718 17th St. Ste. 2300
Denver, Colorado 80202
May 2, 1985

R.L. Stamets
Director New Mexico Oil
Conservation Division
Box 2088
Santa Fe, New Mexico 87501

Case 8595

Dear Mr. Stamets,

We the undersigned are overriding royalty interest owners and as former employees of Florida Exploration Company were directly involved with the development operations of the northeast Caudill-Wolfcamp Field located in Sections 1 & 2, T15S-R36E, Lea County, New Mexico. We believe we have pertinent information applicable to the request for field spacing rules to be considered before the Board at the May 8, 1985 hearing. We respectfully request this information be submitted before that hearing. We believe this information to be a true and accurate representation of fact.

The Enstar (now UTP) Scott #1, the discovery well, started flowing in November 1983 from perforations between 10821-10880' in the lower Wolfcamp. Production was water free until July 1984; since then water production has increased and a pump had to be installed to continue operations. It is believed no attempts have been made to locate or squeeze off the water entry.

The Florida Exploration (now Apache) Gilliam #1 was drilled in August 1984 and subsequently completed as a naturally flowing oil well from perforations between 10810-10876'. Production began declining within a month, but additional perforations between 10746-10752' followed by an acid stimulation increased production to over 500 BOPD water free. Although perforations in the Gilliam #1 are structurally lower than those of the Scott #1, no water was being produced from the Gilliam #1.

In November 1984, a pressure test and temperature survey were run on the Gilliam #1. Interpretation of the temperature survey indicated 75% of production coming from perforations between 10746-10752'. A correlation of the attached neutron-density logs of the two wells indicates that this clean carbonate zone is not present in the Scott #1, but instead correlates to a shaley zone in that well.

In early December 1984, Gilliam #1 production began a slight decline, at which time Florida made a routine paraffin cutting run with resulting production going from 225 BOPD to well over 500 BOPD with no water. The well was choked back to remain within the field allowable, where it continued to flow until late January 1985. Paraffin was again cut and production increased from 220-225 BOPD to 440 BOPD. Production was again choked back and was continuing at a 240-260 BOPD rate when they began to have difficulties with the pumper and oil purchaser, resulting in some shut-in days, thereby lowering the reported February 1985 production.

The well was purchased by and turned over to Apache Corporation on March 1, 1985, and has since continued to decline with an increase in water production. In all likelihood the water is coming from the lower sets of perforations. Also, this is probably the case in the Scott #1 well now operated by Union Texas Petroleum, but not confirmed by them.

Because the FEC Gilliam #1 was completed water - free from perforations structurally lower than those of the Enstar Scott #1, which was already producing water and because the majority of production from the Gilliam #1 is coming from a zone that cannot be correlated to an equivalent zone in the Scott #1, it is believed these wells, despite their proximity, are not in direct communication. Therefore, it is very questionable whether these wells are capable of draining more than 40 acres. Since there has not been any recent bottom hole pressure survey work, discounting the possibility of mechanical problems (ie., paraffin or unnecessary water entry) seems to be very premature to a decision to change from the present 40 acre spacing to an 80 acre spacing.

In summary, we do not feel that 80 acre spacing will adequately drain the reservoir and that some downhole work and investigation should first be done on both the Gilliam #1 well & Scott #1 well, before any decision is made. At this time, it should be evident that only additional drilling on 40 acres spacing will adequately drain the reservoir and protect the rights of the interest owners as well as the State of New Mexico.

Sincerely,

Jerry Gentry
Michele Kennard
Dwight Smith
Bruce Johnson
Dick Leuenberger

:dc

xc: Cloner Gilliam and/or Gaynell Mew
Box 68
Donie, TX 75838

Adrid Bell
Rt #1 Box 1090
Lufkin, TX 75901

Bobbie Huffman
5415 Claymoor Dr.
Austin, TX 78723

Glyn Gilliam
Box 450
Graham, TX 76046

R.S. Gilliam, Jr.
1212 Madison
San Angelo, TX 76901

Wade Gilliam
720 Monrovia
Shreveport, LA 71106

Vernis Strawn
3119 San Lucas
Dallas, TX 75228

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

TONEY ANAYA
GOVERNOR

July 15, 1985

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-5800

Mr. Thomas Kellahin
Kellahin & Kellahin
Attorneys at Law
Post Office Box 2265
Santa Fe, New Mexico

Re: CASE NO. 8595
ORDER NO. ~~R-7983~~

Applicant:
APC Operating Partnership

Dear Sir:

Enclosed herewith are two copies of the above-referenced Division order recently entered in the subject case.

Sincerely,

R. L. STAMETS
Director

RLS/fd

Copy of order also sent to:

Hobbs OCD x
Artesia OCD x
Aztec OCD

Other

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION
HOBBS DISTRICT OFFICE

50 YEARS
1935 - 1985

TONEY ANAYA
GOVERNOR

POST OFFICE BOX 1980
HOBBS, NEW MEXICO 88240
(505) 393-6161

July 16, 1985

MEMO TO: Gilbert Quintana

FROM: Paul F. Kautz

SUBJECT: NORTHEAST CAUDILL WOLFCAMP POOL

In reply to our phone converstaion concerning the creation of a new pool called the East Caudill Wolfcamp. The acreage requested has already been placed in the Northeast Caudill Wolfcamp when it was created. Instead of contracting an already existing pool and creating a new pool, I suggest that the Northeast Caudill-Wolfcamp rules be changed to allow for 80 acre proration units. Presently the Northeast Caudill-Wolfcamp includes the western half of SEctionl and the SE/4 of Section 2, Township 15 South, Range 36 East.

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

TONEY ANAYA
GOVERNOR

August 21, 1985

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-5800

Mr. Thomas Kellahin
Kellahin & Kellahin
Attorneys at Law
Post Office Box 2265
Santa Fe, New Mexico

Re: CASE NO. 8595
ORDER NO. R-7983-A

Applicant:

APC Operating Partnership

Dear Sir:

Enclosed herewith are two copies of the above-referenced Division order recently entered in the subject case.

Sincerely,

R. L. STAMETS
Director

RLS/fd

Copy of order also sent to:

Hobbs OCD x
Artesia OCD x
Aztec OCD

Other

ILLEGIBLE

FIFTH JUDICIAL DISTRICT
COUNTY OF LEA
STATE OF NEW MEXICO

ROBERT M. EDSEL, et al.,
Plaintiffs,
vs.
UNION TEXAS PETROLEUM CORPORATION,
Defendant,
-and-
WILTON E. SCOTT, et al.,
Plaintiffs-in-Intervention,
vs.
UNION TEXAS PETROLEUM CORPORATION,
Defendants-in-Intervention.

No. CV 85-407

DEPOSITION OF GILBERT P. QUINTANA

Albuquerque, New Mexico
November 11, 1985
9:00 a.m.

The deposition of GILBERT P. QUINTANA was taken on behalf of the Plaintiffs-in-Intervention on November 11, 1985, at 9:00 a.m., at 2155 Louisiana, N.E., Suite 8900, Albuquerque, New Mexico, before Paula Wegeforth, Certified Shorthand Reporter and Notary Public in and for the County of Santa Fe, State of New Mexico.

Prepared For: J. SCOTT HALL, ESQ
ATTORNEY AT LAW

By: PAULA WEGEFORTH,
CERTIFIED SHORTHAND REPORTER

(Copy)

HUNNICUTT REPORTING

EXHIBIT

difference in those pressures, it would not matter after another year, anyway, because if you took another pressure test after a year later -- and I would take a look at the difference in drop of pressure between the one that was established at the date of the hearing, which was, you say, for example, 2900 pounds -- and you take another pressure test a year later, you would still be able to determine if that reservoir is still affecting.

Q But my point, Gilbert, is that you were told that in approximately a year's time there had been a reservoir pressure decrease of 1600 pounds. In fact it was like 400 pounds. That is a very significant difference, is it not?

A It's a significant difference when you're comparing it to 4500 pounds. It's still not -- it's a difference in determining how fast that reservoir -- one well is affecting another well. It would change a person's opinion as to how quickly one well is affecting another well time-dependentwise.

Q When was the first time that anybody mentioned to you when the effective order date for the order in this case, 8595, was going to be? You understand my question?

A Nobody -- nobody mentions effective date of order. It's -- nobody tells me when the effective date of an order is.

Q So there was nothing, for instance, in the

application or in the hearing where it was discussed, We need you to enter an order by a certain date?

A Not before the hearing and not -- that was not mentioned to me. It was mentioned to me directly after the hearing, and I -- when I say directly after, I mean within five minutes after the hearing.

And this is not -- this is not uncommon. It is done all the time by many different attorneys and many different engineers and companies request that there's time obligations on certain things to be done, and they mention those to me. Usually we try to -- we try to fit into their needs because there have been many complaints before -- not specific with me, but with other people -- and I won't mention names -- in our department in which, say, orders were not put out by a certain period of time; and, you know, large amounts of money were involved and deals and contracts. And as a result of the time lag between the hearing and the order getting out, cost people a lot of money in -- which was our fault, you know, because we would not get it out by a certain period of time.

We were lectured by the director specifically toward one person, but, of course, it was also mentioned to me that we should get our orders out within a month's period of time. That is in our -- that is part of our requirements as hearing officer, to try and get out those

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orders within a month of the time in which we have heard the case. Specifically, for the reason that there are a lot of contracts involved, and especially if they ask us or make us aware of contractual obligations by a certain set period of time, we try to meet those people's needs.

As I mentioned before, the OCD works under -- we are understaffed, to be blunt, very understaffed. We are over worked, and we can't always do that. But we try to meet those needs.

Q You said that you had a conversation immediately after the hearing about the effective data of the order in this case. I take it that this discussion was not on the record?

A No.

Q Did it take place in the hearing room?

A It took place in the hearing room when the next case was coming up, in between the time that the other clients and the other people coming up. And it was mentioned to me that --

Q Well, let me just ask you, Who was it that mentioned it to you?

A If I remember correctly, it was Tom Kellahin.

Q All right.

A Tom Kellahin told me that there was a certain set date in which -- that he would like to see an order out

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because his clients had contractual obligations to meet, and he'd appreciate it if we could get it out. I said that was no problem since that was within approximately a month of my time obligation anyway.

Q Did he explain to you what the contractual obligations were?

A No. I -- we never -- we never discussed those. We just usually -- when I take notes on a yellow sheet of pad, like this, I'll write down -- I'll write down the case number and I'll write down my notes. And usually on it, if it's -- somebody's in a hurry for contractual reasons or whatever the reason may be -- they have a rig waiting -- can be many reasons -- I'll put on it "Expedite," and I'll put the date on which they need to have it out before that date. And in this case I did write "Expedite" and the case and the date I was supposed to get it out.

As it turned out, I -- due to circumstances both at work -- the number of cases we had to get out -- and some problems in my personal life in which my father passed away and other problems with my mother, I was not at work for quite a bit of the period of time in which I was not able to get out my hearings -- all my cases out. So that's --

Q Have you, in the last few weeks, looked again at your notes that you took at the time of that hearing?

A No, I don't -- I moved to a different office, and

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I don't even recall what happened to the notes.

Q But you do recall making that indication on your notes, to expedite this particular order?

A Yes, I do.

Q Do you know where those notes would be presently?

A Those are my own personal notes. I would not know. I'd have to look -- I'd have to look for them.

But I could show you examples of other -- if I don't find them specifically, I can show you examples of other ones in which I wrote down terms of that sort and write expedite certain date and put a certain date on it.

Q Do you mind looking for those notes and producing those to us? And I'm not interested in the other ones. I'm really interested in the ones just that relate to this particular case.

A I'll see if I can find them, if they weren't thrown out.

Q I would appreciate that. Do you recall what specific date it was, what date they were telling you they had to be done by?

A I vaguely remember June 1st or June something or other. I remember the hearing date was probably May 10th. And I'm going on memory because I haven't even picked up or looked at the case file or anything.

Q Assume that it was May 8th that the hearing was

held.

A Or May 8th.

Q So you're saying that some time in June was when Mr. Kellahin wanted you to get the order out?

A Yes, first part of June some time.

Q Then during the period of time from the time you first talked to Mr. Kellahin to the deadline date of whenever that came up, did you have any further conversations with Mr. Kellahin or anybody else about the date of that order?

A No. With the exception that once in a while attorneys will call up and -- not only Tom, but other people -- and they want to know what's the status of an order, has it come out? And, as I told you before, I was gone much of the time during that period of time, and a lot of times notes would be just left on my desk that so-and-so called; and because I was so swamped down with work, I didn't always return my calls, as a lot of the attorneys that practice before the OCD know.

Q But do you recall Tom Kellahin, for instance, specifically calling you about this order and you not returning his calls?

A I think I recall him -- or somebody from his office calling up once and asking if the order was out, and at that time I said it hadn't been done as of yet.

Q When after the hearing was the next time that you actually talked to anyone about this order?

A When it was coming down and I was trying to get all these cases out, our director gave us a memo telling us we have certain set number of cases outstanding, okay? I think I had eight or ten or something like that, and the other examiner had -- I don't know how many -- twenty something. And he said he wanted them all out by a certain period of time, get them all out.

So I was going through those, and I was making a diligent effort to come in in the evenings and work on all these cases and get them out. The next time I ended up talking to anybody about this hearing was when I went and talked to Mr. Stamets. And when I looked at my notes -- because by that time a month or so had passed, and I had looked at my notes and seen that it said expedite by a certain date. And I went to talk to Mr. Stamets, and I told him that I had been asked to expedite that, that I had not done it, and that, of course, I was aware that one of the previous hearing examiners or the other hearing examiner had been reprimanded for not getting a hearing out by a certain time when somebody had asked us to. And I told Mr. Stamets that I had not got it out by that date, if there was something that we could do.

And he asked what the date of the original

application was, and the original application was some time in May or -- I think, some time in May. And I said, "Would it be all right if I were to make it retroactive to the date that they asked for this? Would it be wrong for me to do that?"

And he says -- he told me, "Well, we've done it before in other cases, so long as it's not retroactive back prior to the date of the application."

And I said, "No, this is not prior to the date of the application. Matter of fact, this is a retroactive date one month -- approximately one month after the date of the hearing."

And he said -- I asked him if it would be all right, since all my orders are recommended orders and this was a -- of course, like I told you, things like this stand out in my mind because that was a learning experience for me. That is a procedure that I can only go on what the director -- what previous hearing examiners have done. If it was not out of the ordinary, then I was learning from him that it was fine for him to do that.

So I incorporated that into the order. And, of course, they are only recommended orders; he has to sign it. And I wanted him to be aware why it had a retroactive date on it.

Q Do you recall how you got that date?

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STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARINGS CALLED BY THE OIL CONSERVATION COMMISSION FOR THE PURPOSE OF CONSIDERING:

APPLICATION OF WILTON SCOTT TO VACATE AND VOID DIVISION ORDER NO. R-7983, LEA COUNTY, NEW MEXICO, — Case No. 8678 DE NOVO

AND

APPLICATION OF UNION TEXAS PETROLEUM FOR A NON-STANDARD SPACING AND PRORATION UNIT, LEA COUNTY, NEW MEXICO. — Case No. 8793

BRIEF OF WILTON SCOTT IN OPPOSITION TO RETROACTIVE EFFECT OF AN 80-ACRE SPACING ORDER AND IN OPPOSITION TO CREATION OF A 40-ACRE NON-STANDARD SPACING UNIT

INTRODUCTION

By Farmout Agreement dated December 6, 1982, Wilton Scott ("Scott") farmed out to Robert Edsel ("Edsel") the SW¼ of Section 1, 15S, 36E, in Lea County. Union Texas Petroleum Corporation ("Union Texas") is a successor-in-interest to Edsel of rights under the Farmout. The Farmout mandated a continuous drilling program, and required the farmoutee to "reassign...all acreage not contained within a producing proration or spacing unit" if the continuous drilling obligation was not satisfied.

In July 1983, the Scott No. 1 well was completed by Enstar Petroleum (now Union Texas) as a producer in the Wolfcamp formation in the NW¼SW¼ of Section 1. In 1984, APC Operating

Partnership ("APC") completed the Gilliam No. 1 well as a producer in the Wolfcamp formation, located in the NE¼SE¼ of Section 2.

In April 1985 APC applied to the Oil Conservation Division ("OCD") in Case No. 8595 for pool creation and special pool rules (including 80 acre spacing) for the Wolfcamp formation underlying portions of Sections 1 and 2. APC admits that this case was brought at the request of Union Texas, because Union Texas had "problems" with certain interest owners in the Scott No. 1 Well. A hearing took place May 8, 1985. Scott received no notice of the hearing and remained completely unaware of the case. On July 12, 1985 the OCD promulgated its Order No. R-7983, denying pool creation but granting temporary 80 acre spacing. Although Order No. R-7983 was dated July 12, 1985, it was made effective retroactive to June 1, 1985. A retroactive effective date was not requested in the Application and no evidence was presented at the hearing to support a retroactive effective date.

It is relevant to note that Edsel had previously brought Case Nos. 8070 and 8124 to obtain a non-standard 80 acre spacing unit and a compulsory pooling order for the NE¼SW¼ and SE¼NW¼ of Section 1 for the last well drilled in the subject pool. The abandonment of this well triggered the reversion of the SW¼SW¼ under the Farmout. [1/] Scott had voiced his objection and the

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1 The Scott No. 2 Well, a direct offset to the Scott No. 1, was drilled at a standard location in the NE¼SW¼; it indicated that the reef was to the north and was sidetracked to a northern location in the same 40 acre proration unit; it was re-entered and sidetracked a second time and the bottom hole was to extend under the SE¼NW¼ of Section 1; it

cases were dismissed when, after four attempts, the last of which was terminated more than 120 days prior to June 15, 1985, Edsel had come up dry on the subject 80 acre tract.

Under the terms of the Farmout Agreement, Scott was entitled to a reassignment of the SW¼SW¼ of Section 1 if no well was commenced on that 40 acres, or if that 40 acres was not assigned to a spacing unit, on or before June 15, 1985. No well was commenced on or before June 15th and no proration unit larger than 40 acres was formed before September 11, 1985 when Union Texas filed a Form C-102 dedicating the W½SW¼ as an 80 acre proration unit pursuant to the order.

On June 19, 1985 Scott requested a reassignment of said SW¼SW¼ from Edsel. Not until after July 12 was his request denied, for the reason that the SW¼SW¼ of Section 1 was included in a spacing unit as of the June 1 effective date in Order No. R-7983 and thus reassignment was not required. Union Texas has also refused to reassign the SW¼SW¼ of Section 1 to Scott.

Scott then filed Case No. 8678 [2/] to vacate Order No. R-7983, claiming deficient notice of the hearing in Case No. 8595 and that 80 acre spacing was improper. All interested parties

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1 (Cont'd)

was at this time that Edsel's attorney, Mr. Kellahin, brought the spacing and pooling cases of which Scott was directly notified. Mr. Kellahin on behalf of APC, at Union Texas' urging since "Union Texas had problems with some of its working interests," brought Case No. 8595, but Scott received no notice of it.

2 Scott also represents F. M. Late, a working interest owner, and the three royalty interest owners in the Scott No. 1 well.

were given written notice of this case. After hearing, the OCD entered Order No. R-7983-B which retained temporary 80 acre spacing, but which changed the order's effective date to July 12 because no evidence was presented to support a retroactive date. Union Texas appealed this order de novo, as did Scott. Union Texas requests that Order No. R-7983 be reinstated, or alternatively that it be granted a non-standard unit for the Scott No. 1 Well consisting of the NW¼SW¼ of Section 1. Scott has dismissed his appeal and now supports 80 acre spacing, but contends that the effective date should remain July 12, 1985, and that Order No. R-7983-B should be affirmed, because the June 1 retroactive effective date of Order No. R-7983 is improper as a matter of law and fact. Scott also opposes a non-standard unit because it will violate his correlative rights.

ARGUMENT

A. RETROACTIVITY

There is no justification for a retroactive effective date prior to July 12, 1985, when Order R-7983 was first issued.

1. Retroactivity Is not Justified By The Commission's Statutory Mandate.

It is undisputed that the Commission has the authority to fix the spacing of wells. N.M. Stat. Ann. § 70-2-12(B)(10) (1978). However, any order or rule fixing the spacing of wells, including a provision for retroactive effect, must be based upon the prevention of waste, the protection of correlative rights, and preventing the drilling of unnecessary wells. See N.M. Stat. Ann. §§ 70-2-11, 17(B) (1978); Continental Oil Co. v. Oil

Conservation Com'n, 70 N.M. 310, 373 P.2d 809 (1962); Manufacturers National Bank v. Dept. of Natural Resources, 402 Mich. 128, 362 N.W.2d 572 (1984). A retroactive provision in the subject spacing order serves none of these purposes.

Retroactivity will not prevent waste, because as the case now stands, all the recoverable hydrocarbons under the W½SW¼ of Section 1 have been and will be produced from the Scott No. 1 Well, the only well drilled or to be drilled on the subject 80 acre spacing unit, regardless of the effective date of the spacing rules. In short, the effective date of the spacing order will not "reduce the total quantity of crude petroleum oil or natural gas ultimately recovered" from the pool. N.M. Stat. Ann. § 70-2-3(A) (1978). For the same reason, retroactivity will not prevent the drilling of unnecessary wells; there is one well on the unit and no others are to be drilled.

The question remains then whether retroactivity will protect correlative rights. There is no dispute that if the July 12, 1985 effective date of the order is retained, Scott will be entitled to an increased share of production from the Scott No. 1 Well by virtue of his Farmout. It provides that wells must be continuously drilled within 120 days of each other and failure to do so or failure to have the acreage dedicated to a proration unit results in abandonment of the interest. June 15, 1985 was the critical date by agreement of all the affected parties. Consequently, depending on the effective date of the 80 acre spacing order, Scott will or will not be entitled to reclaim his interest in the SW¼SW¼ of Section 1. Union Texas claims that

ownership in the production from the Scott No. 1 Well is a correlative rights issue. Scott disagrees.

"Correlative rights" [3/] in New Mexico are determined from the common law principle which allows a mineral owner to produce his fair share of the oil and gas from a pool underlying his land without wasteful conduct which injures other interest owners in the common reservoir. [4/] 1 H. Williams & C. Meyers, Oil and Gas Law, § 204.6. See Baumgartner v. Gulf Oil Corp., 184 Neb. 384, 168 N.W.2d 510 (1969); Pan American Petroleum Corp. v. Wyoming Oil & Gas Conservation Com'n, 446 P.2d 550 (Wyo. 1968). The correlative rights of owners of a common source of supply have been described as follows:

(1) The right against waste of extracted substances;

(2) The right against spoilage of the common source of supply;

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3 Correlative rights is defined in N.M. Stat. Ann. § 70-2-33(H) (1978):

> "correlative rights" means the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practicably determined, and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for such purpose to use his just and equitable share of the reservoir energy.

This is a commonly accepted definition. See 8 H. Williams & C. Meyers, Oil and Gas Law, p. 178.

4 The most common situation involving correlative rights determinations are unorthodox well locations which result in drainage from adjacent interest owners. See e.g., Chevron Oil Co. v. Oil & Gas Conservation Com'n, 150 Mont. 351, 435 P.2d 781 (1967).

(3) The right against malicious depletion of the common source of supply; and

(4) The right to a fair opportunity to extract oil or gas.

E. Kuntz, "Correlative Rights in Oil and Gas," 30 Miss. L.J. 1 (1958). Correlative rights can only be determined on the basis of scientific evidence respecting the physical facts of the common source of supply. 1 Summers, Oil and Gas, § 63, pp. 166-168. Accord, Continental Oil Co. v. Oil Conservation Com'n, supra, 70 N.M. at 319 (correlative rights is determined by the amount of recoverable oil and gas under a person's land which can be produced without waste). Retroactivity is unrelated to any of these concepts.

Moreover, the main purpose of well spacing determinations by a conservation body is to prevent waste, although proper well spacing has the effect of protecting correlative rights by preventing drainage. 1 Summers, Oil and Gas, §§ 63, 83. The issue of the retroactive date as it affects contractual rights under the Farmout is clearly not one of waste since all parties are in agreement that one well will effectively and efficiently drain 80 acres. Nor is it a correlative rights issue because it does not concern the disproportionate taking or the waste of hydrocarbons from a common source of supply. Interest owners under the NW¼SW¼ of Section 1 will still recover their equitable share of hydrocarbons. There is no drainage issue. Rather, the issue is that Union Texas' share of production may be diluted

depending on the effective date of the order as it interacts with the terms of the Farmout.

Clearly, the issue is solely a matter of private contractual rights. The Commission cannot enter an order whose sole purpose is to alter private contractual rights. See Harris, "Modification of Corporation Commission Orders Pertaining to a Common Source of Supply," 11 Okla. L. Rev. 125, 130 (1958). "Indeed, the ownership of the land involved is not even considered when determining the proper size for drilling units in a pool." Manufacturers National Bank v. Dept. of Natural Resources, supra, 362 N.W.2d at 578.

Each time the Commission creates special pool rules which increase the size of spacing and proration units, there is often an adjustment of participation to include the interests of owners in the expanded unit. See, e.g., Ward v. Corporation Commission, 501 P.2d 503 (Okla. 1972) (spacing increased from 160 to 640 acres, and Tenneco's interest in well production increased from zero to 55%); Desormeaux v. Inexco Oil Co., 298 So.2d 897 (La. App.), writ denied 302 So.2d 37 (La. 1974). The present case is no different, except that the effective date of the spacing order becomes meaningful under the terms of the Farmout.

The Commission will indeed be treading on thin ice if it decides to adjust the effective dates of its orders based on their effect on contractual rights. It could be opening its doors to a parade of diverse contract disputes when a spacing order is entered increasing the size of the proration units. It will be deviating from its charge of overseeing a regulatory

system which allows mineral owners the opportunity to fairly produce their hydrocarbons based on the physical characteristics of a reservoir, independent of contract.

2. If The Equities Do Not Favor The Party Seeking Retroactivity An Order Should Not Be Made Retroactive.

At the hearing de novo, Union Texas requested the effective date of 80 acre spacing be made retroactive to June 1, 1985. Union Texas argued that timely application for 80 acre spacing was made by APC in April, 1985, that a hearing was held May 8, 1985, and if the OCD had not been dilatory an order would have issued before June 15, 1985 and the issue of retroactivity would be moot. The argument continues that the only way for the Commission to remedy the harm caused by the OCD is by entering an order with a retroactive date of June 1.

Administrative rules cannot be made retroactive if the equities do not favor the party requesting the retroactive relief. Application of Farmers Irrigation District, 187 Neb. 825, 194 N.W.2d 788 (1972); Tennessee Gas Pipeline Co. v. F.E.R.C., 606 F.2d 1094, 1116 (D.C. Cir. 1979), cert. denied 445 U.S. 920. The original hearing (Case No. 8595) proceeded without constitutionally sufficient notice to Scott. Union Texas Petroleum v. Corporation Com'n, 651 P.2d 652 (Okla. 1981). Thus the order in that case is void as against Scott, Louthan v. Amoco Production Co., 652 P.2d 308 (Okla. App. 1982, cert. denied), and no order should have been effective against Scott until his right to be heard was respected.

In addition to lack of notice of Case No. 8595, Scott was informed that none of the partners to the Farmout were going to

drill the SW¼SW¼ of Section 1 by June 15, 1985. As a result, he commenced preparations for drilling his own well. When June 15 passed, Scott exercised his rights under the Farmout and requested reassignment of the SW¼SW¼. Mr. Bahlberg, a working interest owner, did actually reassign his interest. It was this same Mr. Bahlberg who learned that Order R-7983 was entered July 12, 1985, [5/] first made Scott aware of this fact, and requested that the reassignment be returned.

Immediately after receiving this information, Scott applied to vacate Order R-7983. He could not take an appeal de novo, not having been a party to the original suit. Case No. 8678 was heard August 14 and the only evidence presented was by Scott and his geologist, William McCoy. Mr. Kellahin appeared for APC and Mr. Carr appeared for Union Texas; both supported 80 acre spacing. The Commission took administrative notice of the record in Case No. 8595. The only evidence presented regarding retroactivity in either case was by Scott at the August 14 hearing, where he opposed retroactivity. No evidence was ever presented to support a June 1, 1985 effective date. Furthermore, the August 14 hearing was continued to August 28 to allow rebuttal testimony, but none was offered.

It is undisputed that an administrative agency's rule or order must be based upon the pleadings or evidence in the record. McWood Corp. v. State Corporation Com'n, 78 N.M. 319, 431 P.2d 52

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5 Apparently, Edsel was unaware of the spacing order. It was his attorneys who discovered the order as a result of examining Union Texas' files in Midland during the course of discovery in the Lea County litigation related to these cases.

(1967); General Electric Co. v. Wisconsin Employment Relations Bd., 3 Wis. 2d 227, 88 N.W.2d 691. Since neither Union Texas nor APC presented evidence at either the May or August hearings to support a June 1 retroactive effective date, the OCD properly chose July 12 since it was the date the original order issued.

In addition, it is clear that the law will not grant relief to those who are victims of their own circumstance, or otherwise stated, where the party seeking retroactivity is having to do so because of its own delay. Reichold Energy Corp. v. Division of State Lands, 73 Or. App. 708, 700 P.2d 282 (1985). What justification is there for laying the blame on a heavily burdened, understaffed administrative agency if the problem could have been alleviated by having brought the case one or two months earlier? Since Union Texas could have brought the spacing case before the last possible moment, the law will not now hear its complaint.

Finally, administrative rule changes should not be made retroactive if one party has detrimentally relied on the previous rule. Heckler v. Community Health Services of Crawford, 104 S.Ct. 2218, 2224 (1984); Cartwright v. Civil Service Com'n, 80 Ill.App. 3d 787, 400 N.E.2d 581 (1980). The evidence shows that Scott clearly relied on existing statewide 40 acre spacing rules: Six wells had been drilled in the pool (as defined by the Commission) pursuant to 40 acre spacing; Scott had objected to Edsel's 80 acre spacing case and forced pooling case and expended time and money to that end; Scott manifested his intent to drill the SW¼SW¼ when it was made clear to him that no one intended to

drill it by June 15, 1985; Scott obtained lease extensions of one year to March 11, 1986 for the NW¼ of Section 12 at considerable cost by representing to the owners that their minerals lay in the direction of an orderly step-out development program commencing with a well in SW¼SW¼ of Section 1; and, consistently, Scott demonstrated his reliance by taking immediate steps after June 15 to have his acreage returned so that he could drill it.

Union Texas in effect claims that Scott is taking advantage of the situation to increase its share of well production. However, Union Texas purchased its farmout interest with knowledge of the reassignment obligation and drilled the Scott No. 1 Well based upon 40 acre spacing. Union Texas urged APC to bring the 80 acre spacing case in order to sidestep problems with Scott, and was aware of the ramifications involved when well spacing is increased. Union Texas is only entitled to the share of production to which it is entitled by its contract. Cabot Carbon Corp. v. Phillips Petroleum Co., 287 P.2d 675 (Okla. 1955). Its request to be protected from its own actions rings hollow.

3. The July 12 Date Is Consistent With The Commission's Traditional Practice.

The July 12 date should stand not only for the reasons discussed above, but also because such result would be consistent with the traditional practice of the Commission which is to make special pool rules effective the date the order is issued or on the first of the month following the date of the order. The reasons for the practice are to allow affected parties to make necessary ownership adjustments to existing wells as a result of

increased size of spacing units, and to make allowable changes required by the Commission subject to more orderly adjustment. The Commission should not depart from this tradition and permit retroactivity unless there is a compelling reason based upon the physical characteristics of the reservoir. However, no such reason has been given.

4. The SW¼SW¼ Of Section 1 Reverted To Scott Regardless Of The Effective Date Of The Spacing Order.

Assuming the effective date of the spacing rules to be June 1, 1985, Union Texas still cannot prevail because there was no 80 acre spacing unit under the rules promulgated by Order R-7983 until September 11, 1985 when Union Texas filed with the OCD the appropriate documents identifying and dedicating the spacing unit. The order provides in paragraph 4:

> Until...Form C-102 has been filed or until a non-standard unit has been approved...each well presently...completed...shall receive no more than one-half of a standard allowable for the pool.

Under the express language of the order, it is clear that until Union Texas filed a C-102 dedicating the acreage as a stand up or lie down unit, or until it requested a non-standard 40 acre unit, there existed no 80 acre proration unit. The Scott No. 1 well was considered a non-standard 40 acre unit with only one-half an 80 acre allowable until Union Texas acted pursuant to the order. Union Texas filed a C-102 dedicating the W½SW¼ on September 11, 1985 within 60 days of July 12, the effective date of Order R-7983-B, but not within 60 days of Order R-7983, the effective date of which was made retroactive to June 1. There is

no provision in the order or evidence in the record to suggest any justification for making the September 11 date retroactive. Therefore, by operation of the very order Union Texas seeks to reinstate, the SW¼SW¼ was not included in an 80 acre proration unit until September 11, 1985.

B. NON-STANDARD UNIT

The Creation Of A 40 Acre Non-Standard Spacing Unit Is Not Justified By The Commission's Statutory Mandate.

Scott and APC oppose the application of Union Texas for a 40 acre non-standard spacing and proration unit comprised of the NW¼SW¼ of Section 1. The basis for such opposition is that APC applied for 80 acre spacing in Case No. 8595, and Order R-7983 granting the request issued on July 12, 1985. APC and Union Texas jointly supported 80 acre spacing at the hearing in Case No. 8678 brought by Scott. Although Scott supported 40 acre spacing at the second hearing, based on the evidence, he has changed his position and now supports 80 acre spacing. As a result, there exists no opposition to 80 acre spacing. Consequently, the 80 acre spacing order should remain in effect by unanimous consent of the interested parties which negates any basis for establishing a non-standard 40 acre spacing unit.

The only difference between Order R-7983 and Order R-7983-B is the effective date. Union Texas admitted in the de novo hearing that the only reason it seeks a non-standard 40 acre unit for the NW¼SW¼ as an exception to the 80 acre spacing order is in the event the July 12 date is not made retroactive to June 1. As has been discussed at length under our argument in Section A.1.

above, the effective date issue does not fall under considerations of the prevention of waste, protection of correlative rights, and preventing the drilling of unnecessary wells. To avoid repetition, Scott directs the Commission's consideration to the aforesaid argument.

In addition, based on the uncontested evidence before the Commission, there exists no more than approximately 200 acres of productive reservoir in the Northeast Caudill-Wolfcamp Pool. The subject applications cover 160 acres of this productive acreage. With only two producing wells in the subject 160 acre tract, and based upon the shape of the subject field, there are logically only two 40 acre units that can be combined with the producing proration units, namely the SE¼SE¼ with the NE¼SE¼ where the Gilliam No. 1 Well is located in Section 2, and the SW¼SW¼ with the NW¼SW¼ where the Scott No. 1 Well is located in Section 1. Particularly, in the case of the Scott No. 1 Well, there clearly is no alternative since the well is directly offset to the North by a depleted well, to the East by a dry hole, and to the west by a producer across the section line. The only direction left is south. 6/

Furthermore, the testimony establishes that the field is a water drive from the southwest to the northeast, which propels the oil under the SW¼SW¼ toward the NW¼SW¼. Granting a 40-acre non-standard unit would permit Union Texas to recover Scott's hydrocarbons from the Scott No. 1 Well without permitting him to

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6 If Scott received back his 40 acres he would clearly have no where to go but East to form an 80 acre proration unit and that acreage has already been condemned by a dry hole.

share in production. Union Texas has already admitted that the Scott No. 1 has drained at least 54 acres, that the dranage is updip from the southwest, and a well cannot be economically drilled in the SW¼SW¼. Therefore, it is clear that a non-standard unit would violate Scott's correlative rights.

Moreover, since Scott has dismissed his application for a 40 acre non-standard spacing unit comprised of the SW¼SW¼ of Section 1, if the Commission were to grant Union Texas' request for a non-standard unit, as just discussed Scott would be left with a 40 acre spacing unit and no offset 40 acre unit with which to combine his acreage. The inevitable result will be that Scott shall be forced to bring a compulsory pooling case, force pooling his acreage with the NW¼SW¼ to protect his entitlement to a just and fair share of the oil underlying his tract. Therefore, in the interest of judicial economy, especially when it is manifestly clear that there is no basis for creating any non-standard spacing unit under the facts, the Commission should deny Union Texas' application.

CONCLUSION

Therefore, for the reasons stated, Scott respectfully requests the Commission to affirm its present Orders R-7983 and R-7983-B, which provide for 80 acre spacing with a July 12 effective date. Scott also respectfully requests the Commission to deny Union Texas' application for a non-standard 40 acre spacing unit in Case No. 8793.

Respectfully submitted,

HINKLE, COX, EATON,
COFFIELD & HENSLEY

By 

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Attorneys for Wilton Scott

STATE OF NEW MEXICO

ENERGY AND MINERALS DEPARTMENT

OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION DIVISION FOR THE PURPOSE OF CONSIDERING:

Case 8678
Order No. R-7983-B

APPLICATION OF WILTON SCOTT TO VACATE AND VOID DIVISION ORDER NO. R-7983, AS AMENDED, LEA COUNTY, NEW MEXICO

SUPPLEMENTAL COMMENTS OF ROBERT M. EDSEL AND JAMES EDSEL

Introduction

Mr. R. Charles Gentry entered his appearance on behalf of Robert M. Edsel and James Edsel (the "Edsels") during the January 7, 1986 hearing of the New Mexico Oil Conservation Division ("Division") in Case No. 8678 and other cases consolidated with it. As explained by Mr. Gentry during a brief oral statement at the close of the hearing, the Edsels are the parties who originally obtained farmout rights to the acreage in question. The Edsels were most instrumental in drilling the Scott Well No. 1 which established the existence of the new pool of Wolfcamp production involved in these cases. The Edsels are working interest owners in the Scott Well No. 1 and, as such, will be adversely affected, for reasons that

were explained at the January 7 hearing, if the effective date of the 80-acre spacing order is later than June 15, 1985.

The purpose of this statement is to supplement Mr. Gentry's oral presentation with respect to Mr. Wilton Scott's ("Scott") sole surviving contention -- that the effective date of the 80-acre spacing order should be the date of its actual issuance, July 12, 1985. For that purpose, the Edsels respectfully submit the following supplemental comments.

Competing Correlative Rights

Scott contends that on June 15, 1985, the date specified in the farmout agreement for the reassignment of any acreage not dedicated to a producing well ("Reassignment Date"), the Scott Well No. 1 held only the 40-acre tract on which it was located. He further contends that certain representations had been made to him by James Edsel in the months preceding the Reassignment Date on which he relied to take certain actions in order to be able to drill a well on the acreage to be reassigned. Scott claims that under these circumstances (1) he acquired correlative rights in the Scott Well No. 1 due solely to the existence of 40-acre spacing on June 15, 1985, and (2) those correlative rights should be given a higher priority by the Division than the correlative rights of the Edsels and other original working interest owners in the Scott Well No. 1.

Union Texas Petroleum Corporation ("UTP"), as operator of the Scott Well No. 1, contended at the hearing that the

Division has the authority to make the effective date of the 80-acre spacing order earlier than the date of issuance and that protection of the correlative rights of the original working interest owners in the Scott Well No. 1 justifies and requires exercise of that authority in this case. Thus, the Division is faced with resolving this matter on the basis of the superiority of the competing correlative rights.

A Retroactive Order is Authorized

The Edsels support the Division action sought by UTP and agree that the Division has the authority, and indeed, the duty, to give the spacing order retroactive effect, since that is necessary for the protection of valid correlative rights.

Although no New Mexico case law appears directly on point, it was established at the hearing through the testimony presented by Mr. Nutter that previous orders of the Division have been given retroactive effect. Mr. Nutter's statistical analysis indicated that this retroactive authority has been used rather sparingly, but that does not mean -- as his analysis seemed to suggest -- that the authority should not be used when satisfaction of the statutory obligations of the Division require it. It seemed that Mr. Nutter was suggesting that if only 5% of the Division's orders had been made retroactive, the odds against making this order retroactive ought to be 95 to 5.

The Edsels reject that notion, as well as any other theory or argument predicated on those statistics. No evidence was presented at the hearing to indicate that the Division has previously been faced with a case factually similar to this matter. However, evidence was presented which showed that in situations where the Division felt it necessary, for whatever reasons, to give an order retroactive effect, it has done so.

New Mexico statutes support such actions by the Division Section 70-2-18(A), which applies to in the size of the spacing unit applicable to a producing well, specifically provides authority to issue a retroactive spacing order in this case. The final sentence of that section reads as follows:

> Any division order that increases the size of a standard spacing or proration unit for a pool, or extends the boundaries of such a pool, shall require dedication of acreage to existing wells in the pool in accordance with the acreage dedication requirements for said pool, and all interests in the spacing or prorationing units that are dedicated to the affected wells shall share in production from the effective date of said order.

(Emphasis added.) The emphasized words convey the Division's retroactive authority and the language of this statute clearly recognizes that the effective date may be other than the date the order was issued. If the New Mexico Legislature had intended that the Division not have the power to give retroactive effect to such an order, Section 70-2-18(A) would have been

worded "from the date of issuance of said order" or words to that effect.

Finally, in this regard, Section 70-2-11 imposes on the Division the duty to protect correlative rights and, "[t]o that end, the division is empowered to make and enforce rules, regulations and order, and to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof." (Emphasis added). Clearly, the protection of correlative rights is a primary purpose of the statute the Division is directed to implement. Further, New Mexico statutes specifically authorize retroactive dates for orders increasing the size of a standard spacing unit. The Division properly employed such authority in its July 12, 1985 order to protect correlative rights and such action was "reasonably necessary" to carry out that legitimate purpose.

A Retroactive Order Is Required In This Case

The conditions at depth in this pool that justify 80-acre spacing are the same conditions that existed when Scott originally possessed the right to drill and produce from that pool. They are the same as those existing when Scott conveyed that right, by farmout, for consideration, to the Edsels, who subsequently bore the expense and risk of finding the pool. They are the same as those existing when the discovery was made; when production started; and when the application for 80-acre spacing was submitted and heard. In short, those

conditions have existed during all periods relevant to this issue. From the date of first production, the Scott Well No. 1 has been draining an 80-acre area. Accordingly, the correlative rights applicable to the Scott Well No. 1 were established at the date of first production and it is those correlative rights the Division must act to protect. The Division's action in increasing the spacing unit size for this new pool is simply regulatory recognition and confirmation of a fact always in existence -- that the Scott Well No. 1 effectively and efficiently drains 80 acres. The rights of interest owners who undertook to drill that well extend, from at least the date of first production, to the full area drained by the well. Dating an order so as to ensure the protection of those rights is a reasonable exercise of the authority of the Division. Further, such action is required for the satisfaction of the Division's obligation to protect those legitimate correlative rights, established by drilling and production and confirmed by the Division's 80-acre spacing order.

Scott tries to make a relevant issue of the fact that James Edsel caused him to believe, and to take certain actions based on that belief, that the SW/4 SW/4 of Section 1 would be reassigned because no future wells were planned before the Reassignment Date. That statement was correct in that no other wells were planned and, indeed, none were drilled.

However, at the time of those representations, James Edsel was unaware that APC Operating Partnership had applied for 80-acre spacing and he assumed that the Scott Well No. 1 would hold only the 40 acres on which it was located, and so did Scott. Likewise, at that time, James Edsel expected that the ownership of the Scott Well No. 1 and its production would be determined only by the ownership of the 40 acres which was then dedicated to it, and so did Scott. Most importantly, at that time, Scott had no expectation of ownership in the well or its production, solely as a result of the anticipated reassignment of the SW/4 SW/4 of Section 1.

It is irrelevant and misleading for Scott to now claim that, by virtue of the intervening events, he has gained correlative rights in the 80 acres appropriately dedicated to that well and that those rights have somehow been elevated to a status superior to the correlative rights of the Edsels. It was the Edsels and their partners who made the investment and took the risk to achieve a producing well and receive all the benefits thereof, a right which Scott bargained away in his farmout agreement. The Edsels and their partners are entitled in law and equity to retain the benefit they earned.

Alternative Request

If the effective date of the spacing order is maintained as July 12, 1985 (or any date after June 15, 1985), the Edsels join in UTP's alternative request -- that the NW/4 SW/4 of Section 1, Township 15 South, Range 36 East, be designated

as a 40-acre nonstandard spacing unit for the Scott Well No. 1. If this course is followed, it will be necessary for the effective date of the 40-acre nonstandard spacing unit order to be no later than July 12, 1985. Otherwise, the conflict of correlative rights could still persist during the gap in time between the date of the 80-acre spacing order and the effective date of the nonstandard spacing unit.

Scott's Participation in the Scott Well No. 1

Scott has sought an adjustment of the interests of the working interest owners from date of first production, based upon his contention that the SW/4 SW/4 of Section 1 was not earned by June 15, 1985, as required by the farmout agreement. If the effective date of the 80-acre spacing order is maintained as July 12, 1985, and the 40-acre nonstandard spacing for the Scott No. 1 is not granted, the Division should ensure that Scott's increased participation begins no earlier than the effective date of 80-acre spacing order. As stated in Section 70-2-18(A), an order which increases the size of a standard spacing or proration unit can only require that "all interests in the spacing or proration units that are dedicated to the affected wells share in production from the effective date of said order."

This is consistent with the Oklahoma case of Ward v. Corporation Division, 501 P.2d 503 (Okla. 1972), which we believe was cited with approval by Mr. Lopez in his closing

argument at the January 7 hearing. In that case, the Oklahoma Supreme Court held:

> ... the oil and gas lessees and others who own interests in the spacing (drilling) unit, share in the production of the unit well (whether drilled before or after the spacing (drilling) unit is established[)] as of the time the unit is established.

Id. at 507. To the same effect is Wood Oil Co. v. Corporation Division, 239 P.2d 1023 (Okla. 1950), which the Ward decision cites for the proposition that "the non-drilling owners of a divided interest ... in a spacing unit is [sic] entitled to share in the production from the unit well commencing on the date the Division established the unit." Ward, supra, at 505 (emphasis added).

In summary, the controlling New Mexico statute requires, and relevant case law supports, the limitation on Scott's right to increased participation in the Scott Well No. 1 to no earlier than the effective date of the 80-acre spacing order.

Finally, the Edsels request that Scott pay his pro-rata share of all well costs before receiving any revenue from production due to reassignment of the SW/4 SW/4 of Section 1. The Corporation Division order affirmed in the Ward case, relied upon by Scott, held that the new interest owner "had the right, commencing on the date the applicable spacing unit was established, upon paying its pro-rata share of the cost of the well, to participate in all production from the well...."

Id. (Emphasis added). In the Wood case, cited with approval by the Ward court, it was held that the new interest owners must pay their proportionate share of completing and equipping the well, "without deduction for any production prior to the date of the pooling." Wood, supra, at 1027-28. These cases make clear the Oklahoma rule that those who expect to participate in production from a well, solely by virtue of having been included in an expanded spacing unit applicable to that well, can do so only after having paid their pro-rata share of costs of drilling and equipping the well, with their proportionate share to "be determined in the relation that the acreage owned by them bears to the total acreage in the spacing unit...." Wood, supra, at 1027. Should the Division not see fit to protect the Edsel's correlative rights by reinstating its retroactive order of July 12, 1985, the Edsels respectfully submit that the wisdom of the Oklahoma Courts should be followed by the Division to protect the Edsel's existing rights at the time of creation of the larger unit. If their interest is to be diminished by half -- a result highly inequitable to the Edsels -- then one-half of the investment of the Edsels, at the very lease, should be reimbursed by Scott. In short, these principles, applied in Ward and Wood, supra, should be applied in this case if Scott's working interest is increased by action of the Division and

the Edsels respectfully request that they be applied in any order having that effect.

Respectfully submitted,

By: R. Charles Gentry
R. Charles Gentry

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Dated: January 16, 1986

RCG-30-F

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RECEIVED
JUL 1986
OIL CONSERVATION DIVISION

July 29, 1986

Mr. Richard L. Stamets
Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87504

"Hand Delivered"

Re: Temporary Special Rules
Northeast Caudill-Wolfcamp Pool
Lea County, New Mexico
OCD Case 8598

Dear Mr. Stamets:

Our firm represents APC Operating Partnership who originally applied for the subject special rules.

We have been informed that the Division has set the referenced case for hearing on August 6, 1986 to determine if the temporary rules, including 80-acres, for the subject pool should be made permanent.

We would appreciate this case being continued to the Examiner hearing set for September 3, 1986 so that we will have sufficient time to determine from the other operators and working interest owners in the pool what they desire concerning this case.

Very truly yours,

W. Thomas Kellahin

WTK:ca

cc: Eugene Rooke, Esq.
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August 12, 1986

RECEIVED
AUG 13 1986
OIL CONSERVATION DIVISION

Mr. Michael E. Stogner
Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87504

Re: Northeast Caudill Wolfcamp Pool
Order R-7983-C

Dear Mike:

At my request, you continued Division Case 8595 from the August 6th docket to the September 3rd docket. I have had an opportunity to review this case and find that Division Order R-7983-C entered by the Commission from a January 7, 1986 hearing made the referenced pool rules permanent. (Copy enclosed).

This case was apparently docketed by the Division based upon the temporary rules adopted in August, 1985, and the permanent rule hearing which came in January, 1986, was overlooked.

Accordingly, we would request that Case 8595 be dismissed.

Very truly yours,

W. Thomas Kellahin

WTK:ca

cc: Dick Brunner (Apache)

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION COMMISSION

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

CASE NO. 8678 DE NOVO
Order No. R-7983-C

APPLICATION OF WILTON SCOTT
TO VACATE AND VOID DIVISION
ORDER NO. R-7983, AS AMENDED,
LEA COUNTY, NEW MEXICO

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9:00 a.m. on January 7, 1986, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 26th day of February, 1986, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS THAT:

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

(2) On April 15, 1985, APC Operating Partnership made application to the Oil Conservation Division (Division) for a hearing to consider creation of a new Wolfcamp oil pool and establishment of 80-acre spacing therefor, in Lea County, New Mexico.

(3) This matter was assigned Case No. 8595 and was heard by Division Examiner Gilbert P. Quintana on May 8, 1985.

(4) Division Order No. R-7983 was entered in Case No. 8595 on July 12, 1985.

(5) Said Order denied the application for pool creation insofar as the Northeast Caudill-Wolfcamp Pool had previously

been created in the area in question, but did establish temporary special pool rules for said Northeast Caudill-Wolfcamp Pool, including a provision for 80-acre spacing and made the effective date for said special rules retroactive to June 1, 1985.

(6) On August 2, 1985, Wilton Scott, a working interest owner in said pool, filed an application seeking to vacate Division Order No. R-7983 alleging he had not received notice of the application and that the order adversely affected property in which he had an interest.

(7) This matter was assigned Case No. 8678 and was heard by Division Examiner Michael E. Stogner on August 14 and 28, 1985.

(8) On October 14, 1985, Division Order No. R-7983-B was entered in Case No. 8678 continuing Division Order No. R-7983 in full force and effect but amending the effective date of said order to July 12, 1985, the date that order R-7983 was originally entered.

(9) On November 14, 1985, Wilton Scott filed a timely application for hearing de novo of Case No. 8678 before the Commission.

(10) This matter came on for hearing de novo on January 7, 1986, and was consolidated for the purposes of testimony with Cases Nos. 8793, 8794, and 8795.

(11) At the hearing, Scott withdrew all objection to the special pool rules contained in said Order No. R-7983, as amended, but continued his objection to an effective date for said order at any time prior to July 12, 1985.

(12) Union Texas Petroleum Corporation is the operator of the Scott Well No. 1 located in Unit L of Section 1, Township 15 South, Range 35 East, with an 80-acre tract consisting of the W/2 SW/4 of said Section 1 dedicated thereto in said Northeast Caudill-Wolfcamp Pool.

(13) The Scott Well No. 1 was drilled on acreage farmed out by Scott to Robert Edsel.

(14) The evidence presented in this case indicates that under terms of the farmout agreement, Scott was entitled to a reassignment of the SW/4 SW/4 of said Section 1, as well as other acreage, if no well was commenced thereon or if that acreage was not assigned to a spacing unit on or before June 15, 1985.

(15) The percentage of ownership interests are altered between the various interest owners in the SW/4 SW/4 of said Section 1 with said reassignment.

(16) Union Texas argued that the Commission should reestablish the June 1, 1985, effective date for said Order No. R-7983 and the special rules contained therein in order to protect correlative rights.

(17) Union Texas argued that correlative rights would be protected by preserving all interests in said Scott Well No. 1 as they were at the time the well was drilled and at the time Case No. 8595 was filed and heard.

(18) At the time of the original hearing in Case No. 8595, no party presented evidence or any request in support of entry of an order with an effective date on or before June 15, 1985.

(19) Scott presented evidence to the Commission to show that the June 15, 1985, date passed without the drilling of a well on the SW/4 SW/4 of said Section 1 or the dedication thereof to an existing well.

(20) As no order authorizing dedication of more than 40 acres to said Scott Well No. 1 existed prior to July 12, 1985, the operator of said well could not have dedicated the SW/4 SW/4 of said Section 1 thereto on or before June 15, 1985.

(21) Under the terms of the farmout, the ownership interest in the SW/4 SW/4 of said Section 1 did change on June 16, 1985, as a matter of private contractual agreement.

(22) While Union Texas' arguments contained in Findings Nos. (16) and (17) above could have been justification for Division action to enter an order in Case No. 8595 prior to and effective on or before June 15, 1985, those arguments were not timely made and ownership changes in acreage dedicated to said Scott Well No. 1 did occur.

(23) To enter an order at this time with a retroactive date on or before June 15, 1985, would alter existing ownership within the acreage dedicated to said Scott Well No. 1 and would violate existing correlative rights.

(24) To protect existing correlative rights, the effective date of Division Order No. R-7983 should be affirmed as July 12, 1985.

(25) Decretory Paragraph (5) of said Order No. R-7983 provided that, "this case shall be reopened at an examiner

hearing in August, 1986, at which time the operators in the Northeast Caudill-Wolfcamp Pool may appear and show cause why said pool should not be developed on 40-acre spacing units."

(26) The evidence presented in this case clearly established that 80-acre spacing is the correct spacing for said Northeast Caudill-Wolfcamp Pool and the special rules therefore should be made permanent.

(27) Entry of an order in this case in conformity with the above findings will protect correlative rights and prevent waste.

IT IS THEREFORE ORDERED THAT:

(1) The effective date of Division Order No. R-7983, as amended, and of the special rules and regulations contained therein is hereby affirmed as and shall be July 12, 1985.

(2) The Temporary Special Rules and Regulations for the Northeast Caudill-Wolfcamp Pool contained in said order are hereby made permanent and continued in full force until further order of the Division or Commission.

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

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

JIM BACA, Member

ED KELLEY, Member

R. L. STAMETS,
Chairman and Secretary

S E A L

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

TONEY ANAYA
GOVERNOR

December 12, 1986

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SANTA FE, NEW MEXICO 87501
(505) 827-5800

Mr. Thomas Kellahin
Kellahin & Kellahin
Attorneys at Law
Post Office Box 2265
Santa Fe, New Mexico

Re: CASE NO. 8595
ORDER NO. R-8983-D

Applicant:

ACD (APC Operating Partnership)

Dear Sir:

Enclosed herewith are two copies of the above-referenced Division order recently entered in the subject case.

Sincerely,

R. L. STAMETS
Director

RLS/fd

Copy of order also sent to:

Hobbs OCD x
Artesia OCD x
Aztec OCD

Other Ernest L. Padilla, William F. Carr, Harold Hensley

STATE OF NEW MEXICO

ENERGY AND MINERALS DEPARTMENT

OIL CONSERVATION DIVISION

GARREY CARRUTHERS
GOVERNOR

C E R T I F I C A T I O N

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TO WHOM IT MAY CONCERN:

I, CHARLES E. ROYBAL, Acting Director of the Oil Conservation Division of the New Mexico Energy and Minerals Department, do hereby certify that the attached are true and correct copies of the following documents on file in this office:

Transcript of Case No. 8595 dated May 8, 1985, and exhibits;

Application filed by APC Operating Partnership in Case No. 8595 on April 15, 1985;

Order No. R-7983 entered in Case No. 8595 on July 12, 1985;

Nunc Pro Tunc Order No. R-7983-A entered in Case No. 8595 on July 12, 1985;

Transcript of Case No. 8678 dated August 14, 1985, and exhibits;

Transcript of Case No. 8678 dated August 28, 1985;

Order No. R-7983-B entered in Case No. 8678 on October 15, 1985;

Transcript of combined Cases Nos. 8678, 8793, 8794, and 8795 dated January 7, 1986, and exhibits;

Order No. R-7983-C entered in Case No. 8678 on February 26, 1986;

Order No. R-8153 entered in Case No. 8793 on February 26, 1986;

Order No. R-8154 entered in Case No. 8794 on February 26, 1986;

Order No. R-8155 entered in Case No. 8795 on February 26, 1986.

CHARLES E. ROYBAL, Acting Director

January 6, 1987

STATE OF NEW MEXICO)
)
COUNTY OF SANTA FE)

The foregoing instrument was acknowledged before me this 6th day of January, 1987.

NOTARY PUBLIC

My Commission Expires:

Oct 28, 1989

HINKLE, COX, EATON, COFFIELD & HENSLEY

ATTORNEYS AT LAW

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July 30, 1987

Mr. Jeff Taylor
P. O. Box 2088
Santa Fe, New Mexico 87501

Mr. Scott Hall
P. O. Box 2208
Santa Fe, New Mexico 87504-2208

Re: Union Texas v. OCC and Scott

Gentlemen:

Enclosed herewith please find a copy of the Order which was entered in the above captioned matter on June 19, 1987. I apologize for not sending each of you a conformed copy when I received it.

Very truly yours,

HINKLE, COX, EATON, COFFIELD & HENSLEY

Harold L. Hensley, Jr.

HLH/tw
Enclosures

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF LEA
STATE OF NEW MEXICO

UNION TEXAS PETROLEUM CORP.,

Petitioner,

v. No. CV 86-394 F

OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO and WILTON SCOTT,

Respondents.

ORDER

THIS MATTER having come on for trial on March 5, 1987, and the Court, having heard oral arguments and being fully advised in the premises, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. This matter involves the appellate review of two administrative decisions, Orders R-7983-C and R-8153, entered by the Oil Conservation Commission (OCC) of the State of New Mexico.

2. Order No. R-7983-C affirmed Oil Conservation Division (OCD) Order No. R-7983-B which in turn affirmed OCD Order No. R-7983 establishing special pool rules for the Northeast-Caudill-Wolfcamp Pool, including 80 acre well spacing and

dedication requirements. However, OCD Order No. R-7983-B changed the effective date of Order No. R-7983 from June 1, 1985 to July 12, 1985.

3. Order No. R-8153 denies Union Texas Petroleum Corporation's request for a non-standard 40-acre spacing unit for the Scott No. 1 Well.

4. The administrative record in Case 8595 contains no justification or basis for the effective date of June 1, 1985 as specified in Order No. R-7983, as a consequence of which the effective date for the special rules and regulations for the Northeast-Caudill-Wolfcamp Pool as promulgated by Order No. R-7983, as amended, was properly rescinded by Order No. R-7983-B to provide that the Order would be effective on the date of its entry which was July 12, 1985.

5. The administrative record in Case No. 8678 de novo confirms that the effective date of Order No. R-7983 as amended by Order No. R-7983-B was necessary to protect correlative rights.

6. The administrative record reviewed reflects that 80 acre spacing is the correct spacing for the Northeast-Caudill-Wolfcamp Pool, that the special rules implemented by the OCD as permanent rules by Order No. R-7983-C is proper and that this spacing pattern will likewise protect correlative rights and prevent waste as determined by the OCD.

7. Denial by the OCD of the application by the Petitioner Union Texas Petroleum Corporation in Case No. 8793

which requested a 40 acre non-standard oil spacing and proration unit comprising the NE/4 SW/4 of Section 1, Township 15 South, Range 36 East, Lea County, New Mexico, was proper because the administrative record confirms that the Scott No. 1 Well had already drained substantial reserves from under the SW/4 SW/4 of Section 1; therefore the owners therein could not expect to recover sufficient reserves at the time of the hearing to justify drilling a well on said acreage; the approval of a 40 acre non-standard unit would deprive the working interest owners of their correlative rights, all as decreed by Order No. R-8153.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the subject matter hereof and the parties hereto in accordance with the provisions of Section 70-2-25(B) N.M.S.A. 1978.

2. The administrative record upon which the OCD entered Order Nos. R-7983-C and R-8153 contains substantial evidence upon which to affirm the OCD Orders.

3. No showing has been made by the Petitioner that the entry of Orders Nos. R-7983-C and R-8153 were arbitrary, capricious, unreasonable or contrary to law and the established procedures and practices before the OCD, or that any of said Orders were outside of the jurisdiction of the Commission.

4. All proceedings previously held, as indicated in the administrative record, by the OCD were conducted in accordance with the laws of the State of New Mexico and the rules and regulations of the OCD.

5. OCD Orders R-7983-C and R-8153 are hereby affirmed as proper and correct in all respects by this Court.

/s/ PATRICK J. FRANCOEUR
PATRICK J. FRANCOEUR
DISTRICT JUDGE

APPROVED:

CAMPBELL & BLACK

By: J. Scott Hall - as to form
J. SCOTT HALL
Attorneys for Plaintiff

OIL CONSERVATION COMMISSION

By:
JEFF TAYLOR
General Counsel

HINKLE, COX, EATON, COFFIELD & HENSLEY

By:
HAROLD L. HENSLEY, JR.
Attorneys for Wilton Scott