OIL CONSERVATION DIV.

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION STATE OF NEW MEXICO

APPLICATION OF PIONEER NATURAL RESOURCES USA INC. FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO **NO. 11932**

APPLICATION OF ENERQUEST OIL AND GAS, LLC FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO **NO. 12411**

MOTION TO DISMISS
APPLICATION FILED IN NO. 12411

COMES NOW Doyle Hartman Oil Operator ("Hartman") by counsel and moves to dismiss the Application filed with the Division on May 9, 2000, erroneously assigned as a new case in Case No. 12411, and as grounds in support states:

1. The subject matter of these proceedings is the McCasland 18 Fee Well No. 1 dedicated to 40 acres consisting of the NE/4 SW/4 of Section 18, Township 20 South, Range 39 East, NMPM, Lea County, New Mexico ("McCasland well"). The McCasland well was drilled to TD of 7600 ft. on August 12, 1998, completed in the Tubb formation and first produced in September 1998. In January 1999, some sixteen months before this EnerQuest Application was filed, the well was recompleted in the Blinebry formation and first produced from that formation the same month.

2. The drilling of the McCasland well was authorized by Order R-10986 entered on May 7, 1998 in Case No. 11932 on application of Pioneer Natural Resources USA Inc. ("Pioneer"), over objection of Hartman. Order R-10986 provided for force pooling as follows:

> (1) All mineral interests, whatever they may be, from the surface to the base of the Abo formation underlying

> the NE/4 SW/4 of Section 18, Township 20 South, Range 39 East, NMPM, Lea County, New Mexico, are hereby pooled thereby forming a standard 40-acre oil spacing and proration unit for any and all formations and/or pools spaced on 40 acres within said vertical extent which presently includes but is not necessarily limited to the Undesignated House-Drinkard and Undesignated DK-Abo Pools. Said unit shall be dedicated to the applicant's McCasland "18" Fee Well No. 11 to be drilled at a standard oil well location within the NE/4 SW/4 of Section 18.

A complete copy of Order R-10986 is attached hereto as Exhibit "A" and incorporated by reference.

3. Underlying the issuance of Order R-10986 in Case No. 11932 are the following pertinent facts and circumstances:

A. Under date of January 9, 1998, Pioneer and EnerQuest proposed the subject well and tendered to Hartman an Authority for Expenditure in the amount of $483,755 (for completion), the AFE reciting that the proposal was to

> "Drill and complete flowing Abo well and install production battery and equipment. Secondary Objectives: Blinebry, Tubb and Drinkard Formations. (Emphasis added)

A copy thereof is attached as Exhibit "B" and incorporated by reference.

B. The Application of Pioneer filed February 2, 1998 recited that "The proposed well is to be drilled into the Blinebry, Tubb, Drinkard and Abo formations."

C. On April 1, 1998, Hartman tendered to Pioneer an oil and gas lease for his mineral interest in the 40 acres consisting of the proposed spacing unit for the McCasland well on terms equivalent to other leases Pioneer or EnerQuest had entered into with other mineral owners for that location. Pioneer rejected the lease because it demanded, and Hartman did not include, mineral acreage elsewhere in Section 18 of

Hartman outside of the 40 acres to be pooled. A copy of Hartman's letter transmitting the lease is attached as Exhibit "C" and incorporated by reference.

D. As stated, and notwithstanding Hartman volunteering to lease his minerals on reasonable terms, on May 7, 1998, the Division by Order R-10986 created a spacing and proration unit of 40 acres for the subject well, and forced pool Hartman's interest so that seven-eighths thereof was declared a working interest subject to bearing development expenses.

E. As required by the Order of the Division, Pioneer on May 22, 1998, mailed to Hartman an AFE to drill, complete and equip the McCasland well in the amount of $434,150. The well proposal was stated on the AFE, viz:

"Formation: Abo/Drinkard/Tubb/Blinebry."

That letter and AFE is attached as Exhibit "D" and incorporated by reference.

4. The Special Rules for the Blinebry oil and gas pool define the pool by vertical formation markers; a well completed in those limits is within the pool. Order R-8170, Ex. B., p. 10. Rule A. A standard gas proration unit in the Blinebry Oil and Gas Pool is 160 acres but the rules allow for gas well units of 40 acres. Rule 2(a)1. and Rule 2(b) 2. A standard oil well spacing in the pool is 40 acres. The Special Rules of the pool further allow:

> (b) In the event an oil well in the Blinebry Oil and Gas Pool is reclassified as a gas well, the operator of such well will be afforded the opportunity to form a non-standard gas proration unit for the well; provided however, that, until such unit is formed, said well shall be allocated a gas allowable commensurate with the acreage contained in the unit formerly dedicated to the oil well.

The Special Rules for the Tubb oil and gas pool are a mirror image of the Blinebry rules,[1] Order R-8170, Ex. B, pp. 23-26.

5. Order R-10986 also specified: "The operator shall furnish the Division and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the well;" Hartman has never been furnished such schedule, neither for the original completion nor the January 1999 recompletion. In April 2000, Hartman received a summary of "Estimated Payout" showing total expenses for the well were $2,428,513!

6. The McCasland well produced for seven months (October 1998 – April 1999) from the Tubb formation, making a total of 1,062 barrels of oil (5 BOD) and 104,564 Mcf of gas (498 Mcfd). The month preceding abandonment the Tubb produced gas at an average rate of 558 Mcfd. See Exhibit "E-1" attached and incorporated by reference. In the first seven months that the well produced from the Blinebry formation the cumulative volumes were 1,329 barrels of oil (6.3 BOD) and 80,672 Mcfs of gas (384 Mcfd). In the four months of December 1999 – March 2000 for which C-115s have been filed by the operator the cumulative volumes were 565 barrels of oil (4.6 BOD) and 28,232 Mcfs of gas (231 Mcfd). See Exhibit E-2 attached and incorporated by reference. EnerQuest has abandoned the more productive Tubb formation in order to deplete the hydrocarbons of the Blinebry formation, which appears to being accomplished rapidly. After depleting the Blinebry, EnerQuest will then return the well to production in the Tubb formation. See Exhibit "E-3" attached and incorporated by reference.

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[1] The limiting gas-oil ratio for oil wells in the Blinebry pool is 4,000 cubic feet of gas per barrel of oil while it is 2,000 cubic feet of gas per barrel of oil in the Tubb pool.

ARGUMENT AND AUTHORITIES

A. The Instant Application is Fatally Defective

Rather than filing in Case No. 11932 and seeking modification of Order R-10986, EnerQuest has filed a new application which ignores (a) that all mineral interests have already been pooled for drilling of the McCasland well, (b) that EnerQuest already has and continues to obtain its fair share of oil and gas producible from the existing well, (c) that either a 40 acre standard oil well spacing unit exists or a 40 acre non-standard gas well spacing unit exists and there is no justification offered for changing it, (d) that the dedicated well has already been successfully completed so there is no risk and can be no penalty assessment and (e) that Order R-10986 was violated by the failure of Pioneer to furnish the Division and working interest owners an itemization of actual well costs in the time specified. The statutory prerequisites empowering the Division to force pool are non-existent. NMSA 1978 Section 70-2-17C. No more reserves are to be recovered from the fast depleting Blinebry because of sweeping 160 acres into the existent spacing unit. The McCasland well cannot and will not produce any differently if surrounded by 160 acres, rather than forty acres. "[A] spacing order can only be modified upon substantial evidence showing a change of condition or change in knowledge of conditions, arising sine the prior spacing rule was instituted." Uhden v. New Mexico Oil Conservation Commission, 112 N.M. 528, 530, 817 P.2d 721 (1991).

Hartman attempted to lease his (and Margaret Hartman's) .1029 mineral interest to Pioneer in the 40 acre drill site for the McCasland well; he offered reasonable terms; the lease was refused only because Hartman would not lease other acreage outside of the drill site. For his willingness to cooperate, Hartman was forced pooled by the

Division with his mineral interest being transformed, to a seven-eighths extent, into a working interest subject to the payment of expenses out of his share of production plus an additional 200 percent penalty. The expenses in 1998 were premised on an AFE for $434,150. (Ex. D.) Now EnerQuest would compound the confiscation of Hartman's interest by slicing it down to approximately .025 and burdening him with the costs of the well, which turned out to be 550% of the AFE and imposing a penalty "for the risk" associated with a well already drilled. Moreover, the productive acreage by Pioneer / EnerQuest's own evidence to the Division, is the NE/4 SW/4 so Hartman would be giving away valuable minerals to owners of "goat pasturage" acreage in the SW/4. The very description of the impact on Hartman is to describe obvious constitutional violations. Constitution of New Mexico, Art. II, Sections 18 and 20.

The Special Pool Rules for the Tubb Oil and Gas Pool and for the Blinebry Oil and Gas Pool both specify that a standard gas proration unit in those formations shall be 160 acres. Order R-8170 Exhibit "B", pages 10-13 and 23-26. Both pool rules allow for nonstandard proration units of 40 acres for gas wells. A standard oil proration unit, on the other hand, in both pools is 40 acres and should an oil well be reclassified as a gas well it can occupy a non-standard unit. In effect, such a unit was already created by Order R-10986 in May 1998.

The McCasland well was first produced from the Tubb September 29, 1998. The well was first produced from the Blinebry January 16, 1999. On both C-105 well completion, reports the well is represented to be an "oil well." See Exhibits F-1 and F-2 attached and incorporated by reference. The instant application does not say whether the McCasland well is an oil well or a gas well. Is the well an oil well? Is, and has been

all along, the well a gas well? If it has produced on a 40 acre dedication for twenty months why should the acreage spacing be changed now? Is this application not about waste or correlative rights but a ploy for EnerQuest to hold non-productive lease acreage in Section 18?

This application must be dismissed because:

1. Compulsory pooling has already been accomplished by Order R-10986 and a 40 acre proration unit consisting of the NE/4 SW/4 of Section 18 is appropriately specified for the McCasland well.

2. The statutory forced pooling authority of Section 70-2-17C cannot be misused to confiscate the property of Hartman or other property owners to advance the contractual obligations or economic convenience of the operator, EnerQuest.

3. Any change to Order R-10986 (none is merited) must be laid in Case No. 11932 as a motion to modify the existing pooling order.

4. Under Order R-10986, regarding the working interest portion of Hartman's interest, no expenses can be assessed Hartman by reason of the failure of Pioneer / EnerQuest to furnish an itemized schedule of actual well costs as mandated by the Division.

5. The statutory authorization for forced pooling does not permit the imposition of a risk penalty for a well which has already been drilled, completed and placed on production.

WHEREFORE, Hartman requests that the Application of EnerQuest filed in Case No. 12411 be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of a Motion to Dismiss Application Filed in No. 12411 to be mailed on this 7th day of June, 2000, to the following counsel of record:

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J. E. Gallegos