

BEFORE THE OIL CONSERVATION  
DIVISION  
OF THE STATE OF NEW MEXICO

|   |                   |
|---|-------------------|
| BEFORE THE<br>OIL CONSERVATION COMMISSION<br>Santa Fe, New Mexico |                   |
| Case No. <u>8901</u>  | File No. <u>1</u> |
| Applicant <u>Applicant</u>  |                   |
| Hearing Date <u>19 June 1936</u>                                  |                   |

IN THE MATTER OF THE APPLICATION OF )  
YATES PETROLEUM CORPORATION, YATES )  
DRILLING COMPANY, MYCO INDUSTRIES, INC. )  
AND ABO PETROLEUM CORPORATION )  
FOR THE DETERMINATION OF REASONABLE )  
WELL COSTS. )

CASE NO. \_\_\_\_\_

APPLICATION

COMES NOW YATES PETROLEUM CORPORATION, YATES DRILLING  
COMPANY, MYCO INDUSTRIES, INC. and ABO PETROLEUM CORPORATION  
(hereinafter collectively referred to as applicant) by its attorneys  
and in support hereof, respectfully states:

1. That applicant is a working interest owner in the  
Grynberg State 1-20. Said well was drilled pursuant to Order No.  
R-7393 in Case No. 7984 wherein the Commission ordered all  
mineral interests from the surface through and including the Abo  
formation underlying the SW/4 and all mineral interests from the  
top of the Wolfcamp formation to the Precambrian formation underlying  
the W/2, all in Section 20, Township 9 South, Range 27 East,  
N.M.P.M., Chaves County, New Mexico, pooled to form a standard  
160 acre and a 320 acre proration unit to be dedicated to the

Grynberg State 1-20. Jack J. Grynberg was designated as the Operator of the well. A copy of Order No. R-7393 is attached hereto and made a part hereof as Exhibit "A."

2. Applicant owns 25% of the working interest attributable to the Abo formation, and 62.5% of the working interest attributable to the Precambrian formation.

3. Finding No. 25 of Order No. R-7393 states: "That estimated well costs for the Abo formation, except for costs directly attributable to the Precambrian, should be estimated on the basis of depth for each formation and that costs for the Abo formation should not exceed 81.89 % of the total cost of the proposed well, (5200 foot Abo depth/6350 foot total depth = 0.8189)." Further, the Commission in Order No. R-7393, page 5, paragraph No. 4 ordered, "That the itemized schedule of well costs shall be prepared to reflect actual well costs properly attributable to each zone in accordance with Finding No. (25) in this Order."

4. Pursuant to the Commission's Order and the estimated well costs submitted to applicant by Grynberg, applicant prepaid \$215,706.26 to Grynberg as its share of the estimated well costs.

5. The well was spudded on February 1, 1984, and completed on April 1, 1984, as shown on Form C-105, Well Completion

or Recompletion Report and Log, filed by Grynberg with the Oil Conservation Division. A copy of said form, C-105, is attached hereto and made a part hereof as Exhibit "B."

6. Grynberg did not furnish the Commission or each working interest owner an itemized schedule of actual well costs within 90 days following completion of the well as required in Commission Order R-7393, page 5, paragraph No. 6.

7. Applicant requested from Grynberg an itemized schedule of actual well costs. An itemized schedule was not furnished and applicant audited Grynberg's records on June 24 through June 28, 1985.

8. On November 25, 1985, Yates received a letter dated November 22, 1985, wherein Grynberg purported to make an adjustment for an overpayment of \$2,608.31. Grynberg's apportionment of costs was based solely on the working interest ownership in the Precambrian formation, contrary to the Commission's Order. Attached hereto and made a part hereof as Exhibit "C" is a copy of Grynberg's letter of November 22, 1985 and its attached schedules.

9. Applicant has taken exception to Grynberg's well cost adjustment, and by letter dated January 25, 1986, notified Grynberg of its exception, and furnished a copy of its calculation

of the well costs pursuant to Commission Order R-7393. Applicant further demanded a refund of overpayment of advanced costs of \$87,116.89. Grynberg has failed to respond to applicant's letter of January 24, 1986. A copy of Yates' letter of January 24, 1986 with attachments is attached hereto and made a part hereof as Exhibit "D."

WHEREFORE, applicant prays:

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

B. That upon hearing the Division enter its order determining reasonable well costs and a refund, if applicable, of any overpayments made by applicant to Grynberg.

C. And for such other relief as may be just in the premises.

Yates Petroleum Corporation  
Yates Drilling Company  
Myco Industries, Inc.  
Abo Petroleum Corporation

By: 

Ernest L. Carroll  
LOSEE & CARSON, P.A.  
P.O. Drawer 239  
Artesia, New Mexico 88210  
(505) 746-3508

Attorneys for Applicant



STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION COMMISSION

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

CASE NO. 7984  
Order No. R-7393

APPLICATION OF JACK J. GRYNBERG  
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 October 18, 1983, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 2nd day of December, 1983, 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:

(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, Jack J. Grynberg, seeks an order pooling all mineral interests from the surface through and including the Abo formation underlying the SW/4 of Section 20, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico, and all mineral interests from the top of the Wolfcamp formation to the Precambrian formation underlying the W/2 of said Section 20, said units to be dedicated to a single well to be drilled at a standard location thereon.

(3) That in companion Case 7982, Yates Petroleum Corporation seeks an unorthodox well location 1980 feet from the North line and 990 feet from the West line of said Section 20, to test all formations from the top of the Wolfcamp through the Montoya formation, the N/2 of said Section 20 to be dedicated to said well.

(4) That in companion Case 7983, Yates Petroleum Corporation seeks compulsory pooling of all mineral interests

in the Abo formation underlying the SW/4 and all mineral interests in all formations below the top of the Wolfcamp formation underlying the S/2 of said Section 20, said units to be dedicated to a single well to be drilled at an unorthodox location, for the Wolfcamp and deeper horizons, at a point 1980 feet from the South line and 600 feet from the West line of said Section 20.

(5) That these cases were consolidated with this case for the purpose of obtaining testimony.

(6) That the spacing in this area is 160 acres for Abo gas and 320 acres for Wolfcamp and older gas.

(7) That while all formations from the Wolfcamp and below are sought to be pooled, the primary "deep" target is the Fusselman formation.

(8) That although evidence was presented that wells in the Fusselman formation might not drain 320 acres, no party to these cases had applied for an amendment to the applicable 320-acre spacing rules.

(9) That all parties to these cases agreed that the West half of said Section 20 should be more productive than the East half in the Fusselman formation.

(10) That the West half of said Section 20 is a logical spacing unit for the Wolfcamp and older formations.

(11) That Jack J. Grynberg is also an interest owner in Section 19, Township 9 South, Range 27 East, Chaves County, New Mexico, which section lies immediately West of said Section 20.

(12) That Mr. Grynberg objects to the unorthodox locations proposed by Yates Petroleum Corporation.

(13) That approval of the two Yates applications for wells at unorthodox locations would result in such wells having a calculated drainage radius outside their proration units of 116 net acres greater, in said Section 19, than wells at standard locations.

(14) That approval of said unorthodox locations, with the resultant change in net drainage outside the assigned proration units, would result in drainage across lease lines not offset by counter drainage and would, therefore, result in violation of correlative rights.

(15) That to prevent the violation of correlative rights, the applications of Yates Petroleum Corporation in Case No. 7982 and Case 7983 should be denied.

(16) That the application of Jack J. Grynberg in Case 7984 should be approved.

(17) That the applicant, Jack J. Grynberg, has the right to drill and proposes to drill a well at a standard location thereon.

(18) That the proposed 160-acre spacing unit would apply to and should only be approved in the Abo formation.

(19) That the proposed 320-acre spacing unit would apply to and should only be approved from the top of the Wolfcamp to the Precambrian formation.

(20) That there are interest owners in the proposed proration units who have not agreed to pool their interests.

(21) That to avoid the drilling of unnecessary wells, to prevent waste, to protect correlative rights, and to afford to the owner of each interest in said units the opportunity to recover or receive without unnecessary expense his just and fair share of the gas in any appropriate pool covered by said units, the subject application should be approved by pooling all mineral interests, whatever they may be, within said units.

(22) That the applicant should be designated the operator of the subject well and units.

(23) 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.

(24) That since the interests of the parties are different in each proration unit, it will be necessary to estimate well costs on the basis of a well to the Abo formation drilled to 5,200 feet and a well to the Precambrian formation drilled to 6350 feet.

(25) That estimated well costs for the Abo formation, except for costs directly attributable to the Precambrian, should be estimated on the basis of depth for each formation and that costs for the Abo formation should not exceed 81.89 percent of the total cost of the proposed well, (5200 foot Abo depth/6350 foot total depth = 0.8189).

(26) 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.

(27) 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.

(28) 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.

(29) That \$2,825.00 per month while drilling and \$283.00 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.

(30) 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.

(31) That upon the failure of the operator of said pooled unit to commence drilling of the well to which said unit is dedicated on or before March 1, 1984, 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, from the surface through and including the Abo formation underlying the SW/4 and all mineral interests from the top of the Wolfcamp formation to the Precambrian formation underlying the W/2, all in Section 20, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico, are hereby pooled to form a standard 160-acre and a 320-acre gas spacing and proration unit to be dedicated to a well to be drilled at a standard location thereon.

PROVIDED HOWEVER, that the operator of said units shall commence the drilling of said well on or before the 1st day of March, 1984 and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Wolfcamp and Precambrian formations;

PROVIDED FURTHER, that in the event said operator does not commence the drilling of said well on or before the 1st day of March, 1984, Order (1) of this order shall be null and void and of no effect whatsoever, unless said 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, said operator shall appear before the Division Director and show cause why Order (1) of this order should not be rescinded.

(2) That Jack J. Grynberg is hereby designated the operator of the subject well and unit.

(3) That after the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Commission and each known working interest owner in the subject units two itemized schedules of estimated well costs, one to be for a well to the Abo formation drilled to a depth of 5,200 feet and the second for a well to the Precambrian formation drilled to a depth of 6350 feet.

(4) That the itemized schedule of well costs shall be prepared to reflect actual well costs properly attributable to each zone in accordance with Finding No. (25) in this order.

(5) That 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 wells 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.

(6) That the operator shall furnish the Commission 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 Commission and the Commission 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 Commission will determine reasonable well costs after public notice and hearing.

(7) 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.

(8) 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.

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

(10) That \$ 2,825.00 per month while drilling and \$285.00 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.

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

Case No. 7984  
Order No. 7393

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

(12) 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.

(13) 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.

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

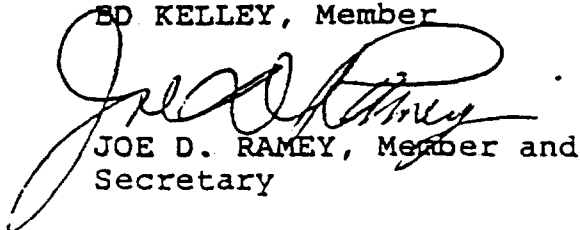
DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

JIM BACA, Member



ED KELLEY, Member



JOE D. RAMEY, Member and  
Secretary

S E A L

STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT

OIL CONSERVATION DIVISION

P. O. BOX 2088  
SANTA FE, NEW MEXICO 87501

WELL COMPLETION OR RECOMPLETION REPORT AND LOG

Form C-105  
Revised 10-1-78

|                        |  |
|------------------------|--|
| NO. OF COPIES RECEIVED |  |
| DISTRIBUTION           |  |
| SANTA FE               |  |
| FILE                   |  |
| U.S.G.S.               |  |
| LAND OFFICE            |  |
| OPERATOR               |  |

|   |     |
|---|-----|
| 3a. Indicate Type of Lease                |     |
| State <input checked="" type="checkbox"/> | Fee |
| 3. State Oil & Gas Lease No.              |     |
| LH-1898                                   |     |

|  |  |  |  |  |  |                                 |  |                                    |  |                                       |  |                                      |  |
|--|--|--|--|--|--|---------------------------------|--|------------------------------------|--|---------------------------------------|--|--------------------------------------|--|
| 1a. TYPE OF WELL   |  | OIL WELL <input type="checkbox"/>            |  | GAS WELL <input checked="" type="checkbox"/> |  | DRY <input type="checkbox"/>    |  | OTHER                              |  |                                       |  |                                      |  |
| b. TYPE OF COMPLETION  |  | NEW WELL <input checked="" type="checkbox"/> |  | WORK OVER <input type="checkbox"/>           |  | DEEPEN <input type="checkbox"/> |  | PLUG BACK <input type="checkbox"/> |  | DIFF. RESVR. <input type="checkbox"/> |  | OTHER                                |  |
| 2. Name of Operator  |  |  |  |  |  |                                 |  |                                    |  |                                       |  | 7. Unit Agreement Name               |  |
| Jack J. Grynberg   |  |  |  |  |  |                                 |  |                                    |  |                                       |  | N/A                                  |  |
| 3. Address of Operator   |  |  |  |  |  |                                 |  |                                    |  |                                       |  | 8. Farm or Lease Name                |  |
| 5000 S. Quebec, Suite 500, Denver, CO 80237  |  |  |  |  |  |                                 |  |                                    |  |                                       |  | Grynberg St. Com                     |  |
| 4. Location of Well  |  |  |  |  |  |                                 |  |                                    |  |                                       |  | 9. Well No.                          |  |
| UNIT LETTER <u>L</u> LOCATED <u>1980</u> FEET FROM THE <u>South</u> LINE AND <u>660</u> FEET FROM                          |  |  |  |  |  |                                 |  |                                    |  |                                       |  | #1                                   |  |
| THE West LINE OF SEC. <u>20</u> TWP. <u>9S</u> RGE. <u>27E</u> NMPM  |  |  |  |  |  |                                 |  |                                    |  |                                       |  | 10. Field and Pool, or Wildcat       |  |
|  |  |  |  |  |  |                                 |  |                                    |  |                                       |  | Und. Pecos Slope A                   |  |
| 15. Date Spudded   |  |  |  |  |  |                                 |  |                                    |  |                                       |  | 12. County                           |  |
| 2/1/84   |  |  |  |  |  |                                 |  |                                    |  |                                       |  | Chaves                               |  |
| 16. Date T.D. Reached  |  |  |  |  |  |                                 |  |                                    |  |                                       |  | 13. Elev. Casinghead                 |  |
| 2/20/84  |  |  |  |  |  |                                 |  |                                    |  |                                       |  | Same                                 |  |
| 17. Date Compl. (Ready to Prod.)   |  |  |  |  |  |                                 |  |                                    |  |                                       |  | 14. Elev. Casinghead                 |  |
| 4/1/84   |  |  |  |  |  |                                 |  |                                    |  |                                       |  | Same                                 |  |
| 18. Elevations (DF, RKB, RT, GR, etc.)   |  |  |  |  |  |                                 |  |                                    |  |                                       |  | 15. Was Directional Sur              |  |
| 3812' GR   |  |  |  |  |  |                                 |  |                                    |  |                                       |  | Made                                 |  |
| 19. Total Depth  |  |  |  |  |  |                                 |  |                                    |  |                                       |  | Yes                                  |  |
| 6419'  |  |  |  |  |  |                                 |  |                                    |  |                                       |  |                                      |  |
| 20. Plug Back T.D.   |  |  |  |  |  |                                 |  |                                    |  |                                       |  | 26. Type Electric and Other Logs Run |  |
| 4756   |  |  |  |  |  |                                 |  |                                    |  |                                       |  | CNL-LD-GR: DLL-MSFL                  |  |
| 21. If Multiple Compl., How Many   |  |  |  |  |  |                                 |  |                                    |  |                                       |  | 27. Was Well Cored                   |  |
| 22. Intervals Drilled By   |  |  |  |  |  |                                 |  |                                    |  |                                       |  | No                                   |  |
| Rotary Tools   |  |  |  |  |  |                                 |  |                                    |  |                                       |  |                                      |  |
| 0-6419'  |  |  |  |  |  |                                 |  |                                    |  |                                       |  |                                      |  |
| 23. Casing Record (Report all strings set in well)   |  |  |  |  |  |                                 |  |                                    |  |                                       |  |                                      |  |
| 24. Producing Interval(s), of this completion - Top, Bottom, Name  |  |  |  |  |  |                                 |  |                                    |  |                                       |  |                                      |  |
| Abo 4728-36'   |  |  |  |  |  |                                 |  |                                    |  |                                       |  |                                      |  |
| 25. Was Directional Sur Made   |  |  |  |  |  |                                 |  |                                    |  |                                       |  |                                      |  |
| Yes  |  |  |  |  |  |                                 |  |                                    |  |                                       |  |                                      |  |
| 26. Type Electric and Other Logs Run   |  |  |  |  |  |                                 |  |                                    |  |                                       |  |                                      |  |
| CNL-LD-GR: DLL-MSFL  |  |  |  |  |  |                                 |  |                                    |  |                                       |  |                                      |  |
| 27. Was Well Cored   |  |  |  |  |  |                                 |  |                                    |  |                                       |  |                                      |  |
| No   |  |  |  |  |  |                                 |  |                                    |  |                                       |  |                                      |  |
| 28. CASING RECORD (Report all strings set in well)   |  |  |  |  |  |                                 |  |                                    |  |                                       |  |                                      |  |
| 29. LINER RECORD   |  |  |  |  |  |                                 |  |                                    |  |                                       |  |                                      |  |
| 30. TUBING RECORD  |  |  |  |  |  |                                 |  |                                    |  |                                       |  |                                      |  |
| 31. Perforation Record (Interval, size and number)   |  |  |  |  |  |                                 |  |                                    |  |                                       |  |                                      |  |
| 32. ACID, SHOT, FRACTURE, CEMENT SQUEEZE, ETC.   |  |  |  |  |  |                                 |  |                                    |  |                                       |  |                                      |  |
| 33. PRODUCTION (continue, see attachment)  |  |  |  |  |  |                                 |  |                                    |  |                                       |  |                                      |  |
| 34. Disposition of Gun (Sold, used for fuel, vented, etc.)   |  |  |  |  |  |                                 |  |                                    |  |                                       |  |                                      |  |
| 35. List of Attachments  |  |  |  |  |  |                                 |  |                                    |  |                                       |  |                                      |  |
| 36. I hereby certify that the information shown on both sides of this form is true to the best of my knowledge and belief. |  |  |  |  |  |                                 |  |                                    |  |                                       |  |                                      |  |



RECEIVED  
NOV 25 1985  
TELETYPE

GRYNBERG PETROLEUM COMPANY

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

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

November 22, 1985

Mr. Tom Kelly  
Yates Petroleum Company  
207 South 4th Street  
Artesia, NM 88210

Dear Tom:

Enclosed please find schedules showing costs of #1-20 Grynberg State. Total cost of the well as adjusted by your audit exceptions is \$340,956.72.

|                    |        | <u>Company<br/>Share</u> | <u>Amount<br/>Advanced</u> | <u>Balance</u>        |
|--------------------|--------|--------------------------|----------------------------|-----------------------|
| Grynberg Petroleum | 37.50% | \$127,858.77             | \$127,858.77               | ---                   |
| Yates Petroleum    | 21.25% | 72,453.30                | 150,994.38                 | \$ (78,541.08)        |
| Yates Drilling     | 13.75% | 46,881.55                | 21,570.62                  | 25,310.93             |
| Myco Industries    | 13.75% | 46,881.55                | 21,570.63                  | 25,310.92             |
| Abo Petroleum      | 13.75% | 46,881.55                | 21,570.63                  | 25,310.92             |
|                    |        | <u>\$340,956.72</u>      | <u>\$343,565.03</u>        | <u>\$ ( 2,608.31)</u> |

Costs are shared on applicable percentages for the 6,350' AFE on the #1-20 Grynberg State.

Your Exception No. 2 on your audit of costs on the #1-20 Grynberg State regarding the monthly overhead for an operating lease will be adjusted on our regular joint interest billings, and your account will be credited accordingly.

Please call if you have any further questions regarding the above.

Sincerely,

GRYNBERG PETROLEUM COMPANY

  
Robert D. Pelo  
Controller

RDP/rw

Exhibit "C"

*Guyanese Petroleum Co.*

*Schedule*

*Guyanese State # 1-20*

*Total Costs Per Page 3 of Attached Schedule # 2*

*339,170.07*

*Adjustments Per Audit by Mr. Tom Kelly  
of Guyana Petroleum*

*# 1 - Overhead chg - Drilling Bunkhead  
# 3 - Credit for 1,522.72' of drilling  
# 4 - 1 / 1 20.13' / casing*

*3764.31*

*2121.09*

*356.57*

*Total Costs as Adjusted*

*340,956.72*

*Guyanese Petroleum Company*

*37.5%*

*127,858.27*

*Guyana Petroleum Company*

*21.25%*

*72,453.30*

*Guyana Drilling Company*

*13.75%*

*46,881.55*

*MICO Industries, Inc.*

*13.75%*

*46,881.55*

*Ab Petroleum Corporation*

*13.75%*

*46,881.55*

*340,956.72*

## Expenditures - Wyoming State "1-20

| Invoice # | Vendor                | Inv. Date | Description  | Amount   |
|-----------|-----------------------|-----------|--|----------|
| 1 33464   | Associated Pipe       | 2-18-84   | 6544' 5 1/2" x 16.50 Cong. Equip                       | 29120.00 |
| 2 R6662   | B & R Lease Service   | 3-19      | Handed Pet   | 158.15   |
| 3 R66717  | "                     | 3-30      | Hand & Hand 48 jts 2 3/4 2 jts 5 1/2                   | 169.87   |
| 4 -       | Robert W. Becker      | 12-23     | Geological Service                                     | 1786.63  |
| 5 004172  | Big Red Supply        | 12-7      | 2 - Boxes Samples Bago                                 | 32.25    |
| 6 004406  | "                     | 12-18     | Cong. Hand & Parts Equip                               | 1090.27  |
| 7 41050   | Bell Petroleum        | 3-26      | Lease Service for lease leak                           | 3291.23  |
| 8 2227    | Buckeye Inc. 2nd      | 3-8       | Hand Chemical to replace pipe from sticking            | 2555.52  |
| 9 3014    | "                     | 3-15      | "  | 1783.23  |
| 10 -      | Thomas K. Campbell    | 4-10      | Engineering & Mechanical                               | 701.67   |
| 11 -      | "                     | 7-12      | "  | 216.97   |
| 12 -      | "                     | 10-17     | "  | 1500.00  |
| 13 12122  | Wach Chase Inc.       | 3-31      | Completion Rig   | 23971.44 |
| 14 -      | Comm. of Public Lands | ✓         | Regd. of W. & M.                                       | 2130.00  |
| 15 90957  | Completion Rentals    | 3-31      | Equipment Rented                                       | 605.80   |
| 16 160    | Desert Drilling       | 2-21      | Drilling Op. "1-20                                     | 99200.00 |
| 17 -      | "                     | 1-20      | "  | 14805.07 |
| 18 -      | Double L Anchor       | 1-10      | Road Repair  | 624.00   |
| 19 -      | Lynnen Drilling       | 12-83     | Surface Damages  | 50.00    |
| 784728    | Halliburton           | 2-18-84   | Cement 5 1/2" L.S.                                     | 10589.74 |
| 784778    | "                     | 2-2       | " 8 5/8" Surface                                       | 8172.35  |
| 725050    | "                     | 2-16      | D.S. 6325' - 6396'                                     | 3574.31  |
| 785108    | "                     | 3-14      | Acid 772   | 2167.53  |
| 73613     | "                     | 3-14      | Acid 772   | 1837.93  |
| 785107    | "                     | 3-16      | Acid 772   | 2190.97  |
| 73990     | "                     | 1-1       | "  | 1764.33  |
| 727257    | "                     | 3-17      | Workover & Co.   | 22212.76 |
| 78 061547 | "                     | 3-19      | Dr. 784778 - 1537.54 784778 - 1226.47 784778 - 6254.50 | 3350.46  |
| 073617    | "                     | 3-21      | Acid 772   | 1727.47  |
| 785111    | "                     | 1-1       | "  | 7017.26  |
| 785114    | "                     | 3-28      | "  | 3886.83  |

Schedule 2

Expenditures - Operating State #1-20

| Invoice # | Vendor               | Invoice Date | Description   | Amount   |
|-----------|----------------------|--------------|---|----------|
| 073384    | Halliburton          | 3-28         | Metaphy Chemicals w/ Nitrogen   | 1971.58  |
| 784687    | /                    | 3-29         | CO <sub>2</sub> & Dime  | 16193.26 |
| 062227    | /                    | 4-16         | Sum 73617.00 251.35 73833.27 276.39 73890.00 221.45 73914.91 235.23 73950.00 235.38 73987.44 249.39 74011.40 258.36 74047.11 273.73 74084.61 289.68 | 109553   |
| 062228    | /                    | /            | Sum 73511.40 258.36 73547.11 273.73 73584.61 289.68   | 7600.29  |
| 6648R     | Hondo Pipes          | 2-6          | 1048.42 8" Casing - Surface Equip   | 8943.69  |
| 6792R     | /                    | 2-29         | Unload 5 1/2"   | 22437.   |
| 6904R     | /                    | 3-27         | Delivery Hondo parts  | 2088.77  |
| 6901R     | /                    | /            | 2" line, 1" flange  | 1871.0   |
| 6892R     | /                    | 3-27         | 7" line, 1" flange, 2" pipe   | 2067.57  |
| 6953R     | /                    | 3-28         | Subs Cellar   | 2772.2   |
| 1329      | Joins Water Services | 3-28         | Water Transport   | 930.04   |
| 1433      | /                    | 2-2          | /   | 7676.2   |
| 1434      | /                    | /            | /   | 7525.7   |
| 1435      | /                    | 2-3-9        | /   | 645.06   |
| 1462      | /                    | 2-10-9       | /   | 860.08   |
| 1488      | /                    | 2-7          | /   | 1075.1   |
| 1522      | /                    | 2-9          | /   | 1075.1   |
| 1567      | /                    | 2-11-12      | /   | 497.04   |
| 1606      | /                    | 2-5          | /   | 671.55   |
| 1607      | /                    | 2-15         | /   | 1073.81  |
| 1608      | /                    | 2-17         | /   | 1075.1   |
| 1609      | /                    | 2-19         | /   | 322.53   |
| 2452      | /                    | 3-28         | /   | 731.18   |
| 1657      | /                    | 2-5          | /   | 564.04   |
| 1787      | /                    | 2-5          | /   | 1075.1   |
| 1907      | /                    | 2-14         | /   | 437.15   |
| 1978      | /                    | 3-14-21      | /   | 2830.74  |
| 2042      | /                    | 3-14-27      | /   | 2801.51  |
| 2109      | /                    | 2-5          | /   | 2820.2   |
| 2202      | /                    | 3-16         | /   | 628.94   |
| 2168      | /                    | 3-29         | Frank P. Renteria   | 46.74    |
| 2219      | /                    | 2-5          | Water Transport   | 2820.2   |

## Schedule 2

## Expenditures - Dryden State #1-20

| Inv. #       | Vender                           | Inv. Date | Description                           | Amount   |
|--------------|----------------------------------|-----------|---------------------------------------|----------|
| 1 078        | Jims Water Service               | 4-20      | Free Tank Rental                      | 4669     |
| 2 -          | James + Gallagos                 | 4-25      | Enamment-Chance Co.                   | 43850    |
| 3 -          | -                                | 5-25      | -                                     | 6600     |
| 4 -          | -                                | 6-15      | -                                     | 3381     |
| 5 -          | A.J. Longo                       | 12-20     | Smelting Consultant                   | 191800   |
| 6 0840627    | Magnolia Packers                 | 3-15      | Rent - Bridges Plug                   | 121173   |
| 7 0840473    | -                                | 3-29      | - South Grip Packers                  | 90371    |
| 8 -          | Jim B. McWilliams                | 4-4       | Professional Services                 | 573535   |
| 9 7065       | Manico                           | 13-10     | 6304' 1975. 2 3/4" 4.7 Tubing - Equip | 1167561  |
| 10 83/570A   | Outfield Const.                  | 1/23/83   | Build Location                        | 205625   |
| 11 84/004    | -                                | 1-9-84    | Shedding to build location            | 103750   |
| 12 182       | Outfield Industrial              | 2-10      | Outbuilding + fence                   | 153017   |
| 13 -         | P.R. Patton + Assoc.             | 3-14      | Consultation - Road to place          | 47081    |
| 14 22705     | Roane H Ready Mix                | 10-4      | Rock - cellars - Desert Rig           | 51574    |
| 15 4-017049  | Schlumberger Well Serv.          | 2-12      | Logging                               | 2036386  |
| 16 4-017057  | -                                | 2-18      | Oil                                   | 649362   |
| 17 NMA-3-114 | F.C. Tank Rental - Anchorage     | 3-22      | Lumbar + Drift 11 4 geyser anchors    | 46245    |
| 18 712       | Troy Welding                     | 5-12      | Cut + weld casing                     | 17460    |
| 19 680       | -                                | 2-12      | -                                     | 12226    |
| 20 684       | -                                | 2-4       | Weld on the grounds                   | 10868    |
| 21 699       | -                                | 2-19      | Cut casing to measuring               | 10868    |
| 22 3493      | Valley Construction              | 5-30-85   | Drill Cleanup                         | 64000    |
| 23 -         | Williams Drilled et al           | 10-31     | Log 1 mile                            | 221-     |
| 24 -         | Dennis Wright Inc.               | -         | -                                     | 52250    |
| 25 -         | Russell Wood                     | -         | -                                     | 624000   |
| 26 -         | -                                | -         | -                                     | 33907007 |
| 27 -         | Overpayment from 85              | -         | -                                     | -        |
| 28 -         | -                                | -         | -                                     | -        |
| 29 -         | Engineering Charges - C. Perrele | -         | -                                     | 60000    |
| 30 -         | -                                | -         | -                                     | 33967007 |



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 24, 1986

Mr. Jack Grynberg  
Grynberg Petroleum Company  
5000 South Quebec No. 500  
Denver, Colorado 80237

CERTIFIED

RE: OCD Order R-7393  
Grynberg State 1-20  
Chaves County, New Mexico

Dear Sir:

We are in receipt of your well costs adjustment of November 22, 1985; to which we take exception.

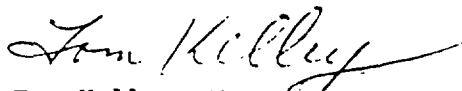
Per the commission order, (copy attached) well costs should be shared based on ownership in each proration unit. Yates et al own 25 percent of the Abo and 62.5 percent of the Precambrian.

We, therefore make demand on you for refund of overpayment of advanced costs of \$87,116.89, per the attached schedule.

Costs are divided in compliance with the commission order, 81.89% to the Abo and 18.11% to the deep zone, except for those costs directly attributable to each zone.

Payment is expected within 30 days from receipt of this letter. Otherwise, Yates will seek remedy both before the commission and through legal action.

Very truly yours,

  
Tom Kelley, Manager  
Joint Interest Auditing

TK:aj

attachment

Exhibit "D"

STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION DIVISION

DEC 7 1983

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

CASE NO. 7983  
Order No. R-7392

APPLICATION OF YATES PETROLEUM  
CORPORATION FOR COMPULSORY POOLING  
AND AN UNORTHODOX LOCATION, CHAVES  
COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on October 18, 1983, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 2nd day of December, 1983, 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:

(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, Yates Petroleum Corporation, seeks compulsory pooling of all mineral interests in the Abo formation underlying the SW/4 and all mineral interests in all formations below the top of the Wolfcamp formation underlying the S/2 of Section 20, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico, said units to be dedicated to a single well to be drilled at an unorthodox location 1980 feet from the South line and 660 feet from the West line of said Section 20.

(3) That in companion Case 7982, Yates Petroleum Corporation sought an unorthodox well location 1980 feet from the North line and 990 feet from the West line of said Section 20, to test all formations from the top of the Wolfcamp through the Montoya formation, the N/2 of said Section 20 to be dedicated to said well.

Case No. 7983  
Order No. R-7392

(4) That in companion Case 7984, Jack J. Grynberg sought compulsory pooling of all mineral interests from the surface through and including the Abo formation underlying the SW/4 of said Section 20, and all mineral interests from the top of the Wolfcamp formation to the Precambrian formation underlying the W/2 of said Section 20, said units to be dedicated to a single well to be drilled at a standard location thereon.

(5) That these cases were consolidated with this case for the purpose of obtaining testimony.

(6) That by Order No. R-7393 dated December 2, 1983, the Commission approved the application of Jack J. Grynberg in Case 7984.

(7) That the application in Case 7983 should be denied.

IT IS THEREFORE ORDERED:

(1) That Case 7983 is hereby denied.

(2) 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

JIM BACA, Member



ED KELLEY, Member



JOE D. RAMEY, Chairman and  
Secretary

S E A L

fd/



STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION COMMISSION

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

CASE NO. 7984  
Order No. R-7393

APPLICATION OF JACK J. GRYNBERG  
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 October 18, 1983, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 2nd day of December, 1983, 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:

- (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, Jack J. Grynberg, seeks an order pooling all mineral interests from the surface through and including the Abo formation underlying the SW/4 of Section 20, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico, and all mineral interests from the top of the Wolfcamp formation to the Precambrian formation underlying the W/2 of said Section 20, said units to be dedicated to a single well to be drilled at a standard location thereon.
- (3) That in companion Case 7982, Yates Petroleum Corporation seeks an unorthodox well location 1980 feet from the North line and 990 feet from the West line of said Section 20, to test all formations from the top of the Wolfcamp through the Montoya formation, the N/2 of said Section 20 to be dedicated to said well.
- (4) That in companion Case 7983, Yates Petroleum Corporation seeks compulsory pooling of all mineral interests

in the Abo formation underlying the SW/4 and all mineral interests in all formations below the top of the Wolfcamp formation underlying the S/2 of said Section 20, said units to be dedicated to a single well to be drilled at an unorthodox location, for the Wolfcamp and deeper horizons, at a point 1980 feet from the South line and 600 feet from the West line of said Section 20.

(5) That these cases were consolidated with this case for the purpose of obtaining testimony.

(6) That the spacing in this area is 160 acres for Abo gas and 320 acres for Wolfcamp and older gas.

(7) That while all formations from the Wolfcamp and below are sought to be pooled, the primary "deep" target is the Fusselman formation.

(8) That although evidence was presented that wells in the Fusselman formation might not drain 320 acres, no party to these cases had applied for an amendment to the applicable 320-acre spacing rules.

(9) That all parties to these cases agreed that the West half of said Section 20 should be more productive than the East half in the Fusselman formation.

(10) That the West half of said Section 20 is a logical spacing unit for the Wolfcamp and older formations.

(11) That Jack J. Grynberg is also an interest owner in Section 19, Township 9 South, Range 27 East, Chaves County, New Mexico, which section lies immediately West of said Section 20.

(12) That Mr. Grynberg objects to the unorthodox locations proposed by Yates Petroleum Corporation.

(13) That approval of the two Yates applications for wells at unorthodox locations would result in such wells having a calculated drainage radius outside their proration units of 116 net acres greater, in said Section 19, than wells at standard locations.

(14) That approval of said unorthodox locations, with the resultant change in net drainage outside the assigned proration units, would result in drainage across lease lines not offset by counter drainage and would, therefore, result in violation of correlative rights.

(15) That to prevent the violation of correlative rights, the applications of Yates Petroleum Corporation in Case No. 7982 and Case 7983 should be denied.

(16) That the application of Jack J. Grynberg in Case 7984 should be approved.

(17) That the applicant, Jack J. Grynberg, has the right to drill and proposes to drill a well at a standard location thereon.

(18) That the proposed 160-acre spacing unit would apply to and should only be approved in the Abo formation.

(19) That the proposed 320-acre spacing unit would apply to and should only be approved from the top of the Wolfcamp to the Precambrian formation.

(20) That there are interest owners in the proposed proration units who have not agreed to pool their interests.

(21) That to avoid the drilling of unnecessary wells, to prevent waste, to protect correlative rights, and to afford to the owner of each interest in said units the opportunity to recover or receive without unnecessary expense his just and fair share of the gas in any appropriate pool covered by said units, the subject application should be approved by pooling all mineral interests, whatever they may be, within said units.

(22) That the applicant should be designated the operator of the subject well and units.

(23) 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.

(24) That since the interests of the parties are different in each proration unit, it will be necessary to estimate well costs on the basis of a well to the Abo formation drilled to 5,200 feet and a well to the Precambrian formation drilled to 6350 feet.

(25) That estimated well costs for the Abo formation, except for costs directly attributable to the Precambrian, should be estimated on the basis of depth for each formation and that costs for the Abo formation should not exceed 81.89 percent of the total cost of the proposed well, (5200 foot Abo depth/6350 foot total depth = 0.8189).

Case No. 7984  
Order No. 7393

(26) 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.

(27) 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.

(28) 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.

(29) That \$2,825.00 per month while drilling and \$283.00 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.

(30) 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.

(31) That upon the failure of the operator of said pooled unit to commence drilling of the well to which said unit is dedicated on or before March 1, 1984, 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, from the surface through and including the Abo formation underlying the SW/4 and all mineral interests from the top of the Wolfcamp formation to the Precambrian formation underlying the W/2, all in Section 20, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico, are hereby pooled to form a standard 160-acre and a 320-acre gas spacing and proration unit to be dedicated to a well to be drilled at a standard location thereon.

PROVIDED HOWEVER, that the operator of said units shall commence the drilling of said well on or before the 1st day of March, 1984 and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Wolfcamp and Precambrian formations;

PROVIDED FURTHER, that in the event said operator does not commence the drilling of said well on or before the 1st day of March, 1984, Order (1) of this order shall be null and void and of no effect whatsoever, unless said 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, said operator shall appear before the Division Director and show cause why Order (1) of this order should not be rescinded.

(2) That Jack J. Grynberg is hereby designated the operator of the subject well and unit.

(3) That after the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Commission and each known working interest owner in the subject units two itemized schedules of estimated well costs, one to be for a well to the Abo formation drilled to a depth of 5,200 feet and the second for a well to the Precambrian formation drilled to a depth of 6350 feet.

(4) That the itemized schedule of well costs shall be prepared to reflect actual well costs properly attributable to each zone in accordance with Finding No. (25) in this order.

(5) That 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 wells 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.

(6) That the operator shall furnish the Commission 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 Commission and the Commission 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 Commission will determine reasonable well costs after public notice and hearing.

(7) 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.

(8) 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.

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

(10) That \$ 2,825.00 per month while drilling and \$285.00 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.

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

Case No. 7984  
Order No. 7393

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

(12) 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.

(13) 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.

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

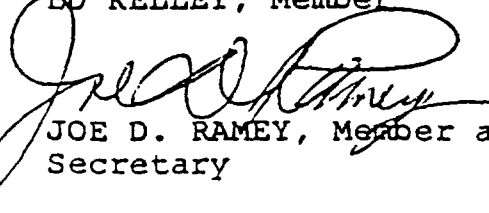
DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

JIM BACA, Member



ED KELLEY, Member



JOE D. RAMEY, Member and  
Secretary

S E A L

| SERVICE DATE   | VENDOR AND SERVICE PERFORMED                   | AMOUNT     | FORMATION SERVED |                      |
|----------------|--|------------|------------------|----------------------|
|                |  |            | 81.89%<br>ABO    | 18.11%<br>PERCMBRIAN |
| K 2/18/84      | Schlumberger-Logging                           | 6,493.62   | 2,833.81         | 3,659.81             |
| 2/18/84        | Big Red Supply-Casinghead & Etc.               | 1,090.27   | 892.82           | 197.45               |
| 2/18/84        | Associated Pipe-5½" 15.5# Casing               | 29,120.80  | 23,847.02        | 5,273.78             |
| 2/19/84        | Troy's Welding-Final Csg.Cutoff                | 108.68     | 89.00            | 19.68                |
| 2/19/84        | Halliburton-Cement 5½" Csg.                    | 9,000.20   | 7,370.26         | 1,629.94             |
| 2/20/84        | Hondo Pipe-Forklift 5½"                        | 224.37     | 183.74           | 40.63                |
| K 2/12-2/20/84 | Sonny Longo-Drlg. Consultant                   | 1,918.00   | -0-              | 1,918.00             |
| 2/21/84        | Desert Drilling-Footage & Daywork              | 114,005.07 | 81,044.49        | 32,960.58            |
| K 3/10/84      | Mimco Pipe-6,304ft. 2 3/8Tbg.                  | 11,675.61  | 11,675.61        | -0-                  |
| 3/10/84        | Buckeye, Inc.-Return mud slick                 | (1,983.23) | (1,624.07)       | (359.16)             |
| K 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   | 2,067.57         | -0-                  |
| 3/12/84        | Hondo Pipe-Tbgd & Subs                         | 2,088.77   | 2,088.77         | -0-                  |
| 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 Water 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 & N <sub>2</sub> @ 6190-6207' | 1,835.68   | -0-              | 1,835.68             |
| 3/14/84        | Maypole Packers-5½" Rental Packer              | 1,219.73   | -0-              | 1,219.73             |
| 3/16/84        | Halliburton-Acid & N <sub>2</sub> @ 6163-6170' | 1,499.68   | -0-              | 1,499.68             |
| 3/16/84        | Halliburton-Acid & N <sub>2</sub> @ 6163-6170' | 1,855.64   | -0-              | 1,855.64             |
| 3/16/84        | Jim's Water Svc.-Fresh & KCL                   | 628.94     | -0-              | 628.94               |
| 3/16/84        | Jim's Water Svc.-Fresh & KCL                   | 2,830.74   | -0-              | 2,830.74             |
| 3/16/84        | Hondo Pipe-Return Sub. & Collar                | (277.22)   | (227.02)         | (50.20)              |
| K 3/17/84      | Halliburton-Deep Frac                          | 18,902.18  | -0-              | 18,902.18            |
| 3/19/84        | B&R Lease Svc.-Fence pit                       | 158.15     | 129.51           | 28.64                |
| K 3/21/84      | Halliburton-Acid & N <sub>2</sub> @ 5414-5429' | 1,470.22   | -0-              | 1,470.22             |
| 3/21/84        | Halliburton-Acid & N <sub>2</sub> @ 5414-5429' | 3,403.53   | -0-              | 3,403.53             |
| 3/22/84        | T&CTank-Install Anchors                        | 462.45     | 378.70           | 83.75                |
| 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 Water Svc.-Fresh & KCL                   | 731.18     | 731.18           | -0-                  |



| SERVICE DATE | VENDOR AND SERVICE PERFORMED        | AMOUNT    | FORMATION SERVED |                       |
|--------------|-------------------------------------|-----------|------------------|-----------------------|
|              |                                     |           | 81.89%<br>ABO    | 18.11%<br>PERCAMBRIAN |
| 12/30/83     | Runnels Mud. Co.-Prepay Mud         | 6,240.00  | 5,109.94         | 1,130.06              |
| 12/30/83     | Oilfield Construction Co.-Location  | 1,037.50  | 849.61           | 187.89                |
| 12/30/83     | Lyman R. Graham - Surface Damage    | 500.00    | 409.45           | 90.55                 |
| 12/31/83     | Oilfield Construction Co.-Location  | 2,056.25  | 1,683.86         | 372.39                |
| 12/31/83     | R.R. Patton - Survey Road           | 470.81    | 385.55           | 85.26                 |
| 1/4/84       | Comm. Pub. Land-ROW 20-T9S-R27E     | 2,130.00  | 1,744.26         | 385.74                |
| 1/6/84       | Hondo Pipe - 8 5/8" 24# Casing      | 8,943.69  | 7,323.99         | 1,619.70              |
| 1/31/84      | Jim's Water Service-Fresh Water     | 430.04    | 352.16           | 77.88                 |
| 2/2/84       | Halliburton-Cement 8 5/8"           | 6,945.86  | 5,687.96         | 1,257.90              |
| 2/1-2/4/84   | Jim's Water Svc.-Fresh Wtr. & Trkg. | 860.08    | 704.32           | 155.76                |
| 2/2/84       | Jim's Water Svc.-Fresh Wtr. & Trkg. | 967.62    | 792.38           | 175.24                |
| 2/2/84       | Jim's Water Svc.-Fresh Wtr. & Trkg. | 752.57    | 616.28           | 136.29                |
| 2/3-2/4/84   | Jim's Water Svc.-Fresh Wtr. & Trkg. | 645.06    | 528.24           | 116.82                |
| 2/4/84       | Roswell Ready Mix-Rods for Cellar   | 515.74    | 422.34           | 93.40                 |
| 2/4/84       | Troy's Welding-Weld Cattleguard     | 108.68    | 89.00            | 19.68                 |
| 2/5/84       | Jim's Water Svc.-Brine & Trkg.      | 282.02    | 230.95           | 51.07                 |
| 2/5/84       | Jim's Water Svc.-Fresh Wtr. & Trkg. | 107.51    | 88.04            | 19.47                 |
| 2/5/84       | Jim's Water Svc.-Brine Wtr. & Trkg. | 564.04    | 461.89           | 102.15                |
| 2/5/84       | Jim's Water Svc.-Brine & Fresh Wtr. | 671.55    | 549.93           | 121.62                |
| 2/5/84       | Jim's Water Svc.-Brine Water        | 282.02    | 230.95           | 51.07                 |
| 2/7/84       | Jim's Water Svc.-Fresh Water        | 107.51    | 88.04            | 19.47                 |
| 2/7/84       | Big Red Supply-Sample Bags          | 32.95     | 26.98            | 5.97                  |
| 2/9/84       | Jim's Water Svc.-Fresh Water        | 107.51    | 88.04            | 19.47                 |
| 2/11/84      | Jim's Water Svc.-Fresh & Brine Wtr. | 497.04    | 407.03           | 90.01                 |
| 2/12/84      | Troy's Welding-Cut & weld wellhead  | 122.26    | 100.12           | 22.14                 |
| 2/15/84      | Jim's Water Svc.-Fresh Water        | 107.38    | 87.93            | 19.45                 |
| 2/17/84      | Jim's Water Svc.-Fresh Water        | 107.51    | 88.04            | 19.47                 |
| 2/19/84      | Jim's Water Svc.-Fresh Water        | 322.53    | 264.12           | 58.41                 |
| 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 | 16,739.89        | 3,623.97              |
| 2/13/84      | Buckeye, Inc.-Mud slick             | 2,555.52  | 2,092.72         | 462.80                |
| 2/16/84      | Halliburton-DST 6325-6396           | 3,039.88  | -0-              | 3,039.88              |

| SERVICE DATE | VENDOR AND SERVICE PERFORMED             | AMOUNT     | FORMATION SERVED |                       |
|--------------|--|------------|------------------|-----------------------|
|              |  |            | 81.89%<br>ABO    | 18.11%<br>PERCAMERIAN |
| 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-                   |
| 3/29-3/30/84 | 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 tbq & csq                 | 169.84     | 169.84           | -0-                   |
| 4/4/84       | Jim McWilliams-Drilling Consultant       | 5,435.35   | 4,451.01         | 984.34                |
| 4/25/84      | Jones & Gallegos-Lawsuit                 | 438.50     | 359.09           | 79.41                 |
| 5/25/84      | Jones & Gallegos-Lawsuit                 | 66.00      | 54.05            | 11.95                 |
| 6/25/84      | Jones & Gallegos - Lawsuit               | 33.81      | 27.69            | 6.12                  |
| 5/30/84      | Valley Construction-final cleanup        | 640.00     | 640.00           | -0-                   |
| 7/10/84      | Double Anchor -Repair Road               | 624.00     | 624.00           | -0-                   |
| 10/31/84     | Welborn Fuffard-Lawsuit                  | 221.00     | 180.98           | 40.02                 |
| 1/10/84      | T.K. Campbell-Grynberg vs. M             | 701.67     | 574.60           | 127.07                |
| 3/12/84      | T.K. Campbell-Grynberg vs. M             | 216.97     | 177.68           | 39.29                 |
| 10/17/84     | T.K. Campbell-Grynberg vs. M             | 1,500.00   | 1,228.35         | 271.65                |
|              | Dennis Wright Ins.-Insurance             | 522.50     | 427.88           | 94.62                 |
|              | Engineering Charge-Grynberg              | 600.00     | 491.34           | 108.66                |
|              |  |            |                  |                       |
|              |  |            |                  |                       |
|              |  |            |                  |                       |
|              | Overhead                                 | 3,764.31   | 2,485.65         | 1,278.66              |
|              | 2 3/8" Tbg. Credited                     | (2,121.09) | (2,121.09)       | -0-                   |
|              | 5 1/2" Casing credited                   | (356.57)   | (292.00)         | (64.57)               |
|              |  |            |                  |                       |
|              |  | 340,956.72 | 225,356.22       | 115,600.50            |
|              |  |            |                  |                       |
| ABO          | $\$225,356.22 \times .25 = \$56,339.06$  |            |                  |                       |
| DEEP         | $\$115,600.50 \times .625 = 72,250.31$   |            |                  |                       |
|              | $\$125,589.37$                           |            |                  |                       |
|              | Prepayment (215,706.26)                  |            |                  |                       |
|              | Overpayment (87,116.89)                  |            |                  |                       |

ALLOCATION OF COSTS - GRYNBERG STATE 1-20

|                             |                  |                |
|-----------------------------|------------------|----------------|
| Deep Only - (schedule)      | \$ 50,631.07     |                |
| Deep Allocated - (schedule) | 55,939.34        | at indicated % |
| Abo Allocated - (schedule)  | 114,076.38       |                |
| Abo @ .8189 -               | 98,521.80 *      |                |
| Deep @ .1811                | <u>21,788.13</u> |                |
|                             | \$340,956.72     |                |

TOTALS

|      |                   |   |      |   |                                  |
|------|-------------------|---|------|---|----------------------------------|
| Deep | 128,358.54        | x | .625 | = | 80,224.09                        |
| Abo  | <u>212,598.18</u> | x | .25  | = | <u>53,149.55</u>                 |
|      | 340,956.72        |   |      |   | 133,373.64                       |
|      |                   |   |      |   | <u>(215,706.26)</u>              |
|      |                   |   |      |   | ( 82,332.62)                     |
|      |                   |   |      |   | <u>2,608.31</u> Grynberg payment |
|      |                   |   |      |   | ( 79,724.31)                     |

Total Deep %

\$128,358.54 ÷ 340,956.72 = .3765

Total Abo%

\$212,598.18 ÷ 340,956.72 = .6235

|                             |                      |
|-----------------------------|----------------------|
| BEFORE THE                  |                      |
| OIL CONSERVATION COMMISSION |                      |
| Santa Fe, New Mexico        |                      |
| Case No. <u>8901</u>        | Exhibit No. <u>Z</u> |
| Submitted by <u>App</u>     |                      |
| Hearing Date <u>Aug 7</u>   |                      |

\* - These charges allocated to Abo per one interpretation of the OCC order, but \$42,683.09 was allocated to the Abo on the schedule prepared by both Yates and Grynberg for the June, 1986 hearing.

| SERVICE DATE | VENDOR AND SERVICE PERFORMED        | AMOUNT    | FORMATION SERVED   |                   |
|--------------|-------------------------------------|-----------|--------------------|-------------------|
|              |                                     |           | ABO .8189          | PREPERMIAN .181   |
| 12/30/83     | Runnels Mud Co. - Prepay Mud        | 6,240.00  | .4737<br>2,955.79  | .5263<br>3,284.21 |
| 12/30/83     | Oilfield Construction Co.-Location  | 1,037.50  | 849.61             | 187.89            |
| 12/30/83     | Lyman R. Graham - Surface Damage    | 500.00    | 409.45             | 90.55             |
| 12/31/83     | Oilfield Construction Co.-Location  | 2,056.25  | 1,683.86           | 372.39            |
| 12/31/83     | R. R. Patton - Survey road          | 470.81    | 385.55             | 85.26             |
| 1/4/84       | Comm. Pub. Land -ROW 20-T9S-R27E    | 2,130.00  | 1,744.26           | 385.74            |
| 1/6/84       | Hondo Pipe - 8 5/8" 24# Casing      | 8,943.69  | 7,323.99           | 1,619.70          |
| 1/31/84      | Jim's Water Service - Fresh Water   | 430.04    | 352.16             | 77.88             |
| 2/2/84       | Halliburton - Cement 8 5/8"         | 6,945.86  | 5,687.96           | 1,257.90          |
| 2/1-2/4/84   | Jim's Water Svc.-Fresh Wtr.& Trkg.  | 860.08    | 704.32             | 155.76            |
| 2/2/84       | Jim's Water Svc.-Fresh Wtr.& Trkg.  | 967.62    | 792.38             | 175.24            |
| 2/2/84       | Jim's Water Svc.-Fresh Wtr.& Trkg.  | 752.57    | 616.28             | 136.29            |
| 2/3-2/4/84   | Jim's Water Svc.-Fresh Wtr.& Trkg.  | 645.06    | 528.24             | 116.82            |
| 2/4/84       | Roswell Ready Mix- Rods for Cellar  | 515.74    | 422.34             | 93.40             |
| 2/4/84       | Troy's Welding - Weld Cattleguard   | 108.68    | 89.00              | 19.68             |
| 2/5/84       | Jim's Water Svc. - Brine & Trucking | 282.02    | 230.95             | 51.07             |
| 2/5/84       | Jim's Water Svc.-Fresh Wtr.& Trkg.  | 107.51    | 88.04              | 19.47             |
| 2/5/84       | Jim's Water Svc. Brine Wtr.&Trkg.   | 564.04    | 461.89             | 102.15            |
| 2/5/84       | Jim's Water Svc.-Brine & Fresh Wtr. | 671.55    | 549.93             | 121.62            |
| 2/5/84       | Jim's Water Svc.-Brine Water        | 282.02    | 230.95             | 51.07             |
| 2/7/84       | Jim's Water Service - Fresh Water   | 107.51    | 88.04              | 19.47             |
| 2/7/84       | Big Red Supply - Sample Bags        | 32.95     | -0-                | 32.95             |
| 2/9/84       | Jim's Water Service - Fresh Water   | 107.51    | -0-                | 107.51            |
| 2/11/84      | Jim's Water Svc.-Fresh & Brine Wtr. | 497.04    | -0-                | 497.04            |
| 2/12/84      | Troy's Welding-Cut & weld wellhead  | 122.26    | 100.12             | 22.14             |
| 2.15.84      | Jim's Water Service - Fresh Water   | 107.38    | -0-                | 107.38            |
| 2/17/84      | Jim's Water Service - Fresh Water   | 107.51    | -0-                | 107.51            |
| 2/19/84      | Jim's Water Service - Fresh Water   | 322.53    | -0-                | 322.53            |
| 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 | .7093<br>14,443.37 | .2907<br>5,920.49 |
| 2/13/84      | Buckeye, Inc. - Mud Slick           | 2,555.52  | -0-                | 2,555.52          |
| 2/16/84      | Halliburton - DST 6325-6396         | 3,039.88  | -0-                | 3,039.88          |

| SERVICE DATE | VENDOR AND SERVICE PERFORMED                    | AMOUNT     | FORMATION SERVED   |                           |
|--------------|---|------------|--------------------|---------------------------|
|              |   |            | ABO .8189          | PREPERMIAN <sup>.18</sup> |
| 2/18/84      | Schlumberger - Logging                          | 6,493.62   |                    | 6,493.62                  |
| 2/18/84      | Big Red Supply - Casinghead & Etc.              | 1,090.27   | 892.82             | 197.45                    |
| 2/18/84      | Associated Pipe - 5 1/2" 15.5# Csg.             | 29,120.80  | 23,847.02          | 5,273.78                  |
| 2/19/84      | Troy's Welding - Final Csg. Cutoff              | 108.68     | 89.00              | 19.68                     |
| → 2/19/84    | Halliburton - Cement 5 1/2" Csg.                | 9,000.20   | 7,370.26           | 1,629.94 ←                |
| 2/20/84      | Hondo Pipe - Forklift 5 1/2"                    | 224.37     | 183.74             | 40.63                     |
| 2/12-2/20/84 | Sonny Longo - Drilling Consultant               | 1,918.00   | -0-                | 1,918.00                  |
| 2/21/84      | Desert Drilling-Footage & Daywork               | 114,005.07 | .7566<br>86,256.27 | .2434<br>27,748.80        |
| 3/10/84      | Mimco Pipe - 6,305' 2 3/8" Tubing               | 11,675.61  | 9,561.16           | 2,114.45                  |
| 3/10/84      | Buckeye, Inc. - Return mud slick                | (1,983.23) | -0-                | (1,983.23)                |
| 3/10-3/31/84 | Mack Chase - Completion Rig                     | 23,971.44  | .3375<br>8,091.51  | .6625<br>15,879.93        |
| 3/12/84      | Hondo Pipe - Wellhead fittings                  | 2,067.57   | 1,693.13           | 374.44                    |
| 3/12/84      | Hondo Pipe - Tubinghead & Subs                  | 2,088.77   | 1,710.49           | 378.28                    |
| 3/12/84      | Hondo Pipe - Flow Tee & Swage                   | 187.10     | 153.22             | 33.88                     |
| 3/12/84      | Troy's Welding - Cut & Weld Casing              | 176.60     | 144.62             | 31.98                     |
| 3/14/84      | Jim's Water Svc. - Fresh & KCL Wtr.             | 437.15     | -0-                | 437.15                    |
| 3/14/84      | Halliburton - Acid @ 6190 - 6207                | 1,562.24   | -0-                | 1,562.24                  |
| 3/14/84      | Halliburton - Acid & N <sub>2</sub> @ 6190-6207 | 1,835.68   | -0-                | 1,835.68                  |
| 3/14/84      | Maypole Packers - 5 1/2" Rental Packer          | 1,219.73   | -0-                | 1,219.73                  |
| 3/16/84      | Halliburton-Acid & N <sub>2</sub> @ 6163-6170'  | 1,499.68   | -0-                | 1,499.68                  |
| 3/16/84      | Halliburton-Acid & N <sub>2</sub> @ 6163-6170'  | 1,855.64   | -0-                | 1,855.64                  |
| 3/16/84      | Jim's Water Service-Fresh & KCL                 | 628.94     | -0-                | 628.94                    |
| 3/16/84      | Jim's Water Service-Fresh & KCL                 | 2,830.74   | -0-                | 2,830.74                  |
| 3/16/84      | Hondo Pipe - Return Sub & Collar                | (277.22)   | (227.02)           | (50.20)                   |
| 3/17/84      | Halliburton - Deep Frac                         | 18,902.18  | -0-                | 18,902.18                 |
| 3/19/84      | B & R Lease Service - Fence Pit                 | 158.15     | 129.51             | 28.64                     |
| 3/21/84      | Halliburton-Acid & N <sub>2</sub> @ 5414-5429'  | 1,470.22   | -0-                | 1,470.22                  |
| 3/21/84      | Halliburton-Acid & N <sub>2</sub> @ 5414-5429'  | 3,403.53   | -0-                | 3,403.53                  |
| 3/22/84      | T & C Tank - Install Anchors                    | 462.45     | 378.70             | 83.75                     |
| 3/24/84      | Jim's Water Service - Fresh & KCL               | 2,801.51   | 2,294.16           | 507.35                    |
| 3/24/86      | Maypole - 5 1/2" Rental Packer                  | 903.71     | 740.05             | 163.66                    |
| 3/26/86      | Bell Pet. Survey -Survey for leak               | 3,291.93   | 2,695.76           | 596.17                    |
| 3/28/84      | Jim's Water Service - Fresh & KCL               | 731.18     | 598.76             | 132.42                    |

[illegible]

| <u>DEEP ONLY CHARGES</u> |                                | <u>INVOICE AMOUNT</u> | <u>DEEP %</u> |
|--------------------------|--------------------------------|-----------------------|---------------|
| Mud Bill                 | \$ 3,284.21 - Divided          | \$ 6,240.00           | .5263         |
| Big Red Supply           | 32.95                          | 32.95                 | 1.0000        |
| Water Service            | 107.51                         | 107.51                | 1.0000        |
| Water Service            | 497.04                         | 497.04                | 1.0000        |
| Water Service            | 107.38                         | 107.38                | 1.0000        |
| Water Service            | 107.51                         | 107.51                | 1.0000        |
| Water Service            | 322.53                         | 322.53                | 1.0000        |
| Geologist                | 1,786.63                       | 1,786.63              | 1.0000        |
| Logging                  | 5,920.49 - Divided             | 20,363.86             | .2907         |
| Mud Slick                | 2,555.52                       | 2,555.52              | 1.0000        |
| DST @ 6325 - 6396        | 3,039.88                       | 3,039.88              | 1.0000        |
| Logging                  | 6,493.62                       | 6,493.62              | 1.0000        |
| Drilling Consultant      | 1,918.00                       | 1,918.00              | 1.0000        |
| Credit Mud Slick         | (1,983.23)                     | (1,983.23)            | 1.0000        |
| Mack Chase               | 15,879.93 - Divided            | 23,971.44             | .6625         |
| Water Service            | 437.15                         | 437.15                | 1.0000        |
| Acid @ 6190 - 6207       | 1,562.24                       | 1,562.24              | 1.0000        |
| Acid @ 6190 - 6207       | 1,835.68                       | 1,835.68              | 1.0000        |
| Packer Rental            | 1,219.73                       | 1,219.73              | 1.0000        |
| Acid @ 6163 - 6170       | 1,499.68                       | 1,499.68              | 1.0000        |
| Acid @ 6163 - 6170       | 1,855.64                       | 1,855.64              | 1.0000        |
| Water Service            | 628.94                         | 628.94                | 1.0000        |
| Water Service            | 2,830.74                       | 2,830.74              | 1.0000        |
| Deep Frac                | 18,902.18                      | 18,902.18             | 1.0000        |
| Acid @ 5414 - 5429       | 1,470.22                       | 1,470.22              | 1.0000        |
| Acid @ 5414 - 5429       | 3,403.53                       | 3,403.53              | 1.0000        |
| Drilling Consultant      | <u>3,105.91</u> - Divided      | 5,435.35              | .5714         |
| TOTAL                    | \$78,821.61                    |                       |               |
| <u>DRILLING COST</u>     |                                |                       |               |
| Deep Only                | 11,416.74 - Daywork -          | 1.0000                |               |
| Deep Allocated           | 16,332.06 -                    | .1592                 |               |
| Abo Allocated            | <u>86,256.27</u> - 5378/6398 = | .8418                 |               |
| TOTAL                    | \$114,005.07                   |                       |               |

|                             |                      |
|-----------------------------|----------------------|
| BEFORE THE                  |                      |
| OIL CONSERVATION COMMISSION |                      |
| Santa Fe, New Mexico        |                      |
| Case No. <u>8901</u>        | EXHIBIT No. <u>3</u> |
| Submitted by <u>App</u>     |                      |
| Hearing Date <u>Aug 7</u>   |                      |

ALLOCATION COMPARISON

YATES vs. GRYNBERG



dec 28

| SERVICE DATE | VENDOR AND SERVICE PERFORMED        | AMOUNT    | FORMATION SERVED   |                   |          |            |
|--------------|-------------------------------------|-----------|--------------------|-------------------|----------|------------|
|              |                                     |           | ABO .8189          | PREPERMIAN .1811  | GRYNBERG | DIFFERENCE |
| 12/30/83     | Runnels Mud Co. - Prepav Mud        | 6,240.00  | .4737<br>2,955.79  | .5263<br>3,284.21 | 3,284.21 | -0-        |
| 12/30/83     | Oilfield Construction Co.-Location  | 1,037.50  | 849.61             | 187.89            | 187.89   | -0-        |
| 12/30/83     | Lyman R. Graham - Surface Damage    | 500.00    | 409.45             | 90.55             | 90.55    | -0-        |
| 12/31/83     | Oilfield Construction Co.-Location  | 2,056.25  | 1,683.86           | 372.39            | 372.29   | -0-        |
| 12/31/83     | R. R. Patton - Survey road          | 470.81    | 385.55             | 85.26             | 85.26    | -0-        |
| 1/4/84       | Comm. Pub. Land -ROW 20-T9S-R27E    | 2,130.00  | 1,744.26           | 385.74            | 385.74   | -0-        |
| 1/6/84       | Hondo Pipe - 8 5/8" 24# Casing      | 8,943.69  | 7,323.99           | 1,619.70          | 1,619.70 | -0-        |
| 1/11/84      | Jim's Water Service - Fresh Water   | 430.04    | 352.16             | 77.88             | 226.34   | 148.46     |
| 2/2/84       | Halliburton - Cement 8 5/8"         | 6,945.86  | 5,687.96           | 1,257.90          | 1,257.90 | -0-        |
| 2/1-2/4/84   | Jim's Water Svc.-Fresh Wtr.& Trkg.  | 860.08    | 704.32             | 155.76            | 452.67   | 296.91     |
| 2/2/84       | Jim's Water Svc.-Fresh Wtr.& Trkg.  | 967.62    | 792.38             | 175.24            | 509.27   | 334.03     |
| 2/2/84       | Jim's Water Svc.-Fresh Wtr.& Trkg.  | 752.57    | 616.28             | 136.29            | 396.09   | 259.80     |
| 2/3-2/4/84   | Jim's Water Svc.-Fresh Wtr.& Trkg.  | 645.06    | 528.24             | 116.82            | 339.51   | 222.69     |
| 2/4/84       | Roswell Ready Mix- Rode for Cellar  | 515.74    | 422.34             | 93.40             | 93.40    | -0-        |
| 2/4/84       | Troy's Welding - Weld Cattleguard   | 108.68    | 89.00              | 19.68             | 19.68    | -0-        |
| 2/5/84       | Jim's Water Svc. - Brine & Trucking | 282.02    | 230.95             | 51.07             | 148.43   | 97.36      |
| 2/5/84       | Jim's Water Svc.-Fresh Wtr.& Trkg.  | 107.51    | 88.04              | 19.47             | 56.58    | 37.11      |
| 2/5/84       | Jim's Water Svc. Brine Wtr.&Trkg.   | 564.04    | 461.89             | 102.15            | 296.86   | 194.71     |
| 2/5/84       | Jim's Water Svc.-Brine & Fresh Wtr. | 671.55    | 549.93             | 121.62            | 353.45   | 231.83     |
| 2/5/84       | Jim's Water Svc.-Brine Water        | 282.02    | 230.95             | 51.07             | 148.43   | 97.36      |
| 2/7/84       | Jim's Water Service - Fresh Water   | 107.51    | 88.04              | 19.47             | 56.58    | 37.11      |
| 2/7/84       | Big Red Supply - Sample Bags        | 32.95     | -0-                | 32.95             | 32.95    | -0-        |
| 2/9/84       | Jim's Water Service - Fresh Water   | 107.51    | -0-                | 107.51            | 56.58    | (50.93)    |
| 2/11/84      | Jim's Water Svc.-Fresh & Brine Wtr  | 497.04    | -0-                | 497.04            | 263.43   | (233.61)   |
| 2/12/84      | Troy's Welding-Cut & weld wellhead  | 122.26    | 100.12             | 22.14             | 22.14    | -0-        |
| 2.15.84      | Jim's Water Service - Fresh Water   | 107.38    | -0-                | 107.38            | 107.38   | (50.47)    |
| 2/17/84      | Jim's Water Service - Fresh Water   | 107.51    | -0-                | 107.51            | 56.98    | (50.53)    |
| 2/19/84      | Jim's Water Service - Fresh Water   | 322.53    | -0-                | 322.53            | 169.75   | (152.78)   |
| 2/23/84      | Robert Backer - Geologist           | 1,786.63  | -0-                | 1,786.63          | 1,786.63 | -0-        |
| 1/31/84      | Oilfield Industrial - Line pit      | 1,530.14  | 1,253.03           | 277.11            | 277.11   | -0-        |
| 2/12/84      | Schlumberger - Logging              | 20,363.86 | .7093<br>14,443.37 | .2907<br>5,920.49 | 9,658.62 | 3,738.13   |
| 2/13/84      | Buckeye, Inc. - Mud Slick           | 2,555.52  | -0-                | 2,555.52          | -0-      | (2,555.52) |
| 2/16/84      | Halliburton - DST 6325-6396         | 3,039.88  | -0-                | 3,039.88          | 3,039.88 | -0-        |

| SERVICE DATE | VENDOR AND SERVICE PERFORMED                   | AMOUNT     | FORMATION SERVED |                            | GRYNBERG  | DIFFERENCE |
|--------------|--|------------|------------------|----------------------------|-----------|------------|
|              |  |            | ABO .8189        | PREPERMIAN <sup>1811</sup> |           |            |
| 2/18/84      | Schlumberger - Logging                         | 6,493.62   |                  | 6,493.62                   | 6,493.62  | -0-        |
| 2/18/84      | Big Red Supply - Casinghead & Etc.             | 1,090.27   | 892.82           | 197.45                     | 197.45    | -0-        |
| 2/18/84      | Associated Pipe - 5 1/2" 15.5# Csg.            | 29,120.80  | 23,847.02        | 5,273.78                   | 5,273.78  | -0-        |
| 2/19/84      | Troy's Welding - Final Csg. Cutoff             | 108.68     | 89.00            | 19.68                      | 19.68     | -0-        |
| 2/19/84      | Halliburton - Cement 5 1/2" Csg.               | 9,000.20   | 7,370.26         | 1,629.94                   | 3,451.74  | 1,821.80   |
| 2/20/84      | Hondo Pipe - Forklift 5 1/2"                   | 224.37     | 183.74           | 40.63                      | 40.63     | -0-        |
| 2/12-2/20/84 | Sonny Longo - Drilling Consultant              | 1,918.00   | -0-              | 1,918.00                   | 1,918.00  | -0-        |
| 2/21/84      | Desert Drilling-Footage & Daywork              | 114,005.07 | 86,256.27        | 27,748.80                  | 60,002.67 | 32,253.87  |
| 3/10/84      | Mimco Pipe - 6,305' 2 3/8" Tubing              | 11,675.61  | 9,561.16         | 2,114.45                   | 2,114.45  | -0-        |
| 3/10/84      | Buckeye, Inc. - Return mud slick               | (1,983.23) | -0-              | (1,983.23)                 | (359.16)  | (1,624.07) |
| 3/10-3/31/84 | Hack Chase - Completion Rig                    | 23,971.44  | 8,091.51         | 15,879.93                  | 15,879.93 | -0-        |
| 3/12/84      | Hondo Pipe - Wellhead fittings                 | 2,067.57   | 1,693.13         | 374.44                     | 374.44    | -0-        |
| 3/12/84      | Hondo Pipe - Tubinghead & Subs                 | 2,088.77   | 1,710.49         | 378.28                     | 378.28    | -0-        |
| 3/12/84      | Hondo Pipe - Flow Tee & Swage                  | 187.10     | 153.22           | 33.88                      | 33.88     | -0-        |
| 3/12/84      | Troy's Welding - Cut & Weld Casing             | 176.60     | 144.62           | 31.98                      | 31.98     | -0-        |
| 3/14/84      | Jim's Water Svc. - Fresh & KCL Wtr             | 437.15     | -0-              | 437.15                     | 437.15    | -0-        |
| 3/14/84      | Halliburton - Acid @ 6190 - 6207               | 1,562.24   | -0-              | 1,562.24                   | 1,562.24  | -0-        |
| 3/14/84      | Halliburton - Acids N <sub>2</sub> @ 6190-6207 | 1,835.68   | -0-              | 1,835.68                   | 1,835.68  | -0-        |
| 3/14/84      | Maypole Packers - 5 1/2" Rental Packer         | 1,219.73   | -0-              | 1,219.73                   | 1,219.73  | -0-        |
| 3/16/84      | Halliburton-Acid & N <sub>2</sub> @ 6163-6170' | 1,499.68   | -0-              | 1,499.68                   | 1,499.68  | -0-        |
| 3/16/84      | Halliburton-Acid & N <sub>2</sub> @ 6163-6170' | 1,855.64   | -0-              | 1,855.64                   | 1,855.64  | -0-        |
| 3/16/84      | Jim's Water Service-Fresh & KCL                | 628.94     | -0-              | 628.94                     | 628.94    | -0-        |
| 3/16/84      | Jim's Water Service-Fresh & KCL                | 2,830.74   | -0-              | 2,830.74                   | 2,830.74  | -0-        |
| 3/16/84      | Hondo Pipe - Return Sub & Collar               | (277.22)   | (227.02)         | (50.20)                    | (50.20)   | -0-        |
| 3/17/84      | Halliburton - Deep Frac                        | 18,902.18  | -0-              | 18,902.18                  | 18,902.18 | -0-        |
| 3/19/84      | B & R Lease Service - Fence Pit                | 158.15     | 129.51           | 28.64                      | 28.64     | -0-        |
| 3/21/84      | Halliburton-Acid & N <sub>2</sub> @ 5414-5429' | 1,470.22   | -0-              | 1,470.22                   | 1,470.22  | -0-        |
| 3/21/84      | Halliburton-Acid & N <sub>2</sub> @ 5414-5429' | 3,403.53   | -0-              | 3,403.53                   | 3,403.53  | -0-        |
| 3/22/84      | T & C Tank - Install Anchors                   | 462.45     | 378.70           | 83.75                      | 83.75     | -0-        |
| 3/24/84      | Jim's Water Service - Fresh & KCL              | 2,801.51   | 2,294.16         | 507.35                     | 507.35    | -0-        |
| 3/24/86      | Maypole - 5 1/2" Rental Packer                 | 903.71     | 740.03           | 163.66                     | 163.66    | -0-        |
| 3/26/86      | Ball Est. Survey - Survey for Leak             | 1,281.93   | 2,685.76         | 596.17                     | 596.17    | -0-        |
| 3/28/84      | Jim's Water Service - Fresh & KCL              | 731.18     | 598.76           | 132.42                     | 132.42    | -0-        |

| SERVICE DATE | VENDOR AND SERVICE PERFORMED               | AMOUNT     | FORMATION SERVED |                 | GRYNBERG   | DIFFERENCE |
|--------------|--|------------|------------------|-----------------|------------|------------|
|              |  |            | ABO 8189         | 1811 PREPERMIAN |            |            |
| 3/28/84      | Halliburton - Acidize & N <sub>2</sub> Abo | 1,675.84   | 1,372.35         | 303.49          | 303.40     | -0-        |
| 3/28/84      | Halliburton - Acidize & N <sub>2</sub> Abo | 1,291.47   | 2,695.38         | 596.09          | 596.09     | -0-        |
| 3/29/84      | Jim's Water Service - Tank Rent            | 46.74      | 38.28            | 8.46            | 8.46       | -0-        |
| 3/29/84      | Halliburton - Frac Abo                     | 13,779.82  | 11,284.29        | 2,495.53        | 2,495.53   | -0-        |
| 3/29-3/30/84 | Jim's Water Service - Tank Rent            | 46.69      | 38.23            | 8.46            | 8.46       | -0-        |
| 3/31/84      | Completion Rentals - BOP Rental            | 605.80     | 496.09           | 109.71          | 109.71     | -0-        |
| 3/30/84      | B & R Lease - Load Tubing & Casing         | 169.84     | 139.08           | 30.76           | 30.76      | -0-        |
| 4/4/84       | Jim McWilliams-Drilling Consultant         | 5,435.35   | 2,329.44         | 3,105.91        | 2,989.44   | (116.47)   |
| 4/25/84      | Jones & Gallegos - Lawsuit                 | 438.50     | 359.09           | 79.41           | 79.41      | -0-        |
| 5/25/84      | Jones & Gallegos - Lawsuit                 | 66.00      | 54.05            | 11.95           | 11.95      | -0-        |
| 5/25/84      | Jones & Gallegos - Lawsuit                 | 11.81      | 27.69            | 6.12            | 6.12       | -0-        |
| 5/30/84      | Vallay Construction-Final Cleanup          | 640.00     | 524.10           | 115.90          | 115.90     | -0-        |
| 7/10/84      | Double Anchor - Repair Road                | 624.00     | 510.99           | 113.01          | 113.01     | -0-        |
| 10/31/84     | Welborn Puffard - Lawsuit                  | 221.00     | 180.98           | 40.02           | 40.02      | -0-        |
| 1/10/84      | T.K. Campbell - Grynberg vs. M             | 701.67     | 574.60           | 127.07          | 127.07     | -0-        |
| 3/12/84      | T.K. Campbell - Grynberg vs. M             | 216.97     | 177.68           | 39.29           | 39.29      | -0-        |
| 10/17/84     | T.K. Campbell - Grynberg vs. M             | 1,500.00   | 1,228.35         | 271.65          | 271.65     | -0-        |
|              | Dennis Wright Ins. - Insurance             | 522.50     | 427.88           | 94.62           | 94.62      | -0-        |
|              | Engineering Charge - Grynberg              | 600.00     | 491.34           | 108.66          | 108.66     | -0-        |
|              | Overhead                                   | 3,764.31   | 3,082.59         | 681.72          | 681.72     | -0-        |
|              | 2 3/8" Tubing Credited                     | (2,121.09) | (1,736.96)       | (384.13)        | (384.13)   | -0-        |
|              | 5 1/2" Casing Credited                     | (356.57)   | (292.00)         | (64.57)         | (64.57)    | -0-        |
|              |  | 340,956.72 | 212,598.18       | 128,358.54      | 166,543.46 | 38,184.93  |

PS Form 3811, July 1983 447-845

DOMESTIC RETURN RECEIPT

|   |                |
|---|----------------|
| <b>SENDER: Complete items 1, 2, 3 and 4.</b><br>Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. <u>The return receipt fee will provide you the name of the person delivered to and the date of delivery.</u> For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested. |                |
| 1. <input checked="" type="checkbox"/> Show to whom, date and address of delivery.  |                |
| 2. <input type="checkbox"/> Restricted Delivery.  |                |
| 3. Article Addressed to:<br>Ms. Georgia Mae Ferrin, Clerk<br>Fifth Judicial District<br>Box 1776<br>Roswell, New Mexico 88201   |                |
| 4. Type of Service:<br><input type="checkbox"/> Registered <input type="checkbox"/> Insured<br><input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD<br><input type="checkbox"/> Express Mail  | Article Number |
| Always obtain signature of addressee <u>or</u> agent and <b>DATE DELIVERED.</b>   |                |
| 5. Signature - Addressee<br>X   |                |
| 6. Signature - Agent<br>X <i>Georgia Mae Ferrin</i>   |                |
| 7. Date of Delivery<br>11/24/82   |                |
| 8. Addressee's Address (ONLY if requested and fee paid)<br>Box 1776<br>Roswell  |                |

LAW OFFICES

LOSEE & CARSON, P. A.

A. J. LOSEE  
JOEL M. CARSON

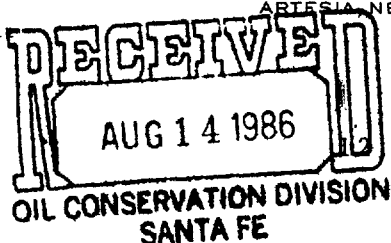
300 AMERICAN HOME BUILDING

P. O. DRAWER 239

AREA CODE 505  
746-3508

JAMES E. HAAS  
ERNEST L. CARROLL

ARTESIA, NEW MEXICO 88211-0239



August 1986

Mr. Richard Stamets, Director  
New Mexico Oil Conservation Division  
P. O. Box 2088  
Santa Fe, New Mexico 87501

Re: Yates v. Grynberg

Dear Mr. Stamets:

I am enclosing a copy of the recalculation of the amount Jack Grynberg owes Yates, et al. The calculations made during the course of the hearing are mathematically incorrect. If Mr. Grynberg's cement depths are used to calculate a ratio of Abo to Wolfcamp, the net change in favor of Mr. Grynberg is \$740.49.

If you agree with these figures, please let me know and I will prepare the order as directed. I am by carbon copy of this letter requesting that Mr. Padilla verify the mathematics.

Yours truly,

LOSEE & CARSON, P.A.

  
Joel M. Carson

JMC:bjk  
Enclosures

cc w/encl: Mr. Ernest Padilla  
cc: Mr. Tom Kelley

RLS

copy calculations in file  
K



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.

August 11, 1986

Memo to: Joel Carson - Losee-Carson

From: Tom Kelley - YPC

Re: Allocation of Costs - Grynberg State 1-20

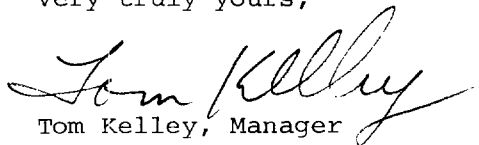
Attached is a re-calculated allocation based on results of the Oil Commission hearing 8/7/86.

Cementing the Abo is substantially changed from previous calculations and is attached on a separate sheet.

Total re-calculated allocation results are as follows:

|                       |              |   |      |           |                   |
|-----------------------|--------------|---|------|-----------|-------------------|
|                       | 128,338.75   |   |      | 80,224.82 |                   |
| Deep -                | \$130,900.83 | x | .625 | =         | \$ 81,813.02      |
| Abo -                 | \$210,055.89 | x | .25  | =         | \$ 52,513.97      |
|                       |              |   |      |           | <u>53,149.49</u>  |
|                       |              |   |      |           | \$134,326.99      |
|                       |              |   |      |           | <u>133,375.71</u> |
| YPC payment -         |              |   |      |           | (\$215,706.26)    |
| Grynberg payment -    |              |   |      |           | \$ 2,608.31       |
| Net due Yates et al - |              |   |      |           | (\$ 78,770.96)    |
|                       |              |   |      |           | 79,724.94         |

Very truly yours,

  
Tom Kelley, Manager  
Joint Interest Auditing

TK/djc

LONGSTRING CEMENTING ALLOCATION

Total Invoice - \$9000.20 (see note)

Total Depth - 6,396'

Top of Wolfcamp - 5,378'

Top of Cement - 4,200'

Cement Above Wolfcamp - 1,178' .53643

Cement Below Wolfcamp - 1,018' .46357

Total cement - 2,196' ÷ 9,000.20 = 4.09845/ft.

|              |   |        |   |                   |
|--------------|---|--------|---|-------------------|
| Abo - 1,178' | x | 4.0985 | = | 4,827.97 -        |
| Deep- 1,018' | x | 4.0985 | = | <u>4,172.23 -</u> |
|              |   |        |   | \$9,000.20        |

Note: Calculations during the 8/7/86 hearing apparently "lost" 1000' of cement in the Abo formation.

Top of cement as established by Morris Ettinger with Jack Grynberg is 4,200' instead of 5,200' as calculated at the hearing.

ALLOCATION OF COSTS - GRYNBERG STATE 1-20

|                             |  |
|-----------------------------|--|
| Deep Only - (schedule)      | \$ 50,631.07 ✓                                   |
| Deep Allocated - (schedule) | <sup>55,939.55</sup><br>58,481.63 at indicated % |
| Abo Allocated - (schedule)  | <sup>114,076.17</sup><br>111,534.09              |
| Abo @ .8189 -               | 98,521.80 *                                      |
| Deep @ .1811 -              | <u>21,788.13</u> ✓                               |
|                             | \$340,956.72                                     |

TOTALS

|      |  |  |
|------|--|--|
| Deep | <sup>128,358.75</sup><br>130,900.83 x .625 =       | <sup>80,224.22</sup><br>81,813.02        |
| Abo  | <sup>212,597.97</sup><br><u>210,055.89</u> x .25 = | <sup>53,149.49</sup><br><u>52,513.97</u> |
|      | 340,956.72   | <sup>133,373.71</sup><br>134,326.99      |
|      |  | (215,706.26)                             |
|      |  | <sup>82,332.55</sup><br>( 81,379.27)     |

2,608.31 Grynberg payment  
<sup>79,724.24</sup>  
 ( 78,770.96)

Total Deep %

<sup>128,358.75</sup>  
 \$130,900.83 ÷ 340,956.72 = .3765

Total Abo %

<sup>212,597.97</sup>  
 \$210,055.89 ÷ 340,956.72 = .6161

\* - These charges allocated to Abo per one interpretation of the OCC order, but \$42,683.09 was allocated to the Abo on the schedule prepared by both Yates and Grynberg for the June, 1986 hearing.



| SERVICE DATE | VENDOR AND SERVICE PERFORMED        | AMOUNT    | FORMATION SERVED   |                            |
|--------------|-------------------------------------|-----------|--------------------|----------------------------|
|              |                                     |           | ABO .8189          | PREPERMIAN .1811           |
| 12/30/83     | Runnels Mud Co. - Prepay Mud        | 6,240.00  | .4737<br>2,955.79  | .5263<br>3,284.11          |
| 12/30/83     | Oilfield Construction Co.-Location  | 1,037.50  | 849.61             | 187.89                     |
| 12/30/83     | Lyman R. Graham - Surface Damage    | 500.00    | 409.45             | 90.55                      |
| 12/31/83     | Oilfield Construction Co.-Location  | 2,056.25  | 1,683.86           | 372.39                     |
| 12/31/83     | R. R. Patton - Survey road          | 470.81    | 385.55             | 85.26                      |
| 1/4/84       | Comm. Pub. Land -ROW 20-T9S-R27E    | 2,130.00  | 1,744.26           | 385.74                     |
| 1/6/84       | Hondo Pipe - 8 5/8" 24# Casing      | 8,943.69  | 7,323.99           | 1,619.70                   |
| 1/31/84      | Jim's Water Service - Fresh Water   | 430.04    | 352.16             | 77.88                      |
| 2/2/84       | Halliburton - Cement 8 5/8"         | 6,945.86  | 5,687.96           | 1,257.90                   |
| 2/1-2/4/84   | Jim's Water Svc.-Fresh Wtr.& Trkg.  | 860.08    | 704.32             | 155.76                     |
| 2/2/84       | Jim's Water Svc.-Fresh Wtr.& Trkg.  | 967.62    | 792.38             | 175.24                     |
| 2/2/84       | Jim's Water Svc.-Fresh Wtr.& Trkg.  | 752.57    | 616.28             | 136.29                     |
| 2/3-2/4/84   | Jim's Water Svc.-Fresh Wtr.& Trkg.  | 645.06    | 528.24             | 116.82                     |
| 2/4/84       | Roswell Ready Mix- Rods for Cellar  | 515.74    | 422.34             | 93.40                      |
| 2/4/84       | Troy's Welding - Weld Cattleguard   | 108.68    | 89.00              | 19.68                      |
| 2/5/84       | Jim's Water Svc. - Brine & Trucking | 282.02    | 230.95             | 51.07                      |
| 2/5/84       | Jim's Water Svc.-Fresh Wtr.& Trkg.  | 107.51    | 88.04              | 19.47                      |
| 2/5/84       | Jim's Water Svc. Brine Wtr.&Trkg.   | 564.04    | 461.89             | 102.15                     |
| 2/5/84       | Jim's Water Svc.-Brine & Fresh Wtr. | 671.55    | 549.93             | 121.62                     |
| 2/5/84       | Jim's Water Svc.-Brine Water        | 282.02    | 230.95             | 51.07                      |
| 2/7/84       | Jim's Water Service - Fresh Water   | 107.51    | 88.04              | 19.47                      |
| 2/7/84       | Big Red Supply - Sample Bags        | 32.95     | -0-                | 32.95                      |
| 2/9/84       | Jim's Water Service - Fresh Water   | 107.51    | -0-                | 107.51                     |
| 2/11/84      | Jim's Water Svc.-Fresh & Brine Wtr. | 497.04    | -0-                | 497.04                     |
| 2/12/84      | Troy's Welding-Cut & weld wellhead  | 122.26    | 100.12             | 22.14                      |
| 2.15.84      | Jim's Water Service - Fresh Water   | 107.38    | -0-                | 107.38                     |
| 2/17/84      | Jim's Water Service - Fresh Water   | 107.51    | -0-                | 107.51                     |
| 2/19/84      | Jim's Water Service - Fresh Water   | 322.53    | -0-                | 322.53                     |
| 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 | .7093<br>14,443.37 | .2907<br>5,920.49<br>19.77 |
| 2/13/84      | Buckeye, Inc. - Mud Slick           | 2,555.52  | -0-                | 2,555.52                   |
| 2/16/84      | Halliburton - DST 6325-6396         | 3,039.88  | -0-                | 3,039.88                   |

| SERVICE DATE | VENDOR AND SERVICE PERFORMED                    | AMOUNT     | FORMATION SERVED   |                             |
|--------------|---|------------|--------------------|-----------------------------|
|              |   |            | ABO .8189          | PREPERMIAN <sup>.1811</sup> |
| 2/18/84      | Schlumberger - Logging                          | 6,493.62   |                    | 6,493.62                    |
| 2/18/84      | Big Red Supply - Casinghead & Etc.              | 1,090.27   | 892.82             | 197.45                      |
| 2/18/84      | Associated Pipe - 5 1/2" 15.5# Csg.             | 29,120.80  | 23,847.02          | 5,273.78                    |
| 2/19/84      | Troy's Welding - Final Csg. Cutoff              | 108.68     | 89.00              | 19.68                       |
| 2/19/84      | ✓ Halliburton - Cement 5 1/2" Csg.              | 9,000.20   | 4,827.97           | 4,172.23                    |
| 2/20/84      | Hondo Pipe - Forklift 5 1/2"                    | 224.37     | 183.74             | 40.63                       |
| 2/12-2/20/84 | Sonny Longo - Drilling Consultant               | 1,918.00   | -0-                | 1,918.00                    |
| 2/21/84      | ✓ Desert Drilling-Footage & Daywork             | 114,005.07 | .7566<br>86,256.27 | .2434<br>27,748.83          |
| 3/10/84      | Mimco Pipe - 6,305' 2 3/8" Tubing               | 11,675.61  | 9,561.16           | 2,114.45                    |
| 3/10/84      | Buckeye, Inc. - Return mud slick                | (1,983.23) | -0-                | (1,983.23)                  |
| 3/10-3/31/84 | Mack Chase - Completion Rig                     | 23,971.44  | .3375<br>8,091.51  | .6625<br>15,879.93<br>81.08 |
| 3/12/84      | Hondo Pipe - Wellhead fittings                  | 2,067.57   | 1,693.13           | 374.44                      |
| 3/12/84      | Hondo Pipe - Tubinghead & Subs                  | 2,088.77   | 1,710.49           | 378.28                      |
| 3/12/84      | Hondo Pipe - Flow Tee & Swage                   | 187.10     | 153.22             | 33.88                       |
| 3/12/84      | Troy's Welding - Cut & Weld Casing              | 176.60     | 144.62             | 31.98                       |
| 3/14/84      | Jim's Water Svc. - Fresh & KCL Wtr              | 437.15     | -0-                | 437.15                      |
| 3/14/84      | Halliburton - Acid @ 6190 - 6207                | 1,562.24   | -0-                | 1,562.24                    |
| 3/14/84      | Halliburton - Acid & N <sub>2</sub> @ 6190-6207 | 1,835.68   | -0-                | 1,835.68                    |
| 3/14/84      | Maypole Packers - 5 1/2" Rental Packer          | 1,219.73   | -0-                | 1,219.73                    |
| 3/16/84      | Halliburton-Acid & N <sub>2</sub> @ 6163-6170'  | 1,499.68   | -0-                | 1,499.68                    |
| 3/16/84      | Halliburton-Acid & N <sub>2</sub> @ 6163-6170'  | 1,855.64   | -0-                | 1,855.64                    |
| 3/16/84      | Jim's Water Service-Fresh & KCL                 | 628.94     | -0-                | 628.94                      |
| 3/16/84      | Jim's Water Service-Fresh & KCL                 | 2,830.74   | -0-                | 2,830.74                    |
| 3/16/84      | Hondo Pipe - Return Sub & Collar                | (277.22)   | (227.02)           | (50.20)                     |
| 3/17/84      | Halliburton - Deep Frac                         | 18,902.18  | -0-                | 18,902.18                   |
| 3/19/84      | B & R Lease Service - Fence Pit                 | 158.15     | 129.51             | 28.64                       |
| 3/21/84      | Halliburton-Acid & N <sub>2</sub> @ 5414-5429'  | 1,470.22   | -0-                | 1,470.22                    |
| 3/21/84      | Halliburton-Acid & N <sub>2</sub> @ 5414-5429'  | 3,403.53   | -0-                | 3,403.53                    |
| 3/22/84      | T & C Tank - Install Anchors                    | 462.45     | 378.70             | 83.75                       |
| 3/24/84      | Jim's Water Service - Fresh & KCL               | 2,801.51   | 2,294.16           | 507.35                      |
| 3/24/86      | Maypole - 5 1/2" Rental Packer                  | 903.71     | 740.05             | 163.66                      |
| 3/26/86      | Bell Pet. Survey -Survey for leak               | 3,291.93   | 2,695.76           | 596.17                      |
| 3/28/84      | Jim's Water Service - Fresh & KCL               | 731.18     | 598.76             | 132.42                      |

[illegible]

| <u>DEEP ONLY CHARGES</u> |                           | <u>INVOICE</u> | <u>OUNT</u> | <u>DEEP %</u> |
|--------------------------|---------------------------|----------------|-------------|---------------|
| Mud Bill                 | \$ 3,284.21 - Divided     | \$ 6,240.00    |             | .5263         |
| Big Red Supply           | 32.95                     | 32.95          |             | 1.0000        |
| Water Service            | 107.51                    | 107.51         |             | 1.0000        |
| Water Service            | 497.04                    | 497.04         |             | 1.0000        |
| Water Service            | 107.38                    | 107.38         |             | 1.0000        |
| Water Service            | 107.51                    | 107.51         |             | 1.0000        |
| Water Service            | 322.53                    | 322.53         |             | 1.0000        |
| Geologist                | 1,786.63                  | 1,786.63       |             | 1.0000        |
| Logging                  | 5,920.49 - Divided        | 20,363.86      |             | .2907         |
| Mud Slick                | 2,555.52                  | 2,555.52       |             | 1.0000        |
| DST @ 6325 - 6396        | 3,039.88                  | 3,039.88       |             | 1.0000        |
| Logging                  | 6,493.62                  | 6,493.62       |             | 1.0000        |
| Drilling Consultant      | 1,918.00                  | 1,918.00       |             | 1.0000        |
| Credit Mud Slick         | (1,983.23)                | (1,983.23)     |             | 1.0000        |
| Mack Chase               | 15,879.93 - Divided       | 23,971.44      |             | .6625         |
| Water Service            | 437.15                    | 437.15         |             | 1.0000        |
| Acid @ 6190 - 6207       | 1,562.24                  | 1,562.24       |             | 1.0000        |
| Acid @ 6190 - 6207       | 1,835.68                  | 1,835.68       |             | 1.0000        |
| Packer Rental            | 1,219.73                  | 1,219.73       |             | 1.0000        |
| Acid @ 6163 - 6170       | 1,499.68                  | 1,499.68       |             | 1.0000        |
| Acid @ 6163 - 6170       | 1,855.64                  | 1,855.64       |             | 1.0000        |
| Water Service            | 628.94                    | 628.94         |             | 1.0000        |
| Water Service            | 2,830.74                  | 2,830.74       |             | 1.0000        |
| Deep Frac                | 18,902.18                 | 18,902.18      |             | 1.0000        |
| Acid @ 5414 - 5429       | 1,470.22                  | 1,470.22       |             | 1.0000        |
| Acid @ 5414 - 5429       | 3,403.53                  | 3,403.53       |             | 1.0000        |
| Drilling Consultant      | <u>3,105.91</u> - Divided | 5,435.35       |             | .5714         |
| TOTAL                    | \$76,821.61               |                |             |               |

DRILLING COST

|                |                                      |
|----------------|--------------------------------------|
| Deep Only      | 11,416.74 - Daywork - 1.0000         |
| Deep Allocated | 16,332.06 - .1592                    |
| Abo Allocated  | <u>86,256.27</u> - 5378/6398 = .8418 |
| TOTAL          | \$114,005.07                         |

$\frac{.24}{.7566}$   
 of total invoice

1500 more on mud  
 bill

STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT

OIL CONSERVATION DIVISION  
P. O. BOX 2088  
SANTA FE, NEW MEXICO 87501

Form C-105  
Revised 10-1-78

|                        |  |
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WELL COMPLETION OR RECOMPLETION REPORT AND LOG

|  |                 |  |  |
|--|-----------------|--|--|
| 10. TYPE OF WELL<br>OIL WELL <input type="checkbox"/> GAS WELL <input checked="" type="checkbox"/> DRY <input type="checkbox"/> OTHER <input type="checkbox"/>   |                 | 5a. Indicate Type of Lease<br>State <input checked="" type="checkbox"/> Fee <input type="checkbox"/> |  |
| b. TYPE OF COMPLETION<br>NEW WELL <input checked="" type="checkbox"/> WORK OVER <input type="checkbox"/> DEEPEN <input type="checkbox"/> PLUG BACK <input type="checkbox"/> DIFF. RESVR. <input type="checkbox"/> OTHER <input type="checkbox"/> |                 | 5. State Oil & Gas Lease No.<br>LH-1898  |  |
| 2. Name of Operator<br>Jack J. Grynberg  |                 | 7. Unit Agreement Name<br>N/A  |  |
| 3. Address of Operator<br>5000 S. Quebec, Suite 500, Denver, CO 80237  |                 | 8. Farm or Lease Name<br>Grynberg St. Com  |  |
| 4. Location of Well<br>UNIT LETTER <u>L</u> LOCATED <u>1980</u> FEET FROM THE <u>South</u> LINE AND <u>660</u> FEET FROM THE <u>West</u> LINE OF SEC. <u>20</u> TWP. <u>9S</u> REC. <u>27E</u> NMPM  |                 | 9. Well No.<br>#1  |  |
| 15. Date Spudded<br>2/1/84   |                 | 10. Field and Pool, or Wildcat<br>Und. Pecos Slope Ab  |  |
| 16. Date T.D. Reached<br>2/20/84   |                 | 12. County<br>Chaves   |  |
| 17. Date Compl. (Ready to Prod.)<br>4/1/84   |                 | 18. Elevations (DF, RKB, RT, GR, etc.)<br>3812' GR   |  |
| 20. Total Depth<br>6419'   |                 | 19. Elev. Casinghead<br>Same   |  |
| 21. Plug Back T.D.<br>4756   |                 | 22. If Multiple Compl., How Many<br>Many   |  |
| 23. Intervals Drilled By<br>Rotary Tools<br>0-6419'  |                 | Cable Tools<br>0   |  |
| 24. Producing Interval(s), of this completion - Top, Bottom, Name<br>Abo 4728-36'  |                 | 25. Was Directional Survey Made<br>Yes   |  |
| 26. Type Electric and Other Logs Run<br>CNL-LD-GR: DLL-MSFL  |                 | 27. Was Well Cored<br>No   |  |
| 28. CASING RECORD (Report all strings set in well)   |                 |  |  |
| CASING SIZE  | WEIGHT LB./FT.  | DEPTH SET  | HOLE SIZE  |
| 8 5/8"   | 24#             | 1035'  | 12 1/4"  |
|  |                 |  | 475' x 8 1/2" Hal. lite, 200' x 8 1/2" Class "C" |
| 5 1/2"   | 15.5#           | 6419'  | 7 7/8"   |
|  |                 |  | 750' x 8 1/2" 50-50 POZ.                         |
|  |                 |  | 2% CCl   |
| 29. LINER RECORD   |                 | 30. TUBING RECORD  |  |
| SIZE   | TOP             | BOTTOM   | SACKS CEMENT                                     |
|  |                 |  | SCREEN   |
|  |                 |  | SIZE   |
|  |                 |  | DEPTH SET  |
|  |                 |  | PACKER SET                                       |
|  |                 |  | 4756' (B.P.)                                     |
| 31. Perforation Record (Interval, size and number)   |                 | 32. ACID, SHOT, FRACTURE, CEMENT SQUEEZE, ETC.   |  |
| 1) 6198-6207, 2 s/ft.<br>6163-6170, 2 s/ft.  |                 | DEPTH INTERVAL   |  |
| 2) 5414-5429, 2 s/ft.  |                 | AMOUNT AND KIND MATERIAL USED  |  |
| 3) 4728-4736, 2 s/ft.  |                 | 6198-6207 2000gals. 10% Acid, 65,000scf  |  |
|  |                 | 6163-6170 2000gals. 10% Acid, 65,000scf  |  |
|  |                 | 6163-6207 20,000gals gelled KCL 6700   |  |
|  |                 | 5414-5429 3000gals. 15% Acid, 500scf/bbl   |  |
| 33. PRODUCTION (continue, see attachment)  |                 | Well Status (Prod. or Shut-in)   |  |
| Date First Production  |                 | SI   |  |
| Production Method (Flowing, gas lift, pumping - Size and type pump)  |                 |  |  |
| Flowing  |                 |  |  |
| Date of Test   | Hours Tested    | Choke Size   | Prod'n. For Test Period                          |
| 7/21/84  | 24              | 6/64   |  |
| Flow Tubing Press.   | Casing Pressure | Calculated 24-Hour Rate  | Oil - Bbl.                                       |
| 250  | 120             |  | 130  |
|  |                 |  | Gas - MCF  |
|  |                 |  | 130  |
|  |                 |  | Water - Bbl.                                     |
|  |                 |  | ---  |
|  |                 |  | Oil Gravity - API (Curr.)                        |
|  |                 |  |  |
| 34. Disposition of Gas (Sold, used for fuel, vented, etc.)   |                 | Test Witnessed By  |  |
| Vented   |                 | Leon Brumfield   |  |
| 35. List of Attachments  |                 | Exhibit "B"  |  |
| 36. I hereby certify that the information shown on both sides of this form is true and correct to the best of my knowledge and belief.   |                 |  |  |
| SIGNED <u>Chris L. Kanner</u>  |                 | TITLE <u>Drig. &amp; Prod. Coordinator</u>   |  |
|  |                 | 11/14/84   |  |

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GRYNBERG PETROLEUM COMPANY

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

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

November 22, 1985

Mr. Tom Kelly  
Yates Petroleum Company  
207 South 4th Street  
Artesia, NM 88210

Dear Tom:

Enclosed please find schedules showing costs of #1-20 Grynberg State. Total cost of the well as adjusted by your audit exceptions is \$340,956.72.

|                    |        | <u>Company<br/>Share</u> | <u>Amount<br/>Advanced</u> | <u>Balance</u>        |
|--------------------|--------|--------------------------|----------------------------|-----------------------|
| Grynberg Petroleum | 37.50% | \$127,858.77             | \$127,858.77               | ---                   |
| Yates Petroleum    | 21.25% | 72,453.30                | 150,994.38                 | \$ (78,541.08)        |
| Yates Drilling     | 13.75% | 46,881.55                | 21,570.62                  | 25,310.93             |
| Myco Industries    | 13.75% | 46,881.55                | 21,570.63                  | 25,310.92             |
| Abo Petroleum      | 13.75% | 46,881.55                | 21,570.63                  | 25,310.92             |
|                    |        | <u>\$340,956.72</u>      | <u>\$343,565.03</u>        | <u>\$ ( 2,608.31)</u> |

Costs are shared on applicable percentages for the 6,350' AFE on the #1-20 Grynberg State.

Your Exception No. 2 on your audit of costs on the #1-20 Grynberg State regarding the monthly overhead for an operating lease will be adjusted on our regular joint interest billings, and your account will be credited accordingly.

Please call if you have any further questions regarding the above.

Sincerely,

GRYNBERG PETROLEUM COMPANY

  
Robert D. Pelo  
Controller

RDP/rw

Exhibit "C"

|             |          |      |
|-------------|----------|------|
|             | Initials | Date |
| Prepared by |          |      |
| Approved by |          |      |

*Graymberg Petroleum Co.*

*Schedule 1*

*Graymberg State #1-20*

*Total Costs Per Page 3 of Attached Schedule #2*

*339,670.07*

*Adjustments Per Audit by Mr. Tom Kelly  
of Yates Petroleum*

*# 1 - Overhead chg. - Drilling Bunker*  
*# 3 - Credit for 1,522.72' of tubing*  
*# 4 - 80.13' of casing*

*3,764.31*

*< 21,211.09*

*< 35,657.2*

*Total Costs as Adjusted*

*340,956.72*

*Graymberg Petroleum Company*

*37.5%*

*127,858.77*

*Yates Petroleum Company*

*21.25%*

*72,453.30*

*Yates Drilling Company*

*13.75%*

*46,881.55*

*MYCO Industries, Inc.*

*13.75%*

*46,881.55*

*Alb Petroleum Corporation*

*13.75%*

*46,881.55*

*340,956.72*

## Expenditures - Oregon State "1-20

| Invoice # | Vendor                           | Inv. Date | Descriptions   | Amount   |
|-----------|----------------------------------|-----------|--|----------|
| 1 33404   | Associated Pipe                  | 2-18-54   | 6544' 5 1/2" x 16.50 Cong Equip                            | 29120.00 |
| 2 R6662   | B. R. Lease Service              | 3-17      | Forest Rd  | 158.15   |
| 3 R66717  | /                                | 3-30      | Prod + Hand 43 jts 2 1/2 2 jts 5 1/2                       | 169.87   |
| 4 -       | Robert W. Becker                 | 12-23     | Geological Service   | 1786.63  |
| 5 004172  | Big Red Supply                   | 12-7      | 2 - Boxes of Samples Bags                                  | 32.95    |
| 6 004406  | /                                | 12-18     | Cong. Hand + Parts Equip                                   | 1090.27  |
| 7 41050   | Bell Petroleum                   | 3-26      | Minor Sealing for Heavy Leak                               | 3291.93  |
| 8 2227    | Bucheye Inc. <sup>212</sup> Inc. | 3-8       | Mad Chemical to hydro drill pipe from sitting              | 2555.52  |
| 9 3014    | /                                | 3-15      | /  | 1783.23  |
| 10 -      | Thomas K. Campbell               | 4-10      | Oregon v. Mendell  | 701.67   |
| 11 -      | /                                | 7-12      | /  | 216.97   |
| 12 -      | /                                | 10-17     | /  | 1500.00  |
| 13 12122  | Black Chase Inc.                 | 3-31      | Completion Rig   | 23971.44 |
| 14 -      | Comm. of Public Lands            | /         | Rept of 78.7   | 2130.00  |
| 15 90157  | Completion Rentals               | 3-31      | Equipment Rental   | 605.80   |
| 16 160    | Desert Drilling                  | 2-21      | Drilling Chg. "1-20  | 99200.00 |
| 17 /      | /                                | /         | / "1-20  | 14805.07 |
| 18 -      | Double L Anchor                  | 1-10      | Road Repair  | 624.00   |
| 19 -      | Lynnen Drilling                  | 12-83     | Surface Damages  | 50.00    |
| 784728    | Halliburton                      | 2-84      | Cement 5 1/2" L.S.   | 10589.77 |
| 784778    | /                                | 2-2       | 8 5/8" Surface   | 8172.35  |
| 725050    | /                                | 2-16      | DSS 6325' - 6396'  | 3574.51  |
| 785108    | /                                | 3-14      | Acid + 712   | 2167.53  |
| 73613     | /                                | 3-14      | Acidizing  | 1837.93  |
| 785109    | /                                | 3-16      | Acid + 712   | 2190.97  |
| 73990     | /                                | /         | /  | 1764.53  |
| 727251    | /                                | 3-17      | Voragel + CO2  | 2221.276 |
| 78 061547 | /                                | 3-19      | Inv. 784728 - 1589.84 " 784778 - 1226.45 " 725050 - 534.43 | 3350.76  |
| 073617    | /                                | 3-21      | Acid + 712   | 1729.67  |
| 785111    | /                                | /         | /  | 4017.26  |
| 785114    | /                                | 3-28      | /  | 3826.83  |



# Schedule 2

## Expenditures - Supply State #1-20

| Invoice # | Vendor              | Inv. Date | Descriptions  | Amount  |
|-----------|---------------------|-----------|---|---------|
| 073384    | Halliburton         | 3-28      | Metaph Chemical w/ Nitrogen                           | 1971.58 |
| 784687    | /                   | 3-29      | CO <sub>2</sub> & Dime                                | 1619326 |
| 062227    | /                   | 4-16      | Inv. 73677 - 251.75 73678 - 275.67 73679 - 244.65     | 109553  |
| 062228    | /                   | /         | 735107 - 835.33 735108 - 331.36 735109 - 294.44       | 760029  |
| 6648R     | Hondo Pipe          | 2-6       | Inv. 735114 - 595.56 735115 - 615.73 735116 - 3316.58 | 894369  |
| 6792R     | /                   | 2-29      | 1048.42 8 1/2" Casing - Surface Equip                 | 22437   |
| 6904R     | /                   | 3-77      | Helrod 5 1/2"   | 208877  |
| 6901R     | /                   | /         | Helrod Hand - parts Equip                             | 18710   |
| 6898R     | /                   | 3-27      | Shurtice & Sanger                                     | 206757  |
| 6953R     | /                   | 3-28      | Wilson, Shingo, & Frye                                | 27722   |
| 1387      | Jones Water Service | 1-31      | Subs. Callow  | 43004   |
| 1433      | /                   | 2-2       | Water - Transport                                     | 76762   |
| 1434      | /                   | /         | /   | 75257   |
| 1435      | /                   | 2-3-4     | /   | 64506   |
| 1462      | /                   | 2-10-4    | /   | 86008   |
| 1488      | /                   | 2-7       | /   | 10751   |
| 1522      | /                   | 2-9       | /   | 10751   |
| 1567      | /                   | 2-11-12   | /   | 49704   |
| 1606      | /                   | 2-5       | /   | 67155   |
| 1607      | /                   | 2-15      | /   | 107382  |
| 1608      | /                   | 2-17      | /   | 10751   |
| 1609      | /                   | 2-19      | /   | 32253   |
| 2452      | /                   | 3-28      | /   | 73118   |
| 1657      | /                   | 2-5       | /   | 56404   |
| 1787      | /                   | 2-5       | /   | 10751   |
| 1907      | /                   | 3-14      | /   | 43715   |
| 1978      | /                   | 3-14-21   | /   | 283074  |
| 2042      | /                   | 3-14-27   | /   | 280151  |
| 2107      | /                   | 2-5       | /   | 28202   |
| 2202      | /                   | 3-16      | /   | 62894   |
| 2168      | /                   | 3-29      | Frank Pontal  | 4674    |
| 2619      | /                   | 2-5       | Water - Transport                                     | 28202   |

Schedule 2

Expenditures - Oregon State #1-20

| Invo. #      | Vendor                        | Invo. Dte. | Description                           | Amount   |
|--------------|-------------------------------|------------|---------------------------------------|----------|
| 1 078        | Joins Water Service           | 4-20       | Exc Tank Rental                       | 4669     |
| 2 -          | Joins + Gallegos              | 4-25       | Encumbrance - Chasco Co.              | 43850    |
| 3 -          | "                             | 5-25       | "                                     | 6600     |
| 4 -          | "                             | 6-25       | "                                     | 3381     |
| 5 -          | A. J. Longo                   | 12-20      | Smoothing Portland                    | 191800   |
| 6 0840627    | Magnolia Park                 | 3-15       | Rent - Bridge Plng                    | 121973   |
| 7 0840673    | "                             | 3-29       | " - South Bridge Park                 | 90371    |
| 8 -          | Joins B. McMillan             | 4-4        | Professional Service                  | 573535   |
| 9 7065       | Manico                        | 3-10       | 6304' 1975. 2 1/2" 4.7 Tubing - Group | 1167561  |
| 10 83/520A   | Oilfield Const.               | 12-3-83    | Build Location                        | 205625   |
| 11 84/1004   | "                             | 1-4-84     | Steadily to build location            | 103750   |
| 12 182       | Oilfield Industrial           | 2-10       | Building + fence                      | 153014   |
| 13 -         | S. R. Patten + Assoc.         | 3-14       | Consultation - Road to phase          | 47081    |
| 14 22705     | Russell Ready Mix             | 1-2-4      | Rock - cellars - Desert Reg           | 51574    |
| 15 4-017049  | Schlumberger Well Serv.       | 2-12       | Logging                               | 2036386  |
| 16 4-017057  | "                             | 2-18       | "                                     | 649362   |
| 17 NMA-3-114 | F + C Tank Rental - Anchorage | 3-22       | Turnish + Install 4 guydine anchors   | 46245    |
| 18 712       | Temp Welding                  | 5-12       | Cut + weld casing                     | 11660    |
| 19 680       | "                             | 2-12       | " " head                              | 12226    |
| 20 684       | "                             | 2-4        | Weld on the grounds                   | 16868    |
| 21 699       | "                             | 2-19       | Cut casing to remove rig              | 16868    |
| 22 3493      | Valley Construction           | 5-30-85    | Drinal Cleanup                        | 64000    |
| 23 -         | William Dufford et al         | 10-31      | Legal fees                            | 221-     |
| 24           | Dennis Wright Inc.            |            |                                       | 52250    |
| 25           | Barracks Wood                 |            |                                       | 624000   |
| 26           |                               |            |                                       | 33907007 |
| 27           |                               |            |                                       |          |
| 28           |                               |            |                                       |          |
| 29           |                               |            |                                       |          |
| 30           |                               |            |                                       |          |

Engineering Charge - C. Dennis

60000

33967007



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 24, 1986

Mr. Jack Grynberg  
Grynberg Petroleum Company  
5000 South Quebec No. 500  
Denver, Colorado 80237

CERTIFIED

RE: OCD Order R-7393  
Grynberg State 1-20  
Chaves County, New Mexico

Dear Sir:

We are in receipt of your well costs adjustment of  
November 22, 1985; to which we take exception.

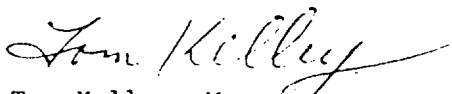
Per the commission order, (copy attached) well costs  
should be shared based on ownership in each proration unit.  
Yates et al own 25 percent of the Abo and 62.5 percent of the  
Precambrian.

We, therefore make demand on you for refund of overpayment  
of advanced costs of \$87,116.89, per the attached schedule.

Costs are divided in compliance with the commission order,  
81.89% to the Abo and 18.11% to the deep zone, except for those  
costs directly attributable to each zone.

Payment is expected within 30 days from receipt of this  
letter. Otherwise, Yates will seek remedy both before the  
commission and through legal action.

Very truly yours,

  
Tom Kelley, Manager  
Joint Interest Auditing

TK:aj

attachment

Exhibit "D"

STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION DIVISION

DEC 7 1983

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

CASE NO. 7983  
Order No. R-7392

APPLICATION OF YATES PETROLEUM  
CORPORATION FOR COMPULSORY POOLING  
AND AN UNORTHODOX LOCATION, CHAVES  
COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on October 18, 1983, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 2nd day of December, 1983, 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:

(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, Yates Petroleum Corporation, seeks compulsory pooling of all mineral interests in the Abo formation underlying the SW/4 and all mineral interests in all formations below the top of the Wolfcamp formation underlying the S/2 of Section 20, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico, said units to be dedicated to a single well to be drilled at an unorthodox location 1980 feet from the South line and 660 feet from the West line of said Section 20.

(3) That in companion Case 7982, Yates Petroleum Corporation sought an unorthodox well location 1980 feet from the North line and 990 feet from the West line of said Section 20, to test all formations from the top of the Wolfcamp through the Montoya formation, the N/2 of said Section 20 to be dedicated to said well.

Case No. 7983

Order No. R-7392

(4) That in companion Case 7984, Jack J. Grynberg sought compulsory pooling of all mineral interests from the surface through and including the Abo formation underlying the SW/4 of said Section 20, and all mineral interests from the top of the Wolfcamp formation to the Precambrian formation underlying the W/2 of said Section 20, said units to be dedicated to a single well to be drilled at a standard location thereon.

(5) That these cases were consolidated with this case for the purpose of obtaining testimony.

(6) That by Order No. R-7393 dated December 2, 1983, the Commission approved the application of Jack J. Grynberg in Case 7984.

(7) That the application in Case 7983 should be denied.

IT IS THEREFORE ORDERED:

(1) That Case 7983 is hereby denied.

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

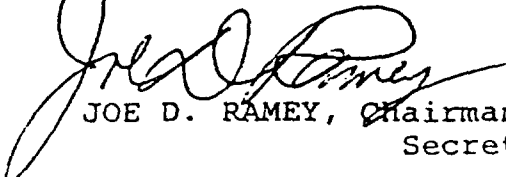
DONE at Santa Fe, New Mexico, on the day and year herein-  
above designated.

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

JIM BACA, Member



ED KELLEY, Member



JOE D. RAMEY, Chairman and  
Secretary

S E A L

fd/

STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION COMMISSION

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

CASE NO. 7984  
Order No. R-7393

APPLICATION OF JACK J. GRYNBERG  
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 October 18, 1983, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 2nd day of December, 1983, 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:

(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, Jack J. Grynberg, seeks an order pooling all mineral interests from the surface through and including the Abo formation underlying the SW/4 of Section 20, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico, and all mineral interests from the top of the Wolfcamp formation to the Precambrian formation underlying the W/2 of said Section 20, said units to be dedicated to a single well to be drilled at a standard location thereon.

(3) That in companion Case 7982, Yates Petroleum Corporation seeks an unorthodox well location 1980 feet from the North line and 990 feet from the West line of said Section 20, to test all formations from the top of the Wolfcamp through the Montoya formation, the N/2 of said Section 20 to be dedicated to said well.

(4) That in companion Case 7983, Yates Petroleum Corporation seeks compulsory pooling of all mineral interests

in the Abo formation underlying the SW/4 and all mineral interests in all formations below the top of the Wolfcamp formation underlying the S/2 of said Section 20, said units to be dedicated to a single well to be drilled at an unorthodox location, for the Wolfcamp and deeper horizons, at a point 1980 feet from the South line and 600 feet from the West line of said Section 20.

(5) That these cases were consolidated with this case for the purpose of obtaining testimony.

(6) That the spacing in this area is 160 acres for Abo gas and 320 acres for Wolfcamp and older gas.

(7) That while all formations from the Wolfcamp and below are sought to be pooled, the primary "deep" target is the Fusselman formation.

(8) That although evidence was presented that wells in the Fusselman formation might not drain 320 acres, no party to these cases had applied for an amendment to the applicable 320-acre spacing rules.

(9) That all parties to these cases agreed that the West half of said Section 20 should be more productive than the East half in the Fusselman formation.

(10) That the West half of said Section 20 is a logical spacing unit for the Wolfcamp and older formations.

(11) That Jack J. Grynberg is also an interest owner in Section 19, Township 9 South, Range 27 East, Chaves County, New Mexico, which section lies immediately West of said Section 20.

(12) That Mr. Grynberg objects to the unorthodox locations proposed by Yates Petroleum Corporation.

(13) That approval of the two Yates applications for wells at unorthodox locations would result in such wells having a calculated drainage radius outside their proration units of 116 net acres greater, in said Section 19, than wells at standard locations.

(14) That approval of said unorthodox locations, with the resultant change in net drainage outside the assigned proration units, would result in drainage across lease lines not offset by counter drainage and would, therefore, result in violation of correlative rights.

Case No. 7984  
Order No. 7393

(15) That to prevent the violation of correlative rights, the applications of Yates Petroleum Corporation in Case No. 7982 and Case 7983 should be denied.

(16) That the application of Jack J. Grynberg in Case 7984 should be approved.

(17) That the applicant, Jack J. Grynberg, has the right to drill and proposes to drill a well at a standard location thereon.

(18) That the proposed 160-acre spacing unit would apply to and should only be approved in the Abo formation.

(19) That the proposed 320-acre spacing unit would apply to and should only be approved from the top of the Wolfcamp to the Precambrian formation.

(20) That there are interest owners in the proposed proration units who have not agreed to pool their interests.

(21) That to avoid the drilling of unnecessary wells, to prevent waste, to protect correlative rights, and to afford to the owner of each interest in said units the opportunity to recover or receive without unnecessary expense his just and fair share of the gas in any appropriate pool covered by said units, the subject application should be approved by pooling all mineral interests, whatever they may be, within said units.

(22) That the applicant should be designated the operator of the subject well and units.

(23) 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.

(24) That since the interests of the parties are different in each proration unit, it will be necessary to estimate well costs on the basis of a well to the Abo formation drilled to 5,200 feet and a well to the Precambrian formation drilled to 6350 feet.

(25) That estimated well costs for the Abo formation, except for costs directly attributable to the Precambrian, should be estimated on the basis of depth for each formation and that costs for the Abo formation should not exceed 81.89 percent of the total cost of the proposed well, (5200 foot Abo depth/6350 foot total depth = 0.8189).



(26) 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.

(27) 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.

(28) 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.

(29) That \$2,825.00 per month while drilling and \$283.00 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.

(30) 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.

(31) That upon the failure of the operator of said pooled unit to commence drilling of the well to which said unit is dedicated on or before March 1, 1984, 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, from the surface through and including the Abo formation underlying the SW/4 and all mineral interests from the top of the Wolfcamp formation to the Precambrian formation underlying the W/2, all in Section 20, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico, are hereby pooled to form a standard 160-acre and a 320-acre gas spacing and proration unit to be dedicated to a well to be drilled at a standard location thereon.

PROVIDED HOWEVER, that the operator of said units shall commence the drilling of said well on or before the 1st day of March, 1984 and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Wolfcamp and Precambrian formations;

PROVIDED FURTHER, that in the event said operator does not commence the drilling of said well on or before the 1st day of March, 1984, Order (1) of this order shall be null and void and of no effect whatsoever, unless said 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, said operator shall appear before the Division Director and show cause why Order (1) of this order should not be rescinded.

(2) That Jack J. Grynberg is hereby designated the operator of the subject well and unit.

(3) That after the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Commission and each known working interest owner in the subject units two itemized schedules of estimated well costs, one to be for a well to the Abo formation drilled to a depth of 5,200 feet and the second for a well to the Precambrian formation drilled to a depth of 6350 feet.

(4) That the itemized schedule of well costs shall be prepared to reflect actual well costs properly attributable to each zone in accordance with Finding No. (25) in this order.

(5) That 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 wells 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.

(6) That the operator shall furnish the Commission 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 Commission and the Commission 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 Commission will determine reasonable well costs after public notice and hearing.

(7) 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.

(8) 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.

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

(10) That \$ 2,825.00 per month while drilling and \$285.00 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.

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

Case No. 7984  
Order No. 7393

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

(12) 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.

(13) 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.

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

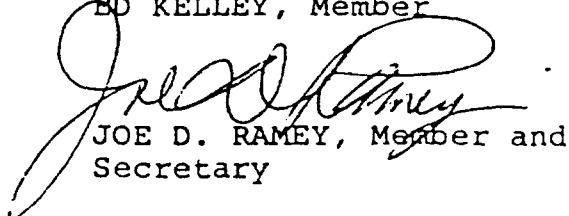
DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

JIM BACA, Member



ED KELLEY, Member



JOE D. RAMEY, Member and  
Secretary

S E A L

| SERVICE DATE | VENDOR AND SERVICE PERFORMED        | AMOUNT    | FORMATION SERVED |                       |
|--------------|-------------------------------------|-----------|------------------|-----------------------|
|              |                                     |           | 81.89%<br>ABO    | 18.11%<br>PERCAMBRIAN |
| 12/30/83     | Runnels Mud. Co.-Prepay Mud         | 6,240.00  | 5,109.94         | 1,130.06              |
| 12/30/83     | Oilfield Construction Co.-Location  | 1,037.50  | 849.61           | 187.89                |
| 12/30/83     | Lyman R. Graham - Surface Damage    | 500.00    | 409.45           | 90.55                 |
| 12/31/83     | Oilfield Construction Co.-Location  | 2,056.25  | 1,683.86         | 372.39                |
| 12/31/83     | R.R. Patton - Survey Road           | 470.81    | 385.55           | 85.26                 |
| 1/4/84       | Comm. Pub. Land-ROW 20-T9S-R27E     | 2,130.00  | 1,744.26         | 385.74                |
| 1/6/84       | Hondo Pipe - 8 5/8" 24# Casing      | 8,943.69  | 7,323.99         | 1,619.70              |
| 1/31/84      | Jim's Water Service-Fresh Water     | 430.04    | 352.16           | 77.88                 |
| 2/2/84       | Halliburton-Cement 8 5/8"           | 6,945.86  | 5,687.96         | 1,257.90              |
| 2/1-2/4/84   | Jim's Water Svc.-Fresh Wtr. & Trkg. | 860.08    | 704.32           | 155.76                |
| 2/2/84       | Jim's Water Svc.-Fresh Wtr. & Trkg. | 967.62    | 792.38           | 175.24                |
| 2/2/84       | Jim's Water Svc.-Fresh Wtr. & Trkg. | 752.57    | 616.28           | 136.29                |
| 2/3-2/4/84   | Jim's Water Svc.-Fresh Wtr. & Trkg. | 645.06    | 528.24           | 116.82                |
| 2/4/84       | Roswell Ready Mix-Rods for Cellar   | 515.74    | 422.34           | 93.40                 |
| 2/4/84       | Troy's Welding-Weld Cattleguard     | 108.68    | 89.00            | 19.68                 |
| 2/5/84       | Jim's Water Svc.-Brine & Trkg.      | 282.02    | 230.95           | 51.07                 |
| 2/5/84       | Jim's Water Svc.-Fresh Wtr. & Trkg. | 107.51    | 88.04            | 19.47                 |
| 2/5/84       | Jim's Water Svc.-Brine Wtr. & Trkg. | 564.04    | 461.89           | 102.15                |
| 2/5/84       | Jim's Water Svc.-Brine & Fresh Wtr. | 671.55    | 549.93           | 121.62                |
| 2/5/84       | Jim's Water Svc.-Brine Water        | 282.02    | 230.95           | 51.07                 |
| 2/7/84       | Jim's Water Svc.-Fresh Water        | 107.51    | 88.04            | 19.47                 |
| 2/7/84       | Big Red Supply-Sample Bags          | 32.95     | 26.98            | 5.97                  |
| 2/9/84       | Jim's Water Svc.-Fresh Water        | 107.51    | 88.04            | 19.47                 |
| 2/11/84      | Jim's Water Svc.-Fresh & Brine Wtr. | 497.04    | 407.03           | 90.01                 |
| 2/12/84      | Troy's Welding-Cut & weld wellhead  | 122.26    | 100.12           | 22.14                 |
| 2/15/84      | Jim's Water Svc.-Fresh Water        | 107.38    | 87.93            | 19.45                 |
| 2/17/84      | Jim's Water Svc.-Fresh Water        | 107.51    | 88.04            | 19.47                 |
| 2/19/84      | Jim's Water Svc.-Fresh Water        | 322.53    | 264.12           | 58.41                 |
| 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 | 16,739.89        | 3,623.97              |
| 2/13/84      | Buckeye, Inc.-Mud slick             | 2,555.52  | 2,092.72         | 462.80                |
| 2/16/84      | Halliburton-DST 6325-6396           | 3,039.88  | -0-              | 3,039.88              |

| SERVICE DATE | VENDOR AND SERVICE PERFORMED                   | AMOUNT     | FORMATION SERVED |                       |
|--------------|--|------------|------------------|-----------------------|
|              |  |            | 81.89%<br>ABO    | 18.11%<br>PERCAMBRIAN |
| 2/18/84      | Schlumberger-Logging                           | 6,493.62   | 2,833.81         | 3,659.81              |
| 2/18/84      | Big Red Supply-Casinghead & Etc.               | 1,090.27   | 892.82           | 197.45                |
| 2/18/84      | Associated Pipe-5½" 15.5# Casing               | 29,120.80  | 23,847.02        | 5,273.78              |
| 2/19/84      | Troy's Welding-Final Csg.Cutoff                | 108.68     | 89.00            | 19.68                 |
| 2/19/84      | Halliburton-Cement 5½" Csg.                    | 9,000.20   | 7,370.26         | 1,629.94              |
| 2/20/84      | Hondo Pipe-Forklift 5½"                        | 224.37     | 183.74           | 40.63                 |
| 2/12-2/20/84 | Sonny Longo-Drlg. Consultant                   | 1,918.00   | -0-              | 1,918.00              |
| 2/21/84      | Desert Drilling-Footage & Daywork              | 114,005.07 | 81,044.49        | 32,960.58             |
| 3/10/84      | Mimco Pipe-6,304ft. 2 3/8Tbg.                  | 11,675.61  | 11,675.61        | -0-                   |
| 3/10/84      | Buckeye, Inc.-Return mud slick                 | (1,983.23) | (1,624.07)       | (359.16)              |
| 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   | 2,067.57         | -0-                   |
| 3/12/84      | Hondo Pipe-Tbqhd & Subs                        | 2,088.77   | 2,088.77         | -0-                   |
| 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 Water 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 & N <sub>2</sub> @ 6190-6207' | 1,835.68   | -0-              | 1,835.68              |
| 3/14/84      | Maypole Packers-5½" Rental Packer              | 1,219.73   | -0-              | 1,219.73              |
| 3/16/84      | Halliburton-Acid & N <sub>2</sub> @ 6163-6170' | 1,499.68   | -0-              | 1,499.68              |
| 3/16/84      | Halliburton-Acid & N <sub>2</sub> @ 6163-6170' | 1,855.64   | -0-              | 1,855.64              |
| 3/16/84      | Jim's Water Svc.-Fresh & KCL                   | 628.94     | -0-              | 628.94                |
| 3/16/84      | Jim's Water Svc.-Fresh & KCL                   | 2,830.74   | -0-              | 2,830.74              |
| 3/16/84      | Hondo Pipe-Return Sub. & Collar                | (277.22)   | (227.02)         | (50.20)               |
| 3/17/84      | Halliburton-Deep Frac                          | 18,902.18  | -0-              | 18,902.18             |
| 3/19/84      | B&R Lease Svc.-Fence pit                       | 158.15     | 129.51           | 28.64                 |
| 3/21/84      | Halliburton-Acid & N <sub>2</sub> @ 5414-5429' | 1,470.22   | -0-              | 1,470.22              |
| 3/21/84      | Halliburton-Acid & N <sub>2</sub> @ 5414-5429' | 3,403.53   | -0-              | 3,403.53              |
| 3/22/84      | T&CTank-Install Anchors                        | 462.45     | 378.70           | 83.75                 |
| 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 Water Svc.-Fresh & KCL                   | 731.18     | 731.18           | -0-                   |

| SERVICE DATE | VENDOR AND SERVICE PERFORMED             | AMOUNT     | FORMATION SERVED |                       |
|--------------|--|------------|------------------|-----------------------|
|              |  |            | 81.89%<br>ABO    | 18.11%<br>PERCAMBRIAN |
| 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-                   |
| 3/29-3/30/84 | 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 tbq & csg                 | 169.84     | 169.84           | -0-                   |
| 4/4/84       | Jim McWilliams-Drilling Consultant       | 5,435.35   | 4,451.01         | 984.34                |
| 4/25/84      | Jones & Gallegos-Lawsuit                 | 438.50     | 359.09           | 79.41                 |
| 5/25/84      | Jones & Gallegos-Lawsuit                 | 66.00      | 54.05            | 11.95                 |
| 6/25/84      | Jones & Gallegos - Lawsuit               | 33.81      | 27.69            | 6.12                  |
| 5/30/84      | Valley Construction-final cleanup        | 640.00     | 640.00           | -0-                   |
| 7/10/84      | Double Anchor -Repair Road               | 624.00     | 624.00           | -0-                   |
| 10/31/84     | Welborn Fuffard-Lawsuit                  | 221.00     | 180.98           | 40.02                 |
| 1/10/84      | T.K. Campbell-Grynberg vs. M             | 701.67     | 574.60           | 127.07                |
| 3/12/84      | T.K. Campbell-Grynberg vs. M             | 216.97     | 177.68           | 39.29                 |
| 10/17/84     | T.K. Campbell-Grynberg vs. M             | 1,500.00   | 1,228.35         | 271.65                |
|              | Dennis Wright Ins.-Insurance             | 522.50     | 427.88           | 94.62                 |
|              | Engineering Charge-Grynberg              | 600.00     | 491.34           | 108.66                |
|              |  |            |                  |                       |
|              |  |            |                  |                       |
|              |  |            |                  |                       |
|              | Overhead                                 | 3,764.31   | 2,485.65         | 1,278.66              |
|              | 2 3/8" Tbg. Credited                     | (2,121.09) | (2,121.09)       | -0-                   |
|              | 5 1/2" Casing credited                   | (356.57)   | (292.00)         | (64.57)               |
|              |  |            |                  |                       |
|              |  | 340,956.72 | 225,356.22       | 115,600.50            |
|              |  |            |                  |                       |
| ABO          | \$225,356.22 x .25 = \$56,339.06         |            |                  |                       |
| DEEP         | \$115,600.50 x .625 = 72,250.31          |            |                  |                       |
|              | \$125,589.37                             |            |                  |                       |
|              | Prepayment (215,706.26)                  |            |                  |                       |
|              | Overpayment (87,116.89)                  |            |                  |                       |

02/16/87  
GEORGIA FERRIN, CLERK

STATE OF NEW MEXICO  
COUNTY OF CHAVES  
IN THE DISTRICT COURT

GRYNBERG PETROLEUM COMPANY )

Petitioner, )

-vs- )

No. CIV 87-103

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

Respondents. )

*Case Assigned  
To: Judge SCHNEDAR*

COMPLAINT  
PETITION FOR REVIEW OF DECISION OF  
OIL CONSERVATION COMMISSION OF NEW MEXICO

COMES NOW Grynberg Petroleum Company, and pursuant to the provisions of Section 70-2-25, NMSA (1978), as amended, respectfully petitions the Court for review of the action of the Oil Conservation Commission of New Mexico in Case 8901 (DeNovo) on the Commission's docket, its Order R-7393-B entered therein and states:

PARTIES:

1. Petitioner ("Grynberg") is a duly organized corporation doing business in the State of New Mexico, and is the operator of the Grynberg State 1-20 Well located in W/2 of Section 20, T9S, R27E, NMPM, Chaves County, New Mexico.



2. Respondents, Yates Petroleum Corporation, Yates Drilling Company, Myco Industries and Abo Petroleum Corporation ("Yates") are corporations duly organized under the laws of the State of New Mexico and are working interest owners in the Grynberg State I-20 Well, and have been issued Commission Order R-7393-B from which the Petitioner objects and appeals.

3. Respondent, the Oil Conservation Commission of the State of New Mexico, ("Commission") is a statutory body created and existing under the provisions of the Oil & Gas Act, Sections 70-2-1 through 70-2-36 NMSA (1978), laws of the State of New Mexico.

GENERAL STATEMENT OF FACTS:

1. On October 18, 1983, the Commission held a hearing on the applications of Grynberg and Yates to compulsory pool the other for the drilling of the Grynberg State I-20 well.

2. On December 2 and 3, 1983, the Commission entered Order R-7393, copy attached as Exhibit A, and incorporated herein, approving the Grynberg application and also entered Order R-7392 denying the Yates application.

3. On January 12, 1984, Yates prepaid its share of the estimated costs of the well to Grynberg.

4. On April 1, 1984 Grynberg completed the subject well.

5. On May 22, 1986 Yates filed an application with the Commission requesting a hearing to determine the reasonable well costs which was docketed as Case 8901.

6. On June 19, 1986 and on August 7, 1987 the Commission heard Case 8901 and on December 31, 1986 entered its Order R-7393-B, copy attached as Exhibit "B" and incorporated herein, finding, among other things, that Yate's share of the costs of the subject well should be \$134,326.99.

7. On January 30, 1987 Grynberg filed its Application for Rehearing, copy attached as Exhibit "C" and incorporated herein, which was deemed denied by the Commission when it failed to act on the application within the ten days required by Section 70-2-25 NMSA (1978).

JURISDICTION:

1. Petitioner has exhausted its administrative remedies before the Commission and now seeks judicial review of the Commission's decision within the time provided for by Section 70-2-25 NMSA (1978), as amended.

2. The Fifth Judicial District, Chaves County, New Mexico, has jurisdiction of this case pursuant to the provisions of Section 70-2-25 NMSA (1978), because the property affected by the Commission order is located within Chaves County, New Mexico.

**RELIEF SOUGHT:**

Petitioner complains of Commission Order R-7393-B and as grounds for asserting the invalidity of the said Order, Petitioner adopts the grounds set forth in its Application for Rehearing (Exhibit C) and states:

1. Commission Order R-7393-B should be reversed because the Commission failed to make a "basic conclusion of fact" as required by Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 373 P2d 809 (1962).

2. Commission Order R-7393-B should be reversed because the order fails to contain sufficient findings as required by Fasken v. Oil Conservation Commission, 87 N.M. 292, 532 P2d 588 (1975).

3. Commission Order R-7393-B should be reversed because the allocation of costs as set forth in Commission Order R-7839-B are contrary to the requirements of Paragraph (25) of the prior Commission Order R-7393.

4. Commission Order R-7393-B is not supported by substantial evidence, is arbitrary and capricious and is contrary to law.

5. The Commission improperly excluded Grynberg's testimony and failed to allocate a portion of the well costs to the San Andres Formation.

6. The Commission erroneously denied Grynberg's Motion to Dismiss the Yates' Application.

WHEREFORE, Petitioner prays that the Court review New Mexico Oil Conservation Commission Case 8981 (DeNovo) and Commission Order R-7393-B and hold said order unlawful, invalid and void, and for such other and further relief as may be proper in the premises.

Respectfully submitted:

By 

W. Thomas Kellahin  
Kellahin, Kellahin & Aubrey  
P. O. Box 2265  
Santa Fe, New Mexico 87504

(505) 982-4285

Attorneys for Petitioner



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

November 10, 1987

Jeffery Taylor  
Energy and Minerals Department  
P. O. Box 2088  
Santa Fe, NM 87501

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

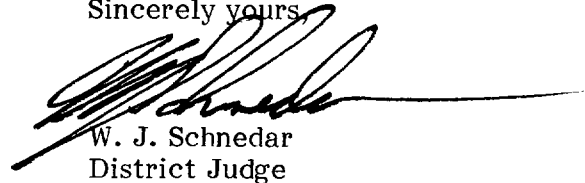
Dear Mr. Taylor:

Ms. Ferrin and I have caused a comprehensive search to be made for the missing transcript. I enclose a copy of our computer printout which shows that the supplemental certificate was indeed filed on June 1, 1987. The supplemental certification was at all times in the file.

We have no record of receiving the transcript of proceedings which was mailed on May 5, 1987. We did run a computer printout of all filings from May 6 through May 12, 1987 and there is no record of any filing from the Oil Conservation Commission.

Therefore, I request that you cause a duplicate of the original exhibits to be filed. I have transcripts of the hearings of June 19, and August 7.

Sincerely yours



W. J. Schnedar  
District Judge

WJS/rh

xc: Joel Carson  
Tom Kellahin

| CASE                 | FILING DATE | FILING FEE | RECEIPT | REOPEN DATE | ORIGIN  | ASSIGNED JUDGE | TRIAL TYPE | STATUS |
|----------------------|-------------|------------|---------|-------------|---|----------------|------------|--------|
| 05-04-CV-CV-87-00103 | 02/16/87    | 50.00      | 003657  | 00/00/00    | PETITION/COMP.<br>SCHEDULED JUDGE: W. J. SCHNEDAR | W. J. SCHNEDAR | NON JURY   | OPEN   |

GRYNBERG PETROLEUM COMPANY Vs. NM etal

CATEGORIES

C1-04-10 OTHER CIVIL

| PLAINTIFFS                 | DEFENDANTS   | PROSECUTION     | DEFENSE                               |
|----------------------------|--|-----------------|---------------------------------------|
| GRYNBERG PETROLEUM COMPANY | ABO PETROLEUM CORPORATION<br>MYCO INDUSTRIES, INC.<br>NM OIL CONSERVATION COMMISSION<br>YATES DRILLING COMPANY | KELLAHIN, W. T. | CARSON, JOEL M.<br>TAYLOR, JEFFREY S. |

| PROCEEDINGS: | DATE     | MISC-INDEX   |
|--------------|----------|--|
|              | 02/16/87 | CATEGORIES: OTHER CIVIL  |
|              | 02/16/87 | COMPLAINT PETITION FOR REVIEW OF DECISION OF OIL CONSERVATION COMMISSION OF NEW MEXICO   |
|              | 02/16/87 | ISSUE SUMMONS  |
|              | 03/06/87 | ANSWER TO COMPLAINT PETITION FOR REVIEW OF DECISION OF OIL CONSERVATION COMMISSION OF NEW MEXICO   |
|              | 04/10/87 | MOTION FOR LEAVE TO AMEND ORIGINAL COMPLAINT TO SUBSTITUTE AND JOIN ADDITIONAL PARTIES   |
|              | 04/10/87 | RATIFICATION   |
|              | 04/17/87 | RESPONSE OF OIL CONSERVATION COMMISSION TO PETITION FOR REVIEW   |
|              | 04/24/87 | NOTICE OF SETTING - MAY 11, 1987, 4:30 PM, TEL. CONF.  |
|              | 04/27/87 | RESPONSE OF THE OIL CONSERVATION COMMISSION IN OPPOSITION TO MOTION TO AMEND COMPLAINT   |
|              | 05/12/87 | JACK J. GRYNBERG AND GRYNBERG PETROLEUM CO. ARE ONE AND THE SAME. LEAVE GRANTED TO SO AMEND ONLY.  |
|              | 06/01/87 | SUPPLEMENTAL CERTIFICATION - WILLIAM J. LEMAY, DIRECTOR OF THE OIL CONSERVATION DIVISION OF THE STATE OF NM ENERGY AND MINERALS DEPARTMENT |
|              | 06/05/87 | ORDER GRANTING LEAVE TO AMEND COMPLAINT  |
|              | 09/09/87 | FIRST AMENDED COMPLAINT PETITION FOR REVIEW OF DECISION OF OIL CONSERVATION COMMISSION OF NEW MEXICO                                       |
|              | 09/16/87 | NOTICE OF HEARING - November 05, 1987  |
|              | 09/23/87 | ACCEPTANCE OF SERVICE AND WAIVER OF ISSUANCE OF SUMMONS  |
|              | 10/05/87 | RESPONSE OF OIL CONSERVATION COMMISSION TO AMENDED PETITION FOR REVIEW   |
|              | 10/19/87 | ACCEPTANCE OF SERVICE AND WAIVER OF ISSUANCE OF SUMMONS  |
|              | 10/19/87 | ANSWER - YATES DRILLING COMPANY, MYCO INDUSTRIES, INC. AND ABO PETROLEUM CORP.   |

RUN DATE: 11/09/87  
BTCH11

FIFTH JUDICIAL DISTRICT COURT  
CASE HISTORY

PAGE 2

| CASE | FILING<br>DATE | FILING RECEIPT<br>FEE | REOPEN<br>DATE | ORIGIN | ASSIGNED<br>JUDGE | TRIAL<br>TYPE | STATUS |
|------|----------------|-----------------------|----------------|--------|-------------------|---------------|--------|
|------|----------------|-----------------------|----------------|--------|-------------------|---------------|--------|

|                        |          |           |                 |                |                |          |           |
|------------------------|----------|-----------|-----------------|----------------|----------------|----------|-----------|
| 05-04-CV-CV-87-00103   | 02/16/87 | 50.00     | 003657 00/00/00 | PETITION/COMP. | W. J. SCHNEDAR | NON JURY | OPEN CONT |
| DISPOSITIONS: CATEGORY |          | DEFENDANT |                 | DISPOSITION    |                |          |           |

NO DISPOSITIONS ON FILE

| REOPEN HISTORY: | OFFENSE | DEFENDANT | REOPEN DATE | DATE CLOSED | PROBATION VIOLATION |
|-----------------|---------|-----------|-------------|-------------|---------------------|
|-----------------|---------|-----------|-------------|-------------|---------------------|

NO REOPEN HISTORY ON FILE

| WARRANTS: DEFENDANT | DATE ISSUED | DATE SERVED | BOND AMOUNT | TYPE | STATUS |
|---------------------|-------------|-------------|-------------|------|--------|
|---------------------|-------------|-------------|-------------|------|--------|

NO WARRANT HISTORY ON FILE

| BONDS: DEFENDANT | DATE | BOND AMOUNT | TYPE | DISPOSITION | BONDSMAN OR DESCRIPTION |
|------------------|------|-------------|------|-------------|-------------------------|
|------------------|------|-------------|------|-------------|-------------------------|

NO BOND HISTORY ON FILE

PAYMENTS:

-----RECEIPT OR

| DATE     | CHECK  | AMOUNT RECEIVED OF        | TYPE | EXC. SOURCE                               |
|----------|--------|---------------------------|------|---|
| 02/16/87 | 003657 | 50.00 KELLAHIN & KELLAHIN | CASH | CIVIL FILING (OTHER)                      |
| 08/07/87 | 005232 | 2.55 LOSEE & CARSON       | CASH | MULTIPLE MISCELLANEOUS FEES               |
| 09/08/87 | 005500 | 1.75 KELLAHIN & KELLAHIN  | CASH | COPIES REPRODUCED BY PHOTOGRAPHIC PROCESS |



STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

September 30, 1987

GARREY CARRUTHERS  
GOVERNOR

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

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

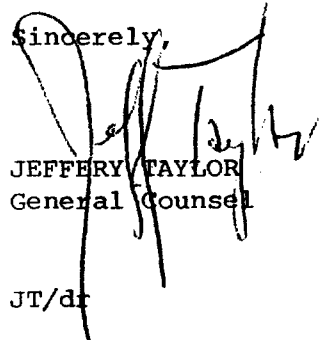
Re: Grynberg v. Oil Conservation Commission,  
No. CIV-87-103

Dear Ms. Ferrin:

Enclosed for filing is our Response to Amended  
Petition for Review to be included in the record  
of the referenced proceeding.

Thank you for your assistance.

Sincerely,

  
JEFFERY TAYLOR  
General Counsel

JT/dr

cc: Joe Carson  
Thomas Kellahin





STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

September 30, 1987

GARREY CARRUTHERS  
GOVERNOR

POST OFFICE BOX 2088  
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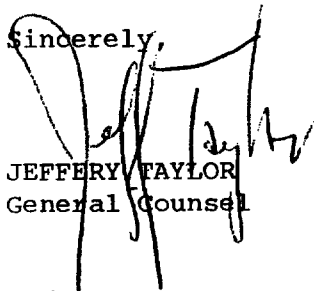
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JEFFERY TAYLOR  
General Counsel

JT/dt

cc: Joe Carson  
Thomas Kellahin

04/24/87  
GEORGIA FERRIN, CLERK

FIFTH JUDICIAL DISTRICT

COUNTY OF CHAVES

STATE OF NEW MEXICO

GRYNBERG PETROLEUM COMPANY,

Petitioner,

vs.

CV-87-103

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

Respondents.

NOTICE OF SETTING

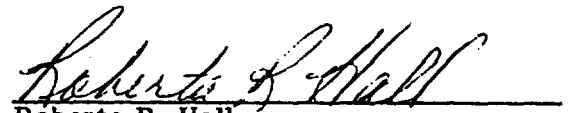
TO: W. Thomas Kellahin  
P. O. Box 2265  
Santa Fe, NM 87504

Joel M. Carson  
P. O. Drawer 239  
Artesia, NM 88210

YOU ARE HEREBY NOTIFIED that the above styled and numbered cause is set for hearing on Motion for Leave to Amend Original Complaint to Substitute Party on May 11, 1987 at 4:30 P.M. at the Chaves County Courthouse, Roswell, New Mexico. The Honorable W. J. Schnedar, District Judge, Division VI presiding.

The hearing will be by telephone conference call. Mr. Kellahin shall arrange the conference call. The telephone number for Judge Schnedar is 624-0859.

DATED: April 24, 1987

  
Roberta R. Hall  
Secretary to Hon. W. J. Schnedar

xc: Mr. Jeffery Taylor (4/28/87)

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

# Memo

*From*

DIANE RICHARDSON  
*Bonding Department*

*To*  
*Jean Welles*  
*Clerk of the Court*  

---

*Tom*  
*Kellaker*  

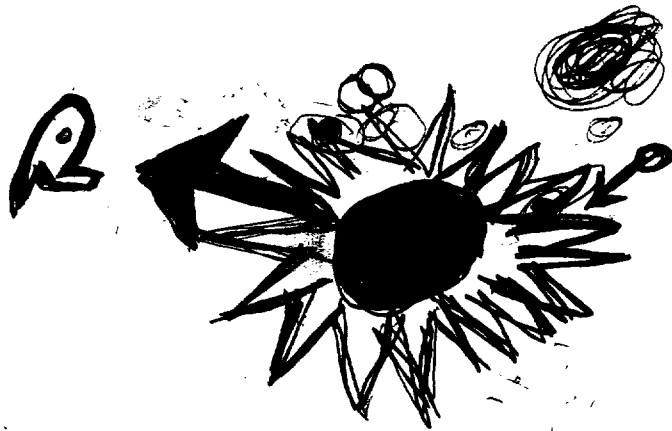
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*Joel Carson*  

---

Oil Conservation Division Santa Fe, New Mexico 87501  
(505) 827-5800

Mrs. Georgia Ferrin  
Clerk of the Court  
Fifth Judicial District  
P.O. Box 1776  
Roswell, N.M. 88201



Re: Grynberg v. Oil Conservation Commission,  
No. CIV-87-103

Dear Mrs. Ferrin,

~~Petitioner's attorney has requested that the record in the referenced case be supplemented by the filing of the enclosed document.~~

Enclosed for filing at the request of Petitioner's attorney is an additional document from the OGD files to be included in the record of the referenced proceeding. Thank you for your assistance.

Sincerely,

JT  
GC

cc Joel Carson  
Tom Kellahin

LAW OFFICES

**LOSEE & CARSON, P. A.**

300 AMERICAN HOME BUILDING

P. O. DRAWER 239

ARTESIA, NEW MEXICO 88211-0239

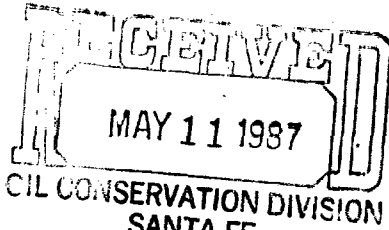
A. J. LOSEE

JOEL M. CARSON

JAMES E. HAAS

ERNEST L. CARROLL

AREA CODE 505  
746-3508



8 May 1987

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

Re: Grynberg v. Oil Conservation Commission,  
et al., No. CIV-87-103

Dear Mrs. Ferrin:

Enclosed herewith, for presentation to Judge Schnedar, please find the Brief in Opposition to Motion for Leave to File Amended Complaint on behalf of respondents, Yates Drilling Company, Myco Industries, Inc., and Abo Petroleum Corporation. I am by copy of this letter furnishing opposing counsel with copies of same. Please return a filed copy to me for my file. Thank you.

Yours truly,

LOSEE & CARSON, P. A.

  
Joel M. Carson

JMC:bjk  
Enclosures

cc w/encl: Mr. W. Thomas Kellahin  
Mr. Jeffery Taylor  
Mr. Tom Kelley

FIFTH JUDICIAL DISTRICT COURT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

|                             |   |                |
|-----------------------------|---|----------------|
| GRYNBERG PETROLEUM COMPANY, | ) |                |
|                             | ) |                |
| Petitioner,                 | ) |                |
|                             | ) |                |
| vs.                         | ) | No. CIV-87-103 |
|                             | ) |                |
| OIL CONSERVATION COMMISSION | ) |                |
| OF THE STATE OF NEW MEXICO; | ) |                |
| and YATES DRILLING COMPANY; | ) |                |
| MYCO INDUSTRIES, INC.; and  | ) |                |
| ABO PETROLEUM CORPORATION,  | ) |                |
|                             | ) |                |
| Respondents.                | ) |                |

BRIEF IN OPPOSITION TO MOTION FOR  
LEAVE TO FILE AMENDED COMPLAINT

This case arises out of an application to the New Mexico Oil Conservation Commission ("OCC") filed by Jack J. Grynberg ("Grynberg") requesting an order pooling the interests of Yates Petroleum Corporation, Yates Drilling Company, Abo Petroleum Corporation, and Myco Industries, Inc. (collectively "Yates"), in the W/2 of Section 20, Township 9 South, Range 27 East, N.M.P.M., Chaves County, New Mexico. In New Mexico OCC Cause No. 7984 the OCC entered an order force pooling the Yates interests.

In compliance with the OCC order Yates signed an operating agreement with Grynberg and paid in advance \$215,706.26 as their share of the estimated cost of drilling the well.

The well was drilled. Yates was entitled to an accounting for the actual cost of drilling the well. This accounting when performed by a Yates auditor indicated that Grynberg owed Yates a refund. Yates filed application No. 8901 requesting a determination of reasonable well costs. In order No. R-7393-b the OCC determined that Grynberg owed Yates \$78,770.96.

Grynberg Petroleum Company, a corporation, requested a rehearing. Grynberg Petroleum Company which is said to be a corporation authorized to do business in the State of New Mexico filed an action in Chaves County, New Mexico to review the decision of the OCC.

Yates answered the Petition and questioned the jurisdiction of the Court to consider the matter because Grynberg Petroleum Company was not a party to either of the proceedings before the OCC and Jack J. Grynberg had not filed an application for rehearing before the OCC or an application for review within the time specified by the statute governing appeals from orders of the OCC (see Section 70-2-25, N.M.S.A, 1978).

The OCC also filed its response denying the standing of Grynberg Petroleum Company and alleging that the Petition had not been timely filed.

Grynberg Petroleum Company filed a Petition to amend to name Grynberg, individually and doing business as Grynberg Petroleum Company and as trustee for various Grynberg Trusts, as parties plaintiff. It is clear from both Cause No. 7984 and No. 8901 that the party involved was Jack J. Grynberg individually and not as a corporation. Grynberg's own employee clarified this in Cause No. 7984. In response to Art Jaramillo's questioning of Morris Ettinger (Grynberg's witness) the following colloquy took place:

Mr. Jaramillo (Q): All right. Has there not also been an assignment from Grynberg Trust to Mr. Grynberg? That question was raised by Ms. Richardson.

Ettinger (A): Yeah, if you look on the last page of exhibit number two.

(Q): What is marked as page number 12 of exhibit No. 2?

(A): Page number 12, yeah.

The only thing is, I want to stress that this related to Section 19 but not to Section 20.

(Q): What is the current ownership status of the leasehold interest in Section 20?



(A): J. J. Grynberg owns 100% of the working interest.

(Page 70 of Transcript in Cause Nos. 7982, 7983, 7984 consolidated)

Grynberg's own expert's testimony indicates that the only person involved is Jack J. Grynberg.

The operating agreement submitted in Cause No. 7984 (compulsory pooling) and the operating agreement signed by Yates and introduced in evidence in Cause No. 8901 (determination of reasonable well costs) were both with Jack J. Grynberg. There is no suggestion in either case that Grynberg Petroleum Company or Jack Grynberg as trustee for the various Grynberg Trusts is involved.

#### Argument

Section 70-2-25(A), N.M.S.A., 1978, provides that within 20 days after the entry of an order or decision by the OCC any person affected thereby may file an application for rehearing with the OCC.

Section 70-2-25(b) provides that a party to the proceedings may appeal to the District Court of the county in which any property affected is located. This petition for review must be filed within 20 days after the entry of the order following the rehearing or after the refusal of a rehearing.

This rule means that the only party aggrieved or affected by the order of the OCC, namely Jack J. Grynberg, must appeal the decision within 20 days from the date the OCC refused his rehearing. The OCC entered its order on December 31, 1986. Grynberg Petroleum Company filed its complaint on February 16, 1987.

The filing of the Petition within the time prescribed by statute is jurisdictional. 2 Am.Jur.2d, "Administrative Law", Section 719. If the time for filing a petition in Court had passed when Grynberg Petroleum Company filed its Petition with the District Court, the provisions of N.M.R.Civ.P. 1-017 and 1-015(c) cannot breathe life back into an already dead case.

N.M.R.Civ.P. 1-015(c) permits the amendment of pleadings under certain circumstances so that the amendment relates back to the original filing of the complaint. The most common amendment is one which is made to avoid the running of the statute of limitations. Yates submits that this rule does not permit the amendment of pleadings to invest the Court with subject matter jurisdiction and that it certainly cannot be made to take two steps back to correct a jurisdictional error which was made long before the case was filed in Court.

Grynberg seeks to avoid not only his failure to make a timely filing of a motion for rehearing, but to also add new

parties, namely the Grynberg Trusts, which were not parties to the 1983 order, were not parties to the 1986 order, were not parties to the request for rehearing, and were not parties to the court case filed in February of 1987. We submit that no interpretation of any rule including N.M.R.Civ.P. 1-015 or 1-017 can be interpreted liberally enough to give the Court jurisdiction over the Trusts.

Yates Petroleum Corporation was not made a party to this proceeding. There is no allegation in the motion and related documents that would permit the Court to name Yates Petroleum Corporation as a party defendant long after the time for suing Yates Petroleum Corporation has passed.

Petitioner cites two cases in support of its position. Neither case supports the motion. Indeed, Chavez v. Regents of UNM, 103 N.M. 606, 711 P.2d 883 (1985), which distinguishes itself from DeVargas v. State ex rel. Dept. of Corrections, 97 N.M. 447, 640 P.2d 1327 (Ct.App. 1981), and Mercer v. Morgan, 86 N.M. 711, 526 P.2d 1304 (Ct.App. 1974) appears to support the position previously urged that if the suit was not brought within the proper time period, it was a nullity and Rules 1-015 and 1-017, N.M.R.Civ.P., cannot give the Court jurisdiction. Petitioner's

complaint should be dismissed and the decision of the OCC  
should be affirmed.


Respectfully submitted,

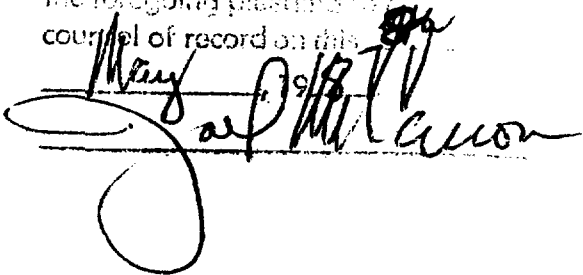
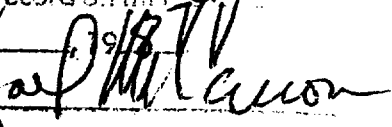
LOSEE & CARSON, P.A.

By: 

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

Attorneys for Respondents,  
Yates Drilling Company,  
Myco Industries, Inc., and  
Abo Petroleum Corporation

I certify that I mailed a true  
and correct copy of the foregoing pleading to  
the court of record on this 

  
Mary 

STATE OF NEW MEXICO  
COUNTY OF CHAVES  
IN THE DISTRICT COURT

GRYNBERG PETROLEUM COMPANY,

Petitioner,

v.

No. Civ. 87-103

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

Respondents.

RESPONSE OF OIL CONSERVATION COMMISSION  
TO PETITION FOR REVIEW

The New Mexico Oil Conservation Commission (hereinafter OCC) by and through its attorney, responds to the Petition filed in this matter as follows:

1. The OCC is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph One, (parties) except that the records of the Division, including Commission Order No. R-7393 attached to the Petition as Exhibit A, indicate that the application that is the subject of the instant case was filed by Jack J. Grynberg and not Grynberg Petroleum Company. Jack J. Grynberg is not

listed on Commission records as a corporation registered to do business in New Mexico but as an individual.

2. The allegations contained in Paragraph Two (parties) of the petition are admitted.

3. The allegations contained in Paragraph Three (parties) of the petition are admitted.

4. The allegations contained in Paragraph One (facts) are admitted, except that the applicant was Jack J. Grynberg and not Grynberg Petroleum Company.

5. The allegations contained in Paragraph Two (facts) are admitted except that the approved application was filed by Jack J. Grynberg and not Grynberg Petroleum Company.

6. The OCC is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph Three (facts).

7. The allegations contained in Paragraph Four (facts) are admitted, except that Commission records indicate the well was completed by Jack J. Grynberg and not Grynberg Petroleum Company.

8. The allegations contained in Paragraph Five (facts) are admitted.

9. The allegations contained in Paragraph Six (facts) are admitted, except that the hearing was held August 7, 1986 rather than August 7, 1987.

10. The allegations contained in Paragraph Seven (facts) are admitted except that Division records indicate that the Application for Rehearing was filed January 20, 1987 rather than January 30, 1987.

11. The allegations contained in Paragraph One (jurisdiction) are admitted, except that Jack J. Grynberg rather than Grynberg Petroleum Company is listed in Commission records as the operator of the subject well.

12. The allegations contained in Paragraph Two (jurisdiction) are denied insofar as Grynberg Petroleum Company does not operate the subject well and was not the Petitioner before the Commission. It is admitted that the well is located in Chaves County, New Mexico.

13. The allegations contained in Paragraph One (relief) are denied.

14. The allegations contained in Paragraph Two (relief) are denied.

15. The allegations contained in Paragraph Three (relief) are denied.

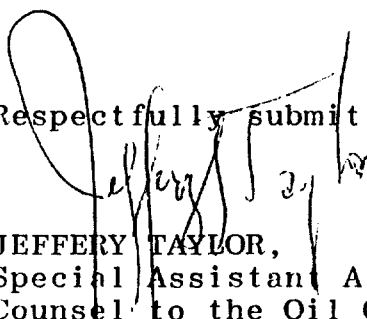
16. The allegations contained in Paragraph Four (relief) are denied.

17. The allegations contained in Paragraph Five (relief) are denied.

18. The allegations contained in Paragraph Six (relief) are denied.

WHEREFORE the Oil Conservation Commission requests that the Petition filed herein be dismissed with prejudice and that no relief be granted.

Respectfully submitted,

  
JEFFERY TAYLOR,  
Special Assistant Attorney General  
Counsel to the Oil Conservation  
Commission  
P. O. Box 2088  
Santa Fe, New Mexico 87501



I hereby certify that on the  
15<sup>th</sup> day of April  
1987, a copy of the foregoing  
pleading was mailed to opposing  
counsel of record.

Jeffrey S. Taylor

LAW OFFICES

LOSEE & CARSON, P. A.

300 AMERICAN HOME BUILDING

P. O. DRAWER 239

ARTESIA, NEW MEXICO 88211-0239

AREA CODE 505

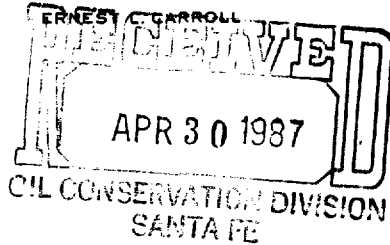
746-3508

A. J. LOSEE

JOEL M. CARSON

JAMES E. HAAS

ERNEST C. CARROLL



28 April 1987

Ms. Roberta R. Hall  
Secretary to Honorable  
W. J. Schnedar  
District Judge  
P. O. Box 1776  
Roswell, New Mexico 88201

Re: Grynberg v. Oil Conservation Commission,  
et al., No. CV-87-103

Dear Ms. Hall:

Reference is made to the Notice of Setting which was filed in the above numbered and styled cause on April 24, 1987, setting the hearing date for May 11, 1987. The Notice of Setting does not include (but should include) the Oil Conservation Commission.

Yours truly,

LOSEE & CARSON, P.A.

Joel M. Carson

JMC:bjk

cc: Mr. Jeffery Taylor

STATE OF NEW MEXICO  
COUNTY OF CHAVES  
IN THE DISTRICT COURT

GRYNBERG PETROLEUM COMPANY,

Petitioner,

v.

No. CV-87-103

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

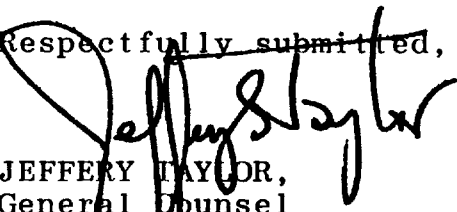
Respondents.

RESPONSE OF THE OIL CONSERVATION COMMISSION  
IN OPPOSITION TO MOTION TO AMEND COMPLAINT

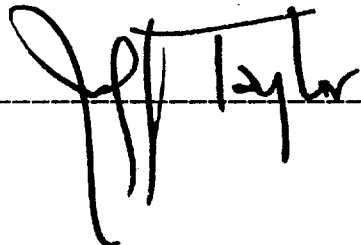
The New Mexico Oil Conservation Commission, respondent in this action, opposes the motion of Petitioner to amend the Complaint or Petition filed in this action. Because the original named Petitioner does not appear to have been a party to the administrative proceeding that led to the instant appeal, it may be without standing to file the appeal and thus the Court could not entertain this proceeding pursuant to the appeal provisions of the Oil and Gas Act, Section 70-2-25(B) NMSA 1978. Neither does it appear, moreover, that the entities that would be substituted under the instant Motion to Amend were parties to the administrative proceeding. They may also lack standing. The Commission is confused as to the real

parties in interest and some explanation may be appropriate. It also appears, however, that the time to file an appeal of the Commission decision has expired. For these reasons the Commission opposes the Motion filed by Petitioner to amend its "Complaint."

Respectfully submitted,

  
JEFFERY TAYLOR,  
General Counsel  
Energy and Minerals Department  
Oil Conservation Division  
P. O. Box 2088  
Santa Fe, New Mexico 87504-2088  
Telephone: (505) 827-5805

I hereby certify that on the  
\_\_\_\_ 23<sup>rd</sup> \_\_\_\_ day of April, 1987,  
a copy of the foregoing pleading  
was mailed to opposing counsel  
of record.

  
\_\_\_\_\_

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

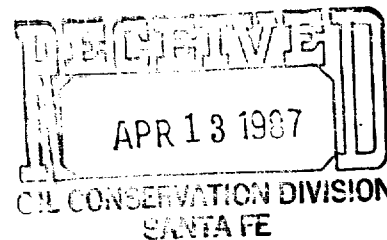
W. Thomas Kellahin

Karen Aubrey

Jason Kellahin

Of Counsel

April 9, 1987



Ms. Jean Willis  
District Court Clerk  
401 North Main, 2nd Floor  
Roswell, New Mexico 88201

PO Box 1776

"Federal Express"

Re: Grynberg v. Oil Conservation Commission  
Chaves County Cause No. 87-103

Dear Ms. Willis:

Please find enclosed a Motion for Leave to Amend the Original Complaint, our Memorandum in support, with attachments.

I would appreciate you filing the original and returning to me three conformed copies of the Motion. I have enclosed a stamped self-addressed envelope for your use.

Very truly yours,

A handwritten signature in dark ink, appearing to read "W. Thomas Kellahin".

W. Thomas Kellahin

WTK:ca

Enc.

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.

**MOTION FOR LEAVE TO AMEND ORIGINAL COMPLAINT**  
**TO SUBSTITUTE AND JOIN ADDITIONAL PARTIES**

COMES NOW Petitioner, Grynberg Petroleum Company, by and through its attorneys, Kellahin, Kellahin & Aubrey, and pursuant to Rule 1-017 N.M.R. Civ.P., moves this Court for an order granting leave to amend the original complaint to substitute Jack J. Grynberg, individually, and doing business as Grynberg Petroleum Company, and as grantor of the Rachel Susan (Grynberg) Trust, the Stephen Mark (Grynberg) Trust and the Miriam Zela (Grynberg) Trust, and as agent for and on behalf of Celeste C. Grynberg and Dean G. Smernoff, Co-Trustees for the Rachel Susan Trust, the Stephan Mark Trust and the

Miriam Zela Trust, as the Petitioner in this cause. Further, pursuant to Rule 1-015(c), N.M.R. Civ.P., Petitioner requests that such amendment relate back to the original date of the Complaint. Further Petitioner seeks to add Yates Petroleum Corporation as a defendant herein. A copy of the proposed Amended Complaint is attached hereto as Exhibit A.

As grounds for this motion Petitioner states:

1. Jack J. Grynberg, individually, and doing business as Grynberg Petroleum Ccompany and as grantor of the Rachel Susan Trust, the Stephen Mark Trust and the Miriam Zela Trust, and as agent for and on behalf of Celeste C. Grynberg and Dean G. Smernoff, Co-Trustees of the Rachel Susan Trust, the Stephan Mark Trust and the Miriam Zela Trust are the real parties in interest in this cause. (Exhibit B).

2. Grynberg Petroleum Company was, through an honest mistake, named as Petitioner in this cause. (Exhibit C).

3. Jack J. Grynberg, individually, and doing business as Grynberg Petroleum Company and as grantor of the Rachel Susan Trust, the Stephen Mark Trust and the Miriam Zela Trust, and as agent for and on behalf of Celeste C. Grynberg and Dean G. Smernoff, Co-Trustees of the Rachel Susan Trust, the Stephan Mark Trust and the Miriam Zela Trust and Grynberg Petroleum Company have a substantial identity of

interest and the claims upon which the complaint are based arise out of the same conduct and occurrence regardless of the named Petitioner.

4. That Yates Petroleum Corporation was inadvertently omitted from the list of defendants.

5. Amendments to pleadings are allowed by the New Mexico Rules of Civil Procedure.

Concurrence of counsel for the parties in this action has been sought. Counsel for Respondent Oil Conservation Commission concurs in this motion. Counsel for Respondents, Yates Drilling Company, Myco Industries, Inc. and Abo Petroleum Corporation does not concur.

THEREFORE, for the reasons stated herein and as set forth more fully in the accompanying memorandum, Petitioner's motion should be granted.

KELLAHIN, KELLAHIN & AUBREY  
Post Office Box 2265  
Santa Fe, New Mexico 87504  
Telephone: (505) 982-4285

By: 

W. Thomas Kellahin

Attorneys for Petitioner



CERTIFICATE OF MAILING

I hereby certify that I have caused to be mailed a true and correct copy of the foregoing pleading to Jeffrey Taylor, Esq., Oil Conservation Commission, Post Office Box 2088, Santa Fe, New Mexico 87501 and Joel Carson, Esq., Post Office Drawer 239, Artesia, New Mexico 88210, on this 9 day of April, 1987.

  
W. Thomas Kellahin

STATE OF NEW MEXICO  
COUNTY OF CHAVES  
IN THE DISTRICT COURT

JACK J. GRYNBERG, )  
individually, and doing )  
business as Grynberg Petroleum )  
Company, and as grantor )  
of the RACHEL SUSAN (GRYNBERG) )  
Trust, the STEPHEN MARK )  
(GRYNBERG) Trust and the )  
MIRIAM ZELA (GRYNBERG) Trust, )  
and as agent for and on behalf )  
of CELESTE C. GRYNBERG and )  
DEAN G. SMERNOFF, Co-Trustees )  
for the RACHEL SUSAN Trust, )  
the STEPHEN MARK Trust, and )  
the MARIAM ZELA Trust. )

Petitioner, )

-vs- )

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

Respondents. )

No. CIV 87\_\_\_\_\_

FIRST AMENDED COMPLAINT  
PETITION FOR REVIEW OF DECISION OF  
OIL CONSERVATION COMMISSION OF NEW MEXICO

COMES NOW Jack J. Grynberg, individually, and doing  
business as Grynberg Petroleum Company, and as grantor of  
the Rachel Susan (Grynberg) Trust, the Stephen Mark  
(Grynberg) Trust and the Miriam Zela (Grynberg) Trust,  
and as agent for and on behalf of Celeste C. Grynberg and  
Dean G. Smernoff, Co-Trustees for the Rachel Susan Trust,

the Stephen Mark Trust and the Miriam Zela Trust, pursuant to the provisions of Section 70-2-25, NMSA (1978), as amended, and respectfully petitions the Court for review of the action of the Oil Conservation Commission of New Mexico in Case 8901 (DeNovo) on the Commission's docket, and its Order R-7393-B entered therein.

**PARTIES:**

1. Petitioner, Jack J. Grynberg, ("Grynberg") is president of Grynberg Petroleum Company, a sole proprietorship, doing business in the State of New Mexico, and is the operator of the Grynberg State 1-20 Well ("subject well") located in W/2 of Section 20, T9S, R27E, NMPM, Chaves County, New Mexico.

2. Petitioners Celeste C. Grynberg and Dean G. Smernoff, are co-trustees of the Rachel Susan Trust, the Stephen Mark Trust and the Miriam Zela Trust which have a 37.5% working interest in the subject well.

3. Petitioner, Jack J. Grynberg, operates the subject well as agent for and on behalf of the Co-trustees shown in paragraph 2 above.

4. Respondents, Yates Petroleum Corporation, Yates Drilling Company, Myco Industries and Abo Petroleum Corporation ("Yates"), are corporations duly organized under the laws of the State of New Mexico and are working

interest owners in the Grynberg State I-20 Well, and have been issued Commission Order R-7393-B from which the Petitioner objects and appeals.

5. Respondent, the Oil Conservation Commission of the State of New Mexico ("Commission"), is a statutory body created and existing under the provisions of the Oil & Gas Act, Sections 70-2-1 through 70-2-36 NMSA (1978), laws of the State of New Mexico.

GENERAL STATEMENT OF FACTS:

1. On October 18, 1983, the Commission held a hearing on the applications of Grynberg and Yates to compulsory pool the other for the drilling of the Grynberg State I-20 well.

2. On December 2 and 3, 1983, the Commission entered Order R-7393, copy attached as Exhibit A, and incorporated herein, approving the Grynberg application and also entered Order R-7392 denying the Yates application.

3. On January 12, 1984, Yates prepaid its share of the estimated costs of the well to Grynberg.

4. On April 1, 1984, Grynberg completed the subject well.

5. On May 22, 1986, Yates filed an application with the Commission requesting a hearing to determine the reasonable well costs which was docketed as Case 8901.

6. On June 19, 1986 and on August 7, 1986, the Commission heard Case 8901 and on December 31, 1986 entered its Order R-7393-B, copy attached as Exhibit "B" and incorporated herein, finding that Yate's share of the costs of the subject well was \$134,326.99.

7. On January 30, 1987, Grynberg filed its Application for Rehearing, copy attached as Exhibit "C" and incorporated herein, which was deemed denied by the Commission when it failed to act on the application within the ten days required by Section 70-2-25, N.M.S.A. (1978).

**JURISDICTION:**

1. Petitioner has exhausted its administrative remedies before the Commission and now seeks judicial review of the Commission's decision within the time provided for by Section 70-2-25, N.M.S.A. (1978), as amended.

2. The Fifth Judicial District, Chaves County, New Mexico, has jurisdiction of this case pursuant to the provisions of Section 70-2-25, N.M.S.A. (1978), because the property affected by the Commission order is located within Chaves County, New Mexico.

**RELIEF SOUGHT:**

Petitioner complains of Commission Order R-7393-B and asserts that said Order is invalid. As grounds for such assertion Petitioner adopts the grounds set forth in its Application for Rehearing (Exhibit C) and further states:

1. Commission Order R-7393-B should be reversed because the Commission failed to make a "basic conclusion of fact" as required by Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962).

2. Commission Order R-7393-B should be reversed because the order fails to contain sufficient findings as required by Fasken v. Oil Conservation Commission, 87 N.M. 292, 532 P.2d 588 (1975).

3. Commission Order R-7393-B should be reversed because the allocation of costs as set forth in Commission Order R-7839-B are contrary to the requirements of Paragraph (25) of the prior Commission Order R-7393.

4. Commission Order R-7393-B is not supported by substantial evidence, is arbitrary and capricious, and is contrary to law.

5. The Commission improperly excluded Grynberg's testimony and failed to allocate a portion of the well costs to the San Andres Formation.

6. The Commission erroneously denied Grynberg's Motion to Dismiss the Yates' Application.

WHEREFORE, Petitioner prays that the Court review New Mexico Oil Conservation Commission Case 8901 (DeNovo) and Commission Order R-7393-B and hold said order unlawful, invalid and void, and for such other and further relief as may be proper in the premises.

Respectfully submitted:

By 

W. Thomas Kellahin  
Kellahin, Kellahin & Aubrey  
P. O. Box 2265  
Santa Fe, New Mexico 87504

(505) 982-4285

Attorneys for Petitioner

STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION COMMISSION

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

CASE NO. 7984  
Order No. R-7393

APPLICATION OF JACK J. GRYNBERG  
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 October 18, 1983, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 2nd day of December, 1983, 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:

(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, Jack J. Grynberg, seeks an order pooling all mineral interests from the surface through and including the Abo formation underlying the SW/4 of Section 20, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico, and all mineral interests from the top of the Wolfcamp formation to the Precambrian formation underlying the W/2 of said Section 20, said units to be dedicated to a single well to be drilled at a standard location thereon.

(3) That in companion Case 7982, Yates Petroleum Corporation seeks an unorthodox well location 1980 feet from the North line and 990 feet from the West line of said Section 20, to test all formations from the top of the Wolfcamp through the Montoya formation, the N/2 of said Section 20 to be dedicated to said well.

(4) That in companion Case 7983, Yates Petroleum Corporation seeks compulsory pooling of all mineral interests



in the Abo formation underlying the SW/4 and all mineral interests in all formations below the top of the Wolfcamp formation underlying the S/2 of said Section 20, said units to be dedicated to a single well to be drilled at an unorthodox location, for the Wolfcamp and deeper horizons, at a point 1980 feet from the South line and 600 feet from the West line of said Section 20.

(5) That these cases were consolidated with this case for the purpose of obtaining testimony.

(6) That the spacing in this area is 160 acres for Abo gas and 320 acres for Wolfcamp and older gas.

(7) That while all formations from the Wolfcamp and below are sought to be pooled, the primary "deep" target is the Fusselman formation.

(8) That although evidence was presented that wells in the Fusselman formation might not drain 320 acres, no party to these cases had applied for an amendment to the applicable 320-acre spacing rules.

(9) That all parties to these cases agreed that the West half of said Section 20 should be more productive than the East half in the Fusselman formation.

(10) That the West half of said Section 20 is a logical spacing unit for the Wolfcamp and older formations.

(11) That Jack J. Grynberg is also an interest owner in Section 19, Township 9 South, Range 27 East, Chaves County, New Mexico, which section lies immediately West of said Section 20.

(12) That Mr. Grynberg objects to the unorthodox locations proposed by Yates Petroleum Corporation.

(13) That approval of the two Yates applications for wells at unorthodox locations would result in such wells having a calculated drainage radius outside their proration units of 116 net acres greater, in said Section 19, than wells at standard locations.

(14) That approval of said unorthodox locations, with the resultant change in net drainage outside the assigned proration units, would result in drainage across lease lines not offset by counter drainage and would, therefore, result in violation of correlative rights.

(15) That to prevent the violation of correlative rights, the applications of Yates Petroleum Corporation in Case No. 7982 and Case 7983 should be denied.

(16) That the application of Jack J. Grynberg in Case 7984 should be approved.

(17) That the applicant, Jack J. Grynberg, has the right to drill and proposes to drill a well at a standard location thereon.

(18) That the proposed 160-acre spacing unit would apply to and should only be approved in the Abo formation.

(19) That the proposed 320-acre spacing unit would apply to and should only be approved from the top of the Wolfcamp to the Precambrian formation.

(20) That there are interest owners in the proposed proration units who have not agreed to pool their interests.

(21) That to avoid the drilling of unnecessary wells, to prevent waste, to protect correlative rights, and to afford to the owner of each interest in said units the opportunity to recover or receive without unnecessary expense his just and fair share of the gas in any appropriate pool covered by said units, the subject application should be approved by pooling all mineral interests, whatever they may be, within said units.

(22) That the applicant should be designated the operator of the subject well and units.

(23) 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.

(24) That since the interests of the parties are different in each proration unit, it will be necessary to estimate well costs on the basis of a well to the Abo formation drilled to 5,200 feet and a well to the Precambrian formation drilled to 6350 feet.

(25) That estimated well costs for the Abo formation, except for costs directly attributable to the Precambrian, should be estimated on the basis of depth for each formation and that costs for the Abo formation should not exceed 81.89 percent of the total cost of the proposed well, (5200 foot Abo depth/6350 foot total depth = 0.8189).

(26) 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.

(27) 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.

(28) 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.

(29) That \$2,825.00 per month while drilling and \$283.00 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.

(30) 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.

(31) That upon the failure of the operator of said pooled unit to commence drilling of the well to which said unit is dedicated on or before March 1, 1984, 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, from the surface through and including the Abo formation underlying the SW/4 and all mineral interests from the top of the Wolfcamp formation to the Precambrian formation underlying the W/2, all in Section 20, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico, are hereby pooled to form a standard 160-acre and a 320-acre gas spacing and proration unit to be dedicated to a well to be drilled at a standard location thereon.

PROVIDED HOWEVER, that the operator of said units shall commence the drilling of said well on or before the 1st day of March, 1984 and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Wolfcamp and Precambrian formations;

PROVIDED FURTHER, that in the event said operator does not commence the drilling of said well on or before the 1st day of March, 1984, Order (1) of this order shall be null and void and of no effect whatsoever, unless said 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, said operator shall appear before the Division Director and show cause why Order (1) of this order should not be rescinded.

(2) That Jack J. Grynberg is hereby designated the operator of the subject well and unit.

(3) That after the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Commission and each known working interest owner in the subject units two itemized schedules of estimated well costs, one to be for a well to the Abo formation drilled to a depth of 5,200 feet and the second for a well to the Precambrian formation drilled to a depth of 6350 feet.

(4) That the itemized schedule of well costs shall be prepared to reflect actual well costs properly attributable to each zone in accordance with Finding No. (25) in this order.

(5) That 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 wells 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.

(6) That the operator shall furnish the Commission 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 Commission and the Commission 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 Commission will determine reasonable well costs after public notice and hearing.

(7) 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.

(8) 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.

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

(10) That \$ 2,825.00 per month while drilling and \$285.00 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.

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

Case No. 7984  
Order No. 7393

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

(12) 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.

(13) 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.

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

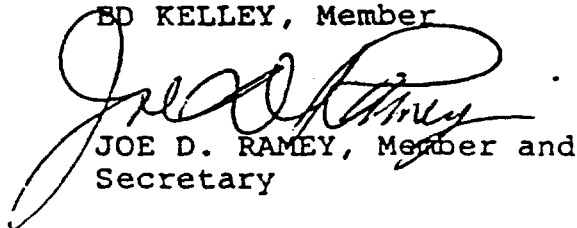
DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

JIM BACA, Member



ED KELLEY, Member



JOE D. RAMEY, Member and  
Secretary

S E A L

ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION COMMISSION

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

CASE NO. 8901  
Order No. R-7393-B

APPLICATION OF YATES PETROLEUM CORPORATION,  
YATES DRILLING COMPANY, MYCO INDUSTRIES,  
INC., AND ABO PETROLEUM CORPORATION FOR  
DETERMINATION OF REASONABLE WELL COSTS,  
CHAVES COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on June 19 and August 7, 1986, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 31st day of December, 1986, 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 applicants, Yates Petroleum Corporation, Yates Drilling Company, Myco Industries, Inc., and Abo Petroleum Corporation (hereinafter referred to as Yates), seek a determination of reasonable well costs in connection with the drilling of the Grynberg State Com Well No. 1 located 1980 feet from the South line and 660 feet from the West line of Section 20, Township 9 South, Range 27 East, Chaves County, New Mexico, said applicants being working interest owners in said well.

(3) Said Grynberg State Com Well No. 1 was drilled pursuant to Order No. R-7393 in Case No. 7984, wherein the Commission ordered all mineral interests from the surface through and including the Abo formation underlying the SW/4 and all mineral interests from the top of the Wolfcamp to the

EXHIBIT "B"

Precambrian formation, underlying the W/2 of said Section 20, be pooled to form standard 160-acre and 320-acre gas spacing proration units, respectively, to be dedicated to the Grynberg State Com Well No. 1, with Jack Grynberg designated as the operator.

(4) The applicants own 25 percent of the working interest attributable to the Abo formation and 62.5 percent of the working interest attributable to the Wolfcamp to Precambrian interval.

(5) At the June 19 hearing both the applicants and Grynberg presented calculations of appropriate well costs in said Grynberg State Com Well No. 1 attributable to the working interest owners.

(6) The Commission determined that neither Grynberg nor applicants had calculated the reasonable well costs as stated in the above-described order in accordance with the Commission's interpretation of that order and required the parties to resubmit the allocation of costs based upon such interpretation.

(7) At the hearing on August 7, 1986, applicants and Grynberg submitted schedules showing the revised allocations.

(8) The Commission adopts the allocation of costs submitted by Yates on their August 7, 1986, Exhibit No. 2 except that the cementing costs as shown by the Halliburton invoice dated February 19, 1984 should be reallocated on the basis of the amount of cement above the base of the Abo and the amount of cement below the base of the Abo.

(9) Morris Ettinger, witness for Grynberg, established that the top of the cement was 4,200 feet and that the top of the Wolfcamp was located at 5,378 feet.

(10) One thousand one hundred seventy eight feet (1,178) of cement were placed in the well below the base of the Abo.

(11) In accordance with the formula established by the Commission, \$4,827.97 should be allocated to depths above the Wolfcamp and \$4,172.23 should be allocated to depths below the Wolfcamp. These calculations are shown on Exhibit "A" attached hereto.

(12) Yates has paid Grynberg \$215,706.26 while the total amount due from Yates to Grynberg was \$134,326.99.



(13) After giving Grynberg credit for sums credited by him to applicants, Grynberg owes applicants the sum of \$78,770.96, all as shown on Exhibit "A" attached hereto.

IT IS THEREFORE ORDERED THAT:

(1) The total reasonable well costs and allocation of well costs attributable to the applicants, Yates Petroleum Corporation, Yates Drilling Company, Myco Industries, Inc., and Abo Petroleum Corporation (Yates), for the Grynberg State Com Well No. 1 located 1980 feet from the South line and 660 feet from the West line of Section 20, Township 9 South, Range 27 East, Chaves County, New Mexico, is hereby determined to be as shown on Exhibit "A" attached to this order.

(2) Based on the estimated well costs, Yates has overpaid the well operator in the amount of \$78,770.96.

(3) Jack J. Grynberg, as well operator, should repay the sum of \$78,770.96 to Yates.

IT IS FURTHER ORDERED THAT:

(2) 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

JIM BACA, Member

*Ed Kelley*

ED KELLEY, Member

*R. L. Stamets*  
R. L. STAMETS,  
Chairman and Secretary

S E A L

ALLOCATION OF COSTS - GRYNBERG STATE OIL WELL NO. 1

|                             |                  |                |
|-----------------------------|------------------|----------------|
| Deep Only - (schedule)      | \$ 50,631.07     |                |
| Deep Allocated - (schedule) | 58,481.63        | at indicated % |
| Abo Allocated - (schedule)  | 111,534.09       |                |
| Abo @ .8189 -               | 98,521.80        |                |
| Deep @ .1811 -              | <u>21,788.13</u> |                |
|                             | \$ 340,956.72    |                |

| <u>Zone Allocation</u> | <u>Total</u>              | <u>Applicants</u>                                   |
|------------------------|---------------------------|---|
| Deep                   | \$ 130,900.83 x .625 =    | \$ 81,813.02  |
| Abo                    | <u>210,055.85</u> x .25 = | <u>52,513.97</u>                                    |
|                        | \$ 340,956.72             | \$ 134,326.99<br><u>(215,706.26)</u><br>(81,379.27) |
|                        | (Grynberg payment)        | <u>2,608.31</u>                                     |
|                        |                           | (\$ 78,770.96)                                      |

Total Deep %

\$130,900.83      340,956.72 + .3839

Total Abo %

\$210,055.89      340,956.72 = .6161

CASE NO. 8901  
ORDER NO. R-7393-B  
EXHIBIT "A"

STATE OF NEW MEXICO  
DEPARTMENT OF ENERGY AND MINERALS  
OIL CONSERVATION COMMISSION

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

RECEIVED

JAN 20 1987

OIL CONSERVATION DIVISION

THE APPLICATION OF YATES DRILLING  
COMPANY, MYCO INDUSTRIES, INC.,  
AND ABO PETROLEUM CORPORATION FOR  
DETERMINATION OF REASONABLE WELL  
COSTS.

CASE: 8901  
ORDER: R-7393-b

APPLICATION OF GRYNBERG  
PETROLEUM COMPANY FOR REHEARING

COMES NOW GRYNBERG PETROLEUM COMPANY pursuant to the provisions of Section 70-2-25 NMSA (1978) and applies to the Oil Conservation Commission of New Mexico for a Rehearing of the above captioned case and order, and in support thereof states:

PARTIES:

1. Petitioner ("Grynberg") is a duly organized corporation doing business in the State of New Mexico, and is the operator of the Grynberg State I-20 Well located in W/2 of Section 20, T9S, R27E, NMPM, Chaves County, New Mexico.

2. The applicants in Case 8901 are Yates Petroleum Corporation, Yates Drilling Company, Myco Industries and

Abo Petroleum Corporation ("Yates") and are corporations duly organized under the laws of the State of New Mexico and are working interest owners in the Grynberg State I-20 Well.

3. The Oil Conservation Commission of the State of New Mexico, ("Commission") is a statutory body created and existing under the provisions of the Oil & Gas Act, Sections 70-2-1 through 70-2-36 NMSA (1978), laws of the State of New Mexico.

**STATEMENT OF FACTS:**

1. Grynberg owns the oil and gas working interest for the E/2SW/4 and SW/4SW/4 of Section 20.

2. Yates owns the oil and gas working interest for the NW/4 and the NW/4SW/4 of Section 20.

3. For purposes of this case, the W/2 of Section 20 would be dedicated to the PrePermian deep gas formation (Deep) in which Grynberg has 37.5 interest and Yates has 62.5% interest.

4. The SW/4 of Section 20 would be dedicated to the shallow gas formation (Abo) in which Grynberg would have a 75% interest and Yates would have a 25% interest.

5. The NW/4SW/4 being the 40-acre tract upon which the subject well is located would be a 40-acre oil well dedication for the San Andres oil potential of which Yates held 100% prior to the forced pooling order.

6. Both Grynberg and Yates sought to drill a well in the W/2 of Section 20 and each filed a compulsory pooling application to force pool the other.

7. Grynberg's force pooling case against Yates was docketed as Commission Case 7984.

8. Yates also filed a forced pooling case against Grynberg which was docketed as Commission Case 7983.

9. Both cases were consolidated and heard by the Commission on October 18, 1983 and on December 2, and 3rd, 1983 the Commission entered Order R-7393 approving the Grynberg application and Order R-7392 denying the Yates application.

10. On January 12, 1984, all of the Yates interests signed the Grynberg AFE for the Abo test and the AFE for the Deep Test and prepaid Grynberg \$215,706.26 for the drilling and completion of the well. (See Grynberg Exhibit 2 - June hearing).

11. On February 1, 1984 Grynberg spudded the Grynberg State I-20 well and completed the well on April 1, 1984 for a total cost of \$340,956.72.

12. On May 22, 1986 Yates filed an application with the Commission requesting a hearing to determine reasonable well costs.

13. At the June hearing Yates agreed that \$340,956.72 were the reasonable costs of the well but

objected to the method used by Grynberg to allocate those costs between Grynberg and Yates for the well.

14. Under the provisions of paragraph (25) of the Grynberg Compulsory Pooling Order R-7393, the Commission apportioned the costs between the Abo formation and the Deep formation as follows:

(25) That estimated well costs for the Abo formation, except for costs directly attributable to the Precambrian\*, should be estimated on the basis of depth for each formation and that costs for the Abo formation should not exceed 81.89 percent of the total costs of the proposed well, (5200 foot Abo depth/6350 foot total depth - 0.8189).

\* The word "Precambrian" was later corrected by the Commission Nunc Pro Tunc Order to correctly state the PrePermian meaning from the top of the Wolfcamp formation to the base of the Pennsylvanian formation, i.e., the deep formation.

15. On June 19, 1986 the Commission held the first of two hearings on the Yates Application (herein referred to as the "June hearing").

16. At the June hearing Yates contended that the Commission should first allocate to the Abo formation all the direct costs attributable to that zone, then allocate all of the direct costs attributable to the Deep formation and then divide the balance on a ratio of 81.89% to the Abo and 18.11% to the Deep zone. Using this formula, Yates contended that its share of the costs of the well should be \$125,589.37 (See Yates Exhibit 1 - June hearing).

17. At the same hearing, Grynberg contended that subsequent to the entry of Order R-7393, two important changes had occurred:

(a) That Yates has signed the AFE thus constituting a contractual agreement between the parties which substitute for the compulsory pooling order; and

(b) That the San Andres oil zone on 40-acre spacing was of sufficient potential to require that it share in the cost allocation for the well.

18. Grynberg contended that should the Commission agree to allocate the costs of the well among the San Andres, Abo and Wolfcamp, and assuming that Yates held 100% of the San Andres zone, then Yates share of the costs of the well would be \$169,767.64. (See Grynberg Exhibit 9 and page 54 Transcript -June hearing).

19. Grynberg further contended that should the Commission decide to exclude the San Andres zone, then the costs allocation to Yates should be \$151,728.44. (See Grynberg Exhibit 7 - June hearing).

20. During the June hearing, there was a discussion off the record after which the Commission ruled that neither party had calculated the allocation of well costs in accordance with the Commission's interpretation of Paragraph 25 of Order R-7393. (See page 69 - June Transcript). However, the Commission did not then, nor in the August hearing, state on the record its interpretation.

21. The case was then continued to the August 7, 1986 Commission hearing and the parties directed to

recalculate the allocations and to exchange those recalculations in advance of the August 7, 1986 hearing.

22. At the August 7, 1986 Hearing without providing a copy to Grynberg in advance of the hearing and over the objection of Grynberg, Yates introduced its allocation of costs (Yates Exhibit 2 - August hearing). That allocation followed the same formula that Yates had followed for the June hearing but this time showed a cost to the Deep formation of \$128,353.54 and a cost to the Yates interest of \$133,373.64.

23. At the August hearing, the Commission excluded the testimony of Mr. Grynberg concerning the potential of the San Andres zone and its share of the allocation of the costs of the well. (See page 56 - August hearing transcript).

24. Grynberg introduced a cost allocation exhibit showing an allocation of costs directly attributable to the Deep zone with the balance of the costs being allocated on a ratio of 81.89% to the Abo and 18.11% to the Deep zone with a resulting cost to the Yates interest for the well of \$153,773.11 (See Grynberg Exhibit 10 - August hearing).

25. One of the principal differences between Yates and Grynberg were the allocation of the following items:



| <u>ITEM/TOTAL</u>                           | <u>Abo</u>  | <u>PrePermian</u> |
|---|-------------|-------------------|
| 2/12/84 Schlumberger logging<br>\$20,363.86 |             |                   |
| Yates:                                      | \$14,443.37 | \$5,920.49        |
| Grynberg:                                   |             | \$9,658.62        |
| Halliburton cement \$9,000.20               |             |                   |
| Yates:                                      | \$ 7,370.26 | \$1,629.94        |
| Grynberg:                                   |             | \$3,451.74        |
| Desert Drilling \$114,005.07                |             |                   |
| Yates:                                      | \$86,256.27 | \$27,748.80       |
| Grynberg:                                   |             | \$60,002.67       |

26. As to the daily drilling costs, Grynberg presented evidence that of the 19 days spent drilling the well, ten days were directly attributable to the Deep formation.

27. Yates contended that the drilling costs should be allocated on a footage basis regardless of how much of the actual drilling time was spent in the deep formation. The Commission accepted Yates contention on this point. (Page 87 - August hearing Transcript).

28. As to the cementing costs, the Commission directed it be allocated 20 percent to the Abo and 80 percent to the Deep zone, based upon using 4200 feet as the top of the cement and Yates pick of the top of the Wolfcamp (Deep zone) which was 5378 feet.

29. As to the Schlumberger logging, Grynberg allocated 100 percent of the depth charge to the Deep zone for all of the four logs while Yates allocated 100

percent of the depth charge to the Deep zone on only one of the four logs with the balance of the logging depth charge being allocated between the deep and Abo zones based upon a footage ratio. Each party allocated the logging portion of the charges based upon the footage logged in the Deep zone. The Commission accepted Yates contention on this point. (Page 87 - August hearing Transcript).

30. In deciding each of the cost allocations set forth in paragraph 25 above, the Commission failed to follow the allocation formula set forth in Paragraph (25) of Order R-7393.

31. The Commission further held that the Order was still in effect, and denied Grynberg's motion to Dismiss notwithstanding the signature by Yates of the Grynberg AFE's.

32. On December 31, 1986 the Commission entered Order R-7393-B finding that Yates' share of the cost of the well should be \$134,326.99.

33. Within twenty days of the date of Order R-7393-B, Grynberg has filed this Application for Rehearing.

## GROUND FOR REHEARING

POINT I: ORDER R-7393-B SHOULD BE REVERSED  
BECAUSE THE COMMISSION FAILED TO  
MAKE A "BASIC CONCLUSION OF FACT."

Order R-7393-B fails to comply with the applicable statutory and judicial mandates set forth in Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 373 P2d 809 (1962) by failing to find that Order R-7393-B will protect correlative rights and prevent waste. The Order is void of the requisite findings concerning waste and protection of correlative rights.

POINT II: ORDER R-7393-B SHOULD BE REVERSED  
BECAUSE THE ORDER FAILS TO CONTAIN  
SUFFICIENT FINDINGS.

Commission Order R-7393 provides a means by which any party can object to the costs of the well and obtain a hearing before the Commission to determine the reasonable costs of the well. Yates had no objection to and concedes that the total well cost of \$340,956.72 is a reasonable well cost. However, under the guise of that provision of the original compulsory pooling order, Yates filed an application to have the Commission decide whether Grynberg had correctly allocated the costs to the various zones in the well.

In deciding that issue, the Commission entered Order R-7393-B which contains Finding (8) thereby adopted the

allocation of costs submitted by Yates and by implication denied the allocation submitted by Grynberg. The Commission has failed to provide the necessary findings which disclose its reasoning for rejecting the Grynberg allocation and adopting, with modification, the Yates allocation.

In addition, the Order fails to disclose why the Commission did not consistently use the same formula for allocation of each of the well costs. Such an inconsistency, without explanation, fails to conform to disclosure requirements required by the New Mexico Supreme Court in Fasken v. Oil Conservation Commission, 87 N.M. 292, 532 P.2d 588 (1975). The Court, in Fasken, held that not only must the Commission order contain ultimate findings such as "prevention of waste and protection of correlative rights," the order must also contain sufficient findings to disclose the reasoning of the Commission.

POINT III: THE ALLOCATION OF COSTS SET FORTH IN  
ORDER R-7393-B ARE CONTRARY TO  
PARAGRAPH (25) OF ORDER R-7393.

On December 2, 1983, the Commission entered Order R-7393 which included the following:

(25) That estimated well costs for the Abo formation, except for costs directly attributable to the Precambrian, should be established on the basis of depth for each formation and that costs for the

Abo formation should not exceed 81.89 percent of the total costs of the proposed well, (5200 foot Abo depth/6350 foot depth = 0.8189).

The word "precambrian" was later corrected by a Nunc Pro Tunc order to correctly show the PrePermian.

The above finding required that all of the costs directly attributable to the Deep zone be determined and then the remaining amount to be divided on a ratio of 81.89% to the Abo and 18.11% to the Deep zone.

Mr. Grynberg's Exhibit 10 (August hearing) correctly applied the provisions of Order R-7393. In addition, Mr. Grynberg showed that the logging and daily drilling costs should be allocated to reflect the actual time spent in those activities in the Deep zone. Conversely, Yates used a footage allocation for some items and apportioned others based upon the 81.89% to the Abo and 18.11% to the Deep zone and used Grynberg's approach for still other items.

The Commission, without amending Order R-7393, and contrary to that order, decided to allocate the costs on a different basis and apparently has allocated certain direct costs to the Abo and certain direct costs to the Deep zone then divided some of the remaining balance between the two zones on a ratio of 81.89% to the Abo and 18.11% to the Deep zone and others on a footage basis different from that calculated in Order R-7393. At the August hearing, the Commission stated on the record that

it was not following Paragraph (25) of Order R-7393: "Mr. Grynberg, for what it's worth, I would point out that the method that is currently being used for allocation of costs under these conditions is substantially different from the one that's in this order..." (Page 44 - August hearing Transcript).

While the Commission stated at the August hearing that "this is certainly a confusing finding and I can understand why there have been problems with allocation of well costs." (See page 22 - August hearing Transcript) there is nothing in the subsequent Order R-7393-B to explain or justify why the Commission failed to follow the terms of the original order. Such action violates the requirements set forth by the New Mexico Supreme Court in Fasken.

POINT IV: ORDER R-7393-B IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, IS ARBITRARY AND CAPRICIOUS AND IS CONTRARY TO LAW.

The following findings made by the Commission in Order R-7393-B are not supported by substantial evidence, are arbitrary and capricious and contrary to law:

(6) The Commission determined that neither Grynberg nor applicants have calculated the reasonable well costs as stated in the above-described order in accordance

with the Commission's interpretation of that order and required the parties to resubmit the allocation of costs based upon such interpretation.

(8) The Commission adopts the allocation of costs submitted by Yates on their August 7, 1986, Exhibit No. 2 except that the cementing costs as shown by the Halliburton invoice dated February 19, 1984 should be reallocated on the basis of the amount of cement above the base of the Abo and the amount of cement below the base of the Abo.

(9) Morris Ettinger, witness for Grynberg, established that the top of the cement was 4,200 feet and that the top of the Wolfcamp was located at 5,378 feet.

(10) One thousand one hundred seventy eight feet (1,178) of cement were placed in the well below the base of the Abo.

(11) In accordance with the formula established by the Commission, \$4,827.97 should be allocated to depths above the Wolfcamp and \$4,172.23 should be allocated to depths below the Wolfcamp. These calculations are shown on Exhibit "A" attached hereto.

(12) Yates has paid Grynberg \$215,706.26 while the total amount due from Yates to Grynberg was \$134,326.99.

(13) After giving Grynberg credit for sums credited by him to applicants, Grynberg owes applicants the sum of \$78,770.96, all as shown on Exhibit "A" attached hereto.

POINT V:           THE COMMISSION IMPROPERLY EXCLUDED  
                  GRYNBERG'S TESTIMONY AND FAILED TO  
                  ALLOCATE A PORTION OF THE WELL COSTS  
                  TO THE SAN ANDRES FORMATION.

At the June hearing, the Commission received evidence by Mr. Morris Ettinger on behalf of Grynberg concerning an allocation of a portion of the costs to the San Andres formation and admitted over the objection of Yate's attorney Grynberg's Exhibit 9 which showed how to make that allocation. (See pages 53-55 and 57-58 June Transcript). However, at the August Hearing the Commission sustained Yate's objection on relevancy and excluded Mr. Grynberg's testimony about the allocation of costs to the San Andres formation. (See pages 55-56 August Transcript.)

In order to accomplish the Commission's intended purpose of allocating the well costs between the parties on some reasonable basis, the Commission both at the June and August hearing admitted certain new evidence that was



not available when the original compulsory pooling order was entered on December 2, 1983. In addition, the Commission selectively used certain of that evidence to modify the provisions of paragraph (25) of the original order.

When it came to the evidence concerning which of the potential producing formations should participate in the allocation of well costs, the Commission made evidentiary rules in August that were inconsistent with prior rulings made in June.

The exclusion of Grynberg's August evidence was erroneous and inconsistent with the prior admission of similar evidence in June. The Commission's ruling is arbitrary, inconsistent, capricious, and contrary to law.

POINT IV: THE COMMISSION ERRONEOUSLY DENIED  
GRYNBERG'S MOTION TO DISMISS THE  
YATES' APPLICATION.

Subsequent to the Compulsory Pooling Order R-7393 entered effective December 2, 1983, Yates voluntarily executed the Grynberg's Authority for Expenditure for the subject well and prepaid its share of the costs of the well. Grynberg contends that this action by Yates constituted a separate voluntary agreement between the parties which reallocated the interests in the various spacing units and made the Commission compulsory Pooling order moot.

This issue was presented to the Commission at the August hearing and the Commission ruled adversely to Grynberg. (See page 50-52 August Transcript).

The Commission has historically viewed any agreement which is voluntarily entered into after the issuance of a compulsory pooling order to supersede that order. (See page 51 August Transcript). However, without evidence to support it, the Commission erroneously equated the signing of the Grynberg AFE's as simply an indication by Yates that they were signing to avoid the risk factor penalty of the compulsory pooling order. First, there is no evidence in the record to support the speculation by the Commission that Yates was simply avoiding the risk factor penalty, and second, the provision of Order R-7393 only required the prepayment by Yates of its share of the costs of the well. The Order does not require the execution by Yates of the AFEs. Such action by Yates can reasonably be concluded to be a voluntary agreement negating the need for the pooling order.

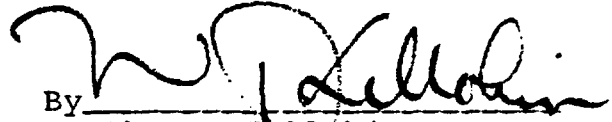
The Commission's failure to dismiss the application constitutes error.

WHEREFORE, GRYNBERG PETROLEUM COMPANY respectfully requests that the Commission grant a Rehearing in the above styled case and that after rehearing, the Commission vacate and set aside its Order R-7393-B and

enter its Order consistent with the matters set forth in  
this Application for Rehearing.

Respectfully submitted:

Kellahin, Kellahin & Aubrey



By  
W. Thomas Kellahin  
P. O. Box 2265  
Santa Fe, New Mexico 87504

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing  
application was mailed to Joel Carson, Esq., Losee &  
Carson, Attorneys at Law, P. O. Drawer 239, Artesia, New  
Mexico 88210 on this 22 day of January, 1987.



W. Thomas Kellahin

AFFIDAVIT OF JACK J. GRYNBERG

Jack J. Grynberg, being first duly sworn, states as follows:

1. I am over the age of eighteen years and fully competent to testify as to the matters herein contained.

2. I am President of Grynberg Petroleum Company.

3. That I am doing business under the name of Grynberg Petroleum Company, which is not incorporated.

4. The Grynberg State 1-20 is the well which was the subject of the application filed in Case No. 8901 before the Oil Conservation Division.

5. Grynberg Petroleum Company neither owns an interest in nor operates the subject well.


6. I, individually, am the operator of the Grynberg State 1-20 well as agent for and on behalf of the real parties in interest which are Celeste C. Grynberg and Dean G. Smernoff, as Co-Trustees for the Rachel Susan Trust, the Stephen Mark Trust and the Miriam Zela Trust which have a 37.5% working interest in the subject well.

7. I retained Kellahin, Kellahin & Aubrey to petition the district court for review of the Commission's Order in Case No. 8901 on my behalf and on behalf of Celeste C. Grynberg and Dean G. Smernoff, as Co-Trustees for the Rachel Susan Trust, the Stephen Mark Trust and the Miriam Zela Trust.

  
\_\_\_\_\_  
Jack J. Grynberg

STATE OF Colorado )  
 ) ss.  
COUNTY OF Arapahoe )

SWORN AND SUBSCRIBED TO before me by Jack J. Grynberg on this 18th day of March, 1987.

  
\_\_\_\_\_  
Notary Public  
Linda L. Magnuson

My Commisison Expires:

March 13, 1990

**AFFIDAVIT OF W. THOMAS KELLAHIN**

State of New Mexico     )  
                                  )   ss  
County of Santa Fe     )

W. Thomas Kellahin, being first duly sworn, states as follows:

1. I am over the age of eighteen years and fully competent to testify as to the matters contained herein.

2. I am a partner in the law firm of Kellahin, Kellahin & Aubrey.

3. Our firm was retained by Jack J. Grynberg to petition this Court for a review of an Oil Conservation Division ("OCD") Order in Case No. 8901.

4. Mr. Grynberg is known to me as the president of Grynberg Petroleum Company.

5. Our firm did not represent Mr. Grynberg or any other parties to Case 8901 before the OCD.

6. My review of the proceedings before the OCD led me to believe that Grynberg Petroleum Company was the real party in interest.

7. As a result of my review, I named Grynberg Petroleum Company as Petitioner in the original Complaint.

8. As a result of issues raised in the Respondents' Answer filed March 5, 1987 I discovered that Jack J. Grynberg, individually, and doing business as Grynberg

Petroleum Company, and as grantor of the Rachel Susan (Grynberg) Trust, the Stephen Mark (Grynberg) Trust and the Mirian Zela (Grynberg) Trust, and as agent for and on behalf of Celeste C. Grynberg and Dean G. Smernoff, Co-Trustees for the Rachel Susan Trust, the Stephen Mark Trust, and the Marian Zela Trust, as opposed to Grynberg Petroleum Company, all the real parties in interest. The Grynberg State 1-20, which well is the subject of our Petition, is operated by Jack J. Grynberg, doing business as Grynberg Petroleum Company.

9. Captioning the Petition in the name of Grynberg Petroleum Company was an honest mistake on my part.

10. It was never my intention to delay these proceedings or to disadvantage Respondents in any way by naming Grynberg Petroleum Company as Petitioner instead of Jack J. Grynberg.

  
W. Thomas Kellahin

SUBSCRIBED AND SWORN to before me this 9th day of April, 1987, by W. Thomas Kellahin.

  
Notary Public

My Commission Expires:

9-26-87

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.

RATIFICATION

COMES NOW, Celeste C. Grynberg and Dean G. Smernoff, Co-Trustees for the Rachel Susan Trust, Stephen Mark Trust, and the Miriam Zela Trust and Jack J. Grynberg, doing business as Grynberg Petroleum Company, real parties in interest, and hereby ratify and consent to this cause of action and agree to be substituted as Petitioners herein.

  
Celeste C. Grynberg

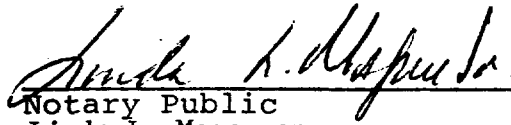
  
Dean G. Smernoff

  
Jack J. Grynberg



STATE OF Colorado )  
 )  
COUNTY OF Arapahoe ) ss.

SUBSCRIBED AND SWORN TO before me by Celeste C. Grynberg  
on this 18th day of March, 1987.

  
\_\_\_\_\_  
Notary Public  
Linda L. Magnuson

My Commission Expires:

March 13, 1990

STATE OF Colorado )  
 )  
COUNTY OF Arapahoe ) ss.

SUBSCRIBED AND SWORN TO before me by Dean G. Smernoff, on  
this 18th day of March, 1987.

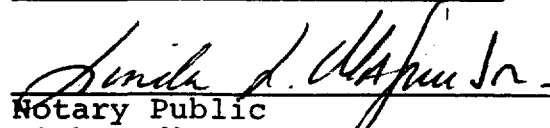
  
\_\_\_\_\_  
Notary Public  
Linda L. Magnuson

My Commission Expires:

March 13, 1990

STATE OF Colorado )  
 )  
COUNTY OF Arapahoe ) ss.

SUBSCRIBED AND SWORN TO before me Jack J. Grynberg on  
this 18th day of March, 1987.

  
\_\_\_\_\_  
Notary Public  
Linda L. Magnuson

My Commission Expires:

March 13, 1990

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.

**MEMORANDUM IN SUPPORT OF MOTION FOR**  
**LEAVE TO AMEND ORIGINAL COMPLAINT**  
**TO SUBSTITUTE PARTY**

Petitioner has filed a motion with this Court for leave to amend its original complaint to substitute Jack J. Grynberg, individually, and doing business as Grynberg Petroleum Company, and as grantor of the Rachel Susan (Grynberg) Trust, the Stephen Mark (Grynberg) Trust and the Miriam Zela (Grynberg) Trust, and as agent for and on behalf of Celeste C. Grynberg and Dean G. Smernoff, Co-Trustees for the Rachel Susan Trust, the Stephan Mark Trust and the Miriam Zela Trust, for Grynberg Petroleum Company as Petitioner.

Such motion should be granted for the reasons set out below.

**Grynberg is Real Party in Interest**

Jack J. Grynberg doing business as Grynberg Petroleum Company is the operator of the Grynberg State 1-20, for and on behalf of Celeste C. Grynberg and Dean G. Smernoff, Co-Trustees of the Rachel Susan Trust, the Stephan Mark Trust and the Miriam Zela Trust have a 37.5% working interest in this well, which is the subject of this cause of action and as such are the real parties in interest. (See Exhibit B attached to Motion for Leave to Amend).

**The Caption Error was an Honest Mistake  
on the Part of Counsel**

The transcript of proceedings of Oil Conservation Division Case No. 8901 reflects that the name "Jack J. Grynberg" and "Grynberg Petroleum Company" were used interchangeably; employees or officers of Grynberg Petroleum Company testified at the Commission hearings; and exhibits at the Commission hearings were marked "Grynberg Petroleum Company." (See Exhibit A hereto).

Kellahin, Kellahin and Aubrey did not represent any of the parties at the Commission proceedings. They were retained by Mr. Grynberg to file an appeal from the Commission's order in Case No. 8901. From review of the transcript of those proceedings, it appeared to counsel that Grynberg Petroleum Company

was the real party in interest.

Such mistake was an honest one on the part of counsel and not made willfully or knowingly. (See Exhibit C attached to Motion for Leave to Amend).

**All Claims Are the Same Under the Amended Complaint**

The claims stated in the proposed Amended Complaint, (See Exhibit A attached to Motion for Leave to Amend) are identical to those in the original complaint. Grynberg Petroleum Company and Jack J. Grynberg, individually, and doing business as Grynberg Petroleum Company, and as grantor of the Rachel Susan (Grynberg) Trust, the Stephen Mark (Grynberg) Trust and the Miriam Zela (Grynberg) Trust, and as agent for and on behalf of Celeste C. Grynberg and Dean G. Smernoff, Co-Trustees for the Rachel Susan Trust, the Stephan Mark Trust and the Miriam Zela Trust have a substantial identity of interest such that the claims upon which the amended complaint are based arise out of the same conduct and occurrence as the claims in the original Complaint.

**Amendments Are Allowed by Rules and Favored  
by the New Mexico Supreme Court**

N.M.R. Civ.P. 1-017 states that the court may allow a reasonable time for ratification of commencement of an action by or substitution of the

real party in interest. N.M.R. Civ.P. 1-015(c) states that the court may allow an amendment to relate back to the date of filing of the original pleading.

The Petition for Review was filed on February 16, 1987. Respondents Yates, Myco and Abo's Answer was filed on March 6, 1987. The Oil Conservation Commission has not yet filed its answer. Petitioner moved to amend as soon as he discovered this mistake and submits that its actions fall well within the "reasonable time" allowed by Rules 1-017 and 1-015(c), N.M.R.Civ. P. Jack J. Grynberg, etc. the real parties in interest, have filed their ratification of commencement of this action herewith.

The Supreme Court of New Mexico has made it clear that its ultimate goal in interpreting Rules 1-017 and 1-015(c) is justice, not "hypertechnical pleading restrictions inimical to just resolution of disputed claims." See, Galion v. Conmaco International, Inc., 99 N.M. 403, 658 P.2d 1130 (1983); Chavez v. Regents of University of New Mexico, 103 N.M. 606, 711 P.2d 883 (1985).

The Court's concern is that none of the parties be prejudiced by allowing an amendment to relate back to the date of the filing of the original. There can be no prejudice here. Where this requirement is met, as in the instant case, "amendments should be freely

granted and allowed to relate back to the date a complaint was originally filed..." Galion, supra at 610.

WHEREFORE, for reasons stated herein  
Petitioner's Motion should be granted.

Respectfully submitted,

KELLAHIN, KELLAHIN & AUBREY  
Post Office Box 2265  
Santa Fe, New Mexico 87504  
Telephone: (505) 982-4285

By:   
W. Thomas Kellahin

Attorneys for Petitioner

CERTIFICATE OF MAILING

I hereby certify that I have caused to be mailed a true and correct copy of the foregoing pleading to Jeffrey Taylor, Esq., Oil Conservation Commission, Post Office Box 2088, Santa Fe, New Mexico 87501 and Joel Carson, Esq., Post Office Drawer 239, Artesia, New Mexico 88210, on this 9 day of April, 1987.

  
W. Thomas Kellahin

COMPLETION REPORT

|   |           |
|---|-----------|
| FILE THE<br>OIL CONSERVATION COMMISSION<br>SANTA FE, NEW MEXICO |           |
| Case No. 7824   | Ex. No. 4 |
| Submitted by <del>GeoVann</del> P.C.T.                          |           |
| Hearing Date 6/19/86  |           |

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'.





207 SOUTH FOURTH STREET  
ARTESIA, NEW MEXICO 88210

TELEPHONE (505) 748-1331

20  
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.

Very truly yours,

YATES PETROLEUM CORPORATION

*Janet Richardson*  
Janet Richardson  
Landman

|                                  |                      |
|----------------------------------|----------------------|
| BEFORE THE                       |                      |
| OIL CONSERVATION COMMISSION      |                      |
| Santa Fe, New Mexico             |                      |
| Case No. <u>7916</u>             | Exhibit No. <u>2</u> |
| Submitted by <u>Grynberg Pet</u> |                      |
| Hearing Date <u>1/19/84</u>      |                      |

JR/mw

cc: Oil Conservation Commission  
Santa Fe, New Mexico.

DESERT DRILLING, INC.  
P. O. Box 146 — 2721 LOVINGTON HIGHWAY  
TELEPHONE 505 392-5301  
HOBBS, NEW MEXICO 88240

JUL 29 1985

SOLD TO

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

|   |               |
|---|---------------|
| INVOICE DATE Feb. 21, 1984                |               |
| DEFECT THE<br>OIL CONSERVATION COMMISSION |               |
| Santa Fe, New Mexico                      |               |
| Case No. 8901                             | EXHIBIT No. 5 |
| Submitted by Grynberg Pet                 |               |
| Hearing Date 6/19/84                      |               |

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

|     |  |                     |
|-----|--|---------------------|
| Day | 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         |
|     |  | <u>\$ 11,416.74</u> |

|               |              |
|---------------|--------------|
| 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

Spill in 83

99200  
14806.07  
114,005.07

STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION DIVISION  
STATE LAND OFFICE BUILDING  
SANTA FE, NEW MEXICO

19 June 1986

COMMISSION HEARING

IN THE MATTER OF:

Application of Yates Petroleum                   CASE  
Corporation, Yates Drilling Com-               8901  
pany, Myco Industries, Inc., and  
Abo Petroleum Corporation for  
determination of reasonable well  
costs, Chaves County, New Mexico.

BEFORE: Richard L. Stamets, Chairman  
Ed Kelley, Commissioner

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the Oil Conservation                   Charles E. Roybal  
Division:                   Attorney at Law  
                              Energy and Minerals Dept.  
                              525 Camino de Los Marquez  
                              Santa Fe, New Mexico 87501

For Yates Petroleum, et al: Joel Carson  
                              Attorney at Law  
                              LOSEE & CARSON  
                              P. O. Drawer 239  
                              Artesia, New Mexico 88201

## A P P E A R A N C E S

~~For Grynberg:~~ Ernest L. Padilla  
Attorney at Law  
PADILLA & SNYDER  
P. O. Box 2523  
Santa Fe, New Mexico 87504

## I N D E X

## TOM KELLEY

|                                    |    |
|------------------------------------|----|
| Direct Examination by Mr. Carson   | 5  |
| Cross Examination by Mr. Padilla   | 23 |
| Redirect Examination by Mr. Carson | 29 |

## MORRIS ETTINGER

|                                   |    |
|-----------------------------------|----|
| Direct Examination by Mr. Padilla | 31 |
| Cross Examination by Mr. Carson   | 59 |

1  
2 MR. STAMETS: Call next Case  
3 8901.

4 MR. ROYBAL: Case 8901. Appli-  
5 cation of Yates Petroleum Corporation, Yates Drilling Com-  
6 pany, Myco Industries, Inc., and Abo Petroleum Corporation  
7 for determination of reasonable well costs, Chaves County,  
8 New Mexico.

9 MR. STAMETS: Call for appear-  
10 ances.

11 MR. CARSON: Mr. Chairman, my  
12 name is Joel Carson, Losee & Carson, P. A., Artesia, New  
13 Mexico, appearing on behalf of the applicants, Yates Petro-  
14 leum Corporation, Yates Drilling, Myco Industries, and Abo  
15 Petroleum.

16 MR. PADILLA: Mr. Chairman, my  
17 name is Ernest L. Padilla, Santa Fe, New Mexico, for Jack J.  
18 Grynberg, and I have one witness.

19 MR. STAMETS: I'd like to have  
20 all those who are witnesses stand and be sworn at this time,  
21 please.

22  
23 (Witnesses sworn.)  
24  
25

1 has been called Applicant's Exhibit One-A, with the applica-  
2 tion being styled Exhibit Number One.

3 Would you tell us what Exhibit One-A is?

4 A I'm sorry, I --

5 Q There it is right there. One-A is an or-  
6 der of the Commission, is it not?

7 A That's correct.

8 Q In Cause Number 7983?

9 A Yes, sir. You want me to explain it to  
10 you as I understand it?

11 Q No, not -- just -- just to identify that  
12 one and then let's go to Exhibit -- Case Number 7984 and --  
13 and identify it and explain to me what -- to the Commission  
14 what it means in general terms -- means to you in general  
15 terms, I guess, is what I want to say.

16 A Okay. Case Number 7984 is an order force  
17 pooling Yates' interests into this unit and naming Jack  
18 Brynberg as the operator.

19 Q Okay, so for purposes of your accounting  
20 how did you allocate costs between the Abo formation and the  
21 deep formations?

22 A Okay, I allocated the cost based on what  
23 I understand as to what actually happened as the drilling  
24 and completion progressed. Those costs that I could ident-  
25 ify that were wholly within the deep rights, that's where I  
put them. Those costs that occurred on the surface I

1 some questions for him later.

2 And you may proceed, Mr.  
3 Padilla.

4  
5 MORRIS ETTINGER,  
6 being called as a witness and being duly sworn upon his  
7 oath, testified as follows, to-wit:

8  
9 DIRECT EXAMINATION

10 BY MR. PADILLA:

11 A Mr. Ettinger, will you please state your  
12 name and by whom you're employed?

13 ~~My name is~~ My name is Morris Ettinger and I am the  
14 exploration manager for Grynberg Petroleum.

15 Q Mr. Ettinger, were you involved in the  
16 case of the Oil Conservation Commission numbered 7984?

17 A Yeah, I was here before the Commission.

18 Q You were an expert witness in that case?

19 A Yes.

20 Q And you have been qualified as an expert  
21 engineer before the Commission on other occasions?

22 A Yes.

23 Q What are your current duties now with the  
24 -4 Jack Grynberg?

25 A I am the, actually, Executive Vice Presi-

1 ent and Manager of Exploration and in charge of all the ex-  
2 ploration activity and some of the production activities.

3 Q In connection with the number -- the well  
4 in question, which is the 1-20 in Section 20 of Township 9  
5 South, Range 27 East, you were also involved as the Explora-  
6 tion Manager?

7 A Yes.

8 Q And you are familiar with the costs and  
9 have made a study of those costs associated with drilling  
10 the well?

11 A Yes.

12 MR. PADILLA: I tender Mr. Et-  
13 tinger as a witness, an expert witness.

14 MR. CARSON: For the purpose of  
15 testifying concerning the well values and the costs in  
16 drilling this well.

17 MR. STAMETS: Do you have some  
18 questions as to Mr. Ettinger's ability to testify in this  
19 case?

20 MR. CARSON: I have no objec-  
21 tion to him as an engineer.

22 MR. STAMETS: Okay, then we  
23 will qualify Mr. Ettinger as an Exploration Manager and pet-  
24 roleum engineer.

25 Q Mr. Ettinger, can you give us the back



STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION DIVISION  
STATE LAND OFFICE BLDG.  
SANTA FE, NEW MEXICO

7 August 1986

COMMISSION HEARING

IN THE MATTER OF:

Application of Yates Petroleum Cor- CASE  
poration, Yates Drilling Company, Myco 8901  
Industries, Inc., and Abo Petroleum  
Corporation for determination of  
reasonable well costs, Chaves County,  
New Mexico.

BEFORE: Richard L. Stamets, Chairman  
Ed Kelley, Commissioner

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the Oil Conservation  
Division:

Jeff Taylor  
Attorney at Law  
Legal Counsel to the Division  
State Land Office Bldg.  
Santa Fe, New Mexico 87501

For the Applicants:

Joel Carson  
Attorney at Law  
LOSEE & CARSON  
P. O. Drawer 239  
Artesia, New Mexico 88210

For Jack J. Grynberg:

Ernest L. Padilla  
Attorney at Law  
PADILLA & SNYDER  
P. O. Box 2325  
Santa Fe, New Mexico 87504

1 Commission's interpretation of this order, ~~how much do you~~  
2 ~~believe Mr. Grynberg owes Yates?~~

3 A My interpretation of the order, my allo-  
4 cation indicates that he owes Yates \$79,724.31.

5 MR. CARSON: I would move the  
6 introduction of Applicant's Exhibit Number Two.

7 MR. STAMETS: Let me just ask  
8 Mr. Kelley a few questions about Exhibit Number Two before  
9 we admit this.

10  
11 CROSS EXAMINATION

12 BY MR. STAMETS:

13 Q The allocation of costs and calculation  
14 of what Yates is due from Mr. Grynberg is shown on page one  
15 of Exhibit Two, right?

16 A Yes, sir.

17 Q And the last page, page five of Exhibit  
18 Two shows your interpretation of which charges are appli-  
19 cable to the deep horizon only.

20 A Yes, sir, that's correct.

21 Q Now, the charges, deep charges, are these  
22 different from the deep charges that you submitted at the  
23 original hearing in this case?

24 A Yes, sir, they are.

25 Q Okay, and they would reflect costs for

LAW OFFICES

**LOSEE & CARSON, P. A.**

300 AMERICAN HOME BUILDING

P. O. DRAWER 239

ARTESIA, NEW MEXICO 88211-0239

A. J. LOSEE

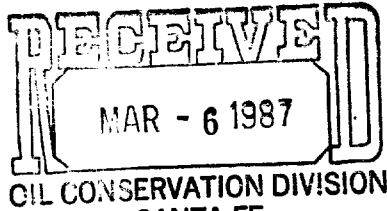
JOEL M. CARSON

JAMES E. HAAS

ERNEST L. CARROLL

AREA CODE 505  
746-3508

TELECOPY  
746-6316



5 March 1987

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

Re: Grynberg v. Oil Conservation Commission, et al.,  
No. CIV-87-103

Dear Mrs. Ferrin:

Enclosed herewith, for filing in the above numbered and styled cause, please find the Answer to Complaint of petitioner on behalf of the respondents, Yates Drilling Company, Myco Industries, Inc. and Abo Petroleum Corporation. I am by copy of this letter furnishing opposing counsel with a copy of same. Please return a filed copy to me for my file. Thank you.

Yours truly,

LOSEE & CARSON, P. A.

  
Joel M. Carson

JMC:bjk  
Enclosures

xc w/encl: Mr. W. Thomas Kellahin  
Mr. Jeffery Taylor  
Mr. Tom Kelley

FIFTH JUDICIAL DISTRICT COURT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

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.

No. CIV-87-103

ANSWER TO COMPLAINT  
PETITION FOR REVIEW OF DECISION OF  
OIL CONSERVATION COMMISSION OF NEW MEXICO

COME NOW the respondents, Yates Drilling Company, Myco Industries, Inc., and Abo Petroleum Corporation ("Yates"), and for their answer state:

PARTIES

1. Denied.
2. Admitted.
3. Admitted.

#### GENERAL STATEMENT OF FACTS

1. Yates admit that on or about October 18, 1983 the Oil Conservation Commission held a hearing on the application of Jack J. Grynberg and Yates to compulsory pool the other for the drilling of the Grynberg State I-20 Well, but deny that Grynberg Petroleum Company ("Grynberg") made the above described application.

2. Admitted, except that Yates deny that Grynberg was a party to the application.

3. Admitted, except that Yates paid its share of the costs to Jack J. Grynberg, not Grynberg.

4. Admitted, except Yates deny that the well was completed by Grynberg.

5. Admitted.

6. Admitted.

7. Admitted.

#### JURISDICTION

1. Denied.

2. Admitted.

#### RELIEF SOUGHT

Yates deny that Grynberg is entitled to any relief or that the Court has jurisdiction over the subject matter of this action.

AFFIRMATIVE DEFENSES

1. That Grynberg is not a person affected by an order of the Oil Conservation Commission within the meaning of Section 70-2-25, N.M.S.A., 1978, and, therefore, has no standing to appeal an order of the Commission.

2. That petitioner has failed to join the real party in interest, namely Jack J. Grynberg.

3. That the Court has no jurisdiction over the subject matter of this action.

4. That petitioner's petition fails to state a claim for which relief can be given.

WHEREFORE, Yates prays that the petition be dismissed, for its costs herein, and for such other relief as may be proper.

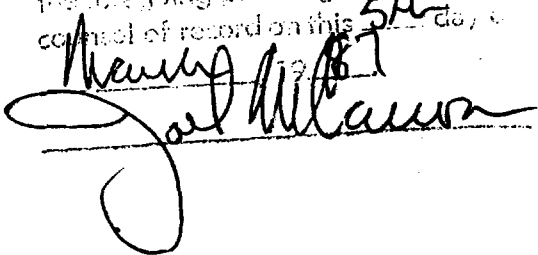
LOSEE & CARSON, P.A.

By: 

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

Attorneys for Respondents,  
Yates Drilling Company, Myco  
Industries, Inc. and Abo  
Petroleum Corporation

I certify that I mailed a true copy of  
the foregoing pleading to opposing  
counsel of record on this 5th day of



STATE OF NEW MEXICO  
COUNTY OF CHAVES  
IN THE DISTRICT COURT

GRYNBERG PETROLEUM COMPANY,

Petitioner,

v.

No. CV-87-103

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

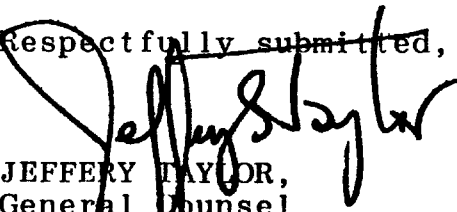
Respondents.

RESPONSE OF THE OIL CONSERVATION COMMISSION  
IN OPPOSITION TO MOTION TO AMEND COMPLAINT

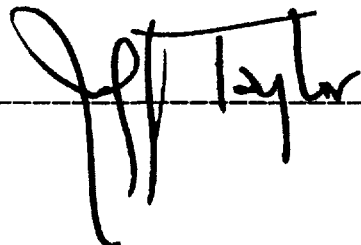
The New Mexico Oil Conservation Commission, respondent in this action, opposes the motion of Petitioner to amend the Complaint or Petition filed in this action. Because the original named Petitioner does not appear to have been a party to the administrative proceeding that led to the instant appeal, it may be without standing to file the appeal and thus the Court could not entertain this proceeding pursuant to the appeal provisions of the Oil and Gas Act, Section 70-2-25(B) NMSA 1978. Neither does it appear, moreover, that the entities that would be substituted under the instant Motion to Amend were parties to the administrative proceeding. They may also lack standing. The Commission is confused as to the real

parties in interest and some explanation may be appropriate. It also appears, however, that the time to file an appeal of the Commission decision has expired. For these reasons the Commission opposes the Motion filed by Petitioner to amend its "Complaint."

Respectfully submitted,

  
JEFFERY TAYLOR,  
General Counsel  
Energy and Minerals Department  
Oil Conservation Division  
P. O. Box 2088  
Santa Fe, New Mexico 87504-2088  
Telephone: (505) 827-5805

I hereby certify that on the  
23<sup>rd</sup> day of April, 1987,  
a copy of the foregoing pleading  
was mailed to opposing counsel  
of record.

  
\_\_\_\_\_



STATE OF NEW MEXICO

ENERGY AND MINERALS DEPARTMENT

OIL CONSERVATION DIVISION



April 15, 1987

GARREY CARRUTHERS  
GOVERNOR

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

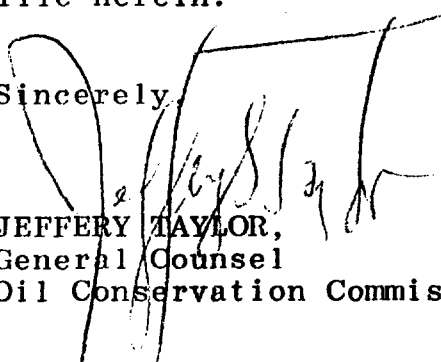
Ms. Georgis Ferrin  
Clerk of the District Court  
P. O. Box 1776  
Roswell, New Mexico 88201

Re: Grynberg vs. OCC et. al.  
No. CIV 87-103

Dear Ms. Ferrin:

Enclosed for filing please find the Response of  
the Oil Conservation Division to the Petition on  
file herein.

Sincerely,

  
JEFFERY TAYLOR,  
General Counsel  
Oil Conservation Commission

JT/dr

enc.

STATE OF NEW MEXICO

ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION DIVISION



GARREY CARRUTHERS  
GOVERNOR

April 15, 1987

POST OFFICE BOX 2088  
STATE LAND OFFICE BUILDING  
SANTA FE, NEW MEXICO 87501  
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Ms. Georgis Ferrin  
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Re: Grynberg vs. OCC et. al.  
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Enclosed for filing please find the Response of  
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Sincerely,

JEFFERY TAYLOR,  
General Counsel  
Oil Conservation Commission

JT/dr

enc.

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, plus the creation of another smaller proration unit for production from a shallower formation. Petitioner challenges the order because he alleges it fails to allocate to him a portion of the production from the shallow formation. As will be shown, however, Petitioner has no ownership interest in the proration unit assigned to the shallow formation 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 fully understands the working of State proration laws. His petition should be dismissed and an order entered upholding the decision of the Commission. ~~Moreover, because of the unfounded nature of this action, the Commission seeks an award of costs.~~

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 brought a compulsory pooling action before the Oil Conservation Division 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. Petitioner herein, doing business as Viking Petroleum, was force pooled pursuant to the terms of the order entered therein, Order No. R-6873, and declined to participate to the deeper formation. Viking challenged the validity of the order alleging that in a well to ~~a~~<sup>a</sup> deep formation it could participate only in shallower formations at its option. ~~But~~ The New Mexico Supreme Court ultimately upheld the authority of this 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 ~~A~~ 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, being the W/2 of Section 18, while those completed in the Abo formation are assigned a 160-acre proration unit, being the NW/4 of Section 18. (See Forms C-102~~s~~) 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, his ownership interest was approximately 50 percent in the Abo formation and 25 percent in the Ordovician formation.

Because production in the deeper Ordovician formation ceased at some point in time, Petitioner Grynberg determined that a 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. Because HEYCO as operator apparently refused to apply for and drill such a well, Grynberg sought, through application with the OCD, to reopen the forced pooling earlier granted to HEYCO, and drill a second well on the 320 acre Ordovician proration unit. [\*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-\_\_\_\_ NMSA (1978).] As a part of this application, Petitioner Grynberg sought to remove HEYCO as operator of the unit. (See paragraph \_\_\_\_\_ of Order No. R-6873-A, a unit has only one operator, although he agreed to being designated as the second operator, if possible.

It is clear from the record of this case that the Petitioner is concerned only with the fact that the order 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 the facts do not support it.

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), 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.

*Abo is Permian age*  
The Abo formation, a discreet formation, is younger <sup>(and shallower)</sup> than Wolfcamp, while the Pre-Permian, a separate formation from the Abo, <sup>older (and deeper) than</sup> ~~(Ordovician)~~ formation is Pennsylvanian. Under 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 argues that because the original order in this case, Order No. R-6873, stated in declaratory 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 on the same basis as in the Ordovician. This is a fallacy, however. 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 160 acre proration units. In the earlier 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 for the Abo formation 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 a working interest in the SW/4. Because the entire SW/4 Abo proration unit is controlled by HEYCO, Grynberg has no interest in a well to the Abo located there. 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. Each would share in proceeds from production according to its percentage of land ownership in the 320-acre proration unit.

#### EVIDENCE

Petitioner Grynberg asserts that the Commission entered this order without 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. *Petitioner was granted all that he requested; if as much* Moreover, *insofar* as the Order provides, *that* upon request by Petitioner to HEYCO to drill the described well, *if* HEYCO does not agree *to drill,* 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 participate in production in a proration unit where it has no interest.

Moreover, the determination that Petitioner seeks is not one that the Commission is empowered to make. It is commonly known that Conservation Commissions have no authority to determine title. When pooling and other orders are issued there is no finding as to the 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.

#### CONCLUSION

The Oil Conservation Commission respectfully requests that the Petitioner<sup>2.</sup> herein be dismissed and that Respondents be awarded their costs in this action.

Respectfully submitted,

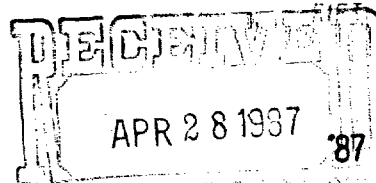
JEFFERY TAYLOR  
Assistant Attorney General  
Oil Conservation Division of the  
Energy and Minerals Department  
P. O. Box 2088  
Santa Fe, New Mexico 87504-2088

Telephone: —(505) 827-5805

FIFTH JUDICIAL DISTRICT

COUNTY OF CHAVES

STATE OF NEW MEXICO



87 APR 24 P1:58

CLERK OF THE DISTRICT COURT

GRYNBERG PETROLEUM COMPANY,

Petitioner,

vs.

CV-87-103

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

Respondents.

**NOTICE OF SETTING**

TO: W. Thomas Kellahin  
P. O. Box 2265  
Santa Fe, NM 87504


JEFFERY TAYLOR  
P. O. BOX 2088  
SANTA FE, NEW MEXICO 87504-2088

Joel M. Carson  
P. O. Drawer 239  
Artesia, NM 88210

YOU ARE HEREBY NOTIFIED that the above styled and numbered cause is set for hearing on Motion for Leave to Amend Original Complaint to Substitute Party on May 11, 1987 at 4:30 P.M. at the Chaves County Courthouse, Roswell, New Mexico, The Honorable W. J. Schnedar, District Judge, Division VI presiding.

The hearing will be by telephone conference call. Mr. Kellahin shall arrange the conference call. The telephone number for Judge Schnedar is 624-0859.

DATED: April 24, 1987

  
Roberta R. Hall  
Secretary to Hon. W. J. Schnedar

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

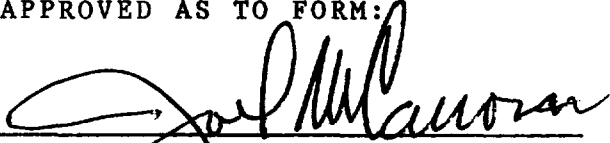
APPROVED AS TO FORM:

---

Jeffery 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.

MAY 19 1987

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

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

AREA CODE 505  
746-3508

15 May 1987

Mr. W. Thomas Kellahin  
Kellahin, Kellahin & Aubrey  
P. O. Box 2265  
Santa Fe, New Mexico 87504-2265

Re: OCC Appeal

Dear Mr. Kellahin:

I rewrote page two of the Order to reflect that Yates Petroleum Corporation is not to be made a defendant and that the various Grynberg Trusts are not to be made plaintiffs. If you do not agree with these changes, please let me know.

Yours truly,

LOSEE & CARSON, P.A.



Joel M. Carson

JMC:bjk  
Enclosures

cc w/encl: Mr. Jeffery Taylor

STATE OF NEW MEXICO  
COUNTY OF CHAVES  
FIFTH JUDICIAL DISTRICT COURT

JACK J. GRYNBERG, individually  
and doing business as  
GRYNBERG PETROLEUM COMPANY,

Petitioner,

v.

No. Civ. 87-103

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

Respondents.

RESPONSE OF OIL CONSERVATION COMMISSION  
TO AMENDED PETITION FOR REVIEW

The New Mexico Oil Conservation Commission (hereinafter  
OCC) by and through its attorney, responds to the Amended  
Petition and Complaint filed in this matter as follows:

1. The allegations contained in Paragraph One (parties)  
are ADMITTED.

2. The allegations contained in Paragraph Two (parties)  
are ADMITTED.

3. The allegations contained in Paragraph Three (parties) are ADMITTED.

4. The allegations contained in Paragraph One (facts) are ADMITTED.

5. The allegations contained in Paragraph Two (facts) are ADMITTED, except that Orders R-7392 and R-7393 were both entered on December 2, 1983.

6. The OCC is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph Three (facts).

7. The allegations contained in Paragraph Four (facts) are ADMITTED.

8. The allegations contained in Paragraph Five (facts) are ADMITTED.

9. The allegations contained in Paragraph Six (facts) are ADMITTED.

10. The allegations contained in Paragraph Seven (facts) are ADMITTED except that the Application for Rehearing was filed on January 20, 1987.



11. The allegations contained in Paragraph One (jurisdiction) are ADMITTED.

12. The allegations contained in Paragraph Two (jurisdiction) are ADMITTED.

13. The allegations contained in Paragraph One (relief) are DENIED.

14. The allegations contained in Paragraph Two (relief) are DENIED.

15. The allegations contained in Paragraph Three (relief) are DENIED.

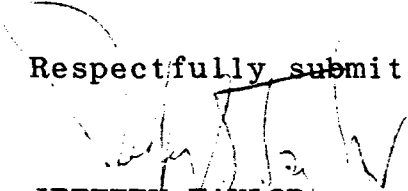
16. The allegations contained in Paragraph Four (relief) are DENIED.

17. The allegations contained in Paragraph Five (relief) are DENIED.

18. The allegations contained in Paragraph Six (relief) are DENIED.

WHEREFORE, Respondent New Mexico Oil Conservation  
Commission requests that this Court enter an order denying  
Petitioner's claims for relief and affirming Order R-7393-B.

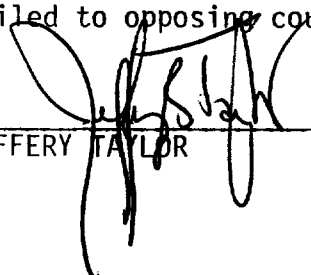
Respectfully submitted,

  
JEFFERY TAYLOR,  
Special Assistant Attorney General  
Counsel to the Oil Conservation  
Commission  
P. O. Box 2088  
Santa Fe, New Mexico 87501

I hereby certify that on the

29<sup>th</sup> day of September, 1987,

a copy of the foregoing pleading was  
mailed to opposing counsel of record.

  
\_\_\_\_\_  
JEFFERY TAYLOR

STATE OF NEW MEXICO  
COUNTY OF CHAVES  
FIFTH JUDICIAL DISTRICT COURT

JACK J. GRYNBERG, individually  
and doing business as  
GRYNBERG PETROLEUM COMPANY,

Petitioner,

v.

No. Civ. 87-103

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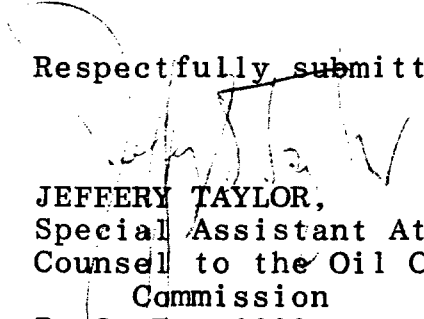
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WHEREFORE, Respondent New Mexico Oil Conservation Commission requests that this Court enter an order denying Petitioner's claims for relief and affirming Order R-7393-B.

Respectfully submitted,

  
JEFFERY TAYLOR,  
Special Assistant Attorney General  
Counsel to the Oil Conservation  
Commission  
P. O. Box 2088  
Santa Fe, New Mexico 87501

I hereby certify that on the

29<sup>th</sup> day of September, 1987,

a copy of the foregoing pleading was  
mailed to opposing counsel of record.

  
\_\_\_\_\_  
JEFFERY TAYLOR



KELLAHIN, KELLAHIN AND AUBREY

*Attorneys at Law*

El Patio - 117 North Guadalupe

Post Office Box 2265

Santa Fe, New Mexico 87504-2265

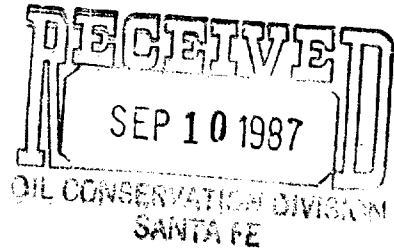
Telephone 982-4285

Area Code 505

W. Thomas Kellahin  
Karen Aubrey

Jason Kellahin  
Of Counsel

September 8, 1987



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

Re: Grynberg v. OCC, Civ. 87-103

Dear Mr. Taylor:

Enclosed is our First Amended Complaint in the above-captioned matter, which we sent to Georgia Ferrin for filing today.

Also enclosed is an acceptance of service and waiver of issuance of summons, which I would appreciate you signing and returning to me for filing.

Trust this acceptable to you. If not, please let me know.

Very truly yours,

A handwritten signature in dark ink, appearing to read "W. Thomas Kellahin".

W. Thomas Kellahin

WTK:ca  
Enc.

FIFTH JUDICIAL DISTRICT  
STATE OF NEW MEXICO  
COUNTY OF CHAVES

AMENDED  
COMPLAINT

JACK J. GRYNBERG,  
individually, and doing  
business as Grynberg Petroleum  
Company,

Petitioner,

-vs-

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

Respondents.

No. CIV 87-103

FIRST AMENDED COMPLAINT  
PETITION FOR REVIEW OF DECISION OF  
OIL CONSERVATION COMMISSION OF NEW MEXICO

COMES NOW Jack J. Grynberg, individually, and doing business as Grynberg Petroleum Company, pursuant to the provisions of Section 70-2-25, NMSA (1978), as amended, and respectfully petitions the Court for review of the action of the Oil Conservation Commission of New Mexico in Case 8901 (DeNovo) on the Commission's docket, and its Order R-7393-B entered therein.

PARTIES:

1. Petitioner, Jack J. Grynberg, ("Grynberg") is president of Grynberg Petroleum Company, a sole proprietorship, doing business in the State of New

Mexico, and is the operator of the Grynberg State I-20 Well ("subject well") located in W/2 of Section 20, T9S, R27E, NMPM, Chaves County, New Mexico.

A 2. Respondents, Yates Petroleum Corporation, Yates Drilling Company, Myco Industries and Abo Petroleum Corporation ("Yates"), are corporations duly organized under the laws of the State of New Mexico and are working interest owners in the Grynberg State I-20 Well, and have been issued Commission Order R-7393-B from which the Petitioner objects and appeals.

A 3. Respondent, the Oil Conservation Commission of the State of New Mexico ("Commission"), is a statutory body created and existing under the provisions of the Oil & Gas Act, Sections 70-2-1 through 70-2-36 NMSA (1978), laws of the State of New Mexico.

GENERAL STATEMENT OF FACTS:

A 1. On October 18, 1983, the Commission held a hearing on the applications of Grynberg and Yates to compulsory pool the other for the drilling of the Grynberg State I-20 well.

both orders entered 12/2 except  
2. On December 2 and ~~12~~ 1983, the Commission entered Order R-7393, copy attached as Exhibit A, and incorporated herein, approving the Grynberg application and also entered Order R-7392 denying the Yates application.

W/o info

3. On January 12, 1984, Yates prepaid its share of the estimated costs of the well to Grynberg.

A 4. On April 1, 1984, Grynberg completed the subject well.

A 5. On May 22, 1986, Yates filed an application with the Commission, which was docketed as Case 8901, requesting a hearing to determine reasonable well costs.

A 6. On June 19, 1986 and on August 7, 1986, the Commission heard Case 8901 and on December 31, 1986 entered its Order R-7393-B, copy attached as Exhibit "B" and incorporated herein, finding that Yate's share of the costs of the subject well was \$134,326.99.

Jan 20  
rather  
than  
30

7. On January 30, 1987, Grynberg filed its Application for Rehearing, copy attached as Exhibit "C" and incorporated herein, which was deemed denied by the Commission when it failed to act on the application within the ten days required by Section 70-2-25, N.M.S.A. (1978).

JURISDICTION:

A 1. Petitioner has exhausted its administrative remedies before the Commission and now seeks judicial review of the Commission's decision within the time provided for by Section 70-2-25, N.M.S.A. (1978), as amended.

A 2. The Fifth Judicial District, Chaves County, New Mexico, has jurisdiction of this case pursuant to the provisions of Section 70-2-25, N.M.S.A. (1978), because the property affected by the Commission order is located within Chaves County, New Mexico.

**RELIEF SOUGHT:**

Petitioner complains of Commission Order R-7393-B and asserts that said Order is invalid. As grounds for such assertion Petitioner adopts the grounds set forth in its Application for Rehearing (Exhibit C) and further states:

D 1. Commission Order R-7393-B should be reversed because the Commission failed to make a "basic conclusion of fact" as required by Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962).

D 2. Commission Order R-7393-B should be reversed because the order fails to contain sufficient findings as required by Fasken v. Oil Conservation Commission, 87 N.M. 292, 532 P.2d 588 (1975).

D 3. Commission Order R-7393-B should be reversed because the allocation of costs as set

forth in Commission Order R-7839-B are contrary to the requirements of Paragraph (25) of the prior Commission Order R-7393.

D 4. Commission Order R-7393-B is not supported by substantial evidence, is arbitrary and capricious, and is contrary to law.

D 5. The Commission improperly excluded Grynberg's testimony and failed to allocate a portion of the well costs to the San Andres Formation.

D 6. The Commission erroneously denied Grynberg's Motion to Dismiss the Yates' Application.

WHEREFORE, Petitioner prays that the Court review New Mexico Oil Conservation Commission Case 8901 (DeNovo) and Commission Order R-7393-B and hold said order unlawful, invalid and void, and for such other and further relief as may be proper in the premises.

Respectfully submitted:

By 

W. Thomas Kellahin  
Kellahin, Kellahin & Aubrey  
P. O. Box 2265  
Santa Fe, New Mexico 87504

(505) 982-4285

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing First Amended Complaint was mailed to Jeffery Taylor, Oil Conservation Division, P. O. Box 2088, Santa Fe, New Mexico 87504, and to Joel Carson, Esq., Losse & Carson, Attorneys at Law, P. O. Drawer 239, Artesia, New Mexico 88210, on this 20th day of Sept., 1987.

  
W. Thomas Kellahin

STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION COMMISSION

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

CASE NO. 7984  
Order No. R-7393

APPLICATION OF JACK J. GRYNBERG  
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 October 18, 1983, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 2nd day of December, 1983, 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:

- (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, Jack J. Grynberg, seeks an order pooling all mineral interests from the surface through and including the Abo formation underlying the SW/4 of Section 20, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico, and all mineral interests from the top of the Wolfcamp formation to the Precambrian formation underlying the W/2 of said Section 20, said units to be dedicated to a single well to be drilled at a standard location thereon.
- (3) That in companion Case 7982, Yates Petroleum Corporation seeks an unorthodox well location 1980 feet from the North line and 990 feet from the West line of said Section 20, to test all formations from the top of the Wolfcamp through the Montoya formation, the N/2 of said Section 20 to be dedicated to said well.
- (4) That in companion Case 7983, Yates Petroleum Corporation seeks compulsory pooling of all mineral interests



in the Abo formation underlying the SW/4 and all mineral interests in all formations below the top of the Wolfcamp formation underlying the S/2 of said Section 20, said units to be dedicated to a single well to be drilled at an unorthodox location, for the Wolfcamp and deeper horizons, at a point 1980 feet from the South line and 600 feet from the West line of said Section 20.

(5) That these cases were consolidated with this case for the purpose of obtaining testimony.

(6) That the spacing in this area is 160 acres for Abo gas and 320 acres for Wolfcamp and older gas.

(7) That while all formations from the Wolfcamp and below are sought to be pooled, the primary "deep" target is the Fusselman formation.

(8) That although evidence was presented that wells in the Fusselman formation might not drain 320 acres, no party to these cases had applied for an amendment to the applicable 320-acre spacing rules.

(9) That all parties to these cases agreed that the West half of said Section 20 should be more productive than the East half in the Fusselman formation.

(10) That the West half of said Section 20 is a logical spacing unit for the Wolfcamp and older formations.

(11) That Jack J. Grynberg is also an interest owner in Section 19, Township 9 South, Range 27 East, Chaves County, New Mexico, which section lies immediately West of said Section 20.

(12) That Mr. Grynberg objects to the unorthodox locations proposed by Yates Petroleum Corporation.

(13) That approval of the two Yates applications for wells at unorthodox locations would result in such wells having a calculated drainage radius outside their proration units of 116 net acres greater, in said Section 19, than wells at standard locations.

(14) That approval of said unorthodox locations, with the resultant change in net drainage outside the assigned proration units, would result in drainage across lease lines not offset by counter drainage and would, therefore, result in violation of correlative rights.

Case No. 7984  
Order No. 7393

(15) That to prevent the violation of correlative rights, the applications of Yates Petroleum Corporation in Case No. 7982 and Case 7983 should be denied.

(16) That the application of Jack J. Grynberg in Case 7984 should be approved.

(17) That the applicant, Jack J. Grynberg, has the right to drill and proposes to drill a well at a standard location thereon.

(18) That the proposed 160-acre spacing unit would apply to and should only be approved in the Abo formation.

(19) That the proposed 320-acre spacing unit would apply to and should only be approved from the top of the Wolfcamp to the Precambrian formation.

(20) That there are interest owners in the proposed proration units who have not agreed to pool their interests.

(21) That to avoid the drilling of unnecessary wells, to prevent waste, to protect correlative rights, and to afford to the owner of each interest in said units the opportunity to recover or receive without unnecessary expense his just and fair share of the gas in any appropriate pool covered by said units, the subject application should be approved by pooling all mineral interests, whatever they may be, within said units.

(22) That the applicant should be designated the operator of the subject well and units.

(23) 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.

(24) That since the interests of the parties are different in each proration unit, it will be necessary to estimate well costs on the basis of a well to the Abo formation drilled to 5,200 feet and a well to the Precambrian formation drilled to 6350 feet.

(25) That estimated well costs for the Abo formation, except for costs directly attributable to the Precambrian, should be estimated on the basis of depth for each formation and that costs for the Abo formation should not exceed 81.89 percent of the total cost of the proposed well, (5200 foot Abo depth/6350 foot total depth = 0.8189).

(26) 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.

(27) 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.

(28) 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.

(29) That \$2,825.00 per month while drilling and \$283.00 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.

(30) 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.

(31) That upon the failure of the operator of said pooled unit to commence drilling of the well to which said unit is dedicated on or before March 1, 1984, 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, from the surface through and including the Abo formation underlying the SW/4 and all mineral interests from the top of the Wolfcamp formation to the Precambrian formation underlying the W/2, all in Section 20, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico, are hereby pooled to form a standard 160-acre and a 320-acre gas spacing and proration unit to be dedicated to a well to be drilled at a standard location thereon.

PROVIDED HOWEVER, that the operator of said units shall commence the drilling of said well on or before the 1st day of March, 1984 and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Wolfcamp and Precambrian formations;

PROVIDED FURTHER, that in the event said operator does not commence the drilling of said well on or before the 1st day of March, 1984, Order (1) of this order shall be null and void and of no effect whatsoever, unless said 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, said operator shall appear before the Division Director and show cause why Order (1) of this order should not be rescinded.

(2) That Jack J. Grynberg is hereby designated the operator of the subject well and unit.

(3) That after the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Commission and each known working interest owner in the subject units two itemized schedules of estimated well costs, one to be for a well to the Abo formation drilled to a depth of 5,200 feet and the second for a well to the Precambrian formation drilled to a depth of 6350 feet.

(4) That the itemized schedule of well costs shall be prepared to reflect actual well costs properly attributable to each zone in accordance with Finding No. (25) in this order.

(5) That 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 wells 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.

(6) That the operator shall furnish the Commission 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 Commission and the Commission 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 Commission will determine reasonable well costs after public notice and hearing.

(7) 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.

(8) 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.

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

(10) That \$ 2,825.00 per month while drilling and \$285.00 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.

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

Case No. 7984  
Order No. 7393

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

(12) 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.

(13) 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.

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

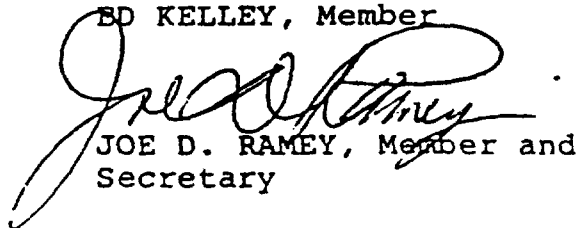
DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

JIM BACA, Member



ED KELLEY, Member



JOE D. RAMEY, Member and  
Secretary

S E A L

ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION COMMISSION

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

CASE NO. 8901  
Order No. R-7393-B

APPLICATION OF YATES PETROLEUM CORPORATION,  
YATES DRILLING COMPANY, MYCO INDUSTRIES,  
INC., AND ABO PETROLEUM CORPORATION FOR  
DETERMINATION OF REASONABLE WELL COSTS,  
CHAVES COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on June 19 and August 7, 1986, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 31st day of December, 1986, 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 applicants, Yates Petroleum Corporation, Yates Drilling Company, Myco Industries, Inc., and Abo Petroleum Corporation (hereinafter referred to as Yates), seek a determination of reasonable well costs in connection with the drilling of the Grynberg State Com Well No. 1 located 1980 feet from the South line and 660 feet from the West line of Section 20, Township 9 South, Range 27 East, Chaves County, New Mexico, said applicants being working interest owners in said well.

(3) Said Grynberg State Com Well No. 1 was drilled pursuant to Order No. R-7393 in Case No. 7984, wherein the Commission ordered all mineral interests from the surface through and including the Abo formation underlying the SW/4 and all mineral interests from the top of the Wolfcamp to the

EXHIBIT "B"

Precambrian formation, underlying the W/2 of said Section 20, be pooled to form standard 160-acre and 320-acre gas spacing proration units, respectively, to be dedicated to the Grynberg State Com Well No. 1, with Jack Grynberg designated as the operator.

(4) The applicants own 25 percent of the working interest attributable to the Abo formation and 62.5 percent of the working interest attributable to the Wolfcamp to Precambrian interval.

(5) At the June 19 hearing both the applicants and Grynberg presented calculations of appropriate well costs in said Grynberg State Com Well No. 1 attributable to the working interest owners.

(6) The Commission determined that neither Grynberg nor applicants had calculated the reasonable well costs as stated in the above-described order in accordance with the Commission's interpretation of that order and required the parties to resubmit the allocation of costs based upon such interpretation.

(7) At the hearing on August 7, 1986, applicants and Grynberg submitted schedules showing the revised allocations.

(8) The Commission adopts the allocation of costs submitted by Yates on their August 7, 1986, Exhibit No. 2 except that the cementing costs as shown by the Halliburton invoice dated February 19, 1984 should be reallocated on the basis of the amount of cement above the base of the Abo and the amount of cement below the base of the Abo.

(9) Morris Ettinger, witness for Grynberg, established that the top of the cement was 4,200 feet and that the top of the Wolfcamp was located at 5,378 feet.

(10) One thousand one hundred seventy eight feet (1,178) of cement were placed in the well below the base of the Abo.

(11) In accordance with the formula established by the Commission, \$4,827.97 should be allocated to depths above the Wolfcamp and \$4,172.23 should be allocated to depths below the Wolfcamp. These calculations are shown on Exhibit "A" attached hereto.

(12) Yates has paid Grynberg \$215,706.26 while the total amount due from Yates to Grynberg was \$134,326.99.



(13) After giving Grynberg credit for sums credited by him to applicants, Grynberg owes applicants the sum of \$78,770.96, all as shown on Exhibit "A" attached hereto.

IT IS THEREFORE ORDERED THAT:

(1) The total reasonable well costs and allocation of well costs attributable to the applicants, Yates Petroleum Corporation, Yates Drilling Company, Myco Industries, Inc., and Abo Petroleum Corporation (Yates), for the Grynberg State Com Well No. 1 located 1980 feet from the South line and 660 feet from the West line of Section 20, Township 9 South, Range 27 East, Chaves County, New Mexico, is hereby determined to be as shown on Exhibit "A" attached to this order.

(2) Based on the estimated well costs, Yates has overpaid the well operator in the amount of \$78,770.96.

(3) Jack J. Grynberg, as well operator, should repay the sum of \$78,770.96 to Yates.

IT IS FURTHER ORDERED THAT:

(2) 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

JIM BACA, Member

*Ed Kelley*

ED KELLEY, Member

*R. L. Stanets*  
R. L. STANETS,  
Chairman and Secretary

S E A L

|                             |                  |                |
|-----------------------------|------------------|----------------|
| Deep Only - (schedule)      | \$ 50,631.07     |                |
| Deep Allocated - (schedule) | 58,481.63        | at indicated % |
| Abo Allocated - (schedule)  | 111,534.09       |                |
| Abo @ .8189 -               | 98,521.80        |                |
| Deep @ .1811 -              | <u>21,788.13</u> |                |
|                             | \$ 340,956.72    |                |

| <u>Zone Allocation</u> | <u>Total</u>              | <u>Applicants</u>     |
|------------------------|---------------------------|-----------------------|
| Deep                   | \$ 130,900.83 x .625 =    | \$ 81,813.02          |
| Abo                    | <u>210,055.85</u> x .25 = | <u>52,513.97</u>      |
|                        | \$ 340,956.72             | \$ 134,326.99         |
|                        |                           | <u>(215,706.26)</u>   |
|                        |                           | (81,379.27)           |
|                        | (Grynberg payment)        | 2,608.31              |
|                        |                           | <u>(\$ 78,770.96)</u> |

Total Deep %

\$130,900.83      340,956.72 + .3839

Total Abo %

\$210,055.89      340,956.72 = .6161

CASE NO. 8901  
ORDER NO. R-7393-P  
EXHIBIT "A"

STATE OF NEW MEXICO  
DEPARTMENT OF ENERGY AND MINERALS  
OIL CONSERVATION COMMISSION

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

RECEIVED

JAN 20 1987

OIL CONSERVATION DIVISION

THE APPLICATION OF YATES DRILLING  
COMPANY, MYCO INDUSTRIES, INC.,  
AND ABO PETROLEUM CORPORATION FOR  
DETERMINATION OF REASONABLE WELL  
COSTS.

CASE: 8901  
ORDER: R-7393-b

APPLICATION OF GRYNBERG  
PETROLEUM COMPANY FOR REHEARING

COMES NOW GRYNBERG PETROLEUM COMPANY pursuant to the provisions of Section 70-2-25 NMSA (1978) and applies to the Oil Conservation Commission of New Mexico for a Rehearing of the above captioned case and order, and in support thereof states:

PARTIES:

1. Petitioner ("Grynberg") is a duly organized corporation doing business in the State of New Mexico, and is the operator of the Grynberg State I-20 Well located in W/2 of Section 20, T9S, R27E, NMPM, Chaves County, New Mexico.

2. The applicants in Case 8901 are Yates Petroleum Corporation, Yates Drilling Company, Myco Industries and

Abo Petroleum Corporation ("Yates") and are corporations duly organized under the laws of the State of New Mexico and are working interest owners in the Grynberg State I-20 Well.

3. The Oil Conservation Commission of the State of New Mexico, ("Commission") is a statutory body created and existing under the provisions of the Oil & Gas Act, Sections 70-2-1 through 70-2-36 NMSA (1978), laws of the State of New Mexico.

**STATEMENT OF FACTS:**

1. Grynberg owns the oil and gas working interest for the E/2SW/4 and SW/4SW/4 of Section 20.

2. Yates owns the oil and gas working interest for the NW/4 and the NW/4SW/4 of Section 20.

3. For purposes of this case, the W/2 of Section 20 would be dedicated to the PrePermian deep gas formation (Deep) in which Grynberg has 37.5 interest and Yates has 62.5% interest.

4. The SW/4 of Section 20 would be dedicated to the shallow gas formation (Abo) in which Grynberg would have a 75% interest and Yates would have a 25% interest.

5. The NW/4SW/4 being the 40-acre tract upon which the subject well is located would be a 40-acre oil well dedication for the San Andres oil potential of which Yates held 100% prior to the forced pooling order.

6. Both Grynberg and Yates sought to drill a well in the W/2 of Section 20 and each filed a compulsory pooling application to force pool the other.

7. Grynberg's force pooling case against Yates was docketed as Commission Case 7984.

8. Yates also filed a forced pooling case against Grynberg which was docketed as Commission Case 7983.

9. Both cases were consolidated and heard by the Commission on October 18, 1983 and on December 2, and 3rd, 1983 the Commission entered Order R-7393 approving the Grynberg application and Order R-7392 denying the Yates application.

10. On January 12, 1984, all of the Yates interests signed the Grynberg AFE for the Abo test and the AFE for the Deep Test and prepaid Grynberg \$215,706.26 for the drilling and completion of the well. (See Grynberg Exhibit 2 - June hearing).

11. On February 1, 1984 Grynberg spudded the Grynberg State I-20 well and completed the well on April 1, 1984 for a total cost of \$340,956.72.

12. On May 22, 1986 Yates filed an application with the Commission requesting a hearing to determine reasonable well costs.

13. At the June hearing Yates agreed that \$340,956.72 were the reasonable costs of the well but

objected to the method used by Grynberg to allocate those costs between Grynberg and Yates for the well.

14. Under the provisions of paragraph (25) of the Grynberg Compulsory Pooling Order R-7393, the Commission apportioned the costs between the Abo formation and the Deep formation as follows:

(25) That estimated well costs for the Abo formation, except for costs directly attributable to the Precambrian\*, should be estimated on the basis of depth for each formation and that costs for the Abo formation should not exceed 81.89 percent of the total costs of the proposed well, (5200 foot Abo depth/6350 foot total depth - 0.8189).

\* The word "Precambrian" was later corrected by the Commission Nunc Pro Tunc Order to correctly state the PrePermian meaning from the top of the Wolfcamp formation to the base of the Pennsylvanian formation, i.e., the deep formation.

15. On June 19, 1986 the Commission held the first of two hearings on the Yates Application (herein referred to as the "June hearing").

16. At the June hearing Yates contended that the Commission should first allocate to the Abo formation all the direct costs attributable to that zone, then allocate all of the direct costs attributable to the Deep formation and then divide the balance on a ratio of 81.89% to the Abo and 18.11% to the Deep zone. Using this formula, Yates contended that its share of the costs of the well should be \$125,589.37 (See Yates Exhibit 1 - June hearing).

17. At the same hearing, Grynberg contended that subsequent to the entry of Order R-7393, two important changes had occurred:

(a) That Yates has signed the AFE thus constituting a contractual agreement between the parties which substitute for the compulsory pooling order; and

(b) That the San Andres oil zone on 40-acre spacing was of sufficient potential to require that it share in the cost allocation for the well.

18. Grynberg contended that should the Commission agree to allocate the costs of the well among the San Andres, Abo and Wolfcamp, and assuming that Yates held 100% of the San Andres zone, then Yates share of the costs of the well would be \$169,767.64. (See Grynberg Exhibit 9 and page 54 Transcript -June hearing).

19. Grynberg further contended that should the Commission decide to exclude the San Andres zone, then the costs allocation to Yates should be \$151,728.44. (See Grynberg Exhibit 7 - June hearing).

20. During the June hearing, there was a discussion off the record after which the Commission ruled that neither party had calculated the allocation of well costs in accordance with ~~the~~ the Commission's interpretation of Paragraph 25 of Order R-7393. (See page 69 - June Transcript). However, the Commission did not then, nor in the August hearing, state on the record its interpretation.

21. The case was then continued to the August 7, 1986 Commission hearing and the parties directed to

recalculate the allocations and to exchange those recalculations in advance of the August 7, 1986 hearing.

22. At the August 7, 1986 Hearing without providing a copy to Grynberg in advance of the hearing and over the objection of Grynberg, Yates introduced its allocation of costs (Yates Exhibit 2 - August hearing). That allocation followed the same formula that Yates had followed for the June hearing but this time showed a cost to the Deep formation of \$128,353.54 and a cost to the Yates interest of \$133,373.64.

23. At the August hearing, the Commission excluded the testimony of Mr. Grynberg concerning the potential of the San Andres zone and its share of the allocation of the costs of the well. (See page 56 - August hearing transcript).

24. Grynberg introduced a cost allocation exhibit showing an allocation of costs directly attributable to the Deep zone with the balance of the costs being allocated on a ratio of 81.89% to the Abo and 18.11% to the Deep zone with a resulting cost to the Yates interest for the well of \$153,773.11 (See Grynberg Exhibit 10 - August hearing).

25. One of the principal differences between Yates and Grynberg were the allocation of the following items:



| <u>ITEM/TOTAL</u>                           | <u>Abo</u>  | <u>PrePermian</u> |
|---|-------------|-------------------|
| 2/12/84 Schlumberger logging<br>\$20,363.86 |             |                   |
| Yates:                                      | \$14,443.37 | \$5,920.49        |
| Grynberg:                                   |             | \$9,658.62        |
| Halliburton cement \$9,000.20               |             |                   |
| Yates:                                      | \$ 7,370.26 | \$1,629.94        |
| Grynberg:                                   |             | \$3,451.74        |
| Desert Drilling \$114,005.07                |             |                   |
| Yates:                                      | \$86,256.27 | \$27,748.80       |
| Grynberg:                                   |             | \$60,002.67       |

26. As to the daily drilling costs, Grynberg presented evidence that of the 19 days spent drilling the well, ten days were directly attributable to the Deep formation.

27. Yates contended that the drilling costs should be allocated on a footage basis regardless of how much of the actual drilling time was spent in the deep formation. The Commission accepted Yates contention on this point. (Page 87 - August hearing Transcript).

28. As to the cementing costs, the Commission directed it be allocated 20 percent to the Abo and 80 percent to the Deep zone, based upon using 4200 feet as the top of the cement and Yates pick of the top of the Wolfcamp (Deep zone) which was 5378 feet.

29. As to the Schlumberger logging, Grynberg allocated 100 percent of the depth charge to the Deep zone for all of the four logs while Yates allocated 100

percent of the depth charge to the Deep zone on only one of the four logs with the balance of the logging depth charge being allocated between the deep and Abo zones based upon a footage ratio. Each party allocated the logging portion of the charges based upon the footage logged in the Deep zone. The Commission accepted Yates contention on this point. (Page 87 - August hearing Transcript).

30. In deciding each of the cost allocations set forth in paragraph 25 above, the Commission failed to follow the allocation formula set forth in Paragraph (25) of Order R-7393.

31. The Commission further held that the Order was still in effect, and denied Grynberg's motion to Dismiss notwithstanding the signature by Yates of the Grynberg AFE's.

32. On December 31, 1986 the Commission entered Order R-7393-B finding that Yates' share of the cost of the well should be \$134,326.99.

33. Within twenty days of the date of Order R-7393-B, Grynberg has filed this Application for Rehearing.

## GROUND FOR REHEARING

POINT I: ORDER R-7393-B SHOULD BE REVERSED  
BECAUSE THE COMMISSION FAILED TO  
MAKE A "BASIC CONCLUSION OF FACT."

Order R-7393-B fails to comply with the applicable statutory and judicial mandates set forth in Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 373 P2d 809 (1962) by failing to find that Order R-7393-B will protect correlative rights and prevent waste. The Order is void of the requisite findings concerning waste and protection of correlative rights.

POINT II: ORDER R-7393-B SHOULD BE REVERSED  
BECAUSE THE ORDER FAILS TO CONTAIN  
SUFFICIENT FINDINGS.

Commission Order R-7393 provides a means by which any party can object to the costs of the well and obtain a hearing before the Commission to determine the reasonable costs of the well. Yates had no objection to and concedes that the total well cost of \$340,956.72 is a reasonable well cost. However, under the guise of that provision of the original compulsory pooling order, Yates filed an application to have the Commission decide whether Grynberg had correctly allocated the costs to the various zones in the well.

In deciding that issue, the Commission entered Order R-7393-B which contains Finding (8) thereby adopted the

allocation of costs submitted by Yates and by implication denied the allocation submitted by Grynberg. The Commission has failed to provide the necessary findings which disclose its reasoning for rejecting the Grynberg allocation and adopting, with modification, the Yates allocation.

In addition, the Order fails to disclose why the Commission did not consistently use the same formula for allocation of each of the well costs. Such an inconsistency, without explanation, fails to conform to disclosure requirements required by the New Mexico Supreme Court in Fasken v. Oil Conservation Commission, 87 N.M. 292, 532 P.2d 588 (1975). The Court, in Fasken, held that not only must the Commission order contain ultimate findings such as "prevention of waste and protection of correlative rights," the order must also contain sufficient findings to disclose the reasoning of the Commission.

POINT III: THE ALLOCATION OF COSTS SET FORTH IN  
ORDER R-7393-B ARE CONTRARY TO  
PARAGRAPH (25) OF ORDER R-7393.

On December 2, 1983, the Commission entered Order R-7393 which included the following:

(25) That estimated well costs for the Abo formation, except for costs directly attributable to the Precambrian, should be established on the basis of depth for each formation and that costs for the

Abo formation should not exceed 81.89 percent of the total costs of the proposed well, (5200 foot Abo depth/6350 foot depth = 0.8189).

The word "precambrian" was later corrected by a Nunc Pro Tunc order to correctly show the PrePermian.

The above finding required that all of the costs directly attributable to the Deep zone be determined and then the remaining amount to be divided on a ratio of 81.89% to the Abo and 18.11% to the Deep zone.

Mr. Grynberg's Exhibit 10 (August hearing) correctly applied the provisions of Order R-7393. In addition, Mr. Grynberg showed that the logging and daily drilling costs should be allocated to reflect the actual time spent in those activities in the Deep zone. Conversely, Yates used a footage allocation for some items and apportioned others based upon the 81.89% to the Abo and 18.11% to the Deep zone and used Grynberg's approach for still other items.

The Commission, without amending Order R-7393, and contrary to that order, decided to allocate the costs on a different basis and apparently has allocated certain direct costs to the Abo and certain direct costs to the Deep zone then divided some of the remaining balance between the two zones on a ratio of 81.89% to the Abo and 18.11% to the Deep zone and others on a footage basis different from that calculated in Order R-7393. At the August hearing, the Commission stated on the record that

it was not following Paragraph (25) of Order R-7393:

"Mr. Grynberg, for what it's worth, I would point out that the method that is currently being used for allocation of costs under these conditions is substantially different from the one that's in this order..." (Page 44 - August hearing Transcript).

While the Commission stated at the August hearing that "this is certainly a confusing finding and I can understand why there have been problems with allocation of well costs." (See page 22 - August hearing Transcript) there is nothing in the subsequent Order R-7393-B to explain or justify why the Commission failed to follow the terms of the original order. Such action violates the requirements set forth by the New Mexico Supreme Court in Fasken.

POINT IV: ORDER R-7393-B IS NOT SUPPORTED BY  
SUBSTANTIAL EVIDENCE, IS ARBITRARY  
AND CAPRICIOUS AND IS CONTRARY TO  
LAW.

The following findings made by the Commission in Order R-7393-B are not supported by substantial evidence, are arbitrary and capricious and contrary to law:

(6) The Commission determined that neither Grynberg nor applicants have calculated the reasonable well costs as stated in the above-described order in accordance

with the Commission's interpretation of that order and required the parties to resubmit the allocation of costs based upon such interpretation.

(8) The Commission adopts the allocation of costs submitted by Yates on their August 7, 1986, Exhibit No. 2 except that the cementing costs as shown by the Halliburton invoice dated February 19, 1984 should be reallocated on the basis of the amount of cement above the base of the Abo and the amount of cement below the base of the Abo.

(9) Morris Ettinger, witness for Grynberg, established that the top of the cement was 4,200 feet and that the top of the Wolfcamp was located at 5,378 feet.

(10) One thousand one hundred seventy eight feet (1,178) of cement were placed in the well below the base of the Abo.

(11) In accordance with the formula established by the Commission, \$4,827.97 should be allocated to depths above the Wolfcamp and \$4,172.23 should be allocated to depths below the Wolfcamp. These calculations are shown on Exhibit "A" attached hereto.

(12) Yates has paid Grynberg \$215,706.26 while the total amount due from Yates to Grynberg was \$134,326.99.

(13) After giving Grynberg credit for sums credited by him to applicants, Grynberg owes applicants the sum of \$78,770.96, all as shown on Exhibit "A" attached hereto.

POINT V: THE COMMISSION IMPROPERLY EXCLUDED GRYNBERG'S TESTIMONY AND FAILED TO ALLOCATE A PORTION OF THE WELL COSTS TO THE SAN ANDRES FORMATION.

At the June hearing, the Commission received evidence by Mr. Morris Ettinger on behalf of Grynberg concerning an allocation of a portion of the costs to the San Andres formation and admitted over the objection of Yate's attorney Grynberg's Exhibit 9 which showed how to make that allocation. (See pages 53-55 and 57-58 June Transcript). However, at the August Hearing the Commission sustained Yate's objection on relevancy and excluded Mr. Grynberg's testimony about the allocation of costs to the San Andres formation. (See pages 55-56 August Transcript.)

In order to accomplish the Commission's intended purpose of allocating the well costs between the parties on some reasonable basis, the Commission both at the June and August hearing admitted certain new evidence that was



not available when the original compulsory pooling order was entered on December 2, 1983. In addition, the Commission selectively used certain of that evidence to modify the provisions of paragraph (25) of the original order.

When it came to the evidence concerning which of the potential producing formations should participate in the allocation of well costs, the Commission made evidentiary rules in August that were inconsistent with prior rulings made in June.

The exclusion of Grynberg's August evidence was erroneous and inconsistent with the prior admission of similar evidence in June. The Commission's ruling is arbitrary, inconsistent, capricious, and contrary to law.

POINT IV: THE COMMISSION ERRONEOUSLY DENIED  
GRYNBERG'S MOTION TO DISMISS THE  
YATES' APPLICATION.

Subsequent to the Compulsory Pooling Order R-7393 entered effective December 2, 1983, Yates voluntarily executed the Grynberg's Authority for Expenditure for the subject well and prepaid its share of the costs of the well. Grynberg contends that this action by Yates constituted a separate voluntary agreement between the parties which reallocated the interests in the various spacing units and made the Commission compulsory Pooling order moot.

This issue was presented to the Commission at the August hearing and the Commission ruled adversely to Grynberg. (See page 50-52 August Transcript).

The Commission has historically viewed any agreement which is voluntarily entered into after the issuance of a compulsory pooling order to supersede that order. (See page 51 August Transcript). However, without evidence to support it, the Commission erroneously equated the signing of the Grynberg AFE's as simply an indication by Yates that they were signing to avoid the risk factor penalty of the compulsory pooling order. First, there is no evidence in the record to support the speculation by the Commission that Yates was simply avoiding the risk factor penalty, and second, the provision of Order R-7393 only required the prepayment by Yates of its share of the costs of the well. The Order does not require the execution by Yates of the AFEs. Such action by Yates can reasonably be concluded to be a voluntary agreement negating the need for the pooling order.

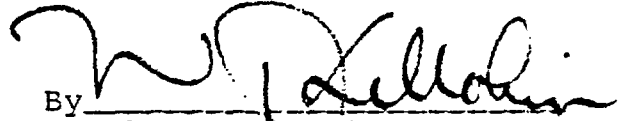
The Commission's failure to dismiss the application constitutes error.

WHEREFORE, GRYNBERG PETROLEUM COMPANY respectfully requests that the Commission grant a Rehearing in the above styled case and that after rehearing, the Commission vacate and set aside its Order R-7393-B and

enter its Order consistent with the matters set forth in  
this Application for Rehearing.

Respectfully submitted:

Kellahin, Kellahin & Aubrey



By  
W. Thomas Kellahin  
P. O. Box 2265  
Santa Fe, New Mexico 87504

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing  
application was mailed to Joel Carson, Esq., Losee &  
Carson, Attorneys at Law, P. O. Drawer 239, Artesia, New  
Mexico 88210 on this 20 day of January, 1987.



W. Thomas Kellahin

STATE OF NEW MEXICO  
COUNTY OF CHAVES  
IN THE DISTRICT COURT

GRYNBERG PETROLEUM COMPANY,

Petitioner,

v.

No. Civ. 87-103

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

Respondents.

RESPONSE OF OIL CONSERVATION COMMISSION  
TO PETITION FOR REVIEW

The New Mexico Oil Conservation Commission (hereinafter OCC) by and through its attorney, responds to the Petition filed in this matter as follows:

1. The OCC is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph One, (parties) except that the records of the Division, including Commission Order No. R-7393 attached to the Petition as Exhibit A, indicate that the application that is the subject of the instant case was filed by Jack J. Grynberg and not Grynberg Petroleum Company. Jack J. Grynberg is not

listed on Commission records as a corporation registered to do business in New Mexico but as an individual.

2. The allegations contained in Paragraph Two (parties) of the petition are admitted.

3. The allegations contained in Paragraph Three (parties) of the petition are admitted.

4. The allegations contained in Paragraph One (facts) are admitted, except that the applicant was Jack J. Grynberg and not Grynberg Petroleum Company.

5. The allegations contained in Paragraph Two (facts) are admitted except that the approved application was filed by Jack J. Grynberg and not Grynberg Petroleum Company.

6. The OCC is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph Three (facts).

7. The allegations contained in Paragraph Four (facts) are admitted, except that Commission records indicate the well was completed by Jack J. Grynberg and not Grynberg Petroleum Company.

8. The allegations contained in Paragraph Five (facts) are admitted.

9. The allegations contained in Paragraph Six (facts) are admitted, except that the hearing was held August 7, 1986 rather than August 7, 1987.

10. The allegations contained in Paragraph Seven (facts) are admitted except that Division records indicate that the Application for Rehearing was filed January 20, 1987 rather than January 30, 1987.

11. The allegations contained in Paragraph One (jurisdiction) are admitted, except that Jack J. Grynberg rather than Grynberg Petroleum Company is listed in Commission records as the operator of the subject well.

12. The allegations contained in Paragraph Two (jurisdiction) are denied insofar as Grynberg Petroleum Company does not operate the subject well and was not the Petitioner before the Commission. It is admitted that the well is located in Chaves County, New Mexico.

13. The allegations contained in Paragraph One (relief) are denied.

14. The allegations contained in Paragraph Two (relief) are denied.

15. The allegations contained in Paragraph Three (relief) are denied.

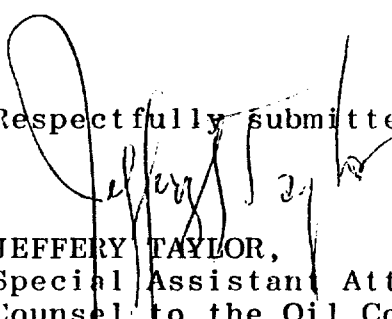
16. The allegations contained in Paragraph Four (relief) are denied.

17. The allegations contained in Paragraph Five (relief) are denied.

18. The allegations contained in Paragraph Six (relief) are denied.

WHEREFORE the Oil Conservation Commission requests that the Petition filed herein be dismissed with prejudice and that no relief be granted.

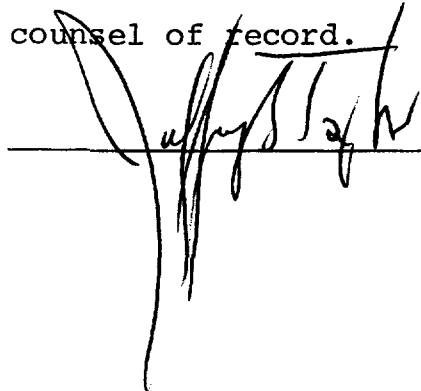
Respectfully submitted,

  
JEFFERY TAYLOR,  
Special Assistant Attorney General  
Counsel to the Oil Conservation  
Commission  
P. O. Box 2088  
Santa Fe, New Mexico 87501

I hereby certify that on the

15<sup>th</sup> day of April

1987, a copy of the foregoing  
pleading was mailed to opposing  
counsel of record.





STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION DIVISION

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

CASE NO. 7983  
Order No. R-7392

APPLICATION OF YATES PETROLEUM  
CORPORATION FOR COMPULSORY POOLING  
AND AN UNORTHODOX LOCATION, CHAVES  
COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on October 18, 1983, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 2nd day of December, 1983, 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:

(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, Yates Petroleum Corporation, seeks compulsory pooling of all mineral interests in the Abo formation underlying the SW/4 and all mineral interests in all formations below the top of the Wolfcamp formation underlying the S/2 of Section 20, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico, said units to be dedicated to a single well to be drilled at an unorthodox location 1980 feet from the South line and 660 feet from the West line of said Section 20.

(3) That in companion Case 7982, Yates Petroleum Corporation sought an unorthodox well location 1980 feet from the North line and 990 feet from the West line of said Section 20, to test all formations from the top of the Wolfcamp through the Montoya formation, the N/2 of said Section 20 to be dedicated to said well.

Case No. 7983  
Order No. R-7392

(4) That in companion Case 7984, Jack J. Grynberg sought compulsory pooling of all mineral interests from the surface through and including the Abo formation underlying the SW/4 of said Section 20, and all mineral interests from the top of the Wolfcamp formation to the Precambrian formation underlying the W/2 of said Section 20, said units to be dedicated to a single well to be drilled at a standard location thereon.

(5) That these cases were consolidated with this case for the purpose of obtaining testimony.

(6) That by Order No. R-7393 dated December 2, 1983, the Commission approved the application of Jack J. Grynberg in Case 7984.

(7) That the application in Case 7983 should be denied.

IT IS THEREFORE ORDERED:

(1) That Case 7983 is hereby denied.

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

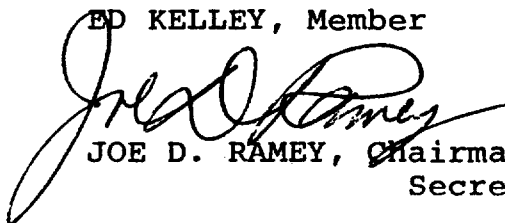
DONE at Santa Fe, New Mexico, on the day and year herein-above designated.

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

JIM BACA, Member



ED KELLEY, Member



JOE D. RAMEY, Chairman and  
Secretary

S E A L

fd/

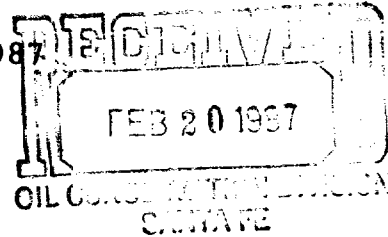
W. Thomas Kellahin  
Karen Aubrey

Jason Kellahin  
Of Counsel

KELLAHIN and KELLAHIN  
*Attorneys at Law*  
El Patio - 117 North Guadalupe  
Post Office Box 2265  
Santa Fe, New Mexico 87504-2265

Telephone 982-4285  
Area Code 505

February 19, 1987



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

Joes Carson, Esq.  
Losse & Carson  
105 South Fourth Street  
Artesia, New Mexico 88210

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

Gentlemen:

On February 16, 1987 we filed a Petition in Chaves County District Court to appeal the Commission's decision in the Yates-Grynberg case. I have enclosed for your acceptance copies of the summons and complaint.

Also enclosed is an entry of appearance and acceptance of service. I would appreciate you signing the form and forwarding the original to me for filing. If you are unable to accept service on behalf of your clients, please let me know by February 25, 1987 so that I can arrange for a processor to make service directly on your clients.

Very truly yours,

W. Thomas Kellahin

WTK:ca  
Enc.

cc: Grynberg Petroleum Co. (w/enc.)

FIFTH JUDICIAL DISTRICT COURT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

GRYNBERG PETROLEUM COMPANY,  
Plaintiff,

vs.

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

Defendants.

NO. CV-87-103

ORIGINAL: To Be  
returned to Clerk of  
District Court for filing

SUMMONS

TO OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO  
c/o Jeffery S. Taylor, Esq.  
State Land Office Building  
Santa Fe, New Mexico 87501

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.

KELLAHIN, KELLAHIN & AUBREY  
Attorney or Attorneys For Plaintiff: W. Thomas Kellahin, Esq.  
Address: Post Office Box 2265  
Santa Fe, New Mexico 87504

WITNESS the Honorable W. J. SCHNEDAR, District Judge of Said Court of the State of New Mexico and Seal of the District Court of Said County, this 16th day of February, 19 87.

(SEAL)

GEORGIA FERRIN  
CLERK OF THE DISTRICT COURT

By: Georgia Ferrin  
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

Divided

STATE OF NEW MEXICO )

COUNTY OF \_\_\_\_\_ )

) ss.

**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 \_\_\_\_\_ (used if no person found at dwelling house or usual place of abode.)

☐ 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

FIFTH JUDICIAL DISTRICT COURT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

|                               |   |               |
|-------------------------------|---|---------------|
| GRYNBERG PETROLEUM COMPANY,   | ) |               |
|                               | ) |               |
| Plaintiff,                    | ) |               |
|                               | ) |               |
| vs.                           | ) | No. CV 87-103 |
|                               | ) |               |
| OIL CONSERVATION COMMISSION   | ) |               |
| OF NEW MEXICO, YATES DRILLING | ) |               |
| COMPANY, MYCO INDUSTRIES,     | ) |               |
| INC., and ABO PETROLEUM       | ) |               |
| CORPORATION,                  | ) |               |
|                               | ) |               |
| Defendants.                   | ) |               |

ACCEPTANCE OF SERVICE  
AND  
ENTRY OF APPEARANCE

COMES NOW, Jeffery Taylor of the Oil Conservation Division, attorney at law, and states that he is the attorney for the Oil Conservation Commission of the State of New Mexico, a named Respondent in the above cause of action and is duly authorized by such Respondent to accept service of the Summons and Petition for Review of a Decision of the New Mexico Oil Conservation Commission on behalf of such Respondent.

That Jeffery Taylor does hereby accept service of the Summons and Petition for Review of a Decision of the New Mexico Oil Conservation Commission as of the \_\_\_\_ day of February, 1987, and further acknowledges receipt of

a true copy of the attached Summons and Petition for Review of a Decision of the New Mexico Oil Conservation Commission, for such Respondent.

Oil Conservation Commission

By \_\_\_\_\_  
Jeffery Taylor, Esq.  
P. O. Box 2088  
Santa Fe, NM 87504

(505) 827-5800

Attorney for Respondent

STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION COMMISSION

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

CASE NO. 7984  
Order No. R-7393

APPLICATION OF JACK J. GRYNBERG  
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 October 18, 1983, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 2nd day of December, 1983, 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:

- (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, Jack J. Grynberg, seeks an order pooling all mineral interests from the surface through and including the Abo formation underlying the SW/4 of Section 20, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico, and all mineral interests from the top of the Wolfcamp formation to the Precambrian formation underlying the W/2 of said Section 20, said units to be dedicated to a single well to be drilled at a standard location thereon.
- (3) That in companion Case 7982, Yates Petroleum Corporation seeks an unorthodox well location 1980 feet from the North line and 990 feet from the West line of said Section 20, to test all formations from the top of the Wolfcamp through the Montoya formation, the N/2 of said Section 20 to be dedicated to said well.
- (4) That in companion Case 7983, Yates Petroleum Corporation seeks compulsory pooling of all mineral interests



in the Abo formation underlying the SW/4 and all mineral interests in all formations below the top of the Wolfcamp formation underlying the S/2 of said Section 20, said units to be dedicated to a single well to be drilled at an unorthodox location, for the Wolfcamp and deeper horizons, at a point 1980 feet from the South line and 600 feet from the West line of said Section 20.

(5) That these cases were consolidated with this case for the purpose of obtaining testimony.

(6) That the spacing in this area is 160 acres for Abo gas and 320 acres for Wolfcamp and older gas.

(7) That while all formations from the Wolfcamp and below are sought to be pooled, the primary "deep" target is the Fusselman formation.

(8) That although evidence was presented that wells in the Fusselman formation might not drain 320 acres, no party to these cases had applied for an amendment to the applicable 320-acre spacing rules.

(9) That all parties to these cases agreed that the West half of said Section 20 should be more productive than the East half in the Fusselman formation.

(10) That the West half of said Section 20 is a logical spacing unit for the Wolfcamp and older formations.

(11) That Jack J. Grynberg is also an interest owner in Section 19, Township 9 South, Range 27 East, Chaves County, New Mexico, which section lies immediately West of said Section 20.

(12) That Mr. Grynberg objects to the unorthodox locations proposed by Yates Petroleum Corporation.

(13) That approval of the two Yates applications for wells at unorthodox locations would result in such wells having a calculated drainage radius outside their proration units of 116 net acres greater, in said Section 19, than wells at standard locations.

(14) That approval of said unorthodox locations, with the resultant change in net drainage outside the assigned proration units, would result in drainage across lease lines not offset by counter drainage and would, therefore, result in violation of correlative rights.

Case No. 7984  
Order No. 7393

(15) That to prevent the violation of correlative rights, the applications of Yates Petroleum Corporation in Case No. 7982 and Case 7983 should be denied.

(16) That the application of Jack J. Grynberg in Case 7984 should be approved.

(17) That the applicant, Jack J. Grynberg, has the right to drill and proposes to drill a well at a standard location thereon.

(18) That the proposed 160-acre spacing unit would apply to and should only be approved in the Abo formation.

(19) That the proposed 320-acre spacing unit would apply to and should only be approved from the top of the Wolfcamp to the Precambrian formation.

(20) That there are interest owners in the proposed proration units who have not agreed to pool their interests.

(21) That to avoid the drilling of unnecessary wells, to prevent waste, to protect correlative rights, and to afford to the owner of each interest in said units the opportunity to recover or receive without unnecessary expense his just and fair share of the gas in any appropriate pool covered by said units, the subject application should be approved by pooling all mineral interests, whatever they may be, within said units.

(22) That the applicant should be designated the operator of the subject well and units.

(23) 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.

(24) That since the interests of the parties are different in each proration unit, it will be necessary to estimate well costs on the basis of a well to the Abo formation drilled to 5,200 feet and a well to the Precambrian formation drilled to 6350 feet.

(25) That estimated well costs for the Abo formation, except for costs directly attributable to the Precambrian, should be estimated on the basis of depth for each formation and that costs for the Abo formation should not exceed 81.89 percent of the total cost of the proposed well, (5200 foot Abo depth/6350 foot total depth = 0.8189).

(26) 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.

(27) 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.

(28) 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.

(29) That \$2,825.00 per month while drilling and \$283.00 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.

(30) 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.

(31) That upon the failure of the operator of said pooled unit to commence drilling of the well to which said unit is dedicated on or before March 1, 1984, 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, from the surface through and including the Abo formation underlying the SW/4 and all mineral interests from the top of the Wolfcamp formation to the Precambrian formation underlying the W/2, all in Section 20, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico, are hereby pooled to form a standard 160-acre and a 320-acre gas spacing and proration unit to be dedicated to a well to be drilled at a standard location thereon.

PROVIDED HOWEVER, that the operator of said units shall commence the drilling of said well on or before the 1st day of March, 1984 and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Wolfcamp and Precambrian formations;

PROVIDED FURTHER, that in the event said operator does not commence the drilling of said well on or before the 1st day of March, 1984, Order (1) of this order shall be null and void and of no effect whatsoever, unless said 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, said operator shall appear before the Division Director and show cause why Order (1) of this order should not be rescinded.

(2) That Jack J. Grynberg is hereby designated the operator of the subject well and unit.

(3) That after the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Commission and each known working interest owner in the subject units two itemized schedules of estimated well costs, one to be for a well to the Abo formation drilled to a depth of 5,200 feet and the second for a well to the Precambrian formation drilled to a depth of 6350 feet.

(4) That the itemized schedule of well costs shall be prepared to reflect actual well costs properly attributable to each zone in accordance with Finding No. (25) in this order.

(5) That 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 wells 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.

(6) That the operator shall furnish the Commission 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 Commission and the Commission 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 Commission will determine reasonable well costs after public notice and hearing.

(7) 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.

(8) 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.

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

(10) That \$ 2,825.00 per month while drilling and \$285.00 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.

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

Case No. 7984  
Order No. 7393

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

(12) 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.

(13) 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.

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

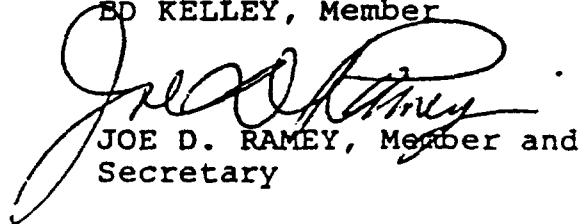
DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

JIM BACA, Member



ED KELLEY, Member



JOE D. RAMEY, Member and  
Secretary

S E A L

ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION COMMISSION

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

CASE NO. 8901  
Order No. R-7393-B

APPLICATION OF YATES PETROLEUM CORPORATION,  
YATES DRILLING COMPANY, MYCO INDUSTRIES,  
INC., AND ABO PETROLEUM CORPORATION FOR  
DETERMINATION OF REASONABLE WELL COSTS,  
CHAVES COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on June 19 and August 7, 1986, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 31st day of December, 1986, 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 applicants, Yates Petroleum Corporation, Yates Drilling Company, Myco Industries, Inc., and Abo Petroleum Corporation (hereinafter referred to as Yates), seek a determination of reasonable well costs in connection with the drilling of the Grynberg State Com Well No. 1 located 1980 feet from the South line and 660 feet from the West line of Section 20, Township 9 South, Range 27 East, Chaves County, New Mexico, said applicants being working interest owners in said well.

(3) Said Grynberg State Com Well No. 1 was drilled pursuant to Order No. R-7393 in Case No. 7984, wherein the Commission ordered all mineral interests from the surface through and including the Abo formation underlying the SW/4 and all mineral interests from the top of the Wolfcamp to the

EXHIBIT "B"

Precambrian formation, underlying the W/2 of said Section 20, be pooled to form standard 160-acre and 320-acre gas spacing proration units, respectively, to be dedicated to the Grynberg State Com Well No. 1, with Jack Grynberg designated as the operator.

(4) The applicants own 25 percent of the working interest attributable to the Abo formation and 62.5 percent of the working interest attributable to the Wolfcamp to Precambrian interval.

(5) At the June 19 hearing both the applicants and Grynberg presented calculations of appropriate well costs in said Grynberg State Com Well No. 1 attributable to the working interest owners.

(6) The Commission determined that neither Grynberg nor applicants had calculated the reasonable well costs as stated in the above-described order in accordance with the Commission's interpretation of that order and required the parties to resubmit the allocation of costs based upon such interpretation.

(7) At the hearing on August 7, 1986, applicants and Grynberg submitted schedules showing the revised allocations.

(8) The Commission adopts the allocation of costs submitted by Yates on their August 7, 1986, Exhibit No. 2 except that the cementing costs as shown by the Halliburton invoice dated February 19, 1984 should be reallocated on the basis of the amount of cement above the base of the Abo and the amount of cement below the base of the Abo.

(9) Morris Ettinger, witness for Grynberg, established that the top of the cement was 4,200 feet and that the top of the Wolfcamp was located at 5,378 feet.

(10) One thousand one hundred seventy eight feet (1,178) of cement were placed in the well below the base of the Abo.

(11) In accordance with the formula established by the Commission, \$4,827.97 should be allocated to depths above the Wolfcamp and \$4,172.23 should be allocated to depths below the Wolfcamp. These calculations are shown on Exhibit "A" attached hereto.

(12) Yates has paid Grynberg \$215,706.26 while the total amount due from Yates to Grynberg was \$134,326.99.



(13) After giving Grynberg credit for sums credited by him to applicants, Grynberg owes applicants the sum of \$78,770.96, all as shown on Exhibit "A" attached hereto.

IT IS THEREFORE ORDERED THAT:

(1) The total reasonable well costs and allocation of well costs attributable to the applicants, Yates Petroleum Corporation, Yates Drilling Company, Myco Industries, Inc., and Abo Petroleum Corporation (Yates), for the Grynberg State Com Well No. 1 located 1980 feet from the South line and 660 feet from the West line of Section 20, Township 9 South, Range 27 East, Chaves County, New Mexico, is hereby determined to be as shown on Exhibit "A" attached to this order.

(2) Based on the estimated well costs, Yates has overpaid the well operator in the amount of \$78,770.96.

(3) Jack J. Grynberg, as well operator, should repay the sum of \$78,770.96 to Yates.

IT IS FURTHER ORDERED THAT:

(2) 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

JIM BACA, Member

*Ed Kelley*

ED KELLEY, Member

*R. L. Stamets*

R. L. STAMETS,  
Chairman and Secretary

S E A L

|                             |                  |                |
|-----------------------------|------------------|----------------|
| Deep Only - (schedule)      | \$ 50,631.07     |                |
| Deep Allocated - (schedule) | 58,481.63        | at indicated % |
| Abo Allocated - (schedule)  | 111,534.09       |                |
| Abo @ .8189 -               | 98,521.80        |                |
| Deep @ .1811 -              | <u>21,788.13</u> |                |
|                             | \$ 340,956.72    |                |

| <u>Zone Allocation</u> | <u>Total</u>              | <u>Applicants</u>     |
|------------------------|---------------------------|-----------------------|
| Deep                   | \$ 130,900.83 x .625 =    | \$ 81,813.02          |
| Abo                    | <u>210,055.85</u> x .25 = | <u>52,513.97</u>      |
|                        | \$ 340,956.72             | \$ 134,326.99         |
|                        |                           | <u>(215,706.26)</u>   |
|                        |                           | (81,379.27)           |
|                        | (Grynberg payment)        | 2,608.31              |
|                        |                           | <u>(\$ 78,770.96)</u> |

Total Deep %

\$130,900.83      340,956.72 + .3839

Total Abo %

\$210,055.89      340,956.72 = .6161

CASE NO. 8901  
ORDER NO. R-7393-B  
EXHIBIT "A"

# APPEAL OF WELL-COST ALLOCATION

Pro-rata  
As billed to operator

Demeanor of Grynberg

The Oil Conservation Commission consists of Land Comm'r, Sec EMNRD, Dir OCC. Hearing was held pursuant to authority of Oil Conservation Commission to enforce and oversee the subject-matter of its orders. Grynberg, by Order R-7393, force pooled Yates interests in Section 20, T9S, R27E, Chase County. Abo formation was pooled to 160 acres, W/2 (360 ac) was pooled for Prepermian formation. Pursuant to paragraph 6 of the Order, the operator, Grynberg, was required to submit a schedule of well costs to the Commission and the pooled parties. Yates objected to the allocation of costs and a hearing was called to determine the reasonableness of such allocation.

In Order 7393, guidelines were set out as to how well costs would be allocated between the two pooled formations.

At the hearings, held June 19 & Aug. 7, 1986, testimony was presented by both parties regarding the proper cost allocation. Testimony demonstrated that Grynberg had over-allocated costs to the Pre-permian formation, and that a refund of pre-paid estimated well costs was due to Yates.

Of a total well cost of approximately \$340,000, only \$20-30,000 remained at issue after testimony was concluded. This difference is found in three items.

- 1 - Logging - depth charge / logging charge
- 2 - Drilling Cost - (Contract as basis for determining)
- 3 - Cement - covered both formations

As to logging, the Comm'n determined that Grynberg's allocation of 100% of the depth charge portion of the Schlumberger logging cost to the pre-permian zone was not appropriate; that if the logging operation benefited both zones, the, the depth charge should be apportioned.

contained

contained  
in Grynberg's  
Petition for  
Rehearing  
(p. 7)

9-10  
A  
B  
O  
P  
R  
E  
R  
M.

As to drilling cost, evidence showed that Grynberg charged the drilling cost based on number of drilling days over each zone, even though the drilling contract was not a day rate but a footage contract - Turnkey, (p. 41, Trans. of 6-19-86) Thus cost should be properly allocated according to footage or formula in TP 25 of order R-7393.

Cement charge was eventually determined using footage comparison.

STATE OF NEW MEXICO  
DEPARTMENT OF ENERGY AND MINERALS  
OIL CONSERVATION COMMISSION

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

RECEIVED

JAN 20 1987

OIL CONSERVATION DIVISION

THE APPLICATION OF YATES DRILLING  
COMPANY, MYCO INDUSTRIES, INC.,  
AND ABO PETROLEUM CORPORATION FOR  
DETERMINATION OF REASONABLE WELL  
COSTS.

CASE: 8901  
ORDER: R-7393-b

APPLICATION OF GRYNBERG  
PETROLEUM COMPANY FOR REHEARING

COMES NOW GRYNBERG PETROLEUM COMPANY pursuant to the provisions of Section 70-2-25 NMSA (1978) and applies to the Oil Conservation Commission of New Mexico for a Rehearing of the above captioned case and order, and in support thereof states:

PARTIES:

1. Petitioner ("Grynberg") is a duly organized corporation doing business in the State of New Mexico, and is the operator of the Grynberg State I-20 Well located in W/2 of Section 20, T9S, R27E, NMPM, Chaves County, New Mexico.

2. The applicants in Case 8901 are Yates Petroleum Corporation, Yates Drilling Company, Myco Industries and

Abo Petroleum Corporation ("Yates") and are corporations duly organized under the laws of the State of New Mexico and are working interest owners in the Grynberg State I-20 Well.

3. The Oil Conservation Commission of the State of New Mexico, ("Commission") is a statutory body created and existing under the provisions of the Oil & Gas Act, Sections 70-2-1 through 70-2-36 NMSA (1978), laws of the State of New Mexico.

**STATEMENT OF FACTS:**

1. Grynberg owns the oil and gas working interest for the E/2SW/4 and SW/4SW/4 of Section 20.

2. Yates owns the oil and gas working interest for the NW/4 and the NW/4SW/4 of Section 20.

3. For purposes of this case, the W/2 of Section 20 would be dedicated to the PrePermian deep gas formation (Deep) in which Grynberg has 37.5 interest and Yates has 62.5% interest.

4. The SW/4 of Section 20 would be dedicated to the shallow gas formation (Abo) in which Grynberg would have a 75% interest and Yates would have a 25% interest.

5. The NW/4SW/4 being the 40-acre tract upon which the subject well is located would be a 40-acre oil well dedication for the San Andres oil potential of which Yates held 100% prior to the forced pooling order.

6. Both Grynberg and Yates sought to drill a well in the W/2 of Section 20 and each filed a compulsory pooling application to force pool the other.

7. Grynberg's force pooling case against Yates was docketed as Commission Case 7984.

8. Yates also filed a forced pooling case against Grynberg which was docketed as Commission Case 7983.

9. Both cases were consolidated and heard by the Commission on October 18, 1983 and on December 2, and 3rd, 1983 the Commission entered Order R-7393 approving the Grynberg application and Order R-7392 denying the Yates application.

10. On January 12, 1984, all of the Yates interests signed the Grynberg AFE for the Abo test and the AFE for the Deep Test and prepaid Grynberg \$215,706.26 for the drilling and completion of the well. (See Grynberg Exhibit 2 - June hearing).

11. On February 1, 1984 Grynberg spudded the Grynberg State I-20 well and completed the well on April 1, 1984 for a total cost of \$340,956.72.

12. On May 22, 1986 Yates filed an application with the Commission requesting a hearing to determine reasonable well costs.

13. At the June hearing Yates agreed that \$340,956.72 were the reasonable costs of the well but

objected to the method used by Grynberg to allocate those costs between Grynberg and Yates for the well.

14. Under the provisions of paragraph (25) of the Grynberg Compulsory Pooling Order R-7393, the Commission apportioned the costs between the Abo formation and the Deep formation as follows:

(25) That estimated well costs for the Abo formation, except for costs directly attributable to the Precambrian\*, should be estimated on the basis of depth for each formation and that costs for the Abo formation should not exceed 81.89 percent of the total costs of the proposed well, (5200 foot Abo depth/6350 foot total depth - 0.8189).

\* The word "Precambrian" was later corrected by the Commission Nunc Pro Tunc Order to correctly state the PrePermian meaning from the top of the Wolfcamp formation to the base of the Pennsylvanian formation, i.e., the deep formation.

15. On June 19, 1986 the Commission held the first of two hearings on the Yates Application (herein referred to as the "June hearing").

16. At the June hearing Yates contended that the Commission should first allocate to the Abo formation all the direct costs attributable to that zone, then allocate all of the direct costs attributable to the Deep formation and then divide the balance on a ratio of 81.89% to the Abo and 18.11% to the Deep zone. Using this formula, Yates contended that its share of the costs of the well should be \$125,589.37 (See Yates Exhibit 1 - June hearing).



17. At the same hearing, Grynberg contended that subsequent to the entry of Order R-7393, two important changes had occurred:

(a) That Yates has signed the AFE thus constituting a contractual agreement between the parties which substitute for the compulsory pooling order; and

(b) That the San Andres oil zone on 40-acre spacing was of sufficient potential to require that it share in the cost allocation for the well.

18. Grynberg contended that should the Commission agree to allocate the costs of the well among the San Andres, Abo and Wolfcamp, and assuming that Yates held 100% of the San Andres zone, then Yates share of the costs of the well would be \$169,767.64. (See Grynberg Exhibit 9 and page 54 Transcript -June hearing).

19. Grynberg further contended that should the Commission decide to exclude the San Andres zone, then the costs allocation to Yates should be \$151,728.44. (See Grynberg Exhibit 7 - June hearing).

20. During the June hearing, there was a discussion off the record after which the Commission ruled that neither party had calculated the allocation of well costs in accordance with the Commission's interpretation of Paragraph 25 of Order R-7393. (See page 69 - June Transcript). However, the Commission did not then, nor in the August hearing, state on the record its interpretation.

21. The case was then continued to the August 7, 1986 Commission hearing and the parties directed to

recalculate the allocations and to exchange those recalculations in advance of the August 7, 1986 hearing.

22. At the August 7, 1986 Hearing without providing a copy to Grynberg in advance of the hearing and over the objection of Grynberg, Yates introduced its allocation of costs (Yates Exhibit 2 - August hearing). That allocation followed the same formula that Yates had followed for the June hearing but this time showed a cost to the Deep formation of \$128,353.54 and a cost to the Yates interest of \$133,373.64.

23. At the August hearing, the Commission excluded the testimony of Mr. Grynberg concerning the potential of the San Andres zone and its share of the allocation of the costs of the well. (See page 56 - August hearing transcript).

24. Grynberg introduced a cost allocation exhibit showing an allocation of costs directly attributable to the Deep zone with the balance of the costs being allocated on a ratio of 81.89% to the Abo and 18.11% to the Deep zone with a resulting cost to the Yates interest for the well of \$153,773.11 (See Grynberg Exhibit 10 - August hearing).

25. One of the principal differences between Yates and Grynberg were the allocation of the following items:

| <u>ITEM/TOTAL</u>                           | <u>Abo</u>  | <u>PrePermian</u> |
|---|-------------|-------------------|
| 2/12/84 Schlumberger logging<br>\$20,363.86 |             |                   |
| Yates:                                      | \$14,443.37 | \$5,920.49        |
| Grynberg:                                   |             | \$9,658.62        |
| Halliburton cement \$9,000.20               |             |                   |
| Yates:                                      | \$ 7,370.26 | \$1,629.94        |
| Grynberg:                                   |             | \$3,451.74        |
| Desert Drilling \$114,005.07                |             |                   |
| Yates:                                      | \$86,256.27 | \$27,748.80       |
| Grynberg:                                   |             | \$60,002.67       |

26. As to the daily drilling costs, Grynberg presented evidence that of the 19 days spent drilling the well, ten days were directly attributable to the Deep formation.

27. Yates contended that the drilling costs should be allocated on a footage basis regardless of how much of the actual drilling time was spent in the deep formation. The Commission accepted Yates contention on this point. (Page 87 - August hearing Transcript).

28. As to the cementing costs, the Commission directed it be allocated 20 percent to the Abo and 80 percent to the Deep zone, based upon using 4200 feet as the top of the cement and Yates pick of the top of the Wolfcamp (Deep zone) which was 5378 feet.

29. As to the Schlumberger logging, Grynberg allocated 100 percent of the depth charge to the Deep zone for all of the four logs while Yates allocated 100

percent of the depth charge to the Deep zone on only one of the four logs with the balance of the logging depth charge being allocated between the deep and Abo zones based upon a footage ratio. Each party allocated the logging portion of the charges based upon the footage logged in the Deep zone. The Commission accepted Yates contention on this point. (Page 87 - August hearing Transcript).

30. In deciding each of the cost allocations set forth in paragraph 25 above, the Commission failed to follow the allocation formula set forth in Paragraph (25) of Order R-7393.

31. The Commission further held that the Order was still in effect, and denied Grynberg's motion to Dismiss notwithstanding the signature by Yates of the Grynberg AFE's.

32. On December 31, 1986 the Commission entered Order R-7393-B finding that Yates' share of the cost of the well should be \$134,326.99.

33. Within twenty days of the date of Order R-7393-B, Grynberg has filed this Application for Rehearing.

## GROUND FOR REHEARING

POINT I: ORDER R-7393-B SHOULD BE REVERSED  
BECAUSE THE COMMISSION FAILED TO  
MAKE A "BASIC CONCLUSION OF FACT."

Order R-7393-B fails to comply with the applicable statutory and judicial mandates set forth in Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 373 P2d 809 (1962) by failing to find that Order R-7393-B will protect correlative rights and prevent waste. The Order is void of the requisite findings concerning waste and protection of correlative rights.

POINT II: ORDER R-7393-B SHOULD BE REVERSED  
BECAUSE THE ORDER FAILS TO CONTAIN  
SUFFICIENT FINDINGS.

Commission Order R-7393 provides a means by which any party can object to the costs of the well and obtain a hearing before the Commission to determine the reasonable costs of the well. Yates had no objection to and concedes that the total well cost of \$340,956.72 is a reasonable well cost. However, under the guise of that provision of the original compulsory pooling order, Yates filed an application to have the Commission decide whether Grynberg had correctly allocated the costs to the various zones in the well.

In deciding that issue, the Commission entered Order R-7393-B which contains Finding (8) thereby adopted the

allocation of costs submitted by Yates and by implication denied the allocation submitted by Grynberg. The Commission has failed to provide the necessary findings which disclose its reasoning for rejecting the Grynberg allocation and adopting, with modification, the Yates allocation.

In addition, the Order fails to disclose why the Commission did not consistently use the same formula for allocation of each of the well costs. Such an inconsistency, without explanation, fails to conform to disclosure requirements required by the New Mexico Supreme Court in Fasken v. Oil Conservation Commission, 87 N.M. 292, 532 P.2d 588 (1975). The Court, in Fasken, held that not only must the Commission order contain ultimate findings such as "prevention of waste and protection of correlative rights," the order must also contain sufficient findings to disclose the reasoning of the Commission.

POINT III: THE ALLOCATION OF COSTS SET FORTH IN  
ORDER R-7393-B ARE CONTRARY TO  
PARAGRAPH (25) OF ORDER R-7393.

On December 2, 1983, the Commission entered Order R-7393 which included the following:

(25) That estimated well costs for the Abo formation, except for costs directly attributable to the Precambrian, should be established on the basis of depth for each formation and that costs for the

Abo formation should not exceed 81.89 percent of the total costs of the proposed well, (5200 foot Abo depth/6350 foot depth = 0.8189).

The word "precambrian" was later corrected by a Nunc Pro Tunc order to correctly show the PrePermian.

The above finding required that all of the costs directly attributable to the Deep zone be determined and then the remaining amount to be divided on a ratio of 81.89% to the Abo and 18.11% to the Deep zone.

Mr. Grynberg's Exhibit 10 (August hearing) correctly applied the provisions of Order R-7393. In addition, Mr. Grynberg showed that the logging and daily drilling costs should be allocated to reflect the actual time spent in those activities in the Deep zone. Conversely, Yates used a footage allocation for some items and apportioned others based upon the 81.89% to the Abo and 18.11% to the Deep zone and used Grynberg's approach for still other items.

The Commission, without amending Order R-7393, and contrary to that order, decided to allocate the costs on a different basis and apparently has allocated certain direct costs to the Abo and certain direct costs to the Deep zone then divided some of the remaining balance between the two zones on a ratio of 81.89% to the Abo and 18.11% to the Deep zone and others on a footage basis different from that calculated in Order R-7393. At the August hearing, the Commission stated on the record that

it was not following Paragraph (25) of Order R-7393: "Mr. Grynberg, for what it's worth, I would point out that the method that is currently being used for allocation of costs under these conditions is substantially different from the one that's in this order..." (Page 44 - August hearing Transcript).

While the Commission stated at the August hearing that "this is certainly a confusing finding and I can understand why there have been problems with allocation of well costs." (See page 22 - August hearing Transcript) there is nothing in the subsequent Order R-7393-B to explain or justify why the Commission failed to follow the terms of the original order. Such action violates the requirements set forth by the New Mexico Supreme Court in Fasken.

POINT IV: ORDER R-7393-B IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, IS ARBITRARY AND CAPRICIOUS AND IS CONTRARY TO LAW.

The following findings made by the Commission in Order R-7393-B are not supported by substantial evidence, are arbitrary and capricious and contrary to law:

(6) The Commission determined that neither Grynberg nor applicants have calculated the reasonable well costs as stated in the above-described order in accordance



with the Commission's interpretation of that order and required the parties to resubmit the allocation of costs based upon such interpretation.

(8) The Commission adopts the allocation of costs submitted by Yates on their August 7, 1986, Exhibit No. 2 except that the cementing costs as shown by the Halliburton invoice dated February 19, 1984 should be reallocated on the basis of the amount of cement above the base of the Abo and the amount of cement below the base of the Abo.

(9) Morris Ettinger, witness for Grynberg, established that the top of the cement was 4,200 feet and that the top of the Wolfcamp was located at 5,378 feet.

(10) One thousand one hundred seventy eight feet (1,178) of cement were placed in the well below the base of the Abo.

(11) In accordance with the formula established by the Commission, \$4,827.97 should be allocated to depths above the Wolfcamp and \$4,172.23 should be allocated to depths below the Wolfcamp. These calculations are shown on Exhibit "A" attached hereto.

(12) Yates has paid Grynberg \$215,706.26 while the total amount due from Yates to Grynberg was \$134,326.99.

(13) After giving Grynberg credit for sums credited by him to applicants, Grynberg owes applicants the sum of \$78,770.96, all as shown on Exhibit "A" attached hereto.

POINT V:           THE COMMISSION IMPROPERLY EXCLUDED  
                  GRYNBERG'S TESTIMONY AND FAILED TO  
                  ALLOCATE A PORTION OF THE WELL COSTS  
                  TO THE SAN ANDRES FORMATION.

At the June hearing, the Commission received evidence by Mr. Morris Ettinger on behalf of Grynberg concerning an allocation of a portion of the costs to the San Andres formation and admitted over the objection of Yate's attorney Grynberg's Exhibit 9 which showed how to make that allocation. (See pages 53-55 and 57-58 June Transcript). However, at the August Hearing the Commission sustained Yate's objection on relevancy and excluded Mr. Grynberg's testimony about the allocation of costs to the San Andres formation. (See pages 55-56 August Transcript.)

In order to accomplish the Commission's intended purpose of allocating the well costs between the parties on some reasonable basis, the Commission both at the June and August hearing admitted certain new evidence that was

not available when the original compulsory pooling order was entered on December 2, 1983. In addition, the Commission selectively used certain of that evidence to modify the provisions of paragraph (25) of the original order.

When it came to the evidence concerning which of the potential producing formations should participate in the allocation of well costs, the Commission made evidentiary rules in August that were inconsistent with prior rulings made in June.

The exclusion of Grynberg's August evidence was erroneous and inconsistent with the prior admission of similar evidence in June. The Commission's ruling is arbitrary, inconsistent, capricious, and contrary to law.

POINT IV: THE COMMISSION ERRONEOUSLY DENIED  
GRYNBERG'S MOTION TO DISMISS THE  
YATES' APPLICATION.

Subsequent to the Compulsory Pooling Order R-7393 entered effective December 2, 1983, Yates voluntarily executed the Grynberg's Authority for Expenditure for the subject well and prepaid its share of the costs of the well. Grynberg contends that this action by Yates constituted a separate voluntary agreement between the parties which reallocated the interests in the various spacing units and made the Commission compulsory Pooling order moot.

This issue was presented to the Commission at the August hearing and the Commission ruled adversely to Grynberg. (See page 50-52 August Transcript).

The Commission has historically viewed any agreement which is voluntarily entered into after the issuance of a compulsory pooling order to supersede that order. (See page 51 August Transcript). However, without evidence to support it, the Commission erroneously equated the signing of the Grynberg AFE's as simply an indication by Yates that they were signing to avoid the risk factor penalty of the compulsory pooling order. First, there is no evidence in the record to support the speculation by the Commission that Yates was simply avoiding the risk factor penalty, and second, the provision of Order R-7393 only required the prepayment by Yates of its share of the costs of the well. The Order does not require the execution by Yates of the AFEs. Such action by Yates can reasonably be concluded to be a voluntary agreement negating the need for the pooling order.

The Commission's failure to dismiss the application constitutes error.

WHEREFORE, GRYNBERG PETROLEUM COMPANY respectfully requests that the Commission grant a Rehearing in the above styled case and that after rehearing, the Commission vacate and set aside its Order R-7393-B and

enter its Order consistent with the matters set forth in  
this Application for Rehearing.

Respectfully submitted:

Kellahin, Kellahin & Aubrey



By  
W. Thomas Kellahin  
P. O. Box 2265  
Santa Fe, New Mexico 87504

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing  
application was mailed to Joel Carson, Esq., Losee &  
Carson, Attorneys at Law, P. O. Drawer 239, Artesia, New  
Mexico 88210 on this 20 day of January, 1987.



W. Thomas Kellahin

04/24/87

GEORGIA FERRIN, CLERK

**FIFTH JUDICIAL DISTRICT**

**COUNTY OF CHAVES**

**STATE OF NEW MEXICO**

**GRYNBERG PETROLEUM COMPANY,**

**Petitioner,**

**vs.**

**CV-87-103**

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

**Respondents.**

**NOTICE OF SETTING**

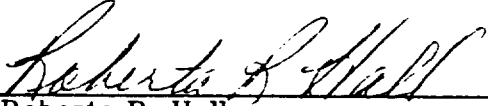
TO: W. Thomas Kellahin  
P. O. Box 2265  
Santa Fe, NM 87504

Joel M. Carson  
P. O. Drawer 239  
Artesia, NM 88210

YOU ARE HEREBY NOTIFIED that the above styled and numbered cause is set for hearing on Motion for Leave to Amend Original Complaint to Substitute Party on May 11, 1987 at 4:30 P.M. at the Chaves County Courthouse, Roswell, New Mexico. The Honorable W. J. Schnedar, District Judge, Division VI presiding.

The hearing will be by telephone conference call. Mr. Kellahin shall arrange the conference call. The telephone number for Judge Schnedar is 624-0859.

DATED: April 24, 1987

  
Roberta R. Hall  
Secretary to Hon. W. J. Schnedar

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

W. Thomas Kellahin  
Karen Aubrey

Jason Kellahin  
Of Counsel

April 28, 1987

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

"Hand Delivered"

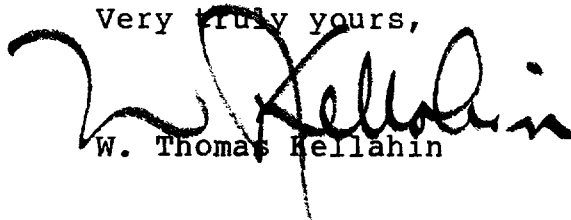
Re: Grynberg Petroleum Company vs.  
Oil Conservation Commission, et al,  
CV 87-103

Dear Mr. Taylor:

Please find enclosed a copy of Judge Schnedar's  
notice of hearing on my motion to Substitute Party.

In accordance with the notice I will initiate a  
conference call to you and Mr. Carson at 4:25 P.M. on  
Monday, May 11, 1987, and then call Judge Schnedar so  
that we can attempt to resolve this motion by a telephone  
conference.

Very truly yours,



W. Thomas Kellahin

WTK:ca  
Enc.

cc: Joel Carson, Esq.  
Losse & Carson  
105 South Fourth Street  
Artesia, New Mexico 88210

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

W. Thomas Kellahin  
Karen Aubrey

Jason Kellahin  
Of Counsel

May 12, 1987

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

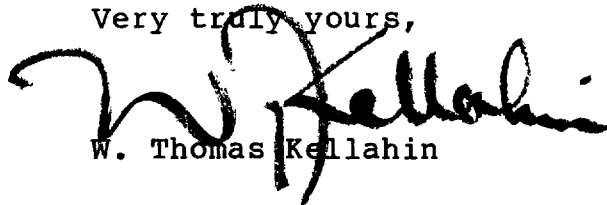
Re: OCC Appeal  
No. CIV 87-103

Dear Mr. Taylor:

Enclosed for your signature and approval please find the original Order Granting Leave to Amend Complaint in the above referenced case.

Please return original to me for forwarding to the Judge.

Very truly yours,



W. Thomas Kellahin

WTK:ca  
Enc.



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

ELIZABETH LOSEE

JAMES E. HAAS\*

ERNEST L. CARROLL

\*LICENSED IN TEXAS ONLY

26 December 1985

VIA PUROLATOR

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

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

Dear Mr. Stamets:

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

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

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

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

Mr. R. L. Stamets, Director  
-2-

26 December 1985

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

Respectfully submitted,

LOSEE & CARSON, P.A.

  
A. J. Losee

AJL:jcb

cc: Mr. George Yates  
Mr. Gene Gallegos

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**

**TO** DIRECTOR,  
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: Gaudin Shale  
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 \_\_\_\_\_

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 on or before March 1, 1987, 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, NMPM, 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. APRIJO, Member

  
JOE D. RALEY, 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 0.750 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 16, 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.

(9) 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 500 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 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.

-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

JIM BACA, Member

*[Signature]*

ED JENSEN, Member

*[Signature]*

R. L. STAMETS,  
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

---

<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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Post Office Box 2228  
Santa Fe, New Mexico 87504-2228  
(505) 982-2691

CERTIFICATE OF MAILING

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



J. E. GALLEGOS

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

MEMORANDUM BRIEF IN SUPPORT  
OF PETITION FOR REVIEW

J. E. GALLEGOS  
ROBERT W. ALLEN  
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Attorneys for Petitioner



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

4 JACK J. GRYNBERG, )  
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No. CV-86-55  
Case Assigned  
To: Judge W. J. Schnedar

MEMORANDUM BRIEF IN SUPPORT  
OF PETITION FOR REVIEW

STATEMENT OF THE CASE

This appeal is brought by the petitioner, Jack J. Grynberg, pursuant to the provisions of §70-2-25(B) NMSA 1978 (Cum.Supp. 1985), seeking judicial review of Oil Conservation Commission Order No. R-6873-A, issued December 6, 1985, in Case No. 8400.<sup>1</sup> Respondents are the Oil Conservation Commission of the Energy and Mineral Department of the State of New Mexico (the "Commission," or "OCC") and Harvey E. Yates Company ("Heyco").

<sup>1</sup>A copy of Order No. R-6873-A is attached as Appendix "A" for the convenience of the Court.

1 Briefly stated, Grynberg is the holder of State of New  
2 Mexico Oil and Gas Lease L-6907, covering the lease of oil, gas  
3 and other minerals in approximately 80 acres located in the  
4 E/2, NW1/4 of Section 18, Township 9 South, Range 27 East,  
5 N.M.P.M., Chaves County, New Mexico. Heyco and other related  
6 working interest owners own the leasehold interest of  
7 approximately 240 acres in the W/2, NW1/4, and SW1/4 of Section  
8 18. (9-18-85 TR. 10; Ettinger Hearing Exhibit No. "2"). On  
9 January 7, 1982, the Commission issued its Order No. R-6873<sup>2</sup>  
10 granting the application of Heyco seeking compulsory pooling of  
11 all mineral interests from the surface through the Ordovician  
12 formation underlying the W/2 of Section 18, and further  
13 declaring Heyco the operator of a well to be drilled on the  
14 320-acre tract created thereby.<sup>3</sup>  
15  
16  
17

18 <sup>2</sup>A copy of Order No. R-6873 is attached as Appendix "B"  
19 for the convenience of the Court.

20 <sup>3</sup>The effect of Order No. R-6873 was to consolidate or  
21 merge all of the interests within the unit in the pooled  
22 formations (9-18-85 Tr. 35-36). Grynberg is the owner of  
23 working leasehold interests in 24.6% of the 320-acre unit and  
24 is, therefore, the owner of an undivided 24.6% proportional  
25 interest in all production from the pooled formations  
underlying the unit established by Order No. R-6873. (Id. at  
39; Ettinger Hearing Exhibit No. "2", attached as Appendix "C"  
for the convenience of the Court).

1 As operator, Heyco drilled and completed a well in the  
2 SW/4 NW/4 of the 320-acre pooled unit, designated the Seymour  
3 State Comm. No. 1. This well was completed in the Abo  
4 formation and in a lower Prepermian formation (9-18-85 TR.  
5 16-17; Ettinger Hearing Exhibit No. "9"). The Abo well is  
6 currently producing on a 160-acre spacing unit while the  
7 Prepermian well, which is on a 320-acre spacing unit, has been  
8 nonproductive since about November, 1984 (9-18-85 TR. 16-17;  
9 Ettinger Hearing Exhibit No. "8").

10 Subsequent to completion of the original unit well,  
11 expert geologic evidence compiled by Grynberg revealed that a  
12 second well, at an unorthodox location 660 feet from the South  
13 line and 660 feet from the West line in the SW/4 SW/4 of  
14 Section 18, would be situated higher structurally. The proposed  
15 location presents a probability of obtaining commercial  
16 production not only from the Abo formation but also from the  
17 Fusselman, a separate Prepermian formation ~~from~~ that tested by  
18 the Seymour State well (9-18-85 TR. 14-20, 24; Ettinger Hearing  
19 Exhibit No. "7").

20 As an interest owner in the pooled unit, Grynberg  
21 requested that Heyco drill and operate a second well at the  
22 proposed unorthodox location to recover undeveloped gas  
23 reserves. Heyco refused to undertake further development of  
24 the unit (9-18-85 TR. 22-23; Ettinger Hearing Exhibit No. 10).  
25

1 On October 5, 1984, Grynberg made application to the Commission  
2 for an amendment to Order No. R-6873 allowing for a second well  
3 at the proposed location to protect his correlative rights and  
4 to prevent the waste of gas reserves underlying the unit which  
5 would otherwise have remained undeveloped.

6 After a hearing, the Commission issued Order No.  
7 R-6873-A (Appendix "A") regarding Grynberg's application. In  
8 that Order, the OCC determined that: (1) the W/2 of Section 18  
9 is a spacing or proration unit in Prepermian zones only; (2)  
10 the operation of OCC Order No. R-6873 conferred no interest in  
11 the minerals underlying the SW/4 of Section 18 in Grynberg,  
12 except in the Prepermian gas zones; and (3) any order entered  
13 granting Grynberg's application should be limited to Prepermian  
14 gas zones (Id., findings 27, 28 and 29, pages 3-4). Order  
15 R-6378A is therefore contrary to Grynberg's entitlement under  
16 prior Order R-6873 to a proportional share of production from  
17 each of the pooled formations in the unit, irrespective of the  
18 actual well or production location.

#### 19 STATEMENT OF PROCEEDINGS

20 In accordance with Section 70-2-25(A) NMSA (Cum.Supp.  
21 1985) and Rule 1222 of the OCC, Grynberg filed his Application  
22 for Rehearing<sup>4</sup> within twenty (20) days after the issuance of  
23

24 \_\_\_\_\_  
25 <sup>4</sup>A copy of that Application is attached as Appendix "D"  
for the convenience of the Court.



1 of Order No. R-6873-A. That Application set forth the reasons  
2 why the Order was believed to be illegal and erroneous.

3 The Commission did not act upon Grynberg's Application  
4 for Rehearing within ten (10) days after filing, thereby making  
5 Order No. R-6873-A final under Section 70-2-25(A) (Cum.Supp.  
6 1985). Grynberg then timely filed his Petition for Review in  
7 this Court pursuant to the provisions of Section 70-2-25(B)  
8 (Cum.Supp. 1985).

9 STATEMENT OF THE ISSUES ON APPEAL

10 The long-standing policy in New Mexico is that on  
11 appeals from administrative bodies, the questions to be  
12 answered by the court are questions of law, restricted to  
13 whether the administrative body acted fraudulently, arbitrarily  
14 or capriciously, and to whether the order was supported by  
15 substantial evidence. Continental Oil Co. v. Oil Conservation  
16 Commission, 70 N.M. 310, 315, 373 P.2d 809, 819 (1962); Johnson  
17 v. Sanchez, 67 N.M. 41, 351 P.2d 449 (1960).

18 Two issues of law are presented here.

19 The first is premised on the legal principle that a  
20 pooling order converts the separate interests within a unit  
21 into a common interest or tenancy as far as the development of  
22 the unit is concerned, regardless of where the well or the  
23 production is located within the unit. Order R-6873-A is  
24 arbitrary and capricious because it ignores or fails to  
25

1 appreciate the legal effect of the prior Order No. R-6873, and  
2 is contrary to New Mexico's law of pooling and unitization. It  
3 ignores the effect of the undertaking of Heyco by Order No.  
4 R-6873 for pooling of all of the formations underlying the  
5 320-acre unit from the surface through the Ordovician.

6 The second issue is premised on the legal principle  
7 that Commission orders must be based upon substantial,  
8 competent legal evidence adduced at the hearing and made part  
9 of the record. The Commission should be reversed because Order  
10 No. R-6873-A was based upon incompetent, unsworn, hearsay  
11 evidence not subject to cross-examination filed with the  
12 Commission fully three weeks after the close of the September  
13 18, 1985 hearing on the case.

14  
15 ARGUMENT

16 POINT I

17 ORDER NO. R-6873-A IS ERRONEOUS AS A MATTER  
18 OF LAW BECAUSE PRIOR ORDER R-6873 ESTABLISHED  
19 OWNERSHIP BY GRYNBERG OF AN UNDIVIDED FRACTIONAL  
20 INTEREST IN ALL PRODUCTION FROM THE POOLED  
21 MINERAL INTERESTS UNDERLYING THE 320-ACRE UNIT

22 This case boils down to a simple legal principle.  
23 Voluntary or compulsory pooling accomplishes unification of  
24 ownership on the area covered by the pooled unit and treats it  
25 as though there was a sole owner.

Order R-6873 created an undivided fractional interest  
in the production from all pooled mineral interests underlying

1 the 320-acre unit in question, from the surface to the  
2 Ordovician formation. The key provisions of Order R-6873  
3 (Appendix "B") are:

4  
5 IT IS THEREFORE ORDERED:

6 (1) That all mineral interests, whatever they may be,  
7 down through the Ordovician formation underlying the  
8 W/2 of Section 18, Township 9 South, Range 27 East,  
9 N.M.P.M., Chaves County, New Mexico, are hereby pooled  
10 to form a standard 320-acre gas spacing and proration  
11 unit to be dedicated to a well to be drilled at a  
12 standard location on said 320-acre tract.

13 (Emphasis supplied).

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

18 All operations for the pooled oil or gas, or  
19 both, which are conducted on any portion of  
20 the unit shall be deemed for all purposes to  
21 have been conducted upon each tract within  
22 the unit by the owner or owners of such  
23 tract. For the purpose of determining the  
24 portions of production owned by the persons  
25 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.

1 (Emphasis supplied).

2 Competent, qualified and uncontradicted expert  
3 evidence was presented at the hearing by Grynberg through the  
4 sworn testimony of Professor Bruce Kramer on the effect of  
5 Pooling Order R-6873 issued pursuant to §70-2-17(C). Mr.  
6 Kramer is a professor of oil and gas at the Texas Tech  
7 University School of Law, and co-author of the pre-eminent  
8 legal treatise on the law of pooling and unitization in the  
9 United States, Revised Volumes II and III, Myers, The Law of  
10 Pooling and Unitization, 2d Ed. (Kramer Hearing, Exhibit "13").

11 Essentially Professor Kramer stated that the Order  
12 accomplished a "unification of ownership, whether it be royalty  
13 or operating interest . . . and essentially you erase all  
14 internal boundary lines and the boundary lines of the new  
15 ownership criteria are those which are set forth in the  
16 compulsory order." (9-18-85 TR. 35-36). Instead of Grynberg  
17 having a specified 80 acres in the 320-acre unit (approximately  
18 24.6%), he has 24.6% in each acre in the unit. (9-18-85 Tr.  
19 36; Kramer Hearing Exhibit "15," attached as Appendix "E" for  
20 the convenience of the Court).

21 In Viking Petroleum v. Oil Conservation Commission,  
22 100 N.M. 452, 672 P.2d 280 (1983), the New Mexico Supreme Court  
23 affirmed this view of the Commission's Order R-6873. The  
24 Supreme Court noted:  
25

1           The first of the key provisions pooled the  
2           320-acre tract from the surface to the  
3           Ordovician formation. The Commission found  
4           that to prevent waste, to protect  
5           correlative rights and to allow each  
6           interest owner to recover its fair share of  
7           gas, the mineral interests will be pooled to  
8           the lower formation. (Emphasis supplied).

9           Other courts have commonly described the effect of  
10          voluntary and compulsory pooling as a form of consolidation or  
11          merger of all the interests in the pooled formations. See,  
12          Parkin v. State Corp. Com'n of Kansas, 234 Kan. 994, 677 P.2d  
13          991, 1002 (1984). Owners of the mineral rights and interests  
14          in a particular tract of land surrender all right to conduct  
15          individual drilling operations on that particular tract, and in  
16          lieu thereof, they become entitled to a proportional share in  
17          the total unit production. Young v. West Edmond Hunton Lime  
18          Unit, 275 P.2d 304, 308 (Okla. 1954). Separate interests  
19          within the unit are converted into a common interest as far as  
20          the development of the unit is concerned, regardless of where  
21          the well or the production is located within the unit. Mire v.  
22          Hawkins, 186 So.2d 591, 596 (La. 1966). If the drilling effort  
23          is successful, the resulting production, to which all tracts  
24          are deemed to contribute, is distributed to all interests in  
25          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).

1 In this case, Order R-6873 entered January, 1982,  
2 provides unequivocally that all mineral interests, whatever  
3 they may be, down through the Ordovician formation underlying  
4 the W/2 of Section 18 are pooled to form a standard 320-acre  
5 gas spacing and proration unit. The "pooled" mineral interests  
6 include, among others, the Fusselman and Abo formations, which  
7 are objective formations for the proposed second well.<sup>5</sup>  
8 Grynberg owns the working interest in approximately 80 acres,  
9 or 24.6% of the 320-acre unit, from the surface to the  
10 Ordovician formation. Heyco and others own the working  
11 interest in the remainder of the pooled unit. Consequently, by  
12 operation of Section 70-2-17(C), supra, and Order R-6873, the  
13 various interests in the separate tracts comprising the  
14 320-acre unit have been consolidated as a matter of law into an  
15 undivided ownership of the entire unit. Grynberg, as a result,  
16

17  
18 <sup>5</sup>It must be recognized that the compulsory pooling of all  
19 formations underlying the W/2 of Section 18, from the surface  
20 to the Ordovician, was specifically requested by HEYCO in its  
21 Amended Application filed October 21, 1981, in Case No. 7390.  
22 Indeed, the fact that all formations were pooled into a single  
23 320-acre unit was clearly HEYCO's purpose. In its original  
24 Application in Case No. 7390, filed September 29, 1981, HEYCO  
25 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."

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.

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 to the Commission. 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

1 statutes and regulations applicable in New Mexico, the Court  
2 held:

3 We have previously held that the Commission  
4 has considerable discretion in determining  
5 which owner is entitled to drill and operate  
6 the unit well. [Citation omitted.] We  
7 conclude that §87.1(b) authorizes the  
8 Commission to establish the well location at  
9 any location upon the spacing unit and that  
10 §87.1(d) authorizes the Commission to pool  
11 the working interest within the spacing unit  
12 and designate an operator to drill and  
13 operate the well at the designated well  
14 location. To hold otherwise would frustrate  
15 the intent of the Act because the owner  
16 desiring to drill would not be entitled to  
17 do so unless he held a lease covering the  
18 well location designated by the Commission.

19 534 P.2d at 1279 (Emphasis supplied).

20 It is clear from the foregoing that Grynberg owns an  
21 undivided 24.6% interest in all production from the pooled  
22 formations within the 320-acre unit, irrespective of where the  
23 well producing the pooled formations may be located on the  
24 unit. Accordingly, should the proposed second well be drilled,  
25 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.

#### 26 POINT II

#### 27 ORDER R-6873-A IS NOT BASED ON COMPETENT LEGAL EVIDENCE

28 Rule 1212 of the OCC requires that its Order be



1 supported by "competent legal evidence." Such is required by  
2 law aside from the rule.

3 While hearings before administrative bodies need not  
4 be conducted generally with the formality of a court hearing or  
5 trial, the procedure for receiving evidence must be consistent  
6 with the essentials of a fair trial. Ferguson-Steere Motor Co.  
7 v. State Corporation Commission, 63 N.M. 137, 314 P.2d 894, 898  
8 (1957). An administrative body

9  
10 . . . is authorized only to make its decision  
11 upon the evidence adduced at the hearing and  
12 made a part of the record. . . . The appellant  
13 was entitled to a hearing as provided by law,  
14 conducted fairly and impartially, with an  
15 opportunity to introduce evidence to refute or  
16 modify any matters or facts which the  
17 Commission might take into consideration in  
18 reaching its decision.

19 Transcontinental Bus System, Inc. v. State  
20 Corporation Commission, 56 N.M. 158, 241 P.2d  
21 829 (1952).

22 This case was principally heard on September 18,  
23 1985. At that time, Harvey E. Yates Company ("Heyco") made a  
24 "statement" by attorney William F. Carr. (9-18-85 TR. 5-7).  
25 Competent and qualified expert evidence was then presented by  
Grynberg through the sworn testimony of Professor Bruce Kramer  
on the effect of pooling Order R-6873. See Point I, supra:

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

1 placed under oath and cross-examined. This time it was  
2 represented by attorney A. J. Losee who presented unsworn  
3 argument and offered two exhibits unrelated to the effect of  
4 Order R-6873. (10-17-85 TR. 4-19). In an informal exchange,  
5 the Chairman remarked that he would "like to know how or who  
6 Heyco is paying in the Abo formation . . . (10-17-85 TR. 17)  
7 . . . something showing the ownership in that half section --"  
8 (10-17-85 TR. 18). At the close of the hearing, the parties  
9 were allowed ten (10) days to file "whatever other submittals  
10 there are, to submit proposed orders in this case." (10-17-85  
11 TR. 28). Grynberg submitted a proposed form of Order in a  
12 timely manner (attached as Appendix "F" for the convenience of  
13 the Court).

14 On November 13, 1985, over three weeks after the  
15 hearing was closed, Heyco filed with the Commission (1) a  
16 letter from Attorney A. J. Losee dated November 11, 1985, (2) a  
17 proposed form of Order, (3) a brief, (4) a copy of a document  
18 styled Harvey E. Yates Company Amended Gas Division Order,  
19 (Seymour State #1 Abo Zone Only), (5) a copy of a document  
20 styled Harvey E. Yates Company Amended Gas Division Order  
21 (Seymour State #1 Atoka Zone Only), (6) First Supplemental  
22 Opinion of Title, December 13, 1983, by S. B. Christy, IV,  
23 relating to the subject one-half section, and (7) Opinion of  
24 Title, April 12, 1983, by S. B. Christy, IV, likewise on the  
25

1 subject land. Items (4) through (7) purported to state legal  
2 opinions as to title to leases and the mineral estate for  
3 Section 18. These documents did not take into account the  
4 legal effect of pooling Order R-6873.

5 There is no attributable source of the division orders  
6 submitted after the fact by Heyco. They track, however, the  
7 title opinions. The authors of all of the title papers were  
8 never present at the hearing to be sworn, to be qualified as  
9 experts, to confront the applicant and to be cross-examined.  
10 Besides the objections and deficiencies that would have emerged  
11 from that process, this non-hearing evidence is subject to  
12 fatal competence and relevance objections. Yet, it necessarily  
13 follows from the content of the Order in this case that those  
14 materials form the sole basis for the decision.

15 The courts in New Mexico follow the rule of  
16 substantial evidence in the record, requiring the reviewing  
17 court to determine whether the record contains substantial  
18 evidence to support an administrative decision and to ignore  
19 evidence to the contrary. Duke City Lumber Co. v. New Mexico  
20 Environmental Improvement Board, 101 N.M. 291, 681 P.2d 717,  
21 719 (1984). Mere uncorroborated hearsay cannot constitute the  
22 substantial evidence upon which an administrative decision must  
23 be based. McWood Corporation v. State Corporation Commission,  
24 78 N.M. 319, 431 P.2d 52 (1967); Ferguson - Steere Motor Co. v.  
25

1 State Corporation Commission, supra. The "evidence" submitted  
2 by Heyco was pure hearsay and cannot, as a matter of law, serve  
3 as any support for the Commission's Order. The contents of the  
4 written materials submitted were from an unsworn witness who  
5 was not subject to cross-examination and whose testimony was  
6 not provided at or prior to the hearing so that Grynberg could  
7 prepare to meet it.

8 Compounding the defect in the quality of the evidence  
9 was the timing of it. In Transcontinental Bus System, Inc. v.  
10 State Corporation Commission, supra, an administrative Order of  
11 the State Corporation Commission was reversed on the grounds  
12 that the Commission considered one of its own rulings in  
13 another case which it had rendered two days after the hearing  
14 on the case before it.

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

21 Accordingly, the unsworn hearsay belatedly submitted  
22 by Heyco cannot support its Order R-6873-A. The only competent  
23 evidence presented at the hearing was that in support of  
24 Grynberg's position that the effect of Order No. R-6873 was to  
25

1 consolidate or merge all of the interests within the unit,  
2 making Grynberg the owner of an undivided 24.6% in all  
3 production from the pooled formations underlying the unit.

4 CONCLUSION

5 For the foregoing reasons, OCC Order No. R-6873A  
6 should be vacated, with directions to enter a new order,  
7 consistent with law and the legally competent evidence  
8 presented to the OCC at public hearing.

9  
10 JONES, GALLEGOS, SNEAD & WERTHEIM, P.A.  
11 Attorneys for Petitioner

12  
13 By J. E. Gallegos  
14 J. E. GALLEGOS

15  
16 By Robert W. Allen  
17 ROBERT W. ALLEN  
18 Post Office Box 2228  
19 Santa Fe, New Mexico 87504-2228  
20 (505) 982-2691

21 CERTIFICATE OF MAILING

22 It is hereby certified that on the 3rd day of June,  
23 1986, a true and correct copy of the foregoing Memorandum Brief  
24 in Support of Petition for Review was mailed to counsel of  
25 record, Jeff Taylor, Esq., General Counsel for the Energy

1 Minerals Department, Oil Conservation Division, Post Office Box  
2 2088, State Land Office Building, Santa Fe, New Mexico 87501,  
3 and A. J. Losee, Esq., Post Office Drawer 239, Artesia, New  
4 Mexico 88210, by first-class mail, postage prepaid.

5  
6   
7 \_\_\_\_\_  
8 ROBERT W. ALLEN

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APPENDIX A

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



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. 6400  
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 0.750 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 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 800 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.

-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

JIM BACA, Member

*Ed Jensen*

ED JENSEN, Member

*R. L. Starnets*

R. L. STARNETS,  
Chairman and Secretary

S E A L

APPENDIX B

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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, NMFM, 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, NMPL, 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 uncovered mineral interest shall be considered a seven-eighths (7/8) working interest and a



one-eighth (1/8) royalty interest for the purpose of allocation 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.

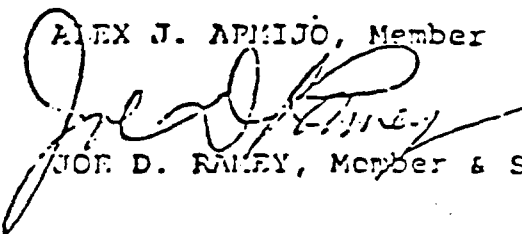
(13) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

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. APHILJO, Member

  
JOE D. BAILEY, Member & Secretary

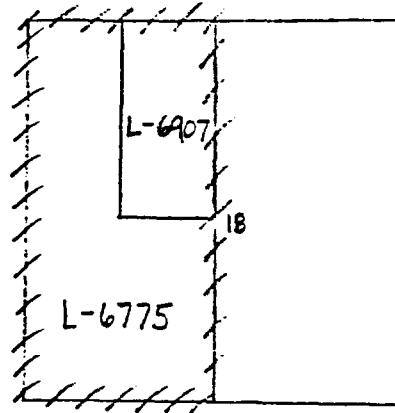
S E A L

APPENDIX C

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EXHIBIT "2"

PROPOSED 320 ACRE DRILLING UNIT AND WORKING INTEREST OWNERS,  
W $\frac{1}{4}$  SECTION 18, TOWNSHIP 9 SOUTH, RANGE 27 EAST, N.M.P.M.,  
CHAVEZ COUNTY, NEW MEXICO.



Containing 325.04 acres, more or less

|        |                               | Acres  | Percent    |
|--------|-------------------------------|--------|------------|
| L-6907 | Jack J. Grynberg              | 80.00  | 24.6123554 |
| L-6775 | Harvey E. Yates Company et al | 245.04 | 75.3876445 |

APPENDIX D

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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



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

CERTIFICATE OF MAILING

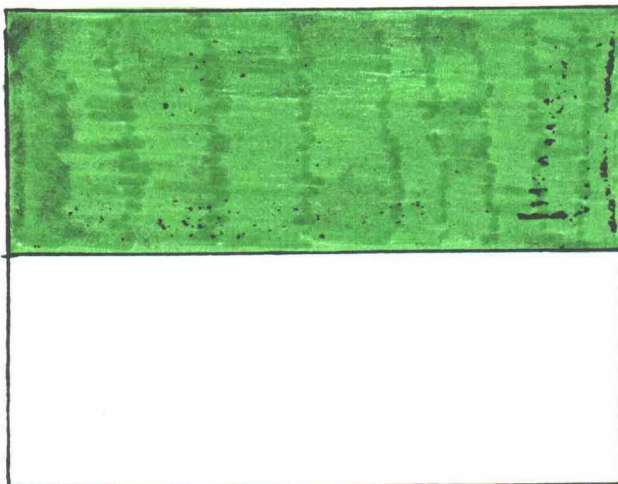
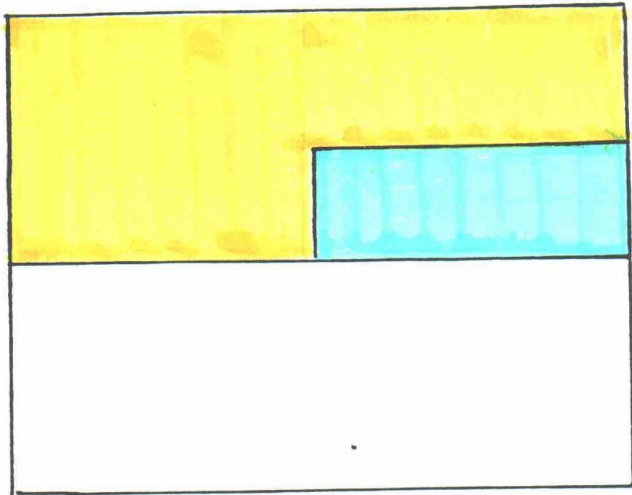
It is hereby certified that on the 26th day of December, 1985, a true and correct copy of the foregoing Application for Rehearing was mailed to counsel of record, A. J. Losee, Esq., Post Office Drawer 239, Artesia, New Mexico 88211, by first-class mail, postage prepaid.

  
J. E. GALLEGOS



APPENDIX E

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



OWNERSHIP BEFORE ORDER R-6873

OWNERSHIP AFTER ORDER R-6873

HEYCO + 240 acres  
GRYNBERG + 80 acres

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

APPENDIX F

1                   BEFORE THE OIL CONSERVATION COMMISSION  
2                   ENERGY AND MINERAL DEPARTMENT  
3                   OF THE  
4                   STATE OF NEW MEXICO

5   IN THE MATTER OF THE APPLICATION OF           )  
6   JACK J. GRYNBERG TO AMEND COMMISSION        )  
7   ORDER NO. R-6873 TO PROVIDE FOR THE         )   Case No. 8400  
8   DRILLING OF A SECOND WELL AT AN            )  
9   UNORTHODOX LOCATION ON THE 320-ACRE         )   Order No. \_\_\_\_\_  
10   PRORATION UNIT, TO CHANGE THE             )  
11   OPERATOR AND TO DETERMINE THE RISK          )   Amending Order  
12   FACTOR AND OVERHEAD CHARGES, CHAVES        )   No. R-6873  
13   COUNTY, NEW MEXICO.                        )  
14    )

15                   PROPOSED ORDER OF THE COMMISSION  
16                   SUBMITTED BY THE APPLICANT

17   BY THE COMMISSION:

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

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

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

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

8 1. The current operator, Yates, drilled and completed  
9 a well in the SW/4 NW/4 of the 320 acre unit designated the  
10 Seymour State Comm. No. 1. The well was completed in the Abo  
11 formation and a lower Prepermian formation. The Prepermian  
12 formation is and has been nonproductive since 1984.

13 2. The existing circumstances are that the 320 unit  
14 contains one producing Abo well on a 160 acre spacing and no  
15 producing Prepermian well on the 320 acre spacing. Grynberg's  
16 evidence establishes that a second well at an unorthodox  
17 location in the SW/4 SW/4 of Section 18 is situated higher  
18 structurally; that the proposed location presents a probability  
19 of obtaining commercial production from the Abo and from the  
20 Fusselman; that the Fusselman is a separate Prepermian  
21 formation from that which was tested by the Seymour State well.

22 3. Although requested by Grynberg to do so, Yates  
23 has refused to undertake further development of the unit by  
24 drilling a second well.  
25

1           4. The drilling of the second proposed well is  
2 necessary for the unit to be effectively and prudently  
3 developed and to prevent waste and protect correlative rights.

4           5. The effect of a pooling order, and specifically  
5 in this instance Order R-6873, is to convert separate interests  
6 into common interests in the whole unit. Grynberg's 24.6%  
7 interest in the property is an undivided fractional interest in  
8 all the production from the pooled mineral interests underlying  
9 the 320 acre interest, from the surface to the Ordovician  
10 formation. Accordingly, Grynberg has a right to drill a well  
11 on the proposed location.

12           6. The second well is proposed for the SW/4 SW/4 and  
13 constitutes an unorthodox location. A reasonable production  
14 limiting factor to compensate for such location is 79%.

15           7. The risk factor of 200 percent and overhead  
16 charges of \$3,550.00 per month while drilling and \$355.00 per  
17 month while producing and other related terms and conditions,  
18 as established by Order R-6873 are reasonable for the second  
19 well on the unit.

20           8. The applicant Grynberg is fit and competent to be  
21 designated operator of the second well or of the unit.

22           IT IS THEREFORE ORDERED:

23           1. That except as hereafter specifically provided,  
24 Order R-6873 remains in force and effect.  
25

1           2. That the unit is dedicated to the drilling of a  
2 second well at an unorthodox location in the SW/4 SW/4 to a  
3 depth sufficient to test the Prepermian formation, and to  
4 produce shallower formations, such as the Abo, if production is  
5 encountered.

6           3. That Jack J. Grynberg is hereby designated the  
7 operator of the subject second well.

8           [3. That Jack J. Grynberg is hereby designated the  
9 operator of the unit, inclusive of the Seymour State well and  
10 the subject second well.]

11           4. That all production proceeds, charges,  
12 non-consent costs and other accountings shall be entirely  
13 separate and distinct as between the Seymour State and the  
14 second well to be drilled.

15           5. That within 20 days after the effective date of  
16 this order, the operator shall furnish the Commission and each  
17 known working interest owner in the unit an itemized schedule  
18 of estimated well costs.

19           6. That the procedures for participation, the risk  
20 factor and overhead charges and the operators drilling and  
21 accounting responsibilities for this second well are the same  
22 as provided in Order R-6873 for the first well.

23           7. That the Commission retains jurisdiction of this  
24 cause for the entry of such further orders as it may deem  
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Respectfully submitted,

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

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

CERTIFICATE OF MAILING

It is hereby certified that on the 29th day  
of October, 1985, a true and correct copy of the  
foregoing Proposed Order Of The Commission Submitted By The  
Applicant was mailed to counsel of record, A. J. Losee, Post  
Office Drawer 239, Artesia, New Mexico 88211, by first-class  
mail, postage prepaid.

J E Gallegos  
J. E. GALLEGOS

7580A

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



JACK J. GRYNBERG  
d/b/a  
GRYNBERG PETROLEUM COMPANY

FINANCIAL STATEMENT  
DECEMBER 31, 1984

ASSETS

|  |                     |
|--|---------------------|
| Cash   | \$ 744,209          |
| Certificates of Deposit &<br>Other Marketable Services   | 14,391,969          |
| Accounts & Notes Receivable                              | <u>1,869,997</u>    |
| Total Current Assets                                     | \$17,006,175        |
| Oil & Gas Properties, Net of<br>Depletion & Depreciation | 3,142,609           |
| Office Furniture & Equipment,<br>Net of Depreciation     | 264,621             |
| Automobiles, Net of Depreciation                         | 38,344              |
| Other Long Term Investments                              | <u>2,677,403</u>    |
| Total Assets   | <u>\$23,129,152</u> |

LIABILITIES & NET WORTH

|                                      |                     |
|--------------------------------------|---------------------|
| Federal & State Income Taxes Payable | \$ 328,501          |
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12   FACTOR AND OVERHEAD CHARGES, CHAVES        )  
13   COUNTY, NEW MEXICO.                        )  
14   )

Case No. 8400

Order No. \_\_\_\_\_

Amending Order  
No. R-6873

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14 limiting factor to compensate for such location is 79%.

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16 charges of \$3,550.00 per month while drilling and \$355.00 per  
17 month while producing and other related terms and conditions,  
18 as established by Order R-6873 are reasonable for the second  
19 well on the unit.

20           8. The applicant Grynberg is fit and competent to be  
21 designated operator of the second well or of the unit.

22           IT IS THEREFORE ORDERED:

23           1. That except as hereafter specifically provided,  
24 Order R-6873 remains in force and effect.  
25

1           2. That the unit is dedicated to the drilling of a  
2 second well at an unorthodox location in the SW/4 SW/4 to a  
3 depth sufficient to test the Prepermian formation, and to  
4 produce shallower formations, such as the Abo, if production is  
5 encountered.

6           3. That Jack J. Grynberg is hereby designated the  
7 operator of the subject second well.

8           [3. That Jack J. Grynberg is hereby designated the  
9 operator of the unit, inclusive of the Seymour State well and  
10 the subject second well.]

11           4. That all production proceeds, charges,  
12 non-consent costs and other accountings shall be entirely  
13 separate and distinct as between the Seymour State and the  
14 second well to be drilled.

15           5. That within 20 days after the effective date of  
16 this order, the operator shall furnish the Commission and each  
17 known working interest owner in the unit an itemized schedule  
18 of estimated well costs.

19           6. That the procedures for participation, the risk  
20 factor and overhead charges and the operators drilling and  
21 accounting responsibilities for this second well are the same  
22 as provided in Order R-6873 for the first well.

23           7. That the Commission retains jurisdiction of this  
24 cause for the entry of such further orders as it may deem  
25 necessary.

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Respectfully submitted,

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

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

CERTIFICATE OF MAILING

It is hereby certified that on the 29th day  
of October, 1985, a true and correct copy of the  
foregoing Proposed Order Of The Commission Submitted By The  
Applicant was mailed to counsel of record, A. J. Losee, Post  
Office Drawer 239, Artesia, New Mexico 88211, by first-class  
mail, postage prepaid.

J E Gallegos  
J. E. GALLEGOS

7580A

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

JACK J. GRYNBERG  
d/b/a  
GRYNBERG PETROLEUM COMPANY

FINANCIAL STATEMENT  
DECEMBER 31, 1984

ASSETS

|  |                     |
|--|---------------------|
| Cash   | \$ 744,209          |
| Certificates of Deposit &<br>Other Marketable Services   | 14,391,969          |
| Accounts & Notes Receivable                              | <u>1,869,997</u>    |
| Total Current Assets                                     | \$17,006,175        |
| Oil & Gas Properties, Net of<br>Depletion & Depreciation | 3,142,609           |
| Office Furniture & Equipment,<br>Net of Depreciation     | 264,621             |
| Automobiles, Net of Depreciation                         | 38,344              |
| Other Long Term Investments                              | <u>2,677,403</u>    |
| Total Assets   | <u>\$23,129,152</u> |

LIABILITIES & NET WORTH

|                                      |                     |
|--------------------------------------|---------------------|
| Federal & State Income Taxes Payable | \$ 328,501          |
| Accounts Payable                     | <u>356,174</u>      |
| Total Current Liabilities            | \$ 684,675          |
| Deferred Credit                      | 282,357             |
| Net Worth                            | <u>\$22,162,120</u> |
| Total Liabilities & Net Worth        | <u>\$23,129,152</u> |

1                   BEFORE THE OIL CONSERVATION COMMISSION  
2                   ENERGY AND MINERAL DEPARTMENT  
3                   OF THE  
4                   STATE OF NEW MEXICO

5       IN THE MATTER OF THE APPLICATION OF       )  
6       JACK J. GRYNBERG TO AMEND COMMISSION       )  
7       ORDER NO. R-6873 TO PROVIDE FOR THE       )  
8       DRILLING OF A SECOND WELL AT AN       )  
9       UNORTHODOX LOCATION ON THE 320-ACRE       )  
10      PRORATION UNIT, TO CHANGE THE       )  
11      OPERATOR AND TO DETERMINE THE RISK       )  
12      FACTOR AND OVERHEAD CHARGES, CHAVES       )  
13      COUNTY, NEW MEXICO.       )  
14      \_\_\_\_\_ )

Case No. 8400

Order No. \_\_\_\_\_

Amending Order  
No. R-6873

15                   PROPOSED ORDER OF THE COMMISSION  
16                   SUBMITTED BY THE APPLICANT

17       BY THE COMMISSION:

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

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

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

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

8 1. The current operator, Yates, drilled and completed  
9 a well in the SW/4 NW/4 of the 320 acre unit designated the  
10 Seymour State Comm. No. 1. The well was completed in the Abo  
11 formation and a lower Prepermian formation. The Prepermian  
12 formation is and has been nonproductive since 1984.

13 2. The existing circumstances are that the 320 unit  
14 contains one producing Abo well on a 160 acre spacing and no  
15 producing Prepermian well on the 320 acre spacing. Grynberg's  
16 evidence establishes that a second well at an unorthodox  
17 location in the SW/4 SW/4 of Section 18 is situated higher  
18 structurally; that the proposed location presents a probability  
19 of obtaining commercial production from the Abo and from the  
20 Fusselman; that the Fusselman is a separate Prepermian  
21 formation from that which was tested by the Seymour State well.

22 3. Although requested by Grynberg to do so, Yates  
23 has refused to undertake further development of the unit by  
24 drilling a second well.  
25

1           4. The drilling of the second proposed well is  
2 necessary for the unit to be effectively and prudently  
3 developed and to prevent waste and protect correlative rights.

4           5. The effect of a pooling order, and specifically  
5 in this instance Order R-6873, is to convert separate interests  
6 into common interests in the whole unit. Grynberg's 24.6%  
7 interest in the property is an undivided fractional interest in  
8 all the production from the pooled mineral interests underlying  
9 the 320 acre interest, from the surface to the Ordovician  
10 formation. Accordingly, Grynberg has a right to drill a well  
11 on the proposed location.

12           6. The second well is proposed for the SW/4 SW/4 and  
13 constitutes an unorthodox location. A reasonable production  
14 limiting factor to compensate for such location is 79%.

15           7. The risk factor of 200 percent and overhead  
16 charges of \$3,550.00 per month while drilling and \$355.00 per  
17 month while producing and other related terms and conditions,  
18 as established by Order R-6873 are reasonable for the second  
19 well on the unit.

20           8. The applicant Grynberg is fit and competent to be  
21 designated operator of the second well or of the unit.

22           IT IS THEREFORE ORDERED:

23           1. That except as hereafter specifically provided,  
24 Order R-6873 remains in force and effect.  
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2 second well at an unorthodox location in the SW/4 SW/4 to a  
3 depth sufficient to test the Prepermian formation, and to  
4 produce shallower formations, such as the Abo, if production is  
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13 separate and distinct as between the Seymour State and the  
14 second well to be drilled.

15           5. That within 20 days after the effective date of  
16 this order, the operator shall furnish the Commission and each  
17 known working interest owner in the unit an itemized schedule  
18 of estimated well costs.

19           6. That the procedures for participation, the risk  
20 factor and overhead charges and the operators drilling and  
21 accounting responsibilities for this second well are the same  
22 as provided in Order R-6873 for the first well.


23           7. That the Commission retains jurisdiction of this  
24 cause for the entry of such further orders as it may deem  
25 necessary.

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

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Respectfully submitted,

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

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

CERTIFICATE OF MAILING

It is hereby certified that on the 29<sup>th</sup> day  
of October, 1985, a true and correct copy of the  
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Applicant was mailed to counsel of record, A. J. Losee, Post  
Office Drawer 239, Artesia, New Mexico 88211, by first-class  
mail, postage prepaid.

  
J. E. GALLEGOS

7580A

JACK J. GRYNBERG  
d/b/a  
GRYNBERG PETROLEUM COMPANY

FINANCIAL STATEMENT  
DECEMBER 31, 1984

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| Total Assets   | <u>\$23,129,152</u> |

LIABILITIES & NET WORTH

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| Deferred Credit                      | 282,357             |
| Net Worth                            | <u>\$22,162,120</u> |
| Total Liabilities & Net Worth        | <u>\$23,129,152</u> |

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.

---

\*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.

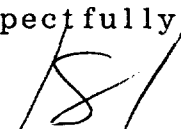
## CONCLUSION

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,



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

Telephone: (505) 827-5805

# JONES, GALLEGOS, SNEAD & WERTHEIM

August 19, 1986

## VIA PUROLATOR

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

RE: Jack J. Grynberg v. The Oil Conservation Commission  
of the Energy and Mineral Department of the State  
of New Mexico, et al., Chaves County Cause No.  
CV-86-55; Our File No. 41000-16

Dear Ms. Willis:

With reference to the above-captioned and numbered cause,  
enclosed herewith please find the original and one copy  
of our Reply Memorandum Brief in Support of Petition for  
Review.

It is requested that you please file the original of record  
and return the copy to me, conformed as to the date of filing,  
in the enclosed, self-addressed, stamped envelope.

Thanking you for your cooperation in this matter, I am,

Very truly yours,

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

By   
ROBERT W. ALLEN

RWA:yfg

Enclosures

cc: Jeff Taylor, Esq.  
A. J. Losee, Esq.

C. RUSSELL JONES 1972-1978

|                     |                    |
|---------------------|--------------------|
| J. S. GALLEGOS      | JUDITH C. HERRERA  |
| JAMES SNEAD         | MARTHA VASQUEZ     |
| JERRY WERTHEIM      | LELAND ARRE        |
| M. J. RODRIGUEZ     | MICHAEL BAIRD      |
| JOHN WENTWORTH      | NANCY R. LONG      |
| STEVEN L. TUCKER    | STEVEN B. MOORES   |
| ARTURO L. JARAMILLO | MERCEDES FERNANDEZ |
| PETER A. COULBERT   |                    |
| JAMES G. WHITLEY    |                    |
| FRANCIS L. MATHEW   |                    |
| ROBERT W. ALLEN     | ATTORNEYS AT LAW   |

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

REPLY MEMORANDUM BRIEF IN  
SUPPORT OF PETITION FOR REVIEW

INTRODUCTION

Respondents fail to acknowledge the plain language of  
Order No. R-6873, which expressly provides:

. . . 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 gas spacing and  
proration unit to be dedicated to a well to  
be drilled at a standard location on said  
320-acre tract. (Page 3, paragraph 1, Order  
No. R-6873; emphasis supplied.)

Instead, they argue that Order No. R-6873 actually  
created three pooled units, not one. Two of these supposed  
units are of 160 acres each, corresponding to OCC drilling and

1 spacing regulations for the Atoka formation, while the third is  
2 of 320 acres, corresponding to drilling and spacing for  
3 Prepermian formations. Without denying that Grynberg is a  
4 participant in one 160-acre pooled unit (the NW/2 of Section  
5 18), and of the 320-acre Prepermian pool (which includes the  
6 SW/4 of Section 18, the same portion of land as the 160-acre  
7 unit in which they insist he has no interest), respondents  
8 argue that he cannot participate in the other 160-acre pooled  
9 unit (the SW/4 of Section 18) because he has no leasehold  
10 interest of surface acreage in that unit. In sum, this is  
11 based on the mistaken belief that Grynberg's ownership rights  
12 are controlled by drilling and spacing regulations. This  
13 completely ignores the legal effect of pooling and the express  
14 language of Order R-6873.

#### 15 ARGUMENT

16 Respondents confuse the legal effect of pooling with  
17 that of spacing regulations. Pooling is the act of bringing  
18 together separately owned tracts in order to most efficiently  
19 produce a common source of mineral supply. The undeniable  
20 effect of pooling, whether voluntary or involuntary, is to  
21 create an interest in each participant of the unit in the total  
22 mineral production from the unit, regardless of whether unit  
23 participants have a leasehold interest in land upon which the  
24 producing unit well is located. See Parkin v. State Corp.  
25

1 Com'n. of Kansas, 234 Kan. 994, 677 P.2d 991, 1002 (1984);  
2 Southland Realty Co. v. Humble Oil & Refining Co., 249 S.W.2d  
3 914 (Tex. 1952). Also see, the uncontradicted expert testimony  
4 of Professor Bruce Kramer that R-6873 accomplished a  
5 "unification of ownership . . . and essentially you erase all  
6 internal boundary lines and the boundary lines of the new  
7 ownership are those which are set forth in the Compulsory  
8 Order." (9-18-85 TR, 35-36).

9  
10 Spacing regulations, on the other hand, which may vary  
11 from formation to formation, do nothing more than establish the  
12 location of a well. The distinction is well illustrated in the  
13 case law.

14 Application of Farmers Irrigation District, 187 Neb.  
15 825, 194 N.W.2d 788 (1972), established that owners of a  
16 leasehold in 4.19 acres were entitled to a percentage of the  
17 production from a well located on another tract of 43.92 acres  
18 within a pooled unit in spite of the fact that the minority  
19 interest owners owned no leasehold interest in the land upon  
20 which the producing well was located. Applicable spacing  
21 regulations required wells be drilled on 40-acre units. The  
22 existing well was located on more than 40 acres; by virtue of  
23 pooling statutes, working interest owners in the much smaller  
24 tract were afforded their proportional interest in total  
25 production, even though the total acreage upon which the well



1 was located was greater than necessary for a drilling unit.

2 Similarly, in C. F. Braun & Co. v. Corporation  
3 Commission, 609 P.2d 1268 (Okla. 1980), owners of leasehold  
4 interests appealed from an order pooling 13 common sources of  
5 supply under a single 640 tract. Each of these 13 sources were  
6 subject to different spacing regulations and constituted 13  
7 separate and distinct drilling and spacing units within the  
8 pooled tract. When dispute arose over the method of  
9 participation in the single unit well, the court, correctly  
10 understanding the difference between pooling orders' and  
11 drilling and spacing regulations, said:

12  
13 As we view our spacing and pooling statutes,  
14 the thirteen common sources of supply  
15 underlying the 640-acre tract in the case at  
16 bar constitute thirteen separate and  
17 distinct spacing and drilling units where  
18 one bore can be used to test and develop one  
19 or all of the thirteen units. Our statutes  
20 do not limit the number of separate spacing  
21 units that can be included in a pooling  
22 application or proceeding.

23 \* \* \*

24  
25 <sup>1</sup>In a footnote the court distinguishes its prior decision  
in Helmerich & Payne v. Corporation Commission, 532 P.2d 419  
(Okla. 1975), relied upon heavily by respondent Heyco by  
saying, "although there were several common sources of supply  
under each of the nine sections, the manner in which the seven  
common sources of supply were pooled was not in issue." C.F.  
Braun & Co., 609 P.2d at 1271, fn.3. The dispute in Helmerich  
was over spacing. Unlike Helmerich, the manner in which common  
sources of supply were pooled by order of the Commission is at  
the heart of the issue here.

1 If the parties treat two or more spacing  
2 units underlying the same tract as a single  
3 unit, the pooling order may treat them as a  
4 single unit.

5 C.F. Braun & Co., 609 P.2d at 1271.  
6 (Emphasis added).

7 Also see, Morgan v. Mobile Oil Corporation, 726 F.2d  
8 1474 (10th Cir., Kan. 1984), where appellees completed two  
9 wells, in two separate formations, under a unit operating  
10 agreement relating only to production from the shallower of the  
11 two formations. The appellants claimed that this agreement  
12 limited the horizontal extent of the applicable leases and  
13 therefore one lease, with its corresponding right to produce in  
14 the lower formation, had expired at the end of its primary  
15 term. The Tenth Circuit held that, because of the effect of a  
16 unitization agreement, the lease pertaining to the lower  
17 horizon had not expired:

18 The 1974 amendment . . . contains specific  
19 language regarding the [shallower] formation.  
20 It does not, however, limit unitization to  
21 that formation or limit the lessee's rights to  
22 that formation.

23 \* \* \*

24 Absent specific contract language to the  
25 contrary, the parties appear to have intended  
26 to unitize the entire area without limitations  
27 to horizons.

28 \* \* \*

29 The conclusion which was reached by the trial  
30 court in favor of the freedom to drill at any  
31 horizon should be affirmed.

1           Morgan, 726 F.2d at 1478. (Emphasis supplied).

2           Accord, Jones Oil Co. v. Corporation Commission, 382  
3 P.2d 751 (Okla. 1963) ("The evidence clearly shows that it  
4 would be uneconomical to make three separate units of these  
5 sands. To us it would violate the very reasons for unitization  
6 ..."); Corporation Commission v. Union Oil Company of Cal., 591  
7 P.2d 711, 716 (Okla. 1979) ("Inasmuch as there was no request  
8 to classify the [formations] as two separate sources, the  
9 Commission was bound to continue treating the [formations] as a  
10 single common source as provided in the prior order.").

11           The factual circumstances here are similar to those in  
12 C.F. Braun, supra. Heyco, the applicant in the original OCC  
13 pooling proceeding, sought and obtained Order No. R-6873  
14 pooling multiple common sources of supply, each common source  
15 otherwise subject to its own individual drilling and spacing  
16 regulation.<sup>2</sup> By the express language of R-6873, the  
17 Commission ordered all formations from the surface down through  
18 the Ordovician pooled into a standard 320-acre unit. Creation  
19

---

20  
21           <sup>2</sup>Pooling all formations into a single 320-acre unit was  
22 clearly HEYCO's purpose. In its original Application in Case  
23 No. 7390, filed September 29, 1981, HEYCO sought to pool only  
24 the mineral interests in the Mississippian formation. By its  
25 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."

1 of this unit was well within the authority of the OCC.  
2 70-2-17(C), NMSA 1978. Order No. R-6873 was upheld by the  
3 Supreme Court of New Mexico in Viking Petroleum v. Oil  
4 Conservation Commission, 100 N.M. 451, 672 P.2d 280, 282  
5 (1983). Order R-6873-A and assertions that Grynberg has no  
6 interest in production from the S/2, W/2 of Section 18 are  
7 therefore simply contrary to the legal effect of Order-6873.

8 Heyco further argues that R-6873 created no  
9 "cross-conveyance" of ownership to Grynberg in the SW/4 of  
10 Section 18. The idea that pooling works to create a  
11 "cross-conveyance" of interest among the members of the unit,  
12 arose from the leading case of Veal v. Tomason, 138 Tex. 391,  
13 159 S.W.2d 472 (1942), where the court viewed multiple leases  
14 which expressly provided for the sharing of royalties among the  
15 parties in proportion to acreage owned as "unitizing" the  
16 entire acreage. The effect was said to vest all the lessors of  
17 land in this unitized block with joint ownership of the royalty  
18 earned from all the land in such block.<sup>3</sup>

---

20  
21 <sup>3</sup>Heyco cites Southern Union Production Co. v. Eason Oil  
22 Co., 540 P.2d 603 (Okla. 1975) for the proposition that one  
23 must have a leasehold interest within a drilling unit in order  
24 to have an interest in production from that unit. Heyco fails  
25 to point out that, in Southern Union, the pooling order was  
terminated when the well for which it was issued was plugged  
and abandoned. No pooling order was in effect when the lessee  
was denied participation in a second well because his acreage  
was not within the drilling unit upon which that well was  
located. Southern Union actually supports the effect of  
pooling by considering it the "right to participate" in  
production from a unit well.

1           Other cases cited by Heyco for the proposition that  
2 pooling does not effectuate a cross-conveyance do not support  
3 the argument. Nale v. Carroll, 289 S.W.2d 743 (Tex. 1956) did  
4 not involve a pooling order. Petitioners in that case  
5 attempted only to obtain a share of production from a well  
6 drilled by prior lessee under an expired drilling permit. In  
7 Arkansas Louisiana Gas Co. v. Southwest Nat.Pro.Co., 60 S.2d 9  
8 (La. 1952) royalty interest owners were attempting to procure a  
9 share of unit production from their operators on the basis of  
10 statutory provisions saying that pooling afforded "the owner of  
11 each tract the opportunity to recover or receive his just and  
12 equitable share of oil and gas . . ." The court merely held  
13 that this statute did not abrogate the contracts existing  
14 between the lessors and their operators.  
15

16           New Mexico courts have not ruled on whether a pooling  
17 order works to convey a real property leasehold interest or an  
18 interest in the total production from the unit. It is a  
19 theoretical distinction without a difference. The  
20 philosophical exercise is unnecessary because unit member's  
21 interests in unit production is created by New Mexico statute:  
22

23           \* \* \*

24           For the purpose of determining the portion of  
25 production owned by the persons owning  
interests in the pooled oil . . . such  
production shall be allocated to the  
respective tracts within the unit in the

1 proportion that the number of surface acres  
2 included within each tract bears to the number  
3 of surface acres included in the entire unit.

4 §70-2-17(C), NMSA 1978.

5 Because Grynberg owns 24.6% of the acreage in the  
6 320-acre unit created by Order No. R-6873, Grynberg owns 24.6%  
7 of the production from that entire unit, regardless of where on  
8 the unit the well producing minerals is located.


9 CONCLUSION

10 This is a clear, single-issue case. Respondents do  
11 not want to accept the legal effect of pooling the interests  
12 included within the 320-acre unit created by Order No. R-6873.  
13 This order pooled multiple formations within one unit without  
14 regard to individual spacing regulations for the various  
15 formations pooled. Mineral interests of unit members are  
16 established by pooling and by statute, and are not dependent on  
17 OCC spacing regulations. Once the legal principal is given  
18 effect, everything else follows. Grynberg owns an undivided  
19 24.6% of all mineral interests within the unit. The Commission  
20 order denying him that interest in a second well on the unit is  
21 unlawful.

22 Respectfully submitted,

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

25 By

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

**CERTIFICATE OF SERVICE**

It is hereby certified that on the 19th day of August, 1986, a true and correct copy of the foregoing Reply Memorandum in Support of Petition for Review was hand-delivered to counsel of record, Jeff Taylor, Esq., General Counsel for the Energy Minerals Department, Oil Conservation Division, State Land Office Building, Santa Fe, New Mexico 87504-2088; and transmitted by over-night mail to A. J. Losee, Esq., Post Office Drawer 239, 106 South Fourth, Artesia, New Mexico 88210.

  
J. E. GALLEGOS

9576A

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.
- ✓ 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.



- 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:  
\_\_\_\_\_

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 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 160 acre proration units by 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

CERTIFICATE OF MAILING

It is hereby certified that on the 14th day of July, 1986, a true and correct copy of the foregoing Response Brief was mailed to counsel of record.

\_\_\_\_\_  
JEFF TAYLOR  
General Counsel

CERTIFICATE OF MAILING

It is hereby certified that on the 14th day of July, 1986,  
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TONEY ANAYA  
GOVERNOR

STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION DIVISION

50 YEARS



1935 - 1985

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

July 11, 1986

Ms. Jean Willis, Clerk  
Fifth Judicial District Court  
Chaves County Courthouse  
P. O. Box 1776  
Roswell, NM 88201

RE: Grynberg v. OCC, No. CV 86-55

Dear Ms. Willis,

Enclosed for filing in the above-referenced matter, please find the response brief of the Oil Conservation Commission.

As always, thank you for your cooperation and assistance.

Sincerely,

  
Jeff Taylor  
General Counsel

cc: Robert W. Allen  
A. J. Lossee

JT/bok





**TONEY ANAYA**  
GOVERNOR

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ELS

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.

---

\*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).

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,



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

Telephone: (505) 827-5805



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~~ <sup>older</sup> ~~Pennsylvanian age or older~~ be located on a designated drilling tract of 320 acres. o/k

The Abo formation is younger than Wolfcamp, while the Pre-Permian (Ordovician), a separate formation from the Abo <sup>older (and deeper) than</sup> formation, is <sup>^</sup> 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

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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

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.

(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 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.

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

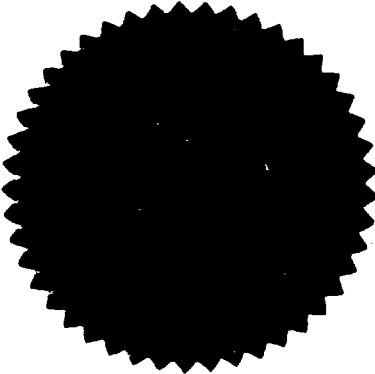
DONE at Santa Fe, New Mexico, on the day and year  
hereinabove designated.

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

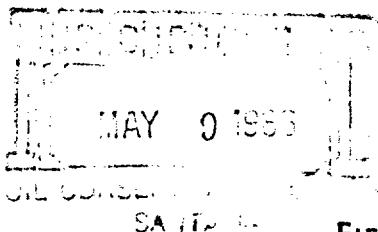
JIM BACA, Member

*J. Kelley*  
ED KELLEY, Member

*R. L. Stamets*  
R. L. STAMETS,  
Chairman and Secretary



S E A L



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

*Copies of Brief*

*Roberts Hall*

*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

*③ Jean Willis, Clerk  
Fifth Judicial District Court  
70 Box 1776  
Chaves County Courthouse*

RE: Jack J. Grynberg Roswell NM 88201  
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*  
W. J. Schnedar  
District Judge

WJS/rh

**GRYNBERG PETROLEUM COMPANY**

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

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

October 05, 1984

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

EXPRESS MAIL

ATTN: Ms. Floreen Davidson

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

*Case 8400*

Dear Ms. Davidson:

Enclosed please find one original and two copies of the above captioned Application. We ask that this be set before the full Commission at your earliest convenience.

If you require further information, please advise.

Very truly yours,

GRYNBERG PETROLEUM COMPANY

*Susan Stone*  
Susan Stone  
Senior Petroleum Landman

SS/rb

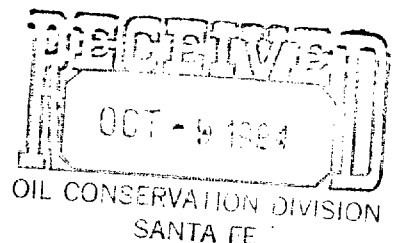
- Enclosures as stated.

CERTIFIED RETURN RECEIPT MAIL

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

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

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





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

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

APPLICATION

*Case 8400*

The Applicant, Jack J. Grynberg, hereby requests an Order which would amend the State of New Mexico's, Oil Conservation Commission Order No. R-6873, dated January 7, 1982, to allow for a second Prepermian well at an unorthodox location on the previously established 320 acre spacing and proration unit, change the operator, determine the risk factor for the proposed well and to provide for the overhead to be charged during drilling and producing operations. In support of this application, it is further stated:

1) The State of New Mexico's, Oil Conservation Commission Order No. R-6873, dated January 7, 1982, pooled all of the mineral interests down through the Ordovician formation underlying the W $\frac{1}{2}$  of Section 18, Township 9 South, Range 27 East, N.M.P.M., Chaves County, New Mexico, to form a standard 320 acre gas spacing and proration unit.

Pursuant to the above referenced Commission Order the Seymour State Com #1 was drilled in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 18, Township 9 South, Range 27 East to a depth of 6385 feet and was dually completed in the Prepermian and Abo formations.

Applicant requests that Order No. R-6873 be amended to allow for the drilling of a second Prepermian well on the previously established 320 acre standard gas spacing and proration unit. Said well to be located at an unorthodox location 660 feet from the South line and 660 feet from the West line of Section 18, Township 9 South, Range 27 East, Chaves County, New Mexico.

2) Applicant believes that a well located at said unorthodox location will better enable applicant to produce the gas underlying the proration unit, will prevent waste, protect correlative rights and afford applicant the opportunity to produce its just and equitable share of gas underlying the unit.

3) Applicant requests that Order No. R-6873 be amended to designate Applicant as operator of the proposed well and unit.

4) Applicant is the holder of State Lease L-6907 covering 80 acres of the 320 acre spacing and proration unit within Section 18 as follows: E $\frac{1}{2}$ NW $\frac{1}{4}$ . A diagram of the proration unit as established by Commission Order No. R-6873 is attached and marked Exhibit "A". This Exhibit also sets out the other working interest owners in the unit and their proportionate shares thereof.

5) Applicant is not challenging Order No. R-6873 and except for these amendments believes that it should remain in full force and effect.

WHEREFORE, the Applicant requests the Commission to set this matter down for a hearing before the full Commission at the earliest possible date, give notice as required by law and after hearing, enter its Order (a) amending Order No. R-6873 to allow for the drilling of a second Prepermian well on the 320 acre proration unit (b) declaring the Applicant to be Operator of said well and unit (c) assigning a risk factor for the proposed well (d) providing for overhead to be charged during the drilling and producing operations and (e) making such other and further provisions as deemed appropriate.

DATED this 5th day of October, 1984.

JACK J. GRYNBERG

BY:

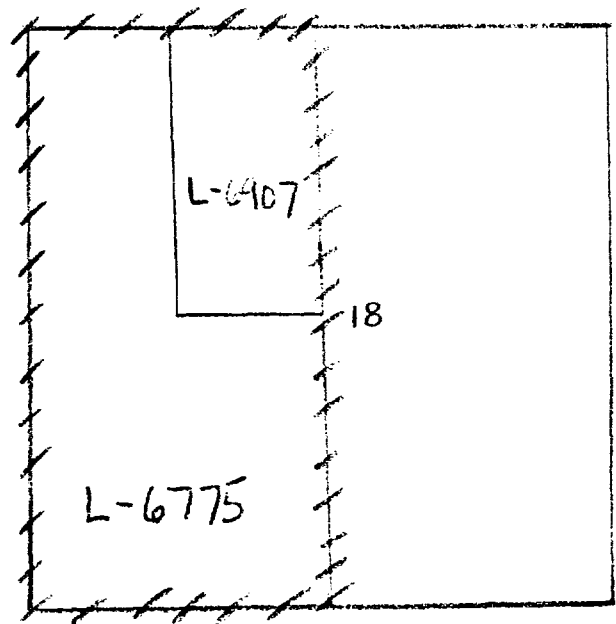
*Susan Stone*

SUSAN STONE

Senior Petroleum Landman

EXHIBIT "A"

STANDARD 320 ACRE SPACING AND PRORATION UNIT ESTABLISHED BY  
ORDER NO. R-6873 AND WORKING INTEREST OWNERS, W½ SECTION 18,  
TOWNSHIP 9 SOUTH, RANGE 27 EAST, N.M.P.M., CHAVES COUNTY,  
NEW MEXICO.



Containing 325.04 acres, more or less

|        |                         | <u>ACRES</u> | <u>PERCENT</u> |
|--------|-------------------------|--------------|----------------|
| L-6907 | Jack J. Grynberg        | 80.00        | 24.6123554     |
| L-6775 | Harvey E. Yates, et.al. | 245.04       | 75.3876445     |

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 (HEYCC) 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.

(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 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.

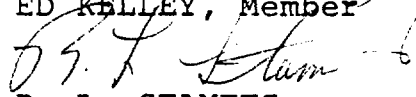
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Case No. 8400  
Order No. R-6873-A

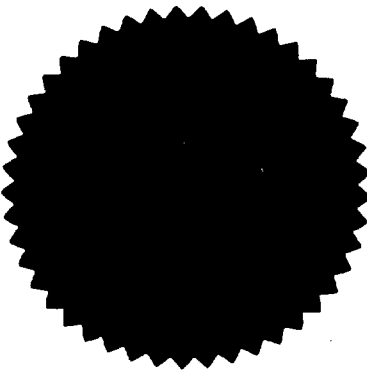
DONE at Santa Fe, New Mexico, on the day and year  
hereinabove designated.

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

JIM BACA, Member

  
ED KELLEY, Member

  
R. L. STAMETS,  
Chairman and Secretary



S E A L

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

Respondents.

CERTIFICATION

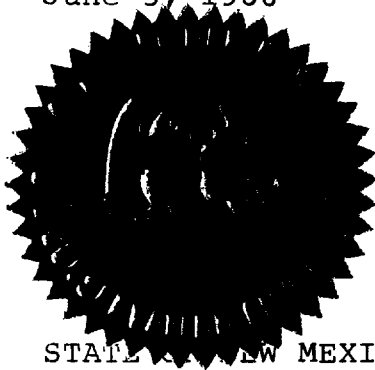
I, R. L. STAMETS, Director of the Oil Conservation Division of the Energy and Minerals Department, do hereby certify that the documents listed below and attached hereto are true and correct copies of documents on file in this office.

- 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.
- 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.

- 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.

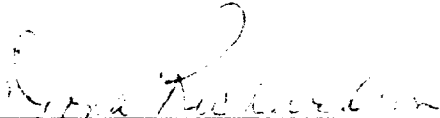
  
R. L. STAMETS, Director

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:

SEP 28, 1989

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

4 JACK J. GRYNBERG, )

5 Petitioner, )

6 vs. )

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

10 Respondents. )  
11 \_\_\_\_\_ )

No. CV-86-55

Case Assigned

To: Judge W. J. Schnedar

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15 MEMORANDUM BRIEF IN SUPPORT  
16 OF PETITION FOR REVIEW  
17  
18  
19

20 J. E. GALLEGOS  
21 ROBERT W. ALLEN  
22 JONES, GALLEGOS, SNEAD & WERTHEIM, P.A.  
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Santa Fe, New Mexico 87504-2228  
(505) 982-2691

24 Attorneys for Petitioner  
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1 FIFTH JUDICIAL DISTRICT COURT  
2 COUNTY OF CHAVES  
3 STATE OF NEW MEXICO

4 JACK J. GRYNBERG, )  
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8 vs. )  
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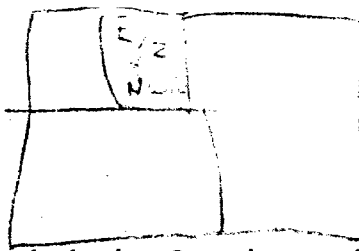
No. CV-86-55  
Case Assigned  
To: Judge W. J. Schnedar

12 MEMORANDUM BRIEF IN SUPPORT  
13 OF PETITION FOR REVIEW

14 STATEMENT OF THE CASE

15 This appeal is brought by the petitioner, Jack J.  
16 Grynberg, pursuant to the provisions of §70-2-25(B) NMSA 1978  
17 (Cum.Supp. 1985), seeking judicial review of Oil Conservation  
18 Commission Order No. R-6873-A, issued December 6, 1985, in Case  
19 No. 8400.<sup>1</sup> Respondents are the Oil Conservation Commission  
20 of the Energy and Mineral Department of the State of New Mexico  
21 (the "Commission," or "OCC") and Harvey E. Yates Company  
22 ("Heyco").  
23

24 <sup>1</sup>A copy of Order No. R-6873-A is attached as Appendix "A"  
25 for the convenience of the Court.



1 Briefly stated, Grynberg is the holder of State of New  
2 Mexico Oil and Gas Lease L-6907, covering the lease of oil, gas  
3 and other minerals in approximately 80 acres located in the  
4 E/2, NW1/4 of Section 18, Township 9 South, Range 27 East,  
5 N.M.P.M., Chaves County, New Mexico. Heyco and other related  
6 working interest owners own the leasehold interest of  
7 approximately 240 acres in the W/2, NW1/4, and SW1/4 of Section  
8 18. (9-18-85 TR. 10; Ettinger Hearing Exhibit No. "2"). On  
9 January 7, 1982, the Commission issued its Order No. R-6873<sup>2</sup>  
10 granting the application of Heyco seeking compulsory pooling of  
11 all mineral interests from the surface through the Ordovician  
12 formation underlying the W/2 of Section 18, and further  
13 declaring Heyco the operator of a well to be drilled on the  
14 320-acre tract created thereby.<sup>3</sup>

---

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16  
17  
18 <sup>2</sup>A copy of Order No. R-6873 is attached as Appendix "B"  
19 for the convenience of the Court.

20 <sup>3</sup>The effect of Order No. R-6873 was to consolidate or  
21 merge all of the interests within the unit in the pooled  
22 formations (9-18-85 Tr. 35-36). Grynberg is the owner of  
23 working leasehold interests in 24.6% of the 320-acre unit and  
24 is, therefore, the owner of an undivided 24.6% proportional  
25 interest in all production from the pooled formations  
underlying the unit established by Order No. R-6873. (Id. at  
39; Ettinger Hearing Exhibit No. "2", attached as Appendix "C"  
for the convenience of the Court).

1           As operator, Heyco drilled and completed a well in the  
2 SW/4 NW/4 of the 320-acre pooled unit, designated the Seymour  
3 State Comm. No. 1. This well was completed in the Abo  
4 formation and in a lower Prepermian formation (9-18-85 TR.  
5 16-17; Ettinger Hearing Exhibit No. "9"). The Abo well is  
6 currently producing on a 160-acre spacing unit while the  
7 Prepermian well, which is on a 320-acre spacing unit, has been  
8 nonproductive since about November, 1984 (9-18-85 TR. 16-17;  
9 Ettinger Hearing Exhibit No. "8").

10           Subsequent to completion of the original unit well,  
11 expert geologic evidence compiled by Grynberg revealed that a  
12 second well, at an unorthodox location 660 feet from the South  
13 line and 660 feet from the West line in the SW/4 SW/4 of  
14 Section 18, would be situated higher structurally. The proposed  
15 location presents a probability of obtaining commercial  
16 production not only from the Abo formation but also from the  
17 Fusselman, a separate Prepermian formation ~~from~~ that tested by  
18 the Seymour State well (9-18-85 TR. 14-20, 24; Ettinger Hearing  
19 Exhibit No. "7").

20           As an interest owner in the pooled unit, Grynberg  
21 requested that Heyco drill and operate a second well at the  
22 proposed unorthodox location to recover undeveloped gas  
23 reserves. Heyco refused to undertake further development of  
24 the unit (9-18-85 TR. 22-23; Ettinger Hearing Exhibit No. 10).  
25

1 On October 5, 1984, Grynberg made application to the Commission  
2 for an amendment to Order No. R-6873 allowing for a second well  
3 at the proposed location to protect his correlative rights and  
4 to prevent the waste of gas reserves underlying the unit which  
5 would otherwise have remained undeveloped.

6 After a hearing, the Commission issued Order No.  
7 R-6873-A (Appendix "A") regarding Grynberg's application. In  
8 that Order, the OCC determined that: (1) the W/2 of Section 18  
9 is a spacing or proration unit in Prepermian zones only; (2)  
10 the operation of OCC Order No. R-6873 conferred no interest in  
11 the minerals underlying the SW/4 of Section 18 in Grynberg,  
12 except in the Prepermian gas zones; and (3) any order entered  
13 granting Grynberg's application should be limited to Prepermian  
14 gas zones (Id., findings 27, 28 and 29, pages 3-4). Order  
15 R-6378A is therefore contrary to Grynberg's entitlement under  
16 prior Order R-6873 to a proportional share of production from  
17 each of the pooled formations in the unit, irrespective of the  
18 actual well or production location.

#### 19 STATEMENT OF PROCEEDINGS

20 In accordance with Section 70-2-25(A) NMSA (Cum.Supp.  
21 1985) and Rule 1222 of the OCC, Grynberg filed his Application  
22 for Rehearing<sup>a</sup> within twenty (20) days after the issuance of  
23

---

24 <sup>a</sup>A copy of that Application is attached as Appendix "D"  
25 for the convenience of the Court.

1 of Order No. R-6873-A. That Application set forth the reasons  
2 why the Order was believed to be illegal and erroneous.

3 The Commission did not act upon Grynberg's Application  
4 for Rehearing within ten (10) days after filing, thereby making  
5 Order No. R-6873-A final under Section 70-2-25(A) (Cum.Supp.  
6 1985). Grynberg then timely filed his Petition for Review in  
7 this Court pursuant to the provisions of Section 70-2-25(B)  
8 (Cum.Supp. 1985).

9 STATEMENT OF THE ISSUES ON APPEAL

10 The long-standing policy in New Mexico is that on  
11 appeals from administrative bodies, the questions to be  
12 answered by the court are questions of law, restricted to  
13 whether the administrative body acted fraudulently, arbitrarily  
14 or capriciously, and to whether the order was supported by  
15 substantial evidence. Continental Oil Co. v. Oil Conservation  
16 Commission, 70 N.M. 310, 315, 373 P.2d 809, 819 (1962); Johnson  
17 v. Sanchez, 67 N.M. 41, 351 P.2d 449 (1960).

18 Two issues of law are presented here.

19 The first is premised on the legal principle that a  
20 pooling order converts the separate interests within a unit  
21 into a common interest or tenancy as far as the development of  
22 the unit is concerned, regardless of where the well or the  
23 production is located within the unit. Order R-6873-A is  
24 arbitrary and capricious because it ignores or fails to  
25

1 appreciate the legal effect of the prior Order No. R-6873, and  
2 is contrary to New Mexico's law of pooling and unitization. It  
3 ignores the effect of the undertaking of Heyco by Order No.  
4 R-6873 for pooling of all of the formations underlying the  
5 320-acre unit from the surface through the Ordovician.

6 The second issue is premised on the legal principle  
7 that Commission orders must be based upon substantial,  
8 competent legal evidence adduced at the hearing and made part  
9 of the record. The Commission should be reversed because Order  
10 No. R-6873-A was based upon incompetent, unsworn, hearsay  
11 evidence not subject to cross-examination filed with the  
12 Commission fully three weeks after the close of the September  
13 18, 1985 hearing on the case.

#### 14 ARGUMENT

#### 15 POINT I

16  
17 ORDER NO. R-6873-A IS ERRONEOUS AS A MATTER  
18 OF LAW BECAUSE PRIOR ORDER R-6873 ESTABLISHED  
19 OWNERSHIP BY GRYNBERG OF AN UNDIVIDED FRACTIONAL  
20 INTEREST IN ALL PRODUCTION FROM THE POOLED  
21 MINERAL INTERESTS UNDERLYING THE 320-ACRE UNIT

22 This case boils down to a simple legal principle.  
23 Voluntary or compulsory pooling accomplishes unification of  
24 ownership on the area covered by the pooled unit and treats it  
25 as though there was a sole owner.

Order R-6873 created an undivided fractional interest  
in the production from all pooled mineral interests underlying

1 the 320-acre unit in question, from the surface to the  
2 Ordovician formation. The key provisions of Order R-6873  
3 (Appendix "B") are:

4  
5 IT IS THEREFORE ORDERED:

6 (1) That all mineral interests, whatever they may be,  
7 down through the Ordovician formation underlying the  
8 W/2 of Section 18, Township 9 South, Range 27 East,  
9 N.M.P.M., Chaves County, New Mexico, are hereby pooled  
10 to form a standard 320-acre gas spacing and proration  
11 unit to be dedicated to a well to be drilled at a  
12 standard location on said 320-acre tract.

13 (Emphasis supplied).

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

18 All operations for the pooled oil or gas, or  
19 both, which are conducted on any portion of  
20 the unit shall be deemed for all purposes to  
21 have been conducted upon each tract within  
22 the unit by the owner or owners of such  
23 tract. For the purpose of determining the  
24 portions of production owned by the persons  
25 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.

1 (Emphasis supplied).

2 Competent, qualified and uncontradicted expert  
3 evidence was presented at the hearing by Grynberg through the  
4 sworn testimony of Professor Bruce Kramer on the effect of  
5 Pooling Order R-6873 issued pursuant to §70-2-17(C). Mr.  
6 Kramer is a professor of oil and gas at the Texas Tech  
7 University School of Law, and co-author of the pre-eminent  
8 legal treatise on the law of pooling and unitization in the  
9 United States, Revised Volumes II and III, Myers, The Law of  
10 Pooling and Unitization, 2d Ed. (Kramer Hearing, Exhibit "13").

11 Essentially Professor Kramer stated that the Order  
12 accomplished a "unification of ownership, whether it be royalty  
13 or operating interest . . . and essentially you erase all  
14 internal boundary lines and the boundary lines of the new  
15 ownership criteria are those which are set forth in the  
16 compulsory order." (9-18-85 TR. 35-36). Instead of Grynberg  
17 having a specified 80 acres in the 320-acre unit (approximately  
18 24.6%), he has 24.6% in each acre in the unit. (9-18-85 Tr.  
19 36; Kramer Hearing Exhibit "15," attached as Appendix "E" for  
20 the convenience of the Court).

21 In Viking Petroleum v. Oil Conservation Commission,  
22 100 N.M. 452, 672 P.2d 280 (1983), the New Mexico Supreme Court  
23 affirmed this view of the Commission's Order R-6873. The  
24 Supreme Court noted:  
25



1       The first of the key provisions pooled the  
2       320-acre tract from the surface to the  
3       Ordovician formation. The Commission found  
4       that to prevent waste, to protect  
5       correlative rights and to allow each  
6       interest owner to recover its fair share of  
7       gas, the mineral interests will be pooled to  
8       the lower formation. (Emphasis supplied).

9       Other courts have commonly described the effect of  
10      voluntary and compulsory pooling as a form of consolidation or  
11      merger of all the interests in the pooled formations. See,  
12      Parkin v. State Corp. Com'n of Kansas, 234 Kan. 994, 677 P.2d  
13      991, 1002 (1984). Owners of the mineral rights and interests  
14      in a particular tract of land surrender all right to conduct  
15      individual drilling operations on that particular tract, and in  
16      lieu thereof, they become entitled to a proportional share in  
17      the total unit production. Young v. West Edmond Hunton Lime  
18      Unit, 275 P.2d 304, 308 (Okla. 1954). Separate interests  
19      within the unit are converted into a common interest as far as  
20      the development of the unit is concerned, regardless of where  
21      the well or the production is located within the unit. Mire v.  
22      Hawkins, 186 So.2d 591, 596 (La. 1966). If the drilling effort  
23      is successful, the resulting production, to which all tracts  
24      are deemed to contribute, is distributed to all interests in  
25      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).

1           In this case, Order R-6873 entered January, 1982,  
2 provides unequivocally that all mineral interests, whatever  
3 they may be, down through the Ordovician formation underlying  
4 the W/2 of Section 18 are pooled to form a standard 320-acre  
5 gas spacing and proration unit. The "pooled" mineral interests  
6 include, among others, the Fusselman and Abo formations, which  
7 are objective formations for the proposed second well.<sup>5</sup>  
8 Grynberg owns the working interest in approximately 80 acres,  
9 or 24.6% of the 320-acre unit, from the surface to the  
10 Ordovician formation. Heyco and others own the working  
11 interest in the remainder of the pooled unit. Consequently, by  
12 operation of Section 70-2-17(C), supra, and Order R-6873, the  
13 various interests in the separate tracts comprising the  
14 320-acre unit have been consolidated as a matter of law into an  
15 undivided ownership of the entire unit. Grynberg, as a result,  
16

17           <sup>5</sup>It must be recognized that the compulsory pooling of all  
18 formations underlying the W/2 of Section 18, from the surface  
19 to the Ordovician, was specifically requested by HEYCO in its  
20 Amended Application filed October 21, 1981, in Case No. 7390.  
21 Indeed, the fact that all formations were pooled into a single  
22 320-acre unit was clearly HEYCO's purpose. In its original  
23 Application in Case No. 7390, filed September 29, 1981, HEYCO  
24 sought to pool only the mineral interests in the Mississippian  
25 formation. By its first amended application filed October 13,  
1981, the request for compulsory pooling was modified to "cover  
all formations from the surface through the Mississippian  
formation." Finally, in HEYCO's second amended application,  
filed October 21, 1981, the request for compulsory pooling was  
modified to "cover from the surface to all depths."

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.

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 to the Commission. 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

1 statutes and regulations applicable in New Mexico, the Court  
2 held:

3 We have previously held that the Commission  
4 has considerable discretion in determining  
5 which owner is entitled to drill and operate  
6 the unit well. [Citation omitted.] We  
7 conclude that §87.1(b) authorizes the  
8 Commission to establish the well location at  
9 any location upon the spacing unit and that  
10 §87.1(d) authorizes the Commission to pool  
11 the working interest within the spacing unit  
12 and designate an operator to drill and  
13 operate the well at the designated well  
14 location. To hold otherwise would frustrate  
15 the intent of the Act because the owner  
16 desiring to drill would not be entitled to  
17 do so unless he held a lease covering the  
18 well location designated by the Commission.

19 534 P.2d at 1279 (Emphasis supplied).

20 It is clear from the foregoing that Grynberg owns an  
21 undivided 24.6% interest in all production from the pooled  
22 formations within the 320-acre unit, irrespective of where the  
23 well producing the pooled formations may be located on the  
24 unit. Accordingly, should the proposed second well be drilled,  
25 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.

#### 26 POINT II

#### 27 ORDER R-6873-A IS NOT BASED ON COMPETENT LEGAL EVIDENCE

28 Rule 1212 of the OCC requires that its Order be

1 supported by "competent legal evidence." Such is required by  
2 law aside from the rule.

3 While hearings before administrative bodies need not  
4 be conducted generally with the formality of a court hearing or  
5 trial, the procedure for receiving evidence must be consistent  
6 with the essentials of a fair trial. Ferguson-Steere Motor Co.  
7 v. State Corporation Commission, 63 N.M. 137, 314 P.2d 894, 898  
8 (1957). An administrative body

9  
10 . . . is authorized only to make its decision  
11 upon the evidence adduced at the hearing and  
12 made a part of the record. . . . The appellant  
13 was entitled to a hearing as provided by law,  
14 conducted fairly and impartially, with an  
15 opportunity to introduce evidence to refute or  
16 modify any matters or facts which the  
17 Commission might take into consideration in  
18 reaching its decision.

19 Transcontinental Bus System, Inc. v. State  
20 Corporation Commission, 56 N.M. 158, 241 P.2d  
21 829 (1952).

22 This case was principally heard on September 18,  
23 1985. At that time, Harvey E. Yates Company ("Heyco") made a  
24 "statement" by attorney William F. Carr. (9-18-85 TR. 5-7).  
25 Competent and qualified expert evidence was then presented by  
Grynberg through the sworn testimony of Professor Bruce Kramer  
on the effect of pooling Order R-6873. See Point I, supra:

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

1 placed under oath and cross-examined. This time it was  
2 represented by attorney A. J. Losee who presented unsworn  
3 argument and offered two exhibits unrelated to the effect of  
4 Order R-6873. (10-17-85 TR. 4-19). In an informal exchange,  
5 the Chairman remarked that he would "like to know how or who  
6 Heyco is paying in the Abo formation . . . (10-17-85 TR. 17)  
7 . . . something showing the ownership in that half section --"  
8 (10-17-85 TR. 18). At the close of the hearing, the parties  
9 were allowed ten (10) days to file "whatever other submittals  
10 there are, to submit proposed orders in this case." (10-17-85  
11 TR. 28). Grynberg submitted a proposed form of Order in a  
12 timely manner (attached as Appendix "F" for the convenience of  
13 the Court).

14 On November 13, 1985, over three weeks after the  
15 hearing was closed, Heyco filed with the Commission (1) a  
16 letter from Attorney A. J. Losee dated November 11, 1985, (2) a  
17 proposed form of Order, (3) a brief, (4) a copy of a document  
18 styled Harvey E. Yates Company Amended Gas Division Order,  
19 (Seymour State #1 Abo Zone Only), (5) a copy of a document  
20 styled Harvey E. Yates Company Amended Gas Division Order  
21 (Seymour State #1 Atoka Zone Only), (6) First Supplemental  
22 Opinion of Title, December 13, 1983, by S. B. Christy, IV,  
23 relating to the subject one-half section, and (7) Opinion of  
24 Title, April 12, 1983, by S. B. Christy, IV, likewise on the  
25

1 subject land. Items (4) through (7) purported to state legal  
2 opinions as to title to leases and the mineral estate for  
3 Section 18. These documents did not take into account the  
4 legal effect of pooling Order R-6873.

5 There is no attributable source of the division orders  
6 submitted after the fact by Heyco. They track, however, the  
7 title opinions. The authors of all of the title papers were  
8 never present at the hearing to be sworn, to be qualified as  
9 experts, to confront the applicant and to be cross-examined.  
10 Besides the objections and deficiencies that would have emerged  
11 from that process, this non-hearing evidence is subject to  
12 fatal competence and relevance objections. Yet, it necessarily  
13 follows from the content of the Order in this case that those  
14 materials form the sole basis for the decision.

15 The courts in New Mexico follow the rule of  
16 substantial evidence in the record, requiring the reviewing  
17 court to determine whether the record contains substantial  
18 evidence to support an administrative decision and to ignore  
19 evidence to the contrary. Duke City Lumber Co. v. New Mexico  
20 Environmental Improvement Board, 101 N.M. 291, 681 P.2d 717,  
21 719 (1984). Mere uncorroborated hearsay cannot constitute the  
22 substantial evidence upon which an administrative decision must  
23 be based. McWood Corporation v. State Corporation Commission,  
24 78 N.M. 319, 431 P.2d 52 (1967); Ferguson - Steere Motor Co. v.  
25

1 State Corporation Commission, supra. The "evidence" submitted  
2 by Heyco was pure hearsay and cannot, as a matter of law, serve  
3 as any support for the Commission's Order. The contents of the  
4 written materials submitted were from an unsworn witness who  
5 was not subject to cross-examination and whose testimony was  
6 not provided at or prior to the hearing so that Grynberg could  
7 prepare to meet it.

8 Compounding the defect in the quality of the evidence  
9 was the timing of it. In Transcontinental Bus System, Inc. v.  
10 State Corporation Commission, supra, an administrative Order of  
11 the State Corporation Commission was reversed on the grounds  
12 that the Commission considered one of its own rulings in  
13 another case which it had rendered two days after the hearing  
14 on the case before it.

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

21 Accordingly, the unsworn hearsay belatedly submitted  
22 by Heyco cannot support its Order R-6873-A. The only competent  
23 evidence presented at the hearing was that in support of  
24 Grynberg's position that the effect of Order No. R-6873 was to  
25



1 consolidate or merge all of the interests within the unit,  
2 making Grynberg the owner of an undivided 24.6% in all  
3 production from the pooled formations underlying the unit.

4 CONCLUSION

5 For the foregoing reasons, OCC Order No. R-6873A  
6 should be vacated, with directions to enter a new order,  
7 consistent with law and the legally competent evidence  
8 presented to the OCC at public hearing.

9  
10 JONES, GALLEGOS, SNEAD & WERTHEIM, P.A.  
11 Attorneys for Petitioner

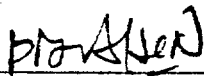
12  
13 By J. E. Gallegos  
14 J. E. GALLEGOS

15  
16 By Robert W. Allen  
17 ROBERT W. ALLEN  
18 Post Office Box 2228  
19 Santa Fe, New Mexico 87504-2228  
20 (505) 982-2691

21 CERTIFICATE OF MAILING

22 It is hereby certified that on the 3rd day of June,  
23 1986, a true and correct copy of the foregoing Memorandum Brief  
24 in Support of Petition for Review was mailed to counsel of  
25 record, Jeff Taylor, Esq., General Counsel for the Energy

1 Minerals Department, Oil Conservation Division, Post Office Box  
2 2088, State Land Office Building, Santa Fe, New Mexico 87501,  
3 and A. J. Losee, Esq., Post Office Drawer 239, Artesia, New  
4 Mexico 88210, by first-class mail, postage prepaid.  
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9 ROBERT W. ALLEN  
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TONEY ANAYA  
GOVERNOR

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

50 YEARS



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June 6, 1986

Ms. Jean Willis  
Court Clerk  
Fifth Judicial District Court  
P. O. Box 1776  
Chaves County Courthouse  
Roswell, NM 88201

RE: CV-86-55, Jack Grynberg  
v. Oil Conservation Division

Dear Ms. Willis:

Enclosed for filing in the above-referenced matter is a certified copy of the administrative record compiled by the Oil Conservation Division at the request of the attorneys for Petitioner Grynberg. A copy of their letter requesting the record is also enclosed.

You will note that I have enclosed more documents than were requested by counsel. This is because I felt that the entire administrative record should be forwarded at this time. Petitioner has indicated that he may object to the inclusion of some documents, but that is a matter that Judge Schnedar will have to decide.

If you have any questions I may be contacted at 827-5805. Thank you for your assistance in this matter.

Sincerely,

  
Jeff Taylor  
General Counsel

cc: (w/o enclosures)  
Robert W. Allen  
A. J. Lossee  
Judge William Schnedar

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

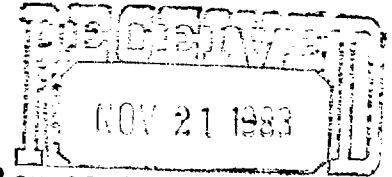
VIKING PETROLEUM, INC.,

Petitioner-Appellee,

vs.

OIL CONSERVATION COMMISSION OF  
THE STATE OF NEW MEXICO and  
HARVEY E. YATES COMPANY,

Respondents-Appellants.



NO. 14,632 OIL CONSERVATION DIVISION  
SANTA FE

SUPREME COURT OF NEW MEXICO

FILED

NOV 17 1983

*Rose Marie Allister*

APPEAL FROM THE DISTRICT COURT OF CHAVES COUNTY

William J. Schnedar, District Judge

W. Perry Pearce  
Santa Fe, NM

for Appellant Oil Conservation  
Commission

Losee, Carson & Dickerson  
A. J. Losee  
Artesia, NM

for Appellant Harvey E. Yates  
Company

Jones, Gallegos, Snead & Wertheim  
Arturo L. Jaramillo  
Santa Fe, NM

for Appellee

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OPINION

**FEDERICI, Justice.**

Viking Petroleum, Inc., petitioner-appellee (Viking), is the holder of an oil and gas leasehold estate on the E 1/2, NW 1/4, Section 18, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico. Harvey E. Yates Company, respondent-appellant (HEYCO), is the operator of the oil and gas leasehold estate on the W 1/2, NW 1/4 and SW 1/4 of Section 18, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico. Viking controls 25%, and HEYCO controls 75% of the underlying mineral interests. HEYCO applied for a permit to drill to the Ordovician formation. Viking agreed to participate in the drilling costs to the base of the shallower Abo formation, but declined to participate in the drilling of a well to the deeper Ordovician formation.

The Oil Conservation Commission of the State of New Mexico, respondent-appellant (Commission), denied Viking's request for partial participation. After a hearing, the Commission issued Order R-6873 (Order), which required all mineral interests pooled through the Ordovician formation to form a standard 320-acre gas spacing and prorationing unit to be dedicated to a well to be drilled at a standard location on the tract. The Order also provided that there should be withheld from any nonconsenting working interest owner's share of production his share of reasonable well costs plus 200% as a reasonable charge for the risk in drilling the well. The Order authorized HEYCO to withhold a pro rata share of all drilling costs as a means of collecting the penalty from Viking as a nonparticipating working interest owner. Viking's application for rehearing was automatically denied by failure of the Commission to act on the application within ten days.

Viking filed a Petition for Review of the Order and a Motion for Stay or Suspension of Order in the District Court of Chaves County. After a hearing on

1  
2 the motion, the district judge entered a decision suspending the  
3 Order. The district court's decision was conditional upon Viking's tender of  
4 \$90,000 to HEYCO as Viking's estimated share of the cost of drilling and  
5 completing the well to the base of the Abo formation.

6 There was a dispute at the hearing as to whether Viking was willing and able  
7 to assume its share of the risk of the proposed well through the Abo by advancing  
8 to HEYCO Viking's share of those particular costs. Concerning the share of the  
9 risk and drilling costs for the well to formations below the Abo, Viking presented  
10 the concept of "partial participation," which ultimately became the central issue  
11 on appeal to the district court. Viking contended that as a correlative right owner  
12 it was entitled to participate partially in the subject well by paying in advance for  
13 its share of costs to the Abo. Concerning the drilling and completion costs below  
14 the Abo, Viking wished to proceed on a "carried basis." HEYCO, as operator,  
15 would be entitled to full reimbursement for Viking's share of the drilling and  
16 completion costs carried by HEYCO below the Abo. The payment was to be made  
17 out of Viking's share of the production from formations below the Abo until those  
18 costs were fully recouped by HEYCO.

19 Viking further contended that if a risk penalty under NMSA 1978, Section  
20 70-2-17(C) would be appropriate at all in this case, it could only be applied to the  
21 drilling and completion costs being carried on behalf of Viking below the Abo  
22 formation. In other words, since HEYCO would not be required to advance any  
23 drilling or completion costs on behalf of Viking from the surface through the Abo  
24 formation, HEYCO would not be assuming any risk as to Viking's share of those  
25 costs and would not be entitled to risk compensation. With regard to the  
26 imposition of a risk penalty for the carried costs below the Abo, Viking argued  
27 that it was within the discretion of the Commission not to permit any risk penalty  
28 at all because the lack of production history in the deeper formations rendered

1  
2 the drilling venture below the Abo an extreme and unjustified risk for correlative  
3 right owners.

4 Following submission of briefs and without further hearing or oral arguments  
5 the district court held that Viking's application for rehearing preserved its right  
6 to object to the Commission's denial of partial participation. The district court  
7 also held that as a matter of law the Commission must provide partial  
8 participation by Viking unless there is substantial evidence in the record that such  
9 participation is clearly unreasonable. After reviewing the record of the  
10 Commission hearing, the district court concluded that the Order was not supported  
11 by substantial evidence, and that the Order was arbitrary, capricious, and  
12 contrary to law. We reverse.

13 We are limited to the same review of administrative actions as the district  
14 court. Reynolds v. Wiggins, 74 N.M. 670, 397 P.2d 469 (1964). This standard was  
15 applied to review of Commission orders in El Paso Natural Gas Company v. Oil  
16 Conservation Commission, 76 N.M. 268, 414 P.2d 496 (1966).

17 Substantial evidence is such relevant evidence as a reasonable mind might  
18 accept as adequate to support a conclusion. Rinker v. State Corporation  
19 Commission, 84 N.M. 626, 506 P.2d 783 (1973). We must view the evidence and all  
20 reasonable inferences in the light most favorable to support the findings, and any  
21 evidence unfavorable will not be considered. Martinez v. Sears, Roebuck and Co.,  
22 81 N.M. 371, 467 P.2d 37 (Ct.App.), cert. denied, 81 N.M. 425, 467 P.2d 997  
23 (1970). Special weight will be given to the experience, technical competence and  
24 specialized knowledge of the Commission. Rutter & Wilbanks Corporation v. Oil  
25 Conservation Commission, 87 N.M. 286, 532 P.2d 582 (1975); Grace v. Oil  
26 Conservation Commission, 87 N.M. 205, 53 P.2d 939 (1975). Our review is limited  
27 to the evidence presented to the Commission, and the administrative findings by  
28 the Commission should be sufficiently extensive to show the basis of the order.

1  
2 Continental Oil Company v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d  
3 809 (1962). The findings must disclose the reasoning of the Commission in  
4 reaching its conclusion. Fasken v. Oil Conservation Commission, 87 N.M. 292, 532  
5 P.2d 588 (1975).

6 Pooling.

7 Forced pooling of multiple zones with an election to participate in less than  
8 all zones is a question of first impression in New Mexico.

9 The Legislature, in an apparent desire to encourage the exploration and  
10 development of oil and gas in situations similar to the one before us, adopted  
11 NMSA 1978, Section 70-2-17(C), which provides in part as follows:

12 C. When two or more separately owned tracts of  
13 land are embraced within a spacing or proration unit, or  
14 where there are owners of royalty interests or undivided  
15 interests in oil and gas minerals which are separately  
16 owned or any combination thereof, embraced within such  
17 spacing or proration unit, the owner or owners thereof may  
18 validly pool their interests and develop their lands as a  
19 unit. Where, however, such owner or owners have not  
20 agreed to pool their interests, and where one such separate  
21 owner, or owners, who has the right to drill has drilled or  
22 proposes to drill a well on said unit to a common source of  
23 supply, the division, to avoid the drilling of unnecessary  
24 wells or to protect correlative rights, or to prevent waste,  
25 shall pool all or any part of such lands or interests or both  
26 in the spacing or proration unit as a unit. (Emphasis  
27 added.)

28 We now review the conclusion reached by the Commission determine  
whether the provisions of the Order are supported by substantial evidence. The  
first of the key provisions pooled the 320-acre tract from the surface to the  
Ordovician formation. The Commission found that to prevent waste, to protect  
correlative rights and to allow each interest owner to recover its fair share of  
gas, the mineral interests will be pooled to the lower formation. HEYCO's  
geologist testified that relying on an Abo well would not be economical because  
the risk involved was so great. Both sides presented expert testimony on  
quantities of oil and gas from formations below the Abo through the Ordovician



1 which were commercially feasible to recover. The force pooling provision in the  
2 order is supported by a finding allowing interest owners to recover their fair share  
3 from the Ordovician formation. There is substantial evidence in the record to  
4 support the finding of the Commission that oil and gas reserves in the Ordovician  
5 were commercially feasible to produce. The Commission found that any  
6 nonconsenting working interest owner should be allowed to pay his share of well  
7 costs out of production. In addition, the Commission found that a reasonable  
8 charge for the risk taken in drilling the well is 200% and any nonconsenting  
9 working interest owner who does not participate should be subject to this risk  
10 charge.  
11

12 Based upon its findings the Commission: (1) pooled the 320-acre tract  
13 applied for from the surface to the Ordovician formation; (2) ordered HEYCO to  
14 proceed with due diligence to drill a test well to the Ordovician formation; (3)  
15 allowed any working interest owner who had not yet agreed to participate the  
16 option of paying his share of well costs, enabling such owner to avoid any risk  
17 charge; (4) authorized the operator to withhold the pro rata share of well costs  
18 plus a risk charge of 200% from production attributable to any nonparticipating  
19 working interest owner; (5) ordered that any amounts withheld from production  
20 should be withheld only from the working interest portion of production, not from  
21 the royalty interest portion.

#### 22 Commercial Production Below the Abo.

23 In considering the application, the Commission heard evidence presented by  
24 HEYCO on the reasons for drilling this well to the Ordovician formation. It was  
25 the position of HEYCO's expert witness, Rodney O. Thompson (Thompson), that  
26 the most likely production from a well in the proposed location was from the  
27 geological formation which he referred to as the pre-Mississippian dolomite.

28 In discussing all of the prospective zones at the proposed location, Thompson

1  
2 stated that he believed that the pre-Mississippian dolomite and the Basal Penn  
3 sand were the most likely prospects. Based on the structure map which he had  
4 prepared from information derived from other wells in the area, Thompson  
5 testified that the location represented an excellent prospect in these two  
6 formations. The testimony and exhibits indicate that in the general area of the  
7 proposed location of the well there is commercial production potential from the  
8 pre-Mississippian dolomite.

9 In response to the expert testimony presented by HEYCO, Viking presented  
10 expert testimony from Morris Ettinger (Ettinger) which indicated that there was  
11 not sufficient evidence to justify the expenditure of funds for a deeper test.  
12 Ettinger testified that his review of the proposal indicated that a deeper test was  
13 unreasonable for a prudent joint interest owner and operator of a well in that  
14 area.

15 There is substantial evidence in the record to support the finding of the  
16 Commission that the most likely production would be from the pre-Mississippian  
17 dolomite, and that the well was economically feasible.

18 Commercial Production From the Abo.

19 An expert witness called by HEYCO testified that in his opinion the San  
20 Andres formation, which had a shallower depth than the Abo formation, was a  
21 likely secondary prospect, and that he expected to encounter some oil production  
22 from the San Andres. He expressed the opinion that although he expected to  
23 encounter gas production in the Abo formation at the proposed location, he  
24 believed that there was a high risk of those reserves being noncommercial. In  
25 fact, this expert witness expressed his opinion that it would not be a justifiable  
26 economic risk to drill a well at the proposed location depending only upon Abo  
27 production.

28 Viking presented contradictory evidence through their expert witness,

1  
2 Ettinger, who gave his opinion that there was a good chance of commercial  
3 production from the Abo. He stated that Viking was willing to participate in a  
4 well drilled to the Abo formation at the proposed location.

5 The record contains substantial evidence to support the finding of the  
6 Commission that production from the Abo formation alone would not be to the  
7 advantage of the mineral interest and royalty owners, and that drilling to a deeper  
8 zone would prevent waste and protect correlative rights.

9 Risk Involved.

10 Witnesses for both parties at the proceeding before the Commission  
11 testified that there is a substantial risk involved in drilling a well to the Abo or  
12 the Ordovician, or in drilling any well. The finding that risk was involved and the  
13 finding of the proportionate share to be assumed by the owners is supported by  
14 substantial evidence.

15 Reimbursement to HEYCO for Costs and Risk Charges.

16 The application before the Commission not only requested that the  
17 designated mineral interests be pooled, but also that HEYCO be named operator  
18 and be entitled to recover the pro rata share of well costs and compensation for  
19 risk out of production from any nonconsenting working interest owner.  
20 Reimbursement of costs and risk charges is authorized by NMSA 1978, Section 70-  
21 2-17, which mandates that provision be made for payment from production of well  
22 costs for "any owner or owners who elects not to pay his proportionate share in  
23 advance." This section further allows the inclusion of a charge for the risk  
24 involved in the drilling of such well, which charge shall not exceed 200% of the  
25 nonconsenting working interest owner's or owners' pro rata share of the cost of  
26 drilling and completing the well. The granting or refusal to grant forced pooling  
27 of multiple zones with an election to participate in less than all zones, the amount  
28 of costs to be reimbursed to the operator, and the percentage risk charge to be

1 assessed, if any, are determinations to be made by the Commission on a case-to-  
2 case basis and upon the particular facts in each case.  
3

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

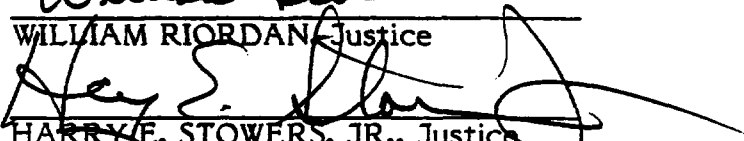
8 The judgment of the district court is reversed. The order of the Commission  
9 is affirmed.

10 IT IS SO ORDERED.

11   
12 WILLIAM R. FEDERICI, Justice

13 WE CONCUR:

14   
15 WILLIAM RIORDAN, Justice

16   
17 HARRY E. STOWERS, JR., Justice  
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28

1  
2  
3 IN THE SUPREME COURT OF THE STATE OF NEW MEXICO  
Tuesday, December 13, 1983

4 NO. 14,632

5 VIKING PETROLEUM, INC.,

6 Petitioner-Appellee,

7 vs.

Chaves County

8 OIL CONSERVATION COMMISSION OF  
9 THE STATE OF NEW MEXICO and  
HARVEY E. YATES COMPANY,

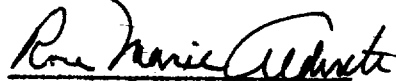
10 Respondents-Appellants.

11 WHEREAS, it appearing to the Court that the Mandate issued in the above  
12 cause on December 2, 1983, failed to assess costs in favor of Appellant Harvey E.  
13 Yates Company;

14 NOW, THEREFORE, IT IS ORDERED that costs assessed in favor of  
15 Appellant Harvey E. Yates Company are as follows: Skeleton Transcript \$2.00;  
16 Transcript on Appeal \$435.45; Docket Fee \$20.00.

17 IT IS FURTHER ORDERED that this Order of the Court is to be made an  
18 addendum to the Mandate heretofore issued on December 2, 1983.

19  
20  
21  
22  
23 ATTEST: A TRUE COPY

24 

25 Clerk of the Supreme Court  
26 of the State of New Mexico  
27  
28

1  
2  
3 IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

4 MANDATE NO. 14,632

5 THE STATE OF NEW MEXICO TO THE DISTRICT COURT sitting within and for the  
6 County of Chaves, GREETING:

7 WHEREAS, in a certain cause lately pending before you, numbered CV-82-77 on your  
8 Civil Docket, wherein Viking Petroleum, Inc. was Petitioner and Oil Conservation  
9 Commission, et al were Respondents, and by your consideration in that behalf judgment  
10 was entered against said Respondents; and

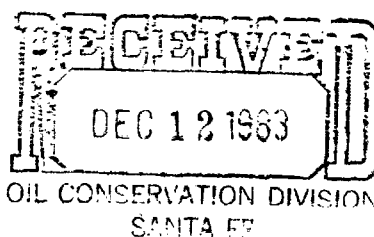
11 WHEREAS, said cause and judgment were afterwards brought into our Supreme  
12 Court for review by Respondents by appeal, whereupon such proceedings were had that on  
13 November 17, 1983, an Opinion was handed down by said Supreme Court and Judgment was  
14 entered reversing the judgment of the District Court and affirming the Order of the  
15 Commission, and remanding said cause to you.

16 NOW, THEREFORE, this cause is hereby remanded to you for such further  
17 proceedings therein as may be proper, if any, consistent and in conformity with said  
18 Opinion and said Judgment.

19 WITNESS, The Hon. H. Vern Payne,  
20 Chief Justice of the Supreme Court  
21 of the State of New Mexico, and  
22 the seal of said Court this 2nd  
23 day of December, 1983.

24 (SEAL)

*Rose Marie Acderite*  
Clerk of the Supreme Court  
of the State of New Mexico



Amended

CASES SET FOR ORAL ARGUMENT UNLESS OTHERWISE INDICATED

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Cases to be Submitted  
Monday  
July 11, 1983

THE CALL OF THE DOCKET FOR THE FOLLOWING CASES WILL BE AT 9:00 A.M.:

NO. 14,680

Leslie J. Hadden, Appellee

Leo C. Kelly

vs.

C. Earl Stewart, Appellant

Cohen & Aldridge  
William F. Aldridge

NO. 14,746

Phelps Dodge Corporation, Appellee

Rodey, Dickason, Sloan, Akin & Robb  
Duane Gilkey

vs.

NM Employment Security Department,  
et al., Appellants

Richard Baumgartner

NO. 14,836

Xorbox, Appellee

Armijo, Baggett & Cameron  
Andrew L. Cameron

vs.

Naturita Supply, et al., Appellants

Briones & Pittard  
Blair Woods

Cases set for Oral Argument Monday July 11, 1983 - Page 2

THE CALL OF THE DOCKET FOR THE FOLLOWING CASES WILL BE AT 1:30 P.M. AND  
COUNSEL NEED NOT BE PRESENT UNTIL THAT TIME:

NO. 14,774

Union Land & Grazing Co., Appellant

Robertson & Blair  
G. Gordon Robertson

vs.

Arturo R. Romero, et al., Appellees

Robert E. Fox

NO. 14,759

Dorothy Kimble, Appellee

Erwin & Davidson  
William C. Erwin  
David L. Mathews

vs.

Albert Layton, et ux., Appellants

Emmett C. Hart



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Cases to be Submitted

TUESDAY

July 12, 1983-

THE CALL OF THE DOCKET FOR THE FOLLOWING CASES WILL BE AT 9:00 A.M.:

NO. 14,679

Trinidad Bustos, Appellant

Richard S. Lees

vs.

Frank A. Bustos, Appellee

George M. Scarborough

NO. 14,657

Manuel Lujan Insurance, Inc., Appellee

Padilla, Riley & Vigil  
Ray A. Padilla

vs.

Larry R. Jordan, dba Jordan  
Insurance, Inc., Appellant

Sutin, Thayer & Browne  
Raymond W. Schowers  
Marianne Woodard

NO. 14,591

Adolfo Giron, Appellant

Foy, Foy & Jollensten  
Tom Foy, Jr.

vs.

Roy Schoenrad, Appellee

Dickson, young & Robinson  
J. C. Robinson

Cases set for Oral Argument Tuesday, July 12, 1983 - Page 2

THE CALL OF THE DOCKET FOR THE FOLLOWING CASES WILL BE AT 1:30 P.M. AND  
COUNSEL NEED NOT BE PRESENT UNTIL THAT TIME:

NO. 14,733

Mike Carrasco, Jr., et al., Appellees

McCormick & Forbes  
Don G. McCormick  
Losee, Carson & Dickerson  
Chad Dickerson

vs.

James P. Riggs, et al., Appellants

Hinkle, Cox, Eaton, Coffield & Hensley  
Stuart D. Shanor  
John S. Nelson  
Hunker & Fedric; Don M. Fedric

NO. 14,632

Viking Petroleum, Appellee

Jones, Gallegos, Snead & Wertheim  
Arturo L. Jaramillo

vs.

Oil Conservation Commission, et al.,  
Appellants

W. Perry Pearce  
Losee, Carson & Dickerson  
A. J. Losee

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Cases to be Submitted  
Wednesday  
July 13, 1983

THE CALL OF THE DOCKET FOR THE FOLLOWING CASES WILL BE AT 9:00 A.M.:

NO. 14,800

W. G. Myers, Appellant

Thomas E. Jones

vs.

Lois R. Olson, et al., Appellees

Shaw, Thompson, Webber & Giles  
William F. Webber

NO. 14,747

Jones Veterinary Supply, Appellant

Sutin, Thayer & Browne  
Sasha Siemel

vs.

Morris L. Gatewood, Appellee

McCulloch, Grisham & Lawless  
Richard V. Earl

NO. 14,734

National Association of Credit  
Management, Inc., Plaintiff

Charles N. Glass

vs.

Tom McCarty, Appellee

Lanny D. Messersmith

vs.

Great American Surplus Lines, Appellant

Shaffer, Butt, Thornton & Baehr  
Briggs F. Cheney

Cases set for Oral Argument Wednesday, July 13, 1983 - Page 2

THE CALL OF THE DOCKET FOR THE FOLLOWING CASES WILL BE AT 1:30 P.M. AND COUNSEL NEED NOT BE PRESENT UNTIL THAT TIME:

NO. 14,744

C. L. Buescher, et al., Appellants

Payne & Mitchell  
Bill G. Payne

vs.

Martin A. Jacquez, et al., Appellees

Stading, Severson, Maxfield & Mesa  
Ronald J. Stading

NO. 14,681

Word Sherrill Realtors, et al., Appellants

Payne, Mitchell & Quigley  
Gary C. Mitchell

vs.

Great Western Realty, et al., Appellees

Montgomery & Andrews  
John E. Conway  
Phyllis A. Dow

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Cases to be Submitted  
Thursday  
July 14, 1983

THE CALL OF THE DOCKET FOR THE FOLLOWING CASES WILL BE AT 9:00 A.M.:

NO. 14,731

Pueblo of Laguna, Appellee

Nordhaus, Haltom & Taylor  
Lester K. Taylor

vs.

Cillessen & Sons, et al., Appellants

Toulouse, Toulouse & Garcia  
James R. Toulouse  
Roy F. Miller, Jr.  
Hartley B. Wess

NO. 14,738

NM Board of Pharmacy, Appellant

Frank P. Dickson, Jr.

vs.

John Reece, Appellee

C. N. Morris

NO. 14,732

State, ex rel Department of  
Human Services, Appellant

Dorsett C. Bennett II, Asst AG

vs.

Pedro (Pete) Coronado, Appellee

Templeman Crutchfield  
C. Barry Crutchfield

**JULY CALENDAR - CASES TO BE SUBMITTED TO THE COURT ON BRIEFS ONLY -  
ORAL ARGUMENT NOT REQUESTED:**

**NO. 14,766**

Manuel Ortiz, Appellant

Branch, Eaton & Keenan  
Roger V. Eaton

vs.

Department of Alcoholic Beverage  
Control, Appellee

Andrea B. McCarty, Asst AG

**NO. 14,769**

Roy Eddie Merrill, Appellee

Mason & Rosebrough  
James Jay Mason

vs.

Pamela Davis, Appellant

Shaw, Thompson, Webber & Giles  
William F. Webber

**NO. 14,702**

Ray Primm, et al, Appellants

Marchiondo & Berry  
Edward D. Myers  
Kenneth B. Wilson

vs.

Zola Horney, et al., Appellees

Jones, Gallegos, Snead & Wertheim  
Francis J. Mathew for Horney  
Sommer & Lawler  
Joseph A. Sommer for Powell  
Thomas K. Campbell  
James Copeland

**JULY CALENDAR - TO BE SUBMITTED ON BRIEFS - Page 2**

**NO. 14,839**

Sharon McCabe (Pollock), Appellee

Moeller & Burnham  
F. Douglas Moeller

vs.

Michael H. Pollock, Appellant

Briones & Pittard  
David Pittard

**NO. 14,677**

ITT Grinnell Corporation, Appellee

Sutin, Thayer & Browne  
Philip R. Schichtel

vs.

Dale Burgett, et al., Appellants

Sherman & Sherman  
Frederick H. Sherman

IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

|                              |   |           |
|------------------------------|---|-----------|
| VIKING PETROLEUM, INC.,      | ) |           |
|                              | ) |           |
| Petitioner-Appellee,         | ) |           |
|                              | ) |           |
| vs.                          | ) | No. 14632 |
|                              | ) |           |
| OIL CONSERVATION COMMISSION  | ) |           |
| OF THE STATE OF NEW MEXICO   | ) |           |
| and HARVEY E. YATES COMPANY, | ) |           |
|                              | ) |           |
| Respondents-Appellants.      | ) |           |

REPLY BRIEF OF  
APPELLANT HARVEY E. YATES COMPANY

A. J. Losee  
Elizabeth Losee  
Losee, Carson & Dickerson, P.A.  
P. O. Drawer 239  
Artesia, New Mexico 88210  
505/746-3508

Attorneys for Respondent-  
Appellant Harvey E. Yates  
Company



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| New Mexico Laws of 1979, Ch. 133, § 1 . . . . .  | 8 n.3             |
| <br><u>Statutes from Other Jurisdictions:</u>  |                   |
| 52 O.S. 1971, § 87.1(d) . . . . .  | 10                |
| <br><u>Other Authorities:</u>  |                   |
| 5 C.J.S., <u>Appeal and Error</u> , § 1464(1) . . . . .  | 6                 |
| COPAS Bulletin No. 2, Determination of<br>Values for Well Cost Adjustment Joint<br>Operations published by the Council of<br>Petroleum Accountants Societies of<br>North America . . . . . | 8                 |

## INTRODUCTION

Appellant Harvey E. Yates Company ("HEYCO") does not agree with all of appellee Viking Petroleum, Inc.'s ("Viking") 18½-page concise review of the issues. Intertwined in this review is the argument attempting to support Viking's positions on the issues. HEYCO responds to these arguments in its Points I, II and III.

### REPLY TO APPELLEE'S POINT I

#### THE DISTRICT COURT ERRED IN VACATING THE ORDER, BECAUSE THE SPLIT RISK QUESTION WAS NOT PRESENTED IN THE APPLICATION FOR REHEARING

Viking's answer to this point is divided into three subparts. HEYCO does not reply to subpart I-C because it has never claimed that it was misled or prejudiced by Viking's application for rehearing. HEYCO combines the reply to subparts A and B of Answer Brief, Point I.

HEYCO does not rely, as suggested by Viking, upon Pubco Petroleum Corp. v. Oil Conservation Com'n, 75 N.M. 36, 399 P.2d 932 (1965), and Federal Power Com. v. Colorado Gas Co., 348 U.S. 492, 99 L.Ed. 583, 75 Sup.Ct. 467 (1955), for factual support. These cases were cited to show that the purpose of an application for a rehearing is "to afford the Commission an opportunity to reconsider and correct an erroneous decision."<sup>1/</sup>

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<sup>1/</sup> Viking purports to bolster its argument on this point by a quotation from a footnote to KFC National Management Corp. v. NLRB, 497 F.2d 298, 300 n.1 (2d Cir. 1974). That case is inapposite, as it stands for the rule urged here by HEYCO, that an agency must have the opportunity to consider and rule on an objection before that objection is presented to the reviewing court.

In its effort to supplement its Application for Rehearing, Viking cites portions of the arguments made before the Commission (Ans. Br. 24), and before the District Court (Ans. Br. 23). In so doing Viking, like the District Court, does not follow the mandate of the rehearing statute, § 70-2-25, N.M.S.A., 1978, requiring that "questions be presented in the petition for rehearing." Any implication that the appellate court is to look to the whole record in order to "complete" a defective petition is noticeably absent.

The appellate courts have authority to review actions of an administrative board only to the extent allowed by statute. Application of Angel Fire Corp., 96 N.M. 65, 634 P.2d 202 (N.M. 1981); Application of Charley's Tour and Transp., Inc., 522 P.2d 1272 (Hawaii 1974); Village of Cobb v. Public Serv. Com'n, 107 N.W.2d 595 (Wis. 1961); Granite City v. Ill. Commerce Com'n, 95 N.E.2d 371 (Ill. 1950); Meinhardt Cartage Co. v. Ill. Commerce Com'n, 155 N.E.2d 631 (Ill. 1959). The purposes requiring strict adherence to statutory rule are, in addition to that enunciated by this Court in Pubco, "to inform the Commission and opposing parties wherein mistakes of law and fact were made in the order." Granite City, supra. "It is the policy of the law to require a petition for rehearing, since it is more expeditious than an appeal. Hence, errors can be remedied by the Commission while it has full control of the matter and no appeal may be necessary." Meinhardt, supra.

Viking refers to portions of §§ 2(d) and (e) and 3

of the Petition for Rehearing in its claim that the partial participation question was preserved for appeal. There is no assertion by Viking that ¶¶ 2(a), (b) or (c) in any way support its argument. Paragraph 2(d) questions the lack of findings as to risk or existence of economic waste involved in the plan proposed by Viking. Which plan or position? That pooling only be authorized from the surface through the Abo because the risk of drilling deeper is too great? Or, that if pooling is authorized to the deeper zones, no risk charge be assessed below the Abo because the risk is too great? Or, that if pooling is authorized to the deep zones, the risk charge should only be assessed from the base of the Abo to the deep zones because Viking would pay its share of costs to the Abo? (Tr. 49-51, 53-55 and 138-139). All three plans or positions were taken by Viking at the Commission hearing.

On appeal, Viking has only asserted that the Commission Order (the "Order") was invalid because the latter plan was not adopted. Viking's petition would have the Commission reconsider the entire hearing. "It is not the purpose of the petition for rehearing to seek a reconsideration of the entire proceeding, but it is to point out and have corrected mistakes of law or of fact, or both, which it is claimed the Commission has made in reaching its determination." Meinhardt, supra.

Paragraph 2(b) of the Petition questions the lack of findings as to unnecessary expense to Viking to recover

its fair share of oil or gas. Nothing in this allegation alerted the Commission to a failure to provide for partial participation. ¶3 questions the application of the 200% risk charge. Was Viking complaining about the assessment of any risk charge from the base of the Abo to the deep zone (one of its plans), or was Viking complaining that the risk charge was assessed against all zones (another plan)? Noticeably absent from the petition is any simple assertion that the Order is invalid because partial participation through the Abo was not authorized. The petition, standing alone, clearly fails to specify that the Order was invalid because it did not provide for partial participation. In following the statutory requirement, neither Viking nor the District Court is entitled to supplement the petition by references to the entire hearing. The partial participation question was not specifically presented in the application for rehearing or preserved for appeal.

#### REPLY TO APPELLEE'S POINT II

THE COMMISSION RECORD IS DEVOID OF EVIDENCE TO SUSTAIN  
A VALID ORDER FORCE POOLING MULTIPLE ZONES WITH  
AN ELECTION TO PARTICIPATE IN LESS THAN ALL ZONES

HEYCO's position is that based on the available evidence, the Commission was powerless to enter a valid order providing for partial participation. As the proponent for a split risk order, Viking had the burden of establishing that it was entitled to such an order. As illustrated by C. F. Braun & Co. v. Corporation Commission, 609 P.2d 1268 (Okla. 1980), the mechanics of cost allocation are

an essential element of a pooling order containing an election to participate in costs to selected formations. The burden of establishing the entitlement to an order providing for partial participation includes presentation of cost allocation evidence. Viking failed to meet that burden in the Commission hearing. At that point it was not incumbent upon HEYCO to inform the Commission that Viking failed to establish its case. The Commission's Order granted HEYCO's request for forced pooling and risk assessment for drilling through the Ordovician formation. HEYCO could not then be expected to needlessly offer argument in support of the Commission's Order. Only with the District Court's Decision overturning that Order was HEYCO presented with the opportunity to offer argument in support of it. See Robison v. Katz, 94 N.M. 314, 610 P.2d 201 (1980).

Another basis for permitting HEYCO's argument to be heard by this Court is the sound policy of affirming a lower court judgment or order upon any legal ground or theory apparent from the record. New Mexico appellate courts have employed this principle numerous times, stating "A decision of the trial court will be upheld if it is right for any reason." Scott v. Murphy Corp., 79 N.M. 697, 448 P.2d 803 (1968); Holmes v. Faycus, 85 N.M. 740, 516 P.2d 1123 (N.M.App. 1973). This is because the primary function of an appellate court is to correct an erroneous result rather than question the grounds upon which it is based. Armijo v. Shambaugh, 64 N.M. 459, 330 P.2d 546 (1951).



It follows logically from the proposition cited so many times by the New Mexico courts that a respondent should be permitted to present legal argument which would aid the appellate court in sustaining the order of an administrative tribunal.<sup>2/</sup> The rule that an appellate court will affirm the order appealed from if it is sustainable on any legal ground apparent on the record, even though such ground is not urged by appellee or not raised in the lower court, has been followed in other jurisdictions. Home Indem. Co. v. Reed Equipment Co., Inc., 381 So.2d 45 (Ala. 1980); Re Smith's Will, 245 Iowa 38, 60 N.W.2d 866; 5 C.J.S., Appeal and Error, § 1464(1).

HEYCO's argument is offered here as support for the correctness of the Order, which should be affirmed if it can be sustained upon correct legal principles. The necessity and concomitant opportunity to present argument which would sustain the Order arose only after that Order was overturned in District Court. For the foregoing reasons, HEYCO's argument should be considered at this time.

Viking correctly states that the Oklahoma Supreme Court, in C. F. Braun & Co. v. Corporation Commission, supra, considered separately the issues of partial participation

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<sup>2/</sup> The evidentiary requirements of Braun v. Corporation Commission were well known to Viking long before this appeal. Viking argued that case at length, for the first time, in the District Court. Viking cannot now contend that it is surprised by the theory advanced by HEYCO.

and cost allocation (n.12, Ans. Br. 30). However, the court reversed the Oklahoma Corporation Commission for lack of evidence to sustain the cost allocation formula. The Oklahoma Commission could then insert in the order a valid cost allocation formula, thus permitting all operating and non-operating parties to evaluate the risk before the well was drilled and the risk taken. Under Viking's construction of Braun, the Oklahoma court should have allowed the order to stand (even though, as in the instant case, there was no proper evidence on cost allocation) and after the well was drilled require the Commission to decide the dispute as to allocation of costs.

Viking's reference to § 70-2-17.C that costs are allocated to the various owners on a surface acre basis has nothing to do with this case (Ans. Br. 28). This controversy is concerned with equitable allocation of costs between multiple zones in a single well bore. Contrary to Viking's assertion, until these costs are equitably allocated they are not subject to mathematical determination (n.12, Ans. Br. 30).

Likewise, Viking's reference to Attorney Joe Hall's hearsay testimony on the hurried Saturday morning calculations of costs of drilling and completing a well to the Abo falls short of relevant evidence on an equitable method for allocating costs to the Abo for a well drilled to the Ordovician (Ans. Br. 28). Costs of drilling and completing a well to the Abo is one thing, but the costs of

drilling the well to the Ordovician and equitably allocating costs between the Abo and Ordovician is quite another matter. In drilling to the Ordovician, a larger hole and larger casing may be required and an additional production string of casing may also be required. COPAS Bulletin No. 2, ¶8 (attached to Br. Ch.). What part of the additional costs should equitably be allocated to the Abo?

Finally, Viking makes the assertion that the entire cost allocation question is a false issue because the well has been drilled (Ans. Br. 30). The well had not been drilled at the time of the Commission hearing and this fact should not be considered on appeal.<sup>3/</sup> However, Viking has raised the issue and HEYCO is constrained to point out the other side of the argument. The cost allocation issue may be false with respect to Viking because it presumably now knows what zones are productive and can make an intelligent after-the-fact election to participate or not participate, but it is not a false issue to HEYCO who has taken the risk, based upon the presumptively valid Commission Order, in drilling the well to the Ordovician.

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<sup>3/</sup> In Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962), the Court held that the admission of testimony, relating to the conditions subsequent to the issuance of the order, has the net effect of negating or minimizing the factual situation as it existed before the commission. See, also Laws 1979, Ch. 133, § 1, amending § 70-2-25.B. Viking also argues the completed well fact at n.3 Ans. Br. 4.

Viking, the party proposing partial participation and with the burden of proof, has pointed to no evidence in the record before the Commission upon an equitable allocation of costs between two zones in a single well bore. The record will not sustain an order force pooling multiple zones with an election to participate in less than all zones.

REPLY TO APPELLEE'S POINT III

THE ORDER IS SUPPORTED BY SUBSTANTIAL EVIDENCE, IS NOT ARBITRARY AND CAPRICIOUS AND IS NOT CONTRARY TO LAW

The crux of Viking's position throughout the 18-page "Introduction" surfaces in its argument under Point III. "If Viking is entitled to advance its costs through the Abo, then Heyco is not entitled to a 200% risk charge that encompasses those costs." (Ans. Br. 32, interlineation added). This statement of position leaves unresolved the question whether Viking is entitled to partial participation.<sup>4/</sup> However, other statements in the Answer Brief reveal Viking's unsupported belief that partial participation was a matter of right vested in it. "Viking as a correlative right owner was nevertheless entitled to participate partially" (Ans. Br. 4); and "Viking has chosen to advance its share of costs" (Ans. Br. 36). From unsupported statements such as these Viking leaps to the conclusion that "Heyco would not be assuming any risk" (Ans. Br. 5); "conflict in the testimony by the geologists was immaterial

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<sup>4/</sup> HEYCO recognizes that the New Mexico force pooling statutes permit partial participation under appropriate facts and circumstances.

since the evidence was undisputed that Viking was totally willing . . . (advance its share of those costs)" (Ans. Br. 9); "no rational basis to justify the payment of risk compensation to Heyco" (Ans. Br. 12); "no reason or need for imposition of risk compensation" (Ans. Br. 14); "penalty unjustifiedly imposed a risk charge upon Viking" (Ans. Br. 19); "arbitrary imposition of a 200% risk penalty" (Ans. Br. 31); "arbitrary and unlawful risk charge (Ans. Br. 34).

The foundation for all of these conclusions is based upon the assumption that Viking, as a matter of law or from the facts in this case, was entitled to partial participation by merely offering to put up its share of costs from the surface to the Abo. These conclusions, being no better than their foundation, crumble on examination of the law and the facts.

First we examine the law. The pertinent provisions of the force pooling statutes of New Mexico, § 70-2-17.C, N.M.S.A., 1978, and Oklahoma, 52 O.S. 1971, § 87.1(d), are substantially the same. The only case cited by either party involving partial participation is C. F. Braun & Co. v. Corporation Commission, supra. In this Oklahoma case appellants contended that the Commission's order was erroneous because it did not allow an election as to each common source of supply. Appellee contended that the statute did not require a separate election and that if such construction is placed on the pooling statute, "there will be a whole new ball game" at the Commission, and therefore a new

ball game in the industry itself. After considering these conflicting positions, the Oklahoma Supreme Court said:

. . . [w]hether a pooled owner is entitled to an election as to each common source of supply or each separate spacing unit as argued by appellant depends upon the facts and circumstances in each pooling proceeding.

The singular is used in our statutes when they speak to a pooling order, but this may not be construed to mean that in a pooling proceeding involving multiple common sources of supply or spacing units underlying the same tract that an owner is necessarily entitled to an election as to each separate unit. The pooling order should be responsive to the application and evidence. (Interlineation added).

Braun stands for the proposition that where multiple zones are being force pooled the non-operator, as a matter of law, is not necessarily entitled to partial participation.

Did the facts in this case entitle Viking to partial participation? "Conflicting expert testimony was presented by both sides on the question of whether and to what extent commercially producible quantities of oil and gas could be expected to be produced from the various formations underlying the W/2 of Section 18." (Ans. Br. 8). Viking's testimony was to the effect that the risk was too great to now test the deeper zones and when sufficient data was available a second well would be required to test these zones. (Tr. 118 & 128). HEYCO's expert testified that it was reasonably probable that the deeper zones contained commercially productive hydrocarbons. (Tr. 82). From these conflicts in the testimony, the Commission faced the question of whether they should encourage the testing of the deeper

zone by assessing the risk charge to all zones.<sup>5/</sup> There was no evidence that HEYCO was willing to drill the well to the deeper zones without full participation by Viking or without the possibility of recovering the risk charge out of any productive zones in the well. Indeed HEYCO's petition and evidence sought application of a 200% risk factor against all zones. If the risk charge was not assessed against all zones, HEYCO might not have been willing to drill the well to the deeper zones. Viking's expert would require a second well to test the deeper zones, resulting in the drilling of an unnecessary well and economic waste (Tr. 118-128).<sup>6/</sup> The Commission was required to balance the correlative rights of HEYCO and Viking as the working interest owners as well as the rights of the royalty and overriding royalty interest owners. Should HEYCO decline to drill to the deeper zones for lack of risk incentive, the correlative rights of these interest owners in the deeper zones would not be protected. After weighing the evidence, the Commission resolved the conflicts in its Finding of Fact No. 5 (Tr. 4).

In resolving these arguments, this Court will not

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<sup>5/</sup> Viking's "take it or leave it" comparison with the eight-well pooling order in Windsor Gas Corp. v. Railroad Com'n of Tex., 529 S.W.2d 834 (Tex.Civ.App. 1975), to the one-well Order in this case is unjustified.

<sup>6/</sup> Viking urges that prevention of waste due to the drilling of unnecessary wells is not an issue here, but concedes that if it was a pooling order based on conflicting testimony would be difficult to overcome under the substantial evidence rule (Ans. Br. 31). See Ans. Br. 9 and Finding of Fact 5, Tr. 4.

weigh the evidence. The inquiry is whether on the record the administrative body could reasonably make the findings. Grace v. Oil Conservation Commission of New Mexico, 87 N.M. 205, 531 P.2d 939 (1975). "Moreover, in considering these issues, we will give special weight and credence to the experience, technical competence and specialized knowledge of the Commission." Grace v. Oil Conservation Commission of New Mexico, supra; Rutter & Wilbanks Corp. v. Oil Conservation Com'n, 87 N.M. 286, 532 P.2d 582 (1975). The Commission Order avoided the drilling of an unnecessary well, protected the correlative rights of all parties in all zones, and afforded all owners the opportunity to recover without unnecessary expense their fair share of the oil and gas in all zones in the unit. The Order was not arbitrary or capricious or contrary to law because Viking was not entitled, either as a matter of law or from the facts in this case, to partial participation.

In conclusion, Viking requests that this cause be "remanded to the Commission for further proceedings consistent with participation in the subject well by Viking through the base of the Abo formation and permitting Viking to elect to proceed on a non-consent basis under § 70-2-17.C, supra, below the base of the Abo formation." (Ans. Br. 36) In effect, Viking would have this Court modify the Commission Order. Before the 1979 amendment, § 70-2-25.B, supra, read in part:



This court shall determine the issues of fact and law and shall . . . enter its order either affirming, modifying or vacating the order of the Commission. (Interlineation added).

The 1979 amendment changed this sentence to read: "The court shall determine the issues of fact and of law and shall enter its order either affirming or vacating the order of the Commission."<sup>7/</sup> It is thus clear that this Court cannot remand this case to the Commission with directions to modify the Commission Order.<sup>8/</sup> This Court must either affirm or vacate the Order. HEYCO does not own the required acreage for a proration unit and if the Order is vacated, HEYCO must necessarily seek a new pooling order. Any such order must afford to Viking, after the risk has been taken by HEYCO, the opportunity to elect to pay its share of the costs, without risk penalty, to any formations in which the well is completed.

For the foregoing reasons, the Order should be affirmed.

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<sup>7/</sup> This amendment was passed to conform the statute to Continental Oil Co. v. Oil Conservation Commission, supra, where the Court held that "Insofar as § 65-3-22.B, supra (now § 70-2-25.B), purports to allow the district court . . . to modify the orders of the Commission, it is void as an unconstitutional delegation of power contravening Article III, Section 1 of the New Mexico Constitution. (Interlineation added).

<sup>8/</sup> To the extent the District Court's stay order suspended part but not all of the provisions of the Order, it is void as a modification of the Order.

Respectfully submitted,

LOSEE, CARSON & DICKERSON, P.A.

By: \_\_\_\_\_

A handwritten signature in dark ink, appearing to read "Elizabeth Losee", written over a horizontal line.

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IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

|                              |   |           |
|------------------------------|---|-----------|
| VIKING PETROLEUM, INC.,      | ) |           |
|                              | ) |           |
| Petitioner-Appellee,         | ) |           |
|                              | ) |           |
| vs.                          | ) | No. 14632 |
|                              | ) |           |
| OIL CONSERVATION COMMISSION  | ) |           |
| OF THE STATE OF NEW MEXICO   | ) |           |
| and HARVEY E. YATES COMPANY, | ) |           |
|                              | ) |           |
| Respondents-Appellants.      | ) |           |

CERTIFICATE OF MAILING

It is hereby certified that on this June 8, 1983 a true copy of the Reply Brief of Appellant Harvey E. Yates Company and a true copy of this Certificate of Mailing was mailed to Arthur L. Jaramillo, Esquire, Attorney for Appellee Viking Petroleum, Inc., Jones, Gallegos, Snead & Wertheim, P.A., P. O. Box 2228, Santa Fe, New Mexico, 87501, and to W. Perry Pearce, Esquire, Special Assistant Attorney General, Attorney for Appellant Oil Conservation Commission, P. O. Box 2088, Santa Fe, New Mexico, 87501, by first class mail, postage prepaid.

LOSEE, CARSON & DICKERSON, P.A.

By:   
A. J. Losee

IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

VIKING PETROLEUM, INC., )  
 )  
Petitioner-Appellee, )  
 )  
vs. ) No. 14632  
 )  
OIL CONSERVATION COMMISSION )  
OF THE STATE OF NEW MEXICO )  
and HARVEY E. YATES COMPANY, )  
 )  
Respondents-Appellants. )

*Filed  
6-9-83  
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REPLY BRIEF OF  
APPELLANT OIL CONSERVATION COMMISSION

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For its Reply Brief herein, Appellant Commission adopts and supports the Reply Brief of Appellant Harvey E. Yates Company filed herein and incorporates that Brief as if fully set out below.

Respectfully submitted,

PAUL G. BARDACKE  
ATTORNEY GENERAL

A handwritten signature in dark ink, appearing to read "W. Perry Pearce", is written over a horizontal line.

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IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

|                              |   |           |
|------------------------------|---|-----------|
| VIKING PETROLEUM, Inc.,      | ) |           |
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| and HARVEY E. YATES COMPANY, | ) |           |
|                              | ) |           |
| Respondents-Appellants.      | ) |           |

CERTIFICATE OF MAILING

It is hereby certified that on this June 9, 1983, a true copy of the Reply Brief of Appellant Oil Conservation Commission and a true copy of this Certificate of Mailing was mailed to Arthur L. Jaramillo, Esquire, Attorney for Appellee Viking Petroleum, Inc., Jones, Gallegos, Snead & Wertheim, P.A., P. O. Box 2228, Santa Fe, New Mexico 87501, and to A. J. Losee, Esquire, Losee, Carson and Dickerson, P.A., Attorney for Appellant Harvey E. Yates Company, P. O. Drawer 239, Artesia, New Mexico 88211, by first class mail, postage prepaid.

PAUL G. BARDACKE  
Attorney General

By   
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SUPREME COURT OF NEW MEXICO  
FILED  
MAY 10 1983  
*Re Marie Aldrete*

IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO


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| VIKING PETROLEUM, INC.,      | ) |           |
|                              | ) |           |
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|                              | ) |           |
| vs.                          | ) |           |
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| OIL CONSERVATION COMMISSION  | ) |           |
| OF THE STATE OF NEW MEXICO   | ) |           |
| and HARVEY E. YATES COMPANY, | ) |           |
|                              | ) |           |
| Respondents-Appellants.      | ) |           |

MOTION FOR EXTENSION OF TIME  
TO FILE REPLY BRIEF

Comes now Appellant, Oil Conservation Commission, by and through its attorney, and moves the Court to grant an extension of time to file Appellant's Reply Brief, and as grounds therefore states:

1. That the court has previously granted an extension to Appellant Harvey E. Yates Company and that is necessary for Appellants to coordinate their briefs.
2. That the Brief-in-Chief of Appellant Oil Conservation Commission shall be filed no later than June 9, 1983.

Respectfully Submitted,  
  
PAUL G. BARDACKE  
Attorney General

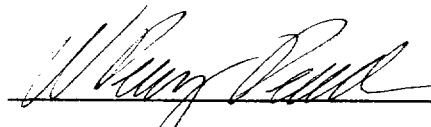
  
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IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

|                              |   |           |
|------------------------------|---|-----------|
| VIKING PETROLEUM, INC.,      | ) |           |
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| vs.                          | ) |           |
|                              | ) |           |
| OIL CONSERVATION COMMISSION  | ) |           |
| OF THE STATE OF NEW MEXICO   | ) |           |
| and HARVEY E. YATES COMPANY, | ) |           |
|                              | ) |           |
| Respondents-Appellants.      | ) |           |

CERTIFICATE OF MAILING

It is hereby certified that on this May 10, 1983, a true copy of the Motion for Extension of Time to File Reply Brief of Appellant Oil Conservation Commission and a true copy of this Certificate of Mailing was mailed to Arthur L. Jaramillo, Esquire, Attorney for Appellee Viking Petroleum, Inc., Jones, Gallegos, Snead & Wertheim, P.A., P. O. Box 2228, Santa Fe, New Mexico, 87501, and to A. J. Losee, Losee, Carson and Dickerson, P.A., P. O. Drawer 239, Artesia, New Mexico 88210, by first class mail, postage prepaid.



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IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

VIKING PETROLEUM, INC.,  
  
Petitioner-Appellee,  
  
vs.  
  
OIL CONSERVATION COMMISSION OF  
THE STATE OF NEW MEXICO and  
HARVEY E. YATES COMPANY,  
  
Respondents-Appellants.

No. 14632

*Filed  
5-5-83  
[Signature]*

ANSWER BRIEF OF  
APPELLEE VIKING PETROLEUM, INC.

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STATEMENT OF THE CASE

Appellee Viking Petroleum, Inc., (hereinafter referred to as "Viking") does not deem an independent statement of the case necessary.

STATEMENT OF PROCEEDINGS

While Viking does not totally agree with the summary characterization of its position as set forth in the Statement of Proceedings in the Brief-In-Chief of appellant, New Mexico Oil Conservation Commission (hereinafter "Commission"), nevertheless, a supplementary statement of proceedings is not deemed necessary since the relief sought by Viking before the Commission and in the District Court is described, in context, hereinbelow.

INTRODUCTION

Because neither of the appellants provide a thorough background for the points they raise on appeal, a concise review of the issues which were presented for decision by the Commission and the District Court on appeal is an appropriate starting place for this Answer Brief.

A. Proceedings Before The Oil Conservation Commission

As pertinent to the issues in this case, Viking is the holder of an oil and gas leasehold interest in E/2 NW/4 Section 18, Township 9 South, Range 27 East, N.M.P.M., Chavez County, New Mexico (Tr. 59-60). Appellant, Harvey E. Yates Company, (hereinafter referred to as "Heyco") owns the leasehold interest in the W/2 NW/4 and SW/4 of Section 18 (Tr. 59).

1 Heyco filed an application with the Commission  
2 pursuant to §70-2-17(C), NMSA 1978, in case No. 7390, seeking  
3 the compulsory pooling of all mineral interests from the  
4 surface through the Mississippian formation underlying the W/2  
5 of Section 18 (Tr. 58).<sup>1</sup> Viking filed a similar application  
6 in case No. 7409 seeking to pool all mineral interests from the  
7 surface through the Pennsylvanian formation underlying the N/2  
8 of Section 18 (Tr. 48-49).

9 The Commission conducted a consolidated hearing on  
10 both cases November 24, 1981 (Tr. 43, 47). At the hearing,  
11 Viking withdrew its application in case No. 7409 and advised  
12 the Commission that with certain specific reservations, it was  
13 willing to accede to the compulsory pooling of its interests in  
14 the W/2 of Section 18 as requested in the Heyco application.  
15 However, as a correlative right owner, Viking advised the  
16 Commission that it would oppose that portion of the Heyco  
17 application which sought compulsory pooling and the drilling of  
18 a test well in the geological formations below the Abo  
19 Formation [approximately 5200 feet] (Tr. 48-57).<sup>2</sup> That  
20

21  
22 <sup>1</sup>Heyco subsequently modified its application to include  
23 the Ordovician formation (Tr. 66-67, 112, 149-150).

24 <sup>2</sup>The Heyco application as amended sought to pool all  
25 mineral interests down through the Ordovician formation  
[approximately 6350 feet] and to drill a test well to that  
depth (Tr. 64).

1 opposition framed the specific issues which were presented to  
2 the Commission for determination in case No. 7390. A  
3 description of the position taken by Viking at the hearing will  
4 serve to focus and define the central issues which are now  
5 before this Court for resolution.

6 Viking informed the Commission that it was prepared to  
7 participate in the proposed well in the W/2 of Section 18 by  
8 advancing its share of the drilling and completion costs  
9 through the base of the Abo Formation (Tr. 49-55). There was  
10 no dispute at the hearing that Viking was fully willing and  
11 financially able to assume its share of the risk in the  
12 proposed well through the Abo by advancing to Heyco, the  
13 operator of the well, Viking's share of those particular  
14 drilling costs (Tr. 68-69). As to the remaining portion of the  
15 Heyco application which sought to pool and drill the formations  
16 below the Abo, Viking asserted two alternative positions.

17 First, Viking contended that the evidence to be  
18 presented at the hearing would demonstrate that there was an  
19 insufficient production history for the formations below the  
20 Abo to justify the economic risk of drilling a test well in  
21 those deeper formations. Such a well, Viking asserted, would  
22 present an unjustifiable risk to correlative right owners and  
23 Viking asked that the Heyco application be denied insofar as it  
24  
25



1 sought compulsory pooling and a test well below the Abo (Tr.  
2 49).<sup>3</sup>

3 The alternative position advanced by Viking at the  
4 hearing presented the concept of "partial participation," which  
5 ultimately became the central issue on appeal to the District  
6 Court. Viking argued that if the Commission granted the Heyco  
7 application for compulsory pooling of all mineral interests in  
8 the W/2 of Section 18 through the Ordovician, that Viking as a  
9 correlative right owner was nevertheless entitled to  
10 participate partially in the subject well by paying in advance  
11 to the operator [Heyco] its share of the drilling and  
12 completion costs through and including completion of the Abo  
13 Foundation (Tr. 48-57). As to the drilling and completion  
14 costs incurred below the Abo, Viking informed the Commission  
15 that it would exercise its election under §70-2-17(C), supra,  
16 to proceed on a "carried basis" as to those particular costs.  
17 Under §70-2-17(C), supra, Heyco as the operator of the well  
18 would be entitled to full reimbursement for Viking's share of  
19

20 <sup>3</sup>The Commission ultimately did permit the compulsory  
21 pooling and the drilling of a test well to the Ordovician as  
22 requested by Heyco (Tr. 04-08). By the time Viking had filed  
23 its Petition for Review with the District Court, Heyco, the  
24 operator of the well under the Commission order, had already  
25 drilled the well to the Ordovician. Consequently, the question  
of whether or not the Commission properly granted the  
application to pool all mineral interests and to drill to the  
deeper Ordovician Formation became moot, and was not an issue  
before the District Court (Tr. 275-276). Accordingly, that  
portion of the Commission order is likewise not an issue here.

1 the drilling and completion costs being carried by Heyco below  
2 the Abo, with payment being made out of Viking's share of the  
3 production from the formations below the Abo until those costs  
4 were fully recouped by Heyco (Tr. 55).

5 Viking further contended that if a risk penalty under  
6 §70-2-17(C) would be appropriate at all in this case, that it  
7 could only be applied to the drilling and completion costs  
8 being carried on behalf of Viking below the Abo Formation (Tr.  
9 54-55). In other words, since Heyco would not be required to  
10 advance any drilling or completion costs on behalf of Viking  
11 from the surface through the Abo Formation, Heyco would not be  
12 assuming any risk as to Viking's share of those costs such as  
13 would warrant risk compensation.<sup>4</sup> As to the imposition  
14

15 <sup>4</sup>The type of provision referred to in the Oil and Gas  
16 Industry as a "risk penalty" is intended to relieve the  
17 non-drilling interest owner from having to advance his  
18 proportionate share of the drilling costs, and at the same  
19 time, to provide extra compensation out of production, if any  
20 is found, to the drilling party [the operator] who has advanced  
21 the entire drilling costs and who would therefore absorb the  
22 entire risk of a dry hole. Application of Kohlman, 263 N.W.2d  
23 674, 675 (S.D. 1978). In New Mexico, 70-2-17(C), supra,  
24 establishes the right of a nondrilling interest owner to elect  
25 to pay his proportionate share of well costs out of his share  
of production, rather than advancing those costs. The statute  
also permits the Commission, in the exercise of its discretion,  
to assess against the nondrilling interest owner a charge for  
the risk assumed by the operator who must "carry" the prorata  
costs of those nondrilling interest owners who elect to pay  
their share of the drilling costs out of production. The  
statute limits the charge for risk to 200% of the nondrilling  
interest owner's prorata share of drilling and completion costs.  
The critical issue in this case is whether a risk penalty  
based upon the nondrilling interest owner's proportionate share

1 of a risk penalty for the carried costs below the Abo, Viking  
2 argued that it was within the discretion of the Commission not  
3 to permit any risk penalty to all because the lack of  
4 production history in the deeper formations rendered the  
5 drilling venture below the Abo an extreme and unjustified risk  
6 for correlative right owners (Tr. 50, 53-57).

7 The transcript of the proceedings before the  
8 Commission demonstrates unequivocally that the Commission  
9 understood from the very outset of the hearing the partial  
10 participation [split-risk] concept which Viking was urging the  
11 Commission to adopt and to apply to the Heyco application.  
12 Mr. Dan Nutter, a hearing officer assisting the Commission at  
13 the hearing, posed the following questions to counsel for  
14 Viking in clarifying Viking's position:

15 MR. NUTTER: All right. Then you'd [Viking]  
16 leave the [Heyco] case stand but you would  
17 wish to participate [in the subject well] on  
a voluntary basis to the Abo, is that it?

18  
19 4 (Cont'd)

20 of drilling costs for the entire well [from the surface to the  
21 Ordovician Formation] can be lawfully and justifiably imposed  
22 upon a nondrilling interest owner who is willing and  
23 financially able to advance his share of drilling costs for a  
24 portion of the proposed well through a recognized pool or  
25 productive formation [from the surface through the Abo  
Formation]. In this situation, there are no deferred costs to  
be "carried" by the operator on behalf of the nondrilling  
interest owner from the surface to the Abo and consequently,  
there is no underlying basis to justify risk compensation for  
the operator as to those particular drilling costs. Viking  
claims that the Commission in this case erroneously imposed a  
200% penalty based upon Viking's prorata share of the costs for  
the entire well (Tr. 04-08).

1 MR. JARAMILLO: Well, I think we have two  
positions in that regard.

2 We will resist the Yates case, first of  
3 all, insofar as it seeks to drill a test  
4 well beyond the base of the Abo formation.  
To the extent the application seeks more  
than that, we resist it.

5 Alternatively, if this Commission  
6 should decide that it will grant the  
7 application as applied for, our position is  
8 that we would participate fully in the costs  
9 of that test well through and including the  
10 Abo formation.

11 MR. NUTTER: Okay, what you'd want then  
12 would be an estimate of costs through the  
13 Abo.

14 MR. JARAMILLO: That's correct.

15 MR. NUTTER: And an estimate of costs from  
16 the Abo to the base of the Penn, or the base  
17 of the Mississippian, whatever it is.

18 MR. JARAMILLO: That is correct.

19 MR. NUTTER: And then you would make your  
20 election [under §70-2-17(C), NMSA 1978]  
21 which all of these pooling orders provide.  
22 They provide an election that you could pay  
23 your costs in advance, and you would advance  
24 your share of the costs to the Abo based on  
25 that original estimate.

MR. JARAMILLO: That's correct.

MR. NUTTER: But you would resist paying any  
penalty, being carried from the base of the  
Abo to the Mississippian?

MR. JARAMILLO: That's correct. Our  
interpretation of the statute is that this  
Commission has the authority for allowing  
the recovery of the difference in that cost  
[between the Abo and the Mississippian] to  
[Heyco], and in addition to that, in its  
discretion the, what I would call a penalty  
or addition to that cost up to 200 percent  
of that difference.

1 MR. NUTTER: The risk factor.

2 MR. JARAMILLO: The risk factor. Our  
3 position is that the evidence that we have  
4 to present will show that that risk factor  
[in drilling below the Abo] is so extreme at  
this point that there should not be a  
penalty or risk factor charge imposed.

5 In other words, if the well does go  
6 through the Mississippian on the basis of  
7 what the Commission hears today, then we  
8 will pay our share of cost down through the  
9 Abo; [Heyco] will pay its share of cost down  
through the Abo, as well as the cost from  
the Abo to the Mississippian. We hope that  
to be a dual completion well, which I  
understand this Commission needs to  
authorize.

10 From the first production from the  
11 Mississippian, if there is any, [Heyco]  
12 would recover all of the difference in the  
13 cost from the Abo to the Mississippian from  
the first production. We will get none.

14 When that recovery of cost is made,  
15 however, we believe that should be the  
16 extent of the relief allowed to [Heyco] in  
this proceeding, and then we would have our  
share of the production paid to us from the  
remainder.

17 There should be no charge for a risk  
18 factor, and again, on the evidence that  
19 we'll present today, that it's an  
unreasonable risk to drill that deep on the  
information that is available to us today.

20 (Tr. 53-55) (Emphasis Supplied).

21 Conflicting expert testimony was presented by both  
22 sides on the question of whether and to what extent  
23 commercially produceable quantities of oil and gas could be  
24 expected to be produced from the various formations underlying  
25 the W/2 of Section 18 (Tr. 74-136). As pertinent to Viking's

1 request for partial participation in the well, however, the  
2 conflict in the testimony by the geologists was immaterial  
3 since the evidence was undisputed that Viking was totally  
4 willing and able to assume the risk of drilling the subject  
5 well from the surface to the Abo by advancing its share of  
6 those drilling and completion costs (Tr. 68-69; 118-119).  
7 Consequently, Heyco as the operator would not be required to  
8 undertake any greater risk than Viking in drilling to the base  
9 of the Abo nor would Heyco be required to advance any of the  
10 costs for that portion of the drilling on behalf of Viking.  
11 Significantly, Heyco offered absolutely no evidence, or even  
12 argument, that partial participation by Viking in the subject  
13 well would in any fashion adversely effect or prejudice Heyco's  
14 rights as the operator or would otherwise be unreasonable under  
15 the circumstances.

16 Heyco introduced at the hearing its proposed  
17 Authorization For Expense (AFE) setting forth the estimated  
18 drilling and completion costs for the proposed well through the  
19 Ordovician Formation. Heyco projected total costs of  
20 \$643,175.00 for the entire well (Tr. 64-65, 209). It was  
21 admitted at the hearing, however, that Heyco had also prepared  
22 an estimate of drilling and completion costs for the proposed  
23 well from the surface to the Abo Formation (Tr. 71). This  
24 portion of the drilling and completion costs was estimated to  
25 be \$371,000.00 (Tr. 71). Mr. Thomas Hall, an attorney for

1 Heyco (Tr. 57), testified as a witness at the hearing. When  
2 Mr. Hall was asked his opinion as to whether the Heyco estimate  
3 of allocated costs between \$371,000.00 to \$400,000.00 would be  
4 in the range of probable costs for drilling and completing the  
5 proposed well from the surface to the Abo Formation, he  
6 testified that \$371,000.00 was "pretty close" (Tr. 72).

7 It was unchallenged by Heyco at the hearing, as shown  
8 by Mr. Hall's own testimony, that drilling and completion costs  
9 for the subject well could be fairly and satisfactorily  
10 apportioned between Viking and Heyco both above and below the  
11 Abo Formation.<sup>5</sup>

12 Following the close of the evidence, the Commission  
13 heard the arguments of counsel (Tr. 137-149) and took the case  
14 under submission. On January 7, 1982, Order R-6873 was issued  
15 (Tr. 04-08). The order is more notable for its omissions than  
16 its contents. Nowhere in its findings or conclusions did the  
17 Commission even address the partial participation plan  
18 specifically urged by Viking at the hearing. Rather, in broad,

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19  
20 <sup>5</sup>Heyco did not introduce before the Commission any  
21 evidence whatsoever of alleged unreasonable complexities in  
22 allocating costs above and below and Abo. See Point Two,  
23 infra. The "COPAS Bulletin No. 2", which Heyco has introduced  
24 for the first time in the Supreme Court as an attachment to its  
25 Brief-In-Chief, was never presented to or considered by the  
Commission. The testimony of Heyco's own witness on cost  
allocation at the Commission hearing belies Heyco's recent  
claim that cost allocation complexities preclude the entry of a  
split risk or partial participation order in this case. See  
footnote 10, infra, p. 28.

1 conclusory language, the Commission simply approved the Heyco  
2 application pooling all interests through the Ordovician  
3 (Finding Nos. 2 and 5, Tr. 04, and Conclusion No. 1, Tr. 06)  
4 and imposed an across-the-board 200% risk penalty based upon  
5 Viking's pro rata share of costs for drilling the entire well  
6 through the Ordovician. This risk penalty would be paid out of  
7 Viking's share of production from the well if it elected not to  
8 advance its pro rata share of the costs for the entire well  
9 (Finding Nos. 7 and 8, Tr. 05, and Conclusion Nos. 3 and 4,  
10 7(A) and 7(B), Tr. 06-07).

11 B. Effect Of The Commission Order On Viking

12 Succinctly stated, the effect of the Commission order  
13 was to force Viking into an untenable all-or-nothing  
14 proposition which deprived Viking as a correlative right owner  
15 from participating in the proposed well from the surface to the  
16 Abo Formation (an economic risk it found acceptable and  
17 prudent) unless it also participated from the Abo Formation  
18 through the Ordovician (a risk it found unacceptable, Tr.  
19 118-128). If Viking elected not to go along with the Heyco  
20 application to drill to the Ordovician by advancing its share  
21 of drilling costs for the entire well, Viking would suffer the  
22 imposition of a 200% risk charge based upon Viking's share of  
23 costs for the entire well (amounting to three times Viking's  
24 pro rata share of costs) payable to Heyco out of Viking's share  
25 of production from the well.



1           The 200% risk penalty under the circumstances of this  
2 case deprived Viking of its most basic right as a correlative  
3 right owner to be afforded the opportunity to produce its just  
4 and equitable share of the oil and gas in each pool underlying  
5 the W/2 of Section 18. See §70-2-17(A), NMSA 1978; §70-2-33(B)  
6 and (H), NMSA 1978.<sup>6</sup> It also provided Heyco with an  
7 arbitrary windfall, since there was absolutely no need for  
8 Heyco to carry any drilling costs on behalf of Viking from the  
9 surface to the Abo, and thus, there was no rational basis to  
10 justify the payment of risk compensation to Heyco for the costs  
11 of drilling that portion of the well. While the Commission  
12 could have properly imposed a risk charge for Viking's carried  
13 costs below the Abo, Order R-6873 was not so restricted.

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14  
15  
16       <sup>6</sup>The fundamental basis for Viking's position on partial  
17 participation is that the governing statutes require the  
18 Commission to afford to the owners of interests in each pool  
19 (productive formation) their just and equitable share of oil  
20 and gas in each pool (Tr. 283-286). This is consistent with  
21 the statutory definition of "correlative rights," which vests  
22 in each interest owner the opportunity to produce his fair  
23 share of oil and gas in each pool. §70-2-33(H), NMSA 1978.  
24 Viking argued in the District Court and argues here that the  
25 statutes contemplate separate consideration by the Commission  
of interest in different pools, and the rights and election of  
a nondrilling interest owner in one pool are neither dependent  
nor contingent upon his rights or election in another pool (Tr.  
284-299). Courts have been firm in rejecting compulsory  
pooling orders which arbitrarily place nondrilling interest  
owners in "take it all" or "leave it all" situations as does  
the Order in this case. See Windsor Gas Corporation v.  
Railroad Commission of Texas, 529 S.W.2d 834 (Tex. Civ. App.  
1975).

1 C. The Application For Rehearing

2 In accordance with §70-2-25(A), NMSA 1978 (Cum. Supp.  
3 1982), Viking filed an Application for Rehearing with the  
4 Commission within 20 days after the entry of Order R-6873  
5 setting forth the respect in which the Order was believed to be  
6 erroneous (Tr. 09-10). As pertinent to the material issues in  
7 this appeal, the Application for Rehearing provided:

8 2. The Order from which this application is made:

9 d. makes no findings as to the risk or  
10 existence of economic waste involved in the  
11 application of Harvey E. Yates Company or the  
plan proposed by Viking Petroleum, Inc.;

12 e. makes no findings as to the unnecessary  
13 expense to Viking Petroleum, Inc., to recover its  
14 fair share of oil or gas, or both, or [how] its  
correlative rights are protected.

15 3. The two hundred percent charge for risk involved  
16 in the drilling of the well which is the subject of  
17 the Commission's Order is neither just nor fair in  
18 light of the unnecessary expense involved in drilling  
19 of the subject well and does not allow nonconsenting  
20 working interest owners an opportunity to recover  
21 their just share of oil and gas.

22 WHEREFORE, the Viking Petroleum, Inc., requests the  
23 Commission set this matter for rehearing at an early  
24 date, give notice as required by law and after  
25 rehearing enter its Order granting the relief it  
requested in the original hearing as reflected in the  
transcript of that proceeding, eliminate the two  
hundred percent charge for risk and grant such further  
relief as appears just and proper.

(Tr. 09-10) (Emphasis Supplied).

It must be remembered in construing the Application  
for Rehearing that the Commission was in no uncertain manner

1 made aware at the hearing of Viking's position or "plan" that  
2 it be permitted to participate in the drilling costs from the  
3 surface through the base of the Abo Formation and that it would  
4 elect to have its share of the drilling costs incurred below  
5 the Abo paid fully out of its share of production  
6 (Tr. 48-57; 137-142). The Commission's mandate at the hearing  
7 was to enter an order "upon such terms and conditions as are  
8 just and reasonable and will afford to the owner or owners of  
9 each tract or interest in the unit the opportunity to recover  
10 or receive without unnecessary expense his just and fair share  
11 of the oil and gas or both." Section 70-2-17(C), supra. The  
12 principal error in Order R-6873 was the total failure of the  
13 Commission to address and resolve in its findings the propriety  
14 and reasonableness of the partial participation plan advanced  
15 by Viking. If Viking was entitled to partial participation as  
16 it urged, then the 200% risk penalty based on the costs of the  
17 entire well was over-inclusive and would be an unnecessary  
18 expense and prejudicial to Viking in recovering its fair share  
19 of oil and gas from the pools or formations between the surface  
20 and the Abo. It was not necessary for Heyco to carry those  
21 particular costs on behalf of Viking, and consequently, there  
22 was no reason or need for the imposition of risk compensation  
23 out of Viking's share of production from the producing  
24 formations between surface and the Abo.

25 Recognizing that the Commission was not operating in a  
vacuum in this case, the Application for Rehearing alerted the

1 Commission of its failure to make any findings concerning the  
2 plan advanced by Viking at the hearing (Plaintiff's 2(d),  
3 Tr. 09) and alerted the Commission that the 200% risk penalty  
4 was neither fair nor just because of the unnecessary expense  
5 which the penalty imposed on Viking as a nonconsenting interest  
6 owner in recovering its fair share of oil and gas (Plaintiff's  
7 3, Tr. 10). This language tracked the language of §70-2-17(C),  
8 supra, and alerted the Commission that the 200% penalty was  
9 contrary to the statutory requirement that the order be made on  
10 fair and just terms for the protection of correlative rights.  
11 The Application for Rehearing specifically asked the Commission  
12 to re-enter an order granting the relief which Viking had  
13 specifically requested at the original hearing, as reflected in  
14 the transcript of the proceeding, and to eliminate the 200%  
15 risk penalty (Tr. 10).

16 The District Court determined on appeal in this case  
17 that the "application for rehearing must be considered in light  
18 of the positions taken by the applicant [Viking] in the hearing  
19 itself. When the two are put together, it is clear that the  
20 relief requested in the Application for a Rehearing was that  
21 the Commission permit Viking to participate in the well through  
22 the Abo." (Tr. 220). The District Court was correct. See  
23 Point One, infra.

24 D. The Proceedings In The District Court

25 The Commission failed to act upon Viking's Application  
for Rehearing and pursuant to §70-2-25(B), NMSA 1978 (Cum.

1 Supp. 1982), Viking filed a petition for review of the  
2 Commission Order with the District Court of Chaves County  
3 (Tr. 01-03). Filed simultaneously with the Petition for Review  
4 was a Motion for Stay or Suspension of Order No. R-6873 (Tr.  
5 12).<sup>7</sup> After oral argument on the Motion For Stay<sup>8</sup> the  
6 Court on May 5, 1982, entered an Order suspending those  
7 provisions of Order R-6873 which otherwise would have required  
8 Viking to advance to Heyco the estimated well costs for the  
9 entire well within 15 days from the date that written estimated  
10 well costs were furnished to Viking (Tr. 35). Instead, the  
11 Order required Viking to tender to Heyco \$90,000, representing  
12 Viking's proportionate share of the estimated cost of drilling  
13 and completing the proposed well from the surface to the base  
14 of the Abo Formation (Tr. 37). In the event that Viking is  
15 ultimately to prevail in its appeal and be permitted partial  
16 participation in the well, the \$90,000 tendered to Heyco,  
17 subject to any adjustment necessary to reflect actual costs in  
18 excess of or less than the estimated costs, is to be applied by  
19 Heyco pursuant to the Order in satisfaction of Viking's right  
20

21  
22  
23 <sup>7</sup>Amended pleadings joining Heyco as a party to the appeal  
were filed on March 11, 1982 (Tr. 16, 20).

24 <sup>8</sup>Transcript of Proceedings April 26, 1982, p. 1-68.  
25

1 to advance its proportionate share of costs from the surface to  
2 the Abo (Tr. 37).<sup>9</sup>

3  
4 <sup>9</sup>In its Brief-In-Chief at p. 3, note 1, Heyco states that  
5 under Commission Rule 104 Abo gas wells are spaced on 160-acre  
6 tracts and Viking's share of estimated well costs is therefore  
7 \$180,000.00 rather than \$90,000.00. Heyco is correct. The  
8 error which has been indulged in by all parties up to this  
9 point stems from the fact that Heyco's application for  
10 compulsory pooling involved an Ordovician well, which is spaced  
11 on 320-acre tracts under Commission Rule 104, and the  
12 Commission pooled the 320 acres from the surface through the  
13 Ordovician. The estimates provided to the District Court as to  
14 Viking's share of costs were premised upon Viking's ownership  
15 interest of approximately 80 acres (24.6%) in the W/2 of  
16 Section 18. See Brief-In-Chief of Appellant New Mexico Oil  
17 Conservation Commission, p. 14. The difference in spacing  
18 requirements between Abo and Ordovician wells has been simply  
19 and inadvertently overlooked by Viking, Heyco and the  
20 Commission in all prior proceedings in this case.

21 The additional amount which would be due to Heyco should  
22 Viking prevail on its claim for partial participation in this  
23 case can, in any event, be fully and completely determined and  
24 paid pursuant to the express language of the Court's Order of  
25 May 5, 1982, which states:

Should the actual drilling and completion  
costs from the surface to the base of the  
Abo formation subsequently be determined by  
the Court, or by the Commission on remand,  
to be more or less than Ninety Thousand  
Dollars (\$90,000.00), an adjustment in the  
above amount paid to respondent, including  
interest at the rate set forth above [10%]  
shall be accordingly made.

(Tr. 37) (Emphasis Supplied).

Judge Schnedar's Order provides an orderly and expeditious  
mechanism for reconciling the actual amount due by Viking for  
its pro rata share of well costs through the Abo Formation if  
it is entitled to partial participation in the subject well.  
Resolution of the issue of the actual amounts due, with  
interest, can be most appropriately made by the Commission on

1 E. The District Court's Decision On The Merits

2 The merits of Viking's appeal was submitted to the  
3 District Court for decision on briefs (Tr. 266-410). On  
4 September 30, 1982, Judge Schnedar entered his decision setting  
5 aside Commission Order R-6873 on the grounds that it was not  
6 supported by substantial evidence, was arbitrary and capricious  
7 and contrary to law (Tr. 219-221). After ruling that the  
8 partial participation issue was properly preserved by Viking's  
9 Application For Rehearing (Tr. 220), the Court resolved the  
10 central issue on appeal in favor of Viking as follows:

11 At the hearing Viking unequivocally told the  
12 Commission that it was willing to  
13 participate through the Abo. Their expert,  
14 Mr. Ettinger, testified that the San Andres  
and Abo were good objectives. Heyco's  
expert, Mr. Thompson, testified that an Abo  
well would not be an economical risk.

15 Viking was willing to put its money where  
16 its mouth was. The testimony of Mr.  
17 Thompson was not such substantial testimony  
as would sustain the Commission in denying  
18 Viking the opportunity to make its own  
mistake. As a matter of law, the Commission  
19 must permit an interest holder to  
20 participate to a lesser depth unless there  
is substantial evidence that such  
participation is clearly unreasonable and  
the Commission so finds.

21 (Tr. 221) (Emphasis Added)

22  
23  
24 9 (Cont'd)

25 remand, where evidence of actual costs, approved as reasonable  
by the Commission, rather than estimated costs can form the  
basis for the Commission's disposition of this question.

1 Judge Schnedar recognized that the correlative rights  
2 of the owner at each apparently feasible production depth must  
3 be considered by the Commission (Tr. 221). In denying Viking  
4 the right to partial participation in the subject well, the  
5 Commission arbitrarily, and contrary to §70-2-17(A), supra,  
6 deprived Viking, as a correlative right owner in the pools or  
7 productive formations between the surface and the Abo, the  
8 opportunity to produce its fair share of oil and gas in those  
9 formations without the unnecessary expense of an over-inclusive  
10 200% penalty. The penalty unjustifiably imposed a risk charge  
11 upon Viking for drilling costs which Viking has always been  
12 prepared to advance. See Point Three, infra.

13 POINT ONE

14 VIKING'S APPLICATION FOR REHEARING PRESERVED  
15 ITS RIGHT TO OBJECT TO THE COMMISSION'S  
16 FAILURE TO PROVIDE FOR PARTIAL PARTICIPATION

17 A. The Application For Rehearing

18 The Application for Rehearing in this case complained  
19 in part that the Commission's Order contained no findings  
20 reflecting "the plan proposed by Viking Petroleum, Inc."  
21 pertaining to the "risk or existence of economic waste involved  
22 in [Heyco's] application," or as to "the unnecessary expense to  
23 Viking Petroleum, Inc., to recover its fair share of oil or  
24 gas, or both, or [how] its correlative rights are protected."  
25 (Tr. 09-10; Introduction, §C, supra). The Application further  
complained of the unfairness of "the two hundred percent charge



1 for the risk involved in the drilling of the well . . . in  
2 light of the unnecessary expense involved . . . ," and the  
3 resulting loss of Viking's "opportunity to recover [its] just  
4 share of oil and gas." Id. Viking therefore prayed for the  
5 following relief in its Application:

6 [that] after rehearing [the Commission]  
7 enter its Order granting the relief it  
8 requested in the original hearing as  
9 reflected in the transcript of that  
proceeding, [and] eliminate the two hundred  
percent charge for risk . . . . "

10 Id.

11 Viking properly set forth the respect in which the  
12 Commission's Order was erroneous and preserved that issue for  
13 judicial review, pursuant to §70-2-25, NMSA 1978 (Cumm.Supp.  
14 1982). As Judge Schnedar noted in his Decision after the  
15 Commission's Order was appealed to District Court:

16 The application for rehearing must be  
17 considered in light of the positions taken  
18 by the applicant in the hearing itself.  
19 When the two are put together, it is clear  
20 that the relief requested in the application  
for a rehearing was that the Commission  
permit Viking to participate in the well  
through the Abo.

21 (Tr. 220).

22 B. The Purpose Of the Application For Rehearing

23 Section 70-2-25, NMSA 1978 (Cumm.Supp. 1982) provides  
24 for an application for rehearing by any party of record  
25 adversely affected by the Commission's Order. The

1 application, being timely filed, should "[set] forth the  
2 respect in which such order or decision is believed to be  
3 erroneous." Id.

4 The purpose of the application for rehearing is "to  
5 afford the Commission an opportunity to reconsider and correct  
6 an erroneous decision." Pubco Petroleum Corp. v. Oil  
7 Conservation Commission, 75 N.M. 36, 399 P.2d 932, 933 (1965).  
8 Pursuant to §70-2-25(A), supra, the Commission may then grant  
9 or refuse a rehearing; a simple failure to act upon the  
10 application within the time allotted is deemed a refusal and an  
11 exhaustion of administrative remedies by the applicant.  
12 Judicial review can be obtained when administrative remedies  
13 are thus exhausted in the manner prescribed. Id.; Federal  
14 Power Commission v. Colorado Interstate Gas Company, 348 U.S.  
15 492, 498-499 (1965). A petition for review by the appropriate  
16 district court is then allowed, "provided . . . that the  
17 questions reviewed on appeal shall be only questions presented  
18 to the Commission by the application for rehearing" Section  
19 70-2-25(B), NMSA 1978 (Cum. Supp. 1982).

20 Appellants rely on the case of Pubco Petroleum Corp.  
21 v. Oil Conservation Commission, supra, as authority for the  
22 argument that Viking failed to preserve the partial  
23 participation issue for judicial review. In Pubco, this Court  
24 held that failure to seek a second rehearing following an  
25 adverse order emanating from a first rehearing precluded the

1 aggrieved party from petitioning for judicial review. The  
2 District Court was without jurisdiction to entertain an appeal  
3 from the Oil Commission's Order because statutorily prescribed  
4 administrative remedies had not been exhausted. Unlike the  
5 instant case, in Pubco the Commission had never been afforded  
6 the required opportunity to reconsider and correct its ultimate  
7 decision via a final application for rehearing.

8 In the case at bar, all procedural requirements  
9 necessary for judicial review have been met. The District  
10 Court viewed the Application for Rehearing in light of  
11 positions taken by counsel on the record and found that the  
12 issue had been preserved. The District Court's position is in  
13 keeping with the rationale behind the rehearing rule:

14 While it is true that objections to  
15 administrative procedures must be timely  
16 made with the agency, the rule is only  
17 intended to preclude parties from raising  
their objections for the first time in the  
reviewing court.

18 KFC National Management Corp. v. N.L.R.B.,  
19 497 F.2d 298, 300 n.1 (2d Cir. 1974).  
(Emphasis Supplied).

20 The Application for Rehearing cannot be viewed in  
21 a vacuum and surely the appellants cannot now state that  
22 the partial participation issue was not raised as an  
23 alternative solution to the Heyco/Viking dispute at the  
24 Commission hearing (Tr. 53-55; Introduction §A, supra). Mr.  
25 Pearce, attorney for appellant Oil Conversation Commission,

1 admitted that the partial participation (split-risk) issue went  
2 to the merits of the dispute when he later appeared in District  
3 Court on a Motion to Stay on April 26, 1982:

4 THE COURT: Now, Mr. Pearce, that gives  
5 me quite a bit of trouble. Assume you have  
6 a very shallow formation with a very certain  
7 -- a high certainty of production and below  
8 that you have a very deep formation with a  
9 very large risk factor. Are you saying that  
10 the Commission can put it beyond the ability  
11 of the interest holder, to in effect say,  
12 "Yes, go. We are willing to go this shallow  
13 route, but we are not willing to go all the  
14 way." And, they have no alternative other  
15 than to pay the full amount.

16 MR. PEARCE: I believe, that's what  
17 happened in this case, Your Honor. I do not  
18 address whether or not the Commission has  
19 the power to do what you suggest. What I do  
20 say is that in this case the Commission did  
21 not enter the order which did that, which is  
22 the order which Petitioner sought before  
23 us. Now, that question, I submit to you, is  
24 the merits of the dispute.

25 (Tr. 24) (Emphasis Supplied).

(Transcript of Proceedings, April 26, 1982,  
p. 24)

The purpose of the Application for Rehearing was to  
alert the Commission as to the errors it had made and afford an  
opportunity for correction of those errors. When Viking asked  
for reconsideration of the Commission's decision because it  
made "no findings as to the risk or existence of economic risk"  
in the Heyco application or Viking's "plan," the Commission was  
alerted to the objection made (Tr. 09). Viking's position  
("plan") was made clear at the hearing itself, as evidenced by

1 the dialogue between Viking's counsel and Hearing Officer  
2 Nutter (Tr. 53-55; Introduction §A, supra). The clarity of  
3 that position was echoed by Heyco's counsel in closing remarks  
4 at the Commission hearing:

5 [MR. STRAND:] And I -- I personally,  
6 in reviewing the statute, do not think the  
7 Commission has the authority to provide for  
8 allowing someone to -- or an interest owner  
9 to participate to the base of the Abo  
10 Formation and then not participate below. I  
11 don't think the statute was intended that  
12 way. I don't think there's language in  
13 there that can be construed that way, and I  
14 would request, as I stated before, just a  
15 compulsory pooling order from top to bottom,  
16 as requested in the application.

17 (Tr. 149).

18 Neither the Commission, nor the counsel present, were  
19 unaware that Viking sought an order of partial participation,  
20 or split-risk, in the drilling of the well to the Mississippian  
21 formation. The Commission was given the chance to apply its  
22 own expertise and to correct its own errors on rehearing, which  
23 is the rationale for "the rule that issues or arguments not  
24 raised to an administrative agency cannot be considered by a  
25 reviewing court." Tenneco Oil Company v. Dept. of Energy, 475  
F.Supp. 299, 307 (D.C.Del. 1979). The rule also precludes  
litigants from reserving an issue that could be raised before  
the agency in an attempt to induce a remand on appeal "if all  
else fails before the agency." Id. Neither of these  
situations occur here. The purpose of the Application for

1 Rehearing, that of notice to the agency and opposing counsel,  
2 has been met.

3 The case of Federal Power Commission v. Colorado  
4 Interstate Gas Company, 348 U.S. 492 (1955) relied upon by  
5 appellants, is similarly inapposite. In that case the  
6 reviewing court considered sua sponte an objection which had  
7 not been urged before the administrative agency whose order was  
8 remanded. Certainly, after reviewing the record in the case at  
9 bar, appellants cannot argue that the partial participation  
10 issue was raised sua sponte by Judge Schnedar in the District  
11 Court.

12 C. Appellants Were Neither Misled Nor Prejudiced By Viking's  
13 Application For Rehearing

14 Appellants desperately resort to a highly technical  
15 argument in an attempt to invalidate Viking's Application for  
16 Rehearing and the District Court's reversal of the Commission's  
17 illegal order. They argue in effect that because the magic  
18 words "split-risk" do not occur on the face of the Application,  
19 the partial participation issue has not been preserved.

20 Appellants apply the wrong test in evaluating the  
21 validity of the Application. "The test is whether an opposing  
22 party was misled or prejudiced by the [alleged] failure . . ."  
23 Shell Oil Company v. Federal Power Commission, 509 F.2d 176,  
24 178 (5th Cir. 1975). Statements of counsel for the appellants  
25 at the proceedings before the Commission and the District Court  
show a clear understanding of Viking's position on partial

1 participation and its objection to the imposition of a 200%  
2 penalty from the surface throughout the depth of the well.  
3 "The sufficiency of a notice of administrative appeal should be  
4 liberally construed as long as an adverse party is not  
5 prejudiced thereby." Petit v. U.S., 488 F.2d 1026, 1031 (Ct.  
6 Cl. 1973). Appellants have nowhere alleged prejudice because  
7 none exists.

8 The partial participation issue was properly presented  
9 for reconsideration by the Commission in the Application for  
10 Rehearing. Due to the Commission's failure to act on that  
11 application, the Order was properly appealed to District Court.

12 POINT TWO

13 EVIDENCE OF A COMPREHENSIVE FORMULA  
14 FOR COST APPORTIONMENT WAS NOT ESSENTIAL  
15 TO VIKING'S ENTITLEMENT TO PARTIAL  
16 PARTICIPATION IN THE PROPOSED WELL

17 A. Heyco May Not Change Its Theory On Appeal

18 Heyco argues for the first time that the failure of  
19 Viking to present evidence demonstrating the proper approach in  
20 determining a formula to allocate well costs between multiple  
21 zones is fatal to Viking's claim for partial participation in  
22 the well (Heyco Brief-In-Chief, pp. 10-16). That theory was  
23 neither presented to the Commission by Heyco nor argued in the  
24 District Court.  
25

1 It is axiomatic that a party will not be permitted to  
2 change his theory of the case on appeal. Kaiser Steel Corp. v.  
3 Revenue Division, 96 N.M. 117, 628 P.2d 687, 690 (Ct. App.  
4 1981); Board of Education v. State Board of Education, 79 N.M.  
5 332, 443 P.2d 502, 505 (Ct. App. 1968). This principle applies  
6 on review of administrative determinations so as to preclude  
7 from consideration questions or issues which were not raised in  
8 the administrative proceedings. Kaiser Steel Corp. v. Revenue  
9 Division, supra, (Revenue Division held to have waived the  
10 issue of the taxpayer's failure to pursue remedies under the  
11 Tax Administration Act where raised for the first time on  
12 appeal); Board of Education v. State Board of Education, supra,  
13 (local school board waived an issue concerning the application  
14 of the tenure statutes which was raised for the first time on  
15 appeal). Accordingly, Heyco's failure to raise the cost  
16 allocation question at the Commission hearing now precludes  
17 consideration of that issue on appeal.

18 B. The Commission Was Presented With Sufficient Evidence Of  
19 Cost Allocation To Grant Viking Partial Participation -- And In  
20 Any Event, The Commission Retained Jurisdiction To Resolve  
Disputes Relative To Such Allocation

21 Even if the cost allocation question could be  
22 considered on appeal, it is far wide of the mark. Evidence was  
23 presented that Heyco had prepared a preliminary estimate which  
24 allocated \$371,000.00 for drilling and completing the Abo  
25 Formation out of a total estimate of \$643,175.00 for the entire



1 well (Tr. 71-72, 65, 209). The portion of the costs to be  
2 allocated to the various owners of each tract included in a  
3 well spacing unit formed by a pooling order is ordinarily  
4 determined by the proportion that the number of surface acres  
5 contained in each tract bears to the number of surface acres in  
6 the entire unit. See §70-2-17(C), supra. Viking's  
7 proportionate share of the estimated costs to drill and  
8 complete the Abo, \$371,000.00, was thus capable of mathematical  
9 computation.<sup>10</sup> The Commission was presented with Heyco's own  
10 figures which its witness, Mr. Hall, described as "pretty  
11 close" when asked about the range of probable costs for  
12 completing the Abo Formation (Tr. 71-72). Heyco interposed no  
13 objection to this evidence, nor did Heyco contend or present  
14 any evidence that cost allocation would present an  
15 insurmountable obstacle to Viking's claim of partial  
16 participation.

17 The only evidence before the Commission therefore  
18 demonstrated that costs could be satisfactorily and fairly

19  
20 <sup>10</sup>Viking owned the leasehold interest on approximately 80  
21 acres or close to 25% of the W/2 of Section 18. Abo well  
22 spacing is 160 acres per well, so Viking's proportionate share  
23 of the costs in completing the Abo Formation, based upon  
24 Heyco's own estimate of drilling and completion costs, was  
25 approximately 50% of \$371,000.00 or approximately \$185,500.00.  
Viking's share of the costs for drilling and completing the  
formations below the Abo, on the other hand, would be based on  
320 acre spacing for the Ordovician well. Heyco estimated  
total costs below the Abo at \$272,175.00 (\$643,175.00 less  
\$371,000.00). With 320 acre spacing, Viking's share of these  
costs would be approximately 25% or \$68,043.75.

1 allocated between the parties as to the two phases of the well.  
2 If Heyco considered cost allocation to present a significant  
3 problem, it should have raised that issue before the Commission.

4 It should also be noted that Heyco's estimate adduced  
5 at the hearing through the testimony of Mr. Hall was not the  
6 sole or final estimate contemplated by Viking upon which it  
7 would make its statutory election. As Hearing Officer Nutter  
8 pointed out at the hearing, Viking expected an estimate of  
9 costs from Heyco, the operator, setting forth the costs to the  
10 Abo (Tr. 53) and a separate estimate of costs from the Abo to  
11 the base of the Mississippian [Ordovician as modified] (Tr.  
12 54). It was expected that these estimates would be provided  
13 after the hearing predicated upon a ruling by the Commission  
14 that Viking was entitled to partial participation. There being  
15 no evidence that cost allocation difficulties would preclude  
16 the relief sought by Viking, that matter was simply not an  
17 issue at the Commission hearing.<sup>11</sup>

18  
19 <sup>11</sup>It is significant that Viking's request for partial  
20 participation was deemed a matter of first impression for the  
21 Commission. No established procedures for dealing with cost  
22 allocation in split-risk cases appeared either in the governing  
23 statutes or in the Rules and Regulations of the Commission.  
24 However, common sense mandated that two cost estimates be  
25 submitted by the operator, and any cost allocation dispute  
could be resolved after notice and a hearing as provided in  
§70-2-17(C), supra. Indeed, in a subsequent case before the  
Commission where split-risk treatment was granted, a straight  
forward, common sense approach was taken by which dual cost  
estimates were to be provided after the hearing by the operator  
[as Viking requested here] based simply upon standard drilling,  
testing and completion procedures (Tr. 389-399).

1 In any event, the entire cost allocation question is a  
2 false issue because the subject well has been drilled and  
3 presumably Heyco knows what the actual costs have been, the  
4 reasons why they were incurred and the portion of the well as  
5 to which those costs are properly allocated. Any dispute which  
6 may arise between Viking and Heyco concerning the reasonable-  
7 ness of those costs or the proper allocation thereof is a  
8 matter reserved by statute for the Commission to resolve after  
9 due notice and a hearing thereon. §70-2-17(C), supra. The  
10 statute does not make the resolution of cost disputes a  
11 prerequisite to the entry of a compulsory pooling order.

12 There being no evidence upon which the Commission  
13 could find that cost allocation difficulties would outweigh  
14 Viking's right to partial participation, that ground, even if  
15 considered on appeal, is an insufficient basis for reinstating  
16 the Commission's Order.<sup>12</sup>

---

17  
18 <sup>12</sup>Heyco's reliance on the cost allocation question  
19 presented in C. F. Braun & Co. v. Corporation Comm., 609 P.2d  
20 1268 (Okla. 1978) is misplaced. The validity of the split-risk  
21 concept recognized in that case was not dependent upon evidence  
22 of a cost allocation formula. The court clearly considered  
23 these two issues separately. The split-risk pooling order  
24 entered in that case was approved in all respects except for  
25 the formula. In the instant case, cost allocation was never in  
dispute at the Commission level since the evidence demonstrated  
that costs were capable of mathematical allocation based upon  
Heyco's own estimate. If cost allocation is an issue at all in  
this case, it is a separate matter for consideration by the  
Commission on remand.

POINT THREE

THE COMMISSION ORDER IS ARBITRARY,  
CAPRICIOUS AND CONTRARY TO LAW -

The Commission and Heyco both argue that the Commission's Order can be upheld on the ground that the compulsory pooling of all interests through the Ordovician Formation properly operates to prevent waste, a concern which the appellants elevate beyond the protection of correlative rights (Commission Brief-In-Chief, pp. 13-16; Heyco Brief-In-Chief, pp. 18-20). If the issues in this case concerned the prevention of waste due to the drilling of unnecessary wells, an order based upon conflicting expert testimony, which required the compulsory pooling of all interests through the Ordovician, would be difficult to overcome under the substantial evidence rule. However, that is not what this appeal is about.

The Commission's compulsory pooling of interests to the Ordovician is not challenged here. What Viking is complaining about is the arbitrary imposition of a 200% risk penalty which is based in part upon Viking's proportionate

---

<sup>13</sup>The comprehensive arguments on this Point which were advanced by Viking in its briefs in the District Court are equally applicable here (Tr. 280-299; 305; 372-383; 384-388). Since the briefs are part of the record in this case, Viking incorporates those arguments herein by reference to avoid unnecessary duplication. With that in mind, Viking will respond to the more limited issues posed by the appellants in their Briefs-In-Chief.

1 share of the drilling costs from the surface through the Abo  
2 Formation, when the undisputed record shows that Viking is  
3 prepared to advance those costs and assume its own risk for  
4 those costs. By failing to address Viking's request for  
5 partial participation in its Order, the Commission, without any  
6 supporting factual basis in its findings, imposed a needless  
7 expense for risk compensation upon Viking in derogation of  
8 Viking's statutory correlative rights. §70-2-17(C), supra;  
9 §70-2-33(H), NMSA 1978.<sup>14</sup>

10 The crux of Viking's position is simply this. If  
11 Viking is entitled to advance its costs through the Abo, then  
12 Heyco is not entitled to a 200% risk charge that encompasses  
13 those costs.<sup>15</sup> The risk penalty imposed in this case is not  
14 limited to costs incurred below the Abo, and is therefore  
15 over-inclusive, arbitrary and contrary to the statutory

---

16  
17  
18 <sup>14</sup>The failure of the Commission to provide ultimate  
19 findings of fact which explain the basis or reasoning behind  
20 the over-inclusive risk charge is sufficient, in and of itself,  
21 to require reversal of the Order. As held in Fasken v. Oil  
22 Conservation Commission, 87 N.M. 292, 532 P.2d 588 (1975),  
23 where basic findings of fact in an administrative order are  
24 utterly lacking, the reviewing court is left without a basis  
25 for determining how the Commission reasoned its way to its  
ultimate findings, and reversal is therefore required. Id., 87  
N.M. at 294; 532 P.2d at 590.

<sup>15</sup>It is apparent from what is not argued in the  
Briefs-In-Chief that both of the appellants now concede that  
the concept of partial participation or split-risk is not per  
se prohibited by the New Mexico statutory scheme (See Tr.  
384-399).

1 protection afforded to correlative right owners in each  
2 productive formation.

3 The Commission argues in its Brief-In-Chief that  
4 Viking is attempting to be granted full participation in  
5 revenue by partial participation in costs (Commission  
6 Brief-In-Chief, pp. 6; 14-15). The truth is that Viking has  
7 never sought to avoid payment of any portion of its share of  
8 drilling and completion costs above or below the Abo  
9 Formation. Viking has consistently stated throughout the  
10 course of proceedings in this case that it will advance its  
11 share of costs through the Abo and will elect under §70-2-17(C)  
12 to pay its share of costs below the Abo out of its share of the  
13 production from those formations. This is clearly not, as the  
14 Commission charges, partial payment of costs for full  
15 participation in revenue. Viking is fully paying its own way  
16 as permitted by §70-2-17(C).

17 The Commission next argues that Viking is attempting  
18 to avoid a risk charge when both parties agree that there are  
19 clearly significant risks (Commission Brief-In-Chief, p. 15).  
20 This analysis is only partially correct. Viking is indeed  
21 attempting to avoid a risk charge, but not because of the risks  
22 involved in drilling the well. Viking is keenly aware of those  
23 risks and is willing to assume its own risk by advancing its  
24 share of costs from the surface through the Abo rather than  
25 having Heyco assume that risk on its behalf. If Heyco is not

1 undertaking that risk for Viking, then it is not entitled to be  
2 compensated by Viking for that risk.

3 There is nothing in the compulsory pooling law which  
4 entitles an operator to demand that it assume the entire risk  
5 for purposes of collecting a substantial penalty out of the  
6 production belonging to correlative right owners. A risk  
7 charge is warranted only where the nondrilling interest owner  
8 elects to pay his costs out of his share of production. This  
9 is not the case here from the surface through the Abo. In  
10 setting aside Order R-6873, the District Court has properly  
11 allowed Viking to avoid an arbitrary and unlawful risk charge.

12 In a classic non-sequitur, the Commission says that it:

13 has decided that an applicant who seeks to  
14 drill a well to a formation at 6,350 feet,  
15 operating under a statute which requires  
16 proportional participation, which statute in  
17 the absence of such proportional  
18 participation allows the assessment of a  
charge for the risk of drilling the well,  
should not be forced to accept partial  
participation in full satisfaction.  
(Commission Brief-In-Chief, p. 17).

19 In fact, the Commission says, to do so would violate Heyco's  
20 correlative rights by allowing Viking to escape the charge for  
21 risk by such partial participation. (Id.)

22 This statement in the Commission's Brief is as  
23 arbitrary as Order R-6873. It is undisputed that Viking is  
24 paying its full proportional share of the costs of drilling the  
25 subject well by advancing its share of drilling and completion

1 costs through the Abo, and by paying its share of drilling and  
2 completion costs below the Abo out of its share of production.  
3 If a risk charge is appropriate for the carried costs below the  
4 Abo, and the Commission on remand so decides, the statute  
5 permits such risk compensation. But Order R-6873 did not do  
6 that. Instead, the Commission extended the penalty to the  
7 costs of the entire well, including the "non-carried" costs  
8 from the surface to the Abo.

9 The short answer to the confused statement quoted  
10 above is that Viking's claim of partial participation does not  
11 subvert either the purpose or the effectiveness of the  
12 compulsory pooling law. Waste is not an issue, since all  
13 interests to the Ordovician were pooled. Viking's election to  
14 advance its share of costs through the Abo and to pay its share  
15 of costs for the deeper formations out of its share of  
16 production does not vitiate the Commission's directive that the  
17 deeper formations be pooled and tested. The responsibility for  
18 drilling the deeper formations lies with Heyco, who asked  
19 specifically for such authority in its application for  
20 compulsory pooling. Heyco would not have done so unless it was  
21 prepared to bear the entire cost of the well, since any  
22 applicant must assume that responsibility if nondrilling  
23 interest owners elect under §70-2-17(C), supra, not to advance  
24 their share of well costs.  
25



1           It follows that Heyco has nothing to complain about  
2 where Viking has chosen to advance its share of costs through  
3 the Abo, because Heyco neither has to assume the payment of  
4 those costs nor incur the risk of losing those costs in the  
5 event of a dry hole. As to Vikings share of costs below the  
6 Abo, Heyco is in no worse position as to those costs than any  
7 applicant would be where a nondrilling interest owner elects to  
8 pay its share of costs out of its share of production. Heyco  
9 as the operator is required to advance those costs and is  
10 entitled to apply for risk compensation in carrying the costs  
11 below the Abo. In either event, the purposes of the compulsory  
12 pooling law are satisfied and the correlative rights of Viking  
13 are protected from unnecessary expense in producing its fair  
14 share of oil and gas in each productive formation.

15           The District Court correctly and aptly recognized the  
16 rights vested in Viking in each productive formation underlying  
17 the W/2 of Section 18. The Court properly set aside Order  
18 R-6873 and the over-inclusive risk penalty as an arbitrary  
19 infringement upon those correlative rights. The District Court  
20 should accordingly be affirmed, and this cause remanded to the  
21 Commission for further proceedings consistent with participa-  
22 tion in the subject well by Viking through the base of the Abo  
23 Formation and permitting Viking to elect to proceed on a  
24  
25

1 nonconsent basis under §70-2-17(C), supra, below the base of  
2 the Abo Formation.

3 Respectfully submitted,

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

5 S/ARTHUR L. JARAMILLO

6 By

ARTHUR L. JARAMILLO  
Post Office Box 2228  
Santa Fe, New Mexico 87501  
(505) 982-2691

9 CERTIFICATE OF MAILING

10 It is hereby certified that on the 5th day of May,  
11 1983, a true and correct copy of the foregoing Answer Brief of  
12 Appellee Viking Petroleum, Inc., was mailed to opposing counsel  
13 of record, W. Perry Pearce, Special Assistant Attorney General  
14 for the Oil Conservation Commission, Post Office Box 2088,  
15 Santa Fe, New Mexico 87501 and A. J. Losee, Losee, Carson &  
16 Dickerson, P.A., Post Office Drawer 239, Artesia, New Mexico  
17 88210, by first-class mail, postage prepaid.

18 S/ARTHUR L. JARAMILLO

19  
20 ARTHUR L. JARAMILLO

IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

VIKING PETROLEUM, INC.,  
Petitioner-Appellee,  
-vs-  
OIL CONSERVATION COMMISSION OF  
THE STATE OF NEW MEXICO and  
HARVEY E. YATES COMPANY,  
Respondents-Appellants.

No. 14632

MOTION TO EXTEND THE PAGE LIMITATION  
OF APPELLEE'S ANSWER BRIEF BY TWO PAGES

Petitioner-Appellee Viking Petroleum, Inc., (Viking)  
by and through its attorneys, moves the Court pursuant to Rule  
9(n)(4) of the Rules of Appellate Civil Procedure for leave to  
submit an additional two pages to its Answer Brief to be filed  
herein.

As grounds therefor, counsel for Petitioner-Appellee  
Viking Petroleum, Inc., states:

1. Rule 9(n)(4) provides for a 35-page limit to an  
answer brief submitted in response to a brief-in-chief filed in  
this Court.


2. Viking must respond to two briefs-in-chief filed  
in this cause, i.e., one submitted by Respondent-Appellant  
Harvey E. Yates Company and one submitted by Respondent-Appellant  
Oil Conservation Commission, totaling 44 pages.

1                   3. Viking therefore requests leave to file an Answer  
2 Brief of 37 pages (including one page designated as a certificate  
3 of mailing) so that it may fully respond to the two briefs-in  
4 chief filed by the Appellants.

5                                   Respectfully submitted,

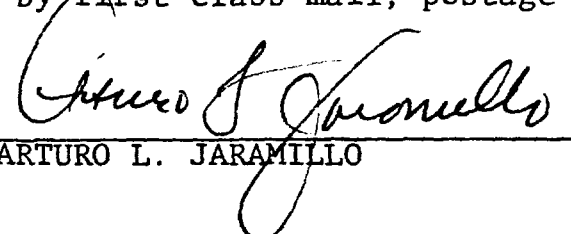
6                                   JONES, GALLEGOS, SNEAD & WERTHEIM, P.A.  
7                                   Attorneys for Petitioner-Appellee

8 By

  
ARTURO L. JARAMILLO  
P. O. Box 2228  
Santa Fe, New Mexico 87501  
(505) 982-2691

11                                   CERTIFICATE OF MAILING

12                   I hereby certify that I did on the 2nd day of May,  
13 1983, mail a true copy of the foregoing Motion to Extend the  
14 Page Limitation of Appellee's Answer Brief by Two Pages to oppos-  
15 ing counsel of record, Perry W. Pearce, Esq., P. Box Box 2088,  
16 Santa Fe, New Mexico, 87501 and A.J. Losee, Esq., P. O. Drawer  
17 239, Artesia, New Mexico, 88210, by first-class mail, postage  
18 prepaid.  
19

  
ARTURO L. JARAMILLO

1 IN THE SUPREME COURT OF THE  
2 STATE OF NEW MEXICO

3 VIKING PETROLEUM, INC., )

4 Petitioner-Appellee, )

5 -vs- )

6 OIL CONSERVATION COMMISSION OF )  
7 THE STATE OF NEW MEXICO and )  
8 HARVEY E. YATES COMPANY, )

9 Respondents-Appellants. )

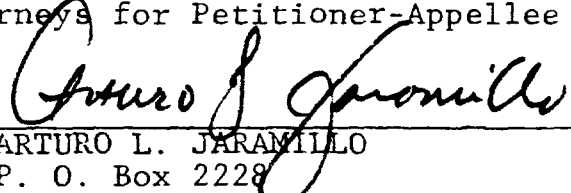
No. 14632

10 NOTICE OF ENTRY OF MOTION  
11 EXTENDING THE PAGE LIMITATION OF  
12 APPELLEE'S ANSWER BRIEF BY TWO PAGES

13 Petitioner-Appellee, Viking Petroleum, Inc., hereby  
14 serves notice pursuant to Rule of Appellate Procedure for Civil  
15 Cases, Rule 9(c) that the Supreme Court has granted its Motion  
16 Extending the Page Limitation of Appellee's Answer Brief by Two  
17 Pages.

18 JONES, GALLEGOS, SNEAD & WERTHEIM, P.A.  
19 Attorneys for Petitioner-Appellee

20 By

21   
ARTURO L. JARAMILLO  
P. O. Box 2228  
Santa Fe, New Mexico 87501  
(505) 982-2691

22 CERTIFICATE OF MAILING

23 I hereby certify that I did on the 2nd day of May, 1983,  
24 mail a true copy of the foregoing Notice of Entry of Motion Extending  
25 the Page Limitation of Appellee's Answer Breif by Two Pages to oppos-  
ing counsel of record, Perry W. Pearce, Esq., P. O. Box 2088, Santa  
Fe, New Mexico, 87501 and A.J. Losee, Esq., P. O. Drawer 239,  
Artesia, New Mexico, 88210, by first-class mail, postage prepaid.

26   
ARTURO L. JARAMILLO

1 IN THE SUPREME COURT OF THE  
2 STATE OF NEW MEXICO

3 VIKING PETROLEUM, INC., )

4 Petitioner-Appellee, )

5 -vs- )

No. 14632

6 OIL CONSERVATION COMMISSION OF )  
7 THE STATE OF NEW MEXICO and )  
8 HARVEY E. YATES COMPANY, )

9 Respondents-Appellants. )  
10

11 NOTICE OF ENTRY OF ORDER  
12 EXTENDING TIME TO FILE ANSWER BRIEF

13 Petitioner-Appellee, Viking Petroleum, Inc., hereby  
14 serves notice pursuant to Rule of Appellate Procedure for civil  
15 cases, Rule 9(c) that the Supreme Court has granted its Motion  
16 for an Extension of Time to File its Answer Brief through May  
17 9, 1983.

18 JONES, GALLEGOS, SNEAD & WERTHEIM, P.A.  
19 Attorneys for Petitioner-Appellee

20 By

21 Arturo L. Jaramillo  
22 ARTURO L. JARAMILLO  
23 P. O. Box 2228  
24 Santa Fe, New Mexico 87501  
25 (505) 982-2691

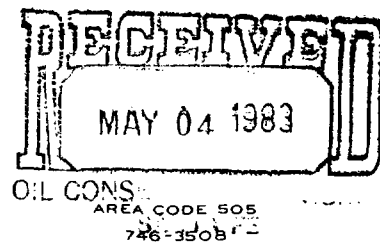
26 CERTIFICATE OF MAILING

27 I hereby certify that I did on the 27<sup>th</sup> day of April,  
28 1983, mail a true copy of the foregoing Notice of Entry of Order  
29 Extending Time to File Answer Brief to opposing counsel of record,  
30 Perry W. Pearce, Esq., P. O. Box 2088, Santa Fe, New Mexico, 87501,  
31 and A.J. Losee, Esq., P. O. Drawer 239, Artesia, New Mexico, 88210,  
32 by first-class mail, postage prepaid.

33 Arturo L. Jaramillo  
34 ARTURO L. JARAMILLO

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

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



2 May 1983

Honorable Rose Marie Alderete  
Clerk of the Supreme Court  
P. O. Box 848  
Santa Fe, New Mexico 87501

Re: Viking Petroleum, Inc., Petitioner-Appellee, vs.  
Oil Conservation Commission of the State of New  
Mexico and Harvey E. Yates Company, Respondents-  
Appellants, Supreme Court No. 14632

Dear Mrs. Alderete:

In accordance with our telephone conversation of this day, enclosed you will please find Appellant Harvey E. Yates Company's Motion for Extension of Time to File Reply Brief, and a separate Certificate of Mailing to Opposing Counsel. Thanks for your consideration to this request.

Very truly yours,

LOSEE, CARSON & DICKERSON, P.A.

A. J. Losee

AJL:jcb  
Enclosure

cc w/enclosure: Mr. Arturo L. Jaramillo  
Mr. W. Perry Pearce

IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

|                              |   |           |
|------------------------------|---|-----------|
| VIKING PETROLEUM, INC.,      | ) |           |
|                              | ) |           |
| Petitioner-Appellee,         | ) |           |
|                              | ) |           |
| vs.                          | ) | No. 14632 |
|                              | ) |           |
| OIL CONSERVATION COMMISSION  | ) |           |
| OF THE STATE OF NEW MEXICO   | ) |           |
| and HARVEY E. YATES COMPANY, | ) |           |
|                              | ) |           |
| Respondents-Appellants.      | ) |           |

MOTION FOR EXTENSION OF  
TIME TO FILE REPLY BRIEF

Harvey E. Yates Company, Appellant, by its attorneys, moves the Court for an order extending the time to file its Reply Brief, from May 19, 1983 until June 9, 1983, and as grounds therefor states:

1. This Court has extended the time for Appellee Viking Petroleum, Inc., to file its Answer Brief until May 9, 1983. Appellant's Reply Brief will be due on May 19, 1983.

2. The undersigned attorney has done all of the work on this appeal for Appellant Harvey E. Yates Company, and is responsible for preparing the Reply Brief. The undersigned will be out of the office for a period from before May 19 through May 29.



WHEREFORE, Appellant Harvey E. Yates Company requests that the time for filing its Reply Brief be extended from May 19, 1983 until June 9, 1983.

Respectfully submitted,

LOSEE, CARSON & DICKERSON, P.A.

By:   
A. J. Losee

P. O. Drawer 239  
Artesia, New Mexico 88210  
Telephone 505/746-3508

IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

|                              |   |           |
|------------------------------|---|-----------|
| VIKING PETROLEUM, INC.,      | ) |           |
|                              | ) |           |
| Petitioner-Appellee,         | ) |           |
|                              | ) |           |
| vs.                          | ) | No. 14632 |
|                              | ) |           |
| OIL CONSERVATION COMMISSION  | ) |           |
| OF THE STATE OF NEW MEXICO   | ) |           |
| and HARVEY E. YATES COMPANY, | ) |           |
|                              | ) |           |
| Respondents-Appellants.      | ) |           |

CERTIFICATE OF MAILING

It is hereby certified that on this May 2, 1983 a true copy of the Motion for Extension of Time to File Reply Brief of Appellant Harvey E. Yates Company and a true copy of this Certificate of Mailing was mailed to Arthur L. Jaramillo, Esquire, Attorney for Appellee Viking Petroleum, Inc., Jones, Gallegos, Snead & Wertheim, P.A., P. O. Box 2228, Santa Fe, New Mexico, 87501, and to W. Perry Pearce, Esquire, Special Assistant Attorney General, Attorney for Appellant Oil Conservation Commission, P. O. Box 2088, Santa Fe, New Mexico, 87501, by first class mail, postage prepaid.

LOSEE, CARSON & DICKERSON, P.A.

By: \_\_\_\_\_

A. J. Losee

IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

VIKING PETROLEUM, INC., )  
 )  
Petitioner-Appellee, )  
 )  
-vs- )  
 )  
OIL CONSERVATION COMMISSION )  
OF THE STATE OF NEW MEXICO )  
and HARVEY E. YATES COMPANY, )  
 )  
Respondents-Appellants. )

No. 14632

*Filed  
4-18-83  
JP*

MOTION FOR EXTENSION OF  
TIME TO FILE ANSWER BRIEF

Viking Petroleum, Inc., Appellee, by and through its attorneys, moves the Court for an extension of time to file its Answer Brief in the above-captioned cause from April 27, 1983 to May 9, 1983, and as grounds therefore states as follows:

1. That Arturo L. Jaramillo is the responsible attorney in the above-captioned case, having handled this matter on behalf of Viking Petroleum, Inc., before the Oil Conservation Commission and the District Court on appeal.

2. That Arturo L. Jaramillo is also the attorney primarily responsible for the preparation of extensive legal briefs on dispositive motions in two complex antitrust cases currently pending in the United States District Court for the District of New Mexico.

1           3. Due to an overlapping schedule for the submission  
2 of an Answer Brief in the case at bar, and briefs relating to  
3 motions for summary judgment in MDL Docket 403 and Cause No.  
4 81-0054-JB, pending in the District of New Mexico, an additional  
5 period of approximately ten (10) days will be necessary to the  
6 preparation of an Answer Brief on behalf of Viking Petroleum, Inc.,  
7 in this case.

8                               Respectfully submitted,

9                               JONES, GALLEGOS, SNEAD & WERTHEIM, P.A.  
10                              Attorneys for Petitioner-Appellee

11           By

*(Arturo L. Jaramillo)*  
ARTURO L. JARAMILLO  
P. O. Box 2228  
Santa Fe, New Mexico 87501  
(505) 982-2691

14                              CERTIFICATE OF MAILING

15                              I hereby certify that I did on the 18th day of April,  
16 1983, mail a true copy of the foregoing Motion for Extension of  
17 Time to File Answer Brief to opposing counsel of record, A. J.  
18 Losee, Esq., P. O. Drawer 239, Artesia, New Mexico, 88211-0239,  
19 and to W. Perry Pearce, Assistant Attorney General, P. O. Box  
20 2088, Santa Fe, New Mexico, 87501, by first-class mail, postage  
21 prepaid.

*(Arturo L. Jaramillo)*  
ARTURO L. JARAMILLO



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

TONEY ANAYA  
GOVERNOR

March 29, 1983

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

The Honorable Rose Marie Alderete  
Clerk of the Supreme Court  
P. O. Box 848  
Santa Fe, New Mexico 87501

Re: Viking Petroleum, Inc., Petitioner-Appellee,  
vs. Oil Conservation Commission of the  
State of New Mexico and Harvey E. Yates  
Company, Respondents-Appellants, Supreme  
Court No. 14632

Dear Mrs. Alderete:

Enclosed for filing, please find eleven copies  
of Brief-in-Chief of Appellant Oil Conservation  
Commission, and a separate Certificate of Mailing to  
Opposing Counsel. Thanks.

Very truly yours,

W. PERRY PEARCE  
Assistant Attorney General

WPP/dr  
enclosure

cc w/enclosure: Mr. A. J. Losee  
Mr. Arturo L. Jaramillo



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

TONEY ANAYA  
GOVERNOR

March 29, 1983

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

A. J. Losee, Esq.  
Losee, Carson and Dickerson, P.A.  
P. O. Drawer 239  
Artesia, New Mexico 88211

Dear Jerry:

Enclosed please find the Brief-in-Chief of  
Appellant Oil Conservation Commission filed with the  
Supreme Court today.

Sincerely,

W. PERRY PEARCE  
General Counsel

WPP/dr

enclosure



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

TONY ANAYA  
GOVERNOR

March 29, 1983

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

Arthur L. Jaramillo, Esq.  
Jones, Gallegos, Snead & Wertheim, P.A.  
P. O. Box 2228  
Santa Fe, New Mexico 87501

Dear Art:

Enclosed please find the Brief-in-Chief of  
Appellant Oil Conservation Commission filed with the  
Supreme Court today.

Sincerely,

W. PERRY PEARCE  
General Counsel

WPP/dr

enclosure

VIKING PETROLEUM, INC.,  
Petitioner-Appellee,  
vs.  
OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO  
and HARVEY E. YATES COMPANY,  
Respondents-Appellants.

W. PERRY PEARCE  
SPECIAL ASSISTANT ATTORNEY GENERAL  
FOR THE OIL CONSERVATION COMMISSION  
P. O. Box 2088  
Santa Fe, New Mexico 87501  
(505) 827-2741



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## STATEMENT OF THE CASE

Appellant Oil Conservation Commission appeals from the decision of the District Court for the County of Chaves, Judge W. J. Schnedar, presiding in Case No. 82-77 (Tr. p. 219). The decision appealed from set aside Order R-6873 issued by Appellant Oil Conservation Commission ("Commission") which granted the application of Appellant Harvey E. Yates Company ("HEYCO") for compulsory pooling pursuant to Section 70-2-17(c) NMSA, 1978. Appellee Viking Petroleum, Inc., pursuant to Section 70-2-25 NMSA, 1978, sought review of Order R-6873, which was entered on January 7, 1982, in the District Court.

## STATEMENT OF PROCEEDINGS

### APPLICATIONS TO APPELLANT COMMISSION

Appellant/Applicant HEYCO sought an order from Appellant Commission force pooling all mineral interests from the surface through the Ordovician formation under the West half of Section 18, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico (Tr. pp. 57, 148-149).

Appellee/Opponent Viking sought an Order in Case 7409 force pooling the North half of Section 18, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico, down through and including the Pennsylvanian formation. Appellee/Opponent Viking withdrew this application and stated that it would oppose the application of Appellant/Applicant HEYCO which sought pooling below the Abo formation (Tr. pp. 47-48). As an alternative, Appellee/Opponent Viking sought partial participation (Tr. pp. 48-49).

The partial participation requested was that Appellee/Opponent Viking be allowed to contribute a proportionate share of wells costs to the Abo formation (Tr. pp. 48-49). Since it would be paying its share of this part of the wells costs, no charge for risk would be assessed (Tr. p. 49). For well costs below the Abo formation, Appellee Viking argued that no charge for risk was appropriate (Tr. p. 49).

#### KEY FINDINGS OF APPELLANT COMMISSION

Order No. R-6873 (Tr. p. 4) contains many findings, but a relative few are material to the issues presented in this appeal.

The Commission found:

- 1) Finding 2 - That the application before it sought pooling from the surface through the Ordovician formation.
- 2) Finding 3 - That Appellant HEYCO had the right to drill and proposed to drill a well on the tract involved.
- 3) Finding 4 - That some interest owners in the tract involved had not agreed to participate.
- 4) Finding 5 - That to prevent waste, to protect correlative rights and to allow each interest owner to recover its fair share of gas from the Ordovician formation, the pooling should be approved.
- 5) Finding 6 - That any non-consenting working interest owner should be allowed to pay his share of well costs out of production.
- 6) Finding 7 - That a reasonable charge for the risk taken in drilling the well is 200% and any non-consenting working interest

owner who does not participate should be subject to this risk change.

KEY ORDER PROVISIONS OF ORDER NO. R-6873

Based upon its findings, Appellant Commission, made the following key ordering provisions (Tr. p. 4):

- 1) Order ¶ 1 - Pooled the 320-acre tract applied for from the surface to the Ordovician formation.
- 2) Order ¶ 1 - Ordered Appellant HEYCO to proceed with due diligence to drill a test well to the Ordovician formation.
- 3) Order ¶ 4 - Allowed any working interest owner who had not yet agreed to participate the option of paying his share of well costs and thereby not being subject to any risk charge.

4) Order ¶ 7 - Authorized the operator to withhold the pro rata share of wells costs plus a risk charge of 200% from production attributable to any non-participating working interest owner.

5) Order ¶ 11- Ordered that any amounts withheld from production should be withheld only from the working interest portion of production, not from the royalty interest portion.

#### DISTRICT COURT REVIEW

On appeal to the District Court, Appellee Viking presented briefs challenging Order No. R-6873. The District Court entered its DECISION on September 30, 1982. This Decision found that Order R-6873 was not supported by substantial evidence, was arbitrary and capricious and was contrary to law. Notice of Appeal was filed by Appellant HEYCO on October 26, 1982, and by Appellant Commission on November 1, 1982. After extension was granted, the transcript on appeal was filed by Appellant/Applicant HEYCO on February 11, 1983.

ARGUMENT AND AUTHORTIES

I

THE COMMISSION ACTED REASONABLY

FAIRLY AND LAWFULLY IN ISSUING

ORDER NO. R-6873

SUMMARY

Appellant/Applicant HEYCO applied to Appellant Commission for an order pooling certain mineral interests below a 320-acre tract. Appellee/Opponent Viking which owned the mineral rights under 25% of the tract sought to restrict the pooling to fewer mineral interests or in the alternative to be granted full participation in revenue by partial participation in costs.

As reflected by Order No. R-6873, the Appellant Commission decided this case after considering its duties to prevent waste and protect correlative rights.

The Appellant Commission acted reasonably in basing its decision on the evidence presented to it, fairly in providing an adequate balance of correlative rights protection, and lawfully in following its statutory mandate.



Such a decision can never be said to be arbitrary, capricious or contrary to law.

A. FACTUAL BASIS OF DECISION

APPLICATION OF HEYCO FOR POOLING

This case was initiated by the filing, by Appellant/Applicant HEYCO, of an application for compulsory pooling of the West half of Section 18, Township 9 South, Range 27 East, NMPM, Chaves County, New Mexico. Appellant/Applicant HEYCO amended this application at a hearing on this matter to pool all mineral interests down through the Ordovician formation.

Section 70-2-17 NMSA 1978, as amended, provides for this pooling process:

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

### HEYCO REQUEST FOR COMPENSATION

The application requested not only that the designated mineral interests be pooled but also that Appellant/Applicant HEYCO be named operator and be entitled to recover the pro rata share of well costs and compensation for risk out of production from any non-consenting working interest owner.

The authorization for reimbursement of costs and risk charges is also authorized by Section 70-2-17 NMSA 1978, which mandates that provision be made for payment from production of well costs for "any owner or owners who elects not to pay his proportionate share in advance" and allows the inclusion of:

a charge for the risk involved in the drilling of such well, which charge shall not exceed two hundred percent of the non-consenting working interest owner's or owners' pro rata share of the cost of drilling and completing the well.

### EVIDENCE OF MINERAL INTEREST OWNERSHIP

At the Commission hearing on the application of Appellant/Applicant HEYCO, evidence was presented on the ownership of mineral interests underlying the tract (Tr. p. 58). That evidence was that Appellant/Applicant HEYCO owned, controlled or had been informed that it would control approximately 75 percent of the mineral interests underlying the tract and that Viking Petroleum owned approximately 25 percent of such mineral interests (Tr. p. 59).

THERE IS A LIKELIHOOD OF COMMERCIAL PRODUCTION BELOW THE ABO

In considering this matter, the Appellant Commission heard presentation of evidence by Appellant/Applicant HEYCO on the reason it wished to drill this well to the Ordovician formation. It was the position of the expert witness, Rodney O. Thompson, presented by Appellant/Applicant HEYCO that the most likely production from a well in the proposed location was from the geological formation which he referred to as the pre-Mississippian dolomite (Tr. p. 78).

In discussing all of the prospective zones at the proposed location, this expert witness stated that he believed that the pre-Mississippian dolomite and the Basal Penn sand were the most likely prospects (Tr. p. 78). Based on the structure map which he had prepared from information derived from other wells in the area, (HEYCO Ex. 6), the location represented an excellent prospect in these two formations. In support of these opinions Mr. Thompson discussed several other wells in the area, the well in Section 13 and the well in Section 7, which indicate that in the general area of the proposed location there is commercial production potential from the pre-Mississippian dolomite (Tr. p. 77-78).

In response to the expert testimony presented by Appellant/Applicant HEYCO, other expert opinion evidence was presented by Appellee/Opponent Viking which indicated the opponent believed that there was not sufficient evidence to

justify the expenditure of funds for a deeper test. That witness, Mr. Morris Ettinger, testified that his review of the proposal indicated that a deeper test was "unreasonable [for a] prudent joint interest owner and operator of a well" (Tr. p. 126).

#### UNCERTAINTY OF COMMERCIAL PRODUCTION FROM THE ABO

The expert geological witness called by Appellant/Applicant HEYCO indicated that in his opinion the San Andres formation which had a shallower depth than the Abo formation was a likely secondary prospect, and he expected to encounter some oil production from the San Andres (Tr. p. 81). Mr. Thompson, for Appellant/Applicant HEYCO, expressed his opinion that although he expected to encounter gas production in the Abo formation at the proposed location, he believed that there was a high risk of those reserves being non-commercial (Tr. p. 82). In fact, this expert witness expressed his opinion that it would not be a justifiable economic risk to drill a well at the proposed location depending only upon Abo production (Tr. p. 96).

In response to this testimony, the witness for Appellee/Opponent Viking stated his opinion that there was a good chance of commercial production from the Abo (Tr. p. 128) and that the Appellee/Opponent Viking was willing to participate in a well drilled to the Abo formation at the proposed location (Tr. p. 117-118). The nature of the

conflict presented to the Commission for decision in this matter is exemplified by the testimony of Morris Ettinger. Mr. Ettinger indicated that the structure map presented as Exhibit 6 of Appellant/Applicant HEYCO, "indicates a very interesting structure, which in my opinion should be verified further by maybe seismic because we have no control to the east, we don't know how large really this structure is and therefore how economical it might be" (Tr. p. 126).

#### RISK INVOLVED

Witnesses for both parties to the proceeding before the Respondent Commission indicated that there is substantial risk involved in drilling of any well (Tr. p. 83-89, 130-133).

#### B. ORDER NO. R-6873 COMPLIES WITH THE STATUTORY RESPONSIBILITIES OF RESPONDENT COMMISSION

#### SUMMARY

The decision of the Respondent Commission in this case acted to prevent waste of natural resources as required by the New Mexico Oil and Gas Act.

The order of Respondent Commission in this matter acts to adequately protect the correlative rights of all interest owners in the lands involved.

## STATUTORY DUTY

Pursuant to the provisions of the New Mexico Oil and Gas Act, the Division is responsible for the prevention of waste and protection of correlative rights related to natural resources within the State of New Mexico. Specifically, Section 70-2-11 states:

A. The division is hereby empowered, and it is its duty to prevent waste prohibited by this act and to protect correlative rights, as in this act provided....

B. The commission shall have concurrent jurisdiction and authority with the division to the extent necessary for the commission to perform its duties as required by law.

The waste which the Commission is charged with preventing is defined by Section 70-2-3 which states in part that such waste is the "locating, spacing, drilling, equipping, operating or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool,....".

The other responsibility of the Commission is the protection of correlative rights. The definition of these rights is set forth in the New Mexico Oil and Gas Act at §70-2-33.H. That section states in part:

"'correlative rights' means the opportunity afforded, so far as is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas, or both, in the pool,...."

The question therefore for the Commission was whether granting the application would prevent waste and would allow each interest owner a better opportunity to produce its just and equitable share or whether denying the application or granting some alternative relief would better accomplish this purpose.

If a conflict arises between prevention of waste and protection of private rights, the Commission must first prevent waste. The New Mexico Supreme Court in the case of Grace v. Oil Conservation Commission, 87 N.M. 205 531 P.2d 939 (1975) stated:

Prevention of waste is paramount, and private rights, such as prevention of drainage not offset by counterdrainage and correlative rights must stand aside until it is practicable to determine the amount of gas underlying each producer's tract or in the pool. 87 N. M. at 212.

See also: El Paso Natural Gas Co. vs. Oil Conservation Commission, 76 N.M. 310, 414 P.2d 496 (1966), Rutter and Wilbanks Corp. vs. Oil Conservation Commission, 87 N.M. 286, 532 P.2d 582 (1975) and Morris, "Compulsory Pooling of Oil and Gas Interests in New Mexico," 3 Natural Resources Journal, October 1963, No. 2, p. 316.

ORDER NO. R-6873 ACTS TO PREVENT WASTE

Testimony before the Commission indicates a reasonable probability that commercially producible quantities of natural gas underly the subject acreage at a depth below the Abo

formation. Evidence presented to the Commission indicates that there is a reasonable possibility that production from the Abo formation alone is not adequate to make the drilling of a well at the proposed location a commercially acceptable risk.

In view of such evidence, any order of the Commission which increased the probability of a test well at the proposed location to the deeper formations prevented waste.

As pointed out above, the protection of correlative rights requires that the Commission determine what is "just and equitable." Section 70-2-17, NMSA, 1978 allows risk charges to be assessed in forced pooling cases against a working interest owner who elects "not to pay his proportionate share in advance." Such risk charge assessment must be "just and equitable" and should act to protect correlative rights.

Evidence was presented to the Commission that an Abo formation completion would cost approximately \$371,000 (Tr. pp. 70-71) and that a completion to the proposed depth would cost approximately \$643,000 (Tr. pp. 63-64). There was also evidence that Opponent/Petitioner Viking had approximately a 25 percent interest in the minerals underlying the proposed 320-acre tract and therefore its proportional participation to each of these depths would be approximately \$91,000 and \$158,000, respectively. However, Opponent/Petitioner Viking wishes to advance \$91,000 as a 25 percent proportionate share



for the total well. The comparison of these sums indicates that Opponent/Petitioner Viking wishes to pay 14.2 percent of the total well costs as its "proportionate share" for a 25 percent participation in the total output of the well.

The Commission believes that this proposal in view of the expert testimony and evidence presented for its consideration is not "just and equitable" as required by the statute. This attempted avoidance of the risk charge when both parties agree that there are clearly significant risks involved is inappropriate. Therefore, the Commission entered an order allowing pooling of all mineral interests as requested from the surface through the Ordovician formation and imposed a charge for the risk of drilling a well of 200 percent which was applicable to the entire well (Tr. p. 4).

C. THE RECORD OF THIS CASE SHOWS  
THAT ORDER NO. R-6873 IS NOT ARBITRARY  
OR CAPRICIOUS

SUMMARY

The courts which address and define an arbitrary and capricious standard indicate that decisions which rise to this level are those which are unconsidered, willful and irrational.

In view of the evidence presented to the Commission at the hearing of this matter, the decision of the Commission does not violate this standard.

#### THE ARBITRARY AND CAPRICIOUS STANDARD

The only New Mexico case which has directly attempted to define an arbitrary and capricious standard was Garcia v. New Mexico Human Services Department, 94 N.M. 178, 608 P.2d 154 (1979). Although this case was subsequently reversed on the basis of a substantial evidence review of the decision, the definition set forth by the Court of Appeals in its decision cited above was not disturbed. That Court found:

Arbitrary and capricious action by an administrative agency is evident 'when it can be said that such action is unreasonable or does not have a rational basis...' and '...is the result of an unconsidered, willful and irrational choice of conduct and not the result of the 'winnowing and sifting' process" [citation omitted] 94 N. M. at 179.

As demonstrated by sub-section I.A. above, the Commission at its hearing was presented with testimony from expert witnesses which indicates that there is substantial support and reasoning behind the decision reached by the Commission and such decision, although it is contrary to the request of one of the contestants and might even have been decided differently, is not such conduct as courts have defined as arbitrary and capricious.

Without summarizing all of that evidence, the Commission has decided that an applicant who seeks to drill a well to a

formation at 6350 feet, operating under a statute which requires proportional participation, which statute in the absence of such proportional participation allows the assessment of a charge for the risk of drilling a well, should not be forced to accept partial participation in full satisfaction. In fact, it appears that it would violate the correlative rights of the party drilling the well to allow a non-consenting party to escape the charge for risk by such partial participation.

The Commission admits that decisions of this type are difficult and complex. However, the Commission is placed in the situation of having to elect between conflicting evidence. When that election has been made on the basis of evidence, certainly that decision should not be subjected to a challenge that it is arbitrary and capricious made by the disgruntled contestant.

II.

THE DISTRICT COURT DECISION  
IMPOSES AND IMPROPER STANDARD  
ON AN ADMINISTRATIVE PROCESS

In its decision invalidating Order No. R-6873, the District Court imposed a requirement for judging future cases of this variety which threatens to restrict the Appellant Commission in the performance of its statutory mandate. That decision states in part:

As a matter of law, the Commission must permit an interest holder to participate to a lesser depth unless there is substantial evidence that such participation is clearly unreasonable and the Commission so finds (Tr. p. 221).

Appellant Commission is the administrative agency charged with regulating the oil and gas production industry within this state. Its duties are set forth in the Oil and Gas Act at §70-2-1 et seq, NMSA, 1978. The duties of Appellant Commission when acting on applications for compulsory pooling are set forth in §70-2-17 C. That section states in part:

...All orders effecting such 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 and gas, or both....\$70-2-17C.

The effect of this statutory mandate is to confer upon the administrative agency the authority to use discretion to issue orders which it believes most appropriately meet its broad responsibilities of preventing waste and protecting correlative rights so long as the order issued is "just and reasonable" and protects interest owners. This discretion granted to Appellant Commission has been recognized and relied upon by this court. In Grace v. Oil Conservation Commission, 87 N.M. 205,532 P2nd 939 (1975) this court stated:

Moreover, in considering these issues, we will give special weight and credence to the experience, technical competence and specialized knowledge of the Commission. Cf., McDaniel v. New Mexico Board of Medical Examiners, 86 N.M. 447,525 P.2d 374 (1974); \$4-32-22, subd. A. NMSA 1953.

The above-quoted portion of the District Court's decision denies to a technical and specialized agency the ability to use its expertise fully.

It is interesting to note that the only case reported which deals with the split-risk problem specifically refuses to hold the position adopted by the District Court in this case.

In Braun v. Corporation Commission, 609 P.2d 1268 the Supreme Court of Oklahoma considered the request of appellant

that a right existed in a pooled party to a separate participation election as to each separate common source of supply. After considering that argument it held:

...However, whether a pooled owner is entitled to an election as to each common source of supply or each separate spacing unit as argued by appellant depends upon the facts and circumstances in each pooling proceeding.

[3-5] The singular is used in our statutes when they speak to a pooling order, but this may not be construed to mean that in a pooling proceeding involving multiple common sources of supply or spacing units underlying the same tract that an owner is necessarily entitled to an election as to each separate unit. The pooling order should be responsive to the application and evidence. 609 P2d at 1271.

This discretion preserved in the administrative agency by the Oklahoma Supreme Court and prescribed by the New Mexico Oil and Gas Act is the discretion which would be denied by the District Court decision. §70-2-17C as set out above requires that orders meet certain standards. Imposition of other standards is inappropriate, and Appellant Commission respectfully requests that this restriction of discretion be removed.

III

THE DISTRICT COURT ERRED IN VACATING  
THE ORDER, BECAUSE THE SPLIT RISK  
QUESTION WAS NOT PRESENTED IN THE  
APPLICATION FOR REHEARING

Appellant Commission hereby adopts and supports Point I of the Brief-in-Chief of Appellant/Applicant HEYCO filed herein and incorporates that point as if fully set out below.

IV

THE COMMISSION RECORD IS DEVOID OF  
EVIDENCE TO SUSTAIN A VALID ORDER FORCE  
POOLING MULTIPLE ZONES WITH AN ELECTION  
TO PARTICIPATE IN LESS THAN ALL ZONES

Appellant Commission hereby adopts and supports Point II of the Brief-in-Chief of Appellant/Applicant HEYCO filed herein and incorporates that point as if fully set out below.



## CONCLUSION

In issuing Order R-6873, Appellant Commission granted the application of Appellant/Applicant HEYCO that all interests from the surface through the Ordovician formation underlying the West half of Section 18, Township 9 South, Range 27 East, NMPM, Lea County, be pooled and that all interest owners who wished to share in the product of this well without penalty be required to participate fully in wells costs.

The evidence summarized above and argument in support thereof demonstrate that such order was a reasonable method of preventing waste and protecting correlative rights. This order is as demonstrated, supported by substantial evidence, not arbitrary and capricious, and is not contrary to law.

For these reasons the Appellant Commission prays that the decision of the District Court in Chaves County, Case No. CU-82-77 be reversed.

Respectfully submitted,

PAUL G. BARDACKE  
ATTORNEY GENERAL



W. PERRY PEARCE  
Assistant Attorney General  
Oil Conservation Commission  
State of New Mexico  
P. O. Box 2088  
Santa Fe, New Mexico 87501

IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

VIKING PETROLEUM, INC., )

Petitioner-Appellee, )

vs. )

No. 14632

OIL CONSERVATION COMMISSION )  
OF THE STATE OF NEW MEXICO )  
and HARVEY E. YATES COMPANY, )

Respondents-Appellants. )

CERTIFICATE OF MAILING

It is hereby certified that on this March 29, 1983, a true copy of the Brief-in-Chief of Appellant Oil Conservation Commission and a true copy of this Certificate of Mailing was mailed to Arthur L. Jaramillo, Esquire, Attorney for Appellee Viking Petroleum, Inc., Jones, Gallegos, Snead & Wertheim, P.A., P. O. Box 2228, Santa Fe, New Mexico 87501, and to A. J. Losee, Esquire, Losee, Carson and Dickerson, P.A., Attorney for Appellant Harvey E. Yates Company, P. O. Drawer 239, Artesia, New Mexico 88211, by first class mail, postage prepaid.

PAUL G. BARDACKE  
Attorney General

By

  
W. PERRY PEARCE  
Assistant Attorney General



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

TONEY ANAYA  
GOVERNOR

March 29, 1983

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

Arthur L. Jaramillo, Esq.  
Jones, Gallegos, Snead & Wertheim, P.A.  
P. O. Box 2228  
Santa Fe, New Mexico 87501

Dear Art:

Enclosed please find the Brief-in-Chief of  
Appellant Oil Conservation Commission filed with the  
Supreme Court today.

Sincerely,

W. PERRY PEARCE  
General Counsel

WPP/dr

enclosure



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

TONEY ANAYA  
GOVERNOR

March 29, 1983

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A. J. Losee, Esq.  
Losee, Carson and Dickerson, P.A.  
P. O. Drawer 239  
Artesia, New Mexico 88211

Dear Jerry:

Enclosed please find the Brief-in-Chief of  
Appellant Oil Conservation Commission filed with the  
Supreme Court today.

Sincerely,

W. PERRY PEARCE  
General Counsel

WPP/dr

enclosure



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

TONEY ANAYA  
GOVERNOR

March 29, 1983

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

The Honorable Rose Marie Alderete  
Clerk of the Supreme Court  
P. O. Box 848  
Santa Fe, New Mexico 87501

Re: Viking Petroleum, Inc., Petitioner-Appellee,  
vs. Oil Conservation Commission of the  
State of New Mexico and Harvey E. Yates  
Company, Respondents-Appellants, Supreme  
Court No. 14632

Dear Mrs. Alderete:

Enclosed for filing, please find eleven copies  
of Brief-in-Chief of Appellant Oil Conservation  
Commission, and a separate Certificate of Mailing to  
Opposing Counsel. Thanks.

Very truly yours,

W. PERRY PEARCE  
Assistant Attorney General

WPP/dr  
enclosure

cc w/enclosure: Mr. A. J. Losee  
Mr. Arturo L. Jaramillo

IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

|                              |   |           |
|------------------------------|---|-----------|
| VIKING PETROLEUM, INC.,      | ) |           |
|                              | ) |           |
| Petitioner-Appellee,         | ) |           |
|                              | ) |           |
| vs.                          | ) | No. 14632 |
|                              | ) |           |
| OIL CONSERVATION COMMISSION  | ) |           |
| OF THE STATE OF NEW MEXICO   | ) |           |
| and HARVEY E. YATES COMPANY, | ) |           |
|                              | ) |           |
| Respondents-Appellants.      | ) |           |

BRIEF-IN-CHIEF OF  
APPELLANT HARVEY E. YATES COMPANY

A. J. Losee  
Losee, Carson & Dickerson, P.A.  
P. O. Drawer 239  
Artesia, New Mexico 88210  
505/746-3508

Attorneys for Respondent-  
Appellant Harvey E. Yates  
Company

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IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

|                              |   |           |
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| VIKING PETROLEUM, INC.,      | ) |           |
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| vs.                          | ) | No. 14632 |
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| OIL CONSERVATION COMMISSION  | ) |           |
| OF THE STATE OF NEW MEXICO   | ) |           |
| and HARVEY E. YATES COMPANY, | ) |           |
|                              | ) |           |
| Respondents-Appellants.      | ) |           |

BRIEF-IN-CHIEF OF  
APPELLANT HARVEY E. YATES COMPANY

STATEMENT OF THE CASE

Appellee Viking Petroleum, Inc. ("Viking") petitioned the District Court for review of Oil Conservation Commission (the "Commission") Order No. R-6873 (the "Order") which was entered on January 7, 1982 (Tr.4) pursuant to 70-2-17(c), N.M.S.A., 1978. The District Court set aside the Order (Tr.219). Appellant Harvey E. Yates Company ("HEYCO") appeals the decision of the District Court.

STATEMENT OF PROCEEDINGS

Viking was the holder of the oil and gas leasehold estate on E/2 NW/4 Section 18, Township 9 South, Range 27

East, N.M.P.M., Chaves County, New Mexico, and HEYCO was the operator of the oil and gas leasehold estate on W/2 NW/4 and SW/4 said Section 18 (Tr.59). The application of Viking for compulsory pooling through the Abo formation on N/2 said Section 18 was withdrawn (Tr.56). The Commission held a hearing on November 24, 1981 (Tr.41-218) in Case No. 7390 to consider the application of HEYCO for compulsory pooling of all mineral interests on the W/2 said Section 18 through the Mississippian formation but amended to include the Ordovician formation. On January 7, 1982 the Commission entered the Order pooling all mineral interests through the Ordovician formation underlying W/2 said Section 18 to form a standard 320-acre gas spacing and prorationing unit to be dedicated to a well to be drilled at a standard location on said tract. The order also provided that there should be withheld from any non-consenting working interest owner's share of production his share of reasonable well costs plus 200% as a reasonable charge for the risk in drilling the well (Tr.4-8). Viking's application for rehearing was refused by the failure of the Commission to act thereon within 10 days (Tr.2).

On February 22, 1982 Viking filed in the District Court of Chaves County a Petition for Review (Tr.1-3), and on the same day filed a Motion for Stay or Suspension of the Order (Tr.12-14). On March 11, 1982 Viking filed an Amended Petition and an Amended Motion for Stay (Tr.16-23).

On April 26, 1982 Judge Schnedar held a hearing on the motion and entered an order on May 5, 1982 suspending the provisions of the Order requiring Viking to pay its share of estimated well costs through the Ordovician formation or suffer a 200% charge for risk. The order was conditioned upon the tender to HEYCO by Viking of \$90,000 as its estimated cost of drilling and completing the well to the base of the Abo formation (Tr.35-38).<sup>1/</sup> Viking mailed the tender within the five-day period (Tr.39).

The decision of the District Court (the "Decision") was entered on September 30, 1982 following submission of briefs and without a further hearing or oral arguments (Tr. 219). Judge Schnedar found that Viking's application for rehearing preserved its right to object to the Commission's failure to provide for a split risk and as a matter of law, the Commission must provide for a split risk participation unless there is substantial evidence that such participation is clearly unreasonable. (Challenged - Point I). The District Court then concluded that the Order should be set aside

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<sup>1/</sup> The estimated well costs to the Abo were \$371,000 (Tr.71). Commission Rule 104 provides that Abo gas wells shall be spaced on 160-acre tracts. The proposed well was located in the NW/4 and Viking owned the E/2 NW/4. Viking's share of estimated well costs was \$180,000 and not \$90,000 as provided for in the District Court order.

because it was not supported by substantial evidence, was arbitrary and capricious and contrary to law.<sup>2/</sup>

The time for appeal commenced to run on September 30, 1982. HEYCO filed its notice of appeal on October 26, 1982 (Tr.222). The time for filing transcript on appeal was extended until February 14, 1983 (Tr.233). Transcript on appeal was filed on February 11, 1983. The time for filing this Brief-in-Chief was extended until March 29, 1983.

I

THE DISTRICT COURT ERRED IN VACATING THE ORDER,  
BECAUSE THE SPLIT RISK QUESTION WAS NOT  
PRESENTED IN THE APPLICATION FOR REHEARING

A brief statement of possibly productive zones in the area of the subject lands, the applicable spacing rules of the Commission and the respective positions of the parties before the Commission may aid in understanding the issues in this case.

Rodney O. Thompson, the HEYCO geologist, identified the productive zones to be encountered in the well (from the shallowest to the deepest) as the San Andres, Abo sand, basal

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<sup>2/</sup> § 70-2-25, N.M.S.A. 1978, as amended, restricts the power of the District Court to either affirm or vacate an order of the Commission. The court cannot modify a Commission order.

Pennsylvanian sand and pre-Mississippian dolomite (Tr.79, 82-84).<sup>3/</sup> Thompson was of the opinion that the Abo gas may be uneconomical (Tr.99) and commercial gas reserves would be encountered in the basal Pennsylvanian and pre-Mississippian (Tr.80). Morris I. Ettinger, the Viking geologist, was of the opinion that commercial gas production could be obtained from the Abo (Tr.129) but more study and production history were necessary before drilling to the deeper horizons (Tr.119).

In furtherance of its statutory mandate to prevent waste and protect correlative rights, the Commission has promulgated Rule 104 which sets forth the acreage and well location requirements for gas wells. With certain exceptions not pertinent to this discussion, a wildcat well in Chaves County which is projected as a gas well to a formation which is shallower than the Wolfcamp (such as the Abo) must be located on a drilling tract consisting of 160 surface acres, and when the projected formation is deeper than the Wolfcamp (such as the Pennsylvanian and Mississippian) the well must be located on a drilling tract consisting of 320 surface acres. An operator cannot drill a well to the Abo, Pennsylvanian or

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<sup>3/</sup> HEYCO's application was amended to include the Ordovician because there is a debate whether the dolomite is pre-Mississippian or Fusselman and Montoya (Tr.80) The Montoya is part of the Ordovician.

Mississippian unless it owns or controls the requisite number of surface acres. HEYCO found itself in this situation. The W/2 of the section was to be dedicated as the spacing unit for the well which was to be located in the NW/4. HEYCO only owned 80 acres (W/2 NW/4) in the 160-acre Abo spacing unit (NW/4) and 240 acres (W/2 NW/4 and SW/4) in the 320-acre Pennsylvanian and Mississippian spacing units (W/2).

The legislature, desiring to encourage the exploration and development of oil and gas in these situations, adopted § 70-2-17.C, N.M.S.A. 1978, providing in part as follows:

C. When two or more separately owned tracts of land are embraced within a spacing or proration unit, or where there are owners of royalty interests or undivided interests in oil and gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, the owner or owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit.

All orders effecting such 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.

HEYCO proposed to drill the well to the Mississippian formation and to force pool all interests from the surface down to the projected depth. In opposition to HEYCO's force pooling all zones through the Ordovician, Viking agreed to participate in drilling the well to the Abo, but resisted drilling to the deeper zones because of insufficient data. Alternatively, if the deeper drilling was authorized, Viking urged that HEYCO should not be permitted to recover from deeper production any charge for risk because it was unreasonable to drill deeper than the Abo (Tr.53-55, 145).

The Order pooled all interests in the tract through the Ordovician and provided for a 200% risk factor. The Order did not permit Viking to participate only through the Abo. The Decision of the District Court was based upon the failure of the Commission to permit Viking to participate only through the Abo. The trial court found that there was not such substantial evidence as would sustain the Commission in denying Viking such partial participation and as a matter of law, the Order should have permitted Viking to participate only through the Abo.

However, before reaching this conclusion the court below determined that the split risk question was preserved on appeal (Tr.220). Statutory provisions for rehearings and appeals are set forth in 70-2-25, N.M.S.A. 1978, providing in pertinent part as follows:



A. Within twenty (20) days after entry of any order or decision of the commission, any person affected thereby may file with the commission an application for rehearing in respect of any matter determined by such order or decision, setting forth the respect in which such order or decision is believed to be erroneous. The commission shall grant or refuse any such application in whole or in part within ten (10) days after the same is filed and failure to act thereon within such period shall be deemed a refusal thereof and a final disposition of such application. In the event the rehearing is granted, the commission may enter such new order or decision after rehearing as may be required under the circumstances.

B. Any party to such rehearing proceeding, dissatisfied with the disposition of the application for rehearing, may appeal therefrom to the district court of the county wherein is located any property of such party affected by the decision, by filing a petition for the review of the action of the commission within twenty (20) days after the entry of the order following rehearing or after the refusal or rehearing as the case may be. Such petition shall state briefly the nature of the proceedings before the commission and shall set forth the order or decision of the commission complained of and the grounds of invalidity thereof upon which the applicant will rely; provided, however, that the questions reviewed on appeal shall be only questions presented to the commission by the application for rehearing . . . . [interlineation added].

The purpose of the rehearing statute is to afford the Commission an opportunity to reconsider and correct an erroneous decision. Federal Power Com. v. Colorado Gas Co., 348 U.S. 492, 99 L.Ed. 583, 75 Sup.Ct. 467 (1955); Pubco Petroleum Corp. v. Oil Conservation Com'n., 75 N.M. 36, 399 P.2d 932 (1965).

An examination of Viking's application for rehearing reveals the complete absence of any language supporting a

claim that the Order was invalid because it did not permit Viking to participate only through the Abo. That portion of Viking's application for rehearing which sets forth the grounds for invalidity of the Order follows:

2. The Order from which this application is made:

a. is not supported by substantial evidence concerning the prevention of waste and protection of correlative rights;

b. makes no findings as to the amount of recoverable gas or oil in the pools sought to be drilled;

c. makes no findings as to the amount of recoverable gas or oil in any pool;

d. makes no findings as to the risk or existence of economic waste involved in the application of Harvey E. Yates Company or the plan proposed by Viking Petroleum, Inc.; and

e. makes no findings as to the unnecessary expense to Viking Petroleum, Inc. to recover its fair share of oil or gas, or both, or has its correlative rights are protected.

3. The two hundred percent charge for risk involved in the drilling of the well which is the subject of the Commission's Order is neither just nor fair in light of the unnecessary expense involved in the drilling of the subject well and does not allow nonconsenting working interest owners an opportunity to recover their just share of oil and gas. (Tr.9-10)

In finding that Viking has preserved its right to object to the Commission's failure to provide for a split risk, the District Court erroneously considered not only the application for rehearing but the position taken by Viking in the Commission hearing itself (Tr.220). The court below misconstrued

the purpose of the requirement in the rehearing statute that the Commission's attention be directed to the grounds for invalidity of its Order. This purpose is not served by any broad statement that the Commission did not approve the plan proposed by Viking at the original hearing. Nowhere in the rehearing petition did Viking make the simple statement (upon which the District Court's decision was based) that the Order was invalid because it did not permit a split risk. The trial court was foreclosed from considering the split risk question.

## II

THE COMMISSION RECORD IS DEVOID OF EVIDENCE  
TO SUSTAIN A VALID ORDER FORCE POOLING  
MULTIPLE ZONES WITH AN ELECTION TO  
PARTICIPATE IN LESS THAN ALL ZONES

This Court, in reviewing the Decision in the first instance makes the same review of the Commission's action as did the District Court. Grace v. Oil Conservation Commission of New Mexico, 87 N.M. 205, 531 P.2d 939 (1975); El Paso Natural Gas Co. v. Oil Conservation Com'n., 76 N.M. 268, 414 P.2d 496 (1966). This review is limited to the evidence presented to the Commission. Continental Oil Co. vs. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962). Force pooling of multiple zones with an election to participate in less than all zones is a question of first impression in New Mexico.

After holding that Viking had preserved the split risk question, the District Court set the Order aside, concluding, without any citation of authority, that "As a matter of law the Commission must permit an interest holder to participate to a lesser depth unless there is substantial evidence that such participation is clearly unreasonable and the Commission so finds."

Assuming the Court's conclusion of law was correct, which is denied, HEYCO submits that the record before the Commission does not contain any evidence whatsoever on a proper equitable formula to apportion the costs between the Abo and Mississippian formations which is necessary to sustain a valid order force pooling multiple zones with an election to participate in less than all zones. The point is illustrated by the only multiple force pool case cited by any of the parties to the District Court. C. F. Braun & Co. v. Corporation Commission, 609 P.2d 1268, 65 O.& G.R. 391 (Ok1.1980). This was a force pooling case where the risk was divided between the Morrow sand at 11,000 feet below the surface and the Hunton formation at 13,500 feet. That portion of the Oklahoma Corporation Commission order which provided for the apportionment of costs:

. . . required the owners electing to participate in the Morrow Sand to pay:

$$75\% \times \frac{11,000}{\text{Total Depth of Well in Feet}} \times \text{Total Cost to Casing Point}$$

and all participating owners, who elected to join in the well for a test below the Morrow Sand were required to pay, in addition to their proportionate share of the above costs, the entire costs of drilling and testing below the Morrow Sand on the following basis:

$$25\% \times \frac{11,000}{\text{Total Depth of Well in Feet}} \times \text{Total Cost to Casing Point}$$

Plus

$$\frac{\text{Total Depth of Well in Feet minus 11,000}}{\text{Total Depth of Well in Feet}} \times \text{Total Cost of Casing Point}$$

Under the above formula, (1) if a well is drilled only to the Morrow Sand (11,000'), all participating owners will pay their proportionate share of the costs, (2) if the total depth is 13,500 feet, which the evidence indicates is the depth sufficient to test the Hunton, owners who elect to participate only in the Morrow Sand, will pay their proportionate share of 61.11% of the total costs, and (3) owners who elect to participate in the Hunton will pay their proportionate share of the 61.11% above set forth, and in addition thereto, the balance of the costs or 38.89% of the total costs.

Appellee in the Oklahoma case offered no evidence on the proper approach in determining a formula to allocate well costs. Appellants, through their expert witnesses, recommended the approach suggested in Bulletin No. 2, Determination of Values for Well Cost Adjustment Joint Operations published by the Council of Petroleum Accountants Societies of North America ("COPAS Bulletin No. 2"), a copy of which is attached. The Oklahoma Commission found that COPAS Bulletin No. 2 was simply a guide for determination of value and in a variety of prior orders the Commission had adjusted well cost allocation

on varying bases depending upon the operational facts of the particular case and took judicial notice of its previous determinations.

After approving the pooling order, the Oklahoma Supreme Court reversed its Commission because it was apparent that the Commission did not base its participation formula upon any special evidence in the case before it but upon judicial notice of prior evidence in other cases before it.

Although the Oklahoma Corporation Commission did not originally follow COPAS Bulletin No. 2, a brief review of the attached bulletin will reveal the complexities of allocating costs between different zones in a single well bore. The last paragraph on the foreword, page 2, points out that the suggestions are guidelines only and that no attempt has been made to include a suggested solution for all of the contingencies that may occur. COPAS Bulletin No. 2 also recognizes that there may be more than one equitable solution to each problem. The allocation of intangible drilling costs has three suggested solutions on page 4. One, where practical utilize actual well drilling and accounting records. This would not be possible in a force pooling order because the well is not yet drilled. Other acceptable methods are a drilling day ratio, that is to say a factor for each zone is determined by a fraction of which the numerator is the number of days drilled through the zone and the denominator is the total

number of drilling days spent on the well. Another acceptable method is a drilling foot ratio where the factor for each zone is determined by a fraction of which the numerator is the footage drilled through that zone and the denominator is the total footage drilled for the entire well. Suffice to say that the Council of Petroleum Accountants Societies of North America has published an eight-page bulletin setting forth guidelines for allocation of costs between multiple zones in a single well bore. (COPAS Bulletin No. 2, attached.)

A complete review of the transcript of the testimony and exhibits presented to the Commission reveals the only possible evidence on allocation of well costs in cross examination of HEYCO witness Thomas J. Hall III by Viking attorney Arturo L. Jaramillo:

Q. In your discussions with Mr. Grynberg, those of Yates and Company, has there ever been any discussion, or has Yates ever prepared or had prepared an AFE form for completion of the well through the Abo formation?

A. No, we haven't. We haven't prepared one through the Abo.

Q. Had there been any discussions as to what the approximate cost of completion through the Abo would be?

A. We -- we -- I had discussions on -- following my conversations with Mr. Grynberg on Saturday, I talked with our production man and he made an estimate of what he thought it would cost to go to the Abo, based on this AFE.

Q. Do you know what the approximate cost was?

A. As I recall it was \$371,000.

Q. All right. Did -- first of all let me ask you if you know whether Yates and Company agreed that was a reasonable estimate for these costs?

A. I would hate to say that it was -- that we would be bound to those right now. I think we'd like to go back and do some work on it. It was Saturday morning and we were trying to get some figures in case we were able to work it out with Jack and he did it very hurriedly, just looking at the AFE and looking at the prognosis of the depths we were -- we were going to.

MR. NUTTER: Mr. Hall, by referring to "Jack" do you mean Mr. Grynberg?

A. Yes, sir, excuse me, Mr. Grynberg.

Q. Well, is it your view, your opinion, that the cost between \$371,000 and say \$400,000 would be in the range of probable cost?

A. I would say that \$371,000 is pretty close. (Tr.70-72).

Even this marginal evidence does not bear upon the question of the proper allocation of costs. This cross examination only alludes to the cost of drilling a well to the Abo and does not remotely cover the equitable considerations of drilling the well from the Abo to the Mississippian formation.

Just as the burden was on the Commission to come forward with evidence supporting its denial of applications for special pool rules or an exemption from gas prorationing in Fasken vs. Oil Conservation Com'n., 87 N.M. 292, 532 P.2d 588 (1975), the burden was on Viking which sought a split-risk order to come forward with evidence demonstrating the proper



approach in determining a formula to allocate well costs between multiple zones. Proceedings in administrative agencies are subject to the customary common law rule that the moving party has the burden of proof. International Min. & C. Corp. v. New Mexico Public Service Commission, 81 N.M. 280, 466 P.2d 557 (1970). The pooling order of the Commission must make definite provisions for pro rata reimbursement solely out of production with respect to any owner who elects not to pay his proportionate share in advance. 70-2-17.C, N.M.S.A., 1978. Without definite provision in a force pooling order establishing a formula allocating costs between the multiple zones, it seems clear that a non-operator cannot make an intelligent decision as to whether he should participate in drilling the well from top to bottom or merely to a shallower zone. The record in this case will not sustain an order force pooling multiple zones with an election to participate in less than all zones because there is no evidence of a formula to allocate costs between zones.

### III

THE ORDER IS SUPPORTED BY SUBSTANTIAL  
EVIDENCE, IS NOT ARBITRARY AND  
CAPRICIOUS AND IS NOT CONTRARY TO LAW

When Viking did not come forward with any evidence on the method for equitably allocating costs, the Commission was in the position of either approving or denying the HEYCO

application. §70-2-17.C (quoted in pertinent part at pages 5 and 6 of this brief) is clear when it has been established that two or more owners of separate tracts within a spacing unit have not agreed to pool their interests and where one such owner who has the right to drill proposes to drill a well 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 such lands as a unit.

The record is clear. Viking owned an 80-acre tract (Tr.59) and HEYCO owned a 240-acre tract (Tr.59) in the spacing unit. Viking and HEYCO could not agree to drill the well to the Mississippian, as Viking only wanted to drill to the shallower Abo formation. HEYCO has the right to drill and proposed to drill a well to a common source of supply in the Mississippian (Tr.4). These elements are set forth in Findings (2), (3) and (4) of the Order (Tr.4) and support conclusion (1) of the Order pooling all interests through the Ordovician.

The only remaining statutory requirement is that the order shall be on such terms and conditions as are just and reasonable and will afford to the owners of each tract the opportunity to recover without unnecessary expense his just and fair share of the oil and gas.

Satisfaction of this statutory requirement and justification for the Order are found in the Commission's Finding (5):

(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. (Tr.4)

In considering the issue of substantial evidence, this Court gives special weight and credence to the experience, technical competence and specialized knowledge of the Commission. Grace v. Oil Conservation Commission, supra. The primary concern of the pooling statute is the elimination and prevention of waste, and secondarily the protection of correlative rights. El Paso Natural Gas Co. vs. Oil Conservation Com'n., supra. The prevention of economic waste caused by the drilling of unnecessary wells has been a chief consideration of the Commission in ordering pooling. Morris, Compulsory Pooling of Oil and Gas Interests in New Mexico, 3 Natural Resources Journal, October 1963, No. 2, p. 319. It is unreasonable and contrary to the spirit of conservation statutes to drill an unnecessary and uneconomically wasteful well. Rutter & Wilbanks Corp. vs. Oil Conservation Com'n., 87 N.M. 286, 532 P.2d 582 (1975). Viking's position before the Commission on this point was clear. Sufficient data was unavailable and a second well would be required on the spacing

unit to test the Mississippian. On direct examination by Mr. Jaramillo, Viking geologist Ettinger testified:

Q. All right, and Viking is taking a position that the drilling of the well should not exceed the base of the Abo formation, is that correct?

A. Yes, only I'll add at this time. (Tr.118)

Q. All right. Now, Viking Petroleum is not taking a position here, are they, Mr. Ettinger, that ultimately it may be advisable [sic] -- it may well be advisable [sic] to drill a deeper well.

A. Well, what we said that we don't want to drill it now because of lack of information. As information, those various wells would be connected to a pipeline, we would have some production information. We'd probably be able to better define the various reservoirs, correlate the various wells here. At that time we might be very willing to participate. (Tr.128)

The Order was adopted by the Commission to encourage the exploration for and development of oil and gas reserves and to avoid the necessity of drilling a second well on the spacing unit to test these deeper zones. A Commission order is prima facie valid. § 70-2-25.B, N.M.S.A. 1978. In reviewing an order of the Commission, this Court will not weigh the evidence. The inquiry is whether, on the record, the Commission could reasonably make the findings. Grace vs. Oil Conservation Commission, supra. The Commission took the only action sustainable by the record when it force pooled all zones from the surface through the Mississippian. The Order was supported by substantial evidence. The Order was not arbitrary and capricious and it was not contrary to law,


because there was no equitable cost allocation evidence which would sustain a valid order force pooling multiple zones with an election to participate in less than all zones.

CONCLUSION

For the foregoing reasons, the District Court should be reversed and the Commission's Order should be affirmed.

Respectfully submitted,

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BULLETIN NO.

2

**DETERMINATION  
OF VALUES FOR  
WELL COST ADJUSTMENTS  
JOINT OPERATIONS**

*This bulletin has been reviewed by the Petroleum Accountants Societies through representation on the Council of Petroleum Accountants Societies. It is recommended that the contents of the bulletin be used as a guide to joint interest operations accounting.*

*The Council is gratified and appreciative to the Petroleum Accountants Society of Denver for research and publication of this bulletin.*

COPAS Bulletin No. 2  
May Be Purchased Direct from the Publisher  
Kraftbilt Products — Box 800 — Tulsa, Oklahoma 74101

## FOREWORD

The basic purpose of this bulletin is to set forth what is considered by the industry in general to be the most equitable basis for the determination of values to be used in connection with well cost adjustments. This is necessitated by the tremendous increase in the various unitizations taking place for which no definite precedent has heretofore been established. The determination of values are normally required as the result of ownership changes which usually occur as the result of one of the following:

1. Change to size of a unit either voluntarily or to conform to edicts of a Regulatory Body.
2. Recompletion of a well in a different zone or formation.
3. Multiple completion of well in zone or zones of different ownership.
4. Failure to obtain production in original objective zone and completion of well in zone of different ownership.
5. The creation of Fieldwide or Reservoir Units.

Prior to execution of the Unit Operating Agreement, the value of the unit well should be agreed upon and written into the agreement. In the creation of Voluntary Units it is recognized that because of other considerations such as obsolete equipment, prior production, secondary recovery, reservoir peculiarities etc., it might be desirable to negotiate a stipulated amount or even to contribute intangibles and/or tangible equipment to the unit.

Well cost, as discussed herein, consists of subsurface equipment, wellhead and wellhead equipment and the associated intangible costs through the Xmas Tree. The lease production equipment, including installation costs, should be treated separately in the negotiations and in most instances should be adjusted in accordance with the Accounting Procedure attached to the Operating Agreement. In some instances the nature of the operations may dictate handling wellhead, wellhead equipment and tubing as separate items. For example, a single completion well being dualled, requiring the Xmas Tree to be changed out for a dual tree and the single string tubing to be changed out for a dual string.

The following suggestions are for use as guide lines only. No attempt has been made to include a suggested solution for all of the contingencies that may occur. It is also recognized that there may be more than one equitable solution to each problem. In these instances alternate suggestions have been included.

## INTANGIBLE DRILLING COSTS

Intangible Drilling Costs are defined as those expenditures which are non-recoverable and as such have no salvage value. For the purpose of this bulletin material items classified as non-controllable in the Material Classification Manual most recently recommended by the Council of Petroleum Accountants Society of North America should be included as intangible costs. Intangible Drilling Costs are incurred in drilling and preparing wells for the production of oil and gas. Intangible costs normally end at the first down stream connection on the wellhead, and generally include the following expenses:

### DRILLING

- Footage—Contract
- Daywork—Contract
- Cost Plus—Contract
- Turnkey Contract
- Company Tools

### LABOR

- Company
- Contract

### AUTOMOTIVE EXPENSE

- Automobile
- Truck and Service Equipment

### ROADS, CANALS AND LOCATIONS

### POWER, FUEL AND WATER

### MATERIAL AND SUPPLIES

- Bits and Equipment Rental
- Drilling Mud and Chemicals
- Other

### SPECIALIZED SERVICES

- Well Surveys and Test Services
- Cementing Casing
- Shooting, Acidizing and Perforating
- Squeeze Jobs

### OTHER INTANGIBLE DRILLING COSTS

- Geological and Engineering
- District Expense
- Administrative Overhead
- Loss and Damage
- Vacation, Sickness and other Employee Benefits
- Other Costs

## A. DETERMINATION OF INTANGIBLE DRILLING COSTS

1. The operators' historical actual recorded cost is the preferred basis to be used in determining the one-hundred per cent amount to be allocated. Alternate methods are as follows:
  - (a) Fixed or agreed sum. This amount would be an arbitrarily assigned amount acceptable by all parties concerned and would be used as the cost only when the operators' actual recorded cost is either unavailable, unrealistic or unacceptable.
  - (b) No Value. This method requires no allocation of costs. In using this method it would be pre-determined that each party has contributed a comparable base cost. A no value basis would normally be used in the creation of voluntary Fieldwide or Reservoir Units, which have been fully developed.
2. When operators' actual cost is used, it should be noted that these costs include in addition to the direct expenses incurred, allowances for operators' District Expense and Administrative Overhead. District expense would be calculated in accordance with the operators'



normal practice of allocating these expenses. Administrative Overhead or Combined Fixed Rates should be the amount charged the joint account if the property for which the cost adjustment is being made was originally jointly owned. If the property for which the cost adjustment is being made was not originally jointly owned, Administrative Overhead or Combined Fixed Rates should be calculated at the prevailing rate for the area in which the unitization or change of ownership is taking place. Also included would be any costs incurred in drilling below the unitized formation to a maximum depth of one hundred feet.

Expenses incurred for certain Specialized Services in formations other than the unitized formation should be excluded. Such Specialized Services could include electric logs, drill stem tests, coring, shooting, acidizing, perforating, squeeze jobs, etc.

3. When operators' actual cost is used such cost should be amortized. The preferred basis is the unit of production method. This factor is determined by a fraction of which the numerator is past production and the denominator is past production plus estimated future reserves.

In the event both oil and gas are produced from the unit well, then this method of amortization should be amended to use a basis of value rather than unit of production. As an alternate, a straight line method may be used. This factor is determined by a fraction of which the numerator is the number of years produced and the denominator is the number of years produced plus the estimated remaining years of production.

## B. ALLOCATION OF INTANGIBLE DRILLING COSTS

This portion of the bulletin pertains to the allocation or association of costs to a portion of the well common to specified zones of operation.

1. The preferred method for the allocation of costs between zones is from a detailed analysis of actual expenditures when practical, utilizing well, drilling and accounting records. Other acceptable methods are as follows:
  - (a) A drilling day ratio. This factor for each zone is determined by a fraction of which the numerator is the number of days drilled through that zone and the denominator is the total number of drilling days spent on the well, beginning on the date the well is spudded and terminating when the rig is released. It is desirable to eliminate from this allocation all expenditures known to be applicable to specific producing formations and could include electric logs, drill stem tests, coring, shooting, acidizing, perforating, squeeze jobs, etc. This would necessitate the elimination of the applicable days required to perform such function. For an illustration, suppose a well completed in three zones required 75 drilling days. If the time from spud date to the base of the first zone, plus the time required to log and set the production string of casing, amounted to 27 days, this zone would receive an allocation of  $27/75$  or 36% of the intangible drilling costs. If the time required to drill from the base of the first zone to the base of the second zone took eleven days, this zone would receive an allocation of  $11/75$  or 15%. If the time required to drill from the base of the second zone to the base of the third zone took 37 days, this zone would receive an allocation of  $37/75$  or 49%.
  - (b) A drilling footage ratio. This factor for each zone is determined by a fraction of which the numerator is the footage drilled through that zone and the denominator is the total footage drilled for the entire well. It is desirable to eliminate from this allocation all expenditures known to be applicable to a specific producing formation

and could include electric logs, drill stem tests, coring, shooting, acidizing, perforating, squeeze jobs, etc.

For an illustration, suppose a well completed in three zones was drilled to a total depth of 14,000 feet. If the footage from surface through the first zone was 12,000 feet, this zone would receive  $12,000/14,000$  or 85.72% of the intangible drilling costs. If the footage from the bottom of the first zone through the second zone was 1,000 feet, this zone would receive  $1,000/14,000$  or 7.14%. If the footage from the bottom of the second zone through the third zone was 1,000 feet, this zone would also receive  $1,000/14,000$  or 7.14%.

2. After the costs have been allocated to the zones by one of the methods described above, assuming there are three zones, these costs should be shared by the owners in the following manner:
  - (a) Applicable costs identified with the zone from the surface to the base of the first producing formation should be allocated equally to all formations with the owners in each formation standing their proportionate share based on their respective interest in each formation.
  - (b) Applicable costs identified with the zone between the base of the first producing formation and the base of the second producing formation should be allocated equally to all formations below the base of the first formation with the owners in each formation standing their proportionate share based on their respective interest in each formation.
  - (c) Applicable costs identified with the area below the base of the second producing formation, will be charged to the deeper formation.

## TANGIBLE COSTS

Tangible Drilling Costs are defined as those material items installed in connection with drilling and completing a well through the Xmas Tree and which, are ordinarily considered to have salvage value, regardless of whether such items may actually be salvaged after they are installed. Such materials are classified as controllable in the Material Classification Manual most recently recommended by the Council of Petroleum Accountants Society of North America.

### A. DETERMINATION OF TANGIBLE COSTS

#### 1. BASE PRICE

- (a) Actual recorded cost reduced by a depreciation factor set forth in 2 below. Some companies price material to their 100% properties as well as joint properties on a current market basis, therefore, actual recorded cost would be appropriate. However, some companies price material to their 100% properties on a depreciated or average cost basis, therefore the basis in (b) or (c) below might be more equitable.
- (b) Current Market (New) value at date of installation reduced by a depreciation factor set forth in 2 below.
- (c) Current Market (New) value at date of unitization reduced by a depreciation factor set forth in 2 below.

#### 2. DEPRECIATION

Depreciation should be limited to such amount so as to produce a value of equipment in an amount not to be less than the salvage value after deducting the cost of salvage.

- (a) Unit of production method. The amount of depreciation is determined by a fraction of which the numerator is past production and the denominator is past production plus estimated future reserves. In the event both oil and gas are produced from the unit well, then this method of depreciation should be amended to use a basis of value rather than unit of production.
- (b) Straight line method. The amount of depreciation is determined by a fraction of which the numerator is the number of years produced and the denominator is the number of years the well produced plus the estimated remaining years of production.
- (c) Agreed condition percentage.

## B. ALLOCATION OF TANGIBLE COST

In most unitizations it will be necessary for the operator to allocate the equipment serving the unit and/or units in the same wellbore on an equitable basis. Due to deep drilling in some wells, larger, heavier and more expensive casing, and in some cases a protection string may be set in the well that would not have been required had the well been drilled to the unit sand only. To attempt to adjust for this situation brings up many problems and would require an estimate of the tangible as well as the intangible cost for a hypothetical well to the unit sand which is not recommended. Since the operator assumed all the risks of drilling the well and the non-operator has usually benefited from this, it is suggested that no adjustment be made for these costs in determining the value of the unit well.

To assure adequate penetration through the unit sand, in most adjustments the depth of a unit is considered to be 100' below the base of the unit sand. The total depth of the well may be slightly greater than the 100' and in these cases it is suggested that the adjustment include total depth. A string of casing may consist of casing of different weights and grades set at various depths, but for the purpose of making an allocation to the unit the total average cost of the casing string should be used.

Assuming three completions in a single well bore, the cost of tangible well equipment should be allocated as follows:

### 1. CASING

- (a) Total average cost of the casing from the surface to the base of the first zone should be allocated equally to all zones in the wellbore.
- (b) Total average cost of the casing from the base of the first zone to the base of the second zone should be allocated equally to the second and third zones.
- (c) Total average cost of the casing from the base of the second zone to the base of the third zone should be allocated entirely to the third zone.

### 2. WELLHEAD

Wellhead and wellhead equipment through the Xmas Tree should be allocated equally to all producing formations served.

### 3. TUBING

In those instances when each unit reservoir is produced through a separate string of tubing then each unit will be charged with the respective tubing string. In those instances when one unit reservoir is produced through the casing then the total cost of the tubing will be shared proportionately by the units served with the appropriate adjustment for tubing below the individual unit reservoirs.

Tangible controllable equipment not specifically mentioned above should be allocated on an equitable basis to the zone or zones served.

## CONDITIONS OF UNITIZATION

Following are the conditions for which the determination of values for well cost adjustments may be required:

1. Straight up lease well or wells to unit in same reservoir.
  - A. Originally drilled as 100% or joint well —
    - (1) Not produced from unit sand.
    - (2) Produced from unit sand.
2. A. Revision of an existing unit from 100% ownership to joint.
  - B. Revision of an existing joint unit — same parties, different interest, or bring in additional interest.
3. Single well completion dualled subsequently into unit reservoir original completion remains 100% and unit completion becomes joint.
4. Dual completion — one or more completions unitized.
5. Single completion depleted and recompleted in higher unitized reservoirs.
6. Single completion depleted and drilled deeper to unitized reservoir.
7. Dry hole reworked into unitized reservoir.
8. Single completion depleted and recompleted for injection or disposal well for unit.
9. Dry hole recompleted for injection or disposal well for unit.
10. Operator furnish substitute well to supplement production from a unit on rental basis.

## INFORMATION TO BE FURNISHED TO NON-OPERATORS BY OPERATOR

Upon completion of the evaluation of the unit well and prior to the execution of the Unit Operating Agreement, the following information should be furnished by the operator to all non-operators:

- A. Copy of well record or well completion report.
- B. Itemized priced list of tangible controllable equipment and basis of pricing, depreciation

and allocation. The well equipment through the Xmas Tree is subject to verification by an audit of the operator's well records and an inventory.

C. Summary of intangible cost by type of expenditure with a brief statement as to how the costs were determined, depreciated and allocated.

D. Brief daily resume of drilling operations including mud weights.

## CONCLUSION

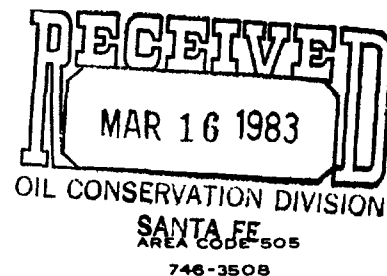
It is believed that the most common conditions of unitizations may be resolved by the recommendations set forth above, and the accountants role in the negotiation of unit operating agreements brought to a timely conclusion.

Owners of working interests in new units formed should be charged their proportionate share of the agreed well value based on their respective interest in the unit; and the selling owners should be credited with their proportionate interest sold.

The unit operator should act as a collection and disbursing agent for all parties with appropriate protection authorized by the operating agreement. So as not to place an undue burden on the operator, purchasers of an interest should remit promptly after being billed and the operator should make payment to sellers immediately after receiving payment from all purchasers. All future accounting for the unit should be governed by the provisions of the operating agreement entered into between the parties.

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

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



14 March 1983

Mr. Arthur L. Jaramillo  
Jones, Gallegos, Snead & Wertheim  
P. O. Box 2228  
Santa Fe, New Mexico 87501

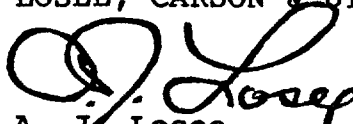
Re: Viking Petroleum, Inc. vs. Oil Conservation  
Commission and Harvey E. Yates Company,  
District Court of Chaves County CV-82-77

Dear Mr. Jaramillo:

Enclosed is copy of Motion for Extension of Time to File Brief-in-Chief filed in the Supreme Court on March 9, with the notation thereon that such extension is granted.

Very truly yours,

LOSEE, CARSON & DICKERSON, P.A.

  
A. J. Losee

AJL:jcb

cc: Mr. W. Perry Pearce  
Mr. Joe Hall

IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

VIKING PETROLEUM, INC.,  
Petitioner-Appellee,

vs.

OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO  
and HARVEY E. YATES COMPANY,  
Respondents-Appellants.

No. 14632

MOTION FOR EXTENSION OF  
TIME TO FILE BRIEF-IN-CHIEF

Harvey E. Yates Company, Appellant, by its attorneys moves the Court for an extension of time to file its Brief-in-Chief, from March 14, 1983 until March 29, 1983, and as grounds therefor states that the attorney responsible for preparing the brief has been out of the office for the past week and one-half and will be out of the office for a portion of this week.

LOSEE, CARSON & DICKERSON, P.A.

By:

  
A. J. Losee

  
SUPREME COURT OF NEW MEXICO  
FILED

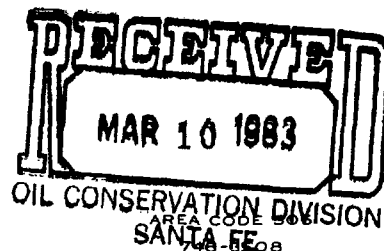
MAR - 9 1983

P. O. Drawer 239  
Artesia, New Mexico 88210  
Telephone 505/746-3508



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

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



8 March 1983

Honorable Rose Marie Alderete  
Clerk of the Supreme Court  
P. O. Box 848  
Santa Fe, New Mexico 87501

Re: Viking Petroleum, Inc., Petitioner-Appellee, vs.  
Oil Conservation Commission of the State of New  
Mexico and Harvey E. Yates Company, Respondents-  
Appellants, Supreme Court No. 14632

Dear Mrs. Alderete:

In accordance with our telephone conversation of this date,  
enclosed please find Motion for Extension of Time to File the  
Brief-in-Chief of Harvey E. Yates Company, from March 14, 1983  
until March 29, 1983. Thank you in advance for your consideration  
to this request.

Very truly yours,

LOSEE, CARSON & DICKERSON, P.A.

A handwritten signature in dark ink, appearing to read "A. J. Losee". The signature is stylized with a large, looping "A" and "L".

A. J. Losee

AJL:jcb  
Enclosure

cc w/enclosure: Mr. Arturo L. Jaramillo  
Mr. W. Perry Pearce  
Mr. Thomas J. Hall



IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

|                              |   |           |
|------------------------------|---|-----------|
| VIKING PETROLEUM, INC.,      | ) |           |
|                              | ) |           |
| Petitioner-Appellee,         | ) |           |
|                              | ) |           |
| vs.                          | ) | No. 14632 |
|                              | ) |           |
| OIL CONSERVATION COMMISSION  | ) |           |
| OF THE STATE OF NEW MEXICO   | ) |           |
| and HARVEY E. YATES COMPANY, | ) |           |
|                              | ) |           |
| Respondents-Appellants.      | ) |           |

MOTION FOR EXTENSION OF  
TIME TO FILE BRIEF-IN-CHIEF

Harvey E. Yates Company, Appellant, by its attorneys moves the Court for an extension of time to file its Brief-in-Chief, from March 14, 1983 until March 29, 1983, and as grounds therefor states that the attorney responsible for preparing the brief has been out of the office for the past week and one-half and will be out of the office for a portion of this week.

LOSEE, CARSON & DICKERSON, P.A.

By:   
A. J. Losee

P. O. Drawer 239  
Artesia, New Mexico 88210  
Telephone 505/746-3508

IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

VIKING PETROLEUM, INC.,  
Petitioner-Appellee,

vs.

OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO  
and HARVEY E. YATES COMPANY,

Respondents-Appellants.

No. 14632

MOTION FOR EXTENSION OF TIME  
TO FILE BRIEF-IN-CHIEF

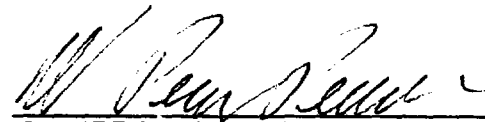
Comes now Appellant, Oil Conservation Commission, by and through its attorney, and moves the Court to grant an extension of time not to exceed fifteen (15) days to file Appellant's Brief-In-Chief, and as grounds therefore states:

1. That the court has previously granted an extension to Appellant Harvey E. Yates Company and that is necessary for Appellants to coordinate their briefs.

2. That the Brief-In-Chief of Appellant Oil Conservation Commission shall be filed no later than March 29, 1983.

Respectfully Submitted,

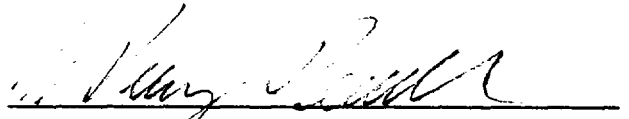
JEFF BINGAMAN  
Attorney General



W. PERRY PEARCE  
Assistant Attorney General for  
the Oil Conservation Commission  
P. O. Box 2088  
Santa Fe, New Mexico 87501

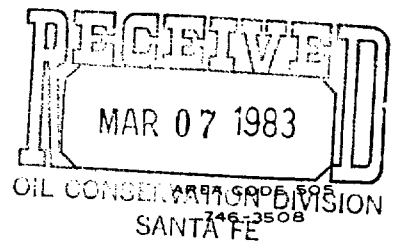
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Extension of Time to File Brief-In-Chief was mailed to all Counsel of record this 8th day of March, 1983., properly addressed and postage prepaid.

  
W. PERRY PEARCE

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

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



4 March 1983

Mr. Arthur L. Jaramillo  
Jones, Gallegos, Snead & Wertheim  
P. O. Box 2228  
Santa Fe, New Mexico 87501

Re: Viking Petroleum, Inc. vs. Oil Conservation  
Commission and Harvey E. Yates Company,  
District Court of Chaves County CV-82-77

Dear Mr. Jaramillo:

The transcript on appeal, which included the deposition of Arlene Rowland and briefs filed with the District Court, was filed with the Supreme Court on February 11. Our brief will be due in the Supreme Court on March 14.

Very truly yours,

LOSEE, CARSON & DICKERSON, P.A.

A handwritten signature in dark ink, appearing to read "A. J. Losee".

A. J. Losee

AJL:jcb

cc: Mr. W. Perry Pearce  
Mr. Joe Hall

## SUPREME COURT OF NEW MEXICO

DOCKET NO.

14632

IKING PETROLEUM, INC.,

Petitioner-Appellee,

vs.

IL CONSERVATION COMMISSION OF  
HE STATE OF NEW MEXICO and  
ARVEY E. YATES COMPANY,

Respondents-Appellants.

## ATTORNEYS

Losee, Carson & Dickerson  
A. J. Losee  
Dr 239  
Artesia, NM 88210

FOR \_\_\_\_\_

W. Perry Pearce, Asst AG  
State Land Office Bldg. SF 87503  
Jones, Gallegos, Snead & Wertheim  
Arturo L. Jaramillo <sup>FOR</sup> Bx 2228 SF 87501  
CIVIL CRIMINAL APPEAL FROM DISTRICT COURT. Chaves COU  
(CV-82-77)

Decision 9/30/82

Notice of Appeal 10/26/82

W. J. Schnedar

JUD

## CASH ACCOUNT FOR COSTS

## CITATIONS

DATE  
1982

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Losee, Carson & Dickerson  
State Treasurer

\$20.00

\$16.00

N. MEX.

PAC. 2ND

1982 DATE

## PROCEEDINGS

November

8

Skeleton Transcript

December

1

Request for Oral Argument

1983

January

20

Motion to extend Transcript on Appeal  
Order D.Ct. granting extension to February 14, 1983

February

11

3 Transcript on Appeal (3 volumes)

Supreme Court of New Mexico

P.O. BOX 848  
Santa Fe, New Mexico  
87503

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STATE AND OFFICE  
SANTA FE

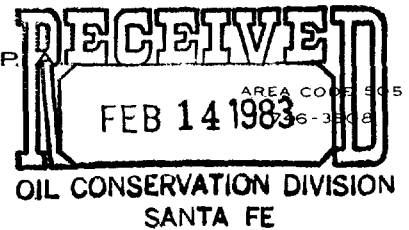
W. Perry Pearce  
~~Asst. Attorney General~~  
State Land Office Bldg  
Santa Fe, NM 87503



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

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

11 February 1983



Honorable Rose Marie Alderete  
Clerk of the Supreme Court  
P. O. Box 848  
Santa Fe, New Mexico 87501

Re: Viking Petroleum, Inc., Petitioner-Appellee, vs.  
Oil Conservation Commission of the State of New  
Mexico and Harvey E. Yates Company, Respondents-  
Appellants, Supreme Court No. 14632

Dear Mrs. Alderete:

We herewith hand you for filing the three sets of the Transcript on Appeal, consisting of the Transcript of Proceedings in one volume and the Transcript of Record Proper in two volumes.

With a carbon copy of this letter we are furnishing other counsel with a photocopy of the Tables of Contents on the Transcript of the Record Proper.

Very truly yours,

LOSEE, CARSON & DICKERSON, P.A.

A. J. Losee

AJL:jcb  
Enclosure

cc w/enclosure: Mr. Arturo L. Jaramillo  
Mr. W. Perry Pearce  
Mr. Thomas J. Hall

IN THE NEW MEXICO SUPREME COURT

VIKING PETROLEUM, INC.,

Petitioner-Appellee

No. \_\_\_\_\_

(Chaves County Cause  
No. CV-82-77)

vs.

OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO  
and HARVEY E. YATES COMPANY,

Respondents-Appellants

Hon. William J. Schnedar - Judge

Transcript of the Record Proper

Appearances in the District Court:

For the Petitioner- Appellee

Arthur L. Jaramillo  
Post Office Box 2228  
Jones, Gallegos, Snead & Wertheim,  
Santa Fe, New Mexico

For the Respondents - Appellants:

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

A. J. Losee,  
Losee, Carson, & Dickerson  
P.O. Drawer 239  
Artesia, New Mexico 88211-0239

W. Perry Pearce,  
Assistant Attorney General  
P. O. Box 2088  
Santa Fe, New Mexico 87501

BY James H. Lister  
CLERK OF THE DISTRICT COURT

DISTRICT COURT  
CHAVES COUNTY, N.M.  
**FILED IN MY OFFICE**  
December 21, 1982  
2:01 p.m.

Volume 1 of 2 Volumes

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IN THE SUPREME COURT OF NEW MEXICO

VIKING PETROLEUM, INC.,

Plaintiff-Appellee:

VS.

No. \_\_\_\_\_

(Chaves County Cause  
No. CV-82-77)

OIL CONSERVATION COMMISSION OF THE  
STATE OF NEW MEXICO AND HARVEY E.  
YATES COMPANY.

Defendants-Appellants

IN THE DISTRICT COURT OF CHAVES COUNTY

HON. WILLIAM J. SCHNEDAR - Presiding

TRANSCRIPT OF THE RECORD PROPER  
DEPOSITIONS AND BRIEFS

APPEARANCES IN THE DISTRICT COURT

For the Petitioner-Appellee:

ARTHUR L. JARAMILLO  
Post Office Box 2228  
Jones, Gallegos, Snead & Wertheim,  
Santa Fe, New Mexico 87501

For the Respondents - Appellants:

THOMAS J. HALL,  
Harvey E. Yates Company  
P.O. BOX 1933  
Roswell, New Mexico 88201

A. J. LOSEE,  
Losee, Carson & Dickerson  
P. O. Drawer 239  
Artesia, New Mexico 88211-0239

W. PERRY PEARCE,  
Assistant Attorney General  
P. O. Box 2088  
Santa Fe, NEW Mexico 87501

VOLUME 2 of 2 VOLUMES

Page 236 to end.

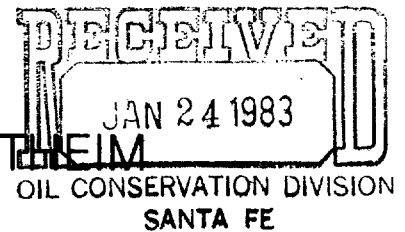
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JONES, GALLEGOS, SNEAD & WERTHEIM



January 21, 1983

Ms. Jean Willis  
District Court Clerk  
P. O. Box 1776  
Roswell, New Mexico 88201

RE: Viking Petroleum Inc., v. Oil Conservation  
Commission et al., Chaves County Cause No.  
CV-82-77; Our File No. 41000-03;

Dear Ms. Willis:

With reference to the above captioned and numbered  
cause, enclosed herewith please find a Designation  
of Record Proper which I would appreciate your filing  
of record. Please conform and return the extra copy.

Thanking you for your cooperation in this matter, I am,

Very truly yours,

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

By

  
ARTURO L. JARAMILLO

ALJ:y1f

Enclosure

cc: Mr. A. J. Losee,  
Mr. W. Perry Pearce

O. RUSSELL JONES (1912-1978)

|                     |                       |
|---------------------|-----------------------|
| J. E. GALLEGOS      | JAMES G. WHITLEY III  |
| JAMES E. SNEAD      | FRANCIS J. MATHEW     |
| JERRY WERTHEIM      | ROBERT W. ALLEN       |
| M.J. RODRIGUEZ      | JUDITH C. HERRERA     |
| JOHN WENTWORTH      | KATHLEEN A. HEMPELMAN |
| STEVEN L. TUCKER    | CHARLES A. PURDY      |
| ARTURO L. JARAMILLO | MARTHA VAZQUEZ        |
| PETER V. CULBERT    | HENRY R. QUINTERO     |

ATTORNEYS AT LAW

1 IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT  
2 FOR THE COUNTY OF CHAVES, STATE OF NEW MEXICO

3 VIKING PETROLEUM, INC., )

4 Petitioner, )

5 -vs- )

6 OIL CONSERVATION COMMISSION )  
7 OF THE STATE OF NEW MEXICO )  
8 and HARVEY E. YATES COMPANY, )

9 Respondents. )

No. CV-82-77

10 DESIGNATION OF RECORD PROPER

11 Comes now, the Petitioner-Appellee, Viking Petroleum,  
12 Inc., and pursuant to Rule 7(e) of the Rules of Appellate Procedure  
13 for Civil Cases, designates all depositions and briefs filed with  
14 the District Court, together with all exhibits attached thereto,  
15 as being necessary to the Record Proper, and places the appellants  
16 on notice that the same were omitted from the original transcript  
17 of the record proper.

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

19 By

20 Arturo L. Jaramillo  
21 ARTURO L. JARAMILLO  
22 P. O. Box 2228  
Santa Fe, New Mexico 87501  
(505) 982-2691

23 CERTIFICATE OF MAILING

24 I hereby certify that I did on the 21st day of January,  
25 1983, mail a true copy of the foregoing Designation of Record Proper  
to opposing counsel of record, Mr. A.J. Losee, P. O. Drawer 239,  
Artesia, New Mexico, 88210 and Mr. W. Perry Pearce, P. O. Box 2088,  
Santa Fe, New Mexico, 87501, by first-class mail, postage prepaid.

Arturo L. Jaramillo  
ARTURO L. JARAMILLO

IN THE DISTRICT COURT OF CHAVES COUNTY  
STATE OF NEW MEXICO

IN RE: NO. CV-82-77

VIKING PETROLEUM, INC. vs. OIL CONSERVATION COMMISSION,  
OF THE STATE OF NEW MEXICO,  
and HARVEY E. YATES COMPANY.

TO: NEW MEXICO SUPREME COURT, P.O. BOX 848, SANTA FE, N.M. 87501  
ARTHUR L. JARAMILLO, P.O. BOX 2228, SANTA FE, N.M. 87501  
THOMAS J. HALL, P.O. BOX 1933, ROSWELL, N.M. 88201  
W. PERRY PEARCE, ASSISTANT ATTORNEY GENERAL, P.O. BOX 2088, SANTA FE, N.M. 87501

YOU ARE HEREBY NOTIFIED THAT:

NOTICE OF APPEAL FILED \_\_\_\_\_ (COPY ATTACHED)

FREE PROCESS ORDER FILED \_\_\_\_\_ (COPY ATTACHED)

TRANSCRIPT DESIGNATION CONFERENCE SET FOR \_\_\_\_\_  
BEFORE HONORABLE \_\_\_\_\_, DISTRICT JUDGE.

TRANSCRIPT ON APPEAL FILED IN DISTRICT COURT CLERK'S OFFICE .

\_\_\_\_\_, OBJECTS MUST BE FILED  
WITHIN 10 DAYS OF DATE OF FILING. CLERK WILL FORWARD TRANSCRIPT TO COURT OF APPEALS  
ON 11th. DAY IF NO OBJECTIONS FILED.

ENCLOSED PLEASE FIND:

DISTRICT COURT FILE NO. \_\_\_\_\_

TRANSCRIPT ON APPEAL

EXHIBITS

OTHER: ORDER EXTENDING TIME TO FILE TRANSCRIPT ON APPEAL.

DATED: JANUARY 19, 1983

JEAN WILLIS,  
CLERK, DISTRICT COURT  
BY: Mary Van Eaton  
deputy

DISTRICT COURT  
CHAVES COUNTY  
FILED IN CLERK'S OFFICE

'83 JAN 19 A9:45

JEAN WILL  
CLERK OF THE DISTRICT COURT

IN THE DISTRICT COURT OF CHAVES COUNTY

STATE OF NEW MEXICO

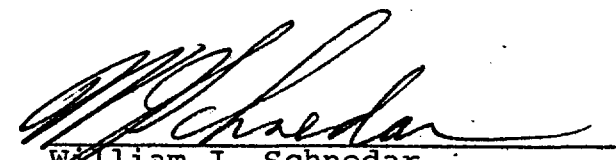
VIKING PETROLEUM, INC., )  
 )  
Petitioner-Appellee, )  
 )  
vs. )  
 )  
OIL CONSERVATION COMMISSION )  
OF THE STATE OF NEW MEXICO )  
and HARVEY E. YATES COMPANY, )  
 )  
Respondents-Appellants. )

No. CV-82-77

ORDER EXTENDING TIME TO  
FILE TRANSCRIPT ON APPEAL.

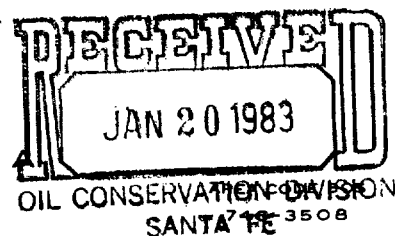
Harvey E. Yates Company, Respondent-Appellant,  
having moved this Court for an extension of time to file the  
Transcript on Appeal, and good cause appearing

THEREFORE, IT IS ORDERED that the time for filing  
the Transcript on Appeal in the Supreme Court of the State  
of New Mexico is hereby extended from January 24 until  
February 14, 1983.

  
William J. Schnedar,  
District Judge

A.J. LOSEE  
JOEL M. CARSON  
CHAD DICKERSON  
DAVID R. VANDIVER  
ELIZABETH LOSEE  
Rebecca Dickerson

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



18 January 1983

Mr. Arthur L. Jaramillo  
Jones, Gallegos, Snead & Wertheim  
P. O. Box 2228  
Santa Fe, New Mexico 87501

Re: Viking Petroleum, Inc. vs. Oil Conservation  
Commission and Harvey E. Yates Company,  
District Court of Chaves County CV-82-77

Dear Mr. Jaramillo:

Enclosed please find copies of:

1. Motion for Extension of Time to File Transcript of Proceedings in the Supreme Court until February 14, 1983
2. Proposed Order Extending Time
3. Notice of Filing Transcript of Proceedings

In order that you may have 10 days to review the transcript of proceedings and transcript of the record proper, enclosed you will please find copies of the same. If you have no objections, please return them to me within 10 days from this date.

Very truly yours,

LOSEE, CARSON & DICKERSON, P.A.

A handwritten signature in cursive script, appearing to read "A. J. Losee".

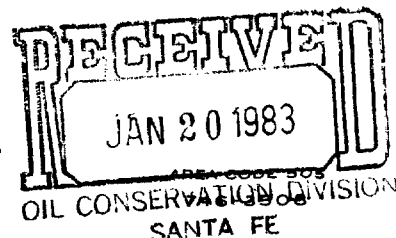
A. J. Losee

AJL:jcb  
Enclosures



A. J. LOSEE  
JOEL M. CARSON  
CHAD DICKERSON  
DAVID R. VANDIVER  
ELIZABETH LOSEE  
Rebecca Dickerson

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



18 January 1983

Honorable William J. Schnedar  
District Judge  
P. O. Box 1776  
Roswell, New Mexico 88201

Re: Viking Petroleum Corporation vs. Oil Conservation  
Commission and Harvey E. Yates Company, CV-82-77

Dear Judge Schnedar:

In accordance with our telephone conversation of this date,  
enclosed please find Motion for Extension of Time to File  
Transcript from January 24 until February 14, 1983, together with  
proposed Order.

If you find the Order to be acceptable, please sign one copy, file  
it with the Clerk and ask Ms. Willis to return a conformed copy of  
the Order to me.

Very truly yours,

LOSEE, CARSON & DICKERSON, P.A.

  
A. J. Losee

AJL:jcb  
Enclosures

IN THE DISTRICT COURT OF CHAVES COUNTY  
STATE OF NEW MEXICO

|                              |   |              |
|------------------------------|---|--------------|
| VIKING PETROLEUM, INC.,      | ) |              |
|                              | ) |              |
| Petitioner-Appellee,         | ) |              |
|                              | ) |              |
| vs.                          | ) | No. CV-82-77 |
|                              | ) |              |
| OIL CONSERVATION COMMISSION  | ) |              |
| OF THE STATE OF NEW MEXICO   | ) |              |
| and HARVEY E. YATES COMPANY, | ) |              |
|                              | ) |              |
| Respondents-Appellants.      | ) |              |

MOTION FOR EXTENSION OF TIME TO  
FILE TRANSCRIPT ON APPEAL

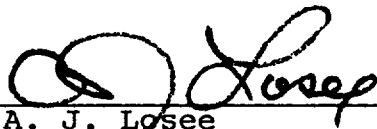
Harvey E. Yates Company, Respondent-Appellant,  
moves the Court to grant an extension of time to file the  
Transcript on Appeal, and as ground therefor states:

1. The Notice of Appeal was filed on October 26,  
1982 and the transcript of the record proper and proceedings  
are due to be filed in the Supreme Court on January 24,  
1983.

2. The transcript of proceedings has been filed  
with the Clerk of this Court and this extension of time is  
necessary to permit attorneys for Viking Petroleum, Inc.,  
Petitioner-Appellee, 10 days to determine if it has objec-  
tions to the transcript.

WHEREFORE, Harvey E. Yates Company prays for an extension of time to file the Transcript on Appeal from January 24, 1983 until February 24, 1983.

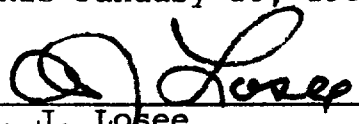
LOSEE, CARSON & DICKERSON, P.A.

By:   
A. J. Losee

P. O. Drawer 239  
Artesia, New Mexico 88210

Attorneys for Respondent-  
Appellant Harvey E. Yates Company

THIS IS TO CERTIFY that a true and correct copy was mailed to Arthur J. Jaramillo, Attorney for Viking Petroleum, Inc., and W. Perry Pearce, Assistant Attorney General, Attorney for Oil Conservation Commission of New Mexico, this January 18, 1983.

  
A. J. Losee

IN THE DISTRICT COURT OF CHAVES COUNTY  
STATE OF NEW MEXICO

|                              |   |              |
|------------------------------|---|--------------|
| VIKING PETROLEUM, INC.,      | ) |              |
|                              | ) |              |
| Petitioner-Appellee,         | ) |              |
|                              | ) |              |
| vs.                          | ) | No. CV-82-77 |
|                              | ) |              |
| OIL CONSERVATION COMMISSION  | ) |              |
| OF THE STATE OF NEW MEXICO   | ) |              |
| and HARVEY E. YATES COMPANY, | ) |              |
|                              | ) |              |
| Respondents-Appellants.      | ) |              |

ORDER EXTENDING TIME TO  
FILE TRANSCRIPT ON APPEAL

Harvey E. Yates Company, Respondent-Appellant,  
having moved this Court for an extension of time to file the  
Transcript on Appeal, and good cause appearing

THEREFORE, IT IS ORDERED that the time for filing  
the Transcript on Appeal in the Supreme Court of the State  
of New Mexico is hereby extended from January 24 until  
February 14, 1983.

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

IN THE DISTRICT COURT OF CHAVES COUNTY  
STATE OF NEW MEXICO

|                              |   |              |
|------------------------------|---|--------------|
| VIKING PETROLEUM, INC.,      | ) |              |
|                              | ) |              |
| Petitioner-Appellee,         | ) |              |
|                              | ) |              |
| vs.                          | ) | No. CV-82-77 |
|                              | ) |              |
| OIL CONSERVATION COMMISSION  | ) |              |
| OF THE STATE OF NEW MEXICO   | ) |              |
| and HARVEY E. YATES COMPANY, | ) |              |
|                              | ) |              |
| Respondents-Appellants.      | ) |              |

NOTICE OF FILING OF TRANSCRIPT

NOTICE IS HEREBY GIVEN that there has been filed with the Clerk of the District Court of Chaves County, New Mexico, the following:

1. Transcript of proceedings appropriately certified by the Court Reporter
2. A copy of this Notice of Filing and proof of service thereof
3. A statement of the Court Reporter of the cost of the transcript of proceedings was \$170

LOSEE, CARSON & DICKERSON, P.A.

By: 

A. J. Losee

P. O. Drawer 239  
Artesia, New Mexico 88210

Attorneys for Respondent-  
Appellant Harvey E. Yates Company

THIS IS TO CERTIFY that a true and  
correct copy was mailed to Arthur J.  
Jaramillo, Attorney for Viking Petroleum,  
Inc., and W. Perry Pearce, Assistant  
Attorney General, Attorney for Oil  
Conservation Commission of New Mexico,  
this January 18, 1983.

  
A. J. Losee

SUPREME COURT OF NEW MEXICO

DOCKET NO.

14632

ATTORNEYS

VIKING PETROLEUM, INC.,

Petitioner-Appellee,

Losee, Carson & Dickerson  
A. J. Losee  
Dr 239  
Artesia, NM 88210

FOR

VS.

OIL CONSERVATION COMMISSION OF  
THE STATE OF NEW MEXICO and  
HARVEY E. YATES COMPANY,

Respondents-Appellants.

W. Perry Pearce, Asst AG  
State Land Office Bldg. SF 87503  
Jones, Gallegos, Sneed & Wertheim  
Arturo L. Jaramillo for Bx 2228 SF 87501  
CIVIL  
CENTRAL APPEAL FROM DISTRICT COURT Chaves COUNTY.  
(CV-82-77)

Decision 9/30/82  
Notice of Appeal 10/26/82

W. J. Schnedar

JUDGE

CASH ACCOUNT FOR COSTS

CITATIONS

DATE  
1982

RECEIVED FROM OR PAID TO

RECEIVED

DISBURSED

N. MEX.

November 8

Losee, Carson & Dickerson  
State Treasurer

\$20.00

\$16.00

PAC. 2ND

1982 DATE

PROCEEDINGS

November 8

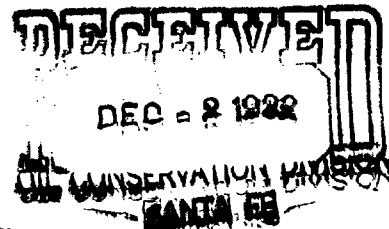
Skeleton Transcript

A. J. LOSEE  
JOEL M. CARSON  
CHAD DICKERSON  
DAVID R. VANDIVER  
ELIZABETH LOSEE  
Rebecca Dickerson

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

AREA CODE 505  
746-3508

30 November 1982



Honorable Rose Marie Alderete  
Clerk of the Supreme Court  
P. O. Box 848  
Santa Fe, New Mexico 87501

Re: Viking Petroleum, Inc., Petitioner-Appellee, vs.  
Oil Conservation Commission of the State of New  
Mexico and Harvey E. Yates Company, Respondents-  
Appellants, Supreme Court No. 14632

Dear Mrs. Alderete:

Enclosed for filing, please find Request for Oral Argument made by  
the undersigned as Attorney for Harvey E. Yates Company.

Very truly yours,

LOSEE, CARSON & DICKERSON, P.A.

  
A. J. Losee

AJL:jcb  
Enclosure

cc w/enclosure: Mr. Arturo L. Jaramillo  
Mr. W. Perry Pearce  
Mr. Joe Hall



**In the Supreme Court of the State of New Mexico**

**REQUEST FOR ORAL ARGUMENT**

VIKING PETROLEUM, INC.

Petitioner-Appellee,

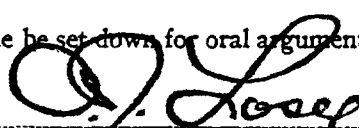
<sup>v.</sup>  
OIL CONSERVATION COMMISSION OF THE  
STATE OF NEW MEXICO and HARVEY E.  
YATES COMPANY,  
Respondents-Appellants.

14632

No. \_\_\_\_\_

The undersigned counsel for Harvey E. Yates Company

in the above entitled cause hereby requests that the same be set down for oral argument.

  
A. J. Losée

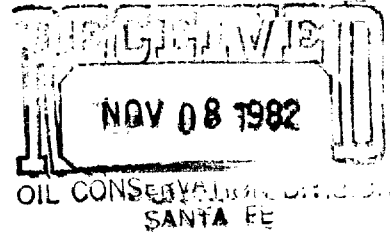
Counsel for Harvey E. Yates Company

A. J. LOSEE  
JOEL M. CARSON  
CHAD DICKERSON  
DAVID R. VANDIVER  
ELIZABETH LOSEE

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

AREA CODE 505  
746-3508

4 November 1982



Honorable Rose Marie Alderete  
Clerk of the Supreme Court  
P. O. Box 848  
Santa Fe, New Mexico 87501

Re: Viking Petroleum, Inc. vs. Oil Conservation  
Commission of the State of New Mexico and  
Harvey E. Yates Company, Chaves County  
District Court No. CV-82-77

Dear Mrs. Alderete:

Enclosed for filing, please find Skeleton Transcript and our check in the amount of \$20 in payment of the docket fee. Please place the court filing stamp on the additional copy of this transcript and return it to me in the enclosed self-addressed envelope.

Thank you for your attention to this request.

Very truly yours,

LOSEE, CARSON & DICKERSON, P.A.

  
A. J. Losee

AJL:jcb  
Enclosures

cc w/enclosure: Mr. Arturo L. Jaramillo  
Mr. W. Perry Pearce  
Mr. Joe Hall

IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

VIKING PETROLEUM, INC.,           )  
  )  
      Petitioner-Appellee,        )  
  )  
vs.                                    )  
  )  
OIL CONSERVATION COMMISSION       )  
OF THE STATE OF NEW MEXICO        )  
and HARVEY E. YATES COMPANY,       )  
  )  
      Respondents-Appellants.     )

No. \_\_\_\_\_

District Court No. CV-82-77

County of Chaves

Schnedar, J.

SKELETON TRANSCRIPT

A. J. Losee,  
LOSEE, CARSON & DICKERSON, P.A.  
P. O. Drawer 239  
Artesia, New Mexico 88210

Attorneys for Respondent-Appellant  
Harvey E. Yates Company

NOV 8 - 1982

*Handwritten:* [Signature]

THIS COPY IS FOR YOUR INFORMATION  
Losee, Carson & Dickerson, P. A.

IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

VIKING PETROLEUM, INC.,                    )  
  )  
      Petitioner-Appellee,                )  
  )  
vs.   )  
  )  
OIL CONSERVATION COMMISSION            )  
OF THE STATE OF NEW MEXICO            )  
and HARVEY E. YATES COMPANY,         )  
  )  
      Respondents-Appellants.         )

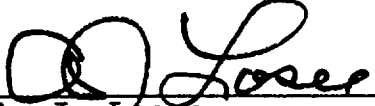
No. \_\_\_\_\_

SKELETON TRANSCRIPT

1.   TITLE PAGE.   See Exhibit A attached.
2.   JUDGMENT APPEALED.   See Exhibit B attached.
3.   MOTIONS EXTENDING TIME FOR FILING THE NOTICE OF  
APPEAL.   Not applicable.
4.   NOTICE OF APPEAL.   See Exhibit C attached.
5.   PROOF OF SERVICE OF NOTICE OF APPEAL.   See Exhibit  
C attached.
6.   SATISFACTORY ARRANGEMENTS.   See Exhibits D and E  
attached.
7.   JURISDICTION.   This is an appeal from a decision  
of the District Court vacating the order of the Oil Conserva-  
tion Commission.   Jurisdiction is vested in the Supreme  
Court pursuant to § 70-2-25-B N.M.S.A., 1978.
8.   FREE PROCESS APPEAL.   Not applicable.

9. CERTIFICATION BY DISTRICT COURT CLERK. See  
Exhibit F attached.


LOSEE, CARSON & DICKERSON, P.A.

By:   
A. J. Losee

P. O. Drawer 239  
Artesia, New Mexico 88210

Attorneys for Respondent-Appellant  
Harvey E. Yates Company

THIS IS TO CERTIFY that a true and  
correct copy was mailed to Arthur J.  
Jaramillo, Attorney for Viking Petroleum,  
Inc., and W. Perry Pearce, Attorney for Oil  
Conservation Commission of New Mexico,  
this Nov. 4, 1982.

  
A. J. Losee

IN THE DISTRICT COURT OF CHAVES COUNTY

STATE OF NEW MEXICO

VIKING PETROLEUM, INC.,           )  
                                  )  
                  Petitioner,       )  
                                  )  
vs.                                 )  
                                  )  
OIL CONSERVATION COMMISSION       )  
OF THE STATE OF NEW MEXICO        )  
and HARVEY E. YATES COMPANY,      )  
                                  )  
                  Respondents.     )

No. CV-82-77

Arturo L. Jaramillo  
JONES, GALLEGOS, SNEAD & WERTHEIM, P.A.  
P. O. Box 2228  
Santa Fe, New Mexico 87501

Attorneys for Petitioner

W. Perry Pearce  
Assistant Attorney General  
State Land Office Building  
Santa Fe, New Mexico 87501

Attorney for Oil Conservation Commission  
of New Mexico

A. J. Losee  
LOSEE, CARSON & DICKERSON, P.A.  
P. O. Drawer 239  
Artesia, New Mexico 88210

Attorneys for Harvey E. Yates Company

EXHIBIT "A"

IN THE DISTRICT COURT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

'82 SEP 30 P4:19

JEAN WILLIAMS  
CLERK OF THE DISTRICT COURT

VIKING PETROLEUM, INC.,

Petitioner,

vs.

No. CV-82-77

OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO  
and HARVEY E. YATES COMPANY,

Respondents.

DECISION

Petitioner Viking Petroleum, Inc., has appealed an order of the Oil Conservation Commission which pooled certain mineral interests and designated Harvey E. Yates Company (HEYCO) the operator. HEYCO had submitted an application to pool all mineral interests through the Mississippian (later amended to the Ordovician) underlying the west half of Section 18, Township 9 South, Range 27 East, N.M.P.M., Chaves County, New Mexico. This application was consolidated with the application of Viking to pool the north half of Section 18 through the ABO. At the consolidated hearing, Viking advised the Commission that it withdrew its petition and that it was willing to participate in the HEYCO unitization "fully and completely in the test well down through the ABO formation." Viking further stated its position at the start of the hearing as follows: "Alternatively if the Commission does grant the unitization of the west one-half through and including the Mississippian as applied for by Yates, our position would be that we are ready, willing and able to participate fully in the costs as correlative right owner in all costs down through and including completion of the ABO formation." The Commission pooled the tract to the Ordovician, provided for a two hundred per cent risk factor, and did not provide for a split risk participation through the ABO only.

EXHIBIT "B"

Viking timely applied for a rehearing, the pertinent parts of which are as follows:

- "2. The order from which this application is made:
  - a. is not supported by substantial evidence concerning the prevention of waste and protection of correlative rights;
  - b. makes no findings as to the amount of recoverable gas or oil in the pools sought to be drilled;
  - c. makes no findings as to the amount of recoverable gas or oil in any pool;
  - d. makes no findings as to the risk or existence of economic waste involved in the application of Harvey E. Yates Company or the plan proposed by Viking Petroleum, Inc., and
  - e. makes no findings as to the unnecessary expense to Viking Petroleum, Inc., to recover its fair share of oil or gas, or both, or has its correlative rights are protected [sic].
3. The two hundred per cent charge for risk involved in the drilling of the well which is the subject to the Commission's Order is neither just nor fair in light of the unnecessary expense involved in the drilling of the subject well and does not allow non-consenting working interest owners an opportunity to recover their just share of oil and gas."

The first question to be answered is: Did Viking's application for rehearing preserve its right to object to the Commission's failure to provide for a split risk? It is undisputed that Viking's review in this Court is limited to those points raised by it in the application for rehearing. Respondents argue at length that this issue is beyond the scope of the application for rehearing. The application for rehearing must be considered in light of the positions taken by the applicant in the hearing itself. When the two are put together, it is clear that the relief requested in the application for a rehearing was that the Commission permit Viking to participate in the well through the ABO.

The second issue is: Can the Commission's Order be sustained? The Order is prima facie valid. Section 70-2-25, N.M.S.A. 1978. The petitioner, Viking, has the burden of proving the Order to be invalid. Id. This review is limited to the evidence presented to the Commission. State, ex rel, Transcontinental Bus Service, Inc. v. Carmody, 53 N.M. 367, 208 P.2d 1073 (1949). This Court



cannot modify the order. Transcontinental Bus System, Inc. v. State Corp. Commission, et al., 56 N.M. 158, 241 P.2d 829 (1952).

At the hearing before the Commission, HEYCO argued that the Commission did not have authority to provide for a split risk. The answer brief of the Commission indicates that a split risk provision has never previously been requested by an applicant or granted by the Commission.

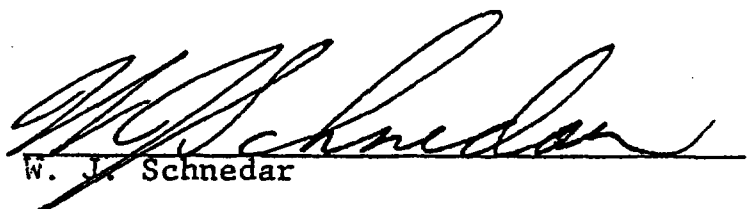
The only case cited by any party dealing with a split risk is C. F. Brown v. Corporation Commission, 609 P.2d 1268 (Okla 1980). This case does not discuss the legality of the split risk provision per se. Apparently the legality of a split risk provision is quite accepted in Oklahoma. On July 21, 1982 in Case No. 7499 the New Mexico Oil Conservation Division issued its first split risk order.

At the hearing Viking unequivocally told the Commission that it was willing to participate through the ABO. Their expert, Mr. Ettinger, testified that the San Andreas and ABO were good objectives. HEYCO's expert, Mr. Thompson, testified that an ABO well would not be an economical risk.

Viking was willing to put its money where its mouth was. The testimony of Mr. Thompson was not such substantial testimony as would sustain the Commission in denying Viking the opportunity to make its own mistake. As a matter of law, the Commission must permit an interest holder to participate to a lesser depth unless there is substantial evidence that such participation is clearly unreasonable and the Commission so finds. The validity of this proposition is demonstrated in a case where a mineral owner does not own the minerals at the depth of the proposed well. The correlative rights of the owner at each apparently feasible production depth must be considered by the Commission whether or not the ownership has been severed.

The order of the Commission shall be set aside on the grounds that it is not supported by substantial evidence, is arbitrary and capricious, and is contrary to law.

IT IS SO ORDERED.

  
W. J. Schnedar

DISTRICT COURT  
CHAVES COUNTY, N.M.  
FILED IN THE OFFICE

IN THE DISTRICT COURT OF CHAVES COUNTY

'82 OCT 26 A8:52

STATE OF NEW MEXICO

JEAN WILLIAMS  
CLERK OF THE DISTRICT COURT

VIKING PETROLEUM, INC., )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
OIL CONSERVATION COMMISSION )  
OF THE STATE OF NEW MEXICO )  
and HARVEY E. YATES COMPANY, )  
 )  
Respondents. )

No. CV-82-77

NOTICE OF APPEAL

NOTICE is hereby given that the respondent Harvey E. Yates Company appeals to the Supreme Court of the State of New Mexico from the decision of the District Court entered September 30, 1982..

LOSEE, CARSON & DICKERSON, P.A.

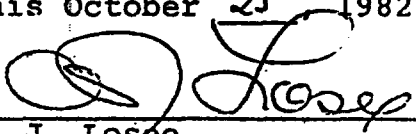
By:

  
A. J. Losee

P. O. Drawer 239  
Artesia, New Mexico 88210

Attorneys for Respondent  
Harvey E. Yates Company

THIS IS TO CERTIFY that a true and correct copy was mailed to Arthur J. Jaramillo, Attorney for Viking Petroleum, Inc., and W. Perry Pearce, Attorney for Oil Conservation Commission of New Mexico, this October 25, 1982.

  
A. J. Losee

Court Reporter, Katherine Brock  
Notified of Notice of appeal  
on Oct. 26, 1982 by Patti.  
(telephoned)

EXHIBIT "C"

DISTRICT COURT  
CHAVES COUNTY, N.M.  
FILED IN DISTRICT OFFICE

IN THE DISTRICT COURT OF CHAVES COUNTY

82 NOV -1 A8:24

STATE OF NEW MEXICO

JEAN WILLIS  
CLERK OF THE DISTRICT COURT

VIKING PETROLEUM, INC., )

Petitioner, )

vs. )

No. CV-82-77

OIL CONSERVATION COMMISSION )  
OF THE STATE OF NEW MEXICO )  
and HARVEY E. YATES COMPANY, )

Respondents. )

CERTIFICATE OF SATISFACTORY ARRANGEMENTS

This is to certify that Respondent-Appellant Harvey E. Yates Company has made satisfactory arrangements for the payment of the costs of the record proper--civil.

JEAN WILLIS  
CLERK OF THE DISTRICT COURT

By: Jean Willis

Deputy

EXHIBIT "D"

DISTRICT CLERK  
CHAVES COUNTY, N.M.  
FILED IN NY OFFICE

IN THE DISTRICT COURT OF CHAVES COUNTY NOV -1 AIO:15

STATE OF NEW MEXICO

JEAN WILSON  
CLERK OF THE DISTRICT COURT

VIKING PETROLEUM, INC., )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
OIL CONSERVATION COMMISSION )  
OF THE STATE OF NEW MEXICO )  
and HARVEY E. YATES COMPANY, )  
 )  
Respondents. )

No. CV-82-77

CERTIFICATE OF SATISFACTORY ARRANGEMENTS

This is to certify that Respondent-Appellant Harvey E. Yates Company has made satisfactory arrangements for the payment of the costs of the transcript of proceedings.

Katherine J. Brookbank  
Katherine Brookbank, C.S.R.  
Court Reporter

EXHIBIT "E"

IN THE SUPREME COURT OF THE  
STATE OF NEW MEXICO

VIKING PETROLEUM, INC.,                   )  
  )  
      Petitioner-Appellee,                )  
  )  
vs.   )  
  )  
OIL CONSERVATION COMMISSION            )  
OF THE STATE OF NEW MEXICO            )  
and HARVEY E. YATES COMPANY,          )  
  )  
      Respondents-Appellants.          )

No. \_\_\_\_\_

CERTIFICATION OF SKELETON TRANSCRIPT

I, Jean Willis, Clerk of the District Court of the Fifth Judicial District of the State of New Mexico, within and for the County of Chaves, do hereby certify that the foregoing copies of pleadings in this skeleton transcript, which bear the district court filing stamp, are true copies of documents which appear in the court's record of this cause No. CV-82-77, on the docket of said court, entitled:

"Viking Petroleum, Inc., Petitioner, vs.  
Oil Conservation Commission of New Mexico  
and Harvey E. Yates Company, Respondents."

I FURTHER CERTIFY that the cost of certification of this skeleton transcript is \$ 1.50 .

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said district court at my office in

EXHIBIT "F"

Roswell, Chaves County, New Mexico, this the 2<sup>nd</sup> day of  
November, 1982.

JEAN WILLIS  
CLERK OF THE DISTRICT COURT

By: Jean Willis  
Deputy

COSTS PAID BY: Losee, Carson & Dickerson, P.A.

FOR: Harvey E. Yates Company, Respondent-Appellant



STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION DIVISION

BRUCE KING  
GOVERNOR

October 29, 1982

POST OFFICE BOX 2088  
STATE LAND OFFICE BUILDING  
SANTA FE, NEW MEXICO 87501  
(505) 827-2434

Ms. Jean Willis  
District Court Clerk  
P. O. Box 1776  
Roswell, New Mexico 88201

Re: Viking Petroleum Inc. vs  
Oil Conservation Commission, et  
al.; Chaves County Cause  
No. CV-82-77

Dear Ms. Willis:

Enclosed please find an original and two copies  
of a Notice of Appeal in the above-referenced action.  
I would appreciate your filing the original and  
returning two conformed copies in the enclosed  
envelope.

Thank you for your help with this matter.

Very truly yours,

W. PERRY PEARCE  
General Counsel

WPP/dr

enc.

STATE OF NEW MEXICO

COUNTY OF CHAVES

IN THE DISTRICT COURT

VIKING PETROLEUM, INC.,

Petitioners

vs.

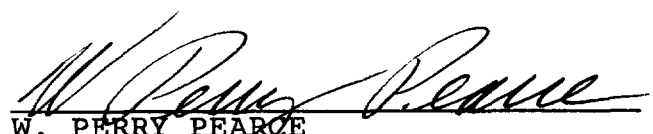
No. CV-82-77

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

Respondents.

NOTICE OF APPEAL

Notice is hereby given that the Respondent, Oil Conservation Commission of the State of New Mexico appeals to the Supreme Court from the decision of the district court filed September 30, 1982.

  
W. PERRY PEARCE  
Assistant Attorney General  
for the Oil Conservation  
Commission  
State of New Mexico  
P. O. Box 2088  
Santa Fe, New Mexico 87501

CERTIFICATE OF SERVICE

It is hereby certified that on the 29th day of October, 1982, a true copy of the foregoing Notice of Appeal was mailed to Thomas J. Hall, III, Esq., Attorney for Harvey E. Yates Company, Post Office Box 1933, Suite 300, Security National Bank Building, Roswell, New Mexico 88201 and to Arturo L. Jaramillo, Jones, Gallegos, Snead and Wertheim, P.A., 215 Lincoln Avenue, Santa Fe, New Mexico 87501 by first-class mail, postage paid.

  
W. PERRY PEARCE



IN THE DISTRICT COURT OF CHAVES COUNTY

STATE OF NEW MEXICO


|                              |   |              |
|------------------------------|---|--------------|
| VIKING PETROLEUM, INC.,      | ) |              |
|                              | ) |              |
| Petitioner,                  | ) |              |
|                              | ) |              |
| vs.                          | ) | No. CV-82-77 |
|                              | ) |              |
| OIL CONSERVATION COMMISSION  | ) |              |
| OF THE STATE OF NEW MEXICO   | ) |              |
| and HARVEY E. YATES COMPANY, | ) |              |
|                              | ) |              |
| Respondents.                 | ) |              |

APPELLANT'S REQUEST FOR THE  
RECORD PROPER

TO: Jean Willis  
Clerk of the District Court

Please prepare a complete record proper, pursuant to  
Rule 7E of the Rules of Appellate Procedure for Civil Cases,  
for appeal of this matter.

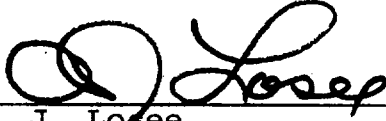
LOSEE, CARSON & DICKERSON, P.A.

By:   
A. J. Losee

P. O. Drawer 239  
Artesia, New Mexico 88210

Attorneys for Defendant  
Harvey E. Yates Company

THIS IS TO CERTIFY that a true and  
correct copy was mailed to Arthur J.  
Jaramillo, Attorney for Viking Petroleum,  
Inc., and W. Perry Pearce, Attorney for  
Oil Conservation Commission of New Mexico,  
this Oct 27, 1982.

  
\_\_\_\_\_  
A. J. Losee

IN THE DISTRICT COURT OF CHAVES COUNTY  
STATE OF NEW MEXICO

|                              |   |              |
|------------------------------|---|--------------|
| VIKING PETROLEUM, INC.,      | ) |              |
|                              | ) |              |
| Petitioner,                  | ) |              |
|                              | ) |              |
| vs.                          | ) | No. CV-82-77 |
|                              | ) |              |
| OIL CONSERVATION COMMISSION  | ) |              |
| OF THE STATE OF NEW MEXICO   | ) |              |
| and HARVEY E. YATES COMPANY, | ) |              |
|                              | ) |              |
| Respondents.                 | ) |              |

APPELLANT'S REQUEST FOR THE  
TRANSCRIPT OF PROCEEDINGS AND EXHIBITS

TO: Katherine Brookbank, CSR  
Court Reporter

Please prepare a ribbon copy and three legible copies  
of the complete transcript of proceedings, including  
exhibits, pursuant to Rule 7B of the Rules of Appellate  
Procedure for Civil Cases, for appeal of this matter.

LOSEE, CARSON & DICKERSON, P.A.


By:

  
A. J. Losee

P. O. Drawer 239  
Artesia, New Mexico 88210

Attorneys for Defendant  
Harvey E. Yates Company

THIS IS TO CERTIFY that a true and  
correct copy was mailed to Arthur J.  
Jaramillo, Attorney for Viking Petroleum,  
Inc., and W. Perry Pearce, Attorney for  
Oil Conservation Commission of New Mexico,  
this Oct 27, 1982.

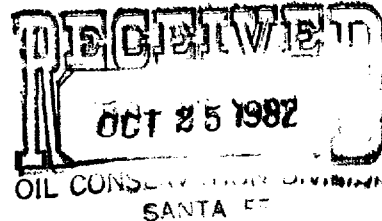
  
A. J. Losee

A. J. LOSEE  
JOEL M. CARSON  
CHAD DICKERSON  
DAVID R. VANDIVER  
ELIZABETH LOSEE

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

AREA CODE 505  
746-3508

25 October 1982



Ms. Jean Willis  
District Court Clerk  
P. O. Box 1776  
Roswell, New Mexico 88201

Re: Viking Petroleum, Inc. vs. Oil Conservation  
Commission and Harvey E. Yates Company, CV-82-77

Dear Ms. Willis:

Enclosed for filing in the captioned case, please find Notice of  
Appeal made by respondent Harvey E. Yates Company.

Very truly yours,

LOSEE, CARSON & DICKERSON, P.A.

A handwritten signature in cursive script, appearing to read "A. J. Losee".

A. J. Losee

AJL:jcb  
Enclosure

cc w/enclosure: Mr. Arthur J. Jaramillo  
Mr. W. Perry Pearce

IN THE DISTRICT COURT OF CHAVES COUNTY  
STATE OF NEW MEXICO

|                              |   |              |
|------------------------------|---|--------------|
| VIKING PETROLEUM, INC.,      | ) |              |
|                              | ) |              |
| Petitioner,                  | ) |              |
|                              | ) |              |
| vs.                          | ) | No. CV-82-77 |
|                              | ) |              |
| OIL CONSERVATION COMMISSION  | ) |              |
| OF THE STATE OF NEW MEXICO   | ) |              |
| and HARVEY E. YATES COMPANY, | ) |              |
|                              | ) |              |
| Respondents.                 | ) |              |

NOTICE OF APPEAL

NOTICE is hereby given that the respondent Harvey E. Yates Company appeals to the Supreme Court of the State of New Mexico from the decision of the District Court entered September 30, 1982.

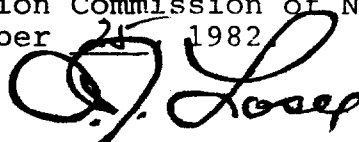
LOSEE, CARSON & DICKERSON, P.A.

By:   
A. J. Losee

P. O. Drawer 239  
Artesia, New Mexico 88210

Attorneys for Respondent  
Harvey E. Yates Company

THIS IS TO CERTIFY that a true and correct copy was mailed to Arthur J. Jaramillo, Attorney for Viking Petroleum, Inc., and W. Perry Pearce, Attorney for Oil Conservation Commission of New Mexico, this October 25, 1982.

  
A. J. Losee

IN THE DISTRICT COURT OF CHAVES COUNTY  
STATE OF NEW MEXICO

VIKING PETROLEUM, INC.,

Petitioner,

vs.

CV-82-77

OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO  
and HARVEY E. YATES COMPANY,

Respondents.

TRANSCRIPT  
OF  
PROCEEDINGS

APPEARANCES IN THE DISTRICT COURT:

For the Petitioner:

Arthur L. Jaramillo  
Jones, Gallegos, Snead & Wertheim  
P.O. Box 2228  
Santa Fe, New Mexico 87501

Chris Pennun  
Jack Raymer & Associates

For the Respondents:

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

W. Perry Pearce  
Assistant Attorney General  
P.O. Box 2088  
Santa Fe, New Mexico 87501

BE IT REMEMBERED, that this cause came on for hearing on the 26th day of April, 1982, at 1:30 P.M. before the Honorable William J. Schnedar, District Judge, at Chaves County, Roswell, New Mexico, the Plaintiff appearing in person and with his attorneys of record, and the Defendant appearing in person with his attorneys of record, whereupon the following proceedings were had, TO-WIT:

P R O C E E D I N G S

THE COURT: Let's see, could I be introduced to the parties?

MR. HALL: I am Joe Hall with Harvey E. Yates Company.

MR. PEARCE: Your Honor, I am Perry Pearce appearing on behalf of the Oil Conservation Commission.

MR. PENNUM: I am Chris Pennum, I work for Jack Raymer & Associates and for Viking Petroleum.

MR. JARAMILLO: I am Arthur Jaramillo, I am with Jones, Gallegos, Snead & Wertheim. Your Honor, this proceeding is a petition for judicial review of an order of the Oil Conservation Commission for New Mexico with respect to the Compulsory Pooling Order entered on January 7, 1982.



THE COURT: Is this just a temporary matter, just the request of the stay?

MR. JARAMILLO: Absolutely, we are asking for some very narrow releif, but to be able to explain it, I am going to have to point out to the Court what the principle issues are. I think I can do that briefly.

THE COURT: Go ahead.

MR. JARAMILLO: The motion before the Court is, as I pointed out, very narrow. We are asking for the stay or suspension of certain provisions of the Commission Order and it's being done solely, Your Honor, to prevent the contention later on for the future of waiver on the part of my client, Viking Petroleum, should we prevail in this case and the Court determine that the penalty that was imposed here, that we challenged, was improper. And, if I may get around to what the particular issue is and what we are really talking about here and what language we want to have stayed. The issue that was before the Commission was this: Harvey Yates Company moved to have the W/2 of Section 18 unitized from the surface down to the ordovician. Harvey Yates and family interests or close interest, at any event, own the lease, hold

interest to about 75 percent of this section. My client, Viking Petroleum, owns 80 acres or 24.6, as a correlative owner in this property. Your Honor, I point this out in the motion in this case, because I think it's extremely important in the Motion for Stay, which was filed the same day that the petition was filed. We allege that the petitioner, Viking Oil, was at all times ready, willing and able to participate in the drilling of this well to the extent of its interest in the well costs down there and including the completion of the Abo formation. And that that is admitted by Yates in this case and the Oil Conservation Commission in its Answer has stated that indeed such a representation was made by Viking to the Commission. Now, the issue before the Commission was whether or not there was any evidence put on by Yates to justify the additional risk of drilling below the Abo formation to the ordovician. There was expert testimony put on by Yates, there was expert testimony put on by Viking. Whether there was substantial evidence is a matter for the merits that I will address in a bit, and how I think that should be handled. But, let me just say for purposes of the instant motion, that there was a substantial dispute between the parties

as to whether or not it was a justifiable and reasonable risk to explore below the Abo formation.

THE COURT: Was there a consideration as to what the parties may have owned in adjoining property too, could that bear on the risk?

MR. JARAMILLO: It didn't bear at all, Your Honor, I believe the only evidence in consideration was Section 18 and what the parties owned in this particular interest.

THE COURT: Yates did have some land next to -- if they found it here, it would help them?

MR. JARAMILLO: There was evidence put on about exploration in adjacent properties, not necessarily owned by Yates, but both parties put on testimony that there were wells drilled here, that they were productive or not productive, and the Commission heard that and again, I am not here to argue the merits of that, but you do need to go through this to understand what we are asking for. What is important is that my client has always been willing to accept this risk and to join with Yates in drilling down to and completing the Abo formation.

Now, in the testimony before the Commission, a transcript, 29 and 30, Mr. Hall, who was an

employee of Yates, testified that any negotiations that were necessarily preliminary to this between Yates and Viking, they had prepared an estimate of the cost to drill through and complete to the Abo formation, which was \$371,000. That calculation was done because my client, Mr. Grynderg, for Viking, had continually pressed that, you know, let's work out an arrangement whereby we will participate down through the Abo formation and because of that nature of negotiations, Mr. Hall came up with this amount. The total cost, as was put into evidence to the Commission, from the surface to the ordovician is \$643,000, this was the authorization for expenditure that was presented to the Commission, the difference being \$272,000. And, of course we took the position that that additional amount of money, \$272,000, did not balance out against the unreasonable risk and the lack of evidence that there would be productive gas found below the base of the Abo formation.

Now, the Commission order did this, without any specific findings, there is no way to be able to reason how the Commission came to apply the penalty that it did. But it determined that this section would be force pooled that Yates would be

the operator, and there was no contest to that. And, that the area that would be pooled would be from the surface to the ordovician. The Commission further provided that within 15 days after Yates produced the authorization for expenditure or estimate of drilling and well costs, that my client had 15 days within which to tender his share, the 24 percent, or suffer a penalty that would be applied throughout the entire well. And, this was so, even though there was an acceptable risk from here down, this was acceptable to both parties and no real risk, because my client was ready and still is able to tender the actual -- his share of the prorated cost from the surface down to the Abo formation.

Now, what does this all mean to Viking and the posture of this case on appeal? My client's percentage share of the costs in drilling this well from the surface to the Abo and in using Yates figure of \$371,000, which we think is high, we have some testimony to put on to that, about five minutes worth of testimony, but using that figure, our funds, our share of these costs would be about \$91,000, and, this is the amount of money that we are going to be talking about in determining the relief we are seeking. The difference in cost between the Abo

formation and the ordovician is almost \$272,00.. Now, by virtue of the 200 percent penalty being applied, not only when there was a genuine dispute as to risk, but from the surface all the way down, the penalty will cost my client, just between the surface and at the Abo formation, \$182,000 in penalty, which I submit, and we will argue this on the merits of the case, is per se, unreasonable where there is no risk being taken because we were always ready to pay this amount of the drilling costs, the \$91,000, that was attributable to our share of the 200 percent penalty as it applies from the Abo to the ordivician. The \$6,000, what amounts to 300 percent, because you recover your costs and 200 percent penalty adds \$200,000 to it, and makes that about \$130,000 or \$140,000 in penalties here.

Now, the position that we are taking in this matter on the merits, which again is not before the Court today, is that at the least, the risk factor that was imposed by the Commission from the surface down to the Abo is \$182,623, the cost is arbitrary and capricious, because there was no real risk because the costs were confronted by all the working owners, including Viking, who had always been ready to tender that money. Since the Commission can't

consider the risk factor separating between the Abo and ordovician, if this Court does reverse the action of the Commission, it would require a remand to the Commission to determine whether there should be any penalty imposed between the -- beneath the Abo formation, and if so, how much. And, since this Court has no longer any jurisdiction to modify the orders of the Commission, it can only vacate and affirm or remand. What we would be looking at is a vacation of that part of the order that deals with the risk penalty between the surface and Abo and remand for consideration of the narrow question of whether there should be a risk factor from the Abo to the ordovician. And, if so, how much.

THE COURT: Has the well been drilled?

MR. JARAMILLO: I believe it has been drilled and they are either starting production or they are doing final testing, that's the latest about it.

THE COURT: Was there any tender made of this portion for the Abo formation?

MR. JARAMILLO: The tender was made by me to the Commission the very day of the hearing from which this appeal was derived, we have always been ready, willing and able to tender that \$91,000, and that's really what we are talking about today. Your

Honor, if we prevail in this case we do not want to be in a position, let's say, 60 days from now, when this Court has decided the merits of Yates or the Commission can say, "Well, you didn't tender the money within 15 days according to the order." Well, the order doesn't say that we can tender from the surface down to the Abo formation, that's what we are in this Court fighting about. We think that that's an appropriate amount for us to pay in this venture with no risk penalty being involved or attached to that. So, what we are asking the Court for today in terms of the stay or suspension of the Court's order, I think can best be described by tendering to the Court, and I have provided Counsel with a copy of this this morning, a proposed Interlocutory Order which we would submit to the Court for entry today, and if I can go through this with the Court, I think our position can be made clear on the very nature of the relief that we are seeking.

First of all, with the recitals of the hearing today, it settles for three provisions of the Commission's orders that are effected by this motion. The first one is that within 15 days from the date that they submitted the estimated well costs, we



are required to either pay our share of the estimated well costs or our share would be taken pursuant to the statutes with the risk penalty involved from production. All right. The portion of the order provides that in that event, Yates would be authorized to retain the prorated share of Viking's well costs attributable to our 24.6 percent interest if these weren't paid within 30 days. And, as a charge for risk factor, it would be 200 percent on the cost of the entire well. Now, what we are asking the Court to suspend in the terms of the operation of this language is very narrow, insofar as these quoted provisions either require or required the payment by us of our estimated well cost within 15 days after the A.F.E. was tendered to us that that portion is suspended pending the ultimate disposition of this cause. In other words, it's only an Interlocutory Order. Beyond that, the Petitioner, Viking, would be required to deliver to the Clerk of the Court within whatever days the Court decides after the entry of this order, a letter of credit drawn on Viking's bank account and made payable to the Clerk of the Court in an amount which the Court will set. It will either be \$371,000 or from the evidence that

we will present to you on drilling.

THE COURT: Well, it would be the 91,000.

MR. JARAMILLO: I am sorry, the 91,000, an amount of about 90,000 and we get that information from the recent drilling of an Abo well in the section right south by the same drilling contractor, completed in February and completing the Abo formation, which we think is more reliable than this estimate. I believe I am accurate in stating that, Mr. Hall can verify that. The record reflects that this \$371,000 was done on a Saturday morning, kind of as an offshoot of some last minute negotiation, so it might not be as close, but it doesn't matter, because by the time that this Court reaches its ultimate disposition in the case, we should have hard evidence on what the actual cost would be. And, if we cannot work that out with Yates, as to what the precise amount should be, we can certainly present evidence to the Court to rule on that. The order recites that these funds are to be paid payable to such parties only as directed by order of the Court as set forth farther down in this order. All right. Paragraph 3 states that the funds that are deposited in the registry of the Court, in the manner described above, constitute

the estimated prorata well drilling costs of Petitioner, Viking Petroleum, from the surface through completion of the Abo formation in the subject well. In the event that Petitioner, Viking, prevails in its position in this cause, and getting back to that, this penalty should not have been imposed, that it was arbitrary and capricious. Then, in that event, those funds, or such other amounts as shall be later determined by the Court to be the actual prorata well drilling costs of Petitioner in the subject well, shall be paid upon final order of the Court to Respondent, Harvey Yates in full satisfaction of Petitioner's obligations under the above quoted provisions of the order.

In the event that we do not prevail in this case and that order R-6873 is ultimately affirmed by this Court, and all material respects by this Court, the amount paid into the registry of the Court will be returned to Viking and Viking will be deemed to have elected to pay its prorata share of reasonable well costs out of its share of production, including the entire 200 percent penalty on the whole well. That would mean that if we lose this case, Yates is in no worse position than it is today.

If we win, then they do not have the argument that we did not tender our fair share of the drilling costs.

THE COURT: Well, the only problem is they don't have the benefit of the tender, it's sitting in this Court drawing no interest or a very small amount of interest.

MR. JARAMILLO: That I think is the purpose for the letter of intent, without having to have the Court invest these funds, they are being invested by the bank. And if the Court determines that this amount should be held in an interest bearing account, then so be it. Those funds could draw the interest and the Court can distribute them as it thinks is fair. And, just with respect to this, let me advise the Court that by statute this Court is to invoke its equity jurisdiction in this proceeding. The statute makes express reference to that and I think that's broad enough to be able to handle this kind of situation, about how should it gain interest, if any, how it should be distributed, depending on how the Court rules on the merits of the case. I think there is broad discretion and we entrust that to the discretion of the Court on how that should be handled.

Now, the question of the narrow suspension of the language, I think, is important. We are not asking this Court to halt operation of this order insofar as Yates is going to start collecting its 200 percent penalty. But I think it's clear by the very fact that we are here before Your Honor, that this order is being appealed. And, should we prevail and should Yates have extracted more, that would be important in the order as modified by this Court, or however the situation stands at the end of this proceeding, then of course we would be entitled to an accounting to be sure that no amount that would be violative of the Court's order, once this matter is completed, would have been taken out without a full accounting being made to all parties on this matter. So we are not asking the Court to delay --

THE COURT: You are not going to stop the money going to Yates?

MR. JARAMILLO: That's correct. This order comes before the Court with the presumption of validity. If we are to prevail in this case it's because we have met our burden of persuading the Court that it was entered in an illegally and erroneous manner, it was arbitrary contrary to the

law. When we have made that showing, which I believe we will in this case, then of course the order is modified by the Court. We will stand and to the extent that they have taken more out of production than they would have been entitled to, we would ask, of course, for an accounting on that matter, but we don't seek any injunction or preliminary relief in that regard.

THE COURT: One other question, has the 15 days already run that you are asking me to stay at this time?

MR. JARAMILLO: It has, and, let me explain our position in that regard, because you have to follow the sequence of how you get an appeal from the O.C.C. before the Court and including this motion. The order of the Oil Conservation Commission was entered on January 7. By statute you are required to file an application for rehearing within 20 days. On January 27, within the 20 days, we filed an application, it's appended to our petition. The statute further provides that if that petition is not acted on within 10 days, it is deemed denied. Those 10 days passed without any action by the Commission, it was deemed denied. The statute for judicial review provides that within 20

days after the denial of the application for rehearing, you must file in this Court a petition for review. Within 15 days after that 10 day deadline, we filed in this Court, I believe it was February 22, and appended to our order filed simultaneously with our petition for review was this motion to stay the suspension of the order. In other words, we have not been before the Court, could not be before the Court in a more timely fashion to act in this regard, and I think I need to refer the Court to the statute that authorizes the Court to issue a stay in a proceeding such as this. It's Section 70-2-25(c), which reads, it's brief: The pendency of proceedings to review shall not of itself stay or suspend operation of the order or decision being reviewed, but during the pendency of such proceedings, the District Court in its discretion may, upon its own motion or upon proper application of any party thereto, stay or suspend, in whole or in part, operation of said order or decision pending review thereof, on such terms as the Court deems just and proper and in accordance with the practice of courts exercising equity jurisdiction.

Now, all that we are saying, Your Honor, that's

the day we filed this petition for review, we filed this Motion to Stay and it's clear under the order that we could not have just tendered to Yates, and it would not have been accepted, the \$91,000, because the order said you tender the full \$158,000 from the surface down to the ordovician. We had made our position clear to the Commission that we were not to do that, we would not do that, but that we would indeed tender the \$91,000, that was tendered that day. The Commission -- and, that's always been our position, and it's not disputed in this case. And, again, foreseeing that someone would raise that very argument that the Court has brought up, we wanted this matter submitted to the Court simultaneously with the filing of our Motion for Relief, because it's the earliest we could have gotten in the matter to the Court. And that's the situation on it. Even though the order recites 15 days, I believe the Court has got to read the statute in the same light as that 15 day requirement sets forth in the Commission's order and apply equity jurisdiction, otherwise you have put Viking in a catch 22. They would be required to pay the entire amount even though they have a right to appeal the legal validity of that



portion of the Commission's order, and I don't think that's proper or -- and, again, there is no damage, there is no threat or loss to Viking, they are in no worse position than they would be if we were nonconsenting on the whole well, that's really the thrust of this. To do equity, you have got to do equity and we want to tender those funds, if we win this appeal, then our cost obligation is satisfied. If we don't win this appeal, then we are not consenting on the whole well, Yates is no worse off and that tender would be returned, that's the thrust of the motion before the Court.

Now, there is one matter that does require some testimony and that is how much this tender should be. As I said, the \$91,000 comes from the \$371 that was estimated. I would ask, perhaps, that it would be more appropriate for me to wait until opposing Counsel have had their say, but we do have some testimony to put on about the actual cost recently incurred by the same rig, the same drilling operator and a well in the adjacent tract, which will show to be about \$50,000 less, which would reduce this to about \$71,000 or so. But, I will defer that testimony and have Mr. Hall and Mr. Pearce respond. Thank you.

MR. PEARCE: May it please the Court. I am Perry Pearce, appearing in this matter on behalf of the New Mexico Oil Conservation Commission. I arise to oppose the Motion for Stay on two bases, the first basis is that this Court is, by the statute, which has been previously referred to, referred to equity matters to determine its proper course of decision. I submit to the Court that the primary element of equity jurisdiction is the lack of an adequate remedy at law. Clearly we are talking about money in this case and the Oil Conservation Commission is in an unusual position, because disputes about money are disputed between operators and interest holders. They are not disputes involving the Commission, and, in a sense, we are on the fringes of this matter. But, be that as it may, we are talking about money. The law in New Mexico, the case law says that the ability to pay a disputed sum and so for recovery of that sum is an adequate remedy at law and does not entitle one to the exercise of equity jurisdiction. And, for this matter, I specifically refer the Court to the case of General Telephone Company of the Southwest versus State Tax Commission. It states, if I may --

THE COURT: What is the citation?

MR. PEARCE: The citation is 69 N.M.  
403 or 367 P.2d 711.

THE COURT: All right.

MR. PEARCE: At Page 408. The general equity jurisdiction of the trial court is not available, although properly pleaded, because the appellee, in fact had an adequate remedy at law by paying the tax under protest and filing suit for refund in the three counties involved, to-wit: Eddy, Lea and Curry. We do not believe that there is a sufficient multiplicity of suits to warrant equity in assuming jurisdiction. Equity will not take jurisdiction when an adequate legal remedy exists, and I omitted the citation in that case.

THE COURT: Well, if he wishes to preserve his point by being willing to go down to the Abo, he should have been allowed to participate by paying the money. If the Court doesn't take equity jurisdiction and stay a portion of the order, does he lose his right to that particular contention?

MR. PEARCE: I think he does at this point, Your Honor. The Oil Conservation Commission entered an order pooling all formations down through

the ordovician. In that order it stated that any party who had not yet consented to participate in that complete well could tender -- could say that he was willing to participate and could participate in that full well, and if he did not he would be subject to a 200 percent risk charge. Mr. Jaramillo, in his argument, said several times that tender had been made to the Commission. I don't get his money, Your Honor.

THE COURT: I understand.

MR. PEARCE: A tender to me is no tender, I don't think, and I will leave that to the other parties in this dispute as to whether or not a tender was made to them, but whether it was or not, a partial tender is not what is required by the order. I submit that Viking Petroleum had an adequate remedy at law by tendering the full amount so as to avoid the penalty and then changing that through its appellate procedure. It could have simply paid that full amount of money under protest, it chose not to do that, Your Honor.

THE COURT: It was available, he could have paid it under protest?

MR. PEARCE: I think he certainly could have, Your Honor. And, I don't think there is anything

in the statute that provides for that.

THE COURT: Well, sometimes when you pay it that makes it moot.

MR. PEARCE: I think if he had submitted that payment properly, it could have been accepted and he would not have lost his right of appeal in this matter, Your Honor. I don't believe that is a concern.

THE COURT: That's really the only thing the Court is being asked to do here, is to sort of try to preserve a right to appeal, is that correct?

MR. PEARCE: No, sir, in my opinion the Court is being asked to reinstate a right which has been lost through delay.

THE COURT: All right.

MR. PEARCE: That's what I believe is going on here, Your Honor.

THE COURT: Can the Court do that?

MR. PEARCE: No, Your Honor.

THE COURT: Even if the Court were to say it would do that, does that have any effect?

MR. PEARCE: If I may proceed to my second point, which I think deals with this matter, and that's what I believe this motion is attempting to do by indirection. Petitioner in this matter is

not allowed to do this directly, he is in practicality asking this Court to substitute its judgment, at least temporarily, for the judgment of the New Mexico Oil Conservation Commission. The Commission found, which Petitioner believes is improper, that this well should not be pooled below the Abo, the Commission listened to that argument. The Commission decided that that was incorrect and that is evidenced by the order that was entered. Now, Petitioner proceeds before Your Honor asking you to stay a portion of our order. The effect of staying a portion of the order is putting a different order in affect, I do not believe that New Mexico law allows that remedy to the Petitioner in this matter.

THE COURT: Now, Mr. Pearce, that gives me quite a bit of trouble. Assume you have a very shallow formation with a very certain -- a high certainty of production and below that you have a very deep formation with a very large risk factor. Are you saying that the Commission can put it beyond the ability of the interest holder to in effect say, "Yes, go, we are willing to go this shallow route, but we are not willing to go all the way." And, they have no alternative other

than to pay the full amount.

MR. PEARCE: I believe, that's what happened in this case, Your Honor. I do not address whether or not the Commission has the power to do what you suggest. What I do say is that in this case the Commission did not enter the order which did that, which is the order which Petitioner sought before us. Now, that question, I submit to you, is the merits of the dispute.

THE COURT: What protection would the interest holder have for a trial hole, the interest holder who does or does not participate? Well, I am going to introduce a hypothetical, suppose the Commission makes an arbitrary act, which sometimes they do --

MR. PEARCE: Certainly not my Commission, Your Honor.

THE COURT: And, in effect, can they say you either go on this deep hole or you can't participate down and the interest holder would be forced to put up a large amount of money, perhaps even greater than the value of the well to the shallow formation or else have to pay the penalty. In effect can the well at the shallow formation may be used up completely to drill down to the deep formation and I can't see that the Conservation Commission would

have the right to in effect prevent an appeal by the interest holder. And, if we assume further that the person that was drilling this is not -- may not be worth the money, at that point the interest holder who was willing to drill only to the shallow surface either goes in with a deep well or loses his money. In other words, he might be paying it to drill this deep well if it's a trial hole and the Conservation Commission is determined to act on it erroneously. He can't get his money back and I can't see that the Conservation Commission should be permitted to have that much power or rather the Oil Conservation Commission.

MR. PEARCE: Well, Your Honor, our statute requires that if various interest holders that make up an appropriate size proration unit are unable to agree to drill a well together, it says that the Oil Conservation Commission shall not pay, shall compulsorily pool those lands. The New Mexico Oil Conservation Commission is also instructed to act to prevent waste of New Mexico resources. I believe that when we arrive at the merits in this matter, the record will show that there was presented to the New Mexico Oil Conservation Commission information which indicated some likelihood, some probability



of production from the formation deeper than the Abo. To fail to pool those lands under the New Mexico Oil and Gas Act, specifically the Compulsory Pooling Section, I believe would be an abuse of the Commission's responsibilities.

Now, the Petitioner in this case, and your hypothetical of going to a deeper formation and having a dry hole in a deeper formation and a shallower formation gives out before costs are paid might occur, Your Honor. But, the reverse side of that is that if a party participates to the shallower formation and does not participate to the deeper formation, he will, after the recovery of some penalty, participate in that deep production. The New Mexico Oil Conservation Commission was presented with evidence that one party, a substantial interest holder in this property, was willing to spend his money to go deeper. Now, that was not a bogus offer, that was not an offer to try to lure someone else in to help pay for the cost of this deeper well. He was an operator that genuinely believed that he would get production on a lower formation.

Now, to grant the request of this stay is, I think, a substitution of this Court's judgment for the Commission. This Court, when the merits of this

case are before you, you will receive briefs, possibly hearing argument on whether or not the Commission acted properly.

THE COURT: All right. Let me ask you one more question.

MR. PEARCE: Yes?

THE COURT: Is it a big deal to allocate the cost down there, it seems like it would be very feasible to say that, you know, the cost to the Abo formation is X dollars and the cost below that is another X amount of dollars. And it seems very simple to say that you can participate down to the formation you want to and if somebody else wanted to go further, we will look at that separately. Engineering-wise, is that a problem?

MR. PEARCE: Number one, I understand that, I do not know. But, I understand that that can be quite a complicated accounting procedure, that the costs of the hole down to the Abo are greater because you are going deeper than if you were just going to the Abo, so there is that accounting to be sorted out. In addition, I am not aware of any order that has been entered by the New Mexico Oil Conservation Commission splitting a risk depending upon the horizon to which a well was drilled.

THE COURT: What do you do when you have horizons split, in other words, somebody owns down to the Abo and the deep rights are owned by a third party?

MR. PEARCE: Well, are they going to the deeper formation?

THE COURT: Well, I assume they are.

MR. PEARCE: If we assume they are, Your Honor, then that well would be pooled all the way down through the deeper formation and the parties would be required to participate to the extent of whatever interest they own.

THE COURT: And, now, if you only own down to the Abo, you couldn't tender your Abo money?

MR. PEARCE: I think you probably could, although to my knowledge, I have never seen that question come up before the Commission. That's not -- I think when we get to the merits of that case the situation we have here -- in fact, the Petitioner who was before you in this matter does own deeper rights and was presented with an order pooling the whole well and chose not to participate and did not agree to participate within the time limit set forth in the order. And now he comes before you asking you to, in effect, and in a real

substantive way, change over or substitute your judgment for ours, substitute a judgment that says, 15 days or 30 days is not long enough, you should have 180 days. Well, that is a substitution of this Court's judgment for the judgment of the New Mexico Oil Conservation Commission and I would refer the Court, if I may, once again, to one more case. And, that case is Continental Oil Company vs. The Oil Conservation Commission. And, the citation is 70 N.M. 310. Specifically at page 325 and 326. In that case the trial court allowed additional evidence on review of an Oil Conservation Commission rehearing petition. The Supreme Court found that allowing that additional evidence was not a proper matter, which I will return to. It says, and I quote from page 326:

The admission of testimony, relating to the conditions subsequent to the issuance of the order, has the net effect of negating or minimizing the factual situation as it existed before the commission. Thus, instead of judicially passing upon the action of the commission, the court also considering facts which did not even exist at the time of the original hearing. In doing so, the court must of necessity substitute its judgment on the merits for that of the commission, and this is not within its province.

I submit, Your Honor, that no harm has been shown to Petitioner from leaving this order in effect exactly as is. That to grant the Motion for Stay or the suggested order before you, in all practicality, constitutes the judgment of a court of review for the trier of fact, and in this case, it would be the

Oil Conservation Commission, I submit, that is improper.

THE COURT: I have one more question. What is the state of the law on this particular question going to different horizons?

MR. PEARCE: I think in New Mexico there isn't any, Your Honor.

THE COURT: What about other States?

MR. PEARCE: I do not know, sir.

THE COURT: Okay. It gives me some problem.

MR. PEARCE: Yes, I recognize the problem. I would simply encourage the Court to view the problem as a problem of the merits, not a problem for stay of an order. There is no harm to anybody from this order staying in effect whatever has or has not been done, it has long since passed, there is no threat of loss of finances if this motion is denied. I suspect that if Petitioner thought his money was in jeopardy it would have indicated so to you. I do not believe that any or either of the --

THE COURT: He is not asking for that.

MR. PEARCE: If I may, Your Honor, he wants to get out from paying a penalty, which he didn't pay sums to avoid by the date set forth in the order, that's what he wants to do. And, I submit

that that is a substitution of a provision of the order, that's not proper.

THE COURT: All right. Thank you.

(Argument given by Mr. Joe Hall.) \*\*\*

THE COURT: Well, what I think he is saying is that the Commission effectively has denied him a right of appeal by the way this order came out.

MR. HALL: Well, I would just respond to that in the same way that Mr. Pearce did, the Petitioner was not in any way kept from tendering his money to the operator. The order stated, rather than to the Commission, that within 15 days from the date of the schedule of the estimated well costs is furnished to him any nonconsenting 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 the reasonable well costs out of production.

THE COURT: Well, but what if he pays it and you get a dry hole, has he thrown \$70,000 into the dry hole whether he likes it or not?

MR. HALL: Well, I think if he had paid it --

THE COURT: Is there any provision for payment under protest?

MR. HALL: Not to my knowledge, Your Honor,

(\*\*\* conclusion of argument by Mr. Joe Hall.)

MR. HALL: May it please the Court, I am Joe Hall, representing Harvey E. Yates Company, respondent. I hope not to be redundant, Your Honor, and my preparation for this case primarily concerned the motion for stay or suspension that was tendered to the Court, which has been modified a great deal in petitioner's testimony before you today. But, I still think that some of my comments would have merit and I would briefly like to give you some of those.

In petitioner's motion, as he says, predicates on Section 70-2-25, which says the District Court, in its discretion, may stay or suspend in whole or in part the order pending review thereof on such terms as the Court deems just and proper, and in accordance with the practice of the Court's exercising equity jurisdiction.

Now, the key passage in this phrase is, in accordance with the practice of the Court's exercising equity jurisdiction. Now, this phrase sets out the parameters within which the Court is supposed to exercise its discretion.

Over the years, equity has built up a great number of guide lines to help the Court in exercising their jurisdiction, and one of these is that equity regard substances and intent over form. I would like to look at this statute, 70-2-25, which is the purpose and intent behind

this statute. I think it's clearly to protect the petitioner from irreparable harm while his appeal is being considered by the courts. And, this purpose fits in nicely with the primary grounds of equity jurisdiction, which is, equity will not serve a wrong without providing a remedy. Now, if the petitioner will suffer an irreparable harm while he is waiting for his appeal to be considered and decided, equity can and should step in -- but the key here is irreparable harm or injury. Without the harm there is no reason for equity to act. And, in his motion that is filed with the Court, petitioner has not alleged how he would be harmed whatsoever. In fact --

THE COURT: Except if he loses a right of appeal.

MR. HALL: Yes, that was in his prepared remarks this morning, which do not necessarily coincide with what he presented to the Court. In part of his motion he states no security should be required for the issuance of this order, as no party shall suffer loss or damage due to the stay or suspension, if, in the event the action of the commission was affirmed since petitioner is not required to pay any money at the time by such order, and I don't think that particular point has changed any, Your Honor.

In the presentation that Mr. Jaramillo made this morning, about the difference in costs in rigs, about going to the Abo formation and going on down to the Ordovician, he



still has not submitted how they would have any monetary loss to Viking Petroleum if the Court does not stay the whole order.

What he is asking the Court to do, which I will get into in a minute, my point is that he is asking the Court to modify the Commission's order. And, I would submit, the Court, at this point, does not have the ability to do under the New Mexico Statute.

So I would state, as to my first point, which parallels with what Mr. Pearce has presented to the Court, that petitioner has not suffered any harm which would require the Court to exercise its discretion.

In his motion and in his presentation this morning, petitioner has primarily attacked provisions of the order itself, and the action of the Commission in deciding and issuing that order. I would submit that this is nothing more than an improper collateral attack upon the Commission's order. And, the petitioner is trying to do at this hearing what he could not do at a hearing on the merits of his petition itself, and that is to introduce additional evidence before the Court and ask the Court to modify the order in this case.

I would explain my position to the Court by pointing out in 1979, Section 70-2-25(b) was amended, and that amendment deleted language which had theretofore both

permitted the Court to hear additional evidence and permitted the Court to modify the order of the Commission. I would submit that that amendment was a clear indication that the Legislature wished to remove from proceedings under Section 70-2-25, one, the ability of parties to introduce additional evidence. As Mr. Pearce mentioned in his citation, that the ability of parties to introduce evidence as to what had happened subsequent to the point at which the Commission received its evidence and upon which the Commission made its judgment, they don't want the Court to come and second guess on hindsight what the Commission did at the time they made their determination. And, secondly, as a corollary, they don't want the Court to be about to modify the Commission's order, step into the administrative area, and modify an administrative body's decision.

So I think the crux of petitioner's whole position is that he is questioning the wisdom of the Commission and that this is not the place to address that question, that the question must be decided upon the hearing, if there is one, by the petitioner for review.

but the fact that there isn't any provision for paying under protest certainly doesn't keep the Petitioner from attempting that, from making an effort to, if he wants to after the facts, come back in and avail himself of the protection of the order in case the court does not vacate the Commission's order. He should do that, he should take the initiative of protecting himself.

THE COURT: But, assuming that the court doesn't vacate it?

MR. HALL: Well, sir, if the court does not --

THE COURT: We don't have any problem, but if the court vacates it, how would he get his \$70,000 back?

MR. HALL: Well, sir, I would submit that the court can only affirm or vacate the order. They cannot modify it in any way. If they vacate the order, it would be thrown back on the Commission to make a determination as to what would happen. I think that if the Court concurs in the Petitioner's request of staying this petition or this motion as just down to the Abo and then remand it to the Commission with like an order or a mandate to determine what is the risk factor going to be below the Abo and allow Petitioner to participate to the

base of the Abo, the court is in effect modifying the Commission's order. I think that the court is only able to stay the Commission's order or the Commission has abused its discretion and it was capricious and arbitrary or not supported by substantial evidence, but the order is vacated, and everyone goes back to the Commission to proceed.

THE COURT: All right. Have you examined the law on this particular issue?

MR. HALL: As to the horizons, no, sir, I haven't, either. Because, my position, again, is the same as Mr. Pearce's, that it is within the authority and jurisdiction of the Oil Conservation Commission, if in this judgment they feel it's in the best interest of the State and the conservation of oil and prevention of waste and prevention of correlative rights that we will just pool everything all the way down the well. That's what they are there for, that's what they have received their instructions from the legislature to do and if that's the way they feel it is best, to stay this, it is their task, then we need to comply with their discretion. And, they are the experts in this and I haven't seen fit to see if there is anything wrong with it.

THE COURT: Well, as a practical matter, putting the money in court doesn't do you any good in court.

MR. HALL: Not particularly, Your Honor, and, how is the Petitioner going to benefit by that, he hasn't had to put out any money thus far. The people who are participating in the well have everything at risk, they are the ones who are paying, not for only their share, but for Petitioner's share in the well. And if at such time the well is producing, and it hasn't been completed as of yet, Your Honor, then whether the Petitioner participates in the well or is force pooled under this particular order, the parties who have already put up the money would be entitled to recoup their share, plus Petitioner's share out of any money recovered from the well. Before we had even talked about a 200 risk penalty being involved, again, I am talking about one bore and no lower Sand Anders preferation split in the well bore, but, again -- have I answered your question sufficiently?

THE COURT: You have. It seems to me if the Court was going to do anything, it would have to say that in effect Viking could pay it to you

without prejudice and put up that front money forthwith rather than paying it in court to me. Putting it in court doesn't do anything.

MR. HALL: It doesn't help anybody, Your Honor, but, remember that the Petitioner is just agreeing or just offering to pay to the base of the Abo.

THE COURT: I understand.

MR. HALL: They are not agreeing to pay this portion in it, share in the whole well bore, so they are in effect asking for a whole new order, which we would maintain is not within the power of this Court to grant at this time. At least under the statute of New Mexico as they are now set out.

THE COURT: Also I made it a condition of staying that particular portion of that order.

MR. HALL: I am sorry, I don't understand.

THE COURT: That the order would be stayed unless Viking would pay to you and you would accept without prejudice the \$91,000, in effect, that would be trying to write in a possible appeal.

MR. HALL: Yes, Your Honor.

THE COURT: And, at the same time, perhaps preventing the matter from going any further than

where one or the other party would be out more than if -- in other words, if it were determined that the horizon, it should have been limited to the Abo horizon, this would in effect put the parties pretty much in the proper place, had it been ordered or issued that way in the first place. Otherwise the farther you go, the harder it is to put them back in the right position. If the order had been that way and that would have been the right order and that puts a lot of ifs in there.

MR. HALL: I also might point out if you do issue an order that Harvey Yates Company accepts the money down to the Abo or the order will be stayed, the real effect of the stay of the order will be nil, unless this is such a protracted appeal that all the parties, all the participating parties at present have recovered all their costs by the time or while the appeal is still running. And then we get to the 200 percent risk part, that's the primary part of the order that allows the Respondent to collect any money.

THE COURT: Have you gotten through the Abo yet?

MR. HALL: We are all the way to the ordovician and they are attempting to complete

different horizons and I am -- I do not know, Your Honor, exactly what the status of it is right now. I know they were testing down in the lowest area in the fusselman, which is in the ordovician, which is the lowest level.

THE COURT: Am I correct in assuming that the Abo well is a good well then?

MR. HALL: Your Honor, and, again, this is evidence that was not put on before the Commission and if Petitioner was trying to put on it, I would have to object, but as I recall, and probably the Petitioner here knows as much about the tests as I, as I recall, there was a test in the Abo and in the Sand Anders and in the fusselman, and they are all showed fairly good tests. I am not that conversant with logs and tests on wells. But I understand that they did have some promise, at least three of those areas.

THE COURT: Well, if you hit it down in the bottom, it's almost a moot question anyway, isn't it?

MR. HALL: Well, it would be moot, except to Petitioner. If Petitioner is not consented on this well under the order, he would eventually receive money from that which we wouldn't have had we just



gone to the Abo. He would receive it after everyone received their money back plus 200 percent of that that the participants have been granted by the Oil Conservation Commission for taking the risk of going all the way down and the Commission said we are not going to muddy the water by just going to the ABO. If somebody wants to take the risk, they have to go for the whole shot and not just limit it. So, in conclusion, I would submit to the Court that the purpose behind Section 70-2-25 was to protect the party from irreparable harm he might suffer during the review of his appeal. And, if Petitioner has not alleged that he has suffered any harm while waiting for the appeal, that the only harm he claimed results from the order itself and the order he is asking the Court to modify and since the Court is not permitted to modify the order, and the Petitioner has not and will not suffer any monetary damage while the order is -- while the order is being appealed, then the Court should deny the Petitioner's Motion for Stay or suspension.

THE COURT: All right. Maybe you can answer this one question I keep asking, have you done any research on this horizon matter?

MR. JARAMILLO: We had done some preliminary research on the basis for our appeal on the merits and, of course, while we intend to have some more work done, I can refer the Court to an Oklahoma decision. It's Brown vs. Corporation Commission of the State of Oklahoma, 609 P.2d, 1268. It's the Supreme Court of Oklahoma case, 1980. The essential holding of that case is indeed that in this statute that is similar to the New Mexico statute, that the Commission has authority to pool certain pools or reservoirs and treat them separately from pools or reservoirs that may be deeper. And, can compulsorily pool first or nonconsenting owners to go down to a certain pool and have him elect whether he wishes to go nonconsent for the rest. And, Your Honor, the statute that we are dealing with, as far as this Commission is concerned, is extremely broad, there is one provision that I think -- it's almost the first one that you run into in the statutes, and that regulates the oil conservation. Section 70-2-11 talks about the power of the Commission. Very briefly, it says that the division is hereby empowered and it is its duty to prevent waste prohibited by this act and to protect correlative

rights as in this act provided. And, the division is empowered to make and enforce rules, regulations and orders and to do whatever may be reasonably necessary to carry out the purposes of this act, whether or not indicated or specified in any sections hereof. Now, that statutory language going to the power of the division, of course the Commission that presides over the division is so empowered as well. Just because there isn't a particular language in this statute that says that Viking Petroleum is a nonconsenting owner, you can participate by tendering your cost from surface to Abo you can go nonconsenting the rest of the way, because there is no particular language in the statute. That doesn't mean there is no authority to do that, that's what we asked the Commission to do. Instead it forced us to do it by 200 percent penalty on something where there was no dispute about that. It forced us to go all the way down or go nonconsenting for the whole well. If we don't go all the way down and pay this \$66,000 differential, what happens to us, we are penalized \$182,000 on a matter that was perfectly not in dispute about our willingness to go along, plus another \$200,000 on the bottom. It's a windfall

for Yates, he gets to recover this and this before we get any production from any of these formations. And, again, I think it's arbitrary on its face, but we will argue when we get to the merits of that case. That authority will be supplemented with others when we get to briefing this Court for the case, Your Honor. Let me say that I don't think it's important for the Court to have great knowledge of what the law is on the merits of this thing. And, five or six times opposing Counsel said, "Your Honor, Petitioner is asking you to modify the provision of this order." We are not asking any such thing, we have asked this Court to stay the operation of the provisions of this order and insofar as they may be construed to be a forfeiture or waiver if we win. We are only asking the Court to stay the operation of the pending outcome of this appeal. Now, let me make a few things straight here, because I think they have gotten totally confused by this presentation. We don't have to tender any money. We have a right to appeal this order if it's wrong. If it's wrong and we convince this Court that it's wrong, it's no good, it's vacated, it's set aside, and nothing more to be done with it, except a remand that would be for

further proceedings consistent with this Court's legal decision, that would be it. As I said before, we are dealing with the Court of equity, where you are seeking equity, you must do equity. If we win this appeal, we will have to tender some costs. We think those costs are from the surface to the Abo formation, \$91,000, or whatever it comes out to. Now, again, we don't have to tender to Yates anything right now, but we are tendering it --

THE COURT: But, you are not tendering it to Yates.

MR. JARAMILLO: No, because they don't deserve that right now, they would recover it only if we have to pay these costs from here to here, because the Court has vacated the decision of the Commission. Now, let me explain this, if I can, and why we are not tendering it to Yates.

THE COURT: All right.

MR. JARAMILLO: As the order stands right now, Viking's 24 percent interest can go nonconsent for the whole well. If we accept the horrendous penalty that's imposed here they collect something on the order of almost have a million dollars in penalties before we start collecting anything. That's

unacceptable to us, that's why we brought this appeal. We think that the penalties involved are not only extreme, but they are arbitrary, because of this. Because we are willing to go along and we are being penalized for it anyway. All right. As the order stands, then, we don't have to tender any money. We are making this tender and it's being done as an Interlocutory Order, pending the disposition of this appeal, because if we win the appeal, Your Honor, we do have to pay something. If we win this appeal, the Court will be ruling that we are correct in saying that we could participate by paying our costs to the surface to the Abo if the Commission wishes to impose a penalty, it would be below the Abo. That's a matter subject to remand. Again, and, I agree the Court cannot modify the opinion, we are not asking them to, but the Court can declare to impose a penalty from the surface to the Abo. That's arbitrary and capricious and will be vacated. Now, if that's done, that means that we have to pay those costs if we want to participate. The Court is ruling as a matter of law that if we prevail that we can so participate. In that event we are tendering this money, that's why it's being held in

the coffers of the court, because if we lose the appeal, it doesn't go to them, it comes back to us, and we are nonconsenting on the whole well. But, if we do win, that money is there and it can be paid to Yates with being consistent with the Court's opinion. Let me say this, I don't think we have to tender it, even though we have made this tender, Mr. Pearce has stated, and I think Mr. Hall said the same thing, that there is no injury involved here. Let me see if I can get it directly, there is no harm to anybody if the order stays as it is. Now, if that is the case, that's fine, but, I didn't want to walk into an ambush of prosecuting my appeal before this Court and prevailing and then Yates and the Commission stand up and say it's too late to tender your money, you didn't tender it within the 15 days. That's what I am trying to prevent. I agree maybe that argument doesn't exist, that there is such a forfeiture. We have a right to appeal the order of the Commission as it stands, we don't have to pay a penny. If that order is wrong, it's vacated and remanded and we start again. And, then the Commission, if they do it right, can allow us the opportunity to participate in the Abo. If that's the case, we will tender the money at that

time. But I tendered this money here and now because I wanted to evade the argument that there is a forfeiture involved if I haven't tendered it timely. That's why we filed the motion today, Your Honor, and, that's the only reason we did. This Court could rule that no money has to be tendered, that the parties will submit their briefs on the schedules set for the Court, the Court will decide this case on the merits. If the opinion is wrong, the Court will so rule, vacate it and send it back to the Commission. The Commission takes it from there, who pays what, when and where. I think that's the simplest way, but, again, I tendered the money because there was the Court of equity and I wanted to avoid a forfeiture position and I didn't want to get caught in an ambush of prosecuting this appeal and winning it and then having the argument made, "Oh, but you are too late." I didn't want to be too late and I am not too late. I brought this matter to the Court as early as I could have, it's a catch 22 for them to argue that 15 days ran before you even got your petition to the Court. That's doesn't make sense, because in the statute it says that the Court can order a stay and it would have no meaning and of course that



could not be the law. Now, on one other point, on this statute that's covering the Commission, and I think this kind of goes to the problem of the Court belaboring with and I think belaboring with it a little too soon, and we will get this before the Court with the law and --

THE COURT: What the likely outcome may or may not be would be one of the things the Court considers when it issues an injunction or stay, and if the law were clearly established one way or the other, it would make my decision on this application for a stay a lot easier.

MR. JARAMILLO: I understand. I understand, I think going to this point we have talked about there not being any specific language that authorizes it, but the statute says that's not prohibitive as long as it's reasonable. What is really the key here is that the Court needs to focus on the number one issue, the extreme penalty, let's not -- if that was a proper penalty, then the Commission would impose it, it didn't do that. There was three specific penalties imposed from here to here, the penalty was the whole well. And, that is our problem. Now, Mr. Pearce said, "Well, I have got an adequate remedy at law, this is a

dispute between producers on an amount of money." That's not the case at all. This is a dispute about a penalty that we claim was issued by a New Mexico agency that arbitrarily and capriciously was issued. We are not fighting with Yates over \$182,000, we are fighting about the legal sufficiency of an order that imposed that penalty. That's really the issue for which we have a statutory right of appeal to this Court. Now, the statute provides that in ordering these compulsory pooling decisions, that order affecting such pooling shall be made after notice of 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. What this opinion does, this 200 percent penalty on the whole well, is to force Viking to join in Yates speculation below the base of the Abo with no alternative, except that if you don't go along, we are going to impose \$182,000 windfall penalty on you, on a matter that's perfectly acceptable for you to take and you are willing to pay, and that's the problem. So with that in mind, let me say

this, I think there are two points. Number one, the Court can order the stay of these provisions --

THE COURT: Actually this penalty is much bigger if they hit a dry hole down there?

MR. JARAMILLO: Yes, it is, we lose the whole amount, I mean we lose the difference here, plus the amount that we tendered if there is a dry hole down in here. Perhaps I am not understanding the Court, maybe I am looking at something that's different.

THE COURT: Well, your total cost is 158; isn't it?

MR. JARAMILLO: This would be our share of the total cost from surface to the ordovician.

THE COURT: And, the penalty on that 158 would be --

MR. JARAMILLO: \$474,000 from the surface to the ordovician, that's over and above their cost, it's recouping their cost, plus 200 percent.

THE COURT: Yeah, and if that's a dry hole, it's all going to come out of your Abo well.

MR. JARAMILLO: That's correct, this is the problem. Again, perhaps this goes to the merits, but, what I am saying is this, I am just trying to forestall the argument of forfeiture or waiver.

This Court could eliminate that by saying, "You do not have to tender any money, there is none that's due under the order as it stands right now." I am simply staying the operation of these provisions pending the outcome of this appeal. If you win the appeal, then the Commission decides how much you pay or you don't pay. If you lose the appeal, you are nonconsent anyway, which is -- we would concede that's how we will go with it anyhow. And, no harm to any parties involved. I tendered the money only because if we win this appeal, we would have to pay something and this was no more than a showing of good faith and that we will have those funds available should we prevail and they will be subject to disbursement by the Court. I don't think it's necessary, I think the Court has perhaps seen that and if that's the case, that's necessary as an order that would stay the operation of the provisions insofar as they could be construed to constitute a waiver should the Petitioner ultimately prevail in this case. And that's all the order needs to say and I would so move. Under alternative I would again tender the order as we have provided it. And, on the merits, why I have discussed this with opposing Counsel and they seem

to be in accord, if the Court were to set a briefing schedule that would allow the Petitioner to file a brief in chief to the Court with 30 days for reply of a responsive brief and five days for Petitioner to reply, that the matter could be submitted to the Court within 75 days. If the Court feels an argument would be helpful, it could schedule oral argument and have the whole matter submitted to it in an expeditious fashion and the statute, of course, requires that these appeals be expedited. I would submit that would be the most orderly and expeditious way of handling the merits in this case.

THE COURT: Is the transcript ready yet?

MR. JARAMILLO: Yes, I have that available right now, it's certified.

THE COURT: I didn't know whether it was typed up.

MR. JARAMILLO: By the way, Your Honor, perhaps it would be helpful to have some inclination, some reading on how it intends to handle this, if the Court is inclined to require us to make a tender, I would like to put on some testimony that would show that the more accurate amount is about \$350,000 or \$321,000, rather, which would reduce

this by about \$13,000. If the Court is disinclined to require any tender that testimony would be unnecessary.

THE COURT: All right.

MR. PEARCE: Very briefly, Your Honor, I keep hearing a very peculiar thing, I believe, from Counsel. He appears to be worried that if an order entered by the New Mexico Oil Conservation Commission is reversed, is stricken and declared null and void as being arbitrary and capricious, that somehow some provision of that order is going to apply against his client. Now, if that's really at the heart of this matter, I think we probably should not have taken up this Court's time. I don't think anybody would get anywhere arguing that if we, the Oil Conservation Commission, entered an order that's null and void, that there is a 15 day payment provision in there that we are going to have to leave applicable. It distracts me to think that I have not understood the issue all along, but it had begun to sound that way to me, and if that's really all there is, then I don't think a stay is necessary on a portion of this order. I don't think anything is necessary at this point in time from the Court. That's simply the

way it's going to be and if Petitioner is concerned about that, he may address that matter in briefing the merits of this dispute.

THE COURT: Well, I got the idea that all he wanted was to preserve his right of appeal and that does bother me on how you can preserve a right of appeal in this situation.

MR. PEARCE: Well, Your Honor, Petitioner would have us believe that he was willing to risk a \$404,000 risk assessment rather than pay in protest or agree to pay with a protest attached, \$66,000. Now, this is an additional \$66,000, now this is a business man, this is a business litigation that the Commission is in sort of against its will. But all he had to do was to avoid that \$404,000, was say, "All right, I think the order is wrong, I am going to appeal the order, but pending the appeal of that order, if you send me bills, I will pay them." That's all he had to do, Your Honor. And, he chose not to do that. What he wanted to do was, he wanted to pay his money and he wanted Yates to come drill that well and he wanted to find out what was down there before he decided whether or not he was going to pay his money. I believe that's what he did, that's what he is trying to do and that's the sort

of hazardous business operation that the Oil Conservation Commission gets very worried about, people riding wells before they decide whether or not to participate. That's part of the reason we have a risk charge. Corespondent has put up its money to drill this well, Petitioner chose not to participate, Corespondent therefore put its money at risk, and at a substantial risk.

THE COURT: And, the risk for Abo formation as well as the other?

MR. PEARCE: Absolutely. The person who is circulating in the Abo formation, and I think that's probably recognized in this area of the Abo that it is a hazardous area, all oil and gas well drilling is hazardous, there is no sure thing. And I think it's unwise to allow parties to simply sit it out and avoid the risk penalty to take the benefit of somebody else's risking their money and I think that's what is at issue here. And, I submit that if the concern about losing some right of subsequent participation, if the order of the Commission is stricken, is probably not well taken, Your Honor.

THE COURT: Did you have anything to add, Mr. Hall?

MR. HALL: Just as to the point of if the



order is vacated. If this order is vacated and it goes back to the Commission for a new hearing, a new order will be issued of one type or another, at which time the Petitioner can act on it. The only point at which I see the Petitioner would have problems and would need the Court's protection to allow it to pay down to the Abo is if the Court would, in its order, come back to the Oil Conservation Commission and say you will write your order in such a manner or change your order, which I would submit would be modifying the order. And I already have been through my opinions on that, sir.

THE COURT: Okay.

MR. JARAMILLO: Your Honor, if I may, briefly, I am impelled to respond to this, because we are not talking about a Johnny-Come-Lately offer of \$91,000 to say in Court I made that very same tender in November of \$91,000 before there was ever a drilling rig out on that section. We had said, and they have not disputed in any pleadings, that we have always been ready, willing and able to tender that money. They didn't accept that money, they said it's all the way or nothing. They got the Commission to agree, so I want to respond to Mr. Pearce's argument on that. Now, the reason why the operative

language of that order may have some impact on us, is that the Court can indeed find that the portion of this order is contrary to law, leaving the rest to stand. Now, that's not modification of the order, that's providing that certain provisions in this are unlawful. Like that \$182,000 penalty, where there is, again, no dispute about accepting that risk. Now, that's a situation where the Court can strike that penalty, saying that was arbitrary and capricious and vacate that portion of the order and send it back to the Commission for further action, consistent with the Court's order. In this case that language would still be in there and the argument still available to them and, again, it's that argument. And if their position is that there is no waiver, a forfeiture and I have my rights on this appeal, that's fine. I am satisfied with that, but I have not heard them say that.

THE COURT: I don't think they will.

MR. JARAMILLO: No, I don't think so either. That's why we need a stay of the operative language that we refer to in the order we submitted to the Court, simply a stay pending appeal. It's an Interlocutory Order, not a substitution of judgment,

not a modification. It just says what the Commission has said here, it will not be operative until they decide this appeal, and that's all that we are asking.

MR. HALL: Your Honor, I would submit that probably as a point of schematics, but I would consider if the Court would vacate certain parts of an order and leave other parts of it standing, that that would be, in effect, a modification.

THE COURT: Well, I don't know how you would split a well, that's not split by the Commission.

MR. HALL: Well, or split an order that the Commission put out in whole.

THE COURT: Oh, I think what I am going to do is first of all, hold whatever appeal a person has, I assume they still have, if the Petitioner wants me to actually issue a stay as such, I will require that they tender their portion of the Abo cost to Yates, not to the Court, which puts the monkey on your back as to whether you want to throw down the money now and worry about interest or Abo production not being good enough or what have you. Or, just go on my ruling that you won't lose any appeal anyway, the commission probably will be in a better position to try and could untangle the parties

and balance the equities than the Court on an injunction hearing.

MR. JARAMILLO: Do I understand the Court to be making two rulings, one, there is no infringement on the prosecution of our appeal and --

THE COURT: One, no, I think it's just whatever appeal you have, whatever right to appeal you have is not waived by you. If you wish the Commission order stayed, I will require you to -- and let me ask this: Have you got to where that one would be due now or whatever it was?

MR. JARAMILLO: We have some understanding that that 91 is actually about \$13,000 too high from actual costs in the well that was just recently drilled.

THE COURT: Well, I think we can determine what that real figure is at this time.

MR. HALL: I don't think that we can from the actual cost. As I understand it, we are talking about drilling and completing through the Abo and of course this well, from the actual costs that Yates has, is drilling and completing through the ordovician. We would have a transition problem there in determining how you prorate that back up

as if it were an Abo well. But, Your Honor, on this point, I don't understand why this would be any requirement to tender to Yates. If I understand the Court, it has ruled whatever appeal right we have, we have and the Court is going to entertain the appeal and we proceed.

THE COURT: Well, it's just a preliminary -- what I really mean is that by not issuing an order, you won't lose it and if either one wants me to issue this order, I will do it on the part of Yates or on the part of Viking.

MR. JARAMILLO: My only concern with tendering to Yates is this: If we win the appeal, they will have been paid our costs as due and that's fine, we won't owe them any money. If we lose the appeal, no, we don't have to pay them anything, we can go nonconsent on the whole well, and they will have our \$91,000. So if an order is entered to the extent that we pay that, then it should be refunded with interest.

THE COURT: It would be subject to refund, yes, it should be refunded with interest if the appeal is ruled adversely against you, Viking.

MR. JARAMILLO: In other words, if the appeal results in an affirmance of the Commission's opinion,

Yates would refund that amount back to Viking with interest.

THE COURT: With interest at the legal rate.

MR. JARAMILLO: At the legal rate.

MR. HALL: If I may ask a question, Your Honor, if Viking does see fit to tender their money to us --

THE COURT: You still have to accept it -- you don't have to accept it.

MR. HALL: If we don't accept it, the order will be stayed.

THE COURT: The order will be stayed if you refuse to accept it. In other words, they will have to get up the money or say they will get it, in other words, we don't have to do it if everybody agrees. This is what you do and this is what I do, but if Viking is willing to get up the money and pay it to you on the condition that if they lose the appeal you will refund it with legal interest, then I will stay it. If you say you won't accept it anyway, I would still stay it.

MR. HALL: What extent would it be stayed?

THE COURT: I think that 15 days, whatever procedure I have, if I don't have the power to stay it, something that's happened already anyway, I

still don't have that power.

MR. HALL: Yes, sir.

THE COURT: But, the stay that he requested would be granted. Why don't I -- I guess the first thing would be that Yates needs to say whether you will accept or won't accept, and what do you need, a couple of days to take that back and decide?

MR. HALL: Yes, I don't have the authority to do that for both Yates and the partners involved.

THE COURT: All right. Okay. Why don't you -- I will give you until the end of the week to decide that.

MR. HALL: All right, sir.

THE COURT: If you decide you will, you can say yes, I will accept it, and how long would you need to get up your money?

MR. JARAMILLO: I think we could have it within seven days, Your Honor.

THE COURT: How about five banking days?

MR. JARAMILLO: We can do that, too. On the question of the amount, we might be able to shorten this. I showed Mr. Hall this morning the actual costs on the Elk Oil Well in Section 19, if he is simply willing to agree that the amounts are what they say down there, the Court can decide

what the amount of the tender should be. Whether it's \$91,000 or going from the amount of the well that was just completed in the Abo which was by the same drilling contractor. That amount is \$321,000, 24.6 percent of that would be \$79,379, so somewhere between what we think are the actual costs, \$79,000 and \$91,000, we think should be the appropriate amount. Again, this \$371 came from a Saturday morning estimate by Yates, we think the more accurate amount, what it would cost to drill and complete would be this \$79,000, because that's what it just cost Viking and Elk Oil to do the very same thing in the section right underneath.

MR. HALL: Again, Your Honor, if I might have the same amount of time to concur with our production people, each well is different. If I might be able to, they have submitted what they feel is a comparable well down to the Abo. If we might have the opportunity to look at the costs ourselves and either submit what we feel is a correct figure to the Court and Petitioner or just say we concur with one of the two figures.

THE COURT: Well, if there is no -- the problem is if there is no hammer to concur.

MR. PEARCE: May I, Your Honor, these are the



sorts of disputes that the Commission hears a lot, the way we resolve it, we require parties to participate to the extent of their interest in the well in the estimate authorization for expenditures, which is estimated. Now, I understand that Correspondent, Yates, has put into A.F.E. has submitted that and I suggest that the appropriate way and the way that it is usually done by the Commission, we order people to participate to that extent. And after the well is completed, an accounting is done and fully sorted out between people to whatever extent that the estimate is incorrect. I think that is the custom and a procedure to the business rather than before a well is drilled trying to go after an evidentiary hearing on what one well costs and trying to guess the other well should or should not cost any more. I think it's easier to take the estimate and let the parties sort it out.

THE COURT: I will set that figure at 90.

MR. JARAMILLO: \$90,000 is quite a bit more than the other.

THE COURT: If you think it's off, Mr. Hall, you could --

MR. HALL: Okay, sir.

THE COURT: You can look at it and if you think your figures are off, then I ask you in good faith to, you know, set a lower figure. Otherwise it will go \$90,000. If you would let Mr. Jaramillo and Mr. Jaramillo can prepare the order and submit it to the others for signing, I was going to say, after you make your determination --

MR. HALL: I will let you and Mr. Jaramillo know by Friday.

THE COURT: Yes, or earlier, the sooner you let him know the sooner you get your money.

MR. HALL: Yes, sir.

\*\*\*\*\*

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF CHAVES )

I, KATHERINE BROOKBANK, do hereby certify that I am the Official Court Reporter for the Fifth Judicial District, State of New Mexico, and that I did report the foregoing proceedings in Stenographic Shorthand and did later personally transcribe my notes into this typewritten material, and that the foregoing transcript of proceedings is a true, complete and accurate transcription of the proceedings had in this hearing, to the best of my ability.

DONE this 17th day of June, 1982

Rechenmo-Brookbank

Official Court Reporter  
CSR License #176



KATHERINE BROOKBANK, RPR, CSR  
OFFICIAL COURT REPORTER  
P.O. BOX 1776  
ROSWELL, NEW MEXICO 88201

W. Perry Pearce  
TO: General Counsel, Oil Conservation Division  
P.O. Box 2088  
Land Office Building  
Santa Fe, New Mexico 87501

Date: June 22, 1982

Transcript of Proceedings in the case of: Viking Petroleum, Inc.,  
Petitioner,  
vs.  
Oil Conservation Commission  
of the State of New Mexico  
and Harvey E. Yates Company,  
Respondent.

CV-82-77

L copy @ .80 per page - 69 pages

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THANK YOU ...

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STATEMENT

**E. Pearl Stoll**CERTIFIED SHORTHAND REPORTER  
ROSWELL, NEW MEXICO 88201

May 5, 1982

Mr. W. Perry Pearce  
General Counsel -Oil Conservation Division  
P. O. Box 2088  
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Santa Fe, New Mexico 87501

| DATE   | DESCRIPTION   | AMOUNT |
|--------|---|--------|
| 5/5/82 | Re: Viking Petroleum, Inc., -v- Oil Conservation Commission<br><br>DEPOSITION: (Taken 4/26/82)<br><br>ARLENE ROWLAND, one copy, . . . . . \$ 18.00<br>4 1/4 % tax . . . . . .77<br>\$ 18.77<br><br>Postage, . . . . . .90<br>\$ 19.67<br><br>THANK YOU<br><br>1610/01<br>OK to pay<br>W. Perry Pearce |        |

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
FOR THE COUNTY OF CHAVES, STATE OF NEW MEXICO

VIKING PETROLEUM, INC., )

Plaintiff, )

-v- )

No. CV 82-77

OIL CONSERVATION COMMISSION OF )  
THE STATE OF NEW MEXICO, et al. )

Defendants. )  
\_\_\_\_\_ )

DEPOSITION OF

ARLENE ROWLAND

Taken on behalf of plaintiff on the 26th day of April,  
1982, at 9:30 A.M., in the Law Offices of Atwood, Malone,  
Mann and Cooter, Suite 800, Security National Bank Building,  
Roswell, New Mexico.

— E. PEARL STOLL —

GENERAL REPORTER

1610 WEST JUNIPER

ROSWELL, NEW MEXICO 88201

A P P E A R A N C E S

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FOR THE DEFENDANT, Harvey E. Yates Company:

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Roswell, New Mexico 88201

- - - - -

REPORTED BY:

E. PEARL STOLL, RPR  
Certified Shorthand Reporter # 35  
29 Wildy Drive  
Roswell, New Mexico 88201

S T I P U L A T I O N

IT IS STIPULATED AND AGREED by and between Counsel for the respective parties in the foregoing entitled and numbered cause that the deposition of ARLENE ROWLAND may be taken before E. Pearl Stoll, a Certified Shorthand Reporter and Notary Public in and for the State of New Mexico; that said deposition is taken on proper Notice and for the purpose of discovery or any purpose as may be elected under the Rules of Civil Procedure now in force in the State of New Mexico.

IT IS FURTHER STIPULATED AND AGREED by and between the parties hereto through their respective attorneys appearing herein that any and all objections to any question or answer herein, except as to the form of the question, may be made upon the offering of this deposition in evidence upon the trial of this cause, with the same force and effect as though made at the time of the asking of the question.

IT IS FURTHER STIPULATED that the officer taking this deposition may return and file same without the signature of the witness herein, said signature being waived by all parties and said deposition is to be used on the trial of this cause with the same force and effect as though the same had been read and signed by said witness.

AND IT IS SO STIPULATED AND AGREED on this the 26th day of April, 1932.



ARLENE ROWLAND

having been called by plaintiffs and being first  
duly sworn, testified upon her oath as follows: -

DIRECT EXAMINATION

BY MR. JARAMILLO:

Q Would you state your name, please?

A Arlene Rowland.

Q And what is your business address?

A Suite 714-Security National Bank Building.

Q Okay. And who is your employer?

A Harvey Yates Company.

Q And how long have you worked for the Yates Company?

A Four and a half years.

Q What is the position you hold with the company at the  
present time?

A I'm the Accounting Department Supervisor.

Q And what is the nature of your duties in that position?

A Oversee all of the accounting functions, as far as  
our joint interest billing, our revenue run disbursement,  
and various accounting functions.

Q Okay. Insofar as your billing to joint interest owners,  
I take it then, you compile the various drilling costs  
for particular wells, and present summaries of those  
to the various joint interest owners?

A I supervise that work. Yes.

- 1 Q Can you tell me how the costs are accounted for? Is  
2 there some type of a ledger that is maintained for each  
3 particular well?
- 4 A Well, we maintain what we call a Well Cost Analysis,  
5 and we keep a folder on each individual well, and list  
6 out every invoice that we have incurred on that well.  
7 As far as costs are concerned, everything is then billed  
8 out to individual interest owners.
- 9 Q And those individual costs, I take it, are added onto  
10 a ledger so that they are all totalled on one or two  
11 pages? Something like that?
- 12 A Well, for each month, yes.
- 13 Q For each month?
- 14 A And then we have accumulative. Yes.
- 15 Q Okay. Pursuant to the Subpoena that was attached to  
16 this Notice, did you bring with you the items that  
17 were described on it, -- on the Subpoena Duces Tecum?
- 18 A I brought all of the expenses that we have incurred to  
19 date.
- 20 Q And that is on this well in the West Half of Section 18?
- 21 A Yes sir.
- 22 Q Okay. I wonder if I can have you describe what is in  
23 the file then, that you did bring with you today?
- 24 A We have copies of invoices that we have received from  
25 outside vendors, with a summary sheet for each month's

1 billing, and it shows the total amount charged, and  
2 the total of each invoice, and who they were from and  
3 the total dollars amount.

4 Q All right. Have any of the costs that you now have  
5 reflected in this file, been set forth in a billing to  
6 any of the interest owners in this well, as of yet?

7 A Yes.

8 Q To whom were they sent?

9 A The interest owners are: Rosemary Avery, Bearing  
10 Service and Supply, Sim B. Christy, Jim  
11 Cieszinski, Connie Energy Co., Cibola Energy  
12 Corp., A. J. Deans, Explorers Petroleum,  
13 Howard Federer, Thomas Joe Hall, Peck Hardee,  
14 James Jennings, McClellan Oil, Ray Nokes,  
15 Plains Radio, Fred Pool Drilling Company,  
16 Arlene Rowland, D. A. Smith, S. S. Smith,  
17 Spiral, Inc., Yates Energy, Fred G. Yates, Inc.,  
18 Mickey Young, and Heyco.

19 Now, at the very first part of the well we had incor-  
20 rects interests, and these have been revised.

21 Q I notice that Viking Petroleum, Inc., is not listed  
22 on that. Is there a reason for that?

23 A Well, pursuant to the advice from our Legal Department  
24 Viking Petroleum was to be non-consented and they were  
25 not to be billed.

- 1 Q Okay. You do not then present itemized bills to non-  
2 consent working interest owners?
- 3 A No. What is called for in the Operating Agreement is  
4 payout statements.
- 5 Q Have any payout statements been presented?
- 6 A No, because there has been no production.
- 7 Q Okay. Those would be prepared after production begins,  
8 then?
- 9 A As a general rule, yes.
- 10 Q I believe there is a provision of the Statute that  
11 requires the tender of actual costs to be sent to  
12 the working interest owners, and there is a certain  
13 period of time in which they are entitled to present  
14 objections to those costs to the Commission. Are you  
15 familiar with that procedure?
- 16 A Well, not intimately, but yes. I know you are allowed  
17 to do that.
- 18 Q Is there a particular name that is given to the pre-  
19 sentation of these costs by your company, that is sent  
20 out to these working interest owners?
- 21 A Well, we send them invoices.
- 22 Q Okay. Has that been done in this case yet, -- the  
23 tender of actual costs to the working interest owners  
24 for this purpose of allowing them to object if any  
25 objection is proper?

1 A To the interest owners which I named previous.

2 Q Okay. None has been sent to Viking Petroleum?

3 A No. Like I said, at the very beginning of the well,  
4 we didn't have correct interests, and Viking Petroleum  
5 did receive some invoices, but they have been reversed.

6 Q So they are not getting them any more?

7 A No.

8 Q Do you have in this file, an up-to-date itemized list  
9 of all costs that could be Xeroxed and made an attach-  
10 ment to your deposition?

11 A Yes.

12 Q I wonder if what we could do is remove them from the  
13 file and have them marked, and then we will have  
14 copies and return the originals to you so your file  
15 remains intact.

16 A Okay. You want just the detail -- as far as what has  
17 been charged. You don't need the actual invoices?

18 Q No. Just -- if you have a summary or --

19 A Yes.

20 Q I wonder if I might look at those?

21 A Yes.

22 (Exhibit P-1 marked.)

23 MR. PEARCE: Mr. Jaramillo, might we suspend  
24 long enough to get copies of this so  
25 the rest of us can have those? I'll be

1 happy to step out into the reception  
2 room.

3 MR. JARAMILLO: Perhaps we can. Let me see if  
4 I can find some of the -- off the  
5 record.

6 (Documents marked as exhibits and taken to be copied.)

7 Q I will have some questions on these exhibits as soon  
8 as we get them copied, but let me go on to another  
9 matter just for a second.

10 I take it that the documents you have just  
11 given me are the detailed statements of costs for each  
12 month since drilling activity began on this well?

13 A Not necessarily since drilling activity began. It is  
14 from when we first had interests and had invoices, you  
15 know. Sometimes we don't at the very moment that  
16 drilling begins.

17 Q Okay. Do you also have a summary sheet that would  
18 cover the total costs from the beginning up to the  
19 present time? Or is that reflected on the most latest  
20 invoices?

21 A We have one, but I don't have it with me. If you  
22 would add each one of those together --

23 Q You would come up with it?

24 A Yes.

25 Q All right. Would it be possible to obtain a copy of

1 your -- I guess I would call it a total up-to-date  
2 summary, containing the running total amounts?

3 A Uh-huh.

4 Q And perhaps you could have that delivered to Mr. Hall  
5 and he could provide each of us with a copy of that,  
6 as well?

7 MR. HALL: Yes.

8 Q But as I understand, if I simply take and add each of  
9 the monthly invoices that you have just given us, I  
10 would come up with the totals that are reflected on  
11 this other summary sheet?

12 A That's right.

13 Q Okay. Apart from the sheets you have just handed me,  
14 what else is contained in your file apart from the  
15 individual invoices? Are there any other tally sheets  
16 that you collect?

17 A I'm sorry. I don't know what --

18 Q Well, any kind of -- for example, do you have an  
19 account ledger where each account is broken down?  
20 Tangible drilling costs, for example, as opposed to  
21 intangible drilling costs?

22 A Well, that is broken down on those sheets.

23 Q Okay. You don't have that set forth in any other  
24 format in your file?

25 A No.

1 Q Do you know what the status of the drilling activity  
2 on this present well is now? Has production started  
3 yet?

4 MR. HALL: I don't think that she is the  
5 person to answer that.

6 Q You don't have that information?

7 A No.

8 Q As far as you know, then, whatever the status is on the  
9 most recent month, on the sheet that you have just  
10 handed me, that is the latest cost incurred?

11 A Yes.

12 Q Do you have any knowledge as to whether there are  
13 future costs anticipated?

14 A Yes. There will be a future cost. We have received  
15 invoices.

16 Q That haven't been paid yet?

17 A Correct.

18 Q Do you have those with you?

19 A Yes, I do.

20 Q Okay. Would you simply read into the record what  
21 those invoices are and the total amounts? And so  
22 I understand, these are costs that you have been  
23 billed, but which have not yet been paid?

24 A That's correct. Okay. Completion Rentals, an invoice  
25 for \$5,299.32.



1 Q What is Completion Rentals?

2 A That's the company's name. Do you want me to detail  
3 what it is for?

4 Q Just generally. Not specifically.

5 A Trimplex pump. That was the major portion of the cost.  
6 That includes casing, scrappers, et cetera.

7 And Completion Rentals again, for \$4,572.75.  
8 Again, rental on a Trimplex pump, power swivel and  
9 drill collar rotary.

10 Halliburton Services, for \$4,981.02, -- drilled  
11 and squeeze purse.

12 Q What is the date of that invoice?

13 A Invoice date is 4/8/82. And Rapid Flo, Inc., three  
14 inch pipe rental for \$1,729.73.

15 CRC Wireline, Inc., 4/19/82, perforating one  
16 to ten inch holes, cased gun perforated, \$1,819.16.

17 Geo Vann, 4/3/82, perforating Gamma Ray Collar  
18 log, \$2,883.40.

19 Dowell Chemical, 4/16/82, tree saver \$1,214.46.

20 Dowell again, 4/15/82, acid pump, and pump and  
21 silt removal, et cetera, \$1,502.82.

22 Dowell Chemical, 4/15/82 for mud and silt  
23 removal, \$4,271.45 -- and hydrochloric acid.

24 Jim's Water Service, \$538.69. Transporting  
25 water.

1 Pruitt Construction, use of truck and operator  
2 on lease \$372.60.

3 Bearing Service, bushings, half-inch gauge with  
4 half-inch face -- four and a half-inch face. Nipples.  
5 \$182.47.

6 Jim's Water Service, water transportation, for  
7 \$1,176.15.

8 T 71 Service, 4/12/82 water transport \$897.73.  
9 And that's all.

10 MR. JARAMILLO: Mr. Hall, do you have any ob-  
11 jection to -- apart from this deposition,  
12 that we be provided with copies of the  
13 invoices that have been accumulated,  
14 whether paid or not paid?

15 MR. HALL: Wouldn't it be better to just get  
16 a copy of the summary sheet of that?  
17 Would that not be sufficient?

18 MR. JARAMILLO: Would that detail what the  
19 service was that was being paid for?

20 MRS. ROWLAND: Yes.

21 MR. JARAMILLO: Okay. I think that will be fine.

22 MR. HALL: Just up through today?

23 MR. JARAMILLO: Right.

24 Q Mrs. Rowland, do you know who the drilling contractor  
25 was in this case? Do you have invoices that would

1 reflect that?

2 A I don't know. I would have to look. It was Horizon  
3 Drilling and Exploration Company.

4 Q And have they billed you now for all the work they  
5 have done, and will do, on this particular well?

6 A No.

7 Q There is still some further billing to come in on that?

8 A Yes.

9 Q Is it also a part of your job, in the accounting work  
10 you do, to run some kind of summary, or survey compar-  
11 ing your actual costs as they are accruing, with the  
12 AFE on this particular well? Do you do that kind of  
13 a job?

14 A I'm sorry. Say that again?

15 Q As I understand it, there is an authorization for  
16 expenditures that was prepared -- and you know which  
17 one I'm talking about, --

18 A Right.

19 Q -- is it one of your functions to compare how your  
20 actual costs are running as against the AFE?

21 A I don't do the comparing, no.

22 Q Okay. Who, in your firm, does that kind of work?

23 A The production supervisor.

24 Q And who would that be?

25 A A. J. Deans.

- 1 Q Is he here in Roswell?
- 2 A Yes. He is. And I have a revision there. The
- 3 Horizon Drilling -- it looks like the rig was released
- 4 and so we have incurred total costs on it.
- 5 Q Okay. Is there a rig number on that invoice?
- 6 A Yes. Rig Number two.
- 7 Q Number two. Okay. Mrs. Rowland, let me just have
- 8 you identify, for purposes of this record, what Plain-
- 9 tiff's Exhibit Number 1 is. This two-page document.
- 10 A It is a Detailed Cost Statement for the total billing
- 11 by vendor, for March of '82.
- 12 Q And what categories of expenditures do you have on
- 13 this summary?
- 14 A We have them broken down into intangibles, to intan-
- 15 gible drilling cost formation evaluation, intangible
- 16 completion costs, tangible drilling and completion,
- 17 and lease operating expense.
- 18 Q And the bottom line would reflect the total amount of
- 19 expenditures paid for this month?
- 20 A Yes.
- 21 Q Okay. What is Exhibit Number 2?
- 22 A It is a Detailed Cost Statement for January of '82.
- 23 Q All right. And broken down into the same classifica-
- 24 tions as you have just testified on Exhibit Number 1?
- 25 A Well, there weren't that many invoices on this one, so

- 1           you don't have that many categories.
- 2       Q       The purpose is the same though. These reflect the
- 3           expenditures paid during the month of January, 1982
- 4           on this particular well?
- 5       A       Yes.
- 6       Q       And in brief fashion, is Plaintiff's Exhibit 3 the
- 7           same type of summary for the month of February, 1982?
- 8       A       Yes. There should be two other pages.
- 9       Q       That is a total of three pages?
- 10      A       Right. For February.
- 11      Q       What is the total expenditure for February, in the
- 12           event that is not legible? Can you see that at the
- 13           end of the summary?
- 14      A       We had two billings, and it is the net of a credit of
- 15           \$49,923.16, and a debit of \$133,989.31.
- 16      Q       Do you know what the reason for that credit is?
- 17      A       That was the corrections for the prior billings that
- 18           went out.
- 19      Q       For the prior month?
- 20      A       Well, from September on.
- 21      Q       Okay. Could you identify Plaintiff's Exhibit 4?
- 22      A       Four is the same type of Detailed Cost Statement for
- 23           December of 1981.
- 24      Q       All right. And Number 5?
- 25      A       Five is November of '81, Detailed Cost Statement.

- 1 Q And Plaintiff's Number 6?
- 2 A October of '81, Cost Statement.
- 3 Q All right. And finally, Plaintiff's Number 7?
- 4 A It is a Detailed Cost Statement for September of '81.
- 5 Q Okay. Is Plaintiff's Exhibit 7 the first Detailed
- 6 Cost Statement that went out to the working interest
- 7 owners?
- 8 A Yes sir.
- 9 Q So between Plaintiff's Exhibit Number 7, and going
- 10 backwards all the way to Plaintiff's Exhibit Number 1,
- 11 do we now have the Detailed Cost Statements for all
- 12 costs which have been paid, with respect to this well
- 13 in the West Half of Section 18?
- 14 A I don't know if any of these have been paid. Okay.
- 15 The costs listed on the Detailed -- Plaintiff's Exhibit
- 16 Number 1, for March of '82, some of these costs will
- 17 not have been paid until this next week in April. This
- 18 last week. So this does not --
- 19 Q All right. Is there any duplication, though, on
- 20 Plaintiff's Exhibit Number 1, and the bills that you
- 21 read into the record as not having been paid yet?
- 22 A No.
- 23 Q All right. <sup>if</sup> So/we have put together then, the total
- 24 costs in Plaintiff's Exhibits Numbered 1 through 7,
- 25 and add in those costs on the statements that are yet

1 to be paid, -- not yet paid, that you read into the  
2 record, we would have the total costs to date that you  
3 have been billed on this well?

4 A That's correct.

5 MR. JARAMILLO: I think that's all I have.

6 MR. HALL: No questions.

7 MR. PEARCE: Nothing.

8 -----  
9 (Witness was explained her right to read and  
10 sign her deposition, and she preferred to  
11 waive that right.)  
12 -----

13  
14 NOTE:

15 Plaintiff's Exhibits 1 through 7 were furnished  
16 to all counsel at the time of taking this deposi-  
17 tion. Copies of exhibits are attached to the back  
18 cover of the transcript for convenient use, on the  
19 ORIGINAL TRANSCRIPT, only.

20 Reporter.  
21 -----  
22  
23  
24  
25

1 STATE OF NEW MEXICO )  
2 ) ss.  
COUNTY OF CHAVES )

REPORTER'S CERTIFICATE

3 I, E. Pearl Stoll, Certified Shorthand Re-  
4 porter and Notary Public in and for the State of New Mexico,  
5 do hereby state that I was present and reported the foregoing  
6 deposition; that the deponent was by me sworn prior to the  
7 giving of said deposition; that the preceding ( 18 ) pages  
8 of typewritten material constitute a true, correct and com-  
9 plete transcript of said proceedings, prepared by me, to the  
10 best of my skill and ability.

11 I further certify that I am not related to, nor attor-  
12 ney for, any of the parties in this cause, and that I have  
13 no interest whatsoever in the outcome thereof.

14 That the cost of taking said deposition is charged to  
15 plaintiff in the sum of \$ 54.00, includ-  
16 ing per diem of \$ 20.00, for the original transcript  
17 only.

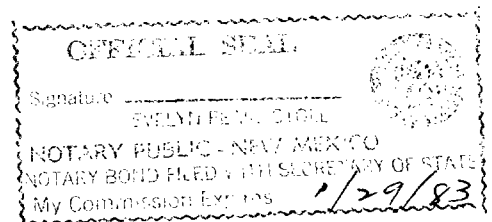
18 WITNESS my hand and seal on this the 3rd day of

19 May, 1982

20 E. Pearl Stoll RPR  
21 Certified Shorthand Reporter

22  
23 My Commission expires:

24 Jan. 29, 1983  
25





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

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
FOR THE COUNTY OF CHAVES, STATE OF NEW MEXICO

VIKING PETROLEUM, INC., )  
 )  
Plaintiff, )  
 )  
-vs- ) No. CV-82-77  
 )  
OIL CONSERVATION COMMISSION )  
OF THE STATE OF NEW MEXICO, et al )  
 )  
Defendant. )  
\_\_\_\_\_ )

NOTICE TO TAKE DEPOSITION

TO: OIL CONSERVATION COMMISSION HARVEY E. YATES COMPANY  
OF THE STATE OF NEW MEXICO c/o Thomas J. Hall, Esq.  
c/o W. Perry Pearce, Esq. P. O. Box 1933  
Assistant Attorney General Roswell, New Mexico 88201  
P. O. Drawer 1508  
Santa Fe, New Mexico 87501

PLEASE TAKE NOTICE that the plaintiff will take the  
deposition of a certain witness, ARLENE ROWLAND, upon oral inter-  
rogatories, before a notary public and court reporter, at the  
offices of Charles Malone, Esq., Suite 800, Securities National  
Bank Bldg, Roswell, New Mexico, on Monday, April 26, 1982 at the  
hour of 9:30 A.M.

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

By J. E. Gallegos  
J. E. GALLEGOS  
P. O. Box 2228  
Santa Fe, New Mexico 87501  
(505) 982-2691

CERTIFICATE OF SERVICE

I hereby certify that I did on the 24th day of April,  
1982, hand deliver a true copy of the foregoing Notice to Take  
Deposition to opposing counsels of record, W. Perry Pearce, Esq.  
and Thomas J. Hall, Esq.

J. E. Gallegos  
J. E. GALLEGOS

**HEYCO**

PETROLEUM PRODUCERS



**HARVEY E. YATES COMPANY**

P. O. BOX 1933

SUITE 300, SECURITY NATIONAL BANK BUILDING

505/623-6601

ROSWELL, NEW MEXICO 88201

April 30, 1982

Mr. Arturo L. Jaramillo  
Jones, Gallegos, Snead & Wertheim  
Post Office Box 2228  
Santa Fe, New Mexico 87501

RE: Viking Petroleum, Inc.  
v. Oil Conservation Com-  
mission  
Case No. CV-82-77  
(HEYCO Ref: 9142)

Dear Art:

Enclosed please find the following information that we agreed,  
at the deposition, to send to you.

- (1) A summary of the invoices received between the  
last billing and the day of the deposition; and
- (2) a cumulative total, to March 31, 1982, of costs  
on the well.

Sincerely,

Thomas J. Hall, III  
Attorney

TJH:seb

Enclosures

cc (w/Encls.): Mr. Perry Pearce, OCD

**HEYCO**

PETROLEUM PRODUCERS



**HARVEY E. YATES COMPANY**

SAINTA FE

P. O. BOX 1933

SUITE 300, SECURITY NATIONAL BANK BUILDING

505/623-6601

April 30, 1982

ROSWELL, NEW MEXICO 88201

Invoices received since the joint interest billing of 3/31/82 on the Seymour State #1 to be billed as of 4/30/82.

Intangibles

|                     |                      |                 |
|---------------------|----------------------|-----------------|
| T71 Service         | Water Transportation | \$ 897.73       |
| Pruitt Construction | Line Pits            | 372.60          |
| Jims Water Service  | Hauled Water         | 538.69          |
| Rapid Flo, Inc.     | 3" PE Pipe Rental    | <u>1,729.73</u> |
| Total               |                      | \$ 3,538.75     |

Intangible Completion Costs

|                    |                        |                 |
|--------------------|------------------------|-----------------|
| Jims Water Service | Hauled Water           | 1,176.15        |
| Dowell Division    | Acidizing              | 4,271.45        |
| Dowell Division    | Acidizing              | 1,502.82        |
| Dowell Division    | TLS/SD Ctrl/Csg. Hdwe. | 1,214.46        |
| Geo Vann           | Jet Casing Perforation | 2,883.40        |
| CRC Wirline        | Casing Perforation     | 1,819.16        |
| Halliburton        | 5½" EZ Drill SV        | 4,981.02        |
| Completion Rentals | Triplex Pump           | 4,572.75        |
| Completion Rentals | Triplex Pump           | <u>5,299.32</u> |
| Total              |                        | \$27,720.53     |

Tangible Drilling & Completion

|  |                           |
|--|---------------------------|
| Bearing Serv. & Supply 5000# ½Gauge w/4½" Face | <u>182.47</u>             |
| Grand Total                                    | <u><u>\$31,441.75</u></u> |

AF0010

HARVEY E YATES COMPANY  
WELL AND OPERATIONS ANALYSIS

PAGE 582

RUN DATE 4/20/82  
AS OF DATE 3/21/82

LEASE-0914282-SEYMORE STATE #1

COUNTY--005-CHAVES

STATE-030-NEW MEXICO

OPERATOR-99980-HARVEY E YATES CO

MO YR REFERENCE D E S C R I P T I O N

A M O U N T

GEN SUB

|    |   |     |                                  |  |            |     |    |
|----|---|-----|----------------------------------|--|------------|-----|----|
| 02 | 2 | 182 | INTANGIBLES                      |  | 6,959.73-  | 250 | 20 |
|    |   |     | BILLING TO CORRECT MI INTANGIBLE |  | 6,959.73-* |     |    |

|    |   |      |                                  |  |            |     |    |
|----|---|------|----------------------------------|--|------------|-----|----|
| 02 | 2 | 1181 | INTANGIBLE COMPLETION CCSTS      |  | 461.61-    | 252 | 44 |
| 02 | 2 | 1281 | BILLING TO CORRECT MI INTANGIBLE |  | 37,400.60- | 252 | 44 |
| 02 | 2 | 182  | BILLING TO CORRECT MI INTANGIBLE |  | 915.27-    | 252 | 44 |
|    |   |      |                                  |  | 38,777.48- |     |    |

|    |   |      |                             |  |         |     |    |
|----|---|------|-----------------------------|--|---------|-----|----|
| 02 | 2 | 1281 | TANG DRUG & COMPLETION      |  | 39.29-  | 260 | 17 |
|    |   |      | BILLING TO CORRECT MI EQUIP |  | 39.29-* |     |    |

|    |   |      |                                   |  |             |     |    |
|----|---|------|-----------------------------------|--|-------------|-----|----|
| 02 | 2 | 1281 | LEASE OPERATING EXPENSE           |  | 48.44-      | 270 | 57 |
| 02 | 2 | 182  | BILLING TO CORRECT MI OPERATE EXP |  | 4,098.22-   | 270 | 57 |
|    |   |      |                                   |  | 4,146.66-   |     |    |
|    |   |      |                                   |  | 49,923.16-* |     |    |

LEASE-0514200-SEYMOUR STATE #1  
COUNTY-005-CHAVES  
STATE-030-NEW MEXICO  
OPERATOR-95980-HARVEY E YATES CC

| MC          | YR | REFERENCE     | O E S C R I F T I O N   | A M C U N T  | GEN | SUE |
|-------------|----|---------------|-------------------------|--------------|-----|-----|
| INTANGIBLES |    |               |                         |              |     |     |
| 01          | 1  | 82500 118125  | SWEATT CNSTRUCTION      | 26,180.84 ✓  | 250 | 04  |
| 01          | 1  | 93150 111005  | JOHN WEST ENGINEERING   | 452.61 ✓     | 250 | 04  |
| 11          | 1  | 00458 10149   | A-1 SIGN ENGRAVERS      | 22.46 ✓      | 250 | 04  |
| 11          | 1  | 93150 981150  | JOHN WEST ENGINEERING   | 508.91 ✓     | 250 | 04  |
| 02          | 2  | 56710 012882  | CARL W. MERECLTH        | 1,180.00 ✓   | 250 | 04  |
| 03          | 2  | 54151 23504   | M & N RENTAL TOOLS      | 2,056.64 ✓   | 250 | 04  |
| 03          | 2  | 82500 28231   | SWEATT CNSTRUCTION      | 1,324.80 ✓   | 250 | 04  |
| 04          | 2  | 54425 0069    | MAGNAGLI INSPECTION     | 741.79 ✓     | 250 | 04  |
| 04          | 2  | 75500 29604   | ROSS GRAVEL             | 343.62 ✓     | 250 | 04  |
| INTANGIBLES |    |               |                         |              |     |     |
| 04          | 2  | 37275 02006   | HORITON DRILLING & EXPL | 226,610.83 ✓ | 250 | 06  |
| INTANGIBLES |    |               |                         |              |     |     |
| 02          | 2  | 07520 3074    | DAVE OILFIELD SERVICES  | 1,716.00 ✓   | 250 | 10  |
| 03          | 2  | 34050 071190  | HALLIBURTON SERVICES    | 4,685.32 ✓   | 250 | 10  |
| 03          | 2  | 34060 254303  | HALLIBURTON SERVICES    | 7,553.35 ✓   | 250 | 10  |
| 02          | 2  | 52660 07700   | LINK RAY HOLE INC       | 3,748.31 ✓   | 250 | 10  |
| 03          | 2  | 75901 59172   | ROSS-ELL READY MIX      | 588.79 ✓     | 250 | 10  |
| INTANGIBLES |    |               |                         |              |     |     |
| 03          | 2  | 08550 0003023 | DAVE OILFIELD SERVICES  | 1,467.20 ✓   | 250 | 12  |
| 03          | 2  | 34060 019320  | HALLIBURTON SERVICES    | 9,070.89 ✓   | 250 | 12  |
| INTANGIBLES |    |               |                         |              |     |     |
| 03          | 2  | 10961 1670    | BROWN TRANSPORTATION CO | 458.53 ✓     | 250 | 14  |
| 02          | 2  | 10961 1701    | BROWN TRANSPORTATION CO | 458.53 ✓     | 250 | 14  |
| 03          | 2  | 46450 A29660  | JIM'S WATER SERVICE     | 269.50 ✓     | 250 | 14  |
| 03          | 2  | 46450 A29701  | JIM'S WATER SERVICE     | 659.81 ✓     | 250 | 14  |
| 03          | 2  | 46450 A29842  | JIM'S WATER SERVICE     | 359.47 ✓     | 250 | 14  |
| 04          | 2  | 46450 A310156 | JIM'S WATER SERVICE     | 456.98 ✓     | 250 | 14  |
| 04          | 2  | 54552 7141    | MARCO AND INC           | 29,236.05 ✓  | 250 | 14  |

HARVEY E YATES COMPANY  
WELL AND OPERATIONS ANALYSISLEASE-0914200-SEYMOUR STATE #1  
COUNTY-005-CHAVES  
STATE-030-NEW MEXICO  
OPERATOR-99980-HARVEY E YATES CC

| NO          | YR | REFERENCE     | D E S C R I P T I O N             | A M C U N T                | GEN        | SUE    |
|-------------|----|---------------|-----------------------------------|----------------------------|------------|--------|
| 04          | 2  | 71330 164     | FRED POOL OPERATING CC            | GENERATOR RENTAL           | 545.00     | 250 14 |
| INTANGIBLES |    |               |                                   |                            |            |        |
| 01          | 1  | 46595 112181  | J R SERVICES                      | PUMP & GENERATOR RENT      | 4,050.00   | 250 18 |
| 01          | 1  | 73400 1768    | RAPID FLO INC                     | PE PIPE RENTAL (3")        | 2,004.21   | 250 18 |
| 02          | 2  |               | J R SERVICES PUMP RENTAL          |                            | 4,050.00   | 250 18 |
| 02          | 2  |               | J R SERVICES                      |                            | 4,050.00   | 250 18 |
| 02          | 2  | 46595 020982  | J R SERVICES                      | PUMP & GENERATOR RENTAL    | 4,050.00   | 250 18 |
| 02          | 2  | 73400 1908    | RAPID FLO INC                     | 3" PE PIPE RENTAL FROM 12  | 1,729.73   | 250 18 |
| 03          | 2  | 46595 820302  | J R SERVICES                      | PUMP & GENERATOR RENTAL    | 4,050.00   | 250 18 |
| 03          | 2  | 73400 1979    | RAPID FLO INC                     | PIPE RENTAL                | 1,729.73   | 250 18 |
| 04          | 2  | 46595 32382   | J R SERVICES                      | RENTAL ON GENERATOR        | 3,886.85   | 250 18 |
| 04          | 2  | 73440 2037    | RAPID FLOW LINES                  | PIPE RENTAL                | 1,729.73   | 250 18 |
| 04          | 2  | 81083 8203434 | STANDARD SERVICE INC              | 30 DAYS RENTAL             | 960.99     | 250 18 |
| INTANGIBLES |    |               |                                   |                            |            |        |
| 12          | 1  |               | 1130 D GIRARD WELL SUPERVISION    |                            | 467.13     | 250 20 |
| 12          | 1  |               | 1130 L CARPENTER WELL SUPERVISION |                            | 213.45     | 250 20 |
| 12          | 1  |               | 1130 B WILLIAMS WELL SUPERVISION  |                            | 69.16      | 250 20 |
| 12          | 1  |               | 1130 A J DEANS WELL SUPERVISION   |                            | 393.20     | 250 20 |
| 02          | 2  | 182           | BILLING TO CORRECT W/ INTANGIBLE  |                            | 6,959.72   | 250 20 |
| 03          | 2  |               | 31 DAYS DRUG OVERHEAD MARCH       |                            | 3,550.00   | 250 20 |
| 03          | 2  | 05230 1506    | ARROWHEAD WELDING                 | PUT ON 8 5/8 NIPPLES 2" CO | 217.35     | 250 20 |
| 03          | 2  | 05230 1509    | ARROWHEAD WELDING                 | CUT OFF 13 3/8 & WELD      | 159.39     | 250 20 |
| 03          | 2  | 05230 1514    | ARROWHEAD WELDING                 | CUT OFF CONDUCTOR PIPE TO  | 218.78     | 250 20 |
| 04          | 2  | 34012 5866    | H & W ENTERPRISES                 | CUT OFF 4 1/2" CASING      | 121.68     | 250 20 |
| INTANGIBLES |    |               |                                   |                            |            |        |
| 10          | 1  | 51730 51115   | LAYERS TILE                       | ABSTRACT                   | 126.00     | 250 22 |
| 10          | 1  | 77400 4518    | SCHULTZ ABSTRACT CC               | ABSTRACT #2423             | 268.72     | 250 22 |
| INTANGIBLES |    |               |                                   |                            |            |        |
| 11          | 1  | 46102 100781  | JENNINGS AND CHRISTY              | DRUG & COT CPINION         | 350.00     | 250 24 |
|             |    |               |                                   |                            | 358,822.40 |        |

HARVEY E YATES COMPANY  
WELL AND OPERATIONS ANALYSIS

LEASE-0914200-SEYMOUR STATE #1  
COUNTY-005-CHAVES  
STATE-020-NEW MEXICO  
OPERATOR-99980-HARVEY E YATES CO

| MC | YR | REFERENCE    | D E S C R I P T I O N                                    | A M O U N T | GEN | SUE |
|----|----|--------------|--|-------------|-----|-----|
| 04 | 2  | 19260 06543  | IDC FORMATION EVALUATION<br>DRESSER INDUSTRIES INC       | 20,265.62 ✓ | 251 | 22  |
| 03 | 2  | 34060 254551 | IDC FORMATION EVALUATION<br>HALLIBURTON SERVICES         | 3,491.29 ✓  | 251 | 24  |
| 03 | 2  | 34060 269303 | HALLIBURTON SERVICES<br>OPEN HOLE TEST #2                | 4,030.78 ✓  | 251 | 24  |
| 04 | 2  | 34060 254635 | HALLIBURTON SERVICES<br>DST #5                           | 3,656.94 ✓  | 251 | 24  |
| 04 | 2  | 34060 254740 | HALLIBURTON SERVICES<br>DST #3                           | 1,786.98 ✓  | 251 | 24  |
| 04 | 2  | 34060 254741 | HALLIBURTON SERVICES<br>DST #4                           | 3,448.38 ✓  | 251 | 24  |
| 04 | 2  | 34060 269305 | HALLIBURTON SERVICES<br>OPEN HOLE DST #4                 | 3,379.74 ✓  | 251 | 24  |
| 03 | 2  | 09211 22253  | IDC FORMATION EVALUATION<br>PENNETT-CATHY WIRE LINE      | 256.55 ✓    | 251 | 26  |
| 03 | 2  | 82240 475600 | SUPERIOR SUPPLY CO<br>SAMPLE BAGS                        | 22.86 ✓     | 251 | 26  |
| 04 | 2  | 11311 31882  | GRYLOGGING<br>LOGGING                                    | 8,235.80 ✓  | 251 | 26  |
| 04 | 2  | 11311 3432   | GRYLOGGING<br>LOGGING                                    | 359.22 ✓    | 251 | 26  |
|    |    |              |  | 46,215.74 * |     |     |
| 03 | 2  | 08550 3131   | INTANGIBLE COMPLETION COSTS<br>BAER OILFIELD SERVICES    | 1,792.44 ✓  | 252 | 32  |
| 04 | 2  | 34060 254236 | HALLIBURTON SERVICES<br>5 1/2 2 STAGE LONGSTRING         | 24,555.96 ✓ | 252 | 32  |
| 03 | 2  | 34012 5910   | INTANGIBLE COMPLETION COSTS<br>H-E W ENTERPRISES         | 759.20 ✓    | 252 | 38  |
| 10 | 1  |              | INTANGIBLE COMPLETION COSTS<br>D GIRAND WELL SUPERVISION | 136.90 ✓    | 252 | 40  |
| 01 | 2  | 123181       | R NOKES WELL SUPERVISION                                 | 480.10 ✓    | 252 | 40  |
| 01 | 2  | 123181       | BOB WMS WELL SUPERVISION                                 | 187.10 ✓    | 252 | 40  |
| 01 | 2  | 123181       | D GIRAND WELL SUPERVISION                                | 183.57 ✓    | 252 | 40  |
| 01 | 2  | 123181       | L CARPENTER WELL SUPERVISION                             | 64.50 ✓     | 252 | 40  |
| 02 | 2  | 131          | D GIRAND WELL SUPERVISION                                | 56.31 ✓     | 252 | 40  |
| 02 | 2  | 131          | L CARPENTER WELL SUPERVISION                             | 57.22 ✓     | 252 | 40  |

LEASE-0914200-SEYMOUR STATE #1  
CDUNTY-005-CHAVES  
STATE-030-NEW MEXICO  
OPERATOR-99980-HARVEY E YATES CC

| NO | YR | REFERENCE   | D E S C R I P T I O N            | A M C U N T | GEN | SUE |
|----|----|-------------|----------------------------------|-------------|-----|-----|
| 02 | 2  | 262         | D GIRARD WELL SUPERIVISON        | 1,062.56 ✓  | 252 | 4C  |
| 12 | 1  |             | INTANGIBLE COMPLETION COSTS      |             |     |     |
| 12 | 1  | 83023 A6669 | CH CHARGES FOR DEC 31 DAYS       | 3,550.00 ✓  | 252 | 4A  |
| 02 | 2  |             | T & C TANK RENTAL                | 461.61 ✓    | 252 | 4A  |
| 02 | 2  |             | FEB DRUG OVERHEAD 28 DAYS        | 3,550.00 ✓  | 252 | 4A  |
| 02 | 2  | 1191        | BILLING TO CORRECT MI INTANGIBLE | 461.61 ✓    | 252 | 4A  |
| 02 | 2  | 1281        | BILLING TO CORRECT MI INTANGIBLE | 27,400.60 ✓ | 252 | 4A  |
| 02 | 2  | 182         | BILLING TO CORRECT MI INTANGIBLE | 915.27 ✓    | 252 | 4A  |
| 03 | 2  | 17710 R347  | DAWN TRUCKING                    | 4,711.32 ✓  | 252 | 4A  |
| 03 | 2  | 21210 200   | W.D'S PIPE RENTAL                | 796.64 ✓    | 252 | 4A  |
| 03 | 2  | 73661 1666  | RED LAKE TRUCKING INC            | 639.90 ✓    | 252 | 4A  |
| 03 | 2  | 83023 A5153 | T & C TANK RENTAL                | 450.88 ✓    | 252 | 4A  |
| 04 | 2  | 34012 5943  | H & W ENTERPRISES                | 715.57 ✓    | 252 | 4A  |
|    |    |             | HAULED TUBING 227 JTS            | 83,069.26 * |     |     |
| 03 | 2  | 08610 42630 | TANG DRUG & COMPLETION           |             |     |     |
| 03 | 2  | 08610 82708 | BEARING SERVICE & SPPLY          | 7,586.88 ✓  | 260 | 01  |
|    |    |             | RING GASKET                      | 246.84 ✓    |     |     |
| 03 | 2  | 08610 82675 | TANG DRUG & COMPLETION           |             |     |     |
| 03 | 2  |             | BEARING SERVICE & SPPLY          | 20,507.35 ✓ | 260 | 03  |
|    |    |             | 1537.95' @ 5/8 CSG               |             |     |     |
| 03 | 2  |             | TANG DRUG & COMPLETION           |             |     |     |
| 03 | 2  | MTL112      | 41.15' @ 1/2 15.50# LTCC J55 WKR | 524.94 ✓    | 260 | 05  |
| 03 | 2  | MTL112      | 3046.05' @ 1/2 15.50# LTCC J55   | 27,754.08 ✓ | 260 | 05  |
| 04 | 2  | 08610 83060 | BEARING SERVICE & SPPLY          | 32,575.15 ✓ | 260 | 05  |
|    |    |             | 3569.05' @ 1/2" R-3 CASIN        |             |     |     |
| 03 | 2  | 08610 82637 | TANG DRUG & COMPLETION           |             |     |     |
| 03 | 2  |             | BEARING SERVICE & SPPLY          | 1,657.88 ✓  | 260 | 05  |
|    |    |             | CSG HEAD AND BALL VALVE          |             |     |     |
| 03 | 2  | MTL120      | TANG DRUG & COMPLETION           |             |     |     |
| 03 | 2  |             | TBG HEAD WITH ACCYS              | 3,638.77 ✓  | 260 | 11  |
| 03 | 2  | MTL124      | TANG DRUG & COMPLETION           |             |     |     |
| 03 | 2  |             | USED 2 7/8 X 45 TREE             | 7,235.06 ✓  | 260 | 12  |



LEASE-0914200-SEYMOUR STATE #1  
COUNTY-005-CHAVES  
STATE-030-NEW MEXICO  
OPERATOR-99980-HARVEY E YATES CC

| NO | YR | REFERENCE   | D E S C R I P T I O N             | A M O U N T   | GEN | SUB |
|----|----|-------------|-----------------------------------|---------------|-----|-----|
| 03 | 2  | 08610 82958 | BEARING SERVICE & SPLY            | 850.46 ✓      | 260 | 13  |
| 04 | 2  | 08610 83188 | BEARING SERVICE & SPLY            | 2,427.64 ✓    | 260 | 13  |
| 01 | 1  | 00458 1296  | TANG. DRUG & COMPLETION           |               |     |     |
| 02 | 2  | 1281        | A-1 SIGN ENGRAVERS                | 39.29 ✓       | 260 | 17  |
| 03 | 2  | MT1118      | BILLING TO CORRECT MI EGLIF       | 39.29 ✓       | 260 | 17  |
|    |    |             | 2" GULFCC ADJ CHOKE               | 667.85- ✓     | 260 | 17  |
|    |    |             |                                   | 104,655.82 *  |     |     |
| 11 | 1  |             | LEASE OPERATING EXPENSE           |               |     |     |
| 01 | 2  |             | DRUG OVERHEAD NOV 1 DAY           | 116.33 ✓      | 270 | 03  |
|    |    |             | JANUARY OVERHEAD                  | 3,550.00 ✓    | 270 | 03  |
| 02 | 2  | 1281        | LEASE OPERATING EXPENSE           |               |     |     |
| 02 | 2  | 182         | BILLING TO CORRECT MI OPERATE EXP | 48.44 ✓       | 270 | 57  |
| 04 | 2  | 10401 7390  | BILLING TO CORRECT MI OPERATE EXP | 4,058.22 ✓    | 270 | 57  |
|    |    |             | SALLY W ROYD                      | 336.00 ✓      | 270 | 57  |
|    |    |             | TRANSCRIPT CF HEARING             |               |     |     |
| 01 | 1  | 08090 18802 | LEASE OPERATING EXPENSE           |               |     |     |
|    |    |             | BAKER STEVENS                     | 48.44 ✓       | 270 | 74  |
|    |    |             | 12 GAL ANTI-FREEZE                |               |     |     |
| 02 | 2  | 74620 13075 | LEASE OPERATING EXPENSE           |               |     |     |
| 02 | 2  | 74620 13795 | RILEY OIL CO INC                  | 481.90 ✓      | 270 | 55  |
|    |    |             | RILEY OIL CO INC                  | 66.32 ✓       | 270 | 55  |
| 03 | 2  | 74620 14129 | RILEY OIL CO INC                  | 81.12 ✓       | 270 | 55  |
|    |    |             | REGULAR                           | 6,828.77 *    |     |     |
|    |    |             |                                   | 603,591.99 ** |     |     |