

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

2005 DEC 27 PM 2 58

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

CASE NO. 13598

MOTION TO QUASH SUBPOENAS

HUDSON OIL COMPANY OF TEXAS, WILLIAM A. HUDSON AND EDWARD R. HUDSON (hereinafter collectively referred to as "Hudson"), through its undersigned attorneys, applies to the New Mexico Oil Conservation Division for an order quashing the Subpoenas issued by the Division to E. Randall Hudson, III, Edward R. Hudson, Jr. and William A. Hudson, II. As grounds for this motion, Hudson states the following:

1. Pursuant to N.M.S.A. § 70-2-8 (2005) and Rule 1214(A) of the New Mexico Oil Conservation Division's Rules of Procedure, the Division issued subpoenas on December 12, 2005. The subpoenas ordered Randall, William and Edward Hudson to appear and give testimony at 8:15 a.m. on Thursday, January 5, 2005 for the above-referenced matter. No reasons for the purpose of their testimony were included in the subpoenas.

2. The subpoenas were issued on the application of Ard Oil, Ltd. and Ard Energy Group, Ltd. ("Ard Oil"). Ard Oil Ltd. is listed as an uncommitted interest owner in Exhibit A of Hudson's application for compulsory pooling.

3. Hudson's application is a routine compulsory pooling matter. Hudson seeks to pool all mineral interests from the base of the San Andres formation through the base of the Morrow formation in Section 12, Township 17 South, Range 31 East, NMPM, Eddy County, New Mexico, to form standard spacing and proration units in the N/2 of said section. Hudson proposes to dedicate its Francotte Federal Well No. 1 to these spacing and proration unit to be drilled at a standard location 660 feet from the North and West lines of said Section 12.

4. Section 70-2-17 of the Oil and Gas Act provides that “[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.” Thus the necessary elements which the Division must find in an application for compulsory pooling are: a) that one party has the right to drill; b) that a party is prepared to drill; c) that a party has proposed the well; d) and that the parties have not been able to reach voluntary agreement with other interest owners. Upon finding these elements, and after notice and hearing, the Division, as a matter of law, must issue an appropriate pooling order.

5. Ard Oil has not submitted a competing application for compulsory pooling nor have they contested any of the above-listed elements. In fact, as Hudson stated in its application, Hudson has the right to drill, is prepared and has proposed to drill a well and has not been able to reach voluntary agreement with certain interest owners. Additionally, even if Ard Oil did contest any or all of these elements, it is certainly not necessary for Randall, William or Edward to testify on these matters. Whoever Hudson may designate as its witness at the hearing will testify to these issues. Therefore, there is nothing more substantively that they will be able to add to the hearing.

6. Furthermore, although Edward Hudson is a principle in Hudson Oil Company of Texas, he is in Aspen, Colorado and does not have personal knowledge regarding this compulsory pooling application. *See* Advisory Committee Notes to Fed. R. Civ. P. 45, § 45App.08[2](Committee Note of 1991 Amendment)(“[I]t might be unduly burdensome to compel an adversary to attend trial as a witness if the adversary is known to have no personal knowledge of matters in dispute, especially so if the adversary would be required to incur

substantial travel burdens.”) Hudson requests that the Division quash or withdraw the subpoena of Edward Hudson on the basis that he has no substantive knowledge of the application and therefore his testimony is not needed in this matter.

7. While Randall and William have knowledge of this application, compelling their attendance and testimony is an undue burden, pursuant to NMRA 1-45(C), and is also unnecessary and therefore requests that their subpoenas also be withdrawn or quashed. Since there is no dispute over the relevant issues in the compulsory pooling application, there is little, if any thing, that the Hudsons could testify to in this case. Furthermore, Ard Oil has not identified a single relevant issue that requires the testimony of any of the Hudsons.

8. Hudson further states that these subpoenas were brought for the purpose of delay and harassment.¹ Certain members of the Hudson family are in contentious litigation regarding the family estate in Texas. (Tarrant County, Texas Probate Court Consolidated Cause Numbers 02-1286-A1 and 02-1286-B1). In that matter, Mrs. Mary Ard has also sent a subpoena to William Hudson and the Court has ordered the abatement of discovery pending a review by independent auditors of certain trust records. See Exhibit A.

9. The subpoenas issued by the Division are clearly a spill-over from this dispute and the Division should not allow itself to be dragged into what amounts to a family feud. This procedural fencing serves only to delay this case. Ard Oil is aware of Hudson’s obligations (given current high prices) to others in the spacing unit to get the well drilled and is aware of the consequences of delay (e.g. loss of farmout opportunities). Hudson requests an immediate withdrawal or quashing of these subpoenas so that this case may move forward on schedule.

¹ See NMRA 1-045(C): “A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing *undue burden or expense* on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and *impose upon the party or attorney in breach of this duty an appropriate sanction*, which may include, but is not limited to, lost earnings and a reasonable attorney’s fees.” (emphasis added).

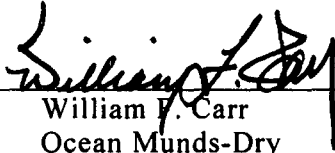
10. If the Division does not quash these subpoenas, Hudson will be forced to in turn request a subpoena to compel the testimony of Mrs. Ard. Hudson will further request the Division exercise its powers under its procedural rules to order the deposition of Mrs. Ard, so that Hudson may determine what issues Ard Oil Ltd. may have regarding this compulsory pooling application. *See* NMAC 19.15.14.1214(A) (2005).

Conclusion

Hudson requests the Division withdraw or quash the subpoenas issued to Randall, Edward and William Hudson because the subpoenas serve only to harass and delay proceedings and because their testimony is unnecessary to this routine compulsory pooling application.

Respectfully submitted,

HOLLAND & HART, LLP

By: 
William J. Carr
Ocean Munds-Dry
P.O. Box 2208
Santa Fe, NM 87504-2208
505/988-4421 (telephone)

ATTORNEYS FOR HUDSON OIL COMPANY OF
TEXAS

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of December 2005, I have caused to be delivered by facsimile a copy of Hudson oil Company of Texas' Motion to Quash Subpoena in the above-captioned case to the following:

James Bruce, Esq. (BY FACSIMILE)
Post Office Box 1056
Santa Fe, New Mexico 87504
FAX NO. (505) 982-2151



William F. Carr

CC-1468
GPC-0706

SUBPOENA DUCES TECUM

THE STATE OF TEXAS

Cause Number: 02-1286-A-1

TO THE SHERIFF OR ANY CONSTABLE WITHIN THE STATE OF TEXAS – GREETINGS:
YOU ARE HEREBY COMMANDED to summon

WILLIAM A. HUDSON, II

who may be served at

18 VALLEY RIDGE RD.
FT. WORTH, TX 76107

\$10.00 tendered to be and appear before the Probate Court No. ONE of Tarrant County, Texas, in the Courtroom of the Honorable Judge Steve M. King, at the Courthouse thereof, in the City of Fort Worth on the 21st day of December A. D. 2005 at 10:00 o'clock a.m. then and there to testify in the estate of JOSEPHINE T. HUDSON, DECEASED.

A case now pending in this Court; and that WILLIAM A. HUDSON, II so carefully search for, examine, inquire for, and bring with him/her and produce, at the time and place aforesaid

SEE ATTACHED

to be inspected by our said Court; and that you continue in attendance from day to day and from term to term until discharged by the Court.

This subpoena is issued at the request of MARY T. ARD, whose attorney of record is KAREN H. GORDON.

WARNING

FAILURE BY ANY PERSON WITHOUT ADEQUATE EXCUSE TO OBEY A SUBPOENA SERVED UPON THAT PERSON MAY BE DEEMED IN CONTEMPT OF THE COURT FROM WHICH THE SUBPOENA IS ISSUED OR A DISTRICT COURT IN THE COUNTY IN WHICH THE SUBPOENA IS SERVED, AND MAY BE PUNISHED BY FINE OR CONFINEMENT, OR BOTH.

HEREIN FAIL NOT BUT HAVE YOU THEN AND THERE BEFORE SAID COURT THIS WRIT, WITH YOUR RETURN THEREON, SHOWING HOW YOU EXECUTED THE SAME.

ISSUED under my hand and seal of said court in Fort Worth, Tarrant County, Texas, on the 15th day of December A. D. 2005.

ATTORNEY:

KAREN H. GORDON
1320 S. University,
Ft. Worth, Tx 76107
817 338-0724



SUZANNE HENDERSON, Clerk of the
Probate Courts of Tarrant County
100 W. Weatherford Street
Fort Worth, Texas 76196-0401

Lori Burk
Lori Burk

EXHIBIT

A

Deputy

CC-1468
GPC-0706 Rev. 5/99**OFFICER'S RETURN**

Came to hand on the _____ day of _____ A.D. _____ and
executed on the _____ day of _____ A.D. _____, by delivering to the
within named _____

a true copy of this _____

Returned this _____ day of _____ A.D. _____

Fee, \$ _____

Authorized Person/Constable/Sheriff

12/16/05

County, Texas

By: _____, Deputy

OFFICER'S RETURN

Came to hand on the _____ day of _____ A.D. _____ and executed on the
_____ day of _____ A.D. _____, by posting a copy of the above and
foregoing citation for ten days, exclusive of the day of posting, before the day of hearing hereof,
at the Court House Door of Tarrant County, Texas, or at the place in or near the said court house
where public notices customarily are posted.

Fee, \$20.00

Constable - Pct. 1, Tarrant County, Texas

By _____, Deputy

VERIFICATION OF SERVICE

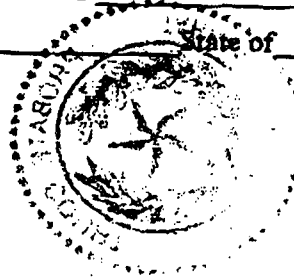
(If served outside the State of Texas or if served by Authorized Person)

Signed and sworn to by the said _____
before me this _____ day of _____ A.D. _____ to certify which
witness my hand and seal of office
(Seal)

Notary's Name Printed _____

County of _____

State of _____



Estate
Exhibit A

DEFINITIONS: As used herein, the following words and phrases shall have the following meanings:

- (a) "Estate" shall mean the estate of Josephine T. Hudson, Deceased.
- (b) "Executors" shall mean Edward R. Hudson, Jr. and William A. Hudson, II in their capacities as Executors of the Estate.
- (c) "Asset" or "Assets" shall mean any asset or assets owned by the Estate or titled in or held in the name of the Estate or Josephine T. Hudson.
- (d) "Tamano Project Area" means the property in Eddy County New Mexico, including but not limited to Township 18S-Range 31 E, covered by certain agreements between the ERH Trust No. 1 and Mewbourne Oil Company.
- (e) "Transaction" means, any agreement, transfer, lease, assignment, purchase, sale, disposition, expenditure, receipt, or event of any kind or character affecting the Estate Assets.

DOCUMENTS TO BE PRODUCED:

- 1. All documents evidencing or identifying the Assets of the Estate on April 11, 2002, the date of Josephine T. Hudson's death.
- 2. All documents evidencing or identifying the current Assets of the Estate.
- 3. All documents regarding the Tamano Project Area.
- 4. All documents known by you regarding any potential oil or gas ventures or the drilling of new wells by the Estate in the next twelve (12) months.
- 5. All documents regarding any transaction involving the Estate from May 31, 2004 to the date of this subpoena.
- 6. All documents regarding any expenditure of Estate funds or receipt of income by the Estate from May 31, 2004 to the present.
- 7. All documents regarding any distribution of Assets of the Estate to any other person or entity from May 31, 2004 to the present.
- 8. All documents regarding any Estate information or accounting of the Estate provided to any person, including but not limited to Mary T. Ard or

any other person having either a direct or indirect interest in the Estate, since May 31, 2004.

9. All documents regarding or evidencing the consent of Mary T. Ard, (or any other person or entity having a legal, equitable, direct or indirect interest in the Estate), to the drilling, exploration, investment or participation in the Tamano Project Area or any other oil or gas venture since April 11, 2002.
10. All documents regarding any bills or expenses paid by the Estate or Executors to themselves or any of their affiliates, including but not limited to Hudson Oil Company of Texas, W.A. & E.R. Hudson, Inc., since May 31, 2004.
11. All documents regarding any ancillary probate proceedings for the Estate of Josephine T. Hudson, deceased.
12. Tamano Project Agreement dated September 1, 2002 by and among Mewbourne Oil Company and Edward R. Hudson Trust No. 1, et al.
- ~~13.~~ The First Amendment to the Tamano Project Agreement dated October 3, 2003, by and among Mewbourne Oil Company and Edward R. Hudson Trust No. 1, et al.
14. The Operating Agreement dated September 1, 2002 by and among Mewbourne Oil Company and Edward R. Hudson Trust No. 1, et al.
15. Any additional amendments and all correspondence related to the above agreements.
16. The general ledger of the Estate from April 11, 2002, to present.
17. All bank statements, cancelled checks, and deposit slips for any bank account in the name of the Estate for the period May 31, 2004 to present.

CC-1468
GPC-0706

SUBPOENA DUCES TECUM

THE STATE OF TEXAS

Cause Number: 02-1286-B-1

TO THE SHERIFF OR ANY CONSTABLE WITHIN THE STATE OF TEXAS – GREETINGS:
YOU ARE HEREBY COMMANDED to summon

WILLIAM A. HUDSON, II

who may be served at

**18 VALLEY RIDGE RD.
FT. WORTH, TX 76107**

\$10.00 tendered to be and appear before the Probate Court No. ONE of Tarrant County, Texas, in the Courtroom of the Honorable Judge Steve M. King, at the Courthouse thereof, in the City of Fort Worth on the 21st day of December A. D. 2005 at 10:00 o'clock a.m. then and there to testify in the estate of **JOSEPHINE T. HUDSON, DECEASED.**

A case now pending in this Court, and that **WILLIAM A. HUDSON, II** so carefully search for, examine, inquire for, and bring with him/her and produce, at the time and place aforesaid

SEE ATTACHED

to be inspected by our said Court; and that you continue in attendance from day to day and from term to term until discharged by the Court.

This subpoena is issued at the request of **MARY T. ARD**, whose attorney of record is **KAREN H. GORDON**.

WARNING

FAILURE BY ANY PERSON WITHOUT ADEQUATE EXCUSE TO OBEY A SUBPOENA SERVED UPON THAT PERSON MAY BE DEEMED IN CONTEMPT OF THE COURT FROM WHICH THE SUBPOENA IS ISSUED OR A DISTRICT COURT IN THE COUNTY IN WHICH THE SUBPOENA IS SERVED, AND MAY BE PUNISHED BY FINE OR CONFINEMENT, OR BOTH.

HEREIN FAIL NOT BUT HAVE YOU THEN AND THERE BEFORE SAID COURT THIS WRIT, WITH YOUR RETURN THEREON, SHOWING HOW YOU EXECUTED THE SAME.

ISSUED under my hand and seal of said court in Fort Worth, Tarrant County, Texas, on the 15th day of December A. D. 2005.

ATTORNEY:

KAREN H. GORDON
1320 S. University St.
Ft. Worth, Tx 76107
817 338-0724



SUZANNE HENDERSON, Clerk of the
Probate Courts of Tarrant County
100 W. Weatherford Street
Fort Worth, Texas 76196-0401


Lori Burk, Deputy

CC-1448
GPC-0704 Rev. 5/99**OFFICER'S RETURN**

Came to hand on the _____ day of _____ A.D. _____ and
executed on the _____ day of _____ A.D. _____, by delivering to the
within named _____

a true copy of this _____

Returned this _____ day of _____ A.D. _____

Fee, \$ _____

Authorized Person/Constable/Sheriff

12/16/05
4-282
_____ County, Texas

By: _____, Deputy

OFFICER'S RETURN

Came to hand on the _____ day of _____ A.D. _____ and executed on the
_____ day of _____ A.D. _____, by posting a copy of the above and
foregoing citation for ten days, exclusive of the day of posting, before the day of hearing hereof,
at the Court House Door of Tarrant County, Texas, or at the place in or near the said court house
where public notices customarily are posted.

Fee, \$20.00

Constable - Pct. 1, Tarrant County, Texas

By _____, Deputy

VERIFICATION OF SERVICE

(If served outside the State of Texas or if served by Authorized Person)

Signed and sworn to by the said _____
before me this _____ day of _____ A.D. _____ to certify which
witness my hand and seal of office
(Seal)

Notary's Name Printed _____

County of _____ State of _____

Trust
Exhibit A

DEFINITIONS: As used herein, the following words and phrases shall have the following meanings:

- (a) "Trust" shall mean the trust created under the last will and testament of Edward R. Hudson for the benefit of Josephine T. Hudson.
- (b) "Co-Trustees" shall mean Edward R. Hudson, Jr. and William A. Hudson, II in their capacities as Co-Trustees of the Trust.
- (c) "Asset" or "Assets" shall mean any asset or assets owned by the Trust or titled in or held in the name of the Trust or the Co-Trustees, including but not limited to any asset which you allege is a former asset of the Trust but is now an asset of the Estate.
- (d) "Tamano Project Area" means the Trust's property in Eddy County New Mexico, including but not limited to Township 18S-Range 31 E, covered by certain agreements between the Trust and Mewbourne Oil Company.
- (e) "Transaction" means, any agreement, transfer, lease, assignment, purchase, sale, disposition, expenditure, receipt, or event of any kind or character affecting the Trust Assets.

DOCUMENTS TO BE PRODUCED:

- 1. All documents evidencing or identifying the Assets of the Trust on April 11, 2002, the date of Josephine T. Hudson's death.
- 2. All documents evidencing or identifying the current Assets of the Trust.
- 3. All documents regarding the Tamano Project Area.
- 4. All documents known by you regarding any potential oil or gas ventures or the drilling of new wells by the Trust in the next twelve (12) months.
- 5. All documents regarding any transaction involving the Trust from December 1, 2004 to the date of this subpoena.
- 6. All documents regarding any expenditure of Trust funds or receipt of income by the Trust from April 11, 2002 to the present.
- 7. All documents regarding any distribution of Assets of the Trust to the Estate or to any other person from April 11, 2002 to the present.

8. All documents regarding any Trust information or accounting of the Trust provided to any person, including but not limited to Mary T. Ard or any other person having either a direct or indirect interest in the Trust, since April 11, 2002.
9. All documents regarding or evidencing the consent of Mary T. Ard, (or any other person or entity having a legal, equitable, direct or indirect interest in the Trust), to the drilling, exploration, investment or participation in the Tamano Project Area or any other oil or gas venture since April 11, 2002.
10. All documents regarding any bills or expenses paid by the Trust or Co-Trustees to themselves or any of their affiliates, including but not limited to Hudson Oil Company of Texas, W.A. & E.R. Hudson, Inc., since April 11, 2002.
11. All documents regarding any ancillary probate proceedings for the Estate of Josephine T. Hudson, deceased, in New Mexico.
12. Tamano Project Agreement dated September 1, 2002 by and among Mewbourne Oil Company and Edward R. Hudson Trust No. 1, et al.
13. The First Amendment to the Tamano Project Agreement dated October 3, 2003, by and among Mewbourne Oil Company and Edward R. Hudson Trust No. 1, et al.
14. The Operating Agreement dated September 1, 2002 by and among Mewbourne Oil Company and Edward R. Hudson Trust No. 1, et al.
15. Any additional amendments and all correspondence related to the above agreements.
16. The general ledger of the Trust from April 11, 2002, to present.
17. All bank statements, cancelled checks, and deposit slips for any bank account in the name of the Trust for the period December 1, 2004, to December 1, 2005.