BEFORE THE

OIL CONSERVATION DIVISION

NEW MEXICO DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES

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

CASE NO. 11434

APPLICATION OF MERIDIAN OIL INC.
FOR COMPULSORY POOLING AND AN
UNORTHODOX GAS WELL LOCATION,
SAN JUAN COUNTY, NEW MEXICO.

**MEMORANDUM BRIEF IN SUPPORT OF FOUR STAR OIL AND GAS COMPANY'S MOTION TO DISMISS APPLICATION OF MERIDIAN OIL INC. FOR COMPULSORY POOLING AND AN UNORTHODOX GAS WELL LOCATION**

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Four Star Oil and Gas Company ("Four Star"), by and through its undersigned attorneys, Campbell, Carr & Berge, P.A., hereby submit this brief in support of its Motion to Dismiss the Application of Meridian Oil Inc. ("Meridian") for compulsory pooling and an unorthodox gas well location, San Juan County, New Mexico.

**SUMMARY OF POSITION AND RELIEF REQUESTED**:

The acreage which Meridian asks the Division to compulsory pool has been voluntarily combined by a Communitization Agreement and the Mesaverde formation

operations are governed by the Operating Agreement to which the parties to this Division case are bound. Accordingly, the owners in the E/2 of Section 23 have validly pooled their interests, and developed their lands as a unit. These lands may not now be pooled by the State.

Furthermore, even if there were interests in the E/2 of Section 23 which had not been voluntarily pooled, these interests could not be pooled in this case because Meridian instituted this pooling application on the same day it made its first contact with Four Star concerning the future development of this spacing unit.

**ARGUMENT**:

**I. BACKGROUND.**

1. On March 30, 1953 a Communitization (or pooling) Agreement was made for the E/2 of Section 23, Township 31 North, Range 9 West, N.M.P.M., between Southern Union Gas Company, Meridian's predecessor in interest, and Skelly Oil Company, Four Star's predecessor in interest.

2. An Operating Agreement was made on April 10, 1953 "to provide for the economical and joint operation of said unit for the production of gas and associated liquid hydrocarbons producible from the Mesaverde formation.

3. The April 10, 1053 Operating Agreement provides:

(a) for the drilling of a single well in the NE/4 NE/4 of Section 23;

(b) designates Southern Union (now Meridian) operator of the tract;

(c) governs operations in the Mesaverde formation on the E/2 of Section 23; and

(d) binds the successors and assigns of the original parties.

4. A Mesaverde well has been drilled, completed and produces from the Mesaverde formation in the NE/4 NE/4 of Section 23 to which the E/2 of this section is dedicated.

5. Pursuant to the April 10, 1953 Operating Agreement, Meridian is the operator of the E/2 of Section 23.

6. Four Star is the successor in interest to Skelly and a non operating working interest owner in the E/2 of Section 23.

7. By letter to Four Star dated October 31, 1995, Meridian proposed the drilling of the Seymour No. 7A Well at an unorthodox location in the Mesaverde formation 1615 feet from the South line and 2200 feet from the East line of said Section 23.

8. Meridian's letter was received by Four Star on November 6, 1995 -- the date on which Meridian filed its application to force pool the E/2 of Section 23 for the Seymour No. 7A Well.

## II. THE E/2 OF SECTION 23 CANNOT BE FORCE POOLED.

The power of the Oil Conservation Division to force pool tracts of land to form a

spacing unit is expressly defined and limited by the Oil and Gas Act. Section 70-2-14(C) provides:

> "When two or more separately owned tracts of land are embraced within a spacing or proration unit, ... the owner or owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the Division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit."

In this case, the owners of Mesaverde rights in the E/2 of Section 23 have voluntarily pooled their interests. The 1953 Communitization Agreement and Operating Agreement are valid contracts which have governed the development of this acreage for over 40-years and are the contracts which authorize Meridian to operate these properties today.

Meridian, however, asks the Division to ignore these contracts and enter an Order again combining the lands for a new well. There is nothing in the Oil and Gas Act which authorizes this action. The E/2 of Section 23 may not now be force pooled by the Division.

Meridian's proposal is inconsistent with prior decisions of the Division. In Case 11294, Santa Fe Energy Resources ("Santa Fe"), attempted to force pool the interests of Phillips Petroleum Company ("Phillips") to form a spacing unit comprised of the West half of a section. While negotiations for the development of this acreage were underway, Phillips

formed a voluntary South half unit in the section and moved to dismiss Santa Fe's application. Phillips argued that the compulsory pooling statute "... is applicable only for those instances in which a spacing unit is available and the parties in that spacing unit cannot agree to pool their interests." Phillips noted that since the SW/4 of this section had been voluntarily committed to a spacing unit it "cannot be made the subject to a W/2 compulsory pooling case without violating the provision of Section 70-2-17 N.M.S.A. (1978)." This case was dismissed. A copy of Phillips' Motion to Dismiss is attached hereto as Exhibit B.

In an attempt to find precedent for their application, Meridian cites four cases in which the Division has entered a pooling order for the drilling of a second well on acreage that has previously been pooled. The one critical factor overlooked by Meridian is that none of these cases involves a situation where the owners of the interests in the spacing unit had voluntarily agreed to pool their interests. Unlike the case cited by Meridian, in this case the owners of all interests in the E/2 of Section 23 voluntarily pooled their interests and have contractually agreed on how the acreage is to be developed. Having validly pooled their interests, the provisions of Section 70-2-17(C) cannot apply in the case and this acreage cannot be force pooled.

However, Meridian has a different view. It asks the Division to rewrite the contracts between the parties -- contracts which do not conflict with Division rules today and have never conflicted with these rules.

Here, the E/2 of Section 23 cannot be force pooled without violating the compulsory pooling provisions of the Oil and Gas Act. Meridian's application must be dismissed.

## III. MERIDIAN PREMATURELY INSTITUTED COMPULSORY POOLING.

If we assume that the E/2 of Section 23 may be the subject of a compulsory pooling action which Four Star denies, Meridian failed to provide required notice of its application and failed to undertake reasonable efforts to secure the consent of Four Star in the proposed well. Dismissal of Meridian's application is therefore required.

Meridian's October 31, 1995 letter to Four Star proposing the Seymour No. 7A Well in the E/2 of Section 23 was received by Four Star on the day that Meridian asked the Division to invoke the State's police power to force pool these lands.

The Division has addressed this situation in the past. In Case 11107, Maralo Inc. ("Maralo"), sought an Order force pooling the interests of Bass Enterprises Production Company ("Bass") in a 160-acre tract in Eddy County, New Mexico. Bass moved to dismiss this application on the grounds that Maralo had provided only two days notice prior to commencing pooling proceedings on September 6, 1994. Maralo then agreed to continue the case for four weeks to provide Bass an opportunity to evaluate its proposal. After this four week delay, on November 7, 1994, Bass again renewed its Motion to Dismiss on the grounds that Maralo had prematurely sought to invoke compulsory pooling. On November 14, 1994, the Division entered Order No. R-10242 dismissing Maralo's application. Copies of Bass'

Motion to Dismiss and Motion to Compel and Division Order No. R-10242 are attached hereto as Exhibits C and D.

Meridian failed to undertake reasonable efforts to obtain the voluntary joinder of Four Star in its proposal to drill an additional well in the E/2 of Section 23. It cannot cure this defect by merely continuing this case to provide Four Star an opportunity to evaluate its proposal. Meridian's application must be dismissed.

**CONCLUSION**:

The Division may not force pool acreage after it has been voluntarily combined by the owners thereof. Furthermore, if compulsory pooling of this acreage was possible under the Oil and Gas Act, Meridian failed to provide the required notice or make reasonable efforts to obtain the voluntary joinder of Four Star in its proposal for further development of this acreage. Meridian's application must be dismissed.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of January, 1996, I have caused to be hand-delivered a copy of our Memorandum in Support of Four Star Oil and Gas Company's Motion to Dismiss in the above-captioned case to the following named counsel:

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