

NEW MEXICO OIL CONSERVATION DIVISION

STATE LAND OFFICE BUILDING

STATE OF NEW MEXICO

Docket No. 3-93

Case No. 10658

IN THE MATTER OF:

The Application of Mewbourne Oil
Company for compulsory pooling
Eddy County, New Mexico

BEFORE:

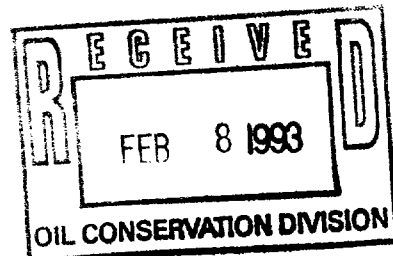
EXAMINER MICHAEL E. STOGNER

January 21, 1993

ORIGINAL

REPORTED BY:

DEBORAH O'BINE
Certified Shorthand Reporter
for the State of New Mexico



CUMBRE COURT REPORTING

P.O. BOX 9262

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A P P E A R A N C E S

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1 EXAMINER STOGNER: Call next case, No.
2 10658.

3 MR. STOVALL: Application of Mewbourne Oil
4 Company for compulsory pooling, Eddy County, New
5 Mexico.

6 EXAMINER STOGNER: Call for appearances.

7 MR. BRUCE: Mr. Examiner, my name is Jim
8 Bruce from the Hinkle Law Firm in Santa Fe,
9 representing the Applicant.

10 EXAMINER STOGNER: Any other appearances?

11 MR. CARR: May it please the Examiner, my
12 name is William F. Carr with the Santa Fe law firm of
13 Campbell, Carr, Berge & Sheridan. I represent Devon
14 Energy Corporation. I do not intend to call a
15 witness.

16 MR. STOVALL: Mr. Examiner, if I'm not
17 mistaken, Mr. Bruce is not going to call a witness
18 today because there is a preliminary matter to be
19 addressed.

20 MR. BRUCE: Well, it depends on the ruling
21 in the preliminary matter.

22 MR. STOVALL: Mr. Carr, do you care to make
23 your motion?

24 MR. CARR: May it please the Examiner, at
25 this time Devon Energy Corporation moves that the

1 application of Mewbourne in this case be dismissed.

2 And initially I would like to offer certain
3 exhibits which Mr. Bruce and I have stipulated can be
4 admitted. They are marked Devon Exhibits A through D
5 and consist of certain agreements that we contend,
6 Devon contends, establish the relationship of the
7 parties. These are copies of the documents that were
8 provided to the Division yesterday, and I would move
9 their admission.

10 EXAMINER STOGNER: Are there any
11 objections?

12 MR. BRUCE: No, I do not have any
13 objections.

14 EXAMINER STOGNER: Exhibits A through E
15 will be admitted into evidence, Devon's Exhibits A
16 through E.

17 MR. CARR: Mr. Examiner, with your
18 permission I'd like to speak to my motion.

19 EXAMINER STOGNER: Please.

20 MR. CARR: Devon Energy seeks dismissal of
21 its interests in the west half of Section 35 from this
22 pooling application. The basis for our motion is,
23 very simply stated, we have reached agreement for the
24 development of this acreage with Mewbourne. We submit
25 to you the reason we are here is that because instead

1 of performing their obligations under our contractual
2 relationship, Mewbourne stands before you trying to
3 change the deal.

4 We all are familiar with the pooling
5 provisions in the Oil and Gas Act, but before a party
6 can obtain an order of pooling the interest of
7 another, there is a condition set forth in the statute
8 that I think is important to focus on. It's in
9 Section 70-2-17(c), and it talks about owners being
10 able to voluntarily combine their lands, and then it
11 goes into pooling language, and it states, and I quote
12 "Where, however, such owners have not agreed to pool
13 their interests," and then it goes on and sets forth
14 the pooling provisions.

15 Here, if we look at Exhibits A, which is
16 entitled an Agreement, and Exhibit B, which is
17 entitled Operating Contract Covering Operation and
18 Development of Lease Acreage, we see that in this case
19 the parties have agreed to pool their interests. They
20 have agreed as to how their interests in this tract
21 are to be developed. And, accordingly, the threshold
22 condition for the exercise of pooling authority cannot
23 be met.

24 Very briefly, if we look to relevant facts,
25 we have an operating contract. It covers 200 acres in

1 the west half of Section 35. These are all the acres
2 that Devon owns an interest in in the proposed spacing
3 unit.

4 The parties now are just Mewbourne and
5 Devon. And if we look at Exhibit B, the third
6 "whereas," we note that it says, "Whereas subject to
7 the terms, covenants, and conditions hereinafter set
8 forth, the parties hereto have agreed upon the
9 operation and development of said lease acreage
10 hereunder for the joint account of the parties
11 herein."

12 If we go to Exhibits C and D, we see that
13 the acreage in this particular tract has been made
14 subject to the agreement which is marked Exhibit B.

15 Our position, very simply, is we have an
16 agreement that is still in effect. It expressly
17 provides what happens when a party proposes a well,
18 how costs are paid and shared, and what circumstances
19 we are only billed and required to pay interest. It
20 sets forth how we are required to pay in advance if
21 the operator so desires.

22 On page 8 it talks about the drilling of
23 wells, and it expressly provides how the situation is
24 handled when one party proposes a well and the other
25 does not desire to participate. It even sets a risk

1 penalty, a risk penalty I might note which is less
2 than what Mewbourne is seeking in this pooling
3 application.

4 The bottom line is we have an agreement.
5 We have, however, agreed on terms that are more
6 favorable to Devon than what they might have obtained
7 from you with a pooling order, and so Mewbourne wants
8 to walk the deal. The agreement, as I noted, covers
9 all of our interest in the west half of 35. The
10 agreement talks and covers acreage not wells, but,
11 again, it should be noted that the well Mewbourne is
12 proposing is on the contract acreage.

13 If you look at these contracts and reflect
14 on the initial contract or agreement, Exhibit A, and
15 compare it to Exhibit B, you will see that this
16 contractual arrangement is the vehicle by which
17 Mewbourne acquired its interest in these properties in
18 the first place. They don't say they don't have an
19 interest in these properties. They want to honor part
20 of their contract, not all of it. We submit they have
21 no right to a pooling order because we voluntarily
22 agreed.

23 After our meeting yesterday, we received
24 another operating agreement from Mewbourne. I would
25 submit to you, Mr. Examiner, this last-minute new

1 document underscores the poverty of Mewbourne's case.
2 In their transmittal letter to you and to Mr. Stovall,
3 they contend that this new agreement, and I quote,
4 "shows the intent of the original parties."

5 They also include from the supplemental or
6 subsequent Joint Operating Agreement that the parties
7 had agreed or that course of conduct shows that they
8 want to have supplemental agreements or that these
9 agreements are required, and I quote, "where land
10 outside the operating contract lands are included in a
11 well unit."

12 We submit to you what they have produced is
13 an irrelevant document. They have come forward with a
14 subsequent operating agreement, and they're asking all
15 of us to speculate as to why it was executed.

16 I challenge the statements in Mr. Bruce's
17 transmittal letters. These are not the original
18 parties. Amoco was an original party. Hondo was
19 not. And Yates' interests are in fact strangers to
20 these contracts. They've offered to you as an
21 evidence of party intent contracts involving different
22 parties and different lands. All we have here is a
23 subsequent agreement, and there is certainly no
24 dispute of any kind that parties to agreement
25 voluntarily want to change or amend that agreement.

1 Under basic principles of contract law, they may do
2 it.

3 And here when we have not only the
4 interests that are covered by this contract by third
5 parties, certainly they have the right, but the bottom
6 line here is no matter what they did there, we have
7 new parties here and a relationship defined by a
8 contract which nobody is suggesting to you is not in
9 full force and effect.

10 Mr. Bruce will tell you in his transmittal
11 letter that the supplemental agreement was required
12 where there were lands outside the operating contract
13 and where they're included in the spacing unit. I
14 would submit in that regard, it would be interesting
15 to look at the application which they have filed in
16 this case. They seek approving of the west half of
17 35, and they say they need to pool it because there's
18 some noncontract lands in that acreage.

19 They also seek the pooling of the northwest
20 quarter. The northwest quarter is 100 percent
21 governed by this contract. In all formations, in all
22 depths, it is contract acreage.

23 If their argument, as they state in the
24 transmittal letter, is true, and that the parties
25 think there is a secondary or new agreement required

1 for noncontract lands, it doesn't apply to the
2 northwest quarter or any formation developed on 160
3 because that is all contract lands, and they don't
4 assert that this contract is not in full force and
5 effect as to that.

6 I would submit to you that when you have a
7 party run in at the last moment with a new contract, a
8 new deal, and say, "Look at what the custom is of
9 prior parties," they're, in essence, abandoning any
10 argument they can make that in fact the existing
11 contract governs this situation. They've thrown that
12 aside. They say, "Well, look what we intended."
13 They're scrambling to find custom or intent. And I
14 submit that is virtually an admission that the
15 contract itself would not authorize the compulsory
16 pooling and part of the lands are not within the
17 spacing unit -- part of the lands of the spacing unit
18 are not under the contract.

19 In essence, Mr. Stogner, what they create
20 is a fiction because what they're asking us to do now,
21 I guess, is say that the custom that previous parties
22 to this agreement adopted was that there's some sort
23 of horizontal segregation. There's some confusion, I
24 would submit, they're trying to hoist on us to subvert
25 the intent of our agreement. They say -- and I think

1 all we have to do is see how absurd what they say
2 actually is. It's just that, accept it as true for a
3 moment. If that is true, look at the consequences
4 they're trying to advance in this particular case. If
5 a well was drilled pursuant to a pooling order, and
6 there's a 200 percent penalty, that means if the well
7 after the fact is successful in the Morrow, then
8 perhaps we are subject to a 200 percent penalty. If,
9 however, they're not successful in the Morrow and
10 complete in the spacing unit on 160 acres, then I
11 guess we're under the contract, and we're not pooled,
12 and we have a different risk penalty.

13 If they complete in the Morrow, do we pay
14 all the costs of the well in the contract-covered
15 intervals in those that they now contend are not, or
16 do we not? And when do we pay? Do we guess up front
17 whether they're going to complete the well on 160 or
18 320?

19 The bottom line is, their position is a
20 fiction. It's absurd. They're trying to avoid our
21 agreement. We have an agreement with them for the
22 development of this acreage. It expressly covers
23 everything they're asking you to address with a
24 pooling order. They have failed to meet the threshold
25 requirement for a pooling order, and their application

1 must be dismissed.

2 MR. STOVALL: Let me do one thing for the
3 record before we start. I think the examiner admitted
4 Devon Exhibits A through E, and I think they are only
5 through D. Is that correct Mr. Carr?

6 MR. CARR: That's correct. I'm sorry.

7 EXAMINER STOGNER: I misunderstood you.
8 That's Exhibits A through D, not E.

9 MR. STOVALL: Let me do one thing before
10 you start, Mr. Bruce, just to make sure we've got the
11 context of the case straight. Now, it is with respect
12 to Exhibits A through D, you, both parties stipulate
13 that the lands that are covered are the northwest
14 quarter and the northwest of the southwest quarter?

15 MR. BRUCE: Southwest quarter are covered
16 by the operating contract.

17 MR. STOVALL: And you stipulate to -- now,
18 I assume that both parties here derive their interests
19 through Pan-American and through Malco?

20 MR. BRUCE: Yes, Mr. Examiner. Mewbourne
21 is the successor in interest to Pan-American, and
22 Devon is the successor in interest to Malco.

23 I would like to point out one thing or two
24 things, if I could, preliminary to my argument is
25 Mewbourne recognizes that as to the northwest quarter

1 and the northwest quarter of the southwest quarter,
2 the 1958 operating contract applies to that land. And
3 as I indicated to you yesterday, Mr. Stovall, we would
4 like to dismiss the application as to any 40-, 80- or
5 160-acre units.

6 MR. STOVALL: So noted, Mr. Examiner. We
7 dismiss the application with respect to 160 or for any
8 wells or spacing units within the northwest quarter.

9 MR. BRUCE: We are only seeking to pool
10 320-acre units.

11 Secondly, I would like to point out that
12 the original parties to the operating contract are
13 Pan-American Petroleum Corporation and Malco
14 Refineries, Inc. That's Exhibit B.

15 Under Exhibit D, which Mr. Carr submitted,
16 it specifically states that Malco Refineries, Inc.,
17 has changed its name to Hondo Oil and Gas Company.
18 Therefore, with respect to the letter I sent to the
19 parties yesterday, as I think everyone knows,
20 Pan-American became Amoco, and under these very
21 documents, Malco became Hondo. So the operating
22 agreement I submitted to Mr. Carr and to the Division
23 yesterday was signed by Hondo and by Amoco, who are
24 the original parties to the 1958 agreement.

25 MR. STOVALL: And Devon's interest is

1 derived from Hondo; is that correct?

2 MR. BRUCE: That's correct. Any other
3 questions, Mr. --

4 MR. STOVALL: No, I just wanted to make
5 sure that we understood -- yes, there is one other.
6 Sorry. All of Devon's interest is in the northwest
7 and the northwest of the southwest?

8 MR. BRUCE: That's correct.

9 MR. STOVALL: They have no interest in the
10 rest of the 320-acre proposed spacing unit?

11 MR. BRUCE: That's correct.

12 Mr. Examiner, the pooling statute which Mr.
13 Carr referred to, Section 70-2-17 (c) provides that
14 when two or more separately owned tracts are embraced
15 in a well spacing unit and the parties have not agreed
16 to pool their interest, then the Division may issue a
17 compulsory pooling order.

18 In this case, we have two tracts in fact.
19 The northeast quarter of the southwest quarter and the
20 south half of the southwest quarter, Section 35, are
21 owned by Mewbourne. And the northwest quarter and the
22 northwest quarter of the southwest quarter of Section
23 35 are owned one half by Mewbourne, successor in
24 interest to Amoco, and one half by Devon, the
25 successor in interest to Malco or Hondo.

1 The essential point is that the operating
2 contract does not cover the entire spacing unit.
3 Thus, there is no single operating agreement covering
4 the 320-acre unit for Mewbourne's proposed Morrow test
5 well.

6 The original parties to the 1958 operating
7 contract, Amoco and Hondo, have recognized that it
8 doesn't apply to well units which include land outside
9 the 1958 contract pursuant to the 1984 operating
10 agreement, which I submitted to both parties
11 yesterday. Since the operating contract doesn't cover
12 the entire west half of Section 35, it can't govern
13 operations for the proposed well. Because Devon has
14 not committed its interest to the entire unit,
15 compulsory pooling is proper, and Mewbourne requests
16 that it be allowed to proceed with its case.

17 Furthermore, I think it's been used many
18 times by this Division or it's been proposed to this
19 Division, there's a simple method for apportioning
20 well costs under COPAS Bulletin No. 2. So I think
21 that is a nonissue with respect to this case. But
22 because there is no agreed-upon operating agreement
23 for the west half of Section 35, we believe that we
24 are entitled to proceed to pool Devon and would
25 request that we be allowed to present our case today.

1 MR. STOVALL: Mr. Bruce, may I ask you --
2 Mr. Carr, you're most anxious to speak?

3 MR. CARR: Very briefly. By dismissing
4 their application as to the northwest quarter, I
5 submit to you Mewbourne acknowledges the contract is
6 in full force and effect. When Mr. Bruce says
7 original parties have evidenced their intent, he's
8 asking us to reach conclusions for which there is no
9 foundation or no basis other than to take a leap of
10 faith with him because what we also have is the Yates'
11 interest. They're total strangers to this agreement.

12 Why the parties entered this contract, we
13 do not know. Perhaps they shouldn't have and should
14 have come in here and force pooled Yates, but they
15 didn't. But the bottom line is it's irrelevant
16 because we don't know. It's different parties and
17 different lands. And what they come in here and argue
18 to you is, "Well, my gosh, if we don't do something
19 here, there won't be an operating agreement governing
20 the acreage."

21 Well, if they ignore our contract and force
22 pool us, there will be no operating agreement
23 governing the acreage anyway. And, furthermore, what
24 we've got here is a situation where the only party who
25 has an interest not governed by this contract now is

1 Mewbourne itself. They have joined the same operating
2 agreement and honor their contractual commitments to
3 us. And then they come in here and they say, "Well,
4 gosh, you know, we need to come in here and pool so
5 all the lands are together."

6 Well, I would suggest you look at page -- I
7 believe it's 8 of the contract. It talks about when
8 one party proposes a well on contract acreage and the
9 others don't join, it says you then have certain
10 procedures you go through. You propose it. If you
11 don't participate, you have your costs withheld and
12 150 percent risk penalty. So it's all covered by the
13 contract. And to come in here now and try and use
14 this Division to subvert our contract and to sidestep
15 its contractual obligations in the contract which is
16 the vehicle by which it acquired this property is
17 simply outrageous.

18 MR. STOVALL: I'd like to go back. Let's
19 deal with the 1984 agreement first. By what
20 interpretation or analysis do you make any inference
21 that this agreement has any impact on the subject
22 lands, Mr. Bruce?

23 MR. BRUCE: As I said, Mr. Stovall, I think
24 it's showing the intent of the parties. If facts are
25 as Mr. Carr says they are, then why did Hondo ever

1 sign this agreement?

2 MR. STOVALL: This covers different lands,
3 does it not? Are the lands which are the subject of
4 this application subject to the 1984 agreement?

5 MR. BRUCE: No, no. This is just an
6 evidence of the intent of the parties, Mr. Stovall.

7 MR. STOVALL: I'm not sure I understand
8 what that intent is that you're saying that it's
9 evidence of. First, are we stipulating to the
10 existence of the 1984 agreement? Do we have a problem
11 with marking and identifying that?

12 MR. CARR: Yes, I do. It's irrelevant.
13 Unless there is a foundation that's laid for this --
14 Mr. Bruce is saying why did Hondo join. The bottom
15 line is we don't know why Hondo joined. We don't know
16 why anyone did. We don't have anyone who can tell us
17 why these parties and some complete stranger decided
18 not to force pool but sign an agreement. And I
19 object. It's irrelevant. There's no foundation for
20 it. And absent that, it should be inadmissible.

21 MR. BRUCE: Under the operating contract,
22 the southwest quarter of Section 11, 18 South, 27
23 East, is subject to this operating contract.

24 MR. STOVALL: Okay. Please refer to it by
25 exhibit so we know what we're --

1 MR. BRUCE: Exhibit B. And the southeast
2 quarter of Section 11 is not subject to the --

3 MR. STOVALL: To Exhibit B?

4 MR. BRUCE: It is not subject to Exhibit B.

5 Now, if -- why would Hondo have to sign
6 this 1984 operating agreement if its lands were
7 subject to the 1958 operating contract? And I believe
8 there is a Morrow well. I don't have the exact name
9 of it.

10 MR. STOVALL: Let me ask you this. If
11 that's a different land, and part of those lands were
12 not subject -- let's follow that line of reasoning
13 through. You're saying now which part of the lands of
14 Section 11 were subject to the Exhibit B? The quarter
15 section --

16 MR. BRUCE: The southwest quarter.
17 Actually, the southwest quarter of Section 11 and I
18 believe all of section -- or the east half of Section
19 15.

20 MR. STOVALL: Were subject to Exhibit B?

21 MR. BRUCE: Yes.

22 MR. STOVALL: Now, if you go to the 1984
23 agreement, that indicates that, I believe -- Exhibit A
24 to the 1984 agreement, which has not yet been marked,
25 refers to the southeast-northeast-southwest of Section

1 11; is that correct, and the east half
2 southeast-southwest-southeast and northwest -- so it
3 covers all of the south half of Section 11; is that
4 correct?

5 MR. BRUCE: The 1984 agreement?

6 MR. STOVALL: The 1984 agreement.

7 MR. BRUCE: Yes, the south half of Section
8 11.

9 MR. STOVALL: Now, it appears to me, just
10 looking at the face of the document, without trying to
11 do any sort of interpretation, that Yates Petroleum
12 was a party in interest, or the Yates group of
13 companies were parties in interest in the southeast
14 quarter of Section 11 which was not subject to the
15 original operating agreement.

16 MR. BRUCE: That's correct.

17 MR. STOVALL: Would that not explain why
18 they would enter into a new operating agreement
19 covering all of those lands with a different party?

20 MR. BRUCE: But why would Hondo have to
21 sign?

22 MR. STOVALL: Because they've got new lands
23 and new parties which are not subject to the old
24 agreement. I guess I'm asking you --

25 MR. BRUCE: In this very case, we have new

1 lands which are not subject to the 1958 operating
2 agreement.

3 MR. STOVALL: But not new parties. My
4 question to you would be -- let me ask you the
5 question now.

6 MR. BRUCE: Okay.

7 MR. STOVALL: If that were their intent,
8 why would they not go and include some of the other
9 lands that were subject to the old agreement and cover
10 all of the lands?

11 MR. BRUCE: I presume this was just for
12 specific well proposals. I guess I'm having a hard
13 time, you know, what if it was Company X that owned
14 the northeast of the southwest quarter and the south
15 half of the southwest quarter in the case today, Case
16 10658? Would we then have an argument that we needed
17 to pool or we needed a new operating agreement?

18 MR. STOVALL: Let me ask -- Mr. Carr, let
19 me ask you this question. Is Devon agreeing to the
20 well under the terms of what you propose as the
21 existing operating agreement?

22 MR. CARR: Yes. We believe they should
23 perform under this contract, yes. And when we sit
24 here and say, well, why would they sign and why
25 wouldn't they and what if, that's what you get into

1 when you don't have a foundation, when you don't have
2 any evidence by the party. You must assume that
3 burden.

4 My question is, why ask why? What we've
5 gotten to is the point, very frankly, where you can't
6 come in here and avoid the fact that you can't lay a
7 proper foundation with speculation on the part of
8 counsel. I can do that, too. I can say, "Well, my
9 guess is that they avoided force pooling Yates. So
10 that's why." But it doesn't mean anything. You've
11 got to have a competent witness. I'm not competent on
12 that. Mr. Bruce isn't competent on that. Instead of
13 asking why, we need to say, can you lay a proper
14 foundation? And if you can't, we're not admitting it.

15 MR. STOVALL: I guess I have a problem, Mr.
16 Bruce. The premise of your argument is that there is
17 no agreement covering the west half of Section 35,
18 which is the subject acreage. Devon is stating that
19 they are subject to an operating agreement, and that
20 operating agreement provides for the drilling of the
21 well. Mewbourne is proposing a well, and it owns the
22 only lands -- it owns and controls the only lands not
23 subject to the operating agreement. Are you saying
24 Mewbourne is force pooling itself into the well?

25 MR. BRUCE: No. We think we need to force

1 pool Devon into a 320-acre unit.

2 MR. STOVALL: If Devon is agreeing to a
3 well under the terms of an existing agreement that
4 covers all of Devon's land within the proration unit,
5 why does Devon need to be force pooled?

6 MR. BRUCE: We think this operating
7 contract only applies to wells that would be completed
8 on 40- or 160-acre units.

9 MR. STOVALL: What in the terms -- in the
10 language of the agreement -- at this point I'm
11 inclined to agree with Mr. Carr, that the 1984
12 operating agreement is entirely different lands, and
13 it includes a different party, and I can speculate as
14 to a different set of reasons why they'd adopt that,
15 and therefore at the moment I would like to omit that
16 from the discussion because I don't think it's
17 helpful.

18 What in the language of Exhibits A through
19 -- really, A and B are the substantive agreements. C
20 and D are the ones that expand the agreement to
21 include the subject lands.

22 MR. BRUCE: Yes.

23 MR. STOVALL: Looking at the face of the
24 agreement, what language causes you to say that it
25 cannot -- additional lands owned by one of the

1 parties, as it is in this case, cannot be brought into
2 a unit governed by the end, and that the land of the
3 other party cannot be subject to the agreement?

4 MR. BRUCE: I think I'm relying more on the
5 statute which provides for pooling when two or more
6 lands are contained in the well unit. I guess I'm
7 having trouble because if, say, the lands other than
8 -- excluding the northwest quarter and the northwest
9 quarter of the southwest quarter, suppose those lands
10 were owned by OXY or Exxon or someone like that, not
11 by Mewbourne, but they had agreed to commit their
12 interest, would an entirely new operating agreement be
13 required? Apparently, based on this 1984 agreement,
14 yes.

15 MR. STOVALL: Would it be required or would
16 it be appropriate or possible for the parties to enter
17 into a new agreement? I don't think the 1984
18 agreement says it's required, and I think that the
19 "what if" that you've thrown into this thing is a
20 condition that doesn't exist in this case, and I think
21 it clouds the issue. I mean, the issue is very simply
22 that Mewbourne is proposing a well. It owns interests
23 presumably in all of the west half; is that correct?

24 MR. BRUCE: That's correct.

25 MR. STOVALL: It varies between the

1 contract area and outside the contract area in the
2 west end?

3 MR. BRUCE: That's correct, Mr. Stovall.

4 MR. STOVALL: And Devon owns an interest
5 within the contract area in the west half and has
6 said, "Fine, we've got a contract with you. You
7 proceed to drill the well, and we agree to do it under
8 the terms of that contract."

9 MR. BRUCE: That's the issue, Mr. Examiner.

10 MR. STOVALL: And am I correct in surmising
11 that perhaps the reason that Mewbourne doesn't want to
12 drill under this contract is it is -- provides a more
13 favorable deal to Devon than it believes should be --

14 MR. BRUCE: Well, that's what Mr. Carr has
15 asserted, and certainly the penalty is less but --

16 MR. STOVALL: If you've got an agreement to
17 participate, why is Mewbourne unwilling to operate
18 under -- Devon has said, "We'll participate under the
19 agreement we have." Why is Mewbourne unwilling to
20 say, "Okay, let's go ahead and drill the well. We'll
21 commit the rest of our acreage to this unit and drill
22 the well"?

23 MR. BRUCE: I guess then you come into
24 questions about are they fully committed to a 320-acre
25 unit?

1 MR. STOVALL: Have they signed an AFE?

2 MR. BRUCE: They haven't signed anything.

3 MR. STOVALL: Is there a nonconsent
4 provision in the agreement? Is there language for
5 non- --

6 MR. BRUCE: In the '58 contract, there is a
7 nonconsent provision. I believe it's Article IX.

8 MR. CARR: It's Article IX, pages 8 and 9,
9 and that's where the 150 percent penalty would apply.

10 MR. STOVALL: Is this a federal lease?

11 MR. BRUCE: There are federal leases
12 involved. I don't know the makeup of --

13 MR. STOVALL: So what is necessary to
14 communitize or to consolidate the acreage is a
15 communitization agreement; is that correct?

16 MR. BRUCE: I think one will be required
17 regardless.

18 MR. STOVALL: And the communitization
19 agreement is a federal form that basically dictates
20 the terms of that but does not cover operating
21 provisions; is that correct?

22 MR. BRUCE: It contains no operating
23 provisions. It merely protects the federal lessee so
24 that production is allocated among the federal leases.

25 MR. STOVALL: Is Devon willing to sign such

1 a communitization agreement?

2 MR. CARR: I believe we are, yes.

3 MR. STOVALL: I'm not sure that that
4 requisite requirement of lack of agreement has been
5 met, and I think that where I'm coming from and my
6 advice to the Division would be that it is only where
7 it is clearly met that the state is not going to
8 impose, nor use its police authority under the forced
9 pooling statute to force parties into agreement -- it
10 should refrain from doing so where there is evidence
11 of agreement.

12 It comes up under lots of different
13 circumstances, but it appears to me that in this case
14 there is a document which governs the relationship of
15 the parties. And the only lands which are not subject
16 to that agreement are owned by the party proposing the
17 well. So I'm not sure how -- given the feeling the
18 Commission should not, in effect, go beyond an
19 agreement. If there's an agreement, the Commission
20 shouldn't use its police authority to force a party
21 into a well.

22 Given that the party sought to be pooled
23 says, "We're willing to participate in whatever way
24 subject to the agreement we already have," I don't
25 know whether we've got the authority to tell them,

1 "No, you can't participate under the agreements
2 you've got, and we're going to use our authority to do
3 something different."

4 And I guess it's not clear to me why, as a
5 practical matter, why Mewbourne seeks to say this
6 agreement is not an agreement. That's not in the
7 record, and I guess you don't have to answer it
8 because I'm not sure it makes any difference. As you
9 well know in forced pooling contracts, the Division
10 does not evaluate in any context the merits of an
11 agreement as such. The relative -- even in terms of
12 offers, in terms of what may be ridiculous offers, if
13 there have been good faith negotiations, we don't
14 evaluate offers, but in this case I'm not sure that's
15 even the issue.

16 Mr. Examiner, I would suggest at this
17 point, unless the parties have anything further that
18 they wish to add to this, that it's a normal break
19 time anyway. Let's take a break and -- unless you
20 have any questions and wish further discussion?

21 EXAMINER STOGNER: Not with either one of
22 these at this time. Let's take a 20-minute recess at
23 this point.

24 (Thereupon, a recess was taken.)

25 EXAMINER STOGNER: Let's resume this

1 hearing.

2 MR. STOVALL: Mr. Examiner, I think I'd
3 make a recommendation at this point. Because we're
4 going to the fundamental issue of whether or not to
5 even have a forced pooling case, the determination
6 from the bench by the examiner is not appropriate. I
7 think it has to come from a director. What I
8 recommend we do is leave this -- let's take the case
9 under advisement. I think leave the record open for a
10 week. At the end of that week, the Division will
11 either issue an order determining that there is an
12 agreement, and, therefore, no basis for a forced
13 pooling, or issue an order determining that in fact
14 the agreement does not apply, and setting the case for
15 hearing on the next hearing docket in two weeks.

16 If that's the case, is that an appropriate
17 date for hearing, if there's going to be a hearing on
18 the merits? We can do it for two or four.

19 MR. BRUCE: Initially continue it for two
20 weeks, if that's --

21 MR. STOVALL: And recognizing that in the
22 intervening time, there will be an order issued of
23 some sort making a determination. And that order may
24 be dispositive of the case, at which time the matter
25 will be dropped from the docket?

1 MR. CARR: Sure.

2 MR. BRUCE: One thing I would ask,
3 depending if the Division does determine that
4 dismissal is appropriate, I would request that the
5 findings be restricted to such an extent that there be
6 no determination of the application of the contract
7 between the parties because I think that's a matter
8 for the courts to decide. The extent of the contract
9 and its effect between two parties I think is a matter
10 for the courts to decide.

11 MR. STOVALL: I don't think I understand
12 what you're requesting, Mr. Bruce.

13 MR. BRUCE: Well, I would request that if
14 the case is dismissed that it be limited just to the
15 facts before the court -- before the Division as to
16 whether compulsory pooling is proper, and that it
17 doesn't go on to adjudicate rights of the parties
18 under the operating contract.

19 MR. STOVALL: Oh no, but it would have to
20 be on the basis -- if it's dismissed, it would have to
21 be on the basis that there is an agreement between the
22 parties that governs -- there is not sufficient
23 disagreement to give rise to a pooling action under
24 the statute. So we can't completely ignore whether
25 there is or is not an agreement, but we won't go to

1 interpretation of the agreement. Is that what you're
2 --

3 MR. BRUCE: That's what I -- I believe
4 that's a matter for the court.

5 MR. STOVALL: The issue is simply whether
6 or not there is an agreement between the parties that
7 would govern the drilling of this well sufficient to
8 eliminate the requisite disagreement, failure to agree
9 under the forced pooling statutes. It will be short
10 and sweet.

11 MR. CARR: All I would request is that the
12 order be entered far enough in advance of the hearing
13 date so that if we are going to have a pooling
14 hearing, we would have time to finalize our
15 preparation of the case. We would move it address
16 penalty election periods, risk penalty, allocation of
17 cost between zones, and also attempt to negotiate with
18 Mr. Bruce whether or not we should go forward before
19 an examiner or directly to the Commission and
20 consolidate this with our appeal that is currently
21 pending of the forced pooling order on the east half
22 of the section.

23 MR. STOVALL: I think the intent is to
24 issue an order by the end of next week, say by Friday
25 we would hopefully have an order out, and we would fax

1 it to both attorneys. Does that give you sufficient
2 time? You always have the option, I guess, to
3 continue.

4 EXAMINER STOGNER: Our intention is to get
5 an order out next week. If undue circumstances --
6 after all, the Legislature is in session, and a lot of
7 undue circumstances can arise at any time in a
8 particular case.

9 With that, the record will remain open in
10 this case pending an order.

11 MR. STOVALL: The case is officially
12 continued to the 4th.

13 EXAMINER STOGNER: Essentially, yes.

14 MR. STOVALL: Recognizing that an order may
15 be issued in the intervening time that will dismiss
16 it.

17 MR. CARR: Thank you, Mr. Stogner.

18 EXAMINER STOGNER: Thank you, Mr. Carr, Mr.
19 Bruce.

20 I do hereby certify that the foregoing is
21 a complete record of the proceedings in
22 the Examiner hearing of Case No. 10658,
23 heard by me on 12/1/93, 1993.
24 Michael E. Stogner, Examiner
25 Oil Conservation Division

CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

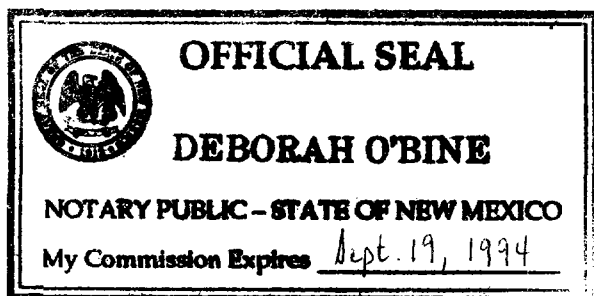
I, Deborah O'Bine, Certified Shorthand Reporter and Notary Public, HEREBY CERTIFY that I caused my notes to be transcribed under my personal supervision, and that the foregoing transcript is a true and accurate record of the proceedings of said hearing.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL, January 25, 1993.



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