

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

JHM
11-19-90

Case File
R-9358
Case 10102



November 19, 1990

GARREY CARRUTHERS
GOVERNOR

Mr. James Bruce
Hinkle, Cox, Eaton, Coffield & Hensley
500 Marquette N.W., Suite 800
Albuquerque, NM 87102-2121

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87504
(505) 827-5800

Re: Sage Energy Statutory Unitization

Dear Jim:

I received your letter of November 15, 1990, which, as I am sure you have by now discovered, is subsequent to the order. Your analysis does merit a response.

The important part of the dissection is the difference between the Statutory Unitization Act and the force-pooling provision of the Oil and Gas Act. In my mind, the major functional difference is that a force-pooling order forces mineral interests into a single proration unit and provides such interests with alternative methods of participating in a single operation, drilling a well. Such interest may pay its prorata share of costs in advance, join the risk and receive its prorata share of production, or it may have its share of costs plus risk charge withheld from production. A force-pooling order has no effect upon interests which have otherwise committed their interests to the well, and it has no import with respect to subsequent operations. The order also expires within a relatively short time if the well is not commenced by a specified date.

Under statutory unitization the unwilling interests are forced into an agreement affecting many wells and proration units for secondary recovery operations. Once in, the parties' rights and relationship are controlled by the agreement (being the unit agreement and unit operating agreement) regardless of whether the party has joined voluntarily or not and whether the interest is cost-bearing or non-cost-bearing. Unlike a force-pooling which may be undertaken by any single interest owner seeking to develop the minerals, a statutory unitization must have the voluntary joinder of a specified and substantial percentage of the interests before it can become effective, but once that happens the operations under the agreement continue indefinitely.

Looking specifically at the "penalty" provision of each, I find the differences again significant. The force-pooling statute requires the Division to "make definite provision" for the "prorata reimbursement solely out of production to the parties advancing the costs", such costs being limited to actual and reasonable costs of drilling the well, a reasonable charge for supervision and "may include a charge for risk" not to exceed 200 %. This charge is a reward to the parties who undertake the risk and is charged only to parties subject to the order who do not pay costs of the specified drilling

Mr. James Bruce
November 19, 1990,
Page 2

operation in advance. The risks involved must be demonstrated to the Division before a charge can be approved.

Under statutory unitization, the Division approves an agreement for the unit operation which must include many provisions including a provision for carrying working interests, which provision will define the manner in which the carried interests will be paid out of production. The statute further provides that the interest will be relinquished to the unit until costs, plus a nonconsent penalty, have been recovered. The nonconsent penalty is not necessarily based upon risk and is an inducement to encourage participation in any given operation. The carrying provision applies to any interest, whether or not that interest voluntarily joined the unit, which does not consent to an approved (by the unit) operation at any time during the life of the unit. An approved agreement must also have is a voting procedure by which the working interest parties to the agreement, whether voluntary or statutorily brought in, can make decisions regarding operations.

Operationally these appear to me to be very substantial differences. As Jim Morrow pointed out, once a unit plan has been approved, the parties are going to look at the agreement to determine rights and responsibilities. An order with substantive additional provisions is extraneous to that agreement. Furthermore, parties who have accepted the agreement, might not have agreed to a penalty provision. In other words, it is my interpretation that the order approves the agreement and imposes on certain parties, and that agreement then establishes the rights and duties.

Having now made this analysis, I invite you to submit a proposed form of order penalty provision which could be applied in this type case. I'm not sure procedurally how we would implement such a provision at this time, but we can cross that bridge if we get to it.

As always the matter is wide open for discussion.

Sincerely,



Robert G. Stovall,
General Counsel

Case File
R-9358
Case 1012

HINKLE, COX, EATON, COFFIELD & HENSLEY

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November 15, 1990

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*NOT LICENSED IN NEW MEXICO

JHM
11-19-90

Mr. Robert Stovall
New Mexico Oil Conservation
Division
P. O. Box 2088
Santa Fe, New Mexico 87504

Re: Sage Energy (Case Nos. 10,102 and 10,103)

Dear Bob:

We discussed whether the Unit Operating Agreement in the above matter complies with Section 70-7-7(F), and as a result whether the Division's Order in the unitization case could properly include a 200% penalty. I believe the answer to both questions is "yes".

First, the Operating Agreement does contain a provision for carrying working interest owners (See Section 11.6), but it does not contain a specific penalty percentage. (The form used by Sage Energy is the standard form used for state lands.) As I read the statute, the Unit Operating Agreement only need contain a provision for carrying working interest owners; subsection F requires the penalty to be determined by the Division. Subsection F ends with the phrase "with maximum penalty amount in each case to be determined by the division." As a result, even if Section 11.6 set forth some penalty provision, it could be superseded by the Order of the Division.

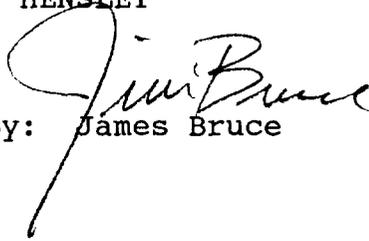
I have spoken with some other practitioners, and the relevant language in subsection F regarding penalties was added in 1986 to make it more like the compulsory pooling statute. To my knowledge, it is the position among parties appearing before the Division that only the Division has the right to set the penalty, and thus including a specific penalty in the Unit Operating Agreement would be of no effect.

Mr. Robert Stovall
November 15, 1990
Page 2

As a result of the foregoing, Sage again requests that its Unit Operating Agreement be approved, but that the order approving the Unit Operating Agreement contain a penalty provision. This would be consistent with other unitization cases. See, e.g., Case No. 9210. Please call me if you have any questions.

Very truly yours,

HINKLE, COX, EATON, COFFIELD &
HENSLEY


By: James Bruce

JB:le
Enclosure

State of New Mexico

~~#10102~~

#10102



JIM BACA
COMMISSIONER

Commissioner of Public Lands

P.O. BOX 1148
SANTA FE, NEW MEXICO 87504-1148

January 29, 1991

Sage Energy Company
10101 Rennen Place, Suite 800
San Antonio, TX 78216-4158

Attn: Lee Patrick

Re: North Vacuum (ABO) North Unit
Lea County, New Mexico
Final Approval

Dear Mr. Patrick:

Please be advised that the Commissioner of Public Lands this date January 29, 1991, has granted final approval for the Waterflood North Vacuum (ABO) North Unit in Lea County, New Mexico.

We concur with OCD Case No. 10103, Order No. R-9359 date November 13, 1990. Enclosed are five (5) Certificates of Approval and one (1) copy of the approved North Vacuum (ABO) North Unit. Your filing fee in the amount of One Hundred Fifty Follars (\$150.00) was received.

If you have any questions regarding this matter please contact Clyde Langdale at (505) 827-5791.

Sincerely,

JIM BACA
COMMISSIONER OF PUBLIC LANDS

BY: *Floyd O. Prando*
Floyd O. Prando, Director
Oil, Gas & Minerals Division

JB/FOP/CL/dm

cc: TRD - Oil & Gas Accounting Division
OCD
BLM - Jerry Dutchover
Royalty Management

State of New Mexico



Commissioner of Public Lands

W.R. HUMPHRIES
COMMISSIONER

P.O. BOX 1148
SANTA FE, NEW MEXICO 87504-1148

October 3, 1990

Mr. Mark Haralson, Senior Landman
Mobil Exploration & Producing U.S. Inc.,
P.O. Box 633
Midland, TX 79702

Re: North Vacuum Abo Unit
Lea County, New Mexico
1990 Plan of Development

Dear Mr. Haralson:

The Commissioner of Public Lands this date approved the 1990 Plan of Development for the North Vacuum Abo Unit. Our approval is subject to like approval by all other appropriate agencies.

The possibility of drainage by wells outside of the Unit Area and the need for further development may exist. You will be contacted at a later date regarding these possibilities.

If we may be of further help, please do not hesitate to contact Clyde Langdale at (505) 827-5791.

Sincerely,

W. R. HUMPHRIES

BY: *Floyd O. Prando*
Floyd O. Prando, Director
Oil, Gas & Minerals Division

cc: OCD
Unit Corresp.
Unit POD

REPORT TO DEPARTMENTS

UNIT NAME North Vacuum (ABO) North Unit

OPERATOR Sage Energy Company

COUNTY Lea County, New Mexico

DATE APPROVED	OCC CASE NO. OCC ORDER NO.	EFFECTIVE DATE	TOTAL ACREAGE	STATE	FEDERAL	INDIAN-FEE	SEGREGATION CLAUSE	TERM
1-29-91	Case No. 10103 Order No. R-9359	2-1-91	1762.79	1762.79	-0-	-0-	All Leases Extended if Sharing in Royalty.	So Long

UNIT AREA

Township 16 South, Range 34 East N.M.P.M

Section 35: S/2 S/2

Section 36: S/2

Township 17 South, Range 34 East N.M.P.M.

Section 1: All

Section 2: E/2, S/2 NW/4, S/2 SW/4

Section 12: NW/4



Sage Energy Company

OIL CONSERVATION DIVISION
RECEIVED
'90 SEP 7 AM 8 26

September 4, 1990

State of New Mexico
Oil Conservation Division
P.O. Box 2088
Santa Fe, New Mexico 87501

Attn: Dave Catanach

RE: Proposed North Vacuum
(Abo) North Unit
Lea County, New Mexico

Gentlemen:

10102

By the appropriate C-108 application Sage Energy has applied to convert 19 wells to water injection wells in the referenced unit. An October 3, 1990 hearing date was requested.

This letter is to serve as a request for a hearing for the approval of the Unit Agreement for the referenced unit. A plat showing the proposed area is attached. All lands involved are State of New Mexico lands. An October 3, 1990 hearing is also requested for the Unit Agreement.

If anything further is needed, please call me.

Sincerely,

SAGE ENERGY COMPANY

Lee Patrick
Division Landman

LP:bg
Enclosure



- ▲ SECTION WELL
- PROPOSED SECTION WELL
- PROPOSED PRODUCING WELL

R 34 E

R 35 E

Sage Energy Company
Midland, Texas

PROPOSED NORTH VACUUM (ABO) NORTH UNIT
LEA COUNTY, NEW MEXICO

7689, 8248
7778, 8248

Scale: 1" = 400'

1998

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:

Cases Nos: 10,102 and 10,103

APPLICATION OF SAGE ENERGY
COMPANY FOR A UNIT AGREEMENT
AND WATERFLOOD PROJECT, LEA
COUNTY, NEW MEXICO.

PRE-HEARING STATEMENT

This pre-hearing statement is submitted by Applicant as required by the Oil Conservation Division.

APPEARANCES OF PARTIES

APPLICANT

Sage Energy Company
10101 Reunion Place, Suite 800
San Antonio, Texas 78216
(512) 340-2288
Attention: Mr. Lee Patrick

ATTORNEY

Hinkle, Cox, Eaton,
Coffield & Hensley
James Bruce
500 Marquette, N.W.
Suite 800
Albuquerque, N.M. 87102
(505) 768-1500

OPPOSITION OR OTHER PARTY

ATTORNEY

STATEMENT OF CASE

APPLICANT

(Please make a concise statement of what is being sought with this application and the reasons therefor.)

Applicant seeks statutory unitization of the North Vacuum (Abo) North Unit, and approval of a waterflood project for the Unit, covering all or portions of Sections 35 and 36-16 South-34 East, and Sections 1, 2, and 12-17 South-34 East.

OPPOSITION OR OTHER PARTY

(Please make a concise statement of the basis for opposing this application or otherwise state the position of the party filing this statement.)

PROPOSED EVIDENCE

APPLICANT

WITNESS (Name and expertise)	EST. TIME	EXHIBITS
Lee Patrick (Landman)	20 minutes	(a) Land Plat (b) Unit Agreement (c) Unit Operating Agreement (d) Notice letters
Jay Hardy (Engineer)	50 minutes	(a) Engineering Report (b) Form C-108

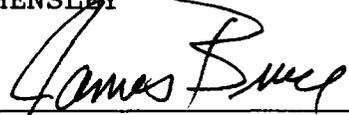
PROCEDURAL MATTERS

(Please identify any procedural matters which which need to be resolved prior to the hearing)

Case No. 10,102 was advertised as a voluntary unit case. Applicant desires to statutorily unitize the unit area. Applicant suggests that testimony be heard in Case No. 10,102, but that it be re-advertised and re-noticed for the October 31, 1990 hearing, at which time Applicant will present any necessary additional evidence.

Respectfully Submitted,

HINKLE, COX, EATON, COFFIELD &
HENSLEY

By 

James Bruce
500 Marquette, N.W.
Suite 800
Albuquerque, N.M. 87102
(505) 768-1500

Attorneys for Applicant

OIL CONSERVATION DIVISION
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September 28, 1990

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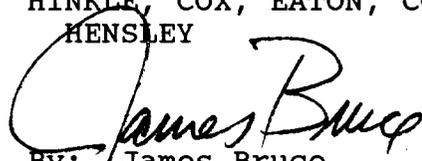
Ms. Florene Davidson
Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87504

Dear Florene:

Enclosed for filing are two original Pre-Hearing Statements (one for cases 10,102 and 10,103, and one for cases 10,099 and 10,100). Copies of these statements were filed on Friday to comply with time requirements.

Very truly yours,

HINKLE, COX, EATON, COFFIELD &
HENSLEY


By: James Bruce

JB:le
Enclosures