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W. THOMAS KELLAHIN*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION
RECOGNIZED SPECIALIST IN THE AREA OF
NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

February 13, 1998

HAND DELIVERED

Mr. Michael E. Stogner
Hearing Examiner

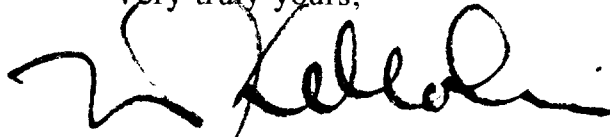
Rand L. Carroll, Esq.
Division Attorney
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: **MOTION TO DISMISS**
NMOCD Case 11927
Application of Redstone Oil & Gas Company
for compulsory pooling and an unorthodox gas well location
Eddy County, New Mexico

Gentlemen:

On behalf of Fasken Land and Minerals, Ltd., an adversely affected interest owner, please find enclosed our MOTION TO DISMISS the referenced case filed by Redstone Oil & Gas Company on January 26, 1998. This case is currently set on the Examiner's Docket scheduled for February 19, 1998.

Very truly yours,



W. Thomas Kellahin

cc: James Bruce, Esq.
Attorney for Redstone Oil & Gas Company
Fasken Land and Minerals, Ltd.
Attn: Sally Kvasnicka

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

IN THE MATTER OF THE APPLICATION
OF REDSTONE OIL & GAS INC. FOR
COMPULSORY POOLING AND AN UNORTHODOX
WELL LOCATION, EDDY COUNTY, NEW MEXICO

CASE NO. 11926

MOTION TO DISMISS

Comes now Fasken Land and Minerals, Ltd. ("Fasken"), by its attorneys, Kellahin and Kellahin, enters its appearance in this case as an interested party in opposition to the applicant and moves the Division to dismiss this case because the applicant has violated Section 70-2-17(C) NMSA 1978 by instituting an application for compulsory pooling prior to proposing the well:

And in support states:

RELEVANT FACTS

(1) The working interest ownership within the Morrow formation in the E/2 of Section 12, T23S, R24E, NMPM, Eddy County, New Mexico is subject to a January 1, 1997 Joint Operating Agreement in which Fasken has a working interest and which is currently operated by Redstone while Fasken owns 100% of the working interest ownership in the W/2 of Section 12 which is **not** subject to this contract.

(2) On September 9, 1997, Fasken proposed to Redstone and the other working interest owners in the E/2 of Section 12 that Fasken would drill and operate its Carnero Federal Well No. 1 to be located in Unit C of Section 12 and dedicated to a standard 640-acre gas spacing unit for any production from the Rock Tank-Upper Morrow Gas Pool and/or the Rock Tank Lower Morrow Gas Pool.

(3) On October 16, 1997, Fasken filed a compulsory pooling application which was docketed as Case 11877 and set for hearing on November 6, 1997.

(4) At Redstone's request, the case was continued to December 4, 1997 and then again continued until it was finally heard on February 5, 1998.

(5) On January 26, 1998, counsel for Redstone Oil & Gas Company ("Redstone") filed a compulsory pooling application with the Division seeking to pool acreage within Section 12, T23S, R24E, NMPM, Eddy County, New Mexico for Redstone's proposed Rock Tank Well No 5.

(6) On February 9, 1998, Redstone sent a written well proposal for this well to Fasken and the other working interest owners. **See Exhibit 1 attached.**

(7) Prior to February 9, 1998, Redstone made no effort either orally or in writing to propose its well to Fasken and the other affected owners.

(8) On February 5, 1998, at the hearing of Fasken's case, Redstone testified that they had only recently (within days) come up with their well location and compulsory pooling idea.

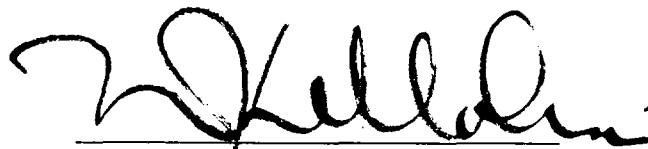
ARGUMENT

Contrary to the custom and practice before the Division and in violation of Section 70-2-17(C) NMSA (1978), Redstone has instituted compulsory action against Fasken without first undertaking **any** effort to form a spacing unit on a voluntary basis for the drilling of Redstone's well. Section 70-2-17(C) NMSA 1978 is very specific in its requirement that the compulsory pooling authority of the Division can only be exercised in those instances where the parties have not agreed to voluntarily pool their interests in a spacing unit for a specifically proposed well on that unit. It is impossible to have any failure to agree prior to any specific well proposal being made by Redstone.

Any compulsory pooling application which is filed before the well is proposed must be dismissed. It is no solution to suggest that this fatal flaw can be fixed by simply continuing the case. Such action simply ignores the requirements of Section 70-2-17(C) NMSA 1978 and will encourage others to use compulsory pooling as a negotiating weapon rather than as a remedy of last resort.

Redstone's actions in this case are egregious. Redstone waited (5) months after Fasken first proposed its well before Redstone proposed its own well. Redstone waited until after the hearing on the Fasken well proposal had taken place before it proposed its own well. Redstone has simply waited too long to propose its well. Redstone is attempting to avoid being subjected to Fasken's pooling application by untimely seeking to create its own pooling application. Redstone's application must be dismissed. Unless this application is dismissed the Division will be establishing a precedent which will allow applicants to avoid complying with Section 70-2-17(C) NMSA 1978.

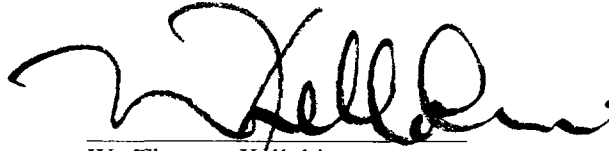
WHEREFORE Fasken Land and Minerals, Ltd. requests that the Division Hearing Examiner grant this motion and dismiss Oil Conservation Division Case 11926.

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

W. Thomas Kellahin
Kellahin & Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87504
(505) 982-4285

CERTIFICATE OF SERVICE

I certify that a copy of this pleading was hand delivered to counsel for applicant this 13th day of February, 1998.



W. Thomas Kellahin



February 9, 1998

TO THE OWNERS ON THE ATTACHED LIST:

Re: Proposed Rock Tank #5
500' FNL & 2.515' FEL Section 12-23S-24E
NMPM, Eddy County, New Mexico

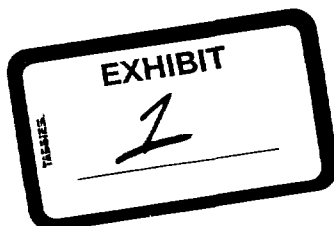
Gentlemen:

Pursuant to the terms of our Operating Agreement dated January 1, 1970 covering all of Section 12-23S-24E as to the Morrow formation, and to our Operating Agreement dated August 1, 1967 covering the Rock Tank Unit, Redstone Oil & Gas Company (Redstone) hereby proposes the drilling of a well at the captioned location. Redstone proposed to drill this well to a depth of 10,500 feet or a depth sufficient to test the Lower Morrow formation, whichever is lesser. Our estimated dry hole cost is \$487,564 and our estimated total well cost is \$717,958. Attached is our AFE for the drilling and completing of this well.

The existing spacing for the Morrow is the 640 acres comprising all of Section 12. As to any gas zones below the top of the Wolfcamp which the Division spaces on 320 acres, Redstone proposes the owners form a spacing unit consisting of the N/2 of Section 12.

In accordance with the above mentioned Operating Agreements, please indicate your election to participate in the above proposal with thirty days from the receipt of this letter by signing and returning one copy of this letter and the AFE to me at your earliest convenience.

8235 DOUGLAS AVENUE, SUITE 1050
DALLAS, TEXAS 75225

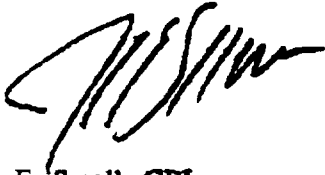


(214) 368-0202
FAX (214) 739-0061

If you have any questions regarding this matter, please advise.

Very truly yours,

REDSTONE OIL & GAS COMPANY



Joe E. Small, CPL
Vice President - Land

THE FOLLOWING ELECTION IS HEREBY MADE:

- ____ 1. We elect to participate in the drilling of the well as described above.
- ____ 2. We elect not to participate in the drilling of the well as described above

By : _____

Name: _____

Date: _____