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STATE OF NEW MEXICO)
COUNTY OF RIO ARriba)

IN THE DISTRICT COURT

R. J. PALMER,

Plaintiff,

vs.

NO. 6177

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,
and
GREENBRIER OIL COMPANY,
a partnership,

Defendants.

PETITION FOR REVIEW

Comes now R. J. PALMER, by his attorneys, H. J. GUTHMANN and McKENNA & SOMMER, and for his Petition for Review, states and alleges:

1. That he is a resident of the County of Rio Arriba, State of New Mexico, and that the property herein involved is located in Rio Arriba County, State of New Mexico.

2. That he is informed and believes that the defendant, Greenbrier Oil Company, is a partnership, but that he has been unable to determine the names of the said partners; and that the Oil Conservation Commission of the State of New Mexico is a duly and legally constituted administrative body of the State of New Mexico.

3. That in August of 1953 the plaintiff filed his application with the Oil Conservation Commission of the State of New Mexico, hereinafter called "Commission", for a permanent order prohibiting defendant, Greenbrier Oil Company from removing, taking, or in any other manner interfering with the tubing, casing, or other equipment located in or on the Palmer No. 1 Well, NE¹/₄SW¹/₄ of SE¹/₄, Sec. 1, Twp. 24 N., R. 2 W., N.M.P.M., Rio Arriba County, State of New Mexico, and also requesting an emergency order.

4. That under date of August 21, 1953, the defendant, Commission, issued its emergency order, E-4, restraining the Greenbrier Oil Company and its agents, or either of them, from taking any action in any manner, or attempting to take any action in any manner to pull or remove any of the tubing or casing or other

equipment now located in the said well, or in any other manner interfering with the present status of the said well.

5. That on September 17, 1953, the application of the plaintiff came on for hearing before the defendant Commission, and under date of November 10, 1953, the Commission found:

- (1) "That due notice was given as required by law, and the interested parties appeared in person and/or by their respective attorneys;"
- (2) "That testimony adduced at the hearing indicates that the possibility of waste resulting from plugging and abandonment of the subject well is remote in view of the production estimates which, if reasonably correct, would not permit recovery of original drilling costs within the foreseeable future;"
- (3) "That the ownership of the properties and the legal relationship of the parties in the matter are outside the jurisdiction of the Commission, and, based on such findings, ordered:
 - I. "That the petition of R. J. Palmer, plaintiff, be and the same is hereby dismissed;"
 - II. "That the emergency order of the Commission, dated August 21, 1953, being Order E-4, in Case No. 574, is hereby revoked;"

6. That on November 27, 1953, the plaintiff filed his application for rehearing, with such application being based on the following grounds and reading literally as follows; to-wit:

" 1. Finding No. 3 of said Order which reads, 'that the ownership of the properties and the legal relationships of the parties in the matter are outside the jurisdiction of the Commission', is completely erroneous and without support in fact and law as a basis for refusing the relief requested since the applicant did not request a determination of the ownership as between the parties of the lease or the properties involved and, furthermore, the jurisdiction of the Commission as to conservation and preventing of waste are present and existent regardless of the ownership of the lease or the properties involved.

2. By its Finding No. 2, the Commission admits that it has jurisdiction over the subject matter of the application, but sets forth in part of its finding that 'the possibility of waste resulting from plugging and abandonment of the subject well is remote in view of the production estimates which, if reasonably correct, would not permit recovery of original drilling costs within the foreseeable future,' which part of the Finding the applicant states is erroneous for the following reasons:

- (a) The testimony and evidence adduced and admitted in the form of shut-in royalty payments by the Greenbrier Oil Company show that the Greenbrier Oil Company viewed the Palmer No. 1 well profitable, or that it would be made more profitable;
- (b) The evidence adduced showed that a valuable discovery of natural gas had been made in the Palmer No. 1 well;

- (c) As a matter of engineering and expert testimony, the well possibly could be reworked for the purpose of shutting off the water and increasing the well potential;
- (d) The gas now capable of being produced could be sold and utilized successfully by the neighboring community of Lindrith, New Mexico;
- (e) The Commission's jurisdiction cannot and is not predicated upon the necessity of any operator being able to recover original drilling costs within any period of time;
- (f) The Commission's jurisdiction is based on conservation, which includes in its meaning the elements of preservation as well as upon waste which is defined in Section 69-203 of the same New Mexico Statutes as "waste, IN ADDITION to its ordinary meaning, shall include: (a) Underground waste; (b) Surface waste, as those words are generally understood in the oil and gas business and in any event, to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of natural gas of any type or in any form . . .".
- (g) If the casing and tubing are pulled, Palmer No. 1 well would be ruined and destroyed resulting in waste and violating the principles of conservation.
- (h) Sound principles of conservation are not furthered by allowing the plugging and abandonment of the Palmer #1 well completed as a producer for the following reasons:
- (1) The applicant can and will upon demand submit the usual plugging bond with the Oil Conservation Commission and thereupon the responsibility of the Greenbrier Oil Company will terminate as to plugging and abandonment;
 - (2) The Greenbrier Oil Company's desire to pull the casing and tubing and other equipment is predicated solely upon its desire to secure the casing and the tubing or its value through resale;
 - (3) Such casing or tubing and other equipment is not so unique or unavailable that it cannot be purchased on the open market;
 - (4) Any action on the part of the Commission in enjoining the removal of the casing and tubing and other equipment does not in any manner destroy the claim of the Greenbrier Oil Company for the reasonable value of the casing and tubing and other equipment that could be recovered.

2. That the plaintiff states that the order of the defendant Commission, entered November 10, 1953, was and is erroneous for the reasons as stated in its application for rehearing set out in Paragraph 6 above.

3. That the defendant Commission failed to act on the application for rehearing of the plaintiff within ten (10) days after its filing, which failure to act is deemed a refusal to rehear and a final disposition of such request for rehearing.

4. That pursuant to Section 69-223, New Mexico Statutes Annotated, 1941

as amended,
Compilation, the plaintiff hereby appeals from the action of the Commission in refusing to grant the requested rehearing.

10. That the Order of the defendant Commission, as hereinbefore alleged, is invalid and if enforced against plaintiff will cause him to suffer irreparable injury.

WHEREFORE, plaintiff prays that this Court vacate the order of the defendant Commission entered November 10, 1953, and that this Court issue its Order prohibiting the defendant Greenbrier Oil Company from removing, taking, or in any other manner interfering with the tubing, casing, or other equipment located in or on the Palmer No. 1 Well, NE $\frac{1}{4}$ SW $\frac{1}{4}$ of the SE $\frac{1}{4}$, Sec. 1, Twp. 24 N., R. 2 W., N.M.P.M., Rio Arriba County, State of New Mexico, and that such other and further relief be granted to the plaintiff as may be proper in the premises.

H. J. GUTHMANN
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Attorneys for Plaintiff

By:

/s/ H. J. Guthmann
H. J. Guthmann

STATE OF NEW MEXICO)
)
COUNTY OF SANTA FE) ss.

H. J. GUTHMANN, being first duly sworn on oath, deposes and states: That he is one of the attorneys for the plaintiff herein; That he has read the foregoing Petition for Review and believes the matters alleged therein to be true; That he knows the contents of the foregoing Petition for Review; And that he is signing this Affidavit because the plaintiff herein is not a resident of Santa Fe County, New Mexico, the County in which the Offices of your Affiant are located; and as to the information alleged on belief, he believes the same to be true.

/s/ H. J. Guthmann
H. J. Guthmann

Subscribed and sworn to before me this 24th day of December, 1953.

(SEAL)

/s/ Margaret S. Sebastian
Notary Public

My Commission Expires: 9-18-55