

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

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

**CASE NO. 11723
(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 11755
(De Novo)
ORDER NO. R-10872**

**TEXACO EXPLORATION AND PRODUCTION INC.'S
MOTION TO QUASH SUBPOENA DUCES TECUM**

Texaco Exploration and Production Inc. ("Texaco") hereby moves the Oil Conservation Commission to quash the Subpoena Duces Tecum issued at the request of Mewbourne Oil Company ("Mewbourne") on September 30, 1997 which commands Texaco to produce on October 9, 1997 numerous documents and other information pertaining to the Texaco Exploration and Production Inc. E. J. Levers Fed. "NCT-1" Well No. 2 which is located in Unit F of Section 12, Township 21 South, Range 25 East, NMPM, Eddy County, New Mexico.

In support of its Motion to Quash, Texaco states:

BACKGROUND

1. Oil Conservation Commission Cases 11723 and 11755 involve the development of Section 1, Township 21 South, Range 25 East, NMPM, Eddy County, New Mexico. Both Mewbourne and Fasken Oil and Ranch, Ltd. ("Fasken") seek approval of a 297.88-acre non-standard gas spacing and proration unit in the S/2 equivalent of Section 1. Mewbourne and Fasken each propose the development of this non-standard spacing and proration unit with wells at unorthodox locations. Mewbourne's proposed unorthodox location is 660 feet from the South line and 2310 feet from the East line of Section 1 and Fasken's proposed unorthodox location is 2080 feet from the South line and 750 feet from the West line of Section 1.

2. Texaco operates the direct south offset spacing unit. On this acreage, Texaco has drilled its E. J. Levers Fed. "NCT-1" Well No. 2 at a standard gas well location 2448 feet from the North line and 1980 feet from the West line of said Section 12. A standard 632.36 acre spacing and proration unit comprised of said Section 12 is dedicated to this well.

3. At the April 3, 1997 Division Examiner hearing, the Mewbourne and Fasken applications were consolidated and came on for hearing before Examiner Stogner.

4. Mewbourne has stated "That to take advantage of this and proven and prolific formation, Mewbourne proposed drilling a well to the Morrow formation as close to the

South line of the Operating Unit as possible.” Texaco appeared in opposition to the Mewbourne location because it is 60% closer to the Texaco tract than permitted by the Special Pool Rules and Regulations for the Catclaw Draw-Morrow Gas Pool. Texaco did not oppose the Fasken location because it was more than a standard set back from the Texaco tract.

5. By Order No. R-10872, dated September 12, 1997, the Division approved the Fasken location and denied the application of Mewbourne. Mewbourne has filed its application for hearing *de novo* which is currently set for hearing on October 30, 1997.

6. On September 30, 1997, at the request of Mewbourne, the Division issued a Subpoena Duces Tecum directing Texaco to appear at the Division’s Santa Fe Office on October 9, 1997 and produce numerous documents, records and records concerning its E. J. Levers Fed. “NCT-1” Well No. 2.

ARGUMENT

7. Texaco requests that this subpoena be quashed because the data sought by Mewbourne is:

- (a) Not pertinent to any issue involved in either Mewbourne’s Case No. 11723 or Fasken’s Case No. 11755;
- (b) Publicly available petroleum geologic and petroleum engineering data from the records of the Oil Conservation Division, Dwights and other public

files accessible to Mewbourne; and/or

- (c) Proprietary data that is not subject to discovery.

**MEWBOURNE'S SUBPOENA SEEKS DATA WHICH IS NOT
PERTINENT TO ANY ISSUE IN CASES 11723 OR 11755**

8. Subpoena power is granted to the Division by the Oil and Gas Act. This statute authorizes the Division "to require the production of books, papers and records in any proceeding before the Commission or Division." However, this Act also imposes specific limitations on this power and provides that "... nothing herein contained shall be construed as requiring any person to produce any books, papers or records or to testify in response to any inquiry, **not pertinent to some question ... lawfully before the Commission** or Division or court for determination." NMSA 1978 § 70-2-8 (Emphasis added).

9. Discovery, including document production, has become a weapon of harassment in civil proceedings. This subpoena appears to be nothing more than an effort to move this type of harassment into the administrative practice before the Commission. Cases 11723 and 11755 only involve two proposed unorthodox well locations in the Morrow formation and a non-standard spacing unit in a Section offsetting the tract on which the Texaco E. J. Levers well is located. None of the information sought by this subpoena is pertinent to whether Mewbourne should be allowed to drill at an unorthodox well location which encroaches on the Texaco tract. The subpoena should be quashed.

**MEWBOURNE SEEKS DATA WHICH IS
AVAILABLE TO IT FROM PUBLIC SOURCES**

10. The information which Mewbourne seeks by subpoena is available to it in the records of the Oil Conservation Division, the New Mexico Engineering Committee, Dwight's and other public sources. Texaco should not be required to produce public documents when Mewbourne is equally capable of obtaining them on its own. *United Nuclear Corp. v. General Atomic Co.*, 96 N.M. 155 (1980), appeal dismissed, 101 S. Ct. 1966 (1981).

**MEWBOURNE SEEKS INFORMATION WHICH IS
INTERPRETATIVE AND PROPRIETARY**

11. Mewbourne seeks Texaco's proprietary estimate of the reserves under Section 12. Not only is this information of no pertinence to the issues in these cases, it is the type of interpretative data which the Commission has not required be produced by operators to their competitors. Mewbourne is not entitled to Texaco's internal reserve estimates. It may obtain data from public sources and make its own estimates of the reserves under its acreage or of any offsetting tract. Mewbourne should be required to do so.

12. The subpoena should be quashed because it represents undue burden on Texaco to contribute extraordinary amounts of time, effort and expense to the collection of data which is otherwise available to Mewbourne.

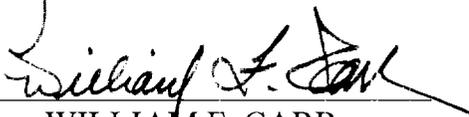
13. The subpoena should be quashed because it is an abuse of the Division's

subpoena authority, does not seek information which is pertinent to the issues in Cases 11723 and 11755, and the Division should not be party to this type of harassment.

Respectfully submitted,

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

By:



WILLIAM F. CARR

Post Office Box 2208

Santa Fe, New Mexico 87504-22078

ATTORNEYS FOR TEXACO
EXPLORATION AND PRODUCTION INC.

CERTIFICATE OF SERVICE

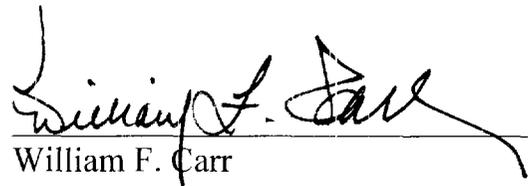
I hereby certify that a copy of the foregoing Texaco Exploration and Production Inc.'s Motion to Quash Subpoena Duces Tecum was hand-delivered this 6th day of October, 1997 to the following counsel of record:

Rand Carroll, Esq.
Oil Conservation Division
2040 South Pacheco Street
Santa Fe, New Mexico 87505

Lyn Hebert, Esq.
Oil Conservation Division
New Mexico Energy, Minerals
& Natural Resources
2040 South Pacheco Street
Santa Fe, New Mexico 87505

James Bruce, Esq.
612 Old Santa Fe Trail
Suite B
Santa Fe, New Mexico 87501

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
117 North Guadalupe Street
Santa Fe, New Mexico 87501


William F. Carr