



3-18

BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF THE PROMULGATION AND
ESTABLISHMENT OF FIELD RULES TO GOVERN
OPERATIONS IN THE IGNACIO FIELD, LA PLATA
COUNTY, COLORADO, WITH PARTICULAR REFER-
ENCE TO THAT KNOWN PRODUCING ZONE LOCATED
THEREIN TERMED "MESAVERDE".

CAUSE NO. 3

PURSUANT TO NOTICE to all parties in interest, the
above-entitled matter came duly on for hearing at the State
Office Building, Denver, Colorado, at the hour of 10:00 o'clock
a.m., January 9, 1956.

BEFORE:

- Mr. Warwick Downing, Chairman
- Mr. H. C. Bretschneider, Commissioner
- Mr. F. M. Van Tuyl, Commissioner
- Mr. W. A. Dillon, Commissioner

APPEARANCES:

- James E. Sperling, Esq., Albuquerque, New Mexico, and
Gilbert Westa, Esq., Denver, Colorado, for the
Pacific Northwest Pipeline Corporation;
- William S. Eakes, Esq., Durango, Colorado, for
W. Alva Short, Charles E. Clovis, and
Robert McCullah;
- A. J. Jersin, Denver, Colorado, Deputy Director,
Sam Freeman, Esq., Denver, Colorado, for the
Oil and Gas Conservation Commission.

I N D E X

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Raymond Nordhausen	5	25	38	43
Robert McCallah	48			
W. Alva Short, Sr.	49			
Charles E. Clovis, Sr.	50	55	58	

Petitioner's Exhibit

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CHAIRMAN DOWNING: We are ready now for Cause No. 3, Ignacio Field, the application of Pacific Northwest Pipeline Corporation for the pooling of six tracts in the Mesaverde Formation. As I understand it there are five tracts; there has been proper service on the five. Who appears for the Applicant?

MR. SPERLING: James E. Sperling, of Simms & Modrall, Albuquerque, New Mexico, for the Petitioner Pacific Northwest Pipeline Corporation, and Mr. Gilbert Westa of Akolt, Turnquist, Shepherd and Dick, Denver, Colorado.

CHAIRMAN DOWNING: Who else wants to enter their appearance?

MR. EAKES: William S. Eakes, Box 1567, Durango, Colorado, appearing for W. Alva Short, Sr., Charles E. Clovis, Sr., and Robert McCullah.

CHAIRMAN DOWNING: Any other appearances? Does anyone else here want to be heard in this matter?

Suppose you tell us very briefly what this is about, I haven't read it.

MR. SPERLING: The five applications with which we are concerned were filed on behalf of Pacific Northwest Pipeline Corporation for the formation of drilling units for the production of natural gas from the common source of supply within the Ignacio Field area; the spacing having been established by the Commission's previous order. The purpose of the application is, of course, to seek the order of the Commission.

for pooling the various interests within these drilling units for the production of natural gas from the unit and the sharing therein in that production by both the royalty and the working interest owners on the basis of the acreage participation that the respective interests bear to the 320 acres within the unit itself. We expect to present evidence, of course, in support of our application and in support of the allegations that have been made therein. We seek the order of the Commission in order that immediate drilling action may be taken with reference to these six applications and the particular drilling units that are covered thereby. The proceeding is, of course, held pursuant to the provisions of the Oil and Gas Conservation Act of Colorado, which we feel provides ample ground for the position that we are taking in connection with the applications.

CHAIRMAN DOWNING: You are the sole operator of the five tracts?

MR. SPERLING: We are the working interest owner of all interest within the tract, with two exceptions, and I believe those will be taken up and that explained as we come to the respective applications.

CHAIRMAN DOWNING: The opposition, is that a working interest or royalty?

MR. SPERLING: Royalty. The order sought, of course, does not attempt to impose any cost of drilling or operation so far as the opponents to the applications are concerned. Naturally all of the drilling costs and operating costs will

be borne by the working interest owners.

COMMISSIONER BRETSCHNEIDER: And your company represents the whole working interest in each unit?

MR. SPERLING: Yes, sir. There are, as I mentioned, two exceptions to that; United States Smelting, Refining and Mining Company having a working interest on a 40-acre Indian lease, and Southern Ute lease in one of the drilling units.

COMMISSIONER BRETSCHNEIDER: Do they oppose you in this plan for that one unit?

MR. SPERLING: No, sir, they do not.

CHAIRMAN DOWNING: How many witnesses have you?

MR. SPERLING: I have one witness.

CHAIRMAN DOWNING: Then as I understand it you want to put these five units into one unit?

MR. SPERLING: No, sir.

CHAIRMAN DOWNING: What do you want to do with this royalty owner? Do you want to give him his royalty on all his proportionate royalty?

MR. SPERLING: We propose to pay him his royalty on the basis of his acreage participation within the 320 acres. If I might use an example, say that as to the northwest quarter of the southwest quarter within the south half of Section 3 in a particular township and range, that south half of course comprising 320 acres, he would participate as a royalty interest owner on the basis of one-eighth of the one-eighth or a 64th of

the production to be obtained from that 320-acre drilling unit.

CHAIRMAN DOWNING: Then as I understand it you are not changing his contractual right as to the land as to his present royalty?

MR. SPERLING: No, sir, we are not attempting to do that. If his lease contract provides for a one-eighth royalty interest, then, of course, he is paid one-eighth.

CHAIRMAN DOWNING: All right, proceed.

MR. SPERLING: The first application relates to the north half of Section 13, Township 33 North, Range 10 West, La Plata County, Colorado.

COMMISSIONER BRETSCHNEIDER: Pardon me just a moment, do you have a map we can look at?

MR. SPERLING: Yes, sir. Before proceeding with the testimony of the witness, I should like to inquire as to whether it is the pleasure of the Commission to have us introduce into the record documentary evidence in the form of the leases and such lease amendments and so forth, as the Commission will see that we have alleged we have obtained or have as a basis for our application, or whether the testimony of Mr. Nordhausen on the point will be sufficient for the initial presentation.

CHAIRMAN DOWNING: I would proceed with his testimony and if it's not contested, why, of course that is sufficient.

RAYMOND NORDHAUSEN

called as a witness on behalf of the Petitioner, being first duly sworn according to law, upon his oath testified as follows:

DIRECT EXAMINATION

BY MR. SPERLING:

Q. State your full name please.

A. Raymond Nordhausen.

Q. Where do you live, Mr. Nordhausen?

A. Albuquerque, New Mexico.

Q. What is your position, if any, with Pacific Northwest Pipeline Corporation, the petitioner in this cause?

A. Unit Manager in the Land Department.

Q. In that capacity, are you familiar with the Ignacio Field area as so designated by this Commission?

A. Yes, I am familiar with that; I have charge of that area.

Q. And in working with that area in connection with your employment by Pacific Northwest, you are familiar with the leases and the particular area covered by the five applications presently pending before this Commission?

A. Yes, I am.

Q. I should like to ask you to refer to your business records and the files of your company in that connection with reference to the application concerning the north half of Section 13, Township 33 North, Range 10 West, La Plata County, Colorado. You have your records before you now?

A. Yes, sir.

Q. The petition contains an allegation to the effect that the petitioner, Pacific Northwest Pipeline Corporation,

is the owner of 100 per cent of the working interest in the oil and gas leases covering the north half of Section 13, is that correct?

A. That is correct.

Q. The petition further alleges that the tracts of land within the area sought to be pooled and the owner of mineral interest therein who has refused to voluntarily consent to the pooling of their interest, the particular tract that I have reference to now being the south half of the northeast quarter of Section 13, an 80-acre tract, the mineral interest alleged to be owned by George Morgan of Durango, Colorado. Will you give us your testimony concerning the status of that lease and the extent of the mineral interest ownership of Mr. Morgan in the 80-acre tract that I have described?

A. Ever since last summer we have been trying to get Mr. Morgan to execute an agreement to pool his interest into that tract, and just Friday our field man advised us that he had executed a consent and placed it in the bank. However, it is still in the hands of the bank and we do not have control of it, and if we had that, why, we would have his consent; but as of right now, as far as written consent to the unit, we do not have it.

COMMISSIONER BRETSCHNEIDER: You know that it's in the bank, do you?

THE WITNESS: It's in his bank to be forwarded to us. It's combined with an extension and it's being forwarded to us.

We do not have it yet.

COMMISSIONER BRETSCHNEIDER: What do you mean by "his bank"? Does he own the bank?

THE WITNESS: No, I mean he is a customer of the bank.

COMMISSIONER BRETSCHNEIDER: Do you know whether he has instructed the bank to deliver to you under some circumstances?

THE WITNESS: My understanding is that he has instructed the bank.

COMMISSIONER BRETSCHNEIDER: But you don't know that definitely?

THE WITNESS: No, I can't say that definitely.

Q. May I ask this, Mr. Nordhausen, is it there under draft awaiting payment of draft as the basis for the delivery?

A. Yes, sir.

COMMISSIONER BRETSCHNEIDER: All you have to do is to pay the draft and it's in the deal, is that it?

THE WITNESS: When it gets into our bank. It's on a draft drawn on Pacific Northwest Pipeline Corporation to be forwarded to the Albuquerque National Bank in Albuquerque for collection.

Q. And it had been delivered to the Durango Bank for such forwarding on Friday, is that correct?

A. We were so advised by Mr. Leyendecker, our fieldman.

Q. Now what is the situation with reference to the remainder of the acreage within that particular 320 acres?

A. All of the mineral owners of the remaining leases in that section have executed amendments to their leases authorizing us to pool the acreages within the north half of Section 13 with the rest of the acreage in there.

COMMISSIONER BRETSCHNEIDER: Is this small piece, the south half of the northeast of 13, going into the unit on the same basis as the others?

THE WITNESS: Yes, sir.

COMMISSIONER BRETSCHNEIDER: There is no lease outstanding to that then until you acquire it, is there?

THE WITNESS: We have the lease.

COMMISSIONER BRETSCHNEIDER: You have the lease?

THE WITNESS: Yes, sir.

COMMISSIONER BRETSCHNEIDER: All you are talking about then is his consent to join the unit on the draft then?

THE WITNESS: If we had that instrument in our possession there wouldn't be any need for the pooling order, but we can't be certain that we are going to get it.

COMMISSIONER BRETSCHNEIDER: What is the instrument, what type of instrument?

THE WITNESS: It's an amendment to the oil and gas lease authorizing pooling in units not exceeding the size of the spacing order in the area, and also it's a 2-year extension to the lease and the consideration is being paid for the extension.

COMMISSIONER VAN TUYL: This is a 10-year lease?

THE WITNESS: It is a 10-year lease, and the

consideration was paid for the lease to be extended for an additional two years.

Q. What is the plan of Pacific Northwest, if you know, Mr. Nordhausen, with reference to the immediate development of this particular 320 acres?

A. Unless we get an extension from one of the other mineral owners in there, then we will drill it before February 8. If we get an extension of the lease from one of the mineral owners under the northwest quarter of Section 13, then we will drill it within two years.

COMMISSIONER BRETSCHNEIDER: Is that extension per that say 80-acre tract?

THE WITNESS: No, it's for the undivided one-half interest under the northwest quarter.

Q. There is no other controversy of any nature with reference to any of the other tracts included within 320 acres?

A. No, the owners of the minerals under all of the other tracts have executed amendments authorizing pooling.

MR. SPERLING: That concludes our presentation.

CHAIRMAN DOWNING: Any cross examination?

MR. EAKES: If the Commission please, we are not interested in this particular tract; it's another tract that is coming up we are interested in.

MR. SPERLING: The next application relates to the west half of Section 13, Township 33 North, Range 9 West,

La Plata County, Colorado.

Q. Mr. Nordhausen, in this application, as in the previous petition, there is an allegation concerning the ownership of the working interest within this proposed 320-acre drilling unit. Will you please give us your testimony concerning the situation with reference to the working interest ownership under this particular tract.

A. Pacific Northwest is the owner of the entire working interest within this drilling unit except a one-sixteenth undivided interest under the lease covering the south half of the northwest quarter, the west half of the southwest quarter, and the northeast quarter of the southwest quarter which is owned by N. R. Royal, Jr., individually and as trustee of Dallas, Texas, who has consented to join us in the drilling of this well. All the other interest in the unit is owned by Pacific. It's an unleased interest owned by Royal.

Q. Have you been in contact with Mr. Royal with reference to this unleased interest?

A. Yes, sir.

Q. Are you presently negotiating for that or what is the situation?

A. He has agreed to join in the drilling of the well and pay his proportionate share of the drilling of the well as a working interest owner.

Q. Is Mr. Royal an oil operator himself?

A. Yes, he is in that business.

Q. And he is participating in the formation of the drilling unit from the standpoint of his working interest on a pro rata basis with your company?

A. That is correct.

Q. Now the petition alleges with reference to Tract 1, that being the north half of the northwest quarter of Section 13, that certain mineral interest owners, namely T. H. McElvain, J. William McElvain, Warner Vaughan, Ruth Vaughan, Mabelle Raymond, and United States Smelting, Refining and Mining Company are the owners collectively of a mineral interest equal to $21/32$ in that particular 80 acres; it being further alleged that the owners of the remaining $11/32$ mineral interest have agreed to the pooling of their interests of the $11/32$ for the formation of the drilling unit. Is the situation presently with reference to the apparently outstanding $21/32$ interest the same as it was at the time of the filing of the petition?

A. It has changed. All of the mineral owners have consented by executing a pooling section authorizing us to pool their interest with the exception of the United States Smelting, Refining and Mining Company; that is we have an amendment authorizing the pooling from McElvain's and Raymond and everybody listed there except the United States Smelting. We are presently negotiating with United States Smelting to secure a pooling amendment, but as of right now the negotiations haven't been completed and they are still not consenting.

Q. So the pooling order is presently sought with reference to the 13/32 interest alleged as outstanding in United States Smelting, Refining and Mining Company?

A. Yes, sir.

MR. SPERLING: At this time I should like to inquire of Mr. Jersin if he has in the Commission files evidence of the consent of the people referred to by Mr. Nordhausen; namely T. H. McElvain and the Vaughans and Mabelle Raymond.

A. I have a copy of their amendment. The original of that instrument, has been sent in for recording so we don't have a certified copy.

COMMISSIONER DILLON: Is that a photostatic copy?

THE WITNESS: It's a photostatic copy of the original instrument, and the original has been sent for recording in La Plata County.

(Whereupon, documents were marked as Petitioner's Exhibits 1 and 2 for identification.)

MR. SPERLING: For the purpose of the record, since I neglected it earlier, I should like to offer as Exhibit No. 1 in connection with all of the applications the map which the Commission has before it, being a leased plat indicating the geographical limits of the Mesaverde formation within the Ignacio Field and the drilling units requested to be covered by pooling orders at this hearing.

CHAIRMAN DOWNING: Any objection?

MR. EAKES: No objection.

CHAIRMAN DOWNING: If not, it will be admitted.

Q. Mr. Nordhausen, I hand you what has been marked as Exhibit No. 2 and ask you to state what it is; of course with reference to the application that we are talking about at the present time, being the west half of Section 13, 33 North, 9 West.

A. This is an amendment to an Oil and Gas Lease covering the southwest quarter of Section 12; the southeast quarter of the southeast quarter of Section 11; the north half of the northwest quarter and the northwest quarter northeast quarter of Section 13, Township 33 North, Range 9 West, La Plata County, Colorado. It amends the lease covering such tract to authorize the lessee to pool the land covered by such lease with other land to form a drilling unit not exceeding 320 acres. It was executed on December 8, 1955, by T. H. McElvain, J. William McElvain, Ruth M. Vaughan, Warner G. Vaughan, and Mabelle M. Miller, formerly Mabelle M. Raymond. This is a photostatic copy of the original, which has been sent to the recorder in La Plata County, Colorado, for recording.

MR. SPERLING: This exhibit is offered for the purpose of bringing the record up to date between the interval that the petition was actually filed and the present circumstance concerning which Mr. Nordhausen has testified, and we ask the admission of the exhibit.

CHAIRMAN DOWNING: Any objection? If there is no objection it will be admitted.

MR. SPERLING: That completes the presentation of Pacific so far as this particular application is concerned.

CHAIRMAN DOWNING: Does anyone want to examine the witness?

COMMISSIONER BRETSCHNEIDER: Before you go on to the next one, just where do you stand in connection with the United States Smelting and Refining Company?

MR. SPERLING: It's my understanding that we are presenting in the negotiation stage so far as that outstanding mineral interest is concerned; that is as to the execution of a pooling agreement. Nothing has been reduced to writing as of the present time.

Q. Is that statement correct, Mr. Nordhausen?

A. That is correct.

COMMISSIONER BRETSCHNEIDER: Do you expect them to join the unit on the basis of a joint operator with you?

MR. SPERLING: No, sir. Their interest in that particular tract is a mineral interest ownership as distinguished from the working interest ownership under a lease, and they, of course, would be paid their royalty interest as any other royalty interest owner would be and would not be assessed with any part of the cost of the well or operation.

THE WITNESS: Their interest is subject to our lease; we own the lease.

MR. SPERLING: The next petition seeks a pooling order pertaining to the north half of Section 1, Township 33 North,

Range 9 West, La Plata County, within the Ignacio Field.

Q. The allegation of the petition with reference to this particular 320-acre unit, Mr. Nordhausen, again contains the statement that 100 per cent of the working interest in the oil and gas leases covering that 320 acres is owned by Pacific Northwest Pipeline Corporation, is that correct?

A. Yes, sir.

Q. With reference now to Tract 1, that being the north half of the northeast quarter and the north half of the southwest quarter of the northeast quarter, containing 100 acres, your petition alleges that mineral interests are owned in undivided parts by Bertha Marie Snow, John W. Turner, M. L. Cummins, R. E. O'Brien, David E. McGraw, Elisabeth R. Eakes, and William S. Eakes. As I say, that mineral interest is with respect to the undivided interest relating to the 100-acre tract who have not voluntarily consented to the pooling of their interest so far as the formation of the drilling unit covering this tract is concerned. Can you advise the Commission by your testimony as to the situation with reference to these outstanding mineral interests, the efforts to obtain voluntary pooling agreements and so forth?

A. Since we filed the petition, our fieldman, Mr. Leyendecker, has obtained an agreement from all of the mineral owners that they would grant a 2-year extension to their lease and include in the extension an amendment authorizing the lessee

to pool the interest with other land in the section. However, the instrument that some of the mineral owners have executed is now in the hands of another of the mineral owners who lives in California, or who is out in California. Isn't that correct, Mr. Eakes?

MR. EAKES: I believe that John Turner is in California, and it has been signed by everyone except John Turner and Elisabeth Eakes. Elisabeth Eakes will sign it as soon as she receives it; it's in the mail to her.

A. It will be signed by all the owners. However, the instrument is not in our possession at this time.

Q. And Pacific is the present holder of a valid oil and gas lease covering that interest?

A. Yes, sir.

Q. On that particular tract?

A. Yes.

Q. Now with reference to Tract 2, that being the northwest quarter and the south half of the southwest quarter of the northeast quarter of Section 1, the petition alleges the mineral interest ownership is by the Federal Land Bank of Wichita, Kansas, of an undivided one-fourth, and the remaining three-fourths to be owned by Perry H. Barnes. Can you give us the current status of the respective leases covering those mineral interests?

A. The Federal Land Bank of Wichita has executed an amendment to their leases, that lease and other leases, authorizing

us to pool their interest in that tract with the other interests in the tract covering a 320-acre unit; and I have a copy of that here. Mr. Barnes as of now has not executed an amendment authorizing pooling, so that hasn't changed from the petition.

Q. But that interest being subject to an oil and gas lease presently owned by Pacific Northwest Pipeline Corporation?

A. Yes. The entire interest in the tract is under lease to Pacific.

MR. SPERLING: That concludes our presentation pertaining to this particular petition.

CHAIRMAN DOWNING: Any cross examination or questions of this witness?

MR. JERSIN: I am not sure I am clear on this John Turner. Did John Turner sign?

THE WITNESS: He is in California and it was sent to him to sign.

MR. JERSIN: Have you heard about his intentions on that?

THE WITNESS: Yes. I am not too sure about it, but somebody spoke for him and represented that he would sign.

MR. EAKES: If I might state, I don't think there is any doubt but what he will sign because his interest is the same as mine, and his land is all included within this unit and he is not hurt by the pooling. His associates in his business have all signed it and recommended to him to sign it.

MR. JERSIN: That is all I have.

MR. SPERLING: The next petition relates to the north half of Section 7, Township 33 North, Range 9 West, La Plata County, Colorado, within the Ignacio Field.

Q. The petition alleges that as to the northwest quarter of the northwest quarter of Section 7, except that portion within the right of way for the main tract of the Farmington branch of the Denver and Rio Grande Western Railroad Company, is owned entire undivided interest by Robert B. McCullah and Mary B. McCullah of Durango, Colorado, which interest is subject to a valid existing oil and gas lease owned by Pacific, dated March 20, 1946, and duly recorded in La Plata County. Is that a correct statement from your knowledge of the records and from the information that you have in your files?

A. That is correct. We do own the lease. However, the lease is dated February 8.

Q. So the petition should be amended to correctly reflect the effective date of the lease as February 8?

A. Yes. The recording reference is correct.

Q. And the order of the Commission is sought requesting the pooling of that interest in the 40 acres, less the railroad right of way within the north half of Section 7?

A. Yes, sir.

Q. Now with reference to Tract 2, which is that portion of the northwest quarter of the northwest quarter of Section 7, which is within the railroad right of way, in other words this Tract 2 is the exception previously made in Tract 1, what is

the situation with reference to mineral interest ownership and lease on the railroad right of way?

A. The minerals under the railroad right of way are presently held under lease by W. P. Carr of Dallas, Texas, and he has agreed to commit his interest to a unit comprised of the north half of Section 7 and to pay his share of the cost of drilling the well and participate in production from the well on the basis of the proportion of the acreage in the unit that his acreage bears to the total acreage in the unit.

Q. And the mineral interest ownership itself is subject to the lease held by Mr. Carr which contains a pooling or unit provision, is that correct?

A. Yes.

Q. Now with reference to Tract 3 as so designated in the petition, that being described as the southeast quarter of the northeast quarter and that part of the northwest quarter of the northeast quarter of Section 7 lying west of Colorado Highway U. S. 550, except 5.492 acres covered by a deed recorded in such and such a place and a tract of land in the southwest quarter of the northeast quarter of Section 7, that tract being 380 feet by 135 feet, the petition alleges the entire mineral interest ownership to be vested in Alva Short, Jr., and Cathleen Short subject to presently outstanding oil and gas lease held by your company. Is that the leasehold ownership and mineral interest ownership as reflected by your records and

abstracts and so forth in support thereof?

A. Yes.

Q. I take it that the lease outstanding and held by your company does not contain a pooling provision?

A. That is right, it does not.

Q. And it is sought by this petition and the order requested therein to pool this interest with other interests within the 320 acres for the formation of the drilling unit in accordance with the presently existing spacing order?

A. Yes.

Q. Your attention is directed to Tract 4 as described in the application, that being the south half of the northwest quarter and the northeast quarter of the northwest quarter of 7, except the railroad right of way within the southeast of the northwest, and alleges mineral interest ownership in Lester A. Short and Catherine Short the entire mineral interest ownership subject to an oil and gas lease held by your company. Is the situation with reference to that tract substantially the same as it is with reference to the tract that you previously testified concerning?

A. Yes.

Q. The pooling order is sought covering that interest?

A. Yes.

Q. With reference to Tract 5, that being the railroad right of way, is the situation with reference to leasehold ownership and mineral interest ownership exactly the same as

the testimony that you gave concerning the railroad right of way included within Tract 2?

A. Yes, it's exactly the same.

Q. Mr. Carr, the holder of the working interest under that lease, has agreed on the same basis to commit his interest under that lease to the unit?

A. Yes, he has.

Q. And pay his proportionate cost of the well?

A. Yes.

Q. With reference to Tract 6, that being the northeast quarter of the northeast quarter of Section 7, 40 acres, the petition alleges mineral interest ownership entire in Charles E. Clovis, Sr., and Eva M. Clovis subject to an oil and gas lease held by your company. The situation in that instance is substantially the same as with reference to the Tract 3 and Tract 4?

A. Yes.

Q. In other words, an outstanding oil and gas lease without pooling provision which you seek to have committed to the unit pursuant to the order of the Commission?

A. Yes.

Q. With reference to Tract 7, that being the southwest quarter of the northeast quarter except the tract previously referred to 380 feet by 135 feet, the petition alleges mineral interest ownership entire in W. Alva Short, also known as

William Alva Short, subject to presently outstanding oil and gas lease held by your company to which the entire mineral interest is subject?

A. Yes.

Q. Is the situation substantially the same with reference to this particular tract as it is with reference to the tracts that you previously testified concerning, those being Tract 3, 4, and 6?

A. It's the same.

Q. And those interests are sought to be included by the order of the Commission in the 320-acre drilling unit proposed by the petition?

A. Yes. In connection with Tract 6, the northeast quarter of the northeast quarter of Section 7 owned by Charles E. Clovis, Sr., and Eva M. Clovis, there is also 12 acres in the northwest of the northeast that is contingent and pertinent to that.

Q. You mean to round out the 320 acres so that the entire 320 acres is subject to lease?

A. Yes.

Q. The working interest ownership being owned by your company exclusively, of course, of the railroad right of way?

A. That is in the northwest quarter of the northeast quarter; the railroad doesn't run through there.

Q. I was speaking of the remainder of the 320 acres.

A. Yes, sir.

Q. And the working interest ownership by your company.

A. Yes.

MR. JERSIN: Does that have a tract number?

THE WITNESS: Tract No. 6.

MR. JERSIN: I understood that to be the northeast quarter of the northeast quarter?

THE WITNESS: The northeast quarter of the northeast quarter of Section 12 contains 40 acres.

MR. JERSIN: Section 7?

THE WITNESS: Of Section 7, yes. Charles E. Clovis, Sr., and Eva M. Clovis are also the owners of 12 acres in the northwest quarter of the northeast quarter that is under the same lease by virtue of the cover-all clause. That part was that excepted from Tract No. 3 is owned by Mr. Clovis, subject to our lease.

Q. In other words, Tract 7 as described in the petition should have included the additional 12 acres lying within the northwest quarter of the northeast quarter?

A. Yes.

Q. What efforts, if any, Mr. Nordhausen, have been made with reference to obtaining the voluntary pooling of these outstanding mineral interest, subject to lease, of course?

A. Well, we have had a fieldman up there all last summer, Mr. Leyendecker, and he has seen each of these owners on several occasions and asked them to execute an amendment to the lease

authorizing pooling. One time last summer we had a meeting in a hall up there and Mr. Richie from the Land Department and Howard Young and myself and Mr. Leyendecker went up there and explained why we wanted a pooling amendment and asked them at that time if they would execute one. We have been unsuccessful so far.

MR. SPERLING: That concludes the petitioner's presentation with reference to this particular tract.

CROSS EXAMINATION

BY MR. EAKES:

Q. Mr. Nordhausen, all of these leases were taken in February of 1946 except one, which was on March 1, 1946, is that not true?

A. That is correct.

Q. Now how many leases are involved here?

A. Six leases, counting Mr. Carr's lease on the railroad right of way.

Q. But there are five land owners besides the railroad, five mineral interest owners besides the railroad?

A. Five different ownerships counting husband and wife as one owner.

Q. That is what I mean, counting husband and wife as one ownership.

A. Yes, sir.

Q. Now can you tell us how much land is encompassed by each of these leases?

A. Yes, sir.

Q. And how much land is covered by the Robert McCullah lease?

A. 320 acres, less the railroad right of way, which runs through there of approximately 12 acres. It would be approximately 310 acres.

Q. And how much of that acreage is included in this proposed unit?

A. 40 acres, less the railroad right of way.

Q. Now how much land is covered by the W. Alva Short, Sr., lease?

A. Approximately 240 acres.

Q. How much of that acreage is included in this drilling unit?

A. Approximately 40 acres.

Q. Now what about the B. Alva Short, Sr., lease, how many acres does that lease include?

A. Approximately 160.

Q. Do you recall that figure, is it 147?

A. I believe that would probably come nearer to it.

Q. And how much of that acreage is included in this proposed pooling unit?

A. Approximately 67.

Q. Now the Lester A. Short lease, do you recall how many acres that lease covers in its original form, the present lease,

the entire lease?

A. 280, less the railroad right of way of -- it would be less than six acres -- approximately 274 acres.

Q. And how many of that 274 acres is included in this proposed drilling unit?

A. 120, less three acres in right of way.

Q. Now how about the Charles E. Clovis lease, how many acres does that lease cover?

A. 632.

Q. And of that 632 acres how many acres are included in this proposed unit?

A. 52.

Q. Now, Mr. Nordhausen, do you propose to hold this entire acreage by this pooling unit? Do you propose that this Commission order that entire acreage held in one pooling unit?

A. Yes.

Q. How many acres of land is covered under all of these leases, these five leases, by these land holders, not counting the railroad, do you know?

A. No, it would be the total.

Q. Does that come to 1619 acres, not counting the railroad's land?

A. I believe that would be close to it.

Q. Now this pooling unit covers only 320 acres out of that 1619 acres, doesn't it?

A. Yes, sir.

Q. Now that will leave 1300 acres, less approximately one acre, will it not, 1300 acres that you are asking this Commission to continue under a lease that normally would expire within another month, aren't you?

A. Yes, sir.

MR. EAKES: I think that is all.

COMMISSIONER BRETSCHNEIDER: May I ask you a question please? Do you consider the Commission is concerned with what effect the unit like this 320-acre unit has on a lease?

MR. EAKES: Yes, sir. Under the statute, the Revised Session Laws of 1955, I wish to refer you to the amended section, Colorado Revised Statutes, 1953, 100-6-6. It states: "The Powers of the Commission: (1) The Commission shall have authority to prevent waste and protect correlative rights of all owners in each and every field or pool." I think it's not only the power of the Commission but I think it's something of a duty of the Commission, if you will pardon my putting it that way.

COMMISSIONER BRETSCHNEIDER: What do you think will happen to the adjoining acres to any one of these units should a commercial well be found under the unit?

MR. EAKES: Well, in due time undoubtedly we could force offset drilling under the implied covenant.

COMMISSIONER BRETSCHNEIDER: You could, except you have a 320-acre unit plan.

MR. EAKES: That is right.

COMMISSIONER BRETSCHNEIDER: And when you drill an offset well to one of these units you must drill on 320 acres.

MR. EAKES: You must still follow the spacing pattern.

COMMISSIONER BRETSCHNEIDER: That is right.

MR. EAKES: Our theory on this thing is that these are 10-year leases; they were taken in 1946, as the Commission understood. Now here in the last month of the life of all of these leases the company, and I am certain that this is a company that has recently acquired them, but they have been existing all this time and our position is that the primary term of the lease has amply provided time for the companies to have drilled their wells. Now comes the expiration term of the lease, and it's valuable property now; it's property that would attract a bonus for releasing of a considerable sum of money. Now, of course, we are here because of the financial question involved. We want the right to release those leases, unless they cure them by the terms of their lease in drilling the well.

COMMISSIONER BRETSCHNEIDER: If they get a unit approved here it's a question of whether it's cured or not.

MR. EAKES: There is a question.

COMMISSIONER BRETSCHNEIDER: Do you think the Commission is concerned with that?

MR. EAKES: Yes, sir.

COMMISSIONER BRETSCHNEIDER: Isn't that a matter between you and the company?

MR. EAKES: No, I don't think so. I think this Commission has the power to pool and it also has the power not

to pool. Where it's a matter that it's not right, where it's a matter of equity and fairness to the people involved, I think that the Commission should not pool under these circumstances but should insist first, that the parties negotiate a settlement if they can; if they can't, let them go their own way. It's not going to be a matter of not developing this area, it's a matter of who is going to get the profit from developing. These leases were taken back in 1946 and there has been a delay rental of 50 cents an acre paid on them, as the records will show. Now here in the last 30 days of the term of the lease the company asks this Commission to continue the life of their lease. Now if the rest of the land not involved in this 320 acres -- if this only affected the north half of Section 7 we wouldn't be here -- but it affects 1300 acres outside of it. It affects four times what is involved in your unit. That is our point pure and simple.

COMMISSIONER BRETSCHNEIDER: I see your point. I am not in a position to say whether this unit plan here will be protected or not by the Commission's action.

MR. EAKES: Of course this is a matter that has been taken to Court in some states. It hasn't been decided in Colorado, but that is the point I wanted to bring out.

CHAIRMAN DOWNING: Let me ask here, is it contended if we make this unit and you drill a well on one unit that that holds the 1320 acres contractually?

MR. EAKES: That is the proposal of the oil company.

CHAIRMAN DOWNING: I know, that is what I am finding out. Is that your contention?

MR. SPERLING: Yes, sir.

CHAIRMAN DOWNING: That if you drill on one unit that holds all the units?

MR. SPERLING: No, sir.

CHAIRMAN DOWNING: It holds the 1320 acres?

COMMISSIONER BRETSCHNEIDER: No, that is not right.

MR. EAKES: If they drill a well on this particular drilling unit, the company maintains that that cures all of these five leases as far as the drilling obligation is concerned. Is that stated right?

MR. SPERLING: That is right, and that is exactly what the law provides.

COMMISSIONER BRETSCHNEIDER: You mean you drill one well on one unit?

MR. SPERLING: We would drill one well on 320 acres, then as to all leases that have acreage committed or lying within the 320 acres the lease term is extended by that production.

COMMISSIONER BRETSCHNEIDER: But not on the other four?

MR. SPERLING: No, sir.

COMMISSIONER BRETSCHNEIDER: You have to drill five wells to protect the 320?

MR. EAKES: No, sir, they are maintaining one well will do it.

COMMISSIONER BRETSCHNEIDER: I didn't know that. Some of these leases then cover a lot of tracts of land scattered in the area, is that it?

MR. SPERLING: That is correct.

CHAIRMAN DOWNING: Your area is also a part of the other five?

MR. EAKES: Yes, sir. Now the north half of Section 7 is platted upon this chart. This is Section 7 right here that we are talking about. Now the legend of the map is here. These different colors are these five land owners that we are talking about, not mentioning the railroad. Now this particular one is Mr. McCullah, He has 40 acres in that north half of Section 7. He has also these seven 40's lying outside of it, which they maintain are proven up by a well on Section 7, and the proposed location I believe is in the northeast corner of the southwest of the northeast.

COMMISSIONER DILLON: Is that all contained within one lease agreement?

MR. EAKES: This in green is one lease agreement, this in yellow is one lease agreement, this in orange is one lease agreement, this in blue is one lease agreement, and this in red is one lease agreement. Now the question is, do we allow them to pool this north half, which is, of course, strategically located under the circumstances, and drill one well at this point and tie up this land up here? Our argument is that it's



not fair.

COMMISSIONER BRETSCHNEIDER: Now has the agreement which has been signed by some of these mineral interests extending the lease term of two years included the outside acreage?

MR. EAKES: There has been no such agreement on this land signed. None of these land owners have signed any extension agreement for this very reason.

CHAIRMAN DOWNING: Then the 1300 acres are portions of leases which is a part of each lease in the unit, and it will hold 1300 acres outside of the leases according to the contractual terms of the lease?

MR. EAKES: This entire land is some 1600 acres, 1619 I believe it is, and if you take out the 320 acres you have 1300 balance.

MR. SPERLING: I would like to ask, Mr. Eakes, how many of the leases that he is talking about comprise drilling units within themselves on the basis of the required spacing?

MR. EAKES: I don't know that I know the answer to that. Perhaps your witness can tell you.

THE WITNESS: There are none.

MR. EAKES: But we are not objecting to the pooling of that north half as such, but we say that before you pool it you should require the company to release or do something else about the rest of that acreage.

MR. SPERLING: Of course that is putting the Commission, as I see it, in the position of interpreting a lease contract

presently existing between the lessor and the lessee, which I submit is not the function of the Commission.

COMMISSIONER BRETSCHNEIDER: That is the reason I asked the question. I doubt whether the Commission has the power to determine the legality of a transaction like that.

MR. EAKES: It isn't a matter of legality, if the Commissioner please, that we are asking. We are saying that under the power granted to this Commission to protect the correlative rights of owners of land within that, that you have the power to refuse to grant this unit. You have the power to grant it under the statute, but you have the power not to grant it; and where you have a situation that has an equity problem such as this, we don't think you should. Now that is it just in a nutshell.

COMMISSIONER BRETSCHNEIDER: How do you explain a violation of correlative rights on a transaction like that should it be approved?

MR. EAKES: The rights of the land owners to have all this other land developed. The company wouldn't even have to pay a rental on it.

COMMISSIONER VAN TUYL: Isn't it true this additional land would be developed within a reasonable time?

MR. EAKES: Now that is not necessarily true. Suppose a well is drilled here. What assurance do we have that this piece up here will be developed?

COMMISSIONER BRETSCHNEIDER: It depends what the result may be.

MR. EAKES: It could be, and it could be that if there is no other well around here that this well could drain this entire country too, couldn't it?

COMMISSIONER BRETSCHNEIDER: Yes, but it's not very likely when you see the development going on in the area.

MR. EAKES: I don't think that under the circumstances though we can rely on probabilities or possibilities, if you see my point.

COMMISSIONER BRETSCHNEIDER: I don't think we can decide that here, we are just discussing it to bring out the points.

CHAIRMAN DOWNING: It's a matter, of course, that ultimately has to be determined by the Courts.

MR. EAKES: It can be determined by agreement certainly.

CHAIRMAN DOWNING: Oh, yes. You contend that will give an advantage in the Courts to one side over the other if we grant that order?

MR. EAKES: No, I think it will give an advantage to the oil company, to the Pacific Northwest, in holding these leases beyond their primary term. Now whether anybody takes them to Court or not -- I imagine either side that loses here will -- but that is not the point. Here it's a question of tying up 1620 acres with a well on 320 acres and whether that is right. Now if these leases were all separate leases, which,

of course, attorneys advise them to do, and if they were taking them now they would know better than to grant a lease covering this large acreage covering one lease. But here it was the very beginning of the development of that field down there, when they first started it, when they were first doing that leasing, and they took over all the land the man owned. Well, here we have got these men down there, farmers and ranchers, who feel that they are being shortchanged and they are looking to the Commission to try to see that they are not.

COMMISSIONER BRETSCHNEIDER: Has the company offered to pay a delay rental on the acreage on the north half of Section 7?

MR. EAKES: Yes, they offered to pay a delay rental on the acreage lying outside that area, but they have not offered to treat it as a separate lease.

COMMISSIONER VAN TUYL: May I ask a question. Is gas being marketed from this field at the present time?

MR. EAKES: No, sir, not from this area. There are some places in the area that it is, but this particular area it is not. A well drilled at this time, unless a feeder line would be put in there, would be capped as a shut-in well until a line is put in there. Now maybe I am talking out of turn, I can't say what the company is going to do, of course.

CHAIRMAN DOWNING: Suppose the Commission granted this application but without prejudice to the rights of either party?

MR. EAKES: Well, I think it would be with prejudice. I don't think you could grant it without prejudice, and the fact that you say it's without prejudice still ties us down to -- what do the French call it, a fait accompli. The matter is being presented to this Board, and this Board has the right to decide the needs, the necessity, and whether the application should be granted, and the Courts can't review that and that is the main thing involved. Sure there are some constitutional questions involved, property without compensation, right of due process, and so forth; but then equal protection under the law, several of them have been raised at hearings on these matters, but the question of whether or not this Commission has the right to decide the factual situation can't be reviewed in Court, as I think you gentlemen understand, and that is the crux of the case.

CHAIRMAN DOWNING: Our findings, you know, could be reviewed in a Court on trial de novo.

MR. EAKES: But you understand the Courts pretty much look at the factual finding of the Commission of this type as being binding upon them.

CHAIRMAN DOWNING: Wouldn't you get the same release? Suppose we granted this and you appealed to the Courts. That nullifies our order and then wouldn't you be in a position to assert everything you want to assert?

MR. EAKES: No.

CHAIRMAN DOWNING: Because then our finding is wiped

out, it doesn't amount to anything.

MR. EAKES: Let me ask you the other way. Suppose you deny it and the oil company appeals to the Court and goes to the expense of the appeal rather than putting the farmers to the expense of the appeal. I mean the shoe fits both feet. It can be worn on that side just as well as it can on the other, and there is a matter of expense involved in these litigations. Like I say, the Commission, I think, should protect the rights of these land owners when they do it.

CHAIRMAN DOWNING: Do you want to tell us something?

MR. SPERLING: Before proceeding with the argument portion, I have two or three questions I would like to ask on redirect.

REDIRECT EXAMINATION

BY MR. SPERLING:

Q. Mr. Nordhausen, are any of the leases included within this particular north half of Section 7 held by production at the present time?

A. No. There is a well drilling on Mr. Short's land though, that will be the well that we intend to hold the unit by.

Q. It's held then either by the drilling operations or by production?

A. Yes.

Q. As a matter of fact, a well is being drilled on the north half of 7 at the present time?

A. Yes, on the land of Mr. Alva Short, Sr.

COMMISSIONER VAN TUYL: That is in the northeast quarter?

THE WITNESS: Southwest of the northeast.

Q. Prior to what is contemplated in the more or less immediate future so far as the construction program of your company is concerned, what market has there been for gas in the Ignacio area?

A. El Paso Natural Gas is taking gas from around the town site of Ignacio.

Q. Does that extend as far west as Section 7?

A. No.

Q. And what about the township and range that we are concerned with here, that is 33, 9 and 10, have there been gathering lines extensively laid throughout that area?

A. There have been none, no gas has been marketed from 33, 9, at this time.

Q. By any company?

A. No. We have taken gas from some of the wells in there to drill other wells.

COMMISSIONER BRETSCHNEIDER: How far is it from the Ignacio main pool?

THE WITNESS: It's from the Pictured Cliffs production.

COMMISSIONER BRETSCHNEIDER: The area from which the El Paso Natural Gas Company is taking gas from now?

THE WITNESS: Seven or eight miles.

COMMISSIONER BRETSCHNEIDER: East?

THE WITNESS: Yes, sir.

COMMISSIONER VAN TUYL: And that production is from the Pictured Cliffs?

THE WITNESS: From the Pictured Cliffs is the only gas they are taking. There is some shutin Dakota wells in the old Ignacio Field.

COMMISSIONER BRETSCHNEIDER: We went over that at Durango when we made the unit plan for the Ignacio Field a couple years ago for the Dakota.

THE WITNESS: The Dakota gas is still not being marketed. Well, I will take that back, I believe they are hooked up to Amerada's well in 33, 8. I believe there is a Dakota well in about Section 17 here and they may be taking gas from there; but we have four Dakota wells, one in Section 12, one in Section 10, one in Section 18, and one in Section 13, and those wells are shut in.

CHAIRMAN DOWNING: When did your company acquire its operating rights.

MR. SPERLING: That was going to be my next question.

Q. What was the acquisition date of Pacific Northwest Pipeline Corporation of these leases that we are concerned with here from Stanolind Oil and Gas Company?

A. It was about May 4 or 5 of 1955.

COMMISSIONER BRETSCHNEIDER: The leases were dated 1946?

THE WITNESS: 1946, yes, sir. We acquired these

particular leases from Stanolind Oil and Gas Company.

Q. Approximately eight months prior to their expiration dates, is that correct?

A. Nine months.

CHAIRMAN DOWNING: How expensive are the wells?

Q. What is the cost of drilling a Mesaverde well?

A. We estimate the cost from 90 to 100 thousand dollars, but the particular well we are drilling in Section 7 now I think the final cost will be considerably more than that. We drilled down to the Dakota and tested the Dakota on it and it will cost probably considerably more than that.

COMMISSIONER BRETSCHNEIDER: Did you get oil or gas in the Dakota?

THE WITNESS: No, no oil.

COMMISSIONER VAN TUYL: What is the average capacity of the gas wells in this general area?

THE WITNESS: The average of the Mesaverde well?

COMMISSIONER VAN TUYL: Yes.

THE WITNESS: Of course we don't have enough wells completed in there to get an average, but the well in Section 3, southwest quarter of 3, has an initial potential of over 17 million cubic feet per day.

COMMISSIONER VAN TUYL: That is a Dakota well?

THE WITNESS: No, it was kicked off as a Dakota and we plugged it back to the Mesaverde and completed as a Mesaverde well.

Q. Can you tell us anything about what is contemplated, policywise, by Pacific with reference to development of the general area as a supply area for the transcontinental line presently under construction?

A. We intend to take our first gas from the Bondad area, and we have I believe five rigs running in there now. We plan to develop the whole area, all of our leases in the area, in the very near future.

COMMISSIONER BRETSCHNEIDER: If you get a well say on the north half of 7, is it your intention to proceed then with request for a unit agreement on the adjoining 320-acre tracts where you have the predominant acreage?

THE WITNESS: We have petitions filed with the Commission now for a drilling unit comprised of the south half of Section 6, right above it; the south half of Section 7, right below it; the north half of 18, right below the south half of 7; the east half of Section 12, just to the west of it; and the east half of Section 1 just to the west of it here. When all those wells are drilled, all of the acreage of the leases which are included in a part of the leases are in the north half of 7, all of the acreage will be developed except this 160-acre tract and this 240-acre tract.

Q. In other words, all of the acreage that Mr. Eakes was talking about except the 160 that you last mentioned?

A. Well, it's 160 plus 240.

Q. Are included within pooling applications presently pending before this Commission?

A. That is correct.

COMMISSIONER BRETSCHNEIDER: When did you file those others?

THE WITNESS: We filed two of them, I believe we mailed them in Thursday, and the other one we filed with the Commission this morning, the other three.

CHAIRMAN DOWNING: Do these leases contain the provision that if drilling is started within the primary terms it may be completed?

THE WITNESS: Yes, they do. I have several of them here if you would like to look at one. The lease forms are all on the same form.

COMMISSIONER BRETSCHNEIDER: You don't necessarily have to have production on the date of expiration?

THE WITNESS: No, sir.

MR. EAKES: It's a commence-drilling well, I believe.

COMMISSIONER BRETSCHNEIDER: Commence drilling?

THE WITNESS: Yes. It's Producers 88342 prepared by Kansas Blue Print Company, and I believe that all the leases are on this form.

CHAIRMAN DOWNING: Any more questions?

RE-CROSS EXAMINATION

BY MR. EAKES:

Q. Mr. Nordhausen, in this lease form that was used,

the Producers 88342, there is no pooling or unitization clause in it, is there?

A. That is correct.

Q. In other words, when these people signed it, it was before this Commission was created, wasn't it?

A. Yes.

Q. Now they made no agreement at any time to take a part of their land under these leases and allow you to pool it, have they?

CHAIRMAN DOWNING: I think that is argument.

MR. EAKES: All right, I will withdraw it.

Q. I believe you testified on some of these other applications that you offered these land owners in some of these other areas \$10 or \$12 an acre for a 2-year extension?

A. That is right.

Q. Have you made any such offer to these people?

A. No, we haven't.

MR. EAKES: Thank you.

CHAIRMAN DOWNING: Any further testimony in this case?

MR. EAKES: Yes, sir, we have some testimony.

COMMISSIONER BRETSCHNEIDER: Does that cover all of the tracts?

MR. SPERLING: No, sir, we have one more tract.

COMMISSIONER BRETSCHNEIDER: Let's go ahead with the last tract and then we will come back to yours.

MR. EAKES: All right, sir.

MR. SPERLING: The petition to be considered is the request for pooling order covering the west half of Section 24, Township 33 North, Range 9 West, La Plata County, within the Ignacio Field.

Q. The request or the petition contains a statement, Mr. Nordhausen, that your company is the owner of 100 per cent of the working interest in the oil and gas leases covering the area within the area sought to be included, is that correct?

A. Yes, except the 40 acres owned by the Indian lease.

Q. With reference to Tract 1, that being the east half of the southwest quarter and the southwest quarter of the southwest quarter of Section 24, the undivided one-fourth mineral interest is alleged to be in John J. Martinez subject to an oil and gas lease held by your company, and further alleging that a three-quarter mineral interest undivided have agreed to the pooling of their interest within this particular area. What is the situation with reference to that tract and the apparent outstanding undivided one-fourth interest at the present time?

A. John Martinez has refused to execute the pooling amendment and continues to refuse.

Q. He has an undivided one-fourth interest in 120 acres within the 320?

A. The lease covers 160 acres, and we are asking to put 120 of it into this unit.

Q. Your attention is directed to Tract 2 as designated in

the petition, that being the south half of the northwest quarter and the northwest quarter of the southwest quarter, the mineral interest ownership being in Perry H. Barnes, R. H. Barnes, an undivided three-fourths interest, and the Federal Land Bank of Wichita undivided one-fourth. Is the situation with the mineral interest ownership of the Federal Land Bank and their willingness to pool the same as with reference to the previous applications that we have covered?

A. Yes, they have now agreed to pool; Perry Barnes has not.

Q. So a three-fourths interest covering also 120 acres is outstanding subject to your oil and gas lease?

A. Yes.

Q. As to the northwest quarter of the northwest quarter of Section 24, that being Tract 3 as designated in the petition, the mineral interest ownership appears to be in the Southern Ute Tribe of Indians, subject to an oil and gas lease held by the United States Smelting, Refining and Mining Company. That lease contains a pooling clause subject to the approval of the Southern Ute Tribal Council.

A. I believe that the lease does not contain a pooling provision, but we expect to be able to obtain their consent.

Q. Have you on previous occasions obtained the consent to pooling from the Southern Ute Tribal Council?

A. Yes.

Q. And what about the working interest under that lease

held by United States Smelting, what is there?

A. United States Smelting, Refining and Mining Company has orally advised us that they would be willing to unitize the west half of Section 24 with us.

COMMISSIONER BRETSCHNEIDER: And take a working interest in the deal?

THE WITNESS: Yes, they would have the working interest, but we have not worked out the details as to the operating agreement on sharing the cost.

MR. JERSIN: Do you know the name of the person you have been talking with?

THE WITNESS: H. D. Eikenberg is the division landman for the United States Smelting, Refining and Mining Company in Midland.

Q. As to the remainder of the lands within that 320-acre drilling unit, the mineral interest ownership has agreed to pooling or executing amendments, or their lease contains a pooling clause, is that correct?

A. That is correct.

MR. SPERLING: That is all.

CHAIRMAN DOWNING: Any questions?

MR. EAKES: No, sir.

(Witness excused.)

CHAIRMAN DOWNING: Any more testimony?

MR. EAKES: Yes, sir. I would like to call Mr. Robert McCallah.

ROBERT McCALLAH

called as a witness on behalf of the protestants, being first duly sworn according to law, upon his oath testified as follows:

DIRECT EXAMINATION

BY MR. EAKES:

Q. Mr. McCallah, are you a land owner in Section 7, Township 33 North, Range 9 West?

A. Yes, I am.

Q. I hand you herewith a chart and ask you if you will identify for the Commission your land.

A. These 40's here, three here and three here.

Q. Now does that include a 40 in the north half of Section 7?

A. Yes, it does.

Q. And is that the northwest of the northwest of Section 7?

A. Yes.

Q. Now how many 40's lie outside of Section 7 that belong to you?

A. Seven.

Q. And how many 40's lie inside Section 7 that belong to you?

A. One quarter.

Q. Just the one 40 up there. Have you ever granted an extension or agreed to give any type of an amendment to this oil and gas lease?

A. No, I have not.

Q. When did you grant this oil and gas lease?

A. February 8, I believe it was, 1946.

MR. EAKES: I think that is all.

CHAIRMAN DOWNING: Any questions?

MR. SPERLING: No questions.

(Witness excused.)

W. ALVA SHORT, SR.

called as a witness on behalf of the protestants, being first duly sworn according to law, upon his oath testified as follows:

DIRECT EXAMINATION

BY MR. EAKES:

Q. Will you state your name please, sir.

A. W. Alva Short, Sr.

Q. Are you a land owner in the north half of Section 7, Township 33 North, Range 9 West, La Plata County, Colorado?

A. I am.

Q. I hand you herewith a chart and ask you what that chart depicts, relating to your land in Section 7?

A. I have this 40 and here.

Q. How many is that altogether, how many 40's?

A. Six 40's.

Q. Now how many of those 40's lie within the north half of Section 7?

A. Just the one.

Q. When did you grant an oil and gas lease covering this land, Mr. Short?

A. February 6, 1946.

Q. Have you granted any amendment, correction, extension, or anything else concerning that oil and gas lease?

A. I have not.

COMMISSIONER BRETSCHNEIDER: To whom was the land leased at the time, Mr. Short?

THE WITNESS: To the Stanolind Oil and Gas Company.

Q. It was originally leased to an individual who was leasing for Stanolind, wasn't it?

A. Yes, it was.

Q. Do you remember his name? Was it Paul Davis?

A. Paul Davis.

COMMISSIONER BRETSCHNEIDER: He was the representative of the Stanolind Oil and Gas Company?

MR. EAKES: He was doing the blocking up for them. I don't know whether he was employed by them or brokering for them.

CHAIRMAN DOWNING: Any further questions?

MR. SPERLING: I have no questions.

(Witness excused.)

CHARLES E. CLOVIS, SR.

called as a witness on behalf of the protestants, being first duly sworn according to law, upon his oath testified as follows:

DIRECT EXAMINATION

BY MR. EAKES:

Q. State your name please, sir.

A. Charles E. Clovis, Sr.

Q. Are you a land owner in La Plata County?

A. Yes, sir.

Q. Do you own land in Section 7, Township 33 North, Range 9 West?

A. Yes, sir.

Q. I hand you a chart showing that and other lands and ask you to identify upon that chart your lands.

A. You mean all of the lands?

Q. All of the lands owned by you that are involved in this matter.

A. Well, I have in Section 8, Township just mentioned, three 40's; in Section 5 I have one 40; in Section 32 I have six 40's.

Q. Now that is of 34 North, is it not?

A. Yes. And in Section 6 -- are you talking about lands now that is involved here?

Q. Just identify all your land.

A. In Section 6 I have five 40's and one 20-acre tract and one fractional tract of approximately 12 acres.

Q. You have approximately 4 1/2 40's in Section 6, is that right?

A. That is right.

Q. What land do you have within the north half of Section 7 which is the proposed unitization?

A. I have the northeast of the northeast, which is 40 acres, and a fraction in the northeast of--

Q. Isn't that fraction in the northwest of the northwest?

A. It's in the northwest, yes.

Q. How many acres does that fraction encompass?

A. Approximately 12 acres.

Q. Then you have 52 acres within this tract, is that right?

A. That is correct.

Q. Now are you acquainted with the land of Mr. Lester

Short?

A. Yes, sir.

Q. Now is his noted in yellow on this chart?

A. Yes, sir.

Q. Do you know that land to be his?

A. Yes, sir, I do.

Q. Now how many 40's does he have altogether?

A. Three 40's, but there is a railroad right of way.

Q. That is three 40's in the north half of Section 7?

A. That is correct.

Q. How many 40's does he have outside of Section 7?

A. Four.

Q. Are those 40's all included in the same lease?

A. Yes, sir.

Q. Now are you acquainted with Mr. A. Short, Jr., the son of Mr. Short that just testified?

A. Yes, sir.

Q. Does he own lands in this area?

A. Yes, sir.

Q. Can you tell the Commission how many 40's he owns altogether?

A. He owns three complete 40's, plus this 40 that I have the 12-acre fraction out of.

Q. Does he have the balance of that 40?

A. Yes, sir.

Q. Twenty-eight acres approximately?

A. That is correct.

Q. How much of that land lies outside of this proposed pooling unit?

A. Eighty acres.

Q. And how much within?

A. About 68 acres.

Q. Now all these lands depicted by different colors here, is each color a separate lease?

A. Yes, sir.

Q. And is it just one lease covering each color completely?

A. That is correct.

Q. And all these leases, were they all granted first either in February or March of 1946?

A. I believe all of them except mine was granted in February, and mine was granted in March 1.

Q. March 1, 1946?

A. Yes, sir.

Q. Now have you or to your knowledge any of the other

land owners ever granted an extension, amendment, or anything else concerning these oil and gas leases?

A. No, not to my knowledge.

COMMISSIONER BRETSCHNEIDER: Is the Stanolind Oil and Gas Company the lessee of all of those?

MR. EAKES: No, sir, Paul Davis was the lessee.

THE WITNESS: Paul L. Davis.

MR. EAKES: And he assigned, I believe, all of them to Stanolind in due course.

COMMISSIONER BRETSCHNEIDER: When did he assign, do you know?

MR. EAKES: No, sir, I don't.

THE WITNESS: I can't recall the date but it was shortly afterwards.

Q. Let me ask you this, Mr. Clovis, did Paul Davis ever pay a rental under this?

A. No, sir.

Q. Did Stanolind pay the first delay rental?

A. Yes, sir.

MR. EAKES: I wish to tender this chart.

CHAIRMAN DOWNING: Any objection?

MR. SPERLING: No objection.

CHAIRMAN DOWNING: If not, the exhibit is received.

MR. EAKES: Your witness.

CROSS EXAMINATION

BY MR. SPERLING:

Q. Mr. Clovis, are all of the lands that you own as depicted on the plat there included within the south half of Section 6, the north half of Section 7, the east half of Section 1, 33, 10, the east half of Section 12, 33, 10, the south half of Section 7--

A. Wait a minute, you are getting too fast. Let's start again.

Q. The south half of Section 6, the north half of Section 7, the south half of Section 7.

A. I don't have that.

Q. Are all your lands included within the south half and the north half of Section 7?

A. No.

Q. What other areas?

A. Well, I have land in 32, I have land in 5, I have land in 8.

Q. Have you been approached by any other companies with reference to leasing your lands?

A. I have been questioned, yes.

Q. In view of the early expiration date?

A. Well, I wouldn't say that. If you would like for me to go into detail, I would say within five years after it was leased, why, I have been approached off and on since that time, people have indicated they would like to be considered.

CHAIRMAN DOWNING: At the present time is there production on any of this land in this formation?

MR. SPERLING: No, sir, not on this particular gentleman's tract.

CHAIRMAN DOWNING: No, I mean in that part of the structure.

COMMISSIONER BRETSCHNEIDER: No, not on the unit.

COMMISSIONER DILLON: What is the nearest production to this area.

MR. NORDHAUSEN: There is a well capable of production in the north half of 7, but it hasn't been completed yet.

MR. SPERLING: But it will be a commercial producing well.

COMMISSIONER VAN TUYL: Did you make a drill stem test on it?

MR. TRUBY: We had a gauge on it. We will drill through the Mesaverde formation and we are certain it will make a gas well.

MR. JERSIN: You don't know what the capacity is though?

MR. TRUBY: No, sir.

Q. Mr. Clovis, would you be willing to accept service of notice of hearing on the applications, other than the present one pending before the Commission, that will be set for hearing at a later date before this Commission while you are here in order to save us serving you personally with notice of

the hearing, in the interest of saving time?

A. You mean take up your other one?

Q. Not to take them up, to simply acknowledge that you have received notice of the filing of the application and that they will be heard on a particular date.

A. Well, I haven't.

Q. I mean assuming that you do receive the notice, will you accept it here rather than having us serve you or have the sheriff serve you as was done for the purposes of this proceeding?

MR. EAKES: If the Commission please, certainly we will accept the notices but we would like to have the notices themselves.

MR. JERSIN: Yes, we have them here.

MR. SPERLING: Would you accept them for all of your clients?

MR. EAKES: No, sir. Mr. Clovis will accept them and I imagine these other two parties that are here will accept them, but I am not appearing for this entire group, as you know, in this matter.

MR. SPERLING: Are you appearing for the Shorts and Mr. Clovis?

MR. EAKES: I am appearing for Mr. Short, Sr., Robert McCullah and Mr. Clovis, and I will accept the service for all three of them, yes, sir.

MR. SPERLING: That is fine.

REDIRECT EXAMINATION

BY MR. EAKES:

Q. Do you know within reasonable bounds what you could get for a new lease on this land on that tract?

A. Well, you mean if it was--

Q. A bonus.

A. Well, that would be hard to estimate. What I have reckoned here lately to be treated fair was more or less what the company has been doing with other people.

Q. Now what has the company been doing with other people?

A. Well, it's what we commonly call a 10 plus 2, for two years extension; that is \$10 bonus plus a dollar an acre a year for two years.

Q. Has this \$12 for a 2-year extension been offered to others in this same vicinity?

A. Yes, sir.

Q. And have they taken the extension to the other leases neighboring these?

A. Not in this immediate area but adjoining the area.

Q. Yes, adjoining the area.

A. Yes, sir.

Q. Do you know of a 2-year extension being granted for \$12 in Section 1 over here in this same township?

A. I have your word and honor that it has.

Q. I think the testimony of Mr. Nordhausen said it had

been. Now that is what you have been looking for?

A. I have been looking to be approached with some reasonable offer, yes.

Q. But you haven't had one to date?

A. That is right.

MR. EAKES: That is all.

CHAIRMAN DOWNING: Any further questions of this witness?

(Witness excused.)

CHAIRMAN DOWNING: Any further testimony?

MR. SPERLING: That is all.

CHAIRMAN DOWNING: Now with regard to arguments, I think we understand it pretty well. Do you want to make any argument?

MR. SPERLING: I would like to make a few remarks. I notice the hour is getting late and I will be brief.

Mr. Eakes in his opening remarks made reference to the statutory provision with reference to correlative rights. I submit to the Commission that there are correlative rights existent other than the correlative rights of royalty interest owners; that being the correlative rights of a working interest owner whose investment capital must be risked. I would also reassert for the benefit of the Commission, for what it's worth, that in my opinion it is not the function of the Commission to determine questions of law that may arise as a result of different interpretations of lease contracts. The function of this Commission, as it has been and is being carried out, is

to operate the Oil and Gas Conservation Act as adopted by the Legislature with a view toward conservation of the natural resources of the State of Colorado with a view to equal protection to everyone concerned, land owner, lease owner, and the public in general.

As the Commission knows, it is the idea of the Pacific Northwest Pipeline Corporation to develop the area as rapidly as possible, assuming the availability of capital for the purpose of furnishing large quantities of gas from this area that we have been talking about for transportation through its line presently under construction. It is anticipated that that line will be in a position to take gas and deliver the first gas to the northwest, we hope, by July 1. In the meantime a very extensive drilling program has been going on in the San Juan Basin of New Mexico and Colorado, and will certainly be pursued not only by reason of the obligation to the respective land owners to develop their acreage but by reason of the necessity under contract obligations to deliver gas.

In plain simple words we have got to have it. We know it's there and we are going after it, but it takes time to do it. That is what we are trying to accomplish as rapidly and as economically as we possibly can do it. The people in Seattle are concerned with the economics of the situation as well as the company because we will be a public utility with a set rate base, and the higher our cost, the higher the costs

are going to be to the consumer in these other states. I know we are primarily concerned with our own state interests, my state being New Mexico and yours being Colorado, but we do owe an obligation to other people in other parts of the country too, and I believe that this company feels it very strongly.

We believe we have dealt and are trying to deal fairly with the people in that area with a view toward developing their acreage and allowing them to reap the benefits of the natural gas that we hope to produce and will produce from that area. The drilling program, as I say, is going rapidly forward. We have five rigs going up there now and weather permitting we will have five more. These are difficult operating times, as I am sure you know, in the winter months. We have been blessed with good weather so far and we hope we will be for at least a few weeks more so that we can get these leases under way.

We respectfully request the favorable consideration of the Commission on the applications that have been presented this morning, and in view of the urgency of our program we would very much appreciate a speedy decision. You, of course, are all aware of the implications, the critical implications so far as we are concerned. Now Mr. Eakes made a suggestion to the Commission to the effect that it might be well to turn down the application in order that the matter could be pursued further in the Courts. Well, that would be very much to Mr. Eakes' advantage, no question about it, in view of the time

element that is here involved. Any delay so far as he is concerned would be most advantageous. Any delay so far as we are concerned would be fatal on that basis. We submit that Mr. Eakes' interest and those of his clients would not be damaged by the granting of the order sought since they have a full and adequate remedy at law so far as any appeal from the action of this Commission is concerned.

I know that the Commission is concerned with doing the right thing as they see it under the Act that you all have to administer, and, of course, the protection for anyone who is aggrieved is saved in the case of any administrative agency by recourse to the courts. We believe that that recourse furnishes more than adequate protection so far as Mr. Eakes and his clients are concerned.

CHAIRMAN DOWNING: Might I ask a question? Suppose this Commission would say that you haven't proven the necessity of this from a conservation standpoint and the purpose is not conservation but private advantage. What would you say to that?

MR. SPERLING: Well, I think the conservation has been established. The conservation principle has been previously established by the Commission by the granting of the field order and the spacing.

CHAIRMAN DOWNING: The spacing orders, yes, but I mean the unit compulsion.

MR. SPERLING: I think that was exactly what was

contemplated by the Legislature in adopting the legislation. There is a specific reference in the Act itself not only to the extending or the application of production from the unit to all tracts within the unit, not only by production, but by drilling operations themselves. The Legislature certainly would not have included such a thing unless they contemplated the exact action resulting there from that we contemplate. It is not that we expect to select the north half of Section 7 and perpetuate leases indefinitely on the basis of drilling a well there. We have already shown, I believe, our good faith to the Commission in the filing of the applications covering substantially or practically all of the leases that we are here concerned with. It is not that they are going to be denied their proportionate part of the gas to be produced.

I would like to say just one more thing. I believe I submitted a proposed form of order or an order in the form we would like it. We have one covering each of the areas that we seek the pooling order on, and with the Commission's permission I shall leave adequate copies with Mr. Jersin.

MR. EAKES: Gentlemen, I will try and be brief. I want to point out two or three things to you. First, we call to your attention the statute showing the purpose of this Commission, which is to prevent waste and protect correlative rights of all owners in each and every pool. It goes on and says, "When necessary it can limit production", but that is the primary purpose of this Commission is to prevent waste.

Now the duty is also imposed upon the Commission by the Legislature to protect the rights of the owners of the interests in the land. Now we maintain that there is no single showing before this Commission of a need for this pooling order to prevent waste at this time. There has been no showing during this entire hearing that a failure to grant this pooling order would cause waste. Now certainly there is a showing that it would damage some of the owners of the interests in the land. Here you would have one man with 40 acres, and he loses his right to the development of 200 acres lying outside; another tract with some 40 acres loses the right to develop 280 acres; the next one loses the right to develop 580 acres, and so on. We have got 1300 acres that are being tied up, and certainly that is not being fair to the parties involved. That is not protecting rights and that is what I am trying to call on you to do.

I want to call to your attention the comments of Justice Hamiter in a Louisiana case concerning these conservation agreements and the pooling units and so forth in a matter that was similar to this. He states: "There are two purposes for these things: One, that the lessor would share in the royalties from the units in proportion to his entire acreage covered by his lease; and the other is that the lessee is unable to drill on any part of the leased property in fulfillment of his contract because of the unitization order. Now that

loss of that right to drill on that man's property is a property right that is protected by our Constitution, and it can't be taken away from him. It shouldn't be taken away from him. Certainly we all realize the necessity to conserve natural resources, but where is it necessary to conserve natural resources that you enter this order? Where is it necessary? There is no showing that it's necessary.

Now further, Justice Hamiter states: "The only basis for sustaining these conservation orders is that they are fair and reasonable and do justice and equity to all parties concerned." That is the meat of my entire argument, that in order to be a matter that we can tolerate in this United States of America, it must be fair and reasonable and do justice to all concerned.

Now the purpose of the Oil and Gas Conservation Commission, as stated, is to prevent waste and protect rights. But look at it a minute. What is the basic purpose of it? What function does it serve? Why are you here? You are here to protect the public interest, aren't you? Now what interest of the public will you protect by granting this order? What interest? Now just think a minute. Is there any interest? At this time you will protect the interest of an oil company in not having to pay for a lease which is about to expire. Simply, that is it. I can't say it any plainer. Sure I think there is a constitutional question involved here, and I think we are obligated to raise that question here, and those questions

we are trying in our feeble way to raise. But where is the public interest being damaged by refusing to grant this order? It's liable to cost an oil company a bunch of money, but then the offer that has been made to others in that same vicinity, the offer that was made to me on another tract that was mentioned here, and I took it, was \$12 an acre for a 2-year extension, and I think these people would take it.

This is a matter of contractual rights that are guaranteed by our Constitution and Bill of Rights, and we are asking you to protect them. Thank you, gentlemen.

CHAIRMAN DOWNING: We will adjourn at this time and render our decision later.

(Whereupon, the hearing in Cause No. 3 adjourned at twelve o'clock, January 9, 1956.)

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C E R T I F I C A T E

I, Donald E. Weimer, Certified Shorthand Reporter, hereby certify that I personally recorded in shorthand the proceedings in the foregoing matter in the first instance and that I later transcribed the same and that the foregoing record is true and correct to the best of my knowledge and belief.

Done at Denver, Colorado, the 14th day of January, 1956.

Phone
FR7-0358

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Certified Shorthand Reporter
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