KELLAHIN AND KELLAHIN
ATTORNEYS AT LAW
EL PATIO BUILDING
117 NORTH GUADALUPE
POST OFFICE BOX 2265
SANTA FE, NEW MEXICO 87504-2265

W. THOMAS KELLAHIN*
*NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

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

September 5, 1997

HAND DELIVERED

Mr. Michael E. Stogner, Hearing Examiner
Rand Carroll, Esq., Division Attorney
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87504

Re: ***NMOCD Case 11792***
Amended Application of Doyle Hartman
concerning the Myers Langlie Mattix Unit,
Lea County, New Mexico

Gentlemen:

On behalf of OXY USA Inc., I am responding to Mr. Condon's letter delivered to you this morning in which he transmits a copy of **Nearburg v. Yates Petroleum Corporation**, Court of Appeals Opinion Number 1997-NMCA-069 and urges on behalf of Hartman that this case "refutes the argument OXY raised at the June 30 hearing" of Division Case 11792.

Mr. Condon's enthusiasm is misplaced. If anything, **Nearburg** supports OXY's contention that the Division should deny Hartman's attempt to re-write the 1973 unit contracts.

In **Nearburg**, it was not disputed that the 1977 version of the model Joint Operating Agreement did contain an unambiguous "non-consent" provision for subsequent operations.

In Hartman's case it is not disputed that the 1973 MLMU Operating Agreement **did not** contain a "non-consent" provision for subsequent operations.

In **Nearburg**, Yates argued that it was a consenting party because it interpreted the "non-consent" provision to give it the right to change its election from being a non-consenting to a consenting party. The Court found Yates' "position to be a strained interpretation of the operating agreement."

Mr. Condon omits the following instructive provisions of the **Nearburg** opinion:

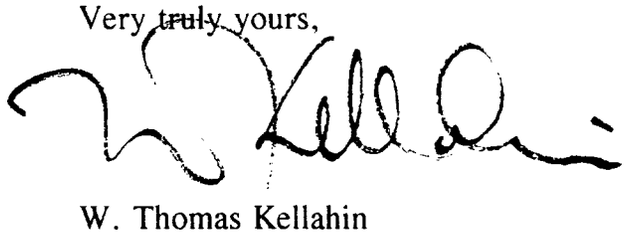
> "A court cannot change contract language for the benefit of one party to the detriment of another",
>
> "In the absence of ambiguity, a court must interpret and enforce the clear language of the contract and cannot make a new agreement for the parties."

In Hartman's case, among other things, OXY argued that:

> (1) unlike the model Joint Operating Agreement (such as in the **Nearburg** case), there is no provision in the MLMU Operating Agreement to allow a working interest owner (Hartman) whose interest was originally committed to the unit, to elect to be carried "non-consent" on subsequent AFE for unit costs and by that act limit his share of unit costs to his share of unit production;
>
> (2) that this original 1973 Unit Operating Agreement **without amendment** was incorporated into the 1980 statutory unitization order (R-6447) which found that these existing agreements complied with the Statutory Unitization Act.

What Mr. Condon is now suggesting in his September 5, 1997 letter, is that the Division can rewrite the 1973 contracts which is contrary to the opinion in the **Nearburg** upon which he attempts to find comfort.

Very truly yours,



W. Thomas Kellahin

fxc: Michael Condon, Esq.
William F. Carr, Esq.
OXY USA Inc.
Greg Curry, Esq.