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February 4, 1958

New Mexico Oil Conservation
Commission
Santa Fe, New Mexico

Re: Case 1308

Gentlemen:

Please find herewith an Application for Rehearing filed by Shell Oil Company in the above case. The Company desires to present some testimony and evidence on the facts within the issues raised by this application.

Very truly yours,

Oliver Seth

OS:wcl
encl.

BEFORE THE OIL CONSERVATION
COMMISSION OF THE STATE OF
NEW MEXICO

IN THE MATTER OF THE APPLICATION OF SUNRAY MID-CONTINENT OIL COMPANY FOR AN ORDER EXTENDING THE HORIZONTAL LIMITS OF THE BISTI-LOWER GALLUP OIL POOL IN SAN JUAN COUNTY, NEW MEXICO, AND TEMPORARILY ESTABLISHING UNIFORM 80-ACRE WELL SPACING AND PROMULGATING SPECIAL RULES AND REGULATIONS FOR SAID POOL	CASE NO. 1308

APPLICATION FOR REHEARING

TO THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO:

COMES NOW, SHELL OIL COMPANY, a Delaware corporation, Protestant in the above-mentioned case and respectfully applies for a rehearing therein, and in support thereof states that the Commission erred in entering its Order No. R-1069-B dated January 17, 1958 in the following respects:

1. That the order is arbitrary, unreasonable and discriminatory in that in establishing temporary eighty-acre proration units it discriminates against operators who in good faith drilled wells on a forty-acre pattern in accordance with then existing state-wide spacing and proration rules.

2. That the order is further unreasonable, arbitrary and discriminatory as to the applicant for the reason that it discriminates against the applicant who in good faith drilled wells on the forty-acre pattern following the 9th day of October, 1957, on which date the Commission entered Order No. R-1069 in Case

No. 1308 which order found in part that the Bisti-Lower Gallup Oil Pool should be developed on a uniform forty-acre well spacing pattern in accordance with the rules and regulations of the Oil Conservation Commission.

3. That the order is further discriminatory, unreasonable and arbitrary for the reason that it discriminates against the applicant who in good faith following the 4th day of November, 1957 drilled wells on a forty-acre spacing pattern in accordance with the provisions of Order No. R-1069-A, which order is entitled "Order of the Commission for Rehearing" and which recites that Order No. R-1069 shall remain in full force and effect until further order of the Commission.

4. The applicant had commenced two wells on a forty-acre pattern before October 9, 1957, and the applicant between October 9 and November 4 had commenced four wells on a forty-acre pattern, and had commenced eight wells between November 4, 1957 and January 17, 1958 on the same pattern. All of the wells described in this paragraph on forty-acre pattern were drilled at an approximate total cost to the applicant of $565,600.00 exclusive of lease facilities. Of the number of wells above indicated, 14 wells under Order No. R-1069-B cannot be assigned sufficient acreage to enable them under the terms of the order to be allowed an eighty-acre allowable; consequently, the applicant will not be permitted any allowable on these wells and has thereby been penalized.

5. That the order is contrary to law in that it is not supported by a finding that one well will efficiently and economically drain 80 acres in accordance with Section 65-3-14(b) of the

New Mexico Statutes, 1953, Annotated, as amended, and is also contrary to law in other respects.

6. That the order is contrary to the evidence in that to constitute a basis for an exception to the state-wide rules providing for forty-acre spacing and proration units the evidence must reveal a better than average reservoir with good homogeneity, whereas the evidence of the proponents, as well as the protestants, clearly shows that the reservoir is below average and relatively heterogenous in nature.

7. That the Order R-1069-B is a retrospective regulation and the retroactive effect of it is to confiscate and violate the vested property rights of the applicant. During the course of the proceedings in this case the exhibits of the applicant and of the other parties showed the wells which had then been drilled or commenced under the Commission's existing and reaffirmed forty-acre spacing and proration rules. These wells being drilled as hereinabove alleged during the period of the state-wide forty-acre spacing rules, during the period between the entry of Order R-1069 and the Order R-1069-A granting the rehearing, and between the time of the order granting the rehearing and the issuing of Order R-1069-B. The order in its retroactive effect upon the property rights of the applicant, which were acquired under existing rules and regulations of the Commission, is contrary to the Fourteenth Amendment of the Constitution of the United States and Section 18, Article II of the Constitution of the State of New Mexico. Applicant had a vested property right by reason of the location of the wells hereinabove alleged drilled pursuant to the authority of the Commission, which right vested prior to the entry of Order No.

R-1069-B. The order in creating eighty-acre spacing, in setting well locations, and in establishing proration units confiscated applicant's vested property rights as hereinabove set forth.

8. The order impairs obligations under contracts between the State of New Mexico, the United States Geological Survey and Shell Oil Company as operator, which contracts were created by the Carson Unit Agreement and plans of development for the Carson Unit which were previously approved by the Commissioner of Public Lands of the State of New Mexico, by the Oil Conservation Commission and by the United States Geological Survey. This violation and impairment of the obligations of contracts is contrary to the provisions of Section 10, Article I of the United States Constitution and Section 19, Article II of the Constitution of the State of New Mexico. The Carson Unit Agreement had been duly approved and was in operation at the time the original petition herein was filed. Thereafter plans of development numbered 1 and 2 had been duly approved by the State of New Mexico and by the U.S.G.S. The third plan of development for the Carson Unit Area was approved by the New Mexico Oil Conservation Commission by letter dated July 23, 1957. It was approved by the Commissioner of Public Lands of the State of New Mexico on the 24th day of July, 1957 and was unconditionally approved by the U.S.G.S. by letter dated October 15, 1957. This third plan of development proposed the drilling of 53 wells within the Carson Area, the development thereby to be upon a forty-acre pattern. The approval of this third plan of development on the forty-acre pattern became an obligation under the Carson Unit Agreement which was a contract among the three parties as set forth above. This unit agreement

specifically so provided. The order herein complained of as above provided impairs the obligation so created.

9. The order herein complained of is contrary to Rule No. 505 of the Commission relating to depth factors in the allocation of production. The order is contrary to the said Rule 505 in that said rule makes no provision for eighty-acre wells at a depth less than 5000 feet. The modification or amendment of Rule 505 is not within the issues of the case or within the notice of the hearings.

10. At the time the Commission entered the order granting rehearing it had previously announced the institution of proration within the area affected and beginning in December, 1957 allocation of production was made to forty-acre tracts by orders entered by the Commission and consequently at all times here pertinent the Commission had adopted a policy of allocating full allowables to forty-acre tracts, and the applicant in reliance thereon proceeded with its drilling program as above set forth.

11. That as a result of the aforesaid substantial expenditures and other action by the applicant in drilling wells in good faith in reliance upon the then existing state-wide forty-acre spacing and proration rules, which were continued by the above-mentioned orders of the Commission of October 9 and November 4, 1957, the Commission is, as a matter of equity and justice, estopped from establishing spacing and proration units which discriminate against all wells so drilled prior to January 17, 1958, the date of Order R-1069-B.

WHEREFORE, Petitioner prays that this Application for Rehearing be granted for the purpose of reconsidering Order No. R-1069-B,

and that, after notice and hearing as required by law, the Commission modify such order so that each forty-acre well drilled prior to January 17, 1958 will receive the same allowable that is allocated to eighty-acre proration units provided for under such order.

Respectfully submitted,

SHELL OIL COMPANY

By _____

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Attorneys for Petitioner