

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION OF NEW MEXICO FOR
THE PURPOSE OF CONSIDERING:

APPLICATION OF SUN EXPLORATION
AND PRODUCTION COMPANY FOR
COMPULSORY POOLING, A NON-
STANDARD UNIT, AND DUAL COMPLETION,
LEA COUNTY, NEW MEXICO

Case No. 8748

APPLICATION OF DOYLE HARTMAN FOR
COMPULSORY POOLING, A NON-STANDARD
UNIT, AND AN UNORTHODOX WELL LOCATION,
LEA COUNTY, NEW MEXICO

Case No. 8722

MEMORANDUM OF
SUN EXPLORATION AND PRODUCTION COMPANY

Several issues were raised at the hearings in the above matters which Sun Exploration and Production Company ("Sun") believes should be clarified to assist the OCD in making its decision.

I. INTRODUCTION

Sun and Doyle Hartman filed counter-applications for forced pooling. At issue is who should be named operator of the proposed unit, and the risk penalty to be assessed against non-consenting working interest owners. Mr. Hartman also requested OCD approval of an unorthodox well location. Sun asserts that Mr. Hartman has not satisfied the requirements for an unorthodox well location. The parties do not dispute the necessity of a non-standard unit.

The applications of Sun and Mr. Hartman were consolidated for hearing, and evidence was presented at the October 23, 1985 and November 21, 1985 examiner hearings.

II. WORKING INTEREST IN JALMAT UNIT

Mr. Hartman claims that, in the Jalmat unit, he has approximately a 70% working interest. October 23, 1985 hearing transcript at p. 52. Sun claims approximately a 55% working interest in the Jalmat unit. Id., at p. 66. In fact, in every AFE submitted to Sun by Mr. Hartman, Sun's share of well costs was set at 55.25%. See Hartman Exhibit No. 10, including Hartman AFE's dated September 5, 1985, October 1, 1985, and October 18, 1985. In short, the AFE's prepared by Mr. Hartman concur that Sun has the majority working interest in the proposed 200 acre Jalmat unit. Sun believes that this factor should weigh in Sun's favor regarding designation of an operator, since it has the greater interest in the success of the well.

The net profits interest Mr. Hartman owns in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 25, part of the Jalmat unit, was also referred to in the October 23 hearing. This net profits interest carries with it no operating rights. If the OCD so desires, Sun will provide a copy of the instrument by which this interest was created.

III. UNORTHODOX LOCATION

Sun proposes to drill a well at an orthodox location in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25. Mr. Hartman proposes to drill a well at an unorthodox location in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, 1500 feet from the south line and 1200 feet from the east line of the section.

Sun has requested the OCD to deny Mr. Hartman's proposed unorthodox well location, and asserts that Mr. Hartman has not met his burden of proof regarding the geological or topographical need for an unorthodox location.

It should first be noted that unorthodox well locations are only permitted where there is a geological or topographical reason therefor. OCD Rule 105(F). See Railroad Com'n v. Shell Oil Co., 161 S.W.2d 1022 (Tex. 1942) (an unorthodox well location will be permitted if, due to the structure or other reservoir conditions, a well at a regular location would not recover the oil or gas); GMC Oil & Gas Corp. v. Texas Oil & Gas Corp., 586 P.2d 731 (Okla. 1978) (unorthodox location granted because of more favorable porosity and a location high on the structure). Furthermore, Mr. Hartman has the burden of proving that his proposed unorthodox location is necessitated by topographical or geological reasons. Int'l Minerals & Chemicals Corp. v. N.M. Public Service Com'n., 81 N.M. 280, 466 P.2d 557 (1970) (in administrative proceedings the moving party has the burden of proof). In the present matter Mr. Hartman has not met his burden: the evidence shows that in the proposed Jalmat unit there is an orthodox location available in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25 which is geologically preferable to the proposed unorthodox location. Furthermore, Sun's proposed orthodox location is definitely superior to Mr. Hartman's proposed unorthodox location regarding the Langlie-Mattix pool, from both a geological and reservoir engineering standpoint. Therefore, Mr. Hartman has not

demonstrated the geological necessity for the proposed unorthodox location. ^{1/} Mr. Hartman has not raised the issue of topographical necessity for his well location. ^{2/}

Mr. Hartman's only stated reason for seeking an unorthodox location is because "better gas contract terms" are available for a well drilled within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25. October 23, 1985 hearing transcript at pp. 12 and 106. First, Sun asserts that this is not a valid basis under OCD rules for granting an unorthodox well location. Second, Sun presented testimony at the November 21, 1985 hearing that gas contract terms are the same for a well in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25 as for a well in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25. If the OCD so desires, Sun will provide copies of the gas contracts covering the SE $\frac{1}{4}$ of Section 25 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36.

The evidence presented by Sun shows that granting Mr. Hartman's unorthodox well location would cause waste and impair correlative rights. Engineering evidence presented at the November 21 hearing shows that Langlie-Mattix production at Mr. Hartman's location would drain Sun's acreage in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 25, and that a penalty on production is

1 Mr. Hartman originally proposed an orthodox well location in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25 (See AFE dated October 1, 1985, in Hartman Exhibit No. 10). Mr. Hartman also proposed an unorthodox location in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25 (See Hartman Exhibit No. 9). These locations were changed at the October 23 hearing.

2 In fact, Sun's calculations place Mr. Hartman's well location virtually on top of a gas pipeline. See the plat attached to this Memorandum. Therefore, his proposed location is barred by topographical reasons.

inadequate to protect correlative rights. ^{3/} More importantly, the engineering evidence presented at the November 21 hearing also shows that ultimate recovery of hydrocarbons will be reduced at the proposed unorthodox location. This is per se underground waste. N.M. Stat. Ann. § 70-2-3(A) (1978) (underground waste includes "...the locating...of any well...in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered..."). The OCD has a duty to prevent waste and protect correlative rights, N.M. Stat. Ann. § 70-2-11 (1978), and would violate these obligations by approving Mr. Hartman's proposed unorthodox location.

Finally, in closing arguments at the November 21 hearing, Mr. Hartman asserted that denial of his unorthodox location would deprive him of developing his Langlie-Mattix interests under the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25. This is incorrect; the Van Zandt State No. 1 well, drilled at an orthodox location in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, has produced from the Langlie-Mattix pool since 1954. October 23, 1985 hearing transcript at pp. 17-18. Mr. Hartman was aware of this when he purchased the 40 acre tract from Sun in 1984.

IV. NOTICE

In closing arguments at both the October 23 and November 21 hearings, Mr. Hartman chastised Sun for filing its application on October 22, 1985, thus giving little advance notice to Mr. Hartman. However, it should be noted that Sun was not given

3 This is because it is not feasible to drill a Langlie-Mattix well to offset the proposed Langlie-Mattix unorthodox location.

written notice of Mr. Hartman's application, originally set for hearing on October 9, 1985, until after October 14, 1985. See Hartman Exhibit No. 11. Furthermore, Sun did not receive notice of Mr. Hartman's unorthodox location application until the hearing on October 23. This seems to be a case of the pot calling the kettle black, and it should not be a factor in the decision ultimately reached by the OCD.

V. PRIORITY IN TIME OF DRILLING PROPOSAL

Mr. Hartman repeatedly asserted or implied that Sun's application should not be granted because its drilling proposal was made several weeks after that of Mr. Hartman. Again, this should not enter into the OCD's decision. So long as an operator has committed itself to drilling a well, there should be no "first in time, first in right" rule applied to counter-forced pooling applications.


Mr. Hartman also stated at hearing that he has been trying to develop this particular area since 1976. At that time the Sun interests were owned by Texas Pacific Oil Company. Since Sun took over operations from Texas Pacific in 1981, the only drilling proposal made to Sun by Mr. Hartman was by his letter of September 6, 1985, as updated on October 1, 1985 and October 18, 1985. See Hartman Exhibit Nos. 5-10. Sun then reviewed its options and made a counter-proposal to Mr. Hartman on October 18, 1985. October 23, 1985 hearing transcript at pp. 67, 69, and 71. Thus Sun was not such a reluctant suitor as Mr. Hartman claims.

VI. CONCLUSION

For the foregoing reasons, and for those presented at the hearings, Sun requests that its forced pooling application be granted, and Mr. Hartman's application for forced pooling and an unorthodox well location be denied.

F. Kimball Joyner
Sun Exploration and Production
Company
Post Office Box 2880
Dallas, Texas 75221

HINKLE, COX, EATON,
COFFIELD & HENSLEY

BY 
James Bruce
Post Office Box 2068
Santa Fe, New Mexico 87504-2068
(505) 982-4554

Attorneys for Sun Exploration and
Production Company

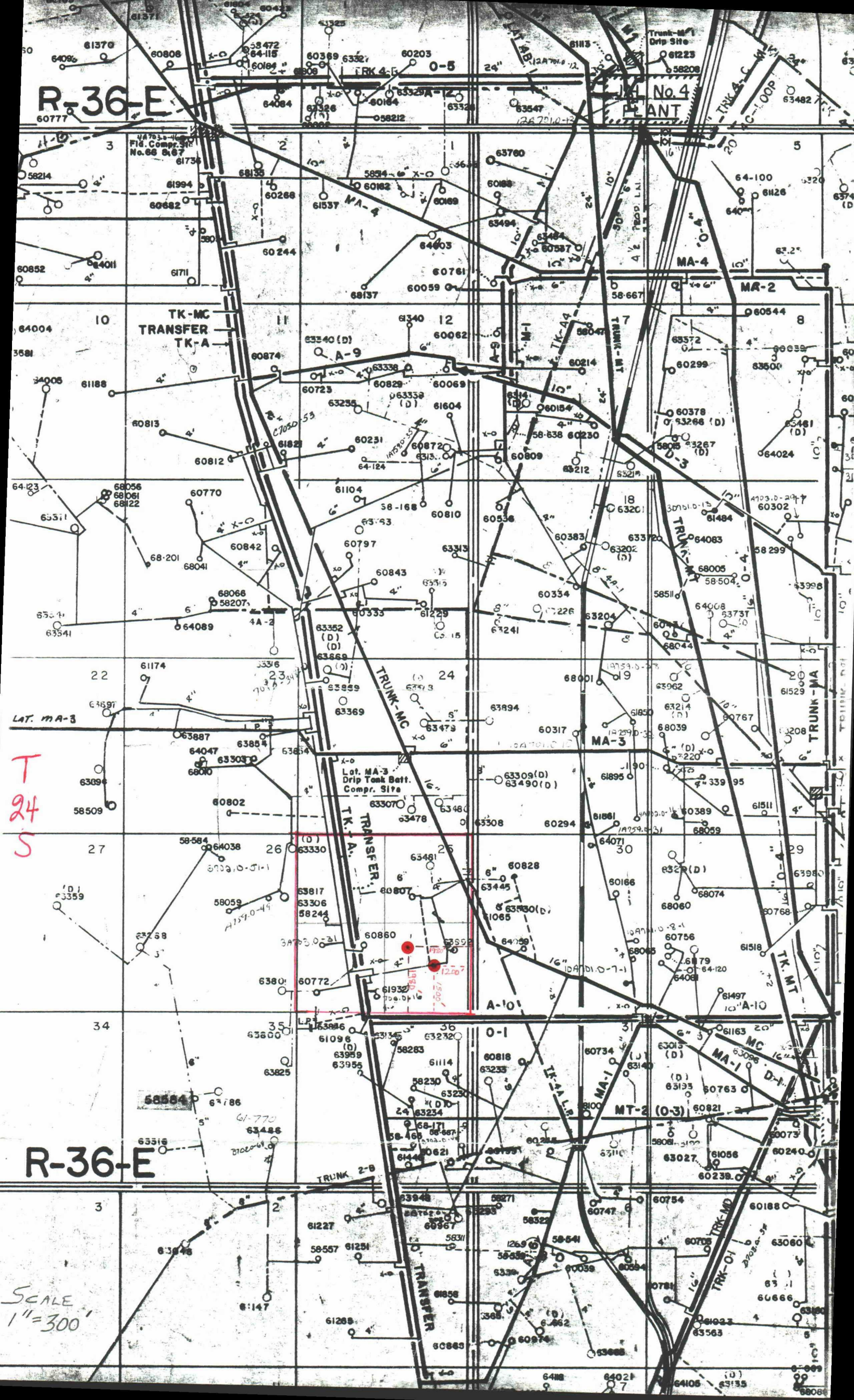
R-36-E

No. 4 PLANT

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24
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R-36-E

SCALE
1" = 300'



HINKLE, COX, EATON, COFFIELD & HENSLEY

LEWIS C. COX
PAUL W. EATON
CONRAD E. COFFIELD
HAROLD L. HENSLEY JR.
STUART D. SHANOR
C. D. MARTIN
PAUL J. KELLY JR.
OWEN M. LOPEZ
DOUGLAS L. LUNSFORD
T. CALDER EZZELL, JR.
WILLIAM B. BURFORD*
RICHARD E. OLSON
RICHARD A. SIMMS
DEBORAH NORWOOD*
RICHARD R. WILFONG*
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JAMES J. WECHSLER
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DAVID B. GROCE*
ROBERT M. BRISTOL
MACDONNELL GORDON
REBECCA J. NICHOLS
PAUL R. NEWTON

ATTORNEYS AT LAW
218 MONTEZUMA
POST OFFICE BOX 2068
SANTA FE, NEW MEXICO 87504-2068
(505) 982-4554

200 BLANKS BUILDING
POST OFFICE BOX 3580
MIDLAND, TEXAS 79702
(915) 683-4691

1700 TEXAS AMERICAN BANK BUILDING
POST OFFICE BOX 12118
AMARILLO, TEXAS 79101
(806) 372-5569

700 UNITED BANK PLAZA
POST OFFICE BOX 10
ROSWELL, NEW MEXICO 88201
(505) 622-6510

December 5, 1985

JEFFREY L. FORNACIARI

OF COUNSEL
ROY C. SNODGRASS, JR.
O. M. CALHOUN
MACK EASLEY

CLARENCE E. HINKLE (1901-1985)
W. E. BONDURANT, JR. (1913-1973)
ROBERT A. STONE (1905-1981)

*NOT LICENSED IN NEW MEXICO

Mr. Michael E. Stogner
New Mexico Oil Conservation Division
Post Office Box 2088
Santa Fe, New Mexico 87501

HAND DELIVERED

Re: Case No. 8748, Application of
Sun Exploration and Production Company;
and
Case No. 8722, Application of
Doyle Hartman

Dear Mr. Stogner:

Enclosed is the proposed order of Sun Exploration and Production Company for the above cases.

If Mr. Hartman's forced pooling application is granted, Sun requests that the risk penalty be set at 50%. This is based upon the geological and engineering testimony presented at the hearing, by both Sun and Mr. Hartman, which shows that Mr. Hartman's proposed well has a high probability of success, and on Mr. Hartman's statements at the hearing that he is the best Jalmat operator in Lea County (October 23, 1985 hearing transcript, p. 23, pp. 31-36, p. 43, and p. 48).

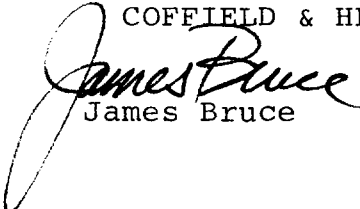
Sun further requests, in the event its application is denied, that the unorthodox location aspect of Mr. Hartman's application be denied because he has failed to carry his burden of proof regarding the necessity therefor: there are available orthodox locations (e.g., the one proposed by Sun) which are preferable from an engineering and geological standpoint. Thus Mr. Hartman has not demonstrated the geological or topographical need for an unorthodox location. Attached to this letter as Exhibit A are Sun's proposed Findings regarding the unorthodox location, which it requests the OCD to include in an order approving Mr. Hartman's forced pooling application.

Mr. Michael E. Stogner
December 5, 1985
Page 2

Both of the above issues are further addressed in Sun's Memorandum submitted with this letter.

Very truly yours,

HINKLE, COX, EATON,
COFFIELD & HENSLEY



James Bruce

JGB:jr
Enclosures

cc: William F. Carr w/encl.
F. Kimball Joyner, Jr. w/encl.
Richard E. Olson, Esq. w/encl.

EXHIBIT A

Sun Exploration and Production Company requests that, in the event Doyle Hartman's forced pooling application is granted, the following paragraphs regarding Mr. Hartman's proposed unorthodox location be included in the order:

(i) Sun Exploration and Production Company, an offset interest owner to the West, Southwest, and South of the proposed unorthodox location appeared at the hearings and objected to approval of the aforesaid unorthodox location on the grounds that an unorthodox Jalmat and Langlie-Mattix location is not justified due to geological or topographical reasons, that an unorthodox Langlie-Mattix location would drain oil from offsetting acreage, thereby violating correlative rights, and that ultimate recovery of hydrocarbons from a well at the unorthodox location will be reduced, thereby causing waste.

(ii) Applicant does not seek approval of said unorthodox well location for topographical reasons.

(iii) Available geological data indicates that approval of the unorthodox location will not improve applicant's geological prospect for encountering hydrocarbons in the Jalmat and Langlie-Mattix pools, will not better enable him to produce the gas underlying the SE $\frac{1}{4}$ of said Section 25 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 36, and will not better enable him to produce the oil underlying the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 25.

(iv) Available engineering data indicates that approval of the unorthodox location will result in a reduced recovery of hydrocarbons from the Jalmat and Langlie-Mattix pools.

(v) The unorthodox location will place applicant in a more favorable position to drain oil from the Langlie-Mattix pool from the Sun Exploration and Production Company offsetting acreage.

(vi) Current economics prevent the drilling of a Langlie-Mattix well to offset the unorthodox location, thus a penalty on Langlie-Mattix production would not protect offsetting interest owners, and the unorthodox location would result in the impairment of correlative rights.

(vii) Based upon Finding Nos. (i) - (vi), the applicant's unorthodox well location application should be denied.

CAMPBELL & BLACK, P.A.

LAWYERS

JACK M. CAMPBELL
BRUCE D. BLACK
MICHAEL B. CAMPBELL
WILLIAM F. CARR
BRADFORD C. BERGE
J. SCOTT HALL
PETER N. IVES
JOHN H. BEMIS

GUADALUPE PLACE
SUITE 1 - 110 NORTH GUADALUPE
POST OFFICE BOX 2208
SANTA FE, NEW MEXICO 87501
TELEPHONE: (505) 988-4421
TELECOPIER: (505) 983-6043

January 14, 1986

Michael E. Stogner
Hearing Examiner
Oil Conservation Division
Post Office Box 2088
Santa Fe, New Mexico 87504-2088

Re: Oil Conservation Division Case 8722: Application
of Doyle Hartman for a Non-Standard Gas Proration
Unit, Compulsory Pooling, and an Unorthodox Gas
Well Location, Lea County, New Mexico.

Dear Mr. Stogner:

Enclosed for your information is a copy of a letter to James Bruce, attorney for Sun Exploration and Production Company requesting Sun to dismiss its application in Case 8748 and withdrawing its objection to Mr. Hartman's application in the above-referenced matter. Since the Hinkle law firm has represented Sun in the U. S. District Court litigation, I anticipate they will promptly act on our request.

As a result of this settlement, Mr. Hartman will own all interests in the 200-acre non-standard proration unit comprised of the SE/4 of Section 5, and the NE/4 NE/4 of Section 36, Township 24 South, Range 36 East, N.M.P.M., Lea County, New Mexico. Mr. Hartman has plans to develop this acreage in the immediate future and requests that an Order be entered approving the non-standard proration unit and the unorthodox well location at the earliest possible date.

Although no post-hearing memoranda were requested by you, Sun has filed in this case a Memorandum which misstates the facts and in other ways tends to mislead the Division and should not be included as a permanent part of the record in this case. To avoid any misunderstanding, however, we do believe certain things should be called to your attention.

Michael Stogner
January 14, 1986
Page Two

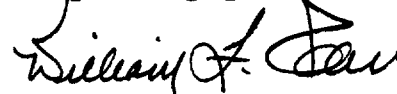
First, notice in this case was given in accordance with the Rules and Regulations of the Oil Conservation Division. Sun is the only party who failed to comply with these rules by filing an application only days before the case actually came on for hearing and prior to the time the Division had been able to include the application in its legal advertisements. In regard to the notice given to Sun, you should also be reminded that the case was continued by Mr. Hartman once prior to the original hearing in the consolidated cases to provide Sun with an opportunity to prepare its case.

Second, as to the arguments raised by Sun in its post hearing memorandum concerning the ownership interests in the subject property, it should be kept in mind that no matter how the ownership interests were construed at any point in time, Mr. Hartman always was the party who was required to pay a majority of the costs involved in the development of this spacing and proration unit. Those disputes as to ownership have now been resolved in the Federal Court litigation in favor of Mr. Hartman.

Third, the memorandum of Sun fails to correctly cite the rules of the Oil Conservation Division concerning what preconditions must be met to obtain approval of an unorthodox well location, and furthermore, only cites as authority for its argument, Texas law. None of the authority cited is binding upon you and is inconsistent with established practice before the Division.

Doyle Hartman requests that an Order be entered by the Division at the earliest possible time granting his application in Case 8722.

Very truly yours,



William F. Carr

WFC/cv

cc: James Bruce, Esq.
F. Kimball Joyner

CAMPBELL & BLACK, P.A.
LAWYERS

JACK M. CAMPBELL
BRUCE D. BLACK
MICHAEL B. CAMPBELL
WILLIAM F. CARR
BRADFORD C. BERGE
J. SCOTT HALL
PETER N. IVES
JOHN H. BEMIS

GUADALUPE PLACE
SUITE 1 - 110 NORTH GUADALUPE
POST OFFICE BOX 2208
SANTA FE, NEW MEXICO 87501
TELEPHONE: (505) 988-4421
TELECOPIER: (505) 983-6043

January 14, 1986

James Bruce, Esq.
Hinkle, Cox, Eaton, Coffield
& Hensley
Post Office Box 2068
Santa Fe, New Mexico 87504-2068

Re: Oil Conservation Division Cases 8722 and 8748
Applications of Doyle Hartman and Sun Exploration
and Production Company for Compulsory Pooling,
Lea County, New Mexico.

Dear Mr. Bruce:

As perhaps you are aware, an agreement has been reached between the parties settling Doyle Hartman, et al. v. Sun Exploration and Production Company, U. S. District Court for the Western District of Texas, Midland-Odessa Division No. MO 85 105. Pursuant to this agreement, all of Sun's interest in the Van Zandt lease is to be conveyed to Mr. Hartman.

We therefore request that you immediately advise the Oil Conservation Division that Sun's application in Case 8748 be dismissed and that Sun has no further objection to the Division entering an order granting Mr. Hartman's application in Case 8722.

Your prompt attention to this matter will permit the Division to enter an order in this case at an early date so that Mr. Hartman can proceed with his plans to develop the acreage.

Very truly yours,


William F. Carr

WFC/cv

James Bruce, Esq.
January 14, 1986
Page Two

cc: F. Kimball Joyner
Sun Exploration & Production Company
Post Office Box 2880
Dallas, Texas 75221

cc: R. L. Stamets, Director
Oil Conservation Division
Post Office Box 2088
Santa Fe, New Mexico 87504-2088

cc: Michael E. Stogner
Hearing Examiner
Oil Conservation Division
Post Office Box 2088
Santa Fe, New Mexico 87504-2088

CAMPBELL & BLACK, P.A.

LAWYERS

JACK M. CAMPBELL
BRUCE D. BLACK
MICHAEL B. CAMPBELL
WILLIAM F. CARR
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SUITE 1 - 110 NORTH GUADALUPE
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TELEPHONE: (505) 988-4421
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January 14, 1986
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Post Office Box 2088
Santa Fe, New Mexico 87504-2088

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Hearing Examiner
Oil Conservation Division
Post Office Box 2088
Santa Fe, New Mexico 87504-2088

HINKLE, COX, EATON, COFFIELD & HENSLEY

ATTORNEYS AT LAW

218 MONTEZUMA

POST OFFICE BOX 2068

SANTA FE, NEW MEXICO 87504-2068

(505) 982-4554

200 BLANKS BUILDING
POST OFFICE BOX 1580
MIDLAND, TEXAS 79702
(915) 683-4691

1700 TEXAS AMERICAN BANK BUILDING
POST OFFICE BOX 2118
AMARILLO, TEXAS 79101
(806) 372-5569

700 UNITED BANK PLAZA
POST OFFICE BOX 10
ROSWELL, NEW MEXICO 88201
(505) 622-6510

LEWIS C. COX
PAUL W. EATON
DONRAE E. COFFIELD
HAROLD L. HENSLEY, JR.
STUART D. SPANOR
C. D. MARTIN
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CLARENCE E. HINKLE (1901-1988)
W. E. BONDurANT, JR. (1913-1973)
ROBERT A. STONE (1905-1981)

*NOT LICENSED IN NEW MEXICO

February 26, 1986

M.S.

Michael E. Stogner
Hearing Examiner
New Mexico Oil Conservation Division
Post Office Box 2088
Santa Fe, New Mexico 87504

Re: Case No. 8748, Application of Sun Exploration and
Production Company;

and

Case No. 8722, Application of Doyle Hartman

Dear Mr. Stogner:

Sun Exploration and Production Company hereby requests
dismissal of its Case No. 8748, and withdraws its opposition to
Mr. Hartman's Case No. 8722, for the reason that Sun has conveyed
all of its interest in the subject non-standard unit to Mr.
Hartman.

Very truly yours,

HINKLE, COX, EATON,
COFFIELD & HENSLEY

James Bruce
James Bruce

JGB/mh

cc: William F. Carr



STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

TONY ANAYA
GOVERNOR

March 21, 1936

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-5800

Mr. James Bruce
Hinkle, Cox, Eaton, Coffield
& Hensley
Attorneys at Law
Post Office Box 2068
Santa Fe, New Mexico

Re: CASE NO. 8748
ORDER NO. R-2127

Applicant:

Sun Exploration and Production Company

Dear Sir:

Enclosed herewith are two copies of the above-referenced Division order recently entered in the subject case.

Sincerely,

R. L. STAMETS
Director

RLS/fd

Copy of order also sent to:

Hobbs OCD x
Artesia OCD x
Aztec OCD

Other William F. Carr, Kim Joiner