

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

June 27, 2000

W. THOMAS KELLAHIN*

*NEW MEXICO BOARD OF LEGAL SPECIALIZATION
RECOGNIZED SPECIALIST IN THE AREA OF
NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047

Mr. Mark Ashley, Examiner
Ms. Lyn Herbert, Esq.
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

HAND DELIVERED

Re: MOTION TO DISMISS
NMOCD Case 12427
Application of Nearburg Exploration
Company, L.L.C. for compulsory pooling,
Pathfinder 18 State Com Well No. 1 (Unit O),
E/2 of Section 18, T18S, R28E
Eddy County, New Mexico

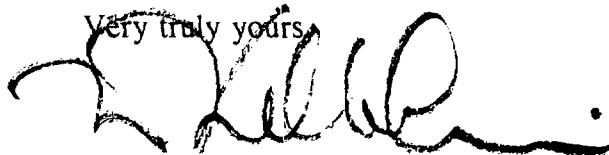
Re: NMOCD Case 12431
Application of Fuel Products, Inc.
for compulsory pooling,
Unit I, E/2 of Section 18, T18S, R28E
Eddy County, New Mexico

Dear Mr. Ashley and Ms. Herbert:

On behalf of Phillips Petroleum Company, an adversely affected interest owner, please find enclosed our MOTION TO DISMISS the referenced application filed by Nearburg Exploration Company, L.L.C. This case is currently set on the Examiner's Docket scheduled for July 13, 2000.

In accordance with Division Rule 1208.A, copies of this pleading have been transmitted by facsimile to counsel of record.

Very truly yours,



W. Thomas Kellahin

cc: J. Scott Hall, Esq. (989-9857) 989-9614
Attorney for Nearburg
Paul Owen, Esq. (982-4289) 986-2538
Attorney for Fuel Products

00 JUN 27 AM 11:25
OIL CONSERVATION DIV.

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

IN THE MATTER OF THE APPLICATION
OF NEARBURG EXPLORATION COMPANY, L.L.C.
FOR COMPULSORY POOLING
EDDY COUNTY, NEW MEXICO

CASE NO. 12427

MOTION TO DISMISS

Comes now Phillips Petroleum Company ("Phillips"), by its attorneys, Kellahin and Kellahin, enters its appearance in this case as an interested party in opposition to the applicant, Nearburg Exploration Company, L.L.C. ("Nearburg") and moves the Division to dismiss this case because the applicant has violated Section 70-2-17(C) NMSA 1978 by instituting an application for compulsory pooling prior to conducting a good faith effort to reach a voluntary agreement, And in support states:

RELEVANT FACTS

(1) The working interest ownership within the Morrow formation in the E/2 of Section 18, T18S, R28E, NMPM, Eddy County, New Mexico is as follows:

- (a) Fuel Products: $200/320 = 63\%$
- (b) Phillips: $80/320 = 25\%$
- (c) Nearburg: $20/320 = 6\%$

(2) By letter dated April 12, 2000, Nearburg proposed to Phillips that Nearburg would drill and operate its Pathfinder "18" State Com. Well No. 1 to be located in Unit O of Section 28 and dedicated it to a standard 320-acre gas spacing unit consisting of the E/2 of this section for any production from the Morrow formation. **See Exhibit "A".**

(3) On May 19, 2000, Nearburg filed a compulsory pooling application with the Division requesting a pooling order for this well at this location which was set for hearing on June 15, 2000.

(4) On May 23, 2000, Fuel Products ("Fuel") filed a compulsory pooling application with the Division requesting a pooling order for its well at a different location but for the same spacing unit which was set for hearing on June 15, 2000.

(5) Prior to May 19, 2000, Nearburg made no effort either orally or in writing to propose its well at any other location to Phillips.

(6) By letter dated June 7, 2000, Nearburg proposed moving the Pathfinder "18 State Com Well No. 1 to a location in Unit B. **See Exhibit "B".**

(7) On June 12, 2000, Nearburg filed a motion to dismiss Fuel's pooling application for failure to propose the well prior to filing the application.

(8) On June 13, 2000, without notice to Phillips, Nearburg amended its compulsory pooling application to move its proposed well location from Unit O to a location in Unit B of Section 18.

(9) By letter dated June 14, 2000, Fuel Products proposed its well in Unit P to be dedicated to the E/2 of Section 18. **See Exhibit "C".**

ARGUMENT

Contrary to the custom and practice before the Division and in violation of NMSA 1978 Section 70-2-17.C, Nearburg has instituted compulsory action against Phillips without first making a "good faith" effort to reach a voluntary agreement as to this new well location or to form a spacing unit on a voluntary basis for the drilling of Nearburg's well at this new location. NMSA 1978 Section 70-2-17.C is very specific in its requirement that the compulsory pooling authority of the Division can only be exercised

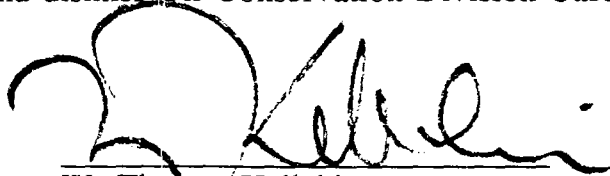
in those instances where the parties have not agreed to voluntarily pool their interests in a spacing unit for a specifically proposed well on that unit. Under the circumstances of this case, it is impossible to have exhausted a good faith effort to reach a voluntary agreement when the applicant files its amended application prior to determining if it is impossible to reach a voluntary agreement as to this new well location. **For example, see NMOCD Case 11434, Order R-10545, NMOCD Case 11107, Order R-10242. In addition see NMOCD Cases 11926, 11927, 12014, 10635, 10636, 9939, 11461, 11999, 11887.**

Nearburg abandoned its original well proposal which is the basis of its application in Case 12427 and then amended its application without first making any effort to re-propose this well to the working interest owners. It is no solution to suggest that this fatal flaw can be fixed by simply continuing the case. **See NMOCD Case 11434, Order R-10545.** It is interesting to note that the Division's June 15, 2000 docket contained eight (8) different compulsory pooling applications filed by Nearburg and not one of these cases went to hearing. Instead they were continued to July 13, 2000. It is obvious that Nearburg uses compulsory pooling as a negotiating weapon. Such action simply ignores the requirements of NMSA 1978 Section 70-2-17.C and will encourage Nearburg others to clog the Division docket and to use compulsory pooling as a negotiating weapon rather than as a remedy of last resort.

Nearburg's application must be dismissed. Nearburg failed to propose this well to the working interest owners before filing its compulsory pooling application and therefore Nearburg has not engaged in any effort, good faith or otherwise, to reach a voluntary agreement for this well. It is impossible to have any failure to agree prior to any specific well proposal being made by Nearburg.

Unless this application is dismissed the Division will be establishing a precedent which will allow applicants to avoid complying with NMSA 1978 Section 70-2-17.C.

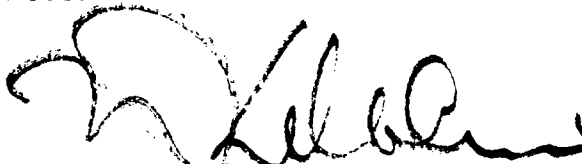
WHEREFORE Phillips Petroleum Company requests that the Division Hearing Examiner grant this motion and dismiss Oil Conservation Division Case 12427



W. Thomas Kellahin
Kellahin & Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87504
(505) 982-4285

CERTIFICATE OF SERVICE

I certify that a copy of this pleading was delivered by facsimile to counsel for the parties this 27 day of June, 2000.



W. Thomas Kellahin

NMOCD Case 12427
Phillips' Motion to Dismiss
-Page 5-

STATE OF TEXAS)
) SS.
COUNTY OF MIDLAND)

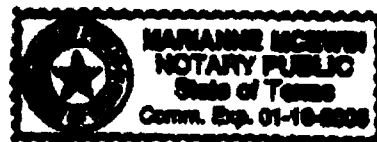
AFFIDAVIT

I, Pat Noah, a Land Director for Phillips Petroleum Company, being first duly sworn and under oath, states that I am personally aware of the facts set forth in this motion and each factual statements is true and correct to the best of my knowledge and belief.

Pat Noah
Pat Noah

Subscribed and sworn to before me this 27th day of June, 2000, by Pat Noah

Marianne McEwen
Notary Public



My Commission Expires:

Seal

1/10/03

10/1/00 10:00 AM PHILLIPS PETROLEUM CO. 10/1/00 10:00 AM P.02/12
ownership plot on
4-19-2000

Nearburg Exploration Company, L.L.C.

Exploration and Production
3300 North "A" Street
Building 2, Suite 120
Midland, Texas 79705
915/686-8235
Fax 915/686-7836

RECEIVED

APR 19 2000

LAND SECTION
PHILLIPS PETROLEUM CO.
ODESSA, TEXAS

April 12, 2000

Phillips Petroleum Company
4001 Penbrook
Odessa, TX 79762
Attn: Mr. Randy Lewicki, CPL

Re: AFE to Drill Pathfinder "18" St. Com. #1
1980' FEL & 990' FSL of Section 18,
T-18-S, R-28-E, NMPM,
Pathfinder Prospect
Eddy County, New Mexico

E/2 Tractation Unit

Dear Randy:

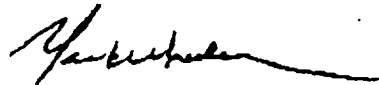
Pursuant to our recent telephone conversations, Nearburg Exploration Company, L.L.C. (NEC) hereby proposes the drilling of an 11,000' Morrow test well at the captioned location. We have enclosed herewith an AFE setting forth NEC's estimated cost to drill and complete said well for Phillips' review and execution, should Phillips decide to participate in the drilling of said well.

Randy, should Phillips elect not to participate, NEC is still interested in acquiring a term assignment covering Lots 3, 4, E/2 SW/4, NE/4 SE/4 and the SW/4 SE/4 of said Section 18 as detailed in our February 15, 2000 letter to you. NEC would also consider acceptable farmout terms on said acreage.

We will forward our proposed Joint Operating Agreement soon under a separate cover letter.

Should you have any questions concerning these matters, please advise.

Sincerely,



Mark Wheeler, CPL
Senior Landman

/cmw:pathfinder18(3m)
xc: Bob Shelton



Nearburg Exploration Company, L.L.C.

Exploration and Production
3300 North "A" Street
Building 2, Suite 120
Midland, Texas 79705
915/686-8235
Fax 915/686-7806

RECEIVED

JUN 8 2000

LAND SURVEY
PHILLIPS PETROLEUM CO.
ODESSA, TEXAS

June 7, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

WORKING INTEREST OWNERS
(See Distribution List)

Re: Pathfinder "18" State #1
1,980' FEL and 660' FNL
Section 18, T-18-S, R-28-E
Eddy County, New Mexico
Pathfinder Prospect


Gentlemen:

On April 12, 2000, Nearburg Exploration Company, L.L.C. (NEC) proposed the drilling of a 11,000' Morrow well. We have enclosed herewith, a revised AFE setting forth NEC's estimated cost to drill and complete for your review and execution, should you elect to participate in the drilling of this well. This location has been changed from the April 12th location.

Should you not elect to participate, NEC would consider acquiring a term assignment or farmout of your interest on reasonable terms.

If we can be of further assistance, please advise.

Yours very truly,

for 
Mark Wheeler, CPL
Senior Landman

MW/dw
encl.



FUEL PRODUCTS, INC.

FASKEN CENTER TOWER II
550 WEST TEXAS, SUITE 220
P. O. BOX 3098
MIDLAND, TX 79702
(915) 687-0008

RECEIVED

JUN 22 2000

LAI
PHILLIPS PETROLEUM CO
ODESSA, TEXAS

June 14, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

WORKING INTEREST OWNERS
(Distribution List Attached)

Re: Illinois Camp 18 State #1
990' FSL & 660' FEL (Unit P)
Sec. 18, T-18-S, R-28-E
Eddy County, New Mexico

Gentlemen:

We are enclosing an AFE setting forth Fuel Products, Inc.'s estimated cost to drill and complete a Morrow test well in the captioned area. The AFE is for your review and execution should you elect to participate in the drilling of this test well.

Should you not elect to participate, Fuel Products, Inc. would consider acquiring a term assignment or farmout of your interest on reasonable terms.

Yours very truly,

Thomas M. Beall

Thomas M. Beall
President

JMG/kim

Enclosures

PROPERTY TAXES
REAL ESTATE & CLAIMS
MIDLAND REGION

JUN 20 2000

<input type="checkbox"/> JDB	<input checked="" type="checkbox"/> PLP	<input type="checkbox"/> CFM
<input type="checkbox"/> PWD	<input type="checkbox"/> JNT	<input type="checkbox"/> JDB
<input type="checkbox"/> LDN	<input type="checkbox"/> JAW	<input type="checkbox"/> FILE
	<input type="checkbox"/> GGC	<input type="checkbox"/>

To: Pat Heath - Odessa

