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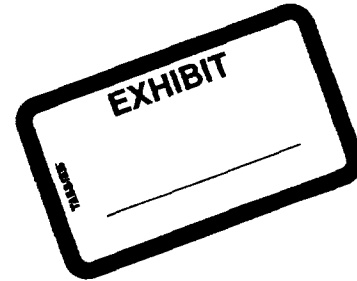
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December 12, 2002



IN RE: DIVISION ORDER OPINION )  
OF TITLE TO: )

Lots 1, 2, E $\frac{1}{2}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$  (N $\frac{1}{2}$ ) Section )  
7, Township 23 South, Range 28 )  
East, N.M.P.M., Eddy County, New )  
Mexico, containing 318.46 acres, )  
more or less. )

No. 33,553

Will 7A Fee No. 1 Well )

Chesapeake Operating, Inc.  
Post Office Box 18496  
Oklahoma City, Oklahoma 73154-0496

Attention: Mr. William F. Chatham

Gentlemen:

In connection with title to the oil and gas produced from the captioned lands, we have examined the following:

(a) Copy of Original Drilling Title Opinion No. 13,308 of Cotton, Bledsoe, Tighe & Dawson, attorneys of Midland, Texas, dated June 20, 2001, addressed to Devon Energy Corporation and Fasken Oil and Ranch, Ltd., reporting title to the captioned lands based on, among other materials, an abstract last certified to May 4, 2001 at 8:00 A.M.;

(b) Copy of First Supplemental Drilling Title Opinion No. 13,308-A of the same firm, dated November 26, 2001, addressed to Devon Energy Corporation, supplementing said original drilling title opinion based on examination of various additional and curative materials;

(c) Mineral takeoff and runsheet compiled by Chalfant Properties, Inc., and copies of instruments from the public records of Eddy County, New Mexico, appearing thereon, represented to be all instruments affecting the captioned lands filed in the public records of Eddy County, New Mexico, during the period from May 4, 2001 at 8:00 A.M. to October 11, 2002 at 7:00 A.M., as reflected by the indices and records of Caprock Title Company of Midland, Texas;

(d) Copy of Operating Agreement dated June 1, 2002, between Chesapeake Exploration Limited Partnership, as operator, and Fasken Land and Minerals, Ltd., Enerstar O&G, LLC, and Discovery Exploration, as nonoperators;

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(e) Copy of Participation Agreement dated August 20, 2001, between Enerstar Resources O&G, LLC and Devon Energy Production Company, L.P.;

(f) Copy of letter agreement dated June 14, 2002, between Devon Energy Production Company, L.P. and Chesapeake Exploration Limited Partnership;

(g) Copy of survey plat of the captioned Section 7, prepared for Chesapeake Operating, Inc., depicting the acreage of the respective tracts composing the captioned lands; and

(h) Copy of Well Completion or Recompletion Report and Log (New Mexico Oil Conservation Division Form C-105) for the Will 7A Fee No. 1 Well.

From our examination of the foregoing, and based solely thereon, we report the status of title to oil and gas produced from the captioned lands, for division order purposes, as of October 11, 2002 at 7:00 A.M., as follows:

**I. TITLE TO OIL AND GAS:**

Title to oil and gas is reported in the ownership schedule attached to this opinion as Exhibit "A".

**II. OIL AND GAS LEASES - ASSIGNMENTS - OVERRIDING ROYALTY INTERESTS - POOLING - OPERATING AGREEMENT - WELL INFORMATION:**

1. Oil and Gas Leases: Subject to our remarks below concerning ownership of the strip of land condemned by the State of New Mexico, the entire mineral estate of all portions of the captioned lands is covered by oil and gas leases, as follows:

Lease 1: From George Brantley and wife, Nancy H. Brantley, and Draper Brantley, as lessors, to Enerstar Resources O&G, L.L.C., dated March 1, 2001, recorded in Book 406, Page 525 of the Eddy County Records, originally purporting to cover NW $\frac{1}{4}$  of the captioned Section 7 but amended by instrument dated July 12, 2001, recorded in Book 443, Page 364, to cover all of NE $\frac{1}{4}$  and all of NW $\frac{1}{4}$  Section 7 save and except that portion of NW $\frac{1}{4}$  Section 7 lying West of the centerline of the AT&SF Railroad right-of-way. This lease provides for a primary term of two years and royalty of 3/16 on oil and gas. It covers the entire mineral estate of that portion of the captioned lands lying north and east of the centerline of the railroad right-of-way, or a total of 295.10 mineral acres. Common features of all leases are set forth hereinbelow.

In addition to the common features of all leases hereinafter set forth, Lease 1 includes a rider, attached as Exhibit "A", containing twelve additional paragraphs. In particular, according to the prior title opinions, the rider provides that the lessee will pay an additional \$100.00 per acre non-drill bonus if a well has not been drilled within the primary term (Paragraph 3); that a well drilled in NE $\frac{1}{4}$  Section 7 will hold all rights as to all depths on that 160 acres and that a discovery below the base of the Bone Springs will hold rights below the Bone Springs on the entire tract (Paragraph 4); that if a test well is not drilled in NW $\frac{1}{4}$  Section 7 before the end of the primary term, all rights from the Bone Springs to the surface in NW $\frac{1}{4}$  Section 7 will revert to the lessors (Paragraph 5); that if a third party comes to the lessee with a farmout proposal covering

the Delaware or Bone Springs Formation during the primary term, the lessee will not hinder the forward progress of such a proposal as long as the terms are agreeable to all parties (Paragraph 6); that the lessee will pay location damages of \$10,000.00 if steel pits are used in the drilling of a test well and an additional \$10,000.00 if reserve pits are excavated, damages after the drilling of one well to be negotiated (Paragraph 7); that the lessee will purchase water for the drilling of all test wells at 40¢ per barrel and caliche at \$2.00 per yard, the amount to be negotiated for all wells after the first well (Paragraph 8); and that upon abandonment of the lease all junk will be hauled off and caliche on the location will be replaced with new dirt (Paragraph 12). (We do not know the contents of the other paragraphs of the lease rider. We assume they are relatively inconsequential inasmuch as the prior title examiner did not discuss them.)

Lease 2: From Juan H. and Ignacia Villa to Enerstar Resources O&G, L.L.C., dated March 2, 2001, recorded in Book 407, Page 620, originally purporting to cover all of N½ Section 7 but amended by instrument dated July 12, 2001, recorded in Volume 443, Page 367, to cover all that portion of NW¼ Section 7 lying west of the centerline of the AT&SF Railroad right-of-way. This lease provides for a primary term of three years and royalty of 3/16 on oil and gas. It covers an undivided 1/4 mineral interest in that portion of the captioned lands lying south and west of the centerline of the railroad right-of-way, or approximately 5.84 mineral acres (subject to the possible claim by the State of New Mexico to such undivided 1/4 mineral interest in 7.88 acres thereof, or 1.97 mineral acres). Common features of all leases are set forth below.

Lease 3: From Margaret V. Dowling to Enerstar Resources O&G, L.L.C., dated March 9, 2001, recorded in Book 408, Page 663, originally purporting to cover all of N½ Section 7 but amended by instrument dated July 24, 2001, recorded in Book 443, Page 370, to cover that portion of NW¼ Section 7 lying west of the centerline of the AT&SF Railroad right-of-way. This lease provides for a primary term of three years and royalty of 3/16 on oil and gas. It covers an undivided 1/2 mineral interest in that portion of the captioned lands lying west of the centerline of the railroad right-of-way, or approximately 11.68 mineral acres. Common features of all leases are set forth below.

Lease 4: From Billy Lara, aka Bill M. Lara, to Enerstar Resources O&G, L.L.C., dated March 20, 2001, recorded in Book 410, Page 1095, originally purporting to cover all of N½ Section 7 but amended by instrument dated July 20, 2001, recorded in Book 443, Page 374, to cover that portion of NW¼ Section 7 lying west of the centerline of the AT&SF Railroad right-of-way. This lease provides for a primary term of 3 years and royalty of 3/16 on oil and gas. It covers an undivided 1/144 mineral interest in that portion of the captioned lands lying west of the centerline of the railroad right-of-way, or approximately 0.162 mineral acre. Common features of all leases are set forth below.

Lease 5: From Lee Montoya to Enerstar Resources O&G, L.L.C., dated March 15, 2001, recorded in Book 411, Page 1158, originally purporting to cover all of N½ Section 7 but amended by instrument dated July 18, 2001, recorded in Book 443, Page 378, to cover that portion of NW¼ Section 7 lying west of the centerline of the AT&SF Railroad right-of-way. This lease provides for a primary term of three years and royalty of 3/16 on oil and gas. It covers an undivided 1/36 mineral interest in that portion of the captioned lands lying west of the centerline

of the railroad right-of-way, or approximately 0.649 mineral acre. Common features of all leases are set forth below.

Lease 6: From Esther Gomez Hernandez to Enerstar Resources O&G, L.L.C., dated March 15, 2001, recorded in Book 411, Page 1160, originally purporting to cover all of N $\frac{1}{2}$  Section 7 but amended by instrument dated July 12, 2001, recorded in Book 443, Page 381, to cover that portion of NW $\frac{1}{4}$  Section 7 lying west of the centerline of the AT&SF Railroad right-of-way. This lease provides for a primary term of three years and royalty of 3/16 on oil and gas. It covers an undivided 1/36 mineral interest in that portion of the captioned lands lying west of the centerline of the railroad right-of-way, or approximately 0.649 mineral acre. Common features of all leases are set forth below.

Lease 7: From David T. Montoya to Enerstar Resources O&G, L.L.C., dated March 15, 2001, recorded in Book 411, Page 1162, originally purporting to cover all of N $\frac{1}{2}$  Section 7 but amended by instrument dated July 12, 2001, recorded in Book 443, Page 384, to cover that portion of NW $\frac{1}{4}$  Section 7 lying west of the centerline of the AT&SF Railroad right-of-way. This lease provides for a primary term of three years and royalty of 3/16 on oil and gas. It covers an undivided 1/36 mineral interest in that portion of the captioned lands lying west of the centerline of the railroad right-of-way, or approximately 0.649 mineral acre. Common features of all leases are set forth below.

Lease 8: From Julian M. Aguilar to Enerstar Resources O&G, L.L.C., dated March 15, 2001, recorded in Book 411, Page 1164, originally purporting to cover all of N $\frac{1}{2}$  Section 7 but amended by instrument dated July 12, 2001, recorded in Book 443, Page 387, to cover that portion of NW $\frac{1}{4}$  Section 7 lying west of the centerline of the AT&SF Railroad right-of-way. This lease provides for a primary term of three years and royalty of 3/16 on oil and gas. It covers an undivided 1/72 mineral interest in that portion of the captioned lands lying west of the centerline of the railroad right-of-way, or approximately 0.3245 mineral acre. Common features of all leases are set forth below.

Lease 9: From Paul Montoya to Enerstar Resources O&G, L.L.C., dated March 15, 2001, recorded in Book 411, Page 1166, originally purporting to cover all of N $\frac{1}{2}$  Section 7 but amended by instrument dated July 17, 2001, recorded in Book 443, Page 390, to cover that portion of NW $\frac{1}{4}$  Section 7 lying west of the centerline of the AT&SF Railroad right-of-way. This lease provides for a primary term of three years and royalty of 3/16 on oil and gas. It covers an undivided 1/36 mineral interest in that portion of the captioned lands lying west of the centerline of the railroad right-of-way, or approximately 0.649 mineral acres. Common features of all leases are set forth below.

Lease 10: From Juanita Peliez to Enerstar Resources O&G, L.L.C., dated March 15, 2001, recorded in Book 411, Page 1168, originally purporting to cover all N $\frac{1}{2}$  Section 7 but amended by instrument dated July 13, 2001, recorded in Book 443, Page 393, to cover that portion of NW $\frac{1}{4}$  Section 7 lying west of the centerline of the AT&SF Railroad right-of-way. This lease provides for a primary term of three years and royalty of 3/16 on oil and gas. It covers an undivided 1/36 mineral interest in that portion of the captioned lands lying west of the centerline of the railroad right-of-way, or approximately 0.649 mineral acre. Common features of all leases are set forth below.

Lease 11: From Wanda Jimenez to Enerstar Resources O&G, L.L.C., dated March 15, 2001, recorded in Book 411, Page 1170,

originally purporting to cover all of NW $\frac{1}{4}$  Section 7 but amended by instrument executed by Rose Ann Jimenez, the current owner, dated July 13, 2001, recorded in Book 443, Page 396, to cover that portion of NW $\frac{1}{4}$  Section 7 lying west of the centerline of the AT&SF Railroad right-of-way. This lease provides for a primary term of three years and royalty of 3/16 on oil and gas. It covers an undivided 1/36 mineral interest in that portion of the captioned lands lying west of the centerline of the railroad right-of-way, or approximately 0.649 mineral acre. Common features of all leases are set forth below.

Lease 12: From Esther Aguilar to Enerstar Resources O&G, L.L.C., dated March 15, 2001, recorded in Book 411, Page 1172, originally purporting to cover all of NW $\frac{1}{4}$  Section 7 but amended by instrument dated July 13, 2001, recorded in Book 443, Page 399, to cover that portion of NW $\frac{1}{4}$  Section 7 lying west of the centerline of the AT&SF Railroad right-of-way. This lease provides for a primary term of three years and royalty of 3/16 on oil and gas. It covers an undivided 1/36 mineral interest in that portion of the captioned lands lying west of the centerline of the railroad right-of-way, or approximately 0.649 mineral acre. Common features of all leases are set forth below.

Lease 13: From Barbara C. Lara, a widow, to Devon Energy Production Company, L.P., dated July 18, 2001, recorded in Book 425, Page 1072, covering all that portion of NW $\frac{1}{4}$  Section 7 lying west of the centerline of the AT&SF Railroad right-of-way, providing for a primary term of three years and royalty of 3/16 on oil and gas. This lease covers an undivided 1/144 mineral interest in that portion of the captioned lands lying west of the centerline of the railroad right-of-way, or approximately 0.162 mineral acre. Common features of all leases are set forth below.

Lease 14: From Hope Morningstar to Devon Energy Production Company, L.P., dated July 31, 2001, recorded in Book 425, Page 1074, covering that portion of NW $\frac{1}{4}$  Section 7 lying west of the centerline of the AT&SF Railroad right-of-way, providing for a primary term of three years and royalty of 3/16 on oil and gas. This lease covers an undivided 1/144 mineral interest in that portion of the captioned lands lying west of the centerline of the railroad right-of-way, or approximately 0.162 mineral acre. Common features of all leases are set forth below.

Lease 15: From Adela Dobkins to Devon Energy Production Company, L.P., dated July 18, 2001, recorded in Book 425, Page 1076, covering that portion of NW $\frac{1}{4}$  Section 7 lying west of the centerline of the AT&SF Railroad right-of-way, providing for a primary term of three years and royalty of 3/16 on oil and gas. This lease covers an undivided 1/144 mineral interest in that portion of the captioned lands lying west of the centerline of the railroad right-of-way, or approximately 0.162 mineral acre. Common features of all leases are set forth below.

Lease 16: From Shawna Elizondo to Devon Energy Production Company, L.P., dated July 31, 2001, recorded in Book 426, Page 526, covering that portion of NW $\frac{1}{4}$  Section 7 lying west of the centerline of the AT&SF Railroad right-of-way, providing for a primary term of five years and royalty of 3/16 on oil and gas. This lease covers an undivided 1/72 mineral interest in that portion of the captioned lands lying west of the centerline of the railroad right-of-way, or approximately 0.3245 mineral acre. Common features of all leases are set forth below.

Common Features of Leases 1-16: Each of the above described Leases 1-12 is on a Producers 88-Producers Revised 1994 New

Mexico Form 342P, Paid-Up, and each of Leases 13-16 is on a Producers 88-Produced Revised 1981 New Mexico Form 342P, Paid Up. Copies of Leases 13-16 are among the materials examined, and they appear to be computer-generated. We are familiar with the 1994 Form 342P, although we have not examined Leases 1-12 ourselves but have relied on the description of those leases in the prior opinions. The 1981 and 1994 versions of the commonly-used Form 342P are not materially different. This is a commence form of lease and contains satisfactory additional drilling and reworking, assignment, force majeure, warranty and lesser interest provisions. This is a paid-up form; no delay rentals need be paid during the primary term in the absence of drilling or production. Shut-in royalty may be paid in the amount of \$1.00 per net acre, commencing on or before ninety days after the well is shut in. Pooling is permitted in units not to exceed the standard proration unit plus a tolerance of 10%.

2. Assignments - Overriding Royalty Interests: The materials under examination include the following assignments of interests under the above described oil and gas leases:

(a) Enerstar - Fasken, Discovery and Devon (Leases 1-12): Enerstar Resources O&G, L.L.C., the original lessee of the above described Leases 1-12, executed three substantially identical assignments of interests under those leases, as follows:

(i) To Fasken Land and Minerals, Ltd., dated April 23, 2001, effective April 1, 2001, recorded in Book 416, Page 317, corrected as to the acknowledgment by Corrected Assignment dated May 11, 2001, effective April 1, 2001, recorded in Book 430, Page 789, assigning an undivided 58-1/3% of all right, title and interest in said Leases 1-12, subject to a Participation Agreement between the parties dated March 1, 2001.

(ii) To Discovery Exploration, dated May 11, 2001, effective April 27, 2001, recorded in Volume 416, Page 1160, corrected as to the acknowledgment by Corrected Assignment also dated May 11, 2001, effective April 27, 2001, recorded in Book 430, Page 785, assigning an undivided 6.25% of all right, title and interest in Leases 1-12, subject to a Participation Agreement and Operating Agreement between Enerstar and Fasken Oil and Ranch, Ltd., dated March 1, 2001.

(iii) To Devon Energy Production Company, L.P., dated May 11, 2001, effective April 27, 2001, recorded in Book 443, Page 360, assigning an undivided 29-1/6% of all right, title and interest in Leases 1-12, subject to a Participation Agreement and Operating Agreement between Enerstar and Fasken Oil and Ranch, Ltd., dated March 1, 2001.

Each of the assignments reserves to Enerstar an overriding royalty equal to the difference between 20.0% of 8/8 and the existing burdens of record on the leases of all oil, gas and other hydrocarbons produced, saved and sold from the lands under the terms of the leases and any extensions or renewals, free and clear of all development, production, operating and marketing costs, with the expressed intent to deliver a net revenue interest of 80% of the specified assigned working interest in the leases.

(b) Fasken - Devon (Leases 1-12): By Assignment dated June 19, 2002, effective June 1, 2002, recorded in Book 463, Page 424, Fasken Land and Minerals, Ltd. assigned to Devon Energy Production Company, L.P. an undivided 29-1/6% of all right, title and interest in the above described Leases 1-12, as amended, subject to a Participation Agreement dated March 30, 2001, between Fasken Oil and Ranch, Ltd. and Enerstar Resources O&G, L.L.C. and the corrected assignments by Enerstar to Fasken and Discovery Exploration noted above. The assignment does not specifically mention overriding royalty burdens, but its having been made subject to the Enerstar assignment to Fasken, in our opinion, subjects the assigned interest to a proportionate part of the Enerstar override.

(c) Devon - Enerstar (ORI in Leases 13-16): By Assignment dated July 12, 2002, recorded in Book 463, Page 936, Devon Energy Production Company, L.P., assigned Enerstar Resources O&G, L.L.C. an overriding royalty interest equal to 1.25% x 8/8 of all oil, gas and other minerals produced, saved and marketed pursuant to the above described Leases 13-16, applicable to renewals and extensions. The assignor retained the authority to pool the leases without the assignee's consent.

(d) Devon - Fasken, Discovery and Enerstar (Leases 13-16): By Assignment dated July 2, 2002, counterparts of which, executed by each respective assignee, are recorded in Book 465, Page 809, Book 463, Page 939, and Book 464, Page 457, Devon Energy Production Company, L.P. assigned an undivided 41.66667% of its right, title and interest in the above described Leases 13-16, subject to a Participation Agreement dated March 30, 2001, between Fasken Oil and Ranch, Ltd. and Enerstar, a Participation Agreement dated August 20, 2001 between Devon Energy Production Company, L.P., and Enerstar, and any existing contract or obligation affecting the premises whether or not recorded or set forth, as follows:

Fasken Oil and Ranch, Ltd.	29.16667%
Enerstar Resources O&G, L.L.C.	6.25000%
Discovery Exploration	6.25000%

In the counterpart of the assignment recorded in Book 465, Page 809, which is executed by Fasken Land and Minerals, Ltd., the identification of the assignee in the assignment has been manually altered from Fasken "Oil and Ranch," Ltd. to Fasken "Land and Minerals," Ltd.

(e) Devon - Chesapeake: By Assignment dated July 31, 2002, recorded in Book 471, Page 835, Devon Energy Production Company, L.P., assigned Chesapeake Exploration Limited Partnership all of Devon's right, title and interest in the above described Leases 1-16. The assignment is made subject to a Participation Agreement dated March 30, 2001, between Fasken Oil and Ranch, Ltd. and Enerstar Resources O&G, L.L.C., a Participation Agreement dated August 20, 2001, between Devon and Enerstar, and any existing contract or obligation affecting the premises whether or not or record or referenced (with a representation by Devon that to the best of its knowledge there are no other such contracts or obligations).

(f) Enerstar - Blundell: By Partial Assignment dated August 6, 2002, effective May 1, 2002, recorded in Book 466,

Page 590, Enerstar Resources O&G, L.L.C. assigned to Bob Blundell, Jr. an undivided 2.5% interest in the above described Leases 1-16, subject to (a) the terms and provisions of the leases, (b) a Participation Agreement dated March 30, 2001, between Fasken Oil and Ranch, Ltd. and Enerstar Resources O&G, L.L.C., (c) a Participation Agreement dated August 20, 2001, between Devon Energy Production Company, L.P., and Enerstar Resources O&G, L.L.C., (d) an Operating Agreement dated June 1, 2001, between Chesapeake Exploration Limited Partnership, as Operator, and Fasken Land and Minerals, Ltd., et al., as nonoperators, and (e) any existing contract or obligation affecting the premises whether or not of record and whether or not specifically referenced. The assignment is also specifically made subject to a proportionate part of existing royalty, overriding royalty and other obligations and burdens on the assigned premises.

(g) Enerstar - Jackson, Discovery and Blundell:  
Enerstar Resources O&G, L.L.C., executed two Assignments of Overriding Royalty Interest, both dated August 26, 2002, effective May 1, 2002, recorded in Book 468, Pages 1091 and 1096, as follows:

(i) Assigning an overriding royalty equal to .078125% of the proceeds received from the sale of all (8/8) of the oil and gas which may be produced, saved and marketed under the above described Leases 1-16, proportionately reduced if the leases cover less than the entire mineral estate but not to the extent that the assignor owns less than the full leasehold, as follows:

Dick Jackson	.0625000%
Discovery Exploration	.0078125%
Bob Blundell, Jr.	.0031250%
Enerstar Resources O&G, L.L.C.	.0046875%

(ii) Assigning an undivided 94% of its 1.171875% overriding royalty interest (1.25% of 93.75%) in the above described Leases 1-16, and any extensions and renewals, as follows:

Dick Jackson	.9375000%
Discovery Exploration	.1171875%
Bob Blundell, Jr.	.0468750%

Both of the assignments make the overriding royalty interest subject to any governmentally approved cooperative or unit plan of development or operation or communitization or other agreement forming a well spacing unit or proration unit under the rules and regulations of the New Mexico Oil Conservation Division to which the leases may be committed.

3. Pooling: The Will 7A Fee No. 1 Well has been completed as a gas well in the Morrow Formation, requiring a proration unit of approximately 320 acres. We understand that the captioned lands have been designated as the proration unit for the well, but the leases have not been pooled in the manner prescribed by their terms. At your request we have prepared and furnished with this opinion a form of designation of pooled unit.

REQUIREMENT A: The designation of pooled unit, pooling the captioned lands for production from the Will 7A Fee No. 1 Well, should be executed and acknowledged by all working interest



owners and filed for record in the office of the Eddy County Clerk.

4. Operating Agreement: We have been submitted a copy of an Operating Agreement dated June 1, 2002, between Chesapeake Exploration Limited Partnership, as operator, and Fasken Land and Minerals, Ltd., Discovery Exploration and Enerstar Resources O&G, LLC, as nonoperators. The agreement is an AAPL Form 610-1982 Model Form, with minor modifications. The agreement covers the exact captioned lands, without depth restriction, and sets forth the interests of the parties, consistently with record ownership, as follows (after "casing point"):

Chesapeake Exploration Limited Partnership	58.333334%
Fasken Land and Minerals, Ltd.	29.166666%*
Enerstar Resources O&G, LLC	6.250000%
Discovery Exploration	6.250000%

\* Actually, the schedule in Exhibit "A" to the agreement states Fasken's percentage as .29166666%, which we are certain is a clerical error.

Under Article III.B. of the agreement, the parties shall own all production of oil and gas from the contract area subject to payment of royalties to the extent of "the lowest lease royalty," with any overriding royalty or other burdens on any party's interest in excess of such amount borne by the party contributing the lease. Under Article VI.A., a test well is to be commenced on or before September 1, 2002, at the location of the Will 7A Fee No. 1 Well and then drilled to a depth of 12,500 feet or to a depth to sufficiently test the Morrow Formation. Article VI.B.2. provides for 100%-300% nonconsent penalties, and Article VI.D.1. calls for a casing point election. Article VIII.F., the preferential right to purchase provision, has been stricken. The term of the agreement is for so long as the test well continues to produce, subject to extension by operations commenced within 90 days after cessation of production.

In addition to Exhibit "A" to the agreement, identifying the contract area, the parties and their interests and the oil and gas leases, the operating agreement includes a COPAS 1984 Onshore Accounting Procedure as Exhibit "C", an insurance exhibit as Exhibit "D", an AAPL Form 610-E gas balancing agreement as Exhibit "E", nondiscrimination provisions as Exhibit "F", and an AAPL Form 610RS Recording Supplement and Financing Statement as Exhibit "H". The recording supplement has apparently not been recorded.

We refer you to the operating agreement for other details.

COMMENT: Exhibit "A" to the operating agreement reflects that Enerstar Resources O&G, LLC and Discovery Exploration have no interest "before casing point" and each an undivided 6.25% interest "after casing point." Chesapeake and Fasken are shown to have 66.66667% and 33.33333%, respectively, "before casing point." We believe that the difference in ownership before and after casing point is intended only to apply to the initial well drilled under the operating agreement and not to any subsequent wells. We find nothing in the agreement, however, stating that Enerstar's and Discovery's carried working interest is only in

the initial well. Exhibit "A" makes it appear that the "before casing point" and "after casing point" interests apply to all wells. If you are concerned about the sharing of drilling costs in wells drilled subsequently to the initial well, we suggest that you obtain agreements from Enerstar and Discovery confirming that the "after casing point" interests set forth in Exhibit "A" to the operating agreement apply to all costs, not just those after casing point, of wells drilled subsequently to the initial well.

5. Well Information: According to the completion report submitted to us, your Will 7A Fee No. 1 Well was spudded on July 16, 2002 at a location 725 feet from the north line and 1063 feet from the east line of the captioned Section 7. It was drilled to a total depth of 12,540 feet and completed on September 18, 2002 as a gas well in the Morrow Formation, the producing interval being between 12,392 feet and 12,426 feet subsurface. The date of first production from the well was October 1, 2002, and the landmen's search upon which we have relied for this opinion is subsequent to that date. This is advisory.

### III. EXCEPTIONS TO TITLE AND REMARKS:

1. Ownership in Highway Strip: Among the matters reported in the prior title opinions is one arising from a certain judgment rendered on January 5, 1968 in Cause No. 24439 in the District Court of the Fifth Judicial District, Eddy County, New Mexico, styled "State of New Mexico, ex rel. State Highway Commission of New Mexico, Petitioner, v. Martin Villa, et al., Defendants." A certified copy of the judgment is recorded in Volume 58, Page 923 of the Eddy County Miscellaneous Records, and is attached to the original drilling title opinion upon which we have relied. According to the judgment, the State of New Mexico was awarded title to the lands described therein, described substantially as follows:

(2-2) A certain tract or parcel of land, lying and being situate in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ , the SW $\frac{1}{4}$ SE $\frac{1}{4}$ , the SE $\frac{1}{4}$ SW $\frac{1}{4}$ , the NW $\frac{1}{4}$ SE $\frac{1}{4}$ , the NE $\frac{1}{4}$ SW $\frac{1}{4}$ , the NW $\frac{1}{4}$ SW $\frac{1}{4}$ , the SE $\frac{1}{4}$ NW $\frac{1}{4}$  and the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 7, T.23S., R.28E., NMPM, County of Eddy, State of New Mexico, being more particularly bounded and described as follows, to-wit:

Beginning at a point on the westerly line of Section 7 and point on the southerly right of way line of NMP F-023-1(12), County of Eddy, State of New Mexico, said point bears S. 0° 29' E. a distance of 1,613.42 feet from the northwesterly corner of Section 7;  
Thence N. 0° 29' W. along said westerly line of Section 7 a distance of 220.46 feet to a point in the northerly right-of-way line of NM FAP 131-A, County of Eddy, State of New Mexico, said point being a point on the southerly right of way line of the Atchison, Topeka & Santa Fe Railroad;  
Thence S. 47° 01' E. along said right of way line common to NM FAP 131-A and the Atchison, Topeka & Santa Fe Railroad a distance of 5,681.50 feet to a point on the southerly line of Section 7;  
Thence S. 89° 35' W. along said southerly line of Section 7 a distance of 145.54 feet to a point on the southerly right of way line of NMP FAP-131-A;  
Thence N. 47° 01' W. along said southerly right of way line a distance of 480.00 feet;

Thence S. 89° 35' W. a distance of 87.32 feet to a point on the southerly right of way line of NMP F-023-1 (12);  
Thence N. 47° 01' W. along said southerly right of way line a distance of 76.71 feet;  
Thence S. 83° 05' W. a distance of 248.40 feet;  
Thence N. 47° 01' W. a distance of 1,100.0 feet;  
Thence N. 14° 35' W. a distance of 354.19 feet;  
Thence N. 47° 01' W. a distance of 3,245.01 feet to the point and place of beginning.

Containing 25.418 acres, more or less, of which 18.166 acres, more or less, are contained in the present (1967) right-of-way. Net area = 7.252 acres, more or less.

(2-2A) Also, a certain tract or parcel of land, lying and being situate in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  and the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 7, T.23S., R.28E., NMPM, County of Eddy, State of New Mexico, being more particularly bounded and described as follows, to-wit:

Beginning at a point on the southerly right of way line of NMP F-023-1(12), County of Eddy, State of New Mexico and point on the westerly line of the property of the defendant, said point bears S.1° 53' 26" E. a distance of 1,652.40 feet from the northwesterly corner of Section 7;  
Thence S. 47° 01' E. along said southerly right of way line a distance of 1,488.01 feet;  
Thence S. 42° 59' W. a distance of 55.9 feet;  
Thence N. 47° 01' W. a distance of 1,435.27 feet to a point on the westerly line of the property of the defendant;  
Thence N. 0° 21' W. along said westerly line of the property of the defendant a distance of 76.81 feet to the point and place of beginning.

Containing 1.876 acres, more or less.

We are advised that you have concluded that this land includes approximately 7.88 acres out of NW $\frac{1}{4}$  of Section 7.

This proceeding was a condemnation action for a highway. The petition states that the state sought to acquire the property in fee simple excepting oil, gas and other minerals, but the judgment purports to condemn the property without any exclusion of the minerals. The judgment recites that Martin Villa and Cruz H. Villa appeared pro se and that defendants named under the style of "Any and All Unknown Persons or Claimants of Interest in and to Any of the Property Interests Herein Sought to Be Acquired" had not appeared and were in default. Martin Villa and Cruz H. Villa owned only an undivided 1/4 mineral interest in the condemned strip at the time. In our opinion the judgment probably was sufficient to have vested the Villas' 1/4 mineral interest in the condemned strip in the state, inasmuch as the Villas evidently participated in the suit and the judgment, on its face, purports to have divested them of all interest in the land. Arguably, however, the petition did not invoke the jurisdiction of the court to condemn any interest in the minerals. We do not believe there is any serious basis for the state to claim the 3/4 mineral interest in the strip of land vested in persons other than the Villas, inasmuch as their interests

were of record and thus not vested in "unknown persons or claimants," and their interests were, moreover, not "sought to be acquired" according to the petition. The court's judgment, however, in purporting to vest all interest in the strip of land in the state, does appear to cloud title to all of the minerals, not just the Villas' interest. To resolve the apparent claim of the State of New Mexico to at least a 1/4 mineral interest in this strip of land, the prior title examiner required, for drilling purposes, that an oil and gas lease be obtained from the State of New Mexico covering the strip of land and that a stipulation be entered into between the state and the mineral owners in the rest of the land south and west of the railroad. It is our understanding that attempts were made to accomplish this, but that the New Mexico State Highway and Transportation Department would not cooperate and in fact would not take any position with respect to its ownership or leasing authority.

If the New Mexico State Highway and Transportation Department will not execute a lease under the same terms as the other mineral owners, or under other acceptable terms, a possible resolution would be to file an action for compulsory pooling to include the state's interest, if any, in your pooled unit. You are obligated by statute to accommodate the state's interest in the proration unit for your well, unless you can be assured the state does not own or claim an interest. A compulsory pooling action would not resolve the question of the state's mineral ownership, but it presumably would discharge your responsibility. Until the question of the State of New Mexico's ownership is resolved one way or another, it will be necessary for the runs attributable to the mineral interest that it may claim to be suspended.

REQUIREMENT B: An oil and gas lease should be obtained from the State of New Mexico on the interest that it owns or claims in the above described strip of land crossing the southwest portion of N $\frac{1}{2}$  of Section 7. In the alternative, a compulsory pooling action should be instituted against the New Mexico State Highway and Transportation Department for inclusion of its acreage in the pooled unit formed for production from the Will 7A Fee No. 1 Well.

REQUIREMENT C: The question of the State of New Mexico's ownership of the 1/4 mineral interest in the strip of land formerly owned by Martin and Cruz Villa should be resolved by a quitclaim from the State of New Mexico to Juan H. Villa and Ignacia De la Rosa Villa, the current owners, by quitclaim from the Villas to the State of New Mexico, or by mutual agreement between the parties. Runs attributable to the State of New Mexico's potential 1/4 mineral interest (both royalty and leasehold interests otherwise credited to the Villas and their lessees) should be suspended pending resolution of the matter.

COMMENT: We are not entirely certain whether the New Mexico State Highway and Transportation Department is amenable to a compulsory pooling action before the Oil Conservation Division. If the state does not object upon your filing of an action, however, in our opinion an order for compulsory pooling would be reliable. In any event, your filing of such an action should be sufficient to discharge your responsibility.

2. Unrecorded Agreements: According to assignments in the chain of title, various interests in the captioned lands are subject to certain unrecorded agreements, as follows:

(a) Enerstar - Fasken Participation Agreement Of March 1, 2001: The assignment of April 23, 2001 from Enerstar Resources O&G, LLC to Fasken Land and Minerals, Ltd. is stated to be subject to a Participation Agreement between the parties dated March 1, 2001. Enerstar's May 11, 2001 assignments to Discovery Exploration and to Devon Energy Production Company, L.P. are made subject to a Participation Agreement and Operating Agreement between Enerstar and Fasken Oil and Ranch, Ltd., dated March 1, 2001. We are not certain whether there are two different agreements, one between Enerstar and Fasken Land and Minerals and the other between Enerstar and Fasken Oil and Ranch, but we suspect that the references are intended to be to the same agreement. We have not examined this agreement or agreements.

REQUIREMENT D: We should be submitted a copy of the Participation Agreement dated March 1, 2001, between Enerstar Resources O&G, LLC and Fasken Land and Minerals, Ltd., and the Participation Agreement and Operating Agreement between Enerstar Resources O&G, LLC and Fasken Oil and Ranch, Ltd., dated March 1, 2001 (all of which may actually be a single agreement). We reserve possible further requirement.

(b) Enerstar - Fasken Participation Agreement of March 30, 2001: The June 19, 2002 assignment by Fasken Land and Minerals, Ltd. to Devon Energy Production Company, L.P., assigning a portion of its interests in Leases 1-12, Devon's subsequent assignments of all of its interests to Chesapeake Exploration Limited Partnership and others, and Enerstar's assignment of an undivided 2.5% interest in all of the leases to Bob Blundell, Jr. are all made subject to a Participation Agreement dated March 30, 2001, between Fasken Oil and Ranch, Ltd. and Enerstar Resources O&G, LLC. We suspect that this may be intended to refer to the same participation agreement between Enerstar and Fasken as the one earlier referred to as being dated March 1, 2001, but we cannot be certain. We have not examined a copy of the agreement.

REQUIREMENT E: We should be submitted a copy of the Participation Agreement dated March 30, 2001, between Enerstar Resources O&G, LLC and Fasken Oil and Ranch, Ltd., and we reserve possible further requirement. If this is alleged to be the same agreement as the one discussed above, referred to as being dated March 1, 2001, we should be submitted an explanation of the discrepancy in the date references, unless an explanation is apparent from the face of the agreement.

(c) Enerstar - Devon Participation Agreement: The assignments made by Devon Energy Production Company, L.P. and the assignment made by Enerstar Resources O&G LLC to Bob Blundell, Jr. described above are made subject to a Participation Agreement between Enerstar and Devon dated August 20, 2001. We have been submitted a copy of this agreement. In substance, Devon was to pay certain consideration and cost reimbursement and became entitled to an undivided 33-1/3% of 8/8 interest prior to casing point at total depth of the test well and an undivided 29.1666667% interest after casing point in and to the test well, as its interest in the "Brantley Prospect," consisting of

Enerstar's leases covering the captioned lands. The test well was to be drilled at approximately 660 feet FNL and 660 feet FEL of Section 7 to a total depth of 2,500 feet subsurface or a depth sufficient to test adequately the Morrow Formation. The agreed net revenue interest in the leases delivered by Enerstar to Devon was to be a proportionately reduced 80% net revenue interest. The assignments of record and other matters reported herein are consistent with this agreement, and this is merely advisory.

3. Execution and Acknowledgment of Assignments: Questions arise from the manner in which several of the assignments of interests in the oil and gas leases covering the captioned lands have been executed or acknowledged, as follows:

(a) Enerstar - Devon: The assignment by Enerstar Resources O&G, L.L.C. to Devon Energy Production Company, L.P., dated May 11, 2001, effective April 27, 2001, recorded in Book 443, Page 360, assigning an undivided 29-1/6% interest in Leases 1-12, was executed by Tommy Folsom. Tommy Folsom is identified in other instruments of record as the president and manager of Enerstar Resources O&G, L.L.C., but the capacity in which he executed the assignment to Devon on behalf of Enerstar is not given either at the signature line or in the acknowledgment to the assignment. Further, the acknowledgment certificate shows that Enerstar Resources O&G, L.L.C. is a New Mexico corporation, which is, we believe, incorrect in that Enerstar appears to be a New Mexico limited liability company. These discrepancies may call into question the efficacy of Enerstar's assignment to Devon, whose interests are now held by Chesapeake, or at least whether it is validly of record. (Similar problems with the execution and acknowledgment of assignments by Enerstar to Fasken Land and Minerals, Ltd. and Discovery Exploration were resolved by corrected assignments, except as noted below.)

REQUIREMENT F: A correction assignment should be made by Enerstar Resources O&G, L.L.C. in favor of Chesapeake Exploration Limited Partnership, correcting the assignment of an undivided 29-1/6% interest in Leases 1-12, with proper execution and acknowledgment, and it should be recorded in Eddy County.

(b) Enerstar Capacity: As indicated in our descriptions of assignments above, Enerstar Resources O&G, LLC, the original lessee of Leases 1-12, executed assignments of an undivided 58-1/3% interest in the leases to Fasken Land and Minerals, Ltd. and an undivided 6.25% interest to Discovery Exploration. There were discrepancies in the execution or acknowledgment of the original assignments by Enerstar to Fasken and Discovery, and corrected assignments were made by Enerstar to both Fasken and Discovery on May 11, 2001, recorded in Book 430, Pages 789 and 785 of the Eddy County Records, respectively. The corrected assignments were executed and acknowledged by Tommy Folsom as President of Enerstar Resources O&G, L.L.C., stated to be a New Mexico limited liability company. Later instruments have been executed by Tommy W. Folsom as manager of Enerstar. It may be that Tommy W. Folsom is both a manager and the president of Enerstar Resources O&G, L.L.C. However, the New Mexico statutes do not specifically authorize limited liability companies organized there to appoint officers and give no protection to third parties relying on execution of conveyances by executive officers. You would be entitled to rely on execution of the Fasken and

Discovery assignments by Tommy Folsom if he had executed as manager, as he would have had apparent authority as such. In our opinion, however, it is necessary to verify his authority to have executed the instruments as President, the same as though he had executed as attorney-in-fact.

REQUIREMENT G: We should be submitted a copy of the instrument executed by the managers or members of Enerstar Resources O&G, L.L.C., appointing Tommy Folsom President of the limited liability company and defining his authority as such. If Tommy Folsom does not have sufficient authority under any such document, a correction assignment should be made by Enerstar Resources O&G, L.L.C. in favor of the current owners, ratifying the above described assignments to Fasken Land and Minerals, Ltd., and Discovery Exploration, with words of grant, executed by a manager of the limited liability company; and such instrument should be recorded in Eddy County.

(c) Devon Assignments: Devon Energy Production Company, L.P., an Oklahoma limited partnership of which Devon Energy Management Company, L.L.C., an Oklahoma limited liability company, is general partner, formerly owned all interest under Leases 13-16 and an undivided 58-1/3% interest in Leases 1-12. We have described hereinabove three assignments made by Devon, which we reiterate as follows:

(i) Dated July 12, 2002, recorded in Book 463, Page 936, assigning Enerstar Resources O&G, L.L.C. an overriding royalty interest equal to 1.25% x 8/8 of all oil, gas and other minerals produced, saved and marketed pursuant to Leases 13-16.

(ii) Dated July 2, 2002, counterparts of which are recorded in Book 463, Page 939, Book 464, Page 457, and Book 465, Page 809, assigning Fasken Oil and Ranch, Ltd. (or Fasken Land and Minerals, Ltd.), Enerstar Resources O&G, L.L.C., and Discovery Exploration a total of 41.6667% of Devon's interest in Leases 13-16.

(iii) Dated July 31, 2002, recorded in Book 471, Page 835, assigning Chesapeake Exploration Limited Partnership all of Devon's remaining right, title and interest in Leases 1-16.

All of these assignments were executed on behalf of Devon Energy Production Company, L.P. by R. D. Clark, "Vice President." R. D. Clark should have executed the assignments (as he acknowledged, correctly) as Vice President of Devon Energy Management Company, L.L.C., General Partner of Devon Energy Production Company, L.P.

REQUIREMENT H: Correction assignments or ratifications of the foregoing assignments should be obtained from Devon Energy Production Company, L.P., properly executed and acknowledged by an authorized officer, manager or member on behalf of Devon Energy Management Company, L.L.C., as General Partner on behalf of Devon Energy Production Company, L.P., and such correction assignments or ratifications should be recorded in Eddy County.

4. Allocation of Overriding Royalty Burden Between Enerstar and Blundell: The 2.5% working interest credited herein to Bob Blundell, Jr. was assigned to him by Enerstar Resources O&G, L.L.C., by Partial Assignment dated August 6, 2002, effective May 1, 2002, recorded in Book 466, Page 590. At the time,

Enerstar owned an undivided 6.25% interest in all of Leases 1-16. Its interest in Leases 13-16 was subject to a proportionate share of Enerstar's own 1.25% overriding royalty interest in those leases, but its interest in Leases 1-12 was not subject to any overriding royalty burden of record. The assignment is not specifically made subject to any particular overriding royalty interests but is generally made subject to a proportionate part of existing royalty, overriding royalty and other obligations and burdens on the leases assigned. Shortly after the assignment of Blundell's 2.5% working interest, Enerstar, by Assignment dated August 26, 2002, effective May 1, 2002, recorded in Book 468, Page 1091, assigned Dick Jackson, Discovery Exploration, Bob Blundell, Jr. and Enerstar itself an overriding royalty equal to .078125% (6.25% of 1.25%) of the proceeds received from sale of all oil and gas produced under all of the leases. At the same time Enerstar made an assignment to Blundell and others of an overriding royalty interest stated to have been carved out of 93.75% interest in the leases. Because the .078125% overriding royalty interest was apparently intended to burden the 6.25% working interest owned by Enerstar at the time of its working interest assignment to Blundell, because the assignment creating the override was made effective at the same time as the working interest assignment to Blundell, and because Blundell, being an assignee under both instruments, presumably was aware of the overriding royalty interest, we have treated Blundell's 2.5% of the working interest as being proportionately subject to a 1.25% overriding royalty interest. This is nevertheless not at all clear from the assignment of Blundell's working interest to him, and the manner in which the overriding royalty interest is shared between Enerstar and Blundell should be clarified of record.

REQUIREMENT I: Enerstar Resources O&G, L.L.C. and Bob Blundell, Jr. and his wife, if any, should execute a stipulation of interest, correction assignment or other instrument, which should be recorded in Eddy County, clarifying that the partial assignment from Enerstar to Blundell, dated August 6, 2002, effective May 1, 2002, recorded in Book 466, Page 590, was intended to be made proportionately subject to a 1.25% overriding royalty interest, such that Blundell became entitled to a 2.5% of 80% net revenue interest under the leases.

5. Devon Assignment to Fasken Oil and Ranch: As noted above, Devon Energy Production Company, L.P., owning the entire working interest under Leases 13-16, assigned an undivided 41.66667% of its interest to the other working interest owners. Three counterparts of the assignment have been recorded, one executed by each of the assignees. In one of the counterparts, acknowledged by Devon on July 2, 2002, recorded in Book 465, Page 809, executed by Fasken Land and Minerals, Ltd., the name of the assignee of 29.16667% interest in the leases has been altered from Fasken Oil and Ranch, Ltd. to Fasken Land and Minerals, Ltd. In the other two counterparts, those executed by Enerstar Resources O&G, L.L.C. and Discovery Exploration, recorded in Book 464, Page 457, and in Book 463, Page 939, respectively, Fasken Oil and Ranch, Ltd. appears to be the assignee of a 29.16667% interest. The manner in which these assignments appear of record calls into question whether Devon intended to assign an interest to Fasken Oil and Ranch, Ltd. or Fasken Land and Minerals, Ltd., and it appears likely that the name of the assignee was altered by Fasken Land and Minerals, Ltd., not by the assignor. We do not believe it can be seriously questioned that Devon validly assigned an undivided 29.16667% interest in Leases 13-16 to either Fasken Oil and Ranch, Ltd. or Fasken Land and Minerals, Ltd.



REQUIREMENT J: A quitclaim should be executed by Fasken Oil and Ranch, Ltd. to Fasken Land and Minerals, Ltd., as to any interest that may have become vested in Fasken Oil and Ranch, Ltd. by virtue of the assignment from Devon Energy Production Company, L.P., and such quitclaim should be recorded in Eddy County.

6. Pooling of Overriding Royalty Interests: Most of the assignments in which overriding royalty interests in the captioned lands were created have not been made subject to pooling by the working interest owners. Unless the owners of overriding royalty interests agree to the pooling, their interests are not necessarily subject to it. Because the overriding royalty interests are owned uniformly in both tracts, this is immaterial for purposes of our reporting ownership of oil and gas production. However, we would recommend that you obtain ratifications of your pooling from the overriding royalty owners so that the question of whether or not an overriding royalty is pooled will not arise if circumstances dividing the ownership should ever develop.

7. Character of Margaret Dowling Interest - Dowling Trust: Based on the prior title opinions, we credit Margaret V. Dowling with 1/2 of the mineral estate of the land lying south and west of the centerline of the railroad right-of-way, subject to Lease 3. Of this interest an undivided 1/10 of 89.75/177.75 interest in SW1/4NW1/4 Section 7 lying west and south of the railroad right-of-way was conveyed to her by O. J. Dowling and wife, Frances Virginia Dowling, by Mineral Deed dated August 25, 1976, recorded in Book 227, Page 289 of the Eddy County Deed Records, and must be presumed to have been conveyed to her as community property if she was married at the time. If this portion, or all, of Margaret V. Dowling's interest is community property, Lease 3, which was not joined by her husband, if any, may be void under New Mexico law. The remainder of Margaret V. Dowling's interest was conveyed to her in a Special Warranty Deed dated September 3, 1992, recorded in Book 133, Page 588 of the Eddy County Records, by the trust department of the Carlsbad National Bank, Trustee of the Oscar J. Dowling and Frances V. Dowling Revocable Trust Agreement, as amended. Probably Margaret V. Dowling was a beneficiary of the trust, and the latter deed was made to her as a gift pursuant to the trust agreement, but this apparently was not evident from the bank's deed. Although the prior title examiner had been submitted copies of excerpts of the Trust Agreement dated February 13, 1976, between Oscar J. Dowling and Frances V. Dowling, as trustors, and Carlsbad National Bank, as trustee, he was not submitted a full copy so as to be able to determine that the trustee's conveyance to Margaret V. Dowling was a distribution of the trust or that the trustee otherwise had authority to make the conveyance.

REQUIREMENT K: We should be submitted an affidavit of marital history or other evidence of the marital status of Margaret V. Dowling as of August 25, 1976. If she was married at that time, a ratification of Lease 3 should be obtained from Margaret V. Dowling and her husband and recorded in Eddy County. If it develops that Margaret V. Dowling was married as of August 25, 1976, but is no longer married to the same person, we reserve further requirement.

REQUIREMENT L: We should be submitted a complete copy of the trust agreement of February 13, 1976, creating the Oscar J. Dowling and Frances V. Dowling Revocable Trust, and any amendments thereto, and we reserve possible further requirement.

8. Villa Mortgage: According to the prior title opinions, the 1/4 mineral interest in the lands lying south and west of the centerline of the railroad right-of-way credited to Juan H. Villa and Ignacia De la Rosa Villa is subject to a certain "Real Estate Mortgage for New Mexico" dated February 3, 1972, recorded in Volume 260, Page 16 of the Eddy County Mortgage Records, in favor of the United States of America acting through the Farmers Home Administration, securing a note in the original principal amount of \$40,500.00, dated February 3, 1972, with a final maturity date of February 3, 2012. In response to a title requirement made in the original drilling opinion, a partial release of the mortgage, dated August 28, 2001, recorded in Book 430, Page 1065, was obtained from the United States of America, acting through one Lynn D. Muncy, Farm Loan Manager of the United States Department of Agriculture. The partial release purports to release the 1972 mortgage as to "the following described property: MINERAL LEASE." There is an attachment to the instrument describing the portion of the captioned lands lying south and west of the railroad right-of-way, but the body of the instrument does not in any way refer to the attached description. We believe that the partial release was intended to release Juan and Ignacia Villa's mineral interest from the mortgage lien, but in our opinion it cannot be considered to have accomplished this.

REQUIREMENT M: Obtain and record a release of the above described mortgage insofar as it covers that portion of N $\frac{1}{2}$  Section 7 lying south and west of the centerline of the AT&SF Railroad right-of-way, or a subordination of the lien to the above described Lease 2. (If a subordination agreement rather than a release of the mortgage is obtained, division orders should be executed by both Juan and Ignacia Villa and the United States of America, acting by and through the Farmers Home Administration.)

9. Jenkins Furniture Judgment Lien: The mineral interest credited herein to Rose Ann Jimenez was formerly owned by Wanda Jimenez Barron, formerly known as Wanda Jimenez. The materials examined by the prior title examiner included a certified copy of a default judgment dated December 28, 1989, filed for record August 25, 2000, recorded in Book 391, Page 705 of the Eddy County Records. The judgment was in favor of Jenkins Furniture Co., Inc. against Pedro Barron and Wanda Barron in Cause No. 03-01-78-0401B in the Magistrate Court of Eddy County, New Mexico, in the amount of \$2,829.75. The recording of the certified copy of the judgment is not sufficient, in our opinion, to have created a judgment lien in favor of Jenkins Furniture Company, Inc. However, in any event, Jenkins Furniture Company, Inc. has executed a subordination of its judgment lien, if any, to the above described Lease 11. The subordination agreement is dated July 23, 2001, and is recorded in Book 425, Page 1060 of the Eddy County Records. At the same time, Rose Ann Jimenez executed an Assignment to Jenkins Furniture Company, Inc., dated July 23, 2001, recorded in Book 425, Page 1062, assigning her royalty payments under the lease until the debt represented by the judgment is paid.

REQUIREMENT N: Division orders should be executed by both Rose Ann Jimenez and Jenkins Furniture Company, Inc. with respect to the royalty payable under Lease 11, and the royalty should be paid to Jenkins Furniture Company, Inc. until you are notified that the indebtedness to it has been paid.

10. Decedents' Estates: The materials under examination reflect the following with respect to the passage of title to certain mineral interests through decedents' estates:

(a) Josephine Aguilar and Chon Aguilar: Josephine Aguilar owned an undivided 1/36 mineral interest in the land lying south and west of the centerline of the railroad right-of-way. An affidavit of Chon Aguilar dated February 17, 1995, recorded in Book 220, Page 852 of the Eddy County Records, states that he is the surviving spouse of Josefina M. Aguilar, who died on January 19, 1995. The affidavit further indicates that no administration of the estate of Josefina M. Aguilar was needed and that no federal or state taxes were due on her estate. An affidavit by Esther Aguilar dated July 25, 2001, recorded in Book 426, Page 528, states that Josefina M. Aguilar, aka Josephine Aguilar, died testate on January 19, 1995, but that her heirs elected not to probate her will. The affidavit further indicates that Josefina M. Aguilar was married once to Chon Aguilar, and that although no children were born to the marriage, two children were adopted, namely Julian Aguilar and Shawna Elizondo. The affidavit states that a copy of the will of Josefina M. Aguilar was attached to the affidavit. Although the will is not attached to the copy of the affidavit submitted to us from the Eddy County Records, the prior title examiner's supplemental title opinion refers to the affidavit and does not indicate that the will would have devised any interest to anyone other than Josephine Aguilar's husband and two children. According to the prior title opinions, Chon Aguilar then died on December 4, 1995. The prior opinion does not contain much discussion of his estate but indicates that in his will he devised the residue of his estate, apparently including any interest in the captioned lands, to his two adopted children, Julian Aguilar and Shawna Elizondo. In our opinion the interest of Josephine Aguilar is technically unmarketable until probate proceedings have been conducted in her estate, although, on the basis of the recorded affidavits, it would appear reasonably safe to assume that title to her interest has passed to Julian Aguilar and Shawna Elizondo.

REQUIREMENT Q: Subject to your waiver, probate proceedings should be conducted in the Estate of Josephine Aguilar, aka Josefina M. Aguilar, resulting in distribution of her interest to Julian Aguilar and Shawna Elizondo.

REQUIREMENT P: We should be submitted evidence that all New Mexico and federal estate taxes payable in connection with the estates of Josefina M. Aguilar and Chon Aguilar have been paid or that none were due.

(b) Felista Lara, aka Felicita Montoya Lara, and Joe Lara: The interests credited herein to Adela Dobkins, Hope Morningstar, Barbara C. Lara and Billy Lara, aka Bill M. Lara, were all formerly owned of record by Felista Lara. According to an affidavit by Paul Montoya dated July 30, 2001, recorded in Book 425, Page 1065, Felicita Montoya Lara, aka Felista Lara, died testate on September 10, 1994. However, according to the affidavit, her heirs elected not to probate her will, a copy of which is stated to be attached to the affidavit. The will is not attached to our copy of the affidavit, but the prior title examiner evidently had a complete copy for his examination in preparation of the supplemental title opinion upon which we have relied. Further according to the affidavit of Paul Montoya, Felicita Montoya Lara had been married once, to Joe D. Lara, who died in 1981. She left four children as her only heirs, namely Adela Dobkins, Hope Morningstar, Joe Lara and Bill M. Lara. We surmise that the will of Felicita

Montoya Lara, if probated, would have devised all of her interest in the captioned lands to her four children. An affidavit by Bill M. Lara dated July 24, 2001, recorded in Book 425, Page 1070, states that Joe Lara, one of the four children of Felicita Montoya Lara, aka Felista Lara, died intestate on December 26, 2000. He had been married once, according to the affidavit, to Barbara C. Lara, and had two children, Emilie Sue Lara and Jessica Alyce Lara, and left his surviving wife and two daughters as his only heirs. By Quitclaim Deed dated July 18, 2001, recorded in Book 425, Page 1071, Emilie Sue Lara and Jessica Alyce Lara quitclaimed all of their right, title and interest in the minerals in that part of SW~~1~~NW~~4~~ Section 7 lying west of the AT&SF Railroad right-of-way to their mother, Barbara C. Lara. In our opinion the interests credited to Adela Dobkins, Hope Morningstar, Barbara C. Lara and Bill Lara, aka Bill M. Lara, will technically not be marketable until probate proceedings have been conducted in the estate of Felista Lara, aka Felicita Montoya Lara; and the interest of Barbara C. Lara will not be technically marketable until probate proceedings have been conducted in the estate of her husband, Joe Lara. The matter would appear to be reasonably safe on the basis of the foregoing affidavits, however.

REQUIREMENT Q: Subject to your possible waiver, probate proceedings should be conducted in the estates of Felicita Montoya Lara, aka Felista Lara, and her son, Joe Lara.

REQUIREMENT R: If the requirement for probate proceedings in the estates of Felicita Montoya Lara and Joe Lara is waived, we should be submitted evidence that New Mexico and federal estate taxes in connection with the estates have been paid or that none were due, and further that there are no debts against the estate of Joe Lara.

11. Brantley Ownership: The entire mineral estate of the land lying north and east of the centerline of the railroad right-of-way, subject to Lease 1, is credited in the prior title opinions equally to George Brantley and to John Draper Brantley, Jr., the latter as separate property. The sources of these parties' interests are, according to the opinions, the estates of Draper Brantley and Irene Brantley and the following conveyances:

(a) Warranty Deed dated March 8, 1978, recorded in Book 234, Page 144, Eddy County Deed Records, from Draper Brantley and Irene Brantley to George Brantley.

(b) Quitclaim Deed dated February 4, 1986, recorded in Book 265, Page 815, Eddy County Deed Records, from Irene Remmers Brantley, a widow and as personal representative of the Estate of John Draper Brantley, Sr., to John Draper Brantley, Jr.

(c) Co-Personal Representatives' Deed and Co-Trustees' Deed dated December 30, 1999, recorded in Book 371, Page 777, Eddy County Records, from John Draper Brantley, Jr. and George Henry Brantley, Co-Personal Representatives of the Estate of Irene Remmers Brantley and Co-Trustees of the John Draper Brantley, Sr. Testamentary Trust, to John Draper Brantley, Jr. (1/2) and George Henry Brantley (1/2).

The prior title examiner states that the probate of the estates of Draper Brantley and Irene Brantley and the above referenced conveyances "creates some confusion as to how George Brantley and John Draper Brantley, Jr. own the mineral interest" credited to

them. The opinions do not go into further detail, and we do not know the specific source of the confusion nor how ownership might thereby be vested other than as reported. We suppose that it is not entirely clear from the instruments that ownership is equal as between the two owners, although the title examiner evidently believed that to have been the intention of George and Irene Brantley.

REQUIREMENT S: A stipulation of interest should be executed by George Brantley and his wife, Nancy H. Brantley, and by John Draper Brantley, Jr., stipulating, with words of grant, that their ownership of the mineral estate in the land lying north and east of the centerline of the AT&SF Railroad right-of-way is equal between them. (If this requirement is waived, you should, at a minimum, not release runs to either owner unless and until division orders have been executed by both of them. This requirement does not affect the leasehold estate under Lease 1.)

12. Unreleased Leases: The drilling title opinion of June 20, 2001 reflects the existence of some 24 oil and gas leases that the title examiner assumed to have expired by their own terms but which have not been released of record. We will not reiterate the description of these leases but refer you to the drilling title opinion. It does not appear that any of the leases covered any land other than portions of the captioned lands and that the last of the leases would have expired on August 11, 1999, unless extended by drilling operations and/or production on lands covered by the leases. In connection with his supplemental title opinion, the title examiner was submitted an affidavit of nonproduction dated July 31, 2001, executed by Henry McDonald, stating that there had never been a well drilled in N $\frac{1}{2}$  Section 7 and that the lands had not been held by pooling or communitization. The affidavit further stated, apparently, that a well had been drilled in S $\frac{1}{2}$  Section 7 under a lease to OXY USA Inc. recorded in Book 278, Page 347, but that N $\frac{1}{2}$  Section 7 had been released, although the title examiner's notes indicated that the lease had covered only SW $\frac{1}{4}$ NW $\frac{1}{4}$  Section 7 lying south and west of the railroad right-of-way. We assume that you conducted your own investigation to make certain that all of the leases had expired before drilling. We are not in the position to assess the knowledge or veracity of the affiant to executed the above referenced affidavit.

REQUIREMENT T: Satisfy yourself that there have been no operations or production on any of the captioned lands continuously since August 11, 1999, that could have extended any of the prior oil and gas leases down to the present. (Unless you are able to verify that there is also no production from S $\frac{1}{2}$  Section 7, we would further recommend that you review the oil and gas lease recorded in Book 278, Page 347, to make certain that it does not in fact cover any land other than that portion of SW $\frac{1}{4}$ NW $\frac{1}{4}$  Section 7 south and west of the railroad right-of-way.)

13. Possible Gomez-Walker Claim: According to the prior title opinions, the materials examined included a Quitclaim Deed dated March 10, 1986, recorded in Book 265, Page 829 of the Eddy County Records, from Ramon Gomez, Jr. and wife, Rebecca A. Gomez, to George E. Walker, purporting to convey all of the grantors' oil, gas and other minerals in the captioned Section 7, among other lands. According to the prior opinions, the grantors owned no interest in the captioned lands, and a requirement was made to investigate the possible claim of George E. Walker. The supplemental title opinion reflects that contact was made with the parties to the deed by telephone, although we do not know who made the investigation or who was spoken to. The requirement was

deemed satisfied on the basis of the investigation, but you may desire to verify that George E. Walker actually makes no claim to an interest in the captioned lands. We doubt that the risk is significant, but we make the following requirement.

REQUIREMENT U: You should inquire of George E. Walker whether he actually claims an interest in the captioned lands. If so, he should be requested to provide evidence of the source of his grantors' interest in the captioned lands. If not, he should be requested to execute and record a disclaimer.

14. Acreage Allocation: We have reported ownership of oil and gas produced from the captioned lands on the basis of the pooling (as required hereinabove) of the lands lying north and east of the centerline of the railroad right-of-way with those lying south and west of the right-of-way. The acreage allocation required on pooling under the terms of the leases makes it necessary to know the amount of acreage in each tract. We have allocated 295.10 acres to the land north and east of the railroad right-of-way and 23.36 acres to the land south and west of the right-of-way on the basis of a plat you have submitted, apparently prepared internally by Chesapeake. (On the basis of the same plat, we have allocated 7.88 acres to the land within the highway right-of-way for purposes of determining the extent of the land involved in the matter reported under Exception to Title No. 1 above.)

The plat was apparently not prepared by a surveyor, and we do not know the source of the acreage figures shown in the plat. The division of N $\frac{1}{2}$  Section 7 by the railroad right-of-way would depend on its location on the ground. We assume that you have verified the location of the railroad right-of-way and are satisfied with the accuracy of the acreage figures upon which we have relied. If not, a survey should be conducted to verify the accuracy of the acreage allocations. You will presumably derive some protection against any inaccuracy from execution by the royalty owners of division orders. This matter does not affect working interests or overriding royalty interests (except insofar as they may depend on the acreage of the highway strip, for which any discrepancy would likely be very small), which are uniform on both sides of the railroad right-of-way.

For your further information and possible future reference, the captioned Section 7 is not a regular section, the portion that would otherwise be described as W $\frac{1}{2}$ N $\frac{1}{2}$  Section 7 instead being Lots 1, 2, 3 and 4. The plat you have submitted shows that Lot 1 (NW $\frac{1}{4}$ NW $\frac{1}{4}$ ) and Lot 2 (SW $\frac{1}{4}$ NW $\frac{1}{4}$ ) of Section 7 each contains 39.23 acres. We do not know the source of these acreage figures but suppose they were taken from the governmental surveys. Again, we have relied entirely on the plat submitted to us.

15. Unrecorded and Undisclosed Agreements: The assignments of working interests made by Devon Energy Production Company, L.P. as noted above, as well as the assignment of a 2.5% working interest by Enerstar Resources O&G, LLC to Bob Blundell, Jr. are made specifically subject to certain described unrecorded agreements and also subject to any existing contract or obligation affecting the premises, whether or not recorded or referenced in the instrument. We are uncertain of the effect of this if it should develop that there are any unrecorded agreements of which the assignee was unaware at the time of the assignment. The general rule, of course, is that the assignee takes free of any unrecorded outstanding interest or agreement except those of which the assignee was actually aware, or of which the assignee would have become aware on inquiry based on

known facts and circumstances. The language used in these assignments might be construed to subject the assignee to any and all outstanding interests and agreements, even if there were no way the assignee could have known of them. This is probably not the construction a court would place on the language, in our view, but you should be aware of the possibility. We can only advise you that our examination cannot, of course, include any matters to which this assignment language might subject any interest in the captioned lands of which we are not actually aware from the materials examined.

We would note that Devon's assignment to Chesapeake additionally represents that, to the best of Devon's knowledge, there are no unrecorded agreements affecting the interest assigned other than those specifically mentioned. Whether this might negate any effect the language might otherwise have, other than to estop Devon itself from asserting the existence of some agreement to its own benefit, we cannot say.

16. Surface Possession: The prior title opinions report title to the mineral estate of the captioned lands but not the surface. We suspect that the surface and mineral estates may not be entirely severed, and under such circumstances it is always possible that an unrecorded deed or contract for conveyance might affect the mineral estate as well as the surface. You would be on notice of the rights of a purchaser under such unrecorded instrument in actual possession of the surface estate notwithstanding that the instrument under which he or she claims is unrecorded. We assume that inquiry would have been made before drilling to anyone in actual possession, but we have no information.

REQUIREMENT V: If you have not already done so, you should conduct an investigation, including a visual inspection, of the possession of the surface of the captioned lands. If anyone is in possession other than those reported as owning mineral interests, you should inquire whether such person claims any interest in the minerals. We reserve possible further requirement pending receipt of the results of your investigation.

17. Rights-of-Way: The prior title opinions report the existence of a number of rights-of-way crossing portions of the captioned lands. We will not reiterate the descriptions of the rights-of-way for division order purposes but refer you to the drilling title opinion and supplemental opinion. Any further operations in the captioned lands should be conducted so as not to interfere with any of the existing rights-of-way.

18. Taxes: We have no information concerning the payment of ad valorem taxes on the captioned lands. The surface and mineral estates have been severed by the oil and gas leases, if not before, and under current taxing practices any nonpayment would not affect the mineral estate in any event. The prior title opinions do not make any requirement concerning the payment of taxes, and we assume that the prior title examiner was satisfied in this regard.

19. Limited Opinion: This opinion is limited as follows:

(a) This opinion does not cover such matters as area, boundaries, location on the ground or other matters which can be determined only by an actual ground survey, nor does it cover any matters not revealed by the materials examined, such as unsubmitted and unrecorded agreements and undisclosed understandings among parties.

(b) This opinion does not cover the question of possible dedication of natural gas deposits under prior contracts subject to the jurisdiction of governmental regulatory agencies. Such dedication may survive the expiration of oil and gas leases owned by the party making the dedication.

(c) This opinion does not deal with any questions of state or federal securities and environmental laws and regulations or the possible effect thereof on title to, or operations on, this property or interests assigned or to be assigned therein.

(d) Without our written consent, this opinion may be relied upon only by the addressee hereof.

(e) We have relied in part on prior title opinions rendered by an attorney other than those in our law firm. Although we have no reason to doubt the accuracy of the prior opinions, we must limit our examination to materials actually examined by us and take no responsibility for any errors in or omissions from the opinions of another attorney.

(f) For the period of time since the certificate date of the abstract examined for the prior opinions upon which we have relied, May 4, 2001 at 8:00 A.M., we have relied not on a certified abstract but on copies of documents furnished to us by Chalfant Properties, Inc., professional landmen engaged by you to search the records and provide the relevant records. We understand that for this purpose the landmen searched the records by using the indexes of Caprock Title Company of Midland, Texas, as well as the public indexes maintained by the County Clerk of Eddy County, New Mexico. Although we have no reason to believe that there are any relevant instruments for this period of time that we have not been submitted, we must advise you that our opinion is based only on examination of the instruments submitted and that we take no responsibility for the search of the records, which was not conducted under our supervision in any respect. You should also be advised that a search of the records by either a landman or attorney, even where the searcher has access to an abstracter's indexes, is considered to be more prone to error than reliance on certified abstracts. Finally, in certain instances, most of which are mentioned in this opinion, the copies from the public records submitted to us are incomplete (omitting, for example, the wills of certain decedents that were attached to affidavits of heirship of record). In each of these instances we have relied on the remarks about these documents made in the supplemental title opinion. We do not object to this but note that in these instances we have relied not on our own examination but on the conclusions of the prior title examiner with regard to the omitted portion of any instrument submitted to us in abbreviated form.

Very truly yours,

HINKLE, HENSLEY, SHANOR  
& MARTIN, L.L.P.



William B. Burford



EXHIBIT "A"  
TO  
HINKLE, HENSLEY, SHANOR & MARTIN, L.L.P.  
TITLE OPINION NO. 33,553

Title to Oil and Gas

A. Royalty Interests

<u>Owner</u>	<u>Lease</u>	<u>Calculation</u>	<u>Interest in Production</u>
George Brantley, whose wife is Nancy H. Brantley	1	$1/2 \times 3/16 \times 295.10/318.46$	.086873155
John Draper Brantley, Jr., as his separate property	1	$1/2 \times 3/16 \times 295.10/318.46$	.086873155
Juan H. Villa and Ignacia De La Rosa Villa, as joint tenants with right of survivorship	2	$1/4 \times 3/16 \times 23.36/318.46$	.003438422*
Margaret V. Dowling	3	$1/2 \times 3/16 \times 23.36/318.46$	.006876845
Paul Montoya, as his separate property	9	$1/36 \times 3/16 \times 23.36/318.46$	.000382047
David Montoya, as his separate property	7	$1/36 \times 3/16 \times 23.36/318.46$	.000382047
Julian Aguilar, as his separate property	8	$1/72 \times 3/16 \times 23.36/318.46$	.000191023
Shawna Elizondo, as her separate property	16	$1/72 \times 3/16 \times 23.36/318.46$	.000191023
Esther Aguilar, as her separate property	12	$1/36 \times 3/16 \times 23.36/318.46$	.000382047
Esther Gomez Hernandez, as her separate property	6	$1/36 \times 3/16 \times 23.36/318.46$	.000382047
Rose Ann Jimenez, as her separate property	11	$1/36 \times 3/16 \times 23.36/318.46$	.000382047**
Juanita Peliez, as her separate property	10	$1/36 \times 3/16 \times 23.36/318.46$	.000382047
Lee Montoya, as his separate property	5	$1/36 \times 3/16 \times 23.36/318.46$	.000382047
Adela Dobkins, as her separate property	15	$1/144 \times 3/16 \times 23.36/318.46$	.000095512
Hope Mormingstar, as her separate property	14	$1/144 \times 3/16 \times 23.36/318.46$	.000095512
Barbara C. Lara, a widow	13	$1/144 \times 3/16 \times 23.36/318.46$	.000095512
Billy Lara, aka Bill M. Lara, as his separate property	4	$1/144 \times 3/16 \times 23.36/318.46$	.000095512
TOTAL			.187500000

- \* The interest credited to Juan H. Villa and Ignacia De La Rosa Villa should be suspended to the extent of  $1/4 \times 3/16 \times 7.88/318.46$ , or .001159879 of production, pending resolution of the possible claim of the New Mexico State Highway and Transportation Department to  $1/4$  of the minerals underlying its highway strip.
- \*\* The interest of Rose Ann Jimenez is instead payable to Jenkins Furniture Company, Inc. until the indebtedness of Pedro Barron and Wanda Barron, a/k/a Wanda Jimenez, to the furniture company, in the amount of \$2,829.75, has been paid.

B. Overriding Royalty Interests\*

Dick Jackson	.0625% + .9375%	.01000000
Discovery Exploration	.0078125% + .1171875%	.00125000
Bob Blundell, Jr.	.003125% + .046875%	.00050000
Enerstar Resources O & G, L.L.C.	.0046875% + .0703125%	.00075000
TOTAL		.01250000

- \* Out of the overriding royalty interests, proportionately according to the ratio of ownership among them,  $1/4 \times 1.25\% \times 7.88/318.46$ , or .000077325, of production should be suspended pending resolution of the possible claim of the New Mexico State Highway and Transportation Department to  $1/4$  of the minerals underlying its highway strip.

C. Working Interests\*

Bob Blundell, Jr.	2.5% x 80%	.020000000
Enerstar Resources O & G, L.L.C.	3.75% x 80%	.030000000
Discovery Exploration	6.25% x 80%	.050000000
Fasken Land & Minerals, Ltd.	29-1/6% x 80%	.233333333
Chesapeake Exploration Limited Partnership	58-1/3% x 80%	.466666667
TOTAL		.800000000

- \* Proportionately out of the working interest of each owner, according to the percentage of working interest of each,  $1/4 \times 80\% \times 7.88/318.46$ , or .004948816, of production should be suspended pending resolution of the possible claim of the New Mexico State Highway and Transportation Department to  $1/4$  of the minerals underlying its highway strip.

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November 26, 2001

No. 13,308-A  
(Brantley Prospect)

Devon Energy Corporation  
20 North Broadway, Suite 1500  
Oklahoma City, Oklahoma 73102

Attention: Mr. Ken Gray

FIRST SUPPLEMENTAL DRILLING TITLE OPINION covering the  
oil and gas estate of the N/2 of Section 7, Township 23  
South, Range 28 East, N.M.P.M., Eddy County, New  
Mexico.

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Ladies and Gentlemen:

At your request and for the purpose of rendering this  
Original Drilling Title Opinion, we examined the following:

MATERIALS EXAMINED

1. Original Drilling Title Opinion No. 13,308 dated June 20, 2001 by this firm (Albert E. Sherman) covering the captioned land from inception to May 4, 2001 at 8:00 a.m.
2. Letter dated October 26, 2001 from Shaw Interests, Inc. (Maner B. Shaw) to Albert E. Sherman transmitting curative documents.
3. Original unrecorded Amendment of Oil and Gas Lease dated effective March 1, 2001 between George Brantley et ux Nancy H. Brantley and Draper Brantley, Jr., as lessors, and Fasken Land and Minerals, Ltd., et al., as lessees.
4. Original unrecorded Amendment of Oil and Gas Lease dated effective March 2, 2001 between Juan H. Villa et ux Ignacia Villa, as lessors, and Fasken Land and Minerals, Ltd., et al., as lessees.
5. Original unrecorded Amendment of Oil and Gas Lease dated effective March 9, 2001 between Margaret V. Dowling, as lessor, and Fasken Land and Minerals, Ltd., et al., as lessees.
6. Original unrecorded Amendment of Oil and Gas Lease dated effective March 20, 2001 between Billy Lara a/k/a Bill M. Lara, as lessor, and Fasken Land and Minerals, Ltd., et al., as lessees.

7. Original unrecorded Amendment of Oil and Gas Lease dated effective March 15, 2001 between Lee Montoya, as lessor, and Fasken Land and Minerals, Ltd., et al., as lessees.
8. Original unrecorded Amendment of Oil and Gas Lease dated effective March 15, 2001 between Esther Gomez Hernandez, as lessor, and Fasken Land and Minerals, Ltd., et al., as lessees.
9. Original unrecorded Amendment of Oil and Gas Lease dated effective March 15, 2001 between David T. Montoya, as lessor, and Fasken Land and Minerals, Ltd., et al., as lessees.
10. Original unrecorded Amendment of Oil and Gas Lease dated effective March 15, 2001 between Julian M. Aguilar, as lessor, and Fasken Land and Minerals, Ltd., et al., as lessees.
11. Original unrecorded Amendment of Oil and Gas Lease dated effective March 15, 2001 between Paul Montoya, as lessor, and Fasken Land and Minerals, Ltd., et al., as lessees.
12. Original unrecorded Amendment of Oil and Gas Lease dated effective March 15, 2001 between Juanita Peliez, as lessor, and Fasken Land and Minerals, Ltd., et al., as lessees.
13. Original unrecorded Amendment of Oil and Gas Lease dated effective March 15, 2001 between Rose Ann Jimenez, as lessor, and Fasken Land and Minerals, Ltd., et al., as lessees.
14. Original unrecorded Amendment of Oil and Gas Lease dated effective March 15, 2001 between Esther Montoya Aguilar, as lessor, and Fasken Land and Minerals, Ltd., et al., as lessees.
15. Affidavit dated July 20, 2001, recorded 425 ECR 1059, Eddy County, New Mexico, executed by Paul T. Montoya.
16. Certificate of Release of Federal Estate Tax Lien dated October 18, 2001, recorded 433 ECR 748, Eddy County, New Mexico.
17. Partial Release dated August 28, 2001, recorded 430 ECR 1065, Eddy County, New Mexico, executed by the United States of America, United States Department of Agriculture.
18. Subordination Agreement dated July 23, 2001, recorded 425 ECR 1060, Eddy County, New Mexico, executed by Jenkins Furniture Company, Inc.
19. Assignment of Royalty Payment dated July 23, 2001, recorded 425 ECR 1062, Eddy County, New Mexico, from Rose Ann Jimenez to Jenkins Furniture Company, Inc.
20. Original unrecorded Affidavit of Non-Production dated July 31, 2001, executed by Henry McDonald.
21. Photocopy of portions of Trust Agreement dated February 13, 1976 between Oscar J. Dowling and Frances V. Dowling, as Trustors, and Carlsbad National Bank, as Trustee.
22. Corrected Quitclaim Deed dated July 12, 2001, effective March 15, 2001, recorded 425 ECR 1064, Eddy County, New Mexico.

23. Affidavit of Death and Heirship dated July 25, 2001, recorded 426 ECR 528, Eddy County, New Mexico, executed by Esther Aguilar relating to the Estate of Josefina M. Aguilar.
24. Oil and Gas Lease dated July 31, 2001, recorded 426 ECR 526, Eddy County, New Mexico, from Shawna Elizondo, as lessor, to Devon Energy Production Company, L.P., as lessee.
25. Affidavit of Death and Heirship dated July 30, 2001, recorded 425 ECR 1065, Eddy County, New Mexico, executed by Paul Montoya relating to the Estate of Felicita Montoya Lara.
26. Affidavit of Death and Heirship dated July 24, 2001, recorded 425 ECR 1070, Eddy County, New Mexico, executed by Bill M. Lara relating to the Estate of Joe Lara.
27. Quitclaim Deed dated July 18, 2001, recorded 425 ECR 1071, Eddy County, New Mexico, from Emilie Sue Lara and Jessica Alyce Lara, as grantor, to Barbara C. Lara, as grantee.
28. Oil and Gas Lease dated July 18, 2001, recorded 425 ECR 1072, Eddy County, New Mexico, from Barbara C. Lara, as lessor, to Devon Energy Production Company, L.P., as lessee.
29. Oil and Gas Lease dated July 31, 2001, recorded 425 ECR 1074, Eddy County, New Mexico, from Hope Morningstar, as lessor, to Devon Energy Production Company, L.P., as lessee.
30. Oil and Gas Lease dated July 18, 2001, recorded 425 ECR 1076, Eddy County, New Mexico, from Adela Dobkins, as lessor, to Devon Energy Production Company, L.P., as lessee.
31. Corrected Assignment of Oil and Gas Leases dated effective April 27, 2001, recorded 430 ECR 785, Eddy County, New Mexico, from Enerstar Resources O&G, L.L.C., as assignor, to Discovery Exploration, as assignee.
32. Corrected Assignment of Oil and Gas Leases dated effective April 1, 2001, recorded 430 ECR 789, Eddy County, New Mexico, from Enerstar Resources O&G, L.L.C., as assignor, to Fasken Land and Minerals, Ltd., as assignee.
33. Letter dated July 17, 2001 from Western Commerce Bank to Jim D. Daniels.

PATENT INFORMATION

By Patent dated December 1, 1891, recorded in Patent Book A, Page 65, as rerecorded in Patent Book A, Page 114 Eddy County, New Mexico, the United States of America patented to Mary E. Tansill all of Section 7.

FEE TITLE

Based upon our examination of the foregoing materials, and subject to the comments and requirements hereinafter made, our opinion is that the oil and gas estate, but not other minerals, in the captioned land is owned as follows:

I. Tract 1 - All of NE/4 and all of NW/4 of Section 7, save and except that part of the NW/4 of Section 7 lying West of the centerline of the AT&SF Railroad Right-of-Way:

George Brantley ..... 1/2  
(Lease 1)

John Draper Brantley, Jr.  
separate property ..... 1/2  
(Lease 1)

II. Tract 2 - That part of the NW/4 of Section 7 lying West of the centerline of the AT&SF Railroad Right-of-Way, SAVE AND EXCEPT Tract 3 described below:

Margaret V. Dowling ..... 1/2  
(Lease 3)

Juan H. Villa and Ignacia DeLaRosa  
Villa, as joint tenants with full  
Right of survivorship ..... 1/4  
(Lease 2)

Paul Montoya, separate property ..... 1/36  
(Lease 9)

David Montoya, separate property ..... 1/36  
(Lease 7)

Julian Aguilar, separate property ..... 1/72  
(Lease 8)

Shawna Elizondo, separate property ..... 1/72  
(Lease 16)

Esther Aguilar, separate property ..... 1/36  
(Lease 12)

Esther Gomez Hernandez, separate property ..... 1/36  
(Lease 6)

Rose Ann Jimenez, separate property ..... 1/36\*  
(Lease 11)

\*The materials examined contain that certain Assignment of Royalty Payment dated July 23, 2001, recorded 425 ECR 1062, Eddy County, New Mexico, from Rose Ann Jimenez to Jenkins Furniture Company, Inc. Pursuant to said assignment, Rose Ann Jimenez conveys to Jenkins Furniture Company, Inc. all royalty payments due under Lease 11, as amended, until the debt secured by the Judgment Lien at 391 ECR 705, Eddy County, New Mexico, has been paid in full, at which time royalty payments shall revert back to Rose Ann Jimenez.

Juanita Peliez, separate property ..... 1/36  
(Lease 10)

Lee Montoya, separate property ..... 1/36  
(Lease 5)

Adela Dobkins, separate property ..... 1/144  
(Lease 15)

Hope Morningstar, separate property ..... 1/144  
(Lease 14)

Barbara C. Lara, separate property ..... 1/144  
(Lease 13)

Billy Lara a/k/a Bill M.  
Lara, separate property ..... 1/144  
(Lease 4)

III. Tract 3 - All of that portion of the captioned land described in that certain Judgment filed in Cause No. 24439 in the District Court of the Fifth Judicial District of Eddy County, New Mexico styled State of New Mexico, ex rel State Highway Commission of New Mexico v. Martin Villa, et al., a certified copy of which is recorded in Volume 58, Page 923 of the Miscellaneous Records of Eddy County, New Mexico:

State of New Mexico ..... All\*\*  
(Unleased)

\*\*See Requirement 2.

#### OIL AND GAS LEASES

##### Lease 1:

Dated: March 1, 2001.

Recorded: 406 ECR 525, as amended \_\_\_\_ ECR \_\_\_\_  
(See Requirement 1).

Lessor: George Brantley et ux Nancy H. Brantley  
and Draper Brantley.

Lessee: Enerstar Resources O&G, LLC

Land Covered: All of the NE/4 and all of the NW/4 of  
Section 7, Township 23 South, Range 28  
East, Eddy County, New Mexico, save and  
except that portion of the NW/4 of  
Section 7 lying west of the centerline  
of the AT&SF Railroad Right-of-Way.

Interest Covered: Full interest lease as to Tract 1  
described under Fee Title.

Primary Term: Two (2) years from date.

Royalty: 3/16 on oil and gas.

Shut-In  
Gas Royalty: Yes, payable on or before 90 days after  
the date the well is shut in and  
annually thereafter in an amount equal  
to \$1.00 per net acre of lessors' gas  
acreage then held under this lease.

Delay Rentals: None, this is a paid-up lease.

Pooling Provision: Yes, paragraph 5 grants lessee the right  
to pool provided that units pooled  
hereunder shall not exceed the standard

proration unit fixed by law or by the Oil Conservation Division of the Energy and Minerals Department of the State of New Mexico or any other lawful authority for the pool or area in which the land is situated, plus a tolerance of 10%.

Lease Form: Producers 88-Producers Revised 1994 New Mexico Form 342P, Paid Up, containing a standard proportionate reduction clause.

Lease Rider: An Exhibit "A" containing 12 additional provisions has been attached to the lease. You should become thoroughly familiar with all the terms and provisions of the lease, including, but not limited to the lease rider attached thereto. We summarize certain provisions of the lease rider as follows:

(a) Paragraph 3 provides that lessee agrees to pay an additional \$100 per acre non-drill bonus if lessee does not drill, or cause to be drilled, a well on the acreage covered by the lease within the primary term of the lease.

(b) Paragraph 4 provides that lessors and lessee agree that a well drilled in the NE/4 of Section 7 shall hold all rights to all depths on the 160 acres therein contained. It is also agreed that a discovery below the base of the Bone Springs will hold rights below the Bone Springs on the entire 302-acre tract.

(c) Paragraph 5 provides that if lessee and/or its assignees do not drill a test in the NW/4 of Section 7 before the expiration of the primary term, all rights from the Bone Springs to the surface in the NW/4 of Section 7 shall revert to lessors.

(d) Paragraph 6 provides that if a third party should come to lessee and/or its assignees with a farmout proposal covering the Delaware or Bone Springs Formations during the primary term of the lease, lessee will not hinder the forward progress of such a proposal, as long as the terms are agreeable to all parties.

(e) Paragraph 7 provides that lessee will pay location damages of \$10,000 if steel pits are used in the drilling of a test well. Lessee agrees to pay an additional \$10,000 if reserve pits are excavated. This amount shall be for one well only and the rest will be negotiated.

(f) Paragraph 8 provides that lessee and/or its assignees agree to purchase water for the drilling of all test wells



within the lease at a cost of \$.40 per 42 gallon barrel from lessors and to purchase caliche at a cost of \$2.00 per yard from lessors. This amount shall be for one well only while the rest will be negotiated.

(g) Paragraph 12 provides that upon the abandonment of the lease all junk on the lease will be hauled off and all caliche on the location will be replaced with new dirt.

Lease 2:

Dated: March 2, 2001.

Recorded: 407 ECR 620, as amended \_\_\_\_\_ ECR \_\_\_\_\_  
(See Requirement 1).

Lessor: Juan H. and Ignacia Villa.

Lessee: Enerstar Resources O&G, LLC

Land Covered: All of that portion of the NW/4 of Section 7, Township 23 South, Range 28 East, Eddy County, New Mexico, lying west of the centerline of the AT&SF Railroad Right-of-Way. Said land is estimated to comprise 18 acres, whether it actually comprises more or less.

Interest Covered: 1/4 mineral interest as to Tract 2 described above under Fee Title.

Primary Term: Three (3) years from date.

Royalty: 3/16 on oil and gas.

Shut-In Gas Royalty: Yes, payable on or before 90 days after the date the well is shut in and annually thereafter in an amount equal to \$1.00 per net acre of lessors' gas acreage then held under this lease.

Delay Rentals: None, this is a paid-up lease.

Pooling Provision: Yes, paragraph 5 grants lessee the right to pool provided that units pooled hereunder shall not exceed the standard proration unit fixed by law or by the Oil Conservation Division of the Energy and Minerals Department of the State of New Mexico or any other lawful authority for the pool or area in which the land is situated, plus a tolerance of 10%.

Lease Form: Producers 88-Producers Revised 1994 New Mexico Form 342P, Paid Up, containing a standard proportionate reduction clause.

Lease 3:

Dated: March 9, 2001.  
Recorded: 408 ECR 663, as amended \_\_\_\_ ECR \_\_\_\_  
(See Requirement 1).  
Lessor: Margaret V. Dowling.  
Lessee: Enerstar Resources O&G, LLC  
Interest Covered: 1/2 mineral interest as to Tract 2  
described under Fee Title.

**Lease 3 is in all other respects identical to Lease 2  
analyzed above.**

Lease 4:

Dated: March 20, 2001.  
Recorded: 410 ECR 1095, as amended \_\_\_\_ ECR \_\_\_\_  
(See Requirement 1).  
Lessor: Billy Lara a/k/a Bill M. Lara.  
Interest Covered: 1/144 mineral interest as to Tract 2  
described above under Fee Title.

**Lease 4 is in all other respects identical to Lease 2  
analyzed above.**

Lease 5:

Dated: March 15, 2001.  
Recorded: 411 ECR 1158, as amended \_\_\_\_ ECR \_\_\_\_  
(See Requirement 1).  
Lessor: Lee Montoya.  
Interest Covered: 1/36 mineral interest as to Tract 2  
described above under Fee Title.

**Lease 5 is in all other respects identical to Lease 2  
analyzed above.**

Lease 6:

Dated: March 15, 2001.  
Recorded: 411 ECR 1160, as amended \_\_\_\_ ECR \_\_\_\_  
(See Requirement 1).  
Lessor: Esther Gomez Hernandez.  
Interest Covered: 1/36 mineral interest as to Tract 2  
described above under Fee Title.

**Lease 6 is in all other respects identical to Lease 2  
analyzed above.**

Lease 7:

Dated: March 15, 2001.  
Recorded: 411 ECR 1162, as amended \_\_\_\_ ECR \_\_\_\_  
(See Requirement 1).  
Lessor: David T. Montoya.  
Interest Covered: 1/36 mineral interest as to Tract 2  
described above under Fee Title.

Lease 7 is in all other respects identical to Lease 2  
analyzed above.

Lease 8:

Dated: March 15, 2001.  
Recorded: 411 ECR 1164, as amended \_\_\_\_ ECR \_\_\_\_  
(See Requirement 1).  
Lessor: Julian M. Aguilar.  
Interest Covered: 1/72 mineral interest as to Tract 2  
described above under Fee Title.

Lease 8 is in all other respects identical to Lease 2  
analyzed above.

Lease 9:

Dated: March 15, 2001.  
Recorded: 411 ECR 1166, as amended \_\_\_\_ ECR \_\_\_\_  
(See Requirement 1).  
Lessor: Paul Montoya.  
Interest Covered: 1/36 mineral interest as to Tract 2  
described above under Fee Title.

Lease 9 is in all other respects identical to Lease 2  
analyzed above.

Lease 10:

Dated: March 15, 2001.  
Recorded: 411 ECR 1168, as amended \_\_\_\_ ECR \_\_\_\_  
(See Requirement 1).  
Lessor: Juanita Peliez.  
Interest Covered: 1/36 mineral interest as to Tract 2  
described above under Fee Title.

Lease 10 is in all other respects identical to Lease 2  
analyzed above.

Lease 11:

Dated: March 15, 2001.  
Recorded: 411 ECR 1170, as amended \_\_\_\_ ECR \_\_\_\_  
(See Requirement 1).  
Lessor: Wanda Jimenez.  
Interest Covered: 1/36 mineral interest as to Tract 2  
described above under Fee Title.

**Lease 11 is in all other respects identical to Lease 2  
analyzed above.**

Lease 12:

Dated: March 15, 2001.  
Recorded: 411 ECR 1172, as amended \_\_\_\_ ECR \_\_\_\_  
(See Requirement 1).  
Lessor: Esther Aguilar.  
Interest Covered: 1/36 mineral interest as to Tract 2  
described above under Fee Title.

**Lease 12 is in all other respects identical to Lease 2  
analyzed above.**

Lease 13:

Dated: July 18, 2001.  
Recorded: 425 ECR 1072.  
Lessor: Barbara C. Lara, a widow.  
Lessee: Devon Energy Production Company, L.P.  
Land Covered: All of that portion of the NW/4 of  
Section 7, Township 23 South, Range 28  
East, Eddy County, New Mexico, lying  
west of the centerline of the AT&SF  
Railroad Right-of-Way.  
Interest Covered: 1/144 mineral interest as to Tract 2  
described above under Fee Title.  
Primary Term: Three (3) years from date.  
Royalty: 3/16 on oil and gas.  
Shut-In  
Gas Royalty: Yes, payable on or before 90 days after  
the date the well is shut-in and  
annually thereafter in an amount equal  
to \$1.00 per net acre of lessor's gas  
acreage then held under this lease.  
Delay Rentals: None, this is a paid up lease.  
Pooling Provision: Yes, Paragraph 5 grants lessee the right  
to pool provided that units pooled  
hereunder shall not exceed the standard  
proration unit fixed by law or by the

Oil Conservation Division of the Energy and Minerals Department of the State of New Mexico or any other lawful authority for the pool or area in which the land is situated, plus a tolerance of 10%.

Lease Form: Producers 88-Producers Revised 1981 New Mexico Form 342P, Paid Up, containing a standard proportionate reduction clause.

Lease 14:

Dated: July 31, 2001.  
Recorded: 425 ECR 1074.  
Lessor: Hope Morningstar.

Lease 14 is in all other respects identical to Lease 13 analyzed above.

Lease 15:

Recorded: 425 ECR 1076.  
Lessor: Adela Dobkins.

Lease 15 is in all other respects identical to Lease 13 analyzed above.

Lease 16:

Dated: July 31, 2001.  
Recorded: 426 ECR 526.  
Lessor: Shawna Elizondo.  
Interest Covered: 1/72 mineral interest as to Tract 2 described above under Fee Title.  
Primary Term: Five (5) years from date.

Lease 16 is in all other respects identical to Lease 13 analyzed above.

OIL AND GAS LEASEHOLD ESTATE

Based upon our examination of the foregoing materials and subject to the comments and requirements hereinafter made, our opinion is that the oil and gas leasehold estate is owned as follows:

I. Tract 1 - All of NE/4 and all of NW/4 of Section 7, save and except that part of the NW/4 of Section 7 lying West of the centerline of the AT&SF Railroad Right-of-Way:

(a) Working Interest:

Fasken Land and  
Minerals, Ltd. .... 58-1/3% x 13/16 WI (Lease 1)  
less 58-1/3% x 1.25% x 8/8 ORI (Asn. 1)

Enerstar Resources  
O&G, L.L.C. .... 35-5/12% x 13/16 WI (Lease 1)  
  
Discovery Exploration ..... 6.25% x 13/16 WI (Lease 1)  
    less 6.25% x 1.25% x 8/8 ORI (Asn. 2)

(b) Overriding Royalty Interest:

Enerstar Resources  
O&G, L.L.C. .... 58-1/3% x 1.25% x 8/8 ORI (Asn. 1)  
    plus 6.25% x 1.25% x 8/8 ORI (Asn. 2)

II. Tract 2 - That part of the NW/4 of Section 7 lying West of the centerline of the AT&SF Railroad Right-of-Way, SAVE AND EXCEPT Tract 3 described below:

(a) Working Interest:

Fasken Land  
and Minerals,  
Ltd. .... 58-1/3% x 139/144 x 13/16 WI (Leases 2-12)  
    less 58-1/3% x 139/144 x 1.25% x 8/8 ORI (Asn. 1)

Enerstar  
Resources  
O&G, L.L.C. .. 35-5/12% x 139/144 x 13/16 WI (Leases 2-12)

Discovery  
Exploration ..... 6.25% x 139/144 x 13/16 WI (Leases 2-12)  
    less 6.25% x 139/144 x 1.25% x 8/8 ORI (Asn. 2)

Devon Energy Production  
Company, L.P. .... 5/144 x 13/16 WI (Leases 13-16)

(b) Overriding Royalty Interest:

Enerstar  
Resources O&G,  
L.L.C. .... 58-1/3% x 139/144 x 1.25% x 8/8 ORI (Asn. 1)  
    plus 6.25% x 139/144 x 1.25% x 8/8 ORI (Asn. 2)

III. Tract 3 - All of that portion of the captioned land described in that certain Judgment filed in Cause No. 24439 in the District Court of the Fifth Judicial District of Eddy County, New Mexico styled State of New Mexico, ex rel State Highway Commission of New Mexico v. Martin Villa, et al., a certified copy of which is recorded in Volume 58, Page 923 of the Miscellaneous Records of Eddy County, New Mexico:

Unleased ..... All\*

\*See Requirement 2.

ASSIGNMENT HISTORY

1. By Assignment of Oil and Gas Leases dated effective April 1, 2001, recorded 416 ECR 317, as corrected 430 ECR 789, Eddy County, New Mexico, Enerstar Resources O&G, L.L.C., as Assignor, assigned to Fasken Land and Minerals, Ltd., as Assignee, an undivided 58-1/3% of all interest in Leases 1 through 12 analyzed above, reserving an overriding royalty interest equal to the difference between 20% of 8/8 and existing burdens of record. The intent is to deliver a net revenue interest of 80% in and to the 58-1/3% interest in the leases assigned. This Assignment is made subject to that certain Participation Agreement dated March 1, 2001, between Assignor and Assignee.
2. By Assignment of Oil and Gas Leases dated April 27, 2001, recorded 416 ECR 1160, as corrected 430 ECR 785, Eddy County, New Mexico, Enerstar Resources O&G, L.L.C., as Assignor, assigned to Discovery Exploration, as Assignee, an undivided 6.25% of all interest in Leases 1 through 12 analyzed above, reserving an overriding royalty interest equal to the difference between 20% of 8/8 and existing burdens of record. The intent is to deliver a net revenue interest of 80% in and to the 6.25% interest in the leases assigned. This Assignment is made subject to that certain Participation Agreement and Operating Agreement dated March 1, 2001, between Fasken Oil and Ranch, Ltd. and Enerstar Resources O&G, L.L.C.

EASEMENTS AND RIGHTS-OF-WAY

1. Right-of-Way Deed dated March 20, 1891, recorded in Vol. B, Page 309 of the Deed Records of Eddy County, New Mexico, from Mary E. Tansill, et vir, Robert W. Tansill, to The Pecos Valley Railway Company conveying a right-of-way for construction of a railroad across Section 7.
2. Grant of Right-of-Way Easement dated March 25, 1935, recorded 64 DR 265, Eddy County, New Mexico, from W. A. Moore, et ux, Martie Moore, to the State of New Mexico, conveying an easement and right-of-way across part of Section 7 and others for a highway.
3. Easement and Right-of-Way dated January 2, 1968, recorded 20 DR 357, Eddy County, New Mexico, from Martin Villa to Southwestern Public Service Company conveying a right-of-way and easement for a power line across the SW/4 NW/4 of Section 7, among other lands.
4. Easement dated June 25, 1973, recorded 215 DR 257, Eddy County, New Mexico, from Draper Brantley, et ux, Irene Brantley, to United States of America, conveying a right-of-way for canal purposes across the N/2 N/2 and NW/4 of Section 7, among other lands.
5. By Right-of-Way and Easement dated July 15, 1982, recorded 253 DR 646, Eddy County, New Mexico, Draper Brantley, Sr. conveyed to El Paso Natural Gas Company a pipeline right-of-way and easement across the W/2 NE/4 of Section 7, among others.
6. Grant of Easement dated December 11, 1973, recorded 217 DR 158, Eddy County, New Mexico, from Juan H. Villa and Ignacia DeLaRosa Villa to the United States of America, conveying a

right-of-way for canal purposes across the W/2 W/2 of Section 7, among others.

You should locate all easements, including all easements apparent from a visual inspection on the ground and should avoid the same in connection with your operations.

#### OPERATING AGREEMENT

Nothing submitted.

#### LIENS AND ENCUMBRANCES

The interest credited herein to Juan H. Villa, et ux, Ignacia DeLaRosa Villa, is subject to that certain Real Estate Mortgage for New Mexico dated February 3, 1972, recorded in Vol. 260, Page 16 of the Mortgage Records of Eddy County, New Mexico, from Juan H. Villa, et ux, Ignacia DeLaRosa Villa, to the United States of America, acting through Farmers Home Administration, covering Tract 2 described above under Fee Title. Said Mortgage secures a promissory note dated February 3, 1972, in the principal amount of \$40,500, which is due February 3, 2012 (See Requirement 4).

#### POSSESSION

You are on notice of the rights of parties in possession and prior to commencing any drilling operations, you should make a visual inspection on the ground to determine the existence and location of such parties and their claim, if any, and avoid any unreasonable interference with same.

#### STATUS OF PRIOR TITLE REQUIREMENTS

This opinion is based solely upon the curative material which you submitted for our examination. Requirements 1 through 16 herein contain a discussion of the status of the requirements contained in the prior opinion. If a requirement was not satisfied or was only partially satisfied, we have stated the action that must be taken to satisfy such requirement.

1.

In connection with Requirement 1 in Title Opinion No. 13,308, you submitted for our examination unrecorded amendments of Leases 1 through 12 amending the legal description contained in each of said leases. Additionally, you submitted for our examination that certain Affidavit dated July 20, 2001, recorded 425 ECR 1059, Eddy County, New Mexico, executed by Paul T. Montoya. Based on this affidavit, we have treated the interests credited herein to Paul Montoya, David Montoya, Julian Aguilar, Shawna Elizondo, Esther Aguilar, Esther Gomez Hernandez, Rose Ann Jimenez, Juanita Peliez and Lee Montoya as the separate property of each of said parties. The amendments have not yet been executed by Devon Energy Production Company, LP. Once the amendments of Leases 1 through 12 have been executed by Devon and have been recorded in Eddy County, New Mexico, Requirement 1 will be satisfied except as set forth in the next paragraph.

Lease 3 was executed by Margaret V. Dowling. The affidavit discussed in the previous paragraph does not relate to the



interest credited to Margaret V. Dowling. Margaret V. Dowling acquired an undivided 1/10 interest in 89.75/177.5 of the S/2 lying west and south of the AT&SF Railroad Right-of-Way and the SW/4 NW/4 lying west and south of AT&SF Railroad Right-of-Way, all in Section 7, pursuant to Mineral Deed dated August 25, 1976, recorded 227 DR 289, Eddy County, New Mexico, from O. J. Dowling et ux Frances Virginia Dowling. Assuming Margaret V. Dowling was married on August 25, 1976, the interest acquired pursuant to the Mineral Deed at 227 DR 289 was presumptively her community property. The remainder of her interest was acquired pursuant to a Special Warranty Deed dated September 3, 1992, recorded 133 ECR 588, Eddy County, New Mexico, from the Trust Department of the Carlsbad National Bank, Trustee under the Oscar J. Dowling and Frances V. Dowling Revocable Trust Agreement, as amended. In connection with another requirement in this opinion, we have examined a portion of said trust agreement. It is likely that Margaret V. Dowling was a beneficiary of the trust and that this was a distribution of Margaret V. Dowling's interest which was conveyed to her as a gift pursuant to the trust agreement. Thus, it is likely that the interest acquired pursuant to Special Warranty Deed at 133 ECR 588 is her separate property. As you are aware, in New Mexico, a conveyance (including execution of an oil and gas lease) of community property by one spouse without the joinder of the other spouse is void. Thus, a ratification of Lease 3, as amended, should be obtained from the spouse of Margaret V. Dowling.

- REQUIREMENT:**
- (a) The amendments of Leases 1 through 12 which you submitted for our examination should be recorded in Eddy County, New Mexico, after Devon Energy Production Company, LP has executed the amendments and its signature has been properly acknowledged.
  - (b) Submit for our examination and then record in Eddy County, New Mexico, a ratification of Lease 3, as amended, executed by the spouse of Margaret V. Dowling.

2.

Nothing submitted. We restate this requirement in its entirety as follows:

This requirement affects the interest credited herein to the State of New Mexico in Tract 3 described above under Fee Title. The materials examined contain that certain Judgment rendered in Cause No. 24439 on January 5, 1968 in the District Court of the Fifth Judicial District, Eddy County, New Mexico, in that certain suit styled *State of New Mexico, ex rel State Highway Commission of New Mexico, Petitioner, v. Martin Villa, et al., Defendants*. A certified copy of the Judgment is recorded in Volume 58, Page 923 of the Miscellaneous Records of Eddy County, New Mexico. We have attached a copy of said judgment hereto as Exhibit "A" for your convenience. Pursuant to said judgment, the State of New Mexico was awarded title to the lands described in the judgment. The original petition filed in said suit appears to indicate that the condemnation action would not cover oil, gas and other minerals. However, said petition is not entirely clear. Additionally, and more importantly, the judgment itself did not except oil, gas and other minerals but instead adjudged the State of New Mexico to be the owner in fee simple of the property described therein. At the time of the judgment, Martin Villa, et ux Cruz H. Villa, only owned a 1/4 mineral interest in said land. However, said judgment purportedly vested fee simple title in the lands described therein in the State of New Mexico. The suit was

against not only the defendants, but "any and all unknown persons or claimants of interest in and to the property interest herein sought to be acquired". Notice was given to such defendants via publication. Thus, arguably the judgment also covered the other 3/4 mineral interest in the lands described in the judgment. Thus, in order to be certain that the tract described in the judgment is effectively leased, an oil and gas lease should be obtained from the State of New Mexico.

- REQUIREMENT:**
- (a) Submit for our examination and record in Eddy County, New Mexico, an oil and gas lease executed by the State of New Mexico covering Tract 3 described above under Fee Title.
  - (b) In the event of production, a stipulation of interest should be executed by the State of New Mexico and by the owners of Tract 2 stipulating as to the parties' ownership in Tract 3.

3.

Satisfied. This requirement called for the release of a federal tax lien recorded 405 ECR 84, Eddy County, New Mexico. This requirement has been satisfied by that certain Release of Federal Tax Lien dated October 18, 2001, recorded 433 ECR 748, Eddy County, New Mexico. (Note: The copy of Release of Federal Tax Lien submitted for our examination was a faxed copy. The reference to the recording of the original tax lien was not entirely clear on the copy we examined. We have assumed that it references 405/0084 and not 405/0004).

4.

This requirement affects Lease 2 and the interest credited herein to Juan H. Villa and Ignacia DeLaRosa Villa, as joint tenants with right of survivorship. The materials examined in connection with our Title Opinion No. 13,308 contain that certain Real Estate Mortgage for New Mexico dated February 3, 1972, recorded in Volume 260, Page 16 of the Mortgage Records of Eddy County, New Mexico, executed by Juan H. Villa, et ux Ignacia D. Villa aka Ignacia DeLaRosa Villa, as mortgagor, to the United States of America acting through the Farmers Home Administration, as mortgagee. Said mortgage secures that certain Promissory Note dated February 3, 1972 in the principal amount of \$40,500.00 with a maturity date of February 3, 2012. In connection with this requirement, you submitted for our examination that certain Partial Release dated August 28, 2001, recorded 430 ECR 1065, Eddy County, New Mexico, executed by Lynn D. Muncy, Farm Loan Manager of United States Department of Agriculture on behalf of the United States of America. Said partial release refers to the Mortgage at 260/16 and purports to release from the lien of said mortgage "the following described property: Mineral Lease". The instrument further goes on to recite that "Only the above described property is released from the lien of the aforesaid instruments." We have assumed that the parties intended for this instrument to have the effect of releasing the mineral interest in the captioned land owned by Juan H. Villa and Ignacia Villa from the mortgage noted above or to subordinate the lien of the United States of America on said interest to the oil and gas lease taken covering said interest. The instrument also has attached as a third page a description of Tract 2, among other lands. However, the body of the instrument does not in any way refer to the attached description. The effect of this release is questionable, although as noted above, we assume that the parties did in fact intend to release the mineral interest owned by Juan

H. Villa and Ignacia Villa in Tract 2 from the mortgage noted above.

**REQUIREMENT:** Submit for our examination and then record in Eddy County, New Mexico, a release of the above described mortgage insofar as said mortgage covers the mineral interest in Tract 2 described above under Fee Title. In the alternative, submit for our examination and then record in Eddy County, New Mexico, a subordination agreement wherein the United States of America subordinates its lien to Lease 2 analyzed above, as amended.

5.

Satisfied. This requirement called for a subordination of the lien created by the instrument at 391 ECR 705, Eddy County, New Mexico. You submitted for our examination that certain Subordination Agreement dated July 23, 2001, recorded 425 ECR 1060, executed by Jenkins Furniture Company, Inc. which satisfies this requirement.

6.

This requirement listed 24 unreleased oil and gas leases contained in the materials examined in connection with our Title Opinion No. 13,308. Said leases covered all or a portion of the N/2 of Section 7. You submitted for our examination that certain unrecorded Affidavit of Non-Production dated July 31, 2001 executed by Henry McDonald which states that there has never been a well drilled on the N/2 of Section 7 nor have these lands been held by pooling or communitization. We have assumed that you have conducted an investigation and verified that the 24 leases listed in our Title Opinion No. 13,308 have expired pursuant to their own terms. However, the Affidavit of Non-Production does contain one statement that is somewhat confusing. The Affidavit of Non-Production states that "This land was once part of an Oil and Gas Lease which covered all of Section 7, T-23-S, R-28-E, that is recorded in Book 278, Page 347, to Oxy USA Inc. That a well was drilled and production was established under this lease on the S/2 of Section 7 during the primary term of this lease, but the N/2 of Section 7 was subsequently released." This statement is confusing because based upon our notes taken in connection with our Title Opinion No. 13,308, it appears that the lease at 278 ECR 347 covered only the SW/4 NW/4 of Section 7 lying south and west of the AT&SF Railroad Right-of-Way. We are uncertain why this statement is included in the Affidavit. However, we have assumed that you are willing to rely upon this Affidavit of Non-Production and your investigation of the production history of the N/2 of Section 7 and have satisfied yourself that the leases listed in Title Opinion No. 13,308 have expired pursuant to their own terms.

7.

This requirement affects Lease 3 and a portion of the interest credited herein to Margaret V. Dowling. The materials examined in connection with our Title Opinion No. 13,308 contain that certain Special Warranty Deed dated September 3, 1992, recorded 133 ECR 588, Eddy County, New Mexico, from the Trust Department of the Carlsbad National Bank, Trustee under the Oscar J. Dowling and Frances V. Dowling Revocable Trust Agreement, as amended, as grantor, to Margaret V. Dowling, as grantee, which conveys an undivided 9/20 interest in all oil, gas and other minerals in and under the SW/4 NW/4 of Section 7 lying west and south of AT&SF Railroad right-of-way. In connection with this requirement, you submitted for our examination a photocopy of

Page 1, Page 19, Page 25 and Page 26 of the Trust Agreement dated February 13, 1976 between Oscar J. Dowling and Frances V. Dowling, as Trustors, and Carlsbad National Bank, as Trustee. Page 19 of said Trust Agreement appears to be a listing of the powers of the trustee, including the right to "sell, convey, mortgage, lease, create security interests in, transfer, assign, exchange, alter or vary all properties, real, personal, and mixed, transferred to or acquired by the trustee hereunder, without the necessity of obtaining any court order or notice to or consent of any beneficiary hereunder." Thus, it is likely that the trustee had the authority to execute the conveyance at 133 ECR 588. However, because we did not examine the entire trust agreement, we are unable to verify that there were no special limitations placed upon the trustee elsewhere in the trust agreement and that the trust agreement was still in existence at the time the Special Warranty Deed at 133 ECR 588 was executed.

**REQUIREMENT:** Submit for our examination the complete above referenced trust agreement so that we may verify that the trustee had the authority to execute the conveyance noted above at 133 ECR 588, Eddy County, New Mexico, and that the trust was still in existence at the time the conveyance was executed.

8.

Satisfied. This requirement has been satisfied by our examination of that certain Affidavit dated July 20, 2001, recorded 425 ECR 1059, Eddy County, New Mexico, and that certain Corrected Quitclaim Deed dated July 12, 2001, effective March 15, 2001, recorded 425 ECR 1064, from Martha Gomez to Esther Gomez Hernandez.

9.

Partially satisfied. This requirement affects the 1/36 interest credited herein to Julian Aguilar (1/72) and Shawna Elizondo (1/72). It also affects Leases 8 and 16 analyzed above. This 1/36 mineral interest in Tract 2 was previously owned of record by Josephine Aguilar. In connection with this requirement, you submitted for our examination that certain Affidavit of Death and Heirship dated July 25, 2001, recorded 426 ECR 528, Eddy County, New Mexico, executed by Esther Aguilar. Said affidavit of heirship indicates that Josefina M. Aguilar a/k/a Josephine Aguilar, died testate on January 19, 1995. However, due to the limited size of her estate, her heirs elected not to probate her will. The affidavit further indicates that Josefina M. Aguilar was married once during her life, that marriage being to Chon Aguilar. The affidavit also states that although no children were born to the marriage, two children were adopted, namely Julian Aguilar and Shawna Elizondo. The materials examined in connection with our Title Opinion No. 13,308 indicate that Chon Aguilar died December 4, 1995. His will left the residue of his estate to his two children, Julian Aguilar and Shawna Elizondo, equally. We have examined no evidence that all estate taxes due in connection with the Estates of Josephine Aguilar a/k/a Josefina M. Aguilar and Chon Aguilar have been paid.

**REQUIREMENT:** Submit for our examination and then record in Eddy County, New Mexico, evidence that all estate taxes due in connection with the Estates of Josefina M. Aguilar a/k/a Josephine Aguilar and Chon Aguilar have been paid or that none were due.

10.

Partially satisfied. This requirement affects the interests credited herein to Adela Dobkins, Hope Morningstar, Barbara C. Lara and Billy Lara a/k/a Bill M. Lara. It also affects Leases 4, 13, 14 and 15 analyzed above. This 1/36 mineral interest in Tract 2 (more particularly described above under Fee Title) was previously owned of record by Felista Lara. This requirement has been partially satisfied by our examination of the following instruments which you submitted for our examination:

- (a) Amendment of Oil and Gas Lease dated effective March 20, 2001, executed by Billy Lara a/k/a Bill M. Lara;
- (b) Affidavit dated July 20, 2001, recorded 425 ECR 1059, Eddy County, New Mexico, executed by Paul T. Montoya;
- (c) Affidavit of Death and Heirship dated July 30, 2001, recorded 425 ECR 1065, Eddy County, New Mexico, executed by Paul Montoya;
- (d) Affidavit of Death and Heirship dated July 24, 2001, recorded 425 ECR 1070, Eddy County, New Mexico, executed by Bill M. Lara; and
- (e) Quitclaim Deed dated July 18, 2001, recorded 425 ECR 1071, Eddy County, New Mexico, from Emilie Sue Lara and Jessica Alyce Lara to Barbara C. Lara.

The Affidavit of Death and Heirship recorded 425 ECR 1065 relates to the Estate of Felicita Montoya Lara a/k/a Felista Lara who died on September 10, 1994. The Affidavit of Death and Heirship at 425 ECR 1070 relates to the Estate of Joe Lara who died December 26, 2000. We have examined no evidence that all estate taxes due in connection with the estates noted above have been paid.

- REQUIREMENT:**
- (a) Submit for our examination and then record in Eddy County, New Mexico, evidence that all estate taxes due in connection with the Estate of Felicita Montoya Lara a/k/a Felista Lara have been paid or that none were due.
  - (b) Submit for our examination and then record in Eddy County, New Mexico, evidence that all estate taxes due in connection with the Estate of Joe Lara have been paid or that none were due. (This portion of the requirement affects only the interest credited herein to Barbara C. Lara and the lease which she executed).

11.

Partially satisfied. Assignment 1 analyzed above is made subject to that Participation Agreement dated March 1, 2001 between Enerstar Resources O&G, L.L.C. and Fasken Land and Minerals, Ltd. We have not examined said unrecorded agreement.

Assignment 2 analyzed above is made subject to that certain unrecorded Participation Agreement and Operating Agreement dated March 1, 2001 between Fasken Oil and Ranch, Ltd. and Enerstar Resources O&G, L.L.C. We have not examined said unrecorded agreements.

**REQUIREMENT:** Submit for our examination the unrecorded agreements referenced in Assignments 1 and 2 analyzed above or satisfy yourself that such agreements do not contain any restrictions on assignability and do not change the ownership reflected herein or otherwise adversely affect such ownership.

12.

Satisfied. This requirement involves strangers to title. We have been advised that contact was made with such strangers to title by telephone and they make no claims to the captioned land and state that the descriptions contained in the Quitclaim Deed recorded 265 ECR 829, Eddy County, New Mexico, incorrectly described the captioned land. We assume that you are willing to rely upon the investigation which has been conducted.

13.

Satisfied. This requirement has been satisfied by our examination of a letter dated July 17, 2001 from Western Commerce Bank, formerly known as Commerce Bank & Trust, to Jim D. Daniels.

14.

This requirement is a production requirement only. This requirement affects the interest credited herein to George Brantley and John Draper Brantley, Jr. Said parties acquired their interest pursuant to the probate of the Estates of Draper Brantley and Irene Brantley and pursuant to the following conveyances:

- (a) Warranty Deed dated March 8, 1978, recorded 234 DR 144, Eddy County, New Mexico, from Draper Brantley and Irene Brantley to George Brantley;
- (b) Quitclaim Deed dated February 4, 1986, recorded 265 DR 815, Eddy County, New Mexico, from Irene Remmers Brantley, a widow and as Personal Representative of the Estate of John Draper Brantley, Sr., to John Draper Brantley, Jr.; and
- (c) Co-Personal Representatives' Deed and Co-Trustees' Deed dated December 30, 1999, recorded 371 ECR 777, Eddy County, New Mexico, from John Draper Brantley, Jr. and George Henry Brantley, Co-Personal Representatives of the Estate of Irene Remmers Brantley and Co-Trustees of the John Draper Brantley, Sr. Testamentary Trust, to John Draper Brantley, Jr. (1/2) and George Henry Brantley (1/2).

The probate of the estates noted above and the conveyances noted above create some confusion as to how George Brantley and John Draper Brantley, Jr. own the mineral interest in Tract 1. In the event of production, prior to disbursing proceeds attributable to the royalty interest in Tract 1, a stipulation of interest should be executed by George Brantley and his spouse and John Draper Brantley, Jr. and his spouse.

**REQUIREMENT:** In the event of production, submit for our examination an then record in Eddy County, New Mexico, a stipulation of interest executed by George Brantley and his spouse and John Draper Brantley, Jr. and his spouse, stipulating as to

their ownership of the mineral estate in Tract 1 described above under Fee Title.

15.

Your attention is directed to the additional provisions added to Lease 1 above and specifically Paragraphs 4 and 5 therein. Although said provisions are not entirely clear, it appears that they are partial termination provisions which are triggered at the end of the primary term. You should take such provisions into consideration in connection with your operations.

**REQUIREMENT:** Advisory.

16.

This requirement previously indicated that we had not credited Devon with an interest in the captioned land. We have now credited Devon with an interest in the captioned land. However, we have not examined the operating agreement and it is possible that the oil and gas leasehold estate is owned in different proportions than that reflected of record in Eddy County, New Mexico.

#### **NEW TITLE REQUIREMENTS**

17.

In connection with the Subordination Agreement discussed in Requirement 5 above, Rose Ann Jiminez executed that certain Assignment of Royalty Payment dated July 23, 2001, recorded 425 ECR 1062, Eddy County, New Mexico, wherein she conveyed to Jenkins Furniture Company, Inc. all royalty payments due under Lease 11, as amended, until the debt secured by the lien at 391 ECR 705 has been paid in full. At such time, royalty payments shall revert back to Rose Ann Jiminez.

**REQUIREMENT:** In the event of production, joint division orders should be executed by Rose Ann Jiminez and Jenkins Furniture Company, Inc., directing the purchaser of production as to the manner in which to distribute proceeds of production attributable to the royalty under Lease 11, as amended.

#### **COMMENTS**


1. Lease 16 analyzed above contains the sentence "See Exhibit A attached hereto and by reference made a part hereof." The copy of Lease 16 submitted for our examination does not contain an Exhibit A. You have advised us that said lease does not have an exhibit attached to it. Therefore, we are making no requirement in this regard.
2. There are several instruments in the early chain of title (1920s, 1930s and 1940s) which contain certain description irregularities. Because of the difficulty in curing such defects and because of the likelihood that all such defects have been cured by limitations, we are making no requirement in this regard. We assume you are willing to rely on limitations title to cure any such defects.
3. The materials examined contain numerous conveyances which purport to convey that portion of the SW/4 NW/4 of Section 7 lying west of the railroad right-of-way or that portion of

the NW/4 of Section 7 lying north and east of the railroad right-of-way. We have treated such conveyances as conveying the property to the centerline of the right-of-way based on the "strip and gore" doctrine. Such doctrine provides that a conveyance of land abutting on a road, highway, alley or other way is presumed to convey the fee to the centerline of the way.

4. This opinion does not purport to cover such matters as actual acreage, location upon the ground, conflicts, vacancies or encroachments, the same being determinable only upon an actual ground survey. We assume that you will have the captioned land carefully surveyed on the ground by a competent surveyor or engineer before commencing development operations on captioned land.
5. This opinion does not cover any matters not revealed by the materials examined, such as undisclosed liens, genuineness of instruments, prior dedication of gas to interstate commerce, the price of either oil or gas produced and marketed from the premises, the number and depth of wells, surface or subsurface location of wells, boundaries, surveys, conflicts, vacancies, access, rights of parties in possession or other matters which can only be determined by an investigation upon the ground or by a survey of the land.
6. This opinion is limited in its coverage of the mineral estate to oil and gas underlying captioned land and does not cover other minerals.
7. This opinion does not attempt to address the question of potential liability for environmental contamination which may be imposed upon any past, present and/or subsequent owner or operator of the property without evidence of negligence or actual contribution to the contaminating event.
8. This opinion is rendered to, and for the sole benefit of, the addressee herein who constitutes the only client of this firm for whom such opinion was rendered.
9. The curative materials examined in connection with this opinion are being returned to Mr. Maner Shaw with his copy of this opinion.

Very truly yours,

COTTON, BLEDSOE, TIGHE & DAWSON, P.C.

By:   
Albert E. Sherman

AES/kk

c: Mr. Maner Shaw  
Shaw Interests, Inc.  
310 West Wall, Suite 305  
Midland, Texas 79701



Exhibit A  
to  
Title Opinion No. 13,308-A

47

F-023-1(12)

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
SITTING IN AND FOR EDDY COUNTY, NEW MEXICO  
FIFTH JUDICIAL DISTRICT  
STATE OF NEW MEXICO  
COUNTY OF EDDY

STATE OF NEW MEXICO, ex rel  
STATE HIGHWAY COMMISSION OF  
NEW MEXICO,

Petitioner,

vs.

MARTIN VILLA, et al,

Defendants.

FILED JAN - 5 1968 IN MA  
OFFICE

FRANCES M. WILCOX  
Clerk of the District Court

No. 24439

JUDGMENT

(Martin Villa & Cruz H. Villa  
Tracts: 2-2 & 2-2A)

This matter coming on before the Court upon the  
Stipulation of the parties and the Petitioner appearing by  
one of its attorneys, John C. Worden, Special Assistant At-  
torney General, and the Defendants, Martin Villa and Cruz  
H. Villa, appearing pro se and the Court having considered  
the Stipulation and being fully advised in the premises finds  
that:

1. It has jurisdiction of the parties hereto  
and of the subject matter hereof.
2. The Laws and Statutes of the State of New  
Mexico have been complied with.
3. The Defendants named herein under the style of  
"ANY AND ALL UNKNOWN PERSONS OR CLAIMANTS OF INTEREST IN AND  
TO ANY OF THE PROPERTY INTERESTS HEREIN SOUGHT TO BE ACQUIRED"

FURTHER INSTRUMENTS IN THE ABOVE  
NUMBERED CAUSE HAVE BEEN OMITTED.

have not appeared, answered, or filed any responsive pleading herein within the time prescribed by law and are therefore in default, having been lawfully served as is more fully set out in the Affidavit of Publication on file herein.

4. The parties appearing herein have stipulated and agreed that the amount of \$8,275.00 without interest for Tracts 2-2 and 2-2A is just and complete compensation to the Defendants for their lands taken and for their property rights impaired, damaged and affected in this condemnation action and including also all damages to the Defendants' remaining lands and property rights and that Judgment should be entered in this cause of action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the following described lands and premises belonging to the Defendants to-wit:

(2-2) A certain tract or parcel of land, lying and being situate in the SE 1/4 SE 1/4, the SW 1/4 SE 1/4, the SE 1/4 SW 1/4, the NW 1/4 SE 1/4, the NE 1/4 SW 1/4, the NW 1/4 SW 1/4, the SE 1/4 NW 1/4 and the SW 1/4 NW 1/4 of Section 7, T. 23 S., R. 28 E., NMPM, County of Eddy, State of New Mexico, being more particularly bounded and described as follows, to wit:

Beginning at a point on the westerly line of Section 7 and point on the southerly right of way line of NMP F-023-1(12), County of Eddy, State of New Mexico, said point bears S.0°29'E. a distance of 1,613.42 feet from the northwesterly corner of Section 7; thence N.0°29'W. along said westerly line of Section 7 a distance of 220.46 feet to a point on the northerly right of way line of NM FAP 131-A, County of Eddy, State of New Mexico, said point being a point on the southerly right of way line of the Atchison, Topeka & Santa Fe Railroad; thence S.47°01'E. along said right of way line common to NM FAP 131-A and the Atchison, Topeka & Santa Fe Railroad a distance of 5,681.50 feet to a point on the southerly line of Section 7; thence S.89°35'W. along said southerly

line of Section 7 a distance of 145.54 feet to a point on the southerly right of way line of NMP FAP-131-A; thence N.47°01'W. along said southerly right of way line a distance of 480.00 feet; thence S.89°35'W. a distance of 87.32 feet to a point on the southerly right of way line of NMP F-023-1(12), thence N.47°01'W. along the said southerly right of way line a distance of 76.71 feet; thence S.83°05'W. a distance of 248.40 feet; thence N.47°01'W. a distance of 1,100.0 feet; thence N. 14°35'W. a distance of 354.19 feet; thence N.47°01'W. a distance of 3,245.01 feet to the point and place of beginning.

Containing 25.418 acres, more or less, of which 18.166 acres, more or less, are contained in the present (1967) right of way.

Net area = 7.252 acres, more or less.

(2-2A) ALSO, a certain tract or parcel of land, lying and being situate in the SW 1/4 NW 1/4 and the NW 1/4 SW 1/4 of Section 7, T.23 S., R. 28 E., NMPM, County of Eddy, State of New Mexico, being more particularly bounded and described as follows, to-wit:

Beginning at a point on the southerly right of way line of NMP F-023-1(12), County of Eddy, State of New Mexico and point on the westerly line of the property of the defendant, said point bears S.1°53'26"E. a distance of 1,652.40 feet from the north-westerly corner of Section 7; thence S.47°01'E. along said southerly right of way line a distance of 1,488.01 feet; thence S.42°59'W. a distance of 55.9 feet; thence N.47°01'W. a distance of 1,435.27 feet to a point on the westerly line of the property of the defendant; thence N.0°21'W. along said westerly line of the property of the defendant a distance of 76.81 feet to the point and place of beginning.

Containing 1.876 acres, more or less.

be and they are hereby condemned and appropriated for the use and purposes set forth in the petition on file in this cause and the Petitioner be and it hereby is adjudged to be the owner in fee simple of the above described property upon payment in full of all moneys due by the terms of this Judgment and the recordation of this Judgment with the County Clerk of Eddy County.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Judgment be and it hereby is rendered against the Petitioner and for the Defendants Martin Villa and Cruz H. Villa in the amount of \$8,275.00 without interest for Tracts 2-2 and 2-2A and this Judgment is granted in full and complete satisfaction, release and discharge of any claim these Defendants, their heirs, executors, administrators and assigns might now or hereafter have by reason of the condemning of the above described lands, and of all damages to lands immediately adjacent thereto by reason of this condemnation, which adjacent land may not have been actually taken but may have been injuriously affected by this condemnation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants named under the style of "ANY AND ALL UNKNOWN PERSONS OR CLAIMANTS OF INTEREST IN AND TO ANY OF THE PROPERTY INTERESTS HEREIN SOUGHT TO BE ACQUIRED" are in default for failure to appear, answer or file any responsive pleading herein within the time prescribed by law, having been lawfully served, as is more fully set out in the Affidavit of Publication on file herein and further none of the Defendants has, at any time material hereto, been owners of any interest in and to the real estate entitling them to any portion of the Judgment and award granted herein and the Defendants named in this paragraph and each of them be and they are hereby forever barred and estopped from making any claim to the award or in and to the above described real estate.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the amount of \$8,275.00, without interest, for Tracts 2-2 and 2-2A

be paid to the Defendants Martin Villa and Cruz H. Villa by the Clerk of the District Court of Eddy County, the amount of \$9,275.00 having been heretofore deposited with the Clerk of the District Court for the benefit of the Defendants herein.

*Shirley*  
DISTRICT JUDGE

SUBSCRIBER:

NEW MEXICO STATE HIGHWAY COMMISSION

BY

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JOHN S. WORLEY  
Special Assistant Attorney General,  
One of the attorneys for Petitioner,  
P. O. Box 1149, Santa Fe, New Mexico

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MARTIN VILLA, Pro Se  
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June 21, 2001

**VIA FEDERAL EXPRESS**

Mr. Ken Gray  
Devon Energy Corporation  
20 N. Broadway, Suite 1500  
Oklahoma City, Oklahoma 73102

**VIA HAND DELIVERY**

Ms. Sally Kvasnicka  
Fasken Oil and Ranch, Ltd.  
303 West Wall, Suite 1800  
Midland, Texas 79701

Re: Original Drilling Title Opinion No. 13,308 covering the oil  
and gas estate of the N/2 of Section 7, Township 23 South,  
Range 28 East, N.M.P.M., Eddy County, New Mexico

Dear Ken and Sally:

We are enclosing the original and one photocopy of the above referenced opinion which  
we prepared at your request. We are also returning to Fasken the abstracts examined in  
connection with such opinion.

After you have had a chance to review the opinion, if you have any questions or comments,  
please do not hesitate to call me.

Very truly yours,

COTTON, BLEDSOE, TIGHE & DAWSON, P.C.

By:

  
Albert E. Sherman

AES/kk  
Enclosures

RECEIVED

JUN 22 2001

LAND DEPARTMENT

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June 20, 2001

No. 13,308

Devon Energy Corporation  
20 N. Broadway, Suite 1500  
Oklahoma City, Oklahoma 73102  
Attention: Mr. Ken Gray

Fasken Oil and Ranch, Ltd.  
303 West Wall, Suite 1800  
Midland, Texas 79701  
Attention: Ms. Sally Kvasnicka  
Land Manager

ORIGINAL DRILLING TITLE OPINION covering the oil and  
gas estate of the N/2 of Section 7, Township 23 South,  
Range 28 East, N.M.P.M., Eddy County, New Mexico.

---

Ladies and Gentlemen:

At your request and for the purpose of rendering this  
Original Drilling Title Opinion, we examined the following:

MATERIALS EXAMINED

1. Abstract of Title No. 01,085 certified by Currier Abstract Co. as covering the records of the County and District Clerks of Eddy County, New Mexico, as to the captioned land from inception to May 4, 2001, at 8:00 a.m., containing 853 pages in five volumes.
2. Photocopy of Will of Felicita Montoya Lara.
3. Assignment of Oil and Gas Lease dated effective April 1, 2001, recorded 416 ECR 317, Eddy County, New Mexico, from Enerstar Resources O&G, L.L.C., as Assignor, to Fasken Land and Minerals, Ltd., as Assignee.
4. Assignment of Oil and Gas Leases dated April 27, 2001, recorded 416 ECR 1160, Eddy County, New Mexico, from Enerstar Resources O&G, L.L.C., as Assignor, to Discovery Exploration, as Assignee.

PATENT INFORMATION

By Patent dated December 1, 1891, recorded in Patent Book A, Page 65, as rerecorded in Patent Book A, Page 114 Eddy County, New Mexico, the United States of America patented to Mary E. Tansill all of Section 7.

FEE TITLE

Based upon our examination of the foregoing materials, and subject to the comments and requirements hereinafter made, our opinion is that the oil and gas estate, but not other minerals, in the captioned land is owned as follows:

I. Tract 1 - All of NE/4 and all of NW/4 of Section 7, save and except that part of the NW/4 of Section 7 lying West of the centerline of the AT&SF Railroad Right-of-Way:

George Brantley ..... 1/2  
(Lease 1)

John Draper Brantley, Jr.  
separate property ..... 1/2  
(Lease 1)

II. Tract 2 - That part of the NW/4 of Section 7 lying West of the centerline of the AT&SF Railroad Right-of-Way, SAVE AND EXCEPT Tract 3 described below:

Margaret V. Dowling ..... 1/2  
(Lease 3)

Juan H. Villa and Ignacia DeLaRosa  
Villa, as joint tenants with full  
Right of survivorship ..... 1/4  
(Lease 2)

Paul Montoya ..... 1/36  
(Lease 9)

David Montoya ..... 1/36  
(Lease 7)

Julian Aguilar, separate property ..... 1/72  
(Lease 8)

Shawna Elizondo, separate property ..... 1/72  
(Unleased)

Esther Aguilar ..... 1/36  
(Lease 12)

Esther Gomez Hernandez ..... 1/36  
(Lease 6)

Rose Ann Jimenez, separate property ..... 1/36  
(Lease 11)

Juanita Peliez ..... 1/36  
(Lease 10)

Lee Montoya ..... 1/36  
(Lease 5)

Adela Dobkins, separate property ..... 1/144  
(Unleased)

Hope Morningstar, separate property ..... 1/144  
(Unleased)



Joe Lara, separate property ..... 1/144  
(Unleased)

Bill Lara, separate property ..... 1/144  
(Unleased)

III. Tract 3 - All of that portion of the captioned land described in that certain Judgment filed in Cause No. 24439 in the District Court of the Fifth Judicial District of Eddy County, New Mexico styled State of New Mexico, ex rel State Highway Commission of New Mexico v. Martin Villa, et al., a certified copy of which is recorded in Volume 58, Page 923 of the Miscellaneous Records of Eddy County, New Mexico:

State of New Mexico ..... All\*  
(Unleased)

\*See Requirement 2.

OIL AND GAS LEASES

Lease 1:

Dated: March 1, 2001.

Recorded: 406 ECR 525.

Lessor: George Brantley and Draper Brantley.

Lessee: Enerstar Resources O&G, LLC

Land Covered: N/2 of Section 7. (See Requirement 1).

Interest Covered: Full interest lease as to Tract 1 described under Fee Title.

Primary Term: Two (2) years from date.

Royalty: 3/16 on oil and gas.

Shut-In Gas Royalty: Yes, payable on or before 90 days after the date the well is shut in and annually thereafter in an amount equal to \$1.00 per net acre of lessors' gas acreage then held under this lease.

Delay Rentals: None, this is a paid-up lease.

Pooling Provision: Yes, paragraph 5 grants lessee the right to pool provided that units pooled hereunder shall not exceed the standard proration unit fixed by law or by the Oil Conservation Division of the Energy and Minerals Department of the State of New Mexico or any other lawful authority for the pool or area in which the land is situated, plus a tolerance of 10%.

Lease Form: Producers 88-Producers Revised 1994 New Mexico Form 342P, Paid Up, containing a standard proportionate reduction clause.

Lease Rider:

An Exhibit "A" containing 12 additional provisions has been attached to the lease. You should become thoroughly familiar with all the terms and provisions of the lease, including, but not limited to the lease rider attached thereto. We summarize certain provisions of the lease rider as follows:

(a) Paragraph 3 provides that lessee agrees to pay an additional \$100 per acre non-drill bonus if lessee does not drill, or cause to be drilled, a well on the acreage covered by the lease within the primary term of the lease.

(b) Paragraph 4 provides that lessors and lessee agree that a well drilled in the NE/4 of Section 7 shall hold all rights to all depths on the 160 acres therein contained. It is also agreed that a discovery below the base of the Bone Springs will hold rights below the Bone Springs on the entire 302-acre tract.

(c) Paragraph 5 provides that if lessee and/or its assignees do not drill a test in the NW/4 of Section 7 before the expiration of the primary term, all rights from the Bone Springs to the surface in the NW/4 of Section 7 shall revert to lessors.

(d) Paragraph 6 provides that if a third party should come to lessee and/or its assignees with a farmout proposal covering the Delaware or Bone Springs Formations during the primary term of the lease, lessee will not hinder the forward progress of such a proposal, as long as the terms are agreeable to all parties.

(e) Paragraph 7 provides that lessee will pay location damages of \$10,000 if steel pits are used in the drilling of a test well. Lessee agrees to pay an additional \$10,000 if reserve pits are excavated. This amount shall be for one well only and the rest will be negotiated.

(f) Paragraph 8 provides that lessee and/or its assignees agree to purchase water for the drilling of all test wells within the lease at a cost of \$.40 per 42 gallon barrel from lessors and to purchase caliche at a cost of \$2.00 per yard from lessors. This amount shall be for one well only while the rest will be negotiated.

(g) Paragraph 12 provides that upon the abandonment of the lease all junk on the lease will be hauled off and all caliche

on the location will be replaced with new dirt.

Lease 2:

Dated: March 2, 2001.

Recorded: 407 ECR 620.

Lessor: Juan H. and Ignacia Villa.

Lessee: Enerstar Resources O&G, LLC

Land Covered: N/2 of Section 7. (See Requirement 1).

Interest Covered: 1/4 MI as to Tract 2 described above under Fee Title.

Primary Term: Three (3) years from date.

Royalty: 3/16 on oil and gas.

Shut-In Gas Royalty: Yes, payable on or before 90 days after the date the well is shut in and annually thereafter in an amount equal to \$1.00 per net acre of lessors' gas acreage then held under this lease.

Delay Rentals: None, this is a paid-up lease.

Pooling Provision: Yes, paragraph 5 grants lessee the right to pool provided that units pooled hereunder shall not exceed the standard proration unit fixed by law or by the Oil Conservation Division of the Energy and Minerals Department of the State of New Mexico or any other lawful authority for the pool or area in which the land is situated, plus a tolerance of 10%.

Lease Form: Producers 88-Producers Revised 1994 New Mexico Form 342P, Paid Up, containing a standard proportionate reduction clause.

Lease 3:

Dated: March 9, 2001.

Recorded: 408 ECR 663.

Lessor: Margaret V. Dowling.

Lessee: Enerstar Resources O&G, LLC

Interest Covered: 1/2 MI as to Tract 2 described under Fee Title.

Lease 3 is in all other respects identical to Lease 2 analyzed above.

Lease 4:

Dated: March 20, 2001.  
Recorded: 410 ECR 1095.  
Lessor: Billy Lara.  
Interest Covered: 1/144 MI as to Tract 2 described above  
under Fee Title.

**Lease 4 is in all other respects identical to Lease 2  
analyzed above.**

Lease 5:

Dated: March 15, 2001.  
Recorded: 411 ECR 1158.  
Lessor: Lee Montoya.  
Interest Covered: 1/36 MI as to Tract 2 described above  
under Fee Title.

**Lease 5 is in all other respects identical to Lease 2  
analyzed above.**

Lease 6:

Dated: March 15, 2001.  
Recorded: 411 ECR 1160.  
Lessor: Esther Gomez Hernandez.  
Interest Covered: 1/36 MI as to Tract 2 described above  
under Fee Title.

**Lease 6 is in all other respects identical to Lease 2  
analyzed above.**

Lease 7:

Dated: March 15, 2001.  
Recorded: 411 ECR 1162.  
Lessor: David T. Montoya.  
Interest Covered: 1/36 MI as to Tract 2 described above  
under Fee Title.

**Lease 7 is in all other respects identical to Lease 2  
analyzed above.**

Lease 8:

Dated: March 15, 2001.  
Recorded: 411 ECR 1164.  
Lessor: Julian M. Aguilar.

Interest Covered: 1/72 MI as to Tract 2 described above  
under Fee Title.

**Lease 8 is in all other respects identical to Lease 2  
analyzed above.**

Lease 9:

Dated: March 15, 2001.

Recorded: 411 ECR 1166.

Lessor: Paul Montoya.

Interest Covered: 1/36 MI as to Tract 2 described above  
under Fee Title.

**Lease 9 is in all other respects identical to Lease 2  
analyzed above.**

Lease 10:

Dated: March 15, 2001.

Recorded: 411 ECR 1168.

Lessor: Juanita Peliez.

Interest Covered: 1/36 MI as to Tract 2 described above  
under Fee Title.

**Lease 10 is in all other respects identical to Lease 2  
analyzed above.**

Lease 11:

Dated: March 15, 2001.

Recorded: 411 ECR 1170.

Lessor: Wanda Jimenez.

Interest Covered: 1/36 MI as to Tract 2 described above  
under Fee Title.

**Lease 11 is in all other respects identical to Lease 2  
analyzed above.**

Lease 12:

Dated: March 15, 2001.

Recorded: 411 ECR 1172.

Lessor: Esther Aguilar.

Interest Covered: 1/36 MI as to Tract 2 described above  
under Fee Title.

**Lease 12 is in all other respects identical to Lease 2  
analyzed above.**

OIL AND GAS LEASEHOLD ESTATE

Based upon our examination of the foregoing materials and subject to the comments and requirements hereinafter made, our opinion is that the oil and gas leasehold estate is owned as follows:

I. Tract 1 - All of NE/4 and all of NW/4 of Section 7, save and except that part of the NW/4 of Section 7 lying West of the centerline of the AT&SF Railroad Right-of-Way:

(a) Working Interest:

Fasken Land and  
Minerals, Ltd. .... 58-1/3% x 13/16 WI (Lease 1)  
less 58-1/3% x 1.25% x 8/8 ORI (Asn. 1)

Enerstar Resources  
O&G, L.L.C. .... 35-5/12% x 13/16 WI (Lease 1)

Discovery Exploration ..... 6.25% x 13/16 WI (Lease 1)  
less 6.25% x 1.25% x 8/8 ORI (Asn. 2)

(b) Overriding Royalty Interest:

Enerstar Resources  
O&G, L.L.C. .... 58-1/3% x 1.25% x 8/8 ORI (Asn. 1)  
plus 6.25% x 1.25% x 8/8 ORI (Asn. 2)

II. Tract 2 - That part of the NW/4 of Section 7 lying West of the centerline of the AT&SF Railroad Right-of-Way, SAVE AND EXCEPT Tract 3 described below:

(a) Working Interest:

Fasken Land  
and Minerals,  
Ltd. .... 58-1/3% x 139/144 x 13/16 WI (Leases 2-12)  
less 58-1/3% x 139/144 x 1.25% x 8/8 ORI (Asn. 1)

Enerstar  
Resources  
O&G, L.L.C. .. 35-5/12% x 139/144 x 13/16 WI (Leases 2-12)

Discovery  
Exploration ..... 6.25% x 139/144 x 13/16 WI (Leases 2-12)  
less 6.25% x 139/144 x 1.25% x 8/8 ORI (Asn. 2)

Unleased ..... 5/144

(b) Overriding Royalty Interest:

Enerstar  
Resources O&G,  
L.L.C. .... 58-1/3% x 139/144 x 1.25% x 8/8 ORI (Asn. 1)  
plus 6.25% x 139/144 x 1.25% x 8/8 ORI (Asn. 2)

III. Tract 3 - All of that portion of the captioned land described in that certain Judgment filed in Cause No. 24439 in the District Court of the Fifth Judicial District of Eddy County, New Mexico styled State of New Mexico, ex rel State Highway Commission of New Mexico v. Martin Villa, et al., a certified copy of which is recorded in Volume 58, Page 923 of the Miscellaneous Records of Eddy County, New Mexico:

Unleased ..... All\*

\*See Requirement 2.

ASSIGNMENT HISTORY

1. By Assignment of Oil and Gas Leases dated effective April 1, 2001, recorded 416 ECR 317, Eddy County, New Mexico, Enerstar Resources O&G, L.L.C., as Assignor, assigned to Fasken Land and Minerals, Ltd., as Assignee, an undivided 58-1/3% of all interest in Leases 1 through 12 analyzed above, reserving an overriding royalty interest equal to the difference between 20% of 8/8 and existing burdens of record. The intent is to deliver a net revenue interest of 80% in and to the 58-1/3% interest in the leases assigned. This Assignment is made subject to that certain Participation Agreement dated March 1, 2001, between Assignor and Assignee.
2. By Assignment of Oil and Gas Leases dated April 27, 2001, recorded 416 ECR 1160, Eddy County, New Mexico, Enerstar Resources O&G, L.L.C., as Assignor, assigned to Discovery Exploration, as Assignee, an undivided 6.25% of all interest in Leases 1 through 12 analyzed above, reserving an overriding royalty interest equal to the difference between 20% of 8/8 and existing burdens of record. The intent is to deliver a net revenue interest of 80% in and to the 6.25% interest in the leases assigned. This Assignment is made subject to that certain Participation Agreement and Operating Agreement dated March 1, 2001, between Fasken Oil and Ranch, Ltd. and Enerstar Resources O&G, L.L.C.

EASEMENTS AND RIGHTS-OF-WAY

1. Right-of-Way Deed dated March 20, 1891, recorded in Vol. B, Page 309 of the Deed Records of Eddy County, New Mexico, from Mary E. Tansill, et vir, Robert W. Tansill, to The Pecos Valley Railway Company conveying a right-of-way for construction of a railroad across Section 7.
2. Grant of Right-of-Way Easement dated March 25, 1935, recorded 64 DR 265, Eddy County, New Mexico, from W. A. Moore, et ux, Martie Moore, to the State of New Mexico, conveying an easement and right-of-way across part of Section 7 and others for a highway.
3. Easement and Right-of-Way dated January 2, 1968, recorded 20 DR 357, Eddy County, New Mexico, from Martin Villa to Southwestern Public Service Company conveying a right-of-way and easement for a power line across the SW/4 NW/4 of Section 7, among other lands.
4. Easement dated June 25, 1973, recorded 215 DR 257, Eddy County, New Mexico, from Draper Brantley, et ux, Irene Brantley, to United States of America, conveying a right-of-

way for canal purposes across the N/2 N/2 and NW/4 of Section 7, among other lands.

5. By Right-of-Way and Easement dated July 15, 1982, recorded 253 DR 646, Eddy County, New Mexico, Draper Brantley, Sr. conveyed to El Paso Natural Gas Company a pipeline right-of-way and easement across the W/2 NE/4 of Section 7, among others.
6. Grant of Easement dated December 11, 1973, recorded 217 DR 158, Eddy County, New Mexico, from Juan H. Villa and Ignacia DeLaRosa Villa to the United States of America, conveying a right-of-way for canal purposes across the W/2 W/2 of Section 7, among others.

You should locate all easements, including all easements apparent from a visual inspection on the ground and should avoid the same in connection with your operations.

#### OPERATING AGREEMENT

Nothing submitted.

#### LIENS AND ENCUMBRANCES

1. A portion of the interests credited herein to George Brantley and John Draper Brantley, Jr. are subject to that certain Federal Tax Lien evidenced by Notice of Federal Estate Tax Lien dated January 29, 2001, recorded 405 ECR 84, Eddy County, New Mexico. The United States of America filed a lien against the interest in the captioned land owned by the Estate of Irene R. Brantley.
2. The interest credited herein to Juan H. Villa, et ux, Ignacia DeLaRosa Villa, is subject to that certain Real Estate Mortgage for New Mexico dated February 3, 1972, recorded in Vol. 260, Page 16 of the Mortgage Records of Eddy County, New Mexico, from Juan H. Villa, et ux, Ignacia DeLaRosa Villa, to the United States of America, acting through Farmers Home Administration, covering Tract 2 described above under Fee Title. Said Mortgage secures a promissory note dated February 3, 1972, in the principal amount of \$40,500, which is due February 3, 2012.
3. The interest credited herein to Rose Ann Jimenez is subject to that certain Judgment Lien resulting from Judgment dated December 28, 1989, filed August 25, 2000, 391 ECR 705, Eddy County, New Mexico. The judgment is in the amount of \$2,829.75 and was rendered in that certain suit styled *Jenkins Furniture Co., Inc. v. Pedro Barron and Wanda Barron* filed in Cause No. 03-01-78-0401B in the Magistrate Court of Eddy County, New Mexico.

#### POSSESSION

You are on notice of the rights of parties in possession and prior to commencing any drilling operations, you should make a visual inspection on the ground to determine the existence and location of such parties and their claim, if any, and avoid any unreasonable interference with same.



TITLE REQUIREMENTS

1.

Your attention is directed to Leases 1 through 12 analyzed above. The land covered by each of said leases is described as being the N/2 of Section 7, Township 23 South, Range 28 East, Eddy County, New Mexico. The lessors in Lease 1 only own an interest in all of the NE/4 and all of the NW/4 of Section 7, save and except that part of the NW/4 lying West of the centerline of the railroad right-of-way, while the lessors of Leases 2 through 12 only own an interest in those lands in the NW/4 of Section 7 lying West of the centerline of the Railroad right-of-way. Additionally, all of the leases incorrectly describe the acreage covered by each lease. It appears that the parties inserted the net mineral acres owned by the lessor rather than the gross acres covered by the lease. All of the above analyzed leases should be amended to cure these problems.

Except for Lease 2 analyzed above, the leases were executed by the various lessors without the joinder of their spouses. In New Mexico, a conveyance (including execution of an oil and gas lease) of community property by one spouse without the joinder of the other spouse is void. Property acquired during marriage is presumptively community property. The only parties who have executed oil and gas leases who hold the property clearly as their separate property are John Draper Brantley, Jr. (one of the lessors of Lease 1), Bill Lara (Lease 4), Julian Aguilar (Lease 8) and Rose Ann Jimenez (Lease 11). In the Amendments discussed in the first paragraph of this requirement, the spouses of all of the lessors should join in the execution of such amendments. In New Mexico because of the severe consequences resulting from the failure of a spouse to join in a conveyance of community property, it is a better practice to have spouses join in all conveyances even if the property is clearly separate property of such party. If property is not clearly the separate property of a spouse, it is imperative that the spouse join in the conveyance, including execution of oil and gas leases.

REQUIREMENT: (a) Submit for our examination and then record in Eddy County, New Mexico, amendments and ratifications, containing present words of grant, of Leases 1 through 12 analyzed above executed by the lessors and their spouses. The description in Lease 1 should be amended to provide as follows:

All of the NE/4 and all of the NW/4 of Section 7, Township 23 South, Range 28 East, Eddy County, New Mexico, save and except that portion of the NW/4 of Section 7 lying West of the centerline of the AT&SF Railroad Right-of-Way.

Leases 2 through 12 should be amended to describe the land covered thereby as follows:

All of that portion of the NW/4 of Section 7, Township 23 South, Range 28 East, Eddy County, New Mexico, lying West of the centerline of the AT&SF Railroad Right-of-Way.

- (b) The amendment and ratification called for in (a) above should correctly describe the estimated acreage covered by the lease.

2.

This requirement affects the interest credited herein to the State of New Mexico in Tract 3 described above under Fee Title. The materials examined contain that certain Judgment rendered in Cause No. 24439 on January 5, 1968 in the District Court of the Fifth Judicial District, Eddy County, New Mexico, in that certain suit styled *State of New Mexico, ex rel State Highway Commission of New Mexico, Petitioner, v. Martin Villa, et al., Defendants*. A certified copy of the Judgment is recorded in Volume 58, Page 923 of the Miscellaneous Records of Eddy County, New Mexico. We have attached a copy of said judgment hereto as Exhibit "A" for your convenience. Pursuant to said judgment, the State of New Mexico was awarded title to the lands described in the judgment. The original petition filed in said suit appears to indicate that the condemnation action would not cover oil, gas and other minerals. However, said petition is not entirely clear. Additionally, and more importantly, the judgment itself did not except oil, gas and other minerals but instead adjudged the State of New Mexico to be the owner in fee simple of the property described therein. At the time of the judgment, Martin Villa, et ux Cruz H. Villa, only owned a 1/4 mineral interest in said land. However, said judgment purportedly vested fee simple title in the lands described therein in the State of New Mexico. The suit was against not only the defendants, but "any and all unknown persons or claimants of interest in and to the property interest herein sought to be acquired". Notice was given to such defendants via publication. Thus, arguably the judgment also covered the other 3/4 mineral interest in the lands described in the judgment. Thus, in order to be certain that the tract described in the judgment is effectively leased, an oil and gas lease should be obtained from the State of New Mexico.

- REQUIREMENT:** (a) Submit for our examination and record in Eddy County, New Mexico, an oil and gas lease executed by the State of New Mexico covering Tract 3 described above under Fee Title.
- (b) In the event of production, a stipulation of interest should be executed by the State of New Mexico and by the owners of Tract 2 stipulating as to the parties' ownership in Tract 3.

3.

This requirement affects a portion of the interest credited herein to George Brantley and a portion of the interest credited herein to John Draper Brantley, Jr. Said parties are the lessors in Lease 1. The materials examined contain that certain Notice of Federal Estate Tax Lien dated January 29, 2001, recorded 405 ECR 84, Eddy County, New Mexico, filed by the United States of America against the Estate of Irene R. Brantley. At the time of her death, Irene R. Brantley owned an undivided 1/6 mineral interest in all of the NE/4 of Section 7 and all of the NW/4 of Section 7 except that portion of the NW/4 of Section 7 lying west of the railroad right-of-way.

- REQUIREMENT:** Submit for our examination and then record in Eddy County, New Mexico, a release of the federal tax lien noted above as to the lands noted above. In

the alternative, submit for our examination and then record in Eddy County, New Mexico, a subordination agreement whereby the United States of America subordinates its lien to Lease 1 analyzed herein, as amended.

4.

This requirement affects Lease 2 and the interest credited herein to Juan H. Villa and Ignacia DeLaRosa Villa, as joint tenants with right of survivorship. The materials examined contain that certain Real Estate Mortgage for New Mexico dated February 3, 1972, recorded in Volume 260, Page 16 of the Mortgage Records of Eddy County, New Mexico, executed by Juan H. Villa, et ux Ignacia D. Villa aka Ignacia DeLaRosa Villa, as mortgagor, to the United States of America acting through the Farmers Home Administration, as mortgagee. Said mortgage secures that certain Promissory Note dated February 3, 1972 in the principal amount of \$40,500.00 with a maturity date of February 3, 2012.

**REQUIREMENT:** Submit for our examination and then record in Eddy County, New Mexico, a release of the above described mortgage insofar as said mortgage covers Tract 2 described above under Fee Title. In the alternative, submit for our examination and then record in Eddy County, New Mexico, a subordination agreement wherein the United States of America subordinates its lien to Lease 2 analyzed above, as amended.

5.

This requirement affects Lease 11 and the interest credited herein to Rose Ann Jimenez. The interest credited herein to Rose Ann Jimenez was previously owned of record by Wanda Jimenez Barron formerly known as Wanda Jimenez. The materials examined contain that certain certified copy of Default Judgment dated December 28, 1989, filed August 25, 2000, 391 ECR 705, Eddy County, New Mexico. Said default judgment was taken in Cause No. 03-01-78-0401B in the Magistrate Court, Eddy County, New Mexico in that suit styled *Jenkins Furniture Co., Inc. v. Pedro Barron and Wanda Barron*. The total judgment is in the amount of \$2,829.75. Although it is not entirely clear that the filing of a certified copy of the default judgment complies in all respects with the statutory requirements for the establishment of a judgment lien, a release of said lien or a subordination of said lien to Lease 11 should be obtained.

**REQUIREMENT:** Submit for our examination and then record in Eddy County, New Mexico, a release of the above referenced judgment lien or a subordination of such lien wherein the plaintiff in said suit subordinates its lien to Lease 11 analyzed above.

6.

The materials examined contain the following oil and gas leases, all of which are unreleased of record, which are past the expiration of their primary terms:

- (a) Oil and Gas Lease dated December 10, 1986, recorded in Volume 272, Page 1160 of the Miscellaneous Records of Eddy County, New Mexico, from John Draper Brantley, Jr. and George Brantley, as lessor, to R. F. Fort, as lessee,

covering all of the N/2 of Section 7 lying north and east of U.S. Highway No. 285 for a 2 year primary term;

- (b) Oil and Gas Lease dated March 13, 1990, recorded 67 ECR 750, Eddy County, New Mexico, from John Draper Brantley, Jr. and George Brantley, as lessor, to R. F. Fort, as lessee, covering all of the N/2 of Section 7 lying north and east of U.S. Highway No. 285 for a primary term of 2 years from December 10, 1990;
- (c) Oil and Gas Lease dated February 11, 1997, recorded 276 ECR 47, Eddy County, New Mexico, from John Draper Brantley, Jr. and George H. Brantley, as lessor, to OXY USA Inc., as lessee, covering all of the N/2 of Section 7 lying north and east of U.S. Highway 285 for a primary term of 18 months;
- (d) Oil and Gas Lease dated December 15, 1986, recorded in Volume 273, Page 655 of the Miscellaneous Records of Eddy County, New Mexico, from Margaret V. Dowling and Carlsbad National Bank, Trustee, as lessor, to R. F. Fort, as lessee, covering the SW/4 NW/4 of Section 7, lying south and west of the AT&SF Railroad right-of-way for a 2 year primary term;
- (e) Oil and Gas Lease dated March 13, 1990, recorded 67 ECR 755, Eddy County, New Mexico, from Margaret V. Dowling and Carlsbad National Bank, Trustee, as lessor, to R. F. Fort, as lessee, covering the SW/4 NW/4 of Section 7 lying south and west of AT&SF Railroad right-of-way for a 2 year primary term from December 15, 1990;
- (f) Oil and Gas Lease dated February 11, 1997, recorded 306 ECR 148, Eddy County, New Mexico, from Margaret V. Dowling, as lessor, to OXY USA Inc., as lessee, covering SW/4 NW/4 of Section 7 lying south and west of AT&SF Railroad right-of-way for a primary term of 18 months;
- (g) Oil and Gas Lease dated December 21, 1957, recorded 85 OGR 494, Eddy County, New Mexico, from Frances V. Dowling, et al., as lessor, to Donald E. Blackmar, as lessee, covering that part of SW/4 NW/4 of Section 7 lying west and south of the right-of-way of the AT&SF Railroad for a primary term of 10 years;
- (h) Oil and Gas Lease dated December 15, 1986, recorded in Volume 273, Page 660 of the Miscellaneous Records of Eddy County, New Mexico, from Juan H. Villa, et ux Ignacia Villa, as lessor, to R. F. Fort, as lessee, covering the SW/4 NW/4 of Section 7 lying south and west of the AT&SF Railroad right-of-way for a 2 year primary term, with the right to extend the primary term an additional 2 years;
- (i) Oil and Gas Lease dated March 13, 1990, recorded 67 ECR 759, Eddy County, New Mexico, from Juan H. Villa, et ux Ignacia Villa, as lessor, to R. F. Fort, as lessee, covering the SW/4 NW/4 of Section

7 lying south and west of AT&SF Railroad right-of-way for a primary term of 2 years from December 15, 1990;

- (j) Oil and Gas Lease dated February 11, 1997, recorded 276 ECR 45, Eddy County, New Mexico, from Juan H. Villa, et ux Ignacia Villa, as lessor, to OXY USA Inc., as lessee, covering the SW/4 NW/4 of Section 7 lying south and west of the AT&SF Railroad right-of-way for a primary term of 18 months;
- (k) Oil and Gas Lease dated July 14, 1980, recorded in Volume 188, Page 327 of the Miscellaneous Records of Eddy County, New Mexico, from Paul Montoya, et ux Sally A. Montoya, as lessor, to R. C. Roberts, as lessee, covering that part of the SW/4 NW/4 of Section 7, lying west and south of AT&SF Railroad right-of-way for a primary term of 3 years from December 13, 1980;
- (l) Oil and Gas Lease dated December 15, 1986, recorded in Volume 273, Page 657 of the Miscellaneous Records of Eddy County, New Mexico, from Paul Montoya, et al., as lessor, to R. F. Fort, as lessee, covering SW4 NW/4 of Section 7 lying south and west of the AT&SF Railroad right-of-way for a primary term of 2 years;
- (m) Oil and Gas Lease dated March 15, 1990, recorded 67 ECR 763, Eddy County, New Mexico, from Paul Montoya, et al., as lessor, to R. F. Fort, as lessee, covering the SW/4 NW/4 of Section 7 lying south and west of AT&SF Railroad right-of-way for a primary term of 2 years from December 15, 1990;
- (n) Oil and Gas Lease dated August 11, 1988, recorded 27 ECR 1197, Eddy County, New Mexico, from Esther Aguilar, as lessor, to R. F. Fort, as lessee, covering the SW/4 NW/4 of Section 7 lying south and west of AT&SF Railroad right-of-way for a primary term of 2 years;
- (o) Oil and Gas Lease dated March 15, 1990, recorded 67 ECR 767, Eddy County, New Mexico, from Esther Aguilar, as lessor, to R. F. Fort, as lessee, covering the SW/4 NW/4 of Section 7 lying south and west of AT&SF Railroad right-of-way for a primary term of 2 years from August 11, 1990;
- (p) Oil and Gas Lease dated February 11, 1997, recorded 277 ECR 265, Eddy County, New Mexico, from Esther Aguilar, as lessor, to OXY USA Inc., as lessee, covering the SW/4 NW/4 of Section 7 lying south and west of AT&SF Railroad right-of-way for a primary term of 18 months;
- (q) Oil and Gas Lease dated February 11, 1997, recorded 278 ECR 347, Eddy County, New Mexico, from Wanda Jimenez, as lessor, to OXY USA Inc., as lessee, covering SW/4 NW/4 of Section 7 lying south and west of AT&SF Railroad right-of-way for a primary term of 18 months;
- (r) Oil and Gas Lease dated February 11, 1997, recorded 278 ECR 349, Eddy County, New Mexico,

from Martha Gomez, as lessor, to OXY USA Inc., as lessee, covering SW/4 NW/4 of Section 7 lying south and west of AT&SF Railroad right-of-way for a primary term of 18 months;

- (s) Oil and Gas Lease dated February 11, 1997, recorded 278 ECR 351, Eddy County, New Mexico, from Lee Montoya, et ux Ramona Montoya, as lessor, to OXY USA Inc., as lessee, covering SW/4 NW/4 of Section 7 lying south and west of AT&SF Railroad right-of-way for a primary term of 18 months;
- (t) Oil and Gas Lease dated February 11, 1997, recorded 278 ECR 353, Eddy County, New Mexico, from Julian M. Aguilar, individually and as personal representative of the Estate of Chon Aguilar, as lessor, to OXY USA Inc., as lessee, covering SW/4 NW/4 of Section 7 lying south and west of AT&SF Railroad right-of-way for a primary term of 18 months;
- (u) Oil and Gas Lease dated February 11, 1997, recorded 278 ECR 355, Eddy County, New Mexico, from Juanita Peliez, as lessor, to OXY USA Inc., as lessee, covering SW/4 NW/4 of Section 7 lying south and west of AT&SF Railroad right-of-way for a primary term of 18 months;
- (v) Oil and Gas Lease dated February 11, 1997, recorded 278 ECR 357, Eddy County, New Mexico, from David Montoya, et ux Carman Montoya, as lessor, to OXY USA Inc., as lessee, covering SW/4 NW/4 of Section 7 lying south and west of AT&SF Railroad right-of-way for a primary term of 18 months;
- (w) Oil and Gas Lease dated February 11, 1997, recorded 278 ECR 383, Eddy County, New Mexico, from Paul Montoya, as lessor, to OXY USA Inc., as lessee, covering all of SW/4 NW/4 of Section 7 lying south and west of AT&SF Railroad right-of-way for a primary term of 18 months; and
- (x) Oil and Gas Lease dated February 11, 1997, recorded 282 ECR 931, Eddy County, New Mexico, from Bill M. Lara, individually and as personal representative of the Estate of Felicita Montoya Lara, as lessor, to OXY USA Inc., as lessee, covering SW/4 NW/4 of Section 7 lying south and west of AT&SF Railroad right-of-way for a primary term of 18 months.

You should conduct an investigation to verify that the above described leases have expired pursuant to their own terms.

**REQUIREMENT:** Submit for our examination and then record in Eddy County, New Mexico, an affidavit of non-development and non-production stating facts sufficient to show, if true, that all of the above described leases have expired pursuant to their own terms.

7.

This requirement affects Lease 3 and a portion of the interest credited herein to Margaret V. Dowling. The materials examined contain that certain Special Warranty Deed dated September 3, 1992, recorded 133 ECR 588, Eddy County, New Mexico, from the Trust Department of the Carlsbad National Bank, Trustee under the Oscar J. Dowling and Frances V. Dowling Revocable Trust Agreement, as amended, as grantor, to Margaret V. Dowling, as grantee, which conveys an undivided 9/20 interest in all oil, gas and other minerals in and under the SW/4 NW/4 of Section 7 lying west and south of AT&SF Railroad right-of-way. We have not examined the trust agreement referenced above and are thus unable to verify the authority of the trustee to execute such conveyance.

**REQUIREMENT:** Submit for our examination the above referenced trust agreement so that we may verify that the trustee had the authority to execute the conveyance noted above at 133 ECR 588, Eddy County, New Mexico.

8.

This requirement affects Lease 6 and the interest credited herein to Esther Gomez Hernandez. The materials examined contain that certain Quitclaim Deed dated March 15, 2001, recorded 411 ECR 648, Eddy County, New Mexico, from Martha Gomez to Esther Gomez Hernandez conveying all of her interest in oil, gas and other minerals in the N/2 of Section 7. Martha Gomez was not joined by a spouse in such conveyance. In New Mexico, the conveyance of community property without the joinder of a spouse is void. Martha Gomez acquired her interest pursuant to that certain Mineral Deed from Paul T. Montoya, et ux Sally Montoya, which is dated October 16, 1981, effective April 16, 1981, recorded in Volume 250, Page 520 of the Miscellaneous Records of Eddy County, New Mexico. Such mineral deed recites that it is conveyed to the grantees (including Martha Gomez) as their separate property. However, we do not believe that this recitation standing alone is sufficient to overcome the community property presumption.

**REQUIREMENT:** (a) Submit for our examination and then record in Eddy County, New Mexico, an affidavit of marital history for Martha Gomez detailing her marital history.

(b) In the event Martha Gomez was married at the time she acquired her interest pursuant to the Mineral Deed recorded at Volume 250, Page 520 of the Miscellaneous Records of Eddy County, New Mexico, her spouse should ratify the Quitclaim Deed at 411 ECR 648, Eddy County, New Mexico.

9.

This requirement affects the 1/36 interest credited herein to Julian Aguilar (1/72) and Shawna Elizondo (1/72). It also affects Lease 8 analyzed above. This 1/36 mineral interest in Tract 2 was previously owned of record by Josephine Aguilar. The materials examined contain that certain Affidavit dated February 17, 1995, recorded 220 ECR 852, Eddy County, New Mexico executed by Chon Aguilar which states that he is the surviving spouse of Josefina M. Aguilar who died January 19, 1995. We have assumed that Josefina M. Aguilar is the same person as Josephine Aguilar

who previously owned the 1/36 mineral interest noted above. The affidavit at 220 ECR 852 indicates that no administration of the Estate of Josefina M. Aguilar was needed and that no federal or state taxes were due on said estate. The affidavit does not specifically state whether Josefina M. Aguilar died intestate or whether she left a will. If she left a will, said will should be examined to verify that she did not leave her interest in the land noted above to any party other than Chon Aguilar, Julian Aguilar or Shawna Elizondo. We have assumed that her only children were Julian Aguilar and Shawna Elizondo. The affidavit noted above does not state that such parties are her children. However, the materials examined also contain the probate proceedings for the Estate of Chon Aguilar who died December 4, 1995. His will indicates that his two children, by adoption, were Julian Aguilar and Shawna Elizondo. He left the residue of his estate to such children, equally. We have examined no evidence that all federal estate taxes due in connection with his estate have been paid.

- REQUIREMENT:**
- (a) Submit for our examination and then record in Eddy County, New Mexico, an affidavit of heirship detailing the marital history and heirship of Josefina M. Aguilar who died January 19, 1995. The affidavit should specifically state that Josefina M. Aguilar died intestate if that is true. Additionally, the affidavit should state, if true, that Josephine Aguilar is the same person as Josefina M. Aguilar.
  - (b) In the event Josefina M. Aguilar died leaving a will, submit such will to us for our examination.
  - (c) Submit for our examination and then record in Eddy County, New Mexico, evidence that all federal estate taxes due in connection with the Estate of Chon Aguilar have been paid or that none were due.

10.

This requirement affects the interest credited herein to Adela Dobkins, Hope Morningstar, Joe Lara and Bill Lara. It also affects Lease 4 analyzed above. This 1/36 mineral interest in Tract 2 (more particularly described above under Fee Title) was previously owned of record by Felista Lara. You submitted for our examination a photocopy of the Will of Felicita Montoya Lara. We have examined no evidence that said will has been probated. Additionally, we have examined no evidence concerning the date of death of Felicita Montoya Lara. We have assumed that Felista Lara is the same person as Felicita Montoya Lara.

Felista Lara acquired her interest as one of the grantees in that certain Mineral Deed dated October 16, 1981, effective April 16, 1981, recorded in Volume 250, Page 520 of the Miscellaneous Records of Eddy County, New Mexico, from Paul T. Montoya and Sally Montoya. The deed at 250/520 recites that it is conveyed to each grantee as such grantee's separate property. However, we do not believe that this recitation standing alone is sufficient to overcome the community property presumption. The Will of Felicita Montoya Lara, which you submitted for our examination, indicates that Felicita was married one time to Joe D. Lara who predeceased her in December of 1981. Such date is subsequent to the time she acquired her interest in the captioned land. Thus, the interest acquired in Tract 2 was presumptively community



property of Felicita Montoya Lara and Joe D. Lara. We have not examined the probate proceedings for Joe D. Lara. The Will of Felicita Montoya Lara leaves the residue of her estate to her four children in equal shares, namely, Adela Dobkins, Hope Morningstar, Joe Lara and Bill Lara. As noted above, we have not examined the probate proceedings for Felicita Montoya Lara.

Lease 4 analyzed above was executed by Bill M. Lara as attorney-in-fact for Billy Lara. We are unable to determine why this lease was executed by Bill Lara as attorney-in-fact for Billy Lara. Additionally, we have not examined the power of attorney appointing Bill M. Lara as attorney-in-fact for Billy Lara. As noted above, we have credited an interest to Bill Lara in Tract 2. We do not know if Bill Lara to whom we have credited an interest is the same as Billy Lara.

- REQUIREMENT:**
- (a) Submit for our examination the probate proceedings for the Estates of Joe D. Lara and Felicita Montoya Lara. Additionally, ancillary probate proceedings for said parties should be conducted in Eddy County, New Mexico if said parties' estates were probated outside of New Mexico. In the event they were probated in New Mexico, a notice of probate for each estate should be filed in Eddy County, New Mexico.
  - (b) Submit for our examination an affidavit of identity stating facts sufficient for us to determine whether Billy Lara who is named as lessor in Lease 4 is the same person as Bill Lara to whom we have credited an interest in Tract 2. Additionally, the affidavit should state facts sufficient for us to determine whether Bill M. Lara who executed as attorney-in-fact for Billy Lara in Lease 4 is the same person to whom we have credited an interest in the captioned land. In the event Bill Lara, to whom we have credited an interest herein, has transferred his interest in Tract 2 to Billy Lara, then said instrument should be recorded in Eddy County, New Mexico. If this interest is still owned by Bill Lara, it will be necessary to obtain a ratification from Bill Lara ratifying Lease 4, as amended.
  - (c) In the event this interest has been transferred from Bill Lara (to whom we have credited an interest herein) to Billy Lara, submit for our examination and then record in Eddy County, New Mexico, the power of attorney pursuant to which Bill Lara was acting in connection with the execution of Lease 4, along with evidence that Billy Lara was alive and competent at the time said lease was executed and that the power of attorney had not been revoked.
  - (d) We reserve further requirements pending our examination of the materials submitted in connection with this requirement.

11.

Assignment 1 analyzed above is made subject to that Participation Agreement dated March 1, 2001 between Enerstar Resources O&G, L.L.C. and Fasken Land and Minerals, Ltd. We have not examined said unrecorded agreement. Additionally, in Assignment 1 the signature line for Enerstar Resources O&G, L.L.C. indicates that Tommy Folsom is president of Enerstar while the acknowledgment indicates that he is manager/member of said entity. Additionally, the acknowledgment for Enerstar indicates that it is a New Mexico corporation rather than a New Mexico limited liability company.

Assignment 2 analyzed above is made subject to that certain unrecorded Participation Agreement and Operating Agreement dated March 1, 2001 between Fasken Oil and Ranch, Ltd. and Enerstar Resources O&G, L.L.C. We have not examined said unrecorded agreements. Additionally, the acknowledgment for Enerstar indicates that the entity is a New Mexico corporation rather than a limited liability company.

- REQUIREMENT:**
- (a) Submit for our examination the unrecorded agreements referenced in Assignments 1 and 2 analyzed above or satisfy yourself that such agreements do not contain any restrictions on assignability and do not change the ownership reflected herein or otherwise adversely affect such ownership.
  - (b) Assignments 1 and 2 analyzed above should be re-acknowledged and re-recorded in Eddy County, New Mexico to cure the defects in the acknowledgments noted above.

12.

This requirement involves strangers to title. The materials examined contain a Quitclaim Deed dated March 10, 1986, recorded 265 ECR 829, Eddy County, New Mexico executed by Ramon Gomez, Jr., et ux Rebecca A. Gomez, to George E. Walker. Pursuant to said deed the grantors convey all of their interest in oil, gas and other minerals in Section 7, among other lands. Ramon Gomez, Jr., et ux Rebecca A. Gomez, and George E. Walker are all strangers to title. We have assumed that said parties claim no interest in the captioned land.

- REQUIREMENT:** Conduct an investigation to satisfy yourself that the parties noted above claim no interest in the captioned land.

13.

The materials examined contain that certain Mortgage dated March 9, 1981, recorded in Volume 315, Page 430 of the Miscellaneous Records of Eddy County, New Mexico, executed by Juan H. Villa, et ux Ignacia DeLaRosa Villa, as mortgagor, to Commerce Bank and Trust, as mortgagee, covering Tract 2 described above under Fee Title. Said mortgage secures a Promissory Note dated March 9, 1981 in the principal amount of \$15,000.00. The materials examined also contain certain Release of Mortgage dated December 13, 1990, recorded 83 ECR 434, executed by Western Commerce Bank. Said release purports to release that certain Mortgage dated December 11, 1990, recorded in Volume 315, Page 430 of the Eddy County Records, between Western Commerce Bank and Juan H. Villa, et ux Ignacia DeLaRosa Villa. We have assumed that this release releases the mortgage recorded at Volume 315,

Page 430 of the Miscellaneous Records of Eddy County, New Mexico. However, the wrong date is referenced in the release and we have examined no evidence that Commerce Bank and Trust became Western Commerce Bank.

Additionally, the materials examined contain those certain Financing Statements recorded in Volume 379, Page 232 of the Miscellaneous Records of Eddy County, New Mexico, 17 ECR 627 and 41 ECR 297, Eddy County, New Mexico, between Juan H. Villa and Ignacia DeLaRosa Villa, as debtor, and Western Commerce Bank, as secured party. Said financing statements purport to cover Tract 2 described above under fee title. The materials examined contain no terminations of such financing statements. The last of said financing statements was filed March 17, 1989. We have assumed that said financing statements relate to the above referenced mortgage which we have assumed was released.

**REQUIREMENT:** Satisfy yourself that Commerce Bank and Trust and/or Western Commerce Bank claim no lien on the interest of Juan H. Villa and Ignacia DeLaRosa Villa pursuant to the instruments noted above.

14.

This requirement is a production requirement only. This requirement affects the interest credited herein to George Brantley and John Draper Brantley, Jr. Said parties acquired their interest pursuant to the probate of the Estates of Draper Brantley and Irene Brantley and pursuant to the following conveyances:

- (a) Warranty Deed dated March 8, 1978, recorded 234 DR 144, Eddy County, New Mexico, from Draper Brantley and Irene Brantley to George Brantley;
- (b) Quitclaim Deed dated February 4, 1986, recorded 265 DR 815, Eddy County, New Mexico, from Irene Remmers Brantley, a widow and as Personal Representative of the Estate of John Draper Brantley, Sr., to John Draper Brantley, Jr.; and
- (c) Co-Personal Representatives' Deed and Co-Trustees' Deed dated December 30, 1999, recorded 371 ECR 777, Eddy County, New Mexico, from John Draper Brantley, Jr. and George Henry Brantley, Co-Personal Representatives of the Estate of Irene Remmers Brantley and Co-Trustees of the John Draper Brantley, Sr. Testamentary Trust, to John Draper Brantley, Jr. (1/2) and George Henry Brantley (1/2).

The probate of the estates noted above and the conveyances noted above create some confusion as to how George Brantley and John Draper Brantley, Jr. own the mineral interest in Tract 1. In the event of production, prior to disbursing proceeds attributable to the royalty interest in Tract 1, a stipulation of interest should be executed by George Brantley and his spouse and John Draper Brantley, Jr. and his spouse.

**REQUIREMENT:** In the event of production, submit for our examination an then record in Eddy County, New Mexico, a stipulation of interest executed by George Brantley and his spouse and John Draper Brantley, Jr. and his spouse, stipulating as to their ownership of the mineral estate in Tract 1 described above under Fee Title.

15.

Your attention is directed to the additional provisions added to Lease 1 above and specifically Paragraphs 4 and 5 therein. Although said provisions are not entirely clear, it appears that they are partial termination provisions which are triggered at the end of the primary term. You should take such provisions into consideration in connection with your operations.

REQUIREMENT: Advisory.

16.

We have not credited Devon Energy Corporation with an interest in the captioned land.

REQUIREMENT: At such time as you acquire an interest in the captioned land, a final check of the records should be conducted to verify that no instruments adversely affecting the interests credited herein have been filed of record since the closeout date of this opinion. Your assignment should be recorded in Eddy County, New Mexico.


COMMENTS

1. There are several instruments in the early chain of title (1920s, 1930s and 1940s) which contain certain description irregularities. Because of the difficulty in curing such defects and because of the likelihood that all such defects have been cured by limitations, we are making no requirement in this regard. We assume you are willing to rely on limitations title to cure any such defects.
2. The materials examined contain numerous conveyances which purport to convey that portion of the SW/4 NW/4 of Section 7 lying west of the railroad right-of-way or that portion of the NW/4 of Section 7 lying north and east of the railroad right-of-way. We have treated such conveyances as conveying the property to the centerline of the right-of-way based on the "strip and gore" doctrine. Such doctrine provides that a conveyance of land abutting on a road, highway, alley or other way is presumed to convey the fee to the centerline of the way.
3. This opinion does not purport to cover such matters as actual acreage, location upon the ground, conflicts, vacancies or encroachments, the same being determinable only upon an actual ground survey. We assume that you will have the captioned land carefully surveyed on the ground by a competent surveyor or engineer before commencing development operations on captioned land.
4. This opinion does not cover any matters not revealed by the materials examined, such as undisclosed liens, genuineness of instruments, prior dedication of gas to interstate commerce, the price of either oil or gas produced and marketed from the premises, the number and depth of wells, surface or subsurface location of wells, boundaries, surveys, conflicts, vacancies, access, rights of parties in possession or other matters which can only be determined by an investigation upon the ground or by a survey of the land.

5. This opinion is limited in its coverage of the mineral estate to oil and gas underlying captioned land and does not cover other minerals.
6. This opinion does not attempt to address the question of potential liability for environmental contamination which may be imposed upon any past, present and/or subsequent owner or operator of the property without evidence of negligence or actual contribution to the contaminating event.
7. This opinion is rendered to, and for the sole benefit of, the addressee herein who constitutes the only client of this firm for whom such opinion was rendered.
8. The abstracts examined in connection with this opinion are being returned herewith.

Very truly yours,

COTTON, BLEDSOE, TIGHE & DAWSON, P.C.

By:   
Albert E. Sherman

AES/kk  
Enclosures