



cc
x File
4-26-94
cc. Land

OXY USA INC.
AUTHORITY FOR EXPENDITURE

Region: Western

AFE NO:

Lease/Plant Name: Myers Langlie Mattix Unit	
Description: Install 40 Acre Five Spot Waterflood Pilot	
Partnership/Funding: Funded	
Location: Lea County, New Mexico	
Field: Langlie Mattix	Region AFE No: 5518
Operator Name: OXY USA INC.	PF/Plant/Loc Code: 1424
Oper. AFE No:	Lease/Plant CC No: 73050700-6
State/County No: 30025	Co./Div No: 327 77
Capital Proj.No: 99999	Sec Rec Proj. No: 040
Budget Appr No: 940700	Offshore Zone:
Remarks:	
<p>It is proposed to install a 40 acre fivespot waterflood pilot project on the Myers Langlie Mattix Unit. The Myers Langlie Mattix Unit is currently producing on an 80 acre fivespot waterflood pattern. Due to poor sweep efficiencies and lateral discontinuity, it is believed that a high amount of mobile oil saturation is recoverable by reducing the 80 acre fivespot waterflood to a 40 acre fivespot waterflood. To help quantify the amount of mobile oil saturation that is recoverable by the 40 acre fivespot waterflood pattern, it is proposed to drill and equip 18 producers, convert 16 wells to water injection, and replace the injection tubing in three current water injection wells.</p> <p>The recovery of 1,606,000 barrels of incremental reserves from the pilot area will result in net cash production of \$8,726,000 which will payout the \$4,094,426 OXY USA Inc. capital expenditure 371% (BFIT). Payout period is 3.0 years.</p>	
Estimated Cost Detail	
	Labor
	Materials Incidentals Total
Gross Cost	1,852,250 3,222,400 5,074,650
Net Cost@ 80.68390 % W.I.	1,494,468 2,599,958 4,094,426

CONCURRENCES

Geol.	Geop.	Land	Exploit.	Engr.	Oper. Prod	Oper. G.P.	FP&A	Acctg.
OXY APPROVAL: _____							Date: _____	
PARTNER APPROVAL: _____							Date: _____	
COMPANY: _____								

Prepared By: Scott E. Gengler
Phone #: 915-685-5825

Date: 11-MAR-94

April 28, 1994

Dear Working Interest Owners:

This AFE recommends performing work on our jointly owned property. The estimates shown on this AFE are based on current costs for materials and services and the actual charges may vary from these estimates.

If the work performed meets with your approval, please sign on the "Partner Approval" line and return this AFE to OXY USA INC., Attn: Armando Morales Jr., P.O. BOX 50250, Midland, Texas 79710.

PHONE (915) 685-5716

FAX (915) 685-5754

APPENDIX IV-2

255 29

Detail of Estimated Cost

Reg AFE No	5518
Asset name	Myers Langlie Mattix Unit
Activity	Install 40 Acre Five Spot Waterflood Pilot

Description	Material	Labor and Inci.	Total
MLMU #72 Convert to Water Injection	12,650	17,000	29,650
MLMU #94 Convert to Water Injection	18,400	18,500	36,900
MLMU #96 Convert to Water Injection	18,500	17,000	35,500
MLMU #97 Replace Injection Tubing	14,100	16,500	30,600
MLMU #98 Convert to Water Injection	18,500	17,000	35,500
MLMU #99 Deepen, Run Liner, and Replace Inj Tbg	44,500	36,500	81,000
MLMU #106 Convert to Water Injection	12,900	17,000	29,900
MLMU #133 Convert to Water Injection	18,650	17,000	35,650
MLMU #134 Reenter and Complete As A Wtr Inj Well	19,000	23,000	42,000
MLMU #135 Convert to Water Injection	12,700	17,000	29,700
MLMU #137 Convert to Water Injection	12,500	17,000	29,500
MLMU #141 Convert to Water Injection	12,450	17,000	29,450
MLMU #143 Convert to Water Injection	12,250	17,000	29,250
MLMU #170 Convert to Water Injection	12,250	17,000	29,250
MLMU #176 Convert to Water Injection	12,750	17,000	29,750
MLMU #177 Replace Injection Tubing	14,100	16,500	30,600
MLMU #178 Convert to Water Injection	12,350	17,000	29,350
MLMU #251 Convert to Water Injection	18,600	17,000	35,600
MLMU #252 Convert to Water Injection	18,800	17,000	35,800
MLMU #258 Drill and Equip Producer	78,700	137,700	216,400
MLMU #259 Drill and Equip Producer	78,700	137,700	216,400
MLMU #260 Drill and Equip Producer	78,700	137,700	216,400
MLMU #261 Drill and Equip Producer	78,700	137,700	216,400
MLMU #262 Drill and Equip Producer	79,150	138,150	217,300
MLMU #263 Drill and Equip Producer	79,150	138,150	217,300
MLMU #264 Drill and Equip Producer	79,150	138,150	217,300
MLMU #265 Drill and Equip Producer	78,700	137,700	216,400
MLMU #266 Drill and Equip Producer	79,150	138,150	217,300
MLMU #267 Drill and Equip Producer	44,000	138,600	182,600
MLMU #268 Drill and Equip Producer	44,000	138,600	182,600
MLMU #269 Drill and Equip Producer	78,700	137,700	216,400
MLMU #270 Drill and Equip Producer	44,000	138,600	182,600
Gross Expense Cost			
Net Expense Cost			

Working Interest	0.806839
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Prepared by	Scott E. Gengler
Phone	915-685-5825

Date	Mar-11-94
------	-----------

DOYLE HARTMAN

Oil Operator

3811 TURTLE CREEK BLVD., SUITE 730

DALLAS, TEXAS 75219

(214) 520-1800

(214) 520-0811 FAX

August 24, 1994

VIA FEDERAL EXPRESS

Mr. Charles Pollard

Operations Engineering Supervisor and

Mr. Scott Gengler

Oxy USA, Inc.

#6 Desta Drive, Suite 6002

Midland, TX 79705-5505

Gentlemen:

Reference is made to Oxy's proposed \$7.36 million budget for the Myers Langlie Mattix Unit for fiscal year 1995. Reference is also made to our letter to Oxy of June 9, 1993 wherein we informed Oxy that we were not agreeable to participating in a large redevelopment of the Myers Langlie Mattix Unit and therefore proposed to assign to Oxy Doyle Hartman, Oil Operator's 4.8691% working interest in the Myers Langlie Mattix Unit, in exchange for Oxy assigning to Doyle Hartman, Oil Operator its 160-acre Eumont tract situated in the SW/4 Section 2, T-22-S, R-36-E.

More than one year has transpired since we first informed Oxy of our desire not to participate in substantial new Myers Langlie Mattix Unit development drilling. During the past twelve months, our 4.8691% Myers Langlie Mattix Unit working interest has suffered a net operating loss of \$36,010.89 (7/93 - 6/94), and on a 100% basis, the unit has suffered a net operating loss of \$739,580.74 over the same time period.

Obviously, based on the financial performance of the Myers Langlie Mattix Unit over the past twelve months, it is highly questionable (under the terms of the Unit Agreement for the Myers Langlie Mattix Unit) whether the Myers Langlie Mattix Unit is still a viable secondary recovery unit, especially in consideration of the fact that the oil recovery to date from the Myers Langlie Mattix Unit is nearing the total of primary plus secondary oil reserves initially expected from the Myers Langlie Mattix Unit.

APPENDIX IV-3

Mr. Charles Pollard
Operations Engineering Supervisor and
Mr. Scott Gengler
August 24, 1994
Page Two

The Myers Langlie Mattix Unit has been in existence for approximately twenty years and was unitized for the purpose of conducting secondary recovery operations that would have been impractical without the formation of a waterflood unit. The unit was not conceived of and formed for the purpose of recovering substantial and previously undeveloped primary reserves. The anticipated secondary oil reserves envisioned in the early 1970's to be recoverable from the Myers Langlie Mattix Unit have now been produced and the Hickman study of February 15, 1991 (commissioned by Oxy's predecessor) justified an extensive new Myers Langlie Mattix Unit development program based solely upon the recovery of substantial and previously unanticipated and undeveloped primary reserves.

The currently effective Myers Langlie Mattix Unit participation factors were not approved for the purpose of developing substantial and previously undeveloped primary reserves. If substantial primary oil reserves still exist within the Myers Langlie Mattix Unit, Doyle Hartman and James A. Davidson possibly desire to develop their own primary reserves, or at least contend that new and more equitable unit participation factors must be accurately computed and approved by the proper regulatory authorities and current working interest owners before any newly proposed development work can proceed. It is mandatory that new and equitable participation factors be utilized for developing any substantial and previously unanticipated primary reserves with the new participation factors being mathematically proportional to the reserves underlying those leases from which any new primary reserves are to be derived.

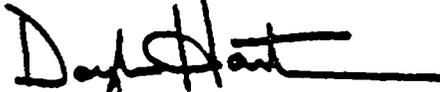
Consequently, it is the position of Hartman and Davidson that Oxy most certainly has not taken the necessary step of computing and obtaining approval for new and more equitable unitization factors and without doubt does not possess the proper authority for proceeding with its proposed development program. However, since we would prefer not to interfere with Oxy's future plans for the Myers Langlie Mattix Unit, we respectfully suggest that both parties sit down and work out a mutually agreeable exchange of properties whereby Oxy can proceed with its desired plans for infill drilling in the Myers Langlie Mattix Unit and Hartman and Davidson can receive from Oxy an exchange property or properties that we ourselves can develop.

Mr. Charles Pollard
Operations Engineering Supervisor and
Mr. Scott Gengler
August 24, 1994
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Since it is imperative that a resolution be immediately reached corresponding to the future development of the Myers Langlie Mattix Unit, we ask that you promptly make contact with James A. Davidson (915-682-6482) about setting up a meeting to initiate a mutual exchange of property.

Very truly yours,

DOYLE HARTMAN, OIL OPERATOR



Doyle Hartman

DH/ao
Enclosures

cc:
VIA FACSIMILE: (915) 682-6504
Mr. James A. Davidson
214 W. Texas, Suite 710
P.O. Box 494
Midland, Texas 79702

Mr. Donald Romine
Vice President - Western Region
Oxy USA, Inc.
#6 Desta Drive, Suite 6002
Midland, TX 79705-5505

Mr. Robert Hunt
Operations Manager - Western Region
Oxy USA, Inc.
#6 Desta Drive, Suite 6002
Midland, TX 79705-5505

Mr. Tim A. Keys
Oxy USA, Inc.
#6 Desta Drive, Suite 6002
Midland, TX 79710

Mr. Charles Pollard
Operations Engineering Supervisor and
Mr. Scott Gengler
August 24, 1994
Page Four

Mr. John Thoma
Financial Consultant
Oxy USA, Inc.
#6 Desta Drive, Suite 6002
Midland, TX 79705-5505

Mr. Patrick N. McGee
Land Manager
Oxy USA, Inc.
#6 Desta Drive, Suite 6002
Midland, TX 79705-5505

Ms. Carol Glass
Landman
Oxy USA, Inc.
#6 Desta Drive, Suite 6002
Midland, TX 79705-5505

Mr. Don Mashburn
Ms. Carolyn Sebastian
Mr. Steven Hartman
Ms. Lisa Holderness
Doyle Hartman, Oil Operator
500 Main Street
Midland, TX 79701



P. N. McGee
Manager-Land
Western Region

OXY USA INC.

Box 50250, Midland, TX 79710

Phone (915) 685-5908
FAX: (915) 685-5754

September 13, 1994



Doyle Hartman
Oil Operator
3811 Turtle Creek Blvd. Suite 730
Dallas, Texas 75219

Re: Myers Langlie Mattix Unit, Lea County, New Mexico.

Dear Mr. Hartman:

In reply to your letters of August 23, and August 24, 1994, it appears we have substantial differences of opinion concerning the potential of the captioned Unit. Such differences of opinion are not unusual in the oil patch. It is clear from your letters you no longer desire to participate in the Myers Langlie Mattix Unit. However, your proposal to exchange your interest in the Unit for OXY's State "N" Lease is not acceptable. Your offer substantially under values the State "N" and is hereby declined as wholly inadequate. OXY has no desire to sell the State "N," therefore, any offer to acquire it must fully compensate OXY for the development potential. Your offer is several orders of magnitude below our internal valuation.

Should you desire to terminate your participation in the Unit, Article 17.1 of the Unit Operating Agreement permits any party in your position to withdraw from further participation by assigning all of their right, title, and interest in the Unit, the Unitized Formation, their lease or leases and any other operating rights, etc. to those parties who desire to continue Unit Operations. By such withdrawal you will avoid any future liability or responsibilities concerning unit operations. Of course nothing in Article 17 permits any party to avoid obligations that have been incurred prior to the delivery of their interests to the remaining parties. Therefore, if you wish to withdraw you should do so promptly to avoid incurring additional obligations.

OXY totally disagrees with your contention the unit is no longer viable. OXY sought and obtained unit operatorship based upon our opinion that we could improve existing unit operations. Recent financial results substantially demonstrate our position in this regard and we expect our planned future operations to continue the improvement.

Regarding your proposal to revise the participation factors for the unit, nothing in the Unit Agreement or Unit Operating Agreement permits such a revision. Only two events allow revision of the participation factors, an expansion of the Unit, and a failure of a tract or tracts to qualify for inclusion. Neither instance is applicable. Further, the Unit Agreement specifically and expressly prohibits "any re-

APPENDIX IV-4

Doyle Hartman
Myers Langlie Mattix Unit
Lea Co., New Mexico

September 13, 1994
Page 2

evaluation of engineering or geological interpretations used in determining Tract Participations" and it further prohibits the removal of any tract from the Unit by reason of depletion.

The provisions cited above make it clear that at the time the Unit Agreement and Unit Operating Agreement were negotiated, the parties anticipated additional time, information, and technology, would reveal substantial variations in reserve composition and disposition. They considered the question and allocated the risk between the parties according to the information they possessed at the time, expressly prohibiting your proposed second guessing.

In short, your allegations are without merit and your proposals are either prohibited or inadequate. However, butting heads profits no one. To this end we are willing to consider a reasonable cash purchase proposal or trade for your interest in the Myers Langlie Mattix Unit. As the party who is dissatisfied with the status quo we feel it is incumbent upon you to propose a basis for reasonable discussion. That basis should include your immediate payment of your overdue JIB's with interest thereon.

Very truly yours,

OXY USA Inc.



P. N. McGee
Manager-Land
Western Region

cc: D. Romine
B. Hunt



OXY USA INC.
Bcx 300, Tulsa, OK 74102

August 19, 1994

Doyle Hartman
Attention Ms. Carol Farmer
P.O. Box 10426
Midland, TX 79702

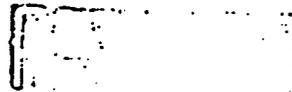
Re: Myers Langlie Mattix Unit
7-3050700-6, Contract # 3730
Lea Co., NM
OXY USA Inc. - Operator

Dear Ms. Farmer:

This letter comes as a follow-up and confirmation of our phone call earlier today. As we discussed, OXY is currently conducting numerous capital improvement projects on the captioned unit. You questioned what options Doyle Hartman has regarding participation in these projects.

Under terms of the Unit Operating Agreement dated January 1, 1993, working interest owners do not have a non-consent option for such capital projects. Rather, the agreement provides the following:

1. Article 3.2.4 states that the operator must seek working interest owner approval of any single expenditure in excess of \$15,000. OXY has done this through the AFE balloting process.
2. Article 4.3.2 defines "approval" as an affirmative vote of three or more owners having a combined interest of at least 65%. Each AFE project currently being billed by OXY has received such approval. Once approved, the financial responsibility for such projects becomes the obligation of each working interest owner, regardless of their vote.
3. Article 17 does provide that a working interest owner may withdraw from the unit (and any future obligations) by assigning its interest to the other working interest owners. However, the assigning of interest does not relieve the owner from any obligation incurred prior to the date of execution and delivery of the assignment.



/Page 2 ...

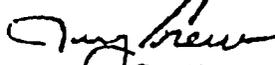
AUG 25 1994

APPENDIX III-1

To Doyle Hartman
August 19, 1994
Page 2 ...

For your convenience, I have attached copies of the Agreement Articles I have referenced. I trust this will address the questions you have raised, but do not hesitate to contact me should you have further questions.

Sincerely,



Jerry Crew
Joint Interest Contracts

JC/mw
Attachments

xc: Pat McGee, MID Land (w/attachment)
Jim Maury, MID Finance "

WORKING INTEREST OWNER ACCUMULATED AFE APPROVAL

Lease/Facility: MYERS LANGLIE MATTIX

Proposed Work: CONVERT D: E, INSTALL W/F PILOT

Required Approval: 65/3

OXY USA Inc.'s Interest: 8068392

Add: 3 808264

6 8082805

7 8096844

8 8096915

9 8096986

10 8117781

12 8805652

From: Tim Keys 10/25/94 2:32PM
 To: Jim Maury, Mike Gooding
 Subject: MYERS LANGLIE MATTIX UNIT

----- Message Contents -----

TO DATE, THIRTEEN WIO'S FOR A TOTAL OF .8805652 HAVE APPROVED THE INSTALLATION OF THE 40 ACRE FIVE SPOT WATERFLOOD PILOT FOR THE SUBJECT UNIT:

WIO	INTEREST
OXY USA INC.	.8068390
LOWE PARTNERS	. ?
SAMPSON RESOURCES	.0010287
AMERADA HESS	.0638753
MARALO INC.	.0059616
JAMES A. DAVIDSON	.0013410
JAMES E. BURR	.0000838
MICHAEL CLOUGH	.0000022
CHARLES H. BROWN JR.	.0000071
ANN CLAY BROWN	.0000072
P.C. LIMITED	.0014039
NANCY HARRISON	.0000071
MARY ELLEN GILBERT	.0000071

LAMAR HUNT	ELECTED NON-CONSENT*
HEADINGTON MINERALS	ELECTED NON-CONSENT *

* THERE IS NO NON-CONSENT PROVISION FOR THIS UNIT.

3-24-94
 cc: Linda


OXY USA INC.
 AUTHORITY FOR EXPENDITURE

Region: Western

AFE NO:

Lease/Plant Name: MYERS LANGLIE MATTIX UNIT																									
Description: REMEDIATION OF PITS/TANK BATTERIES																									
Partnership/Funding: CAPTIAL - SITE ABANDONMENT																									
Location:																									
Field:	Region AFE No: 5360																								
Operator Name: OXY USA INC.	PF/Plant/Loc Code: 1424																								
Oper. AFE No:	Lease/Plant CC No: 73050700-6																								
State/County No: 30025	Co./Div No: 327 77																								
Capital Proj. No: 99999	Sec Rec Proj. No: 040																								
Budget Appr No: 940750	Offshore Zone:																								
Remarks:																									
<p>IN ACCORDANCE WITH OUR AGREEMENT WITH TEXACO WE WILL REMEDIATE AND CLOSE THE PITS LOCATED NEAR WELLS 11, 196, & 226. ALSO, CONTAMINATED SOIL LOCATED AT THE TANK BATTERIES NEAR WELLS 226 AND 227 WILL BE CLEANED UP ALONG WITH DISMANTLING OF THE BATTERIES. REPAIR GAS LEAK NEAR WELL 11.</p> <p>COSTS:</p> <table> <tr> <td>REMEDiate/CLOSE PIT NEAR WELL # 11</td> <td>-</td> <td>\$39,000</td> </tr> <tr> <td>REMEDiate/CLOSE PIT NEAR WELL # 196</td> <td>-</td> <td>\$20,000</td> </tr> <tr> <td>REMEDiate/CLOSE PIT NEAR WELL # 226</td> <td>-</td> <td>\$40,000</td> </tr> <tr> <td>REMEDiate SOIL AROUND TANK BATTERY WELL #226</td> <td>-</td> <td>\$20,000</td> </tr> <tr> <td>REMEDiate SOIL AROUND TANK BATTERY WELL #227</td> <td>-</td> <td>.000</td> </tr> <tr> <td>DISMANTLE TANK BATTERY NEAR WELL 226</td> <td></td> <td>00</td> </tr> <tr> <td>DISMANTLE TANK BATTERY NEAR WELL 227</td> <td></td> <td>0</td> </tr> <tr> <td>REPAIR LEAK OF ACTIVE GAS LINE NEAR WF'</td> <td></td> <td></td> </tr> </table>		REMEDiate/CLOSE PIT NEAR WELL # 11	-	\$39,000	REMEDiate/CLOSE PIT NEAR WELL # 196	-	\$20,000	REMEDiate/CLOSE PIT NEAR WELL # 226	-	\$40,000	REMEDiate SOIL AROUND TANK BATTERY WELL #226	-	\$20,000	REMEDiate SOIL AROUND TANK BATTERY WELL #227	-	.000	DISMANTLE TANK BATTERY NEAR WELL 226		00	DISMANTLE TANK BATTERY NEAR WELL 227		0	REPAIR LEAK OF ACTIVE GAS LINE NEAR WF'		
REMEDiate/CLOSE PIT NEAR WELL # 11	-	\$39,000																							
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REMEDiate/CLOSE PIT NEAR WELL # 226	-	\$40,000																							
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REPAIR LEAK OF ACTIVE GAS LINE NEAR WF'																									
<p>Estimated Cost Detail</p> <table> <tr> <td>Gross Cost</td> <td>Labor</td> <td>Total</td> </tr> <tr> <td>Net Cost@ 80.68390</td> <td>150,000</td> <td>150,000</td> </tr> <tr> <td></td> <td>121,026</td> <td>121,026</td> </tr> </table>		Gross Cost	Labor	Total	Net Cost@ 80.68390	150,000	150,000		121,026	121,026															
Gross Cost	Labor	Total																							
Net Cost@ 80.68390	150,000	150,000																							
	121,026	121,026																							

Appendix IV-1

CONCLUSIONS

Geol.	Geop.	Land	Exploit.	Engr.	Oper. Prod	Oper. G.P.	FP&A	Acctg.
OXY APPROVAL: _____							Date: _____	
PARTNER APPROVAL: _____							Date: _____	
COMPANY: _____								

Prepared By: CHARLES LOCK
 Phone #: 685-5824

Date: 16-FEB-94

March 18, 1994

Dear Working Interest Owners:

This AFE recommends performing work on our jointly owned property. The estimates shown on this AFE are based on current costs for materials and services and the actual charges may vary from these estimates.

If the work performed meets with your approval, please sign on the "Partner Approval" line and return this AFE to OXY USA INC., Attn: Armando Morales Jr., P.O. BOX 50250, Midland, Texas 79710.

MAR 22 1994

PHONE (915) 685-5716 FAX (915) 685-5754

APPENDIX IV-1

OTHER PUBLICATIONS: (Partial Listing)

**The Pros and Cons of Mandatory Dedication (with J.D. Mertes),
Urban Land (April 1979) reprinted in V Management & Control
of Growth, 59-63 (Urban Law Inst. 1980).**

**An Analysis of State Laws and Regulations Impacting Animal Waste
Management (with G. Whetstone and D. Wells) (U.S.
Environmental Protection Agency) (1977).**

**A Review and Summary of State Laws Regarding the Disposal of
Reservoir Clearing and Cleaning Debris (with L. Urban and G.
Whetstone) (Corps of Engineers) (1978).**

**An Analysis of Federal Statutes Impacting Forest Service Planning
and Management Responsibilities (with F. Skillern and C.
Bubany) (Vol. I - Planning Sheets, Vol. II - Comprehensive
Review).**

**Air Quality Modeling (Invited Paper), American Meteorological
Society/Air Pollution Control Agency, Second Joint
Conference on Applications of Air Pollution Meteorology
(March 24-27, 1980).**

**Contract Zoning: Old Myths and New Realities - American Planning
Association - Planning Advisory Service Publication Series
(Summer 1982).**

**Forest Resource Laws in Wenger, (ed.) Forestry Handbook (2d ed.
1984) (with Siegler and Mertes).**

**(Since 1980 I have prepared papers and given speeches at
approximately 60-70 continuing education programs sponsored by
such groups as the State Bar of Texas, State Bar of Wyoming,
Eastern Mineral Law Foundation, Southwestern Legal Foundation,
Rocky Mountain Mineral Law Foundation, Texas Tech University
School of Law and the University of Texas School of Law.)**

UNIVERSITY SERVICE:

**Member and Chair of various Law School and University Committees
including Personnel, Curriculum, Faculty Development, Affirmative
Action, Intellectual Property Policy, Faculty Grievance Panel,
and Athletic Council.**

PROFESSIONAL AWARDS:

**Texas Tech University President's Academic Achievement Award -
1995-1996**

**State Bar of Texas, Oil, Gas & Mineral Law Section Research Grant -
Summer 1991**

**Texas Tech University Dub Rushing Research Award - 1986-1987,
1992-1993**

Texas Tech University Dad's Association Research Award -
1980-1981

PROFESSIONAL SERVICE: (Partial Listing)

Indexing Author

Southwestern Legal Foundation, Oil and Gas Reporter -
Volumes 59-124 (Matthew Bender & Co.)

Council Member

State Bar of Texas, Oil Gas & Mineral Law Section -
1991-1994

Participant

Seventh Annual Law and Economics Symposium, San Diego,
California July 29 - August 20, 1976

Consultant

U.S. Environmental Protection Agency, Workshop on Air
Quality Modeling, Airlie House, Virginia May 3-7, 1981

Member and Treasurer

Advisory Board, Municipal Legal Studies Center, Southwestern
Legal Foundation

Member

Editorial Board, Oil & Gas Reporter, Southwestern Legal
Foundation

Interim Director and Research Associate

Applied Planning Research Institute of Municipalities,
Environments and Regions, Texas Tech University (January
1985 - 1989)

Contributing Author

State Bar of Texas, General Practice Digest - Governmental
Entities, 1988-Present

Member and Chair

State Bar of Texas, Oil, Gas & Mineral Law Specialization
Exam Committee, 1990-Present

Trustee

Rocky Mountain Mineral Law Foundation, 1989-present.
Eastern Mineral Law Foundation, 1990-present.

Consultant or Expert Witness

Campbell & Carr, Santa Fe, N.M.
Gene Gallegos, Esq., Santa Fe, N.M.
Fullbright & Jaworski, Houston, TX
City of Garland, TX.
Southwestern Bell Telephone, Dallas, TX
Fees Ruthning, Brisbane, Australia
Matthews & Branscomb, Corpus Christi, TX
Faulkner, Banfield, Doogan & Holmes, Juneau, AK
Amoco Production Co., Houston, TX
Exxon Corp., Houston, TX

OTHER RESEARCH PROJECTS:

Legal Advisor and Associate Investigator

U.S. Environmental Protection Agency project, "Analysis of State Laws and Regulations Impacting the Management of Animal Wastes" October 1976 - November 1977.

Legal Advisor

U.S. Corps of Engineers project, "Review of Environmental Laws Impacting Disposal of Reservoir Clearing and Cleaning Debris" May 1977 - November 1977.

Associate Investigator

U.S. Forest Service project, "Review of Federal Laws and Regulations that Affect the Land Management and Planning Process" April 1977 to December 1980.

Co-Principal Investigator

Texas Tech University, Center for Energy Research Project, "Model Ordinances - Covenants for the Solar Energy Residence" October 1, 1977 - September 30, 1979.

Principal Investigator

U.S. Forest Service project, "Legal Constraints on Rural Recreation Wildland Development" June 1978 - December 1979.

Principal Investigator

U.S. Forest Service project, "Legal Constraints Imposed by the Clean Air Act on Recreational Land Use Planning" March 1979 - December 1980.

Principal Investigator

U.S. Forest Service project, "Legal Aspects of Use and Development of Wildlife Resources on Private Lands" May 1979 - December 1980.

Principal Investigator

Texas Energy & Natural Resources Advisory Council project, "The Developing Problem of Reconciling Surface Mining to Oil and Gas Development" March - July 1982

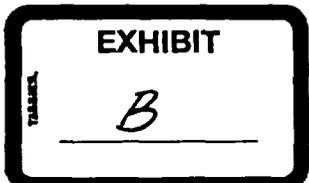
COURSES TAUGHT:

Property
Land Use Planning
International Petroleum
Transactions
Oil & Gas

Water Law
Copyright
Oil & Gas Seminar
State and Local Government Law

REFERENCES:

Will be furnished on request.



SUMMARY OF NEW MEXICO STATUTORY UNITIZATION APPLICATIONS AND ORDERS

Cum. CL	Case No.	Order No.	Order Date	Order Format	Mineral Interests Unitized (M/U/R/U/OV ALL)	Statute Conformity Finding	Statutory LOA Non-Consent Provision	Applicant	Unit	County	Pool	Formation	Acres Approved
1	5596	R-5164	2/17/76	DLQU	ALL	Yes	Yes	Burk Royalty Company	Double L-Queen Unit	Chaves	Double L-Qn Assoc.	Qn	2,670.1
2	5970	R-5498	8/9/77	DLQU	ALL	Yes	Yes	Texaco	Central Vacuum Unit	Lea	Vacuum Gb-SA	Gb-SA	3,048.2
3	6069	R-5583	12/27/77	DLQU	ALL	Yes	Yes	ARCO	East Blinthey Unit	Lea	Blinthey Oil & Gas	Blinthey	3,080
4	6070	R-5594	12/27/77	DLQU	ALL	Yes	Yes	ARCO	East Drinkard Unit	Lea	Drinkard	Drinkard	3,080
5	6328	R-5817	9/29/78	DLQU	ALL	Yes	Yes	Marath, Inc	Marath Jaimal Yates Unit	Lea	Jaimal	Y-Qn	560
6	6366	R-5871	11/27/78	DLQU	ALL	Yes	Yes	Phillips Petroleum Company	East Vacuum Grayburg San Andres Unit	Lea	Vacuum Gb-SA	Gb-SA	7,025.3
7	6652	R-6198	11/30/79	NHGBSAU	ALL	Yes	Yes	Shell Oil Company	North Hobbs Grayburg San Andres Unit	Lea	Hobbs Gb-SA	Gb-SA	10,649.53
8	6667	R-6447	8/27/80	NHGBSAU	ALL	Yes	Yes	Getty Oil	Myers Langlois Matfix Unit	Lea	Langlois Matfix	7R-Qn	9,360
9	7391	R-6947	4/23/82	NHGBSAU	ALL	No		Harvey E. Yates Company	Travis-Penn Unit	Eddy	Travis-Upper Pennsylvanian	Chaco Canyon	480
10	7596	R-7011	6/30/82	NHGBSAU	ALL	Yes	Yes	Yates Drilling Company	South Loco Hills (Grayburg) Unit	Eddy	Loco Hills Qn-Gb-SA	Gb-Locho Hills Sand	1,060
11	7594	R-7251 Dismissed	4/5/83					Harvey E. Yates Company	Carbonate Unit	Lea	North Young	Bone Spring	
12	7045	R-7375-A	5/9/84	NHGBSAU™	ALL	Yes	Yes	J. Cleo Thompson & James Cleo Thompson Jr.	West Square Lake Unit	Eddy	West Square Lake Field	Gb-SA	3,320
13	8397	R-7785	1/27/84	DLQU-NHGBSAU	ALL	Yes	Yes	Gulf Oil Corporation	Eunice Monument South Unit	Lea	Eunice Monument Oil	Gb-SA	14,189.84

**SUMMARY OF NEW MEXICO STATUTORY UNITIZATION
APPLICATIONS AND ORDERS**

Cum. Cl.	Case No.	Order No.	Order Date	Order Format	Mineral Interests Unitized (NMO/RCO/ ALL)	Status Conformity Finding	Statutory UOA Non-Consent Provision	Applicant	Unit	County	Pool	Formation	Acres Approved
14	8779	R-8117	1/6/98	NHG8SAU	ALL	Yes	Yes	Murphy Operating Corporation	Bullit San Andres Unit	Roosevelt	Bullit-SA Assoc.	SA	1,800
15	8952	R-8344	11/7/98	DLOU	ALL	Yes	Yes	Benson-Martin-Greer Dig Corp.	Camada Ojitos Unit	Rio Arriba	West Puerto Chiquito-Mancos Oil	Mancos	69,567.235
16	9231	R-8540	11/9/97	NHG8SAU	ALL	Yes	Yes	Shell Western E & P Inc.	Northwest Drinkard Unit	Lea	North Eunice Blinberry-Tubb-Drinkard O & G	Blinberry-Tubb-Drinkard	4,938
17	9210	R-8557	12/2/87	NHG8SAU	ALL	Yes	Yes	Petco Oil Company	Twin Lakes San Andres Unit	Chaves	Twin Lakes-SA Assoc.	SA	4,863.82
18	9006	R-8905	4/12/89	NHG8SAU	ALL	Yes	Yes	Read & Stevens, Inc.	Bunker Hill Unit	Eddy	Bunker Hill Pentose Assoc.	Pentose	1,350
19	9636	R-8920 Dismissed	5/5/89					Grand Resources Inc	Mesa-Gallup Unit	San Juan	Mesa-Gallup Oil	Gallup	
20	9736	R-0026	10/30/89	NHG8SAU	ALL	Yes	Yes	Kell Oil and Coal, Inc.	Cato San Andres Unit	Chaves	Cato-SA	CA	15,321.83
21	9809	R-9075	12/14/89	NHG8SAU	ALL	Yes	Yes	Yates Drilling Company	Cactus Queen Unit	Chaves	SE Chaves Qn Cos Area Assoc.	Qn	500
22	10062	R-9306	10/29/90	NHG8SAU th	ALL	Yes	Yes	COY USA, Inc.	Central Carlin Queen Unit	Lea	Central Carlin-Qn	Qn	1,561.19
23	10102	R-9358	11/13/90	NHG8SAU	ALL	Yes	Yes	Sage Energy Company	North Vacuum (Aho) North Unit	Lea	North Vacuum-Abb	Abb	1,762.79
24	10153	R-9454	3/12/91	NHG8SAU th	ALL	Yes	Yes	Beech Exploration Inc.	Red Lake Unit	Eddy	East Red Lake-Qn-Gb	Qn	1,131.24
25	10259	R-9482	4/8/91	NHG8SAU	ALL	Yes	Yes	Chesrun, USA, Inc.	Arrowhead Grayburg Unit	Lea	Arrowhead-Gb	Gu	5,922.26
26	10253	R-9494	5/1/91	DLOU-NHG8SAU	ALL	Yes	Yes	Amerada Hess Corporation	North Monument Grayburg-San Andres	Lea	Eunice Monument-Gb-SA	Gb-SA	13,365
27	10341	R-9548	7/22/91	NHG8SAU	ALL	Yes	Yes	Marathon Oil Company	Tamano (BS5C) Unit	Eddy	Tamano-Bone Spring	Bone Spring Second Carbonate	680

**SUMMARY OF NEW MEXICO STATUTORY UNITIZATION
APPLICATIONS AND ORDERS**

Cum. Ct.	Case No.	Order No.	Order Date	Order Format	Mineral Interests Utilized (MORRO/ ALL)	Statute Conformity Finding	Statutory UOA Non-Consent Provision	Applicant	Unit	County	Pool	Formation	Acres Approved
26	10515	R-9710	8/25/92	NHGBSAU	ALL	Yes	Yes	Toscon Exp. & Prod. Inc.	Vacuum Cherokee West Unit	Lea	Vacuum-Glorieta	Glorieta-Padback	2,778.86
29	10553	R 9746	10/23/92	DLQU-NHGBSAU	ALL	Yes	Yes	ARCO Oil & Gas Company	South Justis Unit	Lea	South Justis Blinney-Tubb-Driftward	Blinney-Tubb-Driftward	5,360
30	10618	R-9821	1/6/93	NHGBSAU	ALL	Yes	Yes	Sieve Oil & Gas Company	Parhway Delaware Unit	Eddy	Parhway-Delaware	Delaware	920
31	9836	R-9861 Dismissed	3/23/93					Grand Resources, Inc.	Mesa Gallup Unit	San Juan	Mesa-Gallup Oil	Gallup	
32	10665	R-9894 R-9894 A	5/19/93	NHGBSAU	ALL	Yes	Yes	Hanson Operating Company, Inc.	Ranson Shugart Waterflood Unit	Eddy	Shugart Y-7R-On-Gb	Y-7R-On-Gb	911
33	10781	R-9985	10/13/93	NHGBSAU	ALL	Yes	Yes	Newbourne Oil Company	Querecho Plains Bone Spring Sand Unit	Lea	Querecho Plains-Upper Bone Spring	Upper Bone Spring	2,400
34	10610	R-7900-A	10/26/93	NHGBSAU	ALL	Yes	Yes	Marbob Energy Corporation	Burch-Krity Unit	Eddy	Gb-Jackson	7R-On-Gb-SA	5,149.44
35	10900	R-10083	4/5/94	CMU	ALL	Yes	No	The Wisser Oil Company	Caprock Maljamar Unit	Lea	Maljamar Gb-SA	Gb-SA	4,160
36	10959	R-10123	5/31/94	NHGBSAU	ALL	Yes	Yes	Newbourne Oil Company	Querecho Plains-Queen Assoc. Sand Unit	Lea	Querecho Plains-On Assoc.	On-Pennose Sand	1,520
37	11114	R-10246	1/15/94	NHGBSAU	ALL	Yes	Yes	Great Western Drilling Co.	South Cailer (San Andres) Unit	Lea	South Carter-SA	SA	624
38	11195	R-10449	8/29/95	NHGBSAU	ALL	Yes	Yes	Gillette-Crow, Inc.	West Lovington Strawn Unit	Lea	West Lovington-Strawn	Strawn	1,456.95
39	11298	R-10460 B	3/12/98	NHGBSAU	ALL	Yes	Yes	Even Corp.	Avalon (Delaware) Unit	Eddy	Avalon-Delaware	Good Sheep Reef-Bone Springs-Cherry Canyon-Bushy Canyon	2,118.78
40	11562	R-10740 Dismissed	1/27/97					Shehara Oil Corp.	Shehara State 16 Unit	Lea			
41	11703	in						Parler & Parsley Dev. L.P.	Lusk West (Delaware) Unit	Lea	West Lusk Delaware		

**SUMMARY OF NEW MEXICO STATUTORY UNITIZATION
APPLICATIONS AND ORDERS**

Case No.	Order No.	Order Date	Order Form	Mineral Interests Utilized (MNOCD/ALL)	Statute Conformity Finding	Statutory UOA Non-Consent Provision	Applicant	Unit	County	Pool	Formation	Acres Approved
42	11724		(4)				Gillespie-Crow, Inc	West Lovington Strawn	Lee	West Lovington-Strawn	Strawn	

Footnotes:

- (1) Statutory Unitization approved by 100% of the Working Interest Owners but less than 100% of the Royalty Interest Owners.
- (2) At the statutory unitization hearing, Oxy's attorney agreed to the exclusion of a non-consent penalty against non-consenting parties.
- (3) Non-consent penalty reduced by MNOCD from 400% to 200%.
- (4) Per Florence Davidson, OCD orders not issued as of 6-6-97.

RATIFICATION AND APPROVAL
OF THE PLAN FOR UNIT OPERATIONS
AS STATED IN THE UNIT AGREEMENT AND
UNIT OPERATING AGREEMENT OF THE
MYERS LANGLIE-MATTIX UNIT
LEA COUNTY, NEW MEXICO

KNOW ALL MEN BY THESE PRESENTS, THAT:

For consideration and the purposes stated in those certain agreements, entitled as above, both being dated January 1, 1973, and to obtain the benefits of unitized management, operation and further development of the oil and gas properties in the Myers Langlie-Mattix Unit pursuant to New Mexico Oil Conservation Commission Order No. R-6447 entered on August 27, 1980, approving statutory unitization of the Myers Langlie-Mattix Unit, the undersigned (whether one or more) represents that it is a Working Interest Owner within the meaning of that term as used in the captioned Unit Agreement and, as such, does hereby consent to ratify and approve the plan for unit operations contained in the captioned Unit Agreement and Unit Operating Agreement, said Agreements being incorporated herein by reference and said plan for unit operations having been approved by the New Mexico Oil Conservation Commission in Order No. R-6447.

If the undersigned is also a Royalty Owner, within the meaning of that term as used in said Unit Agreement, then for the considerations and purposes hereinabove stated, this ratification and approval shall extend to the undersigned's Royalty Interest as well as to its Working Interest.

The undersigned hereby acknowledges receipt of copies of said New Mexico Oil Conservation Commission Order No. R-6447, Unit Agreement and Unit Operating Agreement and further acknowledges that the plan for unit operations prescribed in said documents has been ratified and approved and unconditionally delivered on the date set out hereinbelow.

This ratification shall extend to and be binding upon the undersigned, his heirs, legal representatives, successors and assigns.

The undersigned, whether one or more, is referred to in the neuter gender.



GETTY OIL COMPANY

DEC 4 5 1980

WILLIAM HENRY DISTRICT
PRODUCTION DEPARTMENT

IN WITNESS WHEREOF, this instrument is executed this 26th
day of November, 1980.

Cities Service Company

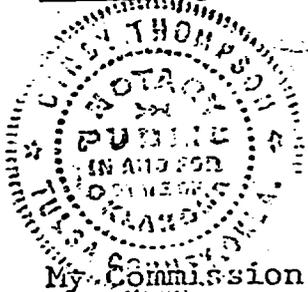
L. H. Stayton
L. H. Stayton Vice President



H. E. Bockelken
H. E. Bockelken
ASSISTANT SECRETARY

STATE OF Oklahoma)
COUNTY OF Tulsa) ss.

SUBSCRIBED AND SWORN TO before me this 26th day of
November, 1980.



Cindy Thompson
Notary Public Cindy Thompson

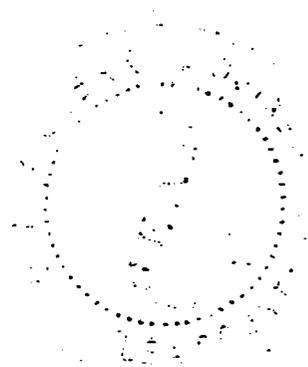
My Commission Expires:
FEBRUARY 3, 1984

STATE OF NEW MEXICO
COUNTY OF LEA
FILED

JAN 6 1981

at 11:05 o'clock A.M.
and recorded in Book 382
Page 584
Donna Bengé, County Clerk
By *[Signature]* Deputy

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10. The creation of the MLMU as a statutory unit occurred when the unit operator (Getty Oil Company) obtained the requisite 75 percent ratification by both working interest owners and royalty interest owners as required by Section 70-7-8 NMSA 1978. On January 5, 1981, the Secretary of the Oil Conservation Division acknowledged receipt of proof of the statutorily required quantum of ratification and declared "that Commission Order No. R-6447 unitizing all interests in the Myers Langlie-Mattix Unit Area, Lea County, New Mexico, is in full force and effect." Attached to this Affidavit as Exhibit D is a copy of one of the 1980 ratifications of a working interest owner which I understand is typical of all working interest owner ratifications. The owners providing the ratifications acknowledged receipt of copies of Order No. R-6447.

11. Under § 70-7-7F, as implemented through Order R-6447, the right of MLMU working interest owners to go non-consent and become a carried interest is now part of the MLMU Unit Agreement and Unit Operating Agreement. Without such a provision, Order R-6447 would be ultra vires.

12. Once a working interest owner elects to become a carried interest by virtue of Order R-6447, the carrying parties would not have the right to sue the non-consenting working interest owners to recover the share of joint interest billing expenses. They are limited in recovering the non-consenting owner's share of expenses from the owner's share of production.

13. The MLMU unit operating agreement was an earlier version of the 1970 Model Form of Unit Operating Agreement (3rd Edition) issued by the American Petroleum Institute. A copy of that model form, which is included in The Law of Pooling

and Unitization, is attached as Exhibit E. Article 11 is the section which deals with unit expenses. Section 11.6 recognizes and provides for a situation where a working interest owner fails to pay its share of unit expense, authorizing those working interest owners who so desire to advance costs and obtain reimbursement of any costs advanced on behalf of a non-paying working interest owner. The remedies available to paying working interest owners are set forth in Section 11.5 of the Model Form Unit Operating Agreement, which provides the right of paying parties to bring suit and obtain a judgment against the non-paying working interest owner. In that regard, Article 11 of the 1970 Model Form Unit Operating Agreement is not a true carried interest provision. This basic structure of the 1970 form was continued in the 1993 Model Form of Unit Operating Agreements with additional remedies being afforded the parties paying the other owners' share of unit expenses.

14. In March, 1974, the American Petroleum Institute issued its First Edition Model Form of Unit Operating Agreement for Statutory Unitization. This Model Form was developed in response to the adoption by numerous states of Statutory Unitization Acts. A copy of the 1974 Model Form for Statutory Unitization is attached as Exhibit F.

15. Sections 11.5 and 11.6 are the provisions which deal with unpaid unit expense. The 1974 Model Form expressly recognizes the need to insert language in the form to deal with a situation where a working interest owner elects to be "carried or otherwise financed." Kansas, Colorado, Michigan, Nebraska, Oregon, South Dakota and Utah, the states which had such a statutory provision in 1974, are specified in the 1974 Model Form. One year later, in 1975, New Mexico adopted its Act with its non-

consent provision. New Mexico Statutory Units would thus need to have a non-consent provision in order to comply with the statutory requirement of Section 70-7-7(F) NMSA.

16. Section 11.6 of the 1974 Model Form deletes the language from the 1970 Model Form of Unit Operating Agreement which provides the right to bring a suit to collect indebtedness from a non-paying working interest owner. This change is consistent with the provision in various Statutory Unitization Acts mandating the right of a unit and working interest owner to go non-consent and become a carried interest.

17. In the operation of the MLMU, Oxy proposed a substantial redevelopment program in 1994. Based upon the correspondence I have reviewed, it is clear that Hartman objected to the redevelopment program and voiced a desire to go non-consent with respect to Oxy's proposal. Oxy wrote Hartman by letter dated August 19, 1994 denying that Hartman and other MLMU working interest owners have the right to go non-consent with respect to unit operations. In my opinion, Oxy's position is contrary to the prescription of NMSA 1978 § 70-7-7F. and Order R-6447 which was ratified in writing by the working interest owners. It requires the agreement to provide for a right of a working interest owner to elect to go non-consent and be carried on a limited, carried or net-profits basis, payable solely out of production.

18. Where the governing instruments provide for the right of a working interest owner to be a non-consenting party and become a carried interest, it is standard practice in the industry for an operator, when proposing unit operations, to circulate an Authority for Expenditure as the means by which a working interest owner can consent or withhold consent to the expenditure. None of the Oxy's AFEs related to the 1994 redevelopment program and subsequent proposals that I have seen, contain

any method by which a working interest owner could disclose an election to go non-consent.

19. I have reviewed the Motion to Dismiss filed by Oxy in this case, whereby Oxy contends that Hartman cannot seek enforcement of Order R-6447, because the interests of Hartman's predecessors-in-interest in the MLMU allegedly were not statutorily unitized or otherwise subject to the terms of the application for statutory unitization for the MLMU filed by Getty Oil Company in 1980 or Order R-6447.

20. As I understand Oxy's position it is that any owner who committed to the unit voluntarily before statutory unitization has no right to go non-consent and must always pay his or her share of any unit expense undertaken by the operator; that conversely, the holdout owners whose interests were compulsorily unitized do have the benefit of electing to be a non-consent party and to do so without penalty. Oxy's position is inconsistent with the express terms of Getty's Application in Case No. 6987, the testimony offered in support of the application, the express terms of Order R-6447 and the letter and spirit of the New Mexico Statutory Unitization Act. The MLMU statutory unitization order is very similar to many such orders issued by the Commission and the Division in statutory unitization proceedings. They uniformly provide that all MLMU mineral interests were approved for statutory unitization and that the interest of "all persons" within the unit area were thereby unitized "whether or not such persons have approved the Unit Agreement or the Unit Operating Agreement in writing." The finding in paragraph 21(b) of Order R-6447, which found or prescribed a provision for carrying any working interest owner in the MLMU, does not limit its application to those working interest owners who had not previously agreed to voluntarily unitize.

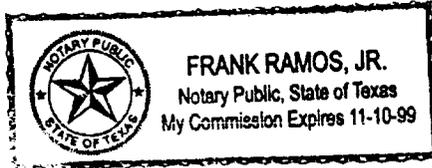
FURTHER AFFIANT SAYETH NOT.

Bruce M. Kramer
Bruce M. Kramer

SUBSCRIBED AND SWORN before me on this 23rd day of June, 1997
by Bruce M. Kramer.

Frank Ramos, Jr.
Notary Public

My Commission Expires:
11-10-99



CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of Bruce M. Kramer's Affidavit in Support of Hartman's Opposition to Oxy's Motion to Dismiss to be hand-delivered on this _____ day of June, 1997 to the following counsel of record:

William F. Carr
Campbell, Carr, Berge & Sheridan
110 N. Guadalupe, Suite 1
Santa Fe, New Mexico 87501

Thomas W. Kellahin
Kellahin & Kellahin
117 N. Guadalupe
Santa Fe, New Mexico 87501

Michael J. Condon

CURRICULUM VITA

BRUCE MORRIS KRAMER
3728 64th Drive
Lubbock, Texas 79413
Telephone: (806) 799-1562

Birthdate: May 26, 1947
Birthplace: Brooklyn, N.Y.
Marital Status: Married
Children: Four

EDUCATION:

B.A. 1968, J.D. 1972
University of California at Los Angeles

LL.M. 1975
University of Illinois, College of Law

BAR ADMISSIONS:

California and Texas

EMPLOYMENT:

Private Practice
Los Angeles, California
June 1972 - August 1973

Assistant Professor (1974-1977)
Associate Professor (1977-1979)
Professor (1979-1992)
Maddox Professor (1992-Present)
School of Law, Texas Tech University

Visiting Professor

Indiana University School of Law (Bloomington) (Fall 1979);
Lewis & Clark Law School (Summer 1980); University of
Florida, Holland Law Center (1982-1983); University of
Texas, School of Law (Summer 1987).

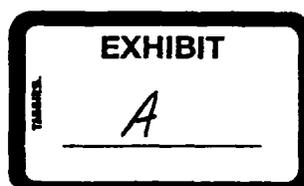
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BRUCE MORRIS KRAMER

Curriculum Vita

Page 2

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1 WHEREUPON, the proceedings herein excerpted begin
2 at approximately 5:15 p.m.:

3 MR. KELLAHIN: May I close debate on my motion?
4 I need about five minutes.

5 EXAMINER STOGNER: Mr. Kellahin, five minutes.

6 MR. KELLAHIN: Thank you, Mr. Stogner.

7 We have responded to Mr. Gallegos's and Mr.
8 Condon's arguments today in the memorandum. It deals
9 extensively with this issue. There are a couple of points
10 I want to bring to your attention.

11 If you look at Mr. Gallegos's reproduction of 7F
12 on the board over there, you'll see that there is a
13 difference in phrasing.

14 You see the word "carrying" in the first line,
15 and you see the word "carried"? Those are not synonymous,
16 they're disjunctive.

17 7F requires that the document shall contain a
18 provision for carrying, and it provides three different
19 types of carrying provision options: You can have a
20 carrying interest provision on a limited basis, on a
21 carried basis, or on a net-profits basis.

22 And when you drop down to the middle of the
23 paragraph where you see "carried" again, the two "carrieds"
24 are linked.

25 What we have in the 1973 agreements that the

1 Division approved in 1980 is a carrying provision. That
2 carrying provision is on a limited basis. The limitation
3 is that it's nonexclusive. It's the second option in the
4 contracts. We have that.

5 What Mr. Hartman is attacking is the fact that
6 our contracts don't have a "carried" provision, which he
7 contends is the only one that can be applied when you
8 interpret 7F. Well, that's not true. 7F provides three
9 different types of carrying provisions. He wants you to
10 mandate that it is a carrying provision on a carried basis.
11 That's not what we did, that's not what happened. He's
12 wrong on that point.

13 Mr. Stogner, Mr. Carroll, you don't have to take
14 my word that OXY is right. You don't have to take Mr.
15 Carr's word that OXY is right.

16 I'll ask you to rely upon the scholarly opinions
17 of a highly respected professor of oil and gas law. He
18 eats and breathes and teaches and lectures and writes about
19 oil and gas law on a full-time basis continually. He edits
20 the bible for oil and gas law. He's one of the current
21 authors of Williams and Meyers' *Treatise on Oil and Gas*
22 *Law*. He is not only an academic expert, he is also a
23 practical expert like you, because he has sat where you are
24 sitting now. He has been a commissioner, he has decided
25 cases, he has struggled with problems like this.

1 And he says these cases are final as to Hartman,
2 they are final and cannot be attacked by Hartman, that
3 there is not merits to his claim, that it would be silly to
4 do anything other than dismiss Hartman's attacks on these
5 orders and these contracts.

6 Professor Pat Martin is the editor of Williams
7 and Meyers' *Treatise on Oil and Gas Law*. He is the
8 authority for this position. He says OXY is right and
9 Hartman is wrong.

10 That concludes my closing.

11 (The proceedings herein excerpted end at
12 approximately 5:20 p.m.)

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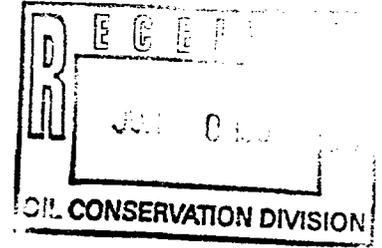
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**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION**

**IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:**



**CASE NO. 6987
CASE NO. 11792**

**AMENDED APPLICATION OF DOYLE HARTMAN
TO GIVE FULL FORCE AND EFFECT TO
COMMISSION ORDER R-6447, TO REVOKE
OR MODIFY ORDER R-4680-A, TO
ALTERNATIVELY TERMINATE THE
MYERS LANGLEIE-MATTIX UNIT,
LEA COUNTY, NEW MEXICO**

**AFFIDAVIT OF BRUCE M. KRAMER
IN SUPPORT OF HARTMAN'S OPPOSITION
TO OXY'S MOTION TO DISMISS**

**STATE OF TEXAS)
) ss.
COUNTY OF LUBBOCK)**

Bruce M. Kramer, being first duly sworn on oath, states as follows:

1. My name is Bruce M. Kramer. I reside in Lubbock, Texas. I am the Maddox Professor at Texas Tech University School of Law. I am the author or co-author of numerous articles or treatises on oil and gas, including "The Law of Pooling and Unitization" which I co-authored with Patrick H. Martin. Attached to this Affidavit as Exhibit A is a copy of my Curriculum Vitae.

APPENDIX II

2. I make this affidavit based upon my experience with the oil and gas industry, my knowledge of the law of pooling and unitization, my study of the pleadings filed of record in this case, my review of copies of various New Mexico Oil Conservation Division files concerning applications for statutory unitization under the New Mexico Statutory Unitization Act, which cases are reflected in the table attached to this Affidavit as Exhibit B, including the file in Case No. 6987, and my review of various Statutory Unitization Acts for the states of New Mexico, Michigan, Kansas, Colorado and Arizona.

3. The testimony stated in this Affidavit is the same as I would give in Court or before the Division under oath if called to testify as a witness in this matter.

4. The New Mexico Statutory Unitization Act authorizes the OCC to compel mineral, royalty or working interest owners to unitize their interests in order to prevent waste, conserve natural resources and protect correlative rights. The New Mexico Legislature has circumscribed the delegation of its police power to the OCC by mandating that the unit agreement or unit operating agreement contain certain specified provisions. One such mandatory provision is listed in § 70-7-7(F) which, when adopted in 1975, required the unit plan to include:

F. a provision for carrying any working interest owner on a limited, carried or net-profits basis, payable out of production, upon such terms and conditions determined by the division to be just and reasonable and allowing an appropriate charge for interest for such service payable out of the owner's share of production; provided that any nonconsenting working interest owner being so carried shall be deemed to have relinquished to the unit operator all of its operating rights and working interest in and to the unit until his share of the costs, service charge and interest are repaid to the unit operator;

The New Mexico provision appears to have been modeled after the Kansas Unitization Act (Kan.Stat.Ann § 55-1305(g), which was first enacted in 1967.

5. The OCC derives its power from the Legislature. Where the statute uses the term "shall" to describe an action, the OCC powers can only be exercised if such a provision or action is included. The requirements of the statute will supersede the terms of a voluntary unit agreement or unit operating agreement to the extent necessary to protect correlative rights, conserve natural resources and prevent waste. Since the OCC has found that those objectives will be served by the issuance of a statutory unitization order, it must include a "non-consent" provision in its orders, otherwise those objectives will not be achieved. Such a provision may be imposed on the unit agreement or the unit operating agreement if they are otherwise not expressed within the text of those documents.

6. In oil and gas law a "non-consent" provision gives an unleased owner or a working interest owner an option not to participate in drilling, reworking or other operations. By not participating the owner is not liable for the expenses incurred, except out of his or her share of production.

7. Section 70-7-7F. describes a situation which is common in oil and gas unit and/or joint operating agreements whereby a working interest owner is allowed to go "non-consent" and become a carried interest with respect to unit expenses. The term "carried interest" has a well-defined and generally accepted meaning within the oil and gas industry. 8 P. Martin & B. Kramer, Williams and Meyers Oil and Gas Law 135 (1996). Where a working interest owner has the right to go "non-consent" and become carried, that working interest owner is not personally liable for those costs. Id. at 696

(defining the term “nonconsent principle.”) Rather, the operator or the working interest owners who have consented to the operation pay the carried interest owner’s portion of operating costs and reimburse themselves out of the carried interest owner’s share of revenue from oil and gas production. The person or persons advancing costs are described as the carrying parties while the other is described as the carried party. *Id.* at 138.

8. A basic principle that follows from an owner’s status as a carried interest is that he or she is not personally liable for any costs, except out of his or her share of production. It would be inconsistent with this principle to allow the carrying party to sue the carried party for any unpaid pro rata share of the costs to which the carried party has elected to go “non-consent.” I am unaware of any authority supporting the proposition that a unit operator or the carrying parties have the right to sue a carried party who has elected to go “non-consent” to recover the carried party’s share of expenses.

9. The Myers Langlie-Mattix Unit (“MLMU”) was authorized as a statutory unit under New Mexico law by Order R-6447 issued by the New Mexico Oil Conservation Commission (“Commission”) on August 27, 1980. (Case No. 6987) That Order specifically found that, as required by statute, the MLMU unit agreements included a provision for carrying any working interest owner on a limited, carried or net-profits basis, payable out of production. The written text of the MLMU unit operating agreement which was presented to the Oil Conservation Commission in Case No. 6987 and filed of record in the Lea County Clerk’s Office in 1991 does not contain such a non-consent provision. A copy of Order R-6447 is attached as Exhibit C.

I N D E X

June 30th, 1997
Examiner Hearing
CASE NO. 11,792

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REPORTER'S CERTIFICATE	7

* * *

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**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION**

**IN THE MATTER OF THE HEARING
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**CASE NO. 6987
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**AMENDED APPLICATION OF DOYLE HARTMAN
TO GIVE FULL FORCE AND EFFECT TO
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OR MODIFY ORDER R-4680-A, TO
ALTERNATIVELY TERMINATE THE
MYERS LANGLIE-MATTIX UNIT,
LEA COUNTY, NEW MEXICO**

**MEMORANDUM OF HARTMAN ON CORRECT
EFFECTUATION OF SECTION 70-7-7F. NMSA 1978**

INTRODUCTION

At first Oxy argued that the provisions of the Statutory Unitization Act, and in particular, Section 70-7-7F. NMSA 1978, applied only to those interest owners who were forced into the Unit.¹ Previously, Oxy has also flatly stated that the MLMU unit operating agreement does not provide a non-consent provision.²

As the facts, logic, and law have developed against it, Oxy concedes that Section 70-7-7F. applies to all interests in the Unit and that it does mandate the unit operating agreement must have a provision for carrying working interest owners. But,

¹ Oxy Motion to Dismiss 1, 3-5 and 14-15.

² See pages 8-9 and Appendices III-1 and III-2.

as a last stand, Oxy contends that the original 1973 MLMU unit operating agreement accommodates an owner electing non-consent and being a carried interest.³ Specifically, if we understand Oxy correctly, the argument is that the agreement allows one to be carried “on a limited basis.” This calls for close examination of the terms of the MLMU unit operating agreement and the controlling statute. Moreover, it calls for an accurate construction of the words and phrases used in those documents.

II.

THE OWNER OF A CARRIED INTEREST HAS NO LIABILITY FOR THE INTEREST’S SHARE OF DEVELOPMENT AND OPERATING COSTS

A. Definitions

The treatise Williams & Meyers, Oil and Gas Law, co-authored by Professors Pat Martin and Bruce Kramer and the Bulletins published by COPAS (Council of Petroleum Accountant Society) are accepted authorities for the meaning of terms used in the oil and gas industry.

“carried interest”

A fractional interest in an oil and gas property, usually a lease, the holder of which has no personal obligation for operating costs, which are to be paid by the owner or owners of the remaining fraction, who reimburse themselves therefor out of production. The person advancing the costs is the carrying party and the other is the carried party, 8 Oil and Gas Law, Manual of Oil and Gas Terms, p. 135 (Emphasis added).

The working interest of an owner or lessee who does not participate in the development of the property and assumes no liability for its share of development and operating costs, thereby assuming a non-paying relationship to the other

³ Closing Statement of attorney Thomas Kellahin. Transcript of June 30, 1977 remarks attached as Appendix I.

party or parties. COPAS Bulletin No. 9 (1986) p. 1. (Emphasis added).

“carrying party”

(1) the owner who advances the costs for the carried party under a carried interest arrangement; (2) this term is also used in pooling and unitization agreements to describe a party who assumes responsibility for that share of the costs of drilling which another party has elected not to assume. 8 Oil and Gas Law, supra, p. 138.

“limited carried interest”

A carried interest which is to be carried for the initial development phase only of the operation. After the operator has recouped his advances to the carried interest, the carry terminates. 8 Oil and Gas Law, supra, p. 589.

“net profits interest”

A non-operating interest that receives a stated percentage of the net profits as defined in the agreement. COPAS, supra, p. 1.

A share of gross production from a property, measured by net profits from operation of the property. 8 Oil and Gas Law, supra, p. 679.

“non-consenting owner”

A working interest owner signatory to the operating agreement, who has elected not to participate in a project or operation. COPAS, supra, p. 1.



A party to a joint venture, a joint operating agreement, or a pooling or unitization agreement who does not agree in advance to participate in drilling, reworking, deepening, or plugging back of a well. 8 Oil and Gas Law, supra, p. 693.

Attached as Appendix II is the affidavit of Professor Bruce Kramer, co-author of the Williams & Myers treatise and also the co-author of the four volume treatise The Law of Pooling and Unitization. Professor Kramer instructs that pursuant

to Section 70-7-7F., in the issuance of a statutory unitization order, the Commission must include a “non-consent” provision in its order; such a provision is imposed on the unit agreement and unit operating agreement if not expressed in those documents. Kramer Affidavit, ¶ 5. In oil and gas law a “non-consent” provision gives a working interest owner an option not to participate in drilling, reworking, or other operations. By electing to not participate that owner is not liable for the expenses incurred, except out of his or her share of production. Kramer Affidavit, ¶ 6. Where a working interest elects to be “non-consent” and be “carried” that owner is not personally liable for his share of costs. Kramer Affidavit, ¶ 7. It is inconsistent with this principle to allow the carrying party to sue the carried party for the share of costs for which that party has elected to be a non-consenting working interest owner. Kramer Affidavit, ¶ 8.

In 1968, the noted oil and gas law authority and professor of law at the University of Texas, Ernest E. Smith, said much the same in writing about the Kansas unitization statute which evidently was the source of New Mexico’s Act, including Section 70-7-7. “Although the Commission has considerable discretion in ordering how and when costs shall be paid, it apparently cannot empower the unit operator to demand advance contribution for costs; for the statute requires the inclusion of a provision allowing any non-operating working interest to be carried.”⁴ In this situation the

⁴ Footnote 77 of the article cites to Kan. Stat. Ann. § 55-1305(g) (Supp. 1947) which reads:

55-1305. Commission orders. The order providing for the unitization and unit operation of a pool or a part thereof shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:

* * *

(g) a provision for carrying any nonoperating working interest owner on a limited, carried or net-profits basis, payable out of production, upon terms and conditions determined by the commission to be just and reasonable, or otherwise financing any nonoperating working interest

proportionate share of expenses attributable to the carried owner's tract would be payable only out of that tract's share of production as it accrued." Smith, "The Kansas Unitization Statute: Part II, Vol. 17 Kansas Law Review 133, 144 (1968).

B. Dissecting the Requirements of Section 70-7-7F

The key statutory provision reads:

70-7-7. Division orders.

F. a provision for carrying any working interest owner on a limited, carried or net-profits basis, payable out of production, upon such terms and conditions determined by the division to be just and reasonable and allowing an appropriate charge for interest for such service payable out of the owner's share of production; provided that any nonconsenting working interest owner being so carried shall be deemed to have relinquished to the unit operator all of its operating rights and working interest in and to the unit until his share of the costs are repaid[, plus an amount not to exceed two hundred percent of such costs as a nonconsent penalty with maximum penalty amount in each case to be determined by the division];

Bracketed: 1986 Amendment

"a provision for carrying any working interest owner . . . payable out of production. . ."

This says a working interest owner can be free of personal liability to pay expenses by having the operator or others carry him with the carrying party to be reimbursed from the carried party's share of production.

"on a limited, carried or net-profits basis . . . upon such terms and conditions as determined by the division to be just and reasonable and allowing an appropriate charge

This says, while there must be some carrying provision, there is flexibility. The operator applicant can propose a limited carried, unlimited carried or a net profits basis which must pass

owner who elects to be carried or otherwise financed, and allowing a reasonable interest charge for such service payable out of such owner's share of the production.

for interest . . .

division muster.⁵ The party or parties to be reimbursed are entitled to interest, which is set at 10% per annum in the MLMU agreement. UOA Sec. 11.5.

“any non-consenting working interest owner being so carried. . .”

This provides that to be carried or not is a function of a working interest owner electing to be “non-consenting” as to the proposed expenditure.

The test of whether the MLMU unit operating agreement really meets the requirements of 70-7-7F., as belatedly claimed by its counsel, is thus:

- A. There must be a provision for “carrying any working interest owner. . . .”
- B. When carried, that party’s portion of expenses are only “payable out of production. . . .”
- C. For an owner to be “so carried” is a matter of his or her election to be “non-consenting.”

C. The Provision of the MLMU Unit Operating Agreement

The pertinent provisions of the subject unit operating agreement appear at Article 11. under Unit Expense and read as follows:

11.3 Advance Billings. Unit Operator shall have the right to require Working Interest Owners to advance their respective shares of estimated Unit expense by submitting to Working Interest Owners, on or before the 15th day of any month, an itemized estimate thereof for the succeeding month, with a request for payment in advance. Within fifteen (15) days thereafter, each Working Interest Owner shall pay to Unit Operator its share of such estimate.

* * *

11.5 Lien of Unit Operator and Working Interest Owners. Each Working Interest Owner grants to Unit Operator a lien upon its oil and gas rights to

⁵ The failure of Getty in 1980 to seek any limits on the carried interest or to specify a net profits interests is neither an omission of the Commission nor grounds to disadvantage working interest owners.

each Tract, its share of Unitized Substances when produced, and its interests in all Unit equipment, as security for payment of its share of Unit expense, together with interest thereon at the rate of ten percent (10%) per annum. Unit Operator shall have the right to bring suit to enforce collection of such indebtedness with or without seeking foreclosure of the lien. In addition, upon default by any Working Interest Owner in the payment of its share of Unit expense, Unit Operator, without prejudice to other existing remedies, shall have the right to collect from the purchaser the proceeds from the sale of such Working Interest Owner's share of Unitized Substances until the amount owed by such Working Interest Owner, plus interest as aforesaid, has been paid. Each purchaser shall be entitled to rely upon Unit Operator's written statement concerning the amount of any default. Unit Operator grants a like lien to the Working Interest Owners.

11.6 Unpaid Unit Expense. If any Working Interest Owner fails to pay its share of Unit expense within sixty (60) days after rendition of a statement therefor by Unit Operator, each Working Interest Owner agrees, upon request by Unit Operator, to pay its proportionate part of the unpaid share of Unit expense of the defaulting Working Interest Owner. The Working Interest Owners that pay the share of Unit expense of a defaulting Working Interest Owner shall be reimbursed by the Unit Operator for the amount so paid, plus any interest collected thereon, upon receipt by Unit Operator of any past due amount collected from the defaulting Working Interest Owner. Any Working Interest Owner so paying a defaulting Working Interest Owner's share of Unit expense shall be subrogated to the lien and rights herein granted Unit Operator.

The only verbiage that one might, with a distorted view point, think calls for "carrying any working interest owner" is the first sentence of Section 11.6 which permits the operator to spread the payment of expenses of a "defaulting Working Interest Owner" among the other working interest owners. If the sentence were within the context of a provision for nonconsenting owners to be carried, there is nothing offensive to the statute so far as that goes. But the first sentence of Section 11.6 does not appear in such context, rather, it is surrounded by provisions which obviously contemplate a consenting owner who has not paid bills, is liable and is subject to collection action.

While the operator under Section 11.5 can collect from the proceeds of the sale of an owner's share of production, this is only one of a set of remedies for pursuing collection. Section 11.5 expressly states that the operator can sue an owner who is not paying and Section 11.6 contemplates enforcement of personal liability (" . . . any past due amount collected from the defaulting Working Interest Owner.")

Under the requirements of the Statutory Unitization Act, the provisions of the MLMU unit operating agreement flunk all three tests for providing a non-consent, carried-interest provision. Even the most cursory reading of Sections 11.5 and 11.6 tell anyone that they have no application whatsoever to a provision for carrying a nonconsenting working interest. Section 11.5 and 11.6 are the antithesis of a carried interest provision. Those sections are applicable to an interest owner who has elected to pay his way -- to be on a consent basis -- but who fails to pay the bills.

Until the dying minutes of the motions hearing on June 30, 1997, Oxy had steadfastly and completely agreed with the foregoing conclusion: The MLMU unit operating agreement has no non-consent provision. That this is so is evidenced by the following.

On August 19, 1994 in behalf of Oxy, Jerry Crew, Joint Interest Contracts, wrote Doyle Hartman about Hartman's decision not to participate in Oxy's "numerous capital improvement projects on the captioned unit." Oxy unequivocally stated:

Under terms of the Unit Operating Agreement dated January 1, 1993 (sic) working interest owners do not have a non-consent option for such capital projects.

Copy of the letter attached as Appendix III-1. The files of another interest owner who elected also to be non-consent on the MLMU 40-acre five-spot waterflood pilot

program, Headington Minerals, reveal an Oxy memo stating “There is no non-consent provision for this unit.” Copy of the memo is attached as Appendix III-2.

The MLMU unit operating agreement lacks a provision that meets the requirements of Section 70-7-7F. The terms of Order R-6447 had to, and did, “prescribe” such a provision into the “unit agreement for unit operation. . .” Section 70-7-7. The provision so prescribed had to be a true carried interest, since the Division would have specified parameters had it intended a limited carried interest or a net profits basis.

II.

HARTMAN'S OWNERSHIP INTEREST ELECTED NONCONSENT AS TO OXY'S 1994 REDEVELOPMENT PLAN

It should not be forgotten that the Hartman's working interest ownership of 4.8% in the MLMU elected to pay expenses and receive revenues from its share of production for twenty years. The interest was owned by Texas-Pacific Oil Company, then by Sun Exploration and Production Company from whom Hartman acquired the interest in 1986. For approximately eight years Hartman participated in expenditures and paid the monthly billings. In 1994, Oxy took over operatorship and started its “redevelopment” project.

Under date of March 18, 1994, Oxy sent to Hartman an AFE for certain remediation work. Copy attached as Appendix IV-1. Under date of April 28, 1994, Oxy sent to Hartman an AFE describing its 40-acre five-spot pilot project at an estimated cost of over \$5 million. Copy attached as Appendix IV-2. In both documents Oxy asked “If the work performed meets with your approval, please sign on the ‘Partner

Approval' line and return this AFE to Oxy USA Inc. [address]" Hartman declined to approve either AFE. He went nonconsent and ceased paying Oxy's monthly billings.

Hartman, however, not only had expressed his nonconsent by not approving the AFE's, he also explained in detail why he took such position in a letter to Oxy dated August 24, 1994. Copy attached as Appendix IV-3. There is no doubt that Oxy got Hartman's message as witnessed by the reply of Oxy's P.N. McGee, dated September 13, 1994, telling Hartman that "it is clear from your letters you no longer desire to participate in the Myers Langlie-Mattix Unit." Copy attached as Appendix IV-4. For counsel of Oxy to suggest that Hartman has not elected to be a non-consenting working interest owner is ludicrous.

CONCLUSION

Oxy's Motion to Dismiss should be denied and the Commission should, as a matter of law, enforce order R-6447 as it has imposed on the MLMU unit agreements the right of working interest owners to elect to be non-consenting and to be carried pursuant to the mandate of Section 70-7-7F.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By 

J.E. GALLEGOS
MICHAEL J. CONDON
460 St. Michael's Drive, Bldg. 300
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(505) 983-6686

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of Hartman's Response in Opposition to Oxy's Motion to Dismiss to be hand-delivered on this 10th day of July, 1997 to the following counsel of record:

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Thomas W. Kellahin
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J. E. Gallegos

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. 11,792
))
APPLICATION OF DOYLE HARTMAN, OIL)
OPERATOR, FOR AN ORDER CLARIFYING ORDER)
NO. R-6447 AND REVOKING OR MODIFYING)
ORDER NO. R-4680-A OR, ALTERNATIVELY,)
FOR AN ORDER TERMINATING THE MYERS)
LANGLIE-MATTIX UNIT WATERFLOOD PROGRAM,)
LEA COUNTY, NEW MEXICO)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS (EXCERPT)

PREHEARING CONFERENCE

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

June 30th, 1997

Santa Fe, New Mexico

This matter came on for prehearing conference before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Monday, June 30th, 1997, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

STEVEN T. BRENNER, CCR
(505) 989-9317

APPENDIX I