

BEFORE THE
OIL CONSERVATION COMMISSION
Santa Fe, New Mexico
August 12, 1960

IN THE MATTER OF:)
)
)

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

Case No.
2051

BEFORE:

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

TRANSCRIPT OF HEARING

MR. PORTER: Case No. 2051.

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

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

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

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

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

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



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

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

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

MR. GIRAND: That is correct.

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

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

MR. MORRIS: That is true.

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

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

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

MR. GIRARD: No objection.

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

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

MR. MORRIS: Yes, I did.

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

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

MR. PORTER: What was the Case number again?

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

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

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

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

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

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

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



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

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

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

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



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

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



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

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



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

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

MR. GIRARD: If the Commission please, at this time I'd like to move to dismiss the application. We stipulated that the first four paragraphs of the application were agreed to as containing factual matters. The applicant charges this: That on December 17, 1956, the Commission entered its Order No. R-1310 force-pooling the NW/4 of Section 25 as a Tubb gas unit and the SW/4 of Section 25 as a Tubb gas unit; that the Commission was without jurisdiction and the same should be vacated for such reason; the Commission was not informed by Olsen Oils, Inc., the applicant in 1567, of the agreed pooling of the applicant's property in the Tubb gas unit, and the concealing of such amounted to a misrepresentation to the Commission concerning the rights of the applicant, and the jurisdiction of the Commission in such matters.

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

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

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

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



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

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

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

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

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



MR. GIRAND: Both are the red.

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

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

MR. GIRAND: At the present time.

MR. PAYNE: Both standard?

MR. GIRAND: Yes, sir.

MR. PAYNE: What about the Blinebry?

MR. GIRAND: We have two Blinebrys.

MR. PAYNE: Standard units?

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



owns approximately 15 percent of the area colored in blue.

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

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

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

MR. GIRAND: It is a family affair.

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

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

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

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

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

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

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

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

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