SHELL OIL COMPANY

MIDLAND AREA

MAILING ADDRESS
P. O. BOX 1509
MIDLAND, TEXAS

GENERAL OFFICES
PETROLEUM BUILDING
MIDLAND, TEXAS

September 30, 1954

Mr. Hawley C. Kerr
P. O. Box 1650
Tulsa, Oklahoma

Mr. Willard F. Kitts and
Mr. Mel T. Yost
P. O. Box 871
Santa Fe, New Mexico

In Re: Phillips Petroleum Company v. Oil Conservation Commission, et al - No. 11422, In the District Court of Lea County, New Mexico.

Gentlemen:

Herewith we enclose to each of you a copy of the Interrogatories propounded to Phillips Petroleum Company by defendant Shell Oil Company, which Interrogatories we have today served on Phillips Petroleum Company by mailing them to Mr. C. J. Roberts, its attorney of record.

Very truly yours,

Richard L. Hughston, Attorney

RLH:AW
Enc.

GILBERT, WHITE AND GILBERT
ATTORNEYS AND COUNSELORS AT LAW
BISHOP BUILDING
SANTA FE, NEW MEXICO

CARL H. GILBERT
L. C. WHITE
WILLIAM W. GILBERT
SUMNER S. KOCH

July 1, 1954

Oil Conservation Commission
Santa Fe, New Mexico

Attention: Mr. Spurrier
Re: Phillips Petroleum Company
vs Oil Conservation Commission of
the State of New Mexico

Gentlemen:

Enclosed herewith please find Notice of Setting which we received from the Clerk of the District Court of Lea County. Please note the cause has been set for hearing July 23 at 9 o'clock a.m. at the Court House in Lovington, New Mexico.

As a matter of information this notice was sent to the undersigned by reason of the fact that at the time of the filing the above cause I was one of the Attorneys for the Oil Conservation Commission, and their attorney of record in the cause.

Wishing you success in the final outcome, I am

Very truly yours,

L. C. WHITE

LCW-c
encl.

IN THE DISTRICT COURT OF LEA COUNTY,
STATE OF NEW MEXICO

PHILLIPS PETROLEUM COMPANY, Plaintiff,	)	
v.	)	NO. 11422
OIL CONSERVATION COMMISSION OF NEW MEXICO, ET AL., Defendants.	)	

INTERROGATORIES PROPOUNDED TO PHILLIPS PETROLEUM COMPANY BY DEFENDANT SHELL OIL COMPANY

TO PHILLIPS PETROLEUM COMPANY:

Shell Oil Company, defendant, propounds the following interrogatories to Phillips Petpleum Company, plaintiff, under Rule 33 of the Rules of the District Courts of the State of New Mexico, and request Phillips Petroleum Company to deliver answers thereto within the time provided therefor in said rules, to-wit:

Interrogatory No. 1: State the name and address of the officer or agent who is answering these interrogatories on behalf of Phillips Petroleum Company.

Interrogatory No. 2: State the position with Phillips Petroleum Company of the person named in answering Interrogatory No. 1.

Interrogatory No. 3: State the duties of the officer or agent named in answering Interrogatory No. 1.

Interrogatory No. 4: State as to each well owned or operated by Phillips Petroleum Company that is or was completed so as to produce simultaneously from two or more oil or gas or oil and gas accumulations:

(a) The name thereof;

(b) The field and State of the location thereof;

(c) The depth and name of each formation in which a completion was made for separate production;

(d) The type of the reservoir recovery mechanism (i.e. dissolved gas, water drive, gas cap expansion, etc.) in each such formation and the degree of effectiveness thereof;

(e) The dates of each completion and each abandonment of a completion in a separate reservoir;

(f) The bottom hole pressure in each reservoir in which the well was completed at the time of completion and if production from any reservoir has been abandoned at the time of abandonment thereof;

(g) The reservoir, if any, from which artificial lift is occurring or has occurred;

(h) The date, cost and nature of each workover thereon; and

(i) Each item of below surface equipment replaced in each such workover.

Interrogatory No. 5: Has Phillips Petroleum Company ever opposed before a State Oil and Gas Administrative Agency the application of another operator for a permit to dually complete an oil-oil well?

Interrogatory No. 6: If you have answered the immediately preceding interrogatory in the affirmative, list the wells, fields and States involved in your oppositions.

Interrogatory No. 7: Is it not a fact that so recently as August 11, 1954, Phillips Petroleum Company offered to join Shell Oil Company in drilling a Wolfcamp well on land in which each of those companies owned an undivided mineral interest, to-wit, the Northwest Quarter ($NW\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section 26, Township 14 South, Range 37 East, Lea County, New Mexico, in the Denton Field, but refused to join it in drilling a well at said location to the Devonian formation?

Interrogatory No. 8: What is your definition of "paraffin intermediate base" crude.

Interrogatory No. 9: List each dual oil-oil well owned or operated by Phillips Petroleum Company from which paraffin intermediate base crude, as you define that term, is produced.

Interrogatory No. 10: What is your definition of "sour" oil.

Interrogatory No. 11: List each dual oil-oil well owned or operated by Phillips Petroleum Company from which sour oil,as you define that term, is produced.

Interrogatory No. 12: Give an itemized statement of the cost of drilling and completing a Wolfcamp well in the Denton Field, Lea County, New Mexico.

Interrogatory No. 13: Give the highest estimate that any of your reservoir engineers has made of the amount of oil that will be recovered by a Wolfcamp well in the Denton Field, Lea County, New Mexico.

Interrogatory No. 14: What is your estimate of the amount of oil that will be recovered by a Wolfcamp well on the quarter-quarter section as to which you are here seeking a permit for a dual completion.

Interrogatory No. 15: State the amount by which the estimate given in the answer to the immediately preceding interrogatory is above or below the average recovery to be expected from a Wolfcamp well in the Denton Field, according to your estimate, and why in your opinion it is above or below such average.

Interrogatory No. 16: As to oil-oil duals, do you agree that the cost of operation, including additional expense incident to bottom hole pressure surveys, to periodic checks for communication between reservoirs and to workovers, is higher than that for operating the two wells necessary to replace the oil-oil dual?

Interrogatory No. 17: As to oil-oil duals, do you agree that more workovers will occur thereon on an average than would occur on the two wells necessary to replace the oil-oil dual.

Interrogatory No. 18: As to oil-oil duals, do you agree that workovers thereon will be more expensive on an average than those on a well completed to produce from only one reservoir.

Interrogatory No. 19: Did you furnish estimates of costs to Atlantic Refining Company of the Wolfcamp wells drilled on lands in Section 11, Township 15 South, Range 37 East, in the Denton Field, Lea County, New Mexico, in which both you and Atlantic Refining Company owned interests?

Interrogatory No. 20: If you have answered the immediately preceding interrogatory in the affirmative, please attach copies of such estimates.

Interrogatory No. 21: Give the itemized statements of the actual

costs of the Wolfcamp wells drilled on the lands mentioned in Interrogatory No. 19.

Interrogatory No. 22: List each dually completed well (oil-oil, gas-gas, or oil-gas) where after a workover you have had difficulty in returning one or the other of the formations to production, the location thereof, and the date of the workover.

SETH AND MONTGOMERY
111 San Francisco Street
Santa Fe, New Mexico

PAXTON HOWARD and
RICHARD L. HUGHSTON
P. O. Box 1509
Midland, Texas

By Richard L. Hughston

ATTORNEYS FOR SHELL OIL COMPANY

CERTIFICATE OF SERVICE

I here certify that on this 30th day of September, 1954, a copy of the foregoing Interrogatories to the Phillips Petroleum Company was served on Mr. C. J. Roberts, Attorney for Phillips Petroleum Company by placing copy of same in the United States Post Office, Midland, Texas, duly stamped and addressed to him at P. O. Box 1751, Amarillo, Texas.

Richard L. Hughston

IN THE DISTRICT COURT OF LEA COUNTY
STATE OF NEW MEXICO

PHILLIPS PETROLEUM COMPANY,

Plaintiff,

vs.

OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO, COMPOSED OF Hon. Edwin L. Mechem, Governor and Chairman, Hon. E. S. Walker, Commissioner of Public Lands, Member, and Hon. Richard R. Spurrier, State Geologist and Secretary,

Defendants.

No. 11422

ANSWER

Comes now the above named defendant and in answer to the complaint herein states:

1. It admits the allegations contained in Paragraphs numbered 1, 2 & 3.

2. In answer to Paragraph numbered 4, defendant admits that plaintiff is and at all material times was engaged in the production of oil and gas within the State of New Mexico and as to the remaining allegations contained therein this defendant does not have sufficient information or knowledge upon which to form a belief as to the truth of the matters therein contained and therefore denies the same.

3. Defendant admits the allegations contained in Paragraph numbered 5.

4. In answer to paragraph numbered 6, defendant expressly denies that plaintiff now is or at any material time has been adversely affected by the orders of the Commission therein complained of or any other order of this Commission material to the issues involved herein.

5. In answer to paragraph numbered 7 of the complaint defendant expressly denies that said well can or is capable of being non-wastefully operated so as to produce from both the Devonian and Wolfcamp formations as therein alleged; and in further answer to said allegations contained in said paragraph defendant states that the dual oil-oil completion of said well as contemplated

GILBERT, WHITE AND GILBERT
ATTORNEYS AT LAW
SANTA FE, NEW MEXICO

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and proposed by plaintiff is [illegible], wasteful and contrary to the prudent and reasonable conservation practices within the oil industry, and that said plaintiff can economically produce oil from each formation by the drilling and operation of a separate well to each oil reservoir or formation in question.

6. Defendant admits the allegations contained in paragraphs numbered 8, 9, 10, 11 and 12 of the complaint.

7. Defendant denies each and every allegation contained in paragraphs numbered 13, 14 and 15 of the complaint.

WHEREFORE, defendant prays that plaintiff take nothing by its complaint and that this Honorable Court enter its order affirming each and all of the orders of the Commission complained of by plaintiff herein.

OIL CONSERVATION COMMISSION OF THE
STATE OF NEW MEXICO

By Lewis S.

H/ Geo. A. Graham

Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that I have this 29 day of January, 1954, mailed a copy of the foregoing Answer to James W. Kellahin addressed to him at P. O. Box 361, Santa Fe, New Mexico, he being one of the attorneys of record for the Complainant herein.

Lewis S.

One of the Attorneys for Defendant.

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GILBERT, WHITE AND GILBERT
ATTORNEYS AT LAW
SANTA FE, NEW MEXICO

IN THE DISTRICT COURT OF LEA COUNTY
STATE OF NEW MEXICO

PHILLIPS PETROLEUM COMPANY
PLAINTIFF

No. 11422

OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO, Composed of Edwil L.Mecham, Governor et al
DEFENDANT

NOTICE OF SETTING

To JASON KELLAHIN, P.O°Box 361, Santa Fe, New Mexico
Attorney for Plaintiff

To GILBERT,WHITE and GILBERT, Santa Fe, New Mexico
Attorney for Defendant

You are hereby notified that the above styled and numbered cause has been set for hearing at 9 o'clock a m., on the 23rd day of JULY 19 54, at the Court House in Lovington, County of Lea, New Mexico.

W.M.BEAUCHAMP
Clerk of the District Court, New Mexico.

By: Lucille B Sisler
Deputy

SUMMONS

IN THE DISTRICT COURT, COUNTY OF LEA, STATE OF NEW MEXICO

PHILLIPS PETROLEUM COMPANY

, Plaintiff

VS.

NO. 11422

OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO, composed of Hon. Edwin L. Mechem, Governor and chairman, Hon. E. S. Walker, Commissioner of Public Lands, Member, and Hon. Richard R. Spurrier, State Geologist and Secretary, Defendant

Defendants

THE STATE OF NEW MEXICO

TO: Oil Conservation Commission of the State of New Mexico,

Hon. Edwin L. Mechem, Chairman

Hon. E. S. Walker, Member

Richard R. Spurrier, Secretary

Greeting: Defandants

You are hereby commanded to appear before the Fifth Judicial Court District of the State of New Mexico, sitting within and for the County of Lea, that being the county in which the complaint herein is filed, within thirty days after service of this summons, then and there to answer the complaint of Phillips Petroleum Company, Plaintiff in the above cause.

You are notified that unless you so appear and answer, the plaintiff will apply to the court for the relief demanded in the complaint together with costs of suit.

WITNESS, the Honorable C. ROY ANDERSON, District Judge of the Fifth Judicial District Court of the State of New Mexico, and the Seal of the District Court of Lea County, this 29th day of December A. D., 19 53

Wm Beauchamp
Clerk of the District Court.

Seal

By
Deputy.

A statement of the nature of the action in general terms, viz: Complaint Attached

Wm Beauchamp
Clerk of the District Court.

By
Deputy.

IN THE DISTRICT COURT IN AND FOR LEA COUNTY, NEW MEXICO

FIFTH JUDICIAL DISTRICT

STATE OF NEW MEXICO COUNTY OF LEA

PHILLIPS PETROLEUM COMPANY,
Complainant

v.

OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO, composed of Hon. Edwin L. Mechem, Governor and Chairman, Hon. E. S. Walker, Commissioner of Public Lands, and Hon. Richard S. Spurrier, State Geologist and Secretary,
Defendants

No. 11422

C O M P L A I N T

Comes now Phillips Petroleum Company, a corporation, organized, created and existing under and by virtue of the laws of the State of Delaware, with a permit to do business and doing business in the State of New Mexico, hereinafter called complainant, and complaining of the Oil Conservation Commission of the State of New Mexico, composed of the Hon. Edwin L. Mechem, Governor of the State of New Mexico, Chairman, Hon. E. S. Walker, Commissioner of Public Lands, Member, and Hon. Richard S. Spurrier, State Geologist of the State of New Mexico and Secretary, hereinafter referred to as Commission, and for cause of action against the Commission alleges:

1.

The complainant, Phillips Petroleum Company, is a corporation organized, created and existing under and by virtue of the laws of the State of Delaware, with a permit to do business and doing business in the State of New Mexico. The Oil Conservation Commission of New Mexico is a statutory body created by virtue of the laws of the State of New Mexico and with the power to sue and be sued, and composed of the Hon. Edwin L. Mechem, Governor of the State of New Mexico, Chairman, the Hon. E. S. Walker, Commissioner of Public Lands, Member, and the Hon. Richard S. Spurrier, State Geologist and Secretary.

2.

Complainant alleges that the official place of residence of the members of the Oil Conservation Commission of the State of New Mexico, and where each

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may be found for the purpose of the service of process, is at Santa Fe, in Santa Fe County, State of New Mexico.

3.

The Oil Conservation Commission of the State of New Mexico as constituted is a statutory agency vested with power to limit and prorate production of crude petroleum and natural gas in the State of New Mexico. As a statutory agency it is charged with the proper administration and enforcement of all laws, rules and regulations pertaining to the conservation and proration of oil and gas production, and as such duly constituted agency has exercised its delegated authority in relation to the complainant as hereinafter alleged.

4.

At all times hereinafter alleged, Phillips Petroleum Company has been and still is engaged in the business of producing oil and gas in the State of New Mexico. It is the owner of an oil well known as its Fonso No. 1 well, located in the NW/4 NW/4 Section 35, Township 14 S., Range 37 E., N.M.P.M. in the Denton field in Lea County, New Mexico, on which it holds a good and valid and subsisting oil and gas lease. As the owner of the Fonso No. 1 well it is, within the definition of the term owner as used in the Conservation Statutes of the State of New Mexico, vested with the right to drill into and produce oil and gas from the Denton Devonian formation and the Denton Wolfcamp formation which overlies the Denton Devonian formation in the Denton field, and appropriate the production of the oil and gas to its own use.

5.

That the Commission has and by statute is given jurisdiction and authority over all matters relating to the conservation of oil and gas in the State of New Mexico, and of the enforcement of all provisions of the Oil and Gas Conservation Act, and of any other law of the State of New Mexico relating to the conservation of oil and gas. That the Commission has the power and jurisdiction, authority and capacity to prescribe rules and regulations and issue orders pertaining to and relating to the conservation of oil and gas in the State of New Mexico.

6.

That at all times hereinafter alleged Phillips Petroleum Company has been and still is engaged in the business of producing oil and gas in the State

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of New Mexico. As an oil and gas producer it is and has been and now is adversely affected by a recent order of the Commission with respect to its property and property rights in Cause No. 557 before the Commission and by Orders R-351 and R-351-A issued in Cause No. 557.

7.

Phillips Petroleum Company alleges that on and prior to July 17, 1952, it completed an oil well in the Devonian formation in the Denton field in Lea County, New Mexico, known as its Ponzo No. 1 well, located in the N/4 NW/4 Section 35, Township 14 S, Range 37 E, N.M.P.M., Lea County, New Mexico. The well was completed at a plug-back total depth of 12,687 feet. That in completing the well it drilled through the Wolfcamp formation, which overlies the Devonian formation which is reached at a lesser depth. That the Ponzo Well No. 1 is capable of being non-wastefully operated so as to produce both from the Devonian formation and the Wolfcamp formation without the necessity of drilling an additional well to produce oil encountered in the well bore of the Ponzo Well No. 1 in the Wolfcamp formation.

8.

On June 15, 1953, and in compliance with the provisions of Rule 112 of the Commission, Phillips Petroleum Company filed its application requesting permission of the Commission to dually complete its Ponzo Well No. 1 so as to produce oil from both the Devonian and the Wolfcamp formation in the Denton field.

9.

That due notice was given to all interested parties of the application of Phillips Petroleum Company to dually complete its well and thereafter a hearing was held before the Commission in Santa Fe, New Mexico, on July 16, 1953. That on September 8, 1953, the Commission duly entered its Order No. R-351, dated August 28, 1953, denying to Phillips Petroleum Company permission to dually complete its Ponzo Well No. 1.

10.

That in due time after the entry of Order No. R-351 and on September 21, 1953, Phillips Petroleum Company filed with the Commission its petition for a re-hearing in Cause No. 557. On September 28, 1953, the Commission, by its Order No. R-351-A, granted a re-hearing to Phillips Petroleum Company.

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11.

That pursuant to the Order of Re-Hearing, a re-hearing was had before the Commission on October 15, 1953. On December 24, 1953, the Commission entered its Order No. A-351-B, dated December 10, 1953, denying Phillips Petroleum Company permission to dually complete its Conzo No. 1 Well.

12.

That attached hereto and made a part of this complaint and by reference thereto incorporated herein for all purposes, are true and correct copies of the Orders of the Commission A-351 and A-351-B.

13.

Phillips Petroleum Company alleges that by virtue of the issuance and entry of Orders Nos. A-351 and A-351-B, it has exhausted its administrative remedy before the Commission and that it is a person in interest and affected by the Orders, and as such prosecutes its appeal therefrom to this Court.

14.

Phillips Petroleum Company alleges that the action of the Commission in denying to it permission to dually complete its well is unreasonable, arbitrary, confiscatory, illegal, erroneous, and void, and deprives it of its property and a valuable property right without due process of law upon each and all of the grounds and for each and all of the reasons following:

(a) The orders are not supported by the evidence and there is no substantial evidence to support the orders.

(b) The findings of the Commission are vague and indefinite, ambiguous and doubtful, and wholly insufficient to support the orders of the Commission.

(c) That the findings of fact of the Commission are not supported by substantial evidence and are contrary to the evidence, and are not supported by any evidence.

(d) That the testimony offered and exhibits introduced clearly show that the dual completion of the well will not subject such well to operational hazards, that no serious danger of inter-zonal communication exists, and that reservoir conditions are highly favorable to the dual completion of the well as proposed, and that the equipment proposed to be used will afford adequate

and ample protection to all producing horizons, all of which was clearly shown by the testimony and exhibits at the hearings, and that such dual completion will result in the prevention of waste and the protection of correlative rights.

(e) That the orders of the Commission were not entered in accordance with law.

(f) That the orders will require the drilling of an excessive number of wells with attendant risks and economic loss.

15.

That each and all of the grounds of error as above alleged were contained in the petition for rehearing filed with the Commission, and were urged upon the Commission and were acted upon by the Commission at the hearings.

WHEREFORE, premises considered, Phillips Petroleum Company prays that proper process be issued to the New Mexico Oil Conservation Commission of the State of New Mexico, composed of the Hon. Edwin L. Mechem, Governor of the State of New Mexico, Hon. E. S. Walker, Commissioner of Public Lands of the State of New Mexico, and Hon. Richard H. Spurrier, State Geologist of the State of New Mexico, commanding it and them in terms of law to appear and answer the Complaint of Phillips Petroleum Company, and that upon hearing herein this Honorable Court enter its judgment reversing the action of the New Mexico Oil Conservation Commission and its members in entering Orders R-351 and R-351-B, denying to the Complainant permission to dually complete its Ponzo Well No. 1, and remanding this cause to the Commission for the entry of an appropriate order, together with such other and further relief, both in law and in equity to which the Complainant may show itself justly entitled.

Jason W. Kellahin
Jason Kellahin
P. O. Box 361, Santa Fe, New Mexico

E. H. Foster

E. J. Roberts

T. M. Blume
P. O. Box 1751,
Amarillo, Texas

Attorneys for Complainant
Phillips Petroleum Company

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EXHIBIT "A"

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

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

Case No. 597
Order No. R-531

THE MATTER OF THE APPLICATION OF
PHILLIPS PETROLEUM COMPANY FOR
AUTHORITY TO EFFECT DUAL COMPLETION
OF ITS FEDERAL NO. 1 WELL, LOCATED IN
NW/4 SW/4, SECTION 35, TOWNSHIP 14
SOUTH, RANGE 37 EAST, NMPM, LEA COUNTY,
NEW MEXICO (IN THE DENTON FIELD) IN SUCH
A MANNER AS TO PERMIT PRODUCTION OF OIL
FROM THE DEVONIAN FORMATION, THROUGH
PERFORATIONS, AND FROM THE DENTON-
WOLFCAMP FORMATION, 12,5?0 TO
12,600 FEET, AND FROM 12,456 TO 12,550 FEET,
AND FROM THE WOLFCAMP FORMATION,
PERFORATED 9,390 to 9,260 FEET.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 o'clock a.m. on July 16, 1953, at Santa Fe, New Mexico, before the Oil Conservation Commission, hereinafter referred to as the "Commission".

NOW, on this 28th day of August, 1953, the Commission, a quorum being present, having considered the application and the testimony adduced 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.

(2) That dual completion of the Federal No. 1 well, in the NW/4 SW/4 section 35, Township 14 South, Range 37 East, NMPM, in the Denton Field, Lea County, New Mexico, for production of oil from the Denton-Wolfcamp formation and oil from the Denton-Devonian formation would be subject to the operational hazards incident to great depths.

(3) That there exists between the two reservoirs a considerable pressure differential, and, should intercommunication occur from any reason, the deeper Devonian reservoir with the higher pressure would be injured.

(4) That testimony shows that packer, and other mechanical failures in oil-oil completions at various depths have caused injurious intermingling communication in reservoirs in other areas under conditions similar to those existing in the Denton Field.

(5) That applicant's testimony as to the economic effectiveness of the Wolfcamp pay section under the subject well appears to be unduly conservative.

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(6) That application for oil-oil dual completion of the Ponzo No. 1 well should be denied.

IT IS THEREFORE ORDERED:

That the application of Phillips Petroleum Company for permission to dually complete its Ponzo No. 1 well, located in the N/4 NE/4, Section 35, Township 14 South, Range 37 East, NMPM, for oil from the Benton-Wolfcamp formation and oil from the Benton-Devonian formation be, and the same hereby is denied.

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

/s/ [illegible]

[illegible], Chairman

/s/ [illegible]

[illegible], Member

/s/ [illegible]

[illegible], Secretary

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ORDER NO.

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

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

Case No. 557
Order No. R-351-A

IN THE MATTER OF THE APPLICATION
OF PHILLIPS PETROLEUM COMPANY
FOR AUTHORITY TO DUALLY COMPLETE
THE NORTH LOCO HILLS UNIT WELL NO. 1
LOCATED IN THE SW/4 SW/4
OF SECTION 35, TOWNSHIP 14 SOUTH,
RANGE 37 EAST, NMPM, LEA COUNTY,
NEW MEXICO (IN THE NORTH LOCO HILLS
AREA) IN SUCH A MANNER AS TO PRODUCE
FROM THE UPPER PENNSYLVANIAN
STRATA THROUGH TUBING SET AT
APPROXIMATELY 12,580 TO 12,600 FEET,
AND OIL FROM THE MISSISSIPPIAN
FORMATION THROUGH TUBING SET AT
APPROXIMATELY 9,240 TO 9,260
FEET.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This case came on for hearing upon the petition of Phillips Petroleum Company on July 16, 1953 at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission" and for re-hearing on October 15, 1953.

NOW, on this 10th day of December, 1953, the Commission, a quorum being present, having fully considered the record and the testimony adduced and the exhibits received at said hearing and re-hearing, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given, in accordance with law, the Commission has jurisdiction of this cause, the persons and subject matter thereof.

(2) That after due public notice and hearing on July 16, 1953, the Commission entered its order No. R-351, denying petitioner's application for dual completion (oil-oil) of its Loco No. Well, W/4 S/4 section 35, Township 14 South, Range 37 East, NMPM, Lea County, New Mexico in the Benton field.

(3) That upon motion duly filed, the Commission granted a re-hearing by its order No. R-351-A for the purpose of taking additional testimony and hearing oral arguments, and that such re-hearing was held on October 15, 1953.

(4) That no evidence was presented at such re-hearing sufficient to justify an order granting petitioner's application.

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IT IS THEREFORE ORDERED:

That Phillips Petroleum Company's application for permission to dually complete its Fenco No. 1 well located in the NW/4 NW/4 Section 35, Township 14 South, Range 37 East, NMPM, Lea County, New Mexico for production of oil from the Denton-Wolfcamp Pool, and oil from the Denton-Devonian Pool be and the same hereby is denied and the Commission's Order No. R-351 be and the same hereby is affirmed.

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

EDWIN L. MECHEM, Chairman

E. S. WALKER, Member

A. L. PORTER, Member and Secretary

S E A L

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Dan
To Yost

IN THE DISTRICT COURT OF LEA COUNTY
STATE OF NEW MEXICO

PHILLIPS PETROLEUM COMPANY,

Plaintiff,

vs.

No. 11, 428

OIL CONSERVATION COMMISSION OF NEW MEXICO, ET AL.

Defendants.

NOTICE OF WITHDRAWAL

Comes now L. C. White, attorney of record for the Oil Conservation Commission of the State of New Mexico in the above entitled cause, and withdraws as their attorney of record.

Attorney for the Oil Conservation Commission of the State of New Mexico.

CERTIFICATE

I hereby certify that I have this 15th day of July, 1954, mailed a copy of the foregoing to Mr. Willard F. Kitts, Attorney at Law, 116 East Palace Avenue, Santa Fe, New Mexico, and to Mr. Jason W. Kellahin, Attorney at Law, Laughlin Building, Santa Fe, New Mexico, they being the attorneys of record for the plaintiff herein.

Attorney for the Oil Conservation Commission of the State of New Mexico.

GILBERT, WHITE AND GILBERT
ATTORNEYS AT LAW
SANTA FE, NEW MEXICO

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

STATE OF NEW MEXICO COUNTY OF [illegible]

PHILLIPS PETROLEUM COMPANY,
Complainant

v.

THE OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO, composed of Hon. Edwin L. Mechem, Governor and Chairman, Hon. E. S. Walker, Commissioner of Public Lands, and Hon. Richard C. Spurrier, State Geologist and Secretary,
Defendants

No. 11422

COMPLAINT

Comes now Phillips Petroleum Company, a corporation, organized, created and existing under and by virtue of the laws of the State of Delaware, with a permit to do business and doing business in the State of New Mexico, hereinafter called complainant, and complaining of the Oil Conservation Commission of the State of New Mexico, composed of the Hon. Edwin L. Mechem, Governor of the State of New Mexico, Chairman, Hon. E. S. Walker, Commissioner of Public Lands, Member, and Hon. Richard C. Spurrier, State Geologist of the State of New Mexico and Secretary, hereinafter referred to as Commission, and for cause of action against the Commission alleges:

1.

The complainant, Phillips Petroleum Company, is a corporation organized, created and existing under and by virtue of the laws of the State of Delaware, with a permit to do business and doing business in the State of New Mexico. The Oil Conservation Commission of New Mexico is a statutory body created by virtue of the laws of the State of New Mexico and with the power to sue and be sued, and composed of the Hon. Edwin L. Mechem, Governor of the State of New Mexico, Chairman, the Hon. E. S. Walker, Commissioner of Public Lands, Member, and the Hon. Richard C. Spurrier, State Geologist and Secretary.

2.

Complainant alleges that the official place of residence of the members of the Oil Conservation Commission of the State of New Mexico, and where each

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may be found for the purpose of the service of process, to wit Santa Fe, in Santa Fe County, State of New Mexico.

3.

The Oil Conservation Commission of the State of New Mexico as constituted is a statutory agency vested with power to limit and prorate production of crude petroleum and natural gas in the State of New Mexico. As a statutory agency it is charged with the proper administration and enforcement of all laws, rules and regulations pertaining to the conservation and proration of oil and gas production, and as such duly constituted agency has exercised its delegated authority in relation to the complainant as hereinafter alleged.

4.

At all times hereinafter alleged, Phillips Petroleum Company has been and still is engaged in the business of producing oil and gas in the State of New Mexico. It is the owner of an oil well known as its Fonso No. 1 well, located in the NW/4 NW/4 Section 35, Township 14 S, Range 37 E, N.M.P.M. in the Denton Field in Lea County, New Mexico, on which it holds a good and valid and subsisting oil and gas lease. As the owner of the Fonso No. 1 well it is, within the definition of the term owner as used in the Conservation Statutes of the State of New Mexico, vested with the right to drill into and produce oil and gas from the Denton Devonian formation and the Denton Wolfcamp formation which overlies the Denton Devonian formation in the Denton field, and appropriate the production of the oil and gas to its own use.

5.

That the Commission has and by statute is given jurisdiction and authority over all matters relating to the conservation of oil and gas in the State of New Mexico, and of the enforcement of all provisions of the Oil and Gas Conservation Act, and of any other law of the State of New Mexico relating to the conservation of oil and gas. That the Commission has the power and jurisdiction, authority and capacity to prescribe rules and regulations and issue orders pertaining to and relating to the conservation of oil and gas in the State of New Mexico.

6.

That at all times hereinafter alleged Phillips Petroleum Company has been and still is engaged in the business of producing oil and gas in the State

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of New Mexico. As an oil and gas producer it is and has been and now is adversely affected by a recent order of the Commission with respect to its property and property rights in Cause No. 557 before the Commission and by Orders A-351 and R-351-E issued in Cause No. 557.

7.

Phillips Petroleum Company alleges that on and prior to July 17, 1952, it completed an oil well in the Devonian formation in the Denton field in Lea County, New Mexico, known as its Fonzo No. 1 well, located in the NE/4 NW/4 Section 35, Township 14 S, Range 37 E, N.M.P.M., Lea County, New Mexico. The well was completed at a plug-back total depth of 12,687 feet. That in completing the well it drilled through the Wolfcamp formation, which overlies the Devonian formation which is reached at a lesser depth. That the Fonzo Well No. 1 is capable of being non-wastefully operated so as to produce both from the Devonian formation and the Wolfcamp formation without the necessity of drilling an additional well to produce oil encountered in the well bore of the Fonzo Well No. 1 in the Wolfcamp formation.

8.

On June 15, 1953, and in compliance with the provisions of Rule 112 of the Commission, Phillips Petroleum Company filed its application requesting permission of the Commission to dually complete its Fonzo Well No. 1 so as to produce oil from both the Devonian and the Wolfcamp formation in the Denton field.

9.

That due notice was given to all interested parties of the application of Phillips Petroleum Company to dually complete its well and thereafter a hearing was held before the Commission in Santa Fe, New Mexico, on July 16, 1953. That on September 8, 1953, the Commission duly entered its Order No. A-351, dated August 28, 1953, denying to Phillips Petroleum Company permission to dually complete its Fonzo Well No. 1.

10.

That in due time after the entry of Order No. A-351 and on September 21, 1953, Phillips Petroleum Company filed with the Commission its petition for a re-hearing in Cause No. 557. On September 28, 1953, the Commission, by its Order No. A-351-A, granted a re-hearing to Phillips Petroleum Company.

11.

That pursuant to the Order of re-hearing, a re-hearing was had before the Commission on October 15, 1953. On December 24, 1953, the Commission entered its Order No. R-351-B, dated December 10, 1953, denying Phillips Petroleum Company permission to dually complete its Fonzo No. 1 Well.

12.

That attached hereto and made a part of this complaint and by reference thereto incorporated herein for all purposes, are true and correct copies of the Orders of the Commission R-351 and R-351-B.

13.

Phillips Petroleum Company alleges that by virtue of the issuance and entry of Orders Nos. R-351 and R-351-B, it has exhausted its administrative remedy before the Commission and that it is a person in interest and affected by the Orders, and as such prosecutes its appeal therefrom to this Court.

14.

Phillips Petroleum Company alleges that the action of the Commission in denying to it permission to dually complete its well is unreasonable, arbitrary, confiscatory, illegal, erroneous, and void, and deprives it of its property and a valuable property right without due process of law upon each and all of the grounds and for each and all of the reasons following:

(a) The orders are not supported by the evidence and there is no substantial evidence to support the orders.

(b) The findings of the Commission are vague and indefinite, ambiguous and doubtful, and wholly insufficient to support the orders of the Commission.

(c) That the findings of fact of the Commission are not supported by substantial evidence and are contrary to the evidence, and are not supported by any evidence.

(d) That the testimony offered and exhibits introduced clearly show that the dual completion of the well will not subject such well to operational hazards, that no serious danger of inter-zonal communication exists, and that reservoir conditions are highly favorable to the dual completion of the well as proposed, and that the equipment proposed to be used will afford adequate

and ample protection to all producing horizons, all of which was clearly shown by the testimony and exhibits at the hearings, and that such dual completion will result in the prevention of waste and the protection of correlative rights.

(e) That the orders of the Commission were not entered in accordance with law.

(f) That the orders will require the drilling of an excessive number of wells with attendant risks and economic loss.

15.

That each and all of the grounds of error as above alleged were contained in the petition for rehearing filed with the Commission, and were urged upon the Commission and were acted upon by the Commission at the hearings.

WHEREFORE, premises considered, Phillips Petroleum Company prays that proper process be issued to the New Mexico Oil Conservation Commission of the State of New Mexico, composed of the Hon. Edwin L. Mechem, Governor of the State of New Mexico, Hon. E. S. Walker, Commissioner of Public Lands of the State of New Mexico, and Hon. Richard A. Spurrier, State Geologist of the State of New Mexico, commanding it and them in terms of law to appear and answer the Complaint of Phillips Petroleum Company, and that upon hearing hereof in this Honorable Court enter its judgment reversing the action of the New Mexico Oil Conservation Commission and its members in entering Orders R-351 and R-351-B, denying to the Complainant permission to dually complete its Lenzo Well No. 1, and remanding this cause to the Commission for the entry of an appropriate order, together with such other and further relief, both in law and in equity to which the Complainant may show itself justly entitled.

Jason W. Kellahin
Jason Kellahin
P. O. Box 361, Santa Fe, New Mexico

E. H. Foster

C. J. Roberts
C. J. Roberts

W. F. Kluse

P. O. Box 1751,
Amarillo, Texas

Attorneys for Complainant
Phillips Petroleum Company

EXHIBIT "A"

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

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

Case No. 557
Order No. R-351

THE MATTER OF THE APPLICATION OF
PHILLIPS PETROLEUM COMPANY FOR
PERMISSION TO EFFECT DUAL COMPLETION
OF ITS JOHNSON NO. 1 WELL, LOCATED IN
NW/4 NW/4, SECTION 35, TOWNSHIP 14
SOUTH, RANGE 37 EAST, NMPM, LEA COUNTY,
NEW MEXICO (IN THE DENTON FIELD) IN SUCH
A MANNER AS TO PERMIT PRODUCTION OF OIL
FROM THE DEVONIAN FORMATION, THROUGH
CASING PERFORATIONS, 12,530 TO
12,600 FEET, AND FROM 12,456 TO 12,550 FEET,
AND GAS FROM THE WOLFCAMP FORMATION,
THROUGH PERFORATIONS 9,590 to 9,260 FEET.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 o'clock a.m. on July 16, 1953, at Santa Fe, New Mexico, before the Oil Conservation Commission, hereinafter referred to as the "Commission".

NOW, on this 28th day of August, 1953, the Commission, a quorum being present, having considered the application and the testimony adduced 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.

(2) That dual completion of the Johnson No. 1 well, in the NW/4 NW/4 section 35, Township 14 South, Range 37 East, NMPM, in the Denton Field, Lea County, New Mexico, for production of oil from the Denton-Wolfcamp formation and oil from the Denton-Devonian formation would be subject to the operational hazards incident to great depths.

(3) That there exists between the two reservoirs a considerable pressure differential, and, should interference communication occur for any reason, the deeper Devonian reservoir with the higher pressure would be injured.

(4) That testimony shows that packer, and other mechanical failures in oil-oil completions at various depths have caused injurious interzone communication in reservoirs in other areas under conditions similar to those existing in the Denton Field.

(5) That applicant's testimony as to the economic effectiveness of the Wolfcamp pay section under the subject well appears to be unduly conservative.

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(6) That application for oil-oil dual completion of the Ponso No. 1 well should be denied.

IT IS THEREFORE ORDERED:

That the application of Phillips Petroleum Company for permission to dually complete its Ponso No. 1 well, located in the N/4 N/4, Section 35, Township 14 South, Range 37 East, NMPM, for oil from the Fenton-Wolfcamp formation and oil from the Fenton-Devonian formation be, and the same hereby is denied.

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

OIL CONSERVATION COMMISSION

/s/ A. L. Porter

A. L. Porter, Jr., Chairman

/s/ E. S. Walker

E. S. Walker, Member

/s/ A. R. Kinsolving

A. R. Kinsolving, Secretary

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EXHIBIT "A"

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

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

Case No. 557
Order No. R-351-B

IN THE MATTER OF THE APPLICATION
OF PHILLIPS PETROLEUM COMPANY
FOR PERMISSION TO EFFECT A DUAL
COMPLETION OF ITS FONZO No. 1
WELL, LOCATED IN THE NE/4 SW/4
SECTION 35, TOWNSHIP 14 SOUTH,
RANGE 37 EAST, NMPM, LEA COUNTY,
NEW MEXICO (IN THE BENTON FIELD),
IN SUCH MANNER AS TO PERMIT
PRODUCTION OF OIL FROM AN UNDES-
IGNATED PENNSYLVANIAN FORMATION
THROUGH PERFORATIONS FROM 12,580 TO 12,600 FEET,
AND OIL FROM THE UNDESIGNATED FUSSELMAN
FORMATION THROUGH PERFORATIONS FROM 9,590 TO 9,260
FEET.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This case came on for hearing upon the petition of Phillips Petroleum Company on July 16, 1953 at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission" and for re-hearing on October 15, 1953.

NOW, on this 10th day of December, 1953, the Commission, a quorum being present, having fully considered the record and the testimony adduced and the exhibits received at said hearing and re-hearing, and being fully advised in the premises.

FINDS:

(1) That due public notice having been given, in accordance with law, the Commission has jurisdiction of this cause, the persons and subject matter thereof.

(2) That after due public notice and hearing on July 16, 1953, the Commission entered its order No. R-351, denying petitioner's application for dual completion (oil-oil) of its Fonzo No. 1 well, NE/4 SW/4 Section 35, Township 14 South, Range 37 East, NMPM, Lea County, New Mexico in the Benton field.

(3) That upon motion duly filed, the Commission granted a re-hearing by its order No. R-351-A for the purpose of taking additional testimony and hearing oral arguments, and that such re-hearing was held on October 15, 1953.

(4) That no evidence was presented at such re-hearing sufficient to justify an order granting petitioner's application.

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IT IS THEREFORE ORDERED:

That Phillips Petroleum Company's application for permission to dually complete its Ponso No. 1 well located in the N/4 S/4 Section 33, Township 14 South, Range 37 East, NMPM, Lea County, New Mexico for production of oil from the Benton-Wolfcamp Pool, and oil from the Benton-Devonian Pool be and the same hereby is denied and the Commission's Order No. A-351 be and the same hereby is affirmed.

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

MURRAY E. MORGAN, Chairman

E. S. WALKER, Member

A. L. PORTER, Member and Secretary

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IN THE DISTRICT COURT OF LEA COUNTY

STATE OF NEW MEXICO

PHILLIPS PETROLEUM COMPANY,

Plaintiff

-vs- No. 11,422

OIL CONSERVATION COMMISSION OF NEW MEXICO, et al.,

Defendant

TRANSCRIPT

MINUTES OF PRE-TRIAL CONFERENCE

BE IT REMEMBERED, That on the 23rd day of July, A. D., 1954, at 9 o'clock, A. M., the above styled and numbered cause came on for pre-trial conference at Lovington, Lea County, New Mexico, in Chambers, before the Honorable John R. Brand, Judge of the Fifth Judicial District in and for Lea County, New Mexico; at which time and place there appeared as follows, to-wit:

Name and Address	Representing
T. J. Roberts P. O. Box 1751 Amarillo, Texas	Phillips Petroleum Company
E. H. Foster P. O. Box 1751 Amarillo, Texas	Phillips Petroleum Company
Jason W. Kallahin P. O. Box 361 Santa Fe, New Mexico	Phillips Petroleum Company

Name and Address	Representing
Ross Madole P. O. Box 900 Dallas, Texas	Magnolia Petroleum Company
Willard F. Kitts P. O. Box 871 Santa Fe, New Mexico	Oil Conservation Commission
Melvin T. Yost P. O. Box 871 Santa Fe, New Mexico	Oil Conservation Commission
H. C. Kerr P. O. Box 1650 Tulsa, Oklahoma (Associate and co-counsel Seth & Montgomery Santa Fe, New Mexico)	Skelly Oil Company
Paxton Howard P. O. Box 1509 Midland, Texas (Associate counsel Seth & Montgomery Santa Fe, New Mexico)	Shell Oil Company

THE COURT: Very well, what is the first order of business? I have read the pleadings.

MR. KALLAHIN: If the Court please, Mr. Roberts, who is a member of the Texas Bar and associated with me here in this case, will be our representative at this conference.

THE COURT: All right. You are the plaintiff. I suppose you may lead off.

MR. ROBERTS: The first matter before the Court is the motion that has been filed by Mr. Madole representing Magnolia, and, if the Court wants to dispose of that before proceeding to the other matters by reason of this suit, we can do that.

THE COURT: Very well. You gentlemen may move up where you can use these desks if you wish.

(Reporter's Note: Whereupon, Mr. Madole presents written motion to dismiss. Mr. Roberts makes oral objection and argument against dismissal of the action, and Mr. Madole counters in behalf of the motion.)

THE COURT: Our rule provides generally that all parties must be named in the original complaint or petition, but, that, thereafter, only the name of one plaintiff and one defendant need be named. I think it would serve no good purpose to require the Phillips Petroleum Company to back up and start over.

Now your objection, the objection of the Magnolia Petroleum Company, is purely technical. I cannot see that any prejudice would result to you from overruling your motion. You are evidently prepared to defend the second matter on its merits and

present your case. Certainly you are an indispensable party. But I do not believe that the failure to name you as a party is fatal. The motion will be overruled.

MR. MADOLE: Probably it ought to be entered that we are a party of record so as to be entitled to an appeal, and at the present time we are not in the petition in any way. The main objection that I had was that I wanted to be in control of the destiny of my own law suit; and, if the Commission should not see fit to appeal for some reason or other and I felt obligated to appeal, that I would be entitled to appeal the case and process it on my own right as a party defendant.

THE COURT: It will be ordered that Magnolia Petroleum and the other two interested companies are of record as party defendants.

Now, then, Mr. Roberts, I believe--

MR. MADOLE: Your Honor, we will have an exception to the ruling of the Court.

THE COURT: Very well.

MR. ROBERTS: I think for me to properly present the points that should be disposed of, or at least considered in this pre-trial conference, I should briefly depict for the Court what this is all about.

THE COURT: I believe I know what it is all about. The only thing I am hazy about in reading the record is that you're producing from one stratum and you wish to also produce in the same well from another stratum. I would like to know: are you

now producing from the lower or upper?

MR. ROBERTS: We are producing from the lower, from the Devonian formation.

THE COURT: And you are perforating to produce also from the upper?

MR. ROBERTS: That's right.

THE COURT: And, just as a matter of curiosity, what is the distance between the two?

MR. ROBERTS: Without referring to the files, the Silurian comes within the 9,000-foot level and the Devonian is on the 12,000-foot level.

THE COURT: Yes. All right. Well, my thought on that, considered, is, I believe, this. Recently I held a pre-trial conference in an appeal having been taken from an order held by the Commissioner of Public Lands, and the pre-trial order was entered permitting the parties to introduce such additional testimony as they saw fit but requiring each of the parties to supply the other, within ample time prior to the date of the hearing, with the names and the addresses of the additional witnesses whom they intended to call, and with a summary of what they expected their testimony to disclose. I think such an order would be appropriate here.

(Reporter's Note: Whereupon, Mr. Kitts presented a written "Memorandum of Points and Authorities.")

THE COURT: The new testimony which they propose to introduce will be limited, as you have set out in your paragraph 6,

to such further evidence as may clarify the record, and which is not available below.

Mr. Roberts, how long will it take you to supply the other parties with the names and addresses of additional witnesses that you propose to use, and what you wish to testify to?

MR. ROBERTS: Not longer than 10 days or two weeks, your Honor.

THE COURT: Can you do it in two weeks?

MR. ROBERTS: Yes, sir.

THE COURT: It will be ordered then that you supply all opposing parties with the names and addresses of the additional witnesses that you propose to use with a brief summary of what their testimony is expected to be, and the opposing parties, on receipt of that notice, will furnish Phillips with a similar list.

(Reporter's Note: Thereupon, a tentative setting for hearing was discussed.)

THE COURT: Very well, we will make a tentative setting for the 20th of October 1954.

You will have 20 days to furnish an answer.

MR. MADOLE: For the record, your Honor, they have two weeks. We may need around 28 days to furnish them with that.

THE COURT: The same order will apply to the remainder of you gentlemen.

MR. KITTS: Which brings up another matter. We'd like to offer the Transcript in evidence.

THE COURT: I am going to overrule you as to that.

(Reporter's Note: Mr. Roberts objects to the transcript being admitted. Mr. Kitts argued that no review of the testimony was expected at this conference.)

THE COURT: I would say this. For example, if I read the record here and someone below is permitted to testify as to pure hearsay evidence without objection, certainly you wouldn't expect this Court to receive that or give that any credence, and that should not be considered if objected to at the hearing in my Court. But what I propose to do, in order to conserve time at the trial, is to read that record before the trial so I'll have it in my mind.

MR. MADOLE: I would wish to reserve the right to inspect that record so as not to be bound by that.

THE COURT: Do you gentlemen have copies of that?

(Reporter's Note: All counsel indicated they did with the exception of Mr. Madole.)

THE COURT: Do you have a copy that you can furnish Mr. Madole?

MR. KITTS: Yes, we can furnish him one.

MR. HOWARD: If the Court please, may I ask one question? We are to furnish a return list of the names and addresses--

THE COURT: Furnish a list by letter to counsel, and you will not be permitted to rehas what has been testified to before. It must be additional or by way of clarification.

MR. KITTS: Do I understand the Court's ruling is to be adverse to the admittance of the evidence here at this time?

The Court will give it the credence to which he thinks it is entitled but as to matters such as leading questions--

THE COURT: No, I will pay no attention to that, but evidence that is clearly inadmissible by the Commission should be excluded anyway, although, of course, they don't do so.

Gentlemen, I take it that's all.

(Reporter's Note: The conference adjourned at 9:55 a.m.)

** *** **

STATE OF NEW MEXICO :
: ss
COUNTY OF LEA :

I, Clarence V. Johnson, Official Court Reporter of the Fifth Judicial District, in and for the County of Lea, State of New Mexico, do hereby certify that I was the official court reporter in the said District Court, that I reported the proceedings had at the pre-trial conference in the above styled and numbered cause, and that the above and foregoing 8 pages of typewritten matter constitute a full, true and correct transcript of minutes taken at said pre-trial conference.

Clarence V. Johnson
Court Reporter

IN THE DISTRICT COURT OF LEA COUNTY
STATE OF NEW MEXICO

PHILLIPS PETROLEUM COMPANY,

Plaintiff,

vs.

OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO, COMPOSED OF Hon. Edwin L. Mechem, Governor and Chairman, Hon. E. S. Walker, Commissioner of Public Lands, Member, and Hon. Richard R. Spurrier, State Geologist and Secretary,

Defendants.

No. 11422

ANSWER

Comes now the above named defendant and in answer to the complaint herein states:

1. It admits the allegations contained in Paragraphs numbered 1, 2 & 3.

2. In answer to Paragraph numbered 4, defendant admits that plaintiff is and at all material times was engaged in the production of oil and gas within the State of New Mexico and as to the remaining allegations contained therein this defendant does not have sufficient information or knowledge upon which to form a belief as to the truth of the matters therein contained and therefore denies the same.

3. Defendant admits the allegations contained in Paragraph numbered 5.

4. In answer to paragraph numbered 6, defendant expressly denies that plaintiff now is or at any material time has been adversely affected by the orders of the Commission therein complained of or any other order of this Commission mater ial to the issues involved herein.

5. In answer to paragraph numbered 7 of the complaint defendant expressly denies that said well can or is capable of being non-wastefully operated so as to produce from both the Devonian and Wolfcamp formations as therein alleged; and in further answer to said allegations contained in said paragraph defendant states that the dual oil-oil completion of said well as contemplated

GILBERT, WHITE AND GILBERT
ATTORNEYS AT LAW
SANTA FE, NEW MEXICO

and proposed by plaintiff is unreasonable, wasteful and contrary to the prudent and reasonable conservation practices within the oil industry, and that said plaintiff can economically produce oil from each formation by the drilling and operation of a separate well to each oil reservoir or formation in question.

6. Defendant admits the allegations contained in paragraphs numbered 8, 9, 10, 11 and 12 of the complaint.

7. Defendant denies each and every allegation contained in paragraphs numbered 13, 14 and 15 of the complaint.

WHEREFORE, defendant prays that plaintiff take nothing by its complaint and that this Honorable Court enter its order affirming each and all of the orders of the Commission complained of by plaintiff herein.

OIL CONSERVATION COMMISSION OF THE
STATE OF NEW MEXICO

By _____

_____
Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of January, 1954, mailed a copy of the foregoing Answer to Jason W. Kellahin addressed to him at P. O. Box 361, Santa Fe, New Mexico, he being one of the attorneys of record for the Complainant herein.

_____
One of the Attorneys for Defendant.

GILBERT, WHITE AND GILBERT
ATTORNEYS AT LAW
SANTA FE, NEW MEXICO

SUMMONS

IN THE DISTRICT COURT, COUNTY OF LEA, STATE OF NEW MEXICO

PHILLIPS PETROLEUM COMPANY

....., Plaintiff

VS.

OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO, COMPOSED OF Hon. Edwin L. Mechem, Governor and Chairman, Hon. E. S. Walker, Commissioner of Public Lands, Member, and Hon. Richard R. Spurrier, State Geologist and Secretary, Defendants

NO. 11422

DEC 30 1953

THE STATE OF NEW MEXICO

TO: Oil Conservation Commission of the State of New Mexico,

Hon. Edwin L. Mechem, Chairman

Hon. E. S. Walker, Member

Hon. Richard R. Spurrier, Secretary

Greeting: Defandants

You are hereby commanded to appear before the Fifth Judicial Court District of the State of New Mexico, sitting within and for the County of Lea, that being the county in which the complaint herein is filed, within thirty days after service of this summons, then and there to answer the complaint of Phillips Petroleum Company, Plaintiff in the above cause.

You are notified that unless you so appear and answer, the plaintiff..... will apply to the court for the relief demanded in the complaint together with costs of suit.

WITNESS, the Honorable C. ROY ANDERSON, District Judge of the Fifth Judicial District Court of the State of New Mexico, and the Seal of the District Court of Lea County,

this 29th day of December A. D., 1953

Seal

WM Brauchamp

Clerk of the District Court.

By .....

Deputy.

A statement of the nature of the action in general terms, viz: Complaint Attached

WM Brauchamp

Clerk of the District Court.

By .....

Deputy.

SHERIFF'S RETURN

State of New Mexico,
County of Lea

I, ...
Sheriff of Lea County, New Mexico, do hereby certify that this writ came to hand the

..... day of ....., 19.....

and there was at the time delivered to me

for service herewith .....cop.....

of this summons and .....cop.....
of the complaint filed therein; that I made service herein by delivering one copy of this summons and one copy of the complaint herein to each of the within named defendant..... within the said County of Lea, as follows to-wit:

.....

.....
(Name)

on ..... and
(Date of Service)

.....

on .....

.....

FEES FOR SERVICE

Serving writ and return . . . $.....

Mileage . . . . . $.....

Total . . . . . $.....

....., Sheriff

By ....., Deputy

No. .....

IN THE

DISTRICT COURT

LEA COUNTY, NEW MEXICO

PHILLIPS PETROLEUM COMPANY

.....

Plaintiff.....

VS.

OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO, Et Al

.....

Defendant.....

SUMMONS

Jason W. Kellahin
Attorney at Law
P.O.Box 361
Santa Fe,New Mexico

Attorney..... for Plaintiff.....

AFFIDAVIT OF SERVICE

THE STATE OF NEW MEXICO
COUNTY OF LEA } ss.

I, ..., being first duly sworn, on oath, state: That I am a citizen of the United States and over the age of eighteen years, and not a party of said action that I have made service of the within summons in the above-named county and state by delivering a true copy of this summons together with a copy of the complaint, filed in said cause to (each of) the following defendant..... herein named, to-wit:

..... on ....., 19.....

..... on ....., 19.....

..... on ....., 19.....

.....

Subscribed and sworn to before me this..... day of ....., 19.....

.....

.....

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

August 23, 1954

COPY

Clerk of the District Court
Lea County
Lovington, New Mexico

Re: Phillips Petroleum Company
vs.
Oil Conservation Commission
of New Mexico et al. Case No. 11422

Dear Sir:

Enclosed please find the defendant's list of witnesses to be used at the trial of this case, which I ask you to kindly file.

Very truly yours,

William F. Kitts
Co-counsel for Oil Conservation
Commission

WFK/ir

enclosure

IN THE DISTRICT COURT OF LEA COUNTY

STATE OF NEW MEXICO

PHILLIPS PETROLEUM COMPANY Plaintiff	)	
v.	)	No. 11422
OIL CONSERVATION COMMISSION OF NEW MEXICO, ET AL Defendants	)	

NOTICE OF INTENTION TO USE CERTAIN NAMES, ADDRESSES, AND SUMMARY OF NATURE OF THEIR TESTIMONY

TO PHILLIPS PETROLEUM COMPANY, OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO, THE SHELL OIL COMPANY, AND SHELL OIL COMPANY:

You are hereby notified, in accordance with instructions of the Court given on July 23, 1954, that the names, addresses, and the nature of the testimony of the witnesses of Magnolia Petroleum Company expected to be used in the trial of this action are as follows:

W. A. Daniel
Kermit, Texas

Information pertaining to dual oil-oil completions in the West Texas area, their operation and difficulties experienced, the cost of drilling wells in the Denton Field, New Mexico, the accumulated production of existing wells in the Wolfcamp formation in the Denton Field, the estimated ultimate recovery therefrom, and the reservoir characteristics of the Wolfcamp formation and the Devonian formation in the Denton Field, New Mexico.

IN THE DISTRICT COURT OF LEA COUNTY

STATE OF NEW MEXICO

PHILLIPS PETROLEUM COMPANY Plaintiff v. OIL CONSERVATION COMMISSION OF NEW MEXICO, ET AL Defendants	)	No. 11422

NOTICES OF WITNESSES TO BE USED, THEIR ADDRESSES, AND SUMMARY OR NATURE OF THEIR TESTIMONY

TO PHILLIPS PETROLEUM COMPANY, OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO, THE SHELL OIL COMPANY, AND SHELL OIL COMPANY:

You are hereby notified, in accordance with instructions of the Court given on July 23, 1954, that the names, addresses, and the nature of the testimony of the witnesses of Magnolia Petroleum Company expected to be used in the trial of this action are as follows:

W. A. Daniel
Kermit, Texas

Information pertaining to dual oil-oil completions in the West Texas area, their operation and difficulties experienced, the cost of drilling wells in the Denton field, New Mexico, the accumulated production of existing wells in the Wolfcamp formation in the Denton field, the estimated ultimate recovery therefrom, and the reservoir characteristics of the Wolfcamp formation and the Devonian formation in the Denton field, New Mexico.

Leonard O. Franklin
Midland, Texas

Information pertaining to dual oil-oil completions in the West Texas area, their operation and difficulties experienced, and the cost of workovers due to mechanical failures.

R. C. Handle
Brownfield, Texas

Information pertaining to dual oil-oil completions in the West Texas area, their operation and difficulties experienced, and the cost of workovers due to mechanical failures.

V. M. Leonard
Duncan, Oklahoma

Information pertaining to dual oil-oil completions in Oklahoma, their operation and difficulties experienced, and the cost of workovers due to mechanical failures.

John D. Howard
Vanderbilt, Texas

Information pertaining to dual oil-oil completions in the Texas Gulf Coast area, their operation and difficulties experienced, and the cost of workovers due to mechanical failures.

Earl G. Thurman
Midland, Texas

Information pertaining to dual oil-oil completions in the West Texas area, their operation and difficulties experienced, the cost of workovers due to mechanical failures, limitations of dual zone artificial lift equipment, and the reservoir characteristics of the Wolfcamp and Devonian formations in the Denton field, New Mexico.

Robert E. urphy
Roswell, New Mexico

Reservoir characteristics of fields of est Texas and New Mexico as related to the Phillips' Ponzo No. 1.

The extent and necessity of the use of such witnesses will be dependent upon the extent that the Court allows the testimony of the proposed Phillips' witnesses as served upon this defendant, and this notice is served without prejudice to its right to object to the admission of testimony of such witnesses of Phillips Petroleum Company.

EARL A. BROWN

CHAS. B. WALLACE

A. E. AIKMAN

W. S. MAPOLE

P. O. Box 900
Dallas, Texas

G. T. HARRIS
Lovington, New Mexico

ATTORNEYS FOR DEFENDANT
MAGNOLIA PETROLEUM COMPANY

I hereby certify that I have this 31st day of August, 1954 mailed a copy of the foregoing, postage prepaid, to:

Willard F. Pitts and
Mel T. Yost
P. O. Box 871
Santa Fe, New Mexico

E. H. Foster
501 First National Bank Building
Amarillo, Texas

H. C. Kerr
P. O. Box 1650
Tulsa, Oklahoma

Paxton Howard
P. O. Box 1509
Midland, Texas

Jason W. Kellahin
P. O. Box 361
Santa Fe, New Mexico

Seth & Montgomery
First National Bank Building
Santa Fe, New Mexico

Ross Madole

ROSS MADOLE

Attorney for Defendant
Magnolia Petroleum Company

CJP:LF 8-5-54 14

IN THE DISTRICT COURT OF LEA COUNTY,

STATE OF NEW MEXICO

Phillips Petroleum Company, Plaintiff	)	
vs.	)	No. ~~11442~~
Oil Conservation Commission of New Mexico et al., Defendants	)	

NOTICES OF WITNESSES TO BE USED, THEIR ADDRESSES, AND SUMMARY OR NATURE OF THEIR TESTIMONY

TO OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO, ITS MEMBERS, THE MAGNOLIA PETROLEUM COMPANY, THE SKELLY OIL COMPANY, AND SHELL OIL COMPANY:

You are hereby notified in accordance with the instruction of the court given on the 23rd day of July, 1954, the names and addresses of the following witnesses expected to be used in the trial of this action, the summary or nature of their testimony being set forth under the names of each witness.

BILL HARVEY
Ada Oil Company
Houston, Texas

Information pertaining to dual oil-oil completions, reflected upon the Corporation Commission's records of the State of Oklahoma, including the number of dually completed wells classified by operators, fields, leases, well names, formations, and depths.

RUSSELL McCLELLAND
Phillips Petroleum Company
Bartlesville, Oklahoma

Information pertaining to dual oil-oil completions reflected upon the Railroad Commission's records of the State of Texas, including the number of dually completed wells, classified by operators, fields, leases, well names, formations, depths, dates, and type of equipment used.

J. K. BAUMEL
Austin, Texas

1. The mechanical feasibility and economic necessity of dual completions at comparable depths, pressures, and other factors pertaining to the Phillips Fonso No. 1.

2. The history, nature and character of dual oil-oil completions, types of equipment used to prevent interzone communication while either zone is being flowed and/or artificially lifted; safeguards adopted and used by the industry in connection with dual oil-oil completions and the successful results achieved at various depths and pressures.

3. Aspects of the scientific soundness and world-wide industrial acceptance of dual oil-oil completions at comparable depths, pressures and other factors involved in the Phillips Fonzo No. 1.

4. Dually completing the Phillips Fonzo No. 1 will not result in waste and has a reasonable relationship to waste prevention when the operation thereof is properly supervised through available safeguards, technique, and methods in preventing interzone communication.

5. Aspects of the confiscatory nature of the Commission's order.

6. Information pertaining to dual oil-oil completions reflected upon the Railroad Commission's records of the State of Texas, including the number of dually completed wells, classified by operators, fields, leases, well names, formations, depths, dates, and type of equipment used.

HARRY N. STANSBURY
Box 2859
Dallas, Texas

1. The mechanical feasibility and economic necessity of dually completing oil wells at comparable depths, pressures, and other factors as are involved in the Phillips Fonzo No. 1.

2. Availability and adequacy of equipment, that which was established in the records before the Commission, to prevent interzone communication and to prevent waste at comparable depths, pressures, and other factors as are involved in the Phillips Fonzo No. 1.

3. The successful history of Atlantic Refining Company in dually completing oil wells.

4. Confiscatory and arbitrary nature of the Commission's order in this action as based upon antiquated ideas and notions in light of scientific progress, proven equipment available and historical background of dually completed oil-oil wells.

J. H. VICKERY
McClintic Building
Midland, Texas

1. Economic necessity of dually completing the Phillips Fonzo

Well No. 1.

2. The imprudent aspects of twinning the Phillips Fonzo No. 1.

3. The mechanical feasibility of dually completing the Phillips Fonzo No. 1.

4. Reservoir engineering problems and practices in fields in West Texas and New Mexico as establishing the soundness of dually completing Phillips Fonzo well No. 1 from the standpoint of conservation.

H. B. [illegible]
P. O. Box 1152
Gladewater, Texas

1. The successful history, the nature and results of dually completing oil-oil wells in the Dollarhide Field in West Texas, including all reservoirs therein.

2. The mechanical feasibility of dually completing the Phillips Fonzo Well No. 1 and the safeguards against interzone communication.

3. Dually completing the Phillips Fonzo will not result in waste.

JACK TURNER
Phillips Petroleum Company
Bartlesville, Oklahoma

1. Proper safeguards that will prevent waste, that may be used and employed in any Commission order, and if enforced will prevent interzone communication in dually completed oil-oil wells.

2. The equipment available for use which Phillips Petroleum Company offers to use, thatwill prevent waste in the Phillips Fonzo well when either zone is being produced.

3. Successful history of dually completed oil wells in Oklahoma.

4. The mechanical feasibility of dual oil-oil wells at comparable depths, pressures, and other factors as involved in the Phillips Fonzo No. 1 application.

5. Availability of methods to detect interzone communication and safeguards to prevent interzone communication.

6. The confiscatory nature of the Commission's order as established by the industrial acceptance of dual oil-oil completions, the proven soundness of the equipment available, and in view of the non-feasibility of twinning the Phillips Fonzo No. 1.

ED [illegible]BURN
Phillips Petroleum Company
Bartlesville, Oklahoma

1. The production history of Wolfcamp wells offsetting the Phillips Fonzo No. 1, showing the economic necessity for dually completing the Phillips Fonzo No. 1 and the confiscatory nature of the Commission's order.

2. The successful history of dual oil-oil wells in the State of Texas.

3. The economic necessity for dually completing the Phillips Fonzo No. 1 and the relationship of the same to the confiscatory nature of the Commission's order.

JASON L. [illegible]LIAMS
Phillips Petroleum Company
Midland, Texas

Reservoir characteristics of Fields of West Texas and New Mexico as related to the Phillips Fonzo No. 1.

Jason W. Kellahin
P. O. Box 361
Santa Fe, New Mexico

E. H. Foster
Thomas M. Blume
C. J. Roberts
501 First National Bank Bldg.
P. O. Box 1751
Amarillo, Texas

ORIGINAL SIGNED BY
C J ROBERTS
Of Counsel

Attorneys for Phillips Petroleum Company

A copy of the foregoing Notice has been delivered to the Oil Conservation Commission of the State of Oklahoma and to its members, to the Magnolia Petroleum Company, to the Skelly Oil Company, and to the Shell Oil Company, by depositing a copy thereof to each in the United States Post Office at Amarillo, Texas, with proper postage, addressed to counsel for each, respectively, as follows:

Mr. Willard F. Kitts and
Mr. Mel T. Yost
P. O. Box 871
Santa Fe, New Mexico

Mr. Ross Madole
P. O. Box 900
Dallas, Texas

Mr. H. C. Kerr
P. O. Box 1650
Tulsa, Oklahoma

Mr. Paxton Howard
P. O. Box 1509
Midland, Texas

A copy of the foregoing Notice has been delivered to resident counsel for each party as follows:

Seth & Montgomery
Santa Fe, New Mexico

Mr. Willard R. Kitts and
Mr. Mel T. Yost
Santa Fe, New Mexico

SHELL OIL COMPANY
INCORPORATED
MIDLAND AREA
MAILING ADDRESS
P. O. BOX 1509
MIDLAND, TEXAS
GENERAL OFFICES
PETROLEUM BUILDING
MIDLAND, TEXAS

September 24, 1954

Mr. Hawley C. Kerr
P. O. Box 1650
Tulsa, Oklahoma

Mr. Willard F. Kitts and
Mr. Mel T. Yost
P. O. Box 871
Santa Fe, New Mexico

In Re: Phillips Petroleum Company v. Oil Conservation Commission, et al - No. 11422, In the District Court of Lea County, New Mexico.

Gentlemen:

Herewith I enclose to each of you a copy of the Objections of Shell Oil Company to the Interrogatories propounded to it by Phillips Petroleum Company. Hearing on the said Objections has been set for 10 a.m. October 13, 1954 in Judge Brand's office at Hobbs, New Mexico.

Very truly yours,

Richard L. Hughston

Richard L. Hughston, Attorney

RLH:AW
Enc.

IN THE DISTRICT COURT OF LEA COUNTY

STATE OF NEW MEXICO

PHILLIPS PETROLEUM COMPANY, Plaintiff,	)	
v.	)	No. 11422
OIL CONSERVATION COMMISSION OF NEW MEXICO, ET AL, Defendants.	)	

OBJECTIONS BY SHELL OIL COMPANY TO INTERROGATORIES PROPOUNDED TO IT BY PHILLIPS PETROLEUM COMPANY.

Defendant Shell Oil Company objects to the interrogatories propounded to it by Phillips Petroleum Company as follows:

1. It objects to each of the interrogatories separately as calling for matter that is immaterial and irrelevant to the issues of this case. How many dually completed wells Shell Oil Company owns and operates throughout the United States and Canada, their location, their bottom hole pressures, their depths, the nature of their crudes, whether any of them was dually completed before any other well in the field where it is located was so completed, or before offsetting wells were dually completed, or whether in some particular field in some State other than New Mexico Shell Oil Company did not oppose dual completions is wholly irrelevant as to whether a dual completion is necessary to prevent, or will tend to cause, waste at the location in the Denton Field in Lea County, New Mexico where Phillips Petroleum Company asked permission to dually complete the well involved in this case, and can at most show that Shell Oil Company has not in every instance opposed oil-oil dual completions. Without going into all of the circumstances surrounding each well that Shell Oil Company has caused to be dually completed, the said evidence would be empty statistics and of no relevancy whatsoever. If the court were to undertake to go into the circumstances surrounding each of such wells, the trial would be unduly prolonged and the court would be trying many

matters instead of one. There are other and more direct ways of the case being tried, ways that would not involve the gathering of irrelevant data and that would not be so unnecessarily expensive and time consuming to this defendant.

2. It objects to each of interrogatories 11, 23, 24, 26, 28, 30, 33, 34 and 36 separately as calling for a matter of opinion or conclusion.

3. It objects to each of interrogatories 17, 18, 25, 27, 29, 32, 35, 37, 41, 45, 49, 51 and 55 separately as calling for a matter of public record, the best evidence of which is the record itself which is as available to Phillips Petroleum Company as it is to Shell Oil Company.

4. It objects to each of interrogatories 17 to 22, inclusive, separately, because it calls for information concerning a field in which Shell Oil Company does not operate and as to which it has only hearsay information.

5. It objects to each of interrogatories 3 to 16, inclusive, separately, as being unnecessarily annoying and expensive in that each of them requires it to assemble information as to all its wells and regardless of whether conditions affecting them were similar to those affecting the well in the Denton Field involved in this suit.

WHEREFORE defendant Shell Oil Company prays the court to set a time for hearing these objections and that upon such hearing each and all of them be sustained.

PAXTON HOWARD
RICHARD L. HUGHSTON

By Richard L. Hughston
Richard L. Hughston
P. O. Box 1509
Midland, Texas

SETH & MONTGOMERY
111 San Francisco Street
Santa Fe, New Mexico

Attorneys for Defendant
Shell Oil Company

TO PHILLIPS PETROLEUM COMPANY:

You are hereby notified that Judge John R. Brand has fixed 10 a.m. on October 13, 1954, at his office in Hobbs, New Mexico, as the time and place for hearing the foregoing objections.

Richard L. Huggston
Attorney for Shell Oil Company

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of September, 1954 copy of the foregoing objections by Shell Oil Company to interrogatories propounded to it by Phillips Petroleum Company was served upon C. J. Roberts, attorney for said Phillips Petroleum Company by placing a copy of same in the United States Post Office at Midland, Texas, duly stamped and addressed to him at 501 First National Bank Building, P. O. Box 1751, Amarillo, Texas.

Richard L. Huggston
Attorney for Shell Oil Company

STATE OF NEW MEXICO COUNTY OF LEA

IN THE DISTRICT COURT

PHILLIPS PETROLEUM COMPANY,

Plaintiff

vs.

OIL CONSERVATION COMMISSION OF NEW MEXICO, et al.,

Defendants

No. 11422

ORDER

This cause coming on to be heard on the motion of plaintiff for leave of Court to dismiss the complaint filed herein with prejudice, and the Court being fully advised in the premises, and good cause therefor appearing,

IT IS THEREFORE ORDERED That plaintiff's complaint be, and the same hereby is dismissed, with prejudice.

District Judge

Please return for
Case file — Case 5-5-6

NR

Please return for
Case file — Case 5-5-6

NR

Shell Oil Company plans to call as witnesses in the case of Phillips vs. Oil Conservation Commission, Lea County, the following persons who will testify on the subjects indicated:

E. W. Nestor, Hobbs, New Mexico, who will testify on the commercial possibility of the Wolf Camp Reservoir on the Fort lease in the Denton field; also as to waste resulting from dual completion due to number and expense of workovers and possible communication between different reservoirs and greater expense and difficulties attendant to artifically lifting such wells.

B. O. Carlson, Hobbs, New Mexico, and C. A. Hull and R. P. Moscrip of Midland, Texas, who will testify concerning the number and expense of workovers on dually completed wells and possible communication between different reservoirs and waste resulting therefrom and greater expense and difficulties attendant to artifically lifting such wells.

X-6740

COPY

MAGNOLIA PETROLEUM COMPANY

P. O. Box 900, Dallas 21, Texas

LEGAL DEPARTMENT

August 16, 1954

Hon. John R. Brand
District Judge
Fifth Judicial District of New Mexico
P. O. Box 1176
Hobbs, New Mexico

Re: Phillips Petroleum Company v.
Oil Conservation Commission,
#11422, Lea County, New Mexico

Dear Judge Brand:

With reference to your letter of August 13, 1954, addressed to Mr. W. F. Kitts and copy of which I received, concerning the above styled case, I would like to advise that I will be glad to consent to a postponement of said case.

Yours very truly,

Ross Madole

Ross Madole

RM:pb

cc: Mr. W. F. Kitts, Oil Conservation Commission
Mr. Paxton H. Howard, Shell Oil Co.
Mr. Hawley C. Kerr, Skelly Oil Co.
Mr. Jason Kellahin, Atty., Santa Fe, N. M.

MAIN OFFICE

SKELLY OIL COMPANY

TULSA 2, OKLAHOMA

August 16, 1954

Re: Phillips Petroleum Company v.
Oil Conservation Commission
et al, No. 11422, District Court,
Lea County, New Mexico.

Seth & Montgomery
Attorneys at Law
111 San Francisco Street
Santa Fe, New Mexico

Gentlemen:

On August 6, 1954 Mr. Hawley C. Kerr forwarded to you copies of the answer to be filed in the above styled and numbered case on behalf of Skelly Oil Company. Mr. Kerr is now on vacation and I am therefore forwarding a copy of a letter written by John R. Brand, District Judge of Hobbs, New Mexico, to Mr. W. F. Kitts, Co-Counsel of the Oil Conservation Commission, in which Judge Brand states that he does not want to change the trial date from October 20 unless this change is concurred in by opposing counsel.

Will you please advise Judge Brand whether or not you concur in a change of the trial date. I believe that setting the trial time up until later in the year would be suitable to Mr. Kerr.

Yours very truly,

GMP:dh

Gayle M. Pickens

cc: Mr. W. F. Kitts
Oil Conservation Commission
P. O. Box 871
Santa Fe, New Mexico

Mr. Ross Madole
Magnolia Petroleum Company
P. O. Box 900
Dallas 21, Texas

cc: Mr. Paxton H. Howard
Shell Oil Company
P. O. Box 1509
Midland, Texas

Mr. Jason Kellahin
Attorney at Law
P. O. Box 361
Santa Fe, New Mexico

August 11, 1954

Re: No. 11422 - Phillips Petroleum Company v. Oil Conservation Commission of the State of New Mexico - District Court of Lea County, N. M.:

District Clerk
Lea County
Lovington, N. M.

Dear Sir:

On August 6, 1954, we forwarded to you for filing plaintiff's notice of witnesses in the above styled cause, but the file number thereon was erroneously stated to be 11,442. To correct that error and to provide for a proof of service in accordance with Rule 5 (f) of the New Mexico Rules of Civil Procedure, we enclose herewith a corrected copy, with proof of service for filing.

Yours very truly,

ORIGINAL SIGNED BY
C. J. ROBERTS

C. J. ROBERTS

CJR:mm

Enc.

cc Mr. T. M. Foster

Mr. Jason W. Kellahin
P. O. Box 361
Santa Fe, N. M.

Mr. Willard F. Mitts and
Mr. Mel T. Yost
P. O. Box 871
Santa Fe, N. M.

Mr. Ross Madole
P. O. Box 900
Dallas, Texas

Mr. W. B. Kerr
P. O. Box 1650
Tulsa, Oklahoma

Mr. Paxton Howard
P. O. Box 1509
Midland, Texas

Seth W. Montgomery
Santa Fe, N. M.

ILLEGIBLE

SM 35-2 Mid (6-47)

SHELL OIL COMPANY

MAIN OFFICE OCC

MIDLAND AREA

MAILING ADDRESS
P. O. BOX 1509
MIDLAND, TEXAS

1954 AUG 20 AM 8:16

August 17, 1954

GENERAL OFFICES
PETROLEUM BUILDING
MIDLAND, TEXAS

Honorable John R. Brand
District Judge
P. O. Box 1176
Hobbs, New Mexico

In Re: Phillips Petroleum Company v.
Oil Conservation Commission,
No. 11422, Lea County, New Mexico.

Dear Judge Brand:

It will be agreeable to me for this case to be reset as requested in Mr. W. F. Kitts' letter to you of August 4, 1954. If a resetting is effected, please advise me thereof.

Very truly yours,

Paxton Howard

Paxton Howard, General Attorney

PH:AW

cc: Mr. W. F. Kitts, Oil Conservation Commission
Mr. Ross Madole, Magnolia Petroleum Company
Mr. Hawley C. Kerr, Skelly Oil Company
Mr. Jason Kellahin, Atty., Santa Fe, N. M.

IN THE DISTRICT COURT OF LEA COUNTY

STATE OF NEW MEXICO

PHILLIPS PETROLEUM COMPANY, Plaintiff, vs. OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO, COMPOSED OF Hon. Edwin L. Mechem, Governor and Chairman, Hon. E. S. Walker, Commissioner of Public Lands, Member, and Hon. Richard Spurrier, State Geologist and Secretary, Defendants.	No. 11422

ENTRY OF APPEARANCE

We, the undersigned, hereby enter our appearance as counsel for the Defendants in the above entitled and numbered cause.

Melvin T. Yost,

Willard F. Kitts,

Santa Fe, New Mexico,

Attorneys for the Oil Conservation Commission of New Mexico

MAGNOLIA PETROLEUM COMPANY

A SOCONY-VACUUM COMPANY

1954 JUN 10 AM 8:18

LEGAL DEPARTMENT

P. O. BOX 900
DALLAS 21, TEXAS

June 8, 1954

Mr. Willard F. Kitts
c/o New Mexico Oil Conservation Commission
125 Mabry Hall, Capitol Building
Santa Fe, New Mexico

Re: Phillips Petroleum Company v. Oil Conservation Commission of the State of New Mexico, etc., No. 11422 in the 5th Judicial District Court, Lea County, New Mexico

Dear Mr. Kitts:

Upon my return from Santa Fe I was served with a "Notice to Adverse Party" by Judge Foster. A copy of my Motion to Dismiss and Answer was sent to you and Mr. Yost.

I still think that the Commission should file a motion to dismiss. I do not believe that we are a party to the suit simply by service of such notice. The rules of practice and procedure that are prescribed for the district courts are applicable, and we feel that we should be made a party defendant by Phillips Petroleum Company amending its petition. I have just talked to Paxton Howard, with Shell, and he prefers that you file such a motion. There is some question in my mind of whether or not I have any status as a party so as to urge my motion to dismiss.

It has been my thought that Judge Foster did not want us a party to the suit and that that was the reason we

were left out initially.

Kindest personal regards.

Yours very truly,

Ross Madole

Ross Madole

RM:pb

cc: Mr. Paxton H. Howard
General Attorney
Shell Oil Company
P. O. Box 1509
Midland, Texas

Mr. Hawley C. Kerr
General Attorney
Skelly Oil Company
P. O. Box 1650
Tulsa 2, Oklahoma

July 6, 1954

COPY

The Clerk of the District Court
Lea County Court House
Lovington, New Mexico

RE: Phillips Petroleum Co.
vs. Oil Conservation
Commission of New Mexico

Dear Sir:

I enclose herewith the Entry of Appearance of Mr. Yost and myself as counsel for defendant in this cause, which I ask you to enter in the file of this case.

Thank you very much.

Very truly yours,

W. F. Kitts

WFK:BP

Enc.

July 7, 1954

Mr. Ross Madole, Legal Department
Magnolia Petroleum Company
P. O. Box 900
Dallas 21, Texas

RE: Phillips Petroleum Company vs.
Oil Conservation Commission,
No. 11422, Lea County, New Mexico

COPY

Dear Mr. Madole:

Please excuse my very belated reply to your letter of June 8, 1954. Although Mel Yost and I have both been serving as part-time attorneys for the Commission, it was only this week that we have been committed to a definite arrangement as to what days we would spend in the Oil Commission office. I am frank to say that in this instance, your letter was simply overlooked. Because of the new arrangement under which Mel Yost and I are now working, I am sure that such an oversight will not be repeated in the future.

As you probably know, Judge Brand has set this matter for trial at Lovington, New Mexico, on July 23, 1954. However, both Phillips and the Commission have requested that this setting be vacated and that a pre-trial conference be held on that same date instead. I feel reasonably confident that Judge Brand will grant our request. I do not know whether you plan to be or wish to be present in the event such a pre-trial setting is made and would like to hear from you in this regard.

We have no intention of waiving any motion to dismiss on the grounds that either Magnolia, Shell or Skelly are indispensable parties. Quite frankly, at this time I am in no way convinced that any of you are indispensable parties, although I believe that all of you are necessary parties within the meaning of the New Mexico statutes. However, a motion to dismiss for failure to join an indispensable party, being jurisdictional, can be raised at any time and I have told Phillips, through Jason Kellahin, that we still plan to make such a motion if we feel that it has any merit. I am presently working on an appellate brief in another case where this

question of indispensable parties is involved, so I feel that my thinking on this question is fairly clear at the moment, and should be even further clarified by the time I finish my brief at the end of this week.

Actually, what Mel Yost and I plan to do is to thrash out this whole question of indispensable parties and necessary parties when and if we are given a pre-trial conference by Judge Brand. I will contact you immediately as soon as I learn of Judge Brand's disposition of our request.

Kindest personal regards.

Very truly yours,

W. F. Kitts

WFK:BP

CC: Mr. Paxton H. Howard
General Attorney
Shell Oil Company
P. O. Box 1509
Midland, Texas

Mr. Hawley C. Kerr
General Attorney
Skelly Oil Company
P. O. Box 1650
Tulsa 2, Oklahoma

July 7, 1954

Hon. John R. Brand
District Judge
Lea County Court House
Lovington, New Mexico

RE: Phillips Petroleum Company vs.
Oil Conservation Commission,
No. 11422, Lea County

Dear Judge Brand:

I have received a copy of the notice of setting of this cause for trial on Friday, July 23rd in Lovington. As counsel for the Oil Conservation Commission, Melvin T. Yost and I respectfully request that this trial setting be vacated and that the matter be set for pre-trial on that same date, if at all possible.

We earnestly believe that a pre-trial conference would be most beneficial to all parties concerned in this case. There are several rather complicated procedural and legal questions under the Oil Conservation Act which should be ironed out before this matter comes to trial, and we believe that much time will be saved should some of these matters be determined and agreed upon at pre-trial. We are also confident that the plaintiff and possible intervenors, as well as the Commission as defendant, will be willing to cooperate to the extent of stipulating as to a large number of the pertinent fact questions involved.

I understand that the plaintiff, Phillips Petroleum Company, has made a similar request of the Court, and we therefore ask your favorable consideration of this matter.

Very truly yours,

Willard F. Kitts,
Co-Counsel for the Oil Conservation
Commission of New Mexico

WFK:BP

DASHKO BUILDING

TELEPHONE 3-2195

JOHN R. BRAND
DISTRICT JUDGE
FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
P. O. BOX 1176
HOBBS, NEW MEXICO

10 JULY 1954

MR. JASON W. KELLAHIN
ATTORNEY AT LAW
LAUGHLIN BUILDING
P. O. BOX 361
SANTA FE, NEW MEXICO

MR. WILLARD F. KITTS
ATTORNEY AT LAW
116 EAST PALACE AVENUE
P. O. BOX 664
SANTA FE, NEW MEXICO

MESSRS. GILBERT, WHITE & GILBERT
ATTORNEYS AT LAW
SANTA FE, NEW MEXICO

RE: PHILLIPS PETROLEUM CO.
VS.
OIL CONSERVATION COMMISSION
OF NEW MEXICO, ET AL.
NO. 11,422

GENTLEMEN:

THE TRIAL SETTING OF THIS MATTER IS HEREBY VACATED, AND A PRE-TRIAL CONFERENCE WILL BE HELD AT 9 O'CLOCK A.M., ON FRIDAY, JULY 23, AT LOVINGTON.

YOURS VERY TRULY,

JOHN R. BRAND
DISTRICT JUDGE

JRB/J

MAGNOLIA PETROLEUM COMPANY

A SOCONY-VACUUM COMPANY

LEGAL DEPARTMENT

P. O. BOX 900
DALLAS 21, TEXAS

EARL A. BROWN
GENERAL COUNSEL
ROY C. LEDBETTER
RAYMOND M. MYERS
CHAS. B. WALLACE
R. T. WILKINSON, JR.
FRANK C. BOLTON, JR.
JACK VICKREY
SAM H. FIELD
ROSS MADOLE
FLOYD B. PITTS
ROY L. MERRILL
ALBERT E. AIKMAN
JACK E. EARNEST
ASSISTANTS

August 2, 1954

Mr. Willard F. Kitts
Attorney at Law
P. O. Box 664
Santa Fe, New Mexico

Re: Phillips Petroleum Company v. Oil Conservation Commission of the State of New Mexico, etc., No. 11422, 5th Judicial District Court, Lea County, New Mexico

Dear Willard:

I enjoyed seeing you again at the pre-trial conference of the above styled suit. I believe that we are in excellent position in view of the Court.

Will you please forward to me, as soon as possible, a copy of the record so that I may compare the same to see that nothing has been omitted. I would like very much to have this transcript before I am served with a copy of the witnesses and their proposed testimony which is to be furnished by Phillips sometime this week.

Kindest personal regards.

Yours very truly,

Ross Madole

Ross Madole

RM:pb

VIA AIRMAIL

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

August 4, 1954

COPY

Honorable John R. Brand
District Judge
Lea County Court House
Lovington, New Mexico

Re: Phillips Petroleum Company vs.
Oil Conservation Commission,
#11422, Lea County, New Mexico

Dear Judge Brand:

On behalf of the Oil Conservation Commission, I would like to request that the tentative setting for the trial of this case on October 20, 1954, be vacated. The reason for this request is that the regular monthly hearing of the Oil Conservation Commission commences that day in Santa Fe. This meeting will probably continue until October 22, 1954. Although normally it is not imperative that both Melvin Yost and I be present at these meetings, one of us has to be there. In addition, due to the importance ofthe subject case now in your court, both of us want very much to partidpate in the trial as counsel for the Commission.

Rule 503 of the Rules and Regulations of the Oil Conservation Commission states that the Commission "shall meet between the 15th and 20th of each month a open hearing for the purpose of determining the amount of oil to be produced from all oil pools for the following calendar month." These hearings are scheduled well in advance and, in fact, the schedule of monthly hearings for 1954 was drawn up and promulgated in November of last year.

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Monthly hearings of the Commission are also scheduled for November 17th and 19th and December 16th to 18th of this year. Any other setting date will be agreeable to the Commission.

Very truly yours,

W. F. KITTS,
Co-Counsel for Oil Conservation Commission

WFK/ir

cc: Mr. Ross Madole
Legal Department
Magnolia Petroleum Company
P. O. Box 900 - Dallas 21, Texas

Mr. Paxton H. Howard, General Attorney
Shell Oil Company
P. O. Box 1509
Midland, Texas

Mr. Hawley C. Kerr
General Attorney
Skelly Oil Company
P. O. Box 1650
Tulsa 2, Oklahoma

Mr. Jason Kellahin
Attorney-at-Law
Box 361
Santa Fe, New Mexico

ILLEGIBLE

August 7, 1954

COPY

Mr. Ross Madole
Attorney at Law
Magnolia Petroleum Co.
Magnolia Building
Dallas, Texas

RE: Phillips Petroleum Co.
v. Corporation Commission

Dear Ross:

Enclosed is a copy of the record before the Commission in this case. Would you kindly return it to the Commission within ten days of its receipt?

Best regards,

W. F. Kitts

WFK:BP

Enc.

DASHKO BUILDING

TELEPHONE 3-2195

JOHN R. BRAND
DISTRICT JUDGE
FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
P. O. BOX 1176
HOBBS, NEW MEXICO

13 August 1954

Mr. W. F. Kitts
Co-Counsel
Oil Conservation Commission
State of New Mexico
P. O. Box 871
Santa Fe, New Mexico

Re: Phillips Petroleum Company vs.
Oil Conservation Commission,
#11422, Lea County, New Mexico

Dear Mr. Kitts:

I am just getting around to answering your letter of August 4 since I have been in Albuquerque for the past 12 days trying cases there.

I regret that you were not aware at Lovington that the date of October 20 conflicted with the meeting of the Conservation Commission but I do not feel like granting your request for change in date unless concurred in by opposing counsel to whom a copy of this letter is going for attention and reply.

Yours very truly,

JOHN R. BRAND
District Judge

JRB/j

cc: Mr. Ross Madole, Magnolia Petroleum Co.
Mr. Paxton H. Howard, Shell Oil Co.
Mr. Hawley C. Kerr, Skelly Oil Co.
Mr. Jason Kellahin, Atty., Santa Fe, N. M.

MAIN OFFICE OCC

SHELL OIL COMPANY

MIDLAND AREA

1954 MAY 7 AM 9:31

MAILING ADDRESS
P. O. BOX 1509
MIDLAND, TEXAS

GENERAL OFFICES
PETROLEUM BUILDING
MIDLAND, TEXAS

Show To
Yost

May 7, 1954

Mr. Melvin Yost
Attorney at Law
New Mexico Oil Conservation Commission
125 Mabry Hall
Capitol Building
Santa Fe, New Mexico

In Re: Phillips Petroleum Company v. Oil Conservation Commission of the State of New Mexico, etc., No. 11422 In the Fifth Judicial District Court, Lea County, New Mexico.

Dear Sir:

We have received copies of the letters of Mr. Ross Madole, of Magnolia, and of Mr. Hawley C. Kerr, of Skelly, regarding the above captioned case.

Like Magnolia and Skelly, we feel that the Commission's Order in this matter should be sustained and we will be glad to help in the defense of the Order.

We also feel that under the Statute Magnolia, Skelly and Shell should have been made parties to this appeal and should have been given notice thereof. We do not wish to intervene in the action but would like to be advised as to your plans regarding either asking that the appeal be dismissed or requiring that the said three companies be made parties to the action.

We would also like to be kept advised as to developments in the case so that we may have ample time within which to help in such manner as you see fit in defending the Commission's Order.

Very truly yours,

Paxton Howard

PH:AW

Paxton Howard, General Attorney

cc: Mr. Ross Madole
Magnolia Petroleum Co., Box 900
Dallas, Texas.

cc: Mr. Hawley C. Kerr
Legal Dept., Skelly Oil Co.
Tulsa 2, Oklahoma.

MAGNOLIA PETROLEUM COMPANY

A SOCONY-VACUUM COMPANY

LEGAL DEPARTMENT

P. O. BOX 900
DALLAS 21, TEXAS

April 22, 1954

Mr. Melvin Yost
Attorney at Law
New Mexico Oil Conservation Commission
125 Mabry Hall, Capitol Building
Santa Fe, New Mexico

Re: Phillips Petroleum Company v. Oil Conservation Commission of the State of New Mexico, etc., No. 11422 in the 5th Judicial District Court, Lea County, New Mexico

Dear Mr. Yost:

Magnolia Petroleum Company has actively participated in the trial of the application to dually complete Fonzo No. 1 well by Phillips, and likewise protested the application upon rehearing. The denial by the Commission of this application is the basis of the appeal by Phillips in the above styled suit. It is my interpretation of Section 69-223 of the New Mexico Statutes, as amended, that Magnolia Petroleum Company, Shell Oil Company, and Skelly Oil Company were necessary parties to this appeal. This section, among other things, provides that:

> "Notice of such appeal shall be served upon the adverse party or parties and the commission in the manner provided for the service of summons in civil proceedings."

Certainly, by virtue of our active participation in the trial of the case before the Commission by the introduction of affirmative evidence and the cross-examination of Phillips' witnesses, we effectively made ourselves "adverse parties" within the meaning of the statute.

We certainly desire to assist the Commission in every way possible to uphold the decision of the Commission. To effectively do this we feel that we should be made a party to the suit by Phillips, without the necessity of filing application for intervention under Rule 24 of the New Mexico Rules for the District Courts. It is therefore our suggestion that, under Rule 12 of said rules above referred to, a motion to dismiss be filed by the Commission for failure to join Magnolia, Shell, and Skelly in the suit as provided in Rule 12 (7), as we feel that we were necessary parties under Rule 19.

I am taking the liberty of sending a copy of this letter to the attorneys for Shell and Skelly, and would appreciate your advising us as soon as you can whether or not you plan on filing such a motion so that we can assist you in the presentation of such a motion and in the ultimate defense of this suit. In my opinion it is important as a matter of strategy to require Phillips to bring us into the suit rather than be compelled to come in by intervention. In the event additional testimony is offered by Phillips, the Commission would be dependent upon Magnolia, Skelly, and Shell to offer rebutting testimony and proper expert advice as to the cross-examination of Phillips' experts.

We feel that this appeal should be defended to the utmost, inasmuch as the whole policy of the Commission to prohibit dual oil-oil completions in the State of New Mexico where danger of injury to one of the reservoirs is present is now under attack by Phillips. There has always been in my mind some question as to whether or not these particular applications were being used simply as a guinea pig for future applications in other fields. It is my opinion that the board's order can be successfully defended, and should be defended vigorously.

Kindest personal regards.

Yours very truly,

Ross Madole

Ross Madole

RM:pb

cc's: Mr. Paxton H. Howard
Attorney at Law
Shell Oil Company
P. O. Box 1509
Midland, Texas

Mr. George W. Selinger
Attorney at Law
Skelly Oil Company
P. O. Box 1650
Tulsa, Oklahoma

MAIN OFFICE OCC

SKELLY OIL COMPANY

GENERAL ATTORNEY:
HAWLEY C. KERR
ASS'T. GENERAL ATTORNEY:
GAYLE M. PICKENS
ATTORNEYS:
JAMES E. HARA
WILLIAM R. HORKEY
FRED D. LEONARD
GEORGE W. MORROW
ROBERT S. RIZLEY
HORACE S. SMITH

TULSA 2, OKLAHOMA

April 23, 1954

RE: Phillips Petroleum Company v. Oil Conservation Commission of the State of New Mexico, etc., #11422
5th Judicial District Court
Lea County, New Mexico

Mr. Melvin Yost
Attorney at Law
New Mexico Oil Conservation Commission
125 Mabry Hall, Capitol Building
Santa Fe, New Mexico

Dear Sir:

Our Mr. George Selinger has requested me to write you concerning your recent conversation with him relative to whether or not our company is willing to assist the Conservation Commission of New Mexico in the above appeal proceedings in upholding the Commission's order denying Phillips' application for permission to dually complete certain of its oil wells in the Denton Field, Lea County, New Mexico.

Concurring and joining in the position taken and recommendations set forth in Mr. Ross Madole's letter to you on behalf of Magnolia, dated April 22, Skelly Oil Company desires to cooperate with and be of assistance to you in the above case in defending and upholding the Commission's order.

Please advise us as to whether or not you plan on filing the motion to dismiss as suggested in Mr. Madole's letter, or as to what steps, if any, you have to suggest in bringing us in as a party to the appeal proceedings. We shall be pleased to have your suggestions as to how we may be of assistance to you in the case.

Yours very truly,

Hawley C. Kerr

HCK/GPE

Cc Mr. Ross Madole
Box 900, Dallas 1, Texas
Mr. Paxton Howard
Shell Oil Company, Box 1509, Midland, Texas
John L. Freeman
George Selinger

IN THE DISTRICT COURT OF LEA COUNTY
STATE OF NEW MEXICO

PHILLIPS PETROLEUM COMPANY, Plaintiff,	)	
vs.	)	No. 11, 422
OIL CONSERVATION COMMISSION OF NEW MEXICO, ET AL. Defendants.	)	

NOTICE OF WITHDRAWAL

Comes now L. C. White, attorney of record for the Oil Conservation Commission of the State of New Mexico in the above entitled cause, and withdraws as their attorney of record.

Attorney for the Oil Conservation Commission of the State of New Mexico.

CERTIFICATE

I hereby certify that I have this 15th day of July, 1954, mailed a copy of the foregoing to Mr. Willard F. Kitts, Attorney at Law, 116 East Palace Avenue, Santa Fe, New Mexico, and to Mr. Jason W. Kellahin, Attorney at Law, Laughlin Building, Santa Fe, New Mexico, they being the attorneys of record for the plaintiff herein.

Attorney for the Oil Conservation Commission of the State of New Mexico.

JASON W. KELLAHIN
ATTORNEY AT LAW
LAUGHLIN BUILDING
P. O. BOX 161
SANTA FE, N. M.

October 5, 1954

Mr. Melvin Yost and Mr. W. F. Kitts
New Mexico Oil Conservation Commission
P. O. Box 871
Santa Fe, New Mexico

Mr. Paxton Howard
General Attorney, Shell Oil Co.
P. O. Box 1509
Midland, Texas

Mr. Ross Madole
Legal Dept., Magnolia Petroleum Co.
P. O. Box 900
Dallas, Texas

Mr. Hawley C. Kerr
General Attorney, Skelly Oil Co.
P. O. Box 1650
Tulsa 2, Oklahoma

Seth and Montgomery
111 San Francisco Street
Santa Fe, New Mexico

Re: Phillips Petroleum Co. v.
Oil Conservation Commission
No. 11422, Lea County

Gentlemen:

Enclosed is a copy of plaintiff's motion to dismiss the above captioned cause, which has been filed this date, together with copy of the order of dismissal which has been submitted to the Court.

I advised District Judge John R. Brand today that the motion to dismiss would be filed, and he advised me that it would be granted.

Yours very truly,

Jason W. Kellahin

Jason W. Kellahin
Attorney for Plaintiff

JWK/my
Encls.

STATE OF NEW MEXICO COUNTY OF LEA

IN THE DISTRICT COURT

PHILLIPS PETROLEUM COMPANY

Plaintiff

vs No. 11422

OIL CONSERVATION COMMISSION OF NEW MEXICO, et al.,

Defendants

M O T I O N

Comes now Phillips Petroleum Company, plaintiff in the above entitled cause, and moves this Court for an order dismissing the complaint filed herein, with prejudice.

/S/ JASON W. KELLAHIN
Attorney for Phillips Petroleum Company, plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing motion has been served upon all parties of record in the above entitled cause by mailing a copy thereof to attorneys of record, postage pre-paid, this 5th day of October, 1954

/S/ JASON W. KELLAHIN
Jason W. Kellahin Attorney at Law
Santa Fe, New Mexico

SUMMONS

IN THE DISTRICT COURT, COUNTY OF LEA, STATE OF NEW MEXICO

PHILLIPS PETROLEUM COMPANY

....., Plaintiff

VS.

OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO, COMPOSED OF Hon. Edwin L. Mechem, Governor and Chairman, Hon. E. S. Walker, Commissioner of Public Lands, Member, and Hon. Richard R. Spurrier, State Geologist and Secretary, Defendants

NO. 11424

THE STATE OF NEW MEXICO

TO: Oil Conservation Commission of the State of New Mexico,

Hon. Edwin L. Mechem, Chairman

Hon. E. S. Walker, Member

Hon. Richard R. Spurrier, Secretary

Greeting: Defandants

You are hereby commanded to appear before the Fifth Judicial Court District of the State of New Mexico, sitting within and for the County of Lea, that being the county in which the complaint herein is filed, within thirty days after service of this summons, then and there to answer the complaint of Phillips Petroleum Company, Plaintiff in the abeve cause.

You are notified that unless you so appear and answer, the plaintiff will apply to the court for the relief demanded in the complaint together with costs of suit.

WITNESS, the Honorable C. ROY ANDERSON, District Judge of the Fifth Judicial District Court of the State of New Mexico, and the Seal of the District Court of Lea County,

this 29th day of December A. D., 1953

Seal

Wm Beauchamp
Clerk of the District Court.

By .....
Deputy.

A statement of the nature of the action in general terms, viz: Complaint Attached

Wm Beauchamp
Clerk of the District Court.

By .....
Deputy.

SHERIFF'S RETURN

State of New Mexico,
County of Lea

I, ...
Sheriff of Lea County, New Mexico, do hereby certify that this writ came to hand the

..... day of ....., 19.....

and there was at the time delivered to me

for service herewith ..... cop.....

of this summons and .....cop.....
of the complaint filed therein; that I made service herein by delivering one copy of this summons and one copy of the complaint herein to each of the within named defendant..... within the said County of Lea, as follows to-wit:

.....

.....
(Name)

on ..... and
(Date of Service)

.....

on .....

.....

FEES FOR SERVICE

Serving writ and return . . . $.....

Mileage . . . . . $.....

Total . . . . . $.....

....., Sheriff

By ....., Deputy

No. .....

IN THE

DISTRICT COURT

LEA COUNTY, NEW MEXICO

PHILLIPS PETROLEUM COMPANY

.....

Plaintiff.....

VS.

OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO, Et Al

.....

Defendant.....

SUMMONS

Jason W. Kellahin
Attorney at Law
P.O.Box 361
Santa Fe,New Mexico

Attorney..... for Plaintiff.....

AFFIDAVIT OF SERVICE

THE STATE OF NEW MEXICO
COUNTY OF LEA
} SS.

I, ..., being first duly sworn, on oath, state: That I am a citizen of the United States and over the age of eighteen years, and not a party of said action that I have made service of the within summons in the above-named county and state by delivering a true copy of this summons together with a copy of the complaint, filed in said cause to (each of) the following defendant..... herein named, to-wit:

..... on ....., 19.....

..... on ....., 19.....

..... on ....., 19.....

.....

.....

.....

Subscribed and sworn to before me this..... day of ....., 19....

IN THE DISTRICT COURT IN AND FOR LEA COUNTY, NEW MEXICO

FIFTH JUDICIAL DISTRICT

STATE OF NEW MEXICO COUNTY OF LEA

PHILLIPS PETROLEUM COMPANY,
Complainant

v.

OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO, composed of Hon. Edwin L. Mechem, Governor and Chairman, Hon. E. S. Walker, Commissioner of Public Lands, and Hon. Richard A. Spurrier, State Geologist and Secretary,
Defendants

No. 11422

C O M P L A I N T

Comes now Phillips Petroleum Company, a corporation, organized, created and existing under and by virtue of the laws of the State of Delaware, with a permit to do business and doing business in the State of New Mexico, hereinafter called complainant, and complaining of the Oil Conservation Commission of the State of New Mexico, composed of the Hon. Edwin L. Mechem, Governor of the State of New Mexico, Chairman, Hon. E. S. Walker, Commissioner of Public Lands, Member, and Hon. Richard A. Spurrier, State Geologist of the State of New Mexico and Secretary, hereinafter referred to as Commission, and for cause of action against the Commission alleges:

1.

The complainant, Phillips Petroleum Company, is a corporation organized, created and existing under and by virtue of the laws of the State of Delaware, with a permit to do business and doing business in the State of New Mexico. The Oil Conservation Commission of New Mexico is a statutory body created by virtue of the laws of the State of New Mexico and with the power to sue and be sued, and composed of the Hon. Edwin L. Mechem, Governor of the State of New Mexico, Chairman, the Hon. E. S. Walker, Commissioner of Public Lands, Member, and the Hon. Richard A. Spurrier, State Geologist and Secretary.

2.

Complainant alleges that the official place of residence of the members of the Oil Conservation Commission of the State of New Mexico, and where each

may be found for the purpose of the service of process, is at Santa Fe, in Santa Fe County, State of New Mexico.

3.

The Oil Conservation Commission of the State of New Mexico as constituted is a statutory agency vested with power to limit and prorate production of crude petroleum and natural gas in the State of New Mexico. As a statutory agency it is charged with the proper administration and enforcement of all laws, rules and regulations pertaining to the conservation and proration of oil and gas production, and as such duly constituted agency has exercised its delegated authority in relation to the complainant as hereinafter alleged.

4.

At all times hereinafter alleged, Phillips Petroleum Company has been and still is engaged in the business of producing oil and gas in the State of New Mexico. It is the owner of an oil well known as its Ponzo No. 1 well, located in the NW/4 NW/4 Section 35, Township 14 S, Range 37 E, N.M.P.M. in the Denton field in Lea County, New Mexico, on which it holds a good and valid and subsisting oil and gas lease. As the owner of the Ponzo No. 1 well it is, within the definition of the term owner as used in the Conservation Statutes of the State of New Mexico, vested with the right to drill into and produce oil and gas from the Denton Devonian formation and the Denton Wolfcamp formation which overlies the Denton Devonian formation in the Denton field, and appropriate the production of the oil and gas to its own use.

5.

That the Commission has and by statute is given jurisdiction and authority over all matters relating to the conservation of oil and gas in the State of New Mexico, and of the enforcement of all provisions of the Oil and Gas Conservation Act, and of any other law of the State of New Mexico relating to the conservation of oil and gas. That the Commission has the power and jurisdiction, authority and capacity to prescribe rules and regulations and issue orders pertaining to and relating to the conservation of oil and gas in the State of New Mexico.

6.

That at all times hereinafter alleged Phillips Petroleum Company has been and still is engaged in the business of producing oil and gas in the State

of New Mexico. As an oil and gas producer it is and has been and now is adversely affected by a recent order of the Commission with respect to its property and property rights in Cause No. 557 before the Commission and by Orders R-351 and R-351-A issued in Cause No. 557.

7.

Phillips Petroleum Company alleges that on and prior to July 17, 1952, it completed an oil well in the Devonian formation in the Denton field in Lea County, New Mexico, known as its Fonzo No. 1 Well, located in the NW/4 NW/4 Section 35, Township 14 S, Range 37 E, N.M.P.M., Lea County, New Mexico. The well was completed at a plug-back total depth of 12,687 feet. That in completing the well it drilled through the Wolfcamp formation, which overlies the Devonian formation which is reached at a lesser depth. That the Fonzo Well No. 1 is capable of being non-wastefully operated so as to produce both from the Devonian formation and the Wolfcamp formation without the necessity of drilling an additional well to produce oil encountered in the well bore of the Fonzo Well No. 1 in the Wolfcamp formation.

8.

On June 15, 1953, and in compliance with the provisions of Rule 112 of the Commission, Phillips Petroleum Company filed its application requesting permission of the Commission to dually complete its Fonzo Well No. 1 so as to produce oil from both the Devonian and the Wolfcamp formation in the Denton field.

9.

That due notice was given to all interested parties of the application of Phillips Petroleum Company to dually complete its well and thereafter a hearing was held before the Commission in Santa Fe, New Mexico, on July 16, 1953. That on September 8, 1953, the Commission duly entered its Order No. R-351, dated August 28, 1953, denying to Phillips Petroleum Company permission to dually complete its Fonzo Well No. 1.

10.

That in due time after the entry of Order No. R-351 and on September 21, 1953, Phillips Petroleum Company filed with the Commission its petition for a re-hearing in Cause No. 557. On September 28, 1953, the Commission, by its Order No. R-351-A, granted a re-hearing to Phillips Petroleum Company.

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11.

That pursuant to the Order of Re-Hearing, a re-hearing was had before the Commission on October 15, 1953. On December 24, 1953, the Commission entered its Order No. R-351-B, dated December 10, 1953, denying Phillips Petroleum Company permission to dually complete its Fonzo No. 1 Well.

12.

That attached hereto and made a part of this complaint and by reference thereto incorporated herein for all purposes, are true and correct copies of the Orders of the Commission R-351 and R-351-B.

13.

Phillips Petroleum Company alleges that by virtue of the issuance and entry of Orders Nos. R-351 and R-351-B, it has exhausted its administrative remedy before the Commission and that it is a person in interest and affected by the Orders, and as such prosecutes its appeal therefrom to this Court.

14.

Phillips Petroleum Company alleges that the action of the Commission in denying to it permission to dually complete its well is unreasonable, arbitrary, confiscatory, illegal, erroneous, and void, and deprives it of its property and a valuable property right without due process of law upon each and all of the grounds and for each and all of the reasons following:

(a) The orders are not supported by the evidence and there is no substantial evidence to support the orders.

(b) The findings of the Commission are vague and indefinite, ambiguous and doubtful, and wholly insufficient to support the orders of the Commission.

(c) That the findings of fact of the Commission are not supported by substantial evidence and are contrary to the evidence, and are not supported by any evidence.

(d) That the testimony offered and exhibits introduced clearly show that the dual completion of the well will not subject such well to operational hazards, that no serious danger of inter-zonal communication exists, and that reservoir conditions are highly favorable to the dual completion of the well as proposed, and that the equipment proposed to be used will afford adequate

and ample protection to all producing horizons, all of which was clearly shown by the testimony and exhibits at the hearings, and that such dual completion will result in the prevention of waste and the protection of correlative rights.

(e) That the orders of the Commission were not entered in accordance with law.

(f) That the orders will require the drilling of an excessive number of wells with attendant risks and economic loss.

15.

That each and all of the grounds of error as above alleged were contained in the petition for rehearing filed with the Commission, and were urged upon the Commission and were acted upon by the Commission at the hearings.

WHEREFORE, premises considered, Phillips Petroleum Company prays that proper process be issued to the New Mexico Oil Conservation Commission of the State of New Mexico, composed of the Hon. Edwin L. Mechem, Governor of the State of New Mexico, Hon. E. S. Walker, Commissioner of Public Lands of the State of New Mexico, and Hon. Richard A. Spurrier, State Geologist of the State of New Mexico, commanding it and them in terms of law to appear and answer the Complaint of Phillips Petroleum Company, and that upon hearing herein this Honorable Court enter its judgment reversing the action of the New Mexico Oil Conservation Commission and its members in entering Orders R-351 and R-351-B, denying to the Complainant permission to dually complete its Ponzo Well No. 1, and remanding this cause to the Commission for the entry of an appropriate order, together with such other and further relief, both in law and in equity to which the Complainant may show itself justly entitled.

Jason W. Kellahin
Jason Kellahin
P. O. Box 361, Santa Fe, New Mexico

E. H. Foster

C. J. Roberts

T. M. Kluse

P. O. Box 1751,
Amarillo, Texas

Attorneys for Complainant
Phillips Petroleum Company

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EXHIBIT "A"

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

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

Case No. 557
Order No. R-351

THE MATTER OF THE APPLICATION OF
PHILLIPS PETROLEUM COMPANY FOR
AUTHORITY TO EFFECT DUAL COMPLETION
OF ITS FOSTER NO. 1 WELL, LOCATED IN
NW/4 NW/4, SECTION 35, TOWNSHIP 14
SOUTH, RANGE 37 EAST, NMPM, LEA COUNTY,
NEW MEXICO (IN THE DENTON FIELD) IN SUCH
A MANNER AS TO PERMIT PRODUCTION OF OIL
FROM THE DEVONIAN FORMATION, THROUGH
PERFORATED CASING PERFORATIONS, 12,580 TO
12,600 FEET, AND FROM 12,456 TO 12,550 FEET,
AND OIL FROM THE WOLFCAMP FORMATION,
THROUGH PERFORATING 9,590 to 9,260 FEET.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 o'clock a.m. on July 16, 1953, at Santa Fe, New Mexico, before the Oil Conservation Commission, hereinafter referred to as the "Commission".

NOW, on this 20th day of August, 1953, the Commission, a quorum being present, having considered the application and the testimony adduced 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.

(2) That dual completion of the Foster No. 1 well, in the NW/4 NW/4 Section 35, Township 14 South, Range 37 East, NMPM, in the Denton Field, Lea County, New Mexico, for production of oil from the Denton-Wolfcamp formation and oil from the Denton-Devonian formation would be subject to the operational hazards incident to great depths.

(3) That there exists between the two reservoirs a considerable pressure differential, and, should intercommunication occur from any reason, the deeper Devonian reservoir with the higher pressure would be injured.

(4) That testimony shows that packer, and other mechanical failures in oil-oil completions at various depths have caused injurious interzone communication in reservoirs in other areas under conditions similar to those existing in the Denton Field.

(5) That applicant's testimony as to the economic effectiveness of the Wolfcamp pay section under the subject well appears to be unduly conservative.

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(6) That application for oil-oil dual completion of the Ponzo No. 1 well should be denied.

IT IS THEREFORE ORDERED:

That the application of Phillips Petroleum Company for permission to dually complete its Ponzo No. 1 well, located in the NW/4 NW/4, Section 35, Township 14 South, Range 37 East, NMPM, for oil from the Fusselman-Wolfcamp formation and oil from the Fusselman-Devonian formation be, and the same hereby is denied.

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

/s/ E. S. Becker

GUY SHEPARD, Chairman

/s/ A. L. Porter

A. L. PORTER, Member

/s/ A. R. Kurtz

A. R. KURTZ, Secretary

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EXHIBIT No. 5

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

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

Case No. 557
Order No. R-351-B

IN THE MATTER OF THE APPLICATION
OF PHILLIPS PETROLEUM COMPANY
FOR PERMISSION TO EFFECT A DUAL
COMPLETION OF IT'S FONZO NO. 1
WELL, LOCATED IN THE NW/4 NE/4
SECTION 35, TOWNSHIP 14 SOUTH,
RANGE 37 EAST, NMPM, LEA COUNTY,
NEW MEXICO (IN THE DENTON FIELD),
IN SUCH A MANNER AS TO PERMIT
PRODUCTION OF OIL FROM THE DEVON-
IAN FORMATION THROUGH PERFORATED
PERFORATIONS, 12,580 to 12,600 FEET,
AND OIL FROM THE FUSSELMAN FORMATION
THROUGH PERFORATIONS FROM 9,590 to 9,260
FEET.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This case came on for hearing upon the petition of Phillips Petroleum Company on July 16, 1953 at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission" and for re-hearing on October 15, 1953.

NOW, on this 10th day of December, 1953, the Commission, a quorum being present, having fully considered the record and the testimony adduced and the exhibits received at said hearing and re-hearing, and being fully advised in the premises.

FINDS:

(1) That due public notice having been given, in accordance with law, the Commission has jurisdiction of this cause, the persons and subject matter thereof.

(2) That after due public notice and hearing on July 16, 1953, the Commission entered its Order No. R-351, denying petitioner's application for dual completion (oil-oil) of its Fonzo No. 1 well, NW/4 NE/4 section 35, Township 14 South, Range 37 East, NMPM, Lea County, New Mexico in the Denton field.

(3) That upon motion duly filed, the Commission granted a re-hearing by its Order No. R-351-A for the purpose of taking additional testimony and hearing oral arguments, and that such re-hearing was held on October 15, 1953.

(4) That no evidence was presented at such re-hearing sufficient to justify an order granting petitioner's application.

ILLEGIBLE

IT IS THEREFORE ORDERED:

That Phillips Petroleum Company's application for permission to dually complete its Ponso No. 1 well located in the [illegible] Section 35, Township 14 South, Range 37 East, NMPM, Lea County, New Mexico for production of oil from the Denton-Wolfcamp Pool, and oil from the Denton-Devonian Pool be and the same hereby is denied and the Commission's Order No. R-351 be and the same hereby is affirmed.

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

[illegible], Chairman

[illegible], Member

[illegible], Member and Secretary

ILLEGIBLE

PHILLIPS PETROLEUM COMPANY

AMARILLO, TEXAS

LEGAL DEPARTMENT
RAYBURN L. FOSTER
VICE PRESIDENT
AND GENERAL COUNSEL
HARRY D. TURNER
GENERAL ATTORNEY

AMARILLO DIVISION
E. H. FOSTER
CHIEF ATTORNEY
R. S. SUTTON
CLIFFORD J. ROBERTS
C. REX BOYD
JACK RITCHIE
THOMAS M. BLUME
JOE V. PEACOCK
WILLIAM M. COTTON
STAFF ATTORNEYS

September 16, 1954

Re: No. 11422 - Phillips Petroleum Company v. Oil Conservation Commission et al - In the District Court of Lea County, New Mexico:

Kitts & Yost
Attorneys at Law
P. O. Box 871
Santa Fe, New Mexico

Gentlemen:

Enclosed are copies of Interrogatories served upon Magnolia Petroleum Company, Shell Oil Company and Skelly Oil Company in the above styled case.

Yours very truly,

C. J. Roberts mm

CJR:mm

C. J. ROBERTS

Encs.

cc Mr. E. H. Foster

[illegible] COUNTY
[illegible]

[illegible] COMPANY,
[illegible])

vs.) No. 11422

[illegible])
[illegible], ET AL,
Defendants)

TO [illegible] MAGNOLIA PETROLEUM COMPANY:

Leave of Court having first been obtained, Phillips Petroleum Company requests, in accordance with Rule 33 of the Rules of the District Courts of the State of New Mexico, that the following interrogatories be answered under oath by an officer or agent of Magnolia Petroleum Company, and that the answers be served upon counsel for Phillips Petroleum Company within fifteen days from the time these interrogatories are served upon it.

INTERROGATORY NO. 1:

State the name and address of the employee or agent who is answering these interrogatories on behalf of Magnolia Petroleum Company.

INTERROGATORY NO. 2:

State the position with Magnolia Petroleum Company of the employee named in interrogatory No. 1.

INTERROGATORY NO. 3:

State the duties of the employee or agent named in interrogatory No. 1.

INTERROGATORY NO. 4:

How many wells has Magnolia Petroleum Company completed in two oil reservoirs to be what is commonly referred to as dual oil-oil wells

INTERROGATORY NO. 5:

How many dual oil-oil wells is Magnolia Petroleum Company currently producing

INTERROGATORY NO. 6:

Does Magnolia Petroleum Company have, own or operate any wells that are completed in as many as three separate strata containing either gas and/or oil, and if so, how many

INTERROGATORY NO. 7:

In what states does Magnolia Petroleum Company have, own or operate dually completed oil-oil wells

ILLEGIBLE

INTERROGATORY NO. 8:

Name the fields in which Magnolia Petroleum Company owns or operates dually completed oil-oil wells.

INTERROGATORY NO. 9:

State the names of wells owned or operated by Magnolia Petroleum Company that are or were completed in two or more strata, the names of the formations each well is currently or has in the past produced from, the total depth of each well, the depth of the upper and lower produced zone in each well, the bottom-hole pressure of each produced zone of each well at the time of original completion as a dual oil-oil producer, the dates each well was dually completed, and the date that each well that is no longer dually produced ceased to be dually produced.

INTERROGATORY NO. 10:

Does any of Magnolia Petroleum Company's dual oil-oil wells produce what is commonly known in the oil and gas industry as "sour" oil from either zone, and if so, how many such dual oil-oil wells does Magnolia Petroleum Company have

INTERROGATORY NO. 11:

Does any of Magnolia Petroleum Company's dual oil-oil wells produce paraffin intermediate base crude, and if so, how many such dual oil-oil wells does Magnolia Petroleum Company have

INTERROGATORY NO. 12:

Has Magnolia Petroleum Company applied to the Oil Conservation Commission of the State of New Mexico for an exception to Rule 107 (c) for a six months test period to permit dual production of its Brunson Forge No. 1 well located in the Northwest Quarter of the Northeast Quarter of Section 5, Township 22 South, Range 37 East, to permit production of oil from the Blinebry zone through the casing-tubing annulus and gas from the underlying Tubb zone through the tubing.

INTERROGATORY NO. 13:

If you have answered Interrogatory No. 12 in the affirmative, what is the date of the application made that is the subject of Interrogatory No. 12

INTERROGATORY NO. 14:

If you have answered Interrogatory No. 12 in the affirmative, do you consider that the production of oil in Magnolia's Brunson Forge No. 1 well through the casing-tubing annulus will be non-wasteful

ILLEGIBLE

INTERROGATORY NO. 15:

If you have answered that the production of oil through the casing-tubing annulus in Magnolia's Brunson Argo No. 1 well will be non-wasteful, then is it true, insofar as the production of oil through the casing-tubing annulus is concerned, that the production of oil through the casing-tubing annulus in the Phillips Fonne No. 1 will be non-wasteful?

INTERROGATORY NO. 16:

If you have answered interrogatory No. 15 in the negative, state the reasons why you believe the production of oil through the casing-tubing annulus in the Brunson Argo No. 1 will be non-wasteful and the production through the casing-tubing annulus in the Phillips Fonne No. 1 well will be wasteful.

INTERROGATORY NO. 17:

Have dual oil-oil installations or completions by Magnolia Petroleum Company been made without the recommendation of its Engineering Department, and if so, how many dual oil-oil completions or installations has Magnolia Petroleum Company made where the Engineering Department of it did not recommend the dual oil-oil installations or completion?

INTERROGATORY NO. 18:

Did the Engineering Department of Magnolia Petroleum Company make recommendations of any sort pertaining to whether or not dual oil-oil completions would be made by Magnolia Petroleum Company?

INTERROGATORY NO. 19:

If the recommendations mentioned in Interrogatory No. 18 were unfavorable, in the event you have answered that interrogatory affirmatively, what were the wells drilled without a favorable recommendation from its Engineering Department, giving names, leases, locations, fields and states?

INTERROGATORY NO. 20:

If Magnolia Petroleum Company has ever dually completed an oil-oil well where its Engineering Department has recommended against same, what were its reasons for so doing and what other factors did it take into consideration besides engineering aspects, such reasons and factors to be given as to each well set out in answer to Interrogatory No. 19.

INTERROGATORY NO. 21:

Has the Engineering Department of Magnolia Petroleum Company ever recommended the dual completion of an oil-oil well by Magnolia Petroleum Company, and if so, state the wells, giving names, leases, fields and states?

INTERROGATORY NO. 22:

Has Magnolia Petroleum Company ever completed the first dual oil-oil well in oil strata where previously thereto there had been no dually completed oil-oil wells in the reservoirs comprising the oil strata?

INTERROGATORY NO. 23:

In the event you have answered Interrogatory No. 22 in the affirmative, state the names of the fields wherein you have completed the first dual oil-oil wells, as well as the states in which such fields are located.

INTERROGATORY NO. 24:

Has Magnolia Petroleum Company ever applied to a state regulatory oil and gas administrative agency for a permit to dually complete an oil-oil well where an offset operator had not at the time of its application applied for a permit to dually complete?

INTERROGATORY NO. 25:

In the event you have answered Interrogatory No. 24 in the affirmative, state the names of the fields in which such wells were dually completed and the states in which such fields are located.

INTERROGATORY NO. 26:

Is it true that Magnolia Petroleum Company made no appearance before the Railroad Commission of Texas at the hearing before that Commission on the application to dually complete David and Inez D. Fasken, Fasken Fee "A" No. 1-T well in the Maguten Field, the order permitting such completion being dated February 6, 1954.

INTERROGATORY NO. 27:

Is it true that in June of 1954 Magnolia Petroleum Company on application before the Railroad Commission of Texas got an order permitting it to dually complete as an oil-oil well its Fasken "B" No. 1 and University of Texas Lease 36995 No. 3 wells in the Maguten (Devonian) and Ellenburger) fields, Andrews County, Texas?

INTERROGATORY NO. 28:

Is it true that the application of Davis and Inez D. Fasken to dually complete their Fasken Fee "A" No. 1-T well was the first application to dually complete filed with the Railroad Commission of the State of Texas in the Maguten Field of Andrews County, Texas?

ILLEGIBLE

INTERROGATORY NO. 29:

Is it a fact that the Wagutex Ellenburger stratum is deeper than 13,000 feet?

INTERROGATORY NO. 30:

Is it a fact that the Wagutex Devonian stratum is deeper than 12,000 feet?

INTERROGATORY NO. 31:

Is it not true that Magnolia Petroleum Company did not have a lawyer or engineer or other employee personally present to protest the first hearing before the Railroad Commission of Texas for a dual oil-oil completion in the Pegasus Field of Texas?

INTERROGATORY NO. 32:

Is it true that the Railroad Commission of Texas on or about June 27, 1950, granted a special order permitting dual oil-oil completions without separate hearings for each application to dually complete in the Shafter Lake Devonian and Wolfcamp strata?

INTERROGATORY NO. 33:

Is it true that in the order entered by the Railroad Commission of Texas that is the subject of Interrogatory No. 32, the Railroad Commission recognized that dual completions in the Shafter Lake Devonian and Shafter Lake Wolfcamp were feasible?

INTERROGATORY NO. 34:

What is your definition of sour crude?

INTERROGATORY NO. 35:

Is it a fact that the crude in the Shafter Lake Devonian and Shafter Lake Wolfcamp strata is sour crude as that term is used in the oil and gas industry?

INTERROGATORY NO. 36:

Is the crude in either the Wagutex Devonian or Wagutex Ellenburger sour crude as that term is used in the oil and gas industry?

INTERROGATORY NO. 37:

Is the crude in any of the zones in the Pegasus Field in which dual oil-oil completions have been made sour crude as that term is used in the oil and gas industry?

ILLEGIBLE

INTERROGATORY NO. 38:

Is it true that Magnolia Petroleum Company, through a duly authorized agent, submitted to the Railroad Commission of Texas at a hearing on multiple zone completions of March 8, 1949, the following statement:

> "A thorough study has been made of the dually completed wells of Magnolia Petroleum Company, and in the light of that experience we hereby submit our opinion as to the feasibility and practicability of the use of multiple zone completions in this State.
>
> "(1) Great advances have been made during the past several years in the manufacture of equipment that is capable of maintaining a satisfactory seal between two producing horizons, except in those cases where corrosion is excessive. For this reason multiple zone completions have become more feasible and practical.
>
> "In our opinion, dual completions between two gas reservoirs and combination oil-gas dual completions where the oil is produced through the tubing are justified and should be permitted in order to prevent waste.
>
> "(2) It would be economically impossible to develop some stringer sands unless dual completions were permitted. In such cases dually completed wells result in greater ultimate recovery of oil and gas.
>
> "(3) We do not, in general, approve of any type of dual completion, either oil-oil or oil-gas, that results in oil being produced through the annular space between the tubing and casing. In our opinion the annulus does not, in most instances, provide a proper flow mechanism and wells so produced have a shorter flowing life and tend to dissipate reservoir energy and reduce ultimate oil recovery. It is, however, recognized that such dual completions are justified in some instances because of economic reasons or because of shortages in material.
>
> "(4) It is our recommendation that the system now followed by the Commission of having dual completion hearings on individual wells be continued. Since conditions vary from field to field and from reservoir to reservoir within the same field, it is not believed that the problem can be adequately and efficiently solved on a statewide basis. We do, however, believe that there is justification for a statewide regulation in regard to the establishment of uniform periodic packer tests to minimize the possibility of communication between dually completed reservoirs. Such tests should, if possible, be witnessed by a representative of the Commission and results of these tests reported to the Commission."

INTERROGATORY NO. 39:

Did Mr. L. P. Keeler, representing the Magnolia Petroleum Company at a hearing concerning the use of multiple zone completions in well bores in the State of Texas, before the Railroad Commission of Texas, held in Austin, Texas on March 8, 1949, state to the Railroad Commission of Texas that the problem of artificially lifting in a dually completed oil-oil well is primarily an operating problem rather than one of waste prevention?

ILLEGIBLE

INTERROGATORY NO. 40:

In the event you have answered that Mr. Keeler made a statement to the effect set forth in Interrogatory No. 39, does Magnolia Petroleum Company agree that the statement made by Mr. Keeler is true?

INTERROGATORY NO. 41:

Is it true that in the East Ranch Field Magnolia Petroleum Company dually completed oil-oil wells?

INTERROGATORY NO. 42:

If you have answered Interrogatory No. 41 affirmatively, is it not true that the reason for so doing was competition of offset operations?

INTERROGATORY NO. 43:

Is it true that the nature of the formations in both the Wolfcamp and Devonian in the Denton Field, Lea County, New Mexico, the field involved in this case, is not that of a sandy, crumbling nature so that the sand itself is not produced to any great extent with the liquids?

INTERROGATORY NO. 44:

Is it true that no trouble will be encountered in dually completing wells in the Wolfcamp and Devonian formations in the Denton Field, Lea County New Mexico, insofar as setting a packer between the two producing formations or zones is concerned.

Dated this the 16th day of September, 1954.

ORIGINAL SIGNED BY
C. J. ROBERTS

Of Counsel

Jason W. Kellahin
P. O. Box 361
Santa Fe, New Mexico

K. H. Foster
Thomas M. Blume
C. J. Roberts
501 First National Bank Bldg.
P. O. Box 1751
Amarillo, Texas

Attorneys for Phillips
Petroleum Company

CERTIFICATE OF SERVICE

I hereby certify that on this the 16th day of September, 1954, a copy of the foregoing Interrogatories to the Magnolia Petroleum Company was served upon Ross Maddox, attorney for the said Magnolia Petroleum Company, by placing a copy of the same in the United States Post Office at Amarillo, Texas, duly stamped and addressed to him at Post Office Box 900, Dallas, Texas.

ORIGINAL SIGNED BY
C. J. ROBERTS

ILLEGIBLE

IN THE DISTRICT COURT OF LEA COUNTY

STATE OF NEW MEXICO

PHILLIPS PETROLEUM COMPANY,

Plaintiff

vs. No. 11422

OIL CONSERVATION COMMISSION OF NEW MEXICO ET AL,

Defendants

TO THE SHELL OIL COMPANY:

Leave of Court having first been obtained, Phillips Petroleum Company requests, in accordance with Rule 33 of the Rules of the District Courts of the State of New Mexico, that the following interrogatories be answered under oath by an officer or agent of Shell Oil Company, and that the answers be served upon counsel for Phillips Petroleum Company within fifteen days from the time these interrogatories are served upon it:

INTERROGATORY NO. 1:

State the name and address of the employee or agent who is answering these interrogatories on behalf of Shell Oil Company.

INTERROGATORY NO. 2:

State the position with Shell Oil Company of the employee named in Interrogatory No. 1.

INTERROGATORY NO. 3:

State the duties of the employee or agent named in Interrogatory No. 1.

INTERROGATORY NO. 4:

How many wells has Shell Oil Company completed in two oil reservoirs to be what is commonly referred to as dual oil-oil wells?

INTERROGATORY NO. 5:

How many dual oil-oil wells is Shell Oil Company currently producing?

INTERROGATORY NO. 6:

Does Shell Oil Company have, own or operate any wells that are completed in as many as three separate strata containing either gas and/or oil, and if so, how many?

ILLEGIBLE

INTERROGATORY NO. 7:

In what States does Shell Oil Company have, own or operate dually completed oil-oil wells?

INTERROGATORY NO. 8:

Name the fields in which Shell Oil Company owns or operates dually completed oil wells.

INTERROGATORY NO. 9:

State the names of the wells owned or operated by Shell Oil Company that are or were completed in two or more strata, the names of the formations each well is currently or has in the past produced from, the depth of the upper and lower produced zone in each well, the bottom-hole pressure of each produced zone of each well at the time of original completion as a dual oil-oil producer, the dates each well was dually completed, and the date that each well that is no longer dually produced, ceased to be dually produced.

INTERROGATORY NO. 10:

Does any of Shell Oil Company's dual oil-oil wells produce what is commonly known in the oil and gas industry as "sour" oil from either zone, and if so, how many such oil-oil wells does Shell Oil Company have

INTERROGATORY NO. 11:

What is your definition of "sour" oil?

INTERROGATORY NO. 12:

Does any of Shell Oil Company's dual oil-oil wells produce paraffin intermediate base crude, and if so, how many such dual oil-oil wells does Shell Oil Company have?

INTERROGATORY NO. 13:

Has Shell Oil Company ever completed the first dual oil-oil well in oil strata where previously thereto there had been no dually completed oil-oil wells in the reservoir comprising the oil strata?

INTERROGATORY NO. 14:

In the event you have answered Interrogatory No. 13 in the affirmative, state the names of the fields wherein it has completed the first dual oil-oil wells, as well as the States in which such fields are located.

INTERROGATORY NO. 15:

Has Shell Oil Company ever applied to a state regulatory oil and gas administrative agency for a permit to dually complete an oil-oil well where

ILLEGIBLE

an offset operator had not, at the time of its application, applied for a permit to dually complete.

INTERROGATORY NO. 16:

In the event you have answered Interrogatory No. 15 in the affirmative, state the names of the fields in which such wells were dually completed, and the States in which such fields are located.

INTERROGATORY NO. 17:

Is it true that the Railroad Commission of Texas, on or about June 27, 1950, granted a special order permitting dual oil-oil completion without separate hearings for each application to dually complete in the Shafter Lake Devonian and Wolfcamp strata?

INTERROGATORY NO. 18:

Is it true that in the order entered by the Railroad Commission of Texas that is the subject of Interrogatory No. 17, the Railroad Commission recognized that dual completions in the Shafter Lake Devonian and Shafter Lake Wolfcamp were feasible?

INTERROGATORY NO. 19:

Is it a fact that the crude in the Shafter Lake Devonian and Shafter Lake Wolfcamp strata is sour crude as that term is used in the oil and gas industry?

INTERROGATORY NO. 20:

If the crude in the Shafter Lake Devonian and Shafter Lake Wolfcamp strata is not sour as to both zones, is the crude in either zone sour as that term is used in the oil and gas industry, and if so, in which zone?

INTERROGATORY NO. 21:

Is the crude in either the Pegutex Devonian or the Pegotex Ellenburger sour crude as that term is used in the oil and gas industry?

INTERROGATORY NO. 22:

Is the crude in any of the zones in the Pegasus field in which dual oil-oil completions have been made sour crude as that term has been used in the oil and gas industry?

INTERROGATORY NO. 23:

Is it true that the nature of the formation in the Wolfcamp and Devonian in the Ventem field in Lea County, New Mexico, is not that of a sandy crumbling nature so that the sand itself is not to any appreciable extent produced with the liquids?

ILLEGIBLE

INTERROGATORY NO. 24:

Is it true that no trouble will be encountered in dually completing wells in the Wolfcamp and Devonian formations in the Denton field in Lea County, New Mexico, insofar as setting a packer between the two producing formations or zones is concerned

INTERROGATORY NO. 25:

Did Mr. E. J. Hodson, representing the Shell Oil Company at a hearing concerning the use of multiple completions in well bores in the State of Texas before the Railroad Commission of Texas held at Austin, Texas on March 9, 1949, state to the Railroad Commission of Texas as follows:

> "First I will read a statement. Shell is opposed to an enactment of any Statewide order which will prohibit or eliminate or tend to prohibit or eliminate the practice of dual completions, or liberalize the present policy by elimination of separate hearings on application to complete wells dually. In other words, we hold that each case should be considered on its merits. Most of the data I have here is on Seeligson where dual experience has been good. We think in some places dual completions don't work too well."

INTERROGATORY NO. 26:

In the event you have answered that Mr. Hodson made the statement as set out in Interrogatory No. 25, does Shell Oil Company agree that the statement made by Mr. Hodson is true?

INTERROGATORY NO. 27:

Did Mr. E. J. Hodson, representing the Shell Oil Company at a hearing concerning the use of multiple zone completions as identified in Interrogatory No. 25, make a statement concerning the experience of Shell Oil Company in the Seeligson field of Texas, as follows?

> "In Seeligson, Shell has 49 wells and 40 of these are now duals, and we think that at Seeligson they have proved themselves to be standard production practice. Those are all oil-oil. There are seven zones underlying our lease. Duals were commenced in 1944, partly because of a war-time measure. That enabled us to produce more oil with less critical tubular goods. The intervening five-year period has given us a chance to look at the performance in the light of some of the often expressed disadvantages of dual completions and one you will often hear is packer failures. We have had packer failures on five occasions and had to replace the packers. In most of the instances or at least half the cases, these have occurred upon completion of the well. We haven't had any unusual difficulty in effecting the separation. We have pressures observed every eight hours. A complete production test is made on each well at least as often as once a month. Bottom-hole pressures are run every six months. Calorimeter tests are run on each well every thirty days, which would enable the detection of a failure. Gravities are checked periodically. Any variation from normal of the above characteristics are treated with suspicion and a draw-down test is made.

ILLEGIBLE

This is done by closing both wells in for a period of time, and then opening one well and observing the pressure on the closed-in well. If the pressure remains constant, then the two zones are separated. I might can make one more point here. Of the 40 dual completions, five failures, all of these were war-time packers. We have had no failures in recent years. We believe these failures were due to faulty rubber in the war-time packers. Generally speaking, mechanical separation in the casing, we believe have been perfected to an extent comparable with any other device or tool on the market. In a gas-gas well in the Riverside Field we had extreme pressure and that is holding. We feel commingling is also possible outside of the casing and very important, whether one or two zones are produced simultaneously or not, whether dual or single, and we have been following an early program deemed to improve casing practice. We have had very nice results. In Bonlignon, other than dual zones completed above the casing shoe, as I recall, 93 per cent were successful, zone distance 200' above the shoe, and by successful, I mean when perforated the zone produced what it should have produced. That test was made to see whether or not we should squeeze and in 93 per cent of the cases squeeze was not necessary."

INTERROGATORY NO. 28:

In the event that you have answered that Mr. Hodson made a statement to the effect set forth in Interrogatory No. 27, does Shell Oil Company agree that the statement made by Mr. Hodson is true?

INTERROGATORY NO. 29:

Did Mr. R. J. Hodson, representing the Shell Oil Company at a hearing concerning the use of multiple zone completions in well bores in the State of Texas as identified in Interrogatory No. 25, state that he did not know of any waste in dually completed wells of Shell Oil Company in the Sheridan field of Texas?

INTERROGATORY NO. 30:

In the event you have answered Interrogatory No. 29 in the affirmative, does that position taken by Mr. Hodson represent the position of Shell Oil Company in respect to waste in the Sheridan Field of Texas?

INTERROGATORY NO. 31:

Did Shell Oil Company experience a corrosion problem in its dually completed wells in the Sheridan field of Texas?

INTERROGATORY NO. 32:

Did Mr. R. J. Hodson, representing the Shell Oil Company, state to the Railroad Commission of Texas at the hearing which is identified in Interrogatory No. 25, that he thought the corrosion problem could be solved?

INTERROGATORY NO. 33:

In the event you have answered Interrogatory No. 32 in the affirmative, does the Shell Oil Company agree with the thoughts expressed by Mr. Hodson as mentioned in Interrogatory No. 32?

ILLEGIBLE

INTERROGATORY NO. 34:

In the event you have answered Interrogatory No. 33 in the negative, state the reasons why the Shell Oil Company does not feel that corrosion problems in dually completed wells cannot be successfully handled.

INTERROGATORY NO. 35:

Did Mr. R. J. Hodson, representing the Shell Oil Company in 1949 at a hearing before the Railroad Commission of Texas on multiple zone completions in well bores in the State of Texas which is identified in Interrogatory No. 25, in respect to the experience of the Shell Oil Company in the Seeligson field of Texas, make the following statement:

> "Artificial lift in flowing life, either by pumping or gas lift, is already feasible for one of the zones. One well pumps the full allowable plus 58 per cent water in zone 19-D. The other flows the full 19-B allowable through the casing. When the casing wall fails, we will be in a position to install a two-zone pump. We have had no experience with the two-zone pump, but understand it is working satisfactorily for other operators.
>
> "Another well I think the Commission will find interesting, No. 26, the upper zone, zone 13-[illegible], pumps its full allowable plus 13 per cent water while the lower zone flows its full allowable through the annulus by the use of a cross-over packer. The two-zone - the two packer installations were made in January, 1946, the production and cross-over packers to divert the upper zone to the tubing. You often hear that a packer won't hold in a pumping well. We watch them very carefully, and since October it has been doing very nicely. We don't know how long it will last; it is holding so far. There is some general objections that we haven't found particularly troublesome. No unusual paraffin trouble has been experienced. Sometimes the side-door chokes have to be pulled and it runs up the price of pressure surveys. It is not necessary to take pressure surveys of every well, so we have a pressure pattern or survey. Work-overs are more expensive. We have not encountered any difficulties we would term unusual as attributable to dual completions there.
>
> "Not all the advantages of dual completions are financial. There are many instances where thin sands, limited reserves, and casing shortages would preclude separate development and zone sands would not be brought into production. Dual completions in many cases offer a practical method of meeting offset requirements and protecting against drainage. East Ranch, where our dual completion experience has been good, is considered an example of this.
>
> "We have reviewed a field where dual completion experience to date has been good. Where it is possible to effect proper dual completions, it would envoke a hardship to require an operator to drill individual wells. Each field and each well presents a different problem, and each application should be considered on its own merits. Proper policing of dual completions is essential and welcomed. It is possible to maintain effective separation both within and outside of the casing, and it is possible to artificially lift one if not both of the separate zones open to simultaneous production. Where the dual completion method is found applicable, it represents an advanced technique for producing reservoir fluids."

INTERROGATORY NO. 36:

If you have answered that Mr. Hudson made the statement that is set out in Interrogatory No. 35, does the Shell Oil Company agree in substance with that statement made by Mr. Olson, and if it does not agree in substance, state the reasons why it does not agree.

INTERROGATORY NO. 37:

Did the Shell Oil Company, through Mr. [illegible] Brunner, advise the Railroad Commission of Texas by telegram in regard to a hearing set for May 16, 1950, that the Shell Oil Company agreed that hearings before the Commission should not be required for dual completions in the Bedford Devonian and Ellenburger fields of Texas?

INTERROGATORY NO. 38:

What are the approximate depths of the Bedford Devonian and Bedford Ellenburger fields of Texas?

INTERROGATORY NO. 39:

Which, if either, of the Bedford Devonian and Bedford Ellenburger fields produces sour crude as that term is used in the industry?

INTERROGATORY NO. 40:

Does either the Bedford Devonian or Bedford Ellenburger field produce paraffin intermediate base crude?

INTERROGATORY NO. 41:

Did the Shell Oil Company, through Mr. [illegible] Brunner, by telegram, advise the Railroad Commission of Texas in connection with a hearing to be held on May 16, 1950, before the Railroad Commission of Texas, that the Shell Oil Company as the operator of 109 wells in the TXL field recommended eliminating the necessity for public hearing for dual completions in the TXL Devonian, Ellenburger and Silurian?

INTERROGATORY NO. 42:

What are the approximate depths of the Devonian, Ellenburger and Silurian zones in the TXL field?

INTERROGATORY NO. 43:

Does either of the Devonian, Ellenburger or Silurian zones in the TXL field produce sour crude as that term is used in the industry?

INTERROGATORY NO. 44:

Does either of the Devonian, Ellenburger and Silurian zones of the TXL fields produce paraffin intermediate base crude?

INTERROGATORY NO. 45:

Did the Shell Oil Company, through Mr. W. F. Brunner, by telegram, advise the Railroad Commission of Texas, in regard to a hearing to be held on May 16, 1950, that the Shell Oil Company recommended eliminating the necessity for public hearings on dual completions in the Robertson Ellenburger and Devonian fields in Texas?

INTERROGATORY NO. 46:

What are the approximate depths of the Devonian and Ellenburger zones in the Robertson field?

INTERROGATORY NO. 47:

Does either the Robertson Devonian field or the Robertson Ellenburger field produce sour crude as that term is used in the industry?

INTERROGATORY NO. 48:

Does either the Robertson Devonian field or the Robertson Ellenburger field produce paraffin intermediate base crude?

INTERROGATORY NO. 49:

Did the Shell Oil Company advise the Railroad Commission of Texas by telegram in regard to a hearing to be held on May 16, 1950, that the Shell Oil Company agreed that hearings should not be required for dual completions in the Goldsmith 5600-foot and Clearfork fields?

INTERROGATORY NO. 50:

Does either the Goldsmith 5600-foot field or the Goldsmith Clearfork field produce sour gas as that term is used in the oil and gas industry?

INTERROGATORY NO. 51:

Did the Shell Oil Company, by telegram, advise the Railroad Commission of Texas in regard to a hearing to be held on May 16, 1950, to determine whether dual completions should be permitted without hearing in certain fields in the State of Texas, that the Shell Oil Company as the operator of fourteen wells in the Wasson 66 and 72 fields recommended eliminating the necessity of public hearing for dual completions in these fields?

INTERROGATORY NO. 52:

What are the approximate depths of the Wasson 66 and 72 fields?

INTERROGATORY NO. 53:

Does either the Wasson 66 or the Wasson 72 fields produce what is known as sour crude in the oil and gas industry?

ILLEGIBLE

INTERROGATORY NO. 54:

Does either the Lesson 66 or Lesson 72 fields produce paraffin intermediate base crude?

INTERROGATORY NO. 55:

Did the Shell Oil Company, by telegram, advise the Railroad Commission of Texas in regard to a hearing to be held on May 16, 1950 to determine whether dual completions should be completed without hearing in the Flanagan field, that the Shell Oil Company recommended eliminating the necessity of public hearing for dual completions from the Clearfork, Devonian and Ellenburger reservoirs of that field?

INTERROGATORY NO. 56:

What are the approximate depths of the Clearfork, Devonian and Ellenburger zones in the Flanagan field?

INTERROGATORY NO. 57:

Does either of the Clearfork Devonian or Ellenburger reservoirs of the Flanagan field produce sour crude?

INTERROGATORY NO. 58:

Does either the Clearfork Devonian or Ellenburger zones of the Flanagan field produce paraffin intermediate base crude?

INTERROGATORY NO. 59:

How many wells does the Shell Oil Company operate in the Flanagan field?

Dated this the 16th day of September, 1954.

ORIGINAL SIGNED BY
C. J. ROBERTS
Of Counsel

James A. Kellahin
P. O. Box 361
Santa Fe, New Mexico

W. H. Foster
Thomas F. Kluge
C. J. Roberts
501 First National Bank Bldg.
P. O. Box 1751
Amarillo, Texas

Attorneys for Phillips
Petroleum Company

CERTIFICATE OF SERVICE

I hereby certify that on this the 16th day of September, 1954, a copy of the foregoing Interrogatories to the Shell Oil Company was served upon Mr. Paxton Howard, attorney for the said Shell Oil Company, by placing a copy of the same in the United States Post Office at Amarillo, Texas, duly stamped and addressed to him at the Petroleum Building, Midland, Texas.

ORIGINAL SIGNED BY
C. J. ROBERTS

ILLEGIBLE

IN THE DISTRICT COURT OF LEA COUNTY

STATE OF NEW MEXICO

PHILLIPS PETROLEUM COMPANY,
Plaintiff

vs. No. 11422

OIL CONSERVATION COMMISSION
OF NEW MEXICO ET AL,
Defendants

TO THE SKELLY OIL COMPANY:

Leave of Court having first been obtained, Phillips Petroleum Company requests, in accordance with Rule 33 of the Rules of the District Courts of the State of New Mexico, that the following interrogatories be answered under oath by an officer or agent of Skelly Oil Company, and that the answers be served upon counsel for Phillips Petroleum Company within fifteen days from the time these interrogatories are served upon it:

INTERROGATORY NO. 1:

State the name and address of the employee or agent who is answering these interrogatories on behalf of Skelly Oil Company.

INTERROGATORY NO. 2:

State the position with Skelly Oil Company of the employee named in Interrogatory No. 1.

INTERROGATORY NO. 3:

State the duties of the employee or agent named in Interrogatory No. 1.

INTERROGATORY NO. 4:

How many wells has Skelly Oil Company completed in two oil reservoirs to be what is commonly referred to as dual oil-oil wells?

INTERROGATORY NO. 5:

How many dual oil-oil wells is Skelly Oil Company currently producing

INTERROGATORY NO. 6:

Does Skelly Oil Company have, own or operate any wells that are completed in as many as three separate strata containing either gas and/or oil, and if so, how many?

ILLEGIBLE

INTERROGATORY NO. 7:

In what States does Kelly Oil Company have, own or operate dually completed oil-oil wells?

INTERROGATORY NO. 8:

Name the fields in which Kelly Oil Company owns or operates dually completed oil wells.

INTERROGATORY NO. 9:

State the names of the wells owned or operated by Kelly Oil Company that are or were completed in two or more strata, the names of the formations each well is currently or has in the past produced from, the depth of the upper and lower produced zone in each well, the bottom-hole pressure of each produced zone of each well at the time of original completion as a dual oil-oil producer, the dates each well was dually completed, and the date that each well that is no longer dually produced, ceased to be dually produced.

INTERROGATORY NO. 10:

Does any of Kelly Oil Company's dual oil-oil wells produce what is commonly known in the oil and gas industry as 'sour' oil from either zone, and if so, how many such oil-oil wells does Kelly Oil Company have?

INTERROGATORY NO. 11:

What is your definition of 'sour' oil?

INTERROGATORY NO. 12:

Does any of Kelly Oil Company's dual oil-oil wells produce paraffin intermediate base crude, and if so, how many such dual oil-oil wells does Kelly Oil Company have?

INTERROGATORY NO. 13:

Has Kelly Oil Company ever completed the first dual oil-oil well in oil strata where previously thereto there had been no dually completed oil-oil wells in the reservoir comprising the oil strata?

INTERROGATORY NO. 14:

In the event you have answered Interrogatory No. 13 in the affirmative, state the names of the fields wherein it has completed the first dual oil-oil wells, as well as the States in which such fields are located.

INTERROGATORY NO. 15:

Has Kelly Oil Company ever applied to a state regulatory oil and gas administrative agency for a permit to dually complete an oil-oil well where

ILLEGIBLE

an offset operator and not, at the time of its application, applied for a permit to dually complete?

INTERROGATORY NO. 16:

In the event you have answered Interrogatory No. 15 in the affirmative, state the names of the fields in which such wells were dually completed, and the States in which such fields are located.

INTERROGATORY NO. 17:

Is it true that the Railroad Commission of Texas, on or about June 27, 1950, granted a special order permitting dual oil-oil completion without separate hearings for each application to dually complete in the Shafter Lake Devonian and Wolfcamp strata?

INTERROGATORY NO. 18:

Is it true that in the order entered by the Railroad Commission of Texas that is the subject of Interrogatory No. 17, the Railroad Commission recognized that dual completions in the Shafter Lake Devonian and Shafter Lake Wolfcamp were feasible?

INTERROGATORY NO. 19:

Is it a fact that the crude in the Shafter Lake Devonian and Shafter Lake Wolfcamp strata is sour crude as that term is used in the oil and gas industry?

INTERROGATORY NO. 20:

If the crude in the Shafter Lake Devonian and Shafter Lake Wolfcamp strata is not sour as to both zones, is the crude in either zone sour as that term is used in the oil and gas industry, and if so, in which zone?

INTERROGATORY NO. 21:

Is the crude in either the Aguatex Devonian or the Aguatex Ellenburger sour crude as that term is used in the oil and gas industry?

INTERROGATORY NO. 22:

Is the crude in any of the zones in the Pegasus Field in which dual oil-oil completions have been made sour crude as that term has been used in the oil and gas industry?

INTERROGATORY NO. 23:

Is it true that the nature of the formation in the Wolfcamp and Devonian in the Ventana field in Lea County, New Mexico, is not that of a sandy crumbling nature so that the sand itself is not to any appreciable extent produced with the liquids?

ILLEGIBLE

EXHIBIT NO. 24

Is it the opinion of the Shelly Oil Company that the gross interval between the Wolfcamp and Devonian formations in Denton Field in Lea County, New Mexico, is a sound objection completing wells in the Wolfcamp and Devonian formations in [illegible]

Is it the opinion of the Shelly Oil Company that the lack of clear interval between two separate producing zones so as to permit setting of a packer between the two producing zones with certainty, a sound objection to dual completions in such two zones

Dated this the 16th day of September, 1954.

ORIGINAL SIGNED BY
C. J. ROBERTS

Of Counsel

James A. Hallenin
P. O. Box 501
Santa Fe, New Mexico

J. H. Foster
Thomas A. Kluce
C. J. Roberts
511 First National Bank Bldg.
P. O. Box 1751
Amarillo, Texas

Attorneys for Phillips Petroleum Company

CERTIFICATE OF SERVICE

I hereby certify that on this the 16th day of September, 1954, a copy of the foregoing Interrogatories to the Shelly Oil Company was served upon Seth W. Montgomery, attorneys for the said Shelly Oil Company, by placing a copy of the same in the United States Post Office at Amarillo, Texas, duly stamped and addressed to Seth W. Montgomery, First National Bank Building, Santa Fe, New Mexico.

ORIGINAL SIGNED BY
C. J. ROBERTS

ILLEGIBLE

MAGNOLIA PETROLEUM COMPANY

A SOCONY-VACUUM COMPANY

LEGAL DEPARTMENT

P. O. BOX 900
DALLAS 21, TEXAS

Sep. 21, 1954

RE: Phillips Petroleum Company v. Oil Conservation Commission of New Mexico, et al, No. 11422 in the District Court of Lea County, State of New Mexico

Mr. Willard F. Kitts,
P. O. Box 871,
Santa Fe, New Mexico.

Dear Sir:

Enclosed is a copy of objections to interrogatories, with notice of hearing on said objections set by the court for October 13th at 10 A. M. in Judge John R. Brand's chambers in Hobbs, New Mexico.

Yours very truly,

A. E. Aikman

AEA:as

Enclosure

IN THE DISTRICT COURT OF LEA COUNTY

STATE OF NEW MEXICO

PHILLIPS PETROLEUM COMPANY Plaintiff	)	
v.	)	No. 11422
OIL CONSERVATION COMMISSION OF NEW MEXICO, ET AL Defendants	)	

OBJECTIONS BY MAGNOLIA PETROLEUM COMPANY TO INTERROGATORIES OF PHILLIPS PETROLEUM COMPANY

TO THE HONORABLE COURT AND TO PHILLIPS PETROLEUM COMPANY:

COMES NOW defendant Magnolia Petroleum Company, in accordance with Rule 33 of the Rules of the District Courts of the State of New Mexico, objecting to the interrogatories propounded by Phillips Petroleum Company to defendant Magnolia Petroleum Company.

Defendant Magnolia Petroleum Company:

1. Objects to each and all the interrogatories, 1 through 44, for the following reasons:

(a) That none of the interrogatories are material or relevant to the issues of the case, and any answers thereto will simply confuse and complicate the true issues of the case.

(b) That the interrogatories are propounded in an effort to show that Magnolia Petroleum Company has some oil-oil dual completions in other states, and in completely different fields, or that Magnolia Petroleum Company is not altogether opposed to oil-oil dual completions, all of which would not tend to prove or disprove any of the issues in the case, nor whether the Oil Conservation Commission's action in denying plaintiff's application was justified.

(c) That the interrogatories primarily amount to a rehash of the testimony before the Oil Conservation Commission, in violation of this court's pretrial ruling that such a rehash would not be permitted.

(d) That the interrogatories are simply a form of argument that if oil-oil duals are permitted in states other than New Mexico, and particularly Texas, then oil-oil duals must be permitted in New Mexico.

(e) That the nature and scope of the interrogatories are such that Magnolia Petroleum Company would be put to a tremendous expense to gather the information requested and, in addition, the time necessary to gather and correlate such information would extend quite beyond the time allowed by law to answer interrogatories, and that such answers would serve no useful purpose, and certainly not any purpose commensurate with the time and expense required.

(f) That Rule 33 pertaining to interrogatories was not designed to permit one party to a suit to harrass an opposing party by requesting answers to interrogatories which are so general in nature and pertaining to information and data so far removed and irrelevant to the case as these interrogatories are.

2. Objects to each and all of Interrogatories Nos. 4, 5, 6, 7, 8, 9, 10, and 11 for the reason that they are not relevant or material to any issue in the lawsuit and will only serve to confuse and complicate the true issues, that they are designed to create issues not material to the suit, that, irrespective of what the answers to such interrogatories may be, such answers would not tend to justify or show error in the Commission's action in denying plaintiff's application for an oil-oil dual in the Denton field, New Mexico.

3. Objects to each and all of Interrogatories Nos. 12 and 13 for the reason that they are not relevant and material to the issues in the case, that whether Magnolia

Petroleum Company made such an application in a completely different field can scarcely hinder or substantiate plaintiff's case, that the context of Interrogatory No.12 shows that any such application is concerned with an entirely different situation than the one involved in this lawsuit, and that such application is merely for the purpose of testing.

4. Objects to Interrogatory No. 14 for the reason that it is irrelevant and immaterial to any issue in the case, that it is argumentative, and does not constitute a proper question, and that it is based upon the erroneous assumption that Interrogatories Nos. 12 and 13 are relevant and material.

5. Objects to each and all of Interrogatories Nos. 15 and 16 for the reason that they are immaterial and irrelevant, that they are argumentative in nature and do not constitute proper questions, and that they are based upon the erroneous assumption that Interrogatories Nos. 12, 13 and 14 are relevant and material.

6. Objects to each and all of Interrogatories Nos. 17, 18, 19, 20 and 21 for the reason that they are immaterial and irrelevant, that they are argumentative and do not constitute proper questions, that whatever the answer to such interrogatories may be they do not tend to prove or disprove or to substantiate or hinder plaintiff's case, nor do they tend to justify or show error in the Commission's action in denying plaintiff's application.

7. Objects to each and all of Interrogatories Nos. 22 and 23 for the reason that they are immaterial and irrelevant to the issues of the case, that they do not tend

to prove or disprove plaintiff's case, nor do they tend to justify or show error in the Commission's action in denying plaintiff's application, and that the questions obviously pertain to fields and reservoirs other than the Denton field and fields located elsewhere than in the State of New Mexico.

8. Objects to each and all of Interrogatories 24 and 25 for the reason that they are immaterial and irrelevant to any issues in the case, that they do not tend to prove or disprove plaintiff's case, nor do they tend to justify or show error in the Commission's action in denying plaintiff's application.

9. Objects to each and all of Interrogatories Nos. 26, 27 and 28 for the reason that they pertain to a matter completely immaterial and irrelevant to the issues of the case, that they pertain to a completely different field located in a completely different state than the Denton field involved in this case, that the answers to such questions do not tend to prove or disprove plaintiff's case, nor do they tend to justify or show error in the Commission's action in denying plaintiff's application, and that they are argumentative in nature and do not constitute proper questions.

10. Objects to each and all of Interrogatories 29 and 30 for the reason that they are immaterial and irrelevant to the issues in this case, that they pertain to a completely different field in a completely different state than the Denton field involved in this case, and they do not tend to prove or disprove any of the issues of this case, nor do they tend to justify or show error in the Commission's action in denying plaintiff's application.

11. Objects to Interrogatory No. 31 for the reason that it is immaterial and irrelevant to the issues in this case, does not tend to prove or disprove plaintiff's case, nor does it tend to justify or show error in the Commission's action in denying plaintiff's application.

12. Objects to each and all of Interrogatories Nos. 32 and 33 for the reason that they are immaterial and irrelevant to the issues of the case, they do not tend to prove or disprove any issues of the case, nor do they tend to justify or show error in the Commission's action in denying Phillips' application; that whether the Railroad Commission of Texas acted in a certain manner is a matter of public record and not a proper question to be propounded to defendant Magnolia Petroleum Company.

13. Objects to Interrogatory No. 34 for the reason that it is immaterial and irrelevant to the issues of the case, it is argumentative and does not tend to in any manner prove or disprove the issues of the case, nor does it tend to justify or show error in the Commission's action in denying plaintiff's application.

14. Objects to Interrogatory No. 35 for the reason that it is immaterial and irrelevant to the issues of the case, it is argumentative and does not tend to in any manner prove or disprove the issues of the case, nor does it tend to justify or show error in the Commission's action in denying plaintiff's application, and that it relates to a completely different field in a different state than the Benton field involved in this cause.

15. Objects to Interrogatory No. 36 for the reason that it is immaterial and irrelevant to the issues of the case, it is argumentative and does not tend to in any manner prove or disprove the issues of the case, nor does it tend to justify or show error in the Commission's action in denying plaintiff's application, and that it relates to a completely different field in a different state than the Denton field involved in this cause.

16. Objects to Interrogatory No. 37 for the reason that it is immaterial and irrelevant to the issues of the case, it is argumentative and does not tend to in any manner prove or disprove the issues of the case, nor does it tend to justify or show error in the Commission's action in denying plaintiff's application, and that it relates to a completely different field in a different state than the Denton field involved in this cause.

17. Objects to Interrogatory No. 38 for the reason that it is immaterial and irrelevant to the issues of the case and does not tend to prove or disprove any of the issues in the case, nor tend to justify or show error in the Commission's action in denying plaintiff's application, that it relates to matters completely different to the Denton field and to a state other than the state of New Mexico, and is argumentative in nature and not a proper question to be propounded.

18. Objects to Interrogatories Nos. 39 and 40 for the reason that they are immaterial and irrelevant to the issues of the case, are argumentative in nature and do not tend to prove or disprove any of the issues in this case, nor do they tend to justify or show error in the Commission's act in denying plaintiff's application.

19. Objects to each and all of Interrogatories Nos. 41 and 42 for the reason that they are immaterial and irrelevant to the issues in this case, that they relate to a completely different field in a different state other than the Benton field involved in this case, that they do not tend to prove or disprove any issues of the case, nor do they tend to justify or show error in the Commission's action in denying plaintiff's application.

20. Objects to Interrogatory No. 3 for the reason that it amounts to a rehash of the testimony before the Commission, which this court by its pretrial ruling has precluded.

21. Objects to Interrogatory No. 44 for the reason that it amounts to a rehash of the testimony before the Commission, which by virtue of its pretrial ruling this court has precluded.

WHEREFORE, premises considered, defendant Magnolia Petroleum Company prays the court to set a time for hearing these objections and that upon said hearing each and all of the foregoing objections be sustained.

EARL A. BRIGGS

CHAS. E. WALLACE

LOSS SADDLE

A. E. AIKMAN

P. O. Box 900
Dallas, Texas

G. T. HANNIS
Lovington, New Mexico

ATTORNEYS FOR DEFENDANT
MAGNOLIA PETROLEUM COMPANY

You are hereby notified that Judge John E. Brand has set a hearing on the foregoing objections at 10 A. M. on October 13, 1954 at his office in Hobbs, New Mexico.

A. E. Aikman

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of September, 1954 copy of the foregoing objections by Magnolia Petroleum Company to interrogatories propounded to it by Phillips Petroleum Company was served upon C. J. Roberts, attorney for said Phillips Petroleum Company by placing a copy of same in the United States Postoffice at Dallas, Texas, duly stamped and addressed to him at 501 First National Bank Building, P. O. Box 1751, Amarillo, Texas.

A. E. Aikman

JASHKO BUILDING

TELEPHONE 3-2195

JOHN R. BRAND
DISTRICT JUDGE
FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO

P. O. BOX 1176
HOBBS, NEW MEXICO

Midland, Texas

John R. Brand

ILLEGIBLE

IN THE DISTRICT COURT OF LEA COUNTY
STATE OF NEW MEXICO

PHILLIPS PETROLEUM COMPANY, Plaintiff,	)	
v.	)	No. 11422
OIL CONSERVATION COMMISSION OF NEW MEXICO, ET AL., Defendants.	)	

NOTICE OF WITNESSES TO BE USED,
THEIR ADDRESSES, AND SUMMARY OR NATURE OF THEIR TESTIMONY

TO PHILLIPS PETROLEUM COMPANY, OIL CONSERVATION COMMISSION OF NEW MEXICO, THE MAGNOLIA PETROLEUM COMPANY, AND THE SKELLY OIL COMPANY:

You are hereby advised, in accordance with instructions of the Court, that the names, addresses, and the nature of the testimony of the witnesses which Shell Oil Company proposes to use in the trial of this case are as follows:

E. W. Nestor
Hobbs, New Mexico

The commercial possibility of the Wolfcamp Reservoir in the area involved in this action in the Denton field; also as to waste resulting from dual completion due to number and expense of workovers and possible communication between different reservoirs and greater expense and difficulties attendant to artificially lifting such wells.

B. D. Carlson
Hobbs, New Mexico

C. A. Hull
Midland, Texas

R. P. Moscript
Midland, Texas

The number and expense of workovers on dually completed wells and possible communication between different reservoirs and waste resulting therefrom and greater expense and difficulties attendant to artificially lifting such wells.

R. M. Carter
Midland, Texas

Information pertaining to drilling and well completion costs in

the Denton Field.

W. F. Quevreaux
Midland, Texas

Use of dual completion equipment and mechanical failures experienced, and limitations of dual lift equipment.

Seth & Montgomery
SETH and MONTGOMERY
Santa Fe, New Mexico

Paxton Howard
PAXTON HOWARD
Midland, Texas

Attorneys for Shell Oil Company

CERTIFICATE

I hereby certify that I have this 10th day of September, 1954, mailed a copy of the foregoing, postage prepaid, to Mr. Jason W. Kellahin, P. O. Box 361, Santa Fe, New Mexico, Mr. F. H. Foster, 501 First National Bank Bldg., Amarillo, Texas, Mr. W. F. Mitts, P. O. Box 871, Santa Fe, New Mexico, Mr. Ross Madole, P. O. Box 900, Dallas, Texas, and Mr. H. C. Kerr, P. O. Box 1650, Tulsa, Oklahoma: they being attorneys of record in this cause.

Paxton Howard
Attorney for Shell Oil Company

ILLEGIBLE

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

September 21, 1954

COPY

Mr. Paxton Howard,
General Attorney
Shell Oil Company
Petroleum Building
Midland, Texas

Re: Phillips Petroleum Company
v. Oil Conservation Commission,
et al, No. 11422, District Court,
Lea County, New Mexico.

Dear Mr. Howard:

I have your letter of September 17, 1954, regarding the meeting to be held on October 12 in Midland of the attorneys and the defense witnesses in the above captioned case.

Bill Macey and Mel Yost are both out of town this week but I think that I can say with certainty that either Mr. Yost or I, and probably both of us, will be present at the meeting accompanied by Stanley J. Stanley, our witness.

As soon as Mr. Macey and Mr. Yost return from Washington I will notify them immediately about this meeting and will also take it upon myself to inform Mr. Walker and Governor Mechem.

Very truly yours,

W. F. KITTS, Attorney
Oil Conservation Commission

WFK/ir

OIL CONSERVATION COMMISSION
P. O. BOX 871
SANTA FE, NEW MEXICO

September 21, 1954

COPY

Mr. Stanley J. Stanley
Oil Conservation Commission
P. O. Box 2045
Hobbs, New Mexico

Re: Phillips Petroleum Company
v. Oil Conservation Commission,
et al, No. 11422, District Court,
Lea County, New Mexico.

Dear Stan:

Earlier this week I received a letter from Paxton Howard of Midland. He proposes to have a meeting in Midland October 12, 1954 at 9:30 a.m. for the purpose of organizing the testimony of the various defendants in this case. The meeting will be attended by all the attorneys and witnesses representing the various defendants. I am sure that you will wish to attend this meeting and I therefore ask you to hold October 12 open for this purpose.

Bill Macey ard Mel Yost are back in Washington this week appearing before the Federal Power Commission, and I will discuss this matter with them ipon their return. In all probability both Mel and I will attend this neeting, and it sounds to me as though it will be well worthwhile. Mr. Howard informs me that the meeting will take place in the Ground Fbor Conference Room of Shell in the Petroleum Building in Midland.

You will hearfrom us further on this matter within the next week.

Very truly yours,

W. F. KITTS, Attorney
Oil Conservation Commission

WFK/ir

SHELL OIL COMPANY

MIDLAND AREA

MAILING ADDRESS
P. O. BOX 1509
MIDLAND, TEXAS

GENERAL OFFICES
PETROLEUM BUILDING
MIDLAND, TEXAS

September 17, 1954

Mr. W. F. Kitts
Oil Conservation Commission
P. O. Box 871
Santa Fe, New Mexico

In Re: Phillips Petroleum Company v. Oil Conservation Commission, et al, No. 11422, District Court, Lea County, New Mexico.

Dear Sir:

It is planned that on Tuesday, October 12, there will be a meeting in Midland of the attorneys and the defense witnesses in the above captioned case for the purpose of organizing the testimony to be presented at the trial of the case. The meeting will be held in the Ground Floor Conference Room of Shell in the Petroleum Building at Midland, and will commence at 9:30 a.m.

We feel that it is most important that the attorneys for the Commission and the Commission's witnesses meet with the representatives of the defendant companies at this time, so that we may line out our case, and would appreciate word from you that you will attend accompanied by your witnesses.

I would appreciate it also if you would advise the others on the Commission and the Commission Staff who should be advised of this meeting so that it will not be necessary for me to send out other notices to the Commission.

I trust that this arrangement will be satisfactory and that I may have word that you will attend.

Very truly yours,

Paxton Howard

Paxton Howard, General Attorney

PH:AW

DASHKO BUILDING

TELEPHONE 3-2195

JOHN R. BRAND
DISTRICT JUDGE
FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO

P. O. BOX 1176
HOBBS, NEW MEXICO

ILLEGIBLE

IN THE DISTRICT COURT OF LEA COUNTY
STATE OF NEW MEXICO

Phillips Petroleum Company Plaintiff vs. Oil Conservation Commission of New Mexico et al., Defendants	)	No. 11422

NOTICES OF WITNESSES TO BE USED, THEIR ADDRESSES, AND SUMMARY OR NATURE OF THEIR TESTIMONY

TO PHILLIPS PETROLEUM COMPANY, SHELL OIL COMPANY, THE MAGNOLIA PETROLEUM COMPANY AND THE SKELLY OIL COMPANY:

You are hereby advised, in accordance with instructions of the Court, that the names, addresses, and the nature of the testimony of the witnesses of the Oil Conservation Commission of New Mexico, which witnesses will testify in event the Court should rule that the testimony of the proposed Phillips' witnesses will be received in evidence, are as follows:

Stanley J. Stanley
Hobbs, New Mexico

The impracticability, dangers and mechanical infeasibility of dually completed oil wells at comparable depths, pressures, and under the circumstances surrounding the Phillip's Fonzo No. 1; the danger of reservoir damage from such dual completions, and unsoundness from conservation standpoint of dually completed oil wells under conditions existing with respect to Phillip's Fonzo No. 1.

E. W. Nestor
Hobbs, New Mexico

The Commercial possibility of the Wolfcamp Reservoir in the area involved in this action in the Denton field; also as to waste resulting from dual completion due to number and expense of workovers and possible communication between different reservoirs and greater expense and difficulties attendant to artificially lifting such wells.

B O. Carlson
Hobbs, New Mexico

C. A. Hull
Midland, Texas

R. P. Moscript
Midland, Texas

The number and expense of workovers on dually completed wells and possible communication between different reservoirs and waste resulting therefrom and greater expense and difficulties attendant to artificially lifting such wells.

/S/ Mel Yost

W. F. Kitts

Attorneys for Oil Conservation Commission, State of New Mexico.

CERTIFICATE

I hereby certify that I have this 23rd day of August, 1954, mailed a copy of the foregoing, postage prepaid, to Mr. Jason W. Kellahin, P. O. Box 361, Santa Fe, New Mexico, Mr. E. H. Foster, 501 First National Bank Bldg., Amarillo, Texas, Mr. Ross Madole, P. O. Box 900, Dallas, Texas, Mr. H. C. Kerr, P. O. Box 1650, Tulsa, Oklahoma, Mr. Paxton Howard, P. O. Box 1509, Midland, Texas and Seth & Montgomery, Santa Fe, New Mexico; they being attorneys of record in this cause.

Mel Yost

Attorney for the Oil Conservation Commission of the State of New Mexico.

IN THE DISTRICT COURT OF [illegible] COUNTY
STATE OF NEW MEXICO

Phillips Petroleum Company, Plaintiff, vs. Oil Conservation Commission of the State of New Mexico, et al., Defendants	No. 11422

NOTICE OF WITNESSES TO BE USED, THEIR ADDRESSES, AND SUMMARY OR NATURE OF THEIR TESTIMONY

TO: PHILLIPS PETROLEUM COMPANY, SHELL OIL COMPANY, THE [illegible] COMPANY, AND THE SKELLY OIL COMPANY:

You are hereby advised, in accordance with instructions of the Court, that the names, addresses, and the nature of the testimony of the witnesses of the Oil Conservation Commission of New Mexico, which witnesses will testify in event the Court should rule that the testimony of the proposed Phillips' witnesses will be received in evidence, are as follows:

Stanley J. Stanley
Hobbs, New Mexico

The impracticability, dangers and mechanical infeasibility of dually completed oil wells at comparable depths, pressures, and under the circumstances surrounding the Phillip's Fonzo No. 1; the danger of reservoir damage from such dual completions; and unsoundness from conservation standpoint of dually completed oil wells under conditions existing with respect to Phillip's Fonzo No. 1.

E. V. Nestor
Hobbs, New Mexico

The Commercial possibility of the Bolleneap Reservoir in the area involved in this action in the Denton field, also as to waste resulting from dual completion due to number and expense of workovers and possible communication between different reservoirs and greater expense and difficulties attendant to artificially lifting such wells.

ILLEGIBLE

B[illegible] Carlson
Bobbs, New [illegible]

C. A. Hall
Midland, Texas

A. P. Moscript
Midland, Texas

The number and expense of workovers on dually completed wells and possible communication between different reservoirs and waste resulting therefrom and greater expense and difficulties attendant to artificially lifting such wells.

Attorneys for Oil Conservation Commission, State of New Mexico.

CERTIFICATE

I hereby certify that I have this 23rd day of August, 1954, mailed a copy of the foregoing, postage prepaid, to Mr. Jason W. Kellahin, P. O. Box 361, Santa Fe, New Mexico, Mr. E. H. Foster, 501 First National Bank Bldg., Amarillo, Texas, Mr. Ross Madole, P. O. Box 900, Dallas, Texas, Mr. H. C. Kerr, P. O. Box 1550, Tulsa, Oklahoma, Mr. Paxton Howard, P. O. Box 1509, Midland, Texas and Seth & Montgomery, Santa Fe, New Mexico! they being attorneys of record in this cause

Attorney for the Oil Conservation Commission of the State of New Mexico.

ILLEGIBLE

TEXAS PACIFIC COAL & OIL COMPANY

MEMORANDUM BRIEF

THE NATURE AND SCOPE OF THE REVIEW BY THE DISTRICT COURT OF AN ORDER OF THE OIL CONSERVATION COMMISSION INCLUDING THE QUESTION OF WHAT EVIDENCE MAY BE PRESENTED UPON APPEAL.

This case represents the first appeal ever taken in the State of New Mexico from an order of the Oil Conservation Commission. It is taken under the provisions of the oil and gas conservation law of this State which was enacted in 1935 and which was re-enacted by the 1949 Legislature with certain amendments. Included in the amendments was one which changed the appeal and review sections under which this appeal is taken.

At the outset it would seem proper to state specifically the position of the Texas Pacific Coal and Oil Company in this case and its attitude concerning the power of the District Court to review matters decided by the Commission, including the nature of the evidence which may properly be heard by this Court.

The original application herein was filed by Amerada Petroleum Corporation and in its application it requested that it be granted an exception from the state-wide rules concerning the spacing of oil and gas wells. The general spacing program in New Mexico has for a number of years been upon a forty acre basis, and deviations from that spacing pattern have been granted from time to time upon application for an exception to the rule. It is of some significance to note that heretofore exceptions have been requested for spacing patterns for less than forty acres, but this appears to be the first instance in this State in which application has been made for an exception requesting a spacing pattern for more than forty acres. It should be noted in passing that Amerada is not being forced by Commission or anyone else to drill on forty acre locations. Texas Pacific Coal and Oil Company is the owner of certain leases in the field here involved, and it entered the hearing before the Commission protesting the granting of the exception to the state-wide rule.

The Commission, after hearing the evidence, denied the application for the exception, by its order No. R-2, in which it found in effect that the evidence submitted by the applicant was insufficient to prove what the Commission considered to be necessary matters of proof for the granting of an exception to the state-wide rule. The applicant then filed its petition for rehearing setting out the respects in which it considered the Commission in error, as required by the statute, and upon the denial of the motion for rehearing it takes this appeal to the Court, in which appeal, under the statute, it is limited to the same questions which were presented to the Commission in its application for rehearing. There is no constitutional question presented in the petition for Review.

The first matter which Texas Pacific Coal and Oil Company would like to call to the attention of the Court, with the request that it be determined at this time, is the nature and extent of the review of the Commission's order which may be obtained before this Court. We consider this proposition fundamental, both from a substantive and a procedural point of view. It is a proposition which we raise at the outset, in order to avoid the possibility of delay in the disposition of this matter by the introduction of evidence and the inevitable objection to its admissiability. It is our position that the so-called "de novo" provisions in the New Mexico appeal statute violate the Constitution of the State of New Mexico, and that this Court, if review is to be granted, is limited upon review to the transcript of evidence before the Conservation Commission and only such other evidence as may bear upon the power of the Commission to act. It is our further position that this Court can only inquire into whether or not the decision of the Commission is supported by substantial evidence, or is arbitrary or capricious, or beyond the power of the Commission to make, or violates some constitutional right of the appellant.

Applicable Constitutional and Statutory Provisions

In order that the Court may bear in mind through this argument the basis of the position of the Texas Pacific Coal and Oil Company, we wish to call to the attention of the Court the constitutional and statutory provisions to which we will make reference and which we consider pertinent to this matter.

As has heretofore been state, the Oil Conservation Commission was created and its power defined by the re-enactment of the 1935 Statute by the 1949 Legislature, which Statute now appears at Chapter 69 of the 1949 Accumulative Pocket Supplement of the New Mexico Statutes 1941 Annotated. Section 69-210 of that Act defines that general powers of the Commission as follows:

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

Section 69-211 enumerates certain specific powers of the Commission, including the one which is pertinent to this case by stating:

> "Apart from any authority, express or implied, elsewhere given to or existing in the commission by virtue of this act or the statute of this state, the commission is hereby authorized to make rules, regulations and orders for the purposes and with respect to the subject matter stated herein, viz:
>
> .....
>
> "(10) To fix the spacing of wells;
>
> .....

It should be apparent that the Legislature has delegated to the Oil Conservation Commission wide powers to deal with matters involving the production of oil and gas in this State, and that such powers are legislative powers which could be exercised by the Legislature itself or through committees, except for the fact that the Legislature obviously considered it more practical

to delegate these powers to an administrative body composed of the Governor of the State, the Commissioner of Public Lands and the State Geologist, as a member and Director. In connection with this legislative power invested in the Oil Conservation Commission, the provision of the Constitution of New Mexico relating to separation of powers must be considered. This provision is found in Section 1, Article III of the Constitution of the State, and is as follows:

> "The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution otherwise expressly directed or permitted."

Certainly this is an unequivocal separation of power.

Finally, in considering this matter, it is necessary to realize that when the Conservation Act was amended by the 1949 Legislature, the provision for judicial review was completely revised in an effort to provide a "de novo" hearing before the Court. This statute, under which the present appeal is taken is found in Section 69-223 of the amended law, and it provides as follows:

> "(b) Any party to such rehearing proceeding, dissatisfied with the disposition of the application for rehearing, may appeal therefrom to the district court of the county wherein is located any property of such party affected by the decision, by filing a petition for the review of the action of the Commission within twenty (20) days after the entry of the order following rehearing or after the refusal or rehearing as the case may be. Such petition shall state briefly the nature of the proceedings before the Commission and shall set forth the order or decision of the commission complained of and the grounds of invalidity thereof upon which the applicant will rely; provided, however, that the questions reviewed on appeal shall be only questions presented to the Commission by the application for rehearing. Notice of such appeal shall be served upon the adverse party or parties and the commission in the manner provided for the service of summons in civil proceedings. The trial upon appeal shall be de novo, without a jury, and the transcript or proceedings before the commission, including the evidence taken in hearings by the commission, shall be received in evidence by the court in whole or in part upon offer by either party, subject to legal objections to evidence, in the same manner as if such evidence was originally offered in the district court. The commission

> action complained of shall be prima facie valid and the burden shall be upon the party or parties seeking review to establish the invalidity of such action of the commission. The court shall determine the issues of fact and of law and shall, upon a preponderance of the evidence introduced before the court, which may include evidence in addition to the transcript of proceedings before the Commission, and the law applicable thereto, enter its order either affirming, modifying, or vacating the order of the commission. In the event the court shall modify or vacate the order or decision of the commission, it shall enter such order in lieu thereof as it may determine to be proper. Appeals may be taken from the judgment or decision of the district court to the supreme court in the same manner as provided for appeals from any other final judgment entered by a district court in this state. The trial of such application for relief from action of the commission and the hearing of any appeal to the supreme court from the action of the district court shall be expediated to the fuliest possible extent."

Thus, it will be seen that in this argument we must consider first, that the general powers of the Commission are derived from the Legislature and that the power to fix the spacing of wells has been specifically delegated to it. Second, that the Constitution of New Mexico contains a specific and unambiguous provision providing for separation of powers of government. Third, that the review statute, under which this appeal is taken, undertakes to authorize the court to conduct a "de novo" hearing, and to enter an order in lieu of the Commission's order, after hearing new and additional evidence which was not before the Commission.

General Applicable Principles of Administrative Law

Before proceeding with a discussion of the cases concerning the question here involved, we consider it proper to briefly mention some general principles of administrative law which are discussed in these cases and which we consider to be pertinent to the matter here under discussion.

As is stated in 42 American Jurisprudence, Public Administrative Law, Section 35:

> "The necessity for vesting administrative authorities with power to make rules and regulations because of the impracticability of the lawmakers providing general regulations for various and varying details of management, has been recognized by the court, and the power of the Legislature to vest such authority in administrative officers has been upheld as against various particular objections."

Questions such as are present in the instant case arise not so much from the authority of the Legislature to confer power upon the administrative board, but rather upon the nature of the power exercised by the board and extent to which judicial review may be had. This proposition involves the question of whether the power exercised by the administrative body is legislative or judicial. The distinction between these types of powers is sometimes difficult to make, but in general it is, as stated in 42 American Jurisprudence, Public Administrative Law, Section 36, as follows:

> "Legislative power is the power to make, alter, or repeal laws or rules for the future, to make a rule of conduct applicable to an individual, who but for such action would be free from it is to legislate. The judicial function is confined to injunctions, etc., preventing wrongs for the future, and judgments giving redress for those of the past."

The broad general powers delegated to the Oil Conservation Commission by the statutes which have been quoted, coupled with specific power to regulate the spacing of wells indicates to us that this is a wide discretionary authority, a legislative authority granted by the lawmakers to the Oil Conservation Commission. It obviously affects the actions of persons in the oil and gas industry in the future and has no reference to the protection of private rights as of the present or for the redress against wrongs which have been done in the past. In other words it appears to us that this is clearly a legislative rather than a judicial function. This brings us to the meat of the proposition insofar as the general applicable principles of administrative law are concerned. As is stated in 42 American Jurisprudence, Public Administrative Law, Section 190:

> "It is a well settled general principle that non-judicial functions cannot be exercised by or imposed upon courts, and statutes which attempt to make a court play a part in the administrative process by conferring upon it administrative or legislative, as distinguished from judicial, functions may contravene the principles of separation of powers among the different branches of our government."

And in Section 191, American Jurisprudence, follows this line of reasoning by stating:

> "The statute which provides or permits a court to revise the discretion of a commission in a legislative matter by considering the evidence and full record of the case, and entering the order it deems the commission ought to have made, is invalid as an attempt to confer legislative powers upon the courts."

Decisions of the Courts of other States

There are several decisions of the courts of the western states concerning the power of the court to review the action of an administrative official or an administrative board. Before passing to the New Mexico cases, we would like to review briefly some of the language in these cases in other States which touch upon the subjects here involved.

The first case to which we wish to call the court's attention is the case of Manning V. Perry, 62 P. 2d 693 (Ariz.). This case involved an action between two parties who sought to obtain from the State Land Department a lease upon certain State land. After investigation and hearing, the Commissioner approved the application of one of the parties and the other party appealed. In the State of Arizona the Land Department consists of the Governor, the Secretary of State, Attorney General, State Treasurer, and State Auditor. After hearing this Land Department approved the decision of the Commissioner, and the party who had lost the application appealed to the court under the Constitution and statutes of Arizona. The case was tried in the superior court of one of the counties of Arizona without the aid of a jury and de novo as the statute seemed to contemplate that it should. The case was taken to the Supreme Court of Arizona upon appeal, the appelent contending that under the law of facts he was entitled to have his lease renewed. Concerning the question of the extent of the "trial de novo" as provided in the statute, the Arizona Supreme Court had this to say:

> "While the superior court on appeal from the Land Department tries the case de novo, it should not be forgotten that the court is not the agency appointed by law to lease state lands. The Legislature has vested that power in the Land Department. If it investigates and determines which of the two or more applicants appears to have the best right to a lease, its decision should be accepted by the court, unless

> it be without support of the evidence, or is contrary to the evidence, or is the result of fraud or misapplication of the law."

The Arizona court discussed with approval the decisions from the State of Wyoming which have held a similar vein:

> "In speaking of the functions of the court on an appeal from the Land Department it is said, in Miller v. Hurley, 37 Wyo. 334, 262 P. 238, 'the discretion of the Land Department in leasing the public lands should be controlling' except in a case of the illegal exercise thereof, or in the case of fraud or grave abuse of such discretion.' It was further said in that case: 'In the first place, nowhere in the Constitution or statutes is the district court or judge thereof, granted power to lease state lands. Both the Constitution and the statutes repose that power in the land board. In exercising such power, the land board exercises a wide discretion. (Citing Wyoming cases) If, by the simple expedient of an appeal from the decision of the land board, that discretion can be taken from the board and vested in the district court, as contended by appellant, then the discretion of the land board amounts to nothing on a contested case. It is an empty thing, a mere ignis fatuus'."

The Arizona court continues:

> "And, we may add, a practice which permits the court to substitute its discretion for that of the Land Department would give us as many leasing bodies as there are superior courts in the state, or fourteen in number, instead of one as provided for by the Legislature--an intolerable situation."

This same view is followed in Denver & R. G. W. R. Co. v. Public Service Commission 100 P. 2d 552 (Utah). In that case the applicant for a motor carrier permit and the protestant both applied for rehearings after the Public Service Commission of Utah had granted an application with certain limitations. The matter was appealed to the District Court under the statutes of Utah. The court called attention to the fact that prior to the enactment of the 1935 statute the court's review of the action of the commission was limited to questions of law and the commission's findings of fact were final and not subject to review. However, in 1935 the Legislature changed the statute and provided that the District Court" shall proceed after a trial de novo." The Arizona court in considering the extent of the authority of the District Court had this to say:

> "The expression 'trial de novo' has been used with two different meanings (3 Am. Jur. p. 356, sec. 815): (1) A complete retrial upon new evidence; (2) a trial upon the record made before the lower tribunal. Locally we find an example of the first in Section 104-77-4, R.S.U. 1933, covering appeals from the justice court to the district court--the case is tried in the district court as if it originated there. An example of the second meaning we find locally in our treatment of equity appeals wherein we say that the parties are entitled to a trial de novo upon the record."

In considering the effect of the amended Utah statute, as applied to these two different meanings, the court said:

> "To review an action is to study or examine it again. Thus, 'trial de novo' as used here must have a meaning consistent with the continued existence of that which is to be again examined or studied. If, in these cases, the first meaning were applied to the use of the term 'trial de novo' then one could not consistently speak of it as a review, as the Commission's action would no longer exist to be re-examined or restudied. There would be no reason for making the Commission a defendant to defend something that had been automatically wiped out by instituting the district court action.
>
> "What the Legislature has done by Section 9 is to increase the scope of the court's review of the record of the Commission's action to include questions of fact as well as questions of law. A submission to the court of the application, together with testimony other than the record of the testimony before the Commission was not contemplated. The Legislature had in mind the second meaning when it used the word 'trial de novo' here."

In the Wyoming case of Banzhaf v. Swan Co. 148 P. 2d 225, the Wyoming Supreme Court had before it an appeal from the District Court of a Wyoming county, which had reversed the decision of the State Board of Land Commissioners on the question of to whom a state lease upon certain lands should be issued. Conflicting applications were filed in the office of the Commissioner of Public Lands. The Commissioner of Public Lands awarded the lease to Banzhaf, and upon appeal to the Board of Land Commissioners under the statute that award was set aside and a lease issued to Swan Company. Upon appeal to the District Court, the District Court reversed the Board of Land Commissioners, and the appeal here is taken by Banzhaf from the order of the District Court.

Under the Wyoming Constitution certain state officials constitute the Board of Land Commissioners and have the power to lease state lands. The statute concerning the leasing of state lands provides that any party aggrieved by the decision of the board may have an appeal to the District Court, and upon the appeal the contest proceeding "shall stand to be heard and for trial de novo, by said court."

In Miller v. Hurley, 262 p. 238, the court said as follows:

> "In the former decisions of this court above set forth, it has been held that the discretion of the land board is a substantial things, and cannot be interfered with by the court, except in case of fraud or grave abuse, resulting in manifest wrong or injustice. Yet if appelant's contention were upheld, it would be necessary to hold that the discretion of the land board, conferred on it by the constitution and statutes of this state, and heretofore recognized by the decisions of this court, is completely wiped out by an appeal. We cannot concur in such contentions, but hold that that discretion should be controlling, except in the case of an illegal exercise thereof, or in case of fraud or grave abuse of such discretion."

The case which we consider to have almost the same factual situation as the case here involved is the recent case of California Co. v. State Oil & Gas Board, 27 So. 2d. 542 (Miss.) This was an appeal to the Supreme Court of Mississippi from a final judgment of the Circuit Court of Adams County, Mississippi, which had dismissed an appeal taken by the California Company from an order of the State Oil & Gas Board. The order had granted to T. F. Hodge, the appellee, an exception to general rule concerning the spacing of oil wells, which was the same type of order as is here involved. The Circuit Court had dismissed the appeal on constitutional grounds and no opportunity was offered the California Company to offer proof as to whether the Oil & Gas Board should have passed such an order. The Mississippi Statute at Section 6136, Code 1942, provides that anyone "being a party to such petition may appeal from the decision of the board within ten days from the date of the rendition of the decision to the circuit court of Hinds county, or of the county in which the petitioner is engaged in business or drilling opezations. . . .and the matter shall be tried de novo by the circuit court and the circuit court shall have full authority to approva or disapprove the action of the board."

The question raised here was that the requirement that the matter be tried de novo unconstitutional and void because it undertook to confer nonjudicial functions upon the circuit court. It should be noted here that the Mississippi statute does not go as far as the New Mexico statute, since it gives the court authority to approve or disapprove while our statute gives the court authority to modify, or in fact to enter any order in lieu of the Commission's order which the court deems to be proper. The Mississippi court called attention to the fact that the provision of the Mississippi statute for a de novo trial was inconsistant with the provision authorizing the court to approve or disapprove the action of the board. No such inconsistency appears to exist under the New Mexico statute. The Mississippi court found it possible under their statute "to hold the de novo provision unconstitutional but to sustain the power of the court to 'approve or disapprove' the action of the board." In so doing the court had this to say:

> "The decision of the foregoing questions is found to involve the question (1) or whether or not a trial de novo in the Circuit Court in the instant case would permit the Circuit Court to substitute its own findings and judgment for that of the State Oil and Gas Board on a purely legislative or administrative matter, and, (2) if so, whether or not the right of appeal should nevertheless be preserved by striking down the provision for a trial de novo and retaining the power of the Circuit Court to merely approve or disapprove the action of the State Oil and Gas Board, upon the theory that to permit said Court on a trial de novo to substitute its own ideas as to the proper spacing of oil wells for those of this administrative or legislative body is unconstitutional, while the mere right to approve or disapprove its action is a valid exercise of judicial power on a hearing as to whether or not the decision of said Board in that regard is supported by substantial evidence, is arbitrary or capricious, beyond the power of the Board to make, or violates some constitutional right of the complaining party.
>
> "We are unable to say that except for the provision granting a trial de novo the Legislature would not have given the right of appeal at all from any action of the Oil and Gas Board. It has made provision for appeals in many instances from the decisions of administrative boards created by statute in this State without requiring that the testimony taken before such boards be reduced to writing for such purpose. But it is unnecessary that we shall here digress to illustrate.
>
> "The Legislature itself had the right in the first instance to prescribe the general rule and regulation as to the spacing of oil and gas wells and to provide for exceptions thereto under given circumstances, and it had the right to delegate this legislative power to a special administrative agency, composed of the State Oil and Gas Supervisor, who is to be a competent

> petroleum engineer or geologist with at least five years experience in the development and production of oil and gas, and therefore presumed to have expert knowledge as to the proper rules and regulations for the spacing of oil and gas wells, and also the Governor, Attorney General, and State Land Commissioner, as it has done by Section 5 of Chapter 117, Laws of 1932, now Section 6136, Code 1942. And it is to be conceded that in adopting such general rule and regulation, the Oil and Gas Board was acting in a legislative capacity; and we are of the opinion that in granting the exception involved in the instant case to the said general rule and regulation the said Board was likewise acting in at least a quasi legislative capacity. In order that any hearing shall be judicial in character, it must proceed upon past or present facts as such, which are of such nature that a judicial trial tribunal may find that they do or do not exist, while in making these conservation rules and the exceptions thereto the larger question is one of state policy. So that what is to be made of the facts depends upon their bearing upon a legislative policy for which persons of special training and special responsibility have been selected.

There appeared to be little doubt in the minds of the Mississippi court, and there is little doubt in ours, that if the Legislature had seen fit it could have adopted this general spacing rule and regulation and could also have heard testimony as to whether exceptions should be provided for, and the fact that it may have conducted such a hearing would not have rendered its action judicial. The Mississippi court concluded that:

> 'And since the Legislature had the power to delegate this function to a Board composed of the officials hereinbefore mentioned, we are of the opinion that the action of said Board in adopting both the general rules and regulations, as provided for by the statute, and the exceptions thereto after a hearing, was as heretofore stated likewise legislative; that, therefore, the Circuit Court would be without constitutional power on appeal to substitute its own opinion as to what are proper oil conservation measures for that of the State Oil and Gas Board, on a legislative or administrative question. Since the separation of executive, legislative and judicial powers,. . . . . forbid."

In view of the presumption of validity of statutes, the Mississippi court held that the authority of the court to approve or disapprove the action of the board may be upheld by

> "limiting its authority in that behalf to the right to conduct a hearing to the extent only of determining whether or not the decision of the administrative agency is supported by substantial evidence, is arbitrary or capricious, beyond the power of the Board to make, or violates some constitutional right of the complaining party....."

The court further held that in determining these questions the circuit court would be acting judicially and to that end it might hear evidence to the extent of determining what state of facts the administrative body acted on. But the court specifically limited the evidence which might be introduced by saying:

> "But to allow an appellant to present to the Circuit Court a different state of case or one based on additional facts would merely tend to becloud the issue as to whether or not the administrative body had based its decision on substantial evidence, had acted arbitrarily or capriciously, beyond its power, or violated some constitutional right of the party affected thereby. In other words, to permit a trial de novo in the Circuit Court on a legislative or administrative decision of the State Oil and Gas Board, within the common acceptance of the term 'tried de novo' would permit a party to withhold entirely any showing of these facts, as he contends them to be, from the original board composed of experts and of those charged with the responsibility of a great public policy of the State, and wait until on appeal when he will make his full disclosure for the first time before none-experts in that field to determine as to the proper spacing of oil and gas wells. In such case the Court would be departing from its proper judicial function into the realm of things about which it has no such knowledge as would form the basis for intelligent action."

After disposing of the decisions of the Texas Courts, as not applicable to the Mississippi statute because based upon a statute providing for an independent action rather than an appeal, the opinion as a part of its conclusion recites:

> "Therefore, the only sound, practicable or workable rule that can be announced by the Court is to hold that when the appeal is from either a general rule and regulation or from an exception granted thereto, the Court to which the appeal is taken shall only inquire into whether or not the same is reasonable and proper according to the facts disclosed before the Board, that is to say, whether or not its decision is supported by substantial evidence or is arbitrary or capricious, or beyond the power of the Board to make, or whether it violates any constitutional right of the complaining party."

The concurring opinion of Justice Griffity considers the question of the power of the Court and of the type of evidence which may be presented concluding as follows:

> "The result is the conclusion that the legislature could not confer upon either of the said judicial courts the original authority in either respect above mentioned, and since it could not do so directly, it could not do so by the indirect device of a trial de novo on appeal; and thus there is the further result that all the authority which could be conferred on the courts would be of a review to determine whether the Oil and Gas Board in its order acted within the authority conferred on it by statute, and if so, then whether in making its order it did so upon facts substantially sufficient to sustain its action.
>
> "The essential nature of such a review is such that it must be of what the Board had before it at the time it made its order. It would be an incongruity as remarkable to permit another different record to be made up on appeal to the circuit court as it would be to allow another and a different record to be presented to this Court on an appeal to it. The question is, and must be, what did the Oil and Gas Board have before it, and all this the majority opinion has well and sufficiently pointed out.
>
> "But what the Oil and Gas Board had before it is best and most dependably shown by a certified transcript made by a competent person in precise duplication of what was there heard and what there transpired. It is an incongruity in merely another phase which omits such a transcript, and thereafter would call witnesses to prove what was heard by and what transpired before the Board, as is allowed to be done by the reversal in this case..."

It appears to us that these cases, particularly the last one, which involved an appeal from a board similar to our Oil Conservation Commission, clearly reflect that the most recent decisions leave to the administrative bodies the discretion which has been given them by the Legislature, and that the courts confine themselves solely to the question of whether there is substantial evidence in the record before the Commission on which the Commission's decision can be based, or, in other words, whether the administrative body acted arbitrarily. It further appears that since this substantial evidence rule is the basis for the extent of review, the transcript

of evidence before the Commission is the only evidence which can logically be considered.

New Mexico Law Concerning Appeals and Reviews Of Orders of Administrative Bodies

We come now to the New Mexico law concerning appeals from reviews or orders from administrative bodies, which we consider to bear out our position as to the power of this court to review a decision of the Oil Conservation Commission. As has heretofore been stated, the pertinent provision of the Constitution of New Mexico is contained in Section 1, Article III and is as follows:

> "The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this constitution otherwise expressly directed or permitted."

Until rather recent years, the cases in New Mexico concerning the powers of the courts to review decisions of administrative bodies have been confined primarily to appeals from the action of the State Corporation Commission. The Constitution of New Mexico is unique in that it contains the provision for the powers of the Corporation Commission and further provides for removal of matters covered by the constitutional provision to the Supreme Court of New Mexico, and:

> "In the event of such removal by the company, corporation or common carrier, or other party to such hearing the Supreme Court may, upon application in its discretion, or of its own motion, require or authorize additional evidence to be taken in such cause; but in the event of removal by the commission, upon failure of the company, corporation, or common carrier, no additional evidence shall be allowed.....
>
> ".....the said court shall have the power and it shall be its duty to decide such cases on their merits, and carry into effect its judgments, orders, and decrees made in such cases, by fine forfeiture, mandamus, injunction and contempt or other appropriate proceedings."

(Article II Section 7 Constitution of New Mexico)

As the functions and duties of the Corporation Commission have grown, it has become necessary to enact a statute supplementing the Constitution, which provides in effect that a motor carrier being dissatisfied with an order of the Commission, which order is not removable directly to the Supreme Court under the constitutional provisions, may:

> "Commence an action in the district court for Santa Fe County against the Commission as defendant, to vacate and set aside such order or determination, on the ground that it is unlawful or unreasonable. In any such proceeding the court may grant relief by injunction, mandamus or other extraordinary remedy....."

The Statute further provides that:

> "The same shall be tried and determined as other civil actions without a jury."

(New Mexico Statutes 1941 Annotated 68-1363)

It should be borne in mind that some of the cases cited are under the constitutional provision, and some are under the statutory provision.

The first case in New Mexico appears to be Seward v. D. & R. G. 17 N.M. 557, which was a proceeding under the constitutional provision, moving directly from the Commission to the Supreme Court. In this case the matter was removed by the Commission when the carrier refused to comply with the order, and the court refused to allow additional evidence under the Constitutional provision. The Attorney General took the position that the Supreme Court had a right to form its independent judgment in the matter and was not confined to a consideration of the reasonableness and lawfulness of the order of the Commission. He based his position upon the language in the statute quoted above, that the court shall have "the power and it shall be its duty to decide such cases upon their merits." The Supreme Court had this to say:

> "Now if the contention is sound then the provision just quoted invests this court with legislative power to fix rates. There is no doubt but that the people of the state, by constitutional provision could confer such power upon the judges of the Supreme Court. If they saw fit they might combine all the power of government in one department, but such action would not be in accord with the settled policy of the states of the Union, where it has been the studied purpose to, so far as possible, keep separate the three great departments, and we should not so construe the provision as conferring legislative power upon this body, unless compelled to do so by clear and unmistakable language."

The court held that the only thing to be decided upon the appeal by the Commission was the reasonableness and lawfulness of the order, and they concluded that if the court finds the order reasonable and lawful, it enters a judgment to that effect, but if it finds it unlawful and unreasonable, it refuses to enforce it and the State Corporation Commission may proceed to form a new order under its rule.

This proposition was further discussed in Seaberg v. Raton Public Service Co. 36 N M. 59; 8 P. 2d 100, in which the petitioner had removed a matter before the Corporation Commission directly to the Supreme Court, and the Corporation Commission filed a motion to dismiss. The facts of the case are not particularly pertinent to the present question, but some of the language of the court indicates the position which it was quick to take in these matters. We quoted from the case as follows:

> "The proceeding of removal is not for the review of judicial action by the commission. It is to test the reasonableness and lawfulness of its orders. The function of the Commission is legislative; that of the court, judicial. The Commission is not given power to enforce any order; it being merely a rate-making or rule-making body, doing what, if there were no commission, the Legislature alone could do. The court, on the other hand, can make no rate or rule, since it lacks the legislative power."

Perhaps the most complete discussion of the matter arose in the case of Harris v. State Corporation Commission 46 N.M. 352 P. 2d. 323, which was an appeal under the statute to the district court of Santa Fe county. The carrier had been granted a certificate and another carrier, adversely affected, appealed to the district court. The appeal to the district court was taken by way of a complaint filed by the protestant. At the trial, the plaintiff, instead of introducing the record of the hearing before the Com-

mission, introduced new evidence by way of testimony of seven witnesses. Upon conclusion of the evidence the court made many findings contrary to those of the Commission and concluded, as a matter of law, that the action of the Commission was unlawful and unreasonable. The first question discussed was the scope of judicial review provided for in the statute. The court goes into a rather exhaustive review of the New Mexico authorities and discusses several Law Review articles concerning the subject. Some of its concluding remarks are as follows:

> " When our Legislature enacted Ch. 154, L. 1933, it declared its purpose and policy to confer upon the Commission the power and authority to make it its duty to supervise and regulate the transportation of persons and property by motor vehicle for hire upon the public highways of this state and to relieve the undue burdens on the highways, and to protect the safety, and welfare of the travelling and shipping public and to preserve, foster and regulate transportation facilities...
>
> "Counsel for Appellee contends that in the removal of a cause pending before the Commission under Sec. 51, etc. of the Act, the trial before the District Court is a trial de novo. This view is repelled distinctly by what we said in the Seward Case.....
>
> "Even where statutes of other states have said that upon judicial review of administrative or legislative acts the trial shall be de novo, some courts have held such provision unconstitutional, others hold that the de novo provision is limited to the ascertainment by the court of whether the jurisdictional facts exist and whether there had been due process, and whether the Commission had kept within its lawful authority.
>
> "That question of constitutional right and power raised by administrative action must be tried de novo so that the court may reach its own independent judgment on the facts and the law without being bound by the rule of administrative finality of the facts and that additional evidence may be introduced so that these questions of constitutional right and power need not be decided on the administrative record alone, may be conceded."
>
> "We hold that the District Court erred in receiving and considering testimony other than that which had been produced at the hearing before the Commission."

The most recent case on this subject is New Mexico Transportation Co., Inc. v. State Corporation Commission, 51 N. M. 59; 178 P. 2d 580, in which the Commission affirmed the position taken in Harris v. State Corporation Commission, supra, and refused to disturb an order of the State Corporation Commission. The Court said:

> "Following the rules there announced, we are unable to say from an examination of the record that the order of the Commission granting these certificates was either unlawful or unreasonable. It is not sufficient that we might have reached a different conclusion."

This matter has also been discussed in general in cases arising out of the enforcement of the liquor laws of New Mexico by the Bureau of Revenue. Out statutes authorize the Commissioner of Revenue to establish a Division of Liquor Control and to appoint a chief of this division to administer the powers and duties of it.

(New Mexico Statutes 1941 Annotated, 61-501 to 61-525)

Among powers given to the Division of Liquor Control is the power to issue, revoke, cancel or suspend licenses.

There are different appeal provisions from orders referring to the issuance of licenses and those referring to cancellation or revocation of licenses. The provisions relative to appeal of orders concerning issuance of licenses are found in Section 61-516 of New Mexico Statutes 1941 Annotated. This section originally provided as follows:

> "Any person, firm or corporation aggrieved by any decision made by the chief of division as to the issuance or refusal to issue any such additional license may appeal therefrom to the district court of Santa Fe County, by filing a petition therefor in said court within thirty (30) days from the date of the decision of the chief of division, and a hearing on the matter may be had in the district court. Provided, however, that the decision of the chief of division shall continue in full force and effect, pending a reversal or modification thereof by the district court."

In 1945 the provision was amended by adding the words "which hearing shall be de novo."

The section of the statute dealing with revocation and suspension of licenses, and appeals from such orders, in Section 61-605, New Mexico Statutes 1941 Annotated, which provides, among other things, that:

> "The matter on appeal shall be heard by the judge of said court without a jury, and such court shall hear such appeal at the earliest possible time granting the matter of the appeal a preference on the docket. The judge, for good cause shown may receive evidence in such proceedings in addition to that appearing in the record of hearing and shall act aside and void any order or finding which is not sustained by, or has been overcome by, substantial, competent, relevant and credible evidence."

This section of the statute has not been amended to provide for a de novo hearing.

In the case of Floeck v. Bureau of Revenue, 44 N. M. 194; 100 P 2d 225, an appeal was taken under the section relating to cancellation of a liquor license, Section 61-605 New Mexico Statutes 1941 Annotated. Some question was raised as to the Constitutionality of the liquor control act, but the court did not pass upon that question. It did, however, have this to say:

> "Assuming the constitutionality of Sec. 1303, it did not undertake to vest in the district court the administrative function of determining whether or not the permit should be granted. It gave the court authority only to determine whether upon the facts and law, the action of the Commissioner in cancelling the license was based upon an error of law or was unsupported by substantial evidence or clearly arbitrary or capricious. (Ma-King Products Co. v. Blair, 271 U. S. 479, 46 S. Ct. 544, 70 L. Ed. 1046); otherwise it would be a delegation of administrative authority to the district court in violation of the Constitution. Bradley v. Texas Liquor Control Board, Tex. Civ. App., 108 S.W. 2d 300; State v. Great Northern Ry. Co. 130 Minn. 57, 153 N. W. 247, Ann. Cas. 1907B, 1201.
>
> "The New Mexico Liquor Control Act is an exercise of the police power of the state, for the welfare, health, pease, temperance and safety of its people. It prescribes the terms and conditions upon which licenses shall be issued and the grounds and procedure for their cancellation; all of which are made purely administrative."

Apparently the question was not raised in this case as to the introduction of new evidence.

However, in the case of Chiordi v. Jernigan 46 N. M. 396; 129 P. 2d 640 this same statute was under consideration. After revocation of his license, a licensee appealed to the district court of Santa Fe County. In discussing the authority or jurisdiction of the district court, the Supreme Court had this to say:

> "No provision is made on appeal for trial de novo, and jury trials are specifically excluded. It is provided that the judge for good cause shown may receive additional evidence. It is obvious that he must review the evidence taken in the hearing before the Chief of Division. As the trial is not de novo the Chief of Division's decision on the facts must be reviewed as he heard it, and it could not be if additional evidence was authorized upon the question of whether appellee was the party in interest. It is our conclusion that the new evidence which may be admitted must be confined to questions of whether the Chief of Division acted fraudulently, capriciously or arbitrarily in rendering his decision. Ma-King Products Co. v. Blair, supra; Floeck v. Bureau of Revenue, supra; Texas Liquor Control Board v. Floyd, supra.
>
> "The proceedings before the Chief of Division, while quasi judicial, were essentially administrative. The questions before the district court and here, are questions of law. They are, whether he acted fraudulently, arbitrarily or capriciously in making his order, and, whether such order was supported by substantial evidence, and generally, whether the Chief of Division acted within the scope of the authority conferred by the liquor control act."

It should be noted that some of the conclusions appear here to be based upon the fact that there is no provision for a trial de novo under this section of the statute.

It may have been this language which prompted the Legislature of 1945 to insert in Section 61-516 New Mexico Statutes 1941 Annotated, which is the section dealing with appeals refusing to issue licenses, the de novo provision. As has been noted above, however, this provision was not inserted in Section 61-605.

In the recent case of Yarbrough v. Montoya, 214 P. 2d 769, the Supreme Court of New Mexico was called upon to pass upon the effect of the insertion of the de novo provision in Section 61- 516, New Mexico Statutes 1941 Annotated. As will be recalled this de novo provision was inserted after the Floeck and Chiordi cases were decided. The Court again called

attention to the fact that the Chief of the Liquor Division is given wide administrative judgment and discretion with respect to new licenses, and that the statute does not provide for formal hearing, and there is no requirement that he may only consider evidence that would be admissible in a court hearing. There is likewise no limitation upon evidence before the Oil Conservation Commission. The Court, in concluding that the de novo provision does not change the fundamental proposition of limitation of judicial review, had this to say:

> "We are further committed to the doctrine that the courts may not overrule the acts of administrative officers on matters committed to this discretion unless their actions are unlawful, unreasonable, arbitrary, capricious, or not supported by evidence."

The Court said further:

> "The applicant says this rule no longer obtains since the provision for a hearing de novo was written into the liquor law in 1945. A sufficient answer to this contention is found in Floeck case, supra, where in speaking of the powers of the District Court on appeal under the 1937 liquor act, we said: 'Assuming the constitutionality of Sec. 1303, it did not undertake to vest in the district court the administrative function of determining whether or not the permit should be granted. It gave the court authority only to determine whether upon the facts and law, the action of the Commissioner in cancelling the license was based upon an error of law or was unsupported by substantial evidence or clearly arbitrary or capricious (Ma-King Products Co. v. Blair, 271, U. S. 479, 46 S. Ct. 544, 70 L. Ed. (1046); otherwise it would be a delegation of administrative authority to the district court in violation of the Constitution.'
>
> "See also the case of Harris v. State Corporation Commission, 46 N. M. 352, 129 P. 2d 323."

It is true that the statutes for appeal from orders of the Commissioner of Public Lands, Section 8-867 New Mexico Statutes, 1941 Annotated, provide for trials de novo, but we find no cases in which the question of extent of review was raised.

CONCLUSIONS

Based upon the decisions and authorities cited, it is the position of Texas Pacific Coal and Oil Company that the nature and scope of the review by this Court of orders of the Oil Conservation Commission, including the question of what evidence may be presented, is limited as follows:

1. In view of the apparent attempt to delegate non-judicial functions to this Court, the review provisions of the statute are unconstitutional unless limited by the Court to the affirming or vacating of the order of the Commission.

2. This court is limited upon review to a determination of whether the action of the Commission was unsupported by substantial evidence or was clearly arbitrary or capricious.

3. In making this determination this Court cannot pass upon the Commission's action unless it limits itself to the transcript of evidence before the Commission.

Respectfully submitted,

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By _____

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