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

APPLICATION OF GETTY OIL COMPANY FOR STATUTORY UNITIZATION, LEA COUNTY, NEW MEXICO.

CASE NO. 6987

APPLICATION OF DOYLE HARTMAN, TO GIVE FULL FORCE AND EFFECT TO COMMISSION ORDER R-6447, TO REVOKE OR MODIFY ORDER R-4680-A, TO ALTERNATIVELY TERMINATE THE MYERS LANGLIE-MATTIX UNIT.

AMENDED APPLICATION

Doyle Hartman, Oil Operator ("Hartman"), pursuant to NMSA 1978 § 70-2-6, §§ 70-7-1, et. seq. (the Statutory Unitization Act) and Rule 1203 of the Rules and Regulations of the New Mexico Oil Conservation Division ("NMOCD"), and pursuant to NMOCD's continuing jurisdiction under Orders R-4680, R-4660, R-6447, and R-4680-A, hereby applies for an Order (a) enforcing Order R-6447, entered by the New Mexico Oil Conservation Commission ("NMOCC") on August 27, 1980, (b) recognizing that the operation of the Myers Langlie-Mattix Unit ("MLMU") is controlled by the Statutory Unitization Act and Order R-6447, (c) revoking, withdrawing or modifying Order R-4680-A entered by NMOCD on March 31, 1995, (d) holding that the MLMU is no longer authorized as a secondary recovery unit, and terminating the MLMU as an approved waterflood unit, and requiring Oxy USA, Inc. ("Oxy") as the present operator of the MLMU to plug and abandon all wells heretofore utilized in connection with the MLMU at Oxy's sole cost and expense, and (e) holding that the MLMU operation should be

terminated, and requiring Oxy as the operator of the MLMU to return the various constituent leases to their respective lessee operators.

Alternatively, given the jurisdictional and procedural deficiencies which attended the entry of Order R-4680-A and the ongoing problems and operation of the MLMU by Oxy, Hartman requests that the NMOCD set this matter for a hearing on and reconsideration of matters concerning the operation of the MLMU, including Order R-4680-A, fully in accordance with the requirements of the Statutory Unitization Act and the MLMU Unit Agreement and Unit Operating Agreement.

This Amended Application raises an additional issue challenging the validity of Order R-4680-A. That order authorized surface injection pressures of 1,800 pounds per square inch ("psi") for certain injection wells in the MLMU project area. No notice was given in Oxy's 1994 Application that an increase in surface injection pressure as authorized by NMOCD Order WFX 460 (900 psi) was being sought; no evidence whatsoever supporting a surface injection pressure of 1,800 psi for the injection wells was submitted at the hearing which would support Finding No. 22 in Order R-4680-A. Therefore, Order R-4680-A is void or voidable to the extent it authorized maximum surface injection pressures of 1,800 psi for injection wells in the project area. Events since entry of Order R-4680-A indicate that excess surface injection pressures are causing or contributing to problems of water out of zone within the MLMU.

Exhibits A-H which were attached to the original application, are not attached again. Exhibits I-K are attached. The original proposed advertisement, Exhibit I to the original application, has not been amended.

As grounds for this Application, Hartman states as follows:

I.

1. The applicant is Hartman, who is engaged in the oil and gas business in New Mexico and who owns a 4.86907% working interest in the MLMU.

2. The supply area of the MLMU is the interval which extends from a point 100 feet above the base of the Seven Rivers formation to the base of the Queen formation, which has heretofore been defined by extensive oil development (the "Langlie-Mattix" pool).

A. FACTUAL BACKGROUND OF MLMU

3. On September 24, 1973, Skelly Oil Company ("Skelly") filed two applications with the NMOCC. The first, assigned as Case No. 5086, sought approval of a Unit Agreement for the MLMU. The other, assigned Case No. 5087, sought approval for secondary recovery by water injection in the MLMU and for rules governing operation of the Unit.

4. The applications were heard jointly before Examiner Richard Stamets on October 31, 1973. Testimony at the hearing indicated that primary recovery in the Unit Area was considered to be approximately 100% complete. Secondary reserves recoverable by waterflood operations were estimated at 6.9 million barrels, approximately 80% of the estimated primary recovery. The life of the waterflood project was estimated to be fifteen years.

5. The MLMU Unit Agreement plan of operation called for secondary recovery operations based upon a modified 80-acre five-spot waterflood pattern on 40-acre well spacing, modification along unit boundaries and in areas of decreased

development, and for a specific formula for tract participation which identified the percent of unitized substances to be allocated to each tract qualified for participation. The tract participation formula utilized essentially primary recoverable oil for each tract: 85% of the factor was estimated recoverable oil by primary recovery compared to all tracts, 10% for cumulative oil produced for each tract and for all tracts as of January 1, 1966, and 5% for tract acreage. The MLMU Unit Agreement was recorded in Lea County on October 10, 1973.

6. The parties to the original Unit Agreement also prepared and executed a Unit Operating Agreement dated January 1, 1973, which provided, inter alia, that all working interest owners are entitled to exercise overall supervision and control of matters pertaining to unit operations, including supervising and controlling the method of operation, the drilling of wells, well recompletions and changes of status, and expenditures. The Unit Operating Agreement requires an affirmative vote of three (3) or more working interests owners with a combined voting interest of at least sixty-five percent (65%) for approval of any unit operation.

7. On November 16, 1973, the NMOCC entered Order No. R-4660 in Case No. 5086 approving the MLMU Unit Agreement and plan of development. The NMOCC retained jurisdiction of the matter for entry of such further orders as the Commission may deem necessary. A copy of Order R-4660 is attached hereto as Exhibit A.

8. On November 20, 1973, the NMOCC entered Order R-4680 approving the MLMU project, which would be governed by Rules 701, 702 and 703 of the Commission's Rules and Regulations. The NMOCC retained jurisdiction for the

entry of such further orders as the Commission may deem necessary. A copy of Order R-4680 is attached hereto as Exhibit B.

9. From 1973 to 1977, Skelly operated the MLMU as a secondary recovery unit and as required by the Unit Agreement, submitted annual reports and plans to NMOCD and to federal authorities concerning the progress of implementing the unit plan. In 1977, as a result of a merger, Getty Oil Company ("Getty") assumed operatorship of the MLMU in place of Skelly. Getty submitted the required periodic annual plans for approval for 1978, 1979 and 1980, all of which were approved.

B. THE MLMU IS UNITIZED UNDER THE STATUTORY UNITIZATION ACT

10. On June 21, 1980, Getty filed an application with NMOCC in this docket. The application sought approval of the MLMU as a unitized operation pursuant to the Statutory Unitization Act, NMSA 1978 §§ 70-7-1 et. seq, which applies to secondary recovery units. The unit plan of development remained a secondary waterflood recovery plan based upon a modified 80-acre five-spot waterflood pattern and 40-acre well spacing. The proposal indicated that increased operational efficiency and increased oil recovery would result if statutory unitization were approved. However, all secondary recovery was represented to be concluded by 1991 or, at the latest, 1993 under the statutory unitization proposal.

11. The matter was heard before NMOCC on August 5, 1980. On August 27, 1980, the NMOCC entered Order R-6447, a copy of which is attached as Exhibit C. The Order expressly found, as required for approval by § 70-7-7, that the

Unit Agreement and Unit Operating Agreement provided for unit operations that were fair and equitable with terms which include:

> (c) a provision governing how the costs of unit operations including capital investments shall be determined and charged to the separately owned tracts and how said costs shall be paid including a provision providing when, how, and by whom the unit production allocated to an owner who does not pay his share of the costs of unit operations shall be charged to such owner, or the interest of such owner, and how his interest may be sold and the proceeds applied to the payment of his costs; [§ 70-7-7E]
>
> (d) a provision for carrying any working interest owner on a limited, carried, or net-profits basis, payable out of production, upon such terms and conditions which are just and reasonable, and which allow an appropriate charge for interest for such service payable out of production, upon such terms and conditions determined by the Commission to be just and reasonable, and allowing an appropriate charge for interest for such service payable out of such owner's share of production, providing that any nonconsenting working interest owner being so carried shall be deemed to have relinquished to the Unit Operator all of his operating rights and working interests in and to the unit until his share of the costs, service charge, and interest are repaid to the Unit Operator; [§ 70-7-7F] (Emphasis added)
>
> * * *
>
> (f) a provision for voting procedure for the decision of matters to be decided by the working interest owners in respect to which each working interest owner shall have a voting interest equal to his unit participation; and [§ 70-7-7H]
>
> (g) the time when the unit operation shall commence and the manner in which, and the circumstances under which, the operations shall terminate and for the settlement of accounts upon such termination. [§ 70-7-7I]

12. Order R-6447 provided for unit operations for the MLMU and approved the unit for statutory unitization for secondary recovery by waterflooding under the then-existing 40-acre well spacing and modified 80-acre 5-spot injection

pattern plan of development. The Commission retained jurisdiction of the matter for the entry of such further orders as the Commission may deem necessary.

13. Subsequent to the entry of Order R-6447, Getty supplied an affidavit representing that Getty had received written approval for statutory unitization from more than 75% of the owners (working interests and royalty interests) as required by NMSA 1978 § 70-7-8. Order R-6447 was determined to be in full force and effect on January 5, 1981. On January 6, 1981, Getty recorded in Lea County an affidavit of Raymond W. Blohm and a letter from Blohm to Royalty Interest Owners dated September 15, 1980, announcing statutory unitization for the MLMU.

14. Subsequent to the approval of the MLMU as a unit under the New Mexico Statutory Unitization Act, first Getty and then Texaco (by merger by Getty) continued to operate the MLMU. Prior to 1991, annual plans and reports were submitted to the NMOCD and federal authorities for approval by Getty and Texaco and approved by NMOCD. Each of those periodic or annual reports recognized that the MLMU was statutorily approved under the Statutory Unitization Act.

C. THE MLMU COMPLETES SECONDARY RECOVERY OBJECTIVE

15. In about 1990 or 1991, and by 1992 at the latest, prudent and economically justified secondary recovery by waterflood as circumscribed by the MLMU Unit Agreement and as authorized by Order R-6447 had been accomplished.

16. No annual plans or reports of operation were submitted by Texaco for the years 1991, 1992 and 1993 as had previously been the practice pursuant to Section 12. of the Unit Agreement.

17. Substantial disagreement arose in 1991 and 1992 between and among the working interest owners in the MLMU regarding past and potential future operations. Specifically, Texaco and others objected to a proposal by an interest owner, Sirgo Operating, Inc. ("Sirgo"), for a highly speculative and expensive infill drilling development program for the MLMU, and ultimately objected to and prevented Sirgo from becoming operator of the MLMU.

18. On August 18, 1992, Texaco proposed the drilling of five additional infill wells and the conversion of seven producing wells to injectors at a cost of $1,203,000. The MLMU working interest owners failed to approve the 1992 development proposal, which Texaco subsequently withdrew by letter dated January 12, 1993.

19. By January, 1993, (if not earlier) the MLMU had fulfilled its purpose as originally stated in support of the request for unit approval in 1973 and the subsequent request for approval under the Statutory Unitization Act in 1980. By 1993, secondary recovery operations had resulted in the recovery of approximately 6.8 million barrels of oil through secondary recovery operations. By this point, Texaco was operating the unit on a monitor and maintenance level.

D. OXY IMPROPERLY OPERATES THE MLMU IN VIOLATION OF THE UNIT AGREEMENT AND ORDER R-6447

20. Beginning in around 1992, Oxy undertook to purchase substantial working interests in the MLMU. Oxy acquired the interest of Sirgo (Myers Partners, Inc., Dollarhide Partners Inc. and Penrose Partners, Inc.) in December, 1992, and acquired Texaco's working interest in the MLMU and assumed operatorship of the

MLMU in December, 1993. Oxy presently owns approximately 80% of the working interest in the MLMU.

21. In April, 1994, Oxy circulated a Authority for Expenditure seeking approval for installation of a 40-acre five spot water injection pattern pilot project on 20-acre well spacing for the MLMU at a stated cost $5,074,650. This proposal (referred to herein as the "redevelopment program") represented a significant modification and amendment of the authorized unit plan of development as approved under Orders R-4660 and R-6447. Oxy contemplated the drilling of infill wells which were intended to result in certain quantities of primary recovery. Oxy did not seek to amend the unit plan as required by NMSA 1978 § 70-7-9, or propose a new or amended unit agreement between the working interest owners, despite the fact that its proposal exceeded the scope of unit operations envisioned by the Unit Agreement and Unit Operating Agreement and approved by NMOCD Orders R-4660 and R-6447. Moreover, Oxy never proposed recalculation of the various tract participation factors as required for development which contemplated additional primary recovery.

22. In January, 1994, the MLMU was and had been uneconomical. In August, 1994, Oxy sent working interest owners a one-page document described as the "MLMU 1995 Operating and Expenditure Budget" ("1995 Budget") referencing an Operating Budget of $3.5 million and a Secondary/Tertiary Recovery Capital Budget of $3.86 million. The Secondary/Tertiary Recovery Capital Budget referenced that producing wells were to be drilled intended to result in primary recovery. Again, Oxy did not propose a new unit agreement or a modification of the Unit Agreement tract

participation factor as required for a proposal which contemplated additional primary recovery and a substantial modification of the approved well-spacing.

23. With respect to both the April, 1994 AFE and the 1995 Budget, Oxy failed to notify working interest owners of the fact that the MLMU was statutorily unitized, or of their right to go non-consent and become a carried interest as provided by the Unit Agreement and Unit Operating Agreement as modified by Order R-6447 and NMSA 1978 § 70-7-7(F).

24. Hartman wrote to Oxy on August 23 and 24, 1994, due to both the April, 1994 AFE and the 1995 Budget, unequivocally objecting to the redevelopment program on the grounds that the proposal was financially unsound. Hartman indicated his intention to go non-consent with respect to Oxy's proposed redevelopment program. Hartman pointed out that Oxy's redevelopment program went beyond the scope of the authorized plan of development for the MLMU, which was not formed or authorized to recover undeveloped primary reserves. Because the secondary oil reserves originally contemplated for recovery by the MLMU had been produced, Hartman gave Oxy notice that he was entitled to develop his own primary reserves under his leases. Hartman also pointed out that the MLMU participation factors did not take into account previously undeveloped primary reserves, and that Oxy had not taken the necessary steps to compute and obtain approval of new participation factors for the redevelopment program. Copies of Hartman's letters are attached as Exhibits D and E.

25. Oxy recognized Hartman's objection to the redevelopment program and his determination to go non-consent. Oxy's response was to deny Hartman's right to go non-consent, misrepresenting that Hartman's options were to either participate in

the redevelopment program, or assign away his interest in the MLMU to Oxy. See letters from Oxy to Hartman dated August 19 and September 13, 1994, attached as Exhibits F and G.

E. OXY'S 1994 NMOCD APPLICATION IGNORES THE LAW AND ORDER R-6447 AND FAILS TO COMPLY WITH NMOCD ORDER R-9708

26. Prior to November, 1994, NMOCD had adopted Order No. R-9708 governing the rules and procedures for qualification for Enhanced Oil Recovery **("EOR")** Projects pursuant to NMSA 1978 § 7-29A-1 et seq. (1993 Repl.). Order R-9708 provides, in Section D(4)(c)(1) and (2) as follows:

> All applications shall be executed and certified by the operator or its authorized representative having knowledge of the facts therein and shall contain:
>
> .
> .
> .
>
> (c) Status of operations in the project area:
> (1) If unitized, the name of the unit and the date and number of the division order approving the unit plan of operation;
> (2) If an application for approval of a unit plan has been made, the date the application was filed with the Division. . .

(Emphasis added).

27. On November 22, 1994, Oxy filed an application with the NMOCD requesting (a) expansion of the MLMU, and (b) qualification of a 760-acre section of the MLMU as an Enhanced Oil Recovery Project for the Recovered Oil Tax Rate ("1994 Application"). The 1994 Application was assigned Case No. 11168. Oxy's application, did not reference Order R-6447 or otherwise inform the NMOCD of the statutory unitization of the MLMU.

28. The proposed expansion of the MLMU sought approval of the redevelopment program which had never been submitted for approval by Oxy to the working interest owners in the manner required by the Unit Agreement and the Statutory Unitization Act and as required by NMSA 1978 § 70-7-8.

29. Oxy's 1994 Application indicated that the redevelopment program would be for the purpose of recovering both primary oil reserves and secondary oil reserves. Oxy did not propose a modification of the Unit Agreement tract participation factor as required for a proposal which contemplated additional primary recovery, which would alter the foundation upon which the tract participation factors were based. At no time has Oxy followed the procedure to amend the MLMU plan of unitization as required by NMSA 1978 § 70-7-9.

30. A hearing was held before NMOCD on December 15, 1994 on Oxy's Application. At the hearing, Oxy admitted that the redevelopment program represented a substantial amendment to the previously approved MLMU unit plan of operations. In testimony describing the history of the MLMU, Oxy's representative, Scott E. Gengler, failed to acknowledge the fact of statutory unitization of the MLMU, Order R-6447, or the mandatory requirements of NMSA 1978, § 70-7-9.

31. Following hearing on December 15, 1994, NMOCD entered Order R-4680-A on March 31, 1995, approving the application to qualify the 760-acre section of the MLMU under the Enhanced Oil Recovery Act. A copy is attached as Exhibit H.

32. On September 20, 1995, Oxy sent to working interest owners a Budget of Capital and Expense for 1996, which estimated capital investment at $1,000,000 and expenses of $2,100,000. Oxy never notified working interest owners of

their right to go non-consent and become a carried interest as to these proposed expenditures as provided by the Unit Agreement and Unit Operating Agreement as modified by Order 6447 and NMSA 1978 § 70-7-7(F). Oxy never solicited the approval or disapproval of the working interest owners in connection with the redevelopment program contemplated by the 1996 proposed budget.

33. The substantial MLMU redevelopment program for which Oxy sought approval in its 1994 Application is a financial failure. Total revenues for the period June, 1994, when Oxy implemented the redevelopment program, without either the approval of the working interest owners or the NMOCD, until January, 1997, were $8,158,696. Operating costs for the same period (excluding over $8 million capital costs for the redevelopment program) were $8,053,704. The MLMU had a cumulative 32-month income over costs of production of only $104,992, with no recoupment of the large capital expenditure. Section 70-7-6(A)(3) supra, requires that the costs of conducting the operation will not exceed the revenues plus a reasonable profit.

34. Notwithstanding Hartman's reputed and unambiguous declarations of his intent to go non-consent and become a carried interest with respect to the Oxy redevelopment program, Oxy has filed suit against Hartman in Texas District Court in an effort to recover Hartman's share of operating expenses which have been billed by Oxy in connection with the redevelopment program.

F. MAXIMUM INJECTION PRESSURES FOR THE EOR PROJECT ARE INCREASED WITHOUT NOTICE OR EVIDENCE SUPPORTING ANY PRESSURE INCREASE

35. By Memo No. 3-77 dated August 24, 1977, the NMOCC set a maximum surface injection pressure of .2 psi per foot of depth to the top of the injection

zone for secondary recovery injection wells in waterflood projects. Operators could request authorization to exceed the .2 psi per foot pressure limitation if they presented evidence that the strata confining the injection fluid has a fracture gradient which would support a higher injection pressure. The .2 psi/ft limitation translates to a surface injection pressure of approximately 700 psi for the MLMU.

36. In response to an application by Getty Oil Company supported by documentary evidence, the NMOCD, by Order WFX No. 460, established a maximum wellhead pressure for injection wells in the MLMU of 900 psi. The order provided that the NMOCD Director can administratively authorize a pressure limitation in excess of 900 psi "upon the operator's establishing that such higher pressure will not result in fracturing of confining strata. " A copy of Order WFX No. 460 is attached hereto as Exhibit I.

37. Oxy's 1994 Application, which was assigned Case No. 11168, did not seek approval for an increase in surface injection pressure for the wells which were to be part of the enhanced oil recovery project or expanded used area as defined by the 1994 Application.

38. The notice of application in Case No. 11168 was silent as to any desire of the operator to alter or exceed the injection pressure limits set by Order WFX No. 460.

39. Testimony at the NMOCD hearing on December 15, 1994 on the issue of surface injection pressure was scant. Scott Gengler, the sole witness for Oxy, testified that for existing injection wells the average pressure was approximately 1,100 pounds for the wells in the project area; that any wells being operated above the .2 psi

per foot of depth guideline had been authorized based upon injection step-rate tests. No evidence was offered to support any extraordinary surface injection pressure to be used for the seventeen wells to be converted from producers to injectors (Exhibit "B" to the Order). By necessity, having never been injection wells, there could not have existed any step-rate tests on those wells.

40. On December 28, 1994, counsel for Oxy submitted to Michael E. Stogner, the NMOCD hearing examiner, a proposed Order in Case No. 11168 requesting that the NMOCD find, inter alia, as follows:

> (5) The injection wells or system shall be equipped with a pressure limiting device which will limit the wellhead pressure on the injection wells to no more than 0.2 psi/ft of depth to the uppermost injection perforations.

A copy of Oxy's counsel's proposed Order is attached hereto as Exhibit J.

41. At some point after the hearing and after Oxy submitted its proposed Order, the NMOCD first considered including in Order R-4680-A an authorization for surface injection pressures of 1,800 psi. A copy of a draft Order with the hand-written "1,800" psi is attached hereto as Exhibit K.

42. Order No. R-4680-A, Finding No. 22, provided that the seventeen proposed injection wells listed on Exhibit "B" should be equipped with a pressure control device that would "limit the surface injection pressure to no more than 1,800 psi."). Ordering paragraph 6. authorized such injection pressure, which is twice the pressure permitted by Order WFX 460, unsupported by application, notice or evidence.

43. In November, 1996, Hartman attempted to rework the Myers "B" Federal No. 30 well ("Myers well") in the NW/4 of Section 5, Township 24 South, Range

37 East in Lea County, New Mexico, a location within the MLMU and within the 760 acre project area approved by Order R-4680-A. During the reworking of the Myers well, Hartman encountered such large quantities of water in the Yates Formation that the well has been shut-in and cannot be produced. Water is not naturally occurring in the Yates Formation in this area.

44. Hartman is informed and believes that Oxy, through its operation of the MLMU and practices of water injection, has flooded gas reserves in the Yates Formation, including gas reserves which would have been successfully produced from the Myers well if not for overinjection and flooding caused by the operation of the MLMU.

II.

LEGAL BASIS FOR THIS APPLICATION

A. ORDER R-6447 GOVERNS AND CONTROLS MLMU UNIT OPERATIONS

45. Order R-6447 is entitled to full force and effect as to all MLMU operations, including but not limited to Oxy's efforts to amend the unit plan as reflected in the 1994 redevelopment program.

46. Any attempt to change or amend the plan of unitization for the MLMU as approved by Order R-6447 must comply with all provisions of the Statutory Unitization Act, NMSA 1978 §§ 70-7-1 et seq., including but not limited to §§ 70-7-6 and 9.

B. OXY'S FAILURE TO COMPLY WITH THE NEW MEXICO STATUTORY UNITIZATION ACT RENDERS ORDER R-4860-A VOID

47. Oxy failed in connection with its 1994 Application to follow the procedures applicable to statutory units and to alert the NMOCD and working interest owners to the fact that the MLMU was unitized under the Statutory Unitization Act, and to the existence and effect of Order R-6447.

48. Oxy failed to comply with the provisions of the New Mexico Statutory Unitization Act and Order R-6447 in connection with its 1994 Application in the following respects:

> A. Oxy failed to present evidence sufficient to support a finding as to whether conditions enumerated under NMSA 1978 § 70-7-6(A)(1) through (6) existed with respect to the 1994 Application and the amendment to the unit plan contemplated therein;
>
> B. Oxy failed to comply with applicable portions of Articles 3 and 4 of the Unit Operating Agreement concerning the obtaining of working interest owner approval for the redevelopment plan and for presenting the case to the regulatory agency;
>
> C. Oxy failed to establish that the amendment to the unit plan was ratified by working interest owners in the manner required by NMSA 1978 § 70-7-8.
>
> D. Oxy failed to amend the tract participation factors under the MLMU Unit Agreement even though the redevelopment program contemplated the recovery of additional primary oil which requires, under the terms of the Unit Agreement, that the tract participation factor be modified and amended to reflect the additional primary recovery.

49. Due to Oxy's failures, the NMOCD in issuing Order R-4680-A did not make the mandatory inquiry as to the existence of the six conditions specified in

NMSA 1978 § 70-7-6(A)(1) through (6) and did not have evidence presented in order to determine those conditions; the NMOCD did not find or require that Oxy establish that the amendment to the unit plan was ratified by working interest owners as required by NMSA 1978 § 70-7-8, and did not approve a fair and equitable tract participation plan for the MLMU in light of the amendment to the unit plan of operations approved by Order R-4680-A. Order R-4680-A is therefore void or that order is voidable and should be set aside. Sims v. Mechem, 72 N.M. 186, 382 P.2d 183 (1963) (commission is a creature of statute, expressly defined and limited and empowered by the laws creating it).

50. Division Order R-9708 concerning applications for Enhanced Oil Recovery Projects, NMOCD Rule 1203A.(4) and honesty and good faith before the NMOCD, all required that Oxy inform the Examiner in its 1994 Application and hearing of the existence and terms of Order R-6447.

51. The Oxy application filed on November 22, 1994 was, in law and in fact, an application for amendment of the unit plan. Such an application is controlled by NMSA 1978 § 70-7-9, which mandates that amendment may be only by an order of the division made "in the same manner and subject to the same conditions as an original order providing for unit operations. . . " § 70-7-9, supra.

52. The "conditions" which must be fulfilled are those enumerated in NMSA 1978 § 70-7-6A. The deficiency of the application to recognize the existence of Order R-6447 and the necessity for satisfying the six statutory conditions was carried forward to the form of notice which was published and mailed to working interest owners.

53. No interested party was advised by the notice of the flawed 1994 application that (a) the MLMU is a statutory unit, (b) that the rights and obligations of the operator and working interest owners are governed by Order R-6447, nor that (c) the existence of the conditions specified in NMSA 1978 § 70-7-8(A)(1) through (6) were required to be alleged by Oxy and must be found to exist on the evidence.

54. The notice of the 1994 proceeding underlying Order R-4680-A denied any interested party due process, failed to alert Hartman and any other interested party of the true issues, or what should have been the true issues, was fatally defective and requires that Order R-4680-A be vacated. Uhden v. New Mexico Oil Conservation Commission, 112 N.M. 528, 817 P.2d 721 (1991).

55. Had Hartman been given notice of the true legal and factual nature of the request by Oxy to amend the unit plan, he would have intervened in Case No. 11168 in objection and asserted his rights under the Statutory Unitization Act and Order R-6447.

56. Neither the NMOCD nor the NMOCC have authority to grant an application which fails to conform with NMOCD's rules and regulations. City of Albuquerque v. State Labor & Industrial Comm., 81 N.M. 288, 466 P.2d 565 (1970); Miller v. City of Albuquerque, 89 N.M. 503, 554 P.2d 665 (1976) (failure to comply with its own regulations is fatal to agency action); State ex rel. Hughes v. City of Albuquerque, 113 N.M. 209, 824 P.2d 349 (Ct. App. 1991) (relief from agency decision authorized if procedures mandated by city ordinances were not followed even if the violation does not rise to constitutional deprivation); New Mexico State Racing Comm. v. Yoakum, 113 N.M. 561, 829 P.2d 7 (Ct. App. 1991), cert. denied, 113 N.M. 352, 826

P.2d 573 (1992) (suspension by State Racing Commission void because Commission failed to follow its own regulation).

57. NMOCD should declare Order R-4680-A void for Oxy's failure to comply with the Rules and Regulations of the NMOCD and for concealing from the NMOCD controlling facts going to the essence of the 1994 proceeding.

C. NMOCD SHOULD SET ASIDE ORDER R-4680-A AND ENJOIN OXY'S OPERATION OF THE MLMU

58. Pursuant to NMSA 1978 § 70-7-21, following designation by NMOCD that a MLMU unit plan has become effective, the operation of any well producing from the pool within the area subject to the unit plan, except in the manner and to the extent provided in such unit plan, shall be unlawful and is prohibited.

59. Oxy has operated the MLMU in an unlawful manner by virtue of having amended the approved unit plan of operations by implementing the redevelopment program without complying with the mandates of the Unit Operating Agreement and the Statutory Unitization Act as specified, supra.

60. Oxy has operated the MLMU in an unlawful manner because the additional costs of the redevelopment program have exceeded the value of the additional oil and gas recovered, and because the expenditures associated with the redevelopment program have not produced a reasonable profit.

61. Oxy has operated the MLMU in an unlawful manner by refusing to recognize the statutorily required non-consent provision, refusing to recognize Hartman's right to go non-consent and become a carried interest with respect to costs

incurred in connection with Oxy's redevelopment program, and by attempting to cause the forfeiture of Hartman's MLMU interest.

62. Because secondary oil recovery in the MLMU has exceeded original objectives and has been accomplished within the scope specified in connection with the approval of the MLMU by Order R-4660 and R-4680, and under the statutory unitization of the MLMU pursuant to Order R-6447, and in light of the unprofitable operation of the MLMU resulting from Oxy's redevelopment program, the NMOCD should terminate the MLMU, and order that the leases should revert back to the rightful owners and lessees so that the owners of those leases can seek to develop their interests separately.

63. In light of the ongoing unlawful operation of the MLMU by Oxy, and because the MLMU had completed approved objective as a secondary waterflood unit by or before January 1994, the NMOCD should terminate the MLMU as an approved statutory unit, require Oxy to bear all costs resultant from its operation since January, 1994, reimburse oil payments by working interest owners, and perform at its sole expense the plugging and abandoning of any wells necessary for the termination of the unit.

D. ORDER R-4680-A IS VOID OR VOIDABLE TO THE EXTENT IT ESTABLISHED AN 1,800 PSI SURFACE INJECTION PRESSURE LIMITATION FOR INJECTION WELLS IN THE PROJECT AREA

64. To the extent Oxy sought by its 1994 Application a surface injection pressure authorization in excess of that established by Order WFX No. 460 and any subsequent amendment thereto, or authorizations made upon proper showing and

evidence, Oxy was required to give notice in its Application of such a request, but failed to do so.

65. The notice of the 1994 proceeding underlying Order R-4680-A denied interested parties due process, and failed to alert Hartman and other interested parties of the true issues, or what the true issues should have been with respect to surface injection pressure authorizations for injection wells in the project area, and thus was fatally defective rendering Order R-4680-A void. Uhden v. New Mexico Oil Conservation Commission, supra.

66. Order WFX No. 460 requires that Oxy, as MLMU operator, is required to establish that higher injection pressures will not result in fracturing of the confining strata if it wishes to inject at a surface injection pressure above 900 psi. Oxy presented no evidence at the hearing on its 1994 Application to support an authorization for surface injection pressures of 1,800 psi for injection wells in the project area.

67. Because no evidence supporting a surface injection pressure of 1,800 psi for injection wells in the project area was tendered in connection with Oxy's 1994 Application, nor was such evidence introduced during the December 15, 1994 hearing, the NMOCD lacked any evidence, much less substantial evidence, to support an amendment or modification of Order WFX No. 460, or to support an 1,800 psi surface injection pressure limitation for injection wells in the MLMU project area.

68. Given the absence of reference to surface injection pressures in the 1994 Application and in the December 15, 1994 hearing transcript, the inclusion of an 1,800 psi surface injection pressure limitation in Order R-4680-A likely resulted from

an 1,800 psi surface injection pressure limitation in Order R-4680-A likely resulted from one of two circumstances. First, there may have been ex parte contacts between Oxy representatives and members of the NMOCD, including but not limited to Michael E. Stogner, the hearing examiner, subsequent to the December 15, 1994 hearing which resulted in the invalid surface injection pressure authorization contained in Order R-4680-A. Second, the NMOCD may have sua sponte authorized the 1,800 psi surface injection pressure without requiring any evidentiary showing by Oxy that the higher surface injection pressures would not result in water out of zone.

69. In either event, that portion of Order R-4680-A authorizing maximum surface injection pressure authorization of 1,800 psi is void because no notice of such a request was included in Oxy's 1994 Application and because the record in Case No. 11168 contains no evidence supporting Finding No. 22 in Order R-4680-A.

70. Order WFX No. 460 provides that the MLMU operator shall take "all steps necessary to insure that the injected water enters only the proposed injection interval and is not permitted to escape to other formations or onto the surface." Order R-4680-A contains a similar requirement.

71. Since the entry of Order R-4680-A, Hartman discovered in connection with his attempt to re-enter the Myers well that water is and has been escaping from the authorized injection zone within the MLMU causing the flooding of gas reserves in the Yates Formation within the exterior boundaries of the MLMU and within the project area authorized by Order R-4680-A.

72. The NMOCD should investigate whether the excess surface injection pressures utilized in connection with the injection wells in the MLMU project area approved by Order R-4680-A have caused or contributed to problems with water out-of-zone. NMOCD should modify or amend Order R-4680-A and the authorized surface injection pressures referenced therein until such time as Oxy satisfies its obligation under Order WFX 460 to establish that surface injection pressures in the injected wells in the project area are not fracturing the confining strata.

E. ALTERNATIVELY, NMOCD SHOULD SET THIS MATTER FOR A HEARING ON AND RECONSIDERATION OF ALL MATTERS CONCERNING THE OPERATION OF THE MLMU

73. In light of the problems resulting from Oxy's failed redevelopment program, its improper and unlawful operation of the MLMU, and its blatant refusal to comply with Order R-6447 and the mandates of the New Mexico Statutory Unitization Act, the NMOCD at a minimum should set a hearing for consideration of all of the foregoing issues, including consideration of the termination of the MLMU as a statutory unit, revocation of the authority and authorization granted under Order R-4680-A, removal of Oxy as the operator of the MLMU, and for such further relief as is warranted under the facts and circumstances. Such a hearing would allow for the participation of all potentially affected working interest and royalty interest owners.

74. Notice of this Application will be sent by certified mail to all persons who are believed to be the current working interest and royalty interest owners in the MLMU, once Oxy provides Hartman with a current list of all working interest and royalty interest owners to insure proper service on all potentially affected parties.

75. A copy of the Proposed Advertisement was attached to the original application as Exhibit I.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By _____

J.E. GALLEGOS
MICHAEL J. CONDON
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing Application to be mailed on this 8th day of May, 1997 to the following counsel of record:

William F. Carr
Campbell, Carr, Berge & Sheridan
Post Office Box 2208
Santa Fe, New Mexico 87504-2208

Thomas W. Kellahin
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

Greg W. Curry
Thompson & Knight
1700 Pacific Avenue, Suite 3300
Dallas, Texas 75201

_____
Michael J. Condon