

BEFORE THE OIL CONSERVATION DIVISION
DEPARTMENT OF ENERGY AND MINERALS
STATE OF NEW MEXICO

RECEIVED

MAY - 6 2004

APPLICATION OF FULFER OIL & CATTLE
CO. TO STAY ADMINISTRATIVE ORDER
NSP-1871 AND SET FOR HEARING YARBROUGH
OIL L.P. APPLICATION FOR A NON-STANDARD
160 JALMAT GAS POOL SPACING UNIT
COMPRISING THE N/2SW/4, SW/4SW/4
AND NW/4SE/4 OF SECTION 17, TOWNSHIP
23 SOUTH, RANGE 37 EAST, LEA COUNTY,
NEW MEXICO

Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

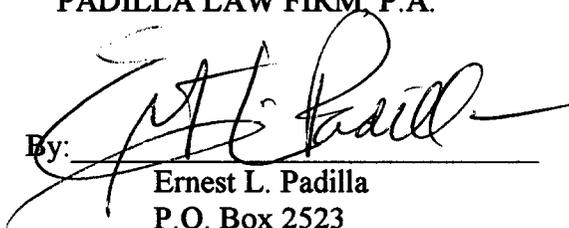
No. 13277

ENTRY OF APPEARANCE

The undersigned attorney, Ernest L. Padilla, Padilla Law Firm, P.A. hereby enters
his appearance on behalf of Yarbrough Oil L.P. on this 6th day of May, 2004.

Respectfully submitted,

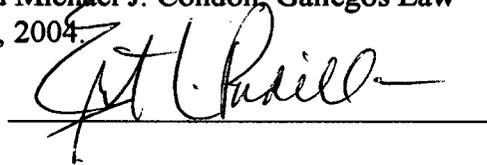
PADILLA LAW FIRM, P.A.

By: 

Ernest L. Padilla
P.O. Box 2523
Santa Fe, NM 87504-2523
(505) 988-7577

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing
pleading to be sent by facsimile to J.E. Gallegos and Michael J. Condon, Gallegos Law
Firm, P.C. at (505) 986-1367 on this 6th day of May, 2004.



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No. 13277

RESPONSE TO APPLICATION FOR IMMEDIATE STAY
OF ADMINISTRATIVE ORDER NSP-1871, OBJECTION TO THAT ORDER
REQUEST FOR PUBLIC HEARING ON THE APPLICATION OF
YARBROUGH OIL L.P. FOR A NON-STANDARD PRORATION UNIT,
JALMAT OIL POOL

For its response to the application herein, Yarbrough Oil, LP states:

A. Introduction.

The application of Fulfer Oil & Cattle Co. (Fulfer) seeks to protect its two wells in the Jalmat Gas Pool that was de-prorated by Order R-1870-P in December, 2001. Fulfer brings its application pursuant to Order R-1870-P under the special pool rules for Jalmat Gas Pool. Specifically, Fulfer complains that it did not receive notice for a non-standard proration unit pursuant to Rules 4(B) and 4(E). Fulfer primarily argues that the proration unit dedicated to the Yarbrough E.L. Steeler No. 4 is too old and has acreage in two different 160-acre subdivisions. It ignores the composition of other proration units surrounding the E.L. Steeler No. 4 proration unit, and most importantly, it ignores, regardless of nomenclature over the years, that all of the relevant wells are completed to produce from the same common source of supply.

In the interest of brevity, Yarbrough adopts the rationale of Michael E. Stogner, the Division's Chief Hearing Officer/Engineer, as contained in his May 4, 2004 letter to J.E. Gallegos, one of Fulfer's counsel. Mr. Stogner's is consistent with Rutter & Wilbanks v. Oil Conservation Commission, 87 NM 286, 289, 532 P.2d 582,585 (1975), rejecting the implication that the Commission's power to pool was limited in that case to 320-acre standard spacing units. In its application, Fulfer simply make no allegation of whether the E.L. Steeler No. 4. proration unit expired by reason of expiration of the underlying oil and gas lease or abandonment with the required intent. Simply stated, it is not unusual for operators of oil and gas wells to recomplete and apply new production techniques to zones or formations that have ceased to produce after other zones and formations have been developed and produced from the same wellbore, all in the interest of conservation of oil and gas.

B. Notice to Fulfer was not required.

Fulfer's application conveniently ignores the "grandfathering" provision of Rule 6(B) of the special rules for the Jalmat Gas Pool. Fulfer's application says that because there has been no production from the Jalmat Gas Pool for 28 years the proration unit created by Order R-479 has lapsed. Fulfer cites no authority to support this contention. Does a proration unit implicitly contain a habendum clause with a fee simple determinable estate found in a typical oil and gas lease? We have found no authority that a proration unit is an interest in real property which would live or die depending on oil and gas production. A proration or spacing unit is a creature of the oil and gas conservation statutes and regulations. *Id.* Order R-1870-P could have extinguished the

E.L. Steeler No. 4 well proration unit, but it did not. Instead that order “grandfathered” the proration unit.

In Santa Fe Exploration Company v. Oil Conservation Commission, 114 NM 103, 835 P.2d 819 (1992), the New Mexico Supreme Court held that notice of a second directional drilling attempt, without a prior hearing, was not a violation of procedural or substantive due process. In this case, since Fulfer is an operator in the Jalmat Gas Pool, it must have been or should have been familiar with the special pool rules for the pool. Fulfer’s application does not state whether Fulfer was operating its wells at the time that Order R-1870-P was promulgated. If it was, then it would have had an opportunity to be heard at the hearing of that case. If it was not, then it took subject to the existing rules. Through its application, Fulfer is collaterally attacking the “grandfathering” provision of Order R-1870-P. Fulfer’s application should not seek to attack Administrative Order NSP-1871, instead it should be an application to rescind Order R-479, which is a valid and existing order, and the “grandfathering” provision of Order R-1870-P.

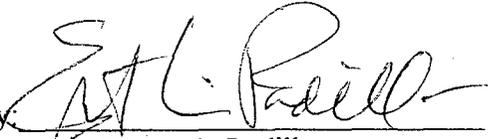
C. Conclusion.

Fulfer’s application is nothing more than a delaying tactic so that it can drain as much natural gas as it can since, by its own admission, it has recently fracture stimulated one of its own well. As long as Order R-479 has not been rescinded, the proration unit dedicated to the E.L. Steeler Well No. 4 is valid. Further, the well location is not unorthodox and there is certainly no notice requirement with respect to fracture stimulation of an oil and gas reservoir. To grant Fulfer’s application would impair Yarbrough’s ability to protect its correlative rights and deny it an opportunity to recover its fair share of oil and gas from an already depleted oil and gas pool.

Respectfully submitted,

PADILLA LAW FIRM, P.A.

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