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October 7, 1997

Hand Delivered

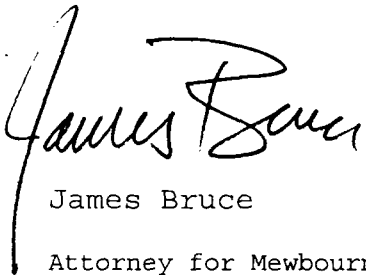
Mr. William J. LeMay
Oil Conservation Division
2040 South Pacheco Street
Santa Fe, New Mexico 87505

Re: Cases 11723/11755 (*de novo*)

Dear Mr. LeMay:

Enclosed is Mewbourne's response to Texaco's Motion to Quash Subpoena. Do to the upcoming hearing, Mewbourne requests that this matter be decided as soon as possible. Perhaps counsel can argue this motion to Ms. Hebert on Thursday.

Very truly yours,



James Bruce

Attorney for Mewbourne
Oil Company

cc: Counsel of record w/encl. (via fax)

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

APPLICATION OF MEWBOURNE OIL
COMPANY FOR AN UNORTHODOX GAS
WELL LOCATION AND A NON-STANDARD
GAS PRORATION UNIT, EDDY COUNTY,
NEW MEXICO.

Case No. 11723 (*de novo*)

APPLICATION OF FASKEN OIL AND
RANCH, LTD. FOR A NON-STANDARD
GAS PRORATION AND SPACING UNIT
AND TWO ALTERNATE UNORTHODOX GAS
WELL LOCATIONS, EDDY COUNTY,
NEW MEXICO.

Case No. 11755 (*de novo*)

Order No. R-10872-A

RESPONSE OF MEWBOURNE OIL COMPANY IN OPPOSITION TO
MOTION TO QUASH SUBPOENA DUCES TECUM

I. INTRODUCTION.

The above cases were consolidated for hearing, and were heard by the Division on April 3, 1997 and May 1, 1997. On September 12, 1997 the Division entered Order No. R-10872, granting the application of Fasken Oil and Ranch, Ltd. to drill a well in §1-21S-25E, and denying the application of Mewbourne Oil Company ("Mewbourne"). Mewbourne has filed an application for hearing *de novo*, which is scheduled for October 30, 1997.

Texaco Exploration and Production Company Inc. ("Texaco"), the operator of the immediately offsetting E.J. Levers "NCT-1" Well No. 2 in §12-21S-25E ("the well"), appeared at the Examiner hearing and presented evidence in opposition to Mewbourne's proposed location. Mewbourne obtained and served upon Texaco a subpoena, requesting information in Texaco's possession or control regarding the well. Texaco has filed a motion to quash the subpoena. Mewbourne submits

this response, requesting that Texaco be ordered to produce the data listed in ¶¶1-4 of the subpoena.

II. ARGUMENT.

Texaco argues that the subpoena should be quashed because the requested data (1) is irrelevant or not pertinent to the above cases, (2) is publicly available, and (3) is proprietary.

Texaco's first argument is ludicrous: At the Examiner hearing, Texaco asserted that if Mewbourne's proposed well was approved, an 81% penalty must be imposed to protect Texaco's correlative rights. Yet Texaco refuses to provide data which is directly pertinent to that assertion.

There is a presumption in favor of discovery. Griego v. Grieco, 90 N.M. 174, 561 P.2d 36 (Ct. App. 1977). Moreover, the term "relevant" or pertinent is liberally interpreted. United Nuclear Corp. v. General Atomic Co., 96 N.M. 155, 629 P.2d 231 (1980), app. dism'd, 451 U.S. 901 (1981). The Division has recognized these principles in ordering that raw data from offsetting wells be produced in compulsory pooling, unorthodox location, and unitization hearings. In accord with these legal principles and Division policy, Texaco must be ordered to turn over data on the well.

As to the second argument, Mewbourne agrees that Texaco should not be ordered to provide publicly available data. United Nuclear Corp., supra (a party need not turn over data which the other party is equally capable of obtaining). However, a brief glance at the subpoena, attached hereto as Exhibit A, reveals the speciousness of

Texaco's claim that the requested data is publicly available: The only publicly available data is monthly production data and basic perforation data. The rest of the data requested in ¶¶1-4 of the subpoena is non-public (pressures, PVT information, well check records, daily production data, well performance before, during, and after it was perforated, etc.). Mewbourne is not "equally capable of obtaining" the vast bulk of the subpoenaed data, and Texaco must be ordered to turn it over.

Regarding the third argument, data that is proprietary is discoverable. See SCRA 1-026.B (1986) (only privileged data is not discoverable). Nonetheless, Mewbourne is willing to withdraw the request for the information specified in ¶5 and ¶6 of the subpoena (reserve calculations and reservoir simulations), provided that Texaco produces the remaining data.

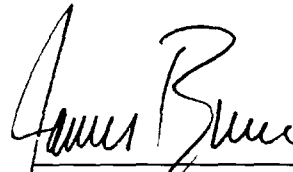
A subpoena must be shown to be unreasonable to allow quashing. Blake v. Blake, 102 N.M. 354, 695 P.2d 838 (Ct. App. 1985). Texaco has not shown the subpoena to be unreasonable. In fact, the data sought by Mewbourne is reasonably necessary for Mewbourne to prepare for the *de novo* hearing, and cannot be obtained other than through Texaco.¹

WHEREFORE, Mewbourne requests that the Division or Commission order Texaco to produce the data listed in ¶¶1-4 of the subpoena on October 9, 1997, or at the latest on October 16, 1997, so that Mewbourne has a reasonable time period before the *de novo* hearing

¹Texaco has provided much, if not all, of the subpoenaed data to Fasken Oil and Ranch, Ltd.

to analyze the data.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James Bruce". The signature is written in a cursive style with a large, prominent "J" and "B".

James Bruce
P.O. Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

Attorney for Mewbourne Oil Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing pleading was served upon the following counsel of record this 7th day of October, 1997:

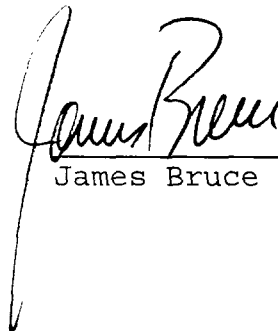
Via Fax:

W. Thomas Kellahin
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504

William F. Carr
Campbell, Carr, Berge & Sheridan, P.A.
P.O. Box 2208
Santa Fe, New Mexico 87504

Via Hand Delivery:

Marilyn S. Hebert
Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505



James Bruce

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

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FILED 1997
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(de novo)

ORDER NO. R-10872

SUBPOENA DUCES TECUM

TO: Texaco Exploration and Production Inc.
c/o William F. Carr
Campbell, Carr, Berge & Sheridan, P.A.
Suite 1
110 North Guadalupe
Santa Fe, New Mexico 87501

Pursuant to N.M. Stat. Ann. §70-2-8 (1995 Repl. Pamp.) and Division Rule 1211, you are hereby ordered to appear at 8:15 a.m. on Thursday, October 9, 1997, at the offices of the New Mexico Oil Conservation Division, 2040 South Pacheco Street, Santa Fe, New Mexico 87505, and produce the documents and records described below, and make them available for inspection and copying by employees or representatives of Mewbourne Oil Company:

DOCUMENTS TO BE PRODUCED: All documents, records, and data regarding the matters itemized below in your possession or under your control pertaining to the Texaco Exploration and Production Inc. E.J. Levers Fed. "NCT-1" Well No. 2 (API No. 30-015-28644),



located in the SE~~1~~⁴~~NW~~ (Unit F) of Section 12, Township 21 South, Range 25 East, N.M.P.M., Eddy County, New Mexico:

1. Reservoir pressure data including, but not limited to, bottom-hole pressure surveys or pressures, pressure buildup tests, surface pressure readings, daily tubing pressures and casing pressures, drill stem tests, and interference tests, with relevant information as to shut-in times and production rates before shut-in;
2. PVT data, PVT reports, and gas analyses including but not limited to molecular weight and API gravity;
3. All production data including, but not limited to, all well check records (including gauges and/or charts) on a daily basis from initial testing and completion to date, showing actual production of oil, gas, and water, and associated wellhead pressures per day and per month;
4. Chronological reports including details on (a) perforating and perforation locations, (b) stimulation fluids, volumes, rates, and pressures for each treated interval, and (c) swabbing, flowing, and/or pumping results for each interval that was perforated and tested, including pre- and post-stimulation results, as applicable;
5. Any reservoir simulation prepared by you or on your behalf regarding the Morrow reservoir in Section 12-21S-25E or the Catclaw Draw-Morrow Gas Pool, including the model software description, model parameters and

assumptions, model variables, model history, matching data, model predictions, and subsequent modification(s); and

6. Any an all reserve calculations including, but not limited to, estimates of ultimate recovery, production decline curves, pressure decline curves, material balance calculations (including reservoir parameters), and volumetric parameters (including reservoir parameters).

INSTRUCTIONS: This subpoena requires the production of all information described above available to you or in your possession, custody, or control, wherever located. The information shall include data from commencement of drilling the well to the latest available data.

"You" or "your" means Texaco Exploration and Production Inc. and its employees, former employees, officers, directors, agents, contractors, representatives, affiliated companies, and predecessors.

This subpoena was issued at the request of Mewbourne Oil Company, through its attorney, James Bruce, P.O. Box 1056, Santa Fe, New Mexico 87504, (505) 982-2043.

ISSUED this 30th day of September, 1997, at Santa Fe, New Mexico.

NEW MEXICO OIL CONSERVATION
DIVISION


WILLIAM J. LeMAY
DIRECTOR