

**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:**

**APPLICATION OF HUDSON OIL COMPANY OF
TEXAS, WILLIAM A. HUDSON, AND EDWARD
R. HUDSON FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO.**

Case No. 13,598

SUR-REPLY IN OPPOSITION TO MOTION TO QUASH

Due to numerous mis-statements and false statements made by applicants in their motion to quash and in their reply, Ard Oil, Ltd. and Ard Energy Group, Ltd. are compelled to submit this sur-reply in opposition to applicant's motion to quash.

A. PARTIES.

1. As an initial matter, the parties to this case must be clearly identified so that the assertions made by applicants can be understood to be clearly unsubstantiated and incorrect.

2. Applicants are Hudson Oil Company of Texas, William A. Hudson, II ("William Hudson"), and Edward R. Hudson, Jr. ("Edward Hudson Jr.") (collectively, "applicants"). They seek an order pooling all mineral interests from the base of the San Andres formation to the base of the Morrow formation underlying the N½ of Section 12, Township 17 South, Range 31 East, N.M.P.M., and naming Hudson Oil Company of Texas as operator of the proposed Francotte Federal Well No. 1.

3. The parties seeking to enforce the subpoenas are Ard Oil, Ltd. and Ard Energy Group, Ltd. (collectively, the "Ard Entities"). THE ARD ENTITIES ARE THE PERSONS

WHO APPLICANTS SEEK TO POOL IN THIS CASE. See the notice letter of applicants' attorney, attached as Exhibit A.

4. The Ard Entities have subpoenaed William A. Hudson and Edward Hudson Jr. as applicants, and E. Randall Hudson, III ("Randall Hudson"), who signed the letter proposing the referenced well to the Ard Entities as Vice-President of Hudson Oil Company of Texas (also an applicant) to appear and testify at the hearing in this matter, re-scheduled for January 19, 2006. Applicants have moved to quash the subpoenas.

B. PROOF OF POOLING REQUIREMENTS.

1. This is a pooling case. As noted in applicants' motion to quash, NMSA 1978 §70-2-17.C provides:

[W]here... such **owner** or **owners** have not agreed to pool their interests, and where one such separate **owner**, or **owners**, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit.

(Emphasis added.) Thus, the elements which the Division must find before approving an application for compulsory pooling are: (a) an owner has the right to drill; (b) an owner has proposed a well; and (c) the owners have not been able to reach voluntary agreement. In addition, the Division must find that an applicant has complied with NMSA 1978 §70-2-18. The Division has interpreted the latter statute to require an applicant to make a good faith effort to obtain the voluntary joinder of an interest owner in a proposed well.

2. It is axiomatic that an applicant must prove the elements of its case. Thus, Hudson Oil Company of Texas, William Hudson, and Edward Hudson Jr., individually and collectively, must prove the above elements of their case. In this case, the well proposal, and all

subsequent correspondence, was sent to the Ard Entities by Hudson Oil Company of Texas. **See Exhibit B.**¹

3. Despite the foregoing, in their pre-hearing statement filed with the Division, applicants listed, as their sole witness, Raye Miller. Mr. Miller is well known to the Division as an employee of Marbob Energy Corporation ("Marbob"). Although Mr. Miller has testified before the Division many times, he is not a competent witness in this case. Marbob is not an applicant, nor is Mr. Miller a principal or employee of applicants. He cannot testify as to the efforts made to obtain voluntary joinder, applicants' AFE, *etc.* His testimony would be hearsay, and he cannot give evidence as to the matters necessary for applicants to prove their case. AS A RESULT, TESTIMONY BY THE SUBPOENAED PARTIES IS NECESSARY.

4. In addition, in Case No. 13348, Marbob applied to force pool the S½ of this same Section 12, naming Hudson Oil Company of Texas as operator of the well to be drilled thereon (in Unit K of Section 12). Mr. Miller was applicant's sole witness in that case, in which the predecessors-in title to the Ard Entities appeared and took part. Mr. Miller was questioned (without objection) on many matters regarding Hudson Oil Company of Texas: He could not answer those questions. **See transcript in Case No. 13348.** Again, this requires enforcement of the subpoenas.

5. Applicants must also prove that they made a good faith effort to obtain the voluntary joinder of the Ard Entities in the proposed well. In that regard, the Ard Entities made a reasonable data request of Hudson Oil Company of Texas on October 22, 2005. **Exhibit C.** This information is necessary for the Ard Entities to make an informed decision regarding joinder or non-joinder in the proposed well. Applicants, as of the date of this Sur-Reply, had not

¹ The proposal letter was mailed to Mary T. Ard and the Edward R. Hudson Sr. Trust No. 4. Months before that letter, those persons had conveyed their interests to the Ard Entities, and they so informed Hudson Oil.

provided any of the requested data. Thus, the subpoenaed parties must be required to appear to testify on these matters.

6. In their pleadings applicants assert (without support of affidavits or any other evidence) that the subpoena should be denied because the subpoenaed parties (a) have no knowledge of the case, or (b) can add nothing to the evidence. Since Mr. Miller cannot testify on the elements of this case, and applicants cannot add anything to the evidence in this case, then the application should be denied out of hand.²

C. REASONS TO QUASH SUBPOENA.

1. Applicants assert that the subpoena should be quashed because it does not state the matters on which the subpoenaed parties are to testify. First, the applicants should know the issues and facts on which they must testify. Second, the subpoena form approved by the New Mexico Supreme Court does not require a statement of issues or facts on which a person will testify. **NMRA 4-505.**

2. Moreover, a subpoena should only be quashed or modified for the following four reasons: (a) it fails to allow a reasonable time for compliance; (b) it requires a person **who is not a party** to travel more than 100 miles; (c) it requires the disclosure of privileged information (unless an exception applies); or (d) it subjects a person to an undue burden. **Id.** The only reason given by applicants is that it is an undue burden for them to appear and testify in this case, and thus the other reasons can be ignored.

3. In applicants' motion to quash, it is stated that Edward Hudson Jr. is in Aspen, Colorado, and cannot appear. It is apparently an undue burden to travel from Fort Worth to Santa Fe, but not an undue burden to travel from Fort Worth to Aspen. As to William Hudson,

² Applicants assert that the subpoena should also be denied because the Ard Entities have not filed a counter-application. There is no regulation or Division precedent requiring them to do so.

he has a residence in Santa Fe. Enough said. And, Randall Hudson, as a principal of Hudson Oil Company of Texas, signed all of the correspondence from Hudson Oil Company of Texas to the Ard Entities. Applicants chose this forum, and it cannot be an “undue burden” to require them to prove their case.

D. TEXAS PROCEEDINGS.

1. Applicants spend considerable time discussing litigation in Tarrant County, Texas, and asserting that this pooling dispute is nothing more than an extension of the Texas litigation. That is false, for the reasons discussed below.

2. The Texas probate involves the Estate of Josephine T. Hudson, the mother of William Hudson, Edward Hudson, and Mary T. Ard, and the Edward R. Hudson Sr. Testamentary Trust No. 1, of which Josephine T. Hudson was beneficiary during her lifetime. THE ESTATE OF JOSEPHINE T. HUDSON, THE EDWARD R. HUDSON SR TESTAMENTARY TRUST NO. 1, AND MARY T. ARD ARE NOT PARTIES TO THIS POOLING CASE, as they do not own interest in the proposed pooled zones. Therefore, all references to the Texas litigation are irrelevant.

3. Next, applicants assert that Mary T. Ard has sought an injunction in the Texas probate to prohibit William Hudson and Edward Hudson Jr. from oil and gas activity on properties in which they, and Mary T. Ard, own an interest. This assertion is also false. Mary T. Ard, individually, has sought an injunction in the Texas litigation only with respect to the interests of the Estate of Josephine T. Hudson and the Edward R. Hudson Sr. Testamentary Trust No. 1. **See the Affidavit of R.E. Grappe, attached hereto as Exhibit D.** Because the Estate of Josephine T. Hudson and the Edward R. Hudson Sr. Testamentary Trust No. 1 are not parties

hereto, the relief being sought in the Texas litigation has nothing to do with William Hudson and Edward Hudson Jr. proceeding with this pooling case.

4. Applicants further assert that the actions of the Ard Entities in this case, and in the Texas litigation, are interposed for purposes of delay. Again, that is false. The Ard Entities' representatives were present and had a witness ready to testify at the January 5th hearing. It was the subpoenaed parties who refused to appear and proceed. In short, the subpoenas were issued so that the Ard Entities could obtain information from applicants which they will not voluntarily divulge, to ensure that witnesses possessing knowledge regarding the application for compulsory pooling would be present, and not for purposes of harassment or delay.

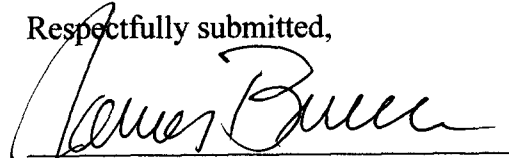
5. Quite to the contrary, had the subpoenaed parties been present at the hearing scheduled for January 5, 2006, the case more likely than not would have been conducted and the matter would now be in the hands of the Examiner to make a decision. The apparent reason the applicants spent a considerable amount of energy discussing the Texas litigation, which has no bearing on this pooling case whatsoever, was an effort to confuse and mislead the Division and to sidestep the fact that the applicants do not feel that it is important enough that they appear before the Division to prove their case.

E. SUMMARY.

The foregoing shows that (a) the witness designated by applicants cannot competently testify on the elements of the case, (b) the Ard Entities have the right to question applicants issues germane to pooling and good faith, (c) the only persons with knowledge of the case are the subpoenaed parties (applicants have not suggested, in their pleadings, another witness who is competent), and (d) it is not an undue burden for the subpoenaed parties to appear and testify.

WHEREFORE, the Ard Entities request that the motion to quash be denied in its entirety.

Respectfully submitted,




James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

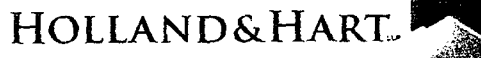
Attorney for Ard Oil, Ltd. and Ard Energy
Group, Ltd.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 6th day of January, 2006 by facsimile transmission:

William F. Carr
Holland & Hart LLP
P.O. Box 2208
Santa Fe, New Mexico 87504
(505) 983-6043


James Bruce



William F. Carr
wcarr@hollandhart.com

November 3, 2005

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ALL AFFECTED INTEREST OWNERS:

Re: Application of Hudson Oil Company of Texas, William A. Hudson and Edward R. Hudson for compulsory pooling, Eddy County, New Mexico.

Ladies and Gentlemen:

This letter is to advise you that Hudson Oil Company of Texas, William A. Hudson and Edward R. Hudson have filed the enclosed application with the New Mexico Oil Conservation Division seeking an order pooling all mineral interests from the base of the San Andres formation to the base of the Morrow formation in the following described acreage in Section 12, Township 17 South, Range 31 East, NMPM: the N/2 to form a standard 320-acre spacing and proration unit for all formations developed on a 320-acre spacing within that vertical extent which includes but is not necessarily limited to the Undesignated Fren-Morrow Gas Pool; the NW/4 to form a standard spacing and proration unit for all formations developed on 160-acre spacing within that vertical extent, and the NW/4 NW/4 to form a standard spacing and proration unit for all formations developed on 40-acre spacing within that vertical extent which includes but is not necessarily limited to the Undesignated Fren-Paddock Pool. Said units are to be dedicated to Francotte Federal Well No. 1 to be drilled 660 feet from the North and West lines of said Section 6 to a depth sufficient to test all formations from the surface through the base of the Morrow formation.

This application has been set for hearing before a Division Examiner on December 1, 2005. The hearing will be held in Porter Hall in the Oil Conservation Division's Santa Fe Offices located at 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505. You are not required to attend this hearing, but as an owner of an interest that may be affected by this application, you may appear and present testimony. Failure to appear at that time and become a party of record will preclude you from challenging the matter at a later date.

Parties appearing in cases are required by Division Rule 1208.B to file a Pre-hearing Statement four days in advance of a scheduled hearing, but no later than the Thursday preceding the hearing. This statement must be filed at the Division's Santa Fe office at the above specified address and should include: the names of the parties and their attorneys; a concise statement of the case; the names of all witnesses the party will call

Holland & Hart LLP

Phone (505) 988-4421 Fax (505) 983-6043 www.hollandhart.com

110 North Guadalupe Suite 1 Santa Fe, NM 87501 Mailing Address P.O. Box 2208 Santa Fe, NM 87504-2208

Aspen Billings Boise Boulder Cheyenne Colorado Springs Denver Denver Tech Center Jackson Hole Salt Lake City Santa Fe Washington, D.C. ☐

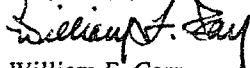


November 3, 2005
Page 2

HOLLAND & HART 

to testify at the hearing; the approximate time the party will need to present its case;
and identification of any procedural matters that are to be resolved prior to the hearing.

Very truly yours,



William F. Carr
ATTORNEY FOR HUDSON OIL COMPANY OF TEXAS,
WILLIAM A. HUDSON AND EDWARD R. HUDSON

cc: E. Randall Hudson III

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Received by (Please Print Clearly) <u>Ja Marie Graf</u> B. Date of Delivery <u>11/8/05</u></p>	
<p>1. Article Addressed to:</p> <p>Ard Oil Limited Ard Energy Group Limited 222 West 4th Street, PH-5 Fort Worth, Texas 76102</p>		<p>C. Signature <u>[Signature]</u></p> <p>D. Is delivery address different from item 1? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>IF YES, enter delivery address below:</p>	
		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>2. Article Number (Copy fro. <u>7001 1140 0002 9558 2672</u>)</p>			

PS Form 3811, July 1999

Domestic Return Receipt

102585-00-44-0952

United States Postal Service		Today's Date	Sender's Name
<p>Sorry We Missed You! We'll Deliver for You</p> <p>Item is at:</p> <p><input type="checkbox"/> Post Office (See back)</p>		<p>Available for Pick-up After</p> <p>Date: _____ Time: _____</p>	
<p><input type="checkbox"/> Letter</p> <p><input type="checkbox"/> Large envelope, magazine, catalog, etc.</p> <p><input type="checkbox"/> Parcel</p> <p><input type="checkbox"/> Restricted Delivery</p> <p><input type="checkbox"/> Perishable Item</p> <p><input type="checkbox"/> Other:</p>		<p><input type="checkbox"/> If checked, you or your agent must be present at time of delivery to sign for item</p> <p>Article Number(s)</p> <p><u>7001 1140 0002 9558 2672</u></p>	
<p>For Delivery: (Enter total number of items delivered by service type)</p> <p>For Notice Left: (Check applicable item)</p> <p><input type="checkbox"/> Express Mail (We will attempt to deliver on the next delivery day unless you instruct the post office to hold it.)</p> <p><input checked="" type="checkbox"/> Certified</p> <p><input type="checkbox"/> Registered</p> <p><input type="checkbox"/> Insured</p> <p><input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Delivery Confirmation</p> <p><input type="checkbox"/> Signature Confirmation</p> <p><input type="checkbox"/> Firm Bill</p>		<p>Notice Left Section:</p> <p>Customer Name and Address</p>	
<p>Article Requiring Payment</p> <p><input type="checkbox"/> Postage Due <input type="checkbox"/> COD <input type="checkbox"/> Customs</p>		<p>Amount Due \$ _____</p>	
<p><input type="checkbox"/> Final Notice: Article will be returned to sender on _____</p>		<p>Delivered By and Date</p>	

PS Form 3849, November 1999

Delivery Notice/Reminder/Receipt

HUDSON OIL COMPANY OF TEXAS

516 TEXAS STREET

FORT WORTH, TEXAS 76102-4696

EDWARD R. HUDSON, JR.
WILLIAM A. HUDSON II
E. RANDALL HUDSON III

August 22, 2005

817.336.7109
FAX 817.334.0442

Mary T. Ard
Edward R. Hudson Trust 4
222 W. 4th Street PH-5
Fort Worth, Texas 76102

RE: Order #R-12275-B
Case #13348
Knockabout Federal Well #1
Eddy County, New Mexico

Dear Mr. Holcomb:

Pursuant to paragraph nine of the above referenced order, Hudson Oil Company of Texas, as operator of the referenced well, is furnishing the New Mexico Oil Conservation Division, and each known pooled working interest owner (including non-consenting working interest owners) an itemized schedule of actual well costs (see attached).

Sincerely,



E. Randall Hudson III

ERHIII/sb

Enclosures



ARD ENERGY LLC
222 WEST 4TH STREET, PH-5
FORT WORTH, TEXAS 76102
[817] 882-9377
FAX [817] 882-9460

October 22, 2005

Sent Via US Mail and
FAX: (817) 334-0442

Mr. E. Randall Hudson III
Hudson Oil Company of Texas
616 Texas Street
Fort Worth, Texas 76102-4696

RE: Proposed Francotte Federal #1 Well
660' FNL & 660 FWL of Section 12
Township 17 South, Range 13 East
Eddy County, New Mexico

Dear Randall:


I am in the process of reviewing the AFE and Joint Operating Agreement furnished with your letter of September 9, 2005 relative to your proposal to drill the subject well. In order for me to properly review your proposal, please furnish me with the following information:

1. In your letter of October 10, 2005 you indicated that you had "contracted with Marbob Energy Corp. to handle the drilling operations" for the proposed well. Please furnish me with a copy of the relevant contact(s) or agreement(s).
2. Hudson Oil Company of Texas' contract with the Drilling Contractor (owner of the drilling rig).
3. Your drilling prognosis for the subject well.
4. Any geological and/or geophysical data pertinent to your decision to propose the well.
5. Specific pipe and casing program and cost per foot.
6. Copies of all information prepared for filing with the State of New Mexico.

As you are probably aware, the interest of the Edward R. Hudson Trust 4 in this area is now owned by Ard Oil LTD, a Texas Limited Partnership and the interest of Mary Hudson Ard in this area is now owned by Ard Energy Group LTD, a Texas Limited Partnership.

Should you want to discuss this request or you feel a meeting would be productive, please give me a call at the telephone number noted above.

Sincerely,


Ronald E. Grappe
Oil & Gas Consultant



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

**APPLICATION OF HUDSON OIL COMPANY OF
TEXAS, WILLIAM A. HUDSON, AND EDWARD
R. HUDSON FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO.**

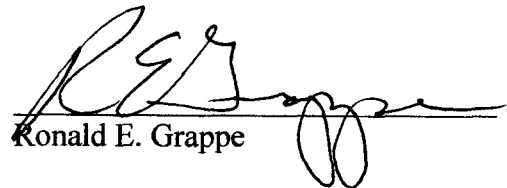
Case No. 13,598

AFFIDAVIT OF RONALD E. GRAPPE

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

Ronald E. Grappe, being duly sworn upon his oath, deposes and states:

1. I am over the age of 18, and have personal knowledge of the matters stated herein.
2. I am the Secretary and Custodian of Records of Ard Energy LLC, a Texas limited liability company. Ard Energy LLC is the general partner of both Ard Oil, Ltd. and Ard Energy Group, Ltd.
3. I also am an oil and gas consultant for Mary T. Ard, and have been a witness on behalf of Mrs. Ard in the proceedings in the Estate of Josephine T. Hudson and the proceedings in the Edward R. Hudson Sr. Testamentary Trust No.1 in the Probate Court of Tarrant County, Texas (the "Texas litigation").
4. In the Texas litigation, Mary T. Ard sought injunctions against William A. Hudson, II and Edward R. Hudson, Jr., prohibiting them from taking certain actions involving oil and gas properties owned by the Estate of Josephine T. Hudson and oil and gas properties owned by the Edward R. Hudson Sr. Testamentary Trust No.1.
5. Neither the Estate of Josephine T. Hudson, Edward R. Hudson, Sr Testamentary Trust No. 1, or Mary T. Ard, own an interest as to the depths affected by the pooling application in the N½ of Section 12, Township 17 South, Range 31 East, N.M.P.M., Eddy County, New Mexico. The injunctions sought in the Texas litigation have no effect on this pooling case.


Ronald E. Grappe



SUBSCRIBED AND SWORN TO before me this 07th day of January, 2006 by Ronald E. Grappe.

John B. Gallager
Notary Public

My Commission Expires:

5-11-2009