

BEFORE THE
Oil Conservation Commission
SANTA FE, NEW MEXICO

IN THE MATTER OF:

CASE NO. 706 through 712,
inclusive

TRANSCRIPT OF PROCEEDINGS

ADA DEARNLEY AND ASSOCIATES
COURT REPORTERS
ROOMS 105, 106, 107 EL CORTEZ BUILDING
TELEPHONE 7-9546
ALBUQUERQUE, NEW MEXICO

BEFORE THE
OIL CONSERVATION COMMISSION
Santa Fe, New Mexico
March 17, 1955

IN THE MATTER OF:

Rehearing in these cases were continued from February 17, 1955, upon the motion of the applicants for rehearing: Saul A. Yager, Marian Yager, M. E. Gimp, Morris Mizel and wife, Flora Mizel, and Sam Mizel. The cases as originally heard involved the application of El Paso Natural Gas Company for compulsory communitization for Mesa-verde production of certain tracts in San Juan County, New Mexico.

Cases 706 through
712, Incl.

Continued.

BEFORE:

Honorable John F. Simms
Mr. E. S. (Johnny) Walker
Mr. William B. Macey

TRANSCRIPT OF HEARING

MR. MACEY: The next case on the docket is Case 706 through 712, inclusive, for rehearing in those matters.

MR. CAMPBELL: Jack M. Campbell, and John F. Russell, Roswell, New Mexico, representing the applicant in the rehearing.

MR. HOWELL: Ben P. Howell, El Paso, Texas, representing El Paso Natural Gas Company. We desire to introduce some additional testimony, and I take it that the entire record on the original hearing is to be considered in the motion for rehearing.

MR. MACEY: It is part of the case.

MR. HOWELL: It is part of the case, and there is no need to introduce any particular portions of that record, that the entire

record is before the Commission. I don't know whether the applicant or we should proceed with the testimony, we are ready to put on our testimony at any time, whichever should go first under your practice.

MR. CAMPBELL: If the Commission please, we do not intend to offer any additional evidence unless the testimony or evidence offered by El Paso Natural Gas Company would call for any rebuttal. The application for rehearing and the case itself it seems to us are primarily legal propositions. I thought that it would be well to review very briefly for the Commission's benefit, the circumstances up to this point and to explain to the Commission our position in the matter and to ask the Commission for a relief under the application for rehearing, or motion for rehearing, ask them for the relief that we seek by way of a revised order. Then if Mr. Howell has additional testimony, of course, or evidence, why we will go ahead with that.

If the Commission please, this involves seven cases, Nos. 706 through 712, before the Commission. The original applications which were filed by El Paso Natural Gas Company in the cases, after setting out the circumstances, the facts, requested that we be required by the Commission, in each of these seven cases, to execute a communitization agreement or pooling agreement on forms which were attached to the application, and the facts in each of the seven cases are essentially the same. There are minor variations which involve legal questions, but basically the question involved is whether the compulsory pooling orders, if one is required, can be made retroactive to a date prior to its entry. And the second question involved, in view of the Commission's orders in these cases, is whether or not

pooling is accomplished merely by the approval by the Commission, of a notice of intention to drill on a drilling unit which has been created by an order of the Commission.

These properties which are owned, the minerals of which are owned in fee by Mr. Yager and others, are situated in San Juan Basin, they are situated in the Blanco Gas Pool, as designated by the Commission in its Order No. R-110, dated November 9, 1951.

In that Order, which was the basis for the establishment of these drilling units of 320 acres each, the Commission provided after -- and this was entered after notice and hearing. "No wells shall be drilled or completed, or recompleted, and no notice of intention to drill, or drilling permit shall be approved unless:

(a) Such well be located on a designated drilling unit, of not less than 320 acres of land, more or less, according to the legal subdivision of the United States Land Surveys, in which unit all the interests, all the interests are consolidated by pooling agreement or otherwise, and on which no other well is completed or approved for completion in the pool.

Such drilling unit shall be in the shape of a rectangle, except for normal variations in legal subdivisions of the United States Land Surveys, the north half, south half, east half or west half of each section of land constituting a drilling unit. "

Now, at the time this order was entered, and since September 1, 1948, which is the date of all of these seven leases, these lands of Yager and others were situated within the boundaries of this designated gas pool, they were parts of 320 acre units. Sometime the early part of 1954--bear in mind, that these leases expired, the primary term, September 1, 1953, unless there was production

under the leases. Some time in the early part of January, of this year, El Paso Natural Gas Company contacted Yager and others to determine whether they would enter into a communitization agreement, communitization of these seven pieces, these tracts that they owned within these 320 acre units. Negotiations, as the transcript will indicate, went on for some time. The net result was that at the expiration date of the lease, leases, no pooling agreement had been entered into by Yager and others, pooling their interest with those of other mineral owners and other working interest owners in these various units.

However, prior to the expiration date of these leases, which was September 1, 1953, El Paso Natural Gas Company, in each of these cases, filed with the Commission a notice of intention to drill on tracts, 320-acre tracts designated by them and purported to dedicate the lands of Yager and others to these drilling units. El Paso Natural Gas Company, under this order, designated whether it would be the east half, west half, north half or south half. In all but two of the cases the Commission approved the notice of intention to drill, despite the fact that the Yager interest had not been pooled, voluntarily or otherwise, as required, we contend, by Order R-110, El Paso went ahead and started drilling wells on these units. In two of the cases the Commission did not even approve the notice of intention to drill, but it was approved by the United States Geological Survey, a Federal Agency. That, of course, is another legal question which of course there is no particular point in arguing here, the question of the validity of the notice of intention to drill by anyone other than the state or Conservation Commission.

In any event, the El Paso Natural Gas Company proceeded to drill these wells on these units designated by them, without any and without any compulsory pooling agreement voluntary pooling agreement, /or compulsory pooling order from this Commission. Some eight months after the wells were completed, El Paso Natural Gas Company came before the Commission and by these applications, to which I have referred, requested the Commission at that date to order Yager to enter into compulsory pooling agreements with them, communitization agreements as they are called in the application, and Yager came before this Commission on hearings. And, the facts essentially, I think, as I have stated them, were brought out before the Commission. Briefs were submitted by me and by Mr. Howell, stating our position in connection with the matter. Our position was then, and is now, this:

This Commission has the power, under Section 13-B of the Statute, to enter a compulsory pooling order. So far as we are concerned, there is no doubt in our minds as to that. We do not believe that the Commission has the power under the Statute to enter a retroactive compulsory pooling order, dating back to a date prior to the time of the entry of the order, we so contended in our brief.

Mr. Howell contended, on the other hand, that the pooling was effected at the time the notice of intention to drill was approved, and that therefore the Commission should enter its compulsory pooling order of this time, effective as of that prior date.

The Commission, after consideration of the briefs to which I refer you in this rehearing, after consideration of the briefs, the Commission entered an order in each of these cases, each of the orders being essentially the same, in which they neither granted nor denied the application for compulsory pooling. They simply set out

the fact, or findings of fact, which are essentially correct as to the dates on which the notice of intention to drill was filed and approved and so forth, and then stated that it was ordered that the Commission recognized the pooling as having been effected at the time the notice of intention to drill was approved by the proper agency, the Commission or the United States Geological Survey.

The net effect of that order, in our opinion, is simply that whenever the Commission enters a spacing order in any case, oil or gas, that all the owner or operator has to do to pool the royalty interests under those tracts is to file with the Commission, without notice to the royalty owners or hearing by the royalty owners, his notice of intention to drill, get it approved, start his well and he has completed the pooling of the royalty interest under that tract.

It is our position in this rehearing that such a condition completely deprives the royalty owner of his right of hearing and we contend that there are many instances in which the royalty owner has a vital and proper interest in the establishment of the drilling units. For instance, this Order R-110 does not require that the units be in the east half, or the west half, or the north half or the south half. It is left up to the discretion of the owners or the interest owners under the tracts.

Now certainly you can conceive situations in which an owner or operator might have an advantage as to lease expirations, royalty burdens, overriding royalty burdens and so forth, of drilling his well, say in the northwest quarter of a section and it then is left to his discretion whether he uses the northeast quarter or the southwest quarter as the other 160-acre tract

with that unit, and the royalty owner could have, in many instances, a vital interest in which unit was used by the owner as his drilling unit; and it is our position that the royalty owner is entitled to notice and hearing before the drilling units are established; and that his interest is definitely effected by the manner in which these drilling units are formed. And, that to say, as the Commission has said in this order, that all that is necessary to pool the royalty owners interest, is the approval of a notice of intention to drill, simply makes meaningless pooling clauses in leases, voluntary pooling agreements of any kind.

It would appear to us that you are leaving the royalty owner completely at the mercy of the operator insofar as these units are concerned, and in the creation and designation of these units, and we do not think that that is a proper way to proceed, and we think that that is actually depriving the royalty interests of their property without due process of law.

Now, that basically is the present situation. Now, on this rehearing, we are requesting the Commission to do what we requested them to do at the time that we submitted our briefs in the original cases. We believe the Commission has the power to compulsory pool acreage under Section 13-B of the present statute. And, we believe that our interests should be pooled. As a matter of fact, as owners of the small tracts within these larger units, we believe we are the ones who are contemplated by the Statutes to come before the Commission and seek relief because it would be uneconomical for us to drill on 40-acre tracts, obviously, for gas.

The El Paso Natural Gas Company, the owner of the entire working interest certainly does not stand to lose anything if this is

pooled or not, since they are getting all of the working interest production, including ours at this time.

We want the Commission to enter a compulsory pooling order, not upon the terms attached to the application, but upon the terms established by the Commission as fair and proper, pooling our interest whatever it may be, as of the time of the entry of the order.

Now, I am sure it is obvious to the Commission that it is important to us, and important to El Paso Natural Gas Company, whether this order is effective as of now, or as of a date prior to the time, the expiration of our leases on September 1, 1953. The El Paso Natural Gas Company started working on these leases in the last six months of their primary term, and all of this took place very close to the expiration date of the leases.

As a matter of fact, in three of the cases, the wells were spudded in either on August 30th or August 31st, and the leases expired at midnight on August 31st. So, you can see, that while it is not a matter, that the question of the expiration of the lease is not a matter for this Commission to determine. The nature of the orders that the Commission enters in these cases is of extreme importance with reference to future litigation as to the expiration of the leases, the status of the leases, and naturally El Paso Natural Gas Company wants these orders entered as of the date of the approval of the notice of the intention of drilling, or the date of the commencement of the well. We believe they should not be entered until such time, and effective until such date as the Commission actually enters the order.

So, in this rehearing we are requesting the Commission to reconsider its position in which, in our opinion, it has taken no

action on the applications.

As a matter of fact, there won't be any reason for the applications if the approach the Commission is taking is correct because under their approach the pooling was completed automatically by the approval of the notice of intention to drill and there would be no reason for the application by El Paso Natural Gas Company for compulsory pooling orders under those circumstances. And we feel that there simply hasn't been anything entered here but a declaration by the Commission of what they believe the effect of the statutes and rules and regulations may be. They have made a legal conclusion but in our opinion they have entered no order in conformance with the applications in these cases and we ask the Commission to enter a compulsory pooling order as of the date of the entry of the orders, pooling all of the interests, royalty and working interests under the 320-acre units, which have been designated as drilling units by the El Paso Natural Gas Company.

I believe that generally states our position. As I say, there are a number of variations in some of these cases. For instance, there are three of the cases in which the wells were actually commenced on other acreage within the drilling unit, that is, not on our tracts. So we have the legal question of whether, until a compulsory pooling order is entered, we are entitled to royalty, at least on all the production from the unit on which the well was drilled on our tracts. That of course is another legal question. There are some of the leases that are confined entirely to the 320-acre units; there are other leases which have some acreage within the unit and some acreage without the unit; and there is the additional

legal question upon what the effect may be upon the acreage that is not included in the unit to which the acreage is dedicated. These are legal questions which will eventually have to be determined by the Court, but we believe the Commission, in the proper exercise of its duties under the law, should enter its orders, compulsorily pooling in each of the cases, whatever interest we may have. And, I don't think it is necessary and proper for the Commission to designate what that interest is, but the date upon which that compulsory pooling order becomes effective, or on which the pooling becomes effective.

If the Commission goes along with its present position, of course, will have a material bearing on whether or not the leases expired, and whether or not we are the owners of eight-eighths, or whether we are the owner of one-eighth, or whether a one-eighth interest is pooled, or whether an eight-eighths interest is pooled.

I believe that basically is the position that we take in the matter.

MR. HOWELL: If it please the Commission, our position in the matter is that the orders which were entered by the Commission were proper orders. We are basing our position upon certain portions of the Statute, upon the orders entered by the Commission, and upon the practice and custom that has been followed in administering the Statute. We are basing the contention on the definition of owner, which is contained in the Statute in Section 26-E. Owner means the person who has the right to drill into and produce from any pool, and to appropriate the production, either for himself or for himself and another. That certainly means, not the royalty owner, not the lessor of a lease which is in existence, but the lessee.

The only person under an oil and gas lease who has the power to drill, and under any lease, regardless of whether it be a large lease or a small lease, when the land owner has executed that lease he has placed in the lessee the right to determine where to locate his well, the right within the rules prescribed under the police power in conserving oil and gas, the right to determine how many wells to drill, when to drill them, as long as the lease is continued by production during its primary term or a well completed prior to the expiration of a primary term in a commencement lease.

Now the statute which authorizes the pooling is found in Section 13-C, the provisions of the statute, 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 that the smallness or shape of a separately owned tract would, under the enforcement of a uniform spacing plan or proration unit otherwise deprives or tends to deprive the owner of such tract to recover his just and equitable share of the crude petroleum, or natural gas, or both in the pool; provided, that the owner of any tract that is smaller than the drilling unit established for the field, shall not be deprived of the right to drill on and produce from such tract, if same can be done without waste. But in such case the allowable production from such tract is compared with the allowable production therefrom, if such tract were a full unit, shall be in ratio of the area of the tract to the area of a full unit. All orders requiring such pooling shall be upon terms and conditions that are just and reasonable, and will afford to the owner of each tract in the pool the opportunity to recover, or receive his just and equitable share of the oil or gas or both in the pool, as approved, provided, so

as approved, provided, so far as may be practicably recovered without waste. And in the event such pooling is required the costs of development and operation of the pool unit shall be limited to the lowest actual expenditures required for such purpose, including a reasonable charge for supervision. And in case of any dispute as to such costs, the Commission shall determine the proper costs.

Now our contention is that the pooling refers to the lessees, the owner, as defined by the statute, the person having the right to enter upon the land to drill and to appropriate the production for himself, or for another. If it applied to the royalty owner, there would be no need whatsoever for the last sentence in this section of the statute, because the royalty owner is not interested in the costs of drilling, or the costs of operation. His royalty comes to him from the statutory owners, those persons having the right to drill, who among themselves shall share the costs.

The undisputed testimony in these cases is that the owners did voluntarily agree among themselves for the communitization or pooling and having selected a tract upon which to drill a well and having drilled a well, it is our position that the pooling under the statute was accomplished when the state gave its approval for the drilling of that well.

Since the applicant has very frankly stated that this is but a way station to the court house, we would like an opportunity to make the record more clear so that it would not be necessary for a court to look into the files of the Commission. In the prior hearing many matters that are in the Commission's files were not introduced in the record. And we do desire to supplement our

~~former testimony in many instances, by introducing the actual documents.~~

If you have no objection we shall proceed with our testimony.

MR. MACEY: Okay, Mr. Howell.

MR. HOWELL: Would you take the stand please, Mr. Coel?

Is it necessary to swear Mr. Coel, he having been sworn before in this case?

MR. MACEY: All witnesses stand and be sworn.

(Witnesses sworn by Mr. Walker.)

EDWARD JOHN COEL,

called as a witness, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. HOWELL:

Q Will you state your name for the record?

A Edward John Coel.

Q Are you the same Edward John Coel who testified in the original hearing of these cases?

A Yes, sir.

MR. HOWELL: As El Paso Natural Gas Company's Exhibit, and letter I suggest that all exhibits on rehearing be designated with the /R, Exhibit R-1, we wish to introduce the Order No. R-110 adopted by the Commission.

(Marked El Paso Natural Gas Company's Exhibit No. R-1, for identification.)

Q Briefly state your position with El Paso Natural Gas Company.

A Senior petroleum engineer, Farmington, New Mexico.

Q And were the wells drilled on the tracts of land involved in this hearing, drilled generally under your supervision?

A Yes, sir.

Q Referring to the Yager Pool Unit No. 2, which is involved in Case 706, I will ask if you have a copy of the original notice of intention to drill which was filed in this case?

A Yes, sir.

Q Will you state to the Commission the depth to which that application shows you intended to drill?

A The total depth of 2,282 feet.

Q Now, to what formation would that be?

A Through the Pictured Cliffs formation.

MR. HOWELL: Would you mark the notice of intention to drill as Exhibit R-2 with a 706 in parenthesis?

(Marked El Paso Natural Gas Company's Exhibit R-2 (706), for identification.

A I have it, sir.

Q And, will you show the original order to the Commission?

MR. HOWELL: If the Commission please, we have prepared photostats of each of these orders, and we would like to leave the photostats and retain the original orders in each instance.

MR. CAMPBELL: Do you have an extra photostatic copy?

A I have some extras.

MR. HOWELL: We can see that you are furnished with one of every one, a copy of each one. We may not have enough at the present time.

MR. CAMPBELL: That is all right.

MR. HOWELL: We offer then the Exhibit R-2 (706) which is the notice of intention to drill.

Q Now, what was the result of drilling that particular well, Mr. Coal?

A The well was found to be dry in the Pictured Cliffs formation, sir.

Q At what date was the well determined to be dry?

A On May 28, 1953.

Q Now, was any notice given to the Oil Conservation Commission of that determination by the operator?

A Yes, sir.

Q What was filed?

A A notice of completing the well in the Pictured Cliffs Formation.

Q Do you have the original notice there?

A Yes, sir.

MR. HOWELL: Will you mark the photostatic copy as Exhibit R-3 with the 706 in parenthesis, and hand it to the Commission?

(Marked El Paso Natural Gas Company's Exhibit No. R-3 (706) for identification.)

Q At a subsequent date, did you determine to drill the well to a greater depth?

A Yes, sir, we filed with the Commission a notice of intention to change plans, received by the Commission on May 28, 1953, to drill the well to the Mesaverde Formation and complete it in the Mesaverde Formation.

Q Do you have that notice of change?

A Yes, sir.

Q You have a photostatic copy?

A Yes, sir.

Q Will you mark the photostatic copy Exhibit R-4 (706)?

A Yes, sir.

(Marked El Paso Natural Gas Company's Exhibit No. R-4 (706) for identification.)

Q Now after filing that notice did you receive any communication from the Commission?

A Yes, sir, we did. The notice was stipulated that on the basis that the original well had been drilled in the northwest quarter of the northwest quarter of Section 6, Township 30 north, Range 11 west, had been dedicated to the Pictured Cliff well, we desire to dedicate the west half which would conform with the regulation of 320 acres, approximately for Mesaverde Formation well and to drill the well deep, to deepen this well in the northwest quarter. This did not conform with the regulation that wells should be located in the northeast or southwest quarters of a given section. Therefore, the Commission required as an unorthodox location that we present waivers from all the offset operators of this well and if there were any objections then a hearing would be called in order to establish an unorthodox location. We wrote the waivers, sent them out and received them back approved and forwarded them on to the Commission and from there on we received a letter from them thereby granting approval of the unorthodox location.

Q Do you have the original letter here, Mr. Coel?

A No, sir, I don't have the original. I do have a copy.

Q Do you have a photostat of the signed copy which was received?

A Yes, sir, I do.

Q Have you been able to locate that original letter?

A Yes, sir, it is in my files. We just neglected to have it here with us.

MR. HOWELL: Would you mark that Exhibit R-5 (706) and hand that photostat to the Commission?

(Marked El Paso Natural Gas Company's Exhibit R-5 (706) for identification.)

Q Did you file a completion report with the Commission upon the completion of this well?

A Yes, sir.

Q When was the well completed in the Mesaverde Formation?

A Drilling was completed on September 19, 1953, and the well was actually completed on September 20, 1953.

Q Was that in the Mesaverde Formation?

A Yes, sir.

Q Now, was there any other well drilled to the Mesaverde Formation on the west half of that Section 6?

A No, sir.

Q Referring now to the well described as the Yager Pool Unit No. 1 --

A You want me to turn that exhibit in, sir?

MR. HOWELL: Oh, yes. Would you mark the completion report R-6 (706)?

(Marked El Paso Natural Gas Company's Exhibit R-6 (706) for identification.)

Q Referring now to the well designated as the Yager Pool Unit No. 1, which is drilled on the south half of Section 31, Township 31 North, Range 11 West, and is the well involved in Case 707, I will ask you if you have an original of the notice of intention to drill in that case?

A Yes, sir.

Q Do you have a photostatic copy?

A Yes, sir.

MR. HOWELL: Will you mark your photostatic copy as Exhibit R-7 with the 707 in parenthesis, and hand that to the Commission?

(Marked El Paso Natural Gas Company's Exhibit R-7 (707), for identification.)

Q Did you file a well record when that well was completed in the Mesaverde Formation?

A Yes, sir.

Q Do you have a copy as well as the original/well record of the

A Yes, sir.

MR. HOWELL: Will you mark the copy Exhibit R-8 with 707 in parenthesis?

A Yes, sir.

(Marked El Paso Natural Gas Company's Exhibit R-8 (707), for identification.)

Q And hand that into the Commission. What was the date of completion of that well?

A Drilling was completed on March 17, 1953, and the well was actually completed March 25, 1953.

Q Was any other well drilled in the south half of Section 31, Township 31 North, Range 11 West?

A No, sir.

Q Passing now to Case 708, do you have the original and a photostatic copy of the notice of intention to drill in that case?

A Yes, sir, I do.

Q Does that involve the well known as the Neal No. 3 Well, located on the west half of Section 15, Township 31 North, Range 11 West?

A Yes, sir.

(Marked El Paso Natural Gas Company's
Exhibit R-9 (708) for identification.)

Q Will you hand to the Commission the copy of this notice
of intention to drill marked as Exhibit R-9 with 708 in parenthesis?

A Yes, sir.

Q Now, do you have a copy of the completion record on this
well?

A I do sir.

MR. HOWELL: Will you mark a copy as Exhibit R-10 with
708 in parenthesis? And, then hand it to the Commission.

(Marked El Paso Natural Gas Company's
Exhibit R-10 (708) for identification.)

Q What was the date of the completion of the Neal No. 3?

A Drilling was completed on August 20, 1953 and the well
actually completed August 22, 1953.

Q Was that completed in the Mesaverde Formation?

A Yes, sir, it was.

Q Was any other well completed on the west half of that
section?

A No other Mesaverde one, no, sir.

Q Referring now to the east half of Section 27, Township 31
North, Range 11 West, which is the tract involved in Case No. 709,
and as the well described as the Callaway Pool Unit No. 1, do you
have a copy of the notice of intention to drill in that case?

A Yes, sir, I do.

MR. HOWELL: Will you mark the copy as Exhibit R-11 709
in parenthesis and hand it to the Commission?

(Marked El Paso Natural Gas Company's
Exhibit No. R-11 (709) for identification)

Q Do you have the original and a copy of the well record in that case?

A Yes, sir, I do.

Q Will you similarly mark a copy as Exhibit R-12 709 in parenthesis and hand it to the Commission?

A Yes, sir.

(Marked El Paso Natural Gas Company's Exhibit No. R-12 (709) for identification)

Q What was the date of completion of that well?

A Drilling was completed on August 20, 1953 -- Excuse me, strike that out -- I have the wrong case here. Drilling was completed on July 29, 1953.

Q And the well completed on what date?

A The well was completed on July 30th.

Q Was that completed in the Mesaverde Formation?

A Yes, sir, it was.

Q Was there any other well in the east half of Section 27 that was completed in the Mesaverde?

A No, sir.

Q Referring now to the east half of Section 8, Township 31 North, Range 10 West, which is the tract involved in Case No. 710, and is the Marcotte Pool unit No. 1 Well, do you have an original and copy of the notice of intention to drill in that Case?

A Yes, sir, I do.

MR. HOWELL: Will you mark the copy Exhibit R-13 (710) and hand it to the Commission?

(Marked El Paso Natural Gas Company's Exhibit R-13 (710), for identification.)

Q You also have a copy of the well record showing the com-

pletion?

A Yes, sir, I do.

MR. HOWELL: Will you mark a copy as Exhibit R-14 (710) and hand it to the Commission?

(Marked El Paso Natural Gas Company's Exhibit R-14 (710) for identification.)

Q Now, what was the date of completion on the Marcotte Pool Unit No. 1?

A Drilling was finished on October 11th, 1953, sir, it was completed on October 13, 1953.

Q Is that October?

A I am sorry -- I have it here as October, sir.

MR. CAMPBELL: What case are we on now?

MR. HOWELL: 710.

Q Your records show that it was completed October 13, 1953?

A Yes, sir.

Q Was that in the Mesaverde Formation?

A Yes, sir.

Q Was there any other Mesaverde well on the east half of that Section 8?

A No, sir.

Q Now, as to these five wells which have been covered by your testimony so far, what was the nature of the tract of land upon which each of these wells was drilled, as to the ownership? Was it Federal or State or Fee land?

A Upon which the well was actually drilled, sir, it was all State or Fee land.

Q Now then, as to lands that are Federal lands, covered by

Federal oil and gas leases, what are the requirements for drilling?

A That we submit an intention to drill to the United States Geological Survey whose district office we were closest to.

Q And is there any other requirements prior to drilling a well when the well is located on Federal lands?

A No, sir, other than approval from United States Geological Survey.

Q All right. Referring now to the east half of Section 8, Township 31 North, Range 11 West which is the tract involved in -- May I change that? That is erroneous. Referring now to the west half of Section 32, Township 31 North, Range 11 West, which is the tract involved in Case No. 711, do you have an original and copy of the form which was filed showing your intention to drill in that case?

A Yes, sir, I do.

MR. HOWELL: Will you mark the copy as Exhibit R-15 (711) and hand to the Commission?

(Marked El Paso Natural Gas Company's Exhibit R-15 (711) for identification.)

Q Does that exhibit R-15 represent the form which you are required to fill out in order to drill a well on Federal land?

A Yes, sir, it does.

Q Was this Heaton No. 3 Well located on Federal land?

A Yes, sir, it was.

Q Now, following the filing of the notice of intention to drill, did you receive a letter from the United States Geological Survey?

A Yes, sir, I did.

Q Do you have a copy of the letter?

A Yes, sir, I do.

Q Will you mark the photostatic copy as Exhibit R-16 (711) and hand to the Commission?

A Yes, sir.

(Marked El Paso Natural Gas Company's Exhibit No. R-16 (711) for identification.)

Q What was the tract of land described in the original notice of intention to drill?

A The south half of Section 32, sir.

Q Was that an error?

A Yes, sir, it was an error.

Q Did you, by subsequent notice, change the designation of the tract?

A Yes, sir, on an intention to change plans, sent to the United States Geological Survey, and subsequently approved by them, we dedicated the west half of Section 32 to the well instead of the south half.

Q Do you have a copy of the notice and change of designation?

A Yes, sir, I do.

Q With the approved stamp on it?

A Yes, sir.

MR. HOWELL: Will you mark that as Exhibit R-17 (711) and hand to the Commission?

(Marked El Paso Natural Gas Company's Exhibit R-17 (711) for identification.)

Q Do you have a well record of the Heaton No. 3?

A Yes, sir.

Q Will you mark a copy as Exhibit R-18 (711) and hand to the Commission?

A Yes, sir.

(Marked El Paso Natural Gas Company's Exhibit R-18-(711), for identification.)

Q When was the Heaton No. 3 Well completed?

A Drilling was finished on April 25, 1953 and completion effected April 28, 1953.

Q Was that completed in the Mesaverde Formation?

A It was.

Q Was there any other well located on the west half of that Section 32?

A No, sir.

Q Referring now to the east half of Section 3 in Township 30 North, Range 10 West, which is the tract involved in Case No. 712, and is the Koch Pool Unit No. 1 Well, do you have an original and copy of the notice of intention to drill?

A I have a copy of each, sir. I do not have the original.

Q Will you mark your copy as Exhibit R-19 (712) and hand to the Commission?

A Yes, sir.

(Marked El Paso Natural Gas Company's Exhibit R-19 (712) for identification.)

Q Now, in this particular instance, do you know whether the record title to this tract was still in Delhi Oil Corporation?

A Yes, sir, it was, and for that reason the intention to drill was, was submitted in the name of Delhi Oil Corporation. With their permission I signed it, signing the superintendent's

name to it, sir, by his permission.

Q Was this Koch Pool Unit No. 1 Well located on Federal land?

A Yes, sir, it was.

Q Did you, or did a letter addressed to Delhi come in at a later date, a copy to you?

A Yes, sir.

Q Do you have a photostat of the copy which was received by you?

A Yes, sir.

Q Will you mark that as Exhibit R-20 (712) and hand it to the Commission?

A Yes, sir.

(Marked El Paso Natural Gas Company's Exhibit R-20 (712) for identification.)

Q Do you have the well log or well record of the Koch Pool Unit No. 1 Well?

A Yes, sir, I do.

Q Will you mark the copy of that record as Exhibit R-21 (712) and hand to the Commission?

A Yes, sir.

(Marked El Paso Natural Gas Company's Exhibit R-21 (712) for identification.)

Q Was the Koch Pool No. 1 Unit completed in the Mesaverde Formation?

A It was.

Q What was the date of completion?

A Drilling was finished on November 5, 1953 and completion effected November 9, 1953.

Q Was any other well located, any other Mesaverde well located in the east half of that Section 3?

A No, sir.

MR. HOWELL: I think that is all from this witness.

MR. MACEY: You wish to introduce those exhibits?

MR. HOWELL: Yes, I would like to introduce Exhibits R-1 to Exhibit R-21 inclusive.

MR. MACEY: Is there objection?

MR. CAMPBELL: No objection.

MR. MACEY: If no objection they will be received.

MR. CAMPBELL: If the Commission please, before cross examining this witness, I would like to have about a five minute recess to shuffle these papers a little bit.

MR. MACEY: We will have a five minute recess.

(Recess.)

MR. MACEY: You wish to proceed, Mr. Campbell?

CROSS EXAMINATION

By MR. CAMPBELL:

Mr. Coal, referring to Case No. 706, which involves your Yager Pool Unit No. 2, as I understand it your original notice of intention to drill which was approved March 23, 1953 was for a well to the Pictured Cliffs Formation, dedicating the northwest quarter of Section 6.

A That is true, sir.

Q Now, in your notice you had stated, "Communitization dedicating the northwest quarter of Section 6 will be filed as soon as possible". Did you contemplate at that time in obtaining a

communitization agreement from all of the working interests and royalty owners?

A Mr. Campbell, that statement is more or less required by both the State and United States Geological Survey on wells that, where more than one interest is located there. We were informed by the Lease Department that that communitization was being worked up and they had intention of filing it, sir, and that was what we so stated.

Q Now, you drilled that well to the Pictured Cliffs, into the Pictured Cliffs, and it was a dry hole?

A Yes, sir.

Q And then you filed a miscellaneous notice in which -- which is your Exhibit R-4 (706) in which you stated that you intended to change your plans by going on down into the Mesaverde, is that correct?

A Yes, sir.

Q Was there any other instrument filed, any new notice of intention to drill, with reference to the Mesaverde Unit, other than this miscellaneous change of plans notice?

A On the intention of changing of plans?

Q Yes.

A No other form like this, no, sir.

Q You filed no new form for notice of intention to drill or recomplete?

A No, sir, it was merely the notice of intention to change plans, and which was subsequently approved by the Commission.

Q Now, based upon that notice and the approval by the Commission in their letter of July 31st, which is your Exhibit R-5

(706), you then proceeded to move in and deepen this well to the Mesaverde Formation?

A Yes, sir.

Q Now when did you move in to start that new work?

MR. HOWELL: I can tell you where the document is that he is looking for. It is in the other file on 706.

A I was just checking my reports on it, sir, the rig was moved in August 31st, sir.

Q From what record do you obtain that information?

A From our drilling record, sir on the well.

Q And who prepared that drilling record?

A It was prepared by the drillers, sir, whoever is -- whoever is in charge of the rig on which the work is done. This particular case was by Conley Cox.

Q Do you have a copy of that drilling record?

A I do, sir.

Q That can be made a part of this record?

A Not unless I had this photostated, sir.

Q May I see it, please? A Yes, sir.

MR. HOWELL: It can be photostated. That is not the drilling record but that is an affidavit-- off the record.

(Discussion off the record.)

MR. CAMPBELL: Could we get a photostatic copy of this into the record?

MR. HOWELL: We will be happy to furnish it.

A We will submit the affidavit as is.

MR. HOWELL: We will submit the affidavit now if you want it.

Q Was this affidavit prepared at your request, Mr. Coel?

A Yes, sir.

Q In May of 1954, is that approximately the time that it was executed?

A Yes, sir.

Q Where is Mr. Cox's office, or place of business?

A In Aztec, New Mexico.

Q Do they do a considerable amount of drilling for El Paso Natural Gas Company?

A Yes, sir, they have.

Q And they are still doing drilling for your company, to your knowledge?

A Yes, sir.

MR. CAMPBELL: I would like to have the record show that a photostatic copy of a daily drilling report, dated August 31st, 1953, from Conley Cox, will be submitted as Yager Exhibit R-1.

Q Do you have any --

MR. MACEY: (Interrupting) Pardon me, Mr. Campbell, who is going to supply these?

MR. HOWELL: We will furnish a photostat of that. We would like to keep the original in our file, but will be happy to furnish photostats for the copy and are tendering you Mr. Cox's affidavit.

MR. CAMPBELL; I don't want to introduce that as my exhibit.

Q Do you have any personal knowledge concerning the actual spudding in on this well?

A Yes, sir.

Q Were you there when it was spudded in?

A It was done under my supervision, sir.

Q Well, were you there at the time it was spudded in?

A You mean actually on the location?

Q Actually on the location.

A I doubt it, sir.

Q You do not remember it if you were, is that it?

A No, sir.

Q Do you know who was present?

A I am not positive. I think I could tie it down to who was present, yes, sir.

Q Well, could you tie it down now or not?

A Well, I could try.

Q Well, try.

A If it would be accepted.

Q Do the best you can.

A Conley Cox, -- Are you talking about this time of August 31st?

Q August 31st.

A Conley Cox was present and I am almost positive Mr. W. Dallas was present.

Q W. W. Dallas?

A Yes, sir.

Q Is he with your company?

A Yes, sir.

Q Where is he?

A In Farmington, New Mexico.

Q Now, Mr. Coel, as I understood it, all of these wells

except the ones involved in Cases 711 and 712, the last two wells, were on other than Federal land, and the last two were on Federal tracts, am I correct in that?

A That is true, sir.

Q And at the time you made the change on your well involved in Case 711, which is in the southwest section of Section 32 North, Range 11 West, you originally filed a notice of intention to drill only with the United States Geological Survey? Is that right?

A Yes, sir.

Q And then in that you dedicated the south half of the section to the well?

A That is true.

Q Now, in the reply that you received from the United States Geological Survey, which is Exhibit R-16 (711), I assume this is on a form that the United States Geological Survey normally used and they state: "Approved subject to the communitization of the south half of Section 32, to form a unit of 320 acres more or less". Are you acquainted with the requirements of the Federal authorities with reference to communitization of acreage, before a unit is approved?

A Vaguely, sir.

Q Well, do they require that all owners join in the execution of the communitization agreement?

A Yes, sir.

Q Do they, as royalty owners, approve and join in the execution of the communitization agreement?

A Yes, sir.

Q Do the overriding royalty owners join in such an agreement,

or do you know?

A I don't know, I think that they do.

Q Do you know whether such an agreement was ever obtained, as far as the west half, as changed, of that unit was concerned?

A Well, apparently not, sir.

Q Do you know whether the Federal Government has executed such a communitization agreement?

A I don't know, sir.

Q Now, when you decided to change the dedication from the south half to the west half, you did not file a new notice of intention to drill with the United States Geological Survey?

A No, sir.

Q You filed this sundry notice indicating your intention to change your plans?

A That is true.

Q Now, referring to your well involved in Case No. 710, in which you state that the well was completed November 5, 1953, I refer to your Exhibit R-14 (710), which is the well record of that well, which appears to be signed by Harold L. Kendrick, does he work under your supervision or what is the position?

A Can we go back a minute, sir? What case are we referring to?

Q 710, that is your Marcotte Pool Unit, Well No. 1.

A All right.

Q Is Mr. Kendrick employed now by El Paso Natural Gas?

A He is employed by El Paso Natural Gas Company, he does not work for me at the present time. He did at the time this was signed.

Q Was he working under your supervision at the time that was

signed?

A Yes, sir.

Q Are you personally acquainted with when the well referred to there was actually spudded in?

A Yes, sir.

Q Were you there?

A I doubt it.

Q Do you have any notes, personal notes, other than this well record to indicate when the spudding in took place?

A Yes, sir, I do. I have here an affidavit from the same Conley Cox as the other affidavit was from, and also the well record here.

Q When was this affidavit prepared?

A On the 31st of January, 1955.

Q Mr. Coel, I am asking you these questions about the spudding in in as much as the leases involved here contain a written-in provision that, "the words, "Commencement of a well", or words of like import, wherever used, in this lease shall mean the actual spudding in of a well for oil or gas". Now, do you know who was present at the time this well involved in Case No. 710, your Marcotte Pool Unit No. 1 was spudded in, do you know who was present when that took place?

A Very likely the same two people, sir. Mr. Dallas, if I may explain, he is now our drilling superintendent, at that time he was our assistant drilling superintendent in the Farmington area, and it was part of his job to see that the work was done as prescribed by us.

Q Now, referring to your Case No. 712, which is your Koch Well No. 1, on a Federal tract, your Exhibit R-21 (712) indicates that that well commenced drilling also on August 30, 1953.

A That is true, sir.

Q Do you know who prepared this log -- Oh, the original was signed by you, I see it now.

A Yes.

Q Well, do you -- Can you personally state that that well was spudded in on August 30, 1953?

A Yes, sir.

Q You were there at that time?

A No, sir, my records show it, sir.

Q Other records than this log of oil or gas wells?

A My drilling records, yes, sir.

Q What drilling records do you have?

A The records prepared by the contractor on the location.

Q May I take a look at those, please?

A Surely.

Q I wonder if you could furnish us with a photostatic copy of this driller's report, or furnish the Commission with one?

A Yes, sir.

Q To be designated as Yager's Exhibit R-2? The report is dated September 1, 1953.

A The report is under that, sir, I just handed the file to you.

MR. HOWELL: Two reports -- Three reports all told.

MR. CAMPBELL: The report is dated -- Let us make the

report of August 30, 1953 as Yager R-2 and the report of August 31, 1953 as Yager R-3.

A Also an affidavit in my file to that effect, too, sir.

MR. CAMPBELL: That is all.

MR. MACEY: Does anyone have any further questions of the witness?

RE-DIRECT EXAMINATION

By MR. HOWELL:

Q Mr. Coel, at my request did you obtain affidavits from the drilling contractor, Conley Cox, concerning the dates at which drilling operations were commenced on several wells?

A Yes, sir, I did.

MR. HOWELL: I will hand you an affidavit of Conley Cox and ask that be marked Exhibit R-22 (706) and offer the affidavit in evidence.

(Marked El Paso Natural Gas Company's Exhibit R-22 (706, for identification.)

MR. HOWELL: In a similar manner, will you mark the affidavit of Conley Cox as Exhibit R-22 (710), I believe.

A R-23.

MR. MACEY: R-23 would be the next one.

(Marked El Paso Natural Gas Company's Exhibit R-23 (710) for identification.)

Q R-23 (710), isn't it?

A Yes, sir.

MR. HOWELL: We offer that affidavit in evidence.

Q You have the affidavit of Conley Cox regarding the commencement of the Koch Pool No. 1?

A I do, sir.

MR. HOWELL: Will you mark that Exhibit R-24 (712) and offer that to the Commission.

(Marked El Paso Natural Gas Company's Exhibit R-24 (712) for identification.)

MR. HOWELL: We offer all three affidavits to the Commission in evidence.

MR. MACEY: Is there objection?

MR. CAMPBELL: If the Commission please, for the purpose only of preserving the record, I will register an objection to these upon the grounds that they are hearsay and that the person who executed them is not present for cross-examination.

MR. MACEY: The record will so note.

(Marked El Paso Natural Gas Company's Exhibit R-25 (711) for identification.)

MR. HOWELL: Now we offer a communitization agreement covering the Heaton No. 3 Well which is marked as Exhibit R-25 (711) which has been executed by El Paso Natural Gas Company, Delhi Oil Corporation, Susan Diggle Horton, Paul B. Horton, but has not been executed by Saul A. Yager, Marian Yager, M. E. Gimp, Morris Mizel, Flora Mizel, Sam Mizel or the wife of Sam Mizel and M. E. Gimp.

MR. CAMPBELL: Is that offered in each case?

MR. HOWELL: No, that is only Case 711.

MR. CAMPBELL: For what purpose are these offered?

MR. HOWELL: These are offered for the purpose of showing that all of the parties except the Yagers have executed communitization agreements in these two cases. I have one other which I propose to offer.

MR. CAMPBELL: Are we to assume that they have not all done so in other cases?

MR. HOWELL: No, the only point that you raised was as to the Federal Leases, the two Federal leases.

(Marked El Paso Natural Gas Company's Exhibit No. R-26 (712) for identification.)

MR. HOWELL: We offer communitisation agreement which has been marked as Exhibit R-26 (712), covering the tract involved in the Koch Pool Unit No. 1, which has been executed by El Paso Natural Gas Company, the Atlantic Refining Company, Delhi Oil Corporation, Sunray Oil Corporation, Fred C. Koch and Mary R. Koch. We would like to call as a witness Mr. Phil McGrath.

MR. MACEY: Is there objection to the introduction of Exhibits R-25 and R-26 in this case?

MR. RHODES: I have some questions I would like to ask one of the principals in this case but I am not sure Mr. Coel is the man to answer them but I wonder if later I might make these requests of Mr. Campbell or Mr. Howell or Mr. Coel. Mr. Kitts says that he is going to ask some later, too.

MR. MACEY: Who are you going to ask the questions of? Mr. Coel is on the witness stand.

MR. RHODES: I wonder if you would determine who we ask the questions of. They concern the lease agreements and the equities concerned herein.

MR. MACEY: You mean the lease contract?

MR. RHODES: The lease contract.

MR. CAMPBELL: I have no objection to the admission of

these in evidence, but I call the Commission's attention to the fact that they have all been executed in the year, 1955, which was some time after the drilling on the units.

MR. HOWELL: Insofar as lease ownership is concerned or the terms of the applicable leases, Mr. Coel does not have knowledge. We do have people here who are available, who have knowledge of the leases and I understand from Mr. Campbell that he desires to introduce copies of the leases which we are willing to have introduced.

MR. RHODES: I would like to ask these of Mr. Campbell. I don't know if that is proper.

MR. MACEY: It won't suffice for you to examine the lease contracts?

MR. RHODES: No, not necessarily, Mr. Macey.

MR. MACEY: I don't think it is proper for us to ask Mr. Campbell any questions.

MR. RHODES: That is what I was afraid of.

MR. MACEY: Are there any further questions of Mr. Coel, if not, Mr. Coel may be excused.

(Witness excused.)

MR. HOWELL: We would like to call Mr. McGrath.

P. T. McGRATH.

called as a witness, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By: MR. HOWELL:

Q Will you state your name for the record?

A P. T. McGrath.

Q What is your residence or address, Mr. McGrath?

A Farmington, New Mexico.

Q What is your official position with the United States Geological Survey, if any?

A District Engineer of the Farmington District.

Q That is of the United States Geological Survey?

A Right.

Q Are you in charge of the office there?

A I am.

Q What are the requirements before the drilling of any well located on Federal lands within the Blanco-Mesaverde Field?

A Any well must be submitted, a notice of intention to drill must be submitted and regulations state that prior written approval will be received before drilling commences, unless some other arrangements have been made. We can give an operator a letter of approval to start a well.

Q What then do you do with reference to advising the State Oil Conservation Commission of approval of a well drilled on Federal lands?

A We require that they send enough of the intentions to drill so that we can send two copies to the State, one to their Astec Office and one here to Santa Fe, and those are not submitted to the State, those are not approved in any way, except that we have an agreement with the Conservation Commission that we will not submit those to them until I have approved the well.

Q And does your office require that any well approved by you which is drilled within the Blanco-Mesaverde Pool conform with the requirements of the New Mexico Oil Conservation Commission, as

to spacing?

A We do.

Q Did your office approve the Heaton No. 3 Well and the -- and the Koch Pool No. 1 Well?

A Yes, sir.

MR. HOWELL: That is all.

MR. MACEY: Any questions of Mr. McGrath?

CROSS EXAMINATION

By MR. CAMPBELL:

Q Mr. McGrath, with reference to the approval of the notice of intention to drill, which I understand you give --

A Yes.

Q Do you have any other requirements where there may be other acreage involved in the unit on which the well is being drilled than Federal acreage?

A Yes, we do, or even if the two Federal leases, we require communitization of the drilling block.

Q And as lessor, or royalty owner, does the Federal Government have to approve those communitization agreements?

A Yes, sir.

Q And do you consider that the unit has been completed unless such communitization agreements are available?

A No, we are not interested if they are drilling on public land, and get their approval, but we do require that, to get the communitization agreement whereby that when the State sets up such a unit for drilling block or for proration unit.

Q And it is your statement that the Federal Government, upon

the approval of the notice of intention to drill, considers that the drilling unit has been created and the acreage pooled?

A The operator so states, or is supposed to, with his intention to drill, that certain acreage is dedicated to that well, that particular well.

MR. CAMPBELL: That is all.

MR. HOWELL: One question. Have you finished.

MR. MACEY: Go ahead, Mr. Howell.

MR. HOWELL: Has it been customary to produce the communitization agreements at a later date and submit them to your office?

A Yes, sir.

MR. MACEY: I would like to ask you a question. As I understand it, an operator can submit a sundry notice to you proposing to drill a well on federal land, in which he dedicates certain acreage to that well, the acreage being dedicated in conformance with the existing drilling unit provisions of any applicable pool rules in which the well is located, is that correct?

A Yes, sir.

MR. MACEY: Now he so states on the sundry notice of intention to drill that he intends to dedicate the west half of the section to the well. When do you require that operator to furnish an executed communitization agreement?

A No set date.

MR. MACEY: There is no set date?

A No, sir.

MR. MACEY: In other words, it could take a considerable time, as far as you are concerned then, the communitization agree-

ment can be approved at any time after you approve the notice of intention to drill?

A Or prior to it -- yes, at any time.

MR. MACEY: Does the communitization agreement involve the approval by your agency, the approval of the communitization agreement by your agency involve a considerable amount of time, does it have to go back to Washington?

A It does, it has to be approved by the Director of the Geological Survey.

REGROSS-EXAMINATION

By: MR. CAMPBELL:

Q Am I correct, that it will not be approved by the Director of the United States Geological Survey until all of the royalty owners have executed --

A I think they do not.

Q They do not require the royalty interests to execute it?

A I think they do not, only the royalty interests.

Q I wonder if you would advise your Roswell office of that?

A Mr. Anderson just advised me.

Q Let the record show I have been working on one for six months -- off the record.

(Discussion off the record.)

MR. CAMPBELL: Only the working interests, in order to clarify the record so there will be no mistakes, your Roswell Office or your agency only requires the working interest's approval of communitization agreement?

A That is what Mr. Anderson just told me, the communitization agreement must go the Roswell Office force and it is checked there and with recommendations it is sent to Washington for approval.

Q One more question. Mr. McGrath, do you know how long that policy has been followed?

A No, sir, I do not.

Q Do you know whether it was ever otherwise, as far as royalty owners executing communitization agreements are concerned?

A No, I couldn't say for sure.

MR. MACEY: Anyone else?

MR. ANDERSON: Mr. Macey, I wonder if I could make a statement in this case that might clarify it? (John Anderson.) As far as the Federal Government is concerned, on royalty owners executing communitization agreements, let's go into a couple of classes of them where they actually have overriding royalty interests on Federal leases, or on any type of leases.

We are not concerned as to whether they sign the communitization agreement or do not. As far as the basic royalty owners are concerned, owners of mineral interests in privately owned lands, if the lease does not have a pooling clause that we consider adequate, the owners of the mineral interest or the basic royalty owners, whatever you want to call them, must sign the communitization agreement.

MR. MACEY: Will you state your position for the record, Mr. Anderson, so there won't be any --

MR. ANDERSON: John Anderson, Regional Oil and Gas Supervisor, United States Geological Survey.

MR. CAMPBELL: May I bring one thing out to clarify this witness's statement, Mr. McGrath, based upon the statement that Mr. Anderson just made, assuming that the oil and gas leases here involved contain no pooling clause, communitization authority, before the United States Geological Survey will approve the communitization of the unit, the basic royalty owners under these fee leases must have joined in the communitization agreement.

A I think that is right, yes, sir.

MR. CAMPBELL: That is all.

MR. MACEY: Anyone else have a question? If not the witness may be excused.

(Witness excused.)

MR. HOWELL: Mr. Utz, will you take the stand, please?

ELVIS A. UTZ.

called as a witness, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. HOWELL:

Q Will you state your name and official position for the record?

A Elvis A. Utz, Engineer with the New Mexico Oil Conservation Commission.

Q Mr. Utz, are you familiar with the cases pending before the Commission, Numbers 706 through 712, both inclusive?

A Reasonably so, yes.

Q I will ask you if you are familiar with the practice and requirements of the Oil Conservation Commission as they existed in

the year, 1953, prior to August 31st?

A Yes, sir.

Q What was the practice and requirements of the Commission with reference to obtaining permission to drill a well upon a drilling tract within the Blanco-Mesaverde Pool?

A The only thing that we required during the period in question was that the operator make a statement on his C-101 as to what acreage was dedicated to that well and if communitization was necessary, that he would communitize it. To the best of my knowledge, other than that there was nothing required in the way of communitization.

Q Is the C-101 the form of Notice of intention to drill?

A That is correct.

Q Have you looked in the files of the Cases 706 through 712, inclusive, that are involved in this hearing?

A Yes, sir, I have.

Q That is the files of the Oil Conservation Commission?

A That is correct.

Q And do those files contain the notices approved by the Commission, authorizing the drilling of the wells on each of those tracts?

A Yes, they do.

Q Did the Commission have any other requirements as a condition of drilling the well, other than filing of the form and subsequent communitization?

A Not to the best of my knowledge, they do not.

Q Has each of the wells in those cases been approved by a representative of the Commission?

A Yes, sir, it has.

Q Now, with reference to the drilling of wells located upon Federal land, what has been the practice of the Commission?

A We have no authority whatsoever to require anything as far as wells drilled on Federal land is concerned. However, the United States Geological Survey honors a number of our requests, among which was to state on the form, notice of intention to drill, to them, the acreage dedicated to the drilling well.

Q What was the practice prior to August 31, 1953, of any operator who wished to drill a well upon Federal land within the Blanco-Mesaverde Pool, with reference to filing any report with your office?

A There was none.

Q Did you receive a copy of the application that was filed with the United States Geological Survey?

A Yes, after it was approved by the United States Geological Survey, the United States Geological Survey furnished us with two copies.

Q Did you accept those notices as approved by the United States Geological Survey as evidence of the authority to drill the well?

A Yes, we do.

Q And you still do so?

A Yes, we do.

MR. HOWELL: That is all.

MR. MACEY: Mr. Campbell?

CROSS EXAMINATION

By MR. CAMPBELL:

Q Mr. Utz, you say that this was the practice followed prior to August 31, 1953. Has there been any change in that?

A In, quite recently, due to the advent of proration, we have stated in the proration orders that an operator shall file his gas well plat or a plat showing his dedicated acreage with his notice of intention to drill. Sometime after August 31st, or the date in question here we did require gas well plats showing the location and the amount of acreage dedicated to the well.

Q You are acquainted with Order No. R-110, aren't you, Mr. Utz?

A Reasonably so.

Q Are you acquainted with the provision that, "as to the location of these wells on the drilling units, 320 acres more or less, no well shall be drilled or completed or recompleted and no notice of intention to drill, or drilling permit shall be approved unless such well be located on a designated drilling unit of not less than 320 acres of land, more or less, according to legal subdivision of the United States land surveys, in which unit all the interests are consolidated by pooling agreement or otherwise." Are you acquainted with that?

A Yes, I am.

Q Do you feel that the procedure followed by the Commission prior to August 31, 1953, in approving notices of intention to drill, without evidence of consolidation/^{by}pooling agreement or otherwise complies with that rule?

A The Commission apparently thought that it did, or they

wouldn't have authorized the District Offices to approve C-101's in lieu, the fact that it took a considerable length of time sometimes to get communitization, I think probably prompted that procedure.

Q Isn't it true also that on occasions the operators waited until rather late in the game to drill their well and seek their approval?

A That is true in a number of cases, yes.

MR. CAMPBELL: That is all.

MR. MACEY: Anyone else? The witness may be excused.

(Witness excused.)

MR. HOWELL: That is all we have.

MR. MACEY: Do you have any statements or anything that you would like to enter in the case?

MR. HOWELL: I don't wish to add to anything more than was said in the opening statement.

MR. MACEY: Mr. Howell, Mr. Rhodes has a question that he would like to ask.

MR. RHODES: Mr. Macey, I wonder if Mr. Howell would place Mr. Hamblin under oath?

MR. MACEY: Would that be satisfactory?

MR. CAMPBELL: May I first, before he gets into that, let the record show that I have requested permission to submit for the record, Yager's Exhibits R-4, R-5, R-6, R-7, R-8, R-9 and R-10, which are photostatic copies of oil and gas leases covering the tracts involved in Cases 706 through 712, and in order to keep it straight, they will be marked R4 (706) and so on, as you have done with yours.

MR. MACEY: Do you have any objection to that, Mr. Howell?

MR. HOWELL: No objection.

MR. MACEY: If no objection they will be received. Do you intend to submit them fairly soon, Mr. Campbell?

MR. CAMPBELL: Yes. Of course we don't have executed copies, do we?

MR. YAGER: I would have to get photostatic copies of copies.

MR. CAMPBELL: We will not be able to furnish photostatic copies of the original. Now if you have the originals it is perfectly all right with us, we would just like them in the record.

MR. HOWELL: We will be happy to furnish photostats of the original to you and let you send them in.

MR. MACEY: All right, that will be satisfactory. Do you have anything further, Mr. Campbell, before Mr. Hamblin?

R. L. HAMBLIN,

called as a witness, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By: MR. MACEY:

Q Would you state your name.

A R. L. Hamblin, with El Paso Natural Gas Company, Manager of the Lease Department.

MR. MACEY: Mr. Rhodes.

DIRECT EXAMINATION

By: MR. RHODES:

Q Mr. Hamblin, are you familiar with the leases concerned in these cases 706 through 712?

A Reasonably so. It has been some time since I actually read them but reasonably so, yes, sir.

Q Well, to clarify the situation in my own mind, the Commission issued a forced pooling order which made the communitization under discussion here, retroactive to the date of the approval of the C-101?

MR. HOWELL: If the Commission please, I believe that the question of Mr. Rhodes assumes a construction of the order that I certainly don't put on it.

MR. MACEY: I agree with you.

MR. HOWELL: I think the orders speak for themselves as to what the Commission did.

MR. MACEY: Perhaps you could reword your question.

Q The pooling agreement or the pooling order issued by the Commission made the effective date of the pooling agreement retroactive to the date upon which the intent to drill was approved, is that correct?

MR. HOWELL: Again I suggest that the order speaks for itself. That is our contention of what the Commission did was to determine that the parties, the working interest only, by agreeing at a certain date, had accomplished the pooling.

MR. CAMPBELL: Let me make this additional statement there in this regard, that it is our position that the Commission didn't do anything except state what they thought the law was in the case.

Q Well, let us assume that the Commission order made the effective date of the communitization retroactive to the date of the approval of the notice of intention to drill. That is one viewpoint, is that correct? Well, let us assume that it did.

A All right.

Q All right, let us further assume that the other side, for

there is also a possibility that the Commission order made the effective date of the communitization as of the effective date of the order. What I want to know is, did these leases expire in the interim?

A That is the question I can't answer, it has to be determined.

Q It has to be determined?

A Yes, sir.

Q But nevertheless, the leases did expire on paper between the date that the well was spudded in and the date that the Commission issued its pooling order?

MR. MACEY: Mr. Howell, I think probably it would be proper for you --

MR. HOWELL: May I make a statement for the record here? I think that the leases when introduced in evidence and I am sure that Mr. Campbell will agree with me in this statement, that the primary term of each of the leases in question expired on August 31, 1953, at midnight, unless by virtue of some provision of the lease there had been drilling operations or commencement of drilling operations which would have continued the primary term. Does that answer your question? I suspect that you could get neither me or Mr. Campbell to agree as to any particular lease as to what the present legal status of the lease is.

MR. RHODES: Mr. Howell, I believe that very ably answers the question.

Q Now if we assumed that the provisions of the pooling orders were retroactive to the date of the spudding of this well, Mr. Yager would hold a standard land owner's royalty or farmer's royalty under the acreage, which is contained in these units that

we are discussing, is that correct?

A That is correct.

Q However, if it was construed that the pooling order affected the communitization of these properties on the effective date of the order, then Mr. Yager would only hold working interest?

A Assuming that to be correct he would own the full working interest on these leases on which the wells were not actually located.

Q But which nevertheless were committed to the drilling unit?

A Yes.

Q Now then, Mr. Hamblin, the main question is this: If it were construed that this Commission order required that the communitization be effective on the effective date of the order, would that not also require under the terms of the communitization that Mr. Yager contribute his proportionate share to the drilling costs of the well?

A That is correct.

MR. CAMPBELL: Which Mr. Yager is willing to do.

Q Now then, one last question, and this may not be a proper question, if not, I will expect it to be objected to. What, in your opinion, is Mr. Yager trying to gain -- (LAUGHTER)

MR. HOWELL: I would be very happy to answer that, since I believe that that calls for a legal conclusion and would be the opinion of a witness as to a point that would just get us into controversy, so I object to the question.

MR. MACEY: I think the answer to the question is rather obvious as to who gains and who loses in the event of what happened.

MR. HOWELL: That is, I think it is an improper question.

MR. MACEY: I will be glad to explain it to you.

MR. REIDER: I don't understand it entirely and I believe it might expedite matters considerably, I think it might expedite matters considerably if Mr. Yager were placed under oath and takes the stand and explains his position.

MR. MACEY: I don't think it is the proper point in the case, Mr. Reider. Frankly we are concerned with the communitization or forced communication of leases involved and I don't think that it is a proper question or a proper point in the case. Do you have anything further?

MR. RHODES: That is all I have.

MR. KITTS: I would like to ask Mr. Campbell a question and Mr. Howell.

MR. MACEY: Does anyone have any further questions of Mr. Hamblin?

(Witness excused.)

MR. KITTS: You have closed your case?

MR. HOWELL: We have closed.

MR. KITTS: Have you closed your case, Mr. Campbell?

MR. CAMPBELL: Yes.

MR. KITTS: I would like to direct a question to Mr. Howell and Mr. Campbell, to get their viewpoint on a legal argument here. This is concerning the section of our statute which defines owner and Section 13-C of the statute, on one hand, read that with Section 1-A of Order R-110. Do you think there is any basic conflict there or do you think that they can be construed together?

MR. CAMPBELL: May I say that in the first place we do not believe that the authority of the Commission to compulsorily pool, under the circumstances existing in this case, arise out of Section 13-C. We believe that Section 13-C is limited to situations where if the uniform plan such as the 320-acre spacing here results in somebody's being left out or if there is an unusual acreage survey situation, that this section applies, but that does not apply to a situation such as ours. We do believe that Section B, Sub-section B, coupled with the general police power under the statute gives the Commission full authority ^{to} compulsorily pool under the circumstances existing in our case.

MR. MACEY: General powers contained in the statute --

MR. CAMPBELL: Now as to the conflict, if there is any, it is our opinion that the Commission by its order in a particular pool may make such reasonable requirements as it sees fit, with reference to the operation of the pool and that where they have chosen to say, as they did in the order, that a notice of intention to drill shall not be approved until all of the interests have been pooled, voluntarily or otherwise, we think they meant all of the interests and we think they meant that unless you are voluntarily pooled, then there must be a compulsory pooling order before the pooling unit is complete. That is our position, legal position in this matter and we think that the order in the pool would control if there is any conflict.

MR. KITTS: Of course, 13-C, the substance of 13-C is repeated, Order R-110, in Section 33-a.

MR. CAMPBELL: We can't see where that is applicable to the situation here, particularly from the applicant's point of view.

inasmuch as you can't show, it seems to me, that they can be deprived of anything to which they are entitled; if they are not pooled, we are the ones that are going to be deprived of it and are being deprived of it.

MR. HOWELL: We feel that the pooling does not deprive Mr. Yager of anything and that the royalty owner whose interest is pooled by the lessee are the royalty owners whose interest is pooled by the lessee in conformity with the spacing rule which has been adopted by the Commission. Now regardless of whether it be adopted pursuant to Section 13-B or Sub-section 13-C, it is a spacing rule that was adopted by the Commission and no person has the right --

MR. WALKER: Wait a moment. Mr. Yager, will you please lower your voice.

MR. HOWELL: And no person has a right to drill otherwise than under the spacing units prescribed by the Commission but that the parties may agree and our contention, the meat in the coconut, is whether or not any one other than the owner under the statute, the persons having the right to drill and appropriate oil and gas, must agree or concur to pool their interests to do what the state says must be done as a matter of conservation, considering correlative rights and considering the interests of all parties, because certainly the correlative rights of no land owner are adversely affected by the lessees agreeing to pool in conformity with an order establishing a 320-acre spacing unit. Each royalty owner is given under such an agreement exactly the correlative rights to which he is entitled and how there could be any necessity for any party other than the owners, the statutory

owners to agree would be requiring an unnecessary thing that would achieve no protection of any rights that would be violated otherwise.

MR. CAMPBELL: May I say just one more thing in regard to that? I think there are situations particularly where you have an operation offsetting your units, east, west, or north, south in a section, there are definitely situations in which the royalty owner can be adversely affected by the choice that the working interest owner makes under those circumstances. For instance, we have a case right here where for some reason they first chose the south half as the unit and then for reasons known best to them they turned to the west half. Now those reasons can involve circumstances of lease ownership, lease expiration, structural conditions, any number of things which can affect diverse royalty ownership within that section and it does not seem to us that it is completely accurate to say that whatever the working interest owner wants to do under these circumstances they can go ahead and do by simply filing a notice of intention to do it and getting it approved by the Commission. If that were the case, as I say, there would be no reason for this application in the first instance, if the Commission is correct. It would just mean that the royalty owner would be subject to whatever the working interest owner decided to do. Now from the working interest owner's point of view that is fine but from the royalty owner's point of view that may not always be so satisfactory.

Can Mr. Yager make one point?

MR. YAGER: That is the reason why, gentlemen, from my point of view, the Section B of the act was amended. You recall that

under the original provision of Section B of the act provided, to avoid the drilling of unnecessary wells, a proration unit of each pool may be fixed, such being the area which may be efficiently and economically drained and developed by one well. So we have got the definition of proration unit, which is the area which could be economically drained and developed by one well, but the amendment, the 1953 amendment went further and said that the Commission may establish a proration unit for each pool, following the same language, such being the area that can be efficiently and economically drained and developed by one well and in so doing the Commission shall consider the economic loss caused by the drilling of unnecessary wells, the protection of correlative rights, including those of royalty owners.

Now how is the Commission going to protect the correlative rights of a royalty owner without notice to the royalty owner, an opportunity for the royalty owner to be heard, if he can be adversely affected and it is obvious that he can be adversely affected. You can have structural conditions, you can have a situation where a number of -- I have outlined here in a letter to Mr. Campbell, about where a royalty owner can be adversely affected by the selection by lease owner or the lessee of whether he is going to select the north half or the south half or the east half or west half and if it were up to him he may select the east half and that may adversely affect the royalty owner in one of the quarters. And that is the reason, that is the reason why the act specifically say that, includes the protection of royalty owners. Now it seems to me so obvious, it seems to me the language is so clear, how anybody can read this language otherwise.

that Section C doesn't apply, I can't understand it.

Listen, gentlemen, the pooling of properties, this is in Section C, that these gentlemen asked you to apply and we contend it does not apply:

"The pooling of properties, or parts thereof, shall be permitted and if not agreed upon may be required when --", not at any time, not at the discretion of the Commission, the discretion of the Commission may be exercised under "BE but when may the Commission act under Section C, "When 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 produce --" and so on and so on.

Now what has happened in the order that the Commission entered in this case, to point out that under Order R-110, the Commission established a uniform spacing plan. Now Section C comes into being only when the enforcement of that uniform spacing plan works an injustice. But where it does not work an injustice, then the Commission operates under Section B and the other acts that relate to Section B under its generally implied power, its express power, and those implied powers that flow from the express powers, to establish proration units but certainly not under Section C. And incidentally in Section B and nowhere in Section B is there a reference to owner but quite the contrary, it includes the rights of royalty owners.

I pointed out at the outset, perhaps my statement is a little too vigorous, I apologize if it is, but as I pointed out at the outset, how are you going to protect the rights of royalty owners

without giving them notice and an opportunity to be heard? You may not, your decision may be the same but I submit that you deprive them of due process under the statute unless you give them notice.

MR. HOWELL: I would like to answer that argument briefly.

MR. MACEY: Go ahead, Mr. Howell.

MR. HOWELL: It is our contention that the Commission established a proration unit when it entered the Order R-110, that the requirement of the proration unit be established was met when the Commission did give notice and hearing. And the royalty owners had an opportunity to appear and the Commission did determine that the correlative rights of the royalty owner would be protected by establishing a 320-acre proration unit in the Blanco-Mesaverde Pool, and that that has been accomplished and that direction of the statute has been met by the entry of Order No. R-110, that then, that having been established, the proration unit having been established, the spacing rule having been applied, that the owners, the statutory owners agreed upon the pooling of their interests in compliance with that order, and that that pooling was accomplished when the lessees then agree and that no further notice or hearing is required unless it be on a pool-wide basis of establishing proration units for the entire pool, would be the only time that additional notice and hearing should be given to royalty owners.

MR. MACEY: Anything further, Mr. Kitts?

MR. KITTS: No.

MR. MACEY: Does anyone have anything further in these cases?

MR. REIDER: I would like to ask Mr. Yager of what instance

he was deprived of his right of hearing?

MR. YAGER: I didn't understand, sir.

MR. REIDER: I would like to ask you, sir, of what instance were you deprived of your right of hearing in any of these matters?

MR. YAGER: Well, when the, you see, there was no notice given, there was no notice given until the royalty owners, that is, the owners of the minerals, until -- oh, some time in 1954, wasn't it -- I believe in 1954.

MR. REIDER: You received no notice?

MR. YAGER: Yes, we received notice in 1954 but it goes to the fact, goes to the proposition that the Commission cannot enter an order which would affect our rights prior to the time that they gave us a notice and an opportunity to be heard, it goes to the question of the total lack of jurisdiction to enter an order of that sort. It has a right, it has the right to enter orders after we have been given notice and an opportunity to be heard, but it cannot enter an order after giving us notice which would be-- which would effect -- which would be retroactive. I think the gentleman's question there is a very pertinent question. I think it was a very pertinent question. I think I agree with both Mr. Howell and Mr. Campbell it has no place in this hearing, it has no place before the Commission. The Commission is not here to determine the questions of the right and title to these leases but certainly the Commission should not enter an order which would directly, it seems to me, favor the other side and say, well, we would indirectly say that this, this pooling was accomplished before the primary term expired.

MR. REIDER: To explain my question, sir, I believe this Commission prides itself on trying to give everybody a chance.

MR. YAGER: I am sure it does.

MR. REIDER: And I believe there is adequate provision to provide the royalty interest or the operator the right for a hearing on any of these matters, and that was the reason for my question that you had been deprived. I wanted to know the specific instance that you were deprived of your right and hearing on this matter. I would like to direct to Mr. Howell --

MR. YAGER: Evidently you are not satisfied with my answer, sir. I didn't mean to imply that the Commission didn't give me an opportunity to be heard and didn't serve a notice upon me and an opportunity to be heard in 1954, but if they enter an order in 1954 that affects the right of 1953, without giving me an opportunity to be heard in 1953, they are not exercising due process of law and that is a legal proposition, sir.

MR. REIDER: I won't --

MR. YAGER: Yes, you might as well argue, if I owe you money, a promissory note and sign the note and a thousand people heard me say, I owe the note, you can walk into court and say, "That fellow Yager owes me" and the judge renders a judgment against me without serving a summons on me, all lawyers would tell you that due process would not then be exercised. You see, he does have opportunity to present his point of view. You may not agree with the point of view when it is presented, but I think it is basic in our idea of right thinking, too, and good morals that that judgment not be passed without an opportunity to be heard.

MR. REIDER: Mr. Howell, with reference to the Yager Unit

No. 2, I would like to know the date you first requested of Mr. Yager to come into the unit?

MR. HOWELL: The record I think shows, the record on the original hearing, I believe, contains the testimony of Mr. Hamblin on this point. I do not have the exact date but I can state that the record shows that Mr. Yager was requested to join the communitization agreements prior to the date that the primary term of the leases expired; that the agreements signed by other parties were delivered to him and are in his possession, so far as we know, up to the present time; that at least the signed copies that were sent to him have not been returned to us and the record so shows on the initial hearing. We didn't go into that testimony today to again go through that point of the case.

MR. YAGER: What was the purpose for that sort of testimony, Mr. Howell, if this Commission is not called upon to pass upon the validity of these leases?

MR. HOWELL: The testimony is in the record for whatever use the Commission wants to make of it.

MR. YAGER: That is what I thought! Is the Commission going to pay any attention to this sort of testimony?

MR. HOWELL: It is a legal question --

MR. MACEY: Gentlemen, gentlemen, gentlemen!

MR. CAMPBELL: The case is closed.

MR. MACEY: Does anyone have anything further? If not, we will take the case under advisement. We will adjourn until 1:15 P. M.

STATE OF NEW MEXICO)
 : ss.
 COUNTY OF BERNALILLO)

I, MARGARET McCOSKEY, 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 31st day of March, 1954.


 Notary Public, Court Reporter

My Commission Expires:

August 15, 1956.