

Correspondence

Case No. 17

Dec. 1939

ATWOOD & MALONE
LAWYERS

JEFF D. ATWOOD
ROSS L. MALONE, JR.

J. P. WHITE BUILDING
ROSWELL, NEW MEXICO

December 30, 1939

Mr. Carl A. Livingston
Attorney
Oil Conservation Commission
Santa Fe, New Mexico

Re: Iverson Tool Company Petition

Dear Mr. Livingston:

You have no doubt received Mr. Wright's memorandum on behalf of Cabra Springs Oil and Gas Company in the above matter. It was our understanding that each side would file a statement of its position but that it was not contemplated that the petitioner would file a reply brief. For that reason we are not filing a reply brief in the matter and it may now be submitted to the Commission as soon as it is convenient for them to consider it.

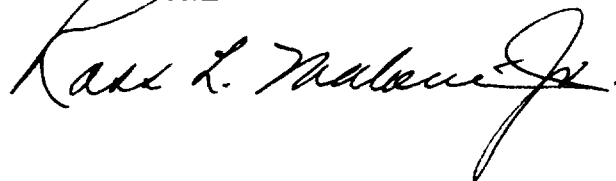
All parties concerned will, of course, greatly appreciate a decision as early as possible.

With best wishes, we are

Very truly yours,

ATWOOD & MALONE

By:



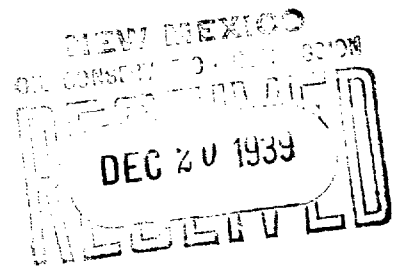
RLM:gb

cc: E. R. Wright

LAW OFFICES

E. R. WRIGHT
SANTA FE, N. M.

Dec. 19, 1939



Oil Conservation Commission,
Santa Fe, New Mexico.

Gentlemen:

Enclosed herewith find original memorandum on behalf of the Cabra Springs Oil and Gas Co. in connection with the application of the Iverson Tool Co. to abandon well in Sec. 22, T. 12 N., R. 22 E.

Very truly yours,


E. R. Wright

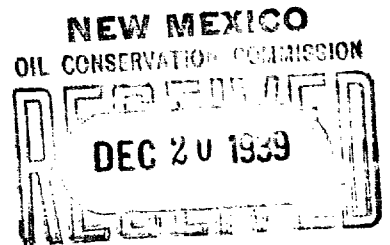
ERW-r

BEFORE THE OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO

IN THE MATTER OF THE PLUGGING)
OF A WELL FOR OIL AND GAS ()
SITUATE IN THE NE ~~NE~~^{NE} ~~NE~~^{NE} OF SEC-)
TION 22, TOWNSHIP 12 NORTH, ()
RANGE 22 EAST, N. M. P. M.,)
SAN MIGUEL COUNTY, NEW MEXICO. ()

No. 17



MEMORANDUM OF CABRA SPRINGS OIL AND GAS
COMPANY

E. R. WRIGHT,
Santa Fe, New Mexico

Attorney for Cabra Springs Oil
and Gas Company

In reply to the memorandum filed by the Iverson Tool Company, the Cabra Springs Oil and Gas Company, hereinafter referred to as Cabra Springs, files this its reply memorandum:-

In petitioner's memorandum it is stated that the only question before the Commission is as to whether or not the well in question is an "abandoned well." We agree generally with this proposition, but make the further contention that in determining whether this well is abandoned, it is the duty of the Commission to take into consideration not only the rights of the respective parties, but also the interest of the public.

In this proceeding now pending before the Commission, we have the following situation:-

A well which has been drilled to the depth of approximately 4200 feet, with a 7-inch casing from the surface to a depth of approximately 4,000 feet, and while it is true that there is water in the hole at the present time, there is nothing to indicate that the well cannot be deepened at a reasonable expense and make a thorough test of the formation. Certainly the completing of such a test is a matter in which the public (people of the state of New Mexico) is vitally interested.

Without going into minute details and merely reviewing the high spots of the testimony taken before the Commission, it appears that prior to 1932 one Hershfield, undoubtedly a wildcat oil promoter, obtained a lease on the Cabra Springs property in his own name. Thereafter he organized various companies and by the sale of stock and oil interests, raised money to start the drilling of a well about a mile from the

site of the present well. This well was drilled to a depth of 2800 feet and then had to be abandoned because of mechanical difficulties, with the result that either late in 1932 or early in 1933 drilling was commenced on the present well. This drilling continued until the end of the year 1936. It appears from the testimony of Mr. Edwards that Hershfield had misrepresented conditions to those who had invested money with him, with the result that there was practically no drilling in 1937 until late in the year 1937, when some 40 feet of hole was drilled, and then Hershfield, in January of 1938, was forced to sever his connections with the Cabra Springs Oil and Gas Company and Mr. Edwards became President of the company and since that date has been endeavoring to rehabilitate the affairs of the Cabra Springs Oil and Gas Company.

It is not necessary to go into the details of his testimony except that it appears that he has cleared up between some \$40,000 and \$50,000 worth of indebtedness of the company by settlement, compromise and otherwise; that the lease on the Cabra Springs property is now in good standing and paid up until the end of 1940. It also appears from the testimony that the only claims outstanding which will remain to be adjusted, which could cause any complications in the affairs of the company, are one of Gross Kelly & Company of Las Vegas, New Mexico, to the amount of about \$1,700.00, and the claim of the caretaker, amounting to something over \$400.00. Mr. Edwards testified that both of these claims could be paid and adjusted through his efforts. Mr. Edwards also testified that over the course of two years he and his backers have advanced approximately \$10,000.00 in an effort to rehabilitate the company.

It is not necessary to go into the details of the law suit at Las Vegas, which resulted in the foreclosing of the

mechanic's lien held by the Iverson Tool Company and in a judgment and sale to the Iverson Tool Company of the rig, tools, casing, etc., in May of this year, the Iverson Tool Company bidding the sum of \$3,000.00, and the judgment itself as of the day of sale amounting to \$4,093.35 plus costs of advertising and special master's fees. It is also in evidence that since the date of the entry of judgment, which was in February of 1939, the Iverson Tool Company has expended approximately \$60.00 a month for a caretaker upon the property.

The Commission heard the testimony of both Mr. Iverson and Mr. Edwards relative to the efforts made by Mr. Edwards to settle, pay off and discharge the judgment since the date of the sale. The Commission also heard Mr. Edwards' testimony that he was sure that he could raise the necessary money to pay off and discharge this judgment. While it is true, as stated by counsel for the petitioner, that under the special oil well lien statute there is no equity of redemption, we take the position that this special oil well lien statute (Chap. 11, Session Laws of 1931) and the act giving the Commission authority to determine when an oil well is an abandoned well and prescribing the conditions under which a casing in an oil well may be pulled and the oil well plugged, must be read together, and certainly, if it appears to the Commission in a case of this kind that the lien claimant or creditor can be fully reimbursed and that the public interest will be best served by holding that the well is not abandoned and that such holding will give an opportunity to fully test the particular structure in question and determine whether or not oil exists therein, then, as we read the two acts, the Commission has the right to say to the parties in this proceeding --

"We find that the public interest does not justify us in

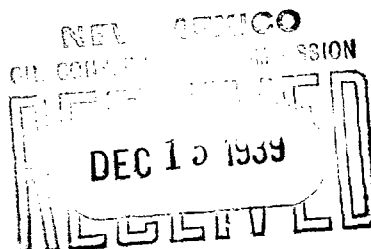
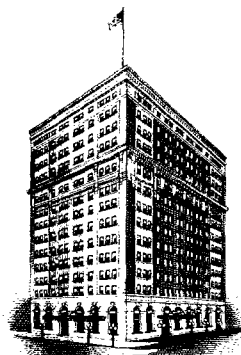
holding that this well is an abandoned well at the present time and we will give the Cabra Springs Oil and Gas Company a reasonable opportunity to pay off the judgment and thereby redeem the oil well equipment, notwithstanding the fact that the statute does not give any such right."

A clear reason for this is that it is known to the Commission that the casing in this well cannot be pulled without destroying the hole and making it impossible for Cabra Springs to obtain any benefit from the very heavy expenditure heretofore made in drilling the hole.

We, therefore, submit that the Commission should find that this well is not abandoned at the present time, and give the Cabra Springs Oil and Gas Company, and particularly Mr. Edwards further reasonable opportunity to raise the money to fully reimburse the Iverson Tool Company.

E. R. WRIGHT,
Attorney for Cabra Springs Oil
and Gas Company,
Santa Fe, New Mexico.

Handwritten note:
J. H. H. H.
12/12/39



HOTEL

UTICA

MOHAWK VALLEY HOTEL COMPANY, INC.
OPERATORS

UTICA, NEW YORK

12/12/39

Oil Conservation Commission
Santa Fe, N.M.

Gentlemen:

In my letter of yesterday written to
you, I made an error in dates.

I said I was Pres. of the Cabra Springs
Oil and Gas Co. until Jan 18th 39..it should have
been 1938.

Please note this correction.

Very truly,

H. A. Hershfield
H.A. Hershfield

Mr. H. A. Hershfield
c/o Mrs. M. M. Goodman
802 West Marquette Street
Albuquerque, New Mexico

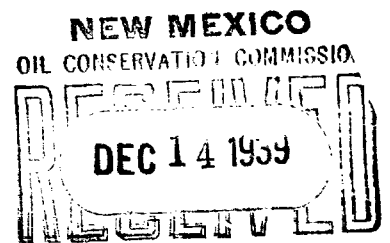
This will acknowledge receipt of your letter of December 11, with reference to the above captioned case in which the Iverson Tool Company is seeking to have determined the status of the well known as the Cabra Springs Oil and Gas Company-North American Investment Company No. 1.

Very truly yours,

Frank Worden
Commissioner of Public Lands
and Secretary of the New
Mexico Oil Conservation Commission

FW:ik

New York City, N.Y.
Dec. 11th. 39.



New Mexico Oil Conservation Commission;
Santa Fe, N.M.

Gentlemen:

I have been informed that you have under consideration the allowing of the abandonment of the Cabra Springs Well in San Miguel County; I would like to know what you have decided to allow in this matter, and will try and explain herein my interest in the matter.

This well was drilled under my supervision as I was the President of the Cabra Springs Oil and Gas Company until January 18th. 1939.

At that time I resigned and Mr. D. J. Edwards was made President, due to the fact that he went into a written contract with me, in which he agreed to finish the well and drill another one on the North Structure of the Cabra Springs Ranch, and pay all outstanding bills owed in the Company's name or my name (as many firms carried their accounts in my name).

I have tried many times to get reports from the Secretary of the company, and only last week had a letter from Mr. George W. McMahon 5418 Russell Ave. Hollywood, Cal. the Company Secy. saying he had a letter from Edwards in which he stated that the Iverson matter was taken care of and all would soon be all right.

Iversons should never have been able to get title to this property, and I suppose under the circumstances the only way to get it back is to pay them what is due them and get this property back where it belongs with the stockholders, I am writing you to kindly give me what information you can as to the present status of the well and your decision in the matter.

If Mr. Edwards had carried out his contract with me he was to receive half of my stock in the company, in as much as this has not been done, I still have all my stock which is control if I want it to be, and if nothing has been done and Edwards cannot show me that he is going to do something, then in that case I think it only fair to all the stockholders, that I call a meeting and put it right up to them as to paying the Iverson claim and retaining their property.

If you would like copy of my contract with Edwards I will gladly have a copy made and mail it to you, or can see you in person some time between Xmas and New Years, as I intend to be in Albuquerque about that time.

When I put Edwards in as Pres. I did what I thought was best for all stockholders having their interest in mind and as I still feel the same, that is the reason for this letter to you.

I am sending a copy of this letter to Iversons, as during the last ten years I have paid them many thousand dollars and our relations were all most pleasant, and I have no fear as to them remaining the same, as I am intending to do some drilling on the Jones Ranch south of Cabra.

I have addressed Mr Edwards allso on this matter and will try and see him allso, in order to learn his accomplishments and plans for the future, something must be done on this property soon as the lease runs out next year.

At present I am the Whitehall Hotel 100th and Broadway. N.Y. but intend leaving in a few days so kindly address your answer to me care Mrs. M.M. Goodman.. 803 West Marquette st Albuquerque. N.M.
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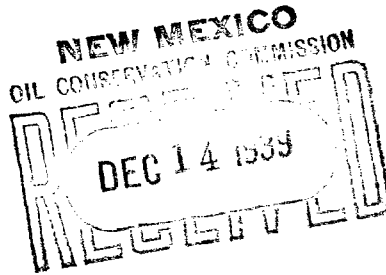
Thanks for any information you can give me, and as to who is representing the Cabra Springs Oil and Gas Company in the matter.

Sincerely yours.

H.A. Hershfield
H.A. Hershfield

JEFF D. ATWOOD
ROSS L. MALONE, JR.

ATWOOD & MALONE
LAWYERS



J. P. WHITE BUILDING
ROSWELL, NEW MEXICO

December 12, 1939

Oil Conservation Commission
Santa Fe, New Mexico

ATTENTION: Carl A. Livingston,
Attorney.

RE: No. 17, Petition of
Iverson Tool Company.

Gentlemen:

In accordance with the suggestion of the Commission, we are enclosing herewith a statement of our position in this case which we trust will be of assistance to the Commission in reaching its conclusion in this matter. We are enclosing three copies of the memorandum so that one copy will be available for each member of the Commission.

May we again respectfully direct the attention of the Commission to the fact that because of the many previous delays in this matter, an early decision will be greatly appreciated by all of the parties concerned.

We have forwarded a copy of this letter and a copy of our memorandum to Judge E. R. Wright, attorney for Cabra Springs Oil and Gas Company.

With best wishes, we are

Very truly yours,

ATWOOD & MALONE

By: 

RLM:gb

cc: E. R. Wright, Esq.

DEC 14 1905

BEFORE THE OIL CONSERVATION COMMISSION
STATE OF NEW MEXICO

IN THE MATTER OF THE PLUGGING
OF A WELL FOR OIL AND GAS
SITUATE IN THE NE¹₄NE¹₄ OF SEC-
TION 22, TOWNSHIP 12 NORTH,
RANGE 22 EAST, N. M. P. M.,
SAN MIGUEL COUNTY, NEW MEXICO. }

No. 17

MEMORANDUM OF PETITIONER,

IVERSON TOOL COMPANY

ATWOOD & MALONE,
Roswell, New Mexico

Attorneys for Petitioner

This memorandum is filed at the suggestion of the Commission to clarify the position of petitioner in this matter. It will be limited to this proposition as we assume that there is no question as to the Commission's authority to act and that the Commission, having heard the testimony, is as familiar with it as counsel and nothing will be gained by a detailed "rehash" thereof.

At the outset, may we state that there is only one question before the Commission in this case. Is the well in question an abandoned well? It was shown that there has been no drilling for two years, that water is standing in the hole and has been for some three years, and that the owner of the leasehold has no funds on which to operate. If the well is an abandoned well, then it should be plugged and the Commission has the power to authorize petitioner to plug it in accordance with the plans for operations heretofore submitted to the Commission.

The question of whether or not Cabra Springs Oil and Gas Company (which we will hereafter refer to as Cabra Springs) should be permitted additional time to repurchase the well and equipment from the petitioner, which Cabra Springs apparently attempted to inject into this matter at the hearing has no place in this proceeding whatever. As the Commission understands, Iverson Tool Company is the absolute owner of all equipment, supplies, rig, casing above the ground and in the

hole, etc., and has been authorized by the District Court to take any steps necessary to pull the casing, remove the property, etc. The law does not provide any right of redemption to Cabra Springs nor does it require the purchaser at the foreclosure sale to resell the equipment to Cabra Springs. It could not be contended that this Commission has the power to require petitioner to sell the equipment to Cabra Springs at any price whatever or to permit a redemption. As the matter stands, Cabra Springs had some five months during which it had an absolute right to redeem the property and since the expiration of its absolute right, approximately five months has expired during which it has been unable to make any cash offer to repurchase the property. It has no funds for that purpose at the present time. By reason of these facts, the petitioner has determined that it is now unwilling and will not sell the property to Cabra Springs under any circumstances and that it will stand upon its ownership thereof.

The facts disclosed by the testimony and which establish the well in question as an abandoned well are briefly these:

The well in question was in process of drilling intermittently during a period from 1932 to 1936. Since 1936 no drilling operations whatever have been carried on at the well with the exception of the thirty day period in the latter part of 1937, during which approximately forty feet were drilled. Since that time, the well has been standing with water in the hole and no operations carried on of any kind. Cabra Springs

has no funds with which to proceed. It appears from the testimony that the hole is in a very bad condition and that it would be extremely expensive for any person to case off the water and continue drilling. In addition to these facts, we have a present situation which it seems conclusively establishes the fact that this is an abandoned well. The rig, camp houses, water facilities and casing above the hole and in the hole all belong to Iverson Tool Company. It is unwilling to permit the use by Cabra Springs of any of this equipment to continue drilling even if Cabra Springs had the money to do so, which it has not. Admitting for purposes of argument that Cabra Springs owns the hole as distinguished from the casing therein, the situation is at an absolute impasse. It will be impossible for Cabra Springs to drill further under any circumstances as it does not own and cannot acquire the rig, casing, equipment, etc. It is impossible for Iverson Tool Company to carry on any drilling operations (which it has no intention of doing) for the reason that while it owns the rig and casing in the hole, it does not own the leasehold estate.

In view of the situation, it seems apparent that this is an abandoned well. It is a well which no one has the right to drill further. No operations have been carried on for the past two years and it is a legal impossibility for either of the interested parties to carry on drilling operations in the future on account of the diversion in ownership of leasehold estate and the rig and casing.

By the same token, Cabra Springs could not plug and abandon this well without the consent of Iverson Tool Company, which is the owner of the rig and casing, etc., so that if the well is ever to be plugged and abandoned and the public interest in the protection of sub-surface strata protected, it must be under an order of this Commission adjudicating the well to be abandoned and permitting its plugging.

The President of Cabra Springs, in testifying before the Commission was apparently seeking sympathy rather than asserting legal rights in the matter. We submit, however, that he has had every reasonable opportunity to salvage this property and has not done so. Almost two years have elapsed since he took over operation of the company and almost a year has elapsed since judgment was entered in the case, yet he has not availed himself of the legal right prior to sale or the offer of Iverson Tool Company subsequent to sale to reacquire title to this property. This is in spite of the fact that according to his own testimony during said time he has had some \$10,000.00 in cash available for payment of the debts of Cabra Springs.

If there is any question of good faith in this matter, we believe that its total absence on the part of Cabra Springs was established by its failure to take care of the labor claim of its caretaker, forcing the caretaker to file a lien upon the property and placing him, to all intents

and purposes, in the same position now occupied by Iverson Tool Company.

This well started out as a promotion proposition under the direction of Mr. Hershfield and from the statement of Mr. Edwards on the witness stand as to the \$5.00, \$10.00 and \$25.00 amounts which he has received since he has been president, it is apparently continuing in the same manner. So long as this well remains unplugged, we have no doubt that the public generally will be solicited to invest funds therein, in spite of the fact that, as we have pointed out, should the funds be raised, Cabra Springs cannot continue drilling or use any of the equipment now located at the well for the reason that it no longer owns it.

In the light of the experience which the Commission and the State of New Mexico has had with similar promotion propositions, we submit that it is very much in the public interest to have this matter disposed of at the earliest possible time in a way which will prohibit the exploiting of the public on the basis of the existence of a well when the public in all probability is not advised as to all of the circumstances surrounding the well.

In conclusion, may we again state that there is only one question in this case: Is the well in question an abandoned well? Similarly, the Commission has only two alternatives in this case: First, to so adjudicate the well and authorize its plugging by petitioner; second, to determine

that the well is not abandoned and thereby to permit it to continue to stand indefinitely as it has for the past two years without any hope of drilling being continued in the future. The new management of the Cabra Springs has failed for two years in an effort to find "an angel". Faced as it was with the possible loss of all of the equipment during that period, it no doubt exhausted every recourse in an effort to produce such an "angel".

As we view it, only one conclusion may be drawn from the facts before the Commission. To all intents and purposes the well has been standing idle for three years. There would not even have been a caretaker at the well if Eakins had resigned when Cabra Springs quit paying their salary instead of continuing on with the hope that by filing a lien they might ultimately get their money. The lease being owned by Cabra Springs and the casing in the hole and all equipment being owned by Iverson Tool Company, neither party can drill the well further in the future, even if by some miracle Cabra Springs should obtain the money it has been seeking for two years. In the future, if the well is not plugged, this impasse would seem to indicate that it will stand as it has stood until such time as this Commission adjudicates it an abandoned well and has it plugged. There is not even in existence a bond from Cabra Springs to the State whereby at some later date this Commission could require Cabra Springs to plug the well or do it at the expense of the bondsmen. Under these

facts, if any well can ever be considered abandoned, this well occupies that status. The public interest requires that it be plugged. The Iverson Tool Company has been authorized by the District Court of San Miguel County, which had jurisdiction over all of the parties, to take all steps necessary to remove the casing from the well. We believe that this alone is sufficient to permit Iverson Tool Company to proceed, but have asked that the well be adjudicated by the Commission as an abandoned well prior to such action. Certainly petitioner is the logical person to be authorized to take this action. It is the only interested party which now has a bond filed with the Commission.

We therefore respectfully submit that the well in question is an abandoned well and should be so adjudicated by this Commission and that the application of Iverson Tool Company should be granted.

Respectfully submitted,

ATWOOD & MALONE

By *Lawrence L. Malone Jr.*
Attorneys for Petitioner
Roswell, New Mexico