MONTGOMERY
& ANDREWS
LAW FIRM

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March 28, 2016

VIA HAND DELIVERY

Ms. Florene Davidson
New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505

Re: Case No. 15448; Application of Mewbourne Oil Company for a Non-Standard Oil Spacing and Proration Unit and Compulsory Pooling, Eddy County, New Mexico

and

Case No. 15449; Application of Mewbourne Oil Company for a Non-Standard Oil Spacing and Proration Unit and Compulsory Pooling, Eddy County, New Mexico

Dear Ms. Davidson:

Enclosed for filing in each of the above cases, not yet consolidated, are two originals and two copies of our Motion to Dismiss filed on behalf of Black Mountain Operating, LLC and E.G.L. Resources, Inc.

Thank you.

Very truly yours,

J. Scott Hall

J. Scott Hall

JSH:bjw
Enclosures
cc: James Bruce, Esq. (via email)

REPLY TO:
325 Paseo de Peralta
Santa Fe, New Mexico 87501
Telephone (505) 982-3873 • Fax (505) 982-4289

Post Office Box 2307
Santa Fe, New Mexico 87504-2307

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

APPLICATION OF MEWBOURNE OIL COMPANY FOR A NON-STANDARD OIL SPACING AND PRORATION UNIT AND COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.

CASE NO. 15448
And
CASE NO. 15449

MOTION TO DISMISS

Black Mountain Operating, LLC ("Black Mountain") and E.G.L. Resources, Inc. ("E.G.L."), together, move the Division enter its order dismissing the Application for a Non-Standard Oil Spacing and Proration Unit and Compulsory Pooling filed on behalf of Mewbourne Oil Company ("Mewbourne") in this matter. In support of its motion, Black Mountain and E.G.L. state:

By its Applications in these matters, Mewbourne asks the Division to, *inter-alia,* enter an order pooling the interests of E.G.L. Resources, Inc. and ten other interest owners in the N/2 S/2 (Case No. 15448) and in S/2 S/2 of Section 28, Township 18 South, Range 29 East, NMPM in Eddy County. Mewbourne's Applications must be dismissed for the reason that all of the lands and formation described in the Applications are subject to a pre-existing Joint Operating Agreement and are not available to be force pooled.

BACKGROUND FACTS

Mewbourne seeks an order pooling all uncommitted mineral interests in the Bone Spring formation for two horizontal wells it proposes to drill in the S/2 of Section 28. The interests of E.G.L. and Black Mountain in Section 28, including the Bone Spring formation, are subject to

that Operating Agreement dated February 5, 1979 by and between Hondo Drilling Company as Operator, and T. J. Sivley, et al., as non-operators. The Contract Area lands covered by the Operating Agreement comprise the S/2 of Section 28. E.G.L. owns one-hundred percent of the leasehold working interest in the S/2SW/4, SW/4SE/4, NE/4SE/4 and the NW/4SW/4, limited to those depths from 4,000' below the surface to 11,420 below the surface. Under the Operating Agreement , E.G.L. has a 50.00% After Payout Contractual Interest in the lands. *See* Operating Agreement excerpts, Exhibit 1. Black Mountain has entered into a Purchase and Sale Agreement with E.G.L. Resources Company dated March 1, 2016 to acquire certain of E.G.L.'s interests in the lands subject to the Operating Agreement, and therefore has an equitable interest in title.

Hondo Drilling drilled the Initial Well under the Operating Agreement in 1979. It is the Trigg Jennings Com No. 1 Well located 660' FSL and 1,980' FWL (N) of Section 28. It first produced from the Morrow formation, North Turkey Track Morrow Gas Pool. In 2001, E.G.L. became Operator of the Trigg Jennings Com No. 1 and in 2004, recompleted the well in the Strawn formation, Empire Strawn Gas Pool. For years, the Operators and other parties to the Operating Agreement have recognized the Trigg Jennings Com No. 1 has holding the Operating Agreement in effect.

Option 2 of Article XIII of the Operating Agreement was selected by the parties. It provides as follows:

TERM OF AGREEMENT...Option No. 2: In the event the well described in Article VI.A., or any subsequent well drilled under any provision of this agreement, results in production of oil and/or gas in paying quantities, this agreement shall continue in force so long as any such well or wells produce, *or are capable of production*, and for an additional period of 90 days from cessation of all production; provided, however, if, prior to the expiration of such additional period, one or more of the parties hereto are engaged in drilling or reworking a well or wells hereunder, this agreement shall continue in force until such operations have been completed and if production results therefrom, this agreement shall continue in force as provided herein. In the event the well described in Article VI.A., or any subsequent well drilled hereunder, results in a

dry hole, and no other well is producing or capable of producing oil and/or gas from the Contract Area, this agreement shall terminate unless drilling or reworking operations are commenced within 90 days from the date of abandonment of said well. (emphasis added)

The Lands In the S/2 of Section 28 Are Not Available To Be Force Pooled.

Under the operation of NMSA § 70-2-17(C) and established Division precedent, there is no basis for the exercise of the Division's compulsory pooling authority in this case, and consequently, Mewbourne's Applications must be dismissed.[1]

Under the pooling statute, Mewbourne has the burden of affirmatively proving that the owners of mineral interests in a spacing unit "have not agreed to pool their interests...". Such a showing is a mandatory pre-condition to the exercise of the Division's authority to pool property interests under § 70-2-17(C). It is a showing that Mewbourne cannot make and therefore the only proper course of action for the Division is the dismissal of Mewbourne's Application.

I. SECTION 70-2-17 REQUIRES THE DIVISION TO DETERMINE WHETHER OR NOT A VOLUNTARY AGREEMENT EXISTS BEFORE IT CAN FORCE POOL THESE WORKING INTERESTS.

The Division must necessarily address the voluntary agreement issue before it exercises its powers to consolidate the lease interests under the compulsory pooling statute. Typically, the compulsory pooling orders that the Division issues contain an express finding to the following effect:

> "(_) There are interest owners in the subject proration unit
>
> that have not agreed to pool their interests."

Such a finding has been included in hundreds of compulsory pooling orders for decades now, and the industry has come to rely on the Division's manner of interpreting and exercising its

[1] A similar motion is currently pending before the Division in Case No. 15433; Application of Matador Production Company for a Non-Standard Spacing and Proration Unit and Compulsory Pooling, Lea County, New Mexico, *Motion To Dismiss*, January 14, 2016.

authority under the pooling statute. As such, the Division's consistent interpretation and application of the pooling statute is established as a form of legal precedent.[2] The Division's standard practice of considering evidence of and making a finding on the voluntary agreement issue fulfills the directive under the pooling statute. In other words, the Division does not exercise its authority until it first makes a finding that "[the] owners have not agreed to pool their interests and develop their lands as a unit."[3] *See Sims v. Mechem,* 72 N.M. 186, 382 P.2d 183 (1963): ("Unquestionably, the [Division] is authorized to require pooling of property *when such pooling has not been agreed upon by the parties.*" *Emphasis added.*)

Black Mountain and E.G.L. ask that the Division do nothing more than make a proper finding that its interests, now E.G.L.'s, are not subject to pooling as they are voluntarily committed under a pre-existing Operating Agreement. Conversely, a finding that the parties have not agreed to pool their interests would operate as an effective nullification of a private agreement, far exceeding the invocation by Mewbourne of the Division's authority under § 70-2-17 (C).

Disputes of this nature are not new to the Division. Precedent orders from a number of compulsory pooling cases support the dismissal of Mewbourne's Applications in these cases. Examples:

Case No. 8606: Order No. R-8013: *Application of Doyle Hartman for Simultaneous Dedication and Compulsory Pooling, Lea County, New Mexico.* In 1985, the Applicant, Doyle Hartman sought to force pool lands that were subject to a 1951 Operating Agreement entered into by the parties' predecessors in interest. The compulsory pooling portion of the application

[2] See Chisolm v. Defense Logistics Agency 656 F.2d 42,47 (3'd. Cir. 1981).
[3] Section 70-2-17(C) says, in part, "Where, however, such owner or owners have not agreed to pool their interests...the division...shall pool all or any part of such lands or interest or both in the spacing or proration unit as a unit."

was denied due to the Applicant's failure to provide evidence to refute that the Operating Agreement was not binding. Order No. R-8013, Findings ¶¶ (11), (12) and (13) (August 20, 1985).

Case No. 10658: Order No. R-9841: *Application of Mewbourne Oil Company for Compulsory Pooling, Eddy County, New Mexico.* In 1993, the Applicant, Mewbourne Oil Company, sought to pool the interests of Devon Energy Corporation. Devon opposed the application on the grounds that the parties were bound to Operating Agreements entered into by their predecessors in 1953 and 1958. Mewbourne argued that the compulsory pooling was justified because the terms of the Operating Agreement were "unfavorable". Order No. R-9841 dismissing the Application provided as follows: "*FINDING: Since under the "force pooling" statutes (Chapter 70-2-17 of the NMSA 1978) there exists in this matter an agreement between the two parties owning undivided interests in a proposed 280-acre gas spacing and proration unit, an order from the Division pooling said parties is unnecessary.*" Order No. R-9841, Findings ¶¶ (5) and (6) (February 3, 1993). The comments of the Division's counsel in the transcript of hearing are notable as it is expressed that, in such cases, the Division makes no determination on the merits of the terms of the Operating Agreement , but determines only whether the agreement exists.

See Order No. R-8013 and Order No. R-9841, Exhibits 2 and 3.

Where the evidence clearly supports a finding that the commitment of working interests is governed by an Operating Agreement , farmout, communitization or other similar agreement, then those interests are not subject to compulsory pooling. In each of the compulsory pooling cases referenced above, the applicant failed to make the showing required by the statute. Each time, the applicant either failed to obtain the compulsory pooling relief sought or the application was denied

outright. This case is no different and the Division should not hesitate to deny the forced pooling of the interests involved here.

For the foregoing reasons, Black Mountain Operating, LLC and E.G.L. Resources, Inc. request that the Division enter its order dismissing and otherwise denying Mewbourne Production Company's Applications for a Non-Standard Spacing and Proration Unit and for Compulsory Pooling.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

By: J. Scott Hall

J. Scott Hall
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(505) 982-3873
shall@montand.com

Attorneys for
Black Mountain Operating. LLC
And
E.G.L. Resources, Inc.

CERTIFICATE OF SERVICE

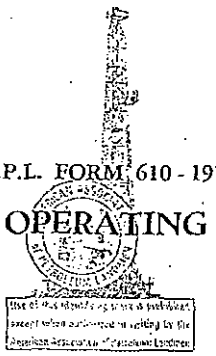
I hereby certify that a true and correct copy of the foregoing was served on the following counsel of record by electronic mail on March 28, 2016:

James A. Bruce
jamesbruc@aol.com

J. Scott Hall

A.A.P.L. FORM 610 - 1977

MODEL FORM OPERATING AGREEMENT



OPERATING AGREEMENT

DATED

February 5, 19 79,

OPERATOR HONDO DRILLING COMPANY

CONTRACT AREA S/2 Section 28, Township 18 South, Range 29 East, N.M.P.M.

COUNTY OR PARISH OF Eddy STATE OF New Mexico

(Revised)

EXHIBIT
1

such party shall give any notices or take any other action inconsistent with the election made hereby. If any present or future income tax laws of the state or states in which the Contract Area is located or any future income tax laws of the United States contain provisions similar to those in Subchapter "K", Chapter 1, Subtitle "A", of the Internal Revenue Code of 1954, under which an election similar to that provided by Section 761 of the Code is permitted, each party hereby affected shall make such election as may be permitted or required by such laws. In making the foregoing election, each such party states that the income derived by such party from Operations hereunder can be adequately determined without the computation of partnership taxable income.

ARTICLE X.
CLAIMS AND LAWSUITS

Operator may settle any single damage claim or suit arising from operations hereunder if the expenditure does not exceed Five Thousand No/100---------- Dollars ($ 5,000.00) and if the payment is in complete settlement of such claim or suit. If the amount required for settlement exceeds the above amount, the parties hereto shall assume and take over the further handling of the claim or suit, unless such authority is delegated to Operator. All costs and expense of handling, settling, or otherwise discharging such claim or suit shall be at the joint expense of the parties. If a claim is made against any party or if any party is sued on account of any matter arising from operations hereunder over which such individual has no control because of the rights given Operator by this agreement, the party shall immediately notify Operator, and the claim or suit shall be treated as any other claim or suit involving operations hereunder.

ARTICLE XI.
FORCE MAJEURE

If any party is rendered unable, wholly or in part, by force majeure to carry out its obligations under this agreement, other than the obligation to make money payments, that party shall give to all other parties prompt written notice of the force majeure with reasonably full particulars concerning it; thereupon, the obligations of the party giving the notice, so far as they are affected by the force majeure, shall be suspended during, but no longer than, the continuance of the force majeure. The affected party shall use all reasonable diligence to remove the force majeure situation as quickly as practicable.

The requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes, lockouts, or other labor difficulty by the party involved, contrary to its wishes; how all such difficulties shall be handled shall be entirely within the discretion of the party concerned.

The term "force majeure", as here employed, shall mean an act of God, strike, lockout, or other industrial disturbance, act of the public enemy, war, blockade, public riot, lightning, fire, storm, flood, explosion, governmental action, governmental delay, restraint or inaction, unavailability of equipment, and any other cause, whether of the kind specifically enumerated above or otherwise, which is not reasonably within the control of the party claiming suspension.

ARTICLE XII.
NOTICES

All notices authorized or required between the parties, and required by any of the provisions of this agreement, unless otherwise specifically provided, shall be given in writing by United States mail or Western Union telegram, postage or charges prepaid, or by teletype, and addressed to the party to whom the notice is given at the addresses listed on Exhibit "A". The originating notice given under any provision hereof shall be deemed given only when received by the party to whom such notice is directed, and the time for such party to give any notice in response thereto shall run from the date the originating notice is received. The second or any responsive notice shall be deemed given when deposited in the United States mail or with the Western Union Telegraph Company, with postage or charges prepaid, or when sent by teletype. Each party shall have the right to change its address at any time, and from time to time, by giving written notice hereof to all other parties.

ARTICLE XIII.
TERM OF AGREEMENT

This agreement shall remain in full force and effect as to the oil and gas leases and/or oil and gas interests subjected hereto for the period of time selected below; provided, however, no party hereto shall ever be construed as having any right, title or interest in or to any lease, or oil and gas interest contributed by any other party beyond the term of this agreement.

☐ Option No. 1: So long as any of the oil and gas leases subject to this agreement remain or are continued in force as to any part of the Contract Area, whether by production, extension, renewal or otherwise, and/or so long as oil and/or gas production continues from any lease or oil and gas interest

☒ Option No. 2: In the event the well described in Article VI.A., or any subsequent well drilled under any provision of this agreement, results in production of oil and/or gas in paying quantities, this agreement shall continue in force so long as any such well or wells produce, or are capable of production, and for an additional period of 90 days from cessation of all production; provided, however, if, prior to the expiration of such additional period, one or more of the parties hereto are engaged in drilling or reworking a well or wells hereunder, this agreement shall continue in force until such operations have been completed and if production results therefrom, this agreement shall continue in force as provided herein. In the event the well described in Article VI.A., or any subsequent well drilled hereunder, results in a dry hole, and no other well is producing, or capable of producing oil and/or gas from the Contract Area, this agreement shall terminate unless drilling or reworking operations are commenced within 90 days from the date of abandonment of said well.

It is agreed, however, that the termination of this agreement shall not relieve any party hereto from any liability which has accrued or attached prior to the date of such termination.

ARTICLE XIV.
COMPLIANCE WITH LAWS AND REGULATIONS

A. Laws, Regulations and Orders:

This agreement shall be subject to the conservation laws of the state in which the committed acreage is located, to the valid rules, regulations, and orders of any duly constituted regulatory body of said state; and to all other applicable federal, state, and local laws, ordinances, rules, regulations, and orders.

B. Governing Law:

The essential validity of this agreement and all matters pertaining thereto, including, but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties and interpretation or construction, shall be governed and determined by the law of the state in which the Contract Area is located. If the Contract Area is in two or more states, the law of the state where most of the land in the Contract Area is located shall govern.

ARTICLE XV.
OTHER PROVISIONS

ARTICLE XVI.
MISCELLANEOUS

This agreement shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, devisees, legal representatives, successors and assigns.

This instrument may be executed in any number of counterparts, each of which shall be considered an original for all purposes.

IN WITNESS WHEREOF, this agreement shall be effective as of 5th day of February, 1979.

OPERATOR

ATTEST:

Margaret Longanecker
Assistant Secretary

RONDO DRILLING COMPANY

President

NON-OPERATORS

T. J. Sivley

W. T. Wynn

Don C. Bell II

Sidney C. Skaar

Co-Trustees in Reorganization Proceedings
for John H. Trigg and Pauline V. Trigg

ATTEST:

Secretary

DEPCO, INC.

By:
President

John William Miller

Forrest Church Miller

Laredo Gertrude McKinney

Evelyn Dorothy Miller

ATTEST:

Secretary

YATES PETROLEUM CORPORATION

By:
President

DIXON & YATES OIL COMPANY, a partnership

By:
Partner

EXHIBIT "A"

ATTACHED TO AND MADE A PART OF OPERATING AGREEMENT DATED FEBRUARY 5, 1979 BETWEEN HONDO DRILLING COMPANY AND NON-OPERATORS

1. Lands subject to agreement:

Township 18 South, Range 29 East, N.M.P.M.

Section 28: S/2

containing 320 acres, more or less.

2. Depth restrictions:

This agreement only covers all horizons from 4,000 feet below the surface down to 100 feet below the total depth drilled in the Initial Test Well.

3. The percentage interests of the parties hereto are as follows:

	Before Payout	After Payout
Hondo Drilling Company	59.765625%	38.671875%
T. J. Sivley	5.859375	5.859375
DEPCO, Inc.	12.500000	12.500000
Yates Petroleum Corporation	16.875000	16.875000
Dixon & Yates Oil Company	3.125000	3.125000
Louise D. Yates	.625000	.625000
S. P. Yates	.625000	.625000
Martin Yates III	.625000	.625000
W. T. Wynn	-0-	3.906250
John H. Trigg	-0-	15.625000
John William Miller	-0-	.390625
Forrest Church Miller	-0-	.390625
Laredo Gertrude McKinney	-0-	.390625
Evelyn Dorothy Miller	-0-	.390625
	100.000000%	100.000000%

4. Oil and gas leases and interests subject to this agreement:

a) Oil and gas lease issued July 1, 1949 by the United States to Dixon & Yates Oil Company, bearing Serial No. LC 067348, and covering, among other lands, NE/4 SW/4.

b) Oil and gas lease issued July 1, 1949 by the United States to Dixon & Yates Oil Company, bearing Serial No. LC 067348-A, and covering, among other lands, NW/4 SE/4.

c) Oil and gas lease issued August 1, 1957 by the United States to Howard W. Jennings, bearing Serial No. NM 030752, and covering, among other lands, S/2 SW/4, SW/4 SE/4, NE/4 SE/4, NW/4 SW/4.

d) Oil and gas lease issued by the United States to DEPCO, Inc., bearing Serial No. NM 00895, and covering, among other lands, SE/4 SE/4.

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE NO. 8606
Order No. R-8013

APPLICATION OF DOYLE HARTMAN FOR
SIMULTANEOUS DEDICATION AND
COMPULSORY POOLING, LEA COUNTY,
NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8 a.m. on July 2, 1985, at Santa Fe, New Mexico, before Examiner Gilbert P. Quintana.

NOW, on this 20th day of August, 1985, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) The applicant, Doyle Hartman, seeks an order pooling all mineral interests from the surface to the base of the Jalmat Gas Pool underlying the NW/4 of Section 8, Township 24 South, Range 37 East, NMPM, Lea County, New Mexico, forming a previously approved 160-acre non-standard spacing and proration unit in the Jalmat Gas Pool.

(3) The applicant proposes to simultaneously dedicate said gas proration unit to his existing E. E. Jack Well No. 1 located 1980 feet from the North line and 660 feet from the West line (Unit E) of said Section 8 and his proposed E. E. Jack Well No. 5 to be drilled at a standard location within said unit.

(4) Marilyn A. Tarlton, interest owner in the subject proration unit and trustee of the surviving trustor's trust of the Lortscher Family Trust, dated November 26, 1980, has not agreed to the drilling of said E. E. Jack Well No. 5.

EXHIBIT
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(5) Evidence was presented showing that an operating agreement entitled, "Operating Agreement", dated January 16, 1951, covering the subject unit area, was entered into by and between Howard Hogan, operator, and Charles T. Scott, Harold S. Russell, Herbert J. Schmitz, and F. D. Lortscher, non-operators.

(6) Said operating agreement was modified December 15, 1954, by an agreement entitled, "Modification of Operating Agreement" and was entered into by and between R. Olsen, operator, and the same non-operators in Finding No. (5) above.

(7) The applicant, Doyle Hartman, controls 66.667 percent of the subject proration unit, including the titles of Howard Hogan, R. Olsen, Herbert J. Schmitz, and Charles T. Scott, Jr.

(8) Marilyn A. Tarlton controls the title of F. D. Lortscher, which is 20 percent of the subject proration unit.

(9) Ms. Tarlton contends that the applicant, other interest owners, and herself are governed by the operating agreements in Findings Nos. (5) and (6) above, hereafter referred to as the "Agreements."

(10) The "Agreements" have provisions for the drilling of additional wells on the subject proration unit, including provisions for non-consent drilling risk penalties, drilling supervision charges, and production supervision charges.

(11) The applicant failed to provide evidence to refute that the "Agreements" are not binding and do not govern the operation of the subject proration unit.

(12) Because of a lack of evidence to the contrary, it appears that the "Agreements" are current binding operating agreements for the subject proration unit, having provisions governing those issues to be addressed in compulsory pooling cases obviating the need for such a hearing in this case.

(13) The compulsory pooling portion of this application should be denied.

(14) The simultaneous dedication portion of this application should be approved, provided the proposed new well is drilled under the provisions of the "Agreements."

IT IS THEREFORE ORDERED THAT:

(1) The portion of the application of Doyle Hartman seeking an order pooling all mineral interests from the surface to the base of the Jalmat Gas Pool underlying the NW/4 of Section 8, Township 24 South, Range 37 East, NMPM, Lea County, New Mexico, is hereby denied.

(2) The previously approved 160-acre non-standard gas proration unit, comprising the NW/4 of said Section 8, shall be simultaneously dedicated to the proposed E. E. Jack Well No. 5 and the applicant's E. E. Jack Well No. 1 located in Unit E of said Section 8 provided the E. E. Jack Well No. 5 is drilled under the terms of the "Agreements."

(3) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

R. L. STAMETS
Director

S E A L

fd/

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

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

CASE NO. 10658
ORDER NO. R-9841

APPLICATION OF MEWBOURNE OIL COMPANY FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on January 21, 1993, at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 3rd day of February, 1993, the Division Director, having considered the testimony, the record and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) The applicant, Mewbourne Oil Company, seeks an order pooling all mineral interests from the base of the Abo formation to the base of the Morrow formation, underlying the following described acreage in Section 35, Township 17 South, Range 27 East, NMPM, Eddy County, New Mexico, and in the following manner:

> the W/2 forming a standard 320-acre gas spacing and proration unit for any and all formations and/or pools developed on 320-acre spacing within said vertical extent, which presently includes, but is not necessarily limited to, the Undesignated Scoggin Draw-Atoka Gas Pool, Undesignated North Illinois Camp-Morrow Gas Pool, Undesignated Scoggin-Morrow Gas Pool and Undesignated Logan Draw-Morrow Gas Pool;

the NW/4 forming a standard 160-acre gas spacing and proration unit for any and all formations and/or pools developed on 160-acre spacing within said vertical extent, which presently includes only the Undesignated Logan Draw-Wolfcamp Gas Pool; and,

the E/2 NW/4 forming a standard 80-acre oil spacing and proration unit for any pools developed on 80-acre spacing within said vertical extent, of which there are currently none.

(3) Said units are to be dedicated to the applicant's Chalk Bluff "35" Federal Well No. 2, to be drilled at an orthodox gas well location within the SE/4 NW/4 (Unit F) of said Section 35.

(4) Devon Energy Corporation (Devon), successor owner of Malco Refineries, Inc.'s interest in the NW/4 and NW/4 SW/4 of said Section 35, appeared at the hearing through counsel and opposed the application on the basis that its interest is governed by an operating agreement with Mewbourne Oil Company, who is the successor owner of the Stanolind Oil and Gas Company underlying the same acreage.

(5) Devon claims its interest is bound under the agreements reached by Malco Refineries, Inc. and Stanolind Oil and Gas Company in July, 1953 and April, 1958, being Devon's Exhibit "A" and "B" in this case.

Mewbourne, also represented by counsel, contends that a supplemental agreement is necessary where acreage outside the "contract lands" are included in a spacing unit, being the NE/4 SW/4 and S/2 SW/4 of said Section 35, which is 100% Mewbourne-contracted properties. Since both parties have not agreed to a "supplemental agreement", Mewbourne contends that the original agreement is invalid and seeks to force-pool Devon's interest into the W/2 spacing unit.

FINDING: Since under the "force-pooling" statutes (Chapter 70-2-17 of the NMSA 1978) there exists in this matter an agreement between the two parties owning undivided interests in a proposed 320-acre gas spacing and proration unit, an order from the Division pooling said parties is unnecessary.

(6) This case should therefore be dismissed.

IT IS THEREFORE ORDERED THAT:

(1) Case No. 10658 is hereby **dismissed**.

(2) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

WILLIAM J. LEMAY
Director

SEAL