

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

2012 MAR -9 P 12: 52

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

**APPLICATION OF MACK ENERGY  
CORPORATION FOR COMPULSORY  
POOLING, LEA COUNTY, NEW MEXICO.**

**Case No. 14,763**

**RESPONSE IN OPPOSITION TO MOTION TO STAY**

Mack Energy Corporation ("Mack") submits this response in opposition to the motion to stay Order No. R-13519 filed by Tom M. Ragsdale ("Mr. Ragsdale").<sup>1</sup>

1. Facts.

Order No. R-13519 was entered on February 21, 2012, granting Mack's application to pool Mr. Ragsdale into the Cockburn A Well No. 5, located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32, Township 17 South, Range 33 East, NMPM, from the surface to the base of the Abo formation. This is an existing well currently producing from the Abo formation. Mack proposes to fracture stimulate the well to increase production.

Mr. Ragsdale owns a 6.25% working interest in the well, while entities related to Mack own the remaining 93.75% working interest (all of the Mack-related entities desire to frac the well). A joint operating agreement ("JOA") has never been entered into among all of the well's working interest owners. Mr. Ragsdale's share of the frac cost is approximately \$14,630.00.

Mr. Ragsdale opposed the pooling, asserting (among other reasons) that (a) Mack did not make a good faith effort to voluntarily pool the acreage, and (b) the proposed frac is too risky and unnecessary. He also requested that no risk charge be assessed.

---

<sup>1</sup> Siana Oil and Gas LLP ("Siana") joined in the stay motion. However, Siana owns no interest in the well.

2. Standards used in granting a stay.

In considering stay motions, the Division has used the general factors for granting an injunction under District Court rules. **NMRA 1-066**. Under those standards Mr. Ragsdale must show, at a minimum, (a) a likelihood of success on the merits, and (b) a balancing of equities (*i.e.*, benefit or detriment of the frac among all interest owners) which would favor Mr. Ragsdale. He cannot succeed on either element.

In addition, Division Rule NMAC 19.15.4.23.B allows a stay if necessary to "protect correlative rights" or "prevent gross negative consequences to an affected party." Again, Mr. Ragsdale cannot satisfy these requirements.

3. Argument.

(a) Good faith pooling: At the close of the hearing, Mr. Ragsdale filed a motion asserting that Mack did not make a good faith effort to voluntarily pool the acreage. This motion was fully briefed by both parties. Order No. R-13519 specifically found that Mack had satisfied Division pooling requirements, and denied the motion.<sup>2</sup> **Order No. R-13519, Finding Paragraphs 6-9.**

(b) Necessity of the frac: A modern frac has never been performed on the well. Mack employed Michael McCoy, a registered professional engineer and partner of Ely & Associates, to examine the potential results of a frac. Ely & Associates is the world leader in fracture stimulation design. **Transcript ("Tr.") at 50-51**. Mr. McCoy testified that the frac will increase recovery from the well. **Tr. at 53-54**. He did testify that there are risks involved, but his testimony was that the risks might reduce incremental production, but that there would still be incremental production. **Tr. at 67 (lines 11-13), 68 (lines 16-25), 69 (lines 8-12).**

---

<sup>2</sup> Mr. Ragsdale's on pooling position is interesting: He complains that a JOA was never entered into, but has refused to sign or even comment upon a JOA provided to him by Mack. He also opposes compulsory pooling, which of course substitutes for a JOA.

Mack requested a 200% risk charge. However, the Division reduced the risk charge to 100% from the normal 200%. The Division found that the risk of the frac was not excessive. **Order No. R-13519, Finding Paragraphs 16, 17.** Furthermore, 93.75% of the working interest owners agree with the stimulation proposal. They would not do so if the risk was as prohibitive as claimed by Mr. Ragsdale. Thus, there are no gross negative consequences to Mr. Ragsdale involved in the frac procedure.

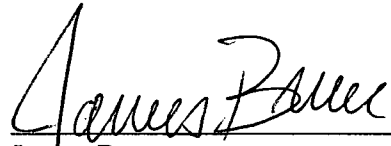
Mr. Ragsdale has pointed to no specific provision of the order which justifies it being stayed or overturned. As a result, he cannot succeed on appeal and his motion must be denied.

(c) Division's rule on stays: The Division recognized that the fracture stimulation will recover additional reserves, and that the payout from the frac would be short. **Id.** Thus, the frac will protect the correlative rights of all interest owners in the well; that is, the frac will allow them to recover their fair share of reserves under the well unit. 93.75% of the working interest owners agree, and they should not be held hostage by a minority owner. Granting the stay will further delay the frac procedure which would otherwise have been completed months ago.

Also, Mr. Ragsdale has shown no gross negative consequences which would occur if a stay is denied. Mack's frac proposal is reasonable, and will result in recovering additional reserves. If Mr. Ragsdale disagrees he can simply non-consent the procedure under the pooling order and let the other working interest owners pay his share of costs.

WHEREFORE, Mack requests that Mr. Ragsdale's motion be denied.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "James Bruce", written over a horizontal line.

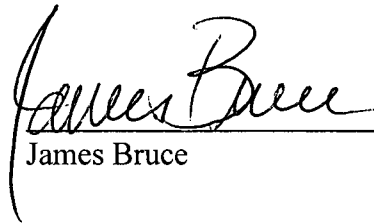
James Bruce  
Post Office Box 1056  
Santa Fe, New Mexico 87504  
(505) 982-2043

Attorney for Mack Energy Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 9th day of March, 2012 by facsimile transmission and United States Mail:

J. Scott Hall  
Montgomery & Andrews, P.A.  
P.O. Box 2307  
Santa Fe, New Mexico 87504  
(505) 982-4289

A handwritten signature in cursive script, appearing to read "James Bruce", written over a horizontal line.

James Bruce