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

APPLICATION OF RILEY PERMIAN OPERATING COMPANY, LLC FOR A HORIZONTAL SPACING UNIT AND COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO	**CASE NO. 24093**

RILEY PERMIAN OPERATING COMPANY, LLC'S REPSONSE TO SPUR ENERGY PARTNERS LLC'S MOTION TO DISMISS

Riley Permian Operating Company, LLC ("Riley") files this Response ("Response") and requests that the New Mexico Oil Conservation Division ("Division") deny the Motion to Dismiss ("Motion") filed by Spur Energy Partners LLC ("Spur") regarding Riley's Application for Compulsory Pooling ("Application"). In support of this Response, Riley states the following.

I. INTRODUCTION

Spur's Motion is a plain attempt to leverage the Division's policies as a means of giving itself a negotiating advantage, which impedes otherwise good faith discussions with Riley over operatorship in lands where both Spur and Riley hold an interest. Spur alleges that Riley failed to meet pre-pooling application requirements set out in Order Nos. R-13155 and R-13165. In doing so, Spur not only incorrectly imbues mere interpretive guidance with the force of a binding administrative rule, but also omits critical facts about how Riley *complied* with the principles set forth in the orders. In reality, Spur's Motion is merely a red herring to conceal its attempt to leverage the Division's policies into an advantage in operatorship negotiations.

Spur's Motion relies on incorrect and unsupportable legal arguments by arguing that the Division's nonbinding policies are mandatory rules. This position violates due process and the New Mexico State Rules Act ("State Rules Act") under NMSA 1978 § 14-4-1. Furthermore,

Spur's Motion omits critical facts about Riley's good faith negotiations, which pertain directly to the Division's pooling application policies. Finally, Spur incorrectly argues that alleged minor deficiencies in Riley's Application justify dismissal, whereas the clear remedy for any such alleged deficiencies is for the Division to permit Riley to amend its Application. Dismissal is a drastic remedy that is not appropriate under these circumstances.

Riley respectfully requests that the Division dismiss Spur's Motion so the parties can resume good faith negotiations.

II. BACKGROUND

1. Riley and Spur have been engaged in good faith negotiations since June of 2023 regarding multiple possible acreage trades, as detailed in *Mark Smith's Affidavit, Exhibit 1*, at ¶ 6 ("Smith Affidavit").

2. Despite frequent communications regarding the acreage, Riley was not aware that Spur was actively pursuing this unit until it received the well proposals for the Red Skies Wells on August 31, 2023. Smith Affidavit at ¶ 7.

3. On September 26, 2023, Spur filed its Compulsory Pooling Application (the "Spur Application") in Case No. 23872, seeking to pool all uncommitted interests in the Yeso formation underlying a 320-acre, more or less, standard horizontal spacing unit comprised of the N/2 of Section 10, Township 18 South, Range 27 East in Eddy County and dedicate the unit to the Red Skies 10 Federal Com 10H, 11H, 12H, 50H, and51H Wells (the "Red Skies Wells").

4. On October 30, 2023, Riley filed an entry of appearance, notice of intervention, and objection to presentation by affidavit.

5. The Division held a status conference on November 16, 2023, and asked Riley if it was planning to file a competing application, to which Riley responded that it was evaluating that

option. *See* Transcript of November 16, 2023, Status Conference, OCD Case No. 23872 (hereinafter "11/16 STC"), 59:25-61:13. Spur requested a January hearing date, and the Division specifically questioned Spur as to whether that would allow Riley to file a competing application, in compliance with the 30-day policy. 11/16 STC, 61:15-62:1. Spur stated that Riley could file by the first week in December for the January 18, 2024, docket. 11/16 STC, 62:2-62:6. Notably, Spur made no mention of needing 30 days to send well proposals before filing an application. The Division expressed doubt about setting a contested hearing for January 18, 2024 given the parties' ongoing negotiations. 11/16 STC, 63:14-63:19. However, Spur *twice* insisted on the January 18 hearing date. 11/16 STC, 63:20-64:1, 64:22-65:10. The Division then set a status conference for January 4, 2024, and a contested hearing for January 18, 2024.

6. As the parties agreed during the November 16, 2023 status conference, Riley filed its Application on December 5, 2023, seeking to pool all uncommitted interests in the Yeso formation within a 400-acre overlapping spacing unit that underlies the N/2 of Section 10 and the W/2 NW/4 of Section 11, Township 18 South, Range 27 East, in Eddy County.

7. Riley sent well proposals on December 15, 2023.

8. Both Riley and Spur are requesting the Division's approval to develop the N/2 of Section 10.

9. Spur has stated that Riley is the only party it is seeking to pool with in the Spur Application. 11/16 STC, 63:8-63:13

10. Spur is the only party the Riley is seeking to pool with its Application, and therefore the only party with whom it has discussed participating in Riley's proposed wells. Smith Affidavit at ¶ 14.

11. Through its ongoing, good faith discussions with Spur, Riley has reasonably determined that Spur has not voluntarily agreed to commit its interests to Riley's wells. Smith Affidavit at ¶¶ 16, 17.

III. ARGUMENT

A. Introduction.

In an attempt to gain an upper hand in the parties' otherwise good-faith negotiations, Spur ignores the agreement it already made for Riley to file its Application during the first week of December. Additionally, Spur raises multiple incorrect legal arguments, omits key facts about the parties' ongoing negotiations, and improperly inflates alleged minor technical deficiencies into fatal errors that it argues warrant dismissal. Each of these arguments will be discussed in detail below, and are more specifically summarized as follows.

1. On November 16, 2023, Spur expressly assured the Division that Riley could file its Application during the first week of December, despite not having received well proposals thirty days prior to such date. Spur is now estopped from arguing that Riley's Application was improperly filed less than thirty days before Riley sent well proposals.

2. Spur's interpretation of Order Nos. R-13155 and R-13165 improperly imbues mere guidance with the force of law.

3. Spur's conclusion that Riley failed to comply with Order Nos. R-13155 and R-13165 disregards the orders' express allowance for situations where a pooling applicant does not send pre-application proposals. Spur's conclusion also ignores Riley's months-long history of discussions with Riley.

4. Spur's Motion omits the orders' requirement that a determination about Riley's compliance is to be made at the hearing rather than upon preliminary motion to dismiss.

Granting Spur's Motion would contradict the Division's policy that a pooling applicant should attempt to obtain voluntary agreements from other owners before a hearing on a pooling application.

5. The minor technical deficiencies alleged by Spur's Motion are appropriately remedied through application amendment, not application dismissal as argued by Spur. Asking the Division to dismiss an application over mere technicalities is a wholly inappropriate remedy that deprives the parties the opportunity to present their operatorship claims before the Division.

B. Spur is estopped from its 30-day policy argument.

Spur's 30-day argument directly contradicts assurances that Spur made to the Division and Riley at the November 16, 2023, status conference and equity requires denial of Spur's Motion. On November 16, 2023, Spur expressly assured the Division that there would be sufficient time for Riley to file its Application for the January hearing date requested by Spur. Spur informed the Division that Riley could file its Application the first week of December for the January 4, 2024 hearing date, and then continue it to January 18, 2024. 11/16 STC, 62:2-62:6. At the time Spur made this agreement, Riley had not yet sent well proposals, and informed the Division and Spur that it was still evaluating whether to file a competing application. 11/16 STC, 61:8-61:13. There could not possibly have been sufficient time for: (i) Riley to finish its evaluation; (ii) create and send well proposals including well footages, AFEs, and other information discussed in Order Nos. R-13155 and R-13165; (iii) wait thirty days; (iv) and then finally, file a pooling application; all before December 5, 2023, the application deadline for the January 4, 2024 hearing. Spur was well aware of this, and the Division expressed reservations about setting a contested hearing date as

early as January. Spur *twice* insisted on keeping the January hearing date. 11/16 STC, 63:20-64:1, 64:22-65:10.

Riley agreed to a January hearing date and the schedule demanded by Spur, in reliance on Spur's assurances that Riley could file its Application the first week of December. Spur made such assurances *knowing* that Riley could not possibly comply with the 30-day policy that Spur now alleges applies to the Application. Spur now wants the Division to dismiss Riley's Application because Riley filed its Application when Spur agreed it could be filed. To dismiss Riley's Application when it relied on Spur's assurances at the status conference would wreak a gross injustice. Spur's 30-day argument is disingenuous and directly contradicted by the assurances it made at the status conference. Equity demands that the Division dismiss Spur's Motion.

C. Order Nos. R-13155 and R-13165 guidance, not binding rules, for this matter.

1. Introduction

Spur argues that Order Nos. R-13155 and R-13165 are binding administrative rules, and failure to comply therewith requires application dismissal. However, Order Nos. R-13155 and R-13165 are not binding on the present proceeding. They have not been adopted as rules or finalized in a rulemaking proceeding consistent with the State Rules Act and NMAC § 19.15.3. Moreover, Order Nos. R-13155 and R-13165 are not binding precent on the present matter, and Spur may not assert preclusion as a defense to Riley's Application. It is therefore inappropriate to dismiss the Application for failure to comply with Order Nos. R-13155 and R-13165.

2. Applicable law

In New Mexico, the State Rules Act mandates that all rules must be filed with the Administrative Law Division at the State Records Center and Archives, and all adopted rules (except emergency rules) must be published in the New Mexico Register before they can become

effective. New Mexico's rulemaking process requires publishing notice, inviting the public to participate through the submission of comments, and holding a public hearing. NMSA 1978 §§ 14-4-4, -5.2, -5.3; NMAC §§ 19.15.3.9 - .12. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Uhden v. New Mexico Oil Conservation Comm'n*, 1991-NMSC-089, ¶ 9; 817 P.2d 721, 723 (1991), citing *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306, 314 (1950). Enforcement of any rule that is promulgated outside of the formal rulemaking proceedings violates due process and violates the State Rules Act.

Only rules issued through an official notice and comment process have the force and effect of law (referred to as "legislative rules" and distinguished from "interpretive rules"). *Princeton Place v. N.M. Human Servs. Dep't*, 2022-NMSC-005, ¶¶ 28, 29; 503 P.3d 319, 329. As opposed to legislative rules, interpretive rules and policies "do not require notice and comment, although… they also do not have the force and effect of law and are not accorded that weight in the adjudicatory process." *Id*. While interpretive rules often do not require promulgation pursuant to the State Rules Act, promulgation is required where interpretive rules "are inconsistent with existing regulations." *Id*.

Moreover, rules of general applicability should be finalized in a rulemaking hearing, not an adjudicatory hearing. *Uhden*, 1991-NMSC-089, ¶ 2; 817 P.2d at 722. Only rules issued through an official notice and comment process have the force and effect of law. *Princeton Place*, 2022-NMSC-005, ¶¶ 28, 29; 503 P.3d at 329. Any requirements established outside the rulemaking framework, such as by administrative order, can only be deemed a guidance policy. While only agency regulations and not the guidelines are binding, agency guidelines are persuasive. *State ex*

rel. Children, Youth & Families Dep't v. Douglas B., 2022-NMCA-028 ¶ 26, fn. 3; 511 P.3d 357, 365 (2022), citing *In re Guardianship of Ashley Elizabeth R.*, 1993-NMCA-129, ¶ 8. 863 P.2d 451, 454 (1993). Guidelines and policies are not final agency actions and do not create any requirements binding on the public. *WildEarth Guardians v. N.M. Env't Improvement Bd.*, 2023 N.M. App. LEXIS 93, * 22 (N.M. App. Ct. 2023).

Orders of the Division are not binding precedent on present applications, especially when a present applicant was not a party to the prior proceedings. Under certain circumstances, administrative orders will have preclusive effect on future proceedings, but only "if rendered under conditions in which the parties have the opportunity to fully and fairly litigate the issue at the administrative hearing." *Shovelin v. Cent. N.M. Elec. Coop., Inc.*, 1993-NMSC-015, ¶12; 850 P.2d 996, 1001 (1993). Res judicata, also known as claim preclusion, does not preclude a person from bringing a claim when that person was not a party to the prior proceeding. *Id*. Stare decisis, or the principle of controlling precedent, has never been held to apply in administrative proceedings, although an agency may not "arbitrarily disregard its own prior decisions…" *Bass Enters. Prod. Co. v. Mosaic Potash Carlsbad Inc.*, 2010-NMCA-065, ¶20; 238 P.3d 885, 893 (2010). Stare decisis has only been applied to administrative decisions in the context of a retroactive lawmaking analysis, which is not at issue in the present matter. *In re PNM Gas Servs.*, 2000-NMSC-012, ¶ 9; 1 P.3d 383, 391 (2000).

3. Analysis

Order Nos. R-13155 and R-13165 were not promulgated pursuant to the State Rules Act, and did not follow a rulemaking procedure. Therefore, they do not have the force of law. They are not published in New Mexico's Administrative Code, nor are they available through the "Rules" section of the Division's website. At *best*, Order Nos. R-13155 and R-13165 could potentially be

construed as interpretive rules, although the Division has made no particular effort to make them known to the regulated community. They are only available through the "OCD Online: Imaging" section of the Division's research database, and are not published as policies or rules. While Order Nos. R-13155 and R-13165 are properly construed as helpful guidance to the regulated community, they cannot be interpreted as establishing mandatory prerequisites to a party filing a pooling application.

Even the Division recognized that no administrative rule formalized this guidance when it found that "no statute or rule specifically requires an applicant for compulsory pooling to furnish interest owners a well proposal prior to filing the application…" Order Nos. R-13155 at 2. The requirement that a pooling applicant send a well proposal with associated information is, and can only be, mere guidance, to assist the Division and affected parties in determining whether an applicant has met the statutory requirement that the owners "have not agreed to pool their interests" and one such owner "has drilled or proposes to drill a well…" There are numerous ways that an applicant may meet such requirements, other than sending well proposals and waiting thirty days prior to filing an application. More importantly, these are statutory prerequisites to the Division *entering an order*, not to an owner filing an application.

The language from Order Nos. R-13155 and R-13165 constitutes guidance, which may be useful in assessing the majority of routine, uncontested pooling applications. The orders do not establish mandatory prerequisites for filing a pooling application. Any such mandatory prerequisites must be established as rules pursuant to the State Rules Act. Failure to comply with nonbinding guidance cannot result in dismissal of an application, so Spur's Motion must be denied.

Further, because Riley was never a party to the underlying cases to the Orders, it cannot be bound by those rules. An order in an adjudicatory hearing is only binding on the parties to the

hearing. See dissent in *McDaniel v. N.M. Bd. Of Med. Exam'rs*, 1974-NMSC-062; 525 P.2d 374, 454 (1974), citing *Seward v. D. & R. G.*, 1913-NMSC-019, ¶ 36; 131 P. 980, 990 (1913) ("'[i]n order to be valid, binding and enforceable the [administrative] order must be reasonably definite and certain in its terms and requirements,' thus to inform the *parties* as to what they are required to do." (emphasis added)). Holding Riley accountable to the requirements of Order Nos. R-13155 and R-13165 violates due process.

D. Riley complied with applicable laws, regulations, and the guidance from Order Nos. R-13155 and R-13165.

1. Introduction

There is no support for Spur's argument that the Division must dismiss Riley's Application because it failed to meet the requirements of applicable laws, regulations, or Order Nos. R-13155 and R-13165. An examination of all the facts and circumstances, including critical facts omitted by Spur's Motion, demonstrates that Riley met all the requirements. Even assuming purely for the sake of argument that Order Nos. R-13155 and R-13165 are binding rules for all pooling applications, Riley complied with those rules. More importantly, the orders themselves expressly require a hearing, and proscribe dismissal.

2. Applicable law

NMSA § 70-2-17(C) provides that when the owners of the interests in a spacing unit "have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit." There are three requirements that must be met before the Division can pool lands: (i) all

owners have not agreed to pool their interests; (ii) one or more owners have drilled or propose to drill a well; and (iii) pooling is necessary to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste. Notably, these are prerequisites for the Division's *issuance* of a pooling *order*. They are not requirements for a pooling *application*, nor are they preconditions to filing an application.

In addition to the pooling statute, the Division has enacted rules that apply to compulsory pooling. 19.15.4.12 NMAC; 19.15.13.1 through 19.15.13.13 NMAC. The Division allows applicants for statutory pooling to obtain approval of an application without a live hearing, based on written evidence submitted prior to a hearing, provided the application is unopposed. 19.15.4.12.A.(1) NMAC. Such evidence must include, *inter alia*, "written evidence of attempts the applicant made to gain voluntary agreement including but not limited to copies of relevant correspondence…" *Id*. This requirement only applies to pooling applications approved without a full hearing pursuant to 19.15.4.12.A.(1) NMAC, and not to all pooling applications in general. Moreover, the rule does not require that such evidence be submitted at the time the application is filed. Pursuant to long-established Division policy, most applicants submit the required evidence with a "pooling checklist" up to two business days before the hearing.

Order No. R-13165 states "the Division takes this opportunity to clarify the requirements that it will *ordinarily* apply in compulsory pooling cases…" It does not impose such requirements on each and every pooling case, and even allows for "extenuating circumstances." Order No. 13165, at (5)(a). The Division expressly recognizes that there are "undoubtedly circumstances in which a prior well proposal should not be required." Order No. 13155, at (7). The Division recognized that the reason for requiring advance proposals was solely "to afford the owners a reasonable opportunity to reach a voluntary agreement." Order No. 13155, at (5).

Notably, Order No. 13165 expressly requires a *hearing*, as opposed to a motion to dismiss, to determine compliance with the requirement for good faith negotiations. Order No. 13165, at (5)(d) ("compliance with the more subjective requirement the Division has customarily recognized for good faith negotiation is better examined in these cases, and in most cases, at the compulsory pooling hearing, based upon a full evidentiary record, rather than upon a preliminary motion to dismiss."). Finally, the Division specifically ordered that if more time was needed for good faith negotiations, the remedy would be a continuance, not a dismissal. Order No. R-13165, at (6). Notwithstanding the mentions of good faith negotiations in Order No. 13165, no such requirement appears in any rule or statute.

3. Analysis

Order Nos. R-13155 and R-13165 focus on the statutory and regulatory prerequisites for pooling orders, to wit: (i) all owners have not voluntarily agreed to pool their interests; (ii) one or more owners have drilled or propose to drill a well; and (iii) written evidence that the applicant attempted to gain voluntary agreement. The third requirement only applies when applicants seek approval of unopposed pooling applications based on written evidence submitted prior to the hearing. All of these requirements are prerequisites for the Division's issuance of pooling orders. They are not requirements for a pooling application. The provisions in Order Nos. R-13155 and R-13165 relating to advance well proposals are meant to ensure that such prerequisites are met before the Division issues a pooling order. In the present case Riley meets those prerequisites.

Although Riley did not submit proposal letters prior to filing its Application, it sent them well in advance of the hearing scheduled for January 18, 2024. Smith Affidavit at ¶ 15. Riley and Spur have been discussing operatorship resolution since June of 2023. Smith Affidavit at ¶ 6. During the fall, Riley considered acquiring Spur's assets, including the acreage underlying the

Applications, which Spur was publicly marketing. Smith Affidavit at ¶ 9. Ultimately, Spur rejected all the bids, and acreage trade discussions between Spur and Riley resumed. As discussions progressed, the parties determined that trading operated units, specifically Riley's Walter unit, could be mutually beneficial to both parties, as each operator would gain better access to its own infrastructure. Smith Affidavit at ¶ 11. Despite the parties' negotiations, the parties have not yet arrived at a mutually agreeable resolution. Smith Affidavit at ¶ 16. The negotiations have, however, made clear that Spur will not voluntarily commit its interests to Riley's proposed wells. *Id*. Riley's Application names the wells that Riley proposes. Thus, the first two prerequisites are satisfied.

The third prerequisite (written evidence that the applicant attempted to gain voluntary agreement) only applies to unopposed pooling applications, which are the vast majority of pooling cases. Order No. R-13165 seems to assume that good faith negotiations are prerequisites for the issuance of a pooling order, although this is unclear from the order itself, and appears nowhere in statute, regulations, or Order No. R-13155. However, even assuming that good faith negotiations are a prerequisite for approval of a pooling application, Riley meets this requirement as well without having sent thirty-day advance proposals. Riley has been negotiating with Spur since October. Thirty-day proposals may be useful for determining good faith negotiations in ordinary, unopposed hearings where the parties with whom negotiations were conducted are not present. The instant case presents entirely different circumstances, and thirty-day proposals are not necessary. Paradoxically, Spur's Motion attempts to manipulate the Division's pooling authority to negate Riley's leverage in negotiations, which weighs against a finding that Spur is engaged in good faith negotiations with Riley.

Order No. R-13155 expressly recognizes that there are undoubtedly circumstances in which a prior well proposal should not be required; Order No. R-13165 limits advance proposals only to *ordinary* cases. The present case demonstrates circumstances where thirty-day advance proposals are not required because they are redundant. The parties are clearly competing for operatorship of the same lands, so there is no need to rely on preliminary well proposals to determine that the parties are not in agreement. Moreover, thirty-day advance proposals would have prevented Riley from timely filing its Application for the January hearings, as Spur expressly agreed it could. The hearing on Spur's Application would have proceeded while Riley's Application was still pending for a February or March hearing date. Thus, 30-day well proposals would have undermined a fair and thorough hearing process.

Riley has complied with the guidance in Order Nos. R-13155 and R-13165, which is to afford owners a reasonable opportunity to reach a voluntary agreement. Riley is not required to send formal proposal letters and AFEs prior to the filing of its Competing Application. Even if there was a question about whether the parties had a reasonable opportunity to reach a voluntary agreement, such a determination must be made at the hearing rather than upon motion.

E. Compliance with Order Nos. R-13155 and R-13165 shall be determined at hearing, not in a motion to dismiss.

The authority on which Spur relies contradicts Spur's own arguments. As noted above, Order No. R-13165 specifically requires a hearing to determine whether a pooling applicant engaged in good faith negotiations, and notes that a motion to dismiss is inappropriate for such a determination. Spur argues that Riley must comply with Order No. R-13165 but then exempts itself from complying with Order No. R-13165. If the order is binding, as Spur insists, then the

order likewise prohibits Spur from moving to dismiss based on Spur's unproven allegations that Riley filed its Application before it attempted to reach a voluntary agreement with Spur.

Spur's Motion contradicts the Division's policy that a pooling applicant should attempt to obtain voluntary agreements from other owners before the hearing on the pooling application. This policy arises from the statutory requirement that all owners "have not agreed to pool their interests…" NMSA § 70-2-17(C). If the Division grants Spur's Motion, the parties will be unable to continue good-faith negotiations about who will operate in the lands at issue. The Division cannot allow Spur to extend the hand of friendship through good faith negotiations, and simultaneously brandish a sword of requesting dismissal of Riley's Application, which is Riley's principle leverage in the negotiations. Good faith negotiations cannot take place while Riley labors under the sword of Damocles due to the prospect of the dismissal of its application. The Division granting Spur's motion would directly contradict the requirement for pooling applicants to attempt to obtain voluntary agreements from other owners.

F. Dismissal Is a Drastic Remedy to Address Minor Technicalities.

Spur has alleged minor deficiencies in Riley's Application, arguing those errors warrant a dismissal. "Dismissal is a drastic remedy, and our Supreme Court has held that it is often appropriate for a district court to take alternative action short of dismissal to address deficiencies in a complaint." *Bailey v. Brasier*, 2021 N.M. App. Unpub. LEXIS 207, *25; see also *Hambaugh v. Peoples*, 1965-NMSC-044, ¶ 16; 401 P.2d 777, 782 (1965) (reversing dismissal and requiring the district court to allow the plaintiff to amend the complaint) and *Lowery v. Atterbury*, 1992-NMSC-001, ¶ 11; 823 P.2d 313, 316 (1992) (holding that "[d]ismissal with prejudice is an extreme measure that should be used sparingly"). Under the circumstances of the instant action, a remedy other than dismissal is appropriate.

1. Proximity well

Spur noted that Riley failed to identify the proximity tract in its Application that would allow it to form a 400-acre spacing unit. Riley does not contest this, but rather requests the opportunity to amend its Application to aptly name the Walter 182710111 #24H Well as the proximity well to allow for the inclusion of proximity tracts within the proposed unit. Allowing Riley to have the opportunity to amend this minor defect is entirely consistent with the Division's long-standing practice. It will not prejudice Spur because: (i) the proximity well is easily identified from the bottomhole locations stated in the Application; (ii) there is still ample time before the hearing on Riley's Application for Spur to evaluate Riley's proposal; (iii) the specific proximity well is a far less important factor in evaluating a pooling proposal than factors such as the formation, lateral length, and unit size (which are all included in Riley's Application); and (iv) Order No. R-13165 specifically requires a continuance, not a dismissal, if further proposal evaluation is necessary.

2. Footage location

Spur also argues that Riley failed to provide specific footage locations in a timely well proposal letter, prohibiting the ability to engage in good faith discussions as required by NMSA 1978 § 70-2-17. The pooling statute cited by Spur does not lay out any requirement to engage in good faith negotiations as Spur asserts, let alone provide for any express requirement to identify specific footage locations. Without identifying the source of this requirement, it would appear as though the requirement stems from Order No. R-13165, which recognizes this as common industry practice. Order No. R-13165 at 2, 3. As discussed above, this practice cannot rise to the level of a hard rule and is merely a nonbinding policy. Furthermore, the duration of the trade discussions between the parties indicate that good faith negotiations have been ongoing contrary to what Spur

asserts in its Motion. Lastly, failing to provide specific footage locations in a proposal letter does not impact the validity of the application itself, which does not require exact locations. See Order No. R-13165 at 3.

3. Overlapping spacing unit

There is no requirement to provide overlapping spacing unit information at the time of filing a compulsory pooling application, and if anything, this information is usually proffered as part of the hearing. Thus, while Riley's Application may not have identified an overlapping spacing unit, that omission in no way constitutes a deficiency, particularly one that would warrant a dismissal.

Allowing Spur to present minor technicalities as grounds for dismissal in this case should be denied because the crux of the dispute between the parties concerns who operates the acreage. Riley urges the Hearing Examiner to examine the full evidentiary record at the compulsory pooling hearing and to make an operatorship determination if the parties are unable to reach an agreement by the time of the hearing. Spur is attempting to give itself leverage in the ongoing negotiations by seeking the dismissal of Riley's Application instead of presenting its case to the Division and obtaining a decision on the merits.

IV. CONCLUSION

For the foregoing reasons, Spur's Motion to Dismiss should be denied.

Respectfully submitted,

BEATTY & WOZNIAK, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2023, I served a true and correct copy of the foregoing pleading on the following counsel of record by electronic mail:

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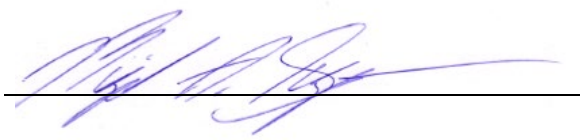

EXHIBIT 1

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

APPLICATION OF RILEY PERMIAN OPERATING COMPANY, LLC FOR A HORIZONTAL SPACING UNIT AND COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO	**CASE NO. 24093**

AFFIDAVIT OF MARK SMITH

I, Mark Smith, being first duly sworn upon oath, deposes and states as follows:

1. My name is Mark Smith, and I am employed by Riley Permian Operating Company, LLC ("Riley") as a Senior Landman.

2. I have previously testified before the New Mexico Oil Conservation Division ("Division"), and the Division has accepted my credentials as those of an expert witness in petroleum land matters and made a matter of record. I have several years of experience in petroleum land matters, and I have worked directly or in a supervisory role with the properties that are the subject of these matters.

3. I am submitting this affidavit in support of Riley's compulsory pool application ("Application") in the above-referenced cases pursuant to 19.15.4.12.(A)(1) NMAC and in response to Spur Energy Partners LLC's ("Spur") Motion to Dismiss.

4. I am familiar with the application filed by Riley in this case and the status of the lands in the subject lands.

5. Under Case No. 24093, Riley seeks an order an order to pool all uncommitted mineral interests in the Yeso Formation within a standard 400-acre horizontal well spacing and unit (the "Walter Unit") composed of the N/2 of Section 10 and the W/2NW/4 of Section 11, Township 18 South, Range 27 East, N.M.P.M., Eddy County, New Mexico, and dedicate the unit

to the following proposed Walter 182710111 #11H, Walter 182710111 #13H, Walter 182710111 #15H, Walter 182710111 #22H, Walter 182710111 #24H, and Walter 182710111 #28H Wells.

6. Since June of 2023, I have exchanged emails with Murphy Lauck and Lance Young, Landmen at Spur, and Mark Hicks, the Vice President of Business Development at Spur, to discuss possible acreage trades in the Permian Basin.

7. I did not know Spur was actively pursuing development of this unit until Riley received the well proposals on August 31, 2023 for the Red Skies Wells, which are now before the Division in Case No. 23872 ("Spur's Application"). In that case, Spur seeks to pool all uncommitted interests in the Yeso formation underlying a 320-acre, more or less, standard horizontal spacing unit comprised of the N/2 of Section 10, Township 18 South, Range 27 East in Eddy County and dedicated to the Red Skies Wells.

8. Riley and Spur both own acreage in the N/2 of Section 10 and the W/2NW/4 of Section 11, Township 18 South, Range 27 East, N.M.P.M., Eddy County, New Mexico.

9. Simultaneously, Spur was publicly marketing its assets. During the bidding process, Riley considered acquiring Spur's assets. These evaluations, including the unknown of who would operate the Red Skies Unit, further delayed Riley's response to Spur's Application and its decision to submit a competing application.

10. Following continued trade discussions throughout October, I ultimately determined it was in the best interest of Riley to protest Spur's Application. Riley entered its appearance on October 30, 2023.

11. In late November as discussions progressed, Mr. Hicks and I determined that trading operated units may be mutually beneficial to both parties, as it would allow each operator to gain closer access to their own infrastructure and facilities. Specifically, we discussed trading

Riley's Walter Unit for Spur's Baffin Unit in Section 18, Township 18 South, Range 27 East, N.M.P.M., Eddy County, New Mexico.

12. Spur sought information related to the water capacity of the Walter Unit, indicating to me a genuine interest in evaluating the acreage trade.

13. After further consideration and after Spur closed the bidding process, Riley submitted its competing compulsory pooling application on December 5, 2023.

14. Spur is the only party the Riley is seeking to pool with its Application, and therefore the only party with whom it has discussed participating in Riley's proposed wells

15. Riley sent via certified mail its well proposals for the Walter unit on December 15, 2023, well in advance of the January 18, 2024 hearing date.

16. Despite the parties' negotiations, the parties have not yet arrived at a mutually agreeable resolution, and Spur has made clear that it will not voluntarily commit its interests to Riley's proposed wells.

17. Riley and Spur continue to engage in good faith negotiations, and Mr. Hicks and I have weekly conversations regarding acreage trades.

18. I hereby swear that to the best of my knowledge and belief, all of the matters set forth herein are true, correct, and accurate.

[*Remainder of page left intentionally blank*]

FURTHER AFFIANT SAYETH NOT.

Dated this 22nd day of December, 2023.

Mark Smith
Riley Permian Operating Company, LLC

STATE OF OKLAHOMA)
) ss.
CITY OF OKLAHOMA CITY AND COUNTY OF OKLAHOMA)

The foregoing instrument was subscribed and sworn to before me this 22nd day of December, 2023, by Mark Smith, Senior Landman for Riley Permian Operating Company, LLC

Witness my hand and official seal.

My commission expires: 9/25/2024

J. Barre Conley
Notary Public - State of Oklahoma
Pottawatomie County
Commission # 00015773
My Commission Expires Sept. 25, 2024