

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

**IN THE MATTER OF THE APPLICATION OF
BASS ENTERPRISES PRODUCTION CO.
AND SANTA FE ENERGY COMPANY
FOR RESCISSION OF ORDER NSL-3745,
EDDY COUNTY, NEW MEXICO.**

CASE NO. 11713

MOTION FOR RECONSIDERATION

MEWBOURNE OIL COMPANY hereby moves for reconsideration and the withdrawal of the Division's letter decision dated February 17, 1997 which stayed Administrative Order No. NSL-3745 and permits affected parties to object to an administrative application for an unorthodox well location after time authorized by Rule 104 F (4) has expired. In support of this motion for reconsideration Mewbourne states:

1. This ruling eliminates the requirements of Rule 104 which limit the time within which affected parties may object to proposed administrative locations;
2. Renders administrative orders of the Division meaningless; and
3. Sets a precedent that undermines the time limitations established by Division rules for other administrative procedures.

Filed with this Motion and incorporated herein by reference is Mewbourne's Memorandum in Support of this Motion for Reconsideration.

WHEREFORE, Mewbourne OIL Company requests that the Oil Conservation Division reconsider and withdraw its letter decision dated February 17, 1997 including the stay of Division Administrative Order No.

Respectfully submitted,

CAMPBELL, CARR, BERGE
& SHERIDAN, P. A.

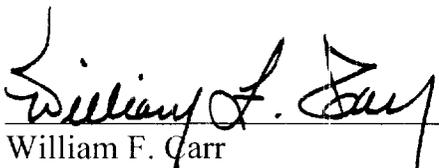
By: 
WILLIAM F. CARR
Post Office Box 2208
Santa Fe, New Mexico 87504-2208
Telephone: (505) 988-4421

ATTORNEYS FOR MEWBOURNE
OIL COMPANY

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be telecopied and mailed a true and correct copy of this Motion for Reconsideration to the following counsel of record on this 26th day of March, 1997:

James E. Haas, Esq.
Losee, Carson, Haas & Carroll
Post Office Box 1720
Artesia, New Mexico 88211-1720
Telecopy #: (505) 746-6316


William F. Carr

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

**IN THE MATTER OF THE APPLICATION OF
BASS ENTERPRISES PRODUCTION CO.
AND SANTA FE ENERGY COMPANY
FOR RESCISSION OF ORDER NSL-3745,
EDDY COUNTY, NEW MEXICO.**

CASE NO. 11713

**MEMORANDUM OF MEWBOURNE OIL COMPANY
IN SUPPORT OF ITS
MOTION FOR RECONSIDERATION**

By letter dated February 17, 1997, the Division ruled that an affected party which fails to object to an administrative application for an unorthodox well location within the time authorized by Rule 104 F (4) may still object to the well location even after the Division has entered an order approving the unorthodox location. Pursuant to this ruling, on receipt of any objection, any application will be set for hearing, and if the affected party shows the unorthodox location will impair its correlative rights, a production penalty will be set on the well.

This ruling (1) eliminates the requirements of Rule 104 which limit the time within which affected parties may object to a proposed unorthodox well location; (2) renders Division administrative orders meaningless; and (3) sets a precedent that undermines the time limitations established by Division rules for other administrative procedures.

BACKGROUND:

On December 5, 1997, Mewbourne filed an application pursuant to Division Rule 104 F seeking approval of an unorthodox well location for its Scanlon Draw "35" State Com Well No. 1 to be located 660 feet from the South line and 1980 feet from the West line of Section 35, Township 18 South, Range 28 East, Eddy County, New Mexico. Notice of this application was provided in accordance with Rule 104 F (4) by certified mail to affected parties including Bass Enterprises Production Co. ("Bass") and Santa Fe Energy Company ("Santa Fe"). Neither Bass or Santa Fe objected within the 20 day time allowed for objections by Rule 104 F (4).¹

On December 27, 1997, the Division received an objection to the proposed location from Bass and Santa Fe. On that date, the Division wrote the attorneys for Bass and Santa Fe and advised that "Your objection on behalf of Bass Enterprises Production Company and Santa Fe Energy Company was received too late for the Division to take any action in either delaying or denying Mewbourne's request. An order approving this application is being processed at this time and will be forthcoming." *See* letter from Michael Stogner to James Haas, attorney for Bass and Santa Fe, December 27, 1996. The Division entered Order NSL-3745 on that date approving the requested unorthodox location for the Scanlon Well.

1

Admitted in paragraph 5 of December 31, 1996 application of Bass: "the objection was not received by the OCD within the deadline as prescribed by Division Rule 104 F (4)." Furthermore, this fact was not disputed in testimony presented by Bass to OCD on February 20, 1997.

In its December 27, 1997 letter, the Division also advised Bass and Santa Fe that they could file an application to rescind this administrative order. On December 31, 1996 Bass and Santa Fe filed an Application for Hearing on Mewbourne Oil Company's Scanlon Draw "35" State No. 1 Well Unorthodox Location and for an Order Rescinding Administrative Order NSL-3745 and Staying the Drilling of the Subject Well.

On February 14, 1997, Mewbourne, through its attorneys, wrote the Division and stated the first issue to be resolved by the Division was whether the application of Bass and Santa Fe should be dismissed.

By letter dated February 17, 1996, the Division responded to Mewbourne's statement concerning the dismissal of the Bass and Santa Fe Application for Rescission. The Division ruled that Bass and Santa Fe are entitled to have NSL-3745 set aside "if they can show that their correlative rights would be violated." The Division announced that "Whether or not the objection was timely for administrative approval purposes affects only who has the burden of proof in the hearing on the merits" and that now "Bass and Santa Fe have the burden of proof at the hearing as to why the unorthodox location should **not** have been approved (or in this case, should be rescinded)." The Division also stayed Order NSL-3745 and denied the request of Mewbourne for a continuance of the February 20, 1997 hearing.

At the February 20 hearing, Bass presented its case and at the conclusion of the Bass

presentation, the case was continued to the Examiner hearing scheduled for March 20, 1997.²

ARGUMENT:

By order dated January 18, 1996, the Division adopted Rule 104 F (4) which establishes procedures for approval of administrative applications for unorthodox well locations. This rule provides:

The applicant shall submit a statement attesting that applicant, on or before the same date the application was submitted to the Division, has sent notification to the affected parties by submitting a copy of the application, including a copy of the plat described in Rule 104.F (3) above by certified or registered mail-return receipt in accordance with Rule 1207 (A) (5) advising them that **if they have an objection it must be filed in writing within twenty days from the date notice was sent.** The Division Director may approve the unorthodox location upon receipt of waivers from all said parties or if no party has entered an objection to the unorthodox location within 20 days after the Director has received the application. (Emphasis added).

Here, Bass and Santa Fe failed to file an objection in writing with the Division within twenty days from the date notice was sent. Accordingly, each had an opportunity to protest but waived that opportunity. The Division Director exercised his discretion and approved the location for the Scanlon Well on December 27, 1996.

Having approved this well location, the Division should not now allow an untimely

²

The case has been continued again at the request of Bass and now is on the docket for the April 3, 1997 Examiner hearings.

after the time for objection allowed by Division rule has passed? If untimely objections are permitted, for how long a time may objections be made? Can they be made after wells are drilled? If the untimely objecting party can meet the burden of proof and show that their correlative rights are being impaired by a well at an unorthodox location, can a production penalty be imposed sometime after it has been drilled? If operators cannot object after a well is drilled, what are the new deadlines for making objections and where in the Division's rules are these limitations found?

Attached hereto is a letter from the Division dated February 20, 1995 which advises Doyle Hartman that his objection to an application for administrative approval of an unorthodox location was untimely. Under the Division's February 17, 1997 ruling, could Mr. Hartman now object to the unorthodox location of the offsetting well? In the Hartman example, the delay in objecting was caused by the fact that Mr. Hartman was moving his office from Midland to Dallas. Should this excuse him from the requirement that his objections be timely made? Are the delays in the delivery of holiday mail an acceptable excuse in this case but Hartman's moving offices not adequate justification for failing to comply with the rules?

The problem with the reasoning in the Decision of February 17, 1997 appears to be rooted in confusion about the definition of "correlative rights" as applied to the facts of this case. "Correlative rights" means the "opportunity" to produce. It is not a right to produce

MEMORANDUM OF MEWBOURNE OIL COMPANY IN SUPPORT OF ITS MOTION FOR RECONSIDERATION,

Page 6

even a single molecule of hydrocarbons--it is only an opportunity to try to do so. Bass and Santa Fe had this opportunity, but waived it when they failed to timely object.

The Division's statement in its December 27, 1996 letter, that Bass and Santa Fe may bring an application to rescind NSL-3745, should not be interpreted as an invitation to set aside the administrative procedures of Rule 104 for approval of unorthodox well locations. The Division correctly states that an application for rescission of an order can be filed. This is true in any case. However, cases should only be reopened and valid orders rescinded when there is a showing that there was some impropriety or error by the party obtaining the order in the process which resulted in its entry. The ruling in this case punishes Mewbourne, who has complied with Division rule, without requiring Bass to show that there was any error in the procedures by which approval was obtained. This ruling rewards those who failed to comply with the requirements of Division rule at the expense of those who do.

Although in this case Bass and Santa Fe waived their right to object to the Mewbourne application, there are still ways in which they may pursue their opportunity to produce their fair share of the reserves in this pool. Bass and Santa Fe have proposed an offsetting well. They seek approval of a second well to be drilled at an unorthodox location on their spacing unit and simultaneous dedication this tract to two wells. The Division should review this proposal without holding the Mewbourne order hostage to these proceedings. There should be an independent review of this proposal to determine if it will protect correlative rights--if

MEMORANDUM OF MEWBOURNE OIL COMPANY IN SUPPORT OF ITS MOTION FOR RECONSIDERATION,

Page 7

it will provide Bass and Santa Fe an opportunity to produce their share of the reserves in this pool without impairing the rights of others to do the same. If, after reviewing the evidence presented by Bass and other affected parties, if any, it is determined that the Bass proposal has merit, it should be approved. The same applies to the application for simultaneous dedication.

This procedure is consistent with Division rules. It does not penalize operators like Mewbourne which have complied with Division rules and, at the same time, will permit Bass and Santa Fe to proceed, within the rules, to protect their correlative rights.

CONCLUSION:

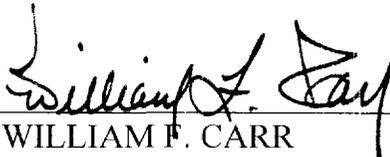
The Division should dismiss the application of Bass and Santa Fe to rescind Oil Conservation Division Order NSL-3745, which approved Mewbourne Oil Company's application for an unorthodox location for its Scanlon Draw "35" State Com No. 1 Well located 660 feet from the South line and 1980 feet from the West line of Section 35, Township 18 South, Range 28 East, NMPM. The Stay of Order NSL-3745 should be lifted. The hearing on the application of Bass and Santa Fe for an unorthodox well location and simultaneous dedication scheduled for April 3, 1997 should proceed, thereby providing Bass and Santa Fe with an opportunity to prove that the relief they seek will protect the correlative rights of each interest owner in the subject pool.

This action is consistent with Division rule, does not penalize operators who obtain

orders in full compliance with Division rules, and avoids uncertainty that can result from arbitrary and potentially inconsistent Division decisions.

Respectfully submitted,

CAMPBELL, CARR, BERGE
& SHERIDAN, P. A.

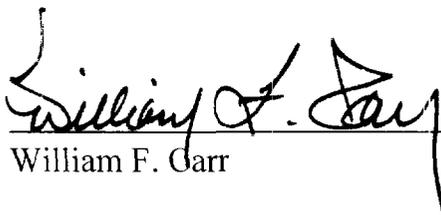
BY: 
WILLIAM F. CARR
Post Office Box 2208
Santa Fe, New Mexico 87504-2208
Telephone: (505) 988-4421

ATTORNEYS FOR MEWBOURNE
OIL COMPANY

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be telecopied and mailed a true and correct copy of Memorandum of Mewbourne Oil Company in Support of its Motion for Reconsideration to the following counsel of record on this 26th day of March, 1997:

James E. Haas, Esq.
Losee, Carson, Haas & Carroll
Post Office Box 1720
Artesia, NM 88211-1720
Telecopy #: (505) 746-6316


William F. Carr

MEMORANDUM OF MEWBOURNE OIL COMPANY IN SUPPORT OF ITS MOTION FOR
RECONSIDERATION,

CAMPBELL, CARR, BERGE
& SHERIDAN, P.A.
LAWYERS

MICHAEL B. CAMPBELL
WILLIAM F. CARR
BRADFORD C. BERGE
MARK F. SHERIDAN

MICHAEL H. FELDEWERT
TANYA M. TRUJILLO
PAUL R. OWEN

JACK M. CAMPBELL
OF COUNSEL

Case 1173

JEFFERSON PLACE
SUITE 1 - 110 NORTH GUADALUPE
POST OFFICE BOX 2208
SANTA FE, NEW MEXICO 87504-2208
TELEPHONE: (505) 988-4421
TELECOPIER: (505) 983-6043

March 26, 1997

HAND DELIVERED

William J. LeMay, Director
Oil Conservation Division
New Mexico Department of Energy,
Minerals and Natural Resources
2040 South Pacheco Street
Santa Fe, New Mexico 87505

Re: *Application of Bass Enterprises Production Company and Santa Fe Energy
Company for Rescission of Order NSL-3745, Eddy County, New Mexico*

Dear Mr. LeMay:

Enclosed for your consideration is the original and copy of the Motion for Reconsideration as well as the Memorandum of Mewbourne Oil Company in Support of its Motion for Reconsideration in the above referenced case.

Your attention to these matters is appreciated.

Very truly yours,



WILLIAM F. CARR
Attorney for Mewbourne Oil Company
cc: James E. Haas, Esq. (**Via Facsimile**)
Rand Carroll, Esq.
Mr. Steve Cobb