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MICHAEL J. CONDON

April 17, 1998
(Our File No. 9-1.77)

VIA TELECOPY
Rand Carroll, Esq.
New Mexico Oil Conservation Division
2040 South Pacheco
Santa Fe, NM 87505

Re: Application of Pioneer Natural Resources, Case No. 11932

Dear Mr. Carroll:

We recently filed on behalf of Doyle Hartman, Oil Operator, a Motion to Dismiss Pioneer's Application for force pooling, and a Memorandum Brief in support of the Motion and in opposition to Pioneer's application. As Calder Ezzell has noted in recent correspondence, our pleadings mischaracterize the 40 acre tract at issue in Pioneer's application. I would appreciate it if you would note that all references in our pleadings to the NE/4 NW/4 should actually refer to the NE/4 SW/4. Thank you for your attention. If you need for us to take any other action, please let me know.

Very truly yours,

GALLEGOS LAW FIRM, P.C.

By Michael J. Condon
MICHAEL J. CONDON

MJC:sa
cc: Doyle Hartman
Calder Ezzell

BEFORE THE OIL CONSERVATION DIVISION

NEW MEXICO DEPARTMENT OF ENERGY,

MINERALS AND NATURAL RESOURCES

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION DIVISION FOR THE PURPOSE OF CONSIDERING:

CASE NO. 11932

APPLICATION OF PIONEER NATURAL RESOURCES USA, INC. FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.

MOTION TO DISMISS

Doyle and Margaret Hartman, d/b/a Doyle Hartman, Oil Operator ("Hartman"), by and through their attorneys, the Gallegos Law Firm, P.C., move the New Mexico Oil Conservation Division for its Order dismissing the application of Pioneer Natural Resources USA, Inc. ("Pioneer") for compulsory pooling for the forty (40) acre tract comprising the NE/4 NW/4 of Section 18, Township 20 South, Range 39 East, N.M.P.M., Lea County, New Mexico (the "subject tract"). In support of this Motion, Hartman states:

1. Compulsory pooling is unavailable to Pioneer for the acreage that Pioneer seeks to force pool in this matter. Hartman has issued to Pioneer a lease for the forty (40) acre subject tract at issue in Pioneer's Application under terms which are customary for Lea County, New Mexico, and which represent terms Pioneer has accepted from other lessors for this acreage.

2. By virtue of Hartman's agreement as reflected in the lease he has issued to Pioneer, Pioneer can immediately drill its well on the forty (40) acre tract at issue without invoking the police powers of the state in the form of a compulsory pooling order. Any decision by Pioneer to delay drilling and prosecute this force pooling proceeding constitutes an attempt by Pioneer to utilize the threat of governmental power to require Hartman to lease acreage outside the forty (40) acre tract and accept lease terms less favorable than those granted other lessors in the forty (40) acre tract.

3. Compulsory pooling is unavailable to Pioneer for the acreage that Pioneer seeks to force pool. Contrary to custom and practice before the Division, and in violation of Section 70-2-17(C) NMSA (1978), Pioneer has prematurely instituted a compulsory pooling action against Hartman without first undertaking a good faith and reasonable effort to reach a voluntary agreement with Hartman for the future development of the subject tract.

4. Hartman issued Pioneer a lease on the subject tract at issue in its compulsory pooling application on commercially reasonable terms consistent with the custom and practice in the industry, and on terms equivalent to those Pioneer has agreed to with other lessors. Circumstances between the parties concerning agreement or lack thereof touching on acreage outside the subject tract is entirely irrelevant, is beyond the preview and scope of NMSA 1978, § 70-2-17(C), and must be disregarded in this proceeding.

WHEREFORE, Hartman requests that the Division enter an Order dismissing the Application of Pioneer in this case.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By _____
J.E. GALLEGOS
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Attorneys for Doyle and Margaret Hartman

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of a Motion to Dismiss to be mailed on this 7th day of April, 1998, to the following counsel of record:

T. Calder Ezzell, Jr.
Hinkle, Cox, Eaton, Coffield & Hensley
Post Office Box 10
Roswell, New Mexico 88202

_____
Michael J. Condon

BEFORE THE OIL CONSERVATION DIVISION

NEW MEXICO DEPARTMENT OF ENERGY,

MINERALS AND NATURAL RESOURCES

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION DIVISION FOR THE PURPOSE OF CONSIDERING:

CASE NO. 11932

APPLICATION OF PIONEER NATURAL RESOURCES USA, INC. FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.

MEMORANDUM BRIEF IN SUPPORT OF HARTMAN'S MOTION TO DISMISS AND IN OPPOSITION TO APPLICATION OF PIONEER FOR COMPULSORY POOLING

Doyle and Margaret Hartman, d/b/a Doyle Hartman Oil Operator ("Hartman") by and through its under signed counsel, the Gallegos Law Firm, P.C., hereby submits its brief in support of its Motion to Dismiss and in Opposition to the Application of Pioneer Resources USA, Inc. ("Pioneer") for compulsory pooling, Lea County, New Mexico.

SUMMARY OF POSITION AND RELIEF REQUESTED:

This case concerns only the NE/4 NW/4 of Section 18, Township 20 North Range 39 East, NMPM, Lea County, New Mexico. NMSA 1978 § 70-2-17(C) provides that the OCD has the power to pool interests for development of land where the owners of such interests "have not agreed to pool their interests. . . ". The undisputed evidence in this case is that Hartman has agreed to pool his interest in the forty (40) acre tract at

issue in this proceeding under terms which are both customary for leases in this area, and consistent with terms which Pioneer has accepted from other lessors. Pioneer is thus free to drill on this tract without the need for any force pooling order. Force pooling is not available to Pioneer under the law, and the central question here is neither one of fact nor agency expertise, but one of correct application of law.

Pioneer's reluctance to drill with the lease Hartman has provided does not justify entry of an order force pooling Hartman to provide Pioneer with lease protection for undeveloped acreage outside the forty (40) acre tract. Implicit in § 70-2-17 is the requirement that an applicant such as Pioneer undertake a good faith effort to secure voluntary joinder prior to initiating force pooling proceedings. Indeed, the Division has consistently imposed an obligation on compulsory pooling applicants to undertake reasonable efforts to secure voluntary agreement or consent prior to initiating compulsory pooling applications.

Based upon the record in this case, and the evidence taken at the compulsory pooling hearing before the Division on April 2, 1998, it is clear that to the extent it has refused Hartman's lease, Pioneer has not undertaken a good faith effort to secure Hartman's voluntary participation in the drilling of the McCasland 18 Fee Well No. 11 ("McCasland well") on the forty (40) acre tract comprising the NE/4 NW/4 of Section 18, Township 20 South, Range 39 East, N.M.P.M., Lea County, New Mexico, which is the subject of Pioneer's Application.

Pioneer has <u>never</u> submitted a lease to Hartman which covers only the forty (40) acre tract at issue in its application. To the contrary, Pioneer has attempted to condition an agreement with Hartman involving this 40-acre tract on Hartman's

willingness to execute a lease on an additional eighty (80) acres of minerals outside the forty (40) acre tract at issue here. Pioneer initiated this force pooling proceeding two (2) weeks after Hartman first received notice from Pioneer of Pioneer's actual development plans for the acreage. Hartman submitted on April 1, 1998, a lease covering the forty (40) acre tract at issue in this application, under terms which are commercially reasonable and consistent with terms customarily negotiated between lessors and lessees in Lea County, New Mexico. Pioneer has rejected Hartman's lease because it wants him to execute a lease as to the 120-acre tract Pioneer ostensibly seeks to ultimately develop.

Pioneer cannot manipulate the police power of the sovereign embodied in the statutory compulsory pooling process to force a property owner to relinquish constitutionally protected rights in property outside the forty (40) acre tract in question.

FACTUAL BACKGROUND

The following undisputed facts support granting of Hartman's Motion to Dismiss Pioneer's Application and, alternatively, denial of Pioneer's Application:

1. EnerQuest Resources, LLC ("EnerQuest") began leasing acreage mostly, but not in all instances, consisting of the SE/4 NW/4, NE/4 SW/4, and SW/4 NW/4 of Section 18, T-20-S, R-39-E, N.M.P.M., Lea County, New Mexico in 1996. A copy of the Original Title Opinion dated June 4, 1997, which was not admitted into evidence at the hearing, is attached hereto as Exhibit A. The various leases which EnerQuest entered with respect to tracts in Section 18 vary widely, with royalty interests ranging from 18.75% to 25%, and the term of the leases varying from eighteen (18) months to three (3) years from lease dates in late 1996 to early 1997. The acreage

covered by the leases ranged from 40 to 200 acres. For example, either Pioneer or EnerQuest agreed to a lease with Muirfield Resources Co. a forty (40) acre tract by a lease dated December, 1996. Exhibit A demonstrates that EnerQuest or its affiliates had secured thirty-one leases pertaining to the 120-acre tract before Hartman was ever approached.

2. Hartman was first approached by EnerQuest by letter dated May 12, 1997 offering to lease Hartman's interest in a 120-acre tract comprising the S/2 NW/4 and NE/4 SW/4 of Section 18, T-20-S, R-39-E, Lea County, New Mexico.[1] The May 12 letter, as well as the Oil and Gas Lease that was not submitted to Hartman until July 11, 1997, were introduced as Exhibit 1 at the April 2, 1998 hearing. The May 12, 1997 letter was not accompanied by a proposed lease. It did, however, indicate that EnerQuest would submit at a future date a lease under the following terms:

(1) 2 year primary term;

(2) 22.5% royalty;

(3) $150 per net acre

The May 12, 1997 letter does not describe or even hint at EnerQuest's development plans for the property. Hartman did not respond to this unsolicited request which was not accompanied by an actual proposed lease.

3. EnerQuest did not actually submit a lease to Hartman until on or about July 11, 1997. The lease which EnerQuest submitted varied the terms of the offer set out in the May 12, 1997 letter by changing the primary term of the lease from

[1] The additional acreage Pioneer seeks to lease is adjacent to the 40-acre tract at issue in Pioneer's Application.

two years, as represented in the May 12, 1997 letter, to three (3) years as specified in the proposed lease. The proposed lease was accompanied by a check with a proposed bonus of $1,943.10. The proposed lease was sent without any description from EnerQuest of the drilling which EnerQuest was proposing for the property, where any well or wells would be drilled, nor did EnerQuest indicate when it intended to undertake drilling on any of the properties. Instead, the proposed lease would have tied up Hartman's acreage for a period of three (3) years without any guarantee that any drilling would have commenced during the lease period.

4. Hartman did not respond to EnerQuest's blind solicitation. Hartman heard nothing more from EnerQuest on this matter.

5. Hartman's first contact from Pioneer regarding the acreage at issue in Pioneer's application in this matter came by letter dated January 9, 1998 from M. Craig Clark. The letter was actually received by Hartman on January 14, 1998. See copy attached as Exhibit B. Mr. Clark indicated that Pioneer and EnerQuest proposed the drilling of an Abo test well, the McCasland well, on the NE/4 SW/4 of Section 18. This was Hartman's first notice that Pioneer intended to drill a well on the forty (40) acre tract at issue in this application. The exact location of the proposed well was not communicated and remains a mystery at this late date.[2]

6. Pioneer included with the January 9, 1998 letter an Authority for Expenditure ("AFE") for the McCasland well in the amount of $483,755. A copy of this correspondence is attached hereto as Exhibit C.

[2] Pioneer's engineer, David Keller, testified at the April 2 hearing that the well location had not been staked. He also testified that the location may be "slightly irregular." No application for approval of an unorthodox location for the McCasland well has been filed by Pioneer.

7. Pioneer and EnerQuest requested that if Hartman did not wish to participate as a partner in the drilling of the McCasland well, Hartman execute the lease presented by EnerQuest in May, 1997. No lease for only the forty (40) acre tract at issue here was or has ever been tendered by Pioneer to Hartman.

8. On February 2, 1998, a mere two (2) weeks after Hartman received the January 9 letter and his first notice of Pioneer's drilling plans for the McCasland well, Pioneer filed its application in this matter seeking to force pool Hartman's interest. Pioneer contended that it had "in good faith sought to join all other mineral or leasehold interest owners in said lands for the purpose set forth herein." Hartman received Pioneer's application on February 8, 1998. The matter was originally scheduled for hearing on Thursday, March 5, 1998.

9. By letter dated February 12, 1998, Mr. Clark wrote Hartman enclosing a Joint Operating Agreement, which was admitted as Exhibit 7 at the April 2, 1998 hearing, referencing the AFE that had been sent to Hartman in January, 1998, and indicating that Pioneer desired to lease Hartman's interest under the terms of the lease provided by EnerQuest in May, 1997. The JOA is a model form with proposed non-consent penalties up to 400%. Several provisions were deleted or modified by Pioneer. This letter was received by Hartman February 17, 1998, over two (2) weeks after Pioneer filed its application in this matter. A copy of Pioneer's February 12, 1998 letter is attached hereto as Exhibit D.

10. On February 26, 1998, Pioneer sought and received a continuance for the hearing on its compulsory pooling application from March 5, 1998 to April 2, 1998.

11. Hartman issued to Pioneer an executed Oil and Gas Lease covering the 40-acre tract at issue here on April 1, 1998. A copy of that lease was introduced as Exhibit 6 at the April 2, 1998 hearing, and is attached hereto as Exhibit E.

12. Hartman's proposed lease varied the terms of the lease proposed by Pioneer as follows:

(a) Hartman deleted language which would have authorized Pioneer to initiate secondary recovery operations on the acreage;

(b) Hartman's proposed lease covers only the 40-acre tract upon which Pioneer plans to drill the McCasland well;

(c) The lease is for a term of six months, and remains in effect so long as oil and gas is produced in paying quantities;

(d) The royalties are 25%;

(e) Hartman deleted indemnification language in ¶ 10 of Pioneer's proposed lease.

13. Pioneer rejected Hartman's proposed lease, according to Mr. Clark's testimony, on the grounds that Hartman's lease only covered the forty (40) acres at issue in this Application, that Pioneer objected to a 25% royalty if Hartman was only leasing the 40-acre tract, and because Hartman would receive a "free look" at the McCasland well before deciding whether to lease the additional acreage or join in any other well Pioneer may propose.

14. Pioneer, according to the testimony of David Keller at the April 2 hearing, has no present plan to drill additional wells on the additional acreage for which it seeks a lease from Hartman. Instead, Pioneer intends to drill the McCasland well,

and determine whether additional drilling is warranted based upon the results of the McCasland well.

15. Under the Joint Operating Agreement Pioneer has negotiated with other interest owners with interests in the 40-acre tract at issue here, Pioneer has granted EnerQuest, H.J. Naumann, Jr., and Wynn Petroleum Company "free looks" with respect to the McCasland well, agreeing to carry their interest "to the casing point" in the initial well, so that those parties have an opportunity to gauge the commerciality of the McCasland well before deciding whether to share in the cost. See the Pioneer Joint Operating Agreement introduced as Exhibit 7 to the April 2, 1998 hearing.

16. Pioneer introduced no evidence at the hearing that it had any plans for secondary recovery operations for the property. Pioneer indicated that it needed to commence drilling by June, 1998 in order to hold some of the other leases, and offered no testimony that Hartman's proposed six (6) month term, from April 1, 1998 is objectionable to Pioneer.

17. Pioneer, its predecessors or affiliates, have agreed to pay six (6) other lessors a 25% royalty under the terms of their leases. See Exhibit A.

ARGUMENT AND AUTHORITIES

1. THE NE/4 NW/4 OF SECTION 18 CANNOT BE FORCED POOLED AS A MATTER OF LAW.

The power of the Oil Conservation Division to force pool tracts of land to form a spacing unit is expressly defined and limited by Section 70-2-17(C) as follows:

> When two or more separately owned tracts of land are embraced within a spacing or proration unit, . . . the owner or owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owner or owners have not agreed to pool their interests, and where

> one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common sources of supply, the Division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interest or both in the spacing or proration unit as a unit.

Here, Hartman has voluntarily agreed to a pooling of his interest in the forty (40) acre subject tract by executing and delivering to Pioneer a lease under terms which are customary for Lea County, New Mexico, and under terms which Pioneer or its predecessors have agreed to with other lessors. Pioneer is free to drill immediately on the acreage at issue in its application.

Any refusal by Pioneer to accept the Hartman lease is the result of Pioneer's attempts to utilize the legislatively delegated power of force pooling to require Hartman to lease acreage outside the forty (40) acre tract and accept lease terms less favorable then those Pioneer has accepted from other lessors. There is nothing in the Oil and Gas Act which authorizes Pioneer's actions or any Order by the Division force pooling acreage as to which a lease has already been issued.

Pioneer's stated reasons for compulsory pooling at the hearing are suspect, at best. First, Pioneer stated it needed to begin drilling because some leases were set to expire in July, 1998. One of those leases is one which Pioneer or its predecessor received from Burlington Resources Oil & Gas Company. A copy of the abstract is attached as Exhibit F. That lease was for a 25% royalty and eighteen (18) month term. Pioneer need not be concerned about the expiration of this lease. It has today in hand the necessary authorization from Hartman to drill its well on the forty (40) acre tract at issue in this Application to hold the Burlington lease.

Pioneer also stated that it needed compulsory pooling "to protect" adjacent acreage (80 acres), which is why Pioneer seeks a lease for 120 acres from Hartman, rather than simply the forty (40) at issue in this Application. Again, Pioneer has in hand a lease which authorizes it to drill on the forty (40) acre tract. The Division has no authority to force pool acreage where the parties have agreed to pool their interests. § 70-2-17(C); Sims v. Medina, 72 N.M. 186, 382 P.2d 183 (1963) (commission is a creature of statute, expressly defined and limited by law). It is a misuse of the police power of the sovereign for a private party to manipulate such awesome governmental authority for its private, economic self-interest. The force pooling statute does not exist as a negotiation hammer for Pioneer to beat Hartman into submission and force him to lease eighty (80) more acres than is needed for the proposed McCasland well.

2. PIONEER PREMATURELY INSTITUTED COMPULSORY POOLING.

Even if Hartman had not granted Pioneer a lease as to the forty (40) acre tract, Pioneer's application is legally deficient. The New Mexico Compulsory Pooling Statute, § 70-2-17(C), and the custom and practice of the Division, anticipate that a compulsory pooling application will be entertained only after the applicant has made a reasonable effort to secure voluntary participation by interest owners. This is only reasonable, since invocation of the procedure under the compulsory pooling statute results in a taking of private property by state action. Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962); Patterson v. Stanoline Oil & Gas Co., 182 Okla. 155, 77 P.2d 83, 89-90 (1938). As a matter of policy and statutory construction, it is important that the Division decline to exercise its pooling

authority where, as here, an applicant has voluntary joinder in the subject tract, and has failed to make a reasonable effort to negotiate a lease prior to filing its application.

While Pioneer has been active in securing leases and drafting plans for development of the property at issue since 1996, it has only been dealing with Hartman on the McCasland well since mid-January, 1998. Contrary to the spin put on the facts by Pioneer at the April 2 hearing, Pioneer has not undertaken reasonable efforts to negotiate an agreement with Hartman before filing this application. The unsolicited lease offer which Hartman received from EnerQuest in May, 1997 was unilaterally modified by EnerQuest before Hartman received a written lease. The lease proposal was not accompanied by any drilling proposal, or any communication which would have given Hartman information necessary to evaluate an offer to tie up acreage for three (3) years, without even any representation that the acreage would be developed during that period.

Contrary to Pioneer's hearing representations, Pioneer has not been waiting on Hartman to develop its property. It obviously spent the better part of 1996 and 1997 attempting to tie up other leasehold interests, and develop a drilling strategy for the McCasland well. Yet the drilling proposal was not communicated to Hartman until January 14, 1998. On February 2, 1998, only nineteen (19) days after Hartman received the AFE for the McCasland well, Pioneer filed its application for compulsory pooling. The application seeks to pool all interest owners in the 40-acre tract at issue in this application and to drill an Abo test well.

To date, Pioneer has <u>never</u> proposed a lease to Hartman which covers only the forty (40) acre tract at issue in this application. When Hartman countered with

a proposed lease covering the 40-acre tract at issue in this application, with terms identical or equivalent to those offered other lessors by Pioneer and its predecessors, Pioneer rejected the proposal on April 1, 1998.

Counsel for Pioneer indicated that Pioneer wished to continue negotiations with Hartman regarding the lease. That is precisely what Pioneer should do, and what Pioneer should have done beginning in January, 1998, before filing its compulsory pooling application. Pioneer cannot meet its obligation to make reasonable efforts to secure voluntary joinder in this 40-acre tract by proposing a lease on a 120-acre tract on take-it-or-leave-it terms, insisting on a lease for acreage outside the subject spacing unit, then simultaneously filing a compulsory pooling application. Having failed to offer Hartman lease terms for the 40-acre tract at issue here, Pioneer cannot utilize the compulsory pooling statute to avoid its obligation to undertake reasonable and good faith efforts to reach an agreement with Hartman on lease terms for the 40-acre tract.

The Division has addressed this situation in the past. In Case 11434, Meridian Oil Inc. sought an Order force pooling the interest of Four Star Oil and Gas Company and Hartman in San Juan County, New Mexico. Four Star and Hartman both moved to dismiss the application, in part, on grounds that Meridian had not undertaken reasonable, good faith efforts to secure the voluntary joinder of all necessary interests. Following hearing, the Division entered its Order No. R-10545, finding that Meridian had "failed to make reasonable efforts to adequately obtain voluntary joinder of all working interest for further development of this acreage prior to

filing its application," and dismissing the application. A copy of the Order is attached hereto as Exhibit G.

Pioneer failed to undertake reasonable efforts to obtain the voluntary joinder of Hartman in its proposal to drill the McCasland well on a certain forty (40) acre proration unit. It cannot seek to have the Division cure this defect by issuing a compulsory pooling order. Pioneer's application must be denied and this case dismissed.

3. PIONEER HAS FAILED TO NEGOTIATE WITH HARTMAN IN GOOD FAITH

Hartman has issued a lease to Pioneer covering the 40-acre tract at issue in this Application. Hartman has proposed that he receive no bonus for the lease, but has provided for a royalty of 25%, consistent with what other lessors have received pertaining to this acreage. Hartman has issued the lease for a six (6) month term, with the lease to remain in effect so long as oil and gas are produced from the property in paying quantities. The lease would expire October 1, 1998, long after the deadline Pioneer has represented it has to complete the drilling of the McCasland well.

In short, the only evidence in this record is that the terms Hartman has proposed for a lease as to the 40-acre tract are within the standard for the industry for leases issued covering oil and gas properties in Lea County, New Mexico. Indeed, the terms proposed by Hartman are identical, or substantially equivalent to terms Pioneer, its predecessors and partners, have offered other lessors for acreage in this tract. Pioneer's blanket rejection of those lease terms is unreasonable.

The gravamen of Pioneer's complaint is that Hartman not receive the same royalty extended to other lessors because he is only willing at this point in time to lease acreage in the 40-acre tract at issue in this application. Pioneer has offered no evidence that any of the leases affecting this acreage have been negotiated on a sliding scale with the royalty payment depending on the amount of acreage at issue. Where, as here, Hartman's proposed lease term is customary for leases in Lea County, Pioneer has no good faith basis for rejecting the proposal.

Pioneer also objects to Hartman having a "free look" at the McCasland well. Hartman is not receiving a "free-look" as to the McCasland 18 Fee No. 11 well. Pioneer failed to identify at the hearing any rational objection to Hartman's ability to analyze the results of the drilling of the McCasland well before he decides, as a reasonably prudent lessor, whether to lease additional acreage to Pioneer. The acreage in its undeveloped state has a certain value to Hartman. If Pioneer hits a dry hole, or improperly completes the well, the acreage would lose value. It is perfectly reasonable for Hartman to require Pioneer to demonstrate its mettle as an operator before either agreeing to lease additional acreage, or prior to deciding to join in other wells which Pioneer may decide to drill in the future.

It is unreasonable for Pioneer to condition Hartman's receipt of a standard 25% royalty for his agreement to lease additional acreage to Pioneer for a three (3) year term, where Pioneer has not guaranteed that it will successfully complete the McCasland well, and cannot guarantee that it will drill additional wells on the additional acreage. If the McCasland well proves to be non-commercial, there is no reason for Hartman to have additional acreage under lease to Pioneer. If the well does prove to

be commercial, and Pioneer decides to drill additional wells, then Pioneer and Hartman can negotiate at that point in time for a lease of additional acreage for a forty (40) acre proration unit. Failing that, Pioneer could properly seek a force pooling of Hartman's interest as to the eighty (80) acre tract.

CONCLUSION

The Division may not force pool acreage where Hartman has provided Pioneer with a standard term lease covering the acreage at issue. Even if Hartman had not given Pioneer a lease, Pioneer has failed to make reasonable efforts to negotiate a lease with Hartman in its proposal for development of this acreage. To ground an order on the attempt by Pioneer to achieve its economic self-interest in capturing acreage outside the area of the application is a perversion of § 70-2-17(C), is unlawful, and if abetted by the Division, would constitute an unconstitutional abuse of governmental authority.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By _____

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Attorneys for Doyle and Margaret Hartman

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of a Memorandum Brief in Support of Hartman's Motion to Dismiss and in Opposition to Application of Pioneer for Compulsory Pooling to be mailed on this 7th day of April, 1998, to the following counsel of record:

T. Calder Ezzell, Jr.
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Michael J. Condon