

GRYNBERG PETROLEUM COMPANY

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

TELEX: 5106002180 ENERGY DVR
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April 18, 1988

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

Attention: Ms. Florene Davidson

RE: Application of Jack J. Grynberg to
Amend Commission Order No. R 6873
Case No. 9355
Docket No. 12-88

Dear Ms. Davidson:

At this time, Jack J. Grynberg, Applicant in the above referenced case, scheduled to be heard on April 21, 1988, hereby requests that this case be postponed until next month. We are making this request so as to allow all of the parties concerned additional time in which to resolve some of the issues at hand.

Pursuant to our telephone conversation on this date, it is my understanding that this request will be granted and that the hearing will be rescheduled for May 19, 1988.

Thank you for your cooperation.

Sincerely,

GRYNBERG PETROLEUM COMPANY



Susan Stone
Land Manager

SS:pbs

cc: To the following:

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

Gene Gallegos
300 Paseo de Peralta
Suite 1000
Santa Fe, NM 87501

Yates Energy Corporation
Fred G. Yates, Jr.
Security National Bank Bldg., Suite 919
Roswell, NM 88201

Seymour Smith
David Smith
#7 S. Dearborn Street, Suite 803
Chicago, IL 60603

Cibola Energy Corporation
1005 Marquette
Albuquerque, NM 87013

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

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

Plains Radio & Broadcasting Co., Inc.
6th & Tyler
Texas American Bank Bldg.
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Bearing Services
701 East Main
Artesia, NM 88210

Connie Energy
1012 East Lincoln Road
Hobbs, NM 88240

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

Yates Petroleum Corporation
105 South 4th Street
Artesia, NM 88210

IN THE DISTRICT COURT
COUNTY OF CHAVES
STATE OF NEW MEXICO

JACK J. GRYNBERG,
Plaintiff,

vs.

CV-86-55-S

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

Case 9355

Defendants.

DECISION

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

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

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

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

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

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

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

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

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

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

IT IS THEREFORE ORDERED

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

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

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


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

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

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

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

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

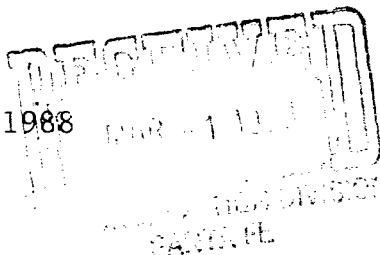

W. J. SCHNEDAR
DISTRICT JUDGE

GRYNBERG PETROLEUM COMPANY

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

TELEX: 5106002180 ENERGY DVR
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February 24, 1988



CERTIFIED RETURN RECEIPT

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

Case 9355

Attention: Ms. Floreen Davidson

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

Dear Ms. Davidson:

Enclosed please find one original and two copies of the above captioned application. We ask that this be set before the full Commission at your earliest convenience.

If you require further information, please advise.

Sincerely,

GRYNBERG PETROLEUM COMPANY

Susan Stone

Susan Stone
Land Manager

SS:pbs

Enclosures: As stated

cc: Certified Return Receipt Mail

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

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

Yates Energy Corporation
Fred G. Yates, Jr.
Security National Bank Bldg., Suite 919
Roswell, NM 88201

Seymour Smith
David Smith
#7 S. Dearborn Street, Suite 803
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Cibola Energy Corporation
1005 Marquette
Albuquerque, NM 87103

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

McClellan Oil Corporation
500 North Main
Sunwest Bank Bldg., Suite 1000
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Plains Radio & Broadcasting Co., Inc.
6th & Tyler
Texas American Bank Bldg.
Amarillo, TX 79105

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Hobbs, NM 88240

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GRYNBERG PETROLEUM COMPANY

5000 SOUTH QUEBEC • SUITE 500 • DENVER, COLORADO 80237-2707 USA • PHONE 303 - 850-7490

TELEX: 510 600 2180 ENERGY DVR

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May 16, 1988

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

Attention: Ms. Floreen Davidson

RE: Application of Jack J. Grynberg
to Amend Commission Order No. R 6873
Case No. 9355
Docket No. 15-88

Dear Ms. Davidson:

At this time, Jack J. Grynberg, Applicant in the above referenced case, scheduled to be heard on May 19, 1988, hereby requests that this case be dismissed without prejudice.

Pursuant to our telephone conversation on this date, it is my understanding that this request will be granted.

Thank you for your cooperation.

Sincerely,

GRYNBERG PETROLEUM COMPANY



Susan Stone
Land Manager

SS:pbs

cc: See Attached

Harvey E. Yates Company
Explorers Petroleum Corp.
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ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

Ms. Susan Stone R
Land Manager
Grybberg Petroleum Company
5000 South Quebec, Suite 500
Denver, Colorado 80237-2707

Re: CASE NO. 9355
ORDER NO. R-6873-B

Applicant:

Jack J. Grynberg

Dear Madam:

Enclosed herewith are two copies of the above-referenced Commission order recently entered in the subject case.

Sincerely,

Flora Davidson

FLORENE DAVIDSON
OC Staff Specialist

Copy of order also sent to:

Hobbs OCD	<u>x</u>
Artesia OCD	<u>x</u>
Aztec OCD	

Other Fred Yates , Jerry Losee