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

APPLICATION OF CHISHOLM ENERGY OPERATING, LLC FOR A NON-STANDARD SPACING AND PRORATION UNIT AND COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.

CASE NO. 16115

CHISHOLM'S RESPONSE IN OPPOSITION TO PREMIER OIL & GAS, INC.'S MOTION TO DISMISS

Chisholm Energy Operating, LLC ("Chisholm"), by and through its undersigned attorneys, files this response in opposition to Premier Oil & Gas, Inc.'s ("Premier") motion to dismiss. For the reasons stated, the motion should be denied.

Contrary to Premier's argument, the joint operating agreement ("JOA") at issue does not supersede the authority of the Division to issue pooling orders. To the contrary, the JOA expressly states that it is subject to state regulatory orders. *See, infra*, Exhibit A. Nor does the JOA control the rights and obligations of the parties in this circumstance where the subject contract area overlaps the proposed spacing unit only across a portion of Section 31. The parties have no agreement to address the portion of the well and spacing unit within Section 6. Statutory pooling is thus necessary to combine all mineral interests within the proposed spacing where it crosses both Sections. As important, the Division has no authority or jurisdiction to determine or adjudicate the "private rights" and obligations of the parties under the JOA. But even if the Division does have that authority, the JOA does not preclude Chisholm from drilling a well outside and across the subject contract area. Premier points to no such provision within the JOA. Moreover, Premier has admitted that the JOA does not preclude proposing a well that extends

beyond the boundaries of the contract area. *See, infra.* Accordingly, for at least these four reasons, more fully addressed below, Premier's motion should be denied.

First, contrary to Premier's contention, the JOA does not preclude imposition of a Division order pooling all mineral interests. The JOA, in fact, expressly provides that "this agreement shall be subject to the conservation laws of the state in which the Contract Area is located, to the valid rules, regulations, and orders of any duly constituted regulatory body of said state and to all other applicable federal, state, and local laws, ordinances, rules, regulations, and orders." *See* JOA, attached as Exhibit A, Art. XIV.A (emphasis added); *see also* Art. XV.I ("This Agreement shall be subject to the conservation laws of the state" and the "valid rules, regulations and orders of any duly constituted regulatory body of said state."). Premier, as a party to the JOA, thus expressly acknowledged and agreed that the JOA is subject to the Division's spacing and pooling orders and has no basis to contend otherwise.

Second, the JOA governs the parties' voluntary agreement to explore and develop oil and gas interests only within the lands committed to the contract area. *See generally*, Exhibit A. It does not, however, proscribe development outside the contract area, nor does it preclude the Division from entering a pooling order that covers a portion of the lands within the contract area. Because the contract area under the JOA does not extend to lands in Section 6, which is partially included within the spacing and proration unit proposed by Chisholm, Premier and Chisholm do not have a voluntary agreement covering the lands necessary to develop the proposed well and spacing unit. Chisholm must therefore obtain an order combining all mineral interests within its proposed spacing and proration unit, including interests in Section 31 and 6, pursuant to NMSA 1978, Section 70-2-17(C). Chisholm's pooling application falls squarely within the Division's authority to approve well spacing and to issue pooling orders combining mineral interests. The JOA is expressly subject to the Division's authority and pooling orders. Premier's attempt to

obstruct Chisholm's reasonable and equitable proposal for development is precisely the "'dog in the manger' attitude" that forced pooling is intended to overcome. *See Tenneco Oil Co. v. El Paso Natural Gas Co.*, 687 P.2d 1049, 1052 (Okla. 1984).

Third, courts, not the Oil Conservation Division, have jurisdiction to determine "private rights" regarding a contractual dispute between the parties as to any supposed limitations imposed by the operative joint operating agreement ("JOA"). The Division has jurisdiction and authority only to determine "public rights" relating to the public issue of conservation of oil and gas and the prevention of waste, not the private contractual rights between parties to a JOA. *See, e.g., Hartman v. El Paso Nat. Gas Co.*, 1988-NMSC-080, ¶ 30763 P.2d 1144 (recognizing distinction between "public rights vs. private rights" with respect to the (citing *Tenneco Oil Co.*, 687 P.2d 1049). The rights and obligations of parties within a contract area under voluntary agreements, such as the JOA at issue, "are to be determined by the district court." *Tenneco Oil Co.*, 687 P.2d at 1053; *see also Samson Res. Co. v. Oklahoma Corp. Comm'n*, 742 P.2d 1114, 1116. "The Oil Conservation Commission is a creature of statute, expressly defined, limited and empowered by the laws creating it." *Santa Fe Expl. Co. v. Oil Conservation Comm'n of State of N.M.*, 1992-NMSC-044, ¶ 27, 835 P.2d 819. Its powers extend to preventing waste and protection of correlative rights, not the adjudication of private rights between parties to a JOA. *Marbob Energy Corp. v. New Mexico Oil Conservation Comm'n*, 2009-NMSC-013, ¶ 2, 206 P.3d 135. The Division thus has no jurisdiction or authority to rule that the JOA relied on by Premier proscribes Chisholm's proposal to drill across and outside of a contract area subject to a JOA.

Fourth, even if the Division did have jurisdiction to review this private right issue, which it does not, the JOA relied on by Premier does not prevent Chisholm from proposing a well that includes but extends beyond the limits of the contract area. Premier generally relies on the fact

that a portion of the lands subject to Chisholm's pooling application in Section 31 are within the contract area governed by the JOA, but cites no provision in the agreement that precludes or limits a party from proposing a well that extends beyond the contract area. In fact, no provision in the JOA imposes such a limitation. In fact, Premier admits that the JOA cannot be interpreted in that manner when it suggested extending Chisholm's proposed well outside the contract area in an east-west direction, rather than north-south as Chisholm proposes. *See* email from K. Jones to B. Sullivan, 4/20/18, attached as Exhibit B. Here, Premier nevertheless urges this unsupported interpretation in an attempt to force Chisholm to position its proposed well in a lay-down orientation. Such an interpretation—where no such intent is expressly stated—would have far-reaching perverse results and will demonstrably result in waste. As will be shown through testimony and exhibits at hearing, Chisholm has determined that the geology in the area supports drilling horizontal wells in a stand-up orientation.

At issue is simply whether such a proposal complies with the Division's well drilling and spacing rules and compulsory pooling authority. Contrary to Premier's argument, the JOA is expressly subject to the Division's regulatory authority to impose such orders.

CONCLUSION

For the foregoing reasons, Premier's motion to dismiss must be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2018, I filed a copy of the foregoing document with the Oil Conservation Division clerk and served a copy to the following counsel of record via Electronic Mail:

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