

STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION COMMISSION

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

CASE NO. 8400  
Order No. R-6873-A

APPLICATION OF JACK J. GRYNBERG  
FOR AMENDMENT OF DIVISION ORDER  
NO. R-6873, CHAVES COUNTY, NEW  
MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

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

NOW, on this 6th day of December, 1985, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) The applicant, Jack J. Grynberg, (Grynberg) seeks the amendment of Commission Order No. R-6873 to: 1) allow for the drilling of a second Pre Permian and Abo gas well at an unorthodox gas well location in the SW/4 SW/4 of Section 18, Township 9 South, Range 27 East, on an established 320-acre proration unit; 2) declare the applicant to be the operator of the second well or, in the alternative, to be the operator of the unit; and 3) establish a risk factor and overhead charges for the new well.

(3) Commission Order No. R-6873, entered January 17, 1982, pooled "all mineral interests, whatever they may be, down through the Ordovician formation underlying the W/2 of Section 18, Township 9 South, Range 27 East, NMPM, Chaves County, New

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

(4) Said order further designated Harvey E. Yates Company (HEYCO) as the operator of the "subject well and unit".

(5) Said pooling and operator designation took place following notice and hearing and under provisions of Section 70-2-17 C NMSA, (1978).

(6) HEYCO subsequently drilled and completed its Seymour State Com Well No. 1 in the SW/4 NW/4 of said Section 18.

(7) Said well was completed as a dual gas well with production from the Abo formation and the Pre Permian Atoka formation.

(8) The records of the Oil Conservation Division (Division) reflect that the operator filed acreage dedication plats for the NW/4 and W/2 of said Section 18 for the Abo formation and the Pre Permian, respectively.

(9) The dedications described in Finding Paragraph No. (8) above represent standard spacing or proration units for each of the formations in said dually completed well.

(10) While said well now continues to produce from the Abo formation it has not produced from the Pre Permian since November 1984.

(11) Said well is not a commercial well in the Pre Permian.

(12) Grynberg is the owner of a lease consisting of the E/2 NW/4 of said Section 18 which was pooled under said Order No. R-6873.

(13) Grynberg chose not to participate in the drilling of the Seymour State Com Well No. 1.

(14) Grynberg has requested that HEYCO drill a second well on the W/2 of said Section 18 in order to better drain reserves thereunder.

(15) Grynberg's proposed well is at an unorthodox gas well location in the SW/4 SW/4 of said Section 18.

(16) Yates has chosen not to drill the well proposed by Grynberg.

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(17) The location proposed by Grynberg is higher structurally and should give any well drilled at that location a better opportunity to recover the reserves under the spacing unit thereby better preventing waste and protecting correlative rights.

(18) The provisions of Section 70-2-17 C NMSA (1978) require the designation of "an operator" for compulsorily pooled units.

(19) Grynberg's application to be separately designated as the operator of a new well to be drilled on the compulsorily pooled unit in question would result in designation of two operators on said unit and should therefore be denied.

(20) HEYCO, as current operator of the compulsorily pooled unit, should be given a reasonable opportunity to drill the second well on said unit as proposed by Grynberg.

(21) Should HEYCO choose not to drill the proposed second well and should Grynberg elect to drill said well, HEYCO should be replaced as operator of the affected pooled unit.

(22) Should Grynberg become operator of the proposed second well and unit, he would seek to complete said well as a dual gas well in the Abo and Pre Permian formations.

(23) The standard spacing unit for the Abo formation would be the SW/4 of said Section 18.

*Ex 1* (24) Grynberg holds no leasehold interest under the SW/4 of said Section 18.

(25) Grynberg attempted to show that by virtue of the provisions of said Division Order No. R-6873, he had acquired an interest in the SW/4 of said Section 18 giving him the right to drill and complete a well above the Pre Permian.

(26) The provisions of Section 70-2-17 C NMSA (1978) permit the Commission to pool lands within a spacing or proration unit.

(27) The W/2 of said Section 18 is a spacing or proration unit in Pre Permian gas zones only.

*Lease* (28) The provisions of said Order No. R-6873 do not confer any interest in the SW/4 of said Section 18 to Grynberg in any formation or interval other than Pre Permian gas zones.

(29) Any order entered in this case granting Gynberg's application should be limited to Pre Permian gas zones.

(30) All participants in the hearing in this matter proposed that the well be assigned a production limitation factor of 0.790 to offset any advantage which might be gained over any offset operator as a result of the proposed unorthodox location.

(31) In the absence of any special rules and regulations for prorationing of production from the Pre Permian formation, the aforesaid production limitation factor should be applied against said well's ability to produce into the pipeline as determined by periodic well tests.

(32) Should Grynberg subsequently drill and complete a Pre Permian gas well in the W/2 of said Section 18, the authorization of production for the HEYCO Seymour State Com Well No. 1 from the Pre Permian should be suspended until such time as the parties agree to designate a single operator for both wells.

(33) The party which chooses to drill a second well on the unit pooled under Order No. R-6873 should be designated the operator of such well and the Pre Permian portion of the unit.

(34) Any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated second well costs to the operator in lieu of paying his share of reasonable well costs out of production.

(35) Any non-consenting working interest owner who does not pay his share of estimated second well costs should have withheld from production his share of the reasonable well costs plus an additional 200 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(36) Any non-consenting interest owner should be afforded the opportunity to object to the actual second well costs but that actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(37) Following determination of reasonable second well costs, any non-consenting working interest owner who has paid his share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(38) \$3,550.00 per month while drilling and \$355.00 per month while producing should be fixed as reasonable charges for supervision (combined fixed rates); the operator should be authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator should be authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator should be authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(39) All proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

(40) Upon the failure of either HEYCO or Grynberg to commence drilling of the second well on said unit on or before May 1, 1986, this order should become null and void and of no effect whatsoever.

(41) Should all the parties to this force pooling reach voluntary agreement subsequent to entry of this order, this order should thereafter be of no further effect except those portions dealing with the unorthodox location and production limitation.

(42) HEYCO and Grynberg should notify the Director of the Oil Conservation Division in writing of the subsequent voluntary agreement of all parties subject to the provisions of this order.

(43) An order entered in accordance with the above findings will serve to prevent waste and protect correlative rights.

IT IS THEREFORE ORDERED THAT:

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

(2) The current unit operator, Harvey E. Yates Company (HEYCO), shall have 30 days following such a request in which to make a determination to drill such well or not.

(3) HEYCO shall make such a determination in writing both to Grynberg and the Director of the Oil Conservation Division (Division).

(4) Upon failure of HEYCO either to elect to drill such second well on the unit or to make a written determination, Grynberg shall, at his option, become the operator of the unit and shall drill a second Pre Permian well on the unit at an unorthodox location, hereby approved, not closer than 660 feet to the South and West lines of Section 18, Township 9 South, Range 27 East, Chaves County, New Mexico.

PROVIDED HOWEVER THAT, the operator shall commence the drilling of said well on or before the 1st day of May 1986, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Pre Permian formation;

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

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

(5) The operator of the second Pre Permian well on the subject unit shall be determined in accordance with Ordering Paragraphs (1) through (4) above.

(6) After the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Division and each known working interest owner in the subject unit an itemized schedule of estimated well costs.

(7) Within 30 days from the date the schedule of estimated well costs is furnished to him, any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production, and any such owner who pays his share of estimated well costs as provided

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

(8) The operator shall furnish the Division and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the well; if no objection to the actual well costs is received by the Division and the Division has not objected within 45 days following receipt of said schedule, the actual well costs shall be the reasonable well costs; provided however, that if there is an objection to actual well costs within said 45-day period the Division will determine reasonable well costs after public notice and hearing.

(9) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid his share of estimated costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

(10) The operator is hereby authorized to withhold the following costs and charges from production:

(A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(B) As a charge for the risk involved in the drilling of the well, 200 percent of the pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(11) The operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(12) \$3,550.00 per month while drilling and \$355.00 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); the operator is hereby authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting

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

(13) Any unsevered mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under the terms of this order.

(14) Any well costs or charges which are to be paid out of production shall be withheld only from the working interest's share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(15) All proceeds from production from the subject well which are not disbursed for any reason shall immediately be placed in escrow in Chaves County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; the operator shall notify the Division of the name and address of said escrow agent within 30 days from the date of first deposit with said escrow agent.

(16) Should all the parties subject to this order reach voluntary agreement subsequent to entry thereof, this order shall thereafter be of no further effect except as to those provisions relative to the unorthodox well location and production limitation factor.

(17) HEYCO and Grynberg shall notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the provisions of this order.

(18) If Grynberg drills and completes said second Pre Permian well, the HEYCO Seymour State Com Well No. 1 in Unit E of said Section 18 shall not be produced from the Pre Permian unless HEYCO and Grynberg agree to a common operator for all Pre Permian wells on the unit and so notify the Division Director in writing.

(19) Upon the completion of such second Pre Permian well it shall be assigned a Production Limitation Factor of 0.79.

(20) In the absence of any Special Rules and Regulations prorating gas production in said Pre Permian formation in which applicant's well is completed, the Special rules hereinafter promulgated shall apply.



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

SPECIAL RULES AND REGULATIONS  
FOR THE  
APPLICATION OF A "PRODUCTION LIMITATION FACTOR"  
TO A NON-PRORATED GAS WELL

APPLICATION OF RULES

RULE 1. These rules shall apply to a Pre Permian formation gas well located 660 feet or more from the South and West lines of Section 18, Township 19 South, Range 27 East, NMPM, Chaves County, New Mexico, which well's Production Limitation Factor of 0.79 shall be applied to the well's deliverability (as determined by the procedure hereinafter set forth) to determine its maximum allowable rate of production.

ALLOWABLE PERIOD

RULE 2. The allowable period for the subject well shall be six months.

RULE 3. The year shall be divided into two allowable periods commencing at 7:00 o'clock a.m. on January 1 and July 1.

DETERMINATION OF DELIVERY CAPACITY

RULE 4. Immediately upon connection of the well the operator shall determine the open flow capacity of the well in accordance with the Division "Manual for Back-Pressure Testing of Natural Gas Wells" then current, and the well's initial deliverability shall be calculated against average pipeline pressure in the manner described in the last paragraph on Page I-6 of said test manual.

RULE 5. The well's "subsequent deliverability" shall be determined twice a year, and shall be equal to its highest single day's production during the months of April and May or October and November, whichever is applicable. Said subsequent deliverability, certified by the pipeline, shall be submitted to the appropriate District Office of the Division not later than June 15 and December 15 of each year.

RULE 6. The Division Director may authorize special deliverability tests to be conducted upon a showing that the well has been worked over or that the subsequent deliverability

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

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

#### CALCULATION AND ASSIGNMENT OF ALLOWABLES

RULE 8. The well's allowable shall commence upon the date of connection to a pipeline and when the operator has complied with all the appropriate filing requirements of the Rules and Regulations and any special rules and regulations.

RULE 9. The well's allowable during its first allowable period shall be determined by multiplying its initial deliverability by its production limitation factor.

RULE 10. The well's allowable during all ensuing allowable periods shall be determined by multiplying its latest subsequent deliverability, as determined under provisions of Rule 5, by its production limitation factor. If the well shall not have been producing for at least 60 days prior to the end of its first allowable period, the allowable for the second allowable period shall be determined in accordance with Rule 9.

RULE 11. Revision of allowable based upon special well tests shall become effective upon the date of such test provided the results of such test are filed with the Division's district office within 30 days after the date of the test; otherwise the date shall be the date the test report is received in said office.

RULE 12. Revised allowables based on special well tests shall remain effective until the beginning of the next allowable period.

RULE 13. There is no rule 13.

RULE 14. January 1 and July 1 of each year shall be known as the balancing dates.

RULE 15. If the well has an underproduced status at the end of a six-month allowable period, it shall be allowed to carry such underproduction forward into the next period and may produce such underproduction in addition to its regularly assigned allowable. Any underproduction carried forward into

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

RULE 16. Production during any one month of an allowable period in excess of the monthly allowable assigned to the well shall be applied against the underproduction carried into the period in determining the amount of allowable, if any, to be cancelled.

RULE 17. If the well has an overproduced status at the end of a six-month allowable period, it shall be shut-in until such overproduction is made up.

RULE 18. If, during any month, it is discovered that the well is overproduced in an amount exceeding three times its average monthly allowable, it shall be shut-in during that month and during each succeeding month until it is overproduced in an amount three times or less its monthly allowable, as determined hereinabove.

RULE 19. The Director of the Division shall have authority to permit the well, if it is subject to shut-in pursuant to Rules 17 and 18 above, to produce up to 500 MCF of gas per month upon proper showing to the Director that complete shut-in would cause undue hardship, provided however, such permission shall be rescinded for the well if it has produced in excess of the monthly rate authorized by the Director.

RULE 20. The Division may allow overproduction to be made up at a lesser rate than permitted under Rules 17 or 18 above upon a showing that the same is necessary to avoid material damage to the well.

#### GENERAL

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

#### IT IS FURTHER ORDERED THAT:

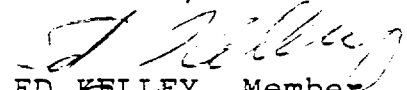
(22) Jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

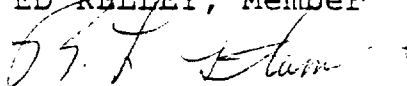
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Case No. 8400  
Order No. R-6873-A

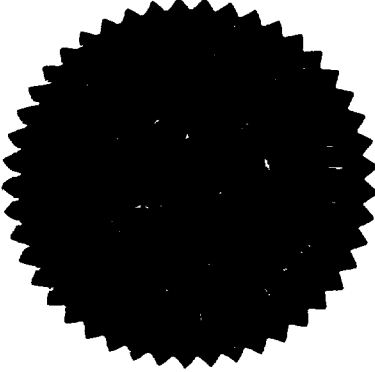
DONE at Santa Fe, New Mexico, on the day and year  
hereinabove designated.

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

JIM BACA, Member

  
ED KELLEY, Member

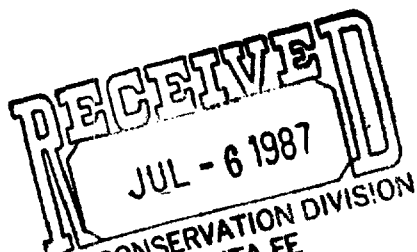
  
R. L. STAMETS,  
Chairman and Secretary



S E A L

J.E. Gallegos

ATTORNEY • 124 E. MARCY ST., SUITE 201 • SANTA FE, NEW MEXICO 87501 • (505) 983-6686



July 2, 1987

The Honorable W. J. Schnedar  
District Judge - Div. VI  
P. O. Box 1776  
Roswell, New Mexico 88201

RE: Jack J. Grynberg v. Oil  
Conservation Commission, et al.,  
Chavez County Cause No. CV 86-55

Dear Judge Schnedar:

This case is an appeal from an Order of the Oil Conservation Commission. It was fully briefed and on August 28, 1986 counsel appeared and presented oral argument.

It is likely this matter has inadvertently escaped the Court's attention because no decision has yet been rendered. For our clients the case presents important and pressing business problems, so attention by the Court would be most greatly appreciated.

Respectfully yours,

*J E Gallegos*  
J/E. GALLEGOS

JEG:evm

cc: A. J. Lossee, Esq.  
Jeff Taylor, Esq.  
Jack Grynberg

STATE OF NEW MEXICO

COUNTY OF CHAVES

IN THE FIFTH JUDICIAL DISTRICT COURT

JJ-CC LIMITED, a Colorado Limited  
Partnership, and JACK J. GRYNBERG,  
a General Partner of JJ-CC LIMITED,

Plaintiffs,

vs.

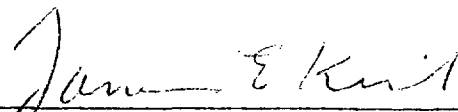
No. CV-83-638

MESA PETROLEUM CO., a Delaware  
corporation; MCKAY OIL CORPORATION,  
a New Mexico corporation; MINOCO  
SOUTHERN CORPORATION in its capacity  
as General Partner of Minoco 1981-LC  
Oil and Gas Program, a Partnership;  
MINOCO 1981-LC OIL AND GAS PROGRAM,  
a Partnership; and CORONA OIL COMPANY,  
a Texas corporation,

Defendants.

ENTRY OF APPEARANCE

COMES NOW JAMES E. KIRK and hereby enters his appearance herein  
as attorney for the Plaintiffs herein.

  
\_\_\_\_\_  
JAMES E. KIRK, Attorney for the Plaintiffs  
11927 Menaul, N.E.  
Albuquerque, N. M. 87112  
505 - 2965690

I HEREBY CERTIFY that I mailed  
a true copy of the foregoing  
pleading to all opposing coun-  
sel this 8th day of May, 1986.

  
\_\_\_\_\_

STATE OF NEW MEXICO

COUNTY OF CHAVES

IN THE FIFTH JUDICIAL DISTRICT COURT

JJ-CC LIMITED, a Colorado Limited  
Partnership, and JACK J. GRYNBERG,  
a General Partner of JJ-CC LIMITED,

Plaintiffs,

v.

No. CV-83-638

MESA PETROLEUM CO., a Delaware  
corporation; MCKAY OIL CORPORATION,  
a New Mexico corporation; MINOCO  
SOUTHERN CORPORATION in its capacity  
as General Partner of Minoco 1981-LC  
Oil and Gas Program, a Partnership;  
MINOCO 1981-LC OIL AND GAS PROGRAM,  
a Partnership; and CORONA OIL COMPANY,  
a Texas corporation,

Defendants.

MOTION FOR RELIEF FROM ORDER

Plaintiffs, through their undersigned counsel, hereby submit their Motion for Relief from Order pursuant to Rule 60(b) of the New Mexico Rule of Civil Procedure, and state the following grounds:

1. This case involves an appeal by the plaintiffs from an administrative determination made by the Oil Conservation Commission of the State of New Mexico, which is an intervenor in this case. This case also involves independent claims for breach of contract, unjust enrichment and declaratory judgment.

2. Plaintiffs were represented by Thomas K. Campbell, II, whose address was Suite 200--Petroleum Building, 200 West First Street, Roswell, New Mexico 88202. Mr. Campbell was assisted by out-of-state counsel, namely Phillip D. Barber of the law firm of Welborn, Dufford, Brown & Tooley, Suite 1100, 1700 Broadway, Denver, Colorado 80290-1199.

3. Upon information and belief, Mesa Petroleum Company submitted a request for hearing on or about May 24, 1985. Neither the plaintiffs, nor their out-of-state counsel,

were furnished with a copy of said request. It is not known whether Mr. Campbell received notice of the request for hearing.

4. Upon information and belief, this case was set, pursuant to Mesa's request, for trial on the merits at 9:00 a.m. on October 2, 1985. Neither the plaintiffs, nor their out-of-state counsel, were given notice of the trial date. It is not known whether Mr. Campbell received notice of the trial date.

5. On or about October 2, 1985, a hearing was held before this court. The court entered an Order in relation to the said hearing. A copy of the Order, dated November 25, 1985, is attached hereto as Exhibit A.

6. Neither the plaintiffs nor their local or out-of-state counsel were present for the October 2, 1985 hearing. Plaintiffs were unaware that the matter had been scheduled for trial and, allegations in the Order to the contrary notwithstanding, out-of-state counsel for plaintiffs was never notified of said hearing. See Affidavit of Phillip D. Barber, attached hereto as Exhibit B.

7. Plaintiffs' counsel in New Mexico, Mr. Campbell, was the attorney of record for plaintiffs in this case and, for unknown reasons, did not appear at the hearing or assure that plaintiffs had notice of the said hearing. No substitute counsel for plaintiffs in New Mexico was ever obtained by Mr. Campbell or by the plaintiffs.

8. The November 25, 1985 Order of this Court dismissed all of plaintiffs' claims for relief. The November 25, 1985 Order was never circulated to plaintiffs or their out-of-state counsel, even though paragraph 3 of the said Order notes that "counsel of record for plaintiffs are Thomas K. Campbell, II and Phillip D. Barber." Thus, although defendants were aware that plaintiffs were represented by out-of-state counsel, they did not provide him with copies of the November 25, 1985 Order or notify him of the October 2, 1985 hearing.

9. On or about November 11, 1985, Jack J. Grynberg, one of the plaintiffs, wrote a letter to Mr. Campbell inquiring whether Mr. Campbell had obtained substitute counsel in this case. Mr. Campbell had previously expressed an interest in withdrawing as counsel-of-record, as he apparently intended to leave the practice of law. A copy of the November 11, 1985 letter is attached hereto as Exhibit C. Exhibit C shows that plaintiffs were unaware that the hearing had been held or that a proposed Order was being circulated which would dismiss plaintiffs' claims in their entirety.



10. As a result of a request to opposing counsel, out-of-state counsel for plaintiffs was first provided with a copy of the November 25, 1985 Order on January 30, 1986. Since that date, plaintiffs have been attempting to determine the reasons for which they were not informed of the trial date. However, they have been unable to reach Mr. Campbell.

11. Rule 60(b)(1) of the New Mexico Rules of Civil Procedure provides that the court may relieve a party or his legal representative from a final judgment, order or proceeding for "mistake, inadvertence, surprise, or excuseable neglect." Plaintiffs respectfully submit that they are entitled to relief from the November 25, 1985 Order for the following reasons:

1. Plaintiffs were not aware that the matter had been scheduled for hearing on October 2, 1985. Neither the plaintiff nor their out-of-state counsel received notice that the matter had been so scheduled.

2. Plaintiffs' legal representative in New Mexico, Mr. Campbell, had a duty to represent plaintiffs until such time as substitute counsel was obtained. Plaintiffs rightfully relied upon Mr. Campbell to keep them apprised of and current on all matters in their case before this court.

3. Neither plaintiffs nor their out-of-state counsel were provided with a draft of the November 25, 1985 Order, nor were they provided with a copy of the Order as entered until direct inquiry and demand was made.

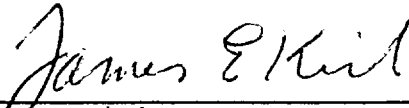
4. Plaintiffs had no way of knowing that their matter had been scheduled for trial, or that their claims would be dismissed with prejudice.

5. It would be manifestly unjust to allow the November 25, 1985 Order to stand in light of the fact that the plaintiffs never received proper notice of the hearing.

WHEREFORE, plaintiffs respectfully request that this court enter its order granting to the plaintiffs relief from the November 25, 1985 Order of this court; that the court further hold that the November 25, 1985 Order be deemed null and void; that the court order that plaintiffs' claims, as set forth in their First Amended Complaint in this matter, be reinstated in their entirety; and that the court order that this matter be scheduled for trial as promptly as possible.

DATED this 8th day of MAY, 1986.

Respectfully submitted,



James Kirk, Esq.  
11927 Menaul Street, N.E.  
Suite 201  
Albuquerque, New Mexico 87112

Attorneys for Plaintiff JJ-CC  
Limited and Jack J. Grynberg

Plaintiffs' Address:

Mr. Jack J. Grynberg  
Suite 500  
5000 South Quebec Street  
Denver, Colorado 80237

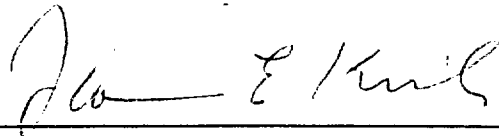
CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing  
MOTION FOR RELIEF FROM ORDER was mailed to all counsel of  
record herein on this 8th day of May, 1986.

William F. Carr, Esq.  
J. Scott Hall, Esq.  
Campbell & Black, P.A.  
P. O. Box 2208  
Santa Fe, New Mexico 87501

Damon Richards, Esq.  
Solsbery & Richards  
P. O. Box 2226  
Roswell, New Mexico 88202

Jeffrey S. Taylor, Esq.  
Assistant Attorney General  
Oil Conservation Commission  
State of New Mexico  
P. O. Box 2088  
Santa Fe, New Mexico 87501



7377D

EXHIBIT "A"

FIFTH JUDICIAL DISTRICT COURT

COUNTY OF CHAVES

STATE OF NEW MEXICO

JJ-CC LIMITED, a Colorado Limited  
Partnership, and JACK J. GRYNBERG,  
as General Partner of JJ-CC Limited,

Plaintiffs,

vs.

No. CV-83-638

MESA PETROLEUM COMPANY, a Delaware  
corporation; MCKAY OIL CORPORATION,  
a New Mexico corporation; MINOCO  
SOUTHERN CORPORATION in its capacity  
as General Partner of Minoco 1981-LC  
Oil and Gas Program; a partnership;  
MINOCO 1981-LC OIL AND GAS PROGRAM,  
a partnership; and CORONA OIL COMPANY,  
a Texas corporation,

Defendants,

OIL CONSERVATION COMMISSION OF THE  
STATE OF NEW MEXICO,

Intervenor.

ORDER

THIS MATTER having come before the Court for trial on the  
merits, and the Court being otherwise fully advised in the  
premises, finds as follows:

1. Upon the request for hearing submitted on May 24, 1985  
by the Defendant Mesa Petroleum Company, this matter was set for  
trial on the merits at 9:00 a.m. on October 2, 1985. Notice of  
the trial setting was duly served by the clerk of the court upon  
all counsel of record.

2. At the time of trial on the merits, appearances were entered for each of the parties in attendance as follows: Steven C. James - attorney for Mesa Petroleum Company; William F. Carr, Campbell & Black, P.A. - attorneys for Mesa Petroleum Company and Corona Oil Company; Damon Richards - McKay Oil Corporation and Minoco 1981-LC Oil and Gas Program; and, Jeffrey S. Taylor - New Mexico Oil Conservation Commission.

3. The plaintiffs failed to attend at trial and no attorneys were present or entered an appearance on their behalf. The pleadings and documents on file with the Court indicate that counsel of record for the plaintiffs are Thomas K. Campbell II and Phillip D. Barber. The court's docket contains no motion or order for the withdrawal or substitution of counsel for the plaintiffs.

4. At trial, the Court, upon its own motion, invited the defendants and intervenor to submit an order for entry by the Court granting relief to them as appropriate and authorized under the New Mexico Rules of Civil Procedure.

5. The plaintiffs are wholly in default in this cause.

6. The defendants and intervenor are entitled to the dismissal of this cause with prejudice pursuant to Rules 41(B), 54(D) and 55 of the New Mexico Rules of Civil Procedure.

7. Each of the parties defendant and the intervenor are entitled to recover from the plaintiffs their full costs, including attorneys' fees, in defending this cause of action.

WHEREFORE, IT IS ORDERED as follows:

1. The plaintiffs' cause of action is dismissed with prejudice.

2. This dismissal shall constitute an adjudication on the merits against the plaintiffs and in favor of the defendants and intervenor.

3. The plaintiffs shall pay to the defendants and the intervenor their full costs and attorneys' fees incurred in the defense of this action, plus the interest thereon at the maximum legal rate prevailing at the date of this Order.

4. The defendants shall submit to the Court their applications for costs and attorneys' fees, along with their affidavits and cost bills setting out in sufficient detail the costs and attorneys' fees incurred by each.

**/s/ Paul Snead**

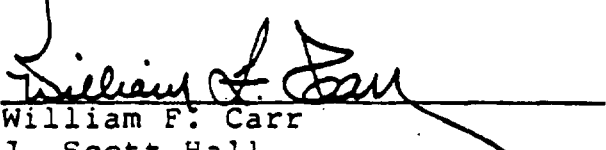
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DISTRICT JUDGE

Approved:

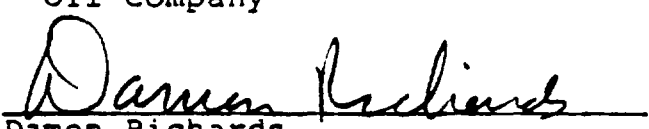
CAMPBELL & BLACK, P.A.

By

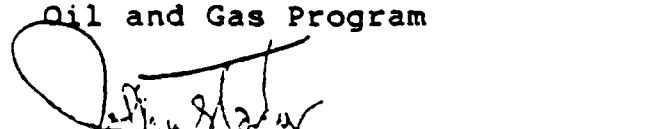
  
William F. Carr

J. Scott Hall

Attorneys for Defendants Mesa  
Petroleum Company and Corona  
Oil Company

  
Damon Richards

Attorney for Defendants McKay Oil  
Corporation and Minoco 1981-LC  
Oil and Gas Program

  
Jeffrey S. Taylor

Assistant Attorney General  
Attorney for the Intervenor, New  
Mexico Oil Conservation Commission

EXHIBIT "B"

STATE OF NEW MEXICO

COUNTY OF CHAVES

IN THE FIFTH JUDICIAL DISTRICT COURT

JJ-CC LIMITED, a Colorado Limited  
Partnership, and JACK J. GRYNBERG,  
a General Partner of JJ-CC LIMITED,

Plaintiffs,

v.

No. CV-83-638

MESA PETROLEUM CO., a Delaware  
corporation; MCKAY OIL CORPORATION,  
a New Mexico corporation; MINOCO  
SOUTHERN CORPORATION in its capacity  
as General Partner of Minoco 1981-LC  
Oil and Gas Program, a Partnership;  
MINOCO 1981-LC OIL AND GAS PROGRAM,  
a Partnership; and CORONA OIL COMPANY,  
a Texas corporation,

Defendants.

AFFIDAVIT OF PHILLIP D. BARBER

Phillip D. Barber, being first duly sworn, deposes as  
follows:

1. I am an attorney licensed to practice in the  
State of Colorado and am a partner in the law firm of Welborn,  
Dufford, Brown & Tooley, 1700 Broadway, Suite 1100, Denver,  
Colorado 80290-1199.

2. I assisted Thomas K. Campbell, a member of the  
New Mexcio bar, in preparing various pleadings and related  
matters in the captioned action.

3. The last Notice of Hearing received by the  
undersigned in this case was for that hearing on defendants'  
Motions to Dismiss Certain Claims for Relief, which motions  
were filed on or about June 6 and June 22, 1984. The said  
hearing on those motions was set for July 16, 1984 at 9:00  
a.m. The undersigned counsel participated in drafting  
Plaintiffs' Response to Defendants' Motion to Dismiss Certain  
Claims for Relief.





EXHIBIT "C"

**GRYN BERG PETROLEUM COMPANY**

*Barber*

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

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

November 11, 1985

Mr. Thomas K. Campbell, II  
P.O. Box 1018  
Roswell, New Mexico 88202

Dear Tom:

For the last few months I have tried to reach you several times and you don't return the calls. I still don't have an attorney to take over the Mesa case in Roswell and you promised me that you would find one for me. One day you might want to get back into business being an attorney, especially if the oil and gas business gets worse. I think it behooves you to get me an attorney in Roswell.

Sincerely yours,

GRYNBERG PETROLEUM COMPANY

  
Jack J. Grynberg  
President

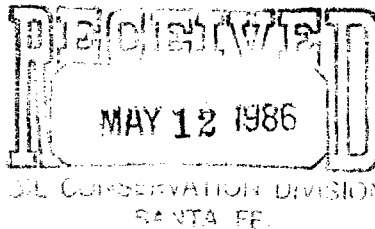
JJG/dlp

**James E. Kirk**  
Attorney at Law

11927 Menaul, N.E.  
Suite 201  
Albuquerque, New Mexico 87112

May 8, 1986

Telephone 505-296-5690  
TELEX No. 797874  
A/B J E KIRK UD



Honorable Paul Snead  
Judge of the District Court  
P.O. Box 1776  
Roswell, New Mexico 88201

Re: CV-83-638

Dear Judge Snead:

With this letter I am enclosing a copy of Plaintiffs' Motion For Relief From Order, the original of which has been filed with the Clerk of the Court.

Because of the somewhat unusual nature of the Motion, I have taken the liberty of bringing this matter to your attention by means of this letter.

If it is in order, I would like to request a hearing on this Motion at the Court's early convenience.

Thank you for your kind consideration in this matter.

Very truly yours,

*James E. Kirk*  
James E. Kirk

JEK/cap

Enc.

cc: William F. Carr, Esq.  
J. Scott Hall, Esq.  
Damon Richards, Esq.  
✓ Jeffrey S. Taylor, Esq.

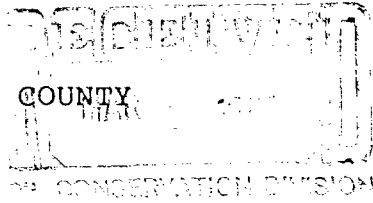
THIS COPY IS FOR  
YOUR INFORMATION  
LOSEE & CARSON, P.A.

ENDORSED COPY:  
ORIGINAL FILED DISTRICT COURT

03/04/86  
JEAN WILLIS, CLERK

IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO



JACK J. GRYNBERG,

Petitioner,

v.

No. CV-86-55

THE OIL CONSERVATION COMMISSION  
OF THE ENERGY AND MINERAL  
DEPARTMENT OF THE STATE OF  
NEW MEXICO, and HARVEY E. YATES  
COMPANY,

Respondents.

ANSWER

COMES Harvey E. Yates Company ("Heyco"), by its attorneys  
and for answer to the Petition for Review, states:

1. Heyco admits Paragraphs 1 and 2, except Heyco denies  
the other working interest owners are related.

2. Heyco admits that the Oil Conservation Commission  
(the "OCC") issued Order R-6873, a copy of which is attached to the  
Petition as Exhibit "A" and denies the remainder of Paragraph 3.

3. Heyco denies Paragraph 4.

4. Heyco denies that the Prepermian formation is  
non-productive and admits the remainder of Paragraph 5.

5. Heyco admits that the Seymour State Comm. No. 1 is  
dually completed in the Abo and Prepermian formations; that the OCC  
rules provide for 160 spacing for Abo gas wells and 320 acre  
spacing for Prepermian gas wells; and deny the remainder of Para-  
graph 6.

6. Heyco admits Paragraphs 7 and 8 except that the Grynberg application was dated October 5, 1985.

7. Heyco admits that the OCC issued Order R-6873-A, copy of which is attached to the Petition as Exhibit "B" and denies the remainder of Paragraph 9.

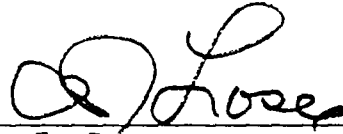
8. Heyco admits Paragraphs 10 and 11.

9. Heyco denies Paragraph 12.

WHEREFORE, having fully answered the Petition for Review, Heyco prays that this Court affirm OCC Order R-6873-A and for such other relief as may be just in the premises.

LOSEE & CARSON

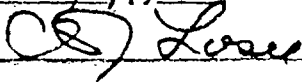
By



A. J. Losee  
P. O. Drawer 239  
Artesia, New Mexico 88210

I certify that I mailed a true  
the foregoing pleading to  
counsel of record on this 28<sup>th</sup> day

February, 1986



LAW OFFICES

LOSEE & CARSON, P. A.

300 AMERICAN HOME BUILDING

P. O. DRAWER 239

ARTESIA, NEW MEXICO 88211-0239

A. J. LOSEE

JOEL M. CARSON

JAMES E. HAAS

ERNEST L. CARROLL

AREA CODE 505  
746-3508

June 18, 1986

Mr. Jeff Taylor  
Legal Counsel  
Oil Conservation Division  
State Land Office Building  
Santa Fe, New Mexico 87501

Re: Grynberg v. Oil Conservation  
Commission, et al, No. CV-86-55

Dear Mr. Taylor:

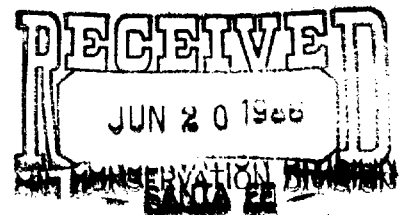
In looking through our files in the captioned matter, I find there are some documents missing which are included in Mr. R. L. Stamets' Certification dated June 5, 1986. Enclosed is copy of the Certification, on which I have checked the documents we need. These include 1), 2), 4), 9) and 10). We would appreciate your sending us copies of these items at your earliest convenience. Thank you.

Sincerely,



Sue C. Pemberton  
Secretary

Enclosure



IN THE FIFTH JUDICIAL DISTRICT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

JACK J. GRYNBERG,

Petitioner, CV-86-55

vs.

THE OIL CONSERVATION COMMISSION OF  
THE ENERGY AND MINERALS DEPARTMENT OF  
THE STATE OF NEW MEXICO AND HARVEY E.  
YATES COMPANY,

Respondents.

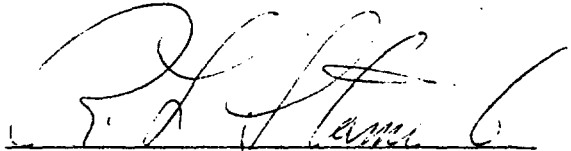
CERTIFICATION

I, R. L. STAMETS, Director of the Oil Conservation Division of the Energy and Minerals Department, do hereby certify that the documents listed below and attached hereto are true and correct copies of documents on file in this office.

- ✓ 1) Letter of October 5, 1984 from Grynberg Petroleum Company to Oil Conservation Commission, seeking hearing on attached Application to Amend Order R-6873.
- ✓ 2) Letter of October 18, 1984 from Grynberg Petroleum Company to Oil Conservation Commission, Amending Application filed by letter of October 5, 1984.
- 3) Transcript of Hearing, September 18, 1985. HA
- ✓ 4) Transcript of Hearing, October 17, 1985.
- 5) Letter of October 29, 1985 from J. E. Gallegos to R. L. Stamets transmitting Proposed Order and Financial Statement.
- 6) Letter of October 30, 1985 from J. E. Gallegos to R. L. Stamets transmitting Affidavit of Ernest W. Lohf.
- 7) Hearing Brief in Behalf of Applicant Grynberg Petroleum Company.
- 8) Applicant's Exhibit List and Hearing Exhibits 1 through 16, except 5. HAW



- ✓ 9) Acreage Dedication Plat (Form C-102) for Pennsylvanian formation in Seymour State Com Well No. 1.
- ✓ 10) Acreage Dedication Plat (Form C-102) for Abo formation in Seymour State Com Well No. 1.
- 11) Letter of November 11, 1985 from A. J. Losee to R. L. Stamets transmitting "Brief on Behalf of Harvey E. Yates Company"; Proposed Order; Supplemental Title Opinion dated April 12, 1983; Supplemental Title Opinion dated December 13, 1983; Amended Gas Division Order, Harvey E. Yates Company, Seymour State Well No. 1, Atoka Zone Only; Amended Gas Division Order, Harvey E. Yates Company, Seymour State Well No. 1, Abo Zone Only.
- 12) Order of the Commission, Case No. 8400, Order No. R-6873-A dated December 6, 1985.
- 13) Application for Rehearing, Case No. 8400, filed December 26, 1985.


  
R. L. STAMETS, Director

June 5, 1986



STATE OF NEW MEXICO )  
COUNTY OF SANTA FE )

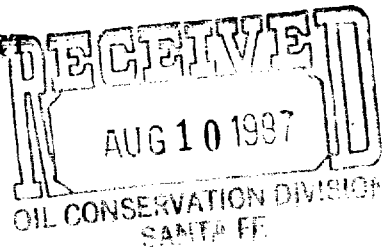
The foregoing instrument was acknowledged before me this 5th day of June, 1986.

  
NOTARY PUBLIC

My Commission Expires:

Oct 21, 1989

IN THE FIFTH JUDICIAL DISTRICT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO



JACK J. GRYNBERG,

Plaintiff,

vs.

CV-86-55

THE OIL CONSERVATION  
COMMISSION, et al.,

Defendants.

**MEMORANDUM**

This is an appeal from the Conservation Commission which was heard at oral argument by the Court on August 28, 1986.

The Court inadvertently failed to enter the case as being under advisement and was unaware of same until Mr. Gallegos wrote the Court on July 2, 1987. A decision was entered July 30, 1987.



W. J. SCHNEDAR  
DISTRICT JUDGE

cc: J. E. Gallegos  
A. J. Losee  
✓ Jeffrey Taylor

KELLAHIN, KELLAHIN AND AUBREY

*Attorneys at Law*

W. Thomas Kellahin

Karen Aubrey

Jason Kellahin  
Of Counsel

El Patio - 117 North Guadalupe

Post Office Box 2265

Santa Fe, New Mexico 87504-2265

Telephone 982-4285  
Area Code 505

JUN - 5 1987

June 4, 1987

Honorable William J. Schnedar  
Judge of the District Court  
Division VI  
P. O. Box 1776  
Roswell, New Mexico 88201

Re: Grynberg Petroleum Corp. vs.  
Oil Conservation Division  
No. CIV 87-103

Dear Judge Schnedar:

In accordance with your decision during our telephonic hearing of May 11, 1987, on our Motion to Amend Complaint, I have obtained the signatures of all counsel of record on the enclosed order which I now submit to you for your approval.

Very truly yours,



W. Thomas Kellahin

WTK:ca  
Enc.

cc: Joel M. Carson, Esq.  
Losee & Carson, P. A.  
P. O. Drawer 239  
Artesia, New Mexico 88210

Jeffery Taylor  
Oil Conservation Commission  
P. O. Box 2088  
Santa Fe, New Mexico 87504

STATE OF NEW MEXICO  
COUNTY OF CHAVES  
IN THE DISTRICT COURT

NO. CIV 87-103

GRYNBERG PETROLEUM COMPANY,  
Petitioner,

vs.

OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO,  
and YATES DRILLING COMPANY,  
MYCO INDUSTRIES, INC., and  
ABO PETROLEUM CORPORATION,

Respondents.

ORDER GRANTING LEAVE TO AMEND COMPLAINT

THIS MATTER HAVING COME BEFORE THE COURT upon  
Petitioner's Motion for Leave to Amend the Original  
Complaint to Substitute Party and the Court being fully  
advised of the matters contained therein;

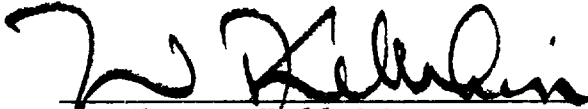
IT IS HEREBY ORDERED that Petitioner be allowed to  
Amend the Complaint to substitute Jack J. Grynberg,  
individually, and doing business as Grynberg Petroleum  
Company as the real party in interest as Petitioner in  
place of Grynberg Petroleum Company, Petitioner.

IT IS FURTHER ORDERED that the motion be denied insofar as it requests that Yates Petroleum Corporation be made a party defendant and requests that the Rachel Susan (Grynberg) Trust, Stephen Mark (Grynberg) Trust, Miriam Zela (Grynberg) Trust, and Jack J. Grynberg and Dean G. Smernoff, as Co-Trustees of the Rachel Susan Trust, Stephen Mark Trust, and Miriam Zela Trust, be named as additional parties plaintiff.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 1987.

\_\_\_\_\_  
W. J. Schnedar, District Judge

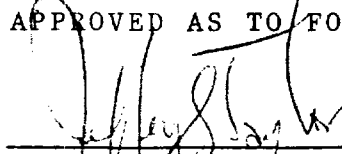
SUBMITTED BY:



W. Thomas Kellahin  
KELLAHIN, KELLAHIN & AUBREY  
P. O. Box 2265  
Santa Fe, New Mexico 87504  
(505/982-4285)

Attorneys for Petitioner

APPROVED AS TO FORM:

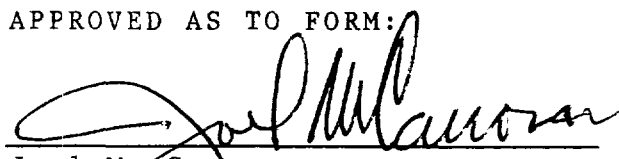


---

Jeffrey Taylor  
OIL CONSERVATION COMMISSION  
P. O. Box 2088  
Santa Fe, New Mexico 87504  
(505/827-5805)

Attorney for Oil  
Conservation Commission

APPROVED AS TO FORM:



---

Joel M. Carson  
LOSEE & CARSON, P.A.  
P. O. Drawer 239  
Artesia, New Mexico 88210  
(505/746-3508)

Attorneys for Yates, et al.

RECEIVED  
JUL 13 1987



FIFTH JUDICIAL DISTRICT  
STATE OF NEW MEXICO

WILLIAM J. SCHNEDAR  
District Judge  
Division VI

P. O. Box 1776  
Roswell, New Mexico 88201  
Phone (505) 624-0859

July 10, 1987

J. E. Gallegos  
124 E. Marcy Street, Suite 201  
Santa Fe, NM 87501

A. J. Losee  
P. O. Drawer 239  
Artesia, NM 88210

Jeffery Taylor  
P. O. Box 2088  
Santa Fe, NM 87504-2088

RE: Jack J. Grynberg  
v.  
The Oil Conservation Commission, et al.  
Chaves County CV-86-55

Gentlemen:

I have received Mr. Gallegos' letter of July 2, 1987. I am embarrassed that the case did slip into a crack.

I will try to have the decision entered this month.

Please accept my apology.

Sincerely yours,

W. J. Schnedar  
District Judge

WJS/rh

FIFTH JUDICIAL DISTRICT COURT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

GRYNBERG PETROLEUM COMPANY  
Plaintiff/Petitioner

V.

No. 05-04-CV-CV-87-00103

NM OIL CONSERVATION COMMISSION etal  
Defendant/Respondent.

NOTICE OF HEARING

Type of Hearing: NON-JURY TRIAL

TO:

TAYLOR, JEFFREY S.  
P.O. BOX 2088  
SANTA FE

NM 87504-2088

YOU ARE HEREBY NOTIFIED THAT the above cause is set for hearing on THURSDAY, November 05, 1987, AT 09:00 AM before the Honorable W. J. SCHNEDAR, District Judge, Division 06, at the CHAVES COUNTY COURTHOUSE, ROSWELL, NEW MEXICO.

W. J. SCHNEDAR  
By: Kathy Ortega  
Judge / Clerk / Deputy

NOTICE MAILED/DELIVERED September 16, 19 87 by Ko



W. Thomas Kellahin  
Karen Aubrey

Jason Kellahin  
Of Counsel

RECEIVED

SEP - 9 1987

OIL CONSERVATION COMMISSION  
SANTA FE

KELLAHIN, KELLAHIN AND AUBREY

Attorneys at Law

El Patio - 117 North Guadalupe

Post Office Box 2265

Santa Fe, New Mexico 87504-2265

Telephone 982-4285  
Area Code 505

September 8, 1987

Mrs. Georgia Ferrin  
Clerk of the District Court  
P. O. Box 1776  
Roswell, New Mexico 88201

Re: CV-87-103: Grynberg Petroleum Company v.  
Oil Conservation Commission, et al.

Dear Mrs. Ferrin:

We have received notification of a docket call for September 11, 1987, for the referenced case. In accordance with that notification we have arranged with Mr. Joel Carson, attorney for certain of the parties involved in this case, to appear in my behalf at the docket call.

We appreciate Mr. Carson's willingness to do this and save my client the expense of my coming to Roswell for the docket call.

This case is an appeal from an order of the New Mexico Oil Conservation Commission. I would anticipate that this matter would not take more than a one-half day hearing before the Judge.

Very truly yours,



W. Thomas Kellahin

WTK:ca  
Enc.

cc: Mr. Jack Grynberg  
Joel Carson, Esq.  
Jeffery Taylor, Esq.



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

GARREY CARRUTHERS  
GOVERNOR

November 23, 1987

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

CERTIFIED - RETURN  
RECEIPT REQUESTED

Ms. Georgia Mae Ferrin, Clerk  
Fifth Judicial District  
P. O. Box 1776  
Chaves County Courthouse  
Roswell, New Mexico 88201

Re: Grynberg Petroleum Co.  
v. OCD, et al.  
No. CV 87-103

Dear Ms. Ferrin:

Enclosed is a replacement set of Exhibits to complete the record in the above-referenced case. Judge Schnedar has the transcripts of the administrative hearing.

Thank you for your assistance in this matter.

Sincerely,

  
JEFFERY TAYLOR  
General Counsel

JT/dr

enclosure

P 612 458 322

**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

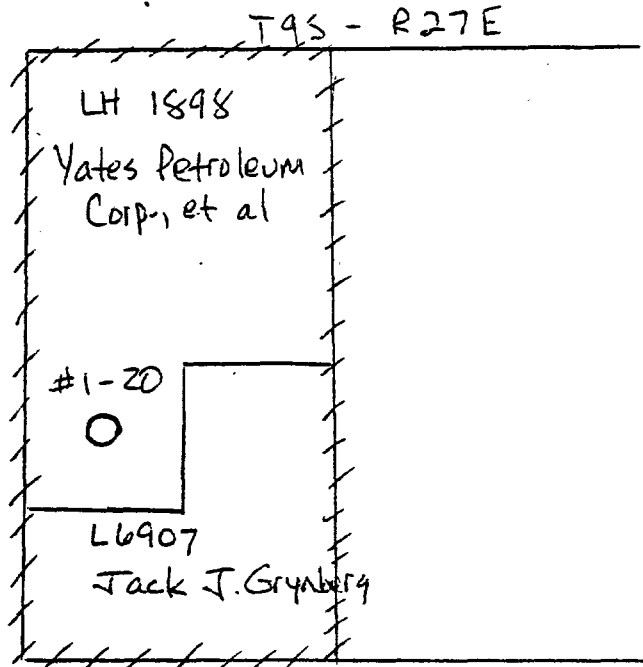
PS Form 3800, Feb. 1982

Sent to GEORGIA FERRIN, CLERK	
Street and No. FIFTH JUD. DISTRICT-Box 1776	
P.O., State and ZIP Code Chaves Courthouse - Roswell	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

EXHIBIT "1"

#1-20 OWNERSHIP AND LOCATION MAP

Township 9 South - Range 27 East, N.M.P.M.  
Section 20: W $\frac{1}{2}$   
Containing 320.00 acres, more or less  
Chaves County, New Mexico



BEFORE THE OIL CONSERVATION COMMISSION Santa Fe, New Mexico	
Case No. <u>8901</u>	Exhibit No. <u>1</u>
Submitted to <u>Grynberg, P.E.T.</u>	
Hearing Date <u>6/19/76</u>	

<u>LEASE</u>	<u>WORKING INTEREST OWNER</u>	<u>PERCENTAGE</u>
L6907	Jack J. Grynberg	37.50%
LH1898	Yates Petroleum Company	43.75%
	Yates Drilling Company	6.25%
	MYCO Industries, Inc.	6.25%
	Abo Petroleum Corporation	6.25%
		<u>100.00%</u>



207 SOUTH FOURTH STREET  
ARTESIA, NEW MEXICO 88210

TELEPHONE (505) 748-1331

S. P. YATES  
PRESIDENT  
MARTIN YATES, III  
VICE PRESIDENT  
JOHN A. YATES  
VICE PRESIDENT  
B. W. HARPER  
SEC. TREAS.

January 12, 1984

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Grynberg Petroleum Company  
5000 South Quebec, Suite 500  
Denver, Colorado 80237

Re: #1-20 Grynberg State  
Township 9 South, Range 27 East  
Section 20: NW/4SW/4  
Chaves County, New Mexico

Gentlemen:

Enclosed are our executed Authorities for Expenditure for drilling the captioned well, one for the Pre-Permian test and one for the Abo test.

Also enclosed are our checks for our advance payment as required by the Oil Conservation Commission Case # 7984, Order # R-7393.

Yates Petroleum Corporation check No. 52281	\$150,994.38
Yates Drilling Company check No. 10842	21,570.62
Abo Petroleum Corporation check No. 5126	21,570.62
Myco Industries, Inc. check No. 6503	21,570.62

Please note the interests on these AFEs have been changed to show our correct interests.

Thank you.

BEFORE THE	
OIL CONSERVATION COMMISSION	
Santa Fe, New Mexico	
Case No. 9901	Exhibit 2
Grynberg Pet	
Date	4/19/86

Very truly yours,

YATES PETROLEUM CORPORATION

*Janet Richardson*  
Janet Richardson  
Landman

JR/mw

cc: Oil Conservation Commission  
Santa Fe, New Mexico.

LEASE/WELL NAME #1-20 Grynberg State, 660 FWL, 1980 FSI

LOCATION Section 20, Township 9 South, Range 27 East, Chaves County, New Mexico

DESCRIPTION Costs attributable to Abo 5,200 feet

INTANGIBLE COSTS:		DRY-HOLE	COMPLETION	TOTAL
Location: staking, permits, site constr., rat & mouse hole, clean-up, etc.		\$ 7,370	\$ 819	\$ 8,189
Drilling: Footage 5,200 @ 14.50/ft. Day-Work days @ /day		75,400	-0-	75,400
Completion: Day-Work 4 days @ 1100 /day		-0-	4,504	4,504
Mobilization & Demobilization: move-in, moveout, rig-down, etc.		-0-	-0-	-0-
1. Mud & Water: chemicals, fresh & salt water, hauling, diesel, etc.		18,000	819	18,819
2. Logs: cement bond, mud log, temp. survey, etc.		19,500	2,293	21,793
3. Drill Stem Test & Coring		-0-	-0-	-0-
Production Tests		-0-	983	983
Cementing		5,323	7,370	12,693
Casing Services		-0-	2,047	2,047
4. Perforation & Stimulation		-0-	35,000	35,000
Rental: equipment, tools, etc.		819	409	1,228
Trucking: hauling, forklift, etc.		983	409	1,392
Fuel		-0-	-0-	-0-
5. Services: company superv., consulting		2,210	1,500	3,710
Cost to Abandon: plugging		4,095	-0-	4,095
Supplies & Expense		819	409	1,228
Overhead		2,825	2,825	5,650
Contingency:		13,730	5,930	19,660
TOTAL INTANGIBLE		\$151,074	\$ 65,317	\$216,391
TANGIBLE COSTS:				
Well Head Equip.: tree, fittings, guide, casing hd., tubing hd., etc.		\$ 1,474	\$ 4,095	\$ 5,569
Sub-Surface Equip.: packer, rods, etc.		-0-	-0-	-0-
Lease Surface Equip.: separator, tank, meter, flowlines, connections, pump, unit, etc.		-0-	10,236	10,236
Casing 8-5/8", 24#, K-55		\$ 6,756	-0-	\$ 6,756
4-1/2", 10.5#, J-55		-0-	\$ 18,200	\$ 18,200
Tubing 2-3/8"		-0-	\$ 10,400	\$ 10,400
Contingency:		823	4,293	5,116
TOTAL TANGIBLE		\$ 9,053	\$ 47,224	\$ 56,277
TOTAL COSTS		\$160,127	\$112,541	\$272,668

## SIGNATURES

## DATE

## SHARE

Jack J. Grynberg

12/9/83

75.00%

Yates Petroleum Corporation

1-12-84

17.50%

Yates Drilling Company

1-12-84

2.50%

MYCO Industries, Inc.

1-12-84

2.50%

Abo Petroleum Corporation

1-12-84

2.50%

DESCRIPTION	Costs for Pre-Permian test 6,350 feet
1. Drilling	100.00
2. Cementing	100.00
3. Completion	100.00
4. Testing	100.00
5. Miscellaneous	100.00
6. Total	500.00

INTANGIBLE COSTS:		DRY-HOLE	COMPLETION	TOTAL
Location: staking, permits, site constr., rat & mouse hole, clean-up, etc.		\$ 9,000	\$ 1,000	\$ 10,000
Drilling: Footage <u>6,350</u> @ <u>14.50/ft.</u> Day-Work days @ /day		92,075	-0-	\$ 92,075
Completion: Day-Work 5 days @ 1100 /day		-0-	5,500	5,500
Mobilization & Demobiliation: move-in, moveout, rig-down, etc.		-0-	-0-	-0-
1.	Mud & Water: chemicals, fresn & salt water, hauling, diesel, etc.	32,200	1,000	33,200
2.	Logs: cement bond, mud log, temp. survey, etc.	25,200	2,800	28,000
3.	Drill Stem Test & Coring	6,000	-0-	6,000
	Production Tests	-0-	1,200	1,200
	Cementing	6,500	9,000	15,500
	Casing Services	-0-	2,500	2,500
4.	Perforation & Stimulation	-0-	35,000	35,000
	Rental: equipment, tools, etc.	1,000	500	1,500
	Trucking: hauling, forklift, etc.	1,200	500	1,700
	Fuel	-0-	-0-	-0-
	Services: company superv., consulting	5,060	1,900	6,960
	Cost to Abandon: plugging	5,000	-0-	5,000
	Supplies & Expense	1,000	500	1,500
	Overhead	2,825	2,825	5,650
	Contingency: 10%	18,700	6,420	25,120
	<u>TOTAL INTANGIBLE</u>	\$205,760	\$ 70,645	\$276,405
TANGIBLE COSTS:				
	Well Head Equip.: tree, fittings, guide, casing hd., tubing hd., etc.	\$ 1,800	\$ 5,000	\$ 6,800
	Sub-Surface Equip.: packer, rods, etc.	-0-	-0-	-0-
	Lease Surface Equip.: separator, tank, meter, flowlines, connections, pump, unit, etc.	-0-	12,500	12,500
	Casing <u>8-5/8", 24#, K-55</u>	8,250	-0-	8,250
	<u>4-1/2", 10.5#, J-55</u>	-0-	22,225	22,225
	Tubing <u>2-3/8", 4.7#, J-55, EUE</u>	-0-	12,700	12,700
	Contingency:	1,000	5,250	6,250
	<u>TOTAL TANGIBLE</u>	11,050	57,675	68,725
	<u>TOTAL COSTS</u>	216,810	128,320	345,130

## SIGNATURES

DATE

SHARE

Jack J. Grymberg

12/ 9 /83

37.50%

Yates/Petroleum Corporation

1-17-54

43.75%

Yates Drilling Company

172-81

6.25%

MYCO Industries, Inc.

1-12-84

6.25%

Abo Petroleum Corporation

1-12-84

**6.25%**

JACK J. GRYNBERG  
GRYNBERG STATE COM #1  
SEC. 20, T9S-R27E  
CHAVES COUNTY, NM  
ABO 5200' - PRE-PERMIAN 6350'  
660' FWL & 1980' FSL  
CONTRACTOR: DESERT DRILLING

DUNCAN: 1-505-623-0989  
Unit: #4937  
OIL POLLUTION COMMISSION  
Santa Fe, New Mexico  
Case No. 1 (1) Entered 11/12/84  
Submitted 11/12/84  
Hearing 11/12/84

02/01/84 Finishing MI and RU. Starting MI on 1/31/84; will spud later this afternoon.

02/02/84 TD 555', drlg. made 555' in 11 Hrs. Dev. survey 1/4 degs @240' and 1/2 degs @508'. MW 8.4, Vis 32. Hauled 1350 bbls fluid. Well was spud @6:30PM 2/1/84. Bit #1, 12 1/4" Hughes-rerun. (Hauled 1350 Bbbls wtr, 75 sxs gel, 25 sxs paper, 6 sxs lime). Had loss circ from abt 350' of 40%.

02/03/84 Day 2, depth 1035', made 480' in 6 3/4 Hrs., drlg. Dev. survey 1/2 degs @1005'. Present operations: TIH w/7 7/8" bit. Ran 24 jts. 8 5/8" Csg 24# STC, total length of 1040' and set @1035'; cmt w/175 sxs Haliburton lit, 10% gel, 1/4# FC, 2% CC; followed by 300 sxs Hailiburton lite, 1/4# FC, 2% CC. Tailed in w/200 sxs Class C, 2% CC. Plug dwn @6PM 2/2/84; circ 35 sxs to surface. Hauled 2550 fresh wtr, 37 sxs paper, 10 sxs lime. Total mud cost \$7,870.00.

02/04/84 Day 3, Depth 2009'; made 974'. Dev survies @1505' of 1/4 degs and @2009' of 1/2 degs. Drlg. ahead.

02/05/84 Day 4, Depth 3252', made 1243'. Dev survies @2509' of 1/2 degs and @3030' of 3/4 degs. Drlg. ahead.

02/06/84 Day 5, Depth 4262', made 1010'. Dev survies @3481' of 3/4 degs and @3949' of 3/4 degs. Currently, circ hole to made bit trip. Hauled 900 bbls of wtr on 2/5/84. MW 9.7.

02/07/84 Day 6, Depth 4509', made 247'. Dev survey @4253' of 3/4 degs. Present Opr. drlg. MW 9.5, Vis 30, WL 8.4, PH 9. Mud as follows: 138 sxs salt, 12 sxs lime, 5 sxs mono-pad, 4 5 gals buckets of defoamer, 20 sxs soda ash.

02/08/84 Day 7, Depth 4824', made 315'. Dev. survey @4780' of 1/2 degs. Present opr. Drlg. Made bit trip #3, J44C, nozzles 12,12,12. MW 9.8, Vis 30, WL 14, PH 10. Mud as follows: 5 sxs salt, 15 sxs lime, 30 sxs soda ash, 1 sx mon-pad, 6 sxs paper, 10 sxs gel, 10-5 gals buckets lub C53. Fresh wtr 150 bbls.

02/09/84 Day 8, depth 5227', made 403'. Present operations: Drlg in ABO form. MW 9.8, Vis 30, WL 10, PH 9.5. No dev survies. MUD USED: 21 sxs Starch; 14 sxs lime; 30 sxs gel; 4 sxs soda ash; 3-10 gals buckets lube; 8 sxs paper.

02/10/84 Day 9, Depth 5560'; made 333'. Present operations: Drlg. Dev survey 1/2 degs @5218'. MW 9.9, Vis 31, WL 9, PH 9.0. MUD USED: Detergent 10 gals; starch 33 sxs; lime 11 sxs; gel 25 sxs; paper 2 sxs; lube 3-5 gal buckets.

02/11/84 Day 10, Depth 5834', drlg. Made 274' in 24 Hrs. MW 9.9, Vis 32, WL 7, PH 9.5.

02/12/84 Day 11, Depth 6147', drlg., made 313' in 24 Hrs., MW 10.1, Vis 32, WL 6, PH 10.5.

02/13/84 Day 12, Depth 6220', made 73' in 24 Hrs. MW 10.1, Vis 35, WL 9, PH 10. Present Operation: Logging. Mud: gel 153 sxs; dress pac 2 sxs; lube 10 gals; mon pac 4 sxs; starch 2 sxs, soda ash 5 sxs.

02/14/84 Day 13, Depth 6220', made 0'. Down time to repair rig, also, fishing; caught fish, now coming out of hole. MW 10.1, Vis 40, WL 9, PH 9.5. Mud: gel 39 sxs; starch 2 sxs; C53 3 15 gal cans. Dev. survey 2 degs @6180'.

02/15/84 Day 14, Depth 6246', made 26', drlg. MW 10.2, Vis 36, WL 12, PH 9. No dev survey Zero mud mix today.

02/16/84 Depth 6382', 44 Hrs made 136', drlg. MW 10.2, Vis 43, WL 10, Cake 2/32nds, PH 8.0. MUD: Starch 89 sxs; gel 44 sxs; lube 15 gals; soda ash 10 sxs; mon pac 3 sxs.

02/17/84 Day 16, Depth 6396', (strapped pipe @6405'), TOH w/DST tool; MW 10.2, Vis 41, WL 8, PH 10.5, Used 20 sxs gel; 8 sxs starch; 5 gal lube.



JACK J. GRYNBERG  
GRYNBERG STATE COM #1  
SEC. 20, T9S-R27E  
CHAVES COUNTY, NM  
ABO 5200' - PRE-PERMIAN 6350'  
660' FWL & 1980' FSL  
CONTRACTOR: DESERT DRILLING

DUNCAN: 1-505-623-0989  
Unit #4937

2/17/84

DST #1 RESULTS: 6335'-6396'

OP 15 mins - fair to strong blow

S.I. 60 mins

OP 120 mins - fair blow increased to 4 psi., decreased to 0 towards end of period.

S.I. 240 mins

REC: 4470 ft of gas cut muddy water.

BOTTOM CHART

I.H. 3478 psi  
IF 787 - 1166 psi  
ISI 2307 psi  
FF 1260 - 2110 psi  
FSI 2228  
FH 3412

UPPER CHART

-----  
592 - 1021 psi  
2272 psi  
1196 - 2057 psi  
2151 psi  
3375 psi

Chamber recovery: 0.048 cuft of gas 2250 C.C. formation water, 20 psi.  
BHT 122°F.

WATER SAMPLE: 0.18 ohm-m @68°F.

PH = 7 Ca = 2200  
Mg = 2000  
Cl = 3600  
SO<sub>4</sub> = Med  
HCO<sub>3</sub> = 850  
Fe = Heavy

No reports  
2/19 + 2/20

2/20/84

Circ for csg. @4AM 2/19/84. TOOH; csg arrived around noon 2/19/84; TD 6419'.  
Ran 161 jts 5 1/2" 15.5# ST &C and set @6418'; shoe @6419'; float @6379'.  
Cmt in 1 stage w/750 sx's 50/50 POZ, 2% CC. Plug dwn @6:40 PM 2/19/84; Top of cmt @4200'. Left 2 jts 5 1/2" csg on loc. Plug held. Rig rel @8:40 PM 2/19/84.  
Set centralizer in hole (4) over pay zone. At 6240' 1 every other jt; at 4750' set at every joint.

2/21/84 through 3/2/84 Waiting on Completion unit.

APR 29 1984 THE  
OIL CONSERVATION COMMISSION  
Santa Fe, New Mexico

Case No. 2-1 Exhibit No. 4

Submitted by Grynberg, JET

COMPLETION REPORT  
Recording Date 6/15/86

GRYNBERG PETROLEUM STATE 1-20  
660' FWL & 1980' FSL  
Sec. 20, Twp. 9S, R27E  
Chaves County, New Mexico  
El. 3823 KB 3812 GL

- 3-10-84 Rig up Mack Chase Unit #14.
- 3-12-84 Rig up GeoVann. Run cement bond log. Top cement 3612'. Rig up B.O.P.
- 3-13-84 Rig up GeoVann. Perf. 6198-6207' with two shots per foot @ 8:30 A.M. Ran 196 joints (6171.32') of 2-3/8" E.U.E. A.P.I. 4.7# tubing. Ran subs to put bottom of packer at 6191.32'. Swabbed dry - no show of gas or oil.
- 3-14-84 No pressure. Well on vacuum. Rig up Halliburton. Acidized with 2000 gallons 10% Morflo and 65,000 SCF nitrogen. Average treating pressure 3900#. Flow back.
- 3-15-84 FTP 40#. No fluid. Small steady flow of gas. Rig up GeoVann. Check Measurements. Perf 6163-6170', two shots per foot.
- 3-16-84 Rig up Halliburton. Acidize with 2000 gallons 10% Morflo and 65,000 SCF nitrogen. Average treating pressure 3850#. Flow back.
- 3-17-84 Well dead. Rig up Halliburton. Frac w/ 20,000 gallons Versagel 1300, 6700 gallons CO<sub>2</sub> and 30,000 pounds 20/40 sand. Maximum treating pressure 4200 P.S.I. Average treating pressure 3910 P.S.I. Shut in two hours. Flow back.
- 3-18-84 Well dead. SITP = 0 SICP = 1100 P.S.I. Shut well in.
- 3-19-84 SITP 250 P.S.I. SICP 900 P.S.I. Swabbed. Found fluid 1500' down. Swabbed off bottom. Trace of gas in fluid. Shut well in.
- 3-20-84 SITP 475 P.S.I. SICP 475 P.S.I. Blew down in 15". Rig up GeoVann. Set cast iron bridge plug @ 5540'. Load hole w/ 100 bbl. 2% KCL water. Perf 5414' to 5429' - two shots per foot. Run tubing to 5447'.

COMPLETION REPORT - Page 2  
GRYNBERG PETROLEUM STATE 1-20

- 3-21-84 SITP 25# SICP 25#. Rig up Halliburton. Acidize with 3000 gallons 15% acid and 500 SCF per barrel nitrogen. Average treating pressure 3700 P.S.I. Maximum pressure 4100 P.S.I. Flow back. Shut in overnight.
- 3-22-84 SITP 200# SICP 350#. Small amount of gas. Blew down in 15" swab. Found fluid at 2500'. Swabbed fluid down to 4000'. Casing pressure still 350#. Water sample analyzed formation water.
- 3-23-84 Rig up GeoVann. Attempted to set cast iron bridge plug at 4920'. Plug stuck at 4783'. Set plug there. Pressure test. Plug not holding.
- 3-24-84 Ran packer to test. Found that bridge plug was not holding.
- 3-26-84 Set cast iron bridge plug at 4780'. Pressure tested. Would not hold fluid. Rigged up Bell Petroleum surveys. Temperature survey indicated no splits in casing. Ran radioactive tracer survey. Found fluid going through plugs.
- 3-27-84 Set Baker cast iron bridge plug at 4756'. Pressure test @ 4000 P.S.I. for 15 minutes. Plug held. Perf 4728-4736' - two shots per foot. Shut down because of wind storm.
- 3-28-84 Rig up Halliburton. Acidize w/2000 gallons Mod 101 and 1000 SCF/bbl. nitrogen. Broke w/1800# maximum treating pressure - 3000 P.S.I. Average treating pressure 3200 P.S.I. Flow back.
- 3-29-84 SITP 20# SICP 200#. Making small amount of gas. Rig up Halliburton. Frac with 20,000 gallons jelled 2% KCL water, 6000 gallons liquid CO<sub>2</sub>, 15,000 pounds 20/40 sand, 14,000 pounds 12/20 sand. Maximum treating pressure 2270 P.S.I. Average treating pressure 2150 P.S.I. Flow rate 20 barrels per minute. Shut in for three hours. Flow back. FTP 350 P.S.I. FCP 800 P.S.I. at 4:00 P.M. Left well flowing overnight.
- 3-30-84 Well dead. T.P. = 0. C.P. = 825 P.S.I. Swab. Kicked off at 9:00 A.M. FTP 500#, FCP 800# at 10:00 A.M. Well died at 2:30 P.M. Gas would not flare. Shut well in.

COMPLETION REPORT - Page 3  
GRYNBERG PETROLEUM STATE 1-20

3-31-84 SITP 500# SICP 550#. Flowed well. Rigged down.

4-01-84 FTP 40# FCP 240#. Gas would flare. No fluid.

  
Jim B. McWilliams

April 4, 1984

# DESERT DRILLING, INC.

P. O. Box 146 — 2721 LOVINGTON HIGHWAY

TELEPHONE 505 392-5301

HOBBS, NEW MEXICO 88240

JUL 29 1985

INVOICE DATE Feb: 21, 1984

SOLD TO

Grynberg Petroleum Company  
5000 S. Quebec  
Denver, Colo. 80237

BEFORE THE  
INVOICE NO. 160  
OIL CONSERVATION COMMISSION  
Santa Fe, New Mexico

Case No. 2961 Exhibit No. 5

Submitted by Grynberg, Pet

Hearing Date 2/19/86

TERMS: NET. - 10TH PROX.

Charges for drilling your # 1-20 Grynberg State from 02/01/84 thru to 02/20/84, Chaves County, New Mexico.

0' - 15' - Bottom of cellar - No Charge

15' - 6396' - 6381' drilled @ \$ 15.50 per foot. \$ 98,905.50

Deep	02/16/84 - 14 hrs daywork @ \$ 166.67 per hr.	\$ 2,333.38
✓	02/17/84 - 24 hrs daywork @ \$ 4,000.00 per day.	\$ 4,000.00
✓	02/18/84 - 24 hrs daywork @ \$ 4,000.00 per day.	\$ 4,000.00
✓	02/19/84 - 6½ hrs daywrok @ \$ 166.67 per hr.	\$ 1,083.36
		<hr/>
		\$ 11,416.74

Total Footage	\$ 98,905.50
Total Daywork	\$ 11,416.74

3.875% tax

\$110,322.24  
4,274.99

\$114,597.23

99,200.00

15,397.23

3692.83

Did we only pay 114,005.07?

Pd. Advance  
99,200.00

Paid in 83

99200  
14805.07  
114,005.07

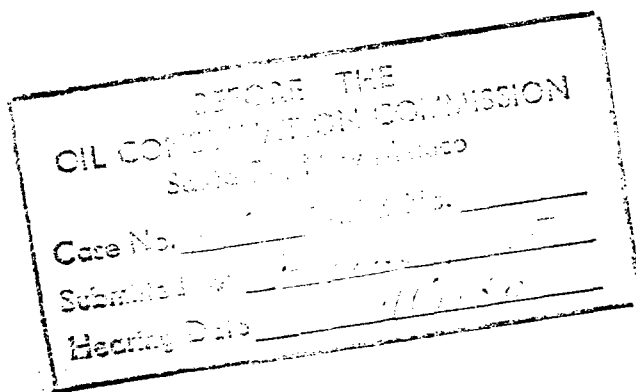
**Schlumberger**  
COMPENSATED NEUTRON  
LOG DENSITY

[illegible]

Form 101-1		The well name, location and borehole referenced data were furnished by the customer.		Form 101-2	
Well Name		Borehole		Type Log	
Well No.	011	Borehole No.	011	Type Log	Depth
Service Order No.	011				
Program Logo No.	011				
Fluid Level	011				
<b>EQUIPMENT DATA</b>					
Module	011	011			
Telemetry Cart	011	011			
Dens. Cart	011	011			
Dens. Snd	011	011			
Dens. Snd	011	011			
Dens. Source	011	011			
Dens. Calibrator	011	011			
Nequl. Cart	011	011			
Nequl. Source	011	011			
Nequl. Calibrator	011	011			
GR Cart	011	011			
Gamma Source	011	011			
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Gamma Source	011	011			

AFTER SURVEY TOOL CHECK SUMMARY			
PERFORMED: 04/02/19		03/12/19	
PROGRAM FILE: LEP10		VERSION: 04.0	
LBTC		TOOL CHECK	
LBT TOOL SERIAL NUMBER :		1999	
	BACKGROUND MEASURED		
	BEFORE	AFTER	UNITS
LL	19.89	19.99	CPS
LU	73.23	73.31	CPS
LS	88.75	88.68	CPS
LTH	8.468	8.58	CPS
SSI	18.89	18.49	CPS
SSR	18.93	18.88	CPS
CNTH		TOOL CHECK	

SERVICE DATE	VENDOR AND SERVICE PERFORMED	AMOUNT	FORMATION	SERVED
			81.89% ABO	18.11% PRECAMBRIAN
12/30/83	Runnels Mud Co.-Prepay Mud	6,240.00	2,955.79	3,284.21
12/30/83	Oilfield Constr. Co.-Location	1,037.50	840.99	196.51
12/30/83	Lyman R. Graham -Surf. Damage	500.00	405.30	94.70
12/31/83	Oilfield Constr. Co.-Location	2,056.25	1,666.78	389.47
12/31/83	R.R. Patton - Survey Road	470.81	381.64	89.17
1/4/84	Comm.Pub.Land-ROW 20-T9S-R27E	2,130.00	1,726.58	403.42
1/6/84	Hondo Pipe -8 5/8" 24# Casing	8,943.69	7,249.76	1,693.93
1/31/84	Jim's Water Serv.-Fresh Water	430.04	203.70	226.34
2/2/84	Halliburton-Cement 8 5/8"	6,945.86	5,630.31	1,315.55
2/1-2/4/84	Jim's Water Svc.-Fresh Wtr & Trkg	860.08	407.41	452.67
2/2/84	Jim's Wtr Svc-Fresh Wtr & Trkg	967.62	458.35	509.27
2/2/84	Jim's Wtr Svc-Fresh Wtr & Trkg	752.57	356.48	396.09
2/3-2/4/84	Jim's Wtr Svc-Fresh Wtr & Trkg	645.06	305.55	339.51
2/4/84	Roswell Ready Mix-Rods for Cellar	515.74	418.06	97.68
2/4/84	Troy's Welding-Weld Cattleguard	108.68	88.09	20.59
2/5/84	Jim's Wtr Svc.-Brine & Trkg	282.02	133.59	148.43
2/5/84	Jim's Wtr Svc-Fresh Wtr & Trkg	107.51	50.93	56.58
2/5/84	Jim's Wtr Svc-Brine Wtr & Trkg	564.04	267.18	296.86
2/5/84	Jim's Wtr Svc-Brine & Fresh Wtr	671.55	318.10	353.45
2/5/84	Jim's Wtr Svc -Brine Wtr	282.02	133.59	148.43
2/7/84	Jim's Wtr Svc-Fresh Water	107.51	50.92	56.59
2/7/86	Big Red Supply-Sample Bags F	32.95	-0-	32.95
2/9/84	Jim's Wtr Svc-Fresh Water	107.51	50.92	56.59
2/11/84	Jim's Wtr Svc-Fresh & Brine Wtr	497.04	213.02	284.02
2/12/84	Troy's Welding-Cut & Weld wellhd	122.26	99.10	23.16
2/15/84	Jim's Wtr Svc-Fresh Water	107.38	50.86	56.52
2/17/84	Jim's Wtr Svc-Fresh Water	107.51	50.93	56.58
2/19/84	Jim's Wtr Svc-Fresh Water	322.53	152.78	169.75
2/23/84	Robert Becker-Geologist	1,786.63	-0-	1,786.63
1/31/84	Oilfield Industrial-Line pit	1,530.14	1,253.03	277.11
2/12/84	Schlumberger-Logging	20,363.86	5,071.00	15,292.86
2/13/86	Buckeye, Inc.-Mud slick ?	2,555.52	2,071.50	484.02
2/16/84	Halliburton-DST 6325-6396	3,039.88	-0-	3,039.88



81.89%

SERVICE DATE	VENDOR AND SERVICE PERFORMED	AMOUNT	ABO	PRECAMBRIAN
2/18/84	Schlumberger-Logging	6,493.62	-0-	6,493.62
2/18/84	Big Red Supply-Csg hd,etc	1,090.27	883.77	206.50
2/18/86	Assoc Pipe-5½ 15.5# Csg	29,120.80	23,605.32	5,515.48
2/19/86	Troy's Weld-Final csg Cutoff	108.68	88.10	20.58
2/19/84	Halliburton-Cement 5½" Csg	9,000.20	-0-	9,000.20
2/20/84	Hondo Pipe-Forklift 5½"	224.37	181.87	42.50
2/12-2/20/84	Sonny Longo-Drlg. Consultant	1,918.00	-0-	1,918.00
2/21/84	Desert Drlg.-Footage & Daywk	114,005.07	54,002.40	60,002.67
3/10/84	Mimco Pipe-6,304' 2 3/8 Tub	11,675.61	9,464.25	2,211.36
3/10/84	Buckeye,Inc-Return mud slick	(1,983.23)	(1,607.61)	(375.62)
3/10-3/31/84	Mack Chase-Completion Rig /	23,971.44	8,091.51	15,879.93
3/12/84	Hondo Pipe-Wellhead fittings	2,067.57	1,675.95	391.62
3/12/84	Hondo Pipe-Tbghd & Subs	2,088.77	1,693.16	395.61
3/12/84	Hondo Pipe-Flow Tee & Swage	187.10	187.10	-0-
3/12/84	Troy's Welding-Cut,Weld Csg	176.60	176.60	-0-
3/14/84	Jim's Wtr Svc-Fresh & KCL	437.15	-0-	437.15
3/14/84	Halliburton-Acid @ 6190'-6207'	1,562.24	-0-	1,562.24
3/14/84	Halliburton-Acid & N26190-6207'	1,835.68	-0-	1,835.68
3/14/84	Maypole Pck-5½" Rental Packer	1,219.73	-0-	1,219.73
3/16/84	Halliburton-Acid & N2 6163-6170	1,499.68	-0-	1,499.68
3/16/86	Halliburton-Acid&N2 6163-6170'	1,855.64	-0-	1,855.64
3/16/84	Jim's Wtr Svc-Fresh & KCL	628.94	-0-	628.94
3/16/84	Jim's Wtr Svc-Fresh & KCL	2,830.74	-0-	2,830.74
3/16/84	Hondo Pipe-Return Sub & Collar	(277.22)	(224.71)	(52.51)
3/17/84	Halliburton-Deep Frac	18,902.18	-0-	18,902.18
3/19/84	B&R Lease Svc-Fence pit	158.15	128.20	29.95
3/21/84	Halliburton-Acid&N2 5414-5429'	1,470.22	-0-	1,470.22
3/21/84	Halliburton-Acid&N2 5414-5429'	3,403.53	-0-	3,403.53
3/22/84	T&C Tank-Install Anchors	462.45	374.86	87.59
3/24/84	Jim's Water Svc-Fresh & KCL	2,801.51	2,801.51	-0-
3/24/84	Maypole - 5½" Rental Packer	903.71	903.71	-0-
3/26/84	Bell Pet.Survey-survey for leak	3,291.93	3,291.93	-0-
3/28/84	Jim's Wtr Svc-Fresh & KCL	731.18	731.18	-0-



SERVICE DATE	VENDOR AND SERVICE PERFORMED	AMOUNT	FORMATION SERVED	
			<u>81.89%</u> ABO	<u>18.11%</u> PERCMBRIAN
3/28/84	Halliburton-Acidize & N <sub>2</sub> Abo	1,675.84	1,675.84	-0-
3/28/84	Halliburton-Acidize & N <sub>2</sub> Abo	3,291.47	3,291.47	-0-
3/29/84	Jim's Water Service-Tank Rent	46.74	46.74	-0-
3/29/84	Halliburton-Frac Abo	13,779.82	13,779.82	-0-
3/29/30/84	Jim's Water Svc.-Tank Rent	46.69	46.69	-0-
3/31/84	Completion Rentals-BOP Rental	605.80	605.80	-0-
3/30/84	B&R Lease-load tbg & csg	169.84	169.84	-0-
4/4/84	Jim McWilliams-Drill. Cons.	5,435.35	2,329.44	3,105.91
4/25/84	Jones & Gallegos-Lawsuit	438.50	355.45	83.05
5/25/84	Jones & Gallegos-Lawsuit	66.00	53.50	12.50
5/25/84	Jones & Gallegos-Lawsuit	33.81	27.40	6.41
5/30/84	Valley Constr-final cleanup	640.00	518.78	121.22
7/10/84	Double Anchor - Repair Road	624.00	505.81	118.19
10/31/84	Welborn Fuffard-Lawsuit	221.00	179.14	41.86
1/10/84	T.K. Campbell-Grynberg vs. M	701.67	568.77	132.90
3/12/84	T.K. Campbell-Grynberg vs. M	216.97	175.88	41.09
10/17/84	T.K. Campbell-Grynberg vs. M	1,500.00	1,215.90	284.10
	Dennis Wright Ins.-Insurance	522.50	423.13	99.37
	Engineering Charge-Grynberg	600.00	<u>486.36</u>	113.64
			24,365.76	
	Overhead	3,764.31	1,783.09	1,981.22
	2 3/8" Tbg. Credited	(2,121.09)	(1,719.36)	(401.73)
	5 1/2" Casing Credited	(356.57)	(288.82)	(67.75)
		<u>340,956.72</u>	<u>163,652.01</u>	<u>177,304.71</u>
<hr/>				
ABO		163,652.01 x 0.25	=	40,913.00
DEEP		177,304.71 x 0.625	=	<u>110,815.44</u>
				151,728.44

Affidavit  
of  
Jack J. Grynberg

In March of 1984, after consultation with Mr. Morris Ettinger, Executive Vice President of Grynberg Petroleum Company and graduate of the Colorado School of Mines with two degrees, one in geophysical engineering and one in geology, we ascertained that the subject well #1-20, located in the NWSW Sec. 20, T9S-R27E, Eddy County, New Mexico, has a potentially productive zone in the San Andres formation from a 1915 foot depth to 1945 feet. I telephoned Randy Patterson of Yates Petroleum Company in Artesia, New Mexico and offered to turn the well over to Yates Petroleum Company, because 100% of the San Andres rights belonged to Yates based on the prior ruling of the Commission that the San Andres has a 40 acre spacing, and the NW/4 of SW/4 of Sec 20, T9S - R27E, which is the location of the well on Yates lease and they own 100% of the San Andres rights.

Yates Petroleum promised to respond to us, and subsequent to March 1984, I had reminded Mr. Patterson that they had not responded to our request, and to this date, we still do not have a response from Yates Petroleum Company.

Dated: June 18<sup>th</sup> 1986  
Denver, Colorado

Jack J. Grynberg  
President  
Grynberg Petroleum Company  
5000 South Quebec, Suite 500  
Denver, Colorado 80237  
Telephone: 303-850-7490

Acknowledgment

State of Colorado  
County of Arapahoe ss

On this 18th day of June in the year of 1986, the foregoing instrument was acknowledged before me, the undersigned, a Notary Public, by Jack J. Grynberg who personally appeared before me and is known to me to be the person described in and who executed the within and foregoing instrument and acknowledged to me that he executed same as his free and voluntary act and deed.

IN WITNESS WHEREOF, I have hereto set my official signature and affixed my notarial seal the day and year first above written.

Amelia D. Magnuson  
Notary Public

Residing at: 5000 SO. QUEBEC ST. #500  
DENVER, COLORADO 80237

My commission expires: MAR 13 1990

BEFORE THE	
OIL CONSERVATION COMMISSION	
San Antonio, Texas	
Case No.	<u>111-1-20-1</u>
Submitted by	<u>Grynberg</u>
Hearing Date	<u>6/18/86</u>

BEFORE THE  
OIL CONSERVATION COMMISSION

Including Same Analysis  
Case No.                       
Submitted                      (1)  
Hearing Date                     

to 2000' 3day 0.16  
to 5200 6days 0.32  
L.T.O. 10 0.53

SERVICE DATE	VENDOR AND SERVICE PERFORMED	AMOUNT	S.A.	Abo	Pre Premium
12/30/83	Runnels Mud. Co.-Prepay Mud ✓	6,240.00	998.40	3112.70	2,128.90
12/30/83	Oilfield Construction Co.-Location ✓	1,037.50	166.00	317.54	353.96
12/30/83	Lyman R. Graham - Surface Damage ✓	500.00	155.18	249.42	94.70
12/31/83	Oilfield Construction Co.-Location ✓	2,056.25	141.28	1025.72	389.45
12/31/83	R.R. Patton - Survey Road ✓	470.81	146.78	1234.81	89.22
1/4/84	Comm. Pub. Land-ROW 20-T9S-R27E ✓	2,130.00	106.51	1062.51	103.49
1/6/84	Hondo Pipe - 8 5/8" 24# Casing ✓	8,943.69	2758.37	4461.39	1693.93
1/31/84	Jim's Water Service-Fresh Water ✓	430.04	68.80	215.02	146.22
2/2/84	Halliburton-Cement 8 5/8" ✓	6,945.86	2165.51	3464.81	3264.54
2/1-2/4/84	Jim's Water Svc.-Fresh Wtr. & Trkg. ✓	860.08	137.61	275.23	447.24
2/2/84	Jim's Water Svc.-Fresh Wtr. & Trkg. ✓	967.62	154.82	309.64	503.16
2/2/84	Jim's Water Svc.-Fresh Wtr. & Trkg. ✓	752.57	120.41	240.82	391.34
2/3-2/4/84	Jim's Water Svc.-Fresh Wtr. & Trkg. ✓	645.06	103.21	206.06	335.79
2/4/84	Roswell Ready Mix-Rods for Cellar ✓	515.74	142.78	257.27	97.68
2/4/84	Troy's Welding-Weld Cattleguard ✓	108.68	22.88	54.21	20.59
2/5/84	Jim's Water Svc.-Brine & Trkg. ✓	282.02	45.12	90.25	146.65
2/5/84	Jim's Water Svc.-Fresh Wtr. & Trkg. ✓	107.51	17.20	34.40	55.91
2/5/84	Jim's Water Svc.-Brine Wtr. & Trkg. ✓	564.04	90.25	180.49	293.30
2/5/84	Jim's Water Svc.-Brine & Fresh Wtr. ✓	671.55	107.45	214.90	349.20
2/5/84	Jim's Water Svc.-Brine Water ✓	282.02	45.12	90.25	146.65
2/7/84	Jim's Water Svc.-Fresh Water ✓	107.51	17.20	34.40	55.91
2/7/84	Big Red Supply-Sample Bags F	32.95	—	—	32.95
2/9/84	Jim's Water Svc.-Fresh Water ✓	107.51	17.20	34.40	55.91
2/11/84	Jim's Water Svc.-Fresh & Brine Wtr. ✓	497.04	79.53	159.05	258.46
2/12/84	Troy's Welding-Cut & weld wellhead	122.26	—	99.10	23.16
2/15/84	Jim's Water Svc.-Fresh Water ✓	107.38	17.20	34.36	55.82
2/17/84	Jim's Water Svc.-Fresh Water ✓	107.51	17.20	34.36	55.95
2/19/84	Jim's Water Svc.-Fresh Water ✓	322.53	51.60	103.21	167.72
2/23/84	Robert Becker-Geologist	1,786.63	—	—	1,786.63
1/31/84	Oilfield Industrial-Line pit ✓	1,530.14	417.434	763.21	292.59
2/12/84	Schlumberger-Logging ✓	20,363.86	3318.61	5340.07	11,705.21
2/13/84	Buckeye, Inc.-Mud slick ?	2,555.52	—	2071.50	484.02
2/16/84	Halliburton-DST 6325-6396	3,039.88	—	—	3039.88

( 2 )

2000  
5200  
6415

SERVICE DATE	VENDOR AND SERVICE PERFORMED	AMOUNT	S.A	Also	via Per.
2/18/84	Schlumberger-Logging ✓	6,493.62	—	—	6,493.62
2/18/84	Big Red Supply-Casinghead & Etc.	1,090.27	—	883.77	206.50
2/18/84	Associated Pipe-5 1/2" 15.5# Casing <i>al</i>	29,120.80	—	23,605.32	5515.48
2/19/84	Troy's Welding-Final Csg.Cutoff	108.68	—	88.10	20.58
2/19/84	Halliburton-Cement 5 1/2" Csg. ✓	9,000.20	—	—	900.20
2/20/84	Hondo Pipe-Forklift 5 1/2"	224.37	—	181.87	42.50
2/12-2/20/84	Sonny Longo-Drlg. Consultant	1,918.00	—	—	1918
2/21/84	Desert Drilling-Footage & Daywork ✓	114,005.07	19,240.31	54,002.40	60,002.67
3/10/84	Mimco Pipe-6,304ft. 2 3/8" Btg. ✓	11,675.61	—	9,464.25	2211.36
3/10/84	Buckeye, Inc.-Return mud slick	(1,983.23)	—	(1607.61)	(375.62)
3/10-3/31/84	Mack Chase - Completion Rig	23,971.44	—	8041.51	15,879.93
3/12/84	Hondo Pipe-Wellhead fittings ✓	2,067.57	—	1675.95	391.65
3/12/84	Hondo Pipe-Toolhd & Subs ✓	2,088.77	—	1693.16	395.61
3/12/84	Hondo Pipe-Flow Tee & Swage	187.10	—	187.10	—
3/12/84	Troy's Welding-Cut & Weld Csg.	176.60	—	176.60	—
3/14/84	Jim's Water Svc.-Fresh & KCL	437.15	—	—	43.15
3/14/84	Halliburton-Acid @ 6190'-6207'	1,562.24	—	—	1,562.24
3/14/84	Halliburton-Acid & N <sub>2</sub> @ 6190-6207'	1,835.68	—	—	1,835.68
3/14/84	Maypole Packers-5 1/2" Rental Packer	1,219.73	—	—	1219.73
3/16/84	Halliburton-Acid & N <sub>2</sub> @ 6163-6170'	1,499.68	—	—	1,499.68
3/16/84	Halliburton-Acid & N <sub>2</sub> @ 6163-6170'	1,855.64	—	—	1,855.64
3/16/84	Jim's Water Svc.-Fresh & KCL	628.94	—	—	628.94
3/16/84	Jim's Water Svc.-Fresh & KCL	2,830.74	—	—	2,830.74
3/16/84	Hondo Pipe-Return Sub. & Collar	(277.22)	—	(224.71)	(52.57)
3/17/84	Halliburton-Deep Frac	18,902.18	—	—	18,902.18
3/19/84	B&R Lease Svc.-Fence pit <i>al</i>	158.15	49.31	78.89	—
3/21/84	Halliburton-Acid & N <sub>2</sub> @ 5414-5429'	1,470.22	—	—	1470.22
3/21/84	Halliburton-Acid & N <sub>2</sub> @ 5414-5429'	3,403.53	—	—	3,403.53
3/22/84	T&CTank-Install Anchors	462.45	—	374.96	87.59
3/24/84	Jim's Water Svc.-Fresh & KCL	2,801.51	—	2801.51	—
3/24/84	Maypole - 5 1/2" Rental Packer	903.71	—	903.71	—
3/26/84	Bell Pet. Survey-Survey for leak	3,291.93	—	3291.93	—
3/28/84	Jim's Water Svc.-Fresh & KCL	731.18	—	731.18	—

19,240.31 104,422.09

(3)

VICE DATE	VENDOR AND SERVICE PERFORMED	AMOUNT
28/84	Halliburton-Acidize & N <sub>2</sub> Abo	1,675.84
28/84	Halliburton-Acidize & N <sub>2</sub> Abo	3,291.47
29/84	Jim's Water Service-Tank Rent	46.74
29/84	Halliburton-Frac Abo	13,779.82
29-3/30/84	Jim's Water Svc.-Tank Rent	46.69
31/84	Completion Rentals-BOP Rental	605.80
30/84	B&R Lease-load tbg & csq	169.84
1/84	Jim McWilliams-Drilling Consultant	5,435.35
25/84	Jones & Gallegos-Lawsuit	438.50
25/84	Jones & Gallegos-Lawsuit	66.00
25/84	Jones & Gallegos - Lawsuit	33.81
30/84	Valley Construction-final cleanup	640.00
30/84	Double Anchor -Repair Road	624.00
31/84	Welborn Fuffard-Lawsuit	221.00
0/84	T.K. Campbell-Grynberg vs. M	701.67
2/84	T.K. Campbell-Grynberg vs. M	216.97
17/84	T.K. Campbell-Grynberg vs. M	1,500.00
	Dennis Wright Ins.-Insurance	522.50
	Engineering Charge-Grynberg	600.00
	Overhead	3,764.31
	2 3/8" Tbg. Credited	(2,121.09)
	5 1/2" Casing credited	(356.57)
		340,956.72

S.A

—	1675.84	—
—	3291.47	—
—	46.74	—
—	13,779.82	—
—	46.69	—
—	605.80	—
—	169.84	—
—	2329.44	3,105.91
—	355.45	83.05
—	53.50	12.50
—	27.40	6.41
199.53	320.—	121.22
194.54	312.—	118.14
—	179.14	41.86
—	568.77	132.90
—	175.83	41.09
—	1215.90	284.10
162.50	260.64	99.37
—	486.36	113.64
556.88	25,900.68	
602.29	1204.58	
—	(1719.36)	(401.73)
—	(238.82)	(67.75)
40,910.96	156,458.47	143,587.29

$$S.A = 40,910.96 \times 1.0 = 40,910.96$$

$$Abo = 156,458.47 \times 0.25 = 39,114.62$$

$$Pro Per = 143,587.29 \times 0.625 = 89,742.06$$

$$169,767.64$$

COST ALLOCATION  
1-20, T9S-R27E  
Chaves County, New Mexico  
(Based on Commission Order R-7343) June 19, 1986  
Pre-Permian

SERVICE DATE	VENDOR AND SERVICE PERFORMED	AMOUNT	COST	REMARKS
12/30/83	*Runnels Mud. Co.-Prepay Mud	6,240.00	3,284.21	
12/30/83	Oilfield Constr. Co.-Location	1,037.50		
12/30/83	Lyman R. Graham - Surface Damage	500.00		
12/31/83	Oilfield Constr. Co. - Location	2,056.25		
12/31/83	R.R. Patton - Survey Road	470.81		
1/4/84	Comm.Pub. Land-ROW 20,T9S-R27E	2,130.00		
1/6/84	Hondo Pipe- 8 5/8" 24# Casing	8,943.69		
1/31/84	*Jim's Wtr.Svc.-Fresh Water	430.04	226.34	
2/2/84	Halliburton-Cement 8 5/8"	6,945.86		
2/1-2/4/84	*Jim's Wtr. Svc.-Fresh Wtr. & Trkg.	860.08	452.67	
2/2/84	*Jim's Wtr.Svc.-Fresh Wtr. & Trkg.	967.62	509.27	
2/2/84	*Jim's Wtr.Svc.-Fresh Wtr. & Trkg.	752.57	396.09	
2/3-2/4/84	*Jim's Wtr. Svc.-Fres Wtr. & Trkg.	645.06	339.51	
2/4/84	Roswell Ready Mix-Rods for Cellar	515.74		
2/4/84	Troy's Welding-Weld Cattleguard	108.68		
2/5/84	*Jim's Wtr. Svc.-Brine & Trkg.	282.02	148.43	
2/5/84	*Jim's Wtr.Svc.-Fresh Wtr. & Trkg.	107.51	56.58	
2/5/84	*Jim's wtr.Svc.-Brine Wtr. & Trkg.	564.04	296.86	
2/5/84	*Jim's Wtr. Svc.-Brine & Fresh Wtr.	671.55	353.45	
2/5/84	*Jim's Wtr. Svc.-Brine Water	282.02	148.43	
2/7/84	*Jim's Wtr. Svc.-Fressh Water	107.51	56.58	
2/7/84	Big Red Supply-Sampe Bags	32.95	32.95	
2/9/84	*Jim's Wtr. Svc.-Fresh Water	107.51	56.58	
2/11/84	*Jim's Wtr. Svc.-Fresh & Brine Wtr.	497.04	263.43	
2/12/84	Troy's Welding-Cut & Weld Wellhead	122.26		
2/15/84	*Jim's Wtr. Svc.-Fresh Water	107.38	56.91	
2/17/84	*Jim's Wtr. Svc.-Fresh Water	107.51	56.98	
2/19/84	*Jim's Wtr. Svc.-Fresh Water	322.53	169.75	
2/23/84	Robert Becker-Geologist	1,786.63	1,786.63	
1/31/84	Oilfield Industrial-Line pit	1,530.14		
2/12/84	Schlumberger-Logging	20,363.86	9,658.62	Depth charge
2/13/84	Buckeye, Inc.-Mud slick	2,555.52		
2/16/84	Halliburton-DST 6325-6396	3,039.88	3,039.88	

SERVICE DATE	VENDOR AND SERVICE PERFORMED	AMOUNT	Pre Permian	REMARKS
			COST	
2/18/84	Schlumberger-Logging	6,493.62	6,493.62	Run #2
2/18/84	Big Red Supply-Casinghead & Etc.	1,090.27		
2/18/84	Associated Pipe-5 1/2" 15.5# Casing	29,120.80		
2/19/84	Troy's Welding-Final Csg. Cutoff	108.68		
2/19/84	Halliburton-Cement 5 1/2" Csg.	9,000.20	3,451.74	Proportional cost for Pre-Permian Section
2/20/84	Hondo Pipe-Forklift 5 1/2"	224.37		
2/12-2/20/84	Sonny Longo-Drig. Consultant	1,918.00	1,918.00	
2/21/84	*Desert Drilling-Footage & Daywork	114,005.07	60,002.67	
3/10/84	Mimco Pipe-6,340 ft. 2 3/8 Tbg.	11,675.61		
3/10/84	Buckeye, Inc.-Return mud slick	(1,983.23)		
3/10-3/31/84	Mack Chase - Completion Rig	23,971.44	15,879.93	
3/12/84	Hondo Pipe-Wellhead fittings	2,067.57		
3/12/84	Hondo Pipe-Tbghd & Subs	2,088.77		
3/12/84	Hondo Pipe-Flow Tee & Swage	187.10		
3/12/84	Troy's Welding-Cut & Weld Csg.	176.60		
3/14/84	Jim's Wtr. Svc.-Fresh & KCL	437.15	437.15	
3/14/84	Halliburton-Acid @ 6190'-6207'	1,562.24	1,562.24	
3/14/84	Halliburton-Acid & N2 @ 6190-6207'	1,835.68	1,835.68	
3/14/84	Maypole Packers-5 1/2" Rental Packer	1,219.73	1,219.73	
3/16/84	Halliburton-Acid & N2 @ 6163-6170'	1,499.68	1,499.68	
3/16/84	Halliburton-Acid & N2 @ 6163-6170'	1,855.64	1,855.64	
3/16/84	Jim's Wtr. Svc. -Fresh & KCL	628.94	628.94	
3/16/84	Jim's Wtr. Svc.-Fresh & KCL	2,830.74	2,830.74	
3/16/84	Hondo Pipe-Return Sub. & Collar	(277.22)	2,830.74	
3/17/84	Halliburton- Deep Frac	18,902.18	18,902.18	
3/19/84	B&R Lease Svc.-Fence pit	158.15		
3/21/84	Halliburton-Acid & N2 @ 5414-5429'	1,470.22	1,470.22	
3/21/84	Halliburton-Acid & N2 @ 5414-5429'	3,403.53	3,403.53	
3/22/84	T & C Tank-Install Anchors	462.45		
3/24/84	Jim's Wtr. Svc. -Fresh & KCL	2,801.51		
3/24/84	Maypole - 5 1/2" Rental Packer	903.71		
3/26/84	Bell Pet. Survey-Survey for leak	3,291.93		
3/28/84	Jim's Wtr. Svc.-Fresh & KCL	731.18		

SERVICE DATE	VENDOR AND SER. E PERFORMED	AMOUNT	COST	REMARKS
3/28/84	Halliburton-Acidize & N <sub>2</sub> Abo	1,675.84		
3/28/84	Halliburton-Acidize & N <sub>2</sub> Abo	3,291.47		
3/29/84	Jim's Water Service-Tank Rent	46.74		
3/29/84	Halliburton-Frac Abo	13,779.82		
3/29-3/30/84	Jim's Wtr. Svc.-Tank Rent	46.69		
3/31/84	Completion Rentals-BOP Rental	605.80		
3/30/84	B & R Lease-load tbq. & csq.	169.84		
4/4/84	Jim McWilliams-Drilling Consultant	5,435.35	2,989.44	llout of 20 days completing Pre-Perm
4/25/84	Jones & Gallegos-Lawsuit	438.50		
5/25/84	Jones & Gallegos-Lawsuit	66.00		
6/25/84	Jones & Gallegos - Lawsuit	33.81		
6/30/84	Valley Construction-Final cleanup	640.00		
7/10/84	Double Anchor - Repair Road	624.00		
10/31/84	Welborn Puffard-Lawsuit	221.00		
1/10/84	T. K. Campbell-Grynberg vs. M	701.67		
3/12/84	T. K. Campbell-Grynberg vs. M	216.97		
10/17/84	T. K. Campbell-Grynberg vs. M	1,500.00		
	Dennis Wright Insurance - Insurance	522.50		
	Engineering Charge-Grynberg	600.00		
	Overhead	3,764.31		
	2 3/8" Tbg. Credited	(2,121.09)		
	5 1/2" Casing credited	(356.57)		
	TOTAL	\$340,956.72	\$147,771.28	

\*Pre-Permian charges based on actual days drilled from 5340' to 5415'. 10 days over total drilling of 19 days. (0.53).

Well cost less Pre-Permian direct expenses =  
= 340,956.72 - 147,771.28 = \$193,185.44

Abo cost = 193,185.44 x 0.8189 = \$158,199.56

Indirect Pre-Permian cost = 193,185.44 x 0.1811 = \$34,985.88

Total Pre-Permian Cost = 147,771.28 + 34,985.88 = \$182,757.16





TONEY ANAYA  
GOVERNOR

STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION DIVISION

August 21, 1986

50 YEARS



1935 - 1985

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

Ms. Jean Willis,  
Clerk, Chaves County  
Courthouse  
P. O. Box 1776  
Roswell, New Mexico 88201

Re: Grynberg v. Oil Conservation Commission  
and Harvey E. Yates Co.  
Cause No. CV-86-55

Dear Ms. Willis:

Attorneys for the Petitioner in the above-referenced  
action have requested that we forward the enclosed  
certified documents for filing.

Thank you for your assistance.

Sincerely,

  
JEFFERY TAYLOR  
General Counsel

JT/dr

enclosures

LAW OFFICES

LOSEE & CARSON, P. A.

300 AMERICAN HOME BUILDING

P. O. DRAWER 239

ARTESIA, NEW MEXICO 88211-0239

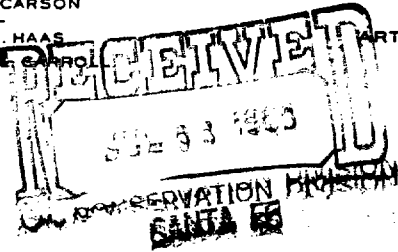
AREA CODE 505  
746-3508

A. J. LOSEE

JOEL M. CARSON

JAMES E. HAAS

ERNEST E. CARROLL



June 18, 1986

Mr. Jeff Taylor  
Legal Counsel  
Oil Conservation Division  
State Land Office Building  
Santa Fe, New Mexico 87501

Re: Grynberg v. Oil Conservation  
Commission, et al, No. CV-86-55

Dear Mr. Taylor:

In looking through our files in the captioned matter, I find there are some documents missing which are included in Mr. R. L. Stamets' Certification dated June 5, 1986. Enclosed is copy of the Certification, on which I have checked the documents we need. These include 1), 2), 4), 9) and 10). We would appreciate your sending us copies of these items at your earliest convenience. Thank you.

Sincerely,

*Sue C. Pemberton*  
Sue C. Pemberton  
Secretary

Enclosure

IN THE FIFTH JUDICIAL DISTRICT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

JACK J. GRYNBERG,

Petitioner, CV-86-55

vs.

THE OIL CONSERVATION COMMISSION OF  
THE ENERGY AND MINERALS DEPARTMENT OF  
THE STATE OF NEW MEXICO AND HARVEY E.  
YATES COMPANY,

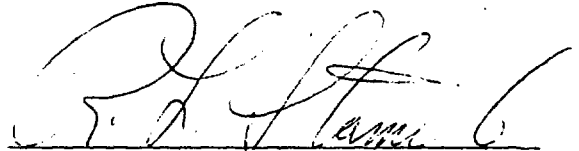
Respondents.

CERTIFICATION

I, R. L. STAMETS, Director of the Oil Conservation Division of the Energy and Minerals Department, do hereby certify that the documents listed below and attached hereto are true and correct copies of documents on file in this office.

- ✓ 1) Letter of October 5, 1984 from Grynberg Petroleum Company to Oil Conservation Commission, seeking hearing on attached Application to Amend Order R-6873.
- ✓ 2) Letter of October 18, 1984 from Grynberg Petroleum Company to Oil Conservation Commission, Amending Application filed by letter of October 5, 1984.
- 3) Transcript of Hearing, September 18, 1985. HAD
- ✓ 4) Transcript of Hearing, October 17, 1985.
- 5) Letter of October 29, 1985 from J. E. Gallegos to R. L. Stamets transmitting Proposed Order and Financial Statement.
- 6) Letter of October 30, 1985 from J. E. Gallegos to R. L. Stamets transmitting Affidavit of Ernest W. Lohf.
- 7) Hearing Brief in Behalf of Applicant Grynberg Petroleum Company. HAD
- 8) Applicant's Exhibit List and Hearing Exhibits 1 through 16, except 5. HAVE

- ✓ 9) Acreage Dedication Plat (Form C-102) for Pennsylvanian formation in Seymour State Com Well No. 1.
- ✓ 10) Acreage Dedication Plat (Form C-102) for Abo formation in Seymour State Com Well No. 1.
- 11) Letter of November 11, 1985 from A. J. Losee to R. L. Stamets transmitting "Brief on Behalf of Harvey E. Yates Company"; Proposed Order; Supplemental Title Opinion dated April 12, 1983; Supplemental Title Opinion dated December 13, 1983; Amended Gas Division Order, Harvey E. Yates Company, Seymour State Well No. 1, Atoka Zone Only; Amended Gas Division Order, Harvey E. Yates Company, Seymour State Well No. 1, Abo Zone Only.
- 12) Order of the Commission, Case No. 8400, Order No. R-6873-A dated December 6, 1985.
- 13) Application for Rehearing, Case No. 8400, filed December 26, 1985.


  
R. L. STAMETS, Director

June 5, 1986



STATE OF NEW MEXICO )  
COUNTY OF SANTA FE )

The foregoing instrument was acknowledged before me this 5th day of June, 1986.

  
NOTARY PUBLIC

My Commission Expires:

Oct 20, 1989

LAW OFFICES  
**LOSEE & CARSON, P. A.**  
300 AMERICAN HOME BUILDING  
P. O. DRAWER 239  
ARTESIA, NEW MEXICO 88211-0239

A. J. LOSEE  
JOEL M. CARSON  
JAMES E. HAAS  
ERNEST L. CARROLL

AREA CODE 505  
746-3508

June 30, 1986

The Honorable William J. Schnedar  
P. O. Box 1776  
Roswell, NM 88201

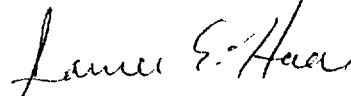
RE: Jack J. Grynberg vs. The Oil Conservation Commission,  
et al.; Chaves County CV-86-55

Dear Judge Schnedar:

We, as counsel for defendant Harvey E. Yates Company, would like to request an extension for the filing of our reply brief to July 15, 1986. We are currently in the process of preparing a brief in another matter which is due on July 7, 1986 and due to the limitations of manpower and resources, we would find it extremely difficult to file our reply brief in the above captioned matter in the allotted time. Counsel for Mr. Grynberg has indicated they have no objections to such an extension in light of the fact that the hearing date for this matter has been rescheduled to August 15, 1986.


We would appreciate it very much if your office would notify us if such an extension is acceptable. Thank you very much.

Respectfully yours,

  
James E. Haas

JEH/fel

cc: Robert Allen





JUN 13 1986  
CONSERVATION DIVISION  
SANTA FE

FIFTH JUDICIAL DISTRICT

STATE OF NEW MEXICO

WILLIAM J. SCHNEDAR  
District Judge  
Division VI

P. O. Box 1776  
Roswell, New Mexico 88201  
Phone (505) 624-0859

June 11, 1986

Robert W. Allen  
P. O. Box 2228  
Santa Fe, NM 87504-2228

Jeffery Taylor  
P. O. Box 2088  
Santa Fe, NM 87504-2088

A. J. Losee  
P. O. Drawer 239  
Artesia, NM 88210

RE: Jack J. Grynberg  
v.  
Oil Conservation Commission, et al.  
Chaves County CV-86-55

Gentlemen:

In a letter to you dated May 2, 1986, Judge Schnedar set this matter for oral argument on July 15, 1986.

Judge Schnedar must be in Eddy County on July 15. Therefore, the setting for that date is vacated.

The case has been reset for oral arguments on August 28, 1986 at 9:00 a.m. If this date is not satisfactory, please call and we will find a new one.

Sincerely yours,

Roberta R. Hall  
Secretary

/rh

January 24, 1986  
JEAN WILLIS, CLERK

FIFTH JUDICIAL DISTRICT COURT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

JACK J. GRYNBERG, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 THE OIL CONSERVATION )  
 COMMISSION OF THE ENERGY )  
 AND MINERAL DEPARTMENT OF )  
 THE STATE OF NEW MEXICO )  
 and HARVEY E. YATES COMPANY, )  
 )  
 Respondents. )

No. CV-86-55

Case Assigned  
To: Judge Alvin F. Jones

PETITION FOR REVIEW

COMES NOW, JACK J. GRYNBERG, by and through his attorneys, JONES, GALLEGOS, SNEAD & WERTHEIM, P.A., and for his Petition for Review, states:

1. The petitioner, Jack J. Grynberg, is the holder of State of New Mexico Oil and Gas Lease L-6907 covering the lease of oil, gas and other minerals in approximately 80 acres located in the <sup>320 of the 140</sup> E/2<sup>140</sup> NW 1/4 of Section 18, Township 9 South, Range 27 East, N.M.P.M., Chaves County, New Mexico.

2. Respondent Harvey E. Yates Company ("Heyco") and other related working interest owners own the leasehold

1 interest of approximately 240 acres in the W/2, NW 1/4 and SW  
2 1/4 of Section 18, Township 9 South, Range 27 East, N.M.P.M.,  
3 Chaves County, New Mexico.

4 3. In Order R-6873 issued January 7, 1982,  
5 respondent Oil Conservation Commission ("OCC") granted the  
6 application of Heyco seeking compulsory pooling of all mineral  
7 interests from the surface through the Ordovician formation  
8 underlying the W/2 of Section 18, Township 9 South, Range 27  
9 East, N.M.P.M., Chaves County, New Mexico, and declared Heyco  
10 the operator of a well to be drilled on the 320-acre tract  
11 created thereby. A copy of that pooling order is attached and  
12 incorporated as Exhibit "A".

13 4. By virtue of Order R-6873, Grynberg owns an  
14 undivided 24.6% proportional interest in all production from  
15 each acre of the pooled formations underlying the 320-acre unit  
16 established thereby.

17 5. Heyco drilled and completed a well in the SW/4  
18 NW/4 of the 320-acre unit designated the Seymour State Comm.  
19 No. 1. The well was completed in the Abo formation and a lower  
20 Prepermian formation. The Prepermian formation is and has been  
21 nonproductive since about November 1984.

22 6. The existing circumstances are that the 320 unit  
23 contains one producing Abo well on a 160 acre spacing and no  
24 producing Prepermian well on the 320 acre spacing. A second  
25



1 well at an unorthodox location, 660 feet from the South line  
2 and 660 feet from the West line, in the SW/4 SW/4 of Section 18  
3 would be situated higher structurally. The proposed location  
4 presents a probability of obtaining commercial production from  
5 the Abo formation and from the Fusselman, which is a separate  
6 Prepermian formation from that which was tested by the Seymour  
7 State well.

8 7. Although requested by Grynberg to do so, Heyco  
9 has refused to undertake further development of the unit by  
10 drilling a second well at the proposed unorthodox location.

11 8. By Application to the OCC dated October 5, 1984,  
12 Grynberg requested an Order to amend Order No. R-6873 to allow  
13 for a second well at the proposed location described above.

14 9. After a hearing, the OCC issued its Order  
15 R-6873-A regarding Grynberg's October 5, 1984 Application on  
16 December 6, 1985. Among other things, the - OCC erroneously  
17 determined that: (1) ~~this was previously determined - not in force~~ The W/2 of Section 18 is a spacing or pooling  
18 proration unit in Prepermian gas zones only; (2) the operation  
19 of OCC Order No. R-6873 does not confer any interest in the  
20 SW/4 of Section 18 in Grynberg, except in the Prepermian gas  
21 zones; and (3) any order entered granting Grynberg's  
22 application should be limited to Prepermian gas zones.  
23 (Findings 27, 28 and 29, pages 3-4). A copy of Order R-6873-A  
24 is attached and incorporated by reference as Exhibit "B".  
25

because there are 10 wells  
in the SW/4 of Section 18.

1           10. Within twenty (20) days after entry of Order  
2 R-6873-A, Grynberg filed an Application for Rehearing with the  
3 OCC setting forth the respects in which such Order is believed  
4 to be illegal and erroneous. A copy of that Application is  
5 attached and incorporated by reference as Exhibit "C".

6           11. The OCC refused such Application for Rehearing by  
7 its failure to act thereon within ten (10) days after the same  
8 was filed.

9           12. Grynberg alleges that Order No. R-6873-A is  
10 arbitrary, capricious and contrary to law and therefore void  
11 for the following reasons:

12  
13  
14       ↖ (a) Order No. R-6873-A is erroneous as a  
15 matter of law because Grynberg by law has an  
16 undivided fractional interest in all  
17 production underlying the pooled 320-acre  
unit, as more fully set forth in Exhibit  
"C", which is incorporated by reference.

18       (b) Order No. R-6873-A is not based on  
19 competent legal evidence as required by Rule  
20 1212 of the OCC and the New Mexico and  
Federal Constitutions, and as more fully set  
forth in Point II of Exhibit "C", which is  
incorporated by reference.

21           WHEREFORE, the petitioner prays that Order No.  
22 R-6873-A be reviewed by this Court and, upon review, be vacated  
23 with directions to enter a new order, consist with law and the  
24 legally competent evidence presented to the OCC at public  
25

1 hearing, and for such further relief as this Court may deem  
2 just.

3 JONES, GALLEGOS, SNEAD & WERTHEIM, P.A.  
4 Attorneys for Petitioner

5 By J. E. Gallegos  
6 J. E. GALLEGOS

7  
8 By Robert W. Allen  
9 ROBERT W. ALLEN  
10 Post Office Box 2228  
11 Santa Fe, New Mexico 87504-2228  
12 (505) 982-2691

13 8066A  
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**FIFTH JUDICIAL DISTRICT COURT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO**

**JACK J. GRYNBERG,** )  
 )  
 **Petitioner,** )  
 )  
 **vs.** )  
 )  
 **THE OIL CONSERVATION** )  
 **COMMISSION OF THE ENERGY** )  
 **AND MINERAL DEPARTMENT OF** )  
 **THE STATE OF NEW MEXICO** )  
 **and HARVEY E. YATES COMPANY,** )  
 )  
 **Respondents.** )  
 )

**No. CV-86-55  
Case Assigned  
To: Judge W. J. Schnedar**

**PETITIONER'S MEMORANDUM IN SUPPORT OF  
MOTION TO EXCLUDE CERTAIN  
DOCUMENTS FROM JUDICIAL REVIEW**

This case was principally heard by the New Mexico Oil Conservation Commission on September 18, 1985, with a continuance on October 17, 1985. On these two dates, the petitioner set forth, by expert testimony and exhibits, undisputed evidence of his ownership of 24.6% of all working interests pooled within the 320-acre unit created by OCC Order R-6873,<sup>1</sup> the need for a second unit well to produce common mineral resources which would otherwise remain undeveloped,<sup>2</sup> and operator Heyco's refusal to drill the

<sup>1</sup>OCC Transcript of Hearing, September 18, 1985, p. 10.

<sup>2</sup>OCC Transcript of Hearing, September 18, 1985, pp. 16-20.

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

1 needed second well.<sup>3</sup>

2 The respondent's participation at these two hearings  
3 consisted only of a "statement" by Heyco, read by Attorney  
4 William F. Carr,<sup>4</sup> and two exhibits unrelated to the effect of  
5 Order R-6873.<sup>5</sup> After the October 17, 1985 hearing, parties  
6 were given ten (10) days within which they could submit  
7 additional materials for consideration by the Commission.

8 On November 13, 1985, over sixteen days after the  
9 hearing was closed, Heyco filed with the Commission (1) a  
10 letter from Attorney A. J. Losee dated November 11, 1985, (2) a  
11 proposed Order, (3) a brief, (4) a copy of a document styled  
12 Harvey E. Yates Company Amended Gas Division Order (Seymour  
13 State #1 Abo Zone Only), (5) a copy of a document styled Harvey  
14 E. Yates Company Amended Gas Division Order (Seymour State #1  
15 Atoka Zone Only), (6) First Supplemental Opinion of Title,  
16 December 13, 1983, by S. B. Christy, IV, relating to the  
17 subject one-half section and (7) Opinion of Title, April 12,  
18 1983, by S. B. Christy, IV, likewise on the subject land.

19 On June 5, 1986, R. L. Stamets, Director of the OCC,  
20 certified a list of documents comprising the administrative  
21

---

22  
23 <sup>3</sup>Transcript of Hearing, September 18, 1985, pp. 22-23.

24 <sup>4</sup>Transcript of Hearing, September 18, 1985, pp. 5-7.

25 <sup>5</sup>Transcript of Hearing, October 17, 1985, pp. 4-19.

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

1 record of the Commission in Case No. 8400.<sup>6</sup> All of the  
2 above-mentioned documents submitted by Heyco after the close of  
3 hearing on Case No. 8400 are included in this certified  
4 record. Also certified by the OCC and included in its  
5 administrative record are two Well Location and Acreage  
6 Dedication Plats (Form C-102) for the Seymour State Com. No. 1  
7 well, one for the Pennsylvania formation and one for the Abo  
8 formation.<sup>7</sup> None of these documents were presented as  
9 exhibits or evidence at either hearing before the OCC in this  
10 case.

11 While hearings before administrative agencies need not  
12 be conducted with the same rigid formality as a court hearing  
13 or trial, the procedure for receiving evidence at an agency  
14 hearing must be consistent with the essentials of a fair  
15 trial. Ferguson-Steere Motor Co. v. State Corporation  
16 Commission, 63 N.M. 137, 314 P.2d 894, 898 (1957).  
17 Accordingly, an administrative agency  
18

19 \_\_\_\_\_  
20  
21 <sup>6</sup>OCC Order No. R-6873 issued as a result of Case No. 8400  
is now the subject of judicial review by this Court.

22 <sup>7</sup>These two plats were not included in the original list  
23 of certified documents sent to the petitioner by the OCC. The  
24 petitioner only learned of the certification of these documents  
by chance during a telephone conversation with the Clerk of the  
25 Chaves County District Court on August 19, 1986.

1 . . . is authorized only to make its  
2 decision upon the evidence adduced at the  
3 hearing and made part of the record . . .  
4 The appellant was entitled to a hearing as  
5 provided by law, conducted fairly and  
6 impartially, with an opportunity to  
7 introduce evidence to refute or modify any  
8 matters or facts which the Commission might  
9 take into consideration in reaching its  
10 decision.

11 Transcontinental Bus System, Inc. v. State  
12 Corporation Commission, 56 N.M. 158, 241  
13 P.2d 829 (1952).

14 Section 70-2-13 NMSA, 1986, which sets forth the authority of  
15 OCC to examiners to conduct hearing states in pertinent part:

16 In the absence of any limiting order, an  
17 examiner appointed to hear any particular case  
18 shall have the power to regulate all  
19 proceedings before him and to perform all acts  
20 and take all measures necessary or proper ...  
21 including the swearing of witnesses, receiving  
22 of testimony and exhibits offered in evidence  
23 subject to such objections as may be imposed

24 §70-2-13 NMSA, 1986.

25 In addition, Commission Rule 1212 requires that all  
interested parties at a hearing shall be afforded full  
opportunity to cross-examine witnesses, and that "no order  
shall be made which is not supported by competent legal  
evidence."

Documents submitted to the OCC by Heyco after the  
close of the hearing on October 28, 1985, and documents  
certified by the OCC which were not presented as evidence by

1 either party at the hearing cannot be part of the OCC's  
2 administrative record on appeal to this Court. In the case of  
3 Norris & Hirshberg, Inc. v. Securities and Exchange Commission,  
4 163 F.2d 689 (D.C. Cir. 1947), cert. denied, 333 U.S. 867  
5 (1948), the Securities and Exchange Commission (SEC) certified  
6 a record for appeal which included 12 exhibits not introduced  
7 into evidence at hearing, and which were not made part of the  
8 record until after the hearing had been closed. Rather than  
9 review the SEC order under appeal, the court remanded the case  
10 to the Commission with directions to compile a record  
11 consisting only of exhibits offered into evidence at the  
12 hearing.

13 The importance of an accurate administrative record  
14 upon judicial review is clearly set forth by the Norris court:

16 [W]e are vitally concerned with knowing that  
17 the record considered by the Commission was in  
18 fact a true record; which means that it is of  
19 first importance for the court to know  
20 whether, in reaching its decision, the  
21 Commission considered as evidence all the  
22 matter which was introduced as such, and  
23 nothing more. That was its duty. If the duty  
24 was not performed, the order was void ab  
25 initio and there is no occasion for judicial  
review. . . .

26 Norris & Hirshberg, 163 F.2d at 693.  
(Emphasis added).

27 Because the above-mentioned documents were presented  
28 to the OCC by Heyco after the hearing had been closed, Grynberg



1 was afforded no opportunity whatsoever to cross-examine  
2 witnesses or offer any evidence refuting that presented by  
3 Heyco. These rights of confrontation and cross-examination are  
4 fully applicable to quasi-judicial administrative proceedings  
5 like those conducted by the OCC. Golberg v. Kelly, 397 U.S.  
6 354 (1970); See also Zuber v. Allen, 396 U.S. 168, 196 (1969)  
7 ("When an action is taken on a record the [agency] cannot then  
8 present testimony in court to remedy gaps in the record, any  
9 more than arguments of counsel on review can substitute for an  
10 agency's failure to make findings and give reasons.").

11 Heyco's submission of documents after the close of hearing on  
12 Case No. 8400 effectively denied Grynberg these basic  
13 procedural due process rights. Therefore, such documents are  
14 incompetent as evidence and cannot constitute part of OCC's  
15 administrative record upon appeal to this Court.  
16

17 Respectfully submitted,

18 JONES, GALLEGOS, SNEAD & WERTHEIM, P.A.  
19 Attorneys for Jack H. Grynberg

20  
21 By

  
J. E. GALLEGOS

Post Office Box 2228

Santa Fe, New Mexico 87504-2228

(505) 982-2691  
22  
23  
24  
25

CERTIFICATE OF HAND-DELIVERY

It is hereby certified that on the 25<sup>th</sup> day  
of August, 1986, a true and correct copy of the  
foregoing Petitioner's Memorandum In Support Of Motion to  
Exclude Certain Documents from Judicial Review was  
hand-delivered to counsel of record, A. J. Losee, Esq.,  
attorney for Harvey E. Yates Company, and to Jeff Taylor, Esq.,  
attorney for the New Mexico Oil Conservation Commission.

  
J. E. GALLEGOS

9621A

1 FIFTH JUDICIAL DISTRICT COURT  
2 COUNTY OF CHAVES  
3 STATE OF NEW MEXICO

4 JACK J. GRYNBERG, )  
5 )  
6 Petitioner, )  
7 )  
8 vs. )  
9 )  
10 THE OIL CONSERVATION )  
11 COMMISSION OF THE ENERGY )  
12 AND MINERAL DEPARTMENT OF )  
13 THE STATE OF NEW MEXICO )  
14 and HARVEY E. YATES COMPANY, )  
15 Respondents. )  
16 )  
17 )  
18 )  
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25 )

No. CV-86-55  
Case Assigned  
To: Judge W. J. Schnedar

26 MOTION TO EXCLUDE CERTAIN  
27 DOCUMENTS FROM JUDICIAL REVIEW

28 COMES NOW the petitioner, JACK J. GRYNBERG, by and  
29 through his attorneys, JONES, GALLEGOS, SNEAD & WERTHEIM, P.A.,  
30 and moves this Court to enter its order excluding from judicial  
31 review the following documents, certified by the New Mexico Oil  
32 Conservation Commission (OCC) as its record on appeal of Case  
33 No. 8400:

34 A. Documents presented to the OCC by respondent  
35 Heyco, including: (1) a letter from Attorney A. J. Losee dated  
36 November 11, 1985, (2) a proposed Order, (3) a brief, (4) a  
37 copy of a document styled Harvey E. Yates Company Amended Gas  
38 Division Order (Seymour State #1 Abo Zone Only), (5) a copy of

1 a document styled Harvey E. Yates Company Amended Gas Division  
2 Order (Seymour State #1 Atoka Zone Only), (6) First  
3 Supplemental Opinion of Title, December 13, 1983, by S. B.  
4 Christy, IV, relating to the subject one-half section and (7)  
5 Opinion of Title, April 12, 1983, by S. B. Christy, IV,  
6 likewise on the subject land; and

7 B. Two Well Location and Acreage Dedication Plats  
8 (Form C-102) for the Seymour State Com. No. 1 well, one for the  
9 Pennsylvania formation and one for the Abo formation, made part  
10 of the certified record sua sponte by the OCC.

11 As grounds therefore, petitioner states that the  
12 above-mentioned documents were not offered into evidence during  
13 hearings before the OCC in Case No. 8400 and therefore do not  
14 constitute any part of the administrative record for the  
15 purpose of judicial review.  
16


17 JONES, GALLEGOS, SNEAD & WERTHEIM, P.A.  
18 Attorneys for Jack H. Grynberg

19 By J. E. Gallegos  
20 J. E. GALLEGOS  
21 Post Office Box 2228  
22 Santa Fe, New Mexico 87504-2228  
(505) 982-2691

23 CERTIFICATE OF HAND-DELIVERY

24 It is hereby certified that on the 28th day  
25 of August, 1986, a true and correct copy of the

1 foregoing Motion to Exclude Certain Documents from Judicial  
2 Review was hand-delivered to counsel of record, A. J. Losee,  
3 Esq., attorney for Harvey E. Yates Company, and to Jeff Taylor,  
4 Esq., attorney for the New Mexico Oil Conservation Commission.

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8 J. E. GALLEGOS

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FIFTH JUDICIAL DISTRICT COURT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

JACK J. GRYNBERG,

Petitioner,

v.

NO. CV-86-55

OIL CONSERVATION COMMISSION OF THE  
ENERGY AND MINERALS DEPARTMENT OF  
THE STATE OF NEW MEXICO, AND HARVEY E.  
YATES COMPANY,

Respondent.

RESPONSE BRIEF OF THE OIL CONSERVATION COMMISSION

Petitioner herein, Jack J. Grynberg, seeks an order of this Court vacating a decision by the Oil Conservation Commission of the Energy and Minerals Department of the State of New Mexico. The decision in question, contained in Order No. R-6873-A, (attached hereto), authorizes the drilling of a second well on a previously established proration unit. Petitioner challenges the order because he alleges that it wrongfully fails to allocate to him a portion of the production from a potential proration unit for the Abo formation, which is shallower than the target Pre-Permian formation. As will be shown, however, Petitioner has no ownership interest in the proration unit which would be assigned to the shallow formation if production is obtained therefrom, and legally has no right

to share in the production therefrom. His claim is untenable at best and borders on the frivolous insofar as Petitioner is an experienced operator who should fully understand the workings of state proration laws. His petition should be dismissed and an order entered upholding the decision of the Commission.

#### FACTS

Although this matter has a long history before the Oil Conservation Division, dating to 1981, for purposes of this action a short factual summary will be adequate

In 1981 the Harvey E. Yates Company (hereinafter HEYCO) filed a compulsory pooling application with the Oil Conservation Division, seeking to pool all mineral interests through the Ordovician formation underlying the west half of Section 18, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico, the same tract which is involved in the current dispute. Petitioner herein, doing business as Viking Petroleum, was force pooled pursuant to the terms of the order entered therein, Order No. R-6873, and decided not to participate in the deeper formation. Petitioner challenged the validity of the order, however, alleging that in a well targeting more than one producing formation it should be allowed to elect to participate only in the shallower formation(s) at its option. But the New Mexico Supreme Court

ultimately upheld the authority of the Commission to force pool more than one producing formation in a single pooling application. The well that was drilled pursuant to Order No. R-6873 was in fact completed in both the Abo and Ordovician (Pre-Permian) formations, although the Ordovician formation is no longer productive. According to the Oil Conservation Division's Statewide rules, wells completed in the Ordovician formation are assigned a 320 acre proration unit, in this case being the W/2 of Section 18, while those completed in the Abo formation are assigned a 160-acre proration unit, here being the NW/4 of Section 18. By implication it can be determined that because Viking/Grynberg owns the minerals in approximately 80 acres, being the E/2 of the NW/4, its ownership interest was approximately 50 percent in the 160-acre Abo formation proration unit and 25 percent in the 320-acre Ordovician formation proration unit. The Commission, however, does not determine ownership interests or participation in force pooling orders. Moreover, the language in Order R-6873 establishing a 320-acre proration unit is applicable to the Ordovician formation only, and did not mention the Abo formation or have the effect of changing the long-standing statewide rules governing proration unit size for such other formations.

Because production in the deeper Ordovician formation in the HEYCO well (the Seymour State Comm. No. 1 well) ceased at some point in time, Petitioner Grynberg determined that another well in the SW/4 of Section 18 would be profitable insofar as



such location was in his opinion structurally preferable to the one previously drilled by HEYCO. HEYCO as operator of the existing units apparently refused to apply for and drill such a well, however, and thus Grynberg sought, through application with the OCD, to reopen the forced pooling earlier granted to HEYCO, and drill a second well to the Ordovician formation on the 320 acre proration unit.\* As a part of this application, Petitioner Grynberg sought to remove HEYCO as operator of the unit.

### LEGAL ISSUES

#### 1. Allocation of Production to Proration Units.

It is clear from the record of this case that the Petitioner is concerned primarily with the fact that Order R-6873-A of the Division did not allocate to him a one-quarter interest in the minerals in the Abo formation in the SW/4 of Section 18. It is just as clear that the Division could not have done this and that neither the facts nor the law support such a conclusion.

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\*The OCD believes that a compulsory pooling action permits the drilling of only one well. A second well requires a second pooling application. See Section 70-2-17(C) NMSA (1978). See also, Helmerich & Payne, Inc. v. Corporation Comm'n, 532 P.2d 419 (Okla. 1975).

Section 70-2-17(B) NMSA 1978 provides that the Division may establish "...a proration unit for each pool, such being the area that can be efficiently and economically drained and developed by one well...."

OCD Statewide Rule 104(C)(II)(a), promulgated pursuant to Section 70-2-17(B) above, provides that gas wells completed in a formation younger than the Wolfcamp shall be located on a drilling tract consisting of 160 contiguous acres; and that gas wells completed in the Wolfcamp formation or in a formation of Pennsylvanian age or older be located on a designated drilling tract of 320 acres.

The Abo formation is younger than Wolfcamp, while the Pre-Permian (Ordovician), a separate formation from the Abo formation, is older (and deeper) than the Pennsylvanian. Under the referenced long-established Statewide Rules, the two different formations have different size proration units assigned to them. The Abo, a 160-acre unit, and the Pre-Permian a 320-acre unit.

Petitioner appears to believe that because the original order in this case, Order No. R-6873, stated in decretory Paragraph (1) that all mineral interests through the Ordovician are pooled to form a 320-acre proration unit, that any other formations above the Ordovician in which Petitioner owns an interest are also pooled to form 320 acre units and that he necessarily shares in production therefrom on the same basis as

in the Ordovician. This is a fallacy. Every formation has by rule a spacing unit size assigned to it. The Abo, which was productive in the well drilled by HEYCO, is assigned an 160 acre proration unit under Statewide Rule 104. In the HEYCO well, the NW/4 of Section 18 was the proration unit assigned to the Abo formation. Petitioner's share in the production from this formation in the established proration unit is approximately 50 percent. The proration unit that will be assigned to the new well if the Abo formation is productive is the SW/4 of Section 18. Petitioner Grynberg owns no interest in the SW/4 of Section 18. Yet he wants to share in production from that proration unit. Section 70-2-17(C) NMSA 1978 requires that: "When two or more separately owned tracts of land are embraced within a spacing or proration unit..." and the owners cannot agree on the terms to drill a well, a compulsory pooling order shall be entered. In the case at bar, only one owner, HEYCO, has an ownership interest in the SW/4. Because the entire SW/4 proration unit is controlled by HEYCO, Grynberg has no interest in a well completed in the Abo located there.

Moreover, Section 70-2-17(C) states that:

"All orders effecting such [compulsory] pooling shall be made after notice and hearing, and shall be upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit the opportunity to

recover or receive without unnecessary expense his just and fair share of the oil or gas or both....For the purpose of determining the portions of production owned by the persons owning interests in the pooled oil or gas, or both, such production shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit..."

Clearly under this statute, because Petitioner Grynberg owns no surface acreage in the proposed SW/4 proration unit for the Abo formation, he cannot be allocated any share of the production from that unit. To do so would deny other owners in the unit the right to receive their fair share of production. A well in the same location completed in the Ordovician, however, does require the joinder of both Grynberg and HEYCO, because of the statewide rule requiring a 320 acre dedication for this pool. Each would share in proceeds from production according to its percentage of land ownership in the 320-acre proration unit. It is evident that Petitioner Grynberg wants to bootstrap his ownership position in the 320-acre Ordovician proration unit to give him a share of production in the entirely separate 160-acre Abo proration unit, where he has no ownership interests. Clearly such a result is inappropriate.

## SUFFICIENCY OF EVIDENCE

Finally, Petitioner Grynberg asserts that the Commission entered Order R-6873-A without sufficient evidence insofar as HEYCO produced no witnesses or sworn testimony. Petitioner conveniently fails to mention that as the applicant in the case it had the burden of proof. Insofar as the application sought removal of HEYCO as operator, Petitioner had the burden to introduce evidence to demonstrate that the operator was unfit or otherwise should be removed against its will. No such evidence was adduced. Moreover, insofar as the Order provides that upon request by Petitioner to HEYCO to drill the described well, if HEYCO does not agree Petitioner shall become operator if it undertakes to drill the well, Petitioner got all that the application requested. Nowhere in the application did petitioner seek to be allowed to participate in production in a proposed proration unit where it has no interest.

## CONCLUSION

The determination that Petitioner seeks is not one that the Commission is empowered to make. It is commonly recognized that Conservation Commissions have no authority to determine title. (See McDaniel v. Moyer, 662 P.2d 309 (Okla. 1983); Southern Union Prod. Co. v. Corporation Comm'n, 465 P.2d 454 (Okla. 1970) When pooling and other orders are issued there is no finding as to the specific ownership interests of the

parties or the manner in which proceeds are to be divided, other than for the assessment of drilling and production costs and penalties, if applicable. If HEYCO and Petitioner dispute their respective ownership interests, a quiet title action is appropriate. Such an action need not involve the Oil Conservation Commission, which is interested only in the proper drilling and production of oil and gas wells in New Mexico. Moreover, Petitioner's claims are speculative insofar as it is not known whether the Abo will be productive in the SW/4 of Section 18.

The Oil Conservation Commission respectfully requests that for the foregoing reasons the Petitioner herein be dismissed and that Respondents be awarded their costs in this action.

Respectfully submitted,



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JOEL M. CARSON  
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July 25, 1986

Mrs. Jean Willis  
Clerk of the District Court  
P. O. Box 1776  
Roswell, NM 88201

RE: Jack J. Grynberg vs. Oil Conservation  
Commission of New Mexico, et al,  
No. CV-86-55-S

Dear Jean:

In accordance with the oral extension of time granted to us by Judge Schnedar, we herewith hand you for filing in the captioned case an Answer Brief of Harvey E. Yates Company. Please stamp one copy of this letter to indicate receipt of the Brief and return it to us in the enclosed self-addressed stamped envelope.

With a copy of this letter we are furnishing opposing counsel with copies of this brief.

Very truly yours,

  
A. J. Losee

cc: J. E. Gallegos  
Jeff Taylor ✓

IN THE DISTRICT COURT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

JACK J. GRYNBERG

Plaintiff,

vs.

No. CV-86-55-S

THE OIL CONSERVATION COMMISSION  
OF THE ENERGY AND MINERALS  
DEPARTMENT OF THE STATE OF NEW  
MEXICO and HARVEY E. YATES COMPANY

Defendants.

ANSWER BRIEF OF HARVEY E. YATES COMPANY

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### STATEMENT OF FACTS

This appeal is brought before the District Court by Petitioner, Jack G. Grynberg ("Grynberg"), seeking review of Oil Conservation Commission Order No. R-6873-A issued on December 6, 1985 in Case No. 8400. Respondents are the Oil Conservation Commission of the Energy and Minerals Department of the State of New Mexico (the "Commission") and Harvey E. Yates Company (hereinafter "HEYCO").

Grynberg owned the state lease covering among other lands, the E/2 NW/4 of Section 18, 80 acres and HEYCO owned the state lease covering the W/2 NW/4 and SW/4 of Section 18, 240 acres.

By Commission Order No. R-6873 dated January 1, 1982, the Commission ordered all formations from the surface down through the Ordovician formation underlying the W/2 of Section 18, T-9-S, R-27-E, N.M.P.M., Chaves County, New Mexico, to be pooled in a standard 320-acre gas spacing and proration unit. This unit is dedicated to a well located at a standard location on said unit of which HEYCO is the operator. Order R-6873 was upheld in Viking Petroleum v. Oil Conservation Commission, 100 N.M. 452, 672 P.2d 280 (1983).

By Application dated October 5, 1984, Grynberg sought to amend Order No. R-6873 to allow the drilling of a second well on the spacing and proration unit at an unorthodox location in the SW/4 SW/4 of Section 18 to test the Fus-

selman (also known as "Pre Permian") and Abo formations. Grynberg sought to be appointed operator of the proposed second well or in the alternative to have HEYCO removed as the operator of the first well (the Seymour State No. 1) and to be designated operator of the entire 320-acre unit. On December 6, 1985, the Commission issued Order No. R-6873-A in response to Grynberg's application. It is from the Commission's Order that Grynberg, appeals.

POINT I

ORDER R-6873 DID NOT ESTABLISH OWNERSHIP IN  
GRYNBERG TO AN UNDIVIDED INTEREST IN PRODUCTION  
FROM THE ABO FORMATION UNDERLYING THE SW/4

The Order R-6873-A is a correct interpretation of the New Mexico Pooling Statute 70-2-17, NMSA (1978) and extant Court decisions interpreting the same or similar pooling statutes.

- A. THE NEW MEXICO POOLING STATUTE 70-2-17, NMSA, DOES NOT OPERATE TO CONVEY TO THE PARTIES POOLED AN UNDIVIDED INTEREST IN ALL LEASES LOCATED WITHIN A POOLED UNIT

The crux of the dispute between the parties hereto turns upon the legal effect of a force pooling order entered by the Commission. Grynberg contends that the pooling order effectuates a cross conveyance of ownership throughout the pooled unit as to the leases pooled. (Memorandum Brief, p.2, ft.3, p.10, l.12) This is also reflected by the state-

ment of Grynberg's attorney, Mr. J. E. Gallegos; "Upon that happening, (the entry of Order No. R-6873) then, everybody had an undivided interest in every acre on that half section. Mr. Grynberg had 25%, 24.6% in every acre of that section". (October 17, 1985, Hearing Transcript, pp. 19-20). HEYCO urges that this interpretation of the effect of force pooling under the New Mexico Pooling Statute fails in light of the language of the pooling statute itself.

Under New Mexico Pooling Statute 70-2-17(C), NMSA, (1978), the situation requiring the application of the statute are described as follows:

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

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

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

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

The statutory language indicates that the Legislature quite purposefully determined that the ownership of each individual tract in the pooled unit would not be altered by the act of pooling. It was recognized, however, that unless production obtained from a well on a pooled unit was attributable on a pro rata basis to the various tracts in the unit, the owner of a lease of a tract on which the unit well was not located could lose his lease for lack of production upon expiration of the primary term of his lease. This would place such owners in an untenable position. By crafting the statute as shown, the Legislature insured that each owner of a lease covering an undivided interest in the unit or a separate tract therein would receive not only their pro rata share of the revenue for production from the pooled unit but also maintain the lease by constructive production beyond its primary term. Grynberg is urging the Commission to erase the internal boundary lines in the W/2 of Section 18. As stated by Grynberg's expert witness, Bruce Kramer, "Essentially you erase all internal boundary lines . . . . Instead of Grynberg having a specified 80

acres in the 320-acre unit (approximately 24.6%) he has 24.6% in each acre in the unit". (September 18, 1985 Hearing Tr. 35-36). Although Professor Kramer cited no case or specific textual authority for this opinion he did state that he had reviewed the multi-volume treatises by Williams & Meyers on Oil and Gas Law. Apparently he overlooked the following:

The statutes and judicial opinions which have dealt with this matter (i.e. the effect of pooling and unitization upon titles and whether a cross conveyance is brought about by the agreement), declare that title is unaffected by the compulsory order which relates to drilling, production and the allocation of production to particular premises, but not to the title to the premises or ownership of the production once it has been allocated to a particular premises. Williams and Meyers, OIL AND GAS LAW, ¶ 941.3, p. 650.

HEYCO submits that there is no textual or case authority for the change in ownership theory offered by Professor Kramer. Such an interpretation of the pooling statute flies in the face of its language.

As described above, Grynberg's position is grounded on the proposition that the pooling order effectuates a cross conveyance of ownership of the pooled leases located within the pooled unit. Grynberg is asking the Commission to take upon itself authority which has not been granted. Grynberg has attempted to transform ownership in an undivided interest "in production" created under the pooling

order into ownership of an "undivided working leasehold interest" under the entire 320-acre pooled unit. (Memorandum Brief in Support of Petition for Review, p.2, n.3) The transformation of an undivided interest in production into a real property interest possessing legally defined attributes is an attempt to use the Commission to administratively transfer title to an undivided interest in all pooled lands and formations even though such a transfer is outside of the statutorily defined powers of the Commission.

The Commission derives its powers from the statutory authority granted by the legislature. LaJara Land Developers, Inc. v. Bernalillo County Assessor, 639 P.2d 605, 97 N.M. 318 (1982); Garcia v. Health and Social Services Dept., 540 P.2d 1308, 88 N.M. 419 (1975), rev'd, 545 P.2d 1018, 88 N.M. 640 (1976). These powers cannot extend beyond the boundaries set out by the specific language of the particular statute. New Mexico Board of Pharmacy v. New Mexico Board of Osteopathic Medical Examiners, 626 P.2d 554, 95 N.M. 980 (1981); LaJara Land Developers, supra. By this action, Grynberg is asking the Commission to take upon itself authority which has not been granted. It is quite clear that such an act lies outside the statutory boundaries of the authority granted to the Commission. Southern Union Production Co. v. Corporation Commission, 465 P.2d 454 (Okla. 1970); McDaniel v. Moyer, 662 P.2d 309 (Okla. 1983).

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

This statement has been supported by the Oklahoma Supreme Court in its interpretation of a pooling statute which is all but identical to the New Mexico statute. In the decision of Southern Union Production Co. v. Eason Oil Co., 540 P.2d 604, (Okla. 1975), the court defined the interest obtained under a pooling order by Southern Union from a pooled lessee who elected not to participate in the drilling of the well, as a "right to participate in the working interest in the unit well". (Emphasis added). Southern Union Production Company obtained a pooling order covering a 640-acre drilling unit, force pooling Eason who owned an 80-acre lease in the drilling unit. Southern Union drilled a well which proved to be noncommercial and was later abandoned. Subsequently, the Oklahoma Corporation Commission reduced the size of the drilling units from 640 to 80 acres. Thereafter Eason drilled an oil well to a different formation, within an 80-acre unit covered by his lease. Southern Union brought suit claiming ownership of a percentage of Eason's lease equal to that which it owned in the original 640-acre unit. The court denied this claim, stating that Eason had conveyed only its right to participate in the

working interest in the 640-acre unit well, and upon abandonment of the well the pooling order expired and all parties were returned to their original positions.

Other jurisdictions, who have examined this question, have likewise rejected the view advocated by Grynberg. In Arkansas-Louisiana Gas Co. v. Southwest Natural Production Co., 60 So. 2d 9, 1 O. & G.R. 1186, (La. 1952), the Supreme Court of Louisiana had occasion to review the effect of a force pooling order of the Commissioner of Conservation. The conflicting view points advocated were succinctly stated by the Court in its opinion:

The argument advanced by the plaintiff-appellant... is that immediately upon the issuance of the Commissioner's order establishing drilling units of 640 acres for the exploration of the Bodcaw and Vaughn sands in this field, the entire structure of the mineral ownership was as to the lands included in these units, converted, and the rights and obligations of the lessees and lessors under the leases affecting the land within each unit recast, with the result that each and every royalty owner was given a definite interest in every foot of gas and every barrel of distillate produced from the well and not merely in that portion allocated to the tract in which he had an interest. . . .

The opposing view was set out as:

It is the contention of the defendants, on the other hand, that unitization of the several tracts under lease, pursuant to the valid orders of the Commissioner, has no other effect than to allocate to each tract its pro rata share of the production from the entire unit based on the proportion the acres contained in the individual tract bears to the total number of acres in the unit; . . .



After reviewing the history of the conservation statutes and the role assigned to the Commissioner of Conservation, the Court rejected the view advocated by the plaintiff, which is identical to that of Grynberg in the present situation. This view has been reaffirmed by the Louisiana Supreme Court in the decision of Monsanto Chemical Co. v. Southern Natural Gas Co., 102 So. 2d 223, (La. 1958).

A similar conclusion as to the effect of pooling and conservation statutes was reached Court in Nale v. Carroll, 289 S.W. 2d 743, (Texas 1956). The Texas Supreme Court cited with approval the findings of fact and conclusions of law of the trial court stating that, "A drilling permit of the Railroad Commission grants no affirmative property rights but merely removes the conservation laws and regulations as a bar to drilling;..." The Court went on to hold:

Petitioner's contention they are co-tenants in the Moore Rule 37 Permit and as such co-tenants in the permit they have a property right, or a right in the nature of property and, therefore, are the owners of a proportionate interest in the oil produced from the Longshore .17 acre, cannot be sustained. The rules and regulations of the Railroad Commission cannot effect a change or transfer of property rights.

Though it is recognized that the regulatory scheme for pooling and spacing in Texas is somewhat different then that of New Mexico, this decision demonstrates that Texas has refused to adopt the position assorted by Petitioner.

- B. GRYNBERG IS NOT ENTITLED TO A PRO RATA SHARE OF GAS PRODUCTION FROM THE ABO FORMATION DUE TO HIS LACK OF OWNERSHIP OF A LEASEHOLD INTEREST IN LANDS LOCATED WITHIN THE BOUNDARIES OF THE REQUISITE SPACING UNIT FOR ABO GAS PRODUCTION.

In Findings 23, 24, 26, 27 and 28 of Order No.

R-6873-A, the Commission made the following findings:

1. The standard spacing unit for the Abo formation would be the SW/4 of Section 18 (Finding 23);
2. Grynberg holds no leasehold interest under the SW/4 of Section 18 (Finding 24);
3. Under the provisions of Section 70-2-17 C NMSA (1978) the Commission is limited to pooling lands within a spacing or proration unit (Finding 26);
4. The W/2 of Section 18 is a spacing or proration unit in the Pre Permian gas zones only (Finding 27) and therefore the provisions in Order No. R-6873-A do not confer any interest in the SW/4 of Section 18 to Grynberg as to any formation or interval other than the Pre Permian gas zones (Finding 28).

This is the correct and appropriate interpretation of the New Mexico Pooling Statute. The first paragraph of subsection C of the statute reads,

When two or more separately owned tracts of land are embraced within a spacing or proration unit, or were there are owners of royalty interest or undivided interest in the oil and gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, the owners thereof may validly pool their interest and develop their land as a unit . . . (Emphasis added).

The remainder of this section and the statute is phrased in the terms of "units" referring to spacing or proration units

as described in the first sentence of paragraph C. It is clear that the statute on its face, limits the power of the Commission to only pool the interests that are located within a spacing or proration unit.

The spacing unit for a well in a gas pool in a formation younger than the Wolfcamp formation is 160 acres. [(Comm. Rule 104 C.II(a)]. The Abo formation is younger than the Wolfcamp. Grynberg's lease did not cover any lands in the SW/4 of Section 18. Therefore, it is clear that the Commission had no authority to pool the Abo formation in the SW/4 under Order R-6873.

In Helmerich and Payne, Inc., et al, v. Corporation Commission, 532 P.2d 419, (Okla. 1975), the Corporation Commission established 640-acre drilling and spacing units for seven common sources of supply underlying nine contiguous sections. Subsequently, the Commission entered a pooling order which covered the entire nine section area. Upon appeal, the Supreme Court vacated and reversed the Commission's order holding that the order exceeded the authority granted by statute to the Corporation Commission and that the authority granted to the Oklahoma Corporation Commission is limited to pooling interests within a single drilling or spacing unit. In reaching its decision, the Court stated the following:

We conclude that the right to regulate the production of oil and gas under our statute last mentioned is limited to situations where common rights to drill within an existing spacing unit and separate or undivided ownership exist. Such common rights to drill and ownership exist in a single 640-acre spacing unit in the instant case, not over a nine governmental section area. At the risk of oversimplification, it is the separate or undivided ownership and common right to drill that is the "matrix or glue" of the designated drilling and spacing unit. When the statute says the Commission shall require the owners "to pool and develop in the spacing unit as a unit" it is limiting pooling within the designated drilling and spacing unit of 640 acres. Further limitation exists in the statute when it provides regulation of separate ownership "embraced within an established spacing unit" or "where undivided interests (are) separately owned" or both conditions exist; - "within such established spacing unit". (Emphasis added).

The legal reasoning of the Oklahoma Court is directly applicable to the present situation. See also Gulfstream Petroleum Corp. v. Layden, 732 P.2d 376 (Okla. 1981). Grynberg claims that the effect of Order No. R-6873-A was to erase the internal lease lines as to all formations pooled from the surface to the base of the Pre Permian formation. This is obviously erroneous and would require the Commission act beyond the scope of its statutorily granted powers.

This position is further supported by the decision of Marathon Oil Co. v. Corporation Comm'n., 651 P.2d 1051, (Okla. 1982), wherein the court held that the Oklahoma Corporation Commission has the authority to issue a pooling

order only as to the deepest drilling unit when more than one common source of supply is located under a drilling unit and to allocate the costs of drilling a well passing through the various units on the basis of ownership in the deepest unit. In this instance, drilling units of 640 acres existed as to deeper horizons and 160 acres for a shallower horizon. Marathon Oil was the owner of leasehold rights in portions of the 640-acres unit, but held no interests in the quarter section chosen as the drilling location. The court found that the Corporation Commission had the power to allocate costs on the basis of the ownership of the leasehold in the deepest formation subject to the pooling order, notwithstanding that the well bore would pass through the shallower formation in which Marathon held no interest in drilling to the deeper formations. The court found further that Marathon would not be entitled to a pro rata share of production obtained from the shallower formation due to the fact that Marathon owned no leasehold interests in the 160-acre spacing unit required for production from the shallow depths, notwithstanding that the shallower formation was also subject to the pooling order.

This is directly analogous to the present situation where Grynberg has stated that the Abo formation is a secondary goal in the drilling of the proposed well. Spacing for a gas well completed in the Abo formation is 160

acres. [Comm. Rule 104 C.II(a)]. The Marathon decision clearly dictates that if Grynberg completes a gas well in the Abo in the SW/4 of Section 18, he would not be entitled to a pro rata share of Abo production, regardless of the pooling order, due to his lack of ownership of a leasehold interest in the required spacing unit for Abo production i.e. 160 acres, or in this case the SW/4 of Section 18. This would be the same result if Grynberg had applied to drill a well on the SW/4 of Section 18 sufficient to test only the Abo formation. Grynberg would have no standing to seek a pooling order as he would not be an owner of an interest with the right to drill in the SW/4 of Section 18, the requisite spacing unit for a well drilled to the Abo formation.

C. GRYNBERG FAILS TO CITE PERSUASIVE AUTHORITY FOR HIS POSITION.

Petitioner, Grynberg, cites a number of cases which purportedly support his position that Commission Order No. R-6873 vested an undivided 24.6% of the working leasehold interest in all formations within the entire 320-acre unit created under said order. However, the case authorities cited by Grynberg fall far short of the substantiating his position.

Petitioner places great reliance upon the decision in Texas Oil & Gas Corp. v. A. H. Rein, 534 P.2d 1276 (Okla.

1974). However, this reliance is misplaced. Rein was the owner of an unleased undivided 120 mineral acres in the S/2 S/2 of a 640 drilling unit. One well had been previously drilled in the center of this section by applicant, Texas Oil & Gas Corp. Subsequently, Texas Oil & Gas sought to modify the spacing order for certain formations to permit the drilling of a second well located in the S/2 S/2 of the section in order to prevent drainage and protect correlative rights. The court affirmed the Corporation Commission's modification of the prior order allowing the drilling of the second well based on the following reasoning:

1. Section 52 O.S. 1971 § 87.1 authorizes the Commission to enter an order after hearing upon a petition of any person owning an interest in minerals embraced within the common source of supply or the rights to drill upon lands embraced within the common source of supply.
2. The previous spacing order established the formations underlying Section 4 as a common source of supply.
3. The applicant (Texas Oil & Gas) is the owner of oil and gas leases covering the north 480 acres of the source of common supply.
4. Therefore, Corporation Commission had the power to allow the second well to be drilled at the location requested.

Contrary to the claims of Petitioner, this decision does not support the contention that Petitioner is now the owner of an undivided 24.6% interest in all formations pooled in the W/2 of Section 18. To the contrary, the very language, cited by Petitioner in page 12 of his brief, re-

flects that the court upheld the Corporation Commission due to the fact that the formations to be developed were subject to 640-acre spacing units and therefore, Texas Oil & Gas should be granted the right to drill anywhere in said unit. Eugene O. Kuntz framed the issue very clearly in his comment on this decision in the Oil & Gas Reporter when he stated, "The question presented involves the authority by which an unleased owner can be required to permit drilling on his lands if his lands should fall within the boundaries of a drilling unit". (Emphasis added). (51 O.& G.R., p.73)

Petitioner lists other decisions which purportedly support his position. These cases, Parkin v. State Corporation Commission of Kansas, 234 Kan. 994, 677 P.2d 991 (1984); Young v. West Edmond Hunton Lime Unit, 275 P.2d 304 (Okla. 1954); Ragsdale v. Superior Oil Co., 237 N.E.2d 492 (Ill. 1968); and Mire v. Hawkins, 186 So.2d 591, (La. 1986) and clearly distinguishable.

The Parkin decision involved a 5,800-acre water flood unit assembled pursuant to the Kansas compulsory unitization statute. The major issue in this case was whether or not the determination to continue the unit operations could be vested in the sole discretion of the present operator of the unit. The language cited from this decision by Petitioner is dicta and not germane to the holding of the case. The Young decision dealt with a suit by royalty



owners against the operator of a unitized oil field for breach of fiduciary duty for failing to sell crude produced from the unitized field at the market price or the highest price available. Once again, proposition from which the decision is cited by Petitioner is dicta. The Ragsdale and Mire decisions simply state the effect of a pooling order as to the spacing unit for the formations pooled. The recital of said decisions for the pro rata sharing of production from a pooled tract is simply a reiteration of the language of 70-2-17(C) of the New Mexico Pooling Statute and offers no support to the position advocated by Petitioner.

On page 8 of his brief, Petitioner quoted the New Mexico Supreme Court decision in Viking, supra., as supporting the position of Petitioner as set forth by Bruce Kramer, witness for Petitioner at the Commission hearing. (Memorandum Brief in Support of Petition for Review, p.8). The Petitioner apparently believes that the Court's synopsis of the provisions of Order No. R-6873 particularly the sentence "The first of the key provision to pool the 320-acre tract from the surface to the Ordovician formation", Viking, supra. pp. 282-283, somehow support Petitioner's "unification" theory as to the entire 320-acre tract. However, the court was not asked to and did not render a decision as to what effect, if any, a pooling order would have as to a given formation outside of the bounds of a spacing or drilling unit.

POINT II

ORDER R-6873-A IS SUPPORTED  
BY SUBSTANTIAL EVIDENCE

The hearing of an administrative appeal, at the district court level, is an appellate proceeding and not a trial de novo and is restricted to the record made before the administrative body. Groendyke Transportation, Inc. v. New Mexico State Corporation Commission, 439 P.2d 709,712 (1968).

In reviewing the decision of an administrative body at the district court level, it is not the function of the Court to retry the case on appeal from the administrative body or to substitute its judgment for that of the agency and the court is limited to determining whether the administrative agency's action is legal or reasonable. Ferguson - Steere Motor Co. v. State Corporation Commission, 63 N.M. 137, 314 P.2d 894 (1957).

On appeal all disputed facts are to be resolved in the favor of the successful party, with all reasonable inferences indulged in support of the verdict and all evidence and inferences to the contrary disregarded. Baca v. Employment Services Division of Human Services Dept. of New Mexico, 98 N.M. 617, 651 P.2d 1261 (1982). Additionally, special weight will be given to the experienced, technical competence and specialized knowledge of the Commission.

Viking Petroleum, supra p. 282, Grace v. Oil Conservation Commission, 87 N.M. 205, 531 P.2d 939 (1975). Administrative findings of the Commission should be sufficiently extensive to show the basis of the order. Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962) and the findings must disclose the reason of the Commission in reaching this conclusion. Fasken v. Oil Conservation Commission, 87 N.M. 292, 532 P.2d 588 (1975).

The standard used by the Courts of New Mexico in reviewing the decision of administrative bodies is that of "substantial evidence". Duke City Lumber Co. v. New Mexico Environmental Improvement Board, 101 N.M. 291, 681 P.2d 717, 719 (1984), Groendyke Transportation, Inc. v. New Mexico State Corporation Commission, 439 P.2d 709, 712 (1968). Stated more fully this rule is on appeals from administrative bodies the question to be answered by the Court are questions of law and are restricted to whether the administrative body acted fraudulently, arbitrarily or capriciously, whether the order was supported by substantial evidence, and generally, whether the action of the administrative body was within the scope of its authority. Llano, Inc. v. Southern Union Gas Co., 399 P.2d 646, 649 (1964).

Substantial evidence for the purposes of appeal has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Jimenez v. Department of Corrections, 101 N.M. 795, 689 P.2d 1266 (1984), Viking Petroleum, supra, 282. The second element of the standard of review applied to the decision of an administrative body is the "fraudulent, arbitrary and capricious" standard. In testing the decision of an administrative body against this standard, the Court must determine that the decision of the administrative body is unreasonable or that it has no rational basis and it is the result of an unconsidered, willful and irrational choice of conduct. Garcia v. New Mexico Human Services Dept., 94 N.M. 178, 608 P.2d 154 rev'd, 94 N.M. 175, 608 P.2d 151.

It is clear from the Commission's findings in Order No. R-6873-A, that the standards enunciated above were fully complied with. In his brief, Petitioner claims that from the content of the Order, it was obvious that the Commission's decision was based solely upon copies of division order title opinions and division orders submitted at the request of the Commission by HEYCO's counsel. However, nothing is found in the Order to support this conclusion. Findings 23, 24, 26, 27 and 28, set forth in their entirety on page 10 of this brief, clearly demonstrate the reasoning and the basis of the Commission's decision.

It is clear, upon reviewing the Findings of the Commission as set out in their Order No. R-6873-A, that such findings were based on evidence before the Commission in the

form of the pooling statute, commission regulations and prior rulings of the Commission itself and that there is nothing in said findings to indicate that materials complained of by Petitioner in any way affected or contributed to the decision of the Commission. Furthermore, there is substantial evidence as defined by the courts of New Mexico to support the decision of the Commission and that the Commission's decision cannot be considered arbitrary, willful nor capricious. The burden of proof is on Grynberg to show that the actions of the Commission were not based on substantial evidence or were arbitrary, capricious or willful. It is clear that Grynberg has failed as to all of these burdens.

#### CONCLUSION

For the foregoing reasons, Commission Order R-6873-A should be affirmed.

Respectfully submitted,

LOSEE & CARSON, P.A.

I certify that I mailed a true copy  
of the foregoing pleading to op-  
posing counsel of record on this

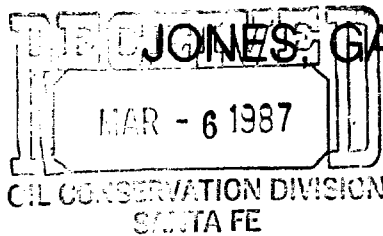
25 Day of July

19 86

LOSEE

By: LOSEE  
P. O. Drawer 239  
Artesia, NM 88210

Attorneys for Harvey E.  
Yates Company



JONES, GALLEGOS, SNEAD & WERTHEIM

March 5, 1987

The Honorable W. J. Schnedar  
District Judge - Div. VI  
P. O. Box 1776  
Roswell, New Mexico 88201

RE: Jack J. Grynberg v. Oil  
Conservation Commission, et al.,  
Chaves County Cause No. CV 86-55

Dear Judge Schnedar:

With reference to your recently issued Docketing Order, a copy of which is enclosed, please be advised that the above referenced case was orally presented to you in Roswell on August 28, 1986. The case was in the nature of a Petition for Review from a decision of the Oil Conservation Commission. The only other action required for resolution of the matter is the Court's decision.

By way of copy of this letter, I am notifying the District Court Clerk's office of the current status of the case. With this information, I assume that it will not be necessary for attorneys for either party to attend the docket call currently set for March 25, 1987.

If I can be of any further assistance to the Court in this matter, please let me know.

Respectfully yours,

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

By

*Robert W. Allen*  
ROBERT W. ALLEN

RWA:evm

Enclosure

cc: District Court Clerk  
A.J. Lossee, Esq.  
Jeff Taylor, Esq.  
Jack Grynberg

O RUSSELL JONES (1912-1978)

JE GALLEGOS	JUDITH C HERRERA
JAMES SNEAD	MARTHA VAZQUEZ
JERRY WERTHEIM	LELAND ARES
M J RODRIGUEZ	MICHAEL BAIRD
JOHN WENTWORTH	NANCY R LONG
STEVEN L TUCKER	STEVEN B MOORES
ARTURO L JARAMILLO	MERCEDES FERNANDEZ
PETER V CULBERT	
JAMES G WHITLEY II	
FRANCIS J MATHEW	
ROBERT W ALLEN	ATTORNEYS AT LAW

# JONES, GALLEGOS, SNEAD & WERTHEIM

June 4, 1986

The Honorable W. J. Schnedar  
Post Office Box 1776  
Roswell, New Mexico 88201

RE: Jack J. Grynberg v. The Oil Conservation Commission,  
et al.; Chaves County CV-86-55


Dear Judge Schnedar:

The petitioner, Jack J. Grynberg has filed his Memorandum Brief in Support of his Petition for Review in this case, in accordance with the Court's instructional letter of May 5, 1986.

As a convenience to the Court, I enclose a copy of that Brief.

Very truly yours,

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

By   
ROBERT W. ALLEN

RWA/eg

Enclosure

cc: Jack Grynberg (w/encl) ..  
A. J. Lossee, Esq. (w/o encl)  
Jeff Taylor, Esq. (w/o encl)

O. RUSSELL JONES (1912-1978)

J. E. GALLEGOS	JUDITH C. HERRERA
JAMES SNEAD	MARTHA VAZQUEZ
JERRY WERTHEIM	LELAND ARES
M. J. RODRIGUEZ	MICHAEL BAIRD
JOHN WENTWORTH	NANCY R. LONG
STEVEN L. TUCKER	STEVEN B. MOORES
ARTURO L. JARAMILLO	MERCEDES FERNANDEZ
PETER V. CULBERT	
JAMES G. WHITLEY II	
FRANCIS J. MATHEW	
ROBERT W. ALLEN	ATTORNEYS AT LAW



FIFTH JUDICIAL DISTRICT  
STATE OF NEW MEXICO

WILLIAM J. SCHNEDAR  
District Judge  
Division VI

P. O. Box 1776  
Roswell, New Mexico 88201  
Phone (505) 624-0859

May 5, 1986

*Will be vacated*

Robert W. Allen  
P. O. Box 2228  
Santa Fe, NM 87504-2228

Jeffery Taylor  
P. O. Box 2088  
Santa Fe, NM 87504-2088

A. J. Losee  
P. O. Drawer 239  
Artesia, NM 88210

RE: Jack J. Grynberg  
v.  
The Oil Conservation Commission, et al.  
Chaves County CV-86-55

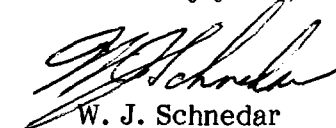
Gentlemen:

The Petitioner has asked me to set a schedule for briefing and oral argument in this case.

Petitioner shall have 30 days from the date of this letter in which to submit a brief. Respondent shall have thirty days after service of Petitioner's brief in which to submit an answer brief. Petitioner shall have an additional ten days to file a reply brief.

I propose to hear the case on oral argument on July 15, 1986 at 9:00 A.M. If this date is not satisfactory with counsel, please call my secretary, Ms. Roberta Hall, and another date will be set.

Sincerely yours,

  
W. J. Schnedar  
District Judge

WJS/rh





TONY ANAYA  
GOVERNOR

STATE OF NEW MEXICO  
**ENERGY AND MINERALS DEPARTMENT**  
OIL CONSERVATION DIVISION

50 YEARS



1935 - 1985

POST OFFICE BOX 2008  
STATE LAND OFFICE BUILDING  
SANTA FE, NEW MEXICO 87501  
(505) 827-5800

February 21, 1986

Office of the Clerk  
Fifth Judicial District Court  
P. O. Box 1776  
County Courthouse  
Roswell, NM 88201

RE: Grynberg v. Oil Conservation  
Commission and Harvey E.  
Yates Company. No CV-86-55

Dear Ms. Willis:

Enclosed for filing is the Answer of Respondent Oil  
Conservation Commission to the Petition for Review filed in  
this matter.

As Always, thank you for your kind assistance.

Sincerely,

Jeff Taylor  
General Counsel

cc: Jones, Gallegos, Snead, &  
Wertheim, PA.

JT/bok



**TONEY ANAYA**  
GOVERNOR

STATE OF NEW MEXICO  
**ENERGY AND MINERALS DEPARTMENT**  
OIL CONSERVATION DIVISION

50 YEARS



1935 - 1985

POST OFFICE BOX 2000  
STATE LAND OFFICE BUILDING  
SANTA FE, NEW MEXICO 87501  
(505) 427-0000

February 21, 1986

Office of the Clerk  
Fifth Judicial District Court  
P. O. Box 1776  
County Courthouse  
Roswell, NM 88201

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General Counsel

cc: Jones, Gallegos, Snead, &  
Wertheim, PA.

JT/bok

IN THE FIFTH JUDICIAL DISTRICT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

JACK J. GRYNBERG,

Petitioner, CV-86-55

vs.

THE OIL CONSERVATION COMMISSION OF  
THE ENERGY AND MINERALS DEPARTMENT OF  
THE STATE OF NEW MEXICO and HARVEY E.  
YATES COMPANY,

Respondents.

ANSWER TO PETITION

The Oil Conservation Commission, through its attorney, responds to the Petition for Review filed in this matter as follows:

1. Respondent is without sufficient information to form an opinion as to the truth of the allegations contained in paragraph one of the Petition.

2. Respondent admits the allegations contained in paragraph two of the Petition, except that the legal description is incorrect and should probably read the W/2 of the NW/4 rather than the W/2 and the NW/4.

3. Respondent admits the allegations contained in paragraph three of the Petition.

4. Respondent denies the allegations contained in paragraph four of the Petition.

5. Respondent admits the allegations contained in paragraph five of the Petition.

6. Respondent admits the allegations contained in paragraph six of the Petition, except that petitioner's characterization of production from the Fusselman may be incorrect. Respondent believes such production comes from a higher Pre-Permian interval.

7. Respondent admits that up to the time of the administrative hearing in this matter, Heyco had refused to undertake further development. Respondent has no information as to any communications between Grynberg and Heyco regarding this question since the date of the administrative hearing.

8. Respondent admits the allegations contained in paragraph eight.

9. Respondent denies the allegations contained in paragraph nine except that an order was entered on December 6, 1985. The delay between the application and the order was due to requests by the parties to continue the case.

10. Respondent admits the allegations contained in paragraph ten.

11. Respondent admits the allegations contained in paragraph eleven.

12. Respondent denies the allegations contained in paragraph twelve.

WHEREFORE, Respondent requests that this Court affirm Order No. R-6873-A, and grant Respondent the costs of defending this action.

Respectfully submitted,

JEFFERY TAYLOR  
General Counsel  
Oil Conservation Division of the  
Energy and Minerals Department  
P. O. Box 2088  
Santa Fe, New Mexico 87504-2088

IN THE FIFTH JUDICIAL DISTRICT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

JACK J. GRYNBERG,

Petitioner, CV-86-55

vs.

THE OIL CONSERVATION COMMISSION OF  
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Respectfully submitted,

JEFFERY TAYLOR  
General Counsel  
Oil Conservation Division of the  
Energy and Minerals Department  
P. O. Box 2088  
Santa Fe, New Mexico 87504-2088



FIFTH JUDICIAL DISTRICT COURT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

JACK J. GRYNBERG,

Petitioner,

-vs-

THE OIL CONSERVATION COMMISSION OF  
THE ENERGY AND MINERALS DEPARTMENT OF  
THE STATE OF NEW MEXICO and HARVEY  
E. YATES COMPANY,

Respondents.

NO.

*CV-86-55*

**SUMMONS**

DIRECTOR,  
**TO** THE OIL CONSERVATION COMMISSION OF THE ENERGY & MINERALS DEPARTMENT  
STATE LAND OFFICE, SANTA FE, NEW MEXICO

**Defendant(s), Greeting:**

You are hereby directed to serve a pleading or motion in response to the Complaint within 30 days after service of the Summons, and file the same, all as provided by law.

You are notified that, unless you so serve and file a responsive pleading or motion, the Plaintiff(s) will apply to the Court for the relief demanded in the Complaint.

Attorney or Attorneys For Plaintiff: J. E. Gallegos, Esq.  
Address: P. O. Box 2228  
Santa Fe, New Mexico 87504-2228

WITNESS the Honorable A. F. Jones, District Judge of Said Court of the State of New Mexico and Seal of the District Court of Said County, this 24th day of January, 19 86.

(SEAL)

CLERK OF THE DISTRICT COURT

By: Judy Hale  
Deputy

**NOTE**

This summons does not require you to see, telephone or write to the District Judge of the Court at this time.

It does require you or your attorney to file your legal defense to this case in writing with the Clerk of the District Court within 30 days after the summons is legally served on you. If you do not do this, the party suing may get a Court Judgment by default against you.

This case is assigned to Judge \_\_\_\_\_ Division \_\_\_\_\_

RETURN FOR COMPLETION BY SHERIFF OR DEPUTY:  
I certify that I served the within Summons in said County on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by delivering a copy thereof, with copy of Complaint attached, in the following manner:  
RETURN FOR COMPLETION BY OTHER PERSON MAKING SERVICE:  
I, being duly sworn, on oath, say that I am over the age of 18 years and not a party to this lawsuit, and that I served the within Summons in said County on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by delivering a copy thereof, with copy of Complaint attached, in the following manner:

(check one box and fill in appropriate blanks)

☐ To Defendant \_\_\_\_\_ (used when Defendant receives copy of Summons, is read Summons or Complaint or refuses to receive Summons or hear reading.)  
☐ To \_\_\_\_\_, a person 15 years of age and residing at the usual place of abode of Defendant \_\_\_\_\_, who at the time of such service was absent therefrom.

☐ By posting a copy of the Summons and Complaint in the most public part of the premises of Defendant \_\_\_\_\_ person found at dwelling house or usual place of abode.) (used if no

☐ To \_\_\_\_\_, an agent authorized to receive service of process for Defendant \_\_\_\_\_.  
☐ To \_\_\_\_\_, (parent) (guardian) of Defendant \_\_\_\_\_ (used when Defendant is a minor or an incompetent person.)

☐ To \_\_\_\_\_, name of person \_\_\_\_\_ title of person authorized to receive service \_\_\_\_\_ (used when Defendant is a corporation or association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision.)

Fees:

SHERIFF OF \_\_\_\_\_ COUNTY State of New Mexico  
SHERIFF \_\_\_\_\_  
By: \_\_\_\_\_ Deputy

Signature of Private Citizen Making Service \_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
Notary or Other Officer \_\_\_\_\_  
Authorized to Administer Oaths \_\_\_\_\_  
Title \_\_\_\_\_

January 24 1986  
JEAN WILLIS, CLERK

FIFTH JUDICIAL DISTRICT COURT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

JACK J. GRYNBERG, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
THE OIL CONSERVATION )  
COMMISSION OF THE ENERGY )  
AND MINERAL DEPARTMENT OF )  
THE STATE OF NEW MEXICO )  
and HARVEY E. YATES COMPANY, )  
 )  
Respondents. )

No. CV-86-55

Case Assigned  
To: Judge Alvin F. Jones

*convention says  
E/2 NW/4 (no comma)*

PETITION FOR REVIEW

COMES NOW, JACK J. GRYNBERG, by and through his  
attorneys, JONES, GALLEGOS, SNEAD & WERTHEIM, P.A., and for his  
Petition for Review, states:

T 1. The petitioner, Jack J. Grynberg, is the holder  
of State of New Mexico Oil and Gas Lease L-6907 covering the  
lease of oil, gas and other minerals in approximately 80 acres  
located in the E/2, NW 1/4 of Section 18, Township 9 South,  
Range 27 East, N.M.P.M., Chaves County, New Mexico.

T 2. Respondent Harvey E. Yates Company ("Heyco") and  
other related working interest owners own the leasehold

1 interest of approximately 240 acres in the W/2, NW 1/4 and SW  
2 1/4 of Section 18, Township 9 South, Range 27 East, N.M.P.M.,  
3 Chaves County, New Mexico.

4 T 3. In Order R-6873 issued January 7, 1982,  
5 respondent Oil Conservation Commission ("OCC") granted the  
6 application of Heyco seeking compulsory pooling of all mineral  
7 interests from the surface through the Ordovician formation  
8 underlying the W/2 of Section 18, Township 9 South, Range 27  
9 East, N.M.P.M., Chaves County, New Mexico, and declared Heyco  
10 the operator of a well to be drilled on the 320-acre tract  
11 created thereby. A copy of that pooling order is attached and  
12 incorporated as Exhibit "A".

13 (F) 4. By virtue of Order R-6873, Grynberg owns an  
14 undivided 24.6% proportional interest in all production from  
15 each acre of the pooled formations underlying the 320-acre unit  
16 established thereby.

17 T 5. Heyco drilled and completed a well in the SW/4  
18 NW/4 of the 320-acre unit designated the Seymour State Comm.  
19 No. 1. The well was completed in the Abo formation and a lower  
20 Prepermian formation. The Prepermian formation is and has been  
21 nonproductive since about November 1984.

22 T see next page 6. The existing circumstances are that the 320 unit  
23 contains one producing Abo well on a 160 acre spacing and no  
24 producing Prepermian well on the 320 acre spacing. A second  
25

zone

I would prefer to call this a higher Pre Permian interval

1 well at an unorthodox location, 660 feet from the South line  
2 and 660 feet from the West line, in the SW/4 SW/4 of Section 18  
3 would be situated higher structurally. The proposed location  
4 presents a probability of obtaining commercial production from  
5 the Abo formation and from the Fusselman, which is a separate  
6 Prepermian formation from that which was tested by the Seymour  
7 State well.

8 T prior to hearing no info since hearing  
9 7. Although requested by Grynberg to do so, Heyco  
10 has refused to undertake further development of the unit by  
11 drilling a second well at the proposed unorthodox location.

12 T 8. By Application to the OCC dated October 5, 1984,  
13 Grynberg requested an Order to amend Order No. R-6873 to allow  
14 for a second well at the proposed location described above.

15 T 9. After a hearing, the OCC issued its Order  
16 R-6873-A regarding Grynberg's October 5, 1984 Application on  
17 December 6, 1985. Among other things, the OCC erroneously  
18 determined that: (1) The W/2 of Section 18 is a spacing or  
19 proration unit in Prepermian gas zones only; (2) the operation  
20 of OCC Order No. R-6873 does not confer any interest in the  
21 SW/4 of Section 18 in Grynberg, except in the Prepermian gas  
22 zones; and (3) any order entered granting Grynberg's  
23 application should be limited to Prepermian gas zones.  
24 (Findings 27, 28 and 29, pages 3-4). A copy of Order R-6873-A  
25 is attached and incorporated by reference as Exhibit "B".

Not heard till 6/17/85

1 T 10. Within twenty (20) days after entry of Order  
2 R-6873-A, Grynberg filed an Application for Rehearing with the  
3 OCC setting forth the respects in which such Order is believed  
4 to be illegal and erroneous. A copy of that Application is  
5 attached and incorporated by reference as Exhibit "C".

6 T 11. The OCC refused such Application for Rehearing by  
7 its failure to act thereon within ten (10) days after the same  
8 was filed.

9 F 12. Grynberg alleges that Order No. R-6873-A is  
10 arbitrary, capricious and contrary to law and therefore void  
11 for the following reasons:

12 *In large measure order relies on OCC interpretation*  
13 *of its own rules based on legal arguments*  
14 *at hearing's subject and ~~and~~ briefs reported*

15 (a) Order No. R-6873-A is erroneous as a  
16 matter of law because Grynberg by law has an  
17 undivided fractional interest in all  
18 production underlying the pooled 320-acre  
19 unit, as more fully set forth in Exhibit  
20 "C", which is incorporated by reference.

21 (b) Order No. R-6873-A is not based on  
22 competent legal evidence as required by Rule  
23 1212 of the OCC and the New Mexico and  
24 Federal Constitutions, and as more fully set  
25 forth in Point II of Exhibit "C", which is  
incorporated by reference.

WHEREFORE, the petitioner prays that Order No.  
R-6873-A be reviewed by this Court and, upon review, be vacated  
with directions to enter a new order, consist with law and the  
legally competent evidence presented to the OCC at public

1 hearing, and for such further relief as this Court may deem  
2 just.

3 JONES, GALLEGOS, SNEAD & WERTHEIM, P.A.  
4 Attorneys for Petitioner

5 By J. E. Gallegos  
6 J. E. GALLEGOS

7 By Robert W. Allen  
8 ROBERT W. ALLEN  
9 Post Office Box 2228  
10 Santa Fe, New Mexico 87504-2228  
11 (505) 982-2691

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

CASE NO. 7390  
Order No. R-6873

APPLICATION OF HARVEY E. YATES  
COMPANY FOR COMPULSORY POOLING,  
CHAVES COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on November 24, 1981, and was continued, readvertised, and reopened on December 22, 1981, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 7th day of January, 1982, the Commission having considered the testimony and the exhibits, and being fully advised in the premises,

FINDS:

- (1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.
- (2) That the applicant, Harvey E. Yates Company, seeks an order pooling all mineral interests down through the Ordovician formation underlying the W/2 of Section 18, Township 9 South, Range 27 East, NMFN, Chaves County, New Mexico.
- (3) That the applicant has the right to drill and proposes to drill a well at a standard location on said 320-acre tract.
- (4) That there are interest owners in the proposed proration unit who have not agreed to pool their interests.
- (5) That to avoid the drilling of unnecessary wells, to protect correlative rights, and to afford to the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the gas in said pool, the subject application should be approved by pooling all mineral interests, whatever they may be, within said unit.

RECEIVED JAN 13 1982



(6) That the applicant should be designated the operator of the subject well and unit.

(7) That any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production.

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

(9) That any non-consenting interest owner should be afforded the opportunity to object to the actual well costs but that actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(10) That following determination of reasonable well costs, any non-consenting working interest owner who has paid his share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(11) That \$3550.00 per month while drilling and \$355.00 per month while producing should be fixed as reasonable charges for supervision (combined fixed rates); that the operator should be authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator should be authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(12) That all proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

(13) That upon the failure of the operator of said pooled unit to commence drilling of the well to which said unit is dedicated or or before March 1, 1982, the order pooling said unit should become null and void and of no effect whatsoever.

IT IS THEREFORE ORDERED.

(1) That all mineral interests, whatever they may be, down through the Ordovician formation underlying the W/2 of Section 18, Township 9 South, Range 27 East, NMPH, 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.

PROVIDED HOWEVER, that the operator of said unit shall commence the drilling of said well on or before the 1st day of March, 1982, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Ordovician formation;

PROVIDED FURTHER, that in the event said operator does not commence the drilling of said well on or before the 1st day of March, 1982, Order (1) of this order shall be null and void and of no effect whatsoever, unless said operator obtains a time extension from the Oil Conservation Division for good cause shown.

PROVIDED FURTHER, that should said well not be drilled to completion, or abandonment, within 120 days after commencement thereof, said operator shall appear before the Division Director and show cause why Order (1) of this order should not be rescinded.

(2) That Harvey E. Yates Company is hereby designated the operator of the subject well and unit.

(3) That within 20 days after the effective date of this order, the operator shall furnish the Division and each known working interest owner in the subject unit an itemized schedule of estimated well costs.

(4) That within 15 days from the date the schedule of estimated well costs is furnished to him, any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production, and that any such owner who pays his share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(5) That the operator shall furnish the Division and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the well; that if no objection to the actual well costs is received by the Division and the Division has not objected within 45 days

following receipt of said schedule, the actual well costs shall be the reasonable well costs; provided however, that if there is an objection to actual well costs within said 45-day period the Division will determine reasonable well costs after public notice and hearing.

(6) That within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid his share of estimated costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

(7) That the operator is hereby authorized to withhold the following costs and charges from production:

(A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(B) As a charge for the risk involved in the drilling of the well, 200 percent of the pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(8) That the operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(9) That \$3550.00 per month while drilling and \$355.00 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); that the operator is hereby authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating such well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(10) That any unsevered mineral interest shall be considered a seven-eighths (7/8) working interest and a

one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under the terms of this order.

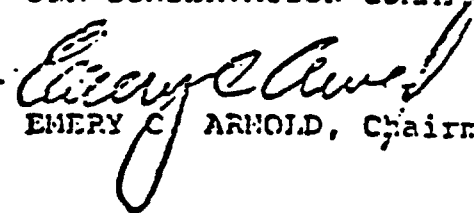
(11) That any well costs or charges which are to be paid out of production shall be withheld only from the working interest's share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(12) That all proceeds from production from the subject well which are not disbursed for any reason shall immediately be placed in escrow in Chaves County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; that the operator shall notify the Division of the name and address of said escrow agent within 30 days from the date of first deposit with said escrow agent.

(13) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

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

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

  
EMERY C. ARNOLD, Chairman

ALEX J. APHISO, Member

  
JOE D. RAMSEY, Member & Secretary

S E A L

STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION COMMISSION

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

CASE NO. 8400  
Order No. R-6873-A

APPLICATION OF JACK J. GRYNBERG  
FOR AMENDMENT OF DIVISION ORDER  
NO. R-6873, CHAVES COUNTY, NEW  
MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

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

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

FINDS THAT:

(1) Due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) The applicant, Jack J. Grynberg, (Grynberg) seeks the amendment of Commission Order No. R-6873 to: 1) allow for the drilling of a second Pre Permian and Abo gas well at an unorthodox gas well location in the SW/4 SW/4 of Section 18, Township 9 South, Range 27 East, on an established 320-acre proration unit; 2) declare the applicant to be the operator of the second well or, in the alternative, to be the operator of the unit; and 3) establish a risk factor and overhead charges for the new well.

(3) Commission Order No. R-6873, entered January 17, 1982, pooled "all mineral interests, whatever they may be, down through the Ordovician formation underlying the W/2 of Section 18, Township 9 South, Range 27 East, NMPM, Chaves County, New

(17) The location proposed by Grynberg is higher structurally and should give any well drilled at that location a better opportunity to recover the reserves under the spacing unit thereby better preventing waste and protecting correlative rights.

(18) The provisions of Section 70-2-17 C NMSA (1978) require the designation of "an operator" for compulsorily pooled units.

(19) Grynberg's application to be separately designated as the operator of a new well to be drilled on the compulsorily pooled unit in question would result in designation of two operators on said unit and should therefore be denied.

(20) HEYCO, as current operator of the compulsorily pooled unit, should be given a reasonable opportunity to drill the second well on said unit as proposed by Grynberg.

(21) Should HEYCO choose not to drill the proposed second well and should Grynberg elect to drill said well, HEYCO should be replaced as operator of the affected pooled unit.

(22) Should Grynberg become operator of the proposed second well and unit, he would seek to complete said well as a dual gas well in the Abo and Pre Permian formations.

(23) The standard spacing unit for the Abo formation would be the SW/4 of said Section 18.

(24) Grynberg holds no leasehold interest under the SW/4 of said Section 18.

(25) Grynberg attempted to show that by virtue of the provisions of said Division Order No. R-6873, he had acquired an interest in the SW/4 of said Section 18 giving him the right to drill and complete a well above the Pre Permian.

(26) The provisions of Section 70-2-17 C NMSA (1978) permit the Commission to pool lands within a spacing or proration unit.

(27) The W/2 of said Section 18 is a spacing or proration unit in Pre Permian gas zones only.

(28) The provisions of said Order No. R-6873 do not confer any interest in the SW/4 of said Section 18 to Grynberg in any formation or interval other than Pre Permian gas zones.

(29) Any order entered in this case granting Gynberg's application should be limited to Pre Permian gas zones.

(30) All participants in the hearing in this matter proposed that the well be assigned a production limitation factor of 0.790 to offset any advantage which might be gained over any offset operator as a result of the proposed unorthodox location.

(31) In the absence of any special rules and regulations for prorationing of production from the Pre Permian formation, the aforesaid production limitation factor should be applied against said well's ability to produce into the pipeline as determined by periodic well tests.

(32) Should Gynberg subsequently drill and complete a Pre Permian gas well in the W/2 of said Section 18, the authorization of production for the HEYCO Seymour State Com Well No. 1 from the Pre Permian should be suspended until such time as the parties agree to designate a single operator for both wells.

(33) The party which chooses to drill a second well on the unit pooled under Order No. R-6873 should be designated the operator of such well and the Pre Permian portion of the unit.

(34) Any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated second well costs to the operator in lieu of paying his share of reasonable well costs out of production.

(35) Any non-consenting working interest owner who does not pay his share of estimated second well costs should have withheld from production his share of the reasonable well costs plus an additional 200 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(36) Any non-consenting interest owner should be afforded the opportunity to object to the actual second well costs but that actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(37) Following determination of reasonable second well costs, any non-consenting working interest owner who has paid his share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(38) \$3,550.00 per month while drilling and \$355.00 per month while producing should be fixed as reasonable charges for supervision (combined fixed rates); the operator should be authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator should be authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator should be authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(39) All proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

(40) Upon the failure of either HEYCO or Grynberg to commence drilling of the second well on said unit on or before May 1, 1986, this order should become null and void and of no effect whatsoever.

(41) Should all the parties to this force pooling reach voluntary agreement subsequent to entry of this order, this order should thereafter be of no further effect except those portions dealing with the unorthodox location and production limitation.

(42) HEYCO and Grynberg should notify the Director of the Oil Conservation Division in writing of the subsequent voluntary agreement of all parties subject to the provisions of this order.

(43) An order entered in accordance with the above findings will serve to prevent waste and protect correlative rights.

IT IS THEREFORE ORDERED THAT:

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



(2) The current unit operator, Harvey E. Yates Company (HEYCO), shall have 30 days following such a request in which to make a determination to drill such well or not.

(3) HEYCO shall make such a determination in writing both to Grynberg and the Director of the Oil Conservation Division (Division).

(4) Upon failure of HEYCO either to elect to drill such second well on the unit or to make a written determination, Grynberg shall, at his option, become the operator of the unit and shall drill a second Pre Permian well on the unit at an unorthodox location, hereby approved, not closer than 660 feet to the South and West lines of Section 18, Township 9 South, Range 27 East, Chaves County, New Mexico.

PROVIDED HOWEVER THAT, the operator shall commence the drilling of said well on or before the 1st day of May 1966, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Pre Permian formation;

PROVIDED FURTHER THAT, in the event that neither HEYCO nor Grynberg elects to drill such well or commences the drilling of the well on or before the 1st day of May, 1966, this order shall be null and void and of no effect whatsoever, unless the operator obtains a time extension from the Division for good cause shown.

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

(5) The operator of the second Pre Permian well on the subject unit shall be determined in accordance with Ordering Paragraphs (1) through (4) above.

(6) After the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Division and each known working interest owner in the subject unit an itemized schedule of estimated well costs.

(7) Within 30 days from the date the schedule of estimated well costs is furnished to him, any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production, and any such owner who pays his share of estimated well costs as provided

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

(8) The operator shall furnish the Division and each known working interest owner an itemized schedule of actual well costs within 30 days following completion of the well; if no objection to the actual well costs is received by the Division and the Division has not objected within 45 days following receipt of said schedule, the actual well costs shall be the reasonable well costs; provided however, that if there is an objection to actual well costs within said 45-day period the Division will determine reasonable well costs after public notice and hearing.

(9) Within 60 days following determination of reasonable well costs, any non-consenting working interest owner who has paid his share of estimated costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

(10) The operator is hereby authorized to withhold the following costs and charges from production:

(A) The pro-rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(B) As a charge for the risk involved in the drilling of the well, 200 percent of the pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(11) The operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(12) \$3,550.00 per month while drilling and \$355.00 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); the operator is hereby authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting

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

(13) Any unsevered mineral interest shall be considered a seven-eighths ( $7/8$ ) working interest and a one-eighth ( $1/8$ ) royalty interest for the purpose of allocating costs and charges under the terms of this order.

(14) Any well costs or charges which are to be paid out of production shall be withheld only from the working interest's share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(15) All proceeds from production from the subject well which are not disbursed for any reason shall immediately be placed in escrow in Chaves County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; the operator shall notify the Division of the name and address of said escrow agent within 30 days from the date of first deposit with said escrow agent.

(16) Should all the parties subject to this order reach voluntary agreement subsequent to entry thereof, this order shall thereafter be of no further effect except as to those provisions relative to the unorthodox well location and production limitation factor.

(17) HEYCO and Grynberg shall notify the Director of the Division in writing of the subsequent voluntary agreement of all parties subject to the provisions of this order.

(18) If Grynberg drills and completes said second Pre Permian well, the HEYCO Seymour State Com Well No. 1 in Unit E of said Section 18 shall not be produced from the Pre Permian unless HEYCO and Grynberg agree to a common operator for all Pre Permian wells on the unit and so notify the Division Director in writing.

(19) Upon the completion of such second Pre Permian well it shall be assigned a Production Limitation Factor of 0.79.

(20) In the absence of any Special Rules and Regulations prorating gas production in said Pre Permian formation in which applicant's well is completed, the Special rules hereinafter promulgated shall apply.

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

SPECIAL RULES AND REGULATIONS  
FOR THE  
APPLICATION OF A "PRODUCTION LIMITATION FACTOR"  
TO A NON-PRORATED GAS WELL

APPLICATION OF RULES

RULE 1. These rules shall apply to a Pre Permian formation gas well located 550 feet or more from the South and West lines of Section 18, Township 19 South, Range 27 East, NMPH, Chaves County, New Mexico, which well's Production Limitation Factor of 0.79 shall be applied to the well's deliverability (as determined by the procedure hereinafter set forth) to determine its maximum allowable rate of production.

ALLOWABLE PERIOD

RULE 2. The allowable period for the subject well shall be six months.

RULE 3. The year shall be divided into two allowable periods commencing at 7:00 o'clock a.m. on January 1 and July 1.

DETERMINATION OF DELIVERY CAPACITY

RULE 4. Immediately upon connection of the well the operator shall determine the open flow capacity of the well in accordance with the Division "Manual for Back-Pressure Testing of Natural Gas Wells" then current, and the well's initial deliverability shall be calculated against average pipeline pressure in the manner described in the last paragraph on Page I-6 of said test manual.

RULE 5. The well's "subsequent deliverability" shall be determined twice a year, and shall be equal to its highest single day's production during the months of April and May or October and November, whichever is applicable. Said subsequent deliverability, certified by the pipeline, shall be submitted to the appropriate District Office of the Division not later than June 15 and December 15 of each year.

RULE 6. The Division Director may authorize special deliverability tests to be conducted upon a showing that the well has been worked over or that the subsequent deliverability

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

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

#### CALCULATION AND ASSIGNMENT OF ALLOWABLES

RULE 8. The well's allowable shall commence upon the date of connection to a pipeline and when the operator has complied with all the appropriate filing requirements of the Rules and Regulations and any special rules and regulations.

RULE 9. The well's allowable during its first allowable period shall be determined by multiplying its initial deliverability by its production limitation factor.

RULE 10. The well's allowable during all ensuing allowable periods shall be determined by multiplying its latest subsequent deliverability, as determined under provisions of Rule 5, by its production limitation factor. If the well shall not have been producing for at least 60 days prior to the end of its first allowable period, the allowable for the second allowable period shall be determined in accordance with Rule 9.

RULE 11. Revision of allowable based upon special well tests shall become effective upon the date of such test provided the results of such test are filed with the Division's district office within 30 days after the date of the test; otherwise the date shall be the date the test report is received in said office.

RULE 12. Revised allowables based on special well tests shall remain effective until the beginning of the next allowable period.

RULE 13. There is no rule 13.

RULE 14. January 1 and July 1 of each year shall be known as the balancing dates.

RULE 15. If the well has an underproduced status at the end of a six-month allowable period, it shall be allowed to carry such underproduction forward into the next period and may produce such underproduction in addition to its regularly assigned allowable. Any underproduction carried forward into

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

RULE 15. Production during any one month of an allowable period in excess of the monthly allowable assigned to the well shall be applied against the underproduction carried into the period in determining the amount of allowable, if any, to be cancelled.

RULE 17. If the well has an overproduced status at the end of a six-month allowable period, it shall be shut-in until such overproduction is made up.

RULE 18. If, during any month, it is discovered that the well is overproduced in an amount exceeding three times its average monthly allowable, it shall be shut-in during that month and during each succeeding month until it is overproduced in an amount three times or less its monthly allowable, as determined hereinabove.

RULE 19. The Director of the Division shall have authority to permit the well, if it is subject to shut-in pursuant to Rules 17 and 18 above, to produce up to 500 MCF of gas per month upon proper showing to the Director that complete shut-in would cause undue hardship, provided however, such permission shall be rescinded for the well if it has produced in excess of the monthly rate authorized by the Director.

RULE 20. The Division may allow overproduction to be made up at a lesser rate than permitted under Rules 17 or 18 above upon a showing that the same is necessary to avoid material damage to the well.

#### GENERAL

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

#### IT IS FURTHER ORDERED THAT:

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

-12-  
Case No. 8400  
Order No. R-6873-A

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

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

SEN BACA, Member

*Ed Bailey*

ED BAILEY, Member

*R. L. Starnets*

R. L. STARNETS,  
Chairman and Secretary

S E A L

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

RECEIVED  
DEC 26 1985  
OIL CONSERVATION DIVISION

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

Case No. 8400

APPLICATION FOR REHEARING

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

POINT I

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

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



(27) The W/2 of said Section 18 is a spacing or proration unit in Pre Permian gas zones only.

(28) The provisions of said Order No. R-6873 do not confer any interest in the SW/4 of said Section 18 to Grynberg in any formation or interval other than Pre Permian gas zones.

(29) Any order entered in this case granting Grynberg's application should be limited to Pre Permian gas zones.

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

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

The effect of compulsory pooling upon the 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:

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

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

(Emphasis supplied).

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

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

In this case, Order R-6873 provides unequivocally that all mineral interests, whatever they may be, down through the Ordovician formation underlying the W/2 of Section 18 are pooled to form a standard 320-acre gas spacing and proration unit. The "pooled" mineral interests include, among others, the Fusselman and Abo formations, which are objective formations for the proposed second well.<sup>1</sup> Grynberg owns the working interest in approximately 80 acres, or 24.6% of the 320-acre unit, from the surface to the Ordovician formation. Heyco and others own the working interest in the remainder of the pooled unit. Consequently, by operation of Section 70-2-17(C), supra, and Order R-6873, the various interests in the separate tracts comprising the 320-acre unit have been consolidated as a matter of law into an undivided ownership of

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<sup>1</sup>It must be recognized that the compulsory pooling of all formations underlying the W/2 of Section 18, from the surface to the Ordovician, was specifically requested by HEYCO in its Amended Application filed October 21, 1981, in Case No. 7390. Indeed, the fact that all formations were pooled into a single 320-acre unit was clearly HEYCO's purpose. In its original Application in Case No. 7390, filed September 29, 1981, HEYCO sought to pool only the mineral interests in the Mississippian formation. By its first amended application filed October 13, 1981, the request for compulsory pooling was modified to "cover all formations from the surface through the Mississippian formation." Finally, in HEYCO's second amended application, filed October 21, 1981, the request for compulsory pooling was modified to "cover from the surface to all depths."

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

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

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

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

We have previously held that the Commission has considerable discretion in determining which owner is entitled to drill and operate 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 the working interest within the spacing unit and designate an operator to drill and operate the well at the designated well location. 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 drilled, as authorized by the Commission, and ultimately found to be productive in both the Fusselman and Abo formations at the proposed location, Grynberg's interest in that production would be 24.6% of the total production.

#### POINT II

##### THE ORDER IS NOT BASED ON COMPETENT LEGAL EVIDENCE

This case was principally heard on September 18, 1985. At that time Harvey E. Yates Company ("HEYCO") made a "statement" by attorney William F. Carr. (9-18-85 TR. 5-7) Competent and qualified expert evidence was presented by applicant through the sworn testimony of Professor Bruce Kramer on the effect of pooling Order R-6873 issued pursuant to §70-2-17(c), NMSA 1978. Essentially he stated that the Order accomplished a "unification of ownership, whether it be royalty or operating interest . . . and essentially you erase all internal boundary lines and the boundary lines of the new ownership criteria are those which are set forth in the compulsory order." (9-18-85 TR. 35-36). Instead of Grynberg having a specified 80 acres in the 320 acre unit (approximately 24.6%) he has 24.6% in each acre in the unit.

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

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

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

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



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

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

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

Ferguson - Steere Motor Co. v. State Corporation Commission, supra, 314 P.2d at 898.

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

The Commission is authorized only to make its decision upon the evidence adduced at the hearing and made a part of the record. . . . The appellant was entitled to a hearing as provided by law, conducted fairly and impartially, with an opportunity to introduce evidence to refute or modify any matters or facts which the Commission might take into consideration in reaching its decision.

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

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

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

CONCLUSION

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

Respectfully submitted,

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

By



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(505) 982-2691

CERTIFICATE OF MAILING

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

  
J. E. GALLEGOS

07/30/87  
GEORGIA FERRIN, CLERK

IN THE DISTRICT COURT

COUNTY OF CHAVES

STATE OF NEW MEXICO

JACK J. GRYNBERG,

Plaintiff,

vs.

CV-86-55-S

THE OIL CONSERVATION COMMISSION  
OF THE ENERGY AND MINERALS  
DEPARTMENT OF THE STATE OF NEW  
MEXICO and HARVEY E. YATES  
COMPANY,

Defendants.

#### DECISION

Jack J. Grynberg (Grynberg) owns a state mineral lease covering approximately 80 acres located in the E/2 NW/4 of Section 18, Township 9 South, Range 27 East, N.M.P.M., Chaves County, New Mexico. HEYCO and others (HEYCO) hold a state mineral lease of approximately 240 acres which constitutes the remaining portion of the W/2 of Section 18.

Our saga begins with HEYCO seeking to force pool its 240 acres with 80 acres held by Grynberg to drill a dual completion well in the ABO and Pre Permian zone. 320-acres are required for a Pre Permian zone well and 160 acres are required for an ABO well. Grynberg attempted to elect to participate in the ABO portion of the well only. The Oil Conservation Commission entered Order Number R6873 which (1) pooled the 320-acre tract from the surface to the Ordovician formation; (2) ordered HEYCO to proceed with due diligence to drill a well to test the Ordovician formation; (3)

allowed any working interest owner to pay his share of the well costs; (4) authorized the operator to withhold the pro rata share of well costs plus a risk charge of 200 per cent from the non-participating working interest owner; (5) ordered that any amounts withheld from production should be withheld only from the working interest portion of production. The Commission's position was sustained by the Supreme Court in the case of Viking Petroleum v. Oil Conservation Commission, 100 N.M. 451, 672 P.2d 280, (1983).

The Pre Permian zone produced a small amount of gas and is not now capable of commercial production. The ABO formation continues to produce but the working interests of both zones have not as yet paid the production costs and penalty.

Grynberg sought to drill a second well on the 320-acre tract to the Fusselman formation. This well will pass through the ABO. Grynberg now appeals Commission Order Number R6873A which permits the drilling of the second well, but hold that Grynberg has no ABO interest in the SW 1/4. The issue presented in this case is who is entitled to production from the ABO formation.

As a preliminary matter, Grynberg has objected to the inclusion in the record of Mr. Christy's title opinion and a copy of the division order which were submitted after the hearing in response to a request made by the hearing officer. Grynberg made no objection when the request for this material was made and therefore waived his right to object. The title opinion and division order are not significant because of the unique legal question in this case, the fact that production costs and penalty

have not yet been recovered, and Grynberg is not shown to have signed the division order.

In the Viking case, supra, Justice Federici noted that it was a case of first impression in New Mexico. The issue in this case appears to be a case of first impression in any jurisdiction.

Counsel have ably briefed the question, but unfortunately, no cases can be considered on point. The problem would not arise but for the fact that we have forced pooling of multiple zones with different spacing requirements.

The Commission's Order is prima facie valid, and the party seeking review has the burden of establishing its invalidity. Section 70-2-25, N.M.S.A., 1978. The parties are agreed that the matter presented to this court is strictly a legal issue. The issue whether or not Commission Order R6873 pooled the ABO interests into a 320-acre unit. The Order reads:

IT IS THEREFORE ORDERED

(1) that all mineral interests whatever they may be, down through the Ordovician formation underlying the W/2 of Section 18, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico, are hereby pooled to form a standard 320-acre spacing and proration unit to be dedicated to a well to be drilled at a standard location on said 320-acre tract. (Applicants Exhibit Number 4)

The Order clearly appears to pool the ABO formation into a 320-acre unit. HEYCO argues that the Commission did not have authority or jurisdiction to create such a unit and that the order must be read with this in mind. HEYCO cites 70-2-17(C), N.M.S.A., 1978 and in particular the portion which reads as follows:

Where, however, such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposed to drill

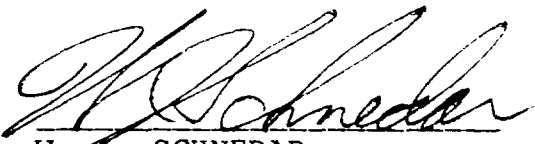
a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit. (Emphasis added).

HEYCO also cites Southern Union Production Company v. Eason Oil Company, 540 P.2d 604 (OK, 1975). However, the factual situation is quite different inasmuch as the original well had been abandoned and the spacing requirements were changed subsequent to the original order.

The pooling of multiple zones with different spacing requirements presents a serious risk that correlative rights will be impaired. Only a broad interpretation of Section 70-2-17(C) will permit the Commission to fulfill its mandate to protect rights and prevent waste. The Commission expressly found in Order Number R6837 that it was necessary to pool all mineral interests within the 320-acre tract. The Order was affirmed by the New Mexico Supreme Court.

The Order now under review: R6873-A is incompatible with Order Number R6873. The Commission has previously established a 320-acre unit for the ABO formation which order is still in effect. The ABO well is still being produced. Order Number R6873-A insofar as it purports to establish a 160-acre proration unit in the ABO formation is void.

IT IS THEREFORE ORDERED that Commission Order Number R6873-A is set aside.

  
W. J. SCHNEDAR  
DISTRICT JUDGE

xc: Counsel of Record





FIFTH JUDICIAL DISTRICT  
STATE OF NEW MEXICO

WILLIAM A. SCHNEDAR  
District Judge  
Division VI

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July 31, 1987

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RE: Jack J. Grynberg  
v.  
Oil Conservation Commission, et al.  
Chaves County CV-86-55

Gentlemen:

Enclosed is an endorsed copy of the decision which Judge Schnedar signed and which was filed July 30, 1987.

Sincerely yours,

Roberta R. Hall  
Secretary

/rh

enclosure