

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

IN THE MATTER OF THE HEARING CALLED BY)	
THE OIL CONSERVATION DIVISION FOR THE)	
PURPOSE OF CONSIDERING:)	
)	
APPLICATION OF FASKEN LAND AND)	CASE NOS. 11,877
MINERALS, LTD., FOR COMPULSORY)	
POOLING AND AN UNORTHODOX GAS WELL)	
LOCATION, EDDY COUNTY, NEW MEXICO)	
)	
APPLICATION OF REDSTONE OIL AND GAS)	and 11,927
COMPANY FOR COMPULSORY POOLING AND)	
UNORTHODOX GAS WELL LOCATION,)	
EDDY COUNTY, NEW MEXICO)	
)	(Consolidated)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

March 5th, 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, March 5th, 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.

* * *

I N D E X

March 5th, 1998
 Examiner Hearing
 CASE NOS. 11,877 and 11,927 (Consolidated)

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E X H I B I T S

Fasken	Identified	Admitted
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* * *

A P P E A R A N C E S

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* * *

1 WHEREUPON, the following proceedings were had at
2 9:36 a.m.:

3 EXAMINER CATANACH: Okay, I guess we'll proceed
4 with Fasken in Case Number 11,877. We're going to hear
5 argument this morning on Fasken's Motion to Dismiss
6 Redstone's Case 11,927.

7 (Off the record)

8 EXAMINER CATANACH: Okay, at this time we'll let
9 Mr. Carr argue his Motion to Dismiss.

10 MR. CARR: May it please the Examiner, Fasken has
11 filed a Motion in this matter to dismiss the compulsory
12 pooling Application of Redstone.

13 I think in this case it's particularly important
14 for the Division to remember that it is a creature of
15 statute, and as the Supreme Court has told you in the
16 *Continental* decision, your powers are expressly defined and
17 limited by the Oil and Gas Act.

18 That statute contains the provisions which permit
19 you to force-pool acreage. And this is one of those areas
20 where statute not only defines your role but it also limits
21 it. You're exercising the police power of the state. And
22 to do that, and before you exercise that power, the
23 provisions of statute must, in fact, be complied with.

24 You're authorized to enter a compulsory pooling
25 order where the statutory conditions, preconditions, have

1 been met. And unless those preconditions have been met, I
2 submit you do not have the power to entertain a force-
3 pooling application.

4 In the Response to the Motion filed this morning
5 by Mr. Bruce, he says, and I quote, "While not strictly
6 complying with Division guidelines, Redstone's proposal was
7 made within a reasonable time period in order to encourage
8 a quick resolution of both cases."

9 But you see, that is, in fact, an admission that
10 they're not -- it's not just strictly Division guidelines,
11 it's statute; it's the basis for your authority to act.
12 And they haven't complied with those preconditions.

13 And what are those preconditions? Well, among
14 others, they say you have to have a right to drill. If you
15 don't have a right to drill, the Division won't let you
16 pool.

17 That's what we're going to talk about in the
18 Branex case, which comes up next, where when someone who
19 wasn't a working interest owner and didn't have a right to
20 drill came before you, and you said, No, go back and get a
21 working interest owner who has a right to drill before you
22 can pool. You enforced it in that situation.

23 You also have to come in and propose to drill,
24 and you have to have been able -- unable to reach
25 agreement, voluntary agreement, for the development of the

1 acreage. In the past, the Division has required a good-
2 faith effort be made to reach voluntary agreement, and here
3 there's no dispute.

4 Fasken proposed the well September the 9th. They
5 filed for compulsory pooling October the 16th. Redstone
6 requested continuances from November the 6th, the original
7 hearing date, to December the 4th and then to February the
8 5th.

9 And Redstone filed its compulsory pooling
10 Application shortly before that hearing date. They filed
11 it on January the 26th. But they didn't propose the well
12 until February the 9th. They didn't propose it until four
13 days after the hearing.

14 In that circumstance they can't have met the
15 conditions of statute. You cannot have negotiated in good
16 faith for the well they propose when it wasn't proposed
17 until after the hearing. They can't have made a good-faith
18 effort as to their well and their location which, at the
19 hearing, they admitted they had only in the last few days
20 decided on. In fact -- You can't reach an agreement if
21 it's not on the table, if it hasn't yet been proposed.

22 And so that precondition is very simply missing,
23 and the Application must be dismissed.

24 If you don't do it, you're going to have exactly
25 what Redstone admits it's doing here. It says it's coming

1 in here and filing its own Application only to protect its
2 rights, and if you don't -- if you do go ahead and dismiss
3 and they want our action stayed.

4 What they're doing is using the compulsory
5 pooling statute, first as a negotiating tool, and then
6 they're using it in an attempt to avoid being pooled by
7 somebody who has met the statutory preconditions. They
8 have a right to drill, they propose to drill, they've in
9 good faith tried to reach an agreement, and now they come
10 before you.

11 And again, I think you have to look at the
12 statute and what it tells you you can do. And then it says
13 when these preconditions are met, it says, you shall enter
14 an order pooling those lands. "Shall". It tells you you
15 must do it.

16 They're asking you, one, to penalize those who
17 have followed the statute. Two, they're asking you to
18 ignore the statute as to someone who has complied with it.
19 And three, they're saying, Well, we didn't quite comply but
20 it's okay.

21 But it's not, because you are a creature of
22 statute. You're empowered to do what the statute tells you
23 you can do, and those powers are expressly defined, and
24 they are limited. And here they are limited and those
25 conditions are not met; you may not enter a pooling order,

1 you may not entertain this Application, it must be
2 dismissed.

3 EXAMINER CATANACH: Mr. Bruce, do you want to
4 respond?

5 MR. BRUCE: Mr. Examiner, it seems that Fasken's
6 main complaint throughout this proceeding has been that
7 Redstone has been seeking to delay this case. That's
8 incorrect.

9 Redstone has -- Let's take a step back.

10 Redstone contends there's a JOA in place. In
11 fact, the only party that really needs to be pooled in this
12 whole section is Fasken, because they're the only party
13 that has an interest that apparently isn't subject to the
14 JOA.

15 However, if Fasken has proposed a well under that
16 JOA, as Redstone claims it should have done, chances are
17 that the well would be drilling by now.

18 It's Fasken who is the party who has manipulated
19 the pooling statute. And the only reason is, it's doing
20 that for operations, it wants to operate.

21 As has been argued here before, if it had
22 submitted its proposal under the JOA, Redstone is the
23 operator under that JOA, but Fasken wants to operate, and
24 instead it's using the pooling statutes in order to get
25 operations.

1 I also submit that Redstone has complied with the
2 statute. The statute only says a good-faith effort must be
3 made. It doesn't specify what is a good-faith effort.

4 The testimony before you a month ago shows that
5 the parties have been in discussions about the drilling of
6 a well in Section 12 since, I think, September or maybe
7 August, 1997, half a year now. Sufficient discussions have
8 taken place to satisfy the requirements of the statute.

9 Now, yes, the Division has had unwritten
10 guidelines. It says, in effect, that you should make a
11 well proposal and proceed after that to file a pooling
12 statute if you can't come to terms. I know the Division
13 likes to see, oh, you know, a month before a pooling
14 application is filed.

15 If that is the case and you decide to dismiss the
16 case, well, that month deadline will be up next week, and
17 next Tuesday I'll go into the Division and file a new
18 pooling statute [*sic*]. We can set the matter for April
19 2nd, and we can go re-present the same case. It will be
20 the same parties, the same land, the same everything. We
21 can do that.

22 But all that will do will be to delay a final
23 resolution of this matter. Apparently the parties are
24 locked in mortal combat. This may well end up in front of
25 the Commission.

1 So if you issue a decision now dismissing
2 Redstone's case, issuing an order in Fasken's case,
3 Fasken's case will be appealed to the Commission, the
4 Division will then have to decide the Redstone case, both
5 of them will then be consolidated before the Commission.
6 What's going to happen, it's going to be delayed, the same
7 thing that Fasken complains about.

8 We think in the interests of getting everything
9 together in one order, this motion should be denied, and we
10 should just go forward from here.

11 Thank you.

12 MR. CARR: Mr. Catanach, several years ago I
13 filed a case for Maralo, about three or four -- It was
14 filed three or four days after the well had first been
15 proposed. I believe it was Bass asked that it be continued
16 for a month, and it was, and then for an additional two
17 weeks, and it was.

18 After we'd been sitting around for about eight or
19 nine weeks following the proposal of the well, Bass filed a
20 motion to dismiss the application because we had not
21 negotiated in good faith prior to seeking the police power
22 of the state prior to invoking that police power, prior to
23 coming to you and seeking compulsory pooling, and our
24 Application was dismissed. And we had to go back,
25 negotiate for six weeks and then come back.

1 I submit to you that filing your application
2 after a hearing and then, just because it's been dragging
3 on, saying, Well, we've had plenty of time now, we can file
4 our own case and continue to play these games -- I think
5 that misses the point.

6 I think the fact of the matter here is that there
7 is an operating agreement, that there's interest in the
8 west half of the section that isn't covered.

9 Yes, Fasken wants to operate. They've proposed a
10 well, they've done it consistent with statute. They've
11 negotiated in good faith, consistent with statute, and they
12 have a right to drill. And they have done everything that
13 they're required to do, and they're entitled to a
14 compulsory pooling.

15 Or, on the other hand, you have Redstone. They
16 didn't even propose the well until four days after the
17 compulsory pooling hearing. And they say, Well, you know,
18 the statute just says, Yes, well, you -- you know, propose
19 a well.

20 But it talks about owners haven't agreed to --
21 that you can pool where owners haven't agreed to pool their
22 interests, where one of those owners has a right to drill
23 and proposes to drill. And it seems to me that to suggest
24 that you can propose to drill in a situation and have that
25 count where you haven't even identified the location, that

1 you're really pretty much begging the statute.

2 We stand before you, Fasken, entitled to an
3 order, and that's what we want. And at the same time, we
4 submit that Redstone stands before you, now trying to
5 invoke the pooling statute after the fact, not to drill a
6 well but to try and prevent somebody who has complied from
7 statute, from getting an order which you're directed by
8 statute to enter.

9 MR. CARROLL: Mr. Carr, this is a case where
10 Fasken amended its application and reoriented --

11 MR. CARR: Yes, it did

12 MR. CARROLL: -- reoriented the --

13 MR. CARR: Yes, it did.

14 MR. CARROLL: -- the 320 to the north half --

15 MR. CARR: Correct.

16 MR. CARROLL: -- from the west half?

17 So you guys are just fighting -- The parties are
18 just fighting over who's going to be operator? The
19 interests are going to be the same either way, in the north
20 half?

21 MR. BRUCE: The interests will be the same either
22 way. They are fighting over who will operate and well
23 location.

24 MR. CARROLL: And the well location is very
25 limited due to topography, right?

1 MR. BRUCE: It has to be apparently either in the
2 northwest of the northeast, or the northeast of the
3 northwest, if I recall the topographic map.

4 MR. CARROLL: Uh-huh. And Mr. Bruce, when you
5 referred to Redstone's proposal that was made only to
6 protect its rights based on the Division's ruling on the
7 Motion to Dismiss, what do you mean by that?

8 MR. BRUCE: Well, we contend that the JOA should
9 apply, and I don't know what the final resolution of that
10 is going to be.

11 But in the meantime, since the OCD retained
12 jurisdiction, did not dismiss Fasken's case, if we wanted
13 to operate, since the case is before the Division, we need
14 to file a pooling application.

15 Obviously, if the case had been dismissed, we
16 never would have filed.

17 EXAMINER CATANACH: We'll be back in a couple of
18 minutes.

19 (Thereupon, a recess was taken at 9:50 a.m.)

20 (The following proceedings had at 9:56 a.m.)

21 EXAMINER CATANACH: Let me ask a couple of
22 questions.

23 As I recall the testimony in the Fasken-
24 Redstone -- or the Fasken case, during the course of
25 negotiations with Fasken, didn't Redstone make it clear to

1 Fasken that they wanted to drill and operate a well?

2 MR. BRUCE: At some point in November -- I
3 believe mid- to late November -- either through a letter or
4 a phone call.

5 EXAMINER CATANACH: So Fasken was aware that
6 Redstone desired to drill and operate a well?

7 MR. BRUCE: Yes.

8 EXAMINER CATANACH: Although a formal well
9 proposal was never submitted.

10 MR. CARROLL: And it's my understanding we've
11 heard all the testimony and evidence in this case?

12 MR. BRUCE: Yeah, it's -- I don't -- Mr. Carr has
13 some affidavits. Other than that, nobody intends to
14 present anything else.

15 EXAMINER CATANACH: Are there any negotiations
16 currently underway between these two parties?

17 MR. BRUCE: They have, I think -- you know,
18 the -- Bill can correct me if I'm wrong. Fasken sent their
19 letter, Redstone sent their letter. They might have had a
20 telephone conversation.

21 There has been -- There was a meeting in Midland
22 in which Fasken met with the working interest owners --
23 this was in late February -- with the working interest
24 owners other than Redstone, to pitch their well proposal.
25 And by phone Redstone has been talking with those same

1 working interest owners.

2 At this point I don't know what the status of it
3 was, but there were conversations, et cetera.

4 MR. CARR: You know, our position is, of course,
5 that stating I'd like to drill and operate the well doesn't
6 suffice for good-faith negotiations with a well proposal
7 and application, and we think it would be a dangerous
8 precedent to set.

9 That's all you have to do, because then
10 compulsory pooling will be a negotiating tool and a tool to
11 avoid action instead of one to bring the tracts together
12 for development.

13 MR. BRUCE: Mr. Examiner, I think this is an
14 exceptional case. I don't see that happening again.

15 MR. CARR: It won't be exceptional, because it
16 becomes the precedent.

17 EXAMINER CATANACH: Well, I agree with Fasken
18 that it was probably improper for Redstone to file their
19 Application before they proposed the well.

20 However, I don't see what is going to be gained
21 by dismissing this Application, because as Mr. Bruce has
22 testified, he'll simply re-file the case next week and ask
23 that a decision in the Fasken case be stayed.

24 And I would tend to agree with that because I
25 believe that these cases should be decided together, since

1 they're competing applications. I just don't see what it's
2 going to gain.

3 MR. CARR: And so in the future I can wait till
4 I'm pooled, and then I can come in with my application and
5 stay the action of the party who has complied with the
6 statute; is that what that means?

7 Maybe after you hear the arguments on the stay
8 you won't agree.

9 EXAMINER CATANACH: Due to the precedent-setting
10 nature of this thing, I'm afraid we're in a position where
11 we -- I think we have to dismiss the Redstone Application,
12 Mr. Bruce. And you're certainly welcome to re-file it this
13 coming Tuesday.

14 As far as your request for a stay in the Fasken
15 decision, I think that we should allow Mr. Carr or Mr.
16 Kellahin to respond to that, and we should defer that
17 argument maybe till next week sometime.

18 MR. CARROLL: At least until an application is
19 filed. It might be premature if Redstone does not re-file
20 its application.

21 EXAMINER CATANACH: So at this time we'll go
22 ahead and dismiss Case 11,927.

23 MR. CARR: Mr. Catanach, I have affidavits that
24 Mr. Kellahin has asked that I offer. There are three of
25 them.

1 One is a notice affidavit by Sally Kvasnicka
2 concerning the reorientation of the spacing unit. It's
3 marked Exhibit 21.

4 Exhibit 22 is an affidavit comparing the Redstone
5 and Fasken AFEs.

6 And Exhibit 23 is a supplemental notice
7 affidavit.

8 In view of your ruling, I'll withdraw Exhibit 22.
9 It's a comparison of AFEs. I think it's inappropriate at
10 this time. Mr. Bruce has also indicated he will object to
11 the admission of that affidavit comparing the AFEs as
12 testimony that he has a right to cross-examine on, and he
13 is probably right. But in view of your prior ruling, I
14 don't think it's even appropriate at this time.

15 So with your permission, I would offer two
16 affidavits. They've been marked Exhibits 21 and 23.

17 MR. BRUCE: I have no objection to 21 and 23.

18 EXAMINER CATANACH: Okay, Exhibits Number 21 and
19 23 will be admitted as evidence in Case Number 11,877.

20 And is -- And I think at this time we'll take
21 Case 11,877 under advisement, pending the outcome of the
22 stay arguments which will be presented.

23 MR. CARROLL: If, in fact, the motion to stay is
24 filed and an application is filed.

25 MR. BRUCE: Mr. Examiner, I will indeed file a

1 motion for a stay.

2 EXAMINER CATANACH: Okay. So we can argue those
3 maybe -- possibly next week or the week after.

4 So we'll just take this case under advisement at
5 this time.

6 (Thereupon, these proceedings were concluded at
7 10:08 a.m.)

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I do hereby certify that the foregoing is
a complete record of the proceedings in
the aforesaid hearing of Case No. _____,
heard by me on 3/5/ 1998.
David R. Catanch, Examiner
OW Conservation Division

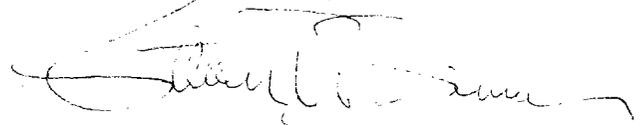
CERTIFICATE OF REPORTER

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 March 7th, 1998.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 14, 1998