

BEFORE THE  
OIL CONSERVATION COMMISSION  
SANTA FE, NEW MEXICO

February 14, 1962

REGULAR HEARING

DEARNLEY-MEIER REPORTING SERVICE, Inc.

FARMINGTON, N. M.  
PHONE 325-1182

ALBUQUERQUE, N. M.  
PHONE 243-6691

IN THE MATTER OF:

(De Novo)

Application of Southwest Production Company for a hearing de novo in Case No. 2415, Order No. R-2150, relating to the force pooling of mineral interests in the Basin-Dakota Gas Pool in the E/2 of Section 14, Township 30 North, Range 12 West, San Juan County, New Mexico. Interested parties include the unknown heirs of Abas Hassan, the unknown heirs of D. M. Longstreet, and Robert E., Alice L. and Samuel G. Goodwin, or their unknown heirs.

CASE NO.  
2415

and

(De Novo)

Application of Southwest Production Company for a hearing de novo in Case No. 2416, Order No. R-2151, relating to the force pooling of mineral interests in the Flora Vista-Mesaverde Gas Pool in the E/2 of Section 22, Township 30 North, Range 12 West, San Juan County, New Mexico. Interested parties include Roy Rector, O. G. Shelby, Dwight L. Millett, Myron H. Dale, George T. Dale, and Julian Coffey.

CASE NO.  
2416

and

(De Novo)

Application of Southwest Production Company for a hearing de novo in Case No. 2446, Order No. R-2068-A, relating to the force pooling of mineral interests in the Basin-Dakota Gas Pool in the E/2 of Section 22, Township 30 North, Range 12 West, San Juan County, New Mexico. Interested parties include Roy Rector, O. G. Shelby, Dwight L. Millett, Myron H. Dale, George T. Dale, and Julian Coffey.

CASE NO.  
2446

and



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(De Novo)  
 Application of Southwest Production Company  
 for a hearing de novo in Case No. 2453,  
 Order R-2152, relating to the force pooling  
 of mineral interests in the Basin-Dakota  
 Gas Pool in the E/2 of Section 7, Township  
 30 North, Range 11 West, San Juan County,  
 New Mexico. Interested parties include  
 Harold M. and Maleta Y. Brimhall.

CASE NO.  
2453

BEFORE:

Edwin L. Mechem, Governor  
 E. S. "Johnny Walker, Land Commissioner  
 A. L. "Pete" Porter, Secretary-Director of Commission.

TRANSCRIPT OF HEARING

MR. PORTER: The Hearing will come to order, please.

We will take up next Case No. 2415.

MR. WHITFIELD: The application of Southwest Production Company for a hearing de novo in Case No. 2415, Order No. R-2150.

MR. VERITY: The Applicant is ready.

MR. PORTER: I would like to call for appearances in this case. Are there any other appearances other than Southwest?

MR. MORRIS: Mr. Coffey has requested that his statement be read into the record at the close of the case.

MR. BRATTON: If the Commission please, Howard Bratton, appearing on behalf of New Mexico Oil & Gas Association. We have no direct interest in this case or the succeeding three cases; however, it is our understanding that these four cases involve some basic interpretation of the forced pooling statute as amended by the legislature. Inasmuch as that statute was originally



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directed and sponsored by the regulatory practice committee of the New Mexico Oil & Gas Association, we would appreciate an opportunity to consider any basic interpretations of the general applications raised in these hearings. For that purpose, we would request that a thirty-day period of time be given within which any interested party or organization could submit written statements as to the basic interpretation or policies raised in connection with the amended statute.

MR. VERITY: May it please the Commission, I realize that these four cases that are next on the docket may possibly involve the setting of general principles by this Commission that will apply to other cases and for this reason, I think Mr. Bratton's request is well taken, that it is entirely proper for the Commission to consider any statement or recommendation that the New Mexico Oil & Gas Association's regulatory practice committee should have. We think it is something that should be considered. There is a best answer to it. We are most likely to come up with the best answer if it hears from everyone who might have an interest in the outcome of these hearings. Therefore, I make no objection to this thirty-day period of time for the Association to make a statement or file with the Commission a written statement.

MR. BRATTON: May it please the Commission, I would like to clarify one point; inasmuch as there are fifteen people, including five lawyers, on the committee, I do not want to guarantee that we will be able to agree on anything.



MR. PORTER: Off the record.

(Off-the-record discussion held.)

MR. PORTER: We will --

MR. SELINGER: Mr. Porter, before you make your announcement, Mr. George W. Selinger for Skelly Oil Company. We are a member of the New Mexico Oil & Gas Association, having been forewarned by Mr. Bratton that there are ten people and five lawyers on that committee that agree, we would like, if the Commission will permit, to be a friend to them. We would like to enter our appearance as a friend to the Commission, as we are interested in this. There are twenty-five other states having pooling provisions and plagued with some of these questions. My associate and I have made a study of this and we are vitally interested. We would like to have the opportunity of being your friend.

MR. PORTER: The Commission can use some friends. Do we have any other appearances?

MR. BUELL: For Pan American Petroleum Company, Guy Buell. Pan American is not directly interested in this, but we are intensely interested in the Commission's policies and procedures relating to the forced pooling statute that may be adopted as a result of these four cases. We would like to enter our appearance, also, we hope, as a friend of the Commission.

MR. PORTER: Does anyone else want to make an appearance?

MR. MORRIS: Richard Morris, appearing for the Commission staff.

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DEAR VLEY-MEIER REPORTING SERVICE, Inc.

MR. VERITY: George L. Verity, appearing on behalf of Southwest Production Company, the Applicant.

MR. WHITWORTH: Garrett Whitworth, appearing on behalf of El Paso Natural Gas.

MR. PORTER: The Commission will allow until March 15, Mr. Bratton, for the New Mexico Oil & Gas Association, the regulatory and practice committee, lawyers or any other interested parties to file on these issues.

MR. VERITY: I would like to call Mr. Jones to the witness stand. Your Honor, this case has much in common with the four cases to follow. Each of the cases involve a separate pooling applicant, a separate tract of land, but there is evidence that will be particular to each of the four cases but there is a bulk of evidence, probably half, that will be common to all four cases, and for this reason, in order to obviate the necessity of repeating this four times, I would like to move that we be permitted to make that testimony only one time and have it apply to all four cases, at that juncture, reserving the closing of each of the four cases until that is taken up.

MR. PORTER: Mr. Verity, the Commission will consolidate the cases. You may proceed in that case.

MR. MORRIS: Excuse me, Mr. Commissioner. Are the cases to be consolidated or to be consolidated for the purpose of hearing?

MR. PORTER: They will be consolidated only for the pur-

pose of hearing.

(Witness sworn.)

JACK D. JONES,

called as a witness herein, having been first duly sworn on oath,  
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. VERITY:

Q Would you state your name and your occupation?

A My name is Jack D. Jones and I am an independent land  
man.

Q Mr. Jones, how long have you been employed doing land  
work in the oil and gas industry?

A For -- in excess of twelve years.

Q How long have you been in the San Juan County area?

A Approximately two years.

Q Are you familiar with the land situation and the prob-  
lems in the industry with regard to risk and leasing developments  
of property?

A Yes, sir.

Q Have you so testified before this Commission before?

A Yes, sir.

Q Mr. Jones, with regard to Case No. 2415, wherein South-  
west Production Company has made an application for a force pool-  
ing order on the East half of Section 14, Township 30 North, Range  
12 West, will you please tell us what the lease and land situation

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on that tract of land is, with regard to the Basin-Dakota Gas Pool.

A Southwest Production has under lease or operating agreement the entire 320 acres with the exception of those interests covered by the parties stated in the application.

Q Do you have the names of these particular parties you refer to?

A Yes, they would be Abas Hassan, who is deceased, so it would be his heirs and the heirs of D. M. Longstreet and also Robert E., Alice L. and Samuel G. Goodwin.

Q Will you please tell us what effort, if any, you have made to locate and contact the heirs of Abas Hassan?

A I have contacted the Arizona State Hospital and obtained from them the information that Mr. Hassan is deceased. They gave me the list of his known relatives that they had. I have made an attempt to contact those parties, two of whom live, or did live, in the United States. I have received no answer and there are several other parties who reside in Syria. I have had no return from my letters to Syria.

Q Have you made an effort to contact the D. M. Longstreet heirs?

A I have contacted the widow of D. M. Longstreet and have obtained from her, as far as she knows, the names of people who would be interested in that estate, and I have made an attempt to contact the parties. I have not been able to contact all of them.

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but the ones I have contacted have indicated that they would be willing to give me the material I need or to lease, if the other parties would do the same, which sort of puts me in an impossible position. I can't get the first one to take the step; they are waiting for somebody else.

Q With regard to Robert E. Goodwin and Alice L. Goodwin and Samuel G. Goodwin, what is the situation?

A I have been unable to obtain any information on their interest. Their interest, if any, arises merely from one document, an order from a case, a guardianship case, which indicates that they may or may not have claimed some interest in some of the lands in the East half of Section 14, the case in which this order was issued. I should say that the case file has disappeared from the court records, and consequently we are unable to determine what the reference meant and how any interest may have arisen, and I have been unable to obtain any information as to their whereabouts.

Q Is it Southwest Production Company's position that they own no interest?

A We do not believe that they have any interest because this is the only reference to them. They do not appear in the chain of title, merely this one reference in an order that they may or may not have an interest.

Q Do you feel that their interest should be force-pooled if they should have one?

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A Yes, I do.

Q Are there other parties that you know of which have an unleased interest in the East half of Section 14 of the Basin-Dakota Gas Pool?

A No.

Q Do you think, Mr. Jones, that you have made a reasonable effort to form a unit for the production of the Basin-Dakota Gas from the East half of Section 14, 30, 12, and reasonably endeavored to place all parties in that unit?

A Yes, sir.

Q Do you know whether or not Southwest Production has heretofore drilled and completed a well in the Basin-Dakota Gas Pool, lying in the section referred to?

A Yes, sir, they have.

Q Do you know the approximate cost of drilling and completing this well?

A That would be -- well, at the present time, the accumulated costs are \$80,309.02. We believe that the total cost will be somewhere in the neighborhood of \$82,000.

Q In the near future, will all the costs be in, in regard to this well?

A I believe it will.

Q Turning now, Mr. Jones, to the application of Southwest Production Company for force pooling, Case No. 2416, involving the Flora Vista-Mesaverde Gas Pool, underlying the East half of

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Section 22, Township 30 North, Range 12 West, and at the same time directing your attention to Application No. 2446, Southwest Production Company's application for force pooling interest in the Basin-Dakota Gas Pool underlying the same, the East half of Section 22, Township 30 North, Range 12 West, are you familiar with the land lease situation underlying this half of the section, with regard to the two separate pools?

A Yes, sir.

Q Will you please tell us what it is?

A We have under lease or operating agreement all lands in the area with the exception of those held by O. G. Shelby, which is .36 acres, that held by Myron H. Dale is 6½ acres and the lands of Julian Coffey about which there is considerable dispute as to the number of acres.

Q Did you mention George T. Dale?

A No, I did not. We have a lease from George T. Dale but the attorney who examined the title indicated that in his opinion the title to those lands were in Marion H. Dale and Verlene Dale, husband and wife. This is the situation that we have: We have obtained a lease from George T. Dale, and it appears that he is the owner of the land and the minerals. He obtained them by exercising a power of attorney given him by his brother, Marion, to purchase or deed the lands owned by his brother to himself.

Q Do you have the name of the wife of O. G. Shelby?

A Leona.



Q And the wife of Marion H. Dale, did you say was Verlene?

A Verlene, yes.

Q Do you know whether or not Julian Coffey was married at the time of the last inquiry?

A I do not believe that he is married.

Q Does the same situation pertain with regard to the formation of a unit underlying this particular half section of land, both with regard to the Flora Vista-Mesaverde Pool and the Basin-Dakota Pool?

A Yes, sir.

Q Do you think that you have made a reasonable effort to form a unit for production from this half section from each of these pools, that would include all parties owning an interest therein?

A Yes, sir.

Q Tell us if you will, please, whether or not Southwest Production Company has drilled and completed a well in the Flora Vista-Mesaverde production under the East half of 22, 30, 12?

A Yes, sir, they have.

Q Do you know what the cost of drilling and completing that well is?

A \$40,000.

Q Tell us, if you will, please, whether or not Southwest Production Company has completed a well on that half section into the Basin-Dakota Gas Pool?

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A Yes, sir, they have.

Q What was the cost of drilling and completing that well?

A We have, at the present time, collected charges of \$73,909.32. We believe that the total cost will run somewhere in the neighborhood of \$75,000.

Q Directing your attention now, Mr. Jones, to Southwest Production Company's force pooling Application No. 2453, requesting that the Basin-Dakota underlying the East half of Section 7, Township 30 North, Range 11 West, be force pooled, are you familiar with the leasing situation with regard to the Basin-Dakota underlying that half section?

A Yes, sir.

Q Well, sir, what is it?

A Southwest Production Company has under lease or operating agreement all the lands therein, except possibly twenty acres, supposedly belonging to Harold M. and Maleta Y. Brimhall, in the South half of the Southwest of the Southwest quarter.

Q Have you made an effort to contact these people and lease their interest?

A Several efforts.

Q Have you found that it has been impossible to do so on any grounds, to either lease from them or to get them in a drilling and operation unit?

A Yes, sir.

Q Can you tell us whether or not the situation with re-

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gard to the leasing problem under that half section is complicated or simple?

A It is rather complicated.

Q As far as you know, these are the only interests, but it is possible that there could be other interests that have not joined and because of the small tract and the legal complications?

A Yes, sir.

Q Has Southwest Production Company drilled and completed a well to the Basin-Dakota Gas Pool on this half section?

A Yes, sir, we have.

Q Do you know the total cost of drilling and completing this well?

A They have presently accumulated costs of \$73,725.47 and it is estimated that the cost will be somewhere in the neighborhood of \$75,000. While I am on this, I can't remember -- I think I have made the estimate for the well on the East half of 14. If I didn't say so, the accumulated cost on it was \$80,309.02, and we believe it will run about \$82,000. I can't remember whether I looked at that or some other figure.

Q In your opinion, have you made a good faith and reasonable effort to form a unit consisting of 100 percent of the joint owners or interested parties for this particular well on this particular unit?

A Yes, sir.

Q Mr. Jones, turning now to the general application that

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would apply to all four of the applications of Southwest Production Company which are here before this Commission at this time, are you familiar, as a land man and person who has been dealing with the oil and gas business of this nature for a considerable period of time, with the cost of supervision of the production of wells?

A Yes, sir.

Q Since the Examiner Hearing in these four cases, have you made further investigations as to what the proper cost of supervision is in these areas?

A Yes, sir. I have had an opportunity to talk to several other companies, to go over some of the operating agreements of Southwest and to recheck several of the operating agreements which I, myself, had prepared.

Q Do you have an opinion as to what is a reasonable cost of supervision of the Dakota gas wells and the Flora Vista-Mesa-verde gas wells in this area?

A I believe the actual cost of supervision of the wells appears, from the information I have been able to obtain, is running somewhere between twenty-five and thirty-five percent. The Commission has allowed ten percent, which I think is rock bottom minimum that could be allowed, but I believe the actual costs are going to be in excess of the amount allowed by the Commission.

Q Have you made any particular investigations with regard to whether or not risk was involved in the drilling of the four wells that are on each of the units covered by the four applica-

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tions here before the Commission?

A I personally believe that it is a statement without -- just not capable of being contradicted. Any time you drill a well, there is a risk factor involved. You could break it down, I suppose, into at least three parts. First, being when you commence the well, you may not reach the formation or members of the formation which you are aiming for, because it may not be present. Second, that you may lose the well during the drilling of said well because of some unforeseen sub-surface condition or because of mechanical difficulty encountered in drilling of the well; and third, even after you have drilled and completed the well, the risk still exists that you may not have a commercially productive well, or if it appears that you do, at the time of completion, that said well may not prove to be commercially productive in that you just might lose your production prior to the time that said well has paid out and prior to the time that you have made any profit from it.

Q Mr. Jones, do the best of engineers occasionally make mistakes with regard to what their thinking on the payout on a formation will be?

A In my experience in dealing with engineers in the ten years I was with Skelly Oil Company, we encountered several errors in which they had made rather drastic mistakes in determining the reserve under a prospect.

Q Now, I believe you broke down the nature of the risks

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encountered in drilling wells into three provisions as the possibility of not encountering production, the possibility of mechanical failure, and the possibility, after the well is completed, it still will not produce in accord with expectations. With regard to these categories of risk, is the risk known with regard to those four wells as to any of the three categories?

A Yes, I believe the industry generally assumes that all three elements will be present in any well that is drilled. That is, at least in my negotiations and preparations of operating agreements, I also threw in what I call non-consent well provisions which provide that any party that did not join you in the drilling of the well would have to pay a penalty, that penalty being to safeguard the parties that practice drilling these wells and assumed these risks and instances where I have negotiated and prepared these, my experience has been that these were at no time less than 200 percent penalty and in some instances was in the nature of 300 percent.

Q Mr. Jones, did you have the particular duty of negotiating and working out operating agreements for major oil companies?

A For seven years that was my main portion of my job with Shell, to negotiate and prepare such operating agreements.

Q Are those non-consenting clauses recognized by the industry as a risk factor in drilling and completing a well?

A I believe so.

Q Are you familiar with any operating agreements provided

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for operating of proven oil fields in San Juan County?

A Yes, I have had the occasion to check both the Carson and Shell-Carson unit, which is in the Gallegos Canyon operation. The Shell's Carson unit provides the risk factor of 200 percent. The Gallegos Canyon provides for a risk factor of 150 percent.

Q Does the Gallegos Canyon also cover the Dakota Gas Pool?

A Yes, sir.

Q Are you familiar with whether or not parties who own interests in the Gallegos Canyon unit on occasion decline to join in the well and participate as non-consenting parties?

A Yes, sir.

Q Do you know whether or not, prior to the acquisitions of these particular four interests that appear here before the Commission, an operating agreement was negotiated with regard to tenants in common holding interest therein which did make provisions for a non-consenting well?

A As for the East half of Section 22 and 14, as a matter of fact, all the land so-called, by the Northwest Production deal that was previously on the operating agreement between Northwest and Montana, that agreement calls for 150 percent penalty on these lands.

Q Is this agreement still in force between various owners of these particular rights?

A It is the basic agreement under which the property is being operated.

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Q Do you know whether or not it was a full-arm-length between Northwest Production Company and Montana and Southwest and Tidewater are now living under it?

A Yes, sir.

Q Mr. Jones, do you have an opinion as to whether or not Southwest Production Company has incurred a risk in drilling these four wells?

A Yes, sir, I believe, as I stated, that any time you drill a well, you incur a risk which, as I say, I believe could be broken down in three component parts. I believe you assume each and every one of the elements of the component parts of risk, each and every time you drill a well.

Q With regard to the third portion of the risk that you outlined, is this still an unknown factor?

A Especially as far as the Dakota formation is concerned, because there is not just enough information about the Dakota. I have talked to several engineers who insist and have insisted for over a year that the Dakota will never pay out, that the people who drilled these Dakota wells are going to lose their shirts.

Q Mr. Jones, what are some of the things that are unforeseen that cause production of a formation not to produce what they are expected at the moment of completion?

A I don't know anything about the technical end of that, but I have seen wells that have been drilled and come in with tremendous potential that in a matter of just a week wind up with

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nothing. A good example of that would be Gulf's Cold Bed Canyon unit in Utah, where they drilled the initial well and brought it in for, I believe, about 13½ million. Within three weeks that well would no longer give a satisfactory test and they drilled two subsequent wells, both of which were dry.

Q Have large pools such as the West Edmond unit in Oklahoma proven disappointing and far below the expectations?

A I believe the West Edmond pool was very disappointing. In the unitization of the unit, which provided for a recycle for a secondary recovery in the Edmond, whereby they were to recycle the gas to stimulate the recovery of oil and based upon engineers' recommendations, they felt that it would be economically profitable to do so. The area was consequently unitized and secondary recovery project started and I believe I have read that the recovery was somewhere in the neighborhood of 60 or 70 percent of what the engineers expected. By that, it is generally my experience that engineers tend to be rather conservative in their estimates. Since they didn't obtain what they figured it was, it must have been quite a failure.

Q Do you have an opinion as to the risk involved in the drilling of each of these four wells?

A Well, I think it is pretty obvious, from what I previously said, from my negotiations that I figure you have a risk figure of at least 100 percent, even on development, which is what this non-consenting factor applies to, the development of

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wells. It is my opinion that your risk factor runs considerably in excess of what the statute is allowing to recover in this state.

Q The statute places a maximum of 150 percent, which you have said is a minimum which you have known in operating?

A I have never seen one less.

Q Do you know how much risk factor Southwest Production has requested in these four cases?

A I believe their application stated 25 percent.

Q Mr. Jones, do you know whether or not Southwest Production Company would be willing, in spite of the fact that it has requested that it be allowed a risk factor, do you know whether or not, within a reasonable period of time, it would be willing to accept only 100 percent cash of the non-consenting parties for their share of the risk in drilling and completing these wells?

A I have discussed that with Southwest. They have indicated that they would be willing to have any one of these parties who are being force pooled to come in and pay their cash share of the well. Of course, I believe that those parties, by so doing, are assuming any of the risk that would still exist. By paying their share, they are assuming that continuing risk, that the well will not pay out or something will happen to the well.

Q Do you have an opinion as to whether or not an order of this Commission to force pool non-consenting interests, an order allowing a ten percent supervision of cost of production and a completion of fifteen percent for supervision during the payout

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period and twenty-five percent risk factor would be a harsh remedy to allow all the parties to protect their correlative rights?

A I certainly do not believe it would be harsh as far as the parties being force pooled is concerned. As a matter of fact, I believe that force pooling is an insufficient remedy as far as the operator is concerned. These are my own impressions. The only objective feature I can see to force pooling to the parties being force pooled is that he will not obtain the bonus that is paid, and secondly, the normal oil and gas lease contract that provides that that party can have free use of gas for his home, being a contractual obligation which does not exist between the operator and that party, I do not believe he would have the right to free gas. He would be able to, I believe it would have to be metered and charged against his share. Those are the only two disadvantages I can see and the possibility exists that he may obtain considerably more over a period of the life of the well than he is losing.

Q Of course, with a lease you would take all of his interest to depletion, would you not?

A Yes, sir.

Q And normally the lease would take all the interest in all formations, whereas the force pooling only asks that they pay appropriate shares of the well, is that right?

A That is right.

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Q Would it, in your opinion, to force pool these interests protect the correlative rights and prevent unnecessary waste?

A Yes, sir, it would.

MR. VERITY: That is all we have.

CROSS EXAMINATION

BY MR. MORRIS:

Q Mr. Jones, referring to Case No. 2415, I believe you stated that you had made a reasonable effort to contact all of the non-consenting interests that may still exist, that exist in this East half of Section 14?

A Yes, sir.

Q And that you mailed registered letters to the heirs of Abas Hassan but they were returned to you?

A No, they have not been returned.

Q Do you have the names of the heirs to whom you state that they were registered and in fact, they were not registered? Do you have the names of the heirs of Abas Hassan to whom you mailed the letters?

A The information obtained from the Arizona State Hospital indicates that his relatives were Sol Hassan.

Q Do you have his address?

A 1113 West Madison Street, Phoenix, Arizona. My letter has been returned stamped "Unclaimed." He has another brother, Milreim Hassan of Athren, Syria.

Q Is that the only address you have for him?

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A Milrelm Hassan, Athren, Syria. There were two half-brothers in Athren. Mamoot and Hatad, both of Athren, Syria, and a half-brother Al Hassan of Portland, Oregon. We have attempted to obtain information from the County Clerk there as to his whereabouts. I have been unsuccessful in obtaining any information.

Q Mr. Jones, the first two names were brothers and the next two were half brothers?

A The last three were half brothers.

Q Now, what interest, if any, does Southwest Production Company allege that these heirs of Abas Hassan own?

A They would have an undivided one-quarter interest in thirty acres and if I testified in the previous instance that that was twenty-eight, I am in error.

Q Then, an undivided one-fourth interest in thirty acres? Do you have a legal description of the thirty acres?

A It would be, in essence, the West 30 acres of the Southeast Southeast.

Q Who owns the other remaining three-fourths undivided of this thirty acres?

A F. J. Welk owns an undivided one-quarter, two acres. W. H. Pepin owns an undivided one-half interest in the other 28 acres. The other half interest is owned by Samuel T. Collins.

Q Referring now to the interest that is owned by the heirs of D. M. Longstreet, could you give me the names of those heirs, please?



A There would be fifteen of them. There would be the widow, whose name is now Nancy Lamb, Mrs. Rose Propst.

Q Mr. Jones, rather than going through all fifteen names, would Southwest Production Company be willing to furnish the Commission with a list of the heirs and their addresses, as far as you were able to obtain them?

MR. VERITY: May I interject at this time, we do not know that these people are heirs. They are individuals that someone has advised us that their thinking is that they are heirs.

Q (by Mr. Morris) Is it Southwest Production Company's position that the fifteen persons whose names you will supply us are interest owners in the land in question?

MR. VERITY: May I answer the question? We do not know; there is no way of knowing until and unless there is some jurisdictional determination. We have no way of knowing; there has been no jurisdictional determination. It is impossible for us to make the determination of it. We have endeavored to contact them because someone has suggested to us that they are the heirs, but this suggestion does not make it fact. It is not something that we can rely upon to represent to the Commission.

Q (by Mr. Morris) Mr. Jones, what interest, if any, do the heirs of D. M. Longstreet own in the subject acres?

A The situation that exists is this: When Mr. Longstreet died, he was survived by the widow and several children. Mrs. Longstreet, without bothering to have the estate probated, sold

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the land to another party and it has now passed through several hands to the parties from whom we have the present lease. Now, I imagine the interest would be determined by the New Mexico statute. She would probably have had half to start with, as community property. I am not sure what the statute is on that. I would imagine she would have received half as widow and the remaining half would have gone to the children, so that her half, I would assume, would have been legally valid as passed by her deed. We would be talking about whatever interest of the children would be. Now, as to that interest, which I believe would be the one concerning the minerals, the half interest in the minerals have been severed during the change and quiet title acts have been maintained by the owner of the surface and half of the minerals, so that that interest that we would be concerned with would be the proportionate share of one-half of the minerals.

Q Can you state to the Commission exactly what interest is owned by non-consenting owners in this unit, outside of Hassan?

A No, sir, I cannot.

Q Mr. Jones, if the Commission were to grant your force pooling request, how much of the production from the well would Southwest contribute to the Longstreet interest?

A Well, to state that, I would have to check -- (indicating) I am sorry to confess that I haven't got that. I believe it would probably be the children -- am I correct that the children would receive a half interest?

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Q What I am asking is this: Can you state to the Commission at this time exactly how much of the production would be attributed to the Longstreet interest?

MR. VERITY: Could I answer the question?

MR. MORRIS: Yes.

MR. VERITY: This is, of course, the problem that is represented, as you pointed out. It is the position of Southwest Production Company that it is not the prerogative of the Commission to determine what proportion of production a particular person in a unit is entitled to. We do not think that the Commission has the authority or the right to make such a determination. This is a question of title and reserved by the statute in the Constitution for the District Court. We think this Commission does have the authority, under the recently amended statute, to force pool all of the interests in a unit and we believe that we are going amiss and that we raise many problems if we endeavor to here determine the exact acreage that any particular persons own. We do not think the Commission is authorized to make this decision. We think it is going to bring up much trouble if the Commission endeavors to do so. We think the particular point in this case, Longstreet has a situation because we have no way of finding out or ascertaining who the true heirs are. We have our opinion as to what the bulk of them own. We do not think the Commission can determine it and we do not ask the Commission to do so. Indeed, we do feel we have a right to have all these interests force

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pooled.

MR. MORRIS: In rebuttal to Mr. Verity's remarks, which bear upon the relevancy of the questions that I have been asking to Mr. Jones, I would like to call the Commission's attention to some of the wording in the compulsory ruling statute of which a copy is before each of the commissioners. I would first refer to the second paragraph of the first page, the sixth line, where it reads, "Each order shall describe the land, including the unit designated thereby." Also further down, at the last sentence on the first page and continuing to the second page, "Such pooling orders of the Commission shall make definite provisions to any owner or owners who elect not to pay the proportionate share in advance." Now, it would be my position, and I think a reasonable one, that interpreting these phrases of the law that I have just read, that the Commission is under a positive duty to make a provision in its order with respect to each non-consenting interest that is being pooled as a result of your order; and in order to accomplish this, it is necessary for the Commission in its hearing to inquire into the nature and extent of each non-consenting interest who owns it, and what efforts have been made to locate that particular interest owner, to secure his voluntary agreement of the pooling and that the Commission's order that is entered should specify, a, b, c, or d as the owner of certain interests which have not consented to the pooling and are therefore being force pooled by virtue of the order.

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I therefore submit that my questions of Mr. Jones are, with respect to who owns what acreage in a given unit, are absolutely necessary at this time.

A I would like to state, in regard to the Longstreet heirs, I personally feel it is debatable that they have interest in as much as quiet title suits had been handed out and quieted them out as to the undivided half interest. If they had no rights in the undivided half interest to which they were quieted out, I think it is obvious that an interest in the other half has already been determined and there is a decree which finds that they have no interest, a court decree. However, the fact remains that only half of the mineral interest was confirmed in that court case. However, the same factual situation exists as to the other half. The court has found, as to the half, that the Longstreet heirs had no right or title or interest. I personally question the right to the other half interest.

Q (by Mr. Morris) On behalf of Southwest Production Company, you allege to the Commission that the Longstreet heirs have no outstanding interest within the land in question, is that your opinion?

A That is my opinion. That is the basis upon which the ones I have been able to contact and have talked to, I have contacted them on the basis of giving quitclaim deeds to protect and honor what Grandma did to these many years ago when she sold the property without the benefit of a court order or probate.

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Q So, in other words, Mr. Jones, you are asking the Commission to force pool these interests, but you do not really know whether these interests exist or not; they may have been quieted out?

A That is my position. I believe Southwest is entitled to that protection, that if these interests should prove to be valid, and I have not been able to clear them out, I believe Southwest is entitled to the protection of the force pooling statute so that the cost attributable to those interests may be recovered.

Q Then, with respect to the total interest, are all the mineral interests that are outstanding within the land in question in Case 2415, you have not been able to locate any of those interests?

A Yes, I have been able to locate some of them.

Q Some of the non-consentors?

A Some of those who might be. In other words, I haven't been able to locate some Longstreet heirs, but I have not been able to locate any of the Hassan heirs, and in my opinion there is no question as to the validity of interest held by Hassan.

Q With respect to the Longstreet heirs that you have been able to contact, what offers have you made to those heirs to secure their quitclaim deed or voluntary consent in this?

A I have described what happened to them and requested them to quitclaim any interest they may have to the present owners

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and the ones I have been able to contact so far have said they will do so if the others would do so. I have not been able to contact one; at the time, he was in jail. He has since disappeared. I don't have any idea where he is now. I just haven't been able to run them all down or get in touch with them.

Q Mr. Jones, did you offer any consideration for a quit-claim deed?

A No, sir, on the simple basis that I do not feel that Grandma sold a valid consideration as such, at the time she purported to deed the entire interest.

Q So you have proceeded upon the theory that Longstreet heirs own no interest in the property in question?

A I believe the objections that have been raised concerning these are entirely technical ones.

Q Mr. Jones, you testified that a well had been drilled in the East half of Section 14 and I believe you testified that it was the Pearl Welks No. 1?

A Yes, sir.

Q Would you state where that well is located?

A I don't have the exact location, but it would be in the Northeast Northeast of Section 14.

Q Would you state to the Commission the date that drilling of this well was commenced?

A I do not have that, but it was prior to the time that we requested the force pooling.



MR. MORRIS: I will ask the Commission to take administrative notice of its well file of the Pearl Welks No. 1.

MR. VERITY: We will stipulate as to whatever it says.

MR. PORTER: The Commission will take administrative notice.

Q (by Mr. Morris) Mr. Jones, I refer you to the form C-105 of the Pearl Welks No. 1 which says the drilling commenced June 7, 1961; does that sound reasonable?

A Yes.

Q And the drilling was completed on June 20, 1961?

A Yes, that sounds about right.

Q I further refer to the contents of this file to form C-128, the acreage and dedication plat on file with the Commission. I hand you an instrument that I have just referred to as the acreage dedication plat on this well and ask you to state the date and by whom this instrument was filed?

A The instrument was filed by Carl W. Smith on June 2, 1961.

Q What was Mr. Smith's position?

A He is production superintendent.

Q So, this was filed on June 2nd and the well record, well file, shows the well commenced five days later, on June 7th?

A June 7th.

Q Now, would you refer to that acreage dedication plat and read to the Commission the question No. 1 that was asked in the

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contents of that form?

A "Is the operator the only owner in the dedicated acreage outlined on the plat below." The answer is "Yes."

Q What acreage was outlined on the plat?

A The entire East 320 acres.

Q Could you explain the obvious discrepancy in the answer to that question?

A At that time, we were of the impression that we had the entire 320 acres leased because we had and we have yet a lease covering the Abas Hassan interest. It has become my opinion by subsequent investigation that the lease is invalid.

Q Then you were proceeding upon the theory that you had the whole 320 acres, at the time you commenced drilling of the lease?

A Yes, because the company had purchased a lease.

Q But the lease, with respect to the 320 acres, was incomplete?

A Yes, sir.

Q Mr. Jones, do you know the date upon which Southwest Production Company first filed its application for compulsory pooling of this acreage?

A No, sir, it would be somewhere subsequent to the completion of the well, though, probably in August, I should think.

MR. MORRIS: If it please the Commission, the commissioners' records will show that the application for pooling was

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filed with the Commission on September 29, 1961. I again refer to the date that the well was completed was June 20, 1961.

Q On the date of application for pooling, September 29, 1961, had there been any production from the Pearl Welks No. 1?

A I do not believe so.

Q Has there been any production as of this date?

A I believe there has; the well has --

Q Do you know for a fact that there has been?

A No, sir, I do not.

Q Mr. Jones, do you know if the Pearl Welks No. 1 has been tested in the Dakota formation?

A I am sure it has.

Q Do you know it has?

A No.

Q You do not have available information as a result of that test?

A I could obtain that information if it is not of record.

Q Do you know that the well has been drilled, tested, and completed and is capable of production in the Dakota formation?

A Southwest has so advised me.

Q Now, Mr. Jones, let's refer to Case No. 2416 and Case 2446. Is the non-consenting ownership the same in both of those cases?

A Yes, sir.

Q With respect to interest owned by O. G. Shelby and his

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Q Fifteen percent royalty?

A Yes.

Q Now, with respect to the interest on the 6.5 acres owned by either Myron H. or George T. Dale, whoever it is that owns it, what is your position with respect to which one of these two men own that 6.5 acres?

A The examining attorney had stated that Myron H. Dale and his wife own the acreage.

Q Have you been able to contact Myron H. Dale and his wife?

A Myron H. Dale lives somewhere in Alaska. Mr. George Dale has refused to give me his address or to forward any cumulative material. Now, I made an agreement with Mr. George Dale that we would not drill on his land because he had certain plans for the development of that. I agreed we would not drill on that land in return for which he would forward certain cumulative material to his brother and wife for signature. As far as I know, that has never been done, because I have never received the cumulative material. We did not drill the well on Mr. Dale's land.

Q Have you made any effort to locate Mr. Dale's wife?

A You mean Verlene? I assume that she is in Alaska with her husband. That may have been an old-fashioned unwarranted assumption.

Q You were unable to make any specific offer to either Myron H. Dale or his wife?

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A Yes.

Q Now, with respect to interest in this land owned by Mr. Julian Coffey, what is the Southwest Production Company's position with respect to how much acreage Mr. Coffey owns?

A We do not know.

Q What efforts have you made to determine how much he owns?

A We know from examination of the property surrounding that that there is a certain tract of land in there -- by mathematical calculations, I arrived at the fact that that land is less than ten acres. It was assessed on the basis of eleven acres, and the last time I talked to him he claimed sixteen acres. The deed to him recited that he obtained fifteen acres.

Q Is it the Southwest Production Company's position that Mr. Coffey owns ten acres or nine and a half acres or what?

A We are willing to pay Mr. Coffey whatever the abstracts, examined by our attorney, will show that he has a valid claim to. Until we have an opportunity to examine the abstracts and determine from that what he would have a valid claim to, we have no way of knowing what the acreage is that he has.

Q Then, you are not prepared, at this time, to state to the Commission what Mr. Coffey's acreage amounts to?

A No, sir.

Q Have you made an offer to Mr. Coffey to lease upon an acreage basis?

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A Yes.

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A Yes, sir. Last Thursday or Friday, I offered to lease Mr. Coffey's land again.

Q What was that offer?

A I offered him \$50 an acre and 25 percent royalty.

Q At the time you made that offer, did you enter into any discussion concerning how much acreage he owned?

A I told him at that time that we would pay him for each and every acre which the abstracts which he would furnish would show. I said, if it was ten acres or sixteen acres or what, we would pay him on that basis, but that our payment would be on the basis of what a title examination by George Verity would show him to own. I also made another proposition: I requested, if he were not interested in leasing, to sign the agreement which he, through his attorney, had agreed to sign several months prior to that time and if he were unable to do either, I requested he advise me by Monday, that we would have to proceed with force pooling.

Q Mr. Jones, these offers that you have offered, the \$25 and 15 percent for Mr. Shelby's and \$50 and 25 percent to Mr. Coffey, were those offers made with respect to both of the producing formations?

A Yes, sir, for the lease period.

Q In other words, the \$50 would be inclusive, both the Dakota and the Mesaverde pools?

A Yes, sir. I might mention that Mr. Millett leased on those terms.

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MR. MORRIS: I ask the Commission to take administrative notice of the well file of the Southwest Production Company Irene Brown Well No. 1.

MR. PORTER: Which case does that involve?

MR. MORRIS: The Irene Brown Well No. 1 involving Case No. 2416.

MR. PORTER: The Commission will take administrative notice.

Q (by Mr. Morris) This well is in the Mesaverde, which is the subject of Case 2416, is it not?

A Yes.

Q Will you state where that well is located?

A Well, the Irene Brown Well No. 1 would be located in the Southwest of the Southeast of Section 22; I don't know the footage.

Q Referring to the form C-105, the well record in this well file, which I hand to you, is that the document that I just referred to?

A Yes, it would appear that I am in error on the location. I thought it was located in the Southwest of the Southeast.

Q I believe the acreage dedication plat, which I now hand you, will show that to be correct?

A Yes.

Q Will you state from the well record what the date of the commencement was of this well?

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A September 8, 1961.

Q What date was it completed?

A September 17, 1961.

Q Would you now refer to the form C-128, the acreage dedication plat, which I have handed to you, and I ask you to state when this form was filed and by whom?

A The form was filed by -- apparently on September 5, 1961, by Carl W. Smith on behalf of Southwest Production Company.

Q Mr. Smith being the production superintendent?

A Yes.

Q Now, with respect to Question No. 1 on the acreage dedication plat which reads, "Is the operator the only owner of the dedicated acreage in the plat below?" What answer is given to that question?

A "Yes."

Q What acreage was outlined on the plat?

A The entire east 320 acres.

Q Would you explain the apparent discrepancy?

A I have only one explanation. I have cautioned them against doing this, and my advisement went unheeded.

Q Mr. Jones, are you familiar with the practices of the Oil Conservation Commission in the Aztec office?

A In respect to what?

Q In respect to the C-105 and C-128 forms.

A No, sir.

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Q Have you ever heard of the practice being followed by the Commission in the Aztec office of what their position is when the acreage dedication plat shows an answer as "no" to that question No. 1?

A No, sir, no, I have never concerned myself with the filing of these. This is part of the drilling function; I have been retained by Southwest simply to handle the land matters.

Q Can you state to the Commission what inquiries Mr. Smith makes before he signs this form as to ownership of the acreage?

A He has made no inquiries of me. He merely ascertains the title satisfactorily to the parcel of land on which he wishes to drill.

Q He apparently did not make such an inquiry in this case, did he?

A No.

Q Would it be a reasonable assumption that he was neglectful in his duties?

A No, I wouldn't say so because he has a map furnished him which purports to show that Southwest acquired all this acreage except for the Millett and Coffey interest, and at that time, they had agreed to either lease or enter into an operating agreement with us.

Q Mr. Jones, with respect to the Irene Brown Well No. 1, do you know whether that well has been tested and found capable of production in the Flora Vista-Mesaverde pool?



A I have been advised that it has actually produced. I believe that previous testimony before the Commission, at which time the 320-acre spacing was set up, indicated that this well had produced -- no, maybe not, at least that it had been tested, if not produced.

Q You cannot state definitely that it has been produced?

A No.

Q Mr. Jones, do you know the date upon which Southwest Production Company first made application for compulsory pooling of this particular portion?

A No.

MR. MORRIS: If the Commission please, application for force pooling was filed with the Commission on September 29, 1961, the well having been completed on September 17, 1961.

A Is that the occasion when we then withdrew our application because we had entered into an agreement with the attorney for Mr. Coffey and Mr. Millett that they would sign an operating agreement?

Q The application to which I refer, Mr. Jones, is the application that came on for hearing.

A That came on for hearing? Well, there was a prior application filed which we withdrew because Mr. Coffey and Mr. Millett, through their attorney, agreed to enter into an operating agreement for operations of their lands.

Q That application was withdrawn?



A Yes.

Q Mr. Jones, would you state the name of the well in the East half of Section 22 that is producing from the Basin-Dakota pool?

A The Ollie Sullivan No. 1.

Q Would you state where that well is located?

A That well should be located in the Northeast of the Northeast of Section 22.

MR. MORRIS: I will ask the Commission to take administrative notice of the well file on the Ollie Sullivan Well No. 1.

MR. PORTER: The Commission will take administrative notice of their file.

Q (by Mr. Morris) I hand you the C-105 form, the well record of the Ollie Sullivan No. 1 and ask if that is the instrument that you have before you.

A Yes.

Q I also hand the well location and acreage dedication form C-128 on the subject well; is that the instrument I have just handed you?

A Yes.

Q Referring now to the form C-105, the well record, will you state to the Commission the date upon which the Ollie Sullivan Well No. 1 was commenced?

A July 25, 1961.

Q What was the date of completion?

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A August 7, 1961.

Q I refer you now to the acreage dedication plat form C-128. Would you state to the Commission what date that form was filed and by whom?

A July 24, 1961, by Carl Smith, production superintendent.

Q In answer to Question No. 1, "Is the operator the only owner of the dedicated acreage outlined below?", what answer was given?

A He gave the answer, "Yes." I might say, at that time we had negotiated with Mr. Coffey and Mr. Millett, at least through their attorneys, and they had agreed to him and Mr. Coffey leasing the lands. Subsequently, when we found he would not, we entered the force pooling action. The earlier information we had which was drawn upon the agreement between Southwest's attorney and the attorney for Mr. Millett and Mr. Coffey, that they would enter into an operating agreement covering those lands. At that time, the Shelby parcel and the others there were still valid and subsisting leases. In my mind, I believe Carl Smith probably was acting upon this information when he said the entire 320 acres.

Q Based upon your information that negotiations were pending, is that correct?

A Yes, and as a matter of fact, it was considered more than negotiations, because I had an actual agreement to lease on the basis of \$50 an acre and 17½ percent royalty with certain exclusive clauses providing we wouldn't drill on their land and cer-

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tain requirements such as that. Between the time that I had such a document drawn and returned to them, they changed their minds and decided they would not lease. When I reproached them, or Mr. Millett, I was told only a mule and a post never changed their minds, that he was neither.

Q Mr. Jones, can you state to the Commission, whether the Ollie Sullivan Well No. 1 has been tested and found capable of production in the Dakota formation?

A I have been so advised, but I do not know whether it has produced.

Q Do you know the date when Southwest Production Company first applied for force pooling in the Dakota formation?

A No.

MR. MORRIS: If the Commission please, the record will show that the application just referred to was received by the Commission on October 11, 1961, the subject well having been completed on August 7, 1961.

A Is that the one that was withdrawn?

Q No, sir, this was the one that eventually went to hearing.

A I remember there was one prior to that which we withdrew.

MR. MORRIS: If the Commission please, my cross examination is going to continue for some time. I note the hour of five minutes until 12:00. I would inquire if you wish me to continue

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or resume later.

MR. PORTER: The Hearing will recess for lunch until 1:30.

(Recess taken at five minutes until 12:00.)

(Hearing resumed at 1:30 p.m.)

MR. PORTER: The Hearing will come to order, please. Mr. Morris, will you proceed with your cross examination of the witness, please?

CONTINUED CROSS EXAMINATION

BY MR. MORRIS:

Q Mr. Jones, with respect to Case No. 2453, I believe that you testified that you made several efforts, reasonable efforts, to contact the Brimhalls and to secure their agreement to either communitize the land or to obtain a lease from them?

A In my opinion, I thought my efforts and proposals were reasonable. The Brimhalls did not.

Q What was your latest offer to the Brimhalls?

A To lease, I offered them \$100 an acre and, I believe, 17½ percent royalty.

Q And they refused?

A Yes.

Q Do you have the latest address of the Brimhalls?

A I can get it for you.

Q Would you furnish that with the other information that we have asked for?



A Yes. Let me see if I do have it here in my files. I will supply it to you.

Q Now, are the Brimhalls the only non-consenting interest owners in the East half of 7,30,11?

A Yes, I would say there is some question that they may be non-consenting, because we have a lease from the Brimhalls which we acquired from a Mr. Juan Moya. Mr. Moya contends that he has a valid and subsistent lease. To prevent any quarrels, I attempted to lease all the land from the other parties and I was successful from all the parties except the Brimhalls.

Q So, it is the position of Southwest that they are the owner of the entire acreage except for twenty acres?

A For the purpose of this force pooling order, we do not feel that we should be forced to elect as to which lease we are claiming.

MR. VERITY: The address of Harold M. and Maleta Y. Brimhall is 6545 North First Place, Phoenix, Arizona.

Q (by Mr. Morris) Mr. Jones, has a Dakota well been drilled in the East half of Section 7?

A Yes, sir.

Q What well is that?

A That should be the Ruby Jones No. 1, I suppose.

Q Where is that well located?

A It would be in the Northeast quarter of the section, probably the Southeast Northeast.

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MR. MORRIS: I will ask the Commission to take administrative notice of their well file on Southwest Production Company's Ruby Jones Well No. 1.

MR. PORTER: The Commission will take administrative notice of that.

Q (by Mr. Morris) I hand you the C-105 form, the well record of the Ruby Jones Well No. 1. Is that the instrument you have in your hand?

A Yes, sir.

Q I hand you the well location and acreage dedication form C-128 on this well. Referring to those instruments, first, the well record, would you state upon what date that well was commenced?

A The well was commenced on June 22, 1961.

Q What was the date of completion?

A It was completed July 7, 1961.

Q Referring to form C-128, the acreage dedication plat, would you state when that form was filed with the Commission and by whom it was prepared?

A It was filed on June 21, 1961, signed by George L. Hoffman, production foreman.

Q Now, in response to Question No. 1 on that form, "Is the operator the only owner of the dedicated acreage outlined on the plat below," what is the answer to that question?

A The answer is, "Yes."

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Q What acreage is outlined on the plat?

A The entire East 320 acres.

Q Could you explain this discrepancy?

A I don't know that there is any discrepancy. As I said, we have the lease covering the entire Southeast quarter, which we obtained from Juan Moya, which he contends is a valid oil and gas lease. Inasmuch as certain of the land owners have challenged it, I went out and attempted to obtain new leases from each of these. Southwest felt they would rather take another lease and pay the parties to be involved than to be involved in any litigation in the matter. We do have leases which cover the entire 320 acres, and the parties who signed the leases to us covering the Southeast quarter contend that they are valid and subsisting oil and gas leases. I am not prepared as a judge to say that Juan is wrong, that his leases are not valid and subsisting, because they may be.

Q Mr. Jones, are you familiar with the Commission's order No. R-1991, entered on June 8, 1961, in Case No. 2288, being the application of Southwest Production Company for non-standard gas proration unit in the East half of Section 7, Township 30 North, Range 11 West, excepting a 20-acre tract owned by the Brimhalls?

A Yes, sir.

Q That order established a 300-acre non-standard unit, did it not?

A Yes.

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Q Now, that order having been entered on June 8, what did you say the date of that C-128 was?

A The C-128 is June 21.

Q So, that was some time after the 300-acre unit had been established, was it not?

A Yes.

Q Which would indicate that the production foreman did not check with anyone as to what acreage was to be dedicated?

A It would appear so.

Q In all four of the cases that are here for consideration, it would appear that a full inquiry had not been made before the C-128 had been filed?

A I don't believe that is necessarily true. In the East half of Section 22, the only lands, at the time the notice was filed, that were not under lease to us were those held by Mr. Mallett and Mr. Coffey, and we supposedly had an agreement with Mr. Mallett and Coffey at that time, so that we should have been able to dedicate the 320 acres. As to the East half of 14, as I explained to you, we did have oil and gas leases from an individual which purported to cover those lands. It was not until after I had made investigations into the matter that we decided the lease was probably void.

Q Referring back, now, to the Ruby Jones Well No. 1, is it your information that that well has been drilled and completed and tested and found productive in the Dakota formation?

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A Yes, sir.

Q Are you familiar with the date upon which the Southwest Production Company first applied for force pooling of the East half of Section 7 in the Dakota formation?

A No.

MR. MORRIS: If the Commission please, the records of the Commission will show that the application for pooling in this, of all interest in the East half of this Section 7 was filed with the Commission on November 14, 1961. Also, if the Commission please, some discussion was entered into this morning concerning an application that had been filed and withdrawn. I have that information available at this time. Mr. Jones, correct me if I am wrong. For the Commission's information, the only three previous pooling cases that were filed concerning the East half of Section 22, Township 30 North, Range 12 West, which would involve Cases 2416 and 2446, that application was filed on August 14, and in Case 2318, Order R-2068, the Commission entered its order there on September 29, 1961, denying the application for compulsory pooling. That application was only with respect to the Dakota formation. So, what I said previously was an error. It would not have any relationship to Case 2416, which relates to the Mesaverde, but would have relation only on Case 2446.

MR. VERITY: I might inquire if counsel recalls in that instance, although the application was denied as to what was left, prior to the case being heard, it was dismissed as to the parties,

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Coffey and Millett, I believe you should have a telegram in your file where we sent a telegram saying we would dismiss it as to those parties.

MR. MORRIS: In Case 2300, filed with the Commission, it was the application by Southwest Production Company for a non-standard unit in the East half of Section 22 and it was not a pooling application. That was the application which was withdrawn.

MR. VERITY: I stand corrected. I believe that is correct. I thought it was force pooling. We ask that these two parties' property be set aside to form a non-standard unit without them.

MR. MORRIS: That is correct. The request was excluding a thirteen-acre and twenty-acre tract in the East half of Section 22, belonging to Millett and Coffey, interest and Pan American. I do not know what interest Pan American had, but it was listed as one of the owners.

Q (by Mr. Morris) Mr. Jones, let's talk a minute about supervision. In your experience in the oil business, what do you commonly understand the word "supervision" to mean?

A I believe it would be the man who goes out and checks the wells and the people who keep the records and such.

Q Would it also include the overhead expenses in the actual drilling of the well?

A No.



Q That would be part of the well cost itself, is that correct?

A That is the way I have treated it.

MR. VERITY: I wonder if I may interpose here. It might save everybody some trouble. With respect to supervision, Southwest Production Company is only requesting here ten percent as supervision charges, ten percent of the total of drilling and completion. In other words, we are only asking for the minimum rather than anything further. Do I make myself clear?

MR. MORRIS: Ten percent of the well cost of drilling and completion for its supervision during the period of its life. Continuing along the same line, Mr. Jones, do you feel that setting a cost for supervision based upon a percentage of what the well cost is a reasonable way of arriving at the cost of supervision?

A I believe so; as I have explained before, we arrived at this percentage system through the system of Shell's bookkeeping, which, over thousands of wells, has arrived at these figures. Of course, they will be dependent upon the type of well and such things as that, but I believe that is a good way, but I see no reason why Southwest wouldn't be willing to go along with actual cost if you wanted to assess the actual cost of supervision plus a certain cost for bookkeeping that would be necessitated.

Q Mr. Jones, what would you say would be the actual cost of operating a well on a monthly basis?

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A I don't have any idea. You would have the cost of your employees, plus his equipment which you would have to depreciate and prorate over a period of years. If you had just one well and had to hire a man to supervise just one well, I would imagine that your cost would be several hundred dollars a month.

Q One way of assessing the cost for these operating costs and supervision, one way of assessing those costs would be to take a percentage of production attributable to various interests rather than a percentage of well costs attributable to the interest?

A I suppose so, I don't know. That would be -- I should think it might be unfair in that manner because if you had an extremely lush well your percentage of that production might be considerably in excess of your cost, or on the other hand, if you had a marginal well, it might be less.

Q Now, when we are talking about operating costs over the life of the well, what items is it, what elements of those costs; is it the salary of the pumper?

A That would be one.

Q The switcher?

A Right. His conveyance, his mode of conveyance would be another.

Q Would you also make a charge for the maintaining of the district office of the company?

A No, that is overhead.



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Q That would be overhead?

A Yes.

Q Going back to the items that you might include within your well costs, that would be related to overhead, what items would you include in that? Salaries of the geologists and engineers?

A Yes.

Q Costs of maintaining your district office?

A Yes.

Q Over how long a time?

A For the life of the well.

Q Well, you do not know how long the life of the well is going to be?

A No.

Q So, how are you going to arrive at the well cost?

A That is rather difficult. That is why certain costs percentage is more equitable rather than the other type, where we state \$50, \$60, or \$100 a well per month.

Q Included as part of well cost, do you include any charge for interest?

A No, I think possibly in the instance of force pooling that interest should be permitted, but the statute does not so provide; so, we have not included any such item.

Q In the well cost that Southwest Production Company has submitted, in respect to the four wells involved in these hearings,



what have been the elements of overhead which have been included in those?

A I haven't really studied the billings that have been presented to you. I don't know if they had any on there. Those were the actual cost, I believe, that was incurred from the actual drilling and supplies that have been used in the drilling of the well. I don't recall that they did include any item of overhead.

Q I don't recall either, Mr. Jones; that is what I am wondering about. In order for the Commission to enter an order and make a definite provision with respect to payment of well cost by the non-consenting owners, they are going to have to arrive at some final and definite figure on which to base the proportionate charges to be made and my question is, if you have continuing charge for overhead, how are you going to ever arrive at a definite figure?

A It will be very difficult.

Q Do you have any suggestions to make?

A We could -- there are two ways to go: First, we could arbitrarily set a sum for overhead, which is normally done in your operating agreement; or second, you could go on simply on the basis of the well cost submitted to you by Southwest, because you have requested that they submit you a statement of well costs.

Q Mr. Jones, in dividing up the proceeds from production that comes from a particular well, am I correct in saying that you would take the gross amount, take off your royalty interest



from the cost and then deduct your taxes, or do you deduct your taxes first?

A What is it you are trying to determine?

Q I am trying to determine how the breakdown on the proceeds from production are distributed.

A Well, your division order generally provides that the party will pay taxes. So, you would then -- or their share of the taxes, at any rate. So, you would deduct from that the royalty and any tax charge that would be attributable to the working interest of the other parties.

Q Now, is it not also a common practice to deduct your operating and handling expenses before you make a distribution to the working interests?

A Certainly those would be against --

Q This is done customarily regardless of the expressed provision of the pooling order, is it not?

A I don't know about that. I should think it would have to be in line with the contract between the parties.

Q I am talking about the situation where we have a non-consenting interest.

A I don't know, we haven't distributed any proceeds yet. I should say, offhand, that would not be done. I should say the distributing would be in conformance with the Commission's order.

Q In order to make such a distribution, you are going to have to know the exact share of non-consenting interests, are you

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not?

A If there are non-consenting owners.

Q If the Southwest Production Company does not know the exact amount to be distributed to a non-consenting interest, Mr. Coffey, for example, if the Commission does not spell out in its order, upon what basis are you going to make that?

A We would require Mr. Coffey to submit abstracts to us which will determine the interest in the land he has.

MR. VERITY: I wonder if I might interpose in the response at this point. The situation of Mr. Coffey, if this Commission force pools, will not be any different from any of the other parties who are entitled to be paid for production from the unit in question. Each and every person must satisfy the party who is charged with making the payment, that he is entitled to receive the money that is to be paid to him. Now, if by any reason, the party who is making the payment, either the pipeline company, if they make it, or in the case of gas wells, sometimes the operators make it, this party must know that persons to whom he pays the money is entitled to receive it. If he makes a mistake in that regard, the penalty he has is he has got to pay the other man who is entitled to receive it. The determination in this regard, with regard to any party who is force pooled, will not be any different from the royalty owners, the working interest in it. They will have to make the evidence of their ownership.

Q (by Mr. Morris) Mr. Jones, proceeding on what Mr.

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Verity has just said, who holds the money in the meantime, if it is not distributed, subject to some determination to who owns what?

A Well, I don't know that there has been any sums paid out. Getting specifically down to Mr. Coffey's situation, there have been none paid, but I would imagine, otherwise, if there had been, Southwest would be in a position of stake holder.

Q It would be possible to escrow those funds, would it not, or pay them into the Court jurisdiction, subject to determination of interest?

A I would imagine, if we can arrive at some basic figure for Mr. Coffey's interest, which varies considerably, there are a number of considerable differences in opinion as to what Mr. Coffey owns.

Q Now, if you are willing to pay him on the basis of ten acres and he claims sixteen, would you go ahead and pay him on the basis of ten and escrow the remaining and questioned proceeds that would be attributable to the questionable six acres?

A I would say, offhand, -- I have not discussed this with Southwest Production Company. We will want Mr. Coffey's abstracts verified to current date, because he has been about busily buying quitclaim deeds from people who may have or may not have the neighboring lands. We will want the abstracts verified to present day as to his titles. We will go on what -- we are willing to pay on the basis of the examining attorney's verification as to what he has valid title to. If he challenges that position, then we

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may have to file an inter plea for Mr. Coffey and other parties whose interests might be claimed.

Q It might well involve some sort of court action, might it not, something in the nature of an interpleader even?

A It might.

Q Along the same line, Mr. Jones, in cases and instances such as we are going to have of Abas Hassan, what is going to happen to proceeds that would be attributable to his interest? Are you going to hold them forever?

A I have discussed that with Southwest. They are agreeable to paying those into Court or, if you should prefer, to designate a financial institution, they would be willing to pay them to any such institution that you might determine.

Q An escrow arrangement, is that what you mean?

A If that is what you have in mind. They do not claim any of the share. They are perfectly willing to dispose of it or to his credit in accordance with your instructions.

Q Mr. Jones, with regard to the risk involved in drilling the wells to which you have testified, now, from the data that we have already, that is already in the record concerning when the wells were drilled, when they were completed, when the application for pooling was filed, and so forth, is it not true that the applications to the Commission for compulsory pooling were, in each case, filed after the well had been drilled, completed, and capable of production from the given formation?

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A I believe that is true.

Q Would you say that by drilling the well prior to coming to the Commission to obtain pooling orders, that Southwest Production Company had already assumed all of the risk?

A Not all of it, on the basis, as I broke the risk down earlier, into three component parts. I believe that is probably a fair analysis of the elements of risk: the drilling and completing of that well had disproved two of the elements at least. It shows you were lucky enough to hit, first the Dakota formation, and secondly, not to have lost your well during the course of drilling of said well. It does not, in my opinion, disprove the fact that the risk of those two elements in fact existed at the time you commenced the well.

Q Southwest Production Company was not assured of obtaining a pooling order from the Commission, was it, or what the provisions in the order might have been?

A No.

Q So, at the time they entered into the drilling of the well, there was no assurance that pooling orders would ever be in effect?

A That's right.

Q Therefore, Southwest Production Company was, by the very nature of things, assuming a risk?

A Yes, a far greater risk.

MR. MORRIS: I believe that is all.



MR. PORTER: Any further questions of the witness?

CROSS EXAMINATION

BY MR. NUTTER:

Q Mr. Jones, I just have a couple of questions relative to supervision of these wells. Now, your well file which you filed with the Commission on several of these, maybe all four of them, contain certain supervisory salaries as to drilling and completion of the wells. Some engineers salaries were on there, some fore-mens salaries and so forth?

A I believe that would fall within the category of overhead. I didn't know --

Q It was included in well cost.

A That would normally be true.

Q You would ask for ten percent of the original cost for supervision of wells throughout the life?

A Yes, sir.

Q You would, in effect, have ten percent supervisory cost to add in as supervision in the future?

A Yes, because that direct cost, that direct drilling of the well, the salaries you entered into, those salaries are people whom you use to determine whether or not to drill and where to drill and in what manner to drill and how to complete your well. I believe they are properly chargeable as to part of the cost of the well itself.

Q Now, did I understand you correctly or did I interpret

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what you said correctly in that it is your opinion that this ten percent, which Southwest has requested here, the ten percent of the original well cost, is actually an arbitrary figure without any real basis?

A It has a real basis in the fact that over thousands of wells, certain of the companies on the West Coast, mainly companies on the West Coast, not in this area but on the West Coast, have worked out percentage factors for those items on the basis of that it will more truly represent the actual cost to the company than the manner in which it is handled in this area, on that form of accounting, rather than arbitrarily setting a figure for so many dollars per well each month. Those companies, in some instances, have excessive and, in most instances, will not be the true cost of supervising the well.

Q Mr. Jones, why does it either have to be percentage of the well cost or a flat fixed cost; why can't it be the actual operating cost each month deducted from the receipts for sale of gas?

A I would imagine that this practice has grown up as a means of simplifying the accounting procedure of a company, so that they would know there are certain items that will be charged. I do not believe Southwest will have any objection to your giving us the actual cost over the life of the well, if you so desire, except that it will require, I imagine, the introduction of certain accounting practices which they have not, at the present time,

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instituted.

Q Southwest will sell some gas each month from a well; say they receive \$1,000 for sale of gas from the well for that month; what would be deducted from the \$1,000 before the distribution to the parties who own an interest in the well?

A The royalty, the taxes, and in the instances of operating agreements, the costs that are permitted under that operating agreement.

Q Well, are you talking about voluntary operating agreements?

A Yes.

Q Well, assume the case where you have Southwest Production Company owning all of the acreage except some acreage which would be force pooled. Say they own 300 acres and force pooled twenty acres. There is no operating agreement in connection with this twenty acres. You receive this \$1,000 a month gross, you deduct royalty and taxes?

A Plus whatever your order specifies that we will take, which would be the cost that those persons share of the cost of the well, plus the risk factor, plus the cost of supervision as determined by the Commission.

Q And you would not take any operating costs off, whatsoever?

A Yes. The operating costs will be chargeable to the working interest. Yes, Southwest charges will be taken off, but

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that will be part of the working interest of the well borne by the working interest owners. That is all we are attempting to do is to determine what percentage or what figure the working interest owners share should be.

Q Now, the working interest owner, by that you mean Southwest Production Company with its 300 acres in the unit?

A Plus the other parties, but Southwest, owning and operating a series of wells, would not break it down as to that individual well. The cost of supervision, their man who is supervising the wells, would of course supervise several wells or -- I mean, he would not just supervise one well. I doubt very much if that would be practical. I think that is the reason this practice has grown of either setting an arbitrary figure of so many dollars or, as on the West Coast, attempting to relate to percentage of your cost of drilling and completing the well.

Q Well, now, in other words, Southwest owns 300 acres in the unit. Parties who are force pooled own 20 acre units. From the \$1,000 gross money you receive for sale of gas, you are deducting the royalty, your cost, and taxes?

A Right.

Q You are going to deduct the operating cost to the working owner; you are going to take off part of the operating cost, then you are going to take off part of the original ten percent as yours?

A No, the operating cost that can be deducted that the



Commission determines we can charge.

Q In other words, you are going to distribute the gross profit from the well, less the tax and royalty?

A And the monies, the cost that you permit us to pay.

Q Yes, I understand that. You stated that this twenty-five to thirty-five percent that was arrived at by one company as being a supervision cost. Now, that was based on the original cost of the well, correct?

A Yes, sir.

Q Was that on a well that had a short life or long life or a short-lived oil well or a long-lived gas well?

A These are on gas wells, especially the higher figures of 35 percent, is on gas wells, where you have extensive facilities to handle the gas and any of liquid produced.

Q You say the 25 or 35 percent was based on California figures, is that correct?

A Yes.

Q Now, where you have a voluntary agreement where there may be a penalty of 100 percent or 200 percent for not paying their share of the cost in the well in advance, I think Mr. Morris covered this, but I will ask you again just in case. Is there ever any interest in addition to that 100 or 200 percent penalty?

A No.

Q So, by virtue of the voluntary agreement, it may be a gentlemen's agreement that this includes some interest?



A It is to compensate for risk and also it would include any interest figure. There are interest provisions, of course, in your operating agreement. If any of the parties fail to pay the sum assessed to them within a certain time, then those sums may bear interest. Generally it is set at six percent per annum. On the risk factor, we just set a flat risk factor of 100, 200, or whatever it might be, to compensate you for having advanced your money, and it would repay you for having taken the risk. Also, for interest which you might have accumulated on your money during a period of repayment. That would be one of the items which you would be reimbursed for out of that factor of the risk.

Q Would it be your opinion, Mr. Jones, that the legislature in establishing this force pooling rule and limiting risk to 50 percent, was contemplating the case where you might have all three elements of risk which you have enumerated, present?

A Well, of course, I haven't studied the legislative history of the act, so I do not know what, exactly, they did have in mind.

Q They were contemplating the condition where the well had not been drilled?

A I believe the statute, as I recall, you can force pool at any time, either before the well has been drilled or after and the risk factor, up to 50 percent, may be gained. So, it would appear to me that they have one of what I choose to call the three elements of risk, if not all three of them.



Q They were contemplating the case where all three elements would be present and you have the third one present at this time?

A I believe so.

MR. NUTTER: That is all.

MR. PORTER: Does anyone else have a question of this witness?

MR. VERITY: I have a few questions.

REDIRECT EXAMINATION

BY MR. VERITY:

Q Mr. Jones, do you conceive any difference in the supervision of a well in California and in San Juan County?

A I would imagine it would be greater here in San Juan County than in California. You move greater distances and have more wild country to cover than it is generally true in California. Also, I would say from my experiences I have had in the past two weeks of trying to get off the highway, you also have a greater risk of tearing up automotive equipment.

Q Mr. Jones, do you have any way of knowing or ascertaining for certain who the heirs of Abas Hassan and D. M. Longstreet are?

A I have been able to contact only the ones I referred to. I do not believe that I could determine, even if I were able to contact them; I don't know that I would be able to determine who his heirs were.

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MR. VERITY: I believe that is all I have with this witness.

MR. MORRIS: I do not care whether I go first or last.

MR. VERITY: I did not mean I had finished with all my evidence. I have some exhibits I would like to introduce if there are no objections, from the Examiner Hearing, merely the exhibits that were introduced there. I believe they might be helpful. I would like to introduce those in this case. With that, I am through with my evidence.

MR. PORTER: Are there any further questions of this witness? You may be excused.

(Witness excused.)

Are there any objections to the introduction of the exhibits from the Examiner Hearing?

MR. MORRIS: If the Commission please, in order to introduce these exhibits, I think he should identify them, who prepared them and what they are, because otherwise we would have to refer to some of the testimony in the prior case.

MR. VERITY: Can we stipulate to that?

MR. MORRIS: Yes, I would stipulate with you on that.

MR. VERITY: I think the exhibits will speak for themselves as to what they are.

MR. MORRIS: Do you feel a stipulation will take care of who prepared them or were they just maps?

MR. VERITY: ~~The only thing I was referring to is plats~~

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of the unit in question that I believe would be helpful. I think it is really immaterial, but I believe they were prepared by Mr. Jones.

MR. JONES: They were either prepared by me or under my supervision.

MR. MORRIS: I will stipulate with you on that.

MR. PORTER: The exhibits will be made part of the record.

MR. MORRIS: If the Commission please, I would like to make a statement, if Mr. Verity has no objection to me going first.

MR. VERITY: That is fine.

MR. MORRIS: I think in these cases the Commission should be fully aware of the problems they are being called upon to decide, perhaps for the first time, since we have been operating under the new compulsory pooling law that was adopted by the 1960 - 61 legislature. One of the problems that has been expressed here today, which is obvious, is just what interest the Commission should pool and how the pooling order should effect the pooling of those interests. In order to come to a solution to that problem, I think that we should carefully read the provisions of the pooling law. First, I would like to point out that I feel that the Commission must find satisfactory jurisdictional fact before it has the power to enter a pooling order, that the interests being pooled, the non-consenting interests being pooled, have not agreed upon pooling. Now, this would seem to

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be an obvious thing; since the pooling application has to be brought out, obviously there are some owners that have not agreed, but I think the wording, and I will, if you will indulge me, I would read from the first paragraph of the statute: "Where there are various owners within a prorated unit, they may validly agree to pool their interests. Where, however, such owner or owners have not agreed to pool their interests," and so forth, the Commission has the right to pool them. The wording there of "not agreed to pool" I think, has the contention that some effort has been made to secure an agreement of those non-consenting interests before pooling can be ordered by the Commission. I think that the Commission should realize that the power given to it by this force pooling law is an extraordinary power and should be exercised with some caution. Proceeding on that premise, I think that the reasonable interpretation of the law and the phrases that I have just read, would require the Commission to inquire in every case as to what efforts have been made to secure the voluntary agreement of all interests, all non-consenting interests that are being pooled by virtue of their order, any order that the Commission might enter. I think that the Commission, as I said before, I think, first, that the Commission has to find a satisfactory jurisdictional fact that some effort has been made to secure an agreement of these people before it has the power to pool them.

Now, in some instances, there are interests which are known, but you cannot locate them. In other instances, there are--

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you may not even know what interest a particular unknown party may have, but I think a reasonable interpretation of the law would be that the Commission should pool interests where the owner has first, as to interests that are known, where the owner has offered reasonable terms to lease or communitize, and that particular interest has refused. I think the Commission can also pool an interest where the owner or owners of the interests whereabouts are unknown and reasonable efforts have been made to locate such a person. This is a common occurrence, where you have unknown heirs. For instance, I think that the Commission can validly pool interests where the owners, unidentified, are unknown after a diligent search has been made, because, in all of these cases, all you are asking of the operator who wants to bring the pooling act, is that he has made every reasonable effort to find the person in order to offer him a chance to lease his acreage or communitize it in these categories. Where the owners have not agreed, I think the provisions of the statutes are plain. However, I believe that the Commission should not pool interests where by their very nature, because of some doubt as to whether they are an interest, they are just a claimant in the acreage involved; then the Commission should not pool those interests, because by the very nature, no chance has been given to these interests to agree. As I said before, I think the Commission must, as to each interest, find that it has not agreed.

Now, particularly where charges for supervision and risk

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are to be made, the Commission should be very reluctant to pool any interest which has not been given a clear-cut opportunity to join on a voluntary basis. Now, one of the questions that the Commission is being called upon to decide is how the pooling order is going to read, whether the order is going to pool all interests within the unit, whatever those interests may be, and this is the way it is done in a number of other states that have compulsory pooling laws, or whether the Commission is going to enumerate each non-consenting interest and spell out how much of an interest that person owns and make some definite provision with respect as to how the proceeds from the well are to be distributed to that interest owner. Now, As I said earlier in the day, I think that our compulsory pooling law requires that we do it in the latter manner.

Reading again from the law, it reads: "Such pooling orders of the Commission shall make definite provisions as to any owner, or owners, who elects not to pay his proportionate share in advance for the pro rata reimbursement solely out of production to the parties advancing the cost of development --" and such. As I read that provision of the law, it would require the Commission to spell out the various interests being pooled and exactly what share each has and how the proceeds of the well are to be distributed. Now, this in no way is going to act as a jurisdiction of title by the Commission, because in entering an order in this, the Commission is going to proceed upon the evi-



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dence that it has elicited from the applicant in the case. If the applicant alleges that A is the owner of "X" amount of interest and B is the owner of "Y" amount of acreage, then that is the basis upon which the Commission will enter its order, providing there is no dispute. If there is a dispute, then the matter has to be resolved in a court. Competent jurisdiction should not be made by the Commission.

We have seen one instant today of such a dispute. Mr. Coffey may claim to have sixteen acres, and Southwest Production Company claims that he only has ten. Now, in a situation like that, I do not know how the Commission can enter any reasonable order without basing it upon an escrow provision of some sort or paying proceeds attributable to that interest into court to be determined at a later time. But if the Commission can spell out what interests are being pooled, what dispute, if any, there is as to the extension of these various interests and what shall be done with the proceeds attributable to that interest, I think it is upon the Commission to do that, under the provisions of a pooling law.

Now, I would agree with the applicant that it would solve all the problems for them if we entered an order pooling all mineral interests within the unit, because then you do not have to worry about who owns what. If you have any proceeds, you just hold the proceeds and you go along producing the full 320 acres, the allowable on it, and hold 7/8 of it to help pay for the well.



This certainly has its merits. However, I believe the expressed provision of the pooling law will prohibit the Commission from entering such an order.

With respect to the risk involved in drilling the well, it is hard for me to see how any element of risk exists if the operator was willing to assume all the risk before it came to the Commission to seek a pooling order; but I certainly realize that there can be a wide variance of opinions upon this subject. I would state, however, that if the proper procedure had been followed in filing the form C-128, the notice of intention to drill, each of the subject wells would have been conditioned upon a pooling order or upon the formation of a non-standard unit before an allowable would be assigned to the well and I submit that if proper forms C-128 had been filed in this case that we might not have this problem at the present time of trying to decide whether the risk was going to be allowed or not. If there was any injury to it or any loss suffered by the operator, I submit that it may well have been caused by its own negligence in filing proper forms in this case. In normal cases, I would certainly recommend that some risk is always allowed where pooling actually is sought before the well is drilled. In this case, however, it is hard for me to see how the non-consenting interests have shared any of the risk, since their interests have been drilled, tested, and completed and shown to be a producing well.

I think the Commission also has another problem to de-

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side. That is, how the costs of supervision are to be assessed, whether it shall be a percentage of the well cost or whether it shall be a production over the life of the well or, in some way determining a solution to the assessment of these supervision charges so that it will be upon a reasonable basis and will not give an undue advantage to either the operator or to the non-consenting interests. In fact, I think that this may be the heart of the whole pooling problem, is arriving at some solution which will encourage drilling, encourage the operator to bring a pooling act, and yet at the same time be upon such terms that a non-consenting interest will not have an incentive to hold out on the operator. In some cases, it may well be that our pooling orders are unrealistic with respect to the cost that it may give to a non-consenting owner. The incentive may be to refuse to lease or give a valid lease. I think the Commission should enter its order realizing this aspect of the case. On the other hand, I believe that the Commission, and this relates back to the first point that I mentioned in respect to how the interests are to be pooled and what interests should be pooled, should carefully spell out each interest, rather than pooling all unleased interests or without just pooling all interests within the unit in order to avoid what might well turn out to encourage imprudent leasing practices. If an operator knows that he can get pooling orders, pooling all mineral interests, he might be something less than completely diligent, being sure that he has solved all of his title problems



and has signed up all of the unleased interests before he drills his wells because he can come to the Commission and get a pooling order that solves his problems. I think this is one of the risks that the Commission would be interjecting into the pooling situation if it pooled all mineral interests without specifying the various ones.

I believe that is all I have.

MR. PORTER: Thank you. Mr. Verity?

MR. VERITY: May it please the Commission, I will endeavor to be brief, but I do have some things to say and a little law I would like to read to you.

It is difficult for me to understand why all of a sudden we have got all of the force pooling problem. Prior to the time of the last legislation, we had a force pooling statute and the Commission entered orders under the same general law and exactly the same notice with which you now call the pooling applications for hearing. These orders pooled all interests. I need not call the Commission's attention to all of these, but so the record will reflect it, allow me to cite one that I have at hand, which is Order No. R-1880, that was issued a short time before this amendment of the present act. It allows force pooling in 320 acres of gas prorated unit, gives 125 percent of all production that is not leased without reference to names or any particular persons. I would like for Order R-1880 to go into the record. Now, at the session of the last legislature and prior to

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that, the oil and gas industry of New Mexico was aware of the fact that there was something about their force pooling statute that was inadequate; specifically these were twofold: One was there was some question and some doubt as to whether or not the force pooling statute of New Mexico was adequate to force pool an undivided interest in a unit as contra-distinguished from a separate parcel within the unit that was off by itself or someone owned all of it. This had never been answered. It had been more or less ignored, but everyone was aware of the fact that the order might be invalid if it force pooled such an interest. The New Mexico force pooling statute made no application whatsoever for a risk factor. At least a portion of the industry felt it should have one. By a committee appointed by the New Mexico Oil and Gas Association studied the question of amending and reworking the force pooling statute. That committee came forth with the present statute that we have, I believe almost word for word, except that it did include a provision that risk would be included as an item of reasonable cost, and that was stricken by the Commission. I happen to know a little about that committee, because I was on it. They went to Oklahoma and picked up the Oklahoma statute, and with it as a model or a norm, we used it to draft the statute that is presently the New Mexico statute. Looking backward, it seemed to me like an intelligent thing to do, but it has caused some confusion. At the time, it seemed like it was well advised, because it was a body of law that interpreted that

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and made it valid. We also had its many years of experience, or so it seemed to the committee, having that statute applied in Oklahoma. Particularly, I would like to point out to the Commission that a part of the language that seems to cause us trouble at this juncture, particularly the language which says, "where, however, such owner or owners have not agreed to pool their interest, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply --" then you shall force pool. That language is word for word out of the Oklahoma statute. The Oklahoma statute also has got that where they have not agreed to pool, the Commission shall force pool.

I would like to very briefly cite an Oklahoma case which happened. I refer to the Oklahoma Corporation Commission's order which appears in Wakefield vs. State, Oklahoma Supreme Court case reported in 306, P 2D, 305, 1957 and embodied in the decision of the Oklahoma order. It is as follows: "It is therefore ordered by the Corporation Commission", the commission of the state of Oklahoma, "one, that the Texas company be and here is authorized to drill and produce a well, with production of natural gas from the Morle Sands and a common source of supply...", "and that a full allowable of production therefrom, that all persons owning leasehold interests within said space unit shall have the right to participate in the drilling of said well and in production therefrom, upon the proper payment by proportionate shares



of the cost and completion of the said well. The sum of \$177,000 is hereby fixed as cost of said well." They go on to provide that if they do not make the payment, they give a lease on the property. In this particular law suit and appeal, do you know what the man was unhappy about? He was appealing, he was unhappy because the Commission did not give him the privilege and permission to participate in the well and to be penalized the 150 percent of the total cost. He said, "That is a right I ought to have." All this application here is asking is that it be granted 125 percent. In Oklahoma, we say that is a harsh provision, where they actually take a lease away from him if he does not pay. In the case of the New Mexico statute, it is watered down. This was the wisdom of the legislature. We do not blame the legislature. This was all that was asked of the legislature, but we say we should not emancipate the provisions of the statute because there is language in which we think we should apply requirements that do not exist. The Oklahoma statute has never been interpreted in that way. We do not think this Commission should so interpret it. I was somewhat amazed to read these cases to find there was no Oklahoma case wherein someone had confronted the Commission and said, "I did not have an actual notice of this hearing of this order and therefore, this is not valid." But although the Oklahoma statute has now been in force and effect, I believe fifteen years, this present one, considerably in excess of ten years; in spite of this and in spite of the fact that all of their orders have been interim, wherein they

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merely give publication after the application is filed. In spite of this fact, I did not find one situation that had gone to the Supreme Court of Oklahoma. I say the reason for this is that it is not a real problem and it is not a real difficulty and we should not make it one here. Mississippi also has a similar pooling statute to the one that we have here. It is very close to the Oklahoma and New Mexico statutes. Mississippi has not had this particular point exactly before it, but I have found that the state of Louisiana has considered this particular point. If you will, I am talking about whether or not this Commission has a right to enter an order interim or that everyone that owns an interest in a particular interest be given notice of hearing by public notice in Santa Fe County and the land wherein the land lies that is subject to the force pooling action. In this particular case, and I refer to Ohio Oil Company vs. Kennedy, a recent law, 1947, reported in 28 So. Rep. 2nd 504, the matter arose because of the fact that one party had a reserve interest in the minerals of his land. If there was no production of these minerals for a period of ten years, he got them back. If there was production in the ten years, the party owned them throughout the duration of production. The state of Louisiana's Commission entered an order that force pooled these particular lands. It said this ten acres is placed in a unit with the well that is going over on the other 80 acres. That well was drilled and started producing oil and gas within the ten years, but the man who re-



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served his rights said, "The force pooling order is not valid; therefore, my ten acres is not being produced; therefore, it comes back to me." A party convened for this ten-year term does not get a right to keep it. Among other things, he said, specifically, "the order is not valid because I didn't have notice". What did the law do with regard to it? The Supreme Court said, I quote from this page 507 from the Court session section 5B of the act 157 of 1940, Dart's statute, 4741.15, on the question of notice reads as follows: "No rules, regulation, or order, including change, renewal, or extension thereof shall, in the absence of an emergency, be made by the commissioner under the provisions of this act, except after a public hearing upon at least ten days' notice given in the manner and form as may be prescribed by the Commission . . ." If you will, please, that is exactly what has been done in this case. We have caused notice to be given in the manner that this Commission has prescribed, and I continue to quote from it to show you that notice was given, order No. 35, certified copy of which is annexed to the pleadings, has the following to say on the question of notice: "Pursuant to power delegated to act 157 of the Louisiana Legislature for 1940, following publication of notice of hearing not less than ten days prior to said hearing in the Baton Rouge State Times, the official state journal, and a newspaper of general circulation, published in East Baton Rouge parish, and in the Haynesville News, a newspaper of general circulation published in Claiborne parish . . ." So,



what do we have? We have there an interim notice and publication in two newspapers, the one in the capital of the state, the one where the land lies. They felt that this was good and sufficient notice of all the interest within the drilling unit. The Court said, with regard to this case, that the notice given was good and sufficient and they held that the order was valid and it was drawn in rem to all persons that had any interest within the 80 acres, in spite of the fact that that person did not know about it and did not agree to it.

If the oil and gas industry is going to keep abreast of the times, which it has been doing, it is necessary for the force pooling statute to keep abreast of the conservation methods that are in practice in the state. If we did not have any conservation, we would not have need for force pooling. If you please, if this Commission were not interested in seeing that unnecessary wells were not drilled, then we would have no need for the force pooling statute; but a regulation of the number of wells to be drilled into one common source of supply, into one pool, is a necessary thing for this Commission to consider; and the Commission does consider it and with regard to the Mesaverde-Flora Vista and Basin-Dakota formations, this Commission makes a prorated unit consisting of 320 acres should be one well drilled in it. If we are going to say one well can be drilled in it on divided or undivided interests, they have got to force pool. This is exactly the problem. If we take a congested area like Aztec and much of the area that

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is subject to the Basin-Dakota gas pool, you have got a congested situation. You have an extremely legal situation, as evidenced in this case, as demonstrated here today; and it is necessary, if we are not just going to take these areas where we have congestion, and draw a circle around them and say they cannot be developed, no one can get any of the gas that underlies it. If we are not going to do that, we must go to a force pooling order that is in line with what we have developed up to this point. Right up to the time that the amended statute came into effect, we did not have any problem with the right of in rem orders. I suggest that there is no problem now. With regard to that, I would like to point out that the Mississippi Court, in the case of Superior Oil vs. Suite, 59 so. 2nd 85, a 1952 Mississippi Supreme Court case, it was suggested to the Court that the order was not valid because they had a clause in it similar to the one that we have here, which said if they had not agreed, then the Commission could enter a spacing order. This appeal suggested that this was not adequate. The appellant said, "I have got to agree, this is a necessity before the Commission could enter its order." And the Court, in this case, interpreting the similar provision said, "This is not necessary. It is evident from the very fact that these parties are here before the Court at this time, that they could not agree." In so ruling, we find this statement by the Court: "Section 10 A and C requires that the parties have not agreed to integrate their interests, and have failed to agree. Clearly,



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the board's findings that the parties have not so agreed is correct. The testimony outlined above, the admission of the appellees' and appellants' attorneys, and the fact that this law suit is before this court, makes it manifest that this finding of the board is supported by the overwhelming evidence." We think there is no sinister implication in the phrase "have not agreed."

May it please the Commission, the phrase "have not agreed", you must have tried to agree and have been unable to agree. We think that this record shows clearly that good faith and reasonable effort was made to form a 100 percent unit in this case. The applicant here has contacted everyone that they can contact who has an interest in it. They have a lot of problems with regard to it. If the area is to be developed, there must be attention given to the force pooling statute which allows a party who owns an undivided interest to go ahead and either drill his well or file an act proposing to drill his well and to have every interest in the unit force pooled, the same as is done in Oklahoma under the same language that we have.

Let me turn for a moment to the question of risk, then I want to read you from an Oklahoma case and I am through. I would like to point out specific language of this statute: "Where, however, such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill, has drilled or proposes to drill a well --", the Commission shall force pool. After we set this up, either the



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person who has drilled or person who proposes to drill has got a right to a force pooling order, we come down and we find out what goes into the force pooling order. "Such pooling order of the Commission shall make definite provision as to any owner, or owners, who elects not to pay his proportionate share in advance for the pro rata reimbursement solely out of production to the parties advancing the cost of the development and operation which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable, but which shall include a reasonable charge for supervision and may include a charge for the risk involved in the drilling of such well, which charge for risk shall not exceed 50 percent of the non-consenting working interest owner or owners pro rata share of the cost of drilling and completing the well."

What wells are we talking about? The well that he either has drilled or he proposes to drill, and I submit that the statutes accurately and exactly refer to either situation. I would offer to submit to this Commission that it is undisputed in this case to the effect that there has been a risk run in this case. I submit to you that risk was run when this well was drilled; even though that risk is now passed, it was a risk and it is a part of the cost of that well, just as surely as the cutting of the hole or the placing of the pipe in this well is cost to that well, and it must be borne because the party who drills wells will find he comes up with dry ones even where he



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thinks he is going to produce. Whoever drills where he does not think it is going to produce? We have found evidence, undisputed evidence, that risk was run. The statute plainly says that the man who drills a well or proposes to drill a well is entitled to an amount for any risk he has in drilling the well. In addition to that, we have the risk that every oil and gas producer lives with from one day to the next and that is that the production may not go to its end. Now, there is not a lawyer practicing in the oil and gas field that has not had clients go broke because they have miscalculated what the production from a well will be.

Whereas, in San Juan County, and in this case, I hope, the Basin-Dakota and Mesaverde-Flora Vista will go on to their final end of what is the very best that is hoped for it. There is not one of us who is not aware of the fact that two or three or five years from now, it may be a grave disaster. I would cite to this Commission the Totah-Gallup oil pool. When it was prepared for temporary spacing orders on areas, which we wanted to make 80 acres, in spite of that fact, in one year when we came back, if you will recall, the calculations of reserves, during that year, had gone way down hill and they had to be curtailed drastically. This points out and points up what we have submitted to you as a risk factor really and actually is 25 percent and has not yet been known. No one yet knows whether or not we are going to be correct or wrong. We think that a risk has been involved; we think that 25 percent is an absolute bare minimum.



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To close, I would like to read to the Commission, very briefly, some language from the Oklahoma Supreme Court, in the case of Anderson vs. Corporation Commission 327 Pacific Second 69. That is a fairly recent case, 1957. Oklahoma, as I am sure this Commission is aware, pioneered much of the conservation legislation with regard to oil quantities. They have probably done more than any other state and in going into this reason of why force pooling is necessary, I would like to close with this quotation: "Petroleum products have, in less than two generations, become most vital in the life and industry of the entire world. They have, by reason thereof, become probably the most important of natural resources. It was only natural that with the increase in importance and use, the necessity for conservation was recognized. To curtail over-production and waste for the benefit and protection of the general public, restraints had to be placed around the individual's rights to develop and produce beyond the demand or need. The only logical method of restraint, other than limitation of production per well, was the curtailment of drilling by exercise of the lease pool. They evolved the well spacing laws, but with well spacing alone, the object of curtailment was met, although often at the expense of serious inequalities and inequities between the various mineral owners and the lessees. Under such primary restraints, when Ellison (the applicant for forced pooling in the case) drilled a well on the 40 acres on which he owned an interest, Anderson (the non-consenting party) would have



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no rights whatever therein, his ownership being of an interest in an adjoining 40 acres. Thus, consideration of the correlative rights of such owners and lessees became a necessary part of the legislation. The results of the acts authorizing unitization and pooling in each common source of supply in order that the exercise of the police power in the conservation of natural resources would not affect too serious an unbalancing of correlative rights."

Anderson, in this case, was unhappy again because he did not have the right to participate in it and pay 150 percent. We have only asked 125 percent and in saying that Anderson had the right to his force pooling under the force pooling act of the Commission of Oklahoma. After that introduction, they said that the order complained of did not constitute a taking of property of Anderson in any way. It granted him the right to participate in the production from the well on Ellison's property, but on condition that certain requirements were met.

I want to say in this case that if there is any party, even at this juncture, who within a reasonable period of time from this date or from the date of the order that the Commission issues, say within thirty days as a reasonable time, desires to come in and pay their part of the cost, Southwest Production Company will be very happy to take it and will be satisfied, irrespective of the fact that they have incurred an run risk in drilling of those wells, and so we would have no objection to this Commission entering an order which finds the cost of drilling and completing the



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well and says to the non-consenting owners, "You will pay 125 per cent plus supervision out of production or pay your cost in cash within a reasonable period of time from this order." We think this Commission, if we are to have orderly development and protect the correlative rights of everyone who is in a unit, must enforce the statute with the force pooling order.

One more thing: There is not a thing in the application of one force pooling order. It is not a thing in the world but another instrument in the record of the title of the particular tract of land that is to be considered by the party who is going to drill to say who is going to be paid and can be given its consideration right along with any other kind of instrument. This does not create a problem unless we make one.

That is all I have.

MR. PORTER: Mr. Verity, you made reference to an Oklahoma order, in fact you read from it. Do you know whether or not that order covers an existing well, one that has already been drilled?

MR. VERITY: I am not certain whether that well had been drilled or not; I don't believe it had, though, because it made provision for a bond to pay instead of cash.

MR. PORTER: In your associate practice before the Oklahoma Commission, have you ever known them to make allowances for risk for a well that has already been drilled?

MR. VERITY: Yes, sir, I believe that I certainly have,



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because you can force pool one that has already been drilled in Oklahoma the same as you can one that is proposed to be drilled. When you do so, they could do one of two things: If it is someone in the oil industry, they will give them the alternative of either paying their share of the cost of the well in cash or they will require them to give a lease and a bond, using a figure which they will set. If it is someone not in the oil industry, they will give them three alternatives. One is the 150 percent and I believe they do that on wells that have already been drilled as well as one that has not. If you are not in the oil industry, you can get 150 percent. If you are like Mr. Anderson, you have got to pay or give up your interest.

MR. PORTER: Does anyone else have anything to offer in this case?

MR. MORRIS: Yes, sir, I have a statement to read into the record on behalf of Mr. Coffey:

"As the owner of fifteen acres of land and minerals in the East half of Section 22, Township 30 North, Range 12 West, I have an interest that is directly affected by any order entered by the Oil Conservation Commission in Cases Nos. 2416 and 2446.

"In general, I am in favor of continuing the orders already entered by the Commission pooling interests in the East half of Section 22. The provisions of Order No. R-2151 and Order No. R-2068-A seem to me to be reasonable, and the application of Southwest Production Company for modification of these



orders should be denied.

"Specifically, I am opposed to allowing Southwest Production to recover 125% of their drilling costs, or allowing a 25% additional recovery on account of any risks incurred in drilling the wells involved here. They placed their own value on this risk factor when they drilled without any assurance of contribution from anyone else, and solely on the basis of what they owned in the way of mineral working interest in the half section. Having already drilled their well, there certainly isn't any risk for which they should be compensated at this time. The risks involved in drilling a well are at best, speculative. Once the well has been drilled, they can be determined, and in this case the risk assumed turned out to be no risk at all. For this reason the driller cannot be entitled to any compensation.

"The applicant also asks for 10% of 7/8ths of the production from these wells from inception of production to depletion for supervision charges.

"Admittedly, the operator is entitled to fair price for his services, but a 10% charge for supervision is on its face so excessive as to be beyond all reason. The original allowance made by the Commission in its Orders No. R-2151, and R-2068-A was ample for this purpose and should be continued in effect.

"In no case should the operator of these wells be allowed to recover any of its costs or charges out of the 1/8th royalty interest that the Commission, as a matter of policy, has

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always reserved to the land owner.

"Since this property is being pooled against the will of some of the land-owners in the area, provision should be made in any order entered by the Commission to insure compensation for any surface damage occasioned to the land involved, and the operator should be prevented from locating its equipment, tanks, etc., near residences and outbuildings of the land-owners.

"In the event there is a change in the spacing provisions of the Commission in the Flora Vista-Mesaverde Gas Pool and the Basin-Dakota Gas Pool, provision should be made in the order of the Commission to insure equitable sharing of production by those whose lands have been pooled as a result of the Commission's orders.

"Your consideration of this will be appreciated."

MR. MORRIS: Mr. Coffey, are you in the room?

MR. COFFEY: Yes, sir.

MR. MORRIS: Have you heard the statement that I just read?

MR. COFFEY: Yes, sir.

MR. MORRIS: Is that your statement?

MR. COFFEY: Yes, sir.

MR. SELINGER: I again wish to approach the Commission as a friend. We are not concerned with the four cases immediately under consideration. We have no interest in that at all, but one of the factors brought out by the Commission's attorney is of deep

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concern to me, as well as the majority of the oil industry. That was the point that every pooling order issued by this Commission should specifically indicate by name the interest and specify cost of sharing by a specific amount rather than the general accepted tradition throughout the oil business, in the twenty-four states that have pooling provisions, in which all interests are pooled without specifically naming them. Incidentally, Oklahoma's well spacing act was adopted in 1935 and the Patterson vs. Stanley case arose from that, immediately thereafter. That was the first pooling provision in the oil business, in answer to a pooling provision by the statute. Therefore, I wish to direct my remarks solely to that one point; as the necessity for the New Mexico Oil Conservation Commission of laying down a ruling or procedure, you are requiring all those matters which the Commission's attorney went into at great length. All other factors will be covered by written statement or probably by the New Mexico Oil & Gas Association when it meets.

What that implies, that is the specific naming of interests by name, various costs and amounts and so forth, implies that, as a matter of fact, the very question preceding your jurisdictional question, that before you can drill, every single interest in a drilling unit must be, beyond any doubt, be resolved to, not only your satisfaction but to everybody's satisfaction. I doubt whether any drilling unit established by any state goes that far, because it is impossible to have title on each and every



tract. In Oklahoma, for example, it goes back to the Indian titles. We have Congressional legislation on that from time to time.

If what Mr. Morris says, that he thinks the Commission should do as a matter of jurisdiction, if what he says is to be done, then your statute should be like it was written in Nebraska, what was written in Utah, and what was written in Wyoming. You must have a refusal first, as a matter of jurisdiction; but that is not what your New Mexico statute says where there has been no agreement, no specific reason why there is not any agreement but where there is no agreement. Well, that is the way the terminology reads in Nevada, Oklahoma, Florida, as well as in this state.

Now, the vast majority of the twenty-four states requiring pooling use the general language, in the event pooling is required, they leave it up to the boards and commissions to determine what their own particular requirements should be. Two states have no provision as to pooling; they just say that regulatory action shall have the right to pool, and that is all they say.

Now, in all of this, let us remember that you gentlemen act as the New Mexico Oil Conservation Commission. Let us not forget your powers and duties flow from one thing: Conservation, the drilling and production of oil and gas; that is your primary objective; that is your sole foundation for all this big setup in this state. But in other states, if you do not watch out, you are going to flange out like the great white father in Washington,

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flange out on side issues on pooling in connection with well spacing. As a matter of fact, this provision, Section 653-14, has to do with well spacing and drilling.

So, in all this argument, let us remember we are only talking about drilling and producing wells. We are not talking about cost and things like that. That is only something incidental to your authority to establish drilling and well spacing units. That is all this pooling comes up, about, just drilling and spacing and drilling and producing of wells. That is your foundation.

Now, if we are to track down the title of every minute interest in the drilling and spacing units, the oil and the gas will fairly well be drained out from under us. Our concern is that by the time you get through with all these side issues, you will have forgotten your primary jurisdiction, your primary duty. You will have done a wrong, not only to the operator, but also to the oil royalty owners because they are going to be drained from under before you can shake a stick, if you get involved in too many issues that you forget your primary duty of drilling and producing.

Now, it was pointed out that the basis for the necessity of specifically mentioning the names and the addresses and interest and the cost and all those minute details is formed by one sentence in the statute: "Such pooling order of the Commission shall make definite provisions as to any owner, or owners, who elects not



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to pay his proportionate share in advance for the pro rata reimbursement." I will tell you how it has been solved in other states; I can explain to you why that was put in here, the exact copying the provision from other states.

Twenty-two years ago we had a matter in Oklahoma which resulted in a rather unusual case. We had 640 acres on a field and I, unlucky George, was the one that had to bear the work of pooling it. The 640 acres, unfortunately, included Boot Hill at the City of Garland, located in this 640 acres. It consisted of about 15 acres and composed lots of -- in those days, I guess the fellows were a little taller than we are now. I guess they were about eight feet long, six feet deep, and about four feet wide, and there was not any procedure, any precedence for pooling a cemetery and this very question came up when the Commission force pooled. How was it going to force pool it? Well, I think they had 125 burial lots there, everyone of them full. It was obvious that we could not go in to specific names, so we established, I, myself, established with Oklahoma Commission the precedence, force pooling all interests in a drilling and spacing unit, without the necessity of referring to a single owner, a single specific ownership.

All states, all twenty-four states, requiring pooling have a general provision pooling of all interests, of whatever kind and nature, as a general paragraph, about five lines long that is just pool all interests. In Oklahoma they go one step



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further, they say that those parties who have appeared at the hearing for the pooling and objected to one provision or another would specifically have their names in it, but it was also followed by in Oklahoma, and Oklahoma is the only state outside of New Mexico up to the present time where you have particular people coming in and objecting to proposed drilling and where you specifically name them. All the other states have general provisions. They specifically appear at the hearing and make their wants heard, their names are mentioned in the particular order, but it is also followed by that general order, general paragraph, force pooling all interests of whatever kind and nature. That was put in there for a purpose, because when an operator comes to the Commission and we say we have a lease on this acreage, we allege to you that to our best knowledge that is our acreage.

If we are wrong, we have a form where we can be taken into court, over the head of the District Court, if we have wrongfully taken someone else's oil or wrongfully paid out somebody else's interest to somebody else who is not entitled to it; we have to pay twice, we have to pay through the nose. But when you listen to all the testimony that was brought out this morning and this afternoon with respect to cost and all of these factors, you can see how far afield a Commission can get from its primary, basic jurisdictional function of encouraging drilling of wells, encouraging establishment of uniform patterns, if possible.

For what purpose? For the purpose of permitting those





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who are eager to spend their money to drill for oil and gas, to hurry up and do it in order to prevent drainage. The operator is sort of a trustee; he is accountable to all the royalty interests, he is accountable to all his partners or working interests. It is his obligation, when he files an application, that he wants to get the well down, so that he can prevent drainage from his pool. That is the reason why we need haste in permitting those who desire to drill the right to go out and as expeditiously as possible drill and get their straw down in the common pool, so he can start participating.

Now, the one provision I referred to before this as the entire basis for the recommendation that your pooling order should be specific, is the sentence I read there, that is assuming that there is no other basis for prorating the cost of reimbursement, that is assuming the basis of acreage, but that is not necessarily to follow. Some states prorate on the acre feet. Most of all the states indicate that they shall participate on the basis of each owner's interest in the drilling and spacing unit.

Now, if you want to get into cost, I don't think that in a specific pooling of a particular drilling and spacing unit, you need to go in to the cost. Why? Because all the costs are not at hand. If you could ask any operator ninety days after he drills a well what will the total cost be, he cannot tell you because they are not in yet. It takes from five to six months for the operator to get all the costs from it, and the deeper you



go, the longer the period of time is. On one well that cost \$900,000 it took us twelve months to get all the bills in. You cannot tell what the costs are.

So, on a pooling and spacing application for force pooling in this state, the normal procedure is to force pool all interests in a drilling and spacing unit. Then, that way, you do not have to get involved in cost, because the operator tells the total cost after he gets all of the costs in and the parties get the total. The operator says this is what it costs here, as a complete cost. Then if the working interests and the overriding interest owners of the drilling and spacing unit have a dispute, your statute tells you the next step. It says on page 100 of your big yellow book, it says, "In the event that disputes, relative to cost -- ". It goes on down here, it tells you what you can do on a hearing for or on disputes of costs. I say you are trying to take two hurdles at one time when obviously all of the bills of the well are not in, when obviously you cannot tell what the interest of each is in a recently-completed well, because all the abstracts have not been examined.

Yet, if you go down and take the acreage substitute, the way other states handle it, in two particular hearings, they pool it and say in that pooling order, "This acreage is the called acreage" and when an actual survey is made of all the interests, it shall be placed in the record and substituted for the called acreage, and the Commission will use that and/or the Commission

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in these other states will work out the interests if all the interest holders cannot come to any agreement at a hearing called specifically for that agreement. That is why we recommend in this amended pooling order a provision for subsequent hearings on cost for pooling; that is why we say that it is to the best interests of the industry, which I am sure you gentlemen have at heart.

You have said the purpose of pooling is to prevent the drilling of unnecessary wells. You have done all those things rather laboriously. With one sweep, you are going to just undo all that by saying, "Well, we are going to go into these particular costs, we are going to have to sit down and determine all this." All that time, all this oil and gas is being drained from under that tract and you are certainly going to slow down the oil and gas in this state.

MR. PORTER: Thank you, Mr. Selinger.

By the way, does that friendship extend to Mr. Morris?

MR. SELINGER: In the early Oklahoma City days, Buck Morris and I always were on the same side.

MR. PORTER: This sentence, Section 65-3-14, "Each order shall describe the lands included in the unit designated thereby," that each order shall describe it. If you have a pool spacing drilling order in a pool in a particular reservoir and it provides for a maximum drainage of so much --

MR. SELINGER: That presents a very interesting question.



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I want to carry you back with me when we first started prorating gas in this state in Southeast New Mexico. I was one of those who maintained, and I still think I am right; I think you will agree after so many years that I have been right in my conclusion that I maintain that drilling and spacing units should follow a governmental section, which requires 640 acres.

If you had followed that 640 acres in Southeast New Mexico and in Northwest New Mexico, if you had provided for that instead of the 320 or whatever, and followed governmental subdivisions, if you had followed that you would have eliminated ninety percent of the unorthodox locations. That is the cause of the unorthodox units you have today.

When you first started, I went back and said we have got to unitize within the governmental sections. Then, Pop! you went ahead and the Commission granted unorthodox units across governmental section lines. That is where all your trouble began. We would not be here in this case today; you would just force pool within that 320 acres; you would say only one well to 320 acres shall be drilled and no more. You would require everybody in that 320 acres to force pool their interests; you would have less wells today; you would have less unnecessary wells today than you have had you followed the governmental sections back there.

MR. PORTER: Now, answer my question.

MR. SELINGER: This sentence here was taken bodily from



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the Oklahoma statute. And I tell you in Oklahoma they follow governmental sections. They prohibit more than one well to that section. They do not grant any exceptions. They rigidly enforce their governmental sections.

MR. PORTER: Mr. Selinger, referring back to my question where it says, "Each order shall describe the land designated in the unit, do you think that applies or means a development description of a particular governmental unit or does it apply to the description of each 320 acres or how?

MR. SELINGER: No, the unit described by the geographical setup that you say is the East half of Section 22 is the unit for such-and-such a reservoir of production of gas. You would not have to describe each one of them.

MR. PORTER: You would not have to describe each one of those cemetery lots?

MR. SELINGER: No, sir. The first step is to pool it. You would set up a satisfactory unit in it. Although, where we have most of the acreage is not in government sections. My gosh, you ought to see some of those units. They are midsummer night dreams, nightmares. Whatever unit you do describe, it is conceivable that you will take a portion of a section of another government section. You might find that it is not connected with whatever unit you just set up and established. That is the unit you pool and that is the description that you put in there. That is your preliminary unit; that is your unit you are force



pooling all the interest in. Generally, there is a plat attached to each of the units in all the other states. That is the description here, I think.

MR. WALKER: Off the record.

(Off-the-record discussion held.)

MR. WHITWORTH: I will be general. I do not want to flank out on the side issues. El Paso does not want to be unfriendly to anyone. I think that in respect to these four cases, at least, El Paso is a friend to the applicant. In this case, we concur with the position that Southwest Production Company has taken what we think is a reasonable interpretation of the compulsory pooling statute of the state of New Mexico, and we think that the relief asked by the applicant in this case should be granted, and that as a policy matter, the Commission's interpretation should be put on the compulsory pooling statute that it provides for an interim, that provides interim, that the order of the Commission is directed to the land and not to individuals. Although the rights of individuals may be affected by the order, we concur wholeheartedly with what Mr. George Selinger said.

MR. BUELL: May it please the Commission, I would like to have permission to make a brief preliminary statement and follow it with a supplemental brief.

As I stated, Pan American has no direct interest in the four cases of Southwest Production Company. But we do have a definite and compelling interest in the general basic issues

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brought out here by these four cases on which the Commission's policies and procedures may be binding on us. The main reason I would like to make a preliminary statement is to make sure I realize the general basic issues that have been made generally by the four Southwest cases.

Now, our appearance here before the Commission is simply to give you the benefit of what we think is fair and we believe is reasonable, not only to Pan American but for all the owners of interests and oil or gas land operators, no matter how small or how big they be. One of the general basic issues that I have realized is the proper application of the risk penalty provision. That has been discussed very thoroughly here, generally, with respect to a well that has been drilled and completed prior to the initiation of any force pooling application.

Pan American feels that in that event no risk penalty should be implied unless the interests who are being force pooled have been given a reasonable amount of notice that the well would be drilled. We make this recommendation because we have been in the position where we thought we had a complete voluntary agreement for a proration unit and a normal operating agreement. I have never seen any that provide for other than 200 percent penalty if any voluntary parties refuse to pay in cash for his share of expenses. We have had it happen to us that one of the people who had advised us that they were going to voluntarily pool and we had started it based on that assumption, and they

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would find they did not have the financial reserve such as they were not in a position to pay their costs. In that kind of event, they simply pay the penalty. We certainly want to get away from the 200 percent penalty provided we are not going to sign a worse force pool.

Certainly, in that event, we feel that a penalty provision is justified and the Commission should insert one in any force pooling order. I think the issue has also been brought up to bring additional or cost related to non-productive risk, whereas Pan American has expressed to the Commission before that actual charges make a non-productive risk probably one of the most minor risks that the driller of a well assumes. We feel that even if the unit being force pooled is completely surrounded by producing wells from the objective arrival, that the inherent risk in drilling still warrants and justifies and urges the Commission to insert a penalty provision in the force pooling order.

We feel that another area issue that has been brought up is not a real issue because everyone of us agreed it is fair and reasonable. That is to the effect whether or not a reasonable effort should have been made by the applicant to voluntarily form a unit. Pan American would recommend, as a matter of policy to the Commission, is we feel that all reasonable effort should first be made to voluntarily form a prorated unit. We feel that it certainly is justifiable for the Commission at the hearing to probe and test and satisfy themselves that a reasonable effort has

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been made and probably from the standpoint of Pan American, the most critical and basic issue which I have recognized is whether or not the Commission shall force pool a contending interest, or to put it in more legal language, whether before the Commission it is interim. It is my humble and candid opinion that, based upon the force pooling statute of the state of New Mexico, that all force pooling proceedings before this Commission are interim actions.

I think there is one sentence in your statute which is completely controlling. That is the last sentence in the first paragraph. Actually, that is the paragraph that gives the Commission the authority to force pool. The rest of the statute tells you how the orders will be issued and things of that nature. That sentence, and I quote, ". . . shall pool all or any part of such lands or interest or both in the spacing or proration unit as a unit." In my opinion, "shall force pool all or any part" generally completely shows the legislative attempt to make this an interim proceeding before the Commission, and actually, in my opinion, even if the statute was not so clear and so concise, I cannot help but wonder, as Mr. Selinger has said and other lawyers have said, lawyers far more capable than myself, all titles are subject to the Commission.

I am sure any force pooling orders that they issue, they are, I know, certainly convinced that the order they issued is a necessary order to protect the correlative rights of all the



people involved. Well, I cannot help but ask myself if the Commission has set that test, has passed it in their own mind, why a force pooling order to force the interests of the parties and the correlative rights of the actual owners interest, however far down the line he may be.

The primary purpose, as I stated, and I hate to repeat myself, but the purpose of the Commission in actions of this nature is simply to prevent waste and protect correlative rights, and an order of these natures will also protect the correlative rights of a later-proven owner. We, in the industry, certainly we operators and certainly Pan American feels that any force pooling order of the Commission should be definite, should be as certain as is humanly possible for the legal staff of the Commission to prepare.

In closing, we would say again the Commission should consider a force pooling act interim and issue their orders accordingly.

MR. PORTER: Does anyone have anything else to say concerning this case?

MR. MORRIS: I will not quit if you go against me.

MR. PORTER: The Commission will allow until March 15 for any interested parties to file a brief explaining their position. We will take the case under advisement and call a recess.

(Recess taken at 3:50.)

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ALBUQUERQUE, NEW MEXICO

BEFORE THE  
OIL CONSERVATION COMMISSION  
Santa Fe, New Mexico

IN THE MATTER OF:

Application of Southwest Production Company  
for an order pooling all mineral interests  
in the Basin-Dakota Gas Pool in the E $\frac{1}{2}$  of  
Section 14, Township 30 North, Range 12 West,  
San Juan County, New Mexico.

CASE NO. 2415

EXAMINER HEARING

October 26, 1911





called as a witness, having been first duly sworn on oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COOLEY:

Q Would you state your full name for the Commission, please.

A Jack D. Jones.

Q By whom are you employed, Mr. Jones?

A I am an independent land man but I represent Southwest in the performance of certain land work.

Q Have you represented Southwest Production Company in connection with Case No. 2415?

A Yes, I have.

Q In what capacity?

A As a land man.

Q Are you familiar with the mineral lease ownership in the land in question in Case No. 2415?

A Yes, sir.

Q Did you have occasion to procure any leases in this area for your client, Southwest Production Company?

A No, sir. We bought these leases from Northwest Production Company.

Q Are you aware of whether the entire east half of Section 14, Township 30 north, Range 12 west NMPM, San Juan County, New Mexico, is under lease to either Southwest Production Company

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or any other oil-gas company?

A All except the land held by Abas Hassam is theirs.

Q Would you please indicate for the record what interest, if any, was owned in this area by Abas Hassam.

A Abas Hassam had an undivided one-quarter interest in twenty-eight acres which is a portion of the southeast of the SE $\frac{1}{4}$ .

Q You say Abas Hassam had. Would you please state whether or not Abas Hassam, to your knowledge, is alive?

A No. I have finally obtained information that Abas Hassam died on July 23, 1946, at the age of 75 in a mental hospital in the state of Arizona.

Q Have you made any effort to ascertain the name and whereabouts of the heirs at law of Abas Hassam?

A Yes, I have. We were able to find or get the names of six, two of whom are supposedly in the United States, but I have been unsuccessful in attempting to contact them. Four of them live in Syria and needless to say, I have not been able to contact them.

Q Have you written any letters?

A Yes, I have.

Q What were the disposition of these?

A Well, the ones in the United States were returned unclaimed, no known address, no forwarding address, and I have received nothing from Syria.



Q Do you have any other avenue you could explore to ascertain the names and whereabouts of --

A I suppose I could make a trip to Syria, but --

Q You stated, Mr. Jones, that all of the properties in the east half of Section 22 are under lease with the exception of the Abas Hassam tract. I note in the estate that D. M. Longstreet appears to own an interest in this land.

A Well, we had a lease from the record owner of the land by the name of D. M. Longstreet, but legally there is an unleased interest there.

Q Would you explain why?

A The circumstance is that D. M. Longstreet died in the '30s and some two years after that, without having probated the will, the widow proceeded to convey the lands. There were, unfortunately, seven minor children or seven children at this time. Mr. Longstreet had died intestate.

Q Did he die a resident of the state of New Mexico?

A Yes. He was a resident of Flora Vista at the time of death.

MR. COOLEY: At this point, I request the Commission to take administrative notice that under the laws of the state of New Mexico as it was in the 1930s, the law of intestacy would dictate that the estate of D. M. Longstreet would descend five-eighths to his widow and three-eighths to be divided equally between his children or their representatives.



Q (by Mr. Cooley) Would you proceed again. You say the only conveyance out of Longstreet was from the widow?

A Yes. There was, of course, subsequent conveyances by people in the chain of title. There has been a mineral severance so we would be concerned here with half the mineral interest because title to the other has been perfected.

Q There are no conveyances or leases of any type conferring this undivided three-eighths interest?

A No.

Q Have you made any efforts to contact the children of D. M. Longstreet?

A Yes. The seven children have now grown to fourteen heirs. I have located ten of them. Four I have not been able to locate and I am at present negotiating for a quitclaim on the leases from the heirs I have located.

Q Would you explain how seven grew to fourteen?

A Some of the children were deceased leaving widows and children.

Q But there are now according to your information fourteen people who are the permanent owners of this undivided three eighths interest?

A Yes, sir.

Q How many of these did you say you were able to contact?

A At the present time, five, but there are ten whose addresses I have been able to locate. I have not yet made con-



tact with all of them. I should say I have not received answers to my inquiries.

Q You have attempted to make contact with all with whom you were acquainted?

A Yes, sir.

Q Also, I note in the application that it refers to the Goodwin Estate which claims some interest in this area. Would you state what that reference in the application means.

A It referred to that merely because on the abstract there is on record a final decree in a guardianship matter which indicates that the Goodwins may have had some interest in some land in the southwest of the SE $\frac{1}{4}$ . The case file when we went to check it out to see what was involved, has disappeared from the court records, so the only thing we have knowledge of is the final decree and it, of course, has put us on notice that there may be some other interest.

Q As far as this one Goodwin Estate was mentioned?

A Yes.

Q I also note from the application there is a reference made to certain gaps in description, particularly in the southeast quarter of the section. Would you elucidate on that?

A So far as I know from checking the descriptions and plots themselves, there are no gaps to fourteen.

Q Are there any other discrepancies in the descriptions?

A No, sir, they work out very well. That is one area



that they do work out.

Q There are numerous various-sized tracts in here?

A Yes.

Q Has there been a Dakota well drilled by Southwest Production Company?

A Yes.

Q What's the name and location of that well? Do you have that information with you?

A No, I imagine Mr. Wiederkehr, if you were to ask him, can give you that information.

Q Has it been completed?

A Yes, sir.

Q Was it completed as a prior Dakota?

A Yes.

Q In the application we have requested a risk factor as well as a compensation for supervision.

Would you give your opinion as to why we should be entitled to it even though the well has now been drilled?

A I certainly will. I have stated twice before that the risk factor we believe -- of course, the well is now a producer-- at the time we commenced the well we had no knowledge of that or that we would have lost the well by mechanical difficulties or found the sands not to exist or be productive, hence the reason for the risk factor.

Q Then, in fact, in your opinion in any area whether



there is known production or not, there is a certain amount of risk in drilling an oil-gas well?

A Yes, by the fact that some production wells are dry holes and some are lost for mechanical reasons.

Q Southwest Production Company will be the operator of this well?

A Yes.

Q And as such, they should be entitled to an allowance for supervision?

A Yes, in my opinion, they should.

MR. COOLEY: I have no further questions.

EXAMINER NUTTER: Are there any questions of Mr. Jones?

EXAMINATION BY MR. MORRIS:

Q Mr. Jones, referring to your application for a moment, do you have a copy of that?

A No, I do not have.

Q I hand you a copy. Is the information contained in Paragraph 2 relating to the description of the land owned by heirs of Abas Hassam, is that correct as it stands, Paragraph 2? That is the west half of the SE $\frac{1}{4}$ .

A Yes, that would be approximately right.

Q Well, it goes on from there --

A That is right, yes.

Q Referring to Paragraph 3 of the application where the acreage in which the heirs of D. M. Longstreet may claim some



interest; is that correct as it stands? I am asking these questions inasmuch as it wasn't specifically -- the description wasn't specifically given in the testimony.

A Yes, it appears to be the correct description.

Q Reference to Paragraph 4 of the application, does that accurately describe the lands --

A Yes, sir.

Q -- in which the Goodwin interests might assert the same claim?

A Yes, sir. Those lands are presently owned by the Smiths who have resided and actively farmed that land since 1909.

Q Do I understand that Paragraph 5 of the application is to be deleted because you believe no gaps exist?

A I believe without detailed survey, that's correct. From plotting the metes and bounds descriptions on a map, three dovetail very nicely. There is one area in there where this does occur. It is remarkable in that fact, but I believe their statement that without a detailed survey that this is probably correct, an accurate statement.

Q This problem would occur in any area where you had several diverse owners?

A Yes. I believe you could make that statement without a survey. It would be impossible to determine without a survey..

Q In referring back to the Longstreet acreage, how much



acreage does that encompass?

A That would be 18 acres. It's a half interest in 36 acres, so it would be three-eighths of eighteen.

Q Fifty percent into this figure 36 acres?

A Yes, sir, an undivided half. As I say, their interest would, of course, be three-eighths of that.

Q In the application, Mr. Jones, it's alleged that the claim of the heirs of D. M. Longstreet is disputed by Southwest Production Company, is that correct?

A It would be as to all but that three-eighths, yes.

Q You would not dispute the three-eighths?

A I wouldn't, no.

Q I was referring to the part of your application in Paragraph 3 wherein it states that the claim of said unknown heirs of D. M. Longstreet, deceased, in the above-described land is unfounded and invalid, and then it continues but upon the contingency -- in other words, you are referring just to the five-eighths there?

A Well, actually, they own the entire 36 acres. Mr. Longstreet did, and his widow conveyed the entire 36 acres, but in the subsequent change of title and conveyances, there was a mineral severance but the title has been perfected and half of the mineral interest by proper legal proceedings as to that portion, and as to the portion which the widow could legally convey, we believe that the claim that they might assert would be



unfounded and invalid.

Q I see. Thank you. With reference again to Paragraph 4 of the application it also states that you believe that any claim that the heirs of these Goodwin people might make would be unfounded and invalid; is that correct?

A As I explained, the Smith family has resided on that land and has actively farmed it since 1909. I would be inclined to believe that any claim the Goodwin might have would be invalid.

Q So, although you claim that the Goodwin claim is unfounded and invalid, you are asking the Commission to pool that interest in the event it might be found valid?

A Upon subsequent legal action, yes. The reason for that was simply that we have spent our money and taken the risk and we believe that subsequent legal action would show that people. We do believe we should be entitled to a return of our investment.

Q Now, Mr. Jones, inasmuch as Southwest Production Company does not recognize claims, some of these claims which you are still afraid of as far as contingency of future legal action might be concerned, has Southwest made any effort to actually secure quitclaim deed to leases from these people anywhere?

A I am at present, as I said, engaged with the Longstreet heirs. I am presently engaged in negotiating either for quit-



claims or for leases of their interest.

Q What about the Goodwins?

A I am unable to find any trace of the Goodwins. I have questioned oldtime residents in the area and nobody can remember the Goodwins. I have not been able to get any lead on them.

Q Would it have been possible, Mr. Jones, to quiet title to the outstanding interest of the heirs of Abas Hassam?

A Well, I suppose we could. I don't know how we are going to arrive at ownership. You have got to have some basis for asserting a claim when you institute a quiet title proceeding.

Q You might have some trouble with the color of title in that area?

A I know we would have some trouble.

Q That would cloud obtaining title by adverse possession?

A This is a severed -- I didn't state it, but the Abas Hassam interest is a severed mineral interest and the only way I can think of to prove adverse possession of minerals is by actively taking those minerals, which has not been done to this point.

Q Is there a possibility that the land belonging to the heirs of Abas Hassam would eventually go to the State of New Mexico?

A I have discussed that possibility with the state and we are agreed that there is such a possibility.

Q Mr. Jones, if the application should be granted as you



have requested, what would Southwest Production Company do with the money that would be attributed to the Hassam interest?

A We intend to set up some means, have the court appoint a trustee to hold those sums pending some determination of escheat to the estate or claims by heirs.

Q Is that a firm procedure that you are going to follow or is it just something you are thinking about?

A I have recommended that to Southwest and they have agreed that that should be the method that we undertake in this matter.

Q Meanwhile, you would withhold from the working interest --

A Yes, sir.

Q -- A certain percentage to be acquired to it?

A I think we would be really required to do so, yes.

Q I believe you stated, Mr. Jones, that you felt that some compensation for risk should be involved even though the well had already been drilled?

A Yes.

Q I have a little trouble finding the justification for risk where the wells already have been completed without difficulty. Would you care to elaborate on that any more?

A Only on the basis that at the time you commence a well you're not sure that it will be a producer until you actually complete it and put it on production. There is always a chance of losing the well. That's about the only thing I can say. In



the face of a completed and producing well, it's rather difficult to say that you are going to lose the well.

Q You see no difference in asking for a bonus for risk, shall we say, whether it be before the well is drilled or after?

A Not as long as we have taken the risk, because you have actually assumed and taken the risk. I believe that's what the risk factor is for, to compensate you for taking the risk in drilling the natural resource of the state.

Q I believe you also said that Southwest would desire something for supervision of the well?

A Yes.

Q Would those costs of supervision be included in the well cost or are they carried by you as a separate account?

A They are carried in a separate account.

Q What would you feel would be an adequate percentage?

A Well, as I have said before, at the time I was with Shell on a wide range of thousands of wells, it indicated it would range from ten to twenty-five percent.

Q For supervision alone?

A Yes, over the life of the well; and, of course, our instructions from Shell were that we fight to the death to prevent going below ten percent because their accountant had worked this out and according to his statistics, that was the minimum you could go and come out and that, of course, depends on the type of well depth and the number of wells in the field.



etc.

MR. COOLEY: That's ten percent of the original well cost?

THE WITNESS: Yes, not of production, no.

Q (by Mr. Morris) So, you are asking for twenty-five percent bonus for risk plus another percentage to be added to that for supervision, if I understand your application?

A That's right.

Q Mr. Jones, if the Commission should grant the application with respect to pooling the interests with the working interests attributed to the Hassam interest, with the working interest of Southwest in the remaining acreage and then pool all royalty interests and let it go at that, would Southwest be satisfied with that type of an order?

A Would you like to go over that again?

Q If the Commission should pool all royalty interests and then pool the working interests attributable to the Hassam 28 acres, I believe, with the working interests presently owned by Southwest Production Company, thereby omitting any working interest claim that might arise in favor of the Goodwins or the Longstreet heirs, would Southwest Production Company find that sort of an order livable?

A I would say as to the Goodwin heirs -- because I don't believe they have a claim, but as to the Longstreet heirs, I would say no, because I have not completed my negotiations with



them nor have I been able to locate four of the heirs, so in the absence of having completed negotiations and having been able to locate all of the heirs, as to the Longstreet heirs, no, because I think we should be entitled to protection there, at least to the return of our money if they should assert their claims.

Q You feel you have made all diligent effort to secure the quitclaim deeds or leases from the heirs, the Longstreet heirs, even though you, at the same time, are denying that they have a valid claim?

MR. COOLEY: May I interrupt at this point? The matter that is being brought up about denying has to do with the fact that D. M. Longstreet at one point owned the interest on the 36 acres after his widow purported to convey the entire 36 acres which she was not legally empowered to do. There was a mineral severance of one-half of the minerals to which we now have a lease, one-half of the minerals have has been the subject of quiet title action wherein the Longstreet heirs were quieted out.

There has not been a quiet title action with regard to the other one-half interest, so it is the quieted one-half interest which we think they could still conceivably assert a claim to but unsuccessfully, but as to the unquieted one-half interest they're just vested owners.

THE WITNESS: I am not denying their ownership because they have it; they own it.



Q (by Mr. Morris) I follow you now. You feel you have made all reasonable effort to locate your lease?

A I am still continuing those efforts and we will continue to do so until we either get a quitclaim or lease offering a quiet title action to clear the matter.

Q As to the ten of the fourteen that you have located, have you been successful in obtaining leases or quitclaims from any of them?

A From five of them I have gotten agreements that we will get quitclaims if the others do.

Q Do you feel that you made reasonable offers --

A Yes.

Q -- in that regard?

A Yes. I pointed out to them that their mother or grandmother conveyed the lands and received a valid and, at that time, a substantial consideration for the land and the minerals and that I believe they have some obligation to ratify her act and we have offered them valid considerations for each of the quitclaims.

MR. MORRIS: I have no further questions.

EXAMINATION BY EXAMINER NUTTER:

Q Mr. Jones, there are 28 acres in the Hassam tract, 18 net acres in the Longstreet tract?

A Three-eighths of 18.

Q And the Goodwin tract contains how many acres or is



it the Smith tract?

A That would be 20 acres but as I say, the only thing we have on them is the decree, the guardianship decree by the court indicating that they might have had some interest in those lands at that time, but the Smiths have resided and actively farmed that land since 1909.

Q Did the Goodwins own it before the Smiths?

A No. That's the only thing that shows up which gives any indication that they had any interest in those lands. As I said, the file in the courthouse has disappeared. We cannot find the file so we are unable to determine what the interest is, but those lands are mentioned in the decree which was of record so it's the only thing that can be found in regard to that case and it does not specify what their interest was. It merely cites those lands in the decree, which gives us some reason to assume that they may have or might have claimed some ownership or interest at that time.

EXAMINER NUTTER: Are there any further questions?

MR. MORRIS: I would like to have the location and name of the well if possible.

MR. COOLEY: The well in question is the Pearl Wilkes located in the northeast quarter of the NE $\frac{1}{4}$  of Section 14.

MR. MORRIS: Thank you.

EXAMINER NUTTER: Are there any other questions of the witness?



He may be excused.

(Witness excused)

EXAMINER NUTTER: Do you have anything further?

MR. COOLEY: I note from the cross-examination of the witness and the history of cases of this type that there is considerable hesitance on the part of the Commission to consider risk factors after the well has been drilled and completed as a productive well. It's my contention in this matter that hind sight is much better than foresight. It's tantamount to telling a man he must draw the ace of spades out of a deck of 52 cards when the odds are 52 to 1 against him and after he has been successful in drawing the ace of spades, being told that he could not draw it.

Now, our client in this case has spent a substantial sum of money, somewhere between \$75,000 and \$100,000 drilling and completing a well. I am sure that the Commission can take judicial notice or administrative notice of the fact that it is common knowledge that there is certainly some risk attendant to drilling of any oil-gas well, whether it be in a known defined producing area or a wildcat and we readily admit that we are not entitled to risk factor nearly so great as we would be had this well been drilled as a wildcat but we contend we are entitled to a risk factor to some degree because of the simple mechanical fact that any well can be lost at a great expense and the Dakota formation is well developed in the San Juan Basin. However, it



is not so well developed that we have not had a number of dry holes in an area where the operators were actually dismayed by the absence of production in the area where they drilled.

To look back after a man's money has been spent and risked and had the well then drilled we would have lost \$75,000 to \$100,000.

None of these other people who owned unleased interest in this area would have risked a dime nor would they have lost a dime. Every cent of the loss would have been attendant upon Southwest Production and to state after they have been successful in their risk that they took none is again, I say, using hindsight rather than foresight which our client was required to use at the time they drilled this well.

With respect to the tack that Mr. Morris took in cross examination, would Southwest Production Company be willing to settle for an order pooling only certain interests that have been brought out in the testimony, I would like to go on record as being of this opinion, legally: That if evidence is produced to show that there are unleased tracts in an area which comprises a spacing unit as established by the Oil Conservation Commission of New Mexico that the proof of any acreage whatsoever existing in this area where diligent efforts have been made without avail is grounds for granting pooling as requested and that any forced pooling order, once ground has been shown, should be granted force pooling the entire spacing unit designated and requested.

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Only in this way do you actually force pool the unit requested and that in the statute is the purpose of force pooling, to consolidate the interests within an established spacing unit. By that I mean established by the Commission in order that wells might be drilled and developed on standard spacing. To reiterate that, once any ground has been shown and diligent effort has been made, a forced pooling order should issue stating in general terms that "ground now has been shown and the east half of Section 14 is hereby force pooled."

MR. WIEDERKEHR: Before you conclude your testimony, may I say something?

MR. COOLEY: Mr. Wiederkehr would like to testify in the case if you have no objection on risk factor.

MR. MORRIS: Let the record show the witness was sworn in the previous case.

V. L. WIEDERKEHR

called as a witness by and on behalf of applicant, having been previously duly sworn on oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COOLEY:

Q Mr. Wiederkehr, are you familiar with the subject well?

A Yes.

Q Would you tell the Commission what the actual conditions were encountered in the drilling of this well with regard



to risk?

A I might point out that this well was perforated and fractured and tested so poorly that we suspected a bad cement job. We squeezed the perforations and we perforated and refracked the well, subjecting ourselves to the possibility of losing the thing so I think the fact that we did squeeze, re-perforated and refracked added to the risk involved in the completion of this well. I thought that might be of interest to you along the risk angle.

Q What has been your experience in the Basin-Dakota Pool, your actual personal knowledge of dry holes in the Dakota formation?

A Since I have been with Southwest Production, we have only drilled one dry hole. The well appeared at the time we logged it to be useful. We followed normal completion practices and the well turned out to be a dry hole to our dismay, as you suggested earlier.

Q Did you have any expectation that this well would be other than a commercial producer?

A The log suggested it would be a commercial well. In the fracturing process, we broke into water and we squeezed and fracked but we were never able to make a commercial well out of it.

Q Would you attribute the failure to make a commercial well in this particular case to existing conditions or absence



of production in the area?

A I attribute it to the fact that there was communication from the main Dakota sands to some lower zone which was carrying water. They were fractures which we couldn't anticipate.

MR. COOLEY: No further questions.

EXAMINER NUTTER: Are there any other questions of the witness?

MR. MORRIS: No, sir.

EXAMINER NUTTER: The witness may be excused.

(Witness excused.)

EXAMINER NUTTER: Do you have any further testimony?

MR. COOLEY: My witnesses have no further testimony.

MR. MORRIS: In the past, the Commission has been very careful in its use of its forced pooling power. I believe rightly so. The Commission has pooled interest only after showing that diligent effort has been made to secure the voluntary consent of the person whose interest is being pooled.

Now, I am speaking in terms of situations where the person whose interest was being pooled is known and has been located and therefore has been made to deal with him to no avail. In the past, I believe the Commission has also pooled the interest of persons that have not been located where the applicant has made all diligent effort to find that person in order to secure his voluntary consent. Obviously, very little consent can be secured if he cannot be located.

The Commission has not in the past pooled the interest of persons who merely have a contingent interest where no effort has been made on the part of the applicant to secure a voluntary consent of those parties.

I believe that the effort in this case would show that the applicant has made diligent effort to secure, locate, and secure the consent of the heirs of Abas Hassam and perhaps the same is true also as to the heirs of D. M. Longstreet. As to the Goodwin heirs, they have not been located, although I believe Mr. Jones does state that he has made some effort to locate them.

Now, Mr. Cooley's position as stated is that the Commission should in all cases pool all of the interest within the unit in question if it is to enter a forced pooling order at all. It occurs to me that the Commission should approach this point of view with caution for the reason that an applicant could show one interest within a unit to which he has applied diligent effort to secure voluntary consent of that interest and thereby obtaining a forced pooling order which, if he pooled all mineral interests within the unit, would have the effect of pooling other interest to which, perhaps, diligent effort has not been applied.

I think in this case, however, the application has been most clear and most fair in pointing out the particular regard in which the interests are deficient but I would urge

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the Commission to use caution in pooling all mineral interests within a given unit where that order would necessarily pool contingent interests only.

That's all I have.

MR. COOLEY: Mr. Examiner, may I have equal time?

EXAMINER NUTTER: Yes, sir.

MR. COOLEY: We are going somewhat afield in this case because there are no contingent interests to our knowledge other than the ones mentioned, the Goodwin Estate, but since the point has been raised, I would like to rebut the argument of Mr. Morris, or attempt to, on this matter of contingent interest.

I think there is a practical situation that possibly the Commission is yet unaware of which I am sure that any attorney in the state or any other state, for that matter, actively engaged in title work can readily reveal to the Commission, and that is that before a producer of oil and gas can get the ultimate thing that he was seeking -- a return on his money -- he must be able to have a release by the gas purchaser or oil purchaser to whom he is selling his production from this particular well. This may also come as an amazing fact to you, but such purchasing companies have no hesitancy whatsoever in taking this oil or gas. The hesitancy comes in paying for it. There are actual situations existing in the San Juan Basin where runs from wells in my particular knowledge, have been held up for as much as four or five years without any payment whatsoever because of



title defects of which the purchasing companies are the sole judge as to whether they will accept your title or refuse it.

We don't claim that you should be entitled to produce the well and make any money off of it in this sort of situation, but you should at least be entitled to get your money back that you spent in drilling a productive well and we don't come to the Commission on the contingent matter as a substitute for quiet title action because obtaining the money that you spent in drilling a well, getting those monies returned is certainly not enough to encourage anyone to drill an oil-gas well. If you spend \$100,000 drilling a well and get \$100,000 back at the end of two or three years, certainly there is no incentive to drill this well.

We feel, however, that the power of the Commission to force pool such contingent interests removes these grounds with respect to the production up to the point where the well has paid out as a very worthwhile thing both in the interest of conservation and the interest of getting additional wells drilled. We in no way take the money of any party involved. They are entitled to receive their fair share of production, his proportionate share of the production until such time as it is paid out. We feel the parties risking their money in drilling this well should be entitled without further adieu to get it back. That is merely an economic situation and in no case is anybody being hurt because whoever owns this land should have to bear

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their proportionate share of the cost of drilling.

MR. MORRIS: Do you feel that if the Commission freely pooled contingent interest it might give rise to imprudent leasing practices?

MR. COOLEY: Definitely not, in my opinion.

MR. MORRIS: Would it be possible for an operator to merely secure some color of title to the leases and make less diligent efforts to secure valid leases on all of the interests within a unit and then come to the Commission for a forced-pooling application? I am not saying --

MR. COOLEY: It is possible but it would be foolhardy. Again, you have encountered the risk in drilling the well and you have risked \$100,000 which you could lose.

MR. MORRIS: It might be done before the well were drilled.

MR. COOLEY: He would not be entitled to anything because he couldn't show title to it so he would stand no chance whatsoever of obtaining any profit on his money. He certainly would be foolhardy to take a lease that he did not think were valid and spend his money on the basis of these leases because the best he could hope for even with a forced pooling order would be to get his \$100,000 back.

EXAMINER NUTTER: I don't follow you on this basis of being able to produce the well only until it paid off. You don't seek a force pooling order only until the well is paid for, do



you?

MR. COOLEY: If it is not forced pooled and the Commission issues its order there are a good many times that firms will say yes -- the pipe line company -- you may give the operator his \$100,000, the cost of his well, but when you get to that point, stop. This permits financing of the well; this permits the title attorney to render an opinion to one of the many oil banks that finance these wells that his money is good up to the amount of money that has been loaned to drill this well. Then when you get the well paid for the runs will have to be held up until the title is clear and the purchasing company knows who to pay his money to..

EXAMINER NUTTER: These cases you are speaking of that you know of personally where the runs were held up for several years, was production bought until such time as the well had been paid for?

A It wasn't bought at all. It's taken, yes. The pipeline company takes the oil; they're happy to take the runs but they don't write you a check for it. You haven't clear title is what they tell you. So the man has spent his money and he's got a producing well and he's got maybe two or three hundred thousand dollars in the crude run and they can't get a cent of it back and if he mortgages this well he is going down. He can't get the money. If you start out with the basic assumption which I think is perfectly valid from an equity standpoint that who-



ever owns these interests should bear their proportionate cost of drilling the well, then by Commission order the person who drills the well gets the \$100,000 -- if that's the cost of the well.

EXAMINER NUTTER: I see. Does anyone else care to voice an opinion on this matter? This is of interest and importance to the Commission.

MR. BRATTON: I had something to do with the drafting of this statute under which they are operating. I would suggest to the Commission -- I certainly would hope it would not delay entering an order in this case because I know Mr. Cooley and his client want and are entitled to expeditious treatment of this case. However, some of the questions that have been raised here are basic to the whole history. As you know, the oil-gas association had a fifteen-man committee working with this commission on regular drilling practices this year. This committee has on it producers, lawyers who write considerable numbers of title opinions and it is a pretty good cross-section of the industry. I think we are not going afield. That committee would like to have an expressed opinion as to the scope of orders that should be, in their judgment, issued under the forced pooling statute; and also, as to the question of a risk factor where a well has been drilled, I think the committee would like to tender its suggestions to this Commission for what value they might be to the Commission.



MR. MORRIS: Does that committee meet again any time soon?

MR. BRATTON: It certainly could. Mr. Greer can get it together in the near future. I doubt if it could meet within what I think would be a reasonable time to get an order out in this case, but as far as long-range situations, I think it could probably get together and give you some of their judgments within two or three months at the latest. I am not suggesting that the committee would decide cases for the Commission but I think the Commission would appreciate any enlightenment on the subject that the committee would be willing to give. That is, assuming the committee would like to from the viewpoint of the title attorney, give to the Commission the benefit of those viewpoints for such weight and consideration as the Commission desires to give them.

EXAMINER NUTTER: Thank you, Mr. Bratton.

MR. MORRIS: I would certainly appreciate any expression the committee might have on these two very vital points raised in this particular case.

MR. COOLEY: I would like to cite the case and point out to you that I did not feel that any of the vital issues that we apparently disagree on are involved in this particular case. This particular case involves a particularly large sum of money. We would like very much to divorce the hypothetical comments that are part of the record in this case from the



actual case itself and urge the Commission not to hold this record on that or in any way delay its decision on this particular case.

EXAMINER NUTTER: Thank you.

Are there any further statements to be made in this case?

The case will be taken under advisement.

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