

1982

S. H. Bennion v. Shell Oil Company : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Peter Stirba; McKay, Burton, THurman & Condie; Attorneys for Plaintiff-Appellant;
Alan L. Sullivan; Paul M. Durham; Van Cott, Bagley, Cornwall & McCarthy; Attorneys for Defendant-Respondent;

Recommended Citation

Brief of Appellant, *Bennion v. Shell Oil Co.*, No. 18345 (Utah Supreme Court, 1982).
https://digitalcommons.law.byu.edu/uofu_sc2/3042

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT
OF THE STATE OF UTAH

S. H. BENNION, :
Plaintiff-Appellant :
vs. : Case No. 18345
SHELL OIL COMPANY, a :
Delaware corporation, :
Defendant-Respondent. :
and :
UTAH STATE BOARD OF OIL, :
GAS & MINING, :
Defendant. :

BRIEF OF APPELLANT

Appeal From the Judgment of the
Third Judicial District Court in and for Salt Lake County
Honorable James S. Sawaya, Judge

PETER STIRBA
McKAY, BURTON, THURMAN & CONDIE
Attorneys for Plaintiff-Appellant
500 Kennecott Building
Salt Lake City, Utah 84133

ALAN L. SULLIVAN
PAUL M. DURHAM
VAN COTT, BAGLEY, CORNWALL & MCCARTHY
Attorneys for Defendant-Respondent
50 South Main Street, #1600
Salt Lake City, Utah 84144

FILED

JUN - 4 1982

IN THE SUPREME COURT
OF THE STATE OF UTAH

S. H. BENNION,	:	
Plaintiff-Appellant	:	
vs.	:	
	:	Case No. 18345
SHELL OIL COMPANY, a	:	
Delaware corporation,	:	
Defendant-Respondent.	:	
and	:	
UTAH STATE BOARD OF OIL,	:	
GAS & MINING,	:	
Defendant.	:	

BRIEF OF APPELLANT

Appeal From the Judgment of the
Third Judicial District Court in and for Salt Lake County
Honorable James S. Sawaya, Judge

PETER STIRBA
McKAY, BURTON, THURMAN & CONDIE
Attorneys for Plaintiff-Appellant
500 Kennecott Building
Salt Lake City, Utah 84133

ALAN L. SULLIVAN
PAUL M. DURHAM
VAN COTT, BAGLEY, CORNWALL & McCARTHY
Attorneys for Defendant-Respondent
50 South Main Street, #1600
Salt Lake City, Utah 84144

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	i, ii
TABLE OF AUTHORITIES	ii, iii
PREFACE	iv
STATEMENT OF THE NATURE OF THE CASE.	1
DISPOSITION IN LOWER COURT	1
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2
ARGUMENT	
POINT I. THE TRIAL COURT ERRED IN DETERMINING THAT MR. BENNION WAS NOT ENTITLED TO HIS WORKING INTEREST IN KIND PRIOR TO JULY 26, 1979	6
POINT II THE TRIAL COURT ERRED IN DETERMINING THAT MR. BENNION WAS NOT ENTITLED TO RECEIVE HIS STATUTORY LANDOWNER'S ROYALTY OF ONE-EIGHTH OF PRODUCTION AS PROVIDED BY SECTION 40-6-6(g) IN KIND PRIOR TO THE EFFECTIVE DATE OF THE POOLING ORDER ENTERED BY THE BOARD.	11
POINT III THE TRIAL COURT ERRED IN DETERMINING THAT MR. BENNION WAS ENTITLED TO PROCEEDS OF PRODUCTION, RATHER THAN ACTUAL PRODUCTION, IN VIOLATION OF MR. BENNION'S CONSTITUTIONALLY PROTECTED VESTED PROPERTY RIGHTS UNDER ARTICLE I, SECTION 1, OF THE UTAH CONSTITUTION.	15

	<u>Page</u>
POINT IV IT WAS AN ABUSE OF DISCRETION FOR THE BOARD TO RULE THAT SHELL OIL COMPANY DID NOT HAVE TO BRING THE BOOKS AND RECORDS OF THE UNIT WELL TO UTAH FOR AUDIT BY BENNION.	20
POINT V THE TRIAL COURT ERRED IN DETERMINING THAT MR. BENNION WAS OBLIGATED TO PAY HIS PROPORTIONATE SHARE OF THE WELL'S EXPENSE IN THAT THIS IMPOSED A COST ON MR. BENNION FOR THE PRODUCTION OF HIS ROYALTY INTEREST	25
POINT VI THE TRIAL COURT ERRED IN DETERMINING THAT MR. BENNION WAS NOT ENTITLED TO RECEIVE ANY INTEREST ON HIS WORKING INTEREST PROCEEDS AS IDENTIFIED IN THE BOARD'S FINAL ORDER	27
CONCLUSION	30

TABLE OF AUTHORITIES

Cases Cited

<u>Applicant of Farmer's Irrigation District,</u> 194 N.W. 2d 788 (Neb. 1972)	13, 18, 19
<u>Champlin Refining Co. v. Corporation Commission of Oklahoma,</u> 286 U.S. 210, 76 L.Ed 1062 (1932). .	8
<u>Duvall v. Stone,</u> 213 P.2d 212 (N.M. 1949) . .	14, 25
<u>Golding v. Schubach Optical Co.,</u> 70 P.2d 873 (Utah, 1937)	17
<u>Shinn v. Buxton,</u> 154 F.2d 629 (10th Cir. 1946). . .	14
<u>Simpson v. Burris,</u> 365 P.2d 134 (Okla. 1961)....	14, 25
<u>Ward v. Corporation Commission,</u> 501 P.2d 503 (Okla. 1972)	13, 19
<u>W. S. Hatch Company v. Public Service Commission,</u> 277 P.2d 809 (Utah, 1954)	9

Statutes and Miscellaneous Authorities Cited

<u>In Re Armstrong</u> , Cause No. 140-18	14, 25, 28
<u>In Re Malnar</u> , Cause No. 131-26	14, 25, 28
<u>In Re S. H. Bennion</u> , Cause No. 139-18	14
Kunz, <u>A Treatise on the Law of Oil and Gas</u> .13, 14, 25	
Myers, Vol. 1 <u>The Law of Pooling and Unitization</u> , . 7	
<u>Practice and Procedure Before Oil and Gas</u> <u>Commission Nuts and Bolts</u> , 25 Rocky Mt. Min. L Inst. 14-1 (1979)	16
Rule C-6 of the Rules and Regulations and Rules of Practice and Procedure of the Oil and Gas Conservation Commission of the State of Utah	23, 24
Section 40-6-1 <u>et seq</u> U.C.A. (1953), as amended	7, 17
Section 40-6-4 U.C.A. (1970 & Supp 1981)	10
Section 40-6-6 U.C.A. (1970 & Supp 1981)	3, 9, 10 11, 14, 15, 17, 26, 28
Section 40-6-9 U.C.A. (1970 & Supp 1981)	24
Section 40-6-10 U.C.A. (1953), as amended	1
Section 15-1-1 U.C.A. (Supp. 1981)	27
Utah Constitution Art. I, Section 1.	15, 16, 17

PREFACE

The case at bar is a purely legal dispute on the issues raised by the plaintiff's Complaint:

1. Is plaintiff entitled to receive his statutory working interest in kind prior to July 26, 1979?
2. Is plaintiff entitled to receive his statutory royalty interest in kind prior to July 26, 1979?
3. Must Shell bring its books and records on the unit well into Utah for audit by plaintiff?
4. Is plaintiff's royalty interest cost free?
5. Is plaintiff entitled to receive interest at the legal rate on his working interest if it is delivered to him in cash?

All of the foregoing issues involve questions of law of first impression in this state. The pooling provisions of Utah's Oil & Gas Conservation Act (hereinafter the "Act"), Section 40-6-6 U.C.A.(1970 & Supp. 1981) have not been the subject of statutory construction by the Utah Supreme Court. Neither has a pooling case been before the Utah Supreme Court. Therefore, the decision of this Court in construing portions of the Act is of great significance.

Considering the statutory construction that is necessary, this Court should be aware that Section 40-6-6 was amended in 1977 subsequent to the time the well, which is the subject matter of this dispute, was drilled and was producing. Therefore, these amendments are not applicable to this lawsuit since Mr. Bennion's property rights vested prior to the time the unit well was drilled and prior to the 1977 amendments. Accordingly, for purposes of the present dispute between the parties, the former law controls and this Court should base the decision upon the construction of the law prior to 1977 amendments.

IN THE SUPREME COURT
OF THE STATE OF UTAH

S. H. BENNION,	:	
Plaintiff-Appellant	:	
vs.	:	
	:	Case No. 18345
SHELL OIL COMPANY, a	:	
Delaware corporation,	:	
Defendant-Respondent.	:	
and	:	
UTAH STATE BOARD OF OIL,	:	
GAS & MINING,	:	
Defendant.	:	

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

Plaintiff commenced this action as an appeal pursuant to Section 40-6-10 U.C.A. (1953), as amended, from an administrative order entered by Utah's Board of Oil, Gas & Mining.

DISPOSITION IN LOWER COURT

After the case was at issue, and the State of Utah indicated its desire not to participate in the proceedings, both Mr. Bennion and Shell Oil Company (hereinafter "Shell") filed Motions for Summary Judgment. Both motions were argued before the Court at the same time and were based upon the case file

which included the Utah State Board of Oil, Gas & Mining (hereinafter the "Board") administrative record that was filed with the Court. On March 8, 1982 the Court entered its Order granting defendant's Motion, dismissing Mr. Bennion's Complaint with prejudice and affirming the Board's Order in its entirety. Plaintiff now appeals this ruling and seeks a review of the legal validity of the Board's Order.

RELIEF SOUGHT ON APPEAL

The Summary Judgment granted in favor of defendant Shell Oil Company should be reversed and this Court should decide the legal issues presented in conformity with the prayer of plaintiff's Complaint.

STATEMENT OF FACTS

The material facts hereinafter referred to involve those which are part of the administrative record filed with the Court below, including the hearing transcripts contained therein.

Plaintiff, S. H. Bennion, is the owner of an unleased, undivided one-fourth mineral interest in all of the oil, gas and minerals located in NE $\frac{1}{4}$, SW $\frac{1}{4}$, NW $\frac{1}{4}$, SE $\frac{1}{4}$ of Section 1, Township 2 South, Range 5 West, Uintah Special Meridian, Duchesne County, Utah. (Ex. A-3) He has signed neither a unit operator's agreement nor a communitization agreement with respect to the mineral interests that he owns in the foregoing section. (Oct. 24, 1979 Tr. 27)

By order in Cause No. 139-3, entered June 24, 1971, as amended by order in Cause No. 139-8, entered September 20, 1972

(See Appendix No. 1), the Board of Oil, Gas & Mining (hereinafter the "Board") established Section 1, Township 2 South, Range 5 West, Uintah Special Meridian, as a drilling and spacing unit for the production of oil, gas and associated hydrocarbons pursuant to the authority given the Board under Section 40-6-6 U.C.A. (1953), as amended. In addition to establishing Section 1 as an oil and gas drilling unit, the Board also ordered that no more than one production oil and gas well could be drilled within the unit comprised of Section 1. (R. 53-57, 67)

In the latter part of 1973, Shell began to drill the designated oil and gas unit well for Section 1 denominated the TEW1-1B5 Well. In July 1974 said well first began production of both oil and gas. It has been operating as the designated unit well since that time. (R. 160)

Mr. Bennion was notified by Shell of the drilling of the unit well and was asked to sign an operating agreement to join in the drilling of TEW1-1B5 Well as a working interest owner. (Shell Ex. 4) After numerous letters to Mr. Bennion, Mr. Bennion advised Shell in a letter dated December 1, 1973 that he did not wish to involve himself as a working interest owner in the drilling of the well. (Shell Ex. 5)

Prior to first production Mr. Bennion advised Shell on numerous occasions that he, as a nonconsenting owner under Utah law, wished to take his proportionate share of the production of the unit well in kind. As he testified at a Board hearing on October 24, 1979:

Mr. Stirba: Have you ever requested from Shell, either you or through one of your attorneys, to receive your proportionate share of production from the well?

Mr. Bennion: Yes, sir. Many times I have asked Shell personally. I've had Mr. Crockett ask Shell. I think you have asked Shell that I wanted my oil and gas in kind and I get peculiar answers that it is available and it is ready--you can have it and I say "Who do I talk to?" and they say "We'll call you." In the absence of a call, it has been continuing now for seven years. I still don't have any oil in kind. They won't give it to me in kind. They won't give my gas to me in kind. They won't pay me for it if I wanted to pay for it. There is just nothing going on. It is a complete stalemate. (Transcript at p. 17)

.

Mr. Williams: Are you willing to accept a check in that amount subject to your right, such rights as you may have to audit their records and make adjustments to that audit which it might produce?

Mr. Bennion: No. I'm not.

Mr. Williams: You're not willing to accept payment in any amount?

Mr. Bennion: I want my oil in kind.

Mr. Williams: Have you made that position clear to Shell?

Mr. Bennion: Very clear from day one. The oil and gas in kind. (Transcript at pp. 30-31)

After repeated requests, Mr. Bennion did not receive his his share of production from the unit well. Consequently, on February 24, 1975, Bennion filed this Application with the Board seeking, among other things, to force pool the drilling unit comprising Section 1, as well as requesting that the Board enter an order giving Bennion his production from said well in kind.

(R. 58-60) A Notice of Hearing was sent by the Board scheduling Mr. Bennion's Application hearing for March 16, 1975. The hearing was continued and an Amended Application was filed with the Board on June 7, 1979. (R. 61-64, See Appendix No. 2). Pursuant thereto, the Board held hearings on the Amended Application on July 26, 1979, and on October 24, 1979, and entered an Interim Order dated March 26, 1980, which, among other things, pooled all the mineral interests in Section 1 for the development and operation of said drilling unit and for the protection of correlative rights, effective at 6:00 A. M., Mountain Daylight Time, July 26, 1979. (R. 65-71, See Appendix No. 3).

The Interim Order of the Board was entered based upon a upon a Stipulation of counsel for Shell and Mr. Bennion that prior to the date of the pooling order, Mr. Bennion was entitled to receive the sum of \$57,887.93 for his working interest and \$14,334.48 for his royalty interest in said well. (R. 72, See Appendix No. 4). These accumulations were based upon computations made by Shell since the well first produced in July 1974. Prior to the parties' Stipulation and the entry of the Interim Order, Mr. Bennion had received no production or royalties from the unit well. (Oct. 24, 1979, Tr. 17, 18)

On December 18, 1980, the Board held an additional hearing in this matter, and based upon the proposed orders presented and the arguments of counsel, the Board entered its final Order in this matter on April 30, 1981. The Board's final Order

substantially incorporates the provisions of its Interim Order and ordered Mr. Bennion to receive the proceeds of both his working interest and royalty interest accumulations prior to July 26, 1979, totaling the sum of \$72,222.41, plus interest that had accumulated in a six-month money market certificate, pursuant to the provisions of the Interim Order. The Board's final Order also determined that Mr. Bennion was entitled to receive the production from said well in kind after the date of the pooling order of July 26, 1979. (R. 80-87, See Appendix No. 5).

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN DETERMINING THAT MR. BENNION WAS NOT ENTITLED TO HIS WORKING INTEREST PRODUCTION IN KIND PRIOR TO JULY 26, 1979.

In order for the Court to fully understand the context of this case, it is essential that this Court have a general historical understanding of oil and gas conservation acts and their origins.

In the early days of oil and gas development in this country, little attention was given to drilling in the most efficient and productive fashion. Oil and gas production was subject only to the law of capture and drilling was done in complete disregard of a neighbor's property rights or an equitable distribution of the resources within any given field. Resource development under the law of capture created conditions of waste and inefficiency, which found its only justification in the preservation of individual property rights. As was stated by

Raymond Myers in The Law of Pooling and Unitization, Volume 1, page 2:

Operating separately-owned properties under the law of capture means a wasteful duplication of material and equipment. Many more wells are drilled than are necessary efficiently to drain the reservoir. The more wells that are drilled, the greater will be the dissipation of the precious reservoir energy.

Again, at Section 1.01, page 15, it is stated:

Under the common law there were no restrictions on the drilling of oil and gas wells. Spurred on by the law of capture the operators endeavored to "git their fustes with the mostest" wells. Whether the desire was to capture a neighbor's oil or only to protect property lines, the result was great waste and the economic loss that always follows the drilling of unnecessary wells. It was seen very early that orderly development and true conservation demanded as a minimum the proper spacing of wells.

Since it was predominantly thought that every property owner had the unlimited right to develop his property's resources in complete disregard of his neighbor, the law of capture provided the appropriate legal underpinning for that view. Eventually, it became apparent that such a narrow view of private property rights was creating great waste of oil and gas.

Therefore, in response to the need to preserve and to efficiently produce oil and gas, most states have enacted various conservation statutes, such as Utah's, found at Section 40-6-1, et seq. U.C.A.(1970 & Supp. 1981), which regulate drilling locations in an attempt to encourage efficient oil and gas production, while at the same time protecting the correlative rights of individual property owners in a given field or pool.

Conservation acts, in their most basic form, are nothing more than governmental communitization of separate and distinct tracts of land in a given field. Individual private property rights are now subsumed under the notion that what is communally good in a given field, is good for each individual mineral interest owner.

Conservation acts such as Utah's have withstood constitutional challenge. See Champlin Refining Co. v. Corporation Commission of Oklahoma, 286 U.S. 210, 76 L.Ed. 1062 (1932). Plaintiff is not challenging the constitutionality of any of the provisions of the Act, but is challenging (1) the construction of Section 40-6-6(g) and (h) as determined by the Board, and (2) the constitutionality of the Board's Order in that it constitutes an impermissible impairment of a vested property right.

In the case at bar, the issue before this Court is not whether or not Mr. Bennion is entitled to receive production prior to the date of the entry of the pooling order of July 26, 1979, since the Board has already decided his entitlement, but rather whether or not he is entitled to receive the production in kind. The Board has ordered that Mr. Bennion receive his production not in kind, but in cash. Such a distinction is not supported by Utah's pooling statute as will be further argued in a later portion of this Brief. Moreover, the Order in depriving Mr. Bennion of the product drained from his property to which he is statutorily entitled, constitutes an unconstitutional impairment of his vested property rights and is not supported by

the express statutory mandate given the Board to protect correlative rights.

Mr. Bennion is the President of V-1 Oil Company, a retailer of gasoline and propane products. (Oct. 24, 1979 Tr. 15) Quite obviously, in this capacity, he has a compelling business need to receive the oil and gas being drained from his property in kind. (Oct. 24, 1979 Tr. 24) There is nothing in the record to indicate that Mr. Bennion did not have the ability to receive delivery of his proportionate share of production in kind, nor is there anything in the record to suggest that Mr. Bennion's business interest in receiving his production in kind was an invalid one.

Section 40-6-6(g) prior to the 1977 amendment states in pertinent part:

. . . as to each owner who does not agree, he shall be entitled to receive from the person or persons drilling and operating the well on the unit his share of the production applicable to his interest, after the person or persons drilling and operating said well have recovered the share of the cost of drilling and operating applicable to such non-consenting owner's interest, plus a reasonable charge for supervision and storage
(Emphasis added)

The foregoing clearly establishes Mr. Bennion's right as a nonconsenting owner to receive his production as of the time the well has paid out. Although "production" is not defined in the Act, the Utah Supreme Court in W. S. Hatch Company v. Public Service Commission, 3 Utah 2d 7, 277 P.2d 809 (1954), defined "production" as follows:

Production has been defined signifying to bring oil, gas or minerals to the surface. When separation from the earth has been accomplished, the "production" has been completed. Id. at 813.

In other words, Mr. Bennion is entitled to his production, the product, when it is separated from the earth. There is nothing in Section 40-6-6(g) or in the plain meaning of the word "production" that requires a nonconsenting owner such as Mr. Bennion to take his production in cash and not in kind after a well is paid out. Mr. Bennion is entitled to demand his proportionate share in kind after the well is paid out and Shell is legally obligated to provide him that production. Shell cannot avoid its direct statutory obligation to give Mr. Bennion his production in kind by withholding from him totally his working interest until such time as ordered by the Board of Oil, Gas & Mining. Pursuant to Section 40-6-6(g), if Mr. Bennion wants his proportionate share of production, he is entitled to receive it in kind.

Moreover, the Board is statutorily mandated to fully protect the correlative rights of all the mineral interest owners in an oil and gas unit. Correlative rights is defined in the act by Section 40-6-4(j) as:

The term "correlative rights" means the owner's or producer's just and equitable share in a pool.

The Board's Order does not fully protect Mr. Bennion's correlative rights in that it does not provide for him to receive his just and equitable share in the pool. Quite obviously, for the Board to deny Mr. Bennion his production of the oil and gas

that is being drained from his property by Shell, amounts to Mr. Bennion not receiving his just and equitable share. Since the production from the well is a statutory entitlement under §40-6-6, the substitution by the Board of the proceeds of production for the actual production is inadequate, and contrary to the express statutory mandate that the Board protect Mr. Bennion's just and equitable share of the production.

Order No. 5 of the Board's Order clearly makes a distinction between the production from the well and the proceeds of such production. The Board orders that Mr. Bennion is entitled to receive the proceeds, but not the production. There is nothing in the Act that supports such a distinction. In fact, the word "proceeds" is not even used in any portion of the Act. The Act mandates that a nonconsenting owner receive his proportionate share of production. Therefore, the Board's Order is contrary to the law in that it does not fully protect Mr. Bennion's correlative rights, nor does it award him his production as required by the Act.

POINT II

THE TRIAL COURT ERRED IN DETERMINING THAT MR. BENNION WAS NOT ENTITLED TO RECEIVE HIS STATUTORY LANDOWNER'S ROYALTY OF ONE-EIGHTH OF PRODUCTION AS PROVIDED BY SECTION 40-6-6(g) IN KIND PRIOR TO THE EFFECTIVE DATE OF THE POOLING ORDER ENTERED BY THE BOARD.

Section 40-6-6(g), prior to the 1977 amendment, reads as follows:

Each pooling order shall make provision for the drilling and operation of a well on the drilling unit, and for the payment of the reasonable actual

cost thereof, including a reasonable charge for supervision and storage facilities. As to each owner who refuses to agree upon the terms for drilling and operating the well, the order shall provide for reimbursement for his share of the cost of and only out of production from the unit representing his interest, excluding royalty or other interests not obligated to pay any part of the cost thereof. In the event of any dispute as to such costs, the commission shall determine the proper costs. The order shall determine the interest of each owner in the unit, and may provide in substance that, as to each owner who agrees with the person or persons drilling and operating the well for the payment by the owner of his share of the cost, each such owner, unless he is agreed otherwise, shall be entitled to receive, subject to royalty or similar obligations, the share of the production of the well applicable to the tract of the consenting owner, and as to each owner who does not agree, he shall be entitled to receive from the person or persons drilling and operating the well on the unit, his share of the production applicable to his interest, after the person or persons drilling and operating said well have recovered the share of the cost of drilling and operating applicable to such nonconsenting owner's interests, plus a reasonable charge of supervision and storage. Each consenting and nonconsenting owner shall be entitled to receive, subject to his paying or making arrangement with the owner or owners operating the well for the payment of all applicable royalties, overriding royalties or other burdens on production and his respective share of current operating or other costs incidental to the efficient operation of the well; his share, respectively, of production allocated to the tract or tracts in which he holds an interest; provided, however, that a nonconsenting owner of a tract in a drilling unit, which is not subject to any lease or other contract for the development thereof for oil and gas, shall be deemed to have a basic landowner's royalty of one-eighth (1/8) or twelve and one-half per cent of the production allocated to such tract. (Emphasis added)

Mr. Bennion's interest is not subject to a lease or other contract for mineral development. He is a nonconsenting owner. Therefore, by the express statutory language of Section

40-6-6(g), Mr. Bennion, as a nonconsenting owner, is entitled to receive a basic landowner's royalty of one-eighth of his proportionate share of production.

Historically, a one-eighth royalty is the usual royalty given by a lessee for the right to drill on the lessor's property. See Kunz, A Treatise on the Law of Oil and Gas, §39.1. Since a nonconsenting owner has no overriding contractual relationship with the operator, this provision clearly creates a statutory relationship between the nonconsenting owner and the operator that is equivalent to the voluntary relationship available to a nonconsenting owner by entering into a lease.

The provision for the royalty payment is necessary in order to clear a constitutional hurdle. Without such a provision, the statute would unconstitutionally deprive an owner of his property without just compensation and due process of law. In other words, although the nonconsenting private property owner is precluded from drilling his land, unless he is the designated operator of the unit well, by receiving the one-eighth royalty from the time the unit well first produces, he is not completely deprived of this property. Since he is entitled to receive a royalty from the time of first production, his property is not drained without some offsetting compensation. See Applicant of Farmer's Irrigation District, 194 N.W.2d 788, 187 Neb. 825 (1972); Ward v. Corporation Commission, 501 P.2d 503 (Okla. 1972).

Although the issue relating to the nature of a non-consenting owner's one-eighth royalty interest has not come before any Utah courts, the Board, in at least three previous cases, has construed 40-6-6(g) as providing for such a royalty from the time of first production. See In Re Malnar, Cause No. 131-26; In Re Armstrong, Cause No. 140-18; In Re S. H. Bennion, Cause No. 139-18. (See Appendix Nos. 6, 7, 8). Shell's counsel agrees that the Board has consistently taken this position:

The Board has taken the position rather consistently that the one-eighth statutory royalty arises by statute and independent of any act of the Board. (R. 225) (Emphasis added)

Therefore, Mr. Bennion was entitled to receive his statutory royalty in kind as of July, 1974. It was unnecessary for him to first go to the Board to trigger his royalty rights.

Moreover, the royalty given under 40-6-6(g) is payable in kind, as it is one-eighth of production. This is consistent with the traditional definition of a one-eighth landowner's royalty. See Shinn v. Buxton, 154 F.2d 629 (10th Cir. 1946); Simpson v. Burris, 365 P.2d 134 (Okla. 1961); Duvall v. Stone, 213 P.2d 212 (N.M. 1949). In Kunz, A Treatise on the Law of Oil and Gas, §38.2 up to 40, "royalty" was defined as follows:

The royalty which is provided for in an oil and gas lease may be defined in very general terms as constituting the share of the product, or the proceeds of the sale of any product, which the lessee pays the lessor for the privilege of producing oil and gas. (Emphasis added)

In most instances, the landowner's royalty will be paid in cash and not in kind. Obviously most lessors or fractional

mineral interest owners have neither the ability nor desire to receive the statutory royalty interest in kind. However, Mr. Bennion, as has previously been indicated, owns and operates V-1 Oil Company, which retails and distributes oil and gas products. Therefore, he has both the need and desire to receive his royalty in kind.

As indicated in the above cited cases, other jurisdictions have construed the word "royalty" as a share of the products. No compelling reason exists for this Court to construe "royalty" any differently, especially in view of a clear need on the part of a small retailer of oil and gas products such as Mr. Bennion. Therefore, this Court should construe the landowner's royalty provision of Section 40-6-6(g) as the Board has as entitling Mr. Bennion to receive his royalty in kind, or "one-eighth of the production allocated to such tract," as stated in 40-6-6(g) prior to the 1977 amendment.

POINT III

THE TRIAL COURT ERRED IN DETERMINING THAT MR. BENNION WAS ENTITLED TO PROCEEDS OF PRODUCTION, RATHER THAN ACTUAL PRODUCTION, IN VIOLATION OF MR. BENNION'S CONSTITUTIONALLY PROTECTED VESTED PROPERTY RIGHTS UNDER ARTICLE I, SECTION 1, OF THE UTAH CONSTITUTION.

Typically, cases such as these present a constitutional issue where the regulatory body has entered a pooling order that is not retroactive. The property owner then has been clearly deprived of his property in that he does not share in the unit production prior to the effective date of the pooling order, which may be entered several years after the unit well first

produces. A pooling order that is not retroactive is unconstitutional. See Ward v. Corporation Commission, 501 P.2d 503 (Okla. 1972). As was stated by Balkovatz in his article, Practice and Procedure Before Oil and Gas Commission Nuts and Bolts, 25 Rocky Mt. Min. L.Inst. 14-1 (1979):

Accordingly, it is submitted that the rule in Ward should be followed to avoid unconstitutional taking of property and to assure equitable distribution to all parties owning oil and gas interests in drilling units. To avoid the risk of a denial to make a compulsory pooling effective retroactive to the date of the drilling unit order, force pooling should be requested immediately after entry of the drilling unit order. However, if the well was drilled after the drilling unit order, the compulsory pooling order should be made effective to the date drilling operations were commenced. (At pp. 14-28)

Because the Board's Order is retroactive, Mr. Bennion is not raising that constitutional issue. However, the Board's Order still is unconstitutional under the Utah Constitution to the extent that he has been deprived of his property, namely the product from the well. The proceeds ordered by the Board to be paid to him are not sufficient to cure the constitutional infirmity. The fact remains that Mr. Bennion's property was drained and his mineral estate depleted. The Board's Order has the effect of completely depriving him of valuable oil and gas products prior to the date of the entry of the pooling order.

Article I, Section 1, of the Utah Constitution states as follows:

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship

according to the dictates of their consciences; to assemble peaceably, protest against wrongs and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for an abuse of that right. (Emphasis added)

The meaning of the property rights provision of this Article was further elucidated in Golding v. Schubach Optical Co., 70 P.2d 873 (Utah 1937), wherein this court stated:

The Constitution declares in Article I, Section 1, men are by nature free and independent, and have certain inalienable rights among which are the pursuing and obtaining of happiness, and safety, and property. These rights are invaded when one "is not at liberty to contract with others respecting the use to which he may subject his property [or use or employ his time and talents] or the manner in which he may enjoy it." Id. at 875. (Emphasis added)

There is no question that the property owned by Mr. Bennion was the oil and gas beneath his mineral estate which constituted his proportionate share of the unit. The oil and gas wasn't owned by Shell, even though Shell was given the exclusive right to drill the only unit well and to drain the unit of its oil and gas. The Board's unitization order did not effect the vested property rights of all mineral interest owners in the unit in terms of what they owned, but merely restricted their rights to develop their respective mineral estates.

In light of Mr. Bennion's ownership of the minerals, and the Board's express statutory duty to protect that ownership, Section 40-6-1 and Section 40-6-6(a), it is clear that since Mr. Bennion was deprived of the oil and gas products representing his share, he "is not at liberty to contract with others respecting

the use to which he may subject his property." This is very significant considering the fact that oil and gas is the lifeblood of Mr. Bennion's business. He testified in this regard at the October 24, 1980 hearing as follows:

Mr. Stirba: Now with respect to your desire to have the oil and gas production in kind, is there a particular reason why you want this?

Mr. Bennion: I'm in the marketing business. I have a small interest in a refinery and I would like to have the oil so that it would enhance my position in the market place in obtaining finished products. I have been in the business 40 years and a little oil helps to get the additional refined and finished products. That's the reason I want my oil in kind and my gas in kind. (Tr. 24)

Shell's attorneys argued before the trial court that Mr. Bennion had no vested rights to any production until the effective date of the Board's pooling order. This argument was rejected both by the Board and by the trial court. The Board's order was made retroactive, and in so doing the Board acted consistently with other similar state boards where a question of a retroactive pooling order has been raised. All state courts that have considered the validity of such a retroactive order have upheld them. For example, in Applicant of Farmer's Irrigation District, supra, a well had been drilled and had become productive on October 15, 1964. Litigation which was initiated on the validity of the title culminated in an application for a compulsory pooling order on July 16, 1967. The Farmer's Irrigation District argued that the order should be made retroactive to the date of production. The Nebraska Oil and Gas

Commission agreed and made the order effective as of October 15, 1964.

On appeal, the Supreme Court of Nebraska affirmed the decision of the Commission and noted that with the adoption of the Nebraska Oil and Gas Conservation Act, land owners could no longer protect their interests through the rule of capture. The court's concern for the rights of each landowner within the drilling unit was expressed as follows:

Here the appellants are entirely dependent for protection on the pooling order allocating to them a share of the production and the cost of production of appellee's well. The several sections of the Act consistently stress the protection of correlative rights. They are clearly designed to protect adjoining landowners under whose lands the pool may stand. To do so in a fair, reasonable, and adequate manner, and to permit an adjoining owner to obtain, recover and receive his just and equitable share, the pooling order may be made retroactive to the time production started, and insofar as costs are concerned, to the start of the drilling operations. Unless the order may be made effective retroactively, it may on occasion verge on the confiscatory. 194 N.W.2d at 791-792.

In Ward v. Corporation Commission, 501 P.2d 503 (Okla. 1972), the Supreme Court of Oklahoma faced a similar fact situation as in the Farmers Irrigation District case. In Ward, Tenneco Oil Company was a mineral interest owner in an oil and gas drilling unit established by the Oklahoma Corporation Commission on June 26, 1969. Prior to the issuance of any spacing order, Ward had drilled a gas well that had commenced production in January 1969. On February 17, 1971, in response to an application of Tenneco, the Commission entered an order force

pooling the unit that contained the Ward gas well. The Commission also entered an order that established Tenneco's right to share in the gas production retroactive to the date that the unit was formed. On appeal, the Supreme Court of Oklahoma upheld the validity of the Commission's order and further held that if the order was not made retroactive it would be constitutionally infirm. The court stated in this regard:

With the purpose of §87.1 to prevent the drilling of unnecessary wells before it, the commission will not, except in extreme cases, make an exception to the rule that permits one producing well only on each spacing (drilling) unit. To impose this denial without granting the right to participate in the production of the unit well, as of the time the non-drilling owners were prohibited from drilling, is the taking by the state of their property without due process in violation of the 14th Amendment to the Constitution of the United States.

Mr. Bennion, by the Board's Unitization Order entered in Cause No. 139-8 is precluded from draining his own mineral estate of oil and gas since only one well may be drilled per unit. Therefore, because he is precluded from his own resource development, the Board's Order depriving him of valuable oil and gas products for his business unconstitutionally impairs his liberty to contract with respect to his property and impermissibly impairs property rights that vested prior to the Board's Unitization Order.

POINT IV

IT WAS AN ABUSE OF DISCRETION FOR THE BOARD TO RULE THAT SHELL OIL COMPANY DID NOT HAVE TO BRING THE BOOKS AND RECORDS OF THE UNIT WELL TO UTAH FOR AUDIT BY MR. BENNION.

Mr. Bennion testified as follows concerning the accounting information provided by Shell:

Mr. Stirba: In conjunction with all the information you receive, I want the Board to be absolutely clear, what specifically are your objections as to right now as to the accounting that you received by Shell; in other words what is your problem?

Mr. Bennion: As to this new accounting that we received?

Mr. Stirba: Right. As to the accounting information you received to date.

Mr. Bennion: First, it is very inaccurate. There is substantial error in it. Two, it doesn't have any records of the original entry into it. Its a summarization of records which they keep in conjunction with other wells and other producing properties.

Its not meaningful to the extent of a specific item cost. In other words, what is the cost of the tubing or the labor or the pipe or the pump or the tank. Its all lumped into one lump sum. Its just full of error. Production records of the information they furnish us doesn't tie to the information they furnished to the state in thirty or forty percent of the cases. They furnished the state one production record of barrels produced and gas produced, and then they furnish us another record which doesn't tie to the state record at all.

The accounting that we have now, the new fresh accounting, is just as frustrating as it has ever been. We can't get to the point of what's going on. We want to know what's going on. We want to know what they are spending all this money for. We want the record to conform with their state reports.
(October 24, 1979 Tr. 20-21)

The record before this court corroborates and supports

Mr. Bennion's testimony. Shell submitted three different sets of production figures to Mr. Bennion; the worksheet attached to Kirkpatrick September 28, 1977 letter to Caldwell, Exhibit "A-5", Exhibits "A-8" through "A-12" submitted to Mr. Bennion pursuant to the representation of Shell's counsel to provide Mr. Bennion with an accounting at the July 26, 1979 hearing, and the state

production reports filed by Shell with the State of Utah as required by law found in the record as Exhibit "A-16"). Errors, discrepancies, and substantial differences in production figures exist with respect to each set of figures which is summarized by Exhibits 1, 2 and 3 submitted to the trial court. (R. 161-170) Some of these discrepancies are not insignificant. For example, the difference between what Shell reported in its January, 1975 state report and what it indicated to Mr. Bennion's accountant in the worksheet attached to the Kirkpatrick letter is almost 17,000 barrels of oil.

In response to these facts, the Board entered an Order authorizing Shell to reimburse Mr. Bennion the costs of traveling expense for his accountants and attorneys to audit Shell's records in Houston. Pursuant to the Board's Order, Mr. Bennion hired the Houston office of Main, Hurdman and Cranstoun to conduct a preliminary audit of the unit well.

As a result of the accountants' preliminary work, they reported to Mr. Bennion that necessary information in order to determine the accuracy of quantity figures was not provided and they were unable to address any of the quantity differences that were of record before the Board. (July 9, 1980 letter to Stirba) Moreover, the accountants relied on a Tenneco Oil Company audit for the period of January, 1973 through December, 1974 and determined incorrect charges were made during this time period against the unit well lease. (July 9, 1980 letter to Stirba) The accountants did not examine any other expenditure information

other than for this time period and therefore were not in a position to address the costs beyond December, 1974. As a result, Mr. Bennion has spent over \$5,000.00 and still does not have the information necessary in which to determine the accuracy of Shell's figures or to explain the differences in Shell's figures. Nor has Shell provided any explanation.

It is Mr. Bennion's contention that the Board abused its discretion in determining that Shell did not have to bring its books and records to Utah for audit, even though a threshold showing was made that justified further examination of Shell's figures. Since Rule C-6 of the General Rules and Regulations of the Board requires Shell to keep and maintain records for the unit well, and puts Shell on notice that such records may be required to be brought before the Board for examination, there exists clear authority for the Board requiring Shell to bring the well's records to Utah. Under the circumstances of this case, the Board should have done so.

The audit work done on behalf of Mr. Bennion in Houston presented real and difficult practical problems for Mr. Bennion and his accountants. First of all, all of the Section 1 books and records were not completely separated from other well records, thus making such an audit more difficult and more expensive. (Dec. 18, 1980 Tr. 19-20) Second, all of the well's records were not available to Mr. Bennion's accountants. Third, Mr. Bennion was compelled to employ accountants that he was unfamiliar with, and he could not communicate as effectively with

Utah wells. Since the well is in Utah, the record should be made available in Utah. The requirements that an operator make its books and records available here is for the protection of those people who have an interest in the wells located here in Utah. If the operator chooses to locate its books and records out of state, it should bear the expense of its decision, not a royalty or working interest owner who has a very small interest in the unit.

Accordingly, this court should reverse the trial court in determining that the Board abused its discretion under the facts of this case in not ordering that Shell bring its books and records on the unit well to Utah for audit by Mr. Bennion.

POINT V

THE TRIAL COURT ERRED IN DETERMINING THAT MR. BENNION WAS OBLIGATED TO PAY HIS PROPORTIONATE SHARE OF THE WELL'S EXPENSE IN THAT THIS IMPOSED A COST ON MR. BENNION FOR THE PRODUCTION OF HIS ROYALTY INTEREST.

The basic landowner's royalty statutorily provided in Section 40-6-6(g), prior to the 1977 amendments, is a cost-free royalty under common law. See Simpson v. Burris, supra; Duvall v. Stone, supra; Kunz, A Treatise on the Law of Oil and Gas, §39.1 at 237-238. There is no reason why this court should not adopt the traditional construction of a one-eighth landowner's royalty and construe the pertinent provision of subsection (g) as providing for a cost-free royalty. The Board has adopted this approach in In Re Malnar, supra, and In Re Armstrong, supra.

If the one-eighth landowner's royalty is cost free, then Shell may not recoup any production costs from nonconsenting

owner's one-eighth royalty interest. In other words, the operator is entitled to recover its production costs as provided by §40-6-6(g) totally out of 7/8ths of the nonconsenting owner's proportionate share of production. One-eighth of the non-consenting owner's proportionate share, Mr. Bennion's basic landowners statutory royalty, is not chargeable against any cost.

The Board's Order, however, obligates Mr. Bennion to pay 100% of the costs of producing both his working interest and his statutory one-eighth royalty interest. By merely shifting the proportionate allocation of production costs onto Mr. Bennion's working interest, his statutory royalty interest is in no sense cost free. He is paying 100% of the cost of producing both the royalty interest and the working interest. Any sensible construction of §40-6-6(g) requires that Mr. Bennion not be obligated to pay for the costs of producing his royalty interest.

To adopt the construction of 40-6-6(g) that the Board adopted, means that the nonconsenting owner, such as Mr. Bennion, is placed in quite a different position vis-a-vis Shell than a landowner who may have leased his land in the unit to Shell and received a one-eighth royalty in return. The lessor will truly get, pursuant to the lease arrangement with Shell, a cost-free one-eighth basic landowner's royalty. He will receive the one-eighth royalty and not be subject to paying any costs of production or expenses of the unit well. Mr. Bennion, however, although statutorily having been granted a one-eighth landowner's royalty as well, will not receive his royalty interest cost free

as he will be required to pay for all costs associated with producing his royalty. The creation of such an anomalous situation clearly could not have been intended by our Legislature, especially when the Legislature clearly intended to place Mr. Bennion, as a nonconsenting owner, in a position equivalent to a lessor by statutorily providing for the basic landowner's royalty.

POINT VI

THE TRIAL COURT ERRED IN DETERMINING THAT MR. BENNION WAS NOT ENTITLED TO RECEIVE ANY INTEREST ON HIS WORKING INTEREST PROCEEDS AS IDENTIFIED IN THE BOARD'S FINAL ORDER.

In the event that this Court determines that Mr. Bennion is not entitled to receive any production from this well in kind, Mr. Bennion alternatively asks this Court to remand this matter to the Board for the Board to enter an order requiring Shell to pay Mr. Bennion interest at the legal rate on his working interest of \$57,887.93. The Board has already ordered that interest be paid on Mr. Bennion's statutory royalty interest and there is no valid reason for Mr. Bennion not to receive interest on his working interest as well.

Section 15-1-1 U.C.A.(Supp. 1981), reads in pertinent part as follows:

The legal rate of interest for the loan or forbearance of any money, goods or things in action shall be ten percent (10%) per annum.

Mr. Bennion's right to receive his working interest became effective at the time the unit well paid out, in May, 1976. At that juncture, when Shell had recovered its costs of

drilling, Mr. Bennion became statutorily entitled to receive his working interest pursuant to 40-6-6(g) which states in pertinent part:

. . . and that each nonconsenting owner shall be entitled to receive, subject to royalty or similar obligations, the share of production from the well applicable to his interest in the unit after the consenting owners have recovered from the nonconsenting owners' share of production the following:

(1) In respect to every such well, 100% of the nonconsenting owners' share of the cost of surface equipment beyond the wellhead connections (including, but not limited to stock tanks, separators, treaters, pumping equipment and piping), plus 100% of the nonconsenting owners' share of the cost of operation of the well commencing with first production and continuing until the consenting owners have recovered these costs, it being intended that the nonconsenting owners' share of these costs and equipment will be that interest which would have been chargeable to the nonconsenting owner had he initially agreed to pay his share of the costs of the well from the beginning of the operation; and

Thus, since Mr. Bennion's statutory entitlement ripened in May, 1976, and he did not receive any of his working interest proceeds until May, 1981, he is entitled to receive interest at the legal rate as provided by 15-1-1 as his working interest accrued monthly during that time period.

Not only is there a statutory mandate, but there is prior Board precedent to justify Mr. Bennion receiving interest. In both In Re Armstrong, Cause No. 140-18, and In re Malnar, Cause No. 131-26, both pooling cases, the Board awarded interest to each respective applicant on the applicant's working interest at a rate of eight percent (8%) per annum. In both of these cases,

not only did the Board award interest, but it chose to award interest at a higher rate than required by law. In light of this precedent, it is manifestly unfair that the Board decided to treat Mr. Bennion differently than it has treated two prior applicants in the only two prior cases where the Board has considered the question.

Moreover, even Shell took the position before the Board that if interest was to be awarded, then Mr. Bennion should receive interest at the legal rate. In Shell's Memorandum of Facts and Law submitted to the Board, in Section IV, Shell argued that if the Board awarded interest, it should be at the legal rate. No argument was made by Shell to distinguish between Mr. Bennion's royalty interest and Mr. Bennion's working interest, and to award interest on one and not the other. The Board's distinction contained in its order is clearly arbitrary and contrary to law.

CONCLUSION

The court below erred in granting defendant Shell Oil Company's Motion for Summary Judgment as the trial court incorrectly determined the law of this case in construing Utah's Oil and Gas Conservation Act. The Act clearly vests certain property rights in Mr. Bennion as a nonconsenting working interest owner which entitle him to receive his proportionate share of production from the unit well in kind as well. The facts of this case which evidence gross disparity in figures

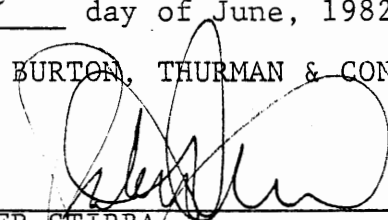
reported by Shell also justify requiring that Shell Oil Company bring its books and records into the State of Utah for audit.

Accordingly the judgment of the trial court should be reversed and the issues of law presented in this case decided in Mr. Bennion's favor.

RESPECTFULLY SUBMITTED, this 4th day of June, 1982.

McKAY, BURTON, THURMAN & CONDIE

By

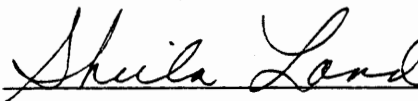

PETER STIRBA
Attorneys for Plaintiff-
Appellant
500 Kennecott Building
Salt Lake City, Utah 84133

MAILING CERTIFICATE

I hereby certify that on the 4th day of May, 1982, I mailed two true and correct copies of the foregoing APPELLANT'S BRIEF, postage prepaid, to:

Allen L. Sullivan, Esq.
Paul M. Durham, Esq.
VAN COTT, BAGLEY, CORNWALL & MCCARTHY
50 South Main Street
Salt Lake City, Utah 84144

Richard L. Dewsnap, Esq.
Assistant Attorney General
1636 West North Temple Street
Salt Lake City, Utah 84116



Sheila Lord

APPENDIX
TO APPELALANT'S BRIEF
(Appendix Nos. 1 through 8)

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

IN THE MATTER OF THE APPLICATION OF)	
SHELL OIL COMPANY FOR AN ORDER EXTENDING)	
PRIOR ORDERS OF THE BOARD IN CAUSE NO:)	
139, AS EXTENDED AND MODIFIED, TO)	O R D E R
FURTHER DEFINE THE SPACED INTERVAL.)	
AND TO COVER AND INCLUDE ADDITIONAL)	CAUSE NO. 139-B
LANDS IN THE ALTAMONT FIELD, DUCHESNE)	
COUNTY, UTAH)	

Pursuant to Notice of Hearing dated September 1, 1972, of the Board of Oil and Gas Conservation, Department of Natural Resources of the State of Utah, this Cause came on for hearing before said Board at 10:00 o'clock a.m. on Wednesday, September 20, 1972, in the State Office Building Auditorium, First Floor - State Office Building, Salt Lake City, Utah. The following Board members were present:

Delbert M. Draper, Jr., Esq., Chairman, Presiding
Charles K. Henderson
Robert K. Norman
Evert J. Jensen

Also present:

Cleon B. Feight, Esq., Director, Division of Oil and Gas Conservation
Paul W. Butchell, Chief Petroleum Engineer, Division of Oil and Gas Conservation
Gerald Daniels, United States Geological Survey, Salt Lake City, Utah
Paul E. Reimann, Assistant Attorney General

Appearances were made as follows:

For Shell Oil Company:	D. F. Cullton, Esq. Denver, Colorado
	Gregory Williams, Esq. Salt Lake City, Utah
For Chevron Oil Company, Western Division:	William M. Balkovatz, Esq. Denver, Colorado
For Ute Distribution Corporation:	George C. Morris, Esq. Salt Lake City, Utah

NOW, THEREFORE, the Board having considered the testimony adduced, and the exhibits received at said hearing, and being fully advised in the premises, now makes and enters the following:

EXHIBIT "A"

APPENDIX # 1

FINDINGS

1. Due and regular notice of the time, place and purpose of the hearing was given to all interested parties 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 the matter covered by said Notice and over all parties interested therein and has jurisdiction to make and promulgate the order hereinafter set forth.

3. By Orders entered in Consolidated Causes No. 139-3 and No. 139-4 dated June 24, 1971, and Cause No. 139-5 dated November 17, 1971, the Board established drilling units comprising each governmental section for the production of oil, gas and associated hydrocarbons from the interval described in paragraph No. 7 of said Order in Consolidated Causes No. 139-3 and No. 139-4, common source of supply underlying the lands in the Altamont Area, all as more particularly described in said Consolidated Causes No. 139-3 and No. 139-4, and Cause No. 139-5.

4. Further drilling and development operations and the information and data obtained therefrom, both within and beyond the presently defined boundaries of spaced lands described in said Orders in Consolidated Causes No. 139-3 and No. 139-4, and Cause No. 139-5, subsequent to the dates of said Orders, indicate that the present spaced interval and spaced area as described in said prior Orders should now be further defined and enlarged as follows:

- (a) The spaced interval for the common source of supply underlying lands described in paragraph 4(b) below should be defined as:

The interval from the top of the Lower Green River formation (TGM₃ marker) to the base of the Green River-Wasatch formations (top of Cretaceous), which base is defined as the stratigraphic equivalent of the Dual Induction Log depths of 16,720 feet in the Shell, Ute 1-1885 well located in the SE_{1/4} of Section 18, Township 2 South, Range 5 West, U.S.M., and 16,970 feet in the Shell, Brotherson 1-line well located in the SE_{1/4} of Section 11, Township 2 South, Range 4 West, U.S.M.

- (b) The lands known and believed to be underlain by the common source of supply from which oil, gas and associated hydrocarbons can be produced from the spaced interval of the Green River-Wasatch formations

in Duchesne County, Utah, as hereinabove defined
in paragraph 4(a), include the following described
lands, which include the lands described in said
Consolidated Causes No. 139-3 and No. 139-4, and
Cause No. 139-5, to wit:

Township 1 South, Range 3 West, U.S.M.
Sections 3 through 10: All
Sections 15 through 22: All
Sections 27 through 34: All

Township 1 South, Range 4 West, U.S.M.
Sections 1 through 36: All

Township 1 South, Range 5 West, U.S.M.
Sections 10 through 17: All
Sections 20 through 36: All

Township 1 South, Range 6 West, U.S.M.
Sections 25 and 26: All
Sections 35 and 36: All

Township 2 South, Range 3 West, U.S.M.
Sections 3 through 8: All
Sections 17 through 20: All
Sections 29 through 32: All

Township 2 South, Range 4 West, U.S.M.
Sections 1 through 36: All

Township 2 South, Range 5 West, U.S.M.
Sections 1 through 36: All

Township 2 South, Range 6 West, U.S.M.
Sections 1 through 36: All

Township 2 South, Range 7 West, U.S.M.
Section 36: All

Township 3 South, Range 3 West, U.S.M.
Sections 5 through 8: All
Sections 17 through 20: All
Sections 29 through 32: All

Township 3 South, Range 4 West, U.S.M.
Sections 1 through 36: All

Township 3 South, Range 5 West, U.S.M.
Sections 1 through 36: All

Township 3 South, Range 6 West, U.S.M.
Sections 1 through 6: All
Sections 11 through 14: All
Sections 21 through 26: All
Sections 35 and 36: All

Township 3 South, Range 7 West, U.S.M.
Section 1: All

Township 4 South, Range 3 West, U.S.M.
Sections 5 and 6: All

Township 4 South, Range 4 West, U.S.M.
Sections 1 through 6: All

Township 4 South, Range 5 West, U.S.M.
Sections 1 through 6: All

Township 4 South, Range 6 West, U.S.M.
Sections 1 and 2: All

5. One well on a governmental section consisting of 640 acres, more or less, will efficiently and economically drain the recoverable oil, gas and associated hydrocarbons from the aforesaid common source of supply underlying the lands described in paragraph 4(b) above, and that a governmental section drilling unit is not larger than the maximum area that can be efficiently and economically drained by one well.

6. The Orders entered in Consolidated Causes No. 139-3 and No. 139-4, and Cause No. 139-5 provide that the permitted well for each drilling unit shall be located in the center of the NE $\frac{1}{4}$ of the governmental section comprising such drilling unit with a tolerance of 660 feet in any direction; provided that an exception to said tolerance may be granted without a hearing where a topographical exception is deemed necessary. Such provisions in said prior orders should continue to apply provided further that exceptions to such permitted well location and tolerance allowance should be allowed where needed for wells presently drilling or producing oil, gas and associated hydrocarbons from the common source of supply in the Altamont Area.

7. Any and all Orders of the Board heretofore promulgated concerning the Altamont Area, Duchesne County, Utah, which are inconsistent with the Order hereinafter set forth should be vacated upon the effective date of this Order.

ORDER

IT IS THEREFORE ORDERED:

A. That 640 acre drilling units be and the same are hereby established comprising each governmental section, or governmental lots corresponding thereto, for the development and production of oil, gas and associated hydrocarbons from the interval described in paragraph 4(a) above, underlying the lands described in paragraph 4(b) above.

8. That no more than one well shall be drilled on any such unit for the production of oil, gas and associated hydrocarbons from the common source of supply, and that the permitted well for each drilling unit shall be located

*Desire has
order that says
production
unit for
oil or
gas or
production*

in the center of the NE $\frac{1}{4}$ of the governmental section comprising such unit, with a tolerance of 660 feet in any direction; provided that an exception to said tolerance may be granted administratively without a hearing where a topographical exception is deemed necessary; and provided that exceptions to the permitted well location and tolerance allowance are hereby allowed where needed for all wells presently drilling or producing oil, gas and associated hydrocarbons from the common source of supply in the Allmont Area, and such exception wells shall be the permitted wells for the drilling units on which they are located.

C. That any and all Orders of the Board heretofore promulgated which are inconsistent with this Order are hereby vacated.

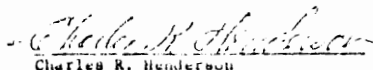
D. That this Order is a temporary order and the Board, on its own motion, or any interested party may file an application requesting a hearing to present new evidence covering the matters set forth herein.

E. That the Board retains continuing jurisdiction of all matters covered by this Order and particularly retains continuing jurisdiction to make further orders as appropriate and authorized by statute and applicable regulations.


ENTERED AND EFFECTIVE THIS 20th day of September, 1972.

BOARD OF OIL AND GAS CONSERVATION
OF THE STATE OF UTAH


Delbert M. Draper, Jr. Chairman


Charles R. Henderson

Robert R. Norman


Evert J. Jensen

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

IN THE MATTER OF THE APPLICATION)	
OF S. H. BENNION FOR AN ORDER)	
POOLING INTERESTS IN THE DRILL-)	AMENDED APPLICATION
LING UNIT COMPRISED OF SECTION 1,)	
TOWNSHIP 2 SOUTH OF RANGE 5 WEST,)	Cause No. 139-13
UINTAH SPECIAL MERIDIAN, DUCHESNE)	
COUNTY, UTAH.)	

Pursuant to Section 40-6-6(f) Utah Code Annotated (1953), as amended, S. H. Bennion, by and through his attorney hereby applies to the Board of Oil, Gas and Mining of the Department of Natural Resources of the State of Utah for an order pooling the Bennion property interests in the drilling unit comprised of Section 1, Township 2 South of Range 5 West, Uintah Special Meridian, Duchesne County, Utah, with the interest of Shell Oil Company and any other property interest applying to the area referred to above. Furthermore, applicant hereby applies to the Board of Oil, Gas and Mining for an order compelling the operators of the Shell Well 1-1B5 to distribute to Mr. Bennion his proportionate share of production of crude oil and natural gases previously produced from said well and to pay Mr. Bennion his cost-free 1/8 land owner's royalty pursuant to Section 40-6-6(h) Utah Code Annotated (1953), as amended. Furthermore, applicant moves that the Board compel Shell to operate the well in the most efficient manner possible to gain the highest possible level of production with the least amount of waste. In support of this Amended Application applicant respectfully alleges and shows:

1. S. H. Bennion is an individual who resides in the State of Idaho.
2. Applicant is a fractional mineral interest owner in a portion of the drilling rights found within the Section described above; specifically a 25% mineral interest owner in NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of the aforesaid Section 1. By

APPENDIX # 2

order entered June 24, 1971 in Cause No. 139-3 as amended by order entered September 20, 1972 in Cause No. 139-8, the Board, in addition to other matters ordered therein, established drilling units comprising each governmental section for the production of oil, gas and associated hydrocarbons for lands comprising Section 1, Township 2 South of Range 5 West, Uintah Special Meridian, Duchesne County, Utah.

3. Section 1, Township 2 South of Range 5 West, Duchesne County, has been established as a drilling unit by orders entered by the Board in said Causes 139-3 and 139-8. Said drilling unit consists of two or more separately owned tracts and there are separately owned interests in all or part of such drilling unit. Under the orders described above only one well is permitted to produce oil and gas at any time from the lands located within such drilling unit. Shell has drilled well number 1-1B5 in Section 1.

4. Pursuant to a communitization agreement dated 6/12/73, Shell asked Bennion to join as a working interest operator in an agreement for the development of the unit. Certain parts of the agreement are not acceptable to Mr. Bennion and Mr. Bennion has refused to adopt or ratify the communitization agreement. Applicant has determined from the records on file with the Board that no communitization agreement has been filed covering the entire area.

5. In spite of applicant's refusal to sign the communitization agreement and become a working interest operator in the aforesaid well with Shell, the application submitted by Shell Oil Company for drilling the well located in Section 1 included Mr. Bennion's name on the space marked "name of operator".

6. Mr. Bennion has no objection of this procedure since Mr. Bennion is willing and able to pay his proportionate share of the cost of production in bringing in the well and has tendered to Shell sums constituting his proportionate share of

the cost. However, Mr. Bennion has been unable, to his satisfaction, to accurately and meaningfully inspect the books and records of Shell and to receive a proper accounting of the drilling cost of said well in order for him to accurately determine his proportionate share of those costs. Accordingly, Mr. Bennion requests that the Board require Shell to produce any and all relevant books and records that will establish the drilling cost for said well in order to determine Mr. Bennion's share of the cost of drilling and operating said well, and for Shell Oil Company to make a proper accounting thereon.

7. Although Mr. Bennion owns part of the underlying land upon which Shell well number 1-1B5 is the unit well and producing, Shell has not made any accounting to Mr. Bennion for the production, nor has Shell tendered to Mr. Bennion his cost-free basic landowner's royalty which Shell is obligated to pay pursuant to Section 40-6-6(h), Utah Code Annotated (1953), as amended.

8. Mr. Bennion also desires to take his proportionate share of the production of said well in kind and requests that the Board order Shell to provide Mr. Bennion with his production in kind, and to further determine an arrangement that is feasible to both parties in this regard.

9. To protect correlative rights, the Board should (1) pool Mr. Bennion's interests with those of other owners in the drilling unit comprising of Section 1, Township 2 South of Range 5 West, Uintah Special Meridian, Duchesne County, Utah; (2) to further determine Mr. Bennion's proportionate share of the cost and production of well number 1-1B5 and to order Shell Oil Company to make an accounting thereon; (3) order that he receive his proportionate share of production in kind; and (4) determine Mr. Bennion's 1/8 landowner's royalty and order Shell Oil Company to distribute said royalty to him in kind.

WHEREFORE, applicant respectfully requests that this application and matter be set for hearing at the scheduled

meeting of the Utah Board of Oil, Gas and Mining which will
take place on July 25, 1979.

DATED this 7th day of June, 1979.

Respectfully submitted,



PETER STIRKA
Attorney for S. H. Bennion
Suite 14, Intrade Building
1399 South Seventh East
Salt Lake City, Utah 84105

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

IN THE MATTER OF THE APPLICATION)	
OF S. H. BENNION FOR AN ORDER)	
POOLING INTEREST IN THE DRILLING)	INTERIM ORDER
UNIT COMPRISED OF SECTION 1,)	
TOWNSHIP 2 SOUTH OF RANGE 5 WEST,)	Cause No. 139-13
UINTAH SPECIAL MERIDIAN, DUCHESNE)	
COUNTY, UTAH)	
<hr/>	

This cause came on for hearing before the Board of Oil, Gas and Mining, Department of Natural Resources, the State of Utah, at 10:00 a.m., on Thursday, July 26, 1979, in the Executive Conference Room, Holiday Inn, 1659 West North Temple, Salt Lake City, Utah, pursuant to the Amended Application of S. H. Bennion ("Bennion") and to notice to all interested parties duly and regularly given by the Board, to consider forced pooling of the uncommitted interest of Bennion in the above-captioned drilling unit, and other matters as set forth in the Amended Application and Notice of Hearing.

The following members of the Board were present:

Charles R. Henderson, Chairman
Edward T. Beck
C. Ray Juvelin
E. Steel McIntyre
John L. Bell

Also present and representing the Division:

Cleon B. Feight, Director
Thalia R. Busby, Administrative Assistant
Frank M. Hamner, Chief Petroleum Engineer

APPENDIX # 3

Michael Minder, Geological Engineer

Denise A. Dragoo, Special Assistant Attorney General

Appearances were made as follows:

S. H. Bennion, for himself

Peter Stirba, Counsel for S. H. Bennion

Don Gallion, Counsel for Shell Oil Company

Gregory P. Williams, Counsel for Shell Oil Company

This cause also came on for hearing before the Board of Oil, Gas and Mining, Department of Natural Resources, State of Utah, on October 24, 1979, at the Wildlife Resources Auditorium, 1596 West North Temple, Salt Lake City, Utah. The following members were present:

Charles R. Henderson, Chairman

John L. Bell

C. Ray Juvelin

E. Steel McIntyre

Constance K. Lundberg

Edward T. Beck

Also present and representing the Division:

Cleon B. Feight, Director

Thalia R. Busby, Administrative Assistant

Frank M. Hamner, Chief Petroleum Engineer

Michael Minder, Geological Engineer

Denise A. Dragoo, Special Assistant Attorney General

Appearances were made as follows:

S. H. Bennion, for himself

Peter Stirba, Counsel for S. H. Bennion

Don Gallion, Counsel for Shell Oil Company

Gregory P. Williams, Counsel for Shell Oil Company

Counsel for Bennion and counsel for Shell Oil Company have submitted a written Stipulation whereby they stipulate and agree to the entry of an Interim Order by the Board.

NOW, THEREFORE, the Board, having considered the matters presented at said hearings and the remarks and the written stipulation of counsel, now makes and enters the following:

FINDINGS

1. That due and regular notice of the time, place, and purpose of said hearings was given to all interested parties in the form and manner and within the time required by law.

2. That the Board has jurisdiction over the matters covered by the Amended Application and all of the parties interested therein, and has jurisdiction to make and promulgate the Interim Order hereinafter set forth.

3. That Bennion is the record owner of an unleased, undivided one-fourth mineral interest in all oil, gas and minerals located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, Township 2 South, Range 5 West, Uintah Special Meridian, Duchesne County, Utah.

4. That by Order in Cause No. 139-3, entered June 24, 1971, as amended by Order in Cause No. 139-8, entered September 20, 1972, the Board established said Section 1, Township 2 South, Range 5 West, Uintah Special Meridian, as a drilling and spacing unit for the production of oil, gas, and associated hydrocarbons from the spaced interval described in said orders; that Shell Oil Company has drilled the TEW 1-1B5 well in said Section 1 which is producing from said interval and is the permitted well for said drilling unit.

5. That Shell is the major working interest owner and is the sole operator within said drilling unit; and that the interests of Bennion in said drilling unit have not been pooled.

6. That Shell has calculated that Bennion's proportionate share of the net revenue from the production of the subject well up to 6:00 a.m., Mountain Daylight time on July 26, 1979, is \$72,222.41 which consists of the following:

Working Interest Accumulations

Revenue

Oil	\$101,608.86
Gas	<u>3,482.23</u>
Total	105,091.09

Expenditures	<u>47,203.16</u>
NET	\$57,887.93

Royalty Interest Accumulations*

Oil	\$13,872.44
Gas	<u>462.04</u>
Total	\$14,334.48

Total Accumulations

Working Interest	\$57,887.93
Royalty Interest	<u>14,334.48</u>
Total	\$72,222.41

(*Based on a one-eighth cost free royalty, proportionately reduced, until payout. Upon payout this royalty merges with and is included in the working interest.)

ORDER

IT IS THEREFORE ORDERED BY THE BOARD:

1. That all interests in the drilling unit comprised of Section 1, Township 2 South, Range 5 West, Uintah Special Meridian, in the Altamont Field of Duchesne County, Utah, be and the same are pooled for the development and operation of said drilling unit and for the protection of correlative rights, effective at 6:00 a.m., Mountain Daylight time, July 26, 1979.

2. That the TEW 1-185 well located in said Section 1 is the permitted well for said drilling unit.

3. That Bennion is entitled to receive from Shell Bennion's proportionate share of production of oil, gas liquids, and natural gas in-kind produced from the subject well from and after 6:00 a.m., Mountain Daylight time, July 26, 1979, upon payment of Bennion's proportionate share of the monthly operating expense of said well. Shell will tender Bennion's invoices for his proportionate share of the monthly operating expense in the same manner and in the same detail as if Bennion had signed the Operating Agreement in effect for said unit. In the event Bennion fails to pay his proportionate share of the monthly operating expense within 15 days of invoice, Shell shall have a first and preferred lien on Bennion's interest in production and shall be entitled to withhold the amount of said production in an amount equal to Bennion's share of the operating expense plus interest at the prevailing rate until such payment is received. Should such default continue for a period of ninety (90) days after receipt of invoice, Shell shall be entitled to retain Bennion's proportionate share of production to the extent of Shell's lien or to tender the production withheld pursuant to Shell's lien to Bennion and pursue other available legal remedies.

4. That for purposes of this Interim Order and unless and until the Board shall order otherwise Bennion's interest in said unit shall be deemed to be a 2.94098% interest ($\frac{1}{4} \times 80/678.2$).

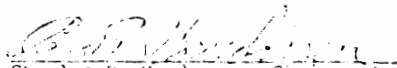
5. That Shell shall pay to the Division of Oil, Gas, and Mining the sum of \$72,222.41, being Bennion's proportionate share of the total net revenue of the subject well, as calculated by Shell, up to 6:00 a.m., Mountain Daylight time, July 26, 1979. Pending further order of the Board the Division shall place such funds in six-month money market certificates as directed by counsel for Bennion and Shell.

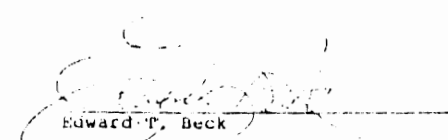
6. That the provisions of this Interim Order are without prejudice to Bennion's claim that his proportionate share in the subject unit is greater than 2.94098% or his claim that Shell's calculation of the net revenue of the subject well is in error. The Board shall address those claims, as well as the claims of whether Bennion is entitled to receive any of the well's production in-kind prior to 6:00 a.m., Mountain Daylight time, July 26, 1979, and whether Bennion is entitled to receive interest on any sums the Board determines he is entitled to receive prior to that date, in its final order in this Cause.

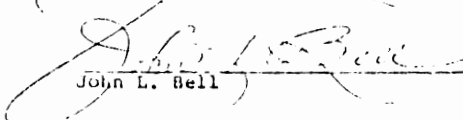
7. That the Board retains jurisdiction over all matters covered by this Order and the parties affected thereby.

DATED this 26 day of March, 1980.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING


Charles R. Henderson, Chairman

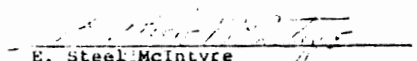

Edward T. Beck


John L. Bell

Thaddeus W. Box

C. Ray Juvelin

Constance K. Lundberg


E. Steel McIntyre

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

IN THE MATTER OF THE APPLICATION)
 OF S. H. BENNION FOR AN ORDER)
 POOLING INTEREST IN THE DRILLING)
 UNIT COMPRISED OF SECTION 1,)
 TOWNSHIP 2 SOUTH OF RANGE 5 WEST,)
 UTAH SPECIAL MERIDIAN, DUCHESNE)
 COUNTY, UTAH)

STIPULATION
 Cause No. 139-13

Applicant S. H. Bennion, by and through his attorney
 Peter Stirba, and Shell Oil Company, by and through its attorneys
 Gregory P. Williams, Van Cott, Bagley, Cornwall & McCarthy,
 hereby stipulate and agree:

1. To the entry of an interim order in the above
 entitled cause in the form of the Interim Order attached hereto
 as Exhibit A and made a part hereof.

2. That the hearing in this cause scheduled for March
 26, 1980, may be continued without date.

DATED THIS 21st day of March, 1980.

 Peter Stirba
 Attorney for S. H. Bennion

 Gregory P. Williams
 Van Cott, Bagley,
 Cornwall & McCarthy
 Attorneys for Shell Oil Company

APPENDIX # 4

MAY 27 1981

NO. 7

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

IN THE MATTER OF THE APPLICATION)	
OF S. H. BENNION FOR AN ORDER)	
POOLING INTEREST IN THE DRILLING)	ORDER
UNIT COMPRISED OF SECTION 1,)	
TOWNSHIP 2 SOUTH OF RANGE 5 WEST,)	Cause No. 139-13
UINTAH SPECIAL MERIDIAN, DUCHESNE)	
COUNTY, UTAH)	

This cause came on for hearing before the Board of Oil, Gas and Mining, Department of Natural Resources, the State of Utah, at 10:00 a.m., on Thursday, July 26, 1979, in the Executive Conference Room, Holiday Inn, 1659 West North Temple, Salt Lake City, Utah, pursuant to the Amended Application of S. H. Bennion ("Bennion") and to notice to all interested parties duly and regularly given by the Board, to consider forced pooling of the uncommitted interest of Bennion in the above-captioned drilling unit, and other matters as set forth in the Amended Application and Notice of Hearing.

The following members of the Board were present:

Charles R. Henderson, Chairman
Edward T. Beck
C. Ray Juvelin
E. Steele McIntyre
John L. Bell

Also present and representing the Division:

Cleon B. Peight, Director
Thalia R. Busby, Administrative Assistant
Frank M. Hamner, Chief Petroleum Engineer

LAW OFFICES OF
VAN COTT, HANLEY, CUNNINGHAM & MCCARTHY
SUITE 200, 161 EAST FIRST SOUTH
SALT LAKE CITY, UTAH 84111

EXHIBIT "A"

APPENDIX # 5

Michael, Minder, Geological Engineer

Denise A. Drago, Special Assistant Attorney General

Appearances were made as follows:

S. H. Bennion, for himself

Peter Stirba, Counsel for S. H. Bennion

Don Gallion, Counsel for Shell Oil Company

Gregory P. Williams, Counsel for Shell Oil Company

This cause also came on for hearing before the Board of Oil, Gas and Mining, Department of Natural Resources, State of Utah, on October 24, 1979, at the Wildlife Resources Auditorium, 1596 West North Temple, Salt Lake City, Utah.

The following Board members were present:

Charles R. Henderson, Chairman

John L. Bell

C. Ray Juvelin

E. Steele McIntyre

Constance K. Lundberg

Edward T. Beck

Also present and representing the Division:

Cleon B. Feight, Director

Thalia R. Busby, Administrative Assistant

Frank M. Hamner, Chief Petroleum Engineer

Michael Minder, Geological Engineer

Denise A. Drago, Special Assistant Attorney General

Appearances were made as follows:

S. H. Bennion, for himself

Peter Stirba, Counsel for S. H. Bennion

Don Gallion, Counsel for Shell Oil Company

Gregory P. Williams, Counsel for Shell Oil Company

This cause also came on for hearing before the Board of Oil, Gas and Mining, Department of Natural Resources, State of Utah, on December 18, 1980, at the Wildlife Resources Auditorium, 1596 West North Temple, Salt Lake City, Utah.

The following Board members were present:

John L. Bell, Co-Chairman

Charles Henderson

Thadís W. Box

E. Steele McIntyre

C. Ray Juvelin

Also present and representing the Division:

Cleon B. Feight, Director

Ron Daniels, Coordinator

Mike Minder, Petroleum Engineer

Paula Frank, Secretary

Denise A. Dragoon, Special Assistant Attorney General

Appearances were made as follows:

Peter Stirba, Counsel for S. H. Bennion

Lowell Kirkpatrick, for Shell Oil Company

Gregory P. Williams, Counsel for Shell Oil Company

NOW, THEREFORE, the Board, having considered the matters presented at said hearings and the remarks and the stipulations of counsel, now makes and enters the following:

FINDINGS

1. That due and regular notice of the time, place, and purpose of said hearings was given to all interested parties in the form and manner and within the time required by law.

2. That the Board has jurisdiction over the matters covered by the Amended Application and all of the parties interested therein, and has jurisdiction to make and promulgate the Order hereinafter set forth.

3. That Bennion is the record owner of an undivided, undivided one-fourth mineral interest in all oil, gas and minerals located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, Township 2 South, Range 5 West, Uintah Special Meridian, Duchesne County, Utah.

4. That by Order in Cause No. 139-3, entered June 24, 1971, as amended by Order in Cause No. 139-8, entered September 20, 1972, the Board established said Section 1, Township 2 South, Range 5 West, Uintah Special Meridian, as a drilling and spacing unit for the production of oil, gas, and associated hydrocarbons from the spaced interval described in said orders; that Shell Oil Company has drilled the TEW 1-185 well in said Section 1 which is producing from said interval and is the permitted well for said drilling unit.

5. That said Section 1, Township 2 South, Range 5 West, Uintah Special Meridian, contains 678.2 acres; and that Bennion's interest in said drilling and spacing unit is a 2.94898% interest.

6. That Shell is the major working interest owner and is the sole operator within said drilling unit; and that Shell is willing to let Bennion share in the proceeds of production of said unit from first production.

7. That pursuant to the Board's Interim Order in this cause dated March 26, 1980, all interests in the drilling unit comprised of Section 1, Township 2 South, Range 5 West, Uintah

Special Meridian, in the Altamont Field of Duchesne County, Utah, were pooled for the development and operation of said drilling unit and for the protection of correlative rights, effective at 6:00 a.m., Mountain Daylight time, July 26, 1979.

8. That Bennion's proportionate share of the net revenue from the production of the subject well up to 6:00 a.m., Mountain Daylight time on July 26, 1979, is \$72,222.41 which consists of the following:

Working Interest Accumulations

Revenue	
Oil	\$101,608.86
Gas	<u>3,482.23</u>
Total	105,091.09
Expenditures	<u>47,203.16</u>
NET	\$57,887.93

Royalty Interest Accumulations*

Oil	\$13,872.44
Gas	<u>462.04</u>
Total	\$14,334.48

Total Accumulations

Working Interest	\$57,887.93
Royalty Interest	<u>14,334.48</u>
Total	\$72,222.41

(*Based on a one-eighth cost free royalty, proportionately reduced, until payout. Upon payout this royalty merges with and is included in the working interest.)

9. That pursuant to the Board's Interim Order in this cause dated March 26, 1980, Shell paid the Division of Oil, Gas, and Mining the sum of \$72,222.41 which sum was placed in a

six-month money market certificate as directed by counsel for Bennion and Shell; that the original certificate earned interest in the amount of \$3,917.69; and that the original sum and interest were invested in a new certificate which bears interest at the rate of 13.519% and will mature on May 6, 1981.

10. That Bennion has conducted an audit of Shell's records relating to the subject well at Shell's offices in Houston, Texas, and has submitted a report relating to such audit to the Board.

11. That it is the practice of the industry to conduct an audit of an operator's records at the office where the operator maintains such records; and that there are standard accounting procedures in the industry relating to such audits.

ORDER

IT IS THEREFORE ORDERED BY THE BOARD:

1. That all interests in the drilling unit comprised of Section 1, Township 2 South, Range 5 West, Uintah Special Meridian, in the Altamont Field of Duchesne County, Utah, be and the same are pooled for the development and operation of said drilling unit and for the protection of correlative rights, effective at 6:00 a.m., Mountain Daylight time, July 26, 1979.

2. That the TEW 1-185 well located in said Section 1 is the permitted well for said drilling unit.

3. That Bennion is entitled to receive from Shell Bennion's proportionate share of production of oil, gas liquids, and natural gas in-kind produced from the subject well from and after 6:00 a.m., Mountain Daylight time, July 26, 1979, upon payment of Bennion's proportionate share of the monthly

operating expense of said well; that Shell will tender Bannion invoices for his proportionate share of the monthly operating expense in the same manner and in the same detail as if Bannion had signed the Operating Agreement in effect for said unit; that in the event Bannion fails to pay his proportionate share of the monthly operating expense within 15 days of invoice, Shell shall have a first and preferred lien on Bannion's interest in production and shall be entitled to withhold the amount of said production in an amount equal to Bannion's share of the operating expense plus interest at the prevailing rate until such payment is received; and that should such default continue for a period of ninety (90) days after receipt of invoice, Shell shall be entitled to retain Bannion's proportionate share of production to the extent of Shell's lien or to tender the production withheld pursuant to Shell's lien to Bannion and pursue other available legal remedies.

4. That Bannion's interest in said drilling unit is a 2.94898% interest.


5. That Bannion is not entitled to share in production occurring prior to 6:00 a.m., Mountain Daylight time on July 26, 1979, in-kind but is entitled to share in the proceeds of such production; that the amount to which Bannion is entitled with respect to production occurring prior to 6:00 a.m., Mountain Daylight time on July 26, 1979, is \$72,222.41; and that the Board shall transfer ownership of the money market certificate purchased pursuant to the Interim Order dated March 26, 1980, to Bannion. In addition, Shell shall pay Bannion the sum of \$2,504.00, representing interest at 6 percent per annum on Bannion's statutory royalty interest for the period from first production until the purchase of the original money market certificate.

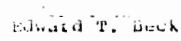
6. That any further audit of Shell's records relating to the subject drilling unit which Bannion wishes to conduct

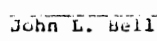
shall be performed at Bernion's expense at the location at which such records are kept; and that any such audit shall be conducted pursuant to the accounting procedures of the industry.

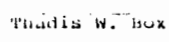
DATED this 20th day of April, 1961.

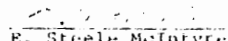
STATE OF UTAH
BOARD OF OIL, GAS AND MINING

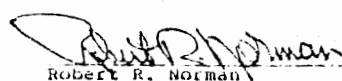

Charles R. Henderson, Chairman

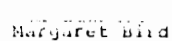

Edward T. Beck


John L. Bell


Thaddeus W. Box


E. Steele McIntyre


Robert R. Norman


Margaret Bird

BEFORE THE BOARD OF OIL, GAS, AND MINING
DEPARTMENT OF NATURAL RESOURCES
in and for the STATE OF UTAH

IN THE MATTER OF THE APPLICATION)
OF STEPHEN V. AND MARVEL MALNAR)
FOR AN ORDER POOLING INTERESTS IN) ORDER
THE 640-ACRE DRILLING UNIT COMPRISED)
OF SECTION 36, TOWNSHIP 1 NORTH,) CAUSE NO. 131-26
RANGE 2 WEST, USM, DUCHESNE COUNTY,)
UTAH.)

This cause came on for further hearing before the Board of Oil, Gas, and Mining, Department of Natural Resources, State of Utah, at 10:00 a.m., on Wednesday, September 17, 1975, in the Executive Conference Room, Holiday Inn, 1659 West North Temple, Salt Lake City, Utah, pursuant to the Order of the Board dated June 11, 1975.

The following members of the Board were present:

Guy N. Cardon, Chairman,
James P. Cowley, Esq.
Charles R. Henderson
Hyrum L. Lee

Robert Norman was noted as being absent. Also present were:

Cleon B. Feight, Director
Division of Oil, Gas, and Mining
Patrick L. Driscoll, Chief Petroleum Engineer
Division of Oil, Gas, and Mining
Ronald W. Daniels, Coordinator of Mined Land Development
Division of Oil, Gas, and Mining
Ed T. Guynn, District Engineer
United States Geological Survey

Arguments were made in support of the respective positions by Earl Dillman, Attorney for Applicants, and W.M. Balkovatz, Staff Attorney for Chevron Oil, Denver, Colorado. Mr. Ted R. Ashmore testified on behalf of Chevron Oil Company.

FINDINGS OF FACT

The Board finds in this matter as follows:

1. That this supplemental hearing is a continuation of the hearing held on June 11, 1975, pursuant to notice of the time, place and purpose of the hearing to all interested parties in the form and manner and within the time required by law.
2. That the Board has retained jurisdiction over the matter covered by said application and all parties interested therein, and has jurisdiction to make and promulgate this Supplemental Order hereinafter set forth.
3. That the parties have complied with the Order of the Board dated

APPENDIX # 6

June 11, 1975, with respect to the exchange of information and memoranda regarding cost, production and reasons for disagreement on remaining issues.

4. The parties have mutually agreed that the total cost of drilling the Ute Allottee #1-3622 well is:

Tangible Drilling Costs	\$331,250.88
Intangible Drilling Costs	909,496.68
Total Drilling Costs	<u>\$1,240,747.56</u>

That operating expense (as of May 31, 1975) is	<u>42,056.12</u>
Total Drilling and Operating Costs	<u>\$1,282,803.68</u>

The parties have also mutually agreed that Applicants' share of production is a 6.237548 interest in the subject drilling unit, based on 40.075 mineral acres in a 642.48 acre drilling and spacing unit. Applicant's share of the above drilling and operating costs therefore calculates to \$80,015.50. Recoupment by Chevron of Applicant's share of drilling and operating costs will be from 7/8ths of said 6.237548 interest, or 5.4578545, and Applicants will receive 1/8th of said figure as cost free royalty, or .7796935%.

5. Applicants have accepted Chevron's tabulation of oil and gas production and sales thereof from date of first production through May, 1975, to wit:

Month	Oil Prod. (bbls)	Oil Sold (bbls)	Oil Sales (\$)	Gas Prod. (mcf)	Gas Sales (\$)
December, 1974	13,182.52	11,751.59	114,342.97	0	0
January, 1975	10,356.92	10,511.58	102,277.67	4723	0
February, 1975	9,261.81	7,737.30	75,283.93	6354	0
March, 1975	9,878.96	10,991.65	106,948.74	6346	721.83
April, 1975	5,768.96	6,381.67	62,093.65	5666	1,492.48
May, 1975	<u>7,110.31</u>	<u>6,455.07</u>	<u>62,807.83</u>	<u>5945</u>	<u>1,109.88</u>
Totals:	55,559.48	53,828.86	523,754.79	29,034	3,324.19

Based on the above figures, Applicant's share of oil sold through May, 1975, calculates to 3,357.60 bbls. of which 7/8ths, or 2,937.90 bbls, is to be credited toward Applicants' share of drilling and operating expenses:

Applicants' share of Total drilling and operating expenses:	\$80,015.50
Credits: 2,937.90 bbls x 9.73 =	28,585.77
3,324.19 gas sales	
x .054578545 =	181.43
Total Credit:	\$28,767.20
Balance:	\$51,248.30

The value of Applicants' royalty oil sold through May, 1975, calculates to 419.70 bbls which, if valued at the \$9.73/bbl price said oil was sold by Chevron,

calculates to \$4,083.68, and the royalty value of gas sold is \$3,324.19 x .007796935 equals \$25.92, for a total of \$4,109.60, due Applicants' by Chevron Oil Company, free of costs, less taxes.

6. That the sole remaining issues unresolved between the Applicants and Chevron Oil, as Operator of the Chevron Ute Allottee #1-3622 well, left to be decided by this Board pursuant to its Order of June 11, 1975, are:

a) The issue of whether the parties should pay interest upon amounts owed to one another, it having been mutually agreed that in such event eight percent (8%) per annum simple interest is a reasonable rate;

b) The issue of whether the Applicants should be required to pay to the Operator a storage fee for Applicants' share of oil produced and taken in kind but stored on the premises until removed and, if so, the reasonable fee for such storage.

ORDER

IT IS THEREFORE ORDERED BY THE BOARD THAT:

1. Interest, at the rate of eight percent (8%) per annum simple interest, is a "reasonable cost" of drilling the subject well, within the meaning of Section 40-6-6(g), Utah Code Annotated (1953 edition, as amended).

In calculating the amount of interest due by Applicants, Operator may charge interest on Applicant's share of costs from the date each such cost was actually paid until production was achieved; thereafter Chevron, as Operator of the subject well, is authorized to take Applicants' share of all monthly costs of drilling and operating, subtract the value of 7/8ths of the Applicants' share in production, and charge said interest rate on the balance. Chevron is further ordered to pay interest at the same rate on Applicants' 1/8th share from the date of first production, until the full cash value of previously withheld production has been paid to the Applicants.

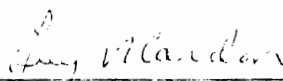
2. As working interest owners charged with the prorata cost of construction of the tank battery system, Applicants will have available for use at no charge their allocatable volume within said tank system. Should Applicants exceed this volume, Applicants will be charged 1¢ per barrel per day above his allocatable share. When said volume reaches 200 barrels, operator will give Applicant written notice, by certified mail, postage prepaid, that the volume attributable to his interest has reached 200 barrels. Five days after the post-mark date, Applicant will be charged 15¢ per barrel per day, for all oil

remaining in the tank battery in excess of his allocatable share. This rate shall continue in effect for 30 days after which time, the charge will be increased to 25¢ per barrel per day, for all such oil.

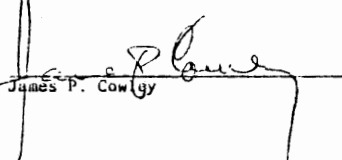
3. This Board retains continuing jurisdiction in this Cause for the purpose of resolving any further issues or matters deriving from the Order of June 11, 1975, or this Supplemental Order.

DATED this 17th day of September, 1975.

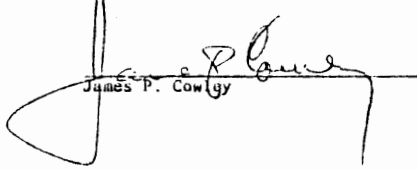
BOARD OF OIL, GAS, AND MINING
STATE OF UTAH



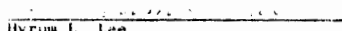
Guy N. Cardon, Chairman



James P. Cowley



Charles R. Henderson



Hyrum L. Lee

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

IN THE MATTER OF THE INTERESTS :	
OF DALE E. ARMSTRONG AND JO ANN	
R. ARMSTRONG IN THE LOWER GREEN :	<u>O R D E R</u>
RIVER AND WASATCH FORMATIONS	
UNDERLYING THE 640 ACRE DRILLING :	
UNIT COMPRISING SEC. 24, T. 3 S.,	CAUSE NO. 140-8
R. 7 W., U.S.M., DUCHESNE COUNTY, :	
UTAH	

This cause was duly considered by the Board of Oil, Gas, and Mining, Department of Natural Resources of the State of Utah at its regular meeting held on Wednesday, September 17, and November 19, 1975, at the Executive Conference Room of the Holiday Inn, 1659 West North Temple, Salt Lake City, Utah, pursuant to stipulations and briefs submitted by Sheridan L. McGarry, Esq., on behalf of Koch Industries, Inc., and Steven H. Gunn, Esq., of the firm of Ray, Quinney & Nebeker, on behalf of Dale E. Armstrong and Jo Ann R. Armstrong.

The following members of the Board were present:

Guy N. Cardon, Chairman
James P. Cowley, Esq.
Charles R. Henderson
Hyrum L. Lee
Robert Norman

NOW THEREFORE, having considered its records in this matter and stipulations and briefs of counsel, and the Board being fully advised in the premises does now make, adopt and find the following:

FINDINGS

1. That on August 27, 1962, Geneal Jensen, as owner, executed an oil and gas lease having a 10-year primary term in favor of William R. Denver covering her undivided 2500/27000 interest in the following described lands situated in Duchesne County, State of Utah:

APPENDIX # 7

TOWNSHIP 3 SOUTH, RANGE 7 WEST, U.S.M.

Section 23: ~~N1/2N1/2~~

Section 24: N1/2N1/2

2. That on August 14, 1970, Dale E. Armstrong and Jo Ann R. Armstrong, hereinafter called the Armstrongs or the Applicants, acquired the mineral interest of the above named lessor. On August 19, 1970, the Board of Oil and Gas Conservation established a 640 acre drilling and spacing unit for all of Section 24 in Township 3 South, Range 7 West, U.S.M., thereby including a portion of said leased lands within said unit.

3. That subsequently, Mountain Fuel Supply Company succeeded Mr. Denver as the lessee and completed Sink Draw #2 Well, Section 24, Township 3 South, Range 7 West, U.S.M., on November 30, 1972, on said spacing unit, but not on the lands leased as aforesaid, in which the Applicants obtained an undivided mineral interest.

4. That from January to September 1973, the well was shut in because of downhole mechanical problems. Applicants gave notice of termination of said lease pursuant to Section 16 of the same, which provision allowed the lessor to terminate if a well was not producing for a period of more than sixty days after expiration of the primary term. The Armstrongs gave notice of the termination prior to Koch's assumption of Mountain Fuel's interest.

5. That upon acquiring Mountain Fuel's interest, Koch attempted to obtain a ~~waiver from the various lessors of tracts~~ in the unit, waiving their right to terminate the lease under the above mentioned provision. Koch thereupon rehabilitated the well without all interests providing permission and resumed production. It is further demanded of the Armstrongs that they pay their proportionate share of the drilling costs incurred after the lease was terminated, as well as those of its predecessors, Mountain Fuel, incurred by the latter before expiration of the lease.

6. That the Armstrongs have agreed to pay their share of the drilling costs incurred after the lease was terminated, but have refused to pay for any portion of the costs incurred by Mountain Fuel while the lease was in existence.

7. That under date of November 22, 1973, the Armstrongs executed a Communitization Agreement communitizing their interest in Sec. 24.

8. That under date of May 15, 1975, the Armstrongs, by and through their attorney of record, petitioned the Board to determine their proportionate share of the drilling and reworking costs of said well and to determine whether or not they were only liable for their proportionate share of the costs incurred after said lease terminated. Due and regular notice of the time and place of hearing on said petition was given by the Board to all interested parties. At said hearing duly held on June 11, 1975, Koch filed its petition with the Board to pool the interest of the Armstrongs in said Sec. 24 and served copies thereof upon the Armstrongs' attorney. At the conclusion of arguments, the Armstrongs' attorney voluntarily stipulated before the Board to the pooling of the Armstrongs' interest in Sec. 24. Pursuant to said stipulation, under date of June 11, 1975, the Board entered its order pooling the interest of the Armstrongs in the Lower Green River and Wasatch formations for the development and operation of the 640 acre drilling unit comprising said Sec. 24 in order to protect correlative rights.

9. That Section 40-6-6(f) of the Utah Code Annotated, 1953, as amended, authorized the Board to enter a pooling order when two or more separately owned tracts are embraced within a drilling unit, or when there are separately owned interests in all or part of a drilling unit in the absence of voluntary pooling.

10. That by the Board's Order in Cause No. 140-1 entered August 19, 1970, and made permanent in Cause No. 140-6 entered August 16, 1971, all of Sec. 24, and other lands, were delineated as being within the Cedar Rim Area, and having a common source of supply of oil and gas. The said orders established 640 acres as the proper spacing for the Lower Green River and Wasatch Formations underlying the 640 acre drilling unit comprising said Sec. 24.

11. That Koch is the operator of the entire working interest within the Lower Green River and Wasatch Formations underlying the 640 acre drilling unit comprising Sec. 24, except for the

Armstrongs, which interest is an unleased interest.

12. Under date of July 14, 1975, the attorneys of record for Koch and the Armstrongs filed with the Board a stipulation as to the following costs:

A. That the drilling and operating costs, including a reasonable charge for storage and handling, incurred by Mountain Fuel Supply Company was \$747,810.65.

B. That during the time Mountain Fuel was operator of said well, Mountain Fuel recovered a total of \$153,945.71 from its share of production of said well.

C. That during the time Koch was operator of said well, to June 1, 1975, Koch's operating costs incurred were \$133,535.11, and that a reasonable charge for storage and handling incurred during said period was \$6,600.49.

13. That by letter dated November 4, 1975, the attorney of record for Koch Industries, Inc., informed the Board, at their request, that Koch had placed an arbitrary salvage value of \$74,600.00 on the Sink Draw #2 Well in their sealed bid to Mountain Fuel Supply Company, which bid was accepted.

14. That the Board has jurisdiction over the matter covered by this Order and all of the parties interested therein, and has jurisdiction to make and promulgate the Order hereinafter set forth.

15. That Section 40-6-6(g) of the Utah Code Annotated, 1953, as amended, is the governing statute governing the rights of the respective parties in this matter.

16. That "a working interest", as that phrase is understood and used in the oil and gas industry, means the mineral ownership which is involved with the costs of drilling, completing, equipping and producing a well, in contrast to the "free" royalty mineral interest.

The phrase "royalty interest" is also understood and used in the oil and gas industry to mean a property interest created by an oil and gas lease, or in some cases by a deed, which entitles the owner thereof to a specified share of the production, if and when there is production, free of any of the costs of production.

17. That the pertinent Utah statutes do not use the phrases "working interest owner" and "royalty owner", but in lieu thereof, use a statutorily defined word "owner". Under Subsection (e) of Section 40-6-4, the word "owner" as used in the statute means:

. . . the person who has the right to drill into and produce . . .

Thus, an owner under the Utah statutes means and includes both the owner of the working interest, as that term is commonly used, and also the land or mineral owner whose ownership is not subject to a subsisting lease.

18. That prior to the cancellation of their lease the Armstrongs, by virtue of a contractual agreement, owned a "royalty mineral interest" only in the Sink Draw Well #2, located on the drilling unit comprising Section 24, Township 3 South, Range 7 West, U.S.M.

19. That after the termination of said lease, the Armstrongs, by virtue of the Oil and Gas Conservation Act (Sec. 40-6-1, et seq., UCA, 1953), acquired a "working mineral interest" in the above mentioned well.

20. That Section 40-6-6(g) of the above mentioned Act, which reads as follows:

Each pooling order shall make provision for the drilling and operation of a well on the drilling unit, and for the payment of the reasonable actual cost thereof, including a reasonable charge for supervision and storage facilities. As to each owner who refuses to agree upon the terms for drilling and operating the well, the order shall provide for reimbursement for his share of the costs out of, and only out of, production for the unit representing his interest, excluding royalty or other interest not obligated to pay any part of the cost thereof . . .

contemplates a drilling or operating, i.e., producing well, therefore, once a well has been abandoned, subsequent working interest owners should not be obligated to pay for the original costs of drilling the well.

21. That the Sink Draw #2 Well was not producing for a period of over six months and that, at the time of the consummation of the sale of the said well and associated acreage, Mountain Fuel Supply Company, the seller, and Koch Industries, Inc., the buyer, due

to the unknown factors concerning the well, agreed to an estimated "Salvage Value" of \$74,600.00.

22. That at the time the Armstrongs acquired their working interest, the Sink Draw #2 Well was technically an abandoned well.

ORDER

IT IS HEREBY ORDERED that the Applicants, Dale E. Armstrong and Jo Ann R. Armstrong reimburse Koch Industries, Inc., for their share of the following:

1. The \$74,600.00 salvage value paid for this well, plus interest at a rate of 8% per annum from date sale consummated.
2. All other expenses incurred or paid by Koch relative to re-completing or working over the well, plus interest at a rate of 8% per annum.
3. All future operating costs, administrative costs, and storage costs.

It is further ordered that the reimbursement of the Armstrongs' share of the costs outlined in paragraph 1 and 2, be accomplished in, and only in the following manner:

1. Koch Industries, Inc., shall retain as its own and for its own use, all of the production from the Sink Draw Well #2, which is attributable to the interest of the Armstrongs from August 1973, until the proceeds or value of said retained production shall equal said share of said costs, provided, however, that Koch shall pay to the Armstrongs the basic landowners' royalty of one-eighth (1/8) or twelve and one-half percent (12-1/2%), of the value of production allocated to their working interest.

Entered this 11 day of September, 1975.

BOARD OF OIL, GAS, AND MINING
OF THE STATE OF UTAH

Guy N. Cardon
Guy N. Cardon, Chairman

Myron L. Lee
Myron L. Lee

James P. Cowley, Esq.
James P. Cowley, Esq.

Robert J. Horman
Robert J. Horman

Charles K. Henderson
Charles K. Henderson

BEFORE THE BOARD OF OIL, GAS, AND MINING
DEPARTMENT OF NATURAL RESOURCES
in and for the STATE OF UTAH.

IN THE MATTER OF THE APPLICATION OF)
S.H. BENNION FOR AN ORDER POOLING)
INTEREST IN THE DRILLING UNITS) ORDER
COMPRISED OF SECTIONS 3,4,5,6,8,9,)
10,16,17, and 19, TOWNSHIP 3 SOUTH OF) CAUSE NO. 139-18
RANGE 5 WEST, MOUNTAIN SPECIAL MERIDIAN,)
DUCHESSNE COUNTY, UTAH.)

THIS CAUSE CAME ON FOR FURTHER HEARING BEFORE THE BOARD OF OIL, GAS,
AND MINING, DEPARTMENT OF NATURAL RESOURCES, STATE OF UTAH, AT 9:00 A.M.,
ON NOVEMBER 15, 1979, AT THE ROADWAY INN, 2080 WEST NORTH TEMPLE, SALT
LAKE CITY, UTAH, HAVING BEEN CONTINUED FROM OCTOBER 24, 1979 AND JULY 26,
1979, BY ORDER OF THE BOARD.

Appearances for the Board were made by:

Charles R. Henderson, Chairman
E. Steele McIntyre, Board Member
John L. Bell, Board Member
Thaddeus W. Box, Board Member
Edward T. Beck, Board Member

Appearances for the Division were made by:

Cleon B. Feight, Director
Frank Hammer, Chief Petroleum Engineer
Mike Minder, Geological Engineer
Denise A. Drago, Special Assistant Attorney General

Appearances for the parties were made by:

S.H. Bennion, President, V-1 Oil Company
Peter Stirba, Attorney for S.H. Bennion
Charles Morris, Joint Interest Representative,
Gulf Oil Company
Hugh C. Garner, Attorney for Gulf Oil Company
Michael Smith, Attorney for Gulf Oil Company

Agreements and memoranda of points and authorities were presented in
support of the respective positions by Mr. Stirba, Attorney for Applicant and
Mr. Garner, Attorney for Respondant Gulf Oil Company. Mr. Bennion testified
on behalf of himself. Mr. Morris testified as to accounting procedures of
Gulf Oil Company. The Board allowed Mr. Stirba to submit a memorandum in

APPENDIX # 8

reply to Gulf Oil Company's memorandum to be submitted no later than December 5, 1979.

FINDINGS OF FACT

1. This supplemental hearing is a continuation of the hearings convened on October 24, 1979 and July 26, 1979, all pursuant to proper notice to all interested parties in the form, manner and time prescribed by the Utah Oil and Gas Conservation Act.

2. The Board has jurisdiction over the issues of this application and all parties interested therein, and has jurisdiction to make the Order hereafter set forth.

3. The parties have stipulated to each unit, the unit well, it's acreage and S.H. Bennion's proportionate interest therein as follows:

<u>Well Designation</u>	<u>T. 3S., R. 5W., U.S.M.</u>	<u>Interest & Percentage</u>
Phillips Ute 1-3C5	Section 3: ALL (637.36 acres, more or less)	2.8242 acres .0044311
Voda Ute 1-4C5	Section 4: ALL (636.32 acres, more or less)	1.6884 acres .0026554
Ute 1-5C5	Section 5: ALL (636.00 acres, more or less)	.85044 acres .0013372
David Smith 1-6C5	Section 6: ALL (612.48 acres, more or less)	2.15926 acres .0035255
Albert Smith 1-8C5	Section 8: ALL (640 acres, more or less)	3.40184 acres .0053153
Smith Broadhead 1-9C5	Section 9: ALL (640 acres, more or less)	5.96872 acres .0062012
Shrine Hospital 1-10C5	Section 10: ALL (640 acres, more or less)	1.4174 acres .0022147
Rachel Jensen 1-16C5	Section 16: ALL (640 acres, more or less)	12.8548 acres .0200544
Joseph Smith 1-17C5	Section 17: ALL (640 acres, more or less)	3.68532 acres .00575832
Josephine Voda 1-19C5	Section 19: ALL (623 acres, more or less)	4.415201 acres .007087

4. The issues which remain to be resolved by this Order, are:

- a) Is applicant entitled to a forced pooling order in accordance with his application?
- b) Is the applicant entitled to receive a proportionate share of production in kind from each of the subject wells as at the date the units are forced pooled upon payment of a monthly operating expense?

- c) What are the applicant's rights with respect to his claim of 1/8 cost free royalty upon the subject wells and may the applicant require Gulf Oil to tender said royalty in kind?
- d) What are the applicant's rights with respect to an audit and examination of Gulf Oil Company's records with respect to each individual unit well which is the subject of this application?

ANALYSIS

1. With respect to the application for involuntary pooling, the Board finds in the first instance that it has jurisdiction to consider the requested order and to make any other response which may be necessary to carry out the provisions of this Act. Section 40-6-3.3, Utah Code Annotated (1953). Furthermore, the Board rejects the narrow construction of Section 40-6-6(f), UCA, set forth by Gulf Oil Company, which would preclude it from considering this application in the event that any interest owner in all or a part of the drilling units concerned had entered into a voluntary pooling order. Such a construction would pre-empt the non-consenting interest owner's correlative rights and would be contrary to the intent of the Oil and Gas Conservation Act, as stated at Section 40-6-1, UCA, that "the correlative rights of all owners be fully protected." See Ohio Oil Company v. Indiana, 177 U.S. 190 (1900); Champlin Ref. Co. v. Corporation Commission, 286 U.S. (1932).

With respect to Section 40-6-6(f), UCA, the Board interprets the phrase an "absence of voluntary pooling" to require an absence of such arrangements as between the applicant and other working interests in the drilling units concerned. Applying this construction of Section 40-6-6(f), UCA, the Board finds that S.H. Bennion's application for forced pooling may be granted with respect to all interests except the David Smith Ute 1-605 well upon which, as testimony has shown, Mr. Bennion has signed a communitization agreement dated October 1, 1972. (See Gulf Exhibits No. 1 submitted for the record on November 15, 1979).

2. With respect to applicant's claim under Section 40-6-6(h), UCA, to his proportionate share of production after pay out, the Board is reluctant to apply its forced pooling order in a retroactive manner. The applicant has failed to bring the present petition before the Board until several years after the drilling units were first initiated concerning his interests. As demonstrated through testimony, applicant had several opportunities to participate in voluntary pooling arrangements on these properties. Failure to either petition the Board or take other action at an earlier date has jeopardized applicant's equitable position in this matter.

Gulf, as the record shows, tendered S.H. Bennion his proportionate share of the costs of the production both in cash and in kind until the applicant failed to pay monthly operational expenses. Failure to pay such operating expenses has jeopardized the applicant's legal position to demand his proportionate share under Section 40-6-6(h), UCA, which holds non-consenting owners liable for the proportional costs of drilling and operation.

For these reasons, the Board finds that the applicant is entitled to receive his proportionate share of production from each of the subject wells which has "paid out" only as of the date of the Board's forced pooling order, forward.

3. With respect to the applicant's rights under Section 40-6-6(h), UCA, the Board must again first address the issue of jurisdiction. The Board rejects the narrow construction of Section 40-6-6(h), UCA, presented by Gulf Oil Company. Gulf maintains that this becomes viable only upon the filing of a petition for relief under the provision, thus precluding the Board from requiring Gulf to pay the applicant a landowners royalty of 1/8 from the date of first production from the subject wells. However, the Board construes Section 40-6-6(h), UCA, as a statutory rendition of the rights of non-consenting working interest owners.

The statute allows the non-consenting owner certain property rights which become effective when oil is produced upon a drilling unit. While the petitioner may request the Board to enforce those rights, they do not lie dormant until triggered by a petition.

In construing Section 40-6-6(h), UCA, it has been the practice of this Board to apply the basic landowner's royalty only prior to "pay-out" of the subject well (i.e. during the period in which the operator is entitled to assess the costs of well drilling, completion, and operation against the non-consenting owner's share of production). Upon "pay-out" of the subject well, the royalty merges with that of the non-consenting owner's proportionate interest in production.

Therefore, in this case, in that the applicant and Gulf Oil Company have stipulated to the ownership interest of S.H. Bennion in the subject drilling units and in that Gulf has in the past tendered production to the applicant "in-kind", the Board finds that the applicant is entitled to receive a 1/8 cost free royalty in cash which applies retroactively from the date production commenced at each of the subject wells until the date of this Order, at which time he is entitled to receive such royalty in-kind.

4. With respect to the applicant's auditing rights, the Board finds that S.H. Bennion is entitled similar accounting rights as those of other interest owners. As the testimony has shown, it is the practice of the industry that the interest owner exercise his rights to fully audit and examine operator's records at the location where the records are kept and at the expense of the interest owner. Testimony concerning Gulf Oil's accounting practices revealed no gross deviation from the norm with respect to the record keeping on the subject wells. Mr. Bennion testified to the receipt of monthly statements prepared by Gulf as required by Section 40-6-6(h), UCA. Therefore, Mr. Bennion's request for special auditing privileges in this case is denied.

ORDER

1. The interests of S.H. Bennion as stipulated by the parties with respect to the drilling units comprised of Sections 3,4,5,6,8,9,10,16,17, and 19, Township 3 South of Range 5 West, Uintah Special Meridian, Duchesne County, Utah, excluding the applicant's interest in the David Smith Ute 1-603, are hereby pooled for the development and operation thereof for the protection of correlative rights.

2. The pooling order shall apply with respect to the subject interests from the date of this order forward. Pursuant to such order, applicant is entitled to receive from Gulf Oil Company his proportionate share of production of oil, gas liquids and natural gas in kind from each paid out unit well from and after the effective date of this order, upon applicant's payment of the monthly operating expense. Gulf Oil Company will tender the applicant's invoices for his proportionate share of the monthly operating expense in the same detail as if he had signed the Unit Operator's Agreement in effect for each respective unit. In the event the applicant fails to pay his proportionate share of the monthly expense within 15 days of invoice, respondent shall have a first and preferred lien on applicant's interest in production and shall be entitled to withhold the amount of said production in an amount equal to applicant's operating expense plus interest at the prevailing rate until such payment is received. Should such default continue for a period of ninety (90) days after receipt of invoice, respondent shall be entitled to retain applicant's proportionate share of production to the extent of its lien or to tender the production withheld pursuant to its lien to applicant and pursue other available legal remedies.

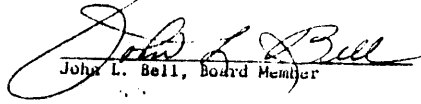
3. Pursuant to Section 40-6-6(h), U.C.A., the applicant is entitled to receive and respondent is ordered to tender a 1/8 cost-free royalty in cash which applies retroactively from the date production commenced at each of the subject wells until the date of this order, or date of pay out whichever is earliest, at which time he is entitled to receive such royalty in-kind.

4. The applicant is entitled to audit the operator's records concerning the subject wells from the first date of production. Such audit is to be performed at the applicant's expense, in the location at which Gulf Oil Company's records are kept and pursuant to the accounting procedures of the industry.

WITNESSED this 24th day of January, 1980.

Charles R. Penderson, Chairman

E. Scott McIntyre, Board Member


John L. Bell, Board Member

Thaddeus W. Box, Board Member

Edward T. Beck, Board Member