State of New Mexico
Oil Conservation Commission

P. O. BOX 871
SANTA FE

September 22, 1961

MEMORANDUM

TO: Members of the Oil Conservation Commission
Governor Edwin L. Mechem, Chairman
Land Commissioner E. S. Johnny Walker, Member
A. L. Porter, Jr., Secretary-Director

FROM: Richard S. Morris, General Counsel

SUBJECT: Case No. 2381, Application of Southwest Production Company for an order pooling all mineral interests in a 320-acre gas proration unit, Basin-Dakota Gas Pool, San Juan County, New Mexico

Attached to this memorandum is a proposed order to be entered in the subject case. Since denial of the application is recommended and since Commission action in this case will establish a policy to be followed in future cases of similar nature, the reasons for recommending denial should be fully explained.

Under the provisions of Section 65-3-14(c) of the New Mexico Statutes Annotated, 1953 Compilation, as amended by the Laws of the State of New Mexico, 1961, the Commission is authorized to force-pool non-consenting working and royalty interests with consenting interests to form proration units where otherwise waste would occur, where correlative rights would be violated, or where the drilling of unnecessary wells would be caused. The Commission has been cautious in its exercise of this force-pooling power and has recognized it as an extraordinary power to be used only where the need was apparent.

The subject application requests the Commission to exercise its force-pooling authority in a situation where there is no

apparent need. At the hearing of this case the applicant, Southwest Production Company, alleged that it proposed to drill a Dakota gas well on a standard 320-acre gas proration unit and that it had valid oil and gas leases on most of the acreage in the unit and had communitization agreements covering the remaining acreage. Force-pooling was sought in order to cover unknown, contingent interests which might arise at a later time. Although the applicant claimed to have all of the acreage leased or communitized, nevertheless it requested Commission action in the event its leases might later be proven faulty in some regard.

It appears that the subject application would not have been brought if the applicant were sure that its titles were good and that its leases covered the entire area intended to have been leased. If the evidence presented had been to the effect that the owner of some particular interest could not be located, after diligent effort, or, after being located, refused to consent, then the Commission might validly exercise its power to pool the known, but non-consenting, interest. Where no particular interest is specified as non-consenting, however, the Commission would appear to be performing an unnecessary act in issuing a pooling order. Certainly it could not determine whether the applicant had diligently attempted to secure the voluntary consent of the interest-owners being pooled.

If the Commission should exercise its force-pooling power in this type of situation, the operator would be encouraged to secure a pooling order in every instance where title was remotely in question. This could result in a flood of applications where Commission action would be meaningless. Also, knowing that a pooling order could be obtained, an operator could be less than diligent in his leasing practices.

In summary, the proposed denial of this application is based on the grounds (a) that there is no present need for the Commission to exercise its pooling power, and (b) that the approval of this type of application would encourage imprudent leasing practices.