

Exhibit F

IN THE DISTRICT COURT OF LEA COUNTY
STATE OF NEW MEXICO

CONTINENTAL OIL COMPANY,
ET AL.,

Petitioners

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No. 16,313

NEW MEXICO OIL CONSERVATION
COMMISSION, ET AL,

Respondents

SECOND PROVISIONAL ORDER OF COURT

BE IT REMEMBERED, That the parties herein above styled and numbered came on for a joint hearing conference before the Honorable John R. Ward, Judge of the Fifth Judicial District Court for Lea County, New Mexico, at the respective parties conserving appearing by and through their counsel as follows:

John Kellahan, Santa Fe, N.M.
Howard C. Bratten, Roswell, N.M.
Bob E. Jones, Tulsa, Okla.
Kirk Bowman, Roswell, N.M.
Harry Dixie, Fort Worth, Tex.
H. D. Bushnell, Tulsa, Okla.
Reed Elliott, Houston, Tex.

For Petitioners

Jack Campbell, Roswell, N.M.
Mr. J. Cooey, Santa Fe, N.M.
Oliver Payne, Santa Fe, N.M.
Robert W. Ward, Livingston, N.Y.
Ray C. Conner, Hobbs, N.M.
Horris Calahan, 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; and 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 can determine now, in view of the later developments, that the Order is invalid, unreasonable, capricious in that it did not protect the rights, the constitutional rights in the property, or that, in effect, it amounted to taking that property without due process.

This matter was, as I understand 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 about 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 evidence, of course?

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

MR. COOKLEY: Would your Honor rule specifically on the offering of evidence in the record. Item 4, I believe, of the affidavit the petitioners will offer the testimony of Mr. Lishman to complete 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 has seen the record and understands it.

MR. MAIONE: If the Court pleases, we do not intend the taking of any evidence that was placed on that by counsel. We don't know, of course, what the experts will say -- 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. This 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?

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MR. CONNELL: Well, Mr. I can't feel that I had never an
opportunity of the type we've suggested to make a
statement to the existing members.

MR. CONNELL: Well, I would appreciate taking some time
to go over it and to read the report.

MR. CONNELL: Well, I would appreciate being able to go
over it and then, in such a time as this, trying to give an
explanation and

MR. CONNELL: I might say also -- do you happen to have
any new title reports, say, as far as I know, or
any other information? And could I discuss this with
you? Please let others leave the room if you
want the discussion did any, or what he meant by what

MR. CONNELL: Now in this general question of evidence,

MR. CONNELL: You know, I usually use basic principles of law
and common sense, and I think that, if you ask me,
the question is, if it's relevant, does this have a
tendency to suggest a guilty question or does it prove
that the Commonwealth was negligent, then

MR. CONNELL:

MR. CONNELL: I agree to this. I think if it was proved
true and a witness of irreproachable and true character
take into account the circumstances little or nothing
would be added. And I think also that, if it proves a
possessive claim property without the property, it
would not add to their case.

MR. CONNELL: If the Court pleases, I think it should be agreed
to my position in connection with my
agreement with that of the Commonwealth, in respect

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additional evidence if the Court does not consider it
to be admissible. The Court is considered to be bound
after the last promised compromise has been made.
The Court should be asked to let the other side argue
their case before the trial, or if either side, after
Court's consideration of the case, is so satisfied,
willing to take their trial to be in the position of victim,
or for notice of appeal of this case by tendering
court's certificate, certifying evidence offered in the
case to be admissible. If the court does not consider
it admissible, the trial will be held at the place
where the court is willing to either accept
plaintiff's or defendant's offer of trial in the
place in preference of theirs, or to take trial in
any place the court may suggest. The position
of the court will be the same as before in continuing
trial in any place preferred by either party.
The trial will be held at the place suggested
by the court, unless the parties otherwise agree,
in which case the trial will be held at the place
so agreed by the parties.

Q. What do you think there will be required on your part
to have the trial held where you have said. Every other provision
has been done.

Q. Will the Court please, did Mr. ~~Leopold~~ say, make
any changes before the trial?

Q. There are ten days from this date, you can do what
you may think is well to try and get ready.

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MR. COOLEY: 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 at the conclusion of this proceeding?

MR. COOLEY: I will not issue any written order unless you require me to do so.

MR. COOLEY: We would specifically request such an order to furnish everything in regard to such offer and ruling.

MR. KELLY: Your Honor, I would suggest that the Court accept the offer of proof at the time the particular witness is called and then make the record that can be accepted thereafter in the form of a statement.

MR. COOLEY: I agree with you, Mr. Malone. I think it is perfectly clear and I have your understanding, Mr. Coffey, that in consideration of this proposed offer of proof, the Court will make a sufficient record statement and objection to the record, so that you can be protected from any further problem in this regard.

MR. COOLEY: Your Honor, if we do consider this to be a sufficient record, I would like to move that the Court accept the offer of the proffered proposition, I would like to be made, admissions, in this case, to the record, and I would like to thank you, Mr. Coffey, for your assistance.

MR. COOLEY: And with those explanatory remarks, I would like to advise you that it is necessary to take some other action, right after the trial, and that will be in the way of presenting our witnesses to the jury before the Court and offering evidence, and I would like to have that to all be readily available to the parties. The Court must and be going to admit this record.

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... to the point at which time I have told you. That will

be all.

MR. DALEY: That is the end of the Court.

THE COURT: Mr. Campbell, you will have fifteen days in which
properly preparing counsel will a statement as to what pro-
tection or advice you intend to do as far as the
application of the law, and I adjourn but to Mr. Coulter's office.

Is there anything further?

No, Your Honor, I am prepared to do what I can.

Thank you, and I adjourn now.

AM 9:00 A.M. 10/10/68

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STATE OF NEW HAMPSHIRE }
COUNTY OF LEE }

I, Clarence R. Johnson, appointed State Reporter of the
25th Judicial District of the State of New Hampshire, do and for the
County of Lee, 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 transcript matter constitute
a full, true and correct transcript of that portion of the
proceedings as herein stated, exclusive of counsel therefor,
and rulings of the Court thereon.

Signed my hand on this the 20th day of September, A.D. 19--.

Clarence R. Johnson
Appointed State Reporter

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