

JAMES BRUCE
ATTORNEY AT LAW

POST OFFICE BOX 1056
SANTA FE, NEW MEXICO 87504

2005 MAY 13 AM 11 56

369 MONTEZUMA, NO. 213
SANTA FE, NEW MEXICO 87501

(505) 982-2043 (Phone)
(505) 660-6612 (Cell)
(505) 982-2151 (Fax)

jamesbruc@aol.com

May 13, 2005

Hand delivered

Florene Davidson
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Case No. 13492/Mewbourne Oil Company

Dear Florene:

Enclosed are an original and two copies of Mewbourne Oil Company's response to motion to dismiss in the above matter.

Very truly yours,



James Bruce

Attorney for Mewbourne Oil Company

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

APPLICATION OF MEWBOURNE OIL
COMPANY FOR CANCELLATION OF A
DRILLING PERMIT AND APPROVAL
OF A DRILLING PERMIT, LEA COUNTY,
NEW MEXICO.

2005 MAY 13 AM 11 56

Case No. 13,492

**RESPONSE OF MEWBOURNE OIL COMPANY
IN OPPOSITION TO MOTION TO DISMISS**

Mewbourne Oil Company ("Mewbourne"), for its response to the motion to dismiss filed by Chesapeake Operating, Inc. ("Chesapeake"), states:

A. BACKGROUND.

1. Mewbourne has filed an application with the Division to cancel two applications for permit to drill ("APD's") filed by Chesapeake Operating, Inc. ("Chesapeake"), covering the following described acreage in Section 4, Township 21 South, Range 35 East, N.M.P.M.:

- (a) One covering the S $\frac{1}{2}$ of irregular Section 4; and
- (b) One covering Lots 1, 2, 7-10, 15, and 16 of Section 4.

In addition, Mewbourne requests the Division to approve Mewbourne's APD, covering Lots 9, 10, 15, 16, and the SE $\frac{1}{4}$ of Section 4.

2. One of Chesapeake's proposed wells is in the SE $\frac{1}{4}$ of Section 4, and one is in Lots 9, 10, 15, and 16 of Section 4. Chesapeake owns no interest in Mewbourne's proposed well unit.

3. Chesapeake has filed an application to force pool the S $\frac{1}{2}$ of Section 4 (Case No. 13,493).

WTD 5/11/05

B. PRIDE/YATES DECISION.

1. Chesapeake asserts that the Pride/Yates order (Order No. R-12108-C) is controlling. Mewbourne agrees that the order is applicable, but asserts that Chesapeake misconstrues and misrepresents that order. The Commission, in that order, decided two main issues: (i) an applicant for an APD must have a good faith claim to title in the proposed well unit. **Finding Paragraph 8(e)** (relying on Order No. R-11700-B); and (ii) an interest owner within the proposed well unit may file an application to cancel an approved APD if it believes that a different unit orientation is proper. **Finding Paragraph 8(i).**

2. Pursuant to Finding Paragraph 8(i) of Order No. R-12108-C, Mewbourne has filed its application to cancel Chesapeake's APD's. (Mewbourne does not need to pool its proposed well unit, because all interest owners in its well unit have entered into an operating agreement.) In its motion, Chesapeake itself states that the issues to be decided are "compulsory pooling and *spacing unit orientation*." Mewbourne agrees, but assuming that spacing unit orientation is decided in Mewbourne's favor, then Chesapeake's APD's must be canceled. Therefore, Mewbourne's application is proper, and must be heard.

C. ORDER NO. R-12343 MANDATES A HEARING.

1. Chesapeake asserts that Order No. R-12343, which denied Mewbourne's request for an emergency order in this case, requires dismissal. Again, that is incorrect: Mewbourne's emergency application requested that Chesapeake's APD's be vacated "pending a full hearing" on this case and on Chesapeake's pooling case. Order No. R-12343 merely denied that request.¹ A full evidentiary hearing has not been held in this matter. Apparently Chesapeake wants to do away with an evidentiary hearing, which will show that the correlative rights of Mewbourne and

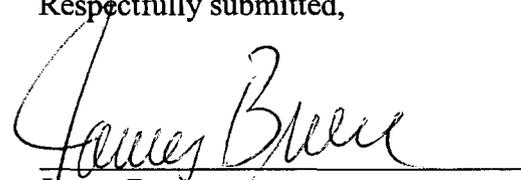
¹ Even if the Division had granted Mewbourne an emergency order, it would have been valid for only 15 days, and a subsequent evidentiary hearing would have been required. **Division Rule 1202.A.**

its working interest partners, Kaiser-Francis Oil Company and Samson Resources Company, are being violated.

2. More importantly, Order No. R-12343 also states that Mewbourne did not prove that “cancellation of Chesapeake’s APD **prior to hearing of the merits of this application** is necessary.” Clearly, a subsequent evidentiary hearing on Mewbourne’s application is required by the very terms of the order relied on by Chesapeake.

WHEREFORE, Mewbourne requests that the Division deny Chesapeake’s motion, and proceed to an evidentiary hearing.

Respectfully submitted,

A handwritten signature in cursive script that reads "James Bruce". The signature is written in black ink and is positioned above a horizontal line.

James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

Attorney for Mewbourne Oil Company

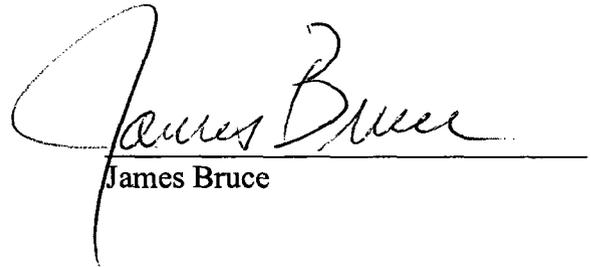
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record via facsimile transmission this 13th day of May, 2005:

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

J. Scott Hall
Miller Stratvert P.A.
P.O. Box 1986
Santa Fe, New Mexico 87504
Fax: (505) 989-9857

Gail MacQuesten
Oil Conservation Division
1220 South St. Francis Drive
Fax: (505) 476-3462


James Bruce