GRYNBERG PETROLEUM COMPANY 5000 SOUTH OUEREC & SUITE 500 & DENVER COLORADO 80337 USA & PHONE 303 SECTION

5000 SOUTH QUEBEC • SUITE:500 • DENVER COLORADO 80237: USA • PHONE 303 - 850-7490

TELEX: 45-4497 ENERGY DVR
TELECOPIER: 303 - 753-9997

October 18, 1984

EXPRESS MAIL

Oil Conservation Commission P. O. Box 2088 Santa Fe, New Mexico 82724-34

ATTENTION: Mr. R. L. Stamets Acting Director

RECEIVED

OCT 2 1984

RE: Amendatory letter to the Application of Jack J. Grynberg to Amend Commission Order No. R-6873 Dated October 5, 1984

OIL CONSERVATION DIVISION

Gentlemen:

purpose of this letter is to further clarify Applicant's intentions in the filing of the above referenced application.

Applicant requests that the following provision be incorporated into his October 5, 1984 Application:

If, in the drilling of the second Prepermian Well on the previously established 320 acre standard spacing and proration unit, Applicant encounters shows of production at a shallower horizon Applicant will make every attempt as a prudent Operator to complete said zone and establish production.

Applicant will participate for his 24.6123554% working interest in any well drilled on the previously established 320 acre spacing and proration unit in accordance with Commission Order No. R-6873 and as outlined in in Exhibit "A" to the October 5, 1984 Application.

JACK J. GRYNBERĞ

Susan Stone

Senior Petroleum Landman

SS/pjr

Enclosures as stated

Amendatory Letter of Jack J. Grynberg, No. R-6873 October 18, 1984

cc: To the following CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Harvey E. Yates Company Explorers Petroleum Corp. Spiral, Inc. Security National Bank Bldg., Suite 300 Roswell, NM 88201

Yates Energy Corp. Fred G. Yates, Inc. Security National Bank Bldg., Suite 919 Roswell, NM 88201

Seymour Smith
David Smith
#7 So. Dearborn Street, Suite 803
Chicago, IL 60602

Cibola Energy Corp. 1005 Marquette Albuquerque, NM 87103

Fred Pool Drilling Company 114 East 4th Street Roswell, NM 88201

McClellan Oil Corporation 500 North Main Sunwest Bank Bldg., Suite 1000 Roswell, NM 88201

Plains Radio & Broadcasting Co., Inc. 6th and Tyler, Texas American Bank Bldg. Amarillo, TX 79105

Bearing Services 701 East Main Artesia, NM 88210

Connie Energy 1012 East Lincoln Road Hobbs, NM 88240

XY, Ltd., a Limited Partnership James T. Jennings 500 North Main Southwest Bank Bldg., #1012 Roswell, NM 88201

GRYNBERG PETROLEUM COMPANY

5000 SOUTH QUEBEC ● SUITE 500 ● DENVER, COLORADO 80237 USA ● PHONE 303 - 850-7490

TELEX: 45-4497 ENERGY DVR TELECOPIER: 303 - 753-9997

October 18, 1984

Oil Conservation Commission P. O. 2088 Santa Fe, New Mexico 87501-34

EXPRESS MAIL

RECEIVED

ATTENTION: Ms. Floreen Davidson

RE: Amendment Letter to the Application of Jack J. Grynberg to Amend Commission Order No. R-6873

THOUGHT BUILDING

OCT 2.2. 1984

OIL CONSERVATION DIVISION

Dear Ms. Davidson:

Enclosed please find one original and two copies of the above referenced Amendatory Letter.

Also, enclosed is a request to continue the hearing on the above referenced matter to a date subsequent to December 3, 1984.

If you require further information, please advise.

Sincerely,

GRYNBERG PETROLEUM COMPANY

Susan Stone

Senior Petroleum Landman

ss/pir

Enclosures as stated

NOTE: Please refer to page two of this letter for all persons receiving a copy of same, being sent CERTIFIED MAIL-RETURN RECEIPT REQUESTED.

Amendatory Letter of Jack J. Grynberg, No. R-6873 October 18, 1984

cc: To the following CERTIFIED MAIL, RETURN RECEIPT REQUESTED

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XY, Ltd., a Limited Partnership James T. Jennings 500 North Main Southwest Bank Bldg., #1012 Roswell, NM 88201 Cose Fike

BEFORE THE OIL CONSERVATION COMMISSION ENERGY AND MINERAL DEPARTMENT

OF THE STATE OF NEW MEXICO RECEIVED.

DEC 26 1985

OIL CONSERVATION DIVISION

IN THE MATTER OF THE APPLICATION OF JACK J. GRYNBERG TO AMEND COMMISSION ORDER NO. R-6873 TO PROVIDE FOR THE DRILLING OF A SECOND WELL AT AN UNORTHODOX LOCATION ON THE 320-ACRE PRORATION UNIT, TO CHANGE THE OPERATOR AND TO DETERMINE THE RISK FACTOR AND OVERHEAD CHARGES, CHAVES COUNTY, NEW MEXICO.

Case No. 8400

APPLICATION FOR REHEARING

The applicant, Jack J. Grynberg ("Grynberg"), hereby applies for rehearing of the Order entered herein on December 6, 1985, pursuant to Section 70-2-25, NMSA 1978, and Rule 1222 of the O.C.C., and as grounds herefor states:

POINT I

ORDER NO. R-6873-A IS ERRONEOUS AS A MATTER OF LAW BECAUSE GRYNBERG HAS AN UNDIVIDED FRACTIONAL INTEREST IN ALL PRODUCTION UNDERLYING THE POOLED 320-ACRE UNIT

The Order of the Commission entered herein on December 6, 1985 (attached hereto as Exhibit "A"), is believed by the applicant to be erroneous insofar as the Commission determined that:

that: The authority of the stand of the stan

- (27) The W/2 of said Section 18 is a spacing or proration unit in Pre Permian gas zones only.
- (28) The provisions of said Order No. R-6873 do not confer any interest in the SW/4 of said Section 18 to Grynberg in any formation or interval other than Pre Permian gas zones.
- (29) Any order entered in this case granting Grynberg's application should be limited to Pre Permian gas zones.

Order (Exhibit "A"), pages 3-4.

Grynberg submits that these findings by the Commission and the Order entered thereon are erroneous as a matter of law and that, by virtue of Order R-6873, Grynberg owns an undividied 24.6% proportional interest in all production from the pooled formations underlying the previously established 320-acre unit.

The effect of compulsory pooling upon the <u>ownership of</u> <u>production</u> obtained from the spacing or proration unit created by a pooling order is specified in Section 70-2-17(C), NMSA 1978, which provides in pertinent part as follows:

All operations for the <u>pooled</u> oil or <u>gas</u>, or both, which are conducted on <u>any portion</u> of the unit shall be deemed for all purposes to have been conducted upon each tract within the unit by the owner or owners of such tract. For the purpose of determining the portions of production owned by the persons owning interest in the pooled oil or gas, or both, such production shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres

included within each tract bears to the number of surface acres included in the entire unit. The portion of the production allocated to the owner or owners of each tract or interest included in a well spacing or proration unit formed by a pooling order shall, when produced, be considered as if produced from the separately owned tract or interest by a well drilled thereon.

(Emphasis supplied).

The courts have commonly described the effect of voluntary and compulsory pooling as a form of consolidation or merger of all the interests in the pooled formations. Parkin v. State Corp. Com'n of Kansas, 234 Kan. 994, 677 P.2d 991, 1002, (1984). Owners of the mineral rights and interests in a particular tract of land surrender all right to conduct individual drilling operations on that particular tract, and in lieu thereof, they become entitled to a proportional share in the total unit production. Young v. West Edmond Hunton Lime Unit, 275 P.2d 304, 308 (Okla. 1954). Separate interests within the unit are converted into a common interest as far as the development of the unit is concerned, regardless of where the well or the production is located within the unit. Mire v. Hawkins, 186 So.2d 591, 596 (La. 1966). If the drilling effort is successful, the resulting production, to which all tracts are deemed to contribute, is distributed to all interests in the proportion to which their acreage in the unit bears to the entire acreage. Section 70-2-17(C), supra; Mire, supra, 186

So.2d at 596; Ragsdale v. Superior Oil Co., 237 N.E.2d 492, 494 (III. 1968).

In this case, Order R-6873 provides unequivocally that all mineral interests, whatever they may be, down through the Ordovician formation underlying the W/2 of Section 18 are pooled to form a standard 320-acre gas spacing and proration The "pooled" mineral interests include, among others, Abo formations, which the **Fusselman** and are objective formations for the proposed second well. Grynberg owns the working interest in approximately 80 acres, or 24.6% of the 320-acre unit, from the surface to the Ordovician formation. Heyco and others own the working interest in the remainder of the pooled unit. Consequently, by operation of Section 70-2-17(C), supra, and Order R-6873, the various interests in the separate tracts comprising the 320-acre unit have been consolidated as a matter of law into an undivided ownership of

It must be recognized that the compulsory pooling of all formations underlying the W/2 of Section 18, from the surface to the Ordovician, was specifically requested by HEYCO in its Amended Application filed October 21, 1981, in Case No. 7390. Indeed, the fact that all formations were pooled into a single 320-acre unit was clearly HEYCO's purpose. In its original Application in Case No. 7390, filed September 29, 1981, HEYCO sought to pool only the mineral interests in the Mississippian formation. By its first amended application filed October 13, 1981, the request for compulsory pooling was modified to "cover all formations from the surface through the Mississippian formation." Finally, in HEYCO's second amended application, filed October 21, 1981, the request for compulsory pooling was modified to "cover from the surface to all depths."

the entire unit. Grynberg, as a result, owns an undivided 24.6% fractional interest in all production from the <u>pooled</u> mineral interests, whatever they may be, from the surface to the Ordovician formation underlying the 320-acre unit.

Because the statute mandates that all operations for the pooled gas conducted on any portion of the unit are to be deemed for all purposes to have been conducted upon each tract within the unit, Grynberg is entitled under Order R-6873 to his proportional share of the production from each of the pooled formations in the unit, irrespective of the location of the well or the actual location of the production. See, Ragsdale v. Superior Oil Company, supra at 494, ("The oil produced is pooled, regardless of the separate tract or tracts upon which the wells are located and from which the oil is produced.").

This principle is illustrated in <u>Texas Oil and Gas Corporation v. Rein</u>, 534 P.2d 1277 (Okla. 1975), a case having facts similar to those presented here. In <u>Rein</u>, the Oklahoma Corporation Commission granted an application to amend a prior drilling and spacing order so as to permit the drilling of a second well within a previously established 640-acre unit. Evidence was introduced that the well which was originally authorized and drilled could not compete for hydrocarbons underlying the unit and that a second well at the proposed location would arrest uncompensated drainage.

The application was opposed on the basis that the applicant did not own any interest in the S/2 of the S/2 of the unit where the proposed well was to be located. In affirming the Commission's order granting authority to drill the second well at the proposed location, the Oklahoma Supreme Court observed that the previous order had pooled the formations underlying the entire 640-acre unit, and that the applicant owned the leasehold interest in the north 480 acres of the unit. Relying on certain provisions of the Oklahoma statutes on compulsory pooling which are in substance the same as the statutes and regulations applicable in New Mexico, the Court held:

We have previously held that the Commission has considerable discretion in determining which owner is entitled to drill and operate unit well. [Citation omitted.] conc lude that §87.1(b) authorizes Commission to establish the well location at any location upon the spacing unit and that §87.1(d) authorizes the Commission to pool the working interest within the spacing unit designate an operator to drill operate the well at the designated well To hold otherwise would frustrate location. the intent of the Act because the desiring to drill would not be entitled to do so unless he held a lease covering the well location designated by the Commission.

534 P.2d at 1279 (Emphasis supplied).

It is clear from the foregoing that Grynberg owns an undivided 24.6% interest in all production from the pooled

formations within the 320-acre unit, <u>irrespective</u> of where the well producing the pooled formations may be located on the unit. Accordingly, should the proposed second well be drilled, as authorized by the Commission, and ultimately found to be productive in both the Fusselman and Abo formations at the proposed location, Grynberg's interest in that production would be 24.6% of the total production.

POINT II

THE ORDER IS NOT BASED ON COMPETENT LEGAL EVIDENCE

This case was principally heard on September At that time Harvey E. Yates Company ("HEYCO") made a "statement" by attorney William F. Carr. (9-18-85 TR. 5-7) Competent and qualified expert evidence presented by was applicant through the sworn testimony of Professor Bruce Kramer on the effect of pooling Order R-6873 issued pursuant §70-2-17(c), NMSA 1978. Essentially he stated that the Order accomplished a "unification of ownership, whether it be royalty or operating interest . . . and essentially you erase all internal boundary lines and the boundary lines of the ownership criteria are those which are set forth in compulsory order." (9-18-85 TR. 35-36). Instead of Grynberg having a specified 80 acres in the 320 acre unit (approximately 24.6%) he has 24.6% in each acre in the unit.

Because of certain technical defects in the notice, the case was readvertised for the Commission docket of October 17, 1985. Again HEYCO did not present a single witness to be placed under oath and cross-examined. This time it was represented by attorney A. J. Losee who presented argument and offered two exhibits (10-17-85 TR. 4-19). informal exchange the Chairman remarked that he would "like to know how or who HEYCO is paying in the Abo formation . . . (10-17-85 TR. 17) . . . something showing the ownership in that half section --" (10-17-85 TR. 18). At the close of the hearing the parties were allowed ten (10) days to file "whatever other submittals there are, to submit proposed orders in this case." (10-17-85 TR. 28). The applicant submitted a proposed form of order in a timely manner

On November 13, 1985, over three weeks after the hearing was closed, HEYCO filed with the Commission (1) a letter from Attorney A. J. Losee dated November 11, 1985, (2) a proposed form of order, (3) a brief, (4) a copy of a document styled Harvey E. Yates Company Amended Gas Division Order, (Seymour State #1 Abo Zone Only), (5) a copy of a document styled Harvey E. Yates Company Amended Gas Division Order (Seymour State #1 Atoka Zone Only), (6) First Supplemental Opinion of Title, December 13, 1983 by S. B. Christy, IV, related to the subject one-half section, and (7) Opinion of

Title, April 12, 1983, by S. B. Christy, IV, likewise on the subject land. Items (4) through (7) purport to state legal opinions as to title to leases and the mineral estate for Section 18. Mr. Losee's letter, item (1) relies on these for meaning on the issue of the affect on pooling of the 320 acre unit by Order R-6873.

There is no attributable source of the division They track, however, the title opinions. The title opinions are by an attorney who has a fractional interest the property as does his law partner, James T. Jennings. 0n their face the opinions were issued to HEYCO for its use. the self-interest of the Yates group the opinions attribute a 43% interest in Grynberg in the Abo formation and 21.5% in the Atoka (Pre Permian) . Since Grynberg is non-consent in the Seymour State #1 this works to apply more of his share to drilling costs on a well that will never pay-out. The authors of all of the title papers (items (4) through (7)) were never present at the hearing to be sworn, to be qualified as experts, to confront the applicant and to be cross-examined. Besides the objections and deficiencies that would have emerged from that process this non-hearing evidence is subject to competence and relevance objections. Yet, it necessarily follows from the content of the order in this case that those materials form the sole basis for the decision.

Rule 1212 of this Commission requires that its Order be supported by "competent legal evidence." Such is required by law aside from the rule. Duke City Lumber Co. v. New Mexico Environmental Improvement Board, 101 N.M. 291, 681 P.2d 717 (1984).Mere uncorroborated hearsay or rumor does constitute substantial evidence upon which an administrative decision must be based. McWood Corporation v. Corporation Commission, 78 N.M. 319, 431 P.2d 52 (1967): Ferguson - Steere Motor Co. v. State Corporation Commission, 63 N.M. 137, 314 P.2d 894 (1957). The "evidence" submitted by HEYCO was pure hearsay and cannot, as a matter of law, serve as any support for the Commission's Order. The contents of the written materials submitted were from a unsworn witnesses who was not subject to cross-examination and whose testimony was not provided at or prior to the hearing so that Grynberg could prepare to meet it.

Compounding the defect in the quality of the evidence was the timing of it.

Hearings before administrative bodies need not be conducted generally with the formality of a court hearing or trial, but the procedure before such bodies must be consistent with the essentials of a fair trial.

<u>Ferguson - Steere Motor Co. v. State</u> <u>Corporation Commission</u>, <u>supra</u>, 314 P.2d at 898. In <u>Transcontinental Bus System</u>, Inc. v. State Corporation <u>Commission</u>, 56 N.M. 158, 241 P.2d 829 (1952), an administrative order of the State Corporation Commission was reversed on the grounds that the Commission considered one of its own rulings in another case which it had rendered two days after the hearing on the case before it. The court held as follows:

The Commission is authorized only to make its decision upon the evidence adduced at the hearing and made a part of the record.

The appellant was entitled to a hearing as provided by law, conducted fairly and impartially, with an opportunity to introduce evidence to refute or modify any matters or facts which the Commission might take into consideration in reaching its decision.

Id., 241 P.2d at 841. (Emphasis added).

The court concluded that the Commission's action violated not only the statute requiring a hearing but the state and federal constitutions as well. <u>Id.</u>, 241 P.2d at 843. See also, <u>First National Bank v. Bernalillo County Valuation Protest Board</u>, 90 N.M. 110, 560 P.2d 174, 180 (Ct.App. 1977) (Hernandez, J., concurring).

Accordingly, the unsworn hearsay belatedly submitted by HEYCO cannot be considered by the Commission and cannot support its Order.

CONCLUSION

Accordingly, Grynberg respectfully applies for rehearing of the Order of December 6, 1985, and that upon such rehearing the Commission modify that Order to provide that Grynberg owns an undivided 24.6% proportional interest in all production from the pooled formations underlying the previously established 320-acre unit.

Respectfully submitted,

JONES, GALLEGOS, SNEAD & WERTHEIM, P.A. Attorneys for Applicant Jack J. Grynberg

By

Y. E. GALLEGOS

Post Office Box 2228

Santa Fe, New Mexico 87504-2228

(505) 982-2691

CERTIFICATE OF MAILING

It is hereby certified that on the 26th day of December, 1985, a true and correct copy of the foregoing Application for Rehearing was mailed to counsel of record, A. J. Losee, Esq., Post Office Drawer 239, Artesia, New Mexico 88211, by first-class mail, postage prepaid.

J. E. GALLEGOS

7930A

Application for Rehearing - Page 12

STATE OF NEW MEXICO ENERGY AND MINERALS DEPARTMENT OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION COMMISSION OF NEW MEXICO FOR THE PURPOSE OF CONSIDERING:

CRSE NO. 8400 Order No. R-3870-A

APPICATION OF JACK J. GRYNBERG FOR AMENDMENT OF DIVISION ORDER NO. R-6673, CHAVES COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9:00 a.m. on October 17, 1985, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NCW, on this day of December, 1985, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS THAT:

- (1) Due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.
- (2) The applicant, Jack J. Grynberg, (Grynberg) seeks the amendment of Commission Order No. R-6873 to: 1) allow for the drilling of a second Pre Permian and Abo gas well at an unorthodox gas well location in the SW/4 SW/4 of Section 18, Township 9 South, Range 27 East, on an established 320-acre provation unit; 2) declare the applicant to be the operator of the second well or, in the alternative, to be the operator of the unit; and 3) establish a risk factor and overhead charges for the new well.
- (3) Commission Order No. R-6873, entered January 17, 1982, pooled "all mineral interests, whatever they may be, down through the Ordovician formation underlying the W/2 of Section 18, Township 9 South, Range 27 East, NMPM, Chaves County, New

Mexico," "to form a standard 320-acre gas spacing and proration unit to be dedicated to a well to be drilled at a standard location on said 320-acre tract."

- (4) Said order further designated Harvey E. Vates Company (HEVCC) as the operator of the "subject well and unit".
- (5) Said pooling and operator designation took place following notice and hearing and under provisions of Section 70-2-17 C RMSA, (1970).
- (6) HIYCO subsequently drilled and completed its Seymour State Com Well No. 1 in the SW/4 NW/4 of said Section 13.
- (7) Said well was completed as a dual gas well with production from the Abo formation and the Pre Permian Atoka formation.
- (8) The records of the Oil Conservation Division (Division) reflect that the operator filed acreage dedication plats for the NW/4 and W/2 of said Section 18 for the Abo formation and the Pre Permian, respectively.
- (9) The dedications described in Finding Paragraph No. (8) above represent standard spacing or proration units for each of the formations in said dually completed well.
- (10) While said well now continues to produce from the Abo formation it has not produced from the Pre Permian since November 1984.
- (11) Said well is not a commercial well in the Pre Permian.
- (12) Grynberg is the owner of a lease consisting of the E/2 NW/4 of said Section 18 which was pooled under said Order No. R-6873.
- (13) Grynberg chose not to participate in the drilling of the Seymour State Com Well No. 1.
- (14) Grynberg has requested that HEYCO drill a second well on the W/2 of said Section 18 in order to better drain reserves thereunder.
- (15) Grynberg's proposed well is at an unorthodox gas well location in the SW/4 SW/4 of said Section 18.
- (16) Yates has chosen not to drill the well proposed by Grynberg.

- (17) The location proposed by Grynberg is higher structurally and should give any well drilled at that location a better opportunity to recover the reserves under the spacing unit thereby better preventing waste and protecting correlative rights.
- (13) The provisions of Section 70-2-17 C MISA (1978) require the designation of "an operator" for compulsorily pooled units.
- (19) Grynbarg's application to be separately designated as the operator of a new well to be drilled on the compulsorily pooled unit in question would result in designation of two operators on said unit and should therefore be denied.
- (20) HEYCO, as current operator of the compulsorily pooled unit, should be given a reasonable opportunity to drill the second well on said unit as proposed by Grynberg.
- (21) Should HEYCO choose not to drill the proposed second well and should Grynberg elect to drill said well, HEYCO should be replaced as operator of the affected pooled unit.
- (22) Should Grynberg become operator of the proposed second well and unit, he would seek to complete said well as a dual gas well in the Abo and Pre Permian formations.
- (23) The standard spacing unit for the Abo formation would be the SW/4 of said Section 18.
- (24) Grynberg holds no leasehold interest under the SW/4 of said Section 18.
- (25) Grynberg attempted to show that by virtue of the provisions of said Division Order No. R-6873, he had acquired an interest in the SW/4 of said Section 18 giving him the right to drill and complete a well above the Pre Permian.
- (26) The provisions of Section 70-2-17 C NMSA (1978) permit the Commission to pool lands within a spacing or proration unit.
- (27) The W/2 of said Section 18 is a spacing or proration unit in Pre Permian gas zones only.
- (28) The provisions of said Order No. R-6873 do not confer any interest in the SW/4 of said Section 18 to Grynberg in any formation or interval other than Pre Permian gas sones.

- (29) Any order entered in this case granting Gynberg's application should be limited to Pre Permian gas zones.
- (30) All participants in the hearing in this matter proposed that the well be assigned a production limitation factor of 0.790 to offset any advantage which might be gained over any offset operator as a result of the proposed unorthodox location.
- (31) In the absence of any special rules and regulations for prorationing of production from the Pre Permian formation, the aforesaid production limitation factor should be applied against said well's ability to produce into the pipeline as determined by periodic well tests.
- (32) Should Grynberg subsequently drill and complete a Pre Fermian gas well in the W.1 of said Section 1d, the authorization of production for the HEYCO Seymour State Com Well No. 1 from the Pre Permian should be suspended until such time as the parties agree to designate a single operator for both wells.
- (33) The party which chooses to drill a second well on the unit pooled under Order No. R-6873 should be designated the operator of such well and the Pre Permian portion of the unit.
- (34) Any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated second well costs to the operator in lieu of paying his share of reasonable well costs out of production.
- (35) Any non-consenting working interest owner who does not pay his share of estimated second well costs should have withheld from production his share of the reasonable well costs plus an additional 200 percent thereof as a reasonable charge for the risk involved in the drilling of the well.
- (36) Any non-consenting interest owner should be afforded the opportunity to object to the actual second well costs but that actual well costs should be adopted as the reasonable well costs in the absence of such objection.
- (37) Following determination of reasonable second well costs, any non-consenting working interest owner who has paid his share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

- (38) \$3,550.00 per month while drilling and \$355.00 per month while producing should be fixed as reasonable charges for supervision (combined fixed rates); the operator should be authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator should be authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator should be authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.
- (39) All proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.
- (40) Upon the failure of either HEYCO or Grynberg to commence drilling of the second well on said unit on or before May 1, 1986, this order should become null and void and of no effect whatsoever.
- (41) Should all the parties to this force pooling reach voluntary agreement subsequent to entry of this order, this order should thereafter be of no further effect except those portions dealing with the unorthodox location and production limitation.
- (42) HEYCO and Grynberg should notify the Director of the Cil Conservation Division in writing of the subsequent voluntary agreement of all parties subject to the provisions of this order.
- (43) An order entered in accordance with the above findings will serve to prevent waste and protect correlative rights.

IT IS THEREFORE ORDERED THAT:

(1) Following entry of this order, Jack J. Grynberg (Grynberg) shall have 30 days in which to request that the operator of the unit pooled under provisions of Order No. R-6873 drill a second well to the Pre Permian on said unit as hereinafter provided.

- (2) The current unit operator, Harvey E. Yates Company (MEYCO), shall have 30 days following such a request in which to make a determination to drill such well or not.
- (3) HEYCO shall make such a determination in writing both to Grynberg and the Director of the Cil Conservation Division (Division).
- (4) Upon failure of HEYCO either to elect to drill such second well on the unit or to make a written determination, Grynberg shall, at his option, become the operator of the unit and shall drill a second Pre Permian well on the unit at an unorthodox location, hereby approved, not closer than 660 feet to the South and West lines of Section 18, Township 9 South, Range 27 East, Chaves County, New Mexico.

PPOVIDED HOWEVER THAT, the operator shall commence the drilling of said well on or before the lat day of May 1986, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Pre Permian formation;

PROVIDED FURTHER THAT, in the event that neither HEYCO nor Grynberg elects to drill such well or commences the drilling of the well on or before the 1st day of May, 1986, this order shall be null and void and of no effect whatsoever, unless the operator obtains a time extension from the Division for good cause shown.

PROVIDED FURTHER THAT, should said well not be drilled to completion, or abandonment, within 120 days after commencement thereof, the operator shall appear before the Division Director and show cause why this order should not be rescinded.

- (5) The operator of the second Pre Permian well on the subject unit shall be determined in accordance with Ordering Paragraphs (1) through (4) above.
- (6) After the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Division and each known working interest owner in the subject unit an itemized schedule of estimated well costs.
- (7) Within 30 days from the date the schedule of estimated well costs is furnished to him, any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production, and any such owner who pays his share of estimated well costs as provided

above shall remain liable for operating costs but shall not be liable for risk charges.

- (3) The operator shall furnish the Division and each known working interest owner an itemized schedule of actual well costs within 50 days following completion of the well; if no objection to the actual well costs is received by the Division and the Division has not objected within 45 days following receipt of said schedule, the actual well costs shall be the reasonable well costs; provided however, that if there is an objection to actual well costs within said 45-day period the Division will determine reasonable well costs after public notice and hearing.
- (9) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid his share of estimated costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.
- (10) The operator is hereby authorized to withhold the following costs and charges from production:
 - (A) The pro-rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.
 - (B) As a charge for the risk involved in the drilling of the well, 200 percent of the pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.
- (11) The operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.
- (12) \$3,550.00 per month while drilling and \$355.00 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); the operator is hereby authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting

working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating such well. not in excess of what are reasonable, attributable to each non-consenting working interest.

- (13) Any unsevered mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/6) royalty interest for the purpose of allocating costs and charges under the terms of this order.
- (14) Any well costs or charges which are to be paid out of production shall be withheld only from the working interest's share of production, and no costs or charges shall be withheld from production attributable to royalty interests.
- (15) All proceeds from production from the subject well which are not disbursed for any reason shall immediately be placed in escrow in Chaves County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; the operator shall notify the Division of the name and address of said escrow agent within 30 days from the date of first deposit with said escrow agent.
- (16) Should all the parties subject to this order reach voluntary agreement subsequent to entry thereof, this order shall thereafter be of no further effect except as to those provisions relative to the unorthodox well location and production limitation factor.
- (17) HEYCO and Grynberg shall notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the provisions of this order.
- (18) If Grynberg drills and completes said second Pre Permian well, the HEYCO Seymour State Com Well No. 1 in Unit E of said Section 18 shall not be produced from the Pre Permian unless HEYCO and Grynberg agree to a common operator for all Pre Permian wells on the unit and so notify the Division Director in writing.
- (19) Upon the completion of such second Pre Permian well it shall be assigned a Production Limitation Factor of 0.79.
- (20) In the absence of any Special Rules and Regulations prorating gas production in said Pre Permian formation in which applicant's well is completed, the Special rules hereinafter promulgated shall apply.

(21) The following Special Rules and Regulations for a non-prorated gas well at an unorthodox location shall apply to the subject well:

SPECIAL RULES AND PEGULATIONS
FOR THE
APPLICATION OF A "PRODUCTION LIMITATION FACTOR"
TO A NON-PROPATED GAS VELL

APPLICATION OF RULES

RULE 1. These rules shall apply to a Pre Permian formation gas well located 850 feet or more from the South and West lines of Section 18, Township 19 South, Range 27 Fast, NWPM, Chaves County, New Mexico, which well's Production Limitation Factor of 0.79 shall be applied to the well's deliverability (as determined by the procedure hereinafter set forth) to determine its maximum allowable rate of production.

ALLOWABLE PERIOD

- PULE 2. The allowable period for the subject well shall be six months.
- RULE 3. The year shall be divided into two allowable periods commencing at 7:00 o'clock a.m. on January 1 and July 1.

DETERMINATION OF DELIVERY CAPACITY

- RULE 4. Immediately upon connection of the well the operator shall determine the open flow capacity of the well in accordance with the Division "Manual for Back-Pressure Testing of Natural Gas Wells" then current, and the well's initial deliverability shall be calculated against average pipeline pressure in the manner described in the last paragraph on Page I-6 of said test manual.
- RULE 5. The well's "subsequent deliverability" shall be determined twice a year, and shall be equal to its highest single day's production during the months of April and May or October and November, whichever is applicable. Said subsequent deliverability, certified by the pipeline, shall be submitted to the appropriate District Office of the Division not later than June 15 and December 15 of each year.
- RULE 6. The Division Director may authorize special deliverability tests to be conducted upon a showing that the well has been worked over or that the subsequent deliverability

determined under Rule 5 above is erroneous. Any such special test shall be conducted in accordance with Rule 4 above.

FULL 7. The operator shall notify the appropriate district office of the Division and all offset operators of the date and time of initial or special deliverability tests in order that the Division or any such operator may at their option witness such tests.

CALCULATION AND ASSIGNMENT OF ALLOWABLES

- RULE 3. The well's allowable shall commence upon the date of connection to a pipeline and when the operator has complied with all the appropriate filing requirements of the Rules and Regulations and any special rules and regulations.
- RULE 9. The well's allowable during its first allowable period shall be determined by multiplying its initial deliverability by its production limitation factor.
- RULE 10. The well's allowable during all ensuing allowable periods shall be determined by multiplying its latest subsequent deliverability, as determined under provisions of Rule 5, by its production limitation factor. If the well shall not have been producing for at least 60 days prior to the end of its first allowable period, the allowable for the second allowable period shall be determined in accordance with Rule 9.
- RULE 11. Revision of allowable based upon special well tests shall become effective upon the date of such test provided the results of such test are filed with the Division's district office within 30 days after the date of the test; otherwise the date shall be the date the test report is received in said office.
- RULE 12. Revised allowables based on special well tests shall remain effective until the beginning of the next allowable period.
 - RULE 13. There is no rule 13.
- RULE 14. January 1 and July 1 of each year shall be known as the balancing dates.
- RULE 15. If the well has an underproduced status at the end of a six-month allowable period, it shall be allowed to carry such underproduction forward into the next period and may produce such underproduction in addition to its regularly assigned allowable. Any underproduction carried forward into

any allowable period which remains unproduced at the end of the period shall be cancelled.

- RULE 15. Production during any one month of an allowable period in excess of the monthly allowable assigned to the well shall be applied against the underproduction carried into the pariod in determining the amount of allowable, if any, to be cancelled.
- RULE 17. If the well has an overproduced status at the end of a six-month allowable period, it shall be shut-in until such overproduction is made up.
- RULE 18. If, during any month, it is discovered that the well is overproduced in an amount exceeding three times its average monthly allowable, it shall be shut-in during that month and during each succeeding month until it is overproduced in an amount three times or less its monthly allowable, as determined hereinabove.
- RULE 19. The Director of the Division shall have authority to permit the well, if it is subject to shut-in pursuant to Rules 17 and 18 above, to produce up to 500 MCF of gas per month upon proper showing to the Director that complete shut-in would cause undue hardship, provided however, such permission shall be rescinded for the well if it has produced in excess of the monthly rate authorized by the Director.
- RULE 20. The Division may allow overproduction to be made up at a lesser rate than permitted under Rules 17 or 18 above upon a showing that the same is necessary to avoid material damage to the well.

GENERAL

RULE 21. Failure to comply with the provisions of this order or the rules contained herein or the Rules and Regulations of the Division shall result in the cancellation of allowable assigned to the well. No further allowable shall be assigned to the well until all rules and regulations are complied with. The Division shall notify the operator of the well and the purchaser, in writing, of the date of allowable cancellation and the reason therefor.

IT IS FURTHER ORDERED THAT:

(22) Jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF HEW HENTOD OIL CONSERVATION COMMISSION

ZIM BACA, Member

ID JALLEY, Hamber

Ř. L. STAMETS,

Chairman and Secretary

SEAL

LAW OFFICES

LOSEE & CARSON, P. A.

A.J. LOSEE
JOEL M. CARSON

ELIZABETH LOSEE
JAMES E. HAAS*
ERNEST L. CARROLL
*LICENSED IN TEXAS ONLY

300 AMERICAN HOME BUILDING P. O. DRAWER 239

ARTESIA, NEW MEXICO 88211-0239

26 December 1985

AREA CODE 505 746-3508

VIA PUROLATOR

R. L. Stamets, Director Oil Conservation Commission State Land Office Building Old Santa Fe Trail Santa Fe, New Mexico 87501

Re: Application of Jack J. Grynberg for Amendment of Order No. R-6873, Chaves County, New Mexico, Case No. 8400, Order No. R-6873-A

Dear Mr. Stamets:

This acknowledges receipt on December 11, 1985 of the subject order. Our copy did not bear the date the order was entered, but you advised in our telephone conversation that such date was December 6, 1985.

In accordance with our telephone conversation of December 23, I understand that the subject order was intended to provide that if Grynberg drilled a second Pre Permian well on the unit Grynberg would be operator of the Pre Permian unit and HEYCO would remain as operator of the Seymour No. 1 Well in the NW/4 of said Section 18, insofar as it applied to the Abo formation. Although the Findings of the Commission seem clear on this point, I had some question as to the ordering provisions.

After our conversation, I reached Mr. Gallegos, attorney for the applicant, on the telephone. He will contact his client to obtain concurrence to the construction of the order.

In order that the rights of my client will be protected, if I do not secure Mr. Grynberg's concurrence in the above construction of this order, you will please consider this an application for rehearing pursuant to § 7-2-25 N.M.S.A. 1978. The grounds for rehearing are that the order is invalid if in fact it removes HEYCO

Mr. R. L. Stamets, Director

as operator of the Seymour No. 1 Well insofar only as said well is producing from the Abo unit in the NW/4 of said Section 18.

Respectfully submitted,

LOSEE & CARSON, P.A.

A. J Losee

AJL: jcb

cc: Mr. George Yates Mr. Gene Gallegos

JONES, GALLEGOS, SNEAD WERTHEIM

December 27, 1985

Mr. A. J. Losee Attorney at Law P. O. Drawer 239 Artesia, New Mexico 88211-0239

RE: Application of Jack J. Grynberg for Amendment of Order No. R-6873, Chaves County, New Mexico, Case No. 8400, Order No. R-6873-A

Dear Mr. Losee:

After our telephone conversation I re-read the order in the above-referenced case. I do not find any ambiguity that even calls for interpretation. It provides that if Heyco refuses to drill the second well and Grynberg drills it, then Grynberg becomes operator of the entire unit inclusive of the Seymour No. 1.

As you know by prior transmittal, we have filed a motion for rehearing in this case in behalf of the applicant.

Very truly yours,

JONES, GALLEGOS, SNEAD & WERTHEIM, P.A.

Ву

J. K. GALLEGOS

JEG/eq

cc: R. L. Stamets
Jack J. Grynberg

GRYNBERG PETROLEUM COMPANY

5000 SOUTH QUEBEC • SUITE 500 • DENVER, COLORADO 80237 USA • PHONE 303 - 850-7490

TELEX: 45-4497 ENERGY DVR TELECOPIER: 303 - 753-9997

October 18, 1984

Oil Conservation Commission P. O. Box 2088 Santa Fe, New Mexico 87501-34 EXPRESS MAIL

ATTENTION: R. L. Stamets
Acting Director

RE: Application of Jack J. Grynberg to Amend Commission Order No. R-6873

OCT 1984

OIL CONSERVATION DIVISION

Dear Mr. Stamets:

It is my understanding that the hearing on the above Application has been set for November 9, 1984. Jack J. Grynberg hereby respectfully requests that this hearing be continued until a date subsequent to December 3, 1984, when Grynberg's attorney, Mr. J. E. Gallegos can be present. Mr. Gallego's is presently out of the country and is not expected to return until December 1, 1984.

Please advise us of your decision as soon as possible. Thank you for your cooperation in this matter.

Sincerely,

GRYNBERG PETROLEUM COMPANY

Susan Stone

Senior Petroleum Landman

SS/pjr

NOTE: Please refer to page two of this letter for all persons receiving a copy of same, being sent CERTIFIED MAIL-RETURN RECEIPT REQUESTED.

Amendatory Letter of Jack J. Grynberg, No. R-6873 October 18, 1984

cc: To the following CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Harvey E. Yates Company
Explorers Petroleum Corp.
Spiral, Inc.
Security National Bank Bldg., Suite 300
Roswell, NM 88201

Yates Energy Corp. Fred G. Yates, Inc. Security National Bank Bldg., Suite 919 Roswell, NM 88201

Seymour Smith
David Smith
#7 So. Dearborn Street, Suite 803
Chicago, IL 60602

Cibola Energy Corp. 1005 Marquette Albuquerque, NM 87103

Fred Pool Drilling Company 114 East 4th Street Roswell, NM 88201

McClellan Oil Corporation 500 North Main Sunwest Bank Bldg., Suite 1000 Roswell, NM 88201

Plains Radio & Broadcasting Co., Inc. 6th and Tyler, Texas American Bank Bldg. Amarillo, TX 79105

Bearing Services 701 East Main Artesia, NM 88210

Connie Energy 1012 East Lincoln Road Hobbs, NM 88240

XY, Ltd., a Limited Partnership James T. Jennings 500 North Main Southwest Bank Bldg., #1012 Roswell, NM 88201 GRYNBERG PETROLEUM COMPANY DECISION DEC 8 1984

5000 SOUTH QUEBEC • SUITE 500 • DENVER, COLORADO 80237 USA • PHONE 303 CONSERVATION DIVISION

TELEX: 45-4497 ENERGY DVR TELECOPIER: 303 - 753-9997

November 27, 1984

C-128400

Oil Conservation Commission P. O. Box 2088 Santa Fe, New Mexico 82724-34

Attention: Ms. Florence Davidson

Re: Continuance of Hearing on the Application of Jack J. Grynberg to Amend Commission Order No. R-6873

Dear Ms. Davidson:

This will confirm our telephone conversation of today in which I requested, on behalf of Jack J. Grynberg, that the hearing on the above application set for December 12, 1984 be continued until a date subsequent to December 24, 1984, so that our attorney, Mr. J. E. Gallegos can be present. Mr. Gallegos is presently out of the country and is now not expected to return until the week of December 12, 1984. It is my understanding that this request will be granted and you will advise the parties of the rescheduled hearing date.

Thank you for your cooperation in this matter.

Sincerely,

GRYNBERG PETROLEUM COMPANY

Susan Stone

Senior Petroleum Landman

ss/pjr

cc: See attached list

Oil Conservation Commission Attention: Ms. Florence Davidson Re: Continuance of Hearing on Order No. R-6873 November 27, 1984

cc: Harvey E. Yates Company
Explorers Petroleum Corp.
Spiral, Inc.
Security National Bank Bldg., Suite 300
Roswell, NM 88201

Yates Energy Corp. Fred G. Yates, Inc. Security National Bank Bldg., Suite 919 Roswell, NM 88201

Seymour Smith
David Smith
#7 So. Dearborn St., Suite 803
Chicago, IL 60602

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GRYNBERG PETROLEUM COMPANY

5000 SOUTH QUEBEC • SUITE 500 • DENVER, COLORADO 80237 USA • PHONE 303 - 850-7490

TELEX: 45-4497 ENERGY DVR
TELECOPIER: 303 - 753-9997

October 18, 1984

EXPRESS MAIL

Oil Conservation Commission P. O. Box 2088 Santa Fe, New Mexico 82724-34

ATTENTION: Mr. R. L. Stamets Acting Director

RECEIVED

RE: Amendatory letter to the Application of Jack J. Grynberg to Amend Commission Order No. R-6873 Dated October 5, 1984

OIL CONSERVATION DIVISION

OCT 9 1984

Gentlemen:

The purpose of this letter is to further clarify Applicant's intentions in the filing of the above referenced application.

Applicant requests that the following provision be incorporated into his October 5, 1984 Application:

If, in the drilling of the second Prepermian Well on the previously established 320 acre standard spacing and proration unit, Applicant encounters shows of production at a shallower horizon Applicant will make every attempt as a prudent Operator to complete said zone and establish production.

Applicant will participate for his 24.6123554% working interest in any well drilled on the previously established 320 acre spacing and proration unit in accordance with Commission Order No. R-6873 and as outlined in in Exhibit "A" to the October 5, 1984 Application.

JACK J. GRYNBERĞ

Susan Stone

Senior Petroleum Landman

SS/pjr

Enclosures as stated

Amendatory Letter of Jack J. Grynberg, No. R-6873 October 18, 1984

cc: To the following CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Harvey E. Yates Company Explorers Petroleum Corp. Spiral, Inc. Security National Bank Bldg., Suite 300 Roswell, NM 88201

Yates Energy Corp. Fred G. Yates, Inc. Security National Bank Bldg., Suite 919 Roswell, NM 88201

Seymour Smith
David Smith
#7 So. Dearborn Street, Suite 803
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Connie Energy 1012 East Lincoln Road Hobbs, NM 88240

XY, Ltd., a Limited Partnership James T. Jennings 500 North Main Southwest Bank Bldg., #1012 Roswell, NM 88201 A.J. LOSEE, CARSON & DICKERSON, P. A.

JOEL M. CARSON

300 AMERICAN HOME BUILDING

JOEL M. CARSON
CHAD DICKERSON
DAVID R. VANDIVER
ELIZABETH LOSEE
REBECCA DICKERSON

300 AMERICAN HOME BUILDING
P. O. DRAWER 239
ARTESIA, NEW MEXICO 882II-0239

AREA CODE 505 746-3508

9 January 1985

Mr. Richard L. Stamets, Director Energy and Minerals Department Oil Conservation Division P. O. Box 2088 Santa Fe, New Mexico 87501

Re: Case No. 8400, Application of Jack J. Grynberg for Amendment of Division Order R-6873, Chaves County, New Mexico

Dear Mr. Stamets:

This will confirm our telephone conversation of January 8, in which the setting on January 10 was vacated; and if the parties are not able to settle the problem it will be reset.

Respectfully submitted,

LOSEE, CARSON & DICKERSON, P.A.

A. J. Losee

AJL: jcb

cc: Mr. Gene Gallegos

Mr. James T. Jennings

Mr. George Yates

JONES, GALLEGOS, SNEAD 😭 WERTHEIM

September 18, 1985

Oil Conservation Commission Post Office Box 2088 Santa Fe, New Mexico 87502-2088

ATTENTION: R. L. Stamets, Director

Amendment to the Application of Jack G. Grynberg to Amend Commission Order R-6873; Commission Case No. 8400

Dear Mr. Stamets:

At the Commission hearing on this case September 18, 1985 it developed that republication would be necessary because of the failure of the notice to mention the unorthodox location and possible involvement of production from the Abo formation. of that republication we request that the application be considered as providing the following:

- Jack G. Grynberg requests designation by the Commission as operator of the second well to be drilled on the established 320 acre proration unit.
- In the alternative, should the Commission policy and judgment so dictate, Grynberg will accept designation as the operator of the unit in place of Harvey E. Yates Company.

Very truly yours,

JONES, GALLEGOS, SNEAD

& WERTHEIM, P.A.

JEG:evm

A. J. Losee, Esq. Bill Carr, Esq. Jack G. Grynberg

O RUSSELL JONES (1912-1978)

JE GALLEGOS JAMES SNEAD JERRY WERTHEIM MURODRIGUEZ JOHN WENTWORTH STEVENI TUCKER ARTURO: JARAMULO PETER V CULBERT JAMES G WHITLEY III STEVEN B MOORES
FRANCIS J MATHEW
ROBERT WALLEN ATTORNEYS AT LAW

JUDITH C HERRERA CHAR: ES A PURDY MARTHA VAZQUEZ LELAND ARES ASENATH M KEPLER MICHAEL BAIRD NANCY R LONG CAROL L COUCH STEVEN B MOORES

Oil Conservation Commission September 18, 1985 Page Two

cc: To the following by CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Harvey E. Yates Company Explorers Petroleum Corp. Spiral, Inc. Security National Bank Bldg., Suite 300 Roswell, New Mexico 88201

Yates Energy Corp. Fred G. Yates, Inc. Security National Bank Bldg., Suite 919 Roswell, New Mexico 88201

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Bearing Services 701 East Main Artesia, New Mexico 88210

Connie Energy 1012 East Lincoln Road Hobbs, New Mexico 88240

XY, Ltd., a Limited Partnership James T. Jennings 500 North Main Southwest Bank Bldg., #1012 Roswell, New Mexico 88201

BEFORE THE OIL CONSERVATION COMMISSION ENERGY AND MINERAL DEPARTMENT OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE APPLICATION OF)	
JACK J. GRYNBERG TO AMEND COMMISSION)	
ORDER NO. R-6873 TO PROVIDE FOR THE)	Case No. 8400
DRILLING OF A SECOND WELL AT AN)	
UNORTHODOX LOCATION ON THE 320-ACRE)	Order No.
PRORATION UNIT, TO CHANGE THE)	
OPERATOR AND TO DETERMINE THE RISK)	Amending Order
FACTOR AND OVERHEAD CHARGES, CHAVES)	No. R-6873
COUNTY, NEW MEXICO.)	
)	

PROPOSED ORDER OF THE COMMISSION SUBMITTED BY THE APPLICANT

BY THE COMMISSION:

This cause came on for hearing at 9:00 a.m. on September 18, 1985, and was continued and readvertised for further hearing on October 17, 1985, at Santa Fe, New Mexico before the Oil Conservation Commission of New Mexico (the "Commission").

Heretofore on January 7, 1982, by Order No. R-6873, the Commission had granted the application of Harvey E. Yates Company to pool all the mineral interests down through the Ordovician formation underlying the W/2 of Section 18, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico, had declared that applicant the operator of a well to be drilled on

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the 320 acre tract and established a risk factor and overhead charges for the well; jurisdiction of the matter was expressly reserved for the entry of further orders as necessary.

Having now heard the evidence and received the exhibits introduced in this case by the applicant Jack J. Grynberg ("Grynberg") and by Harvey E. Yates Company ("Yates") the Commission FINDS AS FOLLOWS:

- 1. The current operator, Yates, drilled and completed a well in the SW/4 NW/4 of the 320 acre unit designated the Seymour State Comm. No. 1. The well was completed in the Abo formation and a lower Prepermian formation. The Prepermian formation is and has been nonproductive since 1984.
- 2. The existing circumstances are that the 320 unit contains one producing Abo well on a 160 acre spacing and no producing Prepermian well on the 320 acre spacing. Grynberg's evidence establishes that second а we l l at an unorthodox location in the SW/4 SW/4 of Section 18 is situated higher structurally; that the proposed location presents a probability of obtaining commercial production from the Abo and from the Fusselman; that the **Fusselman** is а separate Prepermian formation from that which was tested by the Seymour State well.
- 3. Although requested by Grynberg to do so, Yates has refused to undertake further development of the unit by drilling a second well.

- 4. The drilling of the second proposed well is necessary for the unit to be effectively and prudently developed and to prevent waste and protect correlative rights.
- 5. The effect of a pooling order, and specifically in this instance Order R-6873, is to convert separate interests into common interests in the whole unit. Grynberg's 24.6% interest in the property is an undivided fractional interest in all the production from the pooled mineral interests underlying the 320 acre interest, from the surface to the Ordovician formation. Accordingly, Grynberg has a right to drill a well on the proposed location.
- 6. The second well is proposed for the SW/4 SW/4 and constitutes an unorthodox location. A reasonable production limiting factor to compensate for such location is 79%.
- 7. The risk factor of 200 percent and overhead charges of \$3,550.00 per month while drilling and \$355.00 per month while producing and other related terms and conditions, as established by Order R-6873 are reasonable for the second well on the unit.
- 8. The applicant Grynberg is fit and competent to be designated operator of the second well or of the unit.

IT IS THEREFORE ORDERED:

1. That except as hereafter specifically provided,
Order R-6873 remains in force and effect.

- 2. That the unit is dedicated to the drilling of a second well at an unorthodox location in the SW/4 SW/4 to a depth sufficient to test the Prepermian formation and to produce shallower formations, such as the Abo, if production is encountered.
- 3. That Jack J. Grynberg is hereby designated the operator of the subject second well.
- [3. That Jack J. Grynberg is hereby designated the operator of the unit, inclusive of the Seymour State well and the subject second well.]
- 4. That all production proceeds, charges, non-consent costs and other accountings shall be entirely separate and distinct as between the Seymour State and the second well to be drilled.
- 5. That within 20 days after the effective date of this order, the operator shall furnish the Commission and each known working interest owner in the unit an itemized schedule of estimated well costs.
- 6. That the procedures for participation, the risk factor and overhead charges and the operators drilling and accounting responsibilities for this second well are the same as provided in Order R-6873 for the first well.
- 7. That the Commission retains jurisdiction of this cause for the entry of such further orders as it may deem necessary.

Respectfully submitted,

JONES, GALLEGOS, SNEAD & WERTHEIM, P.A.
Attorneys for Applicant

J. E. GALLEGOS
Post Office Box 2228

Santa Fe, New Mexico 87504-2228 (505) 982-2691

CERTIFICATE OF MAILING

of <u>Cleffer</u>, 1985, a true and correct copy of the foregoing Proposed Order Of The Commission Submitted By The Applicant was mailed to counsel of record, A. J. Losee, Post Office Drawer 239, Artesia, New Mexico 88211, by first-class mail, postage prepaid.

J. E. GALLEGOS

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BEFORE THE OIL CONSERVATION COMMISSION ENERGY AND MINERAL DEPARTMENT OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE APPLICATION OF JACK J. GRYNBERG TO AMEND COMMISSION ORDER NO. R-6873 TO PROVIDE FOR THE DRILLING OF A SECOND WELL AT AN UNORTHODOX LOCATION ON THE 320-ACRE PRORATION UNIT, TO CHANGE THE OPERATOR AND TO DETERMINE THE RISK FACTOR AND OVERHEAD CHARGES, CHAVES COUNTY, NEW MEXICO.

Case No. 8400

THE STATUTORY AUTHORITY OF THE OIL CONSERVATION COMMISSION IMPLIES THE POWER TO APPOINT A SECOND OPERATOR OF A SECOND WELL ON A SINGLE POOLED UNIT

Jurisdiction and authority over all matters relating to conservation of oil and gas under the New Mexico Oil and Gas Act are delegated by statute to the Oil Conservation Commission. Section 70-2-6(A)(B) NMSA 1978. The basis of the Commission's statutory powers is founded on the duty to prevent waste and protect the correlative rights of mineral interest owners. Sims v. Mechem, 72 N.M. 186, 382 P.2d 183 (1963).

The correlative rights of each mineral interest owner in a pooled unit consist of the opportunity to produce without waste, and so far as it is practicable, his just and equitable share of the natural gas underlying the pooled reservoir. Section 70-2-33(H), NMSA 1978.

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As fully set forth in the applicant's Substantive Issues Hearing Brief No. 1 (submitted September 16, 1985), Grynberg is owner of an undivided fractional the interest ìn the pooled mineral formations underlying the 320-acre unit in the W/2 of Section 18, T9S, R27E, N.M.P.M., Chaves County, New Mexico. Therefore, he has correlative rights in the pooled resources, and the right to drill the proposed second well pursuant to §70-2-17(C) NMSA 1978. fact that Grynberg is not the owner or lessee of the particular tract within the unit upon which the proposed second well is to be located is immaterial to his correlative rights unit production and his right potential to drill any may location within the unit that be approved by the Commission. Texas Oil and Gas Corporation v. Rein, 534 P.2d 1277, 1278 (Okla. 1975).

Production records from the original unit we l l #1) have established (Seymour State Com. that it i s not productive commerically in the Atoka formation. evidence developed by Grynberg and presented to the Commission on September 16, 1985, indicates that commercial production could be obtained from a separate pre-permian formation, the Fusselman, as well as from the shallower Abo formation, by a dual completion well at the proposed unorthodox location in the SW1/4 of the SW1/4 of Section 18. The Seymour State Com. #1

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well cannot produce from the separate Fusselman formation, and will not effectively drain gas reserves in the Abo formation throughout the entire 320-acre unit.

Unless drilling and operating of the proposed second well at the unorthodox location is permitted by the Commission, interest owners the unit will be denied correlative rights to their equitable shares of the natural gas underlying the pooled reservoir. The current unit operator, HEYCO, has refused Grynberg's demand to drill and operate the second proposed well; therefore, in order to protect correlative rights, Grynberg should be designated the by Commission as operator of this well.

By definition, "underground waste" includes "[t]he locating, spacing, drilling, equipping, operating or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of . . . natural gas ultimately recovered from any pool . . ." §20-2-38(A) NMSA 1978.

HEYCO's failure to locate, drill and operate a well capable of producing the natural gas reserves of the Abo formation underlying the south half of the 320-acre unit, and the reserves of the separate Fusselman formation clearly constitutes a "waste" of resources under the statutory definition.

Prevention of waste and protection of correlative

rights have been described by the New Mexico Supreme Court as "fundamental powers and duties" of the Commission. <u>Continental Oil Co. v. Oil Conservation Commission</u>, 70 N.M. 310, 373 P.2d 809, 817 (1962). Wide discretion has been conferred upon the Commission by the New Mexico Legislature to enable it to carry out these duties:

* * *

To that end, the [Commission] is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof.

70-2-11(A), (B) NMSA 1978 (Emphasis added).

Accordingly, wide discretion is given to a Commission determination of which unit interest owner has the right to drill and operate a pooled unit well. Rein, 534 P.2d at 1279.

Under these circumstances, designation of Grynberg as the operator of the second proposed well while leaving Heyco as operator of the first well can be an appropriate remedy within the statutory authority of the Commission to do "whatever may be reasonably necessary" to carry out the purpose of the Oil and Gas Act.

Respectfully submitted,

JONES, GALLEGOS, SNEAD & WERTHEIM, P.A. Attorneys for Applicant

By

O. E. GALLEGOS

Post Office Box 2228

Santa Fe, New Mexico 87504-2228

(505) 982-2691

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF COLORADO

JUI 15

8Y

Case No. 81 B 00821 M

In re

JACK J. GRYNBERG, a/k/a JACK JAKOB GRYNBERG, a/k/a JACK GRYNBERG, d/b/a JACK GRYNBERG AND ASSOCIATES, d/b/a/ JACK GRYNBERG & ASSOCIATES,

Debtor.

CERTIFICATE

It is certified by the United States Bankruptcy Court for the District of Colorado that this backruptcy action has not been closed and is presently pending before this Court.

Dated at Denver, Colorado this 15th day of October, 1985.

THE COURT:

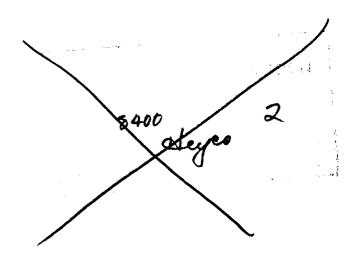
(Court Seal)

Heypo

TAX SMELTER — Rejected an appeal by Denver couple Jack and Celeste Grynberg to avoid paying \$6.7 million in damages in an oil and gas drilling tax shelter program they fraudulently induced 58 people to invest in.

Compiled by Leonard Bruzzese, Lorrie Lynch and Richard Benedetto

USA Today 10/8/85 pp 6A





ENERGY AND MINERALS DEPARTMENT OIL CONSERVATION DIVISION

TONEY ANAYA GOVERNOR POST OFFICE BOX 2088 STATE LAND OFFICE BUILDING SANTA FE, NEW MEXICO 87501 (505) 827-5800

Case 8400

MEMORANDUM

TO: R. L. STAMETS, ACTING DIRECTOR

FROM: MICHAEL E. STOGNER, ACTING CHIEF ENGINEER M.S.

SUBJECT: APPLICATION OF JACK J. GRYNBERG TO AMEND

COMMISSION ORDER NO. R-6873

As per your instructions I have reviewed the subject matter and propose that the subject application be split into two separate cases, one requesting that said Order No. R-6873 be amended to designate Jack J. Grynberg the operator of the well and its 320-acre spacing and proration unit that was the subject of said Order No. R-6873, and the second application seeking to force pool a second well on the same proration unit at an unorthodox location.

This would make for simpler orders and both cases could be consolidated for purposes of testimony. However, I suggest that our attorney look into this matter to see if their proposals are even lawful.

October 12, 1984 fd/

EFFORE THE OIL CONSERVATION COMMISSION ENERGY AND MINERAL DEPARTMENT OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE APPLICATION OF JACK J. GRYNBERG TO AMEND COMMISSION ORDER NO. R-6873 TO PROVIDE FOR THE DRILLING OF A SECOND WELL AT AN UNORTHODOX LOCATION ON THE 320-ACRE PRORATION UNIT, TO CHANGE THE OPERATOR AND TO DETERMINE THE RISK FACTOR AND OVERHEAD CHARGES, CHAVES COUNTY, NEW MEXICO.

CASE NO. 8400

BRIEF ON BEHALF OF HARVEY E. YATES COMPANY

There is before this Commission an application by Jack J. Grynberg for modification and amendment of Commission Order No. R-6873 dated January 1, 1982, wherein the Commission ordered that all formations from the surface down through the Ordovician formation, underlying the W/2 Section 18, Township 9 South, Range 27 East, N.M.P.M., Chaves County, New Mexico, be pooled in a standard 320-acre gas spacing and proration unit. This unit is dedicated to a well drilled at a standard location on said unit of which applicant, Harvey E. Yates Company ("HEYCO") is the operator. With the proposed amendment, Jack J. Grynberg seeks the Commission's permission to drill a second well on said spacing and proration unit at an unorthodox location in the SW/4 SW/4 of Section 18 to test the Fusselman and Abo formations. Grynberg seeks to be appointed as operator of the proposed second well or, in the alternative, to have HEYCO removed as the operator of the first well (the Seymour State No. 1) and be designated as operator of the entire unit.

The central thesis of Crynberg's application is that by operation of the pooling order described above, Grynberg became vested with an undivided 24.6% interest in all lands and formations and leases appurtenant thereto covered by said pooling order and, therefore as such an owner, Grynberg has the <u>right</u> to drill a well to any pooled formation at any location on the pooled unit. This position is a gross misinterpretation of New Mexico Pooling Statute 70-2-17, N.M.S.A. (1978), and extant court decisions interpreting the same or similar pooling statutes. HEYCO asserts that even if the Commission should grant Grynberg's request to drill a second well, Grynberg would not be entitled to a pro rata share of any gas production from the Abo formation due to his lack of ownership of a leasehold interest in the 160-acre Abo spacing unit covering the SW/4 of Section 18.

A. GRYNBERG WOULD NOT BE ENTITLED TO A PRO RATA SHARE OF ABO GAS PRODUCTION FROM THE PROPOSED WELL DUE TO HIS LACK OF OWNERSHIP OF A LEASE-HOLD INTEREST IN LANDS LOCATED WITHIN THE BOUNDARIES OF THE REQUISITE SPACING UNIT FOR ABO GAS PRODUCTION IN THE SW/4 OF SECTION 18.

This position reflects the current status of the law as demonstrated in the decision of Marathon Oil Co. vs. Corporation Comm'n., 651 P.2d 1051, 70 O.& G.R. 80 (Okla. 1982), wherein the court held that the Oklahoma Corporation Commission has the authority to issue a pooling order only as to the deepest drilling unit when more than one common source of supply is located under a drilling unit and to allocate the costs of drilling on the unit on the basis of ownership in the deepest unit. In this instance, drilling units of 640 acres existed as to deeper horizons and 160

acres for a shallower horizon. Marathon Oil was the owner of lease-hold rights in portions of the section, but held no interests in the quarter section chosen as the drilling location. The court found that the Corporation Commission had the power to allocate costs on the basis of the ownership of the leasehold in the deepest formation subject to the pooling order, notwithstanding that the well bore would pass through the shallower formation in which Marathon held no interest in drilling to the deeper formations. The court found further that Marathon would not be entitled to a pro rata share of production obtained from the shallower formation due to the fact that Marathon owned no leasehold interests in the 160-acre spacing unit required for production from the shallow depths, notwithstanding that the shallower formation was also subject to the pooling order.

This is clearly analogous to the present situation where Grynberg has stated that the Abo formation is a secondary goal in the drilling of the proposed well. Spacing for a gas well completed in the Abo formation is 160 acres. Comm. Rule 104 C.II(a). The Marathon decision clearly dictates that if Grynberg completes a gas well in the Abo in the SW/4 of Section 18, he would not be entitled to a pro rata share of production, irregardless of the pooling order, due to his lack of ownership of a leasehold interest in the required spacing unit for Abo production i.e. 160 acres, or in this case the SW/4 of Section 18. This would be the same result if Grynberg had applied to drill a well on the SW/4 of Section 18 sufficient to test only the Abo formation. Grynberg would have no standing to seek a pooling order as he would not be an owner of an

interest with the right to drill in the SW/4 of Section 18, the requisite spacing unit for a well drilled to the Abo formation.

B. THE NEW MEXICO POOLING STATUTE, 70-2-17, N.M.S.A., DOES NOT AFFECT A CONVEYANCE OF AN INTEREST TO A POOLED PARTY SUFFICIENT TO GIVE THAT PARTY THE RIGHT TO DRILL A WELL AT ANY LOCATION ON THE POOLED UNIT.

Under New Mexico Pooling Statute 70-2-17, the situations requiring the application of the statute are described as follows:

Where, however, such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit. (Emphasis added).

The statute them goes on to describe the effect of pooling and how it is treated as to the individual tracts within the pooling unit.

All operations for the pooled oil or gas, or both, which are conducted on any portion of the unit shall be deemed for all purposes to have been conducted upon each tract within the unit by the owner or owners of such tract. For the purpose of determining the portions of production owned by the persons owning interests in the pooled oil or gas, or both, such production shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit. The portion of the production allocated to the owner or owners of each tract or interest included in a well spacing or proration unit formed by a pooling order shall, when produced, be considered as if produced from the separately owned tract or interest by a well drilled thereon. (Emphasis added).

The language denoted above indicates that the Legislature quite purposefully determined that the ownership of each individual

tract in the pooled unit would not be altered by the act of pool-It was recognized, however, that unless production obtained from a well on a pooled unit was attributable on a pro rata basis to the various tracts in the unit, the owner of a lease of a tract on which the unit well was not located could lose his lease for lack of production upon expiration of the primary term of his lease. This would place such owners in an untenable position. crafting the statute as set out above, the Legislature insured that each owner of a lease covering an undivided interest in the unit or a separate tract therein would receive not only their pro rata share of the monetary benefit of any production from the pooled unit but also the legal benefits which flow from production, including the maintenance of a lease beyond its primary term. Grynberg is urging the Commission to erase the internal boundary lines in the W/2 of Section 18. As stated by Grynberg's expert witness, Bruce Kramer, "Essentially you erase all internal boundary lines HEYCO urges the Commission that such an interpretation flies in the face of the language of the pooling statute.

HEYCO further asserts that Grynberg's position is grounded on the proposition that the pooling order effectuates a cross conveyance of ownership throughout the pooled unit and such a position is in contraposition to the available legal authority on the question. As stated by Williams and Meyers in their treatise on oil and gas law:

The statutes and judicial opinions which have dealt with this matter (<u>i.e.</u> the effect of pooling and unitization upon titles and whether a cross conveyance is brought about by the agreement), declare that title is unaffected by the compulsory order

which relates to drilling, production and the allocation of production to particular premises, but not to the title to the premises or ownership of the production once it has been allocated to a particular premises. Williams and Meyers, OIL AND GAS LAW, § 941.3, p. 650.

As stated, the compulsory pooling order relates to the drilling, production and allocation of production to a particular premises. It does not effect a change in ownership of the leasehold interests in the tract pooled.

This statement has been supported by the Oklahoma Supreme Court in their interpretation of a pooling statute which is all but identical to the New Mexico statute. In the decision of Southern Union Production Co. v. Eason Oil Co., 540 P.2d 603, 53 O.& G.R. 64 (Okla. 1975), the court defined the interest obtained under a pooling order by Southern Union from a pooled lessee who elected not to participate in the drilling of the well, as a "right to participate in the working interest in the unit well." Southern Union Production Company obtained a pooling order covering a 640-acre drilling unit for the Cherokee formation, force pooling Eason who owned an 80-acre lease in said section. Southern Union drilled a well which proved to be noncommercial and was later abandoned. The Oklahoma Commission reduced the size of Cherokee drilling units from 640 to Thereafter Eason drilled an oil well on the 80-acre unit 80 acres. covered by his lease. Southern Union brought suit claiming ownership of a percentage of Eason's lease equal to that which it owned in the 640-acre unit. The court denied this claim, stating that Eason had conveyed only its right to participate in the working interest in the unit well, and upon abandonment of the well the pooling order expired and all parties were returned to their original positions.

C. GRYNBERG SEEKS TO HAVE THE COMMISSION ACT BE-YOND THE SCOPE OF ITS LEGISLATIVELY PRESCRIBED POWERS BY VESTING IN HIM AN UNDIVIDED INTEREST IN ALL LANDS AND FORMATIONS POOLED UNDER THE W/2 OF SECTION 18.

thority granted by the Legislature. La Jara Land Developers, Inc. v. Bernalillo County Assessor, 639 P.2d 605, 97 N.M. 318 (1982); Garcia v. Health & Social Services Dept., 540 P.2d 1308, 88 N.M. 419 (1975), rev'd 545 P.2d 1018, 88 N.M. 640 (1976). These powers cannot extend beyond the boundaries set out by the specific language of the particular statute. New Mexico Board of Pharmacy v. New Mexico Board of Osteopathic Medical Examiners, 626 P.2d 554, 95 N.M. 980 (1981); La Jara Land Developers, Inc., supra. In this instance, Grynberg is asking the Commission to take upon itself authority which has not been granted. Grynberg seeks, as described in the language of his brief:

As discussed more fully herein, Grynberg seeks a key legal determination by the Commission that by reason of Order R-6873, Grynberg owns a 24.6% undivided interest in all production from the pooled formations underlying the 320-acre unit... (Hearing Brief in behalf of applicant Grynberg Petroleum Company, p. 3, n. 1).

Subsequently, Grynberg attempts to transform ownership in an undivided interest "in production" created under the pooling order into ownership of an undivided "leasehold interest" under the entire 320-acre pooled unit. The transformation of an undivided interest in production into a real property interest possessing legally defined attributes, including the right to drill, is an

attempt to use the Commission to administratively vest title of an undivided interest in all pooled lands and formations in Grynberg even though such a vesting is outside of the statutorily defined powers of the Commission. If Mr. Grynberg wished to sell his interest in the unit covering the W/2 of Section 18, all that he could sell would be his ownership in his lease covering the E/2 NW/4 which is subject to the Commission's pooling order. Grynberg is surreptitiously seeking to have the Commission vest him with title to an undivided working interest throughout the W/2 of Section 18. It is quite clear such an act lies outside the statutory boundaries of the authority granted to the Oil Conservation Division. Southern Union Production Co. v. Corporation Comm'n., 465 P.2d 454, 36 O.& G.R. 97 (Okla. 1970); McDaniel v. Moyer, 662 P.2d 309, 77 O.& G.R. 335 (Okla. 1983).

D. THE DECISION OF TEXAS OIL & GAS CORP. V. REIN IS NOT AUTHORITY FOR GRYNBERG'S POSITION.

In his brief, Grynberg cites the decision in <u>Texas Oil & Gas Corp. v. Rein</u>, 534 P.2d 1277, 51 O.& G.R. 64 (Okla. 1975), as supporting the proposition advanced by the applicant that Grynberg owns an undivided 24.6% interest in the formations pooled under the order. However, applicant's reliance upon this decision is misplaced.

In this case, Rein was the owner of an unleased undivided 120 mineral acres under the S/2 S/2 of a "drilling unit" consisting of the entire section of 640 acres. One well had been drilled in the center of the section at a normal location and Texas Oil & Gas

Corp. was seeking to modify the spacing order for certain formations to allow the drilling of a second well on the S/2 S/2. court found that it was apparent from the evidence that Texas Oil & Gas owned leases covering the majority of the common source of supply and that, therefore, under the Oklahoma pooling statute, Texas Oil & Gas, as an owner possessing the right to drill a well on the unit to the common source of supply, had the right to request the Commission to pool the interests located within the drilling unit. Grynberg cites this case as authority for his proposition that the pooling order vests him with an undivided 24.6% of all pooled depths with a corresponding right to drill anywhere thereon. However, as stated in the comment by Eugene O. Kuntz following the decision in the Oil & Gas Reporter, "The question presented involves the authority by which an unleased owner can be required to permit drilling on his lands if his land should fall within the boundaries of a drilling unit." 51 O.& G.R. 73.

Although the opinion is silent as to the formations included in the spacing order, it seems clear that the spacing for such formations was 640 acres. It is also clear that Prepermian gas well spacing is 320 acres and Abo gas well spacing is 160 acres. Order R-6873 did not even purport to enlarge Abo gas well spacing.

CONCLUSION

For the foregoing reasons, Order R-6873 should \underline{not} be amended to pool the Abo formation for the production of gas from the SW/4 Section 18.

LOSEE & CARSON, P.A.

A. J. Løsee

P. O. Drawer 239

Artesia, New Mexico 88210 505/746-3508

Attorneys for Harvey E. Yates Company

LAW OFFICES OF

JENNINGS & CHRISTY

1012 SECURITY NATIONAL BANK BUILDING P.O.BOX 1180 ROSWELL, NEW MEXICO 88202-1180

TELEPHONE 622-8432 AREA CODE 505

December 13, 1983

IN RE: FIRST SUPPLEMENTAL OPINION OF TITLE TO:

State of New Mexico Lease L-6775, insofar as the same embraces Lots 1, 2, 3, 4, E\sw\square Section 18, containing 245.04 acres, more or less; and,

State of New Mexico Lease L-6907, insofar as the same embraces E½NW½ Section 18, containing 80 acres, more or less;

NO. 4527-A

collectively covering the Wis Section 18, Township 9 South, Range 27 East, N.M.P.M., Chaves County, New Mexico, containing 325.04 acres, more or less.

HEYCO No. 9142

JAMES T. JENNINGS

K DOUGLAS PERRIN PHIL T. BREWER

SIM B. CHRISTY IV

Seymour Smith State No. 1 Well

Harvey E. Yates Company P. O. Box 1933 Roswell, New Mexico 88201

Attention: Mr. J. E. Cieszinski

Gentlemen:

On April 12, 1983 we advised you the status of title to the captioned leases in the oil and gas mineral estate underlying the captioned lands based upon an examination of prior opinions and abstracts collectively certifying title from inception of records to March 25, 1983 at 8:00 a.m. as to the State records and from inception of records to April 7, 1983 at 8:00 a.m. as to the County records. We have not been furnished a supplemental abstract but we have been furnished certain documents and other curative material which are the basis of this opinion.

From our examination of the foregoing, and supplementing our original opinion of April 12, 1983, for division order purposes, we now advise the status of title to the captioned leases and the oil and gas mineral estate underlying the captioned lands as follows:

NO. 4527-A -- Page Two

December 13, 1983

OFFICIAL TITLE TO STATE LEASES

L-6775 ----- Harvey E. Yates Company ----- ALL L-6907 ----- Jack J. Grynberg ----- ALL

TITLE TO OIL AND GAS

A. As to Production from the Abo formation (NW $\frac{1}{4}$ - 18 = 162.70 acres)

NAME	BPO	APO
State of New Mexico	.12500000 RI	.12500000 RI
Douglas B. Bickerstaff	.00381223 ORR	.00381223 ORR
Melvin A. Brown	.00381223 ORR	.00381223 ORR
David A. Smith	.01779041 ORR	.01779041 ORR
W. T. Wynn	.00381223 ORR	.00381223 ORR
Andrew C. Lattu	.00190612 ORR	.00190612 ORR
David A. Smith	.05309907 WI	.02620909 WI
Seymour Smith	.05309907 WI	.02620909 WI
McClellan Oil Corporation	.09557833 WI	.04717636 WI
James T. Jennings	.00530991 WI	.00262091 WI
Xy Ltd., a limited partnership	.00530991 WI	.00262091 WI
Explorers Petroleum Corp.	.01864049 WI	.01003570 WI
Fred G. Yates, Inc.	.03157353 WI	.01543954 WI
Spiral, Inc.	.00932024 WI	.00501785 WI
Connie Energy Corp.	.00932024 WI	.00501785 WI
Cibola Energy Corp.	.08035736 WI	.03929496 WI
Bearing Service Co.	.03695152 WI	.01543954 WI
Fred Pool	.04926869 WI	.02058604 WI
Plains Broadcasting Company	.09853740 WI	04117209 WI
Yates Energy Corp.	.09777047 WI	.05152639 WI
Harvey E. Yates Co.	.19973055 WI	.10526075 WI
Viking Petroleum, Inc. and	-0-	.43023971 WI
its associates (see below)		
TOTAL	1.00000000	1.0000000

B. As to Production from the Atoka formation ($W_2 - 18 = 325.04$ acres)

NAME	ВРО		APO	
State of New Mexico	.12500000	RI	.12500000	RI
Douglas B. Bickerstaff	.00565407	ORR	.00565407	ORR
Melvin A. Brown	.00565407	ORR	.00565407	ORR
David A. Smith	.02638568	ORR	.02638568	ORR
W. T. Wynn	.00565407	ORR	.00565407	ORR
Andrew C. Lattu	.00282704	ORR	.00282704	ORR.
David A. Smith	.05233163	WI	.03887175	WI
Seymour Smith	.05233163	WI	.03887175	WI
McClellan Oil Corporation	.09419695	MI	,06996916	WI
James T. Jennings	.00523317	WI	,00386718	
Xy Ltd., a limited partnership	.00523317	WI	.00388718	
Explorers Petroleum Corp.	.01919151	WI	.01488435	
Fred G. Yates, Inc.	.03097493	WI	,02289900	WI
Spiral, Inc.	,	WI	.00744217	WI
Connie Energy Corp.	.00959575		.00744217	WI
Cibola Energy Corp.	.07883388	WI	.05827994	
Bearing Service Co.	.03366691	WI	.02289900	
Fred Pool	.04488921	WI	,03053200	MÍ

NO. 4527-A -- Page Three

December 13, 1983

NAME	BPO	APO
Plains Broadcasting Company Yates Energy Corp. Harvey E. Yates Co. Viking Petroleum, Inc. and its associates (see below)	.08977842 WI .09956850 WI .20340366 WI 	.06106400 WI .07642086 WI .15611645 WI .21535811 WI
TOTAL	1.0000000	1.0000000

BPO -- Before "Pay-out" (defined below)

APO -- After "Pay-out" (defined below)

C. As to all other Production (Unreported)

FORCE POOLING

Please refer to page 3, etc. of our original opinion concerning Case 7390, Order R-6873 of the Oil Conservation Commission of Energy and Management Department of the State of New Mexico issued January 7, 1982, which Order compulsorarily pools all mineral interests down through the Ordovician formation underlying the Why Section 18 of the captioned, and providing:

"That any non-consenting working interest owner who does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 200% thereof as a reasonable charge for the risk involved in drilling of the well."

In that Case, the non-consenting working interest owner was Viking Petroleum, Inc. and its associates.

Viking appealed the matter to the District Court of Chaves County in Cause No. CV-82-77, which resulted in a Decision by the District Court, entered September 30, 1982, that the above Order was arbitrary and capricious and contrary to law. From this Decision the operator: Harvey E. Yates Company, appealed to the Supreme Court of the State of New Mexico in Case No. 14632. By a Decision entered November 17, 1983, the New Mexico Supreme Court held:

"Based upon the record in this Case, we find that there was substantial evidence to support the findings made and the conclusions reached by the Commission, and that the Commissioner's Order, is not arbitrary, capricious or contrary to law.

"The judgment of the District Court is reversed. The Order of the Commission is affirmed."

NO. 4527-A -- Page Four

December 13, 1983

Under TITLE TO OIL AND GAS we have now taken into consideration the above Decision by the New Mexico Supreme Court which in effect invokes the 200% penalty clause, and when the consenting working interests have recouped their actual and reasonable well costs plus an additional 200% thereof as a risk factor, then "pay-out" will have occurred; it is our understanding that pay-out has not occurred at the date of this opinion.

As an addendum, the above Commission Order does provide that the 1/8 royalty under the non-consenting owners property shall not be held in suspense and we have given effect to this portion of the Order under TITLE TO OIL AND GAS above.

If and when "pay-out" occurs, you should resubmit to us Schutz Abstract Company abstract 3097 and Gessert-Sanders abstract 52011 in order that we may delineate for you the breakdown of ownership after pay-out of the .43023971 for the Abo formation and the .21535811 for the Atoka formation credited to Viking Petroleum Inc. and its associates.

OIL AND GAS LEASES

Same as original opinion.

EXCEPTIONS TO TITLE AND REMARKS

- 1. Well Information: Same as original opinion except the SUSPEND interest has now been credited in conformity with the above New Mexico Supreme Court case.
 - 2. Lots: Same as original opinion.
 - 3. Burden of ORRs -- L-6775: Same as original opinion.
- 4. Miscellaneous Defects under L-6907: Same as original opinion and after "pay-out", the matter should be resubmitted before runs are released to Viking Petroleum, Inc. and its associates.
 - 5. Limitation of Opinion: Same as original opinion.
 - 6. Interest of Members of this Firm: Same as original opinion.

CONCLUSION

Subject to the above comments, title is approved for division order purposes in the parties noted hereinabove as of the final certificate dates of the abstracts examined in our original opinion as extended by the above New Mexico Supreme Court case.

By

Respectfully submitted,

SBC/vs JENNINGS & CURISTY

All copies of this opinion returned herewith to Heyco's Roswell office.

S. B. Christy

LAW OFFICES OF

JENNINGS & CHRISTY

1012 SECURITY NATIONAL BANK BUILDING
P.O.BOX 1180

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TELEPHONE 622-8432 AREA CODE 505

JAMES T. JENNINGS SIM B. CHRISTY IX K. DOUGLAS PERRIN PHIL T. BREWER DAMON RICHARDS

April 12, 1983

Ċ,

IN RE: OPINION OF TITLE TO: State of New Mexico Lease L-6775, insofar as the same embraces Lots 1, 2, 3, 4, E\SW\ Section 18, containing 245.04 acres, more or less; and,

HEYCO No. 261

State of New Mexico Lease L-6907, insofar as the same embraces E½NW½ Section 18, containing 80 acres, more or less;

NO. 4527

collectively covering the Why Section 18, Township 9 South, Range 27 East, N.M.P.M., Chaves County, New Mexico, containing 325.04 acres, more or less.

HEYCO No. 9142

Seymour Smith State No. 1 Well

Harvey E. Yates Company P. O. Box 1933 Roswell, New Mexico 88201

Attention: Mr. J. E. Cieszinski

Gentlemen:

On October 7, 1981, under our Title Opinion 4327, we advised you the status of title to the captioned leases and lands (and other lands), based upon an examination of abstracts collectively certifying title from inception of records to September 28, 1981 at 8:00 a.m. as to the state records, and from inception of records to September 29, 1981 at 8:00 a.m. as to the county records. In supplement thereof we have today examined:

(a) Schutz Abstract Co., Inc. abstract 3097 of 66 pages, which purports to be a true and correct abstract of all instruments noted of record and on file in the Office of the Commissioner of Public Lands of the State of New Mexico affecting the oil and gas rights to the captioned lands under the terms of the captioned leases, and certified to for the time period from the date of closing of the state abstracts examined in connection with our aforementioned opinion down to March 25, 1983 at 8:00 a.m. This abstract is satisfactory to us in scope and content, and we believe reliance thereon is justified.

Page 2 - NO. 4527

(b) Lawyers Title Insurance Corporation (Gessert-Sanders Division) abstract 52011 of 102 pages, which purports to reflect all instruments filed or recorded in the Office of the Chaves County Clerk, New Mexico, including Probate and District Court proceedings (but excepting Uniform Commercial Code filings), affecting title to the mineral estate only of the captioned lands, and certified to for the time period from the date of closing of the county abstracts examined in connection with our aforementioned opinion down to April 7, 1983 at 8:00 a.m. This abstract contains a satisfactory judgment and lien search against all necessary parties in the chain of title to production from the captioned lands. This abstract is satisfactory to us in scope and content, and we believe reliance thereon is justified.

From our examination of the foregoing and based solely thereon, cumulatively supplementing the prior opinion, for division order purposes we now advise the status of title to the captioned leases and lands as of the final certificate dates of the abstracts now under examination, as follows:

OFFICIAL TITLE TO STATE LEASES

L-6775	 Harvey	E.	Yates	Company	 ALL
L-6907	 Jack J.	. Gı	rynberd		 ALL

TITLE TO OIL AND GAS

A.	As to production from the Abo formation (NW% Sec. 18	= 162.70	acres)
	State of New Mexico	.12500000	RI
	Subtotal RI	.12500000	
	Douglas B. Bickerstaff	-00381223	ORR
	Melvin A. Brown		ORR
	David A. Smith	.01779041	ORR
	W. T. Wynn	.00381223	ORR
	Andrew C. Lattu	.00190612	ORR
	Subtotal ORR	.03113322	
	SUSPEND (see below)	.43023971	WI
	David A. Smith	.02620909	WI
	Seymour Smith	.02620909	WI
	McClellan Oil Corporation	.04717636	WI
	S. B. Christy IV	.00262091	WI
•	"Heyco Group" (see below)	30879071	MI
*		.300/30/1	77 A
	Subtotal WI	.84386678	

TOTAL

1.00000000

в.	As to production from the At-	oka formation (Why Sec. 1	8 = 325.04	acre
	State of New Mexico				
		Subtotal RI		.12500000	
	Douglas B. Bickerstaff Melvin A. Brown			.00565407	ORR ORR
	David A. Smith W. T. Wynn Andrew C. Lattu			.02638568	ORR ORR
		Subtotal ORR		.04617493	
	SUSPEND (see below) David A. Smith			.21535811	WI
	Seymour Smith			0388/1/5	MI
	McClellan Oil Corporation			.06996916	WT
	James T. Jennings			-00388718	WI
	S. B. Christy IV			.00388718	WI
	"Heyco Group" (see below)	~_~~~~		.45797994	WI
• •		Subtotal WI		.82882507	
		TOTAL		1.00000000	

C. As to all other production:

(Unreported)

FORCE POOLING -- SUSPEND

On January 7, 1982, Case 7390, Order R-6873, the Oil Conservation Commission of Energy and Management Department of the State of New Mexico issued an Order compulsory pooling all mineral interests down through the Ordovician formation underlying the W½ Section 18 of the captioned, and providing for a 200% "reasonable charge for risk involved in the drilling of the well" which would be paid by the non-consenting working interest owners to the consenting working interest owners.

We have not tried to calculate this "risk factor" under TITLE TO OIL AND GAS above in view of the pending appeal mentioned below since we do not know whether or not the Commission's Order with respect to the "risk factor" is valid. From that decision Viking Petroleum, Inc., alleged oil and gas lessee in the E½NW½ Section 18, filed an application for review of the Commission's Order in the District Court of Chaves County, New Mexico in Cause No. CV-82-77, which resulted in a decision by the District Court of Chaves County, New Mexico, entered September 30, 1982, that the Order of the Oil Conservation Commission "shall be set aside on the grounds that it is not supported by substantial evidence, is arbitrary and capricious, and is contrary to law." It is our understanding, not reflected from the material under examination, that the District Court's decision has been appealed to the New Mexico Supreme Court, and is currently pending therein.

Under the Oil Conservation Commission decision, the royalty interest (1/8) is to continue to be paid to the royalty owner, and as a consequence we have not placed in SUSPENSE the state royalty involved. However, we have placed in SUSPENSE the remaining interest under the "force pooled" lease and lands which is described as State Lease L-6907 as to the EknWk Section 18, containing 80 acres, more or less. The exact The exact ownership of this interest is contained in our base opinion, and is readily retrieveable when it is determined whether or not the Commission's Order is correct or the District Court Order is correct. Meanwhile, the pipeline purchaser should not pay runs on the SUSPEND interest as to a .43023971 interest in the Abo formation and as to a .21535811 interest in the Atoka formation. When the case has finally been decided by the New Mexico Supreme Court, and all other appeals have been exhausted, we will write a supplemental opinion directing the pipeline purchaser with respect to payment of this SUSPEND interest. Meanwhile, runs may be released to the remaining interests shown under TITLE TO OIL AND GAS above, subject to the other comments and requirements herein contained.

"HEYCO GROUP"

Under TITLE TO OIL AND GAS we have credited the "Heyco Group" with a .30879071 WI (net revenue) in the Abo formation, and with a .45797994 WI (net revenue) in the Atoka formation. The breakdown of this ownership is:

A. As to the Abo formation -- total .30879071:

Name	Interest
Explorers Petroleum Corporation	.01003570
Fred G. Yates, Inc.	.01543954
Spiral, Inc.	.00501785
Connie Energy Corporation	.00501785
Cibola Energy Corporation	.03929496
Bearing Service Company	.01543954
Fred Pool	.02058604
Plains Broadcasting Company	.02058604
Howard Federer	.02058605
Harvey E. Yates Company	.10526076
Yates Energy Corporation	.05152638
TOTAL	.30879071

B. As to the Atoka formation -- total .45797994:

Name	Interest
Explorers Petroleum Corporation	.01488435
Fred G. Yates, Inc.	.02289900
Spiral, Inc.	.00744217
Connie Energy Corporation	.00744217
Cibola Energy Corporation	.05827994
Bearing Service Company	.02289900
Fred Pool	.03053200
Plains Broadcasting Company	.03053200
Howard Federer	.03053200
Harvey E. Yates Company	.15611645
Yates Energy Corporation	.07642086
TOTAL	.45797994

We would call your attention to the fact that there is no formal assignment from Heyco to Fred G. Yates, Inc., Spiral, Inc., Fred Pool, Plains Broadcasting Company, and Howard Federer, and we assume that there is some internal assignments or agreements reflecting this ownership. Technically, they should be recorded in the county records, but since you furnished us the information with respect to ownership inter se among the "Heyco Group", we are not making a formal requirement on the point for present purposes.

OIL AND GAS LEASES

The above oil and gas ownership arises under the following Oil and Gas Leases:

FEATURES	OF	LEASE	L-6775

Form:

167

Original Lessee:

Seymour S. Smith

Date:

December 1, 1971

Recording Data:

The lease is unrecorded in the county records; however, there is no necessity to record the

lease.

Lands:

Lots 1, 2, 3, 4, E\SW\ Section 18 of the captioned, together with other lands, containing a total of 765.04 acres, more or less; all lands are "Wat. Res." lands.

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Term:

For an initial period of five years and a secondary period of an additional five years, and so long thereafter as oil or gas is produced in paying quantities. If you are drilling over the expiration of the fixed term of the lease, then please note paragraph 16 of the lease with respect to notifying the Commissioner of drilling operations together with 30-day periodic reports of progress, and payment of eleventh year rental.

Rental:

Paid to and including the rental due December 1, 1982. If the lease is extended beyond its present fixed term, then a rental of \$382.52 is due and payable to the Commissioner of Public Lands, State Land Office Building, Santa Fe, New Mexico on or before December 1, 1983, and annually thereafter throughout the lifetime of the lease. Rentals continue despite production.

Royalty:

Fixed 121% with shut-in gas well provision.

Other Features:

See page 12, abstract 2433.

FEATURES OF LEASE L-6907

Form:

'67

Original Lessee:

Jack L. Grynberg

Date:

February 1, 1972

Recording Data:

The lease is unrecorded in the county records; however, there is no necessity to record the lease.

Lands:

ENNW's Section 18 of the captioned, and other lands, containing 480 acres, more or less.

Term:

For an initial period of five years and a secondary period of an additional five years, and so long thereafter as oil or gas is produced in paying quantities. If you are drilling over the expiration of the fixed term of the lease, then please note paragraph 16 of the lease with respect to notifying the Commissioner of drilling operations together with 30-day periodic reports of progress, and payment of eleventh year rental.

JENNINGS & CHRISTY

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Rental:

Paid to and including the rental due February 1, 1983. If the lease is extended beyond its present fixed term, then a rental of \$240.00 is due and payable to the Commissioner of Public Lands, State Land Office Building, Santa Fe, New Mexico on or before February 1, 1984, and annually thereafter throughout the lifetime of the lease. Rentals continue despite production.

Royalty:

Fixed 121% with shut-in gas well provision.

Other Features:

See page 36, abstract 2433.

EXCEPTIONS TO TITLE AND REMARKS

1. Well Information: It appears that the Seymour State Com. No. 1 Well located 1,980 feet from the North line and 660 feet from the West line of Section 18 of the captioned was spudded November 30, 1981, and drilled to a total depth of 6,385 feet subsurface.

The well was completed in the Atoka formation on May 22, 1982, with producing interval of 6,008'-6,048', with initial production of 1,722,000 cubic feet of gas, and no water.

The well was also completed May 28, 1982 in the Abo formation with producing interval of 4,912'-4,929', with initial production of 1,646,000 cubic feet of gas, and no water.

In connection with the foregoing, the pipeline purchaser is advised that, except as stated above with respect to SUSPEND interest, there has been no change in the ownership of production from the original completion date of the well down through the close of the abstracts now under examination. As a consequence, all impounded runs, except SUSPEND, should be paid in accordance with this opinion.

2. Lots: All of the captioned lands contain regular 40-acre subdivisions, except:

Section 18: Lot 1 (NW\(\frac{1}{2}\)NW\(\frac{1}{2}\)) --- 41.40 acres
Lot 2 (SW\(\frac{1}{2}\)NW\(\frac{1}{2}\)) --- 41.30 acres
Lot 3 (NW\(\frac{1}{2}\)SW\(\frac{1}{2}\)) --- 41.22 acres
Lot 4 (SW\(\frac{1}{2}\)SW\(\frac{1}{2}\)) --- 41.12 acres

Under present conservation practices in New Mexico, your allowable for any wells drilled on or allocated to the above lots will be proportionately increased as the respective lot acreages bear to the normal 40-acre drillsite. The information is advisory only.

3. Burden of ORRs -- L-6775: Harvey E. Yates Company acquired official title to this lease on May 2, 1977; then on January 1, 1978, Heyco entered into a Declaration of Interest with Seymour Smith and David A. Smith under the terms of which it was agreed that beneficial interest under the lease would be owned 75% by Heyco, 12½% by Seymour Smith, and 12½% by David A. Smith, subject to royalties under the terms of the lease and to overriding royalties of record.

On May 4, 1977, Book 171 at page 440, Heyco and Seymour Smith conveyed David A. Smith a 5% ORR under L-6775, and we have construed this instrument to be a burden on all working interest under this lease in view of the fact that it was of record at the time of the Declaration of Interest mentioned above.

On May 31, 1978, Book 174 at page 146, Heyco, et al, conveyed W. T. Wynn a 1% ORR under this lease; and on May 31, 1978, Book 174 at page 149, Heyco, et al, conveyed Andrew C. Lattu a 1/2% ORR on this lease. We have construed these overriding royalties to be borne solely by Heyco and its successors in title and not by Seymour Smith nor David A. Smith.

On November 8, 1978, Book 176 at page 164, Heyco, et al, conveyed Harvey E. Yates, et al, an 111% operating rights on this lease, and the instrument does not contain a lesser interest clause. Pursuant to your instructions we have construed this instrument to convey a full 111% operating rights not reduced to Heyco's 75% WI under the Declaration of Interest mentioned above.

On October 5, 1978, Book 176 at page 392, Heyco conveyed Coronado a 14.9711% operating rights with a lesser interest clause, and we have construed this instrument to convey Coronado (now Cibola) a 14.9711% x 75% WI, which Heyco owned under the Declaration of Interest mentioned above.

If we have misconstrued your intention on any of the above constructions, kindly advise.

4. Miscellaneous Defects under L-6907: There are several miscellaneous defects and requirements in connection with the working interest ownership and certain overriding royalty ownerships under State Lease L-6907, covering ENNW Section 18. Because these interests have been placed under SUSPENSE, we are not delineating the exceptions and requirements in full, but are prepared to do so when it is finally determined whether or not these interests should be paid to the consenting working interest owners or to the non-consenting working interest owners. We reserve the right to make requirements on the ownership of overriding royalty and working interest under the ENNW Section 18 at the time the matter is finally determined.

- 5. Limitation of Opinion: We would call your attention to the fact that under TITLE TO OIL AND GAS above, we are only reporting the ownership of production for the Abo formation in the NW\(\frac{1}{2}\) Section 18, and for the Atoka formation in the W\(\frac{1}{2}\) Section 18, and to this extent the present opinion is limited. If you need further information as to ownership of other production, please refer the matter to us for further opinion.
- 6. Interest of Members of this Firm: We would call your attention to the fact that James T. Jennings and S. B. Christy IV, who appear to own working interest in the captioned lands, are members of this firm, and as a consequence you may wish to have our report as to ownership of these interests reviewed by other competent counsel.

CONCLUSION

Subject to the above comments, title is approved for division order purposes in the parties noted hereinabove as of the final certificate dates of the abstracts now under examination.

Respectfully submitted,

JENNINGS & CHRISTY

Bv

SBC/jy

All abstracts and other material examined, and all copies of this opinion, returned herewith to Heyco's Roswell office.

HARVEY E. YATES COMPANY AMENDED GAS DIVISION ORDER

To: Harvey E. Yates Company Post Office Box 1933 Roswell, New Mexico 88201 Effective: Date of First Runs
Seymour State #1
Abo Zone Only
Our #78200-01-0

The undersigned hereby certify and warrant that the interest set out opposite the undersigned's name on the Division of Interest Schedule annexed hereto and made part hereof, is the correct and entire ownership and interest, whether royalty, mineral or otherwise, of the undersigned, in the gas produced from the following lands:

Township 9 South, Range 27 East, N.M.P.M.

Section 18: NW/4

Chaves County, New Mexico

The following covenants are also made part of this division order and shall be pending upon the undersigned and the undersigned's heirs, legal representatives, successors, and assigns.

Until further written notice, either from you to the undersigned or from the undersigned to you, you are hereby authorized to receive such gas into your possession, or the possession of any person or company designated by you, the same to be run and measured in accordance with the customary pipeline rules and regulations including adjustments and deductions provided for by law and by rules of applicable regulatory authority, and to account for the proceeds received by you from the sale of such gas according to the aforesaid Division of Interest Schedule. The term "gas" as used herein includes liquid or liquefiable hydrocarbons produced with gas. After metering at the wells, the gas may be commingled with gas produced from other properties, and any liquid or liquefiable hydrocarbons produced with the gas shall, in the case of such commingling, be determined and allocated to the above described property by calculations based upon results of periodic tests, taken not less often than each calendar quarter, to determine the quantity of such hydrocarbons contained in the well stream. You are authorized to receive 100% payment from the purchasing company for such gas, and the undersigned agree to look to you for payment in accordance herewith.

In consideration of your agreements and the mutual benefits hereunder, each of the undersigned ratifies, confirms and adopts the following gas purchase agreement and agrees that the price paid for gas delivered thereunder shall be and is accepted by each of the undersigned and the respective heirs, successors and/or assigns thereof, as the market price for gas during the entire term of such contract:

Gas Purchase Agreement dated December 17, 1982 by and between TRANSWESTERN PIPELINE, Buyer, and HARVEY E. YATES COMPANY, Seller. (Abo Zone Only)

The price to be paid for gas received hereunder shall be based on the amount

HARVEY E. YATES COMPANT AMENDED GAS DIVISION ORDER

Seymour State #1
Ref #78200-01-0
Division Order - Abo Zone Only

Page 2

realized from such sales: provided, however, you may withhold such portion of the price that may be subject to refund under any provision of the above described contract with any purchaser of such gas, any regulation, rule or order of the Federal Energy Regulatory Commission or any successor agency having rulemaking authority under the provisions of the Natural Gas Policy Act of 1978. Upon final determination of the ceiling price payable for such gas pursuant to Section 503 of the Natural Gas Policy Act of 1978, and subject to the terms of said contracts, you shall pay to the undersigned that portion of the price that is not actually refunded by you. Also, any portion of the price actually paid by you to the undersigned which is finally determined to be subject to refund under any said contractual provision or under any said regulation, rule or order, shall be promptly refunded by the undersigned together with any interest which you are required to pay under such final determination. In the absence of such prompt refund, you shall have the right to offset the total amount of any such refund against any other funds coming into your possession and payable to the undersigned.

Amounts payable to the undersigned on gas produced and marketed from said lands during any month shall be payable on or before the last day of the month following the month in which you receive payment from the purchaser or purchasers thereof. Meters and measurements by the purchaser or purchasers shall control all settlements. Prior to computing any royalties or other interest hereunder, you are authorized to deduct any and all federal, state or local taxes imposed on or incident to the severance, production, gathering, processing and marketing of gas, all costs of treating such gas to make it merchantable and all costs which you have incurred in transporting such to any purchaser. If any of the gas is processed through a gasoline plant, each of the undersigned operating interest owners shall bear a proportionate part of any excess government royalty, if any, thereon.

The undersigned agree that you may hold, without interests, the proceeds accruing to the undersigned's interest until there has accrued to such interest the sum of \$5.00.

The undersigned hereby warrant and guarantee the title to the interest credited to the undersigned herein. In the event there is any adverse claim of title to the production affected hereby or any part thereof or to the interest of the undersigned in the lands from which such production is obtained, the undersigned agree that you may hold the proceeds of such production attributable to such interests, without interest, until evidence of good title satisfactory to you has been furnished, or such dispute as to the ownership has been settled. In the event any action or suit is filed in any court affecting title to the interest of any owner herein, or to the gas run credited to such interest, written notice of the filing of owner of such interest stating the court in which the same is filed and the title of such suit or action.

Any of the undersigned executing this division order as a lienholder agree that you are authorized to make payment direct to the owner of the royalty or other interest subject to the lien of all proceeds accruing to such owner's interest and waives any rights thereto until you are furnished written notice to the contrary.

Until you actually receive notice in writing at the above address of any Change in ownership or transfer or any increase or decrease in the amount or Character of any owner's interest (whether or not provided for in any recorded instrument, theretofore furnished to you), together with certified copies of

HARVEY E. YATES COMPANY AMENDED GAS DIVISION ORDER

Seymour State #1 Ref. #78200-01-0 Division Order-Abo Zone Only

Page 3

proper recorded instruments evidence thereof, you may continue to make payments for gas sold on the basis of the ownership set forth in said Division of Interest Schedule, and you shall be held harmless from any loss arising out of any overpayment as a result of failure to receive written notice of any such change in ownership, transfer or difference in interest.

Any such change in ownership or transfer or any increase or decrease in the amount or character of any owner's interest shall be made subject to this division order and shall be effective (insofar as payments made hereunder are concerned) as to gas runs at 7:00 a.m. on the first day of the calendar month, and shall not, as to you be effective as to runs made earlier than 7:00 a.m. on the first day of the calendar month immediately succeeding the month in which you receive notice of such change, transfer or difference.

Each of the undersigned agrees that the interest of the undersigned in the gas produced from said well is as set forth herein and hereby releases you from any and all damages and claims by reason of making payment in accordance with said Division of Interest as herein set forth. Each of the undersigned hereby ratifies, confirms and adopts the lease(s) as so amended, and amendments, if any, thereof, covering the above described lands under which such owner holds an interest, and does hereby grant, lease and let to the present owners of said lease(s) as so amended, as the interest of such owners appears of record, and the respective heirs, successors and assigns of such owners, the lands covered by such lease(s) and amendments, if any.

This division order may be terminated by you or by any one or more of the undersigned (as to the interest of such undersigned) as to any future sales or deliveries of gas from said lands provided that no such termination shall affect any rights given you or any of the undersigned under the terms hereof as to sales or deliveries of gas theretofore made, or as to sums theretofore paid hereunder, and provided further, that no such termination by any of the undersigned shall be effective as to you until 30 days after written notice thereof has been received by you at the above address. Consent is hereby given to you and/or any pipeline company which you may cause to connect with said well, to disconnect and remove such pipelines in case of termination by either you or us of purchase under this division order.

All of the provisions herein contained shall apply to each of the undersigned separately and not jointly. This division order may be signed in multiple counterpart and shall be binding upon each party as soon as signed by each party regardless of whether or not same is signed by any other party.

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HARVEY E. YATES COMPANY Amended Gas Division Order

Page 1

Seymour State #1 (Our #78200-01-0) Abo Zone Only

Effective: Date of First Sale

DIVISION OF INTERESTS SCHEDULE

Owner Number	Name	* Type	BPO Decimal Interest	APO Decimal Interest
72080	State of New Mexico	02	.12500000	.12500000
09430	Douglas B. Bickerstaff	03	.00381223	.00381223
11120	Melvin A. Brown	03	.00381223	.00381223
96260	W. T. Wynn	03	.00381223	.00381223
51596	Andrew C. Lattu	03	.00190612	.00190612
79950	David A. Smith	03	.01779041	.01779041
79950	David A. Smith	01	.05309907	.02620909
80090	Seymour Smith	01	.05309907	.02620909
55530	McClellan Oil Corporation	01	.09557833	.04717636
46105	James T. Jennings	01	.00530991	.00262091
96532	XY Ltd., a limited partnership	01	.00530991	.00262091
26620	Explorers Petroleum Corporation	01	.01864049	.01003570
96865	Fred G. Yates, Inc.	01	.03157353	.01543954
80700	Spiral, Inc.	01	.00932024	.00501785
15333	Connie Energy Corporation	01	.00932024	.00501785
15725	Cibola Energy Corporation	01	.08035736	.03929496
08610	Bearing Service	01	.03695152	.01543954
71330	Fred Pool Drilling Company	01	.04926869	.02058604
71000	Plains Broadcasting Company	01	.09853740	.04117209
99980	Harvey E. Yates Company	01	.19973055	.10526075
96824	Yates Energy Corporation	01	.09777047	.05152639
90551	Viking Petroleum, Inc.	01	-0-	.43023971
	Total		1.00000000	1.00000000

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^{*} Legend of Interests: 01 = Working Interest 02 = Royalty Interest

^{03 =} Overriding Royalty 04 = Production Payment

HARVEY E. YATES COMPANY Amended Gas Division Order

Seymour State #1 (Our #78200-01-0) Abo Zone Only

Effective: Date of First Sale

DIVISION OF INTEREST SCHEDULE

Owner Number	<u>Name</u>	* Type	BPO Decimal Interest	APO Decimal Interest
٨	NOTE: This Page 2 is for the below named	interest owners only		
06190	Rosemary T. Avery	01	.00176812	.00086461
14160	J. E. Cieszinski	01	.00265217	.00129691
17861	A. J. Deans	01	.00315736	.00154396
33962	Thomas J. Hall	01	.00133030	.00065052
34571	Peck Hardee	01	.00265217	.00129692
61070	Ray Nokes	01	.00126294	.00061758
75976	Arlene T. Rowland	01	.00158289	.00077404
97650	Micky Young	01	.00138923	.00067934
	Sub Total		.01579518	.00772388
99980	Harvey E. Yates Company	01	.18912628	.10007524
96824	Yates Energy Corporation	01	.09257956	.04898802
	Total		.29750102	.15678714

*Legend of Interest:

01 = Working Interest
02 = Royalty Interest

03 = Overriding Royalty 04 = Production Payment

JONES, GALLEGOS, SNEAD & WERTHEIM

October 30, 1985

HAND-DELIVERED

RECEIVED

OCT 3 0 1985

Mr. R. L. Stamets, Director Oil Conservation Division Energy and Minerals Department New Mexico State Land Office Santa Fe. New Mexico 87501

OIL CONSERVATION DIVISION

RE: Application of Jack Grynberg OCC Case No. 8400

Dear Mr. Stamets:

Prior to our filing in this case yesterday we had expected an Affidavit from Ernest W. Lohf, attorney for Jack Grynberg in the Colorado bankruptcy proceeding. The necessity of this affidavit was created by the exhibits introduced by Yates Company at the continued hearing casting doubt upon Mr. Grynberg's financial soundness.

The affidavit just arrived and we are submitting it for inclusion in the record of this case. Sufficient copies for all members of the Commission and the reporter are enclosed.

Very truly yours,

JONES, GALLEGOS, SNEAD

& WERTHEIM, P.A.

J. E. GALLEGO

JEG: evm

Enclosures

cc: A. J. Losee, Esq. (w/enclosure)
Jack Grynberg

Morris Ettinger

O. RUSSELL JONES (1912-1978)

JE GALLEGOS
JAMES SNEAD
JERRY WERTHEIM
M J RODRIGUEZ
JOHN WENTWORTH
STEVEN L. TUCKER
ARTURO L JARAMILLO
PETER V CULBERT
JAMES G. WHITLEY III
FRANCIS J MATHEW
ROBERT W ALLEN

JUDITH C. HERRERA CHARLES A. PURDY MARTHA VAZQUEZ LELAND ARES ASENATH M. KEPLER MICHAEL BAIRD NANCY R. LONG CAROL L. COUCH STEVEN B. MOORES

ATTORNEYS AT LAW

BEFORE THE OIL CONSERVATION COMMISSION ENERGY AND MINERAL DEPARTMENT OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE APPLICATION OF)			
JACK J. GRYNBERG TO AMEND COMMISSION)			
ORDER NO. R-6873 TO PROVIDE FOR THE)			
DRILLING OF A SECOND WELL AT AN)			
UNORTHODOX LOCATION ON THE 320-ACRE)	Case	No.	8400
PRORATION UNIT, TO CHANGE THE)			
OPERATOR AND TO DETERMINE THE RISK)			
FACTOR AND OVERHEAD CHARGES, CHAVES)			
COUNTY, NEW MEXICO)			

AFFIDAVIT OF ERNEST W. LOHF

CITY	AND	COUNTY	OF	DENVER)	
)	ss.
STATE	E OF	COLORAI	00)	

Ernest W. Lohf, having been first duly sworn, upon oath states as follows:

l. I am a citizen of the United States and a resident of Denver, Colorado. I am an attorney at law and duly admitted to practice before the Colorado Supreme Court, other Colorado courts, the United States District Court for the District of Colorado, the United States Court of Appeals for the Tenth Circuit and the United States Supreme Court. I have practiced law full-time since 1956, primarily in regard to matters arising under federal and state securities laws, the federal bankruptcy laws and related litigation. I am a senior member of Lohf & Barnhill, P.C., Attorneys at Law, which has its office at 950 South Cherry Street, Suite 900, Denver, Colorado.

- 2. I acted as counsel to Jack J. Grynberg, the above-named applicant, in connection with certain litigation and other matters since 1976. My representation included acting as his primary counsel in connection with his filing of a voluntary petition under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§101 et seq. on February 20, 1981. His wife, Celeste C. Grynberg, also filed a voluntary petition under Chapter 11 of the Bankruptcy Code on the same date. The two cases, Nos. 81 B 00821M and 81 B 00825M, respectively, were filed and administered in the United States Bankruptcy Court for the District of Colorado. Although not consolidated, for most purposes the two cases were administered jointly; and I have detailed familiarity with most proceedings in both cases.
- 3. Mr. and Mrs. Grynberg filed a Second Modified Joint Plan of Reorganization (the "Plan") in their respective Chapter 11 cases. The Plan generally provides, subject to resolution of disputes involving certain of the claims against their respective estates, that all claims which have been or which hereafter may be allowed and ordered paid by the United States Bankruptcy Court for the District of Colorado shall be paid in cash and in full with all interest properly due and payable. After notice and hearing, the Honorable John P. Moore, then United States Bankruptcy Judge, entered his order on April 21, 1982, approving and confirming the Plan in the two Chapter 11 cases. The two cases have not been closed and formally are still pending in the United

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Confirmation of the Plan operated, in accordance with the provisions of Section 1141 of the Bankruptcy Code, 11 U.S.C. \$1141, to revest in the Chapter 11 debtors, after confirmation of the Plan, all property of their respective estates free and clear of all claims and interest of creditors, equity security holders and other persons except as provided in Section 1141, in the Plan or in the order confirming the Plan. To the best of my knowledge, information and belief, none such exception is presently applicable, otherwise material or inhibits Mr. or Mrs. Grynberg from dealing in or with their property and estate to the extent possible had the Chapter 11 cases not been filed, except that the Plan continues in effect a deposit, presently aggregating approximately \$9.5 million, by Jack J. Grynberg made with the Clerk of the United States Bankruptcy Court in September 1981 as substitute collateral for certain disputed claims which have not been finally allowed (with the exception of one claim for approximately \$126,000). Proceedings in respect to remaining claims so collateralized are still in progress.

5. Except as otherwise stated herein, the statements herein are made as of my knowledge.

Ernest W. Lohf

Subscribed and sworn to before me this 200 day of October, 1985, by Ernest W. Lohf.

Witness my hand and official seal.

My commission expires:

GLORIA A. BOROWSKI

Notary Public

BEFORE THE OIL CONSERVATION COMMISSION ENERGY AND MINERAL DEPARTMENT OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE APPLICATION OF)			
JACK J. GRYNBERG TO AMEND COMMISSION)			
ORDER NO. R-6873 TO PROVIDE FOR THE)			
DRILLING OF A SECOND WELL AT AN)			
UNORTHODOX LOCATION ON THE 320-ACRE)	Case	No.	8400
PRORATION UNIT, TO CHANGE THE)			
OPERATOR AND TO DETERMINE THE RISK)			
FACTOR AND OVERHEAD CHARGES, CHAVES)			
COUNTY, NEW MEXICO)			

AFFIDAVIT OF ERNEST W. LOHF

CITY	AND	COUNTY	OF	DENVER)
)	ss.
STATE	OF	COLORAI	00))

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Witness my hand and official seal.

My commission expires:

GLORIA A. BOROWSKI

Notary Public

JONES, GALLEGOS, SNEAD WERTHEIM

October 29, 1985

HAND-DELIVERED

RECEIVED

Mr. R. L. Stamets, Director Oil Conservation Division Energy and Minerals Department New Mexico State Land Office Santa Fe, New Mexico 87501

OCT 29 1985

OIL CONSERVATION DIVISION

RE: Application of Jack Grynberg OCC Case No. 8400

Dear Mr. Stamets:

In accordance with the Commission's request at the close of the hearing in this matter, in behalf of the applicant we are submitting a Proposed Form of Decision Order.

In light of the exhibits introduced in behalf of Yates Company at the continued hearing which questioned the financial responsibility of Jack J. Grynberg, we submit as a late-filed exhibit five copies of the enclosed financial statement of the applicant. It is requested that it be admitted into the record as Applicant's Exhibit No. 17, with copies being distributed to other members of the Commission and to the reporter.

Very truly yours,

JONES, GALLEGOS, SNEAD

& WERTHEIM, P.A.

Bv

J. E. GALLEGOS

JEG:hvm Enclosures

cc: A. J. Losee, Esq.
Jack Grynberg
Morris Ettinger

O. RUSSELL JONES (1912-1978)

J.E. GALLEGOS
JAMES SNEAD
JERRY WERTHEIM
M.J. RODRIGUEZ
JOHN WENTWORTH
STEVEN L. TUCKER
ARTUROL JARAMILLO
PETER V. CULBERT
JAMES G. WHITLEY III
FRANCIS J. MATHEW
ROBERT W. ALLEN

JUDITH C. HERREPA CHARLES A. PURDY MARTHA VAZQUEZ LELAND ARES ASENATH M. KEPLER MICHAEL BAIRD NANCY R. LONG CAROL L. COUCH STEVEN B. MOORES

ATTORNEYS AT LAW

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BEFORE THE OIL CONSERVATION COMMISSION ENERGY AND MINERAL DEPARTMENT OF THE STATE OF NEW MEXICO

)	
)	
)	Case No. 8400
)	
)	Order No.
)	
)	Amending Order
)	No. R-6873
)	
)	
)))))))))

PROPOSED ORDER OF THE COMMISSION SUBMITTED BY THE APPLICANT

BY THE COMMISSION:

This cause came for hearing on аt 9:00 on September 18, 1985, and was continued and readvertised further hearing on October 17, 1985, at Santa Fe, New Mexico before the Oil Conservation Commission of New Mexico (the "Commission").

Heretofore on January 7, 1982, by Order No. R-6873, the Commission had granted the application of Harvey E. Yates Company to pool all the mineral interests down through the Ordovician formation underlying the W/2 of Section 18, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico, had declared that applicant the operator of a well to be drilled on

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the 320 acre tract and established a risk factor and overhead charges for the well; jurisdiction of the matter was expressly reserved for the entry of further orders as necessary.

Having now heard the evidence and received the exhibits introduced in this case by the applicant Jack J. Grynberg ("Grynberg") and by Harvey E. Yates Company ("Yates") the Commission FINDS AS FOLLOWS:

- 1. The current operator, Yates, drilled and completed a well in the SW/4 NW/4 of the 320 acre unit designated the Seymour State Comm. No. 1. The well was completed in the Abo formation and a lower Prepermian formation. The Prepermian formation is and has been nonproductive since 1984.
- 2. The existing circumstances are that the 320 unit contains one producing Abo well on a 160 acre spacing and no producing Prepermian well on the 320 acre spacing. Grynberg's second well evidence establishes that а at an unorthodox location in the SW/4 SW/4 of Section 18 is situated higher structurally; that the proposed location presents a probability of obtaining commercial production from the Abo and from the Fusselman: that the **Fusselman** is а separate Prepermian formation from that which was tested by the Seymour State well.
- 3. Although requested by Grynberg to do so, Yates has refused to undertake further development of the unit by drilling a second well.

Order of the Commission - Page 2

- 4. The drilling of the second proposed well is necessary for the unit to be effectively and prudently developed and to prevent waste and protect correlative rights.
- 5. The effect of a pooling order, and specifically in this instance Order R-6873, is to convert separate interests into common interests in the whole unit. Grynberg's 24.6% interest in the property is an undivided fractional interest in all the production from the pooled mineral interests underlying the 320 acre interest, from the surface to the Ordovician formation. Accordingly, Grynberg has a right to drill a well on the proposed location.
- 6. The second well is proposed for the SW/4 SW/4 and constitutes an unorthodox location. A reasonable production limiting factor to compensate for such location is 79%.
- 7. The risk factor of 200 percent and overhead charges of \$3,550.00 per month while drilling and \$355.00 per month while producing and other related terms and conditions, as established by Order R-6873 are reasonable for the second well on the unit.
- 8. The applicant Grynberg is fit and competent to be designated operator of the second well or of the unit.

IT IS THEREFORE ORDERED:

That except as hereafter specifically provided,
 Order R-6873 remains in force and effect.

- 2. That the unit is dedicated to the drilling of a second well at an unorthodox location in the SW/4 SW/4 to a depth sufficient to test the Prepermian formation, and to produce shallower formations, such as the Abo, if production is encountered.
- 3. That Jack J. Grynberg is hereby designated the operator of the subject second well.
- [3. That Jack J. Grynberg is hereby designated the operator of the unit, inclusive of the Seymour State well and the subject second well.]
- 4. That all production proceeds, charges, non-consent costs and other accountings shall be entirely separate and distinct as between the Seymour State and the second well to be drilled.
- 5. That within 20 days after the effective date of this order, the operator shall furnish the Commission and each known working interest owner in the unit an itemized schedule of estimated well costs.
- 6. That the procedures for participation, the risk factor and overhead charges and the operators drilling and accounting responsibilities for this second well are the same as provided in Order R-6873 for the first well.
- 7. That the Commission retains jurisdiction of this cause for the entry of such further orders as it may deem necessary.

Order of the Commission - Page 4

Respectfully submitted,

JONES, GALLEGOS, SNEAD & WERTHEIM, P.A. Attorneys for Applicant

By

J. E. GALLEGOS

Post Office Box 2228

Santa Fe, New Mexico 87504-2228

(505) 982-2691

CERTIFICATE OF MAILING

It is hereby certified that on the 29th day of Clather , 1985, a true and correct copy of the

foregoing Proposed Order Of The Commission Submitted By

Applicant was mailed to counsel of record, A. J. Losee, Post

Office Drawer 239, Artesia, New Mexico 88211, by first-class

J. E. GALLEGOS

The

7580A

mail, postage prepaid.

Order of the Commission - Page 5

FINANCIAL STATEMENT DECEMBER 31, 1984

ASSETS	
Cash Certificates of Deposit & Other Marketable Services Accounts & Notes Receivable	\$ 744,209 14,391,969 1,869,997
Total Current Assets	\$17,006,175
Oil & Gas Properties, Net of Depletion & Depreciation Office Furniture & Equipment, Net of Depreciation Automobiles, Net of Depreciation Other Long Term Investments	3,142,609 264,621 38,344 2,677,403
Total Assets	\$23,129,152
LIABILITIES & NET WORTH	
Federal & State Income Taxes Payable Accounts Payable	\$ 328,501 356,174
Total Current Liabilities	\$ 684,675
Deferred Credit	282,357
Net Worth	\$22,162,120
Total Liabilities & Net Worth	\$23,129,152

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