

ARGUMENT FOR SUMMARY JUDGMENT

(1) Case at bar: OCC asks for enforcement of order directing Etz to re-enter and plug one of his wells in a manner prescribed by that order. Case brought under 65-3-24 authorizing OCC to seek mandatory injunction where order being violated. Not seeking penalty for violation of order (65-3-27 (b)).

(2) Well involved: Rice Andrews Well No. 1, located in the NE/4 NW/4 of Section 14, T-14-S, R-25-E, Chaves County, New Mexico. *See Complaint.*

(3) Order involved: R-2118 entered in OCC Case No. 2403 on November 17, 1961. (Copy of order attached to complaint - hand court a reference copy)

(4) Order entered following hearing before OCC Examiner (recited in order). At hearing Etz was present and testified. Hearing pursuant to authority of 65-3-11 (1).

(5) Issue at hearing whether well had been properly plugged. OCC determined it had not been and directed Etz to replug.

~~(5a) Refer to Complaint~~

(6) In order to pursue administrative remedies, Etz would have had to file application for hearing de novo within 30 days from November 17, 1961, the date the subject order was entered.

Etz filed no such application (refer to affidavit).

Order became final.

(7) Order required work to be completed by Jan. 1, 1962. Has not been re-entered and plugged to date [refer to affidavit].

~~(7a) Refer to Complaint~~

(8) In Answer, Etz alleges that well is properly plugged. This portion of Answer should be disregarded - this was the issue at Commission hearing where it was determined that the well had not been properly plugged. Not an issue in this proceeding.

This case involves only the enforcement of a valid order

of the OCC which has become final. It is not an appeal from that order.

Any attempt to defend against enforcement of order on such grounds constitutes a collateral attack.

Since defendant has raised this defense in his Answer, will argue the point that ...

\* \* \*

(9) From an examination of the Complaint and the material portion of the Answer, and from an examination of the affidavit filed in support of this motion, it appears that there is no dispute on any material fact. It also appears that the plaintiff is entitled to judgment as a matter of law.

This meets the criterion established for the granting of Summary Judgment by Morris v. Miller & Smith Manufacturing Company, decided by the New Mexico Supreme Court in an opinion filed on October 18, 1961, and as yet unreported.


(10) Submit that Summary Judgment should be entered in form of a mandatory injunction that Etz comply with OCC Order No. R-2118 by certain date (suggest April 15).

*--NLRB v. Electric Products  
101 F.2d 441 (1950)*

## Summary Judgment

In deciding whether summary judgment should be granted, the trial court views the pleadings, affidavits and admissions in a light most favorable to party opposing motion, and only if it appears that there is no dispute on any material fact and that the movant is entitled to judgment as a matter of law, should summary judgment be granted.

*Morris v. Miller & Smith Manufacturing Company, Inc.*; unreported, being decided by the Supreme Court of the State of New Mexico on October 18, 1961, (No. 6911). [69 NM —



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*Summa y gndent*

FILED: October 18, 1961

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

A. J. MORRIS,

Plaintiff-Appellant,

vs.

NO. 6 9 1 1

MILLER & SMITH MFG. CO., INC.,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

MACPHERSON, JUDGE

NORDHAUS & MOSES  
FRED TRECHEL  
Albuquerque, New Mexico

Attorneys for Appellant

SUTIN & JONES  
Albuquerque, New Mexico

Attorneys for Appellee

## O P I N I O N

COMPTON, Chief Justice.

The question presented by this appeal is whether the court erred in granting summary judgment. The pertinent provision of the applicable statute, § 21-1-1(56)(c), 1953 Comp., reads:

". . . The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. . . ."

The plaintiff brought this action to recover judgment for certain sales commissions, and filed a demand for jury trial, after which his deposition was taken by the defendant. After plaintiff's deposition was taken, but before it was filed, defendant moved for summary judgment, alleging that there did not exist a genuine issue as to any material fact. At a hearing upon the motion, summary judgment was granted dismissing plaintiff's complaint with prejudice. It is from this judgment that plaintiff appeals, contending (a) that the pleadings and the deposition of plaintiff failed to show that there is no genuine issue as to any material fact; (b) that the defendant is not entitled to judgment of dismissal as a matter of law; and (c) that the court erred in entering its order dismissing plaintiff's complaint with prejudice.

The complaint alleged an oral employment agreement whereby plaintiff's compensation was to be 4% of gross sales made to customers whose accounts were procured by plaintiff; that in accordance therewith plaintiff sold certain steel to Robert E. McKee General Contractor, Inc., between September 1, 1958 and April 4, 1959 for which defendant refused to pay plaintiff a commission of 4% but paid plaintiff for such sales at the rate of only 2%; and that a balance of \$8,921.33 is due and owing.

Defendant's answer admitted plaintiff's employment on a commission basis but denied the remaining allegations of the complaint; and, alleged payment in full; accord and satisfaction; that defendant, through its President, procured the contract in question and plaintiff agreed to service the contract for a commission of 2%; that plaintiff made out and submitted his own commission reports on the basis of 2% of gross sales on the contract in question and was paid in full; that by reason of the acts and conduct of plaintiff he is estopped to claim a 4% commission; and that if it should be determined that plaintiff was initially entitled to a 4% commission on gross sales to McKee, by his acts and conduct he voluntarily relinquished and waived his right thereto.

We summarize the facts as disclosed by the pleadings and from the deposition upon which summary judgment was granted. In May, 1955, pursuant to an oral agreement, appellant was employed by the appellee at a basic salary of \$200.00 per month with commissions of 4% on gross sales made by appellant, and with a draw to \$500.00 per month against commissions. The basic salary was increased to \$250.00 per month in December, 1955. Appellant was to receive commissions on gross sales made or negotiated by him, or procured through his efforts, but he did not expect commissions on any sales toward which he had not expended sales efforts. In addition to the sale of fabricated steel items, appellant prepared and submitted bids on large construction jobs and received 4% commissions on the gross sales

of jobs awarded to appellee as the low bidder. Appellant outlined the procedure followed by him in procuring sales on these large construction jobs for which he received a 4% commission. This procedure consisted of making the initial contact, doing take-offs on plans and specifications, preparing and submitting written bids and quoting the jobs. On this basis, from May, 1955 to September, 1958, appellant dealt with McKee and others, and received his 4% commission on gross sales to them.

In the early part of 1958 some difficulty arose between appellant and the estimators of McKee regarding a particular bid and appellant advised appellee to refuse to bid further on McKee jobs. However, in July or August of that year, Mr. Smith, an officer of appellee, was contacted by McKee directly with regard to obtaining certain fabricated steel for the Ideal Cement Company project because McKee was unable to get delivery of steel, as fast as it was required, from McKee's original supplier. Thereupon, Smith requested appellant to participate in the discussions on this job, which he did, and the contract in question was consummated with McKee.

The initial contact, however, was not made with appellant, nor did he thereafter do any take-offs, make quotations or prepare and submit written estimates, all of this being done by other personnel of appellee. In other words, appellant did not expend any sales efforts toward the procurement of this contract or follow the usual procedure outlined by him for which he had, on previous occasions, received a 4% commission. Appellant's sole participation in the negotiations for the sales contract with McKee was in the discussions relating thereto and, thereafter, in servicing the contract as liaison man, at appellee's request, for a commission of 2% of gross sales thereunder. To this, appellant states, he was "forced to reluctantly agree, under protest," feeling he was entitled to the customary 4% commission as a result of his continued contacts with McKee. However, appellant submitted his monthly commission reports to appellee wherein he figured his commissions on this job, as liaison man, at 2%, and received payment therefor. In April, 1959, appellant severed his connection with appellee and shortly thereafter brought action against appellee for an additional 2% commission on the McKee contract for the Ideal Cement Company project claiming he was entitled to the same under the terms of the oral agreement.

Appellant's contention in the court below and on appeal is that having originally procured the business of McKee for appellee, he is entitled, under the terms of their oral agreement, to a 4% commission on sales to and contracts with McKee, even though he did not thereafter negotiate the particular sale or contract personally; and his reluctant acceptance, under protest, of a lesser commission on this particular job, did not operate to relinquish or waive his rights to a larger. We do not agree. He alleged in his complaint an oral contract with appellee to compensate him on the basis of a commission of 4% of gross sales on contracts negotiated, bid and procured by him, whereas, by his deposition, it is shown that he did not negotiate, bid or procure the Ideal Cement Company project with McKee. His testimony that this contract was procured under entirely different circumstances than those outlined by him, for which he had previously received a 4% commission, and his further testimony, that appellee was contacted by McKee because McKee was unable to obtain the desired steel items from his original supplier on terms acceptable to McKee, not only fails to support the allegations contained in his complaint, that he procured the contract and was entitled to the full commission therefor, but obviates any inference or doubt that the contract was procured by appellee through any continued contact of appellant with McKee.

Appellant contends that because of appellee's mere denial that he is entitled to the 4% commission on the contract in question, and its affirmative defense that appellant has been paid in full for his services, a genuine issue of fact exists as to the terms of the oral employment agreement. In support of this contention he relies on *Severson v. Fleck*, 251 F. 2d 920 (8th Cir.). This case is not in point. It involved a written contract, the provisions of which the court found to be ambiguous, and, consequently, held that the intent of the parties was an issue of material fact for the jury; whereas, no uncertainty existed as to what was intended by the parties in the present case as is apparent from the record before us.

Appellant's position, therefore, that the terms of the oral agreement present a genuine issue of material fact is without merit. If he did not negotiate, bid or procure the contract, he is not entitled to a 4% commission on gross sales thereunder. If he is not entitled to the 4% commission, then by servicing the contract, at the request of appellee, for the agreed 2% commission, for which he received payment, it is clear that there are no triable issues of material fact.

In view of the foregoing, it is not necessary for this court to enter into a discussion of other alleged genuine issues of material fact which appellant contends exist as the result of alternative defenses contained in appellee's answer. Having concluded that appellant did not initially procure the contract, issues as to accord and satisfaction, waiver and estoppel are rendered immaterial to a determination of the controversy and require no discussion.

Under appellant's Point II, he argues that appellee is not entitled to judgment of dismissal as a matter of law. The basis of his contention being that summary judgment was not proper in this case. He cites numerous authorities supporting the well established principle that summary judgment is not proper where there are material issues of fact involved, with which we are in agreement. It is settled law that it is the function of the trial court to resolve all doubts as to the existence of such an issue against the moving party and deny the motion unless the court is convinced, from a consideration of the pleadings, depositions, admissions and affidavits, that such party is entitled to summary judgment as a matter of law. *Agnew v. Libby*, 53 N. M. 56, 201 P. 2d 775; *McLain v. Haley*, 53 N. M. 327, 207 P. 2d 1013; *Michelson v. House*, 54 N. M. 197, 218 P. 2d 861; *Aktiengesellschaft v. Lawrence Walker Co.*, 60 N. M. 154, 288 P. 2d 691; *Zengerle v. Commonwealth Insurance Co. of N. Y.*, 60 N. M. 379, 291 P. 2d 1099; *Pederson v. Lothman*, 63 N. M. 364, 320 P. 2d 378; *Hamilton v. Hughes*, 64 N. M. 1, 322 P. 2d 335; *Bogart v. Hester*, 66 N. M. 311, 347 P. 2d 327; *Ransom v. Haner*, 362 P. 2d 282 (Alaska, 1961); and *Traylor v. Black, Sivalis & Bryson*, 189 F. 2d 213 (8th Cir.). See also our recent case, *Sooner Pipe & Supply Corp. v. Doerrie*, No. 6806, 364 P. 2d 138. Tested by the foregoing rule, we conclude that the trial court on the record before him correctly determined that appellee was entitled to summary judgment as a matter of law.

It follows from the foregoing that the court did not err in dismissing appellant's complaint with prejudice. Summary judgment is more than a motion to dismiss for failure to state a cause of action upon which relief can be granted. It is by its own terms a final judgment. *Pederson v. Lothman*, *supra*. In considering the motion, the court goes beyond the allegations of the complaint and determines whether a claim can in reality be supported on the grounds alleged. In this case, the court quite properly found appellant's claim could not be supported.

There is one other matter to be mentioned. Appellant's deposition and brief deal with commissions of 4% which were allegedly arbitrarily reduced by appellee to 2% on sales of raw steel and nuts and bolts sold by appellant to McKee, and for which a monthly report claiming the commission thereon was dated December 1 to December 31, 1958. The appellant's deposition, however, shows that these sales were made prior to September 1, 1958. Since the complaint only relates to commissions on sales of steel to McKee during the period commencing September 1, 1958 to April 4, 1959, any questions relating to commissions on such sales to McKee prior to September 1, 1958 are not in issue in this suit and consequently will not be considered by this court.

The judgment of the court below is affirmed.

IT IS SO ORDERED.

s/ J. C. Compton  
Chief Justice

WE CONCUR:

s/ David W. Carmody J.

s/ M. E. Noble J.

CHAVEZ & MOISE, JJ., not participating.



*Summary Judgment*

C O P Y

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FILED: August 16, 1961

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

SOONER PIPE & SUPPLY CORP.,	)	
an Oklahoma Corporation,	:	
	)	
Plaintiff-Appellee,	:	
	)	
vs.	:	NO. 6 8 0 6
	)	
	:	
	)	
T. J. DOERRIE,	:	
	)	
Defendant-Appellant.	:	

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

McMANUS, Judge

OWEN B. MARRON  
DAVID W. KING  
Albuquerque, New Mexico

Attorneys for Appellee

ADAMS, FOLEY & CALKINS  
Albuquerque, New Mexico

Attorneys for Appellant

## O P I N I O N

NOBLE, Justice.

Plaintiff sued for \$9,302.69, together with interest, on an open account for goods, wares and merchandise sold and delivered to defendant. The answer raised two defenses: (1) that the complaint failed to state a claim upon which relief can be granted, and (2) a general denial. A jury was demanded by defendant.

Motion for summary judgment was filed to which was attached an affidavit by a vice-president of plaintiff's corporation. Based upon the affidavit and pre-trial deposition of defendant, the trial court, pursuant to Rule 56 (c), found generally that there was no substantial issue of fact and granted plaintiff a motion for summary judgment and thereafter entered judgment for the amount prayed for. This appeal results.

Defendant insists that substantial issues of fact were unresolved; that the evidence as to whether the sale was made to defendant or to Lost Canyon Oil and Uranium Company was conflicting and that summary judgment was erroneously entered.

The pertinent part of Sec. 21-1-1 (56) (c), N.M.S.A. 1953 Comp. reads:

" . . . . The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. . . ."

We are thus called upon to determine whether the trial court correctly sustained plaintiff's motion for summary judgment. A motion for summary judgment should not be granted when there is a genuine issue of material fact and it is not a substitute for a trial. *Michelson v. House*, 54 N. M. 197, 218 P. 2d 861; *McLain v. Haley*, 53 N. M. 327, 207 P. 2d 1013; *Agnew v. Libby*, 53 N. M. 56, 201 P. 2d 775.

"Litigants are entitled to the right of trial where there is the slightest doubt as to the facts." *Michelson v. House*, supra; *Whitaker v. Coleman*, (C. A. 5), 115 F. 2d 305; *Ginn v. Mac Aluso*, 62 N. M. 375, 310 P. 2d 1034.

In resolving the question as to whether summary judgment should be granted, the trial court does not weigh the evidence, nor do we; but the pleadings, affidavits and admissions, if any, must be viewed in the most favorable aspect they will bear in support of the right of the party opposing the motion to a trial of the issues. *Ginn v. Mac Aluso*, supra.

Turning then to the record before us, we find that the affidavit of Henry Zarrow, vice-president of plaintiff's corporation, merely states that through investigation by a financial media, he was informed that the oil and gas leases were in the name of defendant and that defendant contracted in his name for the drilling of the wells and had a good financial rating and that affiant had no knowledge that defendant was not the actual purchaser of the supplies from plaintiff. The affidavit does not state that the supplies were actually ordered by defendant or that any of the dealings were with

defendant personally. Defendant's pre-trial deposition shows he was president of Lost Canyon Oil and Uranium Company; that the leases on which the merchandise purchased from plaintiff was used, while held in defendant's name, were actually the property of the corporation; that the drilling on the leases was by Bob Murphy, an employee of, or contractor employed by, Lost Canyon Oil and Uranium Company. Defendant's testimony was further that he did not personally order the supplies but that they were ordered by Mr. Murphy and that Mr. Murphy was authorized by the corporation to make the purchases for the corporation. No testimony or admissions have been pointed out to us showing any direct representation that the goods were purchased by defendant personally or that he would be personally responsible for payment.

Where the facts are not clear and undisputed, summary judgment should not be granted. It will be granted only where the moving party is entitled to the judgment upon clear and undisputed facts as a matter of law.

Plaintiff urges that it is entitled to summary judgment as a matter of law upon the principle that an agent who deals in his own name without disclosing his principal is personally liable. The fallacy in this assertion is that there is no evidence that defendant dealt with plaintiff at all. The assumption by plaintiff that the goods were for defendant is not enough, nor is the fact that defendant, as president of the corporation, authorized the driller, Murphy, to make the purchases for the corporation. Plaintiff further asserts that a sub-agent may subject the appointing agent to liability to third persons for his acts within the scope of his employment. Again, there has not been pointed out to us any evidence that Murphy, the sub-agent, represented to plaintiff that the purchases were for defendant.

On the foregoing facts, plus inferences properly deducible therefrom, we feel compelled to hold that there may be issues of fact to be resolved and summary judgment should not have been granted where there is the slightest doubt as to the facts.

The cause is remanded with directions to set aside and vacate the summary judgment and to proceed further in a manner not inconsistent with the views expressed herein.

IT IS SO ORDERED.

/s/ M. E. NOBLE  
Justice

WE CONCUR:

/s/ DAVID W. CARMODY J.

/s/ DAVID CHAVEZ, JR. J.

COMPTON, C. J. and MOISE, J., not participating.

SUBPOENA DUCES TECUM

IN THE DISTRICT COURT OF CHAVES COUNTY  
STATE OF NEW MEXICO

OIL CONSERVATION COMMISSION )  
OF NEW MEXICO, )

Plaintiff, )

vs. )

No. 25416

HENRY W. ETZ, Jr., an )  
individual, )

Defendant. )

The State of New Mexico

*Cayn*

To: Henry W. Etz, Jr.  
511 North Lea  
Roswell, New Mexico

GREETINGS:

You are hereby commanded to appear before the Fifth Judicial District Court of the State of New Mexico, sitting in Roswell, New Mexico, within and for the County of Chaves on the 12th day of March, 1962, at the hour of 1:30 o'clock, p.m., then and there to appear and give testimony in the above-styled and numbered cause. You are further commanded to bring with you at that time and place the following documents:

(1) The original letter written on November 2, 1961, by Henry W. Etz, Jr., to Governor Edwin L. Mechem concerning the Rice Andrews Well No. 1, located in Section 14, Township 14 South, Range 25 East, Chaves County, New Mexico.

(2) The original letter written on January 24, 1962, by Henry W. Etz, Jr., to Governor Edwin L. Mechem concerning the above-described well.

(3) The original letter written on February 8, 1962, by Henry W. Etz, Jr., to Governor Edwin L. Mechem concerning the above-described well.

(4) The original letter written on February 28, 1962, by Henry W. Etz, Jr., to Governor Edwin L. Mechem concerning the above-described well.

You are further instructed that failure to appear and produce the documents as heretofore ordered will subject you to ~~the~~ penalty as prescribed by law.

WITNESS the Honorable GEO. L. REESE, Jr., District Judge of the Fifth Judicial District Court of the State of New Mexico, and the seal of the District Court of Chaves County, this \_\_\_\_\_

\_\_\_\_\_  
JEAN WILLIS, Clerk

\_\_\_\_\_  
By \_\_\_\_\_

IN THE DISTRICT COURT OF CHAVES COUNTY  
STATE OF NEW MEXICO

OIL CONSERVATION COMMISSION  
OF NEW MEXICO,

Plaintiff,

vs.

HENRY W. ETZ, Jr., an  
individual,

Defendant.

No. \_\_\_\_\_

COMPLAINT

Plaintiff, for its claim for relief, states:

1. That the Oil Conservation Commission of New Mexico is a duly organized agency of the State of New Mexico, and that the defendant is an individual who is engaged in the oil industry in the State of New Mexico and who resides at 511 North Lea, Roswell, New Mexico.

2. That by its order No. R-2118 entered in Case No. 2403 on November 17, 1961, plaintiff directed the defendant herein to re-enter his Rice Andrews Well No. 1, located in the NE/4 NW/4 of Section 14, Township 14 South, Range 25 East, NMPM, Chaves County, New Mexico, and to plug said well in a manner prescribed by said order; that said Order No. R-2118 further required that plugging operations be completed on the said Rice Andrews Well No. 1 by January 1, 1962. A copy of said Order No. R-2118 is attached to this Complaint as Attachment "A".

3. That inasmuch as defendant failed to pursue administrative procedures available to him, said Order No. R-2118 became final.

4. That defendant has failed to re-enter and plug said Rice Andrews Well No. 1 in compliance with said Order No. R-2118 and, accordingly is in violation of said order.

5. That specific compliance with said Order No. R-2118 is necessary to preserve natural resources.

WHEREFORE, plaintiff prays that a mandatory injunction issue ordering the defendant to re-enter and plug said Rice Andrews Well No. 1 in accordance with said Order No. R-2118.

EARL E. HARTLEY  
Attorney General of the  
State of New Mexico

---

RICHARD S. MORRIS  
Special Assistant Attorney General  
representing the Oil Conservation  
Commission of New Mexico

BEFORE THE OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO

CASE No. 2403  
Order No. R-2118

IN THE MATTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION COMMISSION  
TO PERMIT HENRY W. ETZ, JR. AND ALL  
INTERESTED PARTIES TO APPEAR AND SHOW  
CAUSE WHY THE RICE ANDREWS WELL NO. 1,  
SECTION 14, TOWNSHIP 14 SOUTH, RANGE  
25 EAST, CHAVES COUNTY, NEW MEXICO  
SHOULD NOT BE REPLUGGED IN ACCORDANCE  
WITH A COMMISSION-APPROVED PLUGGING  
PROGRAM.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 o'clock a.m. on  
October 25, 1961, at Santa Fe, New Mexico, before Daniel S. Nutter,  
Examiner duly appointed by the Oil Conservation Commission of New  
Mexico, hereinafter referred to as the "Commission," in accordance  
with Rule 1214 of the Commission Rules and Regulations.

NOW, on this 17th day of November, 1961, the Commission,  
a quorum being present, having considered the application, the  
evidence adduced, and the recommendations of the Examiner,  
Daniel S. Nutter, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by  
law, the Commission has jurisdiction of this cause and the subject  
matter thereof.

(2) That the Rice Andrews Well No. 1, located in the NE/4  
NW/4 of Section 14, Township 14 South, Range 25 East, NMPM, Chaves  
County, New Mexico, is owned and operated by Henry W. Etz, Jr.,  
511 North Lea, Roswell, New Mexico.

(3) That said Rice Andrews Well No. 1 was drilled within  
the horizontal limits of the Roswell Artesian Water Basin.

(4) That approval of the Notice of Intention to Drill the  
said Rice Andrews Well No. 1 was made subject to the conditions  
that, in the event the well were to be abandoned, the plugging  
program would have to be approved by the Commission and the  
State Engineer's Office and that the plugging would have to be  
witnessed by a representative of the State Engineer's Office.

(5) That the above-described conditions to which the  
approval of the Notice of Intention to Drill the said Rice  
Andrews Well No. 1 was made subject were made in the interest



of protecting the artesian waters of the Roswell Artesian Water Basin and of protecting the possible oil and gas reserves.

(6) That the operator failed to obtain an approved plugging program and failed to notify the Commission and/or the State Engineer's Office of the proposed plugging prior to commencing the plugging of the said Rice Andrews Well No. 1.

(7) That the manner in which the said Rice Andrews Well No. 1 was plugged constitutes a hazard to the water and/or oil and gas in the area.

(8) That the operator should be required to re-enter the said Rice Andrews Well No. 1 and to plug said well as prescribed by the Commission.

IT IS THEREFORE ORDERED:

(1) That Henry W. Etz, Jr. is hereby directed to re-enter his Rice Andrews Well No. 1, located in the NE/4 NW/4 of Section 14, Township 14 South, Range 25 East, NMPM, Chaves County, New Mexico, and to plug said well in the following manner:

- (a) Drill out the cement plug at the surface;
- (b) Go into the hole with bit and clean out down to the cement plug at approximately 900 feet;
- (c) Spot a cement plug of not less than 20 sacks from approximately 425 feet to 575 feet and spot another cement plug of not less than 5 sacks from the surface to approximately 40 feet, filling all intervals between the cement plugs with mud weighing not less than 10 pounds per gallon; and
- (d) Place a regulation steel marker not less than 4 inches in diameter in the top of the surface plug, the steel marker to extend at least 2 feet into the cement plug and 4 feet above the mean ground level.

(2) That the plugging of the said Rice Andrews Well No. 1 shall be completed by January 1, 1962, and that Henry W. Etz, Jr. shall notify the Artesia Office of the Commission of the exact time and date the above-described plugging operations are to commence.

(3) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

-3-  
CASE No. 2403  
Order No. R-2118

DONE at Santa Fe, New Mexico, on the day and year herein-  
above designated.

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

EDWIN L. MECHEM, Chairman

E. S. WALKER, Member

A. L. PORTER, Jr., Member & Secretary

S E A L

esr/

IN THE DISTRICT COURT OF CHAVES COUNTY  
STATE OF NEW MEXICO

---

OIL CONSERVATION COMMISSION  
OF NEW MEXICO,  
PLAINTIFF,

VS.

NO. 25416

HENRY W. ETZ, JR., AN  
INDIVIDUAL,  
DEFENDANT.

---

A N S W E R

DEFENDANT FOR ANSWER TO PLAINTIFF'S COMPLAINT STATES:

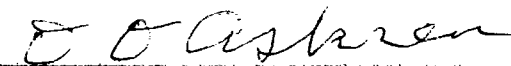
Paragraphs 1 and 2 are ~~heroby~~ admitted.

Answering Paragraph 3, Defendant denies the same.

Answering Paragraph 4, Defendant ~~denies~~ the same,  
and as a further answer to said paragraph Defendant states  
that he did properly and safely plug the well in question  
and did in writing notify the Plaintiff by filing in  
the office of the Plaintiff, at Artesia, New Mexico, a final  
plugging report.

Answering Paragraph 5 of Plaintiff's Complaint,  
defendant denies the same and states the facts to be that  
the defendant has fully complied with the laws regulating  
the plugging.

WHEREFORE, Defendant prays that no injunction issue.



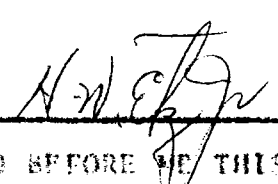
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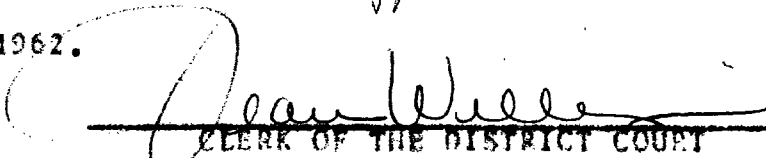
O. O. Askren  
Attorney for Defendant  
607 North Kentucky  
Roswell, New Mexico

STATE OF NEW MEXICO     )  
                                  )   SS  
COUNTY OF CHAVES        )

I, Henry W. Etz, being first duly sworn upon  
my oath, state:

I am the defendant in the above cause, that I have  
read and understand the contents of the foregoing Answer  
and the facts therein alleged are true and correct  
according to the best of my information, belief  
and knowledge.

  
SUBSCRIBED AND SWORN TO BEFORE ME THIS the 23rd  
day of February, 1962.

  
CLERK OF THE DISTRICT COURT  
CHAVES COUNTY, NEW MEXICO

I, HEREBY CERTIFY THAT I HAVE MAILED A COPY OF THE  
FOREGOING PLEADING TO OPPOSING COUNSEL OF RECORD THIS  
23 February, 1962.

\_\_\_\_\_  
O. O. ASKEEN  
Attorney for Defendant

Please return to P.O. Box 871, Santa Fe

SUMMONS

In the District Court, County of Chaves, State of New Mexico

OIL CONSERVATION COMMISSION	}	No. _____
OF NEW MEXICO,		
_____, Plaintiff		
vs.		
HENRY W. ETZ, Jr., an		
individual		
_____		
_____		
_____		
_____, Defendant		

*19-10-11  
Chaves Co. N.M.  
20-11-11  
21-11-11*

The State of New Mexico

To Henry W. Etz, Jr.,  
511 North Lea  
Roswell, New Mexico

\_\_\_\_\_, Defendant

DEFENDANT—GREETING:

You are hereby commanded to appear before the Fifth Judicial District Court of the State of New Mexico, sitting within and for the County of Chaves, that being the county in which the complaint herein is filed, within thirty days after the service of this summons, then and there to answer the complaint of the above named Plaintiff in the above cause.

You are notified that unless you so appear and answer, the Plaintiff will apply to the Court for the relief demanded in the complaint together with the costs of suit.

WITNESS the Honorable GEO. L. REESE, Jr., District Judge of the Fifth Judicial District Court of the State of New Mexico, and the seal of the District Court of Chaves County, this \_\_\_\_\_

*(Signature)*  
\_\_\_\_\_  
JEAN WILLIS, Clerk

By *(Signature)*, Deputy

ENDORSEMENT

The number and style of this case is as stated above.

A statement of the nature of this action in general terms is suit to enforce order of  
the Oil Conservation Commission

\_\_\_\_\_ as per copy of complaint hereto attached  
Richard S. Morris, P. O. Box 871, Santa Fe, New Mexico  
Attorney or Attorneys for Plaintiff. Office and Post Office Address, Roswell, New Mexico.

(Sheriff's return when service is made personally on defendants.)

STATE OF NEW MEXICO,

} ss.

County of \_\_\_\_\_

I, \_\_\_\_\_ Sheriff of \_\_\_\_\_ County,  
State of New Mexico, do hereby certify, that I served the within summons by delivering a copy thereof,  
with copy of complaint attached, in the county aforesaid, in person to \_\_\_\_\_

Dated: \_\_\_\_\_, Sheriff

Fees: \_\_\_\_\_ By \_\_\_\_\_, Deputy

(Sheriff's return when service is made on defendants by leaving a copy at usual place of abode.)

STATE OF NEW MEXICO,

} ss.

County of Chaves

I, H. E. Babcock Jr. Sheriff of Chaves County,  
State of New Mexico, do hereby certify, that I served the within summons 26 Jan 1962  
Date

by delivering a copy thereof, with copy of complaint attached, in the county aforesaid, to \_\_\_\_\_

Mrs. Henry W. Etz, Jr. (wife) a person over fifteen years of age, residing at  
the usual place of abode of defendant Henry W. Etz Jr

\_\_\_\_\_, who at the time of such service was absent therefrom.

Dated: 1-26-62

Fees: 3.00

H. E. Babcock Jr., Sheriff

By J. B. Decker, Deputy

(Return when service is made personally on defendants by other than Sheriff.)

STATE OF NEW MEXICO,

} ss.

County of \_\_\_\_\_

\_\_\_\_\_ being duly sworn, upon his oath, says, I am over the age of  
eighteen years, I served the within summons by delivering a copy thereof, with copy of complaint at-  
tached, in the county aforesaid, in person to \_\_\_\_\_

Fees: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_,

(Return when service is made on defendants by other than Sheriff by serving some one residing at usual  
place of abode of defendant who is then absent.)

STATE OF NEW MEXICO,

} ss.

County of \_\_\_\_\_

\_\_\_\_\_ being duly sworn, upon his oath says, I am over the age of  
eighteen years, I served the within summons \_\_\_\_\_

by delivering a copy thereof, with copy of complaint attached, in the county aforesaid to \_\_\_\_\_

\_\_\_\_\_ a person over fifteen years of age, residing at the  
usual place of abode of defendant \_\_\_\_\_

\_\_\_\_\_, who at the time of such service was absent therefrom.

Fees: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

No 277269

**RECEIPT FOR CERTIFIED MAIL—20¢**

SENT TO <b>Jean Willis</b>		POSTMARK OR DATE  <b>1-22-62</b>
STREET AND NO. <b>Clerk of the Dist Court of</b>		
CITY AND STATE <b>Chaves County</b>		
<b>Roswell, New Mexico</b>		
If you want a return receipt, check which <input checked="" type="checkbox"/> 10¢ shows to whom and when delivered <input type="checkbox"/> 35¢ shows to whom, when, and address where delivered		If you want restricted delivery, check here <input type="checkbox"/> 50¢ fee
<b>FEES ADDITIONAL TO 20¢ FEE</b> POD Form 3800 Jul 1957     SEE OTHER SIDE		

**#1-INSTRUCTIONS TO DELIVERING EMPLOYEE**

- ☐ Deliver *ONLY* to addressee     
 ☐ Show address where delivered  
*(Additional charges required for these services)*

**RETURN RECEIPT**

Received the numbered article described on other side.

SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

*Jean Willis*

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED

**JAN 23 1962**

ADDRESS WHERE DELIVERED (only if requested in item #1)

Jean Willis, Clerk of the  
District Court of Chaves Co.  
Roswell, New Mexico



INSTRUCTIONS: Fill in items below and complete = 1 on other side, when applicable. Moisten gummed ends and attach to back of article. Print on front of article RETURN RECEIPT REQUESTED.

RETURN  
TO

POD Form 3811 Jan 1958

REGISTERED NO.	NAME OF SENDER <b>OIL CONSERVATION COMMISSION</b>
CERTIFIED NO. <b>277269</b>	STREET AND NO. OR P. O. BOX <b>P. O. Box 871</b>
INSURED NO.	CITY, ZONE AND STATE <b>Santa Fe, New Mexico</b>



IN THE DISTRICT COURT OF CHAVES COUNTY  
STATE OF NEW MEXICO

OIL CONSERVATION COMMISSION  
OF NEW MEXICO,

Plaintiff,

vs.

HENRY W. ETZ, Jr., an  
individual,

Defendant.

No. 25416

COMPLAINT

Plaintiff, for its claim for relief, states:

1. That the Oil Conservation Commission of New Mexico is a duly organized agency of the State of New Mexico, and that the defendant is an individual who is engaged in the oil industry in the State of New Mexico and who resides at 511 North Lea, Roswell, New Mexico.

2. That by its order No. R-2118 entered in Case No. 2403 on November 17, 1961, plaintiff directed the defendant herein to re-enter his Rice Andrews Well No. 1, located in the NE/4 NW/4 of Section 14, Township 14 South, Range 25 East, NMPM, Chaves County, New Mexico, and to plug said well in a manner prescribed by said order; that said Order No. R-2118 further required that plugging operations be completed on the said Rice Andrews Well No. 1 by January 1, 1962. A copy of said Order No. R-2118 is attached to this Complaint as Attachment "A".

3. That inasmuch as defendant failed to pursue administrative procedures available to him, said Order No. R-2118 became final.

4. That defendant has failed to re-enter and plug said Rice Andrews Well No. 1 in compliance with said Order No. R-2118 and, accordingly is in violation of said order.

5. That specific compliance with said Order No. R-2118 is necessary to preserve natural resources.

WHEREFORE, plaintiff prays that a mandatory injunction issue ordering the defendant to re-enter and plug said Rice Andrews Well No. 1 in accordance with said Order No. R-2118.

EARL E. HARTLEY  
Attorney General of the  
State of New Mexico

---

RICHARD S. MORRIS  
Special Assistant Attorney General  
representing the Oil Conservation  
Commission of New Mexico

*Mailed on  
January 22, 1962*

OIL CONSERVATION COMMISSION

P. O. BOX 871

SANTA FE, NEW MEXICO

January 22, 1962

C  
O  
P  
Y  
  
Jean Willis  
Clerk of the District Court  
of Chaves County  
Roswell, New Mexico

Dear Madam:

Enclosed please find the original Complaint in the case of the Oil Conservation Commission vs Henry Etz, Jr., to be filed in your Court. Also enclosed is the original and two copies of the Summons in this case.

I should appreciate your delivering a copy of the Summons and Complaint to the local Sheriff's office for service upon Mr. Etz, whose address is shown on the Summons.

I should also appreciate your returning to me a copy of the Summons showing the Case Number and the date the Summons was served by the Sheriff upon Mr. Etz.

Very truly yours,

RICHARD S. MORRIS  
Special Assistant  
Attorney General

RSM/esr  
Enclosures

BEFORE THE OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO

CASE No. 2403  
Order No. R-2118

IN THE MATTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION COMMISSION  
TO PERMIT HENRY W. ETZ, JR. AND ALL  
INTERESTED PARTIES TO APPEAR AND SHOW  
CAUSE WHY THE RICE ANDREWS WELL NO. 1,  
SECTION 14, TOWNSHIP 14 SOUTH, RANGE  
25 EAST, CHAVES COUNTY, NEW MEXICO  
SHOULD NOT BE REPLUGGED IN ACCORDANCE  
WITH A COMMISSION-APPROVED PLUGGING  
PROGRAM.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 o'clock a.m. on October 25, 1961, at Santa Fe, New Mexico, before Daniel S. Nutter, Examiner duly appointed by the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission," in accordance with Rule 1214 of the Commission Rules and Regulations.

NOW, on this 17th day of November, 1961, the Commission, a quorum being present, having considered the application, the evidence adduced, and the recommendations of the Examiner, Daniel S. Nutter, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) That the Rice Andrews Well No. 1, located in the NE/4 NW/4 of Section 14, Township 14 South, Range 25 East, NMPM, Chaves County, New Mexico, is owned and operated by Henry W. Etz, Jr., 511 North Lea, Roswell, New Mexico.

(3) That said Rice Andrews Well No. 1 was drilled within the horizontal limits of the Roswell Artesian Water Basin.

(4) That approval of the Notice of Intention to Drill the said Rice Andrews Well No. 1 was made subject to the conditions that, in the event the well were to be abandoned, the plugging program would have to be approved by the Commission and the State Engineer's Office and that the plugging would have to be witnessed by a representative of the State Engineer's Office.

(5) That the above-described conditions to which the approval of the Notice of Intention to Drill the said Rice Andrews Well No. 1 was made subject were made in the interest

of protecting the artesian waters of the Roswell Artesian Water Basin and of protecting the possible oil and gas reserves.

(6) That the operator failed to obtain an approved plugging program and failed to notify the Commission and/or the State Engineer's Office of the proposed plugging prior to commencing the plugging of the said Rice Andrews Well No. 1.

(7) That the manner in which the said Rice Andrews Well No. 1 was plugged constitutes a hazard to the water and/or oil and gas in the area.

(8) That the operator should be required to re-enter the said Rice Andrews Well No. 1 and to plug said well as prescribed by the Commission.

IT IS THEREFORE ORDERED:

(1) That Henry W. Etz, Jr. is hereby directed to re-enter his Rice Andrews Well No. 1, located in the NE/4 NW/4 of Section 14, Township 14 South, Range 25 East, NMPM, Chaves County, New Mexico, and to plug said well in the following manner:

- (a) Drill out the cement plug at the surface;
- (b) Go into the hole with bit and clean out down to the cement plug at approximately 900 feet;
- (c) Spot a cement plug of not less than 20 sacks from approximately 425 feet to 575 feet and spot another cement plug of not less than 5 sacks from the surface to approximately 40 feet, filling all intervals between the cement plugs with mud weighing not less than 10 pounds per gallon; and
- (d) Place a regulation steel marker not less than 4 inches in diameter in the top of the surface plug, the steel marker to extend at least 2 feet into the cement plug and 4 feet above the mean ground level.

(2) That the plugging of the said Rice Andrews Well No. 1 shall be completed by January 1, 1962, and that Henry W. Etz, Jr. shall notify the Artesia Office of the Commission of the exact time and date the above-described plugging operations are to commence.

(3) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

-3-  
CASE No. 2403  
Order No. R-2118

DONE at Santa Fe, New Mexico, on the day and year herein-  
above designated.

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

EDWIN L. MECHEM, Chairman

E. S. WALKER, Member

A. L. PORTER, Jr., Member & Secretary

S E A L

esr/

GOVERNOR  
EDWIN L. MECHEM  
CHAIRMAN

State of New Mexico  
Oil Conservation Commission

LAND COMMISSIONER  
E. S. JOHNNY WALKER  
MEMBER

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

P. O. BOX 871  
SANTA FE

November 20, 1961

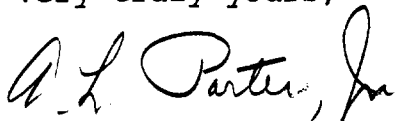
Mr. Henry W. Etz, Jr.  
511 North Lea  
Roswell, New Mexico

Re: CASE NO. 2403  
ORDER NO. R-2118  
APPLICANT:  
OCC (Henry W. Etz, Jr.)

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   x    
Aztec OCC       

OTHER

OIL CONSERVATION COMMISSION.

P. O. BOX 871

SANTA FE, NEW MEXICO

January 3, 1962

CERTIFIED MAIL - Return  
Receipt Requested

Mr. Henry W. Etz, Jr.  
511 North Lea  
Roswell, New Mexico

Dear Mr. Etz:

On November 20, 1961, a copy of Order No. R-2118 was mailed to you at the address shown above. This order, which was entered in Case No. 2403 on November 17, 1961, directed you to re-enter your Rice Andrews Well No. 1 and to plug that well in a specified manner, with plugging operations to be completed by January 1, 1962. Another copy of Order No. R-2118 is enclosed.

Mr. M. L. Armstrong of the Artesia office of the Commission informs me that the well has not been plugged as required by this order. Your voluntary cooperation in having this well plugged is earnestly requested; however, if plugging operations have not been commenced by January 15, the Commission will take whatever steps may be necessary to enforce the plugging of the well in accordance with Order No. R-2118.

Please note that the order requires you to notify the Artesia office of the Commission of the exact time and date the plugging operations are to commence.

Very truly yours,

RICHARD S. MORRIS  
Special Assistant  
Attorney General

RSM/esr  
Enclosure

cc: Mr. M. L. Armstrong  
Oil Conservation Commission  
Drawer DD  
Artesia, New Mexico



*See*  
DRAFT

*pm*  
*11/9*  
JEW/esr  
November 7, 1961

BEFORE THE OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO

~~IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
COMMISSION OF NEW MEXICO FOR  
THE PURPOSE OF CONSIDERING:~~

CASE No. 2403

Order No. R- 2118

*MLL*  
*See*  
*11/9*  
IN THE MATTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION COMMISSION  
TO PERMIT HENRY W. ETZ, JR. AND ALL  
INTERESTED PARTIES TO APPEAR AND SHOW  
CAUSE WHY THE RICE ANDREWS WELL NO. 1,  
SECTION 14, TOWNSHIP 14 SOUTH, RANGE  
25 EAST, CHAVES COUNTY, NEW MEXICO  
SHOULD NOT BE REPLUGGED IN ACCORDANCE  
WITH A COMMISSION-APPROVED PLUGGING  
PROGRAM.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 o'clock a.m. on  
October 25, 1961, at Santa Fe, New Mexico, before Daniel S. Nutter,  
Examiner duly appointed by the Oil Conservation Commission of New  
Mexico, hereinafter referred to as the "Commission," in accordance  
with Rule 1214 of the Commission Rules and Regulations.

NOW, on this \_\_\_\_\_ day of November, 1961, the Commission,  
a quorum being present, having considered the application, the  
evidence adduced, and the recommendations of the Examiner,  
Daniel S. Nutter, and being fully advised in the premises,

FINDS:

- (1) That due public notice having been given as required by  
law, the Commission has jurisdiction of this cause and the subject  
matter thereof.
- (2) That the Rice Andrews Well No. 1, located in the NE/4  
NW/4 of Section 14, Township 14 South, Range 25 East, NMPM, Chaves  
County, New Mexico, is owned and operated by Henry W. Etz, Jr., 511  
North Lea, Roswell, New Mexico.
- (3) That said Rice Andrews Well No. 1 was drilled within the  
horizontal limits of the Roswell Artesian Water Basin.
- (4) That approval of the Notice of Intention to Drill the  
said Rice Andrews Well No. 1 was made subject to the conditions  
that, in the event the well were to be abandoned, the plugging  
program would have to be approved by the Commission and the State  
Engineer's Office and that the plugging would have to be witnessed  
by a representative of the State Engineer's Office.
- (5) That the above-described conditions to which the approval

of the Notice of Intention to Drill the said Rice Andrews Well No. 1 was made subject ~~to~~ were made in the interest of protecting the artesian waters of the Roswell Artesian Water Basin and of protecting the possible oil and gas reserves.

(6) That the operator failed to obtain an approved plugging program and failed to notify the Commission and/or the State Engineer's Office of the proposed plugging prior to commencing the plugging of the said Rice Andrews Well No. 1.

(7) That the manner in which the said Rice Andrews Well No. 1 was plugged ~~by~~ constitutes a hazard to the water and/or oil and gas in the area.

(8) That the operator should be required to re-enter the said Rice Andrews Well No. 1 and to plug said well <sup>as prescribed</sup> ~~in accordance with the plugging program designated~~ by the Commission.

IT IS THEREFORE ORDERED:

(1) That ~~the operator~~ Henry W. Etz, Jr., is hereby directed to re-enter his Rice Andrews Well No. 1, located in the NE/4 NW/4 of Section 14, Township 14 South, Range 25 East, NMPM, Chaves County, New Mexico, and to plug said well in ~~the~~ the following <sup>manner</sup> ~~as follows~~:

- (a) Drill out the cement plug at the surface;
- (b) Go into the hole with bit and clean out ~~the hole~~ down to the cement plug at approximately 900 feet;
- (c) Spot a cement plug of not less than 20 sacks from approximately 425 feet to 575 feet and spot another cement plug of not less than 5 sacks from the surface to approximately 40 feet, filling all intervals between the cement plugs with mud weighing not less than 10 pounds per gallon; and
- (d) Place a regulation steel marker not less than 4 inches in diameter in the top of the surface plug, the steel marker to extend at least 2 feet into the cement plug and 4 feet above the mean ground level.

(2) That the plugging of the said Rice Andrews Well No. 1 <sup>that</sup> shall be completed by January 1, 1962, and ~~that~~ Henry W. Etz, Jr. shall notify the Artesia Office of the Commission of the exact time and date the above-described plugging operations are to commence.

-3-  
CASE No. 2403

(3) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

IN THE DISTRICT COURT OF CHAVES COUNTY  
STATE OF NEW MEXICO

OIL CONSERVATION COMMISSION	)	
OF NEW MEXICO,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 25416
	)	
HENRY W. ETZ, Jr., an	)	
individual,	)	
	)	
Defendant.	)	

AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

STATE OF NEW MEXICO    )  
                              ) ss.  
COUNTY OF SANTA FE    )

I, A. L. PORTER, Jr., do hereby state upon my oath that of my personal knowledge the following matters are true and correct:

1. That at all times pertinent to the case of the Oil Conservation Commission of New Mexico vs. Henry W. Etz, Jr., No. 25416, Chaves County, New Mexico, I have been and am the Secretary-Director of the Oil Conservation Commission of New Mexico, and am fully aware of all matters concerning that case.

2. That by its Order No. R-2118, entered in Case No. 2403 on November 17, 1961, the Oil Conservation Commission of New Mexico, directed Henry W. Etz, Jr., of Roswell, New Mexico, to re-enter his Rice Andrews Well No. 1, located in the NE/4 NW/4 of Section 14, Township 14 South, Range 25 East, NMPM, Chaves County, New Mexico, and to plug said well in a manner prescribed by that order.

3. That no application for rehearing or hearing de novo in Case No. 2403 was filed with the Commission within thirty days following the entry of Order No. R-2118.

4. That the said Rice Andrews Well No. 1 has not been re-entered and plugged in compliance with said Order No. R-2118.

Affiant further saith not.

---

A. L. Porter, Jr.

Subscribed and sworn to before me, this 26th day of February, 1962.

---

Notary Public

My commission expires:

---

IN THE DISTRICT COURT OF CHAVES COUNTY  
STATE OF NEW MEXICO

OIL CONSERVATION COMMISSION	)	
OF NEW MEXICO,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 25416
	)	
HENRY W. ETZ, Jr., an	)	
individual,	)	
	)	
Defendant.	)	

MOTION FOR SUMMARY JUDGMENT

Plaintiff, Oil Conservation Commission of New Mexico, moves the court, pursuant to Rule 56(a) of the Rules of Civil Procedure for the District Courts of the State of New Mexico, for a summary judgment in its favor in accordance with the relief prayed for in its complaint filed herein. The affidavit of A. L. Porter, Jr., Secretary-Director of the Oil Conservation Commission of New Mexico, is attached to this motion in support thereof.

EARL E. HARTLEY  
Attorney General of the  
State of New Mexico

---

RICHARD S. MORRIS  
Special Assistant Attorney General  
representing the Oil Conservation  
Commission of New Mexico

I hereby certify that a copy of this Motion for Summary Judgment has been mailed to opposing counsel of record, on this 26th day of February, 1962.

---

Richard S. Morris

IN THE DISTRICT COURT OF CHAVES COUNTY  
STATE OF NEW MEXICO

OIL CONSERVATION COMMISSION	)	
OF NEW MEXICO,	)	
	)	
Plaintiff,	)	
	)	
VE.	)	No. 25416
	)	
HENRY W. ETZ, Jr., an	)	
individual.	)	
	)	
Defendant.	)	

STIPULATION OF DISMISSAL

Come now the plaintiff and defendant by their  
respective attorneys and stipulate pursuant to Rule 41  
(a) (1) of the Rules of Civil Procedure for the District  
Courts of the State of New Mexico that the subject case  
should be and is hereby dismissed.

---

RICHARD S. MORRIS  
Special Assistant Attorney General  
representing the Oil Conservation  
Commission of New Mexico,  
P. O. Box 871, Santa Fe, New Mexico

---

O. O. ASKREN, Attorney for Defendant  
607 North Kentucky  
Roswell, New Mexico

OIL CONSERVATION COMMISSION

P. O. BOX 871

SANTA FE, NEW MEXICO

March 13, 1962

Mr. Henry W. Etz, Jr.  
511 North Lea  
Roswell, New Mexico

Re: Plugging of Rice Andrews Well  
No. 1, Chaves County, New Mexico

Dear Mr. Etz:

May I suggest, in order to prevent further misunderstanding in this matter, that you contact Mr. M. L. Armstrong at the Artesia District Office of the Commission prior to making definite plans for plugging the subject well.

As stated by Judge Reese at the hearing yesterday, you are expected to comply fully with the order of the Commission.

I regret that court action has been necessary to resolve this matter.

Very truly yours,

RICHARD S. MORRIS  
Special Assistant  
Attorney General

REM/esr

cc: Honorable Geo. L. Reese  
District Judge  
County Courthouse  
Roswell, New Mexico

Mr. O. O. Askren  
607 North Kentucky  
Roswell, New Mexico

Mr. M. L. Armstrong  
District Supervisor  
Oil Conservation Commission  
Drawer DD  
Artesia, New Mexico



OIL CONSERVATION COMMISSION

P. O. BOX 871

SANTA FE, NEW MEXICO

February 26, 1962

C  
O  
P  
Y

Miss Jean Willis  
Clerk of the District Court  
County Courthouse  
P. O. Box 826  
Roswell, New Mexico

Dear Miss Willis:

Enclosed is a Motion for Summary Judgment and an Affidavit in support of that motion to be filed in Case No. 25416 in your court.

By separate letter, I have asked Judge Reese to set this matter for hearing at an early date.

Very truly yours,

RICHARD S. MORRIS  
Special Assistant  
Attorney General

RSM/esr  
Enclosure

OIL CONSERVATION COMMISSION

P. O. BOX 871

SANTA FE, NEW MEXICO

February 26, 1962

C  
O  
P  
Y  
  
Honorable George L. Reese, Jr.  
District Judge  
Roswell, New Mexico

Re: Oil Conservation Commission of  
New Mexico vs. Henry W. Etz, Jr.,  
No. 25416, Chaves County, New  
Mexico

Dear Judge Reese:

Enclosed are copies of a Motion for Summary Judgment and an Affidavit in support of that motion mailed to the Clerk of the District Court this date to be filed on behalf of the plaintiff.

It is requested that this motion be set for hearing at an early date.

Very truly yours,

RICHARD S. MORRIS  
Special Assistant  
Attorney General

RSM/esr  
Enclosures

cc: Mr. O. O. Askren  
607 North Kentucky  
Roswell, New Mexico

WILSON CONSERVATION COMMISSION

P. O. BOX 871

SANTA FE, NEW MEXICO

April 12, 1962

Mr. O. O. Askren  
Attorney at Law  
607 North Kentucky  
Roswell, New Mexico

Dear Mr. Askren:

Your client, Mr. Henry W. Etz, Jr., now has satisfactorily plugged the well as requested in the Commission's suit against him. It is possible, therefore, to dismiss the case and I enclose a Stipulation of Dismissal to that effect for your signature.

Please return the original of this stipulation to me and I will in turn file it with the court.

Very truly yours,

RICHARD S. MORRIS  
Special Assistant  
Attorney General

RSM/esr  
Enclosures

THE DISTRICT COURT OF CHAVES COUNTY  
STATE OF NEW MEXICO

OIL CONSERVATION COMMISSION

PLAINTIFF

V.

NO. ~~24~~ 25416

HENRY W. ETZ, JR.

DEFENDANT

NOTICE OF DATE OF SETTING

TO: RICHARD S. MORRIS  
P. O. Box 871  
Santa Fe, New Mexico

O. O. ASKREN  
607 N. Ky.  
Roswell, New Mexico

You are hereby notified that the above styled and numbered cause has been set for hearing  
at Roswell, New Mexico on the 12th day of March, A. D., 1962,

at the hour of 1:30 o'clock P. M. ON MOTION FOR SUMMARY JUDGMENT *on merits*

*Hon. J. C. L. Ruse, Presiding*

JEAN WILLIS  
JEAN WILLIS, CLERK, DISTRICT COURT

BY G. Mitchell  
DEPUTY

Henry Ets  
MA 2-2583

August 29, 1960

FILE: 0-2-CN-83

Henry Ets  
511 N. Lea  
Roswell, New Mexico

Dear Sir:

Enclosed is a copy of Application for Permit to Drill for Oil, No. 0-2-CN-83, which has been approved.

Please submit to this office copies of any of the following records made in connection with the above mentioned oil well:

1. Radioactivity Log or Electric Log
2. Temperature Log
3. Well Record and/or Sample Description Log
4. Water Analysis from Drill Stem Test

Please be advised that it will be necessary for you to run 1 000 feet of casing instead of 750 feet to protect the fresh water in this area.

In the event that this well is to be abandoned, the plugging program must be approved by this office and the Oil Conservation Commission. The plugging of the well shall be witnessed by a representative of this office.

Very truly yours,

James I. Wright  
Field Engineer  
Water Rights Division

cc: Application (2)  
Field Engineer

ILLEGIBLE

#2

APPLICATION FOR PERMIT  
TO DRILL FOR OIL

(required in artesian underground basins only)

Application No. 0-2-CH-83 Book 0-2-CH-1 Date Received August 11, 1960

1. Name of applicant Henry Ets  
Post Office address 511 N. Lea ; City or Town Roswell, New Mexico  
County of Chaves ; State of New Mexico

2. Well is to be drilled under contract for self  
(self or company)  
and is to be known as the Mathers, Powell & Ets well,

3. The well is to be located in the NE 1/4, NW 1/4,  
of Section 14, Township 14 S., Range 25 E., N. M. P. M.  
on land owned by Mathers of Chaves County, Roswell, New Mexico

4. Description of well: Depth to be drilled 1200 feet;  
Casing and cementing program as follows:

SIZE OF HOLE	SIZE OF CASING	WEIGHT PER FOOT	NEW OR USED	DEPTH FEET	HANDED OR CEMENTED	SACKS OF CEMENT
<u>9 3/4</u>	<u>8 5/8</u>		<u>Used</u>	<u>200</u>	<u>Hand</u>	
<u>7</u>	<u>5 1/2</u>	<u>14#</u>	<u>New</u>	<u>700</u>	<u>Cemented</u>	<u>125</u>

5. Notice of intention (has) X (has not) been filed with the Oil and Gas Conservation Commission or the U. S. Geological Survey.

6. Conformance bond X (has) (has not) been filed and approved with the Oil and Gas Conservation Commission.

7. Time required to commence construction 30 days  
Time required to complete the works 30 days

8. Additional statements or explanations:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I, Henry Ets, being first duly sworn upon my oath, depose and say that I have carefully read the foregoing statement and each and all of the items contained therein, and that the same are true to the best of my knowledge and belief.

Henry Ets applicant

Subscribed and sworn to before me this 11th day of August,  
A. D., 19 60.

My commission expires March 29, 1961  
Freda F. Clark  
Notary Public

STATE ENGINEER OFFICE  
DISTRICT II  
SANTA FE, N.M.  
ROSWELL, N.MEX.  
1960 AUG 18 AM 8:34  
1960 AUG 24 AM 8:2

STATE ENGINEER OFFICE  
DISTRICT II  
ROSWELL, N.MEX.  
1960 AUG 11 AM 11:0

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OCC EX 1  
2403

#1

NEW MEXICO STATE ENGINEER

Application for permit to drill for oil in an artesian underground basin of the State of New Mexico  
Application received August 11, 1961  
Date returned for correction

This application is approved subject to the approval of the District Supervisor. The applicant complies with all rules and regulations of the State Engineer relating to the drilling of wells, and further provides that casing shall not be run to a depth of 100 feet below the present surface of the ground.

\* A minimum of 1000' of 3 1/2" casing will be required to protect the fresh water in this area

Works shall be completed and completion or plugging report filed on or before

August 10, 1961

This is to certify that I have examined the above application for permit to drill for oil in an artesian underground basin of the State of New Mexico and hereby approve the same subject to the foregoing provisions and conditions.

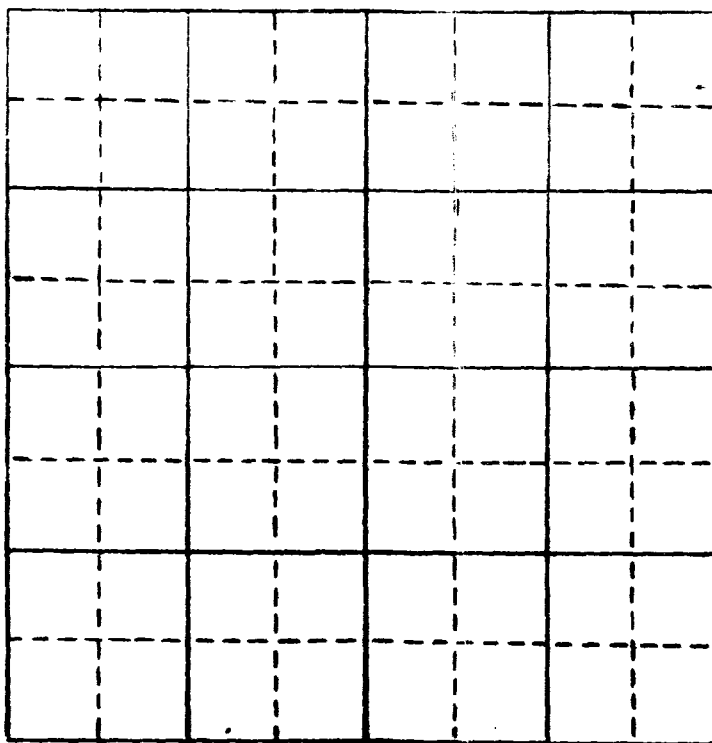
Witness my hand and seal this 19th day of August A.D., 1961

S. E. Reynolds  
State Engineer

D. E. Gray, Engineer, Water Rights Division

LOCATE WELL AS ACCURATELY AS POSSIBLE ON FOLLOWING PLAT:

Section (s) 14, Township 14 S., Range 25 E., N.M.P.M.



#### INSTRUCTIONS

This form shall be executed, preferably typewritten, in triplicate. Each of triplicate copies must be properly signed and attested.

A separate application for permit must be filed for each well used.

Secs. 1-4----Fill out all blanks fully and accurately.

Sec. 7-----Estimate time reasonably required to commence and to complete project.

If additional space is necessary, use a separate sheet or sheets and attach securely hereto.

Drilling shall not commence until approval of the State Engineer is obtained.

All casing shall be inspected and approved by a representative of the State Engineer before use.

If well proves to be non-productive the well shall be plugged under the supervision of the State Engineer or his representative.

Log of well shall be filed with the District Supervisor, Box 810, Roswell, New Mexico, upon completion.

ILLEGIBLE

## FIELD REPORT FOR CEMENTING OF WELLS

WR-36

Name of Applicant Henry EtzName of well Mathes, Powell & EtzDriller's Name M. G. PetersDrilling Method Rotary

## CASING DATA:

Surface 101 feet of 8 5/8 inch. Grade UsedInspected by no-mudded in on \_\_\_\_\_

(Approved)(Rejected) \_\_\_\_\_

Water string 952 feet of 5 1/2 inch. Grade 14# J.S.Inspected by Howard Lobley on August 31, 1960(Approved)(~~Rejected~~) Used API pipe

Oil string \_\_\_\_\_ feet of \_\_\_\_\_ inch. Grade \_\_\_\_\_

Inspected by \_\_\_\_\_ on \_\_\_\_\_

(Approved)(Rejected) \_\_\_\_\_

## CEMENTING PROGRAM:

Cemented by A. J. Service Supervised by John EmmettType of shoe used Float Float collar used nothread 10kBottom three joints welded no Cement: around shoe \_\_\_\_\_ sks.around casing 125 sks Reg. port additives noneSize of hole 8 3/4 Size of casing 5 1/2 sks. of cement required 65Plug pumped down 9:00 (a.m.)(~~p.m.~~) September 8, 1960Cement circulated yes No. of sacks 25Temp. survey ran no (a.m.)(p.m.) Cement at \_\_\_\_\_ feet

Temp. survey ran \_\_\_\_\_ (a.m.)(p.m.) Cement at \_\_\_\_\_ feet

Casing

Checked for shut off 9:00 (a.m.)(~~p.m.~~) September 10, 1960Method used 5000 pressure 30 min. Supervised by John Emmett

Formation

Checked for shut off 1:15 (~~a.m.~~) (p.m.) September 10, 1960Method used 4000 pressure 30 min. Supervised by John Emmett

REMARKS: \_\_\_\_\_

\_\_\_\_\_

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#3



No. 29-61

DOCKET: EXAMINER HEARING - WEDNESDAY - OCTOBER 25, 1961

9 A.M. - OIL CONSERVATION COMMISSION CONFERENCE ROOM  
STATE LAND OFFICE BUILDING - SANTA FE, NEW MEXICO

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The following cases will be heard before Daniel S. Nutter, Examiner, or Elvis A. Utz, as alternate examiner:

Cases 2413 through 2420 will not be heard before 1:00 P.M.

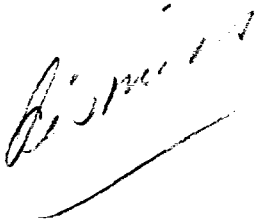
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- CASE 2403: In the matter of the hearing called by the Oil Conservation Commission to permit Henry W. Etz, Jr. and all interested parties to appear and show cause why the Rice Andrews Well No. 1, located in Unit C, Section 14, Township 14 South, Range 25 East, Chaves County, New Mexico, should not be replugged in accordance with a Commission-approved plugging program.
- CASE 2404: Application of Continental Oil Company for a 272.38-acre non-standard gas proration unit, Lea County, New Mexico. Applicant, in the above-styled cause, seeks the establishment of a 272.38-acre non-standard gas proration unit in the Eumont Gas Pool, comprising Lots 2, 3, 4, 5, 6, 7 and 8 of Section 1, Township 21 South, Range 36 East, Lea County, New Mexico; said unit is to be dedicated to the State F-1 Well No. 6, located 660 feet from the North and West lines of said Section 1.
- CASE 2405: Application of Amerada Petroleum Corporation for a dual completion, Lea County, New Mexico. Applicant, in the above-styled cause, seeks permission to complete its Ida Wimberly Well No. 11, located in the NW/4 SW/4 of Section 24, Township 25 South, Range 37 East, Lea County, New Mexico, as a dual completion in the Justis-Paddock and Justis-Blinebry Pools, with the production of oil from the Paddock zone to be through a tapered string of tubing of 2 3/8-inch and 2 1/16-inch diameter and the production of oil from the Blinebry zone to be through a tapered string of tubing of 2 3/8-inch and 1-inch diameter.

CASE 2406: Application of Shell Oil Company for an exception to Rule 502-I, Lea County, New Mexico. Applicant, in the above-styled cause, seeks an exception to Rule 502-I to increase from 25 percent to 100 percent the daily production tolerance applicable to all of its wells located in the Hobbs, Eunice-Monument, Vacuum-Abo and Vacuum-San Andres Pools, Lea County, New Mexico.

CASE 2407: Application of Shell Oil Company for approval of the Cabezon Unit Agreement, Sandoval County, New Mexico. Applicant, in the above-styled cause, seeks approval of the Cabezon Unit Agreement embracing 22,743 acres, more or less, of State, fee and Federal lands in Townships 16 and 17 North, Ranges 2, 3 and 4 West, Sandoval County, New Mexico.

CASE 2408: Application of Texaco, Inc. for a triple completion, Lea County, New Mexico. Applicant, in the above-styled cause, seeks permission to complete its V. M. Henderson Well No. 6, located in Unit C, Section 30, Township 21 South, Range 37 East, Lea County, New Mexico, as a triple completion adjacent to the Paddock, Blinebry, and Drinkard Pools, with production of oil from the Paddock and Drinkard zones to be through parallel strings of 2 1/16-inch tubing and the production of gas from the Blinebry Gas Pool to be through the tubing-casing annulus.



CASE 2409: Application of Texaco Inc. for a quintuple completion, Lea County, New Mexico. Applicant, in the above-styled cause, seeks permission to complete its G. L. Erwin "b" NCT-2 Well No. 2, located in Unit J, Section 35, Township 24 South, Range 37 East, Lea County, New Mexico, as a quintuple completion (tubingless) in undesignated Ellenburger, McKee, Fusselman, Siluro-Devonian and Drinkard pools, with the production of oil from the McKee, Fusselman, Siluro-Devonian and Drinkard zones to be through parallel strings of 2 3/8-inch tubing and the production of oil from the Ellenburger-zone to be through a string of 2 7/8-inch tubing, all strings of tubing to be cemented in a common well bore.

CASE 2410: Application of Hondo Oil & Gas Company for permission to directionally drill and for an unorthodox bottom hole location, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks permission to directionally drill a well in Section 26, Township 17 South, Range 28 East, Eddy County,

CASE 2410: (Cont.)

New Mexico, the surface location to be 2310 feet from the North line and 1980 feet from the East line of said Section 26 and the bottom hole location to be in the Empire-Abo Pool at a situs 2540 feet from the North line and 1980 feet from the East line of said Section 26.

CASE 2411:

Application of Socony Mobil Oil Company, Inc., for an exception to Rule 303 (a), Lea County, New Mexico. Applicant, in the above-styled cause, seeks an exception to Rule 303 (a) to permit the commingling of the production from the Anderson Ranch-Devonian and the Anderson Ranch-Wolfcamp Pools on its New Mexico "S" lease, which includes Lot 2 of Section 2, Township 16 South, Range 32 East, Lea County, New Mexico. Applicant proposes to meter the production from one pool only, and to allocate production to the other pool according to the subtraction method; the API gravity of the Anderson Ranch-Devonian crude is greater than 45°.

CASE 2412:

Application of Val R. Reese & Associates, Inc., for an unorthodox gas well location and a non-standard gas unit, Rio Arriba County, New Mexico. Applicant, in the above-styled cause, seeks permission to locate its Benn Well No. 1-9 at an unorthodox gas well location in an undesignated Gallup pool, 2210 feet from the North line and 330 feet from the East line of Section 9, Township 23 North, Range 7 West, Rio Arriba County, New Mexico, said well to be dedicated to a 152.02-acre non-standard gas unit comprising the NE/4 of said Section 9.

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The following cases will not be heard before 1:00 P.M.

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CASE 2413:

Application of Aspen Crude Purchasing Company for an unorthodox oil well location, San Juan County, New Mexico. Applicant, in the above-styled cause, seeks approval of an unorthodox oil well location in the Totah-Gallup Oil Pool for a well to be drilled 1190 feet from the South line and 2210 feet from the East line of Section 11, Township 28 North, Range 13 West, San Juan County, New Mexico.

CASE 2414:

Application of Southwest Production Company for an unorthodox gas well location, San Juan County, New Mexico. Applicant, in the above-styled cause, seeks approval of an unorthodox

CASE 2414: (Cont.)

gas well location in an undesignated Mesaverde pool for a well located 2360 feet from the South line and 830 feet from the West line of Section 26, Township 30 North, Range 12 West, San Juan County, New Mexico. Said well is to serve as the unit well for a 160-acre gas proration unit comprising the SW/4 of said Section 26.

CASE 2415:

Application of Southwest Production Company for an order pooling all mineral interests in the Basin-Dakota Gas Pool in the E/2 of Section 14, Township 30 North, Range 12 West, San Juan County, New Mexico. Interested parties include the unknown heirs of Abas Hassan, deceased, the unknown heirs of D. M. Longstreet, deceased, and Robert E., Alice L., and Samuel Glenn Goodwin, and/or their unknown heirs.

CASE 2416:

Application of Southwest Production Company for an order pooling all mineral interests in an undesignated Mesaverde gas pool in the E/2 of Section 22, Township 30 North, Range 12 West, San Juan County, New Mexico.

CASE 2417:

Application of Scanlon Engineering Company for an order fixing the spacing of wells, McKinley County, New Mexico. Applicant, in the above-styled cause, seeks an order fixing the spacing of wells producing from the Mesaverde formation in Sections 21, 22 and 27, all in Township 20 North, Range 9 West, McKinley County, New Mexico. Applicant recommends the establishment of two and one-half acre well spacing.

CASE 2418:

Application of Humble Oil & Refining Company for a dual completion, Lea County, New Mexico. Applicant, in the above-styled cause, seeks permission to complete its State BM Well No. 1, located in Unit I, Section 2, Township 25 South, Range 37 East, Lea County, New Mexico, as a dual completion (Tubingless) in undesignated Fusselman and Ellenburger pools, with the production of oil from the Fusselman zone through 2 7/8-inch casing and the production of oil from the Ellenburger zone through 2 3/8-inch casing cemented in a common well bore.

CASE 2419:

Application of Leonard Oil Company for a triple completion, Lea County, New Mexico. Applicant, in the above-styled cause, seeks permission to complete its Federal Ginsberg Well No. 11, located in Unit E, of Section 31, Township 25 South, Range 38 East, Lea County, New Mexico, as a triple completion (conventional) in the Justis Blinbry Pool, in an undesignated

CASE 2419: (Cont.)

Tubb Pool and in the Justis Fusselman Pool, with production of oil from the Tubb and Fusselman zones to be through parallel strings of 2 3/8-inch tubing and the production of oil from the Blinebry zone through a string of 2 1/16-inch tubing.

CASE 2420:

Application of Zapata Petroleum Corporation for authority to inject water into the Maljamar Pool, Lea County, New Mexico. Applicant, in the above-styled cause, seeks authorization to inject water into the Maljamar Pool (Grayburg and San Andres formations) through eight wells located in Sections 17, 18 and 19, all in Township 17 South, Range 33 East, Lea County, New Mexico, for the purpose of secondary recovery.

H. W. ETZ, JR.

~~ROSWELL~~  
ROSWELL, N. M.

511 N. Lea

Nov. 2/61

RECEIVED  
OFFICE OF THE GOVERNOR  
SANTA FE, N. M.  
Nov 7 8 10 AM '61Hon. Governor Ed McChesem  
Santa Fe N.M.

My Dear Governor;

*To Pete Poole*

I was sorry that you were down with the Flu last week when I was in Santa Fe on a hearing before the Oil and Gas Commission in regard to the plugging of a well, I am afraid that I made a poor defence in my behalf as I had planned to bring a few of my friends that were your friends to plead my case, or to try to influence your decision in my favor. I changed my mind on that procedure and decided to stand trail on the facts of the case as presented.

I am enclosing the facts of the case in this letter to you, knowing that I am guilty of failing to notify the Commission's office in Artesia that I intended to plug the well, but definitely knowing that the well is properly plugged and all waters zones are adequately protected.

I drilled three dry holes last year and am not financially/at this time to spend a thousand dollars or more for something that is unnecessary.

The Artesian Water District engineer witnessed the cementing of the water string and the drilling of the plug as his report shows, after coring the the pay zone, which was dry, we pumped twenty five or thirty sacks of cement in the bottom of the hole, and filed temporary abandoned notice on regular formes to the Oil Conservation Commission in Artesia, which was approved.

After Cities Service and myself decided not to deepen the well to the Glorrietta, I filed a final plugging report last July 10th to the Commission Office in Artesia, N.M.

I never heard a word from Mr. Armstrong whether or not it was approved until I recieved a letter from Mr. R.S. Morris in the Attorney General Office to replug the well, under Mr Armstrong's supervision, letter dated Aug 24/61. In the interval my plugging bond had expired so I was forced to buy a new bond, on numerous accasions in the past when I have called to notify the Commissioner's office in regard to plugging a well, they would tell me what to do and it was done accordingly, very few times in the past have they sent an engineer out on the job to see that it was done, of course that was during the time when Mr. Hanson was Supervisor.

I feel the well is properly plugged, though I may have violated a regulation or two, I would rather donate the money to your next campaign, as I have done in the past, and might talk Bert Ballard in supporting the Republican party, he is my brother-in-law, and a good man, but I think he is going for Jack Russell, at least, that is the way he talks at the present time.

Leaving politics out at the present time, I would be very grateful if you could help me out of this predicament at this time.

Very Truly yours,

*Henry W. Etz Jr.*ILLEGIBLE

RECEIVED  
OFFICE OF THE GOVERNOR  
SANTA FE, N. M.

PHONE MA 2-1370

JAN 25 1 24 PM '62

H. W. ETZ, JR.

~~XXXXXXXX~~

ROSWELL, N. M.

511 N. Lea

Jan 24/62

*To State Pat*; Order No.  
R-2118.  
Case 2402.

Hon. Governor Edwin L. Mechem;  
Chairman Oil Conservation Commission.  
Santa Fe New Mexico;

Dear Mr. Governor;

In respect to Order No. R- 2118 we respectfully ask  
for a new hearing on the Rice Etz and Powell Well as records show this  
well to be plugged and all water zones to be fully protected.  
Personal animosity in the case by Mr. Armstrong which was not brought  
before the Commission in the first hearing will be removed in the next  
hearing if granted.

We maintain the well was plugged as instructed by the Water (Artesian)  
Board, and aside from the fact that a lumber marker instead of a joint  
of 4" pipe was used, which we will gladly remedy, the oil and all water  
zones are fully protected.

It will cost at least \$1200 to fifteen hundred dollars to do the work  
as required in Order No. R-2118 and we feel this is wholly unnecessary,  
and ask that the case be revoked.

We have been advised by Mr. Holm Burson after his telephone conversation  
with you that this matter can only be resolved in this manner.

Thanking you very kindly for your consideration in this matter, I am,

Very truly yours,

*H. W. Etz Jr.*

ILLEGIBLE

H. W. ETZ, JR.

~~XXXXXXXXXX~~

ROSWELL, N. M.

Feb 8/62

511 N. Lea.

To *Neil Porter*  
 Hon. Governor Edwin Mechem.  
 Chairman; Oil conservation Commission.  
 Santa Fe N.M.

Re; Rice Andrews,  
 well. #1  
 Etz & Powell  
 Order No. R-2118.

Dear Governor;

Enclosed is sworn statement by myself and Mr Peters, drilling contractor on the Etz-Powell well, NE 1/4, Sec. 14 T4 S, 25 E, Chaves Co. N.M. We maintain that Artesian Water Zones are fully protected, that the hole below the pipe from 952' to total depth at 1210' was filled with cement.

We admit that we violated one requirement by not having an engineer from the oil or water commission present, we admit that steel marker to replace four by ~~four~~ is required, which we will be happy to do.

We respectfully ask that we be granted a hearing with you present, that the suit filed in the Superior Court in Roswell, which comes up Feb. 25th. be cancelled.

The plugging bond does not expire until Aug. 1962 and we feel that the \$1200.00 estimated to comply with the Commission's order R- 2118 is unnecessary, but is the law.

We feel that the water and oil zones are fully protected, we did not intend to break the law, and again I respectfully <sup>ask</sup> that you hear all the evidence written and verbal.

Mr Earl Powell asked Mr. Holm Barson to talk to you in regard to the matter and upon his advice we following his instructions.

Very Respectfully yours,

*H. W. Etz Jr*

ILLEGIBLE



H. W. ETZ, JR.

~~XXXXXXXXXX~~

ROSWELL, N. M.

Feb. 28th./62. 511 W. Lea.

MAR 1 8 03 AM '62

RECEIVED  
OFFICE OF THE GOVERNOR  
SANTA FE, N. M.

Hon. Governor Elia Meehan  
Santa Fe N.M.  
Chairman Oil Conservation Commission.

Dear Governor;

Would you please have the courtesy to have your secretary to return the contents and information that I mailed to you in my letter on or about Feb. 10/62.

It appears that you will not or intend to take any action in the matter in our behalf or grant us a new hearing.

We have answered the suit filed in the Superior court in Chaves Co. which we deemed unnecessary and an additional cost that could have been eliminated if we had been granted a new hearing. <sup>DEEN</sup>

This is not a matter of whether the well is properly plugged, which we can prove, but mere personal animosity on the part of Mr. Armstrong toward me because he was in the wrong when he stated I had not filed a final plugging report.

It was found latter filed under some other name by mistake in his office, I was never notified that the plugging of the well was not approved until I recieved notice from the bonding company that payment for a new bond was due for another year, which I paid.

The only thing necessary to meet requirements which we have failed to do is to replace the wooden marker with a steel marker, which we are willing to do when it is determined whether or not we will be forced to reenter the well.

Kowning it is vital to protect the Artesian and shallow water zones in the State I have always tried to comply with the law, in this particular case, records will prove that the zones of water and oil are fully protected, more efficiently than other wells that have been plugged by myself on the many other dry holes that I have drilled in the State of New Mex. If I did not conscientiously know beyond any doubt that this was a true fact I would gladly comply with the law and replug the well as so ordered. We again respectfully ask that you reconsider and with-draw the suit now pending in court until you hear all the facts in this case. Thanking you for your prompt consideration to this matter, I am,

Most respectfully yours,

ILLEGIBLE

Henry W. Etz Jr.

BEFORE THE OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO

CASE No. 2403  
Order No. R-2118

IN THE MATTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION COMMISSION  
TO PERMIT HENRY W. ETZ, JR. AND ALL  
INTERESTED PARTIES TO APPEAR AND SHOW  
CAUSE WHY THE RICE ANDREWS WELL NO. 1,  
SECTION 14, TOWNSHIP 14 SOUTH, RANGE  
25 EAST, CHAVES COUNTY, NEW MEXICO  
SHOULD NOT BE REPLUGGED IN ACCORDANCE  
WITH A COMMISSION-APPROVED PLUGGING  
PROGRAM.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 o'clock a.m. on  
October 25, 1961, at Santa Fe, New Mexico, before Daniel S. Nutter,  
Examiner duly appointed by the Oil Conservation Commission of New  
Mexico, hereinafter referred to as the "Commission," in accordance  
with Rule 1214 of the Commission Rules and Regulations.

NOW, on this 17th day of November, 1961, the Commission,  
a quorum being present, having considered the application, the  
evidence adduced, and the recommendations of the Examiner,  
Daniel S. Nutter, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by  
law, the Commission has jurisdiction of this cause and the subject  
matter thereof.

(2) That the Rice Andrews Well No. 1, located in the NE/4  
NW/4 of Section 14, Township 14 South, Range 25 East, NMPM, Chaves  
County, New Mexico, is owned and operated by Henry W. Etz, Jr.,  
511 North Lea, Roswell, New Mexico.

(3) That said Rice Andrews Well No. 1 was drilled within  
the horizontal limits of the Roswell Artesian Water Basin.

(4) That approval of the Notice of Intention to Drill the  
said Rice Andrews Well No. 1 was made subject to the conditions  
that, in the event the well were to be abandoned, the plugging  
program would have to be approved by the Commission and the  
State Engineer's Office and that the plugging would have to be  
witnessed by a representative of the State Engineer's Office.

(5) That the above-described conditions to which the  
approval of the Notice of Intention to Drill the said Rice  
Andrews Well No. 1 was made subject were made in the interest

of protecting the artesian waters of the Roswell Artesian Water Basin and of protecting the possible oil and gas reserves.

(6) That the operator failed to obtain an approved plugging program and failed to notify the Commission and/or the State Engineer's Office of the proposed plugging prior to commencing the plugging of the said Rice Andrews Well No. 1.

(7) That the manner in which the said Rice Andrews Well No. 1 was plugged constitutes a hazard to the water and/or oil and gas in the area.

(8) That the operator should be required to re-enter the said Rice Andrews Well No. 1 and to plug said well as prescribed by the Commission.

IT IS THEREFORE ORDERED:

(1) That Henry W. Etz, Jr. is hereby directed to re-enter his Rice Andrews Well No. 1, located in the NE/4 NW/4 of Section 14, Township 14 South, Range 25 East, NMPM, Chaves County, New Mexico, and to plug said well in the following manner:

- (a) Drill out the cement plug at the surface;
- (b) Go into the hole with bit and clean out down to the cement plug at approximately 900 feet;
- (c) Spot a cement plug of not less than 20 sacks from approximately 425 feet to 575 feet and spot another cement plug of not less than 5 sacks from the surface to approximately 40 feet, filling all intervals between the cement plugs with mud weighing not less than 10 pounds per gallon; and
- (d) Place a regulation steel marker not less than 4 inches in diameter in the top of the surface plug, the steel marker to extend at least 2 feet into the cement plug and 4 feet above the mean ground level.

(2) That the plugging of the said Rice Andrews Well No. 1 shall be completed by January 1, 1962, and that Henry W. Etz, Jr. shall notify the Artesia Office of the Commission of the exact time and date the above-described plugging operations are to commence.

(3) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

-3-  
CASE No. 2403  
Order No. R-2118

DONE at Santa Fe, New Mexico, on the day and year herein-  
above designated.

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

EDWIN L. MECHEM, Chairman

E. S. WALKER, Member

A. L. PORTER, Jr., Member & Secretary

S E A L

esr/