

BEFORE THE
Oil Conservation Commission
SANTA FE, NEW MEXICO

IN THE MATTER OF:

CASE NO. 992

TRANSCRIPT OF PROCEEDINGS

ADA DEARNLEY AND ASSOCIATES

COURT REPORTERS
605 SIMMS BUILDING
TELEPHONE 3-6691
ALBUQUERQUE, NEW MEXICO

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BEFORE THE
OIL CONSERVATION COMMISSION
STATE OF NEW MEXICO
Santa Fe, New Mexico

January 19, 1956

IN THE MATTER OF:

Application of Astec Oil and Gas Company for an order approving a non-standard gas proration unit in exception to Rule 5 (a) of Order R-610 of the Special Rules and Regulations for the Blinbry Gas Pool, Lea County, New Mexico. Applicant, in the above-styled cause, seeks an order establishing a 40 acre non-standard gas proration unit consisting of the NE/4 NE/4 Section 10, Township 21 South, Range 37 East; said acreage to be dedicated to applicant's Dauron Well No. 2-B located 660' FNL and 525' FKL of said Section 10.

Case No. 992

AFTERNOON SESSION

Before: E. S. (Johnny) Walker and William B. Macey.

TRANSCRIPT OF HEARING

CHAIRMAN MACEY: The next case on the docket is Case 992.

MR. DAVIS: Quilman Davis and Jack Campbell, attorneys for Applicant. We have one witness.

P R E N T I C E W A T T S

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. DAVIS:

Q Please state your name. A My name is Prentice Watts.

Q What is your position with Astec Oil and Gas Company?

A I am District Superintendent in Hobbs, New Mexico.

Q Are you familiar with the application filed on behalf of Astec Oil and Gas Company in Case 992?

A Yes, I am.

~~MR. DAVIS: Are the qualifications of this witness acceptable?~~

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STENOTYPE REPORTERS
ALBUQUERQUE, NEW MEXICO
TELEPHONE 3-6691

CHAIRMAN MACEY: Yes, sir.

Q What is the nature of Aztec Oil and Gas Company's application?

A This application is for an exception to Rule 5-A of Order 610 as amended for the establishment of the non-standard gas unit in the Blinebry Pool. This covers a 40 acre unit comprising the northeast quarter of the northeast quarter, section 10, Township 21, south, Range 37 east. It's reflected on a plat attached to our application. The effective date of this application is to be November 1st, 1955.

Q Mr. Watts, in that connection, by "effective date" you mean our request for the establishment of a non-standard proration unit is effective as of November 1? A Yes.

Q That is our request. Did you state the name of the well that's located on this tract?

A The name of the well is our Dauron 2-B located 660 feet south of the north line and 525 feet west of the east line of Section 10, Township 21 south, Range 37 east.

Q When was this well originally drilled?

A This well was originally completed in 1951, later, January 1953, it was dually completed in the Blinebry and Drinkard zones. I failed to say it was originally completed in the Drinkard zone.

Q It was initially drilled in 1951 to the Drinkard formation?

A That is correct.

Q When was it dually completed as a gas well?

A It was dually completed February the 26th, 1953.

Q In the Blinebry formation? A Yes.

Q This was in accordance with approval obtained from the

Commission?

A That is correct.

Q Mr. Watts, the proposed non-standard unit, does it lie wholly within a Governmental section?

A Yes.

Q Would you consider that this unit may reasonably be productive of gas from the Blinbry formation in the Blinbry gas pool?

A Yes.

Q Well, you have already stated the size of the unit which would indicate that it doesn't exceed 2640 feet?

A That is correct.

Q Who owns the working interest in this 40-acre tract?

A Aztec owns the entire working interest in the proposed unit.

Q Mr. Watts, why is Aztec making this application at this time?

A On or about November 1st, 1955, we were notified by Continental Oil Company that they no longer considered the pooled unit to be in effect. Therefore, we are requesting a non-standard 40-acre unit be designated.

Q Let's first describe what was it, the pooled unit?

A Originally upon completion of the Blinbry zone, the pooled unit was 160 acres consisting of the northeast quarter of Section 10, Township 21.

Q That wasn't at the time that the well was initially completed?

A No, it was not.

Q That was by agreement reached as of January 1, 1954?

A That is correct.

Q We are now coming in since we have been advised that the Continental, who is the owner of the other land in the northeast quarter --

A (Interrupting) That is correct.

Q (Continuing) -- no longer considers that a pooled unit. We are now making application for the 40 acres on which our well is located?

A That is correct.

Q Is it your opinion that if this non-standard gas proration unit is not approved by the Commission, that the Applicant will be deprived of the opportunity to recover its just and equitable share of its gas in the reservoir?

A That is correct.

MR. DAVIS: I believe that is all the questions I have.

CHAIRMAN MACEY: Any questions of Mr. Watts? Mr. Dippel.

MR. DIPPEL: Harry G. Dippel for Continental Oil Company, and Mr. Jason Kellahin is also representing Continental.

CROSS EXAMINATION

By MR. DIPPEL:

Q Mr. Watts, you spoke of a pooled unit. Do you have a Form C-104 or Form C-110 with a plat attached showing the pool unit you are talking about?

A No, sir.

Q Do you know whether or not Aztec has ever filed with this Commission a Form C-104 and a Form C-110 with plat attached showing this unit?

A I don't know.

Q Will you answer my question, Mr. Davis is not testifying.

A Yes. I do not for sure, sir.

Q What unit are you talking about when you referred to a pool unit?

A We are talking about the northeast quarter of Section 10, Township 21, Range 37 east.

Q What evidence do you have in your possession showing the limit of that pool unit on anything that you have filed with this Commission?

A We have letters to the Commission, we have copies of letters to the Commission from Continental and Aztec. These letters were dated June 18 --

Q (Interrupting) I don't believe you understood my question. Let me restate it.

A All right, sir.

Q What evidence do you have of anything that Aztec has filed with this Commission showing the limits of this pool unit?

A We have these letters that I am referring to, which designated --

Q (Interrupting) You haven't understood my question. What evidence do you have in your possession covering anything that Aztec has filed with this Commission on which is shown the limits of this pool unit?

A Do you mean a state form that we file?

Q Anything that Aztec has filed with the Commission defining the limits of the unit that you referred to as a pooled unit.

A I believe these letters that I refer to designated the area that is in question.

Q You didn't file a Continental letter with the Commission, did you?

A No, sir, we did not.

Q Why don't you try to answer my question, Mr. Watts?

A Apparently I don't understand the question fully.

Q The question simply is what has Aztec filed with this Commission in which they have defined the limits of the unit that you referred to as a pool unit?

A We have not filed any specific form designating the 160 acres that I have referred to.

Q Let me ask you this question, what have you filed with this

Commission that is required of Astec to be filed showing a pooled unit which will show the limits of this unit that you referred to?

A Only the letter that we referred to them.

Q Is that required to be filed by the rules of this Commission?

A No, sir.

Q You haven't answered my question, Mr. Watts.

MR. DAVIS: I would like to object to counsel's questions here. I don't believe his questions are within the call of this hearing. This is an application for a 40-acre non-standard unit, and I don't believe his questions are pertinent to this particular application.

MR. DIPPEL: The witness has said that this 40-acre application deals with something that he refers to as a pooled unit which he claims Continental no longer considers in effect. I think it's very pertinent. If there is a unit of which this 40 acres are a part, we are entitled to know what the unit is, and I think the Commission is entitled to know it. If there is no such unit, then the witness is incorrect when he says there is a unit.

MR. DAVIS: I think if there is any question about the formation of a unit, then that is a matter that should be called under an application of Continental, or we have no objection if the Commission wants to set down an application for a hearing on the question of the northeast quarter as the pooled unit. All we are asking for is a 40-acre non-standard unit consisting of the northeast, of the northeast of Section 10.

MR. DIPPEL: Do I understand that you are asking for a 40-acre unit effective November 1, 1955, is that correct.

MR. DAVIS: Yes, sir.

MR. DIPPEL: Mr. Watts, may I sit up here?

CHAIRMAN MACEY: Yes, sir.

Q Am I correct in understanding that you said awhile ago that there was some sort of a 160 acre tract of land which you referred to as a pooled unit, of which this 40 acres at one time was alleged by you to have been a part?

A That is correct.

MR. DIPPEL: I submit to the Commission then that they are asking for an unorthodox 40-acre unit covering the 40-acre tract which apparently this witness has testified at one time was a part of some other kind of a unit. I don't know whether it is still a part of that unit or not, if it ever was. I think the Commission is entitled to know whether it is or not. Unless we can interrogate this witness about it and find out what he knows about it, I don't see how we will ever develop that.

MR. DAVIS: In answer to that, if the Commission please, I think the witness's answer was responsive to my question for the purpose of filing this application. I specifically asked him what the purpose of this application was and why we were filing at this time. He is simply telling the Commission, or advising the Commission, the reason that we are filing and asking for a non-standard proration unit effective November 1, 1955. We are not even considering in our application or the call of this hearing, the formation of the unit.

MR. DIPPEL: May I see the application, please?

CHAIRMAN MACEY: I believe there's a copy of it.

MR. DIPPEL: Could I have the original?

Q Mr. Watts, will you look at this letter or document I hand you on stationery, reading, "Aztec Oil and Gas Company, 920 Mercantile

Securities Building, Dallas 1, Texas", dated November 4, 1955, addressed to the Oil Conservation Commission, State of New Mexico, two pages signed Astec Oil and Gas Company by Quilman Davis, General Attorney. Will you look at that please?

A Yes, sir.

Q Is that your application? A Yes, sir.

Q Will you refer to numbered Paragraph 7 and read it please?

A Paragraph 7, "Applicant has been unsuccessful in its efforts to pool the lands covered by this application with adjoining lands to form a standard gas proration unit as provided by Order 610 as amended".

MR. DIPPEL: I would like the Reporter to mark this as Continental Exhibit 1.

(Marked Continental's Exhibit No. 1, for identification.)

Q Does that Paragraph 7 which you read deal with this so-called pooled unit you referred to awhile ago?

A Yes, sir.

Q Then there was never such a unit by the very language of that Paragraph 7?

A Yes, sir, we are under the opinion there was a unit.

Q Let me --

A Go ahead.

MR. DAVIS: I will object to the question again. We are talking about an application here for a non-standard unit. The statements made in this application are still not bringing out the question of whether or not we did or did not have a unit. I would like for the Commission to consider that if that matter is to be considered it be on application of Continental, or by Commission's own order for hearing.

~~MR. DIPPEL: This is a sworn application, sworn to by Mr. Davis.~~

If it doesn't state the truth we ought to know it. It says right here they were unsuccessful in pooling it and setting up a unit. I think the question is very pertinent.

MR. DAVIS: One other point, if the Commission please, is that this application was prepared and dated after we had been advised by Continental of their decision, or that they considered the pooled unit no longer effective. Maybe I personally used some rather loose language there, but I still contend that we are not raising the question in this application as to whether or not a 160 acre unit was formed. Certainly that paragraph was prepared and put into the application after we had been so notified by Continental that they no longer considered that a unit.

CHAIRMAN MACEY: Mr. Davis, we feel that the original unit, whether or not it was formed or wasn't formed, is a pertinent part of this case since this acreage was originally part of that purported unit. I don't think we can divorce one from the other. If Mr. Watts can answer the question; I frankly don't think he understands. I don't think he can not answer it. I don't think he understands what you are driving at. Maybe you can rephrase the question that you asked before.

MR. DIPPEL: I will be glad to try another approach, Mr. Macey.

Q Mr. Watts, perhaps this will help you understand what I am driving at. Do you have a copy of the application before you there?

A Yes.

Q Will you look at the first paragraph of that application? That first paragraph reads like this, does it not? "Astec Oil and Gas hereinafter referred to as Applicant, hereby submits its

application for administrative approval of a non-standard gas production unit comprising the northeast quarter, northeast quarter of Section 10, Township 21 south, Range 37 east, NMPN, Lea County, New Mexico, as reflected on the plat attached hereto, effective November 1, 1955". Do you know why the request was made that it be made effective November 1, 1955?

A Yes, sir, that is when we were informed by Continental that the unit, the 160 acre unit to which we have referred, was no longer in effect.

Q Do you have in your possession any document of any kind bearing the signature of Continental Oil Company showing that there ever was any such unit?

MR. DAVIS: I don't believe Mr. Watts is qualified to answer that.

MR. DIPPEL: He knows he has it in his possession.

MR. DAVIS: You said in his personal possession?

A I do not have it in my personal possession here.

Q Thank you. Mr. Watts, do you know of your own personal knowledge -- let me withdraw that question. What did you state your position is with Astec?

A I am District Superintendent.

Q Forty acres that is covered by your application is within your jurisdiction?

A Yes, sir.

Q Is it a part of your duty in that position that you occupy, to file reports and forms required by this Commission with respect to oil and gas wells in the territory over which you have jurisdiction?

A In most cases, yes, sir.

Q In what cases is it not your duty?

A I don't have any specific cases where it is not my duty. It more or less depends on the situation and my --

Q (Interrupting) Give us a situation where it would not be your duty.

A Possibly when the subject is being handled by the Dallas Office.

Q What kind of a situation would it be when the subject would be handled by the Dallas Office?

A I believe that would have to be decided by management, my superior, and not myself.

Q Can you call my attention to one such instance that has happened within the last two years?

A Well, I am sure there have been several.

Q Can you name one?

A For example, as concerned this, I did not participate in any of the conferences concerning the unit with Continental.

Q Are you, and were you on January 1, 1954 and at all times from that date to today in charge of the operation of this well?

A Yes, sir.

Q Is it not then a fact that that being true, it was your responsibility to file forms and reports required by the rules and regulations of this Commission with respect to that specific well?

A Well, sir, I did not file all the reports that are required for that particular well. My duties for the reports filed with the Commission, 1158, OC-102, 1038, for work that we performed on the well, but also I can name other forms that are required by the state that I do not form such as the production and royalty statements.

Q Let's stick with this particular well, and let's go back to the first form C-104 and C-110 and plat attached that was filed covering the well that is dealt with in your application in this Case No. 992.

MR. DIPPEL: May I see the well file?

CHAIRMAN MACEY: The well file?

MR. DIPPEL: Yes, the well file. I have in mind the forms 104, 110 with the plat attached showing the original acreage attributed to this. I believe it was filed in November 1953.

CHAIRMAN MACEY: This is the file right here.

MR. DIPPEL: That's not the one.

CHAIRMAN MACEY: Here is the original 104 that was filed. It was filed in February of 1953, Form 110 covering the distillate from the Blinebry, Form 110 covering the gas from the Blinebry zone, and the plat that was filed in November of 1953. In other words, the 104 and the 110 had been filed previous to filing the plat as I interpret the file.

MR. DIPPEL: Thank you. Will you identify these as Exhibit's 2, 3 and 4, please?

(Marked Continental's Exhibits Nos. 2, 3 and 4 for identification.)

Q Mr. Watts, I hand you three documents which have been identified by the Reporter as Continental's Exhibits 2, 3 and 4 in Case 992. Will you look at those exhibits please?

A Yes, sir.

Q Looking at Exhibit No. 2, what signature appears on that exhibit?

A A. M. Wiederkehr.

Q Who is Mr. Wiederkehr?

A He was an engineer with Aztec.

Q Is he still with Aztec? A No, sir.

Q Was he under your supervision? A No, sir.

Q Were you under his supervision?

A No, sir.

Q What does that Exhibit No. 2 purport to be?

A It is a gas well plat covering the Dauron No. 2 well in the Blinebry Pool.

Q What acreage does that plat purport to show has been attributed by Aztec to the Dauron No. 2? A Forty acres.

Q What 40 acres?

A The northeast of the northeast quarter of Section 10, Township --

Q How many Blinebry gas wells are on that 40 acre tract?

A One.

Q Is that the well that is the subject of this application?

A Yes, sir.

Q Has there ever at any time been any other Blinebry gas well on there?

A Not to my knowledge.

Q Let's look at Exhibit No. 3 that you have in your hand. What does that purport to be?

A This is a certificate of compliance and authorization to transport oil and natural gas.

Q Whose signature appears on that in behalf of Aztec?

A My signature does.

Q When was that dated? A February 26, 1953.

Q Does that form -- That is Form 110? That Form 110 covers

your Dauren No. 2 well on the 40 acre tract that is the subject matter of this application?

A I'll read from the application, "This authorization covers the transport of distillate produced incidental to normal gas production."

Q Normal gas production from what?

A Dauren No. 2, Elinebry zone.

Q Then it does cover this well as to its production from the Elinebry zone?

A That is correct.

Q Exhibit No. 4 that you have in your hand is a Form C-110. What does that form cover, what well and what production?

A This covers the Dauren No. 2. It covers, to read from the form, "This covers gas to be transported by Southern Union Gas Company".

Q Whose signature on behalf of Aztec, appears on there?

A My signature

Q What was your title at that time?

A I was an engineer.

Q I will ask you to look at Exhibit 3 once more. Your title when you signed that was also engineer?

A Yes, sir, they were signed on the same day.

Q Did you forward the documents that have been identified as Continental's Exhibits Nos. 2, 3 and 4 in Case 992, concerning which you have just testified, did you forward those to the New Mexico Oil Conservation Commission, or to whom did you forward them?

A I did not forward this one.

CHAIRMAN MACEY: Which one are you talking about?

A Exhibit 2, I cannot recall forwarding this one myself.

Q Did you forward Exhibits 3 and 4?

A However, Exhibits 3 and 4 were undoubtedly forwarded by me from Hobbs.

Q At the time that you forwarded the documents that have been identified as Exhibits 3 and 4, and which are respectively Forms C-110 and, they are both forms C-110, where is the Form C-104 -- let's withdraw that question.

MR. DIPPEL: Will you mark this Exhibit 5, please?

(Marked Continental's Exhibit No. 5,
for identification.)

Q Mr. Watts, I hand you a Form C-104 dated at Hobbs, New Mexico February 26, 1953, which has been marked by the Reporter as Continental's Exhibit No. 5 in Case 992. Whose signature in behalf of Aztec appears on that?

A My signature does.

Q At that time you were also engineer?

A Yes, sir.

Q Thank you. That also deals with this same well that is the subject of your application in Case 992?

A Yes, sir, it covers the mechanical details of perforations in the two zones.

Q Yes, sir. It covers the same 40 acres that is the subject of your application in Case 992?

A That is correct.

Q Mr. Watts, at the time that you as engineer for Aztec executed and forwarded for filing with this Commission the three documents that have been shown to you, and that have been identified by the Reporter as Continental's Exhibits 3, 4 and 5, you understood what those forms were, didn't you?

A Yes, sir.

Q You know what they are now, don't you?

A Yes, sir.

Q The question now is, have you at any time subsequent thereto executed any such Forms 104, C-104 and C-110 covering the Dauron No. 2 well that is the subject matter of these forms referred to as Exhibits 3, 4 and 5, and which well is the subject of your application in the Case 992 now on hearing?

A I cannot recall filing any. I would have to check a well file. I do not recall filing any myself.

Q Would it have been your responsibility to file them, if any had been filed?

A Not necessarily so.

Q Who else in the Aztec organization might have had that responsibility, if you know?

A There could have been several in the Dallas office.

Q Can you name them?

A Possibly Mr. Wiederkehr.

Q Is he now in the Dallas office?

A He is no longer with Aztec.

MR. DAVIS: I think Mr. Watts is a little bit confused about Mr. Wiederkehr's position. If you will let me ask him a question, get that point cleared up. It has been brought up twice.

Q Was it not Mr. Wiederkehr that was employed by Southern Union Gas and that Aztec being a wholly owned subsidiary, he naturally filed the reports up until May 4, 1954, up to the time it went out on its own?

A That is correct.

Q He has never been associated with Aztec?

A Yes.

Q But in his position with Southern Union Gas Company in the operation of the subsidiary at that time in '53 he did file reports on behalf of Aztec?

A Yes, sir.

By MR. DIPPEL:

~~Q I ask you to state if that is signed by Mr. Wiederkehr?~~

A Yes, sir.

Q Is that the Mr. Wiederkehr to whom you were referring in response to Mr. Davis?

A That is correct.

Q Does the form not show that he signed as engineer for Aztec?

A Yes, sir, he was representing Aztec.

Q This form is not correct --

MR. DAVIS: I object to that question. I was trying to explain, Mr. Dippel, that at the time the form was filed and up until May 1 of 1954, Mr. Wiederkehr had full authority to sign any and all forms on behalf of Aztec Oil and Gas Company, but up until February of 1954 Aztec was still a wholly owned subsidiary of Southern Union and after that date Southern Union had an operating agreement performing services for Aztec up until May 1, 1954, at which time separate offices were obtained for them. That is what I was trying to point out. He had the authority in 1953.

Q Do you know for whom Mr. Wiederkehr is now working?

A He is employed by Southern Union Gas Company at present.

Q In the Dallas office? A Yes.

MR. DIPPEL: I believe that's all the questions I have of Mr. Watts.

CHAIRMAN MACEY: Does anyone else have a question of the witness? Mr. Kitts.

By MR. KITTS:

Q The well was granted a 160 acre allowable, was it not?

A That is correct.

Q It has been producing under a 160 acre allowable?

A That is correct.

Q To your knowledge did Aztec ever offer to Continental or any

other working interest owner on the 160 acres the proceeds of this, any of the proceeds of the well?

A I had no participation in any of the discussions concerning the acting procedures with Continental, and so I don't believe I am qualified to answer that.

Q You can't answer whether such an offer was or was not made?

A I am not qualified to answer. I don't know.

Q Do you know whether, of your knowledge, whether any demand was made by Continental for any share of the proceeds of production?

A No, sir, I do not know. Again I don't believe I am qualified to answer from having full knowledge from any that they may have offered.

MR. KITTS: That is all.

MR. DAVIS: I have a question or two to ask Mr. Watts.

RE-DIRECT EXAMINATION

By MR. DAVIS:

Q You were testifying a few minutes ago in connection with Continental's Exhibits 2, 3 and 4. Let me ask you if these exhibits were not filed on behalf of Aztec Oil and Gas Company prior to the time that authority was given, and the granting of the 160 acre allowable?

A That is correct.

Q Before that was ever considered?

A Yes, sir.

Q These were filed in 1953?

A Yes, sir, that is correct.

MR. DAVIS: I would like to also introduce as Aztec's Exhibit No. 1 and I will ask you, Mr. Watts to describe the nature of that unit. I think you referred awhile ago to a plat attached to our application. Would you please briefly describe that exhibit?

A This exhibit No. 1 in Case 992 is a plat entitled Exhibit A, Application for Non-Standard Gas Proration Unit, Blinebry Gas Pool. It indicates the location of the Dauron No. 2 and indicates 40 acres northeast of the northeast of Section 10, Township 21 south, Range 37 east, as being the unit applicable to this well.

MR. DAVIS: If agreeable with the Commission, I would like to introduce this as part of the record, as Exhibit No. 1.

CHAIRMAN MACEY: Is there objection? Without objection, Exhibit No. 1 will be introduced, Astec's Exhibit No. 1. Are there any other questions of the witness?

MR. DIPPEL: Yes, sir, I have some questions.

RE-CROSS EXAMINATION

By MR. DIPPEL:

Q In response to Mr. Kitts' question, Mr. Watts, I believe you stated that this well has been producing on the basis of 160 acre allowable?

A Yes, sir, that is true.

Q Are you aware of what those allowable figures are?

A Yes, sir, I am aware of what is in the gas proration schedule.

Q Do you know of your own knowledge whether or not that well has been producing its allowable?

A I don't recall whether it is over or under right at present, but for the most part it has.

Q It has what?

A It has produced its allowable.

Q Do you know whether it produced its allowable during the month of December of 1955 or not?

A December '55, I would have to look at records to see when the production was. I don't recall.

~~Q~~ Do you know of your own personal knowledge during any month beginning with January 1954 through December 1955, whether or not this well ever produced less than its allowable?

A I feel certain it did produce less than its allowable at times, and quite likely at times it produced more than the designated allowable as shown in the allowable schedule. I feel that we could check that by looking at production records and the allowable schedule.

CHAIRMAN MACEY: I am sure we could.

A I don't have those figures at hand from memory.

Q Do you know whether or not this well has ever been shut in because of over production?

A I don't recall. I am sure it has been shut in for a few days at a time.

Q Do you know whether or not it has ever been shut in because of over production and because of an order of this Commission requiring it to be shut in to make up over-production?

A That I do not know.

Q If it ever had been so shut in, would you not know it since you are responsible for it?

A Yes, sir, if it had been shut in for any length of time I would know it.

Q Are you telling the Commission now that you don't know whether it has or has not been so shut in?

A Sir, I believe I said that I feel it probably has been shut in for several days at a time because of overage or underage or normal variance in our production.

Q Has this well ever been shut in because of under production?

A I do not recall.

Q You said under or overage. I assume you meant under production when you said underage?

A I mean the normal variation, you can expect normal variance in the gas that the pipeline takes.

Q Of your own personal knowledge, although you are personally responsible for it, you do not know if the well has been shut?

A Not officially shut in by the state.

Q All right. Earlier you testified in response to Mr. Davis's question on direct examination I believe, something to the effect that Continental notified you that it didn't consider the 160 acres that you had been referring to as being a pooled unit any more. Is that right, did I understand you to say that?

A Yes, sir, that is correct.

Q Who in Continental informed you that there ever was a pooled unit which it no longer considered in effect?

A No, one in Continental informed me personally.

Q What you testified to awhile ago is pure hearsay, you don't know anything about it except somebody in the Astec organization told you?

A Yes, sir, that is correct. I take verbal instructions quite often.

Q Was that an instruction to you?

A I don't guess you could call that exactly an instruction. At least it was keeping me informed to some extent what was going on.

Q Let me ask you this question. As of right now, do you know of your own personal knowledge and not based on what somebody else told you, do you know of your own personal knowledge that anybody

purporting to speak for Continental Oil Company ever told Aztec that Continental no longer considered this a pooled unit?

A From my own personal knowledge no one with Continental told me that, nor have I personally received a letter from Continental.

Q So you don't know whether that statement you made awhile ago is true or not, of your own personal knowledge absent what anybody told you?

A That is correct.

Q In your organization?

A That is correct.

MR. DIPPEL: That is all.

CHAIRMAN MAGEY: Anyone else have a question of the witness?

By MR. MAGEY:

Q Mr. Watts, under all the conditions that the well we are discussing has been producing since completion in the Blinbry zone, has the well always been tied to Southern Union Gas Company's system?

A Yes, sir, that is correct.

Q Under normal operating procedures is it customary for you or one of your personnel in Aztec to shut the well in when the time comes for it to be shut in?

A No, sir.

Q Who performs these functions?

A Southern Union usually does that. I will say that our personnel is out there every day and works very closely with them. We would be informed of that if nothing else from the oil production, the distillate production.

Q When they shut the well in you don't know right away that it is shut in necessarily?

A I would usually know within a day from our production reports.

Q In other words, you would know if the well had been shut in

over an extensive length of time for any reason?

A I should know, I may not recall unless I would look at records.

CHAIRMAN MACEY: Does anyone else have a question of the witness?

MR. DIPPEL: Before we excuse the witness, I would like to offer in evidence Continental's Exhibits 1, 2, 3, 4 and 5.

CHAIRMAN MACEY: They have all been identified, have they not?

MR. DIPPEL: Yes, sir, those are the exhibits concerning which he has testified, and they have had a Reporter's identification.

CHAIRMAN MACEY: Is there objection? If not they will be received. Anyone else have a question of the witness? If not the witness may be excused. Do you have anything further, Mr. Davis?

(Witness excused.)

MR. DAVIS: If the Commission please, Astec still objects to the introduction of any testimony concerning whether or not the 160 acre unit was formed. We strongly believe it was. We believe it is a matter for a separate hearing, but in view of the fact that the Commission has permitted Continental to question the witness concerning that, we would like to call another witness to discuss that matter.

MR. DIPPEL: May I state for the record, they brought it up, we didn't. Their witness talked about a pooled unit that we no longer considered in existence.

CHAIRMAN MACEY: I think the record speaks for itself as to what the score is. If there is no further question of Mr. Watts, he may be excused.

Y A N T H O M P S O N

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. DAVIS:

Q Will you please state your name for the record?

A Van Thompson.

Q You testified before this Commission before?

A Yes, sir.

Q What is your position with Aztec Oil and Gas Company?

A Vice President.

MR. DAVIS: Are the qualifications of the witness acceptable to the Commission?

CHAIRMAN MACEY: Yes, sir.

Q Mr. Thompson, in your position as an officer of Aztec Oil and Gas Company, were you involved in the negotiations and the agreements reached with Continental Oil Company in the formation of a standard gas proration unit for the Dauron 2 well, consisting of the northeast quarter?

A I was.

Q Would you review briefly the correspondence and the discussions that were held with representatives of Continental in connection with this?

MR. DIPPEL: We are going to object to any testimony or evidence concerning any negotiations regarding a possible formation of a proration unit. There is no evidence before this Commission and I am confident that none can be produced, to show any unit was ever formed. The proponents in this application have not proven that there has been any such unit formed. This Commission has no jurisdiction to do anything about any breakdown of negotiations or to take any action with respect to the acts of any of the parties

involved in the negotiations even if the Commission desired to do so.

The testimony concerning such negotiations can have no other purpose than to burden the record and consume the time of the Commission unnecessarily concerning a matter that the Commission has no jurisdiction of. And we respectfully object to going into these kind of things before this body, which has no jurisdiction with respect to it.

MR. DAVIS: I believe Mr. Dippel has just repeated my contention a few minutes ago. I don't know whether to object to it or not. I believe the Commission ruled on my objection awhile ago, that the formation and the request of the formation of the northeast quarter of Section 10 as a unit was a material part of the entire hearing. While I still object to the testimony through cross examination, I feel like they put some in, we ought to be able to have some direct testimony on the same subject.

MR. DIPPEL: Could I make a further statement in support of my objection? I think the record will show that any cross examination of Mr. Watts by me with respect to this so-called pooled unit thing was directed to his statement on direct examination that someone in Continental had indicated they no longer considered it a pooled unit. I would like, however, to call the Commission's particular attention to Aztec's application in this Case No. 992, which has been offered by Continental as its Exhibit No. 1 in this case, on page 2, the Paragraph numbered 7, of this sworn application says, "Applicant has been unsuccessful in its efforts to pool the lands covered by this application with adjoining lands to form a standard gas proration unit as provided by Order R-610, as amended." Aztec has sworn that there has not been such a unit. Any testimony now

regarding whether there has been one or not is directly in conflict with their sworn application, and I think is a matter, unless they want to impeach their own application, is just a bunch of time-consuming record-burdening material that can certainly serve no purpose.

MR. DAVIS: If the Commission please, I can't help but disagree with Mr. Dippel's interpretation of it. It is a matter of interpretation by the Commission. It is a copy of our application filed with the Commission, and as I said before, it was filed before, not after we were notified of the decision of Continental. The question again as to whether or not the use of the word unsuccessful efforts might be considered to say that we said there never had been a form, is a gross misinterpretation.

MR. DIPPEL: If the Commission please, on the basis of what Mr. Davis has just said, it seems to me that Aztec took Continental's word, if Continental ever uttered such a word, for the fact that there was not such a unit formed. I am willing in the interest of saving time, to stipulate there never was such a unit formed.

MR. DAVIS: Naturally I can't agree to that stipulation.

CHAIRMAN MACEY: For the record, Mr. Kitts is going to express the Commission's viewpoint pertaining to the so-called unit, and the motion involved in this instance, and the objection.

MR. KITTS: It's the feeling of the Commission that one of the questions in this case is the formation, or non-formation or the existence, or the non-existence of the 160 acre unit. Whether it was formed, if it was formed by agreement, whether formed in fact by agreement of the parties or formed even by operation of law, we

don't know. We therefore feel that any evidence bearing on this question is pertinent to this proceeding, being mindful, the Commission being mindful however that there will be certain questions touched upon in the testimony undoubtedly that will raise questions that cannot properly be decided by the Commission, and the Commission will try and endeavor in hearing the case and finally deciding the case, to keep in mind what it has the power to decide and what it has not the power to decide. We feel that testimony pertaining to the formation or negotiation for the formation of the unit is proper at this time, so the objection is overruled.

MR. DAVIS: I would like to state before examining Mr. Thompson, that we want to do everything we can to clear this matter up. We certainly have no objection to the cross examination of Mr. Thompson, and any of the questions; however, I would like to point out to the Commission that the gentlemen involved on these negotiations to my knowledge are not present. I mean Continental representatives. It may be that we will want to request a continuance on that basis because we will not have an opportunity to cross examine them if there is a serious question raised concerning Mr. Thompson's testimony. Furthermore, we would like to have incorporated in this record copies of letters filed with the Commission, and I am sure they are in the Commission's files, date June 18, which was signed by Aztec Oil and Gas Company requesting 160 acre allowable effective January 1, 1954.

CHAIRMAN MACEY: What was the date of the letter?

MR. DAVIS: June 18, 1954. Then Continental letter signed by Mr. S. V. McCullem also to the Commission and written on behalf of Continental

Stanolind Oil and Gas Company, Atlantic Oil and Refining Company, and Standard of Texas joining in that request for 160 acre allowable which we feel was the real basis and authority for the Commission to grant the allowable as it did.

CHAIRMAN MACEY: Mr. Davis, will you look at those letters and see if they are the letters?

Q Mr. Thompson, I will ask you to look at a letter on the letterhead of Astec Oil and Gas Company dated June 18, 1954 addressed to New Mexico Oil Conservation Commission, Santa Fe, New Mexico, and signed by Q. B. Davis as General Attorney, with carbon copies being directed to Continental, Stanolind Oil, Atlantic Refining, Standard Oil Company of Texas. Would you briefly state what that letter contains?

A Well, this letter says that Astec, Continental Oil, Stanolind and so forth, have agreed to the communitization and pooling of their respective oil and gas leasehold interests in the northeast quarter of Section 10, Township 21 south, Range 37 east, Lea County, New Mexico for the purpose of forming an orthodox gas production unit consisting of 160 acres more or less, for the Astec Oil and Gas Company Dauron C-2 well, producing from the Blinbry formation.

Q Then briefly the request, without reading.

A It says a "communitization agreement and related papers are now being circulated for signatures of the above-named companies. Since we anticipate that there will be some delay in completing the execution of all of the papers, it is requested that a full 160-acre unit gas allowable be set up for the Astec Dauron No. 2-C Well retroactively to January 1, 1954".

MR. DAVIS: I will like to have the letter of June 18, 1954 marked as Astec's Exhibit No. 2, and the letter of June 24, 1954 marked as Exhibit No. 3.

(Marked Astec's Exhibits Nos. 2 and 3, for identification.)

Q Now, Mr. Thompson, I want to show you a letter on Continental Oil Company's letterhead, letter dated June 24, 1954, identified as Astec's Exhibit No. 3, and addressed to the New Mexico Oil Conservation Commission in Santa Fe, to the attention of W. B. Macey, and signed by Mr. S. V. McCollum who is indicated on the letterhead as being Assistant Regional Manager of Production, Southwestern Region. Mr. Thompson, you are familiar with that letter, are you not?

A Yes, sir.

Q Since it will be a matter of record with the Commission, can you simply state that that letter contains substantially the same information that you read, that I had written on behalf of Astec?

A Yes, sir, it does.

Q And that the letter was signed by Mr. McCollum on behalf of the four companies involved, requesting the Commission to grant 160 acre allowable as we did? Is that substantially the contents of the letter?

A Yes, sir, that is correct.

MR. DAVIS: I would like to have these two made a part of the record as Exhibits No. 2 and 3.

CHAIRMAN MACEY: Those two letters identified as Exhibits 2 and 3. Is there objection? If not the two exhibits will be introduced in evidence.

Q Mr. Thompson, will you just start at the beginning and briefly review the events that led up to these agreements, these

letters that we now have identified as Exhibits 2 and 3?

MR. DIPPEL: So there will be no mistake, our objection goes to this whole line of testimony.

CHAIRMAN MACEY: Let the record so note.

A Well, late in 1953 I wrote to the Continental Oil Company, or I believe Mr. Davis did, and told them that we had filed an application with the State Commission for a 40 acre allowable, but suggested that we have some conversation about a pooling agreement on the whole 160 acres. So they wrote back and indicated that they were interested.

Q What date was that?

A That was starting November 13, and then November 19 I had a letter from Hugh Johnson indicating their interest in it. Then on December 17th Aztec wrote the Commission and had their application dismissed for 40 acre unit. On February 19, Quilman Davis and myself met in Ft. Worth with Continental's Mr. E. M. Robertson, Mr. S. V. McCollum, and Mr. Homer Daily, an attorney that I don't remember the name of that attorney. We agreed on a form of pooling of this 160 acres. In the agreement they were also to complete a well in the Tubbs on the same 160. They agreed that we could keep the production from our well, the whole 160 acre allowable until they got their well dually completed. At that time we were going to sell them a three-quarter interest in our well and purchase a one-quarter interest in theirs for the actual cost of their completing the Tubbs well. That was all agreed to and Quilman Davis prepared the papers and the letters of agreement and mailed them to them on March the 9th. We never did hear any more.

CHAIRMAN MACEY: 1954?

A 1954, March the 9th.

Q Let me ask you one question. You referred to 160 acre allowable. Actually the agreement said we were entitled to all the production from the Dauren well? A That is right.

Q Until such time --

A (Interrupting) Until such time as they got their Tubb well completed and connected to a pipeline. That was the agreement. They said it would only take a short while, so we agreed to accept the cost on their well for the basis of the purchase. That was in February of 1954. We followed it up any number of times. In September of 1955, we had some conversations with Mr. Adams here. It was the first we knew that Continental didn't want to go through with the deal.

Q Mr. Thompson, these follow-ups that you have referred to, let me ask you, some of them were in the nature of letters. However, most follow-ups were by telephone or personal contact with representatives of Continental?

A That is right. I personally at least twice talked to Mr. Robertsen at Ft. Worth. We wrote them letters and you talked to them several times. Never did they indicate but what the deal was going to go through the way that we had agreed upon. We felt like that there was agreement and there was going to be a unit. Then in September of '55 why it all blew up.

Q That is carried out in connection with the two letters that we introduced as part of the evidence in this case, the letters June 18 and June 24? A That is right.

Q Which stated the companies had agreed on approval?

A Yes.

Q We feel that it was pooled and it wasn't until September that we had notice that they considered the pooling arrangements that we had agreed upon in February of '54; September 29, 1955 was our first knowledge that they considered them terminated.

A Yes, they came back in September and wanted to retrade the deal. What they wanted to do at that time was to buy an interest in our well for three-quarters of what it had cost us to dually complete the well which was an entirely different deal.

Q And obtain production from that date January 1, that was the new deal they offered?

A That is right. What they wanted to do then was make everything retroactive to January 1st, 1954.

Q Let me ask you, Mr. Thompson, was that deal that they are talking about now, was that ever offered to Continental?

A Yes, you prepared all the papers and mailed them over to them --

Q I mean in the negotiations.

A Oh, yes, in the beginning that is what we wanted to do. We wanted to sell them an interest in the well for three-fourths of \$43,000, but they said that was too much money and they could do it for twelve or fifteen thousand. That is the reason we arrived at this other method.

Q On the same day?

A On the same day.

Q Which was on or about --

A It was February 19th.

Q -- February 19th. Mr. Thompson, it was Mr. Hugh Johnson who is the Regional Manager of the Continental in this area, did he have any knowledge that these negotiations were being carried on?

MR. DIPPEL: I had no intention to object to any of this

testimony, but I think that is going just a little bit overboard too far. How could this witness know what Mr. Hugh Johnson had in his mind or what knowledge he had?

MR. DAVIS: If Mr. Dippel will permit my witness to answer I will answer him.

CHAIRMAN MACEY: What is your question?

MR. DAVIS: If Mr. Thompson had any knowledge whether or not Mr. Johnson knew about the negotiations we were carrying on, if he ever talked to him about it.

MR. DIPPEL: I have no objection to him asking him if he ever talked to Mr. Johnson about it. I object to him trying to have this witness testify about what Mr. Johnson might know.

CHAIRMAN MACEY: I didn't know he asked that question.

MR. DAVIS: Mr. Thompson can answer "no" or explain to his knowledge.

A Mr. Johnson had full knowledge of it.

CHAIRMAN MACEY: Just a minute.

MR. DAVIS: I will rephrase the question.

CHAIRMAN MACEY: I think that will be a real good idea. You withdraw the original question.

MR. DAVIS: I will withdraw the original and rephrase it.

Q Mr. Thompson, was Mr. Hugh Johnson present during any discussion concerning the formation of this unit on February 19, 1954?

A No. I'd say that he wasn't. What actually happened, we met in Mr. Johnson's office and then he sent us Mr. McCollum and all of us over into another room to make this deal. Then after that we all went to lunch together and we told him what had happened and he said, "That's fine."

Q Thank you. Mr. Thompson, you referred to a meeting with representatives of Continental on September 29, 1955. Were there any additional conferences with representatives of Continental after that date?

A Yes, sir. We met first on September 29. Then in October we had a second meeting in our offices there in Dallas, and then later we had a meeting in Ft. Worth with Mr. Johnson and Mr. Harry Dippel.

Q Was that on or about November 22nd?

A That is right.

Q Were any decisions reached other than what you have already stated at these subsequent meetings?

A No decision was ---

MR. DAVIS: (Interrupting) We may have some redirect questions.

CHAIRMAN MACEY: Are there any questions of Mr. Thompson?

MR. DIPPEL: No questions.

CHAIRMAN MACEY: Anyone else? Mr. Kitts.

CROSS EXAMINATION

By MR. KITTS:

Q Mr. Thompson, I think it's been established certainly that this well in question was granted a 160 acre allowable and has been producing pretty much up to that allowable?

A Yes, sir, that is right.

Q I understood your testimony, I believe to be, that you felt that you were entitled to the full 160 acre allowable or the full proceeds of that because of an agreement?

A That is right.

Q However, there was no notification to the Commission until recent months, was there?

A There wasn't any not --

Q (Interrupting) That a formal execution of a written communitization had failed?

A No. There wasn't. We didn't know ourselves it had failed until September 29 when they came to see us. We thought the thing was in effect and was being circulated to be signed.

Q During any of the some eighteen-months period from the time the well started producing that allowable, or granted that allowable, and the Commission was notified of the breakdown of the negotiation, did Astec offer any of the proceeds of the 160 acre allowable production to Continental?

A No, sir.

Q Did Continental, to your knowledge, make any demand for any?

A Yes, sir.

Q They made demand for it?

A They did it in this way, they wanted to buy a three-quarter interest in the well for three-fourths of \$43,000 and take it out of production, which would be out of the proceeds. That, by the way, we would have to get our money.

CHAIRMAN MACEY: What was the effective date that they were going to start taking that out of there?

A Oh, back to January 1st, 1954. They wanted to make it retroactive so it would put us in the position of the well paying for itself.

MR. KITTS: That is all.

CHAIRMAN MACEY: Anybody else have a question of the witness?

By MR. GURLEY:

Q Would you state again what the last date of the correspondence in 1954 that you had with Continental concerning this?

A What correspondence?

Q As I understand your testimony, there was quite a period there where there was no negotiations?

A Yes, sir, that is right. We prepared the papers and mailed them to them and they told us that they were circulating them, or I believe they said they had sent them to Houston. So we followed it up any number of times and finally just dropped the matter and let it go.

Q What do you mean you followed it up?

A We followed it up by calling them and by writing them letters, I think only one letter, asking them what had happened to the thing.

Q What was the date of the letter that you wrote?

A April 29th, it looks like.

Q Of 1954?

A That is right.

Q After April 29th, 1954 did you make any contact with Continental concerning this unit?

A Yes, sir.

Q You made that how?

A By the telephone or verbally once or twice right here at Santa Fe. We would inquire what had happened to the thing.

Q From the time that the well went into production, based on the 160 acre unit, did you have any books set up showing what Continental's contribution would be, assuming that the unit was a unit?

A No, sir.

Q If you thought at the time that that agreement had been reached, why is it that you did not keep books to that effect?

A Because according to the agreement, we were supposed to get

all the proceeds.

Q Until how long a time?

A Until they got the Tubbs well completed and connected to a pipeline.

MR. GURLEY: That is all.

CHAIRMAN MACEY: Anyone else?

MR. DIPPEL: I have some questions now.

By MR. DIPPEL:

Q When you testified in answer to a question, to a question by Mr. Kitts that it was your company's understanding that you were entitled to all of the production because of your agreement, you are referring to a purported verbal agreement reached by representatives of Continental, Astec, is that not right?

A That is correct.

Q You have not reference to any written agreement, do you?

A Yes, sir, I had reference to one that we prepared and mailed over there which I signed, and they never did sign.

Q What I mean was an executed written agreement?

A No, sir.

Q Mr. Thompson, at the time of those negotiations concerning which you have testified, did you or did you not know that the acreage that Continental was talking about was New Mexico Federal unit acreage in which Stanelind, Atlantic and Standard of Texas owned an interest along with Continental?

A Yes, sir, I knew that.

Q At that time did you know that the New Mexico Federal unit acreage involved was subject to the payment of royalties to Uncle Sam?

A Yes, sir, I did.

Q Is it your testimony that it was your understanding that the representatives of Continental Oil Company were agreeing to give away the property of Atlantic, Stanolind, Standard of Texas, and of the United States of America and give it to Aztec?

A Yes, sir.

Q That's your testimony?

A That was the agreement.

Q You believed that?

A Yes, sir.

Q You testified a moment ago in response to Mr. Gurley's question that some contacts were done by telephone or in person?

A Yes.

Q There were numerous occasions during the negotiations where the matters were discussed in person over the telephone, is that not right?

A That is right, yes, sir.

Q You are not attempting to testify, and I am not implying that you have so attempted to, but you don't mean to say here at all that all of the negotiations were carried on in writing, do you?

A Oh, no.

Q There were many verbal ones, is that not right?

A There were many conversations. There wasn't any more trading or anything like that.

Q But there were numerous conversations after the first contact in an attempt to try to unitize? I believe your testimony was that Aztec made the contact seeking to unitize or communitize?

A I think that is right.

Q Mr. Thompson, the proceeds of the production from this well that is the subject of the application in Case 992 now on hearing, included proceeds for the portion of the production that normally would be attributable to the royalty owner owning the royalty under

the 120 acres that the New Mexico Federal unit companies owned the leasehold estate on, and that were being negotiated about in this case?

A Read that question again.

Q Let me rephrase it, we can save time. The proceeds that would represent the United States Government royalty from the production from this well, where are they at this time?

A We paid the royalty, the full 18 royalty to our royalty owners under that 40 acre tract. We only kept the 7-8 which is the working interest.

Q Do I understand your testimony is that 1-8 of the production from the 160 acres including the 120 under which Uncle Sam owned the royalty, you have paid all that royalty to the royalty owner under your little 40 acre tract? A That is right.

Q Now, Mr. Thompson, Mr. Watts awhile ago testified about some people in the Dallas office that might have the responsibility for filing forms, particularly Form C-104, C-110 and the accompanying plat or plats that are required to be filed in New Mexico with this Commission. Do you have anything to do with those filings?

A Not personally, no, sir.

Q Do you know who in the Dallas office might?

A Well, I would say now that with the exception of possibly some unit or something like that, that would be the responsibility of the man in the field.

Q Do you know whose responsibility that was June 18, 1954?

A You mean about this particular well?

Q Yes, sir.

A I would say that the responsibility for changing the thing

and filing the plat and all in that particular case would be Mr. Davis here.

Q You are talking now about the forms amending it from a 40 acre to 160 acre unit?

A That is right.

Q Do you know of your own personal knowledge whether they were ever filed?

A No, I do not.

MR. DAVIS: I object to this line of questioning. Maybe I goofed in not filing the forms. I don't believe it has any material effect on the application or the hearing. If we were in error in not filing new amended forms, then I am certainly sorry. It was my responsibility, I will take the full responsibility.

MR. WALKER: You mean if his line of questioning continues. He has already finished and he has answered.

MR. DIPPEL: That is all the questions I have and I so stated.

CHAIRMAN MACEY: Any more questions of Mr. Thompson?

By MR. KITTS:

Q To your own knowledge, when did Continental make a request or demand of a share of the proceeds of production?

A That was in September 29, 1955.

MR. KITTS: That is all.

CHAIRMAN MACEY: Does anyone else?

By MR. GURLEY:

Q Under this agreement, Mr. Thompson, had the agreement been consummated, where would the royalty interest have been paid over the 160 acres?

A You mean after the agreement had gone into effect?

Q First I will say would the agreement have been retroactive?

A No, sir. The agreement was to go into effect on the date that this Tubbs well was connected to a pipeline, which was to be dually completed, which it hasn't been yet.

Q You were to pay the royalty out of the 160 acres to the royalty owners under the 40?

A We had no discussion about the royalty at all. Perhaps, well, what we did, we just continued paying the same royalty owners that we had already been paying under the Drinkard royalty.

Q Is it your testimony that you then paid the royalty owners under your own 40 acres?

A That is right.

Q The allowable that you were taking for 160 acres?

A That is correct.

MR. GURLEY: That is all.

CHAIRMAN MACEY: Anybody else have a question of the witness?

MR. DIPPEL: Let me ask him about the last two exhibits.

By MR. DIPPEL:

Q Mr. Thompson, I hand you Astec's Exhibit No. 2 in Case 992, from which you read most of the last paragraph awhile ago.

A Yes.

Q Would you read all of the last paragraph, please?

A It says, "The communitization (pooling) agreement and related papers are now being circulated for signatures of the above-named companies. Since we anticipate that there will be some delay in completing the execution of all of the papers, it is requested that a full 160-acre unit gas allowable be set up for the Aztec Dauron No. 2-C Well retroactively to January 1, 1954, in accordance with, and pursuant to, Order No. R-372-A."

Q Thank you. Now, I hand you what has been marked Astec's

Exhibit No. 3 in Case 992, which is the letter signed on Continental stationery by Mr. S. V. McCollum dated June 24. You stated awhile ago that that letter was in substance the same as Astec's letter which is Exhibit No. 2?

A That is right.

Q Does this Continental letter which is Exhibit No. 3 also included as the final clause or phrase in accordance with and pursuant to Order No. R-372-A?

A It apparently has the same wording word for word, the whole paragraph.

Q Is it?

A Yes, sir.

Q Compare the two last paragraphs and tell me if they are word for word the same.

A "Since we anticipate there will be some delay in completing the execution of the communitization agreement and related papers, it is requested on behalf of Continental Oil Company, Stanolind Oil and Gas Company, The Atlantic Refining Company, and Standard Oil Company of Texas that a full 160-acre unit gas allowable be set up for the said Astec Dauron No. 2-C well, retroactive to January 1, 1954, in accordance with and pursuant to Order No. R-372-A."

MR. DIPPEL: That's all the questions I have.

CHAIRMAN MACEY: Anyone else have questions of the witness?
By MR. MACEY:

Q As I understand your testimony, you met with the representatives of the Continental Oil Company sometime in February of 1954?

A That is correct. February 19th.

Q Your company rather prepared documents and sent them to Continental Oil Company in March of the same year?

A March 9th.

Q Can you tell me whether there was any correspondence between the two companies between the time you sent the documents to Continental Oil Company and the time you received the communication from them in September of 1955?

A On April 29th there was a follow-up to Mr. E. M. Robinson which was in writing by Quilman Davis.

Q Pertaining to this proposed --

A (Interrupting) Pertaining to this very thing.

Q Can you tell me what prompted the letters which the Commission received in June of 1954 pertaining to the proposed communitization? I am referring to Astec's Exhibits 2 and 3. Do you have any knowledge of that?

A I don't exactly know. I am sure Quilman does.

Q In September of 1955 you received some notification from Continental Oil Company pertaining to the proposed deal?

A That is right.

Q Did that deal, was it in effect did, it brought Continental to share in the well the first day of January, 1954?

A That is what the effect would have been.

Q That wasn't satisfactory to your company?

A That is correct.

Q Do you have any further negotiations pertaining to the deal between that time and November of '55?

A Yes, sir, we met between that and November. We met two other times.

Q Without any success whatever? A Without any success.

MR. MACEY: That is all I have.

MR. WALKER: You still have some re-direct?

MR. DAVIS: Yes.

RE-DIRECT EXAMINATION

By MR. DAVIS:

Q In answer to Mr. Kitts' and I believe Mr. Gurley also brought it out awhile ago about a demand from Continental for any payment of gas, actually there has been no actual demand, the nature of it was an attempt commencing on or about September 29th to retrieve the thing retroactive to January 1, 1954?

A That is right. It was not a formal demand.

Q If we accepted the proposal that they came in with in 1955 here, is it true that we would have been conveying them an interest, three-fourths interest in the proceeds of the production plus for no cost other than out of the production, plus money from Aztec to Continental. In other words, what I am getting at, actually we would receive nothing from Continental. They would have received a three-fourths interest in the well plus money based upon their proposal, is that correct?

A That is right.

Q In answer to Mr. Gurley's question a few minutes ago about additional follow-ups after we had had our meeting on February 19, was it your impression that after the letter of Aztec on June 18, and the subsequent letter of Continental on June 24, was there any need for additional follow-ups? It was in their hands, was there any need to continue to follow it up?

MR. DIPPEL: I can't see how the conclusion of this witness could have anything to do whether this is a fact or not. It is just his best guess. We will be here this time next week if we are going to go into these things, whether there was a need for anything further or not.

CHAIRMAN MACEY: Would you read the question?

(Question read.)

CHAIRMAN MACEY: I think your question, Mr. Davis, definitely calls for an opinion. You may be able to restate it to satisfy Mr. Dippel and the Commission.

MR. DAVIS: Mr. Macey, all I was attempting to do was to clear up any implications that might have been arrived at from Mr. Gurley's question about continued follow-ups. In other words, I am simply trying to prove by this witness, or ask him whether there was any need for additional follow-ups after these letters were written.

MR. DIPPEL: I have no objection to his testifying whether he thought there was or not, because that doesn't amount to anything.

CHAIRMAN MACEY: Would you state the question so that the record will be clear on exactly what you are saying.

Q Mr. Thompson, do you feel there was any need for additional follow-ups, or there was any need for additional follow-ups?

MR. DIPPEL: I am going to object to the last part, as to whether this, or as to whether there was actually any need I do object, as to whether this witness thought there was any need.

MR. DAVIS: I thought I was asking Mr. Thompson if he thought there was any additional follow-ups.

MR. DIPPEL: He added, and whether there was any need or not.

MR. DAVIS: Well, I have changed it now.

CHAIRMAN MACEY: Is the question, do you feel there is any need for any additional follow-up? Did you feel that there was any?

A I would like to say this, that we did follow it up in September 22, in 1954 in writing to Mr. Robinson at Ft. Worth. After that we felt like that verbally we had done about all that

could be done, so we just dropped the matter.

Q And waited for some reaction from them?

A That is right.

Q In answer to Mr. Dippel's question a few minutes ago about conversations that were had after the February 1954 meeting, I believe you indicated that several of the conversations did relate to the forming of the unit. Let me ask you, did any of them go at all to the trade that we had made in February 19?

A No, sir.

Q Mr. Thompson, Mr. Dippel also raised the question of royalty payments to the United States, is it your opinion that these royalty payments of the United States are the problems of Continental and not of ours?

A I would think so, yes, sir.

Q Mr. Thompson, what would be the effect if there was a cut-back of allowable, first let me ask -- I need to get one matter straight. Please strike --

MR. DAVIS: Would Continental be willing to state, and I am not sure just what your position is on this, whether or not you are objecting to our application for a 40 acre non-standard unit, are you objecting to the formation of that unit?

MR. DIPPEL: We are not objecting to the formation of a 40 acre non-standard unit.

MR. DAVIS: Thank you.

MR. DIPPEL: May I finish?

MR. DAVIS: Oh, excuse me.

MR. DIPPEL: But we are objecting to the formation of that unit without the order authorizing the formation of that unit also requiring, to be perfectly blunt about it, the shutting in of the

~~well until all of this gas that has been illegally produced has been~~
made up.

MR. DAVIS: If the Commission please, we feel again that the question of the cutting back of this well would be a matter of a separate hearing. We would like to ask the ruling of the Commission. Whether or not we would object to any consideration for shutting in the well --

MR. DIPPEL: Mr. Chairman, may I state that Aztec has raised that very matter by the language of their application when they asked that it be made effective November 1, 1955. There is going to have to be some cutting back on the allowable and shutting in to make it up even to that. Apparently they are of the opinion it has been over-produced since that time.

MR. DAVIS: We are not of the opinion that it was over-produced at all. We do feel that we had due notice that Continental had made a decision to terminate the agreement, and that happened or started September 29, we continued these negotiations, or continued conferences with them and we finally were certain that they considered the unit no longer in effect and that prompted our application. And since November 1 was the closest date to a certain decision on our part that Continental had decided that the unit was no longer in effect, prompted us to make the application effective that date. We certainly didn't have in our mind at all that the well was over-produced.

MR. DIPPEL: I am sorry to be bobbing up and down so much, but since this question has been raised at this point, and if there is any possible chance of a doubt in the minds of the Commission to what the answer to Mr. Davis' question is, I would like to call the Commission's attention to certain things that we think make the

answer very clear and that is that this Commission, unless it is going to abandon its duties and obligations under the act creating the Commission and defining its duties and powers, it can't legally authorize this 40 acre unit and grant this well an allowable and let it produce from the effective date of the Commission's order saying that the application for this 40 acre unit is approved, allowing it to produce on a 40 acre allowable, if the application is granted as made effective November 1, 1955, without requiring this well to make up the production dating back to January 1, 1954, which it has been producing on the basis of 160 acre allowable, which 160 acre unit by their application and by their testimony, is shown to have never existed.

Therefore, that gas which would be attributable to the 120 acres owned by the New Mexico Federal Unit companies was illegally produced by Astec. The duty is clear, and I don't have to call the Commission's attention to the fact that the Commission's duty among others, is to protect the correlative rights of the owners of the properties involved. The only way this Commission can protect those correlative rights is to enter an order requiring that all of this illegal production be made up. I think it is so clear there just can't be any question about it. I have found nothing in the rules or regulations or statutes that says that any operator has the right to produce somebody else's gas, and the Commission will sanction it.

MR. CAMPBELL: I haven't popped up. May I make a statement on this motion?

CHAIRMAN MACEY: Yes, sir.

MR. CAMPBELL: It appears to me that this question here has gotten far beyond the application. The proposition of what the

arrangements may have been between Continental and Aztec, the possibility that Continental may have made a bad deal, the question of the distribution of the 160 acre allowable during this period of time that the Commission felt, and Aztec felt, even though Continental may not have, that there was 160 acre unit and that the pooling had been agreed to, is a question entirely apart from the Commission, and any accounting for that should be done in a separate proceeding and a separate action in the Courts possibly, for an accounting. The only question that appears to me is whether or not by Continental sending the Commission a letter June 24, 1954, stating that they had agreed to pool, the Commission was authorized and goodness knows it has done it in hundreds of cases, to grant that allowable until they knew otherwise. As soon as they knew otherwise after being advised by Aztec, they are being requested to reduce it to 40 acre allowable. What happens to the production, or what the agreement between the parties during that interim period is between the parties, it would be grossly unfair in this hearing for the Commission to consider in its order any attempt to reduce the allowable during that period. The Continental was really interested to have it retroactive from January 1st, 1954 on their deal, but they are not willing to have it be that way now.

MR. DIPPEL: I would like to call the Commission's attention again to the fact that Aztec's Exhibits 2 and 3 and Exhibit No. 3 is the Continental letter of June 24, 1954, that letter concludes by requesting 160 acre unit gas allowable be set for the said Aztec well, retroactive to January 1, 1954 in accordance with and pursuant to Order No. R-327-A. Order 327-A contains Rule 11, no, Rule 12, under the heading of Granting of Allowables, "No gas well shall be

given an allowable until Form C-104 and Form C-110 have been filed, together with a plat showing acreage attributed to said well, and the location of all wells on the lease". I submit there is no proof that they have ever filed these forms or that plat. Therefore, regardless of what the allowable schedules might show, as a matter of law they were never entitled to 160 acre allowable.

MR. DAVIS: If the Commission please, the section that Mr. Dippel just read, I believe is a Commission rule, and I think it is certainly within the jurisdiction of the Commission to waive the rules if they are so desirable. I don't think that is a matter of law.

MR. DIPPEL: I submit that the Commission knows it couldn't do that without a hearing I don't believe. If it did, it did not act in pursuance to Continental's letter of June 24, 1954, because the record will not reflect that the Commission ever notified Continental it was waiving this Rule 12 in Order R-372-A.

CHAIRMAN MAGEY: Does the rule specifically state that the allowable should be limited to the amount of acreage attributed to the well on the plat?

MR. DIPPEL: I don't believe it says that. Let me refer to it, it doesn't say that in so many words, but it does say that no allowable shall be granted until Form C-104, Form C-110 have been filed, together with the plat showing acreage attributed to said well, and the locations of all wells on the lease.

It is clear to me that it says that no allowable can be granted for any of the acreage until that form, those two forms and that plat is filed. I submit that any allowable that is carried on the schedule for this well, is, regardless of how it got there, is

an illegal allowable because it is not there pursuant to the Commission's rules. If it is an illegal allowable, all the gas they have produced, we didn't object to their having the 40 acre allowable on their 40 acres in this 160 acre purported to have been unit, but we submit that every cubic foot of gas produced beyond the allowable attributable to 40 acres has been illegally produced. We submit that it is our considered judgment that it is the duty and obligation of this Commission to require them to make up that illegal production.

CHAIRMAN MACEY: Let's take a short recess.

(Recess.)

MR. DIPPEL: I believe I can say very briefly my answer to Mr. Davis' question, if I may be permitted to do so at this time.

CHAIRMAN MACEY: Go ahead.

MR. DIPPEL: That is that we do not object to the granting of the application for the forming of an unorthodox 40 acre unit, but the application requests that it be made effective November 1, 1955, which is necessarily a date that puts into issue the matters that we have been talking about here as are the facts in the case. Therefore, our objection is to the effective date, and it is our contention that on the basis of the facts that have been developed here in this hearing today, the effective date of the granting of this application should be January 1, 1954.

CHAIRMAN MACEY: Mr. Davis, as I understand, you objected to the introduction of any testimony whatsoever pertaining to cutback in allowable, is that correct?

MR. DAVIS: That is right.

MR. KITTIS: You objected to the future introduction of any testimony on that?

MR. DAVIS: I asked Mr. Dippel what his position was. I am objecting to the introduction of any testimony with respect to the cutback of the allowable to January 1, 1954.

CHAIRMAN MACKEY: We feel, Mr. Davis, it is a pertinent part of the case and we will consider any testimony or evidence along those lines. Does that clarify the situation?

MR. DIPPEL: Yes, sir.

CHAIRMAN MACKEY: Do you have any further questions?

MR. DAVIS: I have two more questions to ask Mr. Thompson.

Q In the event this well should be cut back to a 40 acre allowable as of January 1, 1954, what effect would that have on the well?

A It would have the effect of forcing it to be shut in for several years.

Q If that happens, in your opinion would there be drainage by offset wells as to our entire 40 acre tract?

A Well, that would depend on the wells that are around it. I don't believe there are any wells real close to it right now. There is being new wells recompleted all the time.

Q During the period of time it is quite possible there could be new wells?

A Yes.

Q Is it possible there might be drainage from offset wells from the entire 160 that we have been talking about, the northeast quarter, by the existing wells, or an additional well?

A I think that certainly could happen, yes, sir.

MR. DAVIS: I believe that is all.

CHAIRMAN MACEY: Anyone else have a question of the witness?

RE-CROSS EXAMINATION

By MR. MANKIN:

Q You mentioned that there might be no offset, Mr. Thompson, isn't it true that the Shell, Livingston touches the corner of the 40 acres in question, which has the 160 acre unit?

A It might be. I am not familiar with all the Blinebry wells down there. In the recompletion the records get pretty confusing, at least they do in our office.

Q You mentioned several years, would it be six or seven years it would have to be shut in to make up the allowable?

A That is probably true.

MR. MANKIN: Mr. Dippel, I had one or two questions with regard to some questions that I believe you asked him.

Q Mr. Thompson, I understood you to state awhile ago in answer to a question that I think Mr. Macey asked you, he was asking you about the several conversations that were had by various people representing Artec and Continental. I believe you stated that none of those conversations went to the trade. Am I correct in my recollection?

A That is right.

Q You were referring to such of the conversations as you participated in, I take it?

A That is right.

Q You did not participate in all conversations, did you?

A No, sir.

Q You do not have a record that either you or someone under your direction made of the times and places when conversations took place, do you?

A No, sir.

MR. MANKIN: Thank you.

CHAIRMAN MACEY: Anyone else have a question of Mr. Thompson?

If nothing further the witness may be excused.

(Witness excused.)

CHAIRMAN MACEY: Do you have anything further, Mr. Davis?

MR. DAVIS: No more witnesses. We have a statement to make.

CHAIRMAN MACEY: Mr. Dippel.

MR. DIPPEL: We would like to call Mr. Elvis Utz. I believe he has not been sworn.

E L V I S U T Z

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. DIPPEL:

Q Will you state your name please?

A Elvis A. Utz.

Q By whom are you employed?

A New Mexico Oil Conservation Commission.

Q What is your official position with the Commission?

A Gas engineer.

MR. DIPPEL: I take it that his qualifications will be accepted?

CHAIRMAN MACEY: Yes, sir.

Q In your position with the Commission, Mr. Utz, are you familiar with the manner in which the Commission prepares and keeps its gas proration schedules and posts the gas production figures by months?

A Generally familiar, yes.

Q At my request have you examined those records?

A Yes, sir.

Q Either yesterday or today? A Yes, I have.

MR. DIPPEL: Will you identify this as Continental's Exhibit

No. 6?

(Marked Continental's Exhibit No. 6,
for identification.)

Q Mr. Uts, I hand you a document which the Reporter has marked for identification, Continental's Exhibit No. 6, Case 992. Have you, prior to your being called to the witness stand, examined that document?

A Yes, I have.

Q What is that?

A That is proration schedules from January 1st, 1954 through January 1st, 1956, for southeast New Mexico.

Q Has this document been certified to under the seal of the Oil Conservation Commission of the State of New Mexico by anyone?

A Yes, it has.

Q By whom?

A It has been certified to by W. B. Macey.

Q Under what date?

A 19th of January, 1956.

Q Is the seal of the Commission on there?

A Yes, it is.

Q Has it been sworn to? A Yes, it has.

Q When and before whom was it sworn to?

A It was sworn to on the 19th day of January, 1956, by Ida Rodriguez, Notary Public.

Q You do not mean that it was sworn to by Mr. Macey before Ida Rodriguez?

A That is correct.

Q In what county and state is she a Notary Public?

A The County of Santa Fe, State of New Mexico.

Q On page one of the certificate in this document, I refer

you to No. 1 which is there described as Order No. AG-1 and Schedule A attached thereto. Will you refer to that order and schedule please? What is Order No. AG-1?

A That is a gas proration order for the period of January 1st, 1954 through June 30, 1954.

Q The gas proration order of what authority? Is that the gas proration order for that period of the Oil Conservation Commission of the State of New Mexico? A Yes, that is correct.

Q What is Schedule A attached thereto?

A Schedule A is the nominations for January through June 1954 for the gas pools of southeast New Mexico.

Q I refer you to the instrument, or document, numerated as No. 2 in the certificate which is Order No. AG-1-A and the sheet of proration schedules attached thereto. What is Order No. AG-1-A of the Oil Conservation Commission of the State of New Mexico?

A That is the order of the Commission of the supplementary gas proration order for the month of January 1954.

MR. DAVIS: May I interrupt; if Mr. Dippel would explain briefly what he is attempting to prove by this document, perhaps we can stipulate and save a lot of time if he would care to do so.

MR. DIPPEL: I will be glad to state what I am trying to prove. I intend to offer this exhibit in evidence to show what the proration orders and the proration schedules and the allowable schedules of this Commission show with respect to the allowables granted this well, and the production figures charged to the well each month beginning with January 1954 down to the, and including the last month that the Commission has records of. I might add that also included in this exhibit are copies of the Commission

Order No. R-264-A, R-372-A, R-464, R-610, all of which orders in some manner or another pertain to Astec's Dauron Well No. 2, which is the subject of Astec's application in Case 992 now on hearing.

MR. DAVIS: Again I would like to enter my objection to the introduction of this type of testimony into the record with respect to the application that Astec has filed. However, if the Commission feels it should be made a part of the record, we are agreeable to stipulating that this document here is the record of the Commission and the record of its files, and certainly may be incorporated as a part of the record in this hearing, if I am overruled in my objection to the introduction of this and all similar exhibits without identification, not as an exhibit, but as identification as part of the records of the Commission.

MR. WALKER: Are you agreeable to that stipulation?

MR. DIPPEL: No, I am not. I am going to offer it in evidence for all purposes in this hearing. No limited purpose. I think it's admissible to show what the allowables were and what the well produced and what the Commission's orders were with respect to this well.

MR. CAMPBELL: We are not stating that we have an objection to the testimony which has already been stated. What we are saying is that for whatever purpose it is offered there is no reason to go through page by page and thus identify it as records of the Commission. We are willing to stipulate that the document with the certificate attached, represent the records of the Commission in connection with the allowables granted and the production from these wells during the period shown in the docket.

MR. WALKER: Couldn't you make your point instead of

~~identifying it as page by page and put it in your summary as to~~
your intent and what you want that particular exhibit to show?

MR. DIPPEL: May I ask Mr. Davis a question before I answer yours?

MR. WALKER: Surely.

MR. DIPPEL: Do you know at this time or not as to whether Aztec will object to this entire bound material being received in evidence by the Commission as Continental's Exhibit No. 6 in this case? When I offer it do you expect to object to it?

MR. DAVIS: May we have a minute to examine the certificate?

MR. DIPPEL: Yes, sir.

MR. DAVIS: The position of Aztec in this matter is that we do object to the introduction of this as an exhibit. We don't have any objection, however, to admitting that this is a record of the Commission, but we don't know exactly what its effects is, but if it is a part of the Commission record, it is a record only. But certainly in all these cases the Commission considers not only the record, but all its records. I don't know what we are gaining by putting this additional record of the Commission into the record of the case when it is a part of the Commission files.

MR. DIPPEL: If the Commission please, I am afraid we are fixing to get into some rather fine legal arguments here, which probably won't be entirely appropriate before this Commission. But I should like to assure the Commission that it is our firm opinion that it is very important to Continental Oil Company to offer this material in evidence as its Exhibit No. 6. I am anxious, not only willing, but anxious to do everything I can to help expedite this hearing and cut it as short as possible, but I cannot in the interest

of saving time sacrifice Continental Oil Company's rights in this matter. I must respectfully refuse to do so.

CHAIRMAN MACEY: Mr. Dippel, do I understand that you would like to go through the exhibit step by step and outline everything that is in that exhibit?

MR. DIPPEL: No, sir.

CHAIRMAN MACEY: Do I understand that you wish to offer the exhibit at this time in evidence?

MR. DIPPEL: After I am through interrogating the witness about it I intend to offer it. I do not believe it will be necessary to interrogate the witness about every separate order and every separate schedule in here. It is not my purpose at this moment to do so. The events may develop that might make it necessary for me to do that. I do not intend at this moment to take up every sheet of paper and ask him about it.

MR. GURLEY: His offer of agreeing to stipulate if his objection is overruled, is that agreeable to you to stipulate as to the contents of the subject matter there?

MR. DIPPEL: As I understand the stipulation that I am asked to consider agreeing to, I can't agree to it. I do not, however, want to be understood in declining to agree to it as contending that every sheet of paper in this file is not officially on file in the Commission. It is. I shall offer it to be received in evidence as such, but there are certain items of information in here that I think it is imperative that I interrogate this witness about so that it is called to the particular attention of this Commission at this time so that the Commission will have its memory refreshed about these records before it is called on to make a decision as to what it

should do with respect to this application. It may well be that somewhere down the road we may find it very important to have preserved this point right here.

MR. WALKER: Do you put this forth as an objection?

MR. DAVIS: We withdraw our agreement to stipulate.

MR. WALKER: We are right back where we started from.

(Questions resumed by Mr. Dippel)

Q Mr. Ute, let me ask you this question in the hopes that we can kind of short circuit this thing a little. Have you examined the material that has been identified here as Continental's Exhibit No. 6 sufficiently carefully so that you can state whether or not there is included within this certificate a copy of every proration order and every proration schedule, and every allowable schedule of this Commission for each month beginning with the month of January 1954 down to and including January 1956?

A I believe I could do so in about two or three minutes.

Q I stand corrected. Mr. Campbell corrected me. The certificate states, Mr. Macey certifies that, "I do further hereby certify, after diligent search of the records of said Oil Conservation Commission, that the above described are all of the orders, allowable schedules and proration schedules that have been adopted by the Oil Conservation Commission of the State of New Mexico affecting Aztec Oil and Gas Company's Dauron Well referred to in Case No. 992 on the January, 1956, docket of the said Commission located in the Blinbry Gas Pool in the NE/4 NE/4 of Section 10, Township 21 South, Range 37 East, N.M.P.M., Lea County, New Mexico, for the period from November 10, 1953, to January 18, 1956, both inclusive."

Have you examined this material to see whether it includes every

proration order, every proration schedule, and every allowable schedule of this Commission which deals with the allowables and production of this well for the period certified to?

A I have not examined it that closely, no.

Q I believe we were down to Order No. AG-1-B. Is that the Supplementary Gas Proration Order of this Commission for the month of January 1954?

A It is not, it is February.

Q I am sorry, February 1954. A Yes.

CHAIRMAN MACEY: Would it expedite the matters if Mr. Uts did examine it so that he could testify about it?

MR. DIPPEL: It might.

A I will be glad to do so.

CHAIRMAN MACEY: Why don't we take a few moments and do that?

MR. DIPPEL: Fine.

Q Mr. Uts, have you made the examination suggested by Mr. Macey? A Yes, I have.

Q Are you now prepared to answer the question as to whether or not it does contain these orders and schedules?

A Yes, I am, and it does.

Q Mr. Uts, I ask you to refer to the item numbered "7" there which is Order AG-1-F. Will you find that order in that material, please? A Yes.

Q Will you turn Order AG-1-F over on the reverse side and look at numbered paragraph three in parenthesis on that order? Did that paragraph read, "A proration schedule, duly prepared by the Commission and thereafter adopted for the month of June, 1954, is hereto attached and made a part hereof; it distributes and allocates the allowable production among the gas wells in the nine gas

pools listed above for the period stated, in accordance with the Rules and Regulations and Orders R-368-A through R-376-A, inclusive."?

A That is what it says.

Q Will you refer to that proration schedule attached to that order, please? Will you find Aztec Oil and Gas Company Dauron Well 2-A on there please?

A Yes, sir.

Q What does that schedule show as to whether or not that well had an April net allowable?

A It had a negative allowable of 52,149.

Q What does that mean? Those figures are minus 52,149?

A That is correct.

Q What does that indicate?

A It indicates the well is over-produced by that amount.

Q Does that schedule show a column headed "Over", and does it in that column opposite this well show a figure?

A Yes, it does. 68,050.

Q Is that the over-production of the well as of the time the schedule was prepared?

A Yes, it is.

Q Does that schedule have a column labeled "May Net Allowable"?

A Yes, it does.

Q What does it show the May net allowable?

A Negative figure of 67,488.

Q Does it mean that it is that much over-produced?

A That is what it means.

Q Does that schedule also have a column headed "Date First Allowable"?

A Yes, it does.

Q Does that column so headed have anything in it opposite this well No. 2-A?

A It has "S. I." in parentheses.

Q I will ask you to refer to the upper left-hand corner of that schedule and tell this Commission whether or not it explains what S. I. means. What does it state there?

A "S. I. means that the well is over produced beyond the allowed tolerance and must be shut in". That is a notation.

Q Will you refer to, it is Item 9 on the certificate, will you refer to Order AG-2-A? A Yes, sir.

Q What is that order?

A That is the Supplementary Gas Proration Order For the Month of July, 1954.

Q Does that order on the second page thereof have the same paragraph three in parentheses saying a proration schedule is attached and made a part of it, as the proceeding Order AG-1-F had that you just testified about? A Yes, it does.

Q Will you refer to that schedule attached to this Order AG-2-A and find Astec Oil and Gas Company's Dauren Well 2-A on there please? A Yes, sir.

Q What does the column headed "Over" on that schedule show with respect to this well?

A It shows an overage of 5,886.

Q What does it show in the column labeled "June Net Allowable" opposite the well?

A Negative allowable of 3,178.

Q What does it show opposite this well in the column labeled "Date First Allowable"? A It has S. I.

Q The same S. I. as appeared on the schedule attached to Order AG-1-F with the explanation in the upper left-hand corner

that this means that the well is over produced beyond the allowed tolerance and must be shut in"? A It does.

Q The next is Item 15, no, next is Item 24. Will you refer to Order AG-4-2?

A AG-4?

Q AG-4.

A Dash 2?

Q Yes, sir.

A Yes, sir.

Q Will you state whether or not that is the "Supplementary Gas Proration Order For the Month of August 1955"?

A It so states.

Q Will you refer to numbered paragraph three in parenthesis on the backside of that order and see if it has the same language as the other that you testified about to the effect there is a proration schedule which is made a part of the order?

A Yes, it has.

Q Will you refer to that attached schedule and find out this well, Aztec Dauren 2-A, 2-B, or 2-C, however it is shown? What does that schedule show in the column headed "Over", with respect to this well?

A It shows an overage of 37,393.

Q Will you refer to the column headed "July Net Allowable" and state what it shows?

A It shows a negative allowable of 26,332.

Q Will you refer to the column headed "Date First Allowable" and see whether or not it has anything in it opposite this well?

A It has the same S. I.

Q Meaning the same thing? A Correct.

Q Will you refer to the next Order AG-4-3. That is Item 25.

A Yes, sir.

Q Is that the "Supplementary Gas Proration Order For The Month of September, 1955"?

A It is.

Q Will you refer to numbered paragraph three in parenthesis on it and see if it reads the same as the several proceeding orders you have just testified about?

A Yes, it does.

Q The purport of that is that there is attached a proration schedule which is made a part of the order, is that right?

A That is correct.

Q Will you refer to that proration schedule that is so attached and find the Aztec Dauron No. 2 well?

A Yes, sir.

Q What does that schedule show in the column labeled "Over" opposite this Aztec well?

A It shows an over production of 40,921.

Q What does it show in the column labeled "August Net Allowable"?

A Negative allowable of 22,605.

Q What does it show in the column "Date First Allowable"?

A S. I. in parenthesis.

Q With the same note in the upper left-hand corner saying what that means?

A That is right.

Q Will you refer to the next Order AG-4-4?

A Yes, sir.

Q Is that the "Supplementary Gas Proration Order For the Month of October, 1955"?

A It is.

Q Will you refer to the reverse side and see if it has the same paragraph stating that it has a schedule which is attached and made a part of the order?

A It has.

Q Will you refer to it and find the Aztec Well in question?

A Yes, sir.

Q What does that schedule show opposite that Aztec well in the column labeled "Over"?

A 36,506 over production.

Q What does it show in the column labeled "September Allowable" opposite that well?

A Negative allowable of 19,241.

Q What does it show in the last column, column "Date First Allowable" opposite this well?

A S. I. in parenthesis.

Q It doesn't, however, have the explanation in the upper left-hand corner?

A No, it does not on this page.

Q Will you refer to Order AG-4-5, the next order?

A Yes, sir.

Q Is that the "Supplementary Gas Proration Order For The Month of November, 1955"?

A It is.

Q Will you refer to the reverse side and see if it has the same paragraph three in parenthesis? There is a proration schedule which is made a part of the order?

A It does.

Q Will you refer to that schedule and find the Aztec well in question? What does that schedule show opposite the Aztec well Duaron No. 2-A?

A 27,946 overage.

Q What does it show in the column labeled "October Net"?

A Negative of 8,680.

Q What does it show in the column "First Allowable" opposite the well?

A S. I. in parenthesis.

Q It does not have the explanation in the upper left-hand corner

~~Will you refer to the next Order AG 4, 6?~~

A Yes, sir.

Q Is that the "Supplementary Proration Order For The Month Of December, 1955"?

A It is.

Q Does it have the same paragraph No. 3 stating in effect that there is an attached proration schedule which is made a part of the order?

A Yes, it does.

Q Will you find that schedule attached and find on it the Aztec well in question?

A Yes, sir.

Q What does that schedule show opposite that well in the column labeled "Over"?

A 23,989 overage.

Q What does it show opposite the well labeled "November Net Allowable"?

A Negative of 1,798.

Q What does it show opposite that well, column "Date First Allowable"?

A S. I. in parenthesis.

Q But it doesn't have the explanation in the upper left-hand corner?

A No, sir.

Q Have you examined the monthly proration orders in this file, and those orders commence with the orders effective for the month of January 1954 and go down to and including January 1956, to see whether or not this Aztec Dauron Well No. 2, the subject of Aztec's application in Case 992, has ever during any one month or any several months produced no gas whatsoever, indicating that it has been shut in?

A No, it has not.

Q Have you made an examination for that purpose of the records of the Commission?

A Yes, I have.

Q Do you have before you a copy of what is generally referred

to as a ledger sheet?

A I do.

Q Would the information on that ledger show that if that were a fact that the well in any one or more months produced no gas whatsoever?

A The ledger sheet has been checked against the proration schedule and it would so show.

Q Do either the schedules or the ledger sheet reflect the fact that in any one or more months the well produced no gas, indicating it was shut in because of over production?

A It hasn't been shut in according to the production record.

Q While we are on the subject, have you examined the well file or any other files of the Commission, in which there would be on file reports, if any are required, indicating that the well has been shut in?

A I have examined the well file and the proration schedules, and I have found no, nothing that indicates that the well has been shut in, no.

Q So, could you then say in effect that as far as you are able to ascertain from the records of this Commission, the well has never been shut in because of over production?

A Yes, I can.

Q Mr. Uts, can you say whether it is a fact or not that the allowables shown on the schedules in the documents that have been marked for identification as Continental's Exhibit No. 6 now before you, that those allowables were based on a 160 acre unit or not? May I clarify my question? It could cause some confusion. Accepting the fact that there was an adjustment made at some time in 1954 to adjust those allowables schedules to show that there had been a change

in the allowables from a 40 acre to 160 acre or some other size unit basis, are the allowables that you have testified about awhile ago, and the production figures indicating over production, are they based on an allowable on 160 acre basis after adjustment?

A I believe the figures that I testified to here from January through June 1954 indicate a 40 acre allowable. But the adjustment was made in June to 160 acre allowable. I believe that would show on the July schedule.

Q Maybe I can clarify it by asking you this question --

A At any rate, the net status would show from January through December '55 the allowable on 160 acre basis.

Q That is what I was trying to ask you.

MR. KITTS: January when?

A January 1954 through December 1955.

Q So that referring once more to Order No. AG-4-2 in that file, which I believe is for the month of August --

A Dash four dash two?

Q Yes, sir.

A Yes, sir.

Q What month is that for?

A August '55.

Q Referring to the schedule attached to that order, the over production indicated on that schedule and the S. I. appearing in the last column over there, those figures are based upon an adjusted allowable all the way back to January 1, 1954 on a 160 acre basis, are they not? Those over production figures couldn't be with respect to a 40 acre unit could they?

A No, they reflect the supplemental allowable issued back to January '54.

Q And show the status of the production or over production in

allowables as of that month covered by that order on the 160 acre basis?

A That is correct.

Q From the month of August, 1955 as reflected in Order AG-4-2, from that month through the month of September, October, November and December, all of the allowable and production figures shown on the schedules attached to the orders for those months are based on 160 acre allowable, is that right?

A That is correct.

Q Is it or not a fact then that at all times from January 1, 1954 through December 1955, on 160 acre allowable basis, this well has been over produced at all times and still is as of the close of December 1955? Is that a fact or is it not? Let me withdraw the question. My associates tell me I am in error that it was not over produced the first four months of '54.

A That is right.

Q I will rephrase my question and ask you if on 160 acre basis, beginning with the month of May 1954, it has at all times and each month, been over produced?

A Yes, it has.

Q Just for the purpose of completing the identification of what's in this exhibit, Mr. Uts, I will ask you to refer to what appears in the certificate as Items 1 through 34, the Order R-264-A, what does Order 264-A purport to be or cover?

A That is an order of the Commission for the application of the Oil Conservation Commission upon its own motion for an order designating, naming, defining and extending the gas pools of Lea, Eddy and Chaves Counties, New Mexico.

Q The date of the order is November 10, 1953?

A That is right.

Q Refer to the next Order R-372-A.

A Yes.

Q Is that order also dated November 10, 1953?

A Yes, sir.

Q Will you tell the Commission what that order purports to be?

A It is an order of the Commission upon the application of the Oil Conservation Commission on its own motion for all operators and interested parties in Blinebry Gas Pool to show reason why the rules and regulations in Order R-356, with any essential amendments, should not be put into effect.

Q Will you refer to the next order, Order R-610, is that order dated April 11, 1955?

A Which order?

Q 610.

A The next one is 465.

Q R-464. Is that order dated May 27, 1954?

A Yes, it is.

Q It is an order in effect clarifying and revising the vertical limits of the Tubb and Blinebry Pools and requiring -- state what it purports to be?

A Yes, it is an order of the Commission upon the application of the Oil Conservation Commission of New Mexico upon its own motion for an order, one, outlining the procedure to be followed in the stage of separation of gas and distillate in the Tubb and Blinebry Gas Pools; outlining the metering requirements of gas produced from the Tubb and Blinebry Gas Pools; and three, clarifying and revising the vertical limits of the Tubb and Blinebry Gas Pools.

Q Will you refer to the next Order R-610?

A Yes, sir.

Q Bearing date of April 11, 1955?

A That is correct.

Q What does that order purport to cover?

A It is an order of the Commission upon the application of the Oil Conservation Commission on its own motion for an order amending, revising, and abrogating the existing rules of the Oil Conservation Commission and/or promulgating rules and regulations relating to gas pool delineation, gas proration and other related matters affecting or concerning the Blinberry Gas Pool, Lea County, New Mexico.

MR. DIPPEL: Continental offers what has been identified by the Reporter as Continental's Exhibit No. 6 in Case 992, in evidence.

MR. CAMPBELL: May I see it please? If the Commission please, we object to the introduction of Continental Oil Company's Exhibit No. 6 insofar as it is offered for the purpose of questioning the validity of the Commission's prior allowable orders, or for the purpose of establishing any equities as between the parties. We have no objection to it insofar as it reflects the net position of Aztec Oil and Gas Company as to their well involved in this case as of November 1, 1955, which is the date on which we seek to have the 40 acre unit established. Other than that we consider it to be immaterial to this case because the Commission order establishing 160 acre allowable and granting it through all these months is not a subject of the call of this hearing.

We recognize that if we are ever produced as on the date that we seek to have this 40 acre unit established, the Commission may and is obliged, I think, to charge us with our net over production commencing as of that date, but that is an entirely different matter than invalidating the 160 acre allowables all during these previous months back to January 1, 1954, if it is offered for the purpose of

accomplishing that. We do not object to it as to the net position as of November 1, 1955.

CHAIRMAN MACEY: Your objection is overruled and the Commission will accept the exhibit. Do you have anything further?

Q Mr. Uts, I hand you what has been identified by the Reporter as Aztec's Exhibit No. 2, Case 992, which is the letter on Aztec's stationery dated June 18, 1954, addressed to the Commission, requesting the 160 acre allowable retroactive to January 1, 1954, and concluding with the statement that the request is made that this be done "in accordance with, and pursuant to Order No. R-372-A". I also hand you what has been identified as Aztec's Exhibit No. 3 in Case 992 which is the letter of June 24, 1954 from Continental to the Commission likewise requesting the 160 acre allowable retroactive to January 1, 1954 and also concluding with the statement that the request be granted "in accordance with and pursuant to Order No. R-372-A". Mr. Uts, I now ask you to refer to Continental's Exhibit No. 6 in Case 992 and to Order No. R-372-A, and I ask you to refer to Rule 12 of that order reading as follows:

"Rule 12. No gas well shall be given an allowable until Form C-104 and Form C-110 have been filed together with a plat showing acreage attributed to said well and the locations of all wells on the lease".

Now, Mr. Uts, I wish to ask you, have you examined the files of the Oil Conservation Commission of the State of New Mexico for the purpose of trying to find a Form C-104 and a Form C-110 and a plat attached to either or both of them showing the information called for in that Rule 12 of Order R-372-A which may have been filed pursuant to, or subsequent to, or in connection with the letters

that I have just shown you which are identified as Aztec's Exhibits 2 and 3, requesting the granting of 160 acre allowable in accordance with said Order R-372-A? Have you made such an examination of the records?

MR. CAMPBELL: If the Commission please.

CHAIRMAN MACEY: Have you made such an examination of the record?

A I would like to look at the well file again insofar as the 110 and 104 is concerned.

MR. DIPPEL: Have you got these, Mr. Macey?

CHAIRMAN MACEY: I might, say these are exhibits.

A The plat in the well file shows 40 acres to be dedicated to the well.

Q Which is the plat?

A That is Exhibit 2, Continental's Exhibit 2. There is no plat for 160 acres.

Q What is the date of Continental's Exhibit 2?

A It's November 30, 1953.

Q That is not a plat that could possibly have been filed by anybody in connection with or shortly prior to, or subsequent immediately, or immediately subsequent to the letters identified as Continental's Exhibits 2 and 3 which are the applications of Aztec and Continental for 160 acre allowable, and which applications were filed sometime in June, 1954, could it, having been filed in '53?

A I wouldn't think so.

Q I refer you to Continental Exhibits 3, 4, and 5 just handed to you, and ask you to state whether or not they show the date when they were received in the Commission offices?

A They were all received March the 3rd, 1953.

Q And March 3rd, 1953 was prior to June 1954, wasn't it?

A Yes, I believe it was.

Q Have you examined the well file for the purpose of determining whether or not a Form C-104, a Form C-110, and a plat or plats attached to either or both of them showing the information called for by Rule 12 of Order R-372-A for the purpose of determining whether such plat or plats and forms have been filed by Aztec in connection were immediately prior to or shortly subsequent to the June 1954 letters asking for 160 acre allowable retroactive to January 1, 1954?

A Yes, I have. I find none.

MR. CAMPBELL: I want to make a record on this question. Just a minute. I want to make a record on this question. We want to object to that question on several grounds for record purposes. In the first place the witness has not testified that there is any requirement in Order R-372-A that an amended plat is needed to be filed if unit has expanded or contracted. In the second place it is our position in connection with all this testimony in connection with the allowable order in the past that they are objectionable for two reasons, one of which I have stated. One of them is that they are immaterial to this case and that they are not within the call of this hearing. The other one I want to raise is that they are collateral attacks upon allowable orders of the Commission which will be duly issued, to which no objection has been taken by Continental Oil Company.

We want the record to show that we object to this testimony for that reason, and particularly we object to this question in that

the witness has not testified that amended plats are required. He has testified that the forms 110 and 104 were filed.

MR. DIPPEL: I will withdraw the question.

Q Have you examined the records of the Commission for the purpose of ascertaining whether Aztec Oil and Gas Company or somebody from Southern Union Gas Company acting for Aztec, has, at any time since January 1, 1954 to this date, filed a Form C-104, a Form C-110 with a plat or plats attached to either one, which plat or plats would show the information that is referred to, whether required or not, but referred in Rule 12 of Order R-372-A? Have you made such an examination to see if those filings have been made?

A Yes, I have.

Q Have you found any such Form C-104 or C-110 or plat or plats on file showing that 160 acres have been assigned to this Dauron No. 2 well by Aztec?

A They have not been filed insofar as our records are concerned in this office, the Santa Fe office, or the Hobbs office.

MR. DIPPEL: I believe that's all.

CHAIRMAN MACEY: Any further questions?

MR. CAMPBELL: The Commission rule on the record does show that I have objected to any testimony with reference to the validity of the allowable orders referred to during the period from January 1, 1954 to November 1, 1955, and to any testimony with reference to over production or under production during that period except as to the net result on November 1, 1955. Those are my objections. I want to be certain that the record shows these and that they have been apparently overruled by the Commission.

CHAIRMAN MACEY: Let the record show that We overruled

the objection, Mr. Campbell. Do you have any questions, Mr. Davis?

CROSS EXAMINATION

By MR. DAVIS:

Q Referring to your ledger sheet there on production of the Dauren Well, I am talking about the monthly production figures now. Do you show a constant production from that well month by month from January 1, 1954 through, what is this period here, is that through November or October? A This is through November.

Q Do you show a constant monthly production figure on that report? A No, sir.

Q Well, then, would you point out some of the months where the production has been apparently curtailed?

A Any months --

Q Well, starting with a larger one. You started out with a larger production. Then where, from the 35,853 M.C.F. in January, do you have some months on there where that has been curtailed to, oh, two-thirds or half or below?

A Yes, the month of May was only 18,313 and the production progressively became smaller down to October 1955 in which it was 8,705 again in November. I am sorry, I made an error, in September 1955 it was 8,705, went up in October to 15,000, and in November to 16,000.

Q Now, Mr. Utz, based upon these production figures, is it not possible that well could have been shut in for a portion of the month although it certainly was not shut in for the entire month?

A It is quite possible.

Q For as, say as many as fifteen days or a portion of the month it was shut in?

A The production was curtailed, whether it was shut in or by virtue of high line pressure--

MR. DAVIS: That is all.

A I don't know.

CHAIRMAN MACEY: Anyone else?

MR. DIPPEL: I have one with respect to what Mr. Davis inquired about.

RE-DIRECT EXAMINATION

By MR. DIPPEL:

Q The same months that Mr. Davis inquired of you about, just now, what does the ledger show as to constancy of the allowables for those months? Was there any reduction in allowables?

A Yes.

Q Could that possibly have influenced the reduction in production?

A Well, I am looking at the month of May in which the allowable was a little over nine thousand and the well produced eighteen thousand.

Q So it was actually over produced although maybe curtailed, is that right?

A That is correct.

Q Is that same thing true with respect to the other months he asked you about, without going into details month by month, substantially so?

A No, sir. In the month of September the allowable was 17,265, the production was only 8,705.

Q Is there any other month in the same period that he inquired about where that same relationship would be true, smaller production in allowable?

A Not in the same ratio. The production is smaller in October

than the allowable, and again in November.

Q He didn't ask you about these months, did he?

A Well, I made a statement as to the production in November.

Q What about December then?

A We don't have a production figure for December.

Q You are testifying about the months in the year 1955, is that right?

A Yes, sir.

Q Their application for 40 acre allowable was filed during the month of November 1955, wasn't it?

A Yes, sir.

MR. DIPPEL: Thank you.

CHAIRMAN MACEY: Anyone else have a question of the witness?

By MR. MACEY:

Q I am going to hand you, Mr. Utz, Continental Exhibit No. 6 and ask you to turn to Item No. 32 which is identified as Order No. R-372-A.

A Yes, sir.

Q On page 7 of that order, the very last page of the order.

A Yes, sir.

Q Will you read the content of that paragraph and tell me what the date of the gas prorationing in the Blinebry Pool started?

A Which paragraph?

Q The first paragraph.

A First paragraph. You want me to read it into the record?

Q No, I just want you to read it and tell me your idea of that paragraph. When did gas prorationing start in the Blinebry Gas Pool?

A January 1st, 1954.

Q All right. On January 1st, 1954, gas proration schedule for the Blinebry Gas Pool is the well in question, the Dauron No. 2 well

operated by Aztec, is it on that schedule with an allowable?

A Yes, sir, it is.

Q I want you to read Rule 12 of the Commission Order R-372-A. You might as well read the rule in full.

A Rule 12?

Q Yes.

A "No gas well shall be given an allowable until Form C-104 and Form C-110 have been filed together with a plat showing acreage attributed to said well and the locations of all wells on the lease."

Q Will you tell me what date Order R-372 was signed by the Commission?

A November 10th, 1953.

Q Will you examine the well file and tell me whether or not the well file together with the documents that have been removed from the well file for exhibit purposes, whether or not there was a C-104, a C-110, and a gas well plat on file with the Commission's office prior to January 1st, 1954 covering the Blinebry Gas zone on the well in question?

A There is a well plat showing 40 acres on the Blinebry zone, a gas well plat, the C-110 dated February 1953; did you say prior to 1954?

Q Yes, sir.

A States that it is a dually completed well to produce oil, being produced from the Drinkard zone and distillate from the Blinebry zone. Yes, the C-110 covers the Blinebry zone on this particular C-110. There is another C-110 dated February 1953 which states that the authorized transporter is Southern Union Gas Company, the dually completed well, oil from the Drinkard and gas from the Blinebry zone. The Form C-104 which is dated March the 3rd, 1953 covers

gas being produced from the Blinebry zone and oil from the Drinkard zone. It does cover the Blinebry zone.

Q So that on the first day of gas prorationing, Aztec had filed all the documents required under Rule 12, is that right?

A That is correct, for 40 acre allowable.

Q Now, referring back to the proration schedule, what was the size of the proration unit that was assigned the well on the first proration schedule that was issued? A .2540 acres.

CHAIRMAN MACEY: Anyone else? If nothing further, the witness may be excused.

(Witness excused.)

CHAIRMAN MACEY: Do you have anything further?

MR. DIPPEL: Nothing further.

CHAIRMAN MACEY: I presume you have statements you wish to make. Mr. Davis.

MR. DAVIS: I presume we get to close.

MR. DIPPEL: If the Commission please, I should like to call the Commission's attention to the 1949 act of the legislature which is entitled Chapter 168 and which is found in the booklet put out by the Commission here and revised as of January 1, 1953 which sets out the statutes of the State of New Mexico dealing with the powers and duties of the Commission with respect to prorationing matters, and regulation of oil and gas production in the State of New Mexico.

I should like to refer to Section 9 of that act appearing on page 84 of that booklet which says that the "Commission is hereby empowered and it is its duty to prevent the waste prohibited by this Act, and to protect correlative rights as in this Act provided. To that end, the Commission is empowered to make and enforce rules,

regulations and orders, and to do whatever may be reasonably necessary to carry out the purposes of this Act whether or not indicated or specified in any section hereof". Now, the title of the Act which certainly is indicative of its purposes: "Relating to the Conservation of oil and gas, and the protection of correlative rights therein; amending Chapter 72 of the Laws of 1935, as heretofore amended; defining and providing for the prevention of waste of oil and gas; creating an Oil Conservation Commission and prescribing its powers and duties; defining common purchasers and requiring them to purchase oil and gas ratably and without discrimination; providing penalties; creating remedies, including hearing and rehearing before the Commission and Court Review De Novo; and levying a tax on oil and gas for enforcement of this Act."

As stated, one of the powers and duties is the protection of correlative rights. Now, correlative rights are several times defined. They are defined in this statute and they are also defined in the Commission's rules, and the Commission has defined them as "Correlative rights" means the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practically determined, and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for such purpose to use his just and equitable share of the reservoir energy."

Next I should like to refer the Commission to Section 4 of the

Act of 1949 which says that "The Commission shall have, and it is hereby given, jurisdiction and authority over all matters relating to the conservation of oil and gas in this State, and of the enforcement of all the provisions of this Act and of any other law of this State relating to the conservation of oil or gas. It shall have jurisdiction and control of and over all persons or things necessary or proper to enforce effectively the provisions of this Act or of any other law of this State relating to the conservation of oil or gas".

I should like next to refer you to Section 13A on page 87, "The rules, regulations or orders of the Commission shall, so far as it is practicable to do so, afford to the owner of each property in a pool the opportunity to produce his just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practically determined, and so far as such can be practicably obtained without waste, substantially in the proportion that the quantity of the recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas or both in the pool, and for this purpose to use his just and equitable share of the reservoir energy". Almost the same language as the definition of correlative right.

I should like to next refer you to Section 13-F on page 88. Section 13-F of the Act of 1949, "After the effective date of any rule, regulation or order fixing the allowable production, no person shall produce more than the allowable production applicable to him, his wells, leases or properties determined as in this act provided, and the allowable production shall be produced in accordance with the applicable rules, regulations or orders."

There is another place in there where a definition of correlative rights is given, but I shall not bore the Commission with referring you to that. I should like to refer you to Order R-372-A which was the gas prorationing order in effect with respect to the

Blinebry Gas Pool on the date, or on the dates that Aztec and Continental in June of 1954 wrote to the Commission and requested that a 160 acre allowable be granted and that it be made retroactive to January 1, 1954 in accordance with the terms and provisions of this Order R-372-A. Rule 12 has been read here several times. The rule says that no gas well shall be given an allowable until these forms and plats are filed. Continental makes no contention that Aztec didn't file forms covering a 40 acre unit and plats showing the 40 acre units and showing the wells on that 40 acres that we don't contend that Aztec did not file these at the time that it was attributing 40 acres to this well. And we make no issue to the effect that they didn't have these forms and plats on file for all practical purposes on the effective date of gas prorationing in the Blinebry Gas Pool, to wit, January 1, 1954.

Our contention simply stated is that if this rule means anything, it has got to mean that there had to be filed the Form C-104 and the Form C-110 and the plat showing the acreage attributed to the well and the wells on the acreage before there can be 160 acre allowable granted to that well. If it doesn't mean that, then the way to fraud is wide open and I do not believe this Commission is going to lend itself to fraudulent practices being perpetrated upon it.

I am not insinuating that Aztec is perpetrating or intending to perpetrate any fraud. I am simply saying that if the Commission is going to interpret this Rule 12 of the Order R-372-A to mean that if Aztec in this case for, let me withdraw Aztec and say operator A is a fraudulent operator, let's make it a real rascal. I do not imply we have one here. I want to make that clear. I have

to exaggerate a little to show what I am really trying to say to you. If it will please you any more, let's say I am the rascal. I have a well on a 40 acre tract, a regular Governmental subdivision 40 acre tract. I file a Form C-104, a Form C-110 and the necessary plats called for by this rule, and I get a 40 acre allowable. Later on with nothing but fraud in mind I came to Mr. Kellahin who owns 120 acres around me, being the other three - forty acres in that quarter section, that my 40 acres is in, and I started talking to him about unitization and I get him to help me induce the Commission to grant 160 acre allowable and they did grant it. I start producing it and I never file these forms and I never intend to sign a contract with him and I didn't sign a contract with him, and finally he gives up and he comes in here and says "that fellow is a rascal". "He has defrauded me, he has taken my gas, and he won't pay me for it". The Commission says, "We are sorry, we will cut him back to 40 acre allowable effective as of a certain date reasonably near the date of the cutting back."

I have taken his gas. I have complied with the regulations of the Commission which have invited me to defraud him. I can't believe that the Commission would aid me in that kind of a thing. If the Commission interprets this rule to mean that in this case because Aztec has filed a 40 acre plat and appropriate Form C-104 and C-110 showing a 40 acre plat and getting a 40 acre allowable, and then they are not required to file the plats, the revised, if you please, forms and plats to show the correct acreage attributable thereto and showing all of the wells on the correct acreage that they are now trying to attribute to it; if the Commission holds that, then I suggest that this rule is a farce and a nullity and a fraud

upon the operators in the business. I don't believe that the Commission has any such intention, and I don't believe that the Commission intends to interpret that rule that way. It is extremely unfortunate, I am quite sure that the gentlemen with Aztec are embarrassed about the situation even as Continental is embarrassed about it. I make no bones about it, we are tremendously embarrassed that we find ourselves in this position. I am embarrassed, but I must be honest and tell you that we have been a little derelict in this thing. We shouldn't have done it; by the same token I think Aztec has been a little derelict too.

I would suggest to the Commission that Aztec, being the operator, probably owed a little greater duty than did Continental and Stanolind and Atlantic and Standard of Texas in calling the Commission's attention to the fact that this communitization has not been consummated for whatever reason it failed of consummation, assuming for the moment that we are entirely to blame for the failure of consummation of the communitization. Nevertheless, there was a greater duty on them as operator and as the person charged with the responsibility of filing the necessary forms to so inform the Commission, than there was a duty on us.

Now, the testimony here shows that Aztec made the approach and suggested that we try to get together. There is no testimony here, and I doubt that anybody can bring any because no records were kept of the conversations, no one thought that this thing would ever wend its weary way down here on this day before this Commission in this sort of a messy situation. We all thought it would be worked out. Well, it wasn't worked out. But here we are today and if this Commission grants the application of Aztec for an unorthodox 40 acre

unit and makes it effective November 1, 1955, and allows them a 40 acre allowable effective November 1, 1955 without regard to the production that the well has been capable of producing and which it has produced the quantities of production since January 1, 1954 on not a 40 acre but 160 acre allowable basis, I submit to this Commission that Continental and the other New Mexico Federal Unit companies will have their gas taken by Aztec in violation of the obligation. The duty and responsibility of this Commission, if you please, as I see it is to protect the correlative rights of those New Mexico Federal Unit companies.

Now, the legislature has enjoined this Commission to protect those correlative rights. There is an unhappy situation here. How can this Commission discharge its responsibility imposed upon it by the legislature and protect the correlative rights except that it grant the 40 acre unit retroactive effective as of January 1, 1954, which means as sad as it is, that they will have to shut it in until all of this illegal production, if you please, is made up. I say illegal production for the simple reason that unless Rule 12 of Order R-372-A means what I think it means and what I believe this Commission believes it means, that unless those forms and plats are filed an allowable cannot be legally granted, and I believe the Commission will so hold that that is the only way that the Commission can protect the correlative rights of the parties who are members of the New Mexico Federal Unit.

Numerous attempts have been made to consummate this communitization. The Commission has heard here from Mr. Thompson today that several contacts were made. I am not trying to misinterpret his testimony. It is to the effect that they understood that the thing

was going to be done on the basis that, let me not misquote him. Mr. Thompson testified that the agreement was to go into effect when the Tubb well was completed. If the agreement was to go into effect when the Tubb well was completed, that means that their understanding was that effective as of that time these various arrangements about who was going to get what share of the production would be effective as of that time, not being effective retroactive to January 1, 1954. It occurs to me that this is a matter which has resulted from a situation that confronted this Commission at the time gas prorationing was instituted in southeast New Mexico, and which condition the Commission met in a fair and honest attempt to do what was right in establishing gas prorationing and enforcing it, and at the same time assisting the operators all possible in operating their wells and getting their production out of them in a reasonable manner and so that they could comply with their various contract commitments for the sale of that gas. And certainly I do not want Continental to be considered in the attitude here now as trying to criticize the Commission for doing that. On the contrary, I think it is evidence of the fact that we were trying to assist Aztec and the Commission in doing that very thing when we wrote our letter of June, I believe 24, 1954 and suggested that this thing be made a 160 acre allowable retroactive to January 1, 1954.

Now, the negotiations broke down, the testimony that was offered by Aztec would seem to imply that they broke down because we welched on the deal. The words were used, were that we tried to retrade the thing. Well, we never had a deal. I don't believe that this Commission believes, and I doubt that the gentlemen representing Aztec honestly believe that the representatives of Continental Oil

Company who were in that conference that they have testified to, were so stupid, if you please, that Continental's representative thought that Continental could give away their other New Mexico Federal Unit member companies' interest in the proceeds of this gas production on 160 acre allowable, to say nothing of giving away the United States Government's portion of the royalty attributable to that 160 acre production. If we had been that stupid, we couldn't have done it and they should have known it, and they should have told us how stupid we were, if we were so.

I am going to cut my argument much shorter than I thought it was going to be. The Commission has indicated that they would like it to be cut short. I am not going to burden the Commission with a lot of things here that probably aren't going to have a great deal of affect on what the Commission is thinking about this matter. But I, at the risk of boring you with repetition, I feel that I must in all honesty to myself, to the Commission, to my company, and to the other companies that my company as operator of the New Mexico Federal Unit owes an obligation to, again call your attention to the fact that it is our sincere opinion that this Commission not only has jurisdiction of this matter, not only has the power to do it, but I submit respectfully to you that you have the duty to do it. That is to grant their application for a 40 acre unorthodox unit, but not effective as of November 1, 1955, but effective as of January 1, 1954 because the facts produced in evidence by Aztec, the applicants here, in addition to their sworn application which is the subject of this hearing today, showed there never was a communitization resulting in the formation of a 160 acre unit and that in itself proves that they were not entitled to the allowable that we helped

them get. We are guilty along with them in having the Commission unfortunately to grant 160 acre allowable, but we are parties to it. It nevertheless is an illegal allowable and it violates our correlative rights, and I submit those correlative rights must be protected by this Commission. Thank you.

MR. KITTS: I spent Tuesday afternoon in the Supreme Court and they asked a lot of questions of me. I would like to ask about three of you. I think you made it clear that you feel that there never was a 160 acre unit formed, that much is clear in evidence?

MR. DIPPEL: Yes, it is my contention that their application so states.

MR. KITTS: Therefore, any 160 acre allowable is illegal or unauthorized?

MR. DIPPEL: Correct.

MR. KITTS: Let's say the facts have been that somewhere along in the fall of 1954, the communitization agreement, or a communitization agreement had been duly entered into and executed a written agreement. Would that have formed a 160 acre unit?

MR. DIPPEL: Yes, sir.

MR. KITTS: As of the date of the instrument?

MR. DIPPEL: Or as of the date that the instrument in its body provided the date.

MR. KITTS: Which --

MR. DIPPEL: It would be effective as of the date that the language of the instrument says it is effective. If there is nothing in the body of the instrument, and I just didn't believe that Aztec would enter into an agreement like that, I am pretty sure we wouldn't, that didn't provide for an effective date. Whatever the language

of the instrument said as to its effective date.

MR. KITTS: It wouldn't necessarily, according to your argument, and correct me if I misunderstand you, it wouldn't necessarily be back in June of 1954 or January of 1954?

MR. DIPPEL: It wouldn't necessarily have been so, but if you will permit me, I will suggest to you that it is my firm conviction that if at the time you suggest here we had entered into such an agreement, we would have had it made effective January 1, 1954 because I can state to you without any qualification whatsoever, that Continental Oil Company would never have entered into a communitization that wasn't effective January 1, 1954.

MR. KITTS: Would that be the case irrespective of the provisions of R-372-A that you spoke of, the plat?

MR. DIPPEL: Yes, sir. It would have been so except that I think that there we would have been in technical violation of this rule. But I am not divulging any secrets or rattling any skeletons that when I say everybody was doing it and we would have done it too. That is the way it should have been done. I make no criticism of what the Commission's practice was at that time.

MR. KITTS: But any communitization agreement you entered into, say you had entered into one in the fall of '54 for instance, would have had a retroactive effect?

MR. DIPPEL: Yes, sir.

MR. KITTS: That is all.

MR. CAMPBELL: If the Commission please, I would like to first state that I am extremely pleased at the frequent references to correlative rights in this hearing. I think I probably used that term as much as anybody that has ever appeared before this

Commission. It is one of the first times I have ever heard Continental refer to it. I do want to say that my construction of it has never extended to the proposition that this Commission in its orders is under any obligation to guarantee any operator against his own agreements. The facts of this situation are that Continental voluntarily entered into negotiations for the establishment for a pooling agreement. Two months after the proposed agreement which had this provision in it that Aztec was to get 100 percent of the production until the Tubb well was drilled, two months after that agreement was in their hands, they wrote the Commission a letter on June 28, 1954 and asked the Commission, and said to the Commission "our interests are pooled and we want you to grant an allowable retroactive to January 1st, 1954". The Commission complied with their request and the request of Aztec. How were their correlative rights abused, the allowable then was started at 160 and it has been produced at 160 and Aztec has admittedly taken all the production of the 120 acre tract which was now and will in the Court House be that that was their agreement with Continental, and Continental had the authority to enter into it as far as their partners were concerned. If Continental's rights had been abused, it is their own act if they did it. They have their remedy if they want to go to Court to account with Aztec for the 160 acre allowable. If Aztec doesn't have an agreement such as they think they did, then they certainly owe 120 acres of the allowable back to these people and these people in any event owe the Government. That is between them and the Government. If this Commission enters the order they request, everybody's correlative rights are going to be abused, the well is going to be shut in for seven years in order to prevent drainage of

Governmental royalty, so how are correlative rights to be protected by the entry of their order, and how have any correlative rights been abused by any acts of the Commission?

Any correlative rights that have been hurt, they had the remedy in Court on the contract with Aztec, that Aztec says was entered into, and they can sue Aztec in the Court House, but the remedy isn't in that form for that kind of proceeding.

Just a moment on this question of filing of plats. The requirement for the filing of a plat in my judgment is for the benefit of the Oil Conservation Commission and its records. How can these people say that a pool wasn't effective because the plat wasn't filed, whether they wrote the Commission a letter themselves and said that the pooling had been accomplished, they are now when it was to their advantage to get the acreage attributed to get this agreement under way, it was a great thing to take some of the production from the Aztec well, or at least start the thing on the road to where they could get the production. When that didn't work out they now say that because a plat was not filed, a pooling area was not established. I think that is for the benefit of the Commission. This can't show they were harmed because they had full advantage. If the Commission sees fit, even if it were required by the order, I think the Commission under those circumstances is perfectly right in waiving it if they should see fit.

As a matter of fact, as I recall, most of those orders they are actually for the benefit of the operator. If the operator had a tract on January 1st of the year the order went into effect and he filed his plat of the proration estimate sometime before July 1st, they could retroactively grant him the allowable, if he could advise the

Commission that the rest of the acreage is in the unit. I don't see where the people can say if you grant a non-standard unit that you are going to hurt their correlative rights. I might suggest to them that the statutes contain provisions for compulsory pooling if they thing their gas is being drained, and they can't enter into a voluntary agreement with Aztec to provide for the cost of the well and so forth. The statutes contain provisions which give them protection for their correlative rights in that regard. The Court House is the place to determine the contractual rights under this agreement. The 160 acre allowable was a valid allowable granted by this Commission. It was an allowable granted in order after order over a period of fifteen months from June of 1954 until September of 1955 when Continental advised Aztec that they did not consider that the area had been pooled and those orders we believe were valid orders. What Aztec did with that production depends upon the contract that was entered into, the agreement between Aztec and Continental, and Continental can certainly get their money if they can prove that the contract was other than what Aztec says it was.

It doesn't behoove this Commission to get into that controversy because if they do, they are invalidating their own allowable order which was entered into just like hundreds of others have been entered into. If you check the records you will find instances where Continental had non-productive acreage, was anxious to get an allowable granted at the earliest possible moment on a well in somebody else's acreage within the unit. We urge this Commission to enter its order as of November 1st, 1955, charge us with any over production as of that date on our 40 acre tract. If we have disputes with Continental, and we obviously do, about the disposition of the allowable in the

past under proper allowable orders, there are places to argue it out and this is not the place for it.

MR. KITTS: Is it your view that 160 acre proration unit was formed?

MR. CAMPBELL: It is my view this allowable for 160 acres was validly granted by this Commission. As to whether pooling arrangement was worked out formally between the parties, I don't think that is material. The material question is whether the allowable order was valid. It is my position it was because the parties advised the Commission they were willing to pool their interests.

MR. DIPPEL: We did not so advise the Commission, and the letter will speak for itself.

CHAIRMAN MACKEY: Anybody else have anything further? If not we will take the case under advisement and adjourn until 8:30 in the morning.

C E R T I F I C A T E

I, ADA DEARNLEY, Court Reporter, do hereby certify that the foregoing and attached transcript of proceedings in the matter of Case No. 992 were taken by me on January 19, 1956, that the same is a true and correct record to the best of my knowledge, skill and ability.


Reporter