

BEFORE THE
OIL CONSERVATION COMMISSION
September 21, 1960

Examiner Hearing

-----)
IN THE MATTER OF:)
)
Application of W. H. Swearingen for an)
amendment of Order No. R-1748. Applicant,)
in the above-styled cause, seeks an)
amendment of Order No. R-1748 to include)
the SE/4 NW/4 of Section 21 with the)
remainder of the N/2 of said Section 21,)
both in Township 18 South, Range 26 East,)
Eddy County, New Mexico, to form a)
standard 320-acre gas unit in the Atoka-)
Pennsylvanian Gas Pool. Applicant further)
seeks a determination of the well costs)
which are to be paid by the parties.)
-----)

CASE NO.
2080

BEFORE:

Daniel S. Nutter, Examiner
Oliver E. Payne

TRANSCRIPT OF PROCEEDINGS

MR. NUTTER: The hearing will come to order. The next case will be 2080.

MR. PAYNE: Application of W. H. Swearingen for an amendment of Order No. R-1748.

MR. BARKER: Gentlemen, I am Charles B. Barker, attorney of Santa Fe. I represent the applicant W. H. Swearingen. This case, I believe, gentlemen, is before you upon application for a re-hearing upon the order of the Commission, Order Number R-1748, in which order a non-standard unit of 280 acres in the north half



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of Section 21, Township 18 South, Range 26 East, was granted to the applicant, Charles Lovelace. My client, Mr. Swearingen, is the owner of the southeast quarter of the northwest quarter of that section. I do not know that, first I should like to be advised whether this is a hearing before the examiner and not before the Commission as a whole?

MR. PAYNE: It is a hearing before the Examiner, Mr. Barker.

MR. BARKER: In that case I think perhaps there is nothing by way of testimony unless I might be permitted to offer evidence as to the ownership, and to that end I will ask Mr. Swearingen be sworn.

MR. PAYNE: All right, sir.

(Witness sworn.)

W. H. SWEARINGEN

called as a witness, having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BARKER:

Q Will you state your name?

A W. H. Swearingen.

Q Where do you live?

A Santa Fe.

Q Are you the owner of the southeast quarter of the northeast quarter --



A Of the northwest.

Q -- quarter of Section 21, South Eddy County, New Mexico?

A Yes, sir.

Q How long have you been the owner of that particular 40 acre tract?

A Twenty some years, I don't know how long.

Q Do you have the deed under which you acquired the ownership?

A Yes.

Q May I have this deed marked for identification, please?

(Whereupon, Applicant's Exhibit Number 1 was marked for identification.)

MR. NUTTER: Exhibit Number 1 in Case 2080. However, we can photostat this.

MR. BARKER: I can, if the deed will be received in evidence, and a photostat be substituted for the original.

MR. NUTTER: This would be fine.

Q (By Mr. Barker) This is the deed by which you acquired title?

A It is.

Q If that can be done, I will leave that to be photostated. Just for the purpose of making it more clear to the Examiner, I would like to have this little diagram entered also.

(Whereupon, Applicant's Exhibit Number 2 was marked for identification.)



MR. NUTTER: This will be identified as Exhibit Number 2, Applicant's Exhibit Number 2 in Case 2080.

MR. BARKER: I have nothing more for testimony.

BY MR. PAYNE:

Q I would like to pin down exactly what you are seeking in this application.

A I am just seeking to join the unit and be in there.

Q You are also seeking a determination as to the proper manner in which well costs are to be attributed?

A MR. BARKER: I think I can answer that perhaps this way. It is our position that we should be permitted to join this unit as we have heretofore requested under the provisions of sub-section C of Section 65-3-4-14. I think we become squarely before it as set forth by the law inasmuch as apparently Mr. Swearingen and Mr. Loveless who I believe is the proposed operator under the non-standard unit granted him, are not able to agree on the terms. I believe it is incumbent upon the Commission to compel the addition of this 40 to the unit and to prescribe the terms.

MR. PAYNE: Our terms were each owner pays his proportionate share of the well cost according to the amount of acreage he has in the unit, and pays them in advance of the drilling of the well, is that satisfactory?

A No, that ain't.

Q (By Mr. Payne) As I understand you are seeking a force pool and ordinarily the one that does the force pooling pays the



entire cost of the well?

MR. BARKER: That is a point of argument, but as I understand it, it is within the province of the Commission to fix the terms and prescribe the costs and so forth and, of course, that is what we are asking the Commission to do.

Q (By Mr. Payne) Do you own this acreage in fee?

A Yes.

Q You own the surface and minerals by way of tax deed?

A That is right.

Q Well, what I would like to know, how do you want the well cost to be attributed, what is your position?

A I am just leaving that up to the Commission.

MR. NUTTER: It would be helpful if we had a suggestion.

MR. BARKER: Under the circumstances we believe that the proposition we have made heretofore which I assume is in the record, we believe that the, after the costs are fixed, are determined, that the costs should be paid from the production, that portion of the production to be Mr. Swearingen and that the proceeds of the sale of oil or gas or both which should be impounded and held until the costs of the well is paid for.

MR. NUTTER: In the event there wasn't any production how would the cost be paid out?

MR. BARKER: Well, we haven't considered that.

A I believe I can answer that. They are the ones that are pushing the development.



MR. PAYNE: They have a non-standard on which we can drill a well?

A I say they are the ones that are pushing this development.

Q (By Mr. Payne) You wish to work into this unit as a working interest owner. Ordinarily they help put up their proportion of the well cost in advance, they together share the risk of the dry hole?

A You make your decision.

MR. BARKER: I might add, we believe that in the event we should be granted the privilege as I have suggested, that I think Mr. Swearingen should pay interest upon his share of the cost of the well, that is only fair. That is, I think is all that I have to offer this morning. I assume, of course, that the Commission, I might say, gentlemen, I am completely unfamiliar with many of the details which are covered by your rules and regulations, I am requesting that whatever rules and regulations that the Commission has that pertain to the unitization or proration will be considered in reaching a decision in this matter. It, of course, is perfectly obvious I think, I believe the Examiner should take judicial notice of the fact that if the well should be drilled and produced, that location which has been granted, which is 330 feet from the boundary line of Mr. Swearingen's tract, he would not be permitted to drill the well on his own land, certainly not a gas well. I understand this is, if not so designated, that the likelihood is, it is to be designated as a gas pool. So that he would not be permitted and have no way of protecting himself



unless it would be joned in this unit. It puts him in rather a difficult position, assuming which for the purpose of the argument we can assume that he had no means, not able to advance his share of the cost of the well and this well is permitted to produce, you can see what would happen to him. And I somewhat doubt whether the courts would ever sustain such a proposition. There are so many angles to this thing and many of which I am not particularly familiar, but it does seem obvious to me that if we do know the position and could not advance his proportionate cost of the well and this well was permitted to go ahead and produce, it would be taking his property without due process, and it does not seem to me that could be legally done.

MR. NUTTER: Mr. Barker, are you in the position to answer this question? Was the applicant today present at the hearing at which the non-standard unit was proposed and did he object to the formation of the non-standard unit?

MR. BARKER: Well, he can answer that.

A I offered to join it.

MR. BARKER: Well, the question was, were you present?

A No, I wasn't present at the hearing.

MR. NUTTER: Did you enter any objection to the establishment of the non-standard unit?

A I offered to join by a written notice.

MR. BARKER: I think you will find it in the record.

MR. PAYNE: You are seeking this upon terms that you



are just and reasonable?

MR. BARKER: That that is true as provided by the statute. I appreciate the Commission has a very wide discretion, more than I think is usually granted to an administrative body, but the statute does say, does give the Commission a very wide discretion in determining this question, and we simply ask that the Commission consider the circumstances and exercise its discretion in such a manner that no injustice can be done to anybody.

MR. NUTTER: Do you have any further question of the witness? Does anyone have any inquiries? Mr. Newmann.

MR. NEWMANN: I am Kirk Newmann, representing Mr. Loveless as operator of the proposed unit.

BY MR. NEWMANN:

Q Mr. Swearingen, were you offered to be permitted to join the unit and pay your own way in the unit as the other operators in the unit are doing?

A Well no, I wasn't offered that opportunity.

Q Were you asked to sign an operating agreement and pay your part of the costs of the well?

A Well, they wanted me to pay my part of the cost of the well.

Q In other words, you weren't offered an opportunity without paying any costs, is that what you are saying?

A No. I am trying to tell you I was offered the opportunity to pay my part of the costs of the well, but not offered the



opportunity to join the unit.

Q You are hereby offered the opportunity to join the unit if you pay your part of the cost of the well, if you pay a 45% royalty, if would give a lease on that?

A The way that works out, 5.625%, not 45%.

Q That is of the production on 320 acres?

A That is right.

Q Well, I didn't, I don't think they intend to have you pay 45% of the production in a 40 acre lease.

A Let me get a little further here. I was called yesterday evening by one of the partners of this operation, they said the well would never be drilled.

Q I don't know who that partner was, he is in for a rude shock, all the other partners think it will.

MR. LOVELESS: Would you care to tell us who that partner was?

A He represented himself as representing agent.

MR. PAYNE: If the well is never drilled, your property couldn't be drained?

A That is right. The only thing I am trying to do is just protect myself.

Q (By Mr. Newmann) Mr. Swearingen, I think it is more or less customary in the industry that when a participant in the lease has his share of the drilling costs recovered out of production that the person who pays that cost is allowed to recover 150% before the



non-paying partner, participant, would you be willing to do that?

A No. That is, it takes five or six years to pay out. I will agree that they are entitled to interest until they are paid.

Q We would like to go on record on behalf the operator, Mr. Swearingen will be permitted to join the unit provided that he as all the other operators in the unit pay their way or put up their part of the drilling completion equipment costs in advance and sign the operating agreement which has been signed by Yates Petroleum Corporation, the Yates Brothers, Etz T. B. Jackson, Charles, and I understand Harry Olson Development Corporation. We are in the process right now of that group acquiring part of the interest of the Brothers and they have consented to me over the phone to the terms of the operator agreement; and if he will join on the same basis that all the other unit operators he is more than welcome.

A Well, let me state this is just street say, in gossip, Jackson themselves jumped me and said him and Etz weren't interested in that at all.

MR. PAYNE: I don't believe any of this is relevant to the case. Mr. Newmann, on behalf of the operator of the 280 acres, would you have any objection to putting up the entire well costs and Mr. Swearingen come into the unit, his proportionate share taken out of the production plus a reasonable cost for supervision and operation of the unit which can or may or may not be construed as including interest?

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MR. NEWMANN: If the liability, if there are no bonuses for putting up his part of the development cost at all, then their liability for dry hole costs should remain, of course.

MR. PAYNE: Mr. Newmann, we get no bonus for assuming the risk, which our statute does not allow. Incidentally, and that was why you did not attempt to force pool?

MR. NEWMANN: He is attempting to force pool. We will be happy to pay all the costs and pay our share of the position.

MR. PAYNE: I think all the positions of the parties are clear.

MR. BARKER: We have nothing more.

MR. NUTTER: Does anyone have any further questions of Mr. Swearingen?

MR. LOVELESS: His application requested to arrive at a estimated cost for the completed well. I don't know what the purpose of that is as pertaining to that. If he doesn't propose to put up any of the money, I wondered what he had in mind in trying to make that determination.

MR. NUTTER: Mr. Loveless, I don't know if the application actually requests that he be determined the cost of the well or not. The last paragraph of the application reads as follows: "That the Commission enter an order requiring that the said 40 acres of land of the applicant be added to the drilling unit upon such terms and conditions that are just and reasonable to all parts in interest." That is the only place I find he requests anything relative to costs.



MR. LOVELESS: It says --

MR. NUTTER: If there is no further questions of Mr. Swearingen he may be excused.

(Witness excused.)

MR. NUTTER: Do you have anything further, Mr. Barker?

MR. BARKER: Nothing further.

MR. NUTTER: Does anyone have anything further? We will take the case under advisement, and call Case 2081.

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STATE OF NEW MEXICO)
 : ss
COUNTY OF BERNALILLO)

I, LEW NELSON, Notary Public in and for the County of Bernalillo, State of New Mexico, do hereby certify that the foregoing and attached transcript of proceedings before the Oil Conservation Commission was reported by me in stenotype and reduced to typewritten transcript by me and/or under my personal supervision and that the same is a true and correct record to the best of my knowledge, skill and ability.

Witness my hand and seal this the 30 day of September, 1960, in the City of Albuquerque, County of Bernalillo, State of New Mexico.

Lew Nelson
NOTARY PUBLIC

My Commission Expires:
June 1st, 1964

I do hereby certify that the foregoing is a complete record of the proceedings in the Examiner hearing of Case No. 2080, heard by me on 9/21, 1960.
[Signature], Examiner
New Mexico Oil Conservation Commission

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>
W. H. SWEARINGEN	2	
By Mr. Payne	4	
By Mr. Newmann	8	

<u>EXHIBITS</u>	FOR IDENTIFICATION	OFFERED
Applicant's No. 1	3	
Applicant's No. 2	3	

