

CASE 4765: Application of MICHAEL
P & CORINNE GRACE FOR COMPULSORY
POOLING & NON-STANDARD PRO. UNIT.

De Koro Learning
Oct 18, 1992

Case Number

4765

Application

Transcripts

Small Exhibits

ETC.

BEFORE THE
NEW MEXICO OIL CONSERVATION COMMISSION
CONFERENCE ROOM, STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO

July 12, 1972

EXAMINER HEARING

IN THE MATTER OF:

Application of Black River
Corporation for compulsory pooling,
and non-standard proration unit,
Eddy County, New Mexico.

Case No. 4764

IN THE MATTER OF:

Application of Alice Ballard,
Amelia Miller, Thurman Mayes, John
A. Mayes for compulsory pooling and
non-standard proration unit, Eddy
County, New Mexico.

Case No. 4765

BEFORE: RICHARD L. STAMETS,
Examiner.

TRANSCRIPT OF HEARING

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1 MR. STAMETS: Case 4764.

2 MR. HATCH: Case 4764: Application of Black River
3 Corporation for compulsory pooling, and non-standard
4 proration unit, Eddy County, New Mexico.

5 MR. HINKLE: Clarence Hinkle, of Hinkle, Bondurant,
6 and Christy, appearing on behalf of Black River Corporation.
7 In Case 4764, we have the same witness, Mr. Aycock, and we
8 have the same six exhibits that were introduced in connection
9 with Case 4763. I would like the record to reflect that
10 the qualifications of Mr. Aycock would be the same for Case
11 4764 as they were in Case 4763, and I would like the record
12 to show that the testimony of Mr. Aycock with respect to
13 Exhibits One through Six in Case 4763 would be the same for
14 Case 4764.

15 MR. COOLEY: William J. Cooley, of Burr and Cooley,
16 Farmington, New Mexico, appearing on behalf of Alice Ballard,
17 Amelia Miller, Thurman Mayes, John A. Mayes, Michael P. Grace,
18 and Corinne Grace.

19 MR. WATKINS: Lore Watkins, Carlsbad. I wish to
20 enter my appearance as additional counsel for Mr. Michael
21 Grace.

22 MR. COOLEY: It is my motion, first, that Cases
23 4764 and 4765 be consolidated.

24 MR. HINKLE: We have no objection.

25 MR. KELLAHIN: Jason Kellahin, of Kellahin and Fox,

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1 appearing on behalf of Rutter and Wilbanks Corporation,
2 Donald Cooper, Helen Jones, and A. J. Andocropolis. We
3 would also have the same witness who appeared in the
4 preceding case, and I would like to move that his testimony
5 be adopted for reference in this case, and it will be
6 supplemented very briefly in regard to the West half of
7 Section Three.

8 MR. HINKLE: No objection.

9 MR. COOLEY: No objection.

10 MR. STAMETS: The Examiner will take notice of
11 both the witnesses and the exhibits in the previous case.

12 MR. KELLAHIN: We have no objection to the
13 consolidation proposed by Mr. Cooley.

14 MR. STAMETS: Cases 4764 and 4765 will be
15 consolidated.

16 MR. COOLEY: I have a further motion that both
17 cases be continued indefinitely until such time as Civil
18 Case Number 27,600 in the District Court in and for the
19 County of Eddy, State of New Mexico, is resolved. This case
20 arises out of an oil and gas lease that was executed and
21 delivered by Alice Ballard, Amelia Miller, Thurman Mayes,
22 and John A. Mayes, joined by their spouses to one J. W. Miller,
23 covering the Southeast quarter of the Southwest quarter of
24 Section 3, and the Northwest quarter of the West half of
25 the Northeast quarter of Section 10, and the Southeast quarter

1 of the Northeast quarter of Section 9, Township 26 South,
2 Range 24 East.

3 The delay rental provided for on the lease was
4 due October 22nd, 1971, and was not timely paid. This
5 fact occurring, my client filed suit of les pendens in the
6 District Court of Eddy County, New Mexico, for cancellation
7 of the lease. After having requested a release from the
8 lease from Mr. Miller, and his having failed to execute and
9 deliver the same, this case was filed on November 29th, 1971
10 and is now pending. I spoke with opposing counsel this
11 morning, and he advises me we should be, and I agree, we
12 should be ready to try this case within the next thirty days
13 on a motion for summary judgment. The affect of this
14 decision will be to determine whether J. W. Miller, and in
15 Interrogatories in the case, Black River Oil Company is
16 beneficial owner of this lease even though they are not
17 record title owner, the lease is still in Mr. Miller's name
18 as far as the Eddy County records are concerned. This suit
19 will determine whether Black River or Michael Grace is owner
20 of the oil and gas leases covering these particular lands
21 that I have described, and of course, as affects this
22 particular case in the Southeast quarter of the Southwest
23 quarter of Section 3.

24 My clients have executed and delivered a new oil
25 and gas lease on June 23rd, I believe it was dated June 23rd

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1 and executed June 29th, to Michael P. Grace, covering these
2 lands consistent with their position that Mr. Miller's
3 lease, or Black River's lease, had expired.

4 To proceed with this forced pooling in the West
5 half of Section 3 at a time when the lease ownership as to
6 the Southeast of the Southwest quarter of Section 3 is at
7 issue and in controversy in the District Court of the State

8 of New Mexico is in my mind ill advised and, in fact,
9 improper in view of the short period of time that would be
10 required, in the opinion of counsel, to conclude that case.

11 We ask for a forty-five day extension, or
12 continuance, of this case and the companion case, the
13 application of Alice Ballard, Amelia Miller, Thurman Mayes,
14 and John A. Mayes.

15 I see that I should make one further motion, that
16 is that Michael P. Grace II and his cooperator, Corinne Grace,
17 be substituted as parties applicant in Case 4765 inasmuch
18 as the oil and gas leases have been executed by Alice
19 Ballard, Amelia Miller, Thurman Mayes, and John A. Mayes in
20 favor of Mr. Grace, since the filing of the application in
21 this case.

22 I have here copies of the complaint and the answers,
23 plus an affidavit of cancellation concerning this particular
24 Miller lease which counsel might like to examine.

25 MR. STAMETS: Does that complete your motion?

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1 MR. COOLEY: Yes-- I mean, the facts are quite
2 lengthy, and it is a matter of a legal controversy that
3 the Courts must decide.

4 MR. STAMETS: I just didn't want to cut you off.

5 MR. COOLEY: An administrative agency such as the
6 Oil Conservation Commission should defer until the Courts
7 make a decision.

8 MR. HINKLE: We oppose the continuance of Case
9 4764. It is true, as it has been stated, that the Southeast
10 of the Southwest of Section 3 is in litigation as has been
11 stated involving a complaint over rental for a second lease
12 year. The lease was made to J. W. Miller and Black River
13 Corporation has the operating rights under that lease, and
14 it will only be known definitely who owns the working
15 interest, as far as the Southeast and the Southwest is
16 concerned, when the outcome of that suit is known.

17 Now, it may be true that there will be a hearing
18 for summary judgment in thirty days, but it might be a year
19 if it is appealed before this case is decided finally. Now,
20 the testimony has already shown, I believe, in connection
21 with the East half of Section 3 that there is a well located
22 on the West half of Section 3, and there is also a well
23 located in the Southeast of the Northeast of Section 4 which
24 offsets it. Now, all of these wells-- if the well in Section
25 3 and the well in Section 4 go on production immediately,

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1 and there is no reason why they should not if the Commission
2 goes ahead and acts on the non-standard unit. As far as
3 the East half of Section 4 is concerned, you are going to
4 have wells offsetting the well in the West half of Section 3,
5 which would be shut in, and shut in indefinitely. So it is
6 certainly going to affect the correlative rights if the
7 Commission does not permit this well to be produced along
8 with the other two wells.

9 Now, our solution that we will offer will be,
10 in substance, that we go ahead and force pool all of the
11 interests who have not consented as far as the West half
12 of Section 3 is concerned, and have the order provide, due
13 to the fact that title in the Southeast of the Southwest
14 of Section 3 is in question, that seven-eighths of the
15 proceeds which would be allocated to that 47.12 acres be
16 held in suspense by the operator until the outcome of this
17 litigation is known. Now, that is the only equitable way
18 that it can be handled where all of the rights of the parties
19 can be protected.

20 Now, we have no objection to paying the one-eighth
21 royalty which would be due on the 47.12 acres in the Southeast
22 of the Southwest of Section 3 due to the fact that in either
23 case, the Ballards and the Millers and the Mayes will be
24 the owners, so they could go ahead and receive their royalties.
25 The only thing that would be held in suspense would be

1 the seven-eighths of production which would be allocated
2 under communitization or forced pooling which involved the
3 Southeast of the Southwest of Section 3.

4 For these reasons, we do not think that Case 4764
5 should be continued. Go ahead and hear it, because we think
6 it would be in the interest of conservation and the prevention
7 of waste and the protection of correlative rights that you
8 do hear it at this time so we can go ahead and be put on
9 production at the same time as these other two wells.

10 As long as we are on this, I think we might as
11 well bring out something else, since it has been indicated
12 that this suit also affects considerable acreage in the
13 North half of Section 10 and the West half of the Northeast
14 and all of the Northwest of Section 10 and the Southeast of
15 the Northeast of Section 9. Now, they are involved in a
16 request which has been made in Cases 4767 and 4768. In
17 those cases, there are no wells that have been drilled and
18 it is an entirely different situation than we have here in
19 Case 4764 where we have a well capable of being put on
20 production immediately. But as far as Sections 9 and 10 are
21 concerned in the other applications, there are no wells,
22 and those cases should be either continued or dismissed until
23 such time as this litigation is completed and taken up then.
24 That's the only thing that can be done, it looks to me, to
25 protect the rights of all the parties.

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1 At the proper time, when the docket is called, I just
2 want to warn you that I am going to move that those cases
3 be continued or dismissed until this litigation is completed.

4 MR. COOLEY: Mr. Examiner, I will expound on my
5 motion to include the continuance of Cases 4767 and 4768
6 as suggested by counsel. I would limit my motion with
7 respect to an indefinite continuance, I would limit it to
8 a sixty day continuance in deference to the fears with
9 respect to any possible drainage. There was no testimony
10 offered in the previous case, Case 4763, that indicated
11 when the parties involved felt connection could be
12 accomplished and gas actually delivered from Sections 3 and 4,
13 but I would submit that since no connection presently
14 exists, that a sixty day continuance could not possibly
15 involve any substantial violation of correlative rights.

16 The alternate side of this question is in Case
17 4765. With the substitution of parties now, Mr. Grace has
18 likewise applied to be operator of the well in question,
19 and I submit to you how can the Commission rule whether he
20 should be operator or whether Black River should be the
21 operator until the time Michael Grace's interest in this
22 half section has been clarified. With the title clouded as
23 it is and the question certainly undecided as to whether
24 he will have any interest in the half section or not, I
25 submit that we cannot proceed with these cases until it is

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1 ascertained that he does have, or in the alternative, does
2 not have title.

3 MR. HINKLE: We have already consolidated Cases
4 4764 and 4765 without objection, if we go ahead with the
5 hearing, the Commission will determine who is going to be
6 operator of the West half of Section 3. I call this to
7 the attention of the Commission, that the evidence will
8 show that Black River Corporation controls or owns and
9 operates all of the working interests except this 47.12
10 acres that Mr. Grace owns, and I submit that it is a matter
11 of equity when someone owns that much acreage and has
12 already put down a well and spent considerable money in
13 doing so, that person should be designated operator.

14 MR. KELLAHIN: We join Black River in contesting
15 any continuance of these two cases. We feel that Black
16 River would be denied substantial rights, we are talking
17 about 180 million cubic feet of gas per month. We don't
18 agree, of course, that the entire West half should be force
19 pooled as we testified. I think if you will follow Mr.
20 Rutter's suggestion eliminating the South half of the South
21 half, that would eliminate the problem we have here.

22 MR. HATCH: Do you think that the Pooling Statute
23 of New Mexico requires the person named as operator to be
24 holder of the lease hold interest?

25 MR. COOLEY: Yes, I certainly do. It refers to

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1 any person having the right to drill may apply for forced
2 pooling.

3 MR. HATCH: Does it limit who can be named
4 operator of the pooled unit?

5 MR. COOLEY: In my opinion, it does.

6 MR. HINKLE: By the statements of counsel, they
7 have contended that the right to drill will only be
8 determined when this case is determined.

9 MR. COOLEY: And for that reason, it should be
10 continued.

11 MR. HINKLE: I want to call your attention to the
12 application in Case 4765 which states: "Said acreage to
13 be dedicated to a well to be drilled 1980 feet from the
14 South line and 1980 feet from the West line of said Section 3."
15 This would be near the South line, so I think this ought
16 to be determined now by the Commission as far as the West
17 half of Section 3 is concerned without any delay.

18 MR. STAMETS: Mr. Cooley, you have indicated that
19 you feel that the matter would be wholly resolved within
20 sixty days.

21 MR. COOLEY: I feel that it will be resolved
22 within thirty days.

23 MR. STAMETS: Counsel for Black River has indicated
24 that if appeals were filed, that it might extend the actual
25 resolution of the problem for a considerable period of time.

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1 How do you feel about that?

2 MR. COOLEY: The reason I limited my motion to
3 sixty days is we feel it will be wholly and completely
4 resolved in the District Court.

5 MR. HINKLE: That doesn't protect us if you come
6 up here after sixty days and ask for a further continuance
7 because an appeal has been taken.

8 MR. COOLEY: I will stipulate at this point not
9 to request an additional continuance if we can't resolve
10 this within sixty days. It would be a violation of the
11 correlative rights of the other interest owners in the
12 West half of Section 3 to ask them to delay further.

13 MR. STAMETS: How does the Applicant feel about
14 that stipulation?

15 MR. HINKLE: A sixty day delay will cause a loss
16 in production of a lot of gas.

17 MR. STAMETS: I would like to clarify, Mr. Cooley,
18 exactly what the Applicant-- or what your Applicant in Case
19 4765, what exactly do they lose if this hearing is held
20 today?

21 MR. COOLEY: The right to be designated operator.

22 MR. STAMETS: Is it your opinion that once we
23 designate an operator of the unit, it cannot be changed under
24 any circumstances?

25 MR. COOLEY: That is my opinion.

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1 MR. HINKLE: I think it can be changed any time.

2 MR. STAMETS: I believe the Commission records
3 will reflect that there have been changes in operators in
4 forced pooled units.

5 MR. COOLEY: Assuming that Mr. Grace's case and
6 testimony is persuasive enough and his application, rather
7 than the application of Black River is approved, he could
8 then have the anomalous situation of being designated
9 operator of that half section when he owns no interest in
10 it whatsoever. If he loses the lawsuit, he wouldn't want
11 to be operator. What I am saying is that you have a matter
12 in District Court, and there is ample precedent for this
13 in the case of CASCADE VERSUS FEDERAL POWER COMMISSION,
14 where the Federal Power Commission proceeded to approve the
15 merger of El Paso Natural Gas and Pacific Northwest Gas
16 Company and the Supreme Court of the United States reversed
17 the decision on the grounds that the Federal Power
18 Commission must defer to the United States District Court.

19 MR. HINKLE: All we are asking is that an order
20 of the Commission be made subject to whatever the disposition
21 in District Court may be of this thing. If Mr. Grace
22 comes out as being the owner, then he would be the owner,
23 then he would be, if he doesn't voluntarily come in, he would
24 be force pooled.

25 MR. COOLEY: In the opinion of the Commission

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1 counsel, could the selection of the operator in the West
2 half of Section 3 be deferred? That's the only thing we
3 want deferred. Both Black River and Grace want the West
4 half of Section 3 force pooled. If you could enter an
5 order force pooling Section 3 and defer for a period of
6 sixty days the selecting of an operator--

7 MR. HATCH: The only thing you wish to delay is
8 the selection of an operator? I think that could be settled
9 in this hearing, because the Commission is not limited, and
10 it could name the operator, and this would not even have
11 to be a leaseholder in the unit. The Commission could name
12 some other party they thought would do a better job.

13 MR. HINKLE: We wouldn't want a situation that
14 would prevent opening the well and producing.

15 MR. STAMETS: Mr. Cooley, I am a little concerned
16 here. You seem to express some doubt that your Applicant
17 is entitled to the right to the acreage or could be named
18 the operator of any wells.

19 MR. COOLEY: We maintain that we have the right,
20 but it is clouded by the failure of J. W. Miller to release
21 the expired lease.

22 MR. STAMETS: Do you feel that the Commission could
23 name your Applicant as operator of a well in the West half
24 of Section 3?

25 MR. COOLEY: In my opinion, it could.

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1 MR. STAMETS: If you feel that this type order
2 would be proper, it would seem like you could go ahead and
3 present your case on that basis, and the Commission could
4 enter such an order, and there would be no need for delay.

5 MR. COOLEY: I fail to understand the Examiner.

6 MR. STAMETS: If you feel that an order naming
7 your Applicant as operator of the well in the West half of
8 Section 3, if you feel that would be proper, then I can
9 see no need for the Commission to delay this hearing.

10 MR. COOLEY: Well, the basic agreement arises,
11 I assume, from a very wide interpretation by counsel for
12 the Commission, and my own interpretation with respect to
13 Section 65: 3-14, and that is a person does not have the
14 right to file an application for forced pooling unless he
15 has the right to drill.

16 MR. STAMETS: But you indicated that an order
17 naming your Applicant as operator would be proper.

18 MR. COOLEY: No, I said improper, because I think
19 this would infringe upon the District Court's decision in
20 Eddy County, because you would be making a decision that
21 Michael Grace has the right to drill this half section, and
22 the only acreage he lays claim to is the acreage that is
23 the subject of this lawsuit. If he fails in this lawsuit,
24 he has not one acre of ground in the West half of Section 3.

25 MR. STAMETS: Granting your request for a

1 continuance would be doing the same thing, saying your
2 Applicant is a party to this case.

3 MR. COOLEY: No, you would be complying with the
4 Supreme Court mandate in the case of CASCADE VERSUS FEDERAL
5 POWER COMMISSION, wherein they said that it is the place
6 of an administrative agency to defer until such time as
7 the District Court has rendered its decision.

8 MR. HINKLE: I think that would be true if that
9 District Court ruling affected all the acreage, but here,
10 it is only affecting a small portion of it, and the order
11 of the Commission could protect everybody here. Although
12 you are going to approve non-standard units here and name
13 an operator so the well can be produced, that production
14 could be allocated to this land in question at such time
15 as the litigation is complete.

16 (Whereupon the Examiner conferred with Mr. Hatch.)

17 MR. STAMETS: Mr. Cooley, this has not come as a
18 surprise to you, this application, you have been aware of
19 it, have you not?

20 MR. COOLEY: Yes.

21 MR. STAMETS: Therefore, the Examiner feels that
22 the case should be heard at this time, and we will proceed
23 to hear Cases 4764 and 4765.

24 MR. COOLEY: I did amend my motion and say I would
25 be happy to include all cases.

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1 MR. STAMETS: And I only have denied your
2 application for continuance. I have not spoken about your
3 application for substituting Michael Grace and/or Corinne
4 Grace as the Applicants in Case 4765.

5 MR. COOLEY: I would appreciate your ruling on
6 that.

7 MR. STAMETS: Mr. Hinkle, do you have anything
8 to say concerning that matter?

9 MR. HINKLE: No.

10 MR. STAMETS: In Case 4765-- how do you want the
11 names in there?

12 MR. COOLEY: Michael P. Grace II and Corinne Grace,
13 Applicants-- substituted party applicants for Alice Ballard,
14 Amelia Miller, Thurman Mayes, and John A. Mayes. That
15 motion also applies to Cases 4765, 4767, and 4768.

16 MR. STAMETS: We are only considering Case 4765
17 at this time, and we will make that substitution.

18 MR. HINKLE: We have the same witness and the same
19 exhibits we had in Case 4763, and we would like to have the
20 witness sworn again. I believe there was no objection, the
21 records shows no objection, in this case concerning the
22 qualifications of Mr. William P. Aycock being the same as
23 set forth in Case 4763, and also his testimony with respect
24 to Exhibits One through Six would be the same.

25 MR. STAMETS: Are there any objections?

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1 MR. COOLEY: No objection.

2 MR. KELLAHIN: No objection.

3 MR. STAMETS: There being no objections, the
4 Examiner will take that into account.

5 * * *

6 WILLIAM P. AYCOCK,

7 was called as a witness, and after being duly sworn, testified
8 as follows:

9 DIRECT EXAMINATION

10 BY MR. HINKLE:

11 Q Referring you to Exhibit Number Five, does this show
12 the producing well on the West half of Section 3?

13 A Yes, sir.

14 Q Where is it located?

15 A Nineteen hundred eighty feet from the North and West
16 lines of Section 3.

17 MR. COOLEY: I must interrupt, I do not have copies
18 of any of your exhibits in this case.

19 Q (By Mr. Hinkle) Considering your previous testimony,
20 Mr. Aycock, with respect to the structural conditions
21 the cross sections in regard to permeability and
22 porosity and so forth, have you formed any opinion as
23 to whether or not the well located in the West half
24 of Section 3 as shown on Exhibit Five will efficiently
25 and effectively drain all of the West half?

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- 1 A Yes, I think it probably will.
- 2 Q In your opinion, will the pooling of all of the acreage
- 3 and formations of non-standard units consisting of
- 4 the West half of Section 3 prevent the drilling of
- 5 unnecessary wells?
- 6 A Yes, I believe it will.
- 7 Q And would this tend to protect correlative rights?
- 8 A Yes, I think so.
- 9 Q Under part of the acreage in question, the West half
- 10 of Section 3, namely, the Northwest quarter, and the
- 11 North half of the Southwest quarter is federal acreage,
- 12 is it not?
- 13 A Yes, that is correct.
- 14 Q Does your same testimony apply in this case that you
- 15 gave in Case 4763 relative to the representative
- 16 contacted with the U.S.G.S. and their willingness to
- 17 approve the communitization agreement in the event of
- 18 Oil Conservation Commission approval in the West half
- 19 apply in this case also?
- 20 A Yes, sir.
- 21 Q Now, could you give us a detailed list of all interests
- 22 in the West half of Section 3, working, royalty,
- 23 overriding, or otherwise, who have not expressed
- 24 willingness to communitize in pooling their interests?
- 25 A Yes, sir. As previously mentioned, the Northwest

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1 quarter of the North half of the Southwest quarter
 2 are all federal leases. The working interests involve
 3 Cities Service with one-half interest, Black River
 4 Corporation with one-quarter interest, and Arapahoe
 5 with one-quarter interest, all of whom agree with the
 6 advisability of forced pooling of the West half. There
 7 are overriding royalties under these federal leases,
 8 and they are as follows: Helen Jones, one-tenth of
 9 one percent, and she is represented by counsel, and of
 10 course, does not approve of communitization. Rutter
 11 and Wilbanks, 4.7 percent, they also do not approve.
 12 Donald Cooper, two-tenths of one percent, who does not
 13 approve. Robert Hanaford, who indicates approval
 14 of the pooling in the South half of the Southwest
 15 quarter of the fee land.

16 The Southwest of the Southwest quarter is fee land,
 17 and this is leased to-- well, I'll say this, I am
 18 taking into account, and we have recognized the 47.12
 19 acres that constitute the Southeast of the Southwest,
 20 and which are contested leases. Black River has one
 21 half and Arapahoe has one half, with Black River being
 22 the operator. This lease does have a pooling clause
 23 with ten percent tolerance-- I beg your pardon, of the
 24 640 acres, so this acreage would be in excess of that
 25 allowed under the pooling clause in the lease at this

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1 time.

2 The royalty under the fee land is composed of
3 Vera Cretack and Viola Ryan, and we have not been able
4 to reach them. J. W. Miller and his wife, Patricia
5 Miller, and the Millers are in agreement to
6 communitization. Then we have overriding royalties
7 under this fee land as follows: Robert McCall, three
8 percent, and he objects to communitization. Robert
9 Hanaford, he has one percent, and agrees. J. W. Miller
10 has forty-seven and a half acres, and agrees. Theresa
11 Lumbar has two percent, and we have not received an
12 answer to our inquiry, so we assume for the purpose of
13 this hearing she is opposed to communitization. William
14 MacMoore, twenty-five percent of two percent, and he
15 agrees to communitization. The Priscilla MacMoore
16 trust has five percent of two percent, and agree with
17 communitization. Margine MacMoore trust has five percent
18 of two percent, and agrees to communitization. Virginia
19 MacMoore has ten percent of two percent, and agrees.
20 Tommy Phipps, two and a half percent of two percent,
21 and agrees to communitization.

22 Q You mentioned something about the Southeast of the
23 Southwest of Section 3, that portion that is in
24 litigation, that will be referred to as being in
25 litigation at this time?

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- 1 A Yes, sir.
- 2 Q What do you know about the litigation?
- 3 A My understanding is that, as counsel has mentioned,
- 4 there was a lawsuit filed in November that alleged
- 5 non-payment of rental due in October, therefore, the
- 6 lease was null and void by its own terms. I have
- 7 not read a copy of the complaint, nor have I read the
- 8 answers, and so I don't know the details. I was told
- 9 that the defendant did file an answer claiming timely
- 10 and proper payment of the rental payments were made,
- 11 and so therefore, he considers the leases still in
- 12 force and effect. As I understand it, the ownership
- 13 is separate under this tract, and reflects one-quarter
- 14 John Mayes, one-quarter Alice Ballard, one-quarter
- 15 Amelia Miller, and as was mentioned by counsel,
- 16 originally the lease of J. W. Miller, the lease and
- 17 operating rights, were acquired by Black River
- 18 Corporation.
- 19 Q You do know then of your own knowledge that the suit
- 20 is pending?
- 21 A Yes, sir.
- 22 Q Do you have any information as to when it might be
- 23 disposed of?
- 24 A Counsel remarked that it would be sixty days.
- 25 Q That is only a possibility, isn't it?

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- 1 A Yes.
- 2 Q Now, if the defendant, J. W. Miller, should prevail
- 3 in this suit, would these parties you mentioned, Alice
- 4 Ballard, Amelia Miller, Thurman Mayes, and John A. Mayes,
- 5 have any leasehold interest in the Southeast of the
- 6 Southwest of Section 3?
- 7 A Have any leasehold interest?
- 8 Q Yes, if they did not prevail.
- 9 A No. They will have royalty interests no matter who
- 10 is designated the owner of the lease, Mr. Miller or
- 11 Mr. Grace.
- 12 Q But on the other hand, if they should prevail in the
- 13 lawsuit, they would be entitled to a working interest?
- 14 A Mr. Hinkle, I am kind of confused here. I thought
- 15 the Examiner told us we had a substituted applicant
- 16 in this particular thing, Michael P. Grace. You are
- 17 talking about the Ballard group.
- 18 Q Let's assume the evidence presented by the Graces will
- 19 connect up here and show that the Graces are the owners
- 20 of the leases. Then in the event the plaintiff
- 21 prevails, the Graces would become the owner of the
- 22 leases covering 47.12 acres in the Southeast of the
- 23 Southwest.
- 24 A Yes, sir.
- 25 Q What is your recommendation to the Commission as to

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1 how this should be handled so that you can go ahead
2 and produce the well at the present time?

3 A I want to preface my remarks by saying that I am not
4 an attorney, and I am just trying to make a practical
5 suggestion. It would appear to my own eyes that it
6 would be logical if the seven-eighths working interest
7 were to be held in suspense and the Ballard-Mayes
8 group be paid their one-eighth royalty. In that way,
9 their right to be protected would be accommodated and
10 the designated leasehold owners would be protected,
11 because those monies would be placed in suspense and
12 would revert back to whoever the District Court
13 designated to be the owner. The rights of all the
14 other parties would be protected because the well
15 could then be placed in production and be allowed to
16 produce its equitable amount of the gas from the
17 reservoir.

18 Q In that connection, it has been requested that the
19 Commission also consider the cost of drilling, a charge
20 for the risk involved, a provision for the allocation
21 of actual operating costs, and the establishment of
22 charges for supervision of the well. Do you have any
23 information as to the cost of the drilling of the well
24 on the West half of Section 3?

25 A The Cities "3" Federal Well Number 1, which was located

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1 1960 feet from the north and west of Section 3 cost
2 a total of \$146,450.74 to drill and complete, tangible
3 and intangible.

4 Q What, in your opinion, would be the reasonable amount
5 for supervision?

6 A The operating agreement that is proposed provides
7 \$135.00 per well per month, which is a reasonable level
8 of charges.

9 Q Is this based on the customary charges for other
10 operations in the area?

11 A Yes, sir. An isolated well would probably be
12 substantially more than that.

13 Q Is Black River asking for any penalty charge?

14 A No, they are not.

15 Q Are you willing to give the Graces, if they should
16 become owners through a determination in this lawsuit,
17 an opportunity to pay their proper proportionate share
18 in cash or out of production?

19 A Yes.

20 Q What would be the situation if the well on the West
21 half of Section 3 should be shut in through a delay,
22 any appreciable delay, on account of this litigation?

23 A Well, I think any appreciable delay, I'm not willing
24 to put an exact time limit on this, but any appreciable
25 delay would undoubtedly lead to some ultimate loss of

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- 1 income to all royalty and working interest owners
2 because if the wells surrounding this well are going
3 on production, I don't think there is any question
4 that drainage will take place.
- 5 Q Because of the location of the well, drainage would
6 be quick and immediate, would it not?
- 7 A It probably would be, yes.
- 8 Q So it would be in the interest of protecting
9 correlative rights to get this well on production as
10 soon as possible, would it not?
- 11 A In my opinion, it would not injure anyone's rights and
12 it would protect everyone involved to get this well
13 into production as soon as possible.
- 14 Q Now, in your opinion, would approval by the Commission
15 of a non-standard unit for the West half of Section 3
16 be in the interest of conservation, the prevention of
17 waste, and tend to protect correlative rights?
- 18 A Yes, I think in general, it certainly would be. When
19 you get down to the fine point of the definition as
20 to whether you are talking about physical waste or
21 economic waste, I think it would be to everybody's
22 benefit and it would prevent the unnecessary drilling
23 of wells in this area.
- 24 Q Are you proposing that production from the well located
25 in the West half of Section 3 be allocated on the basis

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1 of acreage?

2 A Yes, I am.

3 Q Do you have anything further that you would like to
4 testify to?

5 A I would just like to reiterate to this Commission that
6 Black River Corporation is a responsible operator, and
7 we don't have any desire to see anyone injured at any
8 time. What we are proposing, we believe, is fair to
9 everybody. We are a responsible operator, and do not
10 want to see anybody hurt, and I just want to emphasize
11 we are not trying to promote something just for the
12 benefit of Black River, we think this would work for
13 the benefit of everyone involved.

14 Q Now, the Graces in Case 4765 request the drilling of
15 another well which would be located 1980 feet from the
16 West line and 1980 feet from the South line of Section 3,
17 do you see any necessity in drilling a second well?

18 A No, sir. In my opinion, if at some future date,
19 evidence became available to show that effective
20 drainage was not taking place, the Commission would
21 always be in a position to allow or require additional
22 wells be drilled to affect adequate drainage.

23 Q Black River is the operator of all of the other wells
24 to the north, is that right?

25 A Except for the Cities Service Well.

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1 Q And they are familiar with operations in this area?

2 A Yes, sir.

3 MR. HINKLE: We would like to offer in evidence
4 Exhibits One through Six that have been marked and which
5 were presented in the previous case.

6 MR. STAMETS: Are there any objections to the
7 introduction of these exhibits?

8 (No response)

9 MR. STAMETS: They will be admitted.

10 (Whereupon Applicant's Exhibits One through Six
11 were admitted in evidence.)

12 MR. HINKLE: That's all we have on direct.

13 MR. STAMETS: Are there any questions of this
14 witness?

15 THE WITNESS: I think we indicated a lower figure
16 on Exhibit Five, it should be 407.20 acres in the West half,
17 and I think it shows on the exhibit to be in the East half.
18 I apologize for that mistake.

19 MR. STAMETS: The exhibit should be corrected and
20 the figures should be reversed, the West half is 407.2 and
21 the East half 409.22. You are speaking of Exhibit Five?

22 THE WITNESS: Yes, sir.

23 MR. HINKLE: Have you any suggestions that you
24 could make as to how the Oil Conservation Commission can
25 adjust the production from the well in the West half to give

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1 it credit for 407.20 acres as opposed to a well on 320 acres?

2 THE WITNESS: Yes, sir, I think that pool rules
3 have been promulgated to protect correlative rights, and
4 the rules already say that at such time as this happens,
5 credit should be given for the excess acreage.

6 MR. HINKLE: Are you talking about a prorationing
7 order?

8 THE WITNESS: Right.

9 MR. HINKLE: If we have capacity allowables, will
10 that effectively protect that acreage as well?

11 THE WITNESS: If we had capacity allowables, that
12 is correct, but at the present time, we do not have a
13 capacity allowable.

14 MR. HINKLE: I am talking about the allocation
15 made to the well by the Oil Conservation Commission.

16 THE WITNESS: The allocation by the Oil Conservation
17 Commission based on the C-122 test only, if that's what you
18 mean, that's correct.

19 MR. HINKLE: How does the Commission make an
20 allocation based on the C-122?

21 THE WITNESS: They cannot establish an allowable
22 for the well until one is submitted.

23 MR. HINKLE: That is correct, but it has nothing
24 to do with the allowable?

25 THE WITNESS: Except for the requirement for

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1 establishment of production.

2 MR. HINKLE: I have nothing further.

3 MR. STAMETS: Are there any questions of this
4 witness?

5 * * * *

6 CROSS EXAMINATION

7 BY MR. COOLEY:

8 Q Mr. Aycock, did you participate in the attempt to reach
9 a voluntary communitization agreement?

10 A If you mean personally, no, I did not.

11 Q Do you know who was involved in that with your company?

12 A Yes, Miss Marcia Chandler, who is one of the
13 administrative assistants. If you would like for me to
14 tell you about those contacted and what attempts were
15 made and the methods, I would be glad to do that.

16 Q Was any attempt made at all to contact the Ballard-
17 Mayes-Miller group?

18 A What time are you speaking of?

19 Q Any time before or after the drilling of the well with
20 respect to communitization or anything on that order.

21 A To be frank with you, I don't know, and I can't tell
22 you exactly what was done.

23 Q Do you have anyone here who does know?

24 A No, I do not.

25 Q Do you have an affirmative record of those who were

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1 contacted?

2 A I have a record of those who we attempted to contact.
3 Mr. Mayes was given-- Mr. John A. Mayes was mailed
4 a notice; Mr. Thurman Mayes was mailed a notice; Amelia
5 Miller was sent a wire.

6 Q With respect to my clients, the Ballard-Mayes-Miller
7 group, do you know when they were contacted?

8 A I do not know the exact dates they were mailed notice,
9 but they were mailed notice.

10 Q What type of notice are we speaking of?

11 A I have not seen the exact notice, but they were mailed
12 a communitization agreement and requested to execute
13 it if they agreed, and we never heard anything back
14 as to whether they agreed or not, so we took it for
15 granted that they did not, and that is the basis for
16 this proceeding.

17 Q Who of the Ballard-Mayes-Miller group were mailed
18 notice?

19 A John A. Mayes, Thurman Mayes, and Amelia Miller.

20 Q Was anything sent to Alice Ballard?

21 A I don't see Miss Ballard on our list.

22 MR. STAMETS: I would like a point clarified at
23 this stage of the game. Were they contacted individually
24 as royalty interest owners or working interest owners or both?

25 THE WITNESS: Well, the way we look at it at this

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1 stage, they would be royalty interest owners since Mr.
2 Miller's association with Black River would lead us-- of
3 necessity would lead Black River to assume that Mr. Miller's
4 position was correct with respect to the acreage.

5 Q (By Mr. Cooley) Were you of the opinion that it was
6 necessary to consolidate the entire drilling block
7 consisting of the West half of Section 3, either by
8 voluntary communitization, or forced pooling, or
9 otherwise prior to drilling the well?

10 A I don't think that prior to drilling the well, we
11 anticipated there would be any difficulty in reaching
12 some voluntary agreement.

13 Q I don't think your answer was responsive to my question.

14 A I am doing my very best to answer you.

15 Q I am not trying to offend you or abuse you in any
16 fashion, I simply asked you that if you felt your
17 corporation feels in their interpretation of O.C.C.
18 rules and regulations that consolidation is required
19 in a drilling block prior to the drilling of the well.

20 A I think it is preferable to consolidate before the well
21 is drilled whenever that's possible.

22 Q Do you feel it is permissible under Oil Conservation
23 Commission rules and regulations to drill a well prior
24 to consolidation?

25 A Well, I am not well enough acquainted with all of the

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1 intricacies of it to really express an opinion. At
2 the time my client did this, I assume they were in
3 agreement with everyone except the litigant and that
4 forty-acre tract, and I am sure they also felt that
5 the orderly development of this field was necessary to
6 protect the rights of everyone involved.

7 Q I hand you a photostatic copy of a form C-102, executed
8 by Mr. J. Berry, agent for Black River, and ask you
9 if you have seen this before?

10 A Well, I have seen a copy similar to this in my client's
11 file, yes.

12 Q Mr. Aycock, am I to understand that you are an officer
13 in Black River?

14 A No, I am a consultant retained by the Black River
15 Corporation.

16 Q I beg your pardon. I believe any further questions
17 with respect to this particular exhibit should be
18 withdrawn and directed to Mr. Berry if he is present.

19 Mr. Aycock, you stated that you felt that if Mr.
20 Grace was the successful party in this lawsuit that he
21 should be allowed a reasonable time after its resolution
22 within which to pay his share of the cost of the well
23 that you testified to.

24 A I don't think there was any time limit made, I think
25 I just said that we assumed he would pay his proportionate

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1 cost if he was successful in the litigation.

2 Q Do you have any recommendation as to what would be
3 a reasonable time?

4 A The industry practice is within thirty to ninety days.

5 MR. STAMETS: It is the Examiner's understanding
6 that they could either pay it or have it taken out of the
7 monies coming in, whichever they would choose. They would
8 either have it taken out of the production monies or pay
9 it immediately.

10 MR. COOLEY: I have no further questions of this
11 witness.

12 MR. STAMETS: Are there any additional questions?

13 MR. KELLAHIN: Yes.

14 * * * *

15 CROSS EXAMINATION

16 BY MR. KELLAHIN:

17 Q You testified of efforts to obtain voluntary agreements,
18 but you didn't make these efforts yourself?

19 A No, I enlisted Miss Chandler's help.

20 Q Did you advise her very much?

21 A Yes, I worked closely with her.

22 Q Was that just for the East half, or were separate efforts
23 made to contact the overriding royalty owners in the
24 West half?

25 A We made efforts to notify everybody that was involved

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1 in any of the cases and on what cases they would be
2 involved in. I am not saying that we sent separate
3 letters, but we attempted to make it clear so that we
4 would be sure they understood they were involved in
5 more than one case.

6 Q This was notification in the forced pooling case that
7 you are talking about, is that right?

8 A Yes, sir.

9 Q I am talking about your efforts to obtain voluntary
10 agreements, did you submit the proposed communitization
11 agreement on each half section?

12 A Unless there was indication by verbal contact that it
13 would not be entertained favorably.

14 Q Did you make separate contact as to the East half of
15 the section and the West half of the section?

16 A Yes, we attempted to, yes.

17 MR. KELLAHIN: I have nothing further.

18 MR. STAMETS: Are there any further questions?

19 MR. HINKLE: I have one or two.

20 * * * *

21 REDIRECT EXAMINATION

22 BY MR. HINKLE:

23 Q With respect to the wells drilled on the East half of
24 the West half of Section 3, those wells were approved
25 by the Oil Conservation Commission, were they not?

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1 A Yes, that is correct.

2 MR. STAMETS: Mr. Aycock, if you are not totally
3 familiar with this, just advise me. To your knowledge, did
4 Black River have knowledge that there was litigation as to
5 ownership of the southeast quarter of the southwest quarter
6 of Section 3 at the time the well was proposed to be drilled?

7 THE WITNESS: I would assume from the dates
8 involved. Now, as far as any knowledge beyond that, I don't
9 have any, but I would assume so from the dates involved.

10 MR. STAMETS: Did Black River attempt to sign up
11 the working interest owners, the parties they felt were the
12 working interest owners, in the Southeast quarter of the
13 Southwest quarter before drilling the well?

14 THE WITNESS: Yes, sir. Mr. Miller.

15 MR. STAMETS: So in your opinion, you felt you had
16 all the working interest owners signed up?

17 THE WITNESS: Yes, sir.

18 MR. STAMETS: You responded to several questions
19 that Mr. Kellahin asked concerning the protection of royalty
20 interests in the South half of Section 2. I'm not quite
21 clear as to whether you feel this pool will have to be
22 prorated or needs to be prorated in order to protect the
23 royalty interests of the operators in the South half of
24 Section 3 if these large units we are discussing here are
25 approved.

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1 THE WITNESS: In my opinion, this Commission will
2 have to take that into account, take into account the size
3 of the proration units, yes.

4 MR. STAMETS: Do you feel that an additional well
5 in this section, at this location proposed in Case 4765, do
6 you feel a well drilled at that location would result in
7 economic waste?

8 THE WITNESS: I think that the data we have now
9 would indicate that, yes.

10 MR. COOLEY: The application for an additional
11 well is a typographical error, and is intended to be located
12 at the identical location as in Case 4764.

13 MR. STAMETS: So actually, we are talking about
14 the same location, and this is really not a factor.

15 MR. COOLEY: Yes.

16 MR. STAMETS: Thank you, I appreciate that information.

17 I believe those are all the questions I have.

18 Are there additional questions of this witness?

19 (No response)

20 MR. STAMETS: If not, the witness may be excused.

21 (Witness excused.)

22 * * * *

23 A. W. RUTTER, JR.,

24 was called as a witness, and after being duly sworn, testified
25 as follows:

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BY MR. KELLAHIN:

Q Will you state your name, please?

A A. W. Rutter, Jr.

Q Are you the same Mr. Rutter who testified in Case 4763?

A I am.

Q You heard the testimony in connection with the forced pooling of the West half of Section 3, and the Commission has agreed to incorporate your testimony in the preceding case into this case. Are there any basic differences in the forced pooling of the West half as opposed to the East half?

A The big difference is the acreage which we have. This area is within three percent of being a proration unit, and Lots 3, 4, and 5 in the North half of the Southwest quarter constitute one basic fee ownership by the United States Government, common overriding royalty ownership, common working interest ownership, and it comes within three percent of being a standard proration unit.

Q What would the acreage be?

A Taking 407.20 acres and subtracting 49.64 acres and 47.12 acres, it comes to 310.43 acres. If the South half of the South quarter is included in the proration unit, from what I understand, it will dilute the royalty

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1 interests in the remaining acreage. It is
2 approximately twenty-three and a half percent, I could
3 get a slide rule and actually make the calculation,
4 but it is on the order of twenty-three to twenty-five
5 percent.

6 Q In connection with the pooling of the West half of
7 Section 3, were you ever contacted by Black River with
8 a proposal of any kind for a voluntary agreement?

9 A No, sir. We got a telephone contact, I did not take
10 the telephone contact, and it's possible the telephone
11 contact was with respect to the West half, but we were
12 not submitted a written voluntary pooling agreement,
13 and I think previous testimony explains why. We had
14 voiced opposition to the East half because once you
15 cut a section one way or the other, you are usually
16 left with the other, and if you make one half, you have
17 the hotter half made.

18 Q In connection with this application, do you have any
19 objection to the designation of Black River Corporation
20 as operators?

21 A Absolutely none.

22 Q Regardless of what the unit might be?

23 A That's correct.

24 Q Do you have anything else to add to your testimony?

25 A Well, let me reiterate what I said at first. The

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1 situation here does not call for pooling of any
2 acreage to get to a 310.43 proration unit. You have
3 to pool three separate tracts in order to get to a
4 322.5 acre tract, so the situation here is considerably
5 less complicated. They own one hundred percent of
6 the acreage under the 310 acres, and they can designate
7 that as a proration unit. If they did so, of course,
8 I would still think-- I would want them to take similar
9 action in the East half so there would be a 322 tract
10 then in the East half.

11 MR. KELLAHIN: I have no further questions.

12 MR. STAMETS: Are there any other questions of this
13 witness?

14 MR. HINKLE: Yes.

15 * * * * *
16 CROSS EXAMINATION

17 BY MR. HINKLE:

18 Q You mentioned in your testimony concerning a contact
19 for pooling that you possibly had a phone call?

20 A We did have a phone call after we got the pooling
21 agreement on the East half on which we took no action.
22 We did get phone contact after that, it was not with me,
23 and I cannot tell you that it did not relate to the
24 West half.

25 Q Prior to that time, had you advised Black River that

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1 you would not be interested?

2 A No, I was busy on other matters.

3 Q You didn't advise them you wouldn't pool the East half?

4 A No, sir.

5 MR. HINKLE: That's all.

6 MR. STAMETS: Are there any additional questions
7 of this witness?

8 MR. COOLEY: Yes.

9 * * * *

10 CROSS EXAMINATION

11 BY MR. COOLEY:

12 Q Mr. Rutter, the proposal you make would result in
13 excluding the Ballard-Mayes-Miller group in the
14 Southeast of the Southwest of Section 3 from participation
15 in the existing well, is that correct?

16 A That is correct.

17 Q Have you discussed this with any persons connected
18 with Black River Oil Corporation?

19 A I have discussed the entire matter by telephone with
20 Mr. Phipps. I think the testimony I gave with respect
21 to the East half would apply here.

22 Q I would like to delve into it a little further inasmuch
23 as the exclusion of my clients' acreage from participation
24 in the existing well has been brought up. What was
25 the nature of those discussions with Mr. Phipps?

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1 A They advised me they were going to try and unitize
2 the entire West half.

3 Q Did you find encouragement from your conversations
4 with Black River Corporation with respect to your
5 proposal?

6 A Well, the word encouragement could be interpreted in
7 many different ways. Yes, I was personally encouraged.
8 I was encouraged that they were not, you might say,
9 unalterably opposed to my suggestion. I reiterate
10 though, I don't think I ought to be testifying about
11 Black River's position.

12 Q I am not asking about Black River's position, I am
13 asking you about your conversations with Black River
14 about the proposal.

15 A I pointed out, and I don't know if Mr. Phipps agreed
16 with me, but I pointed out my position.

17 Q If your proposal were adopted, it would subject the
18 Ballard-Miller-Mayes group to the prospect of
19 participation in the drilling of some well in the
20 future, is that correct?

21 A That's correct.

22 MR. COOLEY: No further questions.

23 MR. STAMETS: I would like to clarify a point, Mr.
24 Kellahin and Mr. Rutter, you spoke-- when we were off the
25 record, or it may have even been in the other case, concerning

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1 the Commission's options in this case, and I am only
 2 considering Black River and not considering the other
 3 people, I think just for the purpose of this question, I
 4 would like to leave them out. Our options on Black River
 5 in this case would be either to deny or approve the
 6 application, we could not issue an order in this case
 7 authorizing a 310.43 acre non-standard proration unit for
 8 this well as a result of this case; is that your opinion?

9 MR. KELLAHIN: That is not our position. It is
 10 my opinion that the application has been filed for forced
 11 pooling of the entire half section, and it is my opinion
 12 that the Commission can force pool something less than the
 13 entire half section or the portion about which we are talking.
 14 Perhaps it would be academic in any event because, having
 15 seen the C-102 form, they have already dedicated 310 acres
 16 to this well, and I am sure the overriding royalty owners
 17 are concerned. So if you deny the application, we are left
 18 with a 310 acre unit.

19 MR. STAMETS: You have left me with the impression
 20 that if the Commission denies the application, the royalty
 21 owners represented by Mr. Rutter would have no objection to
 22 signing a communitization agreement.

23 MR. PHIPPS: We won't have communitization at that
 24 point.

25 MR. STAMETS: Does this constitute a non-standard

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1 unit?

2 MR. COOLEY: I would like to add what little bit
3 I can to this. From the dedication plans, I see on the
4 C-102 form, it indicates the dedication of four hundred plus
5 acres, and I don't know what the Commission files reflect.
6 There is furthermore an administrative order, whether it
7 is 882 or 892, dated June 1st, 1972, approving a non-standard
8 unit consisting of the West half of Section 3, containing
9 428.5 acres.

10 MR. STAMETS: What is the number on that order?

11 MR. COOLEY: NSP-882. The plat, however, that I
12 started to ask Mr. Aycock about had Mr. Berry's signature
13 on it and showed 310 acres.

14 MR. STAMETS: I think the alternatives are
15 clarified in my mind, and you may proceed from this point.
16 Are there other questions of the witness?

17 MR. COOLEY: Probably NSP-882 should be dealt with
18 in the order.

19 MR. STAMETS: Are there any other questions of
20 the witness?

21 (No response)

22 MR. STAMETS: If not, the witness may be excused.

23 (Witness excused.)

24 MR. STAMETS: Let's take about a five minute break
25 for the benefit of the reporter.

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1 (Whereupon a recess was taken.)

2 (Hearing continues.)

3 MR. STAMETS: The hearing will come to order,
4 please. Mr. Cooley, you may proceed.

5 MR. COOLEY: Mr. Examiner, we have five witnesses:
6 Corinne Grace, Alice Ballard, Charles Miller, Dale Carlson,
7 and Richard Steinhorst. May we have them all stand and be
8 sworn?

9 (Whereupon the five aforementioned witnesses were
10 sworn by Mr. Hatch.)

11 MR. COOLEY: I will call first Mrs. Ballard, please.

12 * * * *

13 ALICE BALLARD,
14 was called as a witness, and having been already duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. COOLEY:

18 Q Mrs. Ballard, will you state your name, please?

19 A Alice Mayes Ballard.

20 Q Are you the fee owner of all or any portion of the
21 acreage located in the West half of Section 3 that is
22 the subject of this application?

23 A Yes, sir.

24 Q What acreage is that and what interest do you own?

25 A I own one-quarter undivided.

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1 Q In what acreage?

2 A I couldn't tell you without looking at the map.

3 Q All right, I will hand you a map.

4 MR. HINKLE: I wonder if we could stipulate-- we
5 have no objection to showing what these interests are, and
6 if you want to, we can just stipulate as to what their
7 interests are.

8 MR. COOLEY: That would be the Southeast quarter
9 of the Southwest quarter of Section 3.

10 MR. KELLAHIN: We have no objection.

11 MR. HINKLE: We have already testified to what
12 their interests are in the Southeast of the Southwest.

13 MR. COOLEY: I simply want to identify this as
14 being the person.

15 MR. HINKLE: We will stipulate that these are the
16 persons.

17 MR. COOLEY: She now has been identified.

18 Q (By Mr. Cooley) Mrs. Ballard, was it you who first
19 notified Black River Oil Company that it was your
20 position that their lease on the acreage had expired?

21 A I notified Mr. Miller.

22 MR. HINKLE: Mr. Examiner, if the purpose of this
23 testimony is to go into the lawsuit, well, it is absolutely
24 irrelevant because the Commission has no power to determine
25 title of property.

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1 MR. COOLEY: That is not the purpose.

2 MR. STAMETS: Mr. Cooley indicated that he would
3 only take up about thirty minutes, and I see no reason not
4 to listen to these witnesses. Thirty minutes time is not
5 going to hurt any of us.

6 MR. HINKLE: I have no objection to listening to
7 them, but if it is for the purpose of going into the lawsuit,
8 it is irrelevant.

9 MR. STAMETS: After he has made his point would
10 be the point for you to object.

11 Q (By Mr. Cooley) At any time since your notification of
12 the Black River Oil Company that it was your opinion
13 that the leases had expired--

14 MR. STAMETS: I believe she stated that she
15 contacted Mr. Miller and not Black River.

16 MR. COOLEY: Excuse me.

17 Q (By Mr. Cooley) At the time you notified Mr. Miller,
18 had you been told that there was a probability or a
19 possibility of you and your brothers and sisters'
20 acreage being excluded from the proration unit to be
21 dedicated to the well in the West half of Section 3?

22 A Yes, they said there was no need to worry about this
23 because they would just cut off our forty acres.

24 Q Who said that?

25 A Mr. Jim Johnson, landman for Black River.

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1 Q At various times, did they attempt to obtain a new
2 lease from you?

3 A Yes, sir.

4 Q After you had notified them that the lease had expired?

5 A Yes, sir.

6 Q Would you clarify who that was?

7 A Well, Mr. Phipps was at our house, and the lawyer,
8 Mr. Alda. They were there together.

9 MR. STAMETS: That would be Black River rather
10 than Mr. Miller?

11 THE WITNESS: Well, J. W. Miller is who we leased
12 it to.

13 MR. COOLEY: The first time.

14 THE WITNESS: Yes. What he did with it, I don't
15 know.

16 Q (By Mr. Cooley) Would you describe the incident and the
17 occasion on which you were told your acreage might be
18 excluded from participation in the production of the
19 well?

20 A We met with Mr. Johnson in Don McCormick's office in
21 Carlsbad, my sister and I, and they wanted to pay us
22 a bonus on this land.

23 Q For what?

24 A To renew their lease, I guess, I don't know what else
25 it could be. We told them we wouldn't take it until

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1 we talked to the boys, and we finally turned them down
2 because my brother didn't think it was right, and I
3 didn't think so either.

4 Q Was it after you turned them down that it was implied
5 that you would be excluded?

6 A Yes, sir.

7 Q And again, by whom was this stated?

8 A Jim Johnson--- James Johnson, he's landman for Black
9 River Corporation.

10 Q Was that the only time this had ever been indicated
11 to you?

12 A Well, I was told by El Paso Natural Gas in El Paso
13 that they could just cut us off if we didn't like it,
14 and I couldn't tell you the man I went to see there.
15 I went to see Rick Johnson, and he was busy on the
16 telephone, and I talked to the man in the office next
17 to his.

18 Q Have your brothers and sisters, since the filing of
19 this application, executed the oil and gas lease to
20 one Michael P. Grace?

21 A Yes, sir.

22 Q I hand you what has been marked as Exhibit One, and
23 ask you if that is the lease to which you just referred?

24 A Yes, sir.

25 MR. STAMETS: Do you have copies?

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1 MR. COOLEY: Just this one.
2 MR. HINKLE: Are you going to offer this?
3 MR. COOLEY: I am.
4 MR. HINKLE: We have no objection.
5 Q (By Mr. Cooley) And you now consider Michael P. Grace
6 to be lessee of the land described in that lease?
7 A Yes, sir.
8 MR. COOLEY: I have no further questions. I would
9 like now to offer our Exhibit Number One.
10 MR. STAMETS: Are there any objections to the
11 introduction of Exhibit One?
12 (No response)
13 MR. STAMETS: It will be admitted.
14 (Whereupon Grace Exhibit #1 was admitted in evidence.)
15 MR. STAMETS: Are there any questions of this
16 witness?
17 MR. HINKLE: Yes.
18 * * * *
19 CROSS EXAMINATION
20 BY MR. HINKLE:
21 Q You said that you were in Don McCormick's office, the
22 attorney in Carlsbad?
23 A Yes, sir.
24 Q Were you in there in connection with a settlement of
25 this litigation?

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1 A Yes, sir.

2 MR. HINKLE: That's all.

3 * * * *

4 CROSS EXAMINATION

5 BY MR. STAMETS:

6 Q I don't recall if you gave me the date of when the
7 people that may have been representing Black River
8 or Mr. Miller came and offered you a bonus if you
9 would sign a new lease.

10 A Well, sir, they were there several times. Mr. Johnson
11 was there several different times, and Mr. Phipps and
12 Mr. Alda were there, I couldn't tell you how many times,
13 but they were there. It was after I had written to
14 Mr. Miller and asked him to release it.

15 Q Could you give us the dates? Was it during the month
16 of June?

17 A No, it was in November or December.

18 Q 1971?

19 A Yes, sir.

20 MR. HINKLE: The date on the lease agreement is
21 June 29th.

22 MR. STAMETS: The agreement was made on the 23rd
23 of June, 1972, referring to the oil and gas lease of Alice
24 Ballard et al. I have no additional questions.

25 * * * *

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REDIRECT EXAMINATION

BY MR. COOLEY:

Q Were you contacted more than once with respect to obtaining or signing a new lease by Black River?

A Yes, sir.

Q Would you describe each of the times and approximately when they occurred?

A I don't know if I can remember all the times. J. W. Miller was there at the house several times, and Horace Miller was there. Mr. Johnson was there with his wife several times, and Mr. Phipps and Mr. Alda were there.

Q Did the first of these contacts occur before any lawsuit was filed?

A Yes.

Q And the offers continued to be made after the lawsuit was filed?

A Yes, up to just not too many weeks ago.

MR. STAMETS: Excuse me, I missed that last point. You have been approached by Mr. Miller and the Black River parties as recently as just a few weeks ago?

THE WITNESS: Yes.

MR. STAMETS: With the offer of a bonus if you would sign a lease?

THE WITNESS: Yes.

MR. STAMETS: I understood the last time was

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1 December of last year.

2 THE WITNESS: No, that was the first time.

3 MR. STAMETS: And these have occurred occasionally
4 up to the end of June?

5 THE WITNESS: I imagine the last part of May or
6 the first part of June, I don't know the exact dates.

7 * * * *

8 CROSS EXAMINATION

9 BY MR. HINKLE:

10 Q Mrs. Ballard, all of these contacts you have made
11 reference to concerning proposals for a new lease,
12 they were in connection with a compromise of the pending
13 lawsuit, were they not?

14 A Not the first ones.

15 Q But all of these recent ones have been?

16 A Yes.

17 MR. HINKLE: I have nothing further.

18 MR. STAMETS: Does anyone have any further questions
19 of this witness?

20 * * * *

21 CROSS EXAMINATION

22 BY MR. HATCH:

23 Q You have not agreed to pool your interests with Black
24 River?

25 A They never contact us, they pass our house every day and

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1 some of the men are working there, and they go by
2 our place to get to their wells, and my sisters and
3 brothers have not received anything in the mail or
4 by telephone or by anything.

5 MR. STAMETS: Anything further?

6 (No response)

7 MR. STAMETS: If not, the witness may be excused.)

8 (Witness excused.)

9 * * * *

10 CHARLES MILLER,

11 was called as a witness, and having been already duly sworn,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. COOLEY:

15 Q State your name for the record, please?

16 A Charles P. Miller.

17 Q Where do you reside?

18 A Hobbs, New Mexico.

19 Q By whom are you employed?

20 A I am a self-employed consultant.

21 Q Consultant what?

22 A Geologist and engineer.

23 Q Mr. Miller, have you previously testified before the
24 Oil Conservation Commission?

25 A Yes, sir.

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1 Q And have your qualifications as an expert witness
2 been accepted?
3 A Yes, they have.
4 MR. COOLEY: Mr. Examiner, may we--
5 MR. STAMERS: The witness' qualifications are
6 accepted.
7 MR. COOLEY: We would like to have this marked
8 as an exhibit.
9 MR. HATCH: This will be Grace Exhibit Number Two.
10 (Whereupon Grace Exhibit #2 was marked.)
11 Q (By Mr. Cooley) Mr. Miller, have you, at the request of
12 Mr. Michael P. Grace, prepared a land ownership plat
13 of the acreage in the West half of Section 3 that is
14 the subject of the pending application?
15 A Yes, I have.
16 Q Then to the best of your ability from taking these
17 matters from the records of the County Clerk's Office
18 in Eddy County, New Mexico, do these reflect correctly
19 the records of ownership?
20 A As nearly as we can determine, yes.
21 Q As an expert consultant geologist, have you had occasion
22 to make a study with respect to the Morrow sand, the
23 producing formation underlying the West half of Section 3?
24 A Not as much as I should, because we never do as much
25 as we should, but I have made quite a study of it, yes.

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- 1 Q Based on the information you have obtained from the
2 various records-- I assume you have consulted well
3 files with respect to the producing wells in the area,
4 is that correct?
- 5 A Yes, sir.
- 6 Q And you have examined these?
- 7 A Yes.
- 8 Q From your examination of all the information shown and
9 available to you, do you have an opinion as to whether
10 the entire West half of Section 3 is productive of
11 gas from the Morrow formation?
- 12 A I consider it as such.
- 13 Q Do you feel that this acreage could be drained by the
14 existing well in the West half of Section 3?
- 15 A Could I have that question again?
- 16 Q Do you feel that the existing well in the West half
17 of Section 3 will effectively and economically drain
18 the West half of Section 3?
- 19 A I have doubts about that.
- 20 Q Have you examined the permeability and porosity of
21 these wells?
- 22 A From samples or on what basis?
- 23 Q Any bases available to you.
- 24 A I have examined the logs, yes.
- 25 Q What gives you your doubt with respect to this?

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1 A Well, my general experience with the Pennsylvanian
2 Section leads me to question how far the drainage
3 will reach out.

4 MR. COOLEY: I have no further questions.

5 MR. STAMETS: Are there questions of this witness?

6 MR. KELLAHIN: Yes.

7 * * * *

8 CROSS EXAMINATION

9 BY MR. KELLAHIN:

10 Q Mr. Miller, did you hear Mr. Rutter's testimony?

11 A Well, Mr. Kellahin, I wasn't in here all the time.

12 Q Did you hear his suggestion for the drilling of an
13 additional well which would include the acreage in the
14 South half of the South half of Section 3?

15 A Yes, sir.

16 Q If you are correct, a well located in the West half
17 of Section 3 will not drain the South half, and
18 therefore, would it be indicated that another well
19 should be drilled there?

20 A That's the normal sequence it would follow, yes.

21 MR. KELLAHIN: That's all I have.

22 * * * *

23 REDIRECT EXAMINATION

24 BY MR. COOLEY:

25 Q Would this be proven after the well has been produced?

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1 You wouldn't recommend drilling another well in the
2 West half of Section 3 at this time, would you, until
3 you have some producing history?

4 A It would be much better if we had production decline.

5 Q That would be the best evidence of what one well would
6 drain?

7 A It would give us a very good idea.

8 * * * *

9 CROSS EXAMINATION

10 BY MR. HINKLE:

11 Q You really have no information on which to base your
12 conclusion at the present time as to drainage of the
13 well in the West half of Section 3, do you?

14 A I have no more than anybody else.

15 Q You would be in a better position to reach a definite
16 conclusion after there has been considerable production
17 and there has been a decline curve?

18 A That applies to any field, yes.

19 Q That might prove that one well would drain much more
20 than 320 acres.

21 A It's altogether possible that it might drain less too.

22 * * * *

23 CROSS EXAMINATION

24 BY MR. HATCH:

25 Q Do you have any opinion as to whether or not the

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1 Southwest quarter of Section 3 is productive of gas?

2 A I believe I have answered that question.

3 Q I didn't hear it.

4 A Didn't you ask me that?

5 MR. COOLEY: Just answer his question.

6 A Yes, I consider it as such.

7 MR. HINKLE: It is productive?

8 THE WITNESS: Yes, it is productive.

9 MR. STAMETS: There have been other expert witnesses
10 who have testified that a well in the West half at the
11 proper location would effectively and efficiently drain the
12 West half.

13 THE WITNESS: I respect their opinions, but I
14 have my opinions.

15 MR. STAMETS: Are there any other questions of
16 this witness?

17 (No response)

18 MR. STAMETS: If not, he may be excused.

19 (Witness excused.)

20 MR. COOLEY: We would like to introduce our Exhibit
21 Number Two.

22 MR. STAMETS: Are there any objections to the
23 introduction of the exhibit?

24 (No response)

25 MR. STAMETS: It will be admitted.

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1 (Whereupon Grace Exhibit #2 was admitted in
2 evidence.)
3 MR. STAMETS: You may proceed, Mr. Cooley.
4 MR. COOLEY: Mr. Steinhorst?
5
6 RICHARD STEINHORST,
7 was called as a witness, and having been already duly sworn,
8 testified as follows:
9 DIRECT EXAMINATION
10 BY MR. COOLEY:
11 Q State your name for the record, please?
12 A Richard Steinhorst, Jr.
13 Q Where do you reside?
14 A Lafayette, Louisiana.
15 Q By whom are you employed?
16 A By the Graces as a consultant.
17 Q What is your specific employment and educational
18 background?
19 A I have qualified before the Commission-- unless you
20 personally want to know.
21 Q Are you a consulting engineer?
22 A Yes.
23 Q Mr. Steinhorst, state briefly--
24 MR. COOLEY: Are the witness' qualifications
25 accepted?

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1 MR. STAMETS: They are.

2 Q (By Mr. Cooley) Mr. Steinhorst, have you prepared any

3 cost estimates with respect to the drilling of the

4 well, or of a similar well to that which has already

5 been drilled, in the East half-- or the West half of

6 Section 3?

7 A I have.

8 Q Do you consider the well costs which have been testified

9 to by Mr. Aycock to be reasonable under the circumstances?

10 A I would say they were extremely reasonable.

11 MR. HINKLE: What was his answer?

12 THE WITNESS: Extremely reasonable. I don't

13 believe them.

14 Q (By Mr. Cooley) Do you have an opinion as to the

15 question that was previously put to Mr. Miller as to

16 the capability of this particular well to drain the

17 entire West half of Section 3?

18 A I think it is questionable.

19 Q Do you feel that subsequent production history should

20 be obtained before the ordering of drilling or the

21 preventing of drilling of any additional well?

22 A I definitely do. In other words, the information that

23 has been given by the expert testimony prior to this

24 is not substantial enough to make a determination as

25 to the advisability of another well at this time.

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- 1 Q How much production history do you feel would be
2 required in order to make this determination?
- 3 A You need several months of production in order to
4 determine performance.
- 5 Q Do you feel the matter should be reviewed with respect
6 to the capability at some particular time in the
7 future by Commission?
- 8 A I do.
- 9 Q What period of time would you suggest?
- 10 A I would say either quarterly or bi-annually.
- 11 Q Every three or six months?
- 12 A Every three or six months, yes.
- 13 Q This wouldn't be a continuous thing, would it? There
14 would be a time when you could determine from your
15 production history that it either was or was not doing
16 the job, isn't that right?
- 17 A Yes, you could determine that within probably six to
18 nine months. Very definitely, within three to six
19 months, you could have a trend established as to what
20 you thought was occurring-- what I'm trying to say is
21 you would have the information available to substantiate
22 the information that has been testified to.
- 23 Q Summarizing your testimony, you feel that at this time,
24 it would be inappropriate to permit the drilling of
25 more than one well per half section?

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1 A Right.

2 Q And that in some future date, in six to nine months,
3 the Commission should review the matter in light of
4 the production history and make its decision at that
5 time as to whether additional wells should be permitted,
6 is that correct?

7 A That's correct.

8 MR. COOLEY: I have no further questions.

9 MR. STAMETS: Are there any questions of this
10 witness?

11 MR. HINKLE: Yes.

12 * * * *

13 CROSS EXAMINATION

14 BY MR. HINKLE:

15 Q I believe you testified that you didn't think the
16 well in the West half of Section 3 would drain the
17 whole half section, is that right?

18 A That's right.

19 Q There might be some question about it?

20 A I think there is some reasonable doubt.

21 Q How much of a study have you made of that area?

22 A Only from just the facts that have been presented here
23 at this hearing, and what Mr. Miller has done.

24 Q When did you start your study?

25 A This was started on June 24th.

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- 1 Q And have you examined the production records of all
2 the wells in the East half of Sections 33 and 34,
3 the original discovery wells up there?
- 4 A I looked at them and they look pretty good, but I
5 don't have too much history.
- 6 Q Do you have any reason to believe from the production
7 of those wells that they will not drain more than
8 320 acres?
- 9 A I think there is very reasonable doubt from the
10 reservoir data available that they will.
- 11 Q That they will?
- 12 A I think there is reasonable doubt that they will drain
13 the area.
- 14 Q But you wouldn't know definitely until you got more
15 reservoir data and you could then be convinced the
16 other way that these wells could drain as much as
17 640 acres, is this true?
- 18 A This is all true, yes.
- 19 Q So you can't say definitely they won't drain it?
- 20 A I would say that your reservoir characteristics are
21 not very conducive to that type of drainage.
- 22 Q They are large wells though, aren't they?
- 23 A They are good wells.
- 24 Q And in a lot of cases, the Commission has granted
25 640-acre spacing on wells that are not nearly as good

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1 as this, you know that, do you not?

2 A That's true.

3 MR. HINKLE: That's all I have.

4 MR. STAMETS: Are there any other questions?

5 (No response)

6 MR. STAMETS: If not, the witness may be excused.

7 (Witness excused.)

8 * * * *

9 CORINNE GRACE,

10 was called as a witness, and having been already duly sworn,
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. COOLEY:

14 Q Mrs. Grace, you are the wife of Michael P. Grace?

15 A Yes, I am.

16 Q Are you the Cooperator in the Southeast quarter of
17 the Southwest quarter of Section 3, part of the acreage
18 under consideration in this application?

19 A Yes, I am.

20 Q You are aware, are you not, of the conflicting
21 applications of yourself and Mr. Grace and Black River
22 Corporation to be the operators in this half section?

23 A Yes.

24 Q Would you state as briefly as possible to the Examiner
25 why you feel Mr. Grace should be selected as operator

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1 as opposed to Black River Corporation?

2 A Because I feel the people who have little forty-acre
3 tracts should be given a vote in this country just as
4 the big people are. We all should have one vote.
5 My husband's character has been smeared and his ability
6 has been smeared, and I have heard testimony here
7 today that no one can reach Mrs. Ryan and Mrs. Cretack,
8 and I have spoken to them twice in the last two weeks,
9 and I think they have been ignored. These people
10 have gone out and drilled wells and then come to the
11 Commission and told them that they are proper and
12 correct and that the Commission must rush, rush, rush
13 because they have drilled these wells. Why didn't
14 they rush, rush, rush to the Commission before they
15 drilled the wells? My husband has never drilled a
16 well where he didn't do everything in his power to
17 communitize the people and ask them to join before he
18 ever went to the Commission, plus before he ever much
19 less drilled the well.

20 Q Did you and your husband contact the various working
21 interest owners in the West half of Section 3 with
22 respect to voluntary communitization prior to today?

23 A We thought that Black River had the working interest.

24 Q You misunderstood my question. Have you or your
25 husband telegraphed or otherwise attempted to communicate

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1 with the various working interest owners of the
2 underlying West half of Section 3 with respect to
3 voluntary communitization prior to proceeding with
4 this application?
5 A Yes, we have.
6 Q Did you contact all of the owners that you were aware of?
7 A Yes, sir.
8 Q Did you do a title examination to ascertain who might
9 own the overriding royalty interests in the acreage
10 in question?
11 A Yes, we did-- we did not contact the overriding royalty
12 interest owners.
13 Q But you did contact all the working interests?
14 A Yes, sir.
15 MR. STAMETS: I would like to clarify that point.
16 You contacted the working interest owners and any royalty
17 interest owners, but you did not contact any overriding
18 royalty interest owners, or are you including all the
19 royalty interest owners under the overriding interest owners?
20 THE WITNESS: Well--
21 MR. COOLEY: Only the fee royalty owners, the
22 Ballards and the Mayes.
23 MR. STAMETS: Okay.
24 Q (By Mr. Cooley) In the event the Commission should
25 approve your application for forced pooling and make you

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1 and Mr. Grace operators of the well, what would be
2 your proposal with respect to the Cities Federal Number
3 1 Well?

4 A We would reimburse them.

5 Q For the actual extent of the expenses that have been
6 testified about here today?

7 A What they have spent.

8 Q The witness Mr. Steinhorst testified that he felt
9 \$146,650.74, the figure testified to by Mr. Aycock as
10 being the total cost of the well, was extremely
11 reasonable--

12 A I'm sorry to interrupt you, but we would like to see
13 how they break it down and how much it was a foot.

14 Q My question is would they be reimbursed for the total
15 sum that they have testified to with respect to their
16 cost?

17 A Yes, we consider those costs quite reasonable.

18 Q And you would agree to \$135.00 per well per month, the
19 operating charge suggested by Black River?

20 A Yes, sir.

21 Q Mrs. Grace, I made the statement earlier in this case
22 that the location of the well as advertised, or as
23 at least stated in the docket that we have before us,
24 referring to the well location of 1980 feet from the
25 South line as opposed to 1980 feet from the North line

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1 is a typographical error, could you verify that?

2 A Yes, it is.

3 Q And it is not your intention or purpose in this case
4 to drill an additional well in the West half of Section 3?

5 A No, I would consider that a great waste.

6 MR. COOLEY: I have no further questions.

7 * * * *

8 CROSS EXAMINATION

9 BY MR. HINKLE:

10 Q Did you know anything about the application when it
11 was filed, Mrs. Grace, the application that was filed
12 by the Ballard-Miller-Mayes group? Did you have
13 anything to do with the filing of that application?

14 A Yes, sir.

15 Q Why was it filed by them and not in your name?

16 A Because at that time, my husband had not taken the lease
17 from escrow, but he has now.

18 Q You had an agreement whereby you might acquire the lease?

19 A Yes, sir.

20 Q Out of escrow?

21 A Yes, and since the date of the filing, he has taken it
22 out of escrow.

23 Q Did you know at that time that there already had been
24 a well drilled on the West half of Section 3?

25 A Yes.

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- 1 Q And you knew at that time that there was a question
- 2 as to title in the Southeast of the Southwest of
- 3 Section 3 because of the lawsuit pending?
- 4 A We paid them for the lease.
- 5 Q You know that the lawsuit pending involves title, do
- 6 you not?
- 7 A Would you like it if we went and drilled a well on your
- 8 lease?
- 9 Q But this is not your lease, they didn't drill on your
- 10 forty acres.
- 11 A They didn't ask Mrs. Ballard or Mr. Mayes or anybody
- 12 else if they could.
- 13 Q It is true, is it not, that all you can claim is forty
- 14 acres, whereas Black River has all the rest of the
- 15 acreage in the West half?
- 16 A Sir, I consider forty acres very important just as I
- 17 consider my vote very important. You may be a rich
- 18 ranchman, but I think your vote equals my vote. If
- 19 the Commission didn't stand for something like that,
- 20 we wouldn't have a Commission. The big people could
- 21 just go drill and say, "That's mine, because I got the
- 22 most land."
- 23 Q So you think it is equitable to allow them to go ahead
- 24 and drill the well?
- 25 A I didn't allow them to go ahead and drill the well and

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1 the Mayes and Ballards didn't allow them.

2 Q At the time they drilled the well, they had all the
3 acreage except for forty-seven acres.

4 A The Ballards and Mayes didn't allow Mr. Miller to
5 drill a well, they informed him that he had not paid
6 his rent, and they had their lease and they sold their
7 lease to us. Now, what more could they do?

8 Q You have just testified that you are the one that got
9 the Ballards to file the application.

10 A We did not get them to, they had an attorney.

11 Q You said you knew about it.

12 A I said-- of course, I knew about it.

13 Q Didn't you and your husband advise them to go ahead
14 and file this?

15 A They have an attorney.

16 Q Did Mr. Cooley file this application?

17 A Their representative in Santa Fe filed it, and Mr.
18 Cooley came to Santa Fe the next day to check it.

19 MR. HINKLE: That's all I have.

20 * * * *

21 CROSS EXAMINATION

22 BY MR. HATCH:

23 Q Who is their representative in Santa Fe?

24 A Our secretary.

25 Q Is she a representative of the Graces or a representative

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1 of Alice Ballard, Amelia Miller, Thurman Mayes, and
2 John A. Mayes?

3 A Our secretary was doing it for them. She volunteered
4 her services to do it for them, and they came down
5 here and filed the letter, and then Mr. Cooley came
6 the next day.

7 Q Then your secretary filed this application, is that
8 right?

9 A Yes.

10 Q You just said you didn't have anything to do with it.

11 A Sir, I was in Chicago, Illinois.

12 * * * *

13 CROSS EXAMINATION

14 BY MR. HINKLE:

15 Q Mrs. Grace, you had something to do with it.

16 A I didn't have anything to do with it, but I was quite
17 aware of it.

18 * * * *

19 CROSS EXAMINATION

20 BY MR. HATCH:

21 Q Mrs. Grace, I hand you the application in Case 4765,
22 and if you will notice how that is signed, it is signed
23 by Dorothy Harvey, and I see Corinne Grace typed there.
24 I would read it as Corinne Grace being agent for Alice
25 Ballard, Amelia Miller, Thurman Mayes, and John A. Mayes,

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1 and it is signed by Dorothy Harvey.

2 A Well, that is a mistype because Dorothy Harvey was
3 agent for them, and they told her she could sign this
4 for them. I suppose it got typed that way because of
5 a mix-up through telephone calls.

6 * * * *

7 REDIRECT EXAMINATION

8 BY MR. COOLEY:

9 Q You say that you paid the Ballard-Mayes-Miller group
10 for the lease that is Exhibit One, would you tell the
11 Commission the amount of money you paid for that lease?

12 A We have given them \$10,000.00, but we have to give them
13 more money.

14 Q You are contractually obligated to give them more money
15 after the determination of the lawsuit?

16 A Yes, sir.

17 Q How much more money?

18 A Fifty dollars an acre.

19 MR. HATCH: Do you know who contacted Mrs. Harvey
20 to ask her to file those applications?

21 THE WITNESS: I know Mrs. Ballard and Mr. Mayes
22 talked to her. They definitely talked to her, and my
23 husband talked to Miss Harvey also. They talked to her and
24 authorized her to do it, or she never would have done it.

25 MR. COOLEY: Miss Ballard is here to testify if

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1 there is any question concerning the authority.

2 MR. HATCH: I have no further questions.

3 MR. STAMETS: Are there any additional questions?

4 (No response)

5 MR. STAMETS: If not, the witness may be excused.

6 (Witness excused.)

7 MR. COOLEY: No further witnesses.

8 MR. STAMETS: If there are no other witnesses in
9 the case, I would like to call upon Mr. Traywick, who is
10 a representative of the U.S.G.S., to just advise us of what
11 the policy is of the U.S.G.S. in approving situations such
12 as this when less than standard acreage has been communitized
13 as in the two cases under consideration today in Section 3.

14 MR. TRAYWICK: I will be glad to answer that question
15 or any other questions related to it.

16 A federal lease gives the lessor and lessee or
17 working interest owners the right to drill the lease
18 regardless of state statute regarding spacing units or whatever.
19 So we would approve a location even though we knew that a
20 portion of the spacing unit set up by the Commission previously
21 might not be committed. We would have no authority under
22 the Mine Leasing Act to deny a location because a minority
23 interest in the drilling and spacing unit took a non-concerting
24 position with respect to a well.

25 Now, if I can go on a little further. Suppose

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1 a non-concerting position came from another federal lease
2 in the same spacing unit, they would file a notice to drill
3 and we would be obligated to approve it. Of course, no
4 prudent operator would do that, except it has come up where
5 there has been a fairly equal proportionment in spacing
6 units where the entities could not agree, and in these
7 cases, we have advised the individual leases that we would
8 approve well locations on each lease. These matters have
9 always been settled before an actual notice was filed, so
10 we do not have an actual case in which we took action.

11 MR. STAMETS: Do you normally advise an operator
12 who is drilling a well that he may or may not be allowed
13 to produce the well if he does not have the required acreage
14 dedicated to it?

15 MR. TRAYWICK: Yes, we would contact him and attempt
16 to resolve the matter in a way which would be compatible
17 with the state spacing regulations and compatible with
18 orderly development and production of the field. This point
19 is well illustrated by our routine policy on proven
20 communitization agreements where the spacing unit is over
21 the tolerance provided by the Commission. We ask the
22 operator to notify us when administrative approval is granted
23 so we know it can be produced. Does that answer your question?

24 MR. STAMETS: I think it does.

25 MR. TRAYWICK: There are cases where we can hold

1 notice of intention to drill up.

2 MR. STAMETS: I asked Mr. Traywick to make that
3 statement more for the various parties concerned here as
4 to why wells could be drilled without having all of the
5 acreage necessarily communitized at the time.

6 MR. COOLEY: May I ask if the Oil Conservation
7 Commission has a similar policy?

8 MR. STAMETS: I do not wish to speak out on a legal
9 point.

10 MR. HATCH: I will make a thorough review of all
11 the cases to answer that inquiry. I am of the opinion right
12 now that wells have been allowed to be drilled without all
13 the required acreage dedicated at the time they are drilled,
14 but with respect to that, they have not been produced until
15 standard proration units are approved.

16 MR. COOLEY: I think it would be an extremely
17 helpful guideline to all the operators in the State if we
18 knew what everybody's position was with respect to this
19 because there have been times in the history of the Commission
20 where you could not drill without first having consolidation,
21 and then you have the situation with state and federal acreage.

22 MR. STAMETS: Mr. Cooley, I imagine if you put
23 the question to the Commission that you would receive a reply
24 in relatively short order. I'm not guaranteeing that because
25 I'm not the Commission, as you well know.

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1 Are there any statements in this case?

2 MR. KELLAHIN: If the Examiner please, I hate to
3 impose on you, the only thing we are concerned with is the
4 question of correlative rights, and I think Mr. Rutter has
5 made our position abundantly clear. The only thing I
6 would like to point out is that at present, the state of
7 gas production in the State of New Mexico and the energy
8 crisis that it could be adjusted through some kind of
9 proration formula just isn't true unless we change our
10 system of proration somewhat. The problem here, referring
11 to the West half here, in the West half, we have 407.20
12 acres and then immediately north, you have 320 acres dedicated
13 to a well. They are going to both produce the same amount
14 of gas, assuming they are both equally good wells, but
15 that does not take care of the correlative rights. The only
16 way they can be protected is to deny the application insofar
17 as the 407.20 acres is concerned by eliminating the South
18 half of the Southwest quarter from the unit. That would make
19 the unit 310.43 acres, which is very, very close to a
20 standard unit, particularly when you consider the size of
21 these sections. It has been pointed out that the additional
22 acres can be taken care of by dedication to another well
23 to be located to the south, and that would be a logical
24 solution. The only other way would be some form of ratable
25 take order that might or might not work. We submit that

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1 in order to protect the correlative rights of the owners
2 under the 310 acres that the application should be denied.

3 MR. HINKLE: I might state in reply, briefly,
4 that if this Commission takes Mr. Kellahin's suggestion, it
5 is going to lead to maybe not one, but several non-standard
6 units, and the crossing of section lines. The suggestion
7 that has been made here would consist of parts of Section 2,
8 the South half of Section 3, and a part of Section 4, just
9 a long, narrow unit. This would cause the drilling of
10 unnecessary wells and be an economic loss, and the Commission
11 has never, so far as I have known, in cases where we have
12 irregular sections, gone beyond the section lines. They
13 have always included the unit within the sections, and I
14 think that is a real sound policy. So in my opinion, the
15 two applications for two non-standard units, both of them,
16 should be approved.

17 MR. COOLEY: The question seems to get down to
18 whose ox is being gored. The leaseholders in the North half
19 of Section 10 would have their correlative rights violated
20 by drilling additional unnecessary wells somewhere in the
21 South half of Section 3. I feel that Section 65:3-14 clearly
22 directs the Oil Conservation Commission to avoid the drilling
23 of unnecessary wells. Mr. Rutter's own testimony is that
24 an additional well will not recover any additional gas, but
25 would be only drilled for the purpose of protecting his

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1 and related interests, which are rather insignificant
2 overriding royalty interests when you compare them to the
3 expenditure of an additional \$150,000.00. I can't understand
4 how the total overriding royalty value, the total overriding
5 royalty value that is represented by Mr. Kellahin, how
6 their rights are violated anywhere near the extent of
7 \$150,000.00. But they are proposing that someone spend
8 \$150,000.00 to protect them. I am sure that the Commission
9 can devise some fashion of a ratable take order or something
10 of that fashion that would serve to protect the oversized
11 units and permit them to produce an additional quantity of
12 gas. Proration may come to pass, which will take care of
13 that. There are many avenues of approach available instead
14 of requiring the drilling of an unnecessary well at this time.
15 If it develops that, in order to develop the gas, additional
16 wells need to be drilled to avoid underground waste and to
17 avoid leaving unrecovered gas in the ground, that would be
18 a totally different matter, but that will come, if at all,
19 in six to nine months.

20 With respect to the question of who should be
21 nominated by the Commission, or selected by the Commission,
22 as operator of the West half of Section 3, we have direct
23 conflict. When looking at the land ownership plat, it would
24 appear that roughly seven-eighths of the working interest
25 is owned by Black River, while only one-eighth is owned by

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1 Mr. Grace. Now, this is not the case as was testified to.
2 They only own one-quarter of that seven-eighths, so they
3 own possibly sixty to seventy-five acres, net acres, as
4 opposed to forty-seven net acres owned by Mr. Grace. So
5 there is this great discrepancy between the actual amount
6 of net working interest owned by the two applicants. Cities
7 Service has the largest net working interest ownership in
8 the unit, and they have not applied to be operator for one
9 reason or another, but any argument that might be advanced
10 that the majority of the acreage should be-- the majority
11 owner of acreage should be designated operator, the
12 Commission should keep in mind that Black River's interest
13 is only seventy-five acres, as opposed to seven-eighths of
14 the entire drilling block.

15 I have no further comments.

16 MR. HINKLE: I would like to just comment for a
17 second here. It is true that Cities Service does have a
18 half interest in these leases, but Black River obtained a
19 farm-out to drill the discovery well from Cities Service--
20 Arapahoe has a quarter interest and Black River has a quarter
21 interest, but Black River is the operator by reason of an
22 operating agreement which has been entered into between
23 Cities Service and Arapahoe. So Cities Service and Arapahoe
24 have designated Black River as operator.

25 That's all I have.

1 MR. STAMETS: Mr. Hatch, do we have any
2 correspondence on either of these?

3 MR. HATCH: There is a note that Mr. Gene Motter
4 left here to be read as a statement following the end of
5 the case.

6 "Cities Service Oil Company supports Black River
7 Corporation's application in Case 4764 to pool all mineral
8 interests in the Morrow formation underlying the West half
9 of Section 3, Township 26 South, Range 24 East, Eddy County,
10 New Mexico. Cities Service has thirty-nine percent plus
11 interest in the Black River-Cities Service "3" Federal Well
12 Number 1, and recommend that Black River be named operator
13 of the proposed non-standard unit."

14 MR. STAMETS: If there are no further statements,
15 the case will be taken under advisement-- Cases 4764 and 4765
16 will be taken under advisement.

dearnley, meier & mc cormick
209 SIMMS BLDG., P.O. BOX 1092, PHONE 243-6691, ALBUQUERQUE, NEW MEXICO 87103
1216 FIRST NATIONAL BANK BLDG. EAST, ALBUQUERQUE, NEW MEXICO 87108

dearnley, meier & mc cormick

200 SIMMS BLDG., P.O. BOX 1092, PHONE 243-6691, ALBUQUERQUE, NEW MEXICO 87103
1216 FIRST NATIONAL BANK BLDG. EAST, ALBUQUERQUE, NEW MEXICO 87106

1
2 STATE OF NEW MEXICO)
3) SS
4 COUNTY OF BERNALILLO)

5 I, RICHARD E. McCORMICK, a Certified Shorthand Reporter,
6 in and for the County of Bernalillo, State of New Mexico
7 do hereby certify that the foregoing and attached Transcript
8 of Hearing before the New Mexico Oil Conservation Commission
9 was reported by me; and that the same is a true and correct
10 record of the said proceedings to the best of my knowledge,
11 skill and ability.

12 *Richard E. McCormick*
13 CERTIFIED SHORTHAND REPORTER
14
15
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21
22
23
24
25

I do hereby certify that the foregoing is
a true and correct copy of the original
as shown to me on July 14, 1977
Richard E. McCormick
New Mexico Oil Conservation Commission

dearnley, meier & mc cormick

209 SIMMS BLDG., P.O. BOX 1092, PHONE 243-6891, ALBUQUERQUE, NEW MEXICO 87103
1216 FIRST NATIONAL BANK BLDG. EAST, ALBUQUERQUE, NEW MEXICO 87103

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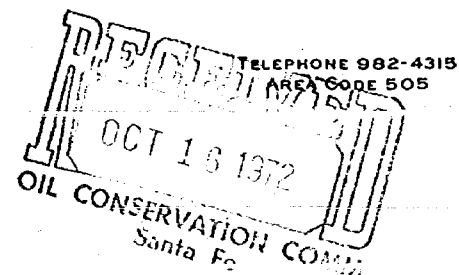
clearnley, meier & mc cormick

209 SIMMS BLDG., P.O. BOX 1092, PHONE 243-6691, ALBUQUERQUE, NEW MEXICO 87103
1216 FIRST NATIONAL BANK BLDG., EAST ALBUQUERQUE, NEW MEXICO 87103

JASON W. KELLAHIN
ROBERT E. FOX
W. THOMAS KELLAHIN

KELLAHIN AND FOX
ATTORNEYS AT LAW
500 DON GASPAR AVENUE
POST OFFICE BOX 1769
SANTA FE, NEW MEXICO 87501

Oct. 11, 1972



Mr. A. L. Porter, Director
New Mexico Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

Re: OCC Case No. 4765

Dear Mr. Porter:

I have been informed that Cases No. 4763 and ⁴⁷⁶⁴4763, scheduled for hearing on the application of Rutter and Wilbanks Corporation for hearing de novo, will be continued to November 15, at the request of Mr. clarence Hinkle, attorney for Black River Corporation.

Confirming our telephone conversation, this is to request that Case No. 4765, also secheduled for hearing de novo at the request of Rutter and Willbanks, be continued to the same date for the reason this case involves the same unit as Case No. 4764, and we would utilize the same witnesses and testimony in these cases.

Yours very truly,

Jason W. Kellahin
Jason W. Kellahin

JWK:ss

cc: Mr. William J. Cooley

DOCKET MAIL

Date 11-18-72

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:

CASES NOS. 4764 and 4765
Order No. R-4354

CONSOLIDATED CASES:

APPLICATION OF BLACK RIVER CORPORATION
FOR COMPULSORY POOLING AND NON-STANDARD
PRORATION UNIT, EDDY COUNTY, NEW MEXICO.

APPLICATION OF MICHAEL P. GRACE AND
CORINNE GRACE FOR COMPULSORY POOLING
AND NON-STANDARD PRORATION UNIT, EDDY
COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on July 12, 1972,
at Santa Fe, New Mexico, before Examiner Richard L. Stamets.

NOW, on this 7th day of August, 1972, the Commission,
a quorum being present, having considered the testimony, the
record, and the recommendations of the Examiner, 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, Black River Corporation, seeks an
order pooling all mineral interests in the Washington Ranch-
Morrow Gas Pool underlying the W/2 of Section 3, Township 26
South, Range 24 East, NMPM, Eddy County, New Mexico, to form a
407.20-acre non-standard gas proration unit to be dedicated to
its Cities "3" Federal Well No. 1, located 1980 feet from the
North line and 1980 feet from the West line of said Section 3.

(3) That the applicant has the right to drill and has
completed its Cities "3" Federal Well No. 1, located 1980 feet
from the North line and 1980 feet from the West line of said
Section 3 in the Washington Ranch-Morrow Gas Pool.

-2-

Cases Nos. 4764 and 4765
Order No. R-4354

(4) That the applicants, Michael P. Grace II and Corinne Grace seek an order pooling all mineral interests in the Washington Ranch-Morrow Gas Pool underlying the W/2 of Section 3, Township 26 South, Range 24 East, NMPM, Eddy County, New Mexico, to form a 407.20-acre non-standard gas proration unit to be dedicated to the Black River Corporation's Cities "3" Federal Well No. 1, located 1980 feet from the North line and 1980 feet from the West line of said Section 3, a completed gas well in the Washington Ranch-Morrow Gas Pool.

(5) That both applicants, Black River Corporation and Michael P. Grace II and Corinne Grace seek to be named operator of the unit to be pooled.

(6) That Cases Nos. 4764 and 4765 were consolidated as both cases involve the same lands and well.

(7) That the evidence indicates that the entire W/2 of the above-described Section 3 can reasonably be presumed productive of gas in the Washington Ranch-Morrow Gas Pool.

(8) That the entire W/2 of the above-described Section 3 can be efficiently and economically drained and developed by the Cities "3" Federal Well No. 1.

(9) That there are interest owners in the proposed non-standard proration unit who have not agreed to pool their interests.

(10) That to avoid the drilling of unnecessary wells, to protect correlative rights, and to afford to the owner of each interest in said non-standard unit the opportunity to recover or receive without unnecessary expense his just and fair share of the gas in said pool, all mineral interests in the Washington Ranch-Morrow Gas Pool underlying the W/2 of Section 3, Township 26 South, Range 24 East, NMPM, Eddy County, New Mexico, should be pooled to form a 407.20-acre non-standard gas proration unit to be dedicated to the Black River Corporation Cities "3" Federal Well No. 1, located 1980 feet from the North line and 1980 feet from the West line of said Section 3.

(11) That Black River Corporation should be designated the operator of the subject well and unit.

(12) That any non-consenting working interest owner should be afforded the opportunity to pay his share of actual well costs in lieu of paying his share of reasonable well costs out of production.

(13) That any non-consenting working interest owner that does not pay his share of said actual well costs should have withheld from production his share of the reasonable well costs.

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Cases Nos. 4764 and 4765
Order No. R-4354

(14) That any non-consenting interest owner should be afforded the opportunity to object to the actual well costs but that said actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(15) That \$135.00 per month should be fixed as a reasonable charge for supervision (combined fixed rates) for the subject well; that the operator should be authorized to withhold from production the proportionate share of such supervision charge attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(16) That title to the working interest in a 407.20-acre tract being the SE/4 of the SW/4 of said Section 3, is the subject of litigation and the working interest share of proceeds from production attributable to said tract should not be disbursed pending the outcome of said litigation.

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

IT IS THEREFORE ORDERED:

(1) That all mineral interest, whatever they may be, in the Washington Ranch-Morrow Gas Pool underlying the W/2 of Section 3, Township 26 South, Range 24 East, NMPM, Eddy County, New Mexico, are hereby pooled to form a 407.20-acre non-standard gas proration unit to be dedicated to Black River Corporation's Cities "3" Federal Well No. 1, located 1980 feet from the North line and 1980 feet from the West line of said Section 3.

(2) That Black River Corporation is hereby designated the operator of the subject well and unit.

(3) That the operator shall furnish the Commission and each known and alleged working interest owner in the subject unit an itemized schedule of actual well costs within 60 days following the date of this order; that if no objection to the actual well costs is received by the Commission and the Commission has not objected within 60 days following receipt of said schedule, the actual well costs shall be the reasonable well costs; provided however, that if there is an objection to actual well costs within said 60-day period, the Commission will determine reasonable well costs after public notice and hearing.

(4) That within 60 days from the date the schedule of said actual well costs is furnished to him, any non-consenting working interest owner or alleged working interest owners shall have

-4-

Cases Nos. 4764 and 4765
Order No. R-4354

the right to pay his share of said actual well costs to the operator in lieu of paying his share of reasonable well costs out of production, and that any such owner who pays his share of said actual well costs as provided above shall remain liable for operating costs.

(5) That the operator is hereby authorized to withhold the following costs and charges from production:

- (A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of said actual well costs within 60 days from the date the schedule of actual well costs is furnished to him.

PROVIDED HOWEVER, that the working interest share of the proceeds from production attributable to the SE/4 SW/4 of Section 3, shall be placed in escrow to be paid to the true owner thereof upon proper determination of title to the same.

(6) That the operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(7) That \$135.00 per month is hereby fixed as a reasonable charge for supervision (combined fixed rates) for the subject well; that the operator is hereby authorized to withhold from production the proportionate share of such supervision charge attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(8) 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.

(9) 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.

(10) That all proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner

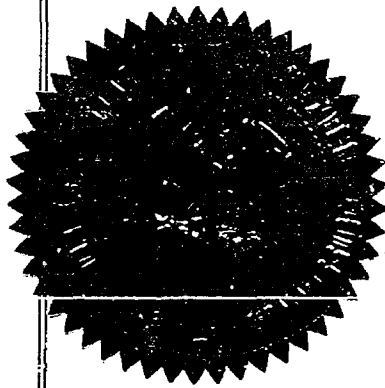
-5-

Cases Nos. 4764 and 4765
Order No. R-4354

thereof upon demand and proof of ownership; that the operator shall notify the Commission of the name and address of said escrow agent within 90 days from the date of this order.

(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

Bruce King
BRUCE KING, Chairman

Alex J. Armijo
ALEX J. ARMJO, Member

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

S E A L

dr/

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:

CASES NOS. 4764 and 4765
Order No. R-4354-A

APPLICATION OF BLACK RIVER CORPORATION
FOR COMPULSORY POOLING AND NON-STANDARD
PRORATION UNIT, EDDY COUNTY, NEW MEXICO.

APPLICATION OF MICHAEL P. GRACE AND
CORINNE GRACE FOR COMPULSORY POOLING
AND NON-STANDARD PRORATION UNIT, EDDY
COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing de novo at 9 a.m. on November 21, 1972, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 29th day of November, 1972, 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 after an examiner hearing, Commission Order No. R-4354, dated August 7, 1972, was entered in Cases Nos. 4764 and 4765 pooling all mineral interests, whatever they may be, in the Washington Ranch-Morrow Gas Pool underlying the W/2 of Section 3, Township 26 South, Range 24 East, NMPM, Eddy County, New Mexico, to form a 407.20-acre non-standard gas proration unit to be dedicated to Black River Corporation's Cities "3" Federal Well No. 1, located 1980 feet from the North line and 1980 feet from the West line of said Section 3, and designating Black River Corporation as operator of the unit.

(3) That Rutter and Wilbanks Corporation requested and was granted a hearing de novo of Cases 4764 and 4765 before the Commission.

-2-
Cases Nos. 4764 and 4765
Order No. R-4354-A

(4) That the evidence presented at the hearing de novo indicates that the entire W/2 of the above-described Section 3 can reasonably be presumed to be productive of gas from the Washington Ranch-Morrow Gas Pool.

(5) That the evidence presented at the hearing de novo establishes to the satisfaction of the Commission that the entire W/2 of the above-described Section 3 can be efficiently and economically drained by the above-described Cities "3" Federal Well No. 1.

(6) That to reduce the size of the proration unit dedicated to said Cities "3" Federal Well No. 1, as proposed by Rutter and Wilbanks Corporation, would deprive the owners of mineral interests in that portion of the unit which would be deleted of the opportunity to recover their just and equitable share of the hydrocarbons in the Washington Ranch-Morrow Gas Pool, unless a third well were to be drilled in said Section 3, with a complete realignment of the acreage dedicated to the subject well and to the well located in the E/2 of Section 3.

(7) That to drill a third well in Section 3, Township 26 South, Range 24 East, Washington Ranch-Morrow Gas Pool, would result in supererogatory risk and economic waste caused by the drilling of an unnecessary well.

(8) That Commission Order No. R-4354 provides protection for the correlative rights of all mineral interest owners in the W/2 of Section 3, when considered as a whole, and will result in the prevention of waste.

(9) That Commission Order No. R-4354 should be reaffirmed.

IT IS THEREFORE ORDERED:

(1) That Commission Order No. R-4354, dated August 7, 1972, be and the same is hereby reaffirmed in its entirety.

(2) That jurisdiction of this cause be 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


BRUCE KING, Chairman

ALEX J. ARHJO, Member

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

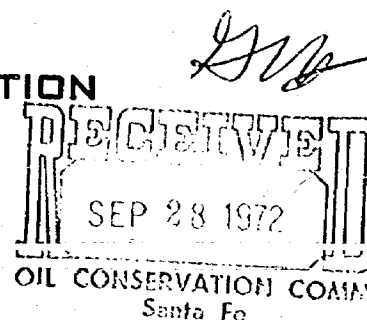
dr/

915 682-5267

BLACK RIVER CORPORATION

620 COMMERCIAL BANK TOWER
MIDLAND, TEXAS 79701

September 25, 1972



✓ State of New Mexico
Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico

Arapahoe Gas Limited
Suite 640 Continental Natl. Bldg. ✓
3333 South Bannock Street
Englewood, Colorado 80110

Mr. Thurman Mayes and Mahala Mayes ✓
Rt. 1
Everton, Arkansas

Alice Mayes Ballard and Harley Ballard ✓
Frijole Route
Carlsbad, New Mexico

Cities Service Oil Company ✓
Attn: Joint Interest
P. O. Box 300
Tulsa, Oklahoma 74101

Mr. John A. Mayes and ✓
Agatha Mayes
Frijole Route
Carlsbad, New Mexico

Amelia Mayes Miller ✓
4001 Jones Street
Carlsbad, New Mexico

Michael P. Grace II and ✓
Corrine Grace
P. O. Box 2062
Santa Fe, New Mexico 87501

DOCKET MAILED

Date *for Oct 18th hearing*

Re: Order No. R-4354
Consolidated Cases Nos. 4764 abd 4765

Gentlemen:

Complying with the Commission regarding the subject order, Black River Corporation, as Operator, furnishes with this letter to the Commission and each alleged working interest owner, a schedule of actual well cost as reflected by the records of Black River Corporation. Also, be advised the required escrow account, as referred to in said order, has been placed with Commerce Bank and Trust, P. O. Drawer 1358, Carlsbad, New Mexico.

Very truly yours,

BLACK RIVER CORPORATION
Tommy Phipps
Tommy Phipps
Executive Vice President

mc/
Encls. Well Cost Summary - Cities-3-Federal #1
Sec. 3, T-26-S, R-24-E,
Eddy County, New Mexico

DOCKET MAILED

Date *11-10-72*

for 1100212

WELL NAME - CITIES-3 FEDERAL #1
Section 3, T-26-S, R-24-E, Eddy County, New Mexico

Page 1 Of 2

VENDOR	INVOICE #	INTANGIBLES	TANGIBLES	OPERATING
Laughlin-Simmons & Co. of Texas	3-14-72	\$ 45.00		
Forrest Miller, Consult. Geo.		946.00		
Sherman Power Tongs, Inc.	424	753.04		
Halliburton	343086	787.59		
Globe Construction Co., Inc.	372-35	2,803.11		
Rowan Drilling-U.S.	16481	70,300.00		
Ken Dickeson Signs	2069	9.88		
Washington Ranch-Damages & Water	4-4-72	4,700.00		
Drilling Overhead -28 days		903.23		
Union Supply Company	1-24105		\$ 317.35	
Union Supply Company	1-2408		10.33	
Bearing Service & Supply Co., Inc.	42058		13.40	
Rental Pipe & Supply Co.	1-5883		64.48	
Union Supply Company, Inc.	GS-1601		17,313.74	
Union Supply Company, Inc.	GS-1603		8,558.38	
Bennett Wire Service	472-32	142.83		
Cecil Horne Wire Line Service	10599	296.40		
Cecil Horne Wire Line Service	10600	265.20		
Cecil Horne Wire Line Service	10602	216.32		
Core Laboratories, Inc.	78693	2,568.80		
Champion Chemical, Inc.	52528	20.80		
Land & Marine Rental Co.	4-0290	182.96		
Schlumberger Well Service	4-5320	7,577.22		
Schlumberger Well Service	4-5256	1,291.26		
Sherman Power Tongs, Inc.	438	208.00		
Stevenson-Roach Tank Co.	3-1174	402.48		
Stevenson-Roach Tank Co.	3-1170	548.60		
Ken Dickeson Signs (Portion Inv.)	2126	9.88		
Rowan Drilling - U.S.	16526	6,164.75		
Stevenson-Roach Tank Co.	31147	296.68		
W&H Production Drilling, Inc.	32-124	641.58		
W&H Production Drilling, Inc.	42-113	1,962.14		
Stevenson-Roach Tank Co.	31146	40.85		
W&H Production Drilling, Inc.	42-107		1,176.03	
Union Supply Company, Inc.	124306		223.58	
Union Supply Company	124246		137.25	

Forward

VENDOR	INVOICE #	INTANGIBLES	TANGIBLES	OPERATING EXPENSE
Union Supply Company, Inc.	124348	\$	\$ 222.51	\$
Union Supply Company, Inc.	124238		4,682.67	
Core Laboratories, Inc.	79221	18.70		
Perfojet Services	2509	1,120.45		
Production Services Company	A-379	46.80		
West Engineering Company	372-12	130.00		
Cecil Horne Wire Line Service	1332		478.40	
Permian Anchor Service Co.	535-72		160.16	
Perfojet Services	2508		1,265.22	
Stevenson-Roach Tank Co.	5-1220		84.50	
Union Supply Co., Inc.	1-24349		378.87	
Operating Overhead - 23 1/2 Days (\$135.00 per month rate)	5-72			103.50
El Paso Natl. Gas-Drlg. Gas	2661	818.27		
Pittsburg(Div. of Colona)	Ck. Credit Material	74.25 CR		
Forrest Miller-Consulting Geo.	Ck. 701	373.50		
Tony Watson-Mud Logger	Ck. 693	250.00		
James S. Johnson-Day Work	Ck. 623	413.79		
A & A Engineering Service	4056	6.76		
Globe Construction Co., Inc.	672-112	81.95		
Rowan Drilling-U. S.	16594	3,220.50		
Stevenson-Roach Tank Co.(Portion)	5-1204	55.72		
Forrest Miller-Geologist	4-72	341.00		
Nelson T. Pope	1761	251.60		
Stevenson-Roach Tank Co.	7-1309		48.62	
Union Supply Co., Inc.(Portion)	1-25696		389.88	
Globe Construction Co., Inc.				122.93
Gray Pumping Service	040-08			78.71
Union Supply Co., Inc.	1-26021			14.66
West Engineering Co. (Portion)	672-70			20.83
Overhead-August 1972	8-72			135.00
TOTAL COSTS PER BLACK RIVER CORPORATION'S INVOICES #133, #140, #146, #151, #159, #169. April, 1972 thru August 31, 1972.		\$ 111,139.39	\$ 36,307.87	\$ 475.63

Cities Service Oil Company
Supports Black River Corporation's
Application in Case 4764 to pool
all mineral interests in the w/2 Sec 3,
T 26 S, R 24 E, Eddy County, New Mexico.
Cities Service has 39%+ interest in
the Black River. Cities Service Federal
3-1 and recommends Black River
be named as operator of the
proposed non standard unit.

Respectfully Submitted

E. J. Mott

Region Engineer

Southwestern Region

Cities Service Oil Co.

DOCKET: REGULAR HEARING - TUESDAY - NOVEMBER 21, 1972

9 A.M. - STATE LAND OFFICE CONFERENCE ROOM, STATE
LAND OFFICE BUILDING - SANTA FE, NEW MEXICOCASE 4763: (De Novo) (Continued from the October 18, 1972 Regular Hearing)

Application of Black River Corporation for compulsory pooling and non-standard proration unit, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks an order pooling all mineral interests in the Morrow formation underlying the E/2 of Section 3, Township 26 South, Range 24 East, adjacent to the Washington Ranch-Morrow Gas Pool, Eddy County, New Mexico, comprising, approximately, a 409.22-acre non-standard proration unit. Said acreage to be dedicated to its Cities "3" Federal Well No. 2 located 2212 feet from the North line and 1998 feet from the East line of said Section 3.

Also to be considered will be the costs of drilling said well, a charge for the risk involved, a provision for the allocation of actual operating costs, and the establishment of charges for supervision of said well.

Upon application of Rutter and Wilbanks Corporation this case will be heard De Novo under the provisions of Rule 1220.

CASE 4764: (De Novo) (Continued from the October 18, 1972, Regular Hearing)

Application of Black River Corporation for compulsory pooling, and non-standard proration unit, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks an order pooling all mineral interests in the Morrow formation underlying the W/2 of Section 3, Township 26 South, Range 24 East, adjacent to the Washington Ranch-Morrow Gas Pool, Eddy County, New Mexico, comprising, approximately, a 407.20-acre non-standard proration unit. Said acreage to be dedicated to its Cities "3" Federal Well No. 1 located 1980 feet from the North line and 1980 feet from the West line of said Section 3.

Also to be considered will be costs of drilling said well, a charge for the risk involved, a provision for the allocation of actual operating costs, and the establishment of charges for supervision of said well.

Upon application of Rutter and Wilbanks Corporation this case will be heard De Novo under the provisions of Rule 1220.

CASE 4765: (De Novo) (Continued from the October 18, 1972 Regular Hearing)

Application of Michael P. Grace and Corinne Grace for compulsory pooling and non-standard proration unit, Eddy County, New Mexico. Applicants, in the above-styled cause, seek an order pooling all

(Case 4765 continued from page 1)

mineral interests underlying the W/2 of Section 3, Township 26 South, Range 24 East, adjacent to the Washington Ranch-Morrow Gas Pool, Eddy County, New Mexico, comprising, approximately, a 407.20-acre non-standard production unit. Said acreage to be dedicated to a well located 1980 feet from the North line and 1980 feet from the West line of said Section 3.

Also to be considered will be the costs of drilling said well, a charge for the risk involved, a provision for the allocation of actual operating costs, and the establishment of charges for supervision of said well.

Upon application of Rutter and Wilbanks Corporation this case will be heard De Novo under the provisions of Rule 1220.

CASE 4771: (De Novo)

Application of Black River Corporation for a non-standard gas unit, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks approval of a 402.22-acre, more or less, non-standard gas unit adjacent to the Washington Ranch-Morrow Gas Pool, comprising the W/2 of Section 4, Township 26 South, Range 24 East, Eddy County, New Mexico, to be dedicated to a well to be located at an unorthodox location 1985 feet from the North line and 2087 feet from the West line of said Section 4.

Upon application of Michael P. Grace II and Corinne Grace this case will be heard De Novo under the provisions of Rule 1220.

CASE 4772: (De Novo)

Application of Black River Corporation for compulsory pooling, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks an order pooling all leasehold, mineral, and royalty interests underlying the W/2 of Section 4, Township 26 South, Range 24 East, adjacent to the Washington Ranch-Morrow Gas Pool, Eddy County, New Mexico, comprising a 402.22-acre, more or less, non-standard gas unit. Said acreage to be dedicated to a well to be located at an unorthodox location 1985 feet from the North line and 2087 feet from the West line of said Section 4.

Also to be considered will be the costs of drilling said well, a charge for the risk involved, a provision for the allocation of actual operating costs, and the establishment of charges for supervision of said well.

Upon application of Michael P. Grace II and Corinne Grace this case will be heard De Novo under the provisions of Rule 1220.

CLARENCE E. HINKLE
W. E. BONDURANT, JR.
LEWIS C. COX, JR.
PAUL W. EATON, JR.
CONRAD E. COFFIELD
HAROLD L. HENSLEY, JR.
STUART D. SHANOR
C. D. MARTIN
PAUL J. KELLY, JR.
J. M. LITTLE

LAW OFFICES
HINKLE, BONDURANT, COX & EATON

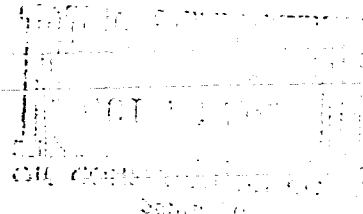
600 HINKLE BUILDING
POST OFFICE BOX 10

ROSWELL, NEW MEXICO 88201

TELEPHONE (505) 622-6510

MIDLAND, TEXAS OFFICE
521 MIDLAND TOWER
(915) 683-4691

October 12, 1972



Handwritten initials or signature.

Mr. A. L. Porter, Jr.
Secretary-Director
Oil Conservation Commission
Box 2088
Santa Fe, New Mexico 87501

Re: Cases 4763, 4764 and 4765

Dear Mr. Porter:

The captioned cases, involving the pooling of all mineral interests in the E $\frac{1}{2}$ Section 3 and the W $\frac{1}{2}$ Section 3, Township 26 South, Range 24 East to form non-standard spacing and proration units for the production of gas from the Washington Ranch-Morrow Gas Pool, are on the Commission docket for October 18. It is our understanding that these cases are to be heard de novo upon the application of Rutter and Wilbacks Corporation, which is represented by Jason Kellahin.

We represent Black River Corporation and participated in the hearing before the examiner and because thereof I am familiar with all aspects of these cases. I made arrangements several weeks ago and have reservations to go to California on October 14 and will not return until October 30. This trip is for reasons I cannot very well postpone.

Please consider this as a motion to continue the above cases until the regular hearing of the Commission, which we understand will be held on November 15, 1972.

Yours sincerely,

HINKLE, BONDURANT, COX & EATON

By Clarence E. Hinkle
(Signature)

CEH:cs



OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO
P. O. BOX 2088 - SANTA FE
87501

GOVERNOR
BRUCE KING
CHAIRMAN

LAND COMMISSIONER
ALEX J. ARMijo
MEMBER

STATE GEOLOGIST
A. L. PORTER, JR.
SECRETARY - DIRECTOR

TO: ALL INTERESTED PARTIES

FROM: A. L. PORTER, Jr., SECRETARY-DIRECTOR

Due to prior commitments by members of the Commission, we will be unable to have a quorum present for the hearing which has been scheduled for November 15, 1972. Cases 4763, 4764, and 4765, all pertaining to Section 3, Township 26 South, Range 24 East, Eddy County, New Mexico, and scheduled for Hearing De Novo at the request of Rutter and Wilbanks, and Case 4796, pertaining to capacity allowable for the Grace City of Carlsbad No. 1, will therefore be continued to 9:00 o'clock a.m., November 21, 1972, in the Land Office Conference Room.

Cases 4766, 4771, and 4772, all pertaining to the W/2 of Section 4, Township 26 South, Range 24 East, will also be advertised for Hearing De Novo on that same date at the request of Michael P. and Corinne Grace.

October 24, 1972

DOCKET: REGULAR HEARING - WEDNESDAY - OCTOBER 18, 1972

OIL CONSERVATION COMMISSION - 9 A.M. - MORGAN HALL, STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO

CASE 4763: (De Novo)

Application of Black River Corporation for compulsory pooling and non-standard proration unit, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks an order pooling all mineral interests in the Morrow formation underlying the E/2 of Section 3, Township 26 South, Range 24 East, adjacent to the Washington Ranch-Morrow Gas Pool, Eddy County, New Mexico, comprising, approximately, a 409.22-acre non-standard proration unit. Said acreage to be dedicated to its Cities "3" Federal Well No. 2 located 2212 feet from the North line and 1998 feet from the East line of said Section 3.

Also to be considered will be the costs of drilling said well, a charge for the risk involved, a provision for the allocation of actual operating costs, and the establishment of charges for supervision of said well.

Upon application of Rutter and Wilbanks Corporation this case will be heard De Novo under the provisions of Rule 1220.

CASE 4764: (De Novo)

Application of Black River Corporation for compulsory pooling, and non-standard proration unit, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks an order pooling all mineral interests in the Morrow formation underlying the W/2 of Section 3, Township 26 South, Range 24 East, adjacent to the Washington Ranch-Morrow Gas Pool, Eddy County, New Mexico, comprising, approximately, a 407.20-acre non-standard proration unit. Said acreage to be dedicated to its Cities "3" Federal Well No. 1 located 1980 feet from the North line and 1980 feet from the West line of said Section 3.

Also to be considered will be costs of drilling said well, a charge for the risk involved, a provision for the allocation of actual operating costs, and the establishment of charges for supervision of said well.

Upon application of Rutter and Wilbanks Corporation this case will be heard De Novo under the provisions of Rule 1220.

CASE 4765: (De Novo)

Application of Michael P. Grace and Corinne Grace for compulsory pooling and non-standard proration unit, Eddy County, New Mexico.

(Case 4765 (De Novo) continued from page 1)

Applicants, in the above-styled cause, seek an order pooling all mineral interests underlying the W/2 of Section 3, Township 26 South, Range 24 East, adjacent to the Washington Ranch-Morrow Gas Pool, Eddy County, New Mexico, comprising, approximately, a 407.20-acre non-standard proration unit. Said acreage to be dedicated to a well located 1980 feet from the North line and 1980 feet from the West line of said Section 3.

Also to be considered will be the costs of drilling said well, a charge for the risk involved, a provision for the allocation of actual operating costs, and the establishment of charges for supervision of said well.

Upon application of Rutter and Wilbanks Corporation this case will be heard De Novo under the provisions of Rule 1220.

CASE 4796: (Continued from the August 16, 1972 Regular Hearing)

Application of Michael P. Grace II and Corinne Grace for capacity allowable, Eddy County, New Mexico. Applicants, in the above-styled cause, seek an exception to the General Rules and Regulations governing the prorated gas pools of Southeast New Mexico, promulgated by Order No. R-1670, as amended, to produce their City of Carlsbad "COM" Well No. 1, located in Unit O of Section 25, Township 22 South, Range 26 East, South Carlsbad-Morrow Gas Pool, Eddy County, New Mexico, at full capacity.

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

June 23, 1972

Case 4765

C
O
P
Y

Mr. Martin L. Allday
201 Wall Towers East
Midland, Texas 79701

630

Dear Mr. Allday:

In accordance with our telephone conversation
of this date, please find enclosed copies of the
four applications we discussed.

Very truly yours,

GEORGE M. HATCH
Attorney

GMH/dr
enclosure

(Case 4763 continued)

Also to be considered will be the costs of drilling said well, a charge for the risk involved, a provision for the allocation of actual operating costs, and the establishment of charges for supervision of said well.

CASE 4764: Application of Black River Corporation for compulsory pooling, and non standard proration unit, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks an order pooling all mineral interests in the Morrow formation underlying the W/2 of Section 3, Township 26 South, Range 24 East, adjacent to the Washington Ranch-Morrow Gas Pool, Eddy County, New Mexico, comprising, approximately, a 407.20-acre non-standard proration unit. Said acreage to be dedicated to its Cities "3" Federal Well No. 1 located 1980 feet from the North line and 1980 feet from the West line of said Section 3.

Also to be considered will be the costs of drilling said well, a charge for the risk involved, a provision for the allocation of actual operating costs, and the establishment of charges for supervision of said well.

CASE 4765: Application of Alice Ballard, Amelia Miller, Thurman Mayes, John A. Mayes for compulsory pooling and non-standard proration unit, Eddy County, New Mexico. Applicants, in the above-styled cause, seek an order pooling all mineral interests underlying the W/2 of Section 3, Township 26 South, Range 24 East, adjacent to the Washington Ranch-Morrow Gas Pool, Eddy County, New Mexico comprising, approximately, a 407.20-acre non-standard proration unit. Said acreage to be dedicated to a well to be drilled 1980 feet from the South line and 1980 feet from the West line of said Section 3.

Also to be considered will be the costs of drilling said well, a charge for the risk involved, a provision for the allocation of actual operating costs, and the establishment of charges for supervision of said well.

CASE 4766: Application of Michael P. Grace and Corinne Grace for compulsory pooling and a non-standard proration unit, Eddy County, New Mexico. Applicants, in the above-styled cause, seek an order pooling all mineral interests underlying the W/2 of Section 4, Township 26 South, Range 24 East, adjacent to the Washington Ranch-Morrow Gas Pool, Eddy County, New Mexico comprising approximately a 402-acre non-standard proration unit. Said acreage to be dedicated to a well to be drilled 1980 feet from the North line and 1980 feet from the West line of said Section 4. Also to be considered will be the costs of drilling said well, a charge for the risk involved, a provision for the allocation of charges for supervision of said well.

CASE 4767: Application of Alice Ballard, Amelia Miller, Thurman Mayes, and John A. Mayes for compulsory pooling, Eddy County, New Mexico. Applicants, in the above-styled cause, seek an order pooling all mineral interests underlying the E/2 of Section 9, Township 26 South, Range 24 East, adjacent to the Washington Ranch-Morrow Gas Pool, Eddy County, New Mexico. Said acreage to be dedicated to a well to be drilled 1980 feet from the North line and 660 feet from the East line of said Section 9.

SECTION 3, T23S, R12E

Map showing land ownership and section numbers (1-36) for Section 3, T23S, R12E.

Owners and Holdings:

- M.P. Grace (Top Left, Top Right, Middle Right, Bottom Right)
- Black River Corp. (Top Left, Middle Left, Middle Right, Bottom Left, Bottom Right)
- CRA, INC (Bottom Left)
- Arapahoe Co. (Bottom Right)

Section Numbers (1-36) are indicated in the corners of the sections.

Scale --- 4" = 1 Mile

cases 4964
4965 Exhibit 2 Grace

*Copy of corrected
Application sent to Mr. Miller
on June 27th
Black Run Corp.*

Michael P. Grace II
Corinne Grace
P. O. BOX 2062
SANTA FE, NEW MEXICO 87501

*Case
4765*

June 22, 1972

km

Mr. A. L. Porter, Jr.
Secretary-Director
New Mexico Oil Conservation Commission
P. O. Box 2088
Santa Fe, N. M. 87501

Dear Mr. Porter:

We hereby request a hearing to force pool the following
area in Township 26 South, Range 24 East, adjacent to the
Washington Ranch Morrow Gas Pool in Eddy County:
West half of Section 3, Township 26 South, Range
24 East, for a well to be drilled 1980 feet from
the South line and 660 feet from the East line, River Federal
Well No. 1, Corinne Grace, Operator.

Very truly yours,

CORINNE GRACE

By Dorothy Harvey

Agent for
Alice Ballard
Amelia Miller
Thurman Mayes
John A. Mayes

Corrected well location:

*1980 ft from the South line and
1980 ft from the West line*

*C9
per MG*

*Also
You standard Unit containing
467.20 acres more or less,*

RECEIVED
JUN 22 1972
OIL CONSERVATION COMM.
Santa Fe

BEFORE THE
OIL CONSERVATION COMMISSION OF NEW MEXICO

IN THE MATTER OF THE APPLICATION
OF RUTTER AND WILBANKS CORPORATION
FOR A HEARING DO NOVO AS TO
OIL CONSERVATION COMMISSION ORDERS
R-4353 AND R-4354.

RECEIVED
AUG 25 1972
OIL CONSERVATION COMM
Santa Fe

A P P L I C A T I O N

Case 4765

Comes now RUTTER AND WILBANKS CORPORATION, and
applies to the Oil Conservation Commission of New
Mexico for a Hearing De Novo with regards to the Oil
Conservation Commission Orders R-4353 and R-4354 which
force pool E/2 of Section 3 and the W/2 of Section 3,
Township 26 South, Range 24 East, N.M.P.M.

Respectfully submitted,

RUTTER AND WILBANKS CORPORATION

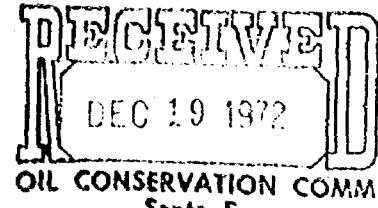
BY

W.F. Kellahin

KELLAHIN & FOX
P. O. Box 1769
Santa Fe, New Mexico 87501

DOCKET MAILED

Date *10-5-72*



BEFORE THE
OIL CONSERVATION COMMISSION OF NEW MEXICO

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

CASES NOS. 4764 and 4765
Order No. R-4354

CONSOLIDATED CASES:

APPLICATION OF BLACK RIVER CORPORATION
FOR COMPULSORY POOLING AND NON-STANDARD
PRORATION UNIT, EDDY COUNTY, NEW MEXICO.

APPLICATION OF MICHAEL P. GRACE AND
CORENNE GRACE FOR COMPULSORY POOLING
AND NON-STANDARD PRORATION UNIT, EDDY
COUNTY, NEW MEXICO.

APPLICATION FOR REHEARING

COMES NOW Rutter & Wilbanks Brothers, and pursuant to the provisions of Section 65-3-22, New Mexico Statutes, Annotated, 1953 Compilation, as amended, apply to the Oil Conservation Commission of New Mexico for rehearing of the above captioned Cases Nos. 4764 and 4765 and Order No. 4354 issued pursuant thereto, and in support thereof would show the Commission:

1. Applicants are the owners of royalty interests underlying the W/2 of Section 3, Township 26 South, Range 24 East, N.M.P.M., Eddy County, New Mexico, which are the subject matter of the hearing before the Commission and Order No. R-4354.

2. The Commission, by its Order No. 4354, approved a non-standard unit for gas production from the Washington Ranch-Morrow Gas Pool consisting of said W/2 of Section 3, Township 26 South, Range 24 East, said non-standard unit consisting of 407.20 acres.

3. By virtue of Rule 104, II (a) of the Rules and Regulations of the Oil Conservation Commission of New Mexico, revised

December 1, 1971, the normal spacing for the Washington Ranch-Morrow Gas Pool is 320 acres.

4. The Commission has never complied with the provisions of Section 65-3-14 (b), New Mexico Statutes, Annotated, 1953 Compilation, as amended, in establishing a proration unit for said Washington Ranch-Morrow Gas Pool.

5. Findings Nos. (7), (8), and (10) of Commission Order No. R-4354 are not supported by substantial evidence.

6. The evidence shows that the S/2 S/2 of Section 3, Township 26 South, Range 24 East is non-productive from the Lower Morrow formation, and is probable non-productive from the Upper Morrow formation, the Commission Order therefore attributing non-productive acreage to the well to which the non-standard unit has been dedicated.

7. The Commission has included in the unit, and thereby pooled royalty interests owned by applicant with royalty under acreage which the testimony and evidence shows will not be productive from the Lower Morrow formation, and is of questionable productivity in the Upper Morrow, resulting in economic loss to applicant.

8. The Commission has disregarded its own rules in dedicating a total of 407.20 acres to a well in the Washington Ranch-Morrow Gas Pool.

9. Order No. R-4354 will result in irreparable injury to the correlative rights of applicant and deprives applicant of its property without due process of law in that it will permit owners of royalty underlying acreage which is shown to be non-productive by the testimony and evidence to share in production from productive acreage underlying the non-standard unit, including that acreage under which applicant owns royalty interests.

10. The non-standard unit approved by the Commission has no reasonable relation to a 320-acre unit required by Rule 104, II (a), and in that respect is arbitrary and capricious.

11. Order No. R-4354 is not supported by substantial evidence, is arbitrary and capricious, and is therefore unlawful, invalid and void.

WHEREFORE applicant prays that the Commission grant a re-hearing in the above captioned cause, and that after rehearing as provided by law, the Commission vacate and set aside its Order No. R-4354 and enter its order approving a unit consisting of 310.43 acres comprising lots 3, 4, 5 and 6, and N/S SW/4 of Section 3, Township 26 South, Range 24 East, N.M.P.M., Eddy County, New Mexico, or such other unit as more nearly conforms to the requirements of Rule 104, II (a) of the Commission's Rules.

Respectfully submitted,

RUTTER & WILBANKS BROTHERS

BY Jason W. Kellahin
KELLAHIN & FOX
P. O. Box 1769
Santa Fe, New Mexico 87501

ATTORNEYS FOR APPLICANT FOR
REHEARING

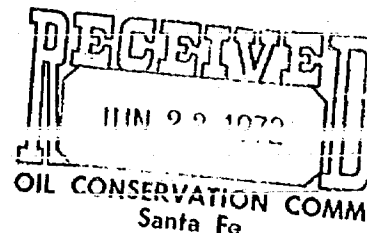
RAYMOND A. LYNCH (913-1971)
CLOVIS G. CHAPPELL, JR.
MARTIN L. ALLDAY
CHARLES C. ALDRIDGE
RANDALL LUNDY
KENNETH W. NORDENMAN
GARY G. WISENER
JAMES M. ALSUP
ROBERT A. SPEARS
JIMMY R. COX

LYNCH, CHAPPELL, ALLDAY & ALDRIDGE

ATTORNEYS

201 WALL TOWERS EAST
MIDLAND, TEXAS 79701

June 22, 1972



State of New Mexico
Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

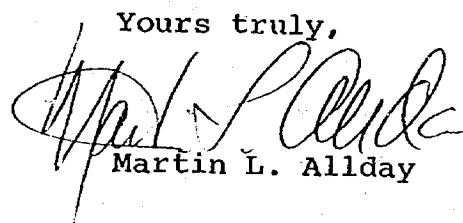
Attention: Dan Nutter

Gentlemen:

This letter represents an application on behalf of our client, Black River Corporation, 620 Commercial Bank Tower, Midland, Texas, 79701, to force pool the interests of all working interest, royalty interest and overriding royalty interest owners as to the Morrow formation underlying all of the W/2 of Section 3, T-26-S, R-24-E, NMPM, Eddy County, New Mexico, which will be assigned to the Cities Federal No. 1 Well located 1980' FNL and 1980' FWL of said section 3.

We will appreciate your setting this application for hearing on your docket for July 12, 1972.

Yours truly,


Martin L. Allday

MLA/meb

DOCKET MAILED

Date 6-30-72

IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO

RUTTER & WILBANKS CORPORATION,
a Texas Corporation.

Petitioner,

vs.

No. 28477

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent.

ANSWER TO PETITION FOR REVIEW

Respondent, Oil Conservation Commission of New Mexico,
answering the Petition for Review states:

FIRST DEFENSE

1. Respondent admits the allegations contained in Paragraphs
1, 2 and 3 of the Petition for Review.

2. Respondent denies the allegation in Paragraph 4 of the
Petition for Review that the Petitioner is adversely affected
by Commission Order No. R-4353 as reaffirmed by Order No. R-4353-A.
Respondent admits all other allegations contained in Paragraph 4
of the Petition for Review.

3. Respondent denies each and every allegation contained in
Paragraph 5 of the Petition for Review.

SECOND DEFENSE

Petitioner fails to state a claim upon which relief can be
granted.

WHEREFORE, Respondent prays:

1. That the Petition for Review be dismissed.
2. That Commission Orders No. R-4353 and R-4353-A be
affirmed.

3. That the Court grant Respondent such other and further relief as the Court deems just.

William F. Carr

WILLIAM F. CARR
Special Assistant Attorney General
representing the Oil Conservation
Commission of New Mexico, P. O.
Box 2088, Santa Fe, New Mexico 87501

I hereby certify that on the 5th
day of March, 1973, a copy of the
foregoing pleading was mailed to opposing
counsel of record.

CASE 1700
A. CORINNE GRACE FOR COMPULSORY
POOLING & NON-STND. PRORATION UNIT

Handwritten: 12 Aug 74