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November 8, 2002
VIA FACSIMILE

David Brooks, Esq.
Oil Conservation Division
New Mexico Department of Energy,
Minerals and Natural Resources
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Re: ***NMOCD Case No. 12943; Application of Great Western Drilling Company for Compulsory Pooling, Lea County, New Mexico***

Dear Mr. Brooks:

This afternoon I received Arrington's Reply Pursuant to its Motion to Dismiss. It is my recollection that the Motion has already been denied, and the briefing undertaken by Arrington's attorney appears to be an unwarranted attempt to revive the Motion without affording Great Western an opportunity to respond in kind.

The Motion to Dismiss was originally made orally by Scott Hall during the September 5, 2002 hearing. It was my understanding that at the conclusion of that hearing, you suspended ruling on the Motion until the October 10, 2002 docket. It was also my understanding that you explicitly denied Arrington's Motion to Dismiss at the inception of the October 10, 2002 hearing.

On October 11, 2002, following the hearing, Scott Hall, counsel for David H. Arrington Oil & Gas, Inc. ("Arrington") submitted case law which he represented supported his position that the Division has a "30-day rule," which requires an applicant for compulsory pooling to have submitted a proposal for the well at least 30 days prior to filing its application. Mr. Hall also indicated that he would submit briefing on that issue if you so directed.

In response to Mr. Hall's October 11, 2002 submission, I sent you a letter dated September 8, 2002, which reviewed recent New Mexico Oil Conservation Division and Commission Orders which considered competing compulsory pooling applications. Similar to Mr. Hall, I indicated that I would submit full briefing on the issue if you so directed.

Apparently, Mr. Hall could not wait for you to direct briefing. Instead, he has submitted a "Reply" in support of a Motion which has been denied, and to which no written Response was

ever filed. I repeat the earlier offer–I will be happy to brief this issue if you so direct.

Moreover, the legal arguments raised by Mr. Hall are superfluous. He is basing his legal arguments upon his contention that a "30-day rule" exists–a contention that he supports with the bald, unsupported statement that:

> [T]he consistent application of the so-called "30-day rule" is well known. Over the years, operators have come to rely on the practice, and the requirement, that they must not invoke the Division's compulsory powers as a matter of first resort, but rather that negotiations, beginning with a well proposal, must occur first.

This statement is wrong. There is no "consistent application" of the "30-day rule," because it does not exist. As illustrated in my September 6, 2002 letter to you, the only "consistent application" found in the Division and Commission Orders which consider the issue is that not one of those cases held that a well proposal must precede a compulsory pooling application by at least 30 days. Not one of those cases dismissed a party's application because its well proposal did not precede its compulsory pooling application by at least 30 days. In short, the 30-day rule does not exist.

Furthermore, the "good faith effort" to obtain voluntary joinder, which Mr. Hall contends is solely represented by the fictional "30-day rule," is disposed of by the simple fact that Great Western successfully negotiated and obtained voluntary joinder of ***thirteen*** other interest owners, while Arrington successfully obtained the voluntary joinder of exactly ***zero*** other interest owners. To the extent that "[p]erfunctory offers are not sufficient," (Arrington's Reply, November 8, 2002, at 5), and to the extent that you must consider whether "the condemnor made a good faith effort to acquire the property or rights by conventional agreement before the expropriation suit was filed," (*id.*), both parties' actions and offers must be considered. Arrington made one entreaty to Great Western, represented by its well proposal. Great Western made one entreaty to Arrington, represented by its well proposal. The parties have submitted exactly the same amount of offers and related communications to each other. The arguments raised by Mr. Hall are simply not persuasive.

For the reasons detailed in my closing argument at the October 10, 2002 hearing, I request that you enter an Order pooling the subject minerals, designating Great Western the operator of the subject well, and denying Arrington's Application.

We look forward to the Division's Order in this case.

Very truly yours,

Paul R. Owen

cc: Mr. Mike Heathington
Great Western Drilling Company
Scott Hall, Esq.
William F. Carr, Esq.