CONTINENTAL OIL COMPANY

PETROLEUM BUILDING
ROSWELL, NEW MEXICO

November 4, 1955

R. L. ADAMS
DIVISION SUPERINTENDENT
OF PRODUCTION
NEW MEXICO DIVISION

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

Attention: Mr. W. B. Macy,
Secretary-Director

Re: NE/4 of Section 10, T-21S,
R-37-E, Lea County, New Mexico,
Aztec Oil & Gas Company's
Dauron No. 2-C well producing
from the Blinebry formation
in the NE/4 NE/4 of said Section

Gentlemen:

Early in 1954, Aztec Oil & Gas Company, as the working interest owner of the NE/4 NE/4 of Section 10, T-21-S, R-37-E, N.M.P.M., Lea County, New Mexico, and Continental Oil Company, as Operator, for itself and for The Atlantic Refining Company, Stanolind Oil & Gas Company, and Standard Oil Company of Texas, as Non-operators, as the working interest owners of the remaining acreage in the NE/4 of said Section, were negotiating for a communitization of said quarter section for Blinebry production, utilizing Aztec's previously completed Dauron #2-C well therefor. At Aztec's request, Continental Oil Company wrote you under date of June 24, 1954, notifying you of such negotiations and requesting that a 160-acre allowable be assigned such well.

After a final effort by Continental Oil Company to consummate such an agreement with Aztec, it appears that no communitization will be effected. Consequently, to the extent that you acted on the basis of such proposed communitization in granting Aztec's said Dauron #2-C well a 160-acre allowable for production from the Blinebry, it seems no reasonable basis therefor presently exists, and that said well is now in the position of having overproduced, because there never has, in fact, been more than 40 acres committed to it.

It is, therefore, respectfully requested that said

well be given an allowable based on 40 acres and that the same be made retroactive to January 1, 1954.

It is regrettable that the anticipation of effecting a 160-acre unit was so prolonged, to end thus in failure, and to the extent that the delay was in any part Continental Oil Company's, we do regret it.

Yours very truly,

R. L. Adams

RLA-SM

AZTEC OIL & GAS COMPANY
920 MERCANTILE SECURITIES BUILDING
DALLAS 1, TEXAS

QUILMAN B. DAVIS
SECRETARY AND GENERAL ATTORNEY

November 7, 1955

AIR MAIL

Mr. W. B. Macey, Secretary-Director
Oil Conservation Commission
State of New Mexico
P. O. 871
Santa Fe, New Mexico

Dear Bill:

There are enclosed for your approval and action the Company's letter requesting that the Aztec-Dauron No. 2-B Blinebry gas well be reduced to a 40-acre allowable and our application, in triplicate, requesting administrative approval of the $NE\frac{1}{4}NE\frac{1}{4}$ of Section 10, Township 21 South, Range 37 East, as a non-standard gas proration unit under the Blinebry gas proration order.

A copy of our letter and application are being sent by registered mail to the offset operators.

With best personal regards, I am

Yours very truly,

Quilman

QBD:NL
Encs.

AZTEC OIL & GAS COMPANY
920 MERCANTILE SECURITIES BUILDING
DALLAS 1, TEXAS

QUILMAN B. DAVIS
SECRETARY AND GENERAL ATTORNEY

November 7, 1955

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

Attention: Mr. W. B. Macey,
Secretary-Director

Re: $NE\frac{1}{4}NE\frac{1}{4}$ of Sec. 10, Twp. 21 S., R. 37 E., Lea County - Aztec Oil & Gas Company's Dauron No. 2-C Blinebry Gas Well

Gentlemen:

We received a copy of Continental Oil Company's letter of November 4, 1955, addressed to the Commission, concerning our Dauron No. 2-C Blinebry gas well. I would like to clarify an inference in the letter that it is impossible to communitize the Blinebry gas rights underlying the $NE\frac{1}{4}$ of Section 10. Aztec Oil & Gas Company is still agreeable to the communitization and pooling of these gas rights in accordance with the understanding and agreement worked out with representatives of Continental Oil Company in February, 1954, but is unwilling to be retraded on the communitization and pooling arrangements approximately one and one-half years later.

I cannot agree with the contention made in Mr. Adams's letter that our well is overproduced, because the 160-acre allowable was assigned by the Commission on the representations of all of the companies having an interest in the $NE\frac{1}{4}$ of Section 10. In fact, you will recall that Aztec had previously filed an application with the Commission asking for a 40-acre unit allowable; and upon being approached by Continental concerning the formation of the unit, the Commission was requested to dismiss our application.

In view of the fact that Aztec Oil & Gas Company acted in good faith in requesting the 160-acre unit gas allowable and produced the Dauron No. 2 Well on this basis, and with the thought that the

communitization would eventually be consummated as agreed upon, we do not believe that there is any basis or justification for reducing the allowable retroactive to January 1, 1954, as requested by Continental.

Yours very truly,

Q. B. Davis

QBD:NL

AZTEC OIL & GAS COMPANY
920 MERCANTILE SECURITIES BLDG.
DALLAS 1, TEXAS

November 7, 1955

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

Attention: Mr. W. B. Macey,
Secretary-Director

Re: $NE\frac{1}{4}NE\frac{1}{4}$ of Section 10, Twp. 21 South, Range 37 East, N.M.P.M., Lea County, N.M. Aztec Oil & Gas Company's Dauron No. 2-B Well Producing from the Blinebry Gas Formation

Gentlemen:

In late February, 1954, Mr. Van Thompson and I, representing Aztec Oil & Gas Company, met in Fort Worth with representatives of Continental Oil Company to work out an equitable means of communitizing Blinebry and Tubb gas rights of the respective companies in the $NE\frac{1}{4}$ of Section 10, and the $SW\frac{1}{4}$ of Section 11, Township 21 South, Range 37 East, N.M.P.M. As a result of this meeting and the agreements reached between representatives of the two companies, our office prepared and submitted to Continental's Fort Worth office on March 9, 1954 communitization agreements and operating agreements covering the pooling of our respective gas rights agreed upon at the meeting referred to above.

Since it appeared that there would be some delay in completing the agreements, which we understood to be due to circulation of the papers for signatures of the partners of Continental Oil Company, our company, on June 18, 1954, requested the Commission to grant a 160-acre gas allowable for the Dauron No. 2-C Well (now referred to as 2-B) retroactive to January 1, 1954, in accordance with and pursuant to Order No. R-372-A. Continental Oil Company, Stanolind Oil and Gas Company, Atlantic Refining Company, and Standard Oil Company of Texas joined in our request for the 160-acre allowable by Continental Oil Company's letter addressed to the Commission on June 24, 1954.

We made several inquiries to Continental as to the status of the agreements, but it was not until on or about September 29 of this year that we were advised that Continental and their partners could

not go through with the pooling and communitization of the lands referred to above as verbally agreed to in February, 1954. We have had two meetings, September 29 and October 17, with representatives of Continental and it now appears that we will be unable to consummate the communitization and pooling of the NE¼ of Section 10 referred to in my letter of June 18, 1954 to the Commission.

It is, therefore, requested that in view of the foregoing the gas allowable for the Aztec-Dauron No. 2-B Well be reduced to a 40-acre unit allowable effective as of November 1, 1955.

Yours very truly,

AZTEC OIL & GAS COMPANY

W. B. Davis

General Attorney

QBD:NL

cc - Continental Oil Company
Stanolind Oil and Gas Company
The Atlantic Refining Company
Standard Oil Company of Texas
Shell Oil Company

AZTEC OIL & GAS COMPANY
920 MERCANTILE SECURITIES BUILDING
DALLAS 1, TEXAS

QUILMAN B. DAVIS
SECRETARY AND GENERAL ATTORNEY

November 9, 1955

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

Attention: Mr. W. B. Macey

Gentlemen:

Reference is made to our November 4, 1955 application to the Commission for administrative approval of a 40-acre non-standard gas proration unit for our Dauron No. 2-B Well.

Under paragraph 1 of our application, we would like to correct the date of dual completion. This well was first completed in the Drinkard formation on January 11, 1951; but the date on which it was dually completed in the Blinebry formation should be February 26, 1953.

Yours very truly,

Quilman B. Davis
NL

QBD:NL

CLASS OF SERVICE
This is a fast message unless its deferred character is indicated by the proper symbol.

WESTERN UNION
TELEGRAM

W. P. MARSHALL, PRESIDENT

1201

SYMBOLS
DL=Day Letter
NL=Night Letter
LT=International Letter Telegram

The filing time shown in the date line on domestic telegrams is STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination

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1955 NOV 10 AM 9 12

W B MACEY, SECRETARY=DIRECTOR=

OIL CONSERVATION COMMISSION SANTA FE NMEX=

PLAN TO BE AT THE NOVEMBER 16 HEARING AND WILL BE GLAD TO STAY OVER FOR A MEETING THURSDAY MORNING AT 9 AM. WILL CONTACT YOU WHEN I ARRIVE TUESDAY. REGARDS=

QUILMAN B DAVIS AZTEC OIL & GAS COMPANY=

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

CLASS OF SERVICE
This is a fast message unless its deferred character is indicated by the proper symbol.

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W B MACEY, SECRETARY DIRECTOR=

NEW MEXICO OIL CONSERVATION COMMISSION SANTA FE NMEX=

RE PROPOSED MEETING WITH CONTINENTAL NOVEMBER 17. WILL GREATLY APPRECIATE YOUR POSTPONING THIS MEETING UNTIL THE OIL AND GAS ASSOCIATION MEETING IN ALBUQUERQUE. REGARDS=

QUILMAN B DAVIS AZTEC OIL & GAS CO=

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

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

December 12, 1955

COPY

Mr. Quilman Davis
Aztec Oil & Gas Company
920 Mercantile Securities Bldg.
Dallas 1, Texas

Dear Sir:

Reference is made to your application of November 4th for an exception to Rule 5 (a) of Order R-610 pertaining to the establishment of a 40 acre non-standard gas proration unit in the Blinebry Gas Pool.

Due to the many complex problems involved in this matter, I feel that it would be advisable for approval of this unit to come from the entire Commission. Therefore, I will set your application for hearing before the Commission at the regular hearing on January 19th.

Very truly yours,

W. B. Macey
Secretary - Director

WBM:brp

BC-Mr. Jason Kellahin
P.O. Box 597
Santa Fe, New Mexico

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

January 24, 1956

COPY

Mr. Harry G. Dippel
Continental Oil Company
1710 Fair Building
Ft. Worth, Texas

Mr. Jason Kellahin
P.O. Box 597
Santa Fe, New Mexico

Mr. Quilman Davis
Astec Oil & Gas Company
920 Mercantile Securities Bldg.
Dallas 1, Texas

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

Re: Case 992

Gentlemen:

Reference is made to the above-captioned case which was heard by this Commission on January 19th.

Due to the complex nature of the case I feel that it would be advisable for both companies involved to submit written briefs on the case. Therefore, I would appreciate it very much if you would furnish us with two copies of your brief by February 15th.

Very truly yours,

W. B. Macey
Secretary - Director

WBM:brp

AZTEC OIL & GAS COMPANY
920 MERCANTILE SECURITIES BUILDING
DALLAS 1, TEXAS

QUILMAN B. DAVIS
SECRETARY AND GENERAL ATTORNEY

February 13, 1956

AIR MAIL

Mr. W. B. Macey
New Mexico Oil Conservation Commission
P. O. Box 871
Santa Fe, New Mexico

Dear Bill:

In accordance with your request, I am enclosing an original and three copies of Aztec Oil & Gas Company's brief relating to its Case 992 heard by the Commission on January 19.

Should you need any additional information or data concerning this matter, please let me know.

With best personal regards, I am

Yours very truly,

Q. B. Davis

QBD:NL
Encs.

BRIEF

CASE 992 -- APPLICATION OF AZTEC OIL & GAS COMPANY FOR AN ORDER APPROVING A NON-STANDARD GAS PRORATION UNIT IN EXCEPTION TO RULE 5(a) OF ORDER R-610 OF THE SPECIAL RULES AND REGULATIONS FOR THE BLINEBRY GAS POOL, LEA COUNTY, NEW MEXICO

I.

Applicant in the above-styled cause seeks an order establishing a forty (40) acre non-standard gas proration unit consisting of the $NE\frac{1}{4}NE\frac{1}{4}$ of Section 10, Township 21 South, Range 37 East, N.M.P.M., Lea County, New Mexico, said acreage to be assigned and dedicated to Applicant's Dauron Well No. 2-B located 660 feet from the north line and 525 feet from the east line of Section 10.

A. FACTS

1. Applicant's Dauron No. 2 Well was initally completed in the Drinkard oil formation on January 11, 1951 and, pursuant to Commission authorization, was dually completed in the Blinebry gas formation on or about February 26, 1953. Following the dual completion, the gas well was connected to the gathering system of Southern Union Gas Company and is still connected to such system.

2. At the hearing before the Commission, Applicant offered testimony in Case 992 in support of its application for the non-standard gas proration unit substantially as follows:

(a) That the non-standard proration unit consist of a single quarter-quarter section of 40 acres.

(b) That the non-standard proration unit lies wholly within a single governmental section.

(c) That the entire non-standard gas proration unit may be reasonably assumed to be productive of gas from the Blinebry gas pool.

(d) That the length or width of the non-standard gas proration unit will not exceed 2640 feet.

(e) That Continental Oil Company, Stanolind Oil and Gas Company, The Atlantic Refining Company, Standard Oil Company of Texas, and Shell Oil Company, believed by Applicant to be the only offset operators to the

non-standard unit, were notified by registered mail of Applicant's intent to form such unit.

(f) That the application was filed only after Applicant had learned that Continental Oil Company intended to terminate the agreement reached between representatives of Applicant and Continental on February 19, 1954, providing for the pooling of operating rights and/or oil and gas leases to form a standard gas proration unit consisting of the NE¼ of Section 10.

B. CONCLUSION

Applicant felt that it was its duty and obligation to promptly file an application with the Commission for a 40-acre non-standard proration unit for its Dauron No. 2-B well to be effective as of the first day of the calendar month following receipt of definitive information that the pooling agreement was considered terminated by Continental. Applicant's testimony in Case 992 satisfied and reflected full compliance with all necessary requirements of Order R-610 to permit establishment of the non-standard proration unit. Unless such unit is approved by the Commission in accordance with Applicant's request, Applicant will be deprived of the opportunity to recover its just and equitable share of the gas from the reservoir.

II.

At the conclusion of Applicant's testimony in Case 992, Continental Oil Company's attorney, through cross examination of Applicant's witness, Mr. Prentice R. Watts, Jr., proceeded to include as a part of the record of Case 992 certain testimony concerning formation of the standard gas proration unit consisting of the NE¼ of Section 10, Township 21 South, Range 37 East, for Applicant's Dauron Well No. 2-B effective as of January 1, 1954, and the agreement reached between Applicant and Continental Oil Company providing for the pooling of their respective operating rights and/or oil and gas leases to form such unit. Applicant objected to the introduction of all testimony concerning the matters raised by Continental on the grounds that such matters were not within the scope of Applicant's application or the notice of hearing for Case 992. Applicant suggested that if the Commission desired to hear testimony on the matters raised by Continental it should

do so at a special hearing called either on application of Continental or on the Commission's own motion. Applicant's objection was overruled by the Commission. Applicant feels that the ruling of the Commission was in error and desires at this time to renew its objection on the grounds above stated.

A. FACTS

1. The Commission's action in overruling Applicant's objection to include in Case 992 matters relating to the agreement with Continental Oil Company by which the standard proration unit ($NE\frac{1}{4}$ of Section 10, Township 21 South, Range 37 East) was formed necessitated a review of all facts relating to the formation of the unit, such facts being as follows:

(a) On November 12, 1953, Applicant filed its application with the Commission for an order establishing the $NE\frac{1}{4}NE\frac{1}{4}$ of Section 10 as a non-standard gas proration unit for Applicant's Dauron Well No. 2-B. A copy of the application was mailed to Continental Oil Company on November 13, 1953, at which time Continental was asked to consider the pooling of the oil and gas leases in the $NE\frac{1}{4}$ of Section 10 to form a standard gas proration unit. Applicant received a letter from Mr. Hugh Johnston, of Continental Oil Company, on November 19, 1953, indicating Continental's interest in pooling the $NE\frac{1}{4}$ of Section 10 to form a standard proration unit for Applicant's Blinebry gas well. Upon receipt of this information from Continental, Applicant requested the Commission, on December 17, 1953, to dismiss its application for the non-standard 40-acre unit.

(b) On January 11, 1954, Mr. Thompson submitted to Mr. Hugh Johnston information concerning cost of the dual completion of Applicant's Dauron No. 2-B Well and an estimate of production from the well during the next 10-year period.

(c) On February 19, 1954, a meeting was held in Continental's offices at Fort Worth, Texas, for the purpose of discussing and arranging for the pooling of the $NE\frac{1}{4}$ of Section 10. Messrs. Van Thompson and Quilman B. Davis visited briefly with Mr. Hugh Johnston, and at Mr. Johnston's request representatives of Applicant and Continental Oil Company retired to a conference room to discuss and agree upon the pooling arrangements. Present at this meeting were Van Thompson and Quilman B. Davis, representing Aztec Oil & Gas Company, and S. V. McCollum, Assistant Regional Manager of Production, E. M. Robison, Homer Daley, and one other person whose name is unknown, representing Continental Oil Company. At this meeting it was first suggested by Mr. Thompson that Aztec would agree to the pooling of the $NE\frac{1}{4}$ of Section 10, insofar as it covered the Blinebry gas production, the sale to Continental et al of a 3/4ths interest in Aztec's Dauron No. 2-B Well on the basis of its actual cost of $43,000.00

of dually completing the well, and Continental et al would be entitled to receive immediately 3/4ths of the gas production from the well. Representatives of Continental, particularly Mr. McCollum, objected to this basis on the grounds that Aztec's costs were excessive and that Continental had been able to dual wells for $15,000 or less. Mr. Thompson explained that he did not doubt the figures quoted by Continental, but that Aztec had encountered some difficulty in its dual completion work and that the $43,000.00 figure was Aztec's actual cost.

After Mr. Thompson's first proposal had been rejected by Continental's representatives, he then suggested two pooling agreements for the NE¼ of Section 10, one to cover the Blinebry gas production and the other to cover the Tubb gas production. It was suggested that Continental select one of its existing oil wells located in the W½NE¼ or the SE¼NE¼ of Section 10, Township 21 South, Range 37 East, and dual complete such well in the Tubb formation, since the NE¼ at that time was not dedicated to a Tubb formation gas well. After some discussion Continental representatives selected its No. 1-E Well located in the NW¼NE¼ of Section 10 for dual completion in the Tubb formation. It was then agreed that the exchange of interest in the respective wells by the respective lease owners would be computed on the basis of the actual cost and expense incurred by Continental in dual completing and equipping, except for casing and tubing, its No. 1-E Well for the production of natural gas from the Tubb formation.

Inasmuch as Aztec's well was on production at that time and the possibility of some delay in dual completing the Continental well, it was agreed that the entire production from the Dauron No. 2-B gas well would belong to Aztec and that Continental would not participate in such production and sales until such time as Continental completed its No. 1-E Well in the Tubb formation and commenced production and delivery of such gas into a gas transportation system.

At the conclusion of the meeting it was agreed that the pooling agreements and related operating agreements would be prepared by Mr. Quilman B. Davis as soon as possible and submitted to Continental for its signature and signatures of the other owners of the federal unit.

(d) On March 9, 1954, Mr. Quilman Davis mailed to Mr. E. M. Robison at Fort Worth, Texas, a letter setting out the terms and conditions of the agreement reached between the parties, as outlined above, together with pooling and operating agreements providing for the pooling of the Blinebry and Tubb formations, respectively.

(e) Nothing was heard from Continental on this matter for several weeks and a follow-up telephone call to Mr. Robison revealed that the agreements had been forwarded to Continental's Houston office. On April 29, 1954, a follow-up letter on the matter was sent to Mr. Robison. Aztec's files do not contain a reply to this letter; however, in subsequent telephone conversations with Mr. Robison it was determined that Continental's Houston office had only one small objection to the agreements which concerned the ownership of casing in the wells since the casing in each extended to the Drinkard formation. It was agreed that Continental's Houston office would prepare a short agreement to

cover the situation; however, Aztec never received any further communication concerning the matter.

(f) After a telephone conversation between Messrs. Robison and Davis concerning the loss of allowable for the Dauron 2-B Well during the first half of 1954 unless action was taken by the companies prior to July 1, 1954, Aztec sent its letter dated June 18, 1954 to the Commission advising it that Aztec Oil & Gas Company, Continental Oil Company, Stanolind Oil and Gas Company, The Atlantic Refining Company, and Standard Oil Company of Texas had agreed to the communitization and pooling of their respective oil and gas leasehold interests in the NE¼ of Section 10, Township 21 South, Range 37 East, Lea County, New Mexico, for the purpose of forming an orthodox gas proration unit of 160 acres for the Aztec Dauron 2-B Blinebry gas well. Carbon copies of the letter were mailed to the above named companies. Subsequently, on June 24, 1954, in accordance with the understanding between Messrs. Robison and Davis, Mr. S. V. McCollum sent a letter to the Commission on behalf of Continental Oil Company, Stanolind Oil and Gas Company, The Atlantic Refining Company, and Standard Oil Company of Texas stating that the parties had agreed to communitize and pool their respective oil and gas interests in the NE¼ of Section 10 for the purpose of forming an orthodox gas proration unit of 160 acres for the Aztec Dauron 2-B Well. Both of these letters requested that the Commission assign a full 160-acre unit gas allowable to the well effective as of January 1, 1954. Aztec understood at that time that the formal pooling and operating agreements covering the Blinebry and Tubb gas formations, respectively, were being circulated for signatures of the above named companies, and so indicated in its letter of June 18, 1954 to the Commission. Although copies of the June 18, 1954 letter went to each of the above named parties containing such statement, Aztec was not advised that its statement was in error.

(g) Aztec received a letter dated September 12, 1955 from Mr. R. L. Adams, Division Superintendent of Production, New Mexico Division, Roswell, New Mexico, inquiring about the communitization and pooling of the Tubb and Blinebry production in the NE¼ of Section 10. Although Continental had copies of all of the agreements involved, Aztec forwarded to Mr. Adams a copy of each agreement for his information.

(h) At the request of Mr. E. M. Robison, Messrs. Van Thompson and Quilman B. Davis met with Messrs. R. L. Adams and E. M. Robison in Aztec's offices on September 29, 1955. This conference was the first indication or knowledge that had been conveyed to Aztec that Continental Oil Company had decided to terminate the pooling agreement which had been reached between representatives of the two companies on February 19, 1954. At this meeting Mr. Adams suggested that Continental and the other members of the federal unit might be agreeable to pooling of the NE¼ of Section 10 Blinebry gas production by acquiring an interest in the well on the basis of Aztec's cost of dual completion ($43,000) if they received 3/4ths of the proceeds from the production from January 1, 1954. This proposal was identical to the proposition submitted by Mr. Thompson and rejected by representatives of Continental at the meeting on February 19, 1954. The offer was rejected by Aztec because it had acted and relied upon the agreement made on February 19, 1954 and did not feel that the matter should be renegotiated after the lapse of nineteen months.

(i) Aztec agreed to a second meeting with representatives of Continental, consisting of Messrs. E. M. Robison, R. L. Adams, and S. V. McCollum, in October, 1955. After discussing the matter at length, it was obvious that Continental intended to terminate the agreement of February 19, 1954, and had no offers to continue the pooling arrangements other than the one submitted by Mr. Adams at the September 29, 1955 meeting.

(j) As a result of the meeting in October, Mr. Quilman B. Davis called Mr. Robison in Fort Worth on November 2 or 3, 1955 to advise Continental of Aztec's decision to request a 40-acre non-standard unit with a like reduction in allowable effective as of the 1st of November, 1955.

(k) At the request of Mr. Hugh Johnston, Messors. Van Thompson and Quilman B. Davis met with Messrs. Johnston and Harry Dipple in Continental's offices at Fort Worth on November 22, 1955. After a brief conference it was determined that there had been no change in the thinking of Continental on the matter other than as outlined above, and the meeting was adjourned.

(l) Again, on November 28, 1955, Aztec's representatives, Messrs. Quilman B. Davis and Prentice R. Watts, met with Continental's representatives, Messrs. Harry Dipple and Jason W. Kellahin. At this meeting Mr. Bill Kitts, attorney for the Commission, was present and Mr. Bill Macey was present part of the time. Approximately two hours of discussion resulted in no action.

B. CONCLUSION

The foregoing facts concerning the meeting and agreement of pooling reached with representatives of Continental on February 19, 1954, the pooling and operating agreements prepared by Aztec and mailed on March 9, 1954 to Continental, and the June 24, 1954 letter of Continental directed to the Commission requesting a 160-acre allowable, clearly evidences an agreement of pooling of the $NE\frac{1}{4}$ of Section 10, Township 21 South, Range 37 East. Moreover Continental filed an application on March 4, 1954 with the Commission seeking an order to dually complete in the Drinkard oil pool and the Tubb gas pool its Hawk B-10 No. 1 Well located 660 feet from the north line and 1980 feet from the east line ($NW\frac{1}{4}NE\frac{1}{4}$) of Section 10, Township 21 South, Range 37 East. The entire $NE\frac{1}{4}$ of Section 10 was colored on the plat attached to Continental's application indicating the dedication of the entire 160 acres to the Tubb gas well. The Commission, by its Order DC-86 issued March 19, 1954, approved the application of Continental Oil Company. Aztec Oil & Gas Company does not have any information or knowledge as to whether or not such well

was dually completed pursuant to the Commission's authorization. Although it was agreed at the February 19, 1954 meeting that Continental Oil Company's No. 1-E Well, also located in the NW¼NE¼ of Section 10, would be dually completed in the Tubb gas formation, Aztec has no objection to the substitution of the Hawk B-10 No. 1 Well. It should also be noted that Continental's application for dual completion of its well in the Tubb formation was filed five days after the meeting at which the pooling of the NE¼ of Section 10 for Blinebry and Tubb formations was agreed upon.

Continental Oil Company held the formal pooling agreements approximately nineteen months without objecting to any of the provisions thereof except the question of ownership of the well casing which could have been resolved without any difficulty insofar as Aztec was concerned.

The Commission's attention is also called to the fact that Continental did not offer a single witness to contradict the testimony of Mr. Thompson relative to the meeting and agreements reached with representatives of Continental Oil Company on February 19, 1954.

The Commission had unquestionable authority, based upon Continental's letter dated June 24, 1954 and Aztec's letter dated June 18, 1954, to approve and grant a full 160-acre unit allowable to the Aztec Dauron No. 2-B gas well effective as of January 1, 1954 and to continue such allowable until notified that the pooling agreement had been terminated. It is unfortunate that the Commission's authority to grant an allowable under these circumstances has been questioned, because since the inception of gas proration in southeastern New Mexico on January 1, 1954 there have been many instances of similar agreements between other companies, pursuant to which the Commission has granted a full gas allowable to the dedicated acreage without question, pending completion of the formal pooling agreements. In some instances the formal pooling agreements and related operating agreements have not been completed for a year or more after the Commission's action

granting an allowable to the dedicated acreage on representation of the parties that pooling of the leases has been agreed upon. If the Commission should change its present policy of granting an allowable based on informal agreements and representation of the parties in interest and require formal executed documents of pooling before granting and assigning an allowable to a well on the basis of the dedicated acreage, a great loss to the oil and gas companies participating in such pooling arrangements will result.

Aztec agreed with Continental on February 19, 1954 on a basis for pooling of the Blinebry and Tubb gas zones underlying the NE¼ of Section 10. On June 24, 1954 Continental, for itself and its associates, advised the Commission in writing that the parties had agreed to the pooling for the purpose of obtaining an allowable for gas from the Blinebry formation, effective January 1, 1954. The Commission, as it has done in numerous cases, relied upon the written authority and approved the unit and granted an allowable to it. This allowable was made a part of the allowable orders from that time and Continental did not, at any time, object to the allowable order. The Commission, it seems to us, cannot find that the additional allowable resulted in waste inasmuch as the gas was marketed, nor can it find, if it has the power to make an independent determination, that the correlative rights of either of the parties have been abused inasmuch as Continental and Aztec both requested the unit. The whole question seems to us to be one of the disposition of the 160-acre allowable rather than its legality, and the disposition of the gas is a matter of contract between the parties. If Continental has been entitled to a portion of this allowable during the months when it was produced, then they have an adequate remedy by a suit for an accounting in a proper Court. The correlative rights of Aztec, and it seems to us, of Continental and its parties, would most certainly not be protected by shutting this well in for a 5 or 6 year period and permitting the drainage of the Blinebry gas from this 160-acre unit by offset wells.

We believe the Commission should sustain the validity of its allowable orders on this unit, grant the application with adjustments for overproduction as of November 1, 1955, and leave the parties to settle their disputes as to their contractual arrangements, either by private negotiation or in the Courts.

Respectfully submitted,

AZTEC OIL & GAS COMPANY

By Quilman B. Davis
Quilman B. Davis

Jack M. Campbell
Jack Campbell

Attorneys for Applicant

920 Mercantile Securities Bldg.
Dallas 1, Texas
Telephone: Prospect 0666

QBD/ba

February 13, 1956

CONTINENTAL OIL COMPANY

FAIR BUILDING
FORT WORTH 2, TEXAS

HARRY G. DIPPEL
GENERAL ATTORNEY
GLENN L. MACE
FRANK L. MERRILL
ATTORNEYS

February 13, 1956

Mr. W.B. Macey
Secretary-Director
New Mexico Oil Conservation Commission
P.O. Box 871
Santa Fe, New Mexico'

Re: Case No. 992

Dear Sir:

Pursuant to the request contained in your letter of January 24, 1956, we enclose herewith three copies of a memorandum brief covering Continental Oil Company's position and contentions in the subject case.

While your said letter requested that you be furnished with only two copies of such brief, we are enclosing a third copy so that each of the three members of the Conservation Commission may have a copy in the event this would be of some convenience.

By carbon copy of this letter copies of this brief are being mailed to Mr. Quilman Davis and Mr. Jack Campbell at the addresses shown in your letter of January 24, 1956 requesting the furnishing of the enclosed brief.

Assuring you of our appreciation for the privilege of filing this brief, I am

Yours very truly,

Harry G. Dippel

HGD-ED
Encs
cc Messrs. Quilman Davis
Jack Campbell
Jason W. Kellahin
w/encs

BEFORE THE

OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO

IN THE MATTER OF: APPLICATION OF AZTEC OIL & GAS COMPANY FOR A NON-STANDARD PRORATION UNIT CONSISTING OF NE/4 NE/4 OF SECTION 10, TOWNSHIP 21 SOUTH, RANGE 37 EAST, N.M.P.M., LEA COUNTY, NEW MEXICO, FOR GAS PRODUCTION FROM THE BLINEBRY FORMATION	)	CASE NO. 992

MEMORANDUM BRIEF OF CONTINENTAL OIL COMPANY

Pursuant to the request contained in letter dated January 24, 1956 from Mr. W.B. Macey, Secretary-Director of the New Mexico Oil Conservation Commission, Continental Oil Company respectfully submits this its memorandum brief in support of its contention that all production by Aztec Oil & Gas Company from its subject well from January 1, 1954 to date, in excess of an allowable based on a 40-acre non-standard unit is illegal and must be balanced on the basis of a 40-acre non-standard proration unit.

STATEMENT OF THE CASE

This case deals with the application of Aztec Oil & Gas Company of date November 4, 1955 for a non-standard gas proration unit for its Dauron No. 2 well located in the

NE/4 NE/4, Section 10, Township 21 South, Range 27 East, N.M.P.M., Lea County, New Mexico. This well has been variously denominated in reports by Aztec to the Commission as its Dauron Well No. 2-A, No. 2-B, and No. 2-C, but the testimony reflected the fact that only one well producing from the Blinebry zone is located on this quarter section.

According to the record, Aztec Oil & Gas Company is the owner of an oil and gas lease covering the 40 acres of fee lands comprising the NE/4 NE/4 of said Section 10. Continental Oil Company, Stanolind Oil and Gas Company, The Atlantic Refining Company, and Standard Oil Company of Texas, as members of the New Mexico Federal Unit, are the owners of an oil and gas lease from the United States of America covering the balance of the land, consisting of 120 acres in the Northeast 1/4 of this section, with Continental Oil Company as "Operator."

At the inception of gas prorationing in Southeastern New Mexico, Aztec approached Continental with a view to communitizing the Northeast 1/4 of said Section 10, and Continental indicated its willingness to communitize on a customary and reasonable basis, but the details of an agreement covering such communitization were never worked out. By letter dated June 18, 1954 Aztec informed the Commission that such communitization had been agreed upon and requested "that a full 160-acre unit gas allowable be set up for the

Aztec Dauron No. 2-C well retroactively to January 1, 1954 in accordance with, and pursuant to, Order No. R-372-A." (Emphasis supplied) At Aztec's urgent request, Continental addressed a letter to the Commission under date of June 24, 1954 in which Continental referred to the aforesaid Aztec letter of June 18, 1954, and stated as follows:

> "Since we anticipate that there will be some delay in completing the execution of the communitization agreement and related papers, it is requested on behalf of Continental Oil Company, Stanolind Oil and Gas Company, The Atlantic Refining Company, and Standard Oil Company of Texas that a full 160-acre gas allowable be set up for the said Aztec Dauron No. 2-C well, retroactive to January 1, 1954, in accordance with and pursuant to Order No. R-372-A." (Emphasis supplied)

Following the requests contained in these two letters the Commission's gas proration schedules carried the subject well as having an allowable based on a 160-acre unit, retroactive to January 1, 1954. Since that time this well has appeared on the Commission's proration schedules with an assigned allowable based upon 160 acres, although an allowable based on 40 acres had been assigned to it during the first six months of 1954. No agreement was ever arrived at by and between the parties in connection with the proposed communitization and no contract was ever entered into evidencing such communitization.

After several additional and final attempts to

reach an agreement with Aztec resulted in failure because of Aztec's continued refusal to agree that the communitization of the New Mexico Federal Unit's 120 acres in the Northeast 1/4 of Section 10 with Aztec's 40 acres in said quarter section should be retroactive to January 1, 1954, Continental Oil Company advised the Commission, by letter dated November 4, 1955 that "it appears that no communitization will be effected" and that it was therefore then apparent that no reasonable basis existed for a 160-acre allowable "and that said well is now in the position of having overproduced, because there never has, in fact, been more than 40 acres committed to it. It is, therefore, respectfully requested that said well be given an allowable based on 40 acres and that the same be made retroactive to January 1, 1954," the effective date of Order No. R-372-A, which order instituted gas prorationing in the Blinebry Pool. Thereafter, Aztec Oil & Gas Company filed its application, bearing date of November 4, 1955, for approval of a non-standard 40-acre gas proration unit "effective November 1, 1955." Said application contained nine numbered paragraphs or statements purporting to be "in support of this application," including the following:

> "7. Applicant has been unsuccessful in its efforts to pool the lands covered by this application with adjoining lands to form a standard gas proration unit as provided by Order R-610, as amended." (Emphasis supplied.)

Order No. R-610 was entered by the Commission under date of April 11, 1955 and superseded Order No. R-372-A entered by the Commission under date of November 10, 1953. Order No. R-372-A was in effect on June 18, 1954 and June 24, 1954, the respective dates of the letters from Aztec and Continental to the Commission requesting the granting of a full 160-acre unit gas allowable for this well "retroactive to January 1, 1954, in accordance with and pursuant to Order R-372-A." Rule 12 of the Special Rules and Regulations for the Blinebry Gas Pool, Lea County, New Mexico, contained in said Order No. R-372-A, provided as follows:

> "RULE 12. No gas well shall be given an allowable until Form C-104 and Form C-110 have been filed together with a plat showing acreage attributed to said well and the locations of all wells on the lease."

The identical language of said Rule 12 is contained in Order No. R-610 as RULE 15 of the Special Rules and Regulations for the Blinebry Gas Pool in said Order No. R-610. Thus, the requirements of said rule were, and are, in effect at all times material hereto.

Aztec's said application was followed up with a letter addressed to the Commission under date of November 7, 1955, on page 2 of which said letter the following statements are made, to-wit:

> "We have had two meetings, September 29 and October 17, with representatives of Continental and it now appears that we will be unable to consummate the communitization and pooling of the NE¼ of Section 10 referred to in my letter of June 18, 1954 to the Commission. (Emphasis supplied.)
>
> "It is, therefore, requested that in view of the foregoing the gas allowable for the Aztec-Dauron No. 2-B Well be reduced to a 40-acre unit allowable effective as of November 1, 1955."

The Commission's well file covering the subject well was offered in evidence and reflects the fact that the only Forms C-104 and C-110 together with a plat showing acreage attributed to said well and the locations of all wells on the lease ever filed by or on behalf of Aztec Oil & Gas Company were filed under date of September 26, 1953, and show no acreage attributed to said well other than the 40 acres consisting of the NE/4 NE/4 of said Section 10. This well file, therefore, shows that Aztec did not file amended Forms C-104 and C-110 together with a plat showing the 160 acres comprising all of the NE/4 of said Section 10 attributed to said well, and which amended forms and plat were required to be filed by Aztec by the very language of the letter from Aztec to the Commission under date of June 18, 1954, and the language of the letter from Continental Oil Company to the Commission under date of June 24, 1954, requesting a 160-acre allowable "retroactive to January 1, 1954, in

accordance with and pursuant to Order R-372-A," which said order, of course, included the above-quoted Rule 12.

Mr. Van Thompson, Vice President of Aztec Oil & Gas Company, testified at the subject hearing that the proceeds of the royalty portion of the total quantity of gas produced by Aztec from the subject well from January 1, 1954 to date, on the basis of a 160-acre allowable, has been paid by Aztec currently as it accrued to the royalty owner under Aztec's lease covering only the 40 acres comprising the NE/4 NE/4 of said Section 10. This witness further expressly testified that no part of the proceeds covering the working interest production from this well was ever paid to, or tendered to, Continental Oil Company or either of the other three companies owning an interest in the 120 acres of New Mexico Federal Unit acreage in the Northeast 1/4 of Section 10; that no part of the proceeds of the royalty production was ever tendered to the United States of America; and that no part of either the working interest production or the royalty production was held in reserve or suspense by Aztec pending a settlement of the pending matter of communitization of said Northeast 1/4 of said Section 10. The testimony of this witness further shows that Aztec continued to wrongfully appropriate unto itself all of the proceeds of the 160-acre unit allowable production attributable to the working interest, and continued to pay to

the royalty owner under its little 40-acre tract the proceeds of all such 160-acre allowable production attributable to the royalty interests under the entire 160 acres long after it admittedly knew that Continental would never agree to this communitization unless the same be made effective retroactively to January 1, 1954.

JURISDICTION AND AUTHORITY OF THE COMMISSION

While we have no doubt that the Commission is familiar with the provisions of Article 3 of Chapter 65 of the New Mexico Statutes of 1953, in which the jurisdiction and authority of the Commission to regulate and prorate the production of gas and fix allowables for gas wells located within the State of New Mexico is defined, we should like to call the Commission's particular attention to certain sections of said Article 3. Most, if not all, of these statutory provisions were referred to in the statements or arguments made by counsel at the conclusion of the hearing of this case before the Commission on January 19, 1956.

The statutory provisions which we believe to have particular significance in this case are found in the following sections:

Section 65-3-5 - which sets out the general jurisdiction and authority of the Commission;

Section 65-3-10 - which has particular reference to the prevention of waste and protection of correlative rights,

and for the convenience and ready reference of the Commission is quoted in full, with emphasis supplied at certain points:

> "65-3-10. POWER OF COMMISSION TO PREVENT WASTE AND PROTECT CORRELATIVE RIGHTS.--The commission is hereby empowered, and it is its duty, to prevent the waste prohibited by this act and to protect correlative rights, as in this act provided. To that end, the commission is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purposes of this act, whether or not indicated or specified in any section hereof."

Section 65-3-11 - which expressly enumerates certain things which the Commission is given authority to do and perform, including the authority "to make rules, regulations and orders * * *

> (7) To require wells to be drilled, operated and produced in such manner as to prevent injury to neighboring leases or properties";

Section 65-3-13 - requiring that the "total allowable natural gas production from gas wells producing from any pool in this State" shall be by the Commission allocated "among the gas wells in the pool * * * upon a reasonable basis and recognizing correlative rights." (Emphasis supplied);

Section 65-3-14 - requiring equitable allocation of allowable production on a basis which allows each owner, insofar as practicable, to recover his just and equitable share of the gas in the pool, and requiring that production

from a tract smaller than a full unit "shall be in ratio of the area of such tract to the area of a full unit," and further requiring that production shall in all cases be in accordance with the applicable rules and regulations of the Commission; and,

Section 65-3-29 - in which correlative rights are defined as follows:

> "(h) 'Correlative rights' means the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practically determined, and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for such purpose to use his just and equitable share of the reservoir energy."

ARGUMENT

This case reflects problems peculiar to the institution of gas prorationing in Southeastern New Mexico and is a result of the difficulties and confusion which existed at that time due to the fact that gas prorationing was being instituted in old developed pools or fields.

Should the Commission grant the application of Aztec Oil & Gas Company in this case without providing in its order granting the same that Aztec shall bring the total of its gas production from the subject well in balance with an allowable based upon a 40-acre unit attributable to said

well, the Commission would, contrary to, and in direct violation of, its statutory duty to prevent the same, permit Aztec to produce many times more than its equitable share of the gas from the Blinebry Pool.

The evidence in this case shows beyond any possible doubt that the 120 acres of New Mexico Federal Unit acreage in the Northeast 1/4 of Section 10 was never communitized or pooled with the little 40-acre tract held by Aztec in said Northeast 1/4 for the formation of a standard 160-acre unit.

There are two methods recognized by the applicable statutes of the State of New Mexico for the pooling or communitization of acreage. These methods are (1) voluntary agreement, and (2) forced pooling required by the Oil Conservation Commission of the State. No contention has been made by any party that a 160-acre standard unit is involved in this case as a result of forced pooling required by the Commission.

Furthermore, there is not a particle of evidence in the record of this case showing the formation of a standard 160-acre unit by voluntary agreement. On the contrary, the evidence conclusively shows that no 160-acre standard unit with its acreage attributed to this well was ever formed.

As pointed out above under "Statement of the Case" numbered paragraph 7 of the very application filed by Aztec

in this case, bearing the Commission's Docket No. 992, states upon the oath of the applicant's General Attorney that a voluntary agreement to pool was never consummated. As stated in the argument made by counsel of Continental Oil Company at the conclusion of the hearing in this case on January 19, 1956, an agreement to pool on the basis contended for by Aztec could not possibly have been entered into by Aztec and Continental, because Continental could not possibly have donated to Aztec the interests of Stanolind, Atlantic and Standard of Texas in and to the working interest share of the production, nor could Continental have donated to Aztec the royalty share of the United States of America in such production. There is not a particle of evidence in the record of this case indicating that Stanolind, Atlantic, Standard of Texas, and the United States of America ever agreed to communitize on any basis.

While the record in this case clearly shows that a standard unit was never formed by agreement of the parties, that no such standard unit ever existed, and that none exists at the present time, we wish to respectfully direct the Commission's attention to the following facts which are a part of the record in this case, to-wit:

1. The sworn application of Aztec assigns as one of the reasons for the application the fact that the applicant was <u>unsuccessful</u> in its efforts to pool acreage for the formation of a standard unit. It should further be noted that

this application does not ask for any change from a standard unit to a non-standard unit, nor does it ask for the termination of an heretofore recognized standard unit, but rather said application proceeds under the provisions of Order No. R-610 in asking for approval of a non-standard unit on the necessary contention that the 40 acres is all that applicant has to attribute to the subject well and that applicant has been unable to pool his 40 acres with any other acreage to form a standard unit.

2. No form or plat required by the rules of the Commission, particularly Rule 12 of Order No. R-372-A, or Rule 15 of Order No. R-610, which superseded Order No. R-372-A, was ever filed with the Commission by Aztec showing more than 40 acres attributed to the subject well, or showing any acreage attributed to said well other than Aztec's 40 acres.

3. Aztec never offered to Continental nor any other owner of an interest in the 120 acres of New Mexico Federal Unit acreage any portion of the proceeds from production, nor did Aztec make any report covering such proceeds to any of the four owners of said 120 acres of "Federal Unit" acreage, nor were such proceeds held in reserve or suspense by Aztec until the pooling or communitization could be consummated, but, on the contrary, Aztec wrongfully appropriated to its own use the proceeds of all such production attributable to the working interest.

4. The entire proceeds of that portion of the full production from this well attributable to the royalty interest was paid by Aztec to the owner of the royalty under its little 40-acre tract, thereby clearly showing that Aztec considered the full production from this well as coming from Aztec's 40-acre tract, rather than as coming from a 160-acre unit.

5. The only forms and plat required by the rules of the Commission ever filed by Aztec to show the acreage attributed to this well were the Forms C-104 and C-110 and plat filed by Aztec under date of September 26, 1953, and said forms and plat attribute no acreage to the subject well other than Aztec's 40 acres.

6. All of the testimony offered by Aztec regarding negotiations between Aztec and Continental point up and prove the fact that there never was any agreement covering the pooling of the respective tracts and that Aztec knew no such agreement had ever been reached.

Despite these facts, and despite the fact that it was and is the operator of the subject well, Aztec allowed the well to remain on the proration schedule with a 160-acre standard unit allowable and, as shown by Continental's Exhibit No. 6, produced not only a 160-acre allowable but month after month produced substantially in excess of that allowable and continued so to produce said well even in months when by the very provisions of some of the allowable

orders the well was ordered shut-in because of over-production.

It has been contended by Aztec that the subject well was entitled to a 160-acre allowable because such allowable was shown on the Commission's allowable schedules pursuant to the letters of June 18, 1954 and June 24, 1954 from Aztec and Continental, respectively, to the Commission. The Commission's attention is again directed to the fact that each of said letters concludes with the request that such allowable be set up "in accordance with and pursuant to Order No. R-372-A." The record in this case shows that at the time these two letters were received by the Commission there were on file with the Commission Forms C-104 and C-110 together with a plat showing attributed to the subject well only 40 acres and showing that 40 acres to be the identical 40-acre tract for which Aztec now seeks approval as a non-standard gas proration unit. The record also shows that no Forms C-104 and C-110 together with a plat showing 160 acres attributed to this well had ever been filed at any time up to the date of hearing. There was, therefore, no compliance with the provisions of Order No. R-372-A nor with the provisions of Order No. R-610, which superseded Order No. R-372-A. The Commission's attention is again respectfully directed to the fact that Rule 12 of Order No. R-372-A, which was superseded by Rule 15 of Order No. R-610, provides that "no gas well shall be given an allowable until Form C-104 and Form C-110 have been filed together with a plat showing

acreage attributed to said well and the locations of wells on the lease." (Emphasis supplied.) It seems clear that the only purpose the above-quoted rule could possibly serve is to place on record in the files of the Commission documents or instruments showing the location of gas wells and showing the acreage attributed to such wells for gas proration purposes.

It should be borne in mind that with the adoption of Order No. R-372-A the Commission was instituting the proration of gas in an old developed pool at a time when there were numerous non-standard units already in production. Rule 7(b) of said order made appropriate provisions for this existing situation. The above-quoted Rule 12 of said order, on the other hand, is the provision, and is the only provision in the order affording the Commission a means of determining exactly what acreage is attributed to a well for which no application was filed under the provisions of Rule 7(b). Order No. R-372-A was an order designed to implement the prorationing of gas and served no other purpose. When considered in this light the requirement of said Rule 12 that the proper forms be filed "together with a plat showing acreage attributed to said well" and the provision of said rule to the effect that "no gas well shall be given an allowable until" this is done, make it obvious that the only possible meaning of this rule is that until the attributed

acreage is shown in the manner required by the rule no allowable shall be granted and certainly no allowable should be granted for any acreage not so attributed.

Not only was there no compliance with the provisions of said Rule 12, but by reason of such lack of compliance with said rule there was no compliance with the provisions of Section 65-3-14 of the statutes requiring allocation of allowables to a non-standard unit on an acreage basis and production in conformity to the orders, rules and regulations of the Commission, and Continental's approval of and request for a 160-acre allowable for the subject well, contained in Continental's aforesaid letter of June 24, 1954, was clearly conditioned upon such compliance.

The allowables granted the subject well in the various proration orders in evidence before the Commission in this case were granted on the erroneous assumption that 160 acres had been legally attributed to said well. However, there never having been any pooling agreement and no compliance with applicable statutes, orders, rules or regulations, to validate an allowable based on 160 acres, there in fact never was more than a 40-acre unit available to Aztec for allowable purposes. This being true, all production from the subject well based on anything in excess of 40 acres was and is illegal production and must be made up if the provisions of the statutes of the State of New Mexico

and the orders, rules and regulations of the Commission are to be complied with.

While Continental Oil Company has at all material times been, and still is, willing to communitize or pool and to seek the prompt execution of an appropriate instrument pooling the New Mexico Federal Unit 120 acres with Aztec's 40 acres in the Northeast 1/4 of Section 10 upon such terms as are equitable to all parties and as are usual and customary, provided such communitization or pooling is made to be effective retroactively to January 1, 1954, Continental does not protest approval of a non-standard 40-acre unit, provided such non-standard unit be made effective retroactively to January 1, 1954, and provided, further, that allowable production be adjusted accordingly, and that Aztec be required to shut-in the subject well until production therefrom is in balance with allowable for a 40-acre unit.

For the Commission to approve a non-standard 40-acre unit without making the same effective January 1, 1954, and without requiring that production be brought in balance as above indicated would be to allow Aztec to wrongfully retain all of the proceeds from gas produced and attributed to 120 acres in which Aztec at no time owned any interest, and which proceeds its own testimony shows it never attempted or offered to account for, either to the working interest owners or to the royalty owner. Such an order by this Commission would set a precedent that would open the door to

possible fraud and would in fact invite fraud.

The order sought by Aztec would allow and place the Commission's stamp of approval on drainage not compensated by counter-drainage, contrary to the provisions of Section 65-3-13 of the New Mexico Statutes.

The authority of the Commission to approve a non-standard 40-acre unit, to be effective retroactively to January 1, 1954, and provide in the order of approval that allowable production be adjusted accordingly, and further provide in such order that the well shall be shut-in until production is in balance for a 40-acre unit, is covered in numerous sections of the statutes of the State of New Mexico. These statutory provisions repeatedly state in mandatory language that the Commission has the duty to protect correlative rights and these statutory provisions further direct that the orders of the Commission shall be designed to allow each owner in a pool to recover his just and equitable share of the oil and/or gas in the pool, and for that purpose to use his fair share of the reservoir energy. Approval of Aztec's non-standard 40-acre unit, effective November 1, 1955, would be tantamount to a complete denial and repudiation of these fundamental principles so clearly set out in the statutes.

CONCLUSION

In conclusion, we should like first to reiterate what was said in our closing statement at the hearing regarding the action of the Commission in showing the subject well on the allowable schedules as having 160 acres attributed to it. We are well aware of the problems and confusion confronting the Commission at that time in connection with the institution of gas prorationing in Southeastern New Mexico, and we desire to have the record reflect clearly the fact that Continental Oil Company is in nowise implying any criticism of the Commission for any action taken by the Commission. We are well aware of the fact that the Commission's action was taken in a fair and honest attempt to assist all parties in accomplishing what was thought to be fair and right under the circumstances as they then existed. It goes without saying that Continental Oil Company's actions have at all times been based upon those same proper motives. We are, nevertheless, fully aware of our share of responsibility for the situation that has resulted in this case.

While, as stated, the Commission's actions with regard to the gas allowable for the subject well to date are not properly subject to criticism, the fact remains that such actions have, nevertheless, resulted in the production of vast quantities of gas which has been illegally produced. This is so because the 160-acre allowable carried on the

schedules for this well was never properly supported by the filing of proper forms and plats showing the specific 160-acre unit attributed to said well. Furthermore, the purpose for which said 160-acre allowable was established was never accomplished because the pooling was never actually consummated.

As a result of the illegal production of this vast quantity of gas from this well the Commission is now faced with the necessity of seeking a fair and just solution to the problem confronting it, and which solution must conform with the applicable provisions of the New Mexico statutes and the rules and regulations of the Commission pursuant thereto. We have been unable to find a case in which the courts of the State of New Mexico have spoken concerning a situation similar to that found in the instant case. We must, therefore, necessarily look to the provisions of the statutes and to the rules and regulations of the Commission.

We submit that the record in this case clearly shows that there was never more than 40 acres dedicated to the subject well; that there was never any compliance by Aztec with the orders of the Commission in regard to allowables assigned this well, except to the extent that the filing of Form C-104 and Form C-110 together with a plat showing Aztec's 40 acres as the only acreage attributed to said well, which forms and plat were filed on September 26,

1953, may constitute such compliance; that all gas produced in excess of a 40-acre allowable was illegally produced; that while Continental must to some extent share with Aztec the responsibility for the position in which the Commission now finds itself, it is crystal clear from the evidence and from the testimony of Aztec's own witnesses that the only interested party receiving any benefit from continued silence was and is Aztec Oil & Gas Company, who, as operator of the well and as such beneficiary, was under a much greater duty than Continental to speak, and speak promptly, to the Commission for the purpose of having the situation corrected and the illegal production of gas discontinued; that approval of Aztec's subject application effective November 1, 1955 will result in, and put the Commission's stamp of approval on, the confiscation of gas belonging to other parties; that the only manner in which the Commission can protect the correlative rights of all parties and prevent such confiscation is to approve a 40-acre non-standard unit and make such approval effective retroactively to January 1, 1954, and require that allowable production be adjusted accordingly, and that Aztec be required to shut-in the subject well until gas production therefrom is in balance with allowable for a 40-acre unit; and that no possible drainage can ultimately result to Aztec from such order, because the

well would be shut-in for such period of time only as is required to enable the parties who have sustained drainage at the hands of Aztec an opportunity to balance such drainage. That the Commission has the authority and, we believe, the duty to enter an order accomplishing these things has, in our opinion, been abundantly demonstrated hereinabove in our several references to the applicable statutes and rules and regulations and orders of the Commission.

It is, therefore, earnestly urged and requested that in approving the non-standard 40-acre unit applied for in Case No. 992 the Commission make such approval retroactive to January 1, 1954, and that by appropriate action it order the subject well shut-in until all production since January 1, 1954 is in balance with an allowable on the basis of a 40-acre gas proration unit.

Respectfully submitted,

CONTINENTAL OIL COMPANY

BY Jason W. Kellahin
Jason W. Kellahin

P.O. Box 597
Santa Fe, New Mexico

Harry G. Dippel
Harry G. Dippel

1710 Fair Building
Fort Worth 2, Texas

ATTORNEYS

CONOCO

CONTINENTAL OIL COMPANY

FAIR BUILDING
FORT WORTH 2, TEXAS

HARRY G. DIPPEL
GENERAL ATTORNEY
GLENN L. MACE
FRANK L. MERRILL
ATTORNEYS

August 30, 1956

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

Re: Case 992

Gentlemen:

We are pleased to be able to inform you that the communitization agreement covering the communitization of the NE/4 of Section 10, T-21-S, R-37-E, N.M.P.M., Lea County, New Mexico, to form a standard 160-acre gas proration unit dedicated to Aztec Oil & Gas Company's Dauron Well 2-B, located 660 feet from the North line and 525 feet from the East line of said Section 10, has now been executed in counterparts by Aztec Oil & Gas Company, Continental Oil Company, The Atlantic Refining Company, Standard Oil Company of Texas, and Stanolind Oil and Gas Company as the owners of all of the working interest under the respective oil and gas leases covering said quarter section.

Aztec Oil & Gas Company is the owner of the well to which this unit is attributed and is, of course, the operator of the unit,and the operating agreement covering such operation has also been executed by all of the above named parties. All of the contracts are in our possession and will be submitted to Aztec for further handling. By telephone this morning I informed Mr. Quilman B. Davis, General Attorney of Aztec, of my telephone conversation this morning with your Mr. Jack Gurley and of the fact that Continental Oil Company now has in its possession and will transmit to Aztec the above-mentioned executed instruments for further handling. Mr. Davis informed me that as soon as he receives these executed instruments Aztec will prepare and forward to the Commission an appropriate affidavit stating that the Communitization Agreement has been fully executed by all working-interest owners. Mr. Davis also informed me that Aztec will request

your Honorable Commission to dismiss its application in Case 992.

You are respectfully advised that Continental Oil Company has no objection to the dismissal of said application and would be glad to join Aztec in such request in the event your Commission desired such joinder.

Assuring you of our appreciation for your many courtesies in connection with this troublesome matter, I am

Yours very truly,

Harvey G. Dickerson

HGD-ED

cc Mr. Quilman B. Davis
Aztec Oil & Gas Company
920 Mercantile Securities Bldg.
Dallas 1, Texas

Mr. Jason W. Kellahin
Attorney at Law
P.O. Box 597
Santa Fe, New Mexico

Mr. H.L. Johnston
Continental Oil Company
Fort Worth, Texas

Mr. R.L. Adams
Continental Oil Company
Roswell, New Mexico

AZTEC OIL & GAS COMPANY
920 MERCANTILE SECURITIES BUILDING
DALLAS 1, TEXAS

QUILMAN B. DAVIS
SECRETARY AND GENERAL ATTORNEY

August 31, 1956

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

Dear Jack:

Mr. Harry Dippel called yesterday and advised that the communtization and operating agreements for the Blinebry formation covering the NE¼ of Section 10, Township 21 South, Range 37 East, had been signed by all parties having a working interest in the unit.

I expect to receive these documents next week, and if they are all in order I will promptly forward to the Commission our affidavit that the communitization has been effected and request the dismissal of our application.

With best personal regards, I am

Yours very truly,

Quilman

QBD:NL

AZTEC OIL & GAS COMPANY
920 MERCANTILE SECURITIES BUILDING
DALLAS 1, TEXAS

QUILMAN B. DAVIS
SECRETARY AND GENERAL ATTORNEY

September 4, 1956

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

Attention: Mr. A. L. Porter,
Secretary-Director

Re: Case No. 992

Gentlemen:

Continental Oil Company has delivered to us executed counterparts of a Communitization Agreement covering the communitization and pooling of the Blinebry gas formation underlying the $NE\frac{1}{4}$ of Section 10, Township 21 South, Range 37 East, N.M.P.M., Lea County, New Mexico, to form a standard 160-acre gas proration unit dedicated to Aztec's Dauron Well 2-B, located in the $NE\frac{1}{4}NE\frac{1}{4}$ of Section 10. An affidavit, in duplicate, by Aztec, as operator of the unit, stating that the communitization has been effected, is enclosed for your files.

Aztec Oil & Gas Company, Applicant in Case No. 992, hereby respectfully requests the Commission to dismiss such case on the grounds that the lands involved have been communitized and pooled for the production of gas and associated liquid hydrocarbons from the Blinebry formation.

With thanks, I am

Yours very truly,

QBD:NL
Enc.
cc - Mr. Harry Dippel
Mr. Jason W. Kellahin
Mr. Prentice Watts

AFFIDAVIT OF COMMUNITIZATION AGREEMENT

STATE OF TEXAS)
)
COUNTY OF DALLAS)

Quilman B. Davis, being first duly sworn, deposes and says that he is the duly authorized agent and representative of Aztec Oil & Gas Company, designated operator of the Dauron Well No. 2-B, located in the NE¼ of the NE¼ of a communitized unit embracing the NE¼ of Section 10, Township 21 South, Range 37 East, N.M.P.M., consisting of 160 acres, more or less, and that all owners of working interests underlying the above described unit have pooled or communitized their respective interests for the purpose of production of gas and associated hydrocarbons from said unit, insofar as said production pertains to the Blinebry Gas Pool.

Quilman B. Davis

Quilman B. Davis, General Attorney
for Aztec Oil & Gas Company

Subscribed and sworn to before me this 4th day of September, 1956.

Naomi D. Langston

Notary Public in and for
Dallas County, Texas

My Commission Expires:

June 1, 1957

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

September 14, 1956

COPY

Mr. Jack Campbell
P. O. Box 721
Roswell, New Mexico

Dear Sir:

On behalf of your client, Aztec Oil and Gas Company, we enclose two copies of Order No. R-879 issued September 13, 1956, by the Oil Conservation Commission in Case No. 992, which was heard on January 19, 1956.

Very truly yours,

A. L. Porter, Jr.
Secretary-Director

jh
encls.

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

September 14, 1956

COPY

Mr. H. G. Dippel
Continental Oil Company
Fair Building
Fort Worth 2, Texas

Dear Sir:

We enclose a copy of Order No. R-879 issued September 13, 1956, by the Oil Conservation Commission in Case No. 992, which was heard on January 19, 1956, for your records.

Very truly yours,

A. L. Porter, Jr.
Secretary-Director

jh
encl.