

Ex H. b. T F

IN THE DISTRICT COURT OF LEA COUNTY
STATE OF NEW MEXICO

CONTINENTAL OIL COMPANY,
ET AL.,

Petitioners

-2-

No. 15,313

NEW MEXICO OIL CONSERVATION
COMMISSION, ET AL.,

Respondents

ORDER OF REFERENCE

BE IT REMEMBERED, That the parties concerned in the case above styled and numbered came on for a settlement conference before the Honorable John R. Brand, Judge of the Fifth Judicial District in and for Lea County, New Mexico, at the respective parties concerned appearing by and through the counsel as follows:

Jason Keilichia, Santa Fe, N.M.
Howard C. Stratton, Roswell, N.M.
Ross L. Malone, Roswell, N.M.
Kirk Newman, Roswell, N.M.
Harry Dwyer, Fort Worth, Tex.
H. D. Huchnell, Tulsa, Okla.
Reed Elliott, Houston, Tex.

For Petitioners

Jack Campbell, Roswell, N.M.
Mr. J. Goeley, Santa Fe, N.M.
Oliver Payne, Santa Fe, N.M.
Robert W. Ward, Lovington, N.M.
Ray C. Coan, Hobbs, N.M.
Morris Calatana, El Paso, Tex.

Whereupon, at the close thereof and among other things, the Court made its ruling as follows, to-wit:

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THE COURT: Within the framework of the previous order, without departing from it to any degree, and after pre-trial conference, the petitioners will be permitted to offer proof which has not been available to the Commission or to them in order that it may be determined whether or not the Order entered by the Commission was proper and reasonable; what, in view of what we have now learned or what will be shown to have occurred since July 1st, the Commission would probably have entered a different Order or whether we now determine now, in view of the later developments, that the Order is invalid, unreasonable, capricious in that it did not protect the rights, the curative rights in the property, or that, in effect, it amounted to taking that property without due process.

This matter was, as I understood it, tried before the Commission on the conflicting testimony of experts as to what might be expected. We should, with the taking of testimony as to what has actually occurred, be in better position to determine whether that Order was improper or not. At least I'll make an effort to do so.

MR. CAMPBELL: Do I understand correctly that the Court intends to admit evidence as to any information now available to the petitioners that was not then available to them on the question of whether they have been deprived of their property? Am I correct in that?

THE COURT: Yes.

MR. CAMPBELL: So that the deliverability tests taken since the Order would be the only ones acceptable to the Court?

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THE COURT: Certainly, because, if we want to know some deliverability tests made prior to that, all we have to do is look at the record.

MR. CAMPBELL: But the Court will consider all of that material of course?

THE COURT: I am required to do so, I take it, and with the understanding that I am compelled to treat those, with the burden and proceed on the assumption that the action of the Commission is regular and proper, unless it is shown to the contrary. I believe the statute so provides.

MR. COOLIDGE: Would your Honor rule specifically on the offer of evidence in the record. Item 4, I believe, of the offer, the prisoners will offer the testimony of Mr. Lister to explain the record made before the Commission which was very voluminous, very technical and very complicated.

THE COURT: Of course that now assumes that the Court can read the record and understand it.

MR. MAIONE: If the Court please, we do not intend the interpretation that was placed on that by counsel. He doesn't know. — we do think there will be some technical testimony in the record that the Court might want some explanation or interpretation.

THE COURT: Very well, I would listen to that, excluding any attempt of the witness to state his interpretation. That is a matter on which I would expect all of the experts to agree. You have a word in here that I never saw before. I would hope that all the experts would agree on the meaning of that word. Do you understand?

MR. MALONE: I'd say three days at a maximum, your Honor.

THE COURT: I'll set it for Monday, November 17th.

MR. COOLEY: Does the Court intend to enter an order as a part of this proceeding?

THE COURT: I will not issue any written order unless you feel you need it.

MR. COOLEY: He would specifically request such an order set forth everything in regard to such offer and ruling thereon.

MR. MALONE: Your Honor, I would suggest that the Court make the offer of proof at the time the particular party makes an offer. The most that can be accomplished is to make a personal statement.

THE COURT: I agree with you, Mr. Malone. I think it is very specific clear and I have your understanding up, stating the transaction of this proposed offer of proof. If you have a witness on the stand and objection is made, you can then say, you are not permitted from offering evidence not provided from a reading your deposition.

MR. COOLEY: Your Honor, if we are to make a statement, we should make the witness of the remarks in the deposition and if presented otherwise, I think it should be made complete. I think that is the way to handle it.

THE COURT: Yes, sir.

MR. COOLEY: And all these explanatory remarks, if we think it is necessary to take some other action, might also be given and would be in the way of prejudicing our case. We appear in before the Court and offering evidence in court. So that is all we really want is to be advised the Court has said he is going to admit this evidence.

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...to say, I think that I have said that. That is

the fact.

MR. CAMPBELL: That is the order of the Court.

THE COURT: Mr. Campbell, you will have fifteen days in which
to supply supporting counsel with a statement as to what your
intent is to offer, your intent is to say that the law
applies to Mr. Campbell alone but to Mr. Douglas, etc.

Is there anything further?

Nothing further being said, the Court

will now adjourn the conference.

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STATE OF NEW MEXICO }
COUNTY OF LEA } ss

I, Clarence F. Johnson, Official Court Reporter of the Fifth Judicial District of the State of New Mexico, in and for the County of Lea, do hereby certify that I reported the proceedings had at the pre-trial of the above entitled and numbered cause; that the foregoing seven pages of transcription matter constitute a full, true and correct transcript of that portion of the proceedings as therein stated, objections of counsel thereto, and rulings of the Court thereon.

WITNESS my hand on this the 20th day of September, A.D. 1911.

~~CLARENCE F. JOHNSON~~
Official Court Reporter

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