

R. T. HICKS CONSULTANTS, LTD.

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July 21, 2014

Mr. Mike Bratcher
NMOCD District 2
811 S. First Street
Artesia, New Mexico 88210
Via E-mail

RE: OCD Spill Policy and Request for Additional Time to Submit a Remediation Plan for Murchison Oil and Gas, Inc. – Hackberry State #1 Release

Dear Mike:

This letter is to address the OCD response to our July 15, 2014 request for an extension to submit a remediation plan for the Murchison Hackberry release. In addition to site conditions that support a deferral of delineation and remediation of the release, the draft rule regarding the recycling of produced water introduced by OCD on July 23, 2014 at the BLM office in Carlsbad leads us to question the value of extensive excavation of an active facility pad. The proposed rule presented by OCD would allow the direct surface disposition of produced water for "road construction or maintenance, or other construction" and other approved purposes.

I would like to use the Murchison Hackberry release site to start a discussion regarding delaying delineation, as currently prescribed by policy, to the time of final reclamation of a site. The conditions at the Hackberry site favor a delay of a delineation program:

1. The site is an active, producing well
2. The release was restricted to the production pad
3. There is no reason to remediate a production pad to support vegetation
4. As shown on the attached map, depth to groundwater in this area exceeds 400 feet.
5. The Operator is not interested in closing the regulatory file
 - a. For business purposes (e.g. a future sale of the well)
 - b. To limit the negligible environmental risks created by this localized release
6. The Operator is interested in addressing any and all environmental impacts caused by normal operations (e.g. possible releases over time that were less than 5 barrels) in one coordinated effort at plugging and abandonment

Rule 29 requires notification, which operators like Murchison provide in a manner consistent with the Rule. The conflicts between the policy enforced by the previous administration, the Rule, and common sense become apparent when one considers the part of the Rule reproduced below [*emphasis added*]:

19.15.29.11 CORRECTIVE ACTION: The responsible person shall complete division-approved corrective action *for releases that endanger public health or the environment*. The responsible person shall address releases in accordance with a remediation plan submitted to and approved by the division or with an abatement plan submitted in accordance with 19.15.30 NMAC.

The definition of a remediation plan is pertinent to beginning of a discussion regarding the OCD Policy:

(5) "Remediation plan" means a written description of a program to address unauthorized releases. The plan *may* include appropriate information, including assessment data, health risk demonstrations and corrective action or actions. *The plan may also include an alternative proposing no action beyond the spill report's submittal.*

No prudent operator (or their consultant) will ignore the Rules. Part 29 of the Rules provide significant flexibility to address different situations differently. Common sense combined with some site-specific data (the release volume and observed limit of the spill footprint to the pad) clearly demonstrate that the spill does not represent an immediate threat to vegetation. Common sense, site data (the attached groundwater map) and a rudimentary understanding of fluid flow demonstrate that this spill will not, with reasonable probability, enter groundwater in the foreseeable future. Furthermore, Form C-147 currently permits the re-use of produced water in road construction, road maintenance, and other approved uses. Extensive excavation of the caliche pad of an active facility would seem incongruent with Form C-147 and the produced water recycling rule draft.

Therefore, we believe the data demonstrate that the release does not represent a threat to public health or the environment – not now or as long as the well is producing. We believe that a reasonable alternative in a remediation plan is

- no action beyond the spill report's submittal and
- delineation of soil impacts and development of a final remediation plan at plugging and abandonment

The Rules allow OCD to exercise flexibility to approve a remediation plan that fits the operational and environmental conditions. Therefore, we respectfully request a 90-day extension of time, until October 1, to deliver a remediation plan for this site. This will allow all parties to begin the discussion of the possible disconnects between the Rules (current and draft) and the policy regarding spills as implemented by the previous administrations. Such a discussion will benefit OCD prior to working with operators on the so-called "Spill Rule", which may see a hearing late in 2015.

Thanks to you and Jim for your consideration of this request.

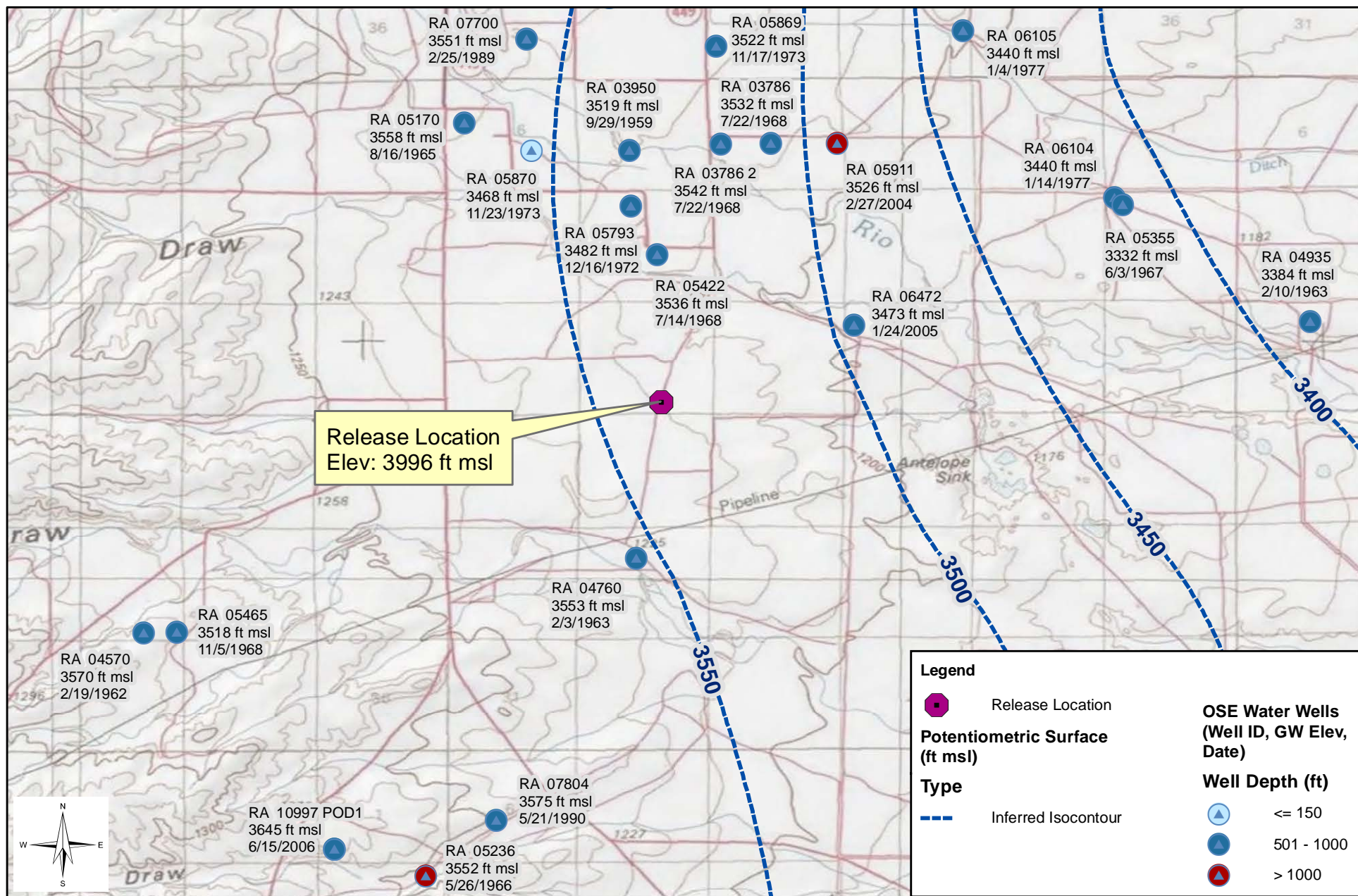
Sincerely,

R.T. Hicks Consultants

A handwritten signature in black ink, appearing to read "Randall Hicks", written in a cursive style.

Randall Hicks

Copy: Murchison Oil and Gas, Inc.
State Land Office
Jim Griswold, NMOCD



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Miles

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Potentiometric Surface and Groundwater Elevation
at Nearby Water Wells
Murchison Oil and Gas
Hackberry State #1

Figure 1
July 2014