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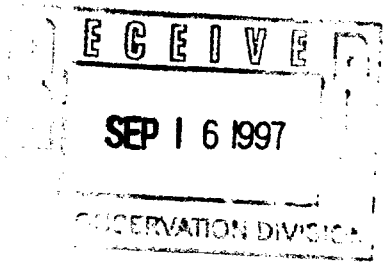

September 12, 1997

Florene Davidson
Oil Conservation Division
2040 South Pacheco Street
Santa Fe, New Mexico 87505

Dear Florene:

Enclosed is a brief, which I ask you to file in Case 11838. Mike Stogner and Rand Carroll have already been provided copies. Thanks.

Very truly yours,

James Bruce

Attorney for Exxon Corporation

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

APPLICATION OF PREMIER OIL & GAS, INC. TO HAVE THE DIVISION ORDER EXXON COMPANY U.S.A TO APPEAR AND SHOW CAUSE WHY ITS AVALON (DELAWARE) UNIT OPERATING AGREEMENT SHOULD NOT BE AMENDED TO CONFORM TO THE REQUIREMENTS OF THE STATUTORY UNITIZATION ACT, EDDY COUNTY, NEW MEXICO. **No. 11838**

REPLY OF EXXON IN SUPPORT OF ITS MOTION TO DISMISS

On August 15, 1997, Exxon Company U.S.A., a division of Exxon Corporation ("Exxon"), filed a motion to dismiss the application of Premier Oil & Gas, Inc. ("Premier") in Case 11838. The motion was granted on August 20, 1997. Premier subsequently received permission from the Division to file a response to Exxon's motion, and Exxon submits the following reply thereto:

I. FACTS.

Exxon is the operator of the Avalon (Delaware) Unit ("the Unit"), located in Eddy County, New Mexico. The Unit was approved by Division Order No. R-10460, and affirmed by Commission Order No. R-10460-B ("the Order").

The Order approved the Unit Operating Agreement[1] for the Unit. The Unit Operating Agreement, in Article 10.1.1, states:

> **Wells and Well Equipment.** All wells listed on Exhibit "H" and associated well equipment shall be delivered subject to the terms of Article 11 hereof, provided that: (i) Exhibit "H" may be amended to add or delete wells by vote of the Working Interest Owners as provided herein....

Exhibit H listed wells which were considered potentially useful for Unit operations, including Premier's FV3 well. It did not include

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[1]Exxon Exhibit 3 at the Commission hearing.

Premier's FV1 well, which is located 1980 feet from the North line and 990 feet from the East line (SE¼NE¼) of Section 25, Township 20 South, Range 27 East, NMPM (within the boundaries of the Unit).

Premier's application requests the Division to order Exxon to include the FV1 well in the Unit. Premier, in its response, asserts that: (1) evidence was not presented at the Commission hearing supporting the exclusion of the FV1 well; and (2) the Commission did not adjudicate this issue. Therefore, Premier contends, the Division retains continuing jurisdiction to review this matter and rule thereon. Premier is wrong on both counts.

I. EVIDENCE IN THE RECORD SUPPORTS EXCLUSION OF THE FV1 WELL FROM THE UNIT.

Premier asserts that there is no evidence in the record to support the exclusion of the FV1 well from the Unit. As an initial matter, Exxon was required at hearing to support, with admissible evidence, the allegations in its unitization application. It was not required to disprove everything it did not request. It never requested that the FV1 well be included in the Unit. To allow Premier's application to proceed to hearing will create a dangerous evidentiary burden for applicants in all future Division cases.

Nonetheless, there is abundant evidence in the record supporting the exclusion of the FV1 well from the Unit, as follows:

(a) Exxon Exhibit 28 (copy attached), the proposed CO_2 flood pattern, does not include the FV1 well.[2] That is because the proposed CO_2 flood wells will be 660 feet (or

[2]Exxon Exhibit 25(copy attached), the plat of the waterflood project, also does not include the FV1 well.

less) from the East line of Section 25, and not 990 feet, which is the FV1 well's footage location.

(b) The testimony of Exxon's engineer, regarding Exxon Exhibit 28 and the basis for attributing CO_2 reserves to exterior Unit tracts, makes it clear that CO_2 project wells in Premier's tract will only be 660 feet from the East line of Section 25. That is the basis for reducing the contributing CO_2 reserve value of the SE¼NE¼ of Section 25 by a factor of 0.5.[3] **Testimony of G. Beuhler, Commission Transcript ("Tr."), Vol. I at pp. 135-136, 138-139, 152-154, and 189-191.**

(c) Premier's own engineer proposed moving the CO_2 project wells on Premier's tract further west than 660 feet from the East line of Section 25, so that Premier would be attributed a larger proportion of CO_2 reserves. **Testimony of T. Payne, Commission Tr., Vol. II at pp. 430-435.** His theory was refuted by Yates Petroleum Corporation's expert, who testified that moving CO_2 project wells further west would reduce the project's recovery efficiency. **Testimony of D. Boneau, Commission Tr., Vol. II at pp. 486-488.**

This evidence clearly supports the exclusion of the FV1 well from the Unit, because it is located too far to the West, and thus does not fit the CO_2 flood pattern.

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[3]A well 660 feet from the East line of Section 25 will recover 50% of the CO_2 project oil under a 40 acre tract.

Moreover, in order to be a useable wellbore under the Unit Operating Agreement, a well "must be completed in the Unitized Formation, and not completed outside the Unitized Formation." **Unit Operating Agreement, Articles 11.1 and 11.1.1.** Ken Jones, Premier's owner, stated at the Commission hearing:

> [The FV1] well is making some gas out of the first Bone Springs sand. This lease was purchased because of the Bone Springs and the Delaware, and we're currently working up in the Bone Springs right now. We still have another pay for that well.

Commission Tr., Vol. II at p. 306. Thus, the FV1 well does not meet the "useable wellbore" requirement of the Unit Operating Agreement because it is completed outside the Unitized Formation.

The foregoing citations to the record demonstrate that there is substantial evidence to support the exclusion of the FV1 well from the Unit, and thus Premier's application must be dismissed.

II. <u>THIS ISSUE WAS PREVIOUSLY ADJUDICATED BY THE COMMISSION</u>.

Premier asserts that at no point "did Exxon alert either Premier or the Commission that it intended to exclude" the FV1 well from the Unit. **Premier's Response at p. 3.** As demonstrated above, it was, and is, clear from the plain terms of the Unit Operating Agreement that the FV1 well would be excluded from the Unit. Premier was provided with a copy of the Unit Operating Agreement in early 1995, and could have easily raised this issue before either the Division or Commission, but failed to do so. Thus, the issue has been adjudicated by the Commission, and there is no basis to re-open the case.

In addition, Premier's only support for its assertion that it

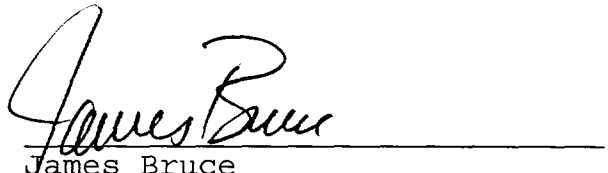
thought the FV1 well would be included in the Unit is a claim to a 1993 conversation between Exxon and Premier. **See Response at p. 5, ¶(c)**. That does not constitute new evidence which would justify re-opening this matter or amending the Order.

III. THE ORDER CONFORMS WITH THE STATUTORY UNITIZATION ACT.

Premier asserts that the FV1 well must be included in the Unit since it is located on a unitized tract. As noted above, the FV1 well (a) does not conform to the CO_2 flood pattern, and (b) is not completed in the Unitized Formation. The Statutory Unitization Act does not require that every well on a unit tract be included. It merely requires that the Unit Operating Agreement include a provision making credits for wells which are "contributed to unit operations." **N.M. Stat. Ann. §70-7-7.D (1995 Repl. Pamp.)**. The FV1 well is not contributed to Unit operations, and thus Articles 10 and 11 of the Unit Operating Agreement comply with the Statutory Unitization Act.

WHEREFORE: There is no basis for the Division to force the other interest owners to include the FV1 well in the Unit. Exxon requests that the Division affirm its prior dismissal of the application, and deny Premier permission to amend its application.

Respectfully submitted,



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Attorney for Exxon Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing pleading was served upon counsel of record this 17th day of September, 1997, in the following manner:

Via U.S.Mail
W. Thomas Kellahin
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Via U.S. Mail
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James Bruce