

January 10, 1956

MEMORANDUM

TO: Governor Simms and Land Commissioner Walker

FROM: W. B. Macey

SUBJECT: Cases 706 & 846, Order R-560-B
Cases 707 & 847, Order R-546-B
Cases 708 & 848, Order R-547-B
Cases 709 & 849, Order R-548-B
Cases 710 & 850, Order R-549-B
Cases 711 & 851, Order R-557-B
Cases 712 & 852, Order R-558-B

This memo covers all of the above-captioned consolidated cases and the orders entered in each case. These cases originally came before the Commission in July of 1954, and after the entry of the original order a rehearing was granted. The orders attached hereto are the orders entered after rehearing in each of the cases designated above.

All of the cases involve gas proration units in the Blanco Mesaverde Gas Pool in San Juan County, New Mexico, and involve El Paso Natural Gas Company on one hand and a group of individuals from Tulsa, Oklahoma, whose chief spokesman, Mr. Saul Yager, is represented by Mr. Jack M. Campbell. In each instance, both parties have submitted very extensive briefs on the legal technicalities involved in these orders. The entire problem presented to the Commission was based on the fact that El Paso Natural Gas Company obtained leases from the "Yager Group", the leases not having any pooling clause.

Under the Blanco Mesaverde Pool rules, it is essential that each drilling unit contain 320 acres and the pool rules (Order R-110) state as follows: "No well shall be drilled unless such well be located on a designated drilling unit of not less than 320 acres of land in which unit all the interests are consolidated by pooling agreement or otherwise"

The applications of El Paso in each instance requested compulsory communitization of the acreage involved, and the companion application requested determination and ratification of the communitization in each instance. The original Commission orders entered after the original cases held that the communitization was effective on the day that the Commission or the regulatory group involved (U.S.G.S.) approved the notice of intention to drill the well on each specific tract.

Mr. Kitts and I have spent a considerable amount of time reviewing all of the facts and evidence entered in this case and all of the legal background in other states pertaining to compulsory communitization and have come to the conclusion that the original order which was entered was in error. We feel that in view of the specific requirement of the pool rules that all interests be "consolidated by pooling agreement or otherwise"; that it is necessary for the operator of a proration unit to actually have an agreement between all of the parties involved or a Commission order compelling them to join in the agreement prior to the time they start their well, and that the communitization is effective only when the parties are in complete agreement or when an order is entered.

We further feel that the word "interests", as used in the pool rules, pertains solely to the "owner"; that is, the man who has the right to drill on the land and prospect for oil and gas. Although El Paso Natural and the other owners in each area may have had an agreement to consolidate or pool their leases prior to the time the wells were started, the only evidence which this Commission has that all of the interests were consolidated by agreement was on the date of the first hearing in these cases, May 19, 1954. It is perfectly possible that the companies involved in these cases actually had an agreement prior to this date, but we do not have any evidence of such agreement.

The reason that the effective date of the communitization, as recognized by this Commission, is important is that there would be some lease expirations involved if there was not an actual communitization agreement effected prior to the expiration date. It is for this reason that in each order we have entered an alternative order which makes the effective date of communitization the date of this order in the event subsequent adjudication as to the title of leases renders our original portion of the order null and void.

If you feel that further discussion of these orders is necessary, I will be glad to arrange a meeting with you for Mr. Kitts and myself; however, I am firmly convinced that the orders that we have entered are proper.