



February 14, 2005

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VIA HAND DELIVERY

Mr. Mark E. Fesmire, P.E.
Director
Oil Conservation Division
New Mexico Department of Energy,
Minerals and Natural Resources
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

Re: Case No. 13348 (de novo): Application of Marbob Energy Corporation for
Compulsory Pooling, Eddy County, New Mexico.

**RESPONSE OF MARBOB ENERGY CORPORATION
TO MOTION TO STAY ORDER**

Dear Mr. Fesmire:

Enclosed is the Response of Marbob Energy Corporation to Motion to Stay Order in the
above-referenced case.

Your attention to this matter is appreciated.

Very truly yours,

William F. Carr
of Holland & Hart LLP

Enclosure

cc: Mr. James G. Bruce, Esq.
Mr. Raye Miller
Mr. E. Randall Hudson, III

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

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

**APPLICATION OF MARBOB ENERGY
CORPORATION FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO.**

CASE NO. 13348 (DE NOVO)

**RESPONSE OF MARBOB ENERGY CORPORATION TO
MOTION TO STAY ORDER**

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Mary T. Ard, Mary T. Ard, Trustee of the Edward Hudson Trust 4, Ard Energy Group, Ltd., and Ard Oil, Ltd. (hereinafter collectively referred to as "Mrs. Ard")¹ seeks a stay of Order No. R-12275. This order granted the application of Marbob Energy Corporation in the above referenced case thereby pooling the working interest in the S/2 of Section 12 South, Range 17 South, Range 31 East, NMPM, and naming Hudson Oil Company of Texas operator of the well to be drilled thereon. Mrs. Ard alleges a stay is needed to prevent gross negative consequences that will result if the order is not stayed pending Commission review of this order.

Mrs. Ard's has two objections to the Division's order. First, she opposes the approval of Hudson Oil Company of Texas as operator of the well and, second, she wants the order in this case (i) to require the operator provide well data to non-operators, (ii) contain accounting provisions, and (iii) give her a casing point election.

The record below reveals that approximately eight years ago, Mrs. Ard and Hudson Oil Company of Texas got into a dispute over the development of this property, litigation followed and the case was settled. Mrs. Ard appears to still be unhappy about this matter. However, she formally settled this dispute years ago and should not be allowed to use this old grievance to delay the drilling of a well that the owners of approximately 90% of the working interest in this spacing unit are ready to drilled².

¹ While it may appear that several parties have joined in the appeal of this order, all of the parties seeking the *de novo* hearing in this case are entities that are related to Mary T. Ard, or have been created out of her interests in this spacing unit or are controlled by her. Some of these entities have even been created out of her interest since the examiner hearing. In fact, Mrs. Ard is the only party opposing the development of this acreage under Division Order No. R-12275.

² No owner opposes the drilling of this well. At the Examiner hearing, even Mrs. Ard, through her attorney, stated that they did not oppose the drilling of this well.

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WELL OPERATOR:

All owners in this spacing unit want the well drilled, including Mrs. Ard. Although Mrs. Ard objects to Hudson Oil Company of Texas operating the well, the designation of Hudson Oil Company of Texas as operator is supported by all other interest owners who together own approximately 90% of the working interest in this spacing unit³.

The Commission and Division only approve or deny the applications that are brought before them. While Mrs. Ard complains about the "gross negative consequences" she may suffer, on de novo appeal Hudson Oil Company of Texas is the only operator proposed by the parties and therefore the only operator the Commission could approve. Furthermore, the applicant in this case, Marbob Energy Corporation, has met all statutory preconditions for a pooling order and pursuant to the Oil and Gas Act, the Commission is required to pool these lands.⁴

SPECIAL PROVISIONS IN THE POOLING ORDER:

In Mrs. Ard's motion, she asks the Commission to include in this order special provisions that require (i) the operator to provide data to non-operators and (ii) establish accounting procedures. All other interest owners in this spacing unit will sign the Joint Operating Agreement which provides for all the things Mrs. Ard seeks in the order. Accordingly, Mrs. Ard is the only interest owner in this well who does not now have the right to receive the data she seeks. Her interest is the only interest in this well that is not specifically governed by COPAS Accounting procedures. All she has to do to get these things is to sign the Joint Operating Agreement.

Mrs. Ard also asks the Commission to give her a casing point election. She is the only non-participating interest owner in this well and the only party to whom this provision would apply. With this request, Mrs. Ard wants to avoid any risk associated with the well. If this request was approved by the Commission, after the well is drilled and the risk assumed by the participating parties, Mrs. Ard could decide not to participate thereby avoiding all risk associated with the drilling of the well. In this situation there would be gross negative consequences on all other owners in this spacing unit because they would be required to assume the risk for Mrs. Ard.

In addition to the provisions of Oil Conservation division Rules 1220 discussed above, the Rules of Civil Procedure for the District Courts of New Mexico announce the

³ The working interest owners have voluntarily agreed to participate in the well and support Hudson Oil Company of Texas serving as operator of the well include Marbob Energy Corporation, Yates Petroleum Corporation, S. J. Iverson Trust, Edward Hudson Trust 2, Edward Hudson Trust 3, Javelina Partners, Zorro Partners, Iverson III, Inc., The P.I.P. 1990 Trust, SJI. Jr. 1990 Trust, W.W.I. 1990 Trust, and William A Hudson, II.

⁴ NMSA 1978, § 70-2-17.C provides that when the statutory preconditions for a pooling order set out in this section of statute are met, the division shall pool all or part of such lands or interests or both in the spacing or proration units as a unit."

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standards that must be met by a party seeking a stay of a final administrative order. Rule 74 provides in relevant part:

Stay. A party appealing a decision or order of an administrative agency may petition the district court for a stay of enforcement of the order or decision of the agency. Upon notice and hearing, the district court may grant a stay of enforcement of the order or decision of the agency upon a showing by the appellant that:

1. It is likely that the appellant will prevail on the merits of the appeal;
2. The appellant will suffer irreparable harm unless a stay is granted; and
3. no substantial harm will result to other interested persons or the public if a stay is granted. (N.M. Dist. Ct. R.C.P. 1-074)

To decide this motion, the Division should also Consider the test announced in this rule.

THE DIVISION SHOULD NOT ISSUE A STAY:

Mrs. Ard has failed to meet any of the three preconditions she is required to establish to show she is entitled to a stay. She must first show that she is likely to prevail on the merits. As noted above, approximately 90% of the working interest is voluntarily committed to the well and only Hudson Oil Company of Texas is proposed to operate the spacing unit. Furthermore, the Applicant has met all statutory pre-conditions to the issuance of a pooling order. Mrs. Ard has no proposal for the Commission, only old grievances to raise. She cannot show that she is likely to prevail on appeal.

Second, Mrs. Ard must show that it will suffer irreparable harm unless a stay is granted. Here she proposes no alternatives to the application before the Commission. Furthermore, the special provisions she seeks in the order are either (i) available to her if she signs the same agreement signed by all other owners in the spacing unit or are (ii) provisions that would permit her to pass the risk of drilling to the other owners in this spacing unit. She has failed to show how she will suffer irreparable injury.

Finally Mrs. Ard must show that there will be no substantial harm to other interested parties. if she gets what she wants, the other interest owners in this acreage will have to assume the risk of drilling the well for her. They would clearly be harmed such a provision.

CONCLUSION:

Mrs. Ard has not shown how a stay will prevent the negative consequences she fears. To the contrary, in view of the facts, and the governing statutes, it is clear that the only thing

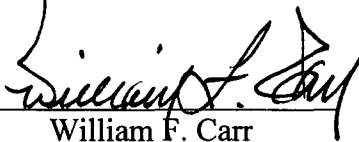
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that a stay would accomplish is a delay in the drilling of this well. Furthermore, she has not and cannot meet the pre-conditions announced in Rule 74 of the Rules of Civil Procedures which govern the issuance of stays in appeals of administrative orders.

Mrs. Ard's Motion To Stay Order must be denied.

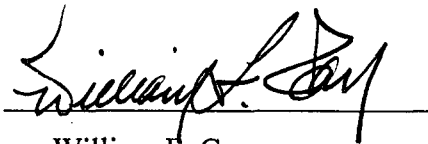
Respectfully submitted,
Holland & Hart, LLP

By: 
William F. Carr

ATTORNEYS FOR MARBOB
ENERGY CORPORATION

CERTIFICATE OF SERVICE

I certify that I have caused a copy of the foregoing pleading to be delivered to Gail MacQuesten, Esq. Attorney for the Oil Conservation Division by Hand Delivery and to James Bruce, Esq., attorney for Mary T. Ard, Mary T. Ard, Trustee of the Edward R. Hudson Trust 4, Ard Energy Group, Ltd., and Ard Oil, Inc., by facsimile [FAX NO. (505) 982-2151] on this 14th day of February, 2005.


William F. Carr