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

APPLICATIONS OF AVANT OPERATING, LLC FOR COMPULSORY POOLING AND APPROVAL OF AN OVERLAPPING NON-STANDARD HORIZONRTAL SPACING UNIT, LEA COUNTY, NEW MEXICO.

CASE NOS.24632 & 24633

RESPONSE TO MAGNUM HUNTER OBJECTION TO AVANT OPERATING, LLC'S AMENDED EXHIBITS AND MOTION TO AMEND APPLICATIONS

1. On November 2, 2024, Avant Operating, LLC ("Avant" or "Applicant") (OGRID No. 330369), through its undersigned counsel, did two simple things. First, it moved for leave to amend the application filed in the above-referenced case to supplement with the following inadvertently omitted information regarding an overlapping horizontal spacing unit ("HSU"), as set forth in its motion. Second, it submitted Amended Exhibit Packets only to provide proof of certified mail and the dates they were sent.

2. Magnum Hunter Production, Inc. ("MHPI"), through counsel, has objected to both actions.

Response to MPHI's Objection to Exhibit Amendment

3. Section 19.15.4.14 NMAC governs the conduct of the adjudicatory proceeding in the above referenced cases. Pursuant to Division precedent, the primary issue for the Division in a contested hearing is to determine which of the competing development plans will: a) most

efficiently develop the acreage, b) prevent waste, and c) protect correlative rights.[1] NMAC Section 19.15.4.14(A) states plainly that "**Hearings before the commission or a division examiner shall be conducted without rigid formality.**" As counsel for MHPI is no doubt aware, the normal rules of evidence in civil trials are not binding on the Division; rather, with certain exceptions not applicable here, **the Division may admit any evidence relevant to its determination of which competing development plan should triumph.**

4. To this end, Section **19.15.4.17(A) NMAC** states plainly, "The rules of evidence applicable in a trial before a court without a jury shall not control, but division examiners and the commission may use such rules as guidance in conducting adjudicatory hearings. **The commission or division examiner may admit relevant evidence, unless it is immaterial, repetitious or otherwise unreliable.**"

5. Recent Division guidance on the issue is clearly in line with Section 19.15.4.17(A), providing that a) that the rules of evidence do not control the conduct of an administrative hearing in the same manner that they do in a district courtroom,[2] b) that the two touchstones for the admission of evidence are relevance and reliability,[3] c) that the purpose of an administrative hearing is to gather as much relevant evidence on the issue as possible,[4] and d) that all parties will have the opportunity to present the Division relevant, reliable evidence that does not surprise the other side.[5] So long as the statutory requirements of materiality, non-

[1] Order No. R-21834, Pg. 15. New Mexico Oil Conservation Division, In the Matter of the Hearing Called by the New Mexico Oil Conservation Division for the Purpose of Considering Case Nos. 21651 and 21733.
[2] Section 19.15.4.17(A) NMAC. See also Docket No. 18-24, New Mexico Oil Conservation Division, In the Matter of the Hearing Called by the Oil Conservation Division for the Purpose of Considering Case Nos. 24141, 24254, Transcript for Wednesday, May 29, 2024, Page 28, Lines 21-22.
[3] *Id*. Page 28, Line 23 through Page 29, Line 1.
[4] Docket No. 34-24, New Mexico Oil Conservation Division, In the Matter of the Hearing Called by the Oil Conservation Division for the Purpose of Considering Case No. 24544, Transcript for Tuesday, August 20, 2024, Page 14, Lines 4-6.
[5] *Id*. Lines 6-9.

repetitiousness, and reliability are met, and the Division is satisfied that no party would be unduly surprised by the information, it may admit the evidence and give it whatever weight it decides is appropriate.

6. **Counsel for MPHI has made no argument that items in the Amended Exhibit packets** – a simple Chart depicting Notice Dates and copies of the proof of certified mailing – **are either immaterial, repetitious, unreliable, or not relevant.** That is because the items – a chart summarizing what official government documents state – are patently material, and inherently reliable and relevant. They also clearly demonstrate that Avant complied with the relevant notice provisions under the NMAC, a fact that the Division is charged with ascertaining in these cases.

7. MPHI counsel's argument appears to be that MPHI has been unduly surprised by the reliable and relevant information in the Amendments to Avant Exhibits D-2 (Notice Chart) and D-3 (Proof of Certified Mail). It should be worth noting at the outset that surprise is not a statutory element promulgated in Section 19.15.4.17(A). Rather, surprise is an unofficial, albeit important, Division gatekeeping consideration.

8. MPHI's argument – that MPHI is unduly surprised or prejudiced by the addition, ***a mere 72 hours later***, of dates on the previously and timely supplied notice chart, as well the addition of photocopies of the certified mailings – is, frankly, absurd. It is also the exact kind of argument that the NMAC Section 19.15.4.14(A) seeks to avoid in administrative hearings, when it states plainly that "Hearings before the commission or a division examiner shall be conducted without rigid formality."

9. The original submitted exhibits contained the requisite notice chart identifying all parties noticed. The amended exhibits are merely an updated chart summarizing what the

photocopies of certified mailing proof demonstrates – that **all parties were properly noticed on July 2, 2024, more than four (4) months prior to the date of this hearing and fully within the NMAC statutory notice timeline.** The presence of the amended exhibits does not raise any new issue before the Division, whether as to Land, Geology, or Reservoir. Photocopies of proof of certified mail with a chart summarizing present zero surprise and only at most trivial inconvenience to MPHI, far from a prejudice threshold. What is more, Exhibit D-4, **for which there is no objection**, plainly demonstrates that Avant provided constructive notice to all possible parties in both Case Nos. 24632 and 24633.

10. Therefore, under the facts, pursuant Section 19.15.4.17(A) NMAC and the Division's recent guidance, MPHI's objection should be overruled. The materials should be admitted because there is no question as to their relevancy or reliability, and present zero surprise or prejudice MPHI.

MPHI's Objection to Avant's Amended Application

11. Section 19.15.16.15 NMAC governs horizontal wells in New Mexico and provides in Subpart (A)(4) that "Subject to Paragraph (9) of Subsection B of 19.15.16.15 NMAC, horizontal spacing units can overlap other horizontal spacing units or vertical well spacing units."

12. Section 19.15.16.15(B)(9) NMAC provides the in subpart (b)(i) that, "Subject to the terms of any applicable operating agreement,[6] or 19.15.13 NMAC[7] or to any applicable compulsory pooling order as to any compulsory pooled interests, a horizontal well that will have a completed interval partially in an existing well's spacing unit, and in the same pool or

[6] Inapplicable to these cases.
[7] 19.15.13 concerns infill wells later proposed in an existing spacing unit and is likewise inapplicable to the present facts.

formation, may be drilled only with the approval of, or in the absence of approval, **after notice to**, all working interest owners of record or known to the applicant in the existing and new well's spacing unit." Subpart (b)(iii) requires additional notice to overlapped parties in advance of actual drilling.

13. Though a best practice before the Division, NMAC does not require, and MPHI counsel does not provide any statutory support for its argument, that the Application specifically identify the existing spacing unit that will be overlapped. The statutes do, however, require that the parties to be overlapped must be noticed. As has been demonstrated by the filed written testimony and communication logs in this case, **Avant has noticed ALL working interest owners within the entire Bone Spring in full compliance with Section 19.15.16.15(B)(9) NMAC.** This includes the operator and all working interest owners of record as to the relevant overlapped vertical spacing unit. In fact, Avant has had direct and ongoing communication with Rhombus Energy, who either directly or through one of its affiliates, is the present operator of the overlapped unit. Thus, Avant has provided all working interest owners in the existing spacing unit with actual notice in the form of Notice of Application letters, and constructive notice as reflected in Avant Case No. 24632 and 24633 Exhibit D-4.

14. Avant has simply requested leave to file an amended application that properly identifies the existing vertical spacing unit in a portion of Section 32 so that it may bring its application in line with best practices. MPHI cites Section 19.15.4.9 NMAC for the proposition that Avant is unable to amend its Application to identify the overlapped spacing unit to the Division. It's reliance on this statute is misplaced. A review of Section 19.15.4.9 NMAC's required elements demonstrates that Avant is perfectly within the statutory requirements. The

Division has published notice of the adjudicatory hearing in the proper manner, and in compliance required eight (8) elements listed therein. Actual notice has been delivered to all interested parties. The requested leave to file an Amended Application will not change these facts, only present a more accurate record for the Division. Amending the application as requested will not impact these essential statutory elements.

15. Again, MPHI makes the ridiculous argument that it has been surprised or perhaps prejudiced by the potential amended application, which purely serves to highlight to the Division information which MPHI had actual knowledge of. Because MPHI can cite no relevant statutory authority for its argument that Avant should be denied the opportunity to amend its application, the objection should overruled.

Summary

16. Simply stated, MPHI has cited no relevant statutory authority for the positions taken in its motion. The actions sought by Avant – leave to file an amended application and two amended exhibits – provide the Division with relevant and reliable evidence that is useful in making its determination as to the actual material issues in these cases.

17. As Avant has demonstrated, the admission of such evidence is in full compliance with the NMAC's statutory requirements. Being mindful of the limited time resource available to the Division, Avant proposes that the parties focus on the real and complex issues surrounding the Division's determination: the efficiency of the competing development plans, preventing waste, and protecting correlative rights.

18. For the reasons stated above, the objection should be overruled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Pre-Hearing Statement was sent to the following counsel of record on this 3rd day of November 2024.

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