

**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:**

**APPLICATION OF DOYLE HARTMAN, ET AL,
TO VOID DIVISION ORDER NSL-3633, FOR
DISCOVERY AND FOR THE CONTRACTION
AND EXTENSION OF THE RHODES OIL AND
GAS POOLS, EDDY COUNTY, NEW MEXICO.**

CASE 11528

**MERIDIAN OIL INC.'S
MOTION TO DISMISS
HARTMAN'S APPLICATION FOR
WITHDRAWAL OF ADMINISTRATIVE ORDER NSL-3633,
FOR DISMISSAL OF TEXACO AS A PARTY
AND FOR WITHDRAWAL OF
COMMISSION ORDER DATED MARCH 19, 1996**

MERIDIAN OIL INC. ("MERIDIAN") by its attorneys, Kellahin & Kellahin, hereby moves that Hartman's Application to the Oil Conservation Commission for a DeNovo Hearing be dismissed because Hartman lacks standing to object; that Texaco be dismissed as a party; and that a letter dated March 19, 1996 which purports to constitute an order of the Commission be withdrawn because said "order" is invalid, and as grounds therefore states:

BACKGROUND

(1) Doyle Hartman and Margaret Hartman, d/b/a Doyle Hartman, Oil Operator, and James A. Davidson, (collectively "Hartman"), has a working interest in the E/2SW/4 of Section 23, T26S, R37E, Lea County, New Mexico which includes the gas rights in the Rhodes Gas Pool.

(2) That Hartman has pending before the Division, Case 11476 in which Hartman seeks to be duly authorized by the Division as the designated operator of a proposed 160-acre gas spacing unit consisting of the SW/4 of said Section 23 for a well to be drilled for production from the Rhodes Gas Pool.

(3) That Texaco Exploration and Production Inc. has a working interest in the W/2SW/4 of Section 23 which includes the gas rights in the Rhodes Gas Pool and has pending before the Division, Case 11475 in which Texaco, in opposition to Hartman, seeks to be duly authorized by the Division as the designated operator of a proposed 160-acre gas spacing unit consisting of the SW/4 of said Section 23 for a well to be drilled for production from the Rhodes Gas Pool.

(4) Meridian has a working interest in the NW/4 of Section 26, T26S, R37E, Lea County, New Mexico, and is the operator of the gas rights in the Rhodes Oil Pool.

(5) The southern boundary of Section 23 and the northern boundary of Section 26 is the boundary between the Rhodes Gas Pool to the north and the Rhodes Oil Pool to the south.

(6) On December 21, 1995, Meridian filed an administrative application pursuant to Division Rule 104.F requesting approval for an unorthodox well location for its Rhodes "B" Federal Well No. 7 ("Rhodes

7 Well") located 330 feet FNL and 1470 feet FEL (Unit C) of Section 26, T26S, R37E, Lea County, New Mexico.

(7) On February 28, 1996, the Division approved Meridian's application and issued Administrative Order NSL-3633 which approved a 40-acre spacing unit (Unit C) for the Rhodes 7 Well, established production limitations for said well and approved its unorthodox well location.

(8) Administrative Order NSL-3633 was issued without a hearing pursuant to the Oil Conservation Division's ("Division") administrative authority as set forth in Division Rule 104.F.

(9) On Friday, March 15, 1996, Hartman filed an Application to the Oil Conservation Commission ("Commission") for a DeNovo Hearing which, among other things, sought to have the Commission withdraw the Division's Administrative Order NSL-3633, issued February 28, 1996.

(10) Division "Rule 1220-DeNovo Hearing Before Commission" states:

"When any order has been entered by the Division pursuant to any hearing held by an Examiner, any party of record adversely affected by such order shall have the right to have such matter or proceeding heard de novo before the Commission...."

(11) Neither Hartman nor Texaco is a party of record, nor has an order been issued by the Division pursuant to a hearing in this matter.

(12) Section 70-2-23 NMSA 1978 provides:

Except as provided for herein, before any rule, regulation or order, **including revocation**, change, renewal or extension thereof, shall be made under the provisions of this act, a public hearing shall be held at such time, place and manner as may be prescribed by the division. The division shall first give reasonable notice of such hearing (in no case less than ten days, except in an emergency) and at any such hearing any person having an interest in the subject matter of the hearing shall be entitled to be heard.

(13) On Tuesday, March 19, 1996, and without affording Meridian an opportunity to respond, William J. LeMay, apparently in his capacity as Chairman of the Commission, wrote to Hartman's attorney advising "the Commission will refer this matter to the Division and direct the Division to set this matter for an Examiner hearing and direct the Division to stay Administrative Order NSL-3633 pending the outcome of such hearing."

(14) In order to protect correlative rights and prevent waste, the Division's custom and practice is to authorize the drilling of a gas well within the boundaries of an oil pool (including the Rhodes Oil Pool) under the following terms and conditions:

(a) the gas well's spacing and proration unit is standard provided it complies with the oil well spacing for the pool which for Rhodes Oil Pool is 40-acre spacing units;

(b) the gas well's location is standard provided it complies with the oil well locations for that pool which for the Rhodes Oil Pool is not closer than 330 feet to any side boundary of the 40-acre spacing unit;

(c) the gas well's ability to produce is limited to that amount of gas determined by multiplying the applicable GOR with the depth bracket oil allowable applicable to the pool which for

the Rhodes Oil Pool is 10,000 GOR times 80 BOPD or a maximum daily gas rate of 800 MCFPD.

(15) Division Rules for a non-prorated gas pool such as the Rhodes Gas Pool authorize the drilling of a gas well under the following terms and conditions:

(a) the gas well's spacing and proration unit is standard provided it complies with the gas well spacing for the pool which for Rhodes Gas Pool is 160-acre spacing units;

(b) the gas well's location is standard provided it complies with the gas well locations for that pool which for the Rhodes Oil Pool is not closer than 660 feet to any side boundary of the 160-acre spacing unit;

(c) the gas well's ability to produce **is not limited**.

(16) Meridian Rhodes 7 Well maintains the standard 330 foot setback required in the Rhodes Oil Pool from the Hartman working interest in the E/2SW/4 of Section 23 which is located in a different pool.

(17) Prior to January 18, 1996, Division Rule 104.F(4) ("Old Notice Rule") required an applicant for administrative approval of an unorthodox well location ("NSL") to have sent notice as follows: to "all operators of proration or spacing units offsetting the unit for which the unorthodox well location is sought shall be notified of the application" thus requiring **notice only to offset operators**.

(18) Division Rule 0.01 defines operator as:

"any person or persons who, duly authorized, is in charge of the development of a lease or the operation of a producing property"

(19) Pending the entry of an order in Case 11476 and companion Case 11475, the Division has not yet duly authorized either Texaco or Hartman as the operator in the SW/4 of Section 23.

(20) After January 18, 1996, Division Rule 104.F(4) deleted the administrative notice requirement for notice to all offset operators and substituted a "New Notice Rule" which now requires that an applicant for administrative approval of an unorthodox well location ("NSL") send notice of that application to affected parties **only in** adjoining and diagonal spacing units in the **same pool** as the proposed unorthodox well and **towards which the unorthodox well location encroaches** with an affected party first being the operator, then the lessee and then the unleased mineral owner.

**THE PURPORTED COMMISSION ORDER
DATED MARCH 19, 1996 IS INVALID**

On Friday, March 15, 1996, Hartman filed an Application with the Commission requesting a DeNovo hearing before the Commission seeking to vacate Administrative Order NSL-3633 despite the fact that there had not yet been an order issued pursuant to a Division Examiner Hearing on this matter.

On Tuesday, March 19, 1996 William J. LeMay, and in accordance with Division Rule 1220 denied Hartman's request for a DeNovo hearing and wrote to Hartman's attorney advising "the Commission will refer this matter to the Division and direct the Division to set this matter for an Examiner hearing..."

However, in the same letter which denied Hartman's request for a DeNovo hearing, Mr. LeMay, without affording Meridian an opportunity to respond and apparently in his capacity as Chairman of the Commission, also wrote to Hartman's attorney advising that the Commission will "direct the Division to stay Administrative Order NSL-3633 pending the outcome of such hearing."

Hartman now refers to this as "the Commission Order dated March 19, 1996." In fact this is not a valid Commission Order because it was issued without proper notice and hearing, without the proper concurrence of other Commissioners and without affording Meridian an opportunity to respond, all in violation of Rule 1220, Section 70-2-23 NMSA 1978, and procedural due process.

WHEREFORE, Meridian requests that Mr. LeMay issue a letter withdrawing that portion of his letter dated March 19, 1996 which contains any direction to the Division to Stay Administrative Order NSL-3633 because said phrase was not validly issued.

**HARTMAN WAS NOT ENTITLED TO NOTICE
AND LACKS STANDING TO REQUEST
THE DIVISION TO VOID ADMINISTRATIVE ORDER NSL-3633**

Hartman is not an adversely affected party, has no interest in gas production in the Rhodes Oil Pool and was not entitled to notice of Meridian's request for an unorthodox well location in the Rhodes Oil Pool and has no standing to request that Administrative Order NSL-3633 be voided.

The Old Notice Rule required notice to any and all operators of any offsetting spacing unit in any pool surrounding the subject unit. However, the Division practice has been to consider only those operators towards whom the well actually encroached as having standing to contested such matters at a hearing. Thus, the Old Notice Rule unnecessarily required notice even to those operators towards whom there was no encroachment and who therefor were not affected parties and had no standing despite having been given notice.

The defects in the Old Rule were corrected by the New Notice Rule which now properly requires notice to those affected party **in the same pool in adjoining spacing units towards whom the well actually encroaches.**

Hartman is neither an operator nor a working interest owner in the Rhodes Oil Pool in which Meridian sought and obtained approval for the Rhodes 7 Well. At all times relevant hereto, Hartman was not an offset operator there being no producing oil or gas well in the Rhodes Oil Pool or Rhodes Gas Pool in the SW/4 of Section 23 in which Hartman has a working interest.

Under the Old Notice Rules, Hartman was not entitled to notice because he was not an offset operator. Hartman's gas interest is not in the Rhodes Oil Pool. In addition, regardless of the pool, the Division has yet to duly authorize an operator in the SW/4 of Section 23 for any gas production.

Under the New Notice Rules, Hartman is not entitled to notice because the Rhodes 7 Well does not move towards the 40 acre tract (SE/4SW/4 of Section 23) where he has a working interest in the gas in the Rhodes Gas Pool **being a different pool.**

Division Rule 1 defines "Pool" as "any underground reservoir containing a common accumulation of crude petroleum oil or natural gas **or both** (emphasis added). In addition, Rule 303.A requires that "each pool shall be produced as a single common source of supply..."

Thus, until such time as the, after notice and hearing decides to change the boundary of the Rhodes Oil Pool, Hartman is not an adversely affected party, has no standing to object and accordingly the Division is required to dismiss his application.

**TEXACO WAS NOT ENTITLED TO NOTICE
AND LACKS STANDING TO REQUEST
THE DIVISION TO VOID ADMINISTRATIVE ORDER NSL-3633**

Texaco is not an adversely affected party and was not entitled to notice of Meridian's request for an unorthodox well location and has no standing to request that this administrative order be voided.

Texaco is neither an operator nor a working interest owner of gas production in the Rhodes Oil Pool underlying any portion of the NW/4 of Section 26 in which Meridian sought and obtained approval to produce gas from that pool from the Rhodes 7 Well. Texaco's interest in the Rhodes Oil Pool is limited to the oil production and the approval of Meridian's application does not adversely affect Texaco.

Under the Old Notice Rules, Texaco was not entitled to notice because he was not duly authorized by the Division as an offset operator.

Under the New Notice Rules, Texaco is not entitled to notice because the Rhodes 7 Well encroaches towards the NW/4NW/4 of Section 26 for which the gas rights are owned by Meridian and not Texaco. While Texaco does have the gas rights in the diagonal offsetting 40-acre tract (SW/4SW/4 of Section 23) those gas rights are not in the Rhodes Oil Pool.

Division Rule 1 defines "Pool" as "any underground reservoir containing a common accumulation of crude petroleum oil or natural gas **or both** (emphasis added). Rule 303.A requires that "each pool shall be produced as a single common source of supply..."

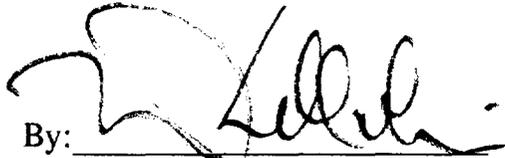
Thus, while Texaco has joined Hartman this case, until such time as the Division, after notice and hearing, changes the boundary of the Rhodes Oil Pool, Texaco is not an adversely affected party, has no standing to object and accordingly the Division is required to dismiss Texaco as a party in this case.

WHEREFORE, Meridian respectfully requests that the Division:

- (1) **Dismiss Hartman's Application to void Division Administrative Order NSL-3633;**
- (2) **that Texaco be dismissed as a party; and**

- (3) that a letter dated March 19, 1996 which purports to constitute an order of the Commission be withdrawn as invalid in so far as it attempts to direct the Division to stay Administrative Order NSL-3633.

KELLAHIN AND KELLAHIN



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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing pleading was hand delivered on April 22, 1996 to the office of Michael Condon, attorney for Doyle Hartman et al., and to William F. Carr, Esq., attorney for Texaco Exploration and Production Inc.



W. Thomas Kellahin