

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

APPLICATION OF STRATA PRODUCTION COMPANY TO REVOKE THE INJECTION AUTHORITY GRANTED UNDER SWD-1591-A FOR THE FORTY NINER RIDGE SWD WELL NO.1, OPERATED BY MEWBOURNE OIL COMPANY IN EDDY COUNTY, NEW MEXICO.

CASE NO. 16447

MOTION TO DISMISS

Mewbourne Oil Company ("Mewbourne") the designated operator under SWD-1591-A hereby moves to dismiss this application. Strata Production Company ("Strata") seeks revocation of SWD-1591-A solely under the contention that it was entitled to notice of the filing of Mewbourne's administrative application. As demonstrated herein, Strata cannot establish that it qualifies as a "leasehold operator" or as an "affected party" entitled to notice under NMAC 19.15.26.8.B(2).¹

1. Administrative Order SWD-1591 was issued on October 28, 2015, and authorized Mewbourne to utilize the Forty Niner Ridge SWD No. 1 (API 30-015-44950) for disposal of produced water in the Devonian formation at depths of approximately 15,545 feet to 16,500 feet. A change in the location of the disposal well was approved by Administrative Order SWD-1591-A (issued June 4, 2018) and a permit to drill at the new location has been likewise approved by the Division.

2. Strata's Application to rescind these administrative orders was filed in September of 2018 and notes that it operates the Forty Niner Ridge Unit No. 6 SWD (API 30-015-336337),

¹ NMAC 19.15.26.8.B(2) requires an applicant filing an administrative application for a disposal well to "furnish, by certified or registered mail, a copy of the application to each owner of the land surface on which each injection or disposal well is to be located and to each leasehold operator or other affected person within any tract wholly or partially contained within one-half mile of the well." (emphasis added)

which is approved for disposal in the shallower Delaware formation, and that it owns mineral rights from the surface to the top of the Bone Spring formation in the Forty Niner Ridge Unit. *See* Application at ¶¶11-13.

3. It is undisputed that Strata was not provided notice of Mewbourne's 2015 administrative application or the subsequent request in 2018 to change the location of the approved disposal because Strata's disposal well and mineral rights do not extend into the deeper Devonian formation.

4. Strata now contends that it should have received notice of Mewbourne's administrative applications as a "leasehold operator" or an "affected person." However, as the Division properly found when Strata first raised this position via email three years after approval of Mewbourne's disposal well, Strata's is not correct. *See* Attachment 1 (August 2018 email chain)

5 Strata's operation of a disposal well in the shallower Delaware formation does not qualify Strata as a "leasehold operator" or an "affected person." A "leasehold operator" does not include operators of disposal wells, landfarms, landfills, surface waste management facilities or other permitted facilities. Rather, the term "leasehold" in the regulation plainly extends only to a subset of operators engaged in the extraction of oil and gas under leasehold activities. *See* Williams & Myers, Oil and Gas Law, Manuel of Terms, Vol. 8 at p. 549 (2016) (defining "leasehold interest" as "[t]he interest of one holding as a grantee or lessee under an oil and gas lease or lease of oil, gas and other minerals.").

6. Similarly, the context in which "operator" is used within the term "affected person" in Part 26 and in Part 2 of the Division's rules clearly refers to development or

ownership of oil and gas interests. Part 26 defines the “affected person” entitled to notice as follows:

“Affected person” means the division designated operator; in the absence of an operator, a lessee whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant files the application; or in the absence of an operator or lessee, a mineral interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant filed the application for permit to inject.

NMAC 19.15.26.7.A (emphasis added). Part 2 of the Division’s regulations, containing the general definition of “affected person,” likewise clarifies that the “operator” within the term “affected person” means an operator involved in the development of oil and gas leasehold interests:

“Affected persons” means the following persons owning interests in a spacing unit or other identified tract:

(a) the operator, as shown in division records, of a well on the tract, or, if the tract is included in a division-approved or federal unit, the designated unit operator;

(b) in the absence of an operator, or with respect to an application wherein the operator of the spacing unit or identified tract is the applicant, each working interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant files the application;

(c) as to any tract or interest therein that is not subject to an existing oil and gas lease, each mineral interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant filed the application; and

(d) if the United States or state of New Mexico owns the mineral estate in the spacing unit or identified tract or any part thereof, the BLM or state land office, as applicable; or

(e) if the mineral estate in the spacing unit or identified tract or any part thereof is tribal land, the BLM, the United States department of the interior, bureau of Indian affairs, and the relevant tribe.

NMAC 19.15.2.7.A (emphasis added).

7. Strata’s disposal well is permitted for a different disposal zone (the shallower Delaware formation) and does involve the development or ownership of oil and gas rights.

Accordingly, Division regulations do not require Mewbourne to provide notice to Stata as a “leasehold operator” or an “affected person” for its proposed disposal well in the deeper Devonian formation.

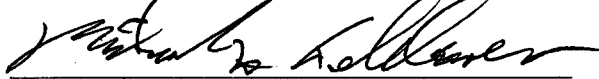
8. Strata’s reference to its mineral ownership from the surface to the top of the Bone Spring formation also fails to qualify it as an “affected person.” As the Division notes in the August 2018 emails, Strata’s mineral interests in shallower formations thousands of feet above the Devonian formation are not be affected by Mewbourne’s approved disposal operations. *See* Attachment 1. The Division has consistently interpreted its rules to require notice only to mineral owners in the proposed disposal interval within one-half mile of the disposal well. This is precisely because the correlative rights of a mineral owner in shallower formations are not be affected by disposal operations in deeper formations, in this case thousands of feet deeper.

9. Finally, Strata’s passing suggestion in its Application that it holds “mineral interests in the deeper formations, including but not limited to the Devonian formation” is not supported by the unrecorded 2005 Exploration Agreement Strata cites as support. *See* Application at ¶14. A legal review of the 2005 Exploration Agreement reveals it does not grant any rights (mineral or otherwise) in the deeper Devonian formation. *See* Attachment 2 (Letter analysis from the law firm of Kelly, Hart & Hallman, LLP). Strata can point to no document, recorded or unrecorded, that definitively grants to it any mineral rights in the approved Devonian disposal interval.

WHEREFORE, Mewbourne requests that this application be dismissed.

Respectfully submitted,

HOLLAND & HART, LLP



Michael H. Feldewert

Adam G. Rankin

Jordan L. Kessler

Post Office Box 2208

Santa Fe, NM 87504

505-998-4421

505-983-6043 Facsimile

mfeldewert@hollandhart.com

arankin@hollandhart.com

jlkessler@hollandhart.com

ATTORNEYS FOR MEWBOURNE OIL COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2018 I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

Sharon T. Shaheen
Kaleb W. Brooks
PO Box 2307
Santa Fe NM 87504
505-982-3873
sshhaeen@montand.com
kwbrooks@montand.com



Michael H. Feldewert

From: Goetze, Phillip, EMNRD <Phillip.Goetze@state.nm.us>
Sent: Wednesday, August 08, 2018 12:06 PM
To: Paul Ragsdale <pragsdale@stratanm.com>
Cc: Jones, William V, EMNRD <WilliamV.Jones@state.nm.us>; McMillan, Michael, EMNRD <Michael.McMillan@state.nm.us>; Brooks, David K, EMNRD <DavidK.Brooks@state.nm.us>; 'jamesbruc@aol.com' <jamesbruc@aol.com>; Riley, Heather, EMNRD <Heather.Riley@state.nm.us>; Tim Harrington <tharrington@mewbourne.com>
Subject: Second Attempt - Mewbourne SWD-1591

RE: Forty Niner Ridge SWD No. 1; API 30-015-44950; Administrative Order SWD-1591-A

Mr. Ragsdale:

Let's try this again following a computer restart that interrupted this process. Thank you for providing the information regarding the status of Strata's interest in the area of the Forty Niner Ridge SWD No. 1.

After review of your submission, the Division does not view Strata as being an "affect person" since Strata's mineral interest lies in shallower formations above the proposed disposal interval. It has been Division's interpretation and procedure that in situations where mineral interest have been severed by depth, the affect person is the party where the correlative rights may be impacted by injection into the proposed disposal interval. The proposed interval in this application was the Devonian and deeper.

With regards to the federal agreement for the Unit, the review process for disposal applications does not consider this type of agreements since these relations are outside of the scope of the authority granted under the UIC program.

At this time, the information offered in the latest submittal is not sufficient cause to rescind the approved order. [Note: As disclosure, I preformed the technical review of the application and recommended its approval.]

If this response appears to be unsatisfactory, you have the opportunity to petition the Director regarding this matter as well as the opportunity to file an application for revoking the order through a hearing before an examiner. Please contact me with any questions regarding matter. Thank you. PRG

Phillip Goetze, PG
Engineering Bureau, Oil Conservation Division, NM EMNRD
1220 South St. Francis Drive, Santa Fe, NM 87505
Direct: 505.476.3466
E-mail: phillip.goetze@state.nm.us

From: Goetze, Phillip, EMNRD
Sent: Wednesday, August 8, 2018 10:35 AM
To: 'Paul Ragsdale' <pragsdale@stratanm.com>
Cc: Jones, William V, EMNRD <WilliamV.Jones@state.nm.us>; McMillan, Michael, EMNRD

<Michael.McMillan@state.nm.us>; Brooks, David K, EMNRD <DavidK.Brooks@state.nm.us>; 'jamesbruc@aol.com' <jamesbruc@aol.com>; Riley, Heather, EMNRD <Heather.Riley@state.nm.us>; 'Tim Harrington' <tharrington@mewbourne.com>
Subject: RE: Mewbourne SWD-1591

Phillip Goetze, PG
Engineering Bureau, Oil Conservation Division, NM EMNRD
1220 South St. Francis Drive, Santa Fe, NM 87505
Direct: 505.476.3466
E-mail: phillip.goetze@state.nm.us

From: Paul Ragsdale <pragsdale@stratanm.com>
Sent: Wednesday, August 8, 2018 9:39 AM
To: Goetze, Phillip, EMNRD <Phillip.Goetze@state.nm.us>
Cc: McMillan, Michael, EMNRD <Michael.McMillan@state.nm.us>
Subject: FW: Mewbourne SWD-1591
Importance: High

Mr. Goetze,

Thank you for your prompt response. I have attached some more information that Strata is an "affected person" as the Operator of and as the majority owner of the mineral rights from the surface to the top of the Bone Springs in the Forty Niner Ridge Unit. The first attachment labeled 49r project is a map of the BLM approved "drill island" and the potential horizontal Delaware oil wells that Strata is planning to drill. As you can see, the portion of the Drill Island in Section 22 is within the AOR of the proposed SWD and could affect our drilling plans.

The attachment labeled pod49erRidge 2017 is a Plan of Development by Mewbourne Oil Company furnished to the BLM that clearly shows that Strata is a designated sub-Operator for the Delaware formation inside the unit. Mewbourne and Strata are obligated to provide each other a copy of their respective Plan of Development according to the Forty Niner Ridge Unit Agreement. We note that Mewbourne has failed to identify the proposed Devonian well in their yearly Plan of Development.

Once again, we respectfully request that the Division consider initiating a hearing considering the potential of improper notification used for the administrative approval of this SWD order.

Please let me know if you need more information,
Paul Ragsdale

From: Goetze, Phillip, EMNRD [<mailto:Phillip.Goetze@state.nm.us>]
Sent: Friday, August 3, 2018 8:49 AM
To: Paul Ragsdale
Cc: McMillan, Michael, EMNRD; 'jamesbruc@aol.com'; Tim Harrington; Jones, William V, EMNRD; Riley, Heather, EMNRD; Dawson, Scott, EMNRD
Subject: RE: Mewbourne SWD-1591

Forty Niner Ridge SWD No. 1; API 30-015-44950; Administrative Order SWD-1591-A

Mr. Ragsdale:

The Division has reviewed the documentation that you submitted regarding the issuance of administrative order SWD-1591-A including the record of notification submitted by Mewbourne as part of their C-108 application. The Division

reviewed both the original application (dated August 24, 2015) and the corresponding amendment to the original application (dated May 14, 2018) submitted due to the change in the surface location. Both applications (original and amended) were reviewed with the following current rules and procedures.

As to the required notification procedure, Subsection B of 19.15.26.8 NMAC states:

B. Method of making application.

(2) The applicant shall furnish, by certified or registered mail, a copy of the application to each owner of the land surface on which each injection or disposal well is to be located and to each leasehold operator or other affected person within any tract wholly or partially contained within one-half mile of the well.

Affected person (at the time of the application) was defined as:

19.15.26.7 DEFINITIONS:

A. "Affected person" means the division designated operator; in the absence of an operator, a lessee whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant files the application; or in the absence of an operator or lessee, a mineral interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant filed the application for permit to inject.

Additionally, Division order No. R-12433 (Case No. 13532) in Findings Paragraph (5) states:

(5) The practice of the Division is to require notice of injection well permit applications to all affected parties by certified mail. In general this consists of notice to the following parties within tracts partially or wholly contained within a 1/2 mile radius of any proposed injection well:

- (a) Division designated operators;
- (b) lessees of tracts with no Division designated operator;
- (c) all mineral interest owners in unleased tracts; and
- (d) the surface owner of the well site and injection facilities.

The practice by the Division under the direction of the Director at the time of application required notification to operators of oil and gas wells or those parties with a mineral interest in any tract or portion of a tract within the ½-mile radius of the disposal well's surface location. Based on the lease information provided by Mewbourne and Division records (see attachments), there was no indication of Strata being qualified for any of the four categories described as "affected persons". As provided by Mewbourne, the portion of Section 22 within the ½-mile notice radius is leased by Mewbourne or includes project areas with well completions that qualifies Mewbourne as the Division designated operator.

Additionally, the operation of the disposal well within the ½-mile radius by Strata does not qualify as a Division designated operator since the disposal order is a UIC permit for disposal and does not represent any ownership of mineral interest. Since the UIC permit does not impart any mineral estate, there are no correlative rights as defined under the Oil and Gas Act and, therefore, no obligation for notice to protect mineral interests that may be impacted by the injection operation. This determination is supported by Division order No. R-12735, Commission Order No. R-11855-B, and by the current interpretation of Solicitor General for the Interior Department that assigns the responsibility for the issuance of APDs to the state on unleased BLM mineral estate since the UIC permit does not have any oil and gas authority.

Please consider the information provided in this e-mail and review any mineral interest Strata may have had in the area at the time of the applications. If Strata can provide evidence that this operator qualified as an "affected person", then the Division shall consider initiating a hearing considering the potential of improper notification used for the administrative approval of this SWD order. Please contact me with any questions regarding the content of the e-mail or the Division's procedure of administrative review of injection applications. PRG

Phillip Goetze, PG
Engineering Bureau, Oil Conservation Division, NM EMNRD
1220 South St. Francis Drive, Santa Fe, NM 87505

Direct: 505.476.3466
E-mail: phillip.goetze@state.nm.us

From: Paul Ragsdale <pragsdale@stratanm.com>
Sent: Wednesday, August 1, 2018 2:28 PM
To: McMillan, Michael, EMNRD <Michael.McMillan@state.nm.us>
Cc: Goetze, Phillip, EMNRD <Phillip.Goetze@state.nm.us>
Subject: Mewbourne SWD-1591
Importance: High

Mike,

It has come to Strata's attention that Mewbourne has received an approved SWD order for a Devonian disposal well in Section 22-T23S-R30E. I have attached 4 pages taken from the NMOCD website for that well.

Page 1 is the cover page of the order.

Page 2 is the table of wells within the Area of Review that clearly lists that Strata's 49'r #6 is within the AOR.

Page 3 is the approved Permit to drill

Page 4 is the plat for the proposed well and I drew in the location of the 49'#6 showing that it is clearly within the AOR.

Page 5 is a letter from Mewbourne stating that have re-reviewed wells and operators within the ½ mile AOR.

~~Strata was never notified of the proposed well in either 2015 or 2018, and~~ we were never given the opportunity to comment on the proposed well. We would request that the Division withdraw the approval of this proposed well and allow Mewbourne to re-apply for the well following NMOCD guidelines and following the proper notification requirements.

Please let me know if you need any additional information,
Paul Ragsdale

Paul Ragsdale
Strata Production Company
Operations Manager

(575) 622-1127 ext 18 Work
(575) 626-7903 Mobile
pragsdale@stratanm.com
PO Drawer 1030
Roswell NM 88202

avast! Antivirus: Inbound message clean.

Virus Database (VPS): 180728-2, 07/28/2018
Tested on: 8/6/2018 7:17:29 AM
avast! - copyright (c) 1988-2018 AVAST Software.

KELLY HART

WILLIAM B. BURFORD
Bill.Burford@kellyhart.com

TELEPHONE: (432) 683-4691
FAX: (432) 683-6518

October 19, 2018

Mr. Allen G. Harvey
Mewbourne Oil Company
500 West Texas Avenue, Suite 1020
Midland, Texas 79701

Re: Forty-Niner Ridge Unit
Eddy County, New Mexico

Dear Mr. Harvey:

You have requested that we advise you concerning the apparent ownership of Strata Production Company in depths below the base of the Morrow Formation underlying the Forty-Niner Ridge Unit, which embraces all of Sections 9, 10 (except NW $\frac{1}{4}$ NW $\frac{1}{4}$), 15, 16, 21, and 22, Township 23 South, Range 30 East, N.M.P.M., Eddy County, New Mexico.

We understand that Mewbourne Oil Company ("Mewbourne") has obtained or applied for a permit for the drilling and operation of a water disposal well to be located on land within the Forty-Niner Ridge Unit and that Strata Production Company ("Strata") is protesting the application, apparently on the basis that it has not been properly notified of Mewbourne's application and has standing to object as the owner of a contractual interest in the Devonian Formation that would be affected by Mewbourne's proposed disposal well. Your question to us is whether Strata appears from the documents hereafter set forth to own any interest in the Devonian Formation underlying lands within the Forty-Niner Ridge Unit.

You have provided us copies of the following documents and have advised us, and asked us to assume, that these are the only documents of record in Eddy County, New Mexico or of which Mewbourne is aware under which Strata might assert ownership of a legal or contractual interest below the Morrow Formation in lands within the Forty-Niner Ridge Unit:

(a) Unit Agreement, Forty-Niner Ridge Unit Area, Eddy County, New Mexico, dated July 1, 1973, executed by Skelly Oil Company, as operator.

(b) Unit Operating Agreement, Forty-Niner Ridge Unit, Eddy County, New Mexico, dated July 1, 1973, executed by Skelly Oil Company, as operator.

(c) Term Assignment from Chevron U.S.A. Inc. to Strata Production Company, dated September 8, 2004, recorded in Book 566, Page 150 of the Eddy County Records.

2773859_1.docx

MIDLAND OFFICE | 508 W. WALL, SUITE 444 | MIDLAND, TX 79701 | TELEPHONE: (432) 683-4691 | FAX: (432) 683-6518
AUSTIN OFFICE | 303 COLORADO STREET, SUITE 2000 | AUSTIN, TX 78701 | TELEPHONE: (512) 495-6400 | FAX: (512) 495-6401
BATON ROUGE OFFICE | 301 MAIN STREET, SUITE 1600 | BATON ROUGE, LA 70801 | TELEPHONE: (225) 381-9643 | FAX: (225) 336-9763
FORT WORTH OFFICE | 201 MAIN STREET, SUITE 2500 | FORT WORTH, TX 76102 | TELEPHONE: (817) 332-2500 | FAX: (817) 878-9280
NEW ORLEANS OFFICE | 400 POYDRAS STREET, SUITE 1812 | NEW ORLEANS, LA 70130 | TELEPHONE: (504) 522-1812 | FAX: (504) 522-1813

Kelly Hart & Hallman, a Limited Liability Partnership | www.kellyhart.com

-ATTACHMENT-

(d) Assignment, Bill of Sale and Conveyance from Strata Production Company to Mewbourne Oil Company, dated effective February 1, 2005, recorded in Book 605, Page 630 of the Eddy County Records.

(e) Unrecorded Exploration Agreement dated effective February 1, 2005, between Strata Production Company and Mewbourne Oil Company.

(f) Amendment to Term Assignment between Chevron U.S.A. Inc. and Mewbourne Oil Company, dated December 15, 2005, but effective as of February 1, 2005, recorded in Book 625, Page 364 of the Eddy County Records.

(g) Stipulation of Interest and Cross-Conveyance between Mewbourne Oil Company and Chevron U.S.A. Inc., dated effective October 1, 2013, recorded in Book 958, Page 209 of the Eddy County Records.

(We are aware that there are other recorded assignments to Strata that involve lands within the unit but are advised that all of them, except for those described above, are limited to depths shallower than the base of the Morrow Formation.)

You have further advised us that wells have been drilled and completed to produce from the Morrow Formation underlying lands within the Forty-Niner Ridge Unit and that a participating area has been established under the unit agreement for the Morrow Formation, but that no wells have been completed in any deeper formation. You have also informed us that no "continuous drilling operations" as defined in the above referenced term assignment from Chevron U.S.A. Inc. to Strata Production Company are in progress and that, when such continuous drilling operations ceased, the deepest depth drilled in any well in the Forty-Niner Ridge Unit was more than 100 feet above the base of the Morrow Formation. That would mean, according to the provisions of the above referenced 2004 term assignment, as amended, it has expired except as to depths above the base of the Morrow Formation.

Based solely on examination of the submitted documents, we conclude that Strata owns no interest, contractual or otherwise, below the base of the Morrow Formation.

The only one of the foregoing instruments that appears to have purportedly vested any interest in Strata as to the Devonian Formation is the term assignment from Chevron U.S.A. Inc. to Strata, dated September 8, 2004. In the assignment, bill of sale and conveyance dated as of February 1, 2005, recorded in Book 605, Page 630, Strata assigned Mewbourne all of its right, title and interest in the leases included in the assignment from Chevron. The Strata-Mewbourne assignment was made subject to an Exploration Agreement between the parties, dated effective February 1, 2005. The exploration agreement provides that upon payout of any well, as defined therein, Strata could exchange the overriding royalty interest reserved in its assignment to Mewbourne for a 25% working interest in the well, proportionately reduced according to the interest assigned by Strata to Mewbourne. Thus, at the time of the 2005 assignment by Strata to Mewbourne, Strata could claim to have had a contractual right, considered well-by-well upon

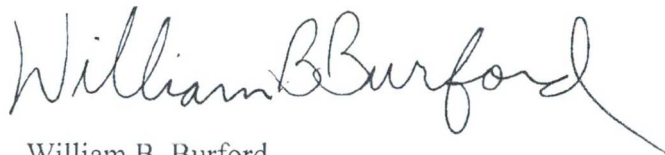
payout of each well, to an interest in any well drilled into the Devonian Formation (or within 100 feet of the top of the Devonian Formation).

However, the 2004 Chevron-Strata assignment includes, in Section 6, a provision that the assignment would terminate upon cessation of "continuous drilling operations," as therein defined, as to depths below the stratigraphic equivalent of the total depth drilled, plus 100 feet. (The definition of the acreage that would be retained by the assignee upon cessation of continuous development was modified in the subsequent amendment to term assignment between Chevron and Mewbourne, but the provision for the depths as to which the term assignment would terminate was not altered.) Thus, the assignment has terminated as to all depths more than 100 feet below the stratigraphic equivalent of the deepest depth drilled in the Morrow participating area. Because no well was drilled below the Morrow Formation (or within 100 feet above the base of the Morrow Formation), Strata has no contractual interest in the Devonian Formation underlying the Morrow Formation.

As you know, we have not currently examined title to the above referenced lands and cannot verify that there are no other instruments that might have vested some interest in Strata below the Morrow Formation. Our opinion is limited to the determination of whether, on the basis of the above referenced instruments and no other basis, Strata might claim a contractual or legal interest in the Devonian Formation underlying lands within the Forty-Niner Ridge Unit. If the instruments of which we have been provided copies are the only instruments under which Strata might own or claim any interest in the lands committed to the Forty-Niner Ridge Unit, we find nothing that would support any claim to such an interest in Strata.

Very truly yours,

KELLY HART & HALLMAN LLP\

A handwritten signature in black ink that reads "William B. Burford". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

William B. Burford

WBB:cl