

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 28 September 1988

7 EXAMINER HEARING

8 IN THE MATTER OF:

9 Application of Texaco Producing, Inc. CASE
10 for compulsory pooling, Lea County, 9490
11 New Mexico.

12 BEFORE: Michael E. Stogner, Examiner
13
14
15

16 TRANSCRIPT OF HEARING

17 A P P E A R A N C E S
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19 For the Division:
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22 For the Applicant:
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MR. STOGNER: Call now Case No. 9490,
the application of Texaco Producing, Inc. for compulsory
pooling, Lea County, New Mexico.

At the request of the applicant this
case will be continued to the 10-26-88 Examiner Hearing.

(Hearing concluded)

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. 9490, heard by me on 28 Sept 1988.
Michael E. Stupac, Examiner
Oil Conservation Division

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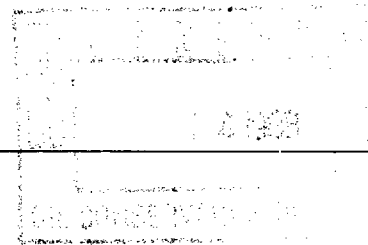
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17 Attorney at Law
18 Legal Counsel to the Division
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20 Santa Fe, New Mexico

21 For Texaco:

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Mr. W. D. Dinwiddie, Pro Se



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1 MR. STOGNER: Call next Case
2 Number 9490.

3 MR. STOVALL: Application of
4 Texaco Producing, Inc., for compulsory pooling, Lea County,
5 New Mexico.

6 MR. STOGNER: Call for ap-
7 pearances in this case.

8 MR. HALL: Scott Hall from
9 Campbell & Black, appearing on behalf of Texaco Producing,
10 Inc.

11 MR. DINWIDDIE: I'm W. D.
12 Dinwiddie, surface and mineral owner and I'd like to speak
13 for myself in this case.

14 MR. STOVALL: Do you under-
15 stand basically how a judicial process works?

16 MR. DINWIDDIE: Yes, I'm
17 appearing with the authority to continue this with my at-
18 torney to appeal it. Yes, I'm willing --

19 MR. STOVALL: Well, by your
20 appearance today you will have the -- you do have the right
21 to appeal it.

22 MR. DINWIDDIE: Yes, sir.

23 MR. STOVALL: In today's
24 hearing what will happen is Mr. Hall will present his
25 witnesses, or Texaco's witnesses, who will explain their

1 case and what they're seeking for, and they're seeking a
2 compulsory pooling in this case.

3 As he finishes with each of
4 those witnesses you will have the opportunity to examine
5 them yourself, cross examine them with respect to matters
6 that they've testified to. It's not the time for you to
7 engage in -- in discussion with them or argument, just
8 merely ask them questions to clarify or attempt to show
9 that they haven't testified accurately or that everything
10 they've said is in error or incompletely -- then at the
11 conclusion, after Mr. Hall has finished, you may at that
12 time testify on your own behalf and to make statements of
13 fact to the hearing examiner, which will go into the
14 record.

15 MR. DINWIDDIE: Thank you.

16 MR. STOVALL: You may also, if
17 you don't wish to actually testify, you may present argu-
18 ment at the conclusion of the case.

19 Now if you think you would
20 like to testify and actually present factual statements,
21 we'd ask that you rise at this time and be sworn with the
22 other witnesses.

23 May I go ahead and swear the
24 witnesses, Mr. Examiner?

25 MR. STOGNER: Please, please.

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(Witnesses sworn.)

MR. STOGNER: Thank you, Mr. Stovall.

Mr. Hall.

CURTIS SMITH,
being called as a witness and being duly sworn upon his oath, testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. HALL:

Q For the record, please state your name.

A My name is Curtis Smith.

Q Mr. Smith, by whom are you employed and in what capacity?

A Texaco, Inc., in Midland, Texas. I'm a landman.

Q Have you previously testified before the Division and had your credentials accepted as a matter of record?

A Yes, I have.

Q And are you familiar with the subject application and the subject lands?

1 A Yes, I am.

2 MR. HALL: Mr. Examiner, are
3 the witness' credentials still acceptable today?

4 MR. STOGNER: They are.

5 Q Mr. Smith, if you would, please, what is
6 it that Texaco seeks by this application?

7 A Texaco seeks an order pooling all
8 mineral owners under the east half of Section 17, Township
9 25 South, Range 36 East, from the surface to the base of
10 the Strawn formation.

11 Q All right, and is this a recompletion or
12 a new well?

13 A Yes, it is. It's a recompletion in the
14 West Jal "B" Deep Well No. 1, or West Jal -- yes -- "B"
15 Deep Well No. 1.

16 We're recompleting it from the Wolfcamp
17 to the Strawn formation.

18 Q All right, and have you prepared certain
19 exhibits in connection with your testimony today?

20 A Yes, I have.

21 Q Let's look at Exhibit One and if you
22 would explain what that's intended to reflect, please, sir.

23 A Exhibit One is a plat which shows the
24 proration unit, being the east half of Section 17, Township
25 25 South, Range 36 East, and the proposed location, or the,

1 actually, the Well No. 1-B, in which we're going to
2 re-enter, and it also has a breakdown of the working in-
3 terest ownership.

4 Q All right, let's look at Exhibit Two, if
5 you would identify that and explain that to the Examiner.

6 A Exhibit Two, it's a breakdown of the
7 working interest ownership of the east half of Section 17.
8 It also shows royalty interest owners which do not have
9 pooling provisions in their leases.

10 Q And would you identify those for the
11 record?

12 A Okay. Harry Eldon Smith, with a .00194
13 percent royalty interest -- or mineral interest, and Eva W.
14 Graham, with a .03100 percent mineral interest.

15 Q All right. What percentage of the acre-
16 age is voluntarily committed to the well today, and would
17 you also state which interests you're seeking to pool
18 today?

19 A Okay. 68.75 percent is voluntarily
20 joining in on this rework. We're under an operating agree-
21 ment with the other working interest partners. We're
22 seeking to pool the mineral interest of Mr. W. D. Din-
23 widdie, which has a 31.25 percent mineral interest. He has
24 a 50 percent mineral interest under the southeast quarter
25 of Section 17 and the northwest quarter of the northeast

1 quarter of Section 17.

2 Q All right. Would you please summarize
3 your efforts to seek the voluntary joinder of these par-
4 ties?

5 A Okay. On Thursday, May 19th, 1988, Mr.
6 Jim Burnett, who is a broker that Texaco uses, visited Mr.
7 Dinwiddie at his home to propose a lease purchase, and Mr.
8 Burnet offered \$150 per acre and a 3/16th royalty. At that
9 time Mr. Dinwiddie countered with an offer. He wanted \$500
10 an acre and 25 percent royalty.

11 Q Was his counter offer acceptable?

12 A No, it wasn't. On Wednesday, July 13th,
13 1989, myself and Mr. Jim Burnett again, our broker, visited
14 Mr. Dinwiddie at his home once again and we discussed the
15 proposed lease purchase and at that time he restructured
16 his counter to \$200 an acre and 30 percent royalty.

17 Q If I understand you correctly, he with-
18 drew his original counter offer?

19 A Yes. He changed his \$500 per acre, 25
20 percent royalty to \$200 an acre, 30 percent royalty.

21 Q All right.

22 A And then on Thursday, August 4th, --
23 anyway, we went back to the office and we looked at the
24 numbers, still the \$200 an acre, and especially the 30 per-
25 cent royalty, would not fit our economics.

1 And on Thursday, August 4th, 1988, Mr.
2 Dinwiddie called me at the office and he told me that he
3 did not want to sell a lease to Texaco.

4 On August 25th, 1988, we went ahead and
5 sent Mr. Dinwiddie an AFE asking for his voluntary joinder
6 in the well and once again we offered him \$150 an acre and
7 instead of a 3/16th royalty this time, we changed it to a
8 25 percent royalty.

9 And then the mineral owners that --
10 there were, let's see, there were five mineral owners that
11 did not have pooling provisions in their leases and we went
12 ahead and sent -- on September 29th we sent amendments to
13 authorize pooling to the mineral owners and which we re-
14 ceived executed amendments from three of those parties and
15 two of them have not returned the amendments yet.

16 Q Which two are those?

17 A Okay, well, let me name the -- all the
18 mineral owners.

19 Q All right.

20 A Richard L. Cormartie, Junior, which he
21 signed -- executed the amendment and returned it; Jane
22 Cormartie Williams executed and returned the amendment;
23 Harry E. Smith executed by Jane Cormartie Williams, his
24 attorney in fact, executed and returned the amendment;
25 Harry Eldon Smith did not return the amendment; and Eva

1 Graham, we have not received a signed amendment from her
2 yet.

3 Q All right, Mr. Smith, in your opinion
4 have you made a good faith effort to secure the voluntary
5 joinder of all these individuals?

6 A Yes.

7 Q Let's look at Exhibit Four if you have
8 that in front of you, please?

9 A Okay.

10 Q Would you identify that, please, sir?

11 A Okay. One of these -- one of these
12 letters is a letter to Pitco Production Company in which
13 Pitco Production Company is a working interest owner in
14 this unit with us in Well No. 1-B.

15 Pitco Production Company is the lessee
16 of the lease that did not include the royalty provision --
17 the pooling provisions.

18 So we went ahead and sent Pitco Produc-
19 tion Company an amendment to get their signature also, and
20 also there's a letter to the five mineral owners who do not
21 have the pooling provisions in their leases.

22 Attached to the letters is the actual
23 amendment to the oil and gas lease authorizing pooling.

24 Q All right. Anything further with
25 respect to Exhibit Four?

1 A No.

2 Q If you would, look at Exhibit Five and
3 let me ask you, is Exhibit Five an affidavit prepared by
4 your counsel whereby they sent notice of this hearing to
5 the affected parties at your direction?

6 A Yes.

7 Q Do you have anything further you wish to
8 add at this time?

9 A No, I don't.

10 MR. HALL: We'd move the ad-
11 mission of Exhibits One, Two, Four and Five.

12 MR. STOGNER: Exhibits One,
13 Two, Four and Five will be admitted into evidence at this
14 time?

15 Mr. Dinwiddie, do you wish to
16 ask this witness any questions pertinent to his testimony
17 today?

18

19 QUESTIONS BY MR. DINWIDDIE:

20 Q Do you have evidence of any royalty, any
21 minerals you have leased in the near past at \$200 an acre?

22 A Do we have evidence that we've bought
23 leases for \$200 an acre?

24 Q In that particular area --

25 A No.

1 Q -- at \$200?

2 A No, I don't have evidence of that.

3 Q Have you bought any minerals or leased
4 any minerals in that area in the near past?

5 A No, sir. No, sir, I haven't.

6 Q Then how can you determine this is a
7 fair offer?

8 A Well, based on the economics with
9 Dennis, our engineer, will get into the numbers more than I
10 will. He's more familiar with that than I am.

11 Based on what the well could support as
12 far as the total expenditure expenditure on the -- the re-
13 work and lease purchases. That's what we figured it on.

14 Q Has this Jal West Deep Strawn formation,
15 was it ever produced by Getty or Texaco?

16 A Not out of this well.

17 Q Isn't it a fact that you have evidence
18 here on this, let's see, that they, Getty, estimated this
19 formation would pay out in two months?

20 A I can't answer that. I don't know. I
21 don't have that information.

22 MR. HALL: If I might ask a
23 questions, which formation are we talking about? The
24 Strawn?

25 MR. STOGNER: Could you be

1 more specific? Are you -- about your formation, which
2 you're referring to?

3 MR. DINWIDDIE: The Strawn
4 formation, isn't that --

5 MR. HALL: Is that what Getty
6 stated to you? Is that your question?

7 MR. DINWIDDIE: It's in one of
8 their statements here to the oil and gas commission.

9 MR. HALL: For this prospect?

10 MR. DINWIDDIE: When they
11 passed -- when they -- see, this well is already drilled
12 through the Fusselman and it's produced out of the Fussel-
13 man.

14 When Getty come up to the
15 Wolfcamp formation there was more than one reason for that.
16 One was to cut us out of any participation in the -- in
17 that particular 40-acre spacing. They come back to a
18 40-acre spacing instead of a 320. When they did that, they
19 relinquished this half of Section 17 as well as some other
20 mineral in the area that we own. So now they're wanting to
21 go back and dictate to me what it's worth.

22 But the well is already
23 drilled in there but they released -- relinquished and re-
24 leased all mineral interest other than the Strawn when they
25 come up to the Wolfcamp, I mean other than the Wolfcamp,

1 when they come to the Wolfcamp.

2 MR. STOGNER: Mr. Dinwiddie,
3 do you have any other questions of this particular witness
4 at this time?

5 MR. DINWIDDIE: Not of this
6 witness.

7 MR. STOGNER: Okay, are there
8 any redirect questions of Mr. Smith?

9 MR. HALL: No, sir.

10 MR. STOGNER: You may be ex-
11 cused.

12
13 DENNIS WEHMEYER,
14 being called as a witness and being duly sworn upon his
15 oath, testified as follows, to-wit:

16
17 DIRECT EXAMINATION

18 BY MR. HALL:

19 Q For the record, Mr. Wehmeyer, please
20 state your name.

21 A Dennis Wehmeyer.

22 Q And by whom are you employed and in what
23 capacity?

24 A I'm employed by Texaco, Incorporated.
25 I'm the District Operations Engineer in the Hobbs District.

1 Q All right, and are you familiar with the
2 subject application and subject lands --

3 A Yes, I am.

4 Q -- we're talking about here today?

5 A Yes.

6 Q And you've previously testified before
7 the Division or one of its examiners and had your cre-
8 dentials accepted as a matter of record?

9 A Yes, I have.

10 MR. HALL: Mr. Examiner, are
11 the witness' credentials still acceptable today?

12 MR. STOGNER: Mr. Wehmeyer is
13 so qualified.

14 Q Mr. Wehmeyer, if you would, do you have
15 Exhibit three in front of you?

16 If you would, please identify Exhibit
17 Three.

18 A Exhibit Three is the -- on the back of
19 it is a copy of the AFE for the rework that was sent to the
20 working interest owners.

21 Q All right. Would you review the cost
22 totals on the AFE, please?

23 A Well, the cost totals, we are esti-
24 mating the cost to recomplete the well at \$90,000. This in-
25 cluded 12 days pulling unit time, \$15,000; rentals, which

1 includes reverse unit time and other equipment rentals at
2 \$17,500; stimulation cost was estimated at \$20,000 for
3 acidizing the well in the Strawn; wireline work was esti-
4 mated at \$8500 for running a correlation log and perfor-
5 ating the well; cement and hardware, which includes
6 cementing, squeezing off the Wolfcamp, and, of course, re-
7 tainer, et cetera, is estimated at \$6000; trucking, outside
8 labor, \$9000; chemicals estimated at \$1500 for packer
9 fluid, et cetera; estimated to buy an additional 1000 foot
10 of tubing since the Strawn is below the Wolfcamp, at \$4000;
11 and miscellaneous costs at \$8500.

12 Q Has Texaco drilled or does Texaco oper-
13 ate other Strawn wells in the area?

14 A We have in the past. We are not now.

15 Q Are the costs shown on Exhibit Three in
16 line with what's being charged in the area for Strawn re-
17 completions?

18 A Yes, it is.

19 Q Mr. Wehmeyer, are you prepared to make a
20 recommendation to the Examiner as to the risk penalty that
21 should be assessed against nonconsenting interest owners?

22 A Yes, we are recommending cost plus 200
23 percent. The reason for that is we feel the risk is justi-
24 fied, the risk penalty is justified, due to the mechanical
25 risk primarily. We're having to go into the well. Like I

1 said, the well's in the Wolfcamp right now. You have to
2 squeeze the Wolfcamp is below the Wolfcamp The biggest
3 risk is squeezing the Wolfcamp since Wolfcamp perms are
4 approximately 500 foot below the 7-3/4 inch liner. In
5 other words, it's below -- below 11,000 foot. There the
6 risk is, again, mechanical. The well is thirteen years
7 old. We don't exactly know what condition the casing is
8 in. We haven't re-entered the well or tested it for quite
9 a long time. The risk is possible collapsed casing when we
10 squeeze the Wolfcamp plus any other casing holes or any-
11 thing else we could encounter up the hole. We don't anti-
12 cipate anything, any problems at this time but we just
13 don't know.

14 Q All right, do you believe that there's a
15 chance that you could recomplete the well in the Wolfcamp
16 and you could lose the well because of the recompletion
17 operations?

18 A Oh, yes, we could.

19 Q Where is the Wolfcamp formation with
20 respect to its economic limits right now?

21 A The Wolfcamp right now is virtually at
22 its economic limit. The Wolfcamp produces approximately 2-
23 to-5 MCF per month. Of course, we're talking 10/15 MCF a
24 day is what it averages. The reason it's at its economic
25 limit is we have to go in and swab the well every month,

1 month and a half, at the present time. The well does load
2 up with fluid, primarily water. We have to swab at approx-
3 imately \$800 a swabbing job. It's just not making enough
4 production to pay the expenses right now. We're just
5 barely.

6 Q In your view do the royalty burdens
7 exacerbate the risk that this well will not be commercially
8 successful?

9 A That's correct.

10 Q Mr. Wehmeyer, have you made an estimate
11 of the overhead and administrative costs while drilling or
12 doing the workover and also while operating the well after
13 the recompletion?

14 A No, I haven't.

15 Q All right. Mr. Wehmeyer, let me ask
16 you, in your opinion will the granting of this application
17 be in the best interests of conservation, the prevention of
18 waste, and protection of correlative rights?

19 A Yes, it will, because we feel like we've
20 got approximately 4000 barrels of condensate reserves and
21 approximately in the neighborhood of a half a BCF we can
22 re- cover from this well. So we feel like it's definitely
23 in the interest of conservation if we do this well.

24 Q If the pooling is not granted will
25 Texaco's plans for going forward with the recompletion

1 change at all?

2 A It definitely could.

3 Q All right. Is there a chance that you
4 might walk away from the recompletion?

5 A Definitely.

6 Q And will that result in the loss of re-
7 serves in the ground?

8 A Yes, it would.

9 Q Were -- was Exhibit Three prepared by
10 you or at your direction?

11 A Yes, it was.

12 MR. HALL: We'd move the ad-
13 mission of Exhibit Three and that concludes our direct of
14 this witness.

15 MR. STOGNER: Exhibit Three
16 will be admitted into evidence at this time.

17

18 CROSS EXAMINATION

19 BY MR. STOGNER:

20 Q Mr. Wehmeyer, what -- what was your
21 overhead charges, your proposed overhead charges?

22 A Well, I did not figure those, Mr. Stog-
23 ner.

24 Q We can provide those. Usually it's the
25 land department that has handled those matters and I, as

1 engineer, do not. We do not handle that. But we can
2 provide that.

3 Q Okay, let's scratch that question just
4 right yet and we'll recall Mr. Smith at that time.

5 But I need to check something, Mr.
6 Wehmeyer.

7 Is presently -- this well is presently
8 producing from the Wolfcamp, is that correct?

9 A That's correct.

10 Q is this a gas well or an oil well out of
11 the Wolfcamp?

12 A It's in the Jal Wolfcamp West Pool.
13 It's probably classified as an oil well.

14 Q So it has a 40-acre proration unit.

15 A It is a 40-acre proration unit.

16 Q And now you mentioned the Wolfcamp pre-
17 sently had how -- what kind of production?

18 A I varies quite a bit. 200 to 500 MCF
19 per month. I looked up the production from January through
20 August of this year off the C-115's.

21 Q All right, now how much oil are we
22 talking about?

23 A One month it produced eight barrels of
24 condensate and did not produce any condensate all the other
25 months.

1 Q When you say condensate --

2 A Well, I should say oil.

3 Q -- is it a gas well or an oil well?

4 A I should say oil.

5 Q Well, is it oil or gas? Is it a gas

6 well in an oil pool? What does the latest C=116 show this

7 well to be?

8 A I'll have to provide that. I don't know

9 off the top of my head.

10 Q Is the GOR over 10,000?

11 A Yes, it is, at the present time it is,

12 yes.

13 Q Do you have any documentation of a non-

14 standard proration unit or anything such as that since ac-

15 cording to what you're telling me it sounds like it's a gas

16 well.

17 A I don't have anything to provide you. I

18 can provide it. I don't have anything to provide you right

19 now.

20 Q How long has this well been producing in

21 the Wolfcamp?

22 A Since 1984.

23 MR. STOGNER: I'm going to

24 take administrative notice of the well files and all these

25 production records that are available on file for this

1 particular well at this time.

2 Q Mr. Wehmeyer, now, the way the adver-
3 tisement is, we're talking about all mineral interest from
4 the surface or all mineral interest to the Strawn forma-
5 tion underlying 320 acres, forming a gas proration unit.

6 What other formations are you proposing
7 or is Texaco proposing to test and possibly produce gas out
8 of, since that has 320-acre spacing?

9 A The only -- the only zone that has
10 320-acre spacing would be the Strawn that we propose to
11 test.

12 Q So you're not proposing to test the
13 Morrow or the --

14 A No, we've already produced the Atoka
15 from this well and the Fusselman. The only 320-acre pro-
16 ration unit would be the Strawn that's left.

17 Q So we're just limiting ourself at this
18 time to the Strawn formation, is that correct?

19 A That's correct.

20 Q I think I need some history of this
21 well. When was it -- when was it spud?

22 A I think it was in the fall of 1975. I
23 want to say December, if I recall when.

24 Q Okay, and how about -- what formations
25 has it produced from?

1 A It's produced from the Fusselman, the
2 Atoka, and the Wolfcamp.

3 Q What kind of production was it from the
4 Fusselman, oil or gas?

5 A Gas.

6 Q And what was that spaced on?

7 A 320.

8 Q And how about the Atoka?

9 A It was also spaced on 320, gas well.

10 Q When those two zones were -- were pro-
11 duced, was there a compulsory pooling on those, on those
12 particular formations?

13 A I don't know. I think there was but
14 Curtis would be better -- better to answer that question.

15 Q And how about the 40-acre oil on the
16 particular 40 acres on which this well is located, is that
17 all Texaco?

18 A Again I would refer that to Curtis,
19 since he's the landman.

20 MR. STOGNER: I have no fur-
21 ther questions of Mr. Wehmeyer at this time.

22 Mr. Dinwiddie, do you have any
23 questions of this witness on anything that he has testified
24 to today?

25

1 QUESTIONS BY MR. DINWIDDIE:

2 Q I believe Mr. Wehmeyer is aware that
3 this definitely is an oil well, seeing all this informa-
4 tion here.

5 A Well, I agree. I was trying to remember
6 I guess, the best I recollect, when the well was completed
7 it did come in making oil and reasonably --

8 Q Well, the Wolfcamp is an oil zone. The
9 Wolfcamp is an oil zone.

10 A Well, primarily oil, it is, and that's
11 why --

12 Q You can't have a 40-acre spacing unit --
13 MR. HALL: If you'll allow him
14 to answer his questions, please, sir.

15 A To the best of my recollection it is an
16 oil well because it did come in making oil, and that's what
17 I -- I'm pretty sure it is. I'll just have to check the
18 records. I don't have the records to back it up, that's
19 all.

20 MR. STOGNER: Do you have any
21 other questions at this time?

22 MR. DINWIDDIE: I certainly
23 object to the risk factor that's involved here in this
24 thing because the well is already drilled and the plugs are
25 there. It's drilled through the Fusselman. This plat

1 right here would be the pool drilling information where all
2 the plugs are set; TD.

3 MR. STOGNER: Mr. Dinwiddie,
4 do you have any questions as far --

5 MR. DINWIDDIE: No, no.

6 MR. STOGNER: -- as this
7 particular witness?

8 MR. DINWIDDIE: No questions,
9 just telling --

10 MR. STOGNER: You'll have your
11 time to testify to that when Mr. Hall is through, but if
12 you have no further questions of this witness, he may be
13 excused.

14 MR. HALL: Mr. Examiner, with
15 respect to the overhead and administrative costs for the
16 recompletion on this well, and while producing, we would
17 offer to supplement the record by correspondence, of course
18 copies to Mr. Dinwiddie, if that's acceptable to you.

19 MR. STOGNER: You're not
20 prepared to present that in this testimony?

21 MR. HALL: We have some
22 figures available today. They are somewhat aged and we
23 believe they may have been amended since their original
24 inception. We'd like an opportunity find that out before
25 we submit the evidence.

1 MR. STOGNER: Mr. Hall, in as
2 much as this is a contested case today, that particular
3 piece of evidence should be presented at this time --

4 MR. HALL: All right, we'll
5 put it on.

6 MR. STOGNER: -- so the
7 party that's being contested can have a chance to cross
8 examine.

9 Let the record show that Mr.
10 Curtis Smith has been recalled to the stand and that we was
11 previously sworn.

12
13 CURTIS SMITH,
14 being recalled as a witness and being previously sworn and
15 remaining under oath, testified as follows, to-wit:

16
17 REDIRECT EXAMINATION

18 BY MR. HALL:

19 Q Mr. Smith, do you have an estimate of
20 overhead and administrative costs while performing the re-
21 completion and also while producing the well?

22 A Well, we have an operating agreement
23 that covers this acreage and other acreage with the working
24 interest owners that I've listed earlier, with the excep-
25 tion of Mr. Dinwiddie, and under the COPAS it has \$300 for

1 drilling well rate and \$50 for the monthly overhead rate,
2 and this is a 1962 operating agreement.

3 Q All right, do you believe that these
4 costs are perhaps in line with what's being charged in the
5 area?

6 A I -- to the best of my knowledge this is
7 the only documentation I have for the overhead rates. I
8 have not seen amendments. To the best of my knowledge this
9 is what we're charging.

10 Q All right, do you recommend that these
11 figures be incorporated into any order that results from
12 these proceedings?

13 A Yes.

14 Q Okay.

15

16

CROSS EXAMINATION

17 BY MR. STOGNER:

18 Q I want to ask you the same questions
19 about the Fusselman and Atoka formations.

20 When that has 320-acre spacing, were
21 those compulsory pooled or did everybody volunteer to --

22 A Well, there were some mineral owners, as
23 in our case, that did not have pooling provisions in their
24 leases. The only documentation I could find in our file
25 that those mineral owners were included in the pooling, in

1 the forced pooling, I don't know if Mr. Dinwiddie or any
2 other working interest owners were included in a compul-
3 sory pooling because with the -- like, again, with the
4 exception of Mr. Dinwiddie, we have an operating agreement
5 with all the other working interest partners.

6 Q But you don't know if those were, indeed
7 -- had a forced pooling order written on them?

8 A No.

9 MR. STOGNER: Mr. Dinwiddie,
10 do you have any questions?

11 MR. DINWIDDIE: For the re-
12 cord, we were not force pooled. They had a -- they had a
13 lease agreement in effect at that time on our minerals and
14 all of the Section 17, not just the east half, and the east
15 half has a 320-acre spacing and we were included in that
16 from, I believe, 1962.

17 MR. STOGNER: Thank you, Mr.
18 Dinwiddie.

19 Are there any other questions
20 of this witness?

21 MR. HALL: No, sir.

22 MR. STOGNER: He may be ex-
23 cused.

24 Mr. Hall, do you have anything
25 further?

1 MR. HALL: That concludes our
2 case.

3 MR. STOGNER: All right, Mr.
4 Dinwiddie, at this time you may present your case.

5 MR. STOVALL: If you have
6 documents or other that you'd like to enter into the re-
7 cord, then you may do so during the course of your pre-
8 sentation.

9 MR. DINWIDDIE: I believe no
10 further questions at this time.

11 MR. STOVALL: Is there anything
12 you'd like to say in terms of factual statements amplifying
13 your statement with respect to leases or any information
14 you have about the well or you've objected to the risk
15 factor, is there any evidence you'd like to support to show
16 that they -- that that risk factor is not appropriate?

17 MR. DINWIDDIE: I believe the
18 risk factor request is excessive, grossly excessive,
19 because the well is already drilled, cased. The only
20 they've got -- they'll have to do is take the plug out and
21 go, and should we decide to become a participating partner
22 in this thing with a 200 percent risk factor added to our
23 100 percent they're already going to take for our pooling
24 interest, that makes it 300 percent involvement we have in
25 this thing to go with, and I just object to that 200 per-

1 cent risk factor since they already have the hole there,
2 and it hasn't been that long since they've come up out of
3 it.

4 In fact they were producing
5 below the Strawn. This Fusselman is -- I have a diagram
6 here if anyone would like to see it, where all the forma-
7 tions are, where they're plugged to in this well, all the
8 way to the top, from top to bottom. This was furnished to
9 me by Getty Oil Company when they drilled it, so --

10 MR. STOGNER: Mr. Dinwiddie,
11 is this the only copy that you have?

12 MR. DINWIDDIE: Yes, sir, but
13 you can have it to make a copy and return mine.

14 MR. STOGNER: I'd like that
15 for the record. I would like to make some copies of this.

16 Let's get some copies of this.
17 Let's take about a five minute recess. This is the only
18 thing that we need copies of that you're referring to right
19 now?

20 MR. DINWIDDIE: Yes, sir, I
21 believe that's right.

22 MR. STOGNER: I need to make
23 copies of it, if I may, copies of this well schematic and I
24 believe you were fixing to describe it and should do so at
25 that time and state your case.

1 MR. DINWIDDIE: Well, I have
2 no other comments other than we have -- you have a map here
3 to look at and, of course you can see they were down at the
4 Atoka, Fusselman first, Atoka, and then up to the Wolfcamp
5 and now they wish to go back down below to the Strawn. So
6 I have no other comments.

7 MR. STOGNER: I'm going to
8 mark this as Mr. Dinwiddie's Exhibit Number One.

9 It is a schematic of the West
10 Jal "BD" Well No. 1. I'll present this as a record at this
11 time.

12 Mr. Dinwiddie, do you have any
13 other comments you'd like to make?

14 MR. DINWIDDIE: I think no. I
15 think not. I've --

16
17 QUESTIONS BY MR. STOGNER:

18 Q Mr. Dinwiddie, I have a question of you.
19 Do you think Texaco has -- has approached you in a fair and
20 reasonable manner trying to get you to volunteer your
21 mineral interest leased to them?

22 A Sir, I can't answer that but if they
23 would want to come out there and buy my house for \$5000 I
24 just wouldn't take it. They might think that was all my
25 house was worth. That's the same thing as this mineral

1 I have, and that's mine. It belongs to me and my wife; has
2 in our family since 1950, and these companies, Getty, Shell
3 first had it; Skelly first had it; then Getty; now Texaco,
4 and of course they're assuming any liabilities or respon-
5 sibilities or anything that the other companies -- previous
6 companies had, and I just -- he can't go anywhere in our
7 area and lease any minerals for \$200.

8 Q Mr. Dinwiddie, do you think that you
9 have been able to speak and correspond with Texaco ade-
10 quately in trying to get your position across to them? Do
11 you think you've had adequate correspondence and contact
12 with them?

13 A Well, when the top dog just evidently
14 relays to you through a Texaco man that he has nothing to
15 add to what's already been offered, it sounds to me like
16 that's kind of closing the door, when they think they can
17 come up here and force pool you anyway.

18 Q And you were willing at that time to go
19 to Texaco in Midland and correspond with you and your law-
20 yer to the people, the landman and Texaco at their offices?

21 A I called the head Texaco landman, Ken-
22 neth Nix, whom I've dealt with since the day he come to
23 Midland; had a real good relationship. That's the reason I
24 called him. I asked him if there was anyone else there
25 that I might talk to. He told me who the top man was and

1 we talked a little bit. He said he would talk to him, see
2 if he could get us in, arrange an appointment. I told him
3 I would bring my attorney, who lives in Midland, with me if
4 he would like. We talked about it. He called me back the
5 next day and said that he had talked to -- I keep wanting
6 to call him Tibbits (sic).

7 MR. SMITH: Tidwell.

8 A Tidwell?

9 MR. SMITH: Tidwell.

10 A He said Mr. Tidwell had said he would be
11 glad, happy, to talk to us if we'd like to come in but he
12 had nothing else to add to what had been offered.

13 Q When was this correspondence or this
14 contact that you are referring to? Do you have a date or
15 a particular time that this happened?

16 A It's since I got this last letter from
17 the other Texaco, it's probably been maybe six weeks now
18 because it was before our September 26th -- this hearing,
19 which was the reason we set it for September 26th.

20 Q So for the last six weeks you have not
21 had any contact with Texaco.

22 A No. I did have a contact with Texaco
23 here back when they were advising me that that they had
24 contacted a law firm here to file this application and they
25 reiterated that was -- of course that was before this.

1 Q And starting in 1975 in this particular
2 well, you have had good relationships with Getty, Skelly,
3 the companies that were operating the well before Texaco,
4 is that correct?

5 A Well, I've had no other reason to have
6 anything else because we had a lease agreement and all we
7 had to do was to each one abide by our agreement, which has
8 never -- is not -- there's been no -- all you have to do is
9 go read your contract.

10 This has been --

11 MR. STOGNER: Mr. Hall.

12 A -- leased since 1962, I believe. No, it
13 was before that a little bit, maybe in the late fifties
14 originally, but '62 is when they drilled the first well on
15 that to hold the lease, which was not this one, it was
16 another one down on the south end, and they held this West
17 Jal D under another well, which was the West Jal Strawn
18 Unit, and that was West Jal A.

19 MR. STOVALL: If I may, a
20 couple questions.

21

22 QUESTIONS BY MR. STOVALL:

23 Q First I'd like to clarify with respect
24 to the land. You say this acreage has been under lease
25 when it was being produced from the deeper formations.

1 A Right.

2 Q And that lease, has that lease expired?

3 A Yes, sir.

4 Q When did that lease expire?

5 A When they drilled this West Jal D. They
6 drilled it before the West Jal A was in place and by that
7 they continued to hold this lease in effect, this east
8 half.

9 Q And then when they plugged back, if I
10 understand correctly, they plugged back the West Jal to --

11 A In '84 they plugged up to the Wolfcamp,
12 which is designated an oil well, 40-acre spacing. That
13 shut us out of any participation and that relinquished all
14 other mineral interest in that east half of 17.

15 Q With respect to your lease.

16 A Yes, sir, that's correct.

17 Q Okay. One other question that was
18 differing a little bit, in your negotiations with Texaco,
19 do you understand that rather than leasing to Texaco, that
20 you could join them as a working interest owner in the well
21 and pay your share of the costs and --

22 A Yes, sir.

23 Q -- participate?

24 A Yes, sir, I'm aware that we have three
25 options. I can lease it to them. I can go in as a non-

1 participating partner or a participating partner.

2 And I just, the only -- I would prefer
3 to take the participating partner, really, but I don't
4 trust everybody. I've gotten older. I've been in the oil
5 field 55 years in Lea County.

6 Q Your -- your preference would be to
7 participate in the well with Texaco as a working interest
8 owner?

9 A Yes, sir.

10 Q Is that correct?

11 A I think so. I don't --

12 Q And your reservation about that has to
13 do with being given adequate information and participation,
14 if you will, on --

15 A I don't want Texaco's pumper taking care
16 of 100 wells and me having to pay his total -- his total
17 fee just to see about that one, and everybody else paying
18 him.

19 Q Have you discussed that with Texaco at
20 all?

21 A No. sir. But this, when I recall,
22 talked to Mr. Smith the last time, I -- when I'd offered to
23 lease him the 100 acres for \$200 and 30 percent, I think it
24 was approximately a month that I didn't hear from him or
25 maybe about -- between four and six weeks, so I called him

1 one day and he still said that that was all the economic
2 thing showed that that would be worth to them, so I told
3 him that I was withdrawing my offer.

4 Q Now, in Texaco's letter of August 25th
5 to you, Exhibit Number Three, they reference an operating
6 agreement. Have you ever seen a copy of that operating
7 agreement, had a chance to review it?

8 A No, sir, not that I'm aware of.

9 Q Do you know what would normally be con-
10 tained in an operating agreement? Do you have any idea
11 yourself of what --

12 A No, sir, because when we write leases I
13 write my own lease.

14 Q You understand the difference between an
15 operating agreement and a lease.

16 A No, sir.

17 Q And you have, if I understand you cor-
18 rectly, stated you have never discussed with the Texaco
19 people under what terms you could participate as a working
20 interest owner rather than a -- rather than leasing to
21 Texaco?

22 A My attorney talked to me. He told me
23 that was the three options that I had.

24 Q But did he -- have you, either you or
25 your attorney talked to Texaco or anybody with Texaco, or

1 any representative, and discussed under what terms you
2 would participate, actually discussed entering into some
3 sort of agreement as a working interest owner with Texaco?

4 A Not that I'm aware of, --

5 Q All of your negotiations have been in
6 the nature of purchasing -- Texaco purchasing your minerals
7 or purchasing a --

8 A Right, right.

9 Q -- lease from you.

10 A A lease, no minerals; just a lease.

11 Q Okay.

12 MR. STOVALL: I have no fur-
13 ther questions.

14 MR. STOGNER: Mr. Hall.

15 MR. HALL: No questions. We
16 might have a brief statement.

17 MR. STOGNER: There are no
18 further questions by either party?

19 Mr. Hall, you may make your
20 closing statement at this time.

21 MR. HALL: Mr. Examiner, the
22 only contested issue in this pooling application is whether
23 or not Texaco made a good faith effort to secure voluntary
24 joinder of the nonparticipating mineral interest owners,
25 including Mr. Dinwiddie.

1 Testimony establishes that some believe
2 we did make the good faith effort and they participated.

3 With respect to Mr. Dinwiddie, I believe
4 we have established through the testimony of Mr. Smith that
5 we first approached him with \$150 an acre and a 3/16th roy-
6 alty lease. That, according to Mr. Smith's testimony, is
7 what the current going rate is for leases in the area.

8 Mr. Dinwiddie countered with \$500 an
9 acre and 25 percent royalty. Before Texaco was even able
10 to act on that counter offer, that counter offer itself was
11 withdrawn and upped to a 30 percent royalty.

12 Mr. Dinwiddie has offered no testimony
13 to establish what he believes the going rate is for lease
14 bonuses or royalties for like recompletions in the area, or
15 anywhere else, for that matter.

16 Mr. Dinwiddie again made the next move.
17 He told Texaco he simply did not want to lease and the deal
18 was off. Accordingly, Texaco responded, sent him an AFE
19 and an operating agreement and another offer; didn't act on
20 it.

21 There were subsequent follow-ups by
22 Texaco to Mr. Dinwiddie, several telephone calls. Mr. Din-
23 widdie said he would take \$250 an acre and 25 percent roy-
24 alty.

25 As the testimony of Mr. Wehmeyer has

1 established, royalty burdens that excessive threaten the
2 economics of the project and may cause Texaco to reassess
3 its plans with the prospect that they will walk away from
4 the recompletion leaving in the ground with nobody parti-
5 cipating at all.

6 With respect to Mr. Dinwiddie's position
7 I understand what he is trying to say. He, throughout, has
8 negotiated with Texaco with the prospect of giving them a
9 lease. Now at the hearing for the first time we hear that
10 he is really not interested in leasing at all but is more
11 interested in participating in the well.

12 Texaco has given him that opportunity
13 through every avenue it knew how. That is evidence of good
14 faith. It has fulfilled its obligation of good faith, both
15 to secure his joinder through leasing or participation.
16 Mr. Dinwiddie has declined.

17 MR. STOGNER: Thank you, Mr.
18 Hall.

19 Anything -- anybody have any-
20 thing further?

21 Mr. Dinwiddie?

22 MR. DINWIDDIE: I didn't know
23 this was going to be another presidential debate; get into
24 that type thing.

25 The reason I withdrew the

1 offer is because Texaco had said that was the final -- that
2 was it.

3 MR. STOVALL: Mr. Dinwiddie,
4 we at this point don't need to get into any more factual
5 discussion about it. The record is complete, I would sug-
6 gest.

7 MR. STOGNER: If nobody else
8 has anything further in Case Number 9490, I'll take it
9 under advisement.

10 Thank you, gentlemen.

11
12 (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. 9490, heard by me on 26 October 1988.

Michael E. Stephens, Examiner
Oil Conservation Division