BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF NEW MEXICO FOR
THE PURPOSE OF CONSIDERING:

CASE No. 2453
Order No. R-2152-A

APPLICATION OF SOUTHWEST PRODUCTION
COMPANY FOR AN ORDER POOLING A 320-
ACRE GAS PRORATION UNIT IN THE BASIN-
DAKOTA GAS POOL, SAN JUAN COUNTY,
NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 o'clock a.m. on February 14, 1962, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 18th day of April, 1962, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) That the applicant, Southwest Production Company, seeks an order pooling all mineral interests in the Basin-Dakota Gas Pool in the E/2 of Section 7, Township 30 North, Range 11 West, NMPM, San Juan County, New Mexico.

(3) That the applicant has made diligent effort to identify and to locate all owners of interest in the proposed proration unit.

(4) That the applicant has made fair and reasonable offers to lease, to obtain quitclaim deeds, or to communitize with respect to each non-consenting interest owner whose identity and address is known.

(5) That although the applicant has made fair and reasonable offers and has been diligent in its efforts to form the proposed proration unit, there remain non-consenting interest owners in the subject proration unit who have not agreed to the pooling of their interests.

(6) That to avoid the drilling of unnecessary wells, to protect correlative rights, and to afford to the owner of each interest in said proration unit the opportunity to recover or receive without unnecessary expense his just and fair share of the gas in the Basin-Dakota Gas Pool, the subject application should be approved by pooling all interests, whatever they may be, within said unit.

(7) That the applicant proposes to dedicate the subject proration unit to its Ruby Jones Well No. 1 located in the SW/4 NE/4 of said Section 7, which well has been completed in the Basin-Dakota Gas Pool.

(8) That the applicant seeks permission to withhold the proceeds from production attributable to each non-consenting working interest until such time as each interest's share of the costs of said well have been recovered, plus 25 percent thereof as a charge for the risk involved in the drilling of the well, plus 10 percent thereof as a charge for operating costs.

(9) That the applicant should be authorized to withhold the proceeds from production attributable to each non-consenting working interest until such time as each interest's share of the costs of said well have been recovered, plus 25 percent thereof as a charge for the risk involved in the drilling of the well.

(10) That it is improper for operating costs to be assessed as a percentage of well costs; accordingly, $75.00 per month should be fixed as the cost of operating the subject well, and each non-consenting working interest owner should be assessed with his share of such cost, to be paid out of production.

(11) That the applicant should furnish the Commission and each known non-consenting working interest owner in the subject unit an itemized schedule of well costs within 30 days following the date of this order.

(12) That any non-consenting working interest owner should be afforded the opportunity to pay his share of well costs within 30 days from the date the schedule of well costs is furnished him by the applicant in lieu of paying his share of costs out of production.

(13) That all proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow in San Juan County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership.

(14) That Southwest Production Company should be designated the operator of said unit.

(15) That Order No. R-2152, previously entered in this case on December 21, 1961, should be superseded.

IT IS THEREFORE ORDERED:

(1) That all mineral interests, whatever they may be, in the Basin-Dakota Gas Pool in the E/2 of Section 7, Township 30 North, Range 11 West, NMPM, San Juan County, New Mexico, are hereby pooled to form a 320-acre gas proration unit. Said unit shall be dedicated to the Ruby Jones Well No. 1 located in the SW/4 NE/4 of said Section 7.

(2) That Southwest Production Company is hereby designated the operator of said unit.

(3) That Southwest Production Company is hereby authorized to withhold the proceeds from production attributable to each non-consenting working interest until such time as each interest's share of well costs have been recovered, plus 25 percent thereof as a charge for the risk involved in the drilling of the well.

(4) That $75.00 per month is fixed as the cost of operating the subject well, and Southwest Production Company is hereby authorized to withhold from production the proportionate share of such cost attributable to each non-consenting working interest.

(5) That any unsevered mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under the terms of this order.

(6) That any well costs or charges which are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(7) That the applicant shall furnish the Commission and each known non-consenting working interest owner in the subject unit an itemized schedule of well costs within 30 days following the date of this order.

(8) That any non-consenting working interest owner shall have the right to pay his share of well costs to Southwest Production Company within 30 days from the date the schedule of well costs is furnished him by Southwest Production Company, in lieu of paying his share of well costs out of production. In the event any such owner elects to pay his share of well costs as provided for in this paragraph, he shall remain liable for operating costs but shall not be liable for risk charges.

(9) That all proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in San Juan County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership. The Commission shall be notified as to the name and address of said escrow agent.

(10) That Order No. R-2152 is hereby superseded.

(11) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

EDWIN L. MECHEM, Chairman

E. S. WALKER, Member

A. L. PORTER, Jr., Member & Secretary

esr/

BEFORE THE
OIL CONSERVATION COMMISSION
SANTA FE, NEW MEXICO

February 14, 1962

REGULAR HEARING

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

(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

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.

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 problems in the industry with regard to risk and leasing developments of property?

A Yes, sir.

Q Have you so testified before this Commmssion before?

A Yes, sir.

Q Mr. Jones, with regard to Case No. 2415, wherein Southwest Production Company has made an application for a force pooling 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

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,

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?

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

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?

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-

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 of interested parties for this particular well on this particular unit?

A Yes, sir.

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

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-

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 unforseen 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

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

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 deals 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.

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 unforseen 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

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

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.

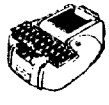
Q Do you know how much risk factor Southwest Production has requested in these four cases?

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



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.

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, Milrelm Hassan of Athren, Syria.

Q Is that the only address you have for him?

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

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?

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

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.

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 interst 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 lo these many years ago when she sold the property without the benefit of a court order or probate.

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

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.

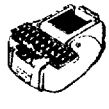
Q What was Mr. Smith's position?

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



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

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

wife, which I believe amounted to .36 acres, is that correct?

A That is right.

Q Where is that .36 located by quarter-quarter sections?

A Let me get the map here (indicating). It should be in the Southeast. It would be in the Northeast of the Southeast.

Q Now, you state that you made a reasonable effort to lease this particular .36 acres?

A This is one of the tracts of land that was under lease; as I explained, there was one lease on said land but the lease provision providing for payment of rentals on royalty had been stricken. Since we had no lease to provide or to pay royalty, it is my belief that that lease expired for failure to pay royalty and afterwards, I prepared an agreement -- there were four leases; I prepared agreements covering these leases which set up a method by which the royalty could be paid and the Shelbys have not yet signed the agreement. I have made them another offer, and they are considering it. Mr. Shelby is out of town at the present time, so his wife cannot relay the offer to him until he returns.

Q What offer have you made to them as far as the monetary consideration is concerned?

A I offered to pay a flat $25.

Q Not $25 an acre?

A Just a flat $25.

Q What were the royalty provisions?

A Fifteen percent.

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?

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?

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.

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?

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.

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?

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-

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.

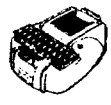
MR. MORRIS: If the Commission please, the record will show that the application just referred to was received by the Commission on October 11, 1961, the subject well having been completed on August 7, 1961.

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



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?

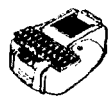
A Yes, sir.

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.



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?

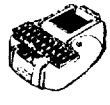
A It was completed July 7, 1961.

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."



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 nonOstandard 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.

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?

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,

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?

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.

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

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.

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

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?

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 foremens 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

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,

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

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.

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

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 affect 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~~ as a 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

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--

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

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 determination jurisdiction of title by the Commission, because in entering an order in this, the Commission is going to proceed upon the evi-

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 of competent jurisdiction should not be made by the Commission.

We have seen one instance 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 the 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-

cide. 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 application, 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

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 questions 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

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

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 the 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-

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 Route 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

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~~ writing interest 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,

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

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

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.

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

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 any 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

well and says to the non-consenting owners, "You will pay 125 percent 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,

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

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

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,

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 implemental 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

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

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

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

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.

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

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

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

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 met 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.)

* * * *

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

I, CECIL LANGFORD, NOTARY PUBLIC in and for the County of Bernalillo, State of New Mexico, do hereby certify that the foregoing and attached transcript of hearing was reported by me in stenotype and that the same was reduced to typewritten transcript under my personal supervision and contains a true and correct record of said proceedings, to the best of my knowledge, skill and ability.

NOTARY PUBLIC

My Commission Expires:

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