

NEW MEXICO OIL CONSERVATION DIVISION

EXAMINER HEARINGSANTA FE, NEW MEXICOHearing Date JULY 13, 2000 Time 8:15 A.M.

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Mark Nearburg	Ameristate Exploration	Austin
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MARK WHEELER	NEARBURG	"
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BARRY ZINZ	'	'
George Broome	Ms Elvain	Santa Fe

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. 12,446

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

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MARK ASHLEY, Hearing Examiner

July 13th, 2000

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, MARK ASHLEY, Hearing Examiner on Thursday, July 13th, 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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 Examiner Hearing
 CASE NO. 12,446

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* * *

1 WHEREUPON, the following proceedings were had at
2 8:20 a.m.:

3 EXAMINER ASHLEY: This hearing will come to order
4 for Docket Number 19-00. Please note today's date, July
5 13th, 2000. I'm Mark Ashley, appointed Hearing Examiner
6 for today's cases.

7 Before we call the first case, I'd like to review
8 the docket for continuances and dismissals.

9 (Off the record)

10 EXAMINER ASHLEY: At this time the Division calls
11 Case 12,446.

12 MS. HEBERT: Application of Fuel Products, Inc.,
13 for compulsory pooling, Eddy County, New Mexico.

14 EXAMINER ASHLEY: Call for appearances.

15 MR. OWEN: Paul Owen of the Santa Fe law firm of
16 Montgomery and Andrews, P.A., appearing on behalf of the
17 Applicant, Fuel Products, Inc. I have two witnesses to be
18 sworn in this matter.

19 EXAMINER ASHLEY: Additional appearances?

20 MR. HALL: Mr. Examiner, Scott Hall, Miller
21 Stratvert Torgerson, Santa Fe, on behalf of Nearburg
22 Exploration Company, LLC. I have no witnesses this
23 morning.

24 EXAMINER ASHLEY: Additional appearances?

25 MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of

1 the Santa Fe law firm of Kellahin and Kellahin, appearing
2 on behalf of Phillips Petroleum Company.

3 EXAMINER ASHLEY: Will the witnesses please rise
4 to be sworn in?

5 (Thereupon, the witnesses were sworn.)

6 EXAMINER ASHLEY: Before we start, I'd like for
7 each one of the attorneys to make a statement as far as
8 where we stand in this case. There's been a motion to
9 dismiss, and I want to -- and there's been responses from
10 the other parties, and I'd like to have this on the record
11 and go from here.

12 MR. KELLAHIN: Mr. Examiner, that was my motion
13 to dismiss on behalf of Phillips Petroleum Company. With
14 permission of opposing counsel, I think I can summarize
15 this for you.

16 Late yesterday afternoon we had a telephonic pre-
17 hearing conference with you, Mr. Examiner, that included
18 the attorneys involved in this case, Mr. Hall, Mr. Owen and
19 I. The motion to dismiss was filed on behalf of Phillips
20 against the Fuel Products case. The simple point was that
21 the Application for force pooling was filed on June 20th.
22 My client received the actual well proposal two days later.
23 We believe that was inappropriate.

24 However, I also understand that the facts are
25 unique in this case, and the filing of the Fuel Products

1 case was a reaction to an earlier Nearburg proposal and
2 filing, which was dismissed on your docket just now. It's
3 Case 12,427.

4 In response to my motion, Mr. Hall and Mr. Owen
5 each filed separate responses. We have talked with each
6 other, and as a compromise, because of the unique
7 circumstances of this case, and for this case alone, we
8 have agreed that if Fuel Products will put on their case in
9 chief today, and that if you will grant us a two-weeks'
10 continuance, we will accommodate the Applicant and we will
11 attempt to respond within that period, thereby waiving our
12 claim about improper filing and notice.

13 And so if you'll agree to do that for us, then
14 you will not have to decide the motion to dismiss.

15 MR. OWEN: Mr. Examiner, Mr. Kellahin has
16 accurately set forth the agreement between the parties.
17 Mr. Kellahin filed a motion to dismiss, arguing that the
18 procedure by which Fuel Products sought the compulsory
19 pooling in this case was improper.

20 In fact, Fuel Products filed a response disputing
21 that construction of the facts. Fuel Products took the
22 position that, in fact, its filing was proper in this case
23 and that dismissal would be improper.

24 However, prior to your ruling on the motion, the
25 parties through their attorneys did reach agreement that

1 Fuel Products would present its case-in-chief today. At
2 the conclusion of the hearing we would request a two-week
3 continuance with the condition that the case now be removed
4 from your docket and with the condition that an order on
5 the merits of the Fuel Products Application in this case
6 not be delayed in any way by the continuance past the
7 continuance period.

8 And I believe that accurately sets forth the
9 agreement between the parties, and we're ready to proceed
10 today.

11 EXAMINER ASHLEY: Mr. Hall?

12 MR. HALL: Mr. Examiner, it's my understanding
13 that the parties, in fact, have been discussing the
14 drilling of a well on the east half of Section 18 that was
15 the subject of the applications of Nearburg in Case 12,427
16 and a subsequent application by Fuel Products in this case.

17 Nearburg has agreed to participate in the Fuel
18 Products well at the location it proposes.

19 However, I would caution and advise the Examiner
20 that Nearburg's rights in the acreage are pursuant to a
21 farmout agreement, and certain of Nearburg's farmout rights
22 terminate if a well is not commenced by August 10th, is my
23 understanding.

24 So on behalf of Nearburg, we would request the
25 issuance of an order on an expedited basis, and I believe

1 all the parties will work with you to provide you with a
2 draft order just as soon as we can.

3 (Off the record)

4 EXAMINER ASHLEY: Can you clarify again why you
5 want this continued for two weeks?

6 MR. OWEN: Mr. Examiner, Phillips Petroleum
7 Company and my client, Fuel Products, Inc., have been
8 discussing the terms and conditions by which Phillips will
9 either participate in the well or otherwise make its
10 acreage available to Fuel Products, and have not yet
11 reached agreement on that point.

12 Phillips Petroleum Company requests additional
13 time to consider the merits of the case, and Fuel Products
14 has agreed to the extra two-week period to accommodate
15 Phillips in that request.

16 EXAMINER ASHLEY: Okay, what's your position on
17 the motion, Mr. Kellahin?

18 MR. KELLAHIN: Mr. Examiner, we think it's a
19 significant breach of practice before the Division to file
20 a pooling case prior to actually receiving the well
21 proposal. And if you disrupt the normal practice of
22 getting a well proposal, specifically as to AFE and
23 location...

24 The practice is to wait 30 days before a pooling
25 application is filed. That would give Phillips or anyone

1 else receiving such a proposal approximately 40 to 50 days
2 to make decisions and try to reach solutions on this.

3 But because of the unique circumstances of this
4 case, we recognize why Fuel Products did not follow that
5 normal practice. And so we are prepared to compromise on
6 this issue, although we feel strongly on the point, and a
7 two-weeks' continuance, then, does give us the benefit of
8 Mr. Mazzullo's technical case. I can go back to Phillips
9 and they can make a decision about participating, some kind
10 of agreement, or whatever else solution they want to
11 propose. And so for the unique circumstances of this case,
12 we're willing to compromise as we have described it to you.

13 EXAMINER ASHLEY: So where does that leave the
14 motion to dismiss?

15 MR. KELLAHIN: Well, it simply makes it moot on
16 the occurrence of the continuance because it disappears,
17 and the only issues remaining at the January 27th hearing
18 would be whether Phillips wanted to come -- highly
19 unlikely, but would come and put on a technical case with
20 regards to penalties or anything else.

21 So the one thing that's accomplished by this
22 continuance is, it makes it unnecessary for you to decide
23 the motion to dismiss.

24 MR. OWEN: Mr. Examiner, if you do want to
25 address the merits of the motion, I believe that Mr. Hall

1 and myself would speak to the merits of the motion. It was
2 the parties' understanding that that was not going to
3 happen today, however I believe that both Mr. Hall and
4 myself are prepared to pursue the merits of the motion at
5 this time, if you want to address that.

6 MR. HALL: Let me say, based on conversations we
7 had yesterday, or informal telephone conference, that
8 because of the agreement reached between Phillips and Fuel
9 Products, the issue of whether or not there was a good
10 faith effort to secure Phillips voluntary joinder would be
11 obviated by the agreement. So you would be in a position
12 to make a finding in an order that there was, in fact, a
13 good faith effort to secure Phillips' joinder. So that's a
14 nonissue in this case, as a result of the agreement of the
15 parties.

16 EXAMINER ASHLEY: Mr. Kellahin, you say that the
17 motion to dismiss will be a moot point if this is
18 continued.

19 MR. KELLAHIN: That's the compromise settlement
20 among the parties involved, that's the result.

21 EXAMINER ASHLEY: So as part of the compromise,
22 will you withdraw your motion to dismiss?

23 MR. KELLAHIN: No, sir, it's of record and the
24 responses are all of record. I don't think you have to
25 rule on it, based upon the agreement that that issue

1 becomes moot with the granting of the continuance.

2 EXAMINER ASHLEY: I've read the responses, I've
3 read the motion, we had our conference yesterday, and the
4 Division's position is that the motion is not warranted at
5 this time, and we're going to deny that motion and we're
6 going to hear the case.

7 MR. KELLAHIN: I'm confused about your decision,
8 Mr. Examiner. Does that mean that we're going to have a
9 two-weeks' continuance or not?

10 EXAMINER ASHLEY: Yes, we will have a two-week
11 continuance.

12 Mr. Owen?

13 MR. OWEN: Mr. Examiner, I call as my first
14 witness in this matter Mr. Mark Nearburg.

15 MARK K. NEARBURG,
16 the witness herein, after having been first duly sworn upon
17 his oath, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. OWEN:

20 Q. Mr. Nearburg, would you please tell us your full
21 name and where you live?

22 A. Mark Nearburg, Austin, Texas.

23 Q. And who do you work for?

24 A. Ameristate Exploration.

25 Q. What do you do for Ameristate?

1 A. Generate prospects, in this case in conjunction
2 with Fuel Products, Inc.

3 Q. And what exactly is your involvement with Fuel
4 Products in this case?

5 A. I'm a partner with Fuel Products in the proration
6 unit in question.

7 Q. By "you", you mean Ameristate, the company in
8 which you're a principal?

9 A. Yes.

10 Q. Have you previously testified before this
11 Division and had your credentials as a petroleum landman
12 accepted and made a matter of record?

13 A. Yes.

14 Q. Are you familiar with the Application filed in
15 this case?

16 A. Yes.

17 Q. Are you familiar with the status of the lands in
18 the subject area?

19 A. Yes.

20 MR. OWEN: Mr. Examiner, are the witness's
21 qualifications acceptable as an expert petroleum landman?

22 EXAMINER ASHLEY: They are.

23 Q. (By Mr. Owen) Mr. Nearburg, could you please
24 tell us what Fuel Products seeks with this Application?

25 A. We seek an order pooling all mineral interests

1 underlying the east half of Section 18, Township 18 South,
2 Range 28 East, NMPM, Eddy County, New Mexico, in the
3 following manner: all formations and/or pools developed on
4 320-acre spacing within that vertical extent, including but
5 not limited to the Undesignated North Illinois Camp-Morrow
6 Gas Pool; all formations developed on a 160-acre spacing
7 underlying the southeast quarter; and all formations
8 developed on a 40-acre spacing underlying the southeast
9 quarter, southeast quarter, which includes but is not
10 necessarily limited to the Undesignated Empire-Abo Pool,
11 the Undesignated Artesia-Queen-Grayburg-San Andres Pool,
12 and the Undesignated Red Lake-Queen-Grayburg-San Andres
13 Pool.

14 Said proration and spacing units are to be
15 dedicated to Fuel Products' proposed Illinois Camp 18 State
16 Number 1 well, to be drilled at a standard location in the
17 southeast quarter in Unit P, like "Paul", of said Section
18 18.

19 Q. Mr. Nearburg, have you brought certain exhibits
20 for introduction in this case?

21 A. Yes.

22 Q. Why don't we turn to your first exhibit, your
23 land map? Can you please explain that for the Examiner?

24 A. Outlined in red is the east half of Section 18,
25 being the proration unit. The proposed well location is

1 990 from the south line, 990 from the east line in Unit P.
2 And it gives an overview of the ownership in the area,
3 showing the acreage that Fuel Products has acquired rights
4 to in yellow; acreage which Nearburg Exploration Company
5 represents in pink, with which they have agreed to
6 participate; and the Phillips acreage in blue.

7 Q. What's your primary objective with this well?

8 A. The Morrow formation in the Undesignated North
9 Illinois Camp-Morrow Gas Pool.

10 Q. Now, the ownership interests that are reflected
11 on Exhibit Number 1, are those set forth on Exhibit Number
12 2?

13 A. Yes. It shows Fuel Products with 62.5-percent
14 working interest; Phillips Petroleum Company, 25-percent
15 working interest; and Nearburg Exploration Company,
16 10.50348-percent working interest, which is comprised of
17 agreements they made with Louis Dreyfus Natural Gas,
18 Marathon Oil Company and ARCO, and they have agreed to --
19 Nearburg has agreed to participate with those interests.
20 Yates Petroleum Corporation has 1.99652-percent interest,
21 and they have also agreed to participate in the drilling of
22 the well. That leaves Phillips Petroleum Company's 25
23 percent uncommitted.

24 Q. Okay. So what total percentage of the acreage is
25 voluntarily committed to the well?

1 A. 75 percent.

2 Q. Let's move to Fuel Products Exhibit Number 3,
3 your AFE. Can you explain that for the Examiner, please?

4 A. This AFE was prepared by Fuel Products, Inc. The
5 dryhole costs are \$508,528. The total on page 1 of 2, if
6 the well is a dryhole, would include intangible abandonment
7 costs of \$15,600, for a total of \$524,128.

8 Completion costs are shown on page 2 of \$309,100.
9 Removing the \$15,600 abandonment costs, the total well cost
10 for a completed well is estimated at \$817,628.

11 Q. And are these costs in line with what has been
12 charged by other operators in the area --

13 A. Yes.

14 Q. -- for similar wells?

15 A. They are.

16 Q. Let's turn to Exhibit Number 4. Why don't you
17 tell us -- I believe this summarizes the efforts made to
18 obtain Phillips' voluntary joinder. Can you explain this
19 exhibit for the Examiner, please?

20 A. The first part of the exhibit is an affidavit of
21 Thomas M. Beall, president of Fuel Products, Inc., my
22 partner in this prospect. The affidavit refers to the memo
23 to file, which is a telephone log of Mr. Bell's attempts
24 verbally to reach agreement with Phillips Petroleum
25 Company, the dates on which the phone calls were made, to

1 whom they were made and what the conversation regarded.

2 Q. Is it your opinion that Fuel Products, Inc., has
3 made a good faith effort to obtain the voluntary joinder of
4 Phillips?

5 A. Yes, I have also attempted to talk with Phillips
6 as recently as yesterday morning to reach their agreement,
7 and so at this point we do not have an agreement with
8 Phillips.

9 Q. What's the status of Nearburg's interest in the
10 spacing unit?

11 A. Nearburg Exploration Company has agreed to
12 support Fuel Products and V-F Petroleum, who is acting as
13 operator for Fuel Products, in the drilling of this well.
14 Nearburg has agreed to participate with their interest.

15 Q. And is that agreement reflected in Fuel Products
16 Exhibit Number 5?

17 A. Yes.

18 Q. You said that V-F Petroleum has agreed to be the
19 operator of this well. Do you, in fact, request that V-F
20 be designated the operator of the well --

21 A. Yes, we do.

22 Q. -- by the Division?

23 Has Fuel Products drilled any other Morrow wells
24 in the area, in the immediate area?

25 A. Yes, we have.

1 Q. Okay. Mr. Nearburg, is Fuel Products Exhibit
2 Number 6 an affidavit from myself enclosing or attaching
3 letters giving notice of this hearing to all the affected
4 interest owners?

5 A. Yes, it is.

6 Q. And Mr. Nearburg, I notice in that exhibit that
7 there are letters to Mewbourne Oil Company, Phillips,
8 Marathon, Louis Dreyfus, Yates and Nearburg. What is the
9 status, again -- I think you've mentioned -- What is the
10 status of Mewbourne, Marathon and Louis Dreyfus's interest?

11 A. Fuel Products has obtained a farmout from
12 Mewbourne Oil Company and Laurel Corporation. Nearburg
13 Producing Company has agreed to participate, along with the
14 interests they farmed in from Louis Dreyfus Natural Gas,
15 Marathon Oil Company and ARCO, and Yates Petroleum has
16 agreed to participate.

17 Q. Have you made an estimate of the overhead and
18 administrative costs while drilling the well and also while
19 producing it, if it's a successful well?

20 A. A drilling overhead rate of \$6000 and a producing
21 rate overhead of \$650 a month. These are in line with the
22 Ernst and Young Survey, 1999/2000.

23 Q. And are they also in line with what's being
24 charged by other operators in the area?

25 A. Yes.

1 Q. Do you recommend that those figures be
2 incorporated into any order that results from this hearing?

3 A. Yes.

4 Q. Mr. Nearburg, were Exhibits 1 through 6 prepared
5 by you or compiled under your direction and supervision?

6 A. Yes.

7 MR. OWEN: Mr. Examiner, I move the admission of
8 Fuel Products Exhibits 1 through 6.

9 EXAMINER ASHLEY: Any objection?

10 MR. KELLAHIN: No, sir.

11 EXAMINER ASHLEY: Exhibits 1 through 6 will be
12 admitted as evidence at this time.

13 MR. OWEN: That's all I have of this witness at
14 this time.

15 MR. KELLAHIN: Mr. Examiner, if you prefer I have
16 questions of Mr. Nearburg.

17 EXAMINER ASHLEY: That's fine.

18 MR. KELLAHIN: Is it appropriate for me to go
19 now?

20 EXAMINER ASHLEY: Yeah, that would be fine.

21 CROSS-EXAMINATION

22 BY MR. KELLAHIN:

23 Q. Mr. Nearburg, I didn't see in any of these
24 documents you've introduced the actual well proposal that
25 was submitted to Phillips. Do you have a letter showing

1 Fuel Products actually proposed this well in writing to
2 Phillips at a specific location?

3 A. I believe counsel does.

4 Q. All right, sir. I don't have extra copies.
5 This was attached to one of the motions to dismiss. Let me
6 show you this. Are you able to recognize that?

7 A. Uh-huh.

8 MR. KELLAHIN: Let me show it to the other
9 counsel.

10 Mr. Examiner, subsequent to the hearing, I will
11 mark this as Phillips Exhibit A, but this is the copy of
12 the letter I've shown Mr. Nearburg and counsel, and I'll
13 put it before you for reference.

14 EXAMINER ASHLEY: Okay.

15 Q. (By Mr. Kellahin) Mr. Nearburg, that letter I
16 showed you, which is dated June 14th and shows a receipt
17 stamp by Phillips of June 22nd, in fact, is the only
18 written proposal formally proposing this well to Phillips
19 at this location; is that not true?

20 A. That's correct. Well, except for the June 20,
21 2000, letter, which is in Exhibit Number 6 of Fuel
22 Products.

23 Q. The June 14th is the first proposal, though?
24 That was my question.

25 A. The first written proposal.

1 Q. Yes, sir.

2 A. The first verbal proposal was made as long ago as
3 September of 1999.

4 Q. When I refer to Mr. Beall's affidavit, I see
5 nothing in the chronology of his contacts with Phillips
6 where he is describing a specific well location; is that
7 not true?

8 A. Well, we have talked extensively with Phillips
9 about where this well will be drilled. We've had the same
10 information of all the other companies who have reached
11 agreement with us to drill this well.

12 Q. So when did the location change?

13 A. I do not believe Fuel's location -- Fuel's
14 location changed with the agreement of Nearburg.

15 Q. All right. So the proposal that's under the
16 dismissed case, 12,431, shows a location in the northeast
17 quarter of the southeast quarter of the section, true?

18 A. Correct.

19 Q. All right. And the application that's still
20 pending for decision today is in a different 40-acre tract;
21 it's down in the southeast-southeast of the section, right?

22 A. Correct.

23 Q. Okay. What was the reason for the change of
24 location?

25 A. Reaching agreement with Nearburg and the other

1 parties involved to drill the well.

2 Q. And what caused them to change --

3 A. And Phillips is aware of that.

4 Q. My question was, what caused them to change
5 location?

6 A. Negotiating an agreement to drill the well at a
7 location acceptable to all parties.

8 Q. And was that based upon a geologic decision or
9 not?

10 A. Yes.

11 Q. Okay. When I look at your Exhibit Number 2 and
12 see the spreadout of the interests, tell me again about
13 Nearburg Exploration Company. You mentioned they acquired
14 their percentage from various companies. I remember you
15 saying ARCO, true?

16 A. Yes.

17 Q. Louis Dreyfus?

18 A. Yes.

19 Q. And who else?

20 A. Marathon.

21 Q. Marathon. Was that all done with one agreement
22 or multiple agreements, Mr. Nearburg?

23 A. You would have to ask Nearburg, but I would
24 assume they had an agreement with each company.

25 Q. Okay. Do you know the type or form of that

1 agreement?

2 A. No, I do not.

3 Q. You don't know if it was a term assignment or a
4 farmout or something else?

5 A. No. I do know that they have time deadlines in
6 October of this year to drill the well.

7 Q. October of this year?

8 A. Yes.

9 Q. Did you hear Mr. Hall just represent to the
10 Division that that deadline for commencing the well was
11 August 10th and not October?

12 A. I do not believe he stated August. If he did, I
13 misheard it.

14 Q. All right. He said to the Examiner that he had a
15 time commitment that Nearburg, in order to maintain their
16 farmout, had to have this well commenced by August 10th.

17 A. I suggest you clarify that with Mr. Hall.

18 Q. So that's not consistent with your understanding,
19 is it?

20 A. No.

21 Q. Okay. When did you first become aware that
22 Nearburg had an interest in the spacing unit?

23 A. When we did the title opinion back in September
24 of 1999.

25 Q. Okay. And what's your relationship with Fuel

1 Products, Mr. Nearburg?

2 A. I'm a partner with Fuel Products in this acreage,
3 subject to the pooling.

4 Q. Would the 62 1/2 percent be divided, then, among
5 various parties participating under this entity called Fuel
6 Products, Inc.?

7 A. Yes, it would.

8 Q. Okay, and what would be your percentage?

9 A. One third of the 62 1/2 percent.

10 Q. You indicated that it's your desire to have V-F
11 Petroleum as the operator that actually drills the well?

12 A. Correct.

13 Q. Is there an operating agreement among the parties
14 at this point?

15 A. No, there is not. There is between Fuel
16 Products, Ameristate and V-F, but not between Nearburg and
17 Yates.

18 Q. All right, so how will you accomplish that
19 participation? Will they sign a joint operating agreement?

20 A. We'll sit down and negotiate the joint operating
21 agreement. Everybody but Phillips has been agreeable.

22 Q. All right. But at this point, the discussion has
23 not gotten to the point of having Nearburg and Yates
24 actually sign a joint operating agreement?

25 A. We've agreed to enter into a mutually acceptable

1 joint operating agreement prior to drilling a well.

2 Q. All right, sir, and we don't have a signed
3 operating --

4 A. We can have Phillips -- If we know what Phillips
5 will do, we will include them in that process, If they
6 decide to participate.

7 Q. Well, with or without Phillips, you're going to
8 need a joint operating agreement, right?

9 A. Correct, but we'd like all parties to enter into
10 the same joint operating agreement.

11 MR. KELLAHIN: All right, sir. I don't have any
12 further questions, thank you.

13 EXAMINER ASHLEY: Mr. Hall?

14 MR. HALL: No questions.

15 EXAMINATION

16 BY EXAMINER ASHLEY:

17 Q. Mr. Nearburg, it's V-F Petroleum that's going to
18 be operating the well?

19 A. Yes, sir, it's V-dash-F Petroleum, Inc.

20 Q. And the farmout agreement for Nearburg was just
21 ARCO, Marathon and Louis Dreyfus?

22 A. Yes, sir.

23 Q. That doesn't -- There is no Mewbourne in that?

24 A. Fuel Products has obtained farmout -- well,
25 farmout/term assignment, depending on the company, from

1 Mewbourne Oil Company and Laurel -- that's L-a-u-r-e-l --
2 Corporation.

3 Q. On Exhibit 1, the plat, map, you have the
4 different interests shaded different colors. The yellow is
5 V-F/Fuel Products?

6 A. Yes.

7 Q. Okay.

8 A. That represents acreage that Fuel owns
9 individually and also the Mewbourne and Laurel interests.

10 Q. Okay. Are you having to pool anybody in the 40
11 acres, then?

12 A. No, sir.

13 EXAMINER ASHLEY: Mr. Owen, is there a need to
14 pool any -- to have the 40-acre pooling in this order? All
15 interests are committed to that already.

16 MR. OWEN: I think that that's a question best
17 directed to Mr. Nearburg.

18 Mr. Nearburg, are there any 40-acre prospects in
19 this well?

20 THE WITNESS: There's a -- Well, you never know.

21 MR. OWEN: Given the status of the lands, are --
22 all interests in the 40-acre in the southeast of the
23 southeast have been committed; is that correct?

24 THE WITNESS: Yes, sir. I would like to go over
25 my title notes, which I'll do this afternoon, and before

1 the order is written I would like to clarify that.

2 MR. OWEN: Mr. Examiner, I think that's correct,
3 but if you wouldn't mind I could confirm that with you
4 after the hearing.

5 EXAMINER ASHLEY: Okay. I have nothing further.

6 THE WITNESS: Thank you.

7 EXAMINER ASHLEY: Thank you.

8 MR. OWEN: Mr. Examiner, as my next witness in
9 this matter I call Mr. Lou Mazzullo.

10 LOUIS J. MAZZULLO,

11 the witness herein, after having been first duly sworn upon
12 his oath, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. OWEN:

15 Q. Good morning, Mr. Mazzullo.

16 A. Good morning.

17 Q. Would you please tell us your full name and where
18 you live?

19 A. Louis J. Mazzullo. I reside in Albuquerque, New
20 Mexico.

21 Q. And who do you work for?

22 A. I'm a certified petroleum geologist and a
23 geological consultant, independent geological consultant.

24 Q. Do you do work for various companies as a
25 geological consultant?

1 A. Yes, I do. I'm both associated with Ameristate
2 Exploration and do other work for other clients.

3 Q. And what's your connection with Fuel Products
4 with respect to this particular case?

5 A. Fuel Products, through their designated operator,
6 V-F Petroleum, retained me to review the Morrow geology of
7 this prospect and to provide some mapping service for them.

8 Q. Mr. Mazzullo, have you previously testified
9 before this Division or one of its Examiners and had your
10 credentials as a petroleum geologist accepted and made a
11 matter of record?

12 A. Yes, I have.

13 Q. Are you familiar with the Application filed in
14 this case?

15 A. Yes, I am.

16 Q. Have you made a technical study of the area which
17 is the subject of this Application?

18 A. I both reviewed material supplied by V-F
19 Petroleum's geologist and generated my own maps, based on
20 that work and my own experience in the area.

21 Q. And are you prepared to share the results of that
22 study with the Examiner?

23 A. Yes, I am.

24 MR. OWEN: Mr. Examiner, I tender Mr. Mazzullo as
25 an expert in petroleum geology.

1 EXAMINER ASHLEY: Mr. Mazzullo is so qualified.

2 Q. (By Mr. Owen) Mr. Mazzullo, you mentioned that
3 you prepared certain exhibits for presentation in this
4 case; is that correct?

5 A. Yes, I have, I've got four exhibits to present.

6 Q. Okay. And as a result of your review of those
7 exhibits, are you prepared to make a recommendation to the
8 Examiner as to the risk penalty that should be assessed
9 against the nonconsenting interest owners?

10 A. Yes, V-F requests and recommends a 200-percent
11 risk penalty assessed.

12 Q. Mr. Mazzullo, let's go to the basis for that
13 recommendation. Why don't we turn to Exhibit Number 7?
14 Can you please explain that, review it for the Examiner?

15 A. Exhibit Number 7 is a structural contour map
16 based on the top of the lower Morrow marker, which is a
17 regionally -- well, it's a locally correlative marker
18 that's used for mapping the structural setting of the
19 Morrow.

20 The subject acreage proration unit under question
21 is located in Section 18 of Township 18 South, 28 East, the
22 east-half proration unit shown with respect to the entire
23 of Section 18, which is outlined by the blue dashed line.

24 V-F and Fuel Products' proposed location is 990
25 feet from the south and east line of the section. It is --

1 This map shows that there are a number of producing Morrow
2 wells indicated by the red-colored well symbols around the
3 area.

4 Of most particular interest to this particular
5 prospect or relevance to this prospect are the wells in
6 Section 17, immediately east of the proposed location, two
7 of which have made 1 BCF, almost 1 BCF or more production,
8 gas production, out of the Morrow, out of various Morrow
9 sands I'll describe in forthcoming exhibits.

10 The significance of this proposed location is
11 that it is updip, up structural dip of two producing wells
12 in Section 17 which are judged to be economic enough to
13 pursue, and we are at least -- by the contour intervals
14 shown, we are at least a hundred feet updip to those two
15 producing wells. And they're currently producing wells,
16 and not plugged.

17 Q. Mr. Mazzullo, were you present in the hearing
18 room during the testimony of Mr. Mark Nearburg in this
19 case?

20 A. Yes, I was.

21 Q. Did you hear the discussion between Mr. Nearburg
22 and Mr. Kellahin relative to the change in location as
23 proposed in this case?

24 A. Yes, I did.

25 Q. Did that discussion indicate that Fuel Products

1 has moved the proposed location as a result of an agreement
2 with Nearburg Exploration Company, a total of 330 feet to
3 the east?

4 A. Yes, it's reflected in one of the -- in the
5 dismissed order for a location in the northeast of the
6 southeast quarter of the section. That was the original
7 proposed location.

8 Q. Based on Exhibit Number 7, the structure map,
9 what, if any, is the significance of that change from a
10 geologic perspective?

11 A. That location change was a consensus based upon
12 different geologic interpretations provided by me, V-F and
13 my discussions with Nearburg Exploration Company. It's
14 just a consensus location, it just moved to accommodate
15 everybody's interpretation. It makes no -- It has no
16 bearing on the degree of risk that this location would hold
17 for V-F.

18 Q. And I believe you testified that the significance
19 of the particular location as reflected on Exhibit Number 7
20 is that it's structurally updip from the location -- from
21 the producing wells in Section 17; is that correct?

22 A. Yes.

23 Q. Is the new well location at 990 from the south
24 line and 990 from the east line still structurally updip
25 from those wells?

1 A. Yes.

2 Q. Okay, Mr. Mazzullo, why don't we turn to Fuel
3 Products Exhibit Number 9 --

4 A. Number --

5 Q. -- I'm sorry, Number --

6 A. -- 8.

7 Q. -- 8 --

8 A. Yes.

9 Q. -- if you wouldn't mind.

10 A. Okay.

11 Q. Keep on track here. Can you please review that
12 for the Examiner?

13 A. Exhibit Number 8 is an isopach or sand thickness
14 map of one of the two major pay sands that produced gas out
15 of the Morrow in this immediate area.

16 The red dots indicate that the wells -- The wells
17 with the red dots actually produce or have produced from
18 this particular sand. In most cases, not exclusively from
19 this sand, but it was one of the sands perforated in these
20 wells.

21 This is the main pay formation or what all the
22 geologists have conceded, that have worked on this area,
23 agree, is one of -- is the major contributor to reserves in
24 the two wells in Section 17. And so what this exhibit
25 shows is that the proposed location in Section 18 not only

1 is updip structurally, as I've shown in Exhibit 7, from
2 those two producing wells in 17, but also within the same
3 channel system, sand channel system that is productive in
4 Section 17, as well as elsewhere.

5 And so the major pay sand, this is our major pay
6 objective in the proposed location.

7 Q. If this was the only pay sand which showed any
8 prospect, would Fuel Products proceed with this well?

9 A. Not necessarily. We always look for other
10 potential in the area to eliminate or to at least minimize
11 risk as much as possible.

12 Q. And is, in fact, another prospect, pay sand,
13 reflected on Fuel Products Exhibit Number 9?

14 A. Yes.

15 Q. Why don't you review that for the Examiner,
16 please?

17 A. Okay. Exhibit Number 9 is another sand thickness
18 or isopach map for another pay sand designated as the "D",
19 delta, sand.

20 As you can see by comparing this exhibit with
21 Exhibit Number 8, that the trend of the proposed sandbody
22 is different from the sandbody that's in sand unit "E" in
23 that it is more parallel to the paleo-shoreline than the
24 other sand unit, and this reflects a different depositional
25 fabric, a depositional environment, for this sand.

1 The projection of this sand into our proposed
2 location is based upon the nature of the sandbody, how it
3 was deposited, but there's no guarantee that that sandbody
4 actually is going to exist in Section 18. It is
5 speculative and it is risky, no matter which way you map
6 it, but it is by consensus, you know, our best
7 interpretation of this area.

8 Q. A few minutes ago you stated by the addition of
9 the second sand, the middle Morrow "D" sand, you have
10 reduced some of the risk associated with this project.
11 Have you, in fact, eliminated the risk associated with this
12 well?

13 A. No, not by any means. When you're dealing with
14 the Morrow, you never eliminate any risk. There is no such
15 thing as a non-risky Morrow well. So the risk is still
16 high, no matter which way you map it. Everybody's
17 interpretation is a little bit different. That's why we
18 changed the location, to have a consensus among different
19 interpretations.

20 Q. Now, the changed location you mentioned, is that
21 of any significance with regard to the isopach maps, which
22 are comprised of Exhibits Number 8 and 9?

23 A. I'm sorry?

24 Q. The changed location from the 990-660 --

25 A. Uh-huh.

1 Q. -- to the 990-990, is that of any significance in
2 these --

3 A. It really doesn't make any difference in terms of
4 risk. It's -- You know, either way it's the same degree of
5 risk, as far as I'm concerned.

6 Q. Did the change in location make it a riskier
7 project?

8 A. Not necessarily.

9 Q. did it make it a less risky project?

10 A. Not necessarily.

11 Q. Mr. Mazzullo, did you review your geologic
12 findings and conclusions with Nearburg Exploration Company?

13 A. Yes, I did, in a telephone conversation with the
14 geologist in charge of this particular project.

15 Q. And did you also offer to show that geologic
16 presentation to Phillips Petroleum Company?

17 A. Not personally. I can't speak for the other
18 parties.

19 Q. Okay. Have you ever met with Phillips to discuss
20 this --

21 A. Not this particular project.

22 Q. Okay. Now, on both Exhibits 8 and 9 there
23 appears to be a cross-section line drawn. Is that cross-
24 section contained in Fuel Products Exhibit Number 10?

25 A. Yes, it is.

1 Q. Will you review that for the Examiner, please?

2 A. This is a cross-section that was constructed
3 under my supervision by a V-F Petroleum geologist, and the
4 purpose of this cross-section is to just show by projection
5 where we expect the two major sandbodies, the "D" sand and
6 the "E" sand, to project into the proposed location.

7 It also conjectures a couple of additional sands
8 that may or may not be present at the proposed location,
9 that just adds to the possible package of --- reservoir
10 package that we might encounter at this formation, but
11 there's no guarantee that we're going to find it. That is
12 the "F" sand and the "B" sand that's drawn in there on the
13 basis of gross correlation between wells that are pretty
14 far apart in terms of -- you know, relative to -- you know,
15 to the Morrow formation.

16 We have a well to the west, two miles away to the
17 west, that projects into this proposed location on the
18 cross-section, and making that connection between the sands
19 is tenuous based on experience, but it's tenuous and very
20 risky.

21 So our main sands right now, the only ones that
22 we feel are the best shot in this particular well are going
23 to be the "D" sand and the "E" sand. The other two, the
24 "B" and the "F", are very speculative.

25 Q. Now, you stated that there's no guarantee that

1 you'll encounter the "F" or the "B" sand --

2 A. Right.

3 Q. -- in these particular wells; is that correct?

4 A. That's correct.

5 Q. Is there any guarantee that you're going to
6 encounter the "D" or the "E" sand --

7 A. Not at all.

8 Q. -- in this particular well?

9 A. I wouldn't guarantee it.

10 Q. Okay.

11 A. We just take our best shot.

12 Q. In fact, you believe there's a chance that you
13 can drill a well, that Fuel Products can drill a well at
14 the proposed location that will not be a commercial
15 success?

16 A. There's a very good chance of that happening.

17 Q. In your opinion, will the granting of this
18 Application be in the best interests of conservation, the
19 prevention of waste and the protection of correlative
20 rights?

21 A. Yes, I do.

22 Q. Were Fuel Products Exhibits 7 through 10 prepared
23 by you or compiled under your direction?

24 A. Yes, they were.

25 MR. OWEN: Mr. Examiner, I move the admission

1 into evidence of Exhibits Numbers 7 through 10.

2 EXAMINER ASHLEY: Are there any objections?

3 MR. HALL: (Shakes head)

4 MR. KELLAHIN: No objection.

5 EXAMINER ASHLEY: Exhibits 7 through 10 will be
6 admitted as evidence.

7 MR. OWEN: That concludes my examination of this
8 witness.

9 EXAMINER ASHLEY: Mr. Kellahin?

10 MR. KELLAHIN: Yes, sir, thank you.

11 (Off the record)

12 THE WITNESS: Okay, sorry.

13 MR. KELLAHIN: That's all right. Are you okay
14 now?

15 THE WITNESS: I'm okay.

16 CROSS-EXAMINATION

17 BY MR. KELLAHIN:

18 Q. All right. When did you first start working on
19 this project, Mr. Mazzullo?

20 A. Oh, about a month ago.

21 Q. And how did you become involved in it?

22 A. I am a partner with Ameristate Exploration, and
23 by that partnership also with Fuel Products.

24 Q. All right, Mark Nearburg brought this to you --

25 A. Mark --

1 Q. -- and asked you to --

2 A. That's right. Well, actually, our -- Fuel
3 Products brought this to me and asked me to work on it.

4 Q. Okay. When you look at sand "E" and compare it
5 to sand "D", do you have a ranking in which one has the
6 greater opportunity to be productive?

7 A. As I mentioned in my testimony, it's the
8 consensus of most of the geologists involved in this
9 prospect -- and there are at least three of them that I
10 know of that's worked on this prospect -- that the "E" sand
11 is probably the most prospective.

12 Q. That represents your better opportunity --

13 A. That represents our better -- Yeah, that
14 represents our better opportunity because of the way it
15 trends north to south through the section.

16 Q. The other geologist involved was the geologist
17 for V-F Petroleum?

18 A. There was the geologist for V-F Petroleum and the
19 geologist for Nearburg Exploration.

20 Q. Who was the geologist for Nearburg Exploration?

21 A. He's not in the room today. His name is Ted
22 Gawloski.

23 Q. Were you involved in the geologic discussion to
24 consider Nearburg Exploration Company's proposal for this
25 well being drilled in the northwest of the northeast of the

1 section?

2 A. Yes, that's why I was originally retained for
3 this project.

4 Q. To examine Mr. Gawloski's --

5 A. Well, to examine Nearburg's location when the
6 original application was made by Nearburg --

7 Q. Yes, sir.

8 A. -- to drill in the northeast quarter.

9 Q. And in that process have you examined actual
10 geologic maps and interpretations by Nearburg Exploration
11 Company?

12 A. No, they didn't make those available to me.

13 Q. Did Mr. Gawloski make available to you the basis
14 by which he was proposing that the Nearburg well, Nearburg
15 Exploration well, be drilled in the northwest-northeast?

16 A. No, he didn't offer anything, he just conceded to
17 our location after verbal agreement was reached.

18 Q. Just like that?

19 A. Just like that. I have that effect on people.

20 Q. Amazing, right?

21 A. Yeah.

22 Q. So they simply abandoned their location and
23 adopted one down in the southeast?

24 A. And I don't know why, and -- you know, and
25 they're not free to tell me why either.

1 Q. All right. What explains the difference in
2 orientation? You've got the "E" sand going generally
3 northeast, and then you have the "D" sand with an east-west
4 orientation. Why does that happen?

5 A. The "E" sand is a fluvial or riverine-deposited
6 sand, and in the Morrow, because the source area for the
7 sediment is to the north northwest, the rivers flowed in a
8 general north-to-south direction.

9 Q. And the "D" sand is a beach sand?

10 A. The "D" sand is more of a beach sand or something
11 marginal to shoreline, which runs along shoreline in the
12 opposite -- in the -- normal to the river-flow direction.

13 Q. All right. Let's look at Exhibit 8, then, and
14 look at the "E" sand. It's a net map in that you've used a
15 gamma-ray cutoff, have you not?

16 A. Right, gamma-ray cutoff.

17 Q. Yeah, why did you use 45?

18 A. That is a standard procedure with some
19 geologists. As I said, I prepared this map from work done
20 by a V-F Petroleum geologist. He used the 45 API unit
21 gamma-ray cutoff, which is a standard way of looking at
22 clean sands.

23 Q. And you didn't have a disagreement with him about
24 that?

25 A. I have no disagreement with that. I mean, there

1 are many ways to skin a cat.

2 Q. When we look at the relationship of the well
3 location in 18 that you're proposing, and the offsetting
4 well control --

5 A. Right.

6 Q. -- I'm unable in this sand to find a data control
7 point that has a net thickness using this criteria of
8 greater than 14 feet --

9 A. Uh-huh.

10 Q. -- is that not true?

11 A. That's right.

12 Q. All right.

13 A. At least not in this channel.

14 Q. Within the channel system, though, you have
15 contoured in such a way to hypothecate a thickness that
16 could at least be equal to 20 feet, right?

17 A. That's right, I did.

18 Q. All right. What's the basis for doing that, Mr.
19 Mazzullo?

20 A. If you look at the adjacent channels, which are
21 on the same time interval as the channel that we're
22 seeking, you see values of over 20 feet: 24 feet in Section
23 15; 24 feet in Section 23 of 27 East, 18 South; 23 feet in
24 Section 14, and so forth. So there is a basis for
25 hypothesizing that these channels can exceed 20 feet in

1 thickness.

2 Q. And by analogy to --

3 A. By analogy to --

4 Q. -- the adjacent system?

5 A. -- adjacent time-equivalent sands.

6 Q. Within this channel, though, we do not yet have a
7 data point that will exceed the 14 foot?

8 A. Not yet.

9 Q. All right.

10 A. But there's a lot less -- There's less control in
11 this channel than, say, the channel to the east, so there's
12 hope.

13 Q. On the structure map, Exhibit 7, Fuel Products
14 originally had the well in the northwest of the southeast,
15 right?

16 A. Yes, 990 from the south, 6- --

17 Q. No, I've misspoken, I'm sorry.

18 A. Yeah, northeast --

19 Q. Northeast-southeast?

20 A. Right.

21 Q. And now you're moving it down --

22 A. Actually, it -- No, actually it's been in the
23 same unit all along. It's just moved 300 feet to the west.

24 Q. All right, so it was mis-described in something,
25 I guess. The original Fuel Products pooling case showed it

1 in the northeast-southeast.

2 A. The northeast of the southeast.

3 Q. And moving it 300 feet would not have put it in
4 that quarter-quarter. So I was just curious if --

5 A. No, as far as I know, it's only been moved -- I
6 mean, I only moved it, through consensus, 300 feet to the
7 west of where it was originally proposed.

8 Q. All right, that's what I'm trying to understand.

9 A. Yeah, right.

10 Q. And you moved it 300 feet to the west for what
11 reason, sir?

12 A. That was by consensus with Nearburg Exploration
13 as well as with V-F, just to satisfy everybody's mapping.

14 Q. All right. Would that accomplish the purpose of
15 trying to move this farther upstructure?

16 A. It may or may not have moved it significantly
17 upstructure, and that wasn't the consideration. Again, I
18 don't know what Nearburg's criteria were. They did not --
19 I did not have privy to their maps.

20 Q. Well, I'm just curious about how precise you can
21 be in analyzing something by 330 feet when I see nothing on
22 any of these displays that will demonstrate that detail.
23 It's not here, is it?

24 A. Well, we wanted to reach agreement with Nearburg
25 Exploration, and in good faith we moved it 300 feet because

1 they asked us to.

2 Q. All right.

3 A. And I don't know why.

4 Q. And when we look at Exhibit 8, which is the "E"
5 sand, that would be moving it away from its greatest
6 contour thickness?

7 A. Maybe.

8 Q. Yeah.

9 A. Maybe. This is my interpretation. It could --
10 You know, the width of the channels, based upon the width
11 of, again, time-equivalent channels, the width of the
12 channels to the north. It may or may not have made any
13 difference whatsoever. We won't know until the drill bit
14 hits the ground.

15 Q. Well, my point is, the only map I have to work
16 with is your map --

17 A. Right.

18 Q. -- and your map says that you should be 660 and
19 not the 990.

20 A. Do you want me to expand the contours? I could
21 expand the contours. It's really my best geologic guess,
22 and, you know, I can make the contours wider, I can make
23 them narrower.

24 Q. All right. Within what range of reason would you
25 expand the contours?

1 A. I used that expansive contour, that expansive
2 channel, based upon what I believe are the known width of
3 these channels from other time-equivalent channels to the
4 west and to the east. You notice how wide they are to the
5 east. They expand into the adjacent sections off the map
6 to the west. The width of the channel that we are seeking
7 is consistent with the widths of channels that have been
8 described elsewhere in this area.

9 So I just tried to stay within the boundaries of
10 what the known width of these channels were in making my
11 map. When I moved the location I didn't move the contours,
12 I just moved the location; the contours stayed the way they
13 were. As long as I'm updip structurally and I'm still in
14 the channel system, you know, 300 feet is not going to make
15 any difference in my mind.

16 Q. Does structure matter? I don't see any water
17 production in the --

18 A. Yes, there is water production. As a matter of
19 fact, if you look at this Exhibit Number 8, there are two
20 blue -- There's a blue line in the channel in question, in
21 our channel to the south of the location, that intersects
22 in Section 30 and into Section 20, is a gas-water contact.

23 Q. And it's a good 300 to 400 feet below any
24 structural position within the east half of 18, isn't it?

25 A. That's right. But if you want to capture

1 reserves in this reservoir updip from two producing wells
2 -- I mean, if you want to capture reserves in this
3 reservoir, it's best to go updip of these two producing
4 wells and capture any attic gas or any gas that's confined
5 to the upper part of the reservoir.

6 Q. Okay. When I look at Exhibit 8, then, the "E"
7 sand, I find the immediate well control to the east in 17?

8 A. Uh-huh.

9 Q. What causes you to believe the channel thickness
10 is west of those wells, as opposed to maybe more centered
11 in the channel?

12 A. If you go up into Section 8, you notice that
13 there's a zero isopach point in between the two channels as
14 I've drawn them.

15 Q. Yes, sir.

16 A. And there are zero isopach points down in Section
17 21 that separate the channel to the east from the one that
18 I drew to the west. I believe, based upon those zero
19 points and the contour points in Sections 20 and 17, the
20 southwest quarter of 8 and the -- Section 7, that this is
21 the proper and the best interpretation of the channel
22 orientation of this particular unit.

23 Q. Above these zones, is there any realistic
24 expectation of uphole potential?

25 A. I did not examine the uphole potential. I was

1 retained solely to examine the Morrow. There's always the
2 chance for it, but I can't address that.

3 Q. You don't have a production map to show us what
4 kind of wells are immediately in here, do you? I didn't
5 see one.

6 A. No, these are just -- The only wells that are on
7 this map are those that penetrated the Morrow.

8 MR. KELLAHIN: All right, sir. Thank you, Mr.
9 Mazzullo, that's all my questions. Thank you.

10 EXAMINER ASHLEY: Mr. Hall?

11 MR. HALL: No questions.

12 EXAMINATION

13 BY EXAMINER ASHLEY:

14 Q. Mr. Mazzullo, on the middle Morrow "D" map,
15 isopach map --

16 A. Uh-huh.

17 Q. -- there's one well in Section 17 that's not
18 shaded as a "D" sand producer?

19 A. Right.

20 Q. Is that correct? It produces only from the "E"
21 sand?

22 A. It produces from the "E" sand and maybe some of
23 these other stray sands, but not from the "D" sand. Why it
24 wasn't perforated is anybody's guess.

25 Q. Oh, it wasn't perforated?

1 A. It wasn't perforated.

2 Q. I see.

3 A. Just to clarify that, Mr. Examiner, the only sand
4 perforated in that well is the "E" sand. Perhaps the
5 operator is going to wait until the "E" sand is depleted
6 before they perforate the "D" sand. On the cross-section
7 it appears to have porosity and gas effect.

8 Q. Okay. What horizon is the well in the southwest
9 quarter of Section 8 producing from?

10 A. The southwest quarter of Section 8, I believe
11 that's a Grayburg -- It's a shallow oil well at this time.

12 There are other wells. As you've noticed on my
13 maps, I say shallow wells are omitted for clarity. There's
14 hundreds of wells in this area, of shallow oil wells.

15 EXAMINER ASHLEY: I have nothing further. Thank
16 you.

17 MR. OWEN: Mr. Examiner, I have no further
18 witnesses in this case. As the attorneys for the parties
19 have agreed, we request a two-week continuance at this
20 time. We request at the conclusion of that continuance
21 that you take this matter under advisement and issue an
22 order appropriate, given the evidence in this case. I will
23 be happy to submit a proposed order to you at that time or
24 prior to that time, after discussing with my colleagues in
25 this case.

1 I would like to point one thing out. In Case
2 Number 12,431, which was dismissed this morning, which was
3 the preceding case to the one which was heard today, the
4 advertisement indicated that the well was going to be
5 drilled in the northeast quarter of the southeast quarter
6 of Section 18.

7 In fact, that's a typographical error, and that
8 was one of the reasons for the filing of the subsequent
9 Application, which was the Application that we've heard in
10 this case. The evidence in this case indicates that the
11 well as initially proposed was to be 990 from the south
12 line and 660 from the east line.

13 The well as it appears today, as it was
14 considered by the parties, is at a location 990 from the
15 south line and 990 from the east line. It has always been
16 in Unit P of the section and, in fact, was not in the
17 northeast quarter of the southeast quarter. It has been
18 located in the southeast of the southeast at all times.

19 We do request, Mr. Examiner, that no additional
20 continuances beyond the one requested today be granted in
21 this case and that no delay in the entering of an order be
22 effected by the continuance requested today. That's in
23 part because of the contractual obligations of Nearburg and
24 in part because of Fuel Products' desire to get this
25 project underway. We request that an order be expedited

1 immediately following the hearing two weeks from today.

2 That concludes my presentation in this case, Mr.
3 Examiner.

4 EXAMINER ASHLEY: Mr. Owen, the original location
5 was 990 from the south and 660 from the east?

6 MR. OWEN: Correct, and I believe that is
7 reflected on the exhibit which was introduced by Mr.
8 Kellahin.

9 EXAMINER ASHLEY: Mr. Hall, can you clarify
10 Nearburg's position on this lease expiration date?

11 MR. HALL: I'll represent to the Examiner that it
12 is my understanding that Nearburg acquired the farmout
13 rights from ARCO and Louis Dreyfus. The farmout rights
14 from ARCO embrace acreage in Section 18, also Section 29.
15 The farmout terms provided that if a well were not
16 commenced on either of those sections by August 10th, then
17 certain rights would expire.

18 There are efforts being made to drill the Section
19 29 acreage. It has not commenced yet, so Nearburg's
20 farmout rights are still at risk in this acreage as well.
21 That's why we reiterate our request for an expedited order.
22 If you deem it necessary, we have a witness available who
23 can testify.

24 EXAMINER ASHLEY: Can your witness clarify the
25 discrepancy that there is between your date and between Mr.

1 Nearburg's date of October?

2 MR. HALL: Yes.

3 MR. WHEELER: I'm Mark Wheeler with Nearburg. We
4 have --

5 EXAMINER ASHLEY: Excuse me, you need to be sworn
6 in.

7 MARK WHEELER,
8 the witness herein, after having been first duly sworn upon
9 his oath, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. HALL:

12 Q. For the record, state your name, please.

13 A. Mark Wheeler.

14 Q. Mr. Wheeler, where do you live, and by whom are
15 you employed?

16 A. Midland, Texas, and I'm employed by Nearburg
17 Exploration Company.

18 Q. And what do you do for Nearburg?

19 A. Senior landman.

20 Q. And Mr. Nearburg, are you familiar with the lands
21 that are the subject of this Application?

22 A. Yes, I am.

23 Q. And are you familiar with the terms of the
24 farmout agreement that covers Nearburg's acreage interest
25 in Section 18?

1 A. Yes.

2 Q. Would you explain to the Hearing Examiner the
3 expiration dates under that farmout?

4 A. As has been previously testified, we have three
5 different companies that we've acquired interest from,
6 ARCO, Louis Dreyfus and Marathon.

7 The ARCO term assignment -- farmout, excuse me,
8 the ARCO farmout requires a well to be drilled somewhere on
9 the farmout land on or before August 15th. I believe you
10 said August 10th, but it's August 15th. We are in the
11 process of trying to get the initial well drilled on
12 Section 29 that would satisfy that farmout on or before
13 August 15th. I believe we'll be successful in that.

14 However, we do have -- The ARCO farmout also
15 covers the acreage in Section 18. In the event we're not
16 successful in getting the well drilled in 29, we would need
17 to drill something in 18 or have our interest represented
18 by the drilling of a well on or before that date, so there
19 is some risk there.

20 But there is risk to our other two farmouts. The
21 Marathon agreement is a separate agreement from the one in
22 Section 29 and would require a well on or before -- I
23 believe it's October 22nd. And then the Louis Dreyfus
24 agreement also has an October deadline, and that is a
25 separate agreement from the one in Section 29.

1 So at the latest we would need to have a well
2 going by mid-October, in order to hold those two farmouts.

3 EXAMINER ASHLEY: Mr. Kellahin?

4 MR. KELLAHIN: May I ask Mr. Wheeler some
5 questions?

6 EXAMINER ASHLEY: Yes.

7 CROSS-EXAMINATION

8 BY MR. KELLAHIN:

9 Q. The ARCO farmout, Mr. Wheeler, represents
10 approximately what percentage of your interest in the
11 spacing unit? Do you know?

12 A. In Section 18?

13 Q. Yes, sir, in the east half.

14 A. It's the majority of the interest. They have a
15 25-percent interest under that 40 acres, the northwest-
16 northeast. So that's ten net acres out of our total there.

17 Q. And under the farmout what did you earn, if this
18 is drilled in a timely fashion?

19 A. We would earn all of their interest until payout,
20 and at that time they would have the option to back in for
21 a proportionate 25 percent.

22 Q. And the Louis Dreyfus percentage?

23 A. Louis Dreyfus and Marathon each have 15.97
24 percent, approximately, of that 40 acres. I believe that's
25 approximately a 2-percent working interest each, 2 1/2, in

1 that proration unit. And again, one of those we earn all
2 interest and Marathon retains an override. The other one,
3 Dreyfus has a back-in.

4 Q. All right. Am I clear in understanding Fuel
5 Products Exhibit 1 that the Nearburg Exploration interest
6 in the spacing unit is confined to the northwest of the
7 northeast?

8 A. Yes, sir.

9 Q. That's where you get your information?

10 A. And that is one reason why the initial location
11 was proposed there, because we had the rights under that 40
12 and nowhere else.

13 Q. Okay. What was the start date of your farmout
14 with ARCO?

15 A. I believe it was February 15th and required a
16 well within six months.

17 Q. All right. So you had a six-month farmout, and
18 it was February. Are the rest of these like that? Are
19 they six months farmout?

20 A. I don't think the Marathon -- I believe the
21 Marathon was not six months, I believe it was five or 150
22 days or something. The Dreyfus -- Actually, the Dreyfus
23 agreement has not been received. We've negotiated it, but
24 they indicated that they would require us to drill a well
25 by sometime mid- to late October.

1 Q. Okay. What is the custom and practice, in your
2 experience, of the general length of these farmout
3 agreements?

4 A. It varies by company. Sometimes you have to
5 drill within three months, sometimes you can get as long as
6 a year. So...

7 MR. KELLAHIN: All right. Thank you, Mr.
8 Wheeler. That's all the questions.

9 EXAMINER ASHLEY: Mr. Owen?

10 MR. OWEN: I have no questions of Mr. Wheeler.

11 EXAMINER ASHLEY: I have nothing further. Thank
12 you, Mr. Wheeler.

13 Any more comments?

14 MR. KELLAHIN: I'd like to formally move the
15 introduction of Phillips Exhibit 1, which was the Fuel
16 Products formal written letter proposal in this well.

17 EXAMINER ASHLEY: Exhibit 1 will be admitted as
18 evidence at this time.

19 There being nothing further today, then Case
20 12,446 will be continued to July 27th of 2000.

21 (Thereupon, these proceedings were concluded at
22 9:36 a.m.)

23 I do hereby certify that the foregoing is
24 a complete record of the proceedings in
the Examiner hearing of Case No. 12446.
25 heard by me on 2-1-99 2000.


Off Conservation Division

STEVEN T. BRENNER, CCR
(505) 989-9317

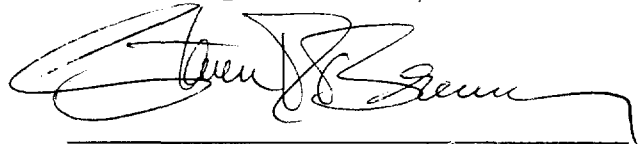
CERTIFICATE OF REPORTER

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 July 16th, 2000.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002