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

**IN THE MATTER AND CONSIDERATION OF:**

**AMENDED APPLICATION OF ALPHA ENERGY PARTNERS, LLC, FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO**

**OCD CASE NO. 25166**
**OCC CASE NO. 25694**
**ORDER NO. 23961**

**AMENDED APPLICATION OF ALPHA ENERGY PARTNERS II, LLC, FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO**

**OCD CASE NO. 25495**
**OCC CASE NO. 25696**
**ORDER NO. 23977**

**AMENDED APPLICATION OF ALPHA ENERGY PARTNERS II, LLC, FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO**

**OCD CASE NO. 25496**
**OCC CASE NO. 25695**
**ORDER NO. 23989**

# REPLY TO AMERICAN ENERGY RESOURCES, LLC'S RESPONSE TO ALPHA'S MOTION REQUESTING THE COMMISSION TO DETERMINE THAT AER'S REPRESENTATIONS OF PURPORTED SHUT-IN PAYMENTS WERE KNOWINGLY MADE IN BAD FAITH

Alpha Energy Partners, II, LLC, and affiliate AEP II Operating, LLC (collectively "Alpha"), through its undersigned attorneys, submits to the Oil Conservation Commission ("Commission" or "OCC") this Reply ("Reply") to American Energy Resources, LLC's ("AER") Response to Alpha's Motion Requesting the Commission to Determine that AER's Representation of Purported Shut-In Payments Were Knowingly Made in Bad Faith ("Motion Re: Bad Faith"). In support of its Reply, Alpha states the following:

**A. Introduction:**

1. Alpha and other prudent operators who have invested immense time, energy, and resources to develop the State's natural resources in a manner that ensures waste is prevented and correlative rights are protected have encountered expensive roadblocks created by AER. AER has engaged in a pattern of acquiring non-producing wells and antiquated, long-outdated leases expired by their own terms, submitting production reports to the Oil Conservation Division ("Division" or "OCD") based on unspecified "tests" that fail to measure the actual volume and flow of gas—thus appearing to fabricate production where none exists—and using those representations to the Division and Commission to thwart responsible development plans approved by the Division. Whenever these bad-faith practices are challenged before the Commission, AER asserts that the Commission is powerless to evaluate them because the Commission allegedly lacks jurisdiction to adjudicate title. AER thus insists that the Commission abdicate its far-reaching authority to disregard conduct that is distinguishable from, and independent of, title adjudication.

2. Before evaluating whether a lease is valid—i.e., before adjudicating title—there are well-established due diligence practices that a prudent operator is expected to undertake and over which the Commission has jurisdiction and authority to evaluate. A number of these practices are codified in New Mexico's Oil and Gas Payment Act, NMSA 1978 §§ 70-10-1, *et. seq.,* ("OG Payment Act"), which specifies obligations of lessees and assignees, including that "payment shall be made directly to the person or persons entitled thereto by the payor…" (Section 70-10-3) (emphasis added)); that "[t]he operator or lessee arranging for the sale of oil and gas shall furnish the payor with the name, address and percentage of interest each person to whom payment is to be made, as well as proof of marketable title to all of the oil and gas to be sold" (Section 70-10-3.1); and that "[i]f the purchaser or payer is unable to locate any person listed by the operator or lessee

then the purchaser or payer shall notify the operator or lessee that he has been unable to locate or obtain the address of the person entitled to payment." *Id.*

**B. AER's Checks Issued to Deceased Persons and Persons not Entitled to Shut-in Payments Demonstrate a Complete Lack of Due Diligence Given that the Persons Entitled to Payment Were Readily Ascertainable.**

4. AER obtained its antiquated leases by assignment dated December 17, 2018, recorded in Book 1117, Page 1122 (Reception No. 1820128). The leases contained a shut-in provision requiring that any shut-in payment made to perpetuate the lease be paid to the persons entitled to payment within 90-days of the well's shut-in. AER concedes that the Saik #001 Well (API No. 30-015-20971) ("Saik Well") ceased all production by 2010 and remained non-producing through at least 2024. *See* AER's Response to Alpha's Motion Requesting and Evidentiary Hearing, ¶ 2. Thus, any valid shut-in payments would have had to be made to the persons entitled to payment within 90 days of shut-in.

5. Under the OG Payment Act, an operator must ensure that payment is made directly to the person entitled to payment. *See* Section 70-10-3. The operator must also locate the person entitled to payment at their correct address—an obligation consistent with the due-diligence standards of a prudent operator. *See* Section 70-10-3.1.

6. The evidence shows that AER failed to do so. Instead, AER issued payments to deceased individuals and persons no longer entitled to payment under the leases. *See* Alpha's Motion Requesting the Commission to Determine that AER's Representations of Purported Shut-in Payments Were Knowingly Made in Bad Faith ("Alpha's Motion Re: Bad Faith"), ¶¶ 12-14. This conduct transgresses both the OG Payment Act and industry standards of due diligence. It also violates the reasonable-diligence requirement applicable to locating owners in pooling proceedings. *See, e.g.* 19.15.4.12(B) NMAC (stating that a party must use reasonable diligence to locate owners before notice by publication is valid).

7. AER obtained the leases in 2018, and therefore, had seven (7) years to locate the persons entitled to shut-in payments before issuing checks dated February 28, 2025. AER's presentation of these defective shut-in payments to the Commission demonstrates a complete lack of reasonable diligence. A good-faith effort would have included documented searches of county records and publicly available sources. Instead, AER made no effort over seven years and, in an apparent attempt to mislead to the Commission, hastily issued checks that failed to pay the current and rightful royalty owners, thereby evidencing bad faith.

8. In its Response to Alpha's Motion Re: Bad Faith ¶¶ 10-16, AER argues that savings clauses in the 1960s leases to Emma Bell and Ben Wheeler justify AER's seven year delay. AER cites Paragraphs 7, 8 and 10, of the Emma Bell Lease, which purportedly toll obligations absent notice from the lessor. These provisions do not excuse AER's conduct. First, AER, as an assignee, lacks contractual privity with the original lessor, who died in 2005. Second, and more importantly, the OG Payments Act—applicable when AER acquired the leases in 2018—supplants these antiquated provisions as a matter of statute and public policy, imposing on AER the duty to locate and pay the persons currently entitled to payment. The February 28, 2025, checks issued to improper payees demonstrate AER's failure to meet this obligation.

9. By contrast, Alpha has identified all mineral and royalty owners entitled to payment through diligent research and updated ownership records reflecting successors and assignees. *See* Alpha's Motion Re: Bad Faith, Exhibits 8 and 9. Alpha's efforts reflect the preparation and good-faith diligence expected of a prudent operator seeking operatorship approval from the Division and Commission. *See id.*

### C. AER's False and Bad Faith Representation of Payments Forfeits AER's Request for a Stay of the Division's Pooling Orders

10. Based on AER's misrepresentations of production from the non-producing Saik Well and its bad-faith representations of shut-in payments, AER seeks a stay with unclean hands and fails the *Tenneco* test. Under *Tenneco v. New Mexico Water Quality Control Comm'n*, 1986-NMCA-033, ¶ 10, AER must show likelihood of success on the merits, lack of harm to interested parties, and no harm to the public interest. AER has instead demonstrated disregard for statutory obligations and correlative rights. Granting a stay to a bad actor would contravene the public interest.

11. Furthermore, no harm will result from allowing the Hollywood Star Unit to overlap the non-producing Saik Unit. The Division routinely approves overlapping units to protect correlative rights and prevent waste. All owners in the Hollywood Star Unit and the Saik Unit encompassed by the Subject Lands would benefit from Alpha's approved development plan. If AER can overcome regulatory deficiencies and demonstrate to the OCD/OCC that the Saik Well should be developed, it may do so pursuant to the Division's approval and rules.

**Conclusion:**

The Commission should possess the legal tools to protect responsible and prudent operators, such as Alpha, and their legitimate development plans, from bad faith practices. Alpha has made an effort to provide the Commission for its consideration a legal basis for discerning what is and is not within its jurisdiction to adjudicate; the Commission cannot adjudicate actual title, but Alpha submits that there are elements of good faith due diligence with respect to ownership, as described herein, distinguishable from the evaluation of title itself, that the Commission has the authority to adjudicate. Thus, Alpha respectfully requests the Commission to find that AER has acted in bad faith and to deny its request for a stay of the Division's Pooling Orders.

Respectfully Submitted,

ABADIE & SCHILL, PC

*/s/ Darin C. Savage*

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Darin C. Savage

Andrew D. Schill
William E. Zimsky
214 McKenzie Street
Santa Fe, New Mexico 87501
Telephone: 970.385.4401
Facsimile: 970.385.4901
darin@abadieschill.com
andrew@abadieschill.com
bill@abadieschill.com

**Attorneys for Alpha Energy Partners II, LLC, and affiliate AEP II Operating, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was filed with the New Mexico Oil Conservation Commission and was served on counsel of record, or on the party of record, if no counsel was provided, via electronic mail on December 16, 2025:

Adam G. Rankin – agrankin@hollandhart.com
Paula M. Vance – pmvance@hollandhart.com
***Attorneys for Permian Resources Operating, LLC;***
***Sarvis Permian Land Fund I, LLC;***
***U.S. Energy Development Corporation; and***
***Sarvis Rockmont Permian Land Fund, LLC***

Jonathan Samaniego – energy.jrs@gmail.com
***Representative for American Energy Resources LLC***

*/s/ Darin C. Savage*

Darin C. Savage