

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE OF
CONSIDERING:

APPLICATION OF MEWBOURNE OIL
COMPANY FOR AN UNORTHODOX GAS
WELL LOCATION AND A NON-STANDARD
GAS PRORATION UNIT, EDDY COUNTY,
NEW MEXICO.

Case No. 11,723
(*de novo*)

APPLICATION OF FASKEN OIL AND
RANCH, LTD. FOR A NON-STANDARD
GAS PRORATION AND SPACING UNIT
AND TWO ALTERNATE UNORTHODOX GAS
WELL LOCATIONS, EDDY COUNTY,
NEW MEXICO.

Case No. 11,755
(*de novo*)

APPLICATION OF TEXACO EXPLORATION
AND PRODUCTION INC. FOR CLARIFICATION,
OR IN THE ALTERNATIVE, AN EXCEPTION
TO, THE SPECIAL POOL RULES AND
REGULATIONS FOR THE CATCLAW DRAW-MORROW
GAS POOL, EDDY COUNTY, NEW MEXICO.

Case No. 11,808

RESPONSE TO LETTER,
AND MOTION TO STRIKE

Mewbourne Oil Company ("Mewbourne") hereby responds to the letter filed herein by Fasken Land and Minerals, Ltd. and Fasken Oil and Ranch, Ltd. (collectively, "Fasken") on December 22, 1997 ("the Letter"), and moves the Commission for an order striking from the record factual matters alleged in the letter. In support thereof, Mewbourne states:

I. RESPONSE.

Fasken's position in its letter is contradictory at best: It does not want the Commission to consider the operating agreement

between the parties (**Letter at p. 2, ¶¶2-4**), but it also does not want the Commission to consider the geology and engineering evidence presented by the parties (**Letter at p. 4, ¶1**). Fasken's position is not only incorrect, it is contrary to its prior position in this matter.

Both the Mewbourne and Fasken locations are unorthodox, and it is unquestionable that the Division and the Commission have the authority to consider, and approve or deny, the locations. **NMSA §70-2-12.B.(7), (10) (1995 Repl. Pamp.) (the Division has the authority to fix well spacing and locations, and prevent harm to neighboring properties); Division Rule 104.F.(2) (the Division has the authority to grant an exception to the well location requirements of Rules 104.B and 104.C).** In accordance with this authority, the Commission examined the technical evidence and determined that the Mewbourne location is the better location. **Order No. R-10872-B, Finding ¶¶(14), (15).**

Fasken now states that "the relative probability of success in a particular zone has absolutely no bearing on the role of the Commission" in this matter (**Letter at p. 4, ¶1**). However, until the Commission's order was entered, Fasken continuously asserted that (i) its location was the optimum location, (ii) the Commission must focus on the geologic evidence, and (iii) regardless of contractual issues, the Commission must address issues relating to the prevention of waste and the protection of correlative rights. **See, e.g., Fasken's Motion in Limine at pp. 6-7, Fasken's Consolidated Pre-Hearing Statement at p. 3, and Fasken's Proposed**

Order of the Commission at pp. 8-9.¹

Fasken now states that the only factor in well location is "the collective judgment" of the interest owners in the S½ of Section 1, who are bound by contract. However, even if the parties to the operating agreement had unanimously selected one proposed well location in the S½ of Section 1, that location would still need to be approved by the Division or the Commission. **Division Rule 104.F.(2)**. Moreover, evidence in the record shows that 98.53% of the working interest owners in the S½ of Section 1 have voluntarily joined in Mewbourne's well (**Mewbourne Exhibit 2**), while only 55.76% of the working interest owners have voluntarily joined in the Fasken well.² Thus, the collective judgment of the interest owners favors the Mewbourne location.

Based on its power to protect correlative rights and prevent waste, the Commission's order is proper.

II. MOTION TO STRIKE.

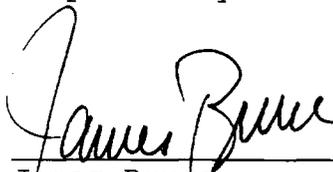
The Letter is based on alleged "facts" not of record. **See Letter at p. 3.** Facts cannot be introduced through the argument of counsel. Therefore, all factual matters alleged in the letter should be struck from the record.

WHEREFORE, Mewbourne requests the Commission to enter its order striking the letter of December 22, 1997 from the record in these cases.

¹In response to Fasken's Motion in *Limine*, the Commission, at the hearing, held that it would consider factors such as geology and engineering. Fasken did not object.

²Mewbourne, and Messrs. Mayer and Haynie, went non-consent in the Fasken well.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 17th day of January, 1998:

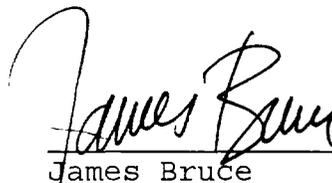
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