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MALCOLM HARRIS

June 24, 1962.

Re: Jalmat Motion for Rehearing

Dear Dick:

Leaving for Ruidoso tomorrow and no secretary this Sunday morning, but want to get this off to you. It wont be pretty, but I'll do my best, so please excuse any errors, strikeovers etc.

Thank you for yours of the 16th and enclosures. I would like to suggest something substantially as follows might be incorporated some place in the brief.

"The findings on the four points (Page 7 of the opinion) which the Court says the Commission failed to make, are but preliminary to the ultimate conclusions which are the findings that the Commission did make, and such four points or findings are encompassed in the final findings.

It is respectfully pointed out that in the enumerable proration orders issued by the Commission since the advent of proration in New Mexico, the Commission has never made the preliminary findings the Court is now saying it must make, but such preliminary findings have always been encompassed in its final findings or conclusions reached by the Commission in its orders. If the Court's opinion is taken literally as it must be, that is, that the Commission's Orders are invalid and void, then every proration order issued out of the Commission is likewise invlaid and void since the Commission has never made the four basic findings separately as such, as the Court says it must, but has always included or encompassed them in its ultimate findings and conclusions even though not setforth separately in any such order. It is respectfully urged that the Court in a supplemental opinion hold that the Orders, No. R-1092-C and No. R-1092-A are not invlaid and void but are subject to collateral attack by reason of the apparent lack of the four basic findings.

Unless the Commission is given the opportunity to make additional findings the Court says it must, (on the record before the Commission) then every proration order in the State of New Mexico is in jeapordy if the language of the Court is taken literally. Further, unless the Court remands this cause to the Commission for the opporunity to determine if the additional findings in accordance with the Court's opinion can be made on the basis of the record before the Commission, then the Commission will be burdened with hearings not only in this matter but in every case where the basic findings the Court now says it must make, have not been made by the Commission."

Dick if we can work the foregoing into the draft of your brief I believe it would be well to do so even though the Court may not like our language too much. I think something along the lines I am suggesting above is "appropo" in view of the fact that as you have pointed out in your draft, the Court has not ruled that the evidence before the Commission was insufficient to make the four basic findings, it simply says the Commission should have made such findings. Therefore I believe that we should strongly and unequivocally state and urge that the record of the Commission is sufficient for it to cure the procedural error in failing to setforth the basic

findings, and if the cause is remanded to the Commission, the record before it will support the basic findings which the Commission can xxxxxx then make.

Having been a Judge I know that a Court does not like to be "accused" of having "perhaps" been in error on the first shots from the hip. But it appears to me that the Court in failing to find the evidence before the Commission insufficient to support it ultimate conclusions, is hanging its hat on a "by the numbers" procedural peg, and thereby if it allows its present opinion to stand, utter chaos is the result to the oil and gas proration, past and future in the State of New Mexico. Then again at this stage of the game, maybe we should not concern oursleves with the feelings of the Court-they wre not concerned with ours.

I will be at the Pan-O-Rama Lodge in Ruidoso where you can contact me if you think we should meet in Santa"Fee" and throw the brief together for filing July 2nd. There is not a hell of a lot of time is there?

Best regards,

Morris

CC; Jack Campbell
Bob Ward
Ray Cowan

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June 16, 1962

Mr. Dick Morris
Office of the Oil Conservation Commission
Land Office Building
Santa Fe, New Mexico

Re: Jalmat

Dear Dick:

Ray Cowan has sent me a copy of Bob Ward's letter of June 5th to Pat McCarthy giving his ideas as to another approach for us on this Motion for Rehearing.

I believe certainly that "Proposition One" in Bob's letter should be pursued.

Further, I think it most important to present to the Court, the difficulties to the Commission and the producers the Court's opinion presents, if it is allowed to stand as it is. Should the opinion be taken literally, as it must be,(which I am sure no producer- oil or gas - wants to do), utter chaos will be the result, and that is putting it mildly.

Ben Howell has been out of town, but I caught himfor a few minutes this morning. Ben feels that we should press proposition one to the utmost. Ray Cowan and I are ready to help with the brief in any manner you suggest. Needless to add, this litigation is of the utmost importance to us as well as to the whole oil and gas industry in New Mexico.

Awaiting your further advices, I remain

Sincerely yours,

Morris A. Galatzan

wjs
cc: Mr. Ray Cowan
P.O. Box 2405, Hobbs, New Mexico
cc: Mr. Jack Campbell
Campbell & Russell
Lawyers
J. P. White Building
Roswell, New Mexico
cc: Mr. Bob Ward
Attorney at Law
Lovington, New Mexico

ROBERT W. WARD
ATTORNEY-AT-LAW
LOVINGTON, NEW MEXICO
201 N. LOVE ST.
PHONE 396-3303

June 8, 1962

Mr. Patrick J. McCarthy
Northern Natural Gas Company
2223 Dodge Street
Omaha 1, Nebraska

Re: Jalmat

Dear Pat:

You will find enclosed thermo fax copy of letter from Ray Cowan which is self-explanatory.

Since receipt of the letter and checking out the cases cited, I have been trying to find another approach to present to the Supreme Court on rehearing other than asking the Court to reverse itself. I have come up with one suggested approach which will be set out hereafter as proposition number 2. I called Dick Morris this morning at the Oil Conservation Commission and had a long discussion with him about the proposed rehearing. Our discussion was along the following lines:

Proposition one: It was his thought that despite the decision in the Carmody Case which held that a case could not be remanded to a commission to take further evidence that this decision did not prevent the Supreme Court from remanding the matter to the commission merely for the purpose of making Findings of Fact in conformity with the opinion of the Court if the commission determined that it had sufficient evidence before it to make such findings. The Supreme Court has frequently remanded cases for this purpose to the District Courts and the statute governing appeals from the commission incorporates the rules of civil procedure insofar as they are not in conflict with the Oil Conservation Commission Act.

Proposition two: I suggested that in addition the OCC ask the Court for a clarification of its opinion for its guidance in the future. From the last paragraph on page 5 of the opinion, it might appear that the Supreme Court requires the OCC to make a separate

set of Findings of Fact on the four propositions mentioned as to each tract in the Jalmat Pool on a quantitive basis. Then suggest to the Court that as to the Jalmat Field and other of the older fields where few if any cores were taken at the time of the drilling of the well that the only way to determine recoverable gas in place in the pool and in the various tracts is by the use of pressure, deliverability, or other similar tests and the decline curves and matters of that kind. Point out that the commission's basic duty is to prevent waste and to protect correlative rights and that the commission has in fact found that the acreage formula was not protecting correlative rights and that the commission would not be doing its duty if it did not take steps to correct this situation. Then suggest to the Court that under the circumstances which exist with respect to the Jalmat Pool that the commission assumes that a general finding by the commission might be made along this line:

"The commission finds that in so far as it is practicable to do so a formula of twenty-five percent acreage and seventy-five percent deliverability (or any other proper formula) will afford to the owner of each property in the Jalmat Pool the ability to produce without waste his just and equitable share of the gas in the Jalmat Pool and that this is an amount in so far as can be practically determined which can be obtained without waste substantially in the proportion that the quantity of recoverable gas under the property of each owner bears to the total recoverable gas in the pool and which will permit each owner to use his just and equitable share of the reservoir energy."

It would be suggested that this finding would then be followed by findings as to the deliverability of each well in the Jalmat Pool and the acreage assigned to the well. It could be pointed out to the Court that to make a quantitive finding as to each well, the commission would have to start off with a deliverability or pressure formula, use some factor times the deliverability and acreage to arrive at the quantity, so that the commission would in fact be going in a circle. In that connection the Court could also be asked to clarify what it meant by "producers tract" and any other similar matters which may be unclear to the commission. In support of this proposition the commission could point out all of the practical problems confronting the commission, the fact that all of the previous orders setting up pro-ration on oil and gas fields are void, etc. Now I recognize, and I

am sure Dick Morris recognizes that the Supreme Court will not give an advisory opinion. However, this should not be an obstacle since what the commission would be asking is the clarification of the Supreme Court's opinion.

Proposition three: It might be well to point out to the Court the tremendous amount of testimony taken and incorporated in the record before the commission, the expense involved, and the time consumed, and ask the Court in the event it does not remand for the purpose of making findings of fact that the Court make it clear that nothing in its opinion would prohibit the introduction of the transcript together with such other evidence as any party desires to put on at a subsequent hearing before the commission.

Yours very truly,

Robert W. Ward

Robert W. Ward

RWW/sgb
cc: Jack Campbell
Ray Cowan
Dick Morris

ROBERT W. WARD
201 N. LOVE ST. ATTORNEY-AT-LAW PHONE 396-3303
LOVINGTON, NEW MEXICO

June 5, 1962

Mr. Dick Morris
Oil Conservation Commission
Santa Fe, New Mexico

Re: Jalmat

Dear Dick:

I received a letter from Ray Cowan and note that he did not send you a copy. I am therefore enclosing copy of the same. I have been swamped since I got back and have not been able to examine the cases or see if there is some other approach I might suggest. I do feel that it would be a mistake and a waste of time to go in to the Supreme Court on a rehearing and flatly ask for a reversal. Certainly after Judge Carmody has spent some eighteen months on this opinion, he is not apt to change his mind. However, such things have happened. Probably over the weekend, I will find the time to sit down and consider the matter, and I will write if I come up with any ideas.

Yours very truly,

Robert W. Ward

Robert W. Ward

RWW/sgb
Enclosure

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May 29, 1962

Mr. Robert W. Ward
Attorney at Law
201 North Love Street
Lovington, New Mexico

Re: Jalmat

Dear Bob

It appears that our Supreme Court has pretty well knocked out our main ground for a re-hearing. I call your attention to the case of State ex rel. Transcontinental Bus Service, Inc. v. Carmody, 53 N.M. 367, 208 P.2d 1073 (also note that the prohibition action was maintained against Judge Carmody, then Judge of the First Judicial District). The rule established that the court, absent statutory authority, has no authority to remand to a commission for additional action is followed in the later cases of State Corporation Commission v. McCulloh, 63 N.M. 436, 321 P.2d 207, and National Trailer Convoy, Inc. v. State Corporation Commission, 64 N.M. 97, 324 P.2d 1023, and other cases cited in Shepard's.

There are cases from other jurisdictions holding to the contrary (42 Am. Jur. Section 248, Text and Supplement), but I do not find any in New Mexico.

Very truly yours,

GIRAND, COWAN & REESE

RCC/fr

cc: Mr. Morris A. Galatzan
Mr. Jack Campbell
Mr. Ben Howell