

ILLEGIBLE

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2205

SANTA FE, NEW MEXICO 87504-2205

TELEPHONE (505) 592-4200
TELEFAX (505) 983-3147

W THOMAS KELLAHIN*

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

WESLEY KELLAHIN (RETIRED 1998)

July 11, 2000

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

VIA FACSIMILE

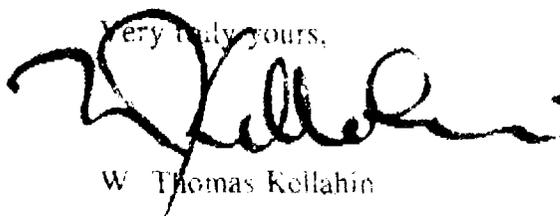
**Re: MOTION TO DISMISS
NMOCD Case 12446
Application of Fuel Products, Inc.
for compulsory pooling,
Illinois Camp 18 State Well No. 1 (Unit P),
E/2 of Section 18, T18S, R28E
Eddy County, New Mexico**

Dear Mr. Ashley:

On behalf of Phillips Petroleum Company, an adversely affected interest owner, we find enclosed our MOTION TO DISMISS the referenced application filed by Fuel Products, Inc. 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 motion have been transmitted by facsimile to counsel of record.

Very truly yours,



W. Thomas Kellahin

- cc: J. Scott Hall, Esq. (989-9857)
Attorney for Nearburg
- Paul Owen, Esq. (982-4289)
Attorney for Fuel Products
- Phillips Petroleum Company
Attn: Randy Lewicki

ILLEGIBLE

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

IN THE MATTER OF THE APPLICATION
OF FUEL PRODUCTS, INC.
FOR COMPULSORY POOLING
EDDY COUNTY, NEW MEXICO

CASE NO. 12446

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, Fuel Products Inc. ("Fuel Products") 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) On June 22, 2000, Phillips received Fuel Products' letter dated June 14, 2000, proposing to Phillips that Fuel Products would drill and operate its Illinois Camp "18" State Well No. 1 to be located in Unit P 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".

ILLEGIBLE

NMOCD Case 12446

Phillips' Motion to Dismiss

-Page 2-

(3) On June 20, 2000, Fuel Products filed a compulsory pooling application with the Division requesting a pooling order for this well at this location which was set for hearing on July 13, 2000.

(4) Phillips has not received a copy of the compulsory pooling application filed by Fuel Products in this case.

ARGUMENT

Contrary to the custom and practice before the Division and in violation of NMSA 1978 Section 70-2-17.C, Fuel Products 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. 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.**

ILLEGIBLE

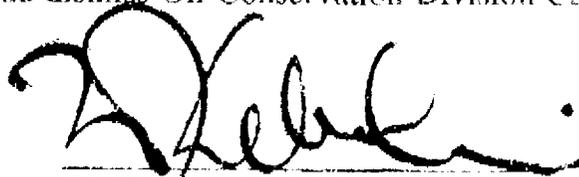
NMOCD Case 12446
Phillips' Motion to Dismiss
Page 3-

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.

Fuel Products application must be dismissed. Fuel Products failed to propose this well to Phillips before filing its compulsory pooling application and therefore Fuel Products 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 Fuel Products.

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 12446



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 11th day of July, 2000.



W. Thomas Kellahin

ILLEGIBLE

FUEL PRODUCTS, INC.
BASKIN CENTER TOWER II
350 WEST TEXAS, SUITE 220
P. O. BOX 3098
MIDLAND, TX 79702
(913) 687-0008

RECEIVED

JUN 22 2000

LA
PHILLIPS PETROLEUM
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. Beali
President

JMG/kim

Enclosures

PROPERTY TAXES
REAL ESTATE & CLAIMS
MIDLAND OFFICE

JUN 20 2000

JDB PLP JEM
 PWB JNT JDB
 LBN JAW FT.E
 GGG

To: Paul Hook - Odessa

EXHIBIT
A

ILLEGIBLE

ILLINOIS CAMP 18 STATE #1
990' FSL & 660' FEL (Unit P)
Sec. 18, T-18-S, R-28-E
Eddy County, New Mexico

Yates Petroleum Corporation
105 S. Fourth Street
Artesia, NM 88210

Louis Dreyfus Gas Holdings, Inc.
Quail Springs Corporate Park
14000 Quail Springs Parkway #600
Oklahoma City, OK 73134

Mewbourne Oil Company
P. O. Box 5270
Hobbs, NM 88241

Phillips Petroleum Co.
4044 Penbrook
Odessa, TX 79762

Nearburg Exploration Company, L.L.C
3300 North "A" Street
Building 2, Suite 120
Midland, TX 79705

Marathon Oil Company
P. O. Box 552
Midland, TX 79702