

1 STATE OF NEW MEXICO
2 ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
3 OIL CONSERVATION DIVISION
4 STATE LAND OFFICE BUILDING
5 SANTA FE, NEW MEXICO

6 26 October 1988

7 EXAMINER HEARING

8 IN THE MATTER OF:

9 In the matter of Case 9391 being re-
10 opened upon the application of Foran
11 Oil Company in order to add the Home-
12 Stake Royalty Corp[oration and the Home-
13 Stake Oil and Gas Company to Division
14 Order No. R-8674, Lea County, New Mexico.

REOPENED

CASE
9391

21.5

15 BEFORE: Michael E. Stogner, Examiner

16 TRANSCRIPT OF HEARING

17 A P P E A R A N C E S

18 For the Division:

19 Robert G. Stovall
20 Attorney at Law
21 Legal Counsel to the Division
22 State Land Office Bldg.
23 Santa Fe, New Mexico

24 For Foran Oil Company:

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Attorney at Law
KELLAHIN, KELLAHIN & AUBREY
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For Home-Stake and Home-
Stake Royalty:

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I N D E X

MARK STEWART

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1 MR. STOGNER: We'll call next
2 Case 9391, which is being reopened upon the application of
3 Foran Oil Company in order to add the Home-Stake Royalty
4 Corporation and the Home-Stake Oil and Gas Company to Div-
5 ision Order No. R-8674, which is the order resulting from
6 said Case Number 9391, providing for the compulsory pool-
7 ing of mineral interest in the Strawn formation underly-
8 ing certain lands in Lea County, New Mexico.

9 Call for appearances.

10 MR. KELLAHIN: Mr. Examiner,
11 I'm Tom Kellahin of the Santa Fe law firm of Kellahin, Kel-
12 lahin & Aubrey. I'm appearing on behalf of the applicant,
13 Foran Oil Company, and I have one witness to be sworn.

14 MR. STOGNER: Are there any
15 other appearances?

16 MR. HALL: Mr. Examiner, Scott
17 Hall from the Campbell & Black law firm, Santa Fe, on be-
18 half of Home-Stake Royalty Corporation. No witnesses.

19 MR. STOGNER: And you're with
20 the Home-Stake Oil and Gas Company or Home-Stake Royalty?

21 MR. HALL: Yes.

22 MR. STOGNER: Home-Stake, et
23 al, okay. All right.

24 Are there any other appear-
25 ances?

1 Will the witnesses please
2 stand and be sworn at this time?

3
4 (Witness sworn.)

5
6 MR. STOGNER: Mr. Kellahin.

7 MR. KELLAHIN: Thank you, Mr.
8 Stogner.

9
10 MARK STEWART,
11 being called as a witness and being duly sworn upon his
12 oath, testified as follows, to-wit:

13
14 DIRECT EXAMINATION

15 BY MR. KELLAHIN:

16 Q Mr. Stewart, would you please state your
17 name and occupation?

18 A My name is Mark Stewart. I'm a landman
19 with Foran Oil Company.

20 Q Mr. Stewart, where do you reside?

21 A Amarillo, Texas.

22 Q Have you previously testified before the
23 Oil Conservation Division as a petroleum landman?

24 A No, sir.

25 Q Would you summarize for Mr. Stogner what

1 has been your education and employment experience that
2 relates to your practice as a professional petroleum
3 landman?

4 A Okay, sir. I have been involved in the
5 oil and gas land work since 1981. I've worked for brokers
6 and companies, primarily in west Texas, southeastern New
7 Mexico, Texas and Oklahoma Panhandles, and western Okla-
8 homa during that period of time.

9 I have a Bachelor's degree in business
10 from West Texas State University.

11 Q In what year, sir?

12 A 1980.

13 Q As a landman for your company have you
14 been involved in discussions and negotiations with the
15 Home-Stake Royalty Corporation of Tulsa, Oklahoma?

16 A Yes, sir.

17 Q And what is your understanding of their
18 interest in the spacing unit that is the subject of this
19 order?

20 A They at this point in time have indi-
21 cated to us that they want to participate in our Etheridge
22 No. 1-7 Lease.

23 Q You, on behalf of your company, then,
24 are the landman that has dealt with the Home-Stake interest
25 in order to attempt to reach a voluntary agreement.

1 A Yes, sir.

2 MR. KELLAHIN; We tender Mr.
3 Stewart as an expert petroleum landman.

4 MR. STOGNER: Mr. Hall, is
5 there any objection?

6 MR. HALL: No, sir.

7 MR. STOGNER: Mr. Stewart is
8 so qualified.

9 Q Let's refresh Mr. Stogner's memory about
10 where we are now and how we got there.

11 Let me -- let me take you through some
12 of the exhibits in the package, Mr. Stewart.

13 First of all, Exhibit Number One is
14 what, sir?

15 A It's a plat of the area which we propose
16 to drill our well, the east half of the southeast quarter
17 of Section 7. I believe that will be Township 16 South,
18 Range 36 East of Lea County, New Mexico -- 37, I'm sorry.

19 Q The spacing unit for the well is the 80-
20 acre tract that's shown in Section 7 and outlined in
21 yellow?

22 A Yes, sir.

23 Q And this is for a Strawn formation test
24 well to be drilled by Foran Oil Company?

25 A Yes, sir.

1 Q This well is one you call the Etheridge
2 No. 1-7 Well.

3 A Yes, sir.

4 Q Why was not Home-Stake Royalty Corpor-
5 ation or Home-Stake Oil and Gas Company named originally as
6 a party to be pooled when we came before Examiner Catanach
7 back in June of this year to obtain Order R-8674?

8 A To the best of my understanding, Home-
9 Stake Companies, Home-Stake Royalty and Home-Stake Oil and
10 Gas, had agreed to give Foran Oil Company two proration
11 units to drill two Strawn tests. Those two proration units
12 were in the west half of the southwest quarter of Section 8
13 of 16, 37, and the east half of the southeast quarter of
14 Section 7 of 16, 37.

15 Q Exhibit Number Two represents the appro-
16 ximate location for the proposed well?

17 A Yes, sir.

18 Q All right. When we turn to Exhibit Num-
19 ber Three, what is this, sir?

20 A This is the lease that was, to the best
21 of my knowledge, Home-Stake had signed and executed giving
22 Foran the right to the two proration units which we were
23 needing in the Section 7 and Section 8.

24 Q So at the time of the prior pooling
25 hearing the Home-Stake Royalty Corporation interests had

1 already been committed to Mr. Foran.

2 A Yes, sir.

3 Q So there was no need to include them in
4 the pooling application, at that time.

5 A Correct.

6 Q Since then has Mr. Foran been able to
7 drill the Etheridge 1-7 Well within the period of time
8 specified by the lease?

9 A No, sir, the Etheridge 1-7 we're not
10 able to drill.

11 Q And the lease expired.

12 A Yes, sir.

13 Q All right. Let's turn to Exhibit Number
14 Four and have you identify and describe what that is.

15 A Exhibit Four is a letter agreement
16 authorizing an extension of the prior oil and gas lease.

17 Q This provided for a 10-day extension at
18 the end of the original 90-day period of the Home-Stake
19 lease?

20 A Yes, sir.

21 Q And were you able to commence the well
22 within that period of time in order to save your lease in-
23 terest?

24 A Yes, sir.

25 Q You were not, were you?

1 A Not as to the Etheridge

2 Q Okay. When we go to Exhibit Number

3 Five, this is also a document taken out of your land file?

4 A Yes, sir.

5 Q And what is this document?

6 A They are asking -- they are granting us

7 the extension of the oil and gas lease and requesting that

8 we send them certain information with regard to the well

9 that would be -- be drilled.

10 Q Okay, and then when we get to Exhibit

11 Number Six as the next piece of correspondence, what is

12 going on now?

13 A They, Home-Stake has notified us that

14 our interest in the west half will no longer be -- we will

15 not be able to drill our well in the east half of the

16 southeast quarter of Section 7, that the lease has expired

17 covering that acreage.

18 Q Miss Courtney says in the body of the

19 letter, "Our agreement has now expired."

20 A Yes, sir.

21 Q Okay, have you dealt with Miss Courtney?

22 A Yes, sir.

23 Q She's the lady that you've talked to

24 when you deal with Home-Stake Royalty Corporation or

25 Home-Stake Oil and Gas Company?

1 A That's who I have been working with.

2 Q All right. You got a copy of the Sep-
3 tember 2nd, '88 letter from Miss Courtney, Exhibit Number
4 Six?

5 A Yes, sir.

6 Q All right, then what did your company do
7 next?

8 A At that point in time we -- I went to
9 Tulsa to sit down in a meeting with Miss Courtney and Harry
10 Tucei was also present at that meeting for a brief period
11 of time.

12 We attempted to work out a deal. Mr.
13 Tucei instructed Barbara to work out a trade and try to
14 come to some kind of understanding. That is how the Exhi-
15 bit Seven came -- that letter was written in response to
16 that. We felt like we had been able to reach a -- would
17 possibly be able to reach an agreement. Of course it was
18 subject to her management's approval but Barbara and I had
19 attempted to work out a trade.

20 Q So Exhibit Number Seven then represents
21 the proposal back to Home-Stake Companies with regards to
22 making a new arrangement on a voluntary basis for the com-
23 mitting of their interest to the well.

24 A Yes, sir.

25 Q And this is a letter that you sent.

1 A Yes, sir.

2 Q And what's the next thing that happened,
3 Mr. Stewart?

4 A We received a letter October 7th that
5 indicated they had rejected our offer. Miss Courtney had
6 contacted me by phone and had said her management would
7 prefer to lease \$750 per acre on a quarter royalty with a
8 6-month term and a 35% back in that was not proportionally
9 reduced.

10 Those terms --

11 Q Before you get to what you did with
12 those terms, those terms are shown on her October 7th
13 letter and that's Exhibit Number Eight?

14 A Yes, sir.

15 Q And appended to that letter, then, they
16 executed your AFE?

17 A Yes, sir.

18 Q Which was Exhibit Fifteen from the
19 original pooling hearing?

20 A Yes, sir.

21 Q And that AFE was executed conditioned
22 upon your acceptance of the terms she set forth in her
23 October 7th letter?

24 A If we did not accept those terms, then
25 they would participate, that they would want to participate

1 in the well.

2 Q At this point has Home-Stake Royalty
3 Corporation executed an operating agreement for their in-
4 terest in the well?

5 A No, sir.

6 Q And have they tendered their share of
7 the costs of the well?

8 A No, sir.

9 Q On October 14th what did you do?

10 A We wrote them a letter and informed them
11 that we would not be able to accept a signed AFE, just
12 signed to us. We set out terms, asked them to -- to sign
13 an attached AFE. We did attach the pooling order, R-8674,
14 a copy, with that letter, trying to set out our terms and
15 conditions of the voluntary trade.

16 Q That's shown as Exhibit Number Nine?

17 A Yes, sir.

18 Q All right, and Exhibit Number Ten, then,
19 sir, is what?

20 A They had not responded to our previous
21 offer. We wanted to go ahead and notify them that we were
22 withdrawing our offer and we continued with the forced
23 pooling procedures.

24 Q All right. As of this morning, Mr.
25 Stewart, despite your efforts and despite the intentions of

1 Home-Stake to try to work out a voluntary agreement with
2 you, is there in fact an agreement in place that has been
3 executed by all parties to commit their interest to the
4 well?

5 A No, sir.

6 Q Has Home-Stake Company sent you their
7 share of the cost of the well yet?

8 A No, sir.

9 Q And there is no executed operating
10 agreement to allow them to be invoiced and billed as costs
11 are expensed?

12 A No, sir.

13 Q What is the current deadline of the
14 commencement date for the drilling of the well that's the
15 subject of the pooling order?

16 A I'm not sure of that date myself. I
17 know we have very little -- little time left under the ori-
18 ginal pooling.

19 MR. KELLAHIN: Mr. Examiner,
20 the case file for this case will show that Mr. Lemay ex-
21 tended the pooling order to a date that will expire on
22 November 15th, 1988. It was in response to a letter I
23 wrote him in September, on the 14th of September, and your
24 file should reflect that letter.

25 MR. STOGNER: Let me make sure

1 we have that this file before we continue.

2 Okay, we do have that on file.

3 Q The information that you've testified
4 from today, Mr. Stewart, comes from the correspondence that
5 you keep and regularly maintain in the well file or the
6 lease file for this property?

7 A Yes, sir.

8 Q And that's something you do in the regu-
9 lar course of your business as a landman for Foran Oil Com-
10 pany?

11 A Yes, sir.

12 Q And you have dealt with Miss Courtney on
13 behalf of her company in trying to resolve the voluntary
14 agreement?

15 A Yes, sir.

16 Q In your opinion will utilizing any more
17 time by you and her reach -- allow you to reach a voluntary
18 agreement?

19 A No, sir.

20 Q At this time is Foran Oil Company pre-
21 pared to proceed with the drilling of the well?

22 A Yes, sir.

23 MR. KELLAHIN: That concludes
24 my examination of Mr. Stewart, Mr. Stogner. We would move
25 the introduction of Exhibits One through Ten.

1 We have marked Exhibit Number
2 Eleven, which is the copy of the application and cover
3 letter we filed with the Division on which we -- we also
4 sent on that same day copies to Home-Stake Royalty and Oil
5 and Gas Company.

6 I would like to withhold sub-
7 mitting that to you until I can get you the return receipt
8 cards. I do not have them with me today but I will supply
9 them to you either today or tomorrow. We've got them. I
10 simply neglected to bring them.

11 MR. STOGNER: Mr. Hall, do you
12 have any objection to Exhibits One through Ten?

13 MR. HALL: One brief question
14 with respect to Exhibit Eight, if I might.

15 MR. STOGNER: Exhibit Eight?

16 MR. HALL: Yes.

17 MR. STOGNER: Okay.

18 MR. HALL: If I might inter-
19 rogate the witness on it.

20
21 VOIR DIRE EXAMINATION

22 BY MR. HALL:

23 Q Mr. Stewart, if you could refer to Ex-
24 hibit Eight, as I understand your testimony and as re-
25 flected on this particular Exhibit Eight, you were offered

1 a back-in 35 percent as reflected on that letter of October
2 7, 1988, but, Mr. Stewart, isn't it also true that you were
3 later advised by Miss Courtney that the 35 percent was a
4 typographical error and should have read 15 percent?

5 A No, sir.

6 MR. HALL: No further
7 questions on Exhibit Eight. We have no objection to it.

8 MR. STOGNER: Exhibits One
9 through Ten will be admitted into evidence at this time and
10 we'll hold Exhibit Number Eleven until such time as the
11 return receipts accompany it.

12 MR. KELLAHIN: That concludes
13 my examination of Mr. Stewart.

14 MR. STOGNER: Thank you, Mr.
15 Kellahin.

16 Mr. Hall, your witness.

17
18 CROSS EXAMINATION

19 BY MR. HALL:

20 Q Isn't it correct that Foran has taken
21 the position throughout that Home-Stake's interest in the
22 lease acreage are committed to Foran by virtue of the
23 March 23rd, 1988, oil and gas lease?

24 A Yes, sir.

25 Q And is that your position today?

1 A Well, the lease has -- the lease --
2 you're referring to the March 23rd lease, 1988.

3 Q Yes, Exhibit Three.

4 A We feel like that we have a valid deal
5 with Home-Stake to drill two proration units in Section 8
6 and in Section 7, those two areas, and what we have to --
7 we're attempting to do is to proceed and drill our second
8 well.

9 Q And in fact the Section 7 Well covered
10 by the March 23rd, '88 oil and gas lease has not been
11 drilled, is that correct?

12 A That is correct.

13 Q And does that oil and gas lease contain
14 a Pugh clause?

15 A Yes, the lease does.

16 Q And what is your understanding of how a
17 Pugh clause works?

18 A That the terms of this lease, the expir-
19 ation primary term, the acreage outside of the producing
20 proration unit will terminate.

21 Q And isn't it correct that none of the
22 acreage in Section 7 was dedicated to a well?

23 A That is correct.

24 Q No further questions.
25

1 MR. STOGNER: Thank you, Mr.
2 Hall.
3 Mr. Kellahin, do you have any
4 redirect?
5 MR. KELLAHIN: No, sir.

6
7 CROSS EXAMINATION

8 BY MR. STOGNER:

9 Q Mr. Stewart, just to refresh my memory a
10 little bit more, how many, in the original case back in
11 June, how many parties were force pooled by that order?

12 A I was not with Foran at that time. I
13 would have to ask Mr. Kellahin's assistance on that.

14 Q At this time I'll take administrative
15 notice of all Case Number 90 -- 9391, but offhand do you
16 remember, Mr. Kellahin?

17 MR. KELLAHIN: Yes, sir.

18 There were -- there were ulti-
19 mately five parties that were sent notices of the order and
20 given an opportunity to participate in the well.

21 They're shown on Exhibit
22 Number Four of the prior hearing.

23 MR. STOGNER: Home-Stake was
24 not one of those.

25 MR. KELLAHIN: That's right.

1 They were excluded from the original pooling case because
2 at that time we did in fact have a lease that had yet
3 expired.

4 The five parties that were
5 sent notices are those that are shown entries three through
6 seven on Exhibit Number Four. Parties one and two, McAdoo
7 and Wells Fargo Bank, joined subsequent to the hearing and
8 parties shown with items three through seven, we were not
9 able to reach an agreement with them after the hearing or
10 after the order was issued and so they were sent the
11 pooling order.

12 MR. STOGNER: In looking at
13 Exhibit Number Three of the old order, Home-Stake is not
14 included in there, is it not?

15 MR. KELLAHIN: It is included
16 within the fractional percentage shown under Foran for
17 entry number two, and part of that 35.792 percent interest
18 represents the Home-Stake lease.

19 MR. STOGNER: Okay, what was
20 that number again?

21 MR. KELLAHIN: The gross in-
22 terest is 35.792. I'll have to find out for you later what
23 portion of that represents the Home-Stake interest.

24 MR. STOVALL: That was based
25 upon the existing lease, is that correct, Mr. Kellahin?

1 MR. KELLAHIN: Yes, sir.

2 MR. STOGNER: Mr. Stewart, do
3 you know what the percentage is?

4 A I believe in the Section 7, I believe
5 they have roughly a 7 percent, or 7 or 8 percent interest,
6 is what their working interest would be attributable to it.

7 Q And that's 7 percent of the 35.792 per-
8 cent of Foran's.

9 A That would be 7 percent of the 100 per-
10 cent.

11 MR. KELLAHIN: You're right,
12 Mr. Stogner. It's the same number.

13 MR. STOGNER: Okay.

14 MR. STOVALL: You don't multi-
15 ply 7 percent times 35 percent. You subtract it from the
16 35 percent.

17 A Yes, sir.

18 Q And Home-Stake's interest is an undi-
19 vided interest throughout the whole east half of the south-
20 east quarter, is that correct?

21 A I believe that's correct.

22 Q I'm not sure that I understand why the
23 break, all right, you had an agreement and then there was a
24 disagreement. What caused the disagreement?

25 A The -- under the terms of the lease that

1 we were operating under, there is a Pugh clause, that at
2 the -- at the expiration of the primary term without in-
3 cluding all the acreage in a proration unit, acreage out-
4 side of a proration unit would be released.

5 We verbally have a deal with Miss
6 Courtney, who had talked with Joe Foran, and she informed
7 Joe that we would have our two proration units and after
8 the well, the first well that was drilled was commercially
9 successful, and at that point in time they decided that
10 they would not live up to their terms of the trade.

11 MR. HALL: Mr. Stogner, if I
12 might correct the record, I believe Mr. Stewart previously
13 testified that the only agreement between the parties was
14 the oil and gas lease, which had been extended once by
15 Home-Stake. Foran still failed to drill the well. That
16 agreement, the lease, expired.

17 Mr. Stewart also testified
18 that there were negotiations between he and Miss Courtney
19 but that neither of them had the authority to consummate
20 the agreement. There was no agreement consummated follow-
21 ing the expiration of the oil and gas leases. No agreement
22 existed.

23 MR. STOGNER: Is there any-
24 thing further in this case?

25 MR. KELLAHIN: No, sir.

1 MR. HALL: Mr. Examiner, I
2 would point out that there's been no discussion today of
3 the risk penalty that Foran is seeking for this well. We
4 presume that they're basing the risk in this proceeding on
5 the testimony evinced in the previous pooling proceeding.

6 The well in Section 8 has
7 already been completed. I understand it's a successful
8 well. That has not been mentioned in this proceeding at
9 all. I think it has a direct bearing on the appropriate
10 risk penalty to be imposed, if any.

11 MR. STOVALL: Let me attempt
12 to clarify the record, then, since you bring that up, Mr.
13 Hall.

14 If I understand the applica-
15 tion, the sole purpose of this application and hearing is
16 to bring Home-Stake under the provisions of the existing
17 forced pooling order as that order was issued back in June,
18 I believe, is that correct?

19 And is that your understanding
20 of the application, that it is merely to add Home-Stake as
21 a party pooled under the order?

22 MR. KELLAHIN: Absolutely, Mr.
23 Stovall.

24 MR. STOVALL: And you are now
25 objecting to a specific term of that order, is that

1 correct?

2 MR. HALL: We're objecting to
3 the inclusion of Home-Stake in the order.

4 MR. STOVALL: You are object-
5 ing to the inclusion of Home-Stake.

6 MR. HALL: That's correct.

7 MR. STOVALL: Are you also
8 objecting to the penalty provision of that order?

9 MR. HALL: Yes, sir.

10 MR. STOVALL: And do you have
11 any witnesses?

12 MR. HALL: No, sir.

13 MR. STOGNER: Anything fur-
14 ther?

15 MR. KELLAHIN: No, sir.

16 MR. STOGNER: Your objection
17 will be so noted, Mr. Hall.

18 If there is nothing further in
19 this case it will be taken under advisement.

20

21 (Hearing concluded.)

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C E R T I F I C A T E

I, SALLY W. BOYD, C. S. R. DO HEREBY CERTIFY that the foregoing Transcript of Hearing before the Oil Conservation Division (Commission) was reported by me; that the said transcript is a full, true and correct record of the hearing, prepared by me to the best of my ability.

Sally W. Boyd CSR

I do hereby certify that the foregoing is a complete record of the proceedings in the Examiner hearing of Case No. 9391 (Rehearing) heard by me on 26 October 1988.
Michael Estep, Examiner
Oil Conservation Division