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

MEWBOURNE OIL COMPANY'S RESPONSE IN OPPOSITION TO FASKEN'S MOTION IN LIMINE, AND MEWBOURNE OIL COMPANY'S MOTION TO DISMISS

Mewbourne Oil Company ("Mewbourne") submits the following response in opposition to the Motion in Limine filed by Fasken Oil and Ranch, Ltd. ("Fasken Oil") and Fasken Land and Minerals, Ltd. ("Fasken Land"). Mewbourne also moves that Case 11,755 be dismissed. In support thereof, Mewbourne states:

A. FACTS.

Mewbourne filed an application for a non-standard Morrow well unit comprised of the S½ of irregular Section 1, Township 21 South, Range 25 East, for a well to be located at an unorthodox location

660 feet FSL and 2310 feet FEL. The well is in the Catclaw Draw Morrow-Gas Pool, which has special pool rules requiring 640 acre spacing, with wells to be located no closer than 1650 feet to the outer boundaries of the well unit. The middle one-third of Section 1 is unleased federal minerals, and thus cannot be dedicated to the well. As a result, the non-standard unit is required in order to drill the well.

The S½ of Section 1 is subject to an Operating Agreement dated April 1, 1970.[1] Pursuant to the Operating Agreement, Mewbourne proposed a well at the above-described location in January 1997. All working interest owners have either joined in the well or elected to be non-consenting parties. In February 1997, subsequent to Mewbourne's proposal, Fasken proposed a well at an unorthodox location 2080 feet FSL and 750 feet FWL of Section 1.

The Operating Agreement provides that once a well is proposed, a timeline is commenced to implement the drilling of that well. The Operating Agreement states that, after the 30 day election period ends:

> [The consenting parties] **shall**...actually commence work on the proposed operation and complete it with due diligence.

Operating Agreement, §12 (emphasis added). There is no question that Mewbourne proposed the first Morrow well under the Operating Agreement. As a result, the parties must proceed to drill that well, and Mewbourne's application is the only application properly

[1]Mewbourne Exhibit 3 at the Examiner hearing.

111

before the Commission.[2]

B. RESPONSE IN OPPOSITION TO MOTION IN LIMINE.

Fasken Oil and Fasken Land have filed a Motion in Limine, requesting that all evidence of the Operating Agreement be excluded from the Commission hearing, contending that the Commission cannot adjudicate contractual controversies between the parties.

Mewbourne agrees with the *general* proposition that the Commission cannot adjudicate private contractual disputes. However, that is not the issue before the Commission. Rather, the focus of the Commission's decision is whether either Fasken Oil or Fasken Land has standing to file an application at this time regarding the S½ of Section 1. To make this determination, the Commission must look at the documents under which each party claims the right to drill a well. In **Samson Resources Co. v. Oklahoma Corp. Comm'n, 859 P.2d 1118 (Okla. App. 1993)**, Samson filed an application for an unorthodox well location. Mobil Oil Corporation filed a motion to dismiss, asserting that Samson owned no mineral interest in the land on which the well was to be drilled. Samson asserted that the Commission had no jurisdiction to determine title to property. However, the Oklahoma conservation statutes require an applicant to own a mineral interest or hold the right to drill a well on the subject property. As a result, the Court held that:

---

[2]It is immaterial whether Fasken Land is a consenting or a non-consenting party to the well: A party who agrees to participate in a well cannot now object to the well; a non-consenting party is deemed by contract to have relinquished its interest in the well and its leasehold operating rights, and thus has no standing to object to Mewbourne's well, since he is not liable for the cost of the well.

> The Corporation Commission has the power to receive evidence and determine whether an applicant owns minerals or has the right to drill in the subject unit.

859 P.2d at 1121. Thus, the Corporation Commission has authority to review contracts and leases to determine whether an applicant has standing to file an application. **Accord**, **Houser v. Columbia Gas Transmission Corp., 561 N.E.2d 980 (Ohio App. 1988)** (Division of Oil and Gas has the authority to determine ownership for purposes of statutory plugging requirements); **Magnolia Petroleum Co. v. Railroad Commission, 170 S.W.2d 189 (1943)** (Railroad Commission has right to make ownership determination in order to grant an exception to the Commission's spacing regulations). Based on these principles, one commentator has stated:

> It is certainly clear that individual interests may be adjudicated and determined by the Commission as a by-product of its determination with respect to allowable production or presumably any other determination within the general jurisdiction of the Commission.

E. Kuntz, Discussion Notes, 13 O&GR 824 (1960).

The Division's rule on the method of instituting a hearing also requires an applicant to be an operator or producer, or own a mineral interest the well unit. **Division Rule 1203**. Mewbourne is not asking the Commission to adjudicate a breach of contract or award damages, but rather to determine Fasken Oil's or Fasken Land's standing to file an application under Division regulations. In order to do this, the Commission must examine the Operating Agreement. This is in accord with the Commission's express power to "examine properties, leases, papers, books and records," and to identify the ownership of oil and gas leases. **NMSA §70-2-12(A),**

(B)(8) (1995 Repl. Pamp.).

Moreover, Mewbourne's request does not break new ground at the Division or the Commission. In Case No. 10,658 the applicant (Mewbourne) sought a compulsory pooling order. Devon Energy Corporation protested, claiming that acreage in the well unit was subject to a valid operating agreement. The Division reviewed the operating agreement, ruled in Devon's favor, and dismissed the application. **Division Order No. R-9841** (attached hereto as Exhibit A). Similarly, in Case No. 10,345, BHP Petroleum sought to force pool Louise Locke, a mineral interest owner. The Commission reviewed certain agreements and found that Ms. Locke's acreage was committed to an exploratory unit, of which BHP Petroleum was operator. Thus, BHP Petroleum had the right to drill the well. **Commission Order No. R-9581-A**. The Commission does not exist in a vacuum, and must examine agreements necessary to its exercise of jurisdiction. This is one of those situations, and the motion of Fasken Oil and Fasken Land must be denied.

C. <u>MOTION TO DISMISS FASKEN OIL'S APPLICATION</u>.

The Operating Agreement requires the operator to be an interest owner in the lands covered by the agreement. Evidence in the record of the Examiner hearing[3] shows that Fasken Oil is <u>not</u> an interest owner in the S½ of Section 1. To avoid this issue, Fasken Oil claims it has been delegated operatorship by Fasken

[3]Mewbourne Exhibit 2 at the Examiner hearing.

Land.[4] However, the Operating Agreement does not allow an interest owner to delegate operations to a non-interest owner. Thus, Fasken Oil is not the operator of nor an interest owner in the well unit, and is not a proper applicant under Division Rule 1203.

The Division or the Commission must give at least ten days reasonable notice of a public hearing before any non-emergency order is made. **NMSA §70-2-23 (1995 Repl. Pamp.)**. Division Rule 1205 requires that published notice of the hearing state the name of the applicant. The published notice in Case No. 11,755 does not name Fasken Land as the applicant. Thus, the published notice does not comply with Rule 1205, and cannot be considered to fulfill the statutory requirement of reasonable notice as to Fasken Land. Therefore, Fasken Land must be stricken as applicant in Case No. 11,755. Fasken Oil does not own an interest in the property which is the subject of Case No. 11,755, as required by Rule 1203. Moreover, Fasken Oil has never been elected operator of the subject property, nor otherwise duly succeeded to the duties of operator under the Operating Agreement. Because Case No. 11,755 has not been properly instituted by a duly qualified applicant upon proper and reasonable notice, it must be dismissed at this time. Otherwise, the general public is denied its fundamental right of procedural due process. It is not for Mewbourne to articulate how it is disadvantaged by the publication defect. Rather, the public at

[4]In the Examiner proceedings, Fasken Oil presented a Management Agreement between Fasken Oil and Fasken Land. See Motion for Joinder, filed by Fasken Oil on April 25, 1997. Fasken Oil sees no problem with presenting this agreement for the Division's consideration to establish its rights as operator, yet complains of Mewbourne submitting the Operating Agreement as part of the record.

large (including Fasken Land's joint venturers, trade creditors, *etc.*) is entitled to know that the Division complies with its rules and that Fasken Land seeks relief. **See Uhden v. Oil Conservation Comm'n, 112 N.M. 528, 817 P.2d 721 (1991).** Notice is defective, and the case must be dismissed.

WHEREFORE, Mewbourne requests that the Motion in Limine be denied, and that Case No. 11,755 be dismissed.

James Bruce
P.O. Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

Attorney for Mewbourne Oil Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Pre-Hearing Statement was served upon the following counsel of record via facsimile transmission this 28th day of October, 1997:

William F. Carr
Campbell, Carr, Berge & Sheridan, P.A.
P.O. Box 2208
Santa Fe, New Mexico 87504
(505) 983-6043

W. Thomas Kellahin
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504
(505) 982-2047

Marilyn S. Hebert
Oil Conservation Commission
2040 South Pacheco Street
Santa fe, New Mexico 87505
(505) 827-8177

James Bruce

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:

CASE NO. 10658
ORDER NO. R-9841

APPLICATION OF MEWBOURNE OIL COMPANY FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on January 21, 1993, at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 3rd day of February, 1993, the Division Director, having considered the testimony, the record and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) The applicant, Mewbourne Oil Company, seeks an order pooling all mineral interests from the base of the Abo formation to the base of the Morrow formation, underlying the following described acreage in Section 35, Township 17 South, Range 27 East, NMPM, Eddy County, New Mexico, and in the following manner:

> the W/2 forming a standard 320-acre gas spacing and proration unit for any and all formations and/or pools developed on 320-acre spacing within said vertical extent, which presently includes, but is not necessarily limited to, the Undesignated Scoggin Draw-Atoka Gas Pool, Undesignated North Illinois Camp-Morrow Gas Pool, Undesignated Scoggin-Morrow Gas Pool and Undesignated Logan Draw-Morrow Gas Pool;

the NW/4 forming a standard 160-acre gas spacing and proration unit for any and all formations and/or pools developed on 160-acre spacing within said vertical extent, which presently includes only the Undesignated Logan Draw-Wolfcamp Gas Pool; and,

the E/2 NW/4 forming a standard 80-acre oil spacing and proration unit for any pools developed on 80-acre spacing within said vertical extent, of which there are currently none.

(3) Said units are to be dedicated to the applicant's Chalk Bluff "35" Federal Well No. 2, to be drilled at an orthodox gas well location within the SE/4 NW/4 (Unit F) of said Section 35.

(4) Devon Energy Corporation (Devon), successor owner of Malco Refineries, Inc.'s interest in the NW/4 and NW/4 SW/4 of said Section 35, appeared at the hearing through counsel and opposed the application on the basis that its interest is governed by an operating agreement with Mewbourne Oil Company, who is the successor owner of the Stanolind Oil and Gas Company underlying the same acreage.

(5) Devon claims its interest is bound under the agreements reached by Malco Refineries, Inc. and Stanolind Oil and Gas Company in July, 1953 and April, 1958, being Devon's Exhibit "A" and "B" in this case.

Mewbourne, also represented by counsel, contends that a supplemental agreement is necessary where acreage outside the "contract lands" are included in a spacing unit, being the NE/4 SW/4 and S/2 SW/4 of said Section 35, which is 100% Mewbourne-contracted properties. Since both parties have not agreed to a "supplemental agreement", Mewbourne contends that the original agreement is invalid and seeks to force-pool Devon's interest into the W/2 spacing unit.

FINDING: Since under the "force-pooling" statutes (Chapter 70-2-17 of the NMSA 1978) there exists in this matter an agreement between the two parties owning undivided interests in a proposed 320-acre gas spacing and proration unit, an order from the Division pooling said parties is unnecessary.

(6) This case should therefore be dismissed.

IT IS THEREFORE ORDERED THAT:

(1) Case No. 10658 is hereby **dismissed**.

(2) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

WILLIAM J. LEMAY
Director

SEAL

JAMES BRUCE
ATTORNEY AT LAW

POST OFFICE BOX 1056
SANTA FE, NEW MEXICO 87504

SUITE B
612 OLD SANTA FE TRAIL
SANTA FE, NEW MEXICO 87501

(505) 982-2043
(505) 982-2151 (FAX)

October 28, 1997

Via Fax and U.S. Mail

Mr. William J. LeMay
Oil Conservation Commission
2040 South Pacheco Street
Santa Fe, New Mexico 87505

Re: Cases 11723/11755 (*de novo*) (Fasken/Mewbourne)

Dear Mr. LeMay:

Enclosed is Mewbourne's response to Fasken's motion in limine.

Very truly yours,

James Bruce

Attorney for Mewbourne
Oil Company