1978

Richard Gerald Dye, aka R. Gerald Dye, and Gas Producing Enterprises, Inc. , A Corporation v. Miller & Viele, A Corporation Lee Charles Miller, Lesley F. Lewis, and Chevron Oil Company, A Corporation v. All Other Persons Unknown Claiming Any Right, Title, Estate, Lien Or Interest In the Real Property Described In the Complaint Adverse To Plaintiffs' Ownership, Or Any Cloud Upon Plaintiffs' Title thereto : Brief of Appellant

Utah Supreme Court

IN THE SUPREME COURT
OF THE STATE OF UTAH

RICHARD GERALD DYE, aka R. GERALD DYE, and GAS PRODUCING ENTERPRISES, INC., a corporation,

Plaintiffs,

-vs-

MILLER & VIELE, a corporation, LEE CHARLES MILLER, LESLEY F. LEWIS, and CHEVRON OIL COMPANY, a corporation,

Defendants,

and

All Other Persons Unknown Claiming Any Right, Title, Estate, Lien or Interest in the Real Property Described in the Complaint Adverse to Plaintiffs' Ownership, or any Cloud upon Plaintiffs' Title Thereto.

Case No. 15475

FILED

FEB - 2 1978

Clerk, Supreme Court, Utah

BRIEF OF APPELLANT

Appeal From the Summary Judgment of the
Fourth District Court for Duchesne County
Honorable David Sam, Judge

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IN THE SUPREME COURT
OF THE STATE OF UTAH

RICHARD GERALD DYE, aka R. GERALD DYE, and GAS PRODUCING ENTERPRISES, INC., a corporation, Plaintiffs, -vs- MILLER & VIELE, a corporation, LEE CHARLES MILLER, LESLEY F. LEWIS, and CHEVRON OIL COMPANY, a corporation, Defendants, and All Other Persons Unknown Claiming Any Right, Title, Estate, Lien or Interest in the Real Property Described in the Complaint Adverse to Plaintiffs' Ownership, or any Cloud upon Plaintiffs' Title Thereto.	Case No. 15475

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BRIEF OF APPELLANT

STATEMENT OF THE KIND OF CASE

This is an action to quiet title in an undivided one-half mineral interest.

DISPOSITION IN THE LOWER COURT

There was no trial. The District Court granted Plain-

tiffs' Motion for Summary Judgment brought under Rule 56 of the Utah Rules of Civil Procedure. Defendant Miller & Viele's Motion for Summary Judgment was denied. The court held that Defendant Miller & Viele was barred by the applicable statutes of limitation from interposing defenses to Plaintiff Richard Gerald Dye's tax title to the disputed one-half mineral interest. Based on that holding, the District Court granted judgment for Plaintiffs quieting title in Plaintiff Richard Gerald Dye to the disputed one-half mineral interest. The court further ordered Defendant Chevron Oil Company to disburse to Plaintiffs accrued and future shares of oil and gas production attributable to the disputed one-half mineral interest.

RELIEF SOUGHT ON APPEAL

Miller & Viele seeks a reversal of the trial court's grant of Summary Judgment in favor of Plaintiffs and its denial of Defendant Miller & Viele's Motion for Summary Judgment, with the accompanying determination that Miller & Viele is not barred by the statutes of limitation from interposing defenses to Plaintiff Richard Gerald Dye's tax title to the disputed one-half mineral interest. The case should then be remanded for trial on the issues of the validity of Plaintiff Richard Gerald Dye's tax title to the disputed one-half mineral interest and the relative priority of that tax title with respect to Miller & Viele's title to the disputed one-half mineral interest. The case

should also be remanded for trial on the issue of whether the predecessor in interest of Plaintiff Richard Gerald Dye acquiesced in Miller & Viele's title to the one-half mineral interest.

IDENTIFICATION OF THE PARTIES AND EXPLANATION OF ABREVIATIONS

Miller & Viele, a Defendant and the Appellant, hereinafter will be referred to as Miller & Viele. Defendant Chevron Oil Company hereinafter will be referred to as Chevron or, where appropriate, by its full name. Richard Gerald Dye, a Plaintiff and Respondent, hereinafter will be referred to as Dye or, where appropriate, by his full name. Plaintiff and Respondent Gas Producing Enterprises, Inc., hereinafter will be referred to by its complete name. Richard Gerald Dye and Gas Producing Enterprises, Inc., collectively, hereinafter will be referred to as Plaintiffs or, where appropriate, by their names.

"R" refers to a page reference in the record of the case.

STATEMENT OF FACTS

Plaintiffs Richard Gerald Dye and Gas Producing Enterprises, Inc., brought this action to quiet title to an undivided one-half mineral interest in real property located in Duchesne County (R-1). Plaintiffs filed a Motion for Summary Judgment under Rule 56 of the Utah

Rules of Civil Procedure and alleged that Miller & Viele was barred by the applicable statutes of limitation from interposing defenses to Dye's tax title (R-74;103). In the alternative, Plaintiffs alleged that Dye held title to the disputed one-half mineral interest by adverse possession (R-2;106).

The District Court held that Miller & Viele was barred by the applicable statutes of limitation from interposing defenses to Dye's tax title (R-220). The court also held that Dye did not have title to the disputed one-half mineral interest by adverse possession (R-221). Miller & Viele does not challenge this latter determination nor have Plaintiffs appealed from this portion of the Judgment. The sole question before the court, then, is whether Miller & Viele is barred by the applicable statutes of limitation from challenging Dye's tax title.

Both Dye and Miller & Viele claim title to the disputed one-half mineral interest. Defendant Miller & Viele's title to the one-half mineral interest stems from the 1928 foreclosure of a valid mortgage in the real property and a sheriff's deed to Miller & Viele's predecessor in interest (R-230). The property was ultimately conveyed to Miller & Viele in June of 1930 (R-231). On October 15, 1946, Miller & Viele conveyed the real property by deed to Plaintiff Dye's predecessor in interest, reserving to itself a one-half mineral interest in "all gas and mineral

rights, including oils and hydrocarbons" (R-73;233). This 1946 deed was solicited and recorded by Dye's predecessor in interest (R-132;233). It is the one-half mineral interest reserved in the 1946 deed which alone is the subject of this quiet title action.

Dye's claim to Miller & Viele's reserved one-half mineral interest is based upon a 1940 Quit Claim Deed from Duchesne County to Dye's predecessor in interest (R-231). Duchesne County claimed an interest in the real property by virtue of an auditor's tax deed issued to Duchesne County on May 9, 1932 (R-231). Dye's claim to the title of the one-half mineral interest reserved by Miller & Viele in its conveyance to Dye's predecessor in interest in 1946 is based upon this tax deed (R-231).

Miller & Viele leased its interest in the one-half mineral interest to the California Oil Company on February 18, 1964 (R-234). California Oil Company changed its name to Chevron Oil Company subsequent to entering into this lease with Defendant Miller & Viele and before filing this lawsuit, and succeeded to all interests of California Oil Company in the lease (R-234).

Dye leased his interest in the one-half mineral interest to Flying Diamond Land and Mineral Corporation on March 26, 1970 (R-234). The oil and gas lease of Dye and Flying Diamond Land and Mineral Corporation was assigned to Plaintiff Gas Producing Enterprises, Inc by two (2) conveyances dated

May 7, 1970, and April 6, 1971 (R-234).

On August 11, 1971, the Utah Board of Oil and Gas Conservation entered an Order in Cause No. 131-14 imposing a 640 acre drilling unit for all of Section 29, of Township 1 South, Range 1 West, U.S.M., including the real property in which Plaintiff Dye and Defendant Miller & Viele claim the one-half mineral interest, which is located in the NW1/4NE1/4 of Section 29 (R-86;234-35).

The aforesaid Order of the Utah Board of Oil and Gas Conservation directed that only one (1) well is permitted to be drilled for production of oil, gas, or hydrocarbons, from the common source of supply on the aforesaid 640 acre drilling unit comprised of all of Section 29 (R-88;235

On October 30, 1973; a Communitization Agreement was entered into between Defendant Chevron Oil Company, Defenda Miller & Viele's lessee, and the Plaintiff Gas Producing Enterprises, Inc., and the other mineral lessees with leasehold interests in the properties covered by the 640 acre drilling unit imposed on said Section 29 by the Utah Board of Oil and Gas Conservation (see page 2 et. seq. of Appendix and page 191 of Abstract of Title; the Abstract of Title wa filed as an Exhibit to Plaintiff's Motion for Summary Judgm but cannot now be located by the clerks of the lower or the Supreme Court. Pursuant to stipulation between counsel, a substitute copy of the Abstract will be filed hereafter if the original is not located; R-235).

Defendant Chevron Oil Company, Miller & Viele's lessee, was designated in the Communitization Agreement to be the operator of the entire 640 acre unit and the only well permitted to be drilled on said Section 29 pursuant to the aforesaid Order of the Utah Board of Oil and Gas Conservation (R-236).

Pursuant to the Order of the Utah Board of Oil and Gas Conservation and the aforesaid Communitization Agreement, Defendant Chevron Oil Company commenced the construction of a well on the SW1/4NW1/4SE1/4 of said Section 29, on December 6, 1973, and completed said well to a depth of 12,700 feet as a producing well on March 26, 1974 (R-236). Since its completion, this well has been producing oil and gas minerals continuously from the common source of supply for all of the aforesaid 640 acre drilling unit of Section 29 (R-236; see illustration on page 1 of Appendix).

The defenses of Defendants Miller & Viele and Chevron Oil Company to Plaintiff Dye's tax title to the disputed one-half mineral interest were interposed by answers filed, respectively, June 16, 1976, and June 21, 1976 (R-16;21; 236).

There is no dispute over title to the surface estate of the real property or the other one-half mineral interest.

CASES CITED

TEXT CITATIONS

STATUTES CITED

ARGUMENT

POINT ONE

MILLER & VIELE IS NOT BARRED BY THE APPLICABLE STATUTES OF LIMITATION FROM INTERPOSING DEFENSES TO PLAINTIFF DYE'S TAX TITLE TO THE DISPUTED ONE-HALF MINERAL INTEREST BECAUSE MILLER & VIELE WAS IN POSSESSION OF THE DISPUTED ONE-HALF MINERAL INTEREST WITHIN FOUR (4) YEARS PRIOR TO THE INTERPOSITION OF ITS DEFENSES IN THIS LAWSUIT TO DYE'S TAX TITLE.

Initially it must be observed that inasmuch as this is an appeal from a Summary Judgment, all facts must be viewed in the light most favorable to Miller & Viele. E.g., Whitman v. W.T. Grant Co., 16 U.2d 81, 395 P.2d 918 (1964); Thompson v. Ford Motor Co., 16 U.2d 30, 395 P.2d 62 (1964). In addition, the only dispute is over title to a one-half mineral interest that is subject to a drilling unit order and a communitization agreement. There is no challenge to ownership of the surface or the other one-half mineral interest.

The issue for determination on appeal is whether or not Miller & Viele is barred by the applicable statutes of limitation from interposing its defenses to Dye's tax title. This issue in turn raises the real question to be determined -- whether Miller & Viele was in actual possession of the disputed mineral interest within four (4) years prior to the interposition of its defenses in this lawsuit to Dye's tax title.

On Summary Judgment, the lower court held that Defend Miller & Viele was barred by the applicable statutes of limitation from interposing defenses to Plaintiff Dye's tax title. The applicable statutes, however, provide that defenses to tax titles can be interposed when the party raising the defense to the tax title has been in possession of the disputed property within four (4) years prior to the interposition of the defense:

> [N]o such action or defense shall be commenced or interposed more than four years after the date of the tax deed, conveyance, or transfer creating such tax title unless the person commencing or interposing such action or defense or his predecessor has actually occupied or been in possession of such property within four (4) years prior to the commencement or interposition of such action or defense or within one (1) year from the effective date of this amendment [Utah Code Ann. §78-12-5.1 emphasis added].

Utah Code Annotated §78-12-5.2, which in part also bars the interposition of defenses to tax titles after four (4) years from the issuance of the tax title, also states:

> Provided, however, that this section shall not bar any action or defense by the owner of the legal title to such property where he or his predecessor has actually occupied or been in actual possession of such property within four (4) years from the commencement or interposition of such action or defense.

In both of these statutes, the phrases "in possession of such property" (78-12-5.1), and "actual possession of

such property" (78-12-5.2), refer to the property for which quiet title is being sought. In this case, since the only property in dispute between the plaintiffs and the defendants is the one-half mineral interest, possession of "such property" means possession of the one-half mineral interest.

Accordingly, Miller & Viele is not barred by the statutes of limitation from interposing defenses to Plaintiff Dye's tax title if, within four (4) years prior to the interposition of its defenses to Dye's tax title, Miller & Viele was in "actual possession" of the disputed one-half mineral interest.

Miller & Viele was in fact in possession of the disputed one-half mineral interest through its lessee, Chevron Oil Company ("Chevron"), within four (4) years prior to the interposition of its defenses to Dye's tax title. It is a well established principal of law that possession of property by a lessee is deemed to be possession of property by the lessor. E.g., Phelps v. Kroll, 235 N.W. 67 (Iowa 1931); see, e.g., C.I.R. v. Center Investment Company, 108 F.2d 190 (9th Cir.), rev'd on other grounds, 309 U.S. 639 (1940); Brunson v. Bailey, 16 So.2d 9 (Ala. 1944); Robinson v. Smith, 128 S.W.2d 27 (Tex. 1939); Steele v. Harris, 2 S.W.2d 537 (Tex. 1928); McWharten v. Oliver, 2 S.W.2d 281 (Tex. 1928); 3 Am Jur. 2d "Adverse Possession" Section 15; 2 C.J.S. "Adverse Possession" Section 47.

On March 26, 1974, Chevron, as Miller & Viele's lessee

of the disputed one-half mineral interest, completed a well. Since its completion, the well has been operated by Chevron and it has continously produced oil and gas from the common source of supply for the disputed one-half mineral interest property and the other surrounding properties. Miller & Viele interposed its defenses to Dye's tax title in its Answer which was filed with the Court on June 17, 1976. Thus Miller & Viele's possession of the disputed one-half mineral interest by and through its lessee, Chevron, was within four (4) years prior to the interposition of its defenses to Dye's tax titles. Accordingly, Miller & Viele is not barred from interposing defenses to Plaintiff Dye's tax title.

The oil and gas well constructed and operated by Chevron, as Miller & Viele's lessee, was located on the 640 acre tract or unit established by the Utah Board of Oil and Gas Conservation in its Order and Cause No. 131-14, of August 11, 1971. This Order of the Utah Board of Oil and Gas Conservation provided that only one (1) well could be drilled for production of oil, gas, or hydrocarbons, from "the common source of supply" in a 640 acre unit specified by the Board in its Order. This 640 acre unit established by the Board included all of Section 29, Township 1 South, Range 1 West, U.S.M., ("Section 29"). The disputed one-half mineral interest is in land located in the NW1/4NE1/4 of Section 29 (see illustration on page of Appendix).

This Order of the Utah Board of Oil and Gas Conservation was issued pursuant to authority granted the Board in Section 40-6-6(a) et. seq., Utah Code Annotated:

> To prevent waste of oil or gas, to avoid the drilling of unnecessary wells, or to protect correlative rights, the Commission [now "Board"; see 1977 Supp.], upon its own notice herein provided, shall have the power to establish drilling units covering any pool. . . . . [40-6-6(a)]
>
> . . . .
>
> After an Order fixing drilling units has been entered by the Commission, the commencement of drilling of any well or wells into any common source of supply for the purpose of producing oil or gas therefrom, at a location other than authorized by the order, is hereby prohibited. The operation of any wells drilled in violation of an order fixing drilling units is prohibited [40-6-6(e)].

On October 30, 1973, Chevron (Miller & Viele's lessee), Plaintiff Gas Producing Enterprises, Inc., and others with a leasehold interest in the properties in Section 29, entered into a Communitization Agreement, the purpose of which is set forth in the paragraph on the first page of the Agreement which states:

> [T]he parties hereto own working, royalty or other leasehold interest, or operating rights under the oil and gas leases and the land subject to this Agreement which cannot be independently developed and operated in conformity with the well spacing program established for the field or area in which said lands are located.

The parties to this Communitization Agreement were precluded by the terms of the Order of the Utah Board of Oil and Gas Conservation from any other alternative than to enter into this pooling agreement whereby they designated an operator to produce from and operate one well for the benefit of all holders of mineral interests within the 640 acre drilling unit covered by this pooling agreement.

The Communitization Agreement provides that an operator will govern the operations of the well which was constructed and completed for the purpose of producing oil and gas minerals from the common source of supply in Section 29. Chevron was selected as the operator of that Section 29 well pursuant to the provisions of the Communitization Agreement.

The well completed by Chevron on March 26, 1974, ("Chevron well"), which has produced oil and gas continuously ever since as aforesaid, is located in the SW1/4NW1/4SE1/4 of Section 29. The oil and gas produced from the Chevron well comes from the "common source of supply" of oil, gas, and associated hydrocarbons for all of Section 29, including the disputed one-half mineral interest property (R-234-35; see Board's Findings of Fact and Order at R-87). Production of oil, gas, and associated hydrocarbons from the Chevron well by Chevron is therefore production, in part, of oil, gas, and

associated hydrocarbons from the disputed one-half mineral interest property.

The Utah Supreme Court has defined "actual possession" in another context as follows:

> Actual possession exists where the thing is in the immediate occupancy of the party; B.DIET. p. 349 or, as the court in this case instructed the jury, actual possession is the subjugation of the premises to the use and dominion of the claimant. [Lillianskyoldt v. Goss, 2 Utah 297 (1877)].

Production of oil and gas by Chevron from the common source of supply for the disputed one-half mineral interest property and surrounding properties, clearly constitutes subjugation of the disputed one-half mineral interest to the use and dominion of Chevron and therefore its lessor, Miller & Viele. In addition, the minerals extracted by Chevron which come, in part, from the disputed one-half mineral interest property, are "in the immediate occupancy" of Chevron, and therefore Miller & Viele.

Other courts ruling on this issue have held that well drilling operations on pooled lands are operations for the extraction of minerals from each of the pooled properties by their respective mineral interest leaseholders.

In Everts v. Phillips Petroleum Co., 218 La. 835, 51 So.2d 87 (1950), the responsible state agency issued a drilling unit order similar to the drilling unit order issued in the instant case, allowing only one well to be

drilled within a large acreage area. The issue in that case was whether the operation of one well established pursuant to that drilling unit order constituted a drilling of minerals from each of the lands within the drilling unit established by the drilling unit order. The well established pursuant to the drilling unit order was called the "Fitzsimmons Well". The land included in the drilling unit, but upon which no well was located, and which land was owned by the plaintiff in that case, was called the "canal strip". The court held that

> the drilling of the Fitzsimmons Well constituted a drilling of the canal strip. It follows, then, that the provisions of the lease respecting the payment of the one and one-half percent royalty and adjoining production was inapplicable as there was drilling on Plaintiff's land [51 So.2d at 92; emphasis added].

In Dixon v. American Liberty Oil Company, 77 So.2d 533, 4 Oil and Gas Reporter 17 (1954), the operator of an oil and gas well located on pooled lands claimed adverse possession over all the lands of the pooled area by virtue of its operation of and control over the well. Responding to that argument, the Court held that through the well operator each of the mineral lessees of land within the pooled area was in possession of its respective leasehold mineral interest, such that the well operator could not adversely possess those lands or interest. Specifically, the court stated that

> the drilling and production of oil from a unitized area constitutes an exercise and user of mineral rights throughout the entire unit and operates as a substitute for performance of drilling obligations contained in a mineral lease [4 Oil and Gas Reporter at 22].

Also, in Smith v. Hold, 67 So.2d 93, 2 Oil and Gas Reporter 21 (1953), defendant owned the mineral rights to oil and gas in a forty acre parcel of land. The State Conservation Department established drilling units allowing only one (1) well on each forty acre drilling unit. Defendant, through his mineral lessee, drilled a well on the West 20 acres of the forty acres. Plaintiff, who owned the surface rights to the East 20 acres of the forty acre parcel, contended that because he had not located his well on the East 20 acres Defendant had lost his rights to the oil and gas below the East 20 acres within the allotted ten year period to prevent "prescription" by plaintiff.

In Smith, the court held that defendant did not lose his rights to the oil and gas below the East 20 acres. The court stated that when the commissioner entered an Order establishing drilling units which represent the area which can be economically drained by one well only, he exercised a constitutional power for the purpose of "conservation of our oil and gas resources for the protection of the public interest." The court held that the defendant complied with the order by drilling one well within the unit and that the defendant would not be required

to drill on the East 20 acres in order to preserve his rig to one-half of the oil and gas interests on the forty acre

In Utah, section 40-6-6(f), Utah Code Ann. 1953 state

> Operations incident to the drilling of a well upon any portion of a unit covered by a pooling order shall be deemed for all purposes to be the conduct of such operations upon each separately owned tract in the unit by the several owners thereof. That portion of the production allocated or applicable to each tract included in a unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from each such tract by a well drilled thereon [emphasis added; see 1977 Supp. also which contains this same provision word for word].

By enacting Section 40-6-6(f), the Utah State Legislature recognized the fact that the extraction of minerals from a portion of a drilling unit established by the appro state agency is in fact the extraction of minerals from all properties comprising the drilling unit, and that the holders of mineral interests in lands comprising the drilli unit have no other alternative for developing their oil and gas rights from the common source of supply than to extract those minerals from the one well permitted by the drilling unitization order.

In the instant case, because of the drilling order establishing this 640 acre tract as a drilling unit, the parties were forced to enter into a Communitization Agreeme or face the imposition of a pooling order. Section 40-6-6(states:

> In the absence of voluntary pooling, the Commission ["Board" -- see 1977 Supp.], upon application of any persons with an interest in the proposed pooling, may enter an order pooling all interests in the drilling unit for the development and operation thereof [emphasis added; see also, the Affidavit of Patrick L. Driscoll of and for the Division of Oil, Gas and Mining of the State of Utah -- R-196].

The principal and policy adopted by the Utah State Legislature in Section 40-6-6(f) therefore apply to the instant case. The principal and policy of Section 40-6-6(f) are clear -- drilling and production on any parcel of the drilling unit is the conduct of such operations for the extraction of minerals on each separately owned tract within the drilling unit.

In addition, the parties to the Communitization Agreement, including Plaintiff Gas and Oil Producing Enterprises, Inc., Plaintiff Dye's lessee, recognized the fact that the production of oil and gas from the Chevron well constitutes production of these minerals from each of the lands comprising the 640 acre drilling unit in which they have a mineral interest. Paragraph 8 of the Communitization Agreement provides:

> The commencement, completion, continued operation or production of a well or wells for communitized substances on the communitized area shall be construed and considered as the commencement, completion, continued operation or production on each and all of the lands within and comprising said communitized area, and operations or production pursuant to this agreement shall

be deemed to be operations or production as to each lease committed hereto [see pages 2 et. seq. of the Appendix].

Each of the parties to the Communitization Agreement, including Plaintiff Gas Producing Enterprises, Inc., Dye's lessee, therefore recognized the fact that production of oil and gas from the Chevron well constitutes production of oil and gas from the common source of supply for all of the lands located within the drilling unit by the respective holders of mineral interests within the drilling unit.

Finally, it should be noted that the apparent policy for these provisions of the applicable statutes of limitation is that possession of the disputed property within four (4) years prior to the interposition of defenses to the tax title by the one interposing those defenses, puts the holder of the tax title on notice that the party in possession claims a priority interest in the property. In the instant case, plaintiffs do not even contend that they were unaware of Miller & Viele's and Chevron's claimed interest in the disputed one-half mineral interest. As a matter of fact, one of the obvious reasons that Chevron became a party to the pooling agreement is that it claimed a leasehold interest from Miller & Viele in the disputed one-half mineral interest.

In the instant case, the Chevron well was constructed, has been operated, and has produced oil and gas, pursuant to the Board's aforesaid Order of August 11, 1971, which

established the 640 acre drilling unit. The Chevron well is located in the 640 acre drilling unit comprising Section 29, on land immediately adjacent to the disputed mineral interest property which is also located in Section 29. The oil and gas minerals produced from the Chevron well and this 640 acre drilling unit come from the common source of supply for all of the properties comprising the 640 acre drilling unit.

Accordingly, Miller & Viele, through its lessee Chevron, has been in actual, and in fact continuous, possession of the minerals of the disputed one-half mineral interest since the construction of, and the commencement of production from, the Chevron well. This is within four years prior to the interposition of Miller & Viele's defenses to Plaintiff Dye's tax title. Therefore, under the provisions of the applicable statutes of limitation, Miller & Viele is not barred from interposing defenses to Dye's tax title to the disputed one-half mineral interest.

POINT TWO

PLAINTIFF DYE'S PREDECESSOR IN INTEREST ACQUIESCED IN MILLER & VIELE'S TITLE TO THE DISPUTED ONE-HALF MINERAL INTEREST BY ACCEPTING THE 1946 DEED IN WHICH THE DISPUTED ONE-HALF MINERAL INTEREST WAS RESERVED TO MILLER & VIELE.

In 1946, Defendant Miller & Viele entered into an

agreement with Arthur L. Young, Plaintiff Dye's predecessor in interest. This agreement is reflected in the October 15, 1946 deed from Miller & Viele to Young, which deed was solicited, recorded, and accepted by Young (R-132;233). The agreement evidenced by this 1946 deed is that the parties recognized that Miller & Viele owned and retained the disputed one-half mineral interest in consideration for which Young received Miller & Viele's rights and title to the surface and the remaining one-half mineral interest in the NW1/4NE1/4 of Section 29.

Accordingly, Dye's predecessor in interest acquiesced in the title of Miller & Viele to the disputed one-half mineral interest. After the delivery and acceptance of this 1946 deed, Young and his successors in interest became co-tenants of the mineral estate with Miller & Viele. As a successor in interest to Young, Dye is bound by the Young's agreement acquiescing in the title of Miller & Viele to the disputed one-half mineral interest.

Inasmuch as the lower court granted Plaintiff's Motion for Summary Judgment, it thereby rejected Miller & Viele's argument that after Young's acceptance of the 1946 deed Young and Miller & Viele became co-tenants to the entire one-half mineral interest in the NW1/4NE1/4 of Section 29. As a result, Miller & Viele has been precluded from further discovery with respect to this agreement. Miller & Viele should have its day in court on this issue.

CONCLUSION

In view of the issuance of the drilling unit order on the 640 acres, and the subsequent entry of all parties into a Communitization Agreement governing drilling and extraction of oil and gas, it is hard to imagine how any single party could be more in possession of the disputed one-half mineral interest than the party that is actually extracting oil and gas from the common pool of oil and gas under the entire 640 acre tract.

By their attempts in this lawsuit to collect royalties from the oil and gas produced by Chevron, Miller & Viele's lessee, Plaintiffs recognize that possession of the disputed one-half mineral interest, and extraction therefrom, is through Chevron as Miller & Viele's lessee.

Because Miller & Viele was in actual possession of the disputed one-half mineral interest as provided by the tax title statutes of limitation, it should not be barred by these statutes of limitation. Miller & Viele should be allowed its day in Court to assert its defenses against Dye's tax title.

In addition, Miller & Viele is entitled to its day in court on the issue of the acquiescence by Dye's predecessor in interest to Miller & Viele's title in the disputed one-half mineral interest.

Respectively submitted:

McMURRAY, McINTOSH, BUTLER &

BY: _____
Macoy A. McMurray
Attorney for Defendant -
Appellant, Miller & Viele

and

BY: _____
Robert J. Dale
Attorney for Defendant -
Appellant, Miller & Viele

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Brief was mailed to Robert Pruitt and Phillip Lear, attorneys for plaintiffs, at 79 South State Street, Suite 400, Salt Lake City, Utah 84111, this 1st day of February, 1978, postage prepaid.

_____

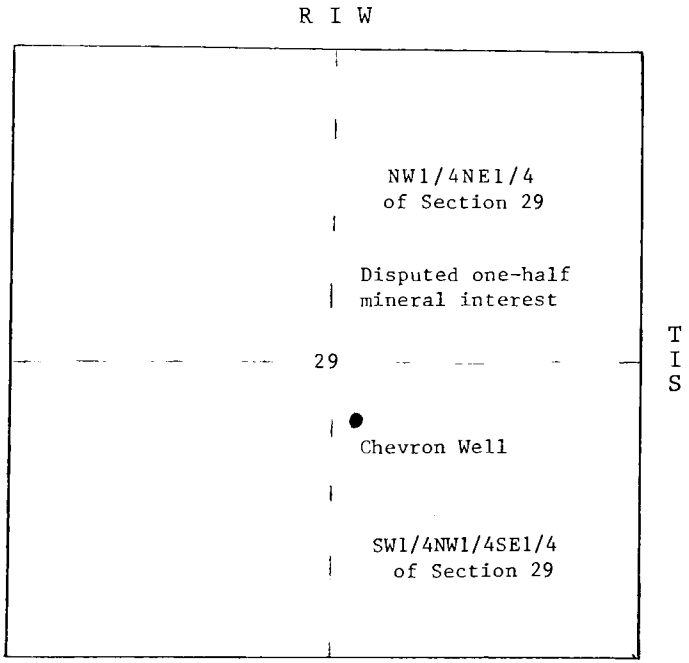
A P P E N D I X

Common source of oil and gas supply
for entire 640 acre drilling unit

640 ACRE DRILLING UNIT

ESTABLISHED BY

THE UTAH BOARD OF OIL AND GAS CONSERVATION



SECTION 29: ALL (640.00 ACRES)

TOWNSHIP 1 SOUTH, RANGE 1 WEST, U.S.M.

DUCHESNE COUNTY, UTAH

ENTRY NO. 172663 DATE 4-8-74 TIME 1:34 PM BOOK 33 PAGE 572 0572
FEE $ 24.00 RECORDED AT REQUEST OF Chevron Oil Co
Marjorie W. Ewell DUCHESNE COUNTY RECORDER DEPUTY

COMMUNITIZATION AGREEMENT

THIS AGREEMENT entered into as of the 30th day of October, 1973, by and between the parties subscribing, ratifying or consenting hereto, such parties hereinafter being referred to as "parties hereto,"

W I T N E S S E T H:

WHEREAS, the Act of May 11, 1938, Chapter 198, Section 4, 52 Stat. 348, 25 U.S.C.A. 396d, requires that all operations under any oil and gas lease on Restricted Tribal Indian Lands shall be subject to the Rules and Regulations of the Secretary of the Interior, and the regulations issued pursuant to said statute, provide that in the exercise of his judgment, the Secretary of the Interior may take into consideration, among other things, the Federal laws, State Laws, regulations by competent Federal or State authorities, or lawful agreements among operators regulating either drilling or production or both (25 C.F.R. 171.21); and

WHEREAS, the Act of March 3, 1909, Chapter 263, 35 Stat. 783 as amended by the Act of August 9, 1955, Chapter 615, Section 3, 69 Stat. 540, 25 U.S.C.A. 396 requires that all operations under any oil and gas lease on Restricted Allotted Indian Lands shall be subject to the Rules and Regulations of the Secretary of the Interior, and the regulations issued pursuant to said statute, provide that in the exercise of his judgment, the Secretary of the Interior may take into consideration, among other things, the Federal laws, State laws, regulations by competent Federal or State authorities, or lawful agreements among operators regulating either drilling or production or both (25 C.F.R. 172.24); and

WHEREAS, the parties hereto own working, royalty or other leasehold interests, or operating rights under the oil and gas leases and lands subject to this agreement which cannot be independently developed and operated in conformity with the well spacing program established for the field or area in which said lands are located; and

WHEREAS, the parties hereto desire to communitize and pool their respective mineral interests in lands subject to this agreement for the purpose of developing and producing communitized substances in accordance with the terms and conditions of this agreement;

NOW, THEREFORE, in consideration of the premises and the mutual advantages to the parties hereto, it is mutually convenanted and agreed by and between the parties hereto as follows:

1.

The lands covered by this agreement (hereinafter referred to as "communitized area") are described as follows:

TOWNSHIP 1 SOUTH, RANGE 1 WEST, U.S.M.
Section 29: All

Containing 640.00 acres, more or less, situated in Duchesne County, Utah;

Provided that this agreement shall include only that interval of the Green River-Wasatch formations, defined as that interval below the stratigraphic equivalent of 9600 feet depth in the "E" log of the Carter #2 Bluebell well located in the SW¼NW¼, Section 3, Township 1 South, Range 2 West, U.S.M., (which equivalence is the depth 9530 feet of the SP curve, Dual Induction Log, run March 15, 1968, in the Chevron #1 Blanchard well located in the NW¼SE¼ of said Section 3), to the base of the Green River-Wasatch formations, underlying said lands and the crude oil, and associated natural gas, referred to herein as "communitized substances", producible from such formation.

2.

Attached hereto, and made a part of this agreement for all purposes, is Exhibit "A" designating the operator of the communitized area and showing the acreage, percentage and ownership of oil and gas interests in all lands within

the communitized area, and the authorization, if any, for communitizing or pooling any patented or fee lands within the communitized area. Attached hereto and made a part of the agreement for all purposes is a plat designated as Exhibit "B" showing the communitized area.

3.

All matters of operation shall be governed by the Operator under and pursuant to the terms and provisions of this agreement. A successor operator may be designated by the owners of the working interest in the communitized area and four (4) executed copies of the Designation of Successor Operator shall be filed with the Oil and Gas Supervisor, United States Geological Survey.

4.

Operator shall furnish the Secretary of the Interior, or his authorized representative, with a log and history of any well drilled on the communitized area, monthly reports of operations, statements of oil and gas sales and royalties therefrom and such other reports as are deemed necessary to compute monthly the royalty due Restricted Tribal and Allotted Indian Lessors, as specified in the applicable oil and gas operating regulations.

5.

The communitized area shall be developed and operated as an entirety, with the understanding and agreement between the parties hereto that all communitized substances produced therefrom shall be allocated among the leaseholds comprising said area in the proportion that the acreage interest of each leasehold bears to the entire acreage interest committed to this agreement.

6.

The royalties payable on communitized substances allocated to the individual leases comprising the communitized area and the rentals provided for in said leases shall be determined and paid on the basis prescribed in each of the individual leases. Payments of rentals under the terms of leases subject to this agreement shall not be affected by this agreement except as provided for under the terms and provisions of said leases or as may be otherwise provided in this agreement. Except as herein modified and changed, the oil and gas leases subject to this agreement shall remain in full force and effect as originally made and issued.

7.

There shall be no obligation on the Lessees to offset any well or wells completed in the same formation as covered by this agreement on separate component tracts into which the communitized area is now or may hereafter be divided, nor shall any Lessee be required to measure separately communitized substances by reasons of the diverse ownership thereof, but the lease owners hereto shall not be released from their obligation to protect said communitized area from drainage of communitized substances by a well or wells which may be drilled offsetting said area.

8.

The commencement, completion, continued operation or production of a well or wells for communitized substances on the communitized area shall be construed and considered as the commencement, completion, continued operation or production on each and all of the lands within and comprising said communitized area, and operations or production pursuant to this agreement shall be deemed to be operations or production as to each lease committed hereto.

9.

Production of communitized substances and disposal thereof shall be in conformity with allocation, allotments and quotas made or fixed by any duly authorized person or regulatory body under applicable Federal or State statutes. This agreement shall be subject to all applicable Federal and State laws or executive order, rules and regulations, and no party hereto shall suffer a

forfeiture or be liable in damages for failure to comply with any of the provisions of this agreement if such compliance is prevented by, or if such failure results from, compliance with any such laws, orders, rules or regulations.

10.

This agreement shall be effective November (Month) one (1) 1973 (Year) upon execution by the necessary parties, notwithstanding the date of execution, and upon approval by the Secretary of the Interior, or by his duly authorized representative, and shall remain in force and effect for a period of two (2) years and so long thereafter as communitized substances are, or can be, produced from the communitized area in paying quantities; provided, that prior to production in paying quantities from the communitized area and upon fulfillment of all requirements of the Secretary of the Interior, or his duly authorized representative, with respect to any dry hole or abandoned well, this agreement may be terminated at any time by mutual agreement of the parties hereto. This agreement shall not terminate upon cessation of production if, within sixty (60) days thereafter, reworking or drilling operations on the communitized area are commenced and are thereafter conducted with reasonable diligence during the period of non-production.

11.

It is agreed between the parties hereto that the Secretary of the Interior or his duly authorized representative shall have the right of supervision over all operations within the communitized area to the same extent and degree as provided in the oil and gas leases under which the owners of Restricted and Allotted Tribal Indian Lands are Lessors and in the applicable oil and gas regulations of the Department of the Interior.

12.

The covenants herein shall be construed to be covenants running with the land with respect to the communitized interests of the parties hereto and their successors in interests until this agreement terminates; and any grant, transfer or conveyance of any such land or interest subject hereto, whether voluntary or not, shall be and hereby is conditioned upon the assumption of all obligations hereunder by the grantee, transferee or other successor in interest, and as to Restricted Tribal and Allotted Indian Lands shall be subject to approval by the Secretary of the Interior.

13.

In connection with the performance of work under the agreement, the operator agrees to comply with all of the provisions of Section 202 (1) to (7) inclusive of Executive Order 11246 (30 FR 12319) which are hereby incorporated by reference in this agreement; however, the operator shall comply with the terms and conditions of the Indian lease while engaged in operations thereon with respect to the employment of available Indian labor.

14.

This agreement shall be binding upon the parties hereto, and shall extend to and be binding upon their respective heirs, executors, administrators, successors and assigns.

15.

This agreement may be executed in any number of counterparts, no one of which needs to be executed by all parties, or may be ratified or consented to by separate instrument, in writing specifically referring hereto, and shall be binding upon all parties who have executed such counterpart, ratification or consent hereto with the same force and effect as if all parties had signed the same document.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date and year first written to be effective as provided in Paragraph No. 10 hereof, and have set opposite their respective names the date of execution.

OPERATOR AND WORKING INTEREST OWNERS

CHEVRON OIL COMPANY

By C.W. Maxwell
Contract Agent, Western Division

Date 21 Nov 73

By F.A. Purdy
Assistant Secretary

WORKING INTEREST OWNERS

GULF OIL CORPORATION

By
Attorney-in-Fact

ATTEST:

By
Assistant Secretary
GORDON R. MORRIS

GAS PRODUCING ENTERPRISES, INC.

By E. C. Martin
Vice President

SHELL OIL COMPANY

By
Attorney-in-Fact

By
Assistant Secretary
Legal Dept.

STATE OF COLORADO)
CITY AND) SS
COUNTY OF DENVER)

Before me, the undersigned authority, a Notary Public in and for said County, personally appeared C. W. MAXWELL and F. A. PURDY to me personally known, who being by me duly sworn did say that they, with the capacity designated by their signatures on the document to which this certificate is attached, are the officers or agents respectively, of Chevron Oil Company, a corporation organized and existing under and by virtue of the laws of the State of California, and that they as such officers or agents and in such capacity being authorized by its Bylaws and/or Board of Directors so to do, signed, sealed, executed and acknowledged before me the foregoing instrument on behalf of said Corporation as their voluntary act and deed and the voluntary act and deed of said Corporation for the uses, purposes and consideration therein expressed and contained by signing the name of the Corporation by them as such officers or agents and that the seal, if any, affixed to said instrument is the Corporate seal of said Corporation, and they further acknowledge to me that said Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed my notarial seal of office on this the 21st day of November, 1973.

My Commission Expires:
Jan. 8, 1975

Sonia L. Curtis
Notary Public

EXHIBIT A
to
COMMUNITIZATION AGREEMENT
dated
October 30, 1973

Embracing: Township 1 South, Range 1 West, U.S.M.
Section 29: All (640.00 acres)
Duchesne County, Utah

OPERATOR OF COMMUNITIZED AREA: Chevron Oil Company

DESCRIPTION OF LEASES COMMITTED:

TRACT I

LESSOR:	a. Miller & Viele, a corporation b. Arthur L. Young and Gwen R. Young, his wife c. Richard Gerald Dye and Larain Dye, his wife
LESSEE OF RECORD:	a. Chevron Oil Company b. Gas Producing Enterprises, Inc. c. Gas Producing Enterprises, Inc.
DATE OF LEASE:	a. February 18, 1964 b. July 3, 1970 c. March 26, 1970
BASIC ROYALTY:	12½%
DESCRIPTION OF LAND COMMITTED:	NW¼NE¼ Section 29, Township 1 South, Range 1 West, U.S.M.
NUMBER OF ACRES:	40.00
NAME AND PERCENTAGE OF WORKING INTEREST OWNER:	a. Chevron Oil Company - 100% b. Gas Producing Enterprises, Inc. - 100% c. Gas Producing Enterprises, Inc. - 100%
NAME AND PERCENTAGE OF ORRI OWNER:	a. None b. Flying Diamond Land and Mineral Corporation - 6.25% c. Flying Diamond Land and Mineral Corporation - 6.25%
PROVISION OF FEE LEASE AUTHORIZING POOLING:	a. See * b. See ** c. See ***

TRACT II

LESSOR:	a. Merrill L. King and Marguerite King, husband and wife b. Jesse Dorrant Freston and Ethelene M. Freston, husband and wife
LESSEE OF RECORD:	Chevron Oil Company
DATE OF LEASE:	a. February 6, 1964 b. January 25, 1964
BASIC ROYALTY:	12½%
DESCRIPTION OF LAND COMMITTED:	S½NE¼ Section 29, Township 1 South, Range 1 West, U.S.M.
NUMBER OF ACRES:	80.00

NAME AND PERCENTAGE OF WORKING INTEREST OWNER:	Chevron Oil Company - 100%
NAME AND PERCENTAGE OF ORRI OWNER:	None
PROVISION OF FEE LEASE AUTHORIZING POOLING:	See *

TRACT III-A

LESSOR:	a. Merrill Russell and NaDean Russell, husband and wife b. Ben C. Gomm and Opal A. Gomm, husband and wife c. L. L. Pack aka Lawrence L. Pack, a single man d. Juanita C. Smith, individually and as Guardian of Dennis G. Smith, a minor e. 1) Brigham Krause and Vera L. Krause, husband and wife; covering the NW¼ only 2) First Security Bank of Utah, N.A., Trustee of the Brigham Krause Estate Trust; covering the SE¼SW¼ only f. V. H. Simmons and Sadie F. Simmons, husband and wife g. Oral Coltharp, a widow h. First Security Bank of Utah, N.A., a national banking corporation, Trustee of Ned G. Coltharp i. Virginia Coltharp Houston and George E. Houston, her husband j. Fawn B. Coltharp, a widow k. Richard M. Coltharp and Anne N. Coltharp, husband and wife
LESSEE OF RECORD:	a. thru j. - Chevron Oil Company k. Shell Oil Company
DATE OF LEASE:	a. October 28, 1963 b. October 23, 1963 c. October 24, 1963 d. November 16, 1967 e. 1) November 14, 1963 2) April 12, 1973 f. October 21, 1968 g. October 28, 1963 h. April 5, 1973 i. April 5, 1973 j. April 5, 1973 k. October 11, 1971
BASIC ROYALTY:	a. thru g. - 12½% h. 16.75% i. 16.75% j. 20% k. 18.75%
DESCRIPTION OF LAND COMMITTED:	NW¼, SE¼SW¼ Section 29, Township 1 South, Range 1 West, U.S.M.
NUMBER OF ACRES:	200.00
NAME AND PERCENTAGE OF WORKING INTEREST OWNER:	a. thru j. - Chevron Oil Company - 100% k. - Shell Oil Company - 100%
NAME AND PERCENTAGE OF ORRI OWNER:	None

PROVISION OF FEE LEASE AUTHORIZING	a., b., e.1)., f., g. - See * c. - See ***** d. and j. - See ****** i. - See ******* h. and i. - See **** e.2). - See ********

TRACT III-B

LESSOR:	a. A. M. Harmston and Elsie L. Harmston, husband and wife b. L. L. Pack aka Lawrence L. Pack, a single man c. Juanita C. Smith, individually and as Guardian of Dennis G. Smith, a minor d. Brigham Krause and Vera L. Krause, husband and wife e. V. H. Simmons and Sadie F. Simmons, husband and wife f. Oral Coltharp, a widow g. First Security Bank of Utah, N.A., a national banking corporation, Trustee of Ned G. Coltharp h. Virginia Coltharp Houston and George E. Houston, her husband i. Fawn B. Coltharp, a widow j. Richard M. Coltharp and Anne N. Coltharp, husband and wife
LESSEE OF RECORD:	a. thru i. - Chevron Oil Company j. Shell Oil Company
DATE OF LEASE:	a. April 2, 1973 b. October 24, 1963 c. November 16, 1967 d. November 14, 1963 e. October 21, 1968 f. October 28, 1963 g. April 5, 1973 h. April 5, 1973 i. April 5, 1973 j. October 11, 1971
BASIC ROYALTY:	a. thru f. - 12½% g. 16.75% h. 16.75% i. 20% j. 18.75%
DESCRIPTION OF LAND COMMITTED:	W½SW¼ Section 29, Township 1 South, Range 1 West, U.S.M.
NUMBER OF ACRES:	80.00
NAME AND PERCENTAGE OF WORKING INTEREST OWNER:	a. thru i. - Chevron Oil Company - 100% j. Shell Oil Company - 100%
NAME AND PERCENTAGE OF ORRI OWNER:	None
PROVISION OF FEE LEASE AUTHORIZING POOLING:	a., g., h. - See **** d., e., f. - See * c. and i. - See ****** j. - See ******* b. - See *****

TRACT IV

LESSOR:	Richard G. Dye and Artice M. Dye, husband and wife
LESSEE OF RECORD:	Chevron Oil Company

DATE OF LEASE:	January 23, 1964
BASIC ROYALTY:	12½%
DESCRIPTION OF LAND COMMITTED:	N½SE¼, SW¼SE¼ Section 29, Township 1 South, Range 1 West, U.S.M.
NUMBER OF ACRES:	120 00
NAME AND PERCENTAGE OF WORKING INTEREST OWNER:	Chevron Oil Company
NAME AND PERCENTAGE OF ORRI OWNER:	None
PROVISION OF FEE LEASE AUTHORIZING POOLING:	See *

TRACT V

LESSOR:	a. Richard Gerald Dye and Larain Dye, husband and wife b. Arthur L. Young and Gwen R. Young, husband and wife
LESSEE OF RECORD:	Gas Producing Enterprises, Inc.
DATE OF LEASE:	a. March 26, 1970 b. July 3, 1970
BASIC ROYALTY:	12½%
DESCRIPTION OF LAND COMMITTED:	NE¼NE¼ Section 29, Township 1 South, Range 1 West, U.S.M.
NUMBER OF ACRES:	40.00
NAME AND PERCENTAGE OF WORKING INTEREST OWNER:	Gas Producing Enterprises, Inc. - 100%
NAME AND PERCENTAGE OF ORRI OWNER:	Flying Diamond Land and Mineral Corporation - 6.25% ORRI
PROVISION OF FEE LEASE AUTHORIZING POOLING:	a. See *** b. See **

TRACT VI

LESSOR:	Rose Theodosia Thompson Parriette, et al
LESSEE OF RECORD:	Gulf Oil Corporation
SERIAL NUMBER OF LEASE:	Bureau of Indian Affairs Lease No. 14-20-H62-1821
DATE OF LEASE:	May 11, 1968, effective August 1, 1968
BASIC ROYALTY:	16-2/3%
DESCRIPTION OF LAND COMMITTED:	NE¼SW¼ Section 29, Township 1 South, Range 1 West, U.S.M.
NUMBER OF ACRES:	40.00
NAME AND PERCENTAGE OF WORKING INTEREST OWNER:	Gulf Oil Corporation - 100%
NAME AND PERCENTAGE OF ORRI OWNER:	None

TRACT VII

LESSOR:	The Ute Indian Tribe and the Ute Distributio Corporation
LESSEE OF RECORD:	Gulf Oil Corporation
SERIAL NUMBER OF LEASE:	Bureau of Indian Affairs Lease No. 14-20-H62-1713
DATE OF LEASE:	May 17, 1968, effective July 1, 1968
BASIC ROYALTY:	16-2/3%
DESCRIPTION OF LAND COMMITTED:	SE¼SE¼ Section 29, Township 1 South, Range 1 West, U.S.M.
NUMBER OF ACRES:	40.00
NAME AND PERCENTAGE OF WORKING INTEREST OWNER:	Gulf Oil Corporation - 100%
NAME AND PERCENTAGE OF ORRI OWNER:	None

NOTES

*Lessee may at any time or times unitize this lease and the lands covered hereby, in whole or in part, or as to any stratum or strata, with other lands and leases in the same field, so as to constitute a unit or units, whenever, in Lessee's judgment, required to promote or encourage the conservation of natural resources by facilitating an orderly or uniform well spacing pattern; a cycling, pressure-maintenance, repressuring or secondary recovery program; or any cooperative or unit plan of development or operation approved by the Secretary of the Interior of the United States. The size of any such unit may be increased by including acreage believed to be productive, and decreased by excluding acreage believed to be unproductive, or the owners of which fail or refuse to join the unit, but any increase or decrease in Lessor's royalties resulting from any such change in any such unit, shall not be retroactive. Any such unit may be established, enlarged, or diminished, and, in the absence of production therefrom, may be abolished and dissolved, by filing for record an instrument so declaring, a copy of which shall be delivered to Lessor or to the depository bank. Drilling, mining or reworking operations upon, or production of any mineral from any part of such unit shall be treated and considered, for all purposes of this lease, as such operation upon or such production from this lease. Lessee shall allocate to the portion of this lease included in any such unit a fractional part of all production from any part of such unit, on one of the following bases: (a) the ratio between the participating acreage in this lease included in such unit and the total of all participating acreage included in such unit; or (b) the ratio between the quantity of recoverable production underlying the portion of this lease included in such unit and the total of all recoverable production underlying such unit; or (c) any other basis approved by State or Federal authorities having jurisdiction thereof. Upon production from any part of such unit, Lessor herein shall be enticled to the royalties in this lease provided, on the fractional part of the unit production so allocated to that portion of this lease included in such unit, and no more.

**Lessee shall have the right to unitize, pool, or combine all or any part of the above described lands in the same general area by entering into a cooperative or unit plan of development or operation approved by any governmental authority and, from time to time, with like approval, to modify, change or terminate any such plan or agreement and, in such event, the terms, conditions and provisions of this lease shall be deemed modified to conform to the terms, conditions and provisions of such approved cooperative or unit plan of development or operation and, particularly, all drilling and development requirements of this lease, express or implied, shall be satisfied by compliance with the drilling and development

requirements of such plan or agreement, and this lease shall not terminate or expire during the life of such plan or agreement. In the event that said above described lands or any part thereof, shall hereafter be operated under any such cooperative or unit plan of development or operation whereby the production therefrom is allocated to different portions of the land covered by said plan, then the production allocated to any particular tract of land shall, for the purpose of computing the royalties to be paid hereunder to Lessor, be regarded as having been produced from the particular tract of land to which it is allocated and not to any other tract of land; and the royalty payments to be made hereunder to Lessor shall be based upon production only as so allocated. Lessor shall formerly express Lessor's consent to any cooperative or unit plan of development or operation adopted by Lessee and approved by any governmental agency by executing the same upon request of Lessee.

In addition to and not in limitation of the rights granted in paragraph 12 hereof, Lessee is hereby granted the right and option to consolidate, pool or combine the lands covered by this lease, or any portion or portions thereof or any stratum or strata thereunder, with other lands or like strata thereunder for the development thereof or for the production therefrom of oil, gas, casinghead gas or other hydrocarbons, or any or all of said products, when in Lessee's discretion and judgment it is advisable so to do for proper development or operations of the premises, or to conform to spacing or zoning rules of any lawful authority, such consolidation, pooling or combining to be into units of such shape and dimensions as Lessee may elect provided that all lands in any such unit shall be contiguous (either adjoining or cornering) but for this purpose contiguity shall not be deemed to be destroyed by reason of the existence of any excluded street, alley, road, railroad, canal, stream, right of way or other similar strip or parcel of land. Any unit formed under this paragraph for production of oil and casinghead gas shall not exceed forty-three (43) acres in surface area, for production of dry or gas well shall not exceed six hundred and sixty (660) acres in surface area, and for production of condensate or distillate shall not exceed three hundred and thirty (330) acres in surface area unless some larger unit for condensate or distillate is permitted or prescribed by lawful authority, in which event such larger unit shall control, provided that, if governmental survey units be irregular in size in the area of the lease, the size of any of the units mentioned herein may be increased to the size of the there existing governmental survey unit nearest in size to the unit acreage prescribed herein. The right and option herein granted to Lessee may be exercised at any time or from time to time, whether before or after production is secured and whether or not a unit may theretofore have been created for some other product, by executing in writing an instrument identifying and describing the unit created, and by delivering a copy thereof to Lessor or by recording a copy thereof in the county where the land is located. The lands in any such unit shall be developed or operated as one tract and any drilling on or production from such unit, whether or not from lands described in this lease, shall be deemed to be drilling done or production secured on the lands subject to this lease for all purposes except for the purpose of payment of royalty hereunder. In such event, and in lieu of the royalties elsewhere herein specified, the Lessor shall receive from production on any such unit only such portion of the royalty, at the rate stipulated elsewhere herein, as Lessor's acreage in the unit (or his royalty interest therein) bears to the total acreage of the unit. Formation of any unit as herein provided shall in no manner affect the ownership or amount of any rental which may be payable under the terms of this lease.

(Note: The foregoing two paragraphs are, respectively, paragraphs numbered 12 and 13 in the oil and gas lease in which they appear.)

**Lessee is hereby given the right and power to pool or combine the land covered by this lease or any portion thereof with any other land, lease or leases when in Lessee's judgment it is necessary or advisable to do so in order to properly develop and operate said premises. If production is found on the pooled acreage, it shall be created as if production is had from this lease whether the well or wells be located on the premises covered by this lease or not. In lieu of the royalties elsewhere herein specified, Lessor shall receive on production from a unit so pooled only

such portion of the royalty stipulated herein as the amount of his acreage placed in the unit or his royalty interest therein bears to the total acreage so pooled in the particular unit involved.

****Lessee may at any time or times unitize this lease and the lands covered hereby, in whole or in part, or as to any stratum or strata, with other lands and leases in the same field, so as to constitute a unit or units, whenever, in Lessee's judgment, required to promote or encourage the conservation of natural resources by facilitating an orderly or uniform well spacing pattern; a cycling, pressure-maintenance, repressuring or secondary recovery program; or any cooperative or unit plan of development or operation approved by the Secretary of the Interior of the United States. The size of any such unit may be increased by including acreage believed to be productive, and decreased by excluding acreage believed to be unproductive, or the owners of which fail or refuse to join the unit, but any increase or decrease in Lessor's royalties resulting from any such change in any such unit, shall not be retroactive. Any such unit may be established, enlarged, or diminished, and, in the absence of production therefrom, may be abolished and dissolved, by filing for record an instrument so declaring, a copy of which shall be delivered to Lessor or to the depository bank. Operations upon, or production of oil or gas from any part of such unit shall be treated and considered, for all purposes of this lease, as operations upon or production from this lease. Lessee shall allocate to the portion of this lease included in any such unit a fractional part of all production from any part of such unit, on one of the following bases: (a) the ratio between the participating acreage in this lease included in such unit and the total of all participating acreage included in such unit; or (b) the ratio between the quantity of recoverable production underlying the portion of this lease included in such unit and the total of all recoverable production underlying such unit; or (c) any other basis approved by State or Federal authorities having jurisdiction thereof. Upon production from any part of such unit, Lessor herein shall be entitled to the royalties in this lease provided, on the fractional part of the unit production so allocated to that portion of this lease included in such unit, and no more.

*****Lessee may at any time or times unitize this lease and the lands covered hereby, in whole or in part, or as to any stratum or strata, with other lands and leases in the same field, so as to constitute a unit or units, whenever, in Lessee's judgment, required to promote or encourage the conservation of natural resources by facilitating an orderly or uniform well spacing pattern; a cycling, pressure-maintenance, re-pressuring or secondary recovery program; or any cooperative or unit plan of development or operation approved by the Secretary of the Interior of the United States. The size of any such unit may be increased by including acreage believed to be productive, and decreased by excluding acreage believed to be unproductive, or the owners of which fail or refuse to join the unit, but any increase or decrease in Lessor's royalties resulting from any such change in any such unit, shall not be retroactive. Any such unit may be established, enlarged, or diminished, and, in the absence of production therefrom, may be abolished and dissolved, by filing for record an instrument so declaring, a copy of which shall be delivered to Lessor or to the depository bank. Drilling or reworking operations upon, or production of oil or gas from any part of such unit shall be treated and considered, for all purposes of this lease, as such operations upon or such production from this lease. Lessee shall allocate to the portion of this lease included in any such unit a fractional part of all production from any part of such unit, on one of the following bases: (a) the ratio between the participating acreage in this lease included in such unit and the total of all participating acreage included in such unit; or (b) the ratio between the quantity of recoverable production underlying the portion of this lease included in such unit and the total of all recoverable production underlying such unit; or (c) any other basis approved by State or Federal authorities having jurisdiction thereof. Upon production from any part of such unit, Lessor herein shall be entitled to the royalties in this lease provided, on the fractional part of the unit production so allocated to that portion of this lease included in such unit, and no more.

******Lessee may at any time or times pool any part or all of said land and lease, or as to any stratum or strata, with other lands and leases in the same field so as to constitute a spacing unit to facilitate an orderly or uniform well spacing pattern or to comply with any order, rule or regulation of the State or Federal regulatory or conservation agency having jurisdiction. Such pooling shall be accomplished or terminated by filing of record a declaration of pooling or declaration of termination of pooling and by mailing or tendering a copy to Lessor or to the depository bank. Drilling or reworking operations upon or production from any part of such spacing unit shall be, for all purposes of this lease, such operations or production from this lease. Lessee shall allocate to this lease the proportionate share of production which the acreage in this lease included in any such spacing unit bears to the total acreage in such spacing unit.

*******Lessee hereby is given the right at its option, at any time and from time to time during the life of this lease, but in no event after twenty (20) years from the date hereof, and whether before or after production, to pool for development and operations purposes all or any part or parts of leased premises or rights therein with any other land in the vicinity thereof, or with any leasehold, operating or other rights or interests in such other land so as to create units of such size and surface acreage as Lessee may desire but containing not more than 80 acres plus 10% acreage tolerance; provided, however, a unit may be established hereunder containing not more than 640 acres plus 10% acreage tolerance if unitized only as to gas rights or only as to gas and condensate; and provided further that if at any time any governmental rule, regulation or order shall prescribe a spacing pattern for the development of an area embracing leased premises or any portion thereof, or allocate a producing allowable based on acreage per well, then any such unit may embrace as such additional acreage as may be so prescribed or as may be permitted in such allocation of allowable. Each unit shall be created by Lessee's recording an instrument describing or otherwise identifying the unit so created and specifying the mineral or horizon so pooled, if so limited. Operations on any part of any lands so pooled shall, except for the payment of royalties, be considered operations on leased premises under this lease and, notwithstanding the status of a well at the time of pooling, such operations shall be deemed to be in connection with a well which was commenced on leased premises under this lease. The term "operations" as used in the preceding sentence shall include, without limitation, commencing, drilling, testing, completing, reworking, recompleting, deepening or plugging back a well, or the production of oil or gas, or the existence of a shut-in well capable of producing oil or gas. There shall be allocated to the portion of leased premises included in any such pooling such proportion of the actual production from all lands so pooled as such portion of leased premises, computed on an acreage basis, bears to the entire acreage of the lands so pooled. The production so allocated shall be considered for the purpose of payment or delivery of royalty to be the entire production from the portion of leased premises included in such pooling in the same manner as though produced from such portion of leased premises under the terms of this lease. A unit established hereunder shall be valid and effective for all purposes of this lease even though there may be mineral, royalty or leasehold interests in lands within the unit which are not effectively pooled or unitized.

********Lessee may at any time or times unitize this lease and the lands covered hereby, in whole or in part, or as to any stratum or strata, with other lands and leases in the same field, so as to constitute a unit or units, whenever, in Lessee's judgment, required to promote or encourage the conservation of natural resources by facilitating an orderly or uniform well spacing pattern; a cycling, pressure-maintenance, repressuring or secondary recovery program; or any cooperative or unit plan of development or operation approved by the Secretary of the Interior of the United States. The size of any such unit may be increased by including acreage believed to be productive, and decreased by excluding acreage believed to be unproductive, or the owners of which fail or refuse to join the unit, but any increase or decrease in Lessor's royalties resulting from any

such charge in any such unit, shall not be retroactive. Any such unit may be established, enlarged, or diminished, and, in the absence of production therefrom, may be abolished and dissolved, by filing for record an instrument so declaring, a copy of which shall be delivered to Lessor or to the depository bank. Operations upon, or production of any mineral from any part of such unit shall be treated and considered, for all purposes of this lease, as operations upon or production from this lease. Lessee shall allocate to the portion of this lease included in any such unit a fractional part of all production from any part of such unit, on one of the following bases: (a) the ratio between the participating acreage in this lease included in such unit and the total of all participating acreage included in such unit; or (b) the ratio between the quantity of recoverable production underlying the portion of this lease included in such unit and the total of all recoverable production underlying such unit; or (c) any other basis approved by State or Federal authorities having jurisdiction thereof. Upon production from any part of such unit, Lessor herein shall be entitled to the royalties in this lease provided, on the fractional part of the unit production so allocated to that portion of this lease included in such unit, and no more.

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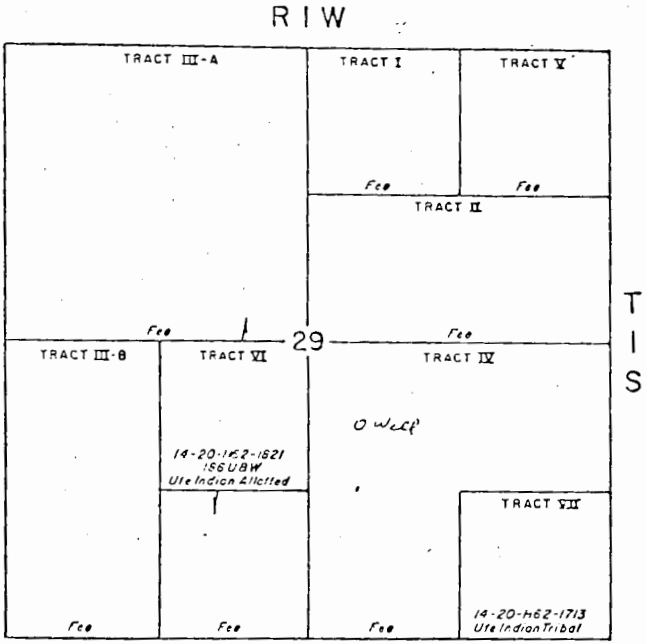
RECAPITULATION

Township 1 South, Range 1 West, U.S.M.

Section 29: All

Tract Number	Number of Acres Committed	Percentage of Interest in Communitized Area
I	40.00	6.25
II	80.00	12.50
III-A	200.00	31.25
III-B	80.00	12.50
IV	120.00	18.75
V	40.00	6.25
VI	40.00	6.25
VII	40.00	6.25
	640.00	100.00

COMMUNITIZATION AGREEMENT
EXHIBIT "B"



SECTION 29: ALL (640.00 ACRES)
TOWNSHIP 1 SOUTH, RANGE 1 WEST, U.S.M.
DUCHESNE COUNTY, UTAH