

CURRICULUM VITA

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EDUCATION:

B.A. 1968, J.D. 1972
University of California at Los Angeles

LL.M. 1975
University of Illinois, College of Law

BAR ADMISSIONS:

California - 1972

EMPLOYMENT:

Private Practice
Los Angeles, California
(June 1972 - August 1973)

Assistant Professor (1974-1977)
Associate Professor (1977-1979)
Professor (1979-Present)
School of Law, Texas Tech University

Visiting Professor
School of Law, University of Indiana (Fall 1979); Lewis & Clark Law
School (Summer 1980); University of Florida, Holland Law Center (1982-
1983)

LAW REVIEW PUBLICATIONS:

Kramer and Pearson, The Implied Marketing Covenant in Oil and Gas Leases:
Some Needed Changes for the 80's, 45 La. L. Rev. (1985) (accepted for
publicatoin)

Kramer, Developmental Conflicts: The Case for Reciprocal Accommodation
21 Hous. L. Rev. 49 (1984).

Kramer, Transboundary Air Pollution and the Clean Air Act: An Historical
Perspective, 32 Kans L. Rev. 181 (Fall 1983).

Kramer, Pooling and Unitization Orders - Application of Administrative
Law Principles, 1983 Inst. on Oil and Gas Law and Taxation 259.

Kramer, Development Agreements: To What Extent Are They Enforceable,
10 Real Estate L.J. 29 (1981).

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- Kramer, Section 1983 and Municipal Liability: Selected Issues Two Years After Monell v. Department of Social Sciences, 12 Urban Lawyer 232 (1980) - reprinted in Froehlich & Carlisle, (ed.) Section 1983: Sword and Shield (ABA 1983).
- Kramer, Air Quality Modeling: Judicial, Legislative and Administrative Reactions, 5 Col. J. Env. Law 236 (1979).
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- Kramer, Economics, Technology and the Clean Air Amendments of 1970: The First Six Years, 6 Ecol. L.Q. 161 (1976).
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- Book Review, Mandelker, Land Use Law and Peterson and McCarthy, Handling Zoning and Land Use Litigation: A Practical Guide, 15 Urban Lawyer 671 (1983).
- Book Review, Cook, Zoning for Downtown Urban Design 15 Urban Lawyer 533 (1983).
- Book Review, Williams, American Land Planning Law: Cases and Materials (2 vol.), 7 Ecol. L.Q. 1045 (1979).

BOOK PUBLICATIONS:

- Kramer, Legal Aspects of Use and Development of Wildlife Resources on Private Lands: Colorado, Kansas, New Mexico, Oklahoma, and Texas -- Great Plains Agricultural Council (U.S. Dep't of Agriculture - 1982).
- Givens, R. (editor) Legal Strategies for Industrial Innovation (1 chapter -- State and Local Regulation of Innovation) - (1982 with 1983 and 1984 Supplement).
- Rose, J. (editor) - Tax and Expenditure Limitations (2 chapters) (1982).
- Revised Volumes II & III, Myers, The Law of Pooling and Unitization, 2d ed. (Matthew Bender & Co.).

OTHER PUBLICATIONS:

- Memorandum, Kentucky ex rel. Hancock v. Train, Preview of U.S. Supreme Court Cases, 1975 Term, No. 6 (1976).
- Memorandum, Union Electric v. EPA, Preview of U.S. Supreme Court Cases, 1975 Term, No. 37 (1976).

Memorandum, Texas v. New Mexico, Preview of U.S. Supreme Court Cases, 1979 Term (1980).

The Pros and Cons of Mandatory Dedication (with J.D. Mertes), Urban Land (April 1979) reprinted in V Management & Control of Growth, 59-63 (Urban Law Inst. 1980).

An Analysis of State Laws and Regulations Impacting Animal Waste Management (with G. Whetstone and D. Wells) (U.S. Environmental Protection Agency) (1977).

A Review and Summary of State Laws Regarding the Disposal of Reservoir Clearing and Cleaning Debris (with L. Urban and G. Whetstone) (Corps of Engineers) (1978).

Clean Air Act Compliance Strategies - Materials for Southwest Legal Foundation Short Course on Local Government Problems (May 1979).

An Analysis of Federal Statutes Impacting Forest Service Planning and Management Responsibilities (with F. Skillern and C. Bubany) (Vol. I - Planning Sheets, Vol. II - Comprehensive Review).

Air Quality Modeling (Invited Paper), American Meteorological Society/Air Pollution Control Agency, Second Joint Conference on Applications of Air Pollution Meteorology (March 24-27, 1980).

The Impact of the Commerce Clause on the Interstate Disposal of Hazardous Wastes (Invited Paper). Proceedings of the Second National Conference on Hazardous Materials Management (March 4-8, 1981).

The Taking Issue: A Background Study and Selected New Problems (Keynote Address), Environmental Law Seminar - State Bar of Texas (May 21-24, 1981).

A Planner's Guide to the Legal Literature on Planning, Land Use Law and Zoning Digest (August 1981).

Contract Zoning: Old Myths and New Realities -- American Planning Association -- Planning Advisory Service Publication Series (Summer 1982).

OTHER RESEARCH PROJECTS:

Legal Advisor and Associate Investigator

U.S. Environmental Protection Agency project, "Analysis of State Laws and Regulations Impacting the Management of Animal Wastes"
October 1976 - November 1977.

Legal Advisor

U.S. Corps of Engineers project, "Review of Environmental Laws Impacting Disposal of Reservoir Clearing and Cleaning Debris"
May 1977 - November 1977

Associate Investigator

U.S. Forest Service project, "Review of Federal Laws and Regulations that Affect the Land Management and Planning Process"
April 1977 to present.

Co-Principal Investigator

Texas Tech University, Center for Energy Research Project, "Model Ordinances - Covenants for the Solar Energy Residence"
October 1, 1977 - September 30, 1979.

Principal Investigator

U.S. Forest Service project, "Legal Constraints on Rural Recreation Wildland Development"
June 1978 - December 1979.

Principal Investigator

U.S. Forest Service project, "Legal Constraints Imposed by the Clean Air Act on Recreational Land Use Planning"
March 1979 - December 1980.

Legal Advisor

Corps of Engineers project, "Development of a Procedure to Review Army Environmental Impact Assessments and Statements"
August 1978 - May 1979.

Principal Investigator

U.S. Forest Service project, "Legal Aspects of Use and Development of Wildlife Resources on Private Lands"
May 1979 - December 1980.

Legal Investigator

U.S. Water & Power Resources Service Project, "Assessment Study of Playa Lakes"
September 1980 - February 1981.

Legal Advisor

Texas Energy & Natural Resource Advisory Council project, "Fuel Grade Ethanol from Cotton Gin Residues"
September 1980 - August 1981.

Principal Investigator

Texas Energy & Natural Resources Advisory Council project, "The Developing Problem of Reconciling Surface Mining to Oil and Gas Development"
March - July 1982

UNIVERSITY SERVICES:

Chairperson, Writing Contests Committee
September 1975 - May 1982

Member, Ad Hoc Honor Code Committee
February 1977 - April 1979

Member, Library Committee
September 1978 - May 1982

Member and Chairperson, Personnel Committee
September 1980 - May 1982; September 1983 - August 1984

Member, Dean Search Committee
March 1981 - August 1981

Chairperson, Ad Hoc Academic Planning Committee
January - April 1982

Member and Chairperson, University Faculty Development Committee
May 1978 - August 1981

Member, University Committee for Protection of Human Subjects
September 1978 - August 1980

Chairperson, University Faculty Grievance Panel
May 1981 - August 1982

PROFESSIONAL SERVICES:

Contributing Editor

Southwestern Legal Foundation, Oil and Gas Reporter

Consultant and Expert Witness

Dorcoster Gas Litigation, Summer 1984

Supplement Author

Myers, The Law of Pooling and Unitization 2d ed. (2 vol.) 1979 - 1984
Annual Supplements (Matthew Bender & Co.)

Indexing Author

Southwestern Legal Foundation, Oil and Gas Reporter
(Matthew Bender & Co.)

Instructor

Southwestern Legal Foundation Short Course on Local Government Problems
May 16-18, 1979

Consultant

City of Plano, Texas - Drafting of Mandatory Dedication of Parkland
Ordinance
January - June 1979

Participant

Seventh Annual Law and Economics Symposium, San Diego, California
July 29 - August 20, 1976

Instructor

National Air Quality Course, National Interagency Fire Training
Center, U.S. Forest Service
October 1978 - January 1979; October 1979 - January 1980

Instructor

Texas Office of Traffic Safety, Texas Municipal Court Judges Seminar
and Short Course, Texas Tech University School of Law and Division
of Continuing Education. Abilene, Wichita Falls, Lubbock, Amarillo
and Junction (1977-1980).

Consultant

Research Planning Consultants, Austin, Texas
(Land Use, Environmental and Energy-Related Matters)

Consultant

U.S. Environmental Protection Agency, Workshop on Air Quality
Modeling, Airlie House, Virginia
May 3-7, 1981

Speaker

Institute on Oil and Gas Law and Taxation, Southwestern Legal
Foundation
January 1983

Speaker

Natural Resources Teachers Institute, Rocky Mountain Mineral Law
Foundation
May 1983

Speaker

Short Course on Land Use Planning, Southwestern Legal Foundation
May 1983

Member

Advisory Board, Municipal Legal Studies Center, Southwestern Legal
Foundation

COURSES TAUGHT:

Property	Water Law
Land Use Planning	Seminar in Constitutional Law
Environmental Law	Copyright
Oil & Gas	
State and Local Government Law	

REFERENCES:

Will be furnished on request.

**LEGAL PRINCIPLES UNDERLYING
APPLICATION OF JACK J. GRYNBERG**

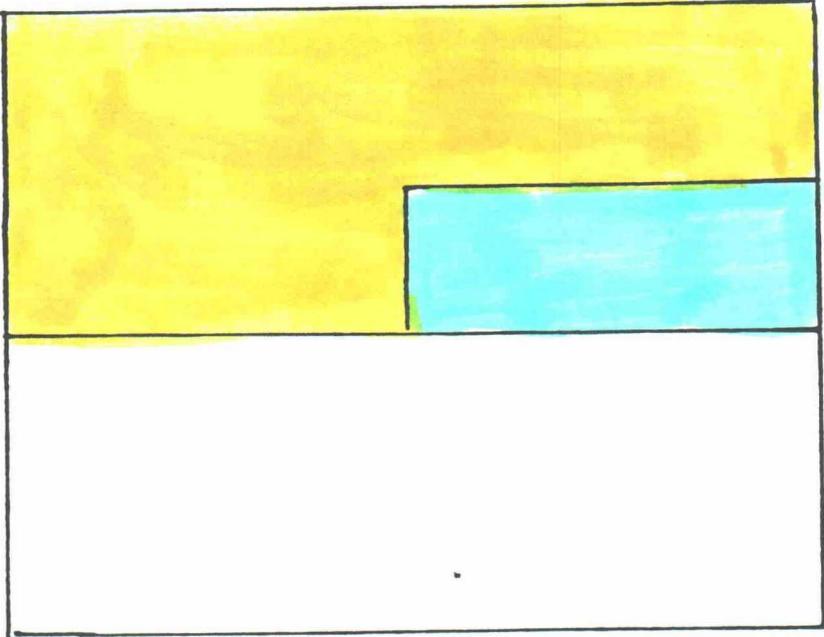
1. Order R-6873 has created an undivided fractional interest in the production from the pooled mineral interests underlying the 320-acre unit, from the surface to the Ordovician Formation. Grynberg's undivided fractional interest in all production from the unit is 24.6%.

2. Upon refusal of the operator to seek authority to drill the off-patterned well, the Commission, in order to prevent waste and protect correlative rights, has the authority to designate any of the working interest owners in the unit as the operator of the off-patterned well.

3. Grynberg's non-consent status in the Seymour State Com. #1 Well does not affect his interest in or right to fully participate in all production from the proposed second well.

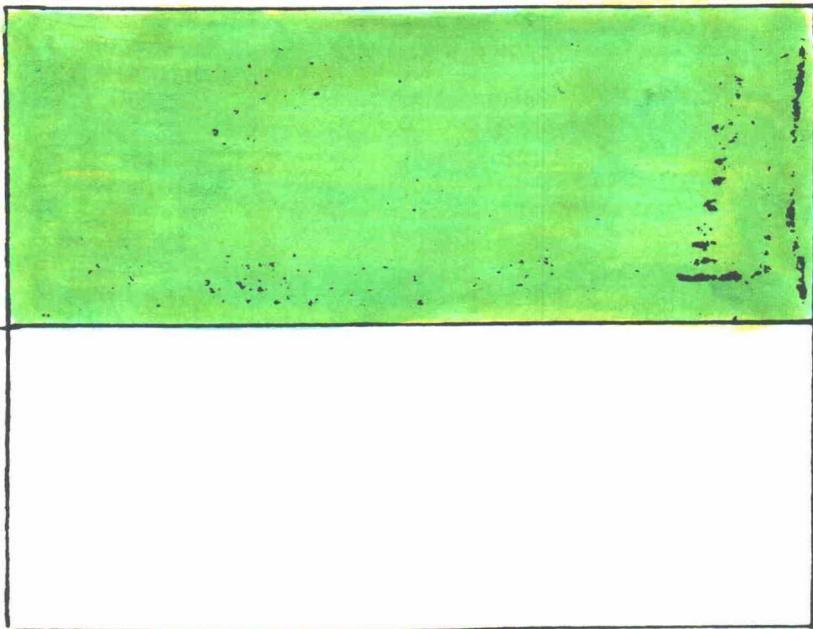
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EFFECT OF COMPULSORY POOLING UNDER ORDER R-6873 ON OWNERSHIP OF PRODUCTION FROM THE SURFACE TO THE ORDOVICIAN IN W/2 OF §18



OWNERSHIP BEFORE ORDER R-6873

- HEYCO ± 240 acres
- GRYNBERG ± 80 acres

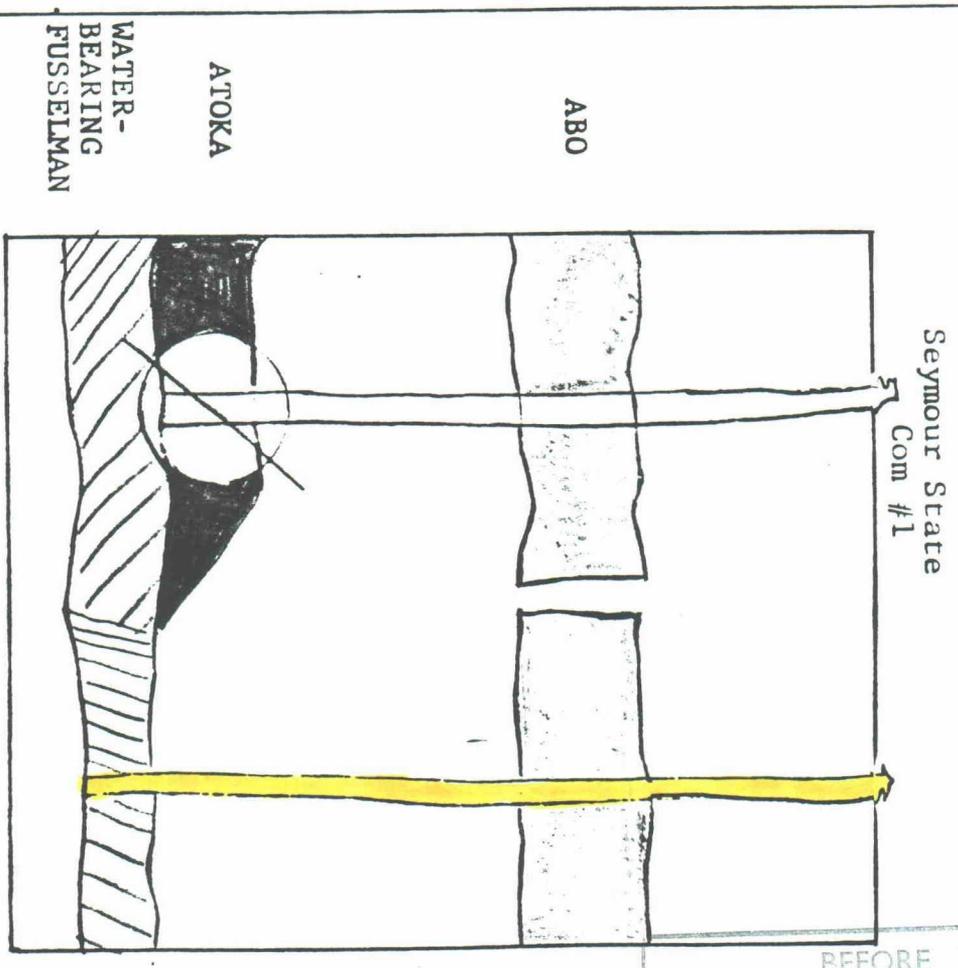
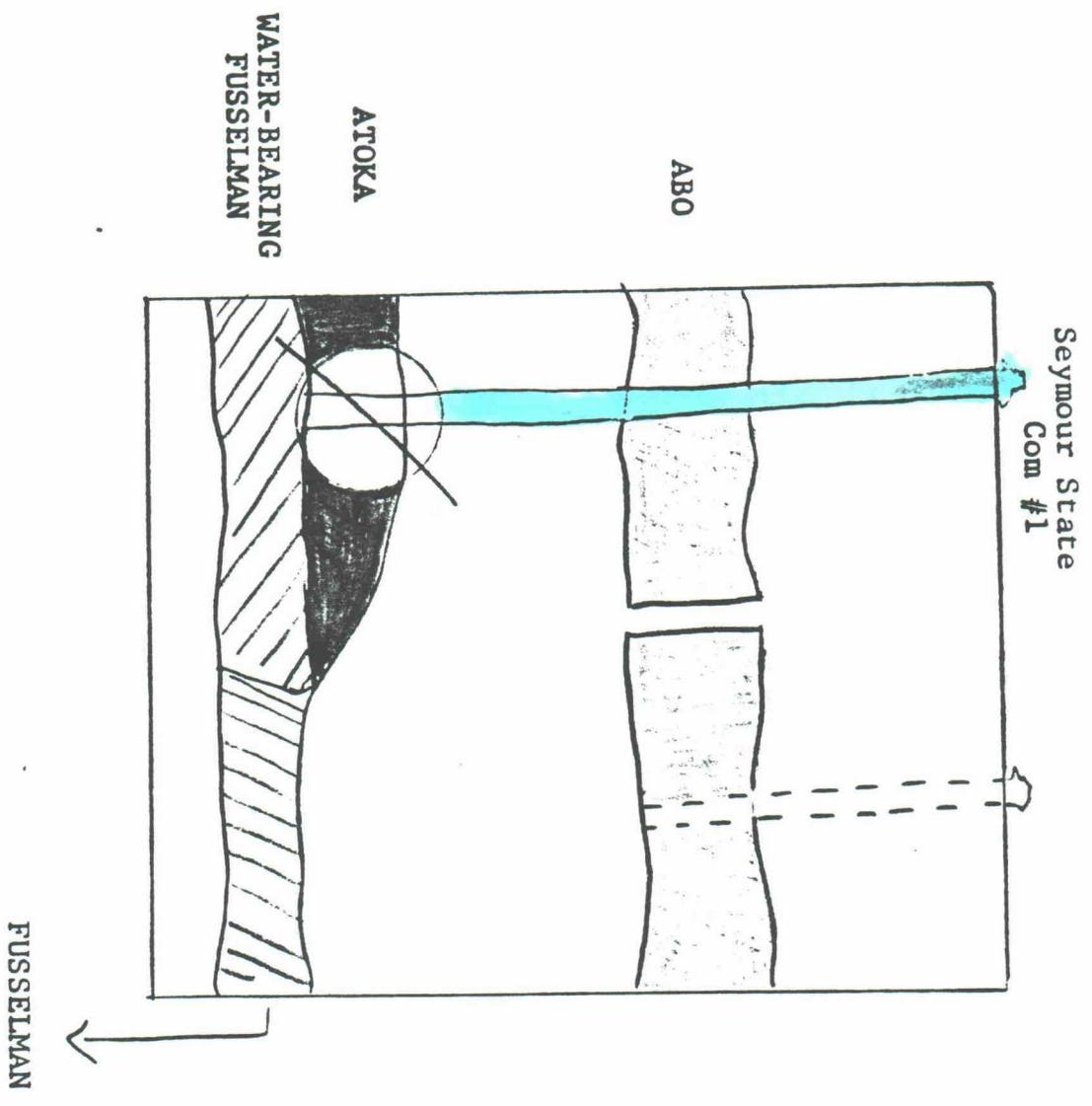


OWNERSHIP AFTER ORDER R-6873

- HEYCO 3/4 UNDIVIDED INTEREST IN ENTIRE 320 ACRE UNIT FROM SURFACE TO ORDOVICIAN
- GRYNBERG 1/4 UNDIVIDED INTEREST IN ENTIRE 320 ACRE UNIT FROM SURFACE TO ORDOVICIAN

BEFORE THE
OIL CONSERVATION COMMISSION
Santa Fe, New Mexico

Case No. 8400 Exhibit No. 15
Submitted by Grynberg
Hearing Date 9.18.83



FUSSELMAN:
Objective
Producing
Formation

BEFORE THE
OIL CONSERVATION COMMISSION
Santa Fe, New Mexico
Case No. 8400 Exhibit No. 16
Submitted by Burnberg
Hearing Date 9.18.83

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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) Case No. 8400
PRORATION UNIT, TO CHANGE THE)
OPERATOR AND TO DETERMINE THE RISK)
FACTOR AND OVERHEAD CHARGES, CHAVES)
COUNTY, NEW MEXICO.)
_____)

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.

JONES, GALLEGOS, SNEAD & WERTHEIM, P.A., ATTORNEYS AT LAW, SANTA FE, NEW MEXICO

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As fully set forth in the applicant's Substantive Legal Issues Hearing Brief No. 1 (submitted September 16, 1985), Grynberg is the owner of an undivided fractional interest in 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. The 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 in the potential unit production and his right to drill at any location within the unit that may 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 well (Seymour State Com. #1) have established that it is not commercially productive in the Atoka formation. Geologic 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

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

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

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

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

24 Prevention of waste and protection of correlative
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1 rights have been described by the New Mexico Supreme Court as
2 "fundamental powers and duties" of the Commission. Continental
3 Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d
4 809, 817 (1962). Wide discretion has been conferred upon the
5 Commission by the New Mexico Legislature to enable it to carry
6 out these duties:

7 * * *

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

12 70-2-11(A), (B) NMSA 1978 (Emphasis added).

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

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

22 Respectfully submitted,

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

25 By



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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) Case No. 8400
PRORATION UNIT, TO CHANGE THE)
OPERATOR AND TO DETERMINE THE RISK)
FACTOR AND OVERHEAD CHARGES, CHAVES)
COUNTY, NEW MEXICO.)
_____)

HEARING BRIEF IN BEHALF OF
APPLICANT GRYNBERG PETROLEUM CO.

INTRODUCTION

In Order R-6873 issued January 7, 1982, this Commission granted the application of Harvey E. Yates Company (HEYCO) seeking compulsory pooling of all mineral interests from the surface through the Ordovician formation underlying the W/2 of Section 18, T9S, R27E, N.M.P.M., Chaves County, New Mexico. HEYCO and other related working interest owners own the leasehold interest in the W/2, NW 1/4 and SW 1/4 of Section 18 (+ 240 acres). Grynberg (formerly Viking) owns the leasehold interest in the E/2, NW 1/4 of Section 18 (+ 80 acres). The key provisions of Order R-6873 as they relate to the present Application are as follows:

IT IS THEREFORE ORDERED:

(1) That all mineral interests, whatever they may be, down through the Ordovician formation

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underlying the W/2 of Section 18, Township 9 South, Range 27 East, N.M.P.M., Chaves County, New Mexico, are hereby pooled 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.

(Emphasis supplied).

In Viking Petroleum v. Oil Conservation Commission, 100 N.M. 452, 672 P.2d 280 (1983), the New Mexico Supreme Court affirmed the Commission's Order R-6873. The Supreme Court noted:

The first of the key provisions pooled the 320-acre tract from the surface to the Ordovician formation. The Commission found that to prevent waste, to protect correlative rights and to allow each interest owner to recover its fair share of gas, the mineral interests will be pooled to the lower formation.

By his present Application, Jack J. Grynberg seeks a modification of Order R-6873 to permit a second Pre-permian well to be drilled at an unorthodox location on the previously established 320-acre spacing and proration unit, to designate Grynberg as the operator for the proposed second well and to determine an appropriate risk factor and overhead charges for the drilling and operation of the proposed well.

In support of this Application, the evidence to be presented at the hearing will demonstrate a significant change in circumstances from those existing at the time Order R-6873 was entered, and the manifest need for the drilling of a second

1 well in the previously established 320-acre unit if the unit is
2 ever to be effectively and prudently developed, waste prevented
3 and correlative rights protected.

4 The key facts that will be established by the evidence
5 are as follows. The original well authorized by Order R-6873
6 (Seymour State Com. #1) is not, and will never be, commercially
7 productive in the Prepermian formations underlying the W/2 of
8 Section 18. The geologic evidence will establish that the
9 second proposed well at an unorthodox location in the SW 1/4,
10 SW 1/4 of Section 18 is situated high structurally. In the
11 opinion of Grynberg's geologist, the location presents a
12 substantial probability of obtaining commercial production from
13 the Fusselman, a separate Prepermian formation from that in
14 which the Seymour State well is completed. Should significant
15 shows of production also be encountered at shallower formations
16 such as the Abo, Grynberg would seek Commission approval for a
17 multiple completion and thereafter establish production from
18 both formations.

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21 As discussed more fully herein, Grynberg seeks a key
22 legal determination by the Commission that by reason of Order
23 R-6873, Grynberg owns a 24.6% undivided interest in all
24 production from the pooled formations underlying the 320-acre
25 unit. The pooled formations include, among others, the
Fusselman and the Abo. 24.6% is the percentage of Grynberg's
leasehold acreage (+ 80 acres) to the entire 320-acre unit
created by Order R-6873. See Point One, infra.

1 As discussed more fully below, HEYCO, as the unit
2 operator under Order R-6873, has a duty to all working interest
3 owners to prudently develop the unit in a manner that will
4 effectively and efficiently produce the pooled formations
5 underlying the unit. Unit production records demonstrate that
6 the existing unit well (Seymour State Com. #1) cannot, and
7 never will, efficiently or economically produce the Prepermian
8 formations underlying the unit. The evidence will further esta-
9 blish that the Seymour State well cannot effectively drain the
10 shallower Abo formations throughout the entire 320-acre unit.

11 In recognition of these facts and the geologic
12 evidence supporting the second well, Grynberg requested HEYCO
13 to seek authority from the Commission for the drilling of a
14 second proposed well in the 320-acre unit at an unorthodox
15 location. (See Exhibit "A" attached hereto). In derogation
16 of the prudent operator rule, HEYCO has arbitrarily refused to
17 undertake further development of the unit. Grynberg thus has
18 no alternative in protecting his correlative rights in the unit
19 but to apply to the Commission himself for authorization to
20 drill and to be designated operator of the proposed second well.

21 In addition to considering the geologic evidence
22 supporting the Grynberg Application and ruling on the
23 sufficiency of that proof, three issues of law are also
24 presented for decision by this Commission in rendering its
25

1 order in this case. Each question arises as a direct and
2 natural consequence of the compulsory pooling of the W/2 of
3 Section 18 as specified in Order R-6873. These legal issues
4 are: (a) whether by virtue of Order R-6873, Grynberg owns an
5 undivided 24.6% proportional interest in all production from
6 the pooled formations underlying the previously established
7 320-acre unit; (b) whether, upon refusal of HEYCO to prudently
8 develop the unit by the drilling of the proposed second well,
9 the Commission has the authority to grant Grynberg's
10 application to drill the proposed second well and to designate
11 Grynberg as operator of the well; and (c) whether Grynberg's
12 non-consent status in the original unit well (Seymour State
13 Com. #1) affects in any manner his right to fully participate
14 in all production obtained from the proposed second well. Each
15 of these legal issues is addressed herein.

16
17 POINT ONE

18 THE LEGAL EFFECT OF COMPULSORY POOLING UNDER
19 ORDER R-6873 HAS BEEN TO VEST IN GRYNBERG AN
20 UNDIVIDED FRACTIONAL INTEREST IN ALL PRODUCTION
21 FROM THE POOLED MINERAL INTERESTS, WHATEVER
22 THEY MAY BE, FROM THE SURFACE THROUGH THE
23 ORDOVICIAN FORMATION UNDERLYING THE 320-ACRE UNIT

24 The effect of compulsory pooling upon the ownership of
25 production 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:

1 All operations for the pooled oil or gas, or
2 both, which are conducted on any portion of
3 the unit shall be deemed for all purposes to
4 have been conducted upon each tract within
5 the unit by the owner or owners of such
6 tract. For the purpose of determining the
7 portions of production owned by the persons
8 owning interest in the pooled oil or gas, or
9 both, such production shall be allocated to
10 the respective tracts within the unit in the
11 proportion that the number of surface acres
12 included within each tract bears to the
13 number of surface acres included in the
14 entire unit. The portion of the production
15 allocated to the owner or owners of each
16 tract or interest included in a well spacing
17 or proration unit formed by a pooling order
18 shall, when produced, be considered as if
19 produced from the separately owned tract or
20 interest by a well drilled thereon.

(Emphasis supplied).

21 The courts have commonly described the effect of
22 voluntary and compulsory pooling as a form of consolidation or
23 merger of all the interests in the pooled formations. See,
24 Parkin v. State Corp. Com'n of Kansas, 234 Kan. 994, 677 P.2d
25 991, 1002, (1984). Owners of the mineral rights and interests
in a particular tract of land surrender all right to conduct
drilling operations on the 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.

1 Hawkins, 186 So.2d 591, 596 (La. 1966). If the drilling effort
2 is successful, the resulting production, to which all tracts
3 are deemed to contribute, is distributed to all interests in
4 the proportion to which their acreage in the unit bears to the
5 entire acreage. Section 70-2-17(C), supra; Mire, supra, 186
6 So.2d at 596; Ragsdale v. Superior Oil Co., 237 N.E.2d 492, 494
7 (Ill. 1968).

8 In this case, Order R-6873 provides unequivocally that
9 all mineral interests, whatever they may be, down through the
10 Ordovician formation underlying the W/2 of Section 18 are
11 pooled to form a standard 320-acre gas spacing and proration
12 unit. The "pooled" mineral interests include, among others,
13 the Fusselman and Abo formations, which are objective
14 formations for the proposed second well.² Grynberg owns
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17 ² It must be recognized that the compulsory pooling of all
18 formations underlying the W/2 of Section 18, from the surface
19 to the Ordovician, was specifically requested by HEYCO in its
20 Amended Application filed October 21, 1981, in Case No. 7390.
21 Indeed, the fact that all formations were pooled into a single
22 320-acre unit was clearly HEYCO's purpose. In its original
23 Application in Case No. 7390, filed September 29, 1981, HEYCO
24 sought to pool only the mineral interests in the Mississippian
25 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." Copies of
the original Application and the first and second amendments
are attached hereto as Exhibit B.

1 the working interest in approximately 80 acres, or 24.6% of the
2 320-acre unit, from the surface to the Ordovician formation.
3 Heyco and others own the working interest in the remainder of
4 the pooled unit. Consequently, by operation of Section
5 70-2-17(C), supra, and Order R-6873, the various interests in
6 the separate tracts comprising the 320-acre unit have been
7 consolidated as a matter of law into an undivided ownership of
8 the entire unit. Grynberg, as a result, owns an undivided
9 24.6% fractional interest in all production from the pooled
10 mineral interests, whatever they may be, from the surface to
11 the Ordovician formation underlying the 320-acre unit.

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

22 This principle is illustrated in Texas Oil and Gas
23 Corporation v. Rein, 534 P.2d 1277 (Okla. 1975), a case having
24 facts similar to those presented here. In Rein, the Oklahoma
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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 the unit well. [Citation omitted.] We conclude that §87.1(b) authorizes the Commission to establish the well location at any location upon the spacing unit and that §87.1(d) authorizes the Commission to pool

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the working interest within the spacing unit and designate an operator to drill and operate the well at the designated well location.³ To hold otherwise would frustrate the intent of the Act because the owner 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, irrespective of where the well producing the pooled formations may be located on the unit. Accordingly, should the proposed second well be 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 TWO

UPON REFUSAL OF THE OPERATOR TO PRUDENTLY DEVELOP THE UNIT, THE COMMISSION IS AUTHORIZED TO GRANT GRYNBERG'S APPLICATION FOR THE DRILLING OF THE PROPOSED SECOND WELL AND TO DESIGNATE GRYNBERG AS OPERATOR OF THE WELL

Production records from the original unit well (Seymour State Com. #1) will establish that the well has never

³Section 70-2-17(C), NMSA 1978, grants similar authority to this Commission.

1 been commercially productive in the Atoka formation, and that
2 no production has been obtained from the Atoka at all since
3 December, 1984. On the other hand, geologic evidence developed
4 by Grynberg indicates that the proposed second well at an
5 unorthodox location in the SW 1/4 of the SW 1/4 of Section 18
6 presents a substantial probability that commercial production
7 can be obtained from a separate Prepermian formation, the
8 Fusselman. The evidence will further establish that commercial
9 production is also likely in the shallower Abo Formation. The
10 Abo formation cannot be effectively drained throughout the
11 entire 320-acre unit by the Seymour State Com. #1 well.

12 HEYCO has arbitrarily refused Grynberg's request that
13 HEYCO undertake to effectively develop and produce these pooled
14 formations within the unit. As a result, recoverable reserves
15 are being wasted and the correlative rights of all working
16 interest owners within the unit are being wrongfully impaired.

17 Under §70-2-70(A), NMSA 1978, the orders of the
18 Commission are required to afford to each owner in a pool, as
19 far as it is practicable, the opportunity to produce his just
20 and equitable share of oil and gas in the pool. In this
21 regard, §70-2-17(C), supra, requires that compulsory pooling
22 orders be drawn upon such terms and conditions as are just and
23 reasonable and afford the owner of each tract within the unit
24 the opportunity to recover or receive without unnecessary
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1 expense his just and fair share of oil and gas. It is clearly
2 within the intent and mandate of these statutory provisions
3 that the Commission make and enforce such orders as may be
4 reasonably necessary to remedy an arbitrary refusal by a unit
5 operator to prudently develop the unit acreage, particularly
6 where such refusal will result in waste and impair correlative
7 rights. Such is the case here.

8 It is a fundamental principle of law that the operator
9 of a unit has an implied duty to exercise reasonable diligence
10 in the development of the unit. See Sauder v. Mid-Continent
11 Corporation, 292 U.S. 272 (1934); Libby v. DeBaca, 51 N.M. 95,
12 179 P.2d 263, 265 (1947); Trust Co. of Chicago v. Samedan Oil
13 Corporation, 192 F.2d 282 (10th Cir. 1951); Mize v. Exxon
14 Corporation, 640 F.2d 637, 641 (5th Cir. 1981). This duty
15 extends to each producible reservoir or horizon within the
16 unit, Shell Oil Company v. Stansbury, 401 S.W.2d 623, 632
17 (Tex.Civ.Ct.App. 1966), as well as to any undeveloped portion
18 of leased acreage. See Libby v. DeBaca, supra, 179 P.2d at
19 265. The evidence will show that HEYCO has unreasonably
20 refused to perform its implied duty of prudent development.

21 Where, as here, geologic evidence demonstrates that an
22 existing unit well cannot economically or efficiently drain
23 common sources of supply within the unit, the Commission has
24 both the jurisdiction and responsibility to modify previous
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1 pooling and drilling orders to allow for additional wells to be
2 drilled. See Corporation Commission v. Union Oil Company of
3 California, 591 P.2d 711 (Okla. 1979); Texas Oil and Gas
4 Corporation v. Rein, 534 P.2d 1277 (Okla. 1975). That is pre-
5 cisely the relief sought by Grynberg in the pending Application.

6 As the owner of an undivided fractional interest in
7 the pooled formations underlying the 320-acre unit, Grynberg
8 has an unquestionable right to drill and to be designated
9 operator of the proposed second well pursuant to §70-2-17(C),
10 supra. As clearly demonstrated by the decision in Texas Oil
11 and Gas Corporation v. Rein, 534 P.2d 1277 (Okla. 1975), the
12 fact that Grynberg does not own the particular tract within the
13 unit upon which the proposed well is to be located is entirely
14 immaterial to his right to drill at any location within the
15 unit that may be approved by the Commission. Rein, 534 P.2d at
16 1279. To rule otherwise would frustrate the intent of the
17 compulsory pooling statute and unreasonably restrain prudent
18 development of the pooled reserves underlying the unit created
19 by Order R-6873.

20 POINT THREE

21 GRYNBERG'S NON-PARTICIPANT STATUS IN THE SEYMOUR
22 STATE COM. #1 WELL DOES NOT AFFECT HIS RIGHT TO
23 FULL PARTICIPATION IN PRODUCTION FROM THE
PROPOSED SECOND WELL

24 Pursuant to the provisions of Order R-6873, as
25 affirmed by the New Mexico Supreme Court, Grynberg elected to

1 have his share of estimated well costs for the Seymour State
2 Com. #1 well withheld from his share of production from that
3 well. The Order also provided that Grynberg would be assessed
4 a 200% penalty for the drilling risk undertaken by the unit
5 operator in the drilling of the Seymour State Com. #1 well.
6 See §70-2-17(C), NMSA 1978.

7 The statutory provisions allowing working interest
8 owners to elect either to advance their proportionate share of
9 drilling and operating costs for a particular well, or to have
10 those costs paid out of production, with a potential risk
11 penalty of up to 200%, were intended to relieve the non-
12 drilling interest owner from being compelled against his better
13 judgment to advance his share of drilling costs, and to provide
14 additional compensation from production (if any is found) to
15 the drilling party who has advanced the entire cost of the well
16 and who would, therefore, absorb the cost of a dry hole. See,
17 Application of Kohlman, 263 N.W.2d 674, 675 (S.D. 1978).

18 Grynberg's non-participant status in the Seymour State
19 Com. #1 well gives rise to the question of whether that status
20 should have any adverse affect upon Grynberg's right to fully
21 participate in production from the proposed second well. As
22 discussed more fully herein, to permit the costs of one well to
23 be paid from production out of a second well (particularly
24 here, where the formations to be produced by the second well
25

1 are either independent from or would not be effectively
2 produced by the first well) would be an impermissible taking of
3 property without any rational basis, and would be in
4 derogation of the correlative rights of working interest
5 owners in production from the second well. This position is
6 supported not only by the express language of the governing
7 statute, but by the fundamental fairness that underscores the
8 Commission's responsibility to prevent waste and protect
9 correlative rights.

10 Section 70-2-17(C), NMSA 1978, makes it expressly
11 clear that the statutory election and the imposition of a risk
12 penalty are to be determined on a well-by-well basis. The
13 statute provides in pertinent part:

14 Such pooling order of the division shall
15 make definite provision as to any owner, or
16 owners, who elects not to pay his
17 proportionate share in advance for the
18 prorata reimbursement solely out of
19 production to the parties advancing the
20 costs of the development and operation,
21 which shall be limited to the actual
22 expenditures required for such purpose not
23 in excess of what are reasonable, but which
24 shall include a reasonable charge for
25 supervision and may include a charge for the
risk involved in the drilling of such well,
which charge for risk shall not exceed two
hundred percent of the non-consenting
working interest owner's or owners' prorata
share of the cost of drilling and completing
the well.

* * *

(Emphasis Supplied).

1 The statute twice uses the word "well" in the singular
2 in reference to the development and operation to which the
3 statutory election and risk penalty provisions are to apply.
4 It is clear that multiple wells would be permitted on an
5 established unit where one well cannot efficiently or
6 effectively drain the various producing formations in the
7 unit. If the first well would not effectively drain the
8 formations being produced by the second well, there is no
9 justification for applying second well production to the
10 payment of costs for the original well. To do so would plainly
11 discourage complete development of the unit. Recoverable
12 reserves in the unit would remain unproduced, resulting in
13 waste and the impairment of correlative rights.

14 Moreover, to expropriate subsequent production for the
15 payment of original well costs would penalize a non-consenting
16 interest owner twice for his good judgment and foresight in
17 electing not to participate in the costs of a well which turns
18 out to be non-productive. In his original opposition to the
19 HEYCO application for compulsory pooling of the W/2 of Section
20 18, Grynberg presented geologic evidence that the drilling of
21 the proposed Seymour State Com. #1 well to the Prepermian Atoka
22 formation presented an extreme and unreasonable risk.
23 Grynberg's geologist testified that, in his opinion, production
24 that might be found in the Prepermian formations at the
25

1 location of the Seymour State well would be short-lived.
2 Accordingly, Grynberg sought approval from the Commission to
3 participate in the costs of the Seymour State well only to the
4 Abo formation, and to pay his share of the remaining well costs
5 to the Prepermian formations out of his share of that
6 production. The Commission, instead, imposed an all-or-nothing
7 election, with a 200% risk penalty. Grynberg had no real
8 choice other than to proceed on a non-participant basis for the
9 entire well.

10 As it turned out, Grynberg's geologic evaluation of
11 the Atoka formation was correct. His election to proceed on a
12 non-participant basis was a wise one. HEYCO, as the Applicant,
13 undertook the risk of drilling the Seymour State well and it
14 must now live with the consequences of that business decision.
15 Under §70-2-17(C), supra, HEYCO could not compel Grynberg to
16 participate in the inordinate risks of that venture by the
17 advancement of his share of costs.

18 The geologic basis for drilling the proposed second
19 well presents a different set of circumstances and risks which
20 must be evaluated before working interest owners can rationally
21 elect whether to participate in the costs of the well.

22 Grynberg has weighed the geologic circumstances and has found
23 them to present an acceptable risk, sufficient to warrant his
24 application for authorization to drill and operate the proposed
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well. This type of prudent development of an established unit which would otherwise remain unproductive would be nullified if the costs and penalty for the original unsuccessful well were to be arbitrarily carried over to the second well.

Under these circumstances, the Commission should properly rule that Grynberg's non-participant status in the first well is of no effect upon his right to full participation in any production which may be obtained from the proposed second well.

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

By _____
J. E. GALLEGOS
Post Office Box 2228
Santa Fe, New Mexico 87504-2228
(505) 982-2691

6710A

GRYNBERG PETROLEUM COMPANY

5000 SOUTH QUEBEC • SUITE 500 • DENVER, COLORADO 80237 USA • PHONE 303-850-7400

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

SENT EXPRESS MAIL

February 2, 1984

Harvey E. Yates Company
Security National Bank Bldg., Suite 300
Roswell, New Mexico 88201

Attention: Mr. Thomas J. Hall, Jr.

RE: State of New Mexico Oil Conservation
Commission Compulsory Pooling Order
No. R-6873, Case No. 7390 in the
W $\frac{1}{2}$ of Section 18, T9S, R27E, N.M.P.M.
Chaves County, New Mexico

Gentlemen:

Pursuant to the above-referenced Commission order, Jack J. Grynberg, as a working interest owner under the standard 320 acre gas spacing and proration unit established by said Commission order hereby respectfully requests that Harvey E. Yates Company, as designated Operator of the unit under said order, initiate and make proper application to the State of New Mexico Oil Conservation Commission for the drilling of a Prepermian well to be located at an unorthodox location in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18, T9S, R27E, Chaves County, New Mexico.

Our reasons for this request are geological. A careful evaluation of the Prepermian production figures for the Seymour State Com. #1, located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 18, T9S, R27E, Chaves County, New Mexico, indicates that the Prepermian zone in this well is non-commercial and has not, nor is it capable of producing the field allowable. Further, based on recently acquired geological information, we feel that the SW $\frac{1}{4}$ SW $\frac{1}{4}$ location we propose will put us in a more favorable structural position in which to encounter gas in commercial quantities from the Prepermian zone.

Jack J. Grynberg is prepared to pay his proportionate share of costs for a Prepermian well in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18, T9S, R27E, Chaves County, New Mexico and is prepared to cooperate in

EXHIBIT A

Harvey E. Yates Company
Roswell, New Mexico 88201

RE: State of New Mexico Oil Conservation
Commission Compulsory Pooling Order
No. R-6873, Case No. 7390 in the
W $\frac{1}{2}$ of Section 18, T9S R27E, N.M.P.M.
Chaves County, New Mexico

every way with Harvey E. Yates Company in order to expedite the
drilling of this well.

Please advise us as to how you plan to respond to this request
within 30 days of receipt of this letter.

Sincerely,

GRYNBERG PETROLEUM COMPANY

Susan Stone

Susan Stone
Senior Petroleum Landman

SS/dp

Companies listed below were sent CERTIFIED - RETURN RECEIPT REQUESTED

cc: Explorers Petroleum Corporation
Spiral, Inc.
Fred G. Yates, Inc.
P. O. Box 1933
Roswell, New Mexico 88201

Seymour Smith
7 South Dearborn St.
Chicago, Illinois 60603

David Smith
105 West Madison
Chicago, Illinois 60602

Cibola Energy Corporation
P. O. Box 1663
Albuquerque, New Mexico 87103

ON FEES

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
 Show to whom and date delivered _____
 Show to whom, date, and address of delivery _____
 RESTRICTED DELIVERY _____
(The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$ _____

2. ARTICLE ADDRESSED TO:
Cibola Energy Corp.
P. O. Box 1668
Albuquerque, NM 87103

4. TYPE OF SERVICE: ARTICLE NUMBER
 REGISTERED INSURED
 CERTIFIED COB **P394312211**
 EXPRESS MAIL

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE Addressee Authorized agent

5. DATE OF DELIVERY
[Signature]

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE: 7b. EMPLOYEE'S INITIALS
[Signature]

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

ON FEES

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
 Show to whom and date delivered _____
 Show to whom, date, and address of delivery _____
 RESTRICTED DELIVERY _____
(The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$ _____

2. ARTICLE ADDRESSED TO:
Explorers Petroleum Corporation
Spiral, Inc.; Fred G. Yates, Inc.
P.O. Box 1933
Roswell, NA 88201

4. TYPE OF SERVICE: ARTICLE NUMBER
 REGISTERED INSURED
 CERTIFIED COB **P394312206**
 EXPRESS MAIL

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE Addressee Authorized agent

5. DATE OF DELIVERY
María Manríquez (HEUCO)

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE: 7b. EMPLOYEE'S INITIALS
[Signature]

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

ON FEES

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
 Show to whom and date delivered _____
 Show to whom, date, and address of delivery _____
 RESTRICTED DELIVERY _____
(The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$ _____

2. ARTICLE ADDRESSED TO:
David Smith
105 West Madison
Chicago, Illinois 60602

4. TYPE OF SERVICE: ARTICLE NUMBER
 REGISTERED INSURED
 CERTIFIED COB **P394312210**
 EXPRESS MAIL

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE Addressee Authorized agent

5. DATE OF DELIVERY
[Signature]

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE: 7b. EMPLOYEE'S INITIALS

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

ON FEES

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
 Show to whom and date delivered _____
 Show to whom, date, and address of delivery _____
 RESTRICTED DELIVERY _____
(The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$ _____

2. ARTICLE ADDRESSED TO:
Seymour Smith
7 South Dearborn St.
Chicago, ILL 60603

4. TYPE OF SERVICE: ARTICLE NUMBER
 REGISTERED INSURED
 CERTIFIED COB **P394312209**
 EXPRESS MAIL

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE Addressee Authorized agent

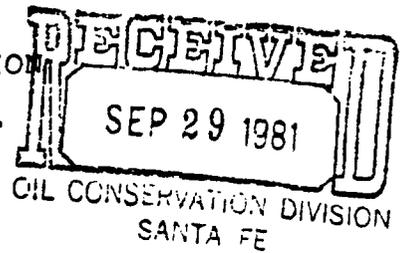
5. DATE OF DELIVERY
[Signature]

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE: 7b. EMPLOYEE'S INITIALS

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

BEFORE THE OIL CONSERVATION DIVISION
ENERGY AND MINERALS DEPARTMENT OF
THE STATE OF NEW MEXICO



IN THE MATTER OF THE APPLICATION :
OF HARVEY E. YATES COMPANY : Case No. 7390
FOR COMPULSORY POOLING, :
CHAVES COUNTY, NEW MEXICO :

APPLICATION

COMES NOW HARVEY E. YATES COMPANY by its attorney and respectfully states:

1. Applicant proposes to drill a well situated 1980 FNL and 660 FWL, Section 18, Township 9 South, Range 27 East, N.M.P.M., Chaves County, New Mexico, to the Mississippian formation and dedicate the W/2 of Section 18 to said well.

2. Applicant is the owner of, and/or holds the contractual right, to drill and develop the Mississippian formations underlying the following described lands situated within the W/2 of Section 18:

<u>Description</u>	<u>Interest Owned</u>	<u>Type of Interest</u>	<u>Net Acres</u>
W/2 NW/4, SW/4	54.2059%	Working Interest	132.82

3. Applicant has obtained voluntary consent to pooling of interests in the Mississippian formations underlying the W/2 of said Section 18, with the exception of the parties named below, whose addresses, and interests owned, according to Applicant's information and belief, are as follows:

<u>Owner</u>	<u>Description</u>	<u>Interest Owned</u>	<u>Type of Interest</u>	<u>Net Acres</u>
Viking Petroleum Inc. 2700 Center Building 2761 E. Skelly Drive Tulsa, Oklahoma	E/2 NW/4 74105	100%	Working Interest	80.00

4. Applicant has been unable to obtain voluntary agreement for pooling of the interests described in paragraph 3 immediately above, and in order to avoid the drilling of unnecessary wells, to protect correlative rights, and to prevent waste, all interests in the Mississippian formations underlying the W/2 of said Section 18 should be pooled pursuant to the provisions of §70-2-17 N.M.S.A., 1978 (formerly §65-3-14 N.M.S.A., 1953).

5. Applicant should be designated operator of said pooled lands.

6. The risk and expense of drilling and completing the proposed well is great, and if the owners of the interests described in paragraph 3 above, or any other unknown owners of interests in the proposed proration unit, do not choose to pay their share of the costs of drilling and completing said proposed well, then Applicant should be allowed a reasonable charge for supervision of said well, and a charge for the risk involved in addition to recovery of the actual cost of drilling and completing said well.

WHEREFORE, Applicant Prays:

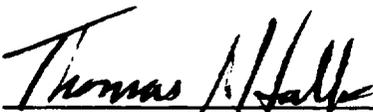
A. That this application be set for hearing before an examiner and that notice of said hearing be given as required by law.

B. That upon such hearing the Division enter its pooling all interests in the Mississippian formations underlying the W/2 of Section 18, Township 9 South, Range 27 East, N.M.P.M., Chaves County, New Mexico, designating applicant as Operator of said pooled lands, making provision for applicant to recover its costs from production, including an appropriate risk factor, and provisions for payment of operating costs and costs of supervision from production, to be allocated among the interest owners as their interests may be determined.

C. For such further relief as the Division deems just and proper.

DATED this 25th day of September, 1981.

HARVEY E. YATES COMPANY

BY: 
Thomas J. Hall III
Attorney for Applicant
P. O. Box 1933
Roswell, New Mexico 88201

TJH:dk
OCD-1 #35



HEYCO

HARVEY E. YATES COMPANY

PETROLEUM PRODUCERS

P. O. BOX 1933

SUITE 300 SECURITY NATIONAL BANK BUILDING

NO. 100 6607

ROSWELL, NEW MEXICO 88203

RECEIVED
October 8, 1981
OCT 13 1981

OIL CONSERVATION DIVISION
SANTA FE

7390

State of New Mexico
Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87501

Attention: Mr. Joe Ramey

Re: Application for
Compulsory Pooling
Seymour State #1
Section 18: E/2 SW/4,
E/2 NW/4 (being W/2)
T-9S, R-27E, N.M.P.M.
Chaves County, New Mexico

Gentlemen:

On September 25, 1981, Harvey E. Yates Company filed an application for compulsory pooling covering the W/2 of Section 18, T-9S, R-27E, in Chaves County, New Mexico. The application was assigned Case No. 7390.

Harvey E. Yates Company would request that the above application be amended in paragraphs 2, 3, and 4 and in paragraph B to cover all formations from the surface through the Mississippian formation.

Mr. Jack Grynberg, who is associated with Viking Petroleum, Inc., has informed us he plans to file an application seeking to pool the N/2 of Section 18 and that he will appeal any decision pooling the W/2 of Section 18. Furthermore, the primary term of applicant's state lease, L-6775, expires November 30, 1981. For these reasons we would request that a hearing de novo before the Commission be set at the earliest possible date.

Sincerely,

Thomas J. Hall, III
Attorney

TJH:dk
OCD #36

Enclosures

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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) Case No. 8400
PRORATION UNIT, TO CHANGE THE)
OPERATOR AND TO DETERMINE THE RISK)
FACTOR AND OVERHEAD CHARGES, CHAVES)
COUNTY, NEW MEXICO.)

HEARING BRIEF IN BEHALF OF
APPLICANT GRYNBERG PETROLEUM CO.

INTRODUCTION

In Order R-6873 issued January 7, 1982, this Commission granted the application of Harvey E. Yates Company (HEYCO) seeking compulsory pooling of all mineral interests from the surface through the Ordovician formation underlying the W/2 of Section 18, T9S, R27E, N.M.P.M., Chaves County, New Mexico. HEYCO and other related working interest owners own the leasehold interest in the W/2, NW 1/4 and SW 1/4 of Section 18 (+ 240 acres). Grynberg (formerly Viking) owns the leasehold interest in the E/2, NW 1/4 of Section 18 (+ 80 acres). The key provisions of Order R-6873 as they relate to the present Application are as follows:

IT IS THEREFORE ORDERED:

(1) That all mineral interests, whatever they may be, down through the Ordovician formation

1 underlying the W/2 of Section 18, Township 9
2 South, Range 27 East, N.M.P.M., Chaves County,
3 New Mexico, are hereby pooled to form a
4 standard 320-acre gas spacing and proration
5 unit to be dedicated to a well to be drilled
6 at a standard location on said 320-acre tract.

(Emphasis supplied).

7 In Viking Petroleum v. Oil Conservation Commission,
8 100 N.M. 452, 672 P.2d 280 (1983), the New Mexico Supreme Court
9 affirmed the Commission's Order R-6873. The Supreme Court
10 noted:

11 The first of the key provisions pooled the
12 320-acre tract from the surface to the Ordovi-
13 cian formation. The Commission found that to
14 prevent waste, to protect correlative rights
15 and to allow each interest owner to recover
16 its fair share of gas, the mineral interests
17 will be pooled to the lower formation.

18 By his present Application, Jack J. Grynberg seeks a
19 modification of Order R-6873 to permit a second Pre-permian
20 well to be drilled at an unorthodox location on the previously
21 established 320-acre spacing and proration unit, to designate
22 Grynberg as the operator for the proposed second well and to
23 determine an appropriate risk factor and overhead charges for
24 the drilling and operation of the proposed well.

25 In support of this Application, the evidence to be
presented at the hearing will demonstrate a significant change
in circumstances from those existing at the time Order R-6873
was entered, and the manifest need for the drilling of a second

1 well in the previously established 320-acre unit if the unit is
2 ever to be effectively and prudently developed, waste prevented
3 and correlative rights protected.

4 The key facts that will be established by the evidence
5 are as follows. The original well authorized by Order R-6873
6 (Seymour State Com. #1) is not, and will never be, commercially
7 productive in the Prepermian formations underlying the W/2 of
8 Section 18. The geologic evidence will establish that the
9 second proposed well at an unorthodox location in the SW 1/4,
10 SW 1/4 of Section 18 is situated high structurally. In the
11 opinion of Grynberg's geologist, the location presents a
12 substantial probability of obtaining commercial production from
13 the Fusselman, a separate Prepermian formation from that in
14 which the Seymour State well is completed. Should significant
15 shows of production also be encountered at shallower formations
16 such as the Abo, Grynberg would seek Commission approval for a
17 multiple completion and thereafter establish production from
18 both formations.'

19 _____
20
21 As discussed more fully herein, Grynberg seeks a key
22 legal determination by the Commission that by reason of Order
23 R-6873, Grynberg owns a 24.6% undivided interest in all
24 production from the pooled formations underlying the 320-acre
25 unit. The pooled formations include, among others, the
Fusselman and the Abo. 24.6% is the percentage of Grynberg's
leasehold acreage (+ 80 acres) to the entire 320-acre unit
created by Order R-6873. See Point One, infra.

1 As discussed more fully below, HEYCO, as the unit
2 operator under Order R-6873, has a duty to all working interest
3 owners to prudently develop the unit in a manner that will
4 effectively and efficiently produce the pooled formations
5 underlying the unit. Unit production records demonstrate that
6 the existing unit well (Seymour State Com. #1) cannot, and
7 never will, efficiently or economically produce the Prepermian
8 formations underlying the unit. The evidence will further esta-
9 blish that the Seymour State well cannot effectively drain the
10 shallower Abo formations throughout the entire 320-acre unit.

11 In recognition of these facts and the geologic
12 evidence supporting the second well, Grynberg requested HEYCO
13 to seek authority from the Commission for the drilling of a
14 second proposed well in the 320-acre unit at an unorthodox
15 location. (See Exhibit "A" attached hereto). In derogation
16 of the prudent operator rule, HEYCO has arbitrarily refused to
17 undertake further development of the unit. Grynberg thus has
18 no alternative in protecting his correlative rights in the unit
19 but to apply to the Commission himself for authorization to
20 drill and to be designated operator of the proposed second well.

21 In addition to considering the geologic evidence
22 supporting the Grynberg Application and ruling on the
23 sufficiency of that proof, three issues of law are also
24 presented for decision by this Commission in rendering its
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order in this case. Each question arises as a direct and natural consequence of the compulsory pooling of the W/2 of Section 18 as specified in Order R-6873. These legal issues are: (a) whether by virtue of Order R-6873, Grynberg owns an undivided 24.6% proportional interest in all production from the pooled formations underlying the previously established 320-acre unit; (b) whether, upon refusal of HEYCO to prudently develop the unit by the drilling of the proposed second well, the Commission has the authority to grant Grynberg's application to drill the proposed second well and to designate Grynberg as operator of the well; and (c) whether Grynberg's non-consent status in the original unit well (Seymour State Com. #1) affects in any manner his right to fully participate in all production obtained from the proposed second well. Each of these legal issues is addressed herein.

POINT ONE

THE LEGAL EFFECT OF COMPULSORY POOLING UNDER ORDER R-6873 HAS BEEN TO VEST IN GRYNBERG AN UNDIVIDED FRACTIONAL INTEREST IN ALL PRODUCTION FROM THE POOLED MINERAL INTERESTS, WHATEVER THEY MAY BE, FROM THE SURFACE THROUGH THE ORDOVICIAN FORMATION UNDERLYING THE 320-ACRE UNIT

The effect of compulsory pooling upon the ownership of production 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:

1 All operations for the pooled oil or gas, or
2 both, which are conducted on any portion of
3 the unit shall be deemed for all purposes to
4 have been conducted upon each tract within
5 the unit by the owner or owners of such
6 tract. For the purpose of determining the
7 portions of production owned by the persons
8 owning interest in the pooled oil or gas, or
9 both, such production shall be allocated to
10 the respective tracts within the unit in the
11 proportion that the number of surface acres
12 included within each tract bears to the
13 number of surface acres included in the
14 entire unit. The portion of the production
15 allocated to the owner or owners of each
16 tract or interest included in a well spacing
17 or proration unit formed by a pooling order
18 shall, when produced, be considered as if
19 produced from the separately owned tract or
20 interest by a well drilled thereon.

(Emphasis supplied).

21 The courts have commonly described the effect of
22 voluntary and compulsory pooling as a form of consolidation or
23 merger of all the interests in the pooled formations. See,
24 Parkin v. State Corp. Com'n of Kansas, 234 Kan. 994, 677 P.2d
25 991, 1002, (1984). Owners of the mineral rights and interests
in a particular tract of land surrender all right to conduct
drilling operations on the 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.

1 Hawkins, 186 So.2d 591, 596 (La. 1966). If the drilling effort
2 is successful, the resulting production, to which all tracts
3 are deemed to contribute, is distributed to all interests in
4 the proportion to which their acreage in the unit bears to the
5 entire acreage. Section 70-2-17(C), supra; Mire, supra, 186
6 So.2d at 596; Ragsdale v. Superior Oil Co., 237 N.E.2d 492, 494
7 (Ill. 1968).

8 In this case, Order R-6873 provides unequivocally that
9 all mineral interests, whatever they may be, down through the
10 Ordovician formation underlying the W/2 of Section 18 are
11 pooled to form a standard 320-acre gas spacing and proration
12 unit. The "pooled" mineral interests include, among others,
13 the Fusselman and Abo formations, which are objective
14 formations for the proposed second well.² Grynberg owns
15

16
17 ² It must be recognized that the compulsory pooling of all
18 formations underlying the W/2 of Section 18, from the surface
19 to the Ordovician, was specifically requested by HEYCO in its
20 Amended Application filed October 21, 1981, in Case No. 7390.
21 Indeed, the fact that all formations were pooled into a single
22 320-acre unit was clearly HEYCO's purpose. In its original
23 Application in Case No. 7390, filed September 29, 1981, HEYCO
24 sought to pool only the mineral interests in the Mississippian
25 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." Copies of
the original Application and the first and second amendments
are attached hereto as Exhibit B.

1 the working interest in approximately 80 acres, or 24.6% of the
2 320-acre unit, from the surface to the Ordovician formation.
3 Heyco and others own the working interest in the remainder of
4 the pooled unit. Consequently, by operation of Section
5 70-2-17(C), supra, and Order R-6873, the various interests in
6 the separate tracts comprising the 320-acre unit have been
7 consolidated as a matter of law into an undivided ownership of
8 the entire unit. Grynberg, as a result, owns an undivided
9 24.6% fractional interest in all production from the pooled
10 mineral interests, whatever they may be, from the surface to
11 the Ordovician formation underlying the 320-acre unit.

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

22 This principle is illustrated in Texas Oil and Gas
23 Corporation v. Rein, 534 P.2d 1277 (Okla. 1975), a case having
24 facts similar to those presented here. In Rein, the Oklahoma
25

1 Corporation Commission granted an application to amend a prior
2 drilling and spacing order so as to permit the drilling of a
3 second well within a previously established 640-acre unit.
4 Evidence was introduced that the well which was originally
5 authorized and drilled could not compete for hydrocarbons
6 underlying the unit and that a second well at the proposed
7 location would arrest uncompensated drainage.

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

20
21 We have previously held that the Commission
22 has considerable discretion in determining
23 which owner is entitled to drill and operate
24 the unit well. [Citation omitted.] We
25 conclude that §87.1(b) authorizes the
Commission to establish the well location at
any location upon the spacing unit and that
§87.1(d) authorizes the Commission to pool

1 the working interest within the spacing unit
2 and designate an operator to drill and
3 operate the well at the designated well
4 location.³ To hold otherwise would
5 frustrate the intent of the Act because the
6 owner desiring to drill would not be
7 entitled to do so unless he held a lease
8 covering the well location designated by the
9 Commission.

10 534 P.2d at 1279 (Emphasis supplied).

11 It is clear from the foregoing that Grynberg owns an
12 undivided 24.6% interest in all production from the pooled
13 formations within the 320-acre unit, irrespective of where the
14 well producing the pooled formations may be located on the
15 unit. Accordingly, should the proposed second well be
16 authorized by the Commission, and ultimately found to be
17 productive in both the Fusselman and Abo formations at the
18 proposed location, Grynberg's interest in that production would
19 be 24.6% of the total production.

20 POINT TWO

21 UPON REFUSAL OF THE OPERATOR TO PRUDENTLY
22 DEVELOP THE UNIT, THE COMMISSION IS
23 AUTHORIZED TO GRANT GRYNBERG'S APPLICATION
24 FOR THE DRILLING OF THE PROPOSED SECOND WELL
25 AND TO DESIGNATE GRYNBERG AS OPERATOR OF THE WELL

Production records from the original unit well
(Seymour State Com. #1) will establish that the well has never

³Section 70-2-17(C), NMSA 1978, grants similar authority
to this Commission.

1 been commercially productive in the Atoka formation, and that
2 no production has been obtained from the Atoka at all since
3 December, 1984. On the other hand, geologic evidence developed
4 by Grynberg indicates that the proposed second well at an
5 unorthodox location in the SW 1/4 of the SW 1/4 of Section 18
6 presents a substantial probability that commercial production
7 can be obtained from a separate Prepermian formation, the
8 Fusselman. The evidence will further establish that commercial
9 production is also likely in the shallower Abo Formation. The
10 Abo formation cannot be effectively drained throughout the
11 entire 320-acre unit by the Seymour State Com. #1 well.

12 HEYCO has arbitrarily refused Grynberg's request that
13 HEYCO undertake to effectively develop and produce these pooled
14 formations within the unit. As a result, recoverable reserves
15 are being wasted and the correlative rights of all working
16 interest owners within the unit are being wrongfully impaired.

17 Under §70-2-70(A), NMSA 1978, the orders of the
18 Commission are required to afford to each owner in a pool, as
19 far as it is practicable, the opportunity to produce his just
20 and equitable share of oil and gas in the pool. In this
21 regard, §70-2-17(C), supra, requires that compulsory pooling
22 orders be drawn upon such terms and conditions as are just and
23 reasonable and afford the owner of each tract within the unit
24 the opportunity to recover or receive without unnecessary
25

1 expense his just and fair share of oil and gas. It is clearly
2 within the intent and mandate of these statutory provisions
3 that the Commission make and enforce such orders as may be
4 reasonably necessary to remedy an arbitrary refusal by a unit
5 operator to prudently develop the unit acreage, particularly
6 where such refusal will result in waste and impair correlative
7 rights. Such is the case here.

8 It is a fundamental principle of law that the operator
9 of a unit has an implied duty to exercise reasonable diligence
10 in the development of the unit. See Sauder v. Mid-Continent
11 Corporation, 292 U.S. 272 (1934); Libby v. DeBaca, 51 N.M. 95,
12 179 P.2d 263, 265 (1947); Trust Co. of Chicago v. Samedan Oil
13 Corporation, 192 F.2d 282 (10th Cir. 1951); Mize v. Exxon
14 Corporation, 640 F.2d 637, 641 (5th Cir. 1981). This duty
15 extends to each producible reservoir or horizon within the
16 unit, Shell Oil Company v. Stansbury, 401 S.W.2d 623, 632
17 (Tex.Civ.Ct.App. 1966), as well as to any undeveloped portion
18 of leased acreage. See Libby v. DeBaca, supra, 179 P.2d at
19 265. The evidence will show that HEYCO has unreasonably
20 refused to perform its implied duty of prudent development.

21 Where, as here, geologic evidence demonstrates that an
22 existing unit well cannot economically or efficiently drain
23 common sources of supply within the unit, the Commission has
24 both the jurisdiction and responsibility to modify previous
25

1 pooling and drilling orders to allow for additional wells to be
2 drilled. See Corporation Commission v. Union Oil Company of
3 California, 591 P.2d 711 (Okla. 1979); Texas Oil and Gas
4 Corporation v. Rein, 534 P.2d 1277 (Okla. 1975). That is pre-
5 cisely the relief sought by Grynberg in the pending Application.

6 As the owner of an undivided fractional interest in
7 the pooled formations underlying the 320-acre unit, Grynberg
8 has an unquestionable right to drill and to be designated
9 operator of the proposed second well pursuant to §70-2-17(C),
10 supra. As clearly demonstrated by the decision in Texas Oil
11 and Gas Corporation v. Rein, 534 P.2d 1277 (Okla. 1975), the
12 fact that Grynberg does not own the particular tract within the
13 unit upon which the proposed well is to be located is entirely
14 immaterial to his right to drill at any location within the
15 unit that may be approved by the Commission. Rein, 534 P.2d at
16 1279. To rule otherwise would frustrate the intent of the
17 compulsory pooling statute and unreasonably restrain prudent
18 development of the pooled reserves underlying the unit created
19 by Order R-6873.

20 POINT THREE

21 GRYNBERG'S NON-PARTICIPANT STATUS IN THE SEYMOUR
22 STATE COM. #1 WELL DOES NOT AFFECT HIS RIGHT TO
23 FULL PARTICIPATION IN PRODUCTION FROM THE
PROPOSED SECOND WELL

24 Pursuant to the provisions of Order R-6873, as
25 affirmed by the New Mexico Supreme Court, Grynberg elected to

1 have his share of estimated well costs for the Seymour State
2 Com. #1 well withheld from his share of production from that
3 well. The Order also provided that Grynberg would be assessed
4 a 200% penalty for the drilling risk undertaken by the unit
5 operator in the drilling of the Seymour State Com. #1 well.
6 See §70-2-17(C), NMSA 1978.

7 The statutory provisions allowing working interest
8 owners to elect either to advance their proportionate share of
9 drilling and operating costs for a particular well, or to have
10 those costs paid out of production, with a potential risk
11 penalty of up to 200%, were intended to relieve the non-
12 drilling interest owner from being compelled against his better
13 judgment to advance his share of drilling costs, and to provide
14 additional compensation from production (if any is found) to
15 the drilling party who has advanced the entire cost of the well
16 and who would, therefore, absorb the cost of a dry hole. See,
17 Application of Kohlman, 263 N.W.2d 674, 675 (S.D. 1978).

18 Grynberg's non-participant status in the Seymour State
19 Com. #1 well gives rise to the question of whether that status
20 should have any adverse affect upon Grynberg's right to fully
21 participate in production from the proposed second well. As
22 discussed more fully herein, to permit the costs of one well to
23 be paid from production out of a second well (particularly
24 here, where the formations to be produced by the second well
25

1 are either independent from or would not be effectively
2 produced by the first well) would be an impermissible taking of
3 property without any rational basis, and would be in
4 derogation of the correlative rights of working interest
5 owners in production from the second well. This position is
6 supported not only by the express language of the governing
7 statute, but by the fundamental fairness that underscores the
8 Commission's responsibility to prevent waste and protect
9 correlative rights.

10 Section 70-2-17(C), NMSA 1978, makes it expressly
11 clear that the statutory election and the imposition of a risk
12 penalty are to be determined on a well-by-well basis. The
13 statute provides in pertinent part:

14 Such pooling order of the division shall
15 make definite provision as to any owner, or
16 owners, who elects not to pay his
17 proportionate share in advance for the
18 prorata reimbursement solely out of
19 production to the parties advancing the
20 costs of the development and operation,
21 which shall be limited to the actual
22 expenditures required for such purpose not
23 in excess of what are reasonable, but which
24 shall include a reasonable charge for
25 supervision and may include a charge for the
risk involved in the drilling of such well,
which charge for risk shall not exceed two
hundred percent of the non-consenting
working interest owner's or owners' prorata
share of the cost of drilling and completing
the well.

* * *

(Emphasis Supplied).

1 The statute twice uses the word "well" in the singular
2 in reference to the development and operation to which the
3 statutory election and risk penalty provisions are to apply.
4 It is clear that multiple wells would be permitted on an
5 established unit where one well cannot efficiently or
6 effectively drain the various producing formations in the
7 unit. If the first well would not effectively drain the
8 formations being produced by the second well, there is no
9 justification for applying second well production to the
10 payment of costs for the original well. To do so would plainly
11 discourage complete development of the unit. Recoverable
12 reserves in the unit would remain unproduced, resulting in
13 waste and the impairment of correlative rights.

14 Moreover, to expropriate subsequent production for the
15 payment of original well costs would penalize a non-consenting
16 interest owner twice for his good judgment and foresight in
17 electing not to participate in the costs of a well which turns
18 out to be non-productive. In his original opposition to the
19 HEYCO application for compulsory pooling of the W/2 of Section
20 18, Grynberg presented geologic evidence that the drilling of
21 the proposed Seymour State Com. #1 well to the Prepermian Atoka
22 formation presented an extreme and unreasonable risk.
23 Grynberg's geologist testified that, in his opinion, production
24 that might be found in the Prepermian formations at the
25

1 location of the Seymour State well would be short-lived.
2 Accordingly, Grynberg sought approval from the Commission to
3 participate in the costs of the Seymour State well only to the
4 Abo formation, and to pay his share of the remaining well costs
5 to the Prepermian formations out of his share of that
6 production. The Commission, instead, imposed an all-or-nothing
7 election, with a 200% risk penalty. Grynberg had no real
8 choice other than to proceed on a non-participant basis for the
9 entire well.

10 As it turned out, Grynberg's geologic evaluation of
11 the Atoka formation was correct. His election to proceed on a
12 non-participant basis was a wise one. HEYCO, as the Applicant,
13 undertook the risk of drilling the Seymour State well and it
14 must now live with the consequences of that business decision.
15 Under §70-2-17(C), supra, HEYCO could not compel Grynberg to
16 participate in the inordinate risks of that venture by the
17 advancement of his share of costs.

18 The geologic basis for drilling the proposed second
19 well presents a different set of circumstances and risks which
20 must be evaluated before working interest owners can rationally
21 elect whether to participate in the costs of the well.

22 Grynberg has weighed the geologic circumstances and has found
23 them to present an acceptable risk, sufficient to warrant his
24 application for authorization to drill and operate the proposed
25

1 well. This type of prudent development of an established unit
2 which would otherwise remain unproductive would be nullified if
3 the costs and penalty for the original unsuccessful well were
4 to be arbitrarily carried over to the second well.

5 Under these circumstances, the Commission should
6 properly rule that Grynberg's non-participant status in the
7 first well is of no effect upon his right to full participation
8 in any production which may be obtained from the proposed
9 second well.

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

12
13 By _____

14 J. E. GALLEGOS
15 Post Office Box 2228
16 Santa Fe, New Mexico 87504-2228
17 (505) 982-2691

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6710A

GRYNBERG PETROLEUM COMPANY

5000 SOUTH QUEBEC • SUITE 500 • DENVER, COLORADO 80237 USA • PHONE 303 - 850-7430

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

SENT EXPRESS MAIL

February 2, 1984

Harvey E. Yates Company
Security National Bank Bldg., Suite 300
Roswell, New Mexico 88201

Attention: Mr. Thomas J. Hall, Jr.

RE: State of New Mexico Oil Conservation
Commission Compulsory Pooling Order
No. R-6873, Case No. 7390 in the
W $\frac{1}{2}$ of Section 18, T9S, R27E, N.M.P.M.
Chaves County, New Mexico

Gentlemen:

Pursuant to the above-referenced Commission order, Jack J. Grynberg, as a working interest owner under the standard 320 acre gas spacing and proration unit established by said Commission order hereby respectfully requests that Harvey E. Yates Company, as designated Operator of the unit under said order, initiate and make proper application to the State of New Mexico Oil Conservation Commission for the drilling of a Prepermian well to be located at an unorthodox location in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18, T9S, R27E, Chaves County, New Mexico.

Our reasons for this request are geological. A careful evaluation of the Prepermian production figures for the Seymour State Com. #1, located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 18, T9S, R27E, Chaves County, New Mexico, indicates that the Prepermian zone in this well is non-commercial and has not, nor is it capable of producing the field allowable. Further, based on recently acquired geological information, we feel that the SW $\frac{1}{4}$ SW $\frac{1}{4}$ location we propose will put us in a more favorable structural position in which to encounter gas in commercial quantities from the Prepermian zone.

Jack J. Grynberg is prepared to pay his proportionate share of costs for a Prepermian well in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18, T9S, R27E, Chaves County, New Mexico and is prepared to cooperate in

EXHIBIT A

Harvey E. Yates Company
Roswell, New Mexico 88201

RE: State of New Mexico Oil Conservation
Commission Compulsory Pooling Order
No. R-6873, Case No. 7290 in the
W $\frac{1}{4}$ of Section 18, T9S, R27E, N.M.P.M.
Chaves County, New Mexico

every way with Harvey E. Yates Company in order to expedite the
drilling of this well.

Please advise us as to how you plan to respond to this request
within 30 days of receipt of this letter.

Sincerely,

GRYNBERG PETROLEUM COMPANY

Susan Stone

Susan Stone
Senior Petroleum Landman

SS/dp

Companies listed below were sent CERTIFIED - RETURN RECEIPT REQUESTED

cc: Explorers Petroleum Corporation
Spiral, Inc.
Fred G. Yates, Inc.
P. O. Box 1933
Roswell, New Mexico 88201

Seymour Smith
7 South Dearborn St.
Chicago, Illinois 60603

David Smith
105 West Madison
Chicago, Illinois 60602

Cibola Energy Corporation
P. O. Box 1663
Albuquerque, New Mexico 87103

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
 Show to whom and date delivered _____
 Show to whom, date, and address of delivery _____
 2. **RESTRICTED DELIVERY**
 (The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$ _____

3. ARTICLE ADDRESSED TO:
 Cibola Energy Corp.
 P. O. Box 1668
 Albuquerque, NM 87103

4. TYPE OF SERVICE: ARTICLE NUMBER
 REGISTERED INSURED
 CERTIFIED COD
 EXPRESS MAIL
 P394312211

(Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE Addressee Authorized agent

5. DATE OF DELIVERY
[Signature]

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE: 7b. EMPLOYEE'S INITIALS
[Signature]

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
 Show to whom and date delivered _____
 Show to whom, date, and address of delivery _____
 2. **RESTRICTED DELIVERY**
 (The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$ _____

3. ARTICLE ADDRESSED TO:
 Explorers Petroleum Corporation
 Spiral, Inc.; Fred G. Yates, Inc.
 P.O. Box 1933
 Roswell, NM 88201

4. TYPE OF SERVICE: ARTICLE NUMBER
 REGISTERED INSURED
 CERTIFIED COD
 EXPRESS MAIL
 P394312208

(Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE Addressee Authorized agent

5. DATE OF DELIVERY
[Signature]

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE: 7b. EMPLOYEE'S INITIALS
[Signature]

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
 Show to whom and date delivered _____
 Show to whom, date, and address of delivery _____
 2. **RESTRICTED DELIVERY**
 (The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$ _____

3. ARTICLE ADDRESSED TO:
 David Smith
 105 West Madison
 Chicago, Illinois 60602

4. TYPE OF SERVICE: ARTICLE NUMBER
 REGISTERED INSURED
 CERTIFIED COD
 EXPRESS MAIL
 P394312210

(Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE Addressee Authorized agent

5. DATE OF DELIVERY
[Signature]

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE: 7b. EMPLOYEE'S INITIALS

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
 Show to whom and date delivered _____
 Show to whom, date, and address of delivery _____
 2. **RESTRICTED DELIVERY**
 (The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$ _____

3. ARTICLE ADDRESSED TO:
 Seymour Smith
 7 South Dearborn St.
 Chicago, ILL 60603

4. TYPE OF SERVICE: ARTICLE NUMBER
 REGISTERED INSURED
 CERTIFIED COD
 EXPRESS MAIL
 P394312209

(Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE Addressee Authorized agent

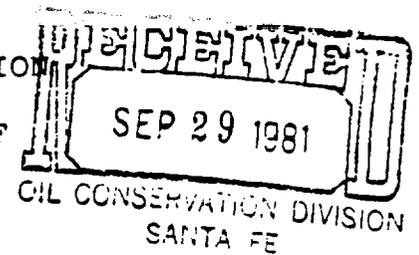
5. DATE OF DELIVERY
[Signature]

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE: 7b. EMPLOYEE'S INITIALS

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

BEFORE THE OIL CONSERVATION DIVISION
ENERGY AND MINERALS DEPARTMENT OF
THE STATE OF NEW MEXICO



IN THE MATTER OF THE APPLICATION :
OF HARVEY E. YATES COMPANY :
FOR COMPULSORY POOLING, :
CHAVES COUNTY, NEW MEXICO :

Case No. 7390

APPLICATION

COMES NOW HARVEY E. YATES COMPANY by its attorney and respectfully states:

1. Applicant proposes to drill a well situated 1980 FNL and 660 FWL, Section 18, Township 9 South, Range 27 East, N.M.P.M., Chaves County, New Mexico, to the Mississippian formation and dedicate the W/2 of Section 18 to said well.

2. Applicant is the owner of, and/or holds the contractual right, to drill and develop the Mississippian formations underlying the following described lands situated within the W/2 of Section 18:

<u>Description</u>	<u>Interest Owned</u>	<u>Type of Interest</u>	<u>Net Acres</u>
W/2 NW/4, SW/4	54.2059%	Working Interest	132.82

3. Applicant has obtained voluntary consent to pooling of interests in the Mississippian formations underlying the W/2 of said Section 18, with the exception of the parties named below, whose addresses, and interests owned, according to Applicant's information and belief, are as follows:

<u>Owner</u>	<u>Description</u>	<u>Interest Owned</u>	<u>Type of Interest</u>	<u>Net Acres</u>
Viking Petroleum Inc. 2700 Center Building 2761 E. Skelly Drive Tulsa, Oklahoma	E/2 NW/4 74105	100%	Working Interest	80.00

4. Applicant has been unable to obtain voluntary agreement for pooling of the interests described in paragraph 3 immediately above, and in order to avoid the drilling of unnecessary wells, to protect correlative rights, and to prevent waste, all interests in the Mississippian formations underlying the W/2 of said Section 18 should be pooled pursuant to the provisions of §70-2-17 N.M.S.A., 1978 (formerly §65-3-14 N.M.S.A, 1953).

5. Applicant should be designated operator of said pooled lands.

6. The risk and expense of drilling and completing the proposed well is great, and if the owners of the interests described in paragraph 3 above, or any other unknown owners of interests in the proposed proration unit, do not choose to pay their share of the costs of drilling and completing said proposed well, then Applicant should be allowed a reasonable charge for supervision of said well, and a charge for the risk involved in addition to recovery of the actual cost of drilling and completing said well.

WHEREFORE, Applicant Prays:

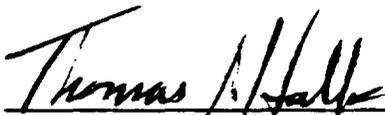
A. That this application be set for hearing before an examiner and that notice of said hearing be given as required by law.

B. That upon such hearing the Division enter its pooling all interests in the Mississippian formations underlying the W/2 of Section 18, Township 9 South, Range 27 East, N.M.P.M., Chaves County, New Mexico, designating applicant as Operator of said pooled lands, making provision for applicant to recover its costs from production, including an appropriate risk factor, and provisions for payment of operating costs and costs of supervision from production, to be allocated among the interest owners as their interests may be determined.

C. For such further relief as the Division deems just and proper.

DATED this 25th day of September, 1981.

HARVEY E. YATES COMPANY

BY: 
Thomas J. Hall III
Attorney for Applicant
P. O. Box 1933
Roswell, New Mexico 88201

TJH:dk
OCD-1 #35

HEYCO

PETROLEUM PRODUCERS



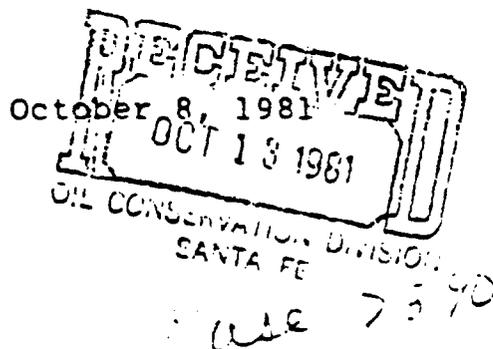
HARVEY E. YATES COMPANY

P. O. BOX 1933

SUITE 300 SECURITY NATIONAL BANK BUILDING

SEE 100 6601

ROSWELL, NEW MEXICO 88201



State of New Mexico
Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87501

Attention: Mr. Joe Ramey

Re: Application for
Compulsory Pooling
Seymour State #1
Section 18: E/2 SW/4,
E/2 NW/4 (being W/2)
T-9S, R-27E, N.M.P.M.
Chaves County, New Mexico

Gentlemen:

On September 25, 1981, Harvey E. Yates Company filed an application for compulsory pooling covering the W/2 of Section 18, T-9S, R-27E, in Chaves County, New Mexico. The application was assigned Case No. 7390.

Harvey E. Yates Company would request that the above application be amended in paragraphs 2, 3, and 4 and in paragraph B to cover all formations from the surface through the Mississippian formation.

Mr. Jack Grynberg, who is associated with Viking Petroleum, Inc., has informed us he plans to file an application seeking to pool the N/2 of Section 18 and that he will appeal any decision pooling the W/2 of Section 18. Furthermore, the primary term of applicant's state lease, L-6775, expires November 30, 1981. For these reasons we would request that a hearing de novo before the Commission be set at the earliest possible date.

Sincerely,

Thomas J. Hall, III
Attorney

TJH:dk
OCD #36

Enclosures

HEYCO

PETROLEUM PRODUCERS



HARVEY E. YATES COMPANY

P O BOX 1833

SUITE 300, SECURITY NATIONAL BANK BUILDING

505/623-6601

ROSWELL, NEW MEXICO 88201

October 20, 1981

Case 7390

State of New Mexico
Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87501

Attention: Mr. Joe Ramey

Re: Application for
Compulsory Pooling
Seymour State #1
Section 18: E/2 SW/4,
E/2 NW/4 (being W/2)
T-9S, R-27E, N.M.P.M.
Chaves County, New Mexico

Gentlemen:

Harvey E. Yates Company would like to make a second amend-
ment to the above referenced application for compulsory pooling.

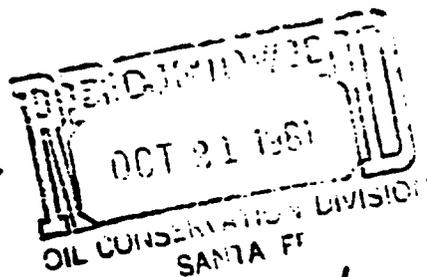
As to the depth provisions in Paragraphs 2, 3, and 4, and
in Paragraph B, Harvey E. Yates Company would request that the appli-
cation be amended to cover from the surface to all depths.

Sincerely,

Thomas J. Hall, III
Attorney

TJH:j

*Florence
I guess this was
in my stock
since*



Died