

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

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

APPLICATION OF MEWBOURNE OIL
COMPANY FOR AN UNORTHODOX GAS
WELL LOCATION AND A NON-STANDARD
GAS PRORATION UNIT, EDDY COUNTY,
NEW MEXICO.

Case No. 11,723
(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.

Case No. 11,755
(de novo)

APPLICATION OF TEXACO EXPLORATION
AND PRODUCTION INC. FOR CLARIFICATION,
OR IN THE ALTERNATIVE, AN EXCEPTION
TO, THE SPECIAL POOL RULES AND
REGULATIONS FOR THE CATCLAW DRAW-MORROW
GAS POOL, EDDY COUNTY, NEW MEXICO.

Case No. 11,808

**RESPONSE OF MEWBOURNE OIL COMPANY IN OPPOSITION TO
APPLICATION FOR REHEARING AND MOTION FOR STAY**

Mewbourne Oil Company ("Mewbourne") hereby submits the following response in opposition to the Application for Rehearing and Motion for Stay filed by Fasken Land and Minerals, Ltd. and Fasken Oil and Ranch, Ltd. (collectively, "Fasken") on December 31, 1997:¹

1. Geology Was The Basis Of The Commission's Decision.

Both the Mewbourne and Fasken locations are unorthodox, and it

¹Mewbourne was not served with a copy of the application, and did not obtain a copy until January 6, 1998.

is unquestionable that the Division and the Commission have the authority to consider, and approve or deny, the locations. **NMSA §70-2-12.B.(7), (10) (1995 Repl. Pamp.) (the Division has the authority to fix well spacing and locations, and prevent harm to neighboring properties); Division Rule 104.F.(2) (the Division has the authority to grant an exception to the well location requirements of Rules 104.B and 104.C).** In accordance with this authority, the Commission examined the technical evidence, and determined that the Mewbourne location is the better location. **Order No. R-10872-B ("the Order"), Finding ¶(14).** Once the Commission made that finding, it was compelled to allow Mewbourne's location to be drilled first. Allowing Fasken's geologically inferior location be drilled first would cause waste.²

The decision of the Commission is unrelated to any contractual dispute between the parties, but rather is based on the protection of correlative rights and the prevention of waste. Thus, the Order is proper.

2. The Operating Agreement Was Not The Basis For The Commission's Decision.

Fasken asserts that the Operating Agreement was the basis of the Commission's decision granting priority to Mewbourne's location. However, Fasken cannot cite to any provision of the Order which states that Mewbourne should be allowed to drill its

²The Fasken location is not on an equal footing with the Mewbourne location, as implied by Fasken: The Fasken location was found to be less prospective, and was denied provided the Mewbourne location is drilled.

well first because of the Operating Agreement.³ Fasken's argument is without merit.

3. The Commission Can Consider Land Evidence.

Fasken states that the Commission, in reaching its decision, cannot consider non-technical evidence. However, there is no limitation in the statutes or Division regulations restricting the factors which can be considered by the Commission in competing unorthodox location cases. Moreover, in response to Fasken's Motion *in Limine*, the Commission, at the hearing, held that it would consider the usual factors used in competing compulsory pooling cases.⁴ Fasken did not object at that time.

As pointed out at the hearing, Fasken has owned its acreage within Section 1 for 25 years, and did nothing while Texaco produced its offsetting Levers Fed. "NCT-1" Well No. 2 at a rate of 4 MMCF/day. The impetus to drill a well in the S½ of Section 1, and to protect the correlative rights of the Section 1 interest owners, was due to Mewbourne's actions. This land testimony is relevant to the protection of correlative rights, is admissible, and Finding ¶(15) of the Order is proper.

³The only reference in the Order to Operating Agreement is Finding ¶(10), which merely states that the agreement covers the S½ of Section 1. Nowhere in the Order is it used as a basis for the Commission's decision.

⁴Contrary to Fasken's assertion, the compulsory pooling statute (§70-2-17.C) does not address competing pooling applications, or well priority in such cases. In addition, the statute does not specify the evidence to be considered by the Commission in pooling cases.

Competing pooling cases often involve different proposed well locations, and the Commission decides which well location gets drilled in those cases. The Division and the Commission have also, in such cases, held that if the location preferred by the Commission is not drilled in a timely manner, the second location may be drilled.

4. The Interest Owners Favor The Mewbourne Location.

Evidence in the record shows that 98.53% of the working interest owners in the S½ of Section 1 have voluntarily joined in Mewbourne's well (**Mewbourne Exhibit 2**), while Fasken admits that only 55.76% of the working interest owners have voluntarily joined in the Fasken well.⁵ **Application for Rehearing at p. 7.** Thus, the interest owners in the S½ of Section 1 favor the Mewbourne location.

In competing compulsory pooling cases, the Commission gives credence to the proposal with the largest interest committed thereto, since those interest owners have the most at risk in the well. The same principle applies to this case, and again Finding ¶(15) of the Order is proper.

5. The Litigation Between Fasken And Mewbourne Does Not Address Well Drilling Priority.

Fasken asserts that the issue of which well should be drilled first is being litigated in District Court In Midland County, Texas. **Application for Rehearing at p. 8.** That is incorrect. The issues in litigation involve alleged breach of contract and breach of fiduciary duty. Nowhere in the complaint or counterclaim does any party ask the court to decide which well should be drilled first. If the Commission desires copies of those pleadings, Mewbourne will provide them.

6. Conclusion.

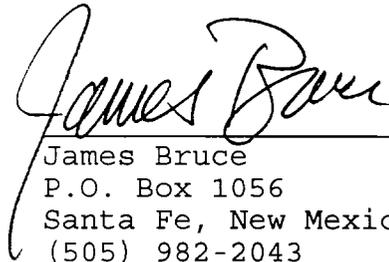
Based on its power to protect the correlative rights of the

⁵Mewbourne, and Messrs. Mayer and Haynie, went non-consent in the Fasken well.

interest owners in the S½ of Section 1, and to prevent waste by preventing the drilling of unnecessary wells, the Commission can consider any relevant data. It did so in this case, and the Order is proper. As a result, the Application for Rehearing should be denied, and there is no basis for a stay of the Order.

WHEREFORE, Mewbourne requests the Commission to deny Fasken's Application for Rehearing and Motion for Stay.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 7th day of January, 1998:

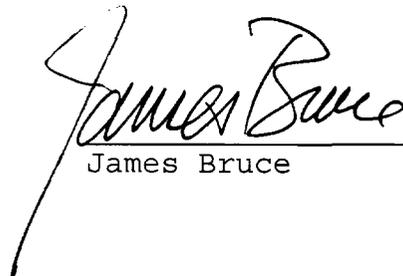
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