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September 18, 1997

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Oil Conservation Division

Hand Delivered

Florene Davidson
Oil Conservation Division
2040 South Pacheco Street
Santa Fe, New Mexico 87505

Re: Cases 11723 11755 (de novo)

Dear Florene:

Enclosed for filing are an original and one copy of a motion for a stay, etc., together with a proposed order regarding the requested stay.

Very truly yours,



James Bruce

Attorney for Mewbourne
Oil Company

TO Round
Please Draft stay -
U. Bruce

cc: Counsel of record w/encl.

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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.

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Oil Conservation Division

Case No. 11755 (de novo)

Order No. R-10872

**MOTION OF MEWBOURNE OIL COMPANY
FOR A STAY OF DIVISION ORDER NO. R-10872
AND TO SHUT-IN AN EXISTING WELL**

Mewbourne Oil Company ("Mewbourne") moves the Oil Conservation Division ("Division") and the Oil Conservation Commission ("Commission") for an order staying Division Order No. R-10872 pending a *de novo* review by the Commission, and requesting that an existing well be shut-in, and in support thereof, states:

A. MOTION FOR A STAY.

1. Denying A Stay Negates Mewbourne's Right To An Appeal.

The above cases were heard by the Division on April 3, 1997. On September 12, 1997 the Division entered Order No. R-10872, granting the application of Fasken Oil and Ranch, Ltd. ("Fasken Oil") and denying the application of Mewbourne. An Application for Hearing *De Novo* was filed with the Division by Mewbourne on September 17, 1997. Mewbourne has an absolute right to a *de novo* hearing before the Commission pursuant to statute. **N.M. Stat. Ann. §70-2-13 (1995 Repl. Pamp.)**.

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If a stay is not granted, Fasken may drill its proposed well. As a result, by the time this matter is decided by the Commission the issue may be moot, and Mewbourne's right to a *de novo* hearing will effectively be negated. As a result, a stay of Order No. R-10872 is proper.

2. Order No. R-10872 Is Contrary To Division Policy And Law.

Order No. R-10872 approved Fasken's well location essentially because it was unopposed by offsetting interest owners. **Order No. R-10872, Finding ¶(16).** Division Memorandum 3-89 states that unorthodox locations will not be granted merely because they are unopposed. Thus, Order No. R-10872 is contrary to Division policy, and needs to be reviewed by the Commission before a well is commenced.

Moreover, no geologic justification was given in Order No. R-10872 for denying one application and granting the other, and the order does not disclose the reasoning of the Division, as required by law. Fasken v. Oil Conservation Comm'n, 87 N.M. 292, 532 P.2d 588 (1975); Viking Petroleum, Inc. v. Oil Conservation Comm'n, 100 N.M. 451, 672 P.2d 280 (1983) (findings must be sufficiently extensive to show the basis of the order and disclose the reasoning of the Division). Therefore, Order No. R-10872 is legally defective, and must be reviewed by the Commission.

3. Order No. R-10872 Ignored The Operating Agreement.

The property at issue in this case, the S½ of Section 1-21S-25E, is subject to an Operating Agreement (Mewbourne Exhibit 3), under which Mewbourne and Fasken Land and Minerals, Ltd. ("Fasken

Land") are interest owners.¹ There was substantial evidence presented at hearing that the operator under the agreement must be an interest owner, and thus Fasken Oil is not a proper applicant. Nonetheless, Order No. R-10872 appointed Fasken Oil as operator. **Order No. R-10872, Decretory ¶(3)**. Therefore, the order is defective because Fasken Oil cannot be operator of a well in the S½ of Section 1.

In addition, Mewbourne's well location was proposed first. As a result, Fasken Land, as operator, had a duty under the Operating Agreement to proceed with obtaining regulatory approval of Mewbourne's location, instead of opposing it. Order No. R-10872 ignored these facts. Again, the order is defective and must be reviewed by the Commission before any well is drilled.

4. The Division Did Not Have Jurisdiction Over Case 11755.

Fasken Land, not Fasken Oil, is the proper applicant in Case 11755. Notice of Case 11755 was never published naming Fasken Land as applicant, as required by Division Rule 1205.B. Thus, notice was defective, the Division never had jurisdiction over Case 11755, and granting relief in Case 11755 was improper.

B. MOTION TO SHUT-IN WELL.

Texaco Exploration and Production Inc. ("Texaco")² operates two wells in Section 12-21S-25E, one located in Unit N (drilled in 1972) and one located in Unit F (commenced in October 1995 and

¹Fasken Oil is not an interest owner under the Operating Agreement.

²Texaco entered an appearance in this action in opposition to Mewbourne's application.

completed in early 1996). **Order No. R-10872, Finding ¶(9); Mewbourne Exhibit 10; Texaco Exhibit 6.** Prorationing was suspended in the Catclaw Draw-Morrow Gas Pool in March 1995, by Commission Order No. R-10328. As a result, when the Texaco well in Unit F was drilled, it was subject to Division Rule 104.D(3), which limits the number of producing wells in a gas spacing and proration unit within non-prorated pools to one. **Order No. R-10872, Finding ¶(5).**

Thus, Texaco's E.J. Levers Fed. "NCT-1" Well No. 2, in Unit F of Section 12, was illegally drilled. Moreover, this well may be draining the S½ of Section 1, giving Texaco an unfair advantage over the interest owners therein.³ Therefore, Mewbourne requests that Texaco's well in Unit F of Section 12 be shut-in pending the hearing *de novo* and until Texaco applies to and obtains an order of the Division allowing it to produce the well.

WHEREFORE, Mewbourne requests that Order No. R-10872 be stayed pending a decision in the hearing *de novo*, and that Texaco's E.J. Levers Fed. "NCT-1" Well No. 2 be shut-in pending a proper application to and decision by the Division.

Respectfully submitted,



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

Attorney for Mewbourne Oil Company

³Texaco's Well No. 2 produces at a rate of several million cubic feet of gas per day.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing pleading was served upon the following counsel of record this 18th day of September, 1997, by United States mail:

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

William F. Carr
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James Bruce

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

APPLICATION OF MEWBOURNE OIL
COMPANY FOR AN UNORTHODOX GAS
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CASE NO. 11723

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GAS WELL LOCATIONS, EDDY COUNTY,
NEW MEXICO.

CASE NO. 11755

Order No. R-10872-A

ORDER STAYING ORDER NO. R-10872

BY THE DIVISION:

*See Also Order No. R-10872
R-10872-B
R-10872-C*

This matter came before the Division upon the motion of Mewbourne Oil Company for a stay of Division Order No. R-10872.

NOW, on this 24th day of September, 1997, the Division Director, having considered the motion and being fully advised in the premises,

FINDS THAT:

- (1) 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. and denying the application of Mewbourne Oil Company.
- (2) Mewbourne Oil Company filed an Application for Hearing De Novo with the Division on September 17, 1997.
- (3) Mewbourne Oil Company has complied with Division Memorandum 3-85 and filed its motion for a stay on September 18, 1997.
- (4) If a stay is not granted, Fasken Oil and Ranch, Ltd. may drill its proposed well. As a result, by the time this matter is decided by the Oil Conservation Commission, Mewbourne Oil Company's right to a de novo hearing will effectively be negated. As a result, a stay of Order No. R-10872 is proper.

Cases Nos. 11723 and 11755 .

Order No. R-10872-A

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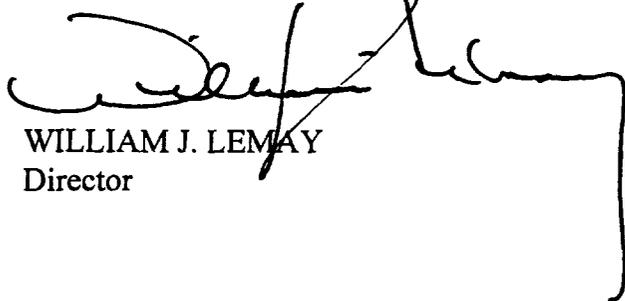
IT IS THEREFORE ORDERED THAT:

(1) Division Order No. R-10872 is hereby stayed in its entirety until the Oil Conservation Commission issues its order on the de novo application filed herein.

(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

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