# Affidavit of Publication

	State of New Mexico,
	State of New Mexico, County of Santa Fe
	I,
	duly sworn, declare and say that I am the (Business Manager) (Editor) of the
	THE NEW MEXICAN 13 , a daily newspaper,
Γ,	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 forconsecutive weeks, and
5, 1- b	on the same day of each week in the regular issue of the paper during the time of
1, 11	publication, and that the notice was published in the newspaper proper, and not in
r'i- b t, a t, a ts ts ts a ne er	any supplement, once each week for
ts id	publication being on the 2 th day of Nov. , 19 58, and the
a ņe	publication being on the
er	last publication on theday of
x- ta of	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.
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	Notary Public.
	My commission expires
	June 16, 1961

NOTICE OF PUBLICATION STATE OF NEW MEXICO OIL CONSERVATION COMMISSION SANTA FE. NEW MEXICO The State of New Mexico by its Oil Con-servation Commission hereby gives notice pursuant to law and the Rules and Regu-lations of said Commission promulgated thereunder of the following public hearing to be held at 9:00 o'clock a.m. on De-cember 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 havag any right, tille, interest er 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 mastier of the spplication of Oisen 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 Fool consisting of the NV4 NV4, SW4 NW4 and the NW4 SW4 of Section 25, Township 22 South, Range 37 East Lea County, New Mexico; or in the alterna tive for a compulsory pooling order pool ing all interests within the vertical limit of the Tubb Gas Pool in the NW4 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 SW4 of said Section 25 as anothe Tubb Gas Unit. GIVEN under the seal of the New Mexi ico Oil Conservation Commission at Sant Fe, New Mexico, on this 24th day of November, 1958. STATE OF NEW MEXICO OIL CONSERVATION COMMISSIOI (SEAL) (Fablined: November 28, 1959)

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#### C. N. MORRIS LAWYER TELEPHONE 7011 P. O. BOX 877 EUNICE, NEW MEXICO

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,

0. N. Morris

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

## C. N. MORRIS

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, he could C. N. Morris

CNM:pmr

GOVERNOR John Burroughs Chairman

# State of New Mexico Oil Conservation Commission

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

LAND COMMISSIONER MURRAY E. MORGAN MEMBER

> 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. <u>R-1786-A</u> 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 V. D. Girand

#### 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.



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

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 122<sup>1</sup>; 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 -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, 1951

Henoracie Caswell 5. Neal District Judge Carisuad, New Mexico

> Re: Sims v. Al Conservation Commission Lea County No. 18860

Lear Judge Neal :

nclosed is positioners' memorandum brief for your consideration in the decision of the above matter.

cospectrally summitted,

... MOTLS

CNM:pmr Anclosure

cc: Hrand, Cowan & Heese Campbell & Russell - Richard 3. Morris



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

AMANDA E. SINS and GEORGE W. SIMS,

Petitioners,

-V8-

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 CILS, 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 Oas 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.



The authority of the New Mexico (11 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 Sub-section (e) insofar as it provides, statute.

> 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,



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 Cils, Inc., for a non-standard gas proration unit. Applicant, in the above-styled cause, seeks an order establishing a 160-scre 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, Les County, New Mexico; or in the alternative for a compulsery 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 <u>CARTER OIL CO. v. STATE</u>, 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.



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



urged only on appeal.

This seems to me to be the identical position which Clasen 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 Cdl Company and Wood Cdl 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

# ILLEGIBLE

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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