

BEFORE THE
NEW MEXICO OIL CONSERVATION COMMISSION
Santa Fe, New Mexico
July 24, 1963

EXAMINER HEARING

IN THE MATTER OF:

Application of J. Gregory Merrion and Associates for compulsory pooling, Rio Arriba County, New Mexico. Applicant, in the above-styled cause, seeks an order force-pooling all mineral interests in the Basin-Dakota Gas Pool underlying the S/2 of Section 34, Township 25 North, Range 6 West, Rio Arriba County, New Mexico.

Case No. 2870

BEFORE: Daniel S. Nutter, Examiner

TRANSCRIPT OF HEARING

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BEFORE THE
OIL CONSERVATION COMMISSION
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interests in the Basin-Dakota Gas Pool under-)
lying the S/2 of Section 34, Township 25)
North, Range 6 West, Rio Arriba County, New)
Mexico.)

CASE 2870

BEFORE: Daniel S. Nutter, Examiner

TRANSCRIPT OF HEARING

MR. NUTTER: We will call Case 2870.

MR. DURRETT: Application of J. Gregory Merrion and Associates for compulsory pooling, Rio Arriba County, New Mexico.

MR. COOLEY: William J. Cooley with the law firm of Verity, Burr, Cooley, and Jones, Farmington, New Mexico, appearing on behalf of the applicant, Mr. Merrion.

(Witness sworn.)

J. GREGORY MERRION

called as a witness, having been first duly sworn on oath, testified as follows:

DIRECT EXAMINATION

BY MR. COOLEY:

Q Would the witness state his full name and place of

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residence?

A J. Gregory Merrion, Farmington, New Mexico.

Q How are you employed, Mr. Merrion?

A I am self-employed as an oil operator.

Q Are you the operating member of J. Gregory Merrion and Associates?

A Yes, I am.

Q Have you previously testified before the New Mexico Oil Conservation Commission as an expert witness?

A Yes, I have.

MR. COOLEY: Mr. Examiner, do you accept the witness' qualifications as having been previously established before this Commission?

MR. NUTTER: Yes, sir, Mr. Cooley. Please proceed.

Q (By Mr. Cooley) Mr. Cooley, are you thoroughly familiar with the application before the Commission in Case 2870?

A Yes, I am.

Q Is it your proposal to drill a well to test the Dakota formation in the South Half of Section 34, Township 25 North, Range 6 West, in Rio Arriba County, New Mexico?

A Yes, that is my intention.

Q Mr. Merrion, would you please outline the ownership of the various tracts contained in the South Half of said Section 34?

A There are two tracts contained in the South Half of 34,



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40-acre tract which is owned by the Merrion Trusts, of which George E. Brogan is Trustee and my brothers and myself are beneficiaries, and 10 percent of that tract is a lease, fee lease; and 25 percent is a fee lease, that's 65 percent fee mineral ownership; and 35 percent fee lease.

There are 280 acres which is a Federal lease owned jointly by a group of people, of which the E. P. Campbell Estate is one. They are all covered by an operating agreement except the E. P. Campbell Estate, and there's provision in their operating agreement for non-consent. Do you want a complete list of the people?

Q No, that's not necessary, thank you.

A Okay.

Q Then the lease which is not controlled by the applicant here is a 280-acre Federal oil and gas lease?

A That is correct.

Q Of which the Estate of E. P. Campbell, Deceased, owns an undivided 12-1/2 percent of the working interest?

A That is correct.

Q Have you made diligent effort to contact all the working interest owners in this 280-acre Federal oil and gas lease?

A Yes, sir, I have.

Q Have you been successful in making such contact?

A I have to a certain extent. I have contacted everybody except the E. P. Campbell -- or at least I have not received any



reply from the E. P. Campbell Estate or the Halliburton Company, which is possibly a successor to their interest.

Q Have you reached an agreement with any of the working interest owners in the 280-acre Federal lease?

A Mr. Kay Kimball, who owns a majority interest in the Federal lease and who is operator, has agreed to join me. He's the only one that has so far. However, he has also agreed to succeed to the interest of those other parties covered by his operating agreement in the event they do not join.

Q To completely explain this position, am I to understand that the operating agreement to which you have referred gives the other owners in this lease, that is, other than Kay Kimball, the opportunity to participate in any well drilled on that land if they so desire?

A Yes.

Q And if they elect not to participate in the cost of drilling the well, is it then Mr. Kimball's option and privilege to proceed with the drilling of the well under the terms of that agreement?

A Yes, he will proceed with the drilling under the terms of that agreement.

Q And he will carry their interest, so to speak, and be reimbursed out of production, is that correct?

A Right, and everybody is covered under that agreement except the Campbell Estate.

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Q Have you attempted to contact or communicate with the representatives of the Estate of E. P. Campbell, Deceased?

A Yes, I have.

Q Would you please advise the Examiner in what nature you have attempted to so communicate?

A I wrote a registered letter with return receipt requested to the Estate of E. P. Campbell, in care of Mr. Chiardo Pierce, in Lubbock, Texas.

Q What was the date of that letter?

A April 24, 1963.

MR. COOLEY: Would you please mark that letter as Exhibit No. 1?

(Whereupon, Applicant's Exhibit No. 1 marked for identification.)

Q (By Mr. Cooley) Referring now to Exhibit No. 1, you said you sent this letter return receipt requested. Did you receive that?

A Yes, it was signed by Mr. Cecil Keith.

Q Do you know what his connection is with the Estate?

A I understand he's a son-in-law of Mr. Campbell.

Q Would you advise the Examiner of the contents of the letter?

A I will read it. It's addressed to the E. P. Campbell Estate, care of Chiardo Pierce, 1603 Broadway, Lubbock, Texas.

"It is my intention to drill a well to test the Dakota formation



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in the South Half of Section 34, Township 25 North, Range 6 West, Rio Arriba County, New Mexico. The estimated cost of drilling and completing this well is \$80,000. It is my understanding that the Estate of E. P. Campbell owns a one-fourth interest under the Federal lease which comprises 280 acres of this drilling block. Please be advised if you wish to join in the drilling of this well. The other working interest owners of this drilling block have expressed their desire to join in the drilling of this well and we will wish to commence shortly after June of this year. I appreciate your early reply. Yours very truly."

Q Does that conclude the letter?

A That concludes the letter.

Q On previous occasions has it been necessary to also force-pool other acreage in which the Estate of E.P. Campbell is involved?

A On one further occasion we did pool E. P. Campbell, on the adjacent drilling block on Section 35 of this same township.

Q In connection with the previous experience, is it your opinion that there will not be forthcoming from that Estate any offer to participate in the cost of drilling?

A There never was any contact made on the previous occasion, in spite of several letters written before and after and during the drilling of that well.

Q In your application, you refer to the Halliburton Company and Continental Emsco Company. Would you please advise the Examiner as to what interest, if any, they own in the acreage



involved in this application?

A To my knowledge, the Estate of E. P. Campbell was bankrupt, and the Halliburton Company and Continental Emsco Company each had liens on certain of Mr. Campbell's lease interests. It was my understanding that they were eventually to own his interest in this lease.

Q Would this be through a foreclosure action in court?

A I don't know what the legal procedure would be. I presume that's true.

Q With this knowledge, have you also communicated with Continental Emsco and the Halliburton Company?

A Yes, on June 7th I wrote each of them a letter.

Q Were the contents of these letters substantially the same as that of the letter to Mr. Campbell?

A Yes, they are essentially the same content. They were certified and return receipts requested, and I do have the receipts.

Q Have you received a reply from each?

A Not from Halliburton, but I did receive a reply almost a month later from Continental Emsco Company.

Q Did they indicate any willingness to immediately participate in the drilling of this well?

A No willingness to do so immediately. They did -- well, let me read you the letter. "We have your letter of June 7th relative to your intention to drill a well and test the Dakota

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formation in the South Half of Section 34, 25 North, 6 West, Rio Arriba County, New Mexico. Continental Emsco and Halliburton Company are mortgagees of the interest of E. P. Campbell in this and other properties, and we are in the process of attempting to clear our title thereto. The writer plans to be in Farmington during the latter part of this month and would like to discuss this matter further at your convenience. Yours very truly, J. F. Wagenhauser, General Counsel."

Q If this application were granted as applied for, would it in any way prevent Continental Emsco or the Halliburton Company or both from participating in the drilling of this well at any time prior to its commencement?

A No, it would not prevent that.

Q What other established Dakota production presently exists in the South Half of Section 34?

A Oh, there are four producing Dakota wells on adjacent drilling blocks. In the North Half of Section 34, there is the Kay Kimball 1-34 Federal; on the West Half of Section 35 there is the Kay Kimball 3-35 Federal Unit; and on the East Half of Section 3, Township 24 North, Range 6 West, that's south of this proposed drilling block, there's the El Paso Natural Gas Company Canyon Largo Unit No. 1-17. That's three adjacent wells, not four.

Q Based on this information, are you of the opinion that the South Half of Section 34 is proven acreage with respect to the Dakota formation?



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A Yes, I think so.

Q Despite the fact that it is relatively safe to assume that the South Half of Section 34 is Productive of gas from the Dakota formation, in your opinion is there any risk involved in establishing such production?

A Very definitely.

Q What is the nature of these risks which are involved inherently in the drilling of a well of this nature?

A Well, probably the main risk in drilling a Dakota well anywhere in the Basin would be getting a well to take so long to pay out that you would be better off with money in a savings and loan account.

Q Mechanically speaking, are there also risks involved in the possibility of losing a well of this nature?

A Yes, I suppose there are some.

Q In view of the risks that you have outlined, do you feel that the application, if granted, should provide for risk factor?

A Yes, I do.

Q What percentage risk factor would you recommend?

A I have never heard of an operating agreement which was negotiated at arm's length which provided for less than 50 percent -- correction, or say 150 percent out of future production on any project that was undertaken without the consent of all parties, and I think that that should be the minimum.



Q In plainer words, you would recommend that the Commission in its force-pooling order follow the same procedures that are generally established in arm's length transactions in voluntary communitization agreements?

A Yes, I think so.

MR. COOLEY: Let the record show that the letters to the Halliburton Company and Continental Emsco Company are respectively marked Exhibits 2 and 3.

(Whereupon, Applicant's Exhibits Nos. 2 and 3 marked for identification.)

MR. COOLEY: At this time I respectfully move the admission of Exhibits 1, 2, and 3 into the record.

MR. NUTTER: Applicant's Exhibits 1 through 3 will be admitted into the record.

(Whereupon, Applicant's Exhibits Nos. 1, 2, and 3 admitted in evidence.)

Q (By Mr. Cooley) Mr. Merrion, is it your opinion that the granting of this application would be in the interest of orderly development of the Basin Dakota Gas Pool?

A Yes, sir, that is my opinion.

Q In this connection, do you believe that the granting of this application will prevent waste and protect correlative rights?

A Yes, I think that it will.

MR. COOLEY: No further questions.



MR. NUTTER: Anyone have any questions of the witness?

Mr. Durrett.

MR. DURRETT: Yes.

CROSS EXAMINATION

BY MR. DURRETT:

Q Mr. Merrion, what did you state the Campbell interest was, percentage-wise?

A I think Mr. Cooley stated it was one-eighth and I had mentioned in a letter that it was my understanding it was one-quarter. Actually, his vested interest is one-eighth, and by terms of their operating agreement he has an option to be reimbursed for 150 percent of another one-eighth. That is the reason I had stated in the letter I thought it was a quarter.

Q How much of this acreage do you have?

A I have 40 acres.

Q 40 acres. I take it from your testimony that you are not aware that a receiver has been appointed in the State of New Mexico to take over the Estate of E. P. Campbell and all of his assets in this State?

A No, I am not aware of that.

Q Well, the Commission has been so advised, not in connection with this case but in connection with another case. Now I can furnish you with the name of the receiver and the name of the attorney who represents the receiver. The receiver is Mr. Jim Bowen of Carlsbad, New Mexico, and the lawyer for the receiver



is -- I don't remember his first name, but it's the attorney Mr. Payne with McCormick and Payne law firm. I'm sure Mr. Cooley can find his full name. He also represents Halliburton and Continental. With that information, I wonder if you would like an opportunity to contact the receiver and give him an opportunity to join on behalf of the E. P. Campbell Estate if he so desires.

A I'd be very happy to.

MR. COOLEY: Off the record.

(Whereupon, a discussion off the record was held.)

MR. COOLEY: In my opinion and officially in this record, I object to the particular ensnarment of any particular tracts being an objection to granting an application for force-pooling, because this is one of the major purposes of the Act itself is to circumvent these things.

In no way has anybody's rights been confiscated by being force-pooled. They're having the risk of having somebody drill a well free for them, though recommended by Mr. Merrion, 50 percent, the standard figure is much lower than that, usually in all respects it's a very reasonable forced communitization.

I think to establish a precedent that would make the particular legal ensnarment of title to a given tract a valid objection to granting an order even a valid reason for delaying it, is a very dangerous process.

MR. NUTTER: I want to ask Mr. Merrion a couple of questions here. This is on the record.

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BY MR. NUTTER:

Q Mr. Merrion, as I understand it, now in the South Half of Section 34, there are two tracts?

A That is correct.

Q One is a 40-acre tract which is a Fee tract, part in Fee, part is leased interest?

MR. COOLEY: It's all Fee.

A It's all Fee.

Q (By Mr. Nutter) You have an interest in this 40 acres?

A That is correct.

Q Now there's another tract that's 280 acres. The Estate of E. P. Campbell owns 12-1/2 percent undivided interest and a portion of the other eighth to be earned out of production?

A No, he owns one-eighth interest in that, period. I'm not sure what the nature of this other -- how I ever got this impression that he had a quarter. Can you explain that?

MR. COOLEY: Yes, this is a legal matter and it's simply a matter of legal interpretation rather than testimony. As you well know, many of the formations underlying a Federal oil and gas lease are segregated out and owned by different people. The Bureau of Land Management, by virtue of the rules and regulations of the Department of the Interior, prohibit the conveyance of what they call a record title to isolated formations. In plain words, they particularly prohibit any type of horizontal, or vertical, rather, segregation.



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Consequently, it's simply a legal fix whereby they assign operating rights. This particular instrument is an assignment of operating rights, assignment of 50 percent of the operating rights, three-fourths to Kay Kimball and one-fourth to E. P. Campbell. They're thereby assigned three-fourths of a half and one-fourth of a half, respectively, then, in the non-participation provisions of the operating agreement. That is, if one party elects to drill and another party or parties does not consent to drill and advance their share of costs, then the parties electing to drill have an option to proceed to do so and advance the cost of the non-participating parties and recover 200 percent out of production.

MR. NUTTER: So the Estate of E. P. Campbell held an eighth of this?

MR. COOLEY: Owns presently a one-eighth interest.

MR. NUTTER: And Kay Kimball owns the other seven-eighths of the working interest --

MR. COOLEY: He owns --

MR. NUTTER: -- of the 280-acre tract?

MR. COOLEY: He owns 75 percent, or 37.5 percent, and he has the right to advance the cost of the other 50 percent owners, which makes him 87-1/2 percent.

MR. NUTTER: He's got seven-eighths then?

MR. COOLEY: But not just an outright. 37-1/2 outright owner, and right to advance the costs for the other 50 percent and



recover it out of production.

Q (By Mr. Nutter) And Kay Kimball has consented to go along with drilling this well?

A He has.

Q And pay his costs in advance?

A Yes.

MR. COOLEY: As well as the other 50 percent.

MR. NUTTER: So what we have here is one-eighth interest which is, it's requested that it be force-pooled. Now this one-eighth interest belongs to the Estate of E. P. Campbell, and the Halliburton Company and the Continental Emsco Division of Youngstown Sheet and Tube Company have a claim on this Campbell Estate?

MR. COOLEY: Have a recorded mortgage.

MR. NUTTER: How would you propose, in the event the Commission enters this forced-pooling order, how would you propose that Halliburton and Continental Emsco Division be allowed to come in and pay their share, if a penalty is assessed in the forced-pooling order, if a penalty is assessed against them and they pay their share before some deadline? Would they have to pay the penalty then, in your opinion?

MR. COOLEY: Well, of course not. That penalty only becomes effective in the case of non-participation.

MR. NUTTER: It becomes effective if their share is paid out of production?

MR. COOLEY: Correct.



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Q (By Mr. Nutter) What would you propose would be the deadline if they could come forth with their share of the well?

A Up to the date we commence the well.

Q Commence drilling the well?

A Correct.

MR. DURRETT: When do you propose to commence drilling the well, Mr. Merrion?

A Probably within four to six weeks, assuming that this order is granted.

Q (By Mr. Nutter) As I recall, some of the force-pooling orders that have been entered by this Commission allow the parties who are force-pooled a period of time, 30 days or 90 days after they receive a tabulation of the actual well costs, in which to pay their proportionate share. If they haven't paid it within that period of time after they have received the tabulation, then the assessment of their share plus the penalty goes against the production.

A I believe you are right.

Q What is the location in the South Half of Section 34 that you propose to drill, Mr. Merrion?

A Well, the topography is a little rough. The Canyon Largo Wash runs down through there. We selected a tentative location 1850 feet from the south and west lines.

Q What is the well in the North Half of this section?

A Kay Kimball 1-34 Federal.



Q What's the location of that?

A It's in Unit H, which would be the Southeast of the Northeast.

MR. COOLEY: It's in F, isn't it?

A No.

Q (By Mr. Nutter) Then to the east of Section 35, the West Half, there is a unit; what's the location of that well?

A 790 from the east and west lines.

Q So it's down in M of Section 35?

A Yes.

Q What was the location of the Canyon Largo No. 17 in Section 3 to the south?

A Unit A, it's roughly 1090, I think, from the corner.

Q And there's no well directly to the west, is that correct?

A No, there's none, that's correct.

MR. DURRETT: I have an additional question, please.

BY MR. DURRETT:

Q Mr. Merrion, could you give us some figures on your estimate of the cost of operation on this well?

A I will not -- according to the agreement between Mr. Kimball and I, I am to drill the well and turn it over to him for the operation. We are in process of negotiating an operating agreement **between us** and he is operating another well jointly between us, and, however, it just went on the line here a few



months ago. I don't know exactly what the operation costs will be. I presume that between -- well, I would say roughly \$100 a month.

Q What is that opinion based on?

A To my recollection, our agreement on this other operating agreement was that office and overhead costs and so forth were to be \$45.00 a month, and it's my estimate that probably pumpers' cost will run the balance.

MR. NUTTER: What is your present estimate of the cost of the well, \$80,000?

A \$80,000, that is correct.

MR. NUTTER: To drill and equip?

A To drill, complete, and equip. The other well I drilled on the adjacent block, I think the final cost was \$77,800 or something like that.

MR. NUTTER: Do you have anything more?

MR. DURRETT: That's all I have. Thank you.

MR. NUTTER: Any other questions of the witness? He may be excused.

(Witness excused.)

MR. NUTTER: I think we have already admitted your evidence, haven't we?

MR. COOLEY: Yes, we have.

MR. NUTTER: Does anyone have anything further to offer in Case 2870? We'll take the case under advisement, and the

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Exhibit No. 1

*Order Mailed
8-7 JGM*

April 24, 1963

REGISTERED
RETURN RECEIPT REQUESTED

Estate of E. P. Campbell
c/o Mr. Chiardo Pierce
1603 Broadway
Lubbock, Texas

BEFORE EXAMINES MATTER
CIL CONSTRUCTION COMPANY
<i>Case No. 2870</i>
CASE NO. 2870

Gentlemen:

It is my intention to drill a well to test the Dakota formation in the South half of Section 34, 25 North, 6 West, Rio Arriba County, New Mexico.

The estimated cost of drilling and completing this well is \$80,000.00. It is my understanding that the Estate of E. P. Campbell owns a 1/4 interest under the Federal lease which comprises 280 acres of this drilling block.

Please be advised, if you wish to join in the drilling of this well. The other working interest owners of this drilling block have expressed their desire to join in the drilling of this well and we will wish to commence shortly after June of this year.

I will appreciate your early reply.

Yours very truly,

J. Gregory Merrion

JGM:sh

cc: Kay Kimbell

Exhibit 2

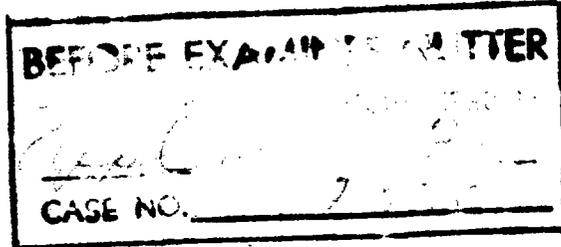
*Order Mailed
8/7*

June 7, 1963

CERTIFIED
RETURN RECEIPT REQUESTED

The Halliburton Company
P. O. Drawer 1431
Duncan, Oklahoma

Attention: Mr. R. O. Brown
Vice President



Gentlemen:

It is my intention to drill a well and test the Dakota formation in the South half of Section 34, 25 North, 6 West, Rio Arriba County, New Mexico. The estimated cost of drilling and completing this well as a Dakota producer is \$80,000.00.

It is my understanding that the Estate of E. P. Campbell owns a one-eighth interest under the Federal lease, which comprises 280 acres of this drilling block. Further, it is my understanding that Halliburton has some claim to this interest as a result of a mortgage.

Please be advised, if you wish to join in the drilling of this well, the other working interest owners have expressed a desire to join in the drilling of this well and we wish to commence the well as soon as possible.

I will appreciate your early reply.

Yours very truly,

J. Gregory Merrion

JGM:ah

Exhibit 3

Non Mailed 5-7-63

June 7, 1963

CERTIFIED
RETURN RECEIPT REQUESTED

Continental-Emsco Company
P. O. Box 359
Dallas, Texas

Attention: Mr. Henry Wise
Legal Department

Gentlemen:

It is my intention to drill a well and test the Dakota formation in the South half of Section 34, 23 North, 6 West, Rio Arriba County, N. M. The estimated cost of drilling and completing this well as a Dakota producer is \$80,000.00.

It is my understanding that the Estate of F. P. Campbell owns a one-eighth interest under the Federal lease, which comprises 280 acres of this drilling block. It is, further, my understanding that Continental-Emsco has some claim to this interest as a result of a mortgage.

Please be advised, if you wish to join in the drilling of this well, the other working interest owners have expressed a desire to join in the drilling of this well and we wish to commence the well as soon as possible.

I will appreciate your early reply.

Yours very truly,

J. Gregory Merrion

JGM:ah

