DOYLE HARTMAN
Oil Operator
500 N. MAIN
P.O. BOX 10426
MIDLAND, TEXAS 79702
(915) 684 4011

DEC

September 3, 1991

VIA CERTIFIED RETURN RECEIPT U.S. MAIL

TO: ALL WORKING AND ROYALTY INTEREST OWNERS
(list attached)
STEVENS B-7 COM LEASE
N/2 SECTION 7, T-23-S, R-37-E
LEA COUNTY, NEW MEXICO

RE: Dissolution of Communitization Agreement

Dear Mesdames and Messrs.:

Reference is made to New Mexico Oil Conservation Division Administrative Order NSP-1632(L)(SD) and Administrative Order NSP-1633(L), copies enclosed, both dated August 21, 1991.

The NMOCD has ordered the formation of two separate Jalmat Gas Pool proration units for the N/2 of Section 7, T 23 S, R-37-E. One proration unit will consist of the N/2 N/2 of said Section 7 and have one Jalmat Gas Pool well dedicated to it, being the Stevens B-7 No.1 located in Unit C of Section 7. The other proration unit consists of the S/2 N/2 of said Section 7 and has dedicated to it two wells, being the Stevens B-7 No. 13 and the Stevens B-7 No. 2, located in Units E and G, respectfully.

In order to comply with the Orders issued by the NMOCD, it is necessary to terminate the Communitization Agreement dated September 20, 1948, which communitized the entire N/2 of said Section 7 from the surface to a depth of 3,850 feet.

Therefore, enclosed please find an Approval-Voluntarily-Dissolution of the subject Communitization Agreement. Please execute and return the subject form at your earliest convenience. If we have not received your signed dissolution form within thirty (30) days from this date, we will assume that you are in agreement to dissolve same and proceed accordingly.

SEP 25 1991

EXHIBIT
A

Thank you for your attention to this matter and please advise if you have any questions.

Very truly yours,

Bryan E. Jones
Land Manager

cc: U.S. Bureau of Land Management
Attn: Area Manager
P.O. Box 1778
Carlsbad, NM 88220

WORKING INTEREST OWNERS - STEVENS B-7 COM

Bayshore Production Company
5801 N. Broadway, Suite 300
Oklahoma City, OK 73118

James C. Brown, Jr.
P.O. Box 10621
Midland, TX 79702

Margaret Clay Couch Trust
c/o Juanita Jackson
P.O. Box 50668
Amarillo, TX 79159

Rufus Gordon (Pete) Clay Trust
c/o Juanita Jackson
P.O. Box 50668
Amarillo, TX 79159

Clay Trusts 1,2,3 (Acct. 936A)
Ameritrust Texas, N.A.
P.O. Box 951414
Ft. Worth, TX 75395

Evelyn Clay O'Hara Trust
3774 West 6th St.
Ft. Worth, TX 76107

ENERGY, I. .RALS AND NATURAL RESOURCES DE ITMENT

OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR

August 21, 1991

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87504
(505) 827-5800

Doyle Hartman, Oil Operator
P.O. Box 10426
Midland, Texas 79707

Attention: Patrick K. Worrell, Engineer

Administrative Order NSP-1633(L)

Dear Mr. Worrell:

Reference is made to your application dated May 29, 1991 for a 157.34-acre non-standard gas proration unit consisting of the following acreage in the Jalmat Gas Pool:

Lea County, New Mexico
Township 23 South, Range 37 East, NMPM
Section 7: Lot 1, N/2 NE/4 and NE/4 NW/4 (N/2 N/2 equivalent)

It is my understanding that this unit it to be dedicated to you existing Stevens B-7 Well No. 1 located at an unorthodox gas well location 990 feet from the North and West lines (Unit C) of said Section 7.

By authority granted me under the provisions of Rule 2(a)9 and 2(c) of the Special Rules and Regulations for the Jalmat Gas Pool, as promulgated by Division Order No. R-8170, as amended, the above-described non-standard gas proration unit and resulting unorthodox gas well locations are hereby approved.

Sincerely,

WILLIAM J. LEMAY
Director

WJL/MES/jc

cc: Oil Conservation Division - Hobbs
U.S. BLM - Carlsbad
Case No. 10349

AUG 26 1991

ENERGY, M. RALS AND NATURAL RESOURCES DE RTMENT

OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR

August 21, 1991

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87504
(505) 827-5800

Doyle Hartman, Oil Operator
P.O. Box 10426
Midland, Texas 79702

Attention: Patrick K. Worrell, Engineer

Administrative Order NSP-1632(L)(SD)

Dear Mr. Worrell:

Reference is made to your application dated May 29, 1991 for a 157.31-acre non-standard gas proration unit consisting of the following acreage in the Jalmat Gas Pool:

Lea County, New Mexico
Township 23 South, Range 37 East, NMPM
Section 7: Lot 2, S/2 NE/4 and SE/4 NW/4 (S/2 N/2 equivalent)

It is my understanding that this unit it to be simultaneously dedicated to the existing Stevens "B" Well No. 13 located at an unorthodox gas well location 1980 feet from the North line and 330 feet from the West line (Unit E) of said Section 7, and the existing Stevens B-7 Com Well No. 2 located at an unorthodox gas well 1650 feet from the North and East lines (Unit G) of said Section 7.

By authority granted me under the provisions of Rule 2(a)9 and 2(c) of the Special Rules and Regulations for the Jalmat Gas Pool, as promulgated by Division Order No. R-8170, as amended, the above-described non-standard gas proration unit and resulting unorthodox gas well locations are hereby approved:

Also, you are hereby authorized to simultaneously dedicate Jalmat Gas production from the Stevens "B" Well No. 13 and Stevens B-7 Com Well No. 2 and produce the allowable assigned to said non-standard unit from both wells in any proportion.

Sincerely,

WILLIAM J. LEMAY
Director

WJL/MES/jc

cc: Oil Conservation Division - Hobbs
U.S. BLM - Carlsbad
Case No. 10349

RETURN THIS COPY
TO: DOYLE HARTMAN
BOX 10126
MIDLAND, TX 79702

VOLUNTARY DISSOLUTION
COMMUNITIZATION AGREEMENT

STATE OF NEW MEXICO
COUNTY OF LEA

WHEREAS, under date of September 20, 1948, a certain Communitization Agreement was entered into by and between Continental Oil Company and Standard Oil Company, et al, communitizing the N/2 of Section 7, T-23 S, R-37-E, Lea County, New Mexico, from the surface of the ground to a depth of 3,850 feet, said Communitization Agreement being recorded in Book 44, Page 206, Misc. Records of Lea County, New Mexico.

AND, WHEREAS, said Communitization Agreement covered and pertained to the following described oil and gas leases, to-wit:

1) United States Oil & Gas Lease bearing Las Cruces Serial No. 030556-(B), covering the S/2 N/2 of Section 7, T-23 S, R-37-E, Lea County, New Mexico.

2) Oil & Gas Lease dated June 5, 1946 from Arthur D. Richards, et ux, to Charles T. Bates, covering the N/2 N/2 of Section 7, T 23-S, R-37-E, Lea County, New Mexico, said lease being recorded in Book 4, Page 241, Oil & Gas Records of Lea County, New Mexico.

AND, WHEREAS, it is the desire of the parties hereto to terminate the said Communitization Agreement so as to comply with New Mexico Oil Conservation Division Administrative Orders numbered NSP-1632(L)(SD) and NSP-1645(L).

NOW, THEREFORE, for and in consideration of the promises and mutual advantages, it is mutually covenanted and agreed by and between the parties hereto that the Communitization Agreement hereinabove specifically described is and henceforth shall be terminated and that the lands and leases covered by said Communitization Agreement shall be developed and operated separately as to the interval from the surface of the ground to a depth of 3,850 feet.

This dissolution of Communitization Agreement shall be effective as of 12:01 a.m., September 1, 1991.

This agreement may be executed in one or more counterparts by any of the parties hereto and all counterparts so executed shall be taken as a single agreement and shall have the same force and effect as if all parties had in fact executed a single agreement.

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

IN WITNESS WHEREOF, the parties hereto have executed this agreement this ___ day of September, 1991.

LESSEE:

Doyle Hartman

Bayshore Production Company

Attest:

by:

James C. Brown, Jr.

Margaret Clay Couch Trust

by:

Rufus Gordon (Pete) Clay Trust

by:

Evelyn Clay O'Hara Trust

by:

Clay Trusts 1,2,3 (Acct936A)
Ameritrust Texas, N.A., Trustee

by:

ROYALTY OWNERS

Texas Commerce Bank San Angelo,
Trustee for Noel C. Warwick Trust

Attest:

by:

Texas Commerce Bank-San Angelo,
Trustee for Vernice Boyle Trust

Attest:

by:

Texas Commerce Bank-San Angelo,
Trustee for Glota Perkins Boyle
Trust

Attest:

by:

Texas Commerce Bank-San Angelo,
Trustee for William C. Wright
Trust

Attest:

by:

Texas Commerce Bank-San Angelo,
Trustee for W.V. Leftwich Trust

Attest:

by.

Texas Commerce Bank-San Angelo,
Trustee for Brenda Ronaldson Trust

Attest:

by:

Texas Commerce Bank-San Angelo,
Trustee for Dorothy Habura Trust

Attest:

by:

Texas Commerce Bank San Angelo,
Trustee for Robert G. Wright Trust

Attest:

by:

Texas Commerce Bank San Angelo,
Trustee for Dorothy Doyle Trust

Attest:

by:

MTrust Corp. Houston, Trustee
for Hubert Clift Trust
(Acct 4815011415)

Attest:

by:

MTrust Corp. Houston, Trustee
for Jeanette G. Clift Trust
(Acct 4815011434)

Attest:

by:

MTrust Corp. Houston, Trustee
for Jeanette E. Clift Trust
(Acct 4815011406)

Attest:

by:

Greg Dodd

Amerada Hess Corporation

Attest:

by:

Benny Lynn Stone

Johnny Paul Stone

Monte Mac Dodd Bond

Roma Jean Henson

Jerry D. Jones and the First National Bank of Levelland, Co-Trustees for the Melinda Jones Trust

Jerry D. Jones

by: _____

Vicki Joe Walker

Chris Lee Tietz

Grace B. Hockman

Robert S. Harris

Norman L. Stevens, Jr.

Vanessa H. Shotwell

Margaret W. Smith

Patricia Nell Rigg

Ralph S. Harris II

Oryx Energy Company

Attest:

by:

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 19___, by _____, _____ of HAYSHORE PRODUCTION COMPANY, a _____ corporation, on behalf of the corporation.

_____
Notary Public
in and for the
State of _____

My Commission Expires:_____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 19___, by _____, Trustee of MARGARET CLAY COUCH TRUST.

_____
Notary Public
in and for the
State of _____

My Commission Expires:_____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 19___, by _____, Trustee of RUFUS GORDON (FEE) CLAY TRUST.

_____
Notary Public
in and for the
State of _____

My Commission Expires:_____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 19___, by _____, Trustee of EVELYN CLAY O'HARA TRUST.

_____
Notary Public
in and for the
State of _____

My Commission Expires:_____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 19___, by _____, _____ of AMERITRUST TEXAS, a _____ corporation, as Trustee of CLAY TRUSTS 1,2,3 (Acct938A).

_____
Notary Public
in and for the
State of _____

My Commission Expires:_____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 19___, by _____, _____ of TEXAS COMMERCE BANK-SAN ANGELO, a _____ corporation, as Trustee of NORA C. WARNICK TRUST.

_____
Notary Public
in and for the
State of _____

My Commission Expires:_____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 19___, by _____, _____ of TEXAS COMMERCE BANK-SAN ANGELO, a _____ corporation, as Trustee of VERNON BOYLE TRUST.

_____
Notary Public
in and for the
State of _____

My Commission expires:_____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 19___, by _____, _____ of TEXAS COMMERCE BANK-SAN ANGELO, a _____ corporation, as Trustee of OLETA PERKINS BOYLE TRUST

_____
Notary Public
in and for the
State of _____

My Commission Expires:_____

STATE OF _____)

COUNTY OF ___ __)

The foregoing instrument was acknowledged before me this ___ day of _____, 19___, by ___ _____, _____ of MTRUST CORP. HOUSTON, a ____ _____ corporation, as Trustee of JEANETTE E. LLIFI 4813011406).

_____ _____
Notary Public
in and for the
State of _____

My Commission Expires:_____ __

STATE OF __ ____)

COUNTY OF ___ __)

The foregoing instrument was acknowledged before me this _____ day of _____, 19___, by GREG DODD.

_____ _____
Notary Public
in and for the
State of _____

My Commission Expires:____ ____

STATE OF _____)

COUNTY OF _ ____)

The foregoing instrument was acknowledged before me this ___ day of ___, 19___, by ___ _____, _____ of AMERADA HESS CORPORATION, a _____ corporation, on behalf of the corporation.

_____ _____
Notary Public
in and for the
State of _____

My Commission Expires:____ __

STATE OF _ ____)

COUNTY OF ____)

The foregoing instrument was acknowledged before me this _____ day of _____, 19___, by DE'ANN YARBROUGH.

_____ _____
Notary Public
in and for the
State of _____ ____

My Commission Expires:_____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 19___, by _____ _____, _____ of NCNB TEXAS NATIONAL BANK, a _____ corporation, as Ind. Executor of the Estate of VIVIAN JONES.

_____
Notary Public
in and for the
State of _____

My Commission Expires:_____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 19___, by CYNTHIA KART (WALKER) SPILLAR.

_____
Notary Public
in and for the
State of _____

My Commission Expires:_____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 19___, by SANDRA DODD [illegible].

_____
Notary Public
in and for the
State of _____

My Commission Expires:_____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 19___, by NANCEE CAY STEPHENS.

_____
Notary Public
in and for the
State of _____

My Commission Expires:_____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 19___, by LYNDA KAY (WALKER) WINTER.

_____
Notary Public
in and for the
State of _____

My Commission Expires:_____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 19___, by JERRY ANN (WALKER) WYNN.

_____
Notary Public
in and for the
State of _____

My Commission Expires:_____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of ___, 19___, by ALICE D. JONES.

_____
Notary Public
in and for the
State of _____

My Commission Expires:_____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 19___, by JERRY D. JONES.

_____
Notary Public
in and for the
State of _____

My Commission Expires:_____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 19___, by MICHAEL ALAN HUNTINGTON.

_____
Notary Public
in and for the
State of _____

My Commission Expires:_____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 19___, by VERNA JEAN (HUNTINGTON) JINKINS

_____
Notary Public
in and for the
State of _____

My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 19___, by BENNY LYNN STONE.

_____
Notary Public
in and for the
State of _____

My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 19___, by JOHNNY PAUL STONE.

_____
Notary Public
in and for the
State of _____

My Commission Expires:_____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of ___, 19___, by MONTE SUE DODD BOND

_____
Notary Public
in and for the
State of _____

My Commission Expires:_____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 19__, by ROMA JEAN HENSON.

_____
Notary Public
in and for the
State of _____

My Commission Expires:_____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this __ day of _____, 19__, by JERRY D. JONES, as Co-Trustees of BELINDA JONES TRUST.

_____
Notary Public
in and for the
State of _____

My Commission Expires:_____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 19___, by _____ of FIRST NATIONAL BANK OF LEVELLAND, a _____ corporation, as CO-Trustee of BELINDA JONES TRUST.

_____
Notary Public
in and for the
State of _____

My Commission Expires: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 19___, by VICKI JOE WALKER.

_____
Notary Public
in and for the
State of _____

My Commission Expires:_____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 19___, by CHRIS LEE TIETZ.

_____
Notary Public
in and for the
State of _____

My Commission Expires:_____

STATE OF New Mexico

COUNTY OF Chaves)

The foregoing instrument was acknowledged before me this 24th day of Sept, 1990, by GRACE B. ROCKMAN.

Estrella D. Ochoa
Notary Public
in and for the
State of New Mexico

My Commission Expires: Sept 1 1990

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 19___, by ROBERT S. HARRIS.

_____
Notary Public
in and for the
State of _____

My Commission Expires: _____

STATE OF _____)

COUNTY OF ___ ____)

The foregoing instrument was acknowledged before me this _____ day of ___, 19___, by NORMAN L. STEVENS, JR.

Notary Public
in and for the
State of _____

My Commission Expires: _____

STATE OF ___ ____)

COUNTY OF ____ __)

The foregoing instrument was acknowledged before me this __ _ day of ____, 19___, by VANESSA P. SHOTWELL.

Notary Public
in and for the
State of _____

My Commission Expires: ___ _____

STATE OF _ _____)

COUNTY OF _ ____)

The foregoing instrument was acknowledged before me this _____ day of ____, 19___, by MARGARET W. SMITH.

Notary Public
in and for the
State of _____

My Commission Expires: ___ _____

STATE OF _ _____)

COUNTY OF ___ __)

The foregoing instrument was acknowledged before me this _____ day of ___, 19___, by PATRICIA NELL [illegible].

Notary Public
in and for the
State of _____

My Commission Expires: ____ ____

STATE OF ___ ____)

COUNTY OF ____ __)

The foregoing instrument was acknowledged before me this ____ day of ___ , 19 , by RALPH S. HARRIS II.

_ _____ _____
Notary Public
in and for the
State of ____ _____

My Commission Expires:____ _____

STATE OF ___ ___)

COUNTY OF ____ _)

The foregoing instrument was acknowledged before me this __ day of _____, 19 __, by _____ _____, _____ __of ORYX ENERGY COMPANY a __ _____ corporation, on behalf of the corporation.

_ _____ _____
Notary Public
in and for the
State of _____ __

My Commission Expires:____ _____

Legal

DOYLE HARTMAN
Oil Operator
500 N. MAIN
P.O. BOX 10426
MIDLAND, TEXAS 79702
(915) 684-4011

October 14, 1991

All Working and Royalty Interest Owners
(list attached)

Re: Communitization Agreement
Stevens "B-7" Com. No. 1
990 FNL & 990 FWL (D)
Section 7, T-23-S, R-37-E
Lea County, New Mexico

Gentlemen:

Reference is made to Bryan Jones' letter to you of September 3, 1991 giving notice of the dissolution of that certain Communitization Agreement dated September 20, 1948. As you are aware, the subject Communitization Agreement communitized (as to dry gas from the surface to a depth of 3850 feet) the 157.3-acre Arthur D. and Ila Richards fee lease located in the N/2 N/2 Section 7, T-23-S, R-37-E with the 157.3-acre Stevens "B" federal lease located in the S/2 N/2 Section 7, T-23-S, R-37-E. Reference is also made to several letters that have been received by us in response to our letter of September 3, 1991 wherein additional information was requested about the announced dissolution.

A review of the September 20, 1948, Communitization Agreement reveals "...it is desired to communitize all of the above described oil and gas leases [Richards and Stevens "B"] ... in order to be consistent with existing well spacing and production allowables ..." From 1948 until early 1991, the communitized area has contained one continuously-active Jalmat gas well being the Stevens "B-7" Com. No. 1 well located 990' FNL and 990' FWL Section 7, T-23-S, R-37-E with the assigned proration unit being the NW/4 Section 7, T-23-S, R-37-E. By early 1991, as a result of low production levels, low gas pricing, and a high percentage of unpaid account receivables, the operation of the Stevens "B-7" no. 1 Com No. 1 had reached a point where it was no longer economically justifiable for Doyle Hartman to continue operating the subject well and proration unit.

As a consequence of the uneconomical nature of the Stevens "B-7" Com No. 1 operations, the September 20, 1948 Communitization Agreement expired under its own terms. Therefore, in order to efficiently and effectively develop any remaining gas reserves that may underlie the S/2 N/2 Section 7, T-23-S, R-37-E, an application was submitted by Doyle Hartman to the New Mexico Oil Conservation Division (NMOCD) to reconfigure the N/2 Section 7 into two new non-standard Jalmat proration units consisting of the S/2 N/2 Section 7 and N/2 N/2 Section 7, T-23-S,

EXHIBIT
B

R-37-E. By virtue of NMOCD orders NSP-1632(L)(SD) and 1633(L), on August 21, 1991, the N/2 Section 7 was reconfigured respectively into the two requested new 157.3 acre proration units consisting of the S/2 N/2 Section 7 and the N/2 N/2 Section 7. Since the Stevens "B-7" Com. No. 1 well is located 990' FNL and 990' FWL Section 7, it corresponds to the new Jalmat proration unit consisting of the N/2 N/2 Section 7 (NSP-1633(L)).

In recognition of the fact that the September 20, 1948 Communitization Agreement corresponding to the N/2 Section 7 was entered into solely for the purpose of "...being consistent with existing rules and regulations governing well spacing and production allowables ...", and also in recognition of the recent reformation of the N/2 Section 7 into two separate proration units that directly conform to the two separate leases (Richards and Stevens "B" leases) that comprised the initial unitized area, the purpose for the original communitization agreement no longer exists. As a result, and so as to be consistent with NMOCD orders NSP-1632 (L)(SD) and NSP-1663(L), you are respectfully requested to execute, at your earliest convenience, the document previously furnished you, on September 3, 1991, dissolving the September 20, 1948 Communitization Agreement.

Moreover, being that Doyle Hartman, upon the recent approvals by the NMOCD of the two new Jalmat proration units, no longer owns a substantial interest in the Stevens "B-7" Com. No. 1 well, Doyle Hartman hereby tenders his resignation as operator of the Stevens "B-7" Com. No. 1 well and further requests that the remaining working interest owners of the Stevens "B-7" No. 1 well promptly elect a new operator for the Stevens "B-7" No. 1 well. In the event no other working interest owner wishes to promptly assume operations of the Steven "B-7" Com. No. 1 well, and in light of the non-commercial nature of the well, Doyle Hartman hereby proposes immediate abandonment (in accordance with applicable State and Federal regulations) of the Stevens "B-7" Com. No. 1 well. A copy of the recently revised abandonment regulations are enclosed for your review.

Very truly yours,

Doyle Hartman

Enclosures
DH/cb
002:STVB1WIO

cc: (list attached)

WORKING AND ROYALTY INTEREST OWNERS
STEVENS "B-7" COM. NO. 1

NTrust Fort Worth N.A.
and Margaret B. Clay
Co-Trustees of Clay Tr.
1-2-3 A/C No. 936A
P. O. Box 951414
Dallas, TX 75397
75-6007709

Rufus Gordon (Pete) Clay
c/o Juanita Jackson
Co-Trustee
P. O. Box 50668
Amarillo, TX 79159-0668
75-6274063

Evelyn C. O'Hara
3774 W. 6th Street
Ft. Worth, 76107

James C. Brown
P. O. Box 10621
Midland, TX 79702
455-76-0007

Margaret Clay Couch Trust
c/o Juanita Jackson
Co-Trustee
P. O. Box 50668
Amarillo, TX 79159-0668
75-6274041

Bayshore Production Co
Limited Partnership
5801 N. Broadway, Ste 300
Oklahoma City, OK 73118-7486

Minerals Management Service
Onshore Federal #17555
P. o. Box 5810
Denver, CO 80217
53-0196958

Texas Commerce Bank
San Angelo Tr. for
Noel C. Warwick Trust
P. O. Box 5291
San Angelo, TX 76902
75-6339831

Texas Commerce Bank
San Angelo Tr. for
Verniece Boyle Trust
P. O. Box 5291
San Angelo, TX 76902
75-6339829

Greg Dodd
154 E. 29th Street, No. 6G
New York, NY 10016
453-78-3406

Texas Commerce Bank
San Angelo Tr. for
Oleta Perkins Boyle Trust
P. O. Box 5291
San Angelo, TX 76902
75-6339827

Texas Commerce Bank
San Angelo Tr. for
William C. Wright Trust
P. O. Box 5291
San Angelo, TX 76902
75-6339826

NTrust Corp. Houston
Trustee for Hubert Clift
Acct #4815011415
Houston Oil & Gas
P. O. Box 97788
Dallas, TX 75397
74-1394458

NTrust Corp. Houston
Trustee of Jeannette C. Clift
Acct. #4815011434
P. O. Box 97788
Dallas, TX 75397
74-6045988

Texas Commerce Bank
San Angelo Tr. for W. V.
Leftwich Trust
P. O. Box 5291
San Angelo, TX 76902
75-6339821

Amerada Hess Corp.
P. O. Box 910834
Dallas, TX 75391-0834
13-4921002

De'Ann Yarbrough
Rt. 2, Box 270A
Clyde, TX 79510
465-29-7540

Texas Commerce Bank
San Angelo Tr. for
Brenda Ronaldson Trst
P. O. Box 5291
San Angelo, TX 76902
75-6339832

NCNB Texas National Bank
Independent Executor of
the Estate of Vivian Jones
P. O. Box 852057
Dallas, TX 75283-2057
75-6366458

Cynthia Hart (Walker) Spillar
3605 Columbia
Garland, TX 75043
461-84-2841

Sandra Dodd Roles
6808 Esther Drive
Austin, TX 78752
252-90-6418

Nancee Gay Stephens
3201 Kari Lane #911
Greenville, TX 75401
461-92-7480

Texas Commerce Bank
San Angelo Tr. for
Dorothy Habura Trust
P. O. Box 5291
San Angelo, TX 76902
75-6358663

Texas Commerce Bank
San Angelo Tr. for
Robert G. Wright Trust
P. O. Box 5291
San Angelo, TX 76902

Texas Commerce Bank
San Angelo Tr. for
Dorothy Boyle Trust
P. O. Box 5291
San Angelo, TX 76902

Linda Kay (Walker) Winter
3414 Ann Arbor
Houston, TX 77063
461-84-2944

Jerry Ann (Walker) Wynn
1112 Sharpes Dr.
Harrisonburg, VA 22801
456-76-8559

Alice Jones
1915 30th
Lubbock, TX 79408
451-74-9266

Jerry D. Jones
1702 31st St.
Lubbock, TX 79411
452-56-4556

Michael Alan Huntington
Box 1051
Jal, NM 88252
585-60-4108

Verna Jean (Huntington) Jinkins
Bx 688
Jal, NM 88252

Benny Lynn Stone
Drawer 1148
Andrews, TX 79714
464-74-9288

Johnny Paul Stone
7900 Westheimer, Apt. 443
Houston, TX 77063

Monte Su Dodd Bond
P. O. Box 50664
Nashville, TN 37205
451-96-0795

NTrust Houston N.A.
Trustee for Jeannette E. Clift
P. O. Box 97788
Dallas, TX 75397
74-6038087

Rona Jean Henson
P. O. Box 208
South Fork, CO 81154-0208
457-26-8335

Jerry D. Jones
& 1st National Bank Levelland
Co-Trustees Belinda Jones Trust
P. O. Box 1626
Levelland, TX 79336-1626
75-6232523

Vicki Jo Walker
P. O. Box 30772
Tucson, AZ 85751-0772
526-11-2991

Chris Lee Tietz
9501 E. Myra Drive
Tucson, AZ 85730
527-13-9309

Grace B. Bockman
P. O. Box 716
Roswell, NM 88202
585-18-8766

Robert S. Harris
7624 E. Morales Place
Tucson, AZ 85710
527-19-1689

Norman L. Stevens, Jr.
Petroleum Bldg., Suite 510
P. O. Box 278
Roswell, NM 88202
046-18-9386

Vanessa H. Shotwell
2200 196th St., SE #18
Bothell, WA 98011
525-64-9763

Margaret W. Smith
3616 Oakwood Place
Riverside, CA 92506
551-46-5358

Patricia Nell Rigg
1303 N. Walnut
Tucson, AZ 85712

Ralph S. Harris II
209 9th Ave. SW, Bsmt. #2
Rochester, MN 55902-2957
527-19-1712

Oryx Energy Company
P. O. Box 2880
Dallas, TX 752212280
23-1743284

AI INISTRATIVE TERMINAT N OF
EXPI_D COMMUNITIZATION AGREEMENT

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Roswell District Office
P.O. Box 1397
Roswell, New Mexico 88202-1397

IN REPLY
REFER TO:

I-SEC-635
3105.2 (065)

OCT 21 1992

Doyle Hartman
Attention: Carolyn M. Sebastian
P. O. Box 10426
Midland, Texas 79702

Gentlemen:

Communmitization Agreement I-SEC-635 was approved December 8, 1948 effective as of December 8, 1948. This agreement communitized the N½, sec. 7, T. 23 S., R. 37 E., NMPM, Lea County, New Mexico involving 160.00 acres of Federal land in lease LC-030556B and 160.00 acres of Fee land, as to dry gas and/or condensate produced at a depth of 3850 feet or less from the Jalmat Gas Pool.

The term of the agreement is for two years and so long thereafter as communitized substances are or can be produced from the communitized area in paying quantities.

Our records show that the well dedicated to the above described communitized spacing unit, your No. 1 Stevens B-7 Com. located on Fee land in the NW¼NW¼ sec. 7 was completed in the Yates-Seven Rivers formation 2887 - 3465 feet on January 27, 1949.

By letter dated October 9, 1992, you stated that as a consequence of the uneconomical nature of the No. 1 Stevens B-7 Com. and in order to efficiently and effectively develop any remaning gas reserves that may underlie the S½N½ sec 7, T. 23 S., R. 37 E., an application was submitted by Doyle Hartman to the NMOCD to reconfigure the N½ sec. 7 into two new non-standard Jalmat proration units consisting of the S½N½ sec. 7 and the N½N½ sec. 7, T. 23 S., R. 37 E. By virtue of NMOCD Orders NSP-1632(L)(SD) and 1633(L) on August 21, 1991, the N½ sec. 7 was reconfigured into the two new 157.3 acre proration units.

As a result and to be consistent with the NMOCD Orders, you requested the termination of Communitization Agreement I-SEC-635.

Accordingly, since the purpose for the communitization agreement no longer exists and pursuant to your request, I-SEC-635 is considered to have terminated as of August 21, 1991, the date the proration unit changed due to NMOCD Orders NSP-1632(L)(SD) and 1633(L).

Sincerely,

J. A. Lopez FOR

Armando A. Lopez
Assistant District Manager
Minerals

RECEIVED
DOYLE HARTMAN
OIL OPERATOR

OCT 23 '992

EXHIBIT
C

FIFTH JUDICIAL DISTRICT
COUNTY OF LEA
STATE OF NEW MEXICO

DOYLE HARTMAN and MARGARET M. HARTMAN,	)	
Plaintiffs,	)	
v.	)	No. CV 93-483J
AMERADA HESS CORP., *et al.*,	)	
Defendants.	)	

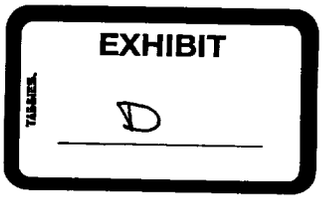
ANSWER AND COUNTERCLAIM TO COMPLAINT TO QUIET TITLE

COME NOW, Defendants Bayshore Production Co., Limited Partnership, James C. Brown and wife Laura G. Brown, trustee, individually and as co-trustee, Rufus Gordon "Pete" Clay, as co-trustee, William C. Couch, as co-trustee, Evelyn Clay O'Hara, individually and as trustee, CME Oil & Gas, Inc., Nancee Stevens Boyce and husband John William Boyce, Roma Jean Henson, Cynthia Mart Walker Spillar, Benny Lynn Stone, Johnny Paul Stone, Linda Kay Walker Winter, and Jerry Ann Walker Wynn (collectively Bayshore/Brown), and for their Answer and Counterclaim to the Complaint, state:

I. ANSWER

1. Bayshore/Brown admit paragraphs 1, 2, 3, 5, 6, 8, 9, 12, 13, and 18 of the Complaint.

2. Bayshore/Brown are without knowledge or information sufficient to form a belief as to the truth of paragraphs 4, 7, 10, 11, 14, 15, 16, 17, and 25 of the Complaint, and therefore deny the same.



3. Answering paragraph 19 of the Complaint, Bayshore/Brown admit the United States owns a royalty interest in the S½N½ of Section 7. Bayshore/Brown are without knowledge or information as to all other allegations contained in paragraph 19 and, therefore, deny the same.

4. Bayshore/Brown deny paragraphs 20 and 22 of the Complaint.

5. Paragraphs 20, 21 and 24 each contain the phrase ". . . property described in paragraph 13". No property is described in paragraph 13. Bayshore/Brown assume a typing error, and that plaintiffs intended to refer to paragraph 18.

6. Answering paragraph 21 of the Complaint, Bayshore/Brown admit that the property described in paragraph 18 was and is communitized. Bayshore/Brown deny any implication as may be contained in paragraph 21 that the N½ of Section 7 is no longer communitized, and affirmatively state that the Communitization Agreement remains in effect. All other allegations as may be contained in paragraph 21 are denied.

7. Answering paragraph 23 of the Complaint, Bayshore/Brown admit that defendants are owners of working or royalty interests of varying proportions in the oil and gas lease covering the N½N½ of Section 7, but deny that defendants' ownership of hydrocarbons is confined to the N½N½ of Section 7, and affirmatively state that defendants are entitled to their proportionate share of gas and condensate produced from the S½N½ of Section 7, as to depths from the surface to 3,850 feet beneath the surface, pursuant to the Communitization Agreement. All other allegations as may be contained in paragraph 23 are denied.

8. Answering paragraph 24 of the Complaint, Bayshore/Brown admit that defendants make a claim of right, title or interest in and to the property described in paragraph 18 of the Complaint and to the gas and condensate produced or producible from such acreage, but deny that the claims

of defendants are null, without merit, and groundless or cast an unwarranted cloud on the title of plaintiffs. All other allegations as may be contained in paragraph 24 are denied.

9. Bayshore/Brown deny all allegations of the Complaint which are not specifically admitted.

AFFIRMATIVE DEFENSES

10. Plaintiffs' action is barred by the doctrine of estoppel.

11. Plaintiffs' action is barred by the doctrine of waiver.

12. Plaintiffs' action is barred by laches.

13. Plaintiffs should be barred from seeking relief due to their unclean hands.

14. Plaintiffs' action is barred by the doctrines of acceptance of benefits and ratification.

15. Plaintiffs' action is barred inasmuch as Plaintiffs' own actions, taken in bad faith or in breach of fiduciary duties, created Plaintiffs' action.

16. Plaintiffs' action is barred by the statute of frauds.

WHEREFORE, having fully answer the Complaint, Bayshore/Brown pray that the Complaint be dismissed with prejudice and that Bayshore/Brown recover their costs herein and that Bayshore/Brown be awarded such other relief as may be just and proper.

II. COUNTERCLAIM

Bayshore/Brown, for their counterclaim against Plaintiffs/Counterdefendants Doyle Hartman and Margaret M. Hartman (the Hartmans), state:

JURISDICTION AND VENUE

1. This Counterclaim involves agreements affecting real property located in Lea County, and Counterclaimants and Counterdefendants own real property interests in the property described in paragraph 2 below, and thus jurisdiction and venue are proper in this Court.

GENERAL ALLEGATIONS

2. The oil and gas mineral interests underlying the N½ of Section 7, Township 23 South, Range 37 East, N.M.P.M., Lea County, New Mexico, as to dry gas and condensate produced from the surface to a depth of 3,850 feet beneath the surface, are subject to the Communitization Agreement which is identified in paragraph 21 of the Complaint.

3. From 1949 to the present there has been continuous production from the N½ of Section 7 as required by the Communitization Agreement. In the alternative, the N½ of Section 7 has been and is currently capable of producing hydrocarbons as required by the Communitization Agreement, and any failure to so produce hydrocarbons was due solely to the acts or omissions of the Hartmans in their capacity as operator, as set forth below.

4. The interests subject to the Communitization Agreement are also subject to a Joint Operating and Accounting Agreement (the JOA), as amended, which was entered into October 25, 1948. Bayshore/Brown assert, upon information and belief, that the Hartmans have in their possession a copy of the JOA; if not, Bayshore/Brown hereby offer to provide the Hartmans with a copy thereof.

5. The JOA provides that the operator shall: (a) "carry on all operations and development" on the subject property; and (b) "have full control and shall conduct and manage the development and production of the gas and/or condensate" from the subject property. The JOA, by its express terms, contemplates development of the S½N½ of Section 7 as well as the N½N½ of Section 7. The JOA provides that it shall be effective as long as the Communitization Agreement remains in effect.

6. On December 27, 1948, Conoco Inc. (formerly Continental Oil Company) commenced drilling, and on January 19, 1949 completed, its Stevens B-7 Com. No. 1 Well in the NW¼NW¼ of Section 7 as a producing gas well in the Yates and Seven Rivers formations of the Langmat Pool; these formations are now part of the Jalmat Gas Pool pursuant to order of the New Mexico Oil Conservation Division (OCD). The Jalmat Gas Pool is located within the depths covered by the Communitization Agreement and JOA. The NW¼ of Section 7 was subsequently dedicated to the Stevens B-7 Com. No. 1 Well.

7. On or about September 1, 1989, the Hartmans acquired Conoco Inc.'s interest in the N½ of Section 7 and became operator of the four existing wells located thereon, which are identified as follows:

(a) The Stevens B-7 Com. No. 1 Well (located in the NW¼NW¼);

(b) The Stevens B-7 Com. No. 13 Well (located in the SW¼NW¼);

(c) The Stevens B-7 Com. No. 2 Well (located in the SW¼NE¼); and

(d) The Stevens B-7 Com. No. 21 Well (located in the SE¼NE¼).

8. As of March 7, 1991, the Stevens B-7 Com. No. 1 Well (located in the NW¼NW¼) was still dedicated to a 160-acre spacing and proration unit, consisting of the NW¼ of Section 7, for production from the Jalmat Gas Pool.

9. From 1949 to the present, the oil and gas interest owners in the N½N½ of Section 7 shared Jalmat Gas Pool production from the Stevens B-7 Com. No. 1 Well, located in the N½N½ of Section 7, with the oil and gas interest owners in the S½N½ of the section.

10. On or about March 7, 1991, the Hartmans recompleted the Steven B-7 Com. No. 13 Well, located in the SW¼NW¼ of Section 7, into the Jalmat Gas Pool, and established production in paying quantities therefrom.

11. A proposal for the recompletion of the Stevens B-7 Com. No. 13 Well was never submitted by the Hartmans to the working interest owners in the N½N½ of Section 7 as required by the JOA. Furthermore, since the well's recompletion, the Hartman's have attempted to exclude the interest owners in the N½N½ of Section 7 from receiving their proportionate share of Jalmat Gas Pool production from said well, as set forth below.

12. On or about May 29, 1991, the Hartmans filed an administrative application with the OCD seeking to terminate the existing 160-acre Jalmat Gas Pool spacing unit consisting of the NW¼ of Section 7, and to substitute therefor two non-standard spacing and proration units, as follows:

(a) The S½N½ of Section 7 for the Stevens B-7 No. 13 and No. 2 Wells; and

(b) The N½N½ of Section 7 for the Stevens B-7 No. 1 Well.

The Hartmans failed to give notice of the application to the interest owners in the N½N½ of Section 7.

13. Without prior notice to the interest owners in the N½N½ of Section 7, the OCD granted the Hartmans' administrative applications and issued the following orders:

(a) Administrative Order NSP-1632(L)(SD) for the S½N½ of said Section 7; and

(b) Administrative Order NSP-1633(L) for the N½N½ of said Section 7.

14. Bayshore/Brown have applied to the OCD to vacate the above administrative orders (Case No. 10,882 on the OCD's docket).

15. Despite demand, the Hartmans have failed to honor their obligations under the Communitization Agreement and JOA and have failed to pay to Bayshore/Brown their rightful share of Jalmat Gas Pool production from the Stevens B-7 Com. No. 13 Well.

COUNT I - DECLARATORY JUDGMENT

16. Bayshore/Brown incorporate paragraphs 1 through 15 of the Counterclaim by reference.

17. An actual controversy exists among Bayshore/Brown and the Hartmans, and Bayshore/Brown are entitled to declaratory relief pursuant to NMSA (1978), §§ 44-6-1, *et seq.* as to their rights under the Communitization Agreement and JOA.

WHEREFORE, on Count I of the Counterclaim, Bayshore/Brown pray for the Court to enter its Order:

(a) Declaring that the Communitization Agreement and JOA are in full force and effect;

(b) Declaring that the procedural due process rights of Bayshore/Brown were violated by issuance of the non-standard gas proration unit orders; and

(c) Awarding compensatory damages, including legal fees, incurred by Bayshore/Brown in setting aside the OCD's non-standard proration unit orders.

COUNT II - BREACH OF CONTRACT, BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING, AND PUNITIVE DAMAGES

18. Bayshore/Brown incorporate paragraphs 1 through 15 of the Counterclaim by reference.

19. The Hartmans have a duty, as operator, to take reasonable, prudent action to maintain production in paying quantities from the N½ of Section 7, including proposing drilling new wells or re-working existing wells to establish and/or maintain production. Such reasonable proposals were never made by the Hartmans to the working interest owners under the JOA.

20. The acts of the Hartmans described herein were in bad faith.

21. Due to the above-described acts and omissions, the Hartmans have breached their contractual obligations under the Communitization Agreement and JOA, have breached their duty of good faith and fair dealing, and have attempted to bolster said breaches by obtaining the non-standard gas proration unit orders without notice to Bayshore/Brown in violation of procedural due process.

22. The acts of the Hartmans have been intentional, wanton, and reckless, and in complete disregard of the rights of Bayshore/Brown, entitling Bayshore/Brown to an award of punitive damages.

23. Bayshore/Brown are entitled to recover their reasonable attorney's fees pursuant to the JOA.

WHEREFORE, on Count II of the Counterclaim, Bayshore/Brown pray for the Court to enter its Order:

(a) Adjudging the Hartmans in breach of the Communitization Agreement and JOA, awarding compensatory damages therefor in an amount to be determined at trial, and awarding reasonable attorney's fees to Bayshore/Brown incurred in protecting their interests in the joint property, as provided for in the JOA; and

(b) Adjudging the Hartmans in breach of their duty of good faith and fair dealing, and awarding Bayshore/Brown punitive damages in an amount to be determined at trial.

COUNT III - ACCOUNTING AND MONEY DUE

24. Bayshore/Brown incorporate paragraphs 1 through 23 of the Counterclaim by reference.

25. Pursuant to the JOA, the Hartmans, as operator, have a duty to account to the working interest owners.

26. Pursuant to the Communitization Agreement and the JOA, Bayshore/Brown are entitled to their proportionate share of production proceeds from the Stevens B-7 Com. No. 13 Well.

WHEREFORE, on Count III of the Counterclaim, Bayshore/Brown pray for the Court to enter its Order:

(a) Requiring the Hartmans to account to Bayshore/Brown for the total amount and value of production from the Stevens B-7 Com. No. 13 Well since its recompletion to the Jalmat Gas Pool on March 7, 1991; and

(b) Awarding Bayshore/Brown their proportionate share of production proceeds from the Stevens B-7 Com. No. 13 Well, together with pre-judgment interest on the amounts due as provided by NMSA (1978), § 56-8-4 (1993 Cum. Supp.).

COUNT IV - OIL GAS AND
GAS PROCEEDS PAYMENT ACT

27. Bayshore/Brown incorporate paragraphs 1 through 26 of the Counterclaim by reference.

28. Bayshore/Brown are legally entitled to a proportionate share of production proceeds from the Stevens B-7 Com. No. 13 Well, but have not been paid their share of proceeds by the Hartmans within the time required by NMSA (1978), § 70-10-3 (1993 Cum. Supp.).

29. The addresses of Bayshore/Brown have been known to the Hartmans since they became operator of the subject property.

30. Bayshore/Brown hereby offer to execute reasonable division orders acknowledging their proper interests in the Stevens B-7 Com. No. 13 Well.

31. Bayshore/Brown are entitled to interest on the amounts due them, together with their attorney's fees, as provided by NMSA (1978), §§ 70-10-1, *et seq.* (1993 Cum. Supp.).

WHEREFORE, on Count IV of the Counterclaim, Bayshore/Brown pray for the Court to enter its Order:

(a) Awarding them their proportionate shares of production proceeds from the Stevens B-7 Com. No. 13 Well since its recompletion to the Jalmat Gas Pool, together with interest thereon at the statutory rate; and

(b) Awarding Bayshore/Brown their reasonable attorney's fees.

FURTHERMORE, as to Counts I through IV of the Counterclaim, Bayshore/Brown pray for the Court to award them their costs and to grant such other and further relief as the Court deems proper.

HINKLE, COX, EATON, COFFIELD & HENSLEY

James A. Gillespie
Post Office Box 10
Roswell, New Mexico 88202
(505) 622-6510
Attorneys for Bayshore/Brown

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer and Counterclaim to Complaint to Quiet Title was mailed to J. E. Gallegos, Esq., 141 E. Palace Avenue, Santa Fe, New Mexico 87501, and Don Maddox, Esq., 220 West Broadway, Hobbs, New Mexico 88241, this 19th day of November, 1993, by first-class mail, postage prepaid.

James A. Gillespie

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF LEA
STATE OF NEW MEXICO

DOYLE HARTMAN and MARGARET M. HARTMAN,

Plaintiffs,

vs. No. CV-93-483-G

AMERADA HESS CORP., a Delaware corporation, et al,

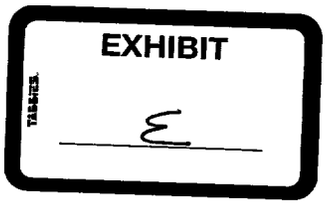
Defendants.

MOTION TO PRELIMINARILY ENJOIN JAMES C. BROWN, TRUSTEE, AND BAYSHORE PRODUCTION COMPANY FROM PURSUING THEIR APPLICATION TO THE OIL CONSERVATION DIVISION AND ANY OTHER ACTIONS OR PROCEEDINGS

Plaintiffs Doyle and Margaret M. Hartman, pursuant to SCRA 1-066, move this Court tc enjoin defendants James C. Brown, trustee, ("Brown"), and Bayshore Production Company, ("Bayshore") from pursuing before the Oil Conservation Division ("OCD") their application to vacate and void certain administrative orders issued in 1991 and from initiating or prosecuting any other proceeding. As grounds for this motion plaintiffs **STATE:**

1. On October 18, 1993, plaintiffs filed a quite title action with this court, against various defendants, including defendants brown and Bayshore.

2. The purpose of plaintiffs' action is to quite title in certain mineral estates in and underlying lands in Lea County, New Mexico, viz:



Township 23 South, Range 37 East, N.M.P.M.
Section 7: Lot 2 SE/4NW/4; S/2NE/4 (equivalent to S/2 N/2) comprising 157.51 acres, more or less.

3. The property described above had previously been communitized for purposed of development and operation of gas and/or condensate, with an oil and gas leasehold covering the N/2N/2 of Section 7 in Township 23 South, Range 37 East, N.M.P.M., covering 157.44 acres more or less in which defendants Brown and Bayshore own interests. Plaintiffs contend herein that several years past, the communitization of these oil and gas leaseholds terminated and ceased under the terms of a Communitization Agreement made September 20, 1948, when the active gas well situated on the communitized acreage (the Stevens B-7 Com. No. 1, completed January 27, 1949) was no longer producing in paying quantities; i.e., the production from the well was non-commercial.

4. The defendants Brown and Bayshore have answered and counterclaimed in this proceeding and in all respects are subject to the jurisdiction of this court. The counterclaim of the defendants Brown and Bayshore invokes adjudication by the court of an issue, among others, concerning Hartman having sought in 1991 and obtained from the New Mexico Oil Conservation Division ("NMOCD") two reconfigured 160 acre well spacing pro-ration units for the 320 acres in question (paragraphs 8 and 12-14 of the Counterclaim); the counterclaim of Brown and Bayshore requests that this Court enter a declaratory judgment that the issuance of those non-standard proration units by the NMOCD violated their

rights of procedural due process and should be set aside. (Count I - Declaratory Judgment of the Counterclaim).

5. This quite title action, in which the Court has undisputed in rem jurisdiction as well as jurisdiction over all of the parties necessary to fully adjudicate the issues, will necessarily decide the pivotal issue of whether the 1948 Communitization Agreement has terminated. In this action, the Court will determine ownership in the dry gas and condensate produced from the property described in paragraph 2, above, inclusive of whether Brown and Bayshore, or any defendants, have any claim of right to that production from the 157.5 acre proration unit consisting of the Hartmans 100% owned S/2N/2 of Section 7 in the said township.

6. Defendants Brown and Bayshore seek to circumvent the jurisdiction of the Court and the orderly adjudication of the issues before this Court. Those defendants filed on November 2, 1993, an application before the NMOCD asking that the administrative body to adjudicate the validity of the stated proration units created over two years ago and thereby change the status quo that existed at the filing of this action and to entertain duplicative and vexatious litigation. A copy of those defendants application to the NMOCD is attached hereto as Exhibit "A" to further demonstrate for the court the action they have taken.

7. The NMOCD proceeding initiated by Brown and Bayshore is designated Docket No. 10882 and said defendants have obtained an

Examiner Hearing on their application which is set for December 16, 1993 in Santa Fe, New Mexico.

8. The action of Brown and Bayshore constitutes duplicative and vexatious litigation which threatens a multiplicity of actions and could result in contradictory decisions and which will interfere with the orderly, comprehensive and inefficient administration of justice by this Court.

9. The inherent equity powers of this Court should be applied to preserve its jurisdiction, to avoid irreparable harm and avoid a multiplicity of suits.

WHEREFORE, the plaintiffs pray the Order of the Court:

1. Setting for immediate hearing this motion in advance of the December 16, 1993 , NMOCD hearing date.

2. Upon this verified motion and having heard the evidence, the Court preliminarily enjoin **JAMES C. BROWN**, trustee and **BAYSHORE PRODUCTION CO., LIMITED PARTNERSHIP**, their privies, agents, and employees from filing or prosecuting any other manner of actions or proceeding against the plaintiffs before the NMOCD, or in any other court or forum relating to any rights, claims or transactions that are the subject matter of this litigation.

3. Grant such further relief as appears proper.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.
J. E. GALLEGOS
141 E. Palace Avenue
Santa Fe, New Mexico 87501
(505) 983-6686

MADDOX LAW FIRM

DON MADDOX
P. O. Box 5370
Hobbs, New Mexico 88241-5370
(505) 393-0505
Attorneys for the Plaintiffs

I hereby certify that a true and correct copy of the foregoing instrument was mailed to all other opposing counsel this 8 day of December, 1993.

DON MADDOX

VERIFICATION

STATE OF TEXAS)
) ss.
COUNTY OF DALLAS)

DOYLE HARTMAN, being first duly sworn on oath, states that he has read the foregoing Motion to Preliminarily Enjoin and that the facts stated are true and correct to his personal knowledge.

DOYLE HARTMAN

SUBSCRIBED AND SWORN to before me this 7th day of December, 1993.

My Commission Expires:

FREDA INGERSOLL
Notary Public, State of Texas
My Commission Expires 5-01-95

EXHIBIT "A"

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

IN THE MATTER OF THE APPLICATION OF JAMES C. BROWN, TRUSTEE, AND BAYSHORE PRODUCTION CO., LIMITED PARTNERSHIP, TO VACATE AND VOID DIVISION ADMINISTRATIVE ORDERS NSP-1633(L) AND NSP-1633(L)(SD), LEA COUNTY, NEW MEXICO

2 1993

CASE:_____

A P P L I C A T I O N

Comes now JAMES C. BROWN, TRUSTEE, by and through his attorneys, KELLAHIN and KELLAHIN, and BAYSHORE PRODUCTION CO., LIMITED PARTNERSHIP, by and through its attorneys HINKLE, COX, EATON, COFFIELD & HENSLEY, and apply to the New Mexico Oil Conservation Division to vacate and void Division Administrative Orders NSP-1632(L)(SD) and NSP-1633(L), Lea County, New Mexico. Applicants seek an order from the Division vacating and voiding Administrative Order NSP-1633(L) covering the N/2N/2 (equivalent) and Administrative Order NSP-1632(L)(SD) covering S/2N/2 (equivalent) of Section 7, T23, R37E, NMPM, Jalmat Gas Pool.

In support thereof, Applicants state:

1. Applicant, James C. Brown, Trustee, has an oil and gas ownership interest underlying the N/2N/2 of Section 7, T23S, R37E, N.M.P.M, Lea County, New Mexico.

2. Applicant, Bayshore Production Co., Limited Partnership, has an oil and gas ownership interest underlying the N/2N/2 of Section 7, T23S, R37E, N.M.P.M, Lea County, New Mexico.

3. The N/7 of said Section 7 was communitized by a Communitization Agreement dated September 20, 1948

4. On December 27, 1948, Conoco (formerly Continental Oil Company) drilled and on January 19, 1949 completed its Stevens B-7 Com No 1 Well in Unit D of Section 7 as a producing gas well in the Yates and Seven Rivers formations of the Langmat Pool.

8. On December 17, 1953, Conoco filed an acreage dedication plat for its Stevens Unit B-7 No 1 Well dedicating a 160-acre tract consisting of the NW/4 of said Section 7 to production from the Yates and Seven Rivers formations of the Langmat Pool.

5. The Jalmat Gas Pool was created by the Oil Conservation Division effective September 1, 1954 from a consolidated of the Jalco and the Langmat Pools and 640-acre gas spacing and proration units were established.

6. The Jalmat Gas Pool underlying Section 7 now extends from the top of the Tansill formation to a point 100 feet above the base of the Seven Rivers formation, thereby including all of the Yates formation.

7. As of September 1, 1989, the Stevens B-7 Com No. 1 Well located in Unit D was still dedicated to a 160-acre spacing and proration unit consisting of the NW/4 of said Section 7 for production from the Jalmat Gas Pool.

8. On September 1, 1989, Doyle Hartman acquired Conoco's interest in the N/2 of Section 7 and became operator of the four existing wells:

(a) Stevens B-7 Com No 1 Well (Unit D)
(b) Stevens B-7 Com No 13 Well (Unit E)
(c) Stevens B-7 Com No 2 Well (Unit G)
(d) Stevens B-7 Com No 21 Well (Unit H)

9. On March 7, 1991, Hartman recompleted the Steven B-7 Com No 13 Well (Unit E) of said Section 7 into the Jalmat Gas Pool and established production in paying quantities.

10. On May 29, 1991, Hartman filed an administrative application with the New Mexico Oil Conservation Division seeking to terminate the existing 160 acre Jalmat Gas spacing unit consisting of the NW/4 of Section 7 and to substitute two new non-standard proration and spacing units as follows:

(a) S/2N/2 of Section 7 for the Stevens B-7 Nos 13 and 2 Wells, and
(b) N/2N/2 of Section 7 for the Stevens B-7 No 1 Well.

11. At the request of Hartman and without prior notice to James C. Brown, Trustee, or to Bayshore Production Co., Limited Partnership, who were working interest owners in the NW/4 of said Section 7, the Division granted Hartman's administrative applications and issued orders as follows:

(a) Administrative Order NSP-1632(L)(SD) for the S/2N/2 of said Section 7, and

(b) Administrative Order NSP-1633(L) for the N/2N/2 of said Section 7,

12. That there is no provision under Division Order R-8170, as amended, for the granting of these two administrative applications or for issuing these two administrative orders.

13. That there is no provision under the Division's general statewide rules for the granting of these two administrative applications or for granting these two administrative orders.

14. That these two orders were issued without prior notice to James C. Brown, Trustee and Bayshore Production Co., Limited Partnership, and thereby deny to those parties procedural due process as required by Uhden v. New Mexico Oil Conservation Commission et al, 112 N.M. 528 (1991), and other cases.

15. James C. Brown, Trustee, and Bayshore Production Co., Limited Partnership, have been denied their share of Jalmat Gas Pool production from the Stevens B-7 Com No. 13 Well as a result of state action taken at the request of Doyle Hartman.

16. For some 44 years, the oil and gas interest owners in the N/2NW/4 of said Section 7 shared production from the Stevens B-7 Com No 1 Well with the oil and gas interest owners in the S/2NW/4 of that section.

17. The N/2NW/4 of said Section 7 is being drained by the Hartman operated Stevens B-7 Com No 13 Well, yet those parties are being denied the right to share in that production.

18. That unless these two orders are vacated, the correlative rights of James C. Brown, Trustee and Bayshore Production Co., Limited Partnership, will have been violated.

19. In accordance with Division Rule 1207, Applicant has notified affected parties, with the names and addresses of those parties set forth on Exhibit A.

WHEREFORE, Applicant requests that, after notice and hearing, this Application be approved as requested.

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Exhibit "A"

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FIFTH JUDICIAL DISTRICT
COUNTY OF LEA
STATE OF NEW MEXICO

DOYLE HARTMAN and MARGARET M. HARTMAN Plaintiffs, vs. AMERADA HESS CORP., a Delaware corporation, et al., Defendants.	No. CV 93-483G

BRIEF IN SUPPORT OF MOTION TO PRELIMINARILY ENJOIN JAMES C. BROWN, TRUSTEE, AND BAYSHORE COMPANY

The plaintiffs, Doyle and Margaret M. Hartman, hereby file their Brief in Support of their Motion to Preliminarily Enjoin Defendants James C. Brown, Trustee, ("Brown") and Bayshore Production Company ("Bayshore") from Pursuing Their Application to the Oil Conservation Division to Vacate and Void Administrative Orders and from instituting or prosecuting any other proceedings, as follows:

I.

INTRODUCTION

On October 18, 1993, plaintiffs filed a quiet title action with this Court against various defendants, including defendants Brown and Bayshore. Plaintiffs seek to quiet their title to certain mineral interests in real estate in Lea County (the "Subject Property") described as:

Township 23 South, Range 37 East, N.M.P.M.

Section 7: Lot 2; SE/4NW/4; S/2NE/4 (equivalent to S/2N/2) comprising of 157.51 acres more or less

to which defendants have admitted, in answer to plaintiffs' Complaint, that they claim an interest.

On November 2, 1993, defendants filed their Application with the New Mexico Oil Conservation Division ("NMOCD") to vacate and void certain administrative orders. The Application has become Case No. 10882 before the NMOCD; a copy of the Application is attached as Exhibit A to the plaintiffs' motion. Those administrative orders, issued more than two years ago, were in response to requests submitted by plaintiffs in May 1991, and allowed plaintiffs to reconfigure the approximately 325 acres of the N/2 of Section 7 into two non-standard proration and spacing units. The Subject Property in this case had previously been pooled or communitized,[1] for purposes of development and operation of wells to recover gas and/or condensate, with an oil and gas leasehold covering the N/2N/2 of Section 7 in Township 23 South, Range 37 East, N.M.P.M., covering 157.44 acres more or less, in which the defendants have ownership interests.

The communitization of the two separate leases terminated years ago, however, under the terms of a Communitization Agreement entered into by the various lease owners on September 20, 1948. The communitization ended by its own terms

[1] "Communitization" and "pooling" are terms used interchangeably to mean the joining together of small tracts, or portions of tracts for the purpose of having sufficient acreage to receive a well drilling permit under the relevant state spacing laws and for the purpose of sharing production by the interest owners in the pooled or communitized unit. Kramer & Martin, Pooling and Unitization, 3d Ed. (1992) §1.02 Vol. 1; Williams & Meyer, Manual of Oil & Gas Terms Annotated, pps. 204 and 921, Vol. 8.

because the only active gas well situated on the communitized acreage (the Stevens B-7 Com. No. 1, completed January 27, 1949) was no longer producing in paying quantities, i.e. the production from the well was non-commercial. Hartmans purchased their 100% ownership in the S/2N/2 of Section 7 in September 1989 from Conoco, Inc. the operator of the properties. Hartmans succeeded as operator and in March 1991 drilled the Stevens B-7 No. 13 well on their own acreage, the S/2N/2 of Section 7.

Defendants Brown and Bayshore have filed an Answer and Counterclaim in this quiet title action. The quiet title action will determine ownership of the Subject Property and will determine whether defendants have any valid claim of entitlement to any production from the 157 acre unit of the Subject Property dedicated to the Hartmans' new Stevens B-7 No. 13 well.

Defendants Brown and Bayshore, in filing their Application to vacate and void administrative orders with the OCD, are attempting to frustrate the jurisdiction of this Court in deciding the quiet title action. In an orderly manner and sequence this action will determine ownership of the property which is the subject matter of the case and, ultimately, whether defendants are due a pro rata share of the production from the new well. From that decision, whether favorable to the plaintiffs or not, will naturally flow the result of whether the 315 acres more or less, (N/2 of Section 7) of formerly communitized leases should be one spacing unit or two.

There is a common subject matter surrounding the quiet title action and defendants' application. Clearly, then, there would be an overlapping of claims, issues, discovery and evidence. To allow, therefore, the administrative application to proceed

simultaneously would result in a waste of judicial and administrative resources, duplication of effort, and risk of inconsistent judgments.

It would appear Brown and Bayshore are trying to engage in a bit of gamesmanship at the regulatory agency. The statutory law of New Mexico specifies that the operator of a well dedicated to a proration or spacing unit where two or more separately owned tracts are embraced must obtain pooling or communitization of the tracts by voluntary agreement or administrative order. If the operator does not obtain such communitization then the various owners will be entitled to share in production as though communitization occurred. NMSA 1978 Section 70-2-18. So Brown and Bayshore could be trying to end-run the Court's determination of ownership by a regulatory procedure that might get their clients a share of production from Hartmans' S/2N/2 No. 13 well even though this Court holds they have no ownership interest or claim in that property or, at least, obtain such payment for the pendency of this lawsuit.

It is also noteworthy that any decision by the NMOCD is appealable to first the New Mexico Oil Conservation Commission; and then is subject to judicial review by a state court in the county where the oil and gas leases are situate. NMSA 1978 Section 70-2-25. The incongruous and obviously wasteful and unnecessary result of the Brown and Bayshore ploy is that their exercise at the NMOCD could end up in the court of Lea County some years later in yet another action.

Another unnecessary use of adjudicative resources could occur if the OCD goes forward and the orders are vacated, it being likely that this Court, irrespective of the vacation of those orders, will find that there has been a termination of communitization.

Should the court so hold, plaintiffs would then have to return to the OCD seeking the previously obtained two non-standard proration and spacing units. Thus, the OCD would be asked to redo what they had just undone, at a complete waste of administrative resources.

II.

ARGUMENTS AND AUTHORITIES

POINT ONE

THIS COURT HAS INHERENT POWER TO ENJOIN THE PARTIES FROM PROCEEDING IN OR INSTITUTING ACTIONS IN OTHER FORUMS

It is well-settled New Mexico law that once a court has acquired jurisdiction over the parties and the subject matter the court may enjoin either party from instituting or proceeding with another action based upon the same facts and issues. General Atomic Company v. Felter, 90 NM. 120, 122, 560 P.2d 541, 534, rev'd on other grounds, 434 U.S. 12, 98 S.Ct. 76 (1977); State ex rel. Bardacke v. Welsh, 102 N.M. 592, 597, 698 P.2d 462, 467 (Ct.App. 1985); Porter v. Robert Porter & Sons, Inc., 68 N.M. 97, 102-103 (1961). The leading case in New Mexico is General Atomic Company v. Felter. There United Nuclear Corporation ("UNC") sued General Atomic in New Mexico state court. Other lawsuits proliferated between General Atomic and various utility companies it supplied nuclear fuel as well as a federal court interpleader filed by General Atomic naming UNC and others. After learning that General Atomic would try to bring UNC into the other lawsuits and into an arbitration proceeding, UNC applied to the district court of

Santa Fe County for a preliminary injunction. The injunction was granted, excluding on-going federal actions. On appeal, the New Mexico Supreme Court upheld the lower court saying, at 90 N.M. 122-123:

> It is well settled that once a court has acquired jurisdiction over the parties and the subject matter, it may enjoin either party from instituting or proceeding with another action in the same state or in a sister state based upon the same facts and issues. (Citations omitted.) This principle rests upon the court's inherent equity power to prevent injustice.
>
> * * *
>
> For that reason an injunction will not issue to prevent mere inconvenience or hardship, but rather to be used when serious and grave reasons are present. (Citations omitted.) The prevention of vexatious, harassing and oppressive suits has been generally recognized as an appropriate basis for invoking this remedy.

This power to enjoin is not limited to an injunction concerning court actions only, but extends to any forum in which rights and claims are adjudicated. See, General Atomic, supra, at 121 (injunction prohibited institution of arbitration proceedings "or any other method or manner of instituting or prosecuting actions, claims or demands relating to the subject matter" of the first-filed lawsuit.) A court having jurisdiction may also exercise the right to enjoin a party from seeking relief in a duplicative proceeding "in order that its processes not be frustrated and to give complete relief." Porter, supra, at 103.

In a very recent decision the New Mexico Supreme Court addressed the district court of San Juan County having enjoined a party before it from prosecuting a suit against another of the parties before it in the Probate Court of Harris County, Texas. El Paso Production, et al., v. PWG Partnership, et al., Supreme Court No. 20,210, filed December 1, 1993 _____ N.M. Bar Bulletin _____. Our Supreme Court did not even concern itself with the obvious power and propriety of the San Juan County district court injunction but rather addressed the issue of imposition of contempt sanctions where the enjoined party violated the injunction. (Copy of the decision is provided to the Court.)

The pivotal issue in this case is a factual one of whether the conditions of termination of communitization were met. Under the terms of the Communitization Agreement, the communitization was to cease when the well or wells on the communitized acreage (the Stevens B-7 Com. No. 1) no longer produced "in paying quantities". Production in paying quantities is defined as "[p]roduction in such quantity as to enable the operator to realize a profit." Oil and Gas Law, Williams and Meyers, Manual of Oil and Gas Terms, Vol. 8, p. 966. Plaintiffs will provide evidence showing that when they purchased the lease interest from Conoco in September 1989, the remaining well was then no longer producing in paying quantities; it was a depleted well making from 0 to 20 Mcf per day and so the communitization had terminated. The granting of the NMOCD administrative orders nor the existing orders themselves, which defendants now seek to have vacated, did not "cause" the termination of communitization but, rather, were reflective of the termination. Therefore, if the orders are vacated, the issue of whether communitization terminated will still need to be decided by this Court in the quiet

title action and from that determination of ownership should follow the correct spacing unit arrangements.

POINT TWO

A COURT WHICH FIRST ACQUIRES JURISDICTION IN AN IN REM PROCEEDING HAS DOMINANT AND EXCLUSIVE JURISDICTION

It is a fundamental rule that "the court first obtaining jurisdiction of a subject matter retains it, as against a court of concurrent jurisdiction." Historical Society of New Mexico v. Montoya, 74 N.M. 285, 291, 393 P.2d 21 (1964); Malcomb v. Smith, 54 N.M. 203, 218 P.2d 1031 (1950) ("as between courts of concurrent jurisdiction, the first acquiring jurisdiction of the subject matter of an action is permitted to retain it to the end"). The court which acquires jurisdiction first has "'dominant jurisdiction' to the exclusion of other courts." Carlisle v. Bennett, 801 S.W.2d 589, 592 (Tex. App. - Corpus Christi 1990). Once the dominant jurisdiction is acquired the court "is entitled to proceed to judgment and may protect its jurisdiction by enjoining the prosecution of a suit subsequently filed involving the same controversy." PPG Industries, Inc. v. Continental Oil Co., 492 S.W.2d 297, 299 (Tex. Civ. App. 1st Dist. 1973). This rule should be applied even more liberally here where the tribunal to be enjoined is an administrative agency of lesser and limited jurisdiction. See 20 Am.Jur.2d "Courts" §128 (noting that these principles have been applied by analogy to allow courts to enjoin administrative proceedings.)

The dominant jurisdiction and injunctive power policy is even stronger when the action is in rem. Princess Lida of Thurn and Taxis v. Thompson, 305 U.S. 456, 59

S. Ct. 275, 87 L.Ed. 285 (1939). In the seminal case of Princess Lida the U.S. Supreme Court stated that "the court first assuming jurisdiction over property may maintain and exercise that jurisdiction to the exclusion of the other." Id., 97 S.Ct. at 280. New Mexico also grants dominance and exclusivity to the first court in in rem actions. In Malcomb, the court in which a lawsuit involving trust property was first brought was held to have exclusive jurisdiction because of the priority of filing and because the trust res was under the court's jurisdiction. Id., 54 N.M. at 208-209. Relying on Malcomb and other authority the New Mexico Supreme Court reiterated that "it is clear that jurisdiction is exclusive" . . ."in in rem proceedings where a court ha[s] acquired actual jurisdiction of the res." Burroughs v. United States Fidelity & Guaranty Co., 74 N.M. 618, 621, 397 P.2d 10 (1964). See, also, O'Hare International Bank v. Lombert, 459 F.2d 328, 331 (10th Cir. 1972) ("the rule [in in rem proceedings] is that in such cases the state or federal court having custody of the property has exclusive jurisdiction"); Interfirst Bank - Houston, N.A. v. Quintana Petroleum Corp., 699 S.W.2d 864, 878 (Tex.Civ.App. 1st Dist. 1985) error refused n.r.e.("where the jurisdiction of a court has attached, or the proceeding is quasi in rem, . . ., other courts should not interfere with that jurisdiction.")

CONCLUSION

There is a commonality of subject matter and parties surrounding this quiet title action and defendants' Application to vacate and void administrative orders and there will be substantial overlap of both evidentiary and factual issues. Because of the overlapping claims, issues and evidence, to allow defendants' Application to vacate and void administrative orders to proceed would result in a waste of judicial and administrative

resources, a duplication of judicial effort, and a risk of inconsistent judgments. The principles proscribing such duplicative litigation come into play even more forcefully when (1) the court issuing the injunction has the first filed case, or (2) the court issuing the injunction has in rem jurisdiction. Both of those elements are present here.

Accordingly, plaintiffs submit that this court should preliminarily enjoin defendants Brown and Bayshore from pursuing their NMOCD Application or any other proceeding until final resolution, including all appeals, of all the claims and issues in this quiet title action.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Brief In Support of Motion to Preliminarily Enjoin James C. Brown, Trustee, and Bayshore Company was on the 8 day of December, 1993, mailed via U.S. mail, postage prepaid to:

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

EL PASO PRODUCTION COMPANY, et al.,

Plaintiffs-Appellees,
and Cross-Appellants,

vs.

NO. 20,210

PWG PARTNERSHIP, et al.,

Defendants-Appellees,

vs.

STEVE J. ABRAHAM, Personal Representative of the Estate of Roseline Abraham, and STEVE J. ABRAHAM, MICHAEL C. ABRAHAM and DIANE ABRAHAM HINKLE, individually and as surviving children of Roseline Abraham, deceased,

Defendants-Counterclaimants-Appellants
and Cross-Appellees.

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY
Leon Karelitz, District Judge Pro Tempore

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OPINION

RANSOM, CHIEF JUSTICE.

The Abraham family appeals from a declaratory judgment in an action brought by El Paso Production Company (El Paso) to determine the validity of an option contract and ownership of the right to repurchase gas rights under a federal oil and gas lease. El Paso cross-appeals from an amended judgment wherein the district court reduced a sanction for contempt of court from $24,000 to $300. On the Abrahams' appeal we affirm the decision of the court below, but on the cross-appeal we reverse and remand for entry of judgment that conforms to the findings of fact.

Facts regarding ownership. In the late 1940s and early 1950s, Mike and Roseline Abraham, along with Mike Abraham's brother and sister-in-law, J.R. and Dorothy Abraham, acquired several federal oil and gas leases in the San Juan Basin of northwestern New Mexico. Mike and Roseline held record title to eight of the ten leases involved in this litigation, and J.R. and Dorothy held record title to the other two. In 1951, the Abrahams agreed to sell to General American Oil Company of Texas one-half of their interest in the leases. Under this agreement, General American was to provide for the development of the oil and gas and to advance or "carry" the Abrahams' expenses associated with this development. These "carried working interest" expenses would then be paid from the profits attributable to the Abrahams' retained interest.

In 1952, General American assigned its interest to El Paso Natural Gas Company (the parent company of El Paso Production Company). On September 25 and 26, 1952, Mike and Roseline, as sellers, and El Paso Natural Gas, as buyer, executed an oil and gas lease sale agreement known as GLA-59. Mike and Roseline agreed to sell to El Paso Natural Gas their remaining carried working interests in the leases described above for $925,000. In the agreement, the Abrahams reserved from the sale all existing royalties and overriding royalties, all oil under the leased lands, and all liquid hydrocarbons extracted from the gas by field separators. The Abrahams also reserved the right to repurchase the leases for a cash payment

of $25,000 after El Paso Natural Gas had produced 30,000,000 mcf of gas from their interest plus enough gas to cover the costs of development and production under the original General American contracts. This repurchase option agreement is the subject of the current litigation.

GLA-59 was recorded in the land title records of San Juan and Rio Arriba Counties and the assignments of the individual leases were executed in 1953. In May 1963, the Abrahams sought to pay off debt and to consolidate their San Juan Basin oil and gas interests, including the GLA-59 reserved interests. To secure financing of $1.5 million dollars from Chemical Bank Trust Company of New York, Mike and Roseline reorganized one of their corporations, Universal Minerals, to which were transferred their reserved oil and gas interests and those of J.R. and Dorothy. Chemical Bank paid most of the proceeds from the financing to named creditors of Mike and Roseline, Universal Minerals, and J.R.

Mike and Roseline signed a transfer agreement of May 29, 1963 that included a description of the following GLA-59 oil and gas assets transferred to Universal Minerals:

> 7. Carried working interests in the 30-6 Unit, Rio Arriba County, New Mexico (reference is made to Exhibit "B" of the 30-6 Unit Agreement for a complete description of said interests.)
>
> 8. Carried working interests in the 31-6 Unit, Rio Arriba County, New Mexico (reference is made to Exhibit B" to the 31-6 Unit Agreement for a complete description of said interests.)

J.R. and Dorothy ratified the agreement in order to merge any retained interests into that transaction. Universal Minerals simultaneously became Rincon Oil & Gas Corporation, with Mike Abraham owning 80% of the stock and an option to purchase the remaining 20% from W.H. Hudson, a corporate manager who had been hired to manage Rincon until Chemical Bank was repaid the outstanding loan amount. On June 3, 1963, Mike and Roseline executed a conveyance to Rincon describing six leases in GLA-59. Apparently, Mike and Roseline may have failed to execute conveyances for the two leases remaining in their names, and J.R. and Dorothy may have executed no conveyances.

In 1964, Mike Abraham was forced into bankruptcy. He signed under oath the schedule requiring the identification of all assets he owned. The schedule did not include any assets in the GLA-59 leases, but did include Abraham's 80% ownership in Rincon's stock and his option

to purchase the outstanding stock. Abraham sought confirmation of a reorganization plan to sell Rincon to another corporation, stating that

> Rincon also owns an undivided working interest in oil production and liquid hydrocarbon production covering several thousand acres of lands in T30N R7W, T30N R6W, and T32N R8W. In addition to owning the oil rights in said acreage, Rincon owns an option (at such time as El Paso Natural Gas Company has produced and saved from the lands subject to the agreement gas attributable to the interest of Rincon in a total amount of 30,000,000 mcf, together with an amount of gas sufficient to reimburse El Paso for all production, development, and operating costs) to repurchase all of the interests sold to El Paso Natural Gas Company for the sum of $25,000 in cash.

The bankruptcy court did not approve this plan, but it did approve the sale in 1966 of all of the bankruptcy estate's interest in the Rincon stock to Chemical Bank in discharge of $2 million of debt. No one raised objections to the sale.

At trial, the district court received evidence that Mike Abraham had knowledge during the bankruptcy proceedings that the option to repurchase the gas leases could ripen as early as 1972. In July 1973, PWG Partnership contracted with Rincon (now owned by Chemical Bank) to purchase all of Rincon's interests in all oil and gas properties and estates. Rincon made both a specific and a general conveyance to PWG, with the general conveyance transferring:

> All leasehold . . . interests . . . and other interests in oil, gas and other liquid hydrocarbons owned and held by Grantor in any lands located within the Continental limits of the United States of America, and any contracts . . . and other instruments which relate thereto . . . .

The district court heard testimony that, while Mike Abraham was a brilliant and astute oil and gas investor, he had terrible record-keeping skills, and the general conveyance was intended to pick up all interests not covered by specific conveyances. Beginning in June 1976, El Paso Natural Gas began paying PWG for liquid hydrocarbons extracted from gas under the GLA-59 leases. Mike Abraham died in 1985. El Paso Natural Gas assigned its interests in the leases to El Paso in 1986. In the summer of 1989, PWG attempted to exercise its option to repurchase the gas leases, believing that the conditions precedent had been met. When Abrahams' attorney Thomas Hartnett III (who had represented Mike in the bankruptcy and both Mike and Roseline in the reorganization of Universal Minerals) heard of PWG's claim, he informed Roseline and her children, who then also laid claim to the option. This suit ensued.

Findings and conclusions of the trial court. -The option to repurchase. After many motions for summary judgment and a full trial on the merits to determine the ownership of the option, the trial court first concluded that the option to repurchase was valid and enforceable against El Paso. This law of the case has not been challenged on appeal unless this Court reverses the decision on ownership and finds that the Abrahams own the option, in which case El Paso has raised several arguments challenging the trial court's conclusion on validity.

The trial court found that the agreement of May 29, 1963, in which both Abraham brothers and their wives agreed to transfer to Rincon their carried working interests in the GLA-59 leases, was ambiguous because all "carried working interests" had already been assigned to El Paso Natural Gas. The court then looked to the referenced Exhibit "B" for a description of the interests in order to ascertain what the Abrahams were agreeing to convey. That exhibit listed only the leases and a variety of oil and gas rights. There was no language in the agreement or in the exhibit limiting the scope or rights to be conveyed to Rincon. The court determined from the four corners of the agreement that the phrase "carried working interests" clearly referred and must have been intended to refer to "rights in or to the oil and gas" in a given lease. The court decided that the agreement of May 29, 1963 intended to transfer all rights that remained in the leases, which consisted of the reserved oil and liquid hydrocarbon rights and the option to repurchase the gas leases. The court buttressed its interpretation by noting that the conduct of the parties after the transfer was consistent with that interpretation. Specifically, Mike Abraham, J.R. Abraham, Hartnett, Hudson, Chemical Bank, El Paso Natural Gas, and the bankruptcy trustee all accepted and acted for some twenty-six years upon the notion that those rights had been transferred to Rincon. Finally, the court concluded that the conveyance of June 3, 1963 spoke in terms of conveying all of Mike and Roseline Abraham's "right, title, interest, claim and demand in and to the oil and gas properties," and determined that the conveyance, from its explicit language, was intended to pass, in the way of oil and gas rights, everything that was able to be transferred as to a mentioned lease, and that "gas rights" included the right to buy back the gas production in a given lease on the happening of a certain event. (In the alternative, the court found that since

the option to repurchase benefitted only the holder of the reserved oil rights, that option was a covenant running with the oil and liquid hydrocarbons and passed with the conveyance of the oil and liquid hydrocarbons in that lease.)

-The leases for which there was no conveyance documentation. The trial court found that the Abrahams agreed to convey to Universal Minerals (Rincon), and that Chemical Bank (and, later, PWG) paid for the conveyance of the Abrahams' interests in all ten of the leases described in the GLA-59 agreement, even though PWG only could produce conveyances for six leases. The court found that because of the scant documentation provided by Mike Abraham and because at the time of the agreement Rincon had no separate counsel who could check to be sure that all conveyances had been made, the general conveyance from Rincon to PWG purported to convey all assets of every kind, both documented and undocumented. Further, the court found that because oil and gas resources are subject to permanent depletion, an owner must diligently act upon his rights in order to avoid loss of the resource. These facts, together with PWG's long-continued possession of the rights with no objection or challenge from the Abrahams, led the court to believe that Mike Abraham was telling the truth in his bankruptcy—that all necessary conveyances had been made such that he and his wife held no legal or equitable title in the leases. The court then invoked a property rule that presumed a grant from Mike and Roseline Abraham and J.R. and Dorothy Abraham for the four leases that had been included in the transfer agreement but for which there was no conveyance documentation. Under that presumption, the court assumed that "all that might lawfully have been done to perfect legal title was in fact done, and in the form prescribed by law."

-Alternative findings and conclusions. In the event of reversal by this Court, the district court made alternative findings and conclusions. The court found that PWG should be granted legal title to the leases under the doctrine of equitable conversion. The court also found that the Abrahams and their heirs were judicially estopped from laying claim to the interests because of the sworn testimony to the bankruptcy court that the Abrahams did not own the interests because they had been sold to Rincon. Finally, the trial court found that judicial estoppel also should apply because the Abrahams had received $1.5 million for those interests plus

forgiveness of debt in the bankruptcy action in exchange for the sale of the assets to Rincon. The court stated that to recognize the Abrahams' claim to the interests now "would be playing fast and loose with, and subverting, the system of justice."

Issues in the Abrahams' appeal. Finding them dispositive, we address only two of the Abrahams' claims of error: that the district court erred in ignoring the intent of the parties to GLA-59 that the 1952 option to repurchase was personal to Mike and Roseline Abraham, and that the district court erred as a matter of law in applying the doctrine of presumed grant to divest Roseline Abraham of her right to the unconveyed leases.

Because we believe that the court correctly interpreted the contract and correctly applied the doctrine of presumed grant, the alternative findings and conclusions are not relied on, and error claimed in that regard will not be addressed. Likewise, because the court found that the option to repurchase passed to Rincon in the conveyances and agreement of May 29, 1963, all of which were signed by Roseline Abraham, questions as to due process and equal protection (by taint from the acts of her husband) are not applicable—Roseline Abraham clearly conveyed her rights in the option to Rincon. Finally, determining that Roseline Abraham did not have a right to a jury trial because all relief requested was equitable, we find no merit in the argument that the trial court erred in refusing to grant a jury trial. See Evans Fin. Corp. v. Strasser, 99 N.M. 788, 789, 664 P.2d 986, 987 (1983) ("If the remedy sought is legal, parties are entitled to a jury trial; if the remedy sought is equitable, there is no jury trial as of right.").

The option to repurchase was an assignable right. The Abrahams urge this Court to find that the 1952 option to repurchase was personal to Mike and Roseline and not assignable. They argue that Texas law must be used to interpret the contract because the parties agreed that Texas law would control.-- Citing Prochemco, Inc. v. Clajon Gas Co., 555 S.W.2d 189 (Tex. Civ. App. 1977), writ ref'd n.r.e., the Abrahams claim that in Texas, options to repurchase are personal covenants that cannot be transferred. Prochemco, however, does not support that proposition and is not applicable to the facts of this case. In Prochemco, the agreement provided that the terms of a contract were covenants running with the land, and the agreement had no provision granting successors or assigns the right to exercise the option to extend the

contract. Id. at 190. The Prochemco court noted that parties may determine that an option will be personal and nonassignable, see id. at 191, but by no stretch of interpretation did the court hold that all option contracts are personal and nonassignable. In contrast, the Texas courts, see, e.g., Hott v. Pearcy/Christon, Inc., 663 S.W.2d 851, 853-54 (Tex. App. 1983), writ ref'd n.r.e., cite favorably to the Contracts Hornbook written by Calamari and Perillo, which suggests that once an offer to purchase has ripened into an option contract by the payment of money to secure the option, the rights created usually are assignable, unless the option calls for some sort of personal performance. John D. Calamari & Joseph M. Perillo, Contracts § 18-32 (3d ed. 1987). Professor Ronald Benton Brown, in his Note on real estate purchase options states that

> [t]he rights of the optionee may be transferred and the obligations of the optionor may bind those to whom the optioned land has been transferred. The question of whether that has happened is primarily a question of the intent of the parties to the option. . . . Ordinarily, an optionee would be unlikely to bargain for a right which could be defeated by the sale to another and so the option should be presumed binding on the optionor's successors unless otherwise agreed.

Ronald B. Brown, An Examination of Real Estate Purchase Options, 12 Nova L. Rev. 147, 187-88 (1987). In the case at bar, the parties expressly provided that the GLA-59 agreement would "inure to the benefit of and be binding upon the said parties and their respective heirs, successors and assigns."

The Abrahams argue that if this Court finds that the option was assignable, it would violate the rule against perpetuities, and the Court should construe the contract so that a violation would not occur.[1] At common law, the rule was designed to prevent the vesting of a future interest in property at an indefinite date that could exceed a length of time established as a life in being at the time of the creation of the interest plus twenty-one years. See Producers Oil Co. v. Gore, 610 P.2d 772, 774 (Okla. 1980); Gartley v. Ricketts, 107 N.M. 451, 453, 760 P.2d 143, 145 (1988). The rule was judicially designed to prevent remote

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[1] We note that the rule against perpetuities is no longer part of our New Mexico statutes. See NMSA 1978, § 47-1-2 (Supp. 1992) (deleting "perpetuities" from section); NMSA 1978, § 47-1-17.1 (Supp. 1992) (repealed). Under the old statute, New Mexico took a "wait and see" and "cy pres" approach to determining if future interests were void. See NMSA 1978, § 47-1-17.1 (Repl. Pamp. 1991); Gartley v. Ricketts, 107 N.M. 451, 453, 760 P.2d 143, 145 (1988).

vesting of contingent interests in real property. Cambridge Co. v. East Slope Inv. Corp., 700 P.2d 537, 540 (Colo. 1985) (en banc). Options to purchase leased premises within the term of the lease are exempt from the rule. See id.; Gore, 610 P.2d at 774 (holding that rule does not apply to conditional preemptive options in operating agreements under oil and gas leases because oil and gas production cannot last indefinitely and rights are always terminable); cf. III Lounge, Inc. v. Gaines, 348 N.W.2d 903, 907 (Neb. 1984) (lease provision allowing exercise of option "at any time" would be construed to allow exercise at any time within the term of the lease).

The option to repurchase in the case at bar was conditioned upon an event that was likely to occur or fail to occur within a reasonable amount of time because of the nature and use of the reservoir. Under the operating agreement that formed the basis of GLA-59, El Paso was required to drill at least eighteen wells within five years and agreed to produce and market the gas under the terms of the agreement.

As the Abrahams stated in their brief, the Texas case of Mattern v. Herzog, 367 S.W.2d 312 (Tex. 1963), gives us guidance on the Texas application of the rule against perpetuities: "When the wording of the option does not compel a construction that the parties intended that the time element should be unlimited, the court will not construe an option contract . . . to run for an indefinite time and thus destroy the validity of the option provision." Id. at 319. Because we can infer a reasonable time limitation in the agreement, and because the condition precedent from which the option arose did occur within twenty-one years of the death of a life in being at the creation of the option, no violation of the rule occurred under Texas or New Mexico law. We affirm the district court's conclusion and hold that the option to repurchase in the GLA-59 agreement was an assignable right, not personal to Mike and Roseline Abraham.

The doctrine of presumed grant. The Abrahams claim that New Mexico does not recognize the doctrine of presumed grant, and that even if we do recognize it, the theory should not be applied in this case because it was never pled, tried, nor reasonably contemplated by the Abrahams during the trial.

The doctrine of presumed grant is a rule of property law that crystallizes from a

rebuttable presumption. See 3 Am. Jur. 2d Adverse Possession § 5 (1986). For many years it has received recognition in the United States as an appropriate means to quiet long possession and it is based upon concepts of both logic and policy. It is logical because the inference of a lost or neglected grant is a natural one to be drawn from the facts; it serves the policy of protecting those who have maintained long possession of property with acquiescence from the record owner. Fletcher v. Fuller, 120 U.S. 534 (1887), appears to be the seminal case applying the doctrine. There, the Fletchers, whose family had been in possession of land for almost 100 years, could not produce a deed conveying title to the Fletchers' vendor, who was the grandson of the original owner. The devisees of the original owner claimed title under the owner's will, which had been probated some twelve years before the transfer to the Fletchers' predecessor. In the trial on the merits, the Fletchers asked for a jury instruction as to the presumption the jury might make of a lost grant to their ancestor in title. The instruction the court refused to give stated, in part,

> "if you find that you can presume a grant, if you find from the testimony that there was a lost deed . . . so that Jeremiah had a good title to convey to Stephen Jencks, that makes the title of the defendants here complete. . . . [T]he presumption . . . was not necessarily restricted to what may fairly be supposed to have occurred, but rather to what may have occurred and seems requisite to quiet title in the possessor."

Id. at 544-45.

In finding that the trial court erred in refusing to give the charge, the Supreme Court stated:

> It may be, in point of fact, that permission to occupy and use was given . . . upon a contract of sale, with promise of a future conveyance, which parties have subsequently neglected to obtain . . . .
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> * * *
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> The law . . . by reasonable presumptions . . . affords the necessary protection against possible failure to obtain or to preserve the proper muniments of title . . . .
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> * * *
>
> It is not necessary, therefore, . . . for the jury, in order to presume a conveyance, to believe that a conveyance was in point of fact executed. It is sufficient if the evidence leads to the conclusion that the conveyance might have been executed and that its existence would be a solution of the difficulties arising

from its non-execution.

Id. at 545-47.

The Fletcher court added that

> presumption of a deed is one that may be rebutted by proof of facts inconsistent with its supposed existence, yet where no such facts are shown, and the things done, and the things omitted, with regard to the property in controversy, by the respective parties, for long periods of time after the execution of the supposed conveyance, can be explained satisfactorily only upon the hypothesis of its existence, then the jury may be instructed that it is their duty to presume such a conveyance, and thus quiet the possession.

Id. at 550. As in Fletcher, there is proof in this case that the former owner actually agreed to sell and did sell the property in question and then acquiesced in the buyer's rights and interests in the property. Under New Mexico Rule of Evidence 301 the resulting logical presumption of a lost or neglected grant is not mandatory, see Mortgage Inv. Co. v. Griego, 108 N.M. 240, 243-44, 771 P.2d 173, 176-77 (1989), but as in Fletcher, under a rule of property law the presumption of a grant arguably is mandatory as a matter of public policy if unrebutted. Cf. Hester v. Sawyers, 41 N.M. 497, 504, 71 P.2d 646, 650 (1937) (holding that once party has proven statutory time period of adverse possession, presumption of grant is conclusive); Baker v. Certain Lands, 720 S.W.2d 318, 320-21 (Ark. Ct. App. 1986) (holding that when one in possession has paid taxes on lands previously forfeited to the state, redemption by grant is presumed as a matter of law).

Texas courts require evidence of three elements in order for the presumption of grant to arise: "long-asserted and open claim, adverse to the apparent owner, . . . non-claim by the apparent owner, . . . [and] acquiescence by the apparent owner in the adverse claim." Magee v. Paul, 221 S.W. 254, 256 (Tex. 1920); see also Bodin v. Gulf Oil Corp., 707 F. Supp. 875, 884 (E.D. Tex. 1988) (holding that the doctrine of presumed grant "is designed to quiet title where there is (1) a long period of occupancy and dominion of the land by one party, that is (2) inconsistent with the record ownership vested in another party during which time (3) the legal owner did not attempt to exercise any rights"); cf. United States v. Fullard-Leo, 331 U.S. 256, 273 (1947) (requiring, for the doctrine of lost grant to be applicable, possession under a claim of right, actual, open and exclusive, and stating that chain of conveyances and payment

of taxes is important). It is the acquiescence in the possession and assertion of ownership that affords the basis for finding that the title passed to the possessor by deed or otherwise. M.T. Humphries v. Texas Gulf Sulphur Co., 393 F.2d 69, 72 (5th Cir. 1968) (applying Texas law). Although there is dicta in Clark v. Amoco Prod. Co., 794 F.2d 967 (5th Cir. 1986), that in Texas a presumed lost deed must be pled and proved by the party asserting it, see id. at 971, a reading of the case on which that dicta was based (Harvey v. Humphreys, 178 S.W.2d 733 (Tex. Civ. App. 1944), writ ref'd n.r.e.) does not lead this Court to that same conclusion. It is not necessary to plead specifically the existence of logical inferences in order to apply the resulting rule of law that determines a property interest. The trial court raised the possibility of applying the presumption during the trial, and we hold that the trial court had discretion to do so.

Relying on Fiest v. Steere, 259 P.2d 140 (Kan. 1953), the Abrahams urge that the doctrines of adverse possession and prescriptive right have replaced the need for presumed grant, but we are not convinced of that proposition.

> The doctrine . . . that the long[-]continued possession of land by one claiming as owner gives rise to the presumption of a valid conveyance to him or to the person under whom he claims, though ordinarily similar in its practical results to the statutes of limitation [for adverse possession], is entirely independent thereof. It involves a presumption of the rightfulness of one's possession, while the statutes of limitation are by their terms applicable only when the possession is, apart from such statutes, wrongful.

4 Herbert T. Tiffany, The Law of Real Property § 1136, at 700 (3d ed. 1975) (footnotes omitted). In New Mexico, adverse possession requires color of title supported by a writing or conveyance of some kind and payment of taxes during the period of possession, see NMSA 1978, § 37-1-22 (Repl. Pamp. 1990); Currier v. Gonzales, 78 N.M. 541, 434 P.2d 66 (1967); Platt v. Martinez, 90 N.M. 323, 324, 563 P.2d 586, 587 (1977), neither of which are required to find presumption of a grant. "Where adverse possession can be shown, the doctrine of presumption of grant has no application." Board of Trustees v. Rye, 521 So. 2d 900, 906 (Miss. 1988).

Therefore, a presumption of grant may be found from evidence supporting the inference (a logical presumption) of a lost or neglected grant followed by long-term, open, active,

exclusive possession of property under claim of right and acquiescence or no resistance by interested parties to that possession or claim of right. Here, based on the written and signed agreements to transfer the leases, the complete performance of one of the parties,[2] and the statement by Mike Abraham that the interests had been conveyed, the trial court found that the grant should have been made if it in fact had not been made. We affirm the trial court's decision on ownership.

El Paso's appeal of the trial court's reduction of the civil contempt award. -Summary of proceedings below. El Paso filed its complaint for declaratory judgment in New Mexico on November 22, 1989. On June 1, 1990, Steve Abraham as personal representative of the Abraham estate (represented by Hartnett) filed suit against El Paso in the Probate Court of Harris County, Texas over the same subject matter. El Paso then filed in New Mexico a motion to enjoin prosecution in Texas, and on November 27, 1990 an injunction was entered enjoining further prosecution of the Texas action. Hartnett advised Steve Abraham to remove himself as personal representative and to procure the appointment of another personal representative. Hartnett then prepared a first amended complaint in the Texas action and applied to the Texas probate court for permission to file it. El Paso filed a motion in New Mexico for an order to show cause, seeking to hold Hartnett in contempt for violation of the injunction. The district court, in its findings and conclusions, established that Hartnett's actions violated the injunction; that, as a direct result of Hartnett's violation of the injunction, El Paso was required to hire counsel to appear in the Texas probate court; and that El Paso had incurred $24,000 in legal fees and expenses that would not have been incurred but for Hartnett's conduct in violating the injunction. The court then ruled that a judgment would be entered in due course, concluding that Hartnett was in civil contempt of court and that El Paso should recover from Hartnett the sum of $24,000. Three months later, the court entered an amended judgment of civil contempt (even though a judgment containing his original ruling was never entered) reducing the award to $300. The court decided that the reduced award was justified because

[2] Chemical Bank refinanced and took a mortgage on Rincon based on the agreement and alleged performance of the agreement.

Hartnett had done nothing directly or indirectly to advance prosecution of the Texas action after the court had originally announced its decision.

-Claims of error. El Paso contends that once it established its entitlement to compensation, the district court's discretion to fashion an appropriate award to address Hartnett's contempt was limited to awarding El Paso full compensation for expenses incurred as a result of the contempt. El Paso cites numerous cases for its position. Hartnett's answer to the claim of error is that El Paso's appeal is frivolous because a trial court always has the power to change its interim findings until it loses jurisdiction of the case.

-Purpose of civil contempt penalties. Courts have both statutory and inherent authority to punish for contempt. NMSA 1978, § 34-1-2 (Repl. Pamp. 1990); State v. Clark, 56 N.M. 123, 125, 241 P.2d 328, 329 (1952) (stating that the contempt statute is "only declaratory of the common law"). This Court discussed at length the difference between civil and criminal contempt in Jencks v. Goforth, 57 N.M. 627, 261 P.2d 655 (1953). We quoted to Gompers v. Buck's Stove & Range Co., 221 U.S. 418, 441 (1911), for the proposition that "[i]f it is for civil contempt the punishment is remedial, and for the benefit of the complainant." Jencks, 57 N.M. at 633, 261 P.2d at 659. We expanded the discussion of contempt further in State ex rel. Apodaca v. Our Chapel of Memories of N.M., Inc., 74 N.M. 201, 392 P.2d 347 (1964). In that case, we stated:

> Judicial sanctions may . . . be employed in civil contempt for either or both of two purposes: to coerce the defendant into compliance with the court's order and to compensate the complainant for losses sustained.
>
> * * *
>
> Where the purpose is to make the defendant comply, the court's discretion is exercised in considering the character and degree of the harm threatened by the continued contumacy and whether or not the contemplated sanctions will bring about a compliance with the court's order.

Id. at 204-05, 392 P.2d at 349-50.

In In re Klecan, 93 N.M. 637, 603 P.2d 1094 (1979), we further distinguished between civil and criminal contempt actions. We stated "[c]ivil contempts are those proceedings instituted to preserve and enforce the rights of private parties to suits and to compel obedience

to the orders, writs, mandates and decrees of the court; whereas criminal contempt proceedings are instituted to preserve the authority and vindicate the dignity of the court." Id. at 638, 603 P.2d at 1095 (emphasis added). Clearly, the case before us now is one of civil contempt.

This Court has never passed on the question of whether a court has discretion not to award damages for actual losses once it has found that a violation of an injunction has occurred which resulted in actual damages in an ascertained amount. Other courts have. In Vuitton et Fils S.A. v. Carousel Handbags, 592 F.2d 126, 130 (2d Cir. 1979), the Second Circuit held that in an order of civil contempt a district court was not free to withhold damages to the extent they are proven. See also W.E. Bassett Co. v. Revlon, Inc., 435 F.2d 656, 665 n.5 (2d Cir. 1970) ("The plaintiff in a civil contempt case may recover not less than the expenses, including counsel fees, which it has incurred in enforcing the disobeyed order of the court."). The Seventh Circuit sheds further light on the question of discretion:

> The type of proceeding . . . determines the degree of discretion which the district court may properly exercise over the course of the proceedings. . . . Since the rights of the complainant, not the authority of the court, are at stake in a civil contempt proceeding, the discretion of the court over the proceeding is more limited. . . . If Ms. Thompson was able to establish that the defendant violated the court's order, the court would have broad discretion in fashioning an equitable remedy to ensure future compliance, but the award of compensatory damages for past violations would not be subject to the discretion of the court.

Thompson v. Cleland, 782 F.2d 719, 721-22 (7th Cir. 1986).

The First Circuit also holds that a court has no discretion in this type of proceeding. In Parker v. United States, 153 F.2d 66, 70 (1st Cir. 1946), the court first analogized the imposition of a compensatory fine in civil contempt to a tort judgment for damages caused by wrongful conduct. The sanction in that case was employed to make reparation to the injured party and to restore him to the position he would have held had the injunction been obeyed. The Parker court held that the district court was not free to exercise discretion and withhold an order for damages, once established. Id.; see also In re Grand Jury Subpoena of June 12, 1986, 690 F. Supp. 1451, 1453 (D. Md. 1988) ("Once the complainant demonstrates actual losses stemming from the contumacious behaviour, the Court is not free to exercise its discretion and withhold an order awarding compensatory damages.").

Courts in the Sixth and Eighth Circuits have stated that a complainant is entitled to enforcement of court orders vindicating private rights. See L.E. Waterman Co. v. Standard Drug Co., 202 F. 167, 172 (6th Cir. 1913); Enoch Morgan's Sons Co. v. Gibson, 122 F. 420, 423 (8th Cir. 1903). These holdings all are in accordance with the principles of tort law—once a duty has been established (to abide by the injunction, in this case) and the defendant violates that duty (by violating the injunction), if the plaintiff proves proximate cause of the damages (the necessity of hiring counsel to defend the lawsuit brought in violation of the injunction) and proves the amount of the damages (found to be $24,000 in this case), then the plaintiff has the right to recover those damages. We hold that once a plaintiff satisfies his burden of proving violation of a court order, proximate cause, and damages, he or she is entitled to judgment for recovery of those damages. Of course, if the damages were in the form of attorney's fees in defending against the violation, as in this case, the court has discretion in determining the reasonableness of those fees. The court additionally may award attorney's fees incurred in obtaining the order of contempt. We find that the trial court erred in failing to enter a judgment for the amount of the damages proved.

There is another reason why the judgment of the trial court must be reversed. The court entered a judgment that was not supported by the findings of fact. Defendant Hartnett did not challenge the court's findings on appeal, and those findings shall now remain undisturbed. "[A] judgment cannot be sustained on appeal unless the conclusion upon which it rests finds support in one or more findings of fact." Thompson v. H.B. Zachry Co., 75 N.M. 715, 716, 410 P.2d 740, 742 (1966). The trial court entered judgment for only $300 after it found that El Paso's compensable damages were in the amount of $24,000. In cases tried by the court, the findings of fact by the court have the same force and effect as the verdict of a jury. Grayson v. Lynch, 163 U.S. 468, 472 (1896) (appeal from the Supreme Court of New Mexico). In effect, the court entered judgment notwithstanding its own verdict, and it did that without even a motion or challenge by the defendant.

The rules of civil procedure (SCRA 1986, 1-052 (Repl Pamp. 1992)) require the trial judge to make and file his decision "'consisting of findings of such ultimate facts and

conclusions of law stated separately as are necessary to support his judgment, in a single document; and that he sign and file such decision in the cause as a part of the record proper.'" Lusk v. First Nat'l Bank, 46 N.M. 445, 449, 130 P.2d 1032, 1034 (1942) (emphasis added) (emphasis in original deleted) (quoting McDaniel v. Vaughn, 42 N.M. 422, 423, 80 P.2d 417, 417 (1938)). The court could have filed an amended decision before entry of judgment, see SCRA 1986, 1-052(B)(1)(g), but it did not do so. Under the rule, "findings or conclusions not embraced in the single document . . . , even though appearing elsewhere in the record, will be disregarded . . . ." Id. The court justified the reduction of the award in its judgment by stating that it reduced the award granted in the decision because Hartnett "has done nothing directly or indirectly to advance prosecution of the Harris County Action" since the original violation of the injunction. The court then noted that the primary purpose of its issuance of the order to show cause was to coerce compliance with the injunction. However, nothing in the court's decision states that purpose, and the damages awarded in the decision were compensatory and not punitive damages.

Therefore, we affirm the decision of the trial court in regard to the declaratory judgment, and reverse and remand the judgment for contempt for further proceedings consistent with this opinion.

IT IS SO ORDERED.

RICHARD E. RANSOM, Chief Justice

WE CONCUR:

JOSEPH F. BACA, Justice

STANLEY F. FROST, Justice

GENE E. FRANCHINI, Justice (dissenting)

SETH D. MONTGOMERY, Justice (not participating)

FRANCHINI, Justice (dissenting)

It is my opinion that Roseline Abraham never assigned, conveyed or divested herself in any manner of the option to repurchase; and that PWG never contracted or bargained for the option.

Assignment

Although it is not affirmatively stated, I conclude that the majority agrees that Texas law applies to the subject case. I view Prochemco in a different light than either the majority or the appellant. It seems to me that Prochemco, Inc. had a real property interest as the landowner (through its wholly-owned subsidiary) and a personal property interest as the holder of an option to extend the contract. Whether or not Prochemco's option was assignable was the controlling factor in that dichotomy. Subsequently, the wholly-owned subsidiary conveyed a 99% interest in the land to a third party. Prochemco then quitclaimed to the third party all of its right, title, and interest in the land. Prochemco, Inc. v. Clajon Gas Co., 555 S.W.2d 189 (Tex. Civ. App. 1971), writ ref'd n.r.e. The third party asserted that since the interests were conveyed, Prochemco no longer had an option that could be exercised under the theory that the option had run with the land.

The difference between the two cases is that the option in Prochemco was for the benefit of the land and thus was held to run with the land. The option in the instant case was for the direct benefit of the Abrahams and therefore a personal covenant. If, in fact, the Texas Court had considered the option to be conveyed along with any right title and interest that Prochemco had in the real property, then the quitclaim deed would have conveyed any rights under the option as well. The Court, however, found that it did not and that the option had survived that conveyance. The majority bases its opinion upon the assignment of the

option to repurchase by the Abrahams in the transfer agreement of May 29, 1963. The general rule in Texas law is that personal property does not pass in the assignment of an oil and gas lease unless it is expressly passed. OTC Petroleum Corp. v. Brock Exploration Corp., 835 S.W.2d 792 (Tex. Civ. App. 1992) (citing Phillips Petroleum Co. v. Adams, 513 F.2d 355, 363 (5th Cir.), cert. denied, 423 U.S. 930 (1975)). In that agreement there is no specific conveyance of personal property or the option. From these facts, I conclude that unless expressly enumerated, a conveyance of real property (fee simple or lease) does not include options that a person may possess that are personal and do not run with the land.

The majority then extensively analyzes the conduct of Mike Abraham as to his interest in the repurchase option. I consider this to be immaterial. The party in interest in this suit is the Estate of Roseline Abraham. Roseline was not a party to the 1964 bankruptcy plan proposed by Mike Abraham. Whatever representations made by Mike Abraham within that plan are not binding upon Roseline. At no time from 1951 through her death did Roseline expressly convey her interest in the option nor did she represent to any party that she had conveyed such an interest. The reasoning of the majority stretches to impute the conduct and intentions of all the other parties, without express or implied authority, to Roseline. There is no theory of law in Texas or New Mexico that I am aware of that would allow that result.

Intent

Texas law emphasizes, as a threshold analysis, the ambiguity of an assignment or conveyance. OTC Petroleum Corp., 835 S.W.2d at 794. "To ascertain the objective intention of the parties, the courts examine and consider the entire writing, seeking to harmonize and give effect to all the provisions of the contract so that none will be rendered meaningless. Id. (citing Universal C.I.T. Credit Corp. v. Daniel, 150 Tex. 513 (1951)).

Nowhere in the transfer is there an express conveyance of the option to PWG or is there any indication that PWG bargained for that conveyance. I, therefore, conclude that there was no objective intention to convey the option.

Presumed Grant

The majority refers in two instances to the "possession" of the option by PWG. That is an interesting concept. Perhaps if the Abraham's had assigned their interests in their original mineral lease agreement then there would have been an argument that PWG possessed the option. That is not the case. In the benchmark case in New Mexico concerning presumed grant, Justice Brice references a property treatise on presumptive grant which states that "[t]his rule is based upon the assumption that if there had been no grant, the owner would have put an end to the wrongful occupation before the full period of limitation had expired." Hester v. Sawyers, 41 N.M. 497, 502 (1937). An even more interesting question is how do you occupy an option. Roseline had no notice that PWG believed themselves to be the owner of the option. Upon notice that the conditions of the option had been met, Roseline immediately exercised her option. What action could she have been expected to take before that time? And since the option had not been bargained for or expressly documented in any of the agreements, she could not have been expected to contest its ownership. It is significant that in applying such an extraordinary doctrine as presumed grant through prescriptive easement, Justice Brice required the prescription be "open, uninterrupted, peaceable, notorious, adverse, under claim of right, and continue for a period of ten years with the knowledge or imputed knowledge of the owner." Id. at 504. The majority opinion does not demonstrate how the actions of PWG meet these requirements.

The Texas law cited by the majority is similar. It requires three elements in order for a presumption of grant to arise: (1) "long asserted and open claim, adverse to the apparent owner, . . . (2) non-claim by the apparent owner, . . . [and] (3) acquiescence by the apparent owner in the adverse claim." Magee v. Paul, 221 S.W. 254, 256 (Tex. 1920) (quoting from the majority). I can find no evidence in the record which demonstrates that PWG openly asserted a claim for any period of time. The only evidence in the record demonstrates that Roseline claimed her interest in the option as soon as she became aware that she could claim it.

I see no reason to apply the doctrine of presumed grant. Without it, there is no assignment, conveyance or any divesting action by Roseline. She exercised her option in October of 1989 and had no reason to take any other action until that time. I would reverse and set aside the judgement of the District Court because to do otherwise gives PWG a valuable interest that they never contracted or bargained for. For all of the above reasons, I dissent.

GENE E. FRANCHINI, Justice