BEFORE THE BOARD OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES

IN AND FOR THE STATE OF UTAH

--oo0oo--

IN THE MATTER OF THE PETITION OF CELSIUS ENERGY COMPANY FOR AN ORDER POOLING ALL INTERESTS IN THE DRILLING UNIT DELINEATED AS THE N 1/2 OF SECTION 20, TOWNSHIP 36 SOUTH, RANGE 26 EAST, SLBM, UCOLO FIELD, SAN JUAN COUNTY, UTAH	:	ORDER ON REHEARING DOCKET NO. 85-029 CAUSE NO. 186-15

--oo0oo--

This matter was heard before the Board of Oil, Gas and Mining ("Board") at its regularly scheduled hearing on August 22, 1985, in the boardroom of the Division of Oil, Gas and Mining, 355 West North Temple 3 Triad Center, Suite 301, Salt Lake City, Utah. The following board members constituting a quorum were present and participating in the hearings and the decision and order embodied therein:

Gregory P. Williams, Chairman
James W. Carter
John M. Garr
Charles R. Henderson
Richard B. Larsen
E. Steele McIntyre[1]

The matter was taken under advisement by the Board and the decision of the Board was announced at the regularly scheduled hearing on October 24, 1985.

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[1] Mr. McIntyre was present at the Board's hearing in this matter on August 22, 1985, but did not participate in the Board's decision embodied herein.

Mark C. Moench, Assistant Attorney General of the State of Utah, participated in the hearing on behalf of the Board.

Members of the staff of the Division of Oil, Gas and Mining ("Division") present at, and participating in the hearing included:

Ronald J. Firth, Associate Director, Oil and Gas
John R. Baza, Petroleum Engineer
Keith M. Clem, Geologist, Utah Geological and Mineral Survey
Cynthia Brandt, Geologist , Utah Geological and Mineral Survey

Barbara W. Roberts, Assistant Attorney General of the State of Utah, participated in the hearing on behalf of the Division.

Petitioners Callie Cowling, Marie Grubbs, Marguerite Wilson, Robert Baird, Ed Baird, Jr., and Robert Baird ("Bairds") were represented by Albert J. Colton, Esq., Anthony L. Rampton, Esq., and Rosemary J. Beless, Esq., from the law firm of Fabian & Clendenin, Salt Lake City, Utah, associated with Dilts, Dyer, Fossum and Hatter, Attorneys at Law, Cortez, Colorado.

Respondent Celsius Energy Company ("Celsius") was represented by Ruland J. Gill, Jr., Esq., Salt Lake City, Utah.

Respondent Bureau of Land Management ("BLM") appeared by and through Assad Rafoul.

Petitioner Bairds filed a Petition for rehearing seeking reversal of the Board's Findings of Fact, Conclusions of Law, and Order dated June 24, 1985.

The Board granted rehearing based on the Bairds' Petition. All parties present argued the facts and the law regarding the merits of the Board's decision.

Counsel for the Bairds presented two issues. The first issue concerned whether the Board's order violated the Bairds' constitutional rights by setting the effective date of the pooling orders back to the date of first production. The Bairds' second issue concerned whether special circumstances exist by virtue of BLM's actions in which it was alleged that the BLM waived or was estopped from claiming rights to production prior to their pooling demand of January 23, 1985.

Counsel for Celsius and the Division responded that the pooling order should be retroactive to the date of first production since the statewide spacing Rule C-3(b), abrogated the rule of capture, and, therefore, in order to protect the correlative rights of the BLM and Celsius it was just and reasonable to enter an order pooling all interests within the drilling and spacing unit as of the date of first production.

The Board having considered the motions, legal arguments, Memoranda of Law, as well as the record, exhibits and evidence presented in the previous hearings on this matter, now makes and enters the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Due and regular notice of the time, place and purpose of the hearing was given by the Division and also given by the Petitioner by personal service to all parties required to be so notified in the form and manner and within the time required by law and the rules and regulations of the Board.

2. The Board has jurisdiction over all matters covered by said notice and over all parties interested therein and has the power and authority to make and promulgate the order hereinafter set forth.

3. The Board having reviewed the pleadings, evidence and transcripts finds no reason to overturn its prior order in this matter, and the Findings of Fact, Conclusions of Law, and Order dated June 24, 1985, are affirmed.

4. The dissenting opinion of Messrs. Henderson and Larsen states that the Board is without authority to alter or void the contracts between Celsius and the Bairds. The majority agrees. The Board is not called upon to alter, void or even interpret private contracts in this matter and is without authority to do so. The Board is called upon to interpret the Utah conservation statute and the Board's General Rules and Regulations and to apply them to the facts and issues presented. This the Board has done. The Board's order, standing alone, could mean that the Bairds have been overpaid by Celsius and that Celsius is entitled to recover the overpayment in some fashion. Thus, while the order provides for some benefit to the BLM and Celsius on the one hand, it can obviously be viewed as providing a harsh result for the Bairds on the other. However, the order does not stand alone as between the Bairds and Celsius. Whether the Bairds, as lessors, have been wronged and, if so, whether they have a remedy based on their contracts with Celsius and the facts and circumstances of their dealings with Celsius is for the courts, not the Board, to decide.

ORDER

IT IS THEREFORE ORDERED:

The Findings of Fact, Conclusions of Law, and Order in Docket No. 85-029, Cause No. 186-15, issued on June 24, 1985 are affirmed as the Board's Order in this matter.[2] This is a final order of the Board.

ENTERED this 22nd day of November, 1985.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING

Gregory P. Williams, Chairman

APPROVED AS TO FORM:

Mark C. Moench
Assistant Attorney General

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[2] The Board Members' vote on the issues raised on rehearing is as follows: Chairman Williams, members Carter and Garr voted to affirm the Board's prior Order. Members Henderson and Larsen voted to overturn the Board's prior Order in part. Member McIntyre abstained.

(3814s)

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
IN AND FOR THE STATE OF UTAH

---ooOoo---

IN THE MATTER OF THE PETITION OF CELSIUS ENERGY COMPANY FOR AN ORDER POOLING ALL INTERESTS IN THE DRILLING UNIT DELINEATED AS THE N1/2 OF SECTION 10, TOWNSHIP 36 SOUTH, RANGE 26 EAST, SLBM, UCOLO FIELD, SAN JUAN COUNTY,UTAH, AND FOR THE EXPEDITED HEARING IN THIS MATTER	:	DISSENTING OPINION DOCKET NO. 85-029 CAUSE NO. ~~185~~-15 186

---ooOoo---

We must respectfully dissent:

Charles R. Henderson, Board Member of the Board of Oil, Gas and Mining
Richard B. Larsen, Board Member of the Board of Oil, Gas and Mining

This hearing concerns the pooling of all interests in the above-captioned case. Additionally, the Board has taken administrative notice of Cause Nos. 186-7, 186-10 and 186-14, three related causes containing evidence and exhibits applicable to the above.

This dissent is limited to Findings of Fact No. 2 and No. 13; Conclusions of Law No. 13, No. 21, and No. 29; Orders No. 32 and No. 34.

Findings of Fact No. 2 and Conclusions of Law No. 21 are identical: "The Board has jurisdiction over all matters covered by said notice and over parties interested therein and has the power and authority to make and promulgate the order hereinafter set forth." (Emphasis added.)

FIRST WE WILL ADDRESS THE QUESTION; Does the Board have the power and authority to promulgate the order in orders No. 32 and 34, as set forth in No. 2 and 21 above?

The questions is, does the Board have the authority to disregard or alter a contract between the lessee Celsius and the lessors, the Bairds?

The Bairds as they are referred to in this hearing are fee owners of three tracts of land owned by various members of the Baird families. The lands are all located in the N1/2 of Section 10, Township 36 South, Range 26 East, SLBM, Ucolo Field.

The Bairds entered into three oil and gas leases with Wexpro, presently Celsius. (See Celsius Exhibit D, Cause 186-15; Page 5, Line 11 thru 15; Page 10, Line 11 thru 16; Page 12, Line 11 thru 13, Transcript of Cause No. 186-10.)

The Bairds three leases on lands in the N1/2 of said Section 10, all have identical pooling provisions, granting (lessee) Celsius, the right to pool into separate units and unitize any part of the lands covered by the leases, with other leases.

These leases granted Celsius the right to pool the lands on Celsius' own judgement. With some minor limitations. Which are: The area pooled for oil and gas was not to exceed 40 acres and 640 for gas with a 10% tolerance, and a provision that if any governmental order prescribed a spacing pattern that was larger, it could be that larger pattern. The pooling could cover all formations. (See Exhibit No. 2, Celsius and Page 19, Line 9 thru 23, Cause No. 186-10.)

Celsius drilled and completed the Ucolo No. 2 well on one of the Bairds leases as a gas and condensate well, on or about April 19th, 1983.

Celsius pooled the three Bairds leases for gas on April 20, 1983, by recording a declaration of pooling in the San Juan County Recorders office for a total of 210.14 acres, which surrounded the drill site for the Ucolo No. 2 well. (Page 21, Line 19 thru 22, Cause No. 186-10; Page 14, Line 7 thru 8; and Page 25, Line 7 thru 12, Cause No. 186-15.

The three leases have a pooling terminating clause that states: "Lessee may terminate any pooling order effected hereto at any time the pooled unit is not producing and no drilling operations are being conducted. (Celsius Exhibit No. 2, Line 44, Cause No. 186-10.)

Celsius cannot terminate the voluntary pooling unit, because Ucolo No. 2 well on the Bairds lease is producing gas and condensate.

On April 6, 1984, almost a year after pooling the Bairds three leases, Celsius presented to the Bairds a gas division order establishing payment of 100% of the royalties from the Ucolo No. 2 well to the Bairds.

In exchange for that agreement, to pay the Bairds 100% of the royalties, the Bairds agreed to ratify the three leases that arguably, at that point, had expired back in 1983. (Page 14, Line 22 thru 18, Cause No. 186-16.)

Counsel for Celsius, Mr. Gill, asked his witness, Mr. Pittam, the following question: "You heard Mr. Rampton say that the Bairds signed the division order for two purposes. First, to ratify the lease. Whey did you ask them to ratify the lease?" Answer: "The Bairds were asked to ratify the lease, because Larry White had a (top lease) option to top lease with them, which he insisted was in effect. That our lease had expired."

Question by Mr. Gill: "And you were under the impression at the time, that there was a cloud on the title, that ratification would cure?" Answer: "Yes." (Page 30, Lines 2 thru 11, Cause No. 186-15.)

Question: "You also heard Mr. Rampton say that the signing of the division order extended the lease, is that correct?" Answer: "Well, the production in the well extended the lease. The leases were extended by the fact they were voluntarily pooled and were productive." (Page 30, Line 12 thru 16, Cause No. 186-15.)

The Board established a drilling and spacing unit for the Ucolo Field on February 28, 1985 consisting of the Bairds 110.14 acres and 189.86 BLM acres by Cause No. 186-14.

Cause No. 186-14 was amended reducing the spaced unit to 200 acres; 110.14 acres of the Bairds and 89.86 acres of BLM lands.

The title question is now settled. The Bairds and Celsius agree there is an agreement to pay the Bairds 100% of the royalties on all the production from the Ucolo No. 2 well. That the three leases have been effectively ratified and voluntarily pooled under the terms of the leases for a total of 110.14 acres.

NOTE: The voluntary pooling above is under the lease authority, not the Ucolo spacing unit pooling order.

Order No. 32; Conclusions of Law No. 21 and No. 29; Findings of Fact No. 2 and 13 do not take into account the above agreement. The fact is: The Findings of Fact, Conclusions of Law and the Order, totally ignores the agreement between the Bairds and Celsius.

Our position: the Board does not have the legal authority, implied or granted by the Utah Code Annotatd 40-6-6 to alter, void or disregard a contract agreement beteen a royalty owner and the lessee, unless the agreement is found to cause a violation of "correlative rights", or is found to be unjust and unreasonable.

Overriding royalties, production payments, royalties and other contractual agreements not subject to paying the cost of drilling, equipping or operating are authorized in all subsections of 40-6-6, dealing with royalty owners except 40-6-6(7)(b) where a nonconsenting owner is not subject to a lease, then his royalty is determined by a specific formula.

The manual of oil and gas terms distributed by the Interstate Oil and Gas Conservation Compact, defines "overriding royalty" as follows: "An interest in oil and gas production at the surface free of expense of production, and in addition to the usual landowners royalty reserved to the lessor in oil and gas lease."

In this case though, the agreement between the Bairds and Celsius was not specifically called an overriding royalty, it is an interest in the production at the surface, free of charge.

In this case, if the Bairds royalty was 1/8 or 12.5% of the contractual payment or overriding royalty would be 5.6241%.

Our position, based on the above is that the Bairds should be paid the royalty, under the terms of their lease on 110.14/200.14 of the production from the pool. The BLM should be paid the royalty under the terms of their lease on 89.86/200.14 of the production from the pool.

Additionally, the Bairds should receive an overriding royalty or contract payment of the royalty under their lease on 89.86/200.14 of the production from the pool.

Order No. 32 should be amended to conform with the above position.

We will now address Findings of Fact No. 13; Conclusions of Law No. 25; and Order No. 34.

Findings of Fact No. 13: "Based upon the evidence presented and stipulations of the parties, we find the Bairds have not voluntarily pooled their interests and that their interest in the drill site spacing unit for the Ucolo No. 2 well consisting of 200.14 acres as discussed below should be statutorily pooled as of the date specified below." (Emphasis added.)

The following discussion will address only those parts of the Order, the Conclusion of Law and Findings and Fact, underlined above and designated as: (Emphasis added.)

The argument that Rule C-3(b) precludes or prohibits the drilling of a second well in the N1/2 of Section 10, is based on only one part of Rule C-3. In fact, on only part of Rule C-3(b). The last part of C-3(b) says "Unless an exception is granted by the commission pursuant to Rule C-3(c)" "The commission may grant an exception to the requirements of (b) above as to the status of a particular well location, without notice and hearing, where an application has been filed in due form and: (1) The necessity for an unorthodox location is based on toporaphical and or geological conditions. (2) The ownership of all oil and gas leases within a radius of 660 feet of the proposed location is common with ownership of the oil and gas leases under the proposed location."

Celsius was qualified for a well site exception location under (2) above, because they were the only leasehold owner in the N1/2 of Section 10. Exhibit 4, Cause No. 186-14 (Exhibit D, Cause No. 186-15), Celsius was eligible for a well site exception due to geological conditions. (Exhibit 4 shows reservoir structure and porosity lines, Cause 186-14; Exhibit D with reservoir calculated drainage area calculation attached, Cause No. 186-15.)

The above substantiates the fact, Celsius could have qualified for an exception to Rule 3-C(b) by making an application under Rule 3-C(c).

Celsius Exhibit D above, shows the location of the BLM lease and Ucolo No. 2 well. Celsius Exhibit 4, above, shows there is numerous possible exception locations on the BLM lease within the high porosity structural contour line that would qualify under Rule C-3(c).

Celsius did not choose to make an application for an exception well on the BLM lease for the Ucolo pool.

Celsius' "correlative rights" would have been violated if they were forced to drill a second well on the BLM lease or any other place in the Ucolo Field. As will be explained below in the discussion of "correlative rights".

The definition of "correlative rights" was changed substantially from the previous definition, by Senate Bill 157 effective May 10, 1983. The present definition is: "Correlative Rights", means the opportunity for each owner in a pool to produce his just and equitable share of the oil and gas in the pool without waste. (40-6-2)(2) (Emphasis added)

The key words are opportunity and wastes. The definition of waste was also expanded by Senate Bill 157. The applicable part is 40-6-2(12)(c). "Locating, drilling, equipping, operating or producing of any oil or gas well in a manner that causes reduction in the quanity of oil or gas ultimately recoverable from a reservoir under prudent and economical operations or that cause unnecessary wells to be drilled. Or that causes the loss or destruction of oil or gas, either at the surface or subsurface." (Emphasis added.)

This new definition adds limited validity to the Right of Capture and additionally that each owner shall have the opportunity to recover and produce his share of the oil that is in the reservoir, when the operator takes advantage of his right to produce.

In Cause No. 186-10, October, 1983, Celsius witness, Mr. Pittam, testified that they had already drilled three Ucolo wells (Page 10, Cause No. 186-10):

Ucolo No. 1 - To the North in Section 3.
Ucolo No. 2 - Well to the N1/2 of Section 10.
Ucolo No. 3 - Well in the S1/2 of Section 10.

The Ucolo No. 2 well, the discovery and producing well, is located less that 4000 feet from the Ucolo No. 1 well. Ucolo No. 1 well had been plugged and abandoned as to the Desert Creek Formation. The Ucolo No. 3 well is less than 2000 feet south and west of Ucolo No. 2 well in the S1/2 of Section 10 in a voluntarily pooled unit.

Mr. Gill stated in part: " and we believe we can show 320 acre drainage". (Page 45, Cause No. 186-10.)

Celsius testified the Ucolo No. 2 well would drain approximately 250 acres, based on their calculations and Celsius' Exhibit No. 9. Celsius also testified that an additional well would cost $850,000 and that such a unit would avoid the drilling of an unnecessary well and serve to protect correlative rights. (Page 49 and Celsius Exhibit No. 9, volumetric calculation of estimated reservoir drainage area, Cause No. 186-14).

The order in establishing the Ucolo No. 2 drilling and spacing order was based on the above principals.

The above information, we believe, is substantial evidence that an additional well in the N1/2 of Section 10 would be an unnecessary well, would be a waste and a violation of Celsius' correlative rights.

That the statutory definition of "correlative rights" takes preference over a rule adopted under a previous statute. Even under the Rule C-3 subsection (c)(e) which reads: "The spacing requirements of this rule shall not apply in cases where, in the opinion of the commission, engineering practices have proven otherwise". (Emphasis added.)

Engineering in this case certainly is used as the science by which properties of energy are made useful. This means Petroleum Engineering.

It is our opinion that Celsius had every opportunity to apply and be granted an exception to C-3(b) to protect their correlative rights and not drill a exception well, or an unnecessary well.

It is also our opinion that Celsius had every opportunity and right to be granted an exception to the General Rule C-3(b) or to drill a well in the BLM lease, had they preferred to do so.

Conclusion of Law No. 25: "Upon completion of the Ucolo well No. 2, as a gas well, Rule C-3(b) of the Board's General Rules and Regulations, which establishes state wide spacing in the absence of

special field spacing precludes the drilling for production of an additional Desert Creek gas well in the N1/2 of Section 10. Thus, the general rule, which we stated, makes pooling effective as of first production, should apply in the absence of special circumstances, which would make pooling as of such date not just and reasonable. We find no such circumstances in this case".

We believe that the information we have provided as adequate proof and reasons that Rule C-3 has not precluded Celsius from drilling a well for production of gas from the Desert Creek Formation in the N1/2 of Section 10, Celsius had not lost their rights of capture.

We would like to quote the legal position of Celsius, regarding retroactive pooling, that can be found on Page 65 of Cause No. 186-15: "We submit, as I go through this legal argument, that there is a rule of law that all of the courts, that have examined retroactive pooling have found to be consistent in these cases and the rule is this: However you label it, whatever you do, it is that point in time where the nonproducing, offsetting owner loses his rule of capture rights. That is the date on which the pooling order is retroactive to, and that is the common thread through all the cases. When the rule of capture rights are lost, that is when, for a pooling order to be just and reasonable, that a pooling order goes retroactive".

The above statement is self explanatory, retroactive pooling applies, only after the owner looses the rights of capture.

We believe we have demonstrated that Celsius never took the opportunity of requesting a well location exception. That Celsius was eligible for such exception under Rule C-3(c) and Rule C-3(e).

That imposition of a one well drilling and spacing order, without granting all interest owners the right to participate in the production from the permitted well as of that date such restriction would result in taking of property without due process of law.

The date of the spacing order was February 28th, 1985, and that is the date the Ucolo No. 2 well pooling order should become effective.

It is our position that the date the Ucolo No. 2 well drilling and spacing unit was established in Cause No. 186-14, was the date Celsius lost the rule of capture rights, February 28, 1985.

We have shown that "correlative rights" statutes did not require Celsius to drill an unnecessary well. That an additional well in the N1/2 of Section 10 would have been a waste and an unnecessary well. Therefore, Celsius had a right to obtain a exception under Rule C-3(d). That, February 28, 1985, is the date of Ucolo No. 2 well pooling order should become effective, and Order No. 34 should be amended to reflect the above position.

Our position as addressed in the first part of this dissent is that there was a legal contract between Celsius and the Bairds. That the Bairds have a legal right to an overriding royalty payment and Order No. 32 should reflect the above positions.

Respectfully submitted this 20th day of November, 1985

Charles R. Henderson

Charles R. Henderson

Richard B. Larsen

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing instrument upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, with postage prepaid to those persons noted below.

Dated at Salt Lake City, Utah, this 6th day of August, 1985.

Carolyn K. Barber

Utah State Office
Minerals Management Service
Bureau of Land Management
324 South State
Salt Lake City, UT 84111

Mazzola & Co.
14624 Fenton
Broomfield, CO 80020

Mr. Joseph R. Mazzola
14624 Fenton
Broomfield, CO 80020

Mr. Maurice W. Brown
300 South Greeley Highway
Cheyenne, WY 82001

Mr. Larry J. White
1305 Park View Boulevard
Colorado Springs, CO 80906

Clifford C. Fossum, Esq.
Dilts, Dyer, Fossum & Hatter, P.C.
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Cortez, CO 81321

Anthony J. Rampton, Esq.
Fabian & Clendenin
215 South State Street, Suite 1200
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Kenai Partners Drilling
Program Series 82-1
c/o Kenai Oil and Gas Inc.
One Barclay Plaza, Suite 500
1657 Larimer Street
Denver, CO 80202

Mr. Ed Baird, Jr.
P. O. Box 471
Dove Creek, CO 81324

Mr. Robert Baird
P. O. Box 235
Dove Creek, CO 81324

Ms. Marguerite Wilson
P. O. Box 416
Dove Creek, CO 81324

Ms. Marie Grubbs
P. O. Box 1483
Fruita, CO 81521

Ms. Callie Cowling
458 Ananassa
Grand Junction, CO 81501

USO- 3100-5
January 1975

Exhibit "A"
- Baird Petition for Rehearing
Docket 85-029
Cause 186-15

MEMORANDUM

Serial No. U-30055
Case Type ____
Status Records Noted: ____

To: DOCKET

From: BRANCH OF REALTY SERVICES

Subject: CASE TRANSMITTED

ACTIVE CASE:

☐ Report(s) requested from ____________, ____________
☐ Conflicts with prior case(s) U-____________.
☐ Hold in abeyance because of: ____________.
____________.
☐ Other: ____________.

INACTIVE CASE:

☐ Withdrawn or Rejected in part
☐ Issued -- ☐ all; ☐ part.
☐ Approved
☐ Allowed
☐ Assigned -- ☐ all; ☐ part.
☐ Extended
☐ Reinstated
☐ Operating agreement approved.
☐ Amended -- ☐ new land description: ____________;
☐ ____________;
new acreage: ____________.
☐ Committed to: ☐ ____________ Unit Agreement
☐ ____________ Communitization Agree.
Effective: ____________.
☐ Segregated, See U-____________.
☐ Lands outside unit area of ____________ unit agreement
appvd. eff. ____________. Lse. dated ____________ Extended thru: ____________
☑ Other: [illegible] lands are within the [illegible] KGS eff. 11/1/83.

T. 36 S., R. 26 E., SLM
Sec. 9, N½, N½SE,
Sec. 10, Lot 1, NW¼NE, N½NW, SW¼NW

DEAD CASE:

☐ Withdrawn
☐ Rejection final
☐ Relinquishment
☐ Cancelled
☐ Terminated
☐ Other: ____________

☐ PATENTED

Comments or special instructions: [illegible] rental increased to [illegible]/ac. eff. 7/1/84.

[illegible] 11-22-83
Land Law Examiner/Legal Clerk — Date

☐ Serial page noted.
PUBLIC ROOM

COMPUTER UP-DATED
BY ADJUDICATION
[signature] DEC 01 1983
Clerk — Date

☐ Status records noted.
RECORDS

Clerk — Date

☐ DOCKET

Clerk — Date

Exhibit "B"
- Bal Petition for Rehearing
Docket No. 85-029
Cause No. 186-15

3100
U-30135
(U-942)

NOV 28 1983

Bradley
11-28-83

Certified Mail

Celsius Energy Company
P. O. Box 11070
Salt Lake City, Utah 84147

NOTICE OF RENTAL RATE INCREASE

This office has been notified that based on oil and gas development in San Juan County, Utah, the following lands in oil and gas lease U-30135 are, effective November 1, 1983, within a new addition to the known geologic structure of the Bug field:

T. 36 S., R. 26 E., SLM, Utah
Sec. 9, N½, NW¼SE¼;
Sec. 10, lot 1, NW¼NE¼, N½NW¼, SW¼NW¼.

In accordance with the regulations in 43 CFR 3103.2-2(d), notice is hereby given that beginning July 1, 1984, the rental rate will be $2 per acre.

Chief, Minerals
Adjudication Section

cc: Accounts

SBradley:oa 11/25/83

Exhibit "C"
Baird Petition for Rehearing
Docket No. 85-02
Cause No. 186-15

...OF LAND MANAGEMENT.

IN REPLY REFER TO

3100
(U-922)

TO : Deputy State Director, Operations U-940 Date: November 14, 1

FROM : Deputy State Director, Minerals U-920

SUBJECT : Undefined Known Geologic Structure, Utah

Based on oil and gas development in San Juan County, Utah, the following described lands (3662.68 acres, including 2019.75 Federal acres) comprise a new addition to the Bug KGS, effective November 1, 1983:

Salt Lake Meridian, Utah

T. 35 S., R. ~~36 E.~~ 26 E.,
Secs. 33, 34 and 35;
T. 36 S., R. ~~36 E.~~, 26 E
Secs. 3 and 4;
Sec. 8, NE/4;
Sec. 9, N/2, SE/4;
Sec. 10;
Sec. 15, Lots 1 to 4 inclusive,
W/2NE/4, NW/4, W/2SE/4.

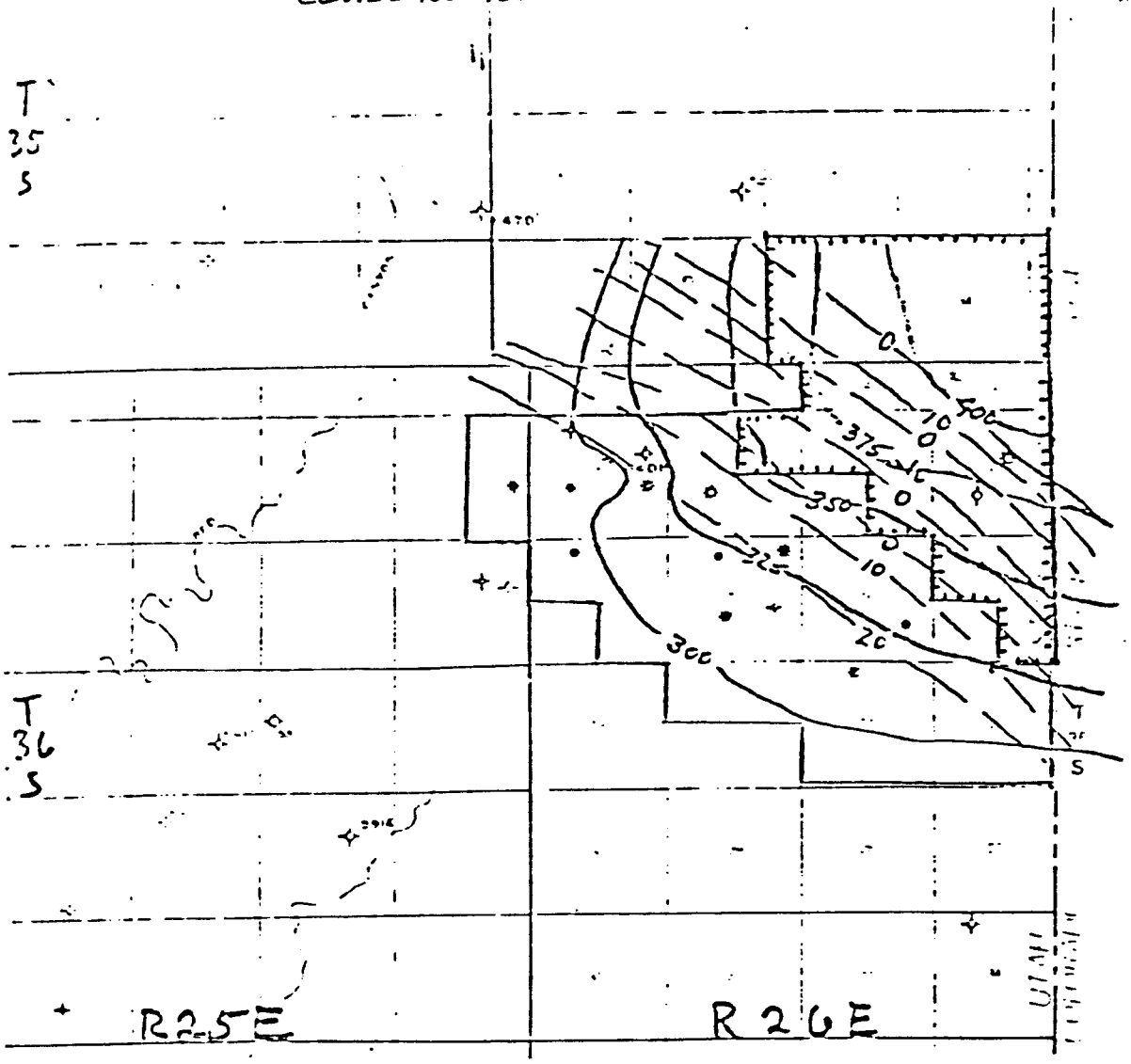
Douglas H. Hilmon

Enclosure

cc: Washington
District Office
Petroleum Investment Company

DSC-1541-2
Mar. 1974

Exhibit "D"
- Bair Petition for Rehearing
Docket No. 85-029
Cause No. 186-15



—400— Structure on top of Desert Creek Limestone C.I.=25'

—10— Isopach of porosity, Desert Creek Limestone, C.I.=10'

Bug KGS Effective 8-28-80, 5,083 acres

Undefined addition, effective 11-1-83, Letter 11-14-83 3663 acres, including 2020 acres Federal

The Bug KGS expanded with production from a new porous zone in the Desert Creek, and a new horizon in the Honaker trail by Celsius Energy: Well 2 Ucolo (SWNE 10-36S-26E) completed 4-19-83 from 6304-6312' for an I.P. of 141 BOPD, 1790 MCFGPD, and 1 Ucolo (NW SW 3-36S-26E) completed 6-5-83 from 4558-4568 for an I.P. of 573 MCFGPD, respectively.

Exhibit "E"
- Board Petition for Rehearing
Docket No. 85-029
Cause No. 186-15

3100.3
U-30135
(U-922)

January 23, 1985

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Celsius Energy Company
P.O. Box 11070
Salt Lake City, Utah 84147

Gentlemen:

According to our records, you are the lessee of 55% of oil and gas lease U-30135. This lease is subject to possible drainage by the Navajo No. 2, in the SE/4 NE/4 Section 10, T. 36 S., R. 26 E., SLM. This well was reported as completed on April 10,1983, in the Desert Creek formation, with an initial potential of 140 BOPD, 1790 MCFPD. Lands within the lease subject to drainage are the NE NE of section 10, T. 36 E., R.26 E., SLM.

Both the terms of your lease and the oil and gas operating regulations require protection of the leased lands from drainage. Accordingly, please advise us by March 29, 1985, of your plans for protecting lease U-30135 from drainage.

You will be expected to drill a protective well on your lease unless you can demonstrate with detailed engineering, geologic, and economic data that such a well would have little or no chance of encountering oil or gas in quantities sufficient to pay the cost of operating the well. You will be obligated to pay compensatory royalty from the day of first production unless you can demonstrate that geologic conditions at depth prevent any oil and/or gas beneath the U-30135 lease being produced from the offsetting well.

Sincerely,

(ORIG. SGD.) W. P. MARTENS

R. A. Henricks
Acting Chief, Branch of Fluid Minerals

bcc: Moab District
Drainage File
Lease file U-30135
Fluids Chron
MSD/Reading

922:APaffoul:db:1-23-85:X3027

Exhibit "F"
-Baird Petition for Rehearing
Docket No. 85-029
Cause No. 186-15

United States Department of the Interior

IN REPLY REFER TO

3105
(U-922)

BUREAU OF LAND MANAGEMENT
UTAH STATE OFFICE
324 SOUTH STATE, SUITE 301
SALT LAKE CITY, UTAH 84111-2303

April 24, 1985

Celsius Energy Company
P.O. Box 11070
Salt Lake City, Utah 84147

Re: Communitization Agreement
N½ Sec. 10, T.36S.,R.26E.
San Juan County, Utah

Gentlemen:

Your letter of April 11, 1985 requests our concurrence in an effective date of April 1, 1985 for a communitization agreement encompassing the referenced area. The policy of this office is to have the effective date of the communitization agreement prior to the date of first production and/or sales of the well producing communitized substances; therefore April 1, 1985 is an unacceptable date. According to our records Ucolo Well No. 2 commenced drilling on March 18, 1983 and was completed for production on April 19, 1983 with a DST run on the Desert Creek Formation with sales. Hence, the communitization agreement should be effective the first of the month in which hydrocarbons were produced for sales.

If you need further information or explanation, do not hesitate to contact this office. Your cooperation in this matter is appreciated.

Sincerely,

R. A. Henricks
Acting Chief, Branch of Fluid Minerals

In so far as judgment is rendered in favor of defendants for the recovery of one-half of the proceeds derived from the sale of the alfalfa seed less one-half of the costs of harvesting it is affirmed, and it is reversed as to the judgment entered on the motion filed for attorney's fee with directions to vacate such judgment and dismiss the motion.

HALLEY, V. C. J., and WELCH, CORN, DAVISON, JOHNSON, O'NEAL and BINGAMAN, JJ., concur.

CARTER OIL CO. v. STATE et al.
No. 34122.

Supreme Court of Oklahoma.
Oct. 23, 1951.

As Corrected Nov. 19, 1951.

In proceeding between Van-Grisso Oil Company and Carter Oil Company for order of Corporation Commission fixing percentage of allowable oil production from 10 acre tract which each such party as lessee at different level might be allowed to produce, the Corporation Commission entered order which allowed well of each lessee to produce 50% of allowable and which in effect required the Carter Oil Company, as first producer, to account for oil taken from tract prior to commencement of production by well of Van-Grisso Oil Company, and the Carter Oil Company appealed. The Supreme Court, O'Neal, J., held that order making division of allowable production was not supported by any competent evidence.

Order reversed.

1. Mines and Minerals ⇐92.15

Power and authority of Corporation Commission relating to conservation of oil is limited to power expressly or by necessary implication granted to it, and such power must be exercised in strict conformity with the grant of power. 52 O.S. Supp. § 86.4.

2. Mines and Minerals ⇐92.23

Provisions of rule of Corporation Commission that well drilled for oil and gas to common source of supply at depth in excess of 2500 feet shall be located not less than 330 feet from property line, and not less than 600 feet from any other producing well, unless otherwise specifically permitted by order of Commission, in absence of establishment by Commission of well-spacing or drilling units in particular pool, governed granting of application by holder of lease for production above 4000 foot level for drilling of well below 2500 foot level on 10-acre tract on which another lessee for production below 4000 foot mark already had producing well. 52 O.S.Supp. §§ 86.4, 87.1(a-d).

3. Mines and Minerals ⇐92.23

Rule of Corporation Commission providing that well drilled for oil and gas to common source of supply at depth in excess of 2500 feet shall be located not less than 330 feet from property line, and not less than 600 feet from any other producing well, unless otherwise specifically permitted by Commission, did not establish 10 acre tract which was but part of oil pool as well spacing and drilling unit, but such rule merely established location of drilling site. 52 O.S.Supp. §§ 86.4, 87.-1(a-d).

4. Constitutional Law ⇐278(1)

Where 10-acre tract was subject to lease for production below 4000 foot level and another lease for prouction above such level, and well below level had been producing for some time when other lessee procured exception to Corporation Commission rule and was allowed to drill second well, order of Commission which in effect made producing lessee account to other lessee for oil previously taken from common source of supply and which operated to limit production from tract below allowable fixed therefor in accordance with statute, was void in that it deprived first producer of his property without due process of law. 52 O.S.Supp. §§ 86.4, 87.1 (a-d).

5. Mines and Minerals ⇐92.48

Power and authority of Corporation Commission in connection with establishment of allowable production from tracts within pool area is limited to restraint in event that owners of wells exceed maximum production established as allowable for unit, and does not extend to the making of an apportionment of the unit allowable between several lessees. 52 O.S.Supp. §§ 86.4, 87.1(a-d).

6. Mines and Minerals ⇐92.49

Statute which expresses and defines power of Commission in administering law applicable to those pools where well-spacing or drilling units have been established may be invoked by Commission to prevent waste and ratable takings of production under well-spacing and unit operations, and to prevent waste of natural resource of value to people, but such statute applies only to pools as to which well-spacing or drilling units and zoning ordinances have previously been established by Commission. 52 O.S.Supp. § 87.1(a-d).

7. Mines and Minerals ⇐47

Law of capture under which oil and gas belongs to person who reduces it to possession, prevails in this state, except as it may be modified by laws enacted under police power, such as proration and spacing statutes, and zoning ordinances.

8. Mines and Minerals ⇐47

Statutes enacted under police power which modify law of capture with relation to oil and gas are not self-executing, but merely authorize administrative boards to issue orders which have effect of regulating or abrogating the law of capture. 52 O.S.Supp. § 87.1(a-d).

9. Mines and Minerals ⇐92.2

The authority of State to prevent waste of oil and gas pools as natural resource of value to general welfare of people is inherent under police power of state. 52 O.S.Supp. § 87.1(a-d).

10. Mines and Minerals ⇐92.59

Order of Corporation Commission having effect of judgment for closing of producing oil wells must be based on competent evidence.

11. Evidence ⇐597

"Substantial evidence" means evidence of substance which induces conviction.

See publication Words and Phrases, for other judicial constructions and definitions of "Substantial Evidence".

12. Mines and Minerals ⇐92.59

In proceeding before Corporation Commission to fix allowable production of oil from 10-acre tract of land subject to lease for production below 4000 foot level and another lease for production above 4000 foot level, and to fix percentage of allowable to be taken by each lessee, order that each party was entitled to produce 50% of allowable of unit involved was not sustained by evidence.

13. Administrative Law and Procedure ⇐462

Boards of quasi judicial powers must base their findings and orders on substantial evidence.

14. Administrative Law and Procedure ⇐676, 763, 791

Public Service Commissions ⇐32

Constitutional provision relating to appeals from decisions of Corporation Commission contemplates reexamination by court of record on appeal and determination by court as to whether findings and conclusions of Commission are sustained by law and substantial evidence. O.S. 1941, Const. art. 9, §§ 20, 35.

15. Administrative Law and Procedure ⇐783

Public Service Commissions ⇐32

When it is claimed that order of Corporation Commission impinges on constitutional rights, court is authorized to exercise its independent judgment as to both law and facts. O.S. 1941, Const. art. 9, §§ 20, 35.

Syllabus by the Court.

1. Under Article 9, Sec. 20, of the constitution of the State of Oklahoma, the Supreme Court review of appealable orders of the Corporation Commission shall be judicial only, and in all appeals involving an asserted violation of any rights of the parties under the constitution of the United States, or the constitution of the State

of Oklahoma, the court shall exercise its own independent judgment as to both the law and the facts.

2. Under the above provision of the constitution, it is provided that in all other appeals from the orders of the Corporation Commission the review of the Supreme Court shall not extend further than to determine whether the Commission has regularly pursued its authority, and whether the findings and conclusions of the Commission are sustained by the law and substantial evidence.

3. Under 52 O.S.Supp. 1949, Sec. 87.1 (a), (b), (c) and (d), the legislature has expressed and defined the powers of the Corporation Commission in the exercise of its administrative control over the production of oil and gas and under these statutory provisions the Commission can only exercise its jurisdiction as it affects pools where it has established well-spacing, drilling, or zoning units, and where the Commission after hearings has determined that the orders are necessary under the state police powers for the prevention of waste as specifically defined in the statute.

4. Under the record made before the Corporation Commission, the evidence shows that the Commission has not established a well-spacing, drilling, or zoning as applied to the Carter-Knox Woods pool, within which pool the two wells in question were drilled. Therefore, the provisions of the statute referred to in paragraph 3 of the syllabus do not apply.

5. Under the Session Laws of 1947, page 327, Sec. 4, and subsequent amendment, Title 52 O.S.Supp., 1949, Sec. 86.4, the legislature authorized the Corporation Commission to promulgate rules and regulations applicable to each common source of supply and to make general orders, rules, and regulations applicable alike to all common sources of supply in the state, but under this grant of power the legislature expressly stated under the statute here considered "that the Corporation Commission shall not, under the provisions of this act, make any order establishing a well-spacing or drilling unit."

6. Under the Corporation Commission's rule 202 a well drilled for oil to a common source of supply in excess of 2500 feet shall be located not less than 330 feet from any lease line and not less than 600 feet from another producing well, unless otherwise permitted by the commission. The Commission's order authorizing the drilling of the second well was a valid order.

7. Where one lessee holds a lease on a ten acre tract within the pool in question covering all production of oil at depths below the 4000 foot level, and another lessee holds a lease on all oil production above the 4000 foot level, and where the lessee holding the lease covering the lower level drills a well to a depth of more than 4000 feet, it is entitled under rule 202 to produce the well from the lower level if within the maximum allowable as established by the Corporation Commission's order applicable to units within the pool.

8. Where the lessee holds the lease on the same ten acre tract to depths above the 4000 foot level, it must, under rule 202, apply to the Corporation Commission for permission to drill the second well. Upon proper application the Commission is authorized to grant the lessee permission to drill the additional well to a depth of 4000 feet as provided in its lease contract, and said lessee is entitled to produce said well within the allowable production as allocated to said unit by the Commission.

9. Where the lessee's well producing oil at a depth below the 4000 foot level was capable of producing 93 barrels daily as of the date of the Corporation Commission's order, and the lessee's well producing at a depth of less than 4000 was capable of producing 55 barrels of oil daily as of that date, and the lessee's well under the 4000 foot level was completed in April, 1948, and the lessee's well above the 4000 foot level was completed in November, 1948, and where the Commission had not established well-spacing, drilling or zoning units under the applicable statutes, the Corporation Commission exceeded its authority under its order to allocate the allowable production equally between the two wells.

10. Under the oil and gas conservation laws of the State of Oklahoma, an order of the Corporation Commission which fixes or limits the daily allowable production of oil from a unit within a common source of supply of an oil producing area, to an amount of oil less than the amount allowed other similar units within said common source of supply is contrary to law.

11. The law of capture under which oil and gas belongs to the one who reduces it to possession obtains in Oklahoma except as it is or may be modified under laws enacted under the police power, such as proration and spacing statutes, and zoning ordinances. Such statutes and ordinances are not self-executing. They simply authorize administrative boards to issue orders that have the effect of regulating or abrogating, in a measure, the law of capture.

12. Where the Corporation Commission's order is in derogation of valid statutory enactments governing the Commission's power and authority to regulate the drilling and production of oil and gas wells, thereby depriving a producer of his property without due process of law, such order impinges on the guarantees embraced within the periphery of the federal and state constitutions, and is thereby void.

13. Where the Commission's findings and order are based on the testimony of two expert witnesses, one stating the upper level formation well produces approximately 75% of recoverable oil, and the lower level well approximately 25% of the recoverable oil, and the other expert stating the lower level will produce approximately 75% and the upper level approximately 25% of the recoverable oil, and the Commission finds the evidence to be "almost of diametrical opposites" and without more finds that each lessee is entitled to 50% of the oil to be produced from the unit, said finding and order based thereon is not sustained by the evidence, and therefore is contrary to law.

W. T. Anglin, Holdenville, Forrest M. Darrough, Joseph A. Gill, Tulsa, John L. Cravens, Oklahoma City, for appellant.

Floyd Green, Conservation Atty. Corporation Commission, Oklahoma City, C. D. Cund, Duncan, T. Murray Robinson, Oklahoma City, for appellees.

O'NEAL, Justice.

This is an appeal from an order of the Corporation Commission of the State of Oklahoma, fixing the allowable production of oil from a ten acre tract of land, and fixing the amount of percentage thereof to be taken by The Carter Oil Company, the holder of an oil and gas lease covering said ten acre tract as to oil and gas produced below the 4000 foot level below the surface, and Van-Grisso Oil Company, the holder of an oil and gas lease covering said tract as to the oil and gas to be produced from above the 4000 foot level below the surface.

The Carter-Knox-Woods pool is a source of supply of oil and gas underlying several sections of land in Township 3 North, Range 5 West, Grady County. The productive portion of the formation is quite narrow horizontally, being approximately 600 to 700 feet wide running in a northwest and southeast direction. The productive portion of said formation is so situated within the section as to dip from the northeast to the southwest at an angle of approximately sixty degrees and is to a depth of approximately 4000 feet, extending from several feet above said depth to several feet below that depth. The Carter Oil Company owned an oil and gas lease covering the ten acre tract here involved, namely: The Southwest Quarter of the Southeast Quarter of the Southeast Quarter of Section 6, Township 3 North, Range 5 West of the I. M. On May 26, 1938 it assigned said oil and gas lease to T. H. McCasland "insofar as said lease covers producing horizon above the depth of 4000 feet." Later Van-Grisso Oil Company, Norman W. Brillhart and Glen S. Norville acquired a part of the interest of McCasland. Under the lease as now owned The Carter Oil Company asserts the right to

produce oil and gas in said formation below the depth of 4000 feet and Van-Grisso Oil Company and associates assert the right to produce from above the depth of 4000 feet.

In April, 1948, The Carter Oil Company drilled, and completed for production, a well on said tract about eighty feet west of the center of said tract. Thereafter, May 17, 1948, Van-Grisso Oil Company and associates filed an application with the Corporation Commission for permission to drill a well on said ten acre tract, as an exception to the Commission's rule 202, which, without such exception, prohibited the drilling of another well below the depth of 2500 feet. The application stated the matter of divided lease ownership; the drilling of a well by The Carter Oil Company, and alleged refusal of The Carter Oil Company to recognize the right of applicant to share in the production of said well, and asserted that unless permission were granted to drill the additional well under an exception to rule 202 of the Commission, they would lose oil rightfully belonging to them.

The application was set for hearing June 11, 1948 before W. H. Sollers, Trial Examiner, at which time W. D. Grisso produced evidence in support of the application. At that hearing W. D. Grisso, representing the applicants, suggested that the matter of division of the allowable production as between the two wells be deferred until after the Van-Grisso well had been drilled so that the capacities of the respective wells could be ascertained and more exact information as to the producing formation might be made known. The Carter Oil Company requested that a temporary division of allowable be fixed prior to the drilling of the Van-Grisso well to be effective upon completion of such well and pending final hearing on the question of division of the allowable production.

Van-Grisso and Republic Natural Gas Company owned a lease on the ten acre tract directly south of the Carter-Van-Grisso ten acre tract. They had drilled a well on the south ten acre tract and filed a consent and waiver as to the drilling of the second well on The Carter-Van-Grisso ten acre tract. After said hearing, and based thereon, the report of the Trial Examiner recommended, and the order of the Corporation Commission granted permission to Van-Grisso to drill the additional well, and fixed temporary division of the normal per well allowable of 200 barrels per day at 50% to each well in the event the Van-Grisso well be completed as a producer. This order was dated June 22, 1948. On or about October 22, 1948 Van-Grisso commenced the drilling of their well and completed it as a producer on November 23, 1948. On November 30, 1948 Van-Grisso and associates filed an application for an order by the Commission fixing a percentage division of the allowable of the two wells. Hearing was had on this application January 5, 1949 resulting in findings of fact and an order; (2) That the allowable from said tract be fixed at the allowable production for other tracts in a common source of supply, or the capacity of the larger well on the tract, whichever is the smaller; (3) That the Conservation Department make quarterly tests of the capacity of the two wells to produce, for the purpose of fixing the allowable production from said tract; (4) That each of the two wells be allowed to produce fifty percent of the allowable from the tract as of June 22, 1948, and that all oil produced from said tract subsequent to that date be divided equally between the owners of the two wells located on said tract; "(5) That the production from the Carter Oil Company's well should be hereafter limited to 10 barrels of oil per day, and the applicants herein should be permitted to produce the remainder of the allowable from said tract from their well until such time as the amount of oil produced from said tract subsequent to June 22nd, 1948 has been produced equally by both parties, and that when such production has been equalized, then the parties should be permitted to produce from said common source of supply underlying said tract of land, equal amounts of the allowable production therefrom." And: "(6) That in the event either of said wells are not capable of producing its share of the oil allowed to be produced from said tract, then the other wells

(sic) should be permitted to produce only such percentage of its share of the allowable production." The Carter Oil Company appeals from said findings and order.

The first contention of The Carter Oil Company is that the retroactive provision of the order of the Corporation Commission making the division of the allowable production of the two wells effective prior to the completion of the second (Van-Grisso) well, is contrary to the applicable law and to the evidence presented in the matter.

The uncontradicted evidence is that The Carter Oil Company completed its well in April, 1948 in the Woods sand formation below a depth of 4000 feet. The Trial Examiner found that The Carter Oil Company has drilled a well for oil and gas on said ten acre tract of land to the Dornick-Hills-Woods sand to a depth of about 4200 feet, and set their casing at a depth of 4005 feet below the surface, and are producing oil from said well at a depth of 4005 feet; that the Dornick-Hills-Woods sand was encountered at a depth of 3986 feet.

As above stated, the Corporation Commission approved said finding and entered an order permitting Van-Grisso and associates to drill a well on said ten acre tract to a depth of 4000 feet for the purpose of producing oil that may be recovered above said depth which belongs to them; that the allowable for wells in that area is 200 barrels per day, and if the well to be drilled by applicants (Van-Grisso and others) is a producing well, the allowable for the unit upon which these two wells are located shall be divided equally between the two wells; that the Corporation Commission should retain jurisdiction over this matter so that when all available information is had and presented, they may adjust the equities between the owners and operators of the two wells, and fix the allowable for the two wells. The evidence shows that between June 22, 1948 and November 23, 1948 The Carter Oil Company well produced 20,229 barrels of oil. The order of the Corporation Commission, not directly, but in effect, required The Carter Oil Company to account to Van-Grisso and associates for the one-half of the 20,229 barrels of oil produced during said period. It required The Carter Oil Company to reduce its rate of taking to ten barrels of oil per day until Van-Grisso and associates shall have equalized said production by producing from their well the difference between the ten barrels per day and the allowable for the unit, or as much thereof as the Van-Grisso well is capable of producing. During the first twenty-three days of November, 1948, The Carter Oil Company well produced at the rate of more than 100 barrels per day. At the time of the hearing said well was producing at the rate of 93 barrels per day. The Van-Grisso well was then producing about 55 barrels per day. The allowable as above noted for the unit was 200 barrels per day, or the capacity of the larger of the two wells, whichever was the lesser. Therefore the allowable for the unit was about 93 barrels per day. The Van-Grisso well was capable of producing only about 55 barrels of oil per day. Therefore, under the order of the Corporation Commission reducing the amount of oil which The Carter Oil Company was permitted to take during the equalization period to ten barrels of oil per day, all the unit would be permitted to take would be about 65 barrels per day, thereby reducing the allowable for the unit to about 28 barrels of oil per day less than the allowable for the unit under the rules of the Commission. That would work a great injustice, not only to The Carter Oil Company, but to the royalty owners under the lease. The latter would be losing one-eighth of about 28 barrels of oil per day during the entire equalization period which we estimate at about 450 days, assuming that the Van-Grisso well will continue to produce as much as 55 barrels per day. The loss to the royalty owners alone would amount to about 1575 barrels of oil. The loss to The Carter Oil Company would be much greater.

There was no well spacing order as applied to the Carter-Knox-Woods pool. Rule 202 of the Corporation Commission applicable, as we take it, to all producing fields, or pools, in the State, provides that a well drilled for oil and gas to a common source of supply in excess of 2500 feet in

depth shall be located not less than 330 feet from any property line, or lease line, and shall be located not less than 600 feet from any other producing or drilling oil and gas well, unless otherwise specifically permitted by order of the Commission, upon hearing; with the proviso that the rule shall not be applicable, if the operator proposing to drill files with the Commission a waiver or consent in writing signed by the lease owner towards whom the well location is proposed to be moved. This has the effect of a ten acre spacing in the absence of a specific spacing order.

The order of the Corporation Commission, in effect, holds that The Carter Oil Company and the Van-Grisso Oil Company and associates are the owners of an oil and gas lease covering the ten acre tract involved in such proportion that from and after June 22, 1948 (the date Van-Grisso and others were given permission to drill their well) each were entitled to take one-half of the allowable production of said tract; that the allowable production of the tract is 200 barrels of oil per day, or the capacity of the larger well drilled thereon. The Carter Oil Company had already drilled a well near the center of the tract which, on June 22, 1948, was producing more than 100 barrels of oil per day. Van-Grisso and others did not commence their well until October 22, 1948 and did not complete it to production until November 23, 1948.

The Carter Oil Company continued to produce from its well, and during that 154 days produced and took 20,229 barrels of oil from its well. The effect of the order of the Corporation Commission is to say to The Carter Oil Company you have, since June 22, 1948, taken from the common source of supply 20,229 barrels of oil which you were not entitled to take because Van-Grisso and associates were entitled to take a like amount but were unable to do so. For that the Corporation Commission will now cut or limit the amount of oil you may take in the future to 10 barrels of oil per day and will allow Van-Grisso and others to take all of the balance of the allowable from the ten acre tract until such time as the amount produced from said tract subsequent to June 22, 1948 has been produced equally by both parties, and that when such production has been equalized, and thereafter, the parties should be permitted to produce from said common source of supply underlying said tract of land equal amounts of the allowable produced.

The Carter Oil Company contends that the effect of said order is to say that as of June 22, 1948 one-half of the oil in place under said tract belonged to Van-Grisso, and the other one-half belonged to The Carter Oil Company. They contend that the effect of the order is not much short of an attempt to give Van-Grisso a judgment for one-half of the oil produced by Carter during the period.

From a consideration of the entire record, it is our view that the order of the Corporation Commission entered as of March 8, 1949, is invalid and void for two reasons:

1. The order as appears on its face is void because it is retroactive in that the order allows each well to produce 50% of the allowable capacity of the two wells to produce as of June 22, 1948; that after the date of the order (March 8, 1949) here complained of, The Carter well is limited to a production of ten barrels of oil per day, and that the Van-Grisso well is permitted to produce the remainder of the allowable from said tract from its well until such time as the amount of oil produced from said tract subsequent to June 22, 1948 has been produced equally between said parties; that the effect of the order deprives Carter of its property rights without due process of law in the oil produced from its lease, and thereby deprives it of its property in violation of the federal and state constitutions.

Consideration must be given to rules 202 and 312 of the Corporation Commission under which the Commission's power and authority was here invoked. Under rule 202 a well drilled for oil in a common source of supply in excess of 2500 feet in depth shall be located not less than 330 feet from the property or lease line, and not less than 600 feet from any other producing or drilling well. The rule then provides that the rule shall not apply if the

operator proposing to drill files with the Commission a waiver in writing signed by the lease owner towards whom the well location is proposing to be moved. Rule 312 provides: "The allowable for any well drilled upon a tract containing less than the unit acreage authorized by the Commission or at a location which does not conform to the pattern established by the Orders of the Commission for the common source of supply shall be adjusted in the ratio that the attributable productive acreage in the unit, as shown by testimony in hearing before the Commission, bears to the established unit acreage."

[1] We have held in H. F. Wilcox Oil & Gas Company v. Walker, 1934, 169 Okl. 33, 35 P.2d 893, and in kindred cases, that the authority of the Corporation Commission relating to the conversation of oil is definitely limited to the power expressly or by necessary implication granted to it and must be exercised in strict conformity therewith. Also, Grison Oil Corporation v. Corporation Commission, 1940, 186 Okl. 548, 99 P.2d 134; H. F. Wilcox Oil & Gas Co. v. Walker, 168 Okl. 355, 32 P.2d 1044.

[2, 3] It is here asserted that the power and authority of the Commission to promulgate the order is vested in the Commission by virtue of the statute, Title 52 O.S. Supp. 1949, § 87.1(a), (b), (c) and (d), which statute expresses and defines the powers of the Commission in administering the law applicable to those pools where *well-spacing or drilling units* have been established. The record here shows that the Commission has not by order, or otherwise, established well-spacing or drilling units in the Carter-Knox-Woods pool. The drilling of wells in the pool is therefore limited here solely by the Commission's rule 202. The powers of the Commission as relied on by the quoted statute are inapplicable here for the reason, as stated, no well-spacing or drilling units have been established by the Commission. We so held in Croxton v. State, 186 Okl. 249, 97 P.2d 11. We cannot subscribe to the contention presented that the effect of the Commission rule 202 establishes the acreage as a well-spacing and drilling unit. That rule simply establishes the location of a drilling site and no more. Unit lines must be established by a proper procedure. That contention is laid at rest by Title 52 O.S.Supp. 1949, § 86.4, which rule provides: "The Commission is hereby empowered after notice of hearing to make all such orders, rules and regulations applicable to each common source of supply as it may find to be necessary or proper and to make general orders, rules and regulations applicable alike to all common sources of supply in the State. It shall not be necessary to publish such order, rule or regulation, after its adoption or promulgation by the Commission, before it shall go into effect, nor shall it be necessary to publish any such order, rule or regulation in each subsequent annual report of the Commission. *Provided, that the Corporation Commission shall not under the provisions of this Act make any order establishing a well spacing or drilling unit.*"

[4, 5] After the Commission granted Van-Grisso the authority to drill a twin well (which order was dated June 22, 1948) Van-Grisso delayed drilling operations until October, 1948, and completed its well in November of 1948. Carter had completed its well in April of 1948. Carter drilled its well under authority of rule 202 and Van-Grisso under authority of the exception provided in said rule. Carter's lease authorized it to produce oil from any point below 4000 feet from the surface of the land. Van-Grisso's lease authorized it to produce from a well at any point above the 4000 foot level. No legal restrictions were imposed upon these contract rights of the parties. The Corporation Commission, under its statutory power, limited the production from each comparable tract of ten acres within the pool area to a daily take of 200 barrels. As the Carter and the Van-Grisso wells were incapable of producing the maximum allowable, the Commission was without statutory power to make and enforce the order here complained of. This for the reason that the Commission's power and authority was one limited to restraint only, in the event that

the owners of the wells exceeded the maximum production established by the Commission's previous order. Gruger v. Phillips Petroleum Company, 192 Okl. 259, 135 P.2d 485.

Here, however, the Commission went beyond this limitation. It assumed the power to make an apportionment of the unit allowable. The Carter well, at the time of the entry of the order, was capable of producing ninety-three barrels daily, and the Van-Grisso well fifty-five barrels daily. This combined production fell short by fifty-two barrels the maximum allowable attributable to the unit. Moreover, the Commission's order, as indicated, provided that each of said wells shall be allowed to produce 50% of the allowable production from the tract as of June 22, 1948 (a date five months preceding the completion of the Van-Grisso well as a producer) and then added the additional burden on Carter that its well, as of the date of the Commission's order, March 8, 1949, be limited to a production of ten barrels of oil daily, and that the Van-Grisso well be permitted to produce the remainder of the allowable from said tract from its well until such time as the amount of oil produced from said tract subsequent to June 22, 1948 has been produced equally by both parties, and that when such production has been equalized, then the parties should be permitted to produce from said common source of supply, underlying said tract of land, equal amounts of the ten acre unit allowable. It will be readily seen that adding Van-Grisso's fifty-five barrel capacity to the Carter ten barrel restricted allowable, falls short by 28 barrels the maximum capacity of the Carter well. The Commission had the power to establish the maximum production from the ten acre unit, thereby protecting adjacent producing units on a comparable allowable, but it had no authority to allocate the allowances between these two producers, this for the reason no restraint was here necessary, as both parties were producing within the limits of the Commission's unit allowable.

[6-9] We think the Commission fell in error in assuming to act under the statute, Title 52 O.S.Supp. 1949, § 87.1(a), (b), (c) and (d), but these statutes, as indicated, only apply to those pools where well-spacing or drilling units and zoning ordinances have, under the authority of this statute, been established by the Commission. These statutes may be invoked by the Commission to prevent waste and ratable takings of production under well-spacing and unit operations, and to prevent waste of a natural resource of inestimable value to the general welfare of the people as a whole. The authority is inherent under the police power of the state.

Questions under these statutes were not before the Commission. Its jurisdiction, as indicated, was invoked under its rule 202 for permission to drill a twin well on the ten acre unit, and the exception provided thereunder for an additional well.

The order of the Commission here considered we hold it to be in excess of the Commission's power and authority, and is thereby void.

[10] 2. The order of the Commission (if conceded to be within its jurisdiction) cannot be sustained here because it is not supported by any competent evidence. In fact, the order is directly opposite to the undisputed evidence in the record. In H. F. Wilcox Oil and Gas Company v. State, 162 Okl. 89, 19 P.2d 347, 349, 86 A.L.R. 421, it was held: "If the corporation commission is to sit as a court and make orders which have the effect of judgments for the closing of producing oil wells, it must proceed in an orderly manner and base its orders on competent evidence * * *."

As already indicated, the Commission order allowed each well to produce 50% of the allowable production from the tract as of June 22, 1948 and the production after said date to be divided equally between the owners of the two wells. The Commission's rule 312 provides, in part, as follows: "The allowable for any well drilled upon a tract containing less than the unit acreage authorized by the Commission or at a location which does not conform to the pattern established by the Orders of the Commission for the common source of supply shall be adjusted in the ratio that the attributable productive acreage in the

unit, as shown by testimony in hearing before the Commission, bears to the established unit acreage."

If rule 312 is properly applicable to the issues here presented, we find the evidence is not in support thereof. Carter and Van-Grisso each called a geologist to testify in support of their respective claims as to the percentage of oil that might be recovered from the productive sand underlying their respective wells. The order summarized their testimony as follows: "There is a very wide variance between the testimony of the applicants and the testimony of The Carter Oil Company as to the percentage of oil and gas, in said common source of supply, that each is entitled to produce; highly skilled geologists educated and experienced, each having access to the same subsurface and surface geological data, have reached technical and scientific conclusions that are almost of diametrical opposites."

[11, 12] Although the Commission found that the evidence is "almost of diametrical opposites" they found and held that each party was entitled to produce 50% of the production from the unit. There being no further or other evidence offered we are constrained to the view that the order is not supported by substantial evidence as required by law. Substantial evidence means evidence of substance, and which induces conviction. Pannell v. Farmers Union Cooperative Gin Association of Sterling, 1943, 192 Okl. 652, 138 P. 2d 817.

[13–15] Boards of quasi judicial powers must base their findings and orders on substantial evidence. This court is vested by virtue of the constitution of Oklahoma with the power to examine into the record on appeal from the Corporation Commission whether in fact the findings and conclusions of the Commission are sustained by law and substantial evidence.

Here where the order complained of impinges on asserted constitutional rights, the court is authorized to exercise its own independent judgment as to both the law and the facts. See Article 9, Section 20, of the Constitution of Oklahoma as amended under authority of Section 35 of said Article. One other suggestion is presented that the order of allocation, being retroactive in character, is not valid. This on the ground that the allocation orders of the Commission are legislative in character and can only act prospectively. Sterling Refining Company v. Walker, 165 Okl. 45, 25 P.2d 312.

The full consideration of the record unerringly leads to the conclusion that the order here is not supported by any substantial evidence and is therefore contrary to law.

The Corporation Commission order No. 22167, insofar as it is in opposition to the views herein expressed, is reversed.

HALLEY, V. C. J., and WELCH, CORN, and GIBSON, JJ., concur.

BINGAMAN, J., concurs in conclusions.

CEDARBAUM v. STATE ex rel. ADAMS, County Atty. of Tulsa County.

No. 34719.

Supreme Court of Oklahoma.

Dec. 18, 1951.

Rehearing Denied Jan. 8, 1952.

The State of Oklahoma, on the relation of Elmer W. Adams, County Attorney of Tulsa County, Oklahoma, brought suit against Edward Cedarbaum, doing business as the Orchid Club, to enjoin the defendant from storing, selling, giving away, or otherwise disposing of intoxicating liquors at the club, and to enjoin defendant from permitting persons to bring intoxicating liquors on the premises and from permitting intoxicated persons to come onto the premises. The District Court of Tulsa County, John Ladner, J., entered a judgment issuing a permanent injunction as prayed for, and the defendant appealed. The Supreme Court, Bingaman, J., held that evidence was sufficient to justify permanent injunction.

Affirmed.

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
IN AND FOR THE STATE OF UTAH

In the matter of the petition of Celsius Energy Company for an Order pooling all interests in the drilling unit delineated as the N½ of Section 10, Township 36 South, Range 26 East, SLBM, Ucolo Field, San Juan County, Utah, and for an expedited hearing in this matter.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER Docket No. 85-029 Cause No. 186-15

This matter was heard before the Board of Oil, Gas & Mining ("Board") at its regularly scheduled hearing at 1 p.m. on June 20, 1985, in the boardroom of the Division of Oil, Gas & Mining, 355 West North Temple, III Triad Center, Suite 301, Salt Lake City, Utah. The following board members, constituting a quorum, were present and participating in the hearing and the decision and order embodied therein:

Gregory P. Williams, Chairman; James W. Carter; Charles R. Henderson; Richard B. Larsen; E. Steele McIntyre. John M. Garr did not participate in this matter.

Mark C. Moench, Assistant Attorney General of the State of Utah, participated in the hearing on behalf of the Board.

Members of the staff of the Division of Oil, Gas & Mining ("Division") present at and participating in the hearing included:

Dr. Dianne R. Nielson, Director
Ronald J. Firth, Associate Director
John R. Baza, Petroleum Engineer

Barbara W. Roberts, Assistant Attorney General of the State of Utah, participated in the hearing on behalf of the Division.

The following appeared at the hearing:

Petitioner Celsius Energy Company ("Celsius" or "Petitioner") by Ruland J. Gill, Jr., Esq., Salt Lake City, Utah.

Respondents Callie Cowling, Marie Grubbs, Marguerite Wilson, Robert Baird, Ed Baird, Jr., and The Adra Baird Estate through its co-executors, Ed Baird, Jr. and Robert Baird ("Bairds") by Albert J. Colton, Esq., Anthony L. Rampton, Esq., and Rosemary J. Beless, Esq., from the law firm of Fabian & Clendenin, Salt Lake City, Utah, associated with Dilts, Dyer, Fossum, and Hatter, Attorneys at Law, Cortez, Colorado.

Respondent Bureau of Land Management appearing by Assad (Jimmy) Rafoul.

Testimony was received from and exhibits were introduced on behalf of Petitioner by Robert E. Pittam, Landman, who was recognized by the Board as an expert in his respective field in the context of this matter. Kenai Oil and Gas, Inc., acting as general partner for Kenai Partners Drilling Program - Series 1981-1, a limited partnership, Denver, Colorado, ("KOGO") an owner in the Ucolo Field, submitted to the Board and Division a letter dated June 19, 1985, supporting the petition of Celsius in all regards as to the size of the spacing and pooling area for the Ucolo Field and as to the pooling order being retroactive to the date of first production. Respondent Bairds appeared to protest the granting of the petition and presented cross-examination to the Petitioner and introduced exhibits and testimony through Robert E. Lauth, certified petroleum geologist, from Durango, Colorado who was recognized by the Board as an expert in his respective field in the context of this matter.

Petitioner timely submitted a "Memorandum of Facts and Law" and Respondent Bairds timely submitted a "Memorandum in Opposition to the Petition of Celsius Energy Company." These documents addressed the facts and issues of the case and specifically presented extensive argument on the issue of whether the Board, in the absence of voluntary pooling of all interests, has authority to pool the interests of a royalty interest owner and whether the Board has authority to make its pooling order retroactive to the date of first production. Petitioner's memorandum also addressed the constitutionality of the Utah Conservation Act. Respondent's Memorandum in Opposition also addressed the issue of the appropriate size of the spacing unit for Ucolo Well No. 2.

Respondent Bairds conceded that the Board has authority to pool the interests of royalty interest owners but contested the Board's authority to make its pooling order retroactive to the date of first production. Respondent Bairds also requested that the pooling order be effective only as to 200.14 acres in the N½ of Section 10 comprising Lots 1 and 2, W½NE¼, SE¼NW¼, S½NE¼NW¼, of Section 10, Township 36 South, Range 26 East, San Juan County, Utah. Petitioner, Respondent Bairds and Respondent Bureau of Land Management stipulated to 200.14 acres in the state of Utah as being drained by the Ucolo No. 2 well. The Division of Oil, Gas and Mining objected to the stipulation contending there was insufficient geological evidence to change the pooling order from 300.14 to 200.14 acres.

The Board, having considered the motions, legal argument, Memoranda of Law, testimony, exhibits, and evidence presented and the statements made by the participants at the hearing, now makes and enters the following:

FINDINGS OF FACT

1. Due and regular notice of the time, place and purpose of the hearing was given by the Division and also given by Petitioner by personal service to all parties required to be so notified in the form and manner and within the time required by law and the rules and regulations of the Board.

2. The Board has jurisdiction over all matters covered by said notice and over all parties interested therein and has the power and authority to make and promulgate the order hereinafter set forth.

3. Petitioner requested an expedited hearing. The Board changed its regularly scheduled hearing from June 27, 1985, to June 20, 1985. Therefore, the request of Petitioner for an expedited hearing is rendered moot. The Board notes Petitioner's request for a signed order by Monday, June 24, 1985, and all parties at the hearing have agreed to a reduced time period to review a proposed order.

Statutory Pooling

4. Celsius Energy Company is a working interest owner and the operator of the Ucolo Well No. 2 located in the SW¼NE¼ of Section 10, Township 36 South, Range 26 East, San Juan County, Utah.

5. The N½ of Section 10, Township 36 South, Range 26 East, San Juan County, Utah (hereinafter referred to as "Section 10"), was established as a 300.14-acre drilling and spacing unit pursuant to Cause No. 186-14, Docket No. 85-009, dated March 28, 1985. Petitioner and KOGO own the working interest and operating rights in all lands embraced in the N½ of Section 10.

6. The Bairds are mineral interest owners of 110.14 acres in the N½ of Section 10. Their interests are subject to outstanding leases with Celsius and KOGO.

7. The Board takes administrative notice of the exhibits and testimony presented in relation to the Ucolo Field under Docket No. 186-10, and Docket No. 85-009, Cause No. 186-14.

8. There are no unleased mineral interest owners within the N½ of Section 10.

9. There are no nonconsenting working interest owners in the N½ of Section 10 as defined in Section 40-6-6, Utah Code Annotated, 1953, as amended.

10. Ucolo Well No. 2 was completed as a gas and condensate well in the Desert Creek zone on April 19, 1983. First production from Ucolo Well No. 2 occurred on or about April 1, 1983. Exploration in the general area of Well No. 2 is noted for expensive and high-risk drilling. Initial production tests from Ucolo Well No. 2 indicated a limited reservoir, the areal extent of which was uncertain. Only through additional lengthy tests could Petitioner determine the outer limits of the pool.

11. The Bureau of Land Management ("BLM") by letter dated January 23, 1985, has demanded that Petitioner either pay compensatory royalty from the date of first production from Ucolo Well No. 2 or drill an offset well for its lands in the N½ of Section 10 under Federal Lease U-30135. In the alternative, Petitioner could space and pool those BLM lands so that the BLM lands being drained would share in production from Ucolo Well No. 2. In February 1985, after a contested hearing in Docket No. 85-009, Cause No. 186-14, the Board granted an order designating all of the N½ of Section 10 as a 300.14 acre spacing unit and Ucolo Well No. 2 as the authorized well for that unit. Petitioner sought voluntary pooling of all interests in the N½ of Section 10.

12. By letter dated April 24, 1985, the BLM notified Petitioner that the Communitization Agreement covering the N½ of Section 10 would not be approved by the BLM unless the effective date was retroactive to first production. All of the working interest owners have consented to communitize their interests in this spacing unit effective retroactively to the date of first production. Petitioner and KOGO will be adversely affected if a communitization agreement covering BLM lands in the N½ of Section 10, or some part thereof is not approved by June 30, 1985, the expiration date of Federal Lease U-30135.

13. Based upon the evidence presented and the stipulations of the parties, we find the Bairds have not voluntarily pooled their interests and that their interests in the drill site spacing unit for Ucolo Well No. 2 consisting of 200.14 acres as discussed below should be statutorily pooled as of the date specified below.

Spacing Unit Size

14. Petitioner has provided expert opinion that the Ucolo Well No. 2 is draining an area of 258 acres. In finding of Fact No. 15 in the Order for Docket No. 85-009, Cause No. 186-14, it is stated that "the estimated drainage area for Ucolo Well No. 2 is 258 acres. The actual drainage area could be slightly larger or slightly smaller than 258 acres." As previously stated, the Board takes administrative notice of record in Docket No. 85-009, Cause No. 186-14. Petitioner concedes that a portion of the Desert Creek pool may be situated in Colorado. Respondent Bairds have provided expert opinion through an affidavit and testimony that the drainage area of Ucolo Well No. 2 may drain an area ranging from 163 acres to 220 acres. The Board notes the wildcat nature of drilling in the Ucolo field, that there are three dry holes in the Desert Creek porosity zone in the

vicinity of Ucolo Well No. 2, and the difficulty in determining the areal extent of the Desert Creek pool in the Utah portion of the Ucolo field. The affidavit of the geology witness for Respondent Bairds is that the testimony given by Petitioner Celsius' geologists and engineer is "reasonable but of necessity is interpretive since at this point the Ucolo field is a one-well field." Respondent's geology witness also stated that the drainage area for Ucolo Well No. 2 "could very well have much smaller than the 258 acres presented by Celsius. The drainage area appears to be somewhere between 110 acres upon which revenues have been paid, and the 300 acres requested by Celsius." The Board notes that the Petitioner and the Respondent Bairds witnesses' testimony is within the margin of error of interpretation of the type of data available to the various parties.

15. At the hearing in this matter, additional evidence was presented with respect to the size of the area drained by Ucolo Well No. 2. Petitioner Celsius, Respondent Bairds and the BLM stipulated that based upon either new data available to Petitioner or a different interpretation presented by Respondent Bairds that a drainage area of 200.14 acres in Utah should be the spacing unit and the pooled area for Ucolo Well No. 2. Based upon such additional evidence and the stipulation of the parties that the lands in Utah drained by Ucolo Well No. 2 are 200.14 acres, we find that we have obtained sufficient credible evidence upon which to base this change in the spacing order under Cause No. 186-14. The order in Cause No. 186-14 should be amended accordingly. The Board notes that all parties received in advance a copy of Respondent's "Memorandum in Opposition" which sets forth clearly that the issue of the size of the spacing unit would be addressed at the hearing in this matter.

16. One well within the 200.14 acres of the N½ of Section 10 will economically and efficiently drain the gas and associated hydrocarbons from the Desert Creek formation. A 200.14 acre drilling and spacing unit is not smaller than the maximum area in Utah that can be efficiently and economically drained by Ucolo Well No. 2.

17. A single-well drilling and spacing unit of 200.14 acres comprising a portion of the N½ of Section 10 should be established to prevent waste of gas and associated hydrocarbons, to avoid the drilling of unnecessary wells and to protect the correlative rights of all parties holding interests in the area.

Retroactive Pooling

18. Petitioner proposed a rule stated as follows: "The Board has authority to enter a pooling order retroactive to the date of first production. The Board is not required to exercise that authority if it would be unjust and unreasonable to do so. Generally, the pooling order should be retroactive to the date the offsetting nonproducing owner was prevented by a fieldwide spacing order or a statewide spacing rule from exercising his rights under the rule of capture." Petitioner contended that the pooling order should be retroactive to first production to protect the correlative rights of the BLM and to avoid an unjust enrichment to the Bairds and other royalty owners.

19. Respondent Bairds proposed a rule that the date of the pooling order should not be retroactive back beyond the date of the spacing order entered by the Board on March 28, 1985, in Cause No. 186-14. Respondent contended in part that they had found no case which provides that a pooling order should apply retroactively to a date of first production which is prior to a spacing order, when the owner of the nonproductive

lease was not prohibited from drilling a protective well prior to the spacing order. Respondent also contended that when the owner of the nonproductive lease is not precluded from drilling a well prior to the spacing order, his property rights have not been taken from him and he is not entitled to recompense in the form of pro rata share of production from the unit well for this period of time. Respondent further contended that a pooling order retroactive beyond the date of the spacing order, March 28, 1985, would be inequitable to the Bairds. The statements of fact contained in Respondent's Memorandum in Opposition are received into the record.

CONCLUSIONS OF LAW

20. Due and regular notice of the time, place and subject matter of this hearing in Docket No. 85-029, Cause No. 186-15, was given to all interested persons in accordance with applicable law and with the rules and regulations of the Board.

21. The Board has jurisdiction over all matters covered by said notice and over all parties interested therein and has the power and authority to make and promulgate the order hereinafter set forth.

22. Pursuant to Section 40-6-6(5), U.C.A. 1953, as amended, the Board has authority to pool "all interests in the drilling unit," including royalty owners, "for all purposes" and all interests including royalty interests are subject to statutory pooling under the Utah Conservation Act §§40-6-1 et. seq.

23. Section 40-6-6(5), U.C.A. 1953, as amended, provides that a statutory pooling order such as this "shall be made upon terms and conditions that are just and reasonable." The Board is also required by statute to protect correlative rights. §40-6-1-, U.C.A. 1953.

24. Section 40-6-6(5) requires that the Board pool upon terms that are just and reasonable. This would mean that each owner in the pool is entitled to share in the benefits of production in proportion to their ownership of the pool. In the ordinary cases, this is accomplished by allowing each owner in a spacing unit to participate in production from the well from first production. The Board has the power and authority to make pooling effective as of first production. However, there may be circumstances in which application of this rule would not be just and reasonable; and in such cases the Board has the power and authority to make the pooling effective as of another date.

25. Upon completion of the Ucolo Well No. 2 as a gas well, Rule C-3(b) of the Board's General Rules and Regulations which establishes statewide spacing in the absence of special field/pool spacing precludes the drilling for production of an additional Desert Creek gas well in the N½ of Section 10. Thus, the general rule which we stated which makes pooling effective as of first production should apply in the absence of special circumstances which would make pooling as of such date not just and reasonable. We find no such circumstances in this case.

26. The matters presented at the hearing were divided into three phases: (1) statutory pooling, (2) size of the spacing unit for Ucolo Well No. 2, and (3) retroactive date of a statutory pooling order. The Board's order herein as to phases (1) and (3) is final. The Board's order in phase (2) is final subject to the filing of a protest by any party not present at the June 20, 1985, hearing in this matter. The Petitioner, in cooperation with the Division, should file a petition and the Division should provide notice of a petition for an order to show cause why phase (2) above is not just and reasonable and entered in accordance with law.

27. The main contested issue in this matter is whether the Board has authority to force pool an interest in a well retroactive to the date of first production or to a date of establishment of drilling and spacing units.

28. Legal precedence on retroactive pooling is far from clear. In deciding this issue, some courts place great emphasis upon the rule of capture while other courts and commissions place the emphasis on the protection of correlative rights. Authority from Oklahoma, Louisiana and Colorado suggest that this Board cannot force pool retroactively, at least not prior to an establishment of a drilling and spacing unit. Authority from Nebraska and Wyoming suggests this Board can force pool retroactive to the date of first production. Dicta in the Utah case of Bennion v. Board of Oil, Gas and Mining, 675 P.2d 1135 (Utah 1983), and the position of the State's Assistant Attorney General representing the Division suggest that because of the single-well drilling limit in the Board's statewide spacing Rule C-3(b), the nonconsenting mineral owner is not at liberty to drill a second well in the unit.

29. The Board has received and duly considered adequate, substantial evidence to support its decision herein, and that decision is supported by the evidence.

30. The granting of the Petitioner's petition, as further modified by the stipulation of the parties to a reduced spaced and pooled area of 200.14 acres, would result in a protection of correlative rights and would assist in preventing the waste of gas and associated hydrocarbon substances from the Desert Creek Formation in the Ucolo Field.

ORDER

IT IS THEREFORE ORDERED:

31. The Order in Cause 186-14, Docket 85-009 is amended so that the drilling unit for Ucolo Well No. 2 shall be reduced to 200.14 acres comprising Lots 1 and 2, W½NE¼, SE¼NW¼, S½NE¼NW¼ of said Section 10, Township 36 South, Range 26 East, SLBM, San Juan County, Utah.

32. The owners of all interest in the drilling unit described in paragraph 31 are statutorily pooled for all purposes until such time as they voluntarily execute a communitization agreement compatible with this order.

33. All interest owners in the lands identified in paragraph 31 shall share in the production from Ucolo Well No. 2 in the proportion that their interest bears to the acreage in said unit.

34. This statutory pooling order shall be retroactive to the date of first production from Ucolo Well No. 2, that is, April 1, 1983.[1]

35. The Board retains continuing jurisdiction over all matters covered by this order and over all parties affected thereby. This is a final order of the Board.

36. The Petitioner, in cooperation with the Division, should file a petition for an order to show cause why the stipulated spacing unit of 200.14 acres for the Ucolo Well No. 2 is not just and reasonable and entered in accordance with law.

[1]The Board's vote on the issue of retroactive pooling was Board members McIntyre, Henderson, Carter and Chairman Williams for and Board member Larsen opposed.

ENTERED THIS 24th day of June, 1985.

BOARD OF OIL, GAS AND MINING

By _____
GREGORY P. WILLIAMS
Chairman

Approved as to form:

_____
MARK C. MOENCH
Assistant Attorney General

CERTIFICATE OF DELIVERY

I hereby certify that I hand delivered a true and correct copy of the foregoing Petitioner's Memorandum of Facts and Law to the following party on this 12th day of June, 1985:

Rosemary J. Beless
Fabian & Clendenin
Continental Bank Building
Salt Lake City, UT 84111

and mailed, postage prepaid, copies of the same to:

R. A. Hendricks
Acting Chief, Branch of Fluid Minerals
Utah State Office
Bureau of Land Management
324 South State Street, Suite 301
Salt Lake City, UT 84111

Kenai Partners Drilling
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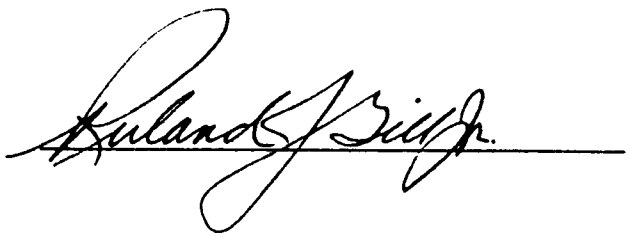

BEFORE THE BOARD OF OIL, GAS & MINING
DEPARTMENT OF NATURAL RESOURCES
IN AND FOR THE STATE OF UTAH

IN THE MATTER OF THE PETITION OF CELSIUS ENERGY COMPANY FOR AN ORDER POOLING ALL INTERESTS IN THE DRILLING UNIT DELINEATED AS THE N1/2 OF SECTION 10, TOWNSHIP 36 SOUTH, RANGE 26 EAST, SLB&M, UCOLO FIELD, SAN JUAN COUNTY, UTAH, AND FOR AN EXPEDITED HEARING IN THIS MATTER	:	ORDER GRANTING RESPONDENTS BAIRDS' MOTION FOR EXPEDITED DISCOVERY SCHEDULE DOCKET NO. 85-029 CAUSE NO. 186-15

The motion by Respondents Callie Cowling, Marie Grubbs, Marguerite Wilson, Robert Baird, Ed Baird, Jr., and The Adra Baird Estate through its Co-Executors, Ed Baird, Jr. and Robert Baird, (hereinafter referred to as "Bairds'), by and through their Utah attorneys Fabian & Clendenin in association with the Colorado law firm of Dilts, Dyer, Fossum & Hatter, for an expedited discovery schedule for discovery against Petitioner Celsius Energy Company, having been duly considered and the Utah Board of Oil, Gas & Mining having been fully advised on the premises thereof, the Board hereby orders that Respondents Bairds' motion for expedited discovery schedule is granted and that Petitioner must produce those documents requested by Respondents Bairds in regard to this matter on or before May 29, 1985.

DATED this ____ day of May, 1985.

STATE OF UTAH
BOARD OF OIL, GAS & MINING

BY _____
Gregory P. Williams
Chairman

APPROVED AS TO FORM:

_____
Mark C. Moench
Assistant Attorney General