

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

APPLICATION OF MEWBOURNE OIL COMPANY  
FOR A NON-STANDARD OIL SPACING AND  
PRORATION UNIT AND COMPULSORY  
POOLING, EDDY COUNTY, NEW MEXICO.

Case No. 16183

PRE-HEARING STATEMENT

Jalapeno Corporation ("Jalapeno") provides this Pre-Hearing Statement for the  
Division hearing as required by Rule 19.15.4.13B NMAC.

APPEARANCES

APPLICANT

Mewbourne Oil Co.

ATTORNEY

James Bruce  
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Santa Fe, NM 87504  
[jamesbruc@aol.com](mailto:jamesbruc@aol.com)

OPPONENTS

Jalapeno Corporation

ATTORNEY

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EOG A Resources, Inc.  
EOG M Resources, Inc.  
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### **STATEMENT OF THE CASE**

Mewbourne Oil Company ("Mewbourne") applies for an order from the Division pooling all the uncommitted interests of Jalapeno and others across separate existing 40 acre oil spacing units into a 320 acre project area or spacing unit being the S2N2 of Section 24 and the S2N2 of Section 23 Township 18 South, Range 30 East, NMPM, in Eddy County, New Mexico. The applicant proposes to drill the Virgo 24/23 B2HE Fed Com. Well #1H to test the Bone Spring formation. It will be a horizontal well with surface location in Section 24 and a terminus in Section 23.

### **MOTION TO DISMISS**

Jalapeno moves to dismiss the application to force pool it on the grounds:

Statutory force pooling is not available or authorized against an owner in a spacing unit who has voluntarily agreed to pool its interest and to participate in its pro rata share of the cost of drilling and completing the subject well. NMSA 1978 § 70-2-17(C). Division orders pooling interests in force pooling applications routinely pool "all uncommitted interests," even in cases filed by Mewbourne which seek an order pooling all mineral interest owners, irrespective of the fact that some owners may have already committed their interests to the well at issue in the application. See Order No. R-14053-B, application of Matador Production Co.; Case No. 15038, Application of Mewbourne, and Order R-13751, limiting the force pooling order to "all uncommitted interests." To allow a party to force pool committed interest owners would subvert the rule requiring an applicant to seek voluntary agreement as a condition of prosecuting a force pooling application.

Jalapeno and the applicant have been in communication since July 26, 2016 when Mewbourne proposed Bone Spring wells in subject Sections 23 and 24. Jalapeno has signed and mailed to Mewbourne executed AFEs including covering the Virgo 24/23 B2HE Fed. Com 1H well. A copy of Jalapeno's May 21, 2018 letter to Mewbourne transmitting the signed AFEs is attached as Exhibit A. Jalapeno has agreed to pool its interests and participate in the well.

Since agreement between the parties exists there is no basis for force pooling Jalapeno. The application should be dismissed as to Jalapeno.

Mewbourne seeks to force pool Jalapeno because Jalapeno will not agree to Mewbourne's proposed JOA, and would not agree to sell its acreage at below market rates. Mewbourne's position reflects bad faith negotiations where Mewbourne attempts to use the threat of force pooling to coerce Jalapeno, even though Jalapeno has agreed to participate in the well. The force pooling procedure should not be used as a bludgeon, and the Division should deny the application for failure of Mewbourne to engage in good faith negotiations.

**JALAPENO CONTENDS THE APPLICATION SHOULD BE DENIED**

Jalapeno contends the application should be denied for the following reasons:

1. The Division lacks the authority under the current powers granted to it by the New Mexico Legislature to approve Mewbourne's compulsory pooling application for a requested project area, non-standard oil spacing and proration unit that comprises eight (8) complete, contiguous and existing 40 acre oil spacing units for a horizontal well in the Bone Spring formation. If the application were granted owners of the separate

existing spacing units will be precluded from operating and developing their leases and suffer loss of their correlative rights.

2. If not others, at least interest owners Phoebe Jane Welch, address in California, and Phoebe Jane Welch III and Sanders Thomas Welch, no address stated, by a pooling order with a 200% risk penalty shall have their property taken in violation of their constitutional rights afforded by the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution. These parties lack any effective means to protect those rights in this proceeding. As nonconsenting and force pooled mineral owners their property and correlative rights will be expropriated by the order that applicant requests.

3. Mewbourne cannot meet its burden to support its request for a 200% risk penalty. The Division is obligated to take administrative notice of the relative absence of risk in developing the proposed Bone Spring well in the Delaware Basin of Eddy County. There is no rationale or factual justification for rewarding applicant with a risk penalty to be collected from the share of revenue to which nonconsenting parties are entitled.

4. The Delaware Basin shale play is a resource play extensively developed by horizontal wells and presents a dependable low risk, highly favorable return on investment. In addition, the economics of the majority owner-operator are unfairly enhanced by the revenue attributable to the risk charged interests of the pooled nonconsent owners.

5. The OCD and OCC lack authorization to impose any risk penalty in force pooling proceedings because there is no objective standard for the imposition of risk penalties. *Gadeco, LLC v. Industrial Comm.*, 812 N.W.2d 405, 2012 ND 33 (2012)

("The Commission's decision ... does not explain how it reached the conclusion that the risk penalty could be assessed ... a reviewing court needs to know the reasons ...") As Commission Chairman Catanach observed in Case No. 15363 (de novo) "If there is a method other than just the automatic imposition of 200 percent, I mean a definition of risk, what we're talking about, I would appreciate being guided to that. I haven't found it." Consequently, any assessment of a risk penalty by the Division is arbitrary and capricious.

6. OCD Order No. R-11992, which adopted Rule 19.15.1.35 NMAC (now Rule 19.15.13.8—Charge for Risks), and which in turn adopted a blanket 200% risk factor in compulsory pooling application, unlawfully (a) allows assessment of a risk penalty without requiring the applicant to support the requested penalty with evidence supporting the penalty, and (b) imposes the burden of proof on an opponent of a compulsory pooling application to justify a different risk factor. This is in violation of the legislative mandate set forth in NMSA 1978 § 70-2-17 and contrary to the standard burden of proof rules imposed on the movant in any proceeding.

7. Installation of surface production facilities occurs after an operator has completed a producing well. There is no risk assignable to such construction. Imposition of a risk penalty on such charges is not authorized by NMSA 1978 § 70-2-17(C) and is unlawful.

#### **PROPOSED EVIDENCE**

Jalapeno will present evidence that it has agreed to participate to the extent of its working interest share in the cost of drilling the proposed Bone Spring well. It cannot be ordered force pooled. Jalapeno's evidence will include data establishing that drilling of

the proposed well presents minimal risk which does not justify the requested risk penalty.

<u>WITNESSES</u>	<u>EST. TIME</u>	<u>EXHIBITS</u>
Harvey Yates (operator/landman)	1 hour	5 approx.
Emmons Yates (practical oil man/landman)	45 min.	5 approx.

### **PROCEDURAL MATTERS**

Mewbourne filed a related application, Case No. 16184, but did not notify Jalapeno by certified mail, and did not list Jalapeno as a party to be force pooled even though Jalapeno owns interests in the proposed spacing unit. Had Jalapeno been served, its position would be the same in Case No. 16184 as set forth above.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By /s/ J. E. Gallegos  
J.E. GALLEGOS  
MICHAEL J. CONDON  
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(505) 983-6686  
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[mjc@gallegoslawfim.net](mailto:mjc@gallegoslawfim.net)

*Attorneys for Jalapeno Corporation*



# Jalapeno Corporation

PO Box 1608, Albuquerque, NM. 87103

Ph: 505-242-2050 fax: 505-242-8501

May 21, 2018

Mewbourne Oil Company  
Attn: Mr. Paul Haden  
500 W. Texas, Suite 1020  
Midland, Texas 79701

Dear Mr. Haden:

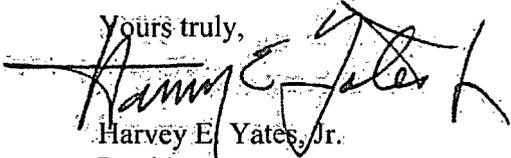
Last week we emailed you two executed AFEs, one covering the Virgo 24/23 B2HE Federal Com 1#H and one covering the Virgo 24/23 B2IL Federal Com # 1H. We also sent you hard copies of the AFEs by certified mail. Both AFEs had been altered by us to reflect our correct interest in each of the wells rather than the incorrect interest shown on the original copies we had received from Mewbourne.

Later that day you emailed us new AFEs for the two wells with our corrected interests. I have executed the two AFEs and attach them to this letter which we email to you. We also are mailing you the executed AFEs with the original of this letter. For the purpose of drilling two Bone Spring wells we are pleased to pool our working interest with that of other parties to drill the Virgo 24/23 B2HE Federal Com 1#H on its spacing unit comprising the S/2 of the N/2 of Sections 23 and 24 of T. 18S/R.30E NMPM and to pool our working interest with that of other parties to drill the Virgo 24/23 B2IL Fed Com 1H on its spacing unit comprising the N/2 of the S/2 of Sections 23 and 24 of T. 18S/R.30E NMPM.

You asked that we indicate our insurance election. We elect to be covered by the Operator's Extra Expense Insurance. Additionally, if thirty days prior to spudding each of the wells, Mewbourne would like to pre-bill this company for this company's proportionate share of that well's estimated drilling and completion costs, we will pay that pre-bill. Alternatively, if Mewbourne would like to simply bill us as well and completion costs arise, that is acceptable also. Of course, we additionally agree to pay our proportionate share of operating costs.

We look forward to the success of the wells.

Yours truly,



Harvey E. Yates, Jr.  
President

**EXHIBIT A**

**MEWBOURNE OIL COMPANY**  
AUTHORIZATION FOR EXPENDITURE

Well Name: <b>Virgo 24/23 B2HE Fed Com #1H</b>		Prospect: <b>Bone Spring</b>	
Location: <b>SL: 2350' FNL &amp; 205' FEL (24); BHL: 1850' FNL &amp; 330' FWL (23)</b>		County: <b>Eddy</b> State: <b>NM</b>	
Sec: <b>24</b>	BLK: <b>          </b>	SURVEY: <b>          </b>	TRAP: <b>18S</b> RING: <b>30E</b> PROP. TVD: <b>8746</b> MID: <b>18665</b>

INTANGIBLE COSTS 0180		CODE	TCP	CODE	CC
Regulatory Permits & Surveys		0180-0100	\$10,000	0180-0200	
Location / Road / Site / Preparation		0180-0105	\$60,000	0180-0205	\$50,000
Location / Restoration		0180-0106	\$175,000	0180-0206	\$30,000
Daywork / Turnkey / Footage Drilling	25 days drlg / 4 days comp @ \$20,000/d	0180-0110	\$534,000	0180-0210	\$85,400
Fuel	1500 gal/day @ 2.63/gal	0180-0114	\$124,700	0180-0214	\$200,000
Mud, Chemical & Additives		0180-0120	\$200,000	0180-0220	
Horizontal Drillout Services	Coil Tbg Drillout			0180-0222	\$220,000
Cementing		0180-0125	\$90,000	0180-0225	\$30,000
Logging & Wireline Services		0180-0130	\$2,000	0180-0230	\$380,000
Casing / Tubing / Snubbing Service		0180-0134	\$20,000	0180-0234	\$80,000
Mud Logging		0180-0137	\$30,000		
Stimulation	49 Stg 19 MM gal / 19 MM/lb			0180-0241	\$3,100,000
Stimulation Rentals & Other				0180-0242	\$200,000
Water & Other		0180-0145	\$50,000	0180-0245	\$600,000
Bits		0180-0148	\$72,000	0180-0248	\$4,000
Inspection & Repair Services		0180-0150	\$40,000	0180-0250	\$5,000
Misc. Air & Pumping Services		0180-0154		0180-0254	\$10,000
Testing & Flowback Services		0180-0158	\$15,000	0180-0258	\$30,000
Completion / Workover Rig				0180-0260	\$10,500
Rig Mobilization		0180-0164	\$120,000		
Transportation		0180-0165	\$20,000	0180-0265	\$20,000
Welding Services		0180-0168	\$5,000	0180-0268	\$15,000
Contract Services & Supervision		0180-0170	\$42,000	0180-0270	\$51,000
Directional Services	Includes Vertical Control	0180-0175	\$210,000		
Equipment Rental		0180-0180	\$205,100	0180-0280	\$30,000
Well / Lease Legal		0180-0184	\$5,000	0180-0284	
Well / Lease Insurance		0180-0185	\$5,700	0180-0285	
Intangible Supplies		0180-0188	\$8,000	0180-0288	\$10,000
Damages		0180-0190	\$5,000	0180-0290	
ROW & Easements		0180-0192		0180-0292	\$1,000
Pipeline Interconnect				0180-0293	
Company Supervision		0180-0195	\$134,400	0180-0295	\$163,200
Overhead Fixed Rate		0180-0196	\$10,000	0180-0296	\$20,000
Well Abandonment		0180-0198		0180-0298	
Contingencies	10% (TCP) 10% (CC)	0180-0199	\$219,300	0180-0299	\$534,500
<b>TOTAL</b>			<b>\$2,412,200</b>		<b>\$5,879,600</b>

TANGIBLE COSTS 0181		CODE	TCP	CODE	CC
Casing (19.1" - 30")		0181-0793			
Casing (10.1" - 19.0")	500' - 13 3/8" 54.5# J-55 ST&C @ \$32.50/ft	0181-0794	\$17,400		
Casing (8.1" - 10.0")	16000' - 9 5/8" 36# J-55 LT&C @ \$24.85/ft	0181-0795	\$42,500		
Casing (6.1" - 8.0")	9000' - 7" 26# P-110 LT&C @ \$21.99/ft	0181-0796	\$211,400		
Casing (4.1" - 6.0")	10400' - 4 1/2" 13.5# P-110 LTC @ \$13.66/ft			0181-0797	\$161,800
Tubing	8230' - 2 7/8" 6.5# L-80 EUE 8rd @ \$4.90/ft			0181-0798	\$43,100
Drilling Head		0181-0860	\$40,000		
Tubing Head & Upper Section				0181-0870	\$30,000
Horizontal Completion Tools	Completion Liner Hanger			0181-0871	\$70,000
Sucker Rods				0181-0876	
Subsurface Equipment				0181-0880	
Artificial Lift Systems	Gas Lift Valves			0181-0884	\$15,000
Pumping Unit				0181-0885	
Surface Pumps & Prime Movers	1/2 VRU/SWD Pump/Circ Pump			0181-0886	\$30,000
Tanks - Oil	3 - 750 bbl Steel			0181-0890	\$43,000
Tanks - Water	2 - 750 bbl Steel Coated			0181-0891	\$40,000
Separation / Treating Equipment	30"x10"x1k# 3 ph/36"x15"x1k# Hor 3ph/Gun bbl			0181-0895	\$42,000
Heater Treaters, Line Heaters	6"x20"x75# HT			0181-0897	\$16,000
Metering Equipment				0181-0898	\$14,000
Line Pipe & Valves - Gathering				0181-0900	\$10,000
Fittings / Valves & Accessories				0181-0906	\$50,000
Cathodic Protection				0181-0908	\$5,000
Electrical Installation				0181-0909	\$25,000
Equipment Installation				0181-0910	\$45,000
Pipeline Construction				0181-0920	\$5,000
<b>TOTAL</b>			<b>\$311,300</b>		<b>\$634,800</b>
<b>SUBTOTAL</b>			<b>\$2,723,500</b>		<b>\$6,514,500</b>

<b>TOTAL WELL COST</b>		<b>\$9,238,000</b>	
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<input checked="" type="checkbox"/> I elect to be covered by Operator's Extra Expense Insurance and pay my proportionate share of the premium. Operator has secured Extra Expense Insurance covering costs of well control, clean up and redrilling as estimated in Line Item 0180-0185.	
<input type="checkbox"/> I elect to purchase my own well control insurance policy.	
If neither box is checked above, non-operating working interest owner elects to be covered by Operator's well control insurance.	
Prepared by: <u>T. Cude</u>	Date: <u>2/6/2018</u>
Company Approval: <u><i>T. Cude</i></u>	Date: <u>2/6/2018</u>
Joint Owner Interest: <u>0.46785000%</u> Amount: <u>\$43,219.98</u>	Signature: <u><i>T. Cude</i></u> <u>2/6/18</u>
Joint Owner Name: <u>Jalapeno Corporation</u>	

**MEWBOURNE OIL COMPANY**  
AUTHORIZATION FOR EXPENDITURE

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Sec: <b>24</b>	BL: <b>Survey</b>	TWP: <b>18S</b>	RNG: <b>30E</b> Prop. ID: <b>8767</b> TMD: <b>18785</b>

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Fuel 1500 gal/day @ 2.63/gal.	0180-0114	\$124,700	0180-0214	\$200,000
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ROW & Easements	0180-0192		0180-0292	\$1,000
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<b>TOTAL</b>		<b>\$2,412,200</b>		<b>\$5,879,600</b>

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Tubing Head & Upper Section			0181-0870	\$30,000
Horizontal Completion Tools Completion Liner Hanger			0181-0871	\$70,000
Sucker Rods			0181-0876	
Subsurface Equipment			0181-0880	
Artificial Lift Systems Gas Lift Valves			0181-0884	\$15,000
Pumping Unit			0181-0885	
Surface Pumps & Prime Movers 1/2 VRU/SWD Pump/Circ Pump			0181-0888	\$30,000
Tanks - Oil 3 - 750 bbl Steel			0181-0890	\$43,000
Tanks - Water 2 - 750 bbl Steel Coated			0181-0891	\$40,000
Separation / Treating Equipment 30"x10"x11# 3 ph/36"x15"x1# Hor 3ph/Gun bbl			0181-0895	\$42,000
Heater Treaters: Line Heaters 6"x20"x75# HT			0181-0897	\$16,000
Metering Equipment			0181-0898	\$14,000
Line Pipe & Valves - Gathering			0181-0900	\$10,000
Fittings / Valves & Accessories			0181-0906	\$50,000
Cathodic Protection			0181-0908	\$5,000
Electrical Installation			0181-0909	\$25,000
Equipment Installation			0181-0910	\$45,000
Pipeline Construction			0181-0920	\$5,000
<b>TOTAL</b>		<b>\$311,900</b>		<b>\$636,400</b>
<b>SUBTOTAL</b>		<b>\$2,724,100</b>		<b>\$6,516,000</b>

<b>TOTAL WELL COST</b>		<b>\$9,240,100</b>	
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I elect to be covered by Operator's Extra Expense Insurance and pay my proportionate share of the premium. Operator has secured Extra Expense Insurance covering costs of well control, clean up and redrilling as estimated in Line Item 0180-0185.  
 I elect to purchase my own well control insurance policy.

If neither box is checked above, non-operating working interest owner elects to be covered by Operator's well control insurance.

Prepared by: <u>T. Cuda</u>	Date: <u>2/6/2018</u>
Company Approval: <u>M. White</u>	Date: <u>2/6/2018</u>

Joint Owner Interest: <u>0.93570000%</u> Amount: <u>\$86,459.62</u>	
Joint Owner Name: <u>Jalapeño Corporation</u>	

File: Virgo 24-23 B2IL Fed Com #1H AFE.xlsx Revised: 01/31/2018