

CASE 3236:Application of ANADARKO
PROD. CO. for force-pooling, Eddy
County, New Mexico.

CASE No.

3236

Application,
TRANSCRIPTS,
SMALL Exhibits
ETC.

OIL CONSERVATION COMMISSION

P. O. ~~Box 2029~~ BOX 2029
SANTA FE, NEW MEXICO

LEGAL DIVISION
PHONE 827-2741

October 20, 1965

VIA AIR MAIL

Mr. Wm. L. Robertson
Attorney at Law
P. O. Box 351
Liberal, Kansas

Dear Bill:

I am enclosing a copy of Order No. R-2968.
Sorry we missed you on the original mailing.

Very truly yours,

J. M. DURRETT, Jr.
Attorney

JMD/esr
Enclosure

C
O
P
Y

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

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

CASE No. 3236
Order No. R-2968

APPLICATION OF ANADARKO PRODUCTION
COMPANY FOR FORCE-POOLING, EDDY COUNTY,
NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 o'clock a.m. on May 19, 1965, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 16th day of September, 1965, the Commission, a quorum being present, having considered the record, and being fully advised in the premises,

FINDS:

That the applicant's request for dismissal should be granted.

IT IS THEREFORE ORDERED:

That Case No. 3236 is hereby dismissed.

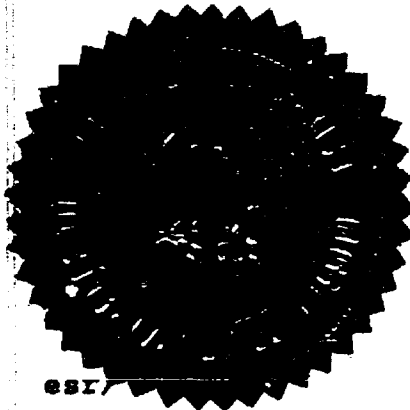
DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

Jack M. Campbell
JACK M. CAMPBELL, Chairman

Guyton B. Hays
GUYTON B. HAYS, Member

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



ESR

GOVERNOR
JACK M. CAMPBELL
CHAIRMAN

State of New Mexico
Oil Conservation Commission



LAND COMMISSIONER
GUYTON B. HAYS
MEMBER

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

P. O. BOX 2088
SANTA FE

September 16, 1965

Mr. Jason Kellahin
Kellahin & Fox
Attorneys at Law
P. O. Box 1769
Santa Fe, New Mexico

Re: Case No. 3236
Order No. K-2968
Applicant:
Anadarko Production Co.

Dear Sir:

Enclosed herewith are two copies of the above-referenced Commission order recently entered in the subject case.

Very truly yours,

A. L. Porter, Jr.
A. L. PORTER, Jr.
Secretary-Director

ir/

Carbon copy of order also sent to:

Hobbs OCC x

Artesia OCC x

Aztec OCC

OTHER Mr. Charles Spann

JASON W. KELLAHIN
ROBERT E. FOX

KELLAHIN AND FOX
ATTORNEYS AT LAW
34 1/2 EAST SAN FRANCISCO STREET
POST OFFICE BOX 1769
SANTA FE, NEW MEXICO 87501

September 14, 1965

SEP 14 1965
TELEPHONE 982-4315
AREA CODE 505

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

Dear Mr. Porter:

This is to request that the Oil Conservation Commission enter its order dismissing the application of Anadarko Production Company for an order force-pooling properties in the Indian Basin-Upper Pennsylvanian Gas Pool, filed with the Commission as Case No. 3236, and heard by the Commission on May 19, 1965.

Subsequent to the hearing of this case the parties involved were able to reach an agreement, rendering the application of Anadarko in Case No. 3236 moot.

The courtesy of the Commission in handling this case is appreciated.

Very truly yours,

KELLAHIN & FOX

Jason W. Kellahin
Jason W. Kellahin

jwk/mas

Docket No. 14-65

DOCKET: REGULAR HEARING - WEDNESDAY - MAY 19, 1965

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

- ALLOWABLE:
- (1) Consideration of the oil allowable for June, 1965.
 - (2) Consideration of the allowable production of gas for June, 1965, from twelve prorated pools in Lea and Eddy Counties, New Mexico, and also presentation of purchaser's nominations for said pools for the six-month period beginning July 1, 1965; consideration of the allowable production of gas from nine prorated pools in San Juan, Rio Arriba and Sandoval Counties, New Mexico, for June, 1965.

CASE 3188 (DE NOVO): (Continued from the April 14th Regular Hearing)

THIS CASE WILL BE DISMISSED AT THE REQUEST OF THE APPLICANT FOR HEARING DE NOVO.

Application of Maleta V. Brimhall and Barbara Burnham for force-pooling, San Juan County, New Mexico. Applicants, in the above-styled cause, seek an order force-pooling all mineral interests in the Basin-Dakota Pool underlying the W/2 of Section 7, Township 30 North, Range 11 West, San Juan County, New Mexico.

CASE 3236: (Continued from the April 14th Regular Hearing)
Application of Anadarko Production Company for force-pooling, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks an order force-pooling all mineral interests in the Indian Basin Upper-Pennsylvanian Gas Pool underlying Section 19, Township 21 South, Range 23 East, Eddy County, New Mexico.

CASE 3249: Southeastern New Mexico nomenclature case calling for an order for the creation and extension of certain pools in Eddy, Lea, and Roosevelt Counties, New Mexico:

- a) CREATE A new oil pool for Seven Rivers production and designated as the Lusk-Seven Rivers Pool. Said pool described as:

TOWNSHIP 19 SOUTH, RANGE 32 EAST, NMPM
SECTION 3: SE/4

Discovery well is Cactus Drilling Company, Shell Federal No. 1 located in Unit J of Section 3, Township 19 South, Range 32 East.

- 2 -

May 19, 1965 Regular Hearing

b) CREATE A new oil pool for Wolfcamp production and designated as the McMillan-Wolfcamp Pool. Said pool described as:

TOWNSHIP 20 SOUTH, RANGE 27 EAST, NMPM
SECTION 5: NW/4 NW/4

Discovery well is Harvey E. Yates, Yates Federal #1 Deep No. 1, located in Unit D of Section 5, Township 20 South, Range 27 East.

c) EXTEND the Fowler-Ellenburger Pool to include therein:

TOWNSHIP 24 SOUTH, RANGE 37 EAST, NMPM
SECTION 23: SE/4

d) EXTEND the Henshaw Queen-Grayburg-San Andres Pool to include therein:

TOWNSHIP 16 SOUTH, RANGE 31 EAST, NMPM
SECTION 18: SW/4 SW/4

e) EXTEND the Indian Basin-Morrow Gas Pool to include therein:

TOWNSHIP 21 SOUTH, RANGE 23 EAST, NMPM
SECTION 25: All
SECTION 36: All

TOWNSHIP 21 SOUTH, RANGE 24 EAST, NMPM
SECTION 30: All
SECTION 31: All

f) EXTEND the Indian Basin-Upper Pennsylvanian Gas Pool to include therein:

TOWNSHIP 21 SOUTH, RANGE 23 EAST, NMPM
SECTION 9: All
SECTION 11: All
SECTION 27: All
SECTION 28: All
SECTION 33: All
SECTION 34: All

TOWNSHIP 21 SOUTH, RANGE 24 EAST, NMPM
SECTION 33: All

May 19, 1965 Regular Hearing

f) Extension to Indian Basin-Upper Pennsylvanian Gas Pool continued:

TOWNSHIP 22 SOUTH, RANGE 23 EAST, NMPM

SECTION 1: All
SECTION 2: All
SECTION 3: All
SECTION 4: All
SECTION 5: All
SECTION 8: All
SECTION 9: All
SECTION 10: All
SECTION 11: All

g) EXTEND the South Lane-Pennsylvanian Pool to include therein:

TOWNSHIP 11 SOUTH, RANGE 34 EAST, NMPM

SECTION 6: W/2 SW/4

h) EXTEND the Lusk-Strawn Pool to include therein:

TOWNSHIP 19 SOUTH, RANGE 31 EAST, NMPM

SECTION 22: SE/4

i) EXTEND the Oil Center-Blinebry Pool to include therein:

TOWNSHIP 21 SOUTH, RANGE 36 EAST, NMPM

SECTION 3: Lots 7, 8, 9, and 16
SECTION 4: Lots 1 and 8

j) EXTEND the Pearl-Seven Rivers Pool to include therein:

TOWNSHIP 19 SOUTH, RANGE 34 EAST, NMPM

SECTION 35: SE/4
SECTION 36: N/2 and SW/4

k) EXTEND the East Red Lake-Queen-Grayburg Pool to include therein:

TOWNSHIP 16 SOUTH, RANGE 28 EAST, NMPM

SECTION 27: SE/4 SE/4

l) EXTEND the Skaggs-Drinkard Pool to include therein:

TOWNSHIP 20 SOUTH, RANGE 37 EAST, NMPM

SECTION 13: NE/4

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May 19, 1965 Regular Hearing

m) EXTEND the Todd-San Andres Gas Pool to include therein:

TOWNSHIP 7 SOUTH, RANGE 35 EAST, NMPM
SECTION 34: E/2

n) EXTEND vertical limits of the Antelope Ridge-Morrow Pennsylvanian Gas Pool in Lea County 11,854 feet to 13,840 feet.

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE)	
APPLICATION OF ANADARKO)	
PRODUCTION COMPANY FOR)	
AN ORDER POOLING THE LESSEES)	
INTEREST IN THE INDIAN BASIN)	CASE NO. 3236
UPPER PENNSYLVANIAN GAS POOL)	
UNDERLYING SECTION 19, TOWN-)	
SHIP 21 SOUTH, RANGE 23 EAST,)	
EDDY COUNTY, NEW MEXICO)	

MEMORANDUM BRIEF
OF PROTESTANTS

In support of their Response and Motion to Dismiss the Application in the above styled and numbered cause, Protestants Odessa Natural Gasoline Company and L. R. French, Jr., would show:

1. The Commission has no jurisdiction to grant the relief sought in said Application.

(a) The authority of the Commission to issue an order force pooling separately owned tracts into a spacing or proration unit is derived from Section 65-3-14, New Mexico Annotated, 1953, as amended. Section 65-3-14(b) defines such units as the area which can be "efficiently and economically drained by one well." Section 65-3-14(c) provides, in part:

"When two or more separately owned tracts of land are embraced within a spacing or proration unit, or where there are owners of royalty interests or undivided interests in oil and gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, the owner or owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill, has drilled or proposes to drill a well on said unit to a common source of supply, the Commission, to avoid the drilling of unnecessary wells or to protect correlative rights or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit."

Until the Commission has made a finding supported by

substantial evidence that one well will efficiently and economically drain 640 acres in a pool, it cannot validly establish 640 acre spacing or proration units, as defined by Section 65-3-14(b) of the Statutes. Until the Commission has validly established such units, it has no authority under Section 65-3-14(c) of the Statutes to issue an order force pooling separately owned tracts in the pool into a 640 acre unit. First, because the Statute only permits the Commission to force pool separately owned tracts into spacing or proration units which represent the area which can be efficiently and economically drained by one well. Secondly, the Commission is only authorized to issue such order "to avoid the drilling of unnecessary wells or to protect correlative rights or to prevent waste," and, until drainage area is determined, no one can say how many wells are needed to properly develop a governmental section without waste or what consolidation of separately owned tracts within the section is required to protect the correlative rights of the owners of such tracts.

In Continental Oil Co. v. Oil Conservation Commission,
70 N. M. 310, 373 P.2 809, the Court stated that:

"The Oil Conservation Commission is a creation of statute, expressly defined, limited and empowered by the laws creating it. The Commission has jurisdiction over matters related to the conservation of oil and gas in New Mexico, but the basis of its powers is founded on the duty to prevent waste and to protect correlative rights... That the extent of the correlative rights must first be determined before the Commission can act to protect them is manifest." The Court then held that the proration orders of the Commission in question lacked the basic findings (including a finding as to drainage area) necessary to and upon which jurisdiction depended and were therefore invalid and void, adding that:

"...although formal and elaborate findings are not absolutely necessary, nevertheless basic jurisdictional findings, supported by evidence, are required to show that the Commission has heeded the mandate and the standards set out by statute."

While upholding the sufficiency of a finding as to drainage area in a forced pooling case, the Oklahoma Court has also recognized the necessity for such a finding. Panhandle Eastern Pipeline Co. v. Corporation Commission 285 P. 2 847.

In a later case, Simms v. Mechem, 72 N. M. 186, 382 P.2 183, which dealt specifically with a forced pooling order from the Oil Conservation Commission, the New Mexico Supreme Court held that an order entered on a finding that the "most efficient and orderly development of such acreage can be accomplished by forced pooling the acreage" was invalid. Section 65-3-10, N.M.S.A., 1953 Comp., requires that any

forced pooling order should be predicated on the prevention of waste. Citing Continental Oil Company v. Oil Conservation Commission, supra.

The Simms case was handed down on May 27, 1963, which is after the date of Order No. R-2440 on February 28, 1963. The findings in Order No. R-2440 affirmatively establish that information as to reservoir characteristics sufficient to sustain a finding as to prevention of waste and protection of correlative rights is not available at this time.

In Order R-2440, the Commission adopted temporary special rules and regulations for the Indian Basin, Upper Pennsylvanian Gas Pool providing that each well completed or recompleted in the Pool shall be located on a standard unit containing 640 acres, more or less, consisting of a single governmental section until one year from the date that a pipeline connection is first obtained for a well in the Pool, "at which time the operators in the subject pool may appear and show cause why the Indian Basin, Upper Pennsylvanian Gas Pool should not be developed on 160 acre spacing units."

Order R-2440 does not purport to find that one well will efficiently and economically drain 640 acres in the Indian Basin, Upper Pennsylvanian Gas Pool, nor was any substantial evidence introduced at the hearing on said order which would support such a finding. On the contrary, the Commission found that temporary special rules should be promulgated for the Pool "in order to prevent the possibility of economic loss resulting from the drilling of unnecessary wells and in order to allow the operators in subject pool to gather information concerning reservoir characteristics of the pool." Emphasis added. (See Finding No. 4) In Finding No. 6, the Commission specifically directed the operators to gather all available information relative to drainage and recoverable reserve during the one year period. In making these findings, the Commission recognized that it did not then have sufficient information to determine the area which could be efficiently and economically drained by one well in the Pool and that, in all probability, it could not obtain such information until significant quantities of gas had been produced from the Pool for a period of one year.

Thus, the Commission has not established or sought to establish in the Indian Basin, Upper Pennsylvanian Gas Pool the kind of spacing or proration units which would authorize it to issue an order force pooling separately owned tracts in the Pool.

Such want of jurisdiction, however, reflects upon neither the validity nor the propriety of temporary orders designed to eliminate the possibility of unnecessary wells until the Commission has sufficient information to proceed intelligently. With laudable caution, the Commission

has prevented that which, if a mistake, cannot be undone, if at all, without risk of irreparable injury. The legislature has wisely required the same caution in the issuance of orders permanently pooling separately owned properties.

(b) Apart from the necessity for a determination of drainage area in a proper proceeding, the Commission has no jurisdiction to issue a forced pooling order upon the application of an owner of a separately owned tract that has not alleged its willingness or capacity to either drill a well on the proposed unit or to advance in cash its share of the cost of an existing well on the unit, plus such charge for risk, not to exceed 50%, as shall be determined by the Commission.

By its nature, a forced pooling order takes from every owner but one, the right to drill upon his separately owned tract in the unit. Section 65-3-14(c) provides that the owners who have not consented to such taking in exchange for a share of unit production shall have the right to pay their share of the cost of the unit well out of production, plus a charge for risk. The non-consent owner cannot be compelled to advance any portion of the cost of a well on the lands of another. Yet, neither can the consenting owner of an undrilled tract demand a share of unit production without offering to advance his share of unit costs. The Commission has jurisdiction to prevent waste, protect correlative rights, and avoid the drilling of unnecessary wells. It does not have the independent authority to give the Applicant in this case a carried interest in Protestant's well.

Section 65-3-14(c) does not require that Applicant be permitted to pay its share of unit costs out of production. In the enactment of said Statute, the legislature is not presumed to have intended either an unconstitutional result, discussed below, nor a vain and foolish action. Expert as this Commission is in oil and gas matters, it can hardly fail to realize that any construction of Section 65-3-14(c) which grants to every owner of an undrilled tract the absolute right to pay his way out of production will, in many instances, discourage such owner from voluntarily sharing the risk and expense of unit development and encourage him to await the outcome of an exploratory well in which he will participate, if successful, through compulsory pooling upon terms more favorable than he would have been accorded by industry usage. We cannot impute to the legislature a desire to burden the Commission with a multitude of unnecessary forced pooling applications designed for private advantage, rather than the prevention of waste or the protection of correlative rights. Only the owner of an undrilled tract who resists communitization is entitled to a "free ride" under Section 65-3-14(c) - and then only for the reason that he cannot be compelled to pay. The New Mexico Oil Conservation Commission has only such powers as are expressly conferred upon it by

statute.

Continental Oil Co. v. Oil Conservation Commission,
supra.

Our New Mexico Statute does not authorize the Commission to compel respondent herein as a non-consenting operator to recover out of production the proportionate share of costs attributable to the applicant's interest.

The Commission, on a number of occasions, has recognized a distinction between consenting and non-consenting owners with respect to the manner of payment by providing that the consenting parties pay in cash and that the non-consenting parties may pay out of production. (Order Nos. R-1764, R-1880, R-1881, R-1939, R-2042, R-2052, R-2150, R-2151, R-2068, A and R-2152)

2. An order granting the relief sought by Applicant constitutes a taking of Protestants' property without due process of law.

(a) Article 2, Sec. 18 of the New Mexico Constitution provides that no person shall be deprived of life, liberty or property without due process of law. This is the same provision that is contained in the Fifth and Fourteenth Amendments to the United States Constitution.

The action of an administrative tribunal, such as the Oil Commission, would be state action within the meaning of the Fourteenth Amendment to the United States Constitution and would be prohibited by Section 18, Article 2, of the New Mexico Constitution. See Phila. v. Security & Exchange Com. (C. A. D. C.), 175 F.2d 808; Good Will Station v. Federal Communication Commission, (C. A. D. C.), 174 F.2d 226.

There would seem to be little question but that the right of a person, who has completed an oil well on a lease to produce the well without interference, is a property right which is protected by these constitutional provisions. For a general discussion on what constitutes property within the meaning of the due process clause, see 16 Am. Jur. 2d 689, et seq. (Constitutional Law 361). We further submit that if the Oil Commission would enter an Order such as applicant seeks and which takes away the right of the owner to produce its well without sharing in the production, is a deprivation of property within the meaning of the due process clause. As is pointed out in 16 Am. Jur. 2d 697 (Constitutional Law, para. 367) a deprivation of property occurs if the owner is deprived of one of the essential attributes of ownership of property including the right to hold and use property without the imposition of conditions upon such use.

It is true that under the police power of the State, and in order to prevent waste and protect correlative rights, the Oil Commission might establish valid proration on spacing units and thereafter force pool acreage into the unit. Without a compliance with these basic jurisdictional requirements, then we have a deprivation of property without due process of law.

(b) Absent a finding that Protestants' well in Section 19, Township 21 South, Range 23 East, will drain oil or gas from Applicant's lands, any order having the effect of requiring Protestants to share the production from such well with Applicant simply takes the property of Protestants for the benefit of Applicant without just compensation or the sanction of any public purpose. That protestants' well may receive a larger allowable by reason of such order is immaterial. Allowables fixed by the Commission in no way increase the recoverable oil and gas underlying Protestants' lands nor diminish the portion that may be taken by Applicant.

(c) The order sought by Applicant would require Protestants to recover the entire cost of their well out of production, leaving Protestants with the entire risk of payout, but reducing, without

compensation, the return on their investment in the well thereafter.

Both the New Mexico and Oklahoma legislatures have recognized that the owner of an undrilled tract, which has been force pooled into a spacing or proration unit, must have some election other than a cash payment for his proportionate share of the cost of the unit well. See Anderson v. Corporation Commission, 327 P.2d 699 and Wakefield v. State of Oklahoma, 306 P.2d 305. Under the New Mexico statute, the election is a payment in cash or out of production. Under the Oklahoma statute, the election is a payment in cash or the sale of the working interest in the undrilled tract at a price fixed by the Commission.

However, there is no justification under either statute to give either election to the owner of an undrilled tract who seeks a force pooling order. By such order, the owner of an undrilled tract in Oklahoma could not refuse to pay his share of the cost of the unit well thereby compelling the drilling party to purchase the working interest in the undrilled tract. In New Mexico, the owner of the undrilled tract who seeks forced pooling should not be permitted to refuse to pay his share of unit well in cash thereby compelling the drilling party to grant him a carried interest in the unit well.

There can be no doubt that a carried interest is a valuable property right and, when such interest has been carved out of the working interest in a well and transferred to another party, the owner of the working interest has been deprived of a portion of his property. The statutes of New Mexico do not require and the State and Federal Constitutions do not permit such a taking of property at the instance of the undrilled tract owner who neither desires to drill nor pay.

It is no answer to say the drilling party may be compensated for the taking of a carried interest by a 150% payment out of production. On the face of it, such a contention constitutes a contradiction in terms. The very thing that makes a carried interest burdensome to the grantor and valuable to the grantee is the fact that the grantor continues to bear the entire risk of payout, although he must share the net benefits of his risk investment with the grantee if and when the well pays out. After payout, there is no risk of payout. After payout, an additional share of production can in no way compensate the drilling party for assuming the risk of payout.

No prudent person would grant, without compensation, a carried interest no matter what percentage recovery he received out of production. Neither would any prudent person refuse to accept the gift of such an interest.

Under the circumstances of this case, an order granting to Applicant the gift of a carried interest in Protestants' well constitutes a taking of Protestants' property without just compensation.

(d) By its terms, Order R-2440 expires one year from the date a pipeline connection is first obtained in the Indian Basin, Upper Pennsylvanian Gas Pool and thereafter said Pool shall be developed on 160 acre spacing units unless the operators in the Pool show cause why the Pool should be developed on some other spacing. Manifestly, an order permanently pooling the lands of Applicant and Protestants into a unit which is scheduled to contain three spacing units unless some different determination is made in the future would constitute a wholly arbitrary and capricious exercise of administrative power, unreasonably and unnecessarily exposing Protestants to the risk of irreparable injury and loss in the event the pooled area is not developed to the density permitted by future spacing orders.

Submitted by,

GRANTHAM, SPANN and SANCHEZ

By *Robert L. French, Jr.*
914 Bank of New Mexico Building
Albuquerque, New Mexico 87101
Telephone: 243 - 3525
Attorneys for Odessa Natural
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TURPIN, SMITH, DYER & HARDIE

By: R. L. Woodward
A. B. C. Building
Midland, Texas
Attorneys for L. R. French, Jr.

Docket No. 14-65

DOCKET: REGULAR HEARING - WEDNESDAY - MAY 19, 1965

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

- ALLOWABLE: (1) Consideration of the oil allowable for June, 1965.
- (2) Consideration of the allowable production of gas for June, 1965, from twelve prorated pools in Lea and Eddy Counties, New Mexico, and also presentation of purchaser's nominations for said pools for the six-month period beginning July 1, 1965; consideration of the allowable production of gas from nine prorated pools in San Juan, Rio Arriba and Sandoval Counties, New Mexico, for June, 1965.

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CASE 3236: (Continued from the April 14th Regular Hearing)
Application of Anadarko Production Company for force-pooling, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks an order force-pooling all mineral interests in the Indian Basin Upper-Pennsylvanian Gas Pool underlying Section 19, Township 21 South, Range 23 East, Eddy County, New Mexico.

CASE 3249: Southeastern New Mexico nomenclature case calling for an order for the creation and extension of certain pools in Eddy, Lea, and Roosevelt Counties, New Mexico:

- a) CREATE A new oil pool for Seven Rivers production and designated as the Lusk-Seven Rivers Pool. Said pool described as:

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SECTION 3: SE/4

Discovery well is Cactus Drilling Company, Shell Federal No. 1 located in Unit J of Section 3, Township 19 South, Range 32 East.

- 2 -

May 19, 1965 Regular Hearing

- b) CREATE A new oil pool for Wolfcamp production and designated as the McMillan-Wolfcamp Pool. Said pool described as:

TOWNSHIP 20 SOUTH, RANGE 27 EAST, NMPM
SECTION 5: NW/4 NW/4

Discovery well is Harvey E. Yates, Yates Federal #1 Deep No. 1, located in Unit D of Section 5, Township 20 South, Range 27 East.

- c) EXTEND the Fowler-Ellenburger Pool to include therein:

TOWNSHIP 24 SOUTH, RANGE 37 EAST, NMPM
SECTION 23: SE/4

- d) EXTEND the Henshaw Queen-Grayburg-San Andres Pool to include therein:

TOWNSHIP 16 SOUTH, RANGE 31 EAST, NMPM
SECTION 18: SW/4 SW/4

- e) EXTEND the Indian Basin-Morrow Gas Pool to include therein:

TOWNSHIP 21 SOUTH, RANGE 23 EAST, NMPM
SECTION 25: All
SECTION 36: All

TOWNSHIP 21 SOUTH, RANGE 24 EAST, NMPM
SECTION 30: All
SECTION 31: All

- f) EXTEND the Indian Basin-Upper Pennsylvanian Gas Pool to include therein:

TOWNSHIP 21 SOUTH, RANGE 23 EAST, NMPM
SECTION 9: All
SECTION 11: All
SECTION 27: All
SECTION 28: All
SECTION 33: All
SECTION 34: All

TOWNSHIP 21 SOUTH, RANGE 24 EAST, NMPM
SECTION 33: All

May 19, 1965 Regular Hearing

f) Extension to Indian Basin-Upper Pennsylvanian Gas Pool continued:

TOWNSHIP 22 SOUTH, RANGE 23 EAST, NMPM

SECTION 1: All
SECTION 2: All
SECTION 3: All
SECTION 4: All
SECTION 5: All
SECTION 8: All
SECTION 9: All
SECTION 10: All
SECTION 11: All

g) EXTEND the South Lane-Pennsylvanian Pool to include therein:

TOWNSHIP 11 SOUTH, RANGE 34 EAST, NMPM

SECTION 6: W/2 SW/4

h) EXTEND the Lusk-Strawn Pool to include therein:

TOWNSHIP 19 SOUTH, RANGE 31 EAST, NMPM

SECTION 22: SE/4

i) EXTEND the Oil Center-Blinebry Pool to include therein:

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SECTION 3: Lots 7, 8, 9, and 16
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SECTION 35: SE/4
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k) EXTEND the East Red Lake-Queen-Grayburg Pool to include therein:

TOWNSHIP 16 SOUTH, RANGE 28 EAST, NMPM

SECTION 27: SE/4 SE/4

l) EXTEND the Skaggs-Drinkard Pool to include therein:

TOWNSHIP 20 SOUTH, RANGE 37 EAST, NMPM

SECTION 13: NE/4

- 4 -

May 19, 1965 Regular Hearing

m) EXTEND the Todd-San Andres Gas Pool to include therein:

TOWNSHIP 7 SOUTH, RANGE 35 EAST, NMPM
SECTION 34: E/2

n) EXTEND vertical limits of the Antelope Ridge-Morrow Pennsylvanian Gas Pool in Lea County 11,854 feet to 13,840 feet.

GRANTHAM, SPANN AND SANCHEZ
ATTORNEYS AT LAW

914 BANK OF NEW MEXICO BUILDING
POST OFFICE BOX 1031
ALBUQUERQUE, NEW MEXICO 87101

EVERETT M. GRANTHAM
CHARLES C. SPANN
MAURICE SANCHEZ
R. RUSSELL RAGER

TELEPHONE
243-3525

May 14, 1965

Mr. A. L. Porter, Jr.
Director
Oil Conservation Commission
State Land Office Building
Santa Fe, New Mexico

Re: In the Matter of the Application of Anadarko
Production Company for an Order Pooling the
Lessees Interest in the Indian Basin Upper
Pennsylvanian Gas Pool Underlying Section
19, Township 21 South, Range 23 East, Eddy
County, New Mexico, No. 3236

Dear Mr. Porter:

I am enclosing herewith for filing an Offer of Judgment and Response
to Application, which I would like filed in the above cause. Also, I
enclose a Certificate of Service, which should also be filed.

Very truly yours,

GRANTHAM, SPANN and SANCHEZ

By: *Chas. C. Spann*
-s-

CCS jhs
enc -3 cpys each

BEFORE THE OIL CONSERVATION COMMISSION OF THE
STATE OF NEW MEXICO

IN THE MATTER OF THE APPLICATION OF)
ANADARKO PRODUCTION COMPANY FOR AN)
ORDER POOLING THE LESSEES INTEREST IN)
THE INDIAN BASIN UPPER PENNSYLVANIAN) No. 3236
GAS POOL UNDERLYING SECTION 19, TOWN-)
SHIP 21 SOUTH, RANGE 23 EAST, EDDY)
COUNTY, NEW MEXICO.)

OFFER OF JUDGMENT

Comes now the Odessa Natural Gasoline Company and L. R.
French, Jr. by and through their attorney, and state:

1. That they will allow an order to be entered against
them in instant cause pooling applicant's interests into a drilling and
spacing unit consisting of Sec. 19, T. 21S, R. 23E, Eddy County, New
Mexico, to be produced by Standard Federal No. 1 Well; provided, how-
ever, that such order requires the applicant to pay, in cash and within
30 days from the date of said order to the Odessa Natural Gasoline
Company and L. R. French, Jr. as their interests appear, the sum of
\$ 65,399.91, being applicant's proportionate share, based
on acreage owned in the unit, of the costs of drilling, completing and
equipping said well, plus a 50% risk factor.

RESPONSE TO APPLICATION

In the alternative and in the event respondents' Offer of Judgment is
not accepted by applicant, then the Odessa Natural Gasoline Company and
L. R. French, Jr. file this, their Response to the application herein.



as follows:

1. They admit the allegations of Paragraphs 1, 4 and 5 of the application.
2. Answering Paragraph 2 of the application, Respondents allege that Order No. R-2440 promulgated temporary special rules and regulations establishing, among other things, 640 acre spacing units in the Indian Basin Upper Pennsylvania Gas Pool, which rules expire one year from the date that a pipeline connection is first obtained for a well in the pool; that no drilling or spacing units within the means of Sec. 65-314(b) NMSA, 1953 Comp., were created by the Commission through Order R-2440, or otherwise; that to the extent the allegations of Paragraph 2 conflict with these affirmative allegations Respondents deny such allegations.
3. Answering Paragraph 3, the Respondents allege that the tests made to date on gas produced from the Standard Federal No. 1 Well, and certain other pressure tests, indicate that the said well is not producing from the same common source of supply as are those wells drilled on the spacing units established by Order R-2440. To the extent the allegations of Paragraph 3 conflict with those affirmative allegations, the Respondents deny such allegations. They admit, however, that the cost of drilling, completing and equipping the well was approximately \$197,000.00.
4. They admit generally the allegations of Paragraph 6, except they deny that in order to avoid drilling unnecessary wells, pro-

protect correlative rights or prevent waste an order should be entered pooling lessees' interests in said drilling and spacing unit. They affirmatively allege that the Commission has no jurisdiction to enter such an order.

AFFIRMATIVE DEFENSES

For further and affirmative defenses to the application herein, the protestants, Odessa Natural Gasoline Company and L. R. French, Jr., state:

1. That the Commission has no jurisdiction to grant the relief sought for the following reasons:

(a) The Commission heretofore issued its Order R-2440 which promulgated temporary special rules applicable to the Indian Basin, Upper Pennsylvania Gas Pool, Eddy County, New Mexico, and its Orders R-2569, R-2679 and R-2726 which extended the limits of said Pool; that, by said Order R-2440 the Commission did not establish spacing or proration units as defined by Section 65-3-14(b), New Mexico Statutes Annotated, 1953, as amended; that the Commission made no finding of fact in said Order R-2440 nor was there any substantial evidence introduced at the hearing on said order which would authorize the Commission to establish spacing or proration units for said Pool under said Statute.

(b) The Commission has no jurisdiction under Section 65-3-14(c), New Mexico Statutes Annotated, 1953, as amended, to enter an order force pooling separately owned tracts in said Pool until spacing and proration units as defined in Section 65-3-14(b) of said Statutes have been validly established for said Pool.

(c) The Commission has no jurisdiction to enter an order force pooling separately owned tracts upon the application of any owner that has not expressly undertaken or agreed either to drill a well on the area covered by said order or to pay in cash his proportionate share of the cost of such well drilled by others, plus such charge for risk, not to exceed 50%, as shall be determined by the Commission.

(d) Until the Commission has made a finding of fact supported by substantial evidence as to the area which can be efficiently and economically drained by one well in the Indian Basin, Upper Pennsylvania Gas Pool, and has validly established spacing or proration units based upon said finding, any order force pooling separately owned tracts in said Pool, as sought by Applicant in this proceeding, constitutes a taking of protestants' property without due process of law.

(e) By its terms Order R-2440 expires one year from the date that a pipeline connection is first obtained in the Indian Basin, Upper Pennsylvania Gas Pool and thereafter said Pool shall be developed on 160 acre spacing units unless the operators in said Pool appear before the Commission and show cause why said Pool should not be so developed; that an order permanently force pooling separately owned tracts in said Pool into 640 acre units at this time would be arbitrary and capricious, unreasonably and unnecessarily exposes protestants to irreparable injury and loss, and constitutes a taking of protestants' property without due process of law.

WHEREFORE, having fully responded to the application, protestants pray for order denying the application, or in the alternative, either staying any proceedings until information is available establishing

that the Standard Federal No. 1 Well will efficiently and economically drain 640 acres, or, as a condition to granting the application, requiring applicants to pay its proportionate share of the cost of said well in cash plus 50% additional as a risk factor or \$ 65,399.91; for such other and further relief as may be just and equitable in the premises.

Submitted by:

GRANTHAM, SPANN AND SANCHEZ

By *Edw. Spann*
914 Bank of New Mexico Building
Albuquerque, New Mexico
Attorneys for Odessa Natural Gasoline
Company and L. R. French, Jr.

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE APPLICATION OF)
ANADARKO PRODUCTION COMPANY FOR AN)
ORDER POOLING THE LESSEES INTEREST IN)
THE INDIAN BASIN UPPER PENNSYLVANIAN) No. 3236
GAS POOL UNDERLYING SECTION 19, TOWN-)
SHIP 21 SOUTH, RANGE 23 EAST, EDDY)
COUNTY, NEW MEXICO.)

CERTIFICATE OF SERVICE

The undersigned attorneys for respondents Odessa Natural Gasoline Company and L. R. French, Jr., certify that a copy of the respondents' Offer of Judgment and Response to Application was mailed to opposing counsel of record on Thursday, May 13, 1965.

GRANTHAM, SPANN and SANCHEZ

By *Edna L. Spann*
914 Bank of New Mexico Building
Albuquerque, New Mexico 87101
Telephone: 243 - 3525
Attorneys for Odessa Natural
Gasoline Company and L. R.
French, Jr.

Memo

From

IDA RODRIGUEZ

To

Send dockets to:

Odessa Natural Gasoline Co.
P. O. Box 3908
Odessa, Texas

L. R. French	Standard Oil Co.
Box 5184	of Texas
Midland, Texas	Box 1660
	Midland, Texas

Marathon Oil Company
Box 552
Midland, Texas

DOCKET MAILED

DOCKET MAILED /

~~Date~~

~~Date~~

5565

3-30-65

JASON W. KELLAHIN
ROBERT E. FOX

KELLAHIN AND FOX
ATTORNEYS AT LAW
54½ EAST SAN FRANCISCO STREET
POST OFFICE BOX 1769
SANTA FE, NEW MEXICO 87501

TELEPHONES
983-9396
982-2991

March 9, 1965

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

Dear Mr. Porter:

Enclosed in triplicate is the application of Anadarko
Production Company for an order force pooling properties
in the Indian Basin Upper Pennsylvanian Gas Pool.

It is anticipated that this application will be contested
and for that reason we request it be set for hearing
before the full commission at the April 14 hearing. If
this is not possible, I would appreciate it if you would
advise me at once.

Copies of the application have been forwarded to Odessa
Natural Gasoline Company, L. R. French, and Marathon Oil
Company.

Yours very truly,

KELLAHIN & FOX

Jason W. Kellahin
Jason W. Kellahin

jwk/dds
enclosures

DOCKET MAILED

5-5-65
2
Date

DOCKET MAILED

3-30-65
Date

KELLAHIN & FOX
ATTORNEYS AT LAW
54 1/2 EAST SAN FRANCISCO STREET
P. O. BOX 1788
SANTA FE, NEW MEXICO 87501

March 22, 1965

23336

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

Gentlemen:

Enclosed are three copies of a plat of a portion of the Indian Basin-Upper Pennsylvanian Gas Pool, showing acreage affected by the application of Anadarko Production Company for an order force-pooling the leasehold interests in Section 19-21S-23E. This application was filed with the Commission March 9, 1965, but plats were not then attached to the application.

Very truly yours,

KELLAHIN & FOX

Jason W. Kellahin

Jason W. Kellahin

jwk/mas
enclosures

attached are applications
B

BEFORE THE OIL CONSERVATION COMMISSION OF THE
STATE OF NEW MEXICO

IN THE MATTER OF THE APPLICATION OF)
ANADARKO PRODUCTION COMPANY FOR AN)
ORDER POOLING THE LESSEES INTEREST IN)
THE INDIAN BASIN UPPER PENNSYLVANIAN)
GAS POOL UNDERLYING SECTION 19, TOWN-)
SHIP 21 SOUTH, RANGE 23 EAST, EDDY)
COUNTY, NEW MEXICO.)

No. 3234

APPLICATION

COMES now the Applicant and alleges:

1. That it is a Delaware corporation, duly authorized to do business in the State of New Mexico and is the owner of a valid and subsisting oil and gas lease covering Lots 3 and 4 and the East Half of the Southwest Quarter (E/2 SW/4) of the captioned Section 19.
2. That heretofore by Order No. R-2440, as the same has been amended and extended, this Commission created drilling and spacing units consisting of 640-acres, more or less, consisting of a single governmental section for the production of gas from the Indian Basin Upper Pennsylvanian Gas Pool, and the captioned Section 19 constitutes one of the drilling and spacing units so created.
3. That heretofore one J. C. Williamson drilled his Standard-Federal No. 1 Well at a location in the approximate center of the Southwest Quarter of the Northeast Quarter of said Section 19 and completed the same as a well capable of producing gas in commercial quantities in said Indian Basin Upper Pennsylvanian Gas Pool. That the cost of drilling, completing and equipping said well Applicant is informed, is approximately the sum of \$197,000.00.
4. That said J. C. Williamson sold said well and his leasehold interest and by mesne assignments has become vested in Odessa Natural Gasoline Company as to an undivided 13/16, and in L. R. French as to an undivided 3/16.
5. That the leasehold ownership in the balance of said

Section 19, other than Applicant's interest, is as follows:

The NE/4 and Lots 1 & 2 and the E/2 NW/4

Odessa Natural Gasoline Company . . .13/16
L. R. French. 3/16

Standard Oil Company of Texas has certain rights
to back-in on the Odessa-French interests under
contractual arrangements unknown to Applicant.

The SE/4

Marathon Oil Company. 100%

6. That Applicant is advised that a pipeline connection to
said Standard-Federal No. 1 Well is imminent and gas sales will commence.
Applicant and the other parties owning leasehold interests in said spac-
ing unit have been unable to agree on the manner of participating in
said well and in order to avoid drilling of unnecessary wells, protect
correlative rights and prevent waste, this Commission should enter an
order pooling the lessees' interests in said drilling and spacing unit.

WHEREFORE, Applicant prays:

1. That this matter be set down for hearing before the
Commission.
2. That notice thereof be given as required by law.
3. That upon such hearing this Commission enter an order
fixing the rights of all parties in respect to sharing the production
and costs of obtaining such production from the above described drill-
ing and spacing unit, and prescribing such other terms and conditions
as to the Commission may appear just, equitable and necessary.

DOCKET MAILED

Date

3-30-65

Wm. L. Robertson

WM. L. ROBERTSON
P. O. Box 351
Liberal, Kansas

Jason W. Kellahin

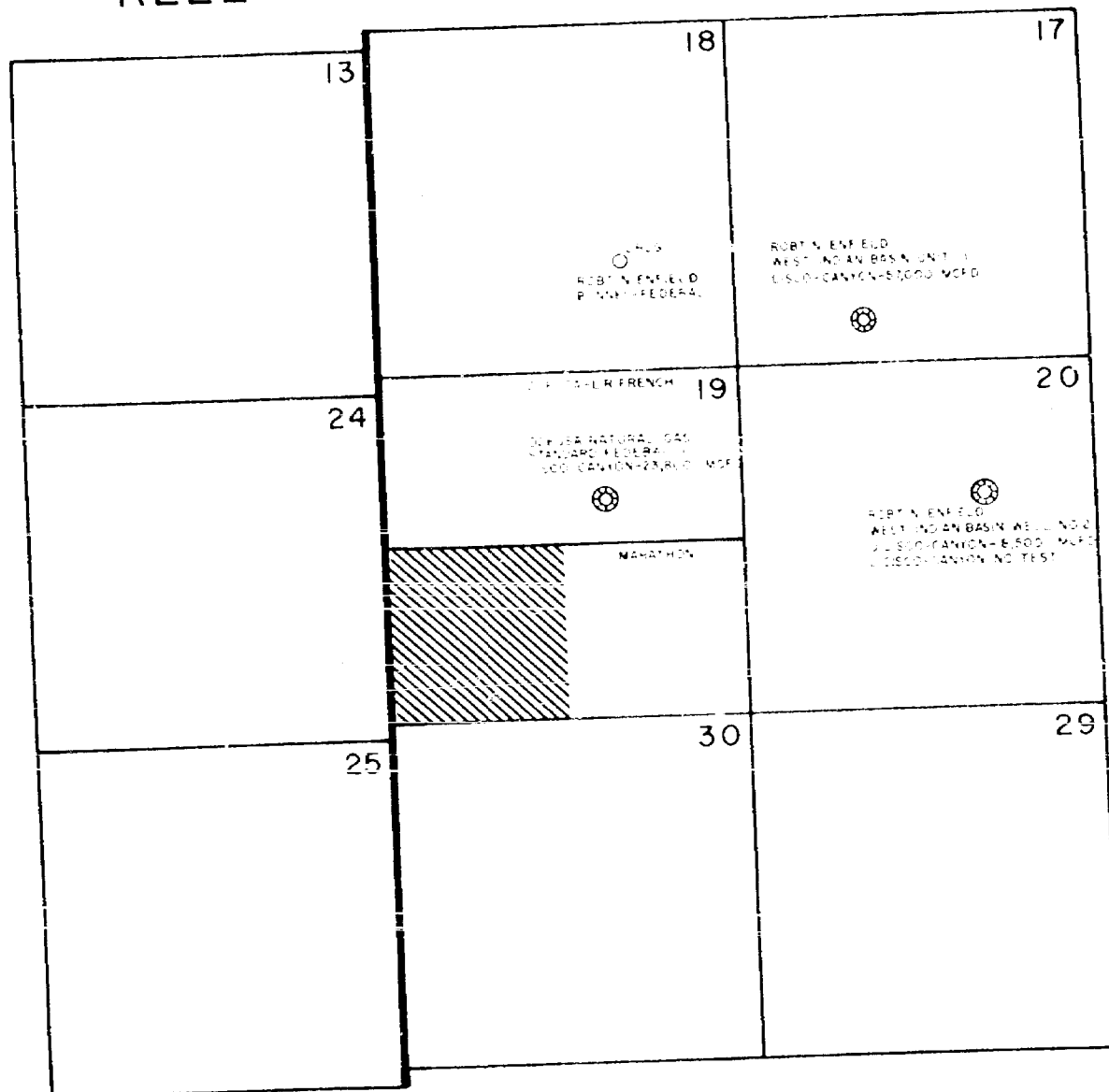
JASON KELLAHIN
Kellahin & Fox
54½ E. San Francisco Street
Santa Fe, New Mexico

Attorneys for Applicant

EDDY COUNTY NEW MEXICO

R22E

R23E



T
21
S

PORTION OF THE
INDIAN BASIN-UPPER PENNSYLVANIAN
GAS POOL

WELL DATA & ACREAGE PLAT



ANADARKO PRODUCTION CO.
ACREAGE

GRANTHAM, SPANN AND SANCHEZ
ATTORNEYS AT LAW
914 BANK OF NEW MEXICO BUILDING
POST OFFICE BOX 1031
ALBUQUERQUE, NEW MEXICO 87101

EVERETT M. GRANTHAM
CHARLES C. SPANN
MAURICE SANCHEZ
R. RUSSELL RAGER

TELEPHONE
243-3525

April 13, 1965

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

Re: Case No. 3236

Dear Mr. Porter:

Please file the enclosed Entry of Appearance in the above-numbered cause wherein I am entering my appearance as attorney for a Mr. L. R. French, Jr.

Very truly yours,

GRANTHAM, SPANN AND SANCHEZ

By: 

CCS:rr
Encl.

DOCKET MAILED

Date 5-5-65

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

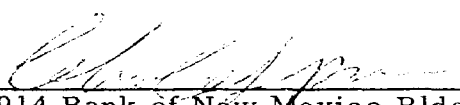
IN THE MATTER OF THE APPLICATION OF
ANADARKO PRODUCTION COMPANY FOR AN
ORDER POOLING THE LESSEES INTEREST
IN THE INDIAN BASIN UPPER PENNSYLVANIAN GAS POOL UNDERLYING SECTION 19,
TOWNSHIP 21 SOUTH, RANGE 23 EAST,
EDDY COUNTY, NEW MEXICO.

No. 3236

ENTRY OF APPEARANCE

Come now the undersigned attorneys and enter their appearance herein for and in behalf of L. R. French, Jr. who is the owner of an undivided three-sixteenths interest in the well which was drilled on the leases in question.

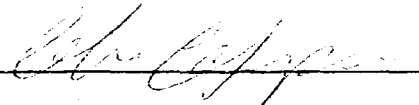
GRANTHAM, SPANN AND SANCHEZ

By 
914 Bank of New Mexico Bldg.
Albuquerque, New Mexico

I hereby certify that I have mailed a copy of the foregoing instrument to W. L. Robertson, P. O. Box 351, Liberal, Kansas, Jason W. Kellahin, P. O. Box 1769, Santa Fe, New Mexico, Terrell Couch, P. O. Box 3128, Houston, Texas and John Woodward, P. O. Box 3986, Odessa, Texas.

DOCKET MAILED

Date 5-5-69



OIL CONSERVATION COMMISSION
P. O. BOX 2088
SANTA FE, NEW MEXICO

April 6, 1965

C
O
P
Y

Mr. Charles C. Spann
Attorney at Law
914 Bank of New Mexico Building
Post Office Box 1031
Albuquerque, New Mexico

Re: Case No. 3236

Dear Mr. Spann:

We have your letter of April 2, 1965, enclosing a Motion for Continuance of the above case on behalf of Odessa Natural Gas Company.

I have contacted Mr. Jason Kellahin, Attorney for Anadarko Production Company, and he has verified your statement that they would prefer to have the hearing as scheduled, but would not formally object to a continuance.

Since neither party desires a hearing on the Motion, it will not be necessary for the parties or their attorneys to appear on April 14, 1965. When the case is called it will be continued to the next regular hearing to be held on Wednesday, May 19, 1965.

As the Motion will not be formally opposed, we do not feel that it will be necessary to issue an order

OIL CONSERVATION COMMISSION
P. O. BOX 2088
SANTA FE, NEW MEXICO

-2-

April 6, 1965

Mr. Charles C. Spann
Attorney at Law

approving the continuance. I will state for the record
at the April 14, 1965, hearing that the case will be
continued to the May regular hearing.

Very truly yours,

A. L. PORTER, Jr.
Secretary-Director

ALP/esr

cc: Mr. Jason W. Kellahin
Attorney at Law
Anadarko Production Company
P. O. Box 1769
Santa Fe, New Mexico

Mr. John Woodward
Attorney at Law
El Paso Natural Gas Products Company
P. O. Box 3986
Odessa, Texas

Mr. Terrell Couch
Attorney at Law
Marathon Oil Company
P. O. Box 3128
Houston, Texas

C
O
P
Y

GRANTHAM, SPANN AND SANCHEZ
ATTORNEYS AT LAW

914 BANK OF NEW MEXICO BUILDING
POST OFFICE BOX 1031
ALBUQUERQUE, NEW MEXICO 87101

EVERETT M. GRANTHAM
CHARLES C. SPANN
MAURICE SANCHEZ
R. RUSSELL RAGER

TELEPHONE
243-3525

April 2, 1965

Mr. A. L. Porter, Jr., Secretary
Oil Conservation Commission
Santa Fe, New Mexico

Re: Case No. 3236

Dear Mr. Porter:

I am enclosing herewith a Motion for a continuance of the hearing on the above numbered Application which has been set for April 14 at Hobbs, New Mexico. My client, Odessa Natural Gas Company, advises that because of the unusual nature of this application, they will need additional time to properly prepare to meet the issues which have been raised.

I talked to Jason Kellahin about the continuance and although he states they would prefer to have the hearing as scheduled, they would not formally object to the continuance. I am sending a copy of this letter to Mr. Kellahin and you may, of course, verify his position with him directly. I would, of course, be available to appear personally in support of my motion if the Commission desires, however, I would hope that the continuance might be granted without a formal hearing on the motion.

Would you please advise me as soon as possible as to whether the motion will be granted?

I am also enclosing and Order which I hope is proper as to form and which can be entered if the Commission decides to grant my motion.

Respectfully yours,

GRANTHAM, SPANN AND SANCHEZ

By: 

CCS:rr

Encls.

cc: Mr. Jason Kellahin
54 1/2 E. San Francisco Street
Santa Fe, New Mexico

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE APPLICATION OF
ANADARKO PRODUCTION COMPANY FOR AN
ORDER POOLING THE LESSEES INTEREST
IN THE INDIAN BASIN UPPER PENNSYLVANIA-
NIAN GAS POOL UNDERLYING SECTION 19,
TOWNSHIP 21 SOUTH, RANGE 23 EAST,
EDDY COUNTY, NEW MEXICO.

No. 3236

MOTION FOR CONTINUANCE

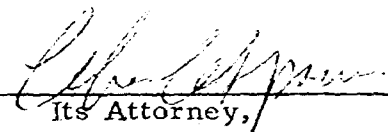
Comes now the Odessa Natural Gas Company, a corporation,
by and through its attorney, and moves the Court for a continuance of
the hearing on instant matter heretofore set for April 14, 1965, at
Hobbs, New Mexico, and in support of the Motion states:

1. That as appears from the Application filed, it is the owner
of an interest in the drilling and spacing unit and the well completed
thereon which are the subject matter of the Application.
2. That it has not had sufficient time to properly prepare for
the hearing which has been heretofore set and will need an additional
period of approximately thirty (30) days to gather the information and
conduct the research necessary to adequately meet the issues which
have been raised by the Application.

Respectfully submitted,

ODESSA NATURAL GAS COMPANY

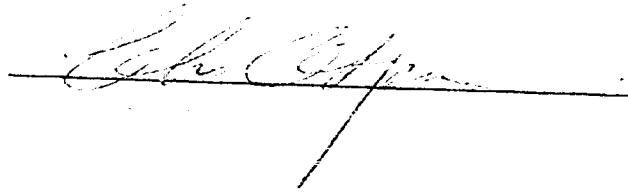
By


Its Attorney,

914 Bank of New Mexico Building,
Albuquerque, New Mexico.

CERTIFICATE OF MAILING

The undersigned certifies that he mailed a copy of the foregoing Motion to W. L. Robertson, P. O. Box 351, Liberal, Kansas, and to Jason Kellahin, 54 1/2 E. San Francisco Street, Santa Fe, New Mexico, attorneys for applicant, on this 2nd day of April, 1965.

A handwritten signature, likely "Lyle C. Appen", is written over a horizontal line.

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE APPLICATION OF
ANADARKO PRODUCTION COMPANY FOR AN
ORDER POOLING THE LESSEES INTEREST
IN THE INDIAN BASIN UPPER PENNSYLVANIA
GAS POOL UNDERLYING SECTION 19,
TOWNSHIP 21 SOUTH, RANGE 23 EAST,
EDDY COUNTY, NEW MEXICO.

No. 3236

ORDER

This matter having come on to be heard upon the Motion of the
Odessa Natural Gas Company for a continuance of the hearing hereto-
fore set for April 14, 1965, at Hobbs, New Mexico, and the Commis-
sion having considered the Motion and being advised in the premises,

IT IS HEREBY ORDERED that the hearing on said Application
be, and it hereby is, continued until the next regular monthly allowable
hearing to be held in May of 1965.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

By JACK M. CAMPBELL, Chairman

Member

A. L. PORTER, JR., Member and
Secretary.

BEFORE THE
NEW MEXICO OIL CONSERVATION COMMISSION
Hobbs ~~SANMEX~~, New Mexico
April 14, 1968

REGULAR HEARING

IN THE MATTER OF:

APPLICATION OF ANADARKO PRODUCTION COMPANY
FOR FORCE-POOLING, EDDY COUNTY, NEW MEXICO

Case No. 3236

BEFORE:

GOVERNOR JACK M. CAMPBELL

SECRETARY-DIRECTOR A. L. PORTER

LAND COMMISSIONER GUYTON B. HAYS

TRANSCRIPT OF HEARING

DEARNLEY-MEIER REPORTING SERVICE, Inc.

FARMINGTON, N. M.
PHONE 325-1182

SANTA FE, N. M.
PHONE 983-3971

ALBUQUERQUE, N. M.
PHONE 243-6691



SPECIALIZING IN: DEPOSITIONS, HEARINGS, STATEMENTS, EXPERT TESTIMONY, DAILY COPY, CONVENTIONS

MR. DURRETT: I'd like to state for the record that there has been a motion to continue this case. I believe the Commission has so advised the attorneys by letter--I don't have the date on that, but I'll get it.

MR. PORTER: We don't need it, Mr. Durrett. The request was for a continuance to the regular May hearing. Is there any objection to the motion? ... This case will be continued to the regular May hearing.

* * *

STATE OF NEW MEXICO)
COUNTY OF BERNALILLO) ss

I, ELIZABETH K. HALE, Notary Public and Court Reporter,
do hereby certify that the proceedings in the foregoing case
were taken and transcribed by me, and that the foregoing is a
true and correct transcript of proceedings to the best of my
knowledge, skill and ability.

IN WITNESS WHEREOF, my hand and seal of office this 25th
day of April, 1965.

Elizabeth K. Gair
Notary Public

My commission expires
May 23, 1968.

BEFORE THE
NEW MEXICO OIL CONSERVATION COMMISSION
Santa Fe, New Mexico
May 19, 1965

REGULAR HEARING

IN THE MATTER OF:

Application of Anadarko Production Company
for force-pooling, Eddy County, New
Mexico. Applicant, in the above-styled
cause, seeks an order force-pooling all
mineral interests in the Indian Basin
Upper-Pennsylvanian Gas Pool underlying
Section 19, Township 21 South, Range 23
East, Eddy County, New Mexico.

Case No. 3236

BEFORE: Honorable Jack M. Campbell
Mr. A. L. "Pete" Porter
Mr. Guyton B. Hays

TRANSCRIPT OF HEARING

DEARNLEY-MEIER REPORTING SERVICE, Inc.

FARMINGTON, N. M.
PHONE 325-1182

SANTA FE, N. M.
PHONE 983-3971

ALBUQUERQUE, N. M.
PHONE 243-6651

MR. PORTER: We will take up Case 3236.

MR. DURRETT: Application of Anadarko Production Company for force-pooling, Eddy County, New Mexico.

MR. PORTER: I would like to call for appearances in Case 3236.

MR. KELLAHIN: If the Commission please, Jason Kellahin, Kellahin and Fox appearing on behalf of the applicant in association with Mr. William L. Robertson, a member of the Oklahoma and Kansas Bars. I would like also to enter an appearance on behalf of Marathon Oil Company in association with John H. Befan, Junior, a member of the Texas Bar.

MR. PORTER: John H. Befan?

MR. KELLAHIN: B-e-f-a-n.

MR. SPANN: Charles Spann of Grantham, Spann and Sanchez, Albuquerque, New Mexico, for respondents Odessa Natural Gasoline Company and L. R. French, Junior. I also have Mr. John Woodward and Mr. John Mason from Odessa, Texas representing Odessa Natural Gasoline Company; and Mr. R. L. Woodward of Turpin, Smith, Dyer and Hardie, Midland, Texas for the respondent L. R. French, Junior.

MR. NEWMAN: E. Kirk Newman of Midland, Texas, member of the New Mexico Bar, representing the California Oil Company.

MR. PORTER: That's the California Company?

MR. NEWMAN: California Oil Company.

MR. PORTER: Are there any other appearances?

The Commission will recognize the attorney for the applicant, Mr. Kellahin.

MR. KELLAHIN: Mr. Robertson will conduct the presentation.

MR. SPANN: If the Commission please, I would like to raise a couple of points here before we proceed with any evidence, if I might.

MR. PORTER: Mr. Spann.

MR. SPANN: We have filed a response in this case, well, we've filed a pleading which has three aspects to it. In the first place, we have offered to permit, it's in the form of an informal offer of judgment, we have offered to permit an order to be entered in accordance with the application, provided the applicant Anadarko pays their proportionate share of the costs of the well, being one hundred percent plus fifty percent for risk factor, or total of \$65,399.91. I have not heard an expression from Anadarko on this offer, and I'm wondering if we should first find out whether they would agree to a judgment in accordance with this offer.

MR. ROBERTSON: We certainly do not intend to pay one hundred fifty percent in cash.

dearnley-meier reporting services

SPECIALIZING IN: DEPOSITIONS, HEARINGS, STATEMENTS, EXPERT TESTIMONY, DAILY COPY, CONVENTIONS

1120 SIMMS BLDG. • P.O. BOX 1092 • PHONE 243-6691 • ALBUQUERQUE, NEW MEXICO

1213 FIRST NATIONAL BANK Bldg. • PHONE 256-1294 • ALBUQUERQUE, NEW MEXICO



MR. SPANN: I assume the offer is rejected.

MR. PORTER: Do you understand the answer, Mr. Spann?

MR. SPANN: Yes. In addition we have filed a customary response to the application in which we have raised probably two issues of fact only, and one is the question of whether this Commission has jurisdiction over this proceeding, and that is based on the fact that we do not think that, one, that it's been established that one well would drain 640 acres in this pool or that evidence is available to this effect; and further, we have raised a question as to whether the well on the proposed unit is producing from the same common source of supply as the wells which were in the, involved in the original application which resulted in this order being entered.

Now, other than that, I don't think there any particular fact issues between us. I think we have admitted practically everything else in the application. In addition we have raised affirmative defenses questioning the jurisdiction of the Commission, and I have filed with the Commission a brief which sets forth the legal issues involved in that connection.

It occurs to me that orderly procedure might be that we would argue those legal issues first and the Commission could then determine if there is any necessity for the hearing on the facts. As I say, I would be glad, they are affirmative

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defenses and I would like to suggest that we dispose of those perhaps before a hearing on the facts, if that would be in order. I would like to submit our arguments, whether it is before or after, but I thought it might be better to do it now.

MR. PORTER: Your motion is for the Commission to hear the legal arguments before we proceed with the testimony?

MR. SPANN: Yes, sir, that's what I would like the Commission to consider.

GOVERNOR CAMPBELL: Are you prepared to argue the legal questions at this time?

MR. ROBERTSON: Governor, we did not prepare a brief as they did. We received a copy of their brief a few moments ago. We're certainly ready to express our opinion upon the issues that were raised in the pleading which the respondents have filed. I think that certainly a jurisdictional question should be resolved before we proceed on anything else.

MR. PORTER: The Commission will hear the argument at this time.

MR. SPANN: Thank you very much. As the Commission knows, this pool, or temporary rules for this pool were originally established by Order R-2440 which was entered on the 28th day of February, 1963. In the order certain findings

were made by the Commission concerning, as a basis for establishing these special rules. Specifically provided, the order did in Finding No. 4 "That temporary special rules and regulations establishing 640-acre spacing units should be promulgated for the subject pool in order"-- and this is an important part -- "in order to prevent the possibility of economic loss resulting from the drilling of unnecessary wells and in order to allow the operators in the subject pool to gather information concerning the reservoir characteristics of the pool."

Finding 6, "That special rules and regulations should be established for a temporary period to expire one year from the date that a pipeline connection is first obtained for a well in the pool; that during this temporary period all operators in the subject pool should gather all available information relative to drainage and recoverable reserves."

Now, the order did not only fail to make findings that 640-acre spacing, that one well would drain 640 acres in the pool, but affirmatively found that they didn't have any such evidence and they were merely doing it to prevent the possibility of economic loss from the drilling of unnecessary wells, and specifically found they wouldn't have such evidence until such time as a pipeline connection had been made and the operators had had a year period to determine

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just what the pool characteristics were.

Now, in the application here, of course, they have alleged affirmatively that a pipeline connection is imminent, but that one has as yet not been made. So, based on the Commission's determination in this order, of course, there is no evidence at this time as to reservoir characteristics which would indicate that one well would drain 640 acres in the pool.

Now, the statute which authorizes the Commission to force-pool acreage is -- of course, the Commission is familiar with it -- 65-3-14 of our statutes. Subsection (b) of this Act provides that "The Commission may establish a proration unit for each pool, such being the area that can be efficiently and economically drained and developed by one well," and in considering this factor, "the Commission shall consider the economic loss caused by the drilling of unnecessary wells, the protection of correlative rights, including those of royalty owners, the prevention of waste, the avoidance of the augmentation of risks arising from the drilling of an excessive number of wells, and the prevention of reduced recovery which might result from the drilling of too few wells."

So, now, to establish a valid proration unit under this section you must have evidence and make a finding that one well can efficiently and economically drain the area

covered by the unit. That you have failed to do so, we contend that you did not validly establish a unit within the meaning of this subsection (b) in your Order No. R-2440.

Then subsection (c) gives you the right to force-pool "When two or more separately owned tracts of land are embraced within a spacing or proration unit." In other words, referring back to (b), a validly established spacing or proration unit. Then you may force-pool under certain terms and conditions. We contend, and that's our first point here is that until you have validly established a spacing and proration unit under subsection (b), you have no authority under (c) to enter a force-pooling order.

Now, we have, of course, in our brief referred to the Continental Oil Company versus Oil Conservation Case 70 N. M. 310, which provides as follows, among other things:

"The Oil Conservation Commission is a creation of statute, expressly defined, limited and empowered by the laws creating it. The Commission has jurisdiction over matters related to the conservation of oil and gas in New Mexico, but the basis of its powers is founded on the duty to prevent waste and to protect correlative rights... That the extent of the correlative rights must first be determined before the Commission can act to protect them is manifest." "The Court then held that the proration orders of

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the Commission in question lacked the basic findings (including a finding as to drainage area)" -- just like in this case in connection with the order you entered establishing these special rules -- "necessary to and upon which jurisdiction depended and were therefore invalid and void," and they said:

"...although formal and elaborate findings are not absolutely necessary, nevertheless basic jurisdictional findings, supported by evidence, are required to show that the Commission has heeded the mandate and the standards set out by statute."

In addition to the basic requirements in 65-3-14, of course, in this recent Simms versus Mechem Case 72, which incidentally came down shortly after you promulgated your special rules as applicable to this pool, and this did involve a forced-pooling order, the Court held that this order was based on the finding that the "most efficient and orderly development of such acreage can be accomplished by forced pooling the acreage." That Court held that was invalid under 65-3-10 which requires before you can do anything apparently that you must predicate an order on the prevention of waste and the protection of correlative rights.

Of course, any order that you might enter in this case, force pooling, it couldn't be based on prevention of waste,



protection of correlative rights, nor could it be based on a finding as to drainage, because by your own affirmative finding in the other order you said that no such evidence is available and won't be available until a pipeline has been connected and the operators have had a year to study the situation, so you couldn't make a finding in this case which would justify the order they seek without squarely disputing the finding that you made in the other order; and so we submit that this issue, or this application cannot be validly founded on findings supported by substantial evidence at this time, and as I say, that's essentially the question of jurisdiction that we are raising under our first point.

Now, in addition I think it should be pointed out that under subsection (a) of 65-3-14 it requires "The rules, regulations, or orders of the Commission shall so far as it is practicable to do so, afford to the owner of each property in a pool the opportunity to produce his just and equitable share of the oil ..."

Obviously you cannot enter an order in accordance with that mandate when you, by your own findings, have determined that there isn't any such evidence available at this time as to the drainage area in this pool, and we, therefore, could not know whether the operator here, if the force pooling

order was entered, was being permitted to produce his fair share of the gas under his acreage.

Now, in addition to this question of jurisdiction which we have raised in connection with the application of the statute permitting you to force pool, we contend that under that section, even though you had jurisdiction and this was a proper case and you did have the evidence as to drainage and the evidence of prevention of waste and so forth as prerequisites, we still contend that your authority under the statute applies only to non-consenting owners. In other words, you can force pool non-consenting owners and permit the recovery out of production plus the fifty percent risk factor. You can permit that, but you cannot do it as applied to consenting owners; in other words, applicants such as the Anadarko in this case.

Again, referring to your statutory, you have only such statutory authority as the statute gives you; under the Simms case and the Continental case, we submit that the statute contemplates forced pooling of non-consenting owners.

Now, as a matter of fact, I think we have listed various orders you previously entered, I won't list them all, where you have recognized the distinction between consenting and non-consenting owners with respect to the manner of payment,

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whereby the non-consenting pay out of cash and the consenting pay out of production. Here you have a consenting owner coming in and asking that we be required to get his proportionate share out of production.

I would also suggest that regardless of your statutory authority, and I might refer to that just briefly here, the statute which authorizes the recovery of costs out of production, that portion of the statute says this: "Such pooling order of the Commission shall make definite provision as to any owner, or owners, who elects not to pay his proportionate share in advance for the pro rata reimbursement solely out of production ..." When you say an owner elects not to pay his proportionate share in advance, you are talking about a non-consenting owner, not someone that comes in as these people are and as the moving party.

Then it goes on to say "... pro rata reimbursement solely out of production to the parties advancing the costs of development and operation which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable, but which shall include a reasonable charge for supervision and may include a charge for the risk involved in the drilling of such well, which charge for risk shall not exceed fifty per cent of the non-consenting working

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interest owner or owners' pro rata share of the cost of drilling and completing the well."

In other words, the legislature had in mind that we were talking about a non-consenting working interest when they gave you this authority that you have, and I submit that under this section you do not have authority to permit or require us, the operator, to recover the proportionate share of the cost attributable to the applicant here out of production; and I further would contend that if you have such authority it would be an unconstitutional deprivation of our property without due process.

We have raised that point also in the brief, and I have reviewed briefly the law, constitutional questions, provisions that are involved and the cases which construed them. There's more or less basic law on this question of due process. The effect of the applicant's position is simply this: They come in here and ask you to force pool them into our well and require us to recover our costs out of production. That's without knowing whether we are draining their property or not. We are assuming the entire risk of pay out under this arrangement, if the well never pays out they haven't lost a thing. They have been given or are seeking a carried working interest in this well as of now, for which they want to pay nothing. It is a valuable interest, if the well pays

out then they have something that they will receive and they're paying absolutely nothing for it here.

I submit that the statute doesn't give you such authority, nor did the legislature contemplate giving you such authority. In Oklahoma I believe they do it a little differently as far as non-consenting owners are concerned, they permit the non-consenting owner to either pay in cash or the Commission may require them to sell their interest to the operator on a basis which gives them a consideration for bonus being paid for acreage in the area and that sort of thing.

Here a non-consenting owner is permitted to pay in cash or he may ask that since he is non-consenting that his proportionate share be taken out of production, allowing you to determine his risk factor if you so desire, but he's a non-consenting owner. He doesn't want to come in. Now we have a consenting owner who is the moving party here, seeks to have you give them a carried working interest in our well, and they are paying absolutely nothing for it or not going to. If it pays out, fine. If this doesn't they have assumed no risk or cost or anything else.

Under the basic constitutional rules of due process which I have dealt with in the brief, I can tell you it would be, if you had such authority, improper, and a violation of

due process.

Now, the granting of this order, of course, by you, you may permit a greater allowable for this well because of the greater acreage in it, but it still doesn't increase the amount of gas under this acreage, so you are giving them as of now an interest in our right to produce here, carried working interest in our well and, as I say, they are paying absolutely nothing for it. I think that essentially covers the point which we are making here in connection with this.

We think, I would like to point out one other thing, however, under your temporary rules the operators are required to notify you when a pipeline connection is made; and within a year thereafter, unless someone comes in and shows cause as to why this should not go back to one hundred sixty-acre spacing statewide rules, it will go by. In other words, these rules expire by their own terms unless somebody is able to assume and establish by a preponderance of the evidence that this one well will drain more than one hundred sixty acres. So now, supposing we enter this permanent order force pooling this acreage into our 640-acre unit and then no one comes forward and is able to establish this drainage, 640-acre drainage, these rules expire and then where are we? We're back on 160-acre spacing with three possible wells to be drilled, and you have given them an interest in our well, and

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suppose the rest of the acreage isn't available in accordance with these rules, 160-acre rules, then what happens?

Obviously we have been deprived and will continue to be deprived of a share of our gas under our acreage from now on. With that in mind, I have in my application suggested possible alternatives. Number one, we don't think you have any jurisdiction at this time in view of the findings that you made in the other case and in view of the clear mandate of the statute.

Number two, if you think you have, then we think that any hearing on the application ought to be continued until such time as the pipeline has been connected, the operators have had a year to gather their information as to reservoir characteristics and drainage and all that sort of thing, and then let them come in to have a hearing on this order. Or as a third alternative, and this was in accordance with our offer of judgment, if you think you have jurisdiction to force pool upon an application of consenting owner, then it ought to be on the basis of their paying cash plus a percentage for the risk factor, and I think you do have some general authority under this section to force pool on such notice and hearing and upon terms and conditions that are just and reasonable.

Although there is fifty percent risk factor involved

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down here as applied to non-consenting owners, and I contend you don't have authority on application of a consenting owner, nevertheless, I think on this broad authority it ought to be on such terms and conditions as would compensate us for our risk. These wells have been sitting down here for some time and the interest factor is, I think the submitted cost is \$197,000.00 and the interest on that alone is considerable and they want to come in today and require us to take their costs out of production. If the well never pays out it's just our hard luck; if it does then they take their interest down the line somewhere. I submit that the consideration of the application is not proper at this time and is not within your jurisdiction under the statutes.

GOVERNOR CAMPBELL: Mr. Spann, is the gas from this well under sales contract now?

MR. SPANN: I'm not sure.

GOVERNOR CAMPBELL: Are you in a position to say, are you dealing with what's called the Northern Natural Gas Pipeline or Southern Union?

MR. SPANN: Southern Union.

MR. DON WOODWARD: Protestant's share of the gas is committed to Southern Union.

GOVERNOR CAMPBELL: Do you know anything about the imminence of pipeline connections on this well?

MR. VALLA: The date that they say they will start taking gas is June 15th.

GOVERNOR CAMPBELL: June the 15th.

MR. SPANN: I believe that is all.

MR. ROBERTSON: If the Commission please, I think this is about the most strained construction of a set of statutes and an order that I have ever heard. First of all, we agree that you need as predicate to the pooling order a spacing order. Now protestant says that the Commission had no evidence before it indicating that 640 acres is proper. If the Commission had no such evidence I know not how you could have issued the order.

Secondly, they take the position that this order automatically, at the end of one year after connection to a pipeline, expires. That's not what this order says. It says "That this case should be reopened at an examiner hearing one year from the date that a pipeline connection is first obtained for a well in the Indian Basin-Upper Pennsylvanian Gas Pool, at which time the operators in the subject pool should appear and show cause why the Indian Basin-Upper Pennsylvanian Gas Pool should not be developed on 160-acre spacing units."

Under that language the operators wouldn't even have to show up, and the Commission, on its own motion, could extend or just do nothing and this order would extend by its own

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terms. Now, I think everyone admits that the Commission is charged with a duty under 65-3-11, subparagraph (10) with a duty to fix spacing of wells, which you have done in this case. The only thing about protestant's approach to this thing is that if you are the owner of a well and there are other interests in the spacing unit that is established with whom you cannot agree, then you, the well owner, are the only person who can file a pooling application in order to adjudicate the rights and equities of the party owning interest in that unit. I submit that is entirely incorrect.

In fact, the Panhandle Eastern case which protestants cited in support of this position was exactly opposite, because in that case Ohio, the owner of an undrilled tract after spacing was established, came in and forced their way into Panhandle Eastern's well. The distinction they attempt to make is a distinction without substance; the statute says "Where there are two or more parties owning interest in the unit who are not able to agree upon an arrangement in which they will participate in a well, whether it is drilled or undrilled, then this Commission has authority to adjudicate the rights and equities of a pooling action," which is what we have here.

Now there are a couple of other items that the protestant brings up; one was a passing reference in the comments, it is

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set out more fully in their pleading, that a different common source of supply is involved. That is not in issue in this hearing. This hearing is a forced pooling order under the existing spacing order. If they want to establish a different spacing, if they feel they have evidence to justify that, that can be done only upon application and notice for that purpose, and such evidence is entirely immaterial to this proceeding here.

GOVERNOR CAMPBELL: Well, if this isn't in this pool in the first instance, it is material. You are not talking about a different spacing for this. You are saying, as I understand it, that this may not be producing from this pool as defined --

MR. ROBERTSON: The Commission has established this Upper Pennsylvanian Pool, the well is completed in the Upper Pennsylvanian Pool. As a matter of fact, the evidence will show that Odessa filed Form C-110 stating that this well is completed in this pool.

MR. PORTER: Is it included within the horizontal limits of the pool as defined by the Commission?

MR. DURRETT: The horizontal limits of the pool as defined by the Commission, Mr. Porter, the only finding on that was Finding 3 in the basic order, which said that it "should be created and designated the Indian Basin-Upper

Pennsylvanian Gas Pool." It says the top of the perforation in the upper formation is at 7376 feet. Now I think we can show that this correlates from well to well.

MR. PORTER: Excuse me just a minute --

MR. DURRETT: There's no top and bottom called in the order itself.

MR. PORTER: Mr. Kapteina, would you determine from your records whether this well is within the horizontal limits of the gas pool?

MR. NUTTER: I can assure you it is within the horizontal limits.

MR. PORTER: The entire 640 acres that we are talking about here lies within the horizontal limits of the pool.

MR. NUTTER: Yes, sir.

MR. MASON: This acreage was not included in the basic order, but by subsequent extensions through the nomenclature hearings it has been included.

MR. ROBERTSON: Although it was the first well in the area, it was spaced by an extension on June 18 of 1964, after which date Odessa filed the form to which I previously referred.

Now, another thing that we have involved here which I think is very critical, Mr. Spann's argument is that they have assumed the risk of pay out and therefore are entitled

to 150% in cash. The statute says that the risk which will be considered by this Commission is the risk involved in the drilling of the well and in encountering a productive formation. Now, the applicant alleges the pleading filed by respondents admits that this well was drilled by J. C. Williamson and that respondent purchased it after the well was completed. I submit they had no risk under those circumstances, at least within the contemplation of the statute here.

Now, the non-consenting working interest owner approach that they're making, the only portion of this particular statute that comes in is in the sentence with reference to the person who elects not to put up his proportionate share in cash, then the Commission can go through these various things, including the risk factor and the drilling of the well and so forth as to such non-consenting working interest owner.

Now, take it within the context of the sentence that we're talking about there, the non-consenting in this case would be the objection of paying 150% in cash. I think that if we follow the protestant's line of reasoning in this spacing thing, I don't think this Commission has ever issued a valid spacing order where you obtained jurisdiction for a further look at this to see whether we should increase the well density or not.

MR. SPANN: I would only say in reply regarding the statement made that these rules would continue in effect after the one year if the Commission takes no action. Finding No. 6 says this, "That special rules and regulations should be established for a temporary period to expire one year from the date that a pipeline connection is first obtained for a well in the pool." I construe that to mean they expire by their own terms and unless somebody comes forward and establishes affirmatively that one well will drain 640. With the possibility of this reverting to 160-acre spacing, which seems implicit in your order, I don't see how the Commission at this time could grant these people an interest in our well.

They're asking that they pay nothing for it. I submit that the legislature never intended that result when they gave you this force pooling authority. I don't think that the legislature could have, anyway, under the constitutional provisions that I have referred to. They sit back here and -- look at the situation we find ourselves in in the future. Every adjoining owner just sits and waits to see if it pays out, gets a force pooling order, sits back to see if the well pays out. If it doesn't he hasn't lost a thing. We are involved in an issue that is going to affect the entire industry as far as the future is concerned, and that's why

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we are raising it.

GOVERNOR CAMPBELL: Are the parties prepared to stipulate as to the facts or do you have evidence that you desire to present?

MR. SPANN: We would stipulate that this was completed in this formation. We merely raise the question as to whether this well was producing from the same common source of supply as the wells which were involved in your wirtten orders, as I understand it. We don't know. In other words, we agree with the Commission at this time. We are not saying that it isn't a fact, we are simply saying we did not have sufficient information at that time to agree it's a fact, and that's why we did not agree or admit to that in the pleading. I think that being honest with the Commission, that's all we can say.

GOVERNOR CAMPBELL: Would you have evidence to the contrary if you had an opportunity to put your evidence on?

MR. SPANN: Well, I think we have some evidence that raises a question. What's the contrary?

GOVERNOR CAMPBELL: What about the applicant?

MR. ROBERTSON: I am prepared to show that this particular unit is underlain by this formation and in our opinion it is underlain by a porous section of the formation, that it is in the same common source of supply.



GOVERNOR CAMPBELL: Can we stipulate to everything perhaps except the point that you were making here?

MR. SPANN: I think so.

GOVERNOR CAMPBELL: You have some documentary evidence with regard to the orders and so forth. I wonder if we can take a recess and see how much of the facts we can agree on so we can shorten the factual representation, and we will rule on the motions.

MR. R. L. WOODWARD: We would agree with that opportunity. But before we undertake to do this there is a statement I would like to make in clarification of our position.

GOVERNOR CAMPBELL: For the reporter, this is Mr. Woodward.

MR. R. L. WOODWARD: I think the applicant has misunderstood the position of the protestants in this case concerning the right of an undrilled tract owner to seek a forced pooling order in a proper case. We in no sense deny that the undrilled tract owner has a right to seek a force pooling order. We only say that when he does seek such an order the Commission has no jurisdiction to grant him a free ride or a carried working interest in the well of another person until he comes forward and says "I am willing to pay my share of the well in cash."

As you can readily appreciate, a carried interest has value. Nobody is going to grant such an interest even for a

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thousand percent recovery without some consideration.

Logically nobody is going to refuse such a gift if it entails no financial obligation, no risk or no liability, and we're simply saying here that the Commission has the authority to prevent waste and protect correlative rights. It doesn't have an independent authority to grant commercial interests to private parties for private purposes.

I would also point out that we're talking about two different kinds of taking of property here. The first taking we're talking about is granting a share of the production from our well, the drainage area isn't established, no one at this time can say that any of the production of that well is coming from the applicant's land. To give them a share of production either now or after pay out takes some of our property.

Secondly, to grant them a free carried interest in this well takes another property right again without compensation. There is another point here I would like to clarify concerning the construction of the statute, basically the risk that any operator runs in drilling a well, particularly a wildcat well, is that he will discover sufficient oil or gas to pay out his investment plus a reasonable return.

Now, this risk was borne by our predecessor, the party from whom we bought the well, in purchasing his interest we

stepped into his shoes. It doesn't make any difference whether we acquired this interest by purchase or by drilling the well originally. We're still standing in the shoes of Williamson who drilled the well for all legal purposes.

This risk is by no means completed until we have some production from this well. We don't know whether it will ever pay out. We don't know whether operating problems will intervene preventing the pay out of the well, even assuming there are sufficient gas reserves underlying it. So the risk we are talking about here of ultimate recovery from production or investment plus a reasonable return is still being borne by the protestants in this case.

We admit that some of the risk has been mitigated by the fact that production has been established, but whether it will continue even throughout a pay out period is something we don't know, we haven't any way of guessing and won't know until after this year's period in which there has been some production. I think the Commission did far more than say that 640-acre spacing would continue a year after the first pipeline connection. They made an affirmative finding of fact that it should be discontinued at that time in their Finding 6 in Order R-2440, unless someone came forward and carried the burden of proof of showing that the pool should be developed on something other than 160 acres.

Now, we're talking about a very different situation from the Panhandle Eastern case. Granted that every spacing order is one over which the Commission retains continuing jurisdiction, in one sense every spacing order is a temporary order in that the Commission can review it, but it takes an affirmative showing to change the spacing in order to amend such a finding.

Here we're not talking about simply a temporary order, but a limited order that expires by its own terms within a period of time and our contention, of course, is that it would be arbitrary and capricious to create the pool three quarter sections into a unit with the risk at the end of a year you may be talking about three spacing units, because all the production from our well is coming from our acreage in the Northeast Quarter of this section. By that time we're giving away a fourth of it, a third of it to somebody else.

MR. PORTER: Mr. Robertson.

MR. ROBERTSON: One point here, I don't think this thing is limited to three quarters. This takes in the entire section and all operators in this section. We're not talking about three quarters.

MR. PORTER: We'll take a fifteen minute recess.

(Whereupon, a recess was taken.)

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

MR. ROBERTSON: If the Commission please, the parties have been able to stipulate on a number of facts of issues involved. First of all, it's stipulated that the well was drilled by J. C. Williamson Petroleum Corporation as a wildcat well. Secondly, that the parties have not been able to agree upon a method of participation in this well; that the well is located 1980 feet from the north and east lines of Section 19, 21 South, 23 East, Eddy County, New Mexico, and is completed in an Upper Pennsylvanian-Cisco carbonate group formation which is at depths from 6816 to 7294 feet below the surface; that the actual and fair and reasonable cost of drilling the well and completing it is \$195,736.41.

Section 19 contains 576.12 acres, that the Odessa French leasehold is the Northeast Quarter, Lots 1 and 2 and the East Half, Northwest Quarter, which is a total of 287.79 acres and amounts to 49.95314% of the unit; that the Marathon leasehold is 160 acres and amounts to 27.77199% of the unit.

That the Anadarko -- let me back up just a minute on that, the Marathon leasehold is the Southeast Quarter. That the Anadarko leasehold is Lots 3 and 4 and the East Half, Southwest Quarter, covers 128.33 acres which amounts to 22.27487% of the unit. That Odessa be designated as unit operator.

GOVERNOR CAMPBELL: You are stipulating that in

the event the unit is established that Odessa will be the operator?

MR. ROBERTSON: That if the pooling is granted that Odessa be designated as unit operator. That Odessa and French will withdraw at this time their objection to the fact that this well is not in the same common source of supply, with the understanding that if evidence later justifies the filing of an application for the separation of the productive sand in this well as a separate common source of supply, that applicant will not attempt to plead estoppel for not raising the question in this hearing.

MR. R. L. WOODWARD: In other words, we are agreeable to withdrawing that as a fact issue in the case at this time with leave to raise it in a separate hearing as to the establishment of a separate common source of supply, and the applicant is agreeing that they won't contend that we've waived our right to do so or that we are estopped to do so in subsequent proceeding. We are not admitting anything and they're not waiving any right to object in the future.

MR. DON WOODWARD: There's one more that has to do with a stipulation that the well in question was drilled as a wildcat well.

MR. ROBERTSON: I made it.

MR. DON WOODWARD: The other thing is that after a ruling on jurisdiction we would, of course, like to reserve the

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right to argue a risk factor as a matter of legal argument. The fact is established that it is a wildcat well. I don't think such an argument is appropriate at this time until after the jurisdictional question has been resolved.

MR. R. L. WOODWARD: Could I propose a clarification? Robert Woodward of Turpin, Smith, Dyer & Hardie. I am a member of the New Mexico Bar. I would like to suggest that we clarify the stipulation on well cost that the figure given is the actual cost of the well within the meaning of the statute. It's the actual cost of the well within the meaning of the forced pooling statute.

GOVERNOR CAMPBELL: This leaves, of course, the sole question of the fair way in which this would be accomplished, assuming the Commission has jurisdiction to accomplish it, correct? Do either of the parties intend to offer evidence beyond what you have stipulated to here?

MR. ROBERTSON: On the risk factor I do, Governor.

MR. PORTER: And so do the other party in the event that the jurisdictional question is resolved.

MR. DON WOODWARD: We want the right to argue what the allowance for risk should be, based on the stipulation it is drilled as a wildcat well.

GOVERNOR CAMPBELL: Are you talking about arguing or offering evidence?

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MR. ROBERTSON: I'm talking about offering evidence. I have an engineer that has prepared cash evaluation of this.

MR. DON WOODWARD: Is that relevant in view of the stipulation?

MR. ROBERTSON: Well, I believe it's relevant.

MR. PORTER: You have estimated as to the total cost of the well and stipulated as to your acreage and percentage. The only question is on this risk factor?

MR. ROBERTSON: That's correct.

GOVERNOR CAMPBELL: The fifty percent question?

MR. ROBERTSON: The stipulation certainly does not place any evidence in this record as to what risk, assuming the Commission first of all decides that forced pooling is proper in this case, then they say, well, a risk factor of some sort should be applied. After you reach that conclusion there's not one scintilla of evidence which would indicate what risk factor you should apply.

MR. DON WOODWARD: Isn't that argument instead of evidence? Our argument would be the stipulation that this well was drilled as a wildcat well put it in the maximum category. It can't be any wilder than a wildcat well.

MR. ROBERTSON: Of course the stipulation was that J. C. Williamson drilled it as a wildcat well.

GOVERNOR CAMPBELL: That's in the record.

MR. ROBERTSON: And these people bought it.

GOVERNOR CAMPBELL: That's a fact that is in the record and stipulated here also?

MR. ROBERTSON: Yes, sir, by the pleadings that are on file.

GOVERNOR CAMPBELL: The pleading and the stipulation?

MR. ROBERTSON: Yes.

GOVERNOR CAMPBELL: What is the nature of the evidence that you would like to offer?

MR. ROBERTSON: First of all, Odessa has no risk factor within the meaning of the statute.

GOVERNOR CAMPBELL: That's an argument.

MR. ROBERTSON: No, I am going to have evidence along this line. Secondly, that if a carried interest approach is granted -- may I ask a clarifying question? I assume on this thing that the Commission would issue or does issue alternative type orders with a certain period of time to elect, such as within so many days, elect to pay cash or if you don't do that it's presumed that you are doing something else.

GOVERNOR CAMPBELL: We have issued such orders.

MR. ROBERTSON: Secondly, that there is no risk factor of a drilling of a potentially productive well because they bought that knowing that it was a productive

well, but if it goes on a carried interest basis that certainly for the use of the money discounted down to present net worth there is a penalty factor that they should be entitled to. This is completely outside the statute, but to me this seems to be a reasonable way during the pay out of this thing to arrive at a risk factor. That, in essence, is what the evidence would show.

MR. DON WOODWARD: I can't see any fact question left. It's a legal argument. However, if it will expedite the proceeding I would suggest that we go ahead with the ruling on the jurisdictional fact that the Commission has such jurisdiction that it can hear such evidence as appears relevant as to the type of order you ought to issue.

GOVERNOR CAMPBELL: This question of jurisdiction is a question of substantial magnitude, not just involved in this case, but in a large number of other cases, past, present and future. Certainly I wouldn't want to rule on that question at this time. I think we need to study this very carefully, both parties might be on opposite sides of this question the next time, and that's not unusual in this business, and from the point of view of everyone concerned I think this should be given very serious consideration before rulings are made on these legal questions. My thought was that if there is evidence to be offered, additional evidence at this time, we should receive it and have it

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in the record and consider it along with the legal questions involved.

MR. KELLAHIN: If the Commission please, in view of what has just been stated, we would request the Commission to submit a brief.

GOVERNOR CAMPBELL: That's perfectly agreeable, and if the other party wishes to elaborate on the brief they have already submitted, this too should be done. I think you being the moving party, if you wish to submit additional legal material to the Commission, that after we complete this hearing today, probably a period of two weeks, and then permit the applicant to respond to that in whatever time. Is two weeks enough?

MR. KELLAHIN: I think two weeks will be satisfactory.

GOVERNOR CAMPBELL: So that the Commission will have the legal position on the legal matters. I think we might as well, if you have evidence that you think is admissible, if you wish to proceed we might as well take it now.

(Whereupon, a discussion was held off the record.)

GOVERNOR CAMPBELL: Yes, sir.

MR. ROBERTSON: I think to this extent the parties are willing to stipulate that Anadarko witness William R. Sharp, a geological engineer by training and actual

profession, would testify that in his opinion there is no risk factor for Odessa and French on the finding of a well capable of producing when they buy a well which is known to be a producing well. That in his opinion if the Commission would grant the alternative, assuming that Anadarko and Marathon would elect not to pay their proportionate part of cash, that out of production Odessa and French should be entitled to recover one hundred and twenty percent of the proportionate part of the actual well costs attributable to the Anadarko and Marathon interests.

That one hundred twenty percent would be based upon a simple six percent interest on the money invested in the well, discounted over the period of pay out down to present net worth.

I think we can stipulate one other thing, that this, that the potential of the well is 23,800,000 cubic feet per day.

GOVERNOR CAMPBELL: In his opinion that is the potential?

MR. ROBERTSON: No, I think the parties can stipulate that. That's a matter of record on the well.

MR. DON WOODWARD: No, that isn't what we said.

MR. PORTER: What kind of test do we have on the well?

MR. VALLA: Twenty-one million.

MR. SHARP: There was a subsequent test that shows twenty-three million, and on January 18, 1962, twenty-one million.

MR. VALLA: The original test was twenty-one million.

MR. SHARP: The subsequent was twenty-three eight.

MR. PORTER: Is that open flow?

MR. SHARP: Yes.

GOVERNOR CAMPBELL: Are these recorded with the Oil Conservation Commission?

MR. VALLA: Yes.

GOVERNOR CAMPBELL: Of course, the Commission will take notice of those in any event, whatever they are.

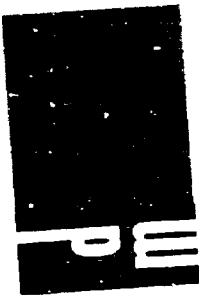
MR. ROBERTSON: The applicant would like for the Commission to take judicial notice of its original spacing order and the extent to which it involves the Section 19, together with the record that was made in Ralph Lowe's application, Case 2749, out of which this Order R-2440 was issued.

MR. DON WOODWARD: Protestants would stipulate that this is what applicant's witness will testify to. They have so told us they would do that and we believe them. We would like to further stipulate that our expert witness

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would contest the conclusions of applicant's expert witness and would testify that the well was drilled as a wildcat well and that through protestant's predecessor in interest the maximum risk was assumed in the drilling of the well, and it is his opinion the protestants are entitled to the maximum allowance for risk in the issuance of any forced pooling order.

As part of our stipulation we would submit this map which our witness would say shows the location of the dry holes and the producing wells in the area when the Williamson well was drilled.

GOVERNOR CAMPBELL: Will you mark that as Protestant's Exhibit No. 1 and let the record show that it was stipulated into evidence on the basis stated by counsel for the Protestant, both parties here or, first the Applicant and Protestants, do you concur in the stipulations that have been stated into the record here?

MR. ROBERTSON: Applicant does.

GOVERNOR CAMPBELL: Protestants do?

MR. SPANN: Yes.

MR. DON WOODWARD: Yes.

(Whereupon, Protestant's Exhibit No. 1 was marked for identification.)

MR. PORTER: Do any of the parties that have

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entered an appearance desire to make any statement with regard to this stipulation of fact? Governor, I would like to clarify something. There is only one applicant here, the Anadarko?

MR. ROBERTSON: That's correct.

MR. PORTER: Do you own the 128.23 acres?

MR. ROBERTSON: That's correct.

GOVERNOR CAMPBELL: Marathon is not a party except they have entered a position. What is the position of Marathon in this matter? Is it your request that if the Commission pools it that it pool Marathon's acreage or just Anadarko? Mr. Befan.

MR. BEFAN: Yes. John Bevan, Marathon at Houston. Marathon's position is, it is in favor of the forced pooling and that it is acreage which, as the record shows, consists of the Southeast Quarter of Section 19, be included in the pooling, if it is force pooled, and we would have an additional statement to make at the close of the evidence.

GOVERNOR CAMPBELL: Is there any further evidence to be offered in this case?

MR. R. L. WOODWARD: Does Marathon agree to be bound by the stipulations by Anadarko?

MR. BEFAN: I think we can agree.

GOVERNOR CAMPBELL: You do agree to be bound by the

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stipulations of fact in the case as far as your position is concerned?

MR. BEFAN: Right.

MR. PORTER: Would anyone like to make a statement at this time?

MR. ROBERTSON: As far as Anadarko is concerned, I believe we are willing to state that we have no further evidence and we are willing to close the record on the basis of what has been stipulated.

My own personal opinion, I don't feel that oral argument would serve any useful purpose at this time since we've already arrived at a briefing time on this, and why go through it now and then look up something else and send it to you in writing.

GOVERNOR CAMPBELL: How about California Oil Company?

MR. NEWMAN: Kirk Newman, California Oil Company. I might state for the record that although the stipulations show that the French, Odessa Natural interest in the proposed unit is forty-nine point something percent after pay out of this well, or a maximum recovery of two hundred thousand, California Oil Company will have reverted to it one-half of that interest. I believe that is correct under the contractual arrangement with Odessa and French, actually made

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with Williamson Petroleum, but with that interest, although it's not present interest, we do consider that it is favorable both to us and to all the parties, including the protestant, that the section be pooled into a single spacing unit and we would endorse the application. We will also --

GOVERNOR CAMPBELL: You want the pay out just as fast as it can be obtained?

MR. NEWMAN: Yes, sir. We also agreed to the stipulations entered in the file with the minority difference between Odessa to reflect our diversionary interest.

GOVERNOR CAMPBELL: Do either of you have anything further, Mr. Spann or Mr. Woodward?

MR. SPANN: No.

GOVERNOR CAMPBELL: You are clear on the time for submission of briefs? The protestants will have two weeks to do whatever additional briefing you wish, and you will have two weeks to respond.

MR. BEFAN: I would like to add in behalf of Marathon that we feel the Commission does have the authority under the statute and under the rules to grant this force pool and in the event that it is so granted, that we feel that this position is correct on the basis of the facts presented in this case and that in the event it is so granted and the well costs to be reimbursed to operator should be

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taken out of production only, and we do not feel that the risk should be the maximum in this case, due to the fact that the well was purchased by the Odessa-French interest.

We think there is little risk involved in the purchase of a producing well. It's our position that the formation of the unit would be in accordance with Commission statutory authority to issue orders to prevent waste, including the prevention of the drilling of unnecessary wells, and to protect correlative rights.

We further feel that it would be much easier to unpool than it would be to undrill wells which are unnecessarily drilled on smaller spacing and which don't conform with standard proration and spacing units which have been established.

MR. PORTER: Anyone else have anything to say in the case? The Commission will take the case under advisement, allowing two weeks for the respondent to get their brief in and two weeks for the applicants to get their briefs in.

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I, ADA DEARNLEY, Notary Public in and for the County of Bernalillo, State of New Mexico, do hereby certify that the foregoing and attached Transcript of Hearing before the New Mexico Oil Conservation Commission was reported by me; and that the same is a true and correct record of the said proceedings, to the best of my knowledge, skill and ability.

Witness my Hand and Seal this 7th day of June, 1965.

Paul Lawrence
NOTARY PUBLIC

My Commission Expires:

June 19, 1967.