
IN THE DISTRICT COURT OF EDDY COUNTY
STATE OF NEW MEXICO

MICHAEL P. GRACE II and
CORINNE GRACE,

Petitioners,

vs.

No. 28181

OIL CONSERVATION COMMISSION
OF NEW MEXICO,

Respondent,

and

CITY OF CARLSBAD, NEW MEXICO,

Intervenor,

and

CITIES SERVICE OIL COMPANY,
a corporation,

Intervenor.

TRANSCRIPT OF PROCEEDINGS

MARCH 7th, 1973

CARLSBAD, NEW MEXICO

VOLUME 1

APPEARANCES

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FOR THE INTERVENOR, CITIES
SERVICE OIL COMPANY:

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BE IT REMEMBERED, that on the 7th day of March, 1973, the above styled and numbered cause came on for the purpose of hearing the following Motions, Motion to Quash, Motion to Intervene by Cities Service Oil Company, Motion to Intervene by City of Carlsbad, New Mexico, and Motion to Vacate Temporary Stay Order or to Post Bond, said Motions being heard by the Honorable Paul Snead, District Judge of the Fifth Judicial District Court, at the Courthouse, Carlsbad, Eddy County, New Mexico, whereupon the following proceedings were had,

TO-WIT:

(Court in session at approximately 10:00 A.M.)

THE COURT: All right, gentlemen, are you ready on this Grace matter?

MR. WATKINS: Your honor, at this time, I have to announce that Mr. Grace is not ready, and we would request a continuance for a week, for the reason that I only found out last night that

one of our witnesses, a Mr. Steinhorst, who is one of our principal witnesses upon the possible or probably loss of the City of Carlsbad Well, Number One, can not be here, because of the illness of his wife. We consider his testimony extremely important to us, and do request a continuance at this time.

THE COURT: Mr. Losee?

MR. LOSEE: Court please, normally we would not have any objection to a continuance, but the Order of the Commission, entered last August, or really last July, establishing prorationing in the South Carlsbad Field, to go into effect September 1st, was, by the Ex Parte Order, which is the subject of the motion here, stayed on September 1st, and our motion to vacate the stay has been pending for two to three months, so that the Petitioners have been prepared for this hearing. I think the notice was at least two to three weeks on it, and as I have explained in my correspondence requesting the hearing, the Respondent, Oil Conservation Commission, feels that the disposition of this stay order is of primary importance, not really as much to the

Commission as to these several other operators in the South Carlsbad Field, so that we feel at this time, they are being financially harmed, and as a result, we would like to go forward on the Petitioner's Motion to Quash, which they filed, and also on the Commission's Motion to Vacate the Stay Order, or require that the Petitioners post bond.

THE COURT: Very well. It appears to me that we are faced with a couple of threshold legal problems which may or may not require any testimony. The motion to continue, will be denied, and we will proceed with the matter. I have indicated to counsel that I was --I would hear first, as an accommodation to Mr. Watkins, his Motion to Quash the Motion for a Stay Order. His request having been made that this be heard prior to this date, and simply not able to schedule it. So, I would be pleased to hear from you, at this time, Mr. Watkins, as to your Motion to Quash.

MR. WATKINS: All right, your honor. Let me look through my file here, just a moment.

(Mr. Watkins checks files.)

MR. WATKINS: May it please the Court. And, to review very briefly, the prorationing order entered by the Conservation Commission in this cause, was after hearing, I believe, in March or April of last year, at which time they prorated the field in question, South Carlsbad, and particularly the one that we are interested in, is the Morrow Pool. Now, subsequent to that hearing, and to the announcement of the Conservation Commission, that they were going to prorate this field, Mr. Grace -- Mr. and Mrs. Grace, moved this Court for a Stay Order which was heard by Judge Archer, on August 31st of last year. Now, I don't want to belabor the Court, I know the Court is familiar with the statutes, but the statute under which we proceeded was 65-3-22, subsection (c). With the Court's permission, I will read that. "The pendency of proceedings to review --- Now, an appeal was taken from that order, or a Motion for Review of that Order, which is in the file.

THE COURT: Right.

MR. WATKINS: "The pendency of proceedings to review shall not of itself stay or suspend

operation of the order or decision being reviewed, but during the pendency of such proceedings, the district court in its discretion may, upon its own motion or upon proper application of any party thereto, stay or suspend, in whole or in part, operation of said order or decision pending review thereof, on such terms as the court deems just and proper and in accordance with the practice of courts exercising equity jurisdiction; Provided, that the court, as a condition to any such staying or suspension of operation of an order or decision may require that one or more parties secure, in such form and amount as the court may deem just and proper one or more other parties against loss or damage due to the staying or suspension of the commission's order or decision, in the event that the action of the commission shall be affirmed."

We proceeded under that. The case has been set on its merits, by this Court, for June the 5th, I believe. Now, upon application to Judge Archer, he exercised his discretion, his judicial discretion, may it please the Court, in two ways. One, he decided from all of the

information in front of him, that the Stay Order should be granted, and, two, he exercised his discretion and decided that no security should be required of the Petitioners, the Grace's. Now, that is very important. I am going to read to the Court, our position, and our position is just simply that once one Judge of co-extensive jurisdiction with another Judge, has acted and has entered an order, exercising his discretion, that another Judge, of co-extensive jurisdiction, may not alter that order. Now, the reason for that is very plain, and for one instance, and that is to prevent forum shuffling. Now, to go a little bit further, your honor, the Oil Commission -- Conservation Commission, filed an affidavit of disqualification of Judge Archer, after he had granted the stay. Then, Judge Archer honored that affidavit of disqualification and removed himself from the case. Now, in line with the principle that one Judge's co-extensive jurisdiction should not set aside or overrule an order made by another Judge, of the same co-extensive jurisdiction, I have several cases, but I cite to the Court, only one case, Hardy vs.

North Butte Mining Company, Circuit Court of Appeal, Ninth Circuit, handed down in October of 1927. The first headnote was an order appointing receivers, made in a suit within the jurisdiction of the court, and in the exercise of judicial discretion, may not be vacated by another judge sitting in the same court, on the same record, as having been improvidently made. Now, I am reading from the opinion. "This is an appeal from a decree dismissing a complaint in equity and discharging receivers theretofore appointed. The appellant commenced suit in the District Court of the United States for the District of Minnesota, Fifth division, against the appellee, for the recovery of \$6500 and interest due on a promissory note executed by the appellee, and for the appointment of a receiver or receivership". "An answer was filed, admitting the allegations of the complaint, accompanied by a formal consent to the appointment of receivers, signed by the appellee through his secretary. On this record two receivers were appointed, with the usual powers." Now, later the receivers presented

a report. "Later the receivers presented a report to the court in the Minnesota district and petitioned for an order confirming certain of their acts and doings as such receivers. An order of confirmation was made accordingly. Later a similar report, accompanied by a similar petition, was presented to the court in the Montana district, but upon the presentation of the report that court, presided over by a different judge, made an order on its own motion requiring the parties to show cause six days later why the order theretofore made appointing the receivers should not be vacated, on the ground that it was mistakenly and improvidently made, and why the receivership should not end and the suit be dismissed forthwith. On the return to the show cause order, the court made a final order discharging the receivers and dismissing the suit." The Court goes on to say: "The sole question presented for decision is this: If an order appointing receivers is made in a suit within the jurisdiction of the court making the order, and in the exercise of judicial discretion, may another judge sitting in the same court, on the

same record, of his own motion or otherwise, vacate the order of appointment because, in his opinion, the order was mistakenly or improvidently made. On both principle and authority this question must be answered in the negative."

In *Appleton vs. Smith*, 1 Federal Cases 1075, a motion to dissolve an attachment was overruled by the District Judge, and the motion was thereafter renewed before Mr. Justice Miller, sitting at circuit. In refusing to entertain the motion, the learned judge said, and I quote: "Where, as in the present case, the motion is made on the same grounds, and with no new state of pleadings or facts, it is nothing more than an appeal from one judge of the same court to another, and, though it is my province in the Supreme Court to hear and determine such appeals, I have in this court no such prerogative. The District Judge would have the same right to review my judgments and orders here as I would have in regard to his. It would be in the highest degree indelicate for one judge of the same court thus to review and set aside the action of his associate in his absence, and might lead to unseemly struggles to obtain

a hearing before one judge in preference to the other". "The authority and propriety of that decision, rendered almost sixty years ago, has never been questioned from that day to this."

In *Cole Silver Mining Company vs. Virginia & Gold Hill Water Company*, Mr. Justice Field, sitting at circuit, refused to dissolve an injunction granted by the Circuit Judge sitting in the same court, saying "The injunction, although preventive in form, is undoubtedly mandatory in fact. It was intended to be so by the Circuit Judge who granted it, and the objection which is now urged for its dissolution was presented to him and was fully considered, I could not with propriety reconsider his decision, even if I differed from him in opinion. The Circuit Judge possesses, as already stated, equal authority with myself in the circuit, and it would lead to unseemly conflicts, if the rulings of one judge, upon a question of law, should be disregarded, or be open to review by the other judge in the same case." The Court goes on, and cites further cases, and then goes on, and I quote: "But the rule itself, and a

careful observance of it, are essential to the prevention of unseemly conflicts, to the speedy conclusion of litigation, and to the respectable administration of the law, especially in the national courts, where many judges are qualified to sit at the trials, and are frequently called upon to act in the same cases. It is unavoidable that the opinions of several judges upon the many doubtful questions which are constantly arising should sometimes differ, and a rule of practice which would permit one judge to sustain a demurrer to a complaint, another of co-ordinate jurisdiction to overrule it, and to try the case upon the theory that the pleading was sufficient, and the former to then arrest the judgment, upon the ground, that his decision upon the demurrer was right, would be intolerable. It has long been almost universally observed." I will not go further, your honor, on that, but we think that that is the situation here, and the situation is in which one court has acted, one judge has acted, exercised his discretion, and in two ways, and under this authority, and under the Rules of Practice, it would be unseemly and improper for

another Judge of co-extensive jurisdiction, to overrule, vacate or modify the order already entered. Thank you, sir.

THE COURT: Thank you, Mr. Watkins.
Mr. Losee?

MR. LOSEE: In response, if the Court please.

THE COURT: All right.

MR. LOSEE: In response to Mr. Watkins, I would like, before we start to read the order, from which the Petitioners say Judge Archer determined that this was -- that there was no requirement for a bond, and that a subsequent Judge is without authority or jurisdiction to modify, and that our only remedy was by appeal. I won't read it in its entirety, but it is not particularly lengthy. After the preliminary recital, reciting that it came on for hearing before the Court, on Petitioners' verified motion for a stay of order Number R-1670-L of the Oil and Gas Commission, prorating the South Carlsbad-Morrow Pool, which is to take effect on September 1, 1972. Having considered said Motion and exhibits attached hereto and being

fully advised in the premises, the Court finds that a Stay of said Order should be granted. It is therefore ordered that said Order Number R-1670-L issued by the New Mexico Oil Commission be and the same hereby is temporarily stayed until further order of the Court. Now, on its face, the order shows that it was heard on the verified Motion, and the exhibits attached to it, which I believe were by two, one geologist and one engineer, it was, and the file would reflect that it was an ex parte proceeding, and the Commission was not notified of the hearing, and in fact, they were not served in the case, until September 11th, 1973 -- 1972, some eleven or twelve days after the entry of the Stay Order. Now, there is no finding in this order, that the Court made, that a bond should not be required to be posted. The order by its very terms, is temporary, not any final stay order. The Court used the language, "temporarily stayed", and obviously in the preparation of the order, the consideration was made that the Court might subsequently review it, because of the language, "...until further order of the court". Now, in the Motion to Quash, the Petitioners' allege

that the only remedy that the Respondent had, was by appeal. Now, this, by its very nature, was an interlocutory order and not by any stretch of the imagination an interlocutory order to which, for all practical purposes, a final disposition of the case had been made. Under Rule 5-1 and 2, of the Supreme Court, the Respondent had no right of appeal from this order. Under the Petitioner's theory, that that order is not subject to modification or vacation, assume that they, rather than the Respondent, had disqualified Judge Archer, by their allegations, we would -- by their active disqualification, we would -- the Respondent would be out any remedy. He can't appeal, and a subsequent Judge can't vacate or modify. We found no cases in New Mexico covering the question of appeals from temporary stay orders, but we did find some temporary injunction cases, and I think by Words and Phrases, they are not unlike stay orders in their effect. The most recent of which is Texas-Pacific Oil and Gas Company vs. Jones 78, New Mexico 348, 431 Pacific 2d, 490, in which the oil and gas lessee secured

a temporary injunction to permit him to enter upon the surface of the grazing lessee's premises, and make a well location. On final, the surface grazing lessee appealed this temporary injunction, or the hearing to make it permanent, and the Court in the case, expressly left open the rights of the settlement of surface damage at a subsequent hearing. The Supreme Court dismissed the appeal, citing Griffin vs. Jones, 25 New Mexico 603, and said that the test was in a temporary injunction of this nature, is whether the parties in the suit, contemplated further proceedings. In this case they contemplated a trial on the issue of damages to the surface lessee. And, in our case, at the time of the stay order, when it was entered, obviously a hearing on the merits was contemplated by the Court and the parties. So, the Respondent says that there was surely no right of relief by appeal, and from this ex parte order, heard eleven days before we were served in the law suit, and the only relief we could obtain was by a Motion to Vacate it, or require that a bond be posted. The subject

is set forth in two encyclopedias, and I would like to take time to read from 46 Am Jur 2d, Judges, Section 41, which recites the general rule, and I think the tenure of all of the cases. "One judge should ordinarily hesitate to vacate, modify, or depart from an interlocutory order or ruling made in the same case by another judge with equal powers. Some courts, in disapproving of the idea that a judge might do so, have expressed themselves in terms of "jurisdiction" and "power", and laid down a seemingly rigid rule in restraint of judges. Thus, some courts have taken the view that one judge should not vacate, modify, or depart from an interlocutory order or ruling of another judge in the same case. But most of the cases recognize that a trial judge has power to vacate, modify, contravene, or depart from the ruling of another in the same case, whatever may be the consequences of his doing so. So, the generally accepted view is that in many instances one judge may properly depart from, or modify, or even vacate, the interlocutory ruling of another in the same case, and even those courts that have held that a judge should not do so

have recognized that such action may be proper in exceptional cases." And, one of those exceptional cases mentioned both in this Am Jur Citation, and in the ALR I am furnishing, is on an ex parte order, and to the same effect, is 48 Corpus Juris Secundum, Judges, Section 56. The subject is annotated in 132 ALR 14, a very extensive annotation. The cases are several years old. Now, New York seems to be the main State that recognizes either the improbability of a subsequent judge vacating an order of a former judge, whether they do it on power, or just dicta, or a question of comedy, but apparently New York uses multiple judges in the same case, and the practice arose in New York, where one judge issued a discretionary order, favorable to one litigant, and he went down the hall or to the next building, and got another judge to vacate that order. And, New York, in effect, stopped this, by reason of their multiplicity of judges, and that situation does not exist in New Mexico. The only judge this case is before, at this time, is your honor, and we have no other judge to go to. But, even New

Mexico recognizes -- or even New York recognizes an exception, and that is in the case of an ex parte order, and I would submit that the Federal Case which Mr. Watkins read, appointing a receiver, was not an ex parte hearing, appointing of a receiver. Just briefly to the annotation in ALR, on the ex parte question: "In some jurisdictions where the general rule is laid down that one judge may not vacate, modify, or depart from the order or ruling of another in the same case, an exception seems to apply to orders entered ex parte or without due notice." I would like to, at this time, briefly list some more current cases than those in Am Jur and CJS, and Am Jur 2d. These cases have held interlocutory orders, and have permitted a second judge to modify or vacate the order. A 1971 Florida case, Tingle vs. Dade County Board of County Commissioners, 245 Southern 2d, 76, which was a subsequent modification of medical expenses earlier awarded by a prior judge in a workmen's compensation case. Lacey vs. Bertone, 1952 California Court of Appeals, 240 Pacific 2d 395, subsequent modification of findings and conclusions in an

interlocutory decree which was subject only to final approval of the accounting by the second judge, who heard the accounting portion of the trial, which included all evidence at the first hearing, and then a motion to amend a complaint which had been denied by the first judge, was granted in the Third Circuit, United States Court of Appeals. In 240 Federal 2d 711, TCF Film Corporation vs. Gourley, a Colorado case, where a second judge improperly refused to litigate because of a search warrant that the first judge issued, held he should have done so. Gonzales vs. District Court of Arapahoe, 435 Pacific 2d 384, that was 1967, Colorado, where a previously denied motion to dismiss was subsequently granted by another judge in the Colorado case. Denver Electric vs. Phipps, 354 Pacific 2d 618, a subsequent dismissal to additional parties, which had been previously added by the first party in an ex parte. Hayes vs. City of Wilmington, 79 Southeastern 2d 792. That is a 1954 North Carolina case.

MR. WATKINS: What was the page number?

MR. LOSEE: 792. And, by our Sister State

of Arizona, Williams vs. Garrett, 417 Pacific 2d 378, a 1966 case, in which the -- a writ of prohibition was secured against the second judge who had granted a change of venue. The Supreme Court of Arizona quoted from the same Am Jur 2nd citation, which I cited, and also from the ALR, in saying that it was perfectly proper for the second judge to change the venue, even though the first judge had denied the motion. Again, from the annotations, and what I think to be the rule in the majority of cases, there is much significance in the circumstances -- and this is Page 17, of 132 ALR 2d., and I quote: "There is much significance in the circumstance that, notwithstanding the strong language used in many of the cases, the instances in which trial judges have been held to have committed reversible error because of having taken action contrary to that of other judges in the same case are not numerous, and outside of the State of New York, and of the second Federal circuit, and with the exception of a few cases concerning discretionary rulings, are almost nonexistent." And, we think the Respondent's position in this motion

is upheld, and we believe there is surely no error in the Court considering the evidence in a temporary order entered, "...until further order of the Court", on an ex parte proceeding, and that any rule of law, whether it be of jurisdiction or of comity, which prevents a litigant the right to have his side of a particular interlocutory position decided from which he can take no appeal, would be patently unfair, and we ask that the Motion be denied.

THE COURT: All right. Mr. Watkins?

MR. WATKINS: Your honor, in brief response, the Commission was going to have its day in Court on the merits, on June 5th. This stay order has been in effect for six months already, and the statute which I had quoted, although the order didn't say it, the order actually contemplated the proration order should be stayed, pending final review, which is set for June 5th.

THE COURT: It appears to the Court, that we are not actually looking at a situation in which Judge Archer is judge of equal powers, because I don't think he is in this case,

because he has in effect quit, or been quit from the case, and it is true that in many instances in a matter of this nature, that another judge has acted, we would, as a matter of peace and order, say, "Well, go back to the judge that took the matter, and make application for a hearing there". I cannot believe that the effect of the disqualification would be that, to say that no hearing could be had on an ex parte proceeding. The Motion to Quash will be denied. Mr. Losee, I guess you have the ball on the question of your Motion to Vacate the stay order.

MR. LOSEE: Yes, sir. If the Court please, and we are prepared to go forward, but there are two motions pending to intervene, one by the City of Carlsbad, and one by Cities Service, and if no one -- I would at least suggest from the Respondent's standpoint, that we permit them to determine those, so that they can participate in this, to the extent they desire, in the motion to set aside.

THE COURT: Very well. I'll hear the Motions to Intervene, then. Mr. Kellahin?

MR. KELLAHIN: Please the Court, Cities Service Oil Company, Jason Kellahin, Santa Fe, New Mexico, appearing on behalf of Cities Service Oil Company. May it please the Court, Cities Service Oil Company filed its Motion to Intervene in this case, and a pleading denominated "Objections to Motion to Intervene" was filed on behalf of Mr. and Mrs. Michael Grace. This is a statutory proceeding. I would like to call the Court's attention to a couple of statutes which have a direct bearing on the question involved here. First, Section 65-3-20, of the New Mexico Statutes, which governs the conduct of hearings before the Oil Conservation Commission, which provides, among other things, that the Commission, prior to entering any order, rule or regulation, shall give notice of such hearing, and goes on to say, that at such hearing, any person having an interest in the subject matter of said hearing shall be entitled to be heard. The other statute which bears on the question, is Section 65-3-22, subsection (b), which makes provision for any party who is dissatisfied with the position of its application for rehearing, a

prerequisite to any appeal to the Court, can then seek an appeal by filing a petition for review to the Court - - in the District Court, and the statute goes on to say, and in that subsection, "Notice of such appeal shall be served upon the adverse party or parties and the commission in the manner provided for the service of summons in civil proceedings." Now, there has been a number of cases go up from the Oil Conservation Commission, to the District Court and to the Supreme Court. The Continental Oil Company case, and the El Paso case, and various other cases, some involving the Kato Pool in Northwestern New Mexico, and this is the first time in my experience, that there has been any objection to an operator in a pool, that was being prorated, being objected to as a party to the litigation. Now, the Cities Service Oil Company filed its Petition to Intervene. It did not receive notice of this hearing, and upon hearing of it, filed a Petition to Intervene in this cause, alleging that the Oil Conservation Commission's Order, would affect -- have a direct affect upon the operation of Cities Service, who

is an operator in oil properties in the South Carlsbad-Morrow Pool, and would be directly affected by any order entered by this Court in these proceedings. And, we allege that the Petitioner, Cities Service, is an indispensable party to it, and no final judgment can be entered which will do justice between the parties without injuriously affecting the rights of Petitioner. That the Petitioner is the owner of property involved in this proceeding, and is so situated that the disposition of the action may impair or impede its ability to protect that interest, unless the Petitioner's interest is adequately represented in this proceedings. Now, the Grace's filed objections to the Petitioner's Motion to Intervene, which is on file, and has allegations made in it -- in other words, they deny that Cities Service owned any property, or that it is affected by the order of the Commission, or by the order of this Court, in event that it is either upheld or reversed by the Oil Conservation Commission. The Grace's went on to state further, in objections to Petition to intervene, that the Intervenor has never been a party to this

cause, that the Petition to Intervene is barred by laches, and that the Petition to Intervene is made in concert with and through the connivance of the Respondent, herein, as is shown by the pleadings of the Oil Conservation Commission of New Mexico, and the pleadings of said purported Intervenor. Further, they stated on information and belief, that Intervenor has failed to observe prorationing orders issued by Respondent herein, and therefore, are estopped by their conduct from intervening in said cause. Now, the prorationing order they are talking about, is the order that is before this Court. The effect was, to this date, and still is, stayed by the order of the Court, so there is no proration order for Cities Service to abide by. In addition, we have present here, in the Courtroom, and I hate to burden the Court with testimony, but if needed, we will offer Mr. Ronnie Ward, who is Landman for Cities Service Oil Company, who will testify that -- as to the ownership of Cities Service's properties in the South Carlsbad-Morrow Pool, and the properties that it does own, and open to proration in this pool, that would be expected by the

institution of proration. We have here in the Courtroom, the transcript of the hearing before the Oil Conservation Commission, heard in Hobbs, New Mexico, on April 19th, 1972, in which Cities Service did in fact enter an appearance through Mr. C. Fincher Neal, Hobbs attorney, and Mr. Robert LeBlanc of the Oklahoma Bar, and offered the testimony of two witnesses, which are a part of the record, and transcript, which will be before the Court in this case. Also present in the Courtroom, is Mr. Elvis Utz, Chief Engineer for the Oil Conservation Commission, who did appear and testify at the Hobbs' hearing. He was present and heard the testimony offered by Cities Service, and he will testify that any operator in a gas pool is affected by decisions whether to, or whether not to prorate a gas pool, which is really the basic question in this case. Now, if the Court wants to hear this testimony, we are prepared to go forward with it.

THE COURT: Well, Mr. Watkins, of course, your objections to the Petition were in the form of more or less a general denial. Do you desire that the Court hear testimony on the

question of ownership of interests within the pooling order?

MR. WATKINS: I think, your honor, I am duty bound to have that presented, and to show, or to have Cities Service show how they will be affected.

THE COURT: All right, but that is a little apart from the question that I think I asked. Is there any dispute as to the fact that they are within that pooling order?

MR. WATKINS: I don't know whether they are in it or not?

THE COURT: All right, fine. We'll hear some testimony then, Mr. Kellahin.

MR. KELLAHIN: Call Mr. Ronnie Ward, please.

(Witness duly sworn by the Court.)

(Cities Service Exhibit C-1, marked for identification.)

MR. RONNIE WARD

Was called as a witness for the Intervenor, Cities Service Oil Company, and after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KELLAHIN:

Q Would you state your name, please?

A Ronnie Ward.

Q By whom are you employed, Mr. Ward?

A Cities Service Oil Company.

Q Where do you live?

A In Midland, Texas.

Q And, what is your position with Cities Service Oil Company?

A I am a Landman.

Q And, what area do you -- in which area do you operate as a Landman?

A 90% in New Mexico, 10% in West Texas.

Q In connection with your work in the State of New Mexico, do you have anything to do with the area that is known as the South Carlsbad-Morrow Gas Pool?

A Yes, sir, I do.

Q Do you have anything to do with the acquisition of any leases or other properties on behalf of Cities Service in this area?

A Yes, sir.

Q And, have you prepared a map which shows the holdings of Cities Service Oil Company in this area?

A Yes, sir, I have.

Q I hand you what has been marked as Cities Service

Number 1, and ask you to identify that, please?

(Cities Service C-1, examined by the
Witness.)

A This is a map showing the acreage that Cities Service has under lease. That it has under lease in our South Carlsbad area, with Cities Service Acreage being colored in yellow.

Q Now, are these leases located within the exterior or boundary which has been defined by the Oil Conservation Commission as the Morrow, South Carlsbad Pool -- Oil Pool?

A I am not familiar with that boundary, so it is possible that some may lay outside of it.

Q Do you have any producing wells on any of these acreages?

A Yes, sir, we do.

Q What formation are they producing from?

A The Morrow.

Q Now, briefly, would you point out the producing acreage that is owned by Cities Service Oil Company?

A Yes, sir. In Township 22 South -- 22 East, the west half of Section 32, contains our Number 1 Strackbein Well. We own 100% of that well. In Section -- Township 22 South, Range 27 East, the

south half is our Number 1 Spencer Well, Cities Service owning 50%. In the north half of Section 30, same township and range, is our Number 1 B Merland Well, which Cities Service owns approximately 90%. And, in Section 19, 22-27, is our Number 1 A Merland, and in Section 25, Township 22, South, Range 26 East, Cities Service owns approximately 13.25% of the Corinne Grace Number 1, City of Carlsbad.

Q Who is that operated by?

A Mr. and Mrs. Grace.

Q Uh-huh. Does that cover the holdings, generally, that are presently producing?

A Yes, sir.

Q And, on the other acreage, which is colored in yellow, is what is known as the working interests, owned by Cities Service.

A Yes, sir.

Q Which means that Cities Service -- are you familiar with the term, "working interest"?

A Yes, sir.

Q Does that mean that Cities Service has a right to drill and develop that acreage?

A Yes, sir, it does.

MR. KELLAHIN: At this time, I'd like

to offer into evidence, Cities Service Exhibit
Number C-1.

MR. WATKINS: No objection.

THE COURT: Admitted.

MR. KELLAHIN: that is all I have on
examination of this Witness, your honor.

THE COURT: You may examine , Mr. Watkins.

MR. WATKINS: I don't believe I have any
questions, your honor.

THE COURT: All right. You may step down,
then, sir.

(Witness excused.)

MR. KELLAHIN: I'd like to call Mr.
Elvis Utz.

(Mr. Utz duly sworn by the Court.)

MR. ELVIS UTZ

Was called as a witness for the Intervenor, Cities Service
Oil Company, and after having been first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. KELLAHIN:

Q Would you state your name, please?

A Elvis A. Utz.

Q What is your residence, Mr. Utz?

A Pardon?

Q What is your residence?

A Santa Fe, New Mexico.

Q Do you hold a job with the State of New Mexico?

A Yes, sir, I do.

Q What is that job?

A I am Manager of the Proration Section, and Gas Engineer.

Q For whom?

A New Mexico Oil Conservation Commission.

Q All right. Now, as Gas Engineer, have you made any study of the gas production in the South Carlsbad-Morrow Pool?

A Yes, sir, I have.

Q Are you familiar with the operator in this pool -- or operators in this pool?

A Yes, sir, I am familiar with most of them, I believe.

Q Now, did you state that you are in charge of prorationing for the Oil Conservation Commission?

A That's right, I am. That is correct.

Q What are your duties in connection with gas prorationing?

A Well, it is to determine the pool allowables and each prorated gas pool, and to assign well allowables

on the basis of rate tables, or proportionate factors.

Q How long have you been engaged in this work?

A I have been with the Commission twenty-four years.
I have been supervisor of the Proration Department
eighteen.

Q Do you prepare the proration schedule, itself, and
allocate the production to the individual wells in
the prorated pools?

A I make a determination of the pool allowables, and the
allowables are allocated under my supervision, by IBM
Machine.

Q All right. Now, how many prorated pools are there
in New Mexico?

A There is twenty-seven.

Q And, did you participate in the hearing before the
Oil Conservation Commission, in April of 1972, in
Case Number 4693, involving the South Carlsbad
Morrow Gas Pool?

A Yes, sir, I did.

Q Did you testify in that case?

A Yes, sir, I did.

Q Were you present at the time that testimony was
offered for and on behalf of Cities Service Oil
Company?

A Yes, sir, I was.

Q Did you hear the testimony of one E. E. Taylor, Regional Geologist for Cities Service?

A I heard the testimony of all three witnesses. I can't say that I remember all of it, definitely.

Q And, did you hear the testimony of Mr. E. F. Motter, at that hearing?

A Yes, sir, I did.

Q And, is it your recollection that they did testify in the proceedings before the Oil Conservation Commission?

A Yes, sir.

Q All right. Now, Mr. Utz, does prorationing have any effect on the individual rights of owners and operators in a gas pool?

A Yes, sir, it certainly does. That is the purpose of it.

Q Well, briefly, would you describe what this effect is?

A Well, briefly, it assigns the production or the pool production to wells, on a proportionate basis, in order to prevent waste and protect quality rights.

Q Does that in some instances, curtail production from one well, and increase production from another?

A Certainly does. It curtails the production from wells who produce more than their proportionate share.

Q In your opinion, would any operator of a gas pool benefit in a decision whether to, or whether not to prorate a gas pool?

A Yes, sir, they certainly would.

Q Every operator in the pool, would that be your testimony?

A Most operators in the pool, and secondly those offsetting wells, over producing, or producing their fair share.

Q Now, I hand you what has been marked as Cities Service Exhibit Number C-1, and ask you to look at that, and tell the Court whether the lands shown in yellow on there, or any part of them, are within the exterior boundries of the South Carlsbad-Morrow Pool?

(Cities Service Exhibit C-1, examined by the Witness.)

A Uh-huh.

Q Are you familiar with the boundary?

A I am familiar with the boundary, Mr. Kellahin. They are not marked on this Exhibit, but I can say that a large portion of the acreage colored in yellow,

are within the boundaries.

Q Now, you heard Mr. Ward testify to some of the producing wells that are owned and operated by Cities Service, did you not?

A Yes, sir.

Q And, are those wells in the South Carlsbad-Morrow Gas Pool?

A All of them that I heard him mention, are in the pool.

Q Did you, after the entry of the Commission's Order to prorate, prepare a proration schedule for this pool?

A I didn't understand?

Q Did you prepare a proration schedule that has not gone into effect, on this pool?

A Yes, sir, I have prepared a schedule, since the 1st of September.

Q Is Cities Service aware of that schedule?

A Yes, sir.

Q But, that order is not in effect, is it.

A They are not, and that is stated in the proration schedule.

MR. KELLAHIN: That is all.

THE COURT: All right. Mr. Watkins?

MR. WATKINS: No questions.

THE COURT: You may step down, sir.

(Witness excused.)

MR. KELLAHIN: If the Court please, I don't believe that the transcript has been filed in this case. We -- I would like to offer, at this time, for the sole purpose of showing the participation of Cities Service Oil Company in the hearing in Case 4693, in Carlsbad, and then withdraw it, to file later, when the entire transcript is filed.

THE COURT: If there are any issues to be made as to the testimony of the last witnesses, or that those persons were present and did appear, we'll hear it. Otherwise, I see no need for it at this point. Mr. Watkins?

MR. WATKINS: I have nothing.

THE COURT: All right. Fine.

MR. KELLAHIN: That is all we have, then, your honor.

THE COURT: All right, Fine. What about the -- Mr. Watkins, do you have any responsive testimony to that, at this time?

MR. WATKINS: No, your honor.

THE COURT: What about the matter of the City of Carlsbad?

MR. McCORMICK: Your honor, I am Mike McCormick, City Attorney, City of Carlsbad. The City filed a verified motion to intervene, on September 11th, 1972. Grounds for this intervention are that the City is receiving from City -- I am sorry, City of Carlsbad, Number -- Well Number 1, a royalty interest, and we also, although it has not -- or is not producing right now, we have a royalty interest in the Humble-Grace Well, which is also effected by this proration order, and the City wishes to intervene in order to assure itself, that whichever way the order goes, that it will maximise its income under the royalty payments that it receives from these producers.

THE COURT: All right. Mr. Watkins -- Yes.

MR. LOSEE: If the Court please, I think the record reflects that the Respondent, Oil Conservation Commission, has interposed an objection to the City of Carlsbad's motion to intervene. I would like, at this time, to withdraw the objection, based on the City's statement

that they are a royalty owner, within the field, then we think they are entitled to be in the suit. We think their interest, of course, will be served by prorationing, and hopefully that will be the result.

THE COURT: All right. Mr. Watkins, do you want to hear some testimony about this, whether they did or did not own an interest, or --?

MR. WATKINS: No, your honor.

THE COURT: All right. Do you want to be heard on the question of their intervention in the light of these witnesses?

MR. WATKINS: No, your honor.

THE COURT: All right. Fine. The Petition in Intervention of Cities Service, and the City of Carlsbad, will be granted, and they will be permitted to intervene in this matter. I guess that brings us then to Mr. Losee, and your motion to dissolve the stay order.

MR. LOSEE: If the Court please, I'd like to make a preliminary statement, if you have no objection.

THE COURT: I have no objection.

MR. LOSEE: Your honor, the Oil Conservation

Commission, Respondent, has filed a motion, asking that the temporary stay order be vacated, or that in the alternative, the Petitioners be required to post a bond. I'd like to turn, really, to the governing statute, before we go further. As Mr. Watkins stated, it is 65-3-22 (c), which is the authority for the Court to stay the proceedings. But, the (b) portion of the same section, says, "The commission action complained of shall be prima facie valid and the burden shall be upon the party or parties seeking review to establish the invalidity of such action of the commission." Then, at (c), it permits the Court, in its discretion may, upon its own motion or upon proper application of any party thereto, stay or suspend, in whole or in part, which has been accomplished in this case. Then it goes further, and says, "...on such terms as the court deems just and proper and in accordance with the practice of courts exercising equity jurisdiction; Provided, that the court, as a condition to any such staying or suspension of operation of an order or decision may require that one or more parties secure, in

such form and amount as the court may deem just and proper, one or more other parties against loss or damage due to the staying or suspension of the commission's order or decision, in the event that the action of the commission shall be affirmed." Then, just momentarily turning to the next section, in the Statutes, being 65-3-23, which is not referring to stay orders, but at least referring to temporary restraining orders or injunction against enforcement of Commission's orders, it says, to point out at least in this matter, this area, that the legislature provided that, one, no temporary restraining order would be issued, without notice to the Commission, and in the (b) section, no temporary injunction would be issued until a bond was executed.

THE COURT: I read that, and it looks very peculiar in the light of that other section, that says if you have got a stay order, you don't need a temporary injunction.

MR.LOSEE: Well, frankly, I have difficulty distinguishing from a temporary -- between a stay order and the injunction. The

stay order, from the Petitioner's standpoint, obviously requires less effort, or less bond, but if he goes by the restraining order, he has to give notice and he has to post a bond. I point it out, at least, in talking about temporary injunctions, that the Court thought to make a bond, that a bond be posted.

THE COURT: And, that a hearing be granted.

MR. LOSEE: And, that a hearing be granted, yes.

THE COURT: And, the only thing appended to the one section there, says that the civil rules will be applicable to that.

MR. LOSEE: Yes, sir. With that explanation, the Commission would like to call three witnesses, whose testimony will in general be, the effect of the stay order upon gas production from the South Carlsbad-Morrow Field, to one, ask the Court to exercise its judicial discretion, after hearing this evidence, to vacate the stay order, and to reinstate the in effect prima facie order of the Commission, or in the alternative, require that the Petitioner's post a bond, which will protect the other operators in the field, from ~~loss or damage in the event that the order of the~~

Commission is finally affirmed.

THE COURT: Well, I have another question, before we get to that one.

MR. LOSEE: Yes, all right, sir.

THE COURT: If, as I read Section 65-3-22, (c) and (d), the rules of civil procedure are to be averred to, in reference to the stay order, do not those rules provide for a hearing following an ex parte order?

MR. LOSEE: Yes, sir. I think it is a mandatory requirement on an ex parte order, as far as the rules are concerned.

THE COURT: I seem to have the feeling somewhere kicking around in my mind, that the Court can stick up a temporary stay for ten days, under those rules, and absent some hearing, those rules will be --

MR. WATKINS: That rule applies to the temporary injunction part of the statute, and not ours. We urge that it is not according to our theory of the case, and that that is not applicable.

THE COURT: You may be correct as to that. We may need to take a look at it.

MR. LOSEE: I think our Statute does make some distinction between stay and temporary injunctions, although in this type of case, it is difficult for me to see the different effect. Matter of fact, Words and Phrases, frequently, in trying to differentiate between a stay order and a temporary injunction, points out that the practical effects is exactly the same.

THE COURT: Anybody got the rules?

MR. WATKINS: May I address the Court just a moment?

THE COURT: Surely.

MR. WATKINS: And, that is in connection with other rules, that the Court probably had in its mind. The applicable rules of practice and procedure in civil cases for courts of this state shall govern -- I am reading from (d), now. "The applicable rules of practice and procedure in civil cases for the courts of this state shall govern the proceedings for review, and any appeal therefrom to the Supreme Court of this state, to the extent such rules are consistent with the provisions of this act."

It is our contention that (c) controls, and that it is the only part of the rules and statutes that controls this procedure, or this proceeding.

THE COURT: Well, this is the reason I was wondering about that paragraph (d), because absent that, we may well consider we would be dealing with simply a special statutory proceeding, in which the usual rules would have no force or effect. You got your rules back?

MR. LOSEE: Yes, sir.

THE COURT: Let me see it.

(Short discussion at the Bench.)

(Court examines State Statutes.)

THE COURT: All right. Maybe there is a difference between a stay and a temporary restraining order.

MR. LOSEE: The difference is, they are talking about, and I am not willing, about the pendency of this proceeding, that there is any difference, and the statute refers to stay of judgments, and I am again referring to the rules of procedure. That is the only statute, is on a stay of a judgment, pending

an appeal, and that is discretionary, I think, without an automatic explanation in the absence of hearing.

THE COURT: That is Rule 62.

(Short discussion at the Bench, between the Court and Counsel.)

THE COURT: All right. Let me take a minute, before we proceed from that point, then.

(Court checks Court File.)

THE COURT: Mr. Watkins, the witness that you had reference to, was Mr. Steinhorst?

MR. WATKINS: Yes, sir. His testimony, your honor, concerns primarily with the probable destruction or the loss of the City of Carlsbad Number 1, if the production -- if the gas production is reduced in accordance with the proposed proration order.

THE COURT: I would like to inquire, gentlemen, whether it might be possible, in order to get a determination of this question today, to agree that if Mr. Steinhorst were present, he would testify in accordance with the Affidavit, filed in connection with the Motion, that Affidavit having reference to the fact

that in his opinion, the curtailment of production on the City of Carlsbad Well Number 1, would result in water encroachment and damage to the well.

MR. LOSEE: If the Court will allow me --?

THE COURT: Yes, sir. Let's take a ten minute break, and then we'll try to take up that question.

(Short recess taken at approximately 11:15 A.M.)

(After short recess.)

MR. LOSEE: Court please, the request was made, could the Respondent stipulate that Mr. Steinhorst, if present, would testify similar to his Affidavit, identified with the motion. I think we have a way that this can be accomplished by letting me offer a slight explanation. This City of Carlsbad Well is the only well out of some twenty wells in the field, that is producing large volumes of water, something around 1200 barrels a day, and the question was made at the hearing -- well, strike that. The question is,

whether or not the well is making water from the gas zone or whether it has been perforated and is actually water out of a water zone, and some remedial work can be done. I asked Mr. Watkins, during the recess, if we -- if the Commission could be furnished with the zones which are perforated in this well, which will permit us to put on testimony to, in effect, rebut this Affidavit, where we do not have the opportunity to cross-examine Mr. Steinhorst, and I understand from Mr. Watkins they could be furnished during the noon hour, and with that as a condition, we have no objection to his stipulating to what he would testify to.

MR. WATKINS: That sounds all right with me.

THE COURT: You can furnish that evidence, and I will receive it, in regard to his Affidavit, and we can take them to hold this position on that, the Petitioners, on the question of what we ought to do on the stay order, and the question of whether we dissolve the stay order or go on with it.

MR. LOSEE: I understand they will be furnished

early in the noon hour, so some witnesses can have the opportunity to go over them.

MR. WATKINS: Give me a moment, please

THE COURT: That sounds right. We'll take the Affidavit of Mr. Steinhorst, as though he testified, and then you can use those to rebut, with any witnesses that you might have.

MR. LOSEE: Yes, sir.

(Mr. Watkins confers with client.)

MR. WATKINS: Mr. Losee, is this what you want?

(Document handed to Mr. Losee, and examined.)

(Short discussion between the attorneys.)

(Mr. Losee and clients confer.)

THE COURT: Is that the information you need, Mr. Losee?

MR. LOSEE: If the Court please, this is a study prepared by Mr. Baldwin, Chief Geologist. I'd like, for the record, to read the intervals perforated, as shown on this. The subject well, referring to the City of Carlsbad, was drilled to 11,970 feet then perforated in the Morrow formation between 11,516 feet and 11,522 feet on January 12, 1971. Let me ask the Court

one other question. We accept this as a statement as to where the well is perforated, but the Company, Permajet, that conducts these perforations, produces a report, which is required to be filed. Would it be permissible for the Petitioners to furnish, subsequent to this hearing, the report from Permajet Company?

THE COURT: Mr. Watkins?

MR. WATKINS: I really don't know what you're talking about, Mr. Losee, but --

THE COURT: Neither do I, Mr. Watkins. You can share my ignorance in the matter.

MR. WATKINS: Now, you want a report from Permajet?

MR. LOSEE: Yes, sir, for the purpose of accepting the Affidavit. We'll take this, this engineer's report, as being correct, on the basis to present testimony that prorationing will not hurt the well.

MR. WATKINS: I see.

MR. LOSEE: We'd like to -- we would like the record to be confirmed by this report from Permajet, and they actually log the well, at the time they make the perforations.

MR. WATKINS: Just a minute.

(Mr. Watkins and Mr. Grace confer.)

MR. WATKINS: Yes, Mr. Losee.

MR. LOSEE: All right.

THE COURT: All right. Well, now, do you need time now, to --

MR. LOSEE: No, we can go forward, if the Court please, with our testimony, in support of the Motion. If you'd like for us to start -- I don't think I can finish with my first witness in the time remaining until 12:00, but I will be glad to start with him.

THE COURT: Let's use the twenty minutes and get underway, then.

MR. LOSEE: Call Mr. Utz.

(Respondent's Exhibits 1, 2, and 3 marked for identification.)

(Exhibits marked as Defendant's Exhibits.)

THE COURT: That is what?

MR. LOSEE: Defendant's Exhibit 1.

THE COURT: Mr. Watkins have you had a chance to look at it?

MR. WATKINS: No, sir. What does it purport to show, Mr. Losee?

MR. LOSEE: Purports to show the wells in the South Carlsbad-Morrow Gas Field, as they are presently situated, solely for a purpose of reference.

THE COURT: You can examine as to it, if you like?

MR. WATKINS: We have no objection to that.

THE COURT: All right, that Exhibit is admitted. You may proceed, Mr. Losee.

MR. ELVIS UTZ

Recalled as a witness for the Oil Conservation Commission:

DIRECT EXAMINATION

BY MR. LOSEE:

Q You are the same Elvis A. Utz who previously testified this morning, are you not?

A Yes, sir, I am.

Q In addition to your responsibilities with the Commission in the field of gas prorationing, you are a Registered Petroleum Engineer.

A Yes, sir, I am.

Q Referring to what has been marked as Defendant's Exhibit 1, explain briefly what is shown by this Exhibit?

A This Exhibit is a map showing the area of the South Carlsbad Pool, and it also shows the dedicated acreage, by the hatched lines, by which the acreage dedicated to each well completed in the Morrow Zone, and imposed on the map is a craggily, wavy line which defines the pool limits, horizontal limits of the pool, which is designated by the Commission at this time.

Q Mr. Utz, are all gas pools in New Mexico prorated?

A No, they are not.

Q Approximately what percent of the wells, the gas wells, are prorated, if you know, sir?

A I don't have a definite figure on that, but its -- oh, I would say substantially over half. Probably in the range of 60%.

Q Before we get into a discussion of the effect of the stay order, upon this field, I'd like to take a few moments to discuss some definitions, or have you discuss the definitions which pertain to proration of a gas field. Would you explain what it means by a spacing unit?

A A spacing unit and a proration unit are synonymous. In this pool, the commission has granted 320 acre spacing, and each one of the cross-hatched areas

there is a half section, or 320 acres, and that is a spacing unit.

Q Would you point one out with a pointer, here?

A All of these are spacing units. (Indicating). These are 320 acres, half section. That is 320 that part of Section 25, and 320 acres, being the south half of Section 25, the other the north half.

Q Now, that is the spacing for gas wells in this South Carlsbad-Morrow Field.

A Yes, it is.

Q One well to each 320 acre tract.

A That's correct.

Q What is meant in prorationing by the term acreage factor?

A For simplicity, rather than to use 320 acres, in a pool which has 320 acre proration units, we use a factor of one, one point zero zero. Now, this, as I say, this is for simplicity, so that is termed an acreage factor, or an allocation factor.

Q So, each tract that has 320 acres, has a one acreage or allocation factor.

A That is correct, with the exception of we allow a tolerance of 316 to 324 acres, which --

Q So --

A -- which is a -- gives us a factor of one.

Q So, if the 320 acre tract is short by four or long by four, it is still counted as one acreage factor.

A That is correct, because you are rounding off every 100 feet.

Q Now, if it gets below 316, or above 324, what happens on the acreage factor?

A If less than 316, then it has an acreage factor of something less than one, and if more than 324, then it has an acreage factor of something more.

Q That is something more or less, or is actually the ratio of the number of acres in the tract, to 320, is that correct?

A That is correct.

Q Now, by the rules of the Commission, applicable to this South Carlsbad Field, is there an area within each 320 acre tract, that a gas well can be drilled, without Commission approval?

A Yes, sir, there is rules as to location of wells, in order for the wells to be standard location, and are in all spacing patterns in the State, and on this particular Pool, on 320 acres, the spacing area that is spanned, is 1980 feet from the end of proration unit, and 660 feet from the side of the

proration unit.

Q So, that any well drilled in that imaginary square, 1980 feet from the end line, or 660 is permissible without a hearing.

A That is correct.

Q What if an operator wishes to drill a well in that field, closer to the boundary lines than that, or outside of this space?

A In the event an operator wants to crowd the unit line, we consider that a non-standard location, and he must come to a hearing, and that is either granted or denied by the Commission, after notice and hearing.

Q Now, if he comes to the hearing, what action, if any, does the Commission take with respect to his acreage factor, in the field?

A The Commission, of course, considers the data, and the evidence that is presented at the hearing. If the location is granted, we use a penalty factor and that penalty factor is arrived at by inscribing a 320 acre circle on the premises that a well will ordinarily drain in a circle, with the center of the circle, at a standard location, or the near standard location, to the non-standard location that is requested, and then we draw a circle with the center

of the circle, being at the non-standard location. Now, the circle with the center being at the standard location, represents the area which the well can drain legally. That is, at a standard location, and if the circle overlaps, if the circle with the center, the non-standard location, overlaps, the standard location circle, then the difference between the circles, we consider a penalty. Simply keynote the well being closer to the offset draining, and it can do more.

Q So --

A Draining more.

Q So, actually the effect of this is to penalize the operator who wants to get closer to his neighbor's line, but a penalty factor.

A That is correct, in order to prevent him from draining his offset neighbor.

Q Gas from under the neighbor's tract.

A Correct.

Q Now, are there any wells in this field, that have such a penalty factor assessed ^{on} them?

A Yes, sir, there are.

Q Would you point the wells out to the Court?

A The well in Section 2, which would be the southeast

quarter of the northeast quarter which is the Grandonoco Number 1, is such a location, and is 140 feet from the unit line, south unit line, and 330 feet from the east unit line. This well, as well as the well in the south half of the unit, which is the Grace-Humble Number 1, which is 990 from the south line of the unit, and 660 from the east line of the unit, they came to hearing, and we granted them a penalty factor for the north well, or the Grandonoco Number 1, of .51, which means we considered that he is penalized 49%. The lower well, or the Humble-Grace Well, is a penalty factor of 61%.

Q And, you earlier said that those penalties are assessed to prevent drainage of gas from the offset tracts.

A That's correct.

Q And, I hand you what has been marked as Exhibit -- excuse me, before I do --

(Defendant's Exhibit 2 handed to Mr. Watkins for examination.)

BY MR. LOSEE:

Q I hand you what has been marked as Defendant's Exhibit 2, and ask if this is a certified copy of the Order

that was entered by the Commission which -- with respect to the two wells you have just been testifying to?

(Defendant's Exhibit 2 handed to the Witness and examined.)

A Yes, it is. Our Order R-4034.

MR. LOSEE: We offer Defendant's Exhibit 2.

THE COURT: Any objection?

MR. WATKINS: No objection.

THE COURT: What was the number of that Order again?

THE WITNESS: R-4034.

THE COURT: Admitted.

BY MR. LOSEE:

Q Now, the operator of each of those wells is Mr. and Mrs. Grace, are they not?

A According to our records, they are.

Q Now, although the Commission has entered an order of proration, on September -- effective September 1st, and that has been stayed, how is this penalty factor taken into consideration, while a field is not being prorated?

A Well, to the best of my knowledge, it is not being

taken into consideration, and if the wells are capable of producing, they are producing whatever the purchaser desires to take from them.

Q So, that actually the order of the Commission, assessing a penalty to prevent drainage, without counter-drainage, is actually for naught, until a field is prorated.

A It is not effective until it is prorated.

Q Now, explain this prorationing. What is meant by marginal and non-marginal wells?

A A marginal well is considered to be a well that has a -- that shows by it's history of production, that it cannot produce its proportionate share of pool production. Likewise, a non-marginal well, is one which shows that it has more than it's ability to produce it's proportionate share of the pool production.

Q By proportionate share, you mean the total production in the field, divided by the total number of wells, or is that what you are referring to as proportionate share?

A Well, the total number of acreage factors, as stated, is divided into the total pool production, yes, sir.

Q That is the proportion for each well in the field.

A That's correct.

Q And, a marginal well is not able to produce that amount.

A A marginal well, by virtue of its production history, has shown that it cannot produce that amount.

Q And, a non-marginal well can produce greater than that.

A This is correct.

Q In proration, what is meant by the term purchaser's nomination, or nominations?

A The statutes require that thirty days before the beginning of any proration period, that the purchasers send us their nomination for each pool. Where there is four purchasers in a pool, we get four nominations, and we total those nominations, and consider them in setting the allowable of the pool. That is the estimate of purchasers, desiring to purchase in that pool.

Q Now, what is meant by actual production in the pool?

A Actual production is as the word implies, it is a monthly figure, as far as proration is concerned. It is the amount of gas, MCF, per month, that the pool has produced.

Q Now, is the purchaser's nomination the same as the actual production?

A Almost invariably the purchaser's nominations are greater than the pool production.

Q In talking about gas prorationing, what is meant by a MCF?

A A cubic foot of gas is twelve inches by twelve inches by twelve inches at a certain pressure, which is called a base pressure. New Mexico considered that pressure as being 15.025 pounds per square inch, and an MCF is one-thousandth of those cubic feet.

Q And, that is the basis for allowables, is on an MCF basis?

A That is correct. All reporting figures and all gas figures are reported in MCF.

Q And, that is true as far as with the sale of gas?

A That is true as far as any figures relating to gas, even reserve figures, and that is the basis on which gas is priced. If the price of gas is 35¢ an MCF, that is the way it is priced, other than a cubic foot.

Q Now, Mr. Utz, with those definitions, would you please explain to the Court, how prorationing would have been accomplished in this field, under the Commission's Order on September 1, 1972, had

not the stay order been entered?

A Actually we did issue a proration for the pool, which was not effective, of course, since we have no production information for the first two months, in a newly prorated pool, we do use the purchaser's nominations, and in this case, September and October. Now, for the third month, of November, we had a little production history, which was September. So, we adjusted the nominations to more accurately reflect the pool's production. Stating briefly, we estimate the production, prospectively, and we assign this production or estimated production to each proration, or each proration unit on the basis of its acreage factor, and I previously explained what an acreage factor is.

Q Now, what effect does prorationing have on the marginal wells that you earlier defined?

A Allowance set by the act of prorating -- allowables, rather, are sometimes greater than the well's ability to produce. The effect of proration is to classify these wells as marginal wells, then they produce at a hundred percent of their capacity. Then, the amount of gas that the marginal wells can produce, is then subtracted from the total

pool production. The balance of the gas is considered to be non-marginal allowables, and it is divided among the non-marginal wells, in accordance with the non-marginal acreage factors, on a proportionate basis.

Q So, that actually the marginal well produces at capacity, as you stated, and the non-marginal wells, on a prorated basis rateably produce the excess production in the field.

A That is correct.

Q Now -- well, strike that. I think at this point, I have a rather complicated Exhibit that Mr. Watkins has not looked at, which I will be glad to let him have it now.

THE COURT: Well, he can look at it now, or after lunch. I think we might adjourn until 1:30.

MR. WATKINS: It will take a little while longer.

THE COURT: All right. 1:30, gentlemen.

(Court in recess until 1:30 P.M.)

AFTERNOON SESSION

(Court reconvened at 1:30 P.M.)

THE COURT: All right, Mr. Losee, let's continue with Mr. Utz, and see what we come up with.

MR. ELVIS UTZ

Retakes the stand.

BY MR. LOSEE:

Q I think, Mr. Utz, prior to recess for lunch, you were explaining and had explained how proration would have been accomplished in the South Carlsbad-Morrow Field. I'll hand you what has been marked as Defendant's Exhibit 3, and before you start, let me have an extra copy, please.

(Extra copy handed to Mr. Losee by the Witness.)

Q This is so the Court can follow your testimony. It is Defendant's Exhibit 3.

A It is marked 3.

Q All right. And, I'll ask if you will explain, first, generally what this Exhibit explains.

A Well, this is an analysis of production verses

allowables for the period of September 1st, 1972, through June of 1973. I have chosen to calculate these allowables in two periods of time, namely from September 1st, through December 31st, 1972, and through January 1st, through June 30th, 1973.

MR. WATKINS: Excuse me, sir. What was that last date?

A January 1st, through June 30th, 1973.

MR. WATKINS: Thank you.

Q And, the period through December of '72, was based on actual production of the wells in the South Carlsbad-Morrow Field?

A That is correct.

Q And, in addition, the period from January through June, is based upon actual production for January, and --

A Actual production for January, and February through July is based on an estimate, estimated production which is based on January, actually.

Q Let me ask you to specifically refer to the first page of this Exhibit, and explain how the allowable calculation was made for September through December, of 1972?

A I took the total pool production for the four

months, September through December, which totaled 5,981,012 MCF. Then, at the end of December, I analyzed per well production, on a monthly basis, and classified wells based on their ability to produce.

Q As marginal or non-marginal?

A As marginal or non-marginal, as previously explained. As I explained, marginal wells are those that cannot produce their initially calculated allowables, and out of twenty wells, I came up with -- came up with, after classification, with eight non-marginal wells, and those are the wells that are shown on the second sheet. The remaining twelve marginal wells, production was 1,489,230, MCF, for the four month period. I subtracted that production, which was a hundred percent of their ability to produce, from the total production from the pool, which left a remaining, non-marginal production to be assigned to the remaining eight non-marginal, an allowance of 4,491,782 MCF. I then, with the remaining non-marginal wells -- well, first, let me explain, that two of the non-marginal wells were the Drag A and Drag B Wells, the Phillips, which only produced for a very few days, two days, I think, the end of

November, and all of the month of December. So, I allocated their allowable based on the length of time they were actually on the line, as compared to the four months period, and reduced their acreage factor, which is in effect is their allocation factor, to 25%. This gives me a total allocation factor of 5.94. This was divided into the 4,491,782, to give me the per well or per unit or per allocation factor, whichever you choose to call it. An allowable factor of 1, and this was 756,192 for the four month period. The wells that were only on a little over a month, had an allowable or proportional factor or proportional production factor which was 189,048, and then if you will notice I calculated for a .25 factor, a .51 factor, and .97 factor and .98 factor, and assigned the allowables, accordingly.

Q So, referring back to your allowable factor of 1, and to Defendant's Exhibit 1, assume the well of Cities Service, Merland, in Section 19, is one -- I am sorry, that is a marginal well. Let us take the Grace Gopogo well, Number 2, which is actually here in Section 24, at an orthodox location, on a 320 acre tract, and it is an allowable for that

four month period would have been 756,192 MCF.

A That's correct.

Q All right. Now, still referring to the first page, would you explain how the allowable was calculated for the period January through June of 1973?

A As previously stated, I had the January production available to me, which was the last month that I have available to me, and I based the pool allowables and per well allowables on the January production, which in my mind, and my opinion, is slightly high. Nevertheless, in order to be completely fair about it, I used that figure, which would cause the allowables to be somewhat high in my opinion. And, the January production, plus my estimated February through June production, totaled 13,771,038. I again reclassified wells, based on their ability to produce, and came up with two less, or six non-marginal wells. This, of course, left fourteen marginal wells. Their actual production, plus my estimated production, was 3,728,684. Subtracting that from the total estimated production, the non-marginal production for the six remaining non-marginal wells for the six months period, then, would be 10,042,354 MCF. And, then, using a 5.48 acreage factor, which divided

into the ten plus million, gave me an allowable for the six month period, for an old unit or an acreage factor of 1,832,546 MCF and the penalized wells were calculated according to their penalty.

Q So, this second period, which is six months in duration, each of the marginal wells could produce the 1,832,546 for a six month period. Break that down, if you would, on a monthly basis, and then a daily basis, on MCF, approximately.

A Well, it is approximately ten million MCF a day, or roughly two hundred thousand a month.

Q So, that each of the non-marginal wells in the field, could produce up to ten million MCF a day, before they produced in excess of their allowable.

A If they had an acreage factor of one.

Q Okay. Now, let me ask you to go to the second page of your Exhibit, and as I understand it, the eight wells listed on the lefthand side, were the original eight non-marginal wells in the field.

A That is correct,

Q And, in January, two of those wells, the Cities Service Merland, and the Spencer, were classified as marginal and taken off of the schedule.

A That is correct.

Q All right. Let's look at the first well on the schedule, and I'll ask you to explain what these numbers mean, with respect to the Phillips Drag A Well Number 1.

A I have listed three figures for each well, for the period. Production first, allowable second, and the status of the well, third. For the period of September through December, the actual production of the Phillips was 163,210 MCF. It is its calculated allowable of 756,192, which caused it to be under produced 592,982, with a plus sign, which means under production.

Q All right. Now, actually that Phillips Well was just on production a short period of time, during that four month period, was it now?

A That is correct, yes.

Q All right. Now, looking at the second column of figures, explain what is meant by those figures, opposite the Phillips Well?

A The Phillips Drag A, Number 1?

Q Yes.

A The same three figures are noted there, for a different period, however, January through June. As previously explained, February through June is

an estimated figure, based on January. So, the estimated production for that well, for a six month period, would be 1,097,352 MCF. The estimated allowable for that well, based on its share, is 1,832,546 MCF. As noted, the status has a plus figure again, so the well would continue to under produce, and its under production at that point, my estimate would be 1,453,854 MCF.

Q All right. Let's turn to the next well, the Phillips Drag B Well, and briefly explain those figures, and the position of that well, under the allowable order? Or prorationing order?

A Well, that well and every other well on the Exhibit, has the same three figures, production, allowable and status. For the first period, September through December, production was 306,860 and the allowable 756,192. The well under produced by 449,332 MCF. The same three figures are noted for the later period of January through June. The total, or the estimated produced was 2,950,488, with an allowable of 1,832,546, which shows the well to have overcome its under production, balanced, and is now in an over produced condition at the end of June, by 668,610 MCF, as noted by the negative sign.

Q Now, I notice opposite that well, you have a dollar figure under "Value of Overproduction". Would you explain that?

A Yes, sir. That well is over produced, as stated, by 668,610 MCF. That is my estimate of what it will be over producing at the end of June. The going price of gas, according to an F.P.C. Examiner for this area, is 35¢ per MCF. I have multiplied the 35¢ by the 668,610 coming out to \$234,013 as the total value of over production for that well.

Q And, that is in the absence of prorationing.

A That is correct.

Q Mr. Utz, let me slow you down a minute, and ask for another copy. My counsel on the other side, returned his copy to me, and I have been using it. Do you have one?

A Yes, sir.

(Witness produces another copy of Exhibit and hands same to Mr. Losee.)

Q Now, Mr. Utz, let's go down to the City of Carlsbad Well, and again, briefly explain those figures and what they represent.

A Well, likewise I have calculated the same set of six figures for the City of Carlsbad figure -- or for

the City of Carlsbad Well. At the end of December, according to actual production, verses the prorated share of the production, it is 404,135 MCF over produced. Going on to the next estimated period, it had allowables of amounts over one point eight million, and an estimated production of one point six million, which lowered its production somewhat, and still remaining over produced. However, only by 219,099 MCF. Now, multiplying that figure by the same 35¢ per MCF, gives me a figure of \$76,684, as the value of the over produced condition.

Q All right. Now, Mr. Utz, looking at the period on that well, from January until June, if that figure is the allowable, and I believe you said that was January production, and estimated production from February on, would the well, for that six months period, have produced in excess of its allowable?

A You mean January through June?

Q Yes?

A No, it actually produced approximately two hundred thousand less.

Q So, that had the stay order not been in effect, and prorationing in the City of Carlsbad Field, during the period from January to June, there would be no

restriction on the City of Carlsbad Well.

A Not according to my estimate.

Q Turning down to the Grace Gopogo Number 2, would you explain those figures.

A I acquired the same set of six figures used, and the well actually having produced 915,220 MCF for the four month period, against an allowable of 756,192, leaving the well over produced at the end of December, 159,028 MCF. Now, my estimate for production of that well, for the six month period, first half of 1973, is 2,731,908, against an allowable of 1,832,546, and that is its proportionate share of the total allowable, causing the well to be over produced a total of 1,058,390, MCF, and the value of that, would be -- of that over production, would be \$370,436.

THE COURT: I don't understand your figures on the Number 1, City of Carlsbad, sir. In the second column, January through June, you have got a production of 1.6 and an allowable of 1.8 of deficit, over production over that period.

THE WITNESS: The well was over produced 404,135 at the end of December, and it under

produced approximately two hundred thousand in the second period, which lowered its total production.

THE COURT: All right, I see it now.

BY MR. LOSEE:

Q Actually, in your answer, Mr. Utz, under the order prorating the Carlsbad Field, the first proration period was fifteen months, was it not?

A Under the order, yes.

Q So --

A September 1st, through 1973.

Q Through all of this year, 1973.

A Yes.

Q And, that is the reason for the under or over produced figures carried over from one period to the next.

A It is an accumulated over or under produced area. It is carried until the allowable is cancelled, or the well is shut in, to make up for over production.

Q Now, you say wells under proration orders are shut in to make up for over production, under existing Commission's Rules. When does this take place?

A Under existing Commission's Rules, and under the order for this pool, which is not in effect, R-1670, I believe it is, when a well becomes over produced,

six times its current allowable, it is --

Q Current monthly allowable?

A Yes, sir. It is subject to a curtailment, and we issue a shut in order, until the well is less than six times its current monthly allowable over produced. That would be a comparison of the over produced status of the well, verses its current monthly allowable.

Q And, how long do you leave it shut in?

A We leave it shut in, until the operator has shown us that the well is less than six times over produced.

Q Now, Mr. Utz, where, in your opinion, does this over production of gas come from?

A In all probability, it comes from the offset operators. At least it shows that he has produced more than his proportionate share of production.

MR. LOSEE: At this time, we would offer Defendant's Exhibit 1 -- or 3, excuse me.

THE COURT: Any objection?

MR. WATKINS: No objection.

THE COURT: It will be admitted.

BY MR. LOSEE:

Q Mr. Utz, what is meant by waste, when you are referring to a gas reservoir, similar to the South Carlsbad-Morrow Gas Field?

A Well, waste can be in two areas. Above ground, or surface waste, and it can be reservoir waste. Of course, above ground would be flaring gas, unnecessarily, or wasting gas in anyway, other than selling it for useful purposes. Now, underground waste, in my opinion, can occur when a well is produced at too high a rate. Particularly in a reservoir like the South Carlsbad-Morrow. This reservoir is anything other than homogeneous, which means that the permeability in the reservoir is very particular and spotty, witness the fact that some wells drilled almost in the confined limits of the pool are dry, which means that the permeability was so low, they couldn't give up gas out of the formation and there is substantial water in the zone. My opinion is if gas is brought to the well bore at such a high rate that it very well can by-pass pockets of water, which in turn would trap pockets of gas in the reservoir. Whereas, if the well was produced at a lower rate, allowing the gas to bring the water along with it to the well bore,

rather than channel through it, and in all probability these pockets of gas would be un-produced. Another factor of waste in the reservoir, in my opinion, is that when a well is producing more than its fair share of reserves, that it has to draw gas from a greater period -- a greater distance, greater radius from the well bore. In other words, any time you move any fluid, including gas, through a reservoir, it takes energy to do this, and in my opinion, in drawing gas through a reservoir, through a greater distance than a 320 acre circle, would cause a waste of reservoir energy.

Q Now, when one well produces at a substantially higher rate than another, does that mean that it is drawing gas from a greater distance from the well bore, than the other?

A In all probability it does.

Q Does prorationing prevent this type of waste that you are referring to, of energy, first?

A Yes, sir, it does, it tries to limit the wells to their proportional share of production.

Q And, part of that is to prevent channeling through water in its formation.

A Well, water or anyother types of liquids.

Q And, the good that occurs, will you recover the gas that is pocketed behind the water, or will it be lost?

A If the gas channels by the water?

Q No, if you develop a pocket of water by reason of rapid withdrawal, and some gas pockets behind it, will that gas be recovered in the well bore?

A Probably not. In other words, when the water, and the gas reach a balance in pressure, the remaining gas will remain in the reservoir.

Q So, that that gas is actually lost force, under present known producing methods.

A That is correct. Only way you'd ever get to it is to drill a well down to that particular pocket of gas.

Q And, referring to prorationing, what do we mean by protection of correlative rights?

A Protection of correlative rights, is giving each operator in the pool, their opportunity to produce their fair share of the reserves in the pool.

Q Now, it is drainage off of 320 acre tracts, onto another, without any corresponding counter-draining, a harm to the correlative rights or detrimental to them?

A Yes, sir, it is.

Q Would you --

A It would allow them to produce more than his share of the pool production.

Q In effect, he takes some of his neighbor's gas.

A That's right.

Q Does that kind of violation of correlative rights, occur in the absence of prorationing?

A No way to prevent it, under the current extreme market conditions for gas, at this time. To my knowledge, most of these wells that are to be produced, are being produced to capacity, and therefore, they are having more production, other than in the rationing.

Q We talk about penalty factors being assessed to the two Grace wells, Grandonoco and Grace-Humble. Any way that that penalty can be enforced in the absence of prorationing?

A No way that the Commission can enforce it, and in my opinion, the operators or the purchasers, have no desire to enforce it, and we don't know what the figure would be, until we make the calculations.

Q Mr. Utz, let me, at this time, ask that we take into consideration the effect of more than one

purchaser of gas in a gas field in New Mexico, and can you advise the Court how many purchasers of gas are in, or were in this field at the time of the hearing to prorate it?

A There were two, Transwestern, and Lano.

Q Are there any additional gas purchasers in the field at this time?

A El Paso also purchases from both Phillips' wells, and I understand they are about to connect with another one.

Q Do you understand any other gas purchasers are going to come into the field?

A My understanding that Southern Union will have a contract in the field, and will undoubtedly be a fourth purchaser.

Q Do these gas purchasers all have the same demands for gas?

A No, they do not, and some purchaser's demands for gas are more seasonable than others. Therefore, it has been my experience in my eighteen years of supervising the proration department, that each purchaser has a different demand for gas.

Q And, in the absence of prorationing, he can take from each gas well that he is connected to, whatever

his contract calls for.

A That is correct.

Q Even though that may be, for that well, more than its share of gas in the field.

A Well, it indicates often the contractor will allow them to take more than their fair share of the gas.

Q Now, is there anyway the producers in the field, protecting them, one producer in the field that is tied into a gas purchaser, without a greater demand, from his neighbor, who is tied into a gas purchaser with a greater demand, on the gas, other than by prorationing?

A I don't believe I follow that question, Mr. Losee?

Q Okay. You would have been pretty good.

THE COURT: I didn't, either.

Q The longer it got, I got confused, too. If one producer is tied into a gas purchaser's line, who for a particular six months period, doesn't have as great a demand for his gas, how does he protect himself, as far as his rateable share of the gas under his tract, from his neighbor, who is -- has a gas purchaser who is willing to take all of the gas that his well is able to produce?

A Well, the only way he can protect himself, is to have

proration of an allowable figure, something that would keep his neighbor curtailed, somewhat, and he would know how much gas he had to take, or it would be cancelled, within a certain period of time.

Q Providing the well can produce it, of course.

A Providing the well can produce it.

MR. LOSEE: I think that is all I have at this time.

THE COURT: All right. Mr. Watkins?

MR. WATKINS: Please the Court.

CROSS EXAMINATION

BY MR. WATKINS:

Q Mr. Utz, referring to your statement that there is an extreme market demand at the present time for gas, what do you mean by that?

A Well, the market demand is higher now, than it has been in the history of gas production in the State.

Q Did you say from your experience, that the demand is greater for -- that the demand is such, that purchasers want to take all of the gas they can get from this field?

A Well, they say they want to, but they don't take what they nominate, and according to these figures

here, they take more than that from some wells, then their proportional share, and the wells are capable of producing it, and we don't restrict market demand, and we don't restrict production.

Q But, there is an extreme market demand now, for gas.

A Yes, sir.

Q Not only here, but all over the country.

A That is true.

Q Now, you mentioned awhile ago, that it was your opinion, that an over production comes from offset wells.

A Yes, sir.

Q What do you base that upon? What is the foundation for that opinion?

A Well, at the -- any time a well produces more gas than his neighbor, he is draining a greater radius of drainage, and if it continues to exist, at the completion of both wells, he will have drained his own gas, plus some gas from his neighbor. That is just simply a common engineering fact.

Q Well, that of course, would depend upon whether these wells, the over produced well, and the under produced well, were connected in the formation, would it not?

A Well, yes, it would, but that determination has

already been made. It is the South Carlsbad Pool. It is a common source of supply, for all twenty of these wells.

Q All right. Well, now, you mentioned awhile ago, that there were -- you gave some figure, I forget it, so many fields in the State, that were prorated. Can you give me that figure again?

A I believe there is twenty-seven.

Q Well, now, were these fields prorated before they were fully developed?

A Yes, sir, they were, most of them were, as a matter of fact.

Q Well, tell me how -- Well, now, the South Carlsbad Pool has not been fully developed, has it?

A No, I am sure it hasn't.

Q And, there is more drilling going on all of the time.

A To the tune of about eleven wells, I understand.

Q Yes, sir. How do you determine the boundaries of the Morrow Foundation, in particular, when the field hasn't been fully developed?

A As you well know, we can't prorate development.

Q No, sir, I don't know anything, I am sorry.

A Okay, I'll tell you, then. Whenever a well is completed on a 320 acre tract, we consider that

320 acre tract developed. If it is completed in the South Carlsbad-Morrow Area, and within one mile of the defined horizontal limits of the South Carlsbad-Morrow Pool, we consider it a part of the pool, and we only take it into the horizontal limits when it is completed on a 320 acre tract, adjacent to, or within the limits of the pool. Now, we don't know that the pool is developed. We know that it isn't developed, as a matter of fact, but you prorate gas on the number of completions, and you compute gas on the number of completions, and every one that has acreage in this area, has an opportunity to drill a well to that formation, and capture his own reserves, before somebody else produces it.

Q Now, have you, or the completions, established reserves in this field?

A In the South Carlsbad-Morrow?

Q Yes?

A Yes, sir, we have.

Q On what data?

A On geological data.

Q Such as what?

A The perforation in the well bore, and the logs, log data that shows the net production, and it shows the

the vertical limit of the Morrow Zone. Shows the pay area.

Q Now, I believe that the completions have established these reservoirs.

A Well, I know they have. We have an order that says the outlines shall be noted by the wavy line on Exhibit Number 1. In other words, the horizontal limits of the South Carlsbad-Morrow Pool, as designated by the Commission.

Q I see.

A And, we have done that on the basis of reserves and geological information, by our geologists.

Q Do you know what the reserves are, or can you give us some figure?

A What the reserves are?

Q Yes, sir?

A No, I do not know what the reserves are under any tract.

Q All right. Now, calling your attention to the City of Carlsbad Number 1, that is somewhat of a unique well, isn't it?

A Well, it is unique in the fact that it produces something like about a thousand barrels of water a day.

Q And, that is a -- that makes it unique. Now, tell me why?

A Well, it produces more water, to my knowledge, than anyother well in the field. Not to say that there is not some wells in the field that do produce water, because some of them do produce smaller amounts of water. Matter of fact, I know one well, according to testimony before me, at hearing, watered out.

Q Wells can water out.

A It is not producing any more.

Q Uh-huh. Now, the net effect of the proration order we are talking about, will be to cut production of gas, in the City of Carlsbad, Number 1, will it not?

A I would doubt -- according to the figures shown on my Exhibit Number 3, according to the six month period, from January through June, my estimate is that it would not be curtailed. However, it obviously should have been curtailed somewhat, during the first four months, or the last four months of '72.

Q Am I correct, sir, -- and please understand, I am completely ignorant of gas and oil procedures. Is this field prorated on a per well basis?

A Yes, sir.

Q Each well.

A Each well.

Q Prorated.

A Well, let me correct that. It is not prorated now, because of a court order.

Q I understand, you are attempting to.

A But, I have been assigning allowables to it, even though they are not effective, on a per well basis.

Q Is that the same procedure that you have used in the other fields that have been prorated?

A Yes, sir, exactly.

Q Uh-huh. Tell me, if you can, Mr. Utz, approximately, what would be the net effect on production of gas from this South Carlsbad Field, if the prorationing order would go into effect? I -- maybe I am not making myself clear, and I am trying to do so. Would it cut back production?

A No, it would not.

Q It would not curtail production?

A No, no, sir. On individual wells it would curtail production, down to their proportionate share, but not curtail production from the pool, as a whole. Only prorate the pool production to the wells that can produce it.

Q I beg your pardon?

A It would prorate production to the wells -- to the

wells that can produce it, the proportional share of production.

Q It would cut down the wells that are good wells.

A Certainly would, yes, sir, and rightly so.

Q Well, I don't want your opinion as to that, sir.

A Okay.

Q All right. Now, can you give me a percentage as to the curtailment of production in these wells that are good wells?

A I can't give you a percentage figure. I can give you an actual figure as of June 1st, or an estimated figure.

Q All right.

A In other words, the City of Carlsbad Well, produced more than its share in the first four months, after the order was written, from September through December, of 404,135 MCF, more than its fair share of its production, or the pool production. The Grandonoco -- or the Gopogo Number 2, produced 159,028 MCF, other than its fair share that was from pool production.

Q Uh-huh.

A Going to the Antweil Little Jewel, and these are actual figures, 37,690 MCF more than its fair

share of production. I understand, in the act of proration, we don't prevent these people from becoming over produced, but we do require they curtail their production and get back in balance, during the following proration period.

Q Yes, sir. Now, let me go into another matter, and I have reference to City of Carlsbad Number 1. Now, this well has been, in the past, over produced.

A Yes, sir.

Q And, I believe you said awhile ago, that when a well over produces to a certain extent, then the Commission's people shut the well in, is that right?

A That is correct.

Q At the present time, and from the data that you have, can you tell me if the Commission plans to shut in the City of Carlsbad Number 1, Well?

(Witness checks records.)

A According to my estimate, the City of Carlsbad would not be subject to shut in, between now and June, anyway, providing my estimate of its production for February through June, is correct.

(Mr. Watkins confers with co-counsel.)

Q Now, all of your testimony, sir, has been based upon estimates that you have made.

A No, that is not true. The production from September

through December, is actual.

Q I understand that. I understand that, but I am talking about the reservoir, for instance.

A You mean testimony as to waste?

Q Yes.

A Based on what?

Q Just your estimate and not on any actual group. And, your opinion.

A Yes, sir, that is my opinion, based on my experience, on some twenty-four years in the oil patch.

MR. WATKINS: I believe that is all.

Thank you, sir.

THE COURT: Redirect, Mr. Losee?

REDIRECT EXAMINATION

BY MR. LOSEE:

Q Mr. Utz, just a question or two, to clarify something. You earlier stated that the Commission under this Rule, and other prorationing rules, shut in a well only after it had reached -- become six times its monthly allowable over produced.

A That is one shut in that we use, and the order provides for, that during a period -- now, after a well has carried over production, through a proration

period, which at this point, in all pools, including this pool, is twelve months long, if he carries production from January through December, he is shut in for curtailment, the term we use, and he is shut in, period, until he makes up all of that over production.

Q So, that based on the actual production from these eight wells, here, through December, and I believe you earlier said you had actual production in January on this Exhibit --

A That is correct. That is what I based the six months on.

Q As of June 30th, what, if any wells on this Exhibit, would be shut in, under this six times allowable rule, under the Commission's Rule.

A What if they would?

Q What, if any of the wells? You already said the City of Carlsbad wouldn't, because it wasn't six times over produced. Now, are there any wells on the Exhibit that would be?

A It looks to me like -- well, I am not even sure the Gopogo Number 2 would be shut in, because I show -- well, not on the basis of six times. However, bear in mind, that he is increasing his over production

and he probably would be shut in, in December, if he doesn't curtail in the meantime.

Q What about the Phillips Drag B Well, which has some over production through June, would it be subject to being shut in?

A According to my estimate, no.

Q So, that actually, in your estimate that you used for the period from January through June, is actually January's production, is it not, multiplied by six?

A That is correct.

Q So, that none of these non-marginal wells under a six time rule, would be shut in.

A According to my estimate, doesn't look like they would be for six times, no.

MR. LOSEE: That is all.

MR. WATKINS: I have nothing further.

THE COURT: Mr. Utz, for my enlightenment --

THE WITNESS: Yes, sir.

THE COURT : Are you saying that it is your view, that whether or not this stay order is in effect now until June, when this case is heard, it will not make any difference on production to the wells?

THE WITNESS: No, I am not saying that.

THE COURT: Well, explain to me, what you said, because you are misleading me incorrectly.

THE WITNESS: I am saying, sir, that the wells will continue to become more out of balance if the stay order is left in effect, because we have the Gopogo Well, is a Grace Well, and it is becoming more and more over produced. I am sure that at the end of June, it will be over produced, as to my estimate, which is more than it is over produced at the present time, so it will produce more than its share. If the stay order is lifted, these people should -- I am not sure that we can curtail them, so they will become more unbalanced. At least they will have allowables assigned to them, at -- on the basis of pool production, and too, they will definitely know what their fair share of production is, then.

THE COURT: Let's talk about the City of Carlsbad and the Grace Wells, as to which contention is made that a shut in would cause some problem as to water. Do you anticipate any need for a shut in or curtailment as to that well, the City of Carlsbad, in the next

three or four months, on what you know now?

THE WITNESS: No, sir, no, sir, I don't -- I don't believe that it will be necessary to shut in the City of Carlsbad, between now, and June 30th.

THE COURT: Then, am I reading you correctly as to that, then, as to that well, whether the stay order is in effect or lifted, will make no difference in the production of that well, in the intervening time?

THE WITNESS: Between now, and June 30th?

THE COURT: Yes, sir.

THE WITNESS: I don't think the well, with that amount of water -- I think the well will probably produce as it is producing now, between now, and June 30th.

THE COURT: All right, now you say probably. Is there anything that could or might happen in the intervening time, that might change that position?

THE WITNESS: Well, there could be a decrease in production out of the pool, which would decrease my production allowables, be an increase in the production of the well.