

1 IN THE DISTRICT COURT OF LEA COUNTY

2 STATE OF NEW MEXICO

3 IN THE MATTER OF THE PETITION OF )  
4 AMERADA PETROLEUM CORPORATION FOR )  
5 REVIEW AND APPEAL OF PROCEEDING )  
6 BEFORE THE OIL CONSERVATION )  
COMMISSION OF THE STATE OF NEW MEXICO, )  
IN CASE NO. 191 )

Case No. \_\_\_\_\_

7  
8 ANSWER OF OIL CONSERVATION COMMISSION  
9 OF THE STATE OF NEW MEXICO  
TO PETITION FOR REVIEW

10 Comes now the Oil Conservation Commission of the State  
11 of New Mexico, and for its answer to the Petition for Review  
12 filed herein by Amerada Petroleum Corporation, states:  
13

14 1. The Commission admits Paragraph 1.

15 2. The Commission admits that a hearing was held on  
16 20 December, 1949, as alleged in Paragraph 2 and admits that at  
17 such hearing the petitioner established by a clear preponderance  
18 of the evidence, the facts alleged in sub-paragraphs 2-a and 2-b.  
19 The Commission denies that at such hearing the petitioner estab-  
20 lished by any evidence the facts alleged in the remainder of  
21 Paragraph 2.

22 3. The Commission admits Paragraph 3.

23 4. The Commission admits Paragraph 4.

24 5. The Commission admits Paragraph 5.

25 6. The Commission admits that petitioner is relying  
26 on the matters alleged in Paragraph 6, but denies that the Com-  
27 mission erred, as alleged in sub-paragraph 6-a and 6-b, or that  
28 the orders entered by the Commission were contrary to the evidence  
29 and the law, as alleged in sub-paragraphs 6-c and 6-d.

30 7. The Commission reserves the right to file herein  
31 and to make a part of this answer a transcript of the proceedings  
32 had in case No. 191 before the Commission.

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1 WHEREFORE, it is prayed that the petitioner take nothing  
2 by its Petition for Review and that the court enter its judgment  
3 herein affirming the orders of the Commission.  
4

5 Joe L. Martinez  
6 Attorney General  
7

8 Philip Dunleavy  
9 Assistant Attorney General  
10

11 Don C. McCormick  
12 Special Assistant Attorney General  
13

14 George L. Graham  
15 Special Assistant Attorney General  
16

17 ATTORNEYS FOR OIL CONSERVATION  
18 COMMISSION OF NEW MEXICO.  
19

20 CERTIFICATE OF SERVICE  
21

22 The undersigned hereby certifies that true copies of  
23 the foregoing Answer were served as follows:  
24

25 Hervey, Dow & Hinkle  
26 Roswell, New Mexico  
27

28 Seth and Montgomery  
29 Santa Fe, New Mexico  
30

31 Booth Kellough  
32 c/o Amerada Petroleum Corporation  
Tulsa, Oklahoma  
33

34 all of whom are attorneys for petitioner, and  
35

36 Atwood, Malone & Campbell  
37 Roswell, New Mexico  
38

39 attorneys for Texas-Pacific Coal and Oil Company, and that such  
40 service was made by ordinary mail addressed to the above named on  
41 March 28, 1950.  
42

IN THE DISTRICT COURT OF LEA COUNTY  
STATE OF NEW MEXICO

IN THE MATTER OF THE PETITION OF  
AMERADA PETROLEUM CORPORATION FOR  
REVIEW AND APPEAL OF PROCEEDING  
BEFORE THE OIL CONSERVATION COM-  
MISSION OF THE STATE OF NEW MEXICO,  
IN CASE NO. 191

No. 8485

SEPARATE ANSWER OF TEXAS PACIFIC COAL AND OIL COMPANY

Comes now Texas Pacific Coal and Oil Company and  
for its answer to the Petition for Review, states:

First Defense

1. Answering Paragraph 2, it denies that Petition-  
er established by a clear preponderance of the evidence the  
matters alleged in Sub-paragraphs (a) through (i) inclusive.

2. Answering Paragraphs 6(a), 6(b) and 6(c), it  
denies that the Commission erred in any of the respects there-  
in alleged.

3. Answering Paragraph 6(d), it specifically de-  
nies that the Orders of the Commission, referred to therein,  
are contrary to law, and further answering said Paragraph,  
it states that said allegation of error is so general in na-  
ture that it is unavailing to Petitioner.

Second Defense

1. Order R-2 of the Oil Conservation Commission  
of New Mexico, in Case #191, was supported by substantial  
evidence, was not arbitrary, capricious or unreasonable, and  
constituted a valid exercise of the powers of the Commission.

WHEREFORE, Texas Pacific Coal and Oil Company re-  
spectfully prays that the Order of the Commission entered

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herein be affirmed; that the appeal be dismissed; that it recover its costs herein expended, and for such other and further relief as to the Court may seem proper.

s/ Eugene T. Adair  
Eugene T. Adair  
Fort Worth, Texas

ATWOOD, MALONE & CAMPBELL

/s/ Jack M. Campbell  
Roosevelt, New Mexico

Attorneys for Texas Pacific Coal  
and Oil Company.

CERTIFICATE

Jack M. Campbell, being one of the attorneys for Texas Pacific Coal and Oil Company, hereby certifies that on March 24, 1958 he caused a copy of the foregoing Separate Answer of Texas Pacific Coal and Oil Company to be mailed to Hervey, Dow & Hinkle, Roosevelt, New Mexico, Seth & Montgomery, Santa Fe, New Mexico, Harry D. Page, Tulsa, Oklahoma and Booth Killough, Tulsa, Oklahoma, all attorneys for Petitioner.

s/ Jack M. Campbell  
Jack M. Campbell

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Case 191

October 4, 1930

Mr. Booth Kellough  
Amerada Petroleum Corporation  
Drawer 2040  
Tulsa, Oklahoma

Dear Mr. Kellough:

I recently had a conversation with Mr. Clarence Hinkle, at which time he said that Amerada would bear the expense incurred by the Commission in preparing the additional copies of the record taken. At that time I told Mr. Hinkle that the Commission would bear the expense of the copies.

It appears, however, that there may be some of the Commission's cases taken to court and the expense is one item of budget for which we cannot be prepared.

We have two vouchers which we have already paid, in the amounts of \$134.43 and \$732.00, a total of \$866.43. If it is not an inconvenience to you and your company, we should appreciate it very much if you could assume the responsibility to the Commission for payment of the above amount.

We feel that this case is establishing a precedent and future cases might become quite expensive.

Thanking you for your consideration of this matter, we are

Very truly yours,

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

R. R. Spurrier  
Secretary-Director

RRS:bw  
cc: Mr. Clarence Hinkle

OIL CONSERVATION COMMISSION  
SANTA FE, NEW MEXICO

September 11, 1950

C  
O  
P  
Y  
  
Judge George T. Harris  
Judge of Fifth Judicial Court  
Roswell, New Mexico

Dear Judge Harris:

The matter of dismissal, with or without prejudice, in the Amerada Bagley controversy has been discussed between Commissioner Shepard and myself. We feel it is of no consequence to the Commission whether the case be dismissed with or without prejudice since spacing cannot be a matter of prejudice but is a matter of various reservoir conditions.

Respectfully,

RRS:bpw

Secretary and Director

CLASS OF SERVICE DESIRED	
DOMESTIC	CABLE
TELEGRAM	ORDINARY
DAY LETTER	URGENT RATE
SERIAL	DEFERRED
NIGHT LETTER	NIGHT LETTER

Patrons should check class of service desired; otherwise the message will be transmitted as a telegram or ordinary cablegram.

# WESTERN UNION

1207

A. N. WILLIAMS  
PRESIDENT

\$	CHECK
S	ACCOUNTING INFORMATION
F	TIME FILED

Send the following telegram, subject to the terms on back hereof, which are hereby agreed to

To **JUDGE GEORGE T. HARRIS**

**SEPTEMBER 11** 19 **50**

Care of or Apt. No. **FIFTH JUDICIAL DISTRICT**

Street and No. **ROSWELL, NEW MEXICO**

*Case 191*

**FOR VICTORY  
BUY  
WAR BONDS  
TODAY**

Place

**LEAVING SANTA FE TO REPRESENT OIL COMMISSION AT PRETRIAL  
CONFERENCE. ASK YOUR INDULGENCE IF FEW MINUTES LATE FOR  
1:30 P. M. SETTING.**

**GEORGE A. GRAHAM**

**OIL CONSERVATION COMMISSION**

Sender's name and address  
(For reference only)

Sender's telephone  
number

REESE AND McCORMICK

ATTORNEYS AT LAW

BUJAC BUILDING

CARLSBAD, NEW MEXICO

GEORGE L. REESE, JR.  
DON G. McCORMICK  
S. M. RUTHERFORD, III

September 9, 1950

Honorable George T. Harris  
District Judge  
Roswell, New Mexico

Re: Amerada Petroleum Corporation,  
Case No. 8485, District Court  
of Lea County.

Dear Judge Harris:

I have received notice that the pre-trial conference in the above case will be resumed at Roswell on 11 September, 1950, at 1:30 p.m. I had planned to attend this hearing, but it now develops a meeting of the Eddy County Bar Association has been called for Noon of that same day in Carlsbad. I happen to be president of this Association, and the meeting is important in that we are now making the final plans for the annual meeting of the State Bar of New Mexico. Therefore, I regret that I shall be unable to attend.

I have been informed by both Mr. Hinkle and Mr. Campbell that Amerada Petroleum Corporation will move to dismiss this matter without prejudice, and that the intervenor, Texas Pacific Coal & Oil Company, will resist this motion and urge that any dismissal should be with prejudice.

I have given this matter some thought and have read a little law on the subject. Under the state of the record, it does not appear to me that it is of great importance to the Oil Conservation Commission which course is taken. You will recall that the order of the Commission which is being reviewed merely held that there was insufficient evidence to justify the establishing of eighty acre production units in the Bagley-Siluro-Devonia Pool. Therefore, if the case were dismissed with prejudice, it would merely mean that Amerada was bound by the decision, that as of 20 December, 1949, the date of the hearing before the Commission, there was insufficient evidence to justify



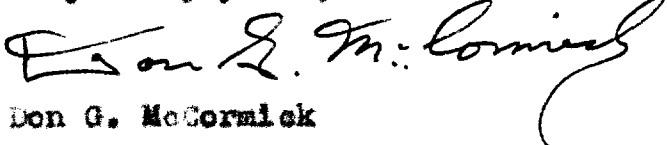
Honorable George T. Harris  
September 9, 1950  
Page 2

the spacing order which was sought. On the other hand, if the case were dismissed without prejudice, the question of whether or not there was sufficient evidence on 20 December, 1949, would not be res adjudicata.

In the event Amerada should later file another petition seeking an eighty acre spacing order, the Commission would be bound to determine all new evidence based on facts developed since 20 December, 1949. In order to do this, they would necessarily have to consider the facts which had been developed up to 20 December, 1949, in order to correlate all the pertinent facts. The law specifically allows Amerada to file a new petition based on changed conditions. Therefore, I do not see that it will make any difference, one way or the other, as to whether the case is dismissed with or without prejudice.

I recognize that counsel for Texas Pacific Coal & Oil Company have borne the brunt of the work in this case, and I trust you will give due consideration to the views of those attorneys. I am merely expressing my own views as attorney for the Oil Conservation Commission and do not desire to prejudice the position of Texas Pacific Coal & Oil Company.

Very truly yours,

  
Don G. McCormick

CC: Hon. Jack M. Campbell  
Attorney at Law  
J. P. White Building  
Roswell, New Mexico

Hon. Clarence E. Hinkle  
Attorney at Law  
J. P. White Building  
Roswell, New Mexico

✓ Mr. R. R. Spurrier  
State Geologist  
Santa Fe, New Mexico

DGM:mjt

IN THE DISTRICT COURT OF LEA COUNTY, NEW MEXICO

IN THE MATTER OF THE PETITION OF )  
AMERADA PETROLEUM CORPORATION FOR )  
REVIEW AND APPEAL OF PROCEEDING )  
BEFORE THE OIL CONSERVATION COM- )  
MISSION OF THE STATE OF NEW )  
MEXICO IN CASE NO. 191 )

CASE NO. 8485

THE STATE OF NEW MEXICO

TO: THOMAS J. MABRY, Chairman,  
GUY SHEPARD, Member, and  
R. R. SPURRIER, Secretary,  
of the Oil Conservation Commission  
of the State of New Mexico;  
TEXAS PACIFIC COAL AND OIL COMPANY,  
a foreign corporation,

GREETINGS:

NOTICE

You are hereby commanded to appear, in your official capacity designated above, before the District Court of the Fifth Judicial District of the State of New Mexico, Division No. 2, sitting within and for the County of Lea at Lovington, New Mexico, that being the county and place in which the petition for review herein is filed, within thirty (30) days after service of this notice, then and there to answer the petition for review of the Amerada Petroleum Corporation, Petitioner in the above cause.

You are notified that unless you so appear and answer, the petitioner, Amerada Petroleum Corporation, will appeal to the court for the relief demanded in its petition for review, which is marked "Exhibit A", attached hereto and made a part hereof to the same extent as if set out in this notice.

WITNESS the Honorable G. T. Harris, District Judge of the said Fifth Judicial District Court, Division No. 2, of the State of New Mexico, and the seal of the District Court of Lea County, New Mexico, Division No. 2, this 23rd day of MARCH, 1950

(SEAL)

W. M. Beauchamp  
W. M. Beauchamp, Clerk of the  
said District Court.

By \_\_\_\_\_  
Deputy

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

} ss

I, \_\_\_\_\_, Sheriff of  
\_\_\_\_\_ County, New Mexico, do hereby certify  
that this within notice came to hand the \_\_\_\_ day of  
February, 1950, and there were at the same time delivered  
to me for service herewith true copies of this notice and of  
the petition for review filed in the within cause; and that  
I made service herein by delivering one copy of this notice  
and one copy of the said petition for review herein to each  
of the within named persons within the said County of  
\_\_\_\_\_, as follows, to wit:

1. THOMAS J. MARRY, by delivering the same to

\_\_\_\_\_  
\_\_\_\_\_  
on February \_\_\_\_, 1950.

2. GUY SHEPARD, by delivering the same to

\_\_\_\_\_  
\_\_\_\_\_  
on February \_\_\_\_, 1950.

3. R. R. SPURRIER, by delivering the same to

\_\_\_\_\_  
\_\_\_\_\_  
on February \_\_\_\_, 1950.

4. Texas Pacific Coal and Oil Company, a foreign  
corporation, by serving

\_\_\_\_\_  
its Service Agent for the State of New  
Mexico, by delivering the same to

\_\_\_\_\_  
\_\_\_\_\_  
on February \_\_\_\_, 1950.