

DEARNLEY-MEIER REPORTING SERVICE, Inc.

PHONE CM 3-6691

ALBUQUERQUE, NEW MEXICO

BEFORE THE
OIL CONSERVATION COMMISSION
SANTA FE, NEW MEXICO
May 24, 1960

EXAMINER HEARING

IN THE MATTER OF:

CASE 2288

TRANSCRIPT OF HEARING



BEFORE THE
OIL CONSERVATION COMMISSION
SANTA FE, NEW MEXICO
May 24, 1961

EXAMINER HEARING

IN THE MATTER OF: :

CASE 2288 Application of Southwest Production Company :
for two non-standard gas proration units, San :
Juan County, New Mexico. Applicant, in the :
above-styled cause, seeks the establishment :
of two non-standard gas proration units in :
the Basin-Dakota Gas Pool, San Juan County, :
New Mexico, described as follows: :

(1) W/2 of Section 7, Township 30 North, :
Range 11 West, except the 3.39-acre tract :
therein owned by Harold M. Brimhall and :
Maleta Y. Brimhall, comprising the sum total :
approximately 327.01 acres. :

(2) E/2 of Section 7, Township 30 North, :
Range 11 West, except the S/2 SW/4 SE/4; :
comprising in sum total approximately 300 :
acres. :

BEFORE:

Elvis A. Utz, Examiner.

T R A N S C R I P T O F P R O C E E D I N G S

MR. UTZ: We will call Case No. 2288.

MR. MORRIS: Application of Southwest Production Company
for two non-standard gas proration units, San Juan County, New
Mexico.

MR. UTZ: Are there any other appearances in the case?

MR. VERITY: George Verity for the Applicant.

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MR. MORRIS: Mr. Examiner, I will read into the record and give some explanation of an appearance entered by Mr. Columbus Wetzel of Phoenix, Arizona on behalf of Harold M. and Maleta Y. Brimhall at a later time.

MR. UTZ: You may proceed.

DIRECT EXAMINATION

BY MR. VERITY:

Q Will you state your name, please.

A Jack E. Jones.

Q Mr. Jones, what is your occupation at the present time?

A I'm a land man.

Q Have you been employed extensively recently by Southwest Production Company?

A Yes, sir; I have.

Q Have you endeavored to make, to obtain leases for them under all the west half of Section 7, Township 30 North, Range 11 West in San Juan County?

A Yes, I have.

Q Will you tell the Commission, please, what Southwest Production Company has done?

A We have leased everything except a tract of land owned by Barbara Burnham and the Brimhalls which comprises approximately 3.39 acres.

Q Have you endeavored to obtain a lease from these people?

A Yes, I have.



Q Have you also endeavored to have them join in the drilling of a well to the Dakota?

A Yes, I have.

Q Will you please tell the Commission of your efforts in this regard?

A Well, I made two personal contacts with the Brimhalls and one with Mrs. Burnham. The first contact was in Phoenix with the Brimhalls and after about three hours of being called everything but a man I finally got the people settled down enough to discuss the situation and they refused to lease. They also refused to join us in the drilling of a well. The trouble seemed to be that Southwest had previously drilled a well in the north half of Section 18. It was located on the Brimhalls' land and the land is right by the river and when they dug deep pits, water had started seeping in at the time they dug. Southwest had not yet covered up the pits because they were waiting for the summer sun. Mr. Brimhall was very unhappy about that and so he refused to discuss anything else because of those damages but after I got him calmed down a while, we made arrangements to meet in Farmington the following week and we were going out to look at the land in order to arrive at a settlement of the damages. I never received any call from the Brimhalls or anything as to the time that I was supposed to meet with him. I later found out from his daughter that he had been in town but she said he hadn't bothered to call on her or her brother, that he had just come in and out. I contacted him at a later date by phone and

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talked to them and told them I wanted to talk to them. When I arrived at their house on the following day, nobody was there. So, I made about five attempts to get in touch with them and finally suggested at ten o'clock that night at which time we further discussed the problem. I made my offer and they again refused.

That was it.

Q How much did they ask you in damages for the location of the well up in Section 18?

A \$5,000.

Q On your first occasion to contact these people, did you offer to buy or lease from them at the same price you bought the other lease?

A Yes.

Q On your second contact, did you make any further offers?

A I doubled the price and made an offer on the damage which I felt was somewhat liberal.

Q Does Southwest Productions think it's possible to deal with them on any kind of reasonable basis?

A No, sir.

Q This is the reason that they want only a non-standard unit?

A Yes, sir. We feel that if we appear to force pool or have them in there that it would just be -- well, the relationship would just be in for further trouble.

(Whereupon, Applicant's Exhibit 1

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marked for identification.)

Q I hand you what the reporter has marked as Exhibit No. 1.
Will you please tell us what that is?

A This is a print of the official survey plat of Township
30 North, Range 11 West.

Q Does it show the amount of acreage in the west half of
Section 7?

A Yes, it does.

Q What is the total acreage in that area?

A Three hundred thirty point four o.

Q So that there are 10.4 acres more than the usual 320 in
that half section?

A Yes.

Q I believe you said that there were 3.39 acres held by the
Brimhalls and Mrs. Burnham?

A Yes.

Q This leaves 327.01 acres in the unit without the 3.39?

A Yes.

Q Has Southwestern Productions already drilled a well in the
west half?

A Yes.

Q It is a standard location in the Capitan?

A Yes, the Nell Hall No. 1.

Q That was completed in the Dakota?

A Yes.

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MR. VERITY: That's all we have at the moment on the application to the west.

MR. MORRIS: Do you plan to submit this in two phases of the case?

MR. VERITY: I have no objection at all to proceeding with all my evidence. Actually, much of it is the same with regard to this leasing, so I'll go ahead with the other if you want me to.

Q (By Mr. Verity) Does Southwest Production Company have leases in the east half of Section 7?

A Yes, sir.

Q Do you have leases from everyone in that half except the south half of the southwest quarter of the southeast quarter?

A Yes.

Q And who owns that?

A Harold M. Brimhall and Maleta Y. Brimhall.

Q You have offered to obtain the lease from them on the 3.39 acres in the west half. Are you at the same time endeavoring to negotiate a lease on this 20 acres?

A Yes.

Q Have you also endeavored to get them to join in the drilling of a well on the east half?

A Yes.

Q Are the results the same?

A Yes.

Q Is the east half a standard sized half section?



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A Yes.

Q And that would leave 300 acres in a unit without the 20 acres?

A Yes, sir.

Q Do you feel it's impossible to obtain any lease from them on this 20 acres on any kind of reasonable basis?

A I believe so, at the present time, though it is my plan to continue to attempt to obtain leases from them, but I -- on the basis of past experience, I believe I will be unsuccessful.

Q Is the same thing true with regard to their joining you?

A Yes.

Q Have you found these people irrational in endeavoring to deal with them?

A Yes, sir.

MR. VERITY: I believe that's all we have.

MR. UTZ: Do you want to offer your exhibits?

MR. VERITY: We will offer Exhibit 1 and I would also like to offer for the Commission's consideration Order No. R-1748 wherein the Commission entered a 280-acre non-standard unit in an identical situation.

That's all the testimony we have.

MR. UTZ: Are there any other questions of the witness?

MR. MORRIS: Yes, sir.

MR. MORRIS:

Q Mr. Jones, in your application for the 327.01 acre unit,



it was stated that Harold M. Brimhall and Maleta Y. Brimhall were the owners of the 3.39 acre tract left out. In your testimony you stated that Barbara Burnham was the owner. Could you explain that?

A Well, at the time Mr. Verity prepared the application I was going upon the information supplied by another party. I subsequently ran the record down and discovered that a deed had been given to Maleta Brimhall and Barbara Burnham covering that acreage.

Q Is that ownership in joint tenancy?

A Yes.

Q So any position taken by Mrs. Brimhall --

A I specifically upon finding out that Mrs. Brimhall had an interest in the land, I contacted her and offered to lease the land from her or to ask her to join us in the drilling of the well and she said she could not do it -- "If I were to do that, mother would kill me", so we dropped it right there.

Q Mr. Jones, considering the first non-standard unit that you testified with reference to, where geographically is the 3.39 acre tract located roughly?

A Roughly, it would be located in the northeast of the southeast, or about right on the border between the northeast of the southwest and the southeast of the northwest of the area fronting on the highway.

Q Is it on the extremity of the unit?

A There is one small parcel between it and the external



boundary, the extended boundary of the unit.

Q It would not be possible for the 3.39 acre tract to be included in any other proration unit formed in the area?

A No, sir.

Q That also holds true of the 20 acres omitted from the second tract under consideration?

A The south half of the southwest of the southeast. It could possibly; because we have the north half of eighteen units.

Q These two tracts owned by the Brimhalls are pretty well isolated?

A Yes, sir.

Q And for that reason, would you expect the Brimhalls to ever recover their share of the gas produced from the Basin-Dakota?

MR. VERITY: I object to that question. I think the Brimhalls have got legal opportunities to pursue their economic rights with regard to this land and I don't think that this hearing can or will cut off any of these rights even if the Commission grants the order requested.

MR. MORRIS: Would Southwest Production Company care to take the position at the present time on their attitude toward a forced pooling case that might be brought at a later date by the Brimhalls?

MR. VERITY: I believe I can answer that question. We think that the Brimhalls are entitled to forced pool this land if they want to do it. The statute gives them that right and this is



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their remedy, but to get along with them on any kind of agreement is an impossibility, and for us to force pool them we think would just further complicate the situation and we feel that they have got this remedy if they want to pursue it any further. It would be a relatively simple matter for them to obtain this right and we would be perfectly happy and in addition to that even after getting a non-standard order, if the Commission will give us one, we still aren't going to be unreasonable. We will do everything we can to live with these people and to assist them in obtaining their proper economic rights, but we sure don't want to throw our position with regard to what we feel is the only way that we can proceed and that is since they have refused at every juncture to do anything, they have been adamant in not wanting to join this well or enter into it or make any kind of arrangement, we think the only thing for us to do is to drill it ourselves and we think this is a right which we should have under the constitution and statutes and rules and regulations of the Commission.

MR. MORRIS: Do I understand you correctly, Mr. Verity, that you would offer no objection to a forced pooling application brought by the owners of the acreage left out?

MR. VERITY: That's a little --

MR. MORRIS: Of course, assuming that the Commission would enter such order upon terms that are reasonable.

MR. VERITY: Yes, in line of your final statement I think it's little bit too broad, just to make a flat statement that we



wouldn't object to a pooling application because I don't know what they might do.

MR. MORRIS: You do feel that is their remedy?

MR. VERITY: Yes. And they have got a right to follow that under any kind of reasonable application. We would not object to it. I don't think it would avail us anything if we did object. The truth of the matter is if the good Lord would just remove these people from our province of operation, we would appreciate it, but we know this is not likely, and so we -- I mean just physically, not permanently.

Q (By Mr. Morris) Do you feel that you made a reasonable offer to the Brimhalls and Mrs. Burnham?

A I believe I made -- I offered them twice the going rate for the acreage. I thought that was unreasonable of me but we wanted to get them so I made the offer.

Q Would you care to state what the offer was?

A It was \$100 a acre.

MR. MORRIS: I have no further questions at this time.

I would like to state the position of the Brimhalls in this case as I understood it from conferring with their attorney.

MR. UTZ: You may proceed.

THE WITNESS: In addition to the \$100, I offered 17½% royalty which was also in excess of that held by other parties in the area.

MR. MORRIS: Mr. Examiner, the Commission has received a

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letter from Mr. Columbus Wetzel, Attorney at Law, Phoenix, Arizona. This letter was received on May 23 -- yesterday. Mr. Wetzel in his letter states that he represents Meeta Y. Brimhall and Harold M. Brimhall, that they have received notice of the subject application and that they request a continuance because they have had inadequate opportunity to prepare a case to represent their position. The letter continues to state that they are protesting their inclusion into any unit being formed including their acreage because of the apparent discrepancy in the position taken in the application being brought today. I engaged in a telephone conversation with Mr. Wetzel this morning and he stated that he would withdraw his motion for a continuance and would not take any position at all in this hearing today provided that he have the right to have a hearing de novo if he did not like the order entered as a result of this hearing.

I informed Mr. Wetzel that he would have that right at any rate and I would state his position for the record at the hearing today. I would like to offer the letter received from Mr. Wetzel into evidence inasmuch as our rule concerning de novo hearings provides that any party adversely affected has the right to a de novo hearing. Certainly the Brimhalls would have the right to a de novo hearing whether any correspondence had been received or any appearance entered by their attorney at all in this hearing.

MR. VERITY: We have no objection to the offer or entry of the letter into evidence. We think that it's significant that



through their counsel, they are just underscoring our prayer for relief here in saying that they did not want to be included in this unit. We think this is further reason that the Commission should grant the prayer of each of the applications and grant two non-standard units.

That's all.

MR. MORRIS: I have no further questions.

MR. UTZ: Without objection Exhibit No. 1 will be entered into the record.

MR. VERITY: I would just like to say this much to the Commission: We feel that in cases like this that the Commission borrows trouble if they endeavor to envision what is best for people like this in this kind of a hearing. We think that the Commission should rule upon the evidence that is presented to it and that it should take cognizance of the fact that people can be difficult and that the best ends of industry and the public in general are served if people are left to their proper legal remedies. They not only have not presented any evidence why these non-standard units should not be granted, but actually pointed out that they don't want any part of this well or unit, and therefore, we think that it's incumbent for the Commission to grant the order requested in these cases. As we have already acknowledged to the Commission's counsel, we certainly would not presume to stop an application for forced pooling.

The law gives them this right if they are not satisfied with



the economic equities of the situation as they will be at the time that the next well is drilled and at the close of the drilling and completion of the one that has been already completed on the west half.

Again, we want to say that we have been reasonable with these people with or without filing an application to force pool. If there is any way to get along with them by agreement even after an order has been filed, we will do so. We earnestly solicit that the Commission allow Southwest Production Company to drill the acreage which it owns and that it be given allowable based thereon.

MR. UTZ: Your position, then, Mr. Verity is that if the Brimhalls care to recover their share of reserve under this section of land that their recourse is to application for force pooling?

MR. VERITY: That is correct, or to make a reasonable effort to come to agreement with us, either by negotiation or by legal remedy.

MR. UTZ: Are there any other questions or any other statements in this case?

The witness may be excused.

(Witness excused.)

The case will be taken under advisement.

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STATE OF NEW MEXICO)
) ss
 COUNTY OF BERNALILLO)

I, THOMAS F. HORNE, Court Reporter, in and for the County of Bernalillo, State of New Mexico, do hereby certify that the foregoing and attached Transcript of Proceedings before the New Mexico Oil Conservation Commission was reported by me in machine shorthand and reduced to typewritten transcript under my personal supervision, and that the same is a true and correct record to the best of my knowledge, skill and ability.

Thomas F. Horne

 NOTARY PUBLIC

My Commission expires:

May 4, 1965

I do hereby certify that the foregoing is a complete record of the proceedings in the Examiner hearing of Case No. 2258, heard by me on May 24, 1961.

Thomas F. Horne
 _____, Examiner
 New Mexico Oil Conservation Commission

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