

CASE 3858: Application of H. C.
BERRY for an order requiring the
fencing of oil-field installations

Case Number

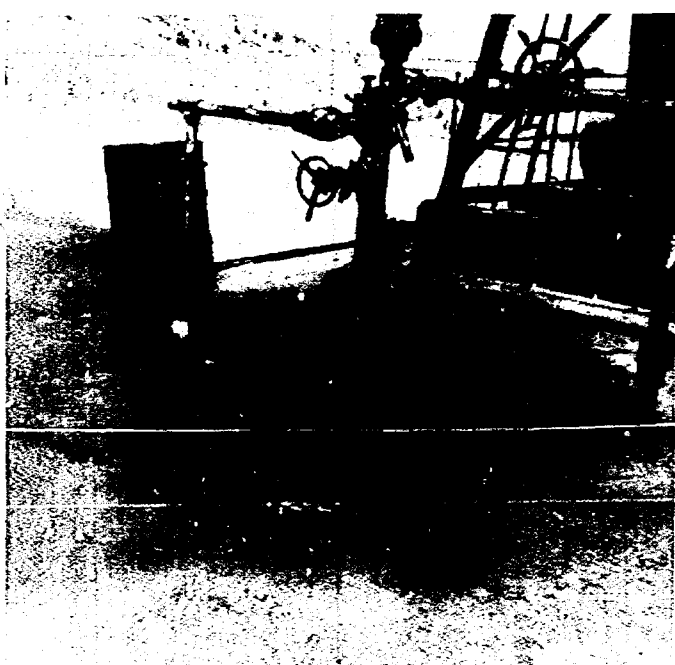
3858

Application

Transcripts.

Small Exhibits

ETC.



Stelly Oil #3

Sec. 2/24/6

6-6-68

Oil Co. RECEIVED
App. 3858

Stelly Oil Co. Well #3
live oil & cow tracks in
oil - Sec. 2/24/6

6-6-68

Oil Co. RECEIVED
App. 3858
Case No. 3858

Oil Co. RECEIVED
App. 3858
Case No. 3858

live oil behind comp
& engine complex - Kucan
Largo 1 1/2 mi from cabin
6-1-68

note cattle tracks

Oil Co. RECEIVED
App. 3858
Case No. 3858

typical pit filling
note loose wires -
unstable posts etc.

Oil Co. RECEIVED
App. 3858
Case No. 3858

GOVERNOR
DAVID F. CARGO
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 2068
SANTA FE

October 4, 1968

Mr. Thomas A. Donnelly
Catron, Catron & Donnelly
Attorneys at Law
Post Office Box 788
Santa Fe, New Mexico

Re: Case No. 3858
Order No. R-3516
Applicant:
H. C. BERRY

Dear Sir:

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

Very truly yours,

A handwritten signature in dark ink, appearing to read "A. L. Porter, Jr.", written over the typed name.

A. L. PORTER, Jr.
Secretary-Director

ALP/ir

Carbon copy of order also sent to:

Hobbs OCC x

Artesia OCC

Aztec OCC x

Other Richard Morris, George Eaton, Jason Kellahin, Robert A. Meyer,
Ronald Jacobs, Stanley Crout, William Griffith, Lewis Jamison,
James E. Sperling, J. Gregory Merrion, Roland L. Hamblin,
Thomas Dugan, John Redfern, Arturo Ortega, F. J. Holland,
A. H. McLeod, John Carothers, U. S. G. S. in Roswell and
Farmington, Mr. Michael T. Solan, Oscar Jordan

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. 3858
Order No. R-3516

APPLICATION OF H. C. BERRY FOR AN
ORDER REQUIRING THE FENCING OF OIL-
FIELD INSTALLATIONS, RIO ARriba AND
SANDOVAL COUNTIES, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on September 18, 1968, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 4th day of October, 1968, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS:

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

(2) That the applicant, H. C. Berry, is the owner and operator of a ranch of approximately 80,000 acres comprising state, federal, and fee lands located in Rio Arriba and Sandoval Counties, New Mexico, embracing, with certain minor exceptions, the following-described area:

<u>TOWNSHIP 22 NORTH, RANGE 6 WEST, NMPM</u>	
Sections 1 through 3:	All
Section 4:	N/2
Section 5:	N/2
Section 10:	E/2
Sections 11 and 12:	All

-2-

CASE No. 3858

Order No. R-3516

TOWNSHIP 23 NORTH, RANGE 6 WEST, NMPM
Sections 1 through 36: All

TOWNSHIP 23 NORTH, RANGE 7 WEST, NMPM
Sections 1 through 3: All
Section 4: E/2
Section 10: N/2
Sections 11 through 14: All

TOWNSHIP 24 NORTH, RANGE 6 WEST, NMPM
Sections 1 through 36: All

TOWNSHIP 24 NORTH, RANGE 7 WEST, NMPM
Sections 1 through 3: All
Sections 8 through 16: All
Section 17: E/2
Section 20: E/2
Sections 21 through 28: All
Section 29: E/2
Sections 33 through 36: All

TOWNSHIP 25 NORTH, RANGE 6 WEST, NMPM
Sections 1 and 2: All
Sections 11 through 14: All
Sections 21 through 36: All

TOWNSHIP 25 NORTH, RANGE 7 WEST, NMPM
Section 25: S/2
Section 26: S/2
Section 35: E/2
Section 36: All

(3) That persons other than the applicant own and operate numerous oil and gas wells and installations related thereto on said ranch.

(4) That the applicant seeks an order requiring the fencing of all wellhead equipment, tank batteries, pumping installations, disposal pits, oil-pipeline risers and valves, and all similar oil-field installations located on applicant's said ranch.

(5) That on numerous occasions liquid hydrocarbons and hydrocarbon impregnated substances have been easily accessible,

-3-

CASE No. 3858

Order No. R-3516

in the area of certain of said installations, to cattle on the subject ranch.

(6) That liquid hydrocarbons and hydrocarbon impregnated substances will, in certain circumstances, be consumed by cattle.

(7) That the consumption of liquid hydrocarbons and hydrocarbon impregnated substances by cattle is injurious to the well-being of said cattle.

(8) That liquid hydrocarbons and hydrocarbon impregnated substances should not become easily accessible to cattle on the subject ranch due to improper oil-field operations.

(9) That proper construction and maintenance of oil-field installations, properly observing presently existing rules and regulations of the New Mexico Oil Conservation Commission will afford reasonable protection against liquid hydrocarbons and hydrocarbon impregnated substances becoming easily accessible to cattle on the subject ranch.

(10) That, at this time, it is unnecessary and would, therefore, be unduly burdensome upon the operators of the numerous oil and gas wells and installations related thereto, located on the subject ranch, to require all of said installations to be fenced.

(11) That the subject application should be denied.

IT IS THEREFORE ORDERED:

(1) That the subject application is hereby denied.

(2) That the owners and operators of oil and gas wells and other related installations on the above-described lands are hereby admonished to properly construct and maintain said wells and installations in a workmanlike manner in order to afford reasonable protection against access to hydrocarbons or hydrocarbon impregnated substances by cattle on said premises.

-4-

CASE No. 3858
Order No. R-3516

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

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION


DAVID F. CARGO, Chairman


GUYTON B. HAYS, Member


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

ear/



SKELLY OIL COMPANY

P. O. BOX 1650

TULSA, OKLAHOMA 74102

September 20, 1968

PRODUCTION DEPARTMENT

C. L. BLACKSHER, VICE PRESIDENT

W. P. WHITMORE, MGR. PRODUCTION

W. D. CARSON, MGR. TECHNICAL SERVICES

J. R. TEEL, MGR. JOINT OPERATIONS

GEORGE W. SELINGER, MGR. CONSERVATION

Re: Case No. 3858

Application of H. C. Berry

Oil Conservation Commission (3)

P. O. Box 2088

Santa Fe, New Mexico 87501

89 SEP 23 AM 9 50

Attention: Mr. A. L. Porter, Jr., Secretary-Director

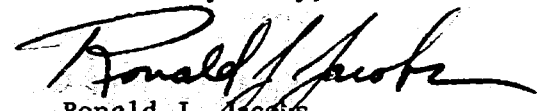
Gentlemen:

At the recent hearing held September 18, 1968, in the captioned case, Mr. H. C. Berry gave testimony and submitted certain photographic exhibits, particularly Exhibits 3 and 4, reflecting the condition around the well head of Skelly Oil Company's Farming "E" No. 3 well, located in Section 2, Township 24 North, Range 6 West, Rio Arriba County, New Mexico. Mr. Berry stated these pictures were taken June 6, 1968. Mr. Berry testified that he had received little or no cooperation from Skelly Oil Company in remedying situations where oil might be available to cattle on his ranch.

We wish to call your attention to the Commission's files in this matter, particularly a letter dated June 25, 1968 from Mr. Emery C. Arnold, Supervisor of District No. 3, to Skelly Oil Company pointing out situations where oil was found to be available to cattle. This letter was answered by us on July 9, 1968 pointing out in each specific instance how the situation had been remedied and assuring the Commission that we will in the future make closer inspection of our locations and keep these problems remedied. We are attaching copies of these letters for your convenience.

The Commission can rest assured that Skelly Oil Company will continue to pursue this matter and will do everything reasonably possible to keep crude oil from being made available to cattle, not only on Mr. Berry's ranch but also in any other area and on any other ranch on which we operate.

Yours very truly,


Ronald J. Jacobs
Conservation Attorney

RJJ:br
Attach.

cc-Thomas A. Donnelly, Esquire

Catron and Catron

The Plaza

Santa Fe, New Mexico 87501 w/ attach.

GOVERNOR
DAVID F. CARGO
CHAIRMAN

State of New Mexico
Oil Conservation Commission



LAND COMMISSIONER
GUYTON B. HAYS
MEMBER

1000 RIO BRAZOS ROAD
AZTEC

June 25, 1968

9-19-68
STATE GEOLOGIST
A. L. PORTER, JR.
SECRETARY - DIRECTOR

Skelly Oil Company
P. O. Box 510
Farmington, New Mexico 87401

Gentlemen:

UU SEP 23 AMPS 50

Recent field investigations of oil and gas producing wells in Southern Rio Arriba County were made by Commission personnel. As we have discussed with you by telephone, certain conditions were found at wells and tank batteries operated by you which constitute hazards to cattle and sheep which are grazed in this area. I am listing those locations where these conditions were discerned.

1. At the Jicarilla B #6 well, located in the southeast quarter of the northwest quarter of section 32, township 25 north, range 5 west, the stuffing box on the pump was leaking and live oil was standing in puddles in an unfenced area.
2. At the Jicarilla B Lease Battery #2, located in the northwest quarter of section 32, township 25 north, range 5 west, live oil was standing in a puddle at the base of the vent stack.
3. At the Farming E #3 well, located in the northeast quarter of the southwest quarter of section 2, township 24 north, range 6 west, the stuffing box on the pump was leaking and live oil was standing in puddles in an unfenced area.

Commission rules require that oil field waste of any type be placed in fenced pits. Although fenced pits are present at all of the above mentioned locations, the conditions described are outside the fenced area. If it is not possible to operate your installations in such a manner as to prevent spilled oil from being accessible to livestock, then the Commission will require that all installations at each location be fenced and have fire walls constructed inside the fences to prevent oil from flowing outside the fenced area.

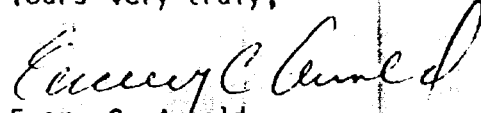
2.

June 25, 1968

As there are several hundred head of cattle in the immediate area of your operations, we urge you to take immediate action to correct the above mentioned conditions so as to prevent any further loss of livestock.

Please report in writing to this office within the next ten days from this date steps you have taken to correct the above mentioned conditions and what future action is anticipated to prevent recurrence of similar conditions.

Yours very truly,



Emery C. Arnold
Supervisor, District #3

ECA:mc

cc: Oil Conservation Commission
Santa Fe, New Mexico

U. S. Geological Survey
Farmington, New Mexico

State Land Office
Santa Fe, New Mexico



SKELLY OIL COMPANY

Drawer 510
Farmington, New Mexico

July 9, 1968

State Of New Mexico
Oil Conservation Commission
1000 Rio Prazos Road
Aztec, New Mexico

Gentlemen:

01 SEP 23 AM 9 59

Regarding your letter June 25, 1968 on hazardous conditions at our various locations in Southern Rio Arriba County, we have taken steps to correct these conditions.

1. At the Jicarilla B #6 well, located in the southeast quarter of the northwest quarter of section 32, township 25 north, range 5 west, the oil has been covered up, and Polish rod lubricators have been installed.
2. At the Jicarilla B Lease Battery #2, located in the northwest quarter of section 32, township 25 North, range 6 west, the vent pipe section of the battery has been fenced.
3. At the Farming E #3 well, located in the northeast quarter of the southwest quarter of section 2, township 24 north range 6 west, the oil has been covered up, and Polish rod lubricators have been installed.

Having taken these steps, we will, in the future, make closer inspections of our locations to keep these problems remedied. It is hoped that this will meet with your approval.

Yours very truly,

P. R. Co.
Foreman,
Skelly Oil Company

JEB:rp

J. E. Bottin

CLASS OF SERVICE
This is a fast message unless its deferred character is indicated by the proper symbol.

WESTERN UNION TELEGRAM

W. P. MARSHALL
CHAIRMAN OF THE BOARD

R. W. McFALL
PRESIDENT

SYMBOLS
DL=Day Letter
NL=Night Letter
LT=International Letter Telegram

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at

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MR A L PORTER DLR IMMY RPT DEL=

Case 3858

NEW MEXICO OIL CONSERAVTION COMMISSION MORGAN HALL
STATE LAND OFFICE BLDG SANTA FE NMEX=

UNABLE TO ATTEND HEARING OF CASE 3858. PLEASE ACCEPT
THIS AS STATEMENT OF MY POSITION. PROPOSED ORDER WOULD
IMPOSE EXTREME OPERATING DIFFICULTIES ON PRODUCERS.
I KNOW OF NO CIRCUMSTANCES WHICH MAKE NECESSARY SPECIAL
RULES FOR THIS AREA AS DISTINGUISHED FROM OTHER AREAS
OF THE STATE WHERE OIL AND GAS IS PRODUCED ON GRAZING
LANDS. I OPPOSE THE ADOPTION OF THE ORDER REQUESTED=

J GEGORY MERRION=

CLASS OF SERVICE
This is a fast message unless its deferred character is indicated by the proper symbol.

WESTERN UNION TELEGRAM

W. P. MARSHALL
CHAIRMAN OF THE BOARD

R. W. McFALL
PRESIDENT

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LA090 NSC350

NS ODA121 PD 3 EXTRA=FAX ODESSA TEX 16 358P CDT=

MR PETE PORTER, OIL CONSERVATION COMM=

STATE LANE OFC BLDG SANTA FE NMEX=

EL PASO PRODUCTS COMPANY, AS OPERATOR OF THE DEVIL'S FORK
GALLUP OIL POOL HEREBY OBJECTS TO THE APPLICATION OF H C
BERRY IN CASE #3858 TO BE HEARD AT THE REGULAR HEARING ON
WEDNESDAY MORNING, SEPTEMBER 18, 1968. AS OPERATOR OF THE
DEVILS FORK GALLUP POOL, WE WOULD BE FORCED REASONABLY
AND UNNECESSARILY TO FENCE IN MANY OF THE UNIT
INSTALLATIONS. WE THINK OIL COMMISSION SHOULD STUDY
CAREFULLY THE EFFECT SUCH AN ORDER WOULD HAVE ON THE ENTIRE

CLASS OF SERVICE
This is a fast message unless its deferred character is indicated by the proper symbol.

WESTERN UNION TELEGRAM

W. P. MARSHALL
CHAIRMAN OF THE BOARD

(401).

SYMBOLS
DL=Day Letter
NL=Night Letter
LT=International Letter Telegram

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination

OIL AND GAS INDUSTRY IN NEW MEXICO. WE REGRET THE FACT
THAT WE WILL BE UNABLE TO ATTEND THE HEARING IN PERSON=
ROLAND L HAMBLIN MANAGER LAND DEPARTMENT EL PASO
PRODUCTS CO=

18 SEP 18 1968

REDFERN DEVELOPMENT CORPORATION

WILCO BUILDING
MIDLAND, TEXAS 79701

September 13, 1968

POST OFFICE BOX 1747

ZIP CODE 79701

TELEPHONE MUTUAL 3-0184

AREA CODE 915

IN REPLY REFER TO
FILE

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

Attention: Mr. A. L. Porter, Jr.

Re: Case #3858
Application of H. C. Berry

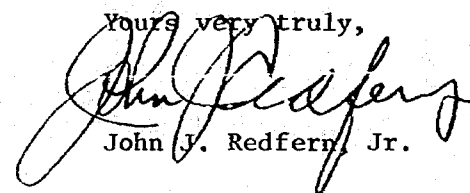
Gentlemen:

We have received notice of the hearing to be held by the Oil Conservation Commission on September 18, 1968 which is an application of H. C. Berry with reference to fencing of oil field installations on Mr. Berry's ranch.

We believe that the Oil Conservation Commission and its field staff have ample authority under its rules and regulations to effectively handle any problems that might arise. We do not believe that special regulations should be enacted.

We therefore urge that the Commission disapprove this application.

Yours very truly,


John J. Redfern, Jr.

JJR:b1

60 SEP 16 10 10 10

Post Office Box 234
Zip Code 87401

DUGAN PRODUCTION CORP.

TELEPHONE: 325-9184 Office
325-5691 Home

Area Code 505

THOMAS A. DUGAN, President

709 BLOOMFIELD RD.
FARMINGTON, NEW MEXICO

September 11, 1968

SW

*file
cover 3858*

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

Re: Case #3858
Application of H. C. Berry

Dear Mr. Porter:

We are opposed to the application of Mr. H. C. Berry to require the fencing of oil-field installations in Rio Arriba and Sandoval Counties, New Mexico, and request that the commission disapprove the application.

I am sure that the fencing of pits of this type is already covered by the rules of the Oil Conservation Commission. We feel that thousands of wells have been operated in New Mexico without the necessity of fencing the entire installation and we feel sure that Mr. Berry would find fault with any type of oil-field fence, as he expressed in the hearing of July 25, 1968. The fencing of the oil-field installations would not solve the problems that exist on the Berry ranch.

Sincerely,

Thomas A. Dugan (dw)
Thomas A. Dugan

dw

cc: Emery Arnold

J. R. MODRALL
JAMES E. SPERLING
JOSEPH E. ROEHL
GEORGE T. HARRIS, JR.
DANIEL A. SISK
LELAND S. SEEBERRY, JR.
ALLEN C. DEWEY, JR.
FRANK H. ALLEN, JR.
JAMES P. SAUNDERS, JR.
JAMES A. PARKER

HENRY G. COORS
JOHN R. COONEY
KENNETH L. HARRIGAN
PETER J. ADAMS
DALE W. EK

LAW OFFICES OF
MODRALL, SEYMOUR, SPERLING, ROEHL & HARRIS

PUBLIC SERVICE BUILDING

P. O. BOX 2168

ALBUQUERQUE, NEW MEXICO 87103

JOHN F. SIMMS (1885-1954)
AUGUSTUS T. SEYMOUR
(1907-1965)

TELEPHONE 243-4511
AREA CODE 505

September 13, 1968

80 SEP 16 AM 10 30

Mr. A. L. Porter, Jr.
Secretary - Director
New Mexico Oil Conservation
Commission
State Land Office Building
Santa Fe, New Mexico 87501

Re: Case No. (3858) - Application of H. C. Berry

Dear Mr. Porter:

I have been informed that the captioned application has been set for hearing on September 18, 1968. I will not be able to attend the hearing and for that reason, I am by this letter communicating to the Commission for consideration at the time of the hearing my views and comments in opposition to the application.

I represent Petroleum Consultants, Inc., an owner and operator of oil and/or gas wells in the designated pools lying within the area described in the application. In addition to my representation of this operator as an attorney, I am also personally interested in and am the owner of working interest in this area.

The great majority, if not all, of the lands described in the application is public domain land subject to oil and gas leases issued by the United States of America. In some instances, surface patents to the lands have been issued by the United States with the minerals including oil and gas having been reserved. The surface ownership is servient to the mineral interest ownership reserved by the United States. There are some fee simple lands or deeded lands in the area, but none of these are included within the areas of interest of either Petroleum Consultants, Inc., or myself.

It is my opinion that the Oil Conservation Commission of New Mexico does not have jurisdiction to entertain consideration of the application or grant the relief sought by the application. My authority for this statement is contained in the specification of authority of the Commission as contained in Sections 65-3-5, 65-3-10 and 65-3-11, New Mexico Statutes Annotated, 1953 as amended. Basically, the Commission's jurisdiction, authority and power is limited to matters relating to the production of oil and gas, the

Mr. A. L. Porter, Jr.
September 13, 1968
Page 2.

prevention of waste thereof and the protection of correlative rights of owners of interest therein. The application seeks to have the Commission adjudicate matters which do not relate to these powers and duties. The application seeks to have the Commission assume a judicial function in determining the property rights of the applicant and others and to determine contractual and tort obligations and liabilities and, in effect, the application seeks an order granting injunctive relief of mandatory nature. Obviously, this is a judicial function and not an administrative function falling within the Commission's jurisdiction.

If the Commission were to undertake to proceed to hearing upon the application, it would be required to make findings of fact and conclusions of law which are solely within the province of the courts of the State of New Mexico, and not within the province of an administrative agency.

I respectfully urge the Commission to dismiss the application on the grounds of lack of jurisdiction, and I ask that this letter be made a part of the record of your office relating to the application.

Respectfully yours,


James E. Sperling

JES:jv

Before the
NEW MEXICO OIL CONSERVATION COMMISSION

at

SANTA FE, NEW MEXICO

EL PASO NATURAL GAS COMPANY'S
STATEMENT IN OPPOSITION TO
H. C. BERRY, APPLICANT, FOR
FENCING ORDER, RIO ARriba AND
SANDOVAL COUNTIES, NEW MEXICO

Docket No. 3858

El Paso Natural Gas Company as owner and operator of oil and gas leases within the area described in this case, respectfully opposes the request of applicant, H. C. Berry, for a fencing order for oil and gas installations. Without admitting the accuracy or the validity of the allegations of the applicant relative to waste oil upon the surface of applicant's premises, or the extent of damages resulting therefrom, it is our position that redress for such damages, resulting from negligence, unworkmanlike or poorly maintained oil field operations, should be sought in a court of law. For the applicant to apply to this Commission for general relief through a fencing order as broad as this one is inappropriate because it exceeds authority granted in the Act. An administrative act will be struck down by the courts whenever that act exceeds the limits of the statute the Commission is constituted to implement or whenever the Legislature attempts to delegate its prerogatives to a commission.

The Oil and Gas Conservation Act in New Mexico is set forth in New Mexico Statutes Annotated, 1953, Chapter 65; Article 3, §§ 1 through 34. The enumeration of the powers and duties of the Commission in Sections 5, 7, 10, 11, and 11.1 of the Act do not include by the broadest implication the unreasonable, inappropriate and unduly burdensome power of requiring all oil and gas operators to fence their

installations for the benefit of other surface users. Except in instances of fire, breaks, leaks or blowouts, oil goes to storage and then is transported by truck or pipeline to market. The only occasion for there to be a planned or expected disposition of oil related matter is when tank bottoms and similar forms of oil field waste are disposed of. Because the discharge of these substances onto the surface occurs in the normal course of operations and occasionally in emergency conditions the Commission wisely requires such oil field wastes to be placed in pits which shall be fenced and the fence kept in good repair, under Rule 313 of the Commission Rules. The disposal of oil or oil field waste onto the surface under any other circumstances is prohibited under the Commission Rules. Except for pits, fencing places a restriction and burden on the use of property which is unreasonable and oppressive. Legal writers and courts everywhere agree that even though ends sought to be achieved by certain legislative enactments are within the police power, the methods and procedures provided may be constitutionally objectionable whenever they are unreasonable, arbitrary, or oppressive and not really designed to accomplish the expressed purpose of the act. We submit such is the case in this application.

To justify a state in interposing its authority in behalf of the public by the exercise of its police power, it must appear that the interest of the public requires such interference, and that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. This commission has authority and power under the Act to require operations to be conducted in such manner as not to injure another's property. Those violating the standard

required should be disciplined, if operations are injurious to another. There may be ten or twenty or a hundred instances where evidence is available to show where a pipe is leaking, a loading area soaked in waste oil, sludge drained from a tank; but there may be thousands of wells and other installations which are properly operated and maintained. Must several thousand fences be erected because ten or a hundred oil field installations are maintained in a manner violative of existing rules? The solution is proper enforcement of the Act as it is; namely, clean up and operate in a workmanlike manner. It is not a valid solution within the power of the Commission to condone poor operation and by an expedient alternative require everything to be fenced. The basic issue to which we address ourselves is whether the Commission may constitutionally correct deficient operation by issuing an order which has no statutory sanction or justification in reason.

We, therefore, respectfully urge the Commission to dismiss the application of H. C. Berry on the ground that the Commission has the power and authority already delegated to it under the Act to correct the existing situation and for the further reason that the order requested is unreasonable.

Dated at El Paso, Texas, September 17, 1968.

Respectfully submitted

EL PASO NATURAL GAS COMPANY

by:

Robert A. Meyer
Robert A. Meyer
Attorney
Office of General Counsel

RAM/am
9/17/68

BERRY FARMS

H. O. BERRY

P. O. Box 407
DEXTER, NEW MEXICO

PHONE 734-5897

August 13, 1968

PH 12 58
15
20 AUG 15



COTTON



CATTLE



ALFALFA

Case 3858

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

Dear Mr. Porter:

As your office is well aware, livestock losses on our ranch have been heavy this year, and we believe that this has been caused by their consumption of crude oil. Verification of the accessibility of crude oil has been made by your field men, State Land Office personnel, BLM personnel, veterinarians and others. Almost without exception, every location has at one time or another been a hazard to livestock because of crude oil.

To remedy this deplorable, dangerous situation and to prevent its reoccurrence, I formally request and make application for the Oil Conservation Commission to hold hearings to consider the proposition that all oil operators that operate within the boundaries of my ranch be required to construct and maintain in good condition "livestock-proof" (in this case, cattle) fencing of all well-head equipment, tank batteries, pumping installations, disposal pits, oil pipeline risers and valves, and similar oil-field installations. We also request that all oil-transporting pipelines be of oil-tight, leak-proof construction and maintained to prevent any leakage or spilling onto the surface, and constructed in such manner as to eliminate any hazard to livestock or personal property. These requirements are to be followed whether they are located on fee land, leased land, or surface user permit land.

As you know, the ranch is located within Rio Arriba and Sandoval Counties, New Mexico, with Highway 44 besecting it east to west. All the lands within said boundaries, with one small exception, are owned or leased by me. The legal description of the outside sections are as follows, starting with the northeast corner and moving south and westward:

Advertisement
CKET MAILED BOCKET MAILED
Date 9/5/68 Date 8-30-68

Sections 1, 2, 11, 14, 23, 22, 21, 29, and 30
Township 25 North, Range 6 West.

Sections S $\frac{1}{2}$ 25, S $\frac{1}{2}$ 26, and E $\frac{1}{2}$ 35, Township 25N, Range 7W

Sections 3, 10, 9, 8, E $\frac{1}{2}$ 17, 16, E $\frac{1}{2}$ 20, 21, E $\frac{1}{2}$ 29, 28,
and 33, Township 24 North, Range 7 West.

Sections E $\frac{1}{2}$ 4, 3, N $\frac{1}{2}$ 10, 11, 14, and 13, Township 23
North, Range 7 West.

Sections 19, 30, 31 and 32, Township 23 North,
Range 6 West.

Sections N $\frac{1}{2}$ 5, N $\frac{1}{2}$ 4, 3, E $\frac{1}{2}$ 10, 11, 12, and 1,
Township 22 North, Range 6 West.

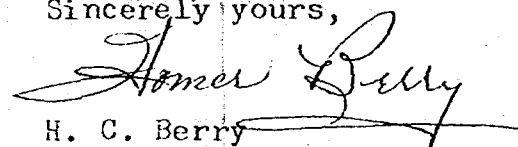
Sections 36, 25, 24, 13, 12, and 1, Township 23 North,
Range 6 West.

Sections 36, 25, 24, 13, 12, and 1, Township 24 North,
Range 6 West.

Sections 36, 25, 24, 13, and 12, Township 25 North,
Range 6 West.

Your favorable consideration to hold a hearing on
this matter at the earliest meeting date will be appreciated.
Awaiting your reply, I remain

Sincerely yours,


H. C. Berry

DOCKET: REGULAR HEARING - WEDNESDAY - SEPTEMBER 18, 1968

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

ALLOWABLE: (1) Consideration of the oil allowable for October, 1968:

(2) Consideration of the allowable production of gas for October, 1968, from thirteen prorated pools in Lea, Eddy, and Roosevelt Counties, New Mexico. Consideration of the allowable production of gas from nine prorated pools in San Juan, Rio Arriba and Sandoval Counties, New Mexico, for October, 1968.

CASE 3858: Application of H. C. Berry for an order requiring the fencing of oil-field installations, Rio Arriba and Sandoval Counties, New Mexico. Applicant, in the above-styled cause, seeks the promulgation of an order requiring the fencing of all wellhead equipment, tank batteries, pumping installations, disposal pits, oil pipeline risers and valves, and all similar oil-field installations located on applicant's ranch in Rio Arriba and Sandoval Counties, New Mexico, said ranch occupying that area more particularly described as follows:

RIO ARRIBA AND SANDOVAL COUNTIES, NEW MEXICOTOWNSHIP 22 NORTH, RANGE 6 WEST

Sections 1 through 3: All
Section 4: N/2
Section 5: N/2
Section 10: E/2
Sections 11 and 12: All

TOWNSHIP 23 NORTH, RANGE 6 WEST

Sections 1 through 36: All

TOWNSHIP 23 NORTH, RANGE 7 WEST

Sections 1 through 3: All
Section 4: E/2
Section 10: N/2
Sections 11 through 14: All

TOWNSHIP 24 NORTH, RANGE 6 WEST

Sections 1 through 36: All

TOWNSHIP 24 NORTH, RANGE 7 WEST

Sections 1 through 3: All
Sections 8 through 16: All
Section 17: E/2
Section 20: E/2
Sections 21 through 28: All
Section 29: E/2
Sections 33 through 36: All

(CASE 3858 CONTINUED)

TOWNSHIP 25 NORTH, RANGE 6 WEST

Sections 1 and 2:	All
Sections 11 through 14:	All
Sections 21 through 36:	All

TOWNSHIP 25 NORTH, RANGE 7 WEST

Section 25:	S/2
Section 26:	S/2
Section 35:	E/2
Section 36:	All

CASE 3859: Application of Wilson Oil Company for an exception to Order No. R-3221, as amended, Lea County, New Mexico. Applicant, in the above-styled cause, seeks an exception to Commission Order No. R-3221, as amended, which order prohibits the disposal of water produced in conjunction with the production of oil on the surface of the ground in Lea, Eddy, Chaves and Roosevelt Counties, New Mexico, after January 1, 1969. Said exception would be for applicant's leases in Sections 13, 23, and 24 of Township 21 South, Range 34 East, and Sections 7 and 18 of Township 21 South, Range 35 East, Wilson Yates-Seven Rivers Pool, Lea County, New Mexico. Applicant, seeks authority to continue to dispose of produced water in seven unlined surface pits located in the center of the W/2 of said Section 13, center of the W/2 SE/4 of said Section 13, SW/4 NE/4 of said Section 23, center of SW/4 of said Section 24, center of NE/4 of said Section 7, NE/4 SW/4 of said Section 7, NW/4 NW/4 of said Section 18. In the alternative, applicant seeks an extension of time in which to comply with the provisions of said order.

CASE 3860: Application of T. J. Sivley for an exception to Order No. R-3221, as amended, Lea County, New Mexico. Applicant, in the above-styled cause, seeks an exception to Commission Order No. R-3221, as amended, which order prohibits the disposal of water produced in conjunction with the production of oil on the surface of the ground in Lea, Eddy, Chaves, and Roosevelt Counties, after January 1, 1969. Said exception would be for applicant's Silver Federal lease in Section 28, Township 20 South, Range 34 East, Lynch Yates-Seven Rivers Pool, Lea County, New Mexico. Applicant seeks authority to continue to dispose of produced water in an unlined surface pit located in the NW/4 SE/4 of said Section 28. In the alternative, applicant seeks an extension of time in which to comply with the provisions of said order.

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

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BEFORE THE
NEW MEXICO OIL CONSERVATION COMMISSION
Santa Fe, New Mexico
September 18, 1968

REGULAR HEARING

IN THE MATTER OF:

Application of H. C. Berry for an order
requiring the fencing of oilfield
installations, Rio Arriba and Sandoval
Counties, New Mexico.

Case 3858

BEFORE: A. L. PORTER, JR.
Examiner

MAIN OFFICE 000

'60 Oct 31 AM 8 25

TRANSCRIPT OF HEARING

MR. PORTER: We'll take up Case 3858.

MR. HATCH: Case 3858. Application of H. C. Berry for an order requiring the fencing of oilfield installations, Rio Arriba and Sandoval Counties, New Mexico.

MR. DONNELLY: May it please the Commission, Mr. Chairman, my name is Tom Donnelly. I'm appearing here with co-Counsel, Mr. Arturo Ortega on behalf of the Petitioner, Mr. H. C. Berry and, if we may, we would like to inquire what other counsel are on behalf of any of the Respondents or other interested parties if that may be in order.

MR. PORTER: What was your request on now?

MR. DONNELLY: May we ask for the record what other parties may be --

MR. PORTER: Yes. We're going to call for appearances at this time, Mr. Donnelly. May I ask first, does anyone else intend to present testimony in this case? Mr. Morris.

MR. MORRIS: Mr. Porter, I'm Richard Morris of Montgomery, Federici, Andrews, Hannahs and Morris of Santa Fe appearing for Southern Union Gas Company. Southern Union may desire to present evidence in this case depending upon the nature of the applicant's testimony.

MR. PORTER: Thank you. Does anyone else desire to present testimony? Does anyone else desire to make an appearance for the purpose of making a statement of position for the record

or to cross examine the witness?

MR. EATON: George Eaton with Pan American Petroleum Corporation. I'll have a statement to make.

MR. KELLAHIN: Jason Kellahin, Kellahin and Fox, Santa Fe, appearing on behalf of Amerada Petroleum Corporation.

MR. PORTER: The gentleman back there.

MR. MEYER: R. A. Meyer, El Paso Natural Gas Company on behalf of El Paso. Statement in opposition.

MR. JACOBS: Ronald J. Jacobs, appearing on behalf of Skelly Oil Company.

MR. CROUT: Stanley Crout of Bigbee and Byrd, appearing on behalf of Beco, Inc.

MR. PORTER: Does anyone else desire to make an appearance in Case 3858?

MR. GRIFFITH: William Griffith appearing on behalf of Camerland Pipeline. We may or may not wish to make a statement.

MR. PORTER: That concludes the appearances. The Commission will recognize Mr. Donnelly.

MR. DONNELLY: At this time, if it please the Commission, I would like to make a very brief statement on behalf of Mr. Berry and then we would propose to offer some testimony from Mr. Berry and one other witness.

I'd just like to briefly, as a statement for now, to point out to the Commission that Mr. Berry has petitioned the

Commission respectfully to issue an order or regulation requiring that fencing or cattle-type fences be placed around certain well-producing installations and facilities located on his ranch in Rio Arriba County and Sandoval County, New Mexico.

Mr. Berry, very briefly, owns a ranch in Rio Arriba and Sandoval Counties, approximately 80,000 acres. It's a unique ranch. In one respect, it's one of the few large ranches in New Mexico that has a vast amount of oil-producing installations. This causes certain problems to Mr. Berry, notably, hazardous conditions have developed there in the last several years which, if unchecked and unregulated, contribute to the production of waste, petroleum facilities which we submit it is within the province of this Commission to regulate and it also is contributing to a hazardous condition towards Mr. Berry's cattle livestock-raising occupation.

Just briefly, as I'm sure the Commission is well aware, this Commission, under Section 65-3-2 of the New Mexico Code Annotated, is given the jurisdiction to prohibit, regulate the production or handling of crude, petroleum oil or natural gas of any type or any form, or the handling of products thereof in such a manner or under such conditions when such amounts as to constitute or result in waste, is each hereby prohibited.

Similarly, in Section 65-3-10 of the New Mexico Statutes, it is expressly stated that the Commission is hereby

empowered and it is its duty to prevent the waste prohibited by this Act and to protect correlative rights as in this Act provided, and to that end, the Commission is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purposes of this Act whether or not indicated or specified in any section thereof.

And there is one further section, Mr. Chairman, 55-3-11 of the New Mexico Statutes which enumerates other powers of the Commission and, in part, that section provides that the Commission has the power to require that wells be drilled, operated and produced in such manner as to prevent injury to neighboring leases or properties.

It is under those specific sections, Mr. Chairman, that we are respectfully requesting on behalf of our client that some regulation be imposed, specifically, to protect his livestock from hazardous oil and petroleum waste being made available to those livestock.

At this point, subject to the Commission's pleasure, we would at this time present our first witness, Mr. Berry, himself.

MR. PORTER: Do you have more than one witness, Mr. Donnelly?

MR. DONNELLY: Yes, sir. We also have a veterinarian, Doctor Wiseman as our second witness.

MR. PORTER: Let's have both the witnesses sworn at this time.

(Witnesses sworn.)

MR. PORTER: Mr. Berry, will you take the stand at the end of the table, please, sir?

H. C. BERRY

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

DIRECT EXAMINATION

BY MR. DONNELLY:

Q Mr. Berry, would you please state your name and address for the benefit of the Commission and other interested parties?

A H. C. Berry, Dexter, New Mexico.

Q Mr. Berry, do you own and operate a ranch in northern New Mexico in Rio Arriba and Sandoval Counties?

A Yes, sir.

Q And specifically, can you pinpoint the location of that ranch?

A You mean by townships?

Q Just generally.

A Well, it's in Rio Arriba and Sandoval, approximately thirty miles west of Cuba. It joins the Jicarilla Apache Reservation.

Q And what is the extent or size of that ranch, generally?

A About 80,000 acres.

Q Does that compose State leaseland and other types of holdings?

A Yes, sir. It's land over which I have surface rights.

MR. PORTER: And that's composed of both State and Federal lands?

THE WITNESS: Yes, sir, and Fee land.

MR. PORTER: State, Federal and Fee lands?

THE WITNESS: Yes, sir.

Q Now, Mr. Berry, how long have you held that ranch?

A I bought the ranch in 1964, took possession January 1st, 1965.

Q Are you familiar, Mr. Berry, with the oil installations and oil-producing facilities located within the boundaries of your ranch?

A Yes, sir.

Q And I believe you were given a notice sent out by the Oil Commission enumerating the parties that had received notice of this hearing, is that correct?

A Yes, sir.

Q And, generally, Mr. Berry, are the companies and individuals listed thereon as the companies that received

notice, do those comprise an itemized listing of the companies or individuals holding or operating oil facilities within your ranch?

A Yes, sir.

Q Now, have you personally gone around and inspected every one of these installations within the period of the last few months?

A Yes, sir.

Q You personally inspected each one of these?

A Yes, sir.

Q Now, can you describe to the Commission, giving the times, generally, that you made these inspections, the conditions that you found these installations to be in, generally?

A Generally, the installations, I would say, were in very poor condition as far as accessibility of waste products, crude oil, the accessibility thereof by livestock which I was running on the ranch.

At one time or another, almost one time or another, I think it's a fair statement to say that almost without exception, every installation had, in varied amounts, had crude oil that was accessible to my livestock.

Q Now, Mr. Berry, what type of livestock do you raise at your ranch?

A Cattle.

Q Do you have any other types of livestock?

A Horses.

Q And approximately how many cattle do you have there at the present time?

A About 1200, a little over 1200.

Q That's 1200 head of livestock?

A Yes.

Q Cattle?

A Yes.

Q What variety?

A They're nearly all hereford. There's a few angus. We have a few angus bulls, a few crosses.

Q Now, Mr. Berry, have you suffered any livestock losses?

A Yes, sir.

Q And can you advise the Commission, generally, what the nature and extent of your losses have been?

A Well, it's been approximately we've had fifty cows that we have found dead that we have attributed to oil poisoning. There's about that many that we cannot account for, we can't find and due to the nature of the country, we assume that they are dead by the same reason.

The terrain is very rough and very brushy. I think this could account for the reason we can't find them. There is approximately that number of cattle that are sick to which we

attribute oil poisoning by --

MR. PORTER: You mean a hundred cattle or fifty that are sick?

THE WITNESS: About fifty. Now, these figures are approximate. These figures are all approximate.

Q Now, Mr. Berry, you stated that these figures are approximate. Is this because of the continued possibility of exposure to petroleum makes this a continuing situation?

A To a lesser degree now than it was a month ago.

Q Now, regarding these installations, are any of these installations, and I'm referring to installations by major oil-producing facilities or storage tanks, batteries and so on, are any of those unfenced within your property?

A Yes, sir.

Q Are any of them fenced?

A Yes, sir, some of them are fenced.

Q Can you just generally, for the Commission's benefit, indicate the extent of unfenced installations?

A I would say more than half of them are unfenced. No fence at all. Some of them that are fenced, the fences are in very poor condition. They are not anyways near cattle-tight.

Q Now, can you describe the installations generally that are fenced? What is the nature of the fencing and the extent of it?

A Well, it varies from absolutely nothing to pretty good. There's a few installations that are far well fixed, and some of them, the fences have been there. They're old. They have been there for years and they're in the condition that they offer hardly any resistance to the entry of cattle.

MR. PORTER: Mr. Berry, would you speak a little louder, please, sir?

THE WITNESS: All right, sir. I'm sorry.

Q Now, Mr. Berry, in addition to the cattle that you've indicated that you lost, outright, through death, I wonder if you could clarify the number that are, to some degree, impaired from the injury, and if you have any notes or if you have any records or anything, I ask you to be as specific as you can for the benefit of the Commission and other interested parties.

A To the best of my ability and knowledge, I think that we've got probably three to 400 cattle that are impaired to a degree. This varies from very little to quite a lot.

Q Have you endeavored, Mr. Berry, to obtain professional advice as to the specific causes of your livestock losses?

A I have.

Q And have you consulted any veterinarian to endeavor to specifically pinpoint the exact causes of your livestock losses?

A I have.

Q Now, Mr. Berry, regarding the causes of your livestock

loss, how long have you been in the ranching business?

A Well, my father before me, and for myself, ever since I can remember.

Q And approximately how long has this been?

A Well, I'm 44 years old, and I remember cows when I was 6, and in business for myself for about twenty years.

Q And during this period of time, have you devoted your main interest and efforts in ranching and livestock raising?

A Ranching and farming, yes, sir.

Q Now, Mr. Berry, going to --

MR. DONNELLY: If I may, for the benefit of the Commission, I wonder if I may have four exhibits marked?

MR. PORTER: Will the Reporter mark the exhibits, please?

(Whereupon, Applicant's Exhibits Numbers 1 through 5, inclusive, were marked for identification.)

Q Now, Mr. Berry, have you endeavored to call to attention of any of the oil operators or owners or parties or companies having an interest in these oil installations located within the boundaries of your ranch, have you endeavored to call the attention of these various companies or owners to the condition of their various installations on your ranch?

A Yes, sir, this has been a continuing thing within the last two or three years.

Q And to your knowledge, have you endeavored to attempt to secure their cooperation or assistance voluntarily?

A Yes, sir, I have.

Q And, in general, has that been successful?

A In a few instances, yes; generally, no. In the majority of the cases, no.

Q Now, when you say in the majority of the cases, no, can you specifically enumerate what particular companies or installations have not seen fit to cooperate or assist in preventing your cattle from being exposed to petroleum products?

A Well, I think we could name almost all of them with a few notable exceptions. We have Kimbell, Skelly and almost all of them with a few notable exceptions have not given consideration to my rights or the protection of my livestock.

Q Now, let's get specific, Mr. Berry. Can you indicate the type of hazard or injury that has occurred or is occurring to your property and livestock?

A Yes, sir.

Q And can you describe to the Commission for the record, what this is?

A Yes, sir. Waste pits from oil wells improperly fenced or not fenced at all. Where they have been fenced, they have been allowed to overflow. Storage tanks that have overflowed. Oil becoming available on the ground around them. The separators

allowed to operate in the same condition. The oil wells themselves around the packing plants allowed to leak and continue to operate in this manner, creating puddles of oil that cattle can walk right up and drink at. Rupturing pipelines spilling out out on the surface. Valves, and I suppose you call them risers, they're valves on oil pipelines that are exposed and cattle are curious beasts and they'll rub and push and crowd and fight, they'll knock the valves off of these oil lines and allowing oil to escape. Oil spilled on the ground from the process of loading from storage facilities onto trucks and left lay there. Oil wells, for one reason or another, flowing out onto the ground in an unfenced area.

Q To what extent have you suffered surface damage?

A Well, considerable. I'd say that there's ten, fifteen, twenty acres over at the ranch that I haven't lived long enough to know how long it will take for this land to become productive again, but it has been allowed to run out on the surface and ruin all vegetation.

Q Is this crude oil?

A Crude oil, yes.

Q Now, you stated a moment ago, Mr. Berry, that this oil constituted a hazard to your livestock or to your cattle. In what manner, specifically, does it constitute a hazard?

A Well, they either drink it or eat it.

Q And what has been your personal observation as a rancher of the result of cattle drinking or ingesting oil that has been left exposed?

A It either kills them or leaves them awful sick or it damages them to the point that they are no longer a good economic unit; internally, now, this is internal damage. It either kills them or makes them real sick.

Q Mr. Berry, at this time, I hand you what has been marked Applicant's Exhibit 1 through 5 and I ask you, Mr. Berry, if you would please look at those and indicate if you are familiar with what those exhibits comprise?

A Yes, sir.

Q What are those? Are those photographs?

A These are photographs, yes, sir.

Q Were you personally present when those photographs were taken?

A I was.

Q And where were they taken?

A On my ranch.

Q And calling your attention to Exhibit 1, what does that depict?

A This is a typical waste pit from an oil well showing a typical type of fence.

Q Specifically, do you have the installation there?

A Yes.

Q What company, if you --

A I think this is from J. Gregory Merrion's operation, Section 16.

Q And does that Exhibit 1 photograph correctly, truly portray the matters shown therein?

A Yes, sir, as it existed at that time.

Q And, generally, is that characteristic of the facilities of similar nature of other companies?

A Generally, and at that time.

Q Now, referring to Exhibit 2, can you advise the Commission what is portrayed therein?

A Yes. This is a fence. This is a fence around an oil installation. The fence is good, but the oil has seeped underneath the fence. It has leaked. It has overflowed and passed under the fence.

Q And in so doing, has it become available to your cattle?

A Yes, sir, this is all in this.

Q Have you observed the cattle tracks?

A I have.

Q And cattle coming into contact with this?

A I have.

Q Does that correctly portray the matters as you saw

them at the time the photograph was taken?

A It does.

Q Calling your attention to the third exhibit, Mr. Berry, where is that? Where was that photograph taken?

A On my ranch.

Q And has it identified the installation, the particular installation?

A Yes.

Q And what company was that?

A Skelly Oil.

Q Was that a fenced or unfenced installation?

A Unfenced.

Q And does that photograph correctly portray the matters that you saw at the time it was taken?

A It does. It shows very clearly the well head itself and oil on the ground and at a great amount.

Q And as to Exhibit 4, Mr. Berry, what is depicted in that exhibit?

A It's a larger -- It encompasses the whole installation of the same well, taken at the same time.

Q And does that correctly show what is in the photograph?

A It does.

Q Do you know approximately the date that this exhibit and the other exhibits were taken?

A I think it's dated on the back. It's the 6th of June, this year.

Q Now, I call your attention to the final exhibit, Exhibit 5, what does that exhibit show, Mr. Berry?

A This is another waste pit showing the fence around it. Oil outside and cattle tracks in the oil.

Q Does that correctly portray what is shown in the photograph?

A It does.

Q And were you present when all of these exhibits were taken?

A I was.

Q And when were they all taken?

A That one was in June, and most of them, I think, are dated. I believe they were in June or July.

MR. DONNELLY: Mr. Chairman, we would move the admission of these exhibits into the record.

MR. PORTER: Does anyone have any objection to the admission of these exhibits? These exhibits will be admitted.

(Whereupon, Applicant's Exhibits Numbers 1 through 5, inclusive, were admitted in evidence.)

Q Now, Mr. Berry, are these, in general, characteristic of many of the installations of other companies on your ranch?

A They are..

Q Now, have you, by reason of the way in which these oil installations have been operated, have you been deprived of the use of any areas of your ranch?

A I have.

Q And can you inform the Commission the extent of the areas of your ranch and the time periods that you have been deprived of the use of your ranch?

A Well, in the pasture we call Canyon Largo, we were forced to move out, move our cattle out of that pasture due to the extremely hazardous condition of not only pipelines, but some producing wells in the area. We moved out, as best I recall, the latter part of May or the first of June, or it could have been the month before. I think maybe it was the latter part of April or the first part of May, and we started to move back into this pasture in July.

Q What numbers of livestock were you required to move?

A Well, at that time, we had over 600 cows in this particular pasture, and it was -- our losses were immediate, extremely heavy, and it was either to move them out or leave them there and let them die and continue to drink crude oil and die. This was brought to the attention of the man in charge of the oil installation and they would make an effort to repair, but they'd repair one bad situation and another one would develop. So we had to move our cattle or lose the balance of them.

As I pointed out, we were attempting to move back in July with about 200 mother cows and their calves, and on that very day, about thirty minutes before the cowboys let them go in this pasture, I discovered a very extremely hazardous condition and we had to turn them back around and go into another pasture.

Q Now, in the other pastures or areas of your ranch, have you also encountered to some extent a hazardous condition by reasons of unfenced or uncontrolled or unmaintained oil installations?

A Mr. Donnelly, in every pasture, without exception, in every pasture which we run cattle, at one time or another, there has been hazardous conditions existed and oil available.

Q To the cattle that are grazing in that area?

A To the cattle.

Q Approximately how big is this Canyon Largo pasture that you referred to a moment ago?

A There's about twelve, fifteen sections.

Q Is that one of your better grass pastures?

A It's probably the best pasture on the ranch. It's mostly bottom land and the Largo Wash runs through it.

Q As to availability, what is the pasture's availability of water and other facilities for cattle?

A In that pasture?

Q Yes.

A Very good because there's water all up and down the pasture and it's probably the best pasture we have.

Q Now, Mr. Berry, a moment ago, you stated that these exhibits depicted the oil installations at that time, which I believe you stated was approximately in June of 1968. Have the conditions changed appreciably to the present time as to the maintenance of these oil installations by the various companies?

A I would say that there has been considerable effort made in the last few weeks to clean up. They have started some of them, have started fencing and made an effort, but it's still, in my opinion, short of what is required; and if one operator or one installation is fenced properly and the next one is not, you don't accomplish the protection which we're asking for.

I think they all have to be fenced, without exception, and all installations fenced. I'm including the well heads, the complete installations.

Q Mr. Berry, have you encountered situations of areas that are properly fenced, but gates and other --

A Yes. I ran across this where an installation would be well fenced, and the gate open.

Q Have you encountered any --

A And I closed the gate. The next day, went back, and it was open again.

Q Have you encountered any problems where the installation

was well fenced, but through the maintenance or operation of the installation, oil has been allowed to leak or penetrate outside?

A Yes. Since there's no deterrent to live oil, it will run through it.

Q Now, in those areas that an effort has been made by the operators to fence, are the fences constructed in such a manner that they're far enough away from the oil pits or installations as to be an effective buffer or barrier between the cattle and the oil?

A Generally not. For example, on a waste pit, if a fence is put right on the edge of the waste pit, an old cow can reach through regardless. If she can get her head between the wires, she can reach through about three feet with just her head.

Q Now, Mr. Berry, I refer you to Applicant's Exhibit 1 in evidence, I believe you referred to that as a waste pit previously.

A Yes.

Q That's shown on that.

A Yes.

Q Is that characteristic of what you have just testified to that the fence is right to the extreme edge of the waste pit?

A It is, and in this particular one, they used steel

posts of a type that we used to build chicken fence and driven in the ground approximately four inches. It's very loose and very sandy. It's no deterrent to cows. As a matter of fact, I think it would be better without anything because the cow is going to rub and she's curious to know why that fence is there and she'll go through it if she can, and she certainly could this one.

Q Now, you stated a moment ago that some operators have made some effort to correct the fencing situation. Have they in any instance moved their fences further from the oil pits?

A They have; one particular one that I know.

Q Is this something that needs constant effort on the part of the oil operators to oversee and check out?

A As far as the fences are concerned and the waste of the oil which makes a hazard to cattle, this is a continuing thing, the maintenance thereof. Even on our ranch where there's no danger where we're not trying to protect the cattle, just merely keep them separated or better use of the range, we have to constantly repair our fences, keep them in good shape, and as I pointed out or you pointed out, the best fence in the world is not going to keep escaping oil from running under the fence and becoming available.

Q To specify with some particularity, Mr. Berry, can you advise the Commission, have there been ruptures of these oil

installations, lines and other facilities on your ranch in the last several months of considerable magnitude?

A There have been, yes.

Q And can you give the times, approximately, and the extent of these large oil ruptures?

A It started in our biggest single rupture was in March. This was on a pipeline. The first part of March.

Q And for what distance did the rupture drain oil?

A Oh, there were innumerable ruptures and they varied from anywhere from a hundred yards to the bottom of the river.

Q How long were these ruptures allowed to remain without being checked?

A One of the big ones was over a week that it ran out on the ground over a week; I think the full capacity of the pipeline.

Q Can you identify the particular pipeline?

A That was Camerland, yes.

Q Since that big rupture that you have just spoken of, have you had other ruptures?

A We have.

Q And what oil breaks or waste petroleum incidents, other than that one you just testified, occurred?

A Well, in a completely different pasture in that same pasture, there was one oil well that the waste pit was completely

unfenced. It might have been attempted to have been fenced in years past, but there wasn't any fence at that particular time.

Q What specific operator was that?

A This was Kimbell, Kay Kimbell. Then after the pipeline ruptured and a completely different set of cattle that had never been in the area of the pipeline in -- well, the dates fail me. It was in June or July. There was quite a few bad installations in one particular pasture. These are oil well installations. And we lost several head of cattle there which were from oil well installations.

Then we had a pipeline in another pasture that a couple of bulls got to fighting and they knocked the valve, exposed valve, off the pipeline and the pipeline started flowing again.

Q And what was the extent of the waste oil that flowed as a result of that one occasion?

A Well, considerable. It covered an area probably of four or five acres.

Q Spewing crude oil out over the dirt?

A Crude oil, yes, flowing out.

Q Mr. Berry, have you, within the recent few weeks, had a situation where in changing the pipe or in working on a well, a hazardous condition develop just recently?

A Yes, sir.

Q Can you explain to the Commission what that circumstance

was?

A Yes, sir. This well was being repaired and --

Q What well was that?

A This was El Paso Products. The well was being repaired and after repairing, the company that did the repairing, we assume left the valve open on the casing in the well head, had no pump in the well at this time, and after one of my employees came by as they were hauling the last load out, and he was covering up that waste oil, himself, and he saw one of the Paso employees later and told him that it was left in kind of a mess and El Paso's employee went over and saw that it was in a mess. But during this interval, later on, I'd say within twelve hours after he left, I suppose the pressure of the gas built up in the casing and the repairing crew had left, or we assume that they left the valve open because it was open and it started spewing oil and flowing and the location of this well is right next to one of our cattle watering tanks. And there were, oh, 80, 100, 150 cattle there at that time when it started spilling this oil.

Q Now, Mr. Berry, in addition to the situations you've just testified to, have you personally observed within the last several months, oil storage tanks which have considerable amount of oil on the sides of these tanks which cattle might come up and lick?

A I have, and I've seen them licking them.

Q Can you pinpoint the time? Would this have been in July or August of this summer?

A It would have been in July or August.

MR. DONNELLY: Mr. Chairman, I have one further exhibit.

(Whereupon, Applicant's Exhibit Number 6 was marked for identification.)

Q Now, Mr. Berry, I hand you what's been marked Applicant's Exhibit Number 6 for identification. Are you familiar with that document, generally?

A I am, sir.

Q And just generally, what is that exhibit?

A This constitutes a report of the State Land Office personnel on an inspection trip to my ranch at my request, my complaint.

Q Mr. Berry, have you read that report carefully?

A I have.

Q Were you personally present at every installation that is enumerated in that report?

A This report covers two trips. On the first trip, I was present. The second trip, my foreman was. But at all the installations that are named here, I have been to or had been to.

Q And were you at those installations that are listed in that report on either of those days or within a very few days, either prior or after?

A I was.

Q To the best of your personal knowledge, Mr. Berry, are the matters recited in that report basically, substantially correct?

A They are.

Q And just generally, what does that report indicate? Does that describe the condition and appearance?

A It describes the condition, the appearance, the situation on June 10 and June 5th.

Q 1968?

A 1968.

Q Of oil installations located on your ranch?

A Of oil installations located on my ranch.

MR. DONNELLY: Mr. Chairman, we would like to move the introduction of this exhibit, if we might, into the record.

MR. PORTER: What were those dates? June 5th and June 10th?

THE WITNESS: Yes. The dates of the inspections were June 5th and June 10th.

MR. PORTER: Are there any objections? The exhibit will be admitted.

(Whereupon, Applicant's Exhibit Number 6 was admitted in evidence.)

Q Now, Mr. Berry, I have one final question I'd like to

ask you. Based on your years as a cattle rancher, livestock raiser, do you have an opinion as an expert in this area as to whether or not a continuing hazard presently exists and will exist in the future to your livestock operations if waste petroleum products are not regulated by the owners and operators of oil installations on your ranch in a tighter fashion than they are presently doing?

A Let me answer the question in this way, Mr. Donnelly: One more year like this year, and for testimony on that, I leave to the expert witness in this field, the veterinarian, one more year like this one and I'm out of business.

As far as producing cattle, salable cattle, as far as realizing income on a considerable investment that I have in that ranch, if my losses continue as they have this year, I'm out of business.

Q Now what sort of control and regulation is necessary in order to prevent this waste of petroleum products and exposure of, consequent exposure to your cattle, what sort of regulations and maintenances, in your opinion, are required?

A Well, I think it's not only in my opinion. It's also the opinion of a great many other people that are familiar with livestock operations: Number one, the hazard, the availability of the hazard has to be removed. This can be accomplished, of course, one or two ways. You can either shutdown or you can fence them

off and keep the cattle out of them. It's that simple.

Q In addition to fencing, does it require constant or regular careful maintenance on the part of the operators?

A Yes, I would think it would also behoove them to prevent waste because this is costing them money and it requires constant supervision and maintenance of their facilities.

Q Now, you referred earlier, I believe, Mr. Berry, to several pipelines or one particular pipeline. I believe you said Camerland Pipeline. Have you had occasion to personally inspect that recently?

A I have.

Q In general, is that pipeline buried or on the surface?

A It's all exposed in the area that the breaks occurred and basically, they've occurred in four different areas.

Q And can you --

A And they are still exposed. I mean, the pipeline itself has been partially replaced. Part of the pipeline has been replaced.

Q Is this an oil pipeline?

A This is a conductor of oil, as I understand.

Q Of crude oil?

A Crude oil.

Q Can you advise the Commission, generally, what the quality of that pipeline is? By that, I mean the condition of the

pipeline itself.

A Mr. Donnelly, I'm no expert in pipelines, but as I have driven along the replaced pipeline and, for example, you'll run across four or five sections of pipe welded together; it's all welded together, that look good, and then you'll find one section that's rust-pitted, old, and I understand that this was an old pipeline, used pipeline that they brought in and --

Q Did you find a number of patches or repairs clearly visible along the line?

A Not on the pipeline that they are now using. On the pipeline that was in operation, there were innumerable repairs and patches. They'd repair it and it would blow somewhere else. But the pipeline itself now, as I said, I'm no expert, but there will be a string of pipe, four or five joints that look good. Then there will be one joint that's rusted, pitted and I point out that no chain is stronger than the weakest link. I mean they can have a string of a mile of brand new, good pipe and just one joint that's bad. They'll have the same problem again.

Q In general, Mr. Berry, have there been periodic breaks most of this summer on that pipeline?

A There have been.

Q And has that occasioned you to move cattle out of the pasture and keep them out?

A It has.

MR. DONNELLY: Thank you, Mr. Berry. That's all.
There may be some other questions from other parties.

MR. PORTER: We're going to have a ten-minute recess
after which the witness will be available for cross examination.

(Whereupon, recess was had.)

MR. PORTER: The hearing will come to order, please.
Does anyone have a question of Mr. Berry? Mr. Morris.

CROSS EXAMINATION

BY MR. MORRIS:

Q Mr. Berry, I'm Dick Morris representing Southern Union
Gas Company. Are you familiar with the facilities that are
operated by the Southern Union Gas Company on your ranch?

A Yes, sir.

Q Specifically, Mr. Berry, I'm referring to the gas
gathering facilities which generally would include a dehydrator, a
meter, the gas gathering pipelines, the tie-ins from the gathering
lines into the transmission facilities and the risers that are
connected with that type of facility. Perhaps I don't fully
understand the scope of your application, but are you requesting
here that the Commission enter an Order requiring all of these
facilities be fenced?

A This is not my intention. I don't think that, and this
would have to be affirmed by the veterinarian, I don't think that
natural gas, per se, creates a hazard. The only hazard to

cattle from natural gas is from the drip gas which does occasionally come off of natural gas, and this, in most instances, goes into a pit and the pit is sometimes properly fenced; sometimes, it isn't.

The risers you speak of, on the natural gas lines, these are great big heavy pipe and I've never known of one of them being broken or damaged. They rub on them and they'll chew on them. They'll lick them just for fun, I guess, but to my knowledge, we've never lost one from this.

And the thing in the application that we were asking for some protection from, were on pipelines, oil transmission lines. In places, they have valves. I suppose these are to bleed the line of the air or something. I don't know what, but we have in two instances had cattle break these off, which allows crude oil to pour out on the ground.

Q You have had no experience on your ranch wherein gas gathering or transmission facilities have caused you any loss or damage, have you, Mr. Berry?

A With the exception, as I pointed out, the drip gas.

MR. MORRIS: Thank you, Mr. Berry.

MR. PORTER: Does anyone else have a question of Mr. Berry? Mr. Arnold.

CROSS EXAMINATION

BY MR. ARNOLD:

Q Mr. Berry, have there been any leaks, to your knowledge, on Camerland's pipelines since they replaced the two miles of line?

A In that particular area? In that particular part of their system? There have been leaks in other areas on other pipelines and which they control, you know.

Q What specific other areas?

A Section 8, 24-6, I believe. Section 2, 24-6, and there was one in, I think it's 13, 24-6. This particular break, we caught this. It was the valve that I'm speaking of. For some reason, somebody had opened it and God help us, it wasn't one of us, somebody had opened it and bled out some oil or air or whatever it was and there was a great quantity of oil right there at this valve which was adjacent to a windmill. And there were cattle in there. The line that they had replaced, to my knowledge, since they replaced it, to the best of my knowledge, has not leaked. Now, it may have. We haven't had any cattle in there because we wanted to give it time to see whether or not it would start leaking again.

Q Are there any other specific well locations which, as of today, you find that are hazardous conditions?

A Hazardous conditions still exist, I would say, at

nearly all wells, specifically in, still, in Mr. Merrion's area of operation and from the well headed south. I suppose this is what you call it, where the pump goes up and down, and they leaked around the packing plant.

Q Well, do you mean that he has stub-in boxes which are leaking right at the moment that he hasn't repaired?

A Well, right at the moment, I can't say, but I was up there about two weeks ago, they were. I was trying to give you another example. This is the thing that we continually are faced with: these waste pits are so constructed that, I suppose they're either turned on or they blow by themselves, I don't know which, and crude oil comes out, either a mixture of crude oil and water or what have you, and gas, comes out with a great deal of force. Now, this blows, in many instances, past the waste pit, as I said, through the fence because the fence is no deterrent on the other side, and it gets vegetation covered with oil on the outside of the pit.

Then there are times when these pits run over and, this, I've seen happen myself and have been there when they were doing it, and they run underneath the fence, if they have a fence. And in places, I've seen them where they have ran to the extent of a quarter of a mile down into the watershed.

Q I don't believe that there have been this kind of conditions over the period of the last month or six weeks.

A Yes, it has improved. Yes, it has improved.

Q When you are speaking of hazardous conditions, you also include the fact that you have impregnated oil, impregnated soil, as well as --

A Yes, sir.

Q -- live oil.

A Yes, sir, and we have had instances and perhaps, if the time comes, if anybody desires testimony, we've had instances "posting" cows that had died and there would be oil impregnated sand in their stomach that would burn, and this is caused by a condition that I didn't know existed, but once the animal is poisoned, they develop what they call a pica, a depraved appetite and they'll eat soil and all sorts of things. They lose part of their mental facilities, I suppose. It's much like you swallowing hot cola, you know what that would do. It really burns them up.

CROSS EXAMINATION

BY MR. PORTER:

Q Mr. Berry, you testified at considerable length concerning oil being made available to your cattle as a result of a ruptured pipeline. Now, you're not recommending that any pipelines be fenced, are you? Wouldn't that be a little impractical?

A That would be a little impractical. I don't know

whether the Commission, whether this is the place or not, but it would be my desire, recommendation that pipelines be buried. Now as I say, I don't know if this is within the scope of the Commission. If you buried the pipeline, if the pipe did rupture, the only way the cattle could get to it would be from the up-seep. Of course, you wouldn't be able to find your leaks quite as well.

Q Actually, what you're talking about, fencing here, is enumerated, I believe; all wellhead equipment, tank batteries, pumping installations, disposal pits, risers, valves on pipelines and so forth. Now, actually, this is protection against leaking stub-in boxes at the pumps.

A Right.

Q And as you have indicated, maybe some of the fences that exist, as far as the pits are concerned or tank batteries, may be too close to the installation.

A In my opinion, yes.

Q And it allows the cattle to get to the oil.

A Now, in the barbed wire fence; not, not so much in net wire fence. And by "net wire", one that I've seen recently, one of the best installations is El Paso Natural, their one well, and they use what we call bull wire, steel pipe set in concrete on the corners. They're not going to loosen up.

Q And of course, the fencing is no protection against

human error like leaving a valve open.

A This is true.

Q Since you don't have oil-proof fencing.

A But, Mr. Porter, if I may say, for example, a leaking stub-in box around a producing well. Now, I realize the country is big. It's rather limited, the number of times a man can make a location and he may not be up there in three, four days. In the meantime, this thing can develop a leak and spill considerable amount of oil and it would seem to me it would behoove the oil companies, themselves, to go ahead and comply with any regulation that the Commission might see fit to impose. I mean, one cow pays for a lot of fencing.

MR. PORTER: Any other questions? The witness may be excused. Will you call your next witness?

MR. BERRY: Thank you, sir.

E. S. WISEMAN

called as a witness, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ORTEGA:

Q Will you please state your name and address, please?

A Doctor E. S. Wiseman, practicing large animal veterinarian from Roswell.

Q What is your educational background for your profession

as a Doctor of Veterinarian Medicine?

A The Degree of Doctor of Veterinarian Medicine, Kansas State College.

Q And when did you receive that degree?

A In 1935.

Q And have you practiced your profession since that time?

A I have.

Q Can you tell us where?

A Primarily in Kansas and I was in the Army for a time and I spent the last twenty-three years in New Mexico.

Q And during the course of your practice in New Mexico, have you had the opportunity to become experienced in the particular toxic effect of petroleum products, particularly those that are volatile as a result of being made available to cattle?

A I have had previous experience particularly in the area of Roswell and Artesia.

Q Can you tell us what your experience has shown?

A What happens to the cows, you mean?

Q Yes.

A Primarily, what we're concerned in, of course, is the volatile fraction of oil, and I believe the oil people call it the light fractions, that with a melting point of or a boiling point of less than 500 degrees. This is the part of the oil

that we are primarily concerned with. The light naphthas and the heavy naphthas, basically, I believe covers this area.

These are the oxygen devoid products, and when they come in contact with tissues, severely hydrolyze and burn the tissues in which they come in contact with.

Q Doctor, although you may not know the specific reason, can you tell us whether cattle are naturally attracted to petroleum products?

A The only thing I can give you is speculative. I talked about this with a lot of knowledgeable cattlemen and there have been two theories which I will accept at that: one is the cattle are thirsty and the other is, they need salt. I would have to go with either one of these concepts.

Q Can you tell us specifically what happens to a cow or a bull that has petroleum products ingested by consuming them?

A A dead animal on post?

Q Yes.

A Or live animal?

Q Well, either way or both.

A Well, the first thing you notice about an ante-mortem animal, that is, an animal that is still alive, is his terrific hydration of the skin. The irritation around the eyes from, particularly, the benzine and xylene fractions cause a scabbing

or a burning effect at the margins of the eyes. They usually show some nasal discharge. The cattle are drawn, they're not eating and is a thoroughly sick animal. Now, that is a live animal.

Q Can you tell us whether this condition affects the ability of a cow to discern what is normally discernable to them as being bad from the standpoint of food or consumption?

A Yes. An animal is in this state or is usually in the state of what we call pica. We see animals which have been damaged maybe a month, six weeks previously, and the animal is very dehydrated, gone down in very bad flesh, lost hundreds of pounds; and on opening up the stomach content, we will notice that he is eating sand, strange things. This is what pica actually describes. He has a false sense of values.

Q Can you tell us whether the symptoms which are observed on ante-mortem examinations of cattle are such that they give you a reasonable basis for an opinion that they are poisoned by petroleum products?

A Once you see an animal that has ingested a reasonable amount of volatile fractions of crude oil and you see their skin, it's like dead leather. There's nothing else I know that actually causes this quite in this --

Q So that even prior to the death of a cow, you are able to make a reasonable diagnosis of the nature of the illness from

the standpoint of proximate result, from petroleum product ingestion into the cow, or consumption?

A It would not be conclusive but, certainly, highly suggestive.

Q Is it a matter of reasonable probability?

A It is a matter of reasonable probability.

Q Doctor, have you been retained by Mr. Berry in the past and, recently, within the last six months, or within the last six months, to go to his ranch in Rio Arriba County and Sandoval County to make a diagnosis of the condition of cows and to conduct postmortems of cows that have died?

A I have done the majority of Mr. Berry's work at Largo since he has attained this ranch. I have been there repeatedly each year he's had it.

Q And during the last six months, did you specifically go up there and, specifically, when?

A Starting on April the 9th, we looked into this matter and I have been there approximately ten times since on this particular matter.

Q And have you found cattle which are sick from petroleum products ingestion?

A We have found dead and live animals that are involved.

Q Can you tell us whether the number is substantial?

A I have seen at least a hundred.

Q That you believe are afflicted from this illness?

A That crude oil was involved.

Q All right.

MR. PORTER: Does that constitute both the sick ones and the dead ones?

THE WITNESS: Yes, sir.

Q That you observed, yourself?

A I have personally seen them.

Q Can you tell us whether you have performed any postmortems or posts, as you say in your language, of some of these cattle that have died?

A I have personally conducted about fifteen postmortems.

Q And what does this postmortem include from the standpoint of study of tissue? What do you do?

A We go through the body of the cadaver. We have also killed animals. If it is a dead animal, we go through it and take samples of all the tissues, make an auto-electric checking of all of the tissues, arrive at a tentative diagnosis and then take samples and send them to the laboratory for further study.

Q Have you detected the odor of petroleum products in the tissues?

A Definitely, on numerous ones.

Q And have you attempted to ignite some of the tissues, yourself?

A With a fire?

Q Yes.

A No, sir.

Q All right. Apparently, that was something else.

A I flotated it with water and we have seen a little oil this way. May I inject one thing further? Usually, by the time that we see these animals, they are so far down the line that the actual oil has disappeared and, of course, the volatile fraction has disappeared within days, the causative agent.

Q Specifically, from your study on postmortem examination of tissues, can you tell us how the petroleum products affect the cattle so as to make them ill and, eventually, cause their death?

A By irritation, caustic -- actual destruction of the cells and serious metabolic damage throughout.

Q Now, do I understand that from the odor of the tissue, you have been able to discern that the cow has consumed petroleum products?

A Yes. Smell is highly indicative, but then the nature of the pathology, you find that it has actually damaged the cells and this is conclusive.

Q Doctor, you say that you have had laboratory tests run of the various tissues. Have these been done under your control, some of them, or have you sent them to other

laboratories?

A I started off doing diagnostic work and then when we realized the gravity of this particular incident, we have had numerous laboratories which we have numerous reports available.

Q All right. What did your own diagnostics indicate to you and what is your opinion regarding the source of the difficulty of these sick and dead cattle that you examined?

A They were dealing with a highly caustic agent that was doing generalized cellular damage throughout the cattle.

Q And from your examination of laboratory tests, did you determine that the caustic agent was petroleum or not?

A Yes, sir.

Q What was it? Was it petroleum?

A It's a volatile fraction of the petroleum.

Q And do I understand that you have seen at least one hundred head that you think have been affected, yourself, personally?

A Dead and still ambulatory, yes.

Q Can you tell us the characteristic from your experience of a cow that has been poisoned from the standpoint of going off into the brush, into an area of seclusion?

A This develops into two types of cases: The acute and the chronic. The chronic animal will live for a considerable period of time and, of course, she slowly goes downhill, loss

of weight, loss of strength, and through her pica-like action, she wanders aimlessly and can be lost anywhere that she can reasonably get to.

Q Now, do you have an opinion as to whether petroleum poisoning will affect the productivity of cattle in the future, either from the standpoint of leather, beef or meat, and the productivity from the standpoint of offspring?

A A lot of these animals are so materially, metabolically hurt that, I mean, they are not functionally a cow anymore. They're something else. Consequently, they are lost, economically, to the herd in regard to the -- Well, this depends upon the extent of damage and each one is a little bit different, and depending upon the potency of the oil that she drank and the extent of damage in the individual. So each or no two are exactly the same. Most of these cows are economically lost to the herd in regard to the reproductivity. We're doing work in this area at the present and, in my opinion, some of these cattle will never return to economically productive cattle.

Q Doctor, how much petroleum does a cow have to consume to be poisoned to the point that it is either so sick as to be lost as an economic unit or to die?

A This can only be answered speculatively in the sense that, the first thing, we have to analyze the oil and find out what kind of oil we're dealing with and how much she ingested.

But in a broad way, to answer your question, anywhere from a pint to a gallon, or perhaps, as high as a gallon and a half.

Q Have you had any experience as to how much a cow will consume in one swallow or however you refer to it.

A We know that she'll drink more than a gallon.

Q I beg your pardon?

A Some will drink more than a gallon. We know that.

Q But it doesn't take very much?

A If it's a highly volatile fraction in this oil, a little as 105 cc.s could kill her.

Q And have you had tests run on the petroleum samples to determine the degree of volatility of some of the fractions?

A Yes, sir, we have.

Q And what was your finding?

A Specifically?

Q Well, generally, unless you want to speak of specific samples.

A Well, we find that there's a lot of variance in the oil. On API rating, it's up to as high as 55 and down to as low as 42, and as I understand oil -- I'm not an oil chemist and I tried to increase my knowledge in this area -- of course, the oil is not what we're interested in. The oil, per se. It's the volatile fraction that we're interested in.

Q Well, have there been analyses run?

A Yes, sir.

Q And have these disclosed that the oil products are involved?

A Yes, sir.

Q And are they also to the extent that they can cause serious damage to the cattle that ingest --

A Without exception.

Q All right. Thank you.

MR. ORTEGA: No other questions.

MR. PORTER: Does anyone have any questions of the witness? He may be excused.

MR. DONNELLY: Mr. Chairman, members of the Commission, we have no further evidence. Thank you for the opportunity to present these matters to the Commission, and we would respectfully request the Commission to carefully consider the application in light of the testimony presented here today and the magnitude of the injury that has occurred and will occur; we submit, in the future unless care is taken, not only to give careful maintenance of these installations which we submit are within the jurisdiction of this Commission to regulate as to the waste aspect and also to require protection be afforded to Mr. Berry under the jurisdiction of this Commission to protect adjoining and correlative rights of other people.

We would submit that unless this is done, that as

Mr. Berry pointed out, it may put him out of business all together. Thank you.

MR. ORTEGA: We do have a report of Doctor Wiseman if the Commission wishes the actual written report from which he testified.

MR. PORTER: Would you like to offer that as an exhibit?

MR. ORTEGA: If the Commission desires further testimony from him on that standpoint, although I think his oral testimony is clear enough.

MR. PORTER: Well, if you feel that the report has been amply covered in your questionings and his answers, it should be sufficient.

MR. ORTEGA: I think it is.

MR. PORTER: Mr. Morris, do you desire to put on any testimony?

MR. MORRIS: No, we do not desire to put on any testimony.

MR. PORTER: I believe there was no indication, but does anyone else want to put on testimony. At this time, the Commission will listen to any statements that you would like to make. Mr. Eaton.

MR. EATON: For Pan American Petroleum Corporation, George Eaton. Pan American Petroleum Corporation is opposed to a blanket fencing Order as requested by the Applicant in Case

3858 and urges that the Commission deny the application. If the Commission should grant the application in whole or in part, we further ask that the case not be used as a precedent in making further fencing rules an order today in either other portions of San Juan County or other portions of the State.

Pan American is not opposing the application merely for the sake of opposition, but because we believe there are good and valid reasons that it should be denied.

Pan American has only one lease and has only one well in the area that's covered by this application. This has always been a marginal well and with the current production now of only five barrels a day for now, it is approaching the economic limit. Our tank battery and our pit are fenced, but our pumping unit in the well is not. Therefore, our installation that would be affected by a fencing order in this particular case would be but a small part of Mr. Berry's vast holdings. Because it is such a small part, however, and because we do have a marginal operation, our situation may be more significant to the overall problem.

Because the Commission's power is derived from the police powers of the state, its power involves both the personal as well as property rights. In order to be effective, there are certain things the Commission order must suffice. It cannot be unreasonable, arbitrary, capricious, particular. Also, the order

should protect correlative rights and it must promote conservation. If a fencing order, such as is requested in this particular case, should result in uneconomic operation of a lease or a well, and it very well might do so in the case of our marginal well, and this results in premature abandonment of our operation, then that order would not meet the test of promoting conservation even if it met all other tests.

In order to give the Commission some idea as to my idea of what the cost might be, I estimate the following costs to fence these particular kinds of installations:

Our pumping well, \$400.00. Our gas well at \$75.00. Our gas well battery, including fire wall, \$600.00. A gas well production unit and pit, \$300.00. An oil well battery, including tank and treating equipment, \$1,000.00. I might add that these all vary a great deal depending on the distance that the particular location might be located from the base of operations in Farmington.

In most cases, these would be unnecessary expenses, and I remind again the Commission that anything it adds to the cost of operation raises the economic limit and decreases its ultimate recovery.

Now, as a petroleum engineer, I must produce oil and gas at a profit. In addition, my producing operation must also be conducted in a safe manner. While fencing all these installations

might keep cattle out, it is also true that if one of our employees is inside such a fence and there's some sort of trouble, there's only one avenue of escape. In my opinion, there's a definite safety hazard involved inside a fenced location where volatile hydrocarbons are present. In other words, the same fences that keep the cows out might keep the men in.

Pan American operates more than eight hundred wells in San Juan Basin alone. Historically, our relationship with the landowners and the ranchers have been very good. We average perhaps no more than two or three miles of job cleanings per year and not all of them could have been prevented by fencing every one of our installations.

Fencing would not prevent losses when some of these infrequent spills occur, and when they do occur and loss does result, we feel they should be the summit of lessor-lessee negotiations.

For these reasons, we oppose this fencing order.

MR. PORTER: Mr. Eaton, you have given some specific figures here as to the cost of fencing. The Commission would like for you to take the stand and be sworn and give us those figures and be available for cross examination on this specific testimony. This is the portion of your testimony in regard to costs.

(Witness sworn.)

GEORGE EATON

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

DIRECT EXAMINATION

BY MR. HATCH:

Q Mr. Eaton, if you will repeat for the Commission that portion of your testimony having to do with the cost of the fencing.

A All right. I have broken down these cost estimates into approximately five categories which cover the big bulk of the type of installations that Pan American has. These five are a pumping well --

CROSS EXAMINATION

BY MR. PORTER:

Q That's your wellhead equipment including your pump jack?

A Yes, sir, and this would be approximately 20 by 40, a 20 by 40 foot fence, \$400.00. A gas wellhead, \$75.00. Now, this particular case, this would be a dry gas well where we have no battery equipment.

Q And what would be the size of that fence?

A This would be much smaller on the order of 10 by 10.

Q All right, sir.

A \$75.00. Let me refer to something else here. A gas

well battery, including fire wall, \$600.00. A gas well production unit and pit, \$300.00. An oil well battery, including tank and treating equipment, \$1,000.00.

Q How much area does that cover?

A This would be somewhat dependent upon the number of tanks that would be in the installation, but it would be quite large, perhaps on the order of 100 feet by 75 feet.

Q Thank you.

A It could be greater than that. Our regulations don't let us put fired equipment closer than 150 feet from our tank battery or tank itself.

Q Are these fences that you're talking about, would they consist of just barbed wire or would you have what we used to call webbed wire fence with barbed wire around the top?

A We usually build our fences with hog wire with a couple strands of barbed wire at the top. The corner posts are set in concrete.

Q And the corner posts raised in two directions?

A Yes, sir.

MR. PORTER: Does anyone have any further questions concerning the cost items to which Mr. Eaton has referred? Mr. Donnelly.

CROSS EXAMINATION

BY MR. DONNELLY:

Q Mr. Eaton, I'd just like to ask you a few questions based on your testimony. Are these figures that you have just provided the Commission, are those based on going out to Mr. Berry's -- your installations on Mr. Berry's ranch and obtaining estimates on the site or are these general figures covering a widespread area?

A These are estimates that we worked up in our office covering what we think might be the average condition for properties in San Juan Basin. It might very well be more for the installation on Mr. Berry's ranch because it's so far from Farmington.

Q Do you have any specific figures, cost figures, as to the actual amounts that you incurred on fencing on installations owned by your company on the ranch in question?

A No, sir, I do not.

Q In each one of these situations, it would vary as to the distance that the fence is set back from the particular installation, isn't that correct?

A Insofar as that distance would also dictate the amount of fencing required, yes.

Q And have you attempted to obtain estimates based on different types of fencing materials?

A No, sir, I have not.

Q So that the cost figures that you provided the Commission with here, as I understand it, are net wire with -- how many strands of barbed wire on top?

A Let's see if I have that. Two strands.

Q Have you attempted to find what the so-called bull wire or barbed wire fence, without the net wire, would cost?

A No, sir.

Q This would be cheaper, would it not?

A I have no idea.

Q Were the posts -- What type of posts are figured into your cost estimates? Are those wooden cedar posts or metal posts?

A They're steel posts.

Q Steel posts?

A Yes, sir. The corner posts are what our people refer to as H-Posts. I don't know why.

Q Do you know what the diameter of that steel would be?

A The ones that I've seen aren't circular. They have more of an H cross section. Perhaps this is the reason they call them H-Posts.

Q And do your figures include any setting of the fence or posts in concrete?

A The corner posts are set in concrete as are the gate posts.

Q So that the cost estimate you've provided does include

in addition to posts and wire, it includes the concrete as well?

A I hope that it includes everything, the concrete, the wire, the transportation from town, to moving the men to the location to construct the fence, that it is all included.

Q In that particular regard, Mr. Eaton, does this include hiring labor or are you utilizing labor from people that you might have available working for you on a salary?

A It includes hiring labor.

Q In other words, your cost estimate then is predicated upon the fact that your company would go out and hire this work to be done and it also includes the transportation cost from, what point?

A From Farmington.

Q From Farmington?

A (Witness nods head indicating yes.)

Q What, if you know, percentage of the cost that you've given the Commission is based on labor?

A I don't have that breakdown with me.

Q What percentage is based on just the material?

A I don't have that breakdown, either.

Q Do you have the percentage based on transportation cost?

A No, sir.

Q Did you, yourself, make the estimate or did someone under you or someone else make them?

A Someone under my supervision made the estimate.

MR. PORTER: Any further questions?

MR. DONNELLY: Thank you.

MR. PORTER: You may be excused. Any further statements in this case? Mr. Meyer?

MR. MEYER: Robert A. Meyer, Attorney, El Paso Natural Gas Company. El Paso Natural Gas Company, as owner and operator of oil and gas leases within the area described in this case, respectfully opposes the request of H. C. Berry, Applicant, for a fencing order for oil and gas installations.

Without admitting the accuracy or the validity of the allegations of the Applicant relative to waste oil upon the Applicant's premises or the extent of damages resulting from there, it is our position that regress for such damages resulting from negligence, unworkmanlike or poorly maintained oil field operations should be sought in a court of law.

For the Applicant to apply to this Commission for general relief through a fencing order as broad as this one is inappropriate because it exceeds authority granted in the Act. An administrative act will be struck down by the courts whenever that act exceeds the limits of the Statute the Commission is constituted to implement or whenever the legislature attempts

to delegate its prerogative to the Commission.

The Oil and Gas Conservation Act in New Mexico is set forth in New Mexico Statutes Annotated 1953, Chapter 65, Article III, Sections 1 through 34. The enumeration of the powers and duties of the Commission in Sections 5, 7, 10, 11 and 11.1 in the Act do not include, by the broadest implication, the unreasonable, inappropriate and unduly burdensome power of requiring all oil and gas operators to fence their installations for the benefit of other surface users.

Except in instances of fire, breaks, leaks or blowouts, oil goes to storage and then is transported by truck or pipeline to market. The only occasion for there to be a planned or expected disposition of oil related matter is when tank bottoms or similar forms of oil field waste are disposed of. Because the discharge of these substances onto the surface occurs in the normal course of operations and, occasionally, in emergency conditions, the Commission wisely requires such oil field waste to be placed in pits which shall be fenced and the fence kept in good repair under Rule 313 of the Commission Rules. The disposable oil or oil field waste onto the surface under any other circumstances is prohibited under the Commission Rules. Except for pits, fencing places a restriction and burden on use of property which is unreasonable and oppressive.

Legal writers and courts everywhere agree that even

though end sought to be achieved by certain legislative enactments are within the police power. The methods and procedures provided may be constitutionally objectionable whenever they are unreasonable, arbitrary or oppressive and not really designed to accomplish the express purpose of the Act. We submit such is the case in this application.

To justify a State in interposing its authority on behalf of the public by the exercise of its police power, it must appear that the interest of the public requires such interference, that the means are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.

This Commission has authority and power under the Act to require operations to be conducted in such manner as not to injure another's property. Those violating the standard required should be disciplined if operations are injurious to another.

There may be ten or twenty or a hundred instances where evidence is available to show where a pipe is leaking, a loading area soaked in waste oil, sludge drained from a tank; but there may be thousands of wells or other installations which are properly operated and maintained. Must several thousands of fences be erected because ten or a hundred oil field installations are maintained in a manner violative of Commission rules?

The solution is proper enforcement of the Act as it is;

mainly, clean up and operate in a workmanlike manner. It is not a valid solution within the power of the Commission to condone poor operations and, by an expedient alternative, require everything to be fenced.

The basic issue to which we address ourselves here is whether the Commission may constitutionally correct deficient operations by issuing an order which has no statutory sanction or justification and reason.

At this point, if it please the Commission, I would wish to depart from the formalized statement which I have filed with the Commission and address myself to the statutory authority upon which Counsel for Mr. Berry has based his application, namely, Section 65-3-2; jurisdiction for the handling of crude oil and waste is provided for in this case.

I question the legal validity of that proposition because the idea of waste as it has been delegated to the Commission is to prevent the economic dissipation of reservoir energies for all those operating in the oil fields and that is the type of waste about which the Commission has authority to act.

Secondly, with regard to the fact that he has looked to correlative rights as a legislative prop to support his position, correlative rights is defined in the Act to mean the opportunity afforded, as far as it is practicable to do so, to

the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas. It has nothing to do with the relationship between the surface users and those developing those strata beneath.

Thirdly, he has quoted from Section 65-3-11, Subsection 7 that the Commission has the power and, I quote: "to require wells to be drilled, operated and produced in such manner as to prevent injury to neighboring leases or properties." There are two available maxims in the law as far as legislative interpretation goes which we would like to apply here.

One is known as the Rule of Noscitur a Sociis. This means that the word shall be known by the company it keeps. And the second one is the Rule of Ejusdem Generis which means that it takes on the connotation of the word preceding it or within which it is found.

Consequently, basing our opposition to the support that Counsel seeks for these two, we say that "leases or properties" means properties of the oil operators in the field and that, as a result of that, he cannot support his application with statutory authority for these reasons.

It is for these reasons we therefor respectfully urge the Commission to dismiss the application of H. C. Berry on the ground that the Commission has the power and authority already delegated to it under the Act to correct the existing situation

and for the further reason that the order requested is unreasonable.

Thank you very much.

MR. PORTER: Mr. Meyer, one question: Perhaps I wasn't clear on what I thought was an implication there that this Commission doesn't have any authority regarding surface waste.

MR. MEYER: They have the authority regarding surface waste insofar as it controls the economic disposition of that waste; that is, that the waste is limited, as far as surface waste goes, to an excess of spilling of oil on the ground so that the economics of New Mexico would not be adversely affected.

MR. PORTER: Well, I thought the implication there was that our authority was limited to perhaps the dissipation of the reservoir energy, an undue dissipation of reservoir energies or subsurface waste.

MR. MEYER: The Commission has all the authority it needs in the Statute to control the dissipation of underground waste which is, for example, permitting an oil well to flow free without any allowable or a setting of an NER which would affect another lease or several leases in the area which would destroy the field. And as to surface waste, as those words are generally understood and defined in the Act or the oil and gas business, "in any event to embrace the unnecessary or excessive

surface loss or destruction without beneficial use." That type of waste is permitted under the Statute.

MR. PORTER: Thank you, Mr. Meyer.

We have a motion for dismissal of this application. Before ruling on this, we would like to proceed with the acceptance of other statements or anyone else who wants to join in this motion or make a motion of their own.

Mr. Kellahin, do you have anything?

MR. KELLAHIN: If the Commission please, Amerada would join in the motion that was made by Counsel for El Paso Natural Gas.

MR. PORTER: Mr. Jacobs.

MR. JACOBS: Mr. Porter, Skelly Oil Company likewise joins in the motion made by Counsel for El Paso for the reasons stated.

MR. PORTER: Anyone else? Mr. Morris.

MR. MORRIS: If the Commission please, Southern Union Gas Company likewise would join in the motion that's been made by Counsel for El Paso Natural Gas Company. I'd like to comment just briefly on the support of the motion.

Our support goes primarily to the point that the Commission, in the first place, does not have the jurisdiction to require fencing of all oil and gas facilities and, as I understand Mr. Berry and of an answer to my question on cross

examination, his application is not directed toward the fencing of gas facilities. But even insofar as this application may be a precedent-establishing matter, I believe that the Commission should be very hesitant in setting down any order that would require fencing of petroleum facilities in general.

The basic proposition that Mr. Meyer has urged upon this Commission is a sound one; that is, "Let's get out and get after those that are violating the prudent practices," and that the Commission does have some authority in this regard, but does not have authority to issue a blanket fencing order such as has been proposed by Mr. Berry's application.

Thank you.

MR. PORTER: Mr. Griffith?

MR. GRIFFITH: Bill Griffith with Camerland Pipeline. We would also like to join in El Paso's motion for dismissal and we would like to point out that Mr. Berry's purported losses are the subject of litigation. We feel he has, certainly, adequate remedies in the court and that's where this matter should be adjudicated.

MR. PORTER: Mr. Jameson.

MR. JAMESON: Lewis Jameson with Petroleum Consultants. My Attorney, Mr. Sperling with the firm of Modrall, Seymour, Sperling, Roehl and Harris, has written the Commission a letter which supports the El Paso motion. Could I inquire if the

Commissioner has that letter before him?

MR. PORTER: The Commission does have that letter. Now, Counsel for the Commission intends to make this letter a part of the record and moved to make it a part of the record.

MR. JAMESON: Thank you. I have nothing more to say.

MR. PORTER: Anyone else?

MR. CROUT: Stanley Crout of Beco. We would like to join in the motion. We consider it inappropriate to make a special regulation for an area such as a certain person's Grant; that is, one set of rules on a particular person's Grant as opposed to oil wells in northwestern New Mexico in general.

Beco does recognize that certain circumstances can exist, but it could be improved, and in this connection, has taken certain improvements and by some of the Commission's suggestions, some additional improvements and would appreciate the Commission's suggestions on additional improvements where some hazard is bound to exist.

We do feel that a blanket order applying to one certain Grant is inappropriate, and as the evidence shows, some action has been taken to eliminate the problem and the blanket order would not be appropriate under the circumstances.

MR. PORTER: Anyone else?

MR. DONNELLY: Mr. Chairman, if I might, I'd like to make a very brief statement.

MR. PORTER: Mr. Donnelly, at this time, I believe we should recognize the communication, or recognize the attorney here who called our attention to the communication which we have received through the mail or telegram concerning the case.

MR. HATCH: In view of the nature of this, we have several communications. Most of them are fairly short and I think they should be read into the record that do not go towards dismissal, but towards opposing adoption of the proposed order.

MR. PORTER: You may proceed to read those communications.

MR. HATCH: A telegram from J. Gregory Merrion to the Commission stating: "Unable to attend hearing in Case 3858. Please accept this as statement of my position. Proposed order would impose extreme altering difficulties on producers. I know of no circumstances which make necessary special rules for this area as distinguished from other areas in the state where oil and gas is produced on grazing lands. I oppose the adoption of the order requested."

And a telegram from El Paso Products Company by Ralph Roland and L. A. Hammet, Manager of the Land Department, addressed to the Commission. "El Paso Products Company, as operator of the Devils-Fork-Gallup Oil Pool, hereby objects to the application of H. C. Berry in Case Number 3858 to be heard at the Regular Hearing on Wednesday, September 18, 1968. As

operator of the Devils-Fork-Gallup Pool, we would be forced reasonably" -- I think the Commission might know that they mean "unreasonably" -- "and unnecessary to fence in many of the unit installations. We think the Oil Commission should study carefully the effect that such order would have on the entire oil and gas industry in New Mexico. We regret the fact that we are unable to attend the hearing in person. L. A. Hammet."

And a letter from Dugan Production Corporation addressed to the Commission, or to Mr. Porter of the Oil Conservation Commission. "We are opposed to the application of H. C. Berry regarding the fencing of oil field installations in Rio Arriba and Sandoval Counties, New Mexico, and request that the Commission disapprove the application. I am sure that the fencing of pits of this type are already covered by the rules of the Oil Conservation Commission. We feel that thousands of wells have been operating in New Mexico without the necessity of fencing the entire installations, and we feel sure that Mr. Berry would find fault with any type of a fence as expressed at the hearing on July the 24th, 1968. Fencing of the oil field installations would not solve the problem that exist on the Berry Ranch. Thomas A. Dugan."

Redfern Development Corporation has addressed a letter to the Commission. "We have received notice of the hearing to be held by the Oil Conservation Commission on September 18th,

1968 concerning an application of H. C. Berry with reference to the fencing of oil field installations on Mr. Berry's ranch. We believe that the Oil Conservation Commission and field staff have ample authority to approve a regulation to effectively handle any problems that might arise. We do not believe that special regulation should be enacted; therefore, the Commission should disapprove this application. John J. Redfern."

And there is a letter here from James E. Sperling representing Petroleum Consultants. It's already been spoken of; I think it was taken in testimony during the motion to dismiss. I'll not read that letter.

MR. PORTER: Also, at this time, do we have any expression from any representatives of the United States Geological Survey or the Bureau of Land Management?

Mr. Donnelly.

MR. DONNELLY: Specifically, Mr. Chairman, I would like to make a brief statement if I might on behalf of Mr. Berry regarding some of the matters that have been brought out in these communications which we had no previous notice of.

I would like to point out that, certainly, as some of these communications have indicated, no one is arguing that any regulation that might be promulgated by this Commission should in any extent be unreasonable. I think no attorney or livestock man or any individual is arguing for an unreasonable

regulation. I know this Commission would not, in any respect, intentionally adopt any such regulation. What we believe the evidence and testimony has brought out here today clearly supports is that there is now in existence an unreasonable, hazardous condition which has existed and which exists at present and which is continuing and that, certainly, the statutory jurisdiction of this Commission extends to preventing waste and, specifically, I believe it was stated at the beginning of the hearing, many of these communications did not recite Section 65-3-10 of the Commission's general powers which specifically authorize the Commission and provides: and it is the duty to prevent waste prohibited by this Act. And it goes on, provides: "To that end, the Commission is empowered to make and enforce rules," and I might inject, parenthetically, "reasonable rules", "regulations and orders, and to do whatever may be reasonably necessary to carry out the purposes of this Act, whether or not indicated or specified in any section hereof."

I think it's clear that the Commission has the authority and the duty to draw up reasonable rules to protect livestock men and others and, specifically, Mr. Berry, in this situation where it is clear that an obvious hazard does appear of considerable magnitude, and for that reason, we strongly submit that the Commission has the authority, legally, to adopt certain classifications and that in this general area or

vicinity, certain minimum standards should be imposed as to maintenance in fencing and I think the fact -- We're certainly not advocating a general blanket ruling as to all fencing, whether or not it is desirable in other areas; we're trying to limit it to a specific locality and we would state or take strong issue as to the fact that it might in some way raise the cost, particularly to marginal oil operations, the fact that these installations may be becoming less productive, less economically beneficial to the operators should not give them the right to relax the maintenance and concern over other people in the area. In fact, it's just as important as in a very productive well.

We submit, Mr. Chairman and members of the Commission, that based on the evidence here today, the Commission does, under the law and the statutes, have the right to regulate reasonably to protect Mr. Berry and others similarly situated in that area.

Thank you.

MR. ORTEGA: May I respectfully state, also, on behalf of Mr. Berry in response to the assertion by one of the representatives that there is already litigation in the court on this issue. Actually, the litigation that is in court relates to damages for what has already occurred, and we have not sought injunctive relief or some extraordinary relief to

prevent future losses because we felt that we had to exhaust our administrative remedies. We felt that this was the place to come for this relief and, in fact, we probably would not have had that standing in court until we applied to this Commission where we think the authority lies, the Commission, for such an order.

MR. PORTER: Does anyone else have anything to state to the Commission in this case?

MR. HOLLAND: I'd like to make a statement. My name is Holland. I'm with Camerland Pipeline. I'd like to say that we've been silent, conspicuously silent, as a result of the litigations that are implied. There are certain things that we're not permitted to say here as a result of the litigation. I just want things clearly understood.

MR. PORTER: Anyone else have anything further in the case?

At this time, the Commission will recognize Mr. Hatch, Counsel for the Commission.

MR. HATCH: If the Commission please, the Commission has the first duty in deciding in its own jurisdiction. I would like to point out my opinion on the jurisdictional matter that has been questioned.

The Commission has been given the duty of supervising the drilling of producing operations and I think that it has

and must have a duty therein and an obligation to see that such operations are carried on in a manner that will afford reasonable protection to other people in the area. What is reasonable in one area may not be reasonable in another.

The Oil Conservation Commission is given express authority by Section 65-3-11.7 to require wells to be drilled, operated and produced in such manner as to prevent injury to neighboring leases or properties. I think the legislature could have said and would have said "mineral properties" if that was their intent. The Commission has been given authority over matters not relating to waste of oil or protection of correlative rights as pointed out in 65-3-11.15, and the Commission's authority over salt water disposal, authority over drilling of potash areas by 65-3-11.16.

Now, I would also like to point out or I'll read to the Commission a statement made in a court case: Continental Oil Company v. Brack, U. S. Court of Appeals, Tenth Circuit, August 17, 1967, reported in 381 Federal Reporter, 2d, page 682. This case involved injury to a person in which the authority of the Commission under Rule 114(a), having to do with the prevention of fire hazards or safety regulations as related to Section 65-3-11.5 which gives the Commission authority to take action to prevent fires. It was argued in that case that the Commission's authority to prevent fires only had to do with

prevention of waste and protection of correlative rights and not the safety of individuals or properties, and the Court, speaking in that case said:

"Thus, the legislature expressly gave the Oil Conservation Commission authority to make regulations 'to prevent fires'.

Even though the conservation of oil was the principal purpose for which the Commission was created, we are unwilling to suppose that the New Mexico legislature, in authorizing the Commission to make regulations to prevent fires, intended to restrict it to the making of regulations to protect oil from damage or destruction by fire. Such a supposition would be, it seems to us, most irrational and unduly legalistic. It is unthinkable that the lawmakers intended the Commission only to seek fire prevention to conserve oil, and did not intend it to seek to prevent fires in order to conserve other property and the lives of persons." *****

That's all I have.

MR. PORTER: Does anyone have any comments concerning any phase of the case, including the Counsel's statement? If not, the Commission will take the entire proceedings under advisement which, of course, includes the motion to dismiss. The hearing is recessed until 1:30 at which time we'll take up Case 3859.

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

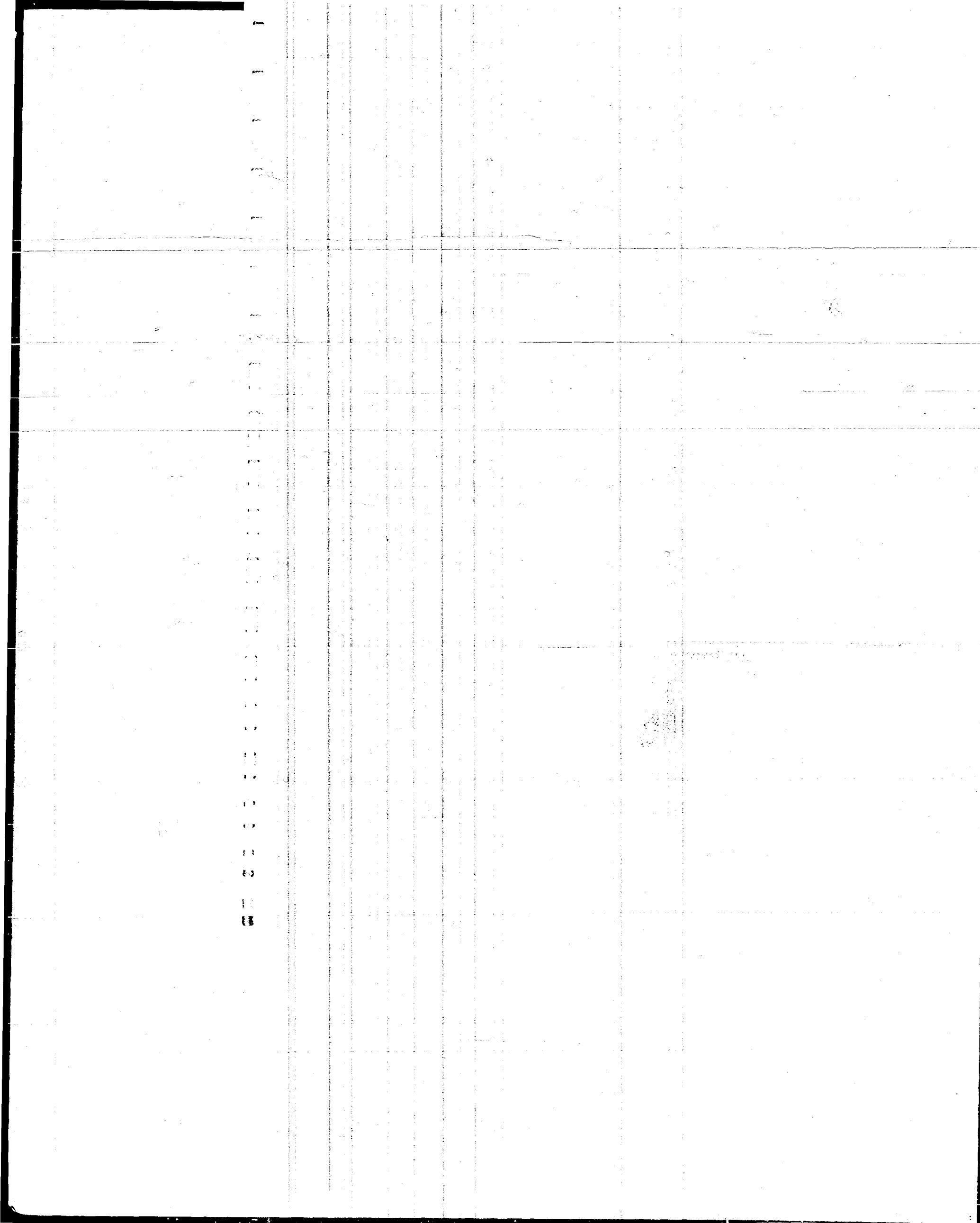
I, CHARLOTTE MACIAS, Notary Public in and for the County of Bernalillo, State of New Mexico, do hereby certify that the foregoing and attached Transcript of Hearing before the New Mexico Oil Conservation Commission was reported by me; and that the same is a true and correct record of the said proceedings,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

Witness my Hand and Seal this 29th day of October, 1968.

Charlotte Macias
Notary Public

My Commission Expires:

February 10, 1971.



JUN 14 3 47 PM '68

STATE LAND OFFICE
SANTA FE, N. M.

Santa Fe, New Mexico
June 14, 1968

TO: Mr. Ted Bilberry, Supervisor Oil & Gas
Division and Mr. Sylvan Floersheim,
Supervisor Lands & Minerals Division

FROM: Frank Meador
Fieldman

RE: Reported abuse of surface of State Lands by Oil
producing lessees and pipeline right-of-way
holders on the H. C. Berry Ranch in Rio Arriba County.

BEFORE
OIL CONSERVATION
Santa Fe, N. M.
H. C. Berry
Case No. 385-8

At the request of your offices, I have made two inspection trips into the area in question. The first was made on June 5, 1968 in the company of several Bureau of Land Management personnel, Mr. Arnold of the OCC, and Mr. H. C. Berry the owner of the ranch and lessee of the State Grazing Lands and grazing permit holder on the federal lands. The second trip I made only with Mr. Lovato, the foreman of Mr. Berry's ranch on June 10, 1968. On this second trip, I carried with me a camera and all pictures taken accompany this report.

On Section 2, Township 24 North, Range 6 West, the Camerland Pipeline Corporation of Denver, Colorado, holds right-of-way No. 15029 and No. 15030. As accompanying photos show, this is an exceedingly poor operation. The line is not buried at all for hundreds of feet, as required by land office regulations, and has repeatedly sprung leaks. This line is in such a state of decomposition from rust and corrosion that in one section of approximately 20 feet there had been nine patches placed on it. There were numerous patches throughout the length of the line located on State Land and many instances of oil leaking far beyond the limits of the right-of-way boundaries. Some of these leaks had been burned off and some had not.

Also on Section 2, Township 24 North, Range 6 West at the Skelly Oil Company Farming "E" Well No. 3: The packing on this well was evidently not in good repair. As this well pumped, a small amount of oil was pumped out onto the ground leaving a small stream and puddles of oil accumulated in the area for several feet. There was no fence or other protection around this location site.

Also on Section 2, Township 24 North, Range 6 West, a leak was observed from a feeder line coming from Amerada, Harvey State No. 1 location on Section 36, Township 25 North, Range 6 West. This leak had ran for such duration that a well defined path of oil could be traced for approximately three eights of a mile. The leak had been repaired but must have run for some considerable length of time before discovery and repair.

Section 16, Township 24 North, Range 6 West, on well sites in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of this section, both under lease to J. Gregory Merrion, there were no oil leaks but oil cans and other trash had been indiscriminately thrown around the well site making it appear somewhat like a public dump ground.

At the well site in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, Township 24 North, Range 6 West, (also under lease to J. Gregory Merrion) the disposal pit is very poorly fenced and there were livestock tracks inside this pit indicating that the fence in existence is no deterrent to livestock. At sometime this pit has spilled over and oil had run down the arroyo several hundred feet. Also, there were old pipe fittings, pump parts and junk in general thrown indiscriminately around the location.

At the well site in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ in Section 16 (also under lease to J. Gregory Merrion) a great many cans and assorted junk had been thrown around the wellsite.

In Section 36, Township 25 North, Range 6 West, in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of this section, El Paso Natural Gas, Canyon Largo Unit had spilled and leaked oil extensively. From the well site to the slush pit were large areas where oil had been allowed to run. The pit itself was almost full of Crude Oil and still being pumped into. It has spilled over and run down an arroyo for several hundred feet. This arroyo continues downhill off of State Land but leads into a Natural spring on other land. When rain comes it washes this oil residue into the spring area polluting the ranchers livestock water and other lands below it.

Also in Section 36, Township 25 North, Range 6 West in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ was observed a feeder pipeline leak that was obviously of long duration. Live oil stood in a pool and had saturated a considerable surrounding area with oil. There were cattle tracks in and around this area in abundance. Back several feet from the oil pool and saturated area was observed cattle feces containing obvious amounts of oil products. I was unable to determine exact ownership of this line but believe it to be Amerada Petroleum Corporation or J. Gregory Merrion.

These three sections of State Land were the only areas checked on the second trip into the area.

I submit this report subject to your approval.

Respectfully submitted,

Frank W. Meador

Frank W. Meador
Fieldman

Inclosures-25 Photos

copies to--Oil & Gas Division
Lands & Minerals
Oscar Jordan
H. C. Berry

ATION : MISSION

Exhibit No.

3858

RECEIVED
JUN 14 3 47 PM '68
STATE LAND OFFICE
SANTA FE, N.M.