

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION 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

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

RESPONSE IN OPPOSITION TO FASKEN'S MOTION FOR JOINDER
AND RENEWED MOTION TO DISMISS

Mewbourne Oil Company ("Mewbourne") submits the following response in opposition to the Motion for Joinder filed by Fasken Oil and Ranch, Ltd. ("Fasken Oil"), and renews its request that Case 11,755 be dismissed. In support thereof, Mewbourne states:

A. Fasken Oil is not the Operator.

1. Mewbourne and Fasken Land and Minerals, Ltd. ("Fasken Land") are parties to an Operating Agreement dated April 1, 1970.

2. The Operating Agreement requires the operator to be an interest owner in the lands covered by the agreement. Evidence in the record shows that Fasken Oil is not an interest owner, and thus cannot be the operator.

3. In early 1997, Fasken Oil informed Mewbourne that it was operator under the Operating Agreement. Mewbourne subsequently determined that Fasken Oil was not an interest owner, and thus was not the operator.

4. Mewbourne never acquiesced to Fasken Oil as operator. See Affidavit of Steve Cobb, attached hereto as Exhibit A.

5. The Operating Agreement does not allow an interest owner to delegate operations to a non-interest owner. Thus, Fasken Land's attempt to name Fasken Oil as operator is of no effect.

B. Dismissal of Fasken Oil's Application.

1. Fasken Oil has requested the joinder of Fasken Land as an applicant in Case No. 11,755. This is an admission that Fasken Oil is not an interest owner under the Operating Agreement, and that Fasken Oil is not a proper applicant.

2. As noted above, the Operating Agreement does not allow an interest owner to delegate operatorship to a non-interest owner. Again, this means that Fasken Oil is not a proper applicant in Case 11,755.

3. Since Fasken Oil is not a proper applicant, Case 11,755 has not been properly published under Division Rule 1205.B. Moreover, notice has not been published naming Fasken Land as an applicant.

4. Finally, Mewbourne asserts that Case 11,755 must be advertised, and personal notice given, as an application for simultaneous dedication. Since that was not done, notice is defective.

WHEREFORE, Mewbourne requests that Case 11,755 be dismissed.



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Attorney for Mewbourne Oil
Company

cc: Counsel of record (via fax)

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

CASE NO. 11755

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

CASE NO. 11723

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

**AFFIDAVIT
OF
STEVE COBB**

**STATE OF TEXAS §
 §
COUNTY OF MIDLAND §**

Before me, the undersigned authority, personally appeared Steve Cobb who being first duly sworn upon his oath, deposes and states:

1. My name is Steve Cobb. I am over the age of 18 and have personal knowledge of the matters stated herein.
2. I am the District Landman for Mewbourne Oil Company ("Mewbourne") with responsibility for Mewbourne's petroleum land matters within the State of New Mexico.
3. David Fasken and certain of his successors in interest have owned beneficial interests in oil and gas leasehold rights in Section 1, Township 21 South, Range 25 East NMPM Eddy County, New Mexico since on or about April 1, 1970 pursuant to the terms and conditions of that certain Operating Agreement of April 1, 1970 among Monsanto Company as Operator and David Fasken and others as parties.



4. Mewbourne acquired its first interest in said Section 1 in November, 1996, more than a quarter-century after David Fasken acquired his interest. As a party to the Operating Agreement, on or about January 20, 1997, Mewbourne proposed to the other parties thereto the drilling of a well to test the Morrow formation at the location 2,310 feet from the east line and 660 feet from the south line of said Section 1. Shortly thereafter, Ms. Sally M. Kvasnicka, land manager for Fasken Oil and Ranch, Ltd. informed me that David Fasken had succeeded Monsanto Company as Operator and that Fasken Oil and Ranch, Ltd. as a successor in interest to David Fasken was now the duly incumbent Operator.

5. Since David Fasken and certain of his affiliated successors appeared to have owned an interest in Section 1 for such an extended period of time, especially compared to Mewbourne's brief period of ownership, and considering Mewbourne's own lack of any documentation dealing with succession of operatorship, I took Ms. Kvasnicka's representations at face value.

6. Later, during our preparation for the April 3, 1997 hearing before the OCD, while studying a title opinion prepared by counsel for Mewbourne, I learned that Fasken Oil and Ranch, Ltd., contrary to Ms. Kvasnicka's representations, could not be the Operator because it did not own an interest in said Section 1.

7. At no time did Mewbourne acquiesce to the proposition that a person or entity that does not own an interest in said Section 1 can nevertheless by the duly incumbent Operator under the authority of the Operating Agreement.

8. At no time did Mewbourne acquiesce to the proposition that a person or entity that does not own an interest in said Section 1, and is not for any purpose an agent, servant, employee or representative of an owner of an interest, can nevertheless make application in its own name for relief and authority before the Oil Conservation Division.

9. Fasken Oil and Ranch, Ltd. on or about April 25, 1997 provided Mewbourne with a copy of a Management Agreement between it and Fasken Land and Minerals, Ltd. pursuant to which Fasken Oil and Ranch, Ltd. allegedly performs various services for Fasken Land and Minerals, Ltd. By the express terms of the Management Agreement between those two Fasken entities, at Section 3.1 thereof, Fasken Oil and Ranch, Ltd. "shall not be deemed for any purpose to be an agent, servant, employee or representative of [Fasken Land and Minerals, Ltd.]"

10. The Operating Agreement of April 1, 1970 covering said Section 1 does not give any party to the Agreement the right or power to delegate to a non-party to the Agreement the authority to operate oil and gas wells subject to the Agreement.

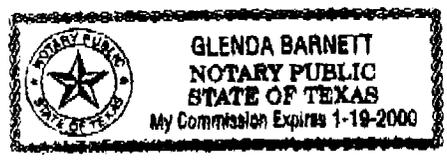
11. There is no mention or statement in any of the many pleadings filed by Fasken Oil and Ranch, Ltd. before the OCD in the captioned dockets, prior to Fasken's Motion for Joinder, to the effect that Fasken Oil and Ranch, Ltd. appears as a representative of, or on behalf of, Fasken Land and Minerals, Ltd.

12. Prior to the Motion for Joinder, Fasken Oil and Ranch, Ltd. filed all of its pleadings in the captioned dockets in its own name, representing that it had the right and authority to do so.

13. Published notice of the applications of Fasken Oil and Ranch, Ltd. do not name Fasken Land and Minerals, Ltd. as an applicant or petitioner before the OCD.

Steve Cobb
Steve Cobb

SUBSCRIBED AND SWORN TO before me this 29th day of April, 1997 by Steve Cobb



Glenda Barnett
Notary Public, State of Texas

My Commission Expires: 1-19-2000