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W. THOMAS KELLAHIN
KAREN AUBREY

CANDACE HAMANN CALLAHAN

JASON KELLAHIN
OF COUNSEL

TRANSMITTAL MEMORANDUM

DATE: March 23, 1990

TO: William J. LeMay
Oil Conservation Division
P.O. Box 2088
Santa Fe, New Mexico 87504

RE: NMOCD Case Nos. 9890 & 9891 / Bird Creek

The following documents are enclosed:

Proposed Order of the Division / NMOCD Case No. 9890

Proposed Order of the Division / NMOCD Case No. 9891

Please:

☒ Per your request
☐ For your information only; no action on your part
is required
☐ For your information
☐ We would appreciate a response from you on this
matter
☐ In order to proceed, we need a response from you
by _____
☐ If you have any questions on this matter, please
do not hesitate to call
☐ Please call our office, we need to discuss this
matter with you
☐ Please note that some action on your part is re-
quired
☐ Other:

Sincerely,


KAREN AUBREY

KA/tic
Enclosures

xc: Lawrence W. Robinette

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:

CASE NO. 9890
ORDER NO. R-

APPLICATION OF BIRD CREEK RESOURCES, INC.
FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO

PROPOSED
ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on
March 21, 1990, at Santa Fe, New Mexico, before Examiner
Michael E. Stogner.

NOW, on this ____ of March, 1990, 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) Division Case Nos. 9890 and 9891 were
consolidated at the time of the testimony.

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(3) The Applicant, Bird Creek Resources, Inc., ("Bird Creek") seeks compulsory pooling of all mineral interests underlying the NE/4NE/4 of Section 15, Township 23 South, Range 28 East, from the surface to the bottom of the Delaware formation, East Loving Delaware Oil Pool, or 6,300 feet, whichever is deeper, for the formation of a spacing and proration unit consisting of 40 acres to be dedicated to a well to be drilled at a standard location, 535 feet from the North line and 535 feet from the East line of said Section 15.

(4) That the NE/4NE/4 of Section 15, T23S, R28E is a standard spacing unit for the East Loving Delaware Pool.

(5) That Applicant has the right to drill and complete a well at the proposed location.

(6) To avoid the drilling of unnecessary wells, to protect correlative rights, to avoid waste, and to afford to the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the production in any pool completion resulting from this order, the subject application as amended should be approved by pooling all mineral interests whatever they may be, within said unit.

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(9) The applicant should be designated the operator of the subject well and unit.

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

(11) The applicant has proposed a 200 percent risk penalty to be assessed against those interest owners subject to the force-pooling provisions of this order, and in support thereof presented evidence and testimony at the hearing.

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

(13) 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.

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(14) Following determination of reasonable well costs, any non-consenting working interest owner who has paid his 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.

(15) \$4541.00 per month while drilling and \$438.00 per month while producing should be fixed as reasonable charges for supervision (combined fixed rates); the operator should be authorized to withhold from production the proportionate share of such supervision charges attributable to each nonconsenting working interest, and in addition thereto, the operator should be authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well not in excess of what are reasonable, attributable to each non-consenting working interest.

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

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(17) Upon the failure of the operator of said pooled unit to commence the drilling of the well to which said unit is dedicated on or before _____, 1990, the order pooling said unit should become null and void and of no effect whatsoever.

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

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

IT IS THEREFORE ORDERED THAT:

(1) All mineral interests, whatever they may be, in the East Loving Delaware Oil Pool underlying the NE/4NE/4 of Section 15, Township 23 South, Range 28 East, N.M.P.M., Eddy County, New Mexico, are hereby pooled forming a standard 40 acre oil spacing and proration unit for said pool to be dedicated to a well to be drilled at a standard oil well location 535 feet from the North line and 535 feet from the East line (Unit) of said Section 15.

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PROVIDED HOWEVER THAT, the operator of said unit shall commence the drilling of said well on or before the ____ day of _____, 1990, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the East Loving Delaware Pool.

PROVIDED FURTHER THAT, in the event said operator does not commence the drilling of said well on or before the ____ day of _____, 1990, Ordering Paragraph No. (1) of this order shall be null and void and of no effect whatsoever, unless said operator obtains a time extension from the Division for good cause shown.

PROVIDED FURTHER THAT, should said well not be drilled to completion, or abandonment, within 120 days after commencement thereof, said operator shall appear before the Division Director and show cause why Ordering Paragraph No. (1) of this order should not be rescinded.

(2) Bird Creek Resources, Inc. is hereby designated the operator of the subject well and unit.

(3) After the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Division and each known working interest owner in the subject unit an itemized schedule of estimated well costs.

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(4) Within 30 days from the date the schedule of estimated well costs is furnished to him any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production and any such owner who pays his share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(5) The operator shall furnish the Division and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the 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 said schedule, the actual well costs shall be the reasonable well costs; provided however, if there is objection to actual well costs within said 45-day period the Division will determine reasonable well costs after public notice and hearing.

(6) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid his share of estimated well costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed

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estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

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

(A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him, and

(B) As a charge for the risk involved in the drilling of the well, 200 percent of the prorata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(8) The operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

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(9) \$4541.00 per month while drilling and \$438.00 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); the operator is hereby authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating such well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(10) 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 the terms of this order.

(11) Any well costs or charges which are to be paid out of production shall be withheld only from the working interest's share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(12) All proceeds from production from the subject well which are not disbursed for any reason shall immediately be placed in escrow in Eddy County, New Mexico,

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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 said escrow agent within 30 days from the date of first deposit with said escrow agent.

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

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

(15) Jurisdiction of this cause 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

WILLIAM J. LEMAY
Director

SEAL

KELLAHIN, KELLAHIN AND AUBREY

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

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CANDACE HAMANN CALLAHAN

JASON KELLAHIN
OF COUNSEL

TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047

TRANSMITTAL MEMORANDUM

HAND DELIVERED

DATE: March 21, 1990

TO: Michael E. Stogner
Oil Conservation Division
State Land Office
Santa Fe, New Mexico 87501

RE: NMOCD Case Nos. 9890 & 9891 / Bird Creek

RECEIVED

MAR 21 1990

OIL CONSERVATION DIVISION

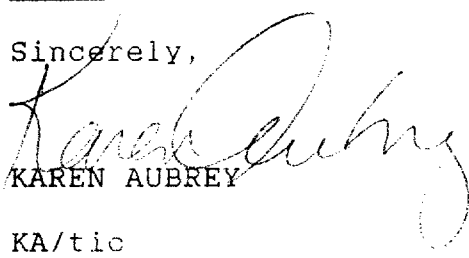
The following documents are enclosed:

Bird Creek Resources Exhibit No. 8

Please:

____ Per your request
____ For your information only; no action on your part
____ is required
____ For your information
____ We would appreciate a response from you on this
____ matter
____ In order to proceed, we need a response from you
____ by _____
____ If you have any questions on this matter, please
____ do not hesitate to call
____ Please call our office, we need to discuss this
____ matter with you
____ Please note that some action on your part is re-
____ quired
____ Other:

Sincerely,


KAREN AUBREY

KA/tic
Enclosure

xc: Lawrence Robinette

BIRD CREEK RESOURCES, INC.

December 18, 1989

Quinoco Consolidated Partners
P.O. Box 378111
Denver, CO 80237

Attn: Mr. Mark Eikerman

BEFORE EXAMINER STOGNER	
OIL CONSERVATION DIVISION	
BIRD CREEK	EXHIBIT NO. 8
CASE NO.	9890 & 9891

Re: Loving Prospect
E/2, Section 15-23S-28E
Eddy County, New Mexico

Gentlemen:

This is to request that Quinoco Consolidated Partners farmout its interest in the E/2 of Section 15-23S-28E, Eddy County, New Mexico on the following basis:

1. On or before June 1, 1989, Bird Creek Resources, Inc. shall commence or cause to be commenced the actual drilling of a 6,300' Delaware test at a legal location in the NE/4 NE/4 of Section 15-23S-28E, Eddy County, New Mexico.
2. Upon completion of the initial test as a well capable of producing oil and/or gas in commercial quantities, Quinoco Consolidated Partners shall assign to Bird Creek all of its interest in the NE/4 NE/4 of Section 15 from the surface down to 100 feet below the stratigraphic equivalent of the total depth drilled or to the base of the Delaware formation, whichever is the lesser.
3. Quinoco Consolidated Partners shall reserve an overriding royalty interest equal to the difference between the existing leasehold burdens and 25%. At payout of the test well, said override shall be convertible to a proportionately reduced 25% working interest.
4. Bird Creek shall have the option to conduct a continuous drilling program in the remainder of the E/2 of Section 15 with no more than 120 days between the completion of the preceding test well and the spudding of the next test to earn the same rights in remaining farmout acreage on a well-by-well basis.

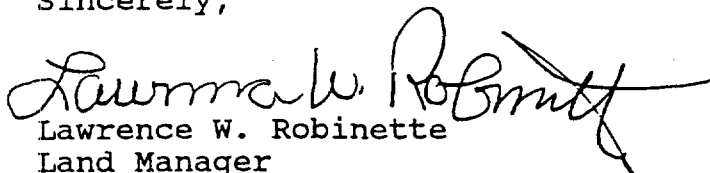
5. Bird Creek shall furnish all geological and well information on any well drilled on the farmout acreage.
6. Each proration unit shall be covered by a Joint Operating Agreement.

If this proposal meets with your approval, please so indicate by signing in the space provided below and returning one copy of this letter to our office. Upon our receipt, we will prepare the formal Farmout Agreement and forward it to you for your review and approval.

This offer shall remain open until February 1, 1989.

If you have any questions or require further information in this regard, please do not hesitate to contact me.

Sincerely,


Lawrence W. Robinette
Land Manager

ACCEPTED AND AGREED TO THIS _____ DAY OF _____, 1990.

By: _____

BIRD CREEK RESOURCES, INC.

December 18, 1989

Oxy USA, Inc.
P.O. Box 50250
Midland, TX 79710

Re: Loving Prospect
E/2, Section 15-23S-28E
Eddy County, New Mexico

Gentlemen:

This is to request that Oxy USA, Inc. farmout its interest in the E/2 of Section 15-23S-28E, Eddy County, New Mexico on the following basis:

1. On or before June 1, 1989, Bird Creek Resources, Inc. shall commence or cause to be commenced the actual drilling of a 6,300' Delaware test at a legal location in the SE/4 SE/4 of Section 15-23S-28E, Eddy County, New Mexico.
2. Upon completion of the initial test as a well capable of producing oil and/or gas in commercial quantities, Oxy USA, Inc. shall assign to Bird Creek all of its interest in the SE/4 SE/4 of Section 15 from the surface down to 100 feet below the stratigraphic equivalent of the total depth drilled or to the base of the Delaware formation, whichever is the lesser.
3. Oxy USA, Inc. shall reserve an overriding royalty interest equal to the difference between the existing leasehold burdens and 25%. At payout of the test well, said override shall be convertible to a proportionately reduced 25% working interest.
4. Bird Creek shall have the option to conduct a continuous drilling program in the remainder of the E/2 of Section 15 with no more than 120 days between the completion of the preceding test well and the spudding of the next test to earn the same rights in remaining farmout acreage on a well-by-well basis.
5. Bird Creek shall furnish all geological and well information on any well drilled on the farmout acreage.

6. Each proration unit shall be covered by a Joint Operating Agreement.

If this proposal meets with your approval, please so indicate by signing in the space provided below and returning one copy of this letter to our office. Upon our receipt, we will prepare the formal Farmout Agreement and forward it to you for your review and approval.

This offer shall remain open until February 1, 1989.

If you have any questions or require further information in this regard, please do not hesitate to contact me.

Sincerely,


Lawrence W. Robinette
Land Manager

ACCEPTED AND AGREED TO THIS _____ DAY OF _____, 1990.

By: _____