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JAMES BRUCE

ATTORNEY AT LAW

POST OFFICE BOX 1056
SANTA FE, NEW MEXICO 87504

3304 CAMINO LISA
HYDE PARK ESTATES
SANTA FE, NEW MEXICO 87501

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

August 8, 2000

Florene Davidson
Oil Conservation Division
2040 South Pacheco Street
Santa Fe, New Mexico 87505

Dear Florene:

Enclosed for filing in Case No. 12467 (NM&O Operating Company) is a response to motion to dismiss. This was previously sent by fax to the hearing examiner.

Very truly yours,



James Bruce

Attorney for NM&O
Operating Company

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

APPLICATION OF NM&O OPERATING
COMPANY FOR COMPULSORY POOLING,
RIO ARriba COUNTY, NEW MEXICO.

Case No. 12467

RESPONSE OF APPLICANT IN OPPOSITION
TO MOTION TO DISMISS APPLICATION

I. INTRODUCTION.

NM&O Operating Company ("NM&O") applied for an order pooling all mineral interests in formations developed on 320 acre spacing from the base of the Pictured Cliffs formation to the base of the Dakota formation underlying the E½ of Section 4, Township 25 North, Range 2 West, N.M.P.M., Rio Arriba County, New Mexico. T.H. McElvain Oil & Gas Properties, Inc. ("McElvain") has moved to dismiss NM&O's application, claiming that NM&O has no right to pool the E½ of Section 4 as to formations above the base of the Mesaverde formation.

II. ARGUMENT.

As clearly stated in NM&O's application (attached hereto as Exhibit A), NM&O seeks to re-complete the Dewey Bartlett Well No. 1 in the Dakota formation.¹ NM&O now dismisses that portion of its application regarding depths above the base of the Mesaverde formation, and seeks only to pool formations below the base of the Mesaverde formation. **As a result, NM&O's application is not in conflict with McElvain's pooling orders or applications, which do not apply to formations below the base of the Mesaverde, and McElvain's motion must be denied.**

¹There is currently no Dakota production in the E½ of Section 4.

Moreover, NM&O is a working interest owner in the E½ of Section 4, and has the right to seek to use the Dewey Bartlett Well No. 1 for a Dakota re-completion, just as McElvain has the right to seek to use that well for a Mesaverde re-completion.

McElvain states in its motion that the Dakota is of poor quality in this area. **Motion at p. 5, ¶13.** NM&O disputes that statement, and will show at hearing that re-completing first in the Dakota is preferable to re-completing in the Mesaverde. Obviously, this difference of opinion cannot be determined on a motion to dismiss. Since there are conflicting applications, one for the Mesaverde and one for the Dakota, using same wellbore, the Division must decide which application prevents waste and protects correlative rights. Therefore, this matter must go to hearing.

WHEREFORE, Applicant requests that the Division deny McElvain's motion.

Respectfully submitted,



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

Attorney for NM&O Operating Company

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading was served by facsimile transmission this 8th day of August, 2000 upon the following counsel of record:

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

Marilyn S. Hebert
Oil Conservation Division
2040 South Pacheco Street
Santa Fe, New Mexico 87504
(505) 827-8177



James Bruce

Spencer Cross, Attorney
8018 NDCBU
Taos, New Mexico 87571
505.758.5090

Via Facsimile and U.S. Mail

08.08.00

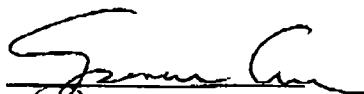
Ms. Lori Wrotenbery
Director
Oil Conservation Division
New Mexico Department of Energy
Minerals and Natural Resources
20405 South Pacheco Street
Santa Fe, New Mexico 87505

Re: Case Numbers 12452, 12467 Before the Oil Conservation Division April 10, 2000

Dear Ms. Wrotenbery:

This letter serves as a declaration of intent by Mr. Dennis Hopper to enter into a gas lease with McElvain Oil covering all formations developed on the 320 acre spacing from the base of the Pictured Cliffs formation to the base of the Dakota formation underlying the E1/2 of Section 4, Township 25 North, Range 2 West, N.M.P.M. Rio Arriba County, New Mexico. Mr. Hopper has a 24.9% BPO & APO interest in all located in all gas located in this spacing unit and sole ownership of 1/2 of the unit's surface. The gas lease will be signed upon the final approval of a draft surface use agreement being negotiated by Mr. Hopper and McElvain. As the representative for Mr. Hopper in this matter I would note that McElvain Oil has been diligent in negotiating a surface use agreement throughout its dealings with Mr. Hopper.

Sincerely,



Spencer Cross

Attorney for Dennis Hopper