

CASE NO. 20

BEFORE THE OIL CONSERVATION COMMISSION
FOR THE STATE OF NEW MEXICO

THE PETITION OF NATIONAL SURETY CORPORATION
TO HAVE DETERMINED THE STATUS OF THE WELL
KNOWN AS THE WINSTON MARKS WELL, LOCATED
UPON THE SE $\frac{1}{4}$ NW $\frac{1}{4}$, SEC. 5, TWP. 25 N., R. 24
E. (COLFAX COUNTY), AS ABANDONED; TO WITH-
DRAW CASING THEREFROM AND PLUG SAID WELL IN
ACCORDANCE WITH THE REQUIREMENTS OF THE
NEW MEXICO OIL CONSERVATION COMMISSION.

CAPITOL BUILDING, SANTA FE, NEW MEXICO
APRIL 15, 1940

Pursuant to notice, duly given and published, hearing
in the above entitled matter was convened in the office of the
Commissioner of Public Lands, Capitol Building, Santa Fe, New
Mexico, at the hour of ten o'clock, A. M., of April 15, 1940,
the Commission sitting as follows:

Hon. Frank Worden, Commissioner of Public Lands, Secretary
Hon. A. Andreas, State Geologist, Member of Commission.
Hon. Carl B. Livingston, Attorney for Commission.

APPEARANCES:

G. W. Robertson, for National Surety Corp., Raton, New Mexico
York Denton Maxwell, New Mexico

The hearing was opened by Mr. Worden, at whose request
Mr. Livingston read the Notice of Hearing, as follows:

"NOTICE FOR PUBLICATION
STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

Pursuant to Chapter 72, Session Laws of 1935, State of
New Mexico, by which Act the Oil Conservation Commission of
New Mexico was created, investing said Commission with the
jurisdiction and authority over all matters relating to the
conservation of oil and gas in this State and of the enforce-
ment of all provisions of said Act, notice is hereby given
that a public hearing will be held at the Capitol, Santa Fe,
New Mexico, on the 15th day of April, 1940, at ten o'clock
A. M., for the purpose of considering the following:

Case No. 20.

The petition of National Surety Corporation to have determined the status of the well known as the Winston Marks Well, located upon the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 5, Township 25 North, Range 24 East (Colfax County), as abandoned; to withdraw casing therefrom and plug said well in accordance with the requirements of the New Mexico Oil Conservation Commission.

Resident attorney for petitioner is G. W. Robertson, Raton, New Mexico.

Any person having any interest in the subject of the said hearing shall be entitled to be heard.

Given under the seal of said Commission at Santa Fe, New Mexico, on March 27, 1940."

BY MR. WORDEN: We will hear from Mr. Robertson. Apparently we do not have any parties representing the Marks interests.

BY MR. ROBERTSON: If the Commission please, I don't want to draw this out any more than necessary, but not knowing from experience very much about the procedure, I don't want to omit anything essential. I would like to make a brief statement.

I appear for the National Surety Corporation. That corporation comes into this case in two different ways, arising out of two different bonds.

About October, 1937, Winston Marks entered into a contract with the Teneja Oil Company, a New Mexico corporation, of which company Mr. York Denton is President. The terms of that contract were that Miss Marks was to drill a well on this location to a total depth of 3500 feet. She was required to file a bond, and she obtained that bond with the National Surety Company through its Amarillo agency. That bond was filed here.

BY MR. LIVINGSTON: The Commission will take judicial notice of that bond.

BY MR. ROBERTSON: That bond was given about January, 1938.

In order to get casing for this well, Winston Marks rented casing from Morris Zeligson, of Tulsa, Oklahoma,

and entered into a written rental agreement with him, by the terms of which was to take this casing and use it in this particular well, and at the expiration of a certain time she was either to return the casing or pay for it. Mr. Zeligson required Miss Marks to give a bond to assure him against loss under the contract with him, and the National Surety Corporation got stuck on that too. We have two bonds here. When Miss Marks failed to pay for, or return the casing, Mr. Zeligson brought suit against the National Surety Corporation. The Corporation paid off the whole amount and received a bill of sale to the casing in the hole.

We are here to ask at least three things. First, we are asking the Commission to adjudge that this well is an abandoned well; second, we are asking for permission to pull and remove our casing; and, third, in order to comply with the requirements as to plugging wells, we are asking permission to plug the well.

We will show that the well is utterly abandoned, Miss Marks proceeding to a depth of not over 1600 feet, when her contract called for a depth of 3500 feet. She had trouble with tools getting stuck in the well as early as July, 1938. She made desultory efforts from time to time to recover the tools, and in December, 1938, a fire occurred in her derrick and burned it up. Since that date nothing of a substantial character has been done by Miss Marks. Nothing has been done, and nothing has been attempted. Miss Marks has abandoned the well, as the testimony will show.

About October, 1939, the Teneja Company offered her an extension on her contract and required her to take some action within a certain time, ten days, and in December, 1939, the Teneja Company gave notice of the cancelling of the contract.

I believe that covers the principal points. Anything in that statement that is not clear?

BY MR. WORDEN: It is perfectly clear to me.

BY MR. ROBERTSON: First, I think we will take up the matter of

the title to the casing. I understand that is essential to the proposition here.

BY MR. LIVINGSTON: If the Commission please, I have explained to Mr. Robertson that the Commission does not endeavor to pass judgment upon the title, but for their own satisfaction they would like to know that the petitioner does have title.

BY MR. ROBERTSON: I have here the bond of indemnity given by the National Surety Company to Morris Zeligson, to which is attached the rental agreement. I would like to retain the original of that and substitute a photostatic copy, if that is satisfactory. (Marked "Petitioner's Exhibit No. 1").

We offer Petitioner's Exhibit No. 1 in evidence.

PETITIONER'S EXHIBIT NO. 1.

"BOND OF INDEMNITY

KNOW ALL MEN BY THESE PRESENTS:

That we, Winston Marks, of Amarillo, Texas (hereinafter called the principal), as principal and the NATIONAL SURETY CORPORATION, a corporation under the laws of the State of New York (hereinafter called the corporation) as surety, are held and firmly bound unto Morris Zeligson, of Tulsa, Oklahoma (hereinafter called the Obligee) in the penal sum of Three Thousand Dollars (\$3,000.00) (which sum is hereby agreed to be the maximum amount of lawful money of the United States of America claimable and recoverable hereunder) well and truly to be paid and for the payment of which lawful money of the United States of America we and each of us hereby bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Dated this 11th day of July, 1938.

The conditions of the above and foregoing obligation are such that, WHEREAS, the principal has entered into a certain contract in writing bearing date of July 11, 1938 with the said Morris Zeligson of Tulsa, Oklahoma covering the renting, use and return of certain oil well casing as defined in the said rental contract, a copy of which is hereto attached, marked Exhibit "A" and made a part hereof.

NOW, THEREFORE, if the said Winston Marks shall fully and faithfully perform any and all terms and conditions of said contract hereto attached and marked Exhibit "A", except such as hereinafter excepted, then this obligation shall be void, otherwise to remain in full force and effect.

This bond does not guarantee payment to the obligee the rental on the pipe as set forth in the contract.

This instrument shall not be construed, interpreted, altered, amended, extended, or changed in any manner whatever, nor any of its provisions waived, by any employee of the Corporation other than the President, or a Vice President, of the Corporation, in a written instrument formally executed by the Corporation through one of the foregoing officers with its seal affixed and duly attested; nor shall the obligee consent to an assignment of the contract or any part thereof or consideration therefor without the express consent of the Corporation duly executed and attested as aforesaid; nor shall this instrument or any rights thereunder be assignable unless with like consent duly executed and attested as aforesaid.

No action, suit or proceeding shall be had or maintained against the corporation on this instrument unless the same be brought or instituted and process served upon the corporation therein within six months after the principal shall cease performing the work mentioned in said contract and in no event after six months after the date, time or period fixed in said contract for the completion of the work mentioned therein.

All notices and other evidence required by this instrument to be furnished by the obligee to the corporation shall be in writing, and shall be forwarded by registered letter addressed to the corporation at its principal office in the City of New York.

That no right of action shall accrue upon or by reason hereof, to or for the use or benefit of any one other than the obligee herein named; and that the obligation of the corporation is and shall be construed strictly as one of

suretyship only; and that this instrument shall be executed by the principal before delivery and in no event, nor for any cause whatsoever shall the penal sum of this instrument be extended or increased beyond the sum of lawful money of the United States of America set forth in line numbered 7 hereof, notwithstanding anything to the contrary in or arising out of the contract between the Principal and Obligees.

(Signed) Winston Marks

NATIONAL SURETY CORPORATION

BY (SIGNED) H. E. Samuels
Attorney in Fact.

RENTAL AGREEMENT

This Agreement made and entered into this 11th day of July, 1938, by and between Morris Zeligson, Party of the First Part, and Winston Marks, Party of the Second Part, as follows:

WHEREAS, Party of the First Part is the owner of approximately 1200 feet of 12-1/2" Casing, now located in the vicinity of Ellis, Kansas, and

WHEREAS, Party of the Second Part is now drilling a well for oil and gas upon the following described lease in Colfax County, New Mexico, being SE NW 1/4 Sec. 5 TNP 25 N, R 24 E

Party of the First Part agrees to rent and furnish above mentioned casing to Party of the Second Part under the following terms and conditions:

Party of the Second part is to pay Party of the First Part the sum of \$500.00, and the cost of hauling from the present location to the drilling location, and an additional consideration of one 80-acre lease to be an offset to the drilling well, and an 80-acre lease within one mile of the drilling well. These payments to cover a rental period of 120 days.

In the event the well is a producer, Second Party will retain casing at a price of \$2.15 per foot for the Lapweld, and \$2.50 per foot for whatever Seamless is furnished. Said title to casing to remain in First Party's name unless and

until full and complete payment is made by Second Party.

In the event of a dry hole, Second Party is to pay for any and all damages to the casing or collars and threads, and to pay for any pipe that may not be recovered from the well at prices hereinbefore mentioned. It will be assumed by both parties that the threads and collars are in first class order before running in the hole unless otherwise notified by Second Party before running, and when pipe recovered in event of dry hole, First Party will have same inspector at the drilling location who will at that time designate any damages.

Party of the Second Part agrees to assume all responsibility in connection with the use and running of above casing and saves Party of the First Part free and harmless from any responsibility whatsoever as to the performance or representations of this casing, but Second Party to have full privilege of inspection of casing before running into the well and at the time of loading, and to accept only pipe which is satisfactory upon the inspection.

Party of the Second Part agrees to either return or pay for the casing within or at the expiration of 120 days from the signing of this agreement. In the event Casing is to be returned, Party of the Second Part will re-deliver casing to the vicinity of its present location free of any cost to First Party.

IT IS AGREED by both parties that accompanying this agreement, Party of the Second Part will furnish a guarantee to indemnify and save First Party harmless from any liens and encumbrances, and to guarantee the performance of Party of Second Part in this agreement in its entirety. Said indemnification to ~~be~~ specifically refer to this agreement and its particulars, such as against liens, value of material and re-delivery.

In WITNESS WHEREOF, the Parties here hereunto set their hands and seals this 11th day of July, 1938.

Party of the First Part

Winston Marks

Party of the Second Part.

STATE OF TEXAS)
 SS.
COUNTY OF POTTER)

Before me, the undersigned, authority, a Notary Public, in and for Potter County, Texas, on this day personally appeared Winston Marks a feme sole, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS 11th day of July, A. D. 1938.

W. S. Eakens

seal EXHIBIT "A" Notary Public, Potter County, Texas"

BY MR. ROBERTSON: Next I propose to offer a draft showing payment by the National Surety Corporation to Morris Zeligson. I have the original, but I would like to retain that and offer a photostatic copy marked "Petitioner's Exhibit No. 2. (Exhibit is so marked). And we offer that exhibit in evidence.

PETITIONER'S EXHIBIT No. 2.

"NATIONAL SURETY CORPORATION	Draft
NEW YORK	Number
	46515

DALLAS, TEXAS JULY 28, 1939

At sight Pay to the order of MORRIS ZELIGSON, TULSA, OKLAHOMA -
TWO THOUSAND SEVEN HUNDRED NINETY-THREE AND 90/100 DOLLARS
\$2,793.90

To

NATIONAL SURETY CORPORATION	NATIONAL SURETY CORPORATION
Payable Through	
THE CHASE NATIONAL BANK 1-74	By (Signed) L. K. Frickstad
Of the City of New York	(Type) L. K. Frickstad
Pine Street Corner of Nassau	
New York, N. Y.	

Endorsement of this draft by payee constitutes a receipt and release in full for items appearing on voucher from which this draft has been detached.

(Rubber stamp):



(Reverse side): (Signed) Morris Zeligson

(Rubber stamps): Rack 31

Pay to the order of any bank, banker or trust company
or through the New York Clearing House

Prior ~~to~~ endorsements guaranteed

JUL 31 1939

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK "

(Two other rubber stamp impressions not legible).

BY MR. ROBERTSON: I have here Petitioner's Exhibit No. 3, which is copy of rental agreement made between Morris Zeligson and Miss Marks, which is on record in Colfax County. This is certified by the County Clerk of Colfax County, New Mexico.

We offer this exhibit in evidence.

PETITIONER'S EXHIBIT No. 3.

"RENTAL AGREEMENT

This Agreement made and entered into this 11th day of July, 1938, by and between Morris Zeligson, Party of the First Part, and Winston Marks, Party of the Second part, as follows:

WHEREAS, Party of the First Part is the owner of approximately 1200 feet of 12-1/2" Casing, now located in the vicinity of Ellis, Kansas, and

WHEREAS, Party of the Second Part is now drilling a well for oil and gas upon the following described lease in Colfax County, New Mexico, being SE NW 1/4 Sec. 5, TNP 25 N R 24 E

Party of the First Part agrees to rent and furnish above mentioned casing to Party of the Second Part under the following terms and conditions:

Party of the Second part is to pay Party of the First Part the sum of \$500.00, and the cost of hauling from the present location to the drilling location, and an additional consideration of one 80-acre lease to be an offset to the drilling well, and an 80-acre lease within one mile of the drilling well, These payments to cover a rental period of 120 days.

In the event the well is a producer, Second Party will retain casing at a price of \$2.15 per foot for the Lapweld, and \$2.50 per foot for whatever Seamless is furnished. Said title to casing to remain in First Party's name unless and until full and complete payment is made by Second Party.

In the event of a dry hole, Second Party is to pay for any and all damages to the casing or collars and threads, and to pay for any pipe that may not be recovered from the well at prices hereinbefore mentioned. It will be assumed by both parties that the threads and collars are to be in first class order before running in the hole unless otherwise notified by Second Party before running, and when pipe recovered in event of dry hole, First Party will have same inspected at the drilling location who will at that time designate any damages.

Party of the Second Part agrees to assume all responsibility in connection with the use and running of above casing and saves Party of the First Part free and harmless from any responsibility whatsoever as to the performance or representation of this casing, but Second Party to have full privilege of inspection of casing before running into well and at the time of loading, and to accept only pipe which is satisfactory upon inspection.

Party of the Second Part agrees to either return or pay for the casing within or at the expiration of 120 days from the signing of this agreement. In the event casing is to be returned, Party of the Second Part will re-deliver casing to the vicinity of its present location free of any cost to First Party.

IT IS AGREED by both parties that accompanying this agreement, Party of the Second Part will furnish a guarantee to indemnify and save First Party harmless from any liens and encumbrances, and to guarantee the performance of Party of Second Part in this agreement in its entirety. Said indemnification to specifically refer to this agreement and its

particulars, such as against liens, value of material and re-delivery.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals this 11th day of July, 1936.

Morris Zeligson
Party of the First Part

Winston Marks
Party of the Second Part

STATE OF TEXAS)
) ss.
COUNTY OF POTTER)

Before me, the undersigned authority, a Notary Public, in and for Potter County, Texas, on this day personally appeared Winston Marks a feme sole, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 11th day of July, A. D. 1938

W. S. Eakens
Notary Public, Potter County, Texas

(SEAL)

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

On this, the 10th day of August, 1939, before me personally appeared Morris Zeligson, to me known to be the identical person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Maxine Witt
Notary Public

(SEAL)

STATE OF NEW MEXICO)
) ss.
COUNTY OF COLFAX)

I, Doris O'Brien, County Clerk of Colfax County, New Mexico, hereby certify that the above and foregoing constitutes a true, perfect, and complete copy of the Rental Agreement filed in my office on the 11th day of August, 1939, under filing number M-3176, and which said Rental Agreement is still on file in my office.

Dated this 11th day of April, 1940

(SEAL) (Signed) Doris O'Brien
County Clerk of Colfax County, N. M.

By A. J. Stanley Deputy"

BY MR. ROBERTSON: I now offer in evidence Petitioner's Exhibit No. 5, which is an assignment from Morris Zeligson to the National Surety Corporation.

PETITIONER'S EXHIBIT No. 5

"ASSIGNMENT.

KNOW ALL MEN BY THESE PRESENTS: That I, Morris Zeligson, in consideration of the sum of One (\$1.00) Dollar, and other good and valuable consideration, to me in hand paid, by National Surety Corporation, the receipt of which is hereby acknowledged, have granted, bargained, sold and assigned, and by these presents do hereby grant, bargain, sell and assign unto National Surety Corporation, its successors or assigns, all of my right, title, interest in, to, or concerning, the following described property, located in or about a partially drilled test well, the drilling of which was commenced by Winston Marks, on the Southeast Quarter (SE $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section Five (5), Township Twenty-Five (25) North, Range Twenty-four (24) East, Colfax County, New Mexico, to-wit:

29 Joints, 774-3/4 feet of 12 $\frac{1}{2}$ inch lapweld casing.

15 Joints, aggregating 447-3/4 feet of 12 $\frac{1}{2}$ inch seamless casing.

to have and to hold the same unto the said National Surety Corporation, its successors and assigns forever: PROVIDED HOWEVER, that this assignment is made without warranty, and assignor has not at any time, prior or subsequent to a contract with Winston Marks, encumbered this property.

Dated this the 28th day of July, 1939.

(Signed) Morris Zeligson
(Typed) Morris Zeligson

WITNESSES TO SIGNATURES:

(Signed) G. H. Spillers	Tulsa, Okla
Name	Address

(Signed) Anne Spillers	Tulsa, Oklahoma
Name	Address

[illegible]

Before me, Frances Thompson, a Notary Public, within and for the State of Oklahoma, on this the 28th day of July, 1939, personally appeared Morris Zeligson, to me known to be the identical person who executed the above and foregoing Bill of Sale, and acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein set forth.

In witness whereof, I have hereunto subscribed my name
and affixed my seal the day and year first above written.

(SEAL) (Signed) Frances Thompson
Notary Public.

MY COMMISSION EXPIRES: Jan. 26, 1940"

BY MR. ROBERTSON: One thing in the statement I omitted: About the latter part of February, 1940, the National Surety Corporation sent a crew of men from Amarillo, Texas, to pull the casing. That was due to my ignorance of the procedure before this Commission, and I do not want this Commission to hold the National Surety Corporation responsible for that. I was not familiar with the procedure, and I innocently assumed that because the casing belonged to us, we could go in and take it. I hope the Commission accepts my apologies, because it was not done with any intention of violating the rules of the Commission. The men were stopped by Mr. Horn.

BY MR. WORDEN: Very well.

BY MR. ROBERTSON: Since learning of the situation, we have tried to comply. At that time, before Mr. Horn came there, Mr. Tom Bressler, who was undertaking to guard this well on behalf of Miss Marks, or some other interest, refused to let these men take the casing. He was not acting on behalf of the Commission, but on behalf of somebody else. We brought suit in replevin, suit in Colfax County, not against the Commission of course, but the other parties, and we offer in evidence Petitioner's Exhibit No. 4, final judgment in that case, in which title is adjudged to rest in the National

fully appears from the Clerk's Certificate of Nonappearance on file herein; and it further appearing to the court that the said defendant is now in default.

NOW, THEREFORE, upon motion of the plaintiff, it is ordered, adjudged, and decreed by the court that judgment by default be, and the same hereby is, rendered in favor of the plaintiff and against the defendant, and that the plaintiff's Complaint and the plaintiff's Affidavit in Replevin be, and the same hereby is, taken as confessed by the defendant.

Thereupon, the plaintiff proceeded with the introduction of its evidence, and, the court having considered the evidence and being now in all things fully advised, the court makes the following

FINDINGS OF FACT

I

That the court has jurisdiction of the parties to and of the subject matter of this action; that the allegations, and each of them, contained in the plaintiff's Complaint and in the plaintiff's Affidavit in Replevin are true.

II

That the plaintiff is a corporation created, organized, and existing under and by virtue of the laws of the State of New York and duly authorized to transact business in the State of New Mexico; that the defendant is a resident of Colfax County, New Mexico.

III

That the plaintiff is and at all times material hereto has been the absolute owner and entitled to the possession of the following described goods, chattels, and personal property, to-wit:

29 Joints, 774-3/4 feet of 12½ inch lapweld casing,

15 Joints, aggregating 447-3/4 feet of 12½ inch seamless casing, all located in or about the so-called Marks well on Section 5, Township 25 North, Range 24 East, in Colfax County, New Mexico, excepting only a small portion thereof consisting of approximately 200 feet which has heretofore been removed

from the location of said well.

IV

That prior to the institution of this action and at the time of the institution of this action, the defendant wrongfully detained all said property above described from the plaintiff.

V

That the plaintiff's right of action accrued within one year prior to the filing of its complaint.

VI

That plaintiff waives its claim for damages on account of the defendant's detention of the property above described.

WHEREFORE, the court concludes as a matter of law that the plaintiff is entitled to the relief prayed for in its Complaint.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED by the court,

1. That the plaintiff have and recover judgment for the recovery of the possession of said property herein above described in Finding of Fact number III hereof, and the plaintiff is adjudged to be the absolute owner thereof and to be entitled to the immediate possession thereof.

2. That the plaintiff have and recover judgment against the defendant for the costs of this action in the sum of \$21.42, for all of which let execution issue forthwith.

Done by the court this 1st day of April, 1940.

(Signed) Livingston N. Taylor

District Judge.

STATE OF NEW MEXICO)
) ss.
COUNTY OF COLFAX)

I, Doris O'Brien, Clerk of the District Court of Colfax County, New Mexico, hereby certify that the above and foregoing constitutes a true, perfect, and complete copy of the Final Judgment made and entered by said court in Cause No. 10293, which cause is entitled National Surety Corporation, a corporation, Plaintiff, vs. Tom Bressler, Defendant, which

said judgment was filed on the 1st day of April, 1940.

Dated this 11th day of April, 1940.

(Signed) Doris O'Erien
Clerk of Said District Court

(SEAL)

By A. J. Stanley - Deputy"

BY MR. ROBERTSON: I think that concludes our evidence on the matter of our title. It seems to me self-evident in view of the documents introduced. Now, turning to the status of the well itself, as an abandoned well, before Mr. Denton testifies, I will ask leave to explain what the file shows. I think, in a general way, Miss Marks from the very beginning has been seriously delinquent in filing reports -- I don't think any log has been filed - in fact, I don't think anything has been complied with except filing of the bond.

I will ask Mr. Livingston to explain the situation. Mr. Livingston, will you be kind enough to take that file and explain to the Commission what Miss Marks has done?

BY MR. LIVINGSTON: The well file in connection with this particular well is very meager. The only thing in the file is the approved notice of intention to drill and the other matters pertaining to the acceptance of the drilling bond. There appears to be an affidavit -- here is an affidavit signed by Harry Foster with regard to the original filing, but so far as the well record is concerned, the file is very, very meager.

BY MR. ROBERTSON: Would you be kind enough to state, for the record, the date of the last instrument which appears in the file?

BY MR. LIVINGSTON: The last instrument, - the first, which is also the last, notice of intention to drill, dated January 15, 1938, and approved January 15, 1938, by A. Andreas, Acting State Geologist.

BY MR. ANDREAS: Upon the approval and acceptance of the bond?

BY MR. LIVINGSTON: The bond was accepted January 24, 1938.

YORK DENTON,

being called as a witness, and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined by Mr. Robertson, and testified as follows:

DIRECT EXAMINATION

Q Your name is York Denton?

A Yes, sir.

Q You live at Maxwell, New Mexico?

A Yes, sir.

Q You are President of the Teneja Oil Company?

A I am.

Q Did your company make a drilling contract with Winston Marks in October, 1937?

A Yes, sir.

Q Do you know about when Miss Marks started to drill?

A She moved the tools and equipment on the location in December, 1939.

Q Did she later commence to drill?

A She did.

Q Up until what time did she continue?

A Either July or August, to the best of my remembrance, July, 1938 is when she lost some of the tools in the hole, as far as the bottom of the hole, I think that is the last drilling she did, bottom hole drilling. They were lost between 1515 and 1575 or 1600. At that time the well began to cave. They continued operations -- I would not say they worked steadily, but they did work at different times to obtain that bit, and during a fishing job they lost two bailers. Operations continued there until the latter part of December, 1938.

Q Was there a fire about December, 1938?

A There was. I was in Albuquerque on December 24th, 1938, and Mr. Brown and Mr. French, stockholders in our oil company, called me at Albuquerque and told me the Marks well had burned down - that is, the rigging and drilling equipment she had over there --

BY MR. ANDREAS: Was that the day of the fire?

A Yes, it burned at one or two o'clock in the afternoon of
December 24, 1938.

BY MR. ROBERTSON:

Q Has there ever been any drilling done out there since that
time?

A No, sir, not up to the first of this month. I was over there
three weeks ago Saturday at the location, and there has been
no drilling done since, and no equipment set up to drill.

Q You have no reason to believe any drilling has been done since
the first of the month?

A No, I don't.

Q Have you, by contract or otherwise, tried to get Winston Marks
to go ahead with drilling operations?

A We did. I believe you have the contract.

Q I hand you Petitioner's Exhibit No. 6, dated October 7, 1939,
and ask you if that is the proposal which the Teneja Oil
Company made to Winston Marks on that date?

A It is a copy.

Q Was the original signed by yourself as President?

A It was.

BY MR. ROBERTSON: We offer Petitioner's Exhibit No. 6 in evidence.

PETITIONER'S EXHIBIT No. 6

"Raton, New Mexico October 7, 1939

Miss Winston Marks
Herring Hotel
Amarillo, Texas

Dear Madam:

This is to confirm our oral understanding entered into
with you yesterday evening.

We understand that you desire to resume drilling opera-
tions under your contract with us dated October 28, 1937, or
to assign that contract to Mr. L. W. Alexander of Oklahoma
City, Oklahoma.

We hereby consent to such assignment and hereby consent
that you may resume drilling operations under the above
mentioned drilling contract under the following conditions:

1. You or your assignee must actually resume drilling
operations within thirty (30) days from this date.

2. Drilling operations may be continued in the hole already started, or, if that is deemed impracticable, you or your assignee may drill a new hole on the same location.

3. Drilling operations must proceed and continue with due diligence until the drilling is complete according to the terms of the contract.

4. This consent does not in any way cancel or abrogate the contract above mentioned, and, in the event that you or your assignee proceed hereunder, the said former contract shall remain in full force and effect in all its terms and provisions except as herein expressly modified.

5. We hold oil and gas leases on approximately 3,000 acres, a description of which acreage is attached hereto marked "Exhibit A". If you or your assignee comply with all the foregoing conditions, we will assign the oil and gas leases covering the above mentioned acreage to you or your assignee at the times hereinafter specified, with the express understanding that we shall not be compelled to pay any rentals accruing or becoming due under the terms of such oil and gas leases, but all such rentals shall be paid by you or your assignee. The assignments shall be made by us to you or your assignee as follows:

- (a) As soon as the complete rig is placed on location and ready to start work, leases covering 1,000 acres shall be assigned.
- (b) If drilling is resumed in the present hole, then as soon as the hole is cleaned out and drilling operations are actually started, the leases covering the remaining 2,000 acres shall be assigned. If, on the other hand, drilling operations are not resumed in the present hole, but a new hole is started, then as soon as said hole has been drilled to a depth of 1,000 feet, the leases covering the remaining 2,000 acres shall be assigned.

As soon as we are notified by you or your assignee of definite acceptance of this arrangement, we will execute all the assignments and place them in escrow with First National Bank in

Raton, Raton, New Mexico.

6. This proposed arrangement must be definitely accepted in writing by you or (in the event of an assignment) by your assignee within ten (10) days from this date. Otherwise, this entire offer will be automatically withdrawn.

7. In the event that this offer is accepted, we will be willing to enter into a more detailed written contract if that is considered necessary by you or your assignee.

Very truly yours,

TENEJA OIL COMPANY

By _____
Its President

EXHIBIT A

	<u>Section</u>	<u>Township</u>	<u>Range</u>	<u>Acres</u>
SW $\frac{1}{4}$	19	26 N.	24 E.	160
NW $\frac{1}{4}$	20	26 N.	24 E.	160
NW $\frac{1}{4}$	21	26 N.	24 E.	160
SW $\frac{1}{4}$	22	26 N.	24 E.	160
SE $\frac{1}{4}$	18	26 N.	24 E.	160
NW $\frac{1}{4}$	17	26 N.	24 E.	160
SE $\frac{1}{4}$	16	26 N.	24 E.	160
SW $\frac{1}{4}$	7	26 N.	24 E.	160
SE $\frac{1}{4}$	13	26 N.	23 E.	160
SE $\frac{1}{4}$	13	25 N.	23 E.	160
NW $\frac{1}{4}$	12	25 N.	23 E.	160
NE $\frac{1}{4}$	1	25 N.	23 E.	160
SW $\frac{1}{4}$	36	26 N.	23 E.	160
SW $\frac{1}{4}$	31	26 N.	24 E.	160
NW $\frac{1}{4}$	9	25 N.	24 E.	160
NE $\frac{1}{4}$	32	26 N.	24 E.	160
SW $\frac{1}{4}$	35	26 N.	24 E.	160
NE $\frac{1}{4}$	27	26 N.	24 E.	160
W $\frac{1}{2}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$	34	26 N.	24 E.	<u>120</u>

3,000[±]

- Q Under that proposal at any time, under paragraph No. 1, it appears that Miss Marks was told she or her assignee must actually resume drilling operations within thirty days after October 7, 1939. She did not do that, did she?
- A No, sir.
- Q Did you send her, sometime after that, notice of the cancellation of the contract?
- A I did.
- Q I hand you Petitioner's Exhibit No. 7, dated December 16, 1939, and ask you if that is a copy of the notice which your company sent to Miss Marks?
- A It is.
- Q Was the original signed by you as President?
- A Yes, sir.

BY MR. ROBERTSON: We offer Petitioner's Exhibit No. 7 in evidence.

PETITIONER'S EXHIBIT No. 7

"Raton, New Mexico, December 16, 1939

Miss Winston Marks
Herring Hotel
Amarillo, Texas

Dear Miss Marks:

Please take notice that neither you nor your assignee or assignees, if any there be, have complied with the provisions of that certain contract entered into between the Teneja Oil Company and yourself on the 7th day of October, 1939, at Raton, New Mexico, covering the drilling of a well near the Town of Maxwell, Colfax County, New Mexico, and the assignment of certain oil and gas leases, description of which is attached to said contract and marked Exhibit A, and that because of and by reason of your default, or that of your assignee or assignees, in the premises the said contract is now in all things cancelled by the undersigned company and held for naught, and you are notified to remove your property or the property of any persons employed by you or any assignee of yours from the premises within the period of thirty (30) days from the date hereof.

TENEJA OIL COMPANY
By _____
-22- Its President"

Q If I understand correctly, it is your position and the position of your company that Miss Marks has abandoned operations under this well?

A Yes.

BY MR. ROBERTSON: I think that is all the questions I have.

BY MR. LIVINGSTON:

Q Mr. Denton, I understood you to say that the tools were removed from the well site before the fire, or after the fire?

A What equipment was left after the fire was moved.

BY MR. ANDREAS: The other equipment, outside of the casing, has nothing to do with this case? I understand that was settled in court, with regard to the tools?

BY MR. ROBERTSON: I can explain that. I also represent the fire insurance company which carried the insurance on the derrick, and that was \$9,000.00. After the amount of the loss was adjusted by the fire insurance company, that company received so many letters and claims against Winston Marks that the fire insurance company felt compelled to pay the money into court in an interpleader suit, so that the fire insurance company could be released and let the court distribute the money. That was done in Colfax County, and roughly speaking, the claims were about twice \$9,000.00 and settlement was made among the claimants by consent at, roughly speaking, a basis of fifty cents on the dollar. The only thing we are concerned about in this case is the casing itself.

BY MR. ANDREAS: (To Mr. Denton)

Q Did you ever get a reply to this letter of December 16th, at any time?

A No, I did not.

Q Did you receive any reply at all?

A No.

Witness dismissed.

G. W. ROBERTSON,

being first duly sworn to tell the truth, the whole truth and nothing but the truth, testifying on behalf of the Petitioner, testified as follows:

DIRECT EXAMINATION

Since about August, 1939, I have been employed by the National Surety Company to see what could be done about their claim against Winston Marks and its rights in this case. Associated with me in this case is a firm of lawyers in Amarillo, Texas. Mr. Ochsner, of that firm, is the man who has handled this business. We have been working together in every way possible to try to salvage what could be salvaged out of this situation, and from August, 1939 up until now, and our experience has been that if we are lucky -- we might get an appointment with Winston Marks to discuss it, and she would not show up. We would get a letter indicating that on or before the following Monday, or Tuesday, she would have something, then we would hear nothing. Most of the negotiations with Miss Marks have been in that condition. But for the last several months we have been unable to get in touch with her. In fact, we do not know now where she is. I understand Mr. Livingston was adroit enough to get a notice to her of this hearing, but I don't know where she is. At one time, particularly in the interpleader proceedings, Miss Marks was represented by V. A. Doggett, an attorney at Raton, and by Mr. Doggett's assistant, Mr. John Tittman. After the conclusion of the interpleader proceedings I approached Mr. Tittman and urged him if possible to do something to adjust our claim. I told him we were not particularly anxious to go to the expense of bringing a case in court, and if she would give any intention of proceeding with the drilling, the casing would be worth much more to her than to the surety company -- I cannot say the exact date, but I am sure it was the latter part of 1939, and he communicated that suggestion to her, but has never had any response from her, and certainly we have

never had any kind of an offer from Miss Marks or anything to suggest that she was interested in what happened to the well or the casing.

BY MR. ANDREAS: Can you recall the last date you have had any communication, verbal or otherwise, from Miss Marks?

A The last time I ever saw her or had any communication from her would be along about, - oh, prior to August of 1939. I have not seen her or heard from her myself, I would say for several months, at least.

BY MR. LIVINGSTON: For the information of the Commission, on March 27th I enclosed to Miss Marks a notice of this hearing and a brief letter telling her when the hearing would be held, and sent it by registered mail with a return receipt requested, and on March 27th; it was received by Miss Marks on April 3, 1940 -- we heard she could be reached at her hotel, so we got the registered notice and return receipt in the file, showing she is not without notice of this hearing, actual notice.

Witness dismissed.

BY MR. ANDREAS: I want to ask Mr. Denton a question. As a practical oil man, familiar with that well and the operations, in your opinion do you think that well can be cleaned out and deepened?

A My opinion is that I am an amateur -- this is my first venture, in giving Miss Marks this contract to put down this one well. Since that time I have drilled a well on the NE¹/₄ of that tract, it is down 1550. Knowing what I do about the records, and the tools in the hole, - the tools being in the hole - according to Mr. Foster's statement there is another string of tools in the hole besides the bit at the bottom. All oil contractors tell me they would rather start a new hole than undertake to clean out a hole like that.

BY MR. ROBERTSON: In arriving at a conclusion, I hope the evidence here is considered sufficient, - I hope the Commission will feel that the well is utterly abandoned and will give permission

to remove the casing from the well and permit us to go ahead and plug the well.

In the matter of plugging the well, necessarily the surety company is not in the oil business. We will have to do that plugging by getting an oil man to do it. I understand from Mr. Livingston that there is a proper procedure necessary, and in the event the decision of the Commission is favorable, it is necessary to file in triplicate notice of intention to plug the well, and how we propose to do it, and when that is approved and after the work is done a report must be filed. I am frank to say, I don't know how to plug a well, or how it should be plugged. Whatever way the Commission wants, they will plug it that way. In preparing the notice I would be thankful for any suggestion the Commission has to offer for the proper way.

BY MR. ANDREAS: If the Commission makes a decision in this case, in the event it is declared abandoned, we can send to you the proper forms.

BY MR. ROBERTSON: I have the forms.

BY MR. ANDREAS: We can communicate with you and instruct you, or whoever you have to plug the well, how it should be done.

C E R T I F I C A T E

I hereby certify that the foregoing twenty-five and one-half pages of typewritten matter are a true, correct and complete transcript of the shorthand notes taken by me in the above entitled cause on the 15th day of April, 1940, before the Oil Conservation Commission, and by me extended into typewriting, together with the exhibits offered in evidence at the time of said hearing.

Witness my hand this 20th day of April, 1940.