New Mexico
OIL CONSERVATION COMMISSION

P. O. BOX 871
SANTA FE, NEW MEXICO

July 31, 1953

Mr. W. T. Hollis
Production Superintendent
El Paso Natural Gas Company
P. O. Box 997
Farmington, New Mexico

Dear Sir:

Receipt is acknowledged of plat and waivers that were necessary for the approval of your Notice of Intention to Change Plans for the No. 2 Yager Pooled Unit in the NW/4 of Section 6, Township 30 North, Range 11 West.

Approval is hereby given to deepen the above well to the Mesaverde formation.

Very truly yours,

R. R. Spurrier

R. R. Spurrier
Secretary and Director

cc: Mr. Emery Arnold
Oil Conservation Commission
P. O. Box 697
Aztec, New Mexico

I CERTIFY THAT THIS IS A TRUE AND EXACT PHOTO COPY OF THE ORIGINAL NEGATIVE AND WAS MADE BY ME THIS 10 DAY OF May 19 54

J. H. Bean

Photostat Operator
B. & R. SERVICE CO.
FARMINGTON, NEW MEXICO

(Form C-102)
(Revised 7/1/52)

ILLEGIBLE

NEW MEXICO OIL CONSERVATION COMMISSION
Santa Fe, New Mexico

MISCELLANEOUS NOTICES

Submit this notice in TRIPLICATE to the District Office, Oil Conservation Commission, before the work specified is to begin. A copy will be returned to the sender on which will be given the approval, with any modifications considered advisable, or the rejection by the Commission or agent, of the plan submitted. The plan as approved should be followed, and work should not begin until approval is obtained. See additional instructions in the Rules and Regulations of the Commission.

Indicate Nature of Notice by Checking Below

Notice of Intention to Change Plans	X	Notice of Intention to Temporarily Abandon Well		Notice of Intention to Drill Deeper	
Notice of Intention to Plug Well		Notice of Intention to Plug Back		Notice of Intention to Set Liner	
Notice of Intention to Squeeze		Notice of Intention to Acidize		Notice of Intention to Shoot (Nitro)	
Notice of Intention to Gun Perforate		Notice of Intention (Other)		Notice of Intention (Other)	

OIL CONSERVATION COMMISSION
SANTA FE, NEW MEXICO

Farmington, New Mexico (Place) May 26, 1953 (Date)

Gentlemen:

Following is a Notice of Intention to do certain work as described below at the Yager Pool Unit

El Paso Natural Gas Company (Company or Operator) Well No. 2 in (Unit)

¼ NW ¼ (40-acre Subdivision) of Sec. 6, T. 30N, R. 11W, NMPM., Blanco Pool

San Juan County.

FULL DETAILS OF PROPOSED PLAN OF WORK
(FOLLOW INSTRUCTIONS IN THE RULES AND REGULATIONS)

This well has been drilled to a total depth of 2283' through the Pictured Cliffs formation and found non-productive in this formation.

It is intended to change plans in the following manner:

1. **To drill this well through the Mesaverde formation.**
2. **To set 5" O.D. liner at 4103' total depth through Mesaverde 4638',**
3. **To shoot lower Mesaverde with approximately two quarts S.N.G. per foot.**

The W/2 of Section 6 will be dedicated to this well.

RECEIVED
MAY 28 1953
OIL CON. COM.
DIST. 3

Approved July 31, 1953
Except as follows:

EL PASO NATURAL GAS COMPANY (Company or Operator)

By [signature]

Position Petroleum Engineer

Send Communications regarding well to:

Name E. J. Coni

Address Box 997, Farmington, New Mexico

Approved
OIL CONSERVATION COMMISSION

By A. L. Kendrick

Title Pet. Engr.

SUBJECT PHOTO
TO [illegible] FILE BY ME

10 May

19 54

J. A. Beam

[illegible] Jr.
U. S. G. S. [illegible] CO.
FARMINGTON, NEW MEXICO

MEMORANDUM FOR FILE IN CASE ~~Ex~~ 706

dated July 31, 1953

In the Commission's date file 5/1/53 to 9/15/53 is a letter from R. R. Spurrier to W. T. Hollis, Production Superintendent El Paso Natural Gas Company, acknowledging receipt of waivers and plat, and granting approval to deepen well to Mesaverde formation.

JONES, HARDIE, GRAMBLING & HOWELL
ATTORNEYS AND COUNSELORS AT LAW
SEVENTH FLOOR BASSETT TOWER
EL PASO, TEXAS

CYRUS H. JONES, 1868-1952
THORNTON HARDIE
ALLEN R. GRAMBLING
BEN R. HOWELL
HAROLD L. SIMS
WILLIAM B. HARDIE
JOHN A. GRAMBLING
R. H. FEUILLE

April 23, 1954

Mr. R. R. Spurrier
Oil Conservation Commission
Santa Fe, New Mexico

Dear Mr. Spurrier:

We enclose seven Applications for Compulsory Communitization involving wells drilled in the Mesaverde formation in the San Juan Basin area. The parties affected by the application of El Paso Natural Gas Company are:

Saul A. Yager, 613 Oil Capital Building, Tulsa, Oklahoma;

Marian Yager, c/o C. H. Rosenstein, McBirney Building, Tulsa, Oklahoma;

M. E. Gimp, c/o Zales Jewelry, 1606 Main Street, Dallas, Texas;

Morris Mizel and wife, Flora Mizel, 101 W. Cameron Street, Tulsa, Oklahoma;

Sam Mizel, 101 W. Cameron Street, Tulsa, Oklahoma.

Will you kindly send receipt for these Applications, advising the writer of any further requirements and set the cases for hearing at the May regular hearing (if time permits) and give the appropriate notices.

Thank you for your cooperation and consideration.

Yours very truly,

JONES, HARDIE, GRAMBLING & HOWELL

By Ben R. Howell

BRH/s
enc.
c-El Paso Natural Gas Company

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

April 30, 1954

TO: Saul A. Yager, 613 Oil Capital Bldg, Tulsa, Okla.;

Marian Yager, c/o C. H. Rosenstein, McBirney Bldg, Tulsa, Okla.;

M. E. Gimp, c/o Zale's Jewelry, 1606 Main Street, Dallas, Tex.;

Morris Misel and wife, Flora Misel, 101 W. Cameron St., Tulsa, Oklahoma;

Sam Misel, 101 W. Cameron Street, Tulsa, Okla.

COPY

We hand you herewith copies of legal notices of publication as sent out on this date by the New Mexico Oil Conservation Commission. These are concerned with Cases 706 through 712, incl., which will be heard at the regular May 19, 1954, hearing of this Commission at 9 a.m., Mabry Hall, State Capitol, Santa Fe, New Mexico, upon applications of El Paso Natural Gas Company.

Very truly yours,

R. R. Spurrier,
Secretary - Director

RRS:nr

Sent Via Registered Mail (Return Receipt)

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

April 30, 1954

COPY

Mr. Ben Howell
Jones, Hardie, Grambling & Howell
Seventh Floor Bassett Tower
EL PASO TEXAS

Dear Sir:

As requested in your letter of April 23, 1954, the seven applications for compulsory pooling which you submitted on that date in behalf of El Paso Natural Gas Company have been set for hearing on May 19, 1954.

Notices have been issued this date which will cover the cases in Santa Fe and in San Juan County. We are also sending copies of notices in all cases to the parties affected by the application whose interests have not been yet ascribed to the unit. These are being sent registered, with return receipt requested.

Very truly yours,

R. R. Spurrier
Secretary - Director

RRS:nr

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

May 3, 1954

COPY

Mr. Saul Yager
613 Oil Capital Building
TULSA, OKLAHOMA

Dear Sir:

As you requested in our telephone conversation on this date, I am sending you herewith copies of El Paso Natural Gas Company's applications (and communitization agreements in connection therewith) in Cases 706 - 712, incl., as scheduled for hearing before this Commission at the regular May 19, 1954, hearing.

Since these are part of our permanent records, we will greatly appreciate your return of these documents prior to May 19.

Very truly yours,

R. R. Spurrier
Secretary - Director

RRS:nr

Encl.

May 6, 1954

Mr. Ben R. Howell
Jones, Hardie, Grambling and Howell
Attorneys-at-Law
7th Floor, Bassett Tower
El Paso, Texas

Re: Applications of El Paso Natural Gas Company for compulsory communitization
Cases 706-712, Incl.
Before the Oil Conservation Commission of New Mexico

Dear Mr. Howell:

At my request, Mr. R. R. Spurrier, Secretary-Director of the New Mexico Oil Conservation Commission has sent me copies of El Paso Natural Gas Company's applications, and communitization agreements in connection therewith, attached to each, in cases 706-712, Incl., for my examination. Since these are a part of his permanent records, Mr. Spurrier has asked that I return these documents to him prior to the hearing which is set for May 19.

Will you be kind enough to furnish me copies of each of these applications with the communitization agreements in connection with them, so that I may have them for my files. If you can furnish me two copies of each I will certainly appreciate that.

Thank you.

Sincerely Yours,

Saul A. Yager

SAY:rb
CC:R. R. Spurrier
Secretary-Director
New Mexico Oil Conservation Commission
P. O. Box 871
Santa Fe, New Mexico
AIRMAIL

SAUL A. YAGER
ATTORNEY AT LAW
613 OIL CAPITAL BUILDING
TULSA 3, OKLAHOMA

May 6, 1954

Mr. R. R. Spurrier
Secretary-Director
New Mexico Conservation Commission
Santa Fe, New Mexico

Dear Sir:

Receipt is acknowledged of your letter of May 3 with the enclosed copies of El Paso Natural Gas Company's applications and communitization agreements in connection therewith in cases 706-712, Incl.

In view of your request that these be returned to you for your permanent records, I have written to Mr. Ben R. Howell at El Paso, Texas, attorney for the El Paso Natural Gas Company, for copies for my files. A copy of my letter to Mr. Howell is here enclosed.

Do you have any objection to my keeping the copies which you sent me pending the furnishing of copies to me by Mr. Howell?

Thank you.

Sincerely Yours,

Saul A. Yager

SAY:rb
encl-1

May 10, 1954

Mr. Ben R. Howell
Jones, Hardie, Grambling and Howell
Attorneys at Law
7th Floor, Bassett Tower
El Paso, Texas

Re: Applications of El Paso Natural Gas Company before the New Mexico Oil Conservation Commission cases 706-712, Incl.

Dear Mr. Howell:

Because of conflicts with other matters and also inability to be prepared, we find that we will be unable to go ahead with the hearings of the above matter set before the commission for May 19, and we are today writing to the Commission requesting that the hearings be continued for 60 days. We trust that this will be agreeable with you.

Yours Very Truly,

Saul A. Yager

SAY:rb
CC:Mr. R. R. Spurrier
Secretary-Director
New Mexico Oil Conservation Commission
Santa Fe, New Mexico

SAUL A. YAGER
ATTORNEY AT LAW
613 OIL CAPITAL BUILDING
TULSA 3, OKLAHOMA

May 10, 1954

Mr. R. R. Spurrier
Secretary-Director
New Mexico Oil Conservation Commission
Santa Fe, New Mexico

Re: Applications of El Paso Natural Gas Company before the New Mexico Oil Conservation Commission cases 706-712, Incl.

Dear Sir:

Because of conflicts with other matters and also inability to prepare, we find that we will be unable to go ahead with the hearings of the above matters set before the Commission on May 19, 1954. We respectfully request that the hearings be continued for 60 days.

It will be appreciated if you will advise me in the enclosed airmail special delivery return envelope.

Thank you.

Yours Very Truly,

Saul A. Yager

SAY:rb
encl-1
AIRMAIL SPECIAL DELIVERY

CC: r. Ben R. Howell
Jones, Hardie, Grambling and Howell
Attorneys at Law
7th Floor, Bassett Tower
El Paso, Texas

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

May 12, 1954

COPY

Mr. Saul A. Yager
Attorney at Law
613 Oil Capital Building
Tulsa 3, Oklahoma

Re: Cases 706-712, Inc.

Dear Mr. Yager:

Reference is made to your letter of May 10th to Mr. Spurrier pertaining to the above captioned cases.

The Commission has advised me that it is unable to commit itself on a postponement of these cases. In order for your request to be considered it will be necessary for you or your representative to be present on May 19th to make a formal request for continuance.

Yours very truly,

W. B. Macey
Chief Engineer

WBM:vc

JONES, HARDIE, GRAMBLING & HOWELL
ATTORNEYS AND COUNSELORS AT LAW
SEVENTH FLOOR BASSETT TOWER
EL PASO, TEXAS

CYRUS H. JONES, 1868-1952
THORNTON HARDIE
ALLEN R. GRAMBLING
BEN R. HOWELL
HAROLD L. SIMS
WILLIAM B. HARDIE
JOHN A. GRAMBLING
R. H. FEUILLE

June 10, 1954

Mr. R. R. Spurrier
New Mexico Oil Conservation Commission
Santa Fe, New Mexico

Dear Mr. Spurrier:

We enclose four copies of brief filed on behalf of El Paso Natural Gas Company in cases numbered 706-712, upon which hearing was conducted in May. Each party was allowed until June 15th to file brief.

A copy of this brief has been sent to Mr. Campbell and to Mr. Yager.

Yours very truly,

JONES, HARDIE, GRAMBLING & HOWELL,

BY: Ben R. Howell

BRH/R.
Encls.

BEFORE THE

OIL CONSERVATION COMMISSION

OF THE STATE OF NEW MEXICO

IN THE MATTER OF APPLICATIONS OF EL PASO NATURAL GAS COMPANY FOR COMPULSORY COMMUNITIZATION OF SEVEN TRACTS:	))))	Cases numbered 706-712, both inclusive

TO THE HONORABLE COMMISSION:

El Paso Natural Gas Company submits this written brief in support of its position, as announced on hearing. The seven cases were heard together, and in the view of Applicant are governed by the same principles.

The undisputed evidence adduced upon the hearing reveals that El Paso Natural Gas Company and other lessees owning all of the leasehold interests in seven tracts of land comprising 320 acre (or approximately 320 acres in case of irregular sections) half sections of land all agreed to communitize or pool the leasehold interests for the purpose of drilling a gas well to the Mesaverde Formation within the boundaries of the Blanco-Mesaverde Gas Pool, as established by the Commission.

The tracts will be referred to by identifying the well. The undisputed evidence reveals that the dates operations were commenced on each well are as follows:

Case No. 706: Yager Pool Unit #2; spudded March 17, 1953 (Pictured Cliffs Test); notice of intention to drill filed March 17, 1953; Commission approval March 23, 1953; re-working to test Mesaverde commenced August 31, 1953; authorized by

Commission August 3, 1953; completed September 20, 1953.

Case No. 707: Yager Pool Unit #1; spudded March 2, 1953; notice of intention to drill approved by Commission February 19, 1953; completed March 25, 1953.

Case No. 708: Neal #3 well; spudded August 7, 1953; notice of intention to drill approved by Commission August 3, 1953; completed August 22, 1953.

Case No. 709: Calloway Pool unit well; spudded July 12, 1953; approval granted by Commission June 2, 1953; completed July 30, 1953.

Case No. 710: Marcotte Pool Unit #1; spudded August 30, 1953; approval of notice of intention to drill granted August 25, 1953; completed November 13, 1953.

Case No. 711: Heaton #3 well. Spudded March 27, 1953; approval of notice of intention to drill granted March 9, 1953; completed April 28, 1953.

Case No. 712: Koch Pool Unit #1; spudded August 30, 1953; approval of notice of intention to drill granted by U.S.G.S., August 14, 1953; completed November 9, 1953.

Reports and records of the Commission reveal that gas was being produced from Yager Pool Unit #1 well, Neal #3 well, Calloway Pool #1 well, and Heaton #3 well on August 31, 1953, and that drilling operations were then in progress on each of the other three wells (Transcript pp. 26-32, inclusive).

The evidence is uncontradicted that one gas well in the Mesaverde Formation in this pool will drain 320 acres, and that failure to pool or communitize severally owned tracts into drilling units of 320 acres would deprive some of the owners of leases of their opportunity to recover their fair share of the oil and gas (Transcript p. 38).

The Commission has already made a similar finding of

fact, and has designated the regular drilling unit and well spacing in the Blanco-Mesaverde for wells drilled to the Mesaverde Formation as 320 acres. The Commission's Order R-110 constitutes a determination by the Commission of this fact.

The applicable laws and regulations are as follows:

New Mexico Annotated Statutes: Section 69-213½, subsections (b) and (c); Section 69-230, subsection (e) is as follows:

> "Owner means the person who has the right to drill into and to produce from any pool, or to appropriate the production, either for himself or for himself and another.

General Rule 102, adopted by the Commission, requires filing of notice of intention to drill.

Your Applicant contends that the pooling or communitization into drilling units of 320 acres as shown on the approved notice of intention to drill, and presently contained within the Commission records, was accomplished and became effective immediately upon approval by the Commission of the proposed drilling tract. When notice of intention to drill was filed pursuant to the rules and approved by the Commission, only the person filing such notice could begin drilling operations on the land committed to the proposed well as described in the notice. The undisputed testimony reveals that the "owners", as defined in the statute, had agreed to pool or communitize the leasehold interests covering each 320 acre drilling block.

Your Applicant contends that no further agreement by royalty owners was necessary to effectuate a pooling when such pooling was pursuant to and complied with the established spacing

unit. In the drilling and spacing of wells the lessee represents the royalty owners. 31-A Tex. Jur., Section 426. Your Applicant recognizes that operators, in the absence of judicial determination and interpretation of the applicable statutory provisions in this State have obeyed the counsel of caution, and have followed the practice of obtaining consent from royalty owners to pooling or communitizing separate leases into a drilling unit. Regardless of such practice, the Lessee has the legal right and is the only person who has the legal right to conduct drilling operations during the term of the lease. The applicable statutory definition of owner, as quoted above, refers to the lessee, and only to the lessee. Therefore, the statutory language:

> "The pooling of properties or parts thereof shall be permitted, and, if not agreed upon, may be required in any case when and to the extent that the smallness or shape of a separately owned tract would, under the enforcement of a uniform spacing plan or proration unit otherwise deprive or tend to deprive the owner of such tract of the opportunity to recover his just and equitable share of the crude petroleum or natural gas, or both, in the pool; . . . "

refers to lessees, and not royalty owners.

Similar statutory provisions have been construed by the Supreme Courts of Mississippi and Louisiana. Superior Oil Co. v. Beery, 59 So. (2d) 85, 59 So. (2d) 844; Humble Oil & Refining Co. v. Hutchins, 59 So. (2d) 103, 64 So. (2d) 733; both by the Supreme Court of Mississippi; Smith v. Holt, 67 So. (2d) 93, by the Supreme Court of Louisiana.

If these cases are followed by the New Mexico courts,

no action by the Commission would be necessary, as the pooling of leases was accomplished when the Commission approved the well location and the dedication of 320 acres to that well. In the absence of judicial determination, your Applicant requests that the Commission enter an order in each of these cases determining that the 320 acre communitized or pooled unit was actually effected on the date of approval of the notice of intention to drill, and that such order find that a regular 320 acre location for a gas well has been made, and that an appropriate unit for production of gas has existed at all times since such date.

Your Applicant recognizes that issues as to lease termination or title are not before the Commission, and that such issues will be determined before the Courts. Your Applicant does request that the Commission determine the effect of its rules, and by order declare that a pooled or communitized unit has existed as to each well since the Commission's action approved and ratified the agreement of the owners to combine the several leasehold interests.

Respectfully submitted,

EL PASO NATURAL GAS COMPANY,

By: Ben F. Howell

BEFORE THE

OIL CONSERVATION COMMISSION

OF THE STATE OF NEW MEXICO

IN THE MATTER OF APPLICATIONS OF EL PASO NATURAL GAS COMPANY FOR COMPULSORY COMMUNITIZATION OF SEVEN TRACTS:	))))	Cases numbered 706-712, both inclusive

MEMORANDUM BRIEF
TO OIL CONSERVATION COMMISSION OF NEW MEXICO
ON CASES NO. 706 THROUGH 712
CONCERNING COMPULSORY COMMUNITIZATION

STATEMENT OF FACTS:

On September 1, 1948 Saul A. Yager and Marian Yager, his wife, executed certain oil and gas leases identical in form, covering certain lands hereinafter described, situated in San Juan County, New Mexico. None of these leases contains any authority to the lessee or his successors or assigns to pool any of the acreage described with any other acreage nor does any of the leases contain "force majeure" clauses. Each of the leases, in addition to the customary terms, contains the following provision:

> "The words 'commencement of a well' or words of like import, wherever used in this lease, shall mean the actual spudding-in of a well for oil or gas."

Each of these leases was for a term of five years from the date of execution and as long thereafter as oil or gas or either of them was produced from the leased land. The description of the land covered by each of the leases with reference to the cases now pending before the Commission is as follows:

(1) Case No. 706

NW¼NW¼ (Lot 4) of Section 6, Township 30 North, Range 11 West, San Juan County, New Mexico.
41.75 acres more or less.

(2) Case No. 707

SW¼SW¼ (Lot 4) of Section 31, Township 31 North, Range 11 West, San Juan County, New Mexico.
41.52 acres more or less.

(3) Case No. 708

E½SW¼ of Section 15, Township 31 North, Range 11 West, San Juan County, New Mexico.
80 acres more or less.

(4) Case No. 709

S½NW¼ and the NW¼SE¼, NE¼SW¼ of Section 27, Township 31 North, Range 11 West, San Juan County, New Mexico.
160 acres more or less

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(5) Case No. 710

SE¼SE¼ of Section 6, Township 31 North, Range 10 West, San Juan County, New Mexico. 40 acres more or less.

(6) Case No. 711

N½SW¼, SE¼SW¼, SW¼SE¼ of Section 32, Township 31 North, Range 11 West, San Juan County, New Mexico. 160 acres more or less.

(7) Case No. 712

NW¼NW¼SE¼ of Section 3, Township 30 North, Range 10 West, San Juan County, New Mexico. 10 acres more or less.

On November 9, 1951 the Oil Conservation Commission, in Case No. 317, issued its Order No. R-110, setting up rules and regulations applying to wells thereafter drilled in the Mesa Verde Pool in the Blanco area. There was not then, and there is not now, any prorationing of gas in this Pool. This order contained the following provisions which are pertinent to the cases here involved:

"Section 1. No well shall be drilled or completed and no Notice of Intention to Drill or Drilling Permit shall be approved, unless,

"(a) Such well be located on a designated drilling unit of not less than three hundred twenty (320) acres of land, more or less, according to legal subdivision of the United States Land Surveys, in which unit all the interests are consolidated by pooling agreement or otherwise and on which no other well is completed, or approved for completion, in the pool;"

"Section 3. Proration Units: The proration unit shall consist of 320 acres of (a) a legal United States General Land Office Survey half-section and (b) the approximate 320 acre unit shall follow the usual legal subdivision of the General Land Office Section Surveys and (c) where proration units lie along the edge of field boundaries described in Section 1 above, exceptions shall be permissible in that contiguous tracts of approximately 320 acres, following regular United States General Land Office subdivisions may be classed as proration units.

"(a) The pooling of properties or parts thereof shall be permitted, and if not agreed upon may be required in any case when and to the extent that the smallness or shape of a separately owned tract would, under the enforcement of the uniform spacing plan of proration units, otherwise deprive or tend to deprive the owner of such tract of the opportunity to recover his just and equitable share of the crude petroleum oil and natural gas in the pool; provided, that the owner of any tract that is smaller than the drilling unit established for the field, shall not be deprived of the right to drill on and produce from such tract if same can be done without waste; but in such case the allowable production from such tract, as compared with the allowable production therefrom if such tract were a full unit, shall be in the ratio of the area of such tract to the area of a full unit of 320 acres."

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The fact situation with reference to each of these cases and leases, as noted above, differs in several respects, and for the purpose of attempting to keep the matters straight, the facts are set out by case numbers.

(1) Case No. 706

Leases covering all but Lot 4, which is the Yager acreage, contained pooling clauses or were Federal leases. A well was commenced on the Yager acreage on March 17, 1953. This was a Pictured Cliff well, and in the Notice of Intention to Drill only the NW¼ was dedicated to the well inasmuch as there was 160-acre spacing in the area for Pictured Cliff wells. This well was apparently dry in the Pictured Cliff formation and was temporarily shut in. According to the testimony of Mr. Coel (Page 28 Tr) permission was received from the Commission for an unorthodox location and to convert this to a Mesa Verde well in the NW¼ of the section. There is no indication of Notice or hearing on this unorthodox location. This witness testified (Page 28 Tr) that the well work was again started on August 31, 1953. It should be borne in mind that this lease expired by its terms on midnight, August 31, 1953 unless a well had been commenced (spudded in) prior to that date and hour.

(2) Case No. 707

There are three leases involved in this case. Two of these are Federal leases; the other is the Yager lease which contains no pooling clause. A well was commenced on the Yager tract on March 2, 1953 and completed on March 25, 1953. At the time the well was commenced all of the interests in the unit had not been pooled, as seems to have been contemplated by Order R-110. The Notice of Intention to Drill was filed in February, 1953 and approved February 19, 1953.

(3) Case No. 708

There are only two leases involved in this case, one of which is a Federal lease covering 240 acres, and the other

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is the 80-acre lease of Yager's, which contains no pooling clause. A well was commenced August 7, 1953, without pooling of all the interests in the unit as contemplated by Order R-110. This well was completed August 22, 1953. The well was drilled on a portion of the Yager lease.

(4) Case No. 709

There are six leases involved in this case, all of them being fee leases. Five of these leases contain pooling clauses, but the Yager lease does not contain such a clause. A well was commenced on July 12, 1953 without the pooling of all the interests as contemplated by Order R-110, and was completed July 30, 1953. This well was not drilled upon any portion of the Yager tract. The Notice of Intention to Drill was approved June 2, 1953. It should be noted that the lease in Case No. 709 covered 120 acres outside the unit.

(5) Case No. 710

There are six fee leases and one Federal lease in this case. All of the fee leases, with the exception of the Yager lease, contain pooling clauses. A well was commenced August 30, 1953, prior to pooling all interests, as contemplated by Order R-110, and was completed November 13, 1953. The well was not located on any portion of the Yager tract. It should be borne in mind that the Yager lease expired by its terms on August 31, 1953 unless a well had been commenced on the Yager land prior to that time.

(6) Case No. 711

One Federal lease and two fee leases are involved in this case. The fee lease, other than the Yager lease, contains a pooling clause. A well was commenced March 27, 1953 prior to pooling of all interests, as contemplated by Order R-110, and was completed April 28, 1953. Approval of the drilling was by the U. S. Geological Survey on March 9, 1953. This lease covered 40 acres in the SW¼SE¼ of Section 32, which was not within the unit area and does not appear to be covered by the application. The well involved in this case was not located on any portion of the Yager tract.

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(7) Case No. 712

One Federal lease and five fee leases are involved in this case. All of the fee leases, except the Yager lease, contain pooling clauses. A well was commenced on August 30, 1953 without pooling of all interests as contemplated by Order R-110, and completed November 9, 1953. It should be noted that the Yager lease expiration date was August 31, 1953. This well was not drilled on any portion of the Yager tract.

Some eight months after the normal expiration date of the Yager leases, the El Paso Natural Gas Company filed applications in Cases 706 through 712 before the Oil Conservation Commission of New Mexico, seeking compulsory communitization or pooling of the Yager acreage with other tracts in seven 320-acre drilling units. With the exception of the different fact situations noted above, the applications in each of the cases are essentially the same. In Cases 709, 710, 711 and 712 the applicant alleges that certain representations were made by Saul Yager in connection with a proposed communitization agreement, which allegations I believe to be completely immaterial to the matter now before the Commission. Each of the applications requests the Commission to order Yager and other royalty owners to pool their interests on the basis of a communitization agreement prepared by El Paso Natural Gas Company, attached to the applications. I feel that under no circumstances does the Commission have the power to order any owner of an interest to enter into a particular communitization agreement conceived and prepared by owners of other interests. If the Commission has the power of compulsory pooling it must be exercised by an order of the Commission, setting out the terms.

At the hearing before the Oil Conservation Commission on May 19, 1954, certain statements were made by representatives of El Paso Natural Gas Company which should be incorporated in the statement of facts inasmuch as the entire picture is not complete without reference to these matters. The following statements are

by Mr. Howell:

(p. 40 Tr) "I can state for the benefit of the Commission and Mr. Yager what our position is, and what we think is the equitable and just rule to be adopted by the Commission in these cases. When, pursuant to an order which has been adopted by the Commission, an area of 320 acres, as required by the Commission for a drilling site, has been dedicated by notice of intention to drill, it is our position that that has effected the communitisation of that tract. Now, in the alternative, if the Commission should see fit not to enter an order making the communitisations effective as of the date the notice of intention to drill was filed, in the alternative, it would appear that in the seven cases we have two situations. We have three cases in which the leases had been perpetuated by drilling operations prior to the expiration of the leases. If the communitisation as to the other four is not effective until this time, we ask that the Commission enter an order in the alternative, either permitting us to complete the units on an unorthodox location. Since Mr. Yager and his group do not desire to join with us, why we are willing that they keep their 40 acres in those units, and that we be given an unorthodox location, or, in the alternative, should they desire to enter the agreement, the communitisation agreement, that they be required to pay their proportionate share in cash with six percent interest from the date of well completion, or failing to pay that, as operator, we recover out of their share of the production 200 percent of the drilling cost."

At p. 42 Tr. Mr. Howell further states:

"It is our position that the matter of whether a lease was extended or not is not before the Commission. We have asked the Commission for a specific order. We are asking that the order be made effective as of the filing of the notice of intention to drill. What results from that is a matter for the courts rather than for the Commission. That is our position."

ARGUMENT

In order to analyse properly the power of the New Mexico Oil Conservation Commission relative to compulsory pooling, it is essential that a careful study be made of the New Mexico statute and the orders which have been promulgated by the Commission under that statute. It is necessary, further, that a careful comparison be made between the statutes and orders in New Mexico and the statutes and orders in those states which have upheld compulsory pooling and have applied it to particular cases. The courts of the State of Mississippi have, without doubt, gone the furthest in sustaining compulsory pooling orders under the Mississippi statutes, and it is therefore essential that a clear understanding be had of the important differences between the statutes and orders of New Mexico and statutes and orders of the State of Mississippi.

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Any authority of the New Mexico Oil Conservation Commission to compulsorily pool separate interests must be found either in Section 13 (b) or 13 (c), Chapter 168 of the Laws of 1949, as amended by Chapter 76 of the Laws of 1953. These Sections are as follows:

"(b) The Commission may establish a proration unit for each pool, such being the area that can be efficiently and economically drained and developed by one well, and in so doing the Commission shall consider the economic loss caused by the drilling of unnecessary wells, the protection of correlative rights, including those of royalty owners, the prevention of waste, the avoidance of the augmentation of risks arising from the drilling of an excessive number of wells, and the prevention of reduced recovery which might result from the drilling of too few wells.

"(c) The pooling of properties or parts thereof shall be permitted, and, if not agreed upon, may be required in any case when and to the extent that the smallness or shape of a separately owned tract would, under the enforcement of a uniform spacing plan or proration unit, otherwise deprive or tend to deprive the owner of such tract of the opportunity to recover his just and equitable share of the crude petroleum or natural gas, or both, in the pool; provided, that the owner of any tract that is smaller than the drilling unit established for the field, shall not be deprived of the right to drill on and produce from such tract, if same can be done without waste; but in such case, the allowable production from such tract, as compared with the allowable production therefrom if such tract were a full unit, shall be in ratio of the area of such tract to the area of a full unit. All orders requiring such pooling shall be upon terms and conditions that are just and reasonable, and will afford to the owner of each tract in the pool the opportunity to recover or receive his just and equitable share of the oil or gas, or both, in the pool as above provided, so far as may be practicably recovered without waste. In the event such pooling is required the costs of development and operation of the pooled unit shall be limited to the lowest actual expenditures required for such purpose including a reasonable charge for supervision; and in case of any dispute as to such costs, the Commission shall determine the proper costs."

The authority of the Mississippi Oil and Gas Board to pool interests is found in Mississippi statutes at Section 6132-22 and is as follows:

"(a) When two or more separately owned tracts of land are embraced within an established drilling unit, the person owning the drilling rights therein and the rights to share in the production therefrom may validly agree to integrate their interests and to develop their lands as a drilling unit. Where, however, such persons have not agreed to integrate their interests, the board may, for the prevention of waste or to avoid the drilling of unnecessary wells require such persons to integrate their interests and to develop their lands as a drilling unit. All orders requiring such pooling shall be made after notice and hearing, and shall be upon terms and conditions that are just and reasonable, and will afford to the owner of each tract the opportunity to recover or receive his just and equitable share of the oil and gas in the pool without unnecessary expense.

"The portion of the production allocated to the owner of each tract included in a drilling unit formed by a pooling order

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shall, when produced, be considered as if it had been produced from such tract by a well drilled thereon. In the event such pooling is required, the cost of development and operation of the pooled unit chargeable by the operator to the other interested owner or owners shall be limited to the actual expenditures required for such purpose, not in excess of what are reasonable, including a reasonable charge for supervision; provided, however, when production of oil or gas is not secured in paying quantities as a result of such forced unitization, the operator shall have no charge against the nonconsenting owner or owners. In the event of any dispute relative to such costs, the board shall determine the proper costs, after due notice to all interested parties and hearing thereon. Appeals may be taken from such determination as from any other order of the board.

"(b) The board shall in all instances where a unit has been formed out of lands or areas of more than one ownership, require the operator when so requested by an owner, to deliver to such owner or his assigns his proportionate share of the production from the well common to such drilling unit, provided, however, that such owner receiving same shall provide at his own expense proper receptacles for the receipt or storage of such oil, gas or distillate.

"(c) Should the persons owning the drilling or other rights in separate tracts embraced within a drilling unit fail to agree upon the integration of the tracts and the drilling of a well on the unit, and should it be established that the board is without authority to require integration as provided for in this section, then, subject to all other applicable provisions of this act, the owner of each tract embraced within the drilling unit may drill on his tract; but the allowable production from such tract shall be such proportion of the allowable production for the full drilling unit as the area of such separately owned tract bears to the full drilling unit.

"(d) The board in order to prevent waste and avoid the drilling of unnecessary wells may permit (1) the cycling of gas in any pool or portion thereof or (2) the introduction of gas or other substance into an oil or gas reservoir for the purpose of repressuring such reservoir, maintaining pressure or carrying on secondary recoverying operations. The board shall permit the pooling or integration of separate tracts when reasonably necessary in connection with such operations.

"(e) Agreements made in the interest of conservation of oil or gas, or both, or for the prevention of waste, between and among owners or operators, or both, owning separate holdings in the same field or pool, or in any area that appears from geologic or other data to be underlaid by a common accumulation of oil or gas, or both, and agreements between and among such owners or operators, or both, and royalty owners therein, for the purpose of bringing about the development and operation of the field, pool or area, or any part thereof, as a unit, and for establishing and carrying out a plan for the cooperative development and operation thereof, when such agreements are approved by the board, are hereby authorized and shall not be held or construed to violate any of the statutes of this state relating to trusts, monopolies, or contracts and combinations in restraint of trade."

There have been no cases appealed to the courts from any compulsory pooling order of the New Mexico Commission. As a matter of fact, there have been no such orders issued in any case where unwilling owners appeared. There have been a number of cases

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appealed to the Supreme Court from orders of the Mississippi Oil and Gas Board.

It will immediately be noted that the Mississippi statute is much more extensive than the New Mexico statute with regard to interests of owners of drilling rights, and that the New Mexico statute in Section 13(b) is more specific with reference to the royalty owner and the protection of correlative rights.

In analyzing the approaches in the two states, it is necessary to have in mind not only the statutory provisions but the general rules on gas spacing and proration units which are in effect in the two states. With regard to the New Mexico rules, reference is made to Order No. R-110 in Case 317, the pertinent portion of which is set out at Page 2 of this brief. With regard to the Mississippi rules, which were promulgated on September 11, 1947, it should be noted that before a drilling unit can be approved "the rights of all owners in the drilling unit upon which the well is located shall first be pooled" and then the order defines the term "owner" as "the person who has the right to drill into and produce from a well or pool, and to appropriate the production either for himself, or for himself and other."

It will be observed that there are the following differences between the statutes and orders in New Mexico and Mississippi:

1. The Mississippi statute, throughout, obviously refers to the persons owning the drilling rights, that is, the lessees. The New Mexico statute in Section 13(b) refers to royalty owners.

2. The Mississippi statute makes reference to "an established drilling unit" while the New Mexico statute refers to "a uniform spacing plan or proration unit". In this regard it is interesting to note that all that seems to be required under the statewide gas spacing order in Mississippi for the establishment of a drilling unit is that all of the lessees pool their interest. Under Order R-110 of this Commission, it seems to be required prior to the drilling that "all the interests are consolidated by pooling agreement or otherwise . . . . " (Underlining mine.)

3. The New Mexico statute contains a specific provision that no owner of the tract that is smaller than the drilling unit for the well shall be deprived of the right to drill on and produce

from such tract, but that, if such is the case, the allowable production from the tract shall be in the ratio of the area of the tract to the area of a full unit. The Mississippi statute provides for such a contingency only where it is contended that the Board is without authority to require pooling. It must be borne in mind that the area involved in these cases is not now and was not at the time of the drilling, or the application for compulsory pooling, subject to prorating of gas. All of the cases arising out of the Mississippi statute were in areas where gas prorationing was in effect. This is important inasmuch as it cannot be said here that a royalty owner would obtain the same amount of royalty whether a well is drilled on his tract or on some other portion of the drilling unit due to the allocation of production on an acreage basis.

4. The New Mexico statute in Section 13 (c) seems to contemplate that a compulsory pooling order may be entered only where the smallness or shape of a separately owned tract would, under the enforcement of a uniform spacing plan or proration unit, otherwise deprive or tend to deprive the owner of such tract of the opportunity to recover his just and equitable share of the oil or gas in the pool. There is no such restriction on the power of the Mississippi Oil and Gas Board.

In examining the New Mexico statute in the light of the circumstances of the cases now before the Commission, how can it be said that El Paso Natural Gas Company, owning the leasehold interest in the entire unit and controlling through pooling agreements all except the small tracts of Yager, is in a position where the smallness or shape of its tracts would deprive it of the opportunity to recover its just and equitable share of the gas in this pool? On the contrary, it would seem that under present circumstances El Paso Natural Gas Company is being allowed to recover not only its share but also the proper share of Yager and the other mineral owners who have not executed pooling agreements. It would seem that the New Mexico statute probably contemplates

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that it will apply to persons in the position of Yager, who are being drained by production from wells elsewhere in a drilling unit than to the operator of the wells causing the uncompensated drainage. It seems apparent that the reasons El Paso Natural Gas Company now seeks compulsory pooling orders are:

1. To extend the term of the Yager leases, and

2. To acquire additional allowable for the Yager acreage in the event prorationing of gas is established in this area. Neither of these two reasons, in my opinion, has any bearing whatsoever on the conservation of oil and gas, and certainly neither of them serves to protect the correlative rights of Yager and the other mineral owners under the separate tracts.

Mississippi has a series of court cases, the first of which was Superior Oil Company vs. Foote, 59 So. 2d85, decided in May, 1952, concerned with the constitutionality of the compulsory pooling statute in Mississippi. In the first cases the Supreme Court of Mississippi specifically stated that they were not passing upon whether individual leases had expired, but were simply sustaining the authority of the State Oil and Gas Board to compulsorily pool whatever interest existed within a drilling unit. The later cases in 1953 held that a drilling unit was established by the granting of the permit to drill, the filing of the plat of the lands and the approval of it, the pooling of the working interest and the granting of a full allowable allocated on an acreage basis, perpetuated a lease even though no well had been drilled on the unit prior to the expiration date of a lease on a separately owned tract within it. There was a dissenting opinion by one judge in all of these cases.

In the case of Superior Oil Company vs. Foote, Supra, the Court held that the Mississippi statute authorized the board to order compulsory pooling after, as well as before, drilling of wells and the commencement of production. It should be noted that at the time of the entry of the orders and the decision of the Court, gas was being prorated in this particular pool, and it

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could be said that the royalty owners would acquire the same amount of royalty whether the well was drilled on their land or somewhere else on the unit. The decision required the lessees to deliver to the royalty owners their share of production. It is interesting to note, as has been indicated above, that Section 1(a) of Order No. R-110 in the New Mexico regulations seems to contemplate that a drilling unit cannot be established or drilling undertaken until all the interests are consolidated by pooling agreement or otherwise. It would seem that this is a distinction which would preclude our Commission from entering a compulsory pooling order after a well is drilled, except for the specific purpose of protecting correlative rights of owners of small tracts.

After the constitutionality of the compulsory pooling statute was sustained in Mississippi in 1952, suits were brought to cancel certain leases upon the ground that they expired by their terms inasmuch as production was not obtained on the leased acreage within the primary term. The case of Superior Oil Company vs. Berry, 63 So. 2d115, resolves this question in Mississippi under the facts and statutes there by holding that the requirement of oil and gas lessees to pool their leases in establishing units has the effect of extending the primary terms of such leases, and also has the effect of pooling mineral interests of royalty owners. A number of distinctions between the facts and statutes in Mississippi and those here involved are called to the attention of the Commission:

1. The Mississippi Oil and Gas Board, by prior orders, had required that the rights of "all owners" in the drilling unit upon which the well is located shall first be pooled. The orders then defined "owners" as the lessees. Section 1(a) of Order R-110, Blanco Pool, requires that all the interests are consolidated by pooling agreement or otherwise. The New Mexico order seems to contemplate the pooling of royalty as well as working interest before the drilling unit is properly established.

2. In the Mississippi case, the complaining party owned an undivided interest, and the other owners of undivided

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interests in the separate tract had signed the pooling agreement.

3. The Mississippi case holds that there were certain conditions required for the establishment of a gas drilling unit which would result in the pooling of the leases irrespective of a compulsory pooling order:

(a) the granting of a permit to drill;

(b) the filing of the plat or map of the lands to be included in the unit and the approval thereof;

(c) the pooling of the leases by the lessees; and

(d) the granting of the 320 acre allowable and the allocating of the same to each separate tract of land therein on an acreage basis.

In the instant cases all interests were not pooled, and the permits to drill were probably invalid or at least could not justifiably be used as the basis for the contention that the approval of the intention to drill constituted the pooling of interests. Furthermore, in the instant cases there was no allocation of production on an acreage basis since there is no prorating of gas in the pool. It certainly cannot be concluded that the attitude of the board and the courts in Mississippi is any basis for the adoption of policy by the New Mexico Commission under different statutes and orders to the effect that a retroactive compulsory pooling order may be entered to extend a lease. This is particularly true where the order is sought by one who cannot say that it will be unable to recover its share of the gas in the absence of such an order.

STATEMENT OF POSITION

For the benefit of the Commission, the position of Yager et al in connection with this matter is as follows:

1. We do not question, at this time, the power of the Commission to enter compulsory pooling orders under the proper circumstances. We do not waive the right to raise this question in the future if litigation becomes necessary.

2. We do not believe that the pooling by working interest owners followed by the filing of a notice of intention to drill

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created a gas drilling unit which resulted in automatic pooling of all interests, (Tr p. 40 Mr. Mowell) under the New Mexico statute or Order R-110. Order R-110 does not establish particular drilling units but only a uniform plan consisting of the N½, S½, E½, or W½ of a section. The order specifically requires that the unit may be designated for 320 acres of land " . . . in which unit all the interests are consolidated by pooling agreement or otherwise . . ." This should, and we believe it does, include owners of royalty interests. Unless voluntary agreements are obtained from royalty owners then the pooling must be accomplished "otherwise" (by compulsory order) before the unit is created. The reason for this is apparent. The New Mexico Commission in its order undertook to protect the correlative rights of all, including royalty owners. Where a section of land is covered by more than one lease with different expiration dates, and where structural conditions vary in different parts of the section, the royalty owner has a definite stake in determining how the unit shall be formed and his interests may be, and often are, in direct conflict with those of the working interest owner or other royalty owners. We think this is a wise provision which should be strictly followed.

3. Unless a unit is properly created it is obvious that unless production is obtained on a leased tract before the expiration of the lease, then the lease has simply expired. Production elsewhere can hold the lease only if this acreage has been properly pooled. This effort to make the order retroactive to a date prior to the expiration of the lease must be accepted for what it is - an effort to get the Commission to hold a lease for El Paso Natural Gas Company. There could be no other reason for such a request. We do not believe the Oil Conservation Commission should be a party to such action.

4. Referring specifically to Cases 709 through 712 where the wells drilled were drilled on acreage other than that leased by Yager, it is our opinion that the leases have expired, since they were not pooled in some manner prior to the expiration

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dates. The requested alternative orders recognise this. If unleased mineral interests are pooled we must, of course, pay our proper share of the drilling and development costs as the compulsory pooling statute contemplates. El Paso Natural Gas Company says the fair share is cash with 6% interest or 200% of the drilling cost out of our share of the production. The law says:

"In the event such pooling is required the costs of development and operation of the pooled unit shall be limited to the lowest actual expenditures required for such purpose including a reasonable charge for supervision; and in case of any dispute as to such costs, the Commission shall determine the proper costs." (Underlining mine.)

Nowhere is there any authority, nor is there any justification, for the imposition of a penalty, either by way of interest or 100% addition, upon an owner who seeks to protect his contractual rights. It is no fault of Yager that El Paso Natural Gas Company chose to wait until the last 6 months of its lease to take action. (Tr p. 18) We believe that if alternative orders are entered calling for reimbursement they must provide only for the lowest actual expenditure with a reasonable charge for supervision - without interest or penalty. We believe, further, that the reimbursement out of our share of production should be taken out of 7/8ths working interest only. This is the procedure followed in Oklahoma and we believe it is fair. (Summers Oil and Gas, Vol. 1, p. 351) Any order entered must, of course, require El Paso Natural Gas Company to account to Yager et al for production to date from the unit.

5. Referring specifically to Case No. 706, the Commission must be aware of the unusual circumstances with reference to the possible termination of the lease. In March 1953 the lessee commenced a Pictured Cliff well and in April, 1953 this well was shut in. The well was located at an unorthodox location for a Mesa Verde well and, according to the testimony of Mr. Coel (Page 28 Tr) El Paso received authority by letter from the Commission on August 3, 1953 for an unorthodox location for a Mesa Verde well, and well work was restarted August 31, 1953 by the

moving in of a cable tool rig. I have serious doubts that, under Order R-110, a notice of intention to drill can properly be approved or the drilling unit established in the absence of prior evidence to the Commission that all interests within the proposed unit have been pooled. I have further serious doubts as to whether the Commission may, by letter, in the absence of notice and hearing, approve an unorthodox location. These leases contain specific provisions with reference to commencement of a well, as has been noted above, and I do not feel the Commission should pass upon what interest it is pooling if it decides to enter a compulsory pooling order in Case No. 706. An order could be entered in this particular case pooling the interests without specifically passing upon the nature of the interest pooled, leaving this question open and leaving open the question of charging of costs, in the event the interest pooled is determined to be an unleased mineral interest.

6. Referring specifically to Cases No. 707 and 708, I feel that the drilling of the well within the primary term of the Yager leases perpetuated those leases, and that the Commission can properly enter its order pooling the one-eighth interest under the tracts therein involved, requiring El Paso Natural Gas Company to account immediately to the royalty owners for their proper share of the production to date.

CONCLUSION

In conclusion it must be pointed out to the Commission that Yager does not object to his acreage being pooled in each of these units. As a matter of fact, he insists that the acreage be pooled in order that the smallness of his tracts will not result in his being unable to recover his share of the gas. It appears from Mr. Howell's statement (p 40 Tr) shown in full on page 6 of this Brief, that the request for an unorthodox gas unit, as an alternative, is based upon the assumption that we do not want our interest pooled. The testimony does show that one well will drain 320 acres and it therefore shows that the present wells on

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each of these units will drain the Yager properties. We therefore want the interests pooled. As has been noted with regard to Cases 709 through 712, the interests pooled must be unleased mineral interests, and we are willing to reimburse El Paso Natural Gas Company upon a fair and proper basis under the statutes for the cost of the drilling and operation of the wells. We are perfectly willing to endeavor to work out with El Paso Natural Gas Company and with the Commission orders in these cases which will be fair, but we cannot go along with a retroactive pooling order inasmuch as we feel that the leases in the last four cases have definitely expired and we do not believe the Commission can or should require us to sign a pooling agreement prepared by the applicant. It would appear from Mr. Howell's statement that since we desire to have our unleased mineral interest pooled, that the only question remaining would be whether the Commission enters a retroactive order or whether it enters a present order requiring us to make reimbursement on proper terms.

Respectfully submitted,

Jack M. Campbell

Jack M. Campbell,
Attorney for Saul A. Yager, et al

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CAMPBELL & RUSSELL
LAWYERS
J. P. WHITE BUILDING
ROSWELL, NEW MEXICO

JACK M. CAMPBELL
JOHN F. RUSSELL

TELEPHONES
4975 - 4287

Dec. 4, 1955

Mr. W. B. Macey
Director, Oil Conservation Commission of N. M.
Santa Fe, New Mexico

Dear Bill:

Enclosed for filing please find original and two copies of Applications for Rehearing in Cases No. 706, 707, 708, 709, 710, 711 and 712.

With kindest regards, I am

Very truly yours,

Jack M. Campbell

JMC:le

OIL CONSERVATION COMMISSION

P. O. BOX 871

SANTA FE, NEW MEXICO

TO: Governor John F. Simms, Chairman

FROM: W. B. Macey, Secretary-Director

SUBJECT: Cases 706 - 712, incl. - Rehearing

COPY

Jack Campbell, who is attorney for royalty owners adversely affected by the provisions of the orders entered in the above-captioned cases, has requested rehearings in each of the cases. The other party interested in the cases is the applicant, El Paso Natural Gas Company. Mr. Campbell filed requests for rehearings on January 6, and the statute requires us to act within ten days on the granting of a rehearing; (Sect. 19 of Ch. 168, Laws of 1949, as amended).

Although I feel that the decisions made in these cases are probably the proper ones, there are a number of features which should be clarified. I therefore think we should grant the rehearing. I discussed the matter yesterday with Mr. Campbell and with legal representatives of El Paso Natural Gas Company, and they both agree that the rehearings, if granted, should be held on a day separate from the regular hearing date. I suggested February 17, and they both agreed to that date.

I realize that the problems involved in these matters which require immediate action are completely foreign to you, but I believe that the best interests of this Commission would be served if a rehearing were granted. I would appreciate your immediate advice in this matter, inasmuch as it will be necessary to prepare and date an order granting rehearing before 5 o'clock tonight.

I am attaching a copy of the notices published in each case so that you can obtain some idea of the nature of the cases.

W. B. M.

WBM:nr

January 14, 1955

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

COPY

January 18, 1955

Mr. Jack Campbell, Attorney
J. P. White Building
ROSWELL, NEW MEXICO

Dear Mr. Campbell:

We attach copies of the Commission's orders for rehearing as signed January 14, 1955, in answer to your petition on behalf of your clients, Mr. Saul Yager et al, in Cases 706 - 712, incl.

As we discussed the matter last week with legal representatives of El Paso Natural Gas Company, it seems most advisable to hold these rehearings on a day separate from the regular hearing date, and we have accordingly reserved Mabry Hall for February 17 (the day following the regular hearing) and will this week issue legal advertisements in proper form.

Very truly yours,

W. B. Macey
Secretary - Director

WBM:nr

cc: Mr. Ben Howell, Attorney
El Paso Natural Gas Company
Box 1492
EL PASO TEXAS

New Mexico
OIL CONSERVATION COMMISSION

GOVERNOR JOHN F. SIMMS
CHAIRMAN
LAND COMMISSIONER E. S. WALKER
MEMBER
STATE GEOLOGIST W. B. MACEY
SECRETARY & DIRECTOR

P. O. Box 871
SANTA FE, NEW MEXICO

February 1, 1955

Mr. Jack Campbell
J. P. White Building
ROSWELL, NEW MEXICO

Dear Sir:

For your information and that of your clients, Mr. Saul Yager, et al, we attach a copy of the legal notices sent out today in Cases 846 - 852, incl., scheduled to be heard on February 17, 1955 by this Commission.

We note that El Paso Natural Gas Company has sent you a copy of its application in each case involved.

Very truly yours,

W. B. Macey
Secretary - Director

WBM:nr

JACK M. CAMPBELL
CHAVES COUNTY
HOME ADDRESS
BOX 721
ROSWELL, NEW MEXICO

File

COMMITTEES:
VICE-CHAIRMAN:
OIL AND GAS
MEMBER:
ENROLLING AND ENGROSSING--A
JUDICIARY
RULES AND ORDER OF BUSINESS
TAXATION AND REVENUE

State of New Mexico

House of Representatives

TWENTY-SECOND LEGISLATURE

Santa Fe

2 February 1955

Oil Conservation Commission
Santa Fe, New Mexico

Gentlemen:

You are hereby requested to postpone the rehearing set on Cases 706-712 before the Oil Conservation Commission on February 17. It is requested that this matter be continued until the day following the regular statewide hearing in March.

Mr. Saul Yager, who is one of the applicants for rehearing is in New York City and will be there for about three weeks. As you know, I am presently a member of the House of Representatives of the State Legislature and would prefer not to have this rehearing until after the Legislature adjourns in March.

Your favorable consideration of this application for a continuance will be appreciated.

Very truly yours

Jack M. Campbell

JACK M. CAMPBELL

jmc:s

F. C.

CAMPBELL & RUSSELL
LAWYERS
J. P. WHITE BUILDING
ROSWELL, NEW MEXICO

JACK M. CAMPBELL
JOHN F. RUSSELL

TELEPHONES
4975 - 4287

April 4, 1955

W. B. Macey,
Secretary-Director
New Mexico Oil Conservation Commission
Santa Fe, New Mexico

Dear Bill:

I am enclosing herewith for filing in Cases 706 through 712, Yager exhibits R-1, R-2 and R-3, which were furnished to us by El Paso Natural Gas Company.

With kindest regards, I am

Very truly yours,

Jack M. Campbell

Jack M. Campbell

JMC:le
Enc. 3

JACK M. CAMPBELL
ATTORNEY AT LAW
224 J. P. WHITE BUILDING
ROSWELL, NEW MEXICO

PHONE 4975

June 11, 1954

Mr. R. R. Spurrier,
Secretary & Director
New Mexico Oil Conservation Commission
P. O. Box 871
Santa Fe, New Mexico

Dear Mr. Spurrier:

I am enclosing herewith a Memorandum Brief to be filed in connection with Cases 706 - 712 inclusive before the Oil Conservation Commission. I have furnished Mr. Ben Howell with a copy of this Brief and I am forwarding a copy to the other members of the Commission, and to Mr. Bill Kitts for the use of the Commission attorneys. I appreciate the consideration of the Commission in allowing me to file this Memorandum Brief even though I was unable to appear at the hearing.

Very truly yours,

Jack M. Campbell

Jack M. Campbell

JMC:le
Enc.

cc: Hon. Edwin L. Mechem
Mr. E. S. Walker

BEFORE THE

OIL CONSERVATION COMMISSION

OF THE STATE OF NEW MEXICO

IN THE MATTER OF APPLICATIONS OF EL PASO NATURAL GAS COMPANY FOR COMPULSORY COMMUNITIZATION OF SEVEN TRACTS:	))))	Cases numbered 706-712, both inclusive

TO THE HONORABLE COMMISSION:

El Paso Natural Gas Company submits this written brief in support of its position, as announced on hearing. The seven cases were heard together, and in the view of Applicant are governed by the same principles.

The undisputed evidence adduced upon the hearing reveals that El Paso Natural Gas Company and other lessees owning all of the leasehold interests in seven tracts of land comprising 320 acre (or approximately 320 acres in case of irregular sections) half sections of land all agreed to communitize or pool the leasehold interests for the purpose of drilling a gas well to the Mesaverde Formation within the boundaries of the Blanco-Mesaverde Gas Pool, as established by the Commission.

The tracts will be referred to by identifying the well. The undisputed evidence reveals that the dates operations were commenced on each well are as follows:

Case No. 706: Yager Pool Unit #2; spudded March 17, 1953 (Pictured Cliffs Test); notice of intention to drill filed March 17, 1953; Commission approval March 23, 1953; re-working to test Mesaverde commenced August 31, 1953; authorized by

Commission August 3, 1953; completed September 20, 1953.

Case No. 707: Yager Pool Unit #1; spudded March 2, 1953; notice of intention to drill approved by Commission February 19, 1953; completed March 25, 1953.

Case No. 708: Neal #3 well; spudded August 7, 1953; notice of intention to drill approved by Commission August 3, 1953; completed August 22, 1953.

Case No. 709: Calloway Pool unit well; spudded July 12, 1953; approval granted by Commission June 2, 1953; completed July 30, 1953.

Case No. 710: Marcotte Pool Unit #1; spudded August 30, 1953; approval of notice of intention to drill granted August 25, 1953; completed November 13, 1953.

Case No. 711: Heaton #3 well. Spudded March 27, 1953; approval of notice of intention to drill granted March 9, 1953; completed April 28, 1953.

Case No. 712: Koch Pool Unit #1; spudded August 30, 1953; approval of notice of intention to drill granted by U.S.G.S., August 14, 1953; completed November 9, 1953.

Reports and records of the Commission reveal that gas was being produced from Yager Pool Unit #1 well, Neal #3 well, Calloway Pool #1 well, and Heaton #3 well on August 31, 1953, and that drilling operations were then in progress on each of the other three wells (Transcript pp. 26-32, inclusive).

The evidence is uncontradicted that one gas well in the Mesaverde Formation in this pool will drain 320 acres, and that failure to pool or communitize severally owned tracts into drilling units of 320 acres would deprive some of the owners of leases of their opportunity to recover their fair share of the oil and gas (Transcript p. 38).

The Commission has already made a similar finding of

fact, and has designated the regular drilling unit and well spacing in the Blanco-Mesaverde for wells drilled to the Mesaverde Formation as 320 acres. The Commission's Order R-110 constitutes a determination by the Commission of this fact.

The applicable laws and regulations are as follows:

New Mexico Annotated Statutes: Section 69-213½, subsections (b) and (c); Section 69-230, subsection (e) is as follows:

> "Owner means the person who has the right to drill into and to produce from any pool, or to appropriate the production, either for himself or for himself and another."

General Rule 102, adopted by the Commission, requires filing of notice of intention to drill.

Your Applicant contends that the pooling or communitization into drilling units of 320 acres as shown on the approved notice of intention to drill, and presently contained within the Commission records, was accomplished and became effective immediately upon approval by the Commission of the proposed drilling tract. Whennotice of intention to drill was filed pursuant to the rules and approved by the Commission, only the person filing such notice could begin drilling operations on the land committed to the proposed well as described in the notice. The undisputed testimony reveals that the "owners", as defined in the statute, had agreed to pool or communitize the leasehold interests covering each 320 acre drilling block.

Your Applicant contends that no further agreement by royalty owners was necessary to effectuate a pooling when such pooling was pursuant to and complied with the established spacing

unit. In the drilling and spacing of wells the lessee represents the royalty owners. 31-A Tex. Jur., Section 426. Your Applicant recognizes that operators, in the absence of judicial determination and interpretation of the applicable statutory provisions in this State have obeyed the counsel of caution, and have followed the practice of obtaining consent from royalty owners to pooling or communitizing separate leases into a drilling unit. Regardless of such practice, the Lessee has the legal right and is the only person who has the legal right to conduct drilling operations during the term of the lease. The applicable statutory definition of owner, as quoted above, refers to the lessee, and only to the lessee. Therefore, the statutory language:

> "The pooling of properties or parts thereof shall be permitted, and, if not agreed upon, may be required in any case when and to the extent that the smallness or shape of a separately owned tract would, under the enforcement of a uniform spacing plan or proration unit otherwise deprive or tend to deprive the owner of such tract of the opportunity to recover his just and equitable share of the crude petroleum or natural gas, or both, in the pool; . . . "

refers to lessees, and not royalty owners.

Similar statutory provisions have been construed by the Supreme Courts of Mississippi and Louisiana. Superior Oil Co. v. Beery, 59 So. (2d) 85, 59 So. (2d) 844; Humble Oil & Refining Co. v. Hutchins, 59 So. (2d) 103, 64 So. (2d) 733; both by the Supreme Court of Mississippi; Smith v. Holt, 67 So. (2d) 93, by the Supreme Court of Louisiana.

If these cases are followed by the New Mexico courts,

no action by the Commission would be necessary, as the pooling of leases was accomplished when the Commission approved the well location and the dedication of 320 acres to that well. In the absence of judicial determination, your Applicant requests that the Commission enter an order in each of these cases determining that the 320 acre communitized or pooled unit was actually effected on the date of approval of the notice of intention to drill, and that such order find that a regular 320 acre location for a gas well has been made, and that an appropriate unit for production of gas has existed at all times since such date.

Your Applicant recognizes that issues as to lease termination or title are not before the Commission, and that such issues will be determined before the Courts. Your Applicant does request that the Commission determine the effect of its rules, and by order declare that a pooled or communitized unit has existed as to each well since the Commission's action approved and ratified the agreement of the owners to combine the several leasehold interests.

Respectfully submitted,

EL PASO NATURAL GAS COMPANY,

By: Ben L. Howell

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE APPLICATIONS OF EL PASO NATURAL GAS COMPANY FOR REHEARING	))))	CASES NOS. 706-712 846-852 both inclusive

To the Honorable Commission:

Upon rehearing in captioned cases, your applicant, El Paso Natural Gas Company, would show:

1. The Commission's findings of fact are contradictory and inconsistent, and do not support the orders issued therein.

The Commission found that a drilling unit was established under the terms of Order R-110 upon approval of the Notices of Intention to Drill a well properly located on a designated tract of land in which the leases of all working interest owners had first been pooled or integrated (Finding No. 5). It found that the agreement of the working interest owners to communitize their leases complied with the provisions of Order R-110, and that the units selected as drilling units likewise complied with Order-110. However, the Commission also found that communitization of the leases involved was agreed upon and effected on May 19, 1954, the date of the first hearing, held several months after the Notice of Intention to Drill had been filed and approved.

Manifestly, the units involved in these cases were not established in accordance with Order R-110 if the leases therein were first communitized on May 19, 1954. No citation of authority is necessary for the proposition that a valid administrative order must be supported by a sufficient finding of facts. The Commission cannot issue an alternative order postulated on first one set of facts and then another. 73 C.J.S. 466 et seq.

Admittedly, the Commission does not have the authority to settle disputes as to the ownership of leases. But it necessarily has the power and the obligation to determine for itself whether the requirements of its orders have been satisfied by persons subject to its jurisdiction.

In Cheesman v. Amerada Petroleum Corporation, 227 S.W.2d 829, the court said:

> "We recognize that the commission cannot adjudicate the validity of an agreement any more than it can adjudicate title, but it has the same power to appraise the objections made to the issuance of a permit as it has to appraise the title on which an application for permit is based." See also: Magnolia Petroleum Co. v. Railroad Commission, 170 S.W.2d 189.

Such appraisal involves nothing more than a conclusion as to a past or present state of facts. In no sense, does it constitute retroactive administrative action.

2. Each of the orders in captioned cases is a nullity.

By definition, an order conclusively determines status, commands action in unequivocal terms, or definitively interprets some law or rule. United States v. Los Angeles & Salt Lake R. Co., 273 U.S. 299; Carolina Aluminum Co. v. Federal Power Commission, 97 F.2d 435, 73 C.J.S. 471 et seq. The alternative orders involved do none of these things. The parties do not know whether the Commission has confirmed the units as of May 19, 1954 or communitized them as of January 12, 1956. It is true that they can go to court to find out, but such action will not validate a void order.

As alternative orders communitizing all interests in the units, effective January 12, 1956, the orders are also insufficient in that they fail to prescribe the terms and conditions under which such communitization shall be accomplished, contrary to the requirements of Section 13(c) of the statute.

3. Written, oral or implied agreements to communitize satisfied the requirements of Order R-110, as interpreted by the Commission prior to August 31, 1956.

The unrefuted testimony of Mr. Elvisa Utz on this point was as follows:

> "Q. What was the practice and the requirements of the Commission with reference to obtaining permission to drill a well upon a drilling tract within the Blanco-Mesaverde Pool?
>
> "A. The only thing that we required during the period in question was that the operator make a statement on his C-101 as to what acreage was dedicated to that well and, if communitization was necessary, that he would communitize it. To the best of my knowledge, other than that there was nothing required in the way of communitization. (Tr. II, p. 45)

****

"Q. Do you feel that the procedure followed by the Commission prior to August 31, 1953, in approving notices of intention to drill, without evidence of consolidation by pooling agreement or otherwise, complies with that rule?

"A. The Commission apparently thought that it did or it wouldn't have authorized the District Offices to approve C-101's in lieu. The fact that it took a considerable length of time sometimes to get communitization, I think probably prompted that procedure. (Tr. II, pp. 47-48)"

The plain import and reasonable implication of this testimony is that prior to August 31, 1953 the Commission only required the assurance that the working interest owners in the dedicated acreage would execute, within a reasonable time, a communitization agreement. While an oral or implied agreement to communitize interests in land might not satisfy the Statute of Frauds, part performance in filing a Notice of Intention to Drill in reliance thereon, together with actual drilling operations, render the agreement enforceable. Griswold v. Public Service Company, 238 P.2d 322.

While the practice of approving Notices on the operator's unsupported declaration that all leases in the unit "will be communitized" is not all that might be desired in the way of definite assurance, it is submitted that recognition of oral and implied agreements to communitize actually made prior to approval of the Notices subserves the principal purpose of Section 1(a) of Order R-110, while recognizing the practical exigencies of the situation. The purpose of any rule is a relevant and highly persuasive consideration in determining its meaning. Hines v. Stein, 298 U.S. 94.

When the Commission establishes spacing units and determines that the drilling of more than one well thereon will create waste, none of the owners of separately owned tracts in the unit has an absolute right to drill for and produce oil or gas from his lands. Each of them has a qualified right to drill, subject to the requirement that they conduct their operations for the development of the entire unit. When all of the working interest owners agree that one of them shall file the Notice of Intention to Drill with the understanding that they shall each share in the benefits and burdens of unit operations, the purposes of the rule are substantially satisfied. As of that date, the unit operator, the location of the

unit well and the acreage dedicated thereto are fixed. Thereafter, the owners in the unit are obligated to execute such reasonable memorandum of their understanding and agreement as may be submitted to them. The performance of drilling obligations should not be prohibited until the negotiation of every detail of the agreement has been completed.

4. The law and the evidence support the conclusion that the working interest owners agreed to communitize their leases in each of the units involved on or before the date the Commission approved the Notices of Intention to Drill thereon.

Order R-110 prohibits the drilling of a well until all interests in the unit have been communitized by agreement or otherwise. Ordinarily, a permit to drill carries with it a presumption that it was regularly issued in accordance with the statute and the Commission's rules. Cheesman v. Amerada Petroleum Corporation, supra; Humble Oil & Refg. Co. v. Lasseter, 120 S.W.2d 541; 31A Tex. Jur. 630, 264. Until some substantial and credible evidence is introduced to the contrary, a presumption exists in all of these cases that the spacing units were established in accordance with the provisions of R-110. That is, that the working interest owners therein had consolidated their leases by agreement or otherwise on or before the date the Notices of Intention to Drill were approved.

In any event, the record in four of these cases clearly shows that communitization of the alleged working interests, effective May 19, 1954, was a legal impossibility. At the hearing held May 19, 1954, Mr. Roland Hamblin, witness for applicant, testified that all the working interests in each of the units involved were then communitized (Tr. I, pp. 8, 9, 10, 13, 14 and 15). El Paso's Exhibits 1-A, 1-B, 1-C and 1-D, the testimony of Mr. Edward John Coel pertaining to drilling and production operations on the lands and leases shown thereon (Tr. I, pp. 26-36), and Yager's Exhibits R-4, R-5, R-6, R-8 and R-10 (Tr. II, p. 48) taken together support but one reasonable conclusion: If the working interests in the Calloway (Cases 709 and 849), Marcotte (Cases 710-850), Heaton (Cases 711 and 851) and Koch (Cases 712 and 852) units were

communitized on May 19, 1954, they had necessarily been communitized prior to September 1, 1953, the date on which the primary term of the Yager leases expired.

No evidence was entered in the record which refutes the presumption that the operator of any of the units involved in these cases had failed to obtain the necessary agreements to communitize contrary to the requirements of Order R-110. Mr. Hamblin was cross-examined closely as to the names of the persons who had actually executed communitization agreements prior to the filing of the Notices of Intention to Drill (Tr. I, pp. 22-24). The substance of Mr. Hamblin's answer was that he could not now be sure. The executed agreements were sent to Mr. Yager in August of 1953 and have not been returned (Tr. I, p. 19).

It is suggested that the executed or partially executed agreements believed to be in Mr. Yager's possession are the best evidence as to the identity of the persons who had executed them prior to August 31, 1953. If it deems this evidence necessary and material, the Commission's attention is directed to its powers under Section 6 of the statute.

It is applicant's posititon that the law and evidence of record are sufficient to establish the date on which the working interest owners agreed to communitize their leases in the units involved. However, should the Commission desire additional evidence on this point, applicant, upon rehearing, will introduce further testimony for the purpose of establishing that all working interest owners agreed to communitize their leases in each of the units involved no later than the date the Notices of Intention to Drill were approved.

In conclusion, applicant urges the Commission to grant the Applications for Rehearing filed herein, and that, upon rehearing, the Commission determine that each of the units involved in captioned cases be recognized as a communitized or pooled tract, effective on the date the Notice of Intention to Drill thereon was approved by the proper authority, and that such pooling or communitization

accomplished by agreement of the working interest owners having the right to drill into and produce from the Mesaverde Gas Pool be confirmed and ratified.

Respectfully submitted,

EL PASO NATURAL GAS COMPANY

By John A Woodward
Attorney

(Excerpt from article in Tulane Law Review, Vol. XXVII, No. 4, June 1953 - "Effective Date of Forced Unitization Orders" by Austin W. Lewis)

It appears, therefore, that under the combined reasoning of the Placid Oil Company-North Central Texas, the Everett-Phillips, and Sohio-R.R. Company decisions, an integration order is not required to place in motion the unitization features of the Conservation Act, but that this unitization is accomplished by the original field or unit order. Support for this reasoning is also found in the decisions of Hood v. Southern Production Co.,[20] Hardy v. Union Producing Company,[21] Crichton v. Lee[22] and Hunter Company v. Vaughan,[23] each of which (although not squarely in point) stressed the inability of the lease owners of unit tracts other than the drill site to drill a second well on the unit and also pointed out that the location of the unit well is unimportant insofar as the division of revenues is concerned. At least one of these decisions, Crichton v. Lee, also gave recognition to the pooling language contained in the unitization order itself. This is significant since some type of pooling provision will be found in all original unit orders, although the language of the pooling declaration may vary from order to order.

The conclusion that unitization is accomplished by the original unit order may also be justified on another ground. A careful examination of the Conservation Act causes one to wonder whether the industry has not built up a useless administrative practice in even requesting an integration order for a unit of determinable size and area where the operators are not in dispute. It is submitted that the statute can readily be construed to provide for such integration orders only where the lessees or owners of unleased interests have failed to agree on the pooling of their rights and that in all other cases the integration order is unnecessary even though the unit may consist of separately owned tracts subject to different leases. It will again be noted by reference to Paragraph 9[24] of the statute that provision is made for the owners of two or more separate tracts to agree on the pooling of their interest and that where these owners have not so agreed, the Commission shall require them to do so and to develop their lands as a drilling unit. Further provision is made for the allocation of production and for the sharing of the cost of development and operation of the pooled unit. ~~Further provision is made for the allocation of production and for the sharing of the cost of development and operation of the pooled unit.~~ The term "owners", as referred to throughout this integration section, is defined in Paragraph 2 of the Act as follows:

> "'Owner' means the person who has the right to drill into and to produce from a pool and to appropriate the production either for himself or for others."[25]

The Supreme Court only last year in Arkansas-Louisiana Gas Company v. Southwest Natural Production Company,[26] recognized that

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the statutory definition of "owners" referred to lessees and operators rather than to royalty owners, although the point now being discussed was not under consideration there.

It would appear, therefore, that a mineral or royalty owner in a unit tract subject to lease, not having the right to drill or produce, is not an "owner" and that his approval of the original unit or his agreement on the pooling of his rights is not necessary insofar as the need for the issuance of an integration order is concerned. This would mean simply that for all purposes of royalty, leasehold or leased mineral rights, forced pooling is accomplished by the original unit order and that the integration order is reserved to settle disputes between lessees and the owners of unleased interests, and particularly to settle operational problems relating to the development of the unit.

It appears to be reasonably well established, therefore, that for lease and servitude purposes, the unitization of a drilling unit having a definite area and outline is accomplished by the original unit order, whether that result be arrived at by the conclusion that the integration order is not required or on the theory that the integration order merely confirms and formalizes retroactively the existing unit. The acceptance of this legal conclusion, however, certainly does not solve all problems which exist in connection with the issuance of the drilling unit orders. Two such problems will be mentioned briefly.

20 206 La. 642, 19 So.2d 336 (1944)
21 207 La. 138, 20 So.2d 734 (1944)
22 209 La. 561, 25 So.2d 229 (1946)
23 217 La. 459, 46 So.2d 725 (1950)
24 Sec. 9, La. Act 157 of 1940 (La. R.S. of 1950, 30:11)
25 Sec. 2, La. Act 157 of 1940 (La. R.S. of 1950, 30:3(1)(b)8)
26 221 La. 508, 60 So.2d 9 (1952)

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ROYALTY OWNER COOPERATION IN THE UNITIZATION OF OIL RESERVOIRS

BY

H. W. Penterman
Shell Oil Company
Tulsa, Oklahoma

Presented Before

Joint Meeting
Engineering and Secondary Recovery Committees
Interstate Oil Compact Commission

Oklahoma City, Oklahoma
December 4, 1953

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ROYALTY OWNER COOPERATION IN THE UNITIZATION OF OIL RESERVOIRS

By H. W. Penterman

I play golf with a group of cheerful burglars who have a simple direct way of assisting anyone in the group who happens to be having a bad day. They tell him that if he is hunting sympathy to look under "s" in the dictionary.

Unfortunately, if one is hunting the way to unitize an oil reservoir, he cannot find it simply by looking under "u" in the dictionary. Caesar wrote, "All Gaul is divided into three parts." Likewise, unitization is divided into three parts: The engineering aspects, the legal aspects and the business policy. My experience has been mainly concerned with the latter. Mr. Sweeney asked if I could contribute something on the subject of securing royalty owner cooperation in the unitization of oil reservoirs.

I will leave to others better qualified than I comments on the engineering aspects. I will only say that the engineering problems are the first which must be considered when any cycling, pressure maintenance or secondary recovery method of operating a reservoir is contemplated. Unless such engineering analyses indicate the promise of a very definite economic gain, abandon the whole idea at that point.

Once the engineers have made a report which indicates something to be gained by the adoption of secondary recovery methods or pressure maintenance or other modern ways of producing a field, then the problem becomes one for the lawyers. The legal procedure will necessarily vary, depending upon where the reservoir is located and whether it is Federal, State or fee land. A few states in the Union, such as Oklahoma and Arkansas, have a statutory arrangement by which unitization of a field can be accomplished. Others such as Texas and Illinois have no such arrangement and any unitization is entirely voluntary cooperation. Louisiana has a statute pertaining to gas condensate fields only by which unitization can be ordered after a hearing before the Conservation Commissioner. The Federal government has a standard form of unitization agreement which is administered by the Department of the Interior through its sub-divisions, the U.S.G.S. and the Bureau of Land Management. In some states the problems of unitizing the royalty interests in a reservoir are indeed complex. Particularly where the lands in part are Federal lands of one type or another, others are State lands and all are interspersed with private fee lands. So complex and cumbersome in fact was the procedure that until the passage of the O'Mahoney-Hatch Bill in 1947 unitization where Federal Lands were involved largely languished.

My first experience with the problems affecting the unitization of a whole reservoir was some 20 years ago. I pounded the pavements in quite a number of Texas cities attempting to get signatures to the unitization agreement for the North Dome at Kettleman Hills. I knew nothing at all about the matter and I was having something less than mediocre success. I finally asked for some help from the people in California who sent me a stack of reports and exhibits over a foot high (I speak literally). After wading through this great mass of material, and as a result, getting a better idea of what it was all about, I could more intelligently explain it. I returned to the task of getting owners' signatures and my subsequent efforts were crowned with very considerable success.

The next project which I recollect now and one which took a very great amount of hard work was the unitization of the working interests in the Van Pool in Texas. It has been approximately 20 years since I have had occasion to think about that matter and the details of the arrangement finally reached are somewhat vague in my mind. I do know, however, that some of the worst difficulties encountered were due to the fact that the field was not completely developed and we did not know what producing horizons future development might bring forth, either horizontally or vertically. As I recall, we made an arrangement whereby there were some three or four periods of re-evaluation at yearly or bi-yearly intervals. In any event, the arrangement contemplated that full information would be available before the final participation of the parties became fixed.

Some years ago I had something to do with unitization of an entire field in Illinois where water flooding operations were to be conducted. There were several hundred royalty owners concerned. They were scattered all over the United States, some in Canada and some in South America. A few larger royalty owners resided locally, and these were approached personally. However, a great many had to be contacted by mail. To assist such parties in coming to a decision we prepared a simple, concise statement based on the conclusions of our own and several engineering consultants, telling what we expected to do and what we expected to receive. We told them that unitization of the properties was necessary to achieve these results and asked for their cooperation. We got it - 100 per cent.

In the last three or four years I have had some part in the unitization of the Elk City Hoxbar Conglomerate reservoir. To accomplish this we circularized the royalty owners by mail, we held royalty owners' meetings, we invited representatives of the royalty owners and their Royalty Owners Associations (of which there were two) to sit in on the various committees. A la Winston Churchill, there never was so much information on so many different phases of the subject put out to so many people. There has always been a great diversity of opinion as to how the Elk City reservoir should be unitized and what participation formula should be used. Despite most vigorous early opposition to unitization of any kind, after full information was made available, there was never any more than a negligible percentage of the royalty owners who believed that a unit operation was not the thing to do. The original Elk City Unit has now been enlarged three times and with each succeeding enlargement the percentage of royalty owners ratifying the arrangement has increased.

Over the years I have had something to do with many other smaller Unit arrangements in addition to those heretofore mentioned. I learned from these that there seems to be no sure-fire, deathless formula for getting royalty owners to agree to any unitization problem. I do believe that I can discern one common denominator, one distinctive characteristic, in all these instances. It is common to both lessees and royalty owners. That is the very human trait of self-interest. At first glance it may seem to be just plain selfishness; the outcropping of the old Adam inherent in all of us. Strange as it may seem, however, if it were not for this, unitization of any oil field would be impossible.

The self-interests of the individuals in any large group are bound to conflict. Self-interest alone, therefore, will not get the job done. In all cases of successful unitization there seems to have been an added quality to self-interest. It is what I call <u>enlightened</u> self-interest. By that I mean self-interest which has received an education. The person charged with the responsibility of securing the unitization of an oil reservoir must see to it that all factual information pertinent thereto is so well impressed upon operators, royalty owners and all concerned, that they are enabled to view the problem not merely with self-interest but with <u>enlightened</u> self-interest. They become willing to

give and take, to concede a bit here, to gain a little there so that a workable arrangement can be reached by which everybody can receive some fair share of the over-all benefits. When a unit operation is justified, make the facts available so that enlightened self-interest can become the motivating influence. Otherwise, there will be no unit.

An oil pool is a unit in itself. To achieve the best results it must be operated as a unit. Man can draw lines upon the surface of the earth and say to his neighbor, "What I can get out on this side of the line is mine and what you get out over there is yours." These words have no compelling affect upon mother nature's division of the contents of the reservoir beneath the surface. Diverse ownership makes difficult and complex the attainment of true conservation. The increased benefits of true conservation when they are clearly disclosed, are the lure which appeals to the self-interest inherent in all of us. Only because of increased benefits are we willing to consider even a partial restriction of our individual rights, such as unitization. Self-interest having available all the facts, becomes enlightened self-interest. It will disclose the pathway to a successful unit program.

Because I advocated a unitization program, I have actually, on more than one occasion, been accused of favoring socialistic or communistic thinking. I will waive my rights under the Fifth Amendment and state to you that I am a firm believer in the American competitive system of free capitalistic enterprise. So are most royalty owners that I know. This system has produced more goods at lower prices, to the greater benefit of all, than any other economic system yet devised. To my mind there is nothing improper or immoral in getting all one can out of operating his business; his farm, his mine, his plumbing shop or his oil well. Call that selfishness or self-interest if you will. If one gets too selfish and tries to get too much out of his efforts, his prices get too high and competition deprives him of customers. The modern efficient methods of producing an oil reservoir have just one objective. That is, by the increase of production and the lowering of costs to provide more economic benefits. Many people at first glance think that a unit proposal is evidence of some sort of socialistic or communistic program. They think of it as a glorified share-the-wealth scheme. It is the antipode of this. The purpose of the unit operation is for each owner to get a larger return from what he owns - for himself. That is neither socialism nor communism. Never let any silly notions on this point go unchallenged.

To sum up, the individual who has the job of attempting to get an oil reservoir unitized must take these three steps. First, get an engineering report which is the composite of opinions of as many good men as you can get to work on the problem. Second, after you have determined what your problem is, tell it to your legal committee and have them arrange to prepare the necessary contracts and agreements to make it effective. The limitation of the science of reservoir engineering is such that engineers cannot be 100 per cent accurate. Lawyers have different ideas as to how best to serve their client's interest. With all due respect to these professions, and recognizing these limitations, then comes the third step; the business decisions which have to be made in adjusting conflicting opinions and ideas in order to reach a workable agreement. The attempt to reach this agreement is a futile gesture unless there has been sufficient information, fully and freely disclosed to everybody concerned; both operators and royalty owners. Then will the enlightened self-interest of the group make certain of a successful unit.

Ch. 65 Utah Laws of 1955

Section 6-G

Each pooling order shall make provision for the drilling and operation of a well on the drilling unit, and for the payment of the reasonable actual cost thereof, including a reasonable charge for supervision and storage facilities. As to each owner who refuses to agree upon the terms for drilling and operating the well, the order shall provide for reimbursement for his share of the costs out of, and only out of, production from the unit representing his interest, excluding royalty or other interest not obligated to pay any part of the cost thereof. In the event of any dispute as to such cost, the Commission shall determine the proper costs. The order shall determine the interest of each owner in the unit, and may provide in substance that, as to each owner who agrees with the person or persons drilling and operating the well for the payment by the owner of his share of the costs, such owner, unless he has agreed otherwise, shall be entitled to receive, subject to royalty or similar obligations, the share of the production of the well applicable to the tract of the consenting owner, and, as to each owner who does not agree, he shall be entitled to receive from the person or persons drilling and operating the well on the unit his share of the production applicable to his interest, after the person or persons drilling and operating said well have recovered the share of the cost of drilling and operating applicable to such nonconsenting owner's interest plus a reasonable charge for supervision and storage. Each consenting and non-consenting owner shall be entitled to receive, subject to his paying or making arrangements with the owner or owners operating the well for the payment of all applicable royalties, overriding royalties or other burdens on production and his respective share of current operating or other costs incidental to the

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Section 6-G

efficient operation of the well, his share respectively of production allocated to the tract or tracts in which he holds an interest; provided, however, that a non-consenting owner of a tract in a drilling unit which is not subject to any lease or other contract for the development thereof for oil and gas shall be deemed to have a basic landdowners royalty of one-eighth (1/8) or twelve and one half per cent (12 1/2%) of the production allocated to such tract.

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BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF G. C. PARKER FOR POOLING ORDER AND ADJUDICATING THE RIGHTS AND EQUITIES OF THE OWNERS OF THE MINERAL AND LEASED PREMISES IN AND UNDER THE NW/4 OF NE/4 OF SECTION 13, TOWNSHIP 1 NORTH, RANGE 3 WEST, GARVIN COUNTY, OKLAHOMA.

Cause CD No. 5389

Order No. 28187

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of Oklahoma on the 11th day of February, 1954, at 10 o'clock a.m., in the Commission's Court Room, Capitol Office Building, Oklahoma City, Oklahoma; the Honorable Reford Bond, Chairman, Ray O. Weems, Vice-Chairman, and Ray C. Jones, Commissioner, sitting.

Houston Bus Hill, Attorney, appeared for the applicant, G. C. Parker; Harold Freeman and S. H. King, Attorneys, appeared for themselves and for T. J. Hall and John Dowd; and Floyd Green, Conservation Attorney, and Ferrill Rogers, Assistant Conservation Attorney, appeared for the Commission.

When the case was called, the same was referred to W. H. Sellers, Trial Examiner, for the purpose of taking testimony and reporting to the Commission.

The Trial Examiner proceeded to hear the cause and has filed his report herein recommending that the application be granted, and that time was allowed for exceptions to be filed to said report, and none having been filed, said recommendation and report are hereby adopted and the Commission therefore finds as follows:

F I N D I N G S

1. That this is an application of G. C. Parker for an order pooling and adjudicating the rights and equities of the owners of oil and gas leases in the NW/4 of NE/4 of Section 13, Township 1 North, Range 3 West, Garvin County, Oklahoma, for the production of oil and gas from the McLish Sand, common source of supply.

2. That the Commission has jurisdiction over the subject matter herein; that notice has been given in all respects as required by law and the above named parties appeared to protect their interest in the matter.

3. That by Order No. 24469, as extended by Order No. 27365, the Commission established 40 acre drilling and spacing units for the production of oil and gas from the McLish Sand in this area, and the NW/4 of NE/4 of said Section 13 constitutes one of said units.

4. That the applicant is the owner of an oil and gas lease on all of said unit except the Southeast 10 acres thereof which is owned by Harold Freeman, S. H. King, et al, and the applicant desires to drill a well on said unit and has been unable to agree with the owners of the outstanding unleased mineral interest, on a plan for the development of said unit; that an order should be made pooling the oil and gas leasehold interest in said unit for the production of oil and gas from the McLish Sand, and G. C. Parker should be permitted to drill and operate the well on said unit.

5. That for the purpose of the order in this case, the fair, reasonable cash market value of an oil and gas lease for the McLish Sand on said 10 acre tract should be fixed at $750.00 per acre, and the cost of drilling, completing and equipping a well to said formation should be fixed at approximately $350,000 to $400,000.00.

6. That taking into consideration the rights and equities of the parties, an order should be made providing for three alternatives, as follows:

ILLEGIBLE

SECOND: That the owners of the outstanding unleased mineral interests in said unit shall be paid by the applicant the sum of $750.00 per acre as mineral compensation in lieu of their right to participate in the working interest in said well and the 7/8ths leasehold production therefrom.

THIRD: That the owners of the outstanding unleased mineral interests in said unit shall be permitted to await the outcome of the drilling of said well, and if production is found in the McLish Sand, that the applicant be permitted to withhold from their proportionate share of the working interest production from said well until such time as the applicant is reimbursed in the sum of 125 percent of such outstanding owners' proportionate part of the cost of drilling, completing and equipping said well, after which time the owners of the outstanding unleased mineral interests shall receive their proportionate share in the working interest in said well.

5. That the owners of the outstanding unleased mineral interests in said unit are hereby required to make an election within 15 days of the date of this order as to which method they desire to pursue in the development of said unit and said election shall be made in writing and addressed to Mr. Houston Bus Mill, Attorney for the applicant, Republic Building, Oklahoma City, Oklahoma, and a copy of the same shall be mailed to the Corporation Commission of Oklahoma; that if said election is not made within said time, then it will be assumed that the owners of the outstanding unleased mineral interests have elected to take a bonus of $750.00 per acre in lieu of their right of participating in the working interest in said well and the 7/8ths working interest production therefrom.

DONE AND PERFORMED this 25th day of February, 1954.

CORPORATION COMMISSION OF OKLAHOMA

_____, Chairman

Ray C. Weems, Vice-Chairman

Ray C. Jones, Commissioner

ATTEST:

Tom McMurray
Secretary

ILLEGIBLE

FIRST: That the owners of the outstanding unleased mineral interests should be required to pay their proportionate share of the cost of drilling, completing and equipping said well to the applicant herein, or furnish satisfactory evidence for the payment thereof within 15 days from the date of the order of the Commission, and receive therefor their proportionate share of the working interest in said well.

SECOND: That the owners of the outstanding unleased mineral interests in said unit should be paid by the applicant the sum of $750.00 per acre as mineral compensation in lieu of their right to participate in the working interest in said well and the 7/8ths leasehold production therefrom.

THIRD: That the owners of the outstanding unleased mineral interests in said unit should be permitted to await the outcome of the drilling of said well, and if production is found in the McLish Sand, that the applicant be permitted to withhold from their proportionate share of the working interest production from said well until such time as the applicant is reimbursed in the sum of 125 percent of such outstanding owners' proportionate part of the cost of drilling, completing and equipping said well, after which time the owners of the outstanding unleased mineral interests should receive their proportionate share in the working interest in said well.

7. That the owners of the outstanding unleased mineral interest should be required to elect within 15 days of the date of the order of the Commission in this cause which method they desire to pursue in the development of this unit, and if such election is not made within said time, then it should be assumed that they have elected to take a bonus in the sum of $750.00 per acre as mineral compensation in lieu of their right to participate in the working interest in said well and the 7/8ths leasehold production therefrom.

8. That in the interest of encouraging development in the area, securing the greatest ultimate recovery of oil from the Pool, the prevention of waste and the protection of correlative rights, this application should be granted.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of Oklahoma as follows:

1. That G. C. Parker be, and he is hereby permitted and authorized to drill and complete a well for the production of oil and gas from the McLish Sand, in the NW/4 of NE/4 of Section 13, Township 1 North, Range 3 West, Garvin County, Oklahoma.

2. That the sum of $350,000.00 to $400,000.00 is fixed, for the purpose of this order, as the cost of drilling, completing and equipping a well to said common source of supply, and in the event there is a dispute as to such cost after the well has been completed, the Commission reserves jurisdiction for the purpose of redetermining such cost.

3. That for the purpose of this order, the sum of $750.00 per acre is fixed as a fair and reasonable mineral compensation to be paid in lieu of the right of participation in the working interest in said well and the 7/8ths leasehold production therefrom.

4. That the following alternatives shall be provided:

FIRST: That the owners of the outstanding unleased mineral interests shall be required to pay their proportionate share of the cost of drilling, completing and equipping said well to the applicant herein, or furnish satisfactory evidence for the payment thereof within 15 days from the date of the order of the Commission, and receive therefor their proportionate share of the working interest in said well.

ILLEGIBLE

SECOND: That the owners of the outstanding unleased mineral interests in said unit shall be paid by the applicant the sum of $750.00 per acre as mineral compensation in lieu of their right to participate in the working interest in said well and the 7/8ths leasehold production therefrom.

THIRD: That the owners of the outstanding unleased mineral interests in said unit shall be permitted to await the outcome of the drilling of said well, and if production is found in the McLish Sand, that the applicant be permitted to withhold from their proportionate share of the working interest production from said well until such time as the applicant is reimbursed in the sum of 125 percent of such outstanding owners' proportionate part of the cost of drilling, completing and equipping said well, after which time the owners of the outstanding unleased mineral interests shall receive their proportionate share in the working interest in said well.

5. That the owners of the outstanding unleased mineral interests in said unit are hereby required to make an election within 15 days of the date of this order as to which method they desire to pursue in the development of said unit and said election shall be made in writing and addressed to Mr. Houston Bus Hill, Attorney for the applicant, Republic Building, Oklahoma City, Oklahoma, and a copy of the same shall be mailed to the Corporation Commission of Oklahoma; that if said election is not made within said time, then it will be assumed that the owners of the outstanding unleased mineral interests have elected to take a bonus of $750.00 per acre in lieu of their right of participating in the working interest in said well and the 7/8ths working interest production therefrom.

DONE AND PERFORMED this 25th day of February, 1954.

CORPORATION COMMISSION OF OKLAHOMA

_____, Chairman

Ray C. Weems, Vice-Chairman

Ray C. Jones, Commissioner

ATTEST:

Tom McMurray
Secretary

ILLEGIBLE

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

COPY

December 17, 1954

Mr. Jack Campbell, Attorney
224 J. P. White Building
ROSWELL, N M

Dear Sir:

On behalf of your client, Mr. Saul Yager, et al, we enclose copies of Oil Conservation Commission orders as follows:

Order R-560 in Case 706
Order R-546 in Case 707
Order R-547 in Case 708
Order R-548 in Case 709
Order R-549 in Case 710
Order R-557 in Case 711
Order R-558 in Case 712

These orders were signed as of December 16, 1954, and placed in the Commission's permanent entry book on December 17, 1954.

Very truly yours,

W. B. Macey
Secretary - Director

WBM:nr

Encl.

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

December 17, 1954

El Paso Natural Gas Company
Bassett Tower
EL PASO TEXAS

Gentlemen:

We enclose orders issued by the Oil Conservation Commission as follows:

Order R-560 in Case 706
Order R-546 in Case 707
Order R-547 in Case 708
Order R-548 in Case 709
Order R-549 in Case 710
Order R-557 in Case 711
Order R-558 in Case 712

These orders were signed on December 16, 1954, and placed in the Commission's permanent entry book on December 17, 1954.

Very truly yours,

W. B. Macey
Secretary - Director

WBM:nr

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

January 10, 1956

COPY

MEMORANDUM

TO: Governor Simms and Land Commissioner Walker

FROM: W. B. Macey

SUBJECT: Cases 706 & 846, Order R-560-B
Cases 707 & 847, Order R-546-B
Cases 708 & 848, Order R-547-B
Cases 709 & 849, Order R-548-B
Cases 710 & 850, Order R-549-B
Cases 711 & 851, Order R-557-B
Cases 712 & 852, Order R-558-B

This memo covers all of the above-captioned consolidated cases and the orders entered in each case. These cases originally came before the Commission in July of 1954, and after the entry of the original order a rehearing was granted. The orders attached hereto are the orders entered after rehearing in each of the cases designated above.

All of the cases involve gas proration units in the Blanco Mesaverde Gas Pool in San Juan County, New Mexico, and involve El Paso Natural Gas Company on one hand and a group of individuals from Tulsa, Oklahoma, whose chief spokesman, Mr. Saul Yager, is represented by Mr. Jack M. Campbell. In each instance, both parties have submitted very extensive briefs on the legal technicalities involved in these orders. The entire problem presented to the Commission was based on the fact that El Paso Natural Gas Company obtained leases from the "Yager Group", the leases not having any pooling clause.

Under the Blanco Mesaverde Pool rules, it is essential that each drilling unit contain 320 acres and the pool rules (Order R-110) state as follows: "No well shall be drilled . . . . unless such well be located on a designated drilling unit of not less than 320 acres of land . . . . in which unit all the interests are consolidated by pooling agreement or otherwise . . . ."

The applications of El Paso in each instance requested compulsory communitization of the acreage involved, and the companion application requested determination and ratification of the communitization in each instance. The original Commission orders entered after the original cases held that the communitization was effective on the day that the Commission or the regulatory group involved (U.S.G.S.) approved the notice of intention to drill the well on each specific tract.

Mr. Kitts and I have spent a considerable amount of time reviewing all of the facts and evidence entered in this case and all of the legal background in other states pertaining to compulsory communitization and have come to the conclusion that the original order which was entered was in error. We feel that in view of the specific requirement of the pool rules that all interests be "consolidated by pooling agreement or otherwise"; that it is necessary for the operator of a proration unit to actually have an agreement between all of the parties involved or a Commission order compelling them to join in the agreement prior to the time they start their well, and that the communitization is effective only when the parties are in complete agreement or when an order is entered.

We further feel that the word "interests", as used in the pool rules, pertains solely to the "owner"; that is, the man who has the right to drill on the land and prospect for oil and gas. Although El Paso Natural and the other owners in each area may have had an agreement to consolidate or pool their leases prior to the time the wells were started, the only evidence which this Commission has that all of the interests were consolidated by agreement was on the date of the first hearing in these cases, May 19, 1954. It is perfectly possible that the companies involved in these cases actually had an agreement prior to this date, but we do not have any evidence of such agreement.

The reason that the effective date of the communitization, as recognized by this Commission, is important is that there would be some lease expirations involved if there was not an actual communitization agreement effected prior to the expiration date. It is for this reason that in each order we have entered an alternative order which makes the effective date of communitization the date of this order in the event subsequent adjudication as to the title of leases renders our original portion of the order null and void.

If you feel that further discussion of these orders is necessary, I will be glad to arrange a meeting with you for Mr. Kitts and myself; however, I am firmly convinced that the orders that we have entered are proper.

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

January 13, 1956

COPY

Mr. Ben H. Howell
El Paso Natural Gas Co.
P.O. Box 1492
El Paso, Texas

Dear Sir:

We enclose a copy of each of the following orders issued January 12, 1956, by the Oil Conservation Commission:

Cases 706 & 846, Order R-560-B
Cases 707 & 847, Order R-546-B
Cases 708 & 848, Order R-547-B
Cases 709 & 849, Order R-548-B
Cases 710 & 850, Order R-549-B
Cases 711 & 851, Order R-557-B
Cases 712 & 852, Order R-558-B

Very truly yours,

W. B. Macey
Secretary - Director

WBM:brp
Encls.

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

COPY

January 13, 1956

Mr. Jack M. Campbell
Campbell & Russell
J. P. White Building
Roswell, New Mexico

Dear Sir:

We enclose a copy of each of the following orders issued January 12, 1956, by the Oil Conservation Commission:

Cases 706 & 846, Order R-560-B
Cases 707 & 847, Order R-546-B
Cases 708 & 848, Order R-547-B
Cases 709 & 849, Order R-548-B
Cases 710 & 850, Order R-549-B
Cases 711 & 851, Order R-557-B
Cases 712 & 852, Order R-558-B

Very truly yours,

W. B. Macey
Secretary - Director

WBM:brp
Encls.

Form 3811
Rev. 1-52

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Rev. 1-52

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State _____

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Form 3811
Rev. 1-52

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INSURED PARCEL
No. _____

Post Office SANTA FE N M

State _____

16—12421

Form 3811
Rev. 1-52

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(Signature or name of addressee)

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Date of delivery MAY 3 1954, *19*

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POSTMARK OF DELIVERING OFFICE

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(NAME OF SENDER)

Street and Number, or Post Office Box, Box 871

REGISTERED ARTICLE
No. 10012

INSURED PARCEL
No. _____

Post Office SANTA FE N M

State _____

16—12421

Post Office Department

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

(GPO)

POSTMARK OF DELIVERING OFFICE

A. OKLA. MAY 3 3:30PM 54

Return to Oil Conservation Commission

(NAME OF SENDER)

Street and Number, or Post Office Box, Box 871

REGISTERED ARTICLE

No. 10015 Post Office SANTA FE N M

INSURED PARCEL

No. ____ 16—12421 State ____

Form 3811
Rev. 1-52

RETURN RECEIPT

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1 Maxine Mazel + Flora Mazel
(Signature or name of addressee)

2 Betty Conke
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery 5-3, 1954

U. S. GOVERNMENT PRINTING OFFICE 16—12421-2

El Paso Natural Gas Company

El Paso, Texas

January 30, 1956

New Mexico Oil Conservation Commission
P. O. Box 871
Santa Fe, New Mexico

Gentlemen:

Enclosed you will find five copies each of Applications for Rehearing in the Yager cases.

A copy of each Application has been furnished to Mr. Jack Campbell, attorney for Mr. Yager.

Yours very truly,

Ben R. Howell

Ben R. Howell

s
enc.
c-Lease Department

El Paso Natural Gas Company

El Paso, Texas

February 9, 1956

Oil Conservation Commission
Santa Fe
New Mexico

Gentlemen:

Attached are three copies of El Paso's Brief and Tender of Proof in Cases 706-712 and 846-852, both inclusive.

Yours very truly,

John A. Woodward

John A. Woodward

s
att.
cc-Jack Campbell, Roswell, New Mexico
A. K. Montgomery, Santa Fe, New Mexico
Lease Department

R-706-A

Was ... April 4 ... 8:35 ... 177 ... a ... 549

Virginia A. Kittell

Mollie Jacques

ASSIGNMENT OF OIL AND GAS LEASES

PRIVATELY OWNED LANDS

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned DELHI OIL CORPORATION, a Delaware corporation, whose address is 1314 Wood Street, Dallas, Texas (hereinafter called "Assignor"), for and in consideration of the sum of Ten Dollars ($10.00), and other good and valuable consideration, the full receipt and sufficiency of which is hereby acknowledged, does hereby sell, assign, transfer, set over and convey unto EL PASO NATURAL GAS COMPANY, a Delaware corporation, whose address is Bassett Tower, El Paso, Texas (hereinafter called "Assignee"), its successors and assigns, all right, title and interest of Assignor in and to those certain oil and gas mining leases described in Exhibit "A" attached hereto and made a part hereof for all purposes;

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns forever, subject, however, to the following:

1. In said leases, assignments thereof and other instruments and documents pertaining thereto there are excepted and reserved to or assigned for the benefit of the various lessors, assignors and others certain royalties, overriding royalties and other rights and interests in, to and connected with oil, gas and other minerals produced from and under said leases, reference being here made to said leases, assignments, instruments and documents for a more particular description of the terms thereof. This Assignment is made expressly subject to all such royalties, overriding royalties and other rights and interests so excepted, reserved or assigned, as set forth in Exhibit "A".

2. Assignor hereby excepts, reserves and retains unto itself, its successors and assigns the following:

A. An overriding royalty on Assignor's interest in all gas produced and saved from the said leases and the lands included in same as follows:

(1) 5½¢ per mcf (1,000 cubic feet) on all such gas produced and saved during the first 3-1/3 years after the date hereof.

(2) 6½¢ per mcf on all such gas produced and saved during the next 3-1/3 years thereafter.

(3) 7½¢ per mcf on all such gas produced and saved during the next 3-1/3 years thereafter.

(4) Not less than 8¢ per mcf on all such gas produced and saved during the next one year thereafter.

(5) Not less than 9¢ per mcf on all such gas produced and saved during the next one year thereafter.

(6) Not less than 10¢ per mcf on all such gas produced and saved thereafter.

B. The volumes of gas, upon which the overriding royalties described above shall be paid, shall be computed upon a pressure base of 15.025 pounds per square inch absolute and at a temperature base of 60 degrees Fahrenheit, and shall be otherwise computed in accordance with the specifications prescribed in Gas Measurement Committee Report No. 2, dated May 6, 1935, of the Natural Gas Department of the American Gas Association, including the appendix thereto and subsequent amendments and appendices from time to time made. Proper corrections shall be made for deviation from Boyle's Law, the specific gravity and the flowing temperatures of the gas produced hereunder. Proper deduction shall be made from such volumes for gas used in development and operation of the said lands and for loss due to shrinkage by reason of extraction of hydrocarbons from such gas.

C. The overriding royalties specified in (4), (5) and (6) of A above shall in no event be less than the respective amounts stated therein but shall be arrived at as follows: approximately ninety (90) days prior to the end of the first ten (10) years following the date hereof the parties shall attempt to agree upon the amounts of such overriding royalties

549-B

for the next five-year period. If the parties agree upon such overriding royalties, then such amounts shall be the overriding royalties to be received by Assignor hereunder for such period. If the parties cannot agree upon such amounts, then such amounts shall be determined by a board of arbitrators to be appointed as provided in the agreement between the parties dated January 18, 1952, hereinafter mentioned. The board of arbitrators, in determining the amounts of such overriding royalties, shall base their decision on the then value of such gas at the well head, considering only quality and pressure of gas, aggregate quantity of delivery and the then current field prices (of then newly negotiated contracts) of gas in other fields connected to or in the area of any of Assignee's pipe lines or gathering systems or of any pipe line system to which any of Assignee's pipe lines or gathering systems are then connected and such other directly related pertinent factors which said board shall deem proper to consider in order to fairly determine the amounts of such overriding royalties. The overriding royalties reserved by Assignor in A above shall be determined for each five-year period after the fifteenth year following the date hereof in like manner to that provided above for the five-year period next following the tenth year after the date hereof, but in no event shall the amount of such overriding royalties be less than 10¢ per mcf.

D. An overriding royalty in the amount of thirty-three and one-third per cent (33 1/3%) of Assignor's interest in all liquid hydrocarbons which may be recovered or extracted from gas produced from the said lands and leases. At Assignor's option, Assignee shall deliver to Assignor the fair market value thereof in cash. At all times prior to the completion of construction and commencement of operation by Assignee of a plant for extraction of such liquids, Assignee shall pay to Assignor in cash the estimated value of thirty-three and one-third per cent (33-1/3%) of all liquids produced with or contained in gas

produced from the said land and applicable to Assignor's interest therein, regardless of whether such liquids are extracted from the gas.

E. All oil in, to and under the said lands and leases, together with the right of ingress and egress to and from the leased premises for the purpose of exploring for, producing and removing same and constructing and operating all facilities necessary or appropriate in connection therewith.

F. All gas and other hydrocarbon substances, in, to and under the said lands and leases in all formations below the Mesaverde formation, together with the right of ingress and egress to and from the leased premises for the purpose of exploring for, producing and removing same and constructing and operating all facilities necessary or appropriate in connection therewith.

3. The said overriding royalties reserved herein are more fully described in a certain Oil and Gas Lease Sale Agreement between Assignor and Assignee dated January 18, 1952, and recorded in the official records of the County Clerk of San Juan County, New Mexico, in Volume _____ at Page _____, reference to which Agreement and record thereof is here made for all purposes, and the terms and provisions of which Agreement are all incorporated herein by reference the same as though set forth verbatim herein.

4. For the same consideration Assignor also grants and assigns to Assignee all its right, title and interest in and to any and all gas wells which may be situated on said lands and any and all personal property now situated thereon or used or obtained in connection therewith.

5. For the same consideration Assignor covenants with and warrants to Assignee, its successors and assigns, that it will warrant and forever defend unto Assignee, its successors and assigns, the title to the entire interest of

549-D

Assignor in and to the said lands and leases and personal property purported to be assigned herein, against all persons whomsoever who may lawfully have or claim an interest therein by, through or under Assignor.

6. Assignee, by its acceptance of this Assignment, warrants and agrees that it will comply with all terms, provisions and conditions of the Agreement dated January 18, 1952, mentioned hereinabove, and, subject to the terms thereof, that it will comply with all obligations of the leases hereby assigned and that it hereby assumes and agrees to pay, as and when the same shall become due and payable, all outstanding royalty, overriding royalty, carried and other interests under the leases hereby assigned applicable to all gas and other hydrocarbons produced and saved by Assignee.

EXECUTED at Dallas, Texas, on this 1st day of March, 1952.

DELHI OIL CORPORATION

BY _____
Vice President

ATTEST:

_____
Secretary

* * * * * * *

El Paso Natural Gas Company, Assignee herein, hereby accepts this Assignment and agrees to be bound by the terms and provisions thereof, all as of March 1, 1952.

EL PASO NATURAL GAS COMPANY

BY _____
Vice President

ATTEST:

_____
Asst. Secretary

549-E

STATE OF TEXAS)
) ss.
COUNTY OF DALLAS)

On this 1st day of March, 1952, before me appeared P. T. BEE, to me personally known, who, being by me duly sworn, did say that he is the Vice President of DELHI OIL CORPORATION, a Delaware corporation, and that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors and said P. T. BEE acknowledged said instrument to be the free act and deed of said corporation.

Ellen Donihoo
Notary Public in and for
Dallas County, Texas.

ELLEN DONIHOO

My commission expires:
June 1, 1953

Return to, El Paso Natural Gas Co
10th floor - Bassett Tower
El Paso, Texas

549-E

EXHIBIT "A"

Attached to and made a part of the foregoing "Assignment of Oil and Gas Leases - Privately Owned Lands" from Delhi Oil Corporation to El Paso Natural Gas Company dated March 1, 1952.

The leases and other instruments hereinafter described in this exhibit, and the records thereof where described, are hereby referred to for all purposes in connection with the assignment to which this exhibit is attached.

I.

The following leases are subject to the following interests:

A. An overriding royalty of two and one-half per cent (2½%) of all oil, gas or other minerals as reserved by Wayne Moore, et ux, and described in that certain assignment of several leases to The Mudge Oil Company, dated February 19, 1948, recorded in Book 126, Page 568 of the records of San Juan County, New Mexico.

B. An overriding royalty of fifteen per cent (15%) of all gas and twenty per cent (20%) of all oil, subject to suspension and conversion to a working interest in certain instances, as reserved by The Mudge Oil Company and more fully described in that certain assignment from The Mudge Oil Company to Delhi Oil Corporation, acknowledged May 1, 1950, recorded in Book 146, Page 633 of the records of San Juan County, New Mexico.

NM 288
NM 1088

Lease dated June 3, 1947, and executed by James C. Sumruld and wife, Fannie Sumruld, as Lessors, to Wayne Moore, Lessee, covering the Northwest Quarter of the Northeast Quarter (NW/4 NE/4) of Section Thirty-four (34), and the Southwest Quarter of the Southeast Quarter (SW/4 SE/4) of Section Twenty-seven (27) all in Township Thirty-one (31) North, Range Eleven (11) West, N.M.P.M., and containing 80 acres, more or less; said lease being recorded in Book 125, at Page 238 of the records of San Juan County, New Mexico; said lease having been amended by that certain agreement between James C. Sumruld, et ux, and Delhi Oil Corporation, dated July 13, 1950, recorded in Book 155, Page 25 of the Records of San Juan County, New Mexico and extended by that certain agreement, dated February 19, 1952, between James C. Sumruld, et ux, and Delhi Oil Corporation.

NM 289
NM 1091

Lease dated May 20, 1947, and executed by R. L. Sprott and wife, Edna Sprott, as Lessors, to Wayne Moore, Lessee, covering Lessor's undivided three-fourths (3/4) interest in the West half of the Southwest Quarter of the Northeast Quarter (W/2 SW/4 NE/4) of Section Eight (8), in Township Thirty-one (31) North, Range Ten (10) West, N.M.P.M., and containing 20 acres, more or less; said lease being recorded in Book 125, at Page 239 of the records of San Juan County, New Mexico; said lease having been amended by that certain agreement between R. L. Sprott, et ux, and Delhi Oil Corporation, dated April 20, 1950, recorded in Book 146, Page 678 of the records of

San Juan County, New Mexico, and said lease having been extended for an additional primary term of five years by that certain agreement between the same parties, dated January 8, 1952, recorded in Book 172, Page 559 of the records of said county.

NM 292

Lease dated May 9, 1946, and executed May 28, 1946, by Arthur Davis, et al, as Lessors, to Ben Case, Lessee, covering the West half of the Southwest Quarter (W/2 SW/4) of Section Twenty-three (23) and the West half of the Northwest Quarter (W/2 NW/4) of Section Twenty-six (26), all in Township Thirty-two (32) North, Range Eleven (11) West, N.M.P.M., and containing 160 acres, more or less, said lease being recorded in Book 125, at Page 55 of the records of San Juan County, New Mexico.

NM 293

Lease dated June 5, 1947, and executed by Gil Turner and wife, Delma Turner, as Lessors, to Wayne Moore, Lessee, covering approximately 149 acres in Section Thirty-four (34), Township Thirty-one (31) North, Range Eleven (11) West, N.M.P.M., San Juan County, New Mexico, all as more particularly described in said lease as recorded in Book 125, at Page 237 of the records of San Juan County, New Mexico; said lease having been extended in part by Agreement dated February 19, 1952, executed by Carl S. Sexton, et ux.

NM 294

Lease dated February 25, 1946, and executed February 28, 1946, by Mrs. Belle Hutchin, Administratrix, et al, as Lessors, to Ben Case, Lessee, covering "N½ SE, W½ NE Section 7", Township 31 North, Range 10 West, N.M.P.M., less two acres, and containing 158 acres, more or less, said lease being recorded in Book 125, Page 49 of the records of San Juan County, New Mexico.

NM 295

Lease dated March 1, 1946, executed by William C. Carruthers and wife, Frankie S. Carruthers, as Lessors, to Ben Case, Lessee, covering the Southwest Quarter of the Southwest Quarter (SW/4 SW/4) of Section Five (5), in Township Thirty-one (31) North, Range Ten (10) West; the North Half of the Northwest Quarter of the Northwest Quarter (N/2 NW/4 NW/4) of Section Eight (8) in Township Thirty-one (31) North, Range Ten (10) West; and the North Half of the Northeast Quarter of the Northeast Quarter (N/2 NE/4 NE/4) of Section Seven (7), in Township Thirty-one (31) North, Range Ten (10) West, N.M.P.M., and containing 80 acres, more or less; said lease being recorded in Book 125, at page 52 of the records of San Juan County, New Mexico; said lease having been amended by that certain agreement between William C. Carruthers, et ux, and Delhi Oil Corporation, dated April 21, 1950.

NM 296

Lease dated April 1, 1946, and executed May 15, 1946, by Arthur Davis, a single person, as Lessor, to Ben Case, Lessee, covering the South Half of the Northwest Quarter (S/2 NW/4), the South Half of the Northeast Quarter (S/2 NE/4) and the North Half of the Southeast Quarter (N/2 SE/4) of Section Twenty-two (22) and the South Half of the Northwest Quarter (S/2 NW/4) of Section Twenty-three (23) in Township Thirty-two (32) North, Range Eleven (11) West, N.M.P.M., and containing 320 acres, more or less; and said lease being recorded in Book 125, at Page 27 of the records of San Juan County, New Mexico; said lease having been amended by that certain agreement between Arthur Davis and Delhi Oil Corporation, dated July 25, 1950.

549-h

NM 327

Lease dated October 15, 1946, and executed by Austin D. Decker, et al, as Lessors, to Wayne Moore, Lessee, covering the Southwest Quarter of the Northwest Quarter (SW/4 NW/4), the North Half of the Northwest Quarter (N/2 NW/4), all in Section Twenty (20), the West Half of the Northeast Quarter (W/2 NE/4), the Southeast Quarter of the Northeast Quarter (SE/4 NE/4) and the Northeast Quarter of the Southeast Quarter (NE/4 SE/4), all in Section Nineteen (19), the South Half of the Southwest Quarter (S/2 SW/4) of Section Eight (8), the West Half of the West Half (W/2 W/2) of Section Seventeen (17), the East Half of the Southwest Quarter (E/2 SW/4) and the West Half of the Southeast Quarter (W/2 SE/4) of Section Twenty-nine (29), all in Township Thirty-two (32) North, Range Ten (10) West, N.M.P.M.; also the Southwest Quarter of the Southeast Quarter (SW/4 SE/4) of Section Fourteen (14), the North Half of the Northeast Quarter (N/2 NE/4) of Section Twenty-three (23), and the North Half of the Northwest Quarter (N/2 NW/4) of Section Twenty-four (24), all in Township Thirty-two (32) North, Range Eleven (11) West, N.M.P.M., and containing 880 acres, more or less; said lease being recorded in Book 125, at Page 206, of the records of San Juan County, New Mexico; said lease having been amended in part by that certain agreement between Austin D. Decker, et ux, and Delhi Oil Corporation, dated April 27, 1950.

NM 344

Lease dated February 3, 1947, and executed by Earl Uselman and wife, Edith Uselman, as Lessors, to Wayne Moore, Lessee, covering the Southeast Quarter of the Northwest Quarter (SE/4 NW/4) of Section Four (4) in Township Thirty-one (31) North, Range Ten (10) West, N.M.P.M., containing Forty (40) acres, more or less, according to U. S. Government Survey thereof. Also, all that part of the Northeast Quarter of the Northwest Quarter (NE/4 NW/4) lying South of the North Bank of the Animas River of Section Four (4) in Township Thirty-one (31) North, Range Ten (10) West, N.M.P.M., containing three (3) acres, more or less; said lease being recorded in Book 125, at Page 203, of the records of San Juan County, New Mexico; said lease having been amended by that certain agreement between Earl Uselman, et ux, and Delhi Oil Corporation, dated April 20, 1950, recorded in Book 146, Page 680 of the records of San Juan County, New Mexico, and said lease having been extended by that certain agreement between the same parties, dated January 9, 1952, recorded in Book 172, Page 556 of the records of said county.

NM 347

Lease dated October 13, 1947, and executed by Fred L. Lawson and wife, Grace P. Lawson, as Lessors, to Wayne Moore, Lessee, covering the Southeast Quarter of the Northeast Quarter (SE/4 NE/4) of Section Eleven (11) in Township Thirty-one (31) North, Range Eleven (11) West, N.M.P.M., and containing Forty (40) acres, more or less; said lease being recorded in Book 130, at Page 17 of the records of San Juan County, New Mexico.

NM 350

Lease dated January 9, 1947, executed by Frank Randlemon and wife, Eva Randlemon, as Lessors, to Ben Case, Lessee, in so far as it covers the following described lands, to-wit: Northeast Quarter of the Southeast Quarter (NE/4 SE/4) of Section Eleven (11) in Township

Thirty-one (31) North, Range Eleven (11) West, N.M.P.M., containing 40 acres, more or less, said lease being recorded in Book 125, Page 214 of the records of San Juan County, New Mexico; said lease having been amended by that certain agreement between Frank Randlemon, et ux, and Delhi Oil Corporation, dated November 2, 1950, recorded in Book 155, Page 31 of the records of said county.

II.

The following leases are subject to the following interests:

A. An overriding royalty of two and one-half per cent (2½%) of all oil, gas or other minerals, as reserved by H. F. Pettigrew and described in that certain assignment to Delhi Oil Corporation, dated August 15, 1950, recorded in Book 151, Page 517 of the records of San Juan County, New Mexico.

B. An overriding royalty of fifteen per cent (15%) of all gas and twenty per cent (20%) of all oil, subject to suspension and conversion to a working interest in certain instances, as granted to San Juan Oil Company by, and more fully described in, that certain agreement entered into between San Juan Oil Company and Delhi Oil Corporation, dated January 5, 1951, recorded in Book 157, Page 328 of the records of San Juan County, New Mexico.

NM 363

Lease dated December 3, 1947, executed December 6, 1947 by Ray H. Wooten and wife, Melba Wooten, as Lessors, to Wayne Moore, Lessee, covering the East Half of the Southeast Quarter (E/2 SE/4) of Section Twenty-three (23), Township Thirty-one (31) North, Range Eleven (11) West, N.M.P.M., in the County of San Juan, New Mexico, containing 80 acres, more or less, said lease being recorded in Book 135, Page 93-A of the records of San Juan County, New Mexico.

NM 364

NM 1084

Lease dated December 29, 1949, executed by Carl G. Calloway, et al, as Lessors, to H. F. Pettigrew, Lessee, covering the Northwest Quarter of the Southwest Quarter (NW/4 SW/4) of Section Twenty-three (23), the East One-half of the Southeast Quarter (E/2 SE/4) of Section Twenty-two (22) and the Northeast Quarter of the Northeast Quarter (NE/4 NE/4) of Section Twenty-seven (27), all in Township Thirty-one (31) North, Range Eleven (11) West, N.M.P.M., San Juan County, New Mexico, being the same land patented to Shade Calloway, by the U. S. A. October 26,1914, recorded in Book 59, Page 121, of the records of San Juan County, New Mexico, containing 160 acres, more or less, said lease being recorded in Book 140, Page 335 of the records of said county.

NM 365

NM 1079

Lease dated September 1, 1948, executed by Saul A. Yager, et ux, as Lessors, to Wayne Moore, Lessee, covering the South one-half of the Northwest Quarter (S/2 NW/4), and the Northeast Quarter of the Southwest Quarter (NE/4 SW/4) and the Northwest Quarter of the Southeast Quarter (NW/4 SE/4) of Section Twenty-seven (27), Township Thirty-one (31) North, Range Eleven (11) West, N.M.P.M., San Juan County, New Mexico, and containing 160 acres, more or less, said lease being recorded in Book 135, Page 86 of the records of said county.

549-j

NM 366

NM-1081

Lease dated September 1, 1948, executed by Saul A. Yager, et ux, as Lessors, to Wayne Moore, Lessee, covering the North one-half of the Southwest Quarter (N/2 SW/4), the Southeast Quarter of the Southwest Quarter (SE/4 SW/4) and the Southwest Quarter of the Southeast Quarter (SW/4 SE/4), all in Section Thirty-two (32), Township Thirty-one (31) North, Range Eleven (11) West, N.M.P.M., San Juan County, New Mexico, containing 160 acres, more or less, said lease being recorded in Book 135, Page 87, of the records of San Juan County, New Mexico.

III.

The following leases are subject to the following interests:

A. An overriding royalty of two and one half per cent (2½%) of all oil, gas or other minerals as reserved by Primo Oil Company and described in that certain assignment to Delhi Oil Corporation, dated January 11, 1951, recorded in Book 157, Page 246 of the records of San Juan County, New Mexico.

B. An overriding royalty of fifteen per cent (15%) of all gas and twenty per cent (20%) of all oil, subject to suspension and conversion to a working interest in certain instances, as granted to San Juan Oil Company by, and more fully described in, that certain agreement entered into between San Juan Oil Company and Delhi Oil Corporation, dated May 25, 1951, recorded in Book 165, Page 447 of the records of San Juan County, New Mexico.

NM 377

NM 1078

Lease dated September 1, 1948, executed by Saul A. Yager, et ux, as Lessors, to Wayne Moore, Lessee, covering the East one-half of the Southwest Quarter (E/2 SW/4) of Section Fifteen (15), Township Thirty-one (31) North, Range Eleven (11) West, N.M.P.M., San Juan County, New Mexico, containing 80 acres, more or less, said lease being recorded in Book 135, Page 88 of the records of San Juan County, New Mexico.

NM 378

NM 1080

Lease dated September 1, 1948, executed by Saul A. Yager, et ux, as Lessors, to Wayne Moore, Lessee, covering the Southwest Quarter of the Southwest Quarter (SW/4 SW/4) of Section Thirty-one (31) in Township Thirty-one (31) North, Range Eleven (11) West, N.M.P.M., San Juan County, New Mexico, containing 40 acres, more or less, said lease being recorded in Book 135, Page 83 of the records of San Juan County, New Mexico.

NM 379

NM 1083

Lease dated September 1, 1948, executed by Saul A. Yager, et ux, as Lessors, to Wayne Moore, Lessee, covering the Northwest Quarter of the Northwest Quarter (NW/4 NW/4) of Section Six (6), Township Thirty (30) North, Range Eleven (11) West, N.M.P.M., San Juan County, New Mexico, containing 40 acres, more or less, said lease being recorded in Book 135, Page 84 of the records of San Juan County, New Mexico.

NM 380

NM 1082

Lease dated September 1, 1948, executed by Saul A. Yager, et ux, as Lessors, to Wayne Moore, Lessee, covering the Southeast Quarter of the Southeast

Quarter (SE/4 SE/4) of Section Eight (8), Township Thirty-one (31) North, Range Ten (10) West, N.M.P.M., San Juan County, New Mexico, containing 40 acres, more or less, said lease being recorded in Book 153, Page 441 of the records of San Juan County, New Mexico.

NM 381

Lease dated May 4, 1950, executed May 5, 1950 by Geo. F. Bruington, et ux, as Lessors, to H. F. Pettigrew, Lessee, in so far as said lease covers all that part of the Northeast Quarter of the Northeast Quarter (NE/4 NE/4) of Section Thirty-five (35) situated, lying and being East of the right of way of the Denver & Rio Grande Railroad Company and all that part of the Northwest Quarter of the Southwest Quarter (NW/4 SW/4) of Section Twenty-five (25) lying and being East of the Aztec Ditch, all in Township Thirty-one (31) North, Range Eleven (11) West, N.M.P.M. and Lot Three (3), or the Northwest Quarter of the Southwest Quarter (NW/4 SW/4) of Section Nineteen (19), Township Thirty-one (31) North, Range Ten (10) West, N.M.P.M., all in San Juan County, New Mexico, purported to contain approximately 110.80 acres, said lease being recorded in Book 146, Page 320 of the records of San Juan County, New Mexico.

NM 382

Lease dated December 20, 1949, executed by J. J. Armstrong, et ux, as Lessors, to H. F. Pettigrew, Lessee, covering three tracts of land in Section Seven (7), Township Thirty-one (31) North, Range Ten (10) West, N.M.P.M., San Juan County, New Mexico, containing 25 acres, more or less, all as more particularly described in said lease and the record thereof, said lease being recorded in Book 140, Page 15 of the Records of said county.

NM 383

Lease dated December 20, 1949, executed by Carl G. Calloway, a single person, and Zella Calloway, a single person, as Lessors, to H. F. Pettigrew, Lessee, in so far as said lease covers all of that part of the Northwest Quarter of the Northeast Quarter of the Northeast Quarter (NW/4 NE/4 NE/4) of Section Thirty-five (35), Township Thirty-one (31) North, Range Eleven (11) West, N.M.P.M., San Juan County, New Mexico, lying and being West of the Denver & Rio Grande Western Railroad Company right-of-way, containing 4 acres, more or less, said lease being recorded in Book 140, Page 336 of the records of San Juan County, New Mexico.

IV.

The following leases are subject to the following interest:

An overriding royalty of one-fifth (1/5) of seven-eighths (7/8) of the proceeds from the sale of all oil, gas and other hydrocarbon substances produced, saved and marketed, as granted to M. J. Florance, et ux, and described in that certain assignment from Blanco Gas Company, dated October 10, 1950.

NM 420

Lease dated October 20, 1947, executed by Carl S. Sexton, et ux, as Lessors, to M. J. Florance, Lessee, covering the Northwest Quarter of the Northwest Quarter (NW/4 NW/4) of Section Twenty-seven (27) and the Northeast Quarter of the Northwest Quarter (NE/4 NW/4) and the North one-half of the Northeast Quarter (N/2 NE/4) in Section

549-L

Twenty-eight (28), Township Thirty-one (31) North, Range Nine (9) West, N.M.P.M., San Juan County, New Mexico, containing 160 acres, more or less, said lease being recorded in Book 130, Page 43 of the records of San Juan County, New Mexico.

NM 421

Lease dated August 16, 1947, executed by Ricardo Jaquez, et ux, as Lessors, to C. H. Nye, Lessee, only in so far as it covers Lot Two (2) or the Southwest Quarter of the Northwest Quarter (SW/4 NW/4), Lot Three (3) or the Northwest Quarter of the Southwest Quarter (NW/4 SW/4), the Southeast Quarter of the Northwest Quarter (SE/4 NW/4), the Northeast Quarter of the Southwest Quarter (NE/4 SW/4) and the Southwest Quarter of the Northeast Quarter (SW/4 NE/4), all in Section Thirty (30), Township Thirty (30) North, Range Eight (8) West, N.M.P.M., San Juan County, New Mexico, containing 143 acres, more or less, said lease being recorded in Book 130, Page 2 of the records of San Juan County, New Mexico.

NM 422

Lease dated October 20, 1947, executed by Felipe Jaquez, et ux, as Lessors, to M. J. Florance, Lessee, covering the West one-half of the Southwest Quarter (W/2 SW/4) of Section Twenty-one (21), the Northwest Quarter of the Northwest Quarter (NW/4 NW/4) of Section Twenty-eight (28), the North one-half of the North one-half (N/2 N/2) of Section Twenty-nine (29) and the Northeast Quarter of the Northeast Quarter (NE/4 NE/4) of Section Thirty (30), all in Township Thirty-one (31) North, Range Nine (9) West, N.M.P.M., San Juan County, New Mexico, covering 320 acres, more or less, said lease being recorded in Book 130, Page 44 of the records of San Juan County, New Mexico.

NM 423

Lease dated August 18, 1947, executed by Theodoro Archuleta, et ux, as Lessors, to C. H. Nye, Lessee, covering approximately 127.4 acres in the Southeast Quarter of the Southwest Quarter (SE/4 SW/4), the West one-half of the Southeast Quarter (W/2 SE/4) and the Northeast Quarter of the Southeast Quarter (NE/4 SE/4), all in Section Nineteen (19), Township Thirty (30) North, Range Eight (8) West, N.M.P.M., San Juan County, New Mexico, all as more specifically described in said lease, said lease being recorded in Book 130, Page 3 of the records of San Juan County, New Mexico.

NM 424

Lease dated September 8, 1947, executed by Ezell Taylor, et al, as Lessors, to M. J. Florance, Lessee, covering the Southeast Quarter of the Southeast Quarter (SE/4 SE/4) of Section Nine (9), the Southwest Quarter of the Southwest Quarter (SW/4 SW/4), all that part of the North one-half of the Southeast Quarter (N/2 SE/4) and the East one-half of the Southwest Quarter (E/2 SW/4) of Section Ten (10) lying and being on the North and West side of the San Juan River, and all that part of the North one-half of the Northwest Quarter (N/2 NW/4) of Section Fifteen (15) lying and being on the North and West side of the San Juan River, all in Township Thirty (30) North, Range Eight (8) West, N.M.P.M., San Juan County, New Mexico, containing 200 acres, more or less, said lease being recorded in Book 130, Page 42 of the records of San Juan County, New Mexico.

NM 425

Lease dated September 15, 1947, executed by Antonio Martinez, et al, as Lessors, to C. H. Nye, Lessee, covering the Southwest Quarter of the Southwest Quarter (SW/4 SW/4) of Section Twelve (12) and all that part of the Northwest Quarter of the Northwest Quarter (NW/4 NW/4) of Section Thirteen (13) lying, being and situated west of the Moline Arroya, all in Township Thirty (30) North, Range Eight (8) West, containing 60 acres, more or less, said lease being recorded in Book 130, Page 41 of the records of San Juan County, New Mexico.

V.

The following lease is subject to an overriding royalty of fifteen per cent (15%) of all gas and twenty per cent (20%) of all oil, subject to suspension and conversion to a working interest in certain instances as reserved by John Byerly, et ux, and more fully described in that certain assignment to Delhi Oil Corporation, dated September 20, 1950, recorded in Book 153, Page 94 of the records of San Juan County, New Mexico.

NM 367

Lease dated November 4, 1947, executed by O. J. Carson, et ux, as Lessors, to John Byerly, Lessee, covering the Southeast Quarter (SE/4) of Section Twenty-eight (28), Township Twenty-six (26) North, Range Eleven (11) West, N.M.P.M., San Juan County, New Mexico, containing 160 acres, more or less, said lease being recorded in Book 130, Page 50 of the records of San Juan County, New Mexico.

All of the foregoing leases are subject to the usual lessor's royalty of one-eighth (1/8) as more fully described in each said lease.

STATE OF NEW MEXICO } ss.
County of San Juan
I hereby ... that this instrument was ... filed for record on this 22nd day of December 1952 ... at 3:10 o'clock P. M. and duly recorded in book ... page 291 ... of the Records of said County.
Witness my hand and seal of office
Virginia Mitchell
Ex-Officio Clerk and Ex-Officio Recorder.
By ... Deputy

Ord 2

R-706-B

ASSIGNMENT OF OIL AND GAS LEASES

PRIVATELY OWNED LANDS

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned DELHI OIL CORPORATION, a Delaware corporation, whose address is Corrigan Tower, Dallas, Texas, (hereinafter called "Assignor"), for and in consideration of the sum of Ten Dollars ($10.00), and other good and valuable consideration, the full receipt and sufficiency of which is hereby acknowledged, does hereby sell, assign, transfer, set over and convey unto EL PASO NATURAL GAS COMPANY, a Delaware corporation, whose address is Bassett Tower, El Paso, Texas, (hereinafter called "Assignee"), its successors and assigns, all right, title and interest of Assignor in and to those certain oil and gas mining leases described in Exhibit "A" attached hereto and made a part hereof for all purposes;

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns forever, subject, however, to the following:

1. In said leases, assignments thereof and other instruments and documents pertaining thereto there are excepted and reserved to or assigned for the benefit of the various lessors, assignors and others certain royalties, overriding royalties and other rights and interests in, to and connected with oil, gas and other minerals produced from and under said leases, reference being here made to said leases, assignments, instruments and documents for a more particular description of the terms thereof. This Assignment is made expressly subject to all such royalties, overriding royalties and other rights and interests so excepted, reserved or assigned, as set forth in Exhibit "A".

2. Assignor hereby excepts, reserves and retains unto itself, its successors and assigns the following:

A. An overriding royalty on Assignor's interest in all gas produced and saved from the said leases and the lands included in same as follows:

291-A

(1) 5½¢ per mcf (1,000 cubic feet) on all such gas produced and saved during the first 3-1/3 years after the date hereof.

(2) 6½¢ per mcf on all such gas produced and saved during the next 3-1/3 years thereafter.

(3) 7½¢ per mcf on all such gas produced and saved during the next 3-1/3 years thereafter.

(4) Not less than 8¢ per mcf on all such gas produced and saved during the next one year thereafter.

(5) Not less than 9¢ per mcf on all such gas produced and saved during the next one year thereafter.

(6) Not less than 10¢ per mcf on all such gas produced and saved thereafter.

B. The volumes of gas, upon which the overriding royalties described above shall be paid, shall be computed upon a pressure base of 15.025 pounds per square inch absolute and at a temperature base of 60 degrees Fahrenheit, and shall be otherwise computed in accordance with the specifications prescribed in Gas Measurement Committee Report No. 2, dated May 6, 1935, of the Natural Gas Department of the American Gas Association, including the appendix thereto and subsequent amendments and appendices from time to time made. Proper corrections shall be made for deviation from Boyle's Law, the specific gravity and the flowing temperatures of the gas produced hereunder. Proper deduction shall be made from such volumes for gas used in development and operation of the said lands and for loss due to shrinkage by reason of the extraction of hydrocarbons from such gas.

C. The overriding royalties specified in (4), (5) and (6) of A above shall in no event be less than the respective amounts stated therein but shall be arrived at as follows: approximately ninety (90) days prior to the end of the first ten (10) years following the date hereof the parties shall attempt to agree upon the amounts of such overriding royalties

for the next five-year period. If the parties agree upon such overriding royalties, then such amounts shall be the overriding royalties to be received by Assignor hereunder for such period. If the parties cannot agree upon such amounts, then such amounts shall be determined by a board of arbitrators to be appointed as provided in the agreement between the parties dated January 18, 1952, hereinafter mentioned. The board of arbitrators, in determining the amounts of such overriding royalties, shall base their decision on the then value of such gas at the well head, considering only quality and pressure of gas, aggregate quantity of delivery and the then current field prices (of then newly negotiated contracts) of gas in other fields connected to or in the area of any of Assignee's pipe lines or gathering systems or of any pipe line system to which any of Assignee's pipe lines or gathering systems are then connected and such other directly related pertinent factors which said board shall deem proper to consider in order to fairly determine the amounts of such overriding royalties. The overriding royalties reserved by Assignor in A above shall be determined for each five-year period after the fifteenth year following the date hereof in like manner to that provided above for the five-year period next following the tenth year after the date hereof, but in no event shall the amount of such overriding royalties be less than 10¢ per mcf.

D. An overriding royalty in the amount of thirty-three and one-third per cent (33-1/3%) of Assignor's interest in all liquid hydrocarbons which may be recovered or extracted from gas produced from the said lands and leases. At Assignor's option, Assignee shall deliver to Assignor the fair market value thereof in cash. At all times prior to the completion of construction and commencement of operation by Assignee of a plant for extraction of such liquids, Assignee shall pay to Assignor in cash the estimated value of thirty-three and one-third per cent (33-1/3%) of all liquids produced with or contained in gas

291-6

produced from the said land and applicable to Assignor's interest therein, regardless of whether such liquids are extracted from the gas.

E. All oil in, to and under the said lands and leases, together with the right of ingress and egress to and from the leased premises for the purpose of exploring for, producing and removing same and constructing and operating all facilities necessary or appropriate in connection therewith.

F. All gas and other hydrocarbon substances, in, to and under the said lands and leases in all formations below the Mesaverde formation, together with the right of ingress and egress to and from the leased premises for the purpose of exploring for, producing and removing same and constructing and operating all facilities necessary or appropriate in connection therewith.

3. The said overriding royalties reserved herein are more fully described in a certain Oil and Gas Lease Sale Agreement between Assignor and Assignee dated January 18, 1952, and recorded in the official records of the County Clerk of San Juan County, New Mexico, in Volume _____ at Page _____, reference to which Agreement and record thereof is here made for all purposes, and the terms and provisions of which Agreement are all incorporated herein by reference the same as though set forth verbatim herein.

4. For the same consideration Assignor also grants and assigns to Assignee all its right, title and interest in and to any and all gas wells which may be situated on said lands and any and all personal property now situated thereon or used or obtained in connection therewith.

5. For the same consideration Assignor covenants with and warrants to Assignee, its successors and assigns, that it will warrant and forever defend unto Assignee, its successors and assigns, the title to the entire interest of

Assignor in and to the said lands and leases and personal property purported to be assigned herein, against all persons whomsoever who may lawfully have or claim an interest therein by, through or under Assignor.

6. Assignee, by its acceptance of this Assignment, warrants and agrees that it will comply with all terms provisions and conditions of the Agreement dated January 18, 1952, mentioned hereinabove, and, subject to the terms thereof, that it will comply with all obligations of the leases hereby assigned and that it hereby assumes and agrees to pay, as and when the same shall become due and payable, all outstanding royalty, overriding royalty, carried and other interests under the leases hereby assigned applicable to all gas and other hydrocarbons produced and saved by Assignee.

EXECUTED at Dallas, Texas, on this 17 day of October, 1952.

DELHI OIL CORPORATION

By _____
Vice President

ATTEST:

_____
Asst. Secretary

* * * * * * * * *

El Paso Natural Gas Company, Assignee herein, hereby accepts this Assignment and agrees to be bound by the terms and provisions thereof, all as of December 16, 1952.

EL PASO NATURAL GAS COMPANY

By _____
Vice President

ATTEST:

_____
Asst. Secretary

291

THE STATE OF TEXAS)
) ss
COUNTY OF DALLAS)

On this 17 day of October, 1952, before me appeared P. T. Lee, to me personally known, who, being by me duly sworn, did say that he is the Vice President of DELHI OIL CORPORATION, a Delaware corporation, and that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors and said P. T. Lee acknowledged said instrument to be the free act and deed of said corporation.

R. L. Caldwell
Notary Public in and for
Dallas County, Texas.

My commission expires:

R. L. CALDWELL
Notary Public Dallas County, Texas
My Commission Expires June 1, 1953

EXHIBIT "A"

Attached to and made a part of the foregoing "Assignment of Oil and Gas Leases - Privately Owned Lands" from Delhi Oil Corporation to El Paso Natural Gas Company dated July , 1952.

The leases and other instruments hereinafter described in this exhibit, and the records thereof where described, are hereby referred to for all purposes in connection with the assignment to which this exhibit is attached.

I.

The following leases are subject to the following interests:

A. An overriding royalty of two and one-half per cent (2½%) of all oil, gas or other minerals as reserved by Wayne Moore, et ux, and described in that certain assignment of several leases to the Mudge Oil Company dated February 19, 1948, recorded in Book 126, Page 568, of the Records of San Juan County, New Mexico, said overriding royalty interests being hereby extended, ratified and confirmed as to the following described leases by Assignor herein, Delhi Oil Corporation.

B. An overriding royalty of fifteen per cent (15%) of eight-eighths (8/8) of all gas and twenty per cent (20%) of eight-eighths (8/8) of all oil only insofar as such overriding royalty interest covers or affects all formations down to and including the Mesaverde Formation, subject to suspension and conversion to a working interest during any month when the production for a particular lease shall average less than five hundred thousand (500,000) of gas per well per day or fifteen (15) barrels of oil per well per day from all formations down to and including the Mesaverde Formation now owned by Frank A. Schultz, all as more fully described in that certain assignment from San Juan Oil Company to Frank A. Schultz dated December 27, 1951, recorded in Book 172, Page 252, of the Records of San Juan County, New Mexico, said overriding royalty interests being hereby extended, ratified and confirmed as to the following described leases by Assignor herein, Delhi Oil Corporation.

C. An overriding royalty of fifteen per cent (15%) of eight-eighths (8/8) of all gas and twenty per cent (20%) of eight-eighths (8/8) of all oil only insofar as such overriding royalty interest covers or affects all formations below the Mesaverde Formation, subject to suspension and conversion to a working interest during any month when the production from a particular lease shall average less than five hundred thousand (500,000) cf gas per well per day or fifteen (15) barrels of oil per well per day from all formations below the Mesaverde Formation now owned by General American Oil Company of Texas, all as more fully described in that certain assignment from San Juan Oil Company to Frank A. Schultz dated December 27, 1951, recorded in Book 172, Page 252, of the Records of San Juan County, New Mexico, said overriding royalty interests being hereby extended, ratified and confirmed as to the following described leases by Assignor herein, Delhi Oil Corporation.

NM-4486
(NMO-184)

Lease dated January 22, 1952 and executed by Pearl Kercheval, as Lessor, to Delhi Oil Corporation, as Lessee, covering a one-eighth (1/8) undivided interest in the South Half of the Southwest Quarter (S/2 SW/4), in the South Half of the Southeast Quarter (S/2 SE/4), of Section Twenty-five (25), Township Thirty-one (31) North, Range Eleven (11) West, N.M.P.M., (being twenty (20) acres, in San Juan County, New Mexico, said lease being recorded in Book 179, Page 178 of the Records of San Juan County, New Mexico.

NM-448b
(NMO-185)

Lease dated January 22, 1952 and executed by Richard Shiershke and wife, Xemina Shiershke, as Lessors, to Delhi Oil Corporation, as Lessee, covering a one-fourth (1/4) undivided interest in the South Half of the Southwest Quarter (S/2 SW/4), the South Half of the Southeast Quarter (S/2 SE/4) of Section Twenty-five (25), Township Thirty-one (31) North, Range Eleven (11) West, N.M.P.M., (being forty (40) acres), in San Juan County, New Mexico, said lease being recorded in Book 179, Page 199 of the Records of San Juan County, New Mexico.

NM-448c
(NMO-186)

Lease dated January 22, 1952 and executed by N. Spatter and wife, Frances Spatter, as Lessors, to Delhi Oil Corporation, as Lessee, covering a one-eighth (1/8) undivided interest in the South Half of the Southwest Quarter (S/2 SW/4), the South Half of the Southeast Quarter (S/2 SE/4) of Section Twenty-five (25), Township Thirty-one (31) North, Range Eleven (11) West, N.M.P.M., (being twenty (20) acres), in San Juan County, New Mexico, said lease being recorded in Book 179, Page 197 of the Records of San Juan County, New Mexico.

NM-448d
(NMO-187)

Lease dated January 22, 1952 and executed by Jesse C. Zachary, Sr. and wife, Laura Zachary, as Lessors, to Delhi Oil Corporation, as Lessee, covering a one-fourth (1/4) undivided interest in the South Half of the Southwest Quarter (S/2 SW/4), the South Half of the Southeast Quarter (S/2 SE/4) of Section Twenty-five (25), Township Thirty-one (31) North, Range Eleven (11) West, N.M.P.M., (being forty (40) acres), in San Juan County, New Mexico, said lease being recorded in Book 179, page 196 of the Records of San Juan County, New Mexico.

NM-448e
(NMO-188)

Lease dated April 22, 1952 and executed by Henry A. Brawn, as Lessor, to Delhi Oil Corporation, as Lessee, covering a one-fourth (1/4) undivided interest in the South Half of the Southwest Quarter (S/2 SW/4), the South Half of the Southeast Quarter (S/2 SE/4) of Section Twenty-five (25), Township Thirty-one (31) North, Range Eleven (11) West, N.M.P.M., (being forty (40) acres), in San Juan County, New Mexico, said lease being recorded in Book 180, Page 69 of the Records of San Juan County, New Mexico.

NM-449
(NMO-189)

Lease dated January 12, 1952 and executed by T. F. Thurston and wife, Teresa H. Thurston, as Lessors, to Delhi Oil Corporation, as Lessee, covering the East Half of the Southeast quarter (E/2 SE/4) of Section Thirty (30) and the East Half of the Northeast Quarter (E/2 NE/4) of Section Thirty-one (31), all in Township Thirty-one (31) North of Range Eleven (11) West, N.M.P.M. and containing one hundred sixty (160) acres, more or less, in San Juan County, New Mexico, said lease being recorded in Book 172, Page 551 of the Records of San Juan County, New Mexico.

NM-450
(NMO-190)

Lease dated January 12, 1952 and executed by Ada L. Fritz and husband, J. C. Fritz, as Lessors, to Delhi Oil Corporation, as Lessee, covering the South Half of the Southwest Quarter (S/2 SW/4) and the Southwest Quarter of the Southeast Quarter (SW/4 SE/4) of Section Thirty (30) and the Northwest Quarter of the Northeast Quarter (NW/4 NE/4) of Section Thirty-one (31), all in Township Thirty-one (31) North of Range Eleven (11) West, N.M.P.M. and containing one hundred sixty (160) acres, more or less, in San Juan County, New Mexico, said lease being recorded in Book 172, Page 549 of the Records of San Juan County, New Mexico.

NM-451
(NMO-191)

Lease dated April 7, 1952 and executed by Sarah C. Flaningam to Delhi Oil Corporation, as Lessee, covering the

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291-B

291-B

Northwest Quarter (NW/4) of Section Thirty-two (32), Township Thirty-one (31) North, Range Eleven (11) West, N.M.P.M. and containing one hundred sixty (160) acres, more or less, in San Juan County, New Mexico, said lease being recorded in Book 179, Page 200 of the Records of San Juan County, New Mexico.

NM-289
(NMO-130)

nm 1091

Lease dated September 23, 1952 and executed by R. L. Sprott et ux, to Delhi Oil Corporation, as lessee, covering the West Half of the Southwest Quarter of the Northeast Quarter (W/2 SW/4 NE/4) of Section 8, Township 31 N, Range 10 West, N. M. P. M. and containing Twenty (20) acres, more or less, in San Juan County, New Mexico, said lease being recorded in Book _____, Page _____ of the Records of San Juan County, New Mexico.

II.

The following lease is not subject to any prior overriding royalty interest.

NM-447
(NMO-183)

1206

Lease dated July 3, 1950 and executed by William H. Chrisman and wife, Carlotta C. Chrisman, as Lessors, and N. Spatter, as Lessee, covering Lots Five (5), Six (6), and Seven (7); The Northeast Quarter of the Southwest Quarter (NE/4 SW/4); and the Southeast Quarter of the Northwest Quarter (SE/4 NW/4) of Section Six (6); and Lot One (1) of Section Seven (7); All in Township Thirty (30) North of Range Eleven (11) West, N.M.P.M.; The Southeast Quarter of the Northeast Quarter (SE/4 NE/4), and the Northeast Quarter of the Southeast Quarter (NE/4 SE/4) of Section One (1); The Southwest Quarter (SW/4) of Section Eleven (11); and The Southwest Quarter of the Northwest Quarter (SW/4 NW/4) of Section Fourteen (14); All in Township Thirty (30) North of Range Twelve (12) West, N.M.P.M., containing 528.35 acres, more or less, in San Juan County, New Mexico, only insofar as said lease covers Lots Five (5), Six (6) and Seven (7); The Northeast Quarter of the Southwest Quarter (NE/4 SW/4); and The Southeast Quarter of the Northwest Quarter (SE/4 NW/4) of Section Six (6) in Township Thirty (30) North of Range Eleven (11) West, N.M.P.M., containing 200 acres, more or less, in San Juan County, New Mexico, said lease being recorded in Book 150, Page 174 of the Records of San Juan County, New Mexico.

III.

The following leases of which Assignor owns an undivided three-fourths (3/4) of the seven-eighths (7/8) working interest are subject to the following interests:

A. An overriding royalty of one-fifth (1/5) of seven-eights (7/8) of the proceeds from the sale of all oil, gas and other hydrocarbon substances produced, saved and marketed as granted to M. J. Florance, et ux, and described in that certain assignment from Blanco Gas Company dated October 10, 1950, said overriding royalty interests reverting to a working interest bearing its proportionate part of operating expenses whenever production from said lease shall in any one month average less than fifteen barrels (15 bls.) of oil per day or 500,000 cf gas per day, said overriding royalty interest being hereby extended, ratified and confirmed as to the following described leases by Assignor herein, Delhi Oil Corporation.

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NM-412
(NMO-165)

NM 1713

Lease dated January 4, 1952 and executed by Pablo M. Gonzales and wife, Lugarda Gonzales, as Lessors, to Delhi Oil Corporation, as Lessee, insofar and only insofar as said lease covers the Southeast Quarter of the Northeast Quarter (SE/4 NE/4) in Section Thirty-Five (35), Township Thirty (30), North, Range Nine (9) West, said lease containing one hundred sixty (160) acres in all, more or less, in San Juan County, New Mexico and being recorded in Book 172, Page 301 of the Records of San Juan County, New Mexico only insofar as said lease covers an undivided three-fourths (3/4) of the seven-eighths (7/8) working interest.

STATE OF NEW MEXICO, County of San Juan SS.
I hereby certify this instrument was filed for record
on Oct 21, 1952 at 1:05 o'clock P. M.,
and duly recorded in book 287 page 90 of the
Records of said county.
Probate Clerk and ex-officio Recorder

M1130

R-706-C

ASSIGNMENT OF OPERATING AGREEMENT
UNITED STATES OIL AND GAS LEASE

WHEREAS, on February 18, 1952, DELHI OIL CORPORATION made and entered into a certain Operating Agreement with C. C. PETERS pertaining to that certain United States Oil and Gas Lease bearing serial number Santa Fe 070703 in so far as the same covers the following described land located in San Juan County, New Mexico, to-wit:

New Mexico Principal Meridian, Range 11 West, N.M.P.M.

Section 5: Lot 4, SW/4 NW/4

Section 6: Lots 1, 2, 3, S/2 NE/4, E/2 SE/4, SW/4 SE/4, SE/4 SW/4

Section 7: NE/4 NW/4

and containing 480.76 acres, more or less;

and

WHEREAS, the said Delhi Oil Corporation is the present owner and holder of all the operating rights granted to it under the said Operating Agreement;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the full receipt and sufficiency of which is hereby acknowledged, the said Delhi Oil Corporation (hereinafter called "Assignor") does hereby assign and transfer unto EL PASO NATURAL GAS COMPANY (hereinafter called "Assignee"), a Delaware corporation, whose address is Bassett Tower, El Paso, Texas, all its right, title and interest in, to and under (1) the said Operating Agreement, (2) any and all gas wells which may be situated on said land, and (3) any and all personal property now situated thereon or used or obtained in connection therewith, subject, however, to the terms, provisions and conditions hereof:

1. In said lease, assignments thereof and other instruments and documents pertaining thereto there are excepted

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and reserved to or assigned for the benefit of the various assignors and others certain royalties, overriding royalties and other rights and interests in, to and connected with oil, gas and other minerals produced from and under said lease, reference being here made to said lease, assignments, instruments and documents for a more particular description of the terms thereof. This Assignment is made expressly subject to all such royalties, overriding royalties and other rights and interests so excepted, reserved or assigned, as hereinafter set forth.

2. Assignor hereby excepts, reserves and retains unto itself, its successors and assigns the following:

A. An overriding royalty on Assignor's interest in all gas produced and saved from the said lease and the above described land as follows:

(1) 5½¢ per mcf (1,000 cubic feet) on all such gas produced and saved during the first 3-1/3 years after the date hereof.

(2) 6½¢ per mcf on all such gas produced and saved during the next 3-1/3 years thereafter.

(3) 7½¢ per mcf on all such gas produced and saved during the next 3-1/3 years thereafter.

(4) Not less than 8¢ per mcf on all such gas produced and saved during the next one year thereafter.

(5) Not less than 9¢ per mcf on all such gas produced and saved during the next one year thereafter.

(6) Not less than 10¢ per mcf on all such gas produced and saved thereafter.

B. The volumes of gas, upon which the overriding royalties described above shall be paid, shall be computed upon a pressure base of 15.025 pounds per square inch absolute and at a temperature base of 60 degrees Fahrenheit, and shall be otherwise computed in accordance with the specifications prescribed in Gas Measurement Committee Report No. 2, dated May 6, 1935, of the Natural Gas Department of the American Gas Association, including the appendix thereto and subsequent amendments and appendices from time to time made. Proper corrections shall

90-B

be made for deviation from Boyle's Law, the specific gravity and the flowing temperatures of the gas produced hereunder. Proper deduction shall be made from such volumes for gas used in development and operation of the said lands and for loss due to shrinkage by reason of extraction of hydrocarbons from such gas.

C. The overriding royalties specified in (4), (5) and (6) of A above shall in no event be less than the respective amounts stated therein but shall be arrived at as follows: approximately ninety (90) days prior to the end of the first ten (10) years following the date hereof the parties shall attempt to agree upon the amounts of such overriding royalties for the next five-year period. If the parties agree upon such overriding royalties, then such amounts shall be the overriding royalties to be received by Assignor hereunder for such period. If the parties cannot agree upon such amounts, then such amounts shall be determined by a board of arbitrators to be appointed as provided in the agreement between the parties dated January 18, 1952, hereinafter mentioned. The board of arbitrators, in determining the amounts of such overriding royalties, shall base their decision on the then value of such gas at the well head, considering only quality and pressure of gas, aggregate quantity of delivery and the then current field prices (of then newly negotiated contracts) of gas in other fields connected to or in the area of any of Assignee's pipe lines or gathering systems or of any pipe line system to which any of Assignee's pipe lines or gathering systems are then connected and such other directly related pertinent factors which said board shall deem proper to consider in order to fairly determine the amounts of such overriding royalties. The overriding royalties reserved by Assignor in A above shall be determined for each five-year period after the fifteenth year following the date hereof in like manner to that provided above for the five-year period next following the tenth year after the date hereof, but in no event shall the amount of such overriding royalties be less than 10¢ per mcf.

D. An overriding royalty in the amount of thirty-three and one-third per cent (33-1/3%) of Assignor's interest in all liquid hydrocarbons which may be recovered or extracted from gas produced from the said land. At Assignor's option, Assignee shall deliver to Assignor such overriding royalty in kind or shall pay to Assignor the fair market value thereof in cash. At all times prior to the completion of construction and commencement of operation by Assignee of a plant for extraction of such liquids, Assignee shall pay to Assignor in cash the estimated value of thirty-three and one-third per cent (33-1/3%) of all liquids produced with or contained in gas produced from the said land and applicable to Assignor's interest therein, regardless of whether such liquids are extracted from the gas.

E. All oil in, to and under the said land, together with the right of ingress and egress to and from the leased premises for the purpose of exploring for, producing and removing same and constructing and operating all facilities necessary or appropriate in connection therewith.

F. All gas and other hydrocarbon substances, in, to and under the said land in all formations below the Mesaverde formation, together with the right of ingress and egress to and from the leased premises for the purpose of exploring for, producing and removing same and constructing and operating all facilities necessary or appropriate in connection therewith.

3. The said overriding royalties reserved herein shall be suspended and Assignor shall have and retain in lieu thereof a working interest in the said land and lease during all periods when the average production per well per day therefrom, averaged on a monthly basis, is (a) as to oil, fifteen (15) barrels or less, and (b) as to gas, five hundred thousand (500,000) cubic feet or less. The limitations of this paragraph shall apply separately to any zone or portion of the said lease which may be segregated for computing government royalty.

90-D

4. The said overriding royalties reserved herein are more fully described in a certain Oil and Gas Lease Sale Agreement between Assignor and Assignee dated January 18, 1952, and recorded in the official records of the County Clerk of San Juan County, New Mexico, in Volume _____ at Page _____, reference to which Agreement and record thereof is here made for all purposes, and the terms and provisions of which Agreement are all incorporated herein by reference the same as though set forth verbatim herein.

5. Assignee, by its acceptance of this Assignment, warrants and agrees that it will comply with all terms, provisions and conditions of the Agreement dated January 18, 1952, mentioned hereinabove, and, subject to the terms thereof, that it will comply with all obligations of the Operator contained in the Operating Agreement hereby assigned, and that it hereby assumes and agrees to pay, as and when the same shall become due and payable, all outstanding royalty, overriding royalty, carried and other interests under the Operating Agreement hereby assigned applicable to all gas and other hydrocarbons produced and saved by Assignee. Assignee further agrees that it will not discriminate against any employee or applicant for employment because of race, creed, color or national origin, and that it will require that an identical provision be incorporated in all subcontracts.

6. This Assignment is subject also to the following interests previously reserved and retained in the said land and lease covering same:

An overriding royalty of five per cent (5%) of all oil and gas produced, reserved by Hazel L. Gentle and Glenn R. Gentle in their Assignment to C. C. Peters dated August 4, 1951.

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90-E

7. Assignor covenants with and warrants to Assignee, its successors and assigns, that it will warrant and forever defend unto Assignee, its successors and assigns, the title to the rights hereby assigned and the interest of Assignor in all personal property situated on the land described above and used or obtained in connection therewith, against all persons whomsoever who may lawfully have or claim an interest therein by, through or under Assignor.

EXECUTED at Dallas, Texas, as of the 1st day of March, 1952.

DELHI OIL CORPORATION

By P. T. Bee
Vice President

ATTEST:

A. B. Petree
Secretary

* * * * * * * *

El Paso Natural Gas Company, Assignee herein, hereby accepts this Assignment and agrees to be bound by the terms and provisions thereof, all as of March 1, 1952.

EL PASO NATURAL GAS COMPANY

By C. F. Perkins
Vice President

ATTEST:

A. J. Wantch
Asst. Secretary

* * * * * * * *

STATE OF TEXAS)
)ss.
COUNTY OF DALLAS)

On this 1st day of March, 1952, before me appeared P. T. BEE, to me personally known, who, being by me duly sworn, did say that he is the Vice President of DELHI OIL CORPORATION, a Delaware corporation, and that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors and said P. T. BEE acknowledged said instrument to be the free act and deed of said corporation.

Ellen Davidson
Notary Public in and for
Dallas County, Texas.

My commission expires:

June 1, 1953.