

Case No. 1: Application of ARANDA E.  
E. W. SIMS for an order  
returning order N-1210.

1. original to alternate
  2. paper used in most
  3. report in DC
  4. could apply for paper
- to most of the work

Case No.

2051

---

Application, Transcript,  
Small Exhibits, Etc.

BEFORE THE  
OIL CONSERVATION COMMISSION  
Santa Fe, New Mexico  
August 18, 1960

IN THE MATTER OF:

Application of Amanda E. Sims and George W. Sims  
for an order vacating the standard 160-acre Tubb  
gas unit created by Order No. R-1310 consisting  
of the NW/4 of Section 25, Township 22 South,  
Range 37 East, Lea County, New Mexico. Applicant  
further seeks the establishment of a 160-acre non-  
standard gas proration unit in the Tubb Gas Pool  
consisting of the SE/4 NW/4, E/2 SW/4 and SW/4  
SW/4 of said Section 25.

Case No.  
2051

BEFORE:

Honorable John Burroughs  
Mr. A. L. Porter  
Mr. Murray Morgan

TRANSCRIPT OF HEARING

MR. PORTER: Case No. 2051.

MR. PAYNE: Application of Amanda and George Sims for an  
order vacating a standard 160-acre Tubb gas unit, and to create a  
160-acre non-standard gas unit.

MR. PORTER: I would like to call for appearances.

MR. MORRIS: C. N. Morris, appearing on behalf of the  
applicant.

MR. GIRAND: W. D. Girand, appearing on behalf of Olsen  
Oils, Inc. We are the operators of the property.

MR. PORTER: We will hear from the applicant at this time.

MR. MORRIS: If the Commission please, there is a copy of

DEARNLEY-MEIER REPORTING SERVICE, Inc.

PHONE CH 3-6891

ALBUQUERQUE, NEW MEXICO



a letter in the file which I wrote to Mr. Girand concerning the procedure in this case. We are not to present any evidence, and I would like to call your attention to the contents of this letter, in effect as follows:

One, the allegations contained in Paragraphs 1, 2, 3 and 4 of my application will not be questioned, and may be considered by the Commission to be true statements of fact. This application which I filed contains five numbered paragraphs; the first four are to be considered as true. Two, applicant's case will consist of the allegations in their application, the record of Oil Conservation Commission Case No. 1567 and Order No. 1310, and the agreement referred to in Paragraph 3 of the application in Case No. 2051. A certified copy of this agreement will be offered in evidence; and, three, no evidence will be presented by the operator.

So that is the basis that we are appearing here in this case; is that correct, Mr. Girand?

MR. GIRAND: That is correct.

MR. MORRIS: At this time I would like to offer a certified copy from the County Clerk of Lea County, of a document of record there, which is referred to in the letter I just wrote to the Commission.

MR. GIRAND: That is a contract of September 11, 1957?

MR. MORRIS: That is true.

MR. PORTER: Is that an exhibit you intend to offer in

DEARNLEY-MEIER REPORTING SERVICE, Inc.

PHONE CH 3-6691

ALBUQUERQUE, NEW MEXICO



the record? If it is, then it should be identified as Applicant's Exhibit No. 1.

MR. MORRIS: All right, sir. Thank you. We offer this exhibit into evidence, Mr. Girand.

MR. GIRAND: No objection.

MR. MORRIS: If it please the Commission, in addition to that exhibit and the records of this Commission we have nothing further to offer except I would like to briefly present our position in this case.

MR. GIRAND: And if the Commission please, have you offered the records in the case?

MR. MORRIS: Yes, I did.

MR. GIRAND: I didn't hear that offered.

MR. MORRIS: I just asked the Commission take notice of their own records. I haven't actually made an offer that this record be admitted.

MR. PORTER: What was the Case number again?

MR. MORRIS: Case No. 1567 and Order No. 1310, R-1310.

MR. PORTER: You are just asking the Commission to take administrative notice of those orders?

MR. MORRIS: Yes, sir; because those are the matters which affect the property in question here today.

Briefly, in this Case No. 1567 there are two copies of a plat. You can see a red and a blue area there. Those are the properties

DEARNLEY-MEIER REPORTING SERVICE, Inc.

PHONE CH 3-6691

ALBUQUERQUE, NEW MEXICO



in question. Now, here is the position of the applicant. My client is the owner of the red portion of that property. It is 160 acres, 120 in the SW/4 and 40 in the NW/4. That property has been pooled as a Drinkard pay, Blinebry pay, and also a Tubb pay, by agreement of the parties. The other property is owned by relatives of my client, and my client owns, I believe, a 1/15th interest in it.

In 1955 this Commission entered an order pooling the red properties as a Tubb production unit. After that order was entered nothing was done, however, and in approximately July of 1957 your records will reflect a Mr. Phillip Randolph made an application to the Commission for advice on whether or not this Order was still effective since no well had ever been drilled. I believe this was in July of '57. In September of 1957 this same Mr. Phillip Randolph came to the home of my clients and secured their signature on Applicant's Exhibit No. 1. That was signed by my clients, by Olsen Oils, Inc. Actually, it was the predecessor of Olsen Oils, Inc., acting through Mr. Phillip Randolph, and it was also signed by the other owners of the operating interests, several individuals who are part owners of the operating interests. All of it was signed and fully executed during the month of September of 1957. My client signed it on September 11. It was also executed on that day by Olsen.

On September the 20th, after that agreement, Applicant's Exhibit 1, was signed, Olsen commenced the drilling of a well in

DEARNLEY-MEIER REPORTING SERVICE, Inc.

PHONE CH 3-6891

ALBUQUERQUE, NEW MEXICO



that red area, a Tubb gas well. That well was completed sometime in November of 1957. The acreage that was attributed to it, according to the Commission's order at that time, was the red area. Two months before that well was completed Applicant's Exhibit 1 was signed as a reaffirmation, actually, by the operator that the red area was still a production unit of Tubb gas.

This well was put into operation, I believe, around the first of the year 1958. Then, within a matter of six months or so after this well was put into production and the acreage attributed to it, being the red acreage, Olsen made an application to pool the blue acreage. Actually, there was a previous application in Case 1478 to pool the blue acreage by Olsen. That matter was continued from time to time for a period of months, and no action was ever taken on it, although there was never any objection filed by anyone.

Then, Case No. 1567 was filed about eight months after that well was placed on production, in which the application asked the Commission to pool the blue area as a Tubb production unit or, in the alternative, to make the NW/4 of Section 25 a Tubb unit, and the SW/4 another Tubb unit, in effect completely rescinding the prior order of the Commission, completely contrary to the express agreement of the parties that the red area was a Tubb unit, and which was already, in effect, producing gas.

This application was heard before Mr. Nutter, and at the hearing the engineer of the applicant testified that all of the

DEARNLEY-MEIER REPORTING SERVICE, Inc.

PHONE CH 3-6691

ALBUQUERQUE, NEW MEXICO



W/2 of Section 25 was, in his opinion, productive of Tubb gas, that it was economical, it would not constitute waste, and it would not in any way adversely affect the correlative rights of any of the parties to produce the blue area as a Tubb unit, and he was asked then about the producing of the NW/4 as distinguished from the blue area. He said that was also economical, and would not constitute waste, and he was asked by the attorney which he preferred, which alternative. He said, I believe, the two 160-acre standard quarter sectional locations, and his testimony was then followed by Mr. Phillip Randolph. The gentleman testified that he had been out and made application to these people to sign the agreements; that they would not sign any agreement pooling the acreage. The impression that I get in reading his testimony is that he was completely unaware that this agreement was in existence. He says that the operators had not even signed any agreement; they had agreed to, but hadn't signed any. Of course, his signature appears on that itself.

Our position is this: The Commission did not have the benefit of all the facts in this Case No. 1567. The fact of the existence of an agreement between the parties in that area, that the area was already pooled, was never brought out. As a matter of fact, I get the impression from reading the record there is an inference the parties refused to sign an agreement, and the position of the applicant is this: The Statute which controls this matter is 65-314; I am sure the Commission is very familiar with it, but

DEARNLEY-MEIER REPORTING SERVICE, Inc.

PHONE CH 3-6691

ALBUQUERQUE, NEW MEXICO



Section C of that Statute deals with the pooling of acreages, and just briefly, at the beginning, it recites: "The pooling of properties or parts thereof shall be permitted, and if not agreed upon may be required in any case, when and to the extent . . ." and so forth. Our position is that the Commission -- in the first place, if it had been advised of the facts which existed at that time, would not have granted the Order 1310 which was entered in Case 1567, and our position is further this: That the Statute giving the Commission the right and the authority to compel the pooling of acreages applies only in those cases where the parties refuse to enter into pooling agreements. Since, obviously, this isn't such a case, then the Commission had no jurisdiction to enter an order pooling those on the standard survey section lines.

My clients have a unit which they agreed would be a production unit. A well was drilled; it is being produced for that unit, and suddenly they find that, although they have, in good faith and good conscience, signed a contract to do that, that now only one-fourth of their property is attributed to that well. We ask that the Commission consider these matters, and in view of the fact that the situation is as I have recited it here, we ask that the Commission rescind this Order 1310 and enter an order similar to the one which was superseded by 1310, which sets up the red area as a Tubb unit as it originally was, and according to the agreement of the parties, so my clients can have their contract enforced.

DEARNLEY-MEIER REPORTING SERVICE, Inc.

ALBUQUERQUE, NEW MEXICO

PHONE CH 3-669



MR. PAYNE: Mr. Morris, your client was notified by certified mail of the hearing in Case 1567?

MR. MORRIS: Yes, sir. My client got a notice in the mail five days before the hearing. That is correct; yes, sir.

MR. GIRAND: If the Commission please, at this time I'd like to move to dismiss the application. We stipulated that the first four paragraphs of the application were agreed to as containing factual matters. The applicant charges this: That on December 17, 1958, the Commission entered its Order No. R-1310 force-pooling the NW/4 of Section 25 as a Tubb gas unit and the SW/4 of Section 25 as a Tubb gas unit; that the Commission was without jurisdiction and the same should be vacated for such reason; the Commission was not informed by Olsen Oils, Inc., the applicant in 1567, of the agreed pooling of the applicant's property in the Tubb gas unit, and the concealing of such amounted to a misrepresentation to the Commission concerning the rights of the applicant, and the jurisdiction of the Commission in such matters.

Now, the Commission entered its order, and in its order asserted jurisdiction of the matter, and said it had jurisdiction of the parties; they were all notified, and that the Commission had a right to proceed. The Commission heard the evidence and found it substantial to warrant the creation of two units, one in the NW/4 of Section 25, and one in the SW/4 of Section 25. Now, the agreement that was referred to by counsel, being an agreement of September 11, 1957, was entered into approximately 14 months before the

DEARNLEY-MEIER REPORTING SERVICE, Inc.

PHONE CH 3-6691

ALBUQUERQUE, NEW MEXICO



hearing was held on the forced pooling, and in that agreement, Paragraph 6, the parties realized that the Commission had authority to control over the production of gas and oil from the fields in New Mexico, and they said, "production of communitized substances and disposal thereof shall be in conformity with allocations, allotments and quotas as fixed by any duly authorized person or regulatory body under applicable statutes. This agreement shall be subject to all applicable laws, orders, rules and regulations and no party hereto shall suffer a forfeit or be liable in damage for failure to comply with any of the provisions of this agreement if such is prevented by compliance with any laws, orders, rules or regulations."

Now, the applicant here has come in to this Commission, which is charged by law with governing the production of oil and gas within the State of New Mexico, but which is not endowed with any authority to pass upon the contractual rights of the citizens of the State of New Mexico. Our courts are set up for that relief. Now, if we have violated the contract here, the applicants have their right of redress in the District Court of Lea County, or such other tribunal which will have jurisdiction, but surely this Commission cannot determine whether or not we violated a contract between the owners of it, and ours, as operators or owners of the working interests.

We call the Commission's attention to the fact that the records show that they had an alternative plea for establishing two con-

DEARNLEY-MEIER REPORTING SERVICE, Inc.

PHONE CH 3-6691

ALBUQUERQUE, NEW MEXICO



formed standard units, quarter sections, and when the counsel referred to the testimony of the witness, Randolph, his testimony was in regard to whether or not he had ever been able to obtain an agreement from these parties for the pooling of the quarter section as a subdivision. They had obtained agreement on the non-standard unit which the Commission had previously granted, but the Commission saw fit to grant two standard units rather than the area outlined in blue as referred to in the map, and the area outlined in red.

If the Commission please, the testimony of the engineer was that the two wells would drain the 320 acres, and they already had one well in the NW/4 so that, if they established two standard units it would allow them to space a well in the SW/4, which would give a better drainage pattern and would be fairer to all parties, including the correlative rights of offsetting operators. We submit the Commission certainly, under the law of this State, has jurisdiction to force-pool. If it doesn't, it is up to the Courts to determine that, because the state of the record today, the statute stands unconstrued by any courts saying it doesn't mean what it says when it says you have the right.

MR. PAYNE: There are no Tubb wells on the blue unit, are there?

MR. GIRAND: Yes, there are two wells on the blue.

MR. PAYNE: Tubb wells on the blue unit are shown on this exhibit?

DEARNLEY-MEIER REPORTING SERVICE, Inc.

PHONE CH 3-6691

ALBUQUERQUE, NEW MEXICO



MR. GIRAND: Both are the red.

MR. PAYNE: And one is in the southeast of the northwest, and the other in the northeast and southwest, so it would not be possible at this time to create the two non-standard units proposed by Olsen in the alternative?

MR. PORTER: May I ask a question? We have two Tubb wells to which these two quarter sections are dedicated?

MR. GIRAND: At the present time.

MR. PAYNE: Both standard?

MR. GIRAND: Yes, sir.

MR. PAYNE: What about the Blinebry?

MR. GIRAND: We have two Blinebrys.

MR. PAYNE: Standard units?

MR. GIRAND: No, sir. The Blinebrys -- there are two leases governing each of the tracts, a single lease on the 40 acres in which the first Tubb well was drilled, that is the southeast of the northwest; then there is the lease on the east half and the southwest of the southwest, and those are leases by Amanda Sims and her husband, George. Now, there is a lease, as I recall, on the northeast of the northwest, and a separate -- I beg your pardon -- there is a separate lease on the northeast of the northwest, and the west half of the northwest, and another lease on the northwest of the southwest that was executed by the four parties. Amanda Sims and her husband own all of the area delineated in red. She

DEARNLEY-MEIER REPORTING SERVICE, Inc.

PHONE CH 3-6691

ALBUQUERQUE, NEW MEXICO



owns approximately 15 percent of the area colored in blue.

MR. MORRIS: I believe she owns 1/15th of the area in blue.

MR. GIRAND: Her brother owns the balance of the interests, I understand.

MR. MORRIS: No, it belongs to one of the Drinkards, and the estate of a deceased Drinkard.

MR. GIRAND: It is a family affair.

MR. MORRIS: I do want to allay misapprehensions that Mr. Girand apparently has. I haven't suggested that the Commission should determine whether or not there has been any violation or breach of the contract by Olsen with these people. I am merely pointing out there is a contract, and that the existence of a contract under the statute is sufficient to take away from the Commission the right to force-pool contrary to the contract. The Commission's Order R-1310 recites that it had jurisdiction, but a recitation of jurisdiction doesn't make jurisdiction. Our position is they would never have undertook to assume jurisdiction if they had known these facts, and so far as saying the existence of this new well prevents the Commission from straightening up the state of the record is not correct, with, because that well is in the area of the Drinkard oil and could be completed any time as a Drinkard oil well, and as far as my clients are concerned that is what should be done.

MR. GIRAND: I believe that is outside the record. If

DEARNLEY-MEIER REPORTING SERVICE, Inc.

PHONE CH 3-6691

ALBUQUERQUE, NEW MEXICO



the Commission please, I don't know of any knowledge we have of the second Tubb well to be completed as a Drinkard well.

MR. MORRIS: I am suggesting the fact that a well has been drilled doesn't in any way affect the state of the record. Our position is that the Commission should rescind the order and enter an order which is in accordance with the contract and in compliance with the statutes under which the Commission acts.

MR. GIRAND: In the alternative, in Case No. 1567, we asked for standard units, and the Commission gave those to us. Now, they had never agreed to those units, and that is the very thing that Section C of the Statute 65-314 covers, "pooling of properties or parts thereof shall be permitted and, if not agreed upon, may be required." They never agreed to using the subdivision, the legal survey. They consented to a non-standard unit, but they didn't consent to a standard unit, and never would.

MR. MORRIS: I wish to state, there is nothing in the law that says pooling should be done along section lines. Certainly that statute doesn't confer on the Commission any jurisdiction that relates to a section line anywhere.

MR. PORTER: Commission will take the case under advisement.

Hearing will recess until tomorrow morning at 9 A.M.

DEARNLEY-MEIER REPORTING SERVICE, Inc.

PHONE CH 3-6691

ALBUQUERQUE, NEW MEXICO



STATE OF NEW MEXICO )  
 )  
COUNTY OF BERNALILLO ) ss

I, JUNE PAIGE, Court Reporter, do hereby certify that the foregoing and attached transcript of proceedings before the New Mexico Oil Conservation Commission at Santa Fe, New Mexico, is a true and correct record to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF I have affixed my hand and notarial seal this 13th day of September, 1960.

*June Paige*  
Notary Public - Court Reporter

My commission expires:

May 11, 1964.

DEARNLEY-MEIER REPORTING SERVICE, Inc.

PHONE CH 3-6691

ALBUQUERQUE, NEW MEXICO



GOVERNOR  
JOHN BURROUGHS  
CHAIRMAN

State of New Mexico  
Oil Conservation Commission

LAND COMMISSIONER  
MURRAY E. MORGAN  
MEMBER



STATE GEOLOGIST  
A. L. PORTER, JR.  
SECRETARY DIRECTOR

P. O. BOX 871  
SANTA FE

September 2, 1900

Mr. C. H. Morris  
Attorney-at-law  
P. O. Box 977  
Bunice, New Mexico

Re: Case No. 2051  
Order No. B-1766

Applicant:  
Amanda E Sins and George W. Sins

Dear Sir:

Enclosed herewith are two copies of the above-referenced Commission order recently entered in the subject case.

Very truly yours,

A. L. PORTER, Jr.,  
Secretary-Director

ir/

Carbon copy of order also sent to:

Hobbs OCC        X  
Artesia OCC         
Aztec OCC       

Other W. D. Girard

DOCKET: REGULAR HEARING AUGUST 17, 1960

Oil Conservation Commission - 9 a.m., Mabry Hall, State Capitol, Santa Fe, N. M.

- ALLOWABLE:**
- (1) Consideration of the oil allowable for September, 1960.
  - (2) Consideration of the allowable production of gas for September, 1960, from six prorated pools in Lea County, New Mexico, also consideration of the allowable production of gas from seven prorated pools in San Juan, Rio Arriba and Sandoval Counties, New Mexico, for September, 1960.

**CASE 1668:** Application of Phillips Petroleum Company for an order promulgating special rules and regulations governing the drilling, spacing, and production of wells in the Ranger Lake-Pennsylvanian Pool, Lea County, New Mexico, including the establishment of 80-acre proration units for wells in said pool.

**CASE 1947:** (De Novo)

Application of the applicant, Phillips Petroleum Company, and the protestant, Tennessee Gas and Oil Company, for a hearing de novo in Case No. 1947, Order No. R-1683, relating to the application of Phillips Petroleum Company for two 80-acre non-standard oil proration units and one unorthodox oil well location in the Kemnitz-Wolfcamp Pool, Lea County, New Mexico.

**CASE 1979:** Application of El Paso Natural Gas Products Company for a hearing de novo before the Oil Conservation Commission in Case No. 1979, Order No. R-1699, which was an application by The Atlantic Refining Company for a pressure maintenance project in the Horseshoe-Gallup Oil Pool, San Juan County, New Mexico.

**CASE 2049:** In the matter of the hearing called by the Oil Conservation Commission on its own motion to permit any interested party to appear and present testimony relative to the drilling, spacing, and production of wells in the Devils Fork-Gallup Pool, Rio Arriba County, New Mexico.

**CASE 2050:** In the matter of the hearing called by the Oil Conservation Commission on its own motion to consider amending Rule 505 (b) of the Commission Rules and Regulations to establish proportional (depth) factors for oil wells in excess of 14,000 feet.

**CASE 2051:** Application of Amanda E. Sims and George W. Sims for an order vacating the standard 160-acre Tubb gas unit created by Order No. R-1310 consisting of the NW/4 of Section 25, Township 22 South, Range 37 East, Lea County, New Mexico. Applicant further seeks the establishment of a 160-acre non-standard gas proration unit in the Tubb Gas Pool consisting of the SE/4 NW/4, E/2 SW/4 and SW/4 SW/4 of said Section 25.

CASE 1634: Application of The Pure Oil Company for an order promulgating special rules and regulations governing the drilling, spacing and production of wells in the South Vacuum-Devonian Pool, Lea County, New Mexico, including the establishment of 80-acre proration units for wells in said pool.

CASE 2052: Southeastern New Mexico nomenclature case calling for an order creating new pools and extending existing pools in Eddy, Lea, and Roosevelt Counties, New Mexico:

- (a) Create a new oil pool, designated as the East Benson-Yates Pool, and described as:

TOWNSHIP 19 SOUTH, RANGE 30 EAST, NMPM  
Section 14: NE/4

- (b) Create a new oil pool, designated as the Cass Draw-Delaware Pool, and described as:

TOWNSHIP 23 SOUTH, RANGE 27 EAST, NMPM  
Section 12: SW/4

- (c) Create a new oil pool, designated as the Grayburg Jackson-Abo Pool, and described as:

TOWNSHIP 17 SOUTH, RANGE 31 EAST, NMPM  
Section 20: SW/4

- (d) Create a new oil pool, designated as the Penasco-Wolfcamp Pool, and described as:

TOWNSHIP 19 SOUTH, RANGE 25 EAST, NMPM  
Section 3: SE/4

- (e) Extend the Bluit-Pennsylvanian Pool, to include therein:

TOWNSHIP 8 SOUTH, RANGE 36 EAST, NMPM  
Section 13: SE/4

- (f) Extend the Corbin-Abo Pool, to include therein:

TOWNSHIP 17 SOUTH, RANGE 33 EAST, NMPM  
Section 31: NE/4  
Section 32: N/2  
Section 33: N/2 and SE/4

- (g) Extend the Corral Canyon-Delaware Pool, to include therein:

TOWNSHIP 25 SOUTH, RANGE 30 EAST, NMPM  
Section 8: S/2 SW/4  
Section 17: NW/4

- (h) Extend the Empire-Abo Pool, to include therein:

TOWNSHIP 17 SOUTH, RANGE 28 EAST, NMPM  
Section 26: S/2  
Section 31: NW/4  
Section 33: NE/4  
Section 35: NE/4 and SW/4

- (i) Extend the Middle Lynch-Yates Pool, to include therein:

TOWNSHIP 20 SOUTH, RANGE 34 EAST, NMPM  
Section 22: E/2 SW/4 and W/2 SE/4

- (j) Extend the Paddock Pool, to include therein:

TOWNSHIP 22 SOUTH, RANGE 38 EAST, NMPM  
Section 18: SE/4

- (k) Extend the North Square Lake-Grayburg Pool, to include therein:

TOWNSHIP 16 SOUTH, RANGE 31 EAST, NMPM  
Section 2: SW/4  
Section 3: SE/4  
Section 10: NE/4

C. N. MORRIS  
LAWYER  
TELEPHONE 7011  
P. O. BOX 977  
EUNICE, NEW MEXICO

August 11, 1960

Mr. W. D. Girard  
Girard & Stout  
Attorneys at Law  
Lea County State Bank Building  
Hobbs, New Mexico

Re: OCC Case No. 2051

Dear Mr. Girard:

In connection with the hearing on the above matter which is set for 9:00 a.m., August 17, 1960, I wish to recite our agreement concerning evidence to be as follows:

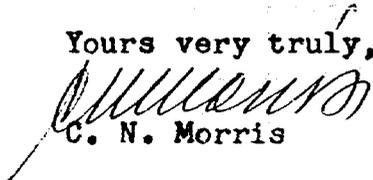
1. The allegations contained in paragraphs one (1), two (2), three (3) and four (4) of my application will not be questioned and may be considered by the Commission to be true statements of fact.

2. Applicants case will consist of the allegations in their application, the record in Oil Conservation Commission Case No. 1567 and Order No. 1310 and the agreement referred to in paragraph three (3) of the application in Case No. 2051. A certified copy of this agreement will be offered in evidence.

3. I understand that you will present no evidence on behalf of your client and that by reason of my limiting the evidence by applicants as hereinbefore recited you are not asking for any continuance to secure evidence.

In order that the Commission be informed of our agreement I am sending a copy of this letter to Mr. Porter.

Yours very truly,

  
C. N. Morris

CNM/mal

cc: Oil Conservation Commission ✓  
P. O. Box 871  
Albuquerque, New Mexico

C. N. MORRIS

LAWYER  
TELEPHONE 7011  
P. O. BOX 877  
MUNICIPAL BUILDING  
SANTA FE, NEW MEXICO

MAIL OFFICE 006

JUN 29 1960

June 29, 1960

Mr. A. L. Porter, Jr.  
Secretary, Oil Conservation Commission  
Box 871  
Santa Fe, New Mexico

Dear Mr. Porter:

Will you please take the necessary steps to arrange a hearing before the Commission upon the application of Amanda E. Sims and George W. Sims which is enclosed in triplicate for filing.

We desire this matter set for hearing before the Commission.

Yours very truly,



C. N. Morris

CHM/mal

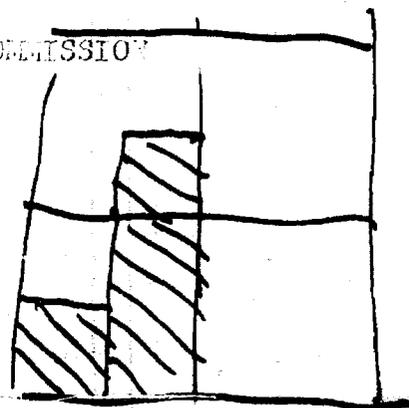
Enclosures:

*Archives  
Mailed  
June 4, 1960*

BEFORE THE OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO

APPLICATION OF AMANDA E. SIMS AND GEORGE W. SIMS FOR AN ORDER VACATING AND SETTING ASIDE ORDER NO. R-1310 ENTERED IN CASE NO. 1567 ON DECEMBER 17, 1958, AND TO SUBSTITUTE THEREFOR A NON-STANDARD 160 ACRE GAS PRODUCTION UNIT IN CONFORMITY WITH AGREEMENT OF PARTIES.



APPLICATION

Comes now Amanda E. Sims and George W. Sims and in support of this Application they show the Commission as follows:

1. That Applicants are the owners of the minerals and mineral rights in and under the  $SE\frac{1}{4} NW\frac{1}{4}$ ,  $E\frac{1}{2} SW\frac{1}{4}$  and  $SW\frac{1}{4} SW\frac{1}{4}$  Section 25, Township 22 S, Range 37 E, N.M.P.M., Lea County, New Mexico, subject to the outstanding oil and gas lease thereon of which Olsen Oils Inc. is the present operator.

2. That the estate of Vivian H. Drinkard, deceased, and Amanda E. Sims, Leo V. Sims, Ellie I. Spear, Bertha E. Sims, G. P. Sims and Winnie L. Sims are the owners of the minerals and mineral rights in and under the  $NE\frac{1}{4} NW\frac{1}{4}$ ,  $W\frac{1}{2} NW\frac{1}{4}$  and  $NW\frac{1}{4} SW\frac{1}{4}$  of Section 25, Township 22 S, Range 37 E, N.M.P.M., Lea County, New Mexico, subject to the outstanding oil and gas lease thereon of which Olsen Oils Inc. is the present operator.

3. That Applicants' property described in Paragraph one (1) above was, by an agreement entered into between Applicants and the lease holders, pooled into a non-standard 160 acre gas production unit on September 11, 1957, for the production of dry gas and associated liquid hydro-carbons which might be produced from the vertical limits of the Tubb gas field. That under such pooling agreement a well was completed in the Tubb zone and such production was attributed to the said 160 acre tract of Applicants.

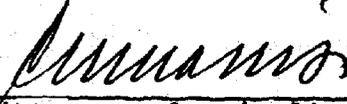
4. That thereafter an application was filed by Olsen Oils, Inc., Oil Conservation Commission Case No. 1567, upon which a hearing was held on December 10, 1958. This application asked the establishment of a 160 acre non-standard gas production unit in the Tubb gas pool.

or in the alternative for an Order force pooling the NW $\frac{1}{4}$  of said section as a Tubb Gas Unit and the SW $\frac{1}{4}$  of said section as a Tubb Gas Unit.

5. That on December 17, 1958, the Commission entered its Order No. R-1310 force pooling the NW $\frac{1}{4}$  of said Section 25 as a Tubb Gas Unit and SW $\frac{1}{4}$  of said Section 25 as a Tubb Gas Unit. That the Commission was without jurisdiction to enter such Order and same should be vacated for such reason. That the Commission was not informed by Olsen Oils Inc., applicant in said case no. 1567, of the agreed pooling of Applicants' property as a Tubb Gas Unit and the concealing of such fact by Olsen Oils Inc. amounted to a misrepresentation to the Commission concerning the rights of applicants and the jurisdiction of the Commission in such matter.

WHEREFORE APPLICANTS PRAY that the Commission hear and determine this matter and enter its Order revoking or rescinding Order No. R-1310 entered in Case No. 1567 and substitute therefore its Order pooling the property of Applicants agreement of the parties.

C. N. Morris  
Eunice, New Mexico

  
Attorney for Applicants

CERTIFICATE

The undersigned does hereby certify that copies of the foregoing Application were delivered to adjoining operators, interested land owners and the involved lease operator by placing same into the U. S. Mail on this 28th day of June, 1960, and addressed to them as follows:

Skelly Oil Company  
805 North Linam  
Hobbs, New Mexico

Western Oil Fields Inc.  
Lovington Highway  
Hobbs, New Mexico

Gulf Oil Corporation  
900 North Turner  
Hobbs, New Mexico

Phillips Petroleum Co.  
208 North Turner  
Hobbs, New Mexico

Campbell & Hedrick  
Box 401  
Mid-America Bldg.  
Midland, Texas

Ohio Oil Co.  
120 West Sanger  
Hobbs, New Mexico

Olsen Oils Inc.  
c/o Girard and Stout  
Attorneys for Olsen Oils Inc.  
Lea County State Bank Bldg.  
Hobbs, New Mexico

*Hobbs  
Mailed*

Estate of Vivian H. Drinkard  
c/o G. P. Sims, Executor  
Box 186  
Eunice, New Mexico

Amanda E. Sims  
Box 186  
Eunice, New Mexico

Leo V. Sims  
Box 579  
Eunice, New Mexico

Ellie I. Spear  
514 East Green Acres  
Hobbs, New Mexico

Bertha E. Sims  
Box 186  
Eunice, New Mexico

G. P. Sims  
Box 186  
Eunice, New Mexico

Winnie L. Sims  
Box 186  
Eunice, New Mexico

*Chambers*

---

OFFICE OF THE OIL CONSERVATION COMMISSION

DECEMBER 13 1960 PM 1:22

BEFORE THE OIL CONSERVATION COMMISSION

OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
COMMISSION OF NEW MEXICO FOR  
THE PURPOSE OF CONSIDERING:

CASE NO. 2051

APPLICATION OF AMANDA E. SIMS AND  
GEORGE W. SIMS FOR AN ORDER VACATING  
THE STANDARD 160-ACRE TUBB GAS UNITS  
CREATED BY ORDER NO. R-1310, AND FOR  
AN ORDER ESTABLISHING A 160-ACRE  
NON-STANDARD GAS PRORATION UNIT IN  
THE TUBB GAS POOL, LEA COUNTY,  
NEW MEXICO.

APPLICATION FOR REHEARING

TO THE HONORABLE JOHN BURROUGHS, CHAIRMAN,  
and to MURRY E. MORGAN, MEMBER, and A. L.  
PORTER, JR., MEMBER AND SECRETARY OF THE  
OIL CONSERVATION COMMISSION OF THE STATE  
OF NEW MEXICO:

The Petitioners respectively request a rehearing in the  
above entitled cause and that Order No. R-1766, of the Commission  
entered in said cause on the 17th day of August, 1960, be vacated,  
set aside and held for naught and replaced by an order of the Commission  
as hereinafter suggested for the reasons and upon the grounds  
following, to-wit:

1. That on or about the 14th day of July, 1955, this  
Commission in Case No. 929 pursuant to an application filed there-  
in by R. Olsen Oil Company, a corporation, made and entered its  
Order No. R-677 thereby creating a production unit for the purpose  
of producing dry gas and associated liquid hydro-carbons from the  
vertical limits of the Tubb gas zone. Said production unit covered  
an oil and gas Leasehold estate owned by R. Olsen Oil Company, a  
corporation, which said oil and gas Leasehold estate covered the  
following described real estate situate in Lea County, New Mexico,  
to-wit:

SE $\frac{1}{4}$  NW $\frac{1}{4}$ , E $\frac{1}{2}$  SW $\frac{1}{4}$  and SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 25, Township 22 S,  
Range 37 E, N.M.P.M., and containing 160 acres more or less.

That thereafter and on or about the 11th day of September, 1957, there was consummated by and between R. Olsen Oil Company, a corporation, Charlton Lyons, Marjorie Lyons, W. P. Prentiss, Dorothea Prentiss, George F. Bauerdorf and Thelma Bauerdork, the then owners of the aforementioned and described oil and gas Leasehold estate and Amanda E. Sims and George W. Sims, the then owners of the fee simple title of the aforementioned and described real estate covered by said aforementioned oil and gas Leasehold estate, a communitization agreement pooling said aforementioned and described oil and gas Leasehold estate for the development of the same as a production unit and for the production therefrom of dry gas and associated liquid hydro-carbons which may be produced from the vertical limits of the Tubb gas zone as defined by the New Mexico Oil Conservation Commission. That said agreement provided that the covenants thereof should be considered as covenants running with the ownership of the respective interests committed by reason of said agreement and shall extend to the heirs, personal representatives, successors and assigns of all the parties to said agreement. [That by virtue of this agreement the respective interest of the respective parties thereto became a fixed and vested interest not subject to change alteration or modification by this Commission.] That the production unit created by this Commission in its Order No. R-677, on July 14, 1955, in Case No. 929, aforementioned and referred to. That thereafter and on or about the 20th day of September, 1957, pursuant to the aforementioned Order of this Commission and also the communitization agreement, R. Olsen Oil Company, a corporation, began the drilling of a gas well to the Tubb gas zone on the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of said aforementioned and described acreage. That said gas well was completed in the Tubb gas zone as a commercial producer of dry gas and associated liquid hydro-carbons from the vertical limits of the Tubb gas zone on or about the 1st day of January, 1958. That such production was attributed to the aforementioned lease in accordance with the Commission's Order No. R-677 and the contract of the parties. That thereafter an application was filed by Olsen Oils, Inc., successors

in interest to R. Olsen Oil Company in the aforementioned and described Leasehold estate, in Oil Conservation Commission Case No. 1567, upon which a hearing was held on December 10, 1958. That during the hearing held by said Commission as aforesaid the applicants did not advise or make known to said Commission the fact that they had entered into a communitization agreement on September 11, 1957, with Amanda E. Sims and George W. Sims, the then owners of the fee simple title of the aforementioned and described real estate covered by said aforementioned oil and gas Leasehold estate for the development of the same and the production therefrom of dry gas and associated liquid hydro-carbons which might be produced from the vertical limits of the Tubb gas zone as defined by the Oil Conservation Commission. That said applicants by their failure to advise the Commission of said agreement misled the Commission in connection with said hearing. That pursuant to said hearing this Commission made an Order on December 17, 1958, being Order No. R-1310, force pooling the NW $\frac{1}{4}$  of the aforescribed property as a Tubb gas unit and the SW $\frac{1}{4}$  of the aforescribed property as a Tubb gas unit. That said Order was in violation of the fixed, vested rights of these applicants as created by the previous Order of this Commission first hereinabove mentioned and referred to and the communitization agreement as aforementioned and referred to. That by reason of Order No. R-677 having been adopted by the Commission and by reason of the communitization agreement having been entered into between the parties as aforesaid, the Leasehold estate hereinbefore described was not subject to the jurisdiction of this Commission for any pooling order and the Commission was without jurisdiction to enter its Order No. R-1310. That this last mentioned and referred to Order of the Commission also was in violation of the correlative rights of said applicants.

2. That by reason of Order No. R-1310 made and entered in Case No. 1567 by this Commission under date of December 17, 1958, the rights of said applicants have been adversely affected due to the fact that their participating interest in the production unit first aforementioned and referred to has been reduced causing them

to suffer economic loss. Said last mentioned and referred to Order of this Commission also resulted in an additional Tubb gas well being drilled upon the first production unit hereinbefore mentioned and referred to thereby causing more depletion of the reservoir under the first production unit and causing further economic loss to these applicants.

That this Commission should vacate, set aside and hold for naught the last production unit created by its last Order hereinbefore mentioned and referred to and leave undisturbed the production unit first hereinabove mentioned and referred to and, by leaving undisturbed the respective interest of these applicants in said original unit, enforce the voluntary pooling agreement of the parties and act within the jurisdiction granted to the Commission by law.

Respectfully requested,

C. N. MORRIS  
BOX 977  
EUNICE, NEW MEXICO

  
\_\_\_\_\_  
Attorney for Applicants

I HEREBY CERTIFY THAT I MAILED A COPY  
OF THE FOREGOING PLEADING TO OPPOS-  
ING COUNSEL OF RECORD THIS 20th  
DAY OF September 1960  
ORIGINAL SIGNED BY:  
C. N. MORRIS

GOVERNOR  
EDWIN L. MECHEM  
CHAIRMAN

**New Mexico**  
**OIL CONSERVATION COMMISSION**

LAND COMMISSIONER, MURRAY E. MORGAN  
MEMBER

STATE GEOLOGIST, A.L. PORTER JR.  
SECRETARY DIRECTOR



P. O. BOX 871  
SANTA FE, NEW MEXICO

November 24, 1958

Advertising Manager  
The New Mexican  
Santa Fe, New Mexico

Re: Notice of Publication

Case 1567

Dear Sir:

Please publish the attached notice one time immediately on receipt of this request. Please proofread carefully, as any error in a land description or in a key word or phrase can invalidate the entire notice.

Immediately upon completion of publication, please send the following to this office:

1. Publisher's affidavit in duplicate.
2. Statement of cost (also in duplicate).
3. Signed voucher (which is attached to this notice).

We should have these immediately after publication in order that the legal notice will be available for the hearing which it advertises, and also so that there will be no delay in your receiving proper payment.

Please publish the notice not later than November 30, 1958.

Very truly yours,

*A. L. Porter, Jr.*  
A. L. Porter, Jr.  
Secretary - Director

Encl.



LAW OFFICE 000

1960 SEP 20 PM 1 22

C. N. MORRIS  
LAWYER  
TELEPHONE 7011  
P. O. BOX 877  
MUNIC. NEW MEXICO

September 20, 1960

Mr. A. L. Porter, Jr.  
Secretary, Oil Conservation Commission  
Box 671  
Santa Fe, New Mexico

Re: Application of Amanda E.  
Sims and George W. Sims,  
Case No. 2051

Dear Mr. Porter:

Please find enclosed three (3) copies of  
Application for Rehearing in the above matter.

A copy of this Application is being  
forwarded to the Respondent.

Yours very truly,



Enclosures:  
CNM/mal

cc: Mr. W. D. Girand /

C. N. MORRIS

ATTORNEY AT LAW

TELEPHONE 396-4912 122 AN A HALF N. LOVE LOVINGTON, NEW MEXICO

September 29, 1961

Mr. A. L. Porter, Jr.  
Member and Secretary of the  
Oil Conservation Commission  
Santa Fe, New Mexico

Dear Mr. Porter:

Would you please forward to me the complete transcript, record, order and exhibits in your cases numbered 929, 1567 and 2051 to enable me to offer these matters to the Court in the petition for review of your order No. R 1766 and R 1766A which are before the District Court of Lea County.

Since it is essential that these records be introduced to the Court to resolve the appeal from the last two mentioned orders, I would appreciate receipt of same without delay.

Yours very truly,



C. N. Morris

CNM:pmr

GOVERNOR  
JOHN BURROUGHS  
CHAIRMAN

State of New Mexico  
Oil Conservation Commission

LAND COMMISSIONER  
MURRAY E. MORGAN  
MEMBER



STATE GEOLOGIST  
A. L. PORTER, JR.  
SECRETARY DIRECTOR

P. O. BOX 871  
SANTA FE

September 28, 1900

Mr. C. H. Morris  
Attorney-at-Law  
P. O. Box 977  
Bowie, New Mexico

Re: Case No. 2051  
Order No. B-1702-A  
Applicant:

Amanda E. Sims & George V. Sims

Dear Sir:

Enclosed herewith are two copies of the above-referenced  
Commission order recently entered in the subject case.

Very truly yours,

A. L. PORTER, Jr.,  
Secretary-Director

ir/

Carbon copy of order also sent to:

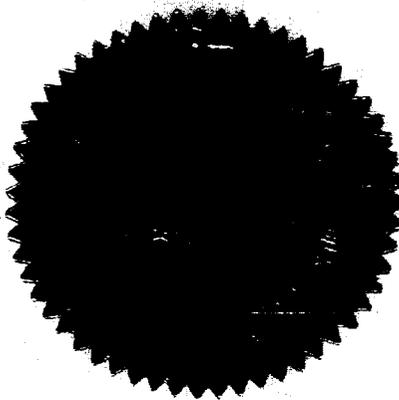
Hobbs OCC X  
Artesia OCC \_\_\_\_\_  
Aztec OCC \_\_\_\_\_

Other V. D. Girard

CERTIFICATION

I, A. L. PORTER, JR., Secretary-Director of the New Mexico Oil Conservation Commission, do hereby certify that this order, Order No. R-1766, is a true and correct copy of the original on file in the Commission's offices.

IN WITNESS WHEREOF, I have affixed my hand and Commission seal this 16th day of November, 1961.



*A. L. Porter, Jr.*  
A. L. Porter, Jr.

Subscribed and sworn to before me this 16th day of November, 1961.

*Ala Rodriguez*  
Notary Public

My commission expires:

September 22, 1965

BEFORE THE OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
COMMISSION OF NEW MEXICO FOR  
THE PURPOSE OF CONSIDERING:

CASE No. 2051  
Order No. R-1766

APPLICATION OF AMANDA E. SIMS AND  
GEORGE W. SIMS FOR AN ORDER VACATING  
THE STANDARD 160-ACRE TUBB GAS UNITS  
CREATED BY ORDER NO. R-1310, AND FOR  
AN ORDER ESTABLISHING A 160-ACRE  
NON-STANDARD GAS PRORATION UNIT IN  
THE TUBB GAS POOL, LEA COUNTY,  
NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 o'clock a.m. on August 17, 1960, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 2nd day of September, 1960, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

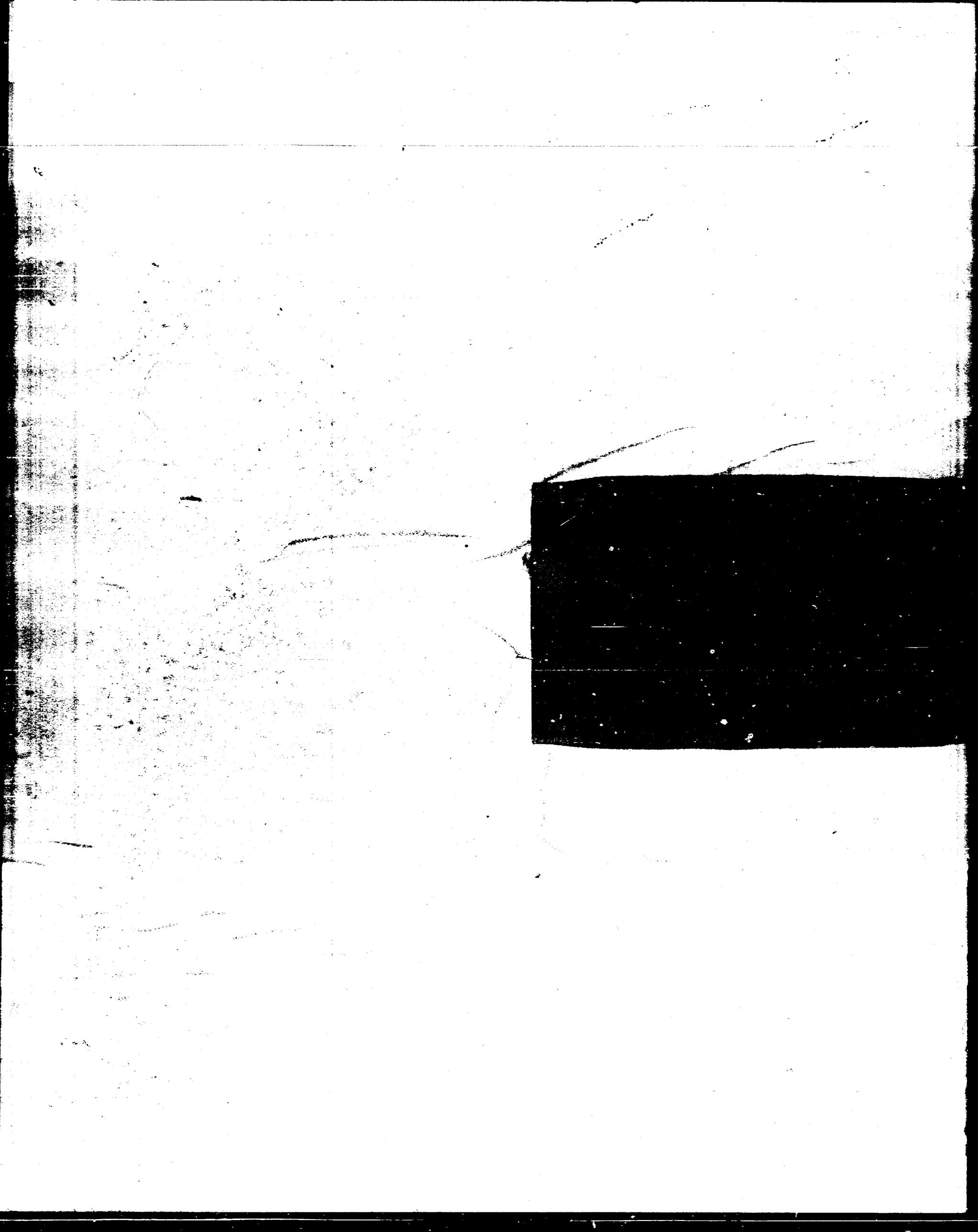
FINDS:

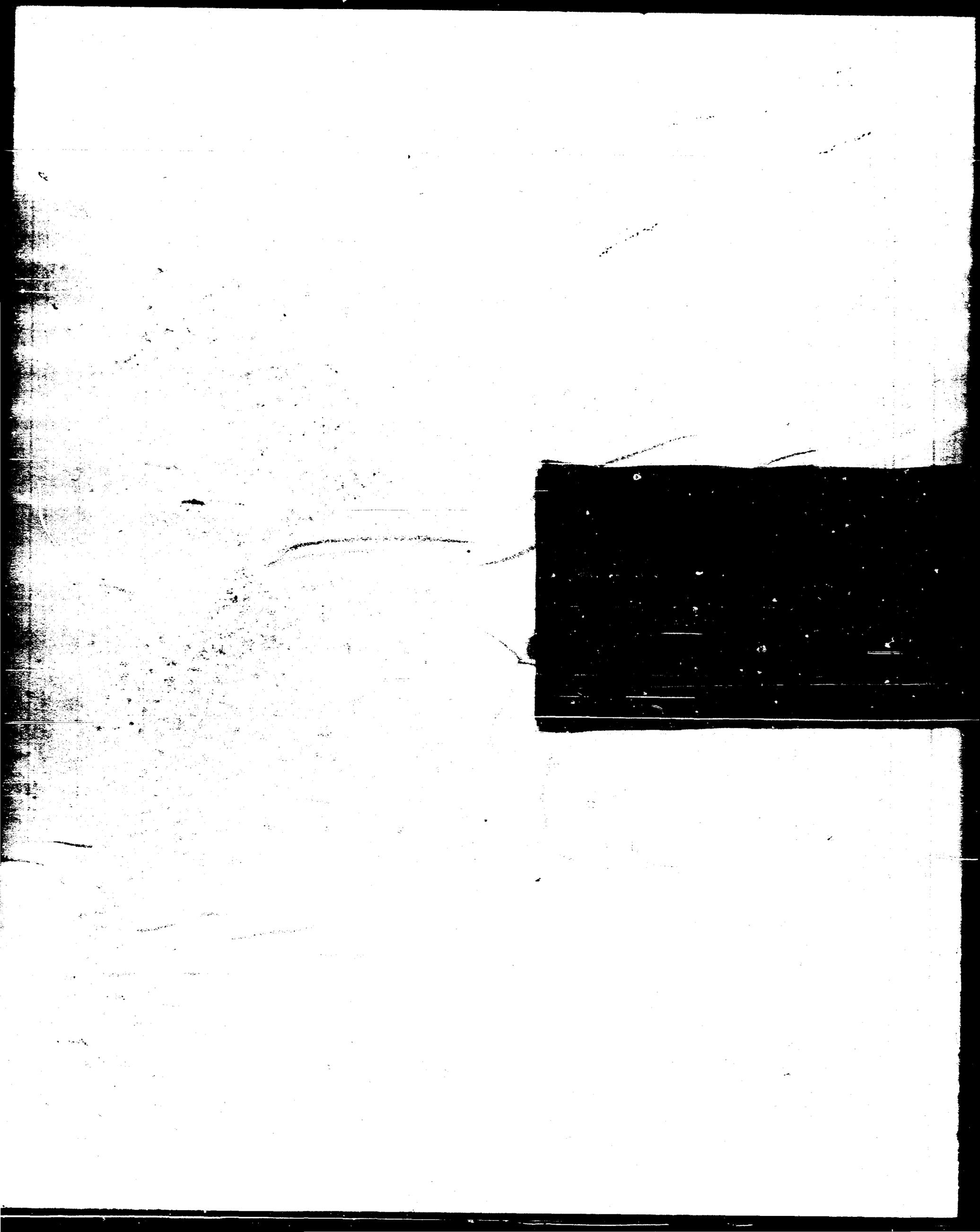
(1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) That an application was filed in Case No. 1567 by Olsen Oils, Inc., for a 160-acre non-standard gas proration unit in the Tubb Gas Pool comprising the N/2 NW/4, SW/4 NW/4 and the NW/4 SW/4 of Section 25, Township 22 South, Range 37 East, NMPM, Lea County, New Mexico, or, in the alternative, for an order force-pooling the NW/4 of said Section 25 as one standard Tubb gas proration unit and the SW/4 of said Section 25 as another standard Tubb gas proration unit.

(3) That Order No. R-1310 was entered in Case No. 1567 force-pooling all interests to form the aforesaid standard Tubb gas proration units.

(4) That applicants herein, Amanda E. Sims and George W. Sims, seek an order vacating the standard 160-acre Tubb gas proration units established by Order No. R-1310, and seek an





No 621192

**RECEIPT FOR CERTIFIED MAIL—29¢**

SENT TO <b>MR. C. W. HOFFER</b> <b>ATTORNEY AT LAW</b>		POSTAGE 29¢
STREET AND NO. <b>122 1/2 North Lane</b>		
CITY AND STATE <b>Lawington, New Mexico</b>		
If you want a return receipt, check which <input type="checkbox"/> by whom to whom and when delivered		If you want restricted delivery, check here <input type="checkbox"/> 29¢ fee
<input type="checkbox"/> 29¢ charge to whom, what, and address where delivered		

**FEE: ADDITIONAL TO 29¢ FEE**

PS Form 3800  
M 1957

SEE OTHER SIDE

1. Stick postage stamps to your article to pay:  
20¢ certified mail fee      Restricted delivery fee—50¢ (optional)  
First-class or airmail postage      Special-delivery fee (optional)  
Either return receipt fee—10¢ or 35¢ (optional)
2. If you want this receipt postmarked, stick the gummed stub on the address side of the article, leaving the receipt attached, and present the article to a postal employee.
3. If you do not want this receipt postmarked, stick the gummed stub on the address side of the article, detach and retain the receipt, and mail the article.
4. If you want a return receipt, write the certified-mail number and your name and address on a return receipt card, POD Form 3814, and attach it to the back of the article. Endorse front of article. RETURN RECEIPT REQUESTED.
5. If you want the article delivered only to the addressee, endorse it on the front DELIVER TO ADDRESSEE ONLY. Place the same endorsement in line 2 of the return receipt card.

Save this receipt and present it if you make inquiry.

U. S. GOVERNMENT PRINTING OFFICE: 1962

19-71507-4

OIL CONSERVATION COMMISSION

P. O. BOX 871

SANTA FE, NEW MEXICO

October 4, 1961

Mr. C. H. Morris  
Attorney at Law  
122 1/2 North Love  
Lovington, New Mexico

Dear Mr. Morris:

In accordance with your request of September 29, 1961, I am forwarding to you the transcripts, exhibits, and orders in Cases Nos. 129, 1567, and 2051. Specifically, the items enclosed are as follows:

Case No. 129

Transcript of proceedings, dated July 14, 1955  
Order No. R-677  
Exhibit No. 1 - Contour Map

Case No. 1567

Transcript of hearing, dated December 10, 1958  
Order No. R-1310  
Exhibit No. 1 - Plat  
Exhibit No. 2 - Contour Map  
Exhibit No. 3 - Receipt for Certified Mail

Case No. 2051

Transcript of hearing, dated August 18, 1960  
Order No. R-1766  
Order No. R-1766-A  
Exhibit No. 1 - Communitization Agreement

In the event you desire the original of the orders, they can be supplied to you, however, it will somewhat inconvenience the Commission and upset its records to do so. I will raise

C  
O  
P  
Y

OIL CONSERVATION COMMISSION

P. O. BOX 871

SANTA FE, NEW MEXICO

-2-

October 4, 1961

Mr. C. E. Harris  
Attorney at Law  
Lovington, New Mexico

no objection if the copies of the orders that I am supplying you with this letter are introduced in court rather than the originals. In this regard, your attention is directed to the last part of Section 6-3-4 of the statutes which provides that a copy of the order may properly be introduced as evidence in court.

If there is anything further that you need from these case files, please let me know.

Very truly yours,

RICHARD S. MORRIS  
Attorney

RM/ear  
Enclosures

C  
O  
P  
Y

November 30, 1961

Honorable Cassell S. Neal  
District Judge  
Carlsbad, New Mexico

Re: Sims v. El Conservation Commission  
Los County No. 12240

Dear Judge Neal:

Enclosed is petitioner's memorandum  
brief for your consideration in the decision of  
the above matter.

Respectfully submitted,

/s/ C. N. MORRIS

C. N. Morris

CCN:pmr  
Enclosure

cc: Girard, Green & Hesse  
Campbell & Russell  
Richard S. Morris

IN THE DISTRICT COURT OF LEA COUNTY, STATE OF NEW MEXICO

AMANDA E. SIMS and GEORGE W.  
SIMS,

Petitioners,

-vs-

No. 18,860

HONORABLE JOHN BARRON, CHAIRMAN, HENRY E. MORGAN, MEMBER, A. L. POWERS, JR., MEMBER, SECRETARY OF THE OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO; AND OLSEN OILS, INC.,

Respondents.

PETITIONERS' MEMORANDUM BRIEF

THAT THE NEW MEXICO OIL CONSERVATION COMMISSION WAS WITHOUT JURISDICTION TO ENTER ORDER NO. R-1310

The petitioners respectfully show the Court that the New Mexico Oil Conservation Commission was without authority to enter Order No. R-1310 in case No. 1567 for the reason that the property of petitioners which such order attempted to affect had already been established as a production unit for Tubb Gas by Order No. R-677 in case No. 929. Order No. R-677 was obtained upon the application of respondent Olsen and upon a showing to the Commission that the granting of such order would prevent waste and would protect the correlative rights of all parties. Production which was obtained on the acreage covered by Order No. R-677 was attributed to such property and produced for a period of several months.

The authority of the New Mexico Oil Conservation concerning the pooling of properties for the production of oil and gas, which is contained in Section 55-3-14, New Mexico Statutes Annotated 1953, limits the required pooling to cases when and to the extent that the smallness or shape of a separately owned tract would, under the enforcement of a uniform spacing plan or proration unit, otherwise deprive or tend to deprive the owner of such tract of the opportunity to recover his just and equitable share of the crude petroleum or natural gas or both in the pool. This authority is set out in sub-section (a) of the section above cited and the only modification of this authority is contained in sub-section (c) of such statute. Sub-section (c) insofar as it provides,

Whenever it appears that the owners in any pool have agreed upon a plan for the spacing of wells, or upon a plan or method of distribution of any allocable funds by the commission for the pool, or upon any other plan for the development or operation of such pool, which plan, in the judgment of the commission, has the effect of preventing waste as prohibited by this act and is fair to the royalty owners in such pool, then such plan shall be adopted by the commission with respect to such pool,

was fully effectuated when Order No. R-677 was adopted by the Commission. That order was based upon substantial evidence that the granting of the order would prevent waste and would protect the correlative rights of the parties. The only other provision in the statute authorizing the Commission to take any action concerning modification, provides,

however, the commission, upon hearing and after notice, may subsequently ~~vacate~~ any such plan to the extent necessary to prevent waste as prohibited by this act.

This language can only mean that the previous order can be modified upon hearing and after notice of the Commission's intention to modify the previous order. The notice given in case No. 1567, which is a part of the record herein, gave notice as follows:

Application of Clean Oil, Inc., for a non-standard gas production unit. Applicant, in the above-stated cause, seeks an order establishing a 100-acre non-standard gas production unit in the Tubb Gas Pool consisting of the N/2 NW/4, SW/4 NW/4 and the NW/4 SW/4 of Section 25, Township 22 South, Range 37 East, Lea County, New Mexico; or in the alternative for a compulsory pooling order pooling all interests within the vertical limits of the Tubb Gas Pool in the NW/4 of said Section 25 as one Tubb Gas Unit and a line order pooling all interests within the vertical limits of the Tubb Gas Pool in the SW/4 of said Section 25 as another Tubb Gas Unit.

The Court will note that nowhere in the notice of hearing was there any notice or any indication that the purpose of the hearing was to modify, vacate, set aside or otherwise effect Order No. R-677.

The Supreme Court of Oklahoma in CARTER OIL CO. v. STATE, 235 P.2d 300, considered this very matter and determined the issue of the validity of the modifying order when it stated:

We hold that the Corporation Commission is without power or authority to review and modify a former order, establishing a well spacing unit, which order has become final, without first giving statutory notice, to all interested parties, of a hearing to be had on the question of modification or change of the order.

The Court is also urged to take note that the authority of the Commission to change any existing final order, if sub-section (e) of Section 65-3-14 gives such authority, can be done only "to the extent necessary to prevent waste." In that connection the Court is urged that there was no basis upon which the Commission should modify Order No. R-677 for the testimony adduced at the hearing of Cause No. 1567 was direct and positive that the granting of the interlocking unit asked for would prevent waste and protect the correlative rights (tr - 6). In that connection also we wish to point out to the Court that the evidence supporting the issuance of Order No. R-677 was exactly the same as the evidence presented to the Commission in the hearing in Cause No. 1567 (tr 4-6). In other words, there was no new evidence to support a modification of the previous order and since the authority of the Commission to modify any such order, if such authority exists at all, is upon hearing and after notice to modify the order to the extent necessary to prevent waste. The question of the change of such an order following the issuance of an order which is not appealed from was decided in WOOD OIL CO. et al v. CORPORATION COMMISSION, et al , 239 P.2d 1021, wherein the Court stated:

The motion to vacate and modify order No. 19990 did not specify any substantial change of condition of the area nor did the evidence reveal such change. The contentions urged in support of the motion were known and could have been urged at the hearing on which the original order was based. Plaintiffs now say that the order sought to be vacated was inequitable, unjust and unconscionable, but such complaints could properly have been

urged only on appeal.

This seems to me to be the identical position which Clean undertook in the present case. Order No. R-677 was issued on its application, such order became final, was acted upon and relied upon by all the parties for a period of years and then without notice of its intention to modify such order, Clean in case No. 1567 without any change in circumstances sought to have Order No. R-677 set aside.

Order No. R-677 was not subject to collateral attack and the attempt of respondents to collaterally attack the order by modifying it was identical with the situations existing in both the Carter Oil Company and Wood Oil Company cases, supra, and in each of these cases the Court asserted that the attempt to so do was void.

#### CONCLUSION

Order No. R-677 entered by the New Mexico Oil Conservation Commission in Cause No. 989 became a final order of the Commission when it was not appealed from and the rights of the parties to the production of Tubb Gas from the area involved in such order were determined. Neither the Commission nor the moving parties in Cause No. 1567 gave any notice that a hearing would be held to modify Order No. R-677 nor did their petition to amend or modify such order recite any facts of any changed conditions or of any existing waste which justified the modifying of the order and such modifying order (R-1310) entered in Case No. 1567

should be declared to be void as an attempt to collaterally  
attack a final order of the Commission in a hearing in  
which the Commission did not have jurisdiction over the  
parties or the subject matter.

Respectfully submitted,

---

**G. J. BROWN**  
Livingston, New Mexico  
Attorney for Petitioner

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32
33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48
49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64
65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80
81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96
97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112

BEFORE EXAMINER NOTICES  
 BOILER INSPECTION COMMISSION  
 EXHIBIT NO. 1

T  
S  
T  
C  
O  
U  
N  
T  
Y

Bob Johnson  
 Uranium Claims

Mrs. F. S. Seldel, Per.

BEFORE EXAMINER NUTTER  
OIL CONSERVATION COMMISSION  
*Paul* EXHIBIT NO. 1  
CASE NO. 15727