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

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

CASE NO. 11434

MERIDIAN'S RESPONSE TO HARTMAN'S MOTION TO DISMISS

Comes now MERIDIAN OIL INC. ("Meridian") by its attorneys, Kellahin & Kellahin, and requests that the New Mexico Oil Conservation Division ("NMOCD") deny the Motion of Doyle Hartman and Margaret Hartman ("Hartman") to dismiss Meridian's compulsory pooling application and in support states:

STATEMENT OF FACTS

1. The E/2 of Section 23, T31N, R9W consists of two separate federal oil & gas leases each dated May 1, 1948 with one lease issued to John C. Dawson for the NE/4 and another to Claude A. Teel for the SE/4.

2. On February 28, 1949 by General Order 799, the New Mexico Oil Conservation Commission ("Commission") adopted special rules and regulations including well spacing and proration units consisting one well per 320-acres for the Blanco Gas Pool which is now known as the Blanco-Mesaverde Gas Pool.

3. Effective March 1, 1955, the Commission established gas prorationing for the Blanco Gas Pool.

4. On April 10, 1953, the working interest owners in the E/2 of Section 23, T31N, R9W entered into an Operating Agreement which contained a plan for the spacing of but one single Mesaverde well within a 320-acre spacing and proration unit consisting of the E/2 of Section 23.

5. This 1953 Operating Agreement is subject to a March 30, 1953 Communitization Agreement which among other things provides for the consolidation of these two federal oil and gas leases "in conformity with the well-spacing program established for the field or area in which said lands are located..."

6. When these 1953 Agreements were signed, the established well spacing program for the Mesaverde formation in the E/2 of Section 23 was one single well per 320-acres.

7. On November 10, 1953, Southern Union Gas Company, as operator spudded the Seymour No. 7 Well in the NE/4 of Section 23 and completed it as a producing Mesaverde gas well to which the E/2 of Section 23 was dedicated.

8. On November 14, 1974, the Commission modified the well spacing program for the Blanco Mesaverde Gas Pool and authorized "infill drilling" of a second well on an existing 320-acre spacing and proration unit.

9. On January 27, 1993 Meridian (now the operator of this spacing unit) advised the other working interest owners (Hartman, Texaco [now Four Star Oil & Gas Company] and Williams Production Company) that the 1953 Operating Agreement did not contain any subsequent well provisions and thus proposed a new Joint Operating Agreement for the drilling of the Seymour No. 7A Well in the SE/4 of this spacing unit as a Mesaverde infill well.

10. On April 12, 1993, and again on October 31, 1995, Meridian renewed its request for a voluntary agreement by the parties for the drilling of this infill well.

11. Meridian has been unable to obtain a voluntary agreement and has filed this compulsory pooling application for this infill well which is opposed by Hartman.

HARTMAN'S POSITION

Hartman contends that the NMOCD cannot enter a compulsory pooling order for an infill Mesaverde well because in 1953 the original parties contracted for a well development plan which provided that **only one well** would be drilled on this 320-acre spacing unit.

MERIDIAN'S POSITION

Meridian contends that the NMOCD has the authority to issue a compulsory pooling order for an infill well in this case thereby modifying the original parties' 1953 plan of development so that this spacing unit now can be developed in conformity with the current well spacing program for this pool as authorized by Commission Order R-1670-T.

MERIDIAN'S CITATION OF AUTHORITY

Meridian's position is supported by the 1953 Operating Agreement, by the New Mexico Oil & Gas Act, by decisions of the Commission and by decisions of the New Mexico Supreme Court.

In authorizing "infill drilling" for the Blanco Mesaverde Gas Pool, the Commission declined to reduce the spacing unit size from the 320-acre units which had existed for more than twenty years and instead authorized two wells for each spacing unit because:

> "(13) That infill drilling will substantially increase recoverable reserves from the Blanco Mesaverde Pool.
>
> (14) That infill drilling will result in greater ultimate recovery of the reserves under the various proration units in the pool.
>
> (15) That infill drilling in the Blanco Mesaverde Pool will result in more efficient use of reservoir energy and will tend to ensure greater ultimate recovery of gas from the pool, thereby preventing waste."

In 1963, the New Mexico Supreme Court in Sims v. Mechem, 72 N.M. 186, 382 P.2d 183 (NM 1963) considered the compulsory pooling powers of the Commission and held:

> "Unquestionably the commission is authorized to require pooling of property when such pooling has not been agreed upon by the parties (citing to what is now 70-2-17C NMSA 1978), and it is clear that the pooling of the entire west half of Section 25 had not been agreed upon. It is also clear from sub-section (e) of the same section (citing to what is now 70-2-17E) that any agreement between owners and lease-holders may be modified by the commission. [emphasis added] But the authority of the commission to pool property or to modify existing agreements relating to production within a pool under either of these sub-sections must be predicted on the prevention of waste."

In 1975, the New Mexico Supreme Court again considered the compulsory pooling authority of the Commission and in Rutter &Wilbanks Corp. v. Oil Conservation Commission, 87 N.M. 286, 532 P.2d 582 (NM 1975) held that not only did the Commission have compulsory pooling authority to pool separately owned tracts within a spacing or proration unit, it had the power to pool separately owned tracts within an oversize non-standard spacing unit. In doing so, the Court approved of the Commission's decision to compulsory pool a 409-acre spacing unit and a 407-acre spacing unit each of which had a completed well and could have been dedicated to standard 320-acre spacing units for the Washington Ranch-Morrow Gas Pool. (See OCC Order Nos. R-4353 and R-4354)

In the 1953 Operating Agreement, the parties specifically agreed that their agreement would be modified to be consistent with the orders and rules of the NMOCD when they provided at page 10:

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LAWS AND REGULATIONS

> "This agreement shall be subject to all valid and applicable State and Federal laws, rules, regulations and orders, and the operations conducted hereunder shall be performed ;in accordance with said laws, rules, regulations

and orders. In the event this agreement or any provision hereof is, or the operations contemplated hereby are found to be, inconsistent with or contrary to any such law, rule, regulation or order, the latter shall be deemed to control and this agreement shall be regarded as modified accordingly, and as so modified, shall continue in full force and effect."

A preliminary review of NMOCD compulsory pooling orders reveals that:

(a) On December 9, 1987, the Division issued Order R-8565 and entered a compulsory pooling order for an infill well when it granted Tenneco Oil Company's application for such an infill well in the Basin-Dakota Gas Pool which has infill provisions similar to the Blanco Mesaverde Gas Pool.

(b) On February 10, 1994, the Division issued Order R-10060 and entered a compulsory pooling order for an infill well when it granted Merrion Oil and Gas Corporations' application for such an infill well in the Basin-Dakota Gas Pool.

(c) On March 30, 1979, the Division issued Order R-5962 and entered a compulsory pooling order for an infill well i the Basin-Dakota Pool upon the application of Curtis Little.

Further review of NMOCD compulsory pooling orders, shows that on October 24, 1990, the NMOCD issued Order R-9332 which granted an application by Hartman for a compulsory pooling order in which he was allowed to pool Chevron USA Inc's interest in an existing well and its existing spacing unit in the Eumont Gas Pool and which authorized Hartman to add additional acreage he controlled to that existing unit and to drill a second "infill well" over the objection of Chevron USA Inc.

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CONCLUSION

Conservation laws and the rules, regulations and orders promulgated thereunder have the effect of modifying the provisions of existing leases and other contracts and agreements. Without that effect, then parties could

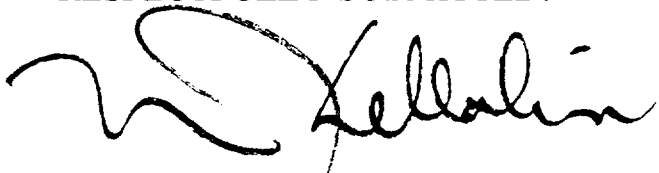
make agreements which are contrary to or inconsistent with what the Commission determines are appropriate rules for a pool, including well locations, well density, spacing unit sizes, production allowables, and gas-oil ratios.

The statutory and administrative compulsory pooling rules and infill drilling orders are a proper and necessary exercise of the police powers of the State of New Mexico. The NMOCD has jurisdiction to interpret, clarify, amend and supplement is own orders and to resolve any challenges to the public issue of conservation of oil and gas.

The NMOCD is not being asked to resolve the "private rights" of the parties created under the 1953 Operating Agreement. There is no dispute about the 1953 Operating Agreement. It simply did not provide for the drilling of the infill well. The 1953 Operating Agreement was created at a time when only one well per 320-acre spacing unit was allowed in the Blanco Mesaverde Pool. Subsequently, the Commission authorized infill drilling of a second well on a spacing unit. There is no agreement between the parties controlling how the infill well will be drilled. Meridian despite its good faith efforts has been unable to obtain a voluntary agreement among the working interest owners.

The Division has the authority and the responsibility to issue a compulsory pooling order in this case so that the infill well can be drilled under appropriate terms and conditions which will prevent waste and protect correlative rights.

RESPECTFULLY SUBMITTED:



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