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. 11932
Order No. R-10986

APPLICATION OF PIONEER NATURAL RESOURCES USA, INC. FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on April 2, 1998, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 7th day of May, 1998, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) The applicant, Pioneer Natural Resources USA, Inc. (Pioneer), seeks an order pooling all mineral interests 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, 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 is to be dedicated to the applicant's proposed McCasland "18" Fee Well No. 11 to be drilled at a standard oil well location within the NE/4 SW/4 of Section 18.

(3) The applicant has the right to drill and proposes to drill its McCasland "18" Fee Well No. 11 at a standard oil well location within the NE/4 SW/4 of Section 18 to a depth sufficient to test the Abo formation.

(4) Doyle Hartman, the only interest owner in the proposed proration unit who has not agreed to pool its interest, appeared at the hearing in opposition to the application.

(5) Subsequent to the hearing, Doyle Hartman filed a "Motion to Dismiss" and a "Memorandum Brief in Support of Hartman's Motion to Dismiss and in Opposition to Application of Pioneer for Compulsory Pooling."

(6) In support of its motion to dismiss, Hartman put forth the arguments that:

a) Pioneer has not negotiated in good faith and prematurely filed a compulsory pooling application in this case; and,

b) by transmittal from Hartman to Pioneer dated April 1, 1998, Hartman executed a lease for the subject 40-acre tract on Pioneer's proposed lease form. Such execution constitutes a voluntary agreement between Hartman and Pioneer, therefore, the Division has no authority to pool Hartman's interest within the subject spacing unit.

(7) The evidence and testimony presented in this case indicates that:

a) EnerQuest Resources, L.L.C. (EnerQuest) initially developed the McCasland "18" Fee Well No. 11 prospect. Subsequently, EnerQuest sold the project to Pioneer and retained a working interest ownership in the proposed spacing unit;

b) as a result of a phone conversation between Mr. Doyle Hartman and Mr. Robert W. Floyd, Vice-President of EnerQuest, an offer to lease Hartman's interest in a 120-acre tract comprising the NE/4 SW/4, SE/4 NW/4 and SW/4 NW/4 of Section 18 was conveyed to Hartman by EnerQuest on May 12, 1997;

c) in July, 1997, EnerQuest followed up its initial contact by conveying to Hartman a lease agreement and lease bonus check;

d) EnerQuest attempted to contact Hartman by phone subsequent to the July, 1997 transmittal and was successful in talking with a representative of Hartman who indicated to EnerQuest that Hartman had not made a decision on the proposal;

e) during the next several months, EnerQuest made numerous attempts to contact Hartman by phone to discuss its lease proposal. Hartman made no effort to return phone calls by EnerQuest;

f) by letter dated January 9, 1998, Pioneer formally proposed to Hartman the drilling of the McCasland "18" Fee Well No. 11 and sought Hartman's voluntary participation in the drilling of the well either by its execution of a lease agreement or by signing an AFE and paying its proportionate share of the well costs;

g) on February 2, 1998, Pioneer filed a compulsory pooling application with the Division seeking to pool the NE/4 SW/4 of Section 18;

h) Case No. 11932 originally appeared on the docket for March 5, 1998 but was continued to the April 2, 1998 docket at the request of the applicant;

i) on April 1, 1998, Hartman conveyed to Pioneer an executed lease agreement for the NE/4 SW/4 of Section 18. In addition to amending the lease agreement from 120 acres to 40 acres, Hartman made other amendments to Pioneer's proposed lease agreement not agreed to by Pioneer;

j) Pioneer testified that certain amendments made by Hartman to its proposed lease agreement are unreasonable and are not consistent with the terms given to other interest owners within the subject spacing unit;

k) Pioneer testified that it is willing to negotiate a lease with Hartman which covers only the NE/4 SW/4 of Section 18 under terms that are fair and reasonable; and,

l) Pioneer testified that it has not nor will not agree to the amendments made by Hartman to its proposed lease agreement and therefore seeks to pool the interest of Hartman.

(8) The evidence and testimony indicates there is currently no voluntary agreement in place between Pioneer and Hartman for the drilling of the McCasland "18" Fee Well No. 11 in the NE/4 SW/4 of Section 18.

(9) The following described circumstances in this case indicate that the compulsory pooling application filed by Pioneer on February 2, 1998 was warranted:

a) initial contact with Hartman regarding the Pioneer/EnerQuest proposal to lease the subject acreage occurred some eight months prior to the filing of the compulsory pooling application;

b) despite numerous attempts to contact Hartman subsequent to its initial contact, Hartman has appeared to be unwilling to discuss the development of the NE/4 SW/4 of Section 18 or to negotiate the terms of the proposed lease;

c) Hartman did not respond to the applicant's proposal until April 1, 1998, a day before the compulsory pooling application was to be heard; and,

d) several of the applicant's leases within the NE/4 SW/4 of Section 18 will expire in early summer, 1998, and as a result, the applicant has attempted to expedite the proceedings in this matter in order to commence the drilling of the McCasland "18" Fee Well No. 11.

(10) The evidence and testimony demonstrates that Pioneer has made a good faith effort to secure the voluntary participation of Hartman for the drilling of the McCasland "18" Fee Well No. 11.

(11) Hartman's motion to dismiss should be denied.

(12) To avoid the drilling of unnecessary wells, to protect correlative rights, to avoid waste, and to afford to the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the production in any pool completion resulting from this order, the subject application should be approved by pooling all mineral interests, whatever they may be, within said unit.

(13) The applicant should be designated the operator of the subject well and unit.

(14) Any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production.

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

(16) Any non-consenting working 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.

(17) Following determination of reasonable well costs, any non-consenting working interest owner who has paid his 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.

(18) $4349.30 per month while drilling and $458.04 per month while producing should be fixed as reasonable charges for supervision (combined fixed rates); the operator should be authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator should be authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(19) All proceeds from production from the subject well which 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.

(20) Upon the failure of the operator of said pooled unit to commence the drilling of the well to which said unit is dedicated on or before August 1, 1998, the order pooling said unit should become null and void and of no effect whatsoever.

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

(22) The operator of the well and unit shall notify the Director of 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) 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.

PROVIDED HOWEVER THAT, the operator of said unit shall commence the drilling of said well on or before the 1st day of August, 1998, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Abo formation.

PROVIDED FURTHER THAT, in the event said operator does not commence the drilling of said well on or before the 1st day of August, 1998, Ordering Paragraph No. (1) of this order shall be null and void and of no effect whatsoever, unless said operator obtains a time extension from the Division Director for good cause shown.

PROVIDED FURTHER THAT, should said well not be drilled to completion, or abandonment, within 120 days after commencement thereof, said operator shall appear before the Division Director and show cause why Ordering Paragraph No. (1) of this order should not be rescinded.

(2) Pioneer Natural Resources USA, Inc., is hereby designated the operator of the subject well and unit.

(3) After the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Division and each known working interest owner in the subject unit an itemized schedule of estimated well costs.

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

(5) 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; 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 said schedule, the actual well costs shall be the reasonable well costs; provided however, if there is objection to actual well costs within said 45-day period the Division will determine reasonable well costs after public notice and hearing.

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

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

(A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(B) As a charge for the risk involved in the drilling of the well, 200 percent of the pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

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

(9) $4349.30 per month while drilling and $458.04 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); the operator is hereby authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating such well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(10) 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 the terms of this order.

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

(12) All proceeds from production from the subject well which are not disbursed for any reason shall immediately be placed in escrow in Lea 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 said escrow agent within 30 days from the date of first deposit with said escrow agent.

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

(14) The operator of the well and unit shall notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(15) The motion to dismiss Case No. 11932 filed by Doyle Hartman on April 7, 1998 is hereby denied.

(16) Jurisdiction is hereby 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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