

Affidavit of Publication

NOTICE OF PUBLICATION
STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION
SANTA FE, NEW MEXICO
The State of New Mexico by its Oil Conservation Commission hereby gives notice pursuant to law and the Rules and Regulations of said Commission promulgated thereunder of the following public hearing to be held at 9:00 o'clock a.m. on December 10, 1958, at Mabry Hall, State Capitol, Santa Fe, New Mexico, before Daniel S. Nutter, Examiner, duly appointed for said hearing as provided by law.
STATE OF NEW MEXICO TO:
All named parties and persons having any right, title, interest or claim in the following case, and notice to the public.
(Note: All land descriptions herein refer to the New Mexico Principal Meridian, whether or not so stated.)
CASE 1567:
In the matter of the application of Olsen Oils, Inc., for a non-standard gas proration unit.
Applicant, in the above-styled cause, seeks an order establishing a 160-acre non-standard gas proration unit in the Tubb Gas Pool consisting of the NW¼ NW¼, SW¼ NW¼ and the NW¼ SW¼ of Section 25, Township 22 South, Range 37 East, Lea County, New Mexico; or in the alternative for a compulsory pooling order pooling all interests within the vertical limits of the Tubb Gas Pool in the NW¼ of said Section 25 as one Tubb Gas Unit and a like order pooling all interests within the vertical limits of the Tubb Gas Pool in the SW¼ of said Section 25 as another Tubb Gas Unit.
GIVEN under the seal of the New Mexico Oil Conservation Commission at Santa Fe, New Mexico, on this 24th day of November, 1958.
STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION
(Snd) A. L. PORTER, Jr., Secretary
(SEAL)
(Published: November 23, 1958)

State of New Mexico, }
County of Santa Fe } ss.

I, Emory C. Baird, being first
duly sworn, declare and say that I am the (Business Manager) (Editor) of the
THE NEW MEXICAN, a daily newspaper,
published in the English Language, and having a general circulation in the City and
County of Santa Fe, State of New Mexico, and being a newspaper duly qualified to
publish legal notices and advertisements under the provisions of Chapter 167 of the
Session Laws of 1937; that the publication, a copy of which is hereto attached, was
published in said paper once each week for one consecutive weeks, and
on the same day of each week in the regular issue of the paper during the time of
publication, and that the notice was published in the newspaper proper, and not in
any supplement, once each week for one weeks consecutively, the first
publication being on the 2 th day of Nov. 1958, and the
last publication on the day of 19; that pay-
ment for said advertisement has been (duly made), or (assessed as court costs); that
the undersigned has personal knowledge of the matters and things set forth in this
affidavit.

Emory C. Baird
Editor - Manager.

Subscribed and sworn to before me this 1st
day of Dec., A.D., 1958

Resmie D. Kell
Notary Public.

My commission expires
June 16, 1961

times, one time at \$ 6.00
lines, times, \$
Tax \$
Total \$ 6.00
Received payment,
By

C. N. MORRIS
LAWYER
TELEPHONE 7011
P. O. BOX 977
EUNICE, NEW MEXICO

September 20, 1960

Mr. A. L. Porter, Jr.
Secretary, Oil Conservation Commission
Box 871
Santa Fe, New Mexico


Re: Application of Amanda E.
Sims and George W. Sims,
Case No. 2051

Dear Mr. Porter:

Please find enclosed three (3) copies of
Application for Rehearing in the above matter.

A copy of this Application is being
forwarded to the Respondent.

Yours very truly,


C. N. Morris

Enclosures:
CNM/mal
cc: Mr. W. D. Girand

C. N. MORRIS

ATTORNEY AT LAW

TELEPHONE 396-4912

122 AN A HALF N. LOVE

LOVINGTON, NEW MEXICO

September 29, 1961


Mr. A. L. Porter, Jr.
Member and Secretary of the
Oil Conservation Commission
Santa Fe, New Mexico

Dear Mr. Porter:

Would you please forward to me the complete transcript, record, order and exhibits in your cases numbered 929, 1567 and 2051 to enable me to offer these matters to the Court in the petition for review of your order No. R 1766 and R 1766A which are before the District Court of Lea County.

Since it is essential that these records be introduced to the Court to resolve the appeal from the last two mentioned orders, I would appreciate receipt of same without delay.

Yours very truly,


C. N. Morris

CNM:pmr

GOVERNOR
JOHN BURROUGHS
CHAIRMAN

State of New Mexico
Oil Conservation Commission

LAND COMMISSIONER
MURRAY E. MORGAN
MEMBER



STATE GEOLOGIST
A. L. PORTER, JR.
SECRETARY DIRECTOR

P. O. BOX 871
SANTA FE

September 28, 1960

Mr. C. N. Morris
Attorney-at-Law
P. O. Box 977
Eunice, New Mexico

Re: Case No. 2051
Order No. R-1786-A
Applicant:

Amanda E. Sims & George W. Sims

Dear Sir:

Enclosed herewith are two copies of the above-referenced Commission order recently entered in the subject case.

Very truly yours,

A. L. PORTER, Jr.,
Secretary-Director

ir/

Carbon copy of order also sent to:

Hobbs OCC X
Artesia OCC
Aztec OCC

Other W. D. Girard

CERTIFICATION

I, A. L. PORTER, JR., Secretary-Director
of the New Mexico Oil Conservation Commission,
do hereby certify that this order, Order
No. R-1766, is a true and correct copy of the
original on file in the Commission's offices.

IN WITNESS WHEREOF, I have affixed my hand
and Commission seal this 16th day of November,
1961.



A. L. Porter, Jr.
A. L. Porter, Jr.

Subscribed and sworn to before me this 16th day
of November, 1961.

Ila Rodriguez
Notary Public

My commission expires:

September 22, 1965

OIL CONSERVATION COMMISSION

P. O. BOX 871

SANTA FE, NEW MEXICO

October 4, 1961

Mr. C. N. Morris
Attorney at Law
122½ North Love
Lovington, New Mexico

Dear Mr. Morris:

In accordance with your request of September 29, 1961, I am forwarding to you the transcripts, exhibits, and orders in Cases Nos. 929, 1567, and 2051. Specifically, the items enclosed are as follows:

Case No. 929

Transcript of proceedings, dated July 14, 1955
Order No. R-677
Exhibit No. 1 - Contour Map

Case No. 1567

Transcript of hearing, dated December 10, 1958
Order No. R-1310
Exhibit No. 1 - Plat
Exhibit No. 2 - Contour Map
Exhibit No. 3 - Receipt for Certified Mail

Case No. 2051

Transcript of hearing, dated August 18, 1960
Order No. R-1766
Order No. R-1766-A
Exhibit No. 1 - Communitization Agreement

In the event you desire the original of the orders, they can be supplied to you, however, it will somewhat inconvenience the Commission and upset its records to do so. I will raise

OIL CONSERVATION COMMISSION

P. O. BOX 871

SANTA FE, NEW MEXICO

-2-

October 4, 1961

Mr. C. N. Morris
Attorney at Law
Lovington, New Mexico

no objection if the copies of the orders that I am supplying you with this letter are introduced in court rather than the originals. In this regard, your attention is directed to the last part of Section 65-3-6 of the statutes which provides that a copy of the order may properly be received as evidence in court.

If there is anything further that you need from these case files, please let me know.

Very truly yours,

RICHARD S. MORRIS
Attorney

RSM/esr
Enclosures

November 30, 1961

Honorable Caswell S. Neal
District Judge
Carlsbad, New Mexico

Re: Sims v. Oil Conservation Commission
Lea County No. 15860

Dear Judge Neal:

Enclosed is petitioners' memorandum
brief for your consideration in the decision of
the above matter.

Respectfully submitted,

Richard S. Morris

CNM:mr
Enclosure

cc: Girard, Cowan & Reese
Campbell & Russell
— Richard S. Morris

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IN THE DISTRICT COURT OF LEA COUNTY, STATE OF NEW MEXICO

AMANDA E. SIMS and GEORGE W.
SIMS,

Petitioners,

-vs-

No. 18,860

HONORABLE JOHN BURROUGHS,
CHAIRMAN, MURRY E. MORGAN,
MEMBER, A. L. PORTER, JR.,
MEMBER, SECRETARY OF THE OIL
CONSERVATION COMMISSION OF
THE STATE OF NEW MEXICO; AND
OLSEN OILS, INC.,

Respondents.

PETITIONERS' MEMORANDUM BRIEF

THAT THE NEW MEXICO OIL CONSERVATION
COMMISSION WAS WITHOUT JURISDICTION
TO ENTER ORDER NO. R-1310

The petitioners respectfully show the Court that the New Mexico Oil Conservation Commission was without authority to enter Order No. R-1310 in cause No. 1567 for the reason that the property of petitioners which such order attempted to affect had already been established as a production unit for Tubb Gas by Order No. R-677 in case No. 929. Order No. R-677 was obtained upon the application of respondent Olsen and upon a showing to the Commission that the granting of such order would prevent waste and would protect the correlative rights of all parties. Production which was obtained on the acreage covered by Order No. R-677 was attributed to such property and produced for a period of several months.

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The authority of the New Mexico Oil Conservation concerning the pooling of properties for the production of oil and gas, which is contained in Section 65-3-14, New Mexico Statutes Annotated 1953, limits the required pooling to cases when and to the extent that the smallness or shape of a separately owned tract would, under the enforcement of a uniform spacing plan or proration unit, otherwise deprive or tend to deprive the owner of such tract of the opportunity to recover his just and equitable share of the crude petroleum or natural gas or both in the pool. This authority is set out in sub-section (c) of the section above cited and the only modification of this authority is contained in sub-section (e) of such statute. Sub-section (e) insofar as it provides,

whenever it appears that the owners in any pool have agreed upon a plan for the spacing of wells, or upon a plan or method of distribution of any allowable fixed by the commission for the pool, or upon any other plan for the development or operation of such pool, which plan, in the judgment of the commission, has the effect of preventing waste as prohibited by this act and is fair to the royalty owners in such pool, then such plan shall be adopted by the commission with respect to such pool,

was fully effectuated when Order No. R-677 was adopted by the Commission. That order was based upon substantial evidence that the granting of the order would prevent waste and would protect the correlative rights of the parties. The only other provision in the statute authorizing the Commission to take any action concerning modification, provides,

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however, the commission, upon hearing and after notice, may subsequently modify any such plan to the extent necessary to prevent waste as prohibited by this act.

This language can only mean that the previous order can be modified upon hearing and after notice of the Commission's intention to modify the previous order. The notice given in case No. 1567, which is a part of the record herein, gave notice as follows:

Application of Olsen Oils, Inc., for a non-standard gas proration unit. Applicant, in the above-styled cause, seeks an order establishing a 160-acre non-standard gas proration unit in the Tubb Gas Pool consisting of the N/2 NW/4, SW/4 NW/4 and the NW/4 SW/4 of Section 25, Township 22 South, Range 37 East, Lea County, New Mexico; or in the alternative for a compulsory pooling order pooling all interests within the vertical limits of the Tubb Gas Pool in the NW/4 of said Section 25 as one Tubb Gas Unit and a like order pooling all interests within the vertical limits of the Tubb Gas Pool in the SW/4 of said Section 25 as another Tubb Gas Unit.

The Court will note that nowhere in the notice of hearing was there any notice or any indication that the purpose of the hearing was to modify, vacate, set aside or otherwise effect Order No. R-677.

The Supreme Court of Oklahoma in CARTER OIL CO. v. STATE, 238 P.2d 300, considered this very matter and determined the issue of the validity of the modifying order when it stated:

We hold that the Corporation Commission is without power or authority to review and modify a former order, establishing a well spacing unit, which order has become final, without first giving statutory notice, to all interested parties, of a hearing to be had on the question of modification or change of the order.

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The Court is also urged to take note that the authority of the Commission to change any existing final order, if sub-section (e) of Section 65-3-14 gives such authority, can be done only "to the extent necessary to prevent waste." In that connection the Court is urged that there was no basis upon which the Commission should modify Order No. R-677 for the testimony adduced at the hearing of Cause No. 1567 was direct and positive that the granting of the interlocking unit asked for would prevent waste and protect the correlative rights (tr - 6). In that connection also we wish to point out to the Court that the evidence supporting the issuance of Order No. R-677 was exactly the same as the evidence presented to the Commission in the hearing in Cause No. 1567 (tr 4-6). In other words, there was no new evidence to support a modification of the previous order and since the authority of the Commission to modify any such order, if such authority exists at all, is upon hearing and after notice to modify the order to the extent necessary to prevent waste. The question of the change of such an order following the issuance of an order which is not appealed from was decided in WOOD OIL CO, et al v. CORPORATION COMMISSION, et al , 239 P.2d 1021, wherein the Court stated:

The motion to vacate and modify order No. 19890 did not specify any substantial change of condition of the area nor did the evidence reveal such change. The contentions urged in support of the motion were known and could have been urged at the hearing on which the original order was based. Plaintiffs now say that the order sought to be vacated was inequitable, unjust and unconscionable, but such complaints could properly have been

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urged only on appeal.

This seems to me to be the identical position which Olsen undertook in the present case. Order No. R-677 was issued on its application, such order became final, was acted upon and relied upon by all the parties for a period of years and then without notice of its intention to modify such order, Olsen in case No. 1567 without any change in circumstances sought to have Order No. R-677 set aside.

Order No. R-677 was not subject to collateral attack and the attempt of respondents to collaterally attack the order by modifying it was identical with the situations existing in both the Carter Oil Company and Wood Oil Company cases, supra, and in each of those cases the Court asserted that the attempt to so do was void.

CONCLUSION

Order No. R-677 entered by the New Mexico Oil Conservation Commission in Cause No. 929 became a final order of the Commission when it was not appealed from and the rights of the parties to the production of Tubb Gas from the area involved in such order were determined. Neither the Commission nor the moving parties in Cause No. 1567 gave any notice that a hearing would be held to modify Order No. R-677 nor did their petition to amend or modify such order recite any facts of any changed conditions or of any existing waste which justified the modifying of the order and such modifying order (R-1310) entered in Case No. 1567

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should be declared to be void as an attempt to collaterally attack a final order of the Commission in a hearing in which the Commission did not have jurisdiction over the parties or the subject matter.

Respectfully submitted,

C. N. MORRIS
Lovington, New Mexico
Attorney for Petitioners

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BEFORE EXAMINER PUTTER
OIL CONSERVATION COMMISSION
EXHIBIT NO. 1
CASE NO. 12-77