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 SPEC ALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

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

September 24, 1997

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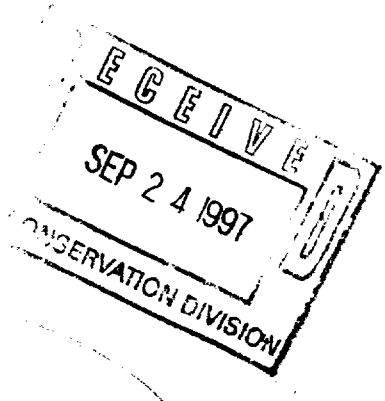


Mr. William J. LeMay, Director
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87504

Re: **Response to Mewbourne Motion to Stay**
NMOCD Case 11755 and NMOCD Case 11723

Dear Mr. LeMay:

On Thursday, September 18, 1997, Mr. Jim Bruce on behalf of Mewbourne hand delivered to you a request to stay Order R-10872 which had approved Fasken's well location and denied Mewbourne's location. Mr. Bruce made that filing without first calling me to determine if it was opposed. In addition, instead of also hand delivering a copy to me, he mailed me a copy which I did not receive until Monday, February 22, 1997. Mr. Bruce has violated Memorandum 3-85 which requires that "a copy of the request for a stay must **concurrently** be furnished the attorneys(s) for the other party(ies) in the case."

On Tuesday, February 23, 1997, I called your office to advise you I was preparing a response to this stay and was told you were out of town. I advised Florene Davidson that I was preparing a response to the stay motion.

This afternoon, as I was leaving my office to file Fasken's Response to the Motion for a Stay, I received a phone message from Ms. Davidson advising me that you had granted the stay.

I am disturbed that the Division would act on a stay request without either contacting opposing counsel or requiring counsel to first determine if his motion was opposed. Please note my objection. It is obvious the Division needs to issue a revision to Memorandum 3-89 in order to provide due process protection to all parties in this type of proceeding.

Please find enclosed Fasken's response to the Motion for a Stay.

Very truly yours,

W. Thomas Kellahin

cc: Michael E. Stogner, hearing examiner
Rand Carroll, Division attorney
Lyn Hebert, Commission attorney
James Bruce, Esq.
Attorney for Mewbourne Oil Company
William F. Carr, Esq.
Attorney for Penwell Energy, Inc.
Attorney for Texaco, Inc.
Fasken Oil and Ranch, Ltd.
Attn: Sally Kvasnicka
Charles Tighe, Esq.

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**

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 STAY
DIVISION ORDER R-10872

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 Motion to Stay Division Order R-10872 as follows:

RELEVANT FACTS

1. Fasken is the operator of the southern portion of Irregular Section 1, Township 21 South, Range 25 East, NMPM, Eddy County, New Mexico, as a result of a Joint Operating Agreement dated April 1, 1970 which includes Mewbourne Oil Company ("Mewbourne") Matador Petroleum Corporation, Devon Energy Corporation, and others, as non-operators.

2. 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, applicant requests approval of a non-standard 297.88 acre unit ("NSP") comprising the southern portion of Irregular Section 1 described as Lots 29, 30, 31, 32 and the SW/4 (S/2 equivalent).

3. Fasken, as operator, proposed to drill the Avalon "1" Federal Com Well No. 2 at an unorthodox gas well location 750 feet from the West line and 2080 from the South line ("the Fasken location") of said Irregular Section 1. **See Exhibit A.**

4. Mewbourne, as a non-operator and working interest owner in this NSP, proposed that the well be at an unorthodox well location 2310 feet from the East line and 660 feet from the south line ("the Mewbourne location") of said Irregular Section 1.

5. Fasken is the applicant in Case 11755 and seeks approval of its proposed location.

6. Mewbourne is the applicant in Case 11723 in which it seeks approval of its proposed well location.

7. The Mewbourne location encroaches upon Section 12 which is operated by Texaco. Section 12 is a 640-acre gas proration and spacing unit in the Catclaw Draw Morrow gas Pool and is simultaneously dedicated to two producing gas wells.

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

9. 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 the Fasken location.

10. Fasken contends its proposed location is the optimum location in the proposed spacing unit at which to drill to test for Morrow gas production, while Mewbourne contends its location is the optimum location.

11. Both Fasken and Mewbourne propose to dedicate the southern 297.88 acres of Irregular Section 1 to which ever well is drilled and if it is capable of gas production from the top of the Wolfcamp to the base of the Morrow formation.

12. Both well locations are within one mile of 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."

13. 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.

14. 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.

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

A. MEWBOURNE'S MOTION FOR A STAY

1. Contrary to Mewbourne's contention, Order R-10872 is not contrary to Division policy and law.

(a) Order R-10872 is consistent with Division policy:

Mewbourne misunderstands Division Memorandum 3-89. This memorandum states that unopposed unorthodox well locations "will have to be supported by substantial evidence." In summary, this memorandum was

intended to discourage the practice of requesting approval of unopposed unorthodox well location which were being submitted **without** substantial geological evidence to support the request.

In this case, Fasken presented the following substantial evidence which demonstrated that:

(a) 3-D seismic data shows a major north/south Morrow cutting fault separates the Fasken location and Texaco wells from the Mewbourne location. Mewbourne's location is on the down thrown side of this fault.

(b) No Morrow sands will communicate or drain across this fault.

(c) The Mewbourne location is at a structural disadvantage in the Morrow because both the Upper and Lower Morrow sands become wet in lower structural positions.

(d) Lower Morrow channel sands trend north-northwest to south-southwest, have a very good permeability, drain long distances, become wet down dip and have more productive potential farther away form areas older wells have drained.

(e) Middle Morrow marine influenced sands trend east-northeast to west-southwest, range from very good to very poor permeability, do not correlate in a north-south direction and did not communicate or drain in a north-south one half mile distance between the Texaco's Levers #1 and #2 wells in Section 12.

(f) The Upper Morrow sand is productive in structurally high areas like the Fasken location and wet in structurally low areas like the Mewbourne location.

(g) The Cisco has productive potential at the Fasken location because the 3-D seismic shows a time structure with fourway closure, an isochron thin from the 3rd Bone Springs sand to the top of the Cisco and an isochron thick from the top of the Cisco to the Middle Morrow Shale.

No Cisco potential exists at the Mewbourne location.

(h) that Fasken's location would help Penwell, the offset operator toward whom the location encroached, evaluate its own acreage at the risk of Fasken. Accordingly Penwell did not object.

The Fasken fact situation is exactly what Division Memorandum 3-89 was intended to encourage. Mewbourne's claim is groundless.

(b) Order R-10872 complies with the case law established in the Viking Petroleum and in the Fasken cases

Mewbourne relies upon **Fasken v. the Oil Commission**, 87 NM 292 (1975) and **Viking Petroleum, Inc. v. Oil Conservation Commission**, 100 NM 451 (1983) for its contention that the order is void because it failed to disclose the basis and reasons of the Division decision. Mewbourne is wrong.

Fasken, supra., requires that: (a) the order contain sufficient findings to disclose the reasoning of the Commission in reaching its ultimate findings and (b) that those findings must have substantial support in the record. In **Fasken**, the Commission failed to make any findings why it had denied Fasken's unopposed application when all it had before it was Fasken's testimony in support of granting the application. **Fasken,** supra, does **not** require that those findings be exhaustive.

In **Viking Petroleum, Inc.** supra, the Court affirmed the Commission order and rejected a "substantial evidence" argument. In doing so the Court declared that it would defer to the Commission's special expertise and affirmed the order because it contained findings sufficient to show the basis of the order and the reasoning of the Commission in reaching its conclusion.

Neither **Fasken** nor **Viking Petroleum** require elaborate or exhaustive findings. It is not necessary for Order R-10872 to recite all of the "substantial evidence" which supports the Division's decision to approve the Fasken location and deny the Mewbourne location. What is required is that the record itself provides substantial evidence to support that decision. As set forth above, such evidence is in the record.

It is also obvious that the order contains sufficient findings to disclose both the basis and reasoning of the Division. A reading of Findings (14) and (15) discloses that Examiner Stogner reviewed all of the technical evidence presented by Fasken, Mewbourne and Texaco and decided that a well was necessary in the subject spacing unit. In addition, a reading of Finding (16) discloses why he approved the Fasken location and denied the Mewbourne location: that "..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..." the Division approved the Fasken location

and denied the Mewbourne location. Those findings are sufficient and disclose the following:

(a) only one well was approved in the spacing unit because two might cause economic loss by the drilling of a second well which might not be necessary at this time.

(b) denial of the Mewbourne location protected Texaco's correlative rights by not subjecting Texaco to encroachment for which they objected and it avoided having to impose a production penalty which in all probability would not protect Texaco.

(c) it protected the correlative rights of Fasken and Mewbourne by approving the Fasken location which was unopposed and therefore did not require any production penalty.

(d) it prevented waste by affording the opportunity to test the Cisco formation at the Fasken location and potentially produce new gas that might not otherwise be explored.

While Mewbourne has correctly cited the **Viking Petroleum** and **Fasken** cases, it has incorrectly applied them to this case.

2. Order R-10872 correctly ignored the Operating Agreement.

Mewbourne complains that by awarding operations to Fasken the Division has ignored the Operating Agreement. What Mewbourne wants is for the Division 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. Mewbourne and Fasken are already litigating those contract issues and other issues in a Texas State District Court in Midland County, Texas.

Correctly, the Division has refused to litigate these issues because the Division does not have jurisdiction to decide contractual disputes. Regardless of those litigated issues, the Division has and must address prevention of waste and correlative rights. It did so in Order R-10872

3. The Division did have jurisdiction over Case 11755.

Mewbourne is grasping 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 application to have both Fasken Land and Fasken Oil interplead as parties. Fasken submitted 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 Division to recall Mr. Carroll's question to Mr. Bruce at the May 1, 1997 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 Mewbourne's objection was frivolous and was intended only to delay the Division from hearing evidence on Fasken's proposed location. The Division correctly denied Mewbourne's motion.

4. Mewbourne's request for a Stay.

Under the current circumstances and at this present time, Fasken does not oppose Mewbourne's request for a temporary stay of the drilling of the Fasken approved location.

B. MOTION TO SHUT-IN WELL

In its Motion, Mewbourne also seeks to shut-in a Texaco well pending the Commission's order in this matter. That issue is directed at Texaco and not Fasken. Accordingly, Fasken chooses not to respond at this time to this issue.

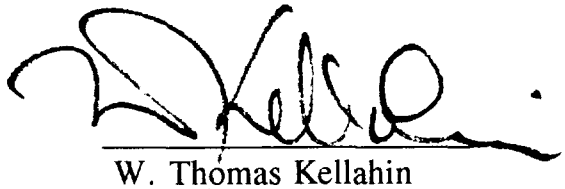
Respectfully submitted,

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 24 day of September, 1997.



W. Thomas Kellahin

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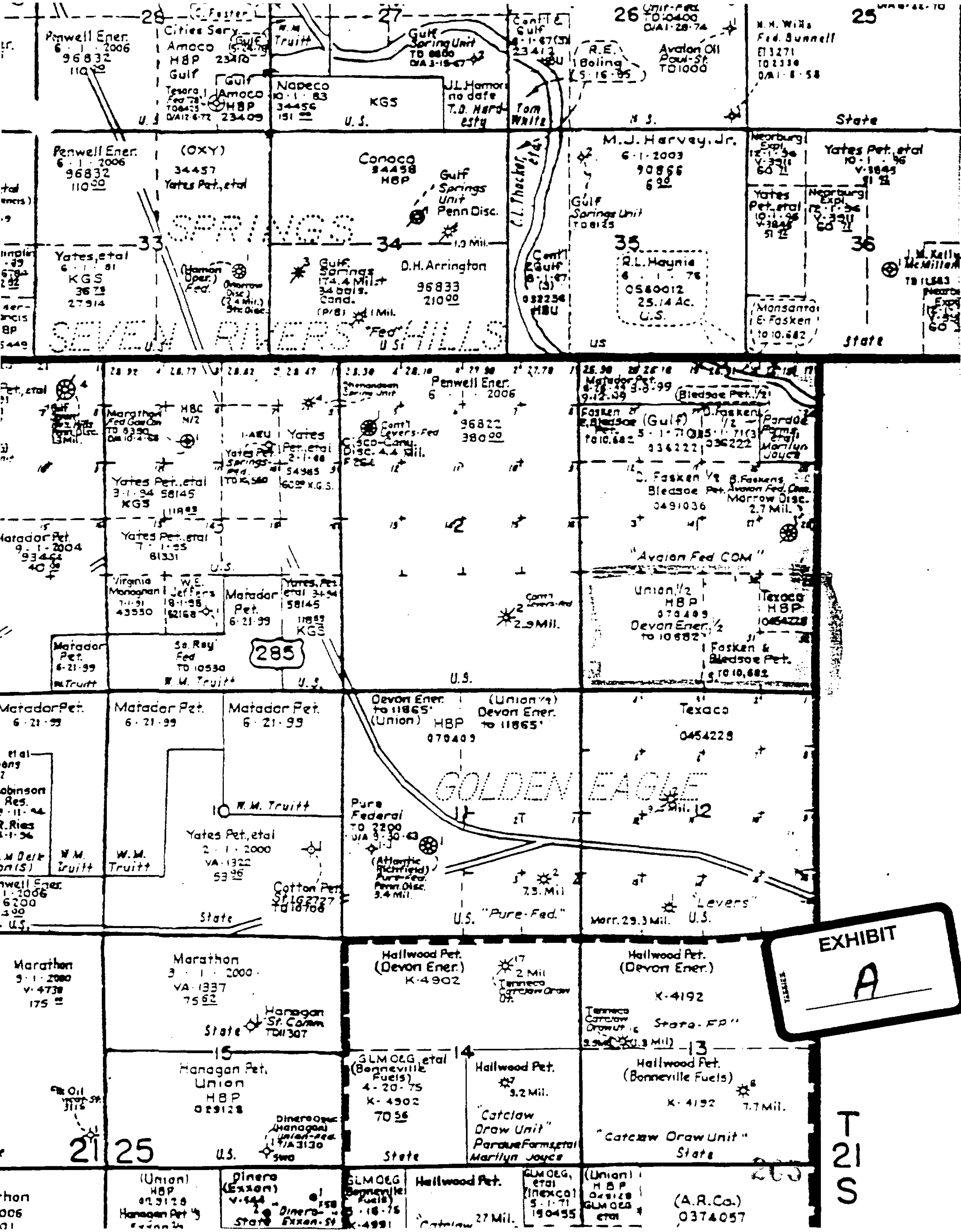

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