

BEFORE THE
NEW MEXICO OIL CONSERVATION COMMISSION
Santa Fe, New Mexico
July 17, 1974

COMMISSION HEARING

-----)
 IN THE MATTER OF:)
)
 Application of Leland A. Hodges, Trustee) CASE
 for the extension of the Potash-Oil Area,) 5276
 Eddy County, New Mexico.)
)
 -----)

BEFORE: A. L. Porter, Secretary-Director
 I. R. Trujillo, Chairman
 Alex J. Armijo, Member.

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the New Mexico Oil Conservation Commission:	William Carr, Esq. Legal Counsel for the Commission State Land Office Building Santa Fe, New Mexico
For Skelly Oil Company:	Jason W. Kellahin, Esq. KELLAHIN & FOX 500 Don Gaspar Santa Fe, New Mexico 87501 and Chester E. Blodget, Esq. Tulsa, Oklahoma

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APPEARANCES (Continued)

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Belco Petroleum Corp.	KELLAHIN & FOX
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MR. PORTER: We'll take up Case 5276.

MR. CARR: Case 5276. Application of Leland A. Hodges, Trustee, for the extension of the Potash-Oil Area, Eddy County, New Mexico.

MR. PORTER: I would like to call for appearances at this time.

MR. BLACKMAN: My name is R.H. Blackman, I'm an Attorney in Carlsbad, New Mexico. I wish to enter my appearance on behalf of Leland A. Hodges, Trustee of the Hall Trust, and also as counsel for Ideal Basic Industries, Inc., Potash Company of America Division. Ideal Basic Industries, Inc. is a Colorado Corporation authorized to do business in New Mexico, and does so in this instance through its Potash Company of America Division.

MR. PORTER: Mr. Kellahin, do you desire to enter an appearance?

MR. KELLAHIN: If the Commission please, Jason Kellahin from Santa Fe, New Mexico, appearing on behalf of Skelly Oil Company in association with Chester E. Blodget, a member of the Oklahoma and Texas Bars. I'm also appearing on behalf of Phillips Petroleum Company, Belco Petroleum Corporation, and Sun Oil Company, in connection with this Case.

MR. PORTER: That's Skelly, Phillips, Belco --

MR. KELLAHIN: (Interrupting) And Sun.

MR. PORTER: (Continuing) And Sun, and associated
with --

MR. KELLAHIN: (Interrupting) Chester E. Blodget,
Tulsa, Oklahoma.

MR. PORTER: (Continuing) Mr. Blodget of Tulsa.

MR. KELLAHIN: Right, he is here with me.

MR. PORTER: Any other appearances? The Commission
at this time will recommend that Mr. Blackman -- not
recommend -- recognize.

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

MR. BLACKMAN: I'll call my first witness, Mr.
Ben Donegan.

MR. PORTER: How many witnesses do you have, Mr.
Blackman?

MR. BLACKMAN: So far I'll have only one to start
with. I don't know whether I'll have any further witnesses
or not. It will depend on the course the Case takes.

MR. PORTER: All right. Now, Mr. Kellahin, do
you know how many witnesses you'll have?

MR. KELLAHIN: We'll probably have two.

MR. PORTER: Thank you. Will the Witnesses stand and be sworn, please.

(Witnesses sworn.)

MR. PORTER: The record will show that Mr. Kellahin's Witnesses have been sworn.

BEN DONEGAN

called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKMAN:

Q Mr. Donegan, will you state your name please, your occupation and your name?

A I'm Ben Donegan, a consulting geologist with Donegan and Donegan of Albuquerque.

Q Are you a participating owner in the Hall Trust, the Applicant in this Case?

A Yes, I am. I am here today as a geologist representing Leland A. Hodges, Trustee, and also as an interest owner in the Hall Trust, owner of the potash leases being considered here today.

Q Mr. Donegan, for the record, this is an Application made by Leland A. Hodges for extension of the boundaries of Order R-111-A, as amended, to include the property as

advertised in the notice for this Hearing. Have you made a study of the geology of that area?

A Yes, I have.

Q Will you kindly explain to the Commission your qualifications as a consulting geologist and what experience you've had, and education.

A I'm a Certified Professional Geologist and have been engaged in exploration and development of natural resources, including oil and gas in New Mexico, for 20 years. My academic training in geology was at Texas Tech, the University of Texas at Austin, Stanford University, and the University of New Mexico. I have previously testified as a witness before the Oil Conservation Commission. My experience in potash exploration has been over the past ten years in several areas of Arizona and New Mexico, including the Carlsbad Potash District. This work was for and in conjunction with a number of potash and oil companies, including Texas Gull, Phillips Petroleum, Shell Oil Company, Kern County Land Company, now Teneco, Southern Union Production Company, Atlantic Richfield, Leonard Enterprises, and the Potash Company of America. I conducted the initial evaluation of the Hodges-Carlsbad Potash Area that led to the acquisition of the Hodges leases, and I participated in

practically all phases of the exploration of this area by Leland A. Hodges to date.

MR. BLACKMAN: Mr. Chairman, will the Commission accept Mr. Donegan's qualifications?

MR. PORTER: The Commission considers Mr. Donegan qualified to testify.

MR. BLACKMAN: Thank you.

BY MR. BLACKMAN:

Q Mr. Donegan, I hand you the document marked for identification as Exhibit 1.

MR. BLACKMAN: This has not been marked as Exhibit 1 in this Case. Mr. Chairman, what is your pleasure with respect to this? We have stamped these but have not marked them as Exhibits. Would you like to have us mark them as Exhibits before discussing them?

MR. PORTER: Could you put them on the wall over there?

MR. BLACKMAN: Yes.

MR. DONEGAN: Mr. Porter, we have small copies of several of these Exhibits, a number of small copies with the single large copy that we put on the wall.

MR. PORTER: All right.

MR. DONEGAN: And a few of them, like this

particular Exhibit, we don't have the small copies; we can put it on the wall, but I'm not sure that you will be able to tell much about it from the distance.

MR. PORTER: You only have the one copy?

MR. DONEGAN: No, we have numerous copies of this Exhibit.

MR. PORTER: Of that one. All right.

MR. DONEGAN: We'll put it on the wall.

BY MR. BLACKMAN:

Q Mr. Donegan, would you kindly explain to the Commission who prepared Exhibit No. 1?

A I prepared Exhibit No. 1.

Q What does Exhibit No. 1 show?

A Exhibit No. 1 is the lease map showing the Hodges potash leases in the area proposed for extension of Rule 111-A as amended. The Hodges Federal leases in this area are indicated by the fine dots on the map and applied-for Federal prospecting permit is shown by the square-rule pattern. The Hodges State potash leases are shown on the map by the diagonal-ruled lines. Potash core tests are shown on the map by small circles with accompanying data indicating the whole number and an abbreviation for the company that drilled each core test. The red line which

follows the dashed line across the map as the present boundary of Rule 111-A as amended. The yellow line which follows the short-dashed line is the outline of the proposed extension of Rule 111-A as amended.

Q Who owns these leases?

A Leland A Hodges, Trustee for Hall Trusts, is the owner of the leases shown on the map by the symbols that I have described. Leland A. Hodges, Trustee, is a group of individuals -- or I should say Hall Trusts -- is a group of individuals from Fort Worth, Texas, that formed the Trust to explore and develop mineral resources.

Q What is the interest of Ideal Basic Industries, or what we'll call Potash Company of America, in this property?

A Leland A Hodges, Trustee, has a joint venture contract with Potash Company of America. This contract provides for a considerable amount of drilling and engineering studies preliminary to the construction of a mill and the sinking of shafts to initiate langbeinite production on the Hodges leases. PCA, or Potash Company of America, is currently drilling on the property in accordance with the joint-venture arrangement.

Q Mr. Donegan, I don't recall that you identified on this map the few parcels that are white. What are those

parcels?

A The parcels that are not shown by either dots, squares, or diagonal lines, in other words the white areas between the red and yellow lines, are lands not owned by Hodges. Some of these lands are unleased Federal lands held under the KPA, or known potash regulations; others are owned by other potash companies in the area.

Q Mr. Donegan, I hand you the document marked for identification as Hodges Exhibit No. 2 and ask you if you would please put a copy of that on the wall. Would you please explain what Exhibit No. 2 is?

A Exhibit No. 2 is a copy of the US geological survey map, made available to the public in June, showing boundaries of various potash areas. For instance, the red outlined area, which follows a dashed line, is the oil potash area covered by the Oil Conservation Commission's Rule 111-A as amended. The heavier dashed line, which is not colored on the map, is the oil potash area designated by the Secretary of Interior of May 11, 1965. The area colored yellow is the Leland A Hodges, Trustee, proposed extension of the potash oil area. Incidentally, the small copies are exact reproductions of the original map of the U.S. Geological Survey and the only additions to this map

are red lines in the yellow-colored area, and on the small copies, small title blocks. Otherwise, it is the exact copy of the U.S. Geological Survey Map.

Q Mr. Donegan, I hand you a copy of the document marked for identification as Hodges' Exhibit No. 3 and ask you if you will kindly identify that document?

A Exhibit No. 3 is a copy of the Secretary of the Interior's Order of May 11, 1965, designating the potash-oil area as shown on the map. You might note that the Secretary's area includes practically all of Hodges' potash leases and that the Hodges' potash leases are joined to the north and east by Rule 111-A boundary as it is today.

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

BY MR. BLACKMAN:

Q Mr. Donegan, I was walking around; did you identify that document?

A Yes, I did, while you were walking around, Mr. Blackman.

Q That Order is the Order which establishes the dashed line on the Hodges Exhibit No. 2, the dashed blue line around the outside?

A Yes, sir.

Q Mr. Donegan, I hand you a document marked for identification as Hodges' Exhibit No. 4 and ask you if you will kindly identify that document?

A Exhibit No. 4 is a copy of the Memorandum of the Chief of the Conservation Division of the U.S. Geological Survey of February the 14th, 1974. This Memorandum provided (1) the expansion of the potash area to include areas not now in the Secretary's area -- I should say to include several potash areas not now included in the Secretary's area -- but which would include the Hodges' area -- and I guess I should correct that to say which should include the Hodges' area -- and (2) to compile and make public by June, 1974, maps showing potash enclaves in the potash-oil area.

Q By the structure of that order, Mr. Donegan, as you understand it, were all the potash companies instructed to submit information to the Geological Survey by a date certain, I believe April, 1974?

MR. KELLAHIN: We object to this line of questioning, to the discussion of these Exhibits relating to the Secretary's area and the Memorandum issued by the Chief of Geological Survey for the reason it has no bearing on this Case. What we're concerned with is the statutory

authority vested in this Commission and the extension of the potash area under R-111-A. There is a degree of cooperation, that is true, between the Oil Commission and the United States Geological Survey, but their rules and regulations have no bearing on anything this Commission does or can the Commission rely on them for any purpose involved in this Hearing; we object to this line of questioning.

MR. BLACKMAN: If the Commission please, I suppose here we come to the basic difference in philosophy of the conduct of this particular Case before the Commission. As I view this particular Case, the Commission has been mandated by the Legislature of the State of New Mexico to protect potash. By the State Legislature the Commission has been given the authority and duty to make reasonable and fair regulations concerning the potash operations, particularly in connection with oil and gas operations. Thus, at this particular point and in this Hearing, the Oil Conservation Commission is acting in a legislative capacity; they are here making rules. An excellent example of the other side of the case is the case which was just dismissed this morning, which is the Mesa Petroleum Case, that it involves an application by Mesa Petroleum Corporation to drill one hole in one particular location. In that kind

of a proceeding, which is a judicial or adjudicatory proceeding, the Commission would be limited to some degree by the ordinary rules of evidence. It would be required to have sufficient evidence of record upon which to base its decision. However, in the case of the Commission acting in its legislative capacity, the Commission is not so bound.

I presume that now is the appropriate time to argue that matter fully because I think this is the crux of the case, in as to whether this document, whether this line of questioning, whether the additional exhibits which I propose to enter, are pertinent. May I continue sitting down where it may be a little easier if I speak loud enough so you can hear me?

MR. PORTER: Sure.

MR. BLACKMAN: We have in this particular situation what I consider to be a unique situation. I don't know whether it exists anywhere else in the Country or not, but the Department of the Interior, through the U.S. Geological Survey, has in effect delegated some authority to the New Mexico Oil Conservation Commission. They have done that by the Exhibit which I have just had identified by Mr. Donegan.

MR. PORTER: You are referring to Exhibit No. 4?

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MR. BLACKMAN: I'm referring to No. 4. I think that it would be well for those who are not familiar with it to go back and go over the history of why we happen to be in the position that we are with oil and potash.

There were many withdrawals made of land in the United States from oil and gas entry. The first one I know anything about was signed by President Wilson. Later there were withdrawals in particular by the Secretary of Interior along through the 30's and 40's. Early in 1951 the Secretary let it be known that the so-called potash areas which had been withheld from entry for oil and gas leasing, by an order dated February 6, 1938, would be revoked, and those lands would be thrown open to oil and gas leasing. That Secretary's order opening the area was dated October 16, 1951. It's in 17 Federal Regulations at 10,669. I have a copy of it which I can submit later. The details are not important at this time.

In July of 1951 there were many hearings held before the New Mexico Oil Conservation Commission concerning oil and gas drilling on potash land in Eddy and Lea Counties and Order No. R-111, in its original form, was the result of those initial hearings. That Order provided for two areas; they called them Area "A" and Area "B." If

my memory serves me correctly, Area "A" was supposed to be the area in which potash reserves existed, and Area "B" was supposed to be the area in which a potash potential existed, or a potential for potash reserves existed. During the next three or four years there were many meetings held between representatives of the potash industry and representatives of the oil and gas industry. The situation was recognized by both the potash industry and the oil and gas industry that they must have, they must work out some kind of a system to administer the problems that were bound to arise when potash leases and oil and gas leases existed on the same property at the same time, with the obvious problem coming up that both of them were going to try and operate at the same time and some kind of rules had to be established.

Now, the Order R-111-A came along in 1955, October 13, 1955 was the original Order R-111-A. At that point they consolidated the two Areas "A" and "B," and that Order, so far as I'm advised, has not been amended to this point, except for the addition of acres. Acreage has been added from time to time and goes now through R-111-G, I believe, but basically the Order has not been changed at all except by statute. Now in 1965 the New

Mexico Legislature came along and passed House Bill No. 245, and House Bill No. 245 cast upon the Commission the duty to jurisdiction of authority over all matters relating to the conservation of oil and gas and the prevention of waste of potash as a result of oil and gas operations in the State. It said that the Commission shall have jurisdiction of authority and control above and over all persons, matters and things necessary or proper to enforce effectively the provisions of this Act or any other law of this State relating to the conservation of oil and gas and the prevention of waste of potash as a result of oil and gas operations.

Now, up until that law was passed, the Oil Conservation Commission's jurisdiction to limit oil and gas operations in potash areas and to limit potash mining operations, was dependent upon two sentences in R-111-A. One of those sentences said in effect that no operations will be conducted for oil and gas drilling which will interfere with the mining -- or something -- the recovery of potash or something of that kind. The other one said just the opposite; that no mining operations will be conducted which will interfere with oil and gas. Now, for that period, between the original order back in 1951 and

the passage of that law in 1965, the jurisdiction of the Oil Conservation Commission to do this regulating really depended upon an agreement between the two parties. It was never challenged, so far as I know, that order was never challenged in court; there were a great many hearings and a great many orders saying, "Yes, you can drill," and "No, you can't drill," and things of this kind, none of which were ever challenged in court so far as I know. But, as of now, the jurisdiction of this Commission and that particular section of R-111-A, has, in my opinion, been superseded by the law and the Commission now rests its jurisdiction upon the law. Now, during all of this time there has been certainly an unwritten agreement or some kind of an understanding -- I don't know whether it has ever been reduced to writing before -- but in the case of Federal oil and gas leases and Federal potash leases, a notice of intention to drill would be filed, a protest would be entered, proceedings would be had following Rule 111-A, hearings would be had before this Commission and orders would be entered and all with this very very nebulous jurisdiction on the part of the Commission, based first upon the agreement between the two parties -- which never was reduced to writing -- and second upon the tacit permission

of the United States Geological Survey that the Oil Conservation Commission should make the decision. Now, I remember many times at the end of those hearings when the then Area Superintendent or District or Region Superintendent -- whatever his title is -- John Anderson use to stand up at the end of one of those hearings and state that the position of the United States Geological Survey, he would state that they -- in effect he would say, "We do not recognize that the Oil Conservation Commission has sovereignty over this question, but we have never yet come up against a situation where we or the United States Geological Survey have disagreed with the New Mexico Oil Conservation Commission," and therefore, a whole series of decisions running over a great many years, I do not recall -- I was not in all of them so I don't know that it never has occurred -- I know of no instance in which the decisions of the Oil Conservation Commission was not followed by the United States Geological Survey, insisting all the time that they had exclusive jurisdiction. I think you will recognize, that under this police power, New Mexico has some jurisdiction to prevent the waste of potash. I think under the police power we do have some jurisdiction. But, in addition to that, in this Order, our Exhibit No. 4,

in Parts 5 and 7 of that Order, the Secretary of the Interior has, in effect, delegated power to the New Mexico Oil Conservation Commission to over-hear it and make some kind of determination. They have said that the potash lessee still has the right to protest to the Oil Conservation Commission and they've recognized that the Oil Conservation Commission is going to hold some hearings and make some kind of jurisdictional ruling on it.

This brings us down to the situation in which here we are today. I might refer also from the Titles of the 1965 Act which includes the following: Providing for the prevention by the Oil Conservation Commission of waste of potash as a result of oil and gas operations and protection of potash deposits. It seems to me that it would be difficult to draft a new nonredundant New Mexico law enjoining upon the Commission's broader duties to preserve and protect the potash deposits, or stronger and more complete authority over all phases of protection process. The Oil Conservation Commission is therefore the key agency; in fact it is the only agency in the State of New Mexico which has the duty, power, and authority to prevent the waste of potash, in so many words.

I will read from part of Exhibit No. 4 the language which is approved by the Secretary of the Interior. This is in the form of a memorandum directed to the Secretary of the Interior which the Secretary was called upon to approve and which he did approve. The Department recommends that: The Department reaffirms its intent to cooperate with the New Mexico Oil Conservation Commission in the implementation of that Agency's Rules and Regulations. In that regard, the potash lessee shall continue to have the right to protest to the New Mexico Oil Conservation Commission the drilling of a proposed oil and gas test on Federal lands provided that the location of said well is within the State of New Mexico's oil-potash area as that area is delineated by New Mexico Oil Conservation Commission Order No. 111 as amended.

And then Part 7 goes on to say: Applications for permit to drill vertical tests for oil and gas at locations that are in the Secretary's potash area but outside the State of New Mexico oil-potash area, and which do not directly off-set an enclave, which is defined as within a quarter mile of an oil test and within a half mile of a gas test, will be routinely approved by the Oil and Gas Supervisor after review by the Mining Supervisor.

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I think that this action by the Federal Government invests the Oil Conservation Commission with the obligation to prevent potash wastes on Federal lands. Since the Department of Interior does not spell out in its regulations a system for resolution of oil-potash differences upon notice of hearing, the quotations in Parts 5 and 7 of its recent action can reasonably be construed as an invitation to the New Mexico Oil Conservation to provide the means whereby mutually antagonistic rights of oil and gas lessees and potash lessees may be resolved with due process of law.

It is my view that the Secretary of the Interior's action in stating that he will routinely approve drilling permits outside R-111-A as amended, without the notice, any notice, or any opportunity for hearing, clearly denies to the potash lessee due process of law. We feel it is incumbent upon New Mexico Oil Conservation Commission to provide the notice and hearing opportunities to correct this oversight.

Basically, the problems that we face here, arise out of the fact that oil and gas and potash cannot be contemporaneously produced from the same property without some damage to one or the other. The damage may consist

of anything from a short delay through increasing stages to the substantial loss of recoverable minerals, which may be permanent, but when an oil and gas lease or potash lease is issued, the lessee receives valuable property rights. When both oil and gas and potash leases are issued to the same property, a conflict of interest is inevitable and the rights of one, or perhaps both lessees, may be adversely affected by the exercise of the rights given to one of the parties. I think it is undeniable that the rights granted by either the State or the Federal Government, or as far as that's concerned, by a private individual, in giving an oil and gas or a potash lease on the property, is a valuable property right; otherwise you wouldn't see all these people assembled in this room contesting about this particular problem. This is a valuable property right; an oil and gas lease is an extremely valuable property right. So is a potash lease. The problem that we have is that both the State and the Federal Government have provided their prescribed terms and conditions concerning the exercise of rights of oil and gas lessees and potash lessees, but the rules are set forth in general terms, and sometimes conflicting terms.

Now, I think that you can see with respect to the

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potash lease within the boundaries of Order R-111-A we have definitive procedures because within the boundaries of R-111-A we do have a provision for notice and we do have a provision for hearing. Due process of law is afforded. But when we get outside R-111-A, we do not have any such procedure. The U. S. Geological Survey has stated that they're going to routinely approve it, and the rules of the Oil Conservation Commission do not provide that there is any notice entitled to be given.

Now this raises a very serious constitutional question. The Constitution of New Mexico provides that no person shall be deprived of life, liberty, or property without due process of law. To restate that and shorten it, no person shall be deprived of property without due process of law.

Now substantially the same language appears in the 5th and 14th Amendments of the United States Constitution. In this consideration of value of property rights it is my opinion that oil and gas leases and potash leases stand on equal footing. It is equally obvious to me that any action, that the action of any governmental authority denying a right to proceed under such a lease constitutes a taking of property. The Oil Conservation Commission says

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one party can or cannot move, they automatically take the property of the other one. It is taking a valuable and substantial property right. The taking or denying the permit of one lessee which may have the effect of diminishing or delaying the exercise of any relevant right by the other lessee of the same property constitutes a deprivation of a valuable, substantial property right and I believe it is second to the constitutional prohibition.

Now the Oil Conservation Commission, under the laws that we have, under the regulations that the Oil Conservation Commission has, does have the power to deprive one or the other of those parties of that valuable property right. There is no doubt about that; the Oil Conservation Commission does have that power. But, to do so they must act within the constitutional limitation. What is due process of law? That is what they have to give, due process of law. Where proceedings are taken before an administrative agency, such as the New Mexico Oil Conservation Commission, a distinction is generally made whether the Commission is acting in a legislative capacity or judicial capacity.

73 Corpus Juris Secundum states that notice and hearing are required where an administrative body acts in a quasi-judicial manner but not when its actions are executive,

administrative, or legislative. That general rule was quoted with approval in Stauffer vs Weedlun 195 Northwestern 2nd at 218. The appeal was dismissed by the United States Supreme Court at 93 Supreme Court, 307. The rule was recognized in New Mexico where the Court states in Phillips Mercantile Company vs. The City of Albuquerque, 60 New Mexico, page 1, where Justice Compton stated at page 12 (Reading) We believe the best statement of general principles is found in one Merrill on Notice, 1952 Edition 543, where it is said, "A common test for the implication of right to notification in administrative proceedings has been the nature of the action to be taken. If it is judicial in nature, the necessity of hearing upon notification is implied; if on the other hand it is legislative in nature, involving a determination of policy rather than an adjudication of rights, the courts decline to imply a right to notification in the absence of the statutory command. (End of Reading.) Now in the question of what constitutes judicial action, Merrill on Notice states at Section 517 (Reading) If an administrative body acts judicially, notice and opportunity for hearing are indispensable to due process. When does the administrative proceed judicially? The familiar test is that adjudication involves the

investigation and determination of the rights of parties under existing legal rules. Examples based upon judgment of the constitutional necessity of notification and hearing include proceedings to award or cancel water rights or to grant or revoke licenses. (End of reading.)

Later in the same Section 517 Merrill continues:

(Reading) There is a tacit assumption that the rule imposed upon specific persons must be on proper hearing involving due notification. The latest pronouncement of the Supreme Court of the United States definitely establishes this as essential to due process of law. (End of reading.)

Now the Tenth Circuit of the Court of Appeals, which has jurisdiction over the State of New Mexico, held that the cancellation of a certificate of purchase of minerals is quasi-judicial in character, requiring notice, citing Merrill. That's Magnolia Petroleum vs. Carter Oil at 218 Federal Second, 1. It is our view that the issuance of a permit to drill on property held under a potash lease or permit constitutes the taking of a substantial property right without due process of law and is thus improper, unconstitutional action and I believe it would be enjoined by the courts.

Now the problem at this point is a practical

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problem. If the potash lessee does not receive actual knowledge of the intention of an oil and gas lessee to drill, or the issuance of the permit to drill, in sufficient time to get to the courthouse to get an injunction, the damage is done, since it is drilling through the potash measures that causes the waste since the potash lessee will leave some substantial amounts of potash in place to protect the well.

As Mr. Donegan has testified, the Potash Company of America has an exploration contract on this property. Since we began our exploration operation on the property we realized the difficulty and the problems connected with it, since it is outside of R-111-A, and we have employed an agent in Artesia who checks a time or two every day the Artesia offices of the U.S. Geological Survey and of the Oil Conservation Commission for applications, notices, rulings, and I suppose rumors too, to see if we can find out anything.

Back to the point on the appropriateness of the evidence that we are looking at in this Case, the H.F. Wilcox Oil and Gas Company vs. the State in 162 Oklahoma, 89, at 19 Pacific Second, 347, there is a head-note by Andrews which states -- it happens to be quoted from the

case itself -- (Reading) When the Corporation Commission acts in a legislative capacity for the purpose of making rules, it may ascertain in any manner it sees fit what rules should be made and may make such rules without the hearing of evidence or without regard to the evidence heard. But when it attempts to apply those rules in order to prevent waste or to regulate production, it acts in a capacity at least quasi-judicial and it must act either under rules of procedure and evidence provided by the legislature or under rules of procedure and evidence provided by itself, and it may not then act without evidence or upon incompetent, irrelevant, or immaterial evidence. (End of reading.)

Again, I would like to point to the distinction between this proceeding in which we are asking for the extension of a rule; we are asking that the Commission make a rule, which is applicable already to a substantial territory in New Mexico, to include additional territory. In that capacity, when the Commission is acting in its legislative capacity, it's entitled, and it should consider all kinds of evidence, whether it be arguments, the peculiar knowledge of its staff, the opinion of experts, any kind of evidence that it can obtain because in the

legislative capacity it is not bound by the rules of evidence as it is bound in the judicial capacity. Now, were we hearing the Mesa Case I should agree with Mr. Kellahin, that the probability is that the evidence that we seek to introduce would be questionable maybe. I think that even then it would still be admissible before this Commission because you are asking to make an administrative decision on a very broad basis and you should have all the knowledge that you can get, and what we are really interested in this time is getting before the Commission all of the information that is pertinent to this question. Now, the Conservation Commission itself, having been charged by the legislature with the duty of protecting potash, is none the less severely handicapped. The Conservation Commission does not have facilities for determining whether potash is present or whether the potash is of commercial value; it has no budget to provide such facilities. In comparison, the United States Geological Survey has a substantial organization to do that work on a continuing basis. The analysis of all potash-drill cores are reported to the United States Geological Survey, and they are entitled to the core itself if they desire. It maintains detailed records of all drilling and production

activities, including activity on State and private lands. The Oil Conservation Commission has no such information, does not have official access to the Geological Survey's records, and it is doubtful if the Survey would respond to a subpoena. I say doubtful they would respond -- I don't think they have ever responded to a subpoena -- so you would probably have to take them to court to see whether you could get the information. As to how much information they are willing to give on an informal basis, I am not advised as to that, but the Oil Conservation Commission is placed in the position of having the duty to protect potash, as commanded by the New Mexico laws and as delegated by the Secretary of Interior, without having the means to keep itself informed of the facts necessary to carry out that obligation. I think that the Commission should avail itself of the best evidence that can be obtained when they are called upon to make any kind of a decision. In this Case, when you are called upon here to alter or to make a rule or to make a regulation, you should have every bit of information that you can think of or that any of the parties can think of. You should have it as up-to-date as possible because this changes, changes very much, very rapidly. The economics of the potash industry have

changed fantastically over the past few years.

I think we should not confuse, at this point, the character of this proceeding with a proceeding, for instance, to decide whether Skelly should be permitted to drill a particular well, or whether Mesa should drill a particular well.

I would like at this point to just elude to that Mesa Case for a minute because it illustrates a real problem. Mesa Petroleum Corporation is the operator, designated operator, in a unit which I believe they call the Mash Unit. That unit consists of eight sections in 3 by 3 configuration, leaving out the section in the northwest corner. At least two Federal oil and gas leases in the unit will expire on August 1st, 1974. Mesa Petroleum Corporation applied to the Geological Survey for locations on Federal potash leases which they desire to drill. I mean they applied for but they were not approved by the Geological Survey. They later filed an application for a permit, the one that was just dismissed this morning before the New Mexico Oil Conservation Commission, asking for permission to drill on a State lease, a 40-acre State lease. If they were permitted to drill on this 40-acre State lease they could hold the entire unit over the two-year period because

they would be drilling over the end of that period. Now, this was outside R-111-A but we were apprised and had known of Mesa's activity for a long time, and in fact we had conferred with the Mesa people prior to the time that they filed their application with the New Mexico Oil Conservation Commission. We were in a position -- we objected to the first hole that they drilled. There were three 40-acre tracts in a north and south configuration; their application was to drill near the north boundary of the northernmost 40-acre tract. To that location we objected. A hearing was set for today; we were able to reach a compromise in which Mesa withdrew their application and we permitted them to drill -- I should restate that -- we stated that if they applied for permission to drill in a location near the north boundary of the southernmost 40-acre tract we would not object and we have not so objected. But, if we had desired to object, we could have objected to a new location. They figured, obviously, that they couldn't win a case on their northernmost location because we had excellent evidence of good potash there. We have good evidence of potash in the lower section but it is in a different horizon and we're not real sure about it; we were willing to compromise on the lower basin.

Think a minute where Mesa would be had we decided to object; if they had come to the hearing today and lost the Case, which was an excellent possibility, and filed a new application on any other location within the State; we could have objected to it. In fact, we had a general objection on file in advance to any locations anywhere since they are outside R-111-A. A hearing would have taken them much beyond the first of August and Mesa would not have been able to continue their unit by that type of action. They would have had to use some other means to see if they could get the unit extended. There is some barren acreage in there probably, which they said they didn't wish to drill on; they might have had to drill anyway there.

I mention that simply to say that being outside of R-111-A does not render the potash lessee helpless. I might put it a different way-- and this was recognized way back in the early 1950's when the original orders were made -- that if you have a possibility of an administrative decision before a group such as the New Mexico Oil Conservation Commission, with a completely competent staff in understanding what the problems are, you have a chance of getting a decision in a hurry; you get a decision made by people having expertise in the area, whereas if you take

it to court you're liable to be tied up for many years, and in that connection, a potash lease and an oil and gas lease are different. Let's take the Federal situation. A Federal oil and gas lease lasts for ten years; you can get a two-year extension of it by drilling over the end, but you have to have production to continue it beyond that date. A potash lease is a different proposition. You do your drilling in the first instance to prove the existence of ore on the lease when you get it and you don't have to do anything more but pay the rent from there in. One dollar an acre and you continue to use your potash lease as long as you want it continued. Now, if you get in a situation where you are in court, time is on the side of the potash lessee, not on the oil and gas lessee. I believe that the oil industry should recognize this matter and should be in favor of putting this jurisdiction within R-111-A before the Oil Conservation Commission.

MR. KELLAHIN: If you please, I think this has certainly gone far enough. We're raising matters that have absolutely no bearing on this Case before the Commission in terms of potash leases or oil leases and everything else. We've been patient and listened for some 40 minutes of this. I think it has gone quite far enough and think

the Commission should stop it.

MR. PORTER: Mr. Blackman, I assume, or I believe you said, that you felt that the Oil Conservation Commission could or should -- I believe if you put it correct -- Part 7 of Exhibit 4 by extending the limits of R-111-A?

MR. BLACKMAN: I believe that they could correct it; I believe they could help us substantially. I think --

MR. PORTER: (Interrupting) All right. Would you like for this to apply to the entire area as described now in Exhibit A -- I don't believe there is a description in there -- the most recent outline of the oil-potash area by the Secretary; you feel that all of that area should be included in R-111-A so as to make this Part 7 here actually inoperative?

MR. BLACKMAN: Yes, I think that's our position. I think that's a fair position. I have --

MR. PORTER: (Interrupting) You're approving all of R-111-A should exclude all of the area that has presently been designated by the Secretary in the new map?

MR. BLACKMAN: Yes, and I feel that is a fair position.

MR. PORTER: You didn't read Part 6. Do you have a suggestion as to how that might be corrected?

MR. BLACKMAN: I'm sorry, I didn't have enough copies of that but I can keep one for myself.

MR. PORTER: I see.

MR. BLACKMAN: I have one in here but I don't have it immediately available. Part 6 reads: (Reading) The Department reasserts its prerogative to make the final decision of whether to approve the drillings of any proposed well on Federal oil and gas leases within the Secretary's potash area. (End of reading.) How would you correct that?

MR. PORTER: That's what I asked you to decide, if you had any suggestions on Part 6.

MR. BLACKMAN: I don't have any suggestions.

MR. PORTER: Mr. Kellahin, do you have any further response to Mr. Blackman?

MR. KELLAHIN: Yes, sir, I have some considerably additional material I would like to present right here; it's pertinent to this matter.

MR. PORTER: Well, the question I asked you, of course, was facetious as far as Part 6 was concerned.

MR. KELLAHIN: Could I get a ruling on my objection?

MR. PORTER: You mean as to the further presentation

of this?

MR. KELLAHIN: Yes.

MR. PORTER: Well, now your position and your objection was on the point, Mr. Kellahin, I believe, that the Exhibit 4 and the material in Exhibit 4 --

MR. KELLAHIN: (Interrupting) You misunderstand me, Mr. Porter, I -- Mr. Blackman has been talking for some 40 minutes and he is covering matters which have not been presented in the testimony. He is in effect making his closing statement, and I think he is imposing on the Commission, he is imposing on us, in making this type of presentation at this point in this hearing, and properly everything he has said which is not directed directly to my objection should be stricken from the record.

MR. BLACKMAN: Mr. Commissioner, in response to that I would like to say this: We have in this particular case, if the Commission rules that I think it should, that this is a legislative matter, and that very broad latitudes may be exercised in the admission of all kinds of evidence, then I would proceed along the lines that I have; if the Commission should take the other view, that this is a narrow case and that we should be limited to the matters of how much potash there is in each particular section here, we're

liable to be here for three weeks because this is not just like a -- if you proceed in that direction then we're going to have to take just about as much time for each one of these little sections that we have in here, maybe each 40 or each 160 or maybe each 320, as was taken in the recent case of Phillips Petroleum and the recent case of Belco with Kerr McGee. We can get into all of those things and we can battle about them, but my feeling is that we have in this hearing a very general proposition of whether -- very simply this -- R-111-A only in its essential provides for notice. The other provisions of R-111-A have either been superseded by statute, provisions that say that you can't mine and interfere with oil and gas and those that say you can't drill to interfere with mining. Those have all been superseded by statute. R-111-A, therefore, is reduced in its essentials to only the question of notice. It has, in addition, a casing program in it, but the Commission stands ready, and has modified that casing program very many times. There is, as I understand it -- I could be wrong on this -- but it is my understanding that before the Oil Conservation Commission there is a casing program prescribed for every location in the State of New Mexico. It is either under a general rule that says

you'll do it this way or under a particular rule for a particular pool. Now, under those circumstances we're talking about a very broad proposition and I consider this to be under the rule-making power of the Commission.

Therefore, the evidence submitted can be completely broad and I think the Commission is in a difficult position if they don't take that position. I was just about to offer you a solution to a lot of these problems, which I think is a solution to a lot of these problems.

MR. PORTER: Mr. Kellahin.

MR. KELLAHIN: Mr. Porter, I feel somewhat like the old cowpuncher who told the country preacher, when he hauled a load of hay out into the field and only one cow showed up, he didn't give him the whole load. I feel like this is what we've got here. I raised a very simple objection to a bit of evidence and we got the entire presentation in the response.

Now, Mr. Blackman has raised many questions which I won't even attempt to answer, nor do I think it is necessary. He did not pay any attention to Part 6, and I think it is a significant provision in this memorandum if the Commission pay any attention to anything here. The part reasserts its prerogative to make the final decision

of whether to approve the drilling of any proposed well on Federal oil and gas leases within the Secretary's potash area. I think that's nothing more than the lesson of the statement of the law. As a matter of fact, the Board of Land Appeals in a recent case involving an Oklahoma corporation in its decision said exactly that: He said that the powers of the State of Oklahoma do not supersede the powers of the Secretary of the Interior and held a forced pooling order entered by the Oklahoma Commission was invalid.

Now, Mr. Blackman's objection to leaving this area under the Secretary's area and not in R-111-A appears to be based primarily on the lack of notice in case somebody wants to drill in here. He has already taken steps to remedy that himself by having someone check the records at the Artesia office and if he wants notice and hearing before the Department of Interior, if he doesn't feel he is getting due process, then he should have resort to the Civil Procedures Act and made some demands on the Department of the Interior and not on this Commission because it is not this Commission's doing, if that is his complaint.

Now, when you get into this question of whether this is a legislative or a judicial function, that raises an age-old dispute of what is legislative and what is

judicial. I would say in this particular instance we are in effect -- Mr. Blackman's clients in effect -- are asking that nobody be permitted to drill in here except after approval of this Commission under the special procedures of R-111-A. That certainly is an extension of the provisions of the Act to affect others is at best a quasi-judicial function; you are affecting valuable property rights of the people. Just as an example, in the Belco Case and the Phillips Case we had to go through this procedure and some two years passed in each instance at the expense of thousands of dollars, then we got our permits.

But, whether it is legislative or judicial -- and the cases quoted by Mr. Blackman had nothing to do with the law in the State of New Mexico, I might add -- I call your attention to Section 65,320 of the New Mexico Statutes: (Reading) Except as provided for herein, before any rule, regulation or order, including revocation of change, renewal or extension thereof, shall be made under the provisions of this Act. A public hearing shall be held at such time, or place, and manner as may be prescribed by the Commission. The Commission shall first give reasonable notice of such hearing, in no case to be less than ten days except in an emergency, and at such hearing any person having an interest

in the subject matter of the hearing shall be entitled to be heard. (End of reading.) Now, a hearing contemplates the presentation of evidence and argument and, as the statute says, these hearings will be conducted under rules prescribed by the Commission. The rules prescribed by the Commission, bearing on the rules of evidence provide: (Reading) Full opportunity shall be afforded all interested parties at a hearing to present evidence and to cross examine witnesses. In general the rules of evidence applicable to a trial before a court without a jury shall be applicable provided that such rules may be relaxed where by so doing the ends of justice will be better served. (End of reading.) Now here is the key to it: (Continue reading.) No order shall be made which is not supported by common legal evidence. (End of reading.) That's what we are asking for.

Now, coming down to the basis of this case, Mr. Blackman has certainly put his finger directly on some very serious problems involved here: In the first place, Order R-111-A was adopted in 1955; the authority of this Commission to regulate oil and gas drilling to protect potash was passed by statute in 1965. Mr. Blackman says that in effect then superseded the part of R-111-A. I'm not at all sure, and I think there is a serious question, whether

a later statute can breathe life into an order entered without statutory authority. I think the Commission would have to rely solely on its right to prevent waste in adopting R-111-A, but certainly it has no statutory authority over potash at that point when it adopted the order. The real question we are faced with here, and one which Mr. Blackman, in his very last statement to be made, indicated they very definitely want to avoid, is the question of commercial deposits of potash. Now, the authority of this Commission, its powers and duties as Mr. Blackman stated, relates to the prevention of waste of potash as a result of oil and gas operations. Now, waste is defined by statute, and in Section 65, 34, Paragraph F, the statute says: (Reading) The drilling or producing operations for oil or gas in any area containing commercial deposits of potash, when such operations would have the effect unduly to reduce the total quantity of such commercial deposits of potash, which may be reasonably recovered in commercial quantities, or where such operations would interfere unduly with the orderly commercial development of such potash deposits -- (End of reading.) Now, there you are, four times in that one paragraph the New Mexico Legislature has pointed out that this Commission's authority relates to protection of

commercial deposits of potash. If the Potash Company of America has a case and Mr. Hodges has a case, it is a case to show where the commercial deposits of potash are in here, which this Commission has the authority to protect. If they can't show that there are commercial deposits of potash, commercial certainly means potash that can be mined at a profit, then this Commission has no jurisdiction or authority to act nor should it act. I believe that the other matters raised by Mr. Blackman are really immaterial to this case. Thank you.

MR. BLACKMAN: Gentlemen, I agree with Mr. Kellahin that there is a very good argument on this question of commercial. The statute, however, is not that narrow. The statute says "prevention of waste of potash," and it defines waste as being commercial. But let's assume for the moment that it does limit it to commercial, and what is commercial. Well, I have listed a few here of the elements bearing on something as to whether it is commercial: You have industry economics, you have company economics, you have governmental action, Washington is liable to do something, Canada is liable to do something; the situation in Canada is absolutely fabulous if you haven't heard. The situation in Canada is such that it has

changed the economics of the potash industry fantastically. Up there, in both oil and gas and potash, between the Federal Government and the Province of Saskatchewan, I believe the tax figures out to something like 130 percent because the Federal Government says we don't recognize the right of a province to tax, but the province taxes anyway. It's something like 80 -- everything over what they consider to be a reasonable profit. You have technology; technology changes. Very different and new methods are coming in. The location of a particular core that you have with respect to other ore bodies, the location of the core body with respect to transportation, the location within a particular ore body. If you have a core that indicates the presence of potash, which everybody in the room would agree be below margin, it might nonetheless be commercial in the particular situation because it was in an area which you were about to drive entry ways. It might be very much nicer to drive it through 4% material than to drive it through salt. The size of the ore body is very pertinent. When you have a core hole, you don't know much about the size of the ore body; you have lots of them. The complexity of the ore itself; for example, here in the recent Kerr McGee Case it was assumed, and in testimony concerning

whether a particular core showed commercial potash, that carallite could not be recovered, but Kerr McGee turns out to be recovering it, so --

MR. PORTER: Mr. Blackman, I want to interrupt you at this point. I think the Commission has probably enough information to rule on the objection. We recognize that commercial potash can be a flexible term, considering the degree of economics involved, and so forth, so we're going to recess the Hearing for a few moments while we make a decision on the motion.

(Whereupon, a short recess was had.)

MR. PORTER: The Hearing will come to order, please. The Commission will sustain the objection, and in order to save time I want to make this statement: That is the Commission will decide the case upon the sworn testimony of the witnesses in the Hearing relative to the presence or absence of commercial potash in the area under consideration. Now, if you desire to offer information that has been developed by the USGS, then a proper foundation will have to be laid by the witnesses who participated in the preparation of that information. I think we can save time if we observe those ground rules and proceed

with the Hearing.

MR. BLACKMAN: If the Commission please, I would make an exception to that ruling of the Commission.

MR. PORTER: Your exception will be noted in the record, Mr. Blackman.

MR. BLACKMAN: At the appropriate time, if I am not able to comply with the rules, I will make an offer of proof.

BY MR. BLACKMAN:

Q Mr. Donegan, I hand you a document which has been marked for identification as Exhibit No. 5. Mr. Donegan, will you explain what that Exhibit 5 is?

A Exhibit 5 is a base map prepared by U.S. Geological Survey to which we have added certain features and show certain geological conditions that exist in the Carlsbad potash district. The original USGS map has been reduced to one-half scale for the purpose of convenience of the Commission. We have a larger copy of the original that we can put on the wall.

This map shows in red the mined-out areas in the Carlsbad potash district. This includes the areas of first mining and second mining both colored red, but the

second-mined area, but the second-mined area is to be identified by the diagonal-ruled lines and dots assembled from the USGS. The proposed Hodges area, or the Hodges area proposed for extension in this Rule 111-A as amended is colored yellow on the map. The green line is the west truncation of the ore zones in the Hodges area. This line could be extended along the margin of the ore bodies to the north; they are also truncated to the west. The blue line to the south is the north border of an area leaching and subsidence of the potash ore zones. This area extends on into Texas and is apparently due to the presence of permeable sand zones in the lower Salado that permitted an influx of ground water and caused solutions to open up and subsequent collapse or subsidence of the ore zones and leaching of the ore zones. This trend or fairway of ore bodies through here is the high-grade deposits of the Carlsbad district. These are the great producers of Carlsbad and some of the greatest mines of the world; they made Carlsbad one of the great potash districts of the world. The mines to the east are deeper and were developed later. The significance of this trend is related to this subsidence area that the trend is cut-off only by that subsidence area. Perhaps this trend ore body

was continued on into Texas if it hadn't been for the leaching in the subsidence area. The drilling that has been done to date to the south on the Hodges area confirms conditions similar to the area to the north in this trend of great ore bodies. I will show you later on another map and as you can see on this map there are areas indicated by the symbols of equal signs are random equal signs areas of no data and by crosses barren areas. You can see in the area of these ore bodies there are a number of barren areas. For instance here, and inside those mines are the mined-out areas; there are numerous local barren areas or salt horses. The point of this is that any individual hole drilled in there wouldn't tell the story, or six or eight holes. The regional picture is the only way we can evaluate the Hodges area. We have some great potash holes in the Hodges area and some locally weakly mineralized holes. Those don't tell the picture except in a general way. They show that we're in this trend of major ore bodies and we likely have similar ore bodies to the south and we likely have local poor areas that would be ideal drill sites.

This map also shows the USGS area of mineable reserves. There are two symbols showing that; one is the

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diagonal line which shows the measured mineable potash reserves in one or more zones. The broken-dashed line shows indicated mineable reserves. I think it is extremely important to consider, and perhaps this is somewhat out of order from what we've just said, but when you consider that the mining companies in this area work in a confidential manner; no one person knows everything about this district; very few know much more than about one mine. But one organization knows everything, that is the USGS. They are the only ones that can actually see the whole picture in there, and that's why a map of this kind is extremely important, because we are able to see from information of this kind data that wouldn't be available any other way to the Commission. If we consider only the data in the area that we're involved in then we're in a very small part of the picture and we're not going to get the true story.

I should point out that the Hodges leases in the proposed areas for extension of Rule 111-A as amended is pretty well defined by geological and other boundaries to where it is a discreet and definite thing. It's not just a lot of land that somebody's trying to get withdrawn. We have a west truncation and south subsidence. The east Rule 111-A area has been withdrawn -- or not withdrawn -- but

has been placed under Rule 111-A as the IMC and Permian potash langbeinite area, and we're bounded on the north by Rule 111-A.

Incidentally, the Hodges' leases and permits covered quite a large area when we first made our play there. What you see now is kind of the guts of the potash that we decided to maintain. We drilled several holes outside this area, confirmed they weren't in this fairway of ore bodies, and abandoned those potash permits. We narrowed our block down to the area that we considered, based on our drilling or regional considerations, probably have potash under substantial part of the block. When I say substantial part we haven't done enough drilling to say that there's potash under every location. We have enough information to show there is a number of potash ore bodies there, probably a number of potash ore bodies, and until we do more drilling we're not going to know the boundaries of those ore bodies. But if we should use one or two barren holes, or several barren holes to call some of this area not to be under Rule 111-A, we may be withdrawing our -- I shouldn't say withdrawing -- we may be ruling out areas very similar to the salt-horses right in the middle of these ore bodies to the north. That's why the entire area should be placed

in Rule 111-A, and then give us the chance when someone wants to drill, to discuss hole-by-hole basis.

I would like, Mr. Blackman, to further show this idea here of the 12th ore zone.

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

BY MR. BLACKMAN:

Q Mr. Donegan, I'll hand you a document marked for identification as Exhibit 7, Hodges' Exhibit No. 7, and ask you to identify that document.

A This is a study of the fifth ore zone by Charles Young, one of the great potash experts in the USGS, and the value or purpose of submitting this particular Exhibit and a particular map out of this Exhibit is that it will show the characteristics of one ore zone in such detail it involves about a thousand holes.

MR. KELLAHIN: If the Commission please, in view of the Commission's ruling on our objection and its statement as to what would be admitted, we object to this Exhibit unless it is shown that the Witness participated in the preparation of information contained in it.

MR. PORTER: Objection sustained.

MR. BLACKMAN: I think that you have made a ruling

all right that material cannot be put in unless you can show who prepared it.

MR. PORTER: I believe my ruling, Mr. Blackman, was that the proper foundation would have to be laid by someone who participated in the preparation. In view of that --

MR. BLACKMAN: (Interrupting) As you well know, in dealing with the United States Geological Survey, they have been forbidden to testify. I can call them up and have them refuse to testify if you think you would like that, but I cannot produce anybody from the United States Geological Survey to identify anything. Now, Mr. Donegan here is testifying as an expert geologist in the field. He has referred unquestionably and studied many, many, many different sources of information and authorities on geology and the like. This is a study that has been made in that particular instance and I would offer this for the limited purpose of simply showing how, from a map that this thing contains, what a potash deposit looks like, as it is outlined on the map. I think that the Commission has placed an impossible barrier upon proceeding in this manner when we are not permitted to utilize the best information that is available. I feel that the Commission

is denying itself at its peril the use of large amounts of information available in the field. I realize you ruled against me and I don't want to belabor the point, but I would offer this particular evidence simply to show that in that limited purpose.

MR. KELLAHIN: With the limitation placed on the Exhibit by Mr. Blackman we'll withdraw our objection.

BY MR. BLACKMAN:

Q Mr. Donegan, would you explain that map, bearing in mind the limitations which I have placed upon you and which the Commission has ruled.

A This is a map showing details of the fifth ore zone from -- what were the limitations, Mr. Blackman?

Q Show what an ore zone looks like.

A Mr. Jones in this bulletin -- and incidentally this is a public bulletin, it costs a dollar from the U.S. Geological Survey -- Mr. Jones used 350 cores, cores from 350 holes, and about 700 logs to prepare this map. The map shows by color the changes in minerality of the fifth ore zone. The area to the north, shown in blue, is an area predominately carnallite in the fifth ore zone.

Q Mr. Donegan, let's lay a little different preliminary on that. Explain what you mean by a fifth ore zone.

How many ore zones are there in the potash producing area?

A The Carlsbad potash district has several kinds of occurrences of potash minerals. Jones classifies them in two main groups: the massive deposits and the disseminated deposits. In addition there are other minor occurrences even as veins. The disseminated deposits are not of economic significance. They are of scientific interest in understanding the massive deposits. The deposits that we are concerned with here are massive deposits and those massive deposits have been named by each company in their own mine with separate names. The USGS has a standard of their own which is convenient to use because it would apply over the entire district. When you talk about the number 3 bed in one mine or Abel bed or Fox bed in another mine, it gets kind of confusing, so the reason that I was talking about the fifth ore zone, that's one of the 12 ore zones that is named by the USGS by their standards. These ore zones occur in the upper Salado formation in a zone approximately equivalent to the old McNutt potash zone. Eleven of the ore zones were in McNutt potash zone, and the 12th is high up in the section and 12 never amounted to very much and is not a commercial ore zone. The fifth is a commercial ore zone; it is mined in the IMC mine. The most significant

thing that this map shows is that these ore bodies are not simple blanket deposits. As Charles Jones has said, the ore zones in ore bodies of the Carlsbad potash district are labyrinthic complexes. And you can imagine when we're dealing with eleven ore zones and maybe four or five of them are significant and will be significant production in the past and in the future, what a complex of ore bodies we would have in any given drill site if we superimposed five or ten of these kind of patterns. In other words, a drill hole here in one zone could miss all of the zones, and there seems to be some relationship to some of these islands. If you can imagine this has been precipitated in a late Permian Sea over an irregular surface that has brief mounds of concerted areas, then this irregular surface would have local highs and that has some control over the thickness of the ore zones and the location or absence of potash. Also, it's important in this area to remember we have something else to make it very complicated. I don't want to belabor the geology here, but I think it will help to understand our problems to the south. Originally potassium in some form or another, probably sylvite and carnallite was precipitated as the first development of these ore

bodies. Then later a very complex metamorphism took place. Solutions moved vertically and horizontally and that's what changed these ores from the original sylvite and carnallite. That's why, as I started to say, we have this unusual situation the colors are showing. We could ignore this map as a USGS map and just say that -- well we can't do that -- but this might be typical of any ore zone, it's just a selected ore zone that they had a lot of data on. Anyway, the blue area is principally carnallite, the purple area is principally sylvite. This color here, the reddish orange, is principally langbeinite, and various areas we have a different combination of minerals between the two. For instance, in some areas we have mixed sylvite and langbeinite. We have similar conditions in our area to the south. Now, the fifth ore zone does not completely apply to our area except as an example of the characteristics of just one ore zone. The ore zones that we're dealing with to the south, there are several of them, and we only have minor mineralization in the fifth, so what we're trying to imply, anything about our area, about the fifth ore zone specifically, but just give an example of one ore horizon.

Q Mr. Donegan, would you give us your opinion concerning the possibilities and probabilities of commercial

deposits of langbeinite ore in this area down here which is colored yellow?

A This area on this map?

Q Yes, the area that is colored yellow is the same on Exhibits 5 and also on Exhibit 1 and I believe 2.

MR. KELLAHIN: If the Commission please, we object to the question as no foundation has been laid for it. The only testimony so far in regard to presence of any kind of potash ore is Exhibit No. 5 which obviously shows the area involved does not contain ore in its entirety.

I think Mr. Blackman's question is proper if he lays a foundation for it and shows that this Witness has actually made a study of the area colored in yellow for the purpose of determining the presence of ore.

MR. BLACKMAN: I beg your pardon, I think he did that to start with, Mr. Kellahin. I'll ask him again. I'm sure he testified to it previously, but I'll ask him again.

BY MR. BLACKMAN:

Q Mr. Donegan, have you made a study of the ore zones, all of the ore zones in the yellow area on Exhibit 5, and particularly in the fourth ore zone? Can you kindly testify as to what you believe the possibilities are

with respect to the existence of commercial ore bodies within that area in the fourth ore zone and then continue your testimony with respect to the other ore zones insofar as you can.

A I have examined --

MR. KELLAHIN: (Interrupting) If the Commission please, Mr. Blackman misses the point of my objection. If this Witness has made a study, he should first produce the results of this study, show how it was made, and the basis of the information on which he bases this. Certainly he's an expert and he can make conclusions, but we have a right to know what he basis those conclusions on. If Mr. Blackman is prepared to present this testimony later, it should come before this question.

MR. BLACKMAN: I will ask that the Commission rule on that question because I think Mr. Donegan, having made a study of it, is entitled at this point to state the results of his study, and he has the background area of the study, which I will present at a later date if the Commission so desires.

MR. PORTER: Mr. Blackman, the Commission feels that he should give us the results of his study and then draw his conclusions from that study after you put that in

the record.

Now, at this point we will recess the Hearing until 1:00 P.M.

(Whereupon the noon recess was held.)

MR. PORTER: The Hearing will come to order, please. The Commission will recognize Mr. Blackman who will continue examination of his Witness.

BY MR. BLACKMAN:

Q Mr. Donegan, you testified that you have made a study of the potash and ~~langbeinite~~ possibilities and probabilities in the area designated in yellow on several of these Exhibits. I would like you to refer specifically to Hodges' Exhibit No. 1, where you will note many drill holes are identified and testifying for a while from that Exhibit, which will make locations of the holes easy, would you kindly tell us what your investigation indicated with respect to hole A-10? What was the log in each of the ore zones which shows any mineralization?

A Mr. Blackman, A-10, encountered in the fourth ore zone, 5.2 feet of 9.1 percent langbeinite, 4.8 percent sylvite, and these are, of course, equivalent K2O

MR. PORTER: What was the first figure you gave?

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MR. DONEGAN: 5.2 feet of 9.1 percent K20 as langbeinite.

MR. PORTER: Thank you.

MR. DONEGAN: I think I can shorten these since there is so many of them; if you like I won't say K20 each time, just the mineral, if that's agreed.

MR. PORTER: Yes.

MR. BLACKMAN: May I interrupt just one minute. I would like the record to show here, that in response to a request, copies of all of these logs have been furnished to Mr. Kellahin -- or rather to Mr. Warnock on behalf of Mr. Kellahin -- unless we testify to the contrary.

MR. PORTER: I see.

MR. BLACKMAN: We gave him all we had; we didn't include everything but we don't have everything.

BY MR. BLACKMAN:

Q Were there any other mineralizations in that? Any other ore zones?

A Yes, sir. Once we get these folded out here it won't take so long. The same holes have quite a bit of mineralization in other ore zones. In the fourth ore zone -- I've given that -- in the first ore zone, Hole A-10 had 5.3 feet of 10.1 langbeinite.

Q Repeat that please, 5.3 feet?

A Of 10.1 percent langbeinite, 2.1 percent sylvite.

In the 10th ore zone in Hole A-10 we cored 4.1 feet of 8.5 percent sylvite and 3.0 percent langbeinite.

Q That's in the 4th zone, the 1st zone and the 10th zone?

A Right.

Q Is there any other mineralization in there?

A There was slight mineralization in other zones, the 2nd and 3rd ore zones.

Q All right. Move over now to page 4 which is along the lower boundary, I believe, of Section 2.

A Yes. M-4 encountered 5.9 feet of 8.6 percent langbeinite.

Q Which ore zone are you in?

A Pardon me, 4th ore zone.

Q 4th ore zone. Repeat the figures please.

A 5.5 feet of 8.6 percent langbeinite.

MR. PORTER: I believe your first figure was 5.9

MR. DONEGAN: I'm sorry, it is 5.9 feet.

MR. PORTER: Thank you.

BY MR. BLACKMAN:

A (Continuing) 8.6 percent langbeinite and 8.0

percent sylvite. In the 1st ore zone, in Hole H-4, we cored 10.4 feet of 12.0 percent sylvite and 4.4 feet langbeinite.

Q And what percentage of langbeinite?

A 4.4 percent langbeinite.

Q 4.4 percent langbeinite?

A Yes.

Q That would be 10.4 feet of 4.4 percent langbeinite.

A Yes, sir. Now, the feet, these are K20 values; not percent of langbeinite but percent K20 equivalent.

Q Any other zones?

A Yes, sir. In the 10th ore zone in Hole H-4 we cored 6.6 feet of 20.1 percent sylvite and 2.3 percent langbeinite. The 2nd and 3rd ore zones were slightly mineralized in Hole H-4.

Q Second and third slight. Now nearby, a half a mile to the west, H-2.

A H-2 in the 4th ore zone had 5.5 feet of 9.3 percent langbeinite K20.

Q Repeat those please?

A 5.5 feet of 9.3 percent K20 langbeinite. In the 1st ore zone in Hole H-2 we encountered 6.7 feet of 3.2 percent sylvite and 6.7 percent langbeinite. It is

unfortunate that we have to give figures on such good holes next to land that we don't have leased.

Q Any other mineralizations in any other zones?

A Yes, sir. In the 2nd ore zone in H-2 we have 3.5 feet of 6.9 percent sylvite, 3.5 percent langbeinite and 1.6 percent leonite; 3rd ore zone slightly mineralized; 10th ore zone 6.8 feet, 12.2 percent sylvite, 3.7 percent langbeinite and 0.8 percent leonite all K2O, of course.

Q Now, there are several holes around there numbered PCA 1 through 5. Would you explain the situation with respect to those holes?

A PCA is drilling in this area at the present time. They're on Hole 6 and may be on Hole 7, which is not shown on the map. We do not yet have the analysis of the PCA holes. The PCA people have seen the cores and think they look good, but until we actually have the chemical analysis we can't give you the exact figures. I might say that we do know one thing has been proven in there; that we have apparently continuity of the ore body with some minor exceptions.

Q Now, with respect to the next hole to the southeast, H-3?

A H-3 in the 4th ore zone at 4.5 feet of 10.3 percent langbeinite. In the 1st ore zone, Hole 3 at 6.4 feet sylvite -- excuse me -- 6.4 feet of 8 percent sylvite.

MR. PORTER: Which zone is that?

MR. DONEGAN: First ore zone.

MR. PORTER: Thank you.

BY MR. BLACKMAN:

A (Continuing) 2.8 feet of langbeinite and 1.1 foot of 6.4 percent glaserite. The significance of glaserite in this area -- this is my opinion, the reason we have the glaserite figures here -- glaserite is a potassium sodium sulfate not being mined to my knowledge anywhere, but I understand that some companies have tried to make it artificial, and we've discovered glaserite in some of our holes, especially to the south, and we have a very exciting possibility in the central part of our block there, that we might develop a glaserite ore body, a product that we could mine that apparently would make a valuable fertilizer. This is all something that would have to be determined when we drilled around the holes that had the glaserite.

MR. NUTTER: Mr. Donegan, you did not give the percentage of that langbeinite at 2.8 feet.

MR. DONEGAN: It was 6.4 feet of 2.8 percent

langbeinite.

MR. NUTTER: Thank you. And what was the percentage of the glaserite?

MR. DONEGAN: Well, what I have here is -- I don't have an average for the entire zone. I might have confused you there. Out of that interval there is a zone of glaserite and it's 1.1 foot thick of 6.4 percent K2O glaserite.

BY MR. BLACKMAN:

Q Any other mineralization in H-3?

A Yes, sir. In the 2nd ore zone we have a thin zone; 2.4 feet 6.7 percent sylvite, 3.9 percent langbeinite, and 0.8 percent leonite; 3rd ore zone only slightly mineralized; 10th ore zone of H-3, 11.2 feet of 9.0 sylvite and 3.5 langbeinite. Now I have a couple of other breakdowns on that ore zone because we had some high-grade streaks; first I gave you the average of the entire 11.2 feet. We have in that interval 5.4 feet of 8.9 percent langbeinite and we have in another interval in that ore zone of 11.2 feet 3.2 feet of 16.9 sylvite. That is the only mineralization of significance in that Hole 3.

Q Now, moving to the east --

MR. KELLAHIN: If the Commission please, in the interests of time it would seem to me that all of the

figures that have been read, as far as we're concerned we can read them. I'm sure we can sift through them. If the Applicant here wishes to submit an exhibit showing these figures I see no reason to take these one by one and go over the whole area. Their duty is to show commercial ore deposits. We've got no interpretation on the basis of these figures yet, I'm sure we will come to it, I don't see the necessity to read all those figures into the record if we have some Exhibit that shows us. We've got 58 core holes and we've got a long way to go.

MR. PORTER: Do you have an Exhibit prepared that would show those thicknesses and percentages.

MR. DONEGAN: No, sir. I have my work maps -- coming by bus -- I guess we were too optimistic. We never dreamed that we were going to have to reveal every hole that we were talking about a hole-to-hole basis. Now I have one work sheet drafted of everything I am giving you, with the exception of about 10 holes. If this thing goes into tomorrow I will certainly have all of this in the morning. I have ordered 6 copies of these maps. I also have here a stack of 58 logs that have all of this data -- it's more than 58 -- and all of that data is right here; we can offer that, which is the same thing

that Mr. Kellahin has.

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

MR. TRUJILLO: Mr. Donegan, can the information
be put on these maps that you will give by tomorrow?

MR. DONEGAN: It is already on the map.

MR. TRUJILLO: It is just a matter of having them
ready not sooner than tomorrow, is that it?

MR. DONEGAN: My daughter put them on a bus to
go to Albuquerque to get a blueprint and ship them back.
Now, whenever the bus gets here, at the latest tonight I
would think.

MR. PORTER: Would that be satisfactory?

MR. KELLAHIN: If the Commission please, mine was
not an objection, they have a perfect right to put this in,
but it seems to me that it would be rather burdensome to
go in this fashion through all these core holes and still
have nothing which shows where the projections of this
information --

MR. TRUJILLO: (Interrupting) Mr. Kellahin, are
you willing to stipulate that if they provide us with maps
with the required information shown on these maps, would
you stipulate to that?

MR. KELLAHIN: Subject to our checking them against the information which we have, yes.

MR. BLACKMAN: I'm not sure --

MR. KELLAHIN: Subject to checking them against the information which you have furnished us, to be sure they are correct.

MR. BLACKMAN: You mean the exhibits that we are going to furnish will be essentially correct or will reveal the core hole information as it is as we know it?

MR. KELLAHIN: That is correct.

MR. BLACKMAN: Well I think I have to proceed around the perimeter of this area anyway to show you what's in there. Otherwise you will object again and Mr. Donegan has not told you what studies he has made. I'm reading into the record what studies he has made, what he has examined, and what is revealed by it. I asked him in the first instance what his conclusion was and you objected to that and the Commission ruled that I had to show what studies he has made. I can't show that by one exhibit until tomorrow, so I will simply have to put it in piece by piece today, unless you are also willing to go ahead and say that I can ask him what his opinion with respect to the trends, the existence of potash, particularly langbeinite

within this area and let him testify with respect to that. I'm willing to go ahead on that but I don't see how I can go ahead both ways.

MR. PORTER: When you come to a fork in the road you can't go down both roads.

MR. KELLAHIN: If the Commission please, this Commission has heard many, many potash cases, and never in the history of this Order has a case been presented in such a fashion as this, with core hole, core hole, core hole. In every instance they've had an exhibit with the core holes on it, the information on the exhibit, their interpretation and ~~projection~~ of that information to show where the ore body lies, and that is the basis of their presentation. Now, to say he can go ahead now and ask him to say whether this is productive commercial quantities or not leaves us in the dark. I have nothing to cross examine him on until the exhibit is produced. There is still nothing, and if he goes down through here and gives us the information on every single solitary core, we still don't know he's done. All he has done is determine that at that one point this situation existed. We don't know what he did with it. I'm at a loss to know how we can possibly proceed at this point.

MR. BLACKMAN: Well, I don't see what other way we can proceed; you want to know how he did it; when I get the information in the record I'll ask him how he did it.

MR. KELLAHIN: I've made my objection. If the Commission wants to let him proceed in this fashion, that is fine.

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

MR. PORTER: Mr. Blackman, is it your intention to discuss each one of these core holes separately anyway, regardless of whether you have them tabulated or with these results on them?

MR. BLACKMAN: I would discuss them by groups, but I might suggest something like this. I have no desire to take the Commission's time up by going into all this detail which obviously will take a long, long, long time to put in there and give all the details of all the projections. My feeling about this particular case is that it is quite different from the cases that have come along before. We have here a substantial area which has high probabilities of potash mineralization. As to whether needs -- we really do not have very much information about it at the present

time. This is the reason why we are drilling these holes PCA 1 through 6 up there. We're trying to get that information and this is a method of trying to establish the size of the ore body, to see if it's sufficient. This means that we will be looking around in different places within here based on rather sketchy information. It is not easy to say whether there is, not easy to establish positively that you can say that as of here we have an ore body that goes from here to here because the information that we have is not sufficiently detailed to do very much of that. We can do it up there at the north where PCA is but the only thing that I can suggest is that we might proceed in this fashion if the Commission would prefer the information put in the form of a map with projection lines on it indicating where the ore bodies are projected to be. We could prepare such an exhibit, the trouble is that it would take a little more time than just drawing a few lines because of the fact of these multiple ore zones.

MR. PORTER: You say you are now in the process of drilling additional core holes in the area?

MR. BLACKMAN: Yes. As Mr. Donegan said, we've drilled 5, we've completed 5 holes. PCA 6 is located on

here. I'm not sure at this moment whether PCA 6 has been completed and PCA 7 is started or not. The process of analysis of the cores in these instances is quite difficult. It is very easy to run an ore in, take a particular section of potash and hand it over to the laboratory and run the K20 on it to find out how much potash is actually present. But to try to find out what the makeup of that potash is requires a large amount of detailed engineering and analytical work, ending up with a material balance, and our chemists won't release the work until they got their material all in balance and they are willing to say positively that this has so many feet of this percentage of sylvite and so many feet of this percentage of langbeinite and so many feet of something else, so we don't have that information. All we can say is that it looks good, but that's all at this point. Now that's only -- that only applies to that area up there. With Mr. Kellahin's permission, what we have done that Mr. Donegan has testified to is we entered into a contract and we are obligated to keep on drilling until we either do something with it or give it up. If we decide to do something on it we'll end up in a joint venture with them as to what it is. We have spotty areas around here and we could draw such a map

and I can get something like that ready so you might suggest one thing, that within the areas with which we are proceeding or in this area we might prepare such a map for the Commission. We can't do it by tomorrow; we would have to say that we would get it as soon as we could in some continuing basis, but otherwise ---

MR. TRUJILLO: (Interrupting) Mr. Blackman, would you have the information for all the holes you have listed on your Exhibit 1?

MR. BLACKMAN: Do we have information for all these holes? Let me ask Mr. Donegan that, a few we do not have, for instance, D-32 in there that I was going, and D-4 I believe which I was going --

MR. TRUJILLO: (Interrupting) If you do have the data for this, is it possible to provide the Commission with a map indicating all that data on the map with the holes that are presently shown here, by say tomorrow?

MR. BLACKMAN: Is that what you have, Ben?

MR. DONEGAN: No, sir. I would like to point out that this is what Mr. Kellahin wouldn't let us -- stopped us from talking about earlier. We don't have the edges of these ore bodies. We have a lot of information to show that there is probably a number of ore bodies in

there and we have some beautiful holes scattered out by themselves and there's no holes near them. We have some blank holes. Our contention of what we were trying to show earlier is that a substantial part of this land probably had potash ore in it and some parts of it doesn't have potash ore. The map you are talking about, Mr. Blackman, I would be hard pressed to see where the edge of any of these ore bodies are. We haven't done enough drilling to any more than generalize. We can show what may be a square mile here that is all ore, or an area down here that looks real good, but we're too early in the development of this thing to say any part of it doesn't have ore other than in the two-inch diameter of say a barren hole.

MR. KELLAHIN: If the Commission please. Based on what the Counsel and the Witness have both stated, it would appear that this Application is wholly premature. They admit they don't have evidence available to them to support their burden under the statute which would be to show the commercial deposits of potash in this area. We're not talking about indicated potash or some other terminology, we're talking about commercial deposits of potash, and if they aren't prepared to go forward with

that then the case should be dismissed.

MR. BLACKMAN: We're prepared to go forward on a hole-by-hole basis, Mr. Kellahin, but you don't want to do it that way. We can show you where we are and show you what the possibilities are because I strongly feel that this is an ideal example of a situation in which we have possibilities of very valuable potash measures in this very area here. This area and the one immediately to the east, which is known as Permian potash area, are the last known langbeinite possibility deposits in the Western Hemisphere. There aren't any anyplace else that are known. The Commission needs the individual information we are talking about. It needs exactly that information that we're talking about to make decisions on whether a particular well should be drilled or should not be drilled, whether a particular oil well should be drilled or should not be drilled. I don't know a way to put the evidence before the Commission as to what it is except to go through and do it and give it to you hole by hole. Mr. Donegan says it is a difficult thing to tell how far you should go. If you have a hole out in the middle -- a mile around you in all directions -- it's a good hole, how much potash do you have? Goodness knows, nobody knows because

you only know when you come up with a core hole that you found let's say 3 inches of potash at a depth of 650 feet and it was 10 feet thick. If you go ten feet away from that you do not know anything; you haven't proven it. Now, when you come to try to prove that it is a very difficult thing. It seems to me that when we're only asking for notice in a case of this kind of intention to drill so the Commission can decide in a particular instance that the character of the proof that Mr. Kellahin is requesting that we have is asking too much. We're thinking that we're not only talking about the Hodges Trust here and PCA, we're talking about the State of New Mexico. We're talking about a very valuable piece of property here. This is of extreme value to the Commission. I can cite a case back years ago that Mr. Porter would remember in which we lost the case before the Commission and many wells were drilled in an area out in Lea County. That land was eventually given up by PCA and I'll be switched if the potash that has been permanently lost in there isn't worth \$100,000,000 right now.

MR. KELLAHIN: If the Commission please, if Mr. Blackman wishes to testify, let him get on the witness stand and be sworn. We don't know anything about any case they lost. What we are talking about is what

requirements of the New Mexico statutes are in this Case. At best, if the Commission doesn't see fit to dismiss the Case, I think it ought to be continued and give PCA a chance to prepare an adequate case. They're certainly not prepared to go forward with the Case today, obviously, and I think both the Counsel and the Witness have admitted that they can't say what is commercial deposits in this area since they're talking about

MR. PORTER: Mr. Blackman, you say you have active coring going on in that area right now?

MR. BLACKMAN: Yes, sir.

MR. PORTER: What time do you think it would take you to complete that coring.

MR. BLACKMAN: To complete this coring in this area?

MR. PORTER: In the area that you are asking for.

MR. BLACKMAN: It will take a long time, Mr. Porter. We have been at it now -- a core hole down there is about 650 feet. It takes somewhere between three days and four weeks to drill a hole, depending on how much trouble they get into. We are obligated to drill a minimum of 15 core holes and as many more as we feel is necessary to determine the existence of ore bodies. Now there isn't

any way to tell that because each core hole gives you a little more information.

MR. PORTER: How many rigs do you have?

MR. BLACKMAN: We only have one. We could only get one. There is a representative of Norandex here, they are drilling; there is not a representative of Day Mines here, they're trying to find a rig. Pennsylvania Drilling Company has been operating in that area for a long time; they haven't been able to get crews. I would say that we hope to be finished with this within possibly a year from now, maybe a year and a half, to get the holes drilled and to get the evaluation made.

MR. PORTER: Would you like to continue the Case for a year and a half?

MR. BLACKMAN: No, sir, I would not. I would be willing to prepare such an Exhibit as the Commission indicates it wants. We will do our best to put the information that is necessary on such an Exhibit and submit it to the Commission to see what you feel, to see what you think about it. At that point I would -- I also feel very strongly that this is a situation in which the Commission should take a different view. I'm asking the Commission to change its rule, the basis on which it has been operating.

MR. PORTER: Well we've already ruled on that.

MR. BLACKMAN: Yes you have, you have already ruled that you're not going to do that today. I think you haven't ruled that two weeks in advance.

MR. DONEGAN: Mr. Porter, while you're considering that decision, I wonder if I could make a statement on behalf of Leland A. Hodges concerning something that I would like you to be aware of in consideration of that decision. We have the current situation, Skelly drilled a No. 1 49er Ridge well, we understand they are planning a No. 2 well in this area. The No. 1 well, and we have evidence that we have already seen that they encountered valuable potash in their hole. It was not in Rule 111 although it was near an old hole that did have potash. We didn't receive notice or have right of hearing. There is other drilling going on, we're being crowded by drilling. Of course that's the primary reason we came in; we're trying to show with evidence we have now that if we don't take action right now we're going to lose a lot of potash in there. This idea of waiting until there is more drilling, this drilling in the contract with FCA provides for continuous drilling. They may have to drill 5 years or 3 years. There is no point that we can wait to finish their

drilling. Meanwhile, all the other oil and gas well activities are going on. The potash situation is changing from day to day. It's just been a matter of the last few weeks the economics have completely changed and I don't see how we can wait for another map or another --

MR. KELLAHIN: If the Commission please, I want to correct just one statement made. He said he had no notice of this Skelly Well. Well, if he had no notice it is because he didn't pay any attention to the official notification by this Commission. That well was within a unit and was approved after a hearing; the well location was approved after a hearing and certainly they had adequate notice, the same notice of any other operator gets in the oil business. If they didn't see it, well that's unfortunate, but just to say that we got to put this in an area now so we can get notice when the statute says the purpose of it is to protect commercial deposits of potash.

MR. DONEGAN: When I said "notice," I said notice and right of hearing. We knew about the well; we came to the hearing; we didn't have right under anything except through the courts to protest the well. We didn't have the right of Rule 111-A to ask for opportunity to discuss the potash in the holes in that area.

MR. KELLAHIN: You did have notice?

MR. DONEGAN: Well we had the notice that there was going to be a hearing about a unit.

MR. BLACKMAN: I think that sort of illustrates the point in here. If the Commission is disposed to continue the case, I would like to think about it just a little bit, but I would like to request two things: I have one witness here to testify to some particular problem who would not be able to come back probably at any other time, and I would like to put that little bit of evidence in. Another one is that we would like to put in the evidence particularly about this area around the Skelly hole and about some of these other areas where we show good potash holes and we'll just leave out all of the bum ones and say here is where we indicate the potash is and where the ore zone is and then see what information we can get with respect to projections and things of this kind. I say to you now when you start to try to determine what constitutes something that is commercial you have a real job on your hands and it is a very difficult thing to do.

I would like to cooperate with the Commission by having a continuance in preparing such an exhibit because I probably would illustrate the matter and it would

certainly tighten up the argument quite a bit.

MR. PORTER: Is it your plan to try to correlate these various core holes? You're not yet talking about the evidence that you are planning right in the core holes, how one relates to the other, and so forth?

MR. BLACKMAN: We would give what evidence we can as to what one relates to the other. I just had an offer from one of my colleagues from another company down there that they would be glad to take a look at this thing this evening and see what we can put down on the map with respect to making correlations which might be helpful to the Commission if we simply recess the hearing until tomorrow. Mr. Donegan has indicated that he didn't think he would be able to do that by himself; perhaps two or three of us could do it.

MR. PORTER: The Commission is considering continuing this case for a couple of weeks until about July 31st, which would be two weeks from today, to allow time for some exhibits to be prepared. I feel that in so doing we could probably shorten this proceeding. Now, what do the interested parties, how do you feel about the date of the 31st?

MR. KELLAHIN: That date would be satisfactory

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with us.

MR. BLACKMAN: It sounds all right to me. What day of the week is that?

MR. PORTER: It's on Wednesday.

MR. BLACKMAN: That will be fine.

MR. PORTER: All right. July 31st would be on Wednesday, two weeks from today.

So, the Commission will continue the case until that time. It should give ample time to prepare the exhibits and come forward with testimony.

MR. BLACKMAN: Very good.

(Whereupon a discussion was held off the record.)

MR. BLACKMAN: I would explain to the Commission the reason for putting this, notwithstanding the exhibit we intend to prepare, we've had difficulty in getting the information on two holes, Mr. Elers' old Duval holes that they've drilled, and we were able to get the information on them and I just wanted to put those --

MR. PORTER: (Interrupting) He has that information and you would like to get that in the record while he is here.

MR. BLACKMAN: Yes, some information with respect to the price of potash.

MR. PORTER: Let the record show that the Case is being reopened for the purpose of questioning one Witness.

(Witness sworn.)

KARL E. ELSERS

called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKMAN:

Q Mr. Elers, will you state your name?

A Karl E. Elers.

Q Your position, please.

A Resident Manager, Duval Corporation, Carlsbad Properties.

Q In that position do you have official custody of the records and material of that sort concerning drill holes drilled by Duval Corporation in the past?

A That is correct.

Q Based on that information, can you testify as to the log information, core information on the drill hole D-4 which is in the -- I can tell you in a minute if I can figure it out -- in Section 28, the southwest corner, 23 South, 30 East?

A I can.

Q Would you so testify as to what that core information shows according to your records?

A Our records on Duval's No. 4 core test show a total of 5 feet 11 inches of 11.1 percent K20 sylvite.

Q 11 point what?

A 11.1 percent K20 as sylvite.

Q Are there any other mineralizations in that hole?

A We show very minor langbeinite mineralization which at that time was not analyzed.

Q Can you give the same testimony with respect to hole No. D-32 which is in the Northeast quarter of Section 14, Township 23 South, Range 30 East -- Range 29 East.

A Yes, I can.

Q Will you testify please?

A D-32, which was drilled in 1948, was not assayed. An estimate was made of the core that was recovered, the estimate being 4 feet 4 inches of 5 percent K20 as langbeinite, 3 percent K20 as sylvite.

Q You said that is not based on analysis?

A That is correct.

Q It is based on an estimate?

A It is based on a visual estimate by the geologist

on the hole.

Q Now, Mr. Elers, would you kindly testify what is the current price per ton of ore of the product known as Kaymag sold by your Company, which is sulfate of potash magnesia.

A Kaymag's current price for the standard grade material is \$26 per ton. For the granular material it is \$29 per ton.

Q Now this is the commercial product made from the ore langbeinite, is that correct?

A That's right.

Q Can you tell us what the price was a year and a half, two years ago?

A Approximately \$18 per ton.

Q Is that for standard or granular?

A Well, that would be an average. I believe it was 16 for standard and 19 for granular.

MR. BLACKMAN: That's all Mr. Elers.

CROSS EXAMINATION

BY MR. KELLAHIN:

Q Mr. Elers, on your core D-4, what is your estimate based on? How did you arrive at these figures?

A D-4, Mr. Kellahin, it was based on analytical

assays from chloraplatinate analysis.

Q From what?

A It is a type of potash analysis that is conducted on core tests.

Q Did you utilize a log on the analysis?

A Yes.

Q Would you make that log available to us?

A The log could be made available, yes, sir.

Q We would like to have a copy.

A I don't have it in Santa Fe with me.

Q We're recessing for two weeks.

A I will make it.

Q The Commission will appreciate it. Now, on your D-32 you say that is based on estimates.

A That is correct.

Q Who made the estimate?

A Mr. Kellahin, I found no names on the log. I can only give you the name of the two individuals who did all of Duval's logging at that time.

Q I will ask you this, are they present here?

A No, sir.

Q Is the estimate the visual estimate that you were talking about?

A That's correct.

Q How reliable is that?

A I would say the reliability is generally within 10 percent on a visual estimate by an experienced geologist.

Q Do you have any records to support this 10 percent accuracy?

A I think we could furnish them, yes, sir.

Q Where you have a visual estimate and then an analysis?

A Correct.

Q Now, on your price, is that a spot price?

A No, sir, that's published list price.

Q From what is it taken?

A From our published list price to our customers.

Q That is a spot price, is it not?

A Well, it's our price in effect for the product feb plant for the period I believe July 1st through February 28th.

Q Do you have any long-term contracts at those prices?

A This I could not tell you, Mr. Kellahin.

Q Do you know what your long-term contract price is?

A At the present time?

Q That's right.

A I don't believe we have any in Kaymag.

Q Do you know what 1973 long-term contract price was?

A No, sir, I don't.

Q You don't make any long-term contracts?

A Our Company may make them but they are made outside of my realm of activity.

Q Now, that brings us back to the question, you say this is Kerr Mac products?

A No, sir, this is Duval products.

Q You know what your posted price is but you don't know what your contract price is, is this what you are saying?

A Well, we're kind -- our list price is the going rate of the material we're selling. Whether we're contracting over long periods of time, I'm not qualified to answer that.

Q If this is the price, if I drove up in a truck you would sell it to me wouldn't you?

A Correct.

Q But if I wanted to buy in volume over a period of years I would negotiate with a different party?

A Whether or not we're doing long-term contract work

in Houston at this time I couldn't say.

Q You don't know?

A No.

Q You don't know what price it is?

A No.

MR. KELLAHIN: Thank you.

REDIRECT EXAMINATION

BY MR. BLACKMAN:

Q Mr. Elers, does this price that you testified to, was that a new increase price as of January 1st, 1974?

A No, sir. The \$26, \$29 price I believe was effective July 1st, 1974.

Q July 1st, 1974, I intended to say

A Yes.

MR. PORTER: Any further questions?

MR. BLACKMAN: I would like to make one statement not directed to Mr. Elers, it is very short.

Earlier in the Hearing, Mr. Porter, you asked me if it were my position that the R-111-A boundary should be made coextensive with the Secretary's area boundaries and I said I thought that was the proper position. I did not want to leave the impression that I was advocating that at this hearing because it is not in the notice.

MR. PORTER: I realize that Mr. Blackman. The reason for my question was that you felt that that would -- then the whole area would make Section 7 more or less moot.

MR. BLACKMAN: I don't know whether it would make it moot or not but I do think it would answer the question of due process of law.

MR. PORTER: In that event --

MR. BLACKMAN: (Interrupting) I didn't want to say I was advocating that, that's all, I'm not trying to --

MR. PORTER: (Interrupting) Well, in that event

MR. BLACKMAN: (Interrupting) I'm not trying to do that to the extent that I may have inferred that I was trying to do that I wish to state the contrary.

MR. PORTER: No, I realize you were not trying to do it, but inasmuch that you thought that the Section 7 should be corrected, and I thought you might have the idea that that was the way to correct it.

MR. BLACKMAN: My idea was to get the Secretary of the Interior to correct it.

MR. PORTER: The Case will be continued until 9:00 A.M. on July 31st.

(Whereupon, the Hearing was adjourned at 2:05 p.m.)

