

# Correspondence

*Revovo*

Case No. 11755

Oct. 1997



11755 dipolo

P. O. BOX 220 • 700 N. GRANT SUITE 890 • ODessa, TEXAS 79760-0220 • (915) 580-6722 • (915) 685-3647 • FAX (915) 333-8801

**VIA FACSIMILE 915-587-0888**  
and 1st Class Mail

October 29, 1997

Re: Avalon Federal Com. 1 well no. 2  
Section 1, T21S, R28E  
Eddy County, New Mexico  
(Catchaw Draw Morrow)

Ms. Sely M. Kveanicks  
Fasken Land and Minerals, Ltd.  
Fasken Oil and Fench, Ltd.  
303 West 7th, Suite 1900  
Midland, Texas 79701

Dear Ms. Kveanicks:

ICA is in receipt of your October 24, 1997, correspondence in which you have, once again, attempted to confuse an already complex issue regarding the matters between Fasken, et al and Mewbourne, et al with respect to disagreement over Morrow location in Section 1 captioned.

You make reference in the first page of your letter to certain recent working interest owner meetings which have been held to hopefully respond to engineering and geologic questions to resolve this matter, however, we feel that your letter misstates the obvious as it is ICA's opinion after attending said meetings that Fasken's location request is predicated entirely upon their inability to support a Cisco formation test independently of the Morrow location as a "bellout."

It is obvious, from our engineering and geologic examination that Mewbourne's proposed application for drill location is scientifically the better prospect as well as risk engineered for a greater chance of success in the Morrow than the Fasken proposed location.

Therefore, please be advised that ICA continues to support Mewbourne's application for drill position and believes that it is the only logical choice for Morrow location in this dedicated drilling and spacing unit that will allow economic return on investment.

In this regard we have notified the New Mexico Oil Conservation Division by separate correspondence (a copy of which will be addressed to your office) to support the October 30 hearing application by Mewbourne and to facilitate the needed termination to this long dispute regarding exploitation of Cisco formation at the expense of Morrow formation development.

As always though, we look forward to a speedy resolution between Fasken and Mewbourne with respect to the leasehold position involved and should there be any further requirements you may need from ICA regarding this matter, please do not hesitate to address them to my attention for fastest handling.

Sincerely,

Curtis N. Leonard  
Counsel/Land Manager

128

cc: Matador Petroleum Corporation  
8340 Meadow Road, Suite 158  
Pecan Creek  
Dallas, Texas 75251  
Attn: Mona Ables

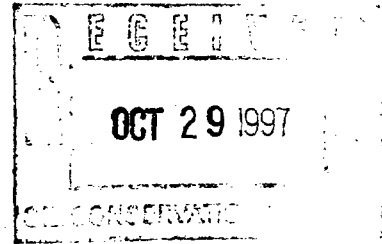
Newbourn Oil Company  
Attn: Steve Cobb  
500 W. Texas, Suite 1020  
Midland, Texas 79701  
fax 916-635-4170

**JAMES BRUCE**  
ATTORNEY AT LAW

POST OFFICE BOX 1056  
SANTA FE, NEW MEXICO 87504

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SANTA FE, NEW MEXICO 87501

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



October 28, 1997

Via Fax and U.S. Mail

Mr. William J. LeMay  
Oil Conservation Commission  
2040 South Pacheco Street  
Santa Fe, New Mexico 87505

Re: Cases 11723/11755 (de novo) (Fasken/Mewbourne)

Dear Mr. LeMay:

Enclosed is Mewbourne's response to Fasken's motion in limine.

Very truly yours,

James Bruce

Attorney for Mewbourne  
Oil Company

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

**MEWBOURNE OIL COMPANY'S  
RESPONSE IN OPPOSITION TO FASKEN'S MOTION IN LIMINE,  
AND MEWBOURNE OIL COMPANY'S MOTION TO DISMISS**

Mewbourne Oil Company ("Mewbourne") submits the following response in opposition to the Motion in Limine filed by Fasken Oil and Ranch, Ltd. ("Fasken Oil") and Fasken Land and Minerals, Ltd. ("Fasken Land"). Mewbourne also moves that Case 11,755 be dismissed. In support thereof, Mewbourne states:

**A. FACTS.**

Mewbourne filed an application for a non-standard Morrow well unit comprised of the S½ of irregular Section 1, Township 21 South, Range 25 East, for a well to be located at an unorthodox location

660 feet FSL and 2310 feet FEL. The well is in the Catclaw Draw Morrow-Gas Pool, which has special pool rules requiring 640 acre spacing, with wells to be located no closer than 1650 feet to the outer boundaries of the well unit. The middle one-third of Section 1 is unleased federal minerals, and thus cannot be dedicated to the well. As a result, the non-standard unit is required in order to drill the well.

The S $\frac{1}{2}$  of Section 1 is subject to an Operating Agreement dated April 1, 1970.<sup>1</sup> Pursuant to the Operating Agreement, Mewbourne proposed a well at the above-described location in January 1997. All working interest owners have either joined in the well or elected to be non-consenting parties. In February 1997, subsequent to Mewbourne's proposal, Fasken proposed a well at an unorthodox location 2080 feet FSL and 750 feet FWL of Section 1.

The Operating Agreement provides that once a well is proposed, a timeline is commenced to implement the drilling of that well. The Operating Agreement states that, after the 30 day election period ends:

[The consenting parties] **shall**...actually commence work on the proposed operation and complete it with due diligence.

**Operating Agreement, §12** (emphasis added). There is no question that Mewbourne proposed the first Morrow well under the Operating Agreement. As a result, the parties must proceed to drill that well, and Mewbourne's application is the only application properly

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<sup>1</sup>Mewbourne Exhibit 3 at the Examiner hearing.

before the Commission.<sup>2</sup>

**B. RESPONSE IN OPPOSITION TO MOTION IN LIMINE.**

Fasken Oil and Fasken Land have filed a Motion in Limine, requesting that all evidence of the Operating Agreement be excluded from the Commission hearing, contending that the Commission cannot adjudicate contractual controversies between the parties.

Mewbourne agrees with the general proposition that the Commission cannot adjudicate private contractual disputes. However, that is not the issue before the Commission. Rather, the focus of the Commission's decision is whether either Fasken Oil or Fasken Land has standing to file an application at this time regarding the S½ of Section 1. To make this determination, the Commission must look at the documents under which each party claims the right to drill a well. In Samson Resources Co. v. Oklahoma Corp. Comm'n, 859 P.2d 1118 (Okla. App. 1993), Samson filed an application for an unorthodox well location. Mobil Oil Corporation filed a motion to dismiss, asserting that Samson owned no mineral interest in the land on which the well was to be drilled. Samson asserted that the Commission had no jurisdiction to determine title to property. However, the Oklahoma conservation statutes require an applicant to own a mineral interest or hold the right to drill a well on the subject property. As a result, the Court held that:

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<sup>2</sup>It is immaterial whether Fasken Land is a consenting or a non-consenting party to the well: A party who agrees to participate in a well cannot now object to the well; a non-consenting party is deemed by contract to have relinquished its interest in the well and its leasehold operating rights, and thus has no standing to object to Mewbourne's well, since he is not liable for the cost of the well.

The Corporation Commission has the power to receive evidence and determine whether an applicant owns minerals or has the right to drill in the subject unit.

859 P.2d at 1121. Thus, the Corporation Commission has authority to review contracts and leases to determine whether an applicant has standing to file an application. Accord, Houser v. Columbia Gas Transmission Corp., 561 N.E.2d 980 (Ohio App. 1988) (Division of Oil and Gas has the authority to determine ownership for purposes of statutory plugging requirements); Magnolia Petroleum Co. v. Railroad Commission, 170 S.W.2d 189 (1943) (Railroad Commission has right to make ownership determination in order to grant an exception to the Commission's spacing regulations). Based on these principles, one commentator has stated:

It is certainly clear that individual interests may be adjudicated and determined by the Commission as a by-product of its determination with respect to allowable production or presumably any other determination within the general jurisdiction of the Commission.

E. Kuntz, Discussion Notes, 13 O&GR 824 (1960).

The Division's rule on the method of instituting a hearing also requires an applicant to be an operator or producer, or own a mineral interest the well unit. Division Rule 1203. Mewbourne is not asking the Commission to adjudicate a breach of contract or award damages, but rather to determine Fasken Oil's or Fasken Land's standing to file an application under Division regulations. In order to do this, the Commission must examine the Operating Agreement. This is in accord with the Commission's express power to "examine properties, leases, papers, books and records," and to identify the ownership of oil and gas leases. NMSA §70-2-12(A),



(B) (8) (1995 Repl. Pamp.).

Moreover, Mewbourne's request does not break new ground at the Division or the Commission. In Case No. 10,658 the applicant (Mewbourne) sought a compulsory pooling order. Devon Energy Corporation protested, claiming that acreage in the well unit was subject to a valid operating agreement. The Division reviewed the operating agreement, ruled in Devon's favor, and dismissed the application. **Division Order No. R-9841** (attached hereto as Exhibit A). Similarly, in Case No. 10,345, BHP Petroleum sought to force pool Louise Locke, a mineral interest owner. The Commission reviewed certain agreements and found that Ms. Locke's acreage was committed to an exploratory unit, of which BHP Petroleum was operator. Thus, BHP Petroleum had the right to drill the well. **Commission Order No. R-9581-A**. The Commission does not exist in a vacuum, and must examine agreements necessary to its exercise of jurisdiction. This is one of those situations, and the motion of Fasken Oil and Fasken Land must be denied.

C. **MOTION TO DISMISS FASKEN OIL'S APPLICATION.**

The Operating Agreement requires the operator to be an interest owner in the lands covered by the agreement. Evidence in the record of the Examiner hearing<sup>3</sup> shows that Fasken Oil is not an interest owner in the S½ of Section 1. To avoid this issue, Fasken Oil claims it has been delegated operatorship by Fasken

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<sup>3</sup>Mewbourne Exhibit 2 at the Examiner hearing.

Land.<sup>4</sup> However, the Operating Agreement does not allow an interest owner to delegate operations to a non-interest owner. Thus, Fasken Oil is not the operator of nor an interest owner in the well unit, and is not a proper applicant under Division Rule 1203.

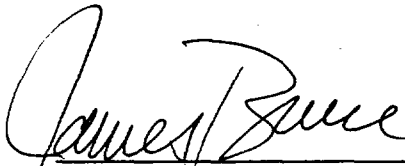
The Division or the Commission must give at least ten days reasonable notice of a public hearing before any non-emergency order is made. **NMSA §70-2-23 (1995 Repl. Pamp.)**. Division Rule 1205 requires that published notice of the hearing state the name of the applicant. The published notice in Case No. 11,755 does not name Fasken Land as the applicant. Thus, the published notice does not comply with Rule 1205, and cannot be considered to fulfill the statutory requirement of reasonable notice as to Fasken Land. Therefore, Fasken Land must be stricken as applicant in Case No. 11,755. Fasken Oil does not own an interest in the property which is the subject of Case No. 11,755, as required by Rule 1203. Moreover, Fasken Oil has never been elected operator of the subject property, nor otherwise duly succeeded to the duties of operator under the Operating Agreement. Because Case No. 11,755 has not been properly instituted by a duly qualified applicant upon proper and reasonable notice, it must be dismissed at this time. Otherwise, the general public is denied its fundamental right of procedural due process. It is not for Mewbourne to articulate how it is disadvantaged by the publication defect. Rather, the public at

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<sup>4</sup>In the Examiner proceedings, Fasken Oil presented a Management Agreement between Fasken Oil and Fasken Land. See Motion for Joinder, filed by Fasken Oil on April 25, 1997. Fasken Oil sees no problem with presenting this agreement for the Division's consideration to establish its rights as operator, yet complains of Mewbourne submitting the Operating Agreement as part of the record.

large (including Fasken Land's joint venturers, trade creditors, etc.) is entitled to know that the Division complies with its rules and that Fasken Land seeks relief. See Uhden v. Oil Conservation Comm'n, 112 N.M. 528, 817 P.2d 721 (1991). Notice is defective, and the case must be dismissed.

WHEREFORE, Mewbourne requests that the Motion in Limine be denied, and that Case No. 11,755 be dismissed.

  
James Bruce  
P.O. Box 1056  
Santa Fe, New Mexico 87504  
(505) 982-2043  
Attorney for Mewbourne Oil Company

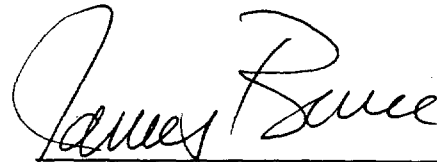
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Pre-Hearing Statement was served upon the following counsel of record via facsimile transmission this 28<sup>th</sup> day of October, 1997:

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

W. Thomas Kellahin  
Kellahin & Kellahin  
P.O. Box 2265  
Santa Fe, New Mexico 87504  
(505) 982-2047

Marilyn S. Hebert  
Oil Conservation Commission  
2040 South Pacheco Street  
Santa fe, New Mexico 87505  
(505) 827-8177



James Bruce

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:

CASE NO. 10658  
ORDER NO. R-9841

APPLICATION OF MEWBOURNE OIL COMPANY FOR COMPULSORY POOLING,  
EDDY COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on January 21, 1993, at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 3rd day of February, 1993, the Division Director, having considered the testimony, the record and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) The applicant, Mewbourne Oil Company, seeks an order pooling all mineral interests from the base of the Abo formation to the base of the Morrow formation, underlying the following described acreage in Section 35, Township 17 South, Range 27 East, NMPM, Eddy County, New Mexico, and in the following manner:

the W/2 forming a standard 320-acre gas spacing and proration unit for any and all formations and/or pools developed on 320-acre spacing within said vertical extent, which presently includes, but is not necessarily limited to, the Undesignated Scoggin Draw-Atoka Gas Pool, Undesignated North Illinois Camp-Morrow Gas Pool, Undesignated Scoggin-Morrow Gas Pool and Undesignated Logan Draw-Morrow Gas Pool;

the NW/4 forming a standard 160-acre gas spacing and proration unit for any and all formations and/or pools developed on 160-acre spacing within said vertical extent, which presently includes only the Undesignated Logan Draw-Wolfcamp Gas Pool; and,

the E/2 NW/4 forming a standard 80-acre oil spacing and proration unit for any pools developed on 80-acre spacing within said vertical extent, of which there are currently none.

(3) Said units are to be dedicated to the applicant's Chalk Bluff "35" Federal Well No. 2, to be drilled at an orthodox gas well location within the SE/4 NW/4 (Unit F) of said Section 35.

(4) Devon Energy Corporation (Devon), successor owner of Malco Refineries, Inc.'s interest in the NW/4 and NW/4 SW/4 of said Section 35, appeared at the hearing through counsel and opposed the application on the basis that its interest is governed by an operating agreement with Mewbourne Oil Company, who is the successor owner of the Stanolind Oil and Gas Company underlying the same acreage.

(5) Devon claims its interest is bound under the agreements reached by Malco Refineries, Inc. and Stanolind Oil and Gas Company in July, 1953 and April, 1958, being Devon's Exhibit "A" and "B" in this case.

Mewbourne, also represented by counsel, contends that a supplemental agreement is necessary where acreage outside the "contract lands" are included in a spacing unit, being the NE/4 SW/4 and S/2 SW/4 of said Section 35, which is 100% Mewbourne-contracted properties. Since both parties have not agreed to a "supplemental agreement", Mewbourne contends that the original agreement is invalid and seeks to force-pool Devon's interest into the W/2 spacing unit.

*FINDING: Since under the "force-pooling" statutes (Chapter 70-2-17 of the NMSA 1978) there exists in this matter an agreement between the two parties owning undivided interests in a proposed 320-acre gas spacing and proration unit, an order from the Division pooling said parties is unnecessary.*

(6) This case should therefore be dismissed.

**IT IS THEREFORE ORDERED THAT:**

(1) Case No. 10658 is hereby **dismissed**.

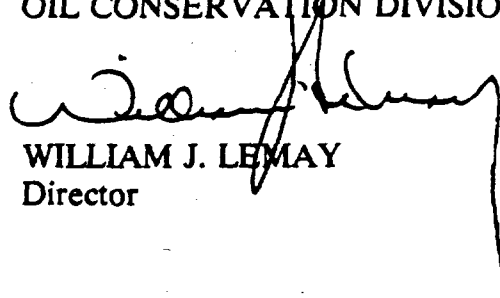
Case No. 10658  
Order No. R-9841  
Page No. 3

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(2) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION

  
WILLIAM J. LEMAY  
Director

SEAL

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

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

**CASE NO. 11755**

1997

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

**CASE NO. 11723**

**RESPONSE OF  
FASKEN LAND AND MINERALS, LTD.  
AND  
FASKEN OIL AND RANCH, LTD.  
TO  
MEWBOURNE OIL COMPANY'S  
MOTION TO DISMISS**

Comes now Fasken Land and Minerals, Ltd. and Fasken Oil and Ranch, Ltd, (collectively "Fasken") by and through its attorneys, Kellahin & Kellahin, and responds to Mewbourne Oil Company's ("Mewbourne") Motion to Dismiss Fasken's application in Case 11755 as follows:

**The Commission has jurisdiction over Case 11755.**

Mewbourne wants to reargue an issue which it lost at the Examiner hearing. Mewbourne continues to grasp at straws with its contention that Fasken Land and not Fasken Oil is the proper applicant. That procedural



pleading issue was resolved by the Division when it granted over Mewbourne's objection, Fasken's Motion for Joinder (with supporting affidavit) to have both Fasken Land and Fasken Oil interplead as applicants in Case 11755. **See Exhibit A attached.**

Fasken again submits the following evidence:

On April 1, 1970, Monsanto Company, as operator, and David Fasken, Len Mayer, Robert L. Haynie, Gulf Oil Corporation, Atlantic Richfield Company, Union Oil Company of California, and Texaco, Inc. as working interest owners, entered into a Joint Operating Agreement.

David Fasken's oil and gas interests subject to the Joint Operating Agreement are now held by Fasken Land and Minerals, Ltd. as owner, and Fasken Oil and Ranch Ltd. as manager, pursuant to a Management Agreement dated December 15, 1995. Fasken Oil and Ranch, Ltd., as manager and on behalf of Fasken Land and Minerals, Ltd, as owner, filed NMOCD Case 11755. The ownership of Fasken Oil and Ranch, Ltd. and Fasken Land and Minerals, Ltd. is identical.

At all times prior to the hearing held on April 3 and 4, 1997, Mewbourne Oil Company had acquiesced to Fasken Oil and Ranch, Ltd. as the successor operator to Monsanto Company of the 1970 Joint Operating Agreement.

At the hearing held on April 3 and 4, 1997, for the first time, Mewbourne Oil Company raised a question about the standing of Fasken Oil and Ranch, Ltd. to be an applicant in Case 11755.

In order that there be no question about the real party applicant in interest, Fasken Land and Minerals, Ltd. requested that it be added as a co-applicant in Case 11755. The Division granted that request.

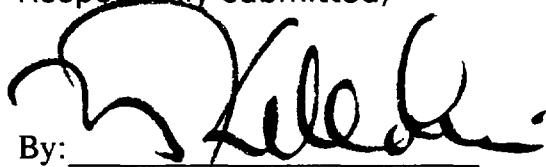
It may be helpful for the Commission to recall Mr. Carroll's question to Mr. Bruce at the May 1, 1997 Examiner hearing:

"Q: (by Carroll) Mr. Bruce, has Mewbourne been prejudiced by naming Fasken Oil and Ranch Limited, rather than Fasken Land and Mineral in the original application?"

"A: (by Bruce) ...I think if you dismiss Fasken's application, they can bring it later."

The point is that if Mewbourne's Motion to Dismiss is granted, then Fasken will simply refile its application and we will ultimately get right back where we are now. Mewbourne's motion to dismiss is frivolous and is intended only to delay the Commission from hearing evidence on Fasken's proposed location. The Commission should do what the Division did and that is to again deny Mewbourne's motion.

Respectfully submitted,

  
By: \_\_\_\_\_  
W. Thomas Kellahin

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this motion was mailed to all counsel of record this 28th day of October, 1997.

  
W. Thomas Kellahin

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

CASE NO. 11755

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

CASE NO. 11723

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

**MOTION FOR JOINDER  
OF  
FASKEN LAND AND MINERALS, LTD.  
AS A  
PARTY-APPLICANT**

Comes now Fasken Land and Minerals, Ltd. and Fasken Oil and Ranch, Ltd, by and through its attorneys, Kellahin & Kellahin, and hereby moves that Fasken Land and Minerals, Ltd. be permitted to appear and participate in NMOCD Cases 11723 and 11755 as a party applicant in Case 11755 and in support thereof states:

(1) On April 1, 1970, Monsanto Company, as operator, and David Fasken, Len Mayer, Robert L. Haynie, Gulf Oil Corporation, Atlantic Richfield Company, Union Oil Company of California, and Texaco, Inc. as working interest owners, entered into a Joint Operating Agreement.

(2) David Fasken's oil and gas interests subject to the Joint Operating Agreement are now held by Fasken Land and Minerals, Ltd. as owner, and Fasken Oil and Ranch Ltd. as manager, pursuant to a Management Agreement dated December 15, 1995.

(3) That Fasken Oil and Ranch, Ltd., as manager and on behalf of Fasken Land and Minerals, Ltd, as owner, filed NMOCD Case 11755.

(4) That the ownership of Fasken Oil and Ranch, Ltd. and Fasken Land and Minerals, Ltd. is identical.

(5) At all times prior to the hearing held on April 4, 1997, Mewbourne Oil Company had acquiesced to Fasken Oil and Ranch, Ltd. as the successor operator to Monsanto Company of the 1970 Joint Operating Agreement.

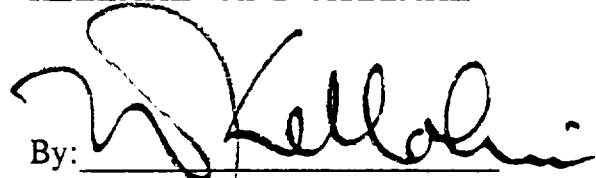
(6) At the hearing held on April 4, 1997, for the first time, Mewbourne Oil Company raised a question about the standing of Fasken Oil and Ranch, Ltd. to be an applicant in Case 11755.

(7) In order that there be no question about the real party applicant in interest, Fasken Oil and Minerals, Ltd. should be added as a co-applicant in Case 11755.

Wherefore, Fasken Land and Minerals, Ltd. and Fasken Oil and Ranch, Ltd. request that the Division grant this motion.

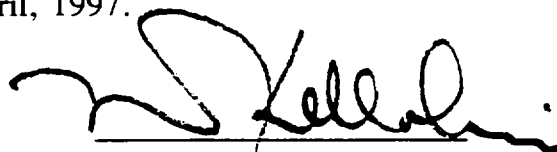
Respectfully submitted,

KELLAHIN AND KELLAHIN

By:   
W. Thomas Kellahin

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this motion was mailed to all counsel of record this 25 day of April, 1997.

  
W. Thomas Kellahin

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

**CASE NO. 11755**

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

**CASE NO. 11723**

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

**AFFIDAVIT  
OF  
SALLY M. KVASNICKA**

**STATE OF TEXAS        )  
                                  ) SS  
COUNTY OF MIDLAND)**

Before me, the undersigned authority, personally appeared Sally M. Kvasnicka, who being first duly sworn, stated:

A. My name is Sally M. Kvasnicka. I am over the age of majority and am competent to make this Affidavit.

B. I am the petroleum land manager for Fasken Oil and Ranch, Ltd. and have determined that:

(1) On April 1, 1970, Monsanto Company, as operator, and David Fasken, Len Mayer, Robert L. Haynie, Gulf Oil Corporation, Atlantic Richfield Company, Union Oil Company of California, and Texaco, Inc. as working interest owners, entered into a Joint Operating Agreement.

(2) David Fasken's oil and gas interests subject to the Joint Operating Agreement are now held by Fasken Land and Minerals, Ltd. as owner, and Fasken Oil and Ranch Ltd. as manager, pursuant to a Management Agreement dated December 15, 1995, attached as Exhibit "A"

(3) At all times prior to the hearing held on April 4, 1997, Mewbourne Oil Company had acquiesced to Fasken Oil and Ranch, Ltd. as the successor operator to Monsanto Company of the 1970 Joint Operating Agreement.

(4) That Fasken Oil and Ranch, Ltd. is the managing company for the oil and gas properties owned by Fasken Land and Minerals, Ltd.

(5) The ownership of Fasken Land and Minerals, Ltd and Fasken Oil and Ranch, Ltd. is identical.

(6) Fasken Land and Minerals, Ltd. has authorized Fasken Oil and Ranch, Ltd. to sign joint operating agreements, operate its oil and gas properties, file NMOCD applications and to appear at NMOCD hearings on behalf of Fasken Land and Minerals, Ltd.

(7) That Fasken Oil and Ranch, Ltd., as manager and on behalf of Fasken Land and Minerals, Ltd, as owner, filed NMOCD Case 11755.

(8) In order that there be no question about the real party applicant in interest, Fasken Land and Minerals, Ltd. should be added as a co-applicant in Case 11755.

FURTHER AFFIANT SAYETH NOT:

Sally M. Kvasnicka  
Sally M. Kvasnicka

STATE OF TEXAS            )  
                                  )SS  
COUNTY OF MIDLAND    )

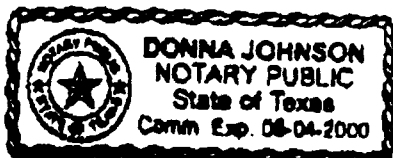
SUBSCRIBED AND SWORN to before me this 24th day of April 1997  
by Sally M. Kvasnicka.

Donna Johnson  
Notary Public

My Commission Expires:

\_\_\_\_\_

(SEAL)



MANAGEMENT AGREEMENT

by and between

FASKEN OIL AND RANCH, LTD.

AND

FASKEN LAND AND MINERALS, LTD.

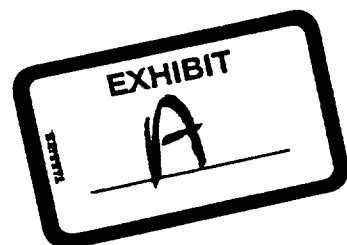


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unemployment, payroll and other taxes, health, life, disability and other insurance costs, and costs of pension, retirement and other employee benefit plans.

Operating Account. "Operating Account" means that certain account or accounts to be maintained solely by Manager at a commercial bank or banks acceptable to Owner into which all proceeds shall be deposited and all expenses with respect to Owner's Business shall be paid.

Parties. "Parties" shall mean both Manager and Owner.

Person. "Person" means any of the following, an individual, corporation, partnership, limited partnership, joint venture, limited liability company, unincorporated association, trust (including, but not limited to a common law trust or a business trust), estate, or other incorporated or unincorporated entity.

Services. "Services" means all functions, duties and services performed by Manager hereunder for the benefit of Owner in connection with the management of the Business as more particularly described in Section 5.1 hereof.

Subject Interests. "Subject Interests" means all tangible and intangible property both real and personal owned by Owner in connection with the Business.

Total Assets. "Total Assets" for any period, means the total assets of Owner at the end of each quarter during such period determined on a consolidated basis in accordance with generally accepted accounting principles consistently applied.

Term of Agreement. "Term of Agreement" means the period from the date hereof until this Agreement is terminated or otherwise expires pursuant to Article X hereof.

Section 1.2 Construction. Whenever the context requires, the gender of all words used herein shall include the masculine, feminine and neuter, and the number of all words shall include the singular and plural.

Section 1.3 References. Unless otherwise specified, the references herein to "Sections", "Subsections" or "Articles" refer to the sections, subsections or articles in this Agreement.

ARTICLE II.

Appointment of Manager

Section 2.1 Appointment. Owner hereby appoints Manager to conduct the Business by and on behalf of, and for the account of, Owner, pursuant to and as set forth in this Agreement. Owner shall at all times have and retain ultimate control over its business and operations.

Section 2.2 Acceptance. Manager hereby accepts the appointment and agrees to perform the duties and obligations herein imposed in a prudent manner, consistent with generally accepted standards for businesses similar to the Business.

Section 2.3 Legal Ownership Retained in Owner. Except insofar as certain properties or assets may be conveyed to Manager by Owner, Manager shall not take title to any properties owned of record or beneficially by Owner during the Term of Agreement except for cash and cash equivalents invested by manager for the account of Owner, all of which will be segregated on the books and records of Manager as provided in Section 8.2. Any addition to the assets of Owner purchased, leased or otherwise acquired with Owner's funds or securities shall be acquired in the name of Owner.

Section 2.4 Duties Retained by Owner. Owner shall remain responsible for (i) making all decisions required of Owner under this Agreement, and (ii) such other duties as shall be specifically identified in writing by Owner to Manager.

Section 2.5 Power of Attorney. By execution of this Agreement, Owner does hereby irrevocably make, constitute and appoint Manager as its true and lawful attorney with full power and authority in its name, place and stead to execute, swear to, acknowledge, deliver, file, record in the appropriate public offices and publish any and all contracts, agreements, instruments, and other documents of any kind or nature related to, arising out of or in connection with the Business or the Manager's performance of this Agreement.

During the Term of Agreement, the power of attorney granted herein shall be irrevocable and a power coupled with an interest, shall survive the death, incompetency, bankruptcy, dissolution or other termination of Owner, shall extend and be binding upon Owner's successors and assigns and shall continue in full force and effect regardless of the occurrence of any of the foregoing. Owner hereby agrees to be bound by any such contracts, agreements, instruments, and other documents executed or otherwise entered into by the attorney and agent acting in good faith pursuant to such power of attorney, and hereby waives

any and all defenses which may be available to contest, negate, or disaffirm any action of the attorney and agent taken under such power of attorney except in cases of bad faith, gross negligence or willful misconduct.

Section 2.6 Evidence of Authority; Attorney-In-Fact. Owner shall execute such (i) letters of instruction to all appropriate third parties instructing such third parties to deal with Manager with respect to all issues relating to the Subject Interests and to make all payments due with respect to the Subject Interests either to Manager, or directly to Owner in care of Manager's address, and (ii) powers of attorney authorizing and empowering certain representatives of Manager to carry out the rights and duties set forth herein, including the ability to deposit all such third party payments into the Operating Account without further action by Owner.

### ARTICLE III.

#### Status of Manager

Section 3.1 Independent Contractor. In performing the Services, Manager shall be an independent contractor, and Manager shall not be deemed for any purpose to be an agent, servant, employee or representative of Owner. Manager shall have full legal charge and control of its employees, agents and equipment engaged in the performance of the Services. Owner shall have no control or right of control of Manager, its subcontractors, or any of their employees and agents, or of the method or means by which the Services are to be performed.

Section 3.2 Reliance on Manager's Authority. Any person is entitled to rely on this Agreement as granting to Manager the power and authority to perform the Services and manage the Subject Interests on behalf of Owner. Although Owner acknowledges that no further action or documentation is required to be given by Owner to authorize or empower Manager to perform the Services and manage the Subject Interests on behalf of Owner, Owner agrees to furnish promptly to Manager whatever documentation, or to take promptly whatever action, is required by manager to evidence such power and authority of Manager under this Agreement.

### ARTICLE IV.

#### Authority and Responsibility of Manager

Section 4.1 General. Manager shall have the authority and the responsibility for the supervision and management of the day-to-day operations of the Business. Manager agrees, to the extent that adequate funds exist in the Operating Account or are otherwise made

available to Manager, to manage the Business in a prudent manner, consistent with generally accepted standards for businesses similar to the Business. Except as set forth in Sections 6.3 and 6.4 hereof, Manager shall have no obligation to advance funds for the account of Owner or to pay any sums of its own in connection with the performance of the Services.

Section 4.2 Compliance with Laws. Manager shall be responsible for full compliance with federal, state and municipal laws, ordinances, regulations and orders relative to the use, operation, development and maintenance of the Business. Manager shall use reasonable efforts to remedy any violation of any such law, ordinance, rule, regulation or order which comes to its attention. If the violation is one for which Owner might be subject to penalty, Manager shall promptly notify Owner of such violation to allow actions to be made to remedy the violation, and Manager shall transmit promptly to Owner a copy of any citation or other communication received by Manager setting forth any such violation.

Section 4.3 Compliance With Obligations. Manager, to the extent such matters are within its control, shall use reasonable efforts to cause compliance with all terms and conditions contained in any contract, agreement, judicial, administrative or governmental order or other contractual instrument affecting the Business; provided, however, that, except as otherwise set forth herein, Manager shall not be required to make any payment or incur any liability on account thereof. Manager shall promptly notify Owner of any violation of any covenant in such instruments or agreements.

## ARTICLE V.

### Administrative Services

Section 5.1 Provision of Administrative Services. Manager shall provide the Services to Owner, subject to the general approval and direction of Owner. The Services shall mean the following:

(a) providing Owner with such office space, equipment, facilities and supplies, and the services of such secretarial, clerical and other personnel as may be required for the reasonable conduct of the Business;

(b) making such arrangements with and employing, at the expense and for the benefit of Owner, such accountants, attorneys, banks, transfer agents, custodians, underwriters, engineers, technical consultants, insurance companies and other persons as may from time to time be requested by Owner or may reasonable be necessary to manage the Business;

(c) maintaining in good order the books and accounts, ledgers and records of Owner and performing all day-to-day accounting functions of Owner, including, without limitation, matters related to paying and receiving, billing, reserve estimates, contract coordination and administration and tax return preparation. Without limiting the generality of the foregoing, Manager shall prepare, or assist in the preparation of, all requisite accounting reports and interim financial statements of Owner, including balance sheets, statements of operations, changes in partnership's equities and cash flow and shall assist Owner, if requested, in selecting an independent public accounting firm for the purpose of conducting annual financial audit reviews of Owner or Manager and shall aid in coordinating such audits;

(d) negotiating, administering and terminating contracts, by and on behalf of Owner, in the ordinary course of Business. Contracts that, by their terms, involve amounts in excess of \$750,000 shall not be entered into by Manager without the prior approval of Owner.

(e) timely preparing and filing on behalf of Owner, all tax returns, reports, forms, documents, certificates and other instruments required by federal, state and municipal tax authorities, regulatory agencies, including federal and state energy regulatory agencies, and other governmental bodies in order to lawfully conduct the Business;

(f) analyzing reports, economic data and other information relating to the Business and periodically reporting to Owner all such information obtained and analyzed, including making recommendations with respect thereto;

(g) maintenance activities, including overseeing and managing the interests of Owner in the various partnerships, joint ventures, companies and other entities in which Owner has an interest;

(h) providing Owner, at its request, with relevant information for assessing the value of, or making decisions with respect to the acquisition, funding, management or disposition of, existing or future assets or investments of Owner;

(i) advising Owner of any potential investments coming to its attention in which Manager believes Owner may be interested and which are within the scope of the Business; and

(j) taking such other actions and performing such other services as are deemed necessary, customary or appropriate in the opinion of Manager to conduct the Business.

Section 5.2 Required Owner Approval. Owner must specifically approve the following matters before they are undertaken by Manager for the account of Owner, and notwithstanding any other provision hereof, none of the following shall be undertaken without Owner's prior approval:

- (a) entering into of capital leases or making of capital expenditures in excess of \$750,000;
- (b) execution of any agreements for borrowing of funds (other than trade accounts payable incurred in the ordinary course of the Business) on a long-term basis;
- (c) loan, pledge, hypothecation or other encumbrance of any Subject Properties;
- (d) acquisition or disposition of any material Subject Properties, other than in the ordinary course of business or as contemplated herein; and
- (e) initiation or compromise of any single litigation matter (or settling or any single claim) with a cost to Owner of \$750,000 or more;

Notwithstanding any provision of this Agreement to the contrary, Manager shall have no authority to take any action that will contravene Owner's Limited Partnership Agreement.

Section 5.3 Service Fee. Owner shall pay a fee for the services rendered hereunder ("Service Fee") of ten thousand dollars (\$10,000) per month to Manager. The Service Fee shall be due and payable in arrears within 10 days of the end of each month.

## ARTICLE VI.

### Personnel Administration

Section 6.1 General. Manager shall have in its employ or available to it at all times during the Term of Agreement a sufficient number of personnel to enable it to properly and adequately manage, operate, maintain, and account for the Business as herein provided. All matters pertaining to the employment, supervision, compensation, promotion and discharge of any employees or personnel of Manager are the responsibility of Manager, who is in all respects the employer of any such employees. All such employment arrangements are solely Manager's concern and responsibility and, other than as set forth in Section 6.5 hereof, Owner

shall have no liability with respect thereto.

Section 6.2 Employees. Manager shall determine the number and qualifications of employees needed in the performance of the Services for the operation of the Business.

Section 6.3 Consultants and Others. Except as otherwise provided herein, Manager shall have the power and authority to retain and pay as independent contractors, on behalf of and for the account of Owner lawyers, accountants, engineers, contractors, technical consultants, architects, appraisers, and others in connection with the conduct of the Business.

Section 6.4 Payment of Out of Pocket Expenses. Manager shall pay all out of pocket expenses of Manager and its employees, agents and consultants including travel, food, lodging, entertainment and similar expenses ("Out of Pocket Expenses"), pursuant to the policies and procedures established by Manager for the payment or reimbursement of such costs with respect to activities conducted for Owner.

Section 6.5 Reimbursement of Manager's Costs and Expenses. Owner shall reimburse Manager, within thirty days after the end of each month during the Term of Agreement, for all Compensation Expenses and Out of Pocket Expenses paid by Manager allocable to and on behalf of Owner or in connection with the Business during such month.

## ARTICLE VII.

### Financial Administration

Section 7.1 Operating Account. Manager shall collect and process all revenues and other income relating to the Business due or received from third parties, including lessees, operators, purchasers of hydrocarbons and other relevant third parties, and shall segregate the same in its books of account and shall promptly remit such funds into the Operating Account. Provided funds are available in the Operating Account, Manager shall pay all costs, expenditures, fees, and other payments due with regard to the Business or the contracts related thereto from the Operating Account. Notwithstanding Manager's payment or such amounts due, Owner shall be responsible for all amounts due with regard to the Business and the contracts related thereto and, except as is expressly provided herein to the contrary, other expenses incurred in connection with the ownership and operation of the Business. On a monthly basis, Manager shall cause all cash funds in the Operating Account that Manager reasonably determines are not needed for the payment of existing or foreseeable (within 90 days) Owner obligations and expenditures to be paid to Owner.

Section 7.2 Cash Management. Manager shall implement a cash management system



for the cash and cash equivalents of Owner. Manager may invest the funds of Owner, provided, that Manager shall maintain accurate records with respect to such cash and cash equivalents of Owner.

## ARTICLE VIII.

### Access to Information, Books and Records

Section 8.1 Access to Owner's Book and Records. Manager and its duly authorized representatives shall have complete access to Owner's offices, facilities and records wherever located, in order to discharge Manager's responsibilities hereunder. All records and materials furnished to Manager by Owner in performance of this Agreement shall at all times during the Term of Agreement remain the property of Owner.

Section 8.2 Access to Manager's Books and Records. Owner and its duly authorized representatives shall have complete access to Manager's books and records with regard to Owner's Business and the right, at Owner's election and expense, to conduct such audits as it deems appropriate.

## ARTICLE IX.

### Conflicts of Interest and Good Faith

Section 9.1 Other Activities. Owner acknowledges that Manager may own, manage and/or operate assets that compete directly with the Business of Owner and may own, manage and/or operate additional business and assets in the future that may compete with the Business of Owner, and Owner agrees that Manager shall have no liability or accountability to Owner for any such competing activities or interests or any profits or value generated therefrom.

## ARTICLE X.

### Term and Termination of Agreement

Section 10.1 Initial Term. The initial term of this Agreement shall be for a three-year period beginning on the Commencement Date. Thereafter, this Agreement shall automatically renew for successive one-year periods until terminated by either party in accordance with the provisions of this Article.

Section 10.2 Termination. This Agreement may be terminated on the first to occur of the following:

(a) In the event the parties shall mutually agree in writing, this Agreement may be terminated on the terms and dates stipulated therein.

(b) Following the initial three-year term hereof, either party may, with or without cause, terminate this Agreement on any anniversary date hereof by giving to the other party at least 60 days advance written notice of its intent to terminate, whereupon this Agreement shall terminate on the future date specified in such notice.

(c) Subject to events of force majeure (as provided in Section 11.6 hereof), in the event either party shall fail to discharge any of its material obligations hereunder, or shall commit a material breach of this Agreement, and such default or breach shall continue for a period of 30 days after the other party has served notice of such default, this Agreement may then be terminated at the option of the non-breaching party by notice thereof to the breaching party.

(d) Dissolution or termination of either Manager or Owner; or cessation to do business; or bankruptcy, insolvency, foreclosure or conveyance in lieu of foreclosure, or assignment for the benefit of their creditors of either Manager or Owner shall effect an immediate termination of this Agreement at the election of other Party.

Section 10.3 Effects of Termination. The termination of this Agreement in accordance with the provisions of this Article shall have the following effects:

(a) Except for the covenants or other provisions herein that by their terms expressly extend beyond the Term of Agreement, the Parties' obligations hereunder are limited to the Term of Agreement.

(b) In the event this Agreement is terminated for any reason, Manager shall immediately deliver possession to Owner of all assets, books and records of Owner in its possession.

(c) Upon a termination of this Agreement (for whatever cause), Owner shall pay to Manager the amount of any and all Service Fee, Compensation Expense and Out of Pocket Expense accrued to the date of such termination which are payable by Owner to Manager in accordance with the provisions hereof.

(d) Upon termination of this Agreement by Owner, Owner shall reimburse Manager for all amounts incurred by Manager in connection with its activities under this Agreement. Without limiting the foregoing, Owner shall (i) hire or pay the reasonable costs of terminating all of Manager's employees used to conduct Owner's Business, (ii) lease or

reimburse Manager for all or a portion of the rental of any facilities or equipment used by Manager under the Agreement which use was discontinued or reduced by termination of this Agreement, and (iii) succeed to or indemnify Manager for any contracts or agreements entered into by Manager relating to the Business.

## ARTICLE XI.

### Miscellaneous

Section 11.1 Relationship of Parties. This Agreement does not create a partnership, joint venture or association; nor does this Agreement, or the operations hereunder, create the relationship of lessor and lessee or bailor and bailee. Nothing contained in this Agreement or in any agreement made pursuant hereto shall ever be construed to create a partnership, joint venture or association, or the relationship of lessor and lessee or bailor and bailee, or to impose any duty, obligation or liability that would arise therefrom with respect to either or both of the Parties except as otherwise expressly provided in this Agreement or any agreement made pursuant hereto.

Section 11.2 No Third Party Beneficiaries. Except to the extent a third party is expressly given rights herein, any agreement to pay an amount and any assumption of liability herein contained, expressed or implied, shall be only for the benefit of the Parties and their respective legal representatives, successors and assigns, and such agreement or assumption shall not inure to the benefit of the obligees of any indebtedness of any other party whomsoever, it being the intention of the parties hereto that no person or entity shall be deemed a third party beneficiary of this Agreement except to the extent a third party is expressly given rights herein.

Section 11.3 Notices. Any notice, demand, or communication required, permitted, or desired to be given hereunder shall be deemed effectively given when personally delivered or mailed by prepaid certified mail, return receipt requested, addressed as follows:

- (i) if to Owner, to:

Fasken Land And Minerals, Ltd.  
303 West Wall Avenue, Suite 1900  
Midland, Texas 79701  
Attention: General Partner

(ii) if to the Manager, to:

Fasken Oil And Ranch, Ltd.  
303 West Wall Avenue, Suite 1900  
Midland, Texas 79701  
Attention: General Partner

or to such other address and to the attention of such other person or officer as either Party may designate by written notice pursuant to this Section 11.3.

Section 11.4 Governing Law. THIS AGREEMENT HAS BEEN EXECUTED AND DELIVERED IN AND SHALL BE INTERPRETED, CONSTRUED AND ENFORCED PURSUANT TO AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

Section 11.5 Assignment. No assignment of this Agreement or any of the rights or obligations set forth herein by either Party shall be valid without the specific written consent of the other party.

Section 11.6 Force Majeure. Neither party shall be liable nor deemed to be in default for any delay or failure of performance under this Agreement or other interruption of service or employment resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, strikes or other work interruptions by either Party's employees or agents or any similar or dissimilar cause beyond the reasonable control of either Party.

Section 11.7 Severability. In the event any provision of this Agreement is held to be unenforceable for any reason, such provision shall be severable from this Agreement if it is capable of being identified with and apportioned to reciprocal consideration or to the extent that it is a provision that is not essential and the absence of which would not have prevented the Parties from entering into this Agreement. The unenforceability of a provision that has been performed shall not be grounds for invalidation of this Agreement under circumstances in which the true controversy between the Parties does not involve such provision.

Section 11.8 Entire Agreement of Parties; Amendment. This Agreement contains the full and complete agreement between the Parties with respect to the subject matter hereof and supersedes all other written or oral agreements between the Parties relating to the subject matter hereof. The Agreement may be amended or modified at any time and from time to time by the Parties; provided that no modification or amendment hereof shall be given effect

unless such modification or amendment is made in a written instrument executed by both Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the day and year first above written.

FASKEN OIL AND RANCH, LTD.

By: FASKEN MANAGEMENT, L.L.C.,  
general partner

By: Norbert J. Dickman  
Norbert J. Dickman,  
Vice President and Manager

FASKEN LAND AND MINERALS, LTD.

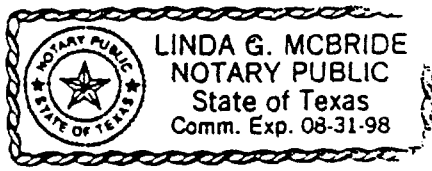
By: FASKEN MANAGEMENT, L.L.C.,  
general partner

By: Norbert J. Dickman  
Norbert J. Dickman,  
Vice President and Manager

ACKNOWLEDGEMENTS

THE STATE OF TEXAS       §  
  §  
COUNTY OF MIDLAND       §

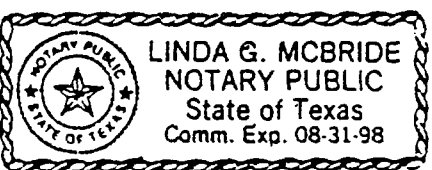
This instrument was acknowledged before me on 3/6, 1996 by NORBERT J. DICKMAN, Vice President of FASKEN MANAGEMENT, L.L.C., general partner of FASKEN OIL AND RANCH, LTD., a Texas limited partnership, on behalf of said limited partnership.



Linda G. McBride  
Notary Public In and For the State of Texas  
Printed Name: Linda McBride  
My Commission Expires: 8-31-98

THE STATE OF TEXAS       §  
  §  
COUNTY OF MIDLAND       §

This instrument was acknowledged before me on 3/6, 1996 by NORBERT J. DICKMAN, Vice President of FASKEN MANAGEMENT, L.L.C., general partner of FASKEN LAND AND MINERALS, LTD., a Texas limited partnership, on behalf of said limited partnership.



Linda G. McBride  
Notary Public In and For the State of Texas  
Printed Name: Linda McBride  
My Commission Expires: 8-31-98

**KELLAHIN AND KELLAHIN**

ATTORNEYS AT LAW

EL PATIO BUILDING

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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)

TELEPHONE (505) 982-4285

TELEFAX (505) 982-2047

October 20, 1997

**HAND DELIVERED**

Mr. William J. LeMay, Chairman  
Oil Conservation Commission  
2040 South Pacheco  
Santa Fe, New Mexico 87502

Re: **FASKEN'S MOTION IN LIMINE**

*NMOCD Case No. 11755*

*Application of Fasken for unorthodox gas well  
locations, Eddy County, New Mexico*

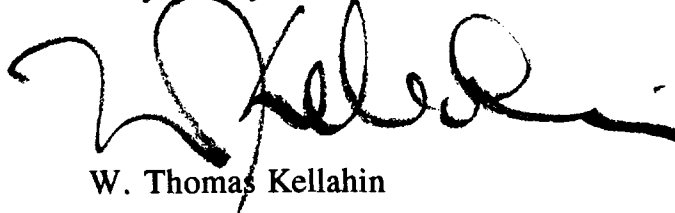
*NMOCD Case 11723*

*Application of Mewbourne for unorthodox gas well  
location, Eddy County, New Mexico*

Dear Mr. LeMay:

On behalf of Fasken, please find enclosed our motion requesting that the Commission enter an order in limine in this matter which is set for a Commission hearing on October 30, 1997.

Very truly yours,



W. Thomas Kellahin

cc: *Lyn Hebert, Esq.*  
*Attorney for the Commission*  
*Rand Carroll, Esq.*  
*Attorney for the Division*  
*William F. Carr, Esq.*  
*Attorney for Texaco*  
*James Bruce, Esq.*  
*Attorney for Mewbourne*

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

**APPLICATION OF FASKEN OIL AND RANCH, LTD.                   CASE NO. 11755  
FOR TWO ALTERNATIVE UNORTHODOX WELL  
LOCATIONS AND A NON-STANDARD PRORATION UNIT,  
EDDY COUNTY, NEW MEXICO.**

**APPLICATION OF MEWBOURNE OIL COMPANY                   CASE NO. 11723  
CORPORATION FOR AN UNORTHODOX WELL LOCATION  
AND A NON-STANDARD PRORATION UNIT  
EDDY COUNTY, NEW MEXICO.**

**FASKEN LAND AND MINERALS, LTD.  
AND  
FASKEN OIL AND RANCH, LTD.  
MOTION IN LIMINE  
TO EXCLUDE  
ARGUMENT AND EVIDENCE  
CONCERNING  
THE FASKEN-MEWBOURNE CONTRACTUAL DISPUTE**

Comes now Fasken Land and Minerals, Ltd. and Fasken Oil and Ranch, Ltd, (collectively "Fasken") by and through its attorneys, Kellahin & Kellahin, and moves the Commission for an order in limine limiting evidence and argument to the geologic and engineering issues and excluding from the DeNovo hearing any evidence or argument concerning the "Fasken-Mewbourne contractual dispute" which is currently the subject of litigation in State District Court, Midland County, Texas,

and in support states:



## RELEVANT FACTS

1. Irregular Section 1 consists of 853.62 acres is divided into thirds with the central portion of this section being "unleased" federal oil and gas minerals the surface of which is subject to a federal environmental study. As a result, both Fasken and Mewbourne requested approval of a non-standard 297.88 acre unit ("NSP") comprising the southern portion of Irregular Section 1, T21S, R25E, Eddy County, N.M. and described as Lots 29, 30, 31, 32 and the SW/4 (S/2 equivalent).

2. Fasken is the operator of the S/2 equivalent of Irregular Section 1 as a result of a Joint Operating Agreement, AAPL-1956 Model Form, dated April 1, 1970 which includes Mewbourne Oil Company ("Mewbourne") Matador Petroleum Corporation, Devon Energy Corporation, and others, as non-operators.

3. South of Section 1 is Section 12 which Texaco Exploration and Production Inc. ("Texaco") operates as a 632.36 acre gas spacing and proration unit within the Catclaw Draw-Morrow Gas Pool which is currently dedicated to the:

(a) E. J. Levers Federal "NCT-1" Well No. 1 (the Levers Well No 1 located 660 feet from the South line and 1980 feet from the West line of Section 12; and

(a) E. J. Levers Federal "NCT-1" Well No. 2 (the Levers Well No 1 located 2448 feet from the North line and 1980 feet from the West line of Section 12

4. Both well locations are within the current boundary of the Catclaw Draw-Morrow Gas Pool which is subject to the Division's Special Rules and Regulations (Order R-4157-D) which include:

"Rule: 2...shall be located no closer than 1650 feet to the outer boundary of the section nor closer than 330 feet to any governmental quarter-quarter section line."

"Rule 5: A standard gas proration unit...shall be 640-acres."

5. While the Catclaw Draw-Morrow Gas Pool is still officially "prorated", prorationing has been suspended and the wells in the pool are allowed to produce at capacity.

6. On January 28, 1997 and without obtaining the concurrence of Fasken, as operator, or of the other working interest owners in the S/2 of Irregular Section 1, Mewbourne filed with the Division an application for approval of an unorthodox gas well location 660 feet from the south line and 2310 feet from the East line of said Section 1. This is NMOCD Case 11723 and is referred to as the "Mewbourne location" which encroaches upon Texaco who appeared at the April 3, 1997 examiner's hearing in opposition to Mewbourne's location.

7. Mewbourne contends its location is necessary in order to compete with Texaco's Levers Well No. 2 which is producing gas from the Morrow formation.

8. Fasken analysis indicates that Mewbourne's location is on the downthrown side of a fault and is fault separated from Texaco's Levers Well No. 2 and would not be able to compete for Morrow gas now being produced by Texaco in that wellbore. Therefore, Fasken proposed to Mewbourne and the other owners in the S/2 of Irregular Section 1 that Morrow gas well be drilled at a location 750 feet from the West line and 2080 feet from the South line of Section 1. This is NMOCD Case 11755 and is referred to as the "Fasken location" which does not encroach upon Texaco. Fasken's proposed location will also test a Cisco structure which the parties do not believe exists at the Mewbourne location.

9. Texaco appeared at the Division hearing in opposition to the Mewbourne location and proposed an 81.4% production penalty.

10. Texaco acknowledged that it could not complain about the Fasken location because Fasken's location was more than 1650 feet away from Texaco's unit boundary event despite its belief that only the Fasken location would drain the reservoir from which the Texaco well is producing.

11. The Fasken location is standard as to Texaco's Section 12 but is unorthodox as to Section 2 which is operated by Penwell Energy Inc. who waived any objection to Fasken's location.

12. On April 3 and 4, 1997, the Division held an evidentiary hearing before Examiner Stogner at which Fasken, Mewbourne and Texaco each presented geological evidence in an effort to support their respective positions.

13. On September 12, 1997, the Division entered Order R-10872 approving the Fasken location and denying the Mewbourne location.

14. Although Fasken has a legitimate business disagreement with Mewbourne with respect to the optimum well location, on April 30, 1997, Mewbourne filed litigation in a District Court in Midland Texas contending that Fasken, among other things, owed Mewbourne a fiduciary duty and that Fasken had breached the Joint Operating Agreement by proposing an alternative location for approval by the Division. These contractual issues are still in litigation.

15. At the Examiner hearing, Mewbourne attempted to introduce testimony and evidence concerning this contractual dispute and asked the Division Examiner to adjudicate certain issues related to those contractual matters.

16. At the hearing held on April 3 and 4, 1997, for the first time, Mewbourne Oil Company raised a question about the standing of Fasken Oil and Ranch, Ltd. to be an applicant in Case 11755. In order that there be no question about the real party applicant in interest, Fasken Land and Minerals, Ltd. requested that it be added as a co-applicant in Case 11755. That procedural pleading issue was resolved by the Division when it granted over Mewbourne's objection, Fasken's application to have both Fasken Land and Fasken Oil interplead as parties.

17. In its motion for a stay of the Division order, Mewbourne continues to complain to the Division concerning its contractual dispute with Fasken. Among other things, Mewbourne complains that by awarding operations to Fasken the Division has ignored the Operating Agreement.

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I  
**ARGUMENT**

In an effort to overcome the fact that the Division approved the Fasken location and denied the Mewbourne location, Mewbourne may ask this Commission to interpret or construe contracts or render decisions concerning:<sup>1</sup>

(a) what type of activities constitutes "actually commence work on the proposed operations" pursuant to Article 12 of the joint operating agreement. **See Examiner Transcript p. 27.**

(b) interpretations and constructions of the "consent/non-consent" election pursuant to Article 12 of the Joint Operating Agreement-1956 AAPL form. **See Examiner Transcript p. 26.**

(c) interpretations and constructions of any limitations or prohibitions for multiple well proposals under Article 12 of the Joint Operating Agreement-1956 AAPL form. **See Examiner Transcript p. 26.**

(d) that only Fasken Land and Minerals, Ltd. and not Fasken Oil and Ranch, Ltd. can exercise the rights and obligations of Fasken under the Joint Operating Agreement. **See Examiner Transcript p. 22-23.**

(e) the priority of multiple well proposals made pursuant to the Joint Operating Agreement. **See Examiner Transcript p. 11, 26-27.**

(f) the standing or lack of standing of Mewbourne Oil Company, Fasken Land and Minerals, Ltd. and Fasken Oil and Ranch, Ltd. to appear before the Commission. **See Examiner Transcript p. 18.**

Mewbourne and Fasken are already litigating these contract issues and other issues in a Texas State District Court in Midland County, Texas.

All these contractually related issues and associated legal opinions are irrelevant and inadmissible on any of the issues properly before the Commission concerning approval of well locations which may adversely affect correlative rights.

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<sup>1</sup> All of these issues were raised at the Examiner hearing held on April 3, 1997 by Mewbourne over the objection of Fasken.

The New Mexico state courts have repeatedly recognized that the Commission is the administrative agency with the "experience, technical expertise and specialized knowledge" to deal with geologic and engineering data also as to prevent waste of a valuable resources and protect the correlative rights of all participants. **Viking Petroleum v. Oil Conservation Comm**, 100 N.M. 451, 672 P.2d 280, 282 (1983), **Rutter & Wilbanks Corporation v. Oil Conservation Commission**, 87 N.M. 286, 532 P.2d 582 (1975); **Grace v. Oil Conservation Commission**, 87 N.M. 205, 531 P.2d 939 (1975).

However, a conservation commission cannot under the guise of meeting its statutory mandate to prevent waste and protect correlative rights, cannot act as an adjudicator of contractual controversies. See **REO Industries v. Natural Gas Pipeline Co.** 932 F.2d 447 (5th Cir. 1991).<sup>2</sup> Mewbourne is already litigating these issues in a district court in Texas. The appropriate forum and remedies for resolving those contractual disputes exist but resides with the court. See **REO Industries, supra**. By the same token, that district court has no business adjudicating those correlative right issues raised in these well location requests which must be resolved by the Commission. Mewbourne wants it both ways--it will want the Commission to adjudicate the dispute between Fasken and Mewbourne over various items in this operating agreement, including who can operate and when and how wells can be proposed. What Mewbourne wants the Commission to decide is that only Mewbourne has the legal right under the operating agreement to propose a well.

Correctly, the Division has refused to adjudicate these issues because the Division does not have jurisdiction to decide contractual disputes. Notably absence from the enumeration of its powers, is the power to interpret contracts and operating agreements and to require specific enforcement of those contract or, in the alternative, to award money damages for any breach of those agreements. **Section 70-2-12.B NMSA 1979.**

Regardless of those litigation issues, the Division has and must address issues relating to the prevention of waste and the protection of correlative rights. It did so in Order R-10872 by disregarding all these contractual issues and declaring that both Fasken and Mewbourne have the right to develop the

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<sup>2</sup> Case deals with the doctrine of primary jurisdiction and the Texas Railroad Commission's jurisdiction, holding among other things, that the Commission could not decide contract interpretation and damages issues.

Morrow formations in this spacing unit See Finding (14) of Order R-10872. It did so in Order R-10872 by focusing on the geologic evidence and concluding that approval of the Fasken location and denial of the Mewbourne location was necessary "...in order to assure the adequate protection of correlative rights, the prevention of waste and in order to prevent the economic loss caused by the drilling of unnecessary wells..."

### CONCLUSION

Wherefore, Fasken Land and Minerals, Ltd. and Fasken Oil and Ranch, Ltd, request that the Commission enter an order in limine limiting evidence and argument to the geologic and engineering issues and excluding from the DeNovo hearing any evidence or argument concerning the "Fasken-Mewbourne contractual dispute" which is currently the subject of litigation in State District Court, Midland County, Texas.

Respectfully submitted,

KELLAHIN AND KELLAHIN

By:   
W. Thomas Kellahin

### CERTIFICATE OF SERVICE

I hereby certify that a copy of this motion was mailed to all counsel of record this 20th day of October, 1997.

  
W. Thomas Kellahin

**KELLAHIN AND KELLAHIN**

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

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)

TELEPHONE (505) 982-4285  
TELEFAX (505) 982-2047

October 8, 1997

Mr. Michael E. Stogner  
Oil Conservation Division  
2040 South Pacheco  
Santa Fe, New Mexico 87504

**HAND DELIVERED**

RECEIVED  
1997  
Oil Conservation Division

Rand Carroll, Esq.  
Oil Conservation Division  
2040 South Pacheco  
Santa FE, New Mexico 87504

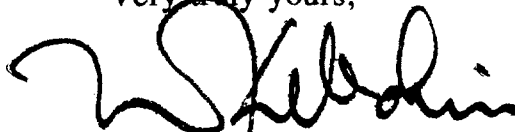
**HAND DELIVERED**

**Re: MOTION TO QUASH MEWBOURNE'S SUBPOENA**  
**NMOCD Case 11755 and Case 11723**  
**Application of Fasken Oil and Ranch, Ltd.**  
**Company for two alternate unorthodox well**  
**locations and a non-standard gas proration**  
**and spacing unit, Eddy County, New Mexico**

Gentlemen:

On behalf of Fasken Oil and Ranch, Ltd. and Fasken Land and Minerals, Ltd. please find enclosed our Motion to Quash the subpoena issued at the request of Mewbourne Oil Company in the referenced cases.

Very truly yours,



W. Thomas Kellahin

cc: James Bruce, Esq.  
Attorney for Mewbourne Oil Company  
William F. Carr, Esq.  
Attorney for Texaco, Inc.  
Fasken Oil and Ranch, Ltd.  
Attn: Sally Kvasnicka

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**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:**

**RECEIVED**

OCT 8 1997

Oil Conservation Division

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

**CASE 11755**

**APPLICATION OF MEWBOURNE OIL COMPANY    CASE 11723  
FOR AND UNORTHODOX GAS WELL LOCATION,  
EDDY COUNTY, NEW MEXICO**

**FASKEN'S MOTION TO QUASH  
SUBPOENA**

Fasken Oil and Ranch, Ltd. and Fasken Land and Minerals, Ltd.  
("Fasken") by its attorneys, hereby moves the Division to quash the  
Subpoena Duces Tecum issued at the request of Mewbourne Oil Company  
("Mewbourne") on October 3, 1997 and accepted on October 7, 1997 which  
commands Fasken to produce on October 9, 1997 the following documents:

"All seismic records in tape form, a shot point map and  
coverage plat along with interpretation of the data which  
relate to the two proposed well, insofar as such data pertains  
to the Cisco, Canyon and Morrow formations."

In support of its Motion to Quash, Fasken states:



(1) In Case 11755, Fasken is the operator of the proposed nonstandard spacing unit consisting of the southern 297.88 acres of Irregular Section 1, T21S, R25E and seeks approval of two alternate unorthodox well locations:

(a) The "Fasken" location is 750 feet from the West line of Section 1 which encroaches towards Irregular Section 2 operated by Penwell; and

(b) The "Mewbourne" location is 660 feet from the South line of Section 1 which encroaches towards Section 12 operated by Texaco.

(2) In Case 11723, Mewbourne is a non-operating working interest owner in a proposed nonstandard spacing unit consisting of the southern 297.88 acres of Irregular Section 1, T21S, R25E and seeks approval of an unorthodox gas well location ("the Mewbourne location") 660 feet from the South line of Section 1 which encroaches towards Section 12 operated by Texaco.

(3) These cases were consolidated for hearing before the Division

(4) Fasken introduced without objection at the Examiner hearing held on April 3, 1997 part of a 3-D seismic interpretation made by Fasken based upon seismic data owned by Matador Petroleum Corporation ("Matador") and licensed to Fasken within the southern portion of Irregular Section 1 which demonstrated the relative merits of the Fasken location when compared to the Mewbourne location and consisted of:

- (a) Fasken Exhibit 10: Shot point and coverage map
- (b) Fasken Exhibit 11: Top of Cisco Time Structure map
- (c) Fasken Exhibit 12: Third Bone Springs-Cisco Isochron
- (d) Fasken Exhibit 13: Cisco-Middle Morrow Shale Isochron
- (e) Fasken Exhibit 14: West/East seismic x-section line 70 thru Mewbourne location
- (f) Fasken Exhibit 15: South/North seismic x-section line 80 thru Fasken location, and
- (g) Fasken Exhibit 16: West/East seismic x-section line 84 thru Fasken location

(5) In addition Fasken used other seismic data, including the Matador seismic data, to locate certain faults in the Morrow which demonstrated that Mewbourne's proposed location was on the downthrown side of a fault and consisted of:

(a) Fasken Exhibit 3: Top of Morrow Structure map.

(6) The Matador "seismic data" which Mewbourne seeks is not owned by Fasken. It is owned by Matador and has been licensed to Fasken.

(7) Fasken has signed an agreement with Matador which precludes Fasken from disclosing the subject seismic data to Mewbourne or any other third party and is therefore unable to comply with this subpoena. See **Exhibit "A" attached.**

(8) Matador is the owner of the requested seismic data which is the confidential business information and the trade secrets of Matador.

(9) The data in question has a substantial economic value and Matador's desire to keep it a secret is reasonable under the circumstances.

(10) Matador's seismic data gives it an opportunity or advantage over competitors who seek to obtain the data without paying for it.

(11) Matador's seismic data if disclosed to Mewbourne will allow Mewbourne to gain valuable data at no cost and to use that data to unfairly compete with the parties who paid for the data.

(12) Matador's seismic data is worth in excess of \$50,000 and Matador and by letter dated February 28, 1997 Matador offered the seismic data to Mewbourne.<sup>1</sup> **See Exhibit "B" attached.**

(13) The other seismic data used by Fasken is publicly available seismic data which Mewbourne can purchase on its own.

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<sup>1</sup> At a meeting held on February 26, 1997, Matador offered to license the seismic data to Mewbourne for \$50,000.00. That offer has been extended to Mewbourne several times on the same terms and Mewbourne has at all times refused to purchase the data.

**Motion to Quash Subpoena**  
**Case Nos. 11755 and 11723**  
**Page 4**

(14) Mewbourne obviously does not need this data in preparation of this case because it has waited more than six months before seeking to obtain it.

(15) If Mewbourne now believes it needs this data, then it is free to purchase it from Matador.

(16) At the hearing held on April 3, 1997, Fasken's interpretation of the seismic data was introduced into evidence **without objection** by Mewbourne and after Mewbourne had a full and complete opportunity to cross-examine the witnesses who had utilized this seismic data. See Transcript page 199 (emphasis added).

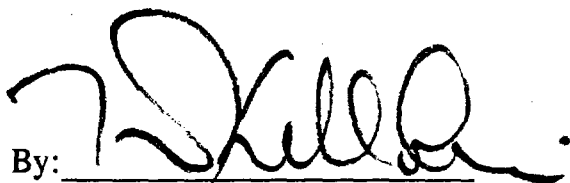
(17) The subpoena is unreasonable and should be quashed because:

(a) it constitutes an undue burden upon Fasken to devote considerable time, expense and effort for the collection and processing of data which is otherwise available to Mewbourne; and

(b) Mewbourne waived its opportunity to obtain this data when Fasken's interpretations of this data were admitted without objection at the examiner hearing.

Therefore, Fasken Oil and Ranch, Ltd. respectfully requests that the New Mexico Oil Conservation Division Quash the Subpoena issued at the request of Mewbourne.

KELLAHIN AND KELLAHIN

By: 

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

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing pleading was transmitted by facsimile this 8th day of October, 1997 to the offices of:

James Bruce, attorney for Mewbourne Oil Company  
William F. Carr, attorney for Texaco

A handwritten signature in black ink, appearing to read "W. Carr", is written over a horizontal line. The signature is cursive and somewhat stylized.

MATADOR PETROLEUM CORPORATION

415 W. WALL, SUITE 1101  
MIDLAND, TX 79701  
(915) 687-3935

December 5, 1994

Barbara Fasken  
Attn: Sally Kvasnicka, Land Manager  
Fasken Oil & Ranch Interests  
303 W. Wall, Suite 1900  
Midland, TX 79701-5116

Re: Eagle Prospect  
Section 1, T21S, R25E  
Eddy County, New Mexico

Dear Ms. Kvasnicka:

Pursuant to our Seismic Farmout Agreement with you, we have completed our 3-D seismic program over the captioned acreage and are currently in possession of the final processed data. Enclosed are copies of such data for your review.

This data is for the sole use and benefit of Fasken Oil & Ranch Interests and is not to be distributed to any third party without the previous written consent of Matador Petroleum.

If you have any questions or would like to discuss the interpretation of this data, please contact me at the above address. If you have any questions regarding our agreement or our development plans in the area, please do not hesitate to contact Barry Osborne, our Land Manager in our Dallas office, at (214) 373-8793.

Please acknowledge your receipt of this data by signing the letter in the space provided below and returning a copy to me at the above address for our records. We look forward to working with you on this project.

Sincerely,

*Louis L. Lint*

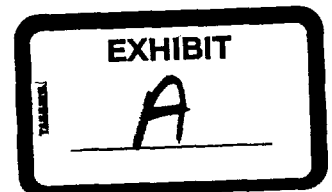
Louis L. Lint  
Staff Geophysicist

LLL/pl  
Enclosure

RECEIVED this 7<sup>th</sup> day of December, 1994.

By: *Joseph J. Foy*  
Title: *Chief Geophysicist*

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**MATADOR PETROLEUM CORPORATION**

SUITE 158, PECAN CREEK  
8340 MEADOW ROAD  
DALLAS, TEXAS 75231-3751  
(214) 987-3650  
FAX: (214) 691-1415

February 28, 1997

Mr. Steve Cobb  
Mewbourne Oil Company  
500 West Texas, Suite 1020  
Midland, TX 79701

Via Fax & Mail

Re: Election to Participate  
Mewbourne's Proposed Catclaw Draw  
"1" Federal #1 Well  
2310' FEL and 660' FSL  
Section 1, T21S, R25E  
Eddy County, NM

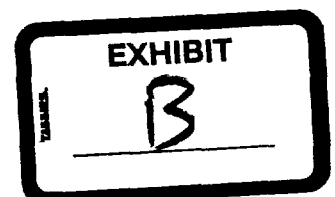
Dear Steve:

Matador Petroleum Corporation has received Mewbourne Oil Company's letter dated January 20, 1997, which proposed the referenced well to be drilled at an unorthodox location and dedicated to a 297.88 acre non-standard gas proration and spacing unit consisting of the southern portion of Section 1 for the production from the Catclaw Draw-Morrow Gas Pool, Eddy County, New Mexico ("Mewbourne Location"). Matador is also in receipt of a well proposal from Fasken Oil and Ranch, Ltd. for a well to be located 2080' FSL and 750' FWL of Section 1, T21S, R25E, Eddy County, New Mexico, to be dedicated to the same non-standard spacing unit proposed by Mewbourne ("Fasken Location").

Matador has concluded the Fasken Location is better situated for the geological potential in this section; however, in order to preserve our right to participate in the Mewbourne Location in the event that such location prevails in the current on-going discussions, Matador formally elects to participate in your well proposal. Matador specifically reserves its right to protest the Mewbourne Location in any hearing conducted before the New Mexico Oil Conservation Division and to support the Fasken Location should any election between the two arise. Matador also reserves the right to protest Mewbourne's status to request an unorthodox well location before the New Mexico Oil Conservation Division as a non-operator of the unit. Our seismic data, which has been offered to you, indicates your prospect location is on the down-dip side of a fault. We are having trouble understanding why you do not wish to take this information into account.

Further, Section 31 of the Joint Operating Agreement, provides that "no well shall be drilled on the unit area for the joint account until both operator and each working interest owner have

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Mr. Steve Cobb  
February 28, 1997  
Page 2

approved title to the land upon which the well is to be drilled...". Our review of the title situation as well as the ownership as set forth in the Joint Operating Agreement indicates that there are some title issues that are yet to be resolved due to the complicated nature of the beneficial interest unit, as well as the nature of the transactions that have taken place in acquiring title to the various interests in this section. We, therefore, do not approve title and object to any party proceeding with the drilling of a well until our concerns to title have been satisfied and we have received and approved a specific title opinion addressing these concerns.

If you have any questions, please do not hesitate to give me a call. We want to see a well drilled in this area and hope that we can work out a well proposal that is agreeable to everyone and is the best possible location.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Barry Osborne', with a horizontal line extending to the right.

C. Barry Osborne

CBO/dm

cc: W.I. Owners

**JAMES BRUCE**  
ATTORNEY AT LAW

POST OFFICE BOX 1056  
SANTA FE, NEW MEXICO 87504

SUITE B  
612 OLD SANTA FE TRAIL  
SANTA FE, NEW MEXICO 87501

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

October 7, 1997

**Hand Delivered**

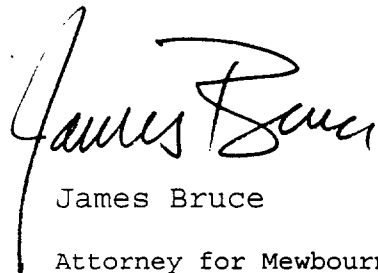
Mr. William J. LeMay  
Oil Conservation Division  
2040 South Pacheco Street  
Santa Fe, New Mexico 87505

Re: Cases 11723/11755 (*de novo*)

Dear Mr. LeMay:

Enclosed is Mewbourne's response to Texaco's Motion to Quash Subpoena. Do to the upcoming hearing, Mewbourne requests that this matter be decided as soon as possible. Perhaps counsel can argue this motion to Ms. Hebert on Thursday.

Very truly yours,



James Bruce

Attorney for Mewbourne  
Oil Company

cc: Counsel of record w/encl. (via fax)

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

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

Case No. 11723 (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. 11755 (de novo)

Order No. R-10872-A

RESPONSE OF MEWBOURNE OIL COMPANY IN OPPOSITION TO  
MOTION TO QUASH SUBPOENA DUCES TECUM

I. INTRODUCTION.

The above cases were consolidated for hearing, and were heard by the Division on April 3, 1997 and May 1, 1997. On September 12, 1997 the Division entered Order No. R-10872, granting the application of Fasken Oil and Ranch, Ltd. to drill a well in §1-21S-25E, and denying the application of Mewbourne Oil Company ("Mewbourne"). Mewbourne has filed an application for hearing *de novo*, which is scheduled for October 30, 1997.

Texaco Exploration and Production Company Inc. ("Texaco"), the operator of the immediately offsetting E.J. Levers "NCT-1" Well No. 2 in §12-21S-25E ("the well"), appeared at the Examiner hearing and presented evidence in opposition to Mewbourne's proposed location. Mewbourne obtained and served upon Texaco a subpoena, requesting information in Texaco's possession or control regarding the well. Texaco has filed a motion to quash the subpoena. Mewbourne submits

this response, requesting that Texaco be ordered to produce the data listed in ¶¶1-4 of the subpoena.

## II. ARGUMENT.

Texaco argues that the subpoena should be quashed because the requested data (1) is irrelevant or not pertinent to the above cases, (2) is publicly available, and (3) is proprietary.

Texaco's first argument is ludicrous: At the Examiner hearing, Texaco asserted that if Mewbourne's proposed well was approved, an 81% penalty must be imposed to protect Texaco's correlative rights. Yet Texaco refuses to provide data which is directly pertinent to that assertion.

There is a presumption in favor of discovery. Griego v. Grieco, 90 N.M. 174, 561 P.2d 36 (Ct. App. 1977). Moreover, the term "relevant" or pertinent is liberally interpreted. United Nuclear Corp. v. General Atomic Co., 96 N.M. 155, 629 P.2d 231 (1980), app. *dism'd*, 451 U.S. 901 (1981). The Division has recognized these principles in ordering that raw data from offsetting wells be produced in compulsory pooling, unorthodox location, and unitization hearings. In accord with these legal principles and Division policy, Texaco must be ordered to turn over data on the well.

As to the second argument, Mewbourne agrees that Texaco should not be ordered to provide publicly available data. United Nuclear Corp., *supra* (a party need not turn over data which the other party is equally capable of obtaining). However, a brief glance at the subpoena, attached hereto as Exhibit A, reveals the speciousness of

Texaco's claim that the requested data is publicly available: The only publicly available data is monthly production data and basic perforation data. The rest of the data requested in ¶¶1-4 of the subpoena is non-public (pressures, PVT information, well check records, daily production data, well performance before, during, and after it was perforated, etc.). Mewbourne is not "equally capable of obtaining" the vast bulk of the subpoenaed data, and Texaco must be ordered to turn it over.

Regarding the third argument, data that is proprietary is discoverable. **See SCRA 1-026.B (1986)** (only privileged data is not discoverable). Nonetheless, Mewbourne is willing to withdraw the request for the information specified in ¶5 and ¶6 of the subpoena (reserve calculations and reservoir simulations), provided that Texaco produces the remaining data.

A subpoena must be shown to be unreasonable to allow quashing. **Blake v. Blake, 102 N.M. 354, 695 P.2d 838 (Ct. App. 1985)**. Texaco has not shown the subpoena to be unreasonable. In fact, the data sought by Mewbourne is reasonably necessary for Mewbourne to prepare for the *de novo* hearing, and cannot be obtained other than through Texaco.<sup>1</sup>

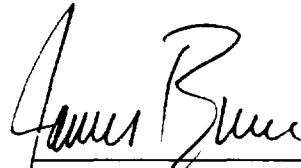
**WHEREFORE**, Mewbourne requests that the Division or Commission order Texaco to produce the data listed in ¶¶1-4 of the subpoena on October 9, 1997, or at the latest on October 16, 1997, so that Mewbourne has a reasonable time period before the *de novo* hearing

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<sup>1</sup>Texaco has provided much, if not all, of the subpoenaed data to Fasken Oil and Ranch, Ltd.

to analyze the data.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "James Bruce". The signature is written in black ink and is positioned above a horizontal line.

---

James Bruce  
P.O. Box 1056  
Santa Fe, New Mexico 87504  
(505) 982-2043

Attorney for Mewbourne Oil Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing pleading was served upon the following counsel of record this 7th day of October, 1997:


Via Fax:

W. Thomas Kellahin  
Kellahin & Kellahin  
P.O. Box 2265  
Santa Fe, New Mexico 87504

William F. Carr  
Campbell, Carr, Berge & Sheridan, P.A.  
P.O. Box 2208  
Santa Fe, New Mexico 87504

Via Hand Delivery:

Marilyn S. Hebert  
Oil Conservation Commission  
2040 South Pacheco  
Santa Fe, New Mexico 87505

  
\_\_\_\_\_  
James Bruce

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

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

CASE NO. 11723  
(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. 11755  
(de novo)

ORDER NO. R-10872

SUBPOENA DUCES TECUM

TO: Texaco Exploration and Production Inc.  
c/o William F. Carr  
Campbell, Carr, Berge & Sheridan, P.A.  
Suite 1  
110 North Guadalupe  
Santa Fe, New Mexico 87501

Pursuant to N.M. Stat. Ann. §70-2-8 (1995 Repl. Pamp.) and  
Division Rule 1211, you are hereby ordered to appear at 8:15 a.m.  
on Thursday, October 9, 1997, at the offices of the New Mexico Oil  
Conservation Division, 2040 South Pacheco Street, Santa Fe, New  
Mexico 87505, and produce the documents and records described  
below, and make them available for inspection and copying by  
employees or representatives of Mewbourne Oil Company:

DOCUMENTS TO BE PRODUCED: All documents, records, and data  
regarding the matters itemized below in your possession or under  
your control pertaining to the Texaco Exploration and Production  
Inc. E.J. Levers Fed. "NCT-1" Well No. 2 (API No. 30-015-28644),

located in the SE~~1~~<sup>4</sup>NW~~4~~ (Unit F) of Section 12, Township 21 South, Range 25 East, N.M.P.M., Eddy County, New Mexico:

1. Reservoir pressure data including, but not limited to, bottom-hole pressure surveys or pressures, pressure buildup tests, surface pressure readings, daily tubing pressures and casing pressures, drill stem tests, and interference tests, with relevant information as to shut-in times and production rates before shut-in;
2. PVT data, PVT reports, and gas analyses including but not limited to molecular weight and API gravity;
3. All production data including, but not limited to, all well check records (including gauges and/or charts) on a daily basis from initial testing and completion to date, showing actual production of oil, gas, and water, and associated wellhead pressures per day and per month;
4. Chronological reports including details on (a) perforating and perforation locations, (b) stimulation fluids, volumes, rates, and pressures for each treated interval, and (c) swabbing, flowing, and/or pumping results for each interval that was perforated and tested, including pre- and post-stimulation results, as applicable;
5. Any reservoir simulation prepared by you or on your behalf regarding the Morrow reservoir in Section 12-21S-25E or the Catclaw Draw-Morrow Gas Pool, including the model software description, model parameters and

assumptions, model variables, model history, matching data, model predictions, and subsequent modification(s); and

6. Any an all reserve calculations including, but not limited to, estimates of ultimate recovery, production decline curves, pressure decline curves, material balance calculations (including reservoir parameters), and volumetric parameters (including reservoir parameters).

INSTRUCTIONS: This subpoena requires the production of all information described above available to you or in your possession, custody, or control, wherever located. The information shall include data from commencement of drilling the well to the latest available data.

"You" or "your" means Texaco Exploration and Production Inc. and its employees, former employees, officers, directors, agents, contractors, representatives, affiliated companies, and predecessors.

This subpoena was issued at the request of Mewbourne Oil Company, through its attorney, James Bruce, P.O. Box 1056, Santa Fe, New Mexico 87504, (505) 982-2043.

ISSUED this 30<sup>th</sup> day of September, 1997, at Santa Fe, New Mexico.

NEW MEXICO OIL CONSERVATION  
DIVISION

  
WILLIAM J. LEMAY  
DIRECTOR



BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

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

CASE NO. 11723  
(de novo)

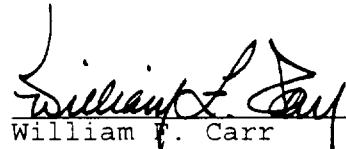
APPLICATION OF FASKEN OIL AND  
RANCH, LTD. FOR A NON-STANDARD  
GAS PRORATION AND SPACING UNIT  
AND TWO ALTERNATE UNORTHODOX GAS  
WELL LOCATIONS, EDDY COUNTY,  
NEW MEXICO.

CASE NO. 11755  
(de novo)

ORDER NO. R-10872

ACCEPTANCE OF SERVICE OF SUBPOENA DUCES TECUM

I, William F. Carr, attorney of record for Texaco Exploration and Production Inc., hereby accept service of the original Subpoena Duces Tecum, dated September 29, 1997, issued in this matter to Texaco Exploration and Production Inc.



William F. Carr  
Campbell, Carr, Berge &  
Sheridan, P.A.  
Suite 1  
110 North Guadalupe  
Santa Fe, New Mexico 87501

RECEIVED

Oct. 7 1997

Dated:

October 3, 1997

10-6-97

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

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

CASE NO. 11723  
(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 11755  
(De Novo)  
ORDER NO. R-10872

RECEIVED  
1997  
Oil Conservation Division

TEXACO EXPLORATION AND PRODUCTION INC.'S  
MOTION TO QUASH SUBPOENA DUCES TECUM

Texaco Exploration and Production Inc. ("Texaco") hereby moves the Oil Conservation Commission to quash the Subpoena Duces Tecum issued at the request of Mewbourne Oil Company ("Mewbourne") on September 30, 1997 which commands Texaco to produce on October 9, 1997 numerous documents and other information pertaining to the Texaco Exploration and Production Inc. E. J. Levers Fed. "NCT-1" Well No. 2 which is located in Unit F of Section 12, Township 21 South, Range 25 East, NMPM, Eddy County, New Mexico.

In support of its Motion to Quash, Texaco states:

### **BACKGROUND**

1. Oil Conservation Commission Cases 11723 and 11755 involve the development of Section 1, Township 21 South, Range 25 East, NMPM, Eddy County, New Mexico. Both Mewbourne and Fasken Oil and Ranch, Ltd. ("Fasken") seek approval of a 297.88-acre non-standard gas spacing and proration unit in the S/2 equivalent of Section 1. Mewbourne and Fasken each propose the development of this non-standard spacing and proration unit with wells at unorthodox locations. Mewbourne's proposed unorthodox location is 660 feet from the South line and 2310 feet from the East line of Section 1 and Fasken's proposed unorthodox location is 2080 feet from the South line and 750 feet from the West line of Section 1.

2. Texaco operates the direct south offset spacing unit. On this acreage, Texaco has drilled its E. J. Levers Fed. "NCT-1" Well No. 2 at a standard gas well location 2448 feet from the North line and 1980 feet from the West line of said Section 12. A standard 632.36 acre spacing and proration unit comprised of said Section 12 is dedicated to this well.

3. At the April 3, 1997 Division Examiner hearing, the Mewbourne and Fasken applications were consolidated and came on for hearing before Examiner Stogner.

4. Mewbourne has stated "That to take advantage of this and proven and prolific formation, Mewbourne proposed drilling a well to the Morrow formation as close to the

South line of the Operating Unit as possible.” Texaco appeared in opposition to the Mewbourne location because it is 60% closer to the Texaco tract than permitted by the Special Pool Rules and Regulations for the Catclaw Draw-Morrow Gas Pool. Texaco did not oppose the Fasken location because it was more than a standard set back from the Texaco tract.

5. By Order No. R-10872, dated September 12, 1997, the Division approved the Fasken location and denied the application of Mewbourne. Mewbourne has filed its application for hearing *de novo* which is currently set for hearing on October 30, 1997.

6. On September 30, 1997, at the request of Mewbourne, the Division issued a Subpoena Duces Tecum directing Texaco to appear at the Division’s Santa Fe Office on October 9, 1997 and produce numerous documents, records and records concerning its E. J. Levers Fed. “NCT-1” Well No. 2.

#### ARGUMENT

7. Texaco requests that this subpoena be quashed because the data sought by Mewbourne is:

- (a) Not pertinent to any issue involved in either Mewbourne’s Case No. 11723 or Fasken’s Case No. 11755;
- (b) Publicly available petroleum geologic and petroleum engineering data from the records of the Oil Conservation Division, Dwights and other public

files accessible to Mewbourne; and/or

- (c) Proprietary data that is not subject to discovery.

**MEWBOURNE'S SUBPOENA SEEKS DATA WHICH IS NOT  
PERTINENT TO ANY ISSUE IN CASES 11723 OR 11755**

8. Subpoena power is granted to the Division by the Oil and Gas Act. This statute authorizes the Division "to require the production of books, papers and records in any proceeding before the Commission or Division." However, this Act also imposes specific limitations on this power and provides that "... nothing herein contained shall be construed as requiring any person to produce any books, papers or records or to testify in response to any inquiry, **not pertinent to some question ... lawfully before the Commission or Division or court for determination.**" NMSA 1978 § 70-2-8 (Emphasis added).

9. Discovery, including document production, has become a weapon of harassment in civil proceedings. This subpoena appears to be nothing more than an effort to move this type of harassment into the administrative practice before the Commission. Cases 11723 and 11755 only involve two proposed unorthodox well locations in the Morrow formation and a non-standard spacing unit in a Section offsetting the tract on which the Texaco E. J. Levers well is located. None of the information sought by this subpoena is pertinent to whether Mewbourne should be allowed to drill at an unorthodox well location which encroaches on the Texaco tract. The subpoena should be quashed.

**MEWBOURNE SEEKS DATA WHICH IS  
AVAILABLE TO IT FROM PUBLIC SOURCES**

10. The information which Mewbourne seeks by subpoena is available to it in the records of the Oil Conservation Division, the New Mexico Engineering Committee, Dwight's and other public sources. Texaco should not be required to produce public documents when Mewbourne is equally capable of obtaining them on its own. *United Nuclear Corp. v. General Atomic Co.*, 96 N.M. 155 (1980), appeal dismissed, 101 S. Ct. 1966 (1981).

**MEWBOURNE SEEKS INFORMATION WHICH IS  
INTERPRETATIVE AND PROPRIETARY**

11. Mewbourne seeks Texaco's proprietary estimate of the reserves under Section 12. Not only is this information of no pertinence to the issues in these cases, it is the type of interpretative data which the Commission has not required be produced by operators to their competitors. Mewbourne is not entitled to Texaco's internal reserve estimates. It may obtain data from public sources and make its own estimates of the reserves under its acreage or of any offsetting tract. Mewbourne should be required to do so.

12. The subpoena should be quashed because it represents undue burden on Texaco to contribute extraordinary amounts of time, effort and expense to the collection of data which is otherwise available to Mewbourne.

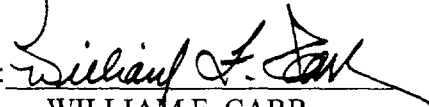
13. The subpoena should be quashed because it is an abuse of the Division's

subpoena authority, does not seek information which is pertinent to the issues in Cases 11723 and 11755, and the Division should not be party to this type of harassment.

Respectfully submitted,

CAMPBELL, CARR, BERGE  
& SHERIDAN, P.A.

By:



WILLIAM F. CARR

Post Office Box 2208

Santa Fe, New Mexico 87504-22078

ATTORNEYS FOR TEXACO  
EXPLORATION AND PRODUCTION INC.

**CERTIFICATE OF SERVICE**

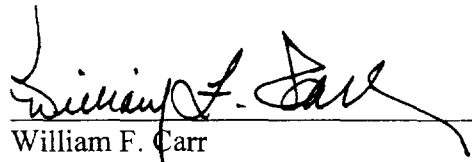
I hereby certify that a copy of the foregoing Texaco Exploration and Production Inc.'s Motion to Quash Subpoena Duces Tecum was hand-delivered this 6<sup>th</sup> day of October, 1997 to the following counsel of record:

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

Lyn Hebert, Esq.  
Oil Conservation Division  
New Mexico Energy, Minerals  
& Natural Resources  
2040 South Pacheco Street  
Santa Fe, New Mexico 87505

James Bruce, Esq.  
612 Old Santa Fe Trail  
Suite B  
Santa Fe, New Mexico 87501

W. Thomas Kellahin, Esq.  
Kellahin & Kellahin  
117 North Guadalupe Street  
Santa Fe, New Mexico 87501

  
William F. Carr



10-3-97

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

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

RECEIVED  
Case No. 11723 (de novo)

1997

Oil Conservation Division

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. 11755 (de novo)

Order No. R-10872

SUBPOENA DUCES TECUM

TO: Fasken Oil and Ranch, Ltd.  
c/o W. Thomas Kellahin  
117 North Guadalupe  
Santa Fe, New Mexico 87501

Pursuant to N.M. Stat. Ann. §70-2-8 (1995 Repl. Pamp.) and Division Rule 1211, you are hereby ordered to appear at 8:15 a.m. on Thursday, October 9, 1997, at the offices of the New Mexico Oil Conservation Division, 2040 South Pacheco Street, Santa Fe, New Mexico 87505, and produce the documents and records described below, and make them available for inspection and copying by employees or representatives of Mewbourne Oil Company:

DOCUMENTS TO BE PRODUCED: All documents, records, and data regarding the matters itemized below in your possession or under your control pertaining to the two wells proposed in the above applications, located in the S¼ of Section 1, Township 21 South, Range 25 East, N.M.P.M.:

All seismic records in tape form, a shot point map and coverage plat, along with interpretation of the data which

relate to the two proposed wells, insofar as such data pertains to the Cisco, Canyon, and Morrow formations.


INSTRUCTIONS: This subpoena requires the production of all information described above available to you or in your possession, custody, or control, wherever located.

"You" or your" means Fasken Oil and Ranch, Ltd., Fasken Land and Minerals, Ltd., and their employees, former employees, officers, directors, agents, contractors, representatives, affiliated companies, and predecessors.

This subpoena was issued at the request of Mewbourne Oil Company through its attorney, James Bruce, P.O. Box 1056, Santa Fe, New Mexico 87504, (505) 982-2043.

ISSUED this 3<sup>rd</sup> day of October, 1997, at Santa Fe, New Mexico.

NEW MEXICO OIL CONSERVATION  
DIVISION

  
WILLIAM J. LEMAY  
DIRECTOR

10-3-1997

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

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

Case No. 11723 (de novo)

1997

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. 11755 (de novo)

Order No. R-10872

SUBPOENA DUCES TECUM

TO: Fasken Oil and Ranch, Ltd.  
c/o W. Thomas Kellahin  
117 North Guadalupe  
Santa Fe, New Mexico 87501

Pursuant to N.M. Stat. Ann. §70-2-8 (1995 Repl. Pamp.) and  
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Conservation Division, 2040 South Pacheco Street, Santa Fe, New  
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employees or representatives of Mewbourne Oil Company:

DOCUMENTS TO BE PRODUCED: All documents, records, and data  
regarding the matters itemized below in your possession or under  
your control pertaining to the two wells proposed in the above  
applications, located in the S½ of Section 1, Township 21 South,  
Range 25 East, N.M.P.M.:

All seismic records in tape form, a shot point map and  
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relate to the two proposed wells, insofar as such data pertains to the Cisco, Canyon, and Morrow formations.

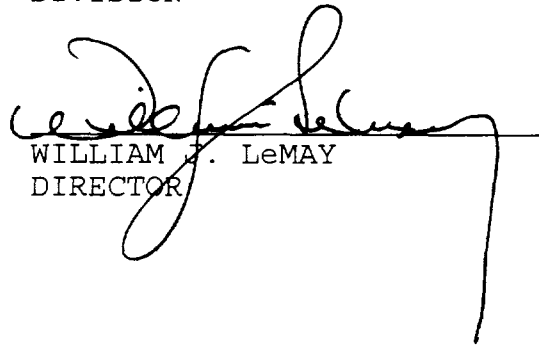
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This subpoena was issued at the request of Mewbourne Oil Company through its attorney, James Bruce, P.O. Box 1056, Santa Fe, New Mexico 87504, (505) 982-2043.

ISSUED this 3<sup>rd</sup> day of October, 1997, at Santa Fe, New Mexico.

NEW MEXICO OIL CONSERVATION  
DIVISION



WILLIAM J. LEMAY  
DIRECTOR

52

**JAMES BRUCE**  
ATTORNEY AT LAW

POST OFFICE BOX 1056  
SANTA FE, NEW MEXICO 87504

SUITE B  
612 OLD SANTA FE TRAIL  
SANTA FE, NEW MEXICO 87501

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

RECEIVED

OCT - 2 1997

October 1, 1997

**Via Fax and U.S. Mail**


Mr. William J. LeMay  
Oil Conservation Division  
2040 South Pacheco Street  
Santa Fe, New Mexico 87505

Re: Cases 11723/11755 (*de novo*)

Dear Mr. LeMay:

Enclosed is Mewbourne's reply regarding its motion to have an existing well shut-in.

Very truly yours,



James Bruce

James Bruce  
Attorney for Mewbourne  
Oil Company

cc: Counsel of record w/encl. (via fax)

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

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

Case No. 11723 (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. 11755 (de novo)

Order No. R-10872

REPLY OF MEWBOURNE OIL COMPANY  
IN SUPPORT OF ITS MOTION TO SHUT-IN AN EXISTING WELL

Mewbourne Oil Company ("Mewbourne") filed its motion requesting that the Texaco Exploration and Production Inc. ("Texaco") E.J. Levers Fed. "NCT-1" Well No. 2, in Unit F of §12-21S-25E be shut-in, because it was illegally drilled. Texaco filed its response, and Mewbourne submits this reply in support of its motion:

Texaco asserts that it has done nothing wrong, and that it should not be required to shut-in its well pending *de novo* review of this matter. Texaco's primary argument is that the Catclaw Draw-Morrow Gas Pool ("the Pool") was developed on 320 acre spacing, and thus the E.J. Levers "NCT-1" Well No. 2 was properly drilled and completed.<sup>1</sup> Texaco's assertion highlights the unfairness to Mewbourne and other interest owners in the S½ §1-21S-

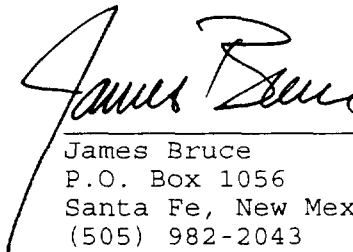
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<sup>1</sup>Texaco claims that the APD for the well was properly approved. However, Exhibit B attached to its response reflects an unapproved APD.

25E by allowing the Texaco well to produce: **Mewbourne's proposed well in the S $\frac{1}{2}$  of Section 1 is at an orthodox location for a laydown 320 acre gas spacing unit under statewide rules.** Yet, at the hearing, Texaco used the special rules for the Pool to claim that Mewbourne's proposed well was extremely unorthodox, and further used 640 acre spacing as the basis for asserting that an 81% production penalty be assessed against the well. Texaco cannot have it both ways. If 320 acre spacing is the correct basis for developing the Pool, then Mewbourne's proposed location has no adverse effect on Texaco, and it should be approved. If not, then Texaco's well should be shut-in because it does not comply with Division rules.

**WHEREFORE**, Mewbourne requests that Texaco's E.J. Levers Fed. "NCT-1" Well No. 2 be shut-in pending a proper application to and decision by the Division.

Respectfully submitted,



---

James Bruce  
P.O. Box 1056  
Santa Fe, New Mexico 87504  
(505) 982-2043

Attorney for Mewbourne Oil Company

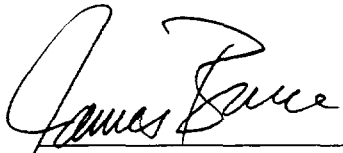
CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing pleading was served upon the following counsel of record this 1st day of October, 1997, by facsimile transmission:

W. Thomas Kellahin  
Kellahin & Kellahin  
P.O. Box 2265  
Santa Fe, New Mexico 87504

William F. Carr  
Campbell, Carr, Berge & Sheridan, P.A.  
P.O. Box 2208  
Santa Fe, New Mexico 87504

Marilyn S. Hebert  
Oil Conservation Commission  
2040 South Pacheco  
Santa Fe, New Mexico 87505

  
\_\_\_\_\_  
James Bruce