

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:)
APPLICATION OF FUEL PRODUCTS, INC.,)
COMPULSORY POOLING, EDDY COUNTY,)
NEW MEXICO)

CASE NO. 12,431

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

June 15th, 2000

Santa Fe, New Mexico

CO JUN 29 AM 5:09
OIL CONSERVATION DIV

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, June 15th, 2000, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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I N D E X

June 15th, 2000
Examiner Hearing
CASE NO. 12,431

PAGE

REPORTER'S CERTIFICATE

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A P P E A R A N C E S

FOR THE DIVISION:

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Legal Counsel to the Division
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FOR THE APPLICANT:

MONTGOMERY & ANDREWS, P.A.
Attorneys at Law
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P.O. Box 2307
Santa Fe, New Mexico 87504-2307
By: PAUL R. OWEN

FOR NEARBURG EXPLORATION COMPANY, L.L.C.:

MILLER, STRATVERT and TORGERSON, P.A.
150 Washington
Suite 300
Santa Fe, New Mexico 87501
By: J. SCOTT HALL

* * *

1 WHEREUPON, the following proceedings were had at
2 9:35 a.m.:

3 EXAMINER CATANACH: At this time I'll call Case
4 12,431, which is the Application of Fuel Products, Inc.,
5 for compulsory pooling, Eddy County, New Mexico.

6 I will call for appearances in this case.

7 MR. OWEN: Paul Owen of the Santa Fe law firm of
8 Montgomery and Andrews, P.A., appearing on behalf of the
9 Applicant, Fuel Products, Inc. I have no witnesses in this
10 case.

11 MR. HALL: Mr. Examiner, Scott Hall, Miller
12 Stratvert Torgerson, Santa Fe, on behalf of Nearburg
13 Exploration Company, L.L.C. No witnesses.

14 EXAMINER CATANACH: Okay. Mr. Owen?

15 MR. OWEN: Mr. Examiner, this morning I filed
16 with the Division a letter requesting the continuance of
17 this case to the July 13th docket. The Application in this
18 case seeks the pooling of acreage in Section 18, Township
19 18 South, Range 28 East, the east half of that section.

20 That acreage is also the subject of an
21 Application filed by Nearburg Exploration Company, L.L.C.,
22 in Case Number 12,427, which has been continued to July
23 13th, and in which case Mr. Hall represents Nearburg.

24 I was contacted late yesterday afternoon by Fuel
25 Products, Inc., and informed that Mr. Hall had filed a

1 motion to dismiss this case. I have reviewed that motion
2 to dismiss, however I have not had time to prepare a
3 written response. I will do so before the July 13th
4 hearing. However, I would like to make a brief statement
5 on the record as to the motion to dismiss, going to the
6 merits of it.

7 The requirements for a compulsory pooling
8 application under New Mexico Statutes Annotated, Section
9 70-2-17.C are that an owner of a mineral interest in
10 property in which the subject spacing unit has a separate
11 ownership, and all the separate owners have not agreed to
12 pool their interests, the owner who has a right to drill or
13 proposes to drill on that acreage may seek the compulsory
14 pooling authority of the Division.

15 The Application in this case, filed on behalf of
16 Fuel Products, Inc., states that Fuel Products, Inc., is an
17 owner of a mineral interest in the section, that it has the
18 right to drill thereon, that it proposes to drill a well
19 thereon, and that it has not reached voluntary agreement.
20 In fact, the lack of voluntary agreement is evidenced by
21 the competing force-pooling applications in this case.

22 Mr. Examiner, I would like to point out that what
23 is not in the statute is an obligation to make a good faith
24 effort to obtain voluntary agreement. It's not stated,
25 it's not implied.

1 Now, whether or not the Division has as a matter
2 of practice required owners to make a good faith effort is
3 another matter, and I submit, Mr. Examiner, that Fuel
4 Products, Inc., is in the process of making such good faith
5 efforts, will submit an AFE within the next day to the
6 other interest owners in the subject spacing area, and will
7 have this matter ripe for consideration before the July
8 13th docket.

9 Mr. Examiner, I request that the motion to
10 dismiss be denied on the record and that we proceed on the
11 merits of the competing force pooling applications under
12 the practices established by this Division on the July 13th
13 docket.

14 EXAMINER CATANACH: Mr. Hall?

15 MR. HALL: Mr. Examiner, Nearburg would oppose
16 the continuance of Case 12,431, and we would submit to you
17 that the proper disposition of the case is dismissal.

18 It's been the long-standing interpretation and
19 practice of the Division, under both Section 70-2-17 and
20 70-2-18 that an applicant must make a good faith effort to
21 obtain voluntary joinder before an application is submitted
22 to the Division. That was not done in this case. It was
23 certainly not done 30 days in advance of the hearing date.
24 As of yesterday, as far as I know, as of today, there has
25 still been no effort on the part of Fuel Products to

1 propose a well to Nearburg or any of the other interest
2 owners at all.

3 I think consistent with the Division's prior
4 practice, the case ought to be dismissed. The facts in the
5 motion are undisputed at this point. I think dismissal is
6 the only disposition the Division can make of this case.

7 EXAMINER CATANACH: Mr. Hall.

8 (Off the record)

9 EXAMINER CATANACH: I am going to go ahead and
10 continue the case to July 13th. I am not going to dismiss
11 the case at this time. And as a matter of fact, I am not
12 going to rule on the motion to dismiss until we have a
13 written response to the motion from Mr. Owen.

14 I believe that after we have Mr. Owen's response,
15 we can probably make a ruling on the motion, which might
16 negate the continuance, and actually it might be -- if
17 Scott's motion is approved, we might dismiss the case
18 ultimately. But we want to give you the chance to respond,
19 written, to the motion, Mr. Owen, and we would assume that
20 you will do so within a reasonable time period. Do you
21 know when you might have that in?

22 MR. OWEN: I'll have it in by the end of the
23 week, before tomorrow afternoon.

24 EXAMINER CATANACH: Okay, which would -- I would
25 say that we could probably make a ruling sometime early

1 next week on the motion, and we'll proceed from there.

2 But in the meantime, we'll go ahead and continue
3 the case to July 13th, pending the motion decision.

4 Okay?

5 MR. HALL: Thank you.

6 MR. OWEN: Thank you, Mr. Examiner.

7 (Thereupon, these proceedings were concluded at
8 9:42 a.m.)

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I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of case no. 12431,
heard by me on June 15, 1980.
David R. Cota, Examiner
Conservation Division

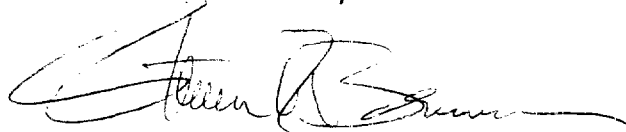
CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
 COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL June 16th, 2000.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 14, 2002