

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

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

**CASE NO. 12446
ORDER NO. R-_____**

**APPLICATION OF FUEL PRODUCTS, INC. FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on July 13, 2000, and at 8:15 a.m. on July 27, 2000, at Santa Fe, New Mexico, before Examiners Mark W. Ashley and David R. Catanach.

NOW, on this ____ day of July, 2000, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

(1) Due public notice has been given and the Division has jurisdiction of this case and its subject matter.

(2) The applicant, Fuel Products, Inc. ("Fuel Products"), seeks an order pooling all mineral interests underlying the E/2 of Section 18, Township 18 South, Range 28 East, NMPM, Eddy County, New Mexico, in the following manner:

(a) all formations and/or pools developed on 320-acre spacing within that vertical extent, including but not limited to the Undesignated North-Illinois Camp-Morrow Gas Pool;

(b) the SE/4 to form a standard spacing and proration unit for any and all formations and/or pools developed on 160-acre spacing within this vertical extent;

(c) the SE/4 SE/4 to form a standard spacing and

proration unit for any and all formations and/or pools developed on 40-acre spacing within this vertical extent, including but not limited to the undesignated Empire Abo Pool, the undesignated Artesia Queen-Grayburg-San Andres Pool, and the undesignated Red Lake Queen-Grayburg-San Andres Pool.

Said spacing and proration units are to be dedicated to Fuel Products' proposed Illinois Camp 18 State #1 Well, to be drilled at standard location in the SE/4 (Unit P) of said Section 18.

(3) The applicant is a working interest owner within the subject proration units and has the right to drill the proposed well for the purpose of developing the minerals underlying these units.

(4) There are interest owners in the subject proration units that have not agreed to pool their interests.

(5) One of the interest owners in the subject proration units that has not agreed to pool its interest is Phillips Petroleum Company ("Phillips").

(6) On July 11, 2000, Phillips filed a Motion to Dismiss the application of Fuel Products, Inc.

(7) In its Motion to Dismiss, Phillips contended that it had not received Fuel Products' formal well proposal until June 20, 2000, and that, as of the date of Phillips' Motion, it had not received a copy of the compulsory pooling application filed by Fuel Products in this case.

(8) In its Motion to Dismiss, Phillips contended that the case should be dismissed because Fuel Products violated NMSA 1978, Section 70-2-17(C) by instituting an application for compulsory pooling prior to conducting a good faith effort to reach voluntary agreement with Phillips. Phillips' position was that the timing of Fuel Products' submission of its formal well proposal to Phillips, and the filing of Fuel Products' application in this case, was "contrary to the custom and practice before the Division and in violation of NMSA 1978, Section 70-2-17(C), [because Fuel Products] instituted compulsory pooling 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 [Fuel Products'] well."

(9) Fuel Products filed a response to Phillips' Motion to Dismiss on July 12, 2000. Attached to that Response was the Affidavit of Tom Beall, President of Fuel Products. That affidavit summarized the efforts of Fuel Products to obtain voluntary agreement with Phillips whereby Phillips would commit its interest to the well which is the subject of this case. The Affidavit was also introduced as Exhibit 4 in the July 13, 2000 hearing in this case.

(10) Fuel Products filed its compulsory pooling application on June 20, 2000. That Application satisfies the requirements of Section 70-2-17(C):

(a) It states that Fuel Products is an owner of mineral interests underlying the E/2 of Section 18, Township 18 South, Range 28 East, NMPM, Eddy County, New Mexico;

(b) It states that Fuel Products has not reached voluntary agreement for pooling or farmout from certain interest owners in the subject spacing; and,

(c) It states that Fuel Products has the right to drill a well on the subject acreage, and that Fuel Products proposes to drill a well on the subject acreage.

(11) The evidence and testimony presented by Fuel Products in the July 13, 2000 hearing on this matter confirmed the representations of Fuel Products in its application, and that Fuel Products satisfied the requirements of Section 70-2-17(C).

(12) The evidence presented by Fuel Products in the hearing on this matter indicates that Fuel Products began in September, 1999, to attempt to reach agreement with Phillips regarding the lands which are the subject of this case. Fuel Products discussed with Phillips specific terms and conditions of a business transaction, regarding Phillips' voluntary joinder in the project which is the subject of this case, at least since April, 2000.

(13) Fuel Products has made a good faith effort to obtain Phillips' voluntary joinder.

(14) At the conclusion of the July 13, 2000 hearing, Fuel Products, Phillips, and Nearburg Exploration Company jointly requested that this case be continued to the July 27, 2000 Examiner Docket so that Phillips might be afforded additional time to consider Fuel Products' well proposal. Fuel Products and Nearburg requested that no additional continuances be granted in this case. Fuel Products and Nearburg requested that the Order in this case be expedited.

(15) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the above-described proration units the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbons, this application should be approved by pooling all uncommitted mineral interests, whatever they may be, within the subject proration units.

(16) V-F Petroleum, Inc. should be designated the operator of the subject well and units.

(17) After pooling, uncommitted working interest owners are referred to as "non-consenting working interest owners." Any non-consenting working interest owner should be afforded the opportunity to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production.

(18) Any non-consenting working interest owner who does not pay its share of estimated well costs should have withheld from production its share of reasonable well costs plus an additional 200 percent thereof as a reasonable charge for the risk involved in re-entering the well.

(19) Any non-consenting interest owner should be afforded the opportunity to object to the actual well costs but actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(20) Following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(21) Reasonable charges for supervision (combined fixed rates) should be fixed at \$6,000.00 per month while conducting re-entry operations and \$650.00 per month while producing. The operator should be authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, and attributable to each non-consenting working interest.

(22) All proceeds from production from the well that are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

(23) If the operator of the pooled units fails to commence drilling operations on the proposed Illinois Camp 18 State #1 Well on or before _____, 2000, or if all the parties to this forced pooling reach voluntary agreement subsequent to entry of this order, this order should become of no effect.

(24) The operator of the well and units should notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

IT IS THEREFORE ORDERED THAT:

(1) The Motion to Dismiss, filed by Phillips Petroleum Company, is hereby DENIED.

(2) The application of Fuel Products, Inc., for compulsory pooling, Eddy County, New Mexico, is hereby GRANTED.

(3) Pursuant to the application of Fuel Products, all uncommitted mineral interests underlying the E/2 of Section 18, Township 18 South, Range 28 East, NMPM, Eddy County, New Mexico, are hereby pooled in the following manner:

(a) all formations and/or pools developed on 320-acre spacing within that vertical extent, including but not limited to the Undesignated North-Illinois Camp-Morrow Gas Pool;

(b) the SE/4 to form a standard spacing and proration unit for any and all formations and/or pools developed on 160-acre spacing within this vertical extent;

(c) the SE/4 SE/4 to form a standard spacing and proration unit for any and all formations and/or pools developed on 40-acre spacing within this vertical extent, including but not limited to the undesignated Empire Abo Pool, the undesignated Artesia Queen-Grayburg-San Andres Pool, and the undesignated Red Lake Queen-Grayburg-San Andres Pool.

Both units shall be dedicated to Fuel Products' proposed Illinois Camp 18 State #1 Well, to be drilled at standard location in the SE/4 (Unit P) of said Section 18.

NOTE: After pooling, uncommitted working interest owners are referred to as "non-

consenting working interest owners.”

(4) The operator of the units shall commence re-entry operations on the proposed Illinois Camp 18 State #1 Well, on or before _____, 2000, and shall thereafter continue re-entry operations on the well with due diligence to test the Morrow formation.

(5) In the event the operator does not commence re-entry operations on the Illinois Camp 18 State Well No. 1 on or before _____, Ordering Paragraph (3) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause shown.

(6) Should the well not be drilled to completion or abandoned within 120 days after commencement thereof, the operator shall appear before the Division Director and show cause why Ordering Paragraph (3) should not be rescinded.

(7) V-F Petroleum, Inc. is hereby designated the operator of the subject well and units.

(8) After the effective date of this order and within 90 days prior to commencing drilling operations, the operator shall furnish the Division and each known non-consenting working interest owner in the units an itemized schedule of estimated well costs.

(9) Within 30 days from the date the schedule of estimated well costs is furnished, any non-consenting working interest owner shall have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production, and any such owner who pays its share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(10) The operator shall furnish the Division and each known non-consenting working interest owner an itemized schedule of actual well costs within 90 days following completion of the well. If no objection to the actual well costs is received by the Division and the Division has not objected within 45 days following receipt of the schedule, the actual well costs shall be the reasonable well costs; provided, however, that if there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs after public notice and hearing.

(11) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid its share of estimated costs in advance as provided above shall pay to the operator its share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator its share of the amount that

estimated well costs exceed reasonable well costs.

(12) The operator is hereby authorized to withhold the following costs and charges from production:

(a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner who has not paid its share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished; and,

(b) as a charge for the risk involved in re-entering the well, 200 percent of the above costs.

(13) The operator shall distribute the costs and charges withheld from production to the parties who advanced the well costs.

(14) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$6,000.00 per month while re-entering and \$650.00 per month while producing. The operator should be authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(15) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8)-royalty interest for the purpose of allocating costs and charges under this order.

(16) Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(17) All proceeds from production from the well that are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership. The operator shall notify the Division of the name and address of the escrow agent within 30 days from the date of first deposit with the escrow agent.

(18) Should all the parties to this compulsory pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(19) The operator of the well and units shall notify the Division in writing of the

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subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(20) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

LORI WROTENBERY
Director

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