

CASE NO.

6489

APPLICATION,
TRANSCRIPTS,
SMALL EXHIBITS,
ETC.

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION COMMISSION

RECEIVED

MAY 22 1979

Oil Conservation

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

CASE NO. 6489
Order No. R-4831-A

APPLICATION OF J. V. FRITTS AND)
WM. B. BARNHILL FOR REVIEW OF)
ORDER NO. R-4831, EDDY COUNTY,)
NEW MEXICO.)

APPLICATION FOR REHEARING

On behalf of myself and Mr. Wm. B. Barnhill, (hereinafter called "Applicants") I wish to file this Application (in triplicate) for a rehearing of the above Order, which the Commission rendered in response to my Application for a Hearing on the applicability of the 200% penalty provided in Case No. 5267, Order No. R-4831 Applicants set forth below the respects in which they contend certain Orders or Decisions of the Commission are erroneous. This Application for Rehearing is filed pursuant to Section 70-2-25(A) N.M.S.A. 1978 Comp.

Order No. R-4831-A in Case No. 6489 ordered as follows:

1. That the Application of J. V. Fritts and Wm. B. Barnhill for the opportunity to join in the drilling of the Federal "B" well No. 1 located in Unit P of Section 1, Township 18 South, Range 26 East, N.M.P.M., Atoka-Pennsylvanian Gas Pool, Eddy County, New Mexico, without being subject to the 200% risk factor provided in Division Order No. R-4831 is hereby denied.

Applicants contend that this Order is erroneous because it is based upon certain underlying Findings of Fact set forth in the Order which are Erroneous. Applicants' arguments as to the erroneous nature of said findings are set out below.

ERROR No. 1

Findings 10 and 11 of Order No. R-4831-A provide as follows:

(10) That the applicants in this case had no record title to their interest in the E $\frac{1}{2}$ of said Section 1 until January 17, 1975, on which date their leases were recorded in Eddy County.

(11) That the Applicants' predecessors in interest did not have record title at the time of the force pooling case held July 10, 1974.

In the "Memorandum of Title" filed by the attorney for Mewbourne Oil Company (hereinafter called "Operator") in the present case, it is stated that the attorney rendered to Operator an original title opinion on May 1, 1974 based upon an examination of abstracts certified to from inception of records down to March 20, 1974 at 8:00 A.M. In this Memorandum of Title, the attorney sets forth the chain of conveyances wherein "record" title to Tract 218 of the Fairchild Farm Lands in E $\frac{1}{2}$ Section 1 purportedly vested in Anna Brown Home for the Aged, whom the examining attorney stated to be the "record" title owner as of the date of closing of the abstracts examined. Applicants contend that the title examiner was incorrect in his conclusion. As stated in the Memorandum of Title, "record" title to Tract 218 was acquired by Minnie Warmker and Kate Warmker by Deed dated January 3, 1910, and the next conveyance of "record" affecting Tract 218 was a quitclaim deed dated April 26, 1948 in which Katherine D. Warmker and Norma Warmker quitclaimed all of their interest in Tract 218 to the Anna Brown Home for the Aged. Applicant J. V. Friets personally examined the county records and there was never a conveyance out of Minnie Warmker, owner of the remaining one-half interest of record in Tract 218, placed of record in the county records. From a title examination standpoint, Norma Warmker was a stranger to the "record" title to this tract as reflected by the County Records, and such a conveyance would put a title examiner on notice of a possible adverse claim to the "record" title to the land under examination. Before an examining attorney could certify as to ownership of the tract in question, he would be required to make an inquiry as to the nature of the claim of the stranger to the title of an interest in the land in question, that is, whether the stranger claimed title under or adversely to Minnie Warmker, the remaining "record" title owner. Applicants contend that such an inquiry would have resulted in the discovery that Minnie Warmker had died, survived by one sister, Katherine D. Warmker, one niece, Norma Warmker, and by one nephew, C. Raymond Buxman. Under the statutes of descent and distribution in effect in New Mexico at the time of the death of Minnie Warmker, the sister, niece and nephew each inherited a 1/3 of her 1/2 "record" interest in Tract 218. Accordingly, as of the date of death of Minnie Warmker, C. Raymond Buxman became vested by operation of law with an undivided 1/6 interest in Tract 218 which was not conveyed to the Anna Brown Home for the Aged.

Further inquiry would have revealed that C. Raymond Buxman subsequently died on June 29, 1948 survived by certain heirs ("Buxman Heirs") prior to the time Operator sought force pooling order in Case 5267.

Attorneys for Operator have stated both in the Memorandum of Law and orally before this Commission in the present case that

the Buxman Heirs, from whom Applicants obtained oil and gas leases, owned no interest of "record" in Tract 218 as reflected from the County Records. However, as noted above, having discovered a deed from a stranger to the "record" title of Minnie Warmker in Tract 218 in the abstract covering the County records, attorneys for Operator were put on notice of a possible adverse claim to the "record" title of this tract by the stranger to the title. It has been held in New Mexico that failure by a purchaser of land to inquire of a third party who had received from his vendor a deed conveying an interest larger than that owned of "record" by the vendor at the time of the conveyance to the third party, made the purchaser guilty of gross negligence for failure to make an inquiry of the third party that in the exercise of ordinary care he was required to make, and the Court held that he could not be considered a bona fide purchaser for value as against the third party (who was claiming under an unrecorded deed). Sawyer v. Barton, 55 N.M. 479 (1951). See also, Johnston v. Ryan, 43 N.M. 127 at 135, where it is stated:

It is Hornbook law that whatever puts a party upon inquiry is a sufficient notice where the means of knowledge are at hand, and if a party omits to inquire he is chargeable with all the facts which by proper inquiry he might have ascertained.

When attorneys for Operator state that the interest of the Buxman Heirs in Tract 218, from whom Applicants acquired oil and gas leases, was not of "record" as of March 20, 1974 (date of abstract certificate examined) then they are mistaken, because in the exercise of ordinary care upon discovery of a conveyance from a stranger to the record title to the Anna Brown Home of the Aged, they should have made inquiry as to the reason why no conveyance was taken from Minnie Warmker, the remaining record title owner of an undivided 1/2 interest, but from a stranger to the title. In fact, without this inquiry, the attorney examining title for Operator could not logically state that Minnie Warmker was divested of her 1/2 interest owned of record in this tract by virtue of a conveyance by a stranger to the title. Appropriate inquiry by the attorney for Operator would have reflected that Minnie Warmker was dead, and was survived by certain heirs, not all of whom conveyed to the Anna Brown Home for the Aged, and that in fact a partial interest was outstanding. It does not appear that this inquiry was ever made by virtue of the fact that the examining attorney, acting on behalf of Operator, failed to take note that a stranger to the title of Tract 218, rather than a record title owner thereof, made a conveyance to the Anna Brown Home for the Aged.

Assuming that Operator was put on notice of a possible adverse claim to the title of Tract 218 by virtue of the conveyance by a stranger to the title, Applicants submit that Operator had the duty as a prudent operator to make the inquiry called for under the circumstances, but that the inquiry was never made.

It is Applicants' understanding that under prior OCC decisions, for example, Order Nos. R-2150-A, R-2151-A, R-2068-B and R-2152-A (1962) (cited in "Compulsory Pooling of Oil and Gas Interests in New Mexico" by Richard Morris, 3 Natural Resources Journal 316 (1963)) the Operator seeking a force pooling order is required to make "diligent efforts to identify and to locate all owners of interest in the proposed proration unit". It is Applicants' understanding that the Commission still requires evidence from an operator seeking a force pooling order that a diligent effort to identify and to locate all owners of interest has been made. An examination of the case file in Case No. 5267 wherein original Order R-4831 was entered force pooling E $\frac{1}{2}$ Section 1, Township 18 South, Range 26 East, would reflect that Operator did not submit, as a part of his list of names of interest owners who did not lease, the Buxman Heirs through whom Applicants claim an interest, although Operator was under a duty to exercise due diligence to find them. If Operator was required to make a diligent effort to identify and locate all owners of interest in the area sought to be force pooled, then it would seem clear that it was under a duty of due diligence to try and ascertain the identity and whereabouts of any outstanding interest owners at such time as its attorney's examination of the County records reflected a deed on Tract 218 from a stranger in title rather than from a record title owner. A cursory inquiry, or no inquiry at all, as here, would not satisfy this duty. That part of Finding No. 11 of Commission Order R-4831-A in the present Case is erroneous when it states that the Applicants' predecessors in interest did not have "record" title at the time of the force pooling case held July 10, 1974 for the reason that Operator failed to meet its obligation to make diligent efforts to identify and locate all owners of interest in the Tract 218 area upon discovery of a title irregularity by the examining attorney. Because Finding No. 11 is erroneous, Finding No. 10 has no applicability to the Order entered in Order No. R-4831-A.

Accordingly, Applicants request the Commission to review the Order entered in Order No. R-4831-A denying relief to Applicants because the Order is based in large part on said Finding of Fact Nos. 10 and 11, and to grant a rehearing thereon.

ERROR NO. 2:

Applicants also contend that Findings of Fact 12 and 13 of Order No. R-4831-A are erroneous for the reasons set forth below. These Findings of Fact provide as follows:

(12) That the Notice of hearing for Case No. 5257, as in all compulsory pooling cases, was in rem, and all interest owners, whether or not of record, were notified of the case and were given the opportunity to appear and testify and to make their interest known, and assure themselves the opportunity to join in the drilling of the well without being subject to the risk penalty provisions of said Order No. R-4831.

(13) That the Applicants did not avail themselves of this opportunity, and their Application at this time should therefore be denied.

Order Nos. 3, and 4, in Order No. R-4831 in Case No. 5267 require that Operator furnish the Commission and each known working interest owner in the force pooled area an itemized schedule of estimated well costs, and that within 30 days from the date the schedule of estimated well costs is furnished to him, any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his shares of reasonable well costs out of production, and that any such paying party shall remain liable for operating costs but shall not be liable for risk charges. From personal knowledge, Applicants know that Operator never furnished the Buxman Heirs, owners of an unleased 1/6 mineral interest in Tract 218, the schedule required in Order No. R-4831. After Applicants acquired leases from the Buxman Heirs, they offered to pay Operator their proportionate part of well costs and operating expenses, but Operator at that time, and to the present, has denied them the chance to participate in this fashion. It is the position of Applicants that since Operator failed to make diligent efforts to identify and locate the Buxman Heirs, and did not furnish to them the itemized schedule of estimated well costs as required in Order No. R-4831, that at least to the extent of the nonconsent 200% penalty provision, said Order was not binding upon the Buxman Heirs. Applicants do not dispute that portion of Finding of Fact No. 12 in Order R-4831-A in the present case which states that Case No. 5267 was in rem and that all interest owners, whether or not of record, were notified of the case and were given the opportunity to appear and testify and to make their interest known and to assure themselves of the opportunity to join in the drilling of the well without being subject to the nonconsent penalty provisions of Order No. R-4831. However, it is the contention of Applicants that Findings of Fact No. 12 and 13 in Order R-4831-A are erroneous in that they would seem to indicate that only by appearing at the original force pooling hearing could an unleased mineral interest owner, whether in this or any other force pool action, be allowed the opportunity to participate in the proposed well by paying his proportionate share of estimated well costs. These Findings of Fact would seem to ignore the prior orders of the Commission in Order No. R-4831 which required Operator to furnish known working interest owners in the force pooled area an itemized schedule of estimated well costs and a chance to participate without the nonconsent 200% penalty. Applicants state that if Operator had made the required diligent efforts to identify and locate the Buxman Heirs, as discussed above, these unleased owners would have been required to have been given an opportunity to participate by paying estimated well costs as provided in Order No. R-4831. Applicants contend that the failure by Operator to meet its duty to make diligent effort to locate and ascertain the Buxman Heirs should not thereby excuse it from the orders contained in Order R-4831 requiring a schedule of estimated well costs be furnished to the Buxman Heirs

with the opportunity to participate in the well without being subject to the 200% nonconsent penalty provision.

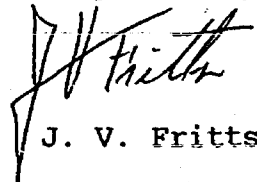
Accordingly, Applicants request the Commission to review the Order entered in Order No. R-4831-A denying relief to Applicants because the Order is based in part on said Finding of Fact Nos. 12 and 13, and to grant a rehearing thereon.

ERROR No. 3

Applicants also contend that by virtue of the foregoing matters, Finding of Fact No. 9 of Order No. R-4831-A in this case should be stricken inasmuch as it has no relevance to the issue of whether Applicants should be allowed to join in the drilling of the well by paying their proportionate part of actual well costs and operating expenses without being burdened with the 200% nonconsent penalty provided in Order R-4831 in Case 5267.

Accordingly, Applicants request the Commission to review the Order entered in Order No. R-4831-A denying relief to Applicants because the Order is based in part on said Finding of Fact No. 9, and to grant a rehearing thereon.

Respectfully submitted,


J. V. Fritts

cc: Wm. B. Barnhill
Mewbourne Oil Company
P. O. Box 7698
Tyler, Texas

Other Tom Kellahin

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION COMMISSION

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

CASE NO. 6489
Order No. R-4831-A

APPLICATION OF J. V. FRITTS AND
Wm. B. BARNHILL FOR REVIEW OF
ORDER NO. R-4831, EDDY COUNTY,
NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9:00 a.m. on March 7, 1979, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 30th day of April, 1979, 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 applicants, J. V. Fritts and Wm. B. Barnhill, seek the review and interpretation of Order No. R-4831 to permit them the opportunity to join in the drilling of the Federal "B" Well No. 1 located in Unit P of Section 1, Township 18 South, Range 26 East, NMPM, Atoka-Pennsylvanian Gas Pool, Eddy County, New Mexico, and to determine the applicability of the 200 percent risk factor.

(3) That Case No. 5267 was heard on July 10, 1974, by a Commission Examiner upon the application of Mark Production Company to force pool the E/2 of said Section 1.

(4) That notice of said hearing was properly given by the Commission pursuant to Section 65-3-6 NMSA 1953.

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Case No. 6489
Order No. R-4831-A

(5) That as a result of said notice being properly given, all interest owners in the E/2 of said Section 1 were notified that the tract was the subject of a force pooling case, and were therefore given the opportunity to appear at the hearing.

(6) That as a result of said hearing, the Commission issued the aforesaid Order No. R-4831 which pooled said lands and imposed a 200 percent risk factor for those not joining in the drilling of the well within the time limits set forth in this order.

(7) That Mark Production Company drilled said Federal B Well No. 1 on a compulsorily pooled 320-acre spacing and proration unit consisting of the E/2 of said Section 1 under the terms and provisions of Order No. R-4831.

(8) That the evidence in Case No. 6489 showed that Mark Production Company spudded the Federal "B" Well No. 1 on August 30, 1974, and completed it on November 22, 1974.

(9) That neither J. V. Fritts and Wm. B. Barnhill nor their predecessors in interest in the E/2 of said Section 1 joined in the drilling of said Federal "B" Well No. 1 within said time limit.

(10) That the applicants in this case had no record title to their interest in the E/2 of said Section 1 until January 17, 1975, on which date their leases were recorded in Eddy County.

(11) That the applicants' predecessors in interest did not have record title at the time of the force pooling case held July 10, 1974.

(12) That the notice of hearing for Case No. 5267, as in all compulsory pooling cases, was in rem, and all interest owners, whether or not of record, were notified of the case and were given the opportunity to appear and testify and to make their interest known, and assure themselves the opportunity to join in the drilling of the well without being subject to the risk penalty provisions of said Order No. R-4831.

(13) That the applicants did not avail themselves of this opportunity, and their application at this time is untimely and should therefore be denied.

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Case No. 6489
Order No. R-4831-A

IT IS THEREFORE ORDERED:

(1) That the application of J. V. Fritts and Wm. B. Barnhill for the opportunity to join in the drilling of the Federal "B" Well No. 1 located in Unit P of Section 1, Township 18 South, Range 26 East, NMPM, Atoka-Pennsylvanian Gas Pool, Eddy County, New Mexico, without being subject to the 200 percent risk factor provided in Division Order No. R-4831 is hereby denied.

(2) 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 herein-above designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

ALEX. J. ARMIJO, Member


EMERY C. ARNOLD, Member


JOE D. RAMEY, Member & Secretary

S E A L

dr/

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION COMMISSION
State Land Office Building
Santa Fe, New Mexico
7 March 1979

COMMISSION HEARING

IN THE MATTER OF:

Application of J. V. Fritts) CASE
and William B. Barnhill for) 6489
review of Order No. R-4831,)
Eddy County, New Mexico.)

BEFORE: Commissioner Ramey
Commissioner Arnold

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the Oil Conservation Commission: Lynn Teschendorf, Esq.
Legal Counsel for the Commission
State Land Office Bldg.
Santa Fe, New Mexico 87503

For the Applicant: J. V. Fritts, pro se

For Mewbourne Oil Co.: W. Thomas Kellahin, Esq.
KELLAHIN & KELLAHIN
500 Don Gaspar
Santa Fe, New Mexico 87501

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3030 Plaza Blanca (SOS) 471-2462
Santa Fe, New Mexico 87502

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SALLY WALTON BOYD
 CERTIFIED SHORTHAND REPORTER
 1030 Plaza Blanca (888) 471-2483
 Santa Fe, New Mexico 87501

1 MR. RAMEY: We'll call next Case 6489.
2 Application of J. V. Fritts and William B. Barnhill for
3 review of Order No. R-4831, Eddy County, New Mexico.

4 Ask for appearances at this time.

5 MR. FRITTS: I'm Mr. Fritts. I am not an
6 attorney so you'll kind of have to tell me what to do.

7 MR. RAMEY: All right.

8 MR. KELLAHIN: I'm Tom Kellahin of Santa Fe,
9 New Mexico, appearing on behalf of Mark Production Company,
10 and its successor in interest, Mewbourne Oil Company.

11 MR. RAMEY: Will all those that are going
12 to testify please stand at this time?

13 (Witnesses sworn.)

14 MR. RAMEY: All right, Mr. Fritts, I think
15 you will go on first. You can tell your story.

16 MR. FRITTS: All right, sir.

17 My name is J. V. Fritts and my address is
18 Box 868 in Roswell.

19 I own an undivided 1/12th working interest
20 in a 5-acre tract described as Tract 218 of Fairchild Farm
21 Lands, which is a part of a producing unit of 320 acres in
22 the east half of Section 1, 18 South, 26 East, Eddy County,
23 New Mexico.

24 William B. Barnhill owns an interest equal
25 to mine.

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CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (S.E.) 471-2452
Santa Fe, New Mexico 87501

1 Our working interests have been confirmed
2 by Court decree and a copy of the final decree has been
3 furnished to the Commission and to Mark Production.

4 Order No. R-4831 ordered the pooling of all
5 mineral interests in this unit and designated Mark Production
6 Company as operator. It also provided that any nonconsenting
7 working interest owner be afforded the opportunity to pay
8 his share of the estimated well costs to the operator in
9 lieu of paying his share of reasonable well cost out of the
10 production.

11 Neither I nor Barnhill or our predecessors
12 in interest were ever furnished with an itemized schedule
13 of estimated well cost or with an itemized schedule of
14 actual well costs within ninety days following the comple-
15 tion of the well.

16 We object to being charged the penalty of
17 200 percent of well costs for risk involved, since we were
18 never afforded the opportunity of paying our share in lieu
19 of paying out on production.

20 We request an order allowing us to partici-
21 pate without a penalty in the actual well costs of the
22 Federal "B" Well No. 1, located on this unit, and we ask
23 that the operator be directed to pay us for 100 percent of
24 the gross production allocated to our interests less our
25 pro rata share of taxes deducted, and they should be

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
2020 Plaza Blanca (505) 471-2462
Santa Fe, New Mexico 87501

1 directed to furnish us a statement of actual well costs,
2 operating expenses, and the actual expenditures attributed
3 to our working interest.

4 And we also ask that all proceeds which have
5 not been disbursed within, say, fifteen days from date of
6 this order shall be placed in escrow in Eddy County, and
7 operator to furnish us with the detailed accounting of such
8 funds, together with name and address of escrow agent.

9 MR. RAMEY: Any questions? Mr. Kellahin?

10
11 QUESTIONS BY MR. KELLAHIN:

12 Q Mr. Fritts, you indicated that you had a
13 Court decree perfecting yours and Mr. Barnhill's interest
14 in the 5 acres within the east half of Section 1.

15 Do you have a copy of that Court decree
16 here today?

17 A Yes, I do. Also, the Oil Conservation
18 also has a copy.

19 Q All right.

20 A We just can use it?

21 Q I don't think there's any problem with that.

22 Mr. Fritts, I show you what I've marked as
23 Newbourne Oil Company's Exhibit Number One, and ask you if
24 that is a true and correct copy of the final decree to which
25 you made reference?

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (SOS) 471-2462
Santa Fe, New Mexico 87501

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
2020 Plaza Blanca (595) 471-2462
Santa Fe, New Mexico 87501

1 A. Yes, sir.

2 Q That final decree was entered on the 12th
3 day of June, 1978, was it not?

4 A. I'll take your word for it.

5 Q Yes, sir, that's apparently what it says.

6 All right. The forced pooling order which
7 you referred to was entered on July 30th, 1974, is that not
8 correct, Mr. Fritts?

9 A. Yes.

10 Q Now, after July 30th, 1974, do you know
11 when the well was completed?

12 A. Completion was reported on December the
13 28th, 1974.

14 Q The 28th of December, 1974 the well in the
15 east half of Section 1 was completed.

16 A. Yes.

17 Q All right. When did you first acquire a
18 record title ownership in the east half of Section 1?

19 A. I believe in -- I acquired my interest by
20 I believe seven oil and gas leases dated December the 26th,
21 1974.

22 Q Am I correct in saying that as of the date
23 of the forced pooling order, and as of the date of the com-
24 pletion of the well pursuant to that order, neither you nor
25 Mr. Barnhill had an interest recorded with regards to the

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CERTIFIED SHORTHAND REPORTER
3030 Plaza Blanca (SOS) 471-2462
Santa Fe, New Mexico 87501

1 east half of Section 1?

2 A. Let me get straight, now, you're asking if
3 I have a recorded interest after the forced pooling order?

4 Q. That's correct, yeah.

5 A. And prior to the completion of the well?

6 Q. That's right.

7 A. No.

8 Q. All right. From whom did you obtain your
9 interest in the east half of Section 1? You said you had
10 seven oil and gas leases in this area.

11 A. Yes.

12 Q. Could you go down each one of those, indi-
13 cate the date of the conveyance and from whom you received
14 it?

15 A. All right. There are seven oil and gas
16 leases and all of them are dated December 26th, 1974.

17 And I think I'm safe in saying that they're
18 all recorded the same date, January the 17th, 1975.

19 Q. January 17th, 1975, they were placed of
20 record in Eddy County, is that correct?

21 A. Right.

22 Q. All right, sir. Would you go slowly now
23 and list --

24 A. All right.

25 Q. -- either the lessor or the grantor in each

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CERTIFIED SHORTHAND REPORTER
3030 Plaza Blanca (SOS) 471-2462
Santa Fe, New Mexico 87501

1 conveyance?

2 A. May I give you a little background?

3 Q. Yes.

4 A. This tract of land was deeded in 1910 to
5 two women, Minnie Warmker, W-A-R-M-K-E-R, and Kate Warmker,
6 two sisters.

7 Minnie Warmker died in 1940. There is no
8 probate in Eddy County.

9 Q. She apparently died intestate?

10 A. Died intestate. In fact, she died in Illi-
11 nois.

12 She left as her heirs three people: Katherine
13 Warmker, who is the same person as Kate Warmker who already
14 has a half interest.

15 Q. That was a surviving sister?

16 A. Right.

17 Q. All right.

18 A. So she left 1/3rd of -- Minnie left a 1/3
19 of her half to Katherine Warmker.

20 She left 1/3 of her half, or a 1/6th, to
21 Norma Warmker, who was a child of a deceased brother, Henry.
22 And there were no probates record in Eddy County on those
23 people.

24 Q. Okay.

25 A. The third interest is 1/3 of 1/2, or 1/6th,

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CERTIFIED SHORTHAND REPORTER
3920 Plaza Blanca (SOS) 471-2462
Santa Fe, New Mexico 87501

1 in the 5 acres, to C. Raymond Buxman, B-U-X-M-A-N, and he
2 was the only child of a deceased sister, Louisa C. Buxman.

3 Shall I go through -- it would be simpler
4 if I'd just go through the title with you right now, is that
5 all right?

6 Q Well, let me ask you a question at this
7 point.

8 A All right.

9 Q Minnie died in 1940 and there was no pro-
10 bate of her estate.

11 A Right.

12 Q When did the heirs of Minnie Warmker first
13 evidence by recorded instrument in Eddy County any interest
14 in the east half of Section 1?

15 A There were no recorded instruments, to my
16 knowledge.

17 Q Okay.

18 A You're talking about, now, the heirs of
19 Minnie?

20 Q That's right.

21 A Okay.

22 Q All right?

23 A All right, now, you ready to start out
24 again?

25 Q Uh-huh.

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3030 Plaza Blanca (988) 471-2463
Santa Fe, New Mexico 87501

1 A. C. Raymond Buxman died in 1947. He died
2 intestate. Now, his interest, forget it for a moment, and
3 let's go back to Kate Warmker, who had 1/2 interest in
4 her own right.

5 Q. She was Minnie's sister back in 1910.

6 A. She was -- she was one of the two people on
7 that deed.

8 Q. Okay.

9 A. Kate Warmker, in her own right and as an
10 heir of Minnie Warmker, gave a deed to the Anna Brown Home,
11 and that was in 1948.

12 Q. This is the Anna Brown Home for the Aged in
13 Illinois.

14 A. Right; right.

15 Q. All right.

16 A. That's now called something else.

17 Norma Warmker, who had inherited 1/3rd of
18 1/2, or a 1/6th, from Minnie, gave a deed to the Anna Brown
19 Home for the Aged.

20 Q. And when did that deed appear of record?

21 A. That was the same deed, in fact.

22 Q. The 1948 deed?

23 A. Right.

24 Q. All right.

25 A. That is all the interest that the Anna Brown

1 Home for the Aged ever acquired.

2 My interest comes, now, from the heirs of
3 C. Raymond Buxman, who died in 1947, intestate.

4 He left a widow. He left a son, Howard.
5 He left a daughter, Irma Neece; a son, Warren Buxman; a
6 daughter, June Schreacke. He left a son, Charles Buxman.
7 He left a son, Eugene Buxman. He left a son, Roger Buxman.

8 Now then, I've got to go back. The son,
9 Howard Buxman, died and left no children but left a surviving
10 widow, Emma.

11 Am I going too fast for you?

12 Q No.

13 A Charles Buxman died, was never married, left
14 no children, so by law his interest passed to his mother,
15 Ella Buxman.

16 Roger Buxman, son of C. Raymond Buxman,
17 died intestate. He left his widow, a son, and a daughter.
18 I'll give you their names, if you'd like.

19 Q No, that's all right. I don't think that's
20 important to us.

21 A So there are no probates on any of these
22 people.

23 Q All right, it is that chain of title and
24 those interests to which you perfected title as a result of
25 the quiet title suit --

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3030 Plaza Blanca (905) 471-2462
Santa Fe, New Mexico 87501

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (SOS) 471-2462
Santa Fe, New Mexico 87501

1 A. That's right.

2 Q. -- and the final decree entered on 12 June

3 '78 in Eddy County Cause CV 78-133.

4 A. Correct.

5 Q. Okay.

6 A. Now you asked me a question where did I get

7 my title. Shall I give that to you?

8 I have seven oil and gas leases from these

9 people. I have an oil and gas lease from Ella Buxman, who

10 is a surviving widow of C. Raymond Buxman.

11 Q. Okay.

12 A. I say that she owns 1/4 of 1/6th that she

13 inherited from her husband, and she has 1/7th of 3/24ths

14 from her son, Charles, who died leaving no children and

15 no widow. Yeah, no widow and no children.

16 I have an oil and gas lease from Irma Buxman

17 Neece, N-E-E-C-E. I say that she owned 1/7th of 3/24ths

18 interest from inheritance.

19 I have an oil and gas lease from Emma Buxman.

20 Her interest came by inheritance from Howard Buxman and

21 she owns 1/7th of 3/24ths interest.

22 I have an oil and gas lease from Eugene

23 Buxman, who inherited 1/7th of a 3/24ths from his father,

24 C. Raymond Buxman.

25 A lease from Warren Buxman, who inherited

1 the 1/7th of a 3/24th interest from his father.

2 A lease from June Schreacke. She was a
3 daughter of C. Raymond Buxman and she inherited 1/7th of
4 a 3/24ths.

5 I have an oil and gas lease from Alma Gloor,
6 G-L-O-O-R. She was formerly Alma Buxman. She's a surviving
7 widow of Roger Buxman, and she inherited 1/4th of 1/7th of
8 a 3/24ths for her interest.

9 This same lease was executed by Ronald
10 deWayne Buxman, son of Roger Buxman, deceased. His interest,
11 good gracious, 1/2 of a 9/672, if I can ease this a little.
12 And his sister, Vicky Lynn Buxman, who had an equal interest,
13 the two of them together inherited 3/4ths of 1/7th of a
14 3/24ths interest, and it came from their father, Roger
15 Buxman.

16 And I say with those seven leases that --
17 that I have a lease from all the mineral owners of the Ray-
18 mond Buxman.

19 Q Now, you've supplied this final decree in
20 your quiet title suit to Mewbourne Oil Company, have you
21 not?

22 A I have.

23 Q And as a result of supplying that to Mew-
24 bourne Oil Company, they have had prepared Division order
25 title opinions and Division orders, showing what your fraction

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (S.O.S.) 471-2463
Santa Fe, New Mexico 87501

1 interest is in the east half of Section 1.

2 A. That's right.

3 Q. And there's no disagreement between you and
4 Mewbourne Production about what that fractional interest is
5 as of this date.

6 A. That's right, there's no disagreement.

7 Q. And you have received all your money, with
8 the exception of that portion being held with regards to
9 the risk factor. You've received all other monies --

10 A. No, I won't go with you on that.

11 Q. Okay, tell me what you've received and what
12 you have not received.

13 A. You mean in money?

14 Q. Not in dollars but in general terms. Are
15 you being paid sums by Mewbourne Oil Company for production
16 from this well?

17 A. I'm being paid sums since about -- well,
18 I'm receiving payments from them now.

19 Q. Okay.

20 A. For my -- for my working interest, and for
21 another interest, which has no connection here.

22 Q. I'm only interested in the working interest
23 ownership in regards to Tract 218.

24 A. And as far as I know, those payments are
25 in order.

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
2020 Plaza Blanca (505) 471-2462
Santa Fe, New Mexico 87501

1 The argument comes from June, '75, which was
2 the date of first production. The fact of the matter is,
3 I have an argument with Mewbourne on the way they're paying
4 me, which is in addition to what I'm trying to establish
5 here, and I don't think the Commission wants to fool with
6 it, but I'll be glad to explain it, if it's necessary.

7 From June of '75 when the first production
8 commenced through June of 1978 is the area of argument.

9 I argue that they should not have assessed
10 me 200 percent.

11 Q All right, let me ask you this. How much
12 money is involved in this 200 percent?

13 A I wrote them a letter setting out what I
14 thought was due me, and do you have a copy of it?

15 Let me just mention my other controversy
16 and then we can forget about it.

17 Q Well, let's not clutter the record, Mr.
18 Fritts, unless it's relevant to the case here.

19 A Well, it's not relevant until you ask me
20 about total value which I think is due me, so in addition
21 to the 200 percent penalty, I argue that they haven't paid
22 me all the gas that was produced.

23 Q Okay. Apart from that, I would like you
24 to take a copy of what I've marked as Exhibit Number Two,
25 which is your letter dated October 6, 1978, and indicate

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
2020 Plaza Blanca (696) 471-2462
Santa Fe, New Mexico 87501

1 to me what the dollar amount is in controversy.

2 A. You mean after we -- the bottom line, is
3 that what you're interested in, or shall I go through the
4 whole thing?

5 Q. Just the bottom line.

6 A. Roughly \$1580.00.

7 Q. As to your interest.

8 A. As to my interest and the same for Mr. --

9 Q. And how about Mr. Barnhill?

10 A. The same to him.

11 Q. About \$1500.00 to Mr. Barnhill.

12 A. Right.

13 Q. Okay. Now I'm curious as to what first
14 led you, Mr. Fritts, to attempt to get these leases from
15 the Buxman heirs back in late '74 and early '75.

16 A. Well, it's quite simple. Barnhill and I
17 started checking records in the general area, particularly
18 in Section 2, and in Section 34 of 17, 26, and intended to
19 buy minerals, assuming that the whole thing was leased,
20 and we succeeded in buying minerals and we were doing it
21 on information prepared by Mr. Barnhill, who is a geologist.

22 He outlined the broad area. He says, this
23 looks like a good area for gas production, let's see if we
24 can get in it. And then we expanded our area a little,
25 took in a little bit more each time I checked, and I finally

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3030 Plaza Blanca (505) 471-2462
Santa Fe, New Mexico 87501

1 checked as far east as Section 6 of 18 South, 25 East, and
2 it included Section 1. I made a take-off on it and I found
3 immediately that your company had not leased the Buxman
4 heirs, and I called them and made a deal with them, and I
5 did it to make money.

6 Q At that point, Mr. Fritts, were you aware
7 that a well had been completed in Section 1?

8 A I was not.

9 Q You were not aware of that?

10 A I started checking before -- we started
11 checking before they formed it, and let me throw this in.
12 Your company did not record the unitized agreement or a copy
13 of this forced pooling agreement until seven, oh, seven or
14 eight months after I recorded my interest.

15 So the records showed no evidence of forced
16 pooling or even the fact that they were going to drill a
17 well.

18 Q Did you acquire any surface ownership in
19 the east --

20 A I did.

21 Q -- half of Section 1?

22 A I did.

23 Q And when did you obtain the surface owner-
24 ship?

25 A Well, let me -- let me stop you now. This

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (505) 471-2462
Santa Fe, New Mexico 87501

1 is an entirely different chain of title.

2 Q Okay, When did you acquire that interest?

3 A A warranty deed was executed February the
4 7th, 1975. It was executed by the Good Samaritan Home.
5 It was executed to William B. Barnhill and it covered all
6 of the surface rights owned by the Good Samaritan Home plus
7 some mineral interest but your question was about the sur-
8 face.

9 Q That's right. At the time you acquired the
10 surface interest did you make any inspection of the surface?

11 A I did not. Would you like to know why I
12 didn't? Or does it matter?

13 Q I don't think it matters, Mr. Fritts.
14 You took it subject to the fact that their well was present
15 located on the property and had you desired to do so, you
16 could have inspected and found the well.

17 A I suppose that's true. This is located
18 in the flood plains of the Pecos River, and I --

19 Q Mr. Barnhill is a geologist, is he not?

20 A Yes.

21 Q And what is your -- do you have any exper-
22 tise in oil and gas?

23 A Not really. I'm a broker of oil and gas
24 leases.

25 Q But you consider yourself experienced in

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
2020 Plaza Blanca (505) 471-2462
Santa Fe, New Mexico 87501

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3030 Plaza Blanca (505) 471-2462
Santa Fe, New Mexico 87501

1 matters of leasing oil and gas property?

2 A. I do.

3 Q As a reasonably prudent man with experience
4 in oil and gas leasing, would you not examine the records
5 before the Oil Conservation Commission or one of its Divi-
6 sions in the District Office with regards to what production
7 may have been completed or what wells may have been drilled
8 on any acreage in which you were interested?

9 A. I haven't ever done it in my life.

10 Q But those records are available to you
11 should you desire to look at them, are they not?

12 A. Certainly.

13 Q And you knew that at the time you acquired
14 this interest.

15 A. I may have known it but I didn't --

16 Q You didn't do it.

17 A. -- consider it necessary. I think you're
18 wrong but I can't argue with a well-known attorney. I
19 think that has to be recorded in the county to be of notice
20 to me.

21 MR. KELLAHIN: I believe I have no other
22 questions for Mr. Fritts.

23 MR. RAMEY: Any other questions for the
24 witness? He may be excused.

25 MR. KELLAHIN: Mr. Ramey, I'd like to discuss

1 with you, before I present my case, some problems I have
2 with this particular application.

3 Mewbourne Oil Company would very much like
4 the Commission to dispose of this matter in one way or an-
5 other, but I'm concerned that the Commission lacks juris-
6 diction based upon what Mr. Fritts has told us in which to
7 give him the type of relief he seeks.

8 It appears to me that the way the advertise-
9 ment is written, based upon Mr. Fritts' letter of applica-
10 tion, that he's seeking a review and interpretation of the
11 forced pooling order, and I think fundamentally the Commis-
12 sion or Division lacks jurisdiction to review and interpret
13 his forced pooling order. That's within the provence of the
14 District Court.

15 In addition, it becomes very apparent that
16 we are in a controversy as identified by Lynn Teschendorf,
17 General Counsel for the Division, in her letter to Mr.
18 Fritts, dated on February 9th, 1979, in which she indicates,
19 "I've received your application for a hearing on certain
20 matters pertaining to the above referenced case; however
21 it appears that there may be some dispute as to record
22 title and lease ownership of the 5-acre tract involved.

23 The Division has no authority to adjudicate
24 titles or make determinations of ownership, but if you can
25 come to some agreement with the operator, Mark Production

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3050 Plaza Blanca (505) 471-2362
Santa Fe, New Mexico 87501

1 Company, or obtain a Court decree as to the interests in
2 this tract, I can proceed to docket this case."

3 Our problem is I think that the Commission
4 is being asked to determine the status of the record title
5 ownership as of the date of the forced pooling hearing and
6 as of the date of the order.

7 Now, you'll have evidence that I'll bring
8 to you that indicates that we believe the record title owner-
9 ship as of the date of the hearing was, at least of record,
10 in the Anna Brown Home for the Aged, and that that acreage
11 was under lease to Felmont Oil Corporation.

12 Now Felmont, subsequent to the hearing,
13 acceded to the order. They consented to the order and to
14 the penalty factor. It was only subsequent, in June of
15 1978, some four years after the forced pooling order, that
16 Mr. Fritts and Mr. Barnhill perfected their record title
17 ownership in the property.

18 Mr. Fritts has just testified that from
19 1940, I guess, which is the death of Minnie Warmker, the
20 sister of Kate, that there was nothing of record to clue
21 the operator that either Mr. Fritts, Mr. Barnhill, or any
22 of the Buxman heirs, had any record title ownership in this
23 property. For some, whatever it was, thirty-four years
24 there is nothing in the record to indicate that the owner-
25 ship is otherwise than in the Anna Brown Home.

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CERTIFIED SHORTHAND REPORTER
3036 Plaza Blanca (505) 471-2462
Santa Fe, New Mexico 87501

1 Now I don't believe the Commission has ever
2 required any operator to go out and attempt to search for
3 the unknown heirs of some party that may or may not have
4 an interest in the acreage to be pooled. We've done this
5 a number of times for Cities Service in Carlsbad, in which
6 there are city lots in which the ownership is not even
7 known. The procedure is to escrow those funds subject to
8 the penalty factor and that if in a period of ten years the
9 parties do not claim that interest, it escheats to the
10 State, but it escheats to the State subject to the operating
11 penalty risk factor.

12 We believe that the situation in here is
13 similar to that, in that Mr. Fritts and Mr. Barnhill have
14 now perfected by Court decree their interest in the property,
15 and they are to receive their percentage interest, based
16 upon the Division order written on this final decree.

17 Mr. Fritts indicates he has no problem
18 with the percentage he's being paid. His question concerns
19 whether the risk factor applies. It is our contention that
20 it does; that first of all, the Commission should not ad-
21 judicate what the record title ownership is as of the date
22 of the hearing, but even if you do attempt to take juris-
23 diction over that matter, why, it appears to me that it
24 would have taken herculean efforts to determine who these
25 unknown interests were, and that's not the operator's obli-

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3030 Plaza Blanca (605) 471-2462
Santa Fe, New Mexico 87501

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (606) 471-2482
Santa Fe, New Mexico 87501

1 gation.

2 But before we present our case, and to
3 simply keep this case as simple as possible, we believe
4 that the Commission at this point lacks jurisdiction to
5 adjudicate the ownership as of the date of the forced pooling.

6 MR. RAMEY: You may be right, Mr. Kellahin,
7 but I would like to hear what your witness has to say and
8 get a complete record on this, and then if we don't have
9 jurisdiction we will -- we will come out with an order such.

10 MR. KELLAHIN: I'd like to call Mr. Donald
11 Haden, please.

12 DONALD G. HADEN

13 being called as a witness and having been duly sworn upon
14 his oath, testified as follows, to-wit:
15

16 DIRECT EXAMINATION

17 BY MR. KELLAHIN:

18 Q Mr. Haden, would you indicate what your
19 name is?
20

21 A My name is Donald G. Haden.

22 Q How do you spell your last name?

23 A H-A-D-E-N.

24 Q Mr. Haden, how are you employed?

25 A I'm District Manager for Mewbourne Oil

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3020 Plaza Blanca (505) 471-2462
Santa Fe, New Mexico 87501

1 Company in Midland, Texas, office.

2 Q What are your duties as District Manager
3 for Mewbourne Oil Company?

4 A Well, primarily to oversee the exploration
5 effort in western Texas and southeastern New Mexico and the
6 Panhandle, including buying oil and gas leases, examining
7 titles, and curing them, et cetera.

8 Q Mr. Haden, what is the relationship between
9 Mark Production Company and Mewbourne Oil Company?

10 A That was simply a name change from Mark
11 Production Company to Mewbourne Oil Company.

12 Q Do your duties as District Manager for
13 Mewbourne Oil Company include keeping track of correspon-
14 dence and documents concerning wells drilled by Mewbourne
15 Oil Company in Eddy County, New Mexico?

16 A Yes, it does.

17 Q And do you maintain a record of the drilling
18 and correspondence with regard to the Federal "B" No. 1 Well,
19 located in the east half of Section 1, Township 18 South,
20 Range 36 East, Eddy County, New Mexico?

21 A Yes, we do.

22 Q And does part of that record include cer-
23 tain documents and title opinions concerning the record
24 title ownership of the working interest of the east half
25 of Section 1?

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3030 Plaza Blanca (606) 471-2462
Santa Fe, New Mexico 87501

1 A. Yes, it does.

2 Q And are those documents and opinions ob-
3 tained by you in the regular course of your business for
4 Mewbourne Oil Corporation?

5 A. Yes, it is.

6 Q Have you brought with you certain records
7 concerning the record title ownership for the east half of
8 Section 1, specifically with regards to Tract Number 218?

9 A. Yes, I have.

10 Q I show you what I have marked as Mewbourne
11 Oil Company Exhibits Three through Eleven and ask you if
12 those are documents which you're referred to concerning the
13 ownership and title questions with regard to the east half
14 of this section?

15 A. Yes, it is.

16 MR. KELLAHIN: If the Commission please,
17 we move the introduction of Exhibits Three through Eleven.

18 MR. RAMEY: They will be admitted.

19 Q Now, Mr. Haden, let's go through those docu-
20 ments, if you please, and would you identify what Exhibit
21 Number Three is?

22 A Exhibit Three is the Order No. R-4831,
23 being the forced pooling order, dated July 30th, 1974.

24 Q Okay. Would you please refer to Exhibit
25 Number Four and identify it?

1 A Exhibit Four is a letter dated October 5th,
2 1974, from Mewbourne Oil Company to Felmont Oil Corporation,
3 furnishing them an estimated well cost of the Federal "B"
4 No. 1.

5 Q Refer to Exhibit Number Five and identify
6 it.

7 A It's a letter dated August the 6th, 1974,
8 from Mewbourne Oil Company to the New Mexico Oil Conservation
9 Commission furnishing them with an itemized schedule of
10 estimated well cost for the Federal "B" No. 1.

11 Q Will you refer to Exhibit Number Six and
12 identify it?

13 A This is a letter dated August the 6th,
14 1974, from Mewbourne Oil Company to Felmont Oil Corporation,
15 furnishing them with two copies of an operating agreement
16 for the Federal "B" No. 1.

17 Q Please refer to Exhibit Number Seven and
18 identify that.

19 A That's a letter from Felmont Oil Corporation
20 to Mark Production Company dated August the 9th, 1974, rela-
21 tive to the Federal "B" No. 1, acknowledging receipt of the
22 invoice and the AFE.

23 Q Okay.

24 A And acknowledging the operating agreement,
25 I guess that's it.

SALLY WALTON BOYD
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3020 Plaza Blanca (SOS) 471-2462
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1 Q All right, Exhibit Number Eight, now.

2 A Exhibit Number Eight is a form filed with
3 the United States Department of the Interior relative to
4 Federal "B" No. 1, showing the location, the spud date of
5 August the 30th, 1974, the date the total depth was reached
6 on September 28th, 1974, and the date of completion of the
7 well on November 22nd, 1974.

8 Q Refer to Exhibit Number Nine and identify it.

9 A That's a letter from Felmont Oil Corporation
10 to Mark Production Company, dated March the 12th, 1975,
11 acknowledging that they have been force pooled in the unit
12 and enclosing a copy of their lease from the Anna Brown
13 Home Unit, dated August the 9th, 1973.

14 Q Okay. Exhibit Number Ten.

15 A Exhibit Number Ten is a letter dated Decem-
16 ber 22nd, 1978, from our attorney, Tevis Herd, with the
17 law firm of Cotton, Bledsoe, Tye, Morrow, and Dawson in
18 Midland, directed to Mr. J. V. Fritts, advising him that
19 in his opinion that the record title reflected that the
20 ownership was in Felmont at the time of the forced pooling
21 order.

22 Q Would you refer to Exhibit Number Eleven
23 and identify it?

24 A Exhibit Number Eleven is a memorandum of
25 title by Tevis Herd, relative to the history of the title

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (SOS) 471-2462
Santa Fe, New Mexico 87501

on the Federal "B" No. 1.

MR. KELLAHIN: That concludes my examination of Mr. Haden.

MR. RAMEY: Any questions of the witness?

MR. FRITTS: Please.

MR. RAMEY: Mr. Fritts.

MR. FRITTS: I have just a few.

CROSS EXAMINATION

BY MR. FRITTS:

Q Do you have a copy of your Division order at hand?

A Yes, I do.

MR. KELLAHIN: Which one do you have?

A Well, there's two. All I have were just excerpts, so it will be requirement number sixteen of title opinion Number 3046-A, and a copy of the third supplemental Division order, opinion Number 3046-D.

Q The very first sentence under requirement Number Sixteen, it says, "Title to Tract 218 was acquired by Minnie Warmker and Kate Warmker." And it goes on to describe the deed.

Under requirement on page eighteen of that same title opinion, under requirement B, it says, "An investigation should be made concerning the Minnie Warmker."

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3030 Plaza Blanca (606) 471-5462
Santa Fe, New Mexico 87501

1 I guess my question would be, did you carry
2 out that investigation?

3 A. I'm not in a position to answer that because
4 I was not employed by Mowbourne at the time this opinion
5 was prepared.

6 Q Then let's go on to on December the 19th,
7 1975, the third supplemental Division order, opinion Number
8 3046-D.

9 And that seems to be in the form of a letter
10 to Mark Production.

11 MR. KELLAHIN: What's the date of that, Mr.
12 Fritts?

13 Q December the 19th, 1975. This is, by the
14 way, more than a year after the well was completed.

15 On page two, skip down to where you see the
16 title evidence obtained by J. V. Fritts reflects that the
17 Good Samaritan Home owned an undivided 5/6ths mineral in-
18 terest in Tract 218 at the time it executed the lease dated
19 August the 9th, 1973, to Felmont Oil, and that the remaining
20 1/6th mineral interest is owned in various portions by my
21 lessors.

22 Do you dispute that?

23 A. Dispute his statement here?

24 Q Yes. Do you say that I did not own the
25 1/6th working interest?

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3030 Plaza Blanca (306) 471-2402
Santa Fe, New Mexico 87501

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (SOS) 471-2462
Santa Fe, New Mexico 87501

1 A. I believe he's saying you did not have
2 record title to that 1/6th.

3 Q Well, will you define record title for me?

4 A. Evidence that is filed of public record in
5 the county wherein the land lies.

6 Q What was the record title on the date of
7 the forced pooling order?

8 A. Well, all I --

9 Q Remember in your first Division order he
10 says title to Tract 218 was acquired by Minnie Warmker and
11 Kate Warmker.

12 A. In 1910.

13 Q In 1910, and his requirement was an investi-
14 gation should be made concerning Minnie Warmker.

15 Why isn't Minnie Warmker and Kate Warmker,
16 the two sisters, who got a deed in 1910, why wouldn't that
17 be record title if nothing had taken place since that time?

18 Would it be record title?

19 A. Well, I think the fact -- Minnie Warmker
20 died in 1940.

21 Q There's nothing on record to show it.

22 A. They can --

23 Q I argue that the title at the time that you
24 bought your lease, or at the time Felmont bought their
25 lease, rather, excuse me, at the time you got the forced

1 pooling order, was Minnie Warmker and Kate Warmker. There
2 is nothing in the record to show her death.

3 So your attorney said make an investigation
4 concerning her, and in his supplemental opinion that I just
5 mentioned here, he says, "It appears that Good Samaritan
6 Home has 5/6ths and Fritts has 1/6th."

7 I can't understand what you mean by record
8 title. If Minnie Warmker who has no probate of record, no
9 affidavits of heirship, if she and her sister Kate aren't
10 record title, then I don't -- I don't know what record title
11 is.

12 A. I believe your lease didn't come from
13 Minnie Warmker, though.

14 Q. Well, maybe not, but did you notify Minnie
15 Warmker? Did you serve her with an itemized schedule?

16 A. I can't --

17 Q. Of well costs?

18 A. -- tell you.

19 MR. KELLAHIN: Tell us where she was buried
20 and we'll be happy to serve her.

21 Q. Even after my title had been placed of re-
22 cord?

23 MR. KELLAHIN: I'm not going to argue with
24 you, Mr. Fritts.

25 Q. It's been stated that -- that you didn't

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (S.W.) 471-2482
Santa Fe, New Mexico 87501

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (SOS) 471-2462
Santa Fe, New Mexico 87501

1 know where these heirs, these Buxman heirs, were, is that
2 true? And you couldn't serve them?

3 A. True.

4 Q. I have here what is an oil and gas lease
5 from those same heirs to Mark Production Company, covering
6 another tract of land within a half a mile of this tract
7 that's in controversy.

8 Will you tell me if that is a fair statement?

9 A. Yeah, this is a lease dated August 10th,
10 1972, from what appears to be these heirs to Mark Production
11 Company, relative to Section 12, 18 South, 26 East.

12 Q. Does it show the address of the lessors?

13 A. Yes, it does.

14 Q. Couldn't you have used that address to
15 notify these people in Section 1?

16 A. Well, I would think just it's not the same
17 section of land and we have many, many tracts in Eddy
18 County, New Mexico.

19 Q. Well, did you make a -- did you make a
20 search?

21 A. Well, I can't answer that. Like I said,
22 this is prior to my employment.

23 Q. Well, I started writing to you in early
24 1975. Did you make a search then for the addresses of these
25 people?

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
8030 Plaza Blanca (505) 471-2462
Santa Fe, New Mexico 87501

1 A. I was -- I came with Mewbourne in September
2 of '76.
3 Q. Then you wouldn't know that.
4 MR. RAMEY: What's the date on that document?
5 A. This one I have in my hand?
6 MR. RAMEY: Yes.
7 A. August the 10th, 1972.
8 MR. FRITTS: Am I supposed to introduce that
9 document?
10 MR. RAMEY: If you so desire.
11 MR. FRITTS: I guess I'd better.
12 Q. (Mr. Fritts continuing.) Mr. Haden, among
13 the documents that you have already introduced is an oil
14 and gas lease from Felmont Oil.
15 Will you tell us what tracts it covers?
16 A. Let's see, it covers Tract 320 of Section
17 12 and Tract 218 of Section 1, both in Township 18 South,
18 Range 26 East.
19 Q. Tract 320 is a tract 12 that's on your oil
20 and gas lease here, is that right?
21 A. Yes, that's correct.
22 Q. So Felmont Oil Corporation knew the title
23 to the two tracts and included it in their -- in their
24 lease.
25 A. Yes.

1 And your lease only covers Tract 320 in
2 Section 12.

3 Q That's true; is that correct?

4 Well, would you -- would you say that the
5 landman that was in charge at the time of all of this, should
6 he not have known about the title to a tract that's just
7 across the line?

8 A Well, he would have if he'd have taken this
9 lease, probably, from the Anna Brown Unit of the Good
10 Samaritan --

11 Q If he had looked at the title and found the
12 Felmont lease, which covers Tract 218 in Section 1 and 320
13 in Section 2, would that not have alerted him to the fact
14 that the Buxman heirs probably would have an interest in
15 both tracts?

16 A Well, that -- that would only be surmise
17 that he would.

18 Q Okay. I have in my file a carbon copy of
19 a letter to your company, dated January the 20th, 1975, and
20 I advised that I had acquired oil and gas leases on a 1/6th
21 interest. Do you have a copy of that with you?

22 A No, I do not.

23 Q On March the 14th, 1975, I wrote another
24 letter to Mark Production. I gave the recording data on my
25 leases and I again expressed the desire to commit my working

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3080 Plaza Blanca (SOS) 471-2442
Santa Fe, New Mexico 87501

1 interest to the unit, and I asked you for a breakdown of
2 the cost.

3 Were you there in -- you weren't there in
4 '75.

5 A. No, I was not.

6 Q. Does your file have -- do you have that
7 letter with you?

8 A. No, I do not. This letter you just read
9 about? No, I do not.

10 Q. Then on October the 3rd of 1975 I wrote a
11 letter to Mark Production and I mentioned the first two
12 letters, and I pointed out that you were circulating a Divi-
13 sion order and that it was in error as to the ownership of
14 Tract 218.

15 Do you have a copy of that letter?

16 A. Is that -- what is the date of your letter
17 where you describe the amounts of money? That's the first
18 one that I've --

19 Q. Is that the first one that you --

20 A. That's the first one that I saw.

21 Q. But would those letters be in your file in --
22 I wrote the letters to Tyler. Would you have -- would your
23 office in Midland have received copies of them?

24 A. Only if they'd reproduced them and sent them
25 to us, since you directed your correspondence to Tyler.

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3026 Plaza Blanca (505) 471-2482
Santa Fe, New Mexico 87501

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (605) 471-2462
Santa Fe, New Mexico 87501

1 Q But you have all -- all that's in your file.
2 You have everything that's in your file?

3 A Well, predominantly, everything that -- I
4 don't have the entire file here, if that's your question.

5 Q My copies are carbon copies, and I wouldn't
6 I don't suppose I'd be allowed to introduce them as --

7 MR. KELLAHIN: Certainly, Mr. Fritts, they
8 could be reproduced and submitted after the hearing. I
9 have no objection to your submitting those.

10 Just set aside those letters you're inter-
11 ested in and we'll see that they get in the record.

12 MR. FRITTS: All right. Now, those are the
13 three letters that I have just briefly mentioned.

14 Am I taking up too much of your time?

15 MR. RAMEY: Take as much as you need, Mr.
16 Fritts.

17 Q (Mr. Fritts continuing.) On June 14, 1978,
18 I wrote a letter to Mark Production, which I furnished a
19 copy of the final decree, and I furnished a copy of a De-
20 claration of Interest between me, Barnhill, and Felmont.

21 Is that in your file?

22 A I believe it is. I don't have it right
23 here. At least we have the -- I believe, one of these sup-
24 plemental Division order opinions here reflects this inform-
25 ation that you described.

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (505) 471-2462
Santa Fe, New Mexico 87501

1 Q Okay. On September the 25th, 1978, I asked
2 for a complete accounting of well cost to Mewbourne Oil,
3 and pointed out that there were some mistakes.

4 There again, do you have -- you don't have
5 that copy, do you?

6 A No, I don't. Well, I have the -- I have
7 the copy of your letter where you set those monetary amounts
8 out.

9 Q All right, that's the next one. On October
10 the 2nd, 1978, you have a copy of that, you have a copy of
11 my letter -- excuse me. On October the 2nd, 1978, is a
12 copy of a letter from you to me setting out the well costs.

13 You don't have that?

14 A I don't have that either. That comes from
15 our Accounting Department in Tyler.

16 Q I'd like to introduce this as part of my
17 exhibits.

18 Would you read it?

19 A The letter is dated October the 2nd, 1978,
20 and it's to Mr. J. V. Fritts from our Tyler office.

21 "Dear Mr. Fritts. Attached is the informa-
22 tion you requested as to the accounting of the total cost
23 to drill and complete the Federal "B" No. 1.

24 The well did pay out in September of 1976,
25 effective October 1, 1976.

1 You are correct to assume at that rate the
2 well would have cost over \$1,000,000.

3 Since Felmont was force pooled, they accepted
4 the payout of 300 percent times the actual cost to complete
5 the well. The total cost was \$445,052.78 times 300 percent
6 equals \$1,335,164.34.

7 Please review Felmont's payout sheet for the
8 method used to determine the figures for payout."

9 Q Mr. Haden, why -- why does Felmont Oil have
10 power -- why did they have any power to commit my interest
11 to the forced -- to the penalty to the forced pooling?

12 Did they own -- did they own my interest?

13 A Our attorney -- our attorney records that
14 they were the record owners at the time of the forced pooling
15 order.

16 Q Well, there again we come up to the -- to
17 the business of what is record title. What interest did
18 Felmont Oil have under lease at the time of the forced
19 pooling order?

20 A The percentage of this particular Tract 218
21 had a total interest in the unit of 1.578125 percent, which
22 would include both royalty interest and working interest.

23 Felmont Oil Corporation had reflected at
24 the time a 1.380859 percent working interest.

25 Upon finalization of this quiet title suit,

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3030 Plaza Blanca (505) 471-3442
Santa Fe, New Mexico 87501

1 then, that was, of course, changed to the Division order
2 that was signed, which then showed that particular working
3 interest to be owned J. V. Fritts, .115072 percent; William
4 B. Barnill, .115072 percent; Felmont Oil Corporation,
5 1.150715 percent.

6 Q So just because Felmont Oil owned a lease
7 from the Anna Brown Home for the Aged, your company assumed
8 that they owned 100 percent at the time of this first -- when
9 you took out the forced pooling, is that correct?

10 A That's true.

11 Q And you don't know of anyone in your organ-
12 ization who ran the records to see what happened to Minnie
13 Warmker?

14 A No, I don't.

15 Q Would you have if you had been handling it?
16 Would you have checked the title?

17 A Well, we'd have made some attempt to. What
18 I'd have done was, since it was Felmont Oil Corporation's
19 lease, I would have presented them with the requirement and
20 let them make their search, because it was in their interest
21 to do so.

22 Q Did you do it?

23 A Well, I --

24 Q At the time of the well, before you drilled
25 the well? Do you take out drilling -- do you have drilling

SALLY WALTON EBYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (SOS) 471-2462
Santa Fe, New Mexico 87501

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (SOS) 471-2462
Santa Fe, New Mexico 87501

1 opinions madewhen you drill a well?

2 A. Yes, we do as a rule.

3 Q Did you find -- did you find that Minnie
4 Warmker was involved in this title? Or your file doesn't
5 show it, excuse me, you weren't there.

6 A. I wasn't there at that time.

7 Q Well, you've mentioned the next letter that
8 I wrote, which is October the 6th, 1978. You have a -- you
9 have a copy of that.

10 Where do you differ with me on the cost and
11 the net figure that I say? Do you say I don't -- I'm not
12 entitled to any of it?

13 A. Mr. Fritts, I'm -- that accounting schedule,
14 all those calculations are made by our Accounting Department
15 in Tyler. I did not prepare those well costs, but they're --
16 I'm sure they're of record there.

17 Q But you say that I didn't own -- that I
18 wasn't able -- that I'm wrong on thinking that I should
19 receive \$1583.

20 A. Well, we believe you're in error to the
21 extent that you're claiming that you should not be subject
22 to the 300 percent penalty.

23 We're not in disagreement as to your current
24 record title interest under which you're now being paid.

25 Q You're only willing to pay me what I'm en-

1 titled to now, not before. Okay.

2 Well, I wrote one or two other letters to
3 your company and never -- and never received a reply of
4 any sort, and I finally wrote a letter saying that I was
5 going to come up to the Oil Commission and appeal the whole
6 thing if I couldn't get satisfaction, and I got a letter
7 from -- from your attorney, and this has already been intro-
8 duced, I think, as one of your exhibits, is that correct?

9 A. That's true.

10 Q Will you -- will you read -- will you read
11 this second paragraph?

12 MR. RAMEY: What exhibit is that, please?

13 MR. KELLAHIN: Number Ten, Mr. Ramey.

14 Q I don't believe it's necessary to read it
15 out loud since everybody has it. Skip down to this part
16 in -- oh, wait, why don't you start here, therefore you and
17 William B. Barnhill.

18 A Start in the middle of the second --

19 Q Right.

20 A -- paragraph on page one of this letter,
21 dated December 22nd, 1978.

22 "Therefore, although you and William B.
23 Barnhill were not parties to the forced pooling order,
24 neither did you nor any of your mineral owners have any in-
25 terest of record at the time the forced pooling order was

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3030 Plaza Blanca (SOS) 471-2482
Santa Fe, New Mexico 87501

1 entered, and it is our opinion that the order is binding on
2 the working interest acquired by you from mineral owners
3 who owned no interest of record, but who acquired their in-
4 terest through the Anna Brown Home, who owned an interest
5 of record at the time of the order.

6 We will be pleased to discuss this matter
7 further with you at any time."

8 Q All right, I would like for you to point out
9 where -- where I'm in error on the chain of title. Tell me
10 how I acquired my interest through the Anna Brown Home.

11 A Well, I --

12 Q Do you have any --

13 A I didn't examine this title, but --

14 Q Did your attorney show it in the -- in the
15 Division order titles? Did he record it?

16 A I believe he requested that that interest
17 be placed in suspense until you got this matter straightened
18 out by your quiet title suit.

19 Q All right, I got it straightened out by
20 quiet title suit, as you all required, and there was not a
21 word in there about -- stating that I acquired my interest
22 through the Anna Brown Home.

23 Are you willing to admit that I acquired my
24 interest by oil and gas leases from a number of heirs who
25 inherited separate from any interest that might have been

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3036 Plaza Blanca (505) 471-2402
Santa Fe, New Mexico 87501

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3028 Plaza Blanca (SOS) 471-2462
Santa Fe, New Mexico 87501

1 owned by the Anna Brown Home?

2 Did I make myself clear?

3 A. Let me say I've --

4 Q. Are you saying that -- are you saying that
5 my 1/6th interest was deeded to me by the Anna Brown Home?

6 A. No, I'm not saying that.

7 Q. Why -- I don't understand why your attorney
8 says it.

9 A. We would just have to review his requirements,
10 I suppose.

11 These heirs of Minnie Warmker --

12 MR. KELLAHIN: Right.

13 A. -- they were not identified of record.

14 Q. No, but your company took an oil and gas
15 lease that included part of them.

16 Minnie Warmker was of record and I maintain
17 that it was your duty, or your landman's in charge at the
18 time, it was his duty to run this title and find those
19 people.

20 A. Mr. Fritts, I'm not a lawyer, but it would
21 appear to me that public notice is only given as to that
22 particular tract of land.

23 Q. Right.

24 A. And things are filed of record on that parti-
25 cular tract of land.

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2030 Plaza Blanca (505) 471-2462
Santa Fe, New Mexico 87501

1 Q All right.

2 A Not some other tract of land.

3 Q Then these two women were record title owners

4 and one of the women deeded her interest to the Anna Brown

5 Home. Am I stating that right?

6 A One of the women plus one other woman who

7 is an heir.

8 Q Right. But we don't know anything about

9 heirs. You don't know where Norma -- you have no notion --

10 A She appears in the title in 1948.

11 Q She appeared in the title by --

12 A Quit claim deed.

13 Q -- quit claim deed.

14 A Anna Brown Home.

15 Q Right, and it looks to me like it would be

16 incumbent upon you to find out where she got her interest.

17 She had no deed into her; we're talking about Norma.

18 I, upon the receipt of this letter from Mr.

19 Herd, I wrote him back pointing out why I thought he was

20 in error.

21 Do you have that in your file?

22 A No, I --

23 Q It's dated December the 26th, 1978.

24 A I don't believe I've seen that letter.

25 Q I'd like to introduce a copy of it.

1 I'm supposed to have one more.

2 On December 27th, 1978, I wrote him a
3 second, just a day later, and I referred to his -- I referred
4 to his two title opinions and pointed out that he agreed
5 with my interpretation of the title, but you do not have --
6 you don't have a copy of that in your file.

7 A. You mean you wrote him on successive days?

8 Q. Right, I went -- I went back through his
9 title opinion and found where he stated that title was in
10 Minnie Warmker and Kate Warmker. He asked that title in-
11 vestigation be made on Minnie Warmker and in his third sup-
12 plemental title he says Good Samaritan Home, or Anna Brown
13 Home, owns 5/6ths, Fritts owns 1/6th, and he made no refer-
14 ence in that letter saying that Felmont Oil had the -- had
15 committed me to being force pooled.

16 MR. FRITTS: I apologize, Mr. Examiner, for
17 the amateurish presentation, but that's all I have to --

18 MR. RAMEY: That's fine.

19 MR. FRITTS: To say.

20 MR. RAMEY: Mr. Haden, where are these heirs
21 located? Are any of them located in Eddy County? What's
22 their addresses?

23 A. I don't believe they are, no, sir.

24 MR. RAMEY: Mr. Fritts, I think Mr. Stamets
25 wanted to ask you a question.

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3030 Plaza Blanca (505) 471-2462
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MR. FRITTS: Yes, sir.

QUESTIONS OF MR. FRITTS BY MR. STANETS:

Q Mr. Fritts, why have you waited so long to come in here?

A Mark Production Company's attorney required that we carry out a quiet title suit to perfect this title. I immediately approached Felmont Oil and asked if they would join hands with me. They owned 5/6ths interest and I owned 1/6th. And it took me a year or two to get the decision out of them and it took another at least, another year for my attorney to carry out the quiet title.

Q Did Mark make any promise to you about what they would do when this quiet title suit was completed?

A No, sir. Their lawyer, in his -- in his title opinion pointed out defects, and said I'll require you to quiet title before these funds can be released.

So they made no promises one way or the other.

Q Now you did not acquire an ownership of these leases until December 26th, '74.

A Yes, sir.

Q And that was after the well was started.

A Yes, sir.

Q And Mark could not have given you notice of

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3030 Plaza Blanca (SOS) 471-2462
Santa Fe, New Mexico 87501

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
8020 Plaza Blanca (805) 471-2462
Santa Fe, New Mexico 87501

1 an estimated well cost before they started the well since
2 you didn't own the leases before that time.

3 A. No, sir.

4 Q. And although you've indicated that they did
5 not give these heirs notice, they're not here --

6 A. Right.

7 Q. -- to testify and to say that.

8 A. Well, can we go at it from a different angle?
9 Will Mark Production Company say they notified them?

10 Q. Well, I'm not sure that that's --

11 A. I'll take their word for it, sir.

12 Q. I'm not sure that that's their responsibility
13 since this was called on your --

14 A. Well, you're asking me to prove a negative
15 and all they have to do is say that they -- if they notified
16 them, I'm out. My argument is dead.

17 But they have never in any of the correspon-
18 dence that I've had with the company, there has never been
19 an indication that they made -- that they served anybody.

20 And after December of '75 the Commission
21 says that the operator will furnish an itemized schedule of
22 actual cost within ninety days.

23 I didn't receive that.

24 Q. Apparently, though, there was some question,
25 at least in Mark's mind, as to the validity of your owner-

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CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (905) 471-2462
Santa Fe, New Mexico 87501

1 ship at that time, is that correct?

2 A. No, sir, according to their lawyer, the
3 questions came on the heirship; there were no probates of
4 record; and he required that we investigate the heirship.

5 They never -- there was never any talk about
6 I never received any letters from them saying that you're
7 not entitled to join in the well, or you can't have the
8 costs, and so forth.

9 As soon as I recorded my leases I wrote
10 them that I would like to join.

11 Q. When were you first aware that a well was
12 being drilled on this property?

13 A. I don't know. It was very late. I, actually
14 I think along about November, between November and December
15 of '74.

16 Q. And when did you start working to acquire
17 these leases?

18 A. I don't know. I would say very close to
19 that time. When I first started I didn't know about the
20 well, but I did know before it was over.

21 Q. That's all I have.

22 MR. RAMEY: Any other questions of the wit-
23 ness? Do you have anything further, Mr. Kellahin?

24 MR. KELLAHIN: Yes, sir, we'd renew our
25 motion to dismiss the case for lack of jurisdiction on be-

1 half of the Division to determine record title ownership
2 as of the date of the forced pooling hearing and order.

3 MR. RAMEY: Well, I won't rule on that motion
4 at this time, Mr. Kellahin.

5 As I stated before, if we don't think we
6 have jurisdiction we will so note in our order.

7 I guess that's a denial.

8 MR. KELLAHIN: Let me, because of that
9 ruling, Mr. Ramey, let me summarize for you what our posi-
10 tion is.

11 This is a difficult problem for any operator
12 when he attempts to force pool acreage in which there are
13 involved unknown heirs of deceased parties, and perhaps not
14 for this case, but for other cases, it might be important
15 for the Division, if it felt appropriate, to give the oper-
16 ator some guidance as to what is going to be required of
17 him with regards to attempts to locate unknown heirs.

18 If you follow the statute, however, Mark
19 Production, when they filed this forced pooling notice, did
20 everything the statute required. There is nothing in the
21 statute to require us to go out and seek the heirs of
22 Minnie Warmker or C. Raymond Buxman, or any of these people.

23 Now if that's a defect in the statute,
24 perhaps the Commission ought to correct it by some rules
25 and regulations further defining what the operator is re-

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3030 Plaza Blanca (505) 471-2462
Santa Fe, New Mexico 87501

1 quired to do for subsequent hearings.

2 This particular case is further complicated
3 by the fact that legal counsel that prepared the title
4 opinions concerning the ownership of the east half of Section
5 1 had come to the conclusion that the Anna Brown Home in
6 Illinois purportedly had the entire 5 acres in Tract 218,
7 and if you'll look at Exhibit Number Nine, which is a letter
8 from Felmont to Mark Production, and the subsequent corres-
9 pondence from Mr. Herd, the examining attorney, Felmont
10 Oil Corporation also believed that they held 6/6ths working
11 interest ownership within this tract, and it was not until
12 June of 1978, some four years later, that it appears that
13 Mr. Fritts and Mr. Barnhill perfected their interest in
14 1/6th of that 5-acre tract.

15 But as of the date of the order and hearing
16 for the forced pooling case, if you examine the lease from
17 Anna Brown Home to Felmont Oil Corporation, it purports to
18 convey all of the interest in Tract 218.

19 The problem is further complicated by the
20 fact that Mr. Fritts acquired his interest after the well
21 was completed. I believe the completion date was sometime
22 in November, about the 22nd of November of '74. Mr. Fritts
23 has testified that his seven leases were all dated 26th
24 December '74 and placed of record on January 17th, 1975.

25 It is our contention, and I believe the

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3030 Plaza Blanca (SOS) 471-2462
Santa Fe, New Mexico 87501

1 evidence here established today, that Mr. Fritts took that
2 interest subject to the terms of the forced pooling order,
3 either by actual knowledge or constructive knowledge.

4 In response to Mr. Stamets' questions he
5 indicated that about this time he also learned of the
6 existence of the well. We believe that a man of Mr. Fritts'
7 expertise in oil and gas matters and looking for unleased
8 acreage, as he's done here, knew or should have known of
9 the forced pooling order, and that having waited another
10 three years, he's effectively barred for failure to pursue
11 this case earlier than that. Even if he's not barred, he
12 has taken it subject to the risk penalty.

13 We believe that the record established
14 through the testimony here today shows the operator exer-
15 cised reasonable diligence in attempting to locate all the
16 record title owners with regards to working interest on
17 this particular tract.

18 If you'll -- before ruling on this case, if
19 you'll do me the courtesy of reading the Exhibit Number
20 Eleven, which is Mr. Herd's summary of title, it will show
21 what Mr. Herd had in his mind when he examined this title.

22 The interest of the two Warmker sisters
23 obtained in 1910 and later conveyed to the Anna Brown Home,
24 I believe in 1948, shows that nothing transpired on this
25 title for many, many years; that the only taxes paid were

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (505) 471-2422
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1 those being paid by the Anna Brown Home; that Minnie Warmker
2 and her heirs, and some of those heirs dies and their heirs,
3 none of these people probated this estate.

4 I think it puts an impossible burden upon
5 an operator putting together a forced pooling case, to re-
6 quire him to search in that much detail to attempt to locate
7 all this missing heirs.

8 I think in this case Mark Production Com-
9 pany and their successor in interest Mewbourne Oil Company
10 have acted with diligence and that the Commission ought to
11 deny the application of Mr. Fritts.

12 MR. RAMEY: Thank you, Mr. Kellahin.

13 Mr. Fritts, do you have anything you want
14 to add?

15 MR. FRITTS: No, sir, I think I've worn out
16 my welcome with you, so I don't.

17 MR. RAMEY: The Commission will take the
18 case under advisement and the hearing is adjourned.

19 (Hearing concluded.)
20
21
22
23
24
25

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (SOS) 471-2462
Santa Fe, New Mexico 87501

REPORTER'S CERTIFICATE

I, SALLY W. BOYD, a court reporter, DO HEREBY
CERTIFY that the foregoing and attached Transcript of
Hearing before the Oil Conservation Commission was reported
by me; that the said transcript is a full, true, and correct
record of the hearing, prepared by me to the best of my
ability, knowledge, and skill, from my notes taken at the
time of the hearing.

Sally W. Boyd
Sally W. Boyd, C.S.R.

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
302 Plaza Blanca (508) 471-2462
Santa Fe, New Mexico 87501

<u>Ella Buxman</u> Ella Buxman	<u>Irma Buxman Neece</u> Irma Buxman Neece
<u>Emma Buxman</u> Emma Buxman	<u>Dustin Neece</u> Dustin Neece
<u>Warren Buxman</u> Warren Buxman	<u>Dorothy Buxman</u> Dorothy Buxman
<u>June Buxman Schreake</u> June Buxman Schreake	<u>Marcus Schreake</u> Marcus Schreake
<u>Eugene Buxman</u> Eugene Buxman	<u>Betty Buxman</u> Betty Buxman

<p align="center">BUREAU OF THE OIL CONSERVATION COMMISSION Santa Fe, New Mexico</p>	
Case No. <u>6489</u>	Exhibit No. <u>2</u>
Submitted by <u>Fritts</u>	
Hearing Date _____	

October 3, 1975

Mark Production Company
330 Citizens Bank Building
Tyler, Texas 75701

Re: Tract 218 of Fairchild Farm Lands, Section 1, T-18S,
R-26E, Lddy County, New Mexico.

Gentlemen:

On January 20th and again on March 11th (the latter being certified) I wrote letters to you concerning a working interest in the above described parcel which is a part of of your Pennsylvanian formation unit covering the East Half of Section 2.

I understand a division order is now being circulated on the unit but I have not received a copy. Will you please send me one, directing it to P. O. Box 868, Roswell, New Mexico 88201?

A copy of the division order has been received by Mr. B. Barnhill, however, and it is our belief that it is in error as to Tract 218. We say that Belmont Oil Corporation only holds a lease on 5/6ths of the mineral rights from Good Samaritan Home, and that Mr. Barnhill and I hold oil and gas leases on the remaining 1/6th from Ella Buxman, Irma Neece, Emma Buxman, Eugene Buxman, Warren Buxman, June Schreacke, Alma Gloor, Ronald DeWayne Buxman and Vicki Lynn Buxman. These leases are recorded as described in my letter of March 11th.

You hold a lease from the Buxman heirs on Tract 320 in Sec. 12, T-18S, R-26E, and the title information in this file should be helpful in understanding our position.

The division order is of course in error as to the division of royalty under Tract 218, since Mr. Barnhill and I each claim an undivided 7/16ths interest in the undivided 5/6ths interest in the minerals claimed by Good Samaritan Home prior to our warranty deeds. This leaves an undivided 1/8th of 5/6ths interest in name of Good Samaritan Home, while the remaining 1/6th interest (subject to our oil and gas leases) is owned by the Buxman heirs.

Mr. Barnhill and I wish to commit our working interest to the unit and stand ready to pay our proportionate share of the costs.

Yours very truly,

cc: Mr. B. Barnhill

Division order to Barnhill should
JVF of ex .000036704
and Buxman unit .00004058
Barnhill .000056304
WE
Belmont .01380859
125

LEONE, THE
OIL CONSERVATION COMMISSION
SANTA FE, NEW MEXICO
Case No. 6489 Sub No. 3
Submitted by Fritts
Hearing Date

March 14, 1975

Mark Production Company
330 Citizens Bank Building
Tyler, Texas 75701

Gentlemen:

On January 20th I notified you that I had acquired oil and gas leases on an undivided one-sixth interest in Tract No. 218 of Fairchild Fama Lands in Sec. 1, T-18S, R-26E, Eddy County, New Mexico. The records show that you completed a gas well in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 1 on December 28, 1974. In that letter I indicated my desire to join the 320-acre drilling unit of which Tract 218 is a part.

The leases to which I refer are owned jointly by myself and Wm. B. Barnhill, all are dated 12-26-74, and are recorded in Eddy County as follows:

Misc. Book 123, page 886 - Ella Buxman
page 888 - Irma Neece
page 890 - Emma Buxman
page 892 - Eugene Buxman
page 894 - Warren Buxman
page 896 - June Schrencke
page 963 - Alma Cloor, Ronald DeWayne
Buxman & Vicki Lynn Buxman

As previously indicated we wish to commit our small working interest to the drilling unit and wish to be sure

sh us with a
eting the unit

truly,

PS Form 3811, Nov. 1973 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

1. The following service is requested (check one):
☐ Show to whom and drop it by mail.
☐ Show to whom, date, and place of delivery.
☐ DELIVER ONLY TO ADDRESSEE and show to whom and date delivered.
☐ DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery.

2. ARTICLE ADDRESSED TO:

3. ARTICLE DESCRIPTION:
REGISTERED NO. 4712021 CERTIFIED NO. INSURED NO.

(Always obtain signature of addressee or agent)
SIGNATURE *William B. Barnhill*

4. DATE OF DELIVERY *3/17/75*

5. ADDRESS (Complete only if requested):

6. UNABLE TO DELIVER BECAUSE:

NEW MEXICO
OIL CONSERVATION COMMISSION
Case No. 6489 Exhibit No. 4
Submitted by Fritts
Hearing Date _____

January 20, 1975

Mark Production Company
330 Citizens Bank Building
Tyler, Texas
75701

Gentlemen:

It is my understanding that you have drilled and completed a gas well in the SE $\frac{1}{4}$ of Sec. 1, T-18S, R-26E, Eddy County, New Mexico, designated as your No. 1 Federal.

I further understand that a drilling unit will be designated as covering the SE $\frac{1}{4}$ of Section 1, and I am assuming you are the operator of the unit.

I have acquired oil and gas leases on an undivided one-sixth interest in Tract No. 215 of Fairchild Farm Lands subdivision, located in the NW $\frac{1}{4}$ of the Section, and am in the process of recording the documents. I would like to join this unit with my tiny interest and wanted to notify the operator before the paper work had been completed.

Yours very truly,

CLERK OF THE DISTRICT COURT
COUNTY OF EDDY, NEW MEXICO
Case No. 6489
Filed 5
Signed by Fritts
Hearing Date

MEWBOURNE OIL COMPANY

CURTIS W. MEWBOURNE
PRESIDENT

P. O. BOX 7888
TYLER, TEXAS 75711
214-561-2900

October 2, 1978

Mr. J. V. Fritts
P. O. Box 868
Roswell, New Mexico 88201

Re: Federal "B" No. 1
Eddy County, New Mexico
Pay-out Status

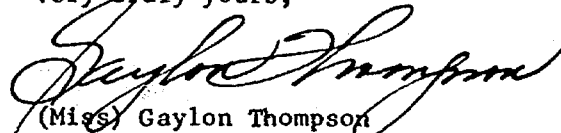
Dear Mr. Fritts:

Attached is the information you requested as to the accounting of the total cost to drill and complete the Federal "B" No. 1.

The well did payout in September of 1976, effective October 1, 1976. You are correct to assume at that rate the well would have cost over one million dollars. Since Felmont was force-pooled they accepted a payout of 300 percent times the actual cost to complete the well. The total cost was $\$445,054.78 \times 300\% = \$1,335,164.34$.

Please review Felmont's payout sheet for the method used to determine the figures for payout.

Very truly yours,


(Miss) Gaylon Thompson

Attachments

72

-----TEN AND NO/100-----

Wherein, to produce, save, take care of, treat, transport, and own said products, and hiring its employees, the following described land is:

EDDY County, NEW MEXICO, to-wit:

2. Without reference to the government, promotion or creation at any time of drilling or other development operations and/ or the discovery, development or any new or additional oil, gas, coal, oil shale and without further payments than the royalties herein provided, and notwithstanding any other law, herein contained to the contrary this lease shall be for a term of five years from the date (called "primary term") and as long thereafter as oil or gas is produced from said land or land with which said land is pooled heretofore.

3. The royalties to be paid by Lessee, are: the useful ownership of that produced and saved from said land, the same to be delivered at the wells or to the credit of Lessee into the pipe line to which the wells may be connected; Lessee may from time to time, at its own risk, pay royalty oil in its possession, paying the market value of the same plus the cost of transportation to the date of payment; this oil may, including casing head gas and other gas, be sold or otherwise disposed of from said land, and sold or used off the premises or for the extraction of gas, oil or other product; therefore, the market value at the well of one-eighth of the gas produced or saved, computed at the gas well oil royalty shall be one-eighth of the amount realized from such sale; while this is gas well oil from lease or an acreage pooled therewith but gas is not being sold or used, Lessee may pay or tender as royalty, on or before ninety days after the date on which said well is shut in and thereafter at annual intervals the sum of \$1.00 per acre; and if such payment is made or tendered, this lease shall not terminate and it will be considered that gas is being produced from this lease in future years; payment of tender of said shut-in gas royalty may be made by check or cash to the order of the owner of the land, or by check or cash to the order of the owner of the lease; Lessee shall have the right to use gas and water from said land, except water from lower water, for all operations hereunder, and the royalty on oil and gas shall be computed after deducting any use said

[illegible]

8. If at the expiration of the primary term oil or gas is not being produced on said land, or from land pooled therewith, but Lessor is then engaged in drilling or reworking operations on the premises, Lessor shall have completed a dry hole thereon within 60 days prior to the end of the primary term, the lease shall remain in force until such completion of said well or the drilling or reworking of any additional well as is contemplated by the operator, but not less than 60 consecutive days, and if it results in the production of oil or gas on any day thereafter as oil or gas is produced from said land, or from land pooled therewith, after the expiration of the primary term of this lease and after oil or gas is produced from said land, or from land pooled therewith, the production there should cease from any cause, the lease shall terminate if Lessor commences operations for drilling or reworking within 90 days after the expiration of said primary term, and if no such operations are commenced within said 90 days, the lease shall terminate on the 60th day after the expiration of the primary term of the result in the production of oil or gas, as herein thereafter as oil or gas is produced from said land, or from land pooled therewith. Any production designated by Lessor in accordance with the terms hereof, may be delivered by Lessor by instrument filed for record in the appropriate records of the county in which the leased premises are situated at any time after the completion of a dry hole or the completion of production on said unit. In the event a well is producing oil or gas, the paying quantities should be brought in on adjacent land and within 600 feet of and draining the leased premises, or said production should be sold, stored, transported, or otherwise disposed of, within 60 days after the completion of production on said unit. Lessor shall have the right at any time to purchase and deliver to Lessor or give or convey a release or releases covering any portion or portions of the above described premises or thereby surrender this lease as to such portion or portions and be relieved of all obligations as to the acreage surrendered.

4. Lessee shall have the right at any time during or after the expiration of this lease to remove all property and fixtures placed by Lessee on said land including the right to draw and remove all casing. When required by Lessee, Lessor will bury all pipe lines below ordinary plow depth, and no well shall drilled within two hundred feet of any existence or here now on said land without Lessor's consent.

5. The rights of either party hereunder may be assigned in whole or in part, and the provisions hereof shall extend to their heirs, successors and assigns but no change or discontinuance in ownership of the land or royalties hereunder accomplished shall operate to enlarge the obligations or diminish the rights hereof, and no change or discontinuance in such ownership shall be binding on Lessee until thirty (30) days after Lessee shall have been furnished by registered U. S. mail at Lessee's principal place of business with a certified copy of recorded instrument or instruments evidencing same. In the event of assignment hereof in whole or in part in violation of the terms of any obligation hereunder shall rest exclusively upon the owner of this lease or of a portion thereof to reimburse such breach. If at any time parties hereto entitled to royalty hereunder, Lessee may withhold payment thereof unless and until furnished with recordable instrument executed by all such parties designated as agent to receive payment for all.

6. The breach by Lessee of any obligation arising hereunder shall not work a forfeiture or termination of this lease nor cause a termination or revocation of the estate created hereby nor be grounds for cancellation hereof in whole or in part. In the event Lessee covenants that operations are not at any time to be conducted in compliance with this lease, Lessee shall notify Lessee in writing of the facts relied upon as constituting a breach hereof, and Lessee, in turn, shall notify the Government of the facts relied upon as constituting a breach hereof. In the event of a breach hereof, the Government may institute proceedings to enforce the provisions of this lease. After the discovery of oil gas or paying quantities on said premises, Lessee shall during the term hereof retain hereunder as a reasonably prudent operator but in discharge of this obligation it shall in no event be required to drill more than one well per forty (40) acres of the area retained hereunder and one of producing oil in paying quantities and one well per 640 acres plus an average wellbore not to exceed 30% of 640 acres of the area retained hereunder and capable of producing oil in paying quantities and one well per 640 acres plus an average wellbore not to exceed 30% of 640 acres of the area retained hereunder.

3. Lessor hereby warrants and agrees to defend the title to said land and agrees that Lessor at its option may discharge any tax, mortgage or other lien upon said land either in whole or in part, and in event Lessor does so, it shall be subrogated to such lien with the right to enforce same and apply any amount received therefrom to the satisfaction of such lien. Notwithstanding the foregoing, Lessor hereby agrees that if Lessor is required to pay any taxes or interest to the city of New Orleans or to the State of Louisiana in order to avoid and land less than the entire fee simple estate, then the royalties to be paid hereon shall be proportionately reduced in the same proportion as the taxes or interest so paid bears to the total taxes or interest so paid. Should any one or more of the parties named as Lessee fail to execute this lease, it shall nevertheless be binding upon the party or parties executing the same.

18. Should Lessee be prevented from complying with any express or implied covenant of this lease, from conducting drilling or reworking operations or from producing oil or gas therefrom by reason of necessity of obtaining or to use equipment or material, or by operation of force majeure, any such act or state of affairs shall not constitute a default by Lessee, and Lessee shall not be obligated to comply with any such express or implied covenant. Lessee shall not be liable for damages for failure to comply therewith; and Lessee shall not be obligated to pay any bonus or royalty on production of oil or gas from the leased premises, or on gas produced by or from such operations from conducting drilling or reworking operations on or from producing oil or gas from the leased premises; the time when Lessee is so prevented shall not be counted against Lessee, anything in this lease to the contrary notwithstanding.

IN WITNESS WHEREOF, this instrument is executed on the date first above written.

5th Cl. Buxman
Ella Buxman

John Buxman
Irma Buxman Neese

Emma Buxman Dustin Decca
Emma Buxman Dustin Decca

Warren Buxman

Mune Buzman Schrenko Marcus Schrenko

8. James B. Buchanan
 President

9. William A. Rorer
 President

6489
Fritts
7
No answer was ever rec'd

Mr. Tovis Herd
Cotton, Fledges, Tighe, Morrow & Dawson
P. O. Box 2776
Midland, Texas 79701

Re: Federal "B" No. 1 in E $\frac{1}{2}$ Sec. 1-18S-26E
Eddy County, New Mexico

Dear Mr. Herd:

Please refer to your letter of December 22d concerning the forced pooling order of the N. M. Oil Conservation Commission case No. 5267, Order No. R-4831, in connection with the above well.

It is stated that when this order was issued title to the mineral estate in tract 218 was vested of record in the Anna Brown Home. It is your opinion that the pooling order, therefore, was binding on working interests acquired by me from mineral owners who owned no interest of record but who acquired their interest through the Anna Brown Home. It is my position that Anna Brown Home never owned more than 5/6ths of the mineral estate. It is also my position that the owners of the remaining 1/6th of the mineral estate did not acquire it from Anna Brown Home but instead acquired it through inheritance in a chain of title having no connection whatsoever with Anna Brown Home. I would like to give you my reasons for these beliefs.

In 1910 O. M. Fairchild conveyed tract 218 to two persons: Minnie Warmker and Kate Warmker. In 1940 Minnie Warmker died intestate and her 1/2 interest passed in equal shares to Katherine D. Warmker, a sister; to Norma Warmker, child of deceased brother Henry; and to C. Raymond Buxman, child of deceased sister Louise C. Buxman.

At this point in the title Kate Warmker owned 1/2 interest through the Fairchild deed plus 1/6th interest by inheritance from Minnie Warmker. Norma Warmker owned 1/6th interest by inheritance from Minnie Warmker. C. Raymond Buxman owned 1/6th interest by inheritance from Minnie Warmker. All of the interests of Kate and Norma Warmker were conveyed to Anna Brown Home by deed. Now the title stood 5/6ths to Anna Brown Home and 1/6th to the heirs of C. Raymond Buxman, so it is plain that Anna Brown Home never had any claim on the Buxman 1/6th interest. All of my working interest comes from leases from the heirs of C. Raymond Buxman; none comes from Anna Brown Home or its successor in interest.

Since the records of Eddy County did not show any probate proceedings as to the deceased persons involved in the estate of Minnie Warmker it might be argued that the title of record was vested in Minnie Warmker, and in Anna Brown Home as successor in title to Kate Warmker. However, I believe you will agree that Anna Brown Home did not ever hold more than 5/6ths of the record title, and that the people from whom I took oil and gas leases did not acquire their interests through the Anna Brown Home.

Mr. Tavis Herd

- 2 -

12-26-78

Instead, my lessors were the heirs of C. Raymond Buxman, who inherited his 1/6th interest from Minnie Warner and she in turn acquired her interest from O. M. Fairchild in 1910. This 1/6th interest was not given the opportunity to pay its share of costs of the well although Order No. R-4831 provided all non-consenting working interests should be afforded such opportunity. Felmont Oil has no interest, right or authority as to our 1/6th working interest and could not commit our interest to the 200% penalty.

It is possible some confusion has been created by the fact that there were two separate transactions by me and Wm. B. Barnhill in connection with tract 218. We took oil and gas leases from the heirs of C. Raymond Buxman as to an undivided 1/6th mineral interest which was unleased at the time of the forced pooling order. In the same time period we purchased most of the mineral rights of the Anna Brown Home through its successor in title, Good Samaritan Home. These two transactions left us owning a working interest on 1/6ths of the minerals, and a royalty interest under the remaining ownership which is subject to the Felmont Oil lease.

I will appreciate it if you will examine your position on this dispute in view of the reasoning I have tried to set out.

Yours very truly,

No answer was received

December 27, 1978

Mr. Tevis Herd
Cotton, Blodges, Tighe, Morrow & Danson
P. O. Box 2776
Midland, Texas 79701

Re: Federal "B" No. 1 in R₂ Sec. 1-18S-20E, Eddy County, New Mexico

Dear Mr. Herd:

Yesterday I responded to your letter of December 22d concerning the forced pooling order O.S. R-4831 in connection with the above well operated by Newbourne Oil Co.

I have now re-read requirement No. 16 set out in your original title opinion on the above unit (No. 3046 dated 6-5-75) and also your third supplemental division order opinion (No. 3046-D dated 12-19-75). I would like to point out that in these opinions you agreed with my interpretation of the title to tract 218 as set out in my letter of December 26th.

In requirement No. 16 it was stated that title to tract 218 was acquired by Minnie Warmker and Kate Warmker in 1910, and that Katherine D. Warmker and Norma Warmker conveyed their interests to Anna Brown Home. Under requirement (b) you asked for an investigation concerning Minnie Warmker.

In the third supplemental opinion you stated "The title evidence obtained by J. V. Fritts reflects that the Good Samaritan Home owned an undivided 5/6 mineral interest in Tract 218 at the time that it executed the lease dated August 9, 1973, to Belmont Oil Corporation....."

In the same paragraph quoted above after the words Belmont Oil Corporation you continued "and that the remaining 1/6 mineral interest was owned, in varying proportions, by the lessors in the above described oil and gas leases dated December 26, 1974, in favor of J. V. Fritts, lessee." There were seven of these leases listed, from the heirs of C. Raymond Duxman.

To meet title defects in tract 218 you required a quiet title suit. This was carried out and a copy of the final decree in suit No. CV-78-133 was furnished to your client on June 14, 1978. I also furnished a copy of a Declaration of Interest entered into between J. V. Fritts, Wm. B. Barnhill and Belmont Oil Corp., setting out our respective interests in the oil and gas leasehold estate. Belmont Oil did not join in our quiet title suit. If they will be helpful to you I will be glad to send you a set of these documents.

Yours very truly,

J. V. Fritts
P. O. Box 868
Roswell, New Mexico
88201

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION
P. O. Box 1000, Santa Fe, New Mexico
Case No. 6489 Sub No. 8
Submitted by Fritts
Hearing Date

MARK PRODUCTION COMPANY

CURTIS W. MEWBOURN
PRESIDENT

330 CITIZENS BANK BUILDING
TYLER, TEXAS 75701
TELEPHONE (214) 597-3551

October 8, 1975

Mr. J. V. Fritts
P. O. Box 868
Roswell, New Mexico 88201

Re: #1 Federal "B"
E/2 Section 1-18S-26E
Eddy County, New Mexico

Dear Mr. Fritts:

Attached is a copy of Requirement #16 in connection with the above captioned. This requirement must be satisfied before we can circulate division orders to those involved. Any assistance you could give us in this regard will be appreciated.

Very truly yours,

16.

Title to Tract 218 was acquired by Minnie Warmker and Kate Warmker by Deed dated January 3, 1910, recorded Book 27, Page 633, Deed Records. By quit claim deed dated April 26, 1948, recorded Book 99, Page 387, Deed Records, Katherine D. Warmker and Norma Warmker quit claimed all interest in Tract 218 to the Anna Brown Home for the Aged, an Illinois corporation. Lease 27 analyzed above covering Tract 218 was executed by the Anna Brown Unit of the Good Samaritan Home of Quincy, Illinois, and we assume that this is the successor in interest to the Anna Brown Home for the Aged.

Tract 218 was sold for taxes to Joseph Lehmann and by Tax Deed dated October 12, 1920, recorded Book 46, Page 608, the tax collector of Eddy County conveyed Tract 218 to Joseph Lehmann. Thereafter, in quiet title suit No. 3227 in the District Court of Eddy County, Joseph Lehmann quieted title to Tract 218, naming as defendants, among others, Minnie Warmker and Kate Warmker. Judgment in this quiet title suit was entered October 23, 1920, vesting title to Tract 218 in Joseph Lehmann.

The Anna Brown Home for the Aged has been paying taxes on Tract 218, for at least the last ten years.

The records reflect a Warranty Deed dated February 7, 1975, recorded Book 221, Page 481, from Good Samaritan Home, an Illinois corporation, to William B. Barnhill conveying all of the surface rights owned by the grantor and an undivided 7/8 interest in the minerals owned by the grantor in Tract 218. Thereafter by Deed dated February 24, 1975, recorded Book 221, Page 494, William B. Barnhill and wife Catharine W. Barnhill conveyed to J. V. Fritts 1/2 of the rights acquired by William B. Barnhill in the Deed dated February 7, 1975, in Tract 218.

The records also reflect oil and gas leases covering Tract 218 in favor of J. V. Fritts as lessee from the following named parties: June Buxman Schroecke, a married woman dealing in her separate property, Ella Buxman, a widow, Irma Buxman Neece, a married woman dealing in her separate property, Emma Buxman, a widow, Eugene Buxman, a married man dealing in his separate property, Warren Buxman, a married man dealing in his separate

property, Alma Buzman Gloor, a married woman dealing in her separate property, Ronald DeWayne Buzman and Vicki Lynn Buzman, both dealing in their separate property. All of these leases are dated December 26, 1974, and by assignment dated February 3, 1975, recorded Book 124, Page 314, Miscellaneous Records, J. V. Fritts and wife Ruth C. Fritts assigned an undivided 1/2 interest in these leases to William B. Barnhill. The records reflect absolutely no title in Tract 218 in any of the lessors in these leases to J. V. Fritts.

A portion (.086304%) of the royalty interest credited to William B. Barnhill and wife Catharine W. Barnhill is payable under Tract 218. and a portion (.219531%) is payable under Tract 231, and only that portion attributable to Tract 218 needs to be suspended.

REQUIREMENT

The interests in production under Tract 218, being the above described portion of the royalty owned by William B. Barnhill and wife Catharine W. Barnhill, all of the royalty owned by J. V. Fritts and wife Ruth C. Fritts, the royalty owned by the Anna Brown Unit of the Good Samaritan Home of Quincy, Illinois, and the working interest of Felmont Oil Corporation, should be suspended pending the following:

- (a) We should be furnished with evidence that the Anna Brown Home for the Aged, a Illinois corporation, the Anna Brown Unit of the Good Samaritan Home of Quincy, Illinois, and the Good Samaritan Home, an Illinois corporation (the grantor in the deed dated February 7, 1975, to William B. Barnhill), are one and the same entity.
- (b) An investigation should be made concerning Minnie Warmker and if she is deceased, we should be furnished with certified copies of the probate proceedings conducted upon her estate.
- (c) We should be furnished with a certified copy of the conveyance or other instrument pursuant to which Norma Warmker acquired her interest in Tract 218.
- (d) We should be furnished with evidence of the title of all of the above named lessors in the leases to J. V. Fritts, and assuming that the evidence of such title can be obtained and furnished to us, the above named lessors should join in a stipulation of interest agreement with William B. Barnhill and wife Catharine W. Barnhill, J. V. Fritts and wife Ruth C. Fritts, and the Good Samaritan Home setting forth their respective ownership of the mineral estate in Tract 218.
- (e) The current mineral owners determined in accordance with the stipulation of interest discussed above should obtain a deed covering Tract 218 from Joseph Lehmann and wife Linda Herbert Lehmann, or, in the alternative, such mineral owners should conduct a quiet title suit against Joseph Lehmann and Linda Herbert Lehmann or their unknown heirs.

- (f) Of the royalty interest credited to William B. Barnhill and wife Catharine W. Barnhill, .086304% should be suspended and .219531%

COTTON, BLEDSOE, TIGHE, MORROW & DAWSON

WM. H. COTTON
ROBERT C. BLEDSOE
CHARLES L. TIGHE
WM. C. MORROW
ROBERT H. DAWSON
TEVIS HERD
RICHARD T. McMILLAN
JOHN A. WOODSIDE
JAMES C. CONSIDINE
BARRY N. BECK

ATTORNEYS AT LAW
SUITE 1930 WILCO BUILDING
MIDLAND, TEXAS 79701

P. O. BOX 7770
TELEPHONE (915) 684-5702

December 19, 1975

Mark Production Company
330 Citizens Bank Bldg.
Tyler, Texas 75701

No. 3046-D
#1 Federal "B"

THIRD SUPPLEMENTAL DIVISION ORDER OPINION covering the #1 Federal "B" well: E/2 Section 1, Township 18 South, Range 26 East, N.M.P.M., Eddy County, New Mexico, as to gas and associated liquid hydrocarbons producible from the Morrow Formation.

Gentlemen:

We rendered an original division order opinion covering the captioned lands on June 5, 1975, and supplemental opinions on August 8, 1975, and September 23, 1975, and have now examined certain curative material discussed herein with respect to the title to Tract 218 of the Fairchild Farm Lands, with respect to which we previously made certain requirements under Title Requirement 16 of our original opinion.

Tract 218 contains 5.05 acres and comprises 1.578125% of the captioned unit. In our original division order opinion we analyzed a lease (Lease 27 in the opinion) dated August 9, 1973, recorded Book 106, Page 988, Miscellaneous Records of Eddy County from Anna Brown Unit of the Good Samaritan Home of Quincy, Illinois, as lessor, to Felmont Oil Corporation, as lessee, covering Tract 218, purportedly being a full interest lease, providing for a primary term of two years and for royalty of 1/8 on oil and gas. In our original division order opinion we credited the production payable under this lease as follows:

J. V. Fritts and wife	
Ruth C. Fritts.086304% R.I.
William B. Barnhill and wife Catharine W. Barnhill.086304% R.I.
Anna Brown Unit of the Good Samaritan Home of Quincy, Illinois.024658% R.I.
Felmont Oil Corporation . . .	1.380859% W.I.

We have previously examined a Certificate of Merger dated September 23, 1970, which reflects that the Anna Brown Home for the Aged merged into the Good Samaritan Home of Quincy, Illinois, an Illinois corporation. The supplemental abstract which we examined in rendering our original division order opinion reflected a Warranty Deed dated February 7, 1975, recorded Book 221, Page 481, Deed Records, from the Good Samaritan Home, an Illinois corporation, conveying to William B. Barnhill all of the surface rights owned by the grantor and an undivided 7/8 interest in the mineral estate owned by the grantor in Tract 218.

Thereafter by Deed dated February 24, 1975, recorded Book 221, Page 494, Deed Records, William B. Barnhill and wife Catharine W. Barnhill, conveyed to J. V. Fritts 1/2 of the rights acquired by William B. Barnhill in Tract 218 from Good Samaritan Home in Deed dated February 7, 1975.

The supplemental abstract also reflected the following oil and gas leases covering Tract 218, all of such leases being dated December 26, 1974, and being in favor of J. V. Fritts as lessee, being five-year paid-up leases, all providing for royalty of 1/8 on oil and gas, the recorded references being to the Miscellaneous Records of Eddy County, New Mexico:

- | | | | |
|-------------|----------|--------------|--------------|
| OIL COMPANY | Case No. | Submitted by | Hearing Date |
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- (1) from June Buxman Schreacke, as her separate property, recorded at 123/896;
 - (2) from Ella Buxman, a widow, recorded at 123/886;
 - (3) from Irma Buxman Neece, recorded at 123/888;
 - (4) from Emma Buxman, a widow, recorded at 123/890;
 - (5) from Eugene Buxman, dealing in his separate property, recorded at 123/892;
 - (6) from Warren Buxman, dealing in his separate property, recorded at 123/894; and
 - (7) from Alma Buxman Gloor, Ronald DeWane Buxman and Vicki Lynn Buxman, recorded at 123/963.

By Assignment dated February 3, 1975, recorded Book 124, Page 314, Miscellaneous Records, J. V. Fritts and wife Ruth C. Fritts, conveyed an undivided 1/2 interest in these leases to William B. Barnhill.

We have reviewed your correspondence with Felmont Oil Corporation and J. V. Fritts concerning the title to the mineral and leasehold estates in Tract 218 and have also examined certain title material obtained by J. V. Fritts which will be quite helpful in the final determination of the ownership of the mineral estate, which can be determined of record only through a quiet title proceeding.

The title evidence obtained by J. V. Fritts reflects that the Good Samaritan Home owned an undivided 5/6 mineral interest in Tract 218 at the time that it executed the lease dated August 9, 1973, to Felmont Oil Corporation, and that the remaining 1/6 mineral interest was owned, in varying proportions, by the lessors in the above described oil and gas leases dated December 26, 1974, in favor of J. V. Fritts, lessee. And, pursuant to the above described Warranty Deeds dated February 7 and 24, 1975, the undivided 5/6 mineral interest originally owned by the Good Samaritan Home is now vested in J. V. Fritts as to an undivided 7/16, in William B. Barnhill as to an undivided 7/16, with the remaining undivided 1/8 thereof still being vested in the Good Samaritan Home.

As noted in our original opinion, Joseph Lehmann acquired title to Tract 218 by Tax Deed dated October 12, 1920, and in quiet title proceedings conducted in Cause No. 3227 in the District Court of Eddy County, Joseph Lehmann quieted title to Tract 218, naming as defendants, among others, Minnie Warmker and Kate Warmker, the predecessors in title to the interests of both the Good Samaritan Home and the Buxman heirs. However, Mr. Fritts' investigation reflects that Joseph Lehmann thereafter paid taxes on Tract 218

December 19, 1975

only for the year 1922, and the abstracts reflect that the Good Samaritan Home has been paying the taxes assessed on Tract 218 for at least the last ten years.

Title evidence obtained by Felmont Oil Corporation reflects that Joseph Lehmann died intestate in the late 1940s without issue, survived by his widow, Josephine Linda Hebert Lehmann. Apparently, probate proceedings were conducted upon the estate of Joseph Lehmann in Cause No. 11020, Probate docket, 27th Judicial District Court, St. Landry Parish, Louisiana, in 1954, which proceedings found that Josephine Linda Hebert Lehmann was the sole and only heir at law of Joseph E. Lehmann. The copy of these proceedings which we have examined reflects that certified copies of these probate proceedings from St. Landry Parish were recorded in Book 6, Page 379 of the Sundry Probate Records of Eddy County, New Mexico on June 22, 1957. Additional title evidence obtained by Felmont also reflects that Josephine Linda Hebert Lehmann died November 30, 1955, leaving a will which was probated in Cause No. 11245, Probate docket, 27th Judicial District Court of St. Landry Parish, Louisiana, and in which she devised all of her property to Mary Lee Hoover, now the wife of Harold Deville. We have not examined a copy of this will of Josephine Linda Hebert Lehmann. One of the items of title evidence obtained by Felmont reflects that in 1957, Standard Oil Company of Texas obtained an oil and gas lease from Mary Lee Hoover Deville covering a portion of Section 12, T-18-S, R-26-E, and it is quite possible that Mary Lee Hoover Deville will be claiming title to all of the mineral estate in Tract 218.

It is therefore our opinion that the undivided 1.578125% of production from the captioned unit attributable to Tract 218 must be held in suspense pending the successful conclusion of a quiet title suit determining the ownership of the mineral and leasehold estates in Tract 218.

We would advise that you furnish to Felmont Oil Corporation and J. V. Fritts copies of all title information which you have previously submitted to us and that you should also furnish them with a copy of this supplemental opinion and await their reply with respect to their conduct of a quiet title suit.

If you have any questions, please advise.

Very truly yours,

COTTON, BLEDSOE, TIGHE,
MORROW & DAWSON

By: *Tevis Herd*
Tevis Herd

TH:cm

Case No.	
Submitted	
Hearing Date	

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO

FILED JUN 12 1978 IN MY
OFFICE

FRANCES M. WILCOX
Clerk of the District Court

J. V. FRITTS, WILLIAM B. BARNHILL,
ELLA BUXMAN, IRMA NEECE, EMMA BUXMAN,
EUGENE BUXMAN, WARREN BUXMAN, JUNE
SCHREACK, ALMA GLOOR, RONALD DeWAYNE
BUXMAN, and VICKI LYNN MATCHINSKY
(formerly Buxman),

Plaintiffs,

vs.

No. CV-78-133

THE UNKNOWN HEIRS OF THE FOLLOWING
NAMED PERSONS: MARY C. WARMKER,
WILHELMINE M. WARMKER, a/k/a MINNIE
WARMKER, HENRY WARMKER, LOUISA C.
BUXMAN, C. RAYMOND BUXMAN, HOWARD
BUXMAN, CHARLES BUXMAN, ROGER BUXMAN,
JOSEPH LEHMAN, a/k/a JOSEPH E.
LEHMAN, a/k/a JOSEPH LEHMANN,
JOSEPHINE LINDA HEBERT LEHMAN, a/k/a
JOSEPHINE LINDA HEBERT LEHMANN;

MARY LEE HOOVER DEVILLE, if living,
if deceased, her unknown heirs;

ALL UNKNOWN CLAIMANTS OF INTEREST
IN THE PREMISES ADVERSE TO THE
PLAINTIFFS,

Defendants.

FIFTH JUDICIAL DISTRICT	
CLERK OF DISTRICT COURT	
COUNTY OF EDDY	
Case No. 6489	
Submitted by Mowbourne Oil	
Hearing Date	

FINAL DECREE

THIS MATTER coming on to be heard before me this 12th day of
June, 1978, and the Plaintiffs being represented by their attorneys,
Hinkle, Cox, Eaton, Coffield & Hensley of Roswell, New Mexico,
and it appearing to the Court that each and all of the Defendants
were served with process as required by law, and it further appearing
that none of the Defendants have entered their appearance or plead
herein, and that the Clerk of this Court has issued a Certificate
of Non-Appearence against all Defendants herein;

IT IS, THEREFORE, ORDERED that each and all of the Defendants
herein be, and the same hereby are, jointly and severally, adjudged
to be in default, and this proceeding may be heard without further
notice to such defaulting Defendants.

This matter coming on further to be heard and the Court having
heard the evidence and being fully advised in the premises, FINDS:

I.

That the lands involved herein are situated wholly within Eddy County, New Mexico.

II.

That the Defendants, and each of them, have been duly served with process in accordance with law, that the time for answering has expired, and that no answers denying Plaintiffs' claims have been filed.

III.

A. That the Plaintiffs, J. V. Fritts and William B. Barnhill, are the owners, in equal shares, of the oil and gas leasehold estate covering an undivided 1/6 interest in the following described lands in Eddy County, New Mexico, to-wit:

Tract 218 of Fairchild Farm Lands, being a part of Section 1, Township 18 South, Range 26 East, N.M.P.M., and

Tract 264 of Fairchild Farm Lands, being a part of Section 2, Township 18 South, Range 26 East, N.M.P.M.

and are the owners in equal shares of the oil and gas leasehold estate covering an undivided 1/3 interest in the following described lands in Eddy County, New Mexico, to-wit:

Tract 265 of Fairchild Farm Lands, being a part of Section 2, Township 18 South, Range 26 East, N.M.P.M.

B. That the above leasehold estates covering the above described lands arise under and by virtue of the following described oil and gas leases:

(1) Oil and Gas Lease dated December 26, 1974, executed by June Buxman Schreacke, as her separate property, as lessor, in favor of J. V. Fritts, as lessee, recorded in Book 123, page 896 of the Eddy County records.

(2) Oil and Gas Lease dated December 26, 1974 from Ella Buxman, a widow, as lessor, to J. V. Fritts, as lessee, recorded in Book 123, page 886 of the Eddy County records.

(3) Oil and Gas Lease dated December 26, 1974 from Irma Buxman Neece, as lessor, to J. V. Fritts, as lessee, recorded in Book 123, page 888 of the Eddy County records.

(4) Oil and Gas Lease dated December 26, 1974 from Emma Buxman, a widow, as lessor, to J. V. Fritts, as lessee, recorded in Book 123, page 890 of the Eddy County records.

(5) Oil and Gas Lease dated December 26, 1974 from Eugene Buxman, as lessor, to J. V. Fritts, as lessee, recorded in Book 123, page 892 of the Eddy County records.

(6) Oil and Gas Lease dated December 26, 1974 from Warren Buxman, as lessor, to J. V. Fritts, as lessee, recorded in Book 123, page 894 of the Eddy County records.

(7) Oil and Gas Lease dated December 26, 1974 from Alma Buxman Gloor, Ronald DeWayne Buxman, and Vicky Lynn Buxman, now Matchinsky, as lessors, to J. V. Fritts, as lessee, recorded in Book 123, page 963 of the Eddy County records.

IV.

That the following Plaintiffs, subject to all valid and subsisting oil and gas leases of record in Eddy County, New Mexico, are the owners in fee simple of the following described real estate situated in Eddy County, New Mexico, to-wit:

Tract 218 of Fairchild Farm Lands, being a part of Section 1, Township 18 South, Range 26 East, N.M.P.M., and

Tract 264 of Fairchild Farm Lands, being a part of Section 2, Township 18 South, Range 26 East, N.M.P.M.

in the undivided interests as set forth hereinbelow:

A. Surface Estate:

<u>Name</u>	<u>Interest</u>
J. V. Fritts -----	5/12
William B. Barnhill -----	5/12
Ella Buxman, as her separate property -----	10/168
Irma Neece, as her separate property -----	3/168
Emma Buxman, as her separate property -----	3/168
Eugene Buxman, as his separate property -----	3/168
Warren Buxman, as his separate property -----	3/168
June Schreacke, as her separate property -----	3/168
Alma Gloor, as her separate property -----	3/672
Ronald DeWayne Buxman, as his separate property -----	9/1344
Vicki Lynn Matchinsky (formerly Buxman), as her separate property -----	9/1344

B. Mineral Estate (Including Oil, Gas and Other Minerals):

<u>Name</u>	<u>Interest</u>
J. V. Fritts -----	35/96
William B. Barnhill -----	35/96
Ella Buxman, as her separate property -----	10/168
Irma Neece, as her separate property -----	3/168
Emma Buxman, as her separate property -----	3/168
Eugene Buxman, as his separate property -----	3/168
Warren Buxman, as his separate property -----	3/168
June Schreacke, as her separate property -----	3/168
Alma Gloor, as her separate property -----	3/672
Ronald DeWayne Buxman, as his separate property -----	9/1344
Vicki Lynn Matchinsky (formerly Buxman), as her separate property -----	9/1344

That the Anna Brown Unit of the Good Samaritan Home of Quincy, Illinois, an Illinois corporation, is the owner of the remaining undivided 5/6 of 1/8 interest in the oil, gas and other minerals under the above Tracts 218 and 264.

V.

That the following Plaintiffs, subject to all valid and subsisting oil and gas leases of record in Eddy County, New Mexico, are the owners in fee simple of the following described real estate situated in Eddy County, New Mexico, to-wit:

Tract 265 of Fairchild Farm Lands, being a part of Section 2, Township 18 South, Range 26 East, N.M.P.M.

in the undivided interests as set forth hereinbelow:

A. Surface Estate:

<u>Name</u>	<u>Interest</u>
J. V. Fritts -----	1/3
William B. Barnhill -----	1/3
Ella Buxman, as her separate property -----	10/84
Irma Neece, as her separate property -----	3/84
Emma Buxman, as her separate property -----	3/84
Eugene Buxman, as his separate property -----	3/84
Warren Buxman, as his separate property -----	3/84
June Schreacke, as her separate property -----	3/84
Alma Gloor, as her separate property -----	3/336
Ronald DeWayne Buxman, as his separate property -----	9/672
Vicki Lynn Matchinsky (formerly Buxman), as her separate property -----	9/672

B. Mineral Estate (Including Oil, Gas and Other Minerals):

<u>Name</u>	<u>Interest</u>
J. V. Fritts -----	7/24
William B. Barnhill -----	7/24
Ella Buxman, as her separate property -----	10/84
Irma Neece, as her separate property -----	3/84
Emma Buxman, as her separate property -----	3/84
Eugene Buxman, as his separate property -----	3/84
Warren Buxman, as his separate property -----	3/84
June Schreacke, as her separate property -----	3/84
Alma Gloor, as her separate property -----	3/336
Ronald DeWayne Buxman, as his separate property -----	9/672
Vicki Lynn Matchinsky (formerly Buxman), as her separate property -----	9/672

That the Anna Brown Unit of the Good Samaritan Home of Quincy, Illinois, an Illinois corporation, is the owner of the remaining undivided 2/3 of 1/8 interest in the oil, gas and other minerals under the above Tract 265.

VI.

A. Mary C. Warmker was never married during her lifetime. She died intestate in the 1920's in Illinois, leaving as her sole and only heirs at law her three sisters and one brother: Wilhelmine Warmker, a/k/a Minnie Warmker, Katherine V. Warmker, a/k/a Kate Warmker, Louisa C. Buxman and Henry Warmker.

B. Wilhelmine M. Warmker, a/k/a Minnie Warmker, was never married during her lifetime, and she died intestate in Adams County, Illinois in 1940, survived by her sister, Katherine V. Warmker, a/k/a Kate Warmker, a nephew, C. Raymond Buxman, the sole and only heir of her predeceased sister, Louisa C. Buxman, and by one niece, Norma Warmker, the sole and only heir of her predeceased brother, Henry Warmker.

C. C. Raymond Buxman died intestate on June 28, 1947 survived by his widow, Ella Buxman, and seven children, Howard Buxman, Irma Buxman Neece, Warren Buxman, June Buxman Schreacke, Roger Buxman, Charles Buxman and Eugene Buxman, as his sole and only heirs at law.

D. Howard Buxman died intestate on April 17, 1966, without issue, and was survived by his widow, Emma Buxman, as his sole and only heir at law.

E. Charles Buxman, who was never married during his lifetime, died intestate on June 15, 1948, survived by his mother, Ella Buxman, as his sole and only heir at law.

F. Roger Buxman died intestate on June 5, 1953, survived by his widow, Alma Buxman, now Gloor, and two children, Ronald DeWayne Buxman and Vicki Lynn Buxman, now Matchinsky, as his sole and only heirs at law.

G. Joseph Lehman, a/k/a Joseph E. Lehman, a/k/a Joseph Lehmann died intestate on August 3, 1946 in New Orleans, Louisiana, without issue. His estate was administered in Cause No. 11020, Probate Docket, 27th Judicial District Court, St. Landry Parish, Louisiana, and his sole and only heir at law was his widow, Josephine Linda Hebert Lehman.

H. Josephine Linda Hebert Lehman, a/k/a Josephine Linda Hebert Lehmann, died testate on November 30, 1955, without issue, and she was predeceased by her husband, Joseph Lehman. Her Will was probated in Cause No. 11245, Probate Docket, 27th Judicial District Court, St. Landry Parish, Louisiana, and under the terms of her Will, her entire estate was devised and bequeathed to Mary Lee Hoover, now DeVille. She was not survived by any issue.

BASED UPON THE ABOVE FINDINGS OF FACT, THE COURT CONCLUDES AS A MATTER OF LAW:

I.

That the Court has jurisdiction of the parties hereto and the subject matter hereof.

II.

That Plaintiffs, J. V. Fritts and William B. Barnhill, are entitled to a decree quieting their interests in the lands and leases described in Finding of Fact III above.

III.

That the Plaintiffs, J. V. Fritts, William B. Barnhill, Ella Buxman, Erma Neece, Emma Buxman, Eugene Buxman, Warren Buxman, June Schreacke, Alma Gloor, Ronald DeWayne Buxman, and Vicki Lynn

Matchinsky (formerly Buxman) are entitled to a decree quieting their fee simple interests in the lands and in the proportions as set forth in Findings of Fact IV and V above.

IV.

That the heir or heirs at law of:

A. Mary C. Warmker, at the date of her death, were three sisters and one brother, Wilhelmine M. Warmker, a/k/a Minnie Warmker, Katherine V. Warmker, a/k/a Kate Warmker, Louisa C. Buxman and Henry Warmker.

B. Louisa C. Buxman, at the date of her death, was her son,
C. Raymond Buxman.

C. Henry Warmker, at the date of his death, was his daughter,
Norma Warmker.

D. Wilhelmine M. Warmker, a/k/a Minnie Warmker, at the date of her death were her sister, Katherine V. Warmker, a/k/a Kate Warmker, a nephew, C. Raymond Buxman, and a niece, Norma Warmker.

E. C. Raymond Buxman, at the date of his death, were his widow, Ella Buxman, and seven children, Howard Buxman, Irma Buxman Neece, Warren Buxman, June Buxman Schreacke, Roger Buxman, Charles Buxman and Eugene Buxman.

F. Howard Buxman, at the date of his death, was his widow,
Emma Buxman.

G. Charles Buxman, at the date of his death, was his mother,
Ella Buxman.

H. Roger Buxman, at the date of his death, were his widow, Alma Buxman, now Gloor, and two children, Ronald DeWayne Buxman and Vicki Lynn Buxman, now Matchinsky.

I. Joseph Lehman, a/k/a Joseph E. Lehman, a/k/a Joseph Lehmann, at the date of his death, was his widow, Josephine Linda Hebert Lehmann.

V.

That Josephine Linda Hebert Lehman, a/k/a Josephine Linda Hebert Lehmann, at the date of her death, was not survived by any spouse or issue.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the title, interests and estates of Plaintiffs, J. V. Fritts and William B. Barnhill, in and to the lands and leases as set forth in Finding of Fact III above be, and the same hereby are, established and quieted against the Defendants, and each of them; and said Defendants, and each of them, and all persons claiming by, through or under them, are forever barred and estopped from having or claiming any lien upon, right to, or title in the estates of these Plaintiffs adverse thereto; and that said Plaintiffs' estates in and to said lands and leases, as set forth in Finding of Fact III above, be, and the same hereby are, forever quieted and set at rest.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the title, interests and estates of Plaintiffs, J. V. Fritts, William B. Barnhill, Ella Buxman, Irma Neece, Emma Buxman, Eugene Buxman, Warren Buxman, June Schreacke, Alma Gloor, Ronald DeWayne Buxman, and Vicki Lynn Matchinsky (formerly Buxman) in and to the lands and proportions as set forth in Findings of Fact IV and V above be, and the same hereby are, established and quieted against the Defendants, and each of them; and that said Defendants, and each of them, and all persons claiming by, through or under them, are forever barred and estopped from having or claiming any lien upon, right to, or title in the fee simple estates of these Plaintiffs adverse thereto; and that said Plaintiffs' estates in fee simple in and to said lands and proportions as set forth in Findings of Fact IV and V above, be, and the same hereby are, forever quieted and set at rest.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

1. That the heir or heirs of law of:

a. Mary C. Warmker, at the date of her death, were three sisters and one brother, Wilhelmine M. Warmker, a/k/a Minnie Warmker, Katherine V. Warmker, a/k/a Kate Warmker, Louisa C. Buxman and Henry Warmker.

b. Louisa C. Buxman, at the date of her death, was her son, C. Raymond Buxman.

c. Henry Warmker, at the date of his death, was his daughter, Norma Warmker.

d. Wilhelmine M. Warmker, a/k/a Minnie Warmker, at the date of her death, were her sister, Katherine V. Warmker, a/k/a Kate Warmker, a nephew, C. Raymond Buxman, and a niece, Norma Warmker.

e. C. Raymond Buxman, at the date of his death, were his widow, Ella Buxman, and seven children, Howard Buxman, Irma Buxman Neece, Warren Buxman, June Buxman Schraecke, Roger Buxman, Charles Buxman and Eugene Buxman.

f. Howard Buxman, at the date of his death, was his widow, Emma Buxman.

g. Charles Buxman, at the date of his death, was his mother, Ella Buxman.

h. Roger Buxman, at the date of his death, were his widow, Alma Buxman, now Gloor, and two children, Ronald DeWayne Buxman and Vicki Lynn Buxman, now Matchinsky.

i. Joseph Lehman, a/k/a Joseph E. Lehman, a/k/a Joseph Lehmann, at the time of his death, was his widow, Josephine Linda Hebert Lehmann.

2. That Josephine Linda Hebert Lehman, a/k/a Josephine Linda Hebert Lehmann, at the date of her death, was not survived by any spouse or issue.

DONE in the District Court of Eddy County the day, month and year first above written.

John B. Walker
DISTRICT JUDGE

CERTIFIED A TRUE COPY

ENTERED ON June 12, 1977

FRANCES M. WILCOX

Clerk of the District Court

BY

John B. Walker
Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, COUNTY OF EDDY, SS.

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

J. V. Fritts, William B. Barnhill, Ella Buxman, Irma Neece,
Emma Buxman, Eugene Buxman, Warren Buxman, June Schreacke, Alma
Gloor, Ronald Dewayne Buxman, and Vicki Lynn Matchinsky (formerly
Buxman),

FILED JUN - 6 1978 IN MY
11:00 AM OFFICE
FRANCES M. WILCOX
Clerk of the District Court

Plaintiffs,

vs.

No. CV-78-133

The Unknown Heirs of the Following Named Persons: Mary C. Warmker,
Wilhelmine M. Warmker a/k/a Mimmie Warmker, Henry Warmker, Louisa C.
Buxman, C. Raymond Buxman, Howard Buxman, Charles Buxman, Roger Buxman,
Joseph Lehman a/k/a Joseph E. Lehman, a/k/a Joseph Lehmann, Josephine
Linda Hebert Lehman a/k/a Josephine Linda Hebert Lehmann;

Mary Lee Hoover Deville, if living, if deceased, her unknown heirs;

All Unknown Claimants of interest in the Premises Adverse to the
Plaintiffs,

Defendants.

Certificate of Non-Appearence

I, Frances M. Wilcox

Clerk of the District Court, within the Fifth Judicial

District of the State of New Mexico, within and for the County of Eddy, do hereby certify that a Complaint in the above
entitled cause was filed in my office on the 11th day of April, 19 78

It appears from the affidavit of Publication signed by E. C. Cantwell, publisher of the
Carlsbad Current-Argus a legal newspaper printed in Eddy County, N. M., that the said
defendant The Unknown Heirs of the Following Named Person: Mary C. Warmker, et al
(as shown above)

legally served with process by four publications, the first publication being dated April 18, 1978
and the last publication being dated May 9, 1978, as shown by the affidavit thereon, filed in
my office 16th day of May, 19 78

I further certify that no appearance for the said defendant had been filed in my office or of record therein.

Witness my hand and seal of said court this 6th day of June, A. D., 19 78

Frances M. Wilcox

CLERK

By

Linda McCloud

October 6, 1978

Mr. Curtis W. Mewbourne
President
Mewbourne Oil Company
P. O. Box 7698
Tyler, Texas 75711

Re: Federal "B" No. 1, Eddy County, New Mexico
Tract 218 of Fairchild Farm Lands in E₂ Sec. 1-1b3-263
Division Order No. 2-012

Dear Mr. Mewbourne:

I own a small working interest in the above well which you operate, plus a smaller royalty interest. The same percentages are held by Wm. B. Barnhill.

My share of the production from this well had been in suspense pending a quiet title suit required by your attorney. This requirement has been met, and by your check dated 9-11-78 I was paid \$3,609.00 as my share of production commencing in June 1975 and running through June 1978. I questioned this payment, and have had some correspondence with your staff about the matter but still maintain I have not been properly paid, nor has Mr. Barnhill. I therefore will appreciate it if you and your staff will recompute the shares due us.

After finally receiving an accounting of the total cost of the well, on October 2, 1978, I find you are charging me 300% of the total well costs by including my interest in the Felmont Oil Company interest (which you show as .01578 in the statements of costs furnished to Felmont. If you refer to your final division order you will find that Felmont only has .01150715 interest. My working interest and that of Mr. Barnhill have no connection whatever with Felmont Oil and we should not be charged a penalty because Felmont was force pooled and elected to take the 300% route.

The pooling order provided for a penalty above the well costs attributable to each of the non-consenting working interest owners who had not paid his share of the estimated well costs within 30 days from the date the schedule of estimated well costs was furnished to him. No such estimate of costs was ever served upon the heirs of C. Raymond Buxman whose interests were not under lease at the time of the order, nor was any such estimate of costs ever served upon Barnhill or myself after we acquired oil and gas leases from these owners. On the contrary, in a series of letters commencing January 20, 1975, I have offered to pay my share of such costs.

With your check of 9-11-78 I was furnished a statement of gross values only for gas and liquids for June 1975 through June 1978, but you deleted such values for gas for the period of February 77 through September 77, saying such sales went to Trigg account to balance under a gas balancing agreement.

Mr. Curtis W. Newbourn

October 6, 1978

Since I had not received any payment whatever for anything prior to the 9-11-78 check I certainly am not liable for any underpayment which you may have made to Trigg or anyone else. I am entitled to my share of 100% of the production.

On 9-22-78 in response to my request for a complete accounting your company sent me another statement of values and on this one was shown the gas sales for February 77 through September 77, again all values shown being gross figures. The accompanying letter said the gross values on the statement could be reduced about 8% for taxes and thus arrive at the net values. Based on the gross values furnished on 9-22-78 and estimated taxes at 8% to reach net values, I calculate that my share of production should be as follows:

Gross value for gas June 75-June 78:	\$2,984,887
Gross value for oil " "	330,211
Combined gross:	\$3,315,098
Less estimated taxes of	108
Estimated taxes	\$ 265,208

My RI: .00071919	Combined gross:	\$3,315,098
My WI: .00115072	Less estimated taxes:	265,208
.00186991	Net value after taxes:	\$3,049,890
	I the net value:	.00186991

My total interest: \$ 5,703

Well costs of: \$445,055
X my WI of: .00115072
My share of costs: \$ 511

Newbourn Oil owes me for my total interest: \$ 5,703

I owe Newbourn Oil for cost of well: 511
Amount due me: \$ 5,192

Amount Newbourn Oil has already paid: 3,609
Amount still due me: \$ 1,583

Since Wm. B. Barnhill owns exactly the same interests in this well he has been under paid the same amount as I have calculated for myself.

Yours very truly,

J. V. Fritts

P. O. Box 868

Roswell, New Mexico

BEFORE THE OIL & GAS COMMISSION

Santa Fe, New Mexico

Case No. 6489 Exhibit No. 2

Submitted by Newbourn

Hearing Date

cc: Wm. B. Barnhill
Box 1354
Roswell, New Mexico 88201

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEX.)

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

CASE NO. 5267
Order No. R-4831

APPLICATION OF MARK PRODUCTION
COMPANY FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on July 10, 1974,
at Santa Fe, New Mexico, before Examiner Daniel S. Nutter.

NOW, on this 30th day of July, 1974, the Commission, a
quorum being present, having considered the testimony, the
record and the recommendations of the Examiner, and being fully
advised in the premises,

FINDS:

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

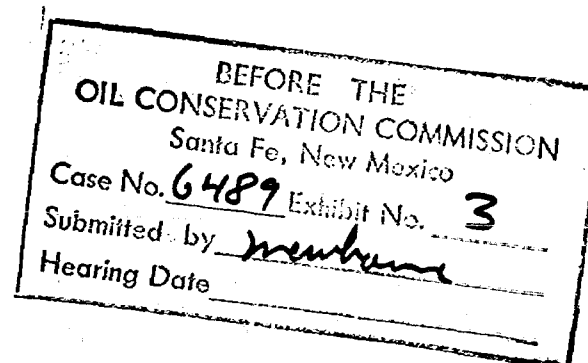
(2) That the applicant, Mark Production Company, seeks
an order pooling all mineral interests in the Pennsylvanian
formation underlying the E/2 of Section 1, Township 18 South,
Range 26 East, NMPM, Atoka-Pennsylvanian Pool, Eddy County, New
Mexico.

(3) That the applicant has the right to drill and proposes
to drill a well at a location 990 feet from the South line and
990 feet from the East line of said Section 1.

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

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

(6) That the applicant should be designated the operator
of the subject well and unit.



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

(8) That any non-consenting working interest owner that does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 200 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

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

(10) That following determination of reasonable well costs, any non-consenting working interest owner that has paid his share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(11) That \$175.00 per month should be fixed as a reasonable charge for supervision (combined fixed rates); that the operator should be authorized to withhold from production the proportionate share of such supervision charge attributable to each non-consenting working interest, and in addition thereto, the operator should be authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

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

(13) That upon the failure of the operator of said pooled unit to commence drilling of the well to which said unit is dedicated on or before November 1, 1974, the order pooling said unit should become null and void and of no effect whatsoever.

IT IS THEREFORE ORDERED:

(1) That all mineral interests, whatever they may be, in the Pennsylvanian formation underlying the E/2 of Section 1, Township 18 South, Range 26 East, NMPM, Atoka-Pennsylvanian Pool, Eddy County, New Mexico, are hereby pooled to form a standard 320-acre gas spacing and proration unit to be dedicated to a well to be drilled at a location 990 feet from the South line and 990 feet from the East line of said Section 1.

PROVIDED HOWEVER, that the operator of said unit shall commence the drilling of said well on or before the 1st day of November, 1974, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Pennsylvanian formation;

PROVIDED FURTHER, that in the event said operator does not commence the drilling of said well on or before the 1st day of November, 1974, Order (1) of this order shall be null and void and of no effect whatsoever;

PROVIDED FURTHER, that should said well not be drilled to completion, or abandonment, within 120 days after commencement thereof, said operator shall appear before the Commission and show cause why Order (1) of this order should not be rescinded.

(2) That Mark Production Company is hereby designated the operator of the subject well and unit.

(3) That after the effective date of this order and within 30 days prior to commencing said well, the operator shall furnish the Commission and each known working interest owner in the subject unit an itemized schedule of estimated well costs.

(4) That within 30 days from the date the schedule of estimated well costs is furnished to him, any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production, and that any such owner who pays his share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(5) That the operator shall furnish the Commission and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the well; that if no objection to the actual well costs is received by the Commission and the Commission has not objected within 45 days following receipt of said schedule, the actual well costs shall be the reasonable well costs; provided however, that if there is an objection to actual well costs within said 45-day period the Commission will determine reasonable well costs after public notice and hearing.

(6) That within 60 days following determination of reasonable well costs, any non-consenting working interest owner that has paid his share of estimated costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

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

- (A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.
- (B) As a charge for the risk involved in the drilling of the well, 200 per cent of the pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

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

(9) That \$175.00 per month is hereby fixed as a reasonable charge for supervision (combined fixed rates); that the operator is hereby authorized to withhold from production the proportional share of such supervision charge attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportional share of actual expenditures required for operating such well, not in excess of what are reasonable, attributable to each non-consenting working interest.

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

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

(12) That all proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; that the operator shall notify the Commission of the name and address of said escrow agent within 90 days from the date of this order.

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

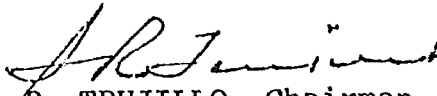
-5-

Case No. 5267

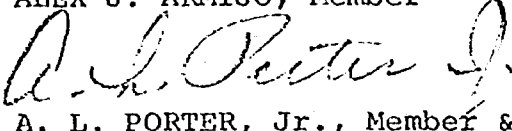
Order No. R-4831

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION


I. R. TRUJILLO, Chairman

ALEX J. ARMIJO, Member


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

SEAL

dr/

August 5, 1974

Mr. Joe Miller
Felmont Oil Corporation
Wilkinson-Poster Building
Midland, Texas 79701

Re: Mark Production Company
#1 Federal "B"
E/2 Section 1, T-18-S, R-26-E
Eddy County, New Mexico

Dear Sir:

Attached you will find an estimated well cost for the subject well in the total amount of \$403,277.00. Your net interest in the proration unit is calculated to be 1.578% of the working interest.

Also attached you will find an invoice in the amount of \$6,363.71, which is your portion of the estimated well cost. Your portion of the estimated well cost must be paid within thirty (30) days from the date hereof. You will be furnished an itemized schedule of actual well costs following completion of the well and any adjustments shall be made at that time between your advance of the estimated well cost and the actual cost.

All mineral interests ~~within~~ the subject proration unit have been pooled by Order of the Oil Conservation Commission and the above set out procedure for advance payments of estimated well cost has been set out by the Commission.

Very truly yours,

Curtis W. Mewbourne

CWM:Bjd

Attachments

BEFORE THE	
OIL CONSERVATION COMMISSION	
Santa Fe, New Mexico	
Case No. <u>6489</u>	Exhibit No. <u>4</u>
Submitted by <u>Mewbourne</u>	
Hearing Date _____	

AUTHORITY FOR EXPENDITURE
MARK PRODUCTION COMPANY - #1 FEDERAL "D"
ATOKA (PENN) FIELD
E/2 SECTION 1, T-18-S, R-26-E
EDDY COUNTY, NEW MEXICO

ESTIMATED COST TO CASING POINT:

Survey and stake	\$ 200
Road and location	8,000
Surface damages and clean up	2,000
Drilling: Footage - 9600' @ \$13.35	128,160
Daywork - 4 days @ \$2,500	10,000
- 1 day @ \$2,400	2,400
Sample logging unit - 14 days @ \$140	1,960
Cement and cementing services	6,130
Conduction pipe - 200' of 16" @ \$12.29	2,458
Surface casing - 2000' of 8-5/8" @ \$9.00	18,000
Mud and chemicals and brine	25,500
Drillstem tests - 3 @ \$1,350	4,050
Geological services	900
Drilling overhead	1,450
Production supervision	1,050
Logging	5,700
Legal services	3,750
Equipment rental	1,000
Welding	300
Travel Expense	450
Trucking	1,800
New Mexico Tax @ 4%	9,010

\$234,268

ESTIMATED COMPLETION COSTS:

Producing casing - 9700' of 4-1/2" @ \$7.00	67,900
Cement and cementing services	5,000
Corrolation log and perforating	2,425
Temperature survey and BHP	400
Treating	6,833
Equipment rental	750
Welding	400
Completion unit	3,000
Tubing - 9600' of 2-3/8" @ \$2.50	24,000
Float equipment and centralizers	850
Packer	1,550
Tank battery and flow lines	10,000
Wellhead	5,478
Stakpack - 750 BTU	13,200
Completion overhead and supervision	2,100
Roustabout work, lines and connections	3,750
Legal services	500
Miscellaneous	1,000
Rig anchors	213
Safety control valves	1,460
Travel Expense	400
Dehydrator	9,200
Trucking	2,100
New Mexico Tax @ 4%	6,500

169,009

TOTAL

\$403,277

APPROVED:

COMPANY: _____

MARK PRODUCTION COMPANY

BY: _____

BY: _____

DATE: _____

DATE: _____

August 6, 1974

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

Re: Case No. 5267
Order No. R-4831

Gentlemen:

To comply with the Order of the Commission in Case No. 5267, you will find attached an itemized schedule of the estimated well costs for the #1 Federal "B", located in the E/2 of Section 1, T-18-S, R-26-E, Eddy County, New Mexico.

These estimated well costs have been furnished to each known working interest owner with a request that each participate in the well and pay his share of the estimated well cost to the operator.

Very truly yours,

Curtis W. Mewbourne

CWM:Bjd

Attachment

BEFORE THE	
OIL CONSERVATION COMMISSION	
Santa Fe, New Mexico	
Case No. <u>6489</u>	EXHIBIT No. <u>5</u>
Submitted by <u>Mewbourne</u>	
Hearing Date _____	

August 6, 1974

Felmont Oil Corporation
Wilkinson-Foster Building
Midland, Texas 79701

Re: Mark Production Company
#1 Federal "B"
E/2 Section 1, T-18-S, R-26-E
Eddy County, New Mexico

Gentlemen:

You will find attached two (2) copies of the Operating Agreement on the subject well. If these meet with your approval, please execute and return to this office one (1) copy, while retaining the second copy for your files.

Very truly yours,

Curtis W. Mewbourne

CWM:Bjd

Attachments

BEFORE THE	
OIL CONSERVATION COMMISSION	
Santa Fe, New Mexico	
Case No. 6489	6
Mewbourne	
Hearing Date	

RH831
600 5267

August 9, 1974

Mark Production Company
330 Citizens Bank Building
Tyler, Texas 75701

Attention: Mr. Curtis W. Mewbourne

Re: Mark Production Company
#1 Federal "B"
E/2 Section 1, T18S, R26E
Eddy County, New Mexico

Dear Sir:

We have received this date, your letter of August 5, 1974, enclosing an invoice for Felmont's share of the captioned well and AFE for same.

Felmont Oil Corporation has recently finished the drilling of two Morrow tests within the same field as your captioned well. Our wells have been drilled, completed and placed on production for approximately \$225,000, whereas your AFE states a cost of 403,000 plus dollars. You have also requested an advance payment of our share of this well without giving an immediate spud date or notice of rig availability or copies of any pooling designation. Your letter also refers to an Order of the Oil and Gas Commission from the State of New Mexico, whereby you state that the advance payment procedure has been set by the Commission and verbally, you have advised our Mr. Joe Miller that if we elected to go non-consent that the Commission has set a 300% penalty. We have not been advised or notified of any forced pooling hearings in regard to our interest. In order that we may completely evaluate our position in this property, as outlined by you as to the penalty provisions, please send us copies of the Oil and Gas Commission orders as well as justification for the unreasonable high AFE.

Felmont Oil Corporation is an old established reputable firm and only in rare instances, where there have been a great number of operators, have we been requested to furnish advance money, our credit

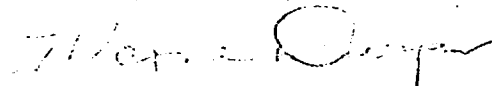
BEFORE THE
OIL CONSERVATION COMMISSION
Santa Fe, New Mexico
Case No. 6489 EXHIBIT No. 7
Submitted by Mewbourne
Hearing Date _____

Mark Production Company
August 9, 1974
Page 2

is extremely good, and then only within 20 days prior to actual drilling commenced on said well. Of course Felmont, as always, will abide with the rules of governmental agencies involved.

Very truly yours,

FELMONT OIL CORPORATION



T. Verne Dwyer
Vice President

TVD:dc

cc: Oil and Gas Commission
State of New Mexico

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

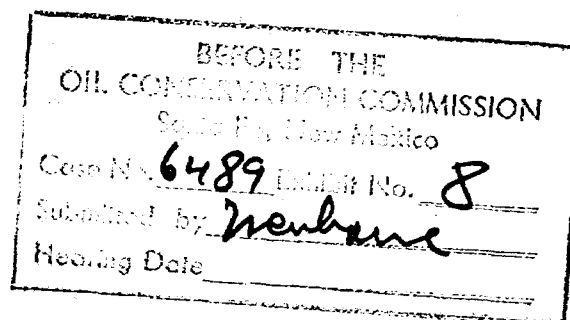
SUBMIT IN DUPLICATE

(See instructions on
reverse side)

Form 9-330, 42-11355-6

WELL COMPLETION OR RECOMPLETION REPORT AND LOG *											
1. TYPE OF WELL: OIL WELL <input type="checkbox"/> GAS WELL <input checked="" type="checkbox"/> DRY <input type="checkbox"/> Other _____					5. LEASE DESIGNATION AND SERIAL NO. LC-066445						
2. TYPE OF COMPLETION: NEW WELL <input checked="" type="checkbox"/> WORK OVER <input type="checkbox"/> DEEPEN <input type="checkbox"/> PLUG BACK <input type="checkbox"/> DIFF. REPAIR <input type="checkbox"/> Other _____					6. IF INDIAN, ALIQUOT OR TRIBE NAME						
3. NAME OF OPERATOR Mark Production Company					7. UNIT AGREEMENT NAME						
4. ADDRESS OF OPERATOR 330 Citizens Bank Bldg., Tyler, Texas 75701					8. FARM OR LEASE NAME Federal "B"						
9. LOCATION OF WELL (Report location clearly and in accordance with any State requirements)* At surface 990' FSL & 990' FEL At top, prod. interval reported below At total depth					9. WELL NO. 1						
10. FIELD AND POOL, OR WILDCAT Atoka Penn					11. REC., T., R., N., OR BLOCK AND SURVEY OR AREA 1-18S-26E						
12. COUNTY OR PARISH Eddy					13. STATE New Mexico						
14. DATE SPUDDED 8-30-74		15. DATE T.D. REACHED 9-28-74		16. DATE COMPL. (Ready to prod.) 11-22-74		17. ELEVATIONS (DF, RKB, RT, OR, ETC.)* 3290' GR		18. ELEV. CASINGHEAD ---			
19. TOTAL DEPTH, MD & TVD 9248'		20. PLUG, BACK T.D., MD & TVD 9233'		21. IF MULTIPLE COMPL., HOW MANY* ---		22. INTERVALS DRILLED BY XX		23. ROTARY TOOLS ---			
24. PRODUCING INTERVAL(S), OF THIS COMPLETION—TOP, BOTTOM, NAME (MD AND TVD)* 9039 - 9076' - Morrow								25. WAS DIRECTIONAL SURVEY MADE Yes			
26. TYPE ELECTRIC AND OTHER LOGS RUN Acoustic Velocity								27. WAS WELL CORED No			
28. CASING RECORD (Report all strings set in well)											
CASINO SIZE		WEIGHT, LB./FT.		DEPTH SET (MD)		HOLE SIZE		CEMENTING RECORD		AMOUNT PULLED	
16"		65#		200'		20"		240 sks		None	
8-5/8"		32# - 24#		1,970'		11"		850 sks		None	
5-1/2"		17# - 15.5#		9,248'		7-7/8"		700 sks		None	
29. LINER RECORD										30. TUBING RECORD	
SIZE		TOP (MD)		BOTTOM (MD)		BACKS CEMENT*		SCREEN (MD)		SIZE	
										2-3/8"	
										8958'	
										8965'	
31. PERFORATION RECORD (Interval, size and number) 9039', 9042', 9045', 9046', 9051', 9052', 9056', 9059', 9064', 9067', 9068', 9074', 9076' - 13, 1/2" holes										32. ACID, SHOT, FRACTURE, CEMENT SQUEEZE, ETC.	
										DEPTH INTERVAL (MD)	
										9039 - 9076'	
										AMOUNT AND KIND OF MATERIAL USED	
										2,600 gals acid	
33. PRODUCTION											
DATE FIRST PRODUCTION 11-20-74		PRODUCTION METHOD (Flowing, gas lift, pumping—size and type of pump) Flowing					WELL STATUS (Producing or shut-in) Shut-in				
DATE OF TEST 11-26-74		HOURS TESTED 1 Hr		CHOKE SIZE 24/64"		PROD'N. FOR TEST PERIOD 79.2		OIL—BBL. 3.3		GAS—MCF. 339	
FLOW. TUBING PRESS. 2420		CASINO PRESSURE Pkr		CALCULATED 24-HOUR RATE 79.2		OIL—BBL. 79.2		GAS—MCF. 8,136		WATER—BBL. 0	
34. DISPOSITION OF GAS (Sold, used for fuel, vented, etc.) Sold - Southern Union Gas Company										TEST WITNESSED BY W. H. Cravey	
35. LIST OF ATTACHMENTS Acoustic Velocity Logs, Directional Survey											
36. I hereby certify that the foregoing and attached information is complete and correct as determined from all available records											
SIGNED <u>Raymond Thompson</u> TITLE <u>Assistant Secretary</u> DATE <u>Dec. 10, 1974</u>											

*(See Instructions and Spaces for Additional Data on Reverse Side)



FELMONT OIL CORPORATION • P. O. BOX 2266 • MIDLAND, TEXAS 79701 • 915 682-5231



JOE D. MILLER
DIVISION MANAGER

March 12, 1975

Mark Production Company
1007 Gihls Tower West
Midland, Texas 79701

Re: Tract 218, Section 1, T-18-S,
R-26-E, Eddy County, New Mexico
Our File: FNML-4994

Gentlemen:

Felmont Oil Corporation is the owner of certain leasehold interest in the captioned land, and we have been advised that Mark Production Company has completed a producing well on Tract 218 in Section 1, T-18-S, R-26-E in Eddy County, New Mexico. We are knowledgeable that we have been forced pooled into this Unit in order to protect not only ourselves but our royalty owners.

Would you please advise us the status of royalty distribution and the cost of drilling and completing this well in order that we may keep current with the payout status? We would also appreciate any information regarding gas and distillate contracts which you may negotiate.

For your files, we are enclosing a copy of our Oil, Gas and Mineral Lease dated August 9, 1973 from Anna Brown Unit of the Good Samaritan Home of Quincy to Felmont covering the captioned property, as well as two Warranty Deeds covering a change in mineral ownership.

Very truly yours,

FELMONT OIL CORPORATION

T. Verne Dwyer

T. Verne Dwyer
Vice President

TVD:mms
Enclosures

cc: Mr. I. R. Trujillo, Chairman
State of New Mexico
Oil Conservation Commission
Santa Fe, NM 87501

BEFORE THE	
OIL CONSERVATION COMMISSION	
Santa Fe, New Mexico	
Case No. <u>6489</u>	EXHIBIT No. <u>9</u>
Submitted by <u>Wm. Dwyer</u>	
Hearing Date _____	

OIL, GAS AND MINERAL LEASE

THIS AGREEMENT, Made this 9th day of August, 1973, between the
Anna Brown Unit of the Good Samaritan Home of Quincy,
2130 Harrison Street, Quincy, Illinois 62301

Felmont Oil Corporation

hereinafter called Lessor (whether one or more) and

hereinafter called Lessee

1. Lessor, in consideration of ten and no/100 Dollars \$ 10.00, in hand paid, the receipt and sufficiency of which is hereby acknowledged, and of the royalties herein provided and of the agreements of the lessee herein contained, hereby grants, leases and lets exclusively unto lessee for the purpose of investigating, making seismograph or other geophysical or geological tests and surveys, exploring, prospecting, drilling, mining and operating for and producing oil, gas and all other minerals, including gas, water, other fluids, and air into sub-surface strata, laying pipe lines, storing oil, building tanks, power stations, telephones lines, and other structures and things thereon to produce, save, take care of, treat, process, store and transport

oil, gas and other products manufactured therefrom the following described land in Eddy County, New Mexico
 to-wit:

Tract 320 of Section 12 and Tract 218 of Section 1, both in Township 18 South, Range 26 East of the NMPM, and in Fairchild's Farmlands as shown by the plat of record in the office of the probate clerk and ex officio recorder of said county and state and containing 10 acres, more or less.

In the event a resurvey of said lands shall reveal the existence of excess and/or vacant lands lying adjacent to the above described land and the Lessor, his heirs or assigns shall by virtue of his ownership of the lands above described have preference right to acquire said excess and/or vacant lands, then in that event this lease shall cover and include such excess and/or vacant lands which the Lessor, his heirs or assigns shall have the preference right to acquire by virtue of his ownership of the land above described as and when acquired by the Lessor; and the Lessee shall pay the Lessor for such excess and/or vacant lands at the same rate per acre as the cash consideration paid for the acreage hereinabove mentioned. For the purpose of calculating the rental payments hereinafter provided for, said land is

estimated to comprise ten acres, whether it actually comprises more or less.
 2. This lease shall remain in force for a term of ten years from this date (called "primary term") and as long thereafter as oil, gas, casinghead gas, casinghead gasoline, or any other mineral is produced from said land or land with which said land is consolidated.

3. The royalties to be paid by Lessee are: (a) on oil saved at the well, one-eighth (1/8) of that produced and saved from the land, some to be delivered at the wells or to the credit of Lessor in the pipe line to which the wells may be connected; Lessor's interest in either case shall bear its proportion of any expense for treating oil to make it marketable as crude, and of any trucking expenses incurred in marketing; (b) on gas, including casinghead gas and all gaseous substances produced from said land and sold or used off the premises or in the manufacture of gasoline or other products therefrom, the market value at the mouth of the well of one-eighth (1/8) of the gas so sold or used, provided that on gas sold at the well, the royalty will be one-eighth (1/8) of the amount realized from such sale; (c) on all other minerals mined and marketed, one-eighth (1/8) either in kind or value at the well or mine, at Lessee's election, except on sulphur, the royalty shall be One Dollar (\$1.00) per long ton; (d) where gas from a gas well, or wells, on said land or on land with which said land is consolidated, is not sold or used, whether before or after the expiration of the primary term, Lessee shall, unless and until this lease be maintained in force and effect under other of its provisions, pay or tender to Lessor, or pay or tender or deposit into the depository bank named in Paragraph 4 hereof, or any successor thereof or named thereafter, in the manner therein provided, as royalty, an amount equal to the delay rental provided for in this lease for acreage then held under this lease by the party making payment or tender, some being payable annually at the end of each year during which such gas is not sold or used, computing such one year periods from the date when the last of all gas wells located on the land above described, or on land with which it is consolidated, is finally shut in. Should the shut-in period be less than one year, Lessee shall pay as royalty, in the manner hereinabove provided, a prorata part of the annual amount provided for, computed to the nearest month, same being payable at the end of one year from the commencement of the shut-in period. Pending and until the payable date of, and while said royalty is so paid, tendered or deposited, it shall be considered and held under all provisions of this lease, that gas is being produced in paying quantities from the leased premises. For the purpose of this paragraph, the term gas well shall include a well, or wells, capable of producing natural gas, condensate or any other gaseous substances, and wells classified as gas wells by any governmental authority.

4. If operations for drilling or mining are not commenced on said land or on land consolidated therewith on or before one (1) year from this date, this lease shall terminate as to both parties, unless on or before one (1) year from this date Lessee shall pay or tender to the Lessor or to the credit of Lessor in the depository

bank herein named, a rental of ten and no/100 Dollars \$ 10.00 which shall cover the privilege of deferring commencement of such operations for a period of one (1) year. In like manner and upon like payments or tenders, annually, the commencement of operations for drilling may be further deferred for successive periods of one (1) year each during the primary term. Payment or tender may be made to the

Lessor or to the State Bank & Trust Company of Quincy, Illinois which bank, or any successor thereof, shall continue to be the agent for the Lessor and Lessor's successors and assigns. If such bank (or any successor bank) shall fail, liquidate, or be succeeded by another bank, or for any reason fail, or refuse to accept rental, Lessee shall not be held in default until thirty (30) days after Lessor shall deliver to Lessee a recordable instrument designating another depository bank, and any depository change is a liability of the Lessor. The payment or tender of rental and shut-in gas well royalties may be made by check or draft of Lessee, mailed or delivered to said bank or Lessor, or either Lessor, if more than one, on or before the rental paying date.

5. Lessee is hereby granted the right to consolidate or unitize this lease, the land covered by it or any part or parts thereof as to all strata or any stratum with any other land, lease, leases or parts thereof as to all strata or any stratum for the production of oil, gas, or any other mineral. Consolidation in one or more instances shall not exhaust the right of Lessee hereunder to consolidate this lease or portion of the oil, gas and mineral estate into other or different units. Units consolidated for oil hereunder shall not exceed forty (40) acres plus a tolerance of ten per cent (10%) thereof, and units consolidated for gas hereunder shall not exceed six hundred forty (640) acres plus a tolerance of ten per cent (10%) thereof, provided that if any Federal or State law, Executive order, rule or regulation shall prescribe a spacing pattern for the development of the field or allocate a producing allowable in whole or in part on acreage per well, then any such units may embrace as much additional acreage as may be so prescribed or as may be used in such allocation or allowable. Lessee shall file written unit designations in the county in which the premises are located. Such units may be designated either before or after the completion of wells. Drilling or reworking operations and production on any part of the consolidated acreage shall be treated for all purposes hereof as if such drilling or reworking operations were upon or such production were from the land described in this lease whether the well or wells be located on the land covered by this lease or not. The entire acreage consolidated into a unit shall be treated for all purposes, except the payment of royalties on production from the consolidated unit, as if it were included in this lease. This paragraph shall never be construed as a limitation or restriction of any other provision of this lease. In lieu of the royalties herein provided, Lessor shall receive on production from a unit so consolidated only such portion of the royalty stipulated herein as the amount of his acreage placed in the unit or his royalty interest therein on an acreage basis bears to the total acreage so consolidated in the particular unit involved.

6. If prior to discovery of oil, gas or other minerals on said land or land consolidated therewith Lessee should drill and abandon a dry hole or holes thereon, or if, after discovery of oil, gas or other minerals, the production thereof should cease from any cause, this lease shall not terminate if Lessee commences reworking or additional drilling operations within sixty (60) days thereafter, or (if it be within the primary term) commences or resumes the payment or tender of rentals or commences operations for drilling or reworking on or before the rental paying date next ensuing after the expiration of two (2) months from date of completion and abandonment of said dry hole or holes or the cessation of production. If a dry hole is completed and abandoned at any time during the last fourteen (14) months of the primary term and prior to discovery of oil, gas or other mineral on said land or land consolidated therewith, no rental payment or operations are necessary in order to keep the lease in force during the remainder of the primary term. If, at the expiration of the primary term, oil, gas or other mineral is not being produced on said land or land consolidated therewith but Lessee is then engaged in operations for drilling, mining or reworking of any well or mine thereon, this lease shall remain in force so long as drilling, mining, or reworking operations are prosecuted (whether on the same or different wells) with no cessation of more than sixty (60) consecutive days, and if they result in production, so long thereafter as oil, gas or other mineral is produced from said land or land consolidated therewith. In the event a well or wells producing oil or gas in paying quantities should be brought in on adjacent land and within one hundred fifty (150) feet of and draining the leased premises, Lessee agrees to drill such offset wells as a reasonably prudent operator would drill under the same or similar circumstances. The judgment of the Lessee, when not fraudulently exercised, in carrying out of the purposes of this lease shall be conclusive.

7. Lessee shall have free use of oil, gas and water from said land, except water from Lessor's wells and tanks, for all operations hereunder, including repressuring, pressure maintenance, cycling, and secondary recovery operations, and the royalty shall be computed after deducting any so used. Lessee shall have the right at any time during or after the expiration of this lease to remove all property and fixtures placed by Lessee on said land, including the right to draw and remove all casing. When required by Lessor, Lessee will bury all pipe lines below ordinary plow depth, and no well shall be drilled within two hundred feet (200 ft.) of any residence or barn now on said land without Lessor's consent. Lessor shall have the privilege, at his risk and expense, of using gas from any gas well on said land for stoves and inside lights in the principal dwelling thereon, out of any surplus gas not needed for operations hereunder.

8. The rights of either party hereunder may be assigned in whole or in part and the provisions hereof shall extend to the heirs, executors, administrators, successors and assigns, but no change or division in ownership of the land, rentals or royalties, however accomplished, shall operate to enlarge the obligations or diminish the rights of Lessee. No such change or division in the ownership of the land, rentals or royalties, shall be binding upon Lessee for any purpose until such person acquiring any interest has furnished Lessee with the instrument or instruments, or certified copies thereof, constituting his chain of title from the original Lessor. In the event of an assignment of this lease to a segregated portion of said land, the rentals payable hereunder, shall be apportioned as between the several leasehold owners ratably according to the surface area owned by each, and default in rental payment by one shall not affect the rights of other leasehold owners thereunder. An assignment of this lease, in whole or in part, shall to the extent of such assignment, relieve and discharge Lessee of any obligations hereunder, and if Lessee or assignee of part or parts hereof shall fail or make default in the payment of the proportionate part of the rentals due from such Lessee or assignee or fail to comply with any other provision of this lease, such default shall not affect this lease insofar as it covers a part of said lands upon which Lessee or any assignee thereof shall make payment of said rentals.

9. Lessee shall not be liable for delays or defaults in its performance of any agreement or covenant hereunder due to force majeure. The term "force majeure" as employed herein shall mean any act of God including but not limited to storms, floods, washouts, landslides, and lightning; acts of the public enemy; wars, blockades, insurrection or riots; strikes or lockouts; epidemics or quarantine regulations; laws, acts, orders or requests of Federal, State, Municipal or other governments or governmental officers or agents under color of authority; freight embargoes or failures; exhaustion or unavailability or delays in delivery of any product, labor, service or material. If Lessee is required, ordered or directed by any Federal, State or Municipal law, executive order, rule, regulation or request enacted or promulgated under color of authority to cease drilling operations, reworking operations or producing operations on the land covered by this lease or if Lessee by force majeure is prevented from conducting drilling operations, reworking operations or producing operations, then until such time as such law, order, rule, regulation, request or force majeure is terminated and for a period of sixty (60) days after such termination each and every provision of this lease or implied covenant arising thereunder that might operate to terminate it or the estate conveyed by it shall be suspended and inoperative and this lease shall continue in full force. If any period of suspension occurs during the primary term, the time thereof shall be added to such term.

10. Lessor hereby warrants and agrees to defend the title to said land, and agrees that lessee, at its option, may discharge any tax, mortgage or other lien upon said land, and in the event lessee does so, it shall be subrogated to such lien with the right to enforce same and apply rentals and royalties according to the word satisfying same. Without impairment of lessee's rights under the warranty in the event of failure of title, it is agreed that, if lessor owns an interest in said land less than the entire fee simple estate, then the royalties and rentals to be paid lessor shall be reduced proportionately, should any one or more of the parties named above as lessors fail to execute this lease, it shall nevertheless be binding upon the party or parties executing the same.

11. Lessee, its successors and assigns, shall have the right at any time to surrender this lease, in whole or in part, to lessor or his heirs and assigns by delivering or mailing a release thereof to the lessor, or by placing a release thereof of record in the county in which said land is situated, thereupon, lessee shall be relieved from all obligations, expressed or implied, of this agreement as to the acreage so surrendered, and thereafter the rentals payable hereunder shall be reduced in the proportion that the acreage covered hereby is reduced by said release or releases.

IN WITNESS WHEREOF, we sign the day and year first above written.

WITNESSES:

ATTEST:

A. H. Speckhart
Financial Secretary

Anna Brown Unit of the Good Samaritan
Home of Quincy, Quincy, Illinois

By:

Roger Mittelberg
President

STATE OF ILLINOIS X
COUNTY OF ADAMS X

BEFORE ME, the undersigned authority, on this day personally appeared Roger Mittelberg, known to me to be the person whose name is subscribed to the foregoing instrument as President of the Anna Brown Unit of the Good Samaritan Home of Quincy, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 28th day of August, 1973.

Andrew C. Schuch
Notary Public in and for Adams
County, Illinois

My commission expires September 6, 1974.

wife, acknowledged the same to be her act and deed, and declared that she had willingly executed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____ A. D. 19____

Notary Public in and for _____ County, Texas

THE STATE OF TEXAS

COUNTY OF _____

JOINT ACKNOWLEDGMENT

BEFORE ME, the undersigned authority, on this day personally appeared _____ and wife, _____, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed. And the said _____ wife of _____, having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said _____, acknowledged such instrument to be her act and deed and declared that she had willingly signed the same for the purposes and consideration therein expressed and that she did not wish to retract it.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____ A. D. 19____

Notary Public in and for _____ County, Texas

INDEXED
COMPARED

WHEN RECORDED RETURN TO:

This instrument was filed for record on the 10th day of September, 1973 at 10:40 o'clock A. M., and duly recorded in Book 106, Page 988 of the Miscellaneous records of this office.

County Clerk

Eddie County, New Mexico
By: Carmel C. Boyd, Deputy

WARRANTY DEED

Good Samaritan Home, an Illinois corporation,

, for consideration paid, grants to

Wm. B. Barnhill, P. O. Box 1354, Roswell, New Mexico 88201

the following described real estate in Eddy county, New Mexico:

All of the surface rights owned by Good Samaritan Home (Grantor herein) and an undivided seven-eighths (7/8ths) interest in and to all of the oil, gas and other minerals owned by Good Samaritan Home in and under and that may be produced from the following described land, to-wit:

Township 18 South, Range 26 East, NMPM

FNM-4994 Section 1: Tract No. 218 of Fairchild Farm Land Subdivision.

Section 2: Tract Nos. 264 and 265 of Fairchild Farm Land Subdivision

Containing 15 acres more or less.

with warranty covenants.

WITNESS our hand and seal this 7th day of February 19 75.

ATTEST:

Harry W. Allen

ILLINOIS

Secretary

STATE OF ~~ILLINOIS~~County of Adams } ss.

GOOD SAMARITAN HOME

By William M. McCleeryWilliam M. McCleery,
PresidentThe foregoing instrument was acknowledged before me this 7th day of February

William M. McCleery, President of Good Samaritan Home, an Illinois Corporation, on behalf of said corporation.

My Commission expires Feb. 14, 19 78Pamela Boudreau
Notary Public

STATE OF NEW MEXICO, }

County of Eddy } ss.

I hereby certify that this instrument was filed for

record on the 25 day ofFebruary, A. D., 19 75at 1:30 o'clock P. M., and duly recorded inBook 221 Page 481 of

Records of Deeds of said County.

Mildred Branch

County Clerk

By Harmon Davis, Deputy

Rec. _____ Fees, \$ _____

Return to _____

WARRANTY DEED

Wm. B. Barnhill and Catharine W. Barnhill, his wife,

for consideration paid, grant to
J. V. Fritts, P. O. Box 868, Roswell, New Mexico

the following described real estate in Eddy county, New Mexico:

One-half (1/2) of the surface rights owned by Wm. B. Barnhill and Catharine W. Barnhill (Grantor herein) and an undivided seven-sixteenths (7/16ths) interest in and to all of the oil, gas and other minerals owned by Wm. B. Barnhill and Catharine W. Barnhill in and under and that may be produced from the following described land, to-wit:

Township 18 South, Range 26 East, NMPM
12-4994 Section 1: Tract No. 218 of the Fairchild Farm Land Subdivision
Section 2: Tract Nos. 264 and 265 of Fairchild Farm Land Subdivision
Containing 15 acres more or less.

with warranty covenants.

WITNESS our hand and seal this 24th day of
February 19 75.

Wm. B. Barnhill (Seal)
Wm. B. Barnhill (Seal)
Catharine W. Barnhill (Seal)
Catharine W. Barnhill (Seal)

STATE OF NEW MEXICO,
County of Chaves }

ss.

The foregoing instrument was acknowledged before me this 24th day of February,
19 75 by Wm. B. Barnhill and Catharine W. Barnhill, his wife.

My Commission expires October 31, 1977.

Sharon R. Miles
Notary Public

STATE OF NEW MEXICO,
County of Eddy }

ss.

I hereby certify that this instrument was filed for
record on the 26 day of
February, A. D., 19 75
at 11:15 o'clock A. M., and duly recorded in
Book 221 Page 474 of

Records of Deeds of said County.

Mildred Branch
County Clerk:
By Karen Davis, Deputy
Rec. _____ Fees, \$ _____
Return to _____

COTTON, BLEDSOE, TIGHE, MORROW & DAWSON

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

SUITE 1930 WILCO BUILDING

MIDLAND, TEXAS 79701

P. O. BOX 2776
TELEPHONE (915) 684-5762

WM. M. COTTON
ROBERT C. BLEDSOE
CHARLES L. TIGHE
WM. C. MORROW
ROBERT H. DAWSON
TEVIS HERD
ROBERT K. HUDSON
RICHARD T. McMILLAN
JOHN A. WOODSIDE
JAMES C. CONSIDINE
BARRY N. BECK
GAYLEN L. GROCE
BRUCE W. WOLITARSKY
MICHAEL R. McELWRATH

December 22, 1978

Mr. J. V. Fritts
404 Hinkle Building
Roswell, New Mexico 88201

Re: Federal "B" No. 1 Well,
E/2 Section 1, T-18-S,
R-26-E, Eddy County, New Mexico

Dear Mr. Fritts:

At the request of Mewbourne Oil Company I have reviewed the title to the captioned well and lands with specific reference to the forced pooling order entered July 30, 1974, in New Mexico Oil Conservation Commission case No. 5267, Order No. R-4831, which imposes a 200% penalty clause on non-consenting working interest owners. At the time that this order was entered title to the mineral estate in Tract 218 of the Fairchild Farm Lands was vested of record in the Anna Brown Home for the Aged, an Illinois corporation, subject to an Oil and Gas Lease to Felmont Oil Corporation.

The title will reflect that J. V. Fritts and William B. Barnhill acquired leases on other mineral interests in Tract 218 in December, 1974, these mineral owners being the Buxman heirs, who owned no title of record in the mineral estate in Tract 218 at the time that the Forced Pooling Order was entered. Therefore, although you and William B. Barnhill were not parties to the Forced Pooling Order, neither did you nor any of your minerals owners have any interest of record at the time that the Forced Pooling Order was entered, and it is our opinion that the Order is binding on the working interests acquired by you from mineral owners who owned no interest of record, but who acquired their interest through the Anna Brown Home, who owned an interest

BEFORE THE
OIL CONSERVATION COMMISSION
Santa Fe, New Mexico

Case No. 6489 Exhibit No. 10

Submitted by Mewbourne

Hearing Date _____

Mr. J. V. Fritts

-2-

December 22, 1978

of record at the time of the Order.

We will be pleased to discuss this matter further with you at any time.

Very truly yours,

COTTON, BLEDSOE, TIGHE,
MORROW & DAWSON

By: Tevis Herd

TH:cm

cc: Mewbourne Oil Company
1010 Wall Towers West
Midland, Texas 79701
Attn: Mr. Donald G. Hayden,
District Manager

MEMORANDUM OF TITLE

Re: Federal "B" No. 1 Well, E/2 Section 1, T-18-S, R-26-E,
Eddy County, New Mexico

This Memorandum is concerned with title to the mineral estate in Tract 218 of Fairchild Farm Lands located in E/2 of the captioned Section 1. The undersigned rendered an original title opinion on May 1, 1974, to Mark Production Company (now Mewbourne Oil Company) covering, among other lands, Tract 218 of the Fairchild Farm Lands in E/2 Section 1. Our title examination was based upon abstracts of title certified by Currier Abstract Company of Artesia, New Mexico, as covering Tract 218 from inception of the records to March 20, 1974, at 8:00 a.m., and as to Tract 218 the records reflect that Tract 218 was acquired by Minnie Warmker and Kate Warmker by Deed dated January 3, 1910. The next conveyance of record affecting Tract 218 is a Quitclaim Deed dated April 26, 1948, in which Katherine D. Warmker and Norma Warmker quitclaimed all of their interest in Tract 218 to the Anna Brown Home for the Aged, an Illinois corporation. Thereafter, Felmont Oil Corporation acquired an Oil and Gas Lease dated August 9, 1973, from the Anna Brown Unit of the Good Samaritan Home of Quincy, Illinois (the successor to the Anna Brown Home for the Aged).

Felmont Oil Corporation was given notice of the proceedings in Case No. 5267 before the New Mexico Oil Conservation Commission in which Order No. R-4831 was entered July 30, 1974, pooling all mineral interests in the Pennsylvanian formation underlying E/2 captioned Section 1 and imposing a 200% penalty clause on non-consenting working interest owners. Thereafter, Mark Production Company proceeded to drill the Federal "B" No. 1 well on E/2 Section 1, which well was commenced August 30, 1974, and completed November 22, 1974. These commencement and completion dates are significant, since all of the interests in Tract 218 now owned by J. V. Fritts and William B. Barnhill were acquired subsequent to the date that the well was drilled and completed.

J. V. Fritts and William B. Barnhill acquired Oil and Gas Leases covering Tract 218 from parties who are the heirs of C. Raymond Buxman, which leases are dated December 26, 1974. At the time of the entry of the Forced Pooling Order none of the parties who executed Oil and Gas Leases to Fritts and Barnhill owned any interest of record in Tract 218 and Mark Production Company had no actual notice at that time of these parties interests, so none of these Buxman heirs were entitled to notice of the forced pooling hearing. Therefore, the Oil and Gas Leases acquired by Fritts and Barnhill from these Buxman heirs, after the completion of the Federal "B" No. 1 well, were subject to the provisions of the Forced Pooling Order and the penalties imposed therein. We rendered an original division order opinion covering all E/2 Section 1 on June 5, 1975, based upon abstracts certified to April 1, 1975, at 7:00 a.m., and as of this time the records still did not reflect any mineral ownership in Tract 218 in any of the Buxman heirs who had executed Leases to Fritts and Barnhill. Therefore, we noted all of the above in our division order opinion as a result of which a quiet title suit was conducted in Cause

BEFORE THE	
OIL CONSERVATION COMMISSION	
Said to be in the	
Case No. <u>6489</u>	No. <u>11</u>
Submitted by <u>Mewbourne</u>	
Hearing Date _____	

No. CV-78-133 in the District Court of Eddy County, New Mexico, in which Final Decree was entered June 12, 1978, finally clarifying of record, only at this time, the heirship of Minnie Warmker and of C. Raymond Buxman. This quiet title suit reflects that Katherine D. Warmker and Norma Warmker were among the heirs of Minnie Warmker, and these parties conveyed all of their interest in Tract 218 to the Anna Brown Home for the Aged. Neither C. Raymond Buxman nor any of his heirs ever placed of record any notice that they were claiming a mineral interest in Tract 218 through Minnie Warmker, and, indeed, neither the ownership of C. Raymond Buxman nor any of his heirs was ever reflected of record in Eddy County, New Mexico, until the conclusion of the quiet title suit on June 12, 1978.

It is our opinion that the Forced Pooling Order is binding upon the working interests under the Oil and Gas Leases acquired by Fritts and Barnhill from mineral owners who owned no interest of record at the time of the forced pooling hearing. At the time of the forced pooling hearing in July of 1974, only the Anna Brown Home for the Aged owned any interest of record in Tract 218, having been conveyed its interest by one of the original owners (Katherine V. Warmker, aka Kate Warmker) and Norma Warmker, one of the heirs of Minnie Warmker. It is also significant that only the Anna Brown Home for the Aged had been paying taxes on Tract 218 for more than the past ten years preceding the forced pooling hearing.

Mr. Fritts attempts to place significance upon the fact that the interest of the Buxman heirs was not acquired through the Anna Brown Home for the Aged, but rather from their ancestor Minnie Warmker, who still owned an interest of record at the time of her death intestate in 1940. However, as of July, 1974, 34 years after the death of Minnie Warmker, nothing had been placed of record to reflect any ownership in Tract 218 by any of the heirs of Minnie Warmker, other than the Quitclaim Deed from Katherine D. Warmker and Norma Warmker to Anna Brown Home for the Aged. The Oil and Gas Lease from the Anna Brown Home to Felmont Oil Corporation purported to cover the entire mineral interest, and at the time of the order Felmont Oil Corporation understood that its Oil and Gas Lease from the Anna Brown Home for the Aged covered the entire mineral estate in Tract 218. It was only after the Forced Pooling Order and after the drilling and completion of the well that the ownership of the Buxman heirs was identified and leased. It should also be noted that the interest of the Buxman heirs had not been established of record within 90 days following the completion of the well, as reflected by our original division order opinion covering E/2 Section 1 and based upon abstracts certified to April 1, 1975.

COTTON, BLEDSOE, TIGHE, MORROW & DAWSON
A Professional Corporation

By:

Tevis Herd
Tevis Herd

TH:cm

Dockets Nos. 11-79 and 12-79 are tentatively set for hearing on March 14 and 28, 1979. Applications for hearing must be filed at least 22 days in advance of hearing date.

DOCKET: COMMISSION HEARING - WEDNESDAY - MARCH 7, 1979

OIL CONSERVATION COMMISSION - 9 A.M. - ROOM 205
STATE LAND OFFICE BUILDING, SANTA FE, NEW MEXICO

CASE 6489: Application of J. V. Fritts and Wm. B. Barnhill for review of Order No. R-4831, Eddy County, New Mexico. Applicants, in the above-styled cause, seek the review and interpretation of Order No. R-4831 to permit them the opportunity to join in the drilling of the Federal "B" Well No. 1 located in Unit P of Section 1, Township 18 South, Range 26 East, Atoka-Pennsylvanian Pool, Eddy County, New Mexico, and to determine the applicability of the 200% risk factor.

CASE 6398: (DE NOVO)

Application of Texas Oil & Gas Corporation for an unorthodox gas well location, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks approval for the unorthodox location for the Wolfcamp and Pennsylvanian formations of its State Com Well No. 1, to be located 660 feet from the South and West lines of Section 18, Township 21 South, Range 26 East, Catclaw Draw Field, Eddy County, New Mexico, all of said Section 18 to be dedicated to the well in the Morrow formation.

Upon application of Texas Oil & Gas Corporation this case will be heard De Novo pursuant to the provisions of Rule 1220.

DOCKET: EXAMINER HEARING - WEDNESDAY - MARCH 14, 1979

9 A.M. - OIL CONSERVATION DIVISION CONFERENCE ROOM,
STATE LAND OFFICE BUILDING, SANTA FE, NEW MEXICO

The following cases will be heard before Daniel S. Nutter, Examiner, or Richard L. Stamets, Alternate Examiner:

ALLOWABLE: (1) Consideration of the allowable production of gas for April, 1979, from fifteen prorated pools in Lea, Eddy, and Chaves Counties, New Mexico.

(2) Consideration of the allowable production of gas for April, 1979, from four prorated pools in San Juan, Rio Arriba, and Sandoval Counties, New Mexico.

CASE 6490: Application of L. C. Harris for a unit agreement, Chaves and Eddy Counties, New Mexico. Applicant, in the above-styled cause, seeks approval for his Walnut Draw Unit Area comprising 9,797 acres, more or less, of Federal, state and fee lands in Townships 15 and 16 South, Ranges 23 and 24 East, Chaves and Eddy Counties, New Mexico.

CASE 6491: Application of C & E Operators, Inc. for an unorthodox well location and a non-standard proration unit, San Juan County, New Mexico. Applicant, in the above-styled cause, seeks approval of an 80-acre non-standard gas proration unit comprising the E/2 SW/4 of Section 10, Township 30 North, Range 11 West, Aztec-Pictured Cliffs Pool, San Juan County, New Mexico, to be dedicated to a well to be located 1700 feet from the South line and 1760 feet from the West line of said Section 10.

CASE 6477: (Continued from February 28, 1979, Examiner Hearing)

Application of Sun Oil Company for a waterflood project, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks authority to institute a waterflood project on its East Millman Pool Unit Area by the injection of water into the Queen and Grayburg formations through eleven wells located in Sections 12 and 13 of Township 19 South, Range 28 East, East Millman Pool, Eddy County, New Mexico.

CASE 6492: Application of Yates Petroleum Corporation for compulsory pooling, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks an order pooling all mineral interests in the San Andres formation underlying the NE/4 NW/4 of Section 13, Township 17 South, Range 25 East, Eddy County, New Mexico, to be dedicated to a well to be drilled at a standard location thereon. Also to be considered will be the cost of drilling and completing said well and the allocation of the cost thereof as well as actual operating costs and charges for supervision. Also to be considered will be the designation of applicant as operator of the well and a charge for risk involved in drilling said well.

CASE 6072: (Reopened and Readvertised)

In the matter of Case 6072 being reopened pursuant to the provisions of Order No. R-5643 which order created the Travis-Upper Pennsylvanian Pool, Eddy County, New Mexico, with provisions for 80-acre spacing. All interested parties may appear and show cause why the Travis-Upper Pennsylvanian Pool should not be developed on 40-acre spacing units.

CASE 6493: Application of Merrion & Bayless for gas well commingling, San Juan County, New Mexico. Applicant, in the above-styled cause, seeks approval for the surface commingling, prior to measurement, of Pictured Cliffs production from the Hi Roll Wells Nos. 1 and 2 located in Units O and K of Section 35, Township 27 North, Range 13 West, San Juan County, New Mexico.

CASE 6494: Application of Morris R. Antweil for an unorthodox gas well location and simultaneous dedication, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks approval for the unorthodox location of his Mesa Macho Well No. 1 located in Unit O of Section 24, Township 20 South, Range 27 East, Morrow formation, Eddy County, New Mexico; the E/2 of said Section 24 to be simultaneously dedicated to the aforesaid well and to applicant's Macho Norte Well No. 1 located in Unit G of Section 24.

CASE 6495: Application of Amax Chemical Corporation for the amendment of Order No. R-111-A, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks the amendment of Order No. R-111-A to extend the boundaries of the Potash-Oil Area by the inclusion of certain lands in Sections 23 and 24, Township 19 South, Range 29 East, Sections 1, 4, 5, 6, 7, 11, 12, 13, 14, 19, 20, 23, 24, and 29, Township 19 South, Range 30 East, and Sections 7, 8, 17, 18, and 19, Township 19 South, Range 31 East, all in Eddy County, New Mexico.

CASE 6496: Application of Llano, Inc. for rescission of pool rules, Lea County, New Mexico. Applicant, in the above-styled cause, seeks the rescission of Order No. R-3006, which promulgated 640-acre spacing for the Grama Ridge-Morrow Gas Pool, Lea County, New Mexico. Applicant proposes that said pool be developed and operated under 320-acre spacing and well location requirements.

CASE 6497: Application of Llano, Inc. for an unorthodox gas well location, Lea County, New Mexico. Applicant, in the above-styled cause, seeks approval for the unorthodox location of a well to be located 1650 feet from the South line and 660 feet from the East line of Section 34, Township 21 South, Range 34 East, Grama Ridge-Morrow Gas Pool, Lea County, New Mexico, the E/2 of said Section 34 to be dedicated to the well.

CASE 6498: Application of Pogo Producing Company to limit application of pool rules, Lea County, New Mexico. Applicant, in the above-styled cause, seeks to limit the application of the Grama Ridge-Morrow Gas Pool Rules to the horizontal limits of said pool, being all of Sections 2, 3, 4, and 10, Township 22 South, Range 34 East and Sections 33 and 34, Township 21 South, Range 34 East, Lea County, New Mexico.

CASE 6499: In the matter of the hearing called by the Oil Conservation Division on its own motion for an order creating and extending horizontal limits and contracting vertical limits of certain pools in Chaves, Eddy, Lea, and Roosevelt Counties, New Mexico:

(a) CREATE a new pool in Eddy County, New Mexico, classified as a gas pool for Morrow production and designated as the Antelope Sink-Morrow Gas Pool. The discovery well is Maddox Energy Corporation State 32 Well No. 1 located in Unit I of Section 32, Township 18 South, Range 24 East, NMPM. Said pool would comprise:

TOWNSHIP 18 SOUTH, RANGE 24 EAST, NMPM
Section 32: E/2

(b) CREATE a new pool in Eddy County, New Mexico, classified as a gas pool for Morrow production and designated as the Baldridge Canyon-Morrow Gas Pool. The discovery well is W. A. Moncrief, Jr., Baldridge Canyon Com Well No. 1 located in Unit G of Section 13, Township 24 South, Range 24 East, NMPM. Said pool would comprise:

TOWNSHIP 24 SOUTH, RANGE 24 EAST, NMPM
Section 13: E/2

(c) CREATE a new pool in Eddy County, New Mexico, classified as an oil pool for Delaware production and designated as the Burton Flat-Delaware Pool. The discovery well is Yates Petroleum Corporation Stonewall EP State Well No. 3 located in Unit N of Section 19, Township 20 South, Range 28 East, NMPM. Said pool would comprise:

TOWNSHIP 20 SOUTH, RANGE 28 EAST, NMPM
Section 19: SW/4

(d) CREATE a new pool in Lea County, New Mexico, classified as an oil pool for San Andres production and designated as the East Crossroads-San Andres Pool. The discovery well is MGF Oil Corporation Santa Fe Railway Well No. 1 located in Unit A of Section 13, Township 10 South, Range 36 East, NMPM. Said pool would comprise:

TOWNSHIP 10 SOUTH, RANGE 36 EAST, NMPM
Section 13: NE/4

(e) CREATE a new pool in Eddy County, New Mexico, classified as a gas pool for Atoka production and designated as the South Culebra Bluff-Atoka Gas Pool. The discovery well is Delta Drilling Company South Culebra Bluff Unit Well No. 1 located in Unit G of Section 23, Township 23 South, Range 28 East, NMPM. Said pool would comprise:

TOWNSHIP 23 SOUTH, RANGE 28 EAST, NMPM
Section 14: E/2
Section 23: All
Section 26: All

(f) CREATE a new pool in Eddy County, New Mexico, classified as a gas pool for Morrow production and designated as the Dublin Ranch-Morrow Gas Pool. The discovery well is J. C. Barnes Oil Company Big Chief Com Well No. 1 located in Unit F of Section 22, Township 22 South, Range 28 East, NMPM. Said pool would comprise:

TOWNSHIP 22 SOUTH, RANGE 28 EAST, NMPM
Section 22: All
Section 27: N/2

(g) CREATE a new pool in Eddy County, New Mexico, classified as a gas pool for Morrow production and designated as the Gardner Draw-Morrow Gas Pool. The discovery well is Phoenix Resources Company Gardner Draw Unit Well No. 1 located in Unit C of Section 20, Township 19 South, Range 21 East, NMPM. Said pool would comprise:

TOWNSHIP 19 SOUTH, RANGE 21 EAST, NMPM
Section 17: W/2
Section 19: N/2
Section 20: N/2

(h) CREATE a new pool in Chaves County, New Mexico, classified as a gas pool for Pennsylvanian production and designated as the Jubilee-Pennsylvanian Gas Pool. The discovery well is Tom L. Ingram Jubilee Well No. 1 located in Unit E of Section 28, Township 10 South, Range 29 East, NMPM. Said pool would comprise:

TOWNSHIP 10 SOUTH, RANGE 29 EAST, NMPM
Section 28: W/2

(i) CREATE a new pool in Lea County, New Mexico, classified as a gas pool for Mississippian production and designated as the King-Mississippian Gas Pool. The discovery well is Cabot Corporation J. L. Reed Well No. 1 located in Unit H of Section 35, Township 13 South, Range 37 East, NMPM. Said pool would comprise:

TOWNSHIP 13 SOUTH, RANGE 37 EAST, NMPM
Section 35: NE/4

(j) CREATE a new pool in Chaves County, New Mexico, classified as a gas pool for Atoka production and designated as the Lone Wolf-Atoka Gas Pool. The discovery well is Depco, Inc. Sundance A Federal Well No. 1 located in Unit J of Section 25, Township 12 South, Range 29 East, NMPM. Said pool would comprise:

TOWNSHIP 12 SOUTH, RANGE 29 EAST, NMPM
Section 25: S/2

(k) CREATE a new pool in Chaves County, New Mexico, classified as a gas pool for Strawn production and designated as the Lost Lake-Strawn Gas Pool. The discovery well is Texas Oil & Gas Corporation O'Brien Well No. 1 located in Unit I of Section 11, Township 9 South, Range 29 East, NMPM. Said pool would comprise:

TOWNSHIP 9 SOUTH, RANGE 29 EAST, NMPM
Section 2: S/2
Section 11: All
Section 14: N/2

(l) CREATE a new pool in Lea County, New Mexico, classified as a gas pool for Morrow production and designated as the West Mesalero-Morrow Gas Pool. The discovery well is Natomas North America, Inc. New Mexico State Well No. 1 located in Unit N of Section 19, Township 10 South, Range 32 East, NMPM. Said pool would comprise:

TOWNSHIP 10 SOUTH, RANGE 32 EAST, NMPM
Section 19: W/2

(m) CREATE a new pool in Eddy County, New Mexico, classified as a gas pool for Permo-Penn production and designated as the Penasco Draw Permo-Penn Gas Pool. The discovery well is Yates Petroleum Corporation La Cama Com Well No. 1 located in Unit F of Section 20, Township 18 South, Range 25 East, NMPM. Said pool would comprise:

TOWNSHIP 18 SOUTH, RANGE 25 EAST, NMPM
Section 18: S/2
Section 19: All
Section 20: All
Section 21: W/2
Section 30: All
Section 31: All

(n) CREATE a new pool in Eddy County, New Mexico, classified as a gas pool for Morrow production and designated as the Siegreest Draw-Morrow Gas Pool. The discovery well is Yates Petroleum Corporation Siegreest JS State Com Well No. 1 located in Unit C of Section 30, Township 19 South, Range 24 East, NMPM. Said pool would comprise:

TOWNSHIP 19 SOUTH, RANGE 24 EAST, NMPM
Section 30: N/2

(o) CREATE a new pool in Eddy County, New Mexico, classified as a gas pool for Atoka production and designated as the North Turkey Track-Atoka Gas Pool. The discovery well is Amoco Production Company State ER Com Well No. 1 located in Unit G of Section 6, Township 19 South, Range 29 East, NMPM. Said pool would comprise:

TOWNSHIP 19 SOUTH, RANGE 29 EAST, NMPM
Section 6: N/2

(p) EXTEND the Angell Ranch-Morrow Gas Pool in Eddy County, New Mexico, to include therein:

TOWNSHIP 19 SOUTH, RANGE 27 EAST, NMPM
Section 35: E/2

(q) EXTEND the Buffalo Valley-Pennsylvanian Gas Pool in Chaves County, New Mexico, to include therein:

TOWNSHIP 15 SOUTH, RANGE 28 EAST, NMPM
Section 17: S/2

(r) EXTEND the Cato-San Andres Pool in Chaves County, New Mexico, to include therein:

TOWNSHIP 8 SOUTH, RANGE 31 EAST, NMPM
Section 5: NW/4 SW/4

(s) EXTEND the Cedar Lake-Morrow Gas Pool in Eddy County, New Mexico, to include therein:

TOWNSHIP 17 SOUTH, RANGE 30 EAST, NMPM
Section 25: W/2
Section 26: E/2
Section 36: NW/4

(t) EXTEND the East Chisum-San Andres Pool in Chaves County, New Mexico, to include therein:

TOWNSHIP 11 SOUTH, RANGE 28 EAST, NMPM
Section 9: E/2 NE/4
Section 10: W/2 NW/4

(u) EXTEND the South Corbin-Wolfcamp Pool in Lea County, New Mexico, to include therein:

TOWNSHIP 18 SOUTH, RANGE 33 EAST, NMPM
Section 20: SW/4

- (v) EXTEND the Double I. Queen Associated Pool in Chaves County, New Mexico, to include therein:

TOWNSHIP 14 SOUTH, RANGE 29 EAST, NMPM
Section 24: NW/4 and E/2 SW/4
Section 36: NW/4 NW/4, S/2 NW/4 and SW/4

- (w) EXTEND the Drinkard Pool in Lea County, New Mexico, to include therein:

TOWNSHIP 22 SOUTH, RANGE 37 EAST, NMPM
Section 18: SE/4

- (x) EXTEND the East Eagle Creek Atoka-Morrow Gas Pool in Eddy County, New Mexico, to include therein:

TOWNSHIP 18 SOUTH, RANGE 26 EAST, NMPM
Section 7: N/2

- (y) EXTEND the Grama Ridge-Morrow Gas Pool in Lea County, New Mexico, to include therein:

TOWNSHIP 21 SOUTH, RANGE 34 EAST, NMPM
Section 35: All

- (z) REDEFINE the vertical limits of the Monument Tubb-Drinkard Pool in Lea County, New Mexico, to include only the Tubb formation and redesignate said pool as the Monument-Tubb Pool.

- (aa) EXTEND the West Indian Basin-Morrow Gas Pool in Eddy County, New Mexico, to include therein:

TOWNSHIP 21 SOUTH, RANGE 22 EAST, NMPM
Section 23: E/2

- (bb) EXTEND the Millman-Strawn Gas Pool in Eddy County, New Mexico, to include therein:

TOWNSHIP 19 SOUTH, RANGE 27 EAST, NMPM
Section 12: E/2

- (cc) EXTEND the South Prairie-Wolfcamp Pool in Roosevelt County, New Mexico, to include therein:

TOWNSHIP 8 SOUTH, RANGE 36 EAST, NMPM
Section 20: N/2

- (dd) EXTEND the Querecho Plains-Bone Spring Pool in Lea County, New Mexico, to include therein:

TOWNSHIP 18 SOUTH, RANGE 32 EAST, NMPM
Section 34: NW/4

- (ee) EXTEND the Richard Knob Atoka-Morrow Gas Pool in Eddy County, New Mexico, to include therein:

TOWNSHIP 18 SOUTH, RANGE 25 EAST, NMPM
Section 7: All
Section 18: N/2

- (ff) EXTEND the Round Tank-Queen Associated Pool in Chaves County, New Mexico, to include therein:

TOWNSHIP 15 SOUTH, RANGE 29 EAST, NMPM
Section 30: NE/4

- (gg) EXTEND the South Salt Lake-Morrow Gas Pool in Lea County, New Mexico, to include therein:

TOWNSHIP 21 SOUTH, RANGE 32 EAST, NMPM
Section 5: Lots 11, 12, 13, 14 and SW/4

- (hh) EXTEND the North Teague-Devonian Pool in Lea County, New Mexico, to include therein:

TOWNSHIP 23 SOUTH, RANGE 37 EAST, NMPM
Section 22: NW/4

- (ii) EXTEND the Tomahawk-San Andres Pool in Roosevelt County, New Mexico, to include therein:

TOWNSHIP 7 SOUTH, RANGE 32 EAST, NMPM
Section 30: SW/4

(jj) EXTEND the Twin Lakes-San Andres Associated Pool in Chaves County, New Mexico, to include therein:

TOWNSHIP 8 SOUTH, RANGE 28 EAST, NMPM
Section 36: NE/4

Docket No. 12-79

DOCKET: COMMISSION HEARING - THURSDAY - MARCH 15, 1979

OIL CONSERVATION COMMISSION - 9 A.M. - ROOM 205
STATE LAND OFFICE BUILDING, SANTA FE, NEW MEXICO

CASE 6222: (Rehearing) (Continued from March 2, 1979, Commission Hearing)

Application of Paul Hamilton for salt water disposal well shut-in, Lea County, New Mexico. Upon application of Paul Hamilton there will be a rehearing of Case No. 6222, Order No. R-5753. This case involves the application of Paul Hamilton for an order shutting down salt water disposal operations in the Texaco Inc., New Mexico State "BO" SWD Well No. 3, located in Unit D of Section 24, Township 11 South, Range 32 East, Moore-Devonian Pool, Lea County, New Mexico. Pursuant to Commission Order No. R-5753-A, evidence at said rehearing shall be limited to evidence relating to data regarding water quality and water level obtained from an observation well completed next to the aforesaid SWD Well No. 3, and to other new evidence unavailable at the time of the original hearing of this case on May 31, 1978.

Dockets Nos. 11-79 and 12-79 are tentatively set for hearing on March 14 and 28, 1979. Applications for hearing must be filed at least 22 days in advance of hearing date.

DOCKET: COMMISSION HEARING - WEDNESDAY - MARCH 7, 1979

OIL CONSERVATION COMMISSION - 9 A.M. - ROOM 205
STATE LAND OFFICE BUILDING, SANTA FE, NEW MEXICO

CASE 6489: Application of J. V. Fritts and Wm. B. Barnhill for review of Order No. R-4831, Eddy County, New Mexico. Applicants, in the above-styled cause, seek the review and interpretation of Order No. R-4831 to permit them the opportunity to join in the drilling of the Federal "B" Well No. 1 located in Unit P of Section 1, Township 18 South, Range 26 East, Atoka-Pennsylvanian Pool, Eddy County, New Mexico, and to determine the applicability of the 200% risk factor.

CASE 6398: (DE NOVO)

Application of Texas Oil & Gas Corporation for an unorthodox gas well location, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks approval for the unorthodox location for the Wolfcamp and Pennsylvanian formations of its State Com Well No. 1, to be located 660 feet from the South and West lines of Section 18, Township 21 South, Range 26 East, Catclaw Draw Field, Eddy County, New Mexico, all of said Section 18 to be dedicated to the well in the Morrow formation.

Upon application of Texas Oil & Gas Corporation this case will be heard De Novo pursuant to the provisions of Rule 1220.

7-30-74 order entered

8-30-74 well spudded

11-22-74 well completed

~~12-28-74~~

12-20-74 7 Leases dated

1-17-75 recorded in Eddy County

1-30-75 Fritts offered to join

3-14-75 Re-wrote

10-3-75 Dir order in error

9-25-78 Write - ~~error~~ in would complete accts -

were mistakes

Fritts
letters

Area of
dispute

6-75

1st date of production

6-78

10-2-78 M's letter of well costs

Newbourne never notified heirs.

* How much of an effort did Newbourne
have to make to determine WI
owners? N.B. - Order only requires
AFE to known WI owners



JOE D. MILLER
DIVISION MANAGER

March 12, 1975

Mark Production Company
1007 Gihls Tower West
Midland, Texas 79701

Re: Tract 218, Section 1, T-18-S,
R-26-E, Eddy County, New Mexico
Our File: FNML-4994

Gentlemen:

Felmont Oil Corporation is the owner of certain leasehold interest in the captioned land, and we have been advised that Mark Production Company has completed a producing well on Tract 218 in Section 1, T-18-S, R-26-E in Eddy County, New Mexico. We are knowledgeable that we have been forced pooled into this Unit in order to protect not only ourselves but our royalty owners.

Would you please advise us the status of royalty distribution and the cost of drilling and completing this well in order that we may keep current with the payout status? We would also appreciate any information regarding gas and distillate contracts which you may negotiate.

For your files, we are enclosing a copy of our Oil, Gas and Mineral Lease dated August 9, 1973 from Anna Brown Unit of the Good Samaritan Home of Quincy to Felmont covering the captioned property, as well as two Warranty Deeds covering a change in mineral ownership.

Very truly yours,

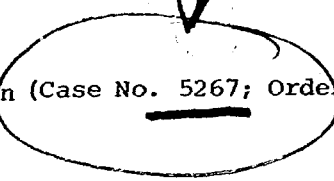
FELMONT OIL CORPORATION

T. Verne Dwyer
Vice President

TVD:nms
Enclosures

cc: Mr. I. R. Trujillo, Chairman (Case No. 5267; Order No. R-4831)
Oil Conservation Commission
Santa Fe, NM 87501

File



J. V. FRITTS
404 HINKLE BUILDING
PHONE - RES. 622-4006 — BUS. 623-4281
ROSWELL, NEW MEXICO 88201

ADDRESS REPLY TO:
P. O. BOX 868

January 25, 1979

Oil Conservation Division
Energy and Minerals Department of
State of New Mexico
P. O. Box 2088
Santa Fe, New Mexico 87501

Case 6489

Reference: Case No. 5267
Order No. R-4831, dated July 30, 1974

Gentlemen:

Acting for myself and Wm. B. Barnhill I wish to file this application (in triplicate) for a hearing on certain provisions of the above order of the Commission, which provided for compulsory pooling of all mineral interests in the Pennsylvanian formation underlying the E₂ of Sec. 1, T-18S, R-26E, NMPM, Atoka-Pennsylvanian Pool, Eddy County, New Mexico, and designated Mark Production Company as operator of the unit.

This application for a hearing is made because a dispute has arisen over the share of costs of the well drilled on this unit which the Operator insists on assessing us as non-consenting working interest owners. The Operator says our interests are subject to a 200% charge for the risk involved in drilling the well, whereas we state we were never afforded an opportunity to pay our share of such costs to the Operator in lieu of payment out of production. We have been ready at all times to pay our share of actual costs upon receipt of a schedule of such costs. Operator at the present time is withholding funds due us far in excess of the amount needed to cover our pro rata share of actual well costs.

Order No. R-4831 provided that any non-consenting working interest owner should be afforded such opportunity to pay his share of actual well costs; that Operator should furnish such owners an itemized schedule of estimated well costs; that within 30 days after receipt of such an estimate any non-consenting working interest shall have the right to pay his share of such costs, thereby avoiding the 200% penalty provided for non-payment of such costs.

No schedule of estimated well costs was ever served on us or on the mineral interest owners from whom we acquired our oil and gas leases. No itemized schedule of actual well costs was served on us within 90 days following completion of the well, as provided in order No. R-4831. In fact, despite a number of requests for such a schedule we did not receive one until October 2, 1978, more than 3 years after first production in June, 1975, and by that time Operator was holding funds more than sufficient to cover our share of the well costs.

Our working interest consists of an undivided 1/6th interest in a tract of about 5 acres located in the E₂ of Sec. 1, acquired by oil and gas leases from the heirs of C. Raymond Buxman, deceased, owners of 1/6th of the mineral rights which were unleased at the time the forced pooling order was entered. The remaining 5/6ths working interest in the tract is owned by Felmont Oil Corporation, acquired by oil and gas lease from Anna Brown Home which was the owner of 5/6ths of the mineral rights at the time the lease was executed.

Operator has stated that Felmont Oil was force-pooled and that company accepted a payout of 300 percent times the actual cost to complete the well, and because Felmont Oil did accept the penalty our 1/6th working interest was subject to the same penalty. This is wrong. Felmont Oil has no interest, right or authority of any kind in our 1/6th interest, and never at any time in the past did it possess such an interest. Our working interest is separate from any interest owned by Felmont Oil or any other owner and no part of our production should be applied toward the payment of any costs chargeable to Felmont Oil or any other owner.

Operator's attorney stated that Felmont's lessor, Anna Brown Home, owned all of the record title at the time of the pooling order; that our 1/6th working interest came from mineral owners who acquired their interest from Anna Brown Home. This is wrong. At the time the forced pooling order was entered the record title stood: Minnie Warmker 1/2; and Anna Brown Home 1/2 by deed from Kate Warmker. The actual title was different. In 1910 the tract was acquired by two persons: Minnie Warmker and Kate Warmker. Minnie Warmker died in 1940 and her 1/2 interest passed in equal shares to Katherine D. Warmker, a sister; to Norma Warmker, child of deceased brother Henry; and to C. Raymond Buxman, child of deceased sister Louisa C. Buxman. At the time of order No. R-4831 the actual title was:

- 1/2 - Kate Warmker, who had given a deed to Anna Brown Home
- 1/3 of 1/2 - Katherine Warmker (by inheritance), who had given a deed to Anna Brown Home
- 1/3 of 1/2 - Norma Warmker (by inheritance), who had given a deed to Anna Brown Home
- 1/3 of 1/2 - C. Raymond Buxman, by inheritance from Minnie Warmker. He died in 1947 in possession of this interest, and his heirs are the owners today having never executed any conveyance of any sort to Anna Brown Home

From the above title discussion it should be clear that Anna Brown Home never at any time owned the 1/6th interest acquired by C. Raymond Buxman by inheritance from Minnie Warmker. It is this 1/6th interest which we hold through oil and gas leases executed by the heirs of C. Raymond Buxman.

We desire a hearing before an Examiner, at a time and place to be set by him.

In the hearing we ask that the Operator of the well on E $\frac{1}{2}$ Sec. 1-18S-26E be directed to only assess us our pro rata share of the actual well costs, and no more, and that Operator shall be forbidden to assess an additional 200% penalty. We also ask that all proceeds from this well which have not been disbursed shall be placed in escrow in Eddy County, New Mexico, and that Operator shall furnish us and your Division with the name and address of the escrow agent, together with a detailed accounting of the funds deposited.

The interested parties concerned in this application, to my knowledge, are as follows:

1-25-79

*Mark Production Company, 330 Citizens Bank Bldg., Tyler, Texas 75701

*Mewbourne Oil Company, P. O. Box 7698, Tyler, Texas 75711
and

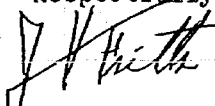
1010 Wall Towers West, Midland, Texas 79701

Wm. B. Barnhill, Box 1354, Roswell, New Mexico 88201

J. V. Fritts, Box 868, Roswell, New Mexico 88201

*It may be that Mewbourne Oil Company is now the Operator of the unit but there is no evidence of such a change from Mark Production Company in the records of Eddy County, New Mexico. I have never been furnished with a copy of the operating agreement or with any document showing a change in operators.

Respectfully submitted,



J. V. Fritts

cc: Wm. B. Barnhill

Mewbourne Oil Company

J. V. FRITTS
404 HINKLE BUILDING
PHONE - RES. 622-4006 — BUS. 623-4281
ROSWELL, NEW MEXICO 88201

ADDRESS REPLY TO:
P. O. BOX 868

January 25, 1979

Oil Conservation Division
Energy and Minerals Department of
State of New Mexico
P. O. Box 2088
Santa Fe, New Mexico 87501

Reference: Case No. 5267
Order No. R-4831, dated July 30, 1974

Gentlemen:

Acting for myself and Wm. B. Barnhill I wish to file this application (in triplicate) for a hearing on certain provisions of the above order of the Commission, which provided for compulsory pooling of all mineral interests in the Pennsylvanian formation underlying the E $\frac{1}{2}$ of Sec. 1, T-18S, R-26E, NMPM, Atoka-Pennsylvanian Pool, Eddy County, New Mexico, and designated Mark Production Company as operator of the unit.

This application for a hearing is made because a dispute has arisen over the share of costs of the well drilled on this unit which the Operator insists on assessing us as non-consenting working interest owners. The Operator says our interests are subject to a 200% charge for the risk involved in drilling the well, whereas we state we were never afforded an opportunity to pay our share of such costs to the Operator in lieu of payment out of production. We have been ready at all times to pay our share of actual costs upon receipt of a schedule of such costs. Operator at the present time is withholding funds due us far in excess of the amount needed to cover our pro rata share of actual well costs.

Order No. R-4831 provided that any non-consenting working interest owner should be afforded such opportunity to pay his share of actual well costs; that Operator should furnish such owners an itemized schedule of estimated well costs; that within 30 days after receipt of such an estimate any non-consenting working interest shall have the right to pay his share of such costs, thereby avoiding the 200% penalty provided for non-payment of such costs.

No schedule of estimated well costs was ever served on us or on the mineral interest owners from whom we acquired our oil and gas leases. No itemized schedule of actual well costs was served on us within 90 days following completion of the well, as provided in order No. R-4831. In fact, despite a number of requests for such a schedule we did not receive one until October 2, 1978, more than 3 years after first production in June, 1975, and by that time Operator was holding funds more than sufficient to cover our share of the well costs.

Our working interest consists of an undivided 1/6th interest in a tract of about 5 acres located in the E $\frac{1}{2}$ of Sec. 1, acquired by oil and gas leases from the heirs of C. Raymond Buxman, deceased, owners of 1/6th of the mineral rights which were unleased at the time the forced pooling order was entered. The remaining 5/6ths working interest in the tract is owned by Felmont Oil Corporation, acquired by oil and gas lease from Anna Brown Home which was the owner of 5/6ths of the mineral rights at the time the lease was executed.

1-25-79

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We desire a hearing before an Examiner, at a time and place to be set by him.

In the hearing we ask that the Operator of the well on E $\frac{1}{2}$ Sec. 1-18S-26E be directed to only assess us our pro rata share of the actual well costs, and no more, and that Operator shall be forbidden to assess an additional 200% penalty. We also ask that all proceeds from this well which have not been disbursed shall be placed in escrow in Eddy County, New Mexico, and that Operator shall furnish us and your Division with the name and address of the escrow agent, together with a detailed accounting of the funds deposited.

The interested parties concerned in this application, to my knowledge, are as follows:

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*Mark Production Company, 330 Citizens Bank Bldg., Tyler, Texas 75701

*Mewbourne Oil Company, P. O. Box 7698, Tyler, Texas 75711
and
1010 Wall Towers West, Midland, Texas 79701

Wm. B. Barnhill, Box 1354, Roswell, New Mexico 88201

J. V. Fritts, Box 868, Roswell, New Mexico 88201

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Respectfully submitted,


J. V. Fritts

cc: Wm. B. Barnhill

Mewbourne Oil Company

Dockets Nos. 11-79 and 12-79 are tentatively set for hearing on March 14 and 28, 1979. Applications for hearing must be filed at least 22 days in advance of hearing date.

DOCKET: COMMISSION HEARING - WEDNESDAY - MARCH 7, 1979

OIL CONSERVATION COMMISSION - 9 A.M. - ROOM 205
STATE LAND OFFICE BUILDING, SANTA FE, NEW MEXICO

CASE 6489: Application of J. V. Fritts and Wm. B. Barnhill for review of Order No. R-4831, Eddy County, New Mexico. Applicants, in the above-styled cause, seek the review and interpretation of Order No. R-4831 to permit them the opportunity to join in the drilling of the Federal "B" Well No. 1 located in Unit P of Section 1, Township 18 South, Range 26 East, Atoka-Pennsylvanian Pool, Eddy County, New Mexico, and to determine the applicability of the 200% risk factor.

CASE 6398: (DE NOVO)

Application of Texas Oil & Gas Corporation for an unorthodox gas well location, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks approval for the unorthodox location for the Wolfcamp and Pennsylvanian formations of its State Com Well No. 1, to be located 660 feet from the South and West lines of Section 18, Township 21 South, Range 26 East, Catclaw Draw Field, Eddy County, New Mexico, all of said Section 18 to be dedicated to the well in the Morrow formation.

Upon application of Texas Oil & Gas Corporation this case will be heard De Novo pursuant to the provisions of Rule 1220.

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION COMMISSION
State Land Office Building
Santa Fe, New Mexico
7 March 1979

COMMISSION HEARING

IN THE MATTER OF:

Application of J. V. Fritts
and William B. Barnhill for
review of Order No. R-4831,
Eddy County, New Mexico.

CASE
6489

BEFORE: Commissioner Ramey
Commissioner Arnold

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the Oil Conservation Commission: Lynn Teschendorf, Esq.
Legal Counsel for the Commission
State Land Office Bldg.
Santa Fe, New Mexico 87503

For the Applicant: J. V. Fritts, pro se

For Mewbourne Oil Co.: W. Thomas Kellahin, Esq.
KELLAHIN & KELLAHIN
500 Don Gaspar
Santa Fe, New Mexico 87501

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CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (SOS) 471-2482
Santa Fe, New Mexico 87501

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1 MR. RAMEY: We'll call next Case 6489.

2 Application of J. V. Fritts and William B. Barnhill for
3 review of Order No. R-4831, Eddy County, New Mexico.

4 Ask for appearances at this time.

5 MR. FRITTS: I'm Mr. Fritts. I am not an
6 attorney so you'll kind of have to tell me what to do.

7 MR. RAMEY: All right.

8 MR. KELLAHIN: I'm Tom Kellahin of Santa Fe,
9 New Mexico, appearing on behalf of Mark Production Company,
10 and its successor in interest, Mewbourne Oil Company.

11 MR. RAMEY: Will all those that are going
12 to testify please stand at this time?

13 (Witnesses sworn.)

14 MR. RAMEY: All right, Mr. Fritts, I think
15 you will go on first. You can tell your story.

16 MR. FRITTS: All right, sir.

17 My name is J. V. Fritts and my address is
18 Box 868 in Roswell.

19 I own an undivided 1/12th working interest
20 in a 5-acre tract described as Tract 218 of Fairchild Farm
21 Lands, which is a part of a producing unit of 320 acres in
22 the east half of Section 1, 18 South, 26 East, Eddy County,
23 New Mexico.

24 William B. Barnhill owns an interest equal
25 to mine.

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1 Our working interests have been confirmed
2 by Court decree and a copy of the final decree has been
3 furnished to the Commission and to Mark Production.

4 Order No. R-4831 ordered the pooling of all
5 mineral interests in this unit and designated Mark Production
6 Company as operator. It also provided that any nonconsenting
7 working interest owner be afforded the opportunity to pay
8 his share of the estimated well costs to the operator in
9 lieu of paying his share of reasonable well cost out of the
10 production.

11 Neither I nor Barnhill or our predecessors
12 in interest were ever furnished with an itemized schedule
13 of estimated well cost or with an itemized schedule of
14 actual well costs within ninety days following the comple-
15 tion of the well.

16 We object to being charged the penalty of
17 200 percent of well costs for risk involved, since we were
18 never afforded the opportunity of paying our share in lieu
19 of paying out on production.

20 We request an order allowing us to partici-
21 pate without a penalty in the actual well costs of the
22 Federal "B" Well No. 1, located on this unit, and we ask
23 that the operator be directed to pay us for 100 percent of
24 the gross production allocated to our interests less our
25 pro rata share of taxes deducted, and they should be

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1 directed to furnish us a statement of actual well costs,
2 operating expenses, and the actual expenditures attributed
3 to our working interest.

4 And we also ask that all proceeds which have
5 not been disbursed within, say, fifteen days from date of
6 this order shall be placed in escrow in Eddy County, and
7 operator to furnish us with the detailed accounting of such
8 funds, together with name and address of escrow agent.

9 MR. RAMEY: Any questions? Mr. Kellahin?

10
11 QUESTIONS BY MR. KELLAHIN:

12 Q Mr. Fritts, you indicated that you had a
13 Court decree perfecting yours and Mr. Barnhill's interest
14 in the 5 acres within the east half of Section 1.

15 Do you have a copy of that Court decree
16 here today?

17 A Yes, I do. Also, the Oil Conservation
18 also has a copy.

19 Q All right.

20 A We just can use it?

21 Q I don't think there's any problem with that.

22 Mr. Fritts, I show you what I've marked as
23 Newbourne Oil Company's Exhibit Number One, and ask you if
24 that is a true and correct copy of the final decree to which
25 you made reference?

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1 A. Yes, sir.

2 Q That final decree was entered on the 12th

3 day of June, 1978, was it not?

4 A. I'll take your word for it.

5 Q Yes, sir, that's apparently what it says.

6 All right. The forced pooling order which

7 you referred to was entered on July 30th, 1974, is that not

8 correct, Mr. Fritts?

9 A. Yes.

10 Q Now, after July 30th, 1974, do you know

11 when the well was completed?

12 A. Completion was reported on December the

13 28th, 1974.

14 Q The 28th of December, 1974 the well in the

15 east half of Section 1 was completed.

16 A. Yes.

17 Q All right. When did you first acquire a

18 record title ownership in the east half of Section 1?

19 A. I believe in -- I acquired my interest by

20 I believe seven oil and gas leases dated December the 26th,

21 1974.

22 Q Am I correct in saying that as of the date

23 of the forced pooling order, and as of the date of the com-

24 pletion of the well pursuant to that order, neither you nor

25 Mr. Barnhill had an interest recorded with regards to the

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1 east half of Section 1?

2 A Let me get straight, now, you're asking if
3 I have a recorded interest after the forced pooling order?

4 Q That's correct, yeah.

5 A And prior to the completion of the well?

6 Q That's right.

7 A No.

8 Q All right. From whom did you obtain your
9 interest in the east half of Section 1? You said you had
10 seven oil and gas leases in this area.

11 A Yes.

12 Q Could you go down each one of those, indi-
13 cate the date of the conveyance and from whom you received
14 it?

15 A All right. There are seven oil and gas
16 leases and all of them are dated December 26th, 1974.

17 And I think I'm safe in saying that they're
18 all recorded the same date, January the 17th, 1975.

19 Q January 17th, 1975, they were placed of
20 record in Eddy County, is that correct?

21 A Right.

22 Q All right, sir. Would you go slowly now
23 and list --

24 A All right.

25 Q -- either the lessor or the grantor in each

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1 conveyance?

2 A May I give you a little background?

3 Q Yes.

4 A This tract of land was deeded in 1910 to
5 two women, Minnie Warmker, W-A-R-M-K-E-R, and Kate Warmker,
6 two sisters.

7 Minnie Warmker died in 1940. There is no
8 probate in Eddy County.

9 Q She apparently died intestate?

10 A Died intestate. In fact, she died in Illi-
11 nois.

12 She left as her heirs three people: Katherine
13 Warmker, who is the same person as Kate Warmker who already
14 has a half interest.

15 Q That was a surviving sister?

16 A Right.

17 Q All right.

18 A So she left 1/3rd of -- Minnie left a 1/3
19 of her half to Katherine Warmker.

20 She left 1/3 of her half, or a 1/6th, to
21 Norma Warmker, who was a child of a deceased brother, Henry.
22 And there were no probates record in Eddy County on those
23 people.

24 Q Okay.

25 A The third interest is 1/3 of 1/2, or 1/6th,

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1 in the 5 acres, to C. Raymond Buxman, B-U-X-M-A-N, and he
2 was the only child of a deceased sister, Louisa C. Buxman.

3 Shall I go through -- it would be simpler
4 if I'd just go through the title with you right now, is that
5 all right?

6 Q Well, let me ask you a question at this
7 point.

8 A All right.

9 Q Minnie died in 1940 and there was no pro-
10 bate of her estate.

11 A Right.

12 Q When did the heirs of Minnie Warmker first
13 evidence by recorded instrument in Eddy County any interest
14 in the east half of Section 1?

15 A There were no recorded instruments, to my
16 knowledge.

17 Q Okay.

18 A You're talking about, now, the heirs of
19 Minnie?

20 Q That's right.

21 A Okay.

22 Q All right?

23 A All right, now, you ready to start out
24 again?

25 Q Uh-huh.

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1 A. C. Raymond Buxman died in 1947. He died
2 intestate. Now, his interest, forget it for a moment, and
3 let's go back to Kate Warmker, who had 1/2 interest in
4 her own right.

5 Q She was Minnie's sister back in 1910.

6 A She was -- she was one of the two people on
7 that deed.

8 Q Okay.

9 A Kate Warmker, in her own right and as an
10 heir of Minnie Warmker, gave a deed to the Anna Brown Home,
11 and that was in 1948.

12 Q This is the Anna Brown Home for the Aged in
13 Illinois.

14 A Right; right.

15 Q All right.

16 A That's now called something else.

17 Norma Warmker, who had inherited 1/3rd of
18 1/2, or a 1/6th, from Minnie, gave a deed to the Anna Brown
19 Home for the Aged.

20 Q And when did that deed appear of record?

21 A That was the same deed, in fact.

22 Q The 1948 deed?

23 A Right.

24 Q All right.

25 A That is all the interest that the Anna Brown

1 Home for the Aged ever acquired.

2 My interest comes, now, from the heirs of
3 C. Raymond Buxman, who died in 1947, intestate.

4 He left a widow. He left a son, Howard.
5 He left a daughter, Irma Neece; a son, Warren Buxman; a
6 daughter, June Schreacke. He left a son, Charles Buxman.
7 He left a son, Eugene Buxman. He left a son, Roger Buxman.

8 Now then, I've got to go back. The son,
9 Howard Buxman, died and left no children but left a surviving
10 widow, Emma.

11 Am I going too fast for you?

12 Q No.

13 A Charles Buxman died, was never married, left
14 no children, so by law his interest passed to his mother,
15 Ella Buxman.

16 Roger Buxman, son of C. Raymond Buxman,
17 died intestate. He left his widow, a son, and a daughter.
18 I'll give you their names, if you'd like.

19 Q No, that's all right. I don't think that's
20 important to us.

21 A So there are no probates on any of these
22 people.

23 Q All right, it is that chain of title and
24 those interests to which you perfected title as a result of
25 the quiet title suit --

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1 A. That's right.

2 Q -- and the final decree entered on 12 June
3 '78 in Eddy County Cause CV 78-- 33.

4 A. Correct.

5 Q Okay.

6 A. Now you asked me a question where did I get
7 my title. Shall I give that to you?

8 I have seven oil and gas leases from these
9 people. I have an oil and gas lease from Ella Buxman, who
10 is a surviving widow of C. Raymond Buxman.

11 Q Okay.

12 A. I say that she owns 1/4 of 1/6th that she
13 inherited from her husband, and she has 1/7th of 3/24ths
14 from her son, Charles, who died leaving no children and
15 no widow. Yeah, no widow and no children.

16 I have an oil and gas lease from Irma Buxman
17 Neece, N-E-E-C-E. I say that she owned 1/7th of 3/24ths
18 interest from inheritance.

19 I have an oil and gas lease from Emma Buxman.
20 Her interest came by inheritance from Howard Buxman and
21 she owns 1/7th of 3/24ths interest.

22 I have an oil and gas lease from Eugene
23 Buxman, who inherited 1/7th of a 3/24ths from his father,
24 C. Raymond Buxman.

25 A lease from Warren Buxman, who inherited

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1 the 1/7th of a 3/24th interest from his father.

2 A lease from June Schreacke. She was a
3 daughter of C. Raymond Buxman and she inherited 1/7th of
4 a 3/24ths.

5 I have an oil and gas lease from Alma Gloor,
6 G-L-O-O-R. She was formerly Alma Buxman. She's a surviving
7 widow of Roger Buxman, and she inherited 1/4th of 1/7th of
8 a 3/24ths for her interest.

9 This same lease was executed by Ronald
10 deWayne Buxman, son of Roger Buxman, deceased. His interest,
11 good gracious, 1/2 of a 98822, if I can ease this a little.
12 And his sister, Vicky Lynn Buxman, who had an equal interest,
13 the two of them together inherited 3/4ths of 1/7th of a
14 3/24ths interest, and it came from their father, Roger
15 Buxman.

16 And I say with those seven leases that --
17 that I have a lease from all the mineral owners of the Ray-
18 mond Buxman.

19 Q Now, you've supplied this final decree in
20 your quiet title suit to Mewbourne Oil Company, have you
21 not?

22 A I have.

23 Q And as a result of supplying that to Mew-
24 bourne Oil Company, they have had prepared Division order
25 title opinions and Division orders, showing what your fraction

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3010 Plaza Blanca (505) 471-2462
Santa Fe, New Mexico 87501

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (661) 471-2463
Santa Fe, New Mexico 87501

1 interest is in the east half of Section 1.
2 A That's right.
3 Q And there's no disagreement between you and
4 Mewbourne Production about what that fractional interest is
5 as of this date.
6 A That's right, there's no disagreement.
7 Q And you have received all your money, with
8 the exception of that portion being held with regards to
9 the risk factor. You've received all other monies --
10 A No, I won't go with you on that.
11 Q Okay, tell me what you've received and what
12 you have not received.
13 A You mean in money?
14 Q Not in dollars but in general terms. Are
15 you being paid sums by Mewbourne Oil Company for production
16 from this well?
17 A I'm being paid sums since about -- well,
18 I'm receiving payments from them now.
19 Q Okay.
20 A For my -- for my working interest, and for
21 another interest, which has no connection here.
22 Q I'm only interested in the working interest
23 ownership in regards to Tract 218.
24 A And as far as I know, those payments are
25 in order.

1 The argument comes from June, '75, which was
2 the date of first production. The fact of the matter is,
3 I have an argument with Mewbourne on the way they're paying
4 me, which is in addition to what I'm trying to establish
5 here, and I don't think the Commission wants to fool with
6 it, but I'll be glad to explain it, if it's necessary.

7 From June of '75 when the first production
8 commenced through June of 1978 is the area of argument.

9 I argue that they should not have assessed
10 me 200 percent.

11 Q All right, let me ask you this. How much
12 money is involved in this 200 percent?

13 A I wrote them a letter setting out what I
14 thought was due me, and do you have a copy of it?

15 Let me just mention my other controversy
16 and then we can forget about it.

17 Q Well, let's not clutter the record, Mr.
18 Fritts, unless it's relevant to the case here.

19 A Well, it's not relevant until you ask me
20 about total value which I think is due me, so in addition
21 to the 200 percent penalty, I argue that they haven't paid
22 me all the gas that was produced.

23 Q Okay. Apart from that, I would like you
24 to take a copy of what I've marked as Exhibit Number Two,
25 which is your letter dated October 6, 1978, and indicate

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (666) 471-2462
Santa Fe, New Mexico 87501

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CERTIFIED SHORTHAND REPORTER
3030 Plaza Blanca (SOS) 471-2462
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1 to me what the dollar amount is in controversy.

2 A You mean after we -- the bottom line, is
3 that what you're interested in, or shall I go through the
4 whole thing?

5 Q Just the bottom line.

6 A Roughly \$1580.00.

7 Q As to your interest.

8 A As to my interest and the same for Mr. --

9 Q And how about Mr. Barnhill?

10 A The same to him.

11 Q About \$1500.00 to Mr. Barnhill.

12 A Right.

13 Q Okay. Now I'm curious as to what first
14 led you, Mr. Fritts, to attempt to get these leases from
15 the Buxman heirs back in late '74 and early '75.

16 A Well, it's quite simple. Barnhill and I
17 started checking records in the general area, particularly
18 in Section 2, and in Section 34 of 17, 26, and intended to
19 buy minerals, assuming that the whole thing was leased,
20 and we succeeded in buying minerals and we were doing it
21 on information prepared by Mr. Barnhill, who is a geologist.

22 He outlined the broad area. He says, this
23 looks like a good area for gas production, let's see if we
24 can get in it. And then we expanded our area a little,
25 took in a little bit more each time I checked, and I finally

1 checked as far east as Section 6 of 18 South, 25 East, and
2 it included Section 1. I made a take-off on it and I found
3 immediately that your company had not leased the Buxman
4 heirs, and I called them and made a deal with them, and I
5 did it to make money.

6 Q At that point, Mr. Fritts, were you aware
7 that a well had been completed in Section 1?

8 A I was not.

9 Q You were not aware of that?

10 A I started checking before -- we started
11 checking before they formed it, and let me throw this in.

12 Your company did not record the unitized agreement or a copy
13 of this forced pooling agreement until seven, oh, seven or
14 eight months after I recorded my interest.

15 So the records showed no evidence of forced
16 pooling or even the fact that they were going to drill a
17 well.

18 Q Did you acquire any surface ownership in
19 the east --

20 A I did.

21 Q -- half of Section 1?

22 A I did.

23 Q And when did you obtain the surface owner-
24 ship?

25 A Well, let me -- let me stop you now. This

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1 is an entirely different chain of title.

2 Q Okay, When did you acquire that interest?

3 A A warranty deed was executed February the
4 7th, 1975. It was executed by the Good Samaritan Home.
5 It was executed to William B. Barnhill and it covered all
6 of the surface rights owned by the Good Samaritan Home plus
7 some mineral interest but your question was about the sur-
8 face.

9 Q That's right. At the time you acquired the
10 surface interest did you make any inspection of the surface?

11 A I did not. Would you like to know why I
12 didn't? Or does it matter?

13 Q I don't think it matters, Mr. Fritts.
14 You took it subject to the fact that their well was present
15 located on the property and had you desired to do so, you
16 could have inspected and found the well.

17 A I suppose that's true. This is located
18 in the flood plains of the Pecos River, and I --

19 Q Mr. Barnhill is a geologist, is he not?

20 A Yes.

21 Q And what is your -- do you have any exper-
22 tise in oil and gas?

23 A Not really. I'm a broker of oil and gas
24 leases.

25 Q But you consider yourself experienced in

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3030 Plaza Blanca (505) 471-2462
Santa Fe, New Mexico 87501

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1 matters of leasing oil and gas property?

2 A. I do.

3 Q As a reasonably prudent man with experience
4 in oil and gas leasing, would you not examine the records
5 before the Oil Conservation Commission or one of its Divi-
6 sions in the District Office with regards to what production
7 may have been completed or what wells may have been drilled
8 on any acreage in which you were interested?

9 A. I haven't ever done it in my life.

10 Q But those records are available to you
11 should you desire to look at them, are they not?

12 A. Certainly.

13 Q And you knew that at the time you acquired
14 this interest.

15 A. I may have known it but I didn't --

16 Q You didn't do it.

17 A. -- consider it necessary. I think you're
18 wrong but I can't argue with a well-known attorney. I
19 think that has to be recorded in the county to be of notice
20 to me.

21 MR. KELLAHIN: I believe I have no other
22 questions for Mr. Fritts.

23 MR. RAMEY: Any other questions for the
24 witness? He may be excused.

25 MR. KELLAHIN: Mr. Ramey, I'd like to discuss

1 with you, before I present my case, some problems I have
2 with this particular application.

3 Mewbourne Oil Company would very much like
4 the Commission to dispose of this matter in one way or an-
5 other, but I'm concerned that the Commission lacks juris-
6 diction based upon what Mr. Fritts has told us in which to
7 give him the type of relief he seeks.

8 It appears to me that the way the advertise-
9 ment is written, based upon Mr. Fritts' letter of applica-
10 tion, that he's seeking a review and interpretation of the
11 forced pooling order, and I think fundamentally the Commis-
12 sion or Division lacks jurisdiction to review and interpret
13 his forced pooling order. That's within the provence of the
14 District Court.

15 In addition, it becomes very apparent that
16 we are in a controversy as identified by Lynn Teschendorf,
17 General Counsel for the Division, in her letter to Mr.
18 Fritts, dated on February 9th, 1979, in which she indicates,
19 "I've received your application for a hearing on certain
20 matters pertaining to the above referenced case; however
21 it appears that there may be some dispute as to record
22 title and lease ownership of the 5-acre tract involved.

23 The Division has no authority to adjudicate
24 titles or make determinations of ownership, but if you can
25 come to some agreement with the operator, Mark Production

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1 Company, or obtain a Court decree as to the interests in
2 this tract, I can proceed to docket this case."

3 Our problem is I think that the Commission
4 is being asked to determine the status of the record title
5 ownership as of the date of the forced pooling hearing and
6 as of the date of the order.

7 Now, you'll have evidence that I'll bring
8 to you that indicates that we believe the record title owner-
9 ship as of the date of the hearing was, at least of record,
10 in the Anna Brown Home for the Aged, and that that acreage
11 was under lease to Felmont Oil Corporation.

12 Now Felmont, subsequent to the hearing,
13 acceded to the order. They consented to the order and to
14 the penalty factor. It was only subsequent, in June of
15 1978, some four years after the forced pooling order, that
16 Mr. Fritts and Mr. Barnhill perfected their record title
17 ownership in the property.

18 Mr. Fritts has just testified that from
19 1940, I guess, which is the death of Minnie Warmker, the
20 sister of Kate, that there was nothing of record to clue
21 the operator that either Mr. Fritts, Mr. Barnhill, or any
22 of the Buxman heirs, had any record title ownership in this
23 property. For some, whatever it was, thirty-four years
24 there is nothing in the record to indicate that the owner-
25 ship is otherwise than in the Anna Brown Home.

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (SOS) 471-2462
Santa Fe, New Mexico 87501

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2030 Plaza Blanca (505) 471-2462
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1 Now I don't believe the Commission has ever
2 required any operator to go out and attempt to search for
3 the unknown heirs of some party that may or may not have
4 an interest in the acreage to be pooled. We've done this
5 a number of times for Cities Service in Carlsbad, in which
6 there are city lots in which the ownership is not even
7 known. The procedure is to escrow those funds subject to
8 the penalty factor and that if in a period of ten years the
9 parties do not claim that interest, it escheats to the
10 State, but it escheats to the State subject to the operating
11 penalty risk factor.

12 We believe that the situation in here is
13 similar to that, in that Mr. Fritts and Mr. Barnhill have
14 now perfected by Court decree their interest in the property,
15 and they are to receive their percentage interest, based
16 upon the Division order written on this final decree.

17 Mr. Fritts indicates he has no problem
18 with the percentage he's being paid. His question concerns
19 whether the risk factor applies. It is our contention that
20 it does; that first of all, the Commission should not ad-
21 judicate what the record title ownership is as of the date
22 of the hearing, but even if you do attempt to take juris-
23 diction over that matter, why, it appears to me that it
24 would have taken herculean efforts to determine who these
25 unknown interests were, and that's not the operator's obli-

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1 gation.

2 But before we present our case, and to
3 simply keep this case as simple as possible, we believe
4 that the Commission at this point lacks jurisdiction to
5 adjudicate the ownership as of the date of the forced pooling.

6 MR. RAMEY: You may be right, Mr. Kellahin,
7 but I would like to hear what your witness has to say and
8 get a complete record on this, and then if we don't have
9 jurisdiction we will --- we will come out with an order such.

10 MR. KELLAHIN: I'd like to call Mr. Donald
11 Haden, please.

12
13 DONALD G. HADEN

14 being called as a witness and having been duly sworn upon
15 his oath, testified as follows, to-wit:

16
17 DIRECT EXAMINATION

18 BY MR. KELLAHIN:

19 Q Mr. Haden, would you indicate what your
20 name is?

21 A My name is Donald G. Haden.

22 Q How do you spell your last name?

23 A H-A-D-E-N.

24 Q Mr. Haden, how are you employed?

25 A I'm District Manager for Mewbourne Oil

1 Company in Midland, Texas, office.

2 Q What are your duties as District Manager
3 for Mewbourne Oil Company?

4 A Well, primarily to oversee the exploration
5 effort in western Texas and southeastern New Mexico and the
6 Panhandle, including buying oil and gas leases, examining
7 titles, and curing them, et cetera.

8 Q Mr. Haden, what is the relationship between
9 Mark Production Company and Mewbourne Oil Company?

10 A That was simply a name change from Mark
11 Production Company to Mewbourne Oil Company.

12 Q Do your duties as District Manager for
13 Mewbourne Oil Company include keeping track of correspon-
14 dence and documents concerning wells drilled by Mewbourne
15 Oil Company in Eddy County, New Mexico?

16 A Yes, it does.

17 Q And do you maintain a record of the drilling
18 and correspondence with regard to the Federal "B" No. 1 Well,
19 located in the east half of Section 1, Township 18 South,
20 Range 36 East, Eddy County, New Mexico?

21 A Yes, we do.

22 Q And does part of that record include cer-
23 tain documents and title opinions concerning the record
24 title ownership of the working interest of the east half
25 of Section 1?

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (505) 475-2462
Santa Fe, New Mexico 87501

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3010 Plaza Blanca (606) 471-2462
Santa Fe, New Mexico 87501

1 A. Yes, it does.

2 Q And are those documents and opinions ob-
3 tained by you in the regular course of your business for
4 Mewbourne Oil Corporation?

5 A Yes, it is.

6 Q Have you brought with you certain records
7 concerning the record title ownership for the east half of
8 Section 1, specifically with regards to Tract Number 218?

9 A Yes, I have.

10 Q I show you what I have marked as Mewbourne
11 Oil Company Exhibits Three through Eleven and ask you if
12 those are documents which you're referred to concerning the
13 ownership and title questions with regard to the east half
14 of this section?

15 A Yes, it is.

16 MR. KELLAHIN: If the Commission please,
17 we move the introduction of Exhibits Three through Eleven.

18 MR. RAMEY: They will be admitted.

19 Q Now, Mr Haden, let's go through those docu-
20 ments, if you please, and would you identify what Exhibit
21 Number Three is?

22 A Exhibit Three is the Order No. R-4831,
23 being the forced pooling order, dated July 30th, 1974.

24 Q Okay. Would you please refer to Exhibit
25 Number Four and identify it?

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3030 Plaza Blanca (808) 471-2462
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1 A Exhibit Four is a letter dated October 5th,
2 1974, from Mewbourne Oil Company to Felmont Oil Corporation,
3 furnishing them an estimated well cost of the Federal "B"
4 No. 1.

5 Q Refer to Exhibit Number Five and identify
6 it.

7 A It's a letter dated August the 6th, 1974,
8 from Mewbourne Oil Company to the New Mexico Oil Conservation
9 Commission furnishing them with an itemized schedule of
10 estimated well cost for the Federal "B" No. 1.

11 Q Will you refer to Exhibit Number Six and
12 identify it?

13 A This is a letter dated August the 6th,
14 1974, from Mewbourne Oil Company to Felmont Oil Corporation,
15 furnishing them with two copies of an operating agreement
16 for the Federal "B" No. 1.

17 Q Please refer to Exhibit Number Seven and
18 identify that.

19 A That's a letter from Felmont Oil Corporation
20 to Mark Production Company dated August the 9th, 1974, rela-
21 tive to the Federal "B" No. 1, acknowledging receipt of the
22 invoice and the AFE.

23 Q Okay.

24 A And acknowledging the operating agreement,
25 I guess that's it.

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CERTIFIED SHORTHAND REPORTER
3026 Plaza Blanca (505) 471-2482
Santa Fe, New Mexico 87501

1 Q All right, Exhibit Number Eight, now.

2 A Exhibit Number Eight is a form filed with
3 the United States Department of the Interior relative to
4 Federal "B" No. 1, showing the location, the spud date of
5 August the 30th, 1974, the date the total depth was reached
6 on September 28th, 1974, and the date of completion of the
7 well on November 22nd, 1974.

8 Q Refer to Exhibit Number Nine and identify it.

9 A That's a letter from Felmont Oil Corporation
10 to Mark Production Company, dated March the 12th, 1975,
11 acknowledging that they have been force pooled in the unit
12 and enclosing a copy of their lease from the Anna Brown
13 Home Unit, dated August the 9th, 1973.

14 Q Okay. Exhibit Number Ten.

15 A Exhibit Number Ten is a letter dated Decem-
16 ber 22nd, 1978, from our attorney, Tevis Herd, with the
17 law firm of Cotton, Bledsoe, Tye, Morrow, and Dawson in
18 Midland, directed to Mr. J. V. Fritts, advising him that
19 in his opinion that the record title reflected that the
20 ownership was in Felmont at the time of the forced pooling
21 order.

22 Q Would you refer to Exhibit Number Eleven
23 and identify it?

24 A Exhibit Number Eleven is a memorandum of
25 title by Tevis Herd, relative to the history of the title

on the Federal "B" No. 1.

MR. KELLAHIN: That concludes my examination of Mr. Haden.

MR. RAMEY: Any questions of the witness?

MR. FRITTS: Please.

MR. RAMEY: Mr. Fritts.

MR. FRITTS: I have just a few.

CROSS EXAMINATION

BY MR. FRITTS:

Q Do you have a copy of your Division order at hand?

A Yes, I do.

MR. KELLAHIN: Which one do you have?

A Well, there's two. All I have were just excerpts, so it will be requirement number sixteen of title opinion Number 3046-A, and a copy of the third supplemental Division order, opinion Number 3046-D.

Q The very first sentence under requirement Number Sixteen, it says, "Title to Tract 218 was acquired by Minnie Warmker and Kate Warmker." And it goes on to describe the deed.

Under requirement on page eighteen of that same title opinion, under requirement B, it says, "An investigation should be made concerning the Minnie Warmker."

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3030 Plaza Blanca (505) 471-2482
Santa Fe, New Mexico 87501

1 I guess my question would be, did you carry
2 out that investigation?

3 A I'm not in a position to answer that because
4 I was not employed by Mewbourne at the time this opinion
5 was prepared.

6 Q Then let's go on to on December the 19th,
7 1975, the third supplemental Division order, opinion Number
8 3046-D.

9 And that seems to be in the form of a letter
10 to Mark Production.

11 MR. KELLAHIN: What's the date of that, Mr.
12 Fritts?

13 Q December the 19th, 1975. This is, by the
14 way, more than a year after the well was completed.

15 On page two, skip down to where you see the
16 title evidence obtained by J. V. Fritts reflects that the
17 Good Samaritan Home owned an undivided 5/6ths mineral in-
18 terest in Tract 218 at the time it executed the lease dated
19 August the 9th, 1973, to Felmont Oil, and that the remaining
20 1/6th mineral interest is owned in various portions by my
21 lessors.

22 Do you dispute that?

23 A Dispute his statement here?

24 Q Yes. Do you say that I did not own the
25 1/6th working interest?

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (G011) 471-2462
Santa Fe, New Mexico 87501

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (SOS) 471-2462
Santa Fe, New Mexico 87501

1 A I believe he's saying you did not have
2 record title to that 1/6th.

3 Q Well, will you define record title for me?

4 A Evidence that is filed of public record in
5 the county wherein the land lies.

6 Q What was the record title on the date of
7 the forced pooling order?

8 A Well, all I --

9 Q Remember in your first Division order he
10 says title to Tract 218 was acquired by Minnie Warmker and
11 Kate Warmker.

12 A In 1910.

13 Q In 1910, and his requirement was an investi-
14 gation should be made concerning Minnie Warmker.

15 Why isn't Minnie Warmker and Kate Warmker,
16 the two sisters, who got a deed in 1910, why wouldn't that
17 be record title if nothing had taken place since that time?

18 Would it be record title?

19 A Well, I think the fact -- Minnie Warmker
20 died in 1940.

21 Q There's nothing on record to show it.

22 A They can --

23 Q I argue that the title at the time that you
24 bought your lease, or at the time Felmont bought their
25 lease, rather, excuse me, at the time you got the forced

pooling order, was Minnie Warmker and Kate Warmker. There is nothing in the record to show her death.

So your attorney said make an investigation concerning her, and in his supplemental opinion that I just mentioned here, he says, "It appears that Good Samaritan Home has 5/6ths and Fritts has 1/6th."

I can't understand what you mean by record title. If Minnie Warmker who has no probate of record, no affidavits of heirship, if she and her sister Kate aren't record title, then I don't -- I don't know what record title is.

A. I believe your lease didn't come from Minnie Warmker, though.

Q. Well, maybe not, but did you notify Minnie Warmker? Did you serve her with an itemized schedule?

A. I can't --

Q. Of well costs?

A. -- tell you.

MR. KELLAHIN: Tell us where she was buried and we'll be happy to serve her.

Q. Even after my title had been placed of record?

MR. KELLAHIN: I'm not going to argue with you, Mr. Fritts.

Q. It's been stated that -- that you didn't

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
2020 Plaza Blanca (505) 471-2432
Santa Fe, New Mexico 87501

1 know where these heirs, these Buxman heirs, were, is that
2 true? And you couldn't serve them?

3 A. True.

4 Q I have here what is an oil and gas lease
5 from those same heirs to Mark Production Company, covering
6 another tract of land within a half a mile of this tract
7 that's in controversy.

8 A Will you tell me if that is a fair statement?

9 Yeah, this is a lease dated August 10th,
10 1972, from what appears to be these heirs to Mark Production
11 Company, relative to Section 12, 18 South, 26 East.

12 Q Does it show the address of the lessors?

13 A Yes, it does.

14 Q Couldn't you have used that address to
15 notify these people in Section 1?

16 A Well, I would think just it's not the same
17 section of land and we have many, many tracts in Eddy
18 County, New Mexico.

19 Q Well, did you make a -- did you make a
20 search?

21 A Well, I can't answer that. Like I said,
22 this is prior to my employment.

23 Q Well, I started writing to you in early
24 1975. Did you make a search then for the addresses of these
25 people?

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3010 Plaza Blanca (05) 471-3443
Santa Fe, New Mexico 87501

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3030 Plaza Blanca (SOS) 471-1462
Santa Fe, New Mexico 87501

1 A. I was -- I came with Mowbourne in September
2 of '76.

3 Q Then you wouldn't know that.

4 MR. RAMEY: What's the date on that document?

5 A This one I have in my hand?

6 MR. RAMEY: Yes.

7 A August the 10th, 1972.

8 MR. FRITTS: Am I supposed to introduce that
9 document?

10 MR. RAMEY: If you so desire.

11 MR. FRITTS: I guess I'd better.

12 Q (Mr. Fritts continuing.) Mr. Haden, among
13 the documents that you have already introduced is an oil
14 and gas lease from Felmont Oil.

15 Will you tell us what tracts it covers?

16 A Let's see, it covers Tract 320 of Section
17 12 and Tract 218 of Section 1, both in Township 18 South,
18 Range 26 East.

19 Q Tract 320 is a tract 12 that's on your oil
20 and gas lease here, is that right?

21 A Yes, that's correct.

22 Q So Felmont Oil Corporation knew the title
23 to the two tracts and included it in their -- in their
24 lease.

25 A Yes.

1 And your lease only covers Tract 320 in
2 Section 12.

3 Q That's true; is that correct?

4 Well, would you -- would you say that the
5 landman that was in charge at the time of all of this, should
6 he not have known about the title to a tract that's just
7 across the line?

8 A Well, he would have if he'd have taken this
9 lease, probably, from the Anna Brown Unit of the Good
10 Samaritan --

11 Q If he had looked at the title and found the
12 Felmont lease, which covers Tract 218 in Section 1 and 320
13 in Section 2, would that not have alerted him to the fact
14 that the Buxman heirs probably would have an interest in
15 both tracts?

16 A Well, that -- that would only be surmise
17 that he would.

18 Q Okay. I have in my file a carbon copy of
19 a letter to your company, dated January the 20th, 1975, and
20 I advised that I had acquired oil and gas leases on a 1/6th
21 interest. Do you have a copy of that with you?

22 A No, I do not.

23 Q On March the 14th, 1975, I wrote another
24 letter to Mark Production. I gave the recording data on my
25 leases and I again expressed the desire to commit my working

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
2020 Plaza Blanca (G08) 471-2482
Santa Fe, New Mexico 87501

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (SOS) 471-2462
Santa Fe, New Mexico 87501

1 interest to the unit, and I asked you for a breakdown of
2 the cost.

3 Were you there in -- you weren't there in
4 '75.

5 A. No, I was not.

6 Q Does your file have -- do you have that
7 letter with you?

8 A. No, I do not. This letter you just read
9 about? No, I do not.

10 Q Then on October the 3rd of 1975 I wrote a
11 letter to Mark Production and I mentioned the first two
12 letters, and I pointed out that you were circulating a Divi-
13 sion order and that it was in error as to the ownership of
14 Tract 218.

15 Do you have a copy of that letter?

16 A. Is that -- what is the date of your letter
17 where you describe the amounts of money? That's the first
18 one that I've --

19 Q Is that the first one that you --

20 A. That's the first one that I saw.

21 Q But would those letters be in your file in --
22 I wrote the letters to Tyler. Would you have -- would your
23 office in Midland have received copies of them?

24 A. Only if they'd reproduced them and sent them
25 to us, since you directed your correspondence to Tyler.

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
2020 Plaza Blanca (806) 471-5462
Santa Fe, New Mexico 87501

1 Q But you have all -- all that's in your file.
2 You have everything that's in your file?

3 A Well, predominantly, everything that -- I
4 don't have the entire file here, if that's your question.

5 Q My copies are carbon copies, and I wouldn't --
6 I don't suppose I'd be allowed to introduce them as --

7 MR. KELLAHIN: Certainly, Mr. Fritts, they
8 could be reproduced and submitted after the hearing. I
9 have no objection to your submitting those.

10 Just set aside those letters you're inter-
11 ested in and we'll see that they get in the record.

12 MR. FRITTS: All right. Now, those are the
13 three letters that I have just briefly mentioned.

14 Am I taking up too much of your time?

15 MR. RAMEY: Take as much as you need, Mr.
16 Fritts.

17 Q (Mr. Fritts continuing.) On June 14, 1978,
18 I wrote a letter to Mark Production, which I furnished a
19 copy of the final decree, and I furnished a copy of a De-
20 claration of Interest between me, Barnhill, and Felmont.

21 Is that in your file?

22 A I believe it is. I don't have it right
23 here. At least we have the -- I believe, one of these sup-
24 plemental Division order opinions here reflects this inform-
25 ation that you described.

1 Q Okay. On September the 25th, 1978, I asked
2 for a complete accounting of well cost to Mewbourne Oil,
3 and pointed out that there were some mistakes.

4 There again, do you have -- you don't have
5 that copy, do you?

6 A No, I don't. Well, I have the -- I have
7 the copy of your letter where you set those monetary amounts
8 out.

9 Q All right, that's the next one. On October
10 the 2nd, 1978, you have a copy of that, you have a copy of
11 my letter -- excuse me. On October the 2nd, 1978, is a
12 copy of a letter from you to me setting out the well costs.

13 You don't have that?

14 A I don't have that either. That comes from
15 our Accounting Department in Tyler.

16 Q I'd like to introduce this as part of my
17 exhibits.

18 Would you read it?

19 A The letter is dated October the 2nd, 1978,
20 and it's to Mr. J. V. Fritts from our Tyler office.

21 "Dear Mr. Fritts. Attached is the informa-
22 tion you requested as to the accounting of the total cost
23 to drill and complete the Federal "B" No. 1.

24 The well did pay out in September of 1976,
25 effective October 1, 1976.

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
303 N. Plaza Blanca (S.B.) 471-5462
Santa Fe, New Mexico 87501

1 You are correct to assume at that rate the
2 well would have cost over \$1,000,000.

3 Since Felmont was force pooled, they accepted
4 the payout of 300 percent times the actual cost to complete
5 the well. The total cost was \$445,052.78 times 300 percent
6 equals \$1,335,164.34.

7 Please review Felmont's payout sheet for the
8 method used to determine the figures for payout."

9 Q Mr. Haden, why -- why does Felmont Oil have
10 power -- why did they have any power to commit my interest
11 to the forced -- to the penalty to the forced pooling?

12 Did they own -- did they own my interest?

13 A Our attorney -- our attorney records that
14 they were the record owners at the time of the forced pooling
15 order.

16 Q Well, there again we come up to the -- to
17 the business of what is record title. What interest did
18 Felmont Oil have under lease at the time of the forced
19 pooling order?

20 A The percentage of this particular Tract 218
21 had a total interest in the unit of 1.578125 percent, which
22 would include both royalty interest and working interest.

23 Felmont Oil Corporation had reflected at
24 the time a 1.380859 percent working interest.

25 Upon finalization of this quiet title suit,

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3030 Plaza Blanca (605) 471-2482
Santa Fe, New Mexico 87501

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3030 Plaza Blanca (608) 471-2462
Santa Fe, New Mexico 87501

1 then, that was, of course, changed to the Division order
2 that was signed, which then showed that particular working
3 interest to be owned J. V. Fritts, .115072 percent; William
4 B. Barnill, .115072 percent; Felmont Oil Corporation,
5 1.150715 percent.

6 Q So just because Felmont Oil owned a lease
7 from the Anna Brown Home for the Aged, your company assumed
8 that they owned 100 percent at the time of this first -- when
9 you took out the forced pooling, is that correct?

10 A That's true.

11 Q And you don't know of anyone in your organ-
12 ization who ran the records to see what happened to Minnie
13 Warmker?

14 A No, I don't.

15 Q Would you have if you had been handling it?
16 Would you have checked the title?

17 A Well, we'd have made some attempt to. What
18 I'd have done was, since it was Felmont Oil Corporation's
19 lease, I would have presented them with the requirement and
20 let them make their search, because it was in their interest
21 to do so.

22 Q Did you do it?

23 A Well, I --

24 Q At the time of the well, before you drilled
25 the well? Do you take out drilling -- do you have drilling

1 opinions made when you drill a well?

2 A Yes, we do as a rule.

3 Q Did you find -- did you find that Minnie
4 Warmker was involved in this title? Or your file doesn't
5 show it, excuse me, you weren't there.

6 A I wasn't there at that time.

7 Q Well, you've mentioned the next letter that
8 I wrote, which is October the 6th, 1978. You have a -- you
9 have a copy of that.

10 Where do you differ with me on the cost and
11 the net figure that I say? Do you say I don't -- I'm not
12 entitled to any of it?

13 A Mr. Fritts, I'm -- that accounting schedule,
14 all those calculations are made by our Accounting Department
15 in Tyler. I did not prepare those well costs, but they're --
16 I'm sure they're of record there.

17 Q But you say that I didn't own -- that I
18 wasn't able -- that I'm wrong on thinking that I should
19 receive \$1583.

20 A Well, we believe you're in error to the
21 extent that you're claiming that you should not be subject
22 to the 300 percent penalty.

23 We're not in disagreement as to your current
24 record title interest under which you're now being paid.

25 Q You're only willing to pay me what I'm en-

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3030 Plaza Blanca (SOS) 471-2462
Santa Fe, New Mexico 87501

1 titled to now, not before. Okay.

2 Well, I wrote one or two other letters to
3 your company and never -- and never received a reply of
4 any sort, and I finally wrote a letter saying that I was
5 going to come up to the Oil Commission and appeal the whole
6 thing if I couldn't get satisfaction, and I got a letter
7 from -- from your attorney, and this has already been intro-
8 duced, I think, as one of your exhibits, is that correct?

9 A. That's true.

10 Q Will you -- will you read -- will you read
11 this second paragraph?

12 MR. RAMEY: What exhibit is that, please?

13 MR. KELLAHIN: Number Ten, Mr. Ramey.

14 Q I don't believe it's necessary to read it
15 out loud since everybody has it. Skip down to this part
16 in -- oh, wait, why don't you start here, therefore you and
17 William B. Barnhill.

18 A Start in the middle of the second --

19 Q Right.

20 A -- paragraph on page one of this letter,
21 dated December 22nd, 1978.

22 "Therefore, although you and William B.
23 Barnhill were not parties to the forced pooling order,
24 neither did you nor any of your mineral owners have any in-
25 terest of record at the time the forced pooling order was

SALLY WALTON BOYD
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1030 Plaza Blanca (505) 471-1482
Santa Fe, New Mexico 87501

1 entered, and it is our opinion that the order is binding on
2 the working interest acquired by you from mineral owners
3 who owned no interest of record, but who acquired their in-
4 terest through the Anna Brown Home, who owned an interest
5 of record at the time of the order.

6 We will be pleased to discuss this matter
7 further with you at any time."

8 Q All right, I would like for you to point out
9 where -- where I'm in error on the chain of title. Tell me
10 how I acquired my interest through the Anna Brown Home.

11 A Well, I --

12 Q Do you have any --

13 A I didn't examine this title, but --

14 Q Did your attorney show it in the -- in the
15 Division order titles? Did he record it?

16 A I believe he requested that that interest
17 be placed in suspense until you got this matter straightened
18 out by your quiet title suit.

19 Q All right, I got it straightened out by
20 quiet title suit, as you all required, and there was not a
21 word in there about -- stating that I acquired my interest
22 through the Anna Brown Home.

23 Are you willing to admit that I acquired my
24 interest by oil and gas leases from a number of heirs who
25 inherited separate from any interest that might have been

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3030 Plaza Blanca (SOS) 471-2402
Santa Fe, New Mexico 87501

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (805) 471-2452
Santa Fe, New Mexico 87501

1 owned by the Anna Brown Home?

2 Did I make myself clear?

3 A. Let me say I've --

4 Q. Are you saying that -- are you saying that
5 my 1/6th interest was deeded to me by the Anna Brown Home?

6 A. No, I'm not saying that.

7 Q. Why -- I don't understand why your attorney
8 says it.

9 A. We would just have to review his requirements,
10 I suppose.

11 These heirs of Minnie Warmker --

12 MR. KELLAMIN: Right.

13 A. -- they were not identified of record.

14 Q. No, but your company took an oil and gas
15 lease that included part of them.

16 Minnie Warmker was of record and I maintain
17 that it was your duty, or your landman's in charge at the
18 time, it was his duty to run this title and find those
19 people.

20 A. Mr. Fritts, I'm not a lawyer, but it would
21 appear to me that public notice is only given as to that
22 particular tract of land.

23 Q. Right.

24 A. And things are filed of record on that parti-
25 cular tract of land.

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3020 Plaza Blanca (996) 471-2462
Santa Fe, New Mexico 87501

1 Q All right.

2 A Not some other tract of land.

3 Q Then these two women were record title owners

4 and one of the women deeded her interest to the Anna Brown
5 Home. Am I stating that right?

6 A One of the women plus one other woman who
7 is an heir.

8 Q Right. But we don't know anything about
9 heirs. You don't know where Norma -- you have no notion --

10 A She appears in the title in 1948.

11 Q She appeared in the title by --

12 A Quit claim deed.

13 Q -- quit claim deed.

14 A Anna Brown Home.

15 Q Right, and it looks to me like it would be
16 incumbent upon you to find out where she got her interest.
17 She had no deed into her; we're talking about Norma.

18 I, upon the receipt of this letter from Mr.
19 Herd, I wrote him back pointing out why I thought he was
20 in error.

21 Do you have that in your file?

22 A No, I --

23 Q It's dated December the 26th, 1978.

24 A I don't believe I've seen that letter.

25 Q I'd like to introduce a copy of it.

1 I'm supposed to have one more.

2 On December 27th, 1978, I wrote him a
3 second, just a day later, and I referred to his -- I referred
4 to his two title opinions and pointed out that he agreed
5 with my interpretation of the title, but you do not have --
6 you don't have a copy of that in your file.

7 A You mean you wrote him on successive days?

8 Q Right, I went -- I went back through his
9 title opinion and found where he stated that title was in
10 Minnie Warmker and Kate Warmker. He asked that title in-
11 vestigation be made on Minnie Warmker and in his third sup-
12 plemental title he says Good Samaritan Home, or Anna Brown
13 Home, owns 5/6ths, Fritts owns 1/6th, and he made no refer-
14 ence in that letter saying that Felmont Oil had the -- had
15 committed me to being force pooled.

16 MR. FRITTS: I apologize, Mr Examiner, for
17 the amateurish presentation, but that's all I have to --

18 MR. RAMEY: That's fine.

19 MR. FRITTS: To say.

20 MR. RAMEY: Mr. Haden, where are these heirs
21 located? Are any of them located in Eddy County? What's
22 their addresses?

23 A I don't believe they are, no, sir.

24 MR. RAMEY: Mr. Fritts, I think Mr. Stamets
25 wanted to ask you a question.

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3020 Plaza Blanca (505) 471-2462
Santa Fe, New Mexico 87501

1 MR. FRITTS: Yes, sir.

2
3 QUESTIONS OF MR. FRITTS BY MR. STAMETS:

4 Q Mr. Fritts, why have you waited so long to
5 come in here?

6 A Mark Production Company's attorney required
7 that we carry out a quiet title suit to perfect this title.
8 I immediately approached Felmont Oil and asked if they would
9 join hands with me. They owned 5/6ths interest and I owned
10 1/6th. And it took me a year or two to get the decision
11 out of them and it took another at least, another year for
12 my attorney to carry out the quiet title.

13 Q Did Mark make any promise to you about what
14 they would do when this quiet title suit was completed?

15 A No, sir. Their lawyer, in his -- in his
16 title opinion pointed out defects, and said I'll require
17 you to quiet title before these funds can be released.

18 So they made no promises one way or the
19 other.

20 Q Now you did not acquire an ownership of
21 these leases until December 26th, '74.

22 A Yes, sir.

23 Q And that was after the well was started.

24 A Yes, sir.

25 Q And Mark could not have given you notice of

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3010 Plaza Blanca (SOS) 471-2462
Santa Fe, New Mexico 87501

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3030 Plaza Blanca (503) 471-1452
Santa Fe, New Mexico 87501

1 an estimated well cost before they started the well since
2 you didn't own the leases before that time.

3 A No, sir.

4 Q And although you've indicated that they did
5 not give these heirs notice, they're not here --

6 A Right.

7 Q -- to testify and to say that.

8 A Well, can we go at it from a different angle?
9 Will Mark Production Company say they notified them?

10 Q Well, I'm not sure that that's --

11 A I'll take their word for it, sir.

12 Q I'm not sure that that's their responsibility
13 since this was called on your --

14 A Well, you're asking me to prove a negative
15 and all they have to do is say that they -- if they notified
16 them, I'm out. My argument is dead.

17 But they have never in any of the correspon-
18 dence that I've had with the company, there has never been
19 an indication that they made -- that they served anybody.

20 And after December of '75 the Commission
21 says that the operator will furnish an itemized schedule of
22 actual cost within ninety days.

23 I didn't receive that.

24 Q Apparently, though, there was some question,
25 at least in Mark's mind, as to the validity of your owner-

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1 ship at that time, is that correct?

2 A. No, sir, according to their lawyer, the
3 questions came on the heirship; there were no probates of
4 record; and he required that we investigate the heirship.

5 They never -- there was never any talk about,
6 I never received any letters from them saying that you're
7 not entitled to join in the well, or you can't have the
8 costs, and so forth.

9 As soon as I recorded my leases I wrote
10 them that I would like to join.

11 Q When were you first aware that a well was
12 being drilled on this property?

13 A I don't know. It was very late. I, actually
14 I think along about November, between November and December
15 of '74.

16 Q And when did you start working to acquire
17 these leases?

18 A I don't know. I would say very close to
19 that time. When I first started I didn't know about the
20 well, but I did know before it was over.

21 Q That's all I have.

22 MR. RAMEY: Any other questions of the wit-
23 ness? Do you have anything further, Mr. Kellahin?

24 MR. KELLAHIN: Yes, sir, we'd renew our
25 motion to dismiss the case for lack of jurisdiction on be-

1 half of the Division to determine record title ownership
2 as of the date of the forced pooling hearing and order.

3 MR. RAMEY: Well, I won't rule on that motion
4 at this time, Mr. Kellahin.

5 As I stated before, if we don't think we
6 have jurisdiction we will so note in our order.

7 I guess that's a denial.

8 MR. KELLAHIN: Let me, because of that
9 ruling, Mr. Ramey, let me summarize for you what our posi-
10 tion is.

11 This is a difficult problem for any operator
12 when he attempts to force pool acreage in which there are
13 involved unknown heirs of deceased parties, and perhaps not
14 for this case, but for other cases, it might be important
15 for the Division, if it felt appropriate, to give the oper-
16 ator some guidance as to what is going to be required of
17 him with regards to attempts to locate unknown heirs.

18 If you follow the statute, however, Mark
19 Production, when they filed this forced pooling notice, did
20 everything the statute required. There is nothing in the
21 statute to require us to go out and seek the heirs of
22 Minnie Warmker or C. Raymond Buxman, or any of these people.

23 Now if that's a defect in the statute,
24 perhaps the Commission ought to correct it by some rules
25 and regulations further defining what the operator is re-

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
2020 Plaza Blanca (505) 471-1462
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1 quired to do for subsequent hearings.

2 This particular case is further complicated
3 by the fact that legal counsel that prepared the title
4 opinions concerning the ownership of the east half of Section
5 1 had come to the conclusion that the Anna Brown Home in
6 Illinois purportedly had the entire 5 acres in Tract 218,
7 and if you'll look at Exhibit Number Nine, which is a letter
8 from Felmont to Mark Production, and the subsequent corres-
9 pondence from Mr. Herd, the examining attorney, Felmont
10 Oil Corporation also believed that they held 6/6ths working
11 interest ownership within this tract, and it was not until
12 June of 1978, some four years later, that it appears that
13 Mr. Fritts and Mr. Barnhill perfected their interest in
14 1/6th of that 5-acre tract.

15 But as of the date of the order and hearing
16 for the forced pooling case, if you examine the lease from
17 Anna Brown Home to Felmont Oil Corporation, it purports to
18 convey all of the interest in Tract 218.

19 The problem is further complicated by the
20 fact that Mr. Fritts acquired his interest after the well
21 was completed. I believe the completion date was sometime
22 in November, about the 22nd of November of '74. Mr. Fritts
23 has testified that his seven leases were all dated 26th
24 December '74 and placed of record on January 17th, 1975.

25 It is our contention, and I believe the

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3020 Plaza Blanca (606) 471-2482
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1 evidence here established today, that Mr. Ritten took that
2 interest subject to the terms of the forced pooling order,
3 either by actual knowledge or constructive knowledge.

4 In response to the Stambaugh questions he
5 indicated that about this time he also learned of the
6 existence of the well. We believe that a man of Mr. Ritten's
7 expertise in oil and gas matters and looking for unleased
8 acreage, as he's done here, know or should have known of
9 the forced pooling order, and that having waited another
10 three years, he's effectively barred for failure to pursue
11 this case earlier than that. Even if he's not barred, he
12 has taken it subject to the risk penalty.

13 We believe that the record established
14 through the testimony here today shows the operator exer-
15 cised reasonable diligence in attempting to locate all the
16 record title owners with regards to working interest on
17 this particular tract.

18 If you'll -- before ruling on this case, if
19 you'll do me the courtesy of reading the Exhibit Number
20 Eleven, which is Mr. Rerd's summary of title, it will show
21 what Mr. Rerd had in his mind when he examined this title.

22 The interest of the two Warner sisters
23 obtained in 1910 and later conveyed to the Anna Brown Home,
24 I believe in 1942, shows that nothing transpired on this
25 title for many, many years; that the only taxes paid were

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1 those being paid by the Anna Brown Home: that Minnie Warmker
2 and her heirs, and some of those heirs dies and their heirs,
3 none of these people probated this estate.

4 I think it puts an impossible burden upon
5 an operator putting together a forced pooling case, to re-
6 quire him to search in that much detail to attempt to locate
7 all this missing heirs.

8 I think in this case Mark Production Com-
9 pany and their successor in interest Mewbourne Oil Company
10 have acted with diligence and that the Commission ought to
11 deny the application of Mr. Fritts.

12 MR. RAMEY: Thank you, Mr. Kellahin.

13 Mr. Fritts, do you have anything you want
14 to add?

15 MR. FRITTS: No, sir, I think I've worn out
16 my welcome with you, so I don't.

17 MR. RAMEY: The Commission will take the
18 case under advisement and the hearing is adjourned.

19 (Hearing concluded.)
20
21
22
23
24
25

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Santa Fe, New Mexico 87501

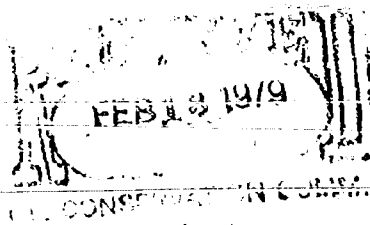
REPORTER'S CERTIFICATE

I, SALLY W. BOYD, a court reporter, DO HEREBY
CERTIFY that the foregoing and attached Transcript of
Hearing before the Oil Conservation Commission was reported
by me; that the said transcript is a full, true, and correct
record of the hearing, prepared by me to the best of my
ability, knowledge, and skill, from my notes taken at the
time of the hearing.

Sally W. Boyd, C.S.R.

SALLY WALTON BOYD
CERTIFIED SHORTHAND REPORTER
3010 Plaza Blanca (SOS) 471-2462
Santa Fe, New Mexico 87501

J. V. FRITTS
404 HINKLE BUILDING
PHONE - RES. 622-4006 — BUS. 623-4281
ROSWELL, NEW MEXICO 88201



ADDRESS REPLY TO:
P. O. BOX 868

February 12, 1979

Mr. Lynn Teschendorf
General Counsel
Oil Conservation Division
Energy and Minerals Department
P. O. Box 2088
Santa Fe, New Mexico 87501

Re: Case No. 5267
Order No. R-4831

Dear Mr. Teschendorf:

This is in response to your letter of February 9th. I have already obtained a court decree as to my interest and that of Wm. B. Barnhill in the five acre tract involved, so I am enclosing copies of the following documents:

Declaration of Interest between J. V. Fritts et ux, William B. Barnhill et ux and Felmont Oil Corporation, recorded in Misc. Book 156, page 521 of records of Eddy County, N. M.

Final Decree in Case No. CV-78-133, Fifth Judicial District, Eddy County, N. M., filed 6-12-78. This suit quiets the title of J. V. Fritts and William B. Barnhill in the oil and gas leasehold estate covering an undivided 1/6th interest in Tract 218 of Fairchild Farm Lands in Sec. 1, T-18S, R-26E, Eddy County, N. M., as described in Finding of Fact III, on page 2 of the Decree.

Copies of these documents were furnished to Mark Production Company on June 14, 1978.

The second paragraph of your letter correctly sets out the issues raised in my application.

Yours very truly,



BRUCE KING
GOVERNOR
LARRY KENOE
SECRETARY

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

February 9, 1979

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
15051 827-2434

Mr. J. V. Fritts
P. O. Box 868
Roswell, New Mexico 88201

Re: Case No. 5267
Order No. R-4831

Dear Mr. Fritts:

I have received your application for hearing on certain matters pertaining to the above-referenced case. However, it appears that there may be some dispute as to record title and lease ownership of the five acre tract involved. The Division has no authority to adjudicate titles or make determinations of ownership, but if you can come to an agreement with the operator, Mark Production Company, or obtain a court decree, as to your interest in this tract, I can proceed to docket this case.

As I read your application, the issues appear to be whether you or your predecessor in interest was ever furnished with an itemized schedule of estimated well costs and with an itemized schedule of actual well costs, whether you were therefore afforded the opportunity to pay your share of well costs in lieu of paying out of production, and whether the risk factor of 200% should be applied to your working interest share. If this is not comprehensive, please let me know as soon as possible.

If you could also let me know when your title problems are resolved, I can docket this case immediately.

Very truly yours,

LYNN TESCHENDORF
General Counsel

LT/fd

cc: Jason Kellahin
Mark Production Co.

FEB 13 1979

Case 6489

DECLARATION OF INTEREST

THIS DECLARATION OF INTEREST, made this 10th day of March, 1978, by and between J. V. FRITTS and wife, RUTH C. FRITTS, and WILLIAM B. BARNHILL and wife, CATHARINE W. BARNHILL, whose address is P. O. Box 868, Roswell, New Mexico 88201 (hereinafter sometimes referred to as "Fritts" and "Barnhill") and FELMONT OIL CORPORATION, a Delaware corporation, whose address is P. O. Box 2266, Midland, Texas 79701 (sometimes hereinafter referred to as "Felmont").

W I T N E S S E T H:

Notice is taken of the following:

1. On August 9, 1973, recorded in Book 106, page 988 of the records of Eddy County, New Mexico, Felmont acquired an oil and gas lease from the Anna Brown Unit of the Good Samaritan Home of Quincy, Illinois, an Illinois corporation, covering the following described land in Eddy County, New Mexico:

Tract 218 of the Fairchild Farm Lands,
being a part of Section 1, Township 18
South, Range 26 East, N.M.P.M.

Said lease purported to cover the full mineral interest in the above described land, whereas in fact, at the time of the execution thereof, the lessor owned an undivided 5/6 mineral interest therein.

2. On December 26, 1974, Fritts acquired oil and gas leases from the owners of the remaining 1/6 mineral interest under the above described land. The following is a list of each lessor, his/her undivided mineral interest in the above described land, and the Eddy County recording data of each said oil and gas lease.

<u>Lessor</u>	<u>Interest</u>	<u>Recording Data Book/Page</u>
Ella Buxman	10/168	123/886
Irma Buxman Neece	3/168	123/888
Emma Buxman	3/168	123/890
Eugene Buxman	3/168	123/892
Warren Buxman	3/168	123/894

June Buxman Schreacke	3/168	123/896
Alma Buxman Gloor	3/672	123/963
Ronald DeWayne Buxman	9/1344	123/963
Vicki Lynn Buxman, now Matchinsky	9/1344	123/963

Fritts thereafter assigned an undivided 1/2 interest in the seven above described oil and gas leases to Barnhill on February 3, 1975, recorded in Book 124, page 314 of the Eddy County Records.

3. By virtue of all of the above described oil and gas leases, Fritts, Barnhill and Felmont are the absolute and unqualified owners of the oil and gas leasehold estate covering the above described land in the following proportions:

Fritts:	1/12
Barnhill:	1/12
Felmont:	<u>5/6</u>
	All

4. The parties hereto are now desirous of agreeing among themselves as to the respective ownership of the oil and gas leasehold estate covering the above described land.

NOW, THEREFORE, for and in consideration of the above premises and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, said parties do hereby agree as follows:

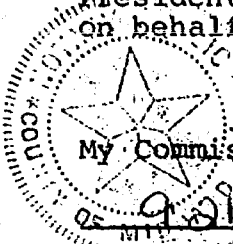
1. That the undivided interest in the oil and gas leasehold estate of the above described land, as of the date of the execution of this instrument, is as follows:

Fritts:	1/12
Barnhill:	1/12
Felmont:	<u>5/6</u>
	All

2. This instrument shall operate as a conveyance running to and from each of the parties hereto as may be necessary to convey and constitute the title in the oil and gas leasehold estate of the

STATE OF TEXAS)
) ss.
 COUNTY OF MIDLAND)

The foregoing instrument was acknowledged before me this 2nd
 day of March, 1978, by T. Verne Dwyer, Vice
President of Felmont Oil Corporation, a Delaware corporation,
 on behalf of said corporation.



My Commission Expires: _____

Judith K. Diehl
 Notary Public

STATE OF NEW MEXICO, County of Eddy, ss. I hereby certify that
 this instrument was filed for record on the 1 day of April
1978 at 11:05 o'clock A.M., and duly recorded in Book 156
Page 521 of the records of Misconson

GERALDINE MAHAFFEY, County Clerk
 By Christine L. Lujan Deputy

above described land as hereinabove set forth, and this instrument shall be deemed to contain such words of grant as are necessary to constitute the above described title.

This instrument shall bind and benefit the parties hereto, their heirs, personal representatives, successors and assigns.

DATED this 10th day of March, 1978, but effective as of first runs.

J. V. Fritts
J. V. Fritts

Ruth C. Fritts
Ruth C. Fritts

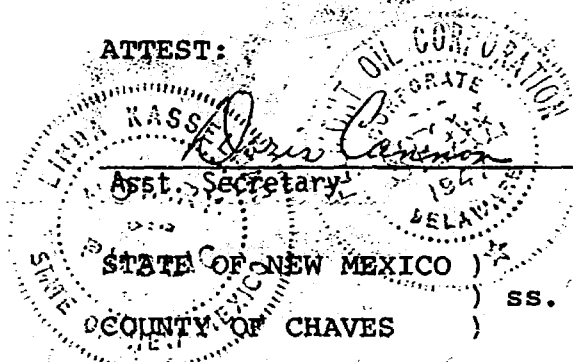
William B. Barnhill
William B. Barnhill

Catharine W. Barnhill
Catharine W. Barnhill

FELMONT OIL CORPORATION

By T. Verne Dwyer
T. Verne Dwyer, Vice President

ATTEST:



The foregoing instrument was acknowledged before me this 10th day of March, 1978, by J. V. Fritts and Ruth C. Fritts, his wife.

My Commission Expires:

September 12, 1981

STATE OF NEW MEXICO)
COUNTY OF CHAVES) ss.

The foregoing instrument was acknowledged before me this 10th day of March, 1978, by William B. Barnhill and Catharine W. Barnhill, his wife.

My Commission Expires:

Sept 14, 1981

Sharon E. Miles
Notary Public

Mr. J. V. Fritts

Tom Kellehim

Court order 6/12/78

July 30, 1974 date of Order

Well completed 12/28/74

Lease ownership acquired 12/26/74
No recorded ownership prior to
well completion.

Seven oil + gas lease

1/17/75

No recorded instrument in Eddy Co.

heirs C. Raymond Buxman

Leases

Ello Buxman	$\frac{1}{4}$ of $\frac{1}{6}$ + $\frac{1}{7}$ of $\frac{3}{24}$
Erma " Niece	$\frac{1}{7}$ of $\frac{3}{24}$
Emma "	$\frac{1}{7}$ " "
Engene "	$\frac{1}{7}$ " "
Warren "	$\frac{1}{7}$ " "
Jane Schreocke	$\frac{1}{7}$ " "
Alma Gloor	$\frac{1}{4}$ of $\frac{1}{7}$ of $\frac{3}{24}$
	$\frac{1}{2}$ of $\frac{3}{24}$

Fritts

Monies received OK on present

Nothing from June 1975

thru " 1978

should not have assessed the 200%

Feels that they are due \$1,583 each

Acquired surface in Sec. 1 on 2/7/75

Don ~~Hadden~~ Haden

Dist. Mgr. Newbourn

Merk Prod. changed to Newbourn

What is record title

J. V. FRITTS
404 HINKLE BUILDING
PHONE - RES. 622-4006 — BUS. 623-4281
ROSWELL, NEW MEXICO 88201

ADDRESS REPLY TO:
P. O. BOX 868

March 8, 1979

Ms. Lynn Teschendorf
General Counsel
Oil Conservation Division
P. O. Box 3088
Santa Fe, New Mexico 87501

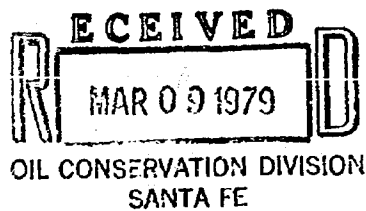
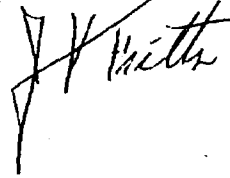
Re: Case No. 6489

Dear Ms. Teschendorf:

Yesterday morning I attended the hearing conducted on the application I made in the above case, which was for the purpose of review and interpretation of Order No. R-4631. Among the items I was allowed to introduce as exhibits was a copy of my letter dated January 20, 1975, to Mark Production Company. My carbon copy of this letter is very dim and this morning I found that I could not reproduce it so that it is readable.

I have therefore made a true copy of this letter, which is enclosed. If I am allowed to do so I ask that you attach this copy to the one now in the hearing file, so that the Examiners will be able to read it without difficulty.

Yours very truly,



J. V. FRITTS
404 HINKLE BUILDING
PHONE - RES. 622-4006 — BUS. 623-4281
ROOSEVELT, NEW MEXICO 88201

ADDRESS REPLY TO:
P. O. BOX 868

January 20, 1975

Mark Production Company
330 Citizens Bank Building
Tyler, Texas
75701

Gentlemen:

It is my understanding that you have drilled and completed a gas well in the SE $\frac{1}{4}$ of Sec. 1, T-18S, R-26E, Eddy County, New Mexico, designated as your No. 1 Federal.


I further understand that a drilling unit will be designated as covering the E $\frac{1}{2}$ of Section 1, and I am assuming you are the operator of the unit.

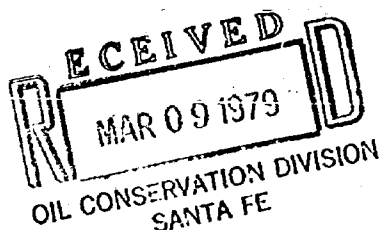
I have acquired oil and gas leases on an undivided one-sixth interest in Tract No. 218 of Fairchild Farm Lands subdivision, located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of the Section, and am in the process of recording the documents. I would like to join this unit with my tiny interest and wanted to notify the operator before the paper work had been completed.

Yours very truly,

TO WHOM IT MAY CONCERN:

I certify that the above is a true version of the letter I wrote and mailed on January 20, 1975, and was copied from the carbon copy which I retained. This carbon copy is a dim one and does not reproduce well on Xerox machines.


J. V. Fritts



BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEX.)

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

CASE NO. 5267
Order No. R-4831

APPLICATION OF MARK PRODUCTION
COMPANY FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on July 10, 1974, at Santa Fe, New Mexico, before Examiner Daniel S. Nutter.

NOW, on this 30th day of July, 1974, the Commission, a quorum being present, having considered the testimony, the record and the recommendations of the Examiner, and being fully advised in the premises,

FINDS:

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

(2) That the applicant, Mark Production Company, seeks an order pooling all mineral interests in the Pennsylvanian formation underlying the E/2 of Section 1, Township 18 South, Range 26 East, NMPM, Atoka-Pennsylvanian Pool, Eddy County, New Mexico.

(3) That the applicant has the right to drill and proposes to drill a well at a location 990 feet from the South line and 990 feet from the East line of said Section 1.

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

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

(6) That the applicant should be designated the operator of the subject well and unit.

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

(8) That any non-consenting working interest owner that does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 200 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

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

(10) That following determination of reasonable well costs, any non-consenting working interest owner that has paid his share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(11) That \$175.00 per month should be fixed as a reasonable charge for supervision (combined fixed rates); that the operator should be authorized to withhold from production the proportionate share of such supervision charge attributable to each non-consenting working interest, and in addition thereto, the operator should be authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

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

(13) That upon the failure of the operator of said pooled unit to commence drilling of the well to which said unit is dedicated on or before November 1, 1974, the order pooling said unit should become null and void and of no effect whatsoever.

IT IS THEREFORE ORDERED:

(1) That all mineral interests, whatever they may be, in the Pennsylvanian formation underlying the E/2 of Section 1, Township 18 South, Range 26 East, NMPM, Atoka-Pennsylvanian Pool, Eddy County, New Mexico, are hereby pooled to form a standard 320-acre gas spacing and proration unit to be dedicated to a well to be drilled at a location 990 feet from the South line and 990 feet from the East line of said Section 1.

PROVIDED HOWEVER, that the operator of said unit shall commence the drilling of said well on or before the 1st day of November, 1974, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Pennsylvanian formation;

PROVIDED FURTHER, that in the event said operator does not commence the drilling of said well on or before the 1st day of November, 1974, Order (1) of this order shall be null and void and of no effect whatsoever;

PROVIDED FURTHER, that should said well not be drilled to completion, or abandonment, within 120 days after commencement thereof, said operator shall appear before the Commission and show cause why Order (1) of this order should not be rescinded.

(2) That Mark Production Company is hereby designated the operator of the subject well and unit.

(3) That after the effective date of this order and within 30 days prior to commencing said well, the operator shall furnish the Commission and each known working interest owner in the subject unit an itemized schedule of estimated well costs.

(4) That within 30 days from the date the schedule of estimated well costs is furnished to him, any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production, and that any such owner who pays his share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(5) That the operator shall furnish the Commission and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the well; that if no objection to the actual well costs is received by the Commission and the Commission has not objected within 45 days following receipt of said schedule, the actual well costs shall be the reasonable well costs; provided however, that if there is an objection to actual well costs within said 45-day period the Commission will determine reasonable well costs after public notice and hearing.

(6) That within 60 days following determination of reasonable well costs, any non-consenting working interest owner that has paid his share of estimated costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

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

(A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(B) As a charge for the risk involved in the drilling of the well, 200 per cent of the pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

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

(9) That \$175.00 per month is hereby fixed as a reasonable charge for supervision (combined fixed rates); that the operator is hereby authorized to withhold from production the proportionate share of such supervision charge attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating such well, not in excess of what are reasonable, attributable to each non-consenting working interest.

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

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

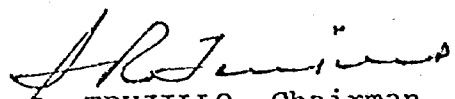
(12) That all proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; that the operator shall notify the Commission of the name and address of said escrow agent within 90 days from the date of this order.

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

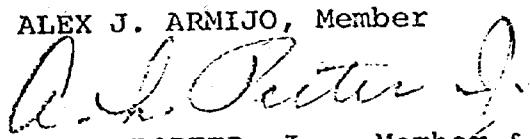
Case No. 5267
Order No. R-4831

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION


I. R. TRUJILLO, Chairman

ALEX J. ARMIJO, Member


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

S E A L

dr/

August 5, 1974

Mr. Joe Miller
Felmont Oil Corporation
Wilkinson-Foster Building
Midland, Texas 79701

Re: Mark Production Company
#1 Federal "B"
E/2 Section 1, T-18-S, R-26-E
Eddy County, New Mexico

Dear Sir:

Attached you will find an estimated well cost for the subject well in the total amount of \$403,277.00. Your net interest in the proration unit is calculated to be 1.578% of the working interest.

Also attached you will find an invoice in the amount of \$6,363.71, which is your portion of the estimated well cost. Your portion of the estimated well cost must be paid within thirty (30) days from the date hereof. You will be furnished an itemized schedule of actual well costs following completion of the well and any adjustments shall be made at that time between your advance of the estimated well cost and the actual cost.

All mineral interests within the subject proration unit have been pooled by Order of the Oil Conservation Commission and the above set out procedure for advance payments of estimated well cost has been set out by the Commission.

Very truly yours,

Curtis W. Mewbourne

CWM:Bjd

Attachments

AUTHORITY FOR EXPENDITURE
MARK PRODUCTION COMPANY - #1 FEDERAL "B"
ATOKA (PENN) FIELD
E/2 SECTION 1, T-18-S, R-26-E
EDDY COUNTY, NEW MEXICO

ESTIMATED COST TO CASING POINT:

Survey and stake	\$ 200
Road and location	8,000
Surface damages and clean up	2,000
Drilling: Footage - 9600' @ \$13.35	128,160
Daywork - 4 days @ \$2,500	10,000
- 1 day @ \$2,400	2,400
Sample logging unit - 14 days @ \$140	1,960
Cement and cementing services	6,130
Conduction pipe - 200' of 16" @ \$12.29	2,458
Surface casing - 2000' of 8-5/8" @ \$9.00	18,000
Mud and chemicals and brine	25,500
Drillstem tests - 3 @ \$1,350	4,050
Geological services	900
Drilling overhead	1,450
Production supervision	1,050
Logging	5,700
Legal services	3,750
Equipment rental	1,000
Welding	300
Travel Expense	450
Trucking	1,800
New Mexico Tax @ 4%	9,010

\$234,268

ESTIMATED COMPLETION COSTS:

Producing casing - 9700' of 4-1/2" @ \$7.00	67,900
Cement and cementing services	5,000
Corrolation log and perforating	2,425
Temperature survey and BHP	400
Treating	6,833
Equipment rental	750
Welding	400
Completion unit	3,000
Tubing - 9600' of 2-3/8" @ \$2.50	24,000
Float equipment and centralizers	850
Packer	1,550
Tank battery and flow lines	10,000
Wellhead	5,478
Stakpack - 750 BTU	13,200
Completion overhead and supervision	2,100
Roustabout work, lines and connections	3,750
Legal services	500
Miscellaneous	1,000
Rig anchors	213
Safety control valves	1,460
Travel Expense	400
Dehydrator	9,200
Trucking	2,100
New Mexico Tax @ 4%	6,500

169,009

TOTAL

\$403,277

APPROVED:

COMPANY: _____

MARK PRODUCTION COMPANY

BY: _____

BY: _____

DATE: _____

DATE: _____

August 6, 1974

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

Re: Case No. 5267
Order No. R-4831

Gentlemen:

To comply with the Order of the Commission in Case No. 5267, you will find attached an itemized schedule of the estimated well costs for the #1 Federal "B", located in the E/2 of Section 1, T-18-S, R-26-E, Eddy County, New Mexico.

These estimated well costs have been furnished to each known working interest owner with a request that each participate in the well and pay his share of the estimated well cost to the operator.

Very truly yours,

Curtis W. Mewbourne

CWM:Bjd

Attachment

August 6, 1974

Felmont Oil Corporation
Wilkinson-Poster Building
Midland, Texas 79701

Re: Mark Production Company
#1 Federal "B"
E/2 Section 1, T-18-S, R-26-E
Eddy County, New Mexico

Gentlemen:

You will find attached two (2) copies of the Operating Agreement on the subject well. If these meet with your approval, please execute and return to this office one (1) copy, while retaining the second copy for your files.

Very truly yours,

Curtis W. Mewbourne

CWM:Bjd

Attachments

R 14831
case 5267

August 9, 1974

Mark Production Company
330 Citizens Bank Building
Tyler, Texas 75701

Attention: Mr. Curtis W. Mewbourne

Re: Mark Production Company
#1 Federal "B"
E/2 Section 1, T18S, R26E
Eddy County, New Mexico

Dear Sir:

We have received this date, your letter of August 5, 1974, enclosing an invoice for Felmont's share of the captioned well and AFE for same.

Felmont Oil Corporation has recently finished the drilling of two Morrow tests within the same field as your captioned well. Our wells have been drilled, completed and placed on production for approximately \$225,000, whereas your AFE states a cost of 403,000 plus dollars. You have also requested an advance payment of our share of this well without giving an immediate spud date or notice of rig availability or copies of any pooling designation. Your letter also refers to an Order of the Oil and Gas Commission from the State of New Mexico, whereby you state that the advance payment procedure has been set by the Commission and verbally, you have advised our Mr. Joe Miller that if we elected to go non-consent that the Commission has set a 300% penalty. We have not been advised or notified of any forced pooling hearings in regard to our interest. In order that we may completely evaluate our position in this property, as outlined by you as to the penalty provisions, please send us copies of the Oil and Gas Commission orders as well as justification for the unreasonable high AFE.

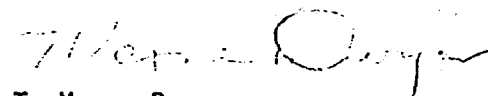
Felmont Oil Corporation is an old established reputable firm and only in rare instances, where there have been a great number of operators, have we been requested to furnish advance money, our credit

Mark Production Company
August 9, 1974
Page 2

is extremely good, and then only within 20 days prior to actual drilling commenced on said well. Of course Felmont, as always, will abide with the rules of governmental agencies involved.

Very truly yours,

FELMONT OIL CORPORATION



T. Verne Dwyer
Vice President

TVD:dc

cc: Oil and Gas Commission
State of New Mexico

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

SUBMIT IN DUPLICATE

(See other In-
structions on
reverse side)Form approved
Budget Bureau No. 42-10355-6

WELL COMPLETION OR RECOMPLETION REPORT AND LOG*

1a. TYPE OF WELL:		OIL WELL <input type="checkbox"/>	GAS WELL <input checked="" type="checkbox"/>	DRY <input type="checkbox"/>	Other <input type="checkbox"/>		
b. TYPE OF COMPLETION:		NEW WELL <input checked="" type="checkbox"/>	WORK OVER <input type="checkbox"/>	DEEPEN <input type="checkbox"/>	PERFOR. BACK <input type="checkbox"/>	DIFF. PERFOR. <input type="checkbox"/>	Other <input type="checkbox"/>
2. NAME OF OPERATOR Mark Production Company						6. LEASE DERIVATION AND AERIAL NO. LC-066445	
3. ADDRESS OF OPERATOR 330 Citizens Bank Bldg., Tyler, Texas 75701						7. UNIT AGREEMENT NAME Federal "B"	
4. LOCATION OF WELL (Report location clearly and in accordance with any State requirements) At surface 990' FSL & 990' FEL At top prod. interval reported below At total depth						8. WELL NO. 1	
14. PERMIT NO.						10. FIELD AND POOL, OR WILDCAT Atoka Penn	
DATE ISSUED						11. SEC., T., R., M., OR BLOCK AND SURVEY OR AREA 1-18S-26E	
12. COUNTY OR PARISH Eddy						13. STATE New Mexico	
15. DATE SPUDDED 8-30-74	16. DATE T.D. REACHED 9-28-74	17. DATE COMPL. (Ready to prod.) 11-22-74	18. ELEVATIONS (OF, RKB, RT, OR, ETC.)* 3290' GR		19. ELEV. CASINGHEAD ---		
20. TOTAL DEPTH, MD & TVD 9248'	21. PLUG, BACK T.D., MD & TVD 9233'	22. IF MULTIPLE COMPL., HOW MANY* ---	23. INTERVALS DRILLED BY XX	ROTARY TOOLS XX	CABLE TOOLS ---		
24. PRODUCING INTERVAL(S), OF THIS COMPLETION—TOP, BOTTOM, NAME (MD AND TVD)* 9039 - 9076' - Morrow					25. WAS DIRECTIONAL SURVEY MADE Yes		
26. TYPE ELECTRIC AND OTHER LOGS RUN Acoustic Velocity					27. WAS WELL CORED No		
28. CASING RECORD (Report all strings set in well)							
CASING SIZE	WEIGHT, LB./FT.	DEPTH SET (MD)	HOLE SIZE	CEMENTING RECORD		AMOUNT PULLED	
16"	65#	200'	20"	240 sks		None	
8-5/8"	32# - 24#	1,970'	11"	850 sks		None	
5-1/2"	17# - 15.5#	9,248'	7-7/8"	700 sks		None	
29. LINER RECORD							
SIZE	TOP (MD)	BOTTOM (MD)	BACKS CEMENT*	SCREEN (MD)			
30. TUBING RECORD							
SIZE	DEPTH SET (MD)	PACKER SET (MD)					
2-3/8"	8958'	8965'					
31. PERFORATION RECORD (Interval, size and number)							
9039', 9042', 9045', 9046', 9051', 9052', 9056', 9059', 9064', 9067', 9068', 9074', 9076' - 13, 1/2" holes							
32. ACID, SHOT, FRACTURE, CEMENT SQUEEZE, ETC.							
DEPTH INTERVAL (MD)			AMOUNT AND KIND OF MATERIAL USED				
9039 - 9076'			2,600 gals acid				
33. PRODUCTION							
DATE FIRST PRODUCTION 11-20-74		PRODUCTION METHOD (Flowing, gas lift, pumping—size and type of pump) Flowing			WELL STATUS (Producing or shut-in) Shut-in		
DATE OF TEST 11-26-74	HOURS TESTED 1 Hr	CHOKE SIZE 24/64 U	PROD'N. FOR TEST PERIOD OIL—BBL. 3.3	GAS—MCF. 339	WATER—BBL. 0	GAS-OIL RATIO ∞	
FLOW. TUBING PRESS. 2420	CASING PRESSURE Pkr	CALCULATED 24-HOUR RATE 79.2	OIL—BBL. 79.2	GAS—MCF. 8,136	WATER—BBL. 0	OIL GRAVITY-API (CORR.) 59°	
34. DISPOSITION OF GAS (Sold, used for fuel, vented, etc.) Sold - Southern Union Gas Company						TEST WITNESSED BY W. H. Cravey	
35. LIST OF ATTACHMENTS Acoustic Velocity Logs, Directional Survey							
36. I hereby certify that the foregoing and attached information is complete and correct as determined from all available records							
SIGNED Raymond W. Thompson		TITLE Assistant Secretary			DATE Dec. 10, 1974		

*(See Instructions and Spaces for Additional Data on Reverse Side)



JOE D. MILLER
DIVISION MANAGER

March 12, 1975

Mark Production Company
1007 Gihls Tower West
Midland, Texas 79701

Re: Tract 218, Section 1, T-18-S,
R-26-E, Eddy County, New Mexico
Our File: FNML-4994

Gentlemen:

Felmont Oil Corporation is the owner of certain leasehold interest in the captioned land, and we have been advised that Mark Production Company has completed a producing well on Tract 218 in Section 1, T-18-S, R-26-E in Eddy County, New Mexico. We are knowledgeable that we have been forced-pooled into this Unit in order to protect not only ourselves but our royalty owners.

Would you please advise us the status of royalty distribution and the cost of drilling and completing this well in order that we may keep current with the payout status? We would also appreciate any information regarding gas and distillate contracts which you may negotiate.

For your files, we are enclosing a copy of our Oil, Gas and Mineral Lease dated August 9, 1973 from Anna Brown Unit of the Good Samaritan Home of Quincy to Felmont covering the captioned property, as well as two Warranty Deeds covering a change in mineral ownership.

Very truly yours,

FELMONT OIL CORPORATION

T. Verne Dwyer

T. Verne Dwyer
Vice President

TVD:mms
Enclosures

cc: Mr. I. R. Trujillo, Chairman
State of New Mexico
Oil Conservation Commission
Santa Fe, NM 87501

OIL, GAS AND MINERAL LEASE

THIS AGREEMENT, Made this the 9th day of August, 1973, between the
Anna Brown Unit of the Good Samaritan Home of Quincy,
2130 Harrison Street, Quincy, Illinois 62301

Felmont Oil Corporation

hereinafter called lessor (whether one or more) and

hereinafter called lessee

1. Lessor, in consideration of ten and no/100 Dollars (\$ 10.00), in hand paid, the receipt and sufficiency of which is hereby acknowledged, and of the royalties herein provided and of the agreements of the lessee herein contained, hereby grants, leases and lets exclusively unto lessee for the purpose of investigating, making seismograph or other geophysical or geological tests and surveys, exploring, prospecting, drilling, mining and operating for and producing oil, gas and all other minerals, including gas, water, other fluids, and air into sub-surface strata, laying pipe lines, storing oil, building tanks, power stations, telephones lines, and other structures and things thereon to produce, save, take care of, treat, process, store and transport said minerals and other products manufactured therefrom the following described land in Eddy County, New Mexico

Tract 320 of Section 12 and Tract 218 of Section 1, both in Township 18 South, Range 26 East of the NMPM, and in Fairchilds' Farmlands as shown by the plat of record in the office of the probate clerk and ex officio recorder of said county and state and containing 10 acres, more or less.

In the event a resurvey of said lands shall reveal the existence of excess and/or vacant lands lying adjacent to the above described land and the lessor, his heirs or assigns shall by virtue of his ownership of the lands above described have preference right to acquire said excess and/or vacant lands, then in that event this lease shall cover and include such excess and/or vacant lands which the lessor, his heirs or assigns shall have the preference right to acquire by virtue of his ownership of the land above described as and when acquired by the lessor, and the lessee shall pay the lessor for such excess and/or vacant lands at the same rate per acre as the cash consideration paid for the acreage hereinabove mentioned. For the purpose of calculating the rental payments hereinafter provided for, said land is

estimated to comprise ten acres, whether it actually comprises more or less.

2. This lease shall remain in force for a term of ten years from this date (called "primary term") and as long thereafter as oil, gas, casinghead gas, casinghead gasoline, or any other mineral is produced from said land or land with which said land is consolidated.

3. The royalties to be paid by lessee are: (a) on oil saved at the well, one-eighth (1/8) of that produced and saved from the land, same to be delivered at the wells or to the credit of lessor in the pipe line to which the wells may be connected; lessor's interest in either case shall bear its proportion of any expense for treating oil to make it marketable as crude, and of any trucking expenses incurred in marketing; (b) on gas, including casinghead gas and oil gaseous substances produced from said land and sold or used off the premises or in the manufacture of gasoline or other products therefrom, the market value at the mouth of the well of one-eighth (1/8) of the gas so sold or used, provided that on gas sold at the well, the royalty will be one-eighth (1/8) of the amount realized from such sale; (c) on all other minerals mined and marketed, one-eighth (1/8) either in kind or value at the well or mine, at lessee's election, except on sulphur, the royalty shall be One Dollar (\$1.00) per long ton; (d) where gas from a gas well, or wells, on said land or on land with which said land is consolidated, is not sold or used, whether before or after the expiration of the primary term, lessee shall, unless and until this lease is maintained in force and effect under other of its provisions, pay or tender to lessor, or pay or tender or deposit into the depository bank named in Paragraph 4 hereof, or any successor thereof or named therefor, in the manner therein provided, as royalty, an amount equal to the delay rental provided for in this lease for acreage then held under this lease by the party making payment or tender, same being payable annually at the end of each year during which such gas is not sold or used, computing such one year periods from the date when the last of all gas wells located on the land above described, or on land with which it is consolidated, is finally shut in. Should the shut-in period be less than one year, lessee shall pay as royalty, in the manner hereinabove provided, a prorata part of the annual amount provided for, computed to the nearest month, same being payable at the end of one year from the commencement of the shut-in period. Pending and until the payable date of, and while said royalty is so paid, tendered or deposited, it shall be considered and held under all provisions of this lease, that gas is being produced in paying quantities from the leased premises. For the purpose of this paragraph, the term gas well shall include a well, or wells, capable of producing natural gas, condensate or any other gaseous substance, and wells classified as gas wells by any governmental authority.

4. If operations for drilling or mining are not commenced on said land or on land consolidated therewith on or before one (1) year from this date, this lease shall terminate as to both parties, unless on or before one (1) year from this date lessee shall pay or tender to the lessor or to the credit of lessor in the depository

bank herein named, a rental of ten and no/100 Dollars (\$ 10.00) which shall cover the privilege of deferring commencement of such operations for a period of one (1) year. In like manner and upon like payments or tenders, annually, the commencement of operations for drilling may be further deferred for successive periods of one (1) year each during the primary term. Payment or tender may be made to the

lessor or to the State Bank & Trust Company of Quincy, Illinois which bank, or any successor thereof, shall continue to be the agent for the lessor and lessor's successors and assigns. If such bank (or any successor bank) shall fail, liquidate, or be succeeded by another bank, or for any reason fail, or refuse to accept rental, lessee shall not be held in default until thirty (30) days after lessor shall deliver to lessee a recordable instrument designating another depository bank, and any depository charge is a liability of the lessor. The payment or tender of rental and shut-in gas well royalties may be made by check or draft of lessee, mailed or delivered to said bank or lessor, or either lessor, if more than one, on or before the rental paying date.

5. Lessee is hereby granted the right to consolidate or unitize this lease, the land covered by it or any part or parts thereof as to all strata or any stratum with any other land, lease, leases or parts thereof as to all strata or any stratum for the production of oil, gas, or any other mineral. Consolidation in one or more instances shall not exhaust the right of lessee hereunder to consolidate this lease or portion of the oil, gas and mineral estate into other or different units. Units consolidated for oil hereunder shall not exceed forty (40) acres plus a tolerance of ten per cent (10%) thereof, and units consolidated for gas hereunder shall not exceed six hundred forty (640) acres plus a tolerance of ten per cent (10%) thereof, provided that if any Federal or State law, Executive order, rule or regulation shall prescribe a spacing pattern for the development of the field or allocate a producing allowable in whole or in part on acreage per well, then only such units may embrace as much additional acreage as may be so prescribed or as may be used in such allocation or allowable. Lessee shall file written unit designations in the county in which the premises are located. Such units may be designated either before or after the completion of wells. Drilling or reworking operations and production on any part of the consolidated acreage shall be treated for all purposes hereof as if such drilling or reworking operations were upon or such production were from the land described in this lease whether the well or wells be located on the land covered by this lease or not. The entire acreage consolidated into a unit shall be treated for all purposes, except the payment of royalties on production from the consolidated unit, as if it were included in this lease. This paragraph shall never be construed as a limitation or restriction of any other provision of this lease. In lieu of the royalties herein provided, lessor shall receive on production from a unit so consolidated only such portion of the royalty stipulated herein as the amount of his acreage placed in the unit or his royalty interest therein on an acreage basis bears to the total acreage so consolidated in the particular unit involved.

6. If prior to discovery of oil, gas or other minerals on said land or land consolidated therewith lessee should drill and abandon a dry hole or holes thereon, or if, after discovery of oil, gas or other minerals, the production therefrom should cease from any cause, this lease shall not terminate if lessee commences reworking or additional drilling operations within sixty (60) days thereafter, or (if it be within the primary term) commences or resumes the payment or tender of rentals or commences operations for drilling or reworking on or before the rental paying date next ensuing after the expiration of two (2) months from date of completion and abandonment of said dry hole or holes or the cessation of production. If a dry hole is completed and abandoned at any time during the last fourteen (14) months of the primary term and prior to discovery of oil, gas or other minerals on said land or land consolidated therewith, no rental payment or operations are necessary in order to keep the lease in force during the remainder of the primary term. If, at the expiration of the primary term, oil, gas or other mineral is not being produced on said land or land consolidated therewith but lessee is then engaged in operations for drilling, mining or reworking of any well or mine thereon, this lease shall remain in force so long as drilling, mining, or reworking operations are prosecuted (whether on the same or different wells) with no cessation of more than sixty (60) consecutive days, and if they result in production, so long thereafter as oil, gas or other mineral is produced from said land or land consolidated therewith. In the event a well or wells producing oil or gas in paying quantities should be brought in on adjacent land and within one hundred fifty (150) feet of and draining the leased premises, lessee agrees to drill such offset wells as a reasonably prudent operator would drill under the same or similar circumstances. The judgment of the lessee, when not fraudulently exercised, in carrying out of the purposes of this lease shall be conclusive.

7. Lessee shall have free use of oil, gas and water from said land, except water from lessor's wells and tanks, for all operations hereunder, including repressuring, pressure maintenance, cycling, and secondary recovery operations, and the royalty shall be computed after deducting any so used. Lessee shall have the right at any time during or after the expiration of this lease to remove all property and fixtures placed by lessee on said land, including the right to draw and remove all casing. When required by lessor, lessee will bury all pipe lines below ordinary plow depth, and no well shall be drilled within two hundred feet (200 ft.) of any residence or barn now on said land without lessor's consent. Lessor shall have the privilege, at his risk and expense, of using gas from any gas well on said land for stoves and inside lights in the principal dwelling thereon, out of any surplus gas not needed for operations hereunder.

8. The rights of either party hereunder may be assigned in whole or in part and the provisions hereof shall extend to the heirs, executors, administrators, successors and assigns, but no change or division in ownership of the land, rentals or royalties, however accomplished, shall operate to enlarge the obligations or diminish the rights of lessee. No sublease or division in the ownership of the land, rentals or royalties, shall be binding upon lessee for any purpose until such person acquiring any interest has furnished lessee with the instrument or instruments, or certified copies thereof, constituting his chain of title from the original lessor. In the event of an assignment of this lease to a segregated portion of said land, the rentals payable hereunder, shall be apportioned as between the several lessor-hold owners ratably according to the surface area owned by each, and default in rental payment by one shall not affect the rights of other lessor-hold owners hereunder. An assignment of this lease, in whole or in part, shall to the extent of such assignment, relieve and discharge lessee of any obligations hereunder, and if lessee or assignee of part or parts hereof shall fail or make default in the payment of the proportionate part of the rentals due from such lessee or assignee or fail to comply with any other provision of the lease, such default shall not affect this lease insofar as it covers a part of said lands upon which lessee or any assignee thereof shall make payment of said rentals.

9. Lessee shall not be liable for delays or defaults in its performance of any agreement or covenant hereunder due to force majeure. The term "force majeure" as employed herein shall mean: any act of God including but not limited to storms, floods, washouts, landslides, and lightning; acts of the public enemy; wars, blockades, insurrection or riots; strikes or lockouts; epidemics or quarantine regulations; laws, acts, orders or requests of Federal, State, Municipal or other governments or governmental officers or agents under color of authority; freight embargoes or failures; expropriation or unavailability or delays in delivery of any product, labor, service or material. If lessee is required, ordered or directed by any Federal, State or Municipal law, executive order, rule, regulation or request enacted or promulgated under color of authority to cease drilling operations, reworking operations or producing operations on the land covered by this lease or if lessee be forced by force majeure to terminate or suspend operations for a period of sixty (60) days after such termination and every provision of this lease or implied covenant arising thereunder that might operate to terminate it or the estate conveyed by it shall be suspended and inoperative and this lease shall continue in full force. If any period of suspension occurs during the primary term, the time thereof shall be added to such term.

10. Lessor hereby warrants and agrees to defend the title to said land, and agrees that lessee, or its option, may discharge any tax, mortgage or other lien upon said land, and in the event lessee does so, it shall be subrogated to such lien with the right to enforce same and apply rentals and royalties accruing hereunder to said land, and in the event lessee does so, it shall be subrogated to such lien with the right to enforce same and apply rentals and royalties accruing hereunder to said land, and in the event lessee does so, it shall be subrogated to such lien with the right to enforce same and apply rentals and royalties accruing hereunder to said land.

11. Lessee, its successors and assigns, shall have the right at any time to surrender this lease, in whole or in part, to lessor or his heirs and assigns by delivering or mailing a release thereof to the lessor, or by placing a release thereof of record in the county in which said land is situated, thereupon, lessee shall be relieved from all obligations, expressed or implied, of this agreement as to the acreage so surrendered, and thereafter the rentals payable hereunder shall be reduced in the proportion that the acreage covered hereby is reduced by said release or releases.

IN WITNESS WHEREOF, we sign the day and year first above written.

WITNESSES:

ATTEST: A. N. Spickard
Financial Secretary

Anna Brown Unit of the Good Samaritan
Home of Quincy, Quincy, Illinois

By: Roger Mittelberg
President

STATE OF ILLINOIS X
COUNTY OF ADAMS X

BEFORE ME, the undersigned authority, on this day personally appeared Roger Mittelberg, known to me to be the person whose name is subscribed to the foregoing instrument as President of the Anna Brown Unit of the Good Samaritan Home of Quincy, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 28th day of August, 1973.

Andrew C. Schuch
Notary Public in and for Adams
County, Illinois

My commission expires September 6, 1974.

wife, acknowledged the same to be her act and deed, and declared that she had willingly executed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, A. D. 19____

Notary Public in and for _____ County, Texas

THE STATE OF TEXAS

JOINT ACKNOWLEDGMENT

COUNTY OF _____

BEFORE ME, the undersigned authority, on this day personally appeared _____ and wife, _____, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed. And the said _____ wife of _____, having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said _____ acknowledged such instrument to be her act and deed and declared that she had willingly signed the same for the purposes and consideration therein expressed and that she did not wish to retract it.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, A. D. 19____

Notary Public in and for _____ County, Texas

INDEXED
COMPARED

WHEN RECORDED RETURN TO:

This instrument was filed for record on the 10th day of September, 1973 at 10:40 o'clock A. M., and duly recorded in Book 106 Page 288 of the Miscellaneous records of this office.
Mildred Mahaffey
County Clerk Edley County, New Mexico
By: Curtis C. Boyd, Deputy

WARRANTY DEED

Good Samaritan Home, an Illinois corporation,

, for consideration paid, grants to
Wm. B. Barnhill, P. O. Box 1354, Roswell, New Mexico 88201

the following described real estate in Eddy county, New Mexico:

All of the surface rights owned by Good Samaritan Home (Grantor herein) and an undivided seven-eighths (7/8ths) interest in and to all of the oil, gas and other minerals owned by Good Samaritan Home in and under and that may be produced from the following described land, to-wit:

Township 18 South, Range 26 East, NMPM
FNNL-4994 Section 1: Tract No. 218 of Fairchild Farm Land Subdivision.
Section 2: Tract Nos. 264 and 265 of Fairchild Farm Land Subdivision
Containing 15 acres more or less.

with warranty covenants.

WITNESS our hand and seal this 7th day of
February 19 75 (Seal)

ATTEST:

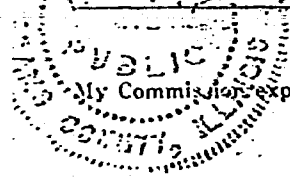
Harry W. Allen
ILLINOIS Secretary

GOOD SAMARITAN HOME (Seal)
By William M. McCleery (Seal)
William M. McCleery,
President. (Seal)

STATE OF ~~ILLINOIS~~
County of Adams } ss.

The foregoing instrument was acknowledged before me this 7th day of February

1975 by William M. McCleery, President of Good Samaritan Home, an Illinois
corporation, on behalf of said corporation.



My Commission expires Feb. 14, 19 78 Pamela Boudreau
Notary Public

STATE OF NEW MEXICO,
County of Eddy } ss.

I hereby certify that this instrument was filed for
record on the 25 day of
February, A. D., 19 75
at 1:30 o'clock P. M., and duly recorded in
Book 221 Page 481 of

Records of Deeds of said County.

Mildred Branch
County Clerk

By Sharon Davis, Deputy

Rec. _____ Fees, \$ _____

Return to _____

WARRANTY DEED

Wm. B. Barnhill and Catharine W. Barnhill, his wife,

for consideration paid, grant to
J. V. Fritts, P. O. Box 868, Roswell, New Mexico

the following described real estate in Eddy county, New Mexico:

One-half (1/2) of the surface rights owned by Wm. B. Barnhill and Catharine W. Barnhill (Grantor herein) and an undivided seven-sixteenths (7/16ths) interest in and to all of the oil, gas and other minerals owned by Wm. B. Barnhill and Catharine W. Barnhill in and under and that may be produced from the following described land, to-wit:

Township 18 South, Range 26 East, NMPM
12-444 Section 1: Tract No. 218 of the Fairchild Farm Land Subdivision
Section 2: Tract No's. 264 and 265 of Fairchild Farm Land Subdivision
Containing 15 acres more or less.

with warranty covenants.

WITNESS our hand and seal this 24th day of
February 1975.

Wm. B. Barnhill (Seal)
Wm. B. Barnhill (Seal)

Catharine W. Barnhill (Seal)
Catharine W. Barnhill (Seal)

STATE OF NEW MEXICO,
County of Chaves

ss.

The foregoing instrument was acknowledged before me this 24th day of February,
1975 by Wm. B. Barnhill and Catharine W. Barnhill, his wife.

My Commission expires October 31, 1977

Sharon R. Miles
Notary Public

STATE OF NEW MEXICO,
County of Eddy

ss.

I hereby certify that this instrument was filed for
record on the 26 day of
February, A. D., 1975
at 11:15 o'clock A. M., and duly recorded in
Book 221 Page 474 of

Records of Deeds of said County.

Mildred Branch
County Clerk:

By Karen Davis, Deputy

Rec. Fees, \$

Return to

COTTON, BLEDSOE, TIGHE, MORROW & DAWSON

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

SUITE 1930 WILCO BUILDING
MIDLAND, TEXAS 79701

P. O. BOX 2776
TELEPHONE (915) 684-5762

WM. M. COTTON
ROBERT C. BLEDSOE
CHARLES L. TIGHE
WM. C. MORROW
ROBERT H. DAWSON
TEVIS HERO
ROBERT K. HUDSON
RICHARD T. McMILLAN
JOHN A. WOODSIDE
JAMES C. CONSIDINE
BARRY N. BECK
GAYLEN L. GROCE
BRUCE W. WOLITARSKY
MICHAEL R. McELWRATH

December 22, 1978

Mr. J. V. Fritts
404 Hinkle Building
Roswell, New Mexico 88201

Re: Federal "B" No. 1 Well,
E/2 Section 1, T-18-S,
R-26-E, Eddy County, New Mexico

Dear Mr. Fritts:

At the request of Mewbourne Oil Company I have reviewed the title to the captioned well and lands with specific reference to the forced pooling order entered July 30, 1974, in New Mexico Oil Conservation Commission case No. 5267, Order No. R-4831, which imposes a 200% penalty clause on non-consenting working interest owners. At the time that this order was entered title to the mineral estate in Tract 218 of the Fairchild Farm Lands was vested of record in the Anna Brown Home for the Aged, an Illinois corporation, subject to an Oil and Gas Lease to Felmont Oil Corporation.

The title will reflect that J. V. Fritts and William B. Barnhill acquired leases on other mineral interests in Tract 218 in December, 1974, these mineral owners being the Buxman heirs, who owned no title of record in the mineral estate in Tract 218 at the time that the Forced Pooling Order was entered. Therefore, although you and William B. Barnhill were not parties to the Forced Pooling Order, neither did you nor any of your minerals owners have any interest of record at the time that the Forced Pooling Order was entered, and it is our opinion that the Order is binding on the working interests acquired by you from mineral owners who owned no interest of record, but who acquired their interest through the Anna Brown Home, who owned an interest

Mr. J. V. Fritts

-2-

December 22, 1978

of record at the time of the Order.

We will be pleased to discuss this matter further with you at any time.

Very truly yours,

COTTON, BLEDSOE, TIGHE,
NORROW & DAWSON

By: Tevis Herd

TH:cm

cc: Mewbourne Oil Company
1010 Wall Towers West
Midland, Texas 79701
Attn: Mr. Donald G. Hayden,
District Manager

MEMORANDUM OF TITLE

Re: Federal "B" No. 1 Well, E/2 Section 1, T-18-S, R-26-E,
Eddy County, New Mexico

This Memorandum is concerned with title to the mineral estate in Tract 218 of Fairchild Farm Lands located in E/2 of the captioned Section 1. The undersigned rendered an original title opinion on May 1, 1974, to Mark Production Company (now Mewbourne Oil Company) covering, among other lands, Tract 218 of the Fairchild Farm Lands in E/2 Section 1. Our title examination was based upon abstracts of title certified by Currier Abstract Company of Artesia, New Mexico, as covering Tract 218 from inception of the records to March 20, 1974, at 8:00 a.m., and as to Tract 218 the records reflect that Tract 218 was acquired by Minnie Warmker and Kate Warmker by Deed dated January 3, 1910. The next conveyance of record affecting Tract 218 is a Quitclaim Deed dated April 26, 1948, in which Katherine D. Warmker and Norma Warmker quitclaimed all of their interest in Tract 218 to the Anna Brown Home for the Aged, an Illinois corporation. Thereafter, Felmont Oil Corporation acquired an Oil and Gas Lease dated August 9, 1973, from the Anna Brown Unit of the Good Samaritan Home of Quincy, Illinois (the successor to the Anna Brown Home for the Aged).

Felmont Oil Corporation was given notice of the proceedings in Case No. 5267 before the New Mexico Oil Conservation Commission in which Order No. R-4831 was entered July 30, 1974, pooling all mineral interests in the Pennsylvanian formation underlying E/2 captioned Section 1 and imposing a 200% penalty clause on non-consenting working interest owners. Thereafter, Mark Production Company proceeded to drill the Federal "B" No. 1 well on E/2 Section 1, which well was commenced August 30, 1974, and completed November 22, 1974. These commencement and completion dates are significant, since all of the interests in Tract 218 now owned by J. V. Fritts and William B. Barnhill were acquired subsequent to the date that the well was drilled and completed.

J. V. Fritts and William B. Barnhill acquired Oil and Gas Leases covering Tract 218 from parties who are the heirs of C. Raymond Buxman, which leases are dated December 26, 1974. At the time of the entry of the Forced Pooling Order none of the parties who executed Oil and Gas Leases to Fritts and Barnhill owned any interest of record in Tract 218 and Mark Production Company had no actual notice at that time of these parties interests, so none of these Buxman heirs were entitled to notice of the forced pooling hearing. Therefore, the Oil and Gas Leases acquired by Fritts and Barnhill from these Buxman heirs, after the completion of the Federal "B" No. 1 well, were subject to the provisions of the Forced Pooling Order and the penalties imposed therein. We rendered an original division order opinion covering all E/2 Section 1 on June 5, 1975, based upon abstracts certified to April 1, 1975, at 7:00 a.m., and as of this time the records still did not reflect any mineral ownership in Tract 218 in any of the Buxman heirs who had executed Leases to Fritts and Barnhill. Therefore, we noted all of the above in our division order opinion as a result of which a quiet title suit was conducted in Cause

No. CV-78-133 in the District Court of Eddy County, New Mexico, in which Final Decree was entered June 12, 1978, finally clarifying of record, only at this time, the heirship of Minnie Warmker and of C. Raymond Buxman. This quiet title suit reflects that Katherine D. Warmker and Norma Warmker were among the heirs of Minnie Warmker, and these parties conveyed all of their interest in Tract 218 to the Anna Brown Home for the Aged. Neither C. Raymond Buxman nor any of his heirs ever placed of record any notice that they were claiming a mineral interest in Tract 218 through Minnie Warmker, and, indeed, neither the ownership of C. Raymond Buxman nor any of his heirs was ever reflected of record in Eddy County, New Mexico, until the conclusion of the quiet title suit on June 12, 1978.

It is our opinion that the Forced Pooling Order is binding upon the working interests under the Oil and Gas Leases acquired by Fritts and Barnhill from mineral owners who owned no interest of record at the time of the forced pooling hearing. At the time of the forced pooling hearing in July of 1974, only the Anna Brown Home for the Aged owned any interest of record in Tract 218, having been conveyed its interest by one of the original owners (Katherine V. Warmker, aka Kate Warmker) and Norma Warmker, one of the heirs of Minnie Warmker. It is also significant that only the Anna Brown Home for the Aged had been paying taxes on Tract 218 for more than the past ten years preceding the forced pooling hearing.

Mr. Fritts attempts to place significance upon the fact that the interest of the Buxman heirs was not acquired through the Anna Brown Home for the Aged, but rather from their ancestor Minnie Warmker, who still owned an interest of record at the time of her death intestate in 1940. However, as of July, 1974, 34 years after the death of Minnie Warmker, nothing had been placed of record to reflect any ownership in Tract 218 by any of the heirs of Minnie Warmker, other than the Quitclaim Deed from Katherine D. Warmker and Norma Warmker to Anna Brown Home for the Aged. The Oil and Gas Lease from the Anna Brown Home to Felmont Oil Corporation purported to cover the entire mineral interest, and at the time of the order Felmont Oil Corporation understood that its Oil and Gas Lease from the Anna Brown Home for the Aged covered the entire mineral estate in Tract 218. It was only after the Forced Pooling Order and after the drilling and completion of the well that the ownership of the Buxman heirs was identified and leased. It should also be noted that the interest of the Buxman heirs had not been established of record within 90 days following the completion of the well, as reflected by our original division order opinion covering E/2 Section 1 and based upon abstracts certified to April 1, 1975.

COTTON, BLEDSOE, TIGHE, MORROW & DAWSON
A Professional Corporation

By:

Tevis Herd
Tevis Herd

TH:cm

ROUGH

dr/

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION COMMISSION

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

CASE NO. 6489

Order No. R-4831-A



ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9:00 a.m.
on March 7, 1979, at Santa Fe, New Mexico,
before the Oil Conservation Commission of New Mexico, hereinafter
referred to as the "Commission."

NOW, on this day of April, 1979, 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 applicants, J. V. Fritts and Wm. B. Barnhill,
seek the review and interpretation of Order No. R-4831 to permit
them the opportunity to join in the drilling of the Federal "B"
Well No. 1 located in Unit P of Section 1, Township 18 South,
Range 26 East, NMPM, Atoka-Pennsylvanian Pool, Eddy County, New
Mexico, and to determine the applicability of the 200 percent
risk factor.

only Fritts appeared

(1) That Mark Production Company drilled said Federal B Well No. 1 on a compulsorily pooled ~~unit~~ 320-acre spacing and production unit consisting of the E/2 of said Section 1 under the terms and provisions of ~~Commissioner's~~ ~~Order~~ Order No R-4831.

(3) That Case No 5267 which ~~was heard in~~ ^{on July 10, 1974, Com'n} ~~Order No R-4831~~ was heard by a ~~Commissioner~~ Examiner upon the application of Mark Production Company to force pool the E/2 of said Section 1.

(4) That notice of said hearing was properly given by the Commission pursuant to Section 65-3-6 NMSA 1953.

(5) That as a result of said notice being properly given, all interest owners in the E/2 of said Section 1 were notified that the tract was the subject of a force pooling case, and were therefore given the opportunity to appear at the hearing.

(6) That as a result of said hearing, the Commission issued the ~~its~~ ^{affixed} Order No. R-4831 which ~~force~~ ^{lands} pooled said ~~acreage~~ ^{and} ~~imposed~~ ^{stipulated} a 200 percent risk factor for those not ^{timely} joining in the drilling of the well, ~~within the time limits set forth in the order.~~

(9) That neither J. V. Fritts and Wm. B. Barahill nor their predecessors in interest in the E/2 of said Section 1 ~~timely~~ joined in the drilling of said Federal B Well No. 1 ~~within said time limit.~~

(8) That the evidence in Case No. 6489 showed that Mark Production Company spudded the Federal "B" Well No. 1 on August 30, 1974, and completed it on November 22, 1974.

(10) That the applicants in this case had no record title to their interest in the E/2 of said Section 1 until January 17, 1975, on which date their leases were recorded in Eddy County.

(11) That the applicants' predecessors in interest did not have record title at the time of the force pooling case held July 10, 1974.

~~inasmuch as~~ the notice of hearing for Case No. 5267, as in all compulsory (10) That, ~~since~~ ^{inasmuch as} all interest owners, whether or not of record, were notified of the ~~force pooling~~ case and were given the opportunity to appear and join in the drilling of said well, ~~any objections at this date are untimely.~~

(11) The application should therefore be denied.

pooling cases, was ~~in~~ ⁱⁿ ~~the~~ ^{the} ~~case~~ ^{case}, and

The opportunity to appear ^{and} testify ^{and to} make their interest known, and ~~as to~~ ^{to} ~~assure~~ ^{themselves} this opportunity to join in the drilling of the well without being subject to the risk penalty provisions of ~~the~~ ~~said~~ Order No R-4831. ~~The subject application is untimely.~~
(13) That the applicants did not avail themselves of this opportunity, and their application at this time is untimely and
(14) ~~The application.~~ should therefore be denied.

IT IS THEREFORE ORDERED

(1) The ~~the~~ application of J. V. Fritts and Wm. B. Barnhill for the opportunity to join in the drilling of the Federal "B" Well No. 1 located in Unit P of Section 1, Township 18 South, Range 26 East, NMPM, Hoke-Pennsylvanian Gas, Eddy County, New Mexico, without being subject to the 200 percent risk factor provided in Division Order No R-4831 is hereby denied.