

BEFORE THE
OIL CONSERVATION COMMISSION
STATE OF NEW MEXICO

CASE 595: In the matter of the application of El Paso Natural Gas Company for compulsory utilization of the E/2 of Section 32, Township 31 North, Range 10 West, San Juan County, New Mexico; or, in the alternative, for approval of an unorthodox drilling unit of 240 acres, more or less, in the E/2 of said Section 32, Township 31 North, Range 10 West.

TRANSCRIPT OF HEARING

October 15th, 1953

BEFORE: Honorable Ed. L. Mechem, Governor
Honorable E. S. Walker, Land Commissioner
Honorable R. R. Spurrier, Director, OCC

STATE OF NEW MEXICO)
COUNTY OF BERNALILLO) ss

I HEREBY CERTIFY that the within transcript of proceedings before the Oil Conservation Commission is a true record of the same as to the best of my knowledge, skill and ability.

DONE at Santa Fe, N.M., this 17th day of October, 1953.

Marjorie S. Allan
Reporter

SWORN TO before me this 17th day of October, 1953.

Myerson
Notary Public

My Commission Expires:

My Commission Expires January 24, 1954

CASE 595:

In the matter of the application of El Paso Natural Gas Company for compulsory utilization of the E/2 of Section 32, Township 31 North, Range 10 West, San Juan County, New Mexico; or, in the alternative, for approval of an unorthodox drilling unit of 240 acres, more or less, in the E/2 of said Section 32, Township 31 North, Range 10 West.

COM. SPURRIER: The meeting will come to order please. The next case on the docket is Case 595. Let the record show that the advertisement was read.

BEN HOWELL: My name is Ben Howell and I represent the El Paso Natural Gas Company. I would like to have a witness sworn.

R. L. HAMBLIN

having been first duly sworn testified as follows:

DIRECT EXAMINATION

BY MR. HOWELL:

Q Will you please state your name for the record?

A My name is R. L. Hamblin.

Q By whom are you employed?

A El Paso Natural Gas Company

Q What is your position with the El Paso Natural Gas Company?

A I am the Manager of the Lease Department.

Q I will ask you if you are familiar with the ownership of leases concerning the E/2 of Section 32 in Township 31 North, Range 10 West?

A I am.

Q Will you state very briefly the ownership of leases in that half section?

A El Paso Natural Gas Company is the owner of the gas rights at least of 160 acres. El Paso and Brookhaven are joint owners of the gas rights as to forty acres. Edward Evensen of San Francisco is the owner of an additional 40 acres. A. S. Hopkins of Cambridge, Massachusetts is the owner of an additional forty acre tract. The State of New Mexico is the owner of approximately forty acres which we understand is not under lease.

Q Is that the forty acre tract which was formerly covered by State of New Mexico B 10567 - the NW/4 of the SW/4 of that section?

A That is correct.

Q And that is owned by Charles W. Shafer, depending on whether it expired on August 20th of 1953?

A That is correct.

Q Have you made efforts to obtain a communitization agreement to communitize the E/2 of that section?

A We have.

Q What wells have been drilled surrounding that? Is there a well on the W/2 of the section?

A There is a well in the SW/2 of Section 32.

Q The W/2 is toward that well?

A Yes.

Q Is there an offset well to the East?

A Yes, on the Federal lease on this tract - Atlantic 6 B

Q Is there anything at all on the Northeast?

A There is a completed well Northeast - Atlantic 3A well.

Q How many of the lease owners have joined in the communitization agreement? Just give the total acreage.

A 240 acres have signed the communitization agreement.

Q Has that communitization agreement been filed with the Oil Commission for approval?

A It is on file.

Q And the communitization agreement, as prepared, would have included the entire E/2 of the section if the owners of leases on the outstanding eighty acres had joined?

A It would have included the entire 320 acres.

Q Taking first the 40 acres owned by A. S. Hopkins, is that under State Lease B 10735-5 covering the SE/4 of the NE/4 of that section?

A That is correct.

Q Have you made an offer to Mr. Hopkins to have him join in the drilling of a well in the communitizing of that tract?

A We have made two offers to Mr. Hopkins to either sell his lease or join with us in drilling our well.

Q He has refused in both instances?

A Yes, he has refused to do anything or sell at any price.

Q Do you have copies of correspondence that you have had with Mr. Hopkins?

A I do.

Q Will you please mark this as El Paso Natural Gas Company Exhibit No. 1? I offer it to the Commission.

(El Paso Natural Gas Co. Exhibit No. 1 marked for identification.)

Q Does that reflect correspondence between the Company and Mr. Hopkins with reference to this well?

A It reflects all correspondence between El Paso Natural Gas Company and Mr. Hopkins.

Q There has been a well drilled on this 320 acres, as there not?

A Yes, sir. We have completed our Well No. 1 on the E/2 of Section 32.

Q What particular forty acres is it located on?

A The well is located on the NW/2 of the NE/4 of Section 32. State of New Mexico B-10735.

Q Is that assignment 32?

A That is correct.

Q When was that well spudded?

A That well was spudded on August 7th, 1953.

Q And when was it completed?

A September 10th, 1953

Q Has it been completed as a producing well?

A Yes with initial potential of 5,168,000 cubic feet of gas per day.

Q Has the well connection been made so that the well is ready to be marketed?

A The well has been tied into our gathering system and is ready to be marketed.

Q That B-10567 covering the NW/4 of the SE/4 of that section - was that lease formerly owned or presently owned by Charles W. Shafer?

A It was owned by Charles W. Shafer of Glendale, California.

Q Did you ask to have Mr. Shafer join in drilling the well or in selling his interest in the lease?

A That is correct. We contacted Mr. Shafer by telephone and also contacted him by letter dated May 7th, 1953 offering to him the opportunity to join us in the drilling of the well and we would carry him with the initial drilling cost, or, if he preferred, to sell us the lease.

Q Will you mark that copy of letter as El Paso Natural Gas Company's Exhibit 2 A?

A I will, but there is additional letters attached to this first letter.

Q Then, will you please mark that first letter as Exhibit 2A please?

(Whereupon, first letter was marked
El Paso Natural Gas Company's
Exhibit 2A for identification.)

Q Is that a copy of the letter which was mailed to Mr. Shafer?

A That is a photostatic copy of the letter mailed to Mr. Shafer.

Q Do you have a copy of Mr. Shafer's reply?

A There was no reply.

Q At one time did Mr. Shafer ever offer to join you in communitizing the lease and join in drilling the well?

A No, he never agreed to communitize with us or join with us in the drilling of the well.

Q Did he ever offer to sell his interest in the well to you?

A Yes, he finally did agree to accept our offer to buy the lease approximately ten days or two weeks before the lease expired.

Q Do you have a copy of the letter from Mr. Shafer concerning that offer?

A I do not have a copy of that letter in my correspondence. It is available I believe and we can offer it in exhibit, but I have not had that photostated.

Q Was that a letter or a telephone communication?

A I believe that was a telephone conversation because we do not seem to have it photostated and I believe his acceptance was by telephone.

Q Approximately what date was that?

A That was approximately ten days or two weeks prior to the expiration of that lease.

Q Was there any time in that ten days or two weeks, if you had purchased that lease from Mr. Shafer, to obtain an agreement from the other leasehold owners for communitization and to obtain the approval of the Commissioner to the communitization agreement.

A We definitely did not believe there was enough time. That is why we could not accept the offer. We would have had to prepare it and have it executed by all interested parties and filed for approval and it would have had to be approved prior to the expiration date and we did not feel that we could have had that done within that time and that is what we told Mr. Shafer.

Q You could not purchase his lease at that time because you could not get the matter prepared by the time the lease would expire?

A Yes.

Q Up to that time you had been unable to get any agreement from Mr. Hopkins?

A That is correct.

Q Where does Hopkins live?

A Cambridge, Massachusetts

Q Had you been able to get any agreement at any time?

A We had correspondence from Hopkins. I made a special trip to Massachusetts to contact Mr. Hopkins and was unable to contact him and I left a registered letter at his Post Office Box stating our offer and stating we had to go ahead with the drilling of a well to protect our own leases.

MR. HOWELL: We offer in evidence the El Paso Natural Gas Company Exhibit 1 and letter to Mr. Shafer, which is Exhibit 2A.

COM. SPURRIER: Is there any objection? If no objection, it will be received.

(Whereupon El Paso Natural Gas Company's Exhibits 1 and 2A were received in evidence.)

Q (MR. WHITE:) In reference to the parties Shafer and Hopkins, what kind of service was given - personal or newspaper publication as to this hearing?

A As to this hearing I do not know.

Mr. WHITE: I was just wondering if notice was mailed to them.

A I think that can be answered as to one of the parties. Mr. Shafer and Mr. Hopkins received notice by mail.

Q (By Mr. Howell) The date of spudding that well - what was that date? Was it three days before the Shafer lease expired?

A It was spudded August 3rd and the lease expired August 22nd.

Q Is it not a violation of the Commission's ruling to spud a well without having the approval of the State Land Office?

A We obtained the approval of the State Land Office, filed an Intention or Notice to Drill and obtained approval of the State Land Office to drill that well.

Q (MR. WHITE:) You did not obtain our permission.

A Yes, we obtained it from the Commission's office in Aztec. It was approved subject to being able to get the communitization agreement. However, we were faced with this fact. We had two hundred acres expiring October 20th and that was only by communitization and drilling a well to protect our interest.

Q How long did you have that 200 acre assignment?

A Those all come in on different dates. I do not have

available the exact dates we acquired that acreage, but it has been within the last year or eighteen months that we have acquired all of that acreage.

Q Within the last eighteen months?

A Yes, I would definitely state that.

COM. SPURRIER: Any more questions of this witness?

MR. KELLAHIN: I represent Charles W. Shafer. I would like to ask the witness a few questions.

CROSS EXAMINATION

BY MR. KELLAHIN:

Q Did you say that in your files, available here, you do not have a copy of Mr. Shafer's acceptance of your offer?

A No, I do not.

Q Have you seen that letter yourself?

A No, sir, I recall no such letter.

Q Does this look familiar to you?

(Whereupon the witness is handed a letter to peruse.)

A I could not state whether I have ever seen that letter or not.

Q Would anybody else have seen it in place of yourself?

A Yes, it is addressed to Mr. Smith of our Lease Department so he may have seen this letter.

Q Was it your testimony that Mr. Shafer did agree to see his lease?

A Yes, he did contact us to sell his lease approximately ten days or two weeks before the expiration of his lease.

Q You do not recall the exact date?

A No, I do not.

Q You state it was your assumption that you could not have gotten it approved in time?

A In view of our past experience, the time required to prepare, circulate and obtain approval of communitization agreement, was not sufficient.

Q How long does that usually take?

A Certainly I would not feel safe in saying under a month.

Q It could be done in a week, could it not?

A It is possible if the people were available.

Q In other words, you do not know how long it would have taken for that, is that not true?

A It could be if it had been prepared and circulated individually flying to each party, delivering it by air, and if the Commission had approved it immediately when it was presented, it could possibly have been done.

Q Did you inform Mr. Shafer that you were drilling on that half section?

A Yes, sir.

Q And when was that?

A Mr. Shafer contacted us and asked if we could not drill on the forty acres to protect the lease and I told him we were unable

to do so because we were already drilling the well in the NE/2 of Section 32, which was the usual spacing of wells in the East half and, furthermore, his well would have been in the southeast section of 32.

Q When did you tell him that?

A That was in a telephone conversation after he had offered to sell us his lease.

Q He accepted your offer, is that not correct?

A Yes, but that offer was subject to the approval of our attorneys for title opinion, etc.

Q You stated you filed notice of intention to drill. When was that filed?

A That was filed from our Farmington office.

Q Did you see the notice?

A We have received a copy of Notice of Intention to Drill.

Q Are you aware or do you know that the E/2 of that section was dedicated to that well?

MR. KELLAHIN: I ask the Commission to take notice of the zone record on Notice of Intention to Drill.

Q Your notice says September 10th was the date the well was completed. Is that correct?

A We called our office this morning and that was the date they gave us. That is according to our records when the well was completed.

Q You do not know what the Commission records will show?

A No.

MR. KELLAHIN: I ask the Commission to notice the record shows the well to have been completed on August 27th, 1953.

Q Have you described to the Commission all your efforts in trying to get an agreement with Mr. Shafer?

A Our Mr. Smith was handling the negotiations and we have other letters where we contacted Mr. Shafer and received no reply. Mr. Smith has had numerous communications with him. We have a letter dated May 7th to Mr. Shafer to which we did not receive a reply. We have a letter dated May 22nd, 1953, a registered letter with return receipt requested, addressed to Mr. Shafer, to which we have had no reply and we have a registered letter dated June 9th, 1953 to Mr. Shafer, all offering to get him to join with us or to sell his lease.

Q Did you ask the Land Commission to put that lease up for sale?

A Yes, I did.

Q And what date was that?

A I do not remember the exact date. It was within a day or two that Mr. Shafer had contacted us and accepted our offer. I took it to the State Land Office and asked if that lease could be extended and they advised me it could not and, at that time, I said if the lease cannot be extended, put it up for sale.

Q Who did you talk to?

A Tony Albert and also to another man.

Q He had no opportunity to check into the question prior to your asking him, did he?

A Probably not. I contacted him over the telephone.

Q It was an offhand opinion he gave you?

A Yes.

Q And you ask him to put it up for sale?

A Yes.

Q (MR. MACEY:) Suppose you had owned that lease on forty acres that would expire on the 20th and you did not obtain a complete communitization agreement. Do you mean to say there was no any way you could have reported the case to the Land Commission and gotten a temporary extension?

A It is my understanding that unless the well was being drilled on that forty acres or a communitization covering that forty acres with the remaining 320 on which a well was being drilled, there was no way in which that lease could have been extended.

Q What did you offer Mr. Shafer in payment for his lease?

A We offered him forty dollars an acre.

Q How come you offered Hopkins fifty dollars an acre and five percent override? One is just as good as the other, is it not? According to my information, on the comparison of those two wells -

A No, there is no reason why the two acreages should not have the same value, but I might state right here that we were and are willing, if that lease can be extended, that our offer is still open to Mr. Shafer if he can obtain an extension of his lease, to either buy his lease or, if he wants to join the communitization, we will carry him and recover his share of the drilling costs out of the

production, but I could not authorize the purchase of a lease due to expire within ten days.

Q (By Mr. Walker) How would the State Land Office benefit from such an agreement as that? I understand Mr. Shafer's position, but in what position would be place the Land Office?

A (By Mr. Howell) What agreement are you referring to?

Q (By Mr. Walker) He said if the lease could be extended he still would make some kind of an agreement with him, or an offer, the same as the one he had prior to the time the lease had expired. How will the Land Office come in on this thing? I do not know how it would benefit the Land Office.

MR. KELLAHIN: I think it would, very definitely. If this is included in the communitization, the State would get the royalty.

MR. RHODES: I wonder about the extension. I cannot think of any thirty day extensions. We do not want to start that because, where would it end?

MR. KELLAHIN: It is a question to be put up to the Land Commission.

Q (By MR. WALKER) I would like to ask, did you already state when you actually attempted to communitize this acreage? I do not mean when these people wanted to come in - but just as far as the Commission is concerned - we know you started talking to Shafer and Hopkins two or three years ago, but when did you start to communitize this acreage as far as the Commission is concerned?

A (By Mr. Hamblin) We just recently filed that communitization agreement in the absence of an order pursuant to a hearing. We feel there is no way we can approach your office on a communitization agreement until we have everybody signed and then present it for approval.

COM. SPURRIER: Is there any other question of the witness? If not, the witness may be excused.

(Witness excused)

MR. HOWELL: Mr. Morrell, will you please take the stand?

FOSTER MORRELL

having been first duly sworn testified as follows:

DIRECT EXAMINATION

BY MR. HOWELL:

Q Will you please state your name and occupation for the record?

A Foster Morell, Petroleum Consultant, representing El Paso Natural Gas Company.

Q You have testified before the Commission before?

A Yes, sir.

Q Mr. Morell, are you familiar with the location of this tract we are talking about?

A I am.

Q Is it within the area in which the Commission has established a 320 acre spacing from Mesa Verde in order to conserve

natural resources ?

A The well is so located.

Q Having heard the testimony as to the fact that 280 acres that have been committed to communitization agreement and 80 acres outstanding, will you state whether or not it is your opinion that failure to communitize or pool the leases into a 320 acre unit, will deprive the owners of some of the gas lying under the land of an opportunity to recover their just and equitable share of the pool?

A That is correct. Failure to communitize would present the people to recover their just and equitable share of actual gas, as to the owner.

MR. HOWELL: That is all.

CROSS EXAMINATION

BY MR. KELLAHIN:

Q Will this well bring in the acreage $NW\frac{1}{2}$ of the $NE\frac{1}{4}$?

A As to the spacing of the well, it would bring in the entire 320 acres.

MR. KELLAHIN: That is all.

COM. SPURRIER: Any questions of the witness? If not, the witness may be excused.

(Witness excused.)

MR. HOWELL: I would like to make a statement on behalf of the Company. The points have been shown of the problems and the difficulties of communitization and I know of no way and no one in the Company knew, and, upon a call to the Land Office, we could find

no suggestion of a way we could purchase that lease ten days before its expiration and be sure we had gotten what we paid for because, at the time there was an opportunity given to buy the lease, we had a definite refusal from the owner of the forty acres, Mr. Hopkins, and we knew there was not time to secure a hearing , such as we are having now, prior to the expiration of that lease on the 20th of August. Insofar as the El Paso Natural Gas Company is concerned, we are completely willing as to the owner of the other forty acres, whether it be Mr. Shafer, the State, or whoever it may be, to come in and share in the well cost. We are willing to carry the well cost, payable out of net production, with a return of our cost plus a reasonable interest which we suggest would be seven percent and would suggest that such an order be entered. That is a problem that we do not know the answer to. I do not know of any way, under the laws and regulations, as they now exist, that that lease can be altered. If there is one, we are completely willing that Mr. Shafer get the benefit of it and the position of the Company is that we have had to go in and drill this area . If by our drilling in this area it would affect or extend the lease, we would be delighted. We will be happy to have Mr. Shafer join in the communitization. We will be very happy to carry him on the drilling cost out of net profits and we suggest that an appropriate order be so entered.

MR. WHITE: This question rises in my mind as to the validity of such an order because an order can have no effect upon

something not in existence. For example: If this lease has expired, how could the Commission issued an order saying a lease on this E/2 is communitized, when the lease is not in existence?

MR. HOWELL: I get your point.

MR. WHITE: The Oil Conservation Commission cannot impose any directives , rules or regulations on the Land Office and the Land Office holds the land. The lease has expired. Could the Commission issue an order at this time to permit the Land Office to put a restriction on the land and, secondly, to sanction the valicity of an order to apply on something not in existence? I just wonder if they could agree to that.

MR. HOWELL: I certainly agree it is a puzzle and I do not know the answer of the problem we have brought to the Commission. However, we think they should enter the Order, or, have we the right to operate this as an unauthorized unit and have the outstanding acreage brought in?

MR. WHITE: Do you think the Commission has such power?

MR. HOWELL: I have no doubt about it as far as the authority for the Hopkins 40 acres is concerned . It really raises a serious question in my mind as to whether the Commission can do it in the other case .

MR. KELLAHIN: I have gone into it to some extent.

MR. HOWELL: I do not see all the ramifications to the answer.

MR. WHITE: You do agree that we do not have any authority over this 40 acres?

MR. HOWELL: If the State Land Office should see fit to commit its 40 acres to this unit.

MR. WHITE: But what power does the Oil Commission have?

MR. HOWELL: I agree with you that I have doubts.

MR. KELLAHIN: I am in rather an unfortunate position in not having a witness. I have only a file which was forwarded to me and, for that reason, I would like to call Mr. Smith as adverse witness to identify a letter and, if he cannot, we are in a difficult situation. Mr. Smith, will you take the stand please?

SAMUEL SMITH

having been first duly sworn testified as follows:

DIRECT EXAMINATION

BY MR. KELLAHIN:

Q Will you state your name please?

A Samuel Smith.

Q What position do you hold with El Paso Natural Gas Company?

A Assistant Manager of the Lease Department.

MR. KELLAHIN: If the Commission please, I would like to call attention to the fact this is an adverse witness.

Q (By Mr. Kellahin) Did you handle part of the correspondence with Mr. Shafer in regard to his lease?

A Yes.

Q And did you receive a letter from him accepting your offer on the sale of that lease?

A May I see the letter?

Q Certainly.

A I cannot state **for certain** that I received this letter. Perhaps I did. But, for the record, if Mr. Shafer has a valid lease and you show good title to our attorney, I am agreeable to receiving it as of now.

Q (MR. WHITE:) Did you, or did you not receive that letter?

A I cannot say. I just do not know.

MR. HOWELL: We do not have any objection, but might I make this statement? I am sure, either by letter or telephone conversation that information was transmitted to our Lease Department and we would not deny that - the gist of what was said there on approximately that date, as that clears the matter up in all fairness. We frankly admit at about that date the matter came in and a call was made to the Land Commission to see if there was any way we could go ahead and close it.

MR. KELLAHIN: We offer in evidence Intervenor's Exhibit No. 1.

COM. SPURRIER: It will be admitted without objection.

(Intervenor's Exhibit No. 1 admitted in evidence.)

Q (By Mr. Kellahin) Following that expression or conversation with Mr. Smith, do you recall forwarding it to someone else?

A Yes.

Q I hand you a letter and ask if you signed that?

A I wrote that letter. That is not my signature, but I

dictated it and it was signed by someone else, but I did dictate this letter.

A Was it signed with your authority?

Q What was the date?

A August 11th.

Q And to whom is it directed?

A Mr. Dow of Herbie, Dow and Hurkle.

MR. KELLAHIN: I offer in evidence, as Intervenor's Exhibit No. 2, this letter, and ask that it be admitted in evidence.

COM. SPURRIER: It will be admitted without objection.

MR. KELLAHIN: In view of the circumstances in regard to the status of Mr. Shafer's lease, that is a matter which is for the decision of the State Land Commission and its legal staff, and I do not think it has a proper part in this hearing. A protest against cancellation of that lease has been filed with the State Land Commission and we are accepting its decision. The position of Shafer is that the drilling of the well in the E/2 of that is participation of that lease and there is substantial legal authority supporting that view, and it is a question that Mr. Shafer is entitled to have an answer for. We do protest the creation of an unorthodox drilling unit in this area. We will enter into a communitization agreement on such terms and conditions as are just and equitable to Mr. Shafer. Whatever those may be, of course, would have to be worked out and we would ask the Commission to render jurisdiction of the case. We do object to unorthodox unit for the reason stated. We believe this

well perpetuated this lease and that communitization would be the proper remedy.

COM. SPURRIER: Under those circumstances, the Commission will continue the case to an indefinite date, depending on a decision and we will have to readvertise the case.

MR. KELLAHIN: I do not believe Mr. Commissioner, that a continuation would be in order - that the Commission should enter some order at this time. The basis of Mr. Shafer's contention is that the drilling of this well would perpetuate this lease and it will not be perpetuated under the law until a communitization order is entered. That is a legal point.

MR WHITE: It has been because it will be?

MR. KELLAHIN: The well was completed prior to Mr. Shafer's lease expiration. Where the State has rules and regulations in spacing of drilling units and communitizing ordered under those regulations, then, at that time, the lease is participating even though it comes after the expiration date of the lease.

MR. WHITE: Supposing this petition were allowed of unorthodox drilling of forty acres and then, as a result, the Shafer lease were renewed or he became the lessee of a new lease, then he could come in under Section 15-C and required to be communitized.

MR. KELLAHIN: That is correct, but that would be in effect an unorthodox unit to be allowed but, in that event, Mr. Shafer might not have his lease. I have not done any considerable research in the question. What we are hearing is an attempt to protect Mr.

Shafer's lease.

MR. WHITE: I do not think the Commission has the authority to grant this lease.

COM. SPURRIER: As usual, I am in the middle.

MR. KELLAHIN: I would like to submit a brief on it for the perusal of the legal staff.

COM. SPURRIER: Under that circumstance, we will take it under advisement.
