

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

JAN 22 1998

IN THE MATTER OF THE HEARING CALLED BY )  
 THE OIL CONSERVATION DIVISION FOR THE )  
 PURPOSE OF CONSIDERING: )  
 )  
 APPLICATION OF FASKEN LAND AND MINERALS, )  
 LTD., FOR COMPULSORY POOLING AND AN )  
 UNORTHODOX GAS WELL LOCATION, EDDY )  
 COUNTY, NEW MEXICO )  
 )

CASE NO. 11,877

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

January 8th, 1998

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, January 8th, 1998, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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## I N D E X

January 8th, 1998  
 Examiner Hearing  
 CASE NO. 11,877

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## A P P E A R A N C E S

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## FOR REDSTONE OIL AND GAS COMPANY:

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\* \* \*

1           WHEREUPON, the following proceedings were had at  
2 12:32 p.m.:

3           EXAMINER CATANACH: At this time we'll call Case  
4 11,877.

5           MR. CARROLL: Application of Fasken Land and  
6 Minerals, Ltd., for compulsory pooling and an unorthodox  
7 gas well location, Eddy County, New Mexico.

8           EXAMINER CATANACH: By way of introduction, we  
9 have talked to counsel for Fasken and Redstone, and what we  
10 are doing today is hearing oral arguments on a Motion to  
11 Dismiss this Application. And that is all we're doing  
12 today. If we decide to pursue the case, it will probably  
13 be in two weeks when the evidentiary hearing is put forth.

14           But at this time I'll call for appearances in  
15 this case.

16           MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of  
17 the Santa Fe law firm of Kellahin and Kellahin, appearing  
18 on behalf of the Applicant.

19           MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,  
20 representing Redstone Oil and Gas Company.

21           MR. CARROLL: Mr. Bruce, I believe it was your  
22 Motion to Dismiss?

23           MR. BRUCE: Yes.

24           MR. CARROLL: I'll let you go first.

25           MR. BRUCE: By way of background, Fasken Land and

1 Minerals seeks to pool all of Section 12, 23 South, 24  
2 East, as to the Morrow formation. The Rock Tank-Upper  
3 Morrow and Rock Tank-Lower Morrow Pools are both spaced on  
4 640 acres in this area. The proposed well is to be in the  
5 northeast quarter, northwest quarter, of Section 12, in the  
6 west half.

7 Redstone Oil and Gas Company owns an interest in  
8 the east half of Section 12 and is also an offset operator.  
9 There is an operating agreement dated January 1, 1970,  
10 which covered all of Section 12. There is a dispute  
11 between Fasken and Redstone as to whether the operating  
12 agreement still covers the west half. However, all parties  
13 agree that the operating agreement still covers the east  
14 half of Section 12, as to the Morrow formation.

15 The operating agreement was signed by Gulf Oil  
16 Corporation, which is Redstone's predecessor-in-interest  
17 and it was also signed by Mr. David Fasken who was Fasken  
18 Land's predecessor in interest. As a result, Fasken also  
19 owns an interest under the east half of Section 12, which  
20 is subject to the 1970 operating agreement.

21 There was a lease covering the west half of  
22 Section 12 in existence at the time the operating agreement  
23 was signed some 28 years ago. That lease expired, I don't  
24 know how long ago, but I believe it was a number of years  
25 ago.

1 Fasken acquired a new lease on the west half  
2 which it stated in the pleadings it owns 100 percent.

3 Fasken has also stated that the west half of  
4 Section 12 is not subject to the operating agreement any  
5 longer. Redstone, I believe, has disputed that assertion  
6 in discussions between the landmen for Redstone and Fasken.

7 Now, if that operating agreement covers all of  
8 Section 12, well, then, obviously there's no need for  
9 compulsory pooling. As I said, that is a legal dispute  
10 between the parties which should either be settled between  
11 them or decided in court.

12 But let's assume for purposes of this argument  
13 that Fasken is correct as to the west half of Section 12,  
14 that it is no longer subject to the operating agreement,  
15 only the east half is subject to that operating agreement.  
16 And everyone agrees that the east half is subject to that  
17 operating agreement, as to the Morrow formation.

18 And everyone agrees that both Fasken and Redstone  
19 and other interest owners own an interest in the east half  
20 which is subject to that operating agreement. It's our  
21 contention that all Fasken has to do is propose a well  
22 under that operating agreement. It doesn't have to force  
23 pool. The east half is subject to the operating agreement.  
24 It owns 100 percent of the west half. Who are they force-  
25 pooling?

1           We merely contend that there exists an agreement  
2 between the parties owning undivided interest in the  
3 proposed well unit, and thus the pooling statute is  
4 inapplicable and cannot be used.

5           As I've said in my Motion, this position was  
6 upheld by the Division in Case 10,658. In that case,  
7 Mewbourne, who I represented in that case, sought to force  
8 pool the west half of Section 35, 17 South, 27 East, 320  
9 acres, for a Morrow well.

10           Two hundred acres -- not the entire 320, but 200  
11 acres within that unit was subject to an operating  
12 agreement under which both Mewbourne and Devon owned an  
13 interest, Devon Energy Corporation.

14           The only nonconsenting interests in that well  
15 were in the acreage covered by the operating agreement.  
16 Devon objected to being pooled, or force pooled, because  
17 its interests were subject to the operating agreement.

18           Now, Mewbourne's position in that case is  
19 identical to Fasken's position in this case. Mewbourne  
20 said that since the entire well unit is not covered by an  
21 operating agreement, force pooling is necessary. The  
22 Division, however, agreed with Devon and dismissed the  
23 case, holding that there was a voluntary agreement between  
24 the parties.

25           The key issue in that Mewbourne-Devon case was

1 that both companies were parties to a joint operating  
2 agreement which covered part of the well unit. We think  
3 that's the same situation here, and this case should be  
4 dismissed.

5 Now, if Fasken was not a party to that operating  
6 agreement, then I'd probably agree with them, that they  
7 would have to force pool. But they are a party and are  
8 bound by its provisions regarding proposing wells. And as  
9 a result, Mewbourne -- excuse me, Redstone -- contends that  
10 the case should be dismissed.

11 MR. CARROLL: Mr. Kellahin?

12 MR. KELLAHIN: Thank you.

13 Gentlemen, you should have in your file Fasken's  
14 reply to the Motion to Dismiss. In that case file we have  
15 provided a written explanation as to our position.

16 In addition, we have attached a copy of the 1970  
17 operating agreement that is the topic of discussion.

18 And finally, attached to that was the affidavit  
19 of Robert Bledsoe, a highly respected expert in such  
20 matters as interpreting, examining, giving advice on  
21 operating agreements.

22 While Mr. Bruce contends that there is a dispute  
23 over this contract that has to be resolved by some judge,  
24 we contend that Mr. Bruce and Mr. Bruce's client are  
25 introducing confusion where no confusion exists. They're

1 attempting to introduce an ambiguity where there is none.

2 It is certainly within your sound discretion to  
3 decide your jurisdiction. And in doing so, you're not  
4 being asked to interpret a contract or to resolve a  
5 contractual dispute. But to exercise your jurisdiction,  
6 you need to decide if there's a contract covering this 640-  
7 acre spacing unit.

8 It is absolutely clear that there is no such  
9 contract. Mr. Bledsoe has reached that opinion. I've been  
10 practicing before you for 25 years and I'm here to tell  
11 you, I think Redstone's position in this is nonsense, it's  
12 totally unsupported.

13 You do not have to interpret joint operating  
14 agreements to read the conventional language of those  
15 agreements and come to the conclusion that the west half of  
16 this section has been excluded.

17 And let me show you how that happened. If you'll  
18 follow the factual summary, the summary is of significance  
19 to you.

20 You see that in 1951 there was a federal lease.  
21 I've given the lease number. It was issued for the west  
22 half of 12. We've characterized it as the "Old Gulf  
23 Lease".

24 And by January 1st of 1970, Gulf, Faskens and  
25 others who had an interest in that lease began to discuss

1 with the Rock Tank Unit people, in which Fasken also had an  
2 interest, how to form a spacing unit in Section 12. It's  
3 uncontested that that lease was not committed to the Rock  
4 Tank Unit.

5 The parties decided that -- I'm sorry, in 1967  
6 when the Rock Tank Unit was formed it included only the  
7 east half. And that unit and operating agreement in 1967  
8 are still in effect. Fasken's got an interest in it. That  
9 is not the issue.

10 The old Gulf lease, effective as of January 1,  
11 1970, is made subject to an operating agreement. That's  
12 the one attached to my Motion -- or Response to the Motion.  
13 That 1970 operating agreement covered all of Section 12.  
14 Its purpose was for the drilling of a Morrow well in the  
15 southwest quarter of 12.

16 That well was completed in July of 1970. It  
17 produced until it was plugged and abandoned in October of  
18 1979. The Com agreement terminated.

19 You can look at what I've handed you. Turn past  
20 Exhibit 1, which is the locator map. Exhibit 1 shows you  
21 the outline of the Rock Tank Unit, shows you Section 12  
22 divided east half/west half.

23 If you turn to the next page, this is the BLM  
24 abstract from the old Gulf lease. And if you turn to page  
25 2 of Exhibit 2, you can read down and see that by December

1 of 1997 the communitization agreement has terminated.

2 That's the communitization agreement that held the section  
3 together for the Morrow gas well in the southwest quarter.

4 The BLM finally got around to expiring the lease  
5 formally in the case file on January 17th, 1984. So  
6 there's no question that that lease, which was formally  
7 committed to the 1970 operating agreement, has terminated.  
8 It's no longer in effect. The well is plugged and  
9 abandoned. The east half continues to be committed to the  
10 Rock Tank Unit.

11 In September of 1993, the BLM issues a new lease.  
12 They issued it to Santa Fe Energy, and it covered the west  
13 half of the section.

14 Four or five months later, on December 21st,  
15 Santa Fe Energy assigns the lease to Fasken.

16 Fasken, as the owner of that lease, has proposed  
17 to drill a Morrow well on its lease and a spacing unit  
18 where it has a substantial portion of the working interest  
19 ownership, and to be dedicated to a standard 640-acre  
20 spacing unit. And they make that proposal to Redstone.

21 And Redstone, in order to improve its position,  
22 has created this notion that somehow this new 1993 lease is  
23 somehow committed to the old 1970 operating agreement, and  
24 therefore we can't force-pool them.

25 If you'll look at what we've attached, you can

1 find in Exhibit 3 the Lynch, Chappell, Alsup's title  
2 opinion from September 4th as to the new Fasken Santa Fe  
3 lease. It's abstracted for you. It says it's got an  
4 effective date, on page 2, of September 1st, 1993.

5 On page 3 it abstracts the assignments. You can  
6 track the assignments. It goes from Santa Fe Energy to  
7 Barbara Fasken, Fasken to others, and finally into Fasken  
8 Land and Minerals.

9 So how do we read the plain boilerplate of the  
10 1970 operating agreement to understand how this one works  
11 and how, quite frankly, all standard operating agreements  
12 work?

13 Well, first of all you're going to look at two  
14 key paragraphs.

15 You're going to look at Article 24, and that's  
16 Attachment 4 to the handout this morning. I've simply  
17 taken it out of the operating agreement. And you start  
18 with -- Article 24 says "Surrender of Leases".

19 When the old Gulf lease is committed to the  
20 operating agreement and the well is plugged and everybody  
21 agrees to plug that well, they are consenting to  
22 surrendering the lease. The lease expires. No question it  
23 was surrendered.

24 What you need to look at is the last paragraph.  
25 I'm going to come back to the first part of that paragraph

1 in just a moment, but what I want to focus your attention  
2 on at this point is the clear, unambiguous language of this  
3 standard boilerplate which simply says, "...and the acreage  
4 assigned or surrendered, and subsequent operations thereon,  
5 shall not thereafter be subject to the terms and provisions  
6 of this agreement." That's exactly what it says.

7 Now, explain to me, or ask Mr. Bruce to explain  
8 to all of us, how the new lease issued in 1993 is supposed  
9 to be covered under this operating agreement.

10 It is absolutely clear that the Gulf lease has  
11 been surrendered, it's terminated, and this agreement  
12 doesn't apply.

13 There's another provision for you to look at.  
14 There's sort of a savings concept in here. When all the  
15 parties agree to commit leases to an operating agreement,  
16 they agree to something else.

17 In the first portion of this last paragraph it  
18 says, "Any assignment or surrender made under this  
19 provision shall not reduce or change the assignors' or  
20 surrendering...interest, as it was immediately before the  
21 assignment, in the balance of the Unit..."

22 Let me tell you how that works. In the west  
23 half, Gulf and those interest owners applied that  
24 percentage to the unit. And so they have an interest in  
25 the spacing unit based upon contributing the west-half

1 lease.

2           When that lease is terminated and disappears, is  
3 gone, they don't have their interest reduced. That's  
4 simply how the contract is written. That's how all these  
5 contracts are written. And that's what they agreed to do.

6           And why is that fair? Because you can read over  
7 on Article 23 what the parties have an opportunity to do.  
8 If you'll turn to the next page, it's Exhibit 5 of the  
9 handout. And it gives them a saving clause, if you will.  
10 It says in 23 that if you have a lease that expires and if  
11 within a certain period of time -- this one provides for  
12 six months -- you can go renew the lease, go get the BLM to  
13 give you another one. And if you do that, then this is  
14 called a renewal.

15           And under the renewal, then, the half section  
16 comes back in. That's exactly how this works. It has some  
17 other provisions in here, but this is the opportunity for  
18 any party -- Any party in the operating agreement can go  
19 back in six months under this deal and get that lease  
20 reissued and put it back in here. That did not happen.

21           You can see from Mr. Bledsoe's expert's opinion,  
22 he says the west half is not committed.

23           Mr. Bruce wants to make the argument that somehow  
24 the unit area isn't contracted because there's no provision  
25 for it.

1           Well, he's not making it clear to you. We have a  
2 provision that deals with this. It's Article 24. The  
3 lease is surrendered, it's gone.

4           Mr. Bruce says, All right, if you accept Fasken's  
5 position about the lease being gone, then try this argument  
6 for size, see if this fits: That if the east half is only  
7 covered by the operating agreement, despite the fact the  
8 well is located in the northwest quarter, somehow Redstone  
9 wants you to configure a solution whereby Fasken is asking  
10 to pool itself. That's absolute nonsense.

11           If that's true, then we can forget the case we  
12 just did for Dugan. That's the Dugan case. Caulkins has  
13 got Dreyfus and Marathon in an operating agreement in the  
14 southwest quarter, Dugan proposes the well in the southeast  
15 quarter, Dugan is not subject to the operating agreement as  
16 to his interest in the southeast quarter. Mr. Bruce is  
17 saying that Dugan can't have a pooling application for the  
18 south half? I don't see how that fits anything. That just  
19 makes absolutely no sense at all.

20           You don't have to interpret the contract to read  
21 the simple words. And the simple words lead you to the  
22 conclusion that the west half is not in it.

23           Now, the element here that's slightly different  
24 is that you can't be deceived in recognizing that Fasken  
25 always has an interest in the east half. Don't worry about

1 that. It's who owns the west half and who is that party?  
2 It happens to be Fasken. And you have to put them together  
3 in some kind of deal under an agreement.

4 Fasken has proposed to Redstone a new operating  
5 agreement, a 1997 operating agreement, when they proposed  
6 the well to them back in October. They refuse to execute  
7 it because they want to somehow get you to believe the 1970  
8 agreement still covers.

9 If the Fasken lease they acquired from Santa Fe -  
10 - Let's think about this for a minute. That new lease got  
11 to Santa Fe. Is Mr. Bruce taking the position that Santa  
12 Fe is subject to the 1970 operating agreement? Well, not  
13 so. That can't be. That doesn't make any sense. But  
14 Fasken's interest in that lease and its whole authority and  
15 responsibility is derived solely from Santa Fe. They got  
16 nothing more or less than Santa Fe got.

17 How did Fasken's acquisition of that lease,  
18 Fasken's acquisition of that lease from Santa Fe, somehow  
19 resurrect the notion that they're subject to the 1970  
20 operating agreement? Again, it makes absolutely no sense  
21 at all.

22 What we don't need is what Mr. Bruce has  
23 suggested, that we're pooling the west half. He's got it  
24 backwards. We're pooling the east half. We're pooling the  
25 east half into a 640-spacing unit for a well to be drilled

1 on the northwest quarter.

2 In my reply to Mr. Bruce I summarize for you the  
3 Mewbourne case and describe for you with specifics the  
4 distinction between the Mewbourne case and this Fasken  
5 case. They're absolutely totally different. There is no  
6 lease-expiration issue in the Mewbourne case.

7 What they were doing in the Mewbourne case is,  
8 they had Devon fully committed to an operating agreement  
9 for their 200 acres in that half section, and there was  
10 interest owners outside of that operating agreement that  
11 had to be consolidated into the spacing unit. The issue  
12 was resolved because Devon's entire interest was subject to  
13 the operating agreement.

14 In this case we have before you today, Fasken's  
15 entire interest in the spacing unit is not subject to the  
16 operating agreement. We've got 100 percent of the west  
17 half that's not subject to it. We're out of that. So we  
18 need a force-pooling application approved.

19 Do you know why this matters? I'll tell you why  
20 it matters. This doesn't matter because of who operates.  
21 It matters because if Redstone can get you to believe the  
22 1997 JOA still is in effect, they want to increase their  
23 interest.

24 Here's what happens.

25 Under the mechanisms of Article 24, if they can

1 convince you that this new lease in the west half is  
2 subject to the 1970 operating agreement, then Redstone's  
3 interest in the 640 spacing unit goes from 18.67 percent to  
4 37.4 percent. It goes up 20 percent if they can get you to  
5 believe this cockamamie story they're trying to sell you.

6 On the other hand, if you agree with me and Mr.  
7 Bledsoe that the west half is not committed -- I said that  
8 wrong. If you believe Mr. Bruce, in addition to Redstone's  
9 interest going up 20 percent, Fasken's interest goes from  
10 60 percent down to 20 percent. We have to take 40 percent  
11 of ours and give it away to the Redstone interest.

12 I can't imagine that this was ever crafted to  
13 construct that kind of solution on a new lease issued some  
14 10 years after the prior lease expired.

15 There is simply, if you'll look at this -- Try  
16 this on. Look at that operating agreement. There is  
17 absolutely no mechanism in that operating agreement which  
18 will allow any of those parties in that operating agreement  
19 to propose a well outside of the contract area. It doesn't  
20 cover the west half. The well is proposed outside of the  
21 area subject to the agreement. It's on Fasken's lease in  
22 the northwest quarter.

23 They've got it backwards, they've got it wrong.  
24 It makes no sense. We should not be asked to go to  
25 district court to straighten this out. This is within your

1 jurisdiction to decide. It's clear, it's unambiguous, it's  
2 simple. The motion ought to be dismissed.

3 Thank you.

4 MR. CARROLL: Response, Mr. Bruce?

5 MR. BRUCE: Yeah, a few lines.

6 With respect to whether the west half is subject  
7 to this operating agreement, I'm really not involved in  
8 that; I'm merely conveying Redstone's position.

9 Mr. Kellahin has spent 90 percent of his time  
10 arguing that. My position is, I don't care.

11 As I said before, assume Fasken is right. Assume  
12 the west half is not subject to the operating agreement.  
13 The case still needs to be dismissed.

14 Let me bring up a couple of things.

15 Mr. Kellahin's Exhibit 1. I want to distinguish  
16 a couple of things.

17 It shows the Rock Tank Unit down there. That's a  
18 working interest unit. It covers Sections 1, 6, 7 and the  
19 east half of Section 12. There's an operating agreement  
20 for that. But that's not what we're here about today,  
21 that's -- forget that.

22 But Exhibit B attached to Fasken's response is  
23 the operating agreement we're looking at. What happened  
24 was, an operating agreement was formed to cover all of  
25 Section 12. It included the working interest owners from

1 the Rock Tank Unit and then the lessees from the west half  
2 of Section 12. Kind of like a sub- -- you know, a sub-unit  
3 or a sub-operating agreement.

4 But that's what we're here today. If you look at  
5 Exhibit B, you can plainly see on Exhibit A of the  
6 operating agreement that it covers all of Section 12. It  
7 doesn't have anything to do with the other acreage in the  
8 Rock Tank Unit. I want to make that clear.

9 Next -- And that same Exhibit A on the operating  
10 agreement shows that David Fasken owned an interest.

11 Next, go to Mr. Kellahin's Exhibit 6. This also  
12 shows that Fasken Land and Minerals -- It owns under the  
13 west half 100 percent. That's that 1.0 figure.

14 And then it says 1970 JOA, east-half working  
15 interest, Fasken Land and Minerals, about 20.5 percent.

16 They have a contractual agreement with people in  
17 part of the well unit on how to propose a well, and they  
18 have to comply with that.

19 This is the exact same situation addressed in  
20 Order R-9841. Despite what Mr. Kellahin says, the well  
21 location is irrelevant.

22 Once again, what matters is whether or not part  
23 of the -- Number one, whether part of the acreage in a well  
24 unit is covered by a JOA, number one. And number two, is  
25 the party proposing that well subject to that JOA? Number

1 two. And in this case, the answer is yes. In the  
2 Mewbourne-Devon case, the answer was yes. Mr. Kellahin is  
3 wrong.

4 I wasn't paying as much attention to that Dugan  
5 case, but that situation was where you had 100-percent  
6 working interest owners in the southeast quarter and 100-  
7 percent working interest owners in the southwest quarter.

8 So Dugan proposing that well was not subject to  
9 that operating agreement on that other quarter section.  
10 That's totally irrelevant, totally incorrect.

11 As I said, Fasken -- And Mr. Kellahin brought up  
12 operations. I think operations may be one of the points of  
13 this. I think it's probably not meaningful for your  
14 deliberations here, but if that JOA applies, there's a  
15 chance that Redstone is operator of that well. If the JOA  
16 doesn't apply, then Fasken may be operator of the well.

17 But obviously Fasken has a vested interest in  
18 proposing something that's not under the JOA so that it can  
19 be operator of the well.

20 Mr. Kellahin says, This is clear, look at this  
21 contract, look at this operating agreement, it's clear what  
22 to do.

23 In the big fight we just got over with, Fasken  
24 stated in its pleadings a couple of times the Commission or  
25 the Division cannot act as an adjudicator of contractual

1 controversies, quote. That's what he's asking you to do,

2 adjudicate contractual controversies.

3 But you need not get to that point if you just  
4 agree with Redstone's argument. The east half is subject  
5 to a JOA, Fasken is a party to that, they have to propose a  
6 well effecting that contract acreage, even if it's only the  
7 east half, under that JOA. And that's all we're asking him  
8 to do. They don't need to pool. The west half is theirs,  
9 so they say.

10 I'd ask that the case be dismissed.

11 MR. CARROLL: Mr. Bruce, I'm curious about a  
12 point Mr. Kellahin brought up. What if Santa Fe Energy had  
13 kept that lease and hadn't conveyed it to Fasken? You're  
14 not saying that Santa Fe Energy is somehow subject to the  
15 JOA on the east half, are you?

16 MR. BRUCE: No.

17 MR. CARROLL: And that would --

18 MR. BRUCE: And then --

19 MR. CARROLL: And that would be the proper --

20 MR. BRUCE: And I --

21 MR. CARROLL: -- subject of --

22 MR. BRUCE: And I --

23 MR. CARROLL: -- an application --

24 MR. BRUCE: -- I do not take a position on this.

25 MR. CARROLL: -- for compulsory pooling?

1 MR. BRUCE: What?

2 MR. CARROLL: Santa Fe Energy, then, could file a  
3 case for compulsory pooling?

4 MR. BRUCE: Oh, they don't own an interest.

5 MR. CARROLL: If -- Assuming that Santa Fe Energy  
6 hadn't conveyed its --

7 MR. BRUCE: That --

8 MR. CARROLL: -- lease to Fasken, would Santa  
9 Fe's application for compulsory pooling be in order? You  
10 wouldn't move to dismiss that case, would you?

11 MR. BRUCE: If that lease -- If the west half is  
12 not subject to this operating agreement --

13 MR. CARROLL: We'll assume that.

14 MR. BRUCE: Assume that. And as I said, that's  
15 what I'm assuming for purposes of this argument.

16 -- and Santa Fe did not own an interest in the  
17 Rock Tank Unit, then yes. Because they're not a party to  
18 any agreement. Fasken is.

19 MR. CARROLL: Do you know whether Redstone  
20 disputes Fasken's proposed location for the well, for this  
21 640-acre unit?

22 MR. BRUCE: I do not know that. I know that they  
23 would like to see a well drilled in Section 12. The  
24 problem is -- and I guess it depends on the other interest  
25 owners in the Rock Tank Unit.

1           If you look at Exhibit 1, the well location, I  
2 believe, is unorthodox, and it does offset the Rock Tank  
3 Unit, which is immediately to the north.

4           You know, Redstone as operator of the Rock Tank  
5 Unit has duties toward the interest owners in that Rock  
6 Tank, and I do not know Redstone's position on that yet,  
7 but obviously it's an unorthodox location and they're an  
8 offset operator, and that's something they have to review  
9 and come to terms with, with the other interest owners in  
10 the Rock Tank Unit.

11           MR. CARROLL: So you don't know whether Redstone  
12 agrees to that location or whether Redstone has its own  
13 location it would like to drill?

14           MR. BRUCE: They have told me that they have been  
15 looking at it geologically, but they haven't given me an  
16 answer on that.

17           MR. CARROLL: Redstone is the operator of the  
18 Rock Tank Unit?

19           MR. BRUCE: Yes.

20           MR. CARROLL: And the Mewbourne-Devon case --  
21 which was decided when? February of 1993, Order 9841. Who  
22 did you represent in that case, Mr. Bruce? Mewbourne?

23           MR. BRUCE: Mewbourne.

24           MR. CARROLL: Who was attorney for Devon?

25           MR. BRUCE: Mr. Carr.

1 MR. KELLAHIN: Mr. Carr, here's the transcript  
2 and exhibits from that case if you'd care to have them.

3 MR. CARROLL: And the 200 acres in question that  
4 were subject to the joint operating agreement, was the well  
5 to be drilled on that 200 acres?

6 MR. BRUCE: Yes, sir, I believe it was. That  
7 does not enter into the decision of the Examiner in that  
8 matter.

9 MR. CARROLL: Yeah, I'm looking at the order. I  
10 don't see that entering into the decision.

11 Mr. Kellahin, I believe you stated that -- or you  
12 -- I inferred from what you said that Fasken owned less  
13 than 100-percent in the west half of this 640-acre unit?

14 MR. KELLAHIN: No. They owned less of it in the  
15 original Gulf lease.

16 MR. CARROLL: Okay. But now they own -- The new  
17 lease, they have 100-percent of the working interest?

18 MR. KELLAHIN: Yes, that's true.

19 MR. BRUCE: That's shown on Mr. Kellahin's  
20 Exhibit 3.

21 MR. CARROLL: So has Fasken approached -- I guess  
22 they have, approached Redstone as the operator of the Rock  
23 Tank Unit in order to try to obtain communitization for  
24 this 640-acre unit.

25 MR. KELLAHIN: In addition, we have sent the

1 proposal to all the interest owners that are shown on my  
2 Exhibit 6. But we're stuck on this issue with Redstone at  
3 this point, and till it's resolved we can't proceed.

4 MR. CARROLL: Well, it appears to the Division  
5 that even if the Division were to hold a hearing and issue  
6 an order, this still might wind up in the courts.

7 MR. KELLAHIN: Well, that's a risk we run every  
8 time we do these things.

9 MR. CARROLL: Right, so I'm trying to think of  
10 the harm of going ahead and issuing an order where we pool  
11 all interests, whatever they may be, in this 640-acre unit,  
12 and then you guys can fight it.

13 MR. KELLAHIN: I agree with you, Mr. Carroll. I  
14 can't see any reason. If we're wrong in pooling, some  
15 judge will tell us and then we'll come back to square one.

16 MR. CARROLL: Whatever -- The interests, whatever  
17 they may be, if there is no interest to be pooled then  
18 there's nothing to pool, and our order is of no effect,  
19 under your argument, Mr. Bruce.

20 MR. BRUCE: Under my argument all they have to do  
21 is send out a well proposal under the JOA.

22 EXAMINER CATANACH: Is it your position that they  
23 can do that for a well outside the unit?

24 MR. BRUCE: Sure.

25 MR. KELLAHIN: You can't, Mr. Catanach. If you

1 look at the operating agreement, Article 12, it's the  
2 fourth line down of the paragraph --

3 MR. CARROLL: What page is that?

4 MR. KELLAHIN: It's on page 5.

5 MR. CARROLL: Fourth line down on --

6 MR. KELLAHIN: Yeah.

7 MR. CARROLL: -- what paragraph?

8 MR. KELLAHIN: Yeah, the well's got to be on the  
9 unit area. Section 12, west half, is not in the unit.  
10 You've got to have the well on the unit to propose the well  
11 pursuant to the operating agreement.

12 MR. CARROLL: And Mr. Bruce, assuming that the  
13 west half is no longer part of the unit area, how do you  
14 get around that language?

15 MR. BRUCE: Well, I still believe that the  
16 contract area, the initial contract area, would govern.  
17 The unit area was defined to be Section 12.

18 MR. CARROLL: Yeah, but assuming -- Let's assume  
19 that the west half is no longer subject to this operating  
20 agreement -- and you made that assumption yourself --  
21 assuming it's not, how can you propose a well that's  
22 outside the unit area?

23 MR. BRUCE: Well, in my opinion you have to look  
24 also at the well spacing in this area. The Division  
25 requires a 640-acre spacing, and I think that would

1 supersede the specific provision of a well on the contract  
2 area.

3 MR. CARROLL: Mr. Bruce, Mr. Kellahin --

4 MR. BRUCE: And I would just say also, that the  
5 unit area is Section 12. Whether or not all leases are  
6 committed to it is another matter, but the unit area is  
7 defined as all of Section 12.

8 MR. CARROLL: Uh-huh. Counsel, we're going to  
9 deny the motion to dismiss and set this case for hearing in  
10 two weeks.

11 MR. KELLAHIN: Mr. Carroll, I would request  
12 concurrence of counsel to put this on the next docket after  
13 that. I want to make sure that we've got all these  
14 interest owners notified of the hearing. The well has been  
15 proposed to them. I need to discuss with Mr. Bruce any  
16 notice issues. I know he only represents Redstone, and  
17 there are other people in the spacing unit.

18 MR. CARROLL: All right, we'll continue it for  
19 four weeks.

20 MR. KELLAHIN: Is that okay, Jim?

21 MR. BRUCE: Yeah.

22 EXAMINER CATANACH: Okay.

23 (Thereupon, these proceedings were concluded at  
24 1:12 p.m.)

25 \* \* \*

CERTIFICATE OF REPORTER

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF SANTA FE )

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

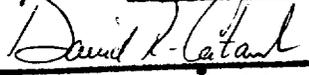
WITNESS MY HAND AND SEAL January 11th, 1998.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 14, 1998

I do hereby certify that the foregoing is a complete record of the proceedings in the Examination of Case No. 1877 heard by me on 1/11/98

 , Examiner  
Of Conservation Division