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

2011 MAR -1 P 3:2

IN THE MATTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION DIVISION FOR  
THE PURPOSE OF HEARING:

CASE NO. 14607

APPLICATION OF MEWBOURNE OIL COMPANY  
FOR A NON-STANDARD GAS SPACING AND PRORATION UNIT,  
AN UNORTHODOX OIL WELL LOCATION AND COMPULSORY POOLING,  
EDDY COUNTY, NEW MEXICO  
[N/2S/2 Sec 30, T18S, R30E-Bradley 30 Fed Com Well No. 1]

CHISOS' MOTION TO DISMISS

Chisos, Ltd. ("Chisos") moves that the New Mexico Oil Conservation Division dismiss Chisos as a party to be pooled in this case because the applicant, Mewbourne Oil Company, ("Mewbourne") prematurely filed this case and failed to comply with the custom and practice of the Division concerning Section 70-2-17.C NMSA 1978 by instituting an application for compulsory pooling prior to conducting good faith efforts to reach a voluntary agreement with Chisos.

And in support states:

RELEVANT FACTS

On February 1, 2011, Mewbourne file its application for compulsory pooling of the N/2S/2 of Sec 30, T18S, R30E. Then, by letter dated February 8, 2011, Mewbourne sent notice of this application and the hearing for March 3, 2011. Then some 20 days after filing its pooling application, by letter dated February 21, 2011, Mewbourne proposed to Chisos the drilling of the Bradley "30" Federal Com Well No. 1H to be dedicated to a 160 acres spacing unit consisting of the N/2S/2 of Sec 30. See Exhibit "A" attached.

By email dated February 24, 2011, Chisos notified Mewbourne that Chisos was electing to voluntarily participate and returned a signed AFE. See Exhibit "B" attached. Then on that same day, Mewbourne mailed a proposed JOA to Chisos.

### ARGUMENT

It has been the Division's longstanding interpretation of NMSA 1978 Section 70-2-17.C of the New Mexico Oil & Gas Act that an applicant is first required to make a good faith effort to obtain the voluntary commitment of interests in a spacing unit before seeking their compulsory pooling. Contrary to the custom and practice before the Division, Mewbourne has instituted compulsory action against Chisos without first making a "good faith" effort to reach a voluntary agreement as to this new well and the formation a spacing unit on a voluntary basis for the drilling of Bradley 30 Fed Com Well No. 1.

NMSA 1978 Section 70-2-17.C is very specific in its requirement that the compulsory pooling authority of the Division can only be exercised in those instances where the parties have not agreed to voluntarily pool their interests in a spacing unit for a specifically proposed well on that unit. Under the circumstances of this case, it is impossible to have exhausted a good faith effort to reach a voluntary agreement when the applicant files its application prior to sending a written well proposal letter, including an AFE, that specifies the spacing unit, the well locations, estimated costs and depth. Generally a 30-day waiting period follows the industry's custom set forth in standard Joint Operating Agreements and is meaningful because it provides a period for the party to received the proposal, respond and to obtain further information from the proposing party or otherwise and then make an informed decision.

It is premature for any party, including Mewbourne, to proceed with compulsory pooling at this time for a spacing unit for the N/2S/2 of this section. Mewbourne's actions in this case are contrary to this practice and if allowed by the Division will encourage Mewbourne and others to use compulsory pooling as a negotiating weapon rather than as a remedy of last resort. The Division's files are replete with cases that were dismissed for the same reasons that Mewbourne's case should be dismissed. For example, See NMOCD Order R-10977 (Case 11927) and Order R-10545 (case 11434)

To the best of Chisos' knowledge there are no expiring leases or other deadlines that constitute an emergency such that the Division should commence hearing Mewbourne's pooling case at this time. To do so, will require the Division to proceed to hearing cases in a piecemeal fashion that ultimately may have been unnecessary. It is no solution to suggest that this fatal flaw can be fixed by simply continuing the case. See NMOCD Case 11434, Order R-10545.

Mewbourne's application against Chisos must be dismissed. Mewbourne failed to propose this well to Chisos before filing its compulsory pooling application and therefore Mewbourne has not engaged in any effort, good faith or otherwise, to reach a voluntary agreement for this well. It is impossible to have any failure to agree prior to any specific well proposal and its specific spacing unit being made by Mewbourne.

Unless this application is dismissed the Division will be establishing a precedent, which will allow applicants to avoid complying with NMSA 1978 Section 70--2-17.C.

**KELLAHIN & KELLAHIN**



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Santa Fe, New Mexico 87501  
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E-mail: [tkellahin@comcast.net](mailto:tkellahin@comcast.net)**

**CERTIFICATE OF SERVICE**

I certify that on March 1, 2011, I served a copy of the foregoing documents by:

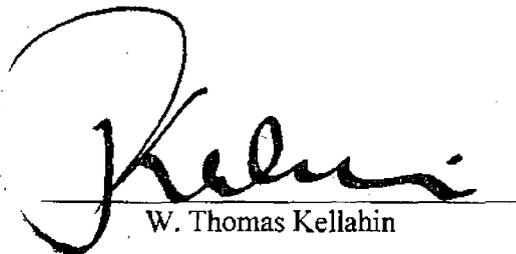
- US Mail, postage prepaid
- Hand Delivery
- Facsimile
- E-mail

to the following:

James Bruce, Esq.  
Attorney for Mewbourne

Richard Ezeanyim, OCD  
Hearing Examiner

David K Brooks, OCD  
Attorney



W. Thomas Kellahin

February 21, 2011

Certified Mail-Return Receipt No. 4528

Chisos, Ltd.  
670 Dona Ana Road, SW  
Deming, New Mexico 88030  
Attn: Sue Ann Craddock

Re: Bradley "30" Federal Com No. 1H  
1850' FSL & 330' FWL (SL) (Sec. 29)  
1980' FSL & 330' FWL (BHL) (Sec. 30)  
Section 30, T18S, R30E  
Eddy County, New Mexico

Dear Sue Ann:

Per my conversation with Mr. Tom Kellahin, it is my understanding Chisos, Ltd. ("Chisos") does not wish to participate in the previously proposed WIU but rather would like to participate in the captioned well with their respective full interest. Mewbourne Oil Company ("Mewbourne") as Operator hereby proposes to drill the captioned well at the referenced surface location ("SL") to the referenced bottom hole location ("BHL"). The proposed well will be drilled to a true vertical depth ("TVD") of approximately 8,130 feet subsurface to evaluate the Second Bone Spring Sand formation for oil production. The proposed well will have a horizontal measured depth ("MD") of approximately 13,200 feet. The N/2S/2 of the captioned Section 30 will be dedicated to the well as the oil proration unit.

Regarding the above, enclosed for your further handling is our AFE dated September 27, 2010 for the captioned well. In the event you elect to participate in the captioned proposed well, please sign the enclosed AFE and return to me within thirty (30) days. Upon receipt of same, I'll forward you our proposed Operating Agreement for signature.

Should you have any questions regarding the above, please email me at [cmitchell@mewbourne.com](mailto:cmitchell@mewbourne.com) or call me at (432) 682-3715.

Sincerely,

**MEWBOURNE OIL COMPANY**

*Corey Mitchell*

Corey Mitchell  
Landman



