

LYNCH, CHAPPELL, ALLDAY & ALDRIDGE

RAYMOND A. LYNCH (1913-1971)
CLOVIS G. CHAPPELL, JR.
MARTIN L. ALLDAY
CHARLES C. ALDRIDGE
RANDALL LUNDY
KENNETH W. NORDEMAN
GARY G. WISENER
JAMES M. ALSUP
ROBERT A. SPEARS
JIMMY R. COX

ATTORNEYS

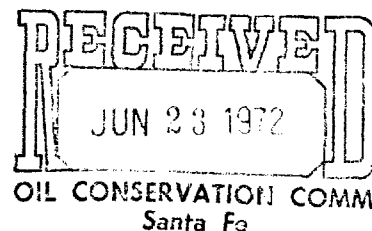
201 WALL TOWERS EAST
MIDLAND, TEXAS 79701

June 21, 1972

Case 4763

AREA CODE 915
683-3351

State of New Mexico Oil
Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501



Attn: Mr. Dan Nutter

Gentlemen:

10-5-72

This letter represents an application on behalf of our client, Black River Corporation, 620 Commercial Bank Tower, Midland, Texas 79701, to force pool the interests of all working interest, royalty interest and overriding royalty interest owners as to the Morrow formation underlying all of the E/2 of Section 3, T-26-S, R-24-E, NMPM, Eddy County, New Mexico.

We would appreciate your setting this application for hearing on your docket for July 12, 1972.

If any further information is required, please advise the undersigned at the above address.

Yours very truly,

LYNCH, CHAPPELL, ALLDAY & ALDRIDGE

A handwritten signature in dark ink, appearing to read "Robert A. Spears".

Robert A. Spears

Attorneys for Applicant

EXCISE MARKED

11-10-72

LAW OFFICES
HINKLE, BONDURANT, COX & EATON

TELEPHONE (505) 622-6510

CLARENCE E. HINKLE
W. E. BONDURANT, JR.
LEWIS C. COX, JR.
PAUL W. EATON, JR.
CONRAD E. COFFIELD
HAROLD L. HENSLEY, JR.
STUART D. SHANOR
C. D. MARTIN
PAUL J. KELLY, JR.
J. M. LITTLE

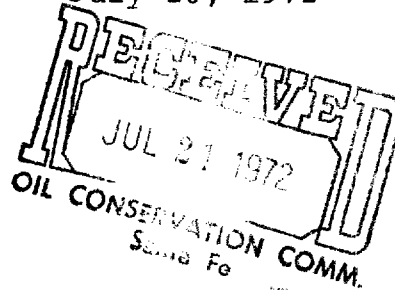
600 HINKLE BUILDING

POST OFFICE BOX 10

ROSWELL, NEW MEXICO 88201

MIDLAND, TEXAS OFFICE
521 MIDLAND TOWER
(915) 683-4891

July 20, 1972



Case 4763

R. L. Stamets, Examiner
Oil Conservation Commission
Box 2088
Santa Fe, New Mexico 87501

Dear Mr. Stamets:

This will refer to our telephone conversation this morning in regard to the location of the Cities 3 Federal 2 well in the E $\frac{1}{2}$ Section 3, Township 26 South, Range 24 East. We contacted Mr. W. P. Aycock at Midland in regard to this matter and he states that Exhibit 5 which was introduced in evidence at the hearing is in error. He states that the information shown on the exhibit was taken from the Midland Oil Scouts report. We enclose 3 copies of corrected plat which shows the location of the well to be 2212 feet from the north line and 1998 feet from the east line of Section 3. Please substitute this exhibit for the one introduced in evidence at the hearing.

Yours sincerely,

HINKLE, BONDURANT, COX & EATON

By

A handwritten signature in dark ink, appearing to read "Clarence E. Hinkle", written over a horizontal line.

CEH:cs
Enc.
cc: Carl Traywick

CLARENCE E. HINKLE
W. E. BONDURANT, JR.
LEWIS C. COX, JR.
PAUL W. EATON, JR.
CONRAD E. COFFIELD
HAROLD L. HENSLEY, JR.
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J. M. LITTLE

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POST OFFICE BOX 10
ROSWELL, NEW MEXICO 88201

TELEPHONE (505) 622-6510

MIDLAND, TEXAS OFFICE
521 MIDLAND TOWER
(915) 683-4691

October 12, 1972



Handwritten signature or initials.

Mr. A. L. Porter, Jr.
Secretary-Director
Oil Conservation Commission
Box 2088
Santa Fe, New Mexico 87501

Re: Cases 4763, 4764 and 4765

Dear Mr. Porter:

The captioned cases, involving the pooling of all mineral interests in the E $\frac{1}{2}$ Section 3 and the W $\frac{1}{2}$ Section 3, Township 26 South, Range 24 East to form non-standard spacing and proration units for the production of gas from the Washington Ranch-Morrow Gas Pool, are on the Commission docket for October 18. It is our understanding that these cases are to be heard de novo upon the application of Rutter and Wilbacks Corporation, which is represented by Jason Kellahin.

We represent Black River Corporation and participated in the hearing before the examiner and because thereof I am familiar with all aspects of these cases. I made arrangements several weeks ago and have reservations to go to California on October 14 and will not return until October 30. This trip is for reasons I cannot very well postpone.

Please consider this as a motion to continue the above cases until the regular hearing of the Commission, which we understand will be held on November 15, 1972.

Yours sincerely,

HINKLE, BONDURANT, COX & EATON

By Clarence E. Hinkle
Handwritten signature of Clarence E. Hinkle.

CEH:cs

DOCKET: REGULAR HEARING - WEDNESDAY - OCTOBER 18, 1972

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

CASE 4763: (De Novo)

Application of Black River Corporation for compulsory pooling and non-standard proration unit, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks an order pooling all mineral interests in the Morrow formation underlying the E/2 of Section 3, Township 26 South, Range 24 East, adjacent to the Washington Ranch-Morrow Gas Pool, Eddy County, New Mexico, comprising, approximately, a 409.22-acre non-standard proration unit. Said acreage to be dedicated to its Cities "3" Federal Well No. 2 located 2212 feet from the North line and 1998 feet from the East line of said Section 3.

Also to be considered will be the costs of drilling said well, a charge for the risk involved, a provision for the allocation of actual operating costs, and the establishment of charges for supervision of said well.

Upon application of Rutter and Wilbanks Corporation this case will be heard De Novo under the provisions of Rule 1220.

CASE 4764: (De Novo)

Application of Black River Corporation for compulsory pooling, and non-standard proration unit, Eddy County, New Mexico. Applicant, in the above-styled cause, seeks an order pooling all mineral interests in the Morrow formation underlying the W/2 of Section 3, Township 26 South, Range 24 East, adjacent to the Washington Ranch-Morrow Gas Pool, Eddy County, New Mexico, comprising, approximately, a 407.20-acre non-standard proration unit. Said acreage to be dedicated to its Cities "3" Federal Well No. 1 located 1980 feet from the North line and 1980 feet from the West line of said Section 3.

Also to be considered will be costs of drilling said well, a charge for the risk involved, a provision for the allocation of actual operating costs, and the establishment of charges for supervision of said well.

Upon application of Rutter and Wilbanks Corporation this case will be heard De Novo under the provisions of Rule 1220.

CASE 4765: (De Novo)

Application of Michael P. Grace and Corinne Grace for compulsory pooling and non-standard proration unit, Eddy County, New Mexico.

(Case 4765 (De Novo) continued from page 1)

Applicants, in the above-styled cause, seek an order pooling all mineral interests underlying the W/2 of Section 3, Township 26 South, Range 24 East, adjacent to the Washington Ranch-Morrow Gas Pool, Eddy County, New Mexico, comprising, approximately, a 407.20-acre non-standard proration unit. Said acreage to be dedicated to a well located 1980 feet from the North line and 1980 feet from the West line of said Section 3.

Also to be considered will be the costs of drilling said well, a charge for the risk involved, a provision for the allocation of actual operating costs, and the establishment of charges for supervision of said well.

Upon application of Rutter and Wilbanks Corporation this case will be heard De Novo under the provisions of Rule 1220.

CASE 4796: (Continued from the August 16, 1972 Regular Hearing)

Application of Michael P. Grace II and Corinne Grace for capacity allowable, Eddy County, New Mexico. Applicants, in the above-styled cause, seek an exception to the General Rules and Regulations governing the prorated gas pools of Southeast New Mexico, promulgated by Order No. R-1670, as amended, to produce their City of Carlsbad "COM" Well No. 1, located in Unit O of Section 25, Township 22 South, Range 26 East, South Carlsbad-Morrow Gas Pool, Eddy County, New Mexico, at full capacity.



OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO

P. O. BOX 2088 - SANTA FE

87501

GOVERNOR
BRUCE KING
CHAIRMAN

LAND COMMISSIONER
ALEX J. ARMIJO
MEMBER

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

TO: ALL INTERESTED PARTIES

FROM: A. L. PORTER, Jr., SECRETARY-DIRECTOR

Due to prior commitments by members of the Commission, we will be unable to have a quorum present for the hearing which has been scheduled for November 15, 1972. Cases 4763, 4764, and 4765, all pertaining to Section 3, Township 26 South, Range 24 East, Eddy County, New Mexico, and scheduled for Hearing De Novo at the request of Rutter and Wilbanks, and Case 4796, pertaining to capacity allowable for the Grace City of Carlsbad No. 1, will therefore be continued to 9:00 o'clock a.m., November 21, 1972, in the Land Office Conference Room.

Cases 4766, 4771, and 4772, all pertaining to the W/2 of Section 4, Township 26 South, Range 24 East, will also be advertised for Hearing De Novo on that same date at the request of Michael P. and Corinne Grace.

October 24, 1972

Western Union
Telegram

IPMFEKA SANA
1-014655A325 11/20/72
ICS IPMMLTA MID
015 PD MIDLAND TEX 11-20 1005 A CST
PMS NEW MEX CONSERVATION CORP
A L PORTER JR SANTA FE NMEX

(DUP AND CORRECTED COPY)

CITIES SVC OIL CO AS JOINT INTEREST/OWNER SUPPORTS
~~BLACK RIVER CORP'S APPLICATIONS AND IN CASE 4763 FOR~~
~~COMPULSORY POOLING AND NON- STANDARD PRORATION UNIT IN THE~~
~~MORROW FORMATION UNDERLYING THE EAST HALF OF SEC 3~~
~~TO BE DEDICATED TO THE CITIES "3" WELL NO 2~~
AND IN CASE NO 4764 FOR COMPULSORY POOLING AND NON-
STANDARD PRORATION UNIT IN THE MORROW FORMATION UNDERLYING
THE WEST HALF SEC 3 TO BE DEDICATED THE CITIES "3"
FED NO 1, ALL IN TWP 26 SOUTH RANGE 24 EDDY CO NEWMEX
~~IN OUR OPINION THESE TWO WELLS WILL ADEQUATELY DRAIN THE~~
~~PROPOSED PRORATION UNIT REQUESTED TO BE ASSIGNED TO THESE~~
~~WELLS AND THE DRILLING OF ADDITIONAL WELL IN SEC 3~~
~~IN NOT JUSTIFIED~~

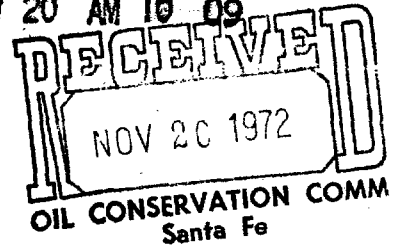
E F MOTTER REG ENGR CITIES SVC OIL CO

1142 EST

IPMFEKA SANA

File Case
4763

1972 NOV 20 AM 10 09



Western Union Telegram

PMFEKA SANA

012618A325 1114EST

1972 NOV 20 AM 9 27

IPMFEKA SANA

1-012558A325 11/20/72

ICS IPMMLTA MID

013 PD MIDLAND TEX 11-20 1004A CST

PMS NMEX CONSERVATION CORP A L PORTER JR DIR
SANTA FE NMEX

RECEIVED
NOV 20 1972

OIL CONSERVATION COMM.
Santa Fe

~~CITIES SERVICE OIL CO AS JOINT INTEREST & SUPPORTS
BLACK RIVER CORP'S APPLICATIONS AND IN CASE
4763 FOR COMPULSORY POOLING AND NON- STANDARD
PRORATION UNIT IN THE MORROW FORMATION UNDERLYING THE
EAST HALF OF SEC 3 TO BE DEDICATED TO THE
CITIES "3" WELL NO 2 AND IN CASE NO 4764
FOR COMPULSORY POOLING AND NON- STANDARD PRORATION
UNIT IN THE MORROW FORMATION UNDERLYING THE WEST HALF
SEC 3 TO BE DEDICATED THE CITIES "A"
FED NO 1, ALL IN TWP 26 SOUTH RANGE 24 EDDY CO NEW MEXICO.
IN OUR OPINION THESE TWO WELLS WILL ADEQUATELY DRAIN THE
PROPOSED PRORATION UNIT REQUESTED
TO BE ASSIGNED TO THESE WELLS AND THE DRILLING OF
ADDITIONAL WELL IN SEC 3 IS NOT JUSTIFIED
E F MOTTER REG ENGR CITIES SERVICE OIL CO~~

1117 EST

IPMFEKA SANA

Western Union called and read the following to me over the phone:

Midland, Texas - Please correct telegram dated November 20th from E. F. Motter, Regional Engineer, Cities Service Oil Company, as follows:

Make the 14th word read OUT instead of and, and the 24th text word from last of message to read DRAIN instead of draw.

Western Union

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

RUTTER & WILBANKS CORPORATION,
a Texas Corporation,

Petitioner,

vs.

No. 28477

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent.

PETITION FOR REVIEW

Comes now Rutter & Wilbanks Corporation, hereinafter called Petitioner, and pursuant to the provisions of Section 65-3-22, New Mexico Statutes Annotated, 1953 Compilation, as amended, respectfully petitions the Court for review of the action of the Oil Conservation Commission of New Mexico in Case No. 4763 on the Commission's docket, and its Order No. R-4353, affirmed by Order No. R-4353-A, entered therein, and states:

1. Petitioner is a corporation duly organized under the laws of the State of Texas, and is the owner of royalty and non-operating mineral interests acquired by transactions outside of the State of New Mexico, and Petitioner is the owner of royalty, non-operating mineral interests in and under the lands involved in Case No. 4763 on the Commission's Docket.

2. The respondent Oil Conservation Commission of the State of New Mexico is a statutory body created and existing under the provisions of the laws of the State of New Mexico, and vested with jurisdiction over all matters relating to the conservation of oil and gas in the State of New Mexico, the prevention of waste, the protection of correlative rights, and the enforcement of the Conservation Act of the State of New Mexico, being Chapter 65,

Article 3, New Mexico Statutes Annotated, 1953 Compilation, as amended.

3. On August 7, 1972, the Commission entered its Order No. R-4353 on the application of Black River Corporation, pooling all of the mineral interests, whatever they may be, including the interests owned by petitioner, to form a non-standard gas proration unit consisting of 409.22 acres, to be dedicated to Black River Corporation's Cities "3" Federal Well No. 2. On November 29, 1972 the Commission, on hearing de novo, as provided by law, entered its Order No. R-4353-A, reaffirming Order No. R-4353 in its entirety. Petitioners timely filed application for rehearing which application was not acted upon by the Commission within ten days and was, therefore, denied. Through inadvertence Rutter & Wilbanks Corporation was designated as Rutter & Wilbanks Brothers on the application for rehearing. A copy of Commission Order No. R-4353 is attached hereto and made a part hereof, as Exhibit "A"; a copy of Commission Order No. R-4353-A is attached hereto and made a part hereof as Exhibit "B"; and a copy of Petitioner's application for rehearing is attached hereto as Exhibit "C", and made a part hereof.

4. Petitioner is the owner of mineral interests in and under the lands affected by Case No. 4763, Order No. R-4353, reaffirmed by Order No. R-4353-A, and by reason of such ownership is adversely affected by Commission Order No. R-4353, reaffirmed by Order No. R-4353-A, is dissatisfied with the Commission's disposition of Case No. 4763, and hereby appeals therefrom.

5. Petitioner complains of said Order No. R-4353, reaffirmed by Order No. R-4353-A, and as grounds for asserting the invalidity of said Order, Petitioner adopts the grounds set forth in its Application for Rehearing, attached hereto as Exhibit "C" and made a part hereof, and states:

a. The Commission by its Order R-4353, purported to approve a non-standard gas proration unit in the Washington Ranch-Morrow Gas Pool, although the Commission has never complied with the provisions of Section 65-3-14 (b), New Mexico Statutes, Annotated, 1953 Compilation, as amended, and has never established a standard proration unit for the Washington Ranch-Morrow Gas Pool.

b. Rule 104, II, (a) of the Rules and Regulations of the Oil Conservation Commission, revised December 1, 1971, provide that a well drilled to a formation of Pennsylvanian age or older shall be located on a unit consisting of 320 acres, but by its Order No. R-4353, reaffirmed by Order No. R-4353-A, the Commission has approved a unit consisting of 409.22 acres.

c. Findings Nos. (5), (6), and (7) of Commission Order No. R-4353, reaffirmed by Findings Nos. (4), (5), (6), (7), and (8) of Commission Order No. R-4353-A are not supported by substantial evidence.

d. The evidence shows that the $S\frac{1}{2}$ $S\frac{1}{2}$ of Section 3, Township 26 South, Range 24 East is non-productive from the Lower Morrow formation, and is probably non-productive from the Upper Morrow formation, the Commission order therefore attributing non-productive acreage to the well to which the non-standard unit has been dedicated.

e. The Commission has included in the unit, and thereby pooled royalty interests owned by Petitioner with royalty under acreage which the testimony and evidence shows will not be productive from the Lower Morrow formation, and is of questionable productivity in the Upper Morrow, resulting in economic loss to the Petitioner.

f. The Commission, without just cause, has disregarded its own rules in dedicating a total of 409.22 acres to a well

in the Washington Ranch-Morrow Gas Pool.

g. Order No. R-4353, reaffirmed by Order No. R-4353-A, will result in irreparable injury to the correlative rights of Petitioner and deprives Petitioner of its property without due process of law in that it will permit owners of royalty underlying acreage which is shown to be non-productive to share in production from productive acreage underlying the non-standard unit, including that acreage under which Petitioner owns royalty interests.

h. The non-standard unit approved by the Commission has no reasonable relation to a 320-acre unit required by Rule 104, II (a), is not based upon any change in the requirements for a standard spacing or proration unit in the Washington Ranch-Morrow Gas Pool, nor on any rule or regulation of the Commission nor any law of the State of New Mexico, and in that respect is arbitrary and capricious.

i. Order No. R-4353, reaffirmed by Order No. R-4353-A, is arbitrary and capricious, and is therefore unlawful, invalid and void.

WHEREFORE Petitioner prays that the Court review New Mexico Oil Conservation Commission Case No. 4763, and Commission Order No. R-4353, reaffirmed by Order No. R-4353-A, and to hold said Order No. R-4353, reaffirmed by Order No. R-4353-A, unlawful, invalid and void, and for such other relief as may be proper in the premises.

KELLAHIN & FOX

By Jason W. Kellahin
Jason W. Kellahin

KELLAHIN & FOX
P. O. Box 1769
Santa Fe, New Mexico 87501

Attorneys for Petitioner

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

RUTTER & WILBANKS CORPORATION,
a Texas Corporation,

Petitioner,

vs.

No. 28477

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent.

NOTICE OF APPEAL

STATE OF NEW MEXICO:

To the Following Named Adverse Parties:

Oil Conservation Commission of New Mexico
Black River Corporation

NOTICE IS HEREBY GIVEN that the above named Petitioner being dissatisfied with the Oil Conservation Commission of New Mexico's promulgation of Order No. R-4353, as affirmed by Order No. R-4353-A, entered in Case No. 4763 on the docket of said Commission, has appealed therefrom in accordance with the provisions of Sec. 65-3-22, New Mexico Statutes, Annotated, having filed their Petition for Review in the District Court for the Fifth Judicial District, Eddy County, New Mexico.

The attorneys representing Petitioner in said cause are:

KELLAHIN & FOX
P. O. Box 1769
Santa Fe, New Mexico 87501

(SEAL)

WITNESS the Honorable D. D. Archer,
District Judge of the Fifth
Judicial District Court of the
State of New Mexico and the Seal
of the District Court of Eddy
County, New Mexico, this 7
day of January, 1973.

James M. Wilcox, Clerk

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

RUTTER & WILBANKS CORPORATION
a Texas Corporation,

Petitioner,

-vs-

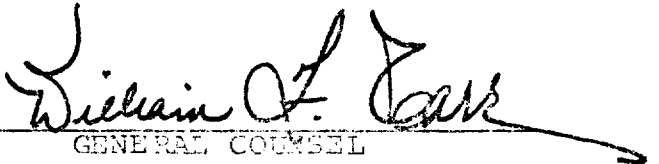
No. 28477

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent.

ACCEPTANCE OF SERVICE

The undersigned acknowledges receipt of Notice
of Appeal in the above captioned case and accepts service
thereof for and on behalf of the Oil Conservation Commission
of New Mexico.


GENERAL COUNSEL

DATE Feb. 6, 1973

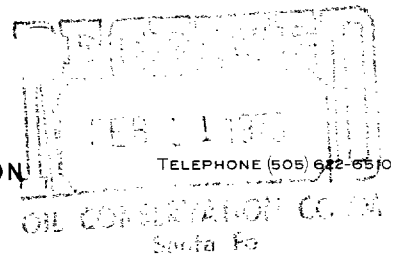
CLARENCE E. HINKLE
W. E. BONDURANT, JR.
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PAUL J. KELLY, JR.

LAW OFFICES
HINKLE, BONDURANT, COX & EATON

600 HINKLE BUILDING
POST OFFICE BOX 10

ROSWELL, NEW MEXICO 88201

February 12, 1973



MIDLAND, TEXAS OFFICE
521 MIDLAND TOWER
(915) 683-4691

Mr. A. L. Porter, Jr.
Oil Conservation Commission
Box 2088
Santa Fe, New Mexico 87501

Dear Mr. Porter:

Jason Kellahin has served Black River Coproration with copies of Notices of Appeal filed on behalf of Rutter & Wilbanks from Order R-4353-A confirming the prior decision creating non-standard gas proration units consisting of the E $\frac{1}{2}$ and W $\frac{1}{2}$ respectively of Section 3, Township 26 South, Range 24 East. Black River desires us to represent it in connection with the appeal and we will enter an appearance and do everything possible to support the order of the Commission.

Jason Kellahin requested that we stipulate that the record be limited to the testimony which was taken at the de novo hearing before the Commission, but we have advised him that we would like to have the full record including the testimony before the examiner due to the fact that it was stipulated at the de novo hearing that the testimony introduced at the examiner's hearing would be a part of the record.

It is not clear from the Petition for Review as to the dates the applications for rehearing in connection with Case 4763, Order R-4353 were filed with the Commission. The Petition for Review in each case states that petitioner timely filed application for rehearing, which application was not acted upon by the Commission within 10 days and was therefore denied. We would appreciate having the date the petition for rehearing was filed and when you considered the 10 days as being up.

There were a number of allegations contained in the application for rehearing which would require the Commission to make a determination in rejecting the order for rehearing. These allegations are adopted as additional ground for the Petition for Review. For that

Mr. A. L. Porter, Jr.

-2-

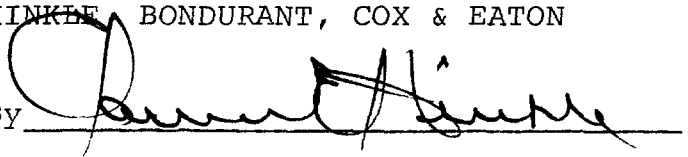
February 12, 1973

reason we would like to have the Commission's thinking or findings with respect to the allegations contained in the application for rehearing and in particular in connection with Paragraphs 4, 5, 6, 7 and 8. Any information or suggestions you may have to offer in connection with these will be appreciated and will be helpful in connection with the appeal.

Yours very truly,

~~HINKLE~~ BONDURANT, COX & EATON

By



CEH:cs

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

RUTTER & WILBANKS CORPORATION
a Texas Corporation,

Petitioner,

No. 28477

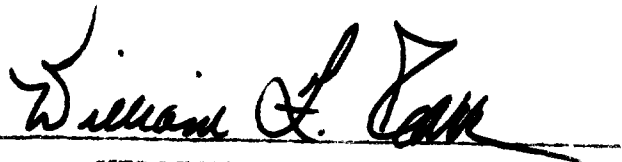
vs.

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondents.

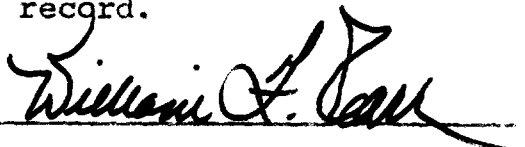
ENTRY OF APPEARANCE

William F. Carr, Special Assistant Attorney General, hereby enters his appearance on behalf of the respondent, Oil Conservation Commission of New Mexico, in the above entitled and numbered cause.



WILLIAM F. CARR
Special Assistant Attorney General
representing the Oil Conservation
Commission of New Mexico, P. O.
Box 2088, Santa Fe, New Mexico

I hereby certify that on the
14th day of February, 1973, a
copy of the foregoing pleading
was mailed to opposing counsel
of record.



OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

February 16, 1973

Clarence Hinkle, Esq.
600 Hinkle Building
Post Office Box 10
Roswell, New Mexico 88201

Dear Mr. Hinkle:

Your letter of February 12 has been referred to me for reply.

I will certify to the District Court in Eddy County, copies of the transcripts of both the examiner hearing and the de novo hearing in Oil Conservation Commission Case No. 4763. I will also certify to the court copies of all exhibits in the above-mentioned proceedings.

The application for rehearing in this case was filed on December 19, 1972. We consider the 10 days to have run on December 29, 1972.

No action was taken by the Oil Conservation Commission on the application for rehearing so there are no findings. Our position on the points raised in the application is as follows:

- No. 4 The Washington Ranch-Morrow Gas Pool is covered by the statewide rules for gas proration. There is, therefore, no statutory violation.
- No. 5 Evidence substantially supported findings Nos. (5), (6), and (7) of Commission Order No. R-4353.
- No. 6 Substantial evidence was presented that the acreage attributed to the well is productive.
- No. 7 The evidence indicated that the applicant will suffer economic loss but again the evidence indicates the acreage in question is productive.
- No. 8 The dedication of a total of 409.22 acres to the well in question is merely the establishment of a non-standard unit pursuant to Oil Conservation Commission Rule 104 D.

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

Clarence Hinkle, Esq.
Page 2

February 16, 1973

I hope this information is helpful to you. If I may be of further assistance, do not hesitate to call.

Sincerely,

WILLIAM F. CARR
Special Assistant Attorney General
Oil Conservation Commission

WFC/dr

IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO

RUTTER & WILBANKS CORPORATION,
a Texas corporation,

Petitioner,

vs.

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent.

No. 28477

RESPONSE TO PETITION FOR REVIEW

Comes Black River Corporation, acting by and through its attorneys of record, Hinkle, Bondurant, Cox & Eaton, Roswell, New Mexico, and for its response to the Petition for Review states:

1. Respondent admits the allegations contained in Paragraphs 1, 2 and 3 of the Petition for Review.
2. Respondent denies the allegations contained in Paragraph 4 of the Petition for Review insofar as it alleges that Petitioner is adversely affected by Commission Order R-4353, reaffirmed by Order R-4353-A.
3. Respondent denies the allegations contained in Paragraph 5 of the Petition for Review.
4. That the Petition for Review fails to state a claim upon which relief can be granted.

WHEREFORE, Respondent prays:

- a. That the Petition for Review be dismissed.
- b. That the Orders issued by the New Mexico Oil Conservation Commission be affirmed.
- c. For such other relief as may be just in the premises.

HINKLE, BONDURANT, COX & EATON

By: 

Attorneys for Black River Corporation
P.O. Box 10
Roswell, New Mexico 88201

WE HEREBY CERTIFY THAT WE HAVE MAILED
A COPY OF THE FOREGOING PLEADING TO
ALL OPPOSING COUNSEL OF RECORD THIS

2/22/73

Hinkle, Bondurant, Cox & Eaton
P O Box 10 Attorneys ROSWELL, N M 88201

FILED
1973 FEB 22 PM 4:30
CLERK OF DISTRICT COURT
EDDY COUNTY NEW MEXICO

IN THE DISTRICT COURT OF EDDY COUNTY
STATE OF NEW MEXICO

RUTTER & WILBANKS CORPORATION,
a Texas corporation,

Petitioner

vs.

OIL CONSERVATION COMMISSION OF
THE STATE OF NEW MEXICO,

Respondent

No. 28477

ENTRY OF APPEARANCE

Come the undersigned, Hinkle, Bondurant, Cox & Eaton,
and hereby enter an appearance in the above styled cause for and
on behalf of Black River Corporation.

DATED this 22nd day of February, 1973.

HINKLE, BONDURANT, COX & EATON

By 

Attorneys for Black River
Corporation

P.O. Box 10

Roswell, New Mexico 88201

WE HEREBY CERTIFY THAT WE HAVE MAILED
A COPY OF THE FOREGOING PLEADING TO
ALL OPPOSING COUNSEL OF RECORD THIS

2/22/73

Hinkle, Bondurant, Cox & Eaton

P. O. Box 10 Attorneys ROSWELL, N. M. 88201

OIL CONSERVATION COMMISSION

**P. O. BOX 2088
SANTA FE, NEW MEXICO 87501**

March 1, 1973

**Mrs. Frances M. Wilcox
Clerk
District Court of the Fifth
Judicial District
Carlsbad, New Mexico**

**Re: Rutter and Wilbanks v. Oil Conservation Commission,
Cause No. 28477 in the District Court of Eddy County,
New Mexico.**

**Rutter and Wilbanks v. Oil Conservation Commission,
Cause No. 28478 in the District Court of Eddy County,
New Mexico.**

Dear Mrs. Wilcox:

**We transmit herewith certified copies of the transcripts
of proceedings, exhibits, and other documents for inclusion in
the record in the above-entitled cases.**

Sincerely,

**WILLIAM F. CARR
Special Assistant Attorney General
Oil Conservation Commission**

**WFC/dr
enclosures**

**cc: Mr. Jason Kellahin
Mr. Clarence Hinkle**

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

INDEX OF DOCUMENTS

**Re: Rutter and Wilbanks v. Oil Conservation Commission,
Cause No. 28477 in the District Court of Eddy County,
New Mexico.**

**Rutter and Wilbanks v. Oil Conservation Commission,
Cause No. 28478 in the District Court of Eddy County,
New Mexico.**

1. Docket No. 15-72, July 12, 1972.
2. Transcript of Oil Conservation Commission examiner hearing on Oil Conservation Commission Case No. 4763.
3. Exhibits 1 through 6 by applicant Black River Corporation admitted on July 12, 1972.
4. Order No. R-4353.
5. Transcript of Oil Conservation Commission examiner hearing on Oil Conservation Commission Consolidated Cases No. R-4764 and R-4765.
6. Grace Exhibits No. 1 and No. 2 admitted on July 12, 1972.
7. Order No. R-4354.
8. Docket No. 27-72, November 21, 1972.
9. Transcript of Oil Conservation Commission De Novo hearing on consolidated Cases No. R-4763, R-4764, and R-4765.
10. Black River Corporation's Exhibits 1 through 6 admitted on November 21, 1972.
11. Rutter and Wilbanks' Exhibits 1 and 2 admitted on November 21, 1972.
12. Order No. R-4353-A.
13. Order No. R-4354-A.

IN THE DISTRICT COURT OF EDDY COUNTY
STATE OF NEW MEXICO

RUTTER & WILBANKS CORPORATION,
a Texas Corporation,

Petitioner,

vs.

No. 28477

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent.

ANSWER TO PETITION FOR REVIEW

Respondent, Oil Conservation Commission of New Mexico,
answering the Petition for Review states:

FIRST DEFENSE

1. Respondent admits the allegations contained in Paragraphs
1, 2 and 3 of the Petition for Review.

2. Respondent denies the allegation in Paragraph 4 of the
Petition for Review that the Petitioner is adversely affected
by Commission Order No. R-4353 as reaffirmed by Order No. R-4353-A.
Respondent admits all other allegations contained in Paragraph 4
of the Petition for Review.

3. Respondent denies each and every allegation contained in
Paragraph 5 of the Petition for Review.

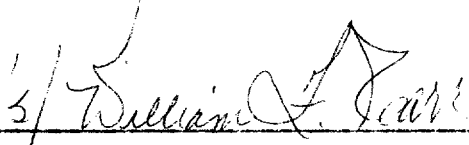
SECOND DEFENSE

Petitioner fails to state a claim upon which relief can be
granted.

WHEREFORE, Respondent prays:

1. That the Petition for Review be dismissed.
2. That Commission Orders No. R-4353 and R-4353-A be
affirmed.

3. That the Court grant Respondent such other and further relief as the Court deems just.



WILLIAM F. CARR
Special Assistant Attorney General
representing the Oil Conservation
Commission of New Mexico, P. O.
Box 2088, Santa Fe, New Mexico 87501

I hereby certify that on the 5th
day of March, 1973, a copy of the
foregoing pleading was mailed to opposing
counsel of record.

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

March 12, 1973

Mr. Clarence E. Hinkle
P. O. Box 10
Roswell, New Mexico 88201

Re: Rutter & Wilbanks v. Oil
Conservation Commission
Cause No. 28477 and Cause
No. 28478, District Court
of Eddy County

Dear Mr. Hinkle:

The Oil Conservation Commission purchases two copies of the transcript of each hearing in which we are involved. In the above-captioned cases, there is one copy of the transcripts in our Santa Fe office and one in the District Court in Carlsbad.

The Commission has found it necessary to adopt a policy whereby we do not loan our last copy of the transcript of any proceeding. It is, however, available in this office for anyone to review.

The reporter in this case is Dearnley, Meier and McCormick, P. O. Box 1092, Simms Building, Albuquerque, New Mexico 87103. We will be happy to do whatever we can to assist you and the reporter in securing a copy of these transcripts.

Sincerely,

WILLIAM F. CARR
Special Assistant Attorney General
Oil Conservation Commission

WFC/dr

C
O
P
Y

CLARENCE E. HINKLE
W. E. BONDURANT, JR.
LEWIS C. COX, JR.
PAUL W. EATON, JR.
CONRAD E. COFFIELD
HAROLD L. HENSLEY, JR.
STUART D. SHANOR
C. D. MARTIN
PAUL J. KELLY, JR.

LAW OFFICES
HINKLE, BONDURANT, COX & EATON

600 HINKLE BUILDING
POST OFFICE BOX 10
ROS WELL, NEW MEXICO 88201

TELEPHONE (505) 622-6510

MIDLAND, TEXAS OFFICE
521 MIDLAND TOWER
(915) 683-4691

March 8, 1973

William F. Carr
Special Assistant Attorney General
Oil Conservation Commission
P.O. Box 2088
Santa Fe, New Mexico 87501

Re: Rutter & Wilbanks v. Oil
Conservation Commission
Cause No. 28477 and Cause
No. 28478, District Court
of Eddy County

Dear Mr. Carr:

We received a copy of your letter of March 1 to the Clerk of the District Court at Carlsbad transmitting certified copies of the transcripts, exhibits and other documents for inclusion in the record in the above cases.

We mentioned to Jason Kellahin, when he forwarded to us copies of the Petitions for Review, that when he ordered the transcripts we would like to have a copy. We do not know what arrangements he made with the Commission for the transcripts but if there is not an extra copy available we would like to borrow a copy, if possible, to review before the hearing. I do not think we need the exhibits at this time, just the transcripts of the testimony.

Yours sincerely,

HINKLE, BONDURANT, COX & EATON

By

Clarence E. Hinkle
CEH

CEH:cs

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

March 12, 1973

Mr. William J. Cooley
152 Petroleum Center Building
Farmington, New Mexico 87401

Re: Rutter & Wilbanks v. Oil
Conservation Commission
Cause No. 28477 and Cause
No. 28478, District Court of
Eddy County

Dear Mr. Cooley:

Enclosed are copies of Respondent's Entry of
Appearance and Answer to Petition for Review in each of
the above-captioned cases.

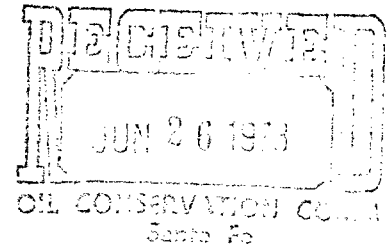
Sincerely,

WILLIAM F. CARR
Special Assistant Attorney General
Oil Conservation Commission

WFC/dr
enclosures

D. D. ARCHER
DISTRICT JUDGE
P. O. Box 98
CARLSBAD, NEW MEXICO
88220

June 25, 1973



Mr. Clarence E. Hinkle
Attorney at Law
P. O. Box 10
Roswell, New Mexico 88201

Mr. Jason W. Kellahin
Attorney at Law
P. O. Box 1769
Santa Fe, New Mexico 87501

Mr. William F. Carr
Special Assistant Attorney General
P. O. Box 2088
Santa Fe, New Mexico 87501

Re: Rutter & Wilbanks Corporation
vs. Oil Conservation Commission
Nos. 28477 and 28478

Gentlemen:

The above matters will be heard at 1:30 P.M. on
Wednesday, August 1, 1973, in the District Courtroom,
Eddy County Courthouse, Carlsbad, New Mexico.

Very truly yours,


D. D. Archer

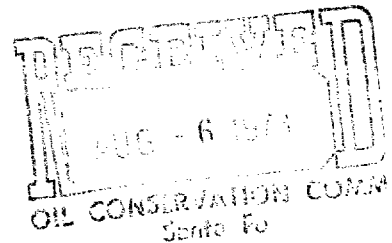
DDA/mg

JASON W. KELLAHIN
ROBERT E. FOX
W. THOMAS KELLAHIN

KELLAHIN AND FOX
ATTORNEYS AT LAW
500 DON GASPAR AVENUE
POST OFFICE BOX 1769
SANTA FE, NEW MEXICO 87501

TELEPHONE 982-4315
AREA CODE 505

August 2, 1973



Mr. William F. Carr
Oil Conservation Commission
P. O. Box 1088
Santa Fe, New Mexico 87501

Re: Rutter & Wilbanks Corporation
v. Oil Conservation Commission
Cases Nos. 28477, 28478, Eddy
County, New Mexico

Dear Bill:

Following the hearing on the above cases in Carlsbad yesterday, I asked for time to file requested findings, and Judge Archer allowed thirty days, and requested that I notify you and Clarence Hinkle.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jason".

Jason W. Kellahin

JWK:ks

IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO

RUTTER & WILBANKS CORPORATION,
a Texas corporation,

Petitioner,

vs.

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent.

Nos. 28477 and 28478

REQUESTED FINDINGS OF FACT OF
OIL CONSERVATION COMMISSION OF
STATE OF NEW MEXICO AND BLACK
RIVER CORPORATION

1. On July 12, 1972 a hearing was conducted by an examiner of the New Mexico Oil Conservation Commission at which three separate applications were considered, which were consolidated for the purpose of the hearing because of similarity of facts, which were as follows:

(a) Application of Black River Corporation for compulsory pooling and non-standard proration unit covering E/2 Section 3, Township 26 South, Range 24 East, NMPM, Eddy County, New Mexico, to form a 409.22 acre non-standard gas proration unit to be dedicated to Cities "3" Federal Well No. 2 located 2212 feet from the north line and 1998 feet from the east line of Section 3, which was docketed as Oil Conservation Commission Case No. 4763.

(b) Application of Black River Corporation for compulsory pooling and non-standard proration unit covering W/2 Section 3, Township 26 South, Range 24 East, NMPM, Eddy County, New Mexico, to form a 407.20 acre non-standard gas proration unit to be dedicated to Cities "3" Federal Well No. 1 located 1980 feet from the north line and 1980 feet from the west line of said Section 3, which was docketed as Oil Conservation Commission Case No. 4764.

(c) Application of Michael P. Grace and Corinne Grace for compulsory pooling and non-standard proration unit covering W/2 Section 3, Township 26 South, Range 24 East, NMPH, Eddy County, New Mexico, to form a 407.20 acre non-standard gas proration unit to be dedicated to Cities "3" Federal Well No. 1 located 1980 feet from the north line and 1980 feet from the west line of said Section 3, which was docketed as Oil Conservation Commission Case No. 4765.

2. The applications of Black River Corporation and Michael P. Grace and Corinne Grace referred to above provide for compulsory pooling and non-standard proration units covering the W/2 Section 3, the only difference in these applications being that the application of Black River Corporation requests that it be designated as unit operator and the application of Michael P. Grace and Corinne Grace requests that one of these applicants be the unit operator.

3. After the hearing before the Oil Conservation Commission held on July 12, 1972 covering the three applications above referred to, on August 7, 1972 the Oil Conservation Commission issued the following orders:

(a) Order R-4353 in Case No. 4763 pooling all mineral interests in the Washington Ranch-Morrow Gas Pool underlying the E/2 Section 3 to form a 409.22 acre non-standard gas proration unit to be dedicated to Black River Corporation's Cities "3" Federal Well No. 2 and designating Black River Corporation as unit operator.

(b) Order R-4354 in Cases No. 4764 and 4765 pooling all mineral interests in the Washington Ranch-Morrow Gas Pool underlying the W/2 Section 3 to form a 407.20 acre non-standard gas proration unit to be dedicated to Black River Corporation's Cities "3" Federal Well No. 1 and designating Black River Corporation as unit operator.

4. Upon Petitions timely filed and notices given as required by law, the applications above referred to were heard de novo before the Commission on November 21, 1972. At this hearing, it was stipulated and agreed that the record made in connection with the hearing before the examiner on the three applications would be considered as a part of the record in connection with the de novo hearing and the applications would be consolidated for the purpose of taking testimony in connection with the de novo hearing.

5. On November 29, 1972 the Oil Conservation Commission issued Order R-4353-A in Case No. 4763 confirming Order R-4353 previously entered and on the same date issued Order R-4354-A in consolidated Cases 4764 and 4765 confirming its previous Order R-4354.

6. Within the time provided by statute Rutter & Wilbanks Corporation filed separate petitions for review of Orders R-4353 affirmed by Order R-4353-A and Order R-4354 affirmed by Order R-4354-A which were docketed as Cases 28477 and 28478 respectively on the docket of the District Court of Eddy County.

7. Cases 28477 and 28478 were consolidated for the purpose of the hearing due to the fact that the factual situation involved in both cases are for all practical purposes identical.

8. Section 3, Township 26 South, Range 24 East, according to the survey plat which was introduced in evidence and which was not disputed, contains 816.42 acres and the E/2 of said section containing 409.22 acres was dedicated to the gas well in the E/2 and the W/2 containing 407.20 acres was dedicated to the gas well in the W/2.

9. Rutter & Wilbanks Exhibit No. 1 introduced at the de novo hearing, is a structural map prepared by William J. LeMay a geologist who testified on behalf of the petitioners which clearly showed that all of Section 3 is estimated to be productive of gas in commercial quantities.

10. There was no conflict in the testimony which showed that each of the wells in Section 3 would effectively, efficiently and economically drain the respective half sections dedicated to it.

11. Dedicated 320 acres or less than a half section to the respective wells would necessitate the creation of an additional non-standard spacing or drilling unit.

12. As shown by Exhibit No. 1 introduced on behalf of the petitioners, all of Sections 2, 3, 4, 5 and 6 in Township 26 South, Range 24 East are irregular sections containing more than 640 acres and gas wells have been completed in the W/2 Section 2 and the E/4 of Section 4 and half of each of these sections has been dedicated to the respective wells.

13. What would ordinarily be the NE/4 SE/4 and the S/2 S/2 of Section 3 are fee lands and all of the rest of the lands in the section are lands of the United States.

14. The government lands are covered by a federal lease on which there is an outstanding 5% overriding royalty of which 4.7% is owned by petitioners.

15. The oil and gas leasehold interests covering the federal and fee lands embraced within the respective half sections dedicated to the gas wells are not owned uniformly and Black River Corporation was designated by the working interest owners to drill the wells and the working interest owners paid the cost of said wells in proportion to their acreage interests in the respective half sections, except at the time of the examiner's hearing in connection with Cases 4764 and 4765 Michael Grace was claiming to have the lease rights in and to the SE/4 SW/4 Section 3 adverse to that of Black River Corporation.

16. The other owners of overriding royalty interests under the federal lands originally joined with Rutter & Wilbanks Corporation in protesting the approval of the E/2 and W/2 respectively as the spacing or proration units to be dedicated to the respective wells; however, these owners did not join with Rutter & Wilbanks

Corporation in its petitions to review the Commission's orders. Consequently, none of the working interest owners, royalty owners, including the United States, have objected to or protested the orders of the Commission creating the well spacing or proration units, and none of the owners of overriding royalties has objected except Rutter & Wilbanks.

17. At the de novo hearing Rutter & Wilbanks Corporation made a proposal that Section 3 be divided into three non-standard spacing or proration units and introduced a plat showing these units, which was petitioner's Exhibit No. 2. The formation of a third drilling and spacing unit would require the drilling of a third well in order to protect lease and correlative rights in Section 3, although the working interest owners who participated in the drilling of the two gas wells indicated that they would not be willing to drill a third well, which would cost between \$225,000.00 and \$250,000.00 to drill and complete.

18. The drilling of a third well in Section 3 would result in economic waste.

19. Petitioners have not objected to the pooling of the mineral and royalty interests involved in the respective half sections but only to the creation of non-standard proration units due to the fact that both half sections contain more than 320 acres.

20. Both of the gas wells are producing from the Morrow formation or Pennsylvanian age and were drilled as a south extension to the Washington Ranch-Morrow Pool or Field.

21. The formation of the two units involved in these cases is in conformity with Subsection (a) of Article II of Rule 104 of the Rules and Regulations of the Commission in that each consists of two contiguous quarter sections of a single governmental section.

REQUESTED CONCLUSIONS OF LAW OF
OIL CONSERVATION COMMISSION OF
STATE OF NEW MEXICO AND BLACK
RIVER CORPORATION

1. The Court has jurisdiction of the parties hereto and the subject matter hereof.

2. The New Mexico Oil Conservation Commission is authorized by statute (65-3-14.5 N.M.S.A. 1953 Comp.) to establish non-standard spacing or proration units and has authority to require pooling of lease and mineral interests when pooling has not been agreed upon by the parties.

3. The creation of a non-standard spacing or proration unit for the E/2 and W/2 of Section 3 respectively are within the provisions of Subsection (a) of Article II of Rule 104 of the Rules and Regulations of the Commission.

4. The formation of non-standard spacing or proration units for the E/2 and W/2 of Section 3 respectively comes within the provisions of Section 65-3-14.5 N.M.S.A. 1953 Comp.

5. There is substantial evidence to support all of the findings of the Commission in Orders R-4353 and R-4353-A issued in Case No. 4763, the petition for review of which is docketed as Case No. 28477, and to support the findings of the Commission in Orders R-4354 and R-4354-A issued in Cases No. 4764 and 4765, the petition for review of which is docketed as Case No. 28478.

6. The petitions of Rutter & Wilbanks Corporation in Cases 28477 and 28478 should be denied and thereby sustain the orders of the Commission.

HINKLE, BONDURANT, COX & KATON

By

Attorneys for Black River Corporation
P. O. Box 10
Roswell, New Mexico 88201

OIL CONSERVATION COMMISSION OF
STATE OF NEW MEXICO

By

William L. Carr
General Counsel

P. O. Box 2088
Santa Fe, New Mexico 87501

FIL CONSERVATION COMMISSION

P. O. BOX 2083

SANTA FE, NEW MEXICO 87501

August 22, 1973

Mr. Clarence E. Hinkle
Hinkle, Bondurant, Cox & Eaton
P. O. Box 10
Roswell, New Mexico 88201

Dear Mr. Hinkle:

I am enclosing an original and two copies of the requested Findings of Fact and Conclusions of Law in the Rutter & Wilbanks cases.

If they meet with your approval, I would appreciate your filing the original with the District Court and transmitting one copy to Jason Kellahin.

I appreciate your preparing the rough draft and have made only minor changes in it.

Best regards.

Very truly yours,

WILLIAM F. CARR
General Counsel

WFC/dr

enclosures

cc: Mr. Jason Kellahin
P. O. Box 1769
Santa Fe, New Mexico

ILLEGIBLE

LAW OFFICES

HINKLE, BONDURANT, COX & EATON

TELEPHONE (505) 622-6510

CLARENCE E. HINKLE
W. E. BONDURANT, JR.
LEWIS C. COX, JR.
PAUL W. EATON, JR.
CONRAD E. COFFIELD
HAROLD L. HENSLEY, JR.
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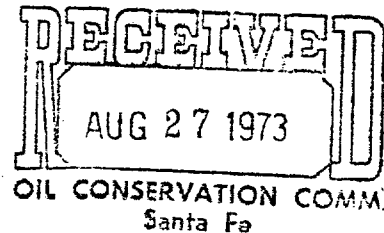
600 HINKLE BUILDING

POST OFFICE BOX 10

ROSWELL, NEW MEXICO 88201

August 23, 1973

MIDLAND, TEXAS OFFICE
521 MIDLAND TOWER
(915) 683-4691



Hon. D. D. Archer
District Judge
Fifth Judicial District
Carlsbad, New Mexico 88220

Dear Judge Archer:

We enclose herewith in duplicate Requested Findings of Fact and Conclusions of Law of the New Mexico Oil Conservation Commission and Black River Corporation. As you know there were two cases docketed in connection with the appeal, which were cases 28477 and 28478. Due to the fact that these were consolidated for the purpose of hearing and were consolidated in the hearing before the Commission, the findings cover both cases as they are identical. We enclose two copies, one to be filed in Case 27844 and one in Case 28478.

Yours sincerely,

HINKLE, BONDURANT, COX & EATON

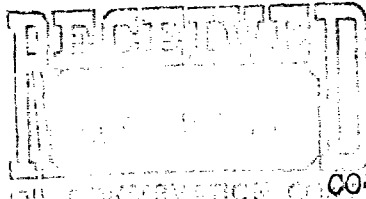
BY 

CEH:cs

Enc.

cc: William F. Carr
cc: Jason Kellahin

STATE OF NEW MEXICO



IN THE DISTRICT COURT

RUTTER & WILBANKS CORPORATION,
a Texas Corporation,

Petitioner,

-vs-

No. 28477

OIL CONSERVATION COMMISSION OF
THE STATE OF NEW MEXICO,

Respondent,

and

BLACK RIVER CORPORATION,

Intervenor.

REQUESTED FINDINGS OF FACT AND
CONCLUSIONS OF LAW OF PETITIONER,
RUTTER & WILBANKS CORPORATION

COMES NOW Petitioner Rutter & Wilbanks Corporation
in the above styled and numbered cause and respectfully
requests the Court to adopt the following:

FINDINGS OF FACT

1. Petitioner is a corporation duly organized under
the laws of the State of Texas, and is the owner of royalty
and non-operating mineral interests acquired by transactions
outside of the State of New Mexico, and Petitioner is the
owner of royalty, non-operating mineral interests in and
under the lands involved in Case No. 4763 on the docket
before the Oil Conservation Commission of New Mexico.

2. The respondent Oil Conservation Commission of New

Mexico is a duly organized agency of the State of New Mexico, whose members are I. R. Trujillo, Chairman, Alex Armijo, member, and A. L. Porter, Jr., Secretary-Director.

3. Intervenor Black River Corporation is a corporation duly organized under the laws of the State of New Mexico, and was the applicant in Case No. 4763, which case was heard before Richard L. Stamets, a duly appointed examiner for the New Mexico Oil Conservation Commission.

4. On August 7, 1972, the Commission entered its order No. R-4353 which pooled the entire East half of Section 3, Township 26 South, Range 24 East, N.M.P.M., Eddy County, New Mexico, to form a 409.22 acre non-standard gas proration unit for production of gas from the Washington Ranch-Morrow pool. The applicant Black River Corporation was designated as operator of the unit.

5. Petitioner timely filed its application for a hearing de novo before the Oil Conservation Commission as provided by law, and on November 21, 1972, the case was heard de novo by the Commission.

6. On November 29, 1972, the Commission entered its order No. R-4353-A , which order re-affirmed Order No. R-4353 in its entirety.

7. Petitioner timely filed its application for rehearing setting forth the respect in which Commission Order No. R-4353, as reaffirmed by Order No. R-4353-A, is erroneous, as provided by law. The application for rehearing was denied by the Com-

mission's failure to act thereon within ten days after it was filed. The Commission entered no order on the application for rehearing.

8. On January 17, 1973, and within the time allowed by law, Petitioner filed its petition for review in this Court.

9. This cause came on for hearing before the Court on August 1, 1973, all parties being present and represented by counsel. Michael P. Grace and Corinne Grace were served with notice of the petition for review but did not appear in the case.

10. For the purpose of trial on the merits, this case was consolidated with Case No. 28478 on the docket of this Court.

11. The transcript of evidence and the exhibits introduced before the Commission have been received in evidence by this Court for review.

12. The Commission, by its Order No. R-4353, reaffirmed by Order No. R-4353-A, purported to approve a non-standard gas proration unit in the Washington Ranch-Morrow Gas Pool. The Commission has never established a standard proration unit, for the Washington Ranch-Morrow Gas Pool as provided by law.

13. The Commission, by its adoption of its Rule 104, II, (a), of the Rules and Regulations of the Oil Conservation Commission, revised December 1, 1971, adopted a spacing regulation requiring that wells drilled to a formation of Pennsylvanian age or older shall be located on a tract consisting of 320 acres.

The adoption of a spacing rule is not the equivalent of the creation of a proration unit pursuant to statute.

14. The tract dedicated to the well under the provisions of Order No. R-4353, reaffirmed by Order No. R-4353-A is in excess of the 320-acre unit, and bears no reasonable relation to the 320-acre spacing unit provided by Commission Rule 104, (a).

15. Order No. R-4353, reaffirmed by Order No. R-4353-A created a gas proration unit of 409.22 acres, and pooled all of the mineral interests underlying the non-standard unit so created, for the production of gas from the Washington Ranch-Morrow Gas Pool.

16. The Commission's authority to compulsorily pool separately owned tracts of land is found in Section 65-3-14, N.M.S.A., 1953 Compilation.

17. Findings Nos. 7, 8, and 10 of Commission Order No. R-4353, as reaffirmed by Order No. R-4353-A, are not supported by substantial evidence.

18. Findings Nos. 4, 5, 6, 7 and 8 of Commission Order No. R-4353-A are not supported by substantial evidence.

19. The evidence before the Commission shows that the S 1/2 S 1/2 of Section 3, Township 26 South, Range 24 East is non-productive from the Lower Morrow formation, and is probably non-productive from the Upper Morrow formation. The Commission has, by its Order No. R-4353, reaffirmed by Order No. R-4353-A, has attributed non-productive acreage to the well on the unit, impairing Petitioner's correlative rights.

20. The Commission has failed to protect correlative rights, including the correlative rights of royalty owners, including Petitioner, contrary to the provisions of law.

21. On the record before the Commission, Order No. R-4353, reaffirmed by Order No. R-4353-A, is not supported by substantial evidence, and Order No. R-4353-A is not supported by substantial evidence.

22. Production from the Washington Ranch-Morrow Gas Pool is not now, and never has been prorated.

23. In the absence of prorationing of production from a pool, the Commission is powerless to adjust the production of gas from wells of equal capacity, located on tracts of differing sizes, and is therefore unable to protect correlative rights of those owning mineral interests underlying such tracts.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties hereto and the subject matter of this cause.

2. The Court is limited in its review to a review of the record before the Commission.

3. The Commission is without authority to create a non-standard proration unit, having never created a standard proration unit.

4. The Commission is without authority to force pool lands to form a unit in excess of a standard spacing or proration unit.

5. There is no provision in law for the Commission to grant exceptions to its orders.


6. Order No. R-4353 and No. R-4353-A are not supported by substantial evidence, and are arbitrary and capricious, and are invalid and void.

7. Order No. R-4353 and No. R-4353-A do not protect correlative rights of petitioner and other owners of interests in the unit.

8. Orders No. R-4353 and No. R-4353-A deprive petitioner of its property without due process of law contrary to the provisions of the Constitution of the United States of America and of the State of New Mexico.

9. Orders No. R-4353 and No. R-4353-A are invalid and void, and should be vacated and set aside.

Respectfully submitted,


JASON W. KELLAHIN, Attorney for
Petitioner, Rutter & Wilbanks
Corporation.

C E R T I F I C A T E

I hereby certify that a true copy of the foregoing Requested Findings of Fact and Conclusions of Law was served on opposing counsel of record by mailing a copy thereof to them this 27th day of August, 1973.


JASON W. KELLAHIN

JASON W. KELLAHIN
ROBERT E. FOX

KELLAHIN AND FOX
ATTORNEYS AT LAW
54½ EAST SAN FRANCISCO STREET
POST OFFICE BOX 1769
SANTA FE, NEW MEXICO 87501

TELEPHONE 982-4315
AREA CODE 505

August 27, 1973

C
O
P
Y

Hon. D. D. Archer
District Judge
Fifth Judicial District
Eddy County Courthouse
Carlsbad, New Mexico 88220

Dear Judge Archer:

Enclosed are Requested Findings of Fact
and Conclusions of Law of Rutter & Wilbanks Cor-
poration in Cases No. 28477 and No. 28478, recently
heard by the Court.

Yours very truly,

Jason W. Kellahin

JWK:ks

Enclosure

cc: Clarence E. Minkle, Esq.
William F. Carr, Esq. ✓

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

RUTTER & WILBANKS CORPORATION,
a Texas Corporation,

Petitioner,

vs.

No. 28478

OIL CONSERVATION COMMISSION OF
THE STATE OF NEW MEXICO,

Respondent,

and

BLACK RIVER CORPORATION,

Intervenor.

JUDGMENT

This cause having come on for hearing by Petitioner, Rutter and Wilbanks Corporation, appearing through its Attorney, Jason W. Kellahin, and Respondent, Oil Conservation Commission of the State of New Mexico, appearing through its Attorney, William F. Carr, and Intervenor, Black River Corporation, appearing through its Attorney, Clarence E. Hinkle, and the Court having considered the arguments of counsel together with the Petition for Review, the transcripts of the examiner hearing held before the Respondent on July 12, 1972, and the de novo hearing held before Respondent on November 21, 1972, together with all exhibits introduced into evidence during those hearings, all of which have been filed with the Court in this action and being otherwise fully advised in the premises, the Court finds that Judgment should be granted in favor of the Respondent affirming Respondent's Orders Nos. R-4354 and R-4354-A.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Judgment be and it hereby is granted in favor of the Respondent affirming

Respondent's Orders Nos. R-4354 and R-4354-A.

DISTRICT JUDGE

SUBMITTED TO:

Jason W. Kellahin
JASON W. KELLAHIN,
Attorney for Petitioner

William F. Carr
WILLIAM F. CARR,
Attorney for Respondent

CLARENCE E. HINKLE,
Attorney for Intervenor

OIL CONSERVATION COMMISSION
P. O. BOX 2088
SANTA FE, NEW MEXICO 87501

September 6, 1973

C
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P
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The Honorable D. D. Archer
District Judge, Division I
Fifth Judicial District Court
Eddy County Courthouse
P. O. Box 98
Carlsbad, New Mexico 88220

Re: Rutter and Wilbanks v.
Oil Conservation Commission
State of New Mexico
Nos. 28477 and 28478
Eddy County, New Mexico

Dear Judge Archer:

I have prepared and forwarded to Clarence Hinkle
Judgments in the above-captioned cases which have
previously been submitted to Jason Kellahin.

I assume Mr. Hinkle will be forwarding these
Judgments to you within the next few days.

Very truly yours,

WILLIAM F. CARR
Special Assistant Attorney General
Oil Conservation Commission

WFC/dr

cc: Mr. Clarence Hinkle
Mr. Jason Kellahin

LAW OFFICES
HINKLE, BONDURANT, COX & EATON

TELEPHONE (505) 622-8510

600 HINKLE BUILDING

POST OFFICE BOX 10

ROSWELL, NEW MEXICO 88201

MIDLAND, TEXAS OFFICE

521 MIDLAND TOWER

(915) 683-4891

, September 13, 1973

Honorable D. D. Archer
District Judge
Fifth Judicial District Court
P.O. Box 98
Carlsbad, New Mexico 88220

Re: Rutter & Wilbanks v. Oil
Conservation Commission
Nos. 28477 and 28478
Eddy County

Dear Judge Archer:

Pursuant to Mr. Carr's letter of September 6 relative to the above cases, I have signed the Judgments and the same are enclosed herewith.

The delay in sending these on to you has been due to the fact that I have been out of town for the last 10 days.

Yours very truly,

HINKLE, BONDURANT, COX & EATON

By Charles E. Hinkle
CH

CEH:cs

Enc.

cc: William F. Carr

cc: Jason Kellahin

STATE OF NEW MEXICO

OIL CONSERVATION COMMISSION
Santa Fe

COUNTY OF EDDY

IN THE DISTRICT COURT

RUTTER & WILBANKS CORPORATION
a Texas Corporation,

Petitioner,

vs.

No. 28477

OIL CONSERVATION COMMISSION OF
THE STATE OF NEW MEXICO,

Respondent,

and

BLACK RIVER CORPORATION,

Intervenor.

NOTICE OF APPEAL

COMES NOW the Petitioner Rutter & Wilbanks Corporation,
and hereby gives notice that it is appealing to the Supreme
Court of the State of New Mexico from the Judgment, Order
and Decision of the Court in this action, which was filed
on September 14, 1973.

JASON W. KELLAHIN
Attorney for Petitioner Rutter &
Wilbanks Corporation

KELLAHIN & FOX
P. O. Box 1769
Santa Fe, New Mexico 87501

CERTIFICATE OF MAILING

I certify that I caused to be mailed a true and correct copy of the foregoing Notice of Appeal to William F. Carr Special Assistant Attorney General, P. O. Box 2088, Santa Fe, New Mexico, 87501, attorney for Respondent Oil Conservation Commission; and to Clarence E. Hinkle, Hinkle, Bondurant, Cox & Eaton, P. O. Box 10, Roswell, New Mexico, 88201, attorney for Black River Corporation, Intervenor, opposing counsel of record, this 10th day of October, 1973.

JASON W. KELLAHIN
ROBERT E. FOX

KELLAHIN AND FOX
ATTORNEYS AT LAW
54½ EAST SAN FRANCISCO STREET
POST OFFICE BOX 1769
SANTA FE, NEW MEXICO 87501

TELEPHONE 982-4315
AREA CODE 505

October 10, 1973

C
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Mrs. Frances M. Wilcox
Clerk of the District Court
Eddy County Courthouse
P. O. Box 98
Carlsbad, New Mexico 88220

Re: Rutter & Wilbanks Corporation
vs. Oil Conservation Commission
Cases Nos. 28477 and 28478
Eddy County, New Mexico

Dear Mrs. Wilcox:

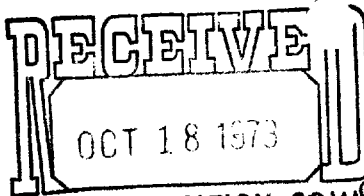
Enclosed are Notice of Appeal in each of the
above cases, for filing.

Yours very truly,

Jason W. Kellahin

JWK:ks
Enclosure

cc: Mr. William Carr ✓
Mr. Clarence Hinkle



STATE OF NEW MEXICO

OIL CONSERVATION COMMISSION COUNTY OF EDDY
Santa Fe
IN THE DISTRICT COURT

RUTTER & WILBANKS CORPORATION,
a Texas Corporation,

Petitioner,

vs.

No. 28477

OIL CONSERVATION COMMISSION OF
THE STATE OF NEW MEXICO,

Respondent,

and

BLACK RIVER CORPORATION,

Intervenor.

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

FILED SEP 14 1973 IN MY
11:32 AM OFFICE
FRANCES M. WILCOX
Clerk of the District Court

JUDGMENT

This cause having come on for hearing by Petitioner, Rutter and Wilbanks Corporation, appearing through its Attorney, Jason W. Kellahin, and Respondent, Oil Conservation Commission of the State of New Mexico, appearing through its Attorney, William F. Carr, and Intervenor, Black River Corporation, appearing through its Attorney, Clarence E. Hinkle, and the Court having considered the arguments of counsel together with the Petition for Review, the transcripts of the examiner hearing held before the Respondent on July 12, 1972, and the de novo hearing held before Respondent on November 21, 1972, together with all exhibits introduced into evidence during those hearings, all of which have been filed with the Court in this action and being otherwise fully advised in the premises, the Court finds that Judgment should be granted in favor of the Respondent affirming Respondent's Orders Nos. R-4353 and R-4353-A.

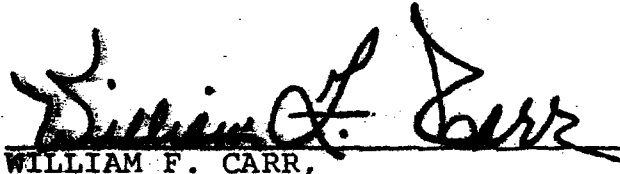
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Judgment be and it hereby is granted in favor of the Respondent affirming


Respondent's Orders Nos. R-4353 and R-4353-A.

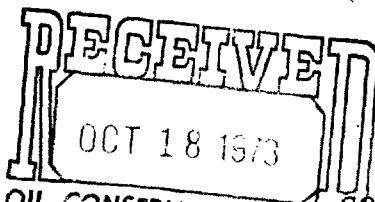

DISTRICT JUDGE

SUBMITTED TO:


JASON W. KELLAHIN,
Attorney for Petitioner


WILLIAM F. CARR,
Attorney for Respondent


CLARENCE E. HINKLE,
Attorney for Intervenor



STATE OF NEW MEXICO

OIL CONSERVATION COMMISSION
Santa Fe

COUNTY OF EDDY D

IN THE DISTRICT COURT

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

RUTTER & WILBANKS CORPORATION,
a Texas Corporation,

Petitioner,

vs.

FILED OCT 11 1973 IN MY
1:40 PM OFFICE
FRANCES M. WILCOX
Clerk of the District Court

No. 28478

OIL CONSERVATION COMMISSION OF
THE STATE OF NEW MEXICO,

Respondent,


and

BLACK RIVER CORPORATION,

Intervenor.

NOTICE OF APPEAL

COMES NOW the Petitioner Rutter & Wilbanks Corporation,
and hereby gives notice that it is appealing to the Supreme
Court of the State of New Mexico from the Judgment, Order
and Decision of the Court in this action, which was filed
on September 14, 1973.


JASON W. KELLAHIN
Attorney for Petitioner Rutter &
Wilbanks Corporation

KELLAHIN & FOX
P. O. Box 1769
Santa Fe, New Mexico 87501

CERTIFICATE OF MAILING

I certify that I caused to be mailed a true and correct copy of the foregoing Notice of Appeal to William F. Carr, Special Assistant Attorney General, P. O. Box 2088, Santa Fe, New Mexico, 87501, attorney for Respondent Oil Conservation Commission; and to Clarence E. Hinkle, Hinkle, Bondurant, Cox & Eaton, P. O. Box 10, Roswell, New Mexico 88201, attorney for Black River Corporation, Intervenor, opposing counsel of record, this 10th day of October, 1973.

Jason W. Kellaher

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

RUTTER & WILBANKS CORPORATION,
a Texas Corporation,

Petitioner,

vs.

No. 28477
28478
(Consolidated)

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent,

and

BLACK RIVER CORPORATION,

Intervenor.

STIPULATION

WHEREAS, Petitioner has heretofore filed its notice of appeal, from the judgment entered in each of the above captioned causes, and

WHEREAS, said causes were consolidated for trial in the District Court, heard on a common record, and a consolidated judgment entered therein, and

WHEREAS, said causes present identical questions for review in the Supreme Court,

NOW, THEREFORE, the undersigned attorneys of record for the respective parties hereto, hereby stipulate and agree that said appeals may be consolidated for all purposes, and that said appeals by petitioner may be heard and determined upon a single transcript and record,

KELLAHIN & FOX

BY _____
Attorneys for Petitioner,

WILLIAM F. CARR, Attorney
for Respondent Oil Conserva-
tion Commission of New Mexico

CLARENCE E. HINKLE, Attorney
for Intervenor Black River
Corporation

STATE OF NEW MEXICO

COUNTY OF SANTA FE

IN THE DISTRICT COURT

RUTTER & WILBANKS CORPORATION,
a Texas Corporation,

Petitioner,

vs.

No. 28477
28478
(Consolidated)

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent,

and

BLACK RIVER CORPORATION,

Intervenor.

O R D E R

THIS MATTER coming on regularly to be heard on the stipulation of counsel for consolidation of the appeals and preparation of the record herein, and the Court being fully advised, and good cause appearing therefore,

NOW, THEREFORE, IT IS ORDERED that Causes Nos. 28477 and 28478 on the docket of this Court be, and the same hereby are consolidated for all purposes, and

Permission is hereby granted to prepare and submit a single transcript and record in said consolidated cause.

DISTRICT JUDGE

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

RUTTER & WILBANKS CORPORATION,
a Texas Corporation,

Petitioner,

vs.

No. 28477
28478
(Consolidated)

OIL CONSERVATION COMMISSION OF
THE STATE OF NEW MEXICO,

Respondent,

and

BLACK RIVER CORPORATION,

Intervenor.

P R A E C I P E

TO: Clerk of the District Court of
Eddy County, New Mexico:

Please prepare a transcript of the record proper and of the proceedings in this cause to be filed with the Supreme Court of the State of New Mexico in support of the appeal heretofore taken by petitioner; the complete record and proceedings shall include, but not be limited to, the following specified matters:

- (1) Complete transcript of all proceedings before the Oil Conservation Commission in Case No. 4763, Cases Nos. 4764, and 4765 (consolidated), including transcript of testimony and all orders, petitions, applications, pleadings and exhibits therein;
- (2) Petition for review filed by petitioner in this case;
- (3) Petitioners' requested findings of fact and conclusions of law;

- (4) Judgment, order, and decision of the Court in this action;
- (5) Notice of Appeal (filed October 10, 1973), together with certificate of service attached thereto;
- (6) This Praecipe; and
- (7) Certificate of Clerk of the District Court and Court Stenographer, showing that satisfactory arrangements have been made with them by petitioner-appellant for payment of their compensation.

In addition to the complete record proper and proceedings in this cause, there shall be included in the transcript all affidavits of service and acceptance of service with respect to this cause.

KELLAHIN & FOX

BY Jason W. Kellahin
Jason W. Kellahin
P. O. Box 1769
Santa Fe, New Mexico 87501

ATTORNEYS FOR PETITIONER-APPELLANT

CERTIFICATE OF MAILING

I certify that I caused to be mailed one each true and correct copy of the foregoing Praecipe to William F. Carr, Special Assistant Attorney General, representing the New Mexico Oil Conservation Commission, and to Clarence E. Hinkle, P. O. Box 10, Roswell, New Mexico, 88202, attorney for Black River Corporation, Intervenor, being the opposing counsel of record, this 6th day of November, 1973.

Jason W. Kellahin
JASON W. KELLAHIN

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

December 28, 1973

Jason Kellahin, Esq.
Kellahin & Fox
P. O. Box 1769
Santa Fe, New Mexico 87501

Re: Eddy County District Court
Causes Nos. 28477 and 28478
(Consolidated)

Dear Jason:

I am returning herewith the record prepared by the clerk of the District Court of Eddy County in the above-captioned cause. I have reviewed it and believe it is sufficient although certain pages are out of order and my files indicate that in addition to the material in the record filed with the Supreme Court, there should be a stipulation and order consolidating these cases.

Very truly yours,

WILLIAM F. CARR
General Counsel

WFC/dr

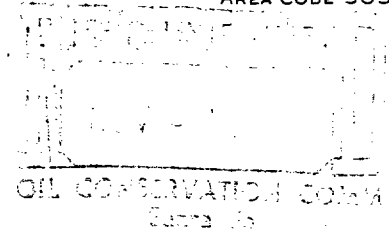
cc: Clarence Hinkle

JASON W. KELLAHIN
ROBERT E. FOX

KELLAHIN AND FOX
ATTORNEYS AT LAW
54½ EAST SAN FRANCISCO STREET
POST OFFICE BOX 1769
SANTA FE, NEW MEXICO 87501

TELEPHONE 982-4315
AREA CODE 505

Nov. 6, 1973



Mrs. Frances M. Wilcox
Clerk of the District Court
P. O. Box 98
Carlsbad, New Mexico 88220

Re: Rutter & Wilbanks vs. Oil Conservation Commission
Nos. 28477-28478 (Consolidated)

Dear Mrs. Wilcox:

Enclosed is a Praecipe for preparation of the record for appeal in the above cases, which were consolidated for hearing before the District Court. I will prepare and forward a stipulation and order for consolidation of the cases on appeal.

Also enclosed are certificates showing that satisfactory arrangements have been made with you, and with Mr. Herman H. Linneweh, Court Reporter, in connection with this appeal.

Yours very truly,

JASON W. KELLAHIN

JWK:ss

cc: Mr. William F. Carr
Mr. Clarence E. Hinkle

ILLEGIBLE

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

RUTTER & WILBANKS CORPORATION,
a Texas Corporation,

Petitioner,

vs.

No. _____

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent,

and

BLACK RIVER CORPORATION,

Intervenor.

O R D E R

THIS MATTER coming on regularly to be heard on the stipulation of the parties for consolidation of the appeals and preparation and acceptance of the record herein, and it appearing to the Court:

1. That the above styled cause was filed in the District Court for the Fifth Judicial District Sitting in and for Eddy County, New Mexico as two causes, being Causes Nos. 28477 and 28478 (Consolidated), on the docket of said court.
2. That said causes were separate appeals taken from orders of the Oil Conservation Commission of New Mexico, entered after hearing on a consolidated record before the Commission.
3. That said causes were consolidated for trial by the District Court under the style and designation of "Rutter & Wilbanks Corporation, Petitioner, vs. Oil Conservation Commission

of New Mexico, Respondent, No. 28477, No. 28478 (Consolidated)*, were heard on a consolidated record, and a consolidated judgment was entered therein.

4. It further appearing that the parties hereto have stipulated that the original exhibits offered in the hearing before the Oil Conservation Commission and certified to the District Court by said Commission be considered as if the same had been included in the transcript, bill of exceptions and record as prepared and certified by the Clerk of the Court in this appeal.

And the Court being fully advised in the premises and good Cause appearing therefor.

It is, therefore, ORDERED, that the action of the District Court of the Fifth Judicial District in and for Eddy County, New Mexico, consolidating Causes Nos. 28477 and 28478 on the docket of that court for all purposes be, and the same hereby is ratified and confirmed, and said causes be, and they hereby are consolidated for all purposes in this Court.

It is FURTHER ORDERED, that the original only of the exhibits offered in the hearing before the Oil Conservation Commission of New Mexico, and certified to the District Court for review in this cause be and the same are hereby received in this Court for all intents and purposes as if the same had been included in the transcript and bill of exceptions certified to the Court by the aforesaid District Court in its transcript and bill of exceptions.

CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

RUTTER & WILBANKS CORPORATION,
a Texas Corporation,

Petitioner,

vs.

No. _____

OIL CONSERVATION COMMISSION OF
THE STATE OF NEW MEXICO,

Respondent,

and

BLACK RIVER CORPORATION,

Intervenor.

STIPULATION

WHEREAS, Petitioner has heretofore filed its notice of appeal from the judgment entered in Causes Nos. 28477 and 28478 (Consolidated), on the docket of the District Court for the Fifth Judicial District sitting in and for Eddy County, New Mexico, and

WHEREAS, the said causes were separate appeals taken from orders of the Oil Conservation Commission of New Mexico, entered after hearing on a consolidated record, and

WHEREAS, said causes were consolidated for trial in the District Court, heard on a common record, and a consolidated judgment entered therein, and

WHEREAS, said causes present identical questions for review in the Supreme Court, and

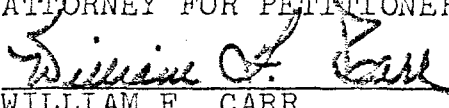
WHEREAS, in preparation of the record on appeal in said causes, the Clerk of the District Court has certified to the Supreme Court a separate packet of exhibits, being the original exhibits certified to the District Court by the Oil Conservation Commission as a part of the record of the hearings before the Oil Conservation Commission and considered as such by the District Court,

NOW, THEREFORE, the undersigned attorneys of record for the respective parties hereto hereby stipulate and agree that subject to approval of the Supreme Court said cases on appeal may be consolidated for all purposes, and that said appeals by petitioner may be heard and determined upon a single transcript and record, and

IT IS FURTHER stipulated and agreed that upon approval of the Supreme Court of New Mexico, the originals only of the exhibits certified by the Clerk of the District Court may be received for all purposes in this appeal.

JASON W. KELLAHIN
Kellahin & Fox
P. O. Box 1769
Santa Fe, New Mexico 87501

ATTORNEY FOR PETITIONER



WILLIAM F. CARR
Special Assistant Attorney General

Attorney for Respondent

CLARENCE H. HINKLE
Hinkle, Bondurant, Cox & Eaton
P. O. Box 10
Roswell, New Mexico 88201

Attorney for Intervenor

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

RUTTER & WILBANKS CORPORATION
a Texas Corporation,

Petitioner,

vs.

No. 28477
28478
(Consolidated)

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent,

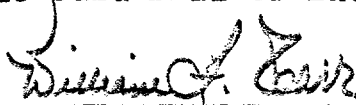
and

BLACK RIVER CORPORATION,

Intervenor.

WAIVER OF NOTICE

COMES NOW the attorney for the Respondent in the above entitled cause, and waives notice of the time and place of the settling of the Bill of Exceptions herein, and does hereby consent that without any further notice the Honorable D. D. Archer may sign and settle said Bill of Exceptions.



WILLIAM F. CARR, Special Assistant
Attorney General

ATTORNEY FOR RESPONDENT OIL CONSERVATION
COMMISSION OF NEW MEXICO

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

RUTTER & WILBANKS CORPORATION,
a Texas Corporation,

Petitioner,

vs.

No. 28477
28478
(Consolidated)

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent,

BLACK RIVER CORPORATION,

Intervenor.

ORDER SETTLING BILL OF EXCEPTIONS

THIS MATTER coming regularly before the Court on Petitioner's application and waiver of notice of the attorneys for the respective parties, and the Court having examined the reporter's transcript and supplemental transcript of the proceedings on the trial of said cause, as duly filed in the office of the Clerk of the Court, finds that the same are a true and accurate record of all proceedings had upon the trial of the subject cause, including all of the record certified to this court by the Oil Conservation Commission of New Mexico, objections, motions, rulings of the Court, exceptions and the original exhibits offered before the Oil Conservation Commission of New Mexico and certified to this court on Petitioner's petition for review, and that the same should be signed sealed and settled as the Bill of Exceptions herein.

WHEREFORE, it is ORDERED that the transcript certified by the Court Reporter and the Clerk of the District Court and filed in the office of the clerk of this Court be, and the same is hereby, signed, sealed and settled as the Bill of Exceptions herein.

DISTRICT JUDGE

Approved as to form:

ATTORNEY FOR PETITIONER

William F. Carr

ATTORNEY FOR RESPONDENT

ATTORNEY FOR INTERVENOR

RUTTER AND WILBANKS vs. OIL CONSERVATION COMMISSION

OIL CONSERVATION COMMISSION

CASE 4762

ORDER R-4353 and R-4353-A

DISTRICT COURT

COUNTY OF EDDY

CASE 28477

(Consolidated with Case 28478)

APPEAL BY RUTTER & WILBANKS

Subject of Case:

Compulsory Pooling and
Creation of Non-Standard
Proration Unit

Other Parties:

Michael Grace

Opposing Counsel:

Jason Kellahin (Rutter & Wilbanks)
William J. Cooley (Grace)
Robert A. Spears (Rutter & Wilbanks)

Other Counsel of Record:

Clarence Hinkle (Black River Corporation)

Judgment for acc - Sept. 14, 1973

Appealed - Oct. 11, 1973



CHIEF JUSTICE
JOHN B. McMANUS, JR.

JUSTICES
LAFEL E. OMAN
DONNAN STEPHENSON
SAMUEL Z. MONTOKA
JOE L. MARTINEZ

Supreme Court of New Mexico

P. O. BOX 848
Santa Fe, New Mexico
87501

ROSE MARIE ALDERETE
CLERK

June 7, 1974

Kellahin & Fox
Attorneys at Law
P.O. Box 1769
Santa Fe, New Mexico 87501

William F. Carr, Esquire
Special Assistant Attorney General
P.O. Box 2088
Santa Fe, New Mexico 87501

Hinkle, Bondurant, Cox & Eaton
Harold L. Hensley, Jr.
Clarence E. Hinkle
Attorneys at Law
P.O. Box 10
Roswell, New Mexico 88201

Re: Rutter & Wilbanks vs. Oil
Conservation Commission and Black
River Corporation
NO. 9907 Supreme Court

Gentlemen:

Please be advised that the setting for oral argument on July 1, 1974 has been vacated at the request of counsel. This matter will be on the Monday, July 15, 1974 calendar for oral argument in the Supreme Court.

Very truly yours,

Rose Marie Alderete

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MANDATE NO. 9907

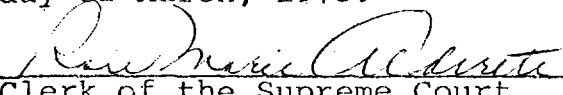
THE STATE OF NEW MEXICO TO THE DISTRICT COURT sitting within
and for the County of Eddy, GREETING:

WHEREAS, in a certain cause lately pending before you,
numbered 28477 on your Civil Docket, wherein Rutter & Wilbanks
Corporation was Petitioner and Oil Conservation Commission was
Respondent, by your consideration in that behalf judgment was
entered against said Petitioner; and

WHEREAS, said cause and judgment were afterwards brought into
our Supreme Court for review by Petitioner by appeal, whereupon
such proceedings were had that on February 21, 1975, an opinion
was handed down and the judgment of said Supreme Court was entered
affirming your judgment aforesaid, and remanding said cause to you.

NOW, THEREFORE, this cause is remanded to you for such further
proceedings therein as may be proper, if any, consistent and in
conformity with said opinion and said judgment.

WITNESS, The Honorable John B. McManus, Jr.,
Chief Justice of the Supreme Court
of the State of New Mexico, and
the seal of said Court this 14th
day of March, 1975.


Clerk of the Supreme Court
of the State of New Mexico

