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JASON KELLAHIN (RETIRED 1991)

April 6, 1998

Mr. David R. Catanach
Hearing Examiner

HAND DELIVERED

Rand Carroll, Esq.
Division Attorney

HAND DELIVERED

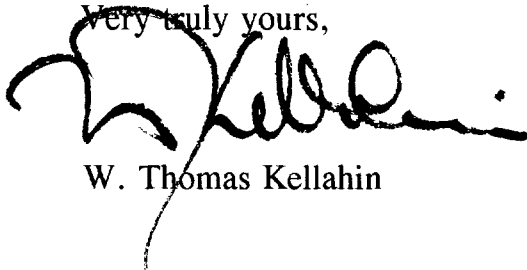
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: NMOCD Case 11877
Application of Fasken Land and Minerals, Ltd
for compulsory pooling and an
unorthodox oil well location,
Eddy County, New Mexico

Dear Gentlemen:

On behalf of Fasken Land and Minerals, Ltd, please find enclosed our Reply to Redstone's latest motion to dismiss.

Very truly yours,



W. Thomas Kellahin

cc: James Bruce, Esq.
Attorney for Redstone Oil & Gas Company
Fasken Oil and Ranch, Ltd.

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

**IN THE MATTER OF THE APPLICATION
OF FASKEN LAND AND MINERALS, LTD.
FOR COMPULSORY POOLING AND AN
UNORTHODOX WELL LOCATION,
EDDY COUNTY, NEW MEXICO**

CASE 11877

**FASKEN LAND AND MINERALS, LTD'S
REPLY TO
REDSTONE OIL & GAS COMPANY'S
MOTION TO DISMISS**

FASKEN LAND AND MINERALS, LTD. ("Fasken") by its attorneys, Kellahin & Kellahin, hereby replies to the Motion to Dismiss filed by Redstone Oil & Gas Company ("Redstone") on April 1, 1998 and asks the Division to deny the Motion to Dismiss

As grounds for its reply, Fasken states the following:

Redstone has moved to dismiss Fasken's compulsory pooling case based upon a contention that Fasken "cannot maintain any judicial action in New Mexico until it has properly registered with the New Mexico Secretary of State as a foreign limited partnership." Redstone is wrong. Its motion must be denied because it has relied upon a misapplication of Section 54-2-51 (1977 Supp.).

Incorrectly, Redstone would like Section 54-2-51 (1997 Supp) to read as follows:

"A foreign limited partnership transacting business in New Mexico may not maintain any action, suit or proceeding in any *judicial action in any court or quasi judicial action before any administrative agency in New Mexico* until it has registered in this state."

In fact, Section 54-2-51 (1997 Supp.) is specifically limited to matters in any **court** of this state and has absolutely nothing to do with a quasi "judicial action" before an administrative agency. Section 54-2-51 (1997 Supp.) states as follows:

"A. A foreign limited partnership transacting business in New Mexico may not maintain any action, suit or proceeding in any **court of this state** until it has registered in this state."

In addition, the statute states:

"B. The failure of a foreign limited partnership to register in this state does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action suit or proceeding in any court of this state."

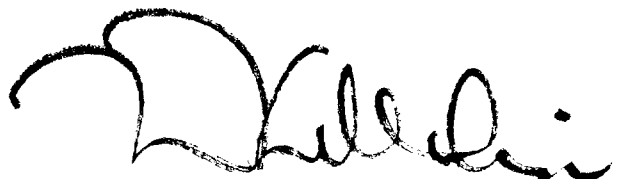
Fasken Land and Minerals, Ltd. ("Fasken") is in compliance with the Division rules and regulations and has standing to be an applicant before this administrative agency in a compulsory pooling case. It is undisputed and admitted by Redstone that Fasken is an owner with the right to drill a well in Section 12. In order to give the Division jurisdiction of Case 11877, Section 70-2-17.C NMSA 1979 only requires that a party be such an "owner". Fasken is such an owner.

In addition, 19 NMAC 15.A.7.63 defines "owner" as "the person who has the right to drill....." It is indisputable that Fasken is an owner with the right to drill. It is also indisputable that the statute relied upon by Redstone deals with actions in New Mexico courts and not administrative proceedings before this agency.

CONCLUSION

Redstone's motion to dismiss is frivolous. The Division is not a "court in New Mexico". Redstone's motion is devoid of any legal authority to support its novel theory. It has untimely filed this motion almost two months after this matter was heard by the Division. By failing to timely raise this objection, Redstone has waived this matter. Fasken has repeatedly submitted to the jurisdiction of the Oil Conservation Division in this and other cases and has been recognized by the Division in this and other cases as having proper standing to bring and defend actions before the Division. Accordingly, the Division has no other choice but to deny Redstone's motion to dismiss and to proceed with entering an order on Fasken's compulsory pooling application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W. Thomas Kellahin', written over a horizontal line.

W. Thomas Kellahin

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing pleading was mailed by regular mail to opposing counsel this 6th day of April, 1998 as follows:

James Bruce, Esq.
P. O. Box 1056
Santa Fe, New Mexico 87504

A handwritten signature in black ink, appearing to read 'W. Thomas Kellahin', written over a horizontal line.

W. Thomas Kellahin