CAMPBELL & BLACK, P.A.
LAWYERS

JACK M. CAMPBELL
BRUCE D. BLACK
MICHAEL B. CAMPBELL
WILLIAM F. CARR
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PETER N. IVES
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GUADALUPE PLACE
SUITE 1 - 110 NORTH GUADALUPE
POST OFFICE BOX 2208
SANTA FE, NEW MEXICO 87504-2208
TELEPHONE: (505) 988-4421
TELECOPIER: (505) 983-6043

February 6, 1987

HAND DELIVERED

Case 9113

William J. LeMay, Director
Oil Conservation Division
New Mexico Department of
Energy and Minerals
State Land Office Building
Santa Fe, New Mexico 87503

Re: Application of Benson-Montin-Greer Drilling Corp., Dugan Production Corp., Jerome P. McHugh & Associates, and Sun Exploration and Production Company, before the New Mexico Oil Conservation Commission.

Dear Mr. LeMay:

Enclosed in triplicate is the application of Benson-Montin-Greer Drilling Corp., Dugan Production Corp., Jerome P. McHugh & Associates and Sun Exploration and Production Company in the above-referenced case.

The applicants request that this case be set for hearing before the full Commission at the same time as the Commission hearing concerning the permanent rules for the Gavilan Mancos Oil Pool.

Your attention to this matter is appreciated.

Very truly yours,

William F. Carr

WILLIAM F. CARR

WFC/ab
Enclosures

cc w/encls: Albert Greer
all counsel of record

CAMPBELL & BLACK, P.A.
LAWYERS

JACK M. CAMPBELL
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TELEPHONE (505) 988-4421
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February 25, 1987

I assume this was sent to all parties in Gavilan case

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Oil Conservation Division
P.O. Box 2088
Santa Fe, New Mexico 87504
Attn: W. LeMay

M.S.
Case 9113

Re: Application of Benson-Montin-Greer Drilling Corp., Dugan Production Corp., Jerome P. McHugh & Associates, and Sun Exploration and Production Company to abolish the Gavilan Mancos Oil Pool; to extend the West Puerto Chiquito Mancos Oil Pool; and for the Amendment of the Special Pool Rules and Regulations for the West Puerto Chiquito Mancos Oil Pool including production limitations, a special gas/oil ratio, and authority for additional wells on proration units, Rio Arriba County, New Mexico.

Dear Sirs:

This letter is to advise you that the above-referenced application has been ~~set for hearing~~ before the New Mexico Oil Conservation Commission on March 30, 1987. A copy of the application in this case is enclosed for your information.

You are not required to attend this hearing, but as an interest owner in this area, you may appear and present testimony. Failure to appear at that time and become a party of record will preclude you from challenging the matter at a later date.

Very truly yours,

William F. Carr

WILLIAM F. CARR

WFC/ab
Enclosure

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION COMMISSION

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

REOPENING OF CASES 8350, 7980, 8946 AND 8950; AND THE APPLICATION OF BENSON-MONTIN-GREER DRILLING CORP., JEROME P. McHUGH & ASSOCIATES AND SUN EXPLORATION & PRODUCTION CO. - CASE 9113 AND APPLICATION OF MESA GRANDE RESOURCES, INC. - CASE 9114.

MOTION OF FLOYD AND EMMA EDWARDS TO VACATE HEARING

Floyd and Emma Edwards through counsel Oman, Gentry & Yntema, P.A., and hereby move this Commission to vacate the hearing on the above referenced Cases, which hearing is presently scheduled to begin on March 30, 1987.

Floyd and Emma Edwards are lessors under three oil and gas leases located in the Gavilan-Mancos Oil Pool in Rio Arriba County. The Edwards' property interests will be significantly impacted by the Commission's actions and decisions on the various matters that will be heard at the hearing, and thus they are clearly interested parties. The Edwards plan on presenting testimony at the hearing. Therefore, based on the grounds discussed below, the Edwards would at this time respectfully request that the hearing be vacated and rescheduled to occur at a later date:

I

THE EDWARDS RECENTLY RETAINED NEW COUNSEL BECAUSE OF A CONFLICT OF INTEREST

The Edwards were previously represented by the law firm of Hinkle, Cox, Eaton, Coffield & Hensley. However, due to an unavoidable conflict of interest that only recently developed, it became necessary for the Hinkle firm to withdraw as attorney for the Edwards. The firm of Oman, Gentry & Yntema, P.A. was only retained by the Edwards on March 2, 1987.

Due to the magnitude and complexity of the matters to be heard by the Commission and the immense economic affect that the Commission's decision will have on the Edwards', and other parties similarly situated, the Edwards need additional time to adequately prepare their case and to contact other individuals who are similarly situated and who may wish to be heard but to the best of the Edwards' knowledge and information did not receive notice of this hearing. The Edwards will oppose, among other things, the proposed increase in the spacing units from 40 to 320 or 640 acres and the proposed changes in the Gavilan-Mancos Pool and the West Puerto Chiquito-Mancos Pool. These are obviously very complex matters that require a great deal of time for adequate preparation, including the retention of the appropriate expert witness or witnesses. Unless the Commission agrees to delay the hearing of the matters scheduled to come before the Commission on March 30, 1987, as enumerated in the caption to this pleading, the unforseeable conflict of interest of the Hinkle law firm

will have the affect of denying the Edwards and their attorneys sufficient time to make appropriate, adequate preparation required in order to present the Edwards' position in these cases, which is representative of the position of other royalty interest owners.

II
PENDING LITIGATION INVOLVING THE OIL CONSERVATION COMMISSION

As the Commission is aware, the Edwards are currently involved in litigation with Jerome McHugh and other parties, including this Commission. (Floyd E. Edwards, et al. v. Jerome P. McHugh, et al., No. RA 85-373(C), State District Court, Rio Arriba County). The main issue in the litigation is that the purported rulings of this Commission in Cases 7980 and 8350, which rulings increased the spacing unit from 40 to 320 acres, were and are unconstitutional and void, at least as to the Edwards, because the Edwards were deprived of a protected property right without proper notice and an opportunity to be heard before the Commission.

Under Order Nos. R-7407 and R-7745, the Commission purportedly increased the spacing units from 40 to 320 acres for a three year period of time ending on March 1, 1987. The Edwards, obviously, oppose such an increase, and would have appeared in opposition to such proposed increase at the original hearing, if they had simply been provided with notice of that hearing. The Edwards will be filing with this Commission a Memorandum regarding this issue of notice and the invalidity of Order Nos. R-7407 and R-7745.

Should the Edwards prevail in this litigation, Order Nos. R-7407 and 7745 would be invalid, at least as they applied to the Edwards. Should they prevail, other similarly situated parties may then seek identical relief from the Courts. Ultimately, this could result in a very confused and complicated situation regarding Order Nos. R-7407 and R-7745 and their application.

On March 26, 1987, a hearing on the Edwards' motion for summary judgment will be heard by the Court. That motion seeks a ruling from the Court on the notice issue and, consequently, the validity of Order Nos. R-7407 and R-7745. A decision from the Court should be forthcoming shortly thereafter.

In view of the possible confusion and problems that would result from a judicial decision favorable to the Edwards and considering the principle of judicial or administrative ecomony, it only seems logical and rational for this Commission to vacate the hearing scheduled for March 30 and continue it until a subsequent date after a judicial decision has been rendered.

III
ADEQUACY OF NOTICE FOR THESE HEARINGS

Should the Court rule that the Edwards as royalty interest owners were entitled to actual notice, then all royalty interest owners in these upcoming hearings are entitled to actual notice, as a matter of constitutional law and due process.

Should the Court rule that the Edwards as royalty interest owners were not entitled to actual notice, then royalty interest

owners in these hearings are not entitled, constitutionally, to actual notice. However, it appears from a reading of Rule 1207 of the Commission's Rules on Procedure that royalty interest owners would still be legally entitled to actual notice under the Commission's own rules of procedure, which have the force of law. See Jaramillo v. Fisher Controls Co., Inc., 102 N.M. 614, 698 P.2d 887 (Ct. App., 1985) Rule 1207 (a) (7) provides for actual notice to royalty interest owners in order to protect their property interests.

In any case, it is imperative to determine exactly what notice was provided to royalty interest owners. Based on past experience before the Commission and based on our best knowledge and information, all royalty interest owners who will have property rights affected by these hearings have not, in fact, been provided actual notice of these hearings.

Again, it is only logical and rational for the Commission to continue the hearing until proper notice is provided, as either constitutionally or legally mandated.

OMAN, GENTRY & YNTEMA, P.A.

By _____
Nicholas R. Gentry
Attorney for Floyd and
Emma Edwards
215 Gold S.W., Suite 201
P. O. Box 1748
Albuquerque, New Mexico 87103
(505) 843-9565

I hereby certify that a true and correct copy of the foregoing Motion Of Floyd And Emma Edwards For Continuance Of Hearing was mailed to all counsel of record this 24th day of March, 1987.

OMAN, GENTRY & YNTEMA, P.A.

By Nicholas R. Gentry
Nicholas R. Gentry

LAW OFFICES OF
OMAN, GENTRY & YNTEMA, P.A.

LAFEL E. OMAN, OF COUNSEL
KESTER L. OMAN
NICHOLAS R. GENTRY
HESSEL E. YNTEMA, III
DAVID STOTTS

PACIFIC BUILDING
215 GOLD AVE., S.W. SUITE 201
POST OFFICE BOX 1748
ALBUQUERQUE, NEW MEXICO 87102
505-843-9565

March 23, 1987

HAND DELIVERED

RECEIVED
MAR 23 1987
OIL CONSERVATION DIVISION

State of New Mexico
Energy and Minerals Department
Oil Conservation Division
State Land Office Building
Santa Fe, New Mexico 87501

Attention: William J. LeMay, Director

Docket No. 11-87 (Gavilan and West Puerto Chiquito-Mancos Pools)

Ladies and Gentlemen:

This letter is in response to your request that any interested owner who wishes to be a party and present testimony during Oil Conservation Commission hearings on the Gavilan and West Puerto Chiquito-Mancos Pools contact Mr. LeMay in writing by March 23, 1987.

Floyd and Emma Edwards, through counsel Oman, Gentry & Yntema, P.A., and Ernest L. Padilla, Padilla & Snyder, have by written motion, filed with the Oil Conservation Commission on March 20, 1987, a copy of which motion is attached to this letter as Exhibit A, requested the Commission to vacate and reschedule at a later date those matters referenced in the Motion of Floyd and Emma Edwards To Vacate presently scheduled to be heard by the Commission on March 30, 1987.

For the reasons stated in the Edwards' written motion as Point I--"The Edwards Recently Retained New Counsel Because of a Conflict of Interest"--the decision of the Oil Conservation Commission on the Edwards motion will determine whether Mr. and Mrs. Edwards can present appropriate expert testimony at a hearing before the Commission on the Gavilan and West Puerto Chiquito-Mancos Pools. If the Commission refuses to postpone to a later date hearing those matters referenced in the Edwards' written motion, the ability of the Edwards to present

appropriate expert testimony at a five-day hearing starting March 30, 1987, is, frankly and unfortunately, doubtful. However, if a postponement is refused, the Edwards would still request that the Oil Conservation Commission reserve at least two hours for presentation of testimony in opposition to the proposed increase in spacing unit size in the Gavilan and West Puerto Chiquito-Mancos Pools. If appropriate expert testimony cannot be developed by the Edwards in time for presentation between March 30 through April 3, 1987, counsel for the Edwards will so notify the Commission at the earliest opportunity in order that the Commission can adjust the hearing schedule.

At any time before March 30, 1987, or, if the March 30, 1987, hearing date is not vacated before March 30, 1987, then at the commencement of proceeding on March 30, 1987, counsel for Mr. and Mrs. Edwards request the opportunity for oral presentation to the Commission of two matters:

1. Motion of Floyd and Emma Edwards to Vacate Hearing, per written motion attached to this letter as Exhibit A; and

2. On March 2, 1987, well spacing in the Dakota and Mancos formations within the Gavilan-Mancos Pool reverted to forty-acre units pursuant to:

   A. Order No. R-7407 provides for temporary 320 acre spacing, effective March 1, 1984, established for a three year period. (See Finding Nos. 11 and 16; Special Rule 2; Order No. 1.)

   B. Order No. R-7745 provides for temporary 320 acre spacing, for a period ending March 1, 1987. (See Finding Nos. 25 and 29; Special Rule 2.)

   Any attempt (i) to expand Order No. R-7407 and/or Order No. R-7745 by extending the duration of these Orders beyond March 1, 1987, or (ii) to give retroactive effect to any decision by the Commission back to March 1, 1987, is opposed by Mr. and Mrs. Edwards.

Attached to this letter as Exhibit B is the Memorandum of Law of Floyd and Emma Edwards presenting to the Commission legal authority supporting the Edwards positions both as to (i) the need to vacate the scheduled March 30, 1987, hearing as to those matters referenced in the Edwards' written motion and (ii) the reversion to forty-acre spacing within the Gavilan-Mancos Pool on March 2, 1987.

Please do not hesitate to contact any of Ernest Padilla, Nicholas Gentry or Kester L. Oman concerning matters covered or raised by this letter or the exhibits thereto.

Very truly yours,

OMAN, GENTRY & YNTEMA, P.A.

By Nicholas R. Gentry
Nicholas R. Gentry

cc: All Counsel of Record
Floyd and Emma Edwards

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION COMMISSION

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

REOPENING OF CASES 8350, 7980, 8946 AND 8950; AND THE APPLICATION OF BENSON-MONTIN-GREER DRILLING CORP., JEROME P. McHUGH & ASSOCIATES AND SUN EXPLORATION & PRODUCTION CO. - CASE 9113 AND APPLICATION OF MESA GRANDE RESOURCES, INC. - CASE 9114.

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The Edwards were previously represented by the law firm of Hinkle, Cox, Eaton, Coffield & Hensley. However, due to an unavoidable conflict of interest that only recently developed, it became necessary for the Hinkle firm to withdraw as attorney for the Edwards. The firm of Oman, Gentry & Yntema, P.A. was only retained by the Edwards on March 2, 1987.

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OMAN, GENTRY & YNTEMA, P.A.

By _____
Nicholas R. Gentry
Attorney for Floyd and
Emma Edwards
215 Gold S.W., Suite 201
P. O. Box 1748
Albuquerque, New Mexico 87103
(505) 843-9565

I hereby certify that a true and correct copy of the foregoing Motion Of Floyd And Emma Edwards For Continuance Of Hearing was mailed to all counsel of record this 24th day of March, 1987.

OMAN, GENTRY & YNTEMA, P.A.

By _____
Nicholas R. Gentry

EXHIBIT A
(Page 6 of 6 Pages)

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION COMMISSION

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

REOPENING OF CASES 7980 8350, 8946 AND 8950; AND THE APPLICATION OF BENSON-MONTIN-GREER DRILLING CORP., JEROME P. McHUGH & ASSOCIATES AND SUN EXPLORATION & PRODUCTION CO., - CASE 9113 AND APPLICATION OF MESA GRANDE RESOURCES, INC. - CASE 9114.

MEMORANDUM OF LAW OF
FLOYD AND EMMA EDWARDS

COMES NOW Floyd and Emma Edwards, through counsel Oman, Gentry & Yntema, P.A., and hereby present to the Oil Conservation Commission their memorandum of law regarding several pertinent legal issues in the above captioned cases set for hearing before the Commission beginning on March 30, 1987.

I

LACK OF NOTICE

A.

FACTUAL BACKGROUND

As the Commission is aware the Edwards are currently involved in litigation pertaining to Case No. 7980. In Edwards, et. al. v.

EXHIBIT B

McHugh, et. al., No. RA 85-373(c), the main issue is the constitutionality of notice provided for that hearing. Presently pending before the Court is the Edwards' summary judgment motion which, in essence, asks the Court to rule that the notice provided in Case No. 7980 was unconstitutional; and, therefore, Order No. R-7407 which increased the spacing unit from 40 to 320 acres was invalid or void as to the Edwards.

In that litigation it is undisputed that the Edwards are owners of several hundred acres of mineral property in Rio Arriba County, in the Gavilan-Mancos Pool. The Edwards have entered into three separate oil and gas leases in connection with this property. Through several assignments Jerome McHugh has become the lessee under those leases. One well, the E.T. #1 is the only well drilled on the land covered by the three leases. The original spacing unit for the E.T. #1 well was 40 acres. The Edwards own all of the 40 mineral acres underlying the E.T. #1 well.

In late 1983, McHugh filed an application (Case No. 7980) with the Commission for an order establishing the Gavilan-Mancos Oil Pool, fixing the pool's boundaries and increasing the size of the proration and spacing units for the Mancos formation from 40 to 320 acres. The Commission published notice of the hearing in Case No. 7980. The Edwards are not residents of New Mexico. However, McHugh has always known the Edwards' address and their whereabouts, and he has conceded that the Edwards did not have prior actual knowledge of the hearing in Case No. 7980, which resulted in Order No. R-7407.

After conducting the hearing without notice to the Edwards, the Commission promulgated Order No. R-7407 granting the relief sought by McHugh. Based on the Commission's order, McHugh attempted to pool certain acreage from the Edwards three leases with other acreage to form 320 acre spacing units which included E.T. #1 well. As a result of the Commission's order, the Edwards entitlement to royalties from the E.T. #1 well has been reduced by three-fourths.

The Edwards first became aware of Case No. 7980 and Order No. R-7407 in the spring of 1984, when their royalty payments were drastically reduced in amount. This was long after the period for filing for a rehearing or appeal had expired.

B.

THE EDWARDS WERE DEPRIVED OF THEIR PROPERTY RIGHTS BY STATE ACTION AND THUS DUE PROCESS REQUIREMENTS APPLY.

The Commission is empowered by the state conservation laws to fix the spacing of wells, N.M. Stat. Ann. § 70-2-12(B)(10) (1978). This is an exercise of the state's police power. See Armstrong v. High Crest Oil, Inc., 520 P. 2d 1081 (Mont. 1974). As such, the Commission's action increasing the spacing unit size for the Mancos formation involved state action. See Louthan v. Amoco Production Company, 652 P. 2d 308 (Okla. App. 1982).

While the Commission's action in increasing the spacing unit size to 320 acres clearly involved state action, it should be noted that McHugh has previously agreed with this position. In the federal

court action first initiated by the Edwards, McHugh moved for dismissal due to failure to join an indispensable party, the Commission. McHugh's position, with which the federal court agreed, was that the crux of the due process claim concerned the Commission's order increasing the spacing unit to 320 acres.

McHugh baldly asserts that no property interests of the Edwards were affected by the Commission's spacing order, without any citation to authority. The reason McHugh cites no authority for his proposition is because there is none.

The Edwards own the mineral rights underlying several hundred acres of land in Rio Arriba County. These mineral rights were subject to Leases 1, 2 and 3, under which the Edwards retained a royalty of 14.5%. Mineral interests and royalty interests are real property in New Mexico. Terry v. Humphreys, 27 N.M. 564, 203 P. 539 (1922); Duvall v. Stone, 54 N.M. 27, 213 P. 2d 212 (1949). Thus, it is clear that the Edwards own a property interest which is protected by the state and federal constitutions.

The conclusion is inescapable that the Edwards were deprived of their property by state action. The Commission's Order No. R-7407 increased well spacing unit size from 40 acres to 320 acres. The increased spacing provided the indispensable prerequisite for McHugh's attempt to pool Leases 1, 2 and 3 with other acreage to form 320 acre spacing units. Without that order, the pooling of 320 acres could not have conceivably occurred, by contract or otherwise. As a result of

the void attempted poolings, the following occurred:

1. The Edwards' royalties from the E.T. #1 well were reduced by three-fourths;
2. If not for the invalid pooling, Leases 2 and 3 would have terminated by their own terms on April 16, 1984, because McHugh failed to drill a producing well on each of the leases by that date; and
3. Without the invalid increase in spacing unit size, the Edwards would be entitled to have one well drilled on each 40 acre tract of land on their leases.

From the foregoing, it is clear that the Edwards were deprived of their property by state action. 1/ In fact, it has been held that spacing orders promulgated by oil and gas conservation bodies deprive mineral interest owners of property rights. Cravens v. Corporation Commission, 613 P. 2d 442 (Okla. 1980) (increase in spacing unit size); Union Texas Petroleum v. Corporation Commission, 651 P. 2d 652 (Okla. 1982), cert. denied 103 S. Ct. 82 (1982) (decrease in spacing unit size).

1/ The laws in existence at the time of making a contract became part of such contract. Montoya v. Postal Credit Union, 630 F.2d 745 (10th Cir. 1980). The existing oil and gas conversation laws and regulations are incorporated into a lease. Layton v. Pan American Petroleum Co., 383 P.2d 624 (Okla. 1963); Everett v. Phillips Petroleum Co., 51 So.2d 87 (la. 1950). As a result, when Leases 1, 2, and 3 were executed in 1980, the leases were subject to the Commission's 40 acre spacing for wells completed in the Mancos formation. Order No. R-7407, if valid as against the Edwards, modifies the terms of the lease contract by increasing the spacing for Mancos wells to 320 acres. Such adverse state action, modifying existing legal rights, is void without constitutionally sifficient notice. Olansen v. Texaco Inc., 587 P.2d 976 (Okla. 1978). The 320 spacing has the effects noted above. Thus, the Edwards had a deep interest in the subject matter of Order No. R-7407.

The Commission, in deciding spacing cases or other matters within its jurisdication, acts in a judicial or quasi-judicial fashion. Moore Oil v. Snakard, 150 F. Supp. 250, (W.D. Okla. 1957); 1951-52 Op. Att'y Gen. 75. The basic requirements of due process in such proceedings are notice and an opportunity to be heard. Robertson v. The Mine and Smelter Supply Company, 15 N.M. 606 (1910). Where due process requirments are not met, the judgment or order is void as against the persons not receiving notice of the proceedings. Id.,; Ford v. Willits, 688 P.2d 1230 (Kan. 1984).

Commission Case No. 7980 was preceded only by notice in the form of publication. Notice by publication is insufficient as a matter of law to deprive a person of property rights. The landmark case on this issue is Mullane v. Central Hanover Bank & Trust Co.. 339 U.S. 306 (1950). In that case, a New York statute permitted trust companies to pool small trust into a common fund for administrative purposes. The statute provided for notice by publication to interested beneficiaries of trust accounts. In rejecting the sufficiency of notice by publication, the Supreme Court stated:

> An elementary fundamental requirement of due process in any proeeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections...
>
> It would be idle to pretend that publication alone... is a reliable means of acquainting interested parties of the fact that their rights are before the courts....

339 U.S. at 314-15. The Court then held that notice by publication is not sufficient to deprive a person of property rights, when that person's whereabouts are known or easily ascertained. Id. at 315. See Mennonite Board of Missions v. Adams, 462 U.S. 791 (1983) (reaffirming and expanding upon the Mullane requirements of due process).

The Mullane principles have been adopted in New Mexico. Eastham v. Public Employees Retirement Ass'n Bd., 89 N.M. 403, 553 P.2d 679 (1976). Furthermore, even before Eastham, the New Mexico courts recognized that administrative proceedings must conform to the requirements of due process. Matter of Protest of Miller, 88 N.M. 492, 542 P.2d 1182 (Ct. App. 1975). The requirements of due process in the administraive setting require, at the minimum, a diligent effort to personally inform the person whose property may be taken. Id.

The cases involving proceedings before state oil and gas conservation commissions have uniformly held that publication notice is insufficient to deprive a person of a property right. In Cravens v. Corporation Commission, 613 P.2d 442 (Okla. 1981), the applicants obtained an order from the Commission which increased spacing from 80 acres to 160 acres in a certain pool. Notice of the application was by publication only. Cravens was unaware of the application until after the order was issued. The Oklahoma Supreme Court reversed the Commission's decision and vacated the order as to Cravens. The Court held that publication notice was insufficient, and stated:

> Regardless of statutory provisions for publication alone, applicants were required to use due diligence in notifying [Cravens] of their application under the principles of ... Mullane.

613 P.2d at 444 (emphasis added).

Similarly, in Louthan v. Amoco Production Company, 652 P.2d 308 (Okla. App. 1982), certain mineral owners applied to the Oklahoma Corporation Commission to increase well spacing form 160 acres to 640. Again, the only type of notice required by statute and/or regulation and the only type given, was by publication. After entry of the increased spacing order, Amoco filed suit to vacate the order. The trial court upheld the validity of the spacing order. The appellate court reversed, holding that the order was void as to Amoco:

> Was Amoco denied due process of law? We hold it was.
>
> Statutorily authorized deprivation of property solely on the basis of publication service is constitutionally deficient in situations where, with use of due diligence, actual notice is possible. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S. Ct. 652, 94 L.Ed. 865 (1950); Cravens v. Corporation Commission, Okl. 613 P.2d 442 (1980).
>
> In the situation here it was even more important that all mineral interest owners in section 20 be constitutionally notified since a producing well existed on it -- a well that Cherokee knew or should have known about. It could easily have discovered the names and addresses of some if not all owners of both the working as well as the royalty interests of Lawton "A", as well as other areas of section 20.
>
> The 1970 spacing and drilling order of the

> corporation commission is, therefore, void as to Amoco.

Id. at 310 (emphasis added). Accord, Union Texas Petroleum v. Corporation Commission, 651 P.2d 652 (Okla. 1982), cert. denied 103 S. Ct. 82 (1982); Walker v. Cleary Petroleum Corp., 421 So.2d 85 (Ala. 1982); Olansen v. Texaco, Inc., 587 P.2d 976 (Okla. 1978) (reasonable notice must be given to rpyalty owners).

In the present case, McHugh knew the Edwards' whereabouts, since the Edwards' address was plainly denoted on Leases 1, 2 and 3. Moreover, as lessee under those leases, McHugh had been paying rentals, royalties, and bonuses to the Edwards, and he certainly knew where to send those payments. Nonetheless, he failed to give constitutionally sufficient notice of a hearing which significantly and adversely affected the Edwards' property rights. We have no idea why McHugh decided to act in that fashion. However, the conclusion remains that the Commission lacked jurisdiction to deprive the Edwards of their property rights, and Order No. R-7407 is void as against them. 2/ Thus, it is clear that Order No. R-7407 is void as to the Edwards.

2/ Even absent due process requirements, McHugh should have been required to give notice to plaintiffs of his application in Case No. 7980, based on general principles of fair dealing. It has been held that in New Mexico a lessor and lessee stand in the relation of principal and agent, and the lessee should, in good faith, communicate with the lessor, to the extent possible, regarding matters of mutual interest. Amoco v. Jacobs, 746 F.2d 1394 (10th Cir. 1984).Thus, a lessee must not take action in which he has an interest adverse to that of the lessor, unless the lessor has full knowledge and consents

These legal principles do also, of course, apply to the upcoming hearing. Therefore, it is incumbent on the Commision and applicants to insure that proper notice has been provided to all interested parties, so that we are not faced with this same problem once again.

II

EXPIRATION OF ORDER NO. R-7407 AND R-7745

Even if these orders were at one time valid as to the Edwards, which point the Edwards certainly do not concede, by their own clear and unambiguous language, Order Nos. R-7407 and R-7745 expired on March 1, 1987.

Order No. R-7407 provided for temporary 320 acre spacing, effective March 1, 1984, for a three year period. See Finding Nos. 11 and 16; Special Rule 2; and Order No. 1. Order No. R-7745 provided for temporary 320 acre spacing, for a period ending on March 1, 1987. See Finding Nos. 25 and 29; Special Rule 2. These orders are, therefore, no longer in effect, and spacing units revert to 40 acres and remain at 40 acres until further order of the Commission.

2/ to the action. Phillips Petroleum v. Peterson, 218 F.2d 926 (10th Cir. 1954). In the present case the interests of the Edwards and McHugh were obviously disparate, and McHugh should have notified the Edwards of his proposed respacing of the subject pool as a matter of good faith dealing.

The applicants and this Commission have known for three years that these orders were to expire on March 1, 1987. The three year period was expressly established in order to allow the operators in the Gavilan-Mancos Pool to gather reservoir information.

Neither the Commission nor any applicant has requested an order which would expand the time period of either of these orders, nor has there been any request for a new Commission order which sould have retroactive effect back to March 1, 1987. In any event, such a retroactive order or a nunc pro tunc order would be contrary to the Commission's authority. The law will not grant retroactive relief to party because the relief sought was necessary due to that party's own delay or lack of due diligence. Reichold Energy Corp v. Division of State Lands, 700 P.2d 282 (Or. 1985).

Administrative rules or regulations cannot be made retroactive, if the equities do not favor the party requesting the retroactive relief. Application of Farmers Irrigation District, 194 N.W.2d 788 (Neb. 1972); Tennessee Gas Pipeline Co. v. F.E.R.C., 606 F.2d 1094 (D.C. Cir. 1979); cert. denied, 445 U.S. 920. The original hearings proceeded without the applicants providing adequate notice to the Edwards, thus the orders in those cases were void as they applied to the Edwards, Louthan v. Amoco, supra, since they were not given an opportunity to be heard.

The law unambiguously provides that a commission order purporting to increase the size of a spacing unit is repugnant to due

process and void unless preceded by actual notice to affected parties. For example, in Cravens v. Corporation Commission, supra, the commission increased well spacing from 80 to 160 acres without notice to Cravens. Like the Edwards' case, the commission's actions formed the improper predicate for the lessee's attempt to pool tracts and dilute Craven's royalty interest. The Oklahoma Supreme Court, relying on Mullane v. Central Hanover Bank and Trust Co., supra, voided the order as to Cravens, since he was afforded not actual notice. As a result of the voided order, the lessee's attempted pooling was ineffective.

Thus, this Commission cannot extend the time of the original orders or issue an order with retroactive effect to the Edwards, since the original order was void as to them.

III

CONCLUSION

The Edwards never had the opportunity to appear before this Commission and protect their interests and property rights when the issue of increasing the spacing units was originally heard by this body, simply because the Edwards were not given proper notice of the hearing. The law is clear that the notice that was given, by publication only, was constitutionally deficient. The law is also clear that in such a situation the order of the Commision is void as to the Edwards. Thus, 40 acres spacing appies to the Edwards' property. If adequate notice has not been provided for the upcoming

hearing, the resultant Commission Order will be void as to all those parties who did not get appropriate notice.

Due to the expiration on March 1, 1987, of the Commision's Orders, spacing has reverted from 320 to 40 acres for the entire affected area. 40 acre spacing will remain until further order of the Commission. A nunc pro tunc order or an order having a retroactive effect is not proper in these circumstances.

OMAN, GENTRY & YNTEMA, P.A.

By _____
Nicholas R. Gentry
215 Gold Ave., S.W., Suite 201
P.O. Box 1748
Albuquerque, New Mexico 87103
(505) 843-9565

I hereby certify that a copy of the foregoing Memorandum of Law of Floyd and Emma Edwards was mailed to all opposing counsel of record this 23rd day of March, 1987.

_____

KELLAHIN, KELLAHIN AND AUBREY
Attorneys at Law
El Patio - 117 North Guadalupe
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

W. Thomas Kellahin
Karen Aubrey

Jason Kellahin
Of Counsel

Telephone 982-4285
Area Code 505

March 23, 1987

Mr. William J. LeMay
Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87504

RECEIVED
MAR 23 1987
OIL CONSERVATION DIVISION

Re: Gavilan and West Puerto
Chiquito-Mancos Pool Cases

Dear Mr. LeMay:

In accordance with the Commission notice of hearing, please find enclosed our one page statement of the positions of Jerome P. McHugh, Dugan Production Corporation, and Sun Exploration and Production Company.

Very truly yours,

W. Thomas Kellahin

WTK:ca
Enc.

cc: Counsel of Record

Before the New Mexico Oil Conservation Commission
Gavilan-West Puerto Chiquito-Mancos Pool Cases

Parties: Dugan Production Corporation, Jerome P. McHugh & Sun Exploration and Production Company
Attorney: W. Thomas Kellahin, Kellahin, Kellahin & Aubrey, Santa Fe, New Mexico 87504 (505) 982-4285

In compliance with the Commission's notice and docket for the referenced cases, the above parties state that they will present geologic and engineering evidence to prove that:

1. The Gavilan-Mancos Oil Pool and The West Puerto Chiquito Mancos Oil Pool are producing from a single common source of supply, i.e., one pool.

2. The Pool is a highly fractured stratified reservoir which produces from a combination of solution gas drive and gravity drainage, supplemented by gas injection pressure maintenance. The majority of the oil is contained within natural fractures and the formation matrix will have little or no contribution to ultimate recoveries.

3. The Gavilan and West Puerto Chiquito-Mancos producing areas are in effective pressure communication with each other.

4. Based upon pressure maintenance and interference testing good communication exists well to well and throughout the reservoir and a maximum well spacing of 640 acres per well should be established.

5. Minimizing the unnecessary dissipation of natural reservoir energy by restricting the gas oil ratios to 600 cubic feet of gas per barrel of oil produced by restricting the producing rate to 800 barrels of oil per day based upon 640 acre spacing will result in more effective production of the pool and will increase ultimate recovery.

6. The current pool allowable of 702BOPD for a 320 acre spacing unit (1342BOPD for a 640 acre spacing unit in the adjacent West Puerto Chiquito Mancos Pool) as derived from the statewide depth bracket schedule is too high and does not properly consider the unique reservoir characteristics that exist in the mancos formation.

7. The Pool reservoir pressures are continuing to decline and the GOR continuing to increase at excessive rates even with the adoption of the temporary provisions of Order R-7407-D so that the Commission must take further measures to restrict well density, allowables and gas-oil ratio limits in order to prevent waste.

8. That under current rules, waste is occurring and will continue to occur in the future, resulting in a large amount of the original oil being left unrecovered.

9. The current Gavilan-Mancos Oil Pool Rules promote the drilling of unnecessary wells, cause waste to occur, encourage competitive operations which create waste and should be abolished and replaced with the West Puerto Chiquito Mancos Oil Pool Rules as amended.

CAMPBELL & BLACK, P.A.
LAWYERS

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MICHAEL B. CAMPBELL
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BRADFORD C. BERGE
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March 20, 1987

RECEIVED
MAR 20 1987
OIL CONSERVATION DIVISION

HAND DELIVERED

William J. LeMay, Director
Oil Conservation Division
New Mexico Department of
Energy and Minerals
State Land Office Building
Santa Fe, New Mexico 87503

Re: Oil Conservation Commission hearing on Gavilan and West Puerto Chiquito-Mancos Pools, March 30, 1987.

Dear Mr. LeMay:

Pursuant to your memorandum attached to the docket for the above-referenced hearing, I am enclosing herewith a position statement of Benson-Montin-Greer Drilling Corp.

Very truly yours,

William F. Carr

WILLIAM F. CARR

WFC/ab
Enclosure

cc w/enclosure: All counsel of record

POSITION STATEMENT

BENSON-MONTIN-GREER DRILLING CORP.

March 23, 1987

Benson-Montin-Greer Drilling Corp. will present engineering and geological testimony at the March 30, 1987, Oil Conservation Commission hearings on the Gavilan and West Puerto Chiquito Mancos Pools which will show:

A. The Gavilan Mancos Oil Pool and the West Puerto Chiquito Mancos Oil Pool constitute one single source of supply which should be governed by the same rules and regulations.

B. This pool is a common reservoir which is stratified and highly fractured with little or no matrix oil contribution. The producing mechanism in the reservoir is a combination of solution gas drive and gravity drainage, supplemented by gas injection pressure maintenance.

C. There is a high degree of pressure communication throughout this reservoir, and it should be developed on 640 spacing and proration units.

D. Recent development of the reservoir has resulted in excessive withdrawal rates which have damaged and will continue to damage the reservoir, thereby reducing the ultimate recovery therefrom as has been evidenced by recent increases in the gas/oil ratios and recent increases in the rate of pressure decline.

E. The state-wide depth bracket schedule for fixing allowables for this reservoir (702 BOPD for Gavilan and 1360? BOPD for West Puerto Chiquito) is not consistent with the reservoir's characteristics and is unreasonably high. Therefore, special rules and regulations are necessary to reduce withdrawal rates from the reservoir, thereby preventing reservoir damage and the waste which will result and that said rules should restrict production by imposition of a gas/oil ratio of no more than 600 cubic feet of gas per barrel of oil and by restricting producing rates to no more than 800 barrels of oil per day per 640 spacing or proration unit.

Amoco Production Company
Denver Region
1670 Broadway
P.O. Box 800
Denver, Colorado 80201
303-830-4040

Kent J. Lund
Attorney

March 20, 1987

RECEIVED
MAR 24 1987
OIL CONSERVATION DIVISION

Federal Express

Mr. William J. LeMay
Director
New Mexico Oil Conservation Division
P.O. Box 2088
State Land Office Building
Santa Fe, New Mexico 87501

RE: Commission Hearing on Gavilan and West Puerto Chiquito-Mancos Pools

Dear Mr. LeMay:

In response to your recent memorandum requesting a concise statement from the parties interested in the proceedings scheduled to begin on March 30, 1987, Amoco Production Company ("Amoco") respectfully submits the following for your consideration.

Amoco has not yet decided whether it will be a formal party to the hearings beginning on March 30 and/or whether it will present testimony during those hearings. However, Amoco is an operator and/or interest holder within the Gavilan-Mancos and West Puerto Chiquito-Mancos Oil Pools, and respectfully reserves the right to participate in those hearings, depending on how those hearings actually proceed.

With respect to Case No. 8350, Amoco submits that the temporary order should be made permanent and, specifically, the provision for 320 acre spacing units should be made permanent. Moreover, the spacing for this oil pool must be the same as the Gavilan-Mancos oil pool.

In Case No. 7980, Amoco submits that the temporary order should be made permanent and, in particular, the provision for 320 acre spacing unit should be made permanent. There is some indication of pressure interference on 320s, and 640 acre spacing appears to be too large given the variability in the reservoir.

With respect to Case Nos. 8946 and 8950, Amoco cannot yet submit a final position. Amoco believes that the data is inconclusive as to whether the reservoir is rate sensitive and as to whether there is secondary recovery potential for the Gavilan-Mancos oil pool and the West Puerto Chiquito-Mancos oil pool. However, it appears at this time that there is no secondary recovery potential.

Amoco opposes the relief requested by the applicant in Case No. 9113 and supports the relief requested by the applicant in Case No. 9114. It appears that the Gavilan-Mancos oil pool is not productive from the C zone

and is productive from the A and B zones. In contrast, it appears that the West Puerto Chiquito-Mancos oil pool produces from the C zone and not from the A and B zones. We further understand that the completion techniques utilized in the West Puerto Chiquito-Mancos oil pool are consistent with that interpretation. Amoco intends to support the application of Mesa Grande Resources, Inc. in Case No. 9114, probably by means of a statement of counsel.

Finally, with respect to rescheduled Case Nos. 9111 and 8951, Amoco: (1) submits that Case No. 9111 must be determined consistently with Case Nos. 9113 and 9114 (Amoco's position on those latter two cases is set forth above); and (2) has no opinion in Case No. 8951 because it is not an offset owner.

Thank you for your consideration of Amoco's positions in these cases.

Sincerely,

Kent J. Lund

KJL:meb

cc: Mr. David G. Wight
Mr. C. Alan Wood
S.F. Gates, Esq.
Mr. Kirk Stone
Mr. Rich Bottjer
All Counsel of Record (Messrs. Taylor, Kellahin, Carr, Lopez, Pearce, Stovall, Padilla, Buettner, & Cooter)

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PAUL J. KELLY, JR.
OWEN M. LOPEZ
DOUGLAS L. LUNSFORD
T. CALDER EZZELL, JR.
WILLIAM B. BURFORD*
RICHARD E. OLSON
RICHARD A. SIMMS
RICHARD R. WILFONG*
STEVEN D. ARNOLD
JAMES J. WECHSLER
NANCY S. CUSACK
JEFFREY L. FORNACIARI
JEFFREY D. HEWETT*
JAMES BRUCE
JERRY F. SHACKELFORD*
JEFFREY W. HELLBERG*
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THOMAS M. HNASKO
MICHAEL F. MILLERICK
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ALLEN G. HARVEY
GREGORY J. NIBERT
JUDY K. MOORE*
DAVID T. MARKETTE*
JAMES R. McADAMS*
JAMES M. HUDSON
MACDONNELL GORDON
REBECCA J. NICHOLS
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JOE W. WOOD
STEPHEN L. ELLIOTT

CLARENCE E. HINKLE (1901-1985)
W. E. BONDURANT, JR. (1913-1973)
ROBERT A. STONE (1905-1981)

*NOT LICENSED IN NEW MEXICO

March 23, 1987

HAND-DELIVERED

RECEIVED
MAR 23 1987
OIL CONSERVATION DIVISION

William J. LeMay, Director
Oil Conservation Division
New Mexico Department of
Energy and Minerals
State Land Office Building
Santa Fe, New Mexico 87503

Re: March 30 Hearings on Gavilan-Mancos Oil Pool and West Puerto Chiquito-Mancos Oil Pool

Dear Mr. LeMay:

This response to your Memorandum regarding the above-referenced matters is submitted by Mallon Oil Company, Mesa Grande Resources, Inc., Mesa Grande, Ltd., and Mobil Producing Texas and New Mexico, Inc., following a number of technical meetings with the following companies: American Penn Energy, Inc.; Amoco Production Company; Hooper, Kimball and Williams; Koch Exploration, Inc.; Kodiak Petroleum, Inc.; Mallon Oil Company; Mesa Grande, Ltd.; Mesa Grande Resources, Inc.; Mobil Producing Texas and New Mexico, Inc.; Reading and Bates Petroleum Company; and Tenneco Oil Company. Please be advised that each individual company or entity may submit additional memoranda to you on their own behalf. The consensus position is as follows:

(1) The Gavilan-Mancos Oil Pool should be extended and the West Puerto Chiquito-Mancos Oil Pool should be contracted as set forth in Mesa Grande Resources, Inc.'s application, because there exists a permeability restriction between the two pools which prevents them from operating as a single source of supply, and because the producing characteristics of the two pools are separate and distinct; and

(2) The Gavilan-Mancos Oil Pool should be produced in accordance with statewide rules which provide for 702 barrels of oil per day and a limiting gas: oil ratio of 2,000 cubic feet of gas to one barrel of oil. The reason supporting this position is

that the Gavilan-Mancos Oil Pool is a fractured and porosity system reservoir.

The parties listed above have worked together to present a unified case and expect to call Alan P. Emmendorfer and John Faulhaber, geologists, and Gregory B. Hueni, petroleum reservoir engineer, as expert witnesses. These parties may call other witnesses such as landpersons, additional geologists and reservoir engineers, recognizing that they have only two days to present direct and rebuttal testimony as well as conducting cross-examination of opponents' witnesses.

Sincerely,

HINKLE, COX, EATON, COFFIELD
& HENSLEY

Owen M. Lopez by Mr Donald Gordon

Owen M. Lopez

MONTGOMERY & ANDREWS, P.A.

W. Perry Pearce by Edmund H Kendrick

W. Perry Pearce

OML/mg

Before the New Mexico Oil Conservation Commission
Gavilan-West Puerto Chiquito-Mancos Pool Cases

Parties: Dugan Production Corporation, Jerome P. McHugh & Sun Exploration and Production Company
Attorney: W. Thomas Kellahin, Kellahin, Kellahin & Aubrey, Santa Fe, New Mexico 87504 (505) 982-4285

In compliance with the Commission's notice and docket for the referenced cases, the above parties state that they will present geologic and engineering evidence to prove that:

1. The Gavilan-Mancos Oil Pool and The West Puerto Chiquito Mancos Oil Pool are producing from a single common source of supply, i.e., one pool.

2. The Pool is a highly fractured stratified reservoir which produces from a combination of solution gas drive and gravity drainage, supplemented by gas injection pressure maintenance. The majority of the oil is contained within natural fractures and the formation matrix will have little or no contribution to ultimate recoveries.

3. The Gavilan and West Puerto Chiquito-Mancos producing areas are in effective pressure communication with each other.

4. Based upon pressure maintenance and interference testing good communication exists well to well and throughout the reservoir and a maximum well spacing of 640 acres per well should be established.

5. Minimizing the unnecessary dissipation of natural reservoir energy by restricting the gas oil ratios to 600 cubic feet of gas per barrel of oil produced by restricting the producing rate to 800 barrels of oil per day based upon 640 acre spacing will result in more effective production of the pool and will increase ultimate recovery.

6. The current pool allowable of 702BOPD for a 320 acre spacing unit (1342BOPD for a 640 acre spacing unit in the adjacent West Puerto Chiquito Mancos Pool) as derived from the statewide depth bracket schedule is too high and does not properly consider the unique reservoir characteristics that exist in the mancos formation.

7. The Pool reservoir pressures are continuing to decline and the GOR continuing to increase at excessive rates even with the adoption of the temporary provisions of Order R-7407-D so that the Commission must take further measures to restrict well density, allowables and gas-oil ratio limits in order to prevent waste.

8. That under current rules, waste is occurring and will continue to occur in the future, resulting in a large amount of the original oil being left unrecovered.

9. The current Gavilan-Mancos Oil Pool Rules promote the drilling of unnecessary wells, cause waste to occur, encourage competitive operations which create waste and should be abolished and replaced with the West Puerto Chiquito Mancos Oil Pool Rules as amended.

KAI FARMS COMPANY
2305 West Ruthrauff Road
Tucson, Arizona 85705

(602) 887-2255

Residence: P.O. BOX 500
RILLITO, AZ. 85654

(602) 293-4472

March 26, 1987

Case 9113

Mr. William LeMay
Director of
Oil Conservation Commission
P.O. Box 2088
Santa Fe, New Mexico 87501

Dear Mr. Le May:

As the successful bidder of the February 18th BLM Auction, I have acquired the mineral rights to Section 25, NE¼,N½ SE¼ of T25N,R3W.

I understand there is a request to expand the West Puerto Chiquito Pool from the east back to the west to include Sections 1 thru 6, 8 thru 14, and 24 all in Township 24N, Range 2 West; plus Section 25,26, 35 and 36 of Township 26N, Range 2 West. The spacing in the West Puerto Chiquito Pool now is 640 Acres per well.

I also understand that the expansion of the West Puerto Chiquito Pool is planned to stop at the small sections along the west edge of Township 25 North, Range 2West and use them for a "Buffer Zone", between the 640 and 160 Acre current spacing.

As mineral rights holder in Section 25 NE¼,N½ SE¼, I would like to retain our current 160 Acre spacing. I feel that the proposed proposal above using the short section as "Buffer Zone", seems acceptable to me.

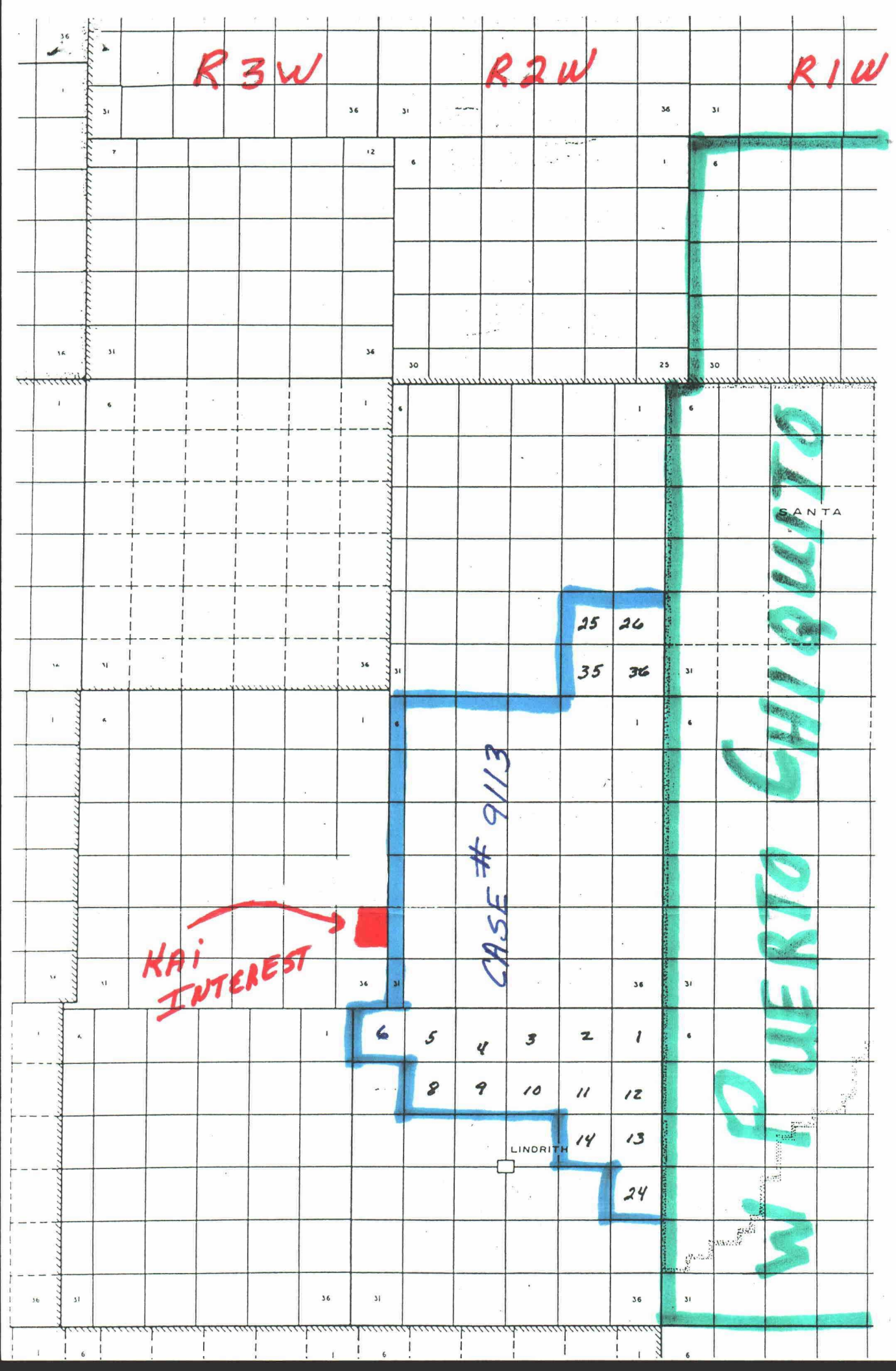
Any assistance you may be able to lend to this matter will be greatly appreciated.

Sincerely,

Herbert Kai

Herbert Kai

HK/syv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KAI FARMS COMPANY

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(602) 293-4472

March 26, 1987

Mr. William LeMay
Director of
Oil Conservation Commission
P.O. Box 2088
Santa Fe, New Mexico 87501

Case 9113

Dear Bill:

It was a pleasure to meet you in Santa Fe on February 18, 1987. Curtis Little had many good comments about you on our way to your office. I will certainly miss Curtis, as a business partner and friend.

I was the successful bidder on the February 18th auction. I understand there is a request to expand the West Puerto Chiquito pool. This expansion may affect my interest if it is allowed to go too far west. Would you please take my comments into consideration and if necessary forward to anyone involved.

I hope you will call me when you get into Tucson, Arizona. We have many attractions in the desert town.

Sincerely,

Herbert Kai

HK/svy

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:

CASES NOS. 7980, 8946,
9113, AND 9114
ORDER NO. 8950

CASE NO. 8950
ORDER NO. R-6469-D

CASE NO. 7980

IN THE MATTER OF CASE 7980 BEING REOPENED PURSUANT TO THE PROVISIONS OF COMMISSION ORDER NO. R-7407, WHICH ORDER PROMULGATED TEMPORARY SPECIAL RULES AND REGULATIONS FOR THE GAVILAN - MANCOS OIL POOL IN RIO ARRIBA COUNTY, INCLUDING A PROVISION FOR 320-ACRE SPACING UNITS.

CASE NO. 8946

IN THE MATTER OF CASE 8946 BEING REOPENED PURSUANT TO THE PROVISIONS OF COMMISSION ORDER NO. R-7407-D, WHICH ORDER PROMULGATED A TEMPORARY LIMITING GAS-OIL-RATIO AND DEPTH BRACKET ALLOWABLE FOR THE GAVILAN-MANCOS OIL POOL IN RIO ARRIBA COUNTY.

CASE NO. 9113

APPLICATION OF BERSON-KONTIN-GREER DRILLING CORPORATION, JEROME P. McHUGH & ASSOCIATES, AND SUN EXPLORATION AND PRODUCTION COMPANY TO ABOLISH THE GAVILAN-MANCOS OIL POOL, TO EXTEND THE WEST PUERTO CHIQUITO-MANCOS OIL POOL, AND TO AMEND THE SPECIAL RULES AND REGULATIONS FOR THE WEST PUERTO CHIQUITO-MANCOS OIL POOL, RIO ARRIBA COUNTY, NEW MEXICO.

CASE NO. 8950

IN THE MATTER OF CASE 8950 BEING REOPENED PURSUANT TO THE PROVISIONS OF COMMISSION ORDERS NOS. R-6469-C AND R-3401-A, AS AMENDED, WHICH ORDER PROMULGATED A TEMPORARY ALLOWABLE AND LIMITING GAS-OIL RATIO FOR THE WEST PUERTO CHIQUITO-MANCOS OIL POOL IN RIO ARRIBA COUNTY.

CASE NO. 9114

APPLICATION OF MESA GRANDE RESOURCES, INC. FOR THE EXTENSION OF THE GAVILAN-MANCOS OIL POOL AND THE CONTRACTION OF THE WEST PUERTO CHIQUITO-MANCOS OIL POOL, RIO ARRIBA COUNTY, NEW MEXICO.

ILLEGIBLE

APPLICATION FOR REHEARING

Comes now Mrs. Don Howard and other interested land owners represented by the undersigned as stated in the hearing before this Commission on March 30 and 31 and April 1, 2, and 3, 1987 and files this APPLICATION FOR REHEARING of the commission's order of June 8, 1987, and state:

Neither they or their legal counsel received prior notice of the said hearing and became aware of it only a few days prior to said date therefore presented no testimony. The undersigned however, entered his appearance on their behalf at the hearing and orally made a statement wherein he gave his name, address and telephone number. Also, neither prior to or at the hearing were they furnisned copies of any of the exhibits presented.

Neither these land and royalty owners nor their counsel were served with or receive a copy of the commission's order of June 8, 1987 until June 24, 1987. At that time a copy of the order was given to their counsel in response to an inquiry by the undersigned as to whether or not a decision had been entered.

Said order does not address the issue as to whether said royalty owners are proper parties to the proceeding which may account for the Commission's failure to timely send a copy of the order to the undersigned. At any rate this Application for Rehearing is well within the 20 days from receipt of the order on June 24, 1987.

These applicants through their counsel join in, endorse, and adopt as their own the Application for Rehearing heretofore filed by counsel for Mallon Oil Company, and Mesa Grande Resources Inc.

and in particular that the commission address and consider the question of whether Benson-Montin-Greer Drilling Corporation and Production Company met the legal burden placed upon them of proving by a preponderance of the evidence that their proposed changes to the state wide rule were justified. (See; International Minerals & Chemical Corp. v. New Mexico Public Service Commission, 81 N. M. 280; 466 P. 2d. 557 (1970). This issue was specifically raised by the undersigned at the aforesaid hearing and is most significant especially where, as herein, there is conflicting evidence on some of the principal-critical issues and where the said proponents offered little or no evidence on other issues.

WHEREFORE, these applicants request the commission to set these matters for hearing and rehearing as soon as possible.

Respectfully submitted,

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et al.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Application for Rehearing were mailed to the following persons this 7th day of July 1987:

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REPLY TO SANTA FE OFFICE

July 22, 1987

See case 9113

Tom C. Barr, Secretary
Energy, Minerals and
Natural Resources Department
Villagra Building
Santa Fe, New Mexico 87501

Re: Review of Oil Conservation Commission Orders
R-7407-E and R-6469-D

Dear Secretary Barr:

Enclosed please find the Application for Review of two Oil Conservation Commission orders. Under the provisions of the New Mexico Oil and Gas Act, you are authorized to hold hearings to review Commission orders, if it appears that those orders contravene the State's energy plan or the public interest. Mallon Oil Company and Mesa Grande Resources believe that such contraventions have occurred.

Because of the short time frame established by the statute, Mallon and Mesa Grande request that a hearing be opened on or before July 29, 1987 at which time we request that a future date be set for counsel for the parties to present argument after you and your staff have had an opportunity to review the record and briefs in this matter.

Thank you for your consideration of and attention to this vitally important matter.

Sincerely,

W. Perry Pearce

WPP:mp:71
#9831-86-01
Enclosures
cc w/enclosures:
Charles Roybal, Esquire
Mr. William LeMay
Jeff Taylor, Esquire
All Counsel of Record

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION COMMISSION FOR THE PURPOSE OF CONSIDERING:	CASES NOS. 7980, 8946, 9113, AND 9114 ORDER NO. R-7407-E CASE NO. 8950 ORDER NO. R-6469-D

APPLICATION FOR REVIEW

COME NOW Mallon Oil Company and Mesa Grande Resources, Inc. ("Applicants") and file this, their Application for Review of Commission orders in the above-described matters, and state as follows:

I.

BACKGROUND

A controversy has developed between two sets of owners and operators on how to produce the Gavilan Mancos Oil Pool ("Gavilan"). Applicants and certain other allied owners[1] believe the Gavilan and the West Puerto Chiquito-Mancos Pool

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[1] Mallon Oil Company
Mesa Grande Resources, Inc.
Mesa Grande, Ltd.
Mobil Oil Corporation
American Penn Energy, Inc.
Kodiak Petroleum
Hooper, Kimball & Williams
Reading & Bates Petroleum Co.
Koch Exploration
Amoco Production Company
Arriba Company, Ltd.
Smackco, Ltd.
Phelps Dodge Corp.
Floyd & Emma Edwards
Don Howard

("West Puerto"), although physically adjacent to each other, are separate and distinct pools with no effective communication and that the currently designated boundary between the pools is inaccurate and should be moved roughly one or two section lines to the east. Gavilan contains wells capable of very high rates of production and pool recovery is not rate sensitive.[2] Therefore, the standard statewide depth-bracket allowable is appropriate.

Opposition owners[3] in the pools, however, have argued that the Gavilan and West Puerto are in direct effective communication, that pool recovery from the Gavilan is rate sensitive and that production from the Gavilan Pool should be drastically reduced.

The Oil Conservation Commission of this Department ("Commission") conducted a five-day hearing held in March and April 1987, after which the the Commission agreed with

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2 "Rate sensitive" is a shorthand expression used by technical people to indicate that the amount of ultimate primary recovery is affected by the rate or level of production. There are a number of natural producing mechanisms which are not rate sensitive such as a "solution gas drive" mechanism. The Applicants have submitted convincing evidence that the primary drive mechanism for the Gavilan is a solution gas drive which demonstrates that ultimate recovery of Gavilan oil reserves is not affected by the rate or level of production.

3 Benson-Montin-Greer Drilling Corporation
Jerome P. McHugh & Associates
Dugan Production Corporation
Sun Exploration and Production Company
Meridian Oil Company

Applicants that the Gavilan is a separate pool from the West Puerto. See R-6469-D Finding of Fact, Paragraphs (5)(6)(7) & (17), Ordering Paragraph (1) and R-7407E, Finding of Fact (6)(7)(8), Ordering Paragraph (1). A dispute, however, continues between the parties concerning the proper boundary line between the Gavilan and West Puerto and whether production from the Gavilan is rate sensitive. Accordingly, the Commission orders required bottomhole pressure tests on all wells in both pools within the first week of July 1987. (R-6469-D Ordering Paragraph (3) & R-7407-E Ordering Paragraph (4)). The orders have now been effectively amended by the staff, not the Commission, to require less than all wells to be tested. Applicants object to that informal amendment.

The Commission also established a testing period for rate sensitivity purposes, allowing all wells to produce at near top allowables for 90 days and then drastically reducing production for another 90 days. At the end of the test period, wells are to remain drastically reduced for at least an additional five months pending a reopened hearing, in May 1988, to consider the test data. Applicants object to this unnecessarily extended period of restricted allowables below the standard statewide depth brackets.

II.

THE OIL CONSERVATION COMMISSION HAS ENTERED ORDERS WHICH CONTRAVENE THE DEPARTMENT'S STATEWIDE PLAN AND THE PUBLIC INTEREST

The Applicants request a review by the Secretary of the Energy, Minerals and Natural Resources Department ("Secretary")

of Commission Orders R-6469-D and R-7407-E pertaining to rules governing production from the Gavilan and the West Puerto because such orders contravene this Department's Statewide Plan and the public interest of New Mexico. Applicants have prepared a brief memorandum on the authority of the Secretary to grant this Application, which brief is attached hereto as Exhibit A and incorporated herein by reference.

Applicants request the Secretary to amend the Commission orders as follows:

1. The testing requirements for five wells should be reinstated and modified to obtain necessary data.

2. The reopened hearing should be scheduled in February 1988 instead of May 1988 in light of the 83% cut in statewide depth bracket allowable imposed by the Commission at the request of the Sun Oil Co.-BMG Group.[4]

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[4] Applicants believe the real intent of the Sun-BMG group is to confiscate the Applicants' property. Without a reservoir study of the Gavilan the BMG group decided the Gavilan needed to be unitized. Applicants, frustrated by BMG groups' refusal to collect and discuss technical data finally commissioned an outside study to determine feasibility of secondary recovery and thus unitization. That study concluded no secondary recovery or unit was needed. After the Commission cut the Gavilan top allowable by 83% in September 1986, at the request of the BMG group, Sun, BMG's partner, began buying properties in the Gavilan. Sun tried to buy Applicants' Gavilan oil properties at distress prices. In short, it is the intention of the Sun-BMG group to drive these Applicants out of the oil business in the Gavilan and take over operation of their properties. With this background, the Secretary can realize why the matters requested herein are of extreme urgency to the continued health of the oil industry in New Mexico.

3. If the Secretary does not advance the hearing from May 1988 to February 1988, then the Secretary should order effective January 1, 1988, the reinstatement of statewide depth bracket allowable which previously existed in the Gavilan of 702 bopd with a 2000/1 GOR for a 320-acre proration unit, (twice this amount for a 640-acre proration unit). Such reinstated statewide allowables should remain in effect until the Commission acts on the May 1988 reopened hearing.

4. The Secretary should make clear that the proper boundary between the Gavilan and West Puerto will be considered at the reopened hearing based on the test and production data ordered by the Secretary and the Commission.

5. Applicants also urge that the additional points set out in Applicants' prior Application for Rehearing be considered by the Secretary. A copy of the Applicants' Application for Rehearing before the Commission is attached as Exhibit B and incorporated herein by reference.

III.

TESTING REQUIREMENTS

These Applicants have specifically requested that bottom hole pressure data be obtained from the following BMG wells in West Puerto:

Canada Ojitos Unit (COU)

E-10
F-30
B-29
B-32
L-27

The details of this bottom hole pressure testing and the need therefore is set forth on Pages 4-6, Paragraphs 2a., 2b. and 2c. of Exhibit B.

The Commission is refusing to follow its own orders of June 8, 1987, (attached as Exhibit C and incorporated herein) to require bottom hole pressures on all wells and BMG has refused to pressure test key wells covered by the orders. This bottom hole pressure information will provide meaningful data on the proper location of the boundary line between Gavilan and West Puerto.[5] In addition, this pressure data will enhance the information available to confirm that the Gavilan wells are not rate sensitive. The Secretary should modify the above order to require well testing as requested by Applicants on the COU wells E-10, F-30, B-29, B-32 and L-27.

IV.

REOPENED HEARING DATE SHOULD BE SCHEDULED IN FEBRUARY 1988

If the reopened hearing ordered by the Commission remains scheduled for May 1988, the estimated loss in production during this five-month period alone to all interested parties due to the

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5 BMG has filed an application with the Commission to increase its allowables along the current boundary line of the Gavilan and West Puerto. This Application, scheduled for hearing on September 24, 1987, would permit the BMG wells producing from the A & B zones to obtain gas injection credit to remove allowable penalties for gas injected in the C zone. The effect would be to restore 70% of the allowable cut to the BMG wells while continuing the 83% allowable cut against the wells operated by Applicants and other parties in Gavilan.

allowable limitation imposed by these Commission orders will exceed 400,000 barrels of oil and 750,000 MCF of gas, worth $9,000,000.00. State tax revenue loss alone would exceed $800,000.00. It is estimated that the monthly tax loss in revenue to the State will be $170,000.00 per month not counting its one-half share of federal lease royalty. In other words, advancing the hearing from May 1988 to February 1988 could restore $170,000 per month in badly needed State revenues plus the State's one half of increased federal royalties.

In addition, the continuation of these unwarranted allowable restrictions below the standard statewide depth bracket allowables will shift reserves from these Applicants to the Sun-BMG group and result in a clear violation of the correlative rights of these Applicants and their royalty owners, including the BLM. The BLM royalty on Applicants' tracts because of newer leases are higher than the BMG operated BLM tracts in West Puerto. <u>The effect of these orders is to drain reserves from tracts in which the State of New Mexico would be entitled to higher royalty rates</u>.

The Applicants are not contesting another four month 83% reduction in statewide allowables (October 1987 through January 1988) to obtain the data the Commission has indicated it needs to finally settle the rate sensitivity issue in the Gavilan and to settle the proper location of the Gavilan-West Puerto boundary. It is unreasonable, however, to require these Applicants and others to continue on 83% statewide allowable cut

until May 1988 and so long thereafter until an order issues, while the Commission reviews new data, some of which will have been gathered as early as July 1987. The Commission should advance the reopened hearing to February 1988, in order to stop the arbitrary and unnecessary restriction in allowables for the Gavilan.

V.

IN THE ALTERNATIVE, STATEWIDE DEPTH BRACKET ALLOWABLES SHOULD BE RESTORED PENDING THE REOPENED HEARING.

If the Secretary elects not to require an advancement of the May 1988 hearing to February 1988, then in all fairness and in order to comply with the statewide plan and in the public interest the allowables for the Gavilan should be restored to 702 bopd with a 2000/1 GOR effective January 1, 1988, for a 320-acre proration unit and twice such amount for a 640-acre proration unit. A similar restoration of allowables should be implemented in the West Puerto.

The Commission's orders contemplate a partial restoration of the Gavilan allowable effective July 1, 1987, to 640 bopd and a 2000/1 GOR for a 320-acre proration unit. (Gavilan is essentially drilled on a 320-acre pattern.) Bottomhole pressure tests were to be run on all wells in the first week of July 1987. After three months of this partially restored production rate, the allowable is then reduced on October 1, 1987, to 400 bopd with a 600/1 GOR with new bottomhole pressure tests to be conducted in the first week for October 1987. After three months

of reduced production (October, November and December), additional bottomhole pressures will be conducted in the first week of January 1988. Under the existing orders, this severely restricted rate will continue, after the testing period ends, until the Commission acts on the May 1988 reopened hearing. That means a minimum of an additional five months of restricted allowables without any justification. In other words, the Gavilan receives partial restoration of its production rate for only three months and then the Gavilan rate is again restricted below the statewide depth brackets allowables for a minimum of at least eight months. The Gavilan has already suffered a ten-month 83% restriction of statewide depth bracket allowables at the 400 bopd and 600/1 GOR from September 1986 through June 1987. The net effect of the Commission orders are to require Gavilan to produce at a statewide depth bracket allowable restriction of 83% for at least 18 months out of a 21-month period.

The inequity to Applicants is clear. Therefore, the allowable for the Gavilan should be restored January 1, 1988 to the statewide depth bracket of 702 bopd with a 2000/1 GOR, for a 320-acre proration unit and twice this amount for a 640-acre proration unit continuing until the Commission acts on the May 1988 hearing.

VI.

BOUNDARY QUESTION

Because of the additional test data required by the Commission and requested by the Applicants, the Secretary should make clear that the proper boundary between Gavilan and West

Puerto should be considered at the reopened hearing based upon all data then available.

VII.

ADDITIONAL REVIEW

The other matters for which Applicants request review by the Secretary are set forth in Exhibit B. At this time, however, Applicants are willing to abide by the subject orders if the above tests, hearing advancement, allowable restoration and boundary consideration are ordered by the Secretary. Applicants will not pursue its appeal if the requests outlined above are granted by the Secretary since all parties will have sufficient data and equal footing to proceed with what Applicants hope will be a February 1988 reopened hearing.

CONCLUSION

For the foregoing reasons, Applicants request that the Commission's orders be amended to require 1) proper testing, 2) advancing the reopened hearing to February 1988, (or, in the alternative, to reinstate allowables effective January 1, 1988, pending the results of the reopened hearing,) and 3) the reopened hearing will consider the proper boundary of the Gavilan and West Puerto.

In order to grant this request, the Secretary does not need to rehear the evidence presented at the original hearing or rule on the merits of the arguments presented at the original hearing. The Secretary can grant this request based upon the previous hearing record, the Commission orders and the arguments of

counsel. The requested amendments will not change the substance or direction of the Commission orders but rather will clarify those orders, provide proper test data for review, and will give all parties a fair and equal standing at the reopened hearing.

Accordingly, Applicants' request the Secretary open this hearing on or before July 29, 1987, which date is within twenty days of the denial of Applicants' Application for Rehearing. However, in light of the short time period for the hearing to be convened the Secretary could use this initial hearing to set the ground rules for a hearing to be resumed shortly after July 29, 1987.

Respectfully submitted,

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I hereby certify that I caused a true and correct copy of the foregoing Application for Review to be mailed to the following persons this 22nd day of July, 1987.

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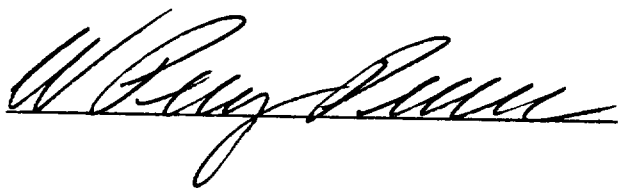

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STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

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

CASES NOS. 7980, 8946, 9113, AND 9114
ORDER NO. 4-7407-E

CASE NO. 8950
ORDER NO. R-6469-D

EXHIBITS TO
APPLICATION FOR REVIEW

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

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

CASES NOS. 7980, 8946, 9113, AND 9114
ORDER NO. R-7407-E

CASE NO. 8950
ORDER NO. R-6469-D

MEMORANDUM OF LAW AND AUTHORITY
IN SUPPORT OF APPLICATION FOR REVIEW

I.

BACKGROUND

On March 30, 1987, a five day hearing commenced before the Commission to consider appropriate pool rules, allowables and boundaries for two adjacent pools: the Gavilan and the West Puerto. On June 8, 1987, the Commission entered Orders R-6469-D and R-7407-E ordering, among other things, as follows:

1. The two pools are separate, with weak communication;

2. All wells in both pools should have bottomhole pressure tests run at three different times to determine rate sensitivity to production levels;

3. The allowables for the Gavilan Pool (which had previously been arbitrarily reduced by 83%) should be restored to 1280 bopd and a 2000:1 GOR for 640-acre proration units (640 bopd for a 320 acre proration unit) for a three-month period, beginning July 1, 1987, in order to determine rate sensitivity;

4. The allowables for Gavilan should be restricted again in October 1987 for a period of ninety (90) days as part of the rate sensitivity testing;

5. In January 1988 testing should cease and the information obtained is to be analyzed by the Commission prior to reopening the hearing in May 1988 for such further orders as may be appropriate in light of the test data;

6. The Gavilan allowables are to remain restricted at 17% (an 83% cut) of the statewide depth bracket top allowable until the May 1988 reopened hearing and so long thereafter until the results of said hearing are put into effect.

Both sides filed Applications for Rehearing with the Commission. Applicants herein objected to the imposition of the additional five months of restricted allowables to run from January to May 1988; requested that the reopened hearing date be moved to February 1988 to alleviate this arbitrary continuation of the allowable restriction; and requested that isolation bottomhole tests be conducted on certain key wells which would more accurately establish the boundary between the Gavilan and West Puerto as well as be determinative of the rate sensitivity question. These requests were denied as a matter of law on July 9, 1987 when the Commission took no action on the Applicants' Application for Rehearing.

The opposing parties, BMG, et al., also filed an Application for Rehearing, objecting to the Commission's determination that the Gavilan and West Puerto Fields were separate; objecting to the reinstatement of statewide depth bracket allowables to the Gavilan and objecting to the rate sensitivity testing ordered by the Commission, which Application for Rehearing was also denied as a matter of law on July 9, 1987.

II.

APPEAL TO THE SECRETARY

Applicants have filed their Application for Review by the Secretary, not to overturn the Commission's substantive orders, but to clarify and amend them in four vital ways:

1. To order the testing requested by Applicant and required by the Commission's order as necessary to obtain relevant data.

2. To advance the reopened hearing date from May 1988 to February 1988; or

3. In the alternative, to reinstate previous statewide depth bracket allowables to the Gavilan, effective January 1, 1988, of 702 bopd and a 2000/1 GOR for a 320 acre proration unit (and twice this amount for a 640 acre production unit) pending the reopened hearing.

4. To clarify that the reopened hearing will consider the appropriate boundary between the Gavilan and West Puerto based on the new testing and production data.

The parties to a Commission proceeding have two statutory avenues of appeal: appeal directly to the district court (§ 70-2-25 NMSA 1978) or appeal for review by the Secretary of the Energy, Minerals and Natural Resources Department. (§ 70-2-26 NMSA 1978, see copies of these stautory provisions attached to this memorandum) Applicants have chosen to pursue their rights by appeal to the Secretary for they believe that with the proposed amendments to the Commission's orders, all

parties can proceed to the reopened hearing on a relatively equal basis, with sufficient data to once and for all resolve the controversy surrounding the Gavilan and West Puerto. On the other hand, if Applicants appeal to the district court the entire validity of the Commission orders would be at issue. Although Applicants have objected and preserved their objections to several errors in the Commission orders, they believe those objections do not need to be raised if the orders are amended as requested.

III.

STATUTORY AUTHORITY

Statutory authority for appeal to the Secretary states that the Secretary may hold a public hearing to determine whether the orders appealed "contravene the statewide plan or the public interest." (§ 70-2-26 NMSA 1978) Applicants have specifically reviewed the "Policy-Level Plan for the Development and Management of New Mexico's Energy and Mineral Resources" ("Plan") to understand the statewide plan and how it may affect this Application. The Plan sets out four goals, two of which are directly applicable to this controversy:

1. To optimize state revenues from the production of mineral resources;

2. To stimulate economic development in New Mexico by optimizing the supply of mineral resources. (P. 6 of the Plan)

The Plan further states that developers are entitled to expect a reasonable degree of regulatory stability at the state and local levels and to be assisted by the State in the drilling, production and transportation of natural resources. (P. 7 of the Plan)

Applicants believe that the subject orders of the Commission are in contravention of the stated goals of the Plan. Specifically, the orders require Applicants to restrict their production by 83% of the previous statewide depth bracket allowables from January 1988 to May 1988, after the Commission ordered testing period is over. There is no justification in the orders for continuing this arbitrary restriction. This restriction will result in a tremendous loss of revenue to the State of New Mexico as affected wells have the ability to produce an additional 400,000 barrels of oil and 750,000 mcf of gas under normal allowables, providing at least $800,000 in additional tax revenues to the State over this five-month period. The State also loses one-half of the royalty production attributable to federal leases which is not produced due to these severe allowable restrictions. This arbitrary restriction clearly contravenes the stated goals of the Plan. This error can be easily corrected by amending the Commission's orders to provide for a February 1988 hearing date, or, in the alternative, to reinstate the previous statewide allowables in January 1988, pending the reopened hearing.

Further, Applicants believe the Commission orders, as written, are contrary to the public interest. It is in the public's interest to have orders which encourage the legitimate development and production of resources and which fairly require the compilation of data to resolve disputes. The orders, as written, do not encourage the development and production of resources because they arbitrarily and unnecessarily continue restriction (by 83%) of the statewide allowables. Applicants have diligently developed the minerals on their property, and spent millions of dollars in doing so, with the understanding that statewide rules would apply to them just as they apply to other operators in the State. Changing these rules, in midstream, without any finding that these changes are necessary to prevent waste or protect correlative rights, unquestionably has a chilling effect on development of reserves in New Mexico and therefore clearly affects the public interest.

The orders also fail to require the fair compilation of data on an equal and reasonable basis so that the issues before the Commission can be resolved at the reopened hearing. In order to determine the questions of rate sensitivity and the appropriate boundary location, it is necessary to obtain isolated bottomhole pressure tests on the wells requested in Applicants' Application for Rehearing and this Application for Review. Without this data, the issues the Commission has reserved for the reopened

hearing cannot be intelligently and completely resolved. The public interest will be thwarted if ultimate resolution of those issues is made without consideration of the relevant data.

IV.

CONCLUSION

Applicants, therefore, request the Secretary grant their Application for Review, hold a hearing to consider oral arguments of the parties and enter an order amending or modifying the Commission's Order as requested by Applicants.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Memorandum of Law and Authority in Support of Application for Review to be mailed to the following persons this 22nd day of July, 1987.

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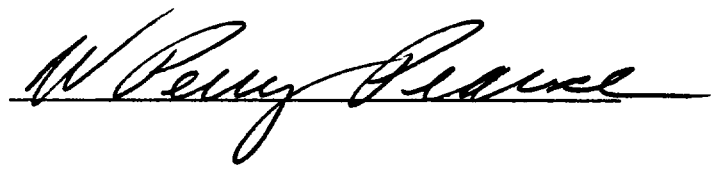

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70-2-25. Rehearings; appeals.

A. Within twenty days after entry of any order or decision of the commission, any party of record adversely 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 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 of record 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 days after the entry of the order following rehearing or after the refusal or [of] 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. Notice of such appeal shall be served upon the adverse party or parties and the commission in the manner provided for the service of summons in civil proceedings. The trial upon appeal shall be without a jury, and the transcript of proceedings before the commission, including the evidence taken in hearings by the commission, shall be received in evidence by the court in whole or in part upon offer by either party, subject to legal objections to evidence. The commission action complained of shall be prima facie valid and the burden shall be upon the party or parties seeking review to establish the invalidity of such action of the commission. 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. Appeals may be taken from the judgment or decision of the district court to the supreme court in the same manner as provided for appeals from any other final judgment entered by a district court in this state. The trial of such application for relief from action of the commission and the hearing of any appeal to the supreme court from the action of the district court shall be expedited to the fullest possible extent.

C. 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 the 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; provided, that the court, as a condition to any such staying or suspension of operation of an order or decision may require that one or more parties secure, in such form and amount as the court may deem just and proper, one or more other parties against loss or damage due to the staying or suspension of the commission's order or decision, in the event that the action of the commission shall be affirmed.

D. The applicable rules of practice and procedure in civil cases for the courts of this state shall govern the proceedings for review and any appeal therefrom to the supreme court of the state to the extent such rules are consistent with provisions of the Oil and Gas Act [70-2-1 to 70-2-36 NMSA 1978].

70-2-26. Review of oil conservation commission decision; appeals.

The secretary of [the] energy and minerals department may hold a public hearing to determine whether an order or decision issued by the oil conservation commission contravenes the department's statewide plan or the public interest. The hearing shall be held within twenty days after the entry of the commission order or decision following a rehearing or after the order refusing a rehearing as the case may be. The hearing shall be a de novo proceeding and the secretary shall enter such order or decision as may be required under the circumstances, having due regard for the conservation of the state's oil, gas and mineral resources, and the commission shall modify its own order or decision to comply therewith. If a rehearing before the commission was granted, the record of the rehearing shall be made part of the record of the hearing before the secretary. If the application for rehearing was denied, the record of the hearing before the commission or the division shall be made part of the record of the hearing before the secretary. Such orders and decisions of the secretary may be appealed by any party to the original hearing or the rehearing before the commission, or by any party to the hearing before the secretary held pursuant to this section, in accordance with the procedure of Subsections B, C and D of Section 70-2-25 NMSA 1978 except that the appeal shall not be a de novo proceeding and shall be limited to a review of the record of the hearing held pursuant to the provisions of this section.

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:

CASES NOS. 7980, 8946, 9113, AND 9114
ORDER NO. R-7407-E

CASE NO. 8950
ORDER NO. R-6469-D

CASE NO. 7980

IN THE MATTER OF CASE 7980 BEING REOPENED PURSUANT TO THE PROVISIONS OF COMMISSION ORDER NO. R-7407, WHICH ORDER PROMULGATED TEMPORARY SPECIAL RULES AND REGULATIONS FOR THE GAVILAN-MANCOS OIL POOL IN RIO ARRIBA COUNTY, INCLUDING A PROVISION FOR 320-ACRE SPACING UNITS.

CASE NO. 8946

IN THE MATTER OF CASE 8946 BEING REOPENED PURSUANT TO THE PROVISIONS OF COMMISSION ORDER NO. R-7407-D, WHICH ORDER PROMULGATED A TEMPORARY LIMITING GAS-OIL RATIO AND DEPTH BRACKET ALLOWABLE FOR THE GAVILAN-MANCOS OIL POOL IN RIO ARRIBA COUNTY.

CASE NO. 9113

APPLICATION OF BENSON-MONTIN-GREER DRILLING CORPORATION, JEROME P. McHUGH & ASSOCIATES, AND SUN EXPLORATION AND PRODUCTION COMPANY TO ABOLISH THE GAVILAN-MANCOS OIL POOL, TO EXTEND THE WEST PUERTO CHIQUITO-MANCOS OIL POOL, AND TO AMEND THE SPECIAL RULES AND REGULATIONS FOR THE WEST PUERTO CHIQUITO-MANCOS OIL POOL, RIO ARRIBA COUNTY, NEW MEXICO.

CASE NO. 9114

APPLICATION OF MESA GRANDE RESOURCES, INC. FOR THE EXTENSION OF THE GAVILAN-MANCOS OIL POOL AND THE CONTRACTION OF THE WEST PUERTO CHIQUITO-MANCOS OIL POOL, RIO ARRIBA COUNTY, NEW MEXICO.

CASE NO. 8950

IN THE MATTER OF CASE 8950 BEING REOPENED PURSUANT TO THE PROVISIONS OF COMMISSION ORDERS NOS. R-6469-C AND R-3401-A, AS AMENDED, WHICH ORDER PROMULGATED A TEMPORARY ALLOWABLE AND

LIMITING GAS-OIL RATIO FOR THE WEST PUERTO CHIQUITO-MANCOS OIL POOL IN RIO ARRIBA COUNTY.

APLICATION FOR REHEARING

Mesa Grande Resources, Inc. and Mallon Oil Company, (Applicants) file this Application for Rehearing, and state:

1. Applicants are pleased the Commission has confirmed that the Gavilan-Mancos Oil Pool ("Gavilan") is a separate pool from the West Puerto Chiquito-Mancos Pool ("West Puerto"), and as such should continue to be operated under separate rules. Because the two pools do have "different geologic and operating conditions," the Commission should direct its attention to protecting each pools' separate conservation aspects and the separate correlative rights of the owners in each pool.

The only remaining issues for the Commission to decide should be:

a. The appropriate boundary between the Gavilan and West Puerto;

b. Whether the Gavilan owners' correlative rights should be further impinged upon by the unnecessary restriction of the Gavilan allowable production from 702 bopd with a 2000/1 GOR to the temporary 400 bopd with a 600/1 GOR rule for a 320-acre proration unit. For example, a top allowable well on a 320-acre proration unit with a 2000/1 GOR in the Gavilan suffers an 83% allowable cut from 702 bopd to only 120 bopd. This cut in allowable is not necessary to prevent waste or to protect

correlative rights. In fact, the only result of this arbitrary allowable cut is to redistribute reserves away from the top allowable wells, in violation of the owners' correlative rights.

The effect of this cut will continue to be devastating on Gavilan development by the Applicants and others similarly situated. The Commission should note that 15 wells have been drilled in the Gavilan and West Puerto Pools since the Commission's original imposition of drastic and unwarranted allowable cuts in September 1, 1986. Of these 15 wells, 12 have been drilled by the proponents of allowable reduction, who also sought increased spacing allegedly to prevent the drilling of unnecessary wells.

The Commission needs to be aware that drilling $800,000 wells in this area can become uneconomic in today's oil depression when the additional risk imposed by this Commission of drastically limiting production is added to the already high risks of obtaining a good producing well.

2. Although not accepting the allowable constraints of the above orders, the Applicants do recognize the Commission's intent to obtain additional engineering data to confirm applicant's and the Commission's positions that Gavilan and West Puerto should remain separate. Applicants also recognize this Commission's concern of future waste in the Gavilan. Applicants share the same concern. That is why Applicants commissioned an independent engineering study to review in depth the possibility of waste. This complete study, based on actual Gavilan data, has been

presented to the Commission and Applicants submit such study clearly shows that statewide producing practices will not injure this pool, just as such practices have not injured hundreds of other New Mexico pools with similar solution gas drive characteristics. However, Applicants request that if the Commission and its staff truly seek meaningful engineering data during the next six months that the following be ordered or required:

a. "C" zone pressure testing in the oil column of the West Puerto should be required to comply with the spirit of the Commissions June 8th orders.

The Commission should note that at an operators' meeting held at the Division's request on June 23, 1987, for the purpose of attempting to satisfy the requirement of ordering paragraphs (3) in order no. r-6469-d and (4) in order no. R-7407-E, Benson-Montin-Greer Drilling Corporation (BMG), through Mr. Al Greer, refused to permit "C" zone pressure tests in the oil column of the West Puerto[1] -- specifically the Canada Ojitos Unit (COU) Well E-10 (Section 10, Township 25 North, Range 1 West). The Applicants believe the Commission is extremely interested in whether the "C" zone is affected by "A & B" zone

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[1] The Commission staff has professed they did not want this testing to cause any expense to the operators. However, none of the pressure tests sought by the commission can be accomplished without the operators incurring additional expenses and this should be executed by all operators.

production rates from the Gavilan-Mancos Pool wells. No recent "C" zone pressure in the oil column has been provided to the Applicants or the Commission. It is urged the Commission order "C" zone pressure tests in the E-10 well. A copy of Mallon Oil Company's letter of June 24, 1987, setting forth this problem is attached. Only with meaningful pressure data of this type can Mr. Greer's factually unsupported allegations of harm to his "C" zone project be refuted or proved.

b. Isolation tests should be required on key BMG wells F-30, B-29 and B-32.

The key wells in the BMG case were F-30, B-29 and B-32. These wells are completed in the "A & B" and "C" zones. BMG presented so-called interference tests on these three wells. As these wells are presently completed, however, there is no way to determine the individual productivity or the pressure contribution of the "A & B" zones and "C" zone in these three wells. The Commission should order isolation tests for these key wells of the same type run by Mallon on its Fisher Federal 2-1 and by Mobil on its B-73. The Commission ordered bottomhole pressure surveys. These should be run separately on the "A & B" zone and on the "C" zone in the F-30 and B-29 wells in conjunction with the isolation tests. The B-32 is already on the bottomhole pressure survey schedule and its bottomhole pressure should be measured separately on the "A & B" zones and the "C" zone at the same time as the isolation tests. Again, this type of meaningful pressure and production data will be significant to determine:

(1) if the "A & B" zones are cross-flowing and charging the "C" zone in the West Puerto, especially at the curtailed "A & B" zones rate, and

(2) the extent of the production between the "A & B" zones in the Gavilan versus the West Puerto.

c. Isolation and pressure tests should be required for the BMG-COU Well No. L-27.

Mr. Greer testified that the L-27 had produced approximately 1.5 million barrels from the "A & B" zones. No separate tests have been run on the "A & B" zones and the "C" zone in the L-27 well. Isolation tests and bottomhole pressure measurements on the L-27 will verify whether the "A & B" zones are the producing zones and the relationship of the "A & B" zone production, if any, in this area of the West Puerto to the separate "A & B" zones production from Gavilan.

d. This case should be reopened in February 1988 rather than May 1988.

Gavilan has already suffered reduced allowables from September 1, 1986 to July 1, 1987 and will suffer another 83% allowable cut from October 1, 1987 until the Commission restores the allowable after the hearing now scheduled for May 1988.[2] Applicants respectfully request that the May 1988 hearing be

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[2] For example, the Applicants' monthly production rate will have been drastically reduced for all but three months in a two-year period if the Commission's current hearing schedule is followed. Applicants are losing approximately 49,000 barrels per month due to the Commission's allowable limit orders. To date, more than 440,000 barrels of production has been lost with the working and royalty interest owners and the State of New Mexico suffering severe financial losses.

advanced to February 1988 so that the Commission may review the latest data in a timely manner. The pressure and production data at normal statewide rates will be available in the first week of October 1987 and there will be four (4) months to analyze this data before a February 1988 hearing. The additional reduced production data and January 1988 pressure data will be available in January 1988, or at least 30 days before a February 1988 hearing date. The issues before the Commission need to be determined as soon as possible in order to protect the correlative rights of owners in Gavilan. Gavilan will be suffering severe allowable cuts from October 1987 to the subsequent hearing decision date. Moving the hearing date to February 1988 will provide all parties adequate time to prepare and will reduce the time for imposing unnecessary allowable restraints on Gavilan.

3. Applicants would further state they are parties of record adversely affected by the issuance of Orders Nos. R-7407-E and R-6469-D.

4. The Commission should reconsider its decision in this matter and should grant a rehearing because:

a. The decisions of the Commission to reduce allowable production and its failure to extend the Gavilan boundaries ("Decisions") are arbitrary and capricious;

b. The Decisions of the Commission are not based upon substantial evidence;

c. The Decisions of the Commission ignore and do not recognize the correlative rights of the applicants; and

d. The Decisions of the Commission are contrary to law;

all as more specifically described below.

5. Benson-Montin-Greer Drilling Corporation, Jerome P. McHugh & Associates, and Sun Exploration and Production Comapny proposed changes to the special pool rules and statewide rules governing the Gavilan Pool. Therefore, they have the burden of proving by a preponderance of evidence that such rule changes were justified. International Minerals & Chemicals Corp. v. New Mexico Public Service Com'n, 81 N.M. 280, 466 P.2d 557 (1970). Such parties failed in their burden and the Commission did not address this failure.

6. Applicants submit that certain findings and orderings are not supported by the evidence presented at the hearing. In particular, and without limitation, the following findings are incorrect for the reasons stated below:

As to Order R-7407-E:

a. Finding (9): Applicants proved that most of the recoverable oil in Gavilan is stored in the micro fractures and intergranular porosity. The BMG group presented no facts which refuted this proof. Finding (9) is incorrect and fails to recognize this proof.

b. Findings (12) and (13): While testimony regarding rate-sensitivity was conflicting, the only model which matched Gavilan field performance was the model presented by Applicants. The model presented by Sun Exploration and Production Company was not based upon realistic parameters or actual field conditions as to Gavilan. As a result, the only reliable evidence establishes that Gavilan is not rate sensitive.

c. Finding (14): The parties are not in agreement that any type of pressure maintenance project is proper at this time. Applicants believe that a high pressure-pressure maintenance project which is suggested by BMG would adversely affect Gavilan pool performance at this time and cause waste. In addition, the formation of a unit is beyond the scope of the hearing and no evidence regarding unitization was presented at the hearing.

d. Finding (15): The pool depletion period estimated by Applicants is nine years. There is no evidence to support the five-year estimate.

e. Finding (16): The issue of pipeline connections is beyond the scope of the hearing. In addition, a pool cannot be produced without drainage, and the conservation system is designed to give each owner the opportunity to produce his fair share. As set forth below it is an illegal act to reduce production from non-wasteful (connected) well to protect the correlative rights of the owners of a wasteful (unconnected) well.

f. Finding (20): This finding proposes to further reduce allowables for some wells connected to pipelines beyond the 83% reduction to protect the correlative rights of wells that do not have a casinghead gas connection. New Mexico law does not permit this Commission to reduce the allowable on a connected well in order to protect a non-connected well that flares and wastes its casinghead gas. It is believed that approximately 55 wells in the Gavilan have casinghead gas connections while approximately 15 wells have no connection. Under the Commission's order, these 50 connected wells have their top allowable potential reduced by 83%. The Commission's order permits the Director to further reduce production from Applicants' wells, below 17% of top allowable, without any legal justification. This part of the Commission's order should be stricken. If any action is needed in this area, the Commission or affected operators should institute separate hearings.

g. Ordering (2): This extension application of Mesa Grande Resources, Inc., should be granted. BMG admits its extension area wells are in good communication in the "A & B" zones with the Gavilan wells.

h. Ordering (4): The Gavilan allowable for a 640 acre proration unit should be 1404 bopd and 2000/1 GOR. Testing requirements should be modified as set forth in paragraphs 2(a)(b) and (c) above.

i. Ordering (5): There is no basis in law or fact to arbitrarily reduce the Gavilan allowable for an indefinite period of time.

j. Ordering (6): As previously outlined, the unconnected well matter was not an issue at this hearing, and the Commission has no authority to reduce the allowable of a non-wasteful (connected) well to protect the correlative rights of a wasteful (unconnected) well.

k. Ordering (8): As already requested, the reopened hearing should be advanced to February 1988.

As to Order R-6469-D (and only as to their effect on Gavilan):

l. Finding (11): There is no similar finding in R-7407-E. The top allowable in Gavilan for a 640-acre proration unit should be 1404 bopd (twice the current 702 bopd for a 320-acre proration unit). The top allowable for Gavilan should be 1404 bopd with a 2000/1 GOR. This will cause no penalty to wells already drilled on 320-acre proration units which originally had the Gavilan top allowable of 702 bopd with a 2000/1 GOR. Applicants have no objection to the West Puerto having the same top allowable treatment.

m. Findings (12) & (13): There are no findings with these provisions in the findings of Order R-7407-E. The Gavilan top allowable producing rate of 702 bopd and 2000/1 for a 320-acre spacing unit are no wasteful. If the Commission and Mr. Greer are interested in determining whether waste will occur at normal allowable rates or drainage occur "via the highly transmissive fracture system," then the testing requests in paragraphs 2(a), (b) and (c) above should be granted. There is no factual or legal basis to apply these two findings to Gavilan.

n. Finding (15): This finding does not appear in R-7407-E. There is no evidence to support a finding that "the pressure differential favors" Gavilan." In fact, the limited data showed the exact opposite: if there is a "weak" connection between Gavilan and West Puerto the pressure differential still favors West Puerto. In addition, the testing requested in pargraphs 2(a), (b) and (c) above will relate directly to these erroneous findings.

o. Finding (16): This finding does not appear in R-7407-E. If this finding is correct then the westernmost tier of sections referred to therein should be deleted from the West Puerto and included in the extension of Gavilan in accordance with the application of Mesa Grande Resources, Inc., in Case No. 9114.

p. Ordering (2): As discussed above, this application should be granted.

q. Ordering (3): This paragraph should be amended to include the tests requested in paragraphs 2(a),(b) and (c) above.

r. Ordering (4): This ordering paragraph should be stricken as to the allowable limitation of 800 bopd and 600/1 GOR.

s. Ordering (5): The reopened hearing should be advanced to February 1988.

7. Rules issued by the Commission should be fair and equal in effect. The subject order is discriminatory as described below:

a. The order allows production at 1280 barrels of oil per day and a GOR of 2000:1 for a three (3) month period, but requires production at 800 barrels of oil per day and a GOR of 600:1 for eight (8) months and is therefore inherently unfair and biased as to the periods of production (3 months v. 8 months) toward the interests of Jerome P. McHugh & Associates and Sun Exploration and Production Company.

b. The Commission's production limitations have resulted in certain wells operated by Mallon Oil Company being shut-in for over 25 days per month. This discriminates against Mallon Oil Company and causes economic waste and violates correlative rights due to production from offsetting wells.

c. Substantial investments were made by Applicants herein and others in Gavilan based upon then-existing pool rules. A change of the rules in mid-stream has and will work a financial hardship on those interest owners by restricting production. This has resulted in limiting return on investment to an amount insufficient to recover the millions of dollars invested, resulting in severe economic hardship. In addition, this has a chilling effect on further oil and gas investment in this state.

8. The Commission's production limitations constitute a taking of property without just compensation in violation of the federal and state constitutions.

9. Order R-7407-E fails to comply with applicable statutory and judicial mandates. In Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962), the

New Mexico Supreme Court, in a case dealing with a natural gas pool, discussed the basic conclusions of fact that the Commission is required to find prior to changing a proration formula. The requirements are that the Commission find, as far as it is practical to do so:

1. the amount of recoverable reserves under each producer's tract;
2. the total amount of recoverable reserves in the pool;
3. the proportionate relationship of (1) and (2); and
4. what portion of the reserves can be recovered without waste.

A review of Order R-7407-E shows that the Commission failed to make any of these required findings and did not discuss any of these necessary elements. The record in this matter is clear that the changes adopted by the Commission constitute a change in the proration formula since these changes alter the relative proportion of production between operators in Gavilan and deviate from statewide rules. Order R-7407-E is therefore contrary to law and arbitrary and capricious.

WHEREFORE, applicants request the Commission to set these matters for rehearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Application for Rehearing were mailed to the following persons this ____ day of June, 1987.

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[WPP:106]

June 8, 1987

STATE OF NEW MEX)
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

CASES NOS. 7980, 8946,
9113, AND 9114
ORDER NO. R-7407-E

CASE NO. 7980

IN THE MATTER OF CASE 7980 BEING REOPENED PURSUANT TO THE PROVISIONS OF COMMISSION ORDER NO. R-7407, WHICH ORDER PROMULGATED TEMPORARY SPECIAL RULES AND REGULATIONS FOR THE GAVILAN-MANCOS OIL POOL IN RIO ARRIBA COUNTY, INCLUDING A PROVISION FOR 320-ACRE SPACING UNITS.

CASE NO. 8946

IN THE MATTER OF CASE 8946 BEING REOPENED PURSUANT TO THE PROVISIONS OF COMMISSION ORDER NO. R-7407-D, WHICH ORDER PROMULGATED A TEMPORARY LIMITING GAS-OIL RATIO AND DEPTH BRACKET ALLOWABLE FOR THE GAVILAN-MANCOS OIL POOL IN RIO ARRIBA COUNTY.

CASE NO. 9113

APPLICATION OF BENSON-MONTIN-GREER DRILLING CORPORATION, JEROME P. McHUGH & ASSOCIATES, AND SUN EXPLORATION AND PRODUCTION COMPANY TO ABOLISH THE GAVILAN-MANCOS OIL POOL, TO EXTEND THE WEST PUERTO CHIQUITO-MANCOS OIL POOL, AND TO AMEND THE SPECIAL RULES AND REGULATIONS FOR THE WEST PUERTO CHIQUITO-MANCOS OIL POOL, RIO ARRIBA COUNTY, NEW MEXICO.

CASE NO. 9114

APPLICATION OF MESA GRANDE RESOURCES, INC. FOR THE EXTENSION OF THE GAVILAN-MANCOS OIL POOL AND THE CONTRACTION OF THE WEST PUERTO CHIQUITO-MANCOS OIL POOL, RIO ARRIBA COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

These causes came on for hearing on March 30 and 31 and April 1, 2, and 3, 1987 at Santa Fe, New Mexico before the Oil Conservation Commission of New Mexico hereinafter referred to as the "Commission."

NOW, on this 8th day of June, 1987, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearings 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 these causes and the subject matter thereof.

(2) At the time of hearing, Cases 7980, 8946, 8950, 9113 and 9114 were consolidated for purposes of testimony.

(3) Case 7980 involves review of temporary pool rules promulgated by Order R-7407 and Case 8946 involves reopening the matter of temporary reduction of allowable and gas/oil ratio limit, under Order R-7407-D, both orders pertaining to the Gavilan-Mancos Oil Pool.

(4) Case 8950 involves reopening the matter of temporary reduction of allowable and gas/oil ratio limit under Order R-3401-A pertaining to the West Puerto-Chiquito-Mancos Oil Pool.

(5) Case 9113 involves a proposal to abolish the Gavilan-Mancos Oil Pool and consolidate that pool into the West Puerto-Chiquito-Mancos Oil Pool and Case 9114 involves a proposal to shift the boundary between Gavilan-Mancos and West Puerto Chiquito-Mancos Oil Pools.

(6) The evidence shows that there is limited pressure communication between the two designated pools, and that there are two weakly connected areas separated by some restriction at or near the common boundary of the two designated pools.

(7) The evidence shows there are three principal productive zones in the Mancos formation in both presently designated pools, designated A, B, and C zones listed from top to bottom and that, while all three zones are productive in both designated pools, West Puerto Chiquito produces primarily from the C zone and Gavilan produces chiefly from the A and B zones.

(8) It is clear from the evidence that there is natural fracture communication between zones A and B but that natural fracture communication is minor or non-existent between zones B and C.

(9) The reservoir consists of fractures ranging from major channels of high transmissibility to micro-fractures of negligible transmissibility, and possibly, some intergranular porosity that must feed into the fracture system in order for oil therein to be recovered.

(10) The productive capacity of an individual well depends upon the degree of success in communicating the wellbore with the major fracture system.

(11) Interference tests indicate: 1) a high degree of communication between certain wells, 2) the ability of certain wells to economically and efficiently drain a large area of at least 640 acres; and 3) the probability exists that the better wells recover oil from adjacent tracts and even more distant tracts if such tracts have wells which were less successful in connecting with the major fracture system.

(12) There is conflicting testimony as to whether the reservoir is rate-sensitive and the Commission should act to order the operators in West Puerto Chiquito and Gavilan-Mancos pools to collect additional data during 90-day periods of increased and decreased allowables and limiting gas-oil ratios.

(13) Two very sophisticated model studies conducted by highly skilled technicians with data input from competent reservoir engineers produced diametrically opposed results so that estimates of original oil in place, recovery efficiency and ultimate recoverable oil are very different and therefore are in a wide range of values.

(14) There was agreement that pressure maintenance would enhance recovery from the reservoir and that a unit would be required to implement such a program in the Gavilan-Mancos Pool.

(15) Estimates of the amount of time required to deplete the Gavilan pool at current producing rates varied from 33 months to approximately five years from hearing date.

(16) Many wells are shut in or are severely curtailed by OCD limits on permissible gas venting because of lack of pipeline connections and have been so shut in or curtailed for many months, during which time reservoir pressure has been shown by pressure surveys to be declining at 1 psi per day or more, indicating severe drainage conditions.

(17) No party requested making the temporary rules permanent, although certain royalty (not unleased minerals)

owners requested a return to 40-acre spacing, without presenting supporting evidence.

(18) Proration units comprised of 640 acres with the option to drill a second well would permit wider spacing and also provide flexibility.

(19) Recognizing that the two designated pools constitute two weakly connected areas with different geologic and operating conditions, the administration of the two areas will be simplified by maintaining two separate pools.

(20) A ninety day period commencing July 1, 1987, should be given for the connection for casinghead gas sale from now-unconnected wells in the Gavilan pool, after which allowables should be reduced in that pool until said wells are connected.

(21) To provide continuity of operation and to prevent waste by the drilling of unnecessary wells, the temporary spacing rules promulgated by Order R-7407 should remain in effect until superceded by this Order.

(22) Rules for 640-acre spacing units with the option for a second well on each unit should be adopted together with a provision that units existing at the date of this order should be continued in effect.

IT IS THEREFORE ORDERED THAT:

(1) The application of Benson-Montin-Greer et al in Case No. 9113 to abolish the Gavilan-Mancos pool and extend the West Puerto Chiquito-Mancos pool to include the area occupied by the Gavilan-Mancos Pool is denied.

(2) The application of Mesa Grande Resources, Inc. for the extension of the Gavilan-Mancos and the concomitant contraction of West Puerto Chiquito-Mancos Pool is denied.

(3) Rule 2 of the temporary special rules and regulations for the Gavilan-Mancos Oil Pool as promulgated by Order R-7407 is hereby amended as follows:

> Rule 2 (a). A standard proration unit shall consist of between 632 and 648 acres consisting of a governmental section with at least one and not more than two wells drilled or recompleted thereon; provided that if the second well is drilled or recompleted on a standard unit it shall not be located in the same quarter section, nor

closer than 1650 feet to the first well drilled on the unit; and provided further that proration units formed prior to the date of this order are hereby granted exception to this rule.

(b). A buffer zone is hereby created consisting of the east half of sections bordering Township 1 West. Only one well per section shall be drilled in said buffer zone and if such well is located closer than 2310 feet from the western boundary of the West Puerto Chiquito-Mancos Oil Pool it shall not be allowed to produce more than one-half the top allowable for a 640-acre proration unit.

(4) Beginning July 1, 1987, the allowable shall be 1280 barrels of oil per day per 640 acres with a limiting gas-oil ratio of 2,000 cubic feet of gas per barrel of oil. Operators are required to monitor reservoir performance, including but not limited to, production rates, gas-oil ratios, reservoir pressures, and shall report this information to the Commission within 30 days after completion of the tests. Within the first week of July, 1987, bottom hole pressure tests shall be taken on all wells. Wells shall be shut-in until pressure stabilizes or for a period not longer than 72 hours. Additional bottom hole tests shall be taken within the first week of October, 1987, with similar testing requirements. All produced gas, including gas vented or flared, shall be metered. Operators are required to submit a testing schedule to the District Supervisor of the Aztec office of the Oil Conservation Division prior to testing so that tests may be witnessed by OCD personnel.

(5) Beginning October 1, 1987, the allowable shall be 800 barrels of oil per day per 640 acres with a limiting gas-oil ratio of 600 cubic feet of gas per barrel of oil. Operators are required to monitor reservoir performance as in (4) above with bottom hole pressure tests to be taken within the first week of January, 1988. This allowable and GOR limitation shall remain in effect until further notice from the Commission.

(6) In order to prevent further waste and impairment of correlative rights each well in the Gavilan-Mancos Oil Pool shall be connected to a gas gathering system by October 1, 1987 or within ninety days of completion. If Wells presently unconnected are not connected by October 1 the Director may reduce the Gavilan-Mancos allowable as may be appropriate to prevent waste and protect correlative rights. In instances where it can be shown that connection is absolutely uneconomic the well involved may be granted authority to flow or vent the

gas under such circumstances as to minimize waste as determined by the Director.

(7) The temporary special pool rules promulgated by Order R-7407 are hereby extended to the effective date of this order and said rules as amended herein are hereby made permanent.

(8) This case shall be reopened at a hearing to be held in May, 1988 to review the pools in light of information to be gained in the next year and to determine if further changes in rules may be advisable.

(9) Jurisdiction of this cause is retained for 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

WILLIAM R. HUMPHRIES, Member

ERLING A. BROSTUEN, Member

WILLIAM J. LEMAY, Chairman and Secretary

S E A L

dr/

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE 8950
Order No. R-6469-D

IN THE MATTER OF CASE 8950 BEING REOPENED PURSUANT TO THE PROVISIONS OF COMMISSION ORDERS NOS. R-6469-C AND R-3401-A, AS AMENDED, WHICH ORDER PROMULGATED A TEMPORARY ALLOWABLE AND LIMITING GAS-OIL RATIO FOR THE WEST PUERTO CHIQUITO-MANCOS OIL POOL IN RIO ARRIBA COUNTY.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing on March 30 and 31 and April 1, 2, and 3, 1987 at Santa Fe, New Mexico before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 8th day of June, 1987 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) At the time of hearing, Cases 7980, 8946, 8950, 9113 and 9114 were consolidated for purposes of testimony.

(3) Case 8950 involves re-opening the matter of temporary reduction of allowable and gas/oil ratio limit under Order R-6469-C/R-3401-A pertaining to the West Puerto Chiquito-Mancos Oil Pool.

(4) Case 9113 involves a proposal to abolish the Gavilan-Mancos Oil Pool and consolidate that pool into the West Puerto Chiquito-Mancos Oil Pool and Case 9114 involves a proposal to shift the boundary between Gavilan-Mancos and West Puerto Chiquito-Mancos Oil Pool.

(5) The evidence shows that there is limited pressure communication between the two designated pools, and that there are two weakly connected areas separated by some restriction at or near the common boundary of the two designated pools.

(6) The evidence shows there are three principal productive zones in the Mancos formation in both presently designated pools, designated A, B, and C zones listed from top to bottom and that, while all three zones are productive in both designated pools, West Puerto Chiquito produces primarily from the C zone and Gavilan produces chiefly from the A and B zone.

(7) It is clear from the evidence that there is natural fracture communication between zones A and B but that natural fracture communication is minor or non-existent between zones B and C.

(8) Interference tests indicate: 1) a high degree of communication between certain wells, 2) the ability of certain wells to economically and efficiently drain a large area of at least 640 acres; and 3) the probability exists that the better wells recover oil from adjacent tracts and even more distant tracts if such tracts have wells which were less successful in connecting with the major fracture system.

(9) There is conflicting testimony as to whether the reservoir is rate-sensitive and the Commission should act to order the operators in West Puerto Chiquito and Gavilan-Mancos pools to collect additional data during 90-day periods of increased and decreased allowables and limiting gas-oil ratios.

(10) Estimates of the amount of time required to deplete the Gavilan Pool at current producing rates varied from 33 months to approximately five years from hearing date.

(11) An allowable of 1280 barrels per day is based upon an extension of the depth bracket allowable table and should be the allowable for a 640-acre proration unit for a period of 90 days with a limiting gas-oil ratio of 2,000 cubic feet of gas per barrel of oil.

(12) The Oil Conservation Commission and their staff will evaluate the data collected, or contract to have the data evaluated, to ascertain whether the 1280 BOPD allowable and 2,000 to 1 limiting GOR will cause waste and/or provide a mechanism for confiscation of oil and gas through drainage via the highly transmissive fracture system.

(13) After the initial 90-day period ends, the allowable should be reduced to 800 BOPD per 640 acres with a limiting GOR of 600 cubic feet of gas per barrel of oil.

(14) The West Puerto Chiquito-Mancos Pool is dominated by the Canada Ojitos Unit on which a pressure maintenance program has been in progress since 1968 wherein all produced gas has been reinjected as well as outside purchased gas being injected.

(15) From commencement of production in the West Puerto Chiquito Mancos Pool in 1964 until approximately the end of 1986, a period of 22 years, the West Puerto Chiquito Pool enjoyed a favored pressure differential to the area now designated the Gavilan Mancos Pool but now the pressure differential favors the Gavilan Mancos Pool.

(16) The existing West Puerto Chiquito Mancos Pool wells located in the westernmost tier of sections in Township 25 North, Range 1 West, and the proper development of the Mancos Pool along the common existing boundary of the two pools will protect operators within the West Puerto Chiquito Mancos Pool from drainage by wells within the Gavilan Mancos Pool.

(17) Recognizing that the two designated pools constitute two weakly connected areas with different geologic and operating conditions the administration of the two areas will be simplified by maintaining two separate pools.

IT IS THEREFORE ORDERED THAT:

(1) The application of Benson-Montin-Greer in Case No. 9113 to abolish the Gavilan-Mancos Pool and extend the West Puerto Chiquito-Mancos Pool to include the area occupied by the Gavilan-Mancos pool is denied.

(2) The application of Mesa Grande Resources, Inc. for the extension of the Gavilan-Mancos and the concomitant contraction of West Puerto Chiquito-Mancos pool is denied.

(3) Beginning July 1, 1987, the allowable shall be 1280 barrels of oil per day per 640 acres with a limiting gas-oil ratio of 2,000 cubic feet of gas per barrel of oil. Operators are required to monitor reservoir performance, including but not limited to, production rates, gas-oil ratios, reservoir pressures, and shall report this information to the Commission within 30 days from completion of the tests. Within the first week of July, 1987, bottom hole pressure tests shall be taken

on all wells. Wells shall be shut-in until pressure stabilizes or for a period not longer than 72 hours. Additional bottom hole tests shall be taken within the first week of October, 1987, with similar testing requirements. All produced gas, including gas vented or flared, shall be metered. Operators are required to submit a testing schedule to the District Supervisor of the Aztec office of the Oil Conservation Division prior to testing so that tests may be witnessed by OCD personnel.

(4) Beginning October 1, 1987, the allowable shall be 800 barrels of oil per day per 640 acres with a limiting gas-oil ratio of 600 cubic feet of gas per barrel of oil. Operators are required to monitor reservoir performance as in (3) above with bottom hole pressure tests to be taken within the first week of January, 1988. This allowable and GOR limitation shall remain in effect until further notice from the Commission.

(5) This case shall be reopened at a hearing to be held in May, 1988 to review the pools in light of information to be gained in the next year and to determine if further changes in rules may be advisable.

(5) 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

WILLIAM R. HUMPHRIES, Member

ERLING A. BROSTUEN, Member

WILLIAM J. LEMAY, Chairman and Secretary

S E A L

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July 8, 1987

HAND DELIVERED

William J. LeMay, Director
Oil Conservation Division
New Mexico Department of Natural Resources
State Land Office Building
Santa Fe, New Mexico 87501

Re: Application of Mallon Oil Company and Mesa Grande Resources, Inc. for rehearing of Order No. R7407-E and R-6469-D

Dear Mr. LeMay:

Enclosed for your consideration is the Memorandum of Benson-Montin-Greer Drilling Corporation, Jerome P. McHugh & Associates, Sun Exploration & Production Company and Dugan Production Corporation in support of denial of the above-referenced application for rehearing. As you will observe, our response is limited to only those issues raised by Mallon which we believe are appropriate considerations for rehearing. We have not, therefore, discussed in detail those matters raised by Mallon which are neither within the jurisdiction of the Commission nor based on either the record of these proceedings or the orders entered in these cases.

We believe it is inappropriate for Mallon to subvert the purpose of an application for rehearing, as it has, to mount an attack on Mr. Greer and to propose additional testing requirements which go beyond the provisions of the subject orders.

To set the record straight, our clients are the only parties who appeared in these proceedings who had acquired substantial and, we submit, useful test data. At all times prior to and since the March 1987 hearing, we have supported efforts to obtain additional test data that could be useful in analyzing the characteristics of this reservoir.

Since Mallon, as implied in its application for rehearing, appears ready to cooperate in obtaining reservoir date, we are ready to discuss the issues.

It is clear that the commission can and should continue to provide direction to operators concerning the data it deems necessary if a final resolution of the issues in these cases is to be obtained in May 1988. We believe that any further meetings of operators should be with the Director of the Division and each operator should be prepared to conduct such tests as are necessary to obtain accurate, reliable data upon which the Commission can base its decisions. This procedure can be implemented without further Commission hearings.

If the Commission does not grant an application for rehearing, the parties will likely file notices of appeal with the District Court and thereby preserve all issues if a review by the courts is ultimately necessary. These proceedings perhaps should be stayed pending further Commission action. The parties will then be free to focus their efforts on the development of data for the May 1988 hearings. Hopefully the disputes about the development of this area can then be resolved-where they should be resolved-before the Commission.

Respectfully submitted:

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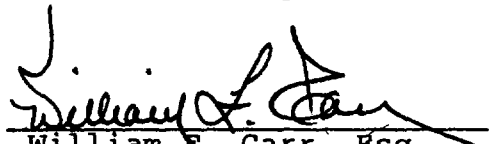
Attorneys for Sun Exploration and Development Corporation, Dugan Production Company & Jerome P. McHugh & Associates



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STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION COMMISSION

RECEIVED

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OIL CONSERVATION DIVISION

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

CASES NOS. 7980, 8946, 9113, AND 9114
ORDER NO. R-7407-E

CASE NO. 8950
ORDER NO. R-6469-D

CASE NO. 7980

IN THE MATTER OF CASE 7980 BEING REOPENED PURSUANT TO THE PROVISIONS OF COMMISSION ORDER NO. R-7407, WHICH ORDER PROMULGATED TEMPORARY SPECIAL RULES AND REGULATIONS FOR THE GAVILAN-MANCOS OIL POOL IN RIO ARRIBA COUNTY, INCLUDING A PROVISION FOR 320-ACRE SPACING UNITS.

CASE NO. 8946

IN THE MATTER OF CASE 8946 BEING REOPENED PURSUANT TO THE PROVISIONS OF COMMISSION ORDER NO. R-7407-D, WHICH ORDER PROMULGATED A TEMPORARY LIMITING GAS-OIL RATIO AND DEPTH BRACKET ALLOWABLE FOR THE GAVILAN-MANCOS OIL POOL IN RIO ARRIBA COUNTY.

CASE NO. 9113

APPLICATION OF BENSON-MONTIN-GREER DRILLING CORPORATION, JEROME P. McHUGH & ASSOCIATES, DUGAN PRODUCTION CORPORATION AND SUN EXPLORATION AND PRODUCTION COMPANY TO ABOLISH THE GAVILAN-MANCOS OIL POOL, TO EXTEND THE WEST PUERTO CHIQUITO-MANCOS OIL POOL, AND TO AMEND THE SPECIAL RULES AND REGULATIONS FOR THE WEST PUERTO CHIQUITO-MANCOS OIL POOL, RIO ARRIBA COUNTY, NEW MEXICO.

CASE NO. 9114

APPLICATION OF MESA GRANDE RESOURCES, INC., FOR THE EXTENSION OF THE GAVILAN-MANCOS OIL POOL AND THE CONTRACTION OF THE WEST PUERTO CHIQUITO-MANCOS OIL POOL, RIO ARRIBA COUNTY, NEW MEXICO.

CASE NO. 8950

IN THE MATTER OF CASE 8950 BEING REOPENED PURSUANT TO THE PROVISIONS OF COMMISSION ORDERS NOS. R-6469-C AND R-3401-A, AS AMENDED, WHICH ORDER PROMULGATED A TEMPORARY ALLOWABLE AND LIMITING GAS-OIL RATIO FOR THE WEST PUERTO CHIQUITO-MANCOS OIL POOL IN RIO ARRIBA COUNTY.

MEMORANDUM BY
BENSON-MONTIN-GREER DRILLING CORPORATION
JEROME P. McHUGH & ASSOCIATES
DUGAN PRODUCTION CORPORATION
AND
SUN EXPLORATION & PRODUCTION COMPANY
IN SUPPORT OF COMMISSION'S DENIAL
OF THE APPLICATION FOR REHEARING
FILED BY MESA GRANDE RESOURCES
AND
MALLON OIL COMPANY

Comes now Benson-Montin-Greer Drilling Corporation, Jerome P. McHugh & Associates, Dugan Production Corporation , and Sun Exploration and Production Company, (hereinafter collectively called "BMG, et al") and recommend to the New Mexico Oil Conservation Commission that the application for Rehearing filed by Mesa Grande Resources and Mallon Oil Company (herein collectively called "Mallon") be denied.

To aid the Commission in a review of the Mallon Application for Rehearing and to support our recommendation that such a rehearing be denied, the following memorandum is presented to the Commission:

INTRODUCTION

The intended purpose of an Application for Rehearing filed in accordance with Section 70-2-25 NMSA (1978) is to identify the specific matters decided by the Commission which the applicant believes to be erroneous.

Mallon uses the Application for Rehearing as a forum to raise and argue extraneous matters outside and beyond the scope of the record made at the March 1987 hearing from which the disputed orders were issued.

In addition, Mallon improperly uses the Application for Rehearing to attach a letter dated June 24, 1987 from Kevin Fitzgerald to Frank Chavez, a letter which is factually inaccurate, misleading, and absolutely irrelevant to any of the findings which Mallon seeks to appeal.

In an effort to organize our response, we have not identified nor commented upon all the numerous matters and issues raised by Mallon's Application for Rehearing to which we have disagreement.

While Mallon Oil Company's Application for Rehearing discusses a number of matters, those matters should be organized into two basic issues: (1) the separation of Gavilan and West Puerto Chiquito into two separate pools; and (2) the Gavilan Allowables. In addition, there are five secondary issues which we have addressed under a heading called (3) Other matters.

ISSUE ONE: Separate Pools

Mallon gratuitously congratulates the Commission for deciding that the Gavilan and West Puerto Chiquito areas are separate and have "different geologic and operating conditions," but then, goes on and requests the Commission to obtain additional data from the Canada Ojitos Unit ("COU") to determine if the two areas should remain separate. This portion of the Mallon Application for Rehearing is a collateral attack of the very finding that they seek to uphold. The data that Mallon wants gathered underscores their apparent lack of confidence that the two areas are, in fact, separate. If the two areas are separate, then there is no need for the type of test data Mallon suggests.

For example, the test data Mallon seeks to have the COU perform has nothing to do with determining the rate sensitivity nature of the Gavilan, but is directed towards Mallon's unsupported theory that the A and B zones in the Gavilan area are being depleted by production from the C zone in the COU. Mallon now seeks to gather the reservoir intereference data which the Commission and BMG, et al., have previously sought and with which Mallon refused to fully cooperate.

Should the Commission desire to re-examine the "separation" between the two areas that Mallon now request test data for, then the Commission should grant

the BMG, et al, Application for Rehearing on that issue and we can have another hearing.

The data Mallon is seeking has nothing to do with any of the issues Mallon preserved for appeal in his Application for Rehearing.

As further example, Mallon requests test data on the COU L-27 well. Mr. Greer testified that the L-27, in fact, does produce from both the A & B zones and is directly contrary to Mallon's contention that only the C zone produces in the COU. As Mr. Chavez of the OCD advised Mallon at the meeting on June 23, 1987, this has nothing to do with the rate sensitivity issue set forth in the Commission order and should not be required.

Mallon's request for data should be contrasted with the type of data he has voluntarily presented. He has not directly provided any useful pressure data on any of his wells. The only pressure data he provided was on a well that currently appears to be essentially a dry hole.

Finally, it should be understood that Mr. Greer and all of the BMG, et al., representatives have and will continue to co-operate to the fullest with the Commission in attempting to best resolve how to operate and produce this reservoir. Perhaps the best place for all parties to address their concerns about the test provisions is to continue with the dialogue established with a Division called operator's meetings.

Accordingly, paragraph 2 of the Mallon Application for Rehearing can and should be ignored as irrelevant.

ISSUE TWO: Gavilan Allowables

Mallon contends that any reduction in allowables for Gavilan below the statewide maximum allowable precludes his wells from draining oil reserves thus violates his correlative rights. The reduction in allowables for Gavilan is a legitimate and appropriate exercise of conservation laws by the Commission. The reduction, among other things, will preclude Mallon and others with high capacity wells from draining oil reserves underlying the offsetting tracts of other owners.

Mallon at page 12(7b.) also erroneously argues that the production limitations have resulted in certain of his wells being shut-in for over 25 days per month. The reason his wells are restricted is because he has significantly overproduced those wells in violation of Commission orders. In fact, Mallon's wells are not shut-in, they are merely restricted. They are being produced at a restricted rate until such time as Mallon "makes up" the over production.

The Courts have repeatedly held that the rules and regulations of the Commission do not amount to a taking of property as Mallon argues.

There is no vested "property right" in the allowable that may be assigned to a pool, or in fact, to wells drilled based upon state wide rules. The Commission is entirely within its authority to set allowables and to adjust allowables. In this case, as BMG, et al, have proved and as the Commission has found, production limitations must be set at low volumes in the Gavilan area in order to conserve reservoir energy and avoid waste.

Mallon's arguments on this point are made to the Commission without citation of authority and we suggest that none exist.

Accordingly, the record is replete with evidence justifying the continuation of the reduction in allowables for the Gavilan area. Mallon's request for a Rehearing on this issue should be denied.

OTHER MATTERS:

(a) Mesa Grande: Mesa Grande Resources, Inc., has failed to timely file an application for rehearing as required by Section 70-2-25, 1978. The Application for Rehearing filed by Mr. Pearce, on behalf of Mallon Oil Company, is signed only by Mr. Pearce. Mr. Owen Lopez, the attorney appearing from Mesa Grande Resources, Inc., did not sign the Mallon application.

(b) Continental Oil Case: Mallon raises one of the issues in the Continental Oil Case in which the New

Mexico Supreme Court said the Commission must define correlative rights by specific findings before acting to protect such rights. Mallon erroneously attempts to apply this issue to the Gavilan Case by contending the Commission must specifically determine how much oil underlies each spacing unit before it can reduce the statewide allowables assigned to the wells. Mallon has prematurely raised this issue. The obvious intent of the Commission Order R-7407-D is to provide a period for data gathering so that an order can be entered addressing this issue. The record before the Commission is undisputed that "as far as it is practical to do so," the data does not yet exist by which the Commission or anyone else can make the type of allocations discussed in the Continental Oil Case. The Continental Oil issue raised by Mallon was answered by the New Mexico Supreme Court in Grace v. Oil Conservation Commission 87 N.M. 205, which denied Grace the very same issue that Mallon now seeks to raise.

(c) May 1988 Hearing:

Mallon has requested that the May, 1988, hearing be moved to February, 1988, so that the Commission can restore his allowable. The purpose of the May, 1988 hearing is not to "restore Mallon's allowable." Mallon's allowables have been restricted because of his intentional failure to abide by the Commission's Order R-7407-D.

The May, 1988 Hearing is an appropriate time to examine additional data. The whole purpose of the test data periods is so that data gathered for July-August-September (period of high production) can be compared to data gathered for October-November-December (period of low production). In accordance with Division rules the December, 1987 data does not have to be filed until January 24, 1988 and is not generally available prior to that time. Unlike a February Hearing a May, 1988 Hearing is more likely to provide enough time to evaluate the data.

(d) Additional Drilling:

Mallon also comments on the additional drilling that has taken place in COU and Gavilan and attempts to contrast that with the reduction in allowables. An examination of a Gavilan area map will quickly show that the new COU wells are all drilled on 640 acre spacing and along the current common boundary between the areas and were drilled to protect the unit from Gavilan drainage as suggested by the Commission in Order R-7407-E (finding 21). A further examination will also show that many of the Gavilan wells are the first wells in a section and represent a prudent development and expansion of the area. In all instances the wells were drilled to protect acreage from further drainage.

(e) Boundary between the two areas:

Mallon appeals the Commission's decision to leave in place the current boundary between the two areas.

Mallon raises this as one of the two "only remaining issues" for the Commission to decide. The order has, in fact, decided this issue and it is a decision with which neither side is satisfied. BMG, et al, contends that the boundary is artificial and cannot work. Mallon wants to move the Gavilan boundary to the east. This contested point simply illustrates that it is, and will continue to be, impossible to set different rules for two areas of the same reservoir. The records show that there is sufficient communication between the areas so that the reservoir will continue to behave as one common source of supply.

Respectfully submitted:

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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:

CASES NOS. 7980, 8946, 9113, AND 9114
ORDER NO. 8950

CASE NO. 8950
ORDER NO. R-6469-D

CASE NO. 7980

IN THE MATTER OF CASE 7980 BEING REOPENED PURSUANT TO THE PROVISIONS OF COMMISSION ORDER NO. R-7407, WHICH ORDER PROMULGATED TEMPORARY SPECIAL RULES AND REGULATIONS FOR THE GAVILAN - MANCOS OIL POOL IN RIO ARRIBA COUNTY, INCLUDING A PROVISION FOR 320-ACRE SPACING UNITS.

CASE NO. 8946

IN THE MATTER OF CASE 8946 BEING REOPENED PURSUANT TO THE PROVISIONS OF COMMISSION ORDER NO. R-7407-D, WHICH ORDER PROMULGATED A TEMPORARY LIMITING GAS-OIL-RATIO AND DEPTH BRACKET ALLOWABLE FOR THE GAVILAN-MANCOS OIL POOL IN RIO ARRIBA COUNTY.

CASE NO. 9113

APPLICATION OF BENSON-MONTIN-GREER DRILLING CORPORATION, JEROME P. McHUGH & ASSOCIATES, AND SUN EXPLORATION AND PRODUCTION COMPANY TO ABOLISH THE GAVILAN-MANCOS OIL POOL, TO EXTEND THE WEST PUERTO CHIQUITO-MANCOS OIL POOL, AND TO AMEND THE SPECIAL RULES AND REGULATIONS FOR THE WEST PUERCO CHIQUITO-MANCOS OIL POOL, RIO ARRIBA COUNTY, NEW MEXICO.

CASE NO. 8950

IN THE MATTER OF CASE 8950 BEING REOPENED PURSUANT TO THE PROVISIONS OF COMMISSION ORDERS NOS. R-6469-C AND R-3401-A, AS AMENDED, WHICH ORDER PROMULGATED A TEMPORARY ALLOWABLE AND LIMITING GAS-OIL RATIO FOR THE WEST PUERTO CHIQUITO-MANCOS OIL POOL IN RIO ARRIBA COUNTY.

CASE NO. 9114

APPLICATION OF MESA GRANDE RESOURCES, INC. FOR THE EXTENSION OF THE GAVILAN-MANCOS OIL POOL AND THE CONTRACTION OF THE WEST PUERTO CHIQUITO-MANCOS OIL POOL, RIO ARRIBA COUNTY, NEW MEXICO.

ILLEGIBLE

APPLICATION FOR REHEARING

Comes now Mrs. Don Howard and other interested land owners represented by the undersigned as stated in the hearing before this Commission on March 30 and 31 and April 1, 2, and 3, 1987 and files this APPLICATION FOR REHEARING of the commission's order of June 8, 1987, and state:

Neither they or their legal counsel received prior notice of the said hearing and became aware of it only a few days prior to said date therefore presented no testimony. The undersigned however, entered his appearance on their behalf at the hearing and orally made a statement wnerein he gave his name, address and telephone number. Also, neither prior to or at the hearing were they furnished copies of any of the exhibits presented.

Neither these land and royalty owners nor their counsel were served with or receive a copy of the commission's order of June 8, 1987 until June 24, 1987. At that time a copy of the order was given to their counsel in response to an inquiry by the undersigned as to whether or not a decision had been entered.

Said order does not address the issue as to whether said royalty owners are proper parties to the proceeding which may account for the Commission's failure to timely send a copy of the order to the undersigned. At any rate this Application for Rehearing is well within the 20 days from receipt of the order on June 24, 1987.

These applicants through their counsel join in, endorse, and adopt as their own the Application for Rehearing heretofore filed by counsel for Mallon Oil Company, and Mesa Grande Resources Inc.

and in particular that the commission address and consider the question of whether Benson-Montin-Greer Drilling Corporation and Production Company met the legal burden placed upon them of proving by a preponderance of the evidence that their proposed changes to the state wide rule were justified. (See: International Minerals & Chemical Corp. v. New Mexico Public Service Commission, 81 N. M. 280; 466 P. 2d. 547 (1970). This issue was specifically raised by the undersigned at the aforesaid hearing and is most significant especially where, as herein, there is conflicting evidence on some of the principal-critical issues and where the said proponents offered little or no evidence on other issues.

WHEREFORE, these applicants request the commission to set these matters for hearing and rehearing as soon as possible.

Respectfully submitted,

WILLIAM O. JORDAN
28 Old Arroyo Chamiso
Santa Fe, New Mexico 87505
(505) 982-5689

Attorney for Mrs. Don Howard
et al.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Application for Rehearing were mailed to the following persons this 7th day of July 1987:

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STATE OF NEW MEXICO

ENERGY AND MINERALS DEPARTMENT

OIL CONSERVATION DIVISION

GARREY CARRUTHERS
GOVERNOR

July 9, 1987

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William O. Jordan, Esq.
28 Old Arroyo Chamiso
Santa Fe, New Mexico 87505

Re: Case Nos. 7980, 8946,
9113, 9114, and 8950

Dear Mr. Jordan:

We are in receipt of your Application for Rehearing filed in this matter on July 9, 1987. NMSA 70-2-25(A) 1978 requires that Applications for Rehearing be filed within twenty days of the entry of the order. Because the order in the referenced cases was entered on June 8, 1987, your Application for Rehearing was not timely filed and is therefore rejected.

If you have any questions, please contact either myself or Jeff Taylor at 827-5800.

Sincerely,

WILLIAM J. LEMAY
Director

WJL/fd