

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

APPLICATION OF REDSTONE OIL & GAS
COMPANY FOR COMPULSORY POOLING AND
AN UNORTHODOX GAS WELL LOCATION,
EDDY COUNTY, NEW MEXICO.

No. 11,960

APPLICATION OF FASKEN LAND AND MINERALS,
LTD. FOR COMPULSORY POOLING AND AN
UNORTHODOX GAS WELL LOCATION, EDDY
COUNTY, NEW MEXICO.

No. 11,877

RESPONSE OF REDSTONE OIL & GAS COMPANY
IN OPPOSITION TO MOTION TO DISMISS

AND

MOTION OF REDSTONE OIL & GAS COMPANY
TO DISMISS CASE NO. 11,877

In Case No. 11,960, Redstone Oil & Gas Company ("Redstone") applied for an order pooling all mineral interests from the surface to the base of the Morrow formation underlying all of Section 12, Township 23 South, Range 24 East, N.M.P.M., Eddy County, New Mexico, and approving an unorthodox gas well location. This application was filed in response to a similar application filed by Fasken Land and Minerals, Ltd. ("Fasken") to pool the same acreage (Case No. 11,877).

I. Response to Motion to Dismiss.

Fasken has filed a motion to dismiss Case No. 11,960. Redstone requests that the motion be denied, for the following reasons:

1. Redstone had previously filed a pooling application in Case No. 11,927, which was dismissed without prejudice because Redstone failed to timely send out a well proposal.¹ It is

¹The case was dismissed upon Fasken's motion. If Fasken had not filed the motion, this matter would now be under advisement.

undisputed that Redstone has now complied with Division requirements regarding submitting a well proposal to the interest owners before filing a pooling application. **See Affidavit of J. Small (Redstone Exhibit 14 in Case No. 11,927)**. Therefore, Fasken's motion is absolutely without merit.

2. Fasken's main complaint is that Redstone has delayed the drilling of a well. That is nonsense. Fasken's own actions have delayed the drilling of a well. If Fasken had proposed the well under the JOA, as Redstone contends it should have done, the interest owners would have had 30 days to elect to join in the well, and the well would no doubt have been drilled by now. Instead, Fasken proceeded with a compulsory pooling proceeding, for the sole purpose of claiming well operations.²

In addition, once the unfairness of a stand-up unit for the Canyon formation was pointed out, Fasken amended and re-advertised its application. That resulted in a one month delay in this matter, which was not due to Redstone.

3. Fasken contends that delay has harmed it because there is behind-pipe potential in the Canyon formation in the Rock Tank Unit Well No. 4. However, the interest owners in the Rock Tank Unit have known of that potential for years, without taking any action to re-complete the well, and it is not yet re-completed. Therefore, this argument is meaningless. Moreover, Well No. 4 is at an orthodox location. Fasken's proposed well is severely

²Redstone would drill the well in Section 12 forthwith if Fasken would withdraw its pooling application.

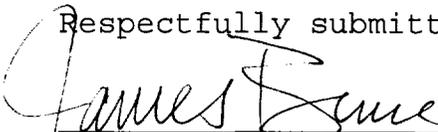
unorthodox, and thus could have a substantial adverse effect on Rock Tank Unit interest owners. Who is really being prejudiced?

II. Motion to Dismiss.

Fasken is a Texas limited partnership.³ As such, it must register with the New Mexico Secretary of State before transacting business in this state. **NMSA 1978 §54-2-51 (1997 Supp.)**. Fasken has not done so. **See Exhibit A**. As a result of its failure to comply with state law, it cannot maintain any judicial action in New Mexico until it has properly registered. **NMSA 1978 §54-2-55 (1997 Supp.)**. The Division, when considering cases before it, acts in a judicial capacity. **Amoco Production Co. v. Heimann, 904 F.2d 1405 (10th Cir. 1990); Uhdén v. Oil Conservation Comm'n, 112 N.M. 528, 817 P.2d 721 (1991)**. Therefore, because Fasken is not registered to do business in New Mexico, it had no right to file its application in Case 11,877, and the case must be dismissed.

WHEREFORE, Redstone requests that (a) Fasken's motion be denied, and (b) Fasken's application in Case No. 11,877 be dismissed.

Respectfully submitted,


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Santa Fe, New Mexico 87504
(505) 982-2043

Attorney for Redstone Oil & Gas
Company

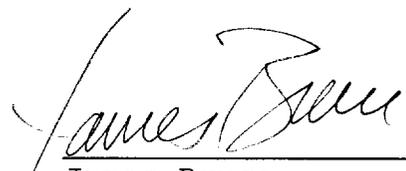
³See Notice of Appeal filed by Fasken in Eddy County District Court Case No. CV 98-54 (an appeal arising from Commission Case Nos. 11,723 and 11,755 (*de novo*)).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing application was sent via facsimile transmission this 15th day of April, 1998 to the following counsel of record:

W. Thomas Kellahin
Kellahin & Kellahin
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James Bruce

AFFIDAVIT

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

James Bruce, being duly sworn upon his oath, deposes and states:

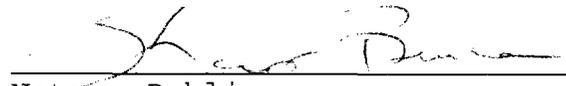
1. I am over the age of 18, and have personal knowledge of the matters set forth herein.

2. On March 31, 1998, personnel in the office of the New Mexico Secretary of State informed me that Fasken Land and Minerals, Ltd. is not registered with the Secretary of State as a foreign limited partnership.



James Bruce

SUBSCRIBED AND SWORN TO before me this 1st day of April, 1998, by James Bruce.



Notary Public

My Commission Expires:
3/14/01

