From: Ernest Padilla
To: Felicia Orth; McClure, Dean, EMNRD
Cc: Cox, Scott, EMNRD; Hearings, OCD, EMNRD; Bill Zimsky; Andrew Schill; Darin Savage
Subject: [EXT] RE: Allar Development Case No. 21346
Date: Monday, August 24, 2020 4:03:53 PM
Attachments: image001.jpg
Exploration Agreement.pdf

Ms. Orth and Mr. McClure,

I have attached a complete package of the Exploration Agreement. The JOA is attached as Appendix 4 of the Exploration Agreement.

I will not get into an extensive argument as Mr. Savage has just made. In my earlier email I merely tried to explain briefly how the matter was handled since there would be no transcript of the status conference.

Further, I do not believe that in the Lime Rock cases, I said that the JOA was a 1935 dated agreement. What I said was that the JOA in the Lime Rock case had been entered 35 years earlier than the time of the Lime Rock applications.

Ernie

From: Darin Savage <darin@abadieschill.com>
Sent: Monday, August 24, 2020 3:41 PM
To: Felicia Orth <felicia.l.orth@gmail.com>; Dean.McClure@state.nm.us
Cc: Cox, Scott, EMNRD <Scott.Cox@state.nm.us>; Hearings, OCD, EMNRD <ocd.hearings@state.nm.us>; Ernest Padilla <padillalawnm@outlook.com>; Bill Zimsky <bill@abadieschill.com>; Andrew Schill <andrew@abadieschill.com>
Subject: Re: Allar Development Case No. 21346

Ms. Orth and Mr. McClure,

Thank you for the opportunity to respond. In order to clarify the distinctions between the current case and Lime Rock, we have attempted to follow closely to the descriptions of the JOA presented in the Lime Rock case in comparison with the descriptions of the Exploration Agreement in the present case without presenting new arguments. We wouldn't object to Mr. Padilla offering a comparable email with descriptions he believes are relevant.
Mr. Padilla has provided the OCD in the Lime Rock Case Nos. 14820 – 23 a dispute over a fully executed JOA, which Mewbourne Oil Company ("Mewbourne") produced to the OCD and to Lime Rock Resources ("Lime Rock") prior to the pooling hearing as part of the due process procedures. The executed JOA lists the Operator, Mark Production Company, and is signed by the operator and the non-operators.
Furthermore, the JOA provides a specific legal description of the unit it covers (Section 7-T18S-27E) and it contains HBP language that maintains its validity ("This agreement shall remain in full force and effect for as long as any of the oil and gas leases subjected to this agreement remain or are continued in force as to any part of the Unit Area, whether by production, extension, renewal or

otherwise"); in the Lime Rock Case, a specific producing well is identified as maintaining the HBP status of the JOA.

Even after Mewbourne provided the executed JOA, under proper due process procedures, Mr. Padilla, representing Lime Rock, made a strong case in his Response to Mewbourne's Motion to Dismiss, that the executed JOA was a private agreement containing ambiguities, and therefore: "Whether or not the operating agreement is subject to interpretation or is ambiguous is not for the Division to Decide." Lime Rock's Response, Part B, Page 2. In other words, the existence of the JOA is immaterial and inapplicable to whether the OCD can issue a valid and binding pooling order, as it did in Devon's Hot Potato Case for Sections 23 and 26.

In contrast, the Exploration Agreement ("EA") referenced in the OXY-Devon Assignment is very different. It does not contain HBP language, is not HBP, and there has been no producing well identified that could hold it. It is a purely private contract with a specific term limit that has since expired. There is no executed JOA associated with the EA, only a contractually-based option to enter a JOA, and then if only certain conditions are met. For a JOA to be valid under the contractual language of Paragraph 5.1, either ECHO or KOC would have to be selected as the operator (no other operators are allowed under the provision); a "Prospect" would have to be selected and legally described; the JOA would have to be executed; and all this would have to be accomplished prior to the EA's expiration, when the contract is still valid.

Darin

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DARIN SAVAGE

Abadie | Schill P.C.

214 McKenzie Street, Santa Fe, New Mexico 87501

*P | **970.385.4401** :: F | **970.385.4901** :: C | **970.764.8191***

On Aug 24, 2020, at 1:33 PM, Felicia Orth <felicia.l.orth@gmail.com> wrote:

Thank you for the clarification. We will wait for your email response. Felicia Orth

On Mon, Aug 24, 2020, 1:14 PM Darin Savage <darin@abadieschill.com> wrote:

> Ms. Orth and Mr. McClure,
>
> We thank Mr. Padilla for providing the additional information which we believe will help clarify the distinctions in this case. During the hearing, we understood Mr. Padilla to have referenced a 1935 JOA, which we thought Mr. McClure was requesting, but this is an executed 1973 JOA that covers the Lime Rock unit involved. There may have been some misunderstanding about the 1935 JOA and the Lime Rock case, as these appear to be two separate cases. Mr. Padilla also provided additional commentary in his email about the OCD's position in the Lime Rock case and an additional Title Opinion, along with an additional Motion and Response, all of which were not included in the initial proceedings. Given this additional info, we ask for permission to provide a brief email response explaining the difference between the current case, involving Sections 23 and 26, and the Lime Rock case.
>
> We also ask that if Mr. Padilla has a copy of a JOA for Sections 23 and 26 for the current case, that it be provided as well, as this information would also help provide a better understanding and clarification. The expired Exploration Agreement referenced in the OXY-Devon assignment did not include a copy of the form JOA, and the Division or the parties have yet to see the terms of that form.
>
> Thank you for your consideration in this matter,
>
> Darin
>
> Image removed by sender.
>
> DARIN SAVAGE
> *Abadie | Schill P.C.*
> *214 McKenzie Street, Santa Fe, New Mexico 87501*

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On Aug 24, 2020, at 11:50 AM, Ernest Padilla <PadillaLawNM@outlook.com> wrote:

<Exhibit 1 Supplemental Title Opinion .pdf>