CERTIFICATION

TO WHOM IT MAY CONCERN:

I, WILLIAM J. LEMAY, Director of the Oil Conservation Division of the New Mexico Energy, Minerals and Natural Resources Department, State of New Mexico, do hereby certify that the attached are true and correct copies of the documents involved in NMOCD Cases 11297 and 11298 constituting the entire proceedings before the Division and the Commission in this matter:

Examiner Hearing held on June 29 and 30, 1995:

Transcript consisting of Volumes Pages 1 through 311.

Exxon Exhibits 1-42:

Note: these same exhibits were submitted to the Commission and therefore only the Exxon Exhibits submitted to the Commission are enclosed.

Yates Exhibits 1-7:

Note: these same exhibits were submitted to the Commission and therefore only the Yates Exhibits submitted to the Commission are enclosed.

Premier Exhibits 1 through 10:

Note: the Premier exhibits submitted to the Division are different from those submitted to the Commission and therefore the Premier Exhibits submitted to the Division are enclosed.

Commission hearing held on December 14, 1995:

Transcript consisting Volumes One and Two numbered Pages 1 through 524.

Exxon Exhibits 1 through 42.

Yates Exhibits 1 through 8

Premier Exhibits A and B and numbered Exhibits 1 through 11.

Commission Order No. R-10460-B (De Novo) dated March 12, 1996.

Application for Rehearing submitted to the Commission on March 20, 1996 by Premier Oil & Gas, Inc.

WILLIAM J. LEMAY, Director

Exhibit "A"

STATE OF NEW MEXICO)
) ss
COUNTY OF SANTA FE)

The foregoing instrument was acknowledged before me by William J. LeMay, Director of the Oil Conservation Division and Chairman of the Oil Conservation Commission on this 22nd day of January 1997.

~~Florene Davidson~~ Diana Richardson
Notary Public

My Commission Expires:

Oct 28, 1997
(date)

Notary Seal

KELLAHIN AND KELLAHIN
ATTORNEYS AT LAW
EL PATIO BUILDING
117 NORTH GUADALUPE
POST OFFICE BOX 2265
SANTA FE, NEW MEXICO 87504-2265

W. THOMAS KELLAHIN*
*NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047

January 26, 1997

VIA FACSIMILE

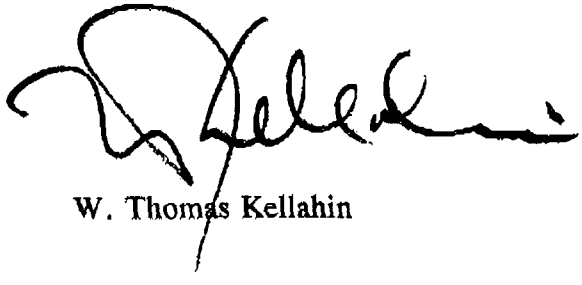
Lyn Herbert, Esq.	(505) 827-8177
James Bruce, Esq.	(505) 982-8623
William F. Carr, Esq.	(505) 983-6043

Re: CIV 96-CV-121-JWF
Premier v. Oil Conservation Commission

Dear Counsel:

On January 22, 1997, I sent the Oil Commission record to the District Court Clerk by Federal Express. Attached is a copy of the Notice of Submission. Please call me if you have any questions.

Very truly yours,



W. Thomas Kellahin

FIFTH JUDICIAL DISTRICT
COUNTY OF LEA
STATE OF NEW MEXICO

PREMIER OIL & GAS, INC.,

Petitioner,

vs. **No. CIV 96-CV-121-JWF**

OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO, EXXON CORPORATION AND YATES PETROLEUM CORPORATION

Respondents.

NOTICE OF SUBMISSION OF RECORD ON APPEAL

Petitioner hereby gives notice of submission of a Certified Copy of the record of the administrative proceedings in the Oil Conservation Commission regarding the above-captioned action. A copy of the certification sheet from the Director of the Oil Conservation Division is attached hereto as Exhibit "A".

Respectfully submitted,

KELLAHIN & KELLAHIN

BY _____
W. Thomas Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87504
telephone (505) 982-4285

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing pleading was transmitted by facsimile on this 22nd day of January 1997, to the following:

Lyn Hebert, Esq.
Special Assistant Attorney General
Attorney for Oil Conservation Commission,
State of New Mexico
Energy, Minerals and Natural Resources Department
2040 S. Pacheco St.
Santa Fe, New Mexico 87505
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Attorney for Exxon Corporation

William F. Carr, Esq.
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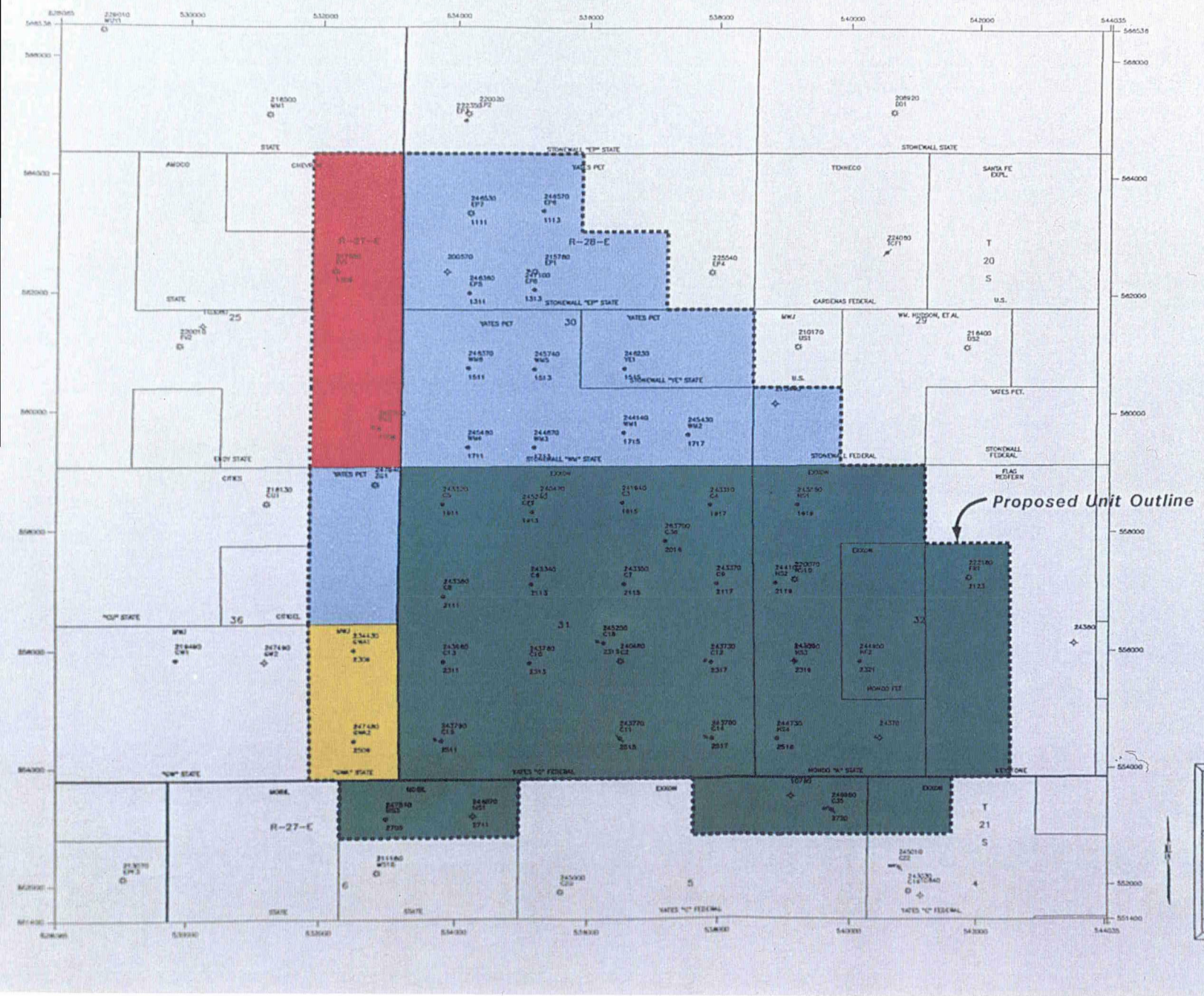
Santa Fe, New Mexico 87504
fx 505-983-6043
Attorney for Yates Petroleum Corporation

W. Thomas Kellahin

AVALON (DELAWARE) FIELD BASEMAP



OPERATOR

- EXXON
- YATES
- MWJ
- PREMIER

WELL STATUS SYMBOL LEGEND

- UNDEFINED
- PRODUCING OIL WELL
- SHUT IN OIL WELL
- TEMPORARILY ABANDONED OIL WELL
- ABANDONED OIL WELL
- PRODUCING GAS WELL
- TEMPORARILY ABANDONED GAS WELL
- ABANDONED GAS WELL
- ACTIVE INJECTION WELL
- SALT WATER INJECTION WELL
- SALT WATER DISPOSAL WELL
- DRY HOLE
- DRY HOLE, JUNKED AND ABANDONED

Map 1

EXXON COMPANY USA

PRODUCTION DEPARTMENT – SOUTHWESTERN DIVISION
RESERVOIR TECHNOLOGY GROUP

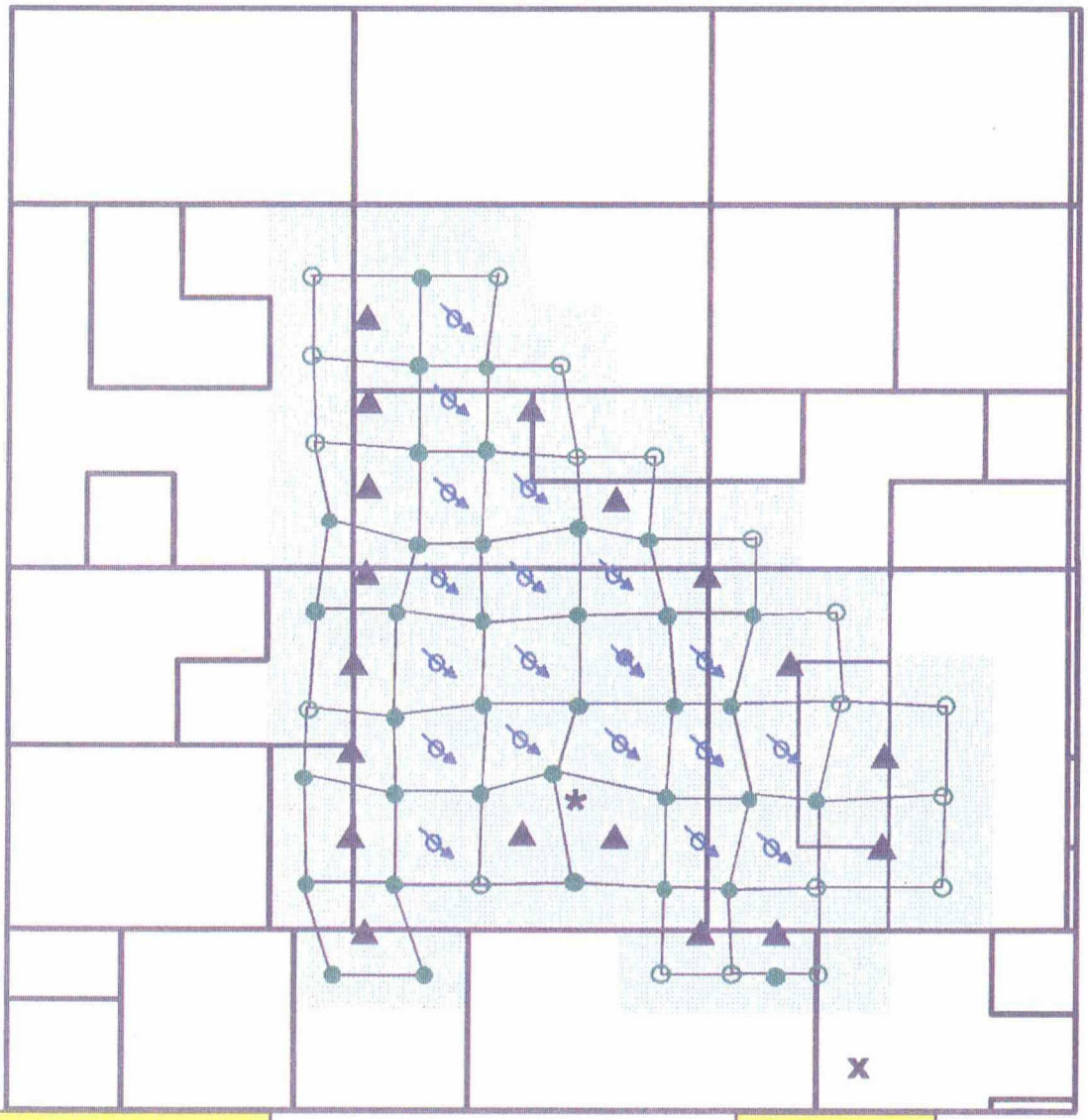
BASE MAP
AVALON (DELAWARE) FIELD
EDDY COUNTY, NEW MEXICO
API RETMOS, WELLBIDS AND NEW WELL NUMBERS
ARE ANNOTATED AT EACH WELL SPOT

0 1000 2000 FEET SCALE – 1000 FEET/INCH

D.L. CANTRELL AUGUST 18, 1992

AVALON (DELAWARE) UNIT

POTENTIAL DEVELOPMENT PLAN: CO_2 FLOOD



- **Scope**
  - 37 patterns, 2100 acres expanding into outer ring
  - Earliest start 1999
- **Issues**
  - Attain miscibility pressure and reduce gas saturation: 3+ years
  - CO_2 injectivity test
  - Oil price

WELL SYMBOL LEGEND

- Oil Well
- Oil Well (Proposed for CO2 Flood)
- Water Phase Injector (Conversion)
- Water Phase Injector (Proposed)
- CO2 Phase Injector (Proposed for CO2 Flood)
- Water Source Well
- Disposal Well

N

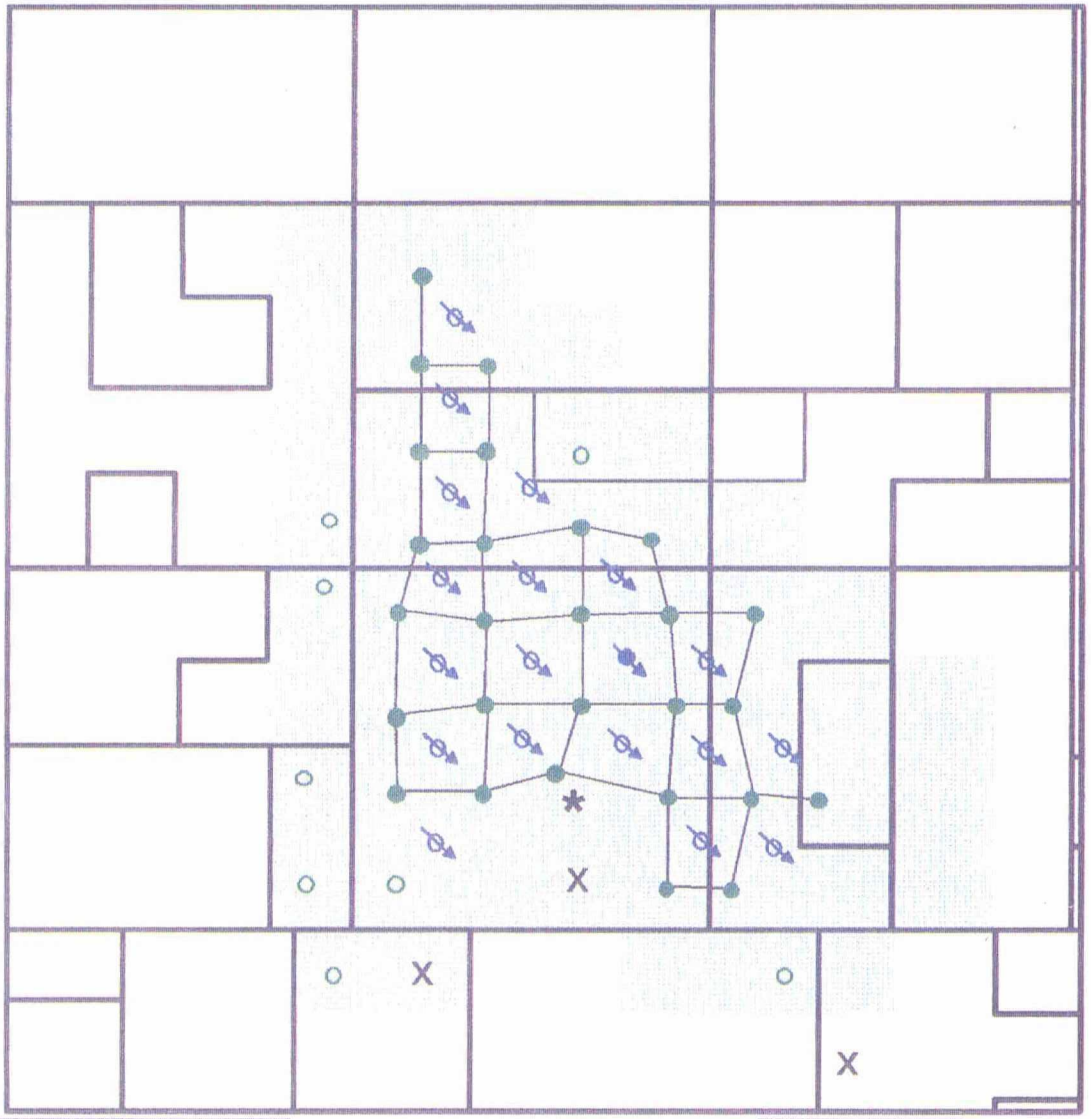
NMOCD Hearing

June, 1995

Exhibit No. 28
Exxon Corporation
NMOCD Cases 11297 & 11298
Hearing Date: June 29, 1995

AVALON (DELAWARE) UNIT

DEVELOPMENT PLAN: WATERFLOOD



- **Scope**
  - 19 water injection patterns, 1100 acres in developed area
  - 18 injector drillwells/1 conversion
  - Water treating and injection facilities
  - Estimated start 2 months after unit approval

WELL SYMBOL LEGEND

- Oil Well
- Injector (Conversion)
- Injector (Proposed)
- X Water Source Well
- ○ Well for Future Use
- ✱ Disposal Well

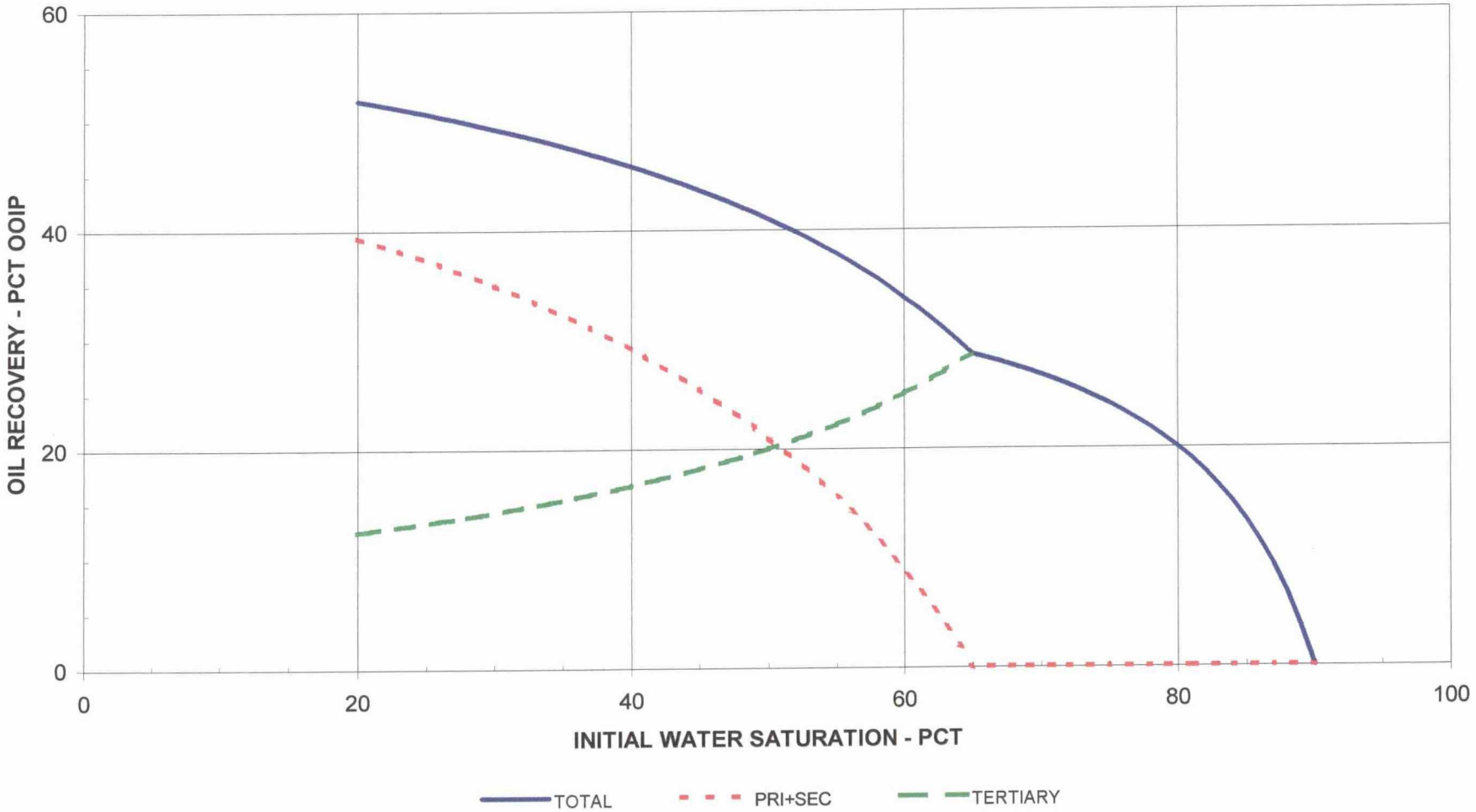
N

NMOCD Hearing

June, 1995

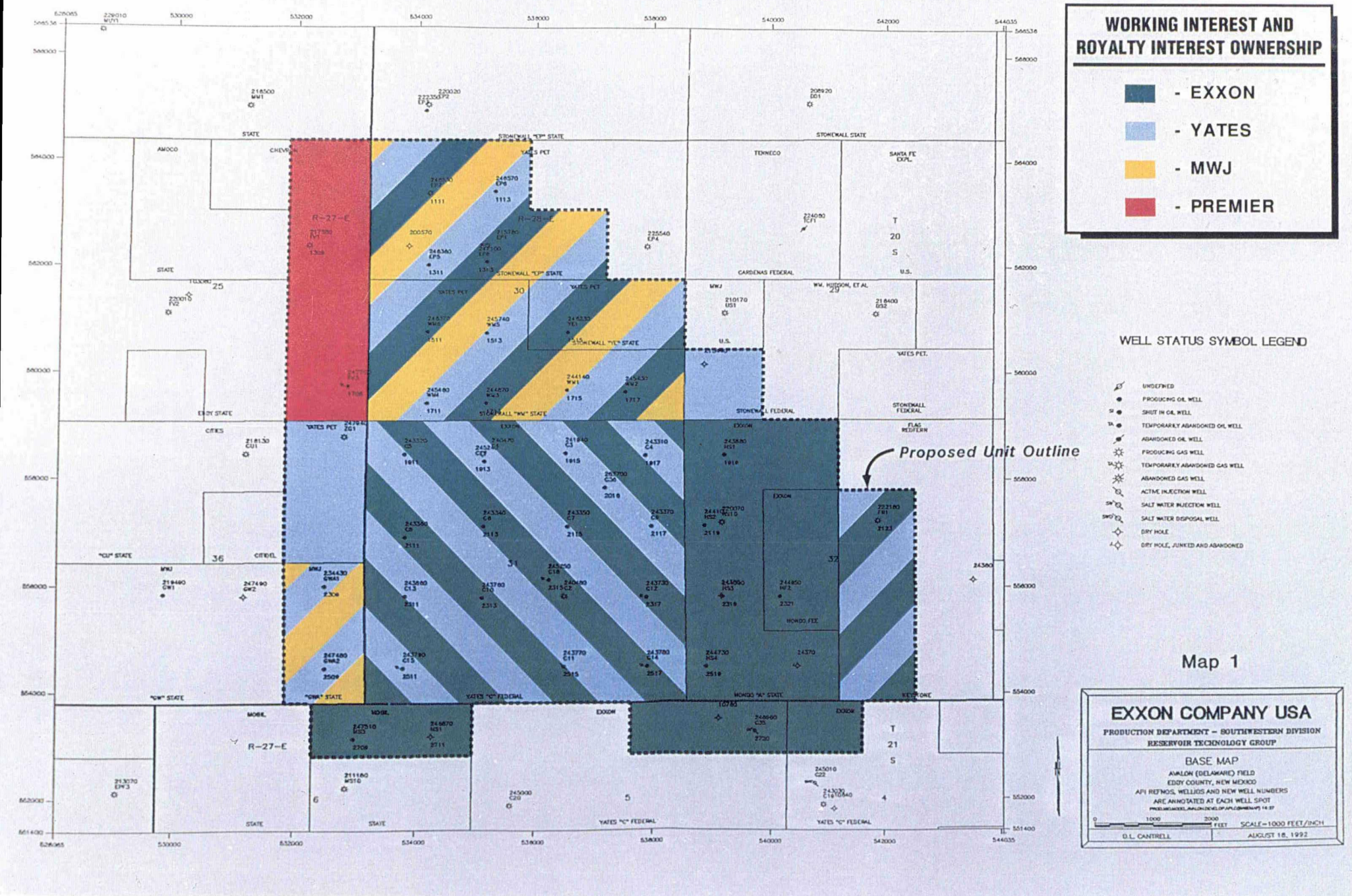
Exhibit No. 25
Exxon Corporation
NMOCD Cases 11297 & 11298
Hearing Date: June 29, 1995

THEORETICAL RECOVERY FACTORS



SORWF=0.35, SORM=0.10, EV SEC=0.70, EV TERT=0.40

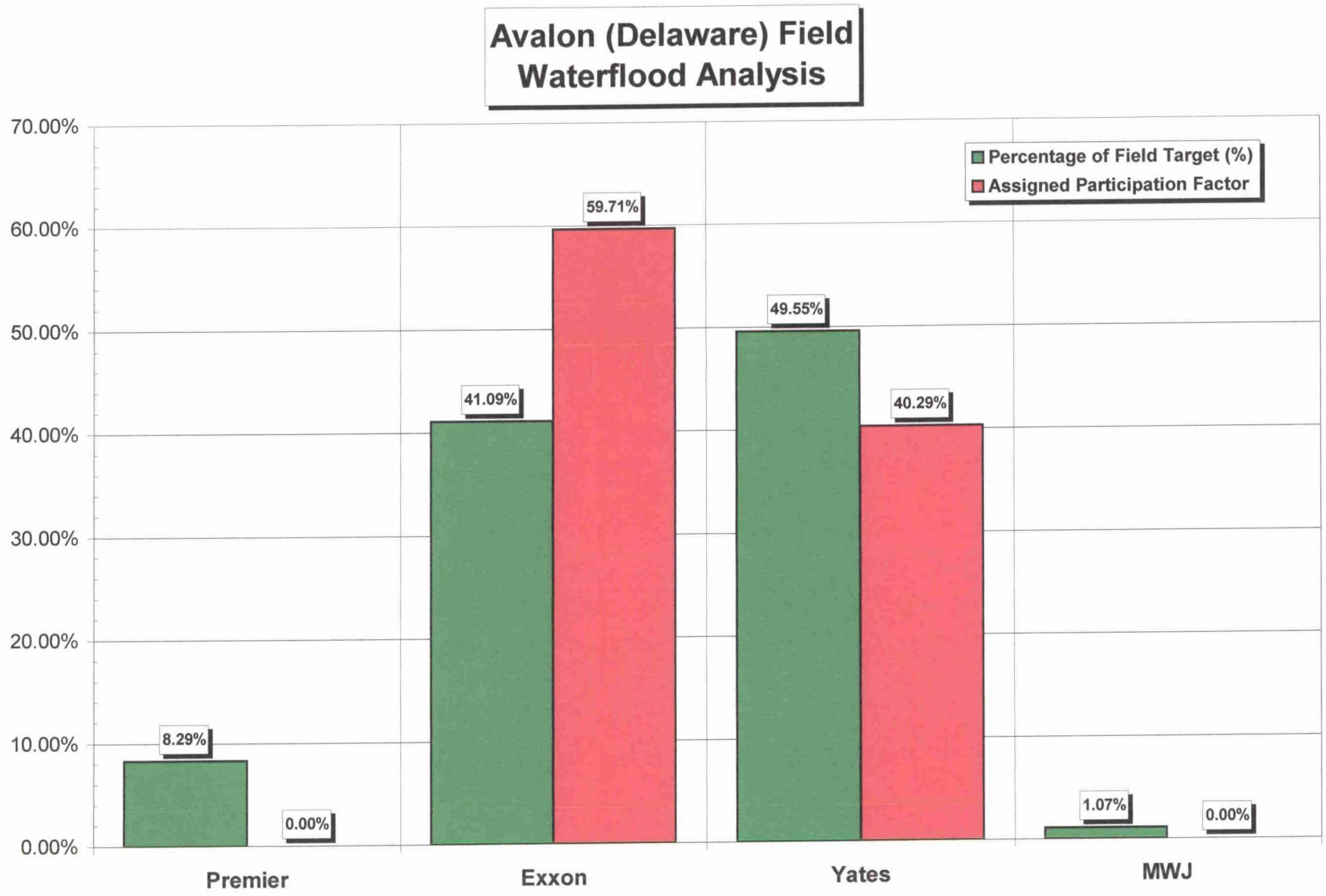
AVALON (DELAWARE) FIELD BASEMAP

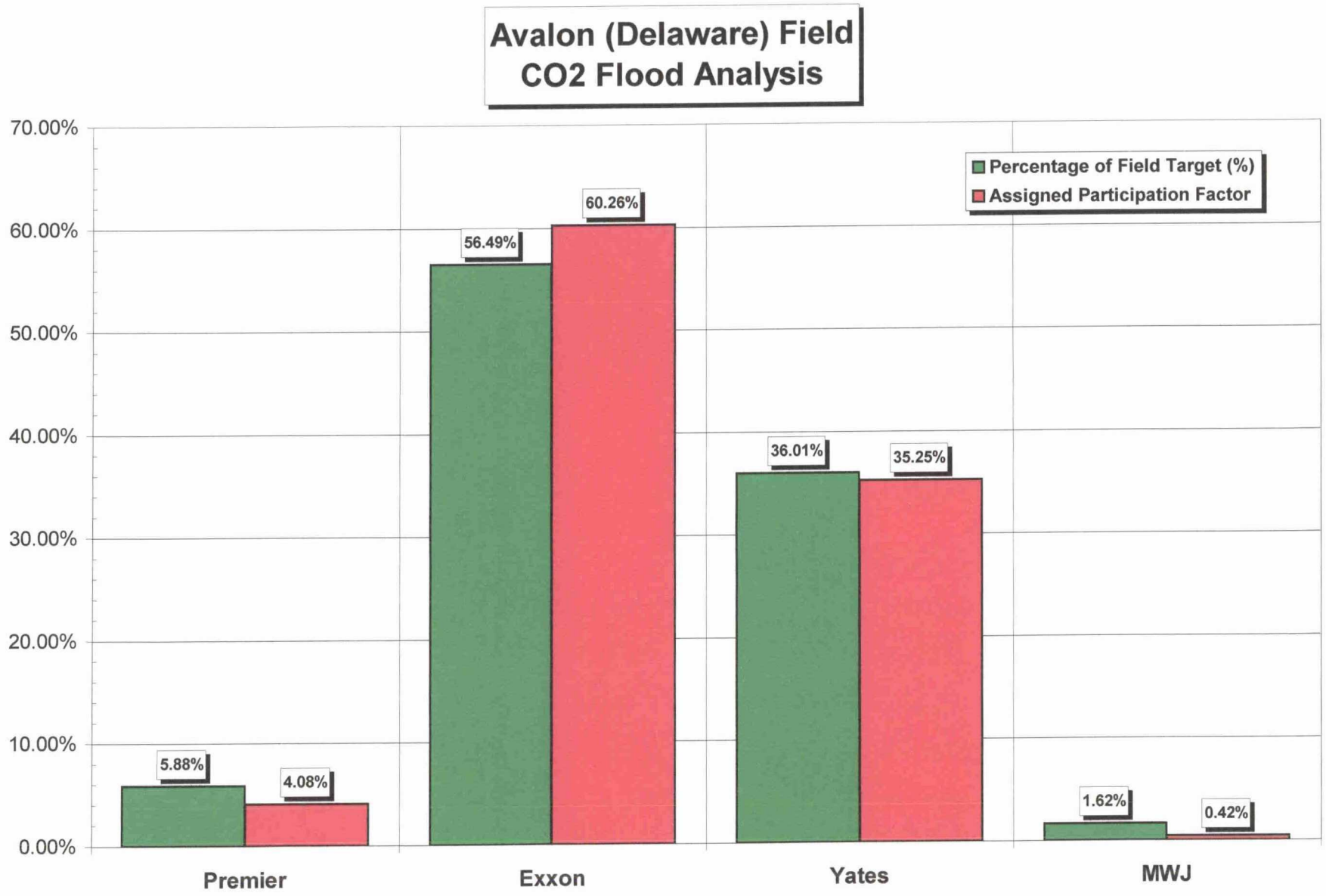


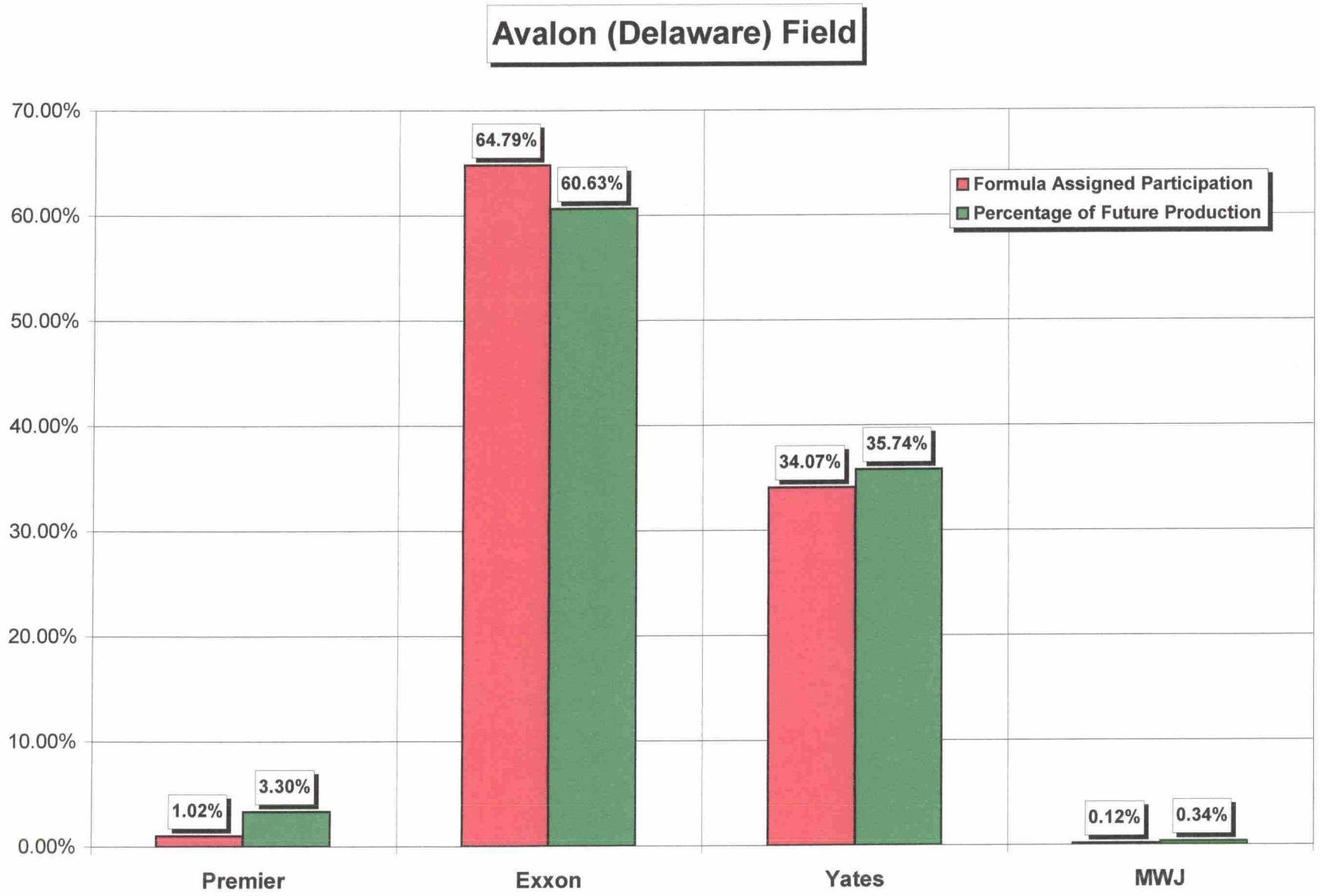
Avalon (Delaware) Field

Listing of Potential Tract Participation Factors

Parameter		*Premier Acreage*	Exxon Acreage	Yates Acreage	MWJ Acreage	Field Total
Original Oil in Place (MSTBO)	Tract Value	13.73	146.70	82.87	4.91	248.21
	% of Field Total	5.53%	59.10%	33.39%	1.98%	100.00%
Cumulative Oil Production to 1-1-93 (MSTBO)	Tract Value	5	2,234	741	16	2,995
	% of Field Total	0.17%	74.57%	24.72%	0.54%	100.00%
January 1993 Oil Production Rate (BOPM)	Tract Value	0	13,244	3,450	54	16,748
	% of Field Total	0.00%	79.08%	20.60%	0.32%	100.00%
Initial Potential Oil Rate (BOPD)	Tract Value	72	2,479	1,118	31	3,700
	% of Field Total	1.95%	67.00%	30.22%	0.84%	100.00%
Number of Wells	Tract Value	2	22	11	2	37
	% of Field Total	5.41%	59.46%	29.73%	5.41%	100.00%
Remaining Primary Reserves (MSTBO)	Tract Value	0.00	1,289.20	1,370.10	0.70	2,660.00
	% of Field Total	0.00%	48.47%	51.51%	0.03%	100.00%
Total Lease Acreage (acres)	Tract Value	160	1,232	646	80	2,119
	% of Field Total	7.55%	58.17%	30.50%	3.78%	100.00%
Waterflood Target (MSTBO)	Tract Value	2.95	14.62	17.63	0.38	35.58
	% of Field Total	8.29%	41.09%	49.55%	1.07%	100.00%
CO2 Target (MSTBO)	Tract Value	10.07	96.71	61.65	2.78	171.21
	% of Field Total	5.88%	56.49%	36.01%	1.62%	100.00%
Waterflood Reserves (MSTBO)	Tract Value	0.0	4,595.8	2,205.8	0.0	6,801.6
	% of Field Total	0.00%	67.57%	32.43%	0.00%	100.00%
CO2 Reserves (MSTBO)	Tract Value	1,626.0	24,031.8	14,059.4	165.8	39,883.0
	% of Field Total	4.08%	60.26%	35.25%	0.42%	100.00%
Future Barrels Produced (MSTBO)	Tract Value	1,626.0	29,916.8	17,635.3	166.5	49,344.6
	% of Field Total	3.30%	60.63%	35.74%	0.34%	100.00%
Total Barrels Produced (MSTBO)	Tract Value	1,631.1	32,150.3	18,375.8	182.7	52,339.9
	% of Field Total	3.12%	61.43%	35.11%	0.35%	100.00%
Average	% of Field Total	3.48%	61.02%	34.21%	1.28%	100.00%
Proposed Participation Factor (50% OOIP,10% 1/93 Rate, 20% Rem Primary, 20% Future Prod)		3.42%	59.28%	36.20%	1.09%	100.00%


Avalon (Delaware) Field
Waterflood Analysis
70.00%
60.00%
50.00%
40.00%
30.00%
20.00%
10.00%
0.00%
Percentage of Field Target (%)
Assigned Participation Factor
8.29%
0.00%
41.09%
59.71%
49.55%
40.29%
1.07%
0.00%
Premier
Exxon
Yates
MWJ


Avalon (Delaware) Field
CO2 Flood Analysis
70.00%
60.00%
50.00%
40.00%
30.00%
20.00%
10.00%
0.00%
Percentage of Field Target (%)
Assigned Participation Factor
5.88%
4.08%
56.49%
60.26%
36.01%
35.25%
1.62%
0.42%
Premier
Exxon
Yates
MWJ

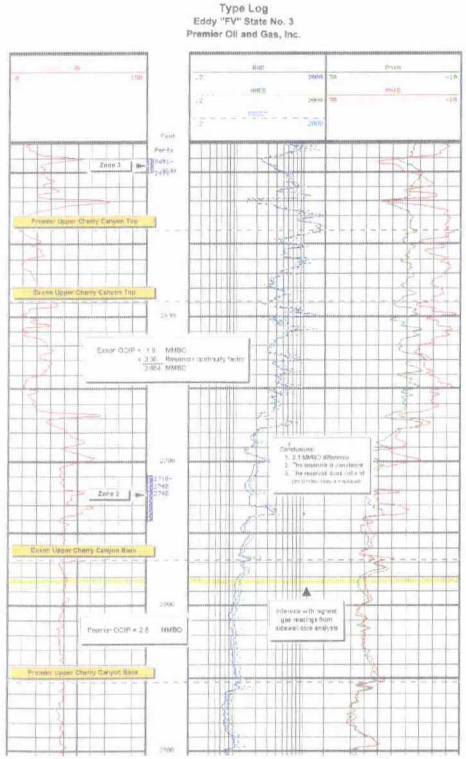

Avalon (Delaware) Field
70.00%
60.00%
50.00%
40.00%
30.00%
20.00%
10.00%
0.00%
64.79%
60.63%
34.07%
35.74%
1.02%
3.30%
0.12%
0.34%
Formula Assigned Participation
Percentage of Future Production
Premier
Exxon
Yates
MWJ

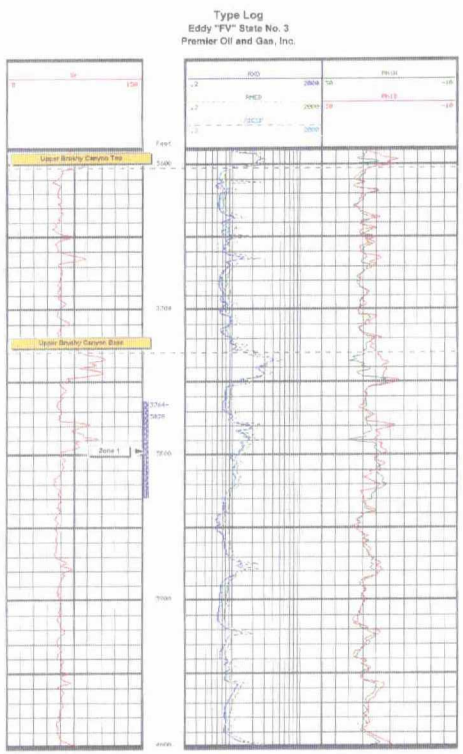
AVALON ECONOMIC SUMMARY

WORKING INTEREST = 100%
NET INTEREST = 87.5%

CASE#	CASE DESCRIPTION (1)	GROSS INVESTMENT (M$) 1992$	GROSS INVESTMENT (M$) AS SPENT $	NET RESERVES (MBO)	ROR (%)	PAYOUT (YRS)	PRESENT VALUE PROFIT (M$) 0%	5%	10%	15%	20%	CASE#
	BASE CASES:											
1	EOR PROJECT	84.2	102.7	42.2	25%	9.6	2,157	434	134	47	14	1
2	EOR PROJECT (INCREMENTAL OVER WF)	61.0	77.9	34.9	25%	-	1,927	364	106	35	10	2
	PRICING SENSITIVITIES:											
3	OIL PRICE UP $2 ($23/BO)	84.2	102.7	42.2	27%	9.3	2,457		155		20	3
4	OIL PRICE DOWN $2 ($19/BO)	84.2	102.7	42.2	23%	10.0	1,857		113		8	4
5	FLAT PRICING (NO REAL GROWTH)	84.2	102.7	42.2	23%	9.9	1,177		99		8	5
6	CO2 PRICE UP $0.25 ($1.25/KCF)	84.2	102.7	42.2	24%	9.9	2,135		128		11	6
7	CO2 PRICE DOWN $0.25 ($0.75/KCF)	84.2	102.7	42.2	26%	9.4	2,179		140		17	7
8	INVESTMENTS UP 10%	92.7	113.0	42.2	23%	9.9	2,151		130		11	8
9	INVESTMENTS DOWN 10%	75.8	92.4	42.2	26%	9.4	2,163		139		18	9
	PRODUCTION SENSITIVITIES											
10	PRIMARY ONLY	0.2	0.2	1.0	>100%	-	17	13	11	9	8	10
11	WATERFLOOD	23.3	24.7	7.2	24%	5.9	230	70	28	12	4	11
12	HIGHER OIL SATURATION (+3% So)	84.2	102.7	50.6	30%	8.7	2,805		182		30	12
13	LOWER OIL SATURATION (-6% So)	84.2	102.7	25.8	17%	11.5	908		58		(9)	13
14	HIGHER INJECTIVITY (+40%)	91.0	111.1	43.7	29%	8.6	1,527		159		28	14
15	LOWER INJECTIVITY (-30%)	79.2	96.4	39.4	21%	10.8	2,667		107		3	15
16	HIGHER SLUG SIZE (.6 HCPV)	84.2	102.7	42.2	25%	9.6	2,200		131		13	16
17	LOWER SLUG SLIZE (.4 HCPV)	84.2	102.7	38.3	24%	9.6	1,812		122		13	17

(1) UNLESS NOTED, ECONOMICS ARE INCREMENTAL OVER PRIMARY





THE WITNESS: No, we're not covering it.

CHAIRMAN LEMAY: Well, I think it's significant in the sense that you did run some tests on this well that would be part of the unit, and the issue came up before, whether this well was economic or uneconomic.

So from that point of view, I think it's relevant testimony.

MR. KELLAHIN: All right, sir.

MR. BRUCE: And I have nothing further of this witness.

CHAIRMAN LEMAY: Okay.

REDIRECT EXAMINATION

BY MR. KELLAHIN:

Q. Point of clarification, then. Ken, when we're looking at this test, there is nothing in this test that's attributable to the Upper Cherry Canyon interval for which you are seeking the additional inclusion of this 82 feet of net pay that Exxon is intending to exclude?

A. Correct.

Q. All right. This test relates to zones in this wellbore outside of that issue?

A. Correct.

MR. KELLAHIN: All right. No further questions.

MR. BRUCE: I didn't quite understand, but the entire Delaware interval is unitized, Mr. Chairman.

flowing oil back up the casing, and the gas pressure was continuing to increase, and the oil was coming up. It was not coming up dramatically, but I would say over the six days it probably averaged ten barrels a day.

So at that time is when Mr. Mayhew called me and said we were in violation. He said, We've got some problems, maybe we can work with you on it, but there's some problems out there with OSHA standards that you need to address.

So I shut the well down. I needed to wait for Mr. Kellahin to come back from vacation, I needed to discuss many different things with him.

Q. When did you think this well had additional potential? You mentioned a couple things here that you thought the well might have additional oil somewhere, Lower Brushy Canyon, this correlation that would, as I understand it, give you more pay than Exxon gave you credit for. When did that realization come to you?

A. There's an unmanned mud log from this well, and there are notes on the original log that we obtained from Chevron in the transfer of ownership, and from those notes we were able to piece together some places that have some potential.

The Lower Brushy Canyon, at the very -- just above the Bone Springs sand, there are some sands that they

(g) the best formula is Premier's proposed participation formula which distributes equity based upon the following:

50% original oil in place;
10% 1993 rate;
20% remaining primary and
20% future production

(h) the Premier geology is correct and their participation formula is fair because:

(i) it uses more traditional parameters like those adopted for Parkway Delaware Unit while the Exxon proposal does not;

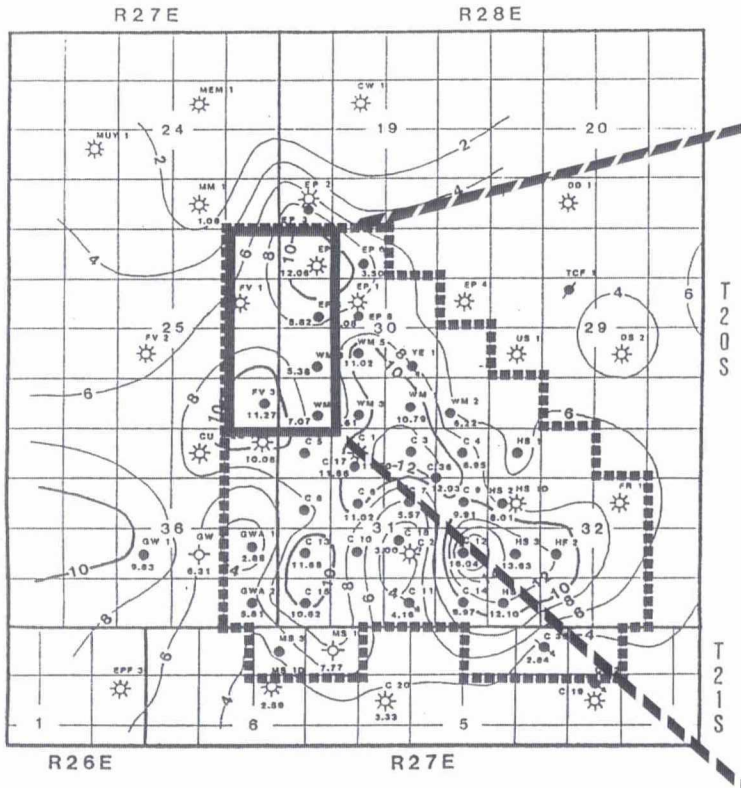
(ii) it allocates the total unit future oil production equitably among the tracts while the Exxon participation formula is flawed because it fails to do so.

(20) Based upon the foregoing, the Commission concludes that:

(a) Premier's claim of an additional 82 feet of "pay" is refuted by their own workover attempt in October, 1995. Their workover of the FV3 Well in what they considered to be "pay not accounted for in the Unit participation formula", resulted in 6 to 7 barrels of oil and 300 barrels of water per day, which is uneconomic. This section overlies the disputed 82 feet of additional pay, but both zones correlate with uneconomic production from the Yates Citdel ZG "Stat" No. 1, the south offset to this well;

(b) Premier's arguments and proposed participation formula is limited to oil-in-place calculations. The oil-in-place is a log calculation which may or may not be producible. Equal value was given to potential CO_2 reserves compared to primary and secondary recoveries which are far less risky operations.

(c) the geological interpretation of Premier's was a more believable and scientifically sound interpretation. Unfortunately, for Premier, the production results show the additional potential pay to be uneconomic.



1109	1111
S_W = 40%	S_W = 40%
OOIP = 1.44 MMBO	OOIP = 2.55 MMBO
Workover Reserve = 0 MBO	Workover Reserve = 267 MBO
Waterflood Target = 480 MBO	Waterflood Target = 860 MBO
Waterflood Reserve = 0 MBO	Waterflood Reserve = 145 MBO
1309	**1311**
S_W = 41%	S_W = 42%
OOIP = 1.93 MMBO	OOIP = 2.60 MMBO
Workover Reserve = 0 MBO	Workover Reserve = 214 MBO
Waterflood Target = 630 MBO	Waterflood Target = 830 MBO
Waterflood Reserve = 0 MBO	Waterflood Reserve = 285 MBO
1509	**1511**
S_W = 39%	S_W = 42%
OOIP = 1.77 MMBO	OOIP = 1.70 MMBO
Workover Reserve = 0 MBO	Workover Reserve = 166 MBO
Waterflood Target = 630 MBO	Waterflood Target = 540 MBO
Waterflood Reserve = 0 MBO	Waterflood Reserve = 269 MBO
1709	**1711**
S_W = 39%	S_W = 46%
OOIP = 1.58 MMBO	OOIP = 1.71 MMBO
Workover Reserve = 0 MBO	Workover Reserve = 0 MBO
Waterflood Target = 580 MBO	Waterflood Target = 450 MBO
Waterflood Reserve = 0 MBO	Waterflood Reserve = 164 MBO

PREMIER OIL & GAS, INC.

UPPER CHERRY CANYON
HYDROCARBON POROSITY THICKNESS

AVALON (DELAWARE) FIELD
EDDY COUNTY, NEW MEXICO
CONTOUR INTERVAL: 2
SCALE: 2000 FEET / INCH

GEOLOGY BY: G. E. HARRINGTON NOVEMBER, 1995

EXHIBIT 7

TABLE OF CONTENTS

(UNTIZATION CORRESPONDENCE AND NOTES)

DATE	PARTIES	TOPIC
05/29/91	WIOs	Exxon held a preliminary WIO meeting for a technical discussion and initial plans for a secondary recovery unit.
11/20/91	WIOs	Exxon held a second preliminary WIO meeting with technical discussion and project plans discussed.
03/09/92	Exxon-WIOs	Technical Report issued. Technical report proposed that at least 90% of the WIOs approve the Technical Report.
07/10/92	Yates-Exxon	Yates returned the executed Pre-Unitization Voting Agreement.
10/28/92	Exxon-Premier	Responds to Premier's questions of 10/26/92
11/12/92	Premier-Exxon	Compliments Technical Report. Has minor concerns: • Limits of primary production for Lower Cherry/Upper Brushy • Proposes 3 additional injectors on the west edge of his 4 tracts (4-40s) • Challenges FV3 reserves
11/25/92	Yates-Exxon	Outlines questions concerning the Unit.
Nov/Dec/92	Exxon-Premier	Meeting to review concerns. Exxon acquires FV3 well log and drilling report from Premier
12/09/92	Exxon-Yates	Technical report review meeting.
12/22/92	Exxon-Premier	Exxon does not believe the FV3 (or FV1) to be productive on primary in the LCC/UBC, and that additional west-side injectors are probably not appropriate
01/07/93	Yates-Coquina	Discussed the results of the 12/09/92 meeting Yates had with Exxon.
01/27/93	Exxon	The Sundry Notice application for the Avalon Enhanced Oil Recovery Project was approved by the BLM
02/01/93	Exxon meetings with BLM (Carlsbad) & NMOCD (Artesia)	Reviewed the Avalon project with the BLM and the NMOCD. Agenda and attendance list attached
02/02/93	Exxon meetings with NMSLO & NMOCD both in Santa Fe	Reviewed the Avalon project with the NMSLO & NMOCD. Agenda and attendance list attached.
02/09/93	Exxon-BLM	Summarizes the points covered in the 02/01/93 meeting
04/15/93	Exxon-WIO	Exxon sent out ballots to amend the Technical report and to add certain addenda. This addendum was approved in June of 1994

Exhibit No. 7
Exxon Corporation
NMOCD Cases 11297 & 11298
Hearing Date: June 29, 1995

01/94	Exxon-WIO	Exxon requested copies of Division Orders, Division Order Title Opinions; and Title Opinions.
04/08/94	Exxon- WIO	Exxon informed the WIOs that the Technical Report was approved and proposed a WIO meeting on April 26, 1994 to: • discuss the participation formula & percentages • current development plan • distribute and review the proposed Avalon Unit and Unit Operating Agreement
04/28/94	Exxon-WIO	Exxon sent out minute notes from the 04/08/94 WIO meeting and solicited written comments and any suggested changes to the UA/UOA from the WIOs. Exxon proposed a WIO meeting on 06/03/94 (changed to 06/17/94).
06/17/94	WIO Meeting	Approximately 90% of WIO were represented. WIO presented feedback on: • Proposed Unit • Participation formula • Bidding out of Oil and CO2 • Proposed drilling and producing rates • Vote required should be greater than 75% • Yates to take lead in developing alternative Equity formula • Premier presented its differing opinions on: 1. the UCC reservoir 2. significant differences between Premier and Exxon involving geologic picks 3. asked to withdraw tract from Unit.
06/20/94	Exxon-WIO's	Presented meeting notes and summary of WIO meeting of 06/17/94
09/06/94	Yates-Exxon	Yates proposed two new Equity formulas
10/10/94	Exxon-Yates	Exxon responded to Yates's 09/06/94 proposal
12/05/94	Yates-Exxon	Yates proposes two additional participation formulas
02/09/95	Yates- Exxon	Yates suggested three areas to clarify: • Veto by minority owners • Buyouts of other interests in the Unit • Non-Consents
02/22/95	Exxon-WIO	• Exxon revising UA/UOA to address WIO's concerns • Single phase formula • Requesting WIO's to vote on non-binding ballot if agree to the Unitization proposal • 97.4231% agreed to the non-binding ballot (ballot responses attached) • Two parties voted "no": Premier and Whiting
02/23/95	Exxon-Yates	Exxon agreed to amend the voting procedure as requested by Yates
05/01/95	Exxon-Royalty ORR owners	Exxon mailed out a "draft" Unit Agreement to the Royalty and Overriding Royalty owners
05/02/95	Exxon meeting with BLM (Roswell)	Exxon requested approval of the Avalon (Delaware) Unit as logically subject to secondary operations under the Unitization provisions of the Mineral Leasing Act

PREMIER

Oral Argument

I. Introduction

May it please the Court? I am Lyn Hebert, special assistant attorney general appearing on behalf of the New Mexico Oil Conservation Commission. I shall limit my portion of the argument to the conflict issue raised by Premier. Mr. Carr will follow me and then Mr. Bruce. They will be addressing the issues raised as to the technical evidence presented to the Commission.

The Oil Conservation Commission was created in 1935 and has three members. One of the three members is on the Commission because of the office he holds: the Director of the Oil Conservation Division. Another member is a designee of the Secretary of The Energy, Minerals and Natural Resources Department. This department contains the Oil Conservation Division. The third member of the Oil Conservation Commission is a designee of the Commissioner of Public Lands. All of these references to "commissions" and "commissioners" can become confusing, so, as I did in my brief, I shall refer to the Oil Conservation Commission as the "OCC" and the Commissioner of Public Lands as the "State Land Office" as that is the state office under his control. The statute, NMSA 1978 Section 70-2-5, requires ~~both~~ the designee of both the department secretary and the designee of the State Land Office to be "...persons who have expertise in the regulation of petroleum production...."

Premier alleges that it did not receive a fair hearing before the OCC, because the State Land Office's designee on the OCC, Jamie Bailey, had some knowledge of some of the issues **(check what Premier's specific allegation is)** in this matter because of her employment at the State Land Office in its Oil, Gas and Minerals Division; and that her actions in her capacity of a State Land Office employee somehow prejudiced her regarding this matter.

This is simply not true. Ms. Bailey was appointed to the OCC as the State Land Office's designee, in part, because of her experience in oil and gas matters as an employee of the State Land Office. However, the issues before the State Land Office and the issues before the OCC are distinct.

The State Land Office leased state oil and gas leases to both Premier and Exxon. Exxon sought to have some of its state oil and gas leases unitized **(try to explain this)** with other interests including some of the state oil and gas leases held by Premier. Now, **only** the OCC can order unitization. However, a party who has state oil and gas leases and desires a unitization order, such as Exxon, **must** first obtain approval from the State Land Office. This is what was considered by the SLO. Under SLO rules the focus for such an approval process is on the SLO (i.e. its beneficiaries receiving its fair share of oil & gas in the proposed unit

[redacted]

*not Reid

*no pecuniary, individual interest involved

II.

*other statutory schemes where state employees & official have more than one role

Sec of Environment Dept. - written determination by Sec prior to issuance of mining

permit; but then issuance of the permit can be appealed to the Mining Commission on which the Secretary sits, and the among the issues that can be appealed is the appropriateness of the Secretary's prior determination.

The Director of OCD signs the Division orders. The orders can then be appealed to the OCC; and yet the Director is one of 3 members of the OCC. Certainly, the Director has made a determination based on evidence at the division hearing and the recommendations of the hearing examiner who reports to the Director, he issued the order that is appealed to the OCC. If the Petitioner's reasoning is correct as to Commissioner Bailey, then it would mean that the OCD Director would not be able to participate as a Commissioner in **any** OCC hearings.

These overlapping roles of state employees and officials provide safeguards and protections not only to the interests of the state itself, but to those parties involved in adjudicatory hearings. Parties get another oppotunity to persuade, convince, provide additional evidence. The state employees & officials have no personal interest. There is no pecuniary gain to the individual.

II. generally

*disavow Unna's letter.

over 100 state government attorneys

an attorney for the SLO does not speak for the OCC ~~& a letter from a SLO attorney cannot be used to estop the actions of a state commission. ASIDE: the SLO attorney answers only to the Commissioner of Public Lands; the majority of the Oil Conservation Commission answers to the Governor.~~

the AG commissions attorneys to represent the OCC. Also:
1. atty new to position
2. issue not researched

The letter, itself, does not make sense - it is contradictory. On the one hand, the attorney advises that Ms. Bailey will participate in the Exxon hearing for a unitization order before the OCC because there is no bias or conflict. On the other hand, the attorney states that in the future, steps will be taken to avoid a similar situation. **Check Unna letter.**

~~V~~. Ask Ct to affirm OCC's decision

III. the Reid case is always cited in re to bias & prejudgment in administrative adjudications. Prior to a hearing to consider revocation of Reid's optometry license, an optometry board member who would hear the case stated that Reid would be loosing his license after the hearing. ~~that~~ The Sup Ct determined that such a statement was evidence of prejudgment & bias of the board member & that, consequently, Reid did not receive a fair hearing before an impartial board as was his due process right.

Premier has not & can not point to any evidence of bias by Comm. Bailey that remotely approached that stated in Reid.

To: Lyn

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

PREMIER OIL & GAS, INC.

Petitioner,

vs. No. CV 96-121-JWF

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,
EXXON CORPORATION, and
YATES PETROLEUM CORPORATION,

Respondents.

BRIEF OF EXXON CORPORATION
AND YATES PETROLEUM CORPORATION
IN SUPPORT OF
OIL CONSERVATION COMMISSION ORDER NO. R-10460-B

Exxon Corporation ("Exxon") and Yates Petroleum Corporation ("Yates") file this brief in support of Order No. R-10460-B entered by the Oil Conservation Commission ("the Commission").

I. STATEMENT OF THE CASE:

In May 1995 Exxon applied to the Oil Conservation Division ("the Division") in Case No. 11298 for statutory unitization of certain lands in Eddy County, New Mexico, to be known as the Avalon (Delaware) Unit ("the Avalon Unit"). This application was filed pursuant to the Statutory Unitization Act, §§ 70-7-1 through 21 (1995 Repl. Pamp.) ("the Act")[1]. Exxon also applied to the Division in Case No. 11297 for authority to institute a waterflood project in the Avalon Unit. The Division heard the applications on

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[1] The Act allows the Commission to join together several tracts of land, on a pool-wide basis, in order to conduct enhanced recovery operations, provided that at least 75% of working interest owners and 75% of royalty owners in the unit voluntarily agree to unitization.

June 29 and 30, 1995. Exxon's applications were supported by Yates and other interest owners. Premier Oil and Gas, Inc. ("Premier") opposed the applications, contending that either: (i) its acreage should not be unitized; or (ii) if unitized, its acreage was entitled to a greater share of unit production than proposed by Exxon.

By Order No. R-10460, the Division approved unitization and the waterflood project, and denied Premier's requests. Premier appealed the Division's Order to the Commission pursuant to N.M. Stat. Ann. § 70-2-13 (1995 Repl. Pamp.). The Commission held its *de novo* hearing on December 14 and 15, 1995, at which all parties hereto appeared and were represented by counsel. The Commission entered Order No. R-10460-B on March 12, 1996, again approving statutory unitization of the Avalon Unit and authorizing Exxon to institute a waterflood project in the unit. Premier filed its Application for Rehearing with the Commission on March 20, 1996. The Commission did not act on the application, and it was therefore deemed denied pursuant to N. M. Stat. Ann. § 70-2-25(A) (1995 Repl. Pamp.). Premier then filed its Petition to review the Commission's order with this court on April 12, 1996.

II. STATEMENT OF FACTS:

A. Unitization Process.

In 1991 Exxon began considering unitization of the Delaware formation underlying the Avalon Unit in order to conduct enhanced

recovery operations.[2] In March 1992 Exxon wrote to the other working interest owners within the proposed unit area, formally proposing an enhanced recovery unit. Because Exxon was the largest working interest owner in the unit, owning over 80% of current production, the other working interest owners asked Exxon to take the lead in preparing a technical study of the proposed unit area. The technical study ("the Technical Report," **Exxon Exhibit 10**)[3] was completed in August 1992 and made available to all working interest owners.[4] It examined and analyzed all available geologic data on the Delaware formation on a regional basis, and integrated engineering and actual well performance into the geologic model, to determine the area to be unitized and the feasibility of enhanced recovery operations. **Testimony of D. Cantrell, Transcript at 57-64, 69-70, 100, 104; Testimony of G. Beuhler, Transcript at 136-138, 189-191.**

The Technical Report showed that: (1) the Delaware formation underlying the Avalon Unit has been reasonably defined by development; (2) the Avalon Unit covers the productive limits of

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[2] A discussion of the unitization process during the years 1991-1995 is given by Exxon landman J. Thomas. See **Transcript at 27-36**. (Note: References to the "Transcript" refer to the two volume transcript of the Commission hearing held on December 14 and 15, 1995.)

[3] The exhibit numbers refer to the exhibits submitted at the Commission hearing in December 1995.

[4] The Technical Report was prepared at Exxon's sole expense at an estimated cost of $500,000. **Testimony of J. Thomas, Transcript at 37-38; Testimony of D. Cantrell (Exxon geologist), Transcript at 104-105; Testimony of G. Beuhler (Exxon engineer), Transcript at 196-197.**

the Delaware formation in the subject area; and (3) a waterflood project for the Avalon Unit is economically feasible. As a result, Exxon proposed that the Avalon Unit be comprised of 2118.78 acres of state, federal, and fee lands[5] in Eddy County, New Mexico. **See Exxon Exhibit 1.** Exxon also proposed a waterflood project for the Avalon Unit, which will cost $14.4 million and recover an additional 8.2 million barrels of oil which will not be recovered by primary production operations. The waterflood project area encompasses 1088.55 acres within the Avalon Unit. **See Exxon Exhibit 27A.** Tracts lying outside the waterflood project area, on the outer boundary of the Avalon Unit, are deemed by all working interest owners in the Avalon Unit (except Premier) to be uneconomic for the recovery of waterflood reserves. This is evidenced by the fact that these outer tracts have little or no primary or secondary reserves. **Exxon Exhibit 22; Testimony of G. Beuhler, Transcript at 133, 145-148.** Thus, these tracts will produce no oil during the waterflood project. **See Exxon Exhibit 36.**

In addition to a waterflood project, the Technical Report also investigated the feasibility of a carbon dioxide injection project ("the CO_2 flood"). The CO_2 flood, if instituted, will encompass the entire unit area. All unit tracts have CO_2 flood reserves, and will produce oil during this phase. **Exxon Exhibits 28, 36.** The CO_2 flood is expected to cost at least $70 million, if instituted,

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[5] The tracts within the Avalon Unit, and their ownership, are listed in Exhibit "B" of the Unit Agreement (**Exxon Exhibit 2**).

and will recover an estimated 39.9 million barrels of oil. **Exxon Exhibit 29**. Whether the CO_2 flood will be instituted depends upon a review of waterflood performance for at least a three year period, the results of injectivity tests, and a future determination as to the economics of the CO_2 flood. **Testimony of G. Beuhler, Transcript at 138-140.**

As of late 1992 there was a general consensus on unitization among working interest owners. As a result, Exxon met with representatives of the Bureau of Land Management ("BLM"), the Commissioner of Public Lands ("Commissioner"), and the Division in early 1993 to discuss the project. (The Commissioner and the BLM are the largest royalty owners in the Avalon Unit.) Exxon then forwarded ballots to the working interest owners, and over 90% of them approved the Technical Report. In January 1994 Exxon requested title data from working interest owners so that it could proceed with preparation of exhibits to the Unit Agreement.

In April 1994, Exxon notified working interest owners that the Technical Report was approved, and held two working interest owner meetings to discuss unitization. Due to concerns expressed by Yates, Premier, and other working interest owners regarding the participation formula,[6] voting percentages, and other matters, Yates was asked to take the lead in developing a single phase participation formula, under which all interest owners would share

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[6] Exxon had initially proposed a two-phase participation formula. Under that formula, tracts without waterflood reserves would not share in unit production until the CO_2 flood was instituted. **Testimony of J. Thomas, Transcript at 54-55; Testimony of G. Beuhler, Transcript at 145.**

in production from the inception of the unit. Yates developed several single phase formulas, which they discussed with Exxon during the next several months. As a result of these discussions, Exxon and Yates agreed to present a single phase participation formula to the other interest owners, which allocated production to each unit tract based upon:

25% Remaining primary reserves as of 1/1/93
50% Waterflood reserves
25% CO_2 flood reserves

See Order No. R-10460-B, Finding ¶9. This formula was based on an equitable weighing of the amount of reserves under each tract, and the risk and cost involved in each phase of primary or enhanced recovery operations. **Testimony of G. Beuhler, Transcript at 145-147, 156; Testimony of D. Boneau (Yates engineer), Transcript at 257-259.**

In February 1995 Exxon sent the working interest owners a letter making certain revisions to the proposed Unit Agreement and the Unit Operating Agreement **(Exxon Exhibit 3)** and proposing the above single phase formula. A non-binding ballot on unitization was approved by 97.4% of the working interest owners, and preliminary approval for unitization was obtained from the Commissioner and the BLM. Final copies of the Unit Agreement, together with ratification forms, were sent to all interest owners in May 1996, and Exxon filed its unitization and waterflood applications with the Division.

B. **Premier's Interest.**

Premier is sole the working interest owner of Tract 6[7] of the Avalon Unit, comprised of the E½E½ §25, Township 20 South, Range 27 East. **Exxon Exhibit 20.** Premier purchased Tract 6 in 1990, but has never drilled any wells thereon. During the period 1992-1995, Premier was provided the same information as all other working interest owners in the unit, participated at working interest owner meetings, and was offered the opportunity to propose a participation formula.

Premier's tract has no remaining primary reserves. Moreover, it is not within the project area for the waterflood because it has no waterflood reserves. **Testimony of G. Beuhler, Transcript at 146-147.** Thus, it will not contribute any hydrocarbons during the waterflood project. It does have about 4% of CO_2 flood reserves. Thus, under the Commission-approved participation formula, its tract is entitled to 4% x 25% = 1% of unit production, which it will receive from the date of first production.

C. **Division and Commission Hearings.**

At the Division hearing in June 29 and 30, 1995, Exxon and Yates submitted land, geologic, and engineering evidence in support of the applications.[8] Premier presented geologic and engineering

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[7] The Commissioner is the royalty owner of Tract 6.

[8] There are 43 working interest owners and 24 royalty owners in the unit. By the hearing date, 98.6% of working interest owners and 98% of royalty owners had voluntarily approved or ratified Exxon's unitization proposal. **Testimony of J. Thomas, Transcript at 30-32.** (Under the Act, "royalty owners" includes all non-cost bearing interests, including royalty, overriding royalty, and production payment interests).

testimony in opposition to unitization. Premier claimed that its acreage was not necessary to unitization, and thus should be excluded from the Avalon Unit. Alternatively, Premier asserted that, if its acreage were unitized, its tract was entitled to a substantially larger participation factor than proposed by Exxon. However, Premier did not present a participation formula at the Division hearing.

After weighing all the evidence, the Division entered its Order No. R-10460 in September 1995, approving unitization and the waterflood project, and denying Premier's requests. This Order was appealed to the Commission, which held a *de novo* hearing, pursuant to statute, on December 14 and 15, 1995. The Commission heard two day of technical testimony, involving six expert witnesses and dozens of exhibits. Thereafter, the Commission entered Order No. R-10460-B, again authorizing unitization and the institution of a waterflood project for the Avalon Unit. This appeal followed.

Additional facts pertinent to Exxon's and Yates' arguments are set forth below in the Argument section of this brief.

III. STANDARD OF REVIEW:

The appeal of the Commission's order is before the Court on the record established at the Commission hearing. **N.M. Stat. Ann § 70-2-25(B) (1995 Repl. Pamp.)**. Therefore, this Court sits in an appellate capacity when reviewing the decision of the Commission, and it must determine whether Order No. R-10460-B is lawful and is supported by substantial evidence. **Rutter & Wilbanks Corp. v. Oil Conservation Comm'n, 87 N.M. 286, 532 P.2d 582 (1975)** ("substantial

evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion); **Grace v. Oil Conservation Comm'n, 87 N.M. 205, 531 P.2d 939 (1975).** The Commission's order is *prima facie* valid. **N.M. Stat. Ann. § 70-2-25(B) (1995 Repl. Pamp.).** Moreover, the Courts give special weight and credence to the experience, technical competence, and specialized knowledge of the Commission. **Rutter & Wilbanks Corp. v. Oil Conservation Comm'n, supra.** As a result, Premier has the burden to show that the Commission's order: (1) is contrary to statute; or (2) has no support in the record.

IV. ARGUMENT:

Premier asserts that the Commission's order should be reversed based upon nine points set forth in its Petition. Point I (bias and pre-judgment) has been addressed by the Commission in its brief, and Exxon and Yates concur in and adopt the arguments made by the Commission. It is the understanding of undersigned counsel that Point II (constitutionality of the Act) is being abandoned by Premier, and thus no argument is made herein on that issue.[9] Points III, IV, and V (unitization and correlative rights issues) are consolidated for argument in Part IV(A) below. Points VI through IX (substantial evidence issues) are discussed in Part IV(D) below.

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[9] Exxon and Yates reserve the right to address the constitutionality issue at hearing if necessary.

A. Commission Order No. R-10460-B Complies with the Statutory Unitization Act and Protects Premier's Correlative Rights.

The Commission's findings and Order are matters particularly suited to the expertise of the Commission, are supported by substantial evidence, and meet the requirements of the Statutory Unitization Act. Ignoring the statutory meaning of terms and oversimplifying selected evidence, Premier contends that the formation of the Avalon Unit and the commitment of the Premier tract thereto violates The Statutory Unitization Act ("the Act") and Premier's correlative rights.[10] The Court must not allow itself to be drawn into Premier's subtle trap of second-guessing the factual findings which are explicitly within the expertise of the Commission.

1. Statutory Unitization Act.

The Statutory Unitization Act was adopted by the legislature in 1975. **N.M. Stat. Ann. § 70-7-1 *et. seq.* (1995 Repl. Pamp.).** The purpose of the Act is to provide for unitized management of reservoirs, or portions thereof, for secondary and tertiary recovery operations where control of an entire producing area is needed to maximize the recovery of oil and gas. **N.M. Stat. Ann. § 70-7-1 (1995 Repl. Pamp.)**. The Act contains specific requirements for the creation of a statutory unit (see §§ 70-7-5 through 7), and authorizes the Oil Conservation Commission to carry out and effectuate the purposes of the Act. **§ 70-7-3**. This authority is

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[10] Since Premier has abandoned its claim that the Act is unconstitutional, it now focuses its attack on the Commission's application of the statute to the Avalon Unit.

based on the general jurisdiction of the Division to prevent the waste of oil and gas and protect the correlative rights of the owners thereof, **N.M. Stat. Ann. § 70-2-11 (1995 Repl. Pamp.)**, and the specific requirements of the Act to assure that a proposed unit plan is "fair, reasonable and equitable" to the owners of interest therein. **§ 70-7-7.**

Statutory unitization applications involve complicated geological and engineering issues. In this case, technical reports which had taken years to prepare were reviewed by expert engineering and geological witnesses called by Exxon, Yates, and Premier. The evidence, however, was in conflict as to whether the Premier tracts should be included in the unit area. The Commission, and not this Court, is the proper forum for the resolution of that conflict.

In ***Santa Fe Exploration Co. v. Oil Conservation Comm'n***, 114 N.M. 103, 835 P.2d 819 (1992), the New Mexico Supreme Court reviewed a decision of the Commission following administrative hearings in which conflicting geological and engineering evidence was produced. The Court stated that when expertise, technical competence and specialized knowledge is required to resolve and interpret evidence, the courts defer to the judgement of the administrative agency which "possesses and exercises such knowledge and expertise."[11]

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[11] The Supreme court in ***Santa Fe*** stated: "In any contested administrative appeal, conflicting evidence will be produced. In the instant case, the resolution and interpretation of such evidence presented requires expertise, technical competence, and specialized knowledge of engineering and geology as possessed by Commission members.

The Commission has special expertise in oil and gas matters. *See* ***Continental Oil Co. v. Oil Conservation Comm'n***, 70 N.M. 310, 315-16, 373 P.2d 809, 814-15 (1962). In this case, the Commission applied its expertise, technical competence, and specialized knowledge of engineering and geology to the evidence, and concluded that: (1) formation of the Avalon Unit was "necessary to effectively increase the ultimate recovery of oil and gas from the unitized portion of the Avalon-Delaware Pool" **(Order No. R-10460-B, Finding ¶26)**; (2) the unit plan would have no adverse effect upon the interest owners in the Avalon Unit **(Order No. R-10460-B, Finding ¶23)**; and (3) the proposed unit would protect the correlative rights of all interest owners in the unit area **(Order No. R-10460-B, Finding ¶32)**. Furthermore, the Commission expressly found that the Unit participation formula was "fair." **Order No. R-10460-B, Finding 20(f)**.[12]

See NMSA 1978, § 70-2-4 (commissioners to have "expertise in regulation of petroleum production by virtue of education or training"); NMSA 1978, § 70-2-5 (director is "state petroleum engineer" who is "registered by the state board of registration for petroleum engineers and land surveyors as a petroleum engineer" or "by virtue of education and experience (has) expertise in the field of petroleum engineering.") **Where a state agency possesses and exercises such knowledge and expertise, we defer to their judgment."** ***Stokes v. Morgan***, 101 N.M. 195, 202, 680 P.2d 335, 342 (1984): ***Groendyke Transp. Inc. v. New Mexico State Corp. Comm'n***, 101 N.M. 470, 477, 684 P.2d 1135, 1142 (1984)." ***Santa Fe***, 114 N.M. at 114-15, 835 P.2d at 830-831. (Emphasis added).

[12] Finding 20(f) provides:

"The correlative rights of all interest owners are protected by the Exxon Unit participation formula. It is not the Commission's responsibility to change a formula which was the product of negotiations if that formulas is fair. That is not to say that other formulas, derived as a result of negotiation would not be "fair' because there is no one perfect formula. Premier will benefit by receiving income

The Act specifically sets out the matters that must be found by the Commission prior to issuing a statutory unitization order. **§ 70-7-6**. Premier has not challenged the fact that the Commission made all the findings required by the Act.

2. Correlative Rights.

As noted above, the Avalon Unit is comprised of 2118.78 acres, including a buffer zone comprised of 40-acre edge tracts. Premier owns the working interest in one of these edge tracts, Unit Tract 6, which have no waterflood potential but potential for production during the CO_2 flood.

Premier asserts that the Commission should have rejected the unit participation formula and, instead, determined the relative values of the tracts in the unit pursuant to the Act. **Application for Rehearing, Point VIII**. Premier's argument is that by not determining relative value of each tract in the unit, the Commission failed to comply with the Act and violated Premier's correlative rights. **Petition for Review, Point III; Application for Re-hearing, Point VIII**. To support this contention, Premier cites the Technical Report **(Exxon Exhibit 10 (G-19)** and points out that while the unit participation formula allocates 1.0192% of all unit production to Premier's Tract 6, this tract has 4.16% of the total remaining reserves. Premier asserts that its correlative rights are violated for, on the basis of this data, "(s)uch a

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from the start even though their tract is uneconomic today. However, CO_2 "potential" earns Premier the right according to Exxon's formula to receive income from the start of unit operation."

participation formula does not allocate unitized hydrocarbons on a fair, reasonable and equitable basis." **Application for Rehearing at 13.**

The fallacy of this argument is apparent when the statutory definition of correlative rights is examined. "Correlative rights" is defined by the Oil and Gas Act as follows:

> "correlative rights' means the **OPPORTUNITY** afforded, **SO FAR AS IT IS PRACTICABLE TO DO SO**, to the owner of each property in a pool to produce **WITHOUT WASTE** his just and equitable share of the oil or gas or both in the pool, being an amount, so far as can be practicably determined and so far as can be practicably obtained **WITHOUT WASTE**, substantially in the proportion that the quantity of **RECOVERABLE** oil or gas or both under the property bears to the total **RECOVERABLE** oil or gas or both in the pool and, for such purposes, to use his just and equitable share of the reservoir energy.

N.M. Stat. Ann. § 70-2-33 H (emphasis added). Premier's argument appears to be that since it has 4.16% of the remaining reserves under its Tract 6, it should receive that percentage of the unit production or its correlative rights are violated. As "correlative rights" is defined by statute, however, this term only means Premier is entitled to an **opportunity**[13] to produce **recoverable**

[13] Premier has had an opportunity to produce reserves from these tracts for the last five years and failed to do so. **Testimony of d. Boneau, Transcript at 220**. Furthermore, one way for an owner to avail itself of the opportunity to produce its reserves is for its interest to be committed to a unit plan. Premier declined to join in the Unit Plan. Having failed to avail itself of two opportunities, Premier should not be rewarded for its lack of diligence.

reserves[14] as far as it is practicable and only as long as this can be done without causing waste.[15] Again these concepts and the interplay between them is a matter properly vested in the Commission.

Furthermore, Premier's review of this data is grossly oversimplified. The type of review of technical geologic and engineering evidence made by the Commission is demonstrated by Finding 17(h) of Order No. R-10460-B, which reads:

> "Premier's engineering consultant stated that Tract 6 was not given credit for waterflood target "reserves" (referencing Technical Report Exhibit E-6). However, Technical Report Exhibit E-6 does not set forth "reserves," but rather "waterflood target oil-in place." "Target oil-in-place" is a volumetric value used as a starting point in calculating recoverable reserves, on which equity is based. In order to obtain recoverable reserves, the "target oil-in-place" must be adjusted by factors such as well-to-well continuity, sweep efficiency, floodable oil, pattern effects, and

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[14] The Premier tracts are edge tracts that have been demonstrated to be capable of only subeconomic primary production, *see* **Exxon Exhibit 22; Testimony of G. Beuhler, Transcript at 132-33**, no secondary production, Testimony of G. Beuhler, Transcript at 180, and tertiary "potential." **Testimony of G. Beuhler, Transcript at 188.** As such the determination of the recoverable nature of the reserves under these tracts is a matter properly within the Commission's expertise.

[15] Even if the reserves under the Premier tracts were "recoverable," the Commission would violate its statutory duties if it omitted the Premier tracts from the unit and this caused the waste of oil. "Waste" is defined as the ". . . operating or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool . . . ." **N.M. Stat. Ann. § 70-2-3.** The prevention of waste is the paramount duty of the Commission and overrides correlative rights concerns when these duties are in conflict. See, ***Continental Oil Co.*, 70 N.M. at 319, 373 P.2d at 818.** Again, this is an issue within the expertise of the Commission. The record shows that waste will occur if Premier's tract is excluded from the Avalon Unit. **Testimony of D. Boneau, Transcript at 220-221.**

> development costs. This was done on all tracts, including Premier's Tract 6.

(Emphasis in original). From this finding alone, it is clear why technical evidence should be reviewed by the Commission and why the courts should defer to this agency on the interpretation of complex geological and engineering issues. Neither the attorneys arguing this case nor the Court are qualified to consider the conflicting evidence supporting the Commission's findings, or to substitute their own judgement for that of the Commission.

The Commission declined to determine the relative value of each tract in this unit. This is the heart of Premier's attack on the Commission's Orders. However, "relative value" is only one method of allocating production. The Commission recognized this, and used an alternate method. ***See* Finding 17(h), Order No. R-10460-B.** This Court should not substitute an allocation formula advanced by Premier for one which the Commission, in its expertise, found to be appropriate. "[W]here an agency such as the [Commission] passes upon the fairness of a proposed participation formula, concerns of lessee unfairness are ameliorated." ***Amoco Production v. Heimann*, 904 F.2d 1405, 1413 (10th Cir. 1990).** The Commission passed upon the "relative value" formula. Premier's concerns are misplaced.

If the Commission had not chosen an alternate formula, and had instead determined the relative value of each tract, the review would have entailed much more than a simple comparison of remaining reserves or surface acres. The Statutory Unitization Act defines the "relative value" of tracts in terms of "its contributing value

to the unit," "location on structure," and "its probable productivity of oil and gas in the absence of unit operations."[16] All are matters which cannot be properly evaluated without technical expertise in geology and engineering. All are matters on which courts should defer to the Commission.

By inclusion of Premier's tracts in the Avalon Unit, Premier receives revenue under the unit participation formula from the commencement of production of unitized substances regardless of whether or not a CO_2 flood is initiated. **Testimony of G. Beuhler, Transcript at 146, 188.** After considering the geological and engineering evidence presented by the parties, the Commission determined that the Unit participation formula was "fair," **Order No. R-10460-B, Finding ¶20(f)**, and that it would protect the correlative rights of all interest owners in the Unit area. **Order No. R-10460-B, Finding ¶32.** The court should defer to this Commission decision.

3. Inclusion of the Premier Tracts in the Unit is not Premature.

Premier asserts that approval of the CO_2 project is premature at this time, and that its tracts should therefore be omitted from the Avalon Unit. It further contends that approval of the CO_2

---

[16] "Relative value" means the value of each separately owned tract for oil and gas purposes and its contributing value to the unit in relation to like values of other tracts in the unit, taking into account acreage, the quality of oil and gas recoverable therefrom, location on structure, its probable productivity of oil and gas in the absence of unit operations, the burden of operation to which the tract will or is likely to be subjected, or so many of said factors, or such other pertinent engineering, geological, operating of pricing factors, as may be reasonably susceptible of determination. NMSA 1978, § 70-7-4 (J).

flood at this time is not supported by substantial evidence. **Application for Rehearing, Point VII, Petition for Review, Point IV.** A review of the record shows the contrary to be true.

Exxon reviewed its potential development plan for CO_2 **(Exxon Exhibit 28, Testimony of G. Beuhler, Transcript at p. 138)**, and stated that with a CO_2 flood, there was potential additional recovery of 39.9 million barrels of oil from the Avalon Unit. **Exxon Exhibit 29; Testimony of G. Beuhler, Transcript at 139.** Without the inclusion of Premier's tracts, CO_2 operations would have to be scaled back. **Testimony of G. Beuhler, Transcript at 147-48.** The omission of the Premier tracts would result in the waste of as much as 2 million barrels of oil. **Testimony of D. Boneau, Transcript at 220-221.**

Exxon testified that it would take three years or more to study the reservoir's waterflood performance, **(Testimony of G. Beuhler, Transcript at 140)**, and that before a CO_2 project could be implemented, sufficient volumes of water needed to be injected to "pressure up the reservoir." **Testimony of G. Beuhler, Transcript at 184.**

It would be short sighted not to anticipate a CO_2 flood at this time **(Testimony of G. Beuhler, Transcript at 147)**, Exxon was planning for CO_2 injection at this time **(Testimony of G. Beuhler, Transcript at 188)**, exclusion of the Premier tracts would only lead to future problems with development of the reservoir and result in the waste of oil. **Testimony of D. Boneau, Transcript at 217, 220.**

Based on this evidence and the record as a whole, the Commission found that inclusion of the Premier tracts would enhance the CO_2 flood sweep. **Order No. R-10460-B, Finding ¶19(i).** It also concluded that the CO_2 flood would increase the production of reserves and was important to the State of New Mexico. **Order No. R-10460-B, Finding ¶¶15(a)-(f).** Finally, the Commission found that "Excluding Premier's tract would in fact delay unitization and disrupt the orderly development of a CO_2 flood." **Order No. R-10460-B, Finding ¶20(g).**

The removal of the Premier tracts would permit Premier to develop this acreage on a stand alone basis free of unit operations. Furthermore, Premier suggests that when it is time to commence a CO_2 flood, Premier could participate with "either (a) a lease line injection agreement ... or (b) including the Premier acreage in the CO_2 project." **Application for Rehearing, Point VI, Page 11.** Premier's proposal is exactly what the Act is designed to prevent--the development by multiple operators under lease line agreements which complicate operations and can lead to inefficient production practices.

The approval of the CO_2 project is not premature and the decision of the Commission is supported by substantial evidence in the record. This Court must defer to the Commission's expertise and must affirm the Commission's Orders.

B. <u>The Commission's Order is Supported by Substantial Evidence (Points VI-IX)</u>.

Order No. R-10460-B includes over 75 findings of fact. Of those, Premier has challenged only six specific findings,

incorrectly asserting that they are not supported by substantial evidence. Each of these findings is summarized below, together with evidence in the record supporting those findings.

1. Finding 20(a).

Premier claimed that the Technical Report did not attribute an additional 82 feet of "pay" to its FV3 well; therefore, its tract was improperly classified as uneconomic for primary and waterflood production, and its reserves were not properly credited in the Technical Report.

In Finding 20(a), the Commission found that the claim to 82 feet of additional pay was contradicted by Premier's workover of the FV3 well and by the offsetting Yates ZG1 well. The Commission's finding is supported by the following evidence:

a. Premier's workover of the FV3 well in October 1995 did not test the claimed "pay" interval. **Testimony of K. Jones (owner of Premier), Transcript at 285-288, 300-301.** Thus, Premier did not believe it was productive.

b. Gulf, the company that drilled the FV3 well in 1989, did not perforate the well in this 82 foot interval, and thus did not think this "pay" existed. **Testimony of D. Cantrell, Transcript at 477.**

c. The Yates ZG1 well, which immediately offsets the FV3 Well, is similar geologically and in producibility, and is uneconomic. **Testimony of D. Cantrell, Transcript at 112, 472-474; Testimony of D. Beuhler, Transcript at 161-163.**

d. The claimed 82 feet of additional pay in

the FV3 well does not exist. **Testimony of D. Cantrell, Transcript at 106-112; Exxon Exhibits 19A and 19B.**

e. The FV3 well was an uneconomic well. **Testimony of G. Beuhler, Transcript at 161.**

2. Finding 20(c).

In Finding 20(c), the Commission found that, while it favored Premier's general geologic interpretation of the field, the production from Premier's acreage and offsetting acreage proved that the additional claimed "pay" was uneconomic. This finding is supported by the following testimony:

a. Primary production from the FV3 well and the offsetting ZG1 well was uneconomic. **Testimony of G. Beuhler, Transcript at 161-163; Testimony of D. Cantrell, Transcript at 119, 472-474.**

b. To determine whether a tract has primary or secondary reserves, the geologic model must be verified by actual production. **Testimony of G. Beuhler, Transcript at 136-137, 180-182.**

3. Finding 17(h).

Premier's engineer stated that Premier was not given credit for waterflood reserves. Finding 17(h) stated that he confused "reserves" with oil-in-place. Supporting evidence is as follows:

a. Premier's engineer used oil-in-place rather than "reserves." **Premier Exhibit 9 at pp. 4, 6; Testimony of T. Payne, Transcript at 443.**

b. Oil-in-place does not equal "reserves." **Testimony of G. Beuhler, Transcript at 180-182.**

c. Oil-in-place is a starting point in calculating reserves, and must be adjusted by factors such as well-to-well continuity, sweep efficiency, pattern effects, and development costs. Id.

4. Finding 19(a).

Premier claimed that its primary and waterflood reserves were not properly evaluated in the Technical Report. In Finding 19(a), the Commission stated that Premier's assertion: (i) ignores recovery efficiency; and (ii) ignores the analogous offset well, the ZG1. This finding is directly supported by the following evidence:

a. Premier's assertion ignores recovery efficiency and higher risk associated with non-primary reserves. **Testimony of D. Boneau, Transcript at 260-261; Testimony of G. Beuhler, Transcript at 145-147.**

b. Premier's acreage is outside the waterflood pattern and thus will produce no oil during the waterflood project. **Testimony of G. Beuhler, Transcript at 180-182, 187.**

c. The State ZG1 well is analogous to the Premier FV3 Well, and both wells have produced uneconomic amounts of oil. **Testimony of G. Beuhler, Transcript at 161-163; Testimony of D. Cantrell, Transcript at 472-474.**

d. See **the testimony cited to support Finding**

17(h), above.

5. Finding 20(f).

In this finding, the Commission stated that the participation formula proposed by Exxon is fair and protects the correlative rights of all interest owners. This is supported by the following:

a. The participation formula is fair and protects everyone's interests. **Testimony of G. Beuhler, Transcript at 143-146, 150; Testimony of D. Boneau, Transcript at 218-221, 223, 257.**

b. Premier's tract has no primary or waterflood reserves. **Testimony of G. Beuhler, Transcript at 147, 158, 187-190.**

c. Although Premier's tract has no primary or waterflood reserves, it is attributed production from the inception of the unit. **Testimony of D. Boneau, Transcript at 219-220; Testimony of G. Beuhler, Transcript at 146-148; Testimony of D. Cantrell, Testimony at 117.**

d. Premier will receive a share of unit production, based on its CO_2 flood reserves, even though those reserves may never be produced. **Testimony of G. Beuhler, Transcript at 194-195; Testimony of D. Boneau, Transcript at 220.**

In addition, the argument that Premier's correlative rights are impaired is addressed above in Part IV(A) of this brief.

6. Finding 20(b).

Premier's proposed participation formula[17] places primary weight on oil-in-place. Such a formula gives equal value to all types of reserves, and ignores risks and costs associated with a CO_2 flood. The following evidence supports this finding:

a. Oil-in-place does not take into account the higher cost of recovering oil in a waterflood or CO_2 flood situation, as opposed to primary oil. **Testimony of G. Beuhler, Transcript at 156.**

b. The oil-in-place under Premier's tract is not being produced under primary or waterflood conditions; it will only be produced if a CO_2 flood is instituted. **Id., Transcript at 143-145, 180-182.**

c. Equal value was given by Premier to CO_2 flood, waterflood, and primary oil. **Premier Exhibit 9 at page 36; Testimony of T. Payne, Transcript at 447-450.**

d. The CO_2 flood is a riskier and costlier project, which may not occur. **Testimony of G. Beuhler, Transcript at 145-147; Order No. R-10460-B, Finding ¶15(c).**

Premier asserts several times that the above Findings are inconsistent with the undisputed testimony. That is incorrect. As discussed above, there is competent evidence to support each of the disputed findings. The Order of the Commission should be sustained if reasonably supported by substantial evidence in the record.

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[17] Premier's participation formula, set forth in Finding ¶19(g) of Order No. R-10460-B, was submitted to Exxon one day before the Commission hearing. **Testimony of K. Jones, Transcript at 284-285.**

Rutter & Wilbanks Corp. v. Oil Conservation Comm'n, supra; 6 Williams & Meyers, Oil and Gas Law, §948. As to the above Findings, there was a conflict in the testimony presented by Exxon and Yates on the one hand, and Premier on the other. However, it is for the Commission to weigh the evidence where a conflict occurs. As stated by one court:

> It is not for this Court to substitute its opinion for the opinion of the Board where the Board has reached its decision on conflicting evidence and where its conclusions are supported by substantial evidence.

Ohio Oil Co. v. Porter, 225 Miss. 55, 82 So.2d 636 (1955). Although Premier disagrees with a few findings in a 20 page order, the Commission reviewed voluminous testimony, weighed the evidence, and made its decision. Since there is sufficient evidence to support Order No. R-10460-B, the Commission must be upheld. Palmer Oil Corp. v. Phillips Petroleum Co., 204 Okla. 543, 231 P.2d 977 (1951).

Likewise, the Commission reviewed the data regarding the participation formula and found that it was fair to all interest owners. As the Commission stated, there is no perfect formula. Order No. R-10460-B, Finding 20(f)). Accord, 6 Williams & Meyers, Oil and Gas Law, §§ 970-970.2. However, under the Act, there must be a final interpreter of the data, and that interpreter is the Commission. 6 Williams & Meyers, Oil and Gas Law, §970.2. Based upon: (1) minuscule primary production on Premier's tract; (2) lack of waterflood reserves on Premier's tract; (3) the cost and risk associated with CO_2 reserves; and (4) the fact that over 98%

of all other interests owners found the negotiated participation formula to be fair, the Commission decided that the participation formula developed by Exxon and Yates provided "relative value" to Premier as required by statute. **N.M. Stat. Ann. §§ 70-7-4(J) and 70-7-6 (1995 Repl. Pamp.)**. Therefore, its decision should not be disturbed.

V. CONCLUSION.

Based on the foregoing, Exxon and Yates request this Court to affirm Commission Order No. R-10460-B and dismiss Premier's Petition with prejudice.

Respectfully submitted,

HINKLE, COX, EATON, COFFIELD
& HENSLEY, L.L.P.

By: _____

James Bruce
218 Montezuma
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Attorneys for Exxon Corporation

CAMPBELL, CARR, BERGE
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By: _____

William F. Carr
Post Office Box 2088
Santa Fe, New Mexico 87504-2088
(505) 988-4421 - Telephone
(505) 983-6043 - Telecopy

Attorneys for Yates Petroleum Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Brief of Exxon Corporation and Yates Petroleum Corporation in Support of Oil Conservation Commission Order No. R-10460-B** was mailed, by first-class mail, postage prepaid, to the following counsel of record, on this 17th day of January 1997:

W. Thomas Kellahin
KELLAHIN & KELLAHIN
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

Marilyn S. Herbert
Rand L. Carroll
Oil Conservation Commission
2040 South Pacheco Street
Santa Fe, New Mexico 87505

James Bruce

JAMES BRUCE
ATTORNEY AT LAW

POST OFFICE BOX 1056
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SUITE B
612 OLD SANTA FE TRAIL
SANTA FE, NEW MEXICO 87501

(505) 982-2043
(505) 982-2151 (FAX)

March 14, 1997

Marilyn S. Hebert
Oil Conservation Commission
2040 South Pacheco Street
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William F. Carr
Campbell, Carr, Berge & Sheridan, P.A.
P.O. Box 2088
Santa Fe, New Mexico 87504

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

Dear Counsel:

Enclosed to each of you is an endorsed copy of the Order Affirming Commission Decision in the ***Premier*** appeal.

Very truly yours,

James Bruce

JAMES BRUCE
ATTORNEY AT LAW

POST OFFICE BOX 1056
SANTA FE, NEW MEXICO 87504

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612 OLD SANTA FE TRAIL
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(505) 982-2043
(505) 982-2151 (FAX)

February 27, 1997

Marilyn S. Hebert
Oil Conservation Commission
2040 South Pacheco Street
Santa Fe, New Mexico 87505

William F. Carr
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P.O. Box 2088
Santa Fe, New Mexico 87504

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

Dear Counsel:

Enclosed to each of you is a copy of the Order Affirming Commission Decision in the ***Premier*** appeal, together with a bond signature page. Please sign the signature page and return them to me, and I will file the order with the Court.

Very truly yours,

James Bruce

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
EDDY, CHAVES, AND LEA COUNTIES

JAY W. FORBES
District Judge
Division I

P.O. Box 1838
Carlsbad, New Mexico 88221 - 1838
Phone (505) 885-4828
Fax (505) 887-7095

February 4, 1997

JOINT LETTER

W. Thomas Kallahin, Esq.
P. O. Box 2265
Santa Fe, NM 87504

William F. Carr, Esq.
P. O. Box 2208
Santa Fe, NM 87504-2208

James Bruce, Esq.
P. O. Box 2068
Santa Fe, NM 87504-2068

Marilyn S. Hebert, Esq.
2040 South Pacheco
Santa Fe, NM 87505

RE: Premier Oil & Gas vs. Oil Conservation Commission, et al
Eddy County Cause No. CV-96-121-JWF

Gentlemen and Ms. Hebert:

Having reviewed the whole record of the proceedings by the New Mexico Oil Conservation Commission in cases 11297 and 11298, having read the legal Briefs and having listened to oral argument of counsel, I find the Decision of the Commission was reasonable and is supported by substantial evidence.

I additionally find Commissioner Bailey was not biased, prejudiced or in any way prejudged the issues presented to the New Mexico Oil Conservation Division (full Commission). I request Mr. Carr prepare an Order Affirming Order Number R-10460-B of the NMOCD, have the same approved as to form by all concerned and submit the same to me for entry into the record.

Very truly yours,

Jay W. Forbes

JWF/mll

NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-7131

January 13, 1997

Eleanor Jarnagin, Clerk
Fifth Judicial District
Division I - Eddy County
Post Office Box 1838
Carlsbad, New Mexico 88220

Re: **Premier Oil & Gas, Inc. v. Oil Conservation Commission et al.**
Case No. DV-96-121-JWF

Dear Ms. Jarnagin:

Enclosed please find the original and one copy of the Answer Brief of the Oil Conservation Commission of the State of New Mexico in the above-referenced case. Please file the original and return the conformed copy to me in the enclosed self-addressed stamped envelope.

Thank you for your assistance.

Sincerely,

Marilyn S. Hebert

cc: James Bruce
William F. Carr
W. Thomas Kellahin .

KELLAHIN AND KELLAHIN
ATTORNEYS AT LAW
EL PATIO BUILDING
117 NORTH GUADALUPE
POST OFFICE BOX 2265
SANTA FE, NEW MEXICO 87504-2265

W. THOMAS KELLAHIN*
*NEW MEXICO BOARD OF LEGAL SPECIALIZATION RECOGNIZED SPECIALIST IN THE AREA OF NATURAL RESOURCES-OIL AND GAS LAW

JASON KELLAHIN (RETIRED 1991)

TELEPHONE (505) 982-4285
TELEFAX (505) 982-2047

December 12, 1995

Rand Carroll, Esq. **HAND DELIVERED**
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

Lyn Hebert, Esq. **HAND DELIVERED**
Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87501

James Bruce, Esq. **HAND DELIVERED**
Hinkle Law Firm
P. O. Box 2068
Santa Fe, New Mexico 87501

William F. Carr, Esq. **HAND DELIVERED**
P. O. Box 2208
Santa Fe, New Mexico 87501

Re: **NOTICE OF DISTRICT COURT HEARING**
NMOCD Cases 11297 and 11298
Exxon's proposed Statutory
Unitization of Avalon

Dear Counsel:

Please be advise that we are to appear in District Court, Carlsbad, on Friday, January 31, 1997 at 9:00 AM to argue this appeal. Enclosed is a copy of the Order and Motion.

I propose that we each exchange Trial Briefs on January 13, 1997. Please call me if you have any objections to this proposal.

Regards,

W. Thomas Kellahin

Rand Carroll

From: Lyn Hebert
To: Rand Carroll
Subject: Premier Appeal
Date: Monday, October 28, 1996 2:27PM

Marilyn Leibert from Judge Forbes's office called today regarding the letter we sent to the Judge. She said the Judge has no problem vacating the hearings Nov. 26 and Dec. 26, but he will only do so if we submit motions and orders. Plus, the local rules apparently require the signature of the clients as well as the attorneys on motions vacating settings. So we need a motion and order vacating the pretrial conference and a motion and order vacating the evidentiary hearing.
I told her we do need a briefing schedule, and she told me to submit a request and order on that also.
This seems to have been ridiculously complicated.
The earliest I could work on this is maybe Wednesday. Do you know whether anyone at OCD has requests and orders on the computer? Or perhaps, Tom, Bill or Jim would like to bill some.

NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-7131

October 24, 1996

The Honorable Jay W. Forbes
Division 1 - Fifth Judicial District
P.O. Box 1838
Carlsbad, NM 88220

RE: **Premier Oil & Gas, Inc. v. Oil Conservation Commission et al**
Case No. CV-96-121-JWF

Dear Judge Forbes:

This letter is being submitted by the attorneys for the New Mexico Oil Conservation Commission and Oil Conservation Division with the concurrence of counsel for all parties.

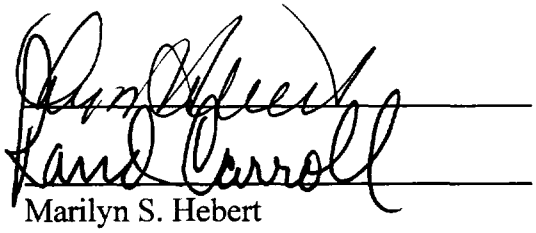
This case is an appeal to the District Court of a decision of the Commission. As you probably know, the District Court acts like an appellate court in these matters based upon the record established before the agency. The hearing of this appeal, now set for 9:00 a.m., on Thursday, December 26, 1996, is for purposes of oral argument by counsel. It is our estimate that the matter will take at most one-half day.

We respectfully request you to consider changing the date for oral argument for a time other than the week of Christmas, because all clients and attorneys desiring to attend this hearing are located outside of Carlsbad and will be required to forego Christmas with their families in order to be present in Carlsbad on Thursday morning.

Also, a pre-trial conference is set for Tuesday, November 26, 1996 at 9:00 a.m. We believe that a pre-trial conference is not necessary in this case because all counsel have agreed to file simultaneous briefs two weeks prior to the scheduled date for oral argument. If you concur, we would appreciate you vacating the pre-trial conference.

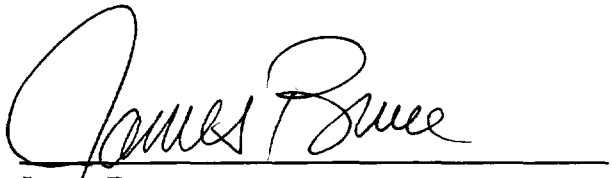
Thank you for your attention to this matter.

Very Truly Yours,



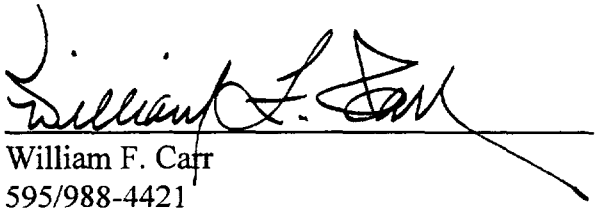
Marilyn S. Hebert
Rand Carroll
505/827-1364
505/827-8156

Attorneys for Respondent
New Mexico Oil Conservation Commission
and New Mexico Oil Conservation Division



James Bruce
505/982-4554

Attorney for Respondent
Exxon Corporation



William F. Carr
595/988-4421

Attorney for Respondent
Yates Petroleum Corporation

W. Thomas Kellahin
505/982-4285

Attorney for Petitioner
Premier Oil & Gas, Inc.

NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-7131

June 27, 1996

Eleanor Jarnagin
Clerk of the District Court
Fifth Judicial District
P.O.Box 1838
Carlsbad, NM 88221-1838

Re: Premier Oil & Gas, Inc. v. Oil Conservation Commission et al.
No. 96-CIV 121 JWF

Dear Ms. Jarnagin:

Enclosed please find an original and copy of an Entry of Appearance and a self-addressed, stamped envelope. Please file the original, conform and return the copy to me.

Thank you for your assistance.

Sincerely,

Marilyn S. Hebert

cc: William F. Carr
James Bruce
W. Thomas Kellahin

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

PREMIER OIL & GAS, INC.

Petitioner,

vs. No. 96-CV-121 JWF

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,
EXXON CORPORATION, AND
YATES PETROLEUM CORPORATION,

Respondents.

ENTRY OF APPEARANCE

Comes now Marilyn S. Hebert, special assistant attorney general, and enters her appearance on behalf of the New Mexico Oil Conservation Commission, Respondent.

Marilyn S. Hebert
Special Assistant Attorney General
State of New Mexico
Energy, Minerals and Natural
Resources Department
2040 South Pacheco
Santa Fe, NM 87505
(505) 827-1364

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Entry of Appearance was delivered by first-class mail, postage prepaid, this 27th day of June, 1996, to:

William F. Carr, Esq.
Campbell, Carr, Berge, P.A.
Post Office Box 2208
Santa Fe, New Mexico 87504-2208
(505) 988-4421

W. Thomas Kellahin
Kellahin & Kellahin
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Santa Fe, New Mexico 87504-2265
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James Bruce
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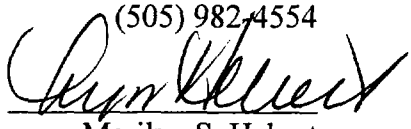


Marilyn S. Hebert
Special Assistant Attorney General
State of New Mexico
Energy, Minerals and Natural
Resources Department
2040 South Pacheco
Santa Fe, NM 87505
(505) 827-1364

June 3, 1996
Litigation Update
New information in **bold**

Premier Oil & Gas Co. v. OCC, Exxon Corp. and Yates Petroleum Corp., No. 96-CIV-121 —

This case involves an appeal from a decision of the Oil Conservation Commission. concerning inclusion of certain acreage in a statutory unit. Premier is contesting inclusion of its acreage in a unit with Exxon's. No monetary damages are being claimed. Rand filed an answer in this case on May 31.

Attorney General of New Mexico

PO Drawer 1508
Santa Fe, New Mexico 87504-1508

505/827-6000
Fax 505/827-5826

TOM UDALL
Attorney General

MANUEL TIJERINA
Deputy Attorney General

1035

May 7, 1996

Margaret D. Cordovano
Energy, Minerals & Natural Resources
Department
2040 South Pacheco Street
Santa Fe, NM 87505

Dear Ms. Cordovano:

RE: Special Commission

Effective immediately, Attorney General Tom Udall appoints you Special Assistant Attorney General for the express and limited purpose of representing the Oil Conservation Commission in the matter of Premier v. Oil Conservation Commission, CIV 96-121. This commission and title should be used only in connection with your representation of the Commission in the appeal to the district court, and for no other purpose. This commission shall automatically terminate at the conclusion of the district court proceeding or on the date that your employment ends with the Department, whichever event occurs first.

Sincerely,

Manuel Tijerina
Deputy Attorney General

Enclosure

MT:mmo

c: Carol Leach, General Counsel
Letty Belin, Environmental Enforcement Division Director
Gerald Gonzalez, Civil Division Director
Daryl Schwebach, Administrative Services Division Director

Attorney General of New Mexico
P.O. Drawer 1508
Santa Fe, New Mexico 87504

Carol Leach
NM Energy, Minerals & Natural Resources
2040 South Pacheco Street
Santa Fe, NM 87505

April 18, 1996

MEMORANDUM

TO: CAROL LEACH

FROM: MARGARET D. CORDOVANO

SUBJECT: SUIT FILED AGAINST OCC

This is to advise you of a suit for which we have just received a summons filed in Eddy County (5th Judicial District) and naming the OCC as one of the defendants. The case is entitled Premier Oil & Gas Co., Inc. v. Oil Conservation Commission of the state of New Mexico, Exxon Corp. and Yates Petroleum Corp., No. 96-CIV-121. Rand Carroll gave me the "Acceptance of Service and Entry of Appearance" form as well as the Petition for Review of A Decision of the Oil Conservation Commission, as he is not counsel for the OCC. Since Rand was served on April 16, we have until May 16 to file an appearance and a responsive pleading. Rand wanted me to accept the service of summons. However, I am not commissioned by the Attorney General's Office to do this. After discussing this with Lynn, acting in your absence, we agreed that we could wait until you got back to file an appearance.

The petition claims:

(1) The Statutory Unitization Act is unconstitutional because it provides for the use of the state's police powers to allow the private confiscation and impairment of property rights.

(2) Commr. Bailey was disqualified to participate in this case because she had prior ex parte discussion, bias and prejudgment in the matter as a result of her role in the State Land Office.

(3) The decision is contrary to the law in the Statutory Unitization Act.

(4) The decision and some of the findings on which it is based are not supported by substantial evidence and are arbitrary and capricious.

The relief sought:

(1) Declaration that Commission Order R-10460-B is unlawful, invalid and void

(2) Declaration that the Statutory Unitization Act is unconstitutional

(3) Declaration that Premier's property rights have been violated by an unlawful taking and

(4) Other relief as may be proper.

I will do the following prior to your return:

1) Ask Denise to write a letter to the Attorney General to request my becoming commissioned as a Special Assistant Attorney General on this case. Lyn will sign the letter as Acting General Counsel.

2) Send a copy of the petition to Bill LeMay with a request that copies of the petition be sent to each of the commissioners with my cover memo.

3) Do some preliminary research on the issues.

4) Advise Jennifer of the filing of the case.

I have some questions:

1) Do you want me to file an appearance in this matter?

2) Should Risk Management be advised in view of the nature of the relief sought?

3) Shall I prepare a response? Do you want me to work with Rand, Lynn, or you on this?

Thank you.

4/11e
9:30am

Margaret — You better sign on behalf of the Commission. Please see me. Rand

Send back 4pm. 30

NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OFFICE OF THE SECRETARY
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-5950

Jennifer A. Salisbury
CABINET SECRETARY

April 18, 1996

Manuel Tijerina
Deputy Attorney General
Office of the Attorney General
Bataan Memorial Building
Santa Fe, NM 87501

Re: Premier v. Oil Conservation Commission
No. CIV 96-121

Dear Mr. Tijerina:

I am writing to request that you commission Margaret D. Cordovano as a special assistant attorney general to handle this lawsuit. We were served on April 16, 1996. It involves an appeal from a decision of the Oil Conservation Commission. A copy of Ms. Cordovano's resume is attached for your review. Carol Leach, our department's general counsel, is out of the office until April 30 and I am acting in her place.

Please contact me at 827-1364 if you have any questions. Thank you for your assistance.

Sincerely,

Lyn Hebert
Deputy General Counsel

LH:dz

Encl.

Margaret Dineen Cordovano
735 Descanso Road
Santa Fe, NM 87501
(505) 988-7626

Bar Admission: New Mexico, 1988
Illinois, 1981

Education: Northern Illinois University, J.D., 1981. Employed as law librarian while attending law school.

Class Rank: Top 15%
Honors: Dean's List (5 semesters). American Jurisprudence awards.

Rutgers University, M.L.S., Library Science, 1970. Attended on fellowship.

Indiana University, M.A., Spanish, 1969. Teaching Associate while full-time student.

State University of New York at Stony Brook, B.A., Spanish, 1966. Attended on scholarship and graduated in top 10% of class.

University of North Carolina, Summer, 1975. Courses in legal bibliography and law librarianship.

Employment: Energy, Minerals and Natural Resources Department, October 1995 to present. Part-time position as Staff Attorney (50% of time; other 50% as department librarian). Review professional services contracts, construction contracts and joint powers agreements; respond to attorneys representing former employees on employment matters; write opinions on legal matters at request of staff of Energy, Conservation and Management Division; act as counsel to the Oil Conservation Commission; review and revise policies of the Office of the Secretary; write opinions for the Office of the Governor; and draft legislation.

White, Koch, Kelly & McCarthy, April 1988 through September, 1989. Temporary position as research attorney and law librarian. Did research and writing for litigation attorneys in such areas as federal and state procedure, constitutional law, professional responsibility, torts, workers' compensation, insurance law, employment law, and domestic relations. Used WESTLAW and LEXIS computerized legal research systems. Prepared memoranda each week for attorneys summarizing newly-released New Mexico Supreme Court and Court of

Appeals opinions. Reviewed library collection for additions and withdrawals of titles, created a catalog of library holdings, and established an acquisitions system for use by the library clerk. (About 20% of time spent on library matters.)

Hyatt Legal Services, November 1986 through June 1987. Staff Attorney in Chicago area. Solely responsible for all aspect of cases from counseling through court proceedings. General practice including family law, real estate, bankruptcy, and wills. The greatest number of cases were in the area of divorce and post-divorce matters.

Sole Practitioner, DuPage County, Illinois, 1981 through 1986. General practice including family law, real estate, wills, traffic cases, and employment law. In the unemployment compensation area, handled administrative hearings and appeals from these hearings to the Board of Review and the Circuit Court. Cases in family law involved dissolution of marriage, adoption, custody and support of out-of-wedlock children, legal separation, and post-judgment measures, including enforcement of child support, relief from judgment, modification of support, and petitions for leave to remove from the jurisdiction.

Researcher for Attorneys, 1984 through 1986. Research and writing for sole practitioners on a contract basis in areas including taxation, securities regulation, real estate, family law, constitutional law, and consumer law. Prepared trial briefs, memoranda of law, and pleadings.

Librarian in Science Library, August 1990 to present. (Since October 1995, 50% of time.) Sole librarian in New Mexico Energy, Minerals and Natural Resources Department. Select materials for the collection, acquire books and technical reports, answer reference questions and do research at the request of scientists, engineers and managers. Use on-line databases of Dialog Information Services and New Mexico Technet. Also, maintain catalog of library holdings and other records.

Law Librarian, 1975 through 1983. Before entering private practice on full-time basis, was employed as a law librarian at Northern Illinois University College of Law. Responsible for the public services function of the law library in a newly-established law school. Established policies and procedures and hired, trained and supervised employees. Developed LEXIS training program for students and used LEXIS for legal research. Answered patrons' reference questions. Prepared written aids for library users, performed legal research for faculty, and lectured to classes on legal research.

Publication:

Finding It --A Guide to Basic Legal Materials for the DuPage County Practitioner, in DuPage County Court Handbook (1986).

April 17, 1996

MEMORANDUM

TO: BILL LEMAY, CHAIRMAN, OCC

FROM: MARGARET D. CORDOVANO, OCC COUNSEL

SUBJECT: SUIT FILED BY PREMIER OIL & GAS CO., INC.

I received a summons and a petition through Rand Carroll on a suit filed by Premier Oil & Gas Co.., Inc. in the 5th Judicial District Court (Eddy County). It is a petition for judicial review of the OCC order 10460-B in Case No. 11297 and 11298. The suit also seeks to have the Statutory Unitization Act declared unconstitutional. A copy of the petition is attached.

Please have a copy of the petition sent to each of the Commissioners. Please note that a response is not required to be filed until May 16.

April 17, 1996

MEMORANDUM

TO: JENNIFER A. SALISBURY

FROM: MARGARET D. CORDOVANO

SUBJECT: SUIT FILED AGAINST OCC

For your information, a suit has been filed in Eddy County (5th Judicial District) by Premier Oil & Gas Co., Inc., a lessee of lands in the Delaware Pool, against the OCC, Yates Petroleum and Exxon for judicial review of the OCC decision requiring Premier to participate in the Enhanced Oil Recovery Project of Exxon. Exxon sought to institute a waterflood project in the Avalon-Delaware pool of which Premiere is a part under the "Statutory Unitization Act" for secondary recovery of all mineral interests in the area. After a hearing, the Commission ordered that the application of Exxon for statutory unitization of all lands in the pool be approved which includes the Premiere land and established a formula penalty formula as a non-consent penalty against Premiere. Premiere's application for rehearing by the OCC was not acted upon by the Commision and is therefore deemed denied.

The relief sought is declaration that the Statutory Unitization Act is unconstitutional, that the Order of the OCC (R-10460-B) is unlawful, invalid and void, that Premier's property rights have been violated by an unlawful taking and other relief. No specific monetary damages are sought.

One of the arguments of Premiere is that Commr. Bailey from the State Land Office should not have participated in this decision as she was biased and prejudiced on the matter for having done work relevant to the matter in the State Land Office.

Service of summons on Rand Carroll was on April 16. Rand gave me the petition and summons. In Carol's absence, I will seek to be named Special Assistant Attorney General for the case through a letter from Lynn Hebert. When Carol returns, we will discuss whether I should file an appearance.

If you want a copy of the petition, please let me know.

If there is anything further we can do for you on this matter, please give me a call.

Sincerely,

Jan Unna
General Counsel

JU/jc

cc: Jami Bailey
Rand Carroll, Esq.

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

PREMIER OIL & GAS, INC.,
Petitioner,

vs. **No. CIV 96-121-JWF**

OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO, EXXON CORPORATION AND YATES PETROLEUM CORPORATION,
Respondents.

NOTICE OF APPEAL

COMES NOW, PREMIER OIL & GAS, INC. ("Premier"), pursuant to Rule 12-201 of New Mexico Rule of Appellate Procedure and files its Notice of Appeal to the New Mexico Supreme Court of the District Court "Order Affirming Commission Decision" entered herein on March 12, 1997 which is attached hereto as Exhibit A.

Respectfully submitted,

W. THOMAS KELLAHIN, Esq.
KELLAHIN & KELLAHIN
P. O. Box 2265
Santa Fe, New Mexico 87504
(505) 982-4285
Attorney for Premier Oil & Gas, Inc.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Notice of Appeal was mailed to the following this 26 day of March, 1997.

Clerk of the Supreme Court
Supreme Court Building
P. O. Box 848
Santa Fe, New Mexico 87504

Honorable Jay W. Forbes
District Judge
P. O. Box 1838
Carlsbad, New Mexico 88220

Marilyn S. Hebert, Esq.
Special Assistance Attorney General
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505
Attorney for the Oil Conservation Commission

James Bruce, Esq.
P. O. Box 1056
Santa Fe, New Mexico 87504
Attorney for Exxon Corporation

William F. Carr, Esq.
P. O. Box ~~2088~~ 2208
Santa Fe, New Mexico 87504
Attorney for Yates Petroleum Corporation

Dewetta Sharene Brown
P. O. Box 1838
Carlsbad, New Mexico 88220
Court Monitor

W. Thomas Kellahin

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

PREMIER OIL & GAS, INC.,

Petitioner,

vs.

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,
EXXON CORPORATION, and
YATES PETROLEUM CORPORATION,

Respondents.

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY
FILED MAR 12 1997 IN MY OFFICE
ELEANOR JARNAGIN
Clerk of the District Court

No. CV 96-121-JWF

COPY

ORDER AFFIRMING COMMISSION DECISION

This matter having come before the Court upon the Petition for Review of a Decision of the Oil Conservation Commission of New Mexico ("the Petition") filed herein by Premier Oil & Gas, Inc., and the Court, having reviewed the transcript of proceedings before the Oil Conservation Commission ("the Commission"), the evidence taken in hearings by the Commission, and the briefs of the parties, and having heard and considered the oral arguments of the parties,

FINDS THAT the Petition is not well taken and should be dismissed.

IT IS THEREFORE ORDERED THAT the Petition is dismissed with prejudice and Commission Order No. R-10460-B is hereby affirmed.

/s/ [illegible]
District Court Judge

Approved by:

Marilyn S. Hebert
Special Assistant Attorney General
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-7147

Attorney for the Oil Conservation Commission

James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

Attorney for Exxon Corporation

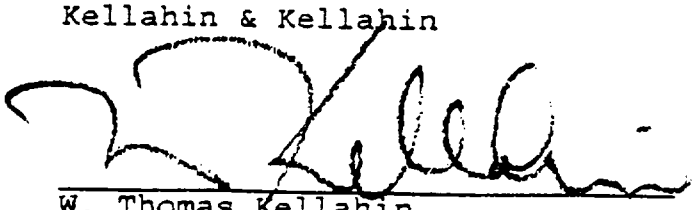
Campbell, Carr, Berge
& Sheridan, P.A.

William F. Carr
Post Office Box 2088
Santa Fe, New Mexico 87504-2088
(505) 988-4421

Attorneys for Yates Petroleum Corporation

Approved as to form:

Kellahin & Kellahin



W. Thomas Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504
(505) 982-4285

Attorneys for Premier Oil & Gas, Inc.

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
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Respectfully submitted,

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P. O. Box 2265
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FIFTH JUDICIAL DISTRICT
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OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,
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FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY
FILED MAR 12 1997 IN MY OFFICE
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Clerk of the District Court

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FINDS THAT the Petition is not well taken and should be dismissed.

IT IS THEREFORE ORDERED THAT the Petition is dismissed with prejudice and Commission Order No. R-10460-B is hereby affirmed.

S/ Jeff Parker
District Court Judge

Approved by:

Marilyn S. Hebert
Special Assistant Attorney General
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-7147

Attorney for the Oil Conservation Commission

James Bruce
Post Office Box 1056
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Approved as to form:

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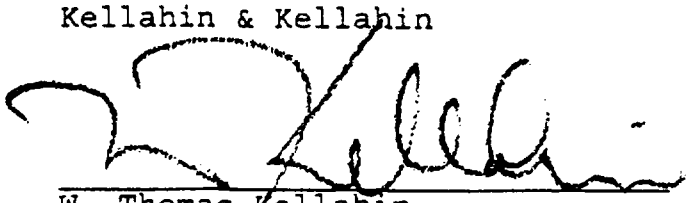

W. Thomas Kellahin
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Attorneys for Premier Oil & Gas, Inc.

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

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OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,
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FIFTH JUDICIAL DISTRICT
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FINDS THAT the Petition is not well taken and should be dismissed.

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S/ Jay Forbes
District Court Judge

Approved by:

Marilyn S. Hebert
Special Assistant Attorney General
2040 South Pacheco Street
Santa Fe, New Mexico 87505
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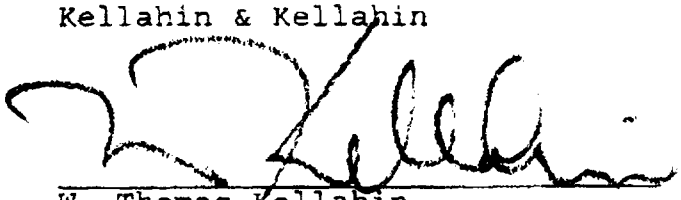

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Attorneys for Premier Oil & Gas, Inc.

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

PREMIER OIL & GAS, INC.,

Petitioner,

vs. No. CV 96-121-JWF

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO
EXXON CORPORATION AND YATES PETROLEUM CORPORATION

Respondents.

ANSWER BRIEF
OF THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

Comes now the Oil Conservation Commission of the State of New Mexico (OCC) by and through its attorneys of record and submits this Answer Brief in the above-entitled matter.

Summary of Proceedings

Exxon Corporation (EXXON) applied to the OCC for statutory unitization pursuant to the Statutory Unitization Act, Sections 70-7-1 through 70-7-21 NMSA 1978, of approximately 2118.78 acres comprised of state, federal and fee lands to be known as the Avalon (Delaware) Unit Area (UNIT AREA) in Eddy County, New Mexico. Exxon also sought authority from the OCC, *inter alia,* to institute a waterflood project in a portion of the Unit Area. Pursuant to Section 70-2-12 NMSA 1978, the Oil Conservation Division (DIVISION) held a hearing on the application on June

29 and 30, 1995, at which Exxon, Premier Oil and Gas Corporation (PREMIER), and Yates Petroleum Corporation (YATES) appeared and were represented by counsel. The Division entered an order granting Exxon's request for statutory unitization and allowing Exxon, *inter alia,* to institute a waterflood project. The Division's order is attached hereto as Exhibit A.

Premier appealed the Division order to the OCC pursuant to Section 70-2-13 NMSA 1978. The OCC held its *de novo* hearing on December 14, 1995, at which all parties appearing at the Division hearing appeared and were represented by counsel before the OCC. The OCC entered its order on March 12, 1996, ordering the statutory unitization of the Unit Area and allowing, *inter alia,* Exxon to institute a waterflood project. (The OCC's order is attached to Premier's Petition for Review to the District Court as Exhibit 6.) Premier filed its Application for Rehearing (Premier's Exhibit 1) with the OCC on March 20, 1996. The OCC did not act on the Application, and it was therefore deemed denied pursuant to Section 70-2-25 NMSA 1978.

ARGUMENT

The OCC addresses fully only Points I and II of Premier's Petition. The OCC supports the arguments made by Exxon and Yates as to Points III through IX. As to those latter points, the findings of fact in the OCC's order are supported by substantial evidence, *i.e.,* evidence that a reasonable mind might accept as adequate to support a conclusion. **Rutter & Wilbanks Corp. v. Oil Conservation Comm'n,** 87 N.M. 286, 532 P.2d 582 (1975); **Fugere v. State,** 120 N.M. 29, 897 P.2d 216 (Ct. App. 1995). Additionally, the OCC's order is in accordance with applicable law. The case law in New Mexico illustrates that the courts of the state give great deference to the OCC's decisions on the issues of fact which necessarily involve a great deal of expertise in the areas of petroleum engineering and geology. As the Supreme Court stated in **Fasken v. Oil Conservation**

Comm'n, 87 N.M. 292, 293, 532 P.2d 588, 589 (1975), in reference to counsels' arguments in that case: "The difficulty with them [the arguments to the court] is that they emanate from the lips and pens of counsel and are not bolstered by the expertise of the [Oil Conservation] Commission to which we give special weight and credence."

Point I
COMMISSIONER BAILEY WAS NOT DISQUALIFIED FROM PARTICIPATING IN THE CASE BEFORE THE OCC

A. Conflict of Interest

Commissioner Bailey is the designee of the Commissioner of Public Lands (STATE LAND OFFICE) on the OCC; such designee is required by statute to have expertise in the area of oil and gas production. Section 70-2-4 NMSA 1978 states, in part: "The designees of the commissioner of public lands and the secretary of energy, minerals and natural resources shall be persons who have expertise in the regulation of petroleum production by virtue of education or training." The duties and responsibilities of the State Land Office and those of the OCC are distinct. The State Land Office is the trustee of state lands. N.M. Const., art. XIII. The OCC has as its principal duties the prevention of waste and the protection of correlative rights in the production of oil and gas. **Simms v. Mechem,** 72 N.M. 186, 382 P.2d 183 (1963). Even so, there is a specific statute, Section 19-10-48 NMSA 1978, that addresses the interplay between the powers of the OCC and the powers of the State Land Office stating: "Nothing herein [19-10-45 to 19-10-48 NMSA 1978] contained shall be held to modify in any manner the power of the oil conservation commission under laws now existing or hereafter enacted with respect to the proration, and conservation of oil or gas and the prevention of waste, nor as limiting in any manner the power and the authority of the commissioner of public

lands now existing or hereafter vested in him."

The State Land Office leases certain state lands to private entities for oil and gas production in accord with the state statutory scheme. *See* Sections 19-10-1 through 19-10-70 NMSA 1978. Sections 19-10-45 through 19-10-47 NMSA 1978 address cooperative agreements for the development or operation of oil and gas pools between state lessees and others; additionally, the State Land Office has adopted rules as to how a state lands lessee can obtain the approval of the State Land Office as to these cooperative agreements as well as the effect on state lands leases when forced pooling is ordered by the Oil Conservation Division. *See* Commissioner of Public Lands Rules 1.044 through 1.052, attached hereto as Exhibit B. Section 19-1-2.1 NMSA 1978 and Rule 1.046 require the State Land Office to keep the geological and engineering data supplied by the applicant confidential for a certain period of time. There is no provision for an adversarial hearing in this process. The issue before the State Land Office, referred to in Premier's Application for Rehearing, was limited to Exxon's desire to obtain the approval of the State Land Office to include certain state lands leased to Exxon in a cooperative agreement for the development and operation of oil and gas pools with others. [1]

The issues before the OCC, however, were Exxon's request for a statutory unitization order

---

[1]There is a difference between the terms "pooling" and "unitization" even though they are at times used interchangeably. "Pooling" is the bringing together of small tracts for the granting of a drilling permit under applicable spacing rules; it is important for the prevention of drilling unnecessary and uneconomical wells. "Unitization" is the joint operation of all or some portion of a producing reservoir. Unitization is important where there is separate ownership in a common producing pool which requires the operator to engage in cycling pressure maintenance, or secondary recovery operations and to explore for minerals at considerable depths. T. Brown and S. Miller, *Layman's Guide to Oil & Gas* 132 (1985).

as to approximately 2118.78 acres that included state trust land, federal land and land owned by private entities. Also, Exxon sought approval from the OCC to: 1) institute a waterflood project in part of the proposed unit; 2) qualify the waterflood project for the recovered oil tax rate; and 3) drill 18 new producing wells at unorthodox locations. These issues differ greatly from that issue before the State Land Office, even though some of the proposed unit included state trust lands.

In the third paragraph on page 9 of its Application for Rehearing, Premier states: "By her [Commissioner Bailey's] actions, the SLO [the State Land Office] agreed to include the State Oil & Gas lease which it has leased to Premier and which Premier objects to being included in the unit." This statement is incorrect so far as the State Land Office's power granted by Sections 19-10-45 through 19-10-47 NMSA 1978 *vis a vis* Premier's state oil and gas leases. Commissioner Bailey, as an employee of the State Land Office, did not have the power to include the Premier lease without its permission as to any cooperative agreement on unit production; this can only be done by the OCC pursuant to the Statutory Unitization Act. (The SLO, as a royalty owner pursuant to Section 70-7-8 NMSA 1978, did approve Exxon's proposed unitization as to state trust lands in the Unit Area, including Premier's state oil and gas leases in the Unit Area.)

It is not unusual in state administrative matters for a decision maker in an administrative hearing to have prior involvement in some or all aspects of an issue. For instance, the Secretary of the Environment Department or his designee is a member of the state mining commission. *See* Section 69-36-6 NMSA 1978. Applicants for new mine permits must obtain from the Secretary of the Environment Department a written determination that the permitted activities will be expected to achieve environmental standards. The Secretary's written determination must be obtained by the applicant prior to the issuance of a new mine permit by the Mining and Minerals Division. *See*

Section 69-36-7(P)(2) NMSA 1978. However, if there is an appeal of the Mining and Minerals Division Director's order either to issue or not issue a new mine permit, then the appeal is heard by the Mining Commission of which the Environment Department Secretary is a member. *See* Section 69-36-15 NMSA 1978.

The officials and employees of the state are making decisions in the interest of the state, not for any pecuniary individual gain. In her capacity as an employee of the State Land Office, Commissioner Bailey has to comply with the statutes and rules that circumscribe her duties in that employment. In her capacity as the designee of the State Land Office on the OCC, Commissioner Bailey is subject to a different set of statutes and rules. In acting in an adjudicatory capacity on the OCC, Commissioner Bailey addresses different issues and considers different evidence from that of an employee of the State Land Office. The fact that one individual holds both of these positions does not create a conflict that in any manner prejudiced Premier's interests. The hearing before OCC conformed with the principles of due process set forth in **Santa Fe Exploration Co. v. Oil Conservation Comm'n,** 114 N.M. 103, 835 P.2d 819 (1992).

B. Bias and Prejudgment

In its Application for Rehearing, Premier cites correctly **Santa Fe Exploration Co. v. Oil Conservation Comm'n.**, 114 N.M. 103, 835 P.2d 819 (1992) as the setting forth the minimum due process requirements that must be afforded parties before administrative adjudicatory bodies such as the OCC. In turn, **Santa Fe Exploration Co.** at page 109 cites **Reid v. New Mexico Bd. of Examiners in Optometry**, 92 N.M. 414, 589 P.2d 198 (1979) as an example in which the Supreme Court found that the statements of the trier of fact were biased and indicated a predisposition regarding the outcome of the case.

The facts in **Reid** involved a licensing hearing before the Board of Examiners of Optometry (Board) in which one of the Board's licensees was accused of wrongdoing. The Board, after conducting an administrative adjudicatory hearing, had the authority to revoke the licensee's license. The licensee sought to disqualify one of the Board members based on prior statements the Board member had made to the effect that the licensee would lose his license after the hearing. The license was, in fact, revoked, and the licensee appealed to the Court. The Supreme Court found that the Board member's statement indicated prejudgment, and the Board's failure to disqualify the member from participating in that hearing violated the licensee's right to due process.

As with the **Santa Fe Exploration Co.** case, the facts in this case are distinguishable . Premier has not alleged any kind of statement or other action by Commissioner Bailey that remotely approaches the prejudice and bias exhibited by the **Reid** Board member. As in **Santa Fe Exploration Co.**, no member of the OCC, including Commissioner Bailey, expressed any opinion regarding the outcome of the case prior to the hearing.

Point II
THE STATUTORY UNITIZATION ACT IS CONSTITUTIONAL

Point II of Premier's Petition was not presented to the OCC in Premier's Application for Rehearing; consequently, this question cannot be reviewed on appeal. Section 70-2-25 NMSA 1978 states, in part, "...provided, however, that the questions reviewed on appeal [to the district court] shall be only questions presented to the commission [OCC] by the application for rehearing." Point II of the Petition maintains that the Statutory Unitization Act, Sections 70-7-1 through 70-7-21 NMSA 1978, is unconstitutional. However, Premier's Application for Rehearing to the OCC

contains no such claim. In fact, Point VIII on page 12 of the Application for Rehearing complains that the OCC violated correlative rights by failing to comply with the Statutory Unitization Act.

But even had Premier raised the issue of the constitutionality of the Statutory Unitization Act (Act) to the OCC, there is no question as to the constitutionality of this Act adopted more than 20 years ago. Laws 1975, ch. 293. Except for Texas[1], every major oil and gas producing state has a compulsory unitization statute,[2] including Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nebraska, Nevada, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia and Wyoming.

In 1945 Oklahoma passed the first comprehensive statutory provision for compulsory unitization act. This act faced a variety of constitutional challenges including substantive due process taking and equal protection arguments in **Palmer Oil Corp. v. Phillips Petroleum Co.**, 231 P.2d 997 (Okla. 1951), *appeal dismissed,* 343 U.S. 390 (1952). In a more recent case the Arkansas state supreme court summarily rejected a takings clause challenge to a compulsory unitization order issued by the state conservation commission. **Williams v. Arkansas Oil & Gas Comm'n.**, 817 S.W.2d 863, (Ark. 1991)The Statutory Unitization Act is an important tool in conservation of the state's natural resources, and the courts have recognized the significant state interest outweighs the

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[1]Apparently Texas law provides that the parties can voluntarily agree to unitization, or the Texas Railroad Commission can determine to order the wells shut-in. Vernon's Tex. Nat. Res. Code Sections 85.046, 933-933.7.

[2]B. Kramer & P. Martin, The Law of Pooling and Unitization, Vol 1. Section 18.01 (Third Edition 1996).

individual's private property interest.

CONCLUSION

There is no evidence in the record that Commissioner Bailey should have been disqualified from participating in the OCC hearing. Premier was afforded its due process rights in the administrative adjudicatory hearing. The Statutory Unitization Act is constitutional. There is sufficient evidence in the record to support the findings of the OCC, and the OCC's order is not arbitrary, capricious or contrary to law.

The OCC's order should be affirmed by this court.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Answer Brief was mailed to opposing counsel of record this 15th day of January 1997.

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

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

APPLICATION OF EXXON CORPORATION FOR A WATERFLOOD PROJECT, QUALIFICATION FOR THE RECOVERED OIL TAX RATE PURSUANT TO THE "NEW MEXICO ENHANCED OIL RECOVERY ACT" FOR SAID PROJECT, AND FOR 18 NON-STANDARD OIL WELL LOCATIONS, EDDY COUNTY, NEW MEXICO.

CASE No. 11297

APPLICATION OF EXXON CORPORATION FOR STATUTORY UNITIZATION, EDDY COUNTY, NEW MEXICO.

CASE No. 11298

Order No. R-10460

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on June 29, 1995, in Hobbs, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 18th day of September, 1995 the Division Director, having considered the testimony, the record and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

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

(2) The applicant in Case No. 11298, Exxon Corporation ("Exxon"), seeks the statutory unitization, pursuant to the "Statutory Unitization Act", Sections 70-7-1 through 70-7-21, NMSA (1978), for the purpose of establishing both a secondary recovery and tertiary recovery project, of all mineral interests in the designated and Undesignated Avalon-Delaware Pool comprising 2140.14 acres, more or less, of State, Federal, and fee

lands in Eddy County, New Mexico, said unit to henceforth be known as the Avalon (Delaware) Unit Area; the applicant further seeks approval of the "*Unit Agreement*" and "*Unit Operating Agreement*", which were submitted at the time of the hearing in evidence as applicant's Exhibit Nos. 2 and 3.

(3) In Case No. 11297, Exxon seeks authority:

(a) to institute a waterflood project in its proposed Avalon (Delaware) Unit Area by the injection of water into the designated and Undesignated Avalon-Delaware Pool by the injection of water through 18 new wells to be drilled as injection wells and one well to be converted from a producing oil well to an injection well;

(b) to qualify this project for the recovered oil tax rate pursuant to the "New Mexico Enhanced Oil Recovery Act" (Laws 1992, Chapter 38, Sections 1 through 5); and

(c) to drill 18 new producing wells throughout the project area at locations considered to be unorthodox.

(4) The applicant proposes that said unit comprise the following described area in Eddy County, New Mexico:

TOWNSHIP 20 SOUTH, RANGE 27 EAST, NMPM
Section 25: E/2 E/2
Section 36: E/2 E/2

TOWNSHIP 20 SOUTH, RANGE 28 EAST, NMPM
Section 29: SW/4 SW/4
Section 30: Lots 1 through 4, SW/4 NE/4, E/2 W/2, and SE/4
Section 31: All
Section 32: SW/4 NE/4, W/2, and W/2 SE/4

TOWNSHIP 21 SOUTH, RANGE 27 EAST, NMPM
Section 4: Lot 4
Section 5: Lots 1 and 2
Section 6: Lots 1 and 2

(5) The horizontal confines of said unit are within the governing limits, as specified by Division General Rule 104.A(2), of the Avalon-Delaware Pool with a large part of the proposed area having been reasonably defined by development.

(6) The vertical limits or "unitized formation" of said unitized area is that interval described as the Delaware Mountain Group, extending from 100 feet above the base of the Goat Seep Reef to the top of the Bone Spring formation and including, but not limited to, the Cherry Canyon and Brushy Canyon formations, as identified by the *Compensated Neutron/Lithodensity/Gamma Ray Log* dated September 14, 1990 run in the Exxon Corporation Yates "C" Federal Well No. 36, located 1305 feet from the North and East lines (Unit A) of Section 31, Township 20 South, Range 28 East, NMPM, Eddy County, New Mexico, with the top of the unitized interval being found in said well at a depth of 2,378 feet below the surface (869 feet above sea level) and the base of the unitized interval being found at a depth of 4,880 feet below the surface (1,633 feet below sea level), or stratigraphic equivalents thereof.

(7) The proposed Unit Area contains twelve separate tracts of land, the working interests in which are owned by forty-eight different interest owners. Exxon operates five of the twelve tracts, five tracts are operated by Yates Petroleum Corporation ("Yates"), one tract is operated by Premier Oil & Gas, Inc. ("Premier"), and one tract is operated by MWJ Producing Company. There are twenty-four royalty and overriding royalty interest owners in the proposed Unit Area.

(8) At the time of the hearing, the owners of approximately 97.5% of the working interest, and the owners of over 95% of the royalty and overriding royalty interest, had voluntarily joined in the proposed unitization. The 95% royalty owner approval includes federal lands owned by the United States. The U.S. Bureau of Land Management has indicated its preliminary approval by designating the unit as logical for conducting secondary recovery operations, and the New Mexico Commissioner of Public Lands, acting on behalf of the state's trust lands, has preliminarily approved the proposed unitization.

(9) The applicant has conducted negotiations with interest owners within the proposed unit area for over four years. Therefore, the applicant has made a good faith effort to secure voluntary unitization within the above-described Unit Area.

(10) All interested parties who have not agreed to unitization were notified of the hearing by applicant. At the hearing in this matter, Yates entered its appearance and presented evidence in support of the application. Unit Petroleum Company and MWJ Producing Company, working interest owners, made statements in support of the application.

(11) Premier, the operator and sole working interest owner of Tract No. 6, which comprises the E/2 E/2 of Section 25, Township 20 South, Range 27 East, NMPM, Eddy County, New Mexico, and represents 7.6% of the proposed unit acreage, appeared at the hearing and presented evidence in opposition to the inclusion of Tract 6 within the Unit Area.

(12) Exxon, the largest working interest owner in the proposed Unit Area with 80 percent of the current production, prepared a "*Report of the Technical Committee for the Working Interest Owners*", which was submitted at the time of the hearing in evidence as applicant's Exhibit No. 10, Volumes I and II.

(13) The applicant proposes to institute a waterflood project at an expected cost of $14,400,000.00 for the secondary recovery of oil and associated gas, condensate, and all associated liquefiable hydrocarbons within and to be produced from the proposed Unit Area (being the subject of Division Case No. 11,297). The estimated reserves recoverable from the waterflood project are 8.2 million barrels of oil.

(14) Said Unit Area also has potential as a tertiary (CO_2 injection) project. Evidence presented at the hearing by the applicant and proponents of this case shows that:

(a) the estimated recoverable tertiary reserves are 39.9 million barrels of oil;

(b) if such a CO_2 flood is instituted in the proposed Unit Area, it will likely be the first CO_2 project in the area and could facilitate other CO_2 floods;

(c) the waterflood project will provide additional data which may justify additional secondary recovery waterflood projects in other Delaware pools in the general area;

(d) institution of the CO_2 flood depends upon waterflood performance, results of future CO_2 injectivity tests, and perception of future oil prices. A minimum of 3 years of water injection would be required to repressure the reservoir prior to commencing a CO_2 injection program; and

(e) the participation formula presented is single phase whereby remaining primary oil is weighted by 25%, secondary oil and workover potential is weighted by 50% and tertiary oil is weighted by 25%, which results in Exxon receiving 73.920333% of Unit

production, Yates receiving 4.149893% of Unit production and Premier receiving 1.019231% of Unit production.

(15) Additional testimony was presented by Exxon for approval of said Unit Area because:

(a) the waterflood project area includes approximately 1100 acres in the center of the Unit Area. The outer or "fringe" tracts were included in the Unit Area based upon their CO_2 flood potential. The "fringe" tracts having little or no primary or secondary production potential will however participate in production from inception of the Unit;

(b) the "Technical Report" and the Unit Agreement attribute no remaining primary or waterflood reserves to Tract 6, operated by Premier;

(c) Premier will own 1% of the Avalon (Delaware) Unit despite the fact that Premier's Tract 6 has produced only 0.1% of the cumulative oil to date;

(d) in addition, Premier is likely to receive positive cash flow from the first day of unit operations because of investment adjustments;

(e) it would be difficult, if Tract 6 were deleted from the Unit, to waterflood or CO_2 flood Tract 6 separately from the Unit. Furthermore, if Tract 6 is not part of the Unit, production of CO_2-laden gas from Tract 6 would present operational difficulties; and

(f) deleting Tract 6 from the Unit Area would require additional negotiations among working interest owners, revision of Unit documents, and other delays. It was further indicated that if Tract 6 is deleted, unitization may never occur.

(16) Premier presented evidence in opposition to the formation of said Unit and contends that Tract 6 should be excluded because:

(a) the proposed waterflooding portion of this project is the reason for the Unit, while the tertiary recovery portion, or CO_2 injection, has only some probability of happening or not happening;

(b) under the Exxon analysis the inclusion of the Premier's Tract 6 is not necessary in order to effectively carry on the waterflood portion of this project and that it is premature to include Tract 6 for tertiary recovery;

(c) under the Exxon analysis there is no increase in ultimate recovery of secondary oil from the Unit by including Tract 6;

(d) the Exxon analysis of the CO_2 potential is speculative and has not been the subject of any scientific study to determine its feasibility and therefore any forecasted increase in ultimate recovery of tertiary oil from the unit by including Tract 6 is speculative;

(e) Exxon proposes to include Tract 6 only as a "protection buffer" and assigns no "contributing value" for secondary oil recovery; and

(f) Premier, as owner of all of said Section 25, is not receiving any "contributing value" for primary or secondary oil and does not desire to divide its property for the formation of said Unit.

(17) Based upon the foregoing, the inclusion of Tract 6 in the proposed unitization is in the best interest of conservation in that it is deemed necessary, as well as fair and reasonable, to effectively carry out tertiary recovery operations. The exclusion of Tract 6 would result in waste and could serve to inhibit CO_2 development not only of this project but others in the area. Further, such unitization as requested and the adoption of Exxon's proposed secondary and tertiary plans for this Unit Area will serve to benefit the working interest and royalty interest owners of the oil and gas rights in the Delaware formation.

(18) The proposed unitized method of operation as applied to the Avalon (Delaware) Unit is feasible and will result with reasonable probability in the increased recovery of substantially more oil and gas from the unitized portion of the Avalon-Delaware Pool than would otherwise be recovered without unitization.

(19) The estimated additional costs of such operations will not exceed the estimated value of the additional oil so recovered plus a reasonable profit.

(20) The applicant's Exhibit Nos. 2 and 3 in this case, being the Unit Agreement and the Unit Operating Agreement, should be incorporated by reference into this order.

(21) The unitized management, operation and further development of the Avalon (Delaware) Unit Area, as proposed, is reasonably necessary to effectively increase the ultimate recovery of oil and gas from the unitized portion of the Avalon-Delaware Pool.

(22) The Avalon (Delaware) Unit Agreement and the Avalon (Delaware) Unit Operating Agreement provide for unitization and unit operation of the Avalon (Delaware) Unit Area upon terms and conditions that are fair, reasonable and equitable, and include:

(a) a participation formula which will result in fair, reasonable and equitable allocation to the separately owned tracts of the Unit Area of all oil and gas that is produced from the Unit Area and which is saved, being the production that is (i) not used in the conduct of unit operations, or (ii) unavoidably lost;

(b) a provision for the credits and charges to be made in the adjustment among the owners in the Unit Area for their respective investments in wells, tanks, pumps, machinery, materials and equipment contributed to the unit operators;

(c) a provision governing how the costs of unit operations including capital investments shall be determined and charged to the separately-owned tracts and how said costs shall be paid, including a provision providing when, how and by whom such costs shall be charged to each owner, or the interest of such owner, and how his interest may be sold and the proceeds applied to the payment of his costs;

(d) a provision for carrying any working interest owner on a limited or carried basis payable out of production, upon terms and conditions which are just and reasonable, and which allow an appropriate charge for interest for such service payable out of production, upon such terms and conditions determined by the Division to be just and reasonable;

(e) a provision designating the Unit Operator and providing for supervision and conduct of the unit operations, including the selection, removal and substitution of an operator from among the working interest owners to conduct the unit operations;

(f) a provision for a voting procedure for decisions on matters to be decided by the working interest owners in respect to which each working interest owner shall have a voting interest equal to his unit participation; and

(g) a provision specifying the time when the unit operation shall commence and the manner in which, and the circumstances under which, the operations shall terminate and for the settlement of accounts upon such termination.

(23) The statutory unitization of the Avalon (Delaware) Unit Area is in conformity with the above findings, and will prevent waste and protect correlative rights of all interest owners within the proposed Unit Area, and should therefore be approved as requested by Exxon.

(24) The proposed Avalon (Delaware) Unit Area contains undeveloped acreage and acreage that will not be part of the initial waterflood project. Therefore, in compliance with Division General Rule 701.G(3), the initial waterflood project area, for allowable and tax credit purposes, should be reduced to include the following described 1088.50 acres in Eddy County, New Mexico:

TOWNSHIP 20 SOUTH, RANGE 28 EAST, NMPM
Section 30: Lots 1 through 4, SE/4 NW/4, E/2 SW/4, and S/2 SE/4
Section 31: Lots 1 through 3, NE/4, E/2 NW/4, NE/4 SW/4, N/2 SE/4, and SE/4 SE/4
Section 32: W/2 NW/4, N/2 SW/4, and SW/4 SW/4.

(25) Exhibit "A", attached hereto and made a part hereof, lists the 19 proposed injection wells (18 of which are to be new drills and one is to be a conversion) for the initial waterflood project. It is the applicant's intent to drill the 18 new wells and initially complete them first as oil producing wells and eventually convert them to water injectors. Approval of the unorthodox locations is necessary for "start-up" of said waterflood project.

(26) The waterflood pattern to be utilized initially is to be a 40-acre inverted fivespot comprising the 19 aforementioned water injection wells and 27 producing wells.

(27) The present Delaware oil producing wells within the subject project area and interval are in an advanced state of depletion and should therefore be properly classified as "stripper wells".

(28) The operator of the proposed Avalon (Delaware) Unit Waterflood Project should take all steps necessary to ensure that the injected water enters and remains confined to only the proposed injection interval and is not permitted to escape from that interval and migrate into other formations, producing intervals, pools, or onto the surface from injection, production, or plugged and abandoned wells.

(29) The injection of water into the proposed injection wells should be accomplished through 2-3/8 inch plastic-coated tubing installed in a seal bore assembly set within 100 feet of the uppermost injection perforation. The casing-tubing annulus should be filled with an inert fluid and a gauge or approved leak-detection device should be attached to the annulus in order to determine leakage in the casing, tubing or seal bore assembly.

(30) Prior to commencing injection operations into the proposed injection wells, the casing in each well should be pressure tested throughout the interval from the surface down to the proposed seal bore assembly setting depth to assure the integrity of such casing.

(31) The injection wells or pressurization system for each well should be so equipped as to limit injection pressure at the wellhead to no more than 490 psi; however, the Division Director should have the authority to administratively authorize a pressure increase upon a showing by the operator that such higher pressure will not result in the fracturing of the injection formation or confining strata.

(32) The operator should give advance notification to the supervisor of the Artesia District Office of the Division of the date and time of the installation of injection equipment and of the mechanical integrity pressure-tests in order that the same may be witnessed.

(33) The proposed waterflood project should be approved and the project should be governed by the provisions of Rule Nos. 701 through 708 of the Oil Conservation Division Rules and Regulations.

(34) The applicant further requests that the subject waterflood project be approved by the Division as a qualified Enhanced Oil Recovery Project ("EOR") pursuant to the "Enhanced Oil Recovery Act" (Laws 1992, Chapter 38, Sections 1 through 5).

(35) The evidence presented indicates that the subject waterflood project meets all the criteria for approval.

(36) The approved "project area" should initially comprise that area described in Finding Paragraph No. (24) above.

(37) To be eligible for the EOR credit, prior to commencing injection operations the operator must request from the Division a Certificate of Qualification, which Certificate will specify the proposed project area as described above.

(38) At such time as a positive production response occurs and within five years from the date of the Certificate of Qualification, the operator must apply to the Division for certification of a positive production response, which application shall identify the area actually benefitting from enhanced recovery operations, and identifying the specific wells which the operator believes are eligible for the credit. The Division may review the application administratively or set it for hearing. Based upon evidence presented, the Division will certify to the Department of Taxation and Revenue those lands and wells which are eligible for the credit.

(39) The injection authority granted herein for the proposed injection wells should terminate one year after the effective date of this order if the operator has not commenced injection operations into the subject wells, provided however, the Division, upon written request by the operator, may grant an extension thereof for good cause shown.

IT IS THEREFORE ORDERED THAT:

(1) The application of Exxon Corporation ("Exxon") in Case No, 11,298 for the Avalon (Delaware) Unit, covering 2,118.78 acres, more or less, of State, Federal, and fee lands in the designated and Undesignated Avalon-Delaware Pool, Eddy County, New Mexico is hereby approved for statutory unitization, for the purpose of establishing both a secondary recovery and tertiary recovery project, pursuant to the "Statutory Unitization Act", Sections 70-7-1 through 70-7-21, NMSA (1978).

(2) The Avalon (Delaware) Unit Agreement, and the Avalon (Delaware) Unit Operating Agreement, which were submitted to the Division at the time of the hearing as Exhibits 2 and 3, respectively, are hereby incorporated by reference into this order.

(3) The lands herein designated the Avalon (Delaware) Unit Area shall comprise the following described acreage in Eddy County, New Mexico:

TOWNSHIP 20 SOUTH, RANGE 27 EAST, NMPM
Section 25: E/2 E/2
Section 36: E/2 E/2

TOWNSHIP 20 SOUTH, RANGE 28 EAST, NMPM
Section 29: SW/4 SW/4
Section 30: SW/4 NE/4, NW/4, and S/2
Section 31: All
Section 32: SW/4 NE/4, W/2, and W/2 SE/4

TOWNSHIP 21 SOUTH, RANGE 27 EAST, NMPM
Section 4: Lot 4
Section 5: Lots 1 and 2
Section 6: Lots 1 and 2

(4) The vertical limits or "unitized formation" of said unitized area shall include that interval described as the Delaware Mountain Group, extending from 100 feet above the base of the Goat Seep Reef to the top of the Bone Spring formation and including, but not limited to, the Cherry Canyon and Brushy Canyon formations, as identified by the *Compensated Neutron/Lithodensity/Gamma Ray Log* dated September 14, 1990 run in the Exxon Corporation Yates "C" Federal Well No. 36, located 1305 feet from the North and East lines (Unit A) of Section 31, Township 20 South, Range 28 East, NMPM, Eddy County, New Mexico, with the top of the unitized interval being found in said well at a depth of 2,378 feet below the surface (869 feet above sea level) and the base of the unitized interval being found at a depth of 4,880 feet below the surface (1,633 feet below sea level), or stratigraphic equivalents thereof.

(5) Since the persons owning the required statutory minimum percentage of interest in the Unit Area have approved, ratified, or indicated their preliminary approval of the Unit Agreement and the Unit Operating Agreement, the interests of all persons within the Unit Area are hereby unitized whether or not such persons have approved the Unit Agreement or the Unit Operating Agreement in writing.

(6) The applicant as Unit operator shall notify in writing the Division Director of any removal or substitution of said Unit operator by any other working interest owner within the Unit Area.

IT IS FURTHER ORDERED THAT:

(7) Exxon is hereby authorized to institute a waterflood project in its Avalon (Delaware) Unit Area by the injection of water into the designated and Undesignated Avalon-Delaware Pool, as found in that stratigraphic interval between 2378 feet to 4880 feet as identified by the *Compensated Neutron/Lithodensity/Gamma Ray Log* dated September 14, 1990 run in the Exxon Corporation Yates "C" Federal Well No. 36, located 1305 feet from the North and East lines (Unit A) of Section 31, Township 20 South,

Range 28 East, NMPM, Eddy County, New Mexico, through nineteen certain wells as further described in Exhibit "A" attached hereto and made a part hereof.

(8) In compliance with Division General Rule 701.G(3), the initial waterflood project area, for allowable and tax credit purposes, shall comprise only the following described 1088.50 acres in Eddy County, New Mexico:

TOWNSHIP 20 SOUTH, RANGE 28 EAST, NMPM
Section 30: Lots 1 through 4, SE/4 NW/4, E/2 SW/4, and S/2 SE/4
Section 31: Lots 1 through 3, NE/4, E/2 NW/4, NE/4 SW/4, N/2 SE/4, and SE/4 SE/4
Section 32: W/2 NW/4, N/2 SW/4, and SW/4 SW/4.

(9) The applicant must take all steps necessary to ensure that the injected water only enters and remains confined to the proposed injection interval and is not permitted to escape to other formations or onto the surface from injection, production, or plugged and abandoned wells.

IT IS FURTHER ORDERED THAT:

(10) Injection shall be accomplished through 2-3/8 inch plastic-coated tubing installed in a seal bore assembly set approximately within 100 feet of the uppermost injection perforation; the casing-tubing annulus in each well shall be filled with an inert fluid and equipped with an approved pressure gauge or attention-attracting leak detection device.

(11) The 19 water injection wells or pressurization system shall be initially equipped with a pressure control device or acceptable substitute which will limit the surface injection pressure to no more than 490 psi.

(12) The Division Director shall have the authority to administratively authorize a pressure limitation in excess of the 490 psi herein authorized upon a showing by the operator that such higher pressure will not result in the fracturing of the injection formation or confining strata.

(13) Prior to commencing injection operations, the casing in each injection well shall be pressure-tested throughout the interval from the surface down to the proposed seal bore assembly setting depth, to assure the integrity of such casing.

(14) The operator shall give advance notification to the supervisor of the Artesia District Office of the Division of the date and time of the installation of injection equipment and of the mechanical integrity pressure-test in order that the same may be witnessed.

(15) The applicant shall immediately notify the supervisor of the Artesia District Office of the Division of the failure of the tubing, casing or seal bore assembly in any of the injection wells, the leakage of water or oil from or around any producing well, or the leakage of water or oil from any plugged and abandoned well within the project area, and shall take such steps as may be timely and necessary to correct such failure or leakage.

(16) The applicant shall conduct injection operations in accordance with Division Rule Nos. 701 through 708 and shall submit monthly progress reports in accordance with Division Rule Nos. 706 and 1115.

FURTHERMORE:

(17) The subject waterflood project is hereby approved as an Enhanced Oil Recovery Project ("EOR") pursuant to the "Enhanced Oil Recovery Act" (Laws 1992, Chapter 38, Sections 1 through 5).

(18) The approved "project area" shall initially comprise that area described in Decretory Paragraph No. (8) above.

(19) To be eligible for the EOR credit, prior to commencing injection operations the operator must request from the Division a Certificate of Qualification, which certificate will specify the proposed project area as described above.

(20) At such time as a positive production response occurs and within five years from the date of the Certificate of Qualification, the operator must apply to the Division for certification of a positive production response, which application shall identify the area actually benefitting from enhanced recovery operations, and identifying the specific wells which the operator believes are eligible for the credit. The Division may review the application administratively or set it for hearing. Based upon evidence presented, the Division will certify to the Department of Taxation and Revenue those lands and wells which are eligible for the credit.

(21) The injection authority granted herein for the proposed injection wells shall terminate one year after the effective date of this order if the operator has not commenced

injection operations into the subject wells, provided however, the Division, upon written request by the operator, may grant an extension thereof for good cause shown.

FURTHERMORE:

(22) The applicant is authorized to drill the first eighteen wells listed on Exhibit "A" attached hereto. The applicant may complete the wells as producers and later convert them to injection.

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

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

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

WILLIAM J. LEMAY
Director

S E A L

EXHIBIT "A"

CASE NO. 11297
ORDER NO R-10460

EXXON CORPORATION
PROPOSED WATER INJECTION WELLS/UNORTHODOX OIL WELL LOCATIONS
AVALON (DELAWARE) UNIT WATERFLOOD PROJECT AREA

TOWNSHIP 20 SOUTH, RANGE 28 EAST, NMPM,
EDDY COUNTY, NEW MEXICO

WELL NO.	ORIGINALLY PROPOSED LOCATION	SECTION	ACTUAL STAKED LOCATION	PROPOSED PERFORATED INTERVAL FEET
1212	1668' FNL & 1455' FWL	30	1665' FNL & 1452' FWL	2486 - 4817
1412	2310' FSL & 1485' FWL	30	2301' FSL & 1485' FWL	2509 - 4832
1612	992' FSL & 1489' FWL	30	1152' FSL & 1489' FWL	2492 - 4798
1614	1046' FSL & 2677' FWL	30	NO CHANGE	2498 - 4853
1812	183' FNL & 1397' FWL	31	101' FNL & 1355' FWL	2467 - 4774
1814	123' FNL & 2673' FEL	31	NO CHANGE	2496 - 4844
1816	46' FNL & 1402' FEL	31	43' FNL & 1458' FEL	2520 - 4902
2012	1386' FNL & 1314' FWL	31	NO CHANGE	2481 - 4800
2014	1335' FNL & 2681' FWL	31	1388' FNL & 2750' FWL	2495 - 4843
2018	1317' FNL & 97' FEL	31	1310' FNL & 97' FEL	2501- 4924
2212	2600' FSL & 1322' FWL	31	NO CHANGE	2496 - 4817

EXHIBIT "A"
PAGE TWO

WELL NO.	ORIGINALLY PROPOSED LOCATION	SECTION	ACTUAL STAKED LOCATION	PROPOSED PERFORATED INTERVAL FEET
2214	2699' FSL & 2549' FWL	31	2610' FSL & 2549' FWL	2509 - 4841
2216	2566' FNL & 1377' FEL	31	2564' FNL & 1377' FEL	2505 - 4885
2218	2423' FSL & 78' FEL	31	2517' FSL & 78' FEL	2477 - 4918
2220	2648' FSL & 1127' FWL	32	2658' FSL & 1127' FWL	2489 - 4945
2412	1337' FSL & 1324' FWL	31	NO CHANGE	2535 - 4826
2418	1356' FSL & 99' FEL	31	NO CHANGE	2478 - 4911
2420	1323' FSL & 1107' FWL	32	1333' FSL & 1107' FWL	2479 - 4935
2016*	1305' FNL & 1305' FEL	31	NO CHANGE	2478 - 4880

*Already drilled under prior Division Order (previously designated the Exxon Corporation Yates "C" Federal No. 36).

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

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

APPLICATION OF EXXON CORPORATION FOR A WATERFLOOD PROJECT, QUALIFICATION FOR THE RECOVERED OIL TAX RATE PURSUANT TO THE "NEW MEXICO ENHANCED OIL RECOVERY ACT" FOR SAID PROJECT, AND FOR 18 NON-STANDARD OIL WELL LOCATIONS, EDDY COUNTY, NEW MEXICO.

CASE No. 11297

APPLICATION OF EXXON CORPORATION FOR STATUTORY UNITIZATION, EDDY COUNTY, NEW MEXICO.

CASE No. 11298

Order No. R-10460-A

NUNC PRO TUNC ORDER

BY THE DIVISION:

It appearing to the New Mexico Oil Conservation Division ("Division") that Order No. R-10460, dated September 18, 1995, does not correctly state the intended order of the Division.

IT IS THEREFORE ORDERED THAT:

(1) Finding Paragraph No. (29) on page 9 of said Order No. R-10460, be and the same, is hereby amended to read in its entirety as follows:

> " (29) Injection should be accomplished through lined or otherwise corrosion-resistant tubing installed in a packer set within 300 feet of the upper most injection perforation; the casing-tubing annulus in each well should be filled with an inert fluid and equipped with an approved gauge or leak-detection device. The supervisor of the Artesia District Office of the Division may authorize the setting of the casing-tubing isolation device at a shallower

depth if appropriate."

(2) Finding Paragraph No. (30), also on page 9 of said Order No. R-10460, be and the same, is hereby amended to read in its entirety as follows:

> " (30) Prior to commencing injection operations, each injection well should be pressure tested throughout the interval from the surface down to the proposed upper most perforation to assure mechanical integrity of each well."

(3) Decretory Paragraph No. (10) on page 12 of said Order No. R-10460, be and the same, is hereby amended to read in its entirety as follows:

> " (10) Injection shall be accomplished through lined or otherwise corrosion-resistant tubing installed in a packer set within 300 feet of the upper most injection perforation; the casing-tubing annulus in each well shall be filled with an inert fluid and equipped with an approved gauge or leak-detection device. The supervisor of the Artesia District Office of the Division can authorize the setting of the casing-tubing isolation device at a shallower depth if appropriate."

(4) Decretory Paragraph No. (13), also on page 12 of said Order No. R-10460, be and the same, is hereby amended to read in its entirety as follows:

> " (13) Prior to commencing injection operations, each injection well shall be pressure tested throughout the interval from the surface down to the proposed upper most perforation to assure mechanical integrity of each well."

(5) The corrections set forth in this order be entered nunc pro tunc as of September 18, 1995.

DONE at Santa Fe, New Mexico, on this 25th day of October, 1995.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

WILLIAM J. LEMAY
Director

SEAL

filing of such notice and payment of the required fees the land affected by such suit will not be subject to assignment or other disposition until such suit shall be finally determined and disposed of.

1.043 Cancellation for Default. The Commissioner may cancel any lease or assignment thereof for default upon giving the lessee or assignee notice by registered mail (certified mail if the lease so provides) of his intention to cancel, specifying the default and unless the lessee or assignee remedies the default within thirty (30) days of the mailing date, the Commissioner may cancel the lease or assignment. Proof of receipt of notice is not necessary or required before a valid cancellation may be entered.

COOPERATIVE AND UNIT AGREEMENTS

1.044 Purpose--Consent. The Commissioner may consent to and approve agreements made by lessees of State Lands for any of the purposes enumerated in Section 19-10-45 NMSA 1978.

1.045 Application--Requisites of Agreements. Formal application shall be filed with the Commissioner for approval of a cooperative or unit agreement at least twenty (20) days in advance of the New Mexico Oil Conservation Division's hearing date. The filing fee therefor shall be thirty dollars ($30.00) for each section or fractional part thereof, whether the acreage is federal, state, or privately owned. A unit agreement presented must have a unique unit name that will identify the agreement for so long as the agreement remains in effect and only under extraordinary circumstances will a unit name change be allowed after initial approval is granted. Applications for approval shall contain a statement of facts showing:

A. That such agreement will tend to promote the conservation of oil and gas and the better utilization of reservoir energy.

B. That under the proposed unit operation, the State of New Mexico will receive its fair share of the recoverable oil and gas in place under its lands in the proposed unit area.

C. That each beneficiary institution of the State of New Mexico will receive its fair and equitable share of the recoverable oil and gas under its lands within the unit area.

D. That such unit agreement is in other respects for the best interest of the trust.

1.046 Information to be Furnished. Complete geological and engineering data shall be presented with the application and the information offered for the Commissioner's action must be in clear and understandable form. Such data shall be kept confidential by the Commissioner pursuant to Section 19-1-2.1 NMSA 1978 for a period of six (6) months or until the unit agreement is approved, whichever first occurs. Then such data will be made a permanent part of the records and open for public inspection. If for any reason such proposed agreement is not approved, then at the request of the applicant, the data shall be returned to the applicant.

1.046.1 Use of Fresh Water. The use of fresh water in waterflood units is discouraged in the cases where salt water is practical. If an operator plans to use fresh water in a proposed unit, the following specific information should also be provided:

A. Laboratory analyses of water compatibility tests (fresh vs. salt water).

B. Reservoir analyses for swelling clays and soluble salts.

C. Estimate of monthly make-up water required for operations.

D. Location and depth of area salt water wells or quantities of produced water available for injection.

1.047 Decision Postponed. In any matter respecting cooperative and unit agreements, the Commissioner may postpone his decision pending action by the Oil Conservation Division and may use any information obtained by his own investigators, or obtained by the Oil Conservation Division to enable him to act properly on the matter. The applicant shall deposit with the Commissioner a sum of money estimated to be sufficient to meet the actual and necessary expenses of any investigation or inspection by representatives of the State Land Office.

1.048 Leases Conformed. When any cooperative or unit agreement has been approved by the Commissioner and executed by the lessee, the terms and provisions of the lease, so far as they apply to lands within the unit area, are automatically amended to conform to the terms and provisions of the cooperative agreement; otherwise, said terms and provisions shall remain in full force and effect.

1.049 Posting to Tract Books. In every case where a cooperative unit agreement is finally approved by the Commissioner such agreement and the application therefor shall be entered upon the tract books of the State Land Office, filed and recorded, together with any order respecting the same issued by

the New Mexico Oil Conservation Division; any modification or dissolution of such cooperative or unit agreement shall be likewise entered and filed. The fees therefor shall be those regularly charged by the State Land Office for similar services.

1.050 Assignments. No assignment of acreage under lease within any unitized or cooperative area will be approved by the Commissioner unless the assignment is subject to the provisions of the cooperative or unit agreement covering the area within which the acreage sought to be assigned lies, or unless the Commissioner and all parties to the cooperative agreement agree, in writing, that such acreage is not needed for proper cooperative operations.

1.051 Form of Agreement. No specific forms for the various types of cooperative or unit operating agreements are required; however, sample forms of agreements now in operation will be furnished for guidance upon request, if available. Agreements submitted for approval must be submitted in duplicate. At least one copy must contain original signatures, which copy, after approval of the agreement, will be retained by the Commissioner as the approved copy.

1.052 Forced Pooling--Oil Conservation Division Order:

The record owner or operator of all oil and gas leases covering the state owned lands forced pooled by order of the New Mexico Oil Conservation Division, either under 70-2-17 (gas proration unit) or under 70-7-1, NMSA (statutory unitization act for secondary recovery), shall file with the Commissioner the following information:

A. One (1) copy of application for hearing for forced pooling at least ten (10) days prior to date set for hearing.

B. State lease number, record owner and legal description of all state lands forced pooled.

C. Oil Conservation Division Order number and date.

D. Legal description and type (Federal, fee, or Indian) of all lands included in forced pooling order.

E. Location, formation, and depth of well.

F. Oil Conservation Division approved copies of forms numbered C-101, C-102, C-103, C-104, and C-105. These are to be filed at same time as filed with Oil Conservation Division.

G. Date production commenced.

H. A copy of the agreement for unit operations involving state lands approved in writing by the Oil Conservation Division, and signed by parties required by the agreement to initially pay at least seventy-five percent of unit operating costs, and by owners of at least seventy-five percent of the non-cost bearing interests such as royalties, overriding royalties and production payments.

This Rule has no application to a situation wherein all parties have voluntarily executed a communitization agreement covering all lands in a proration unit or a secondary recovery unit and such agreement has been approved by the Commissioner.

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY
FILED DEC 4 1996 IN MY OFFICE
ELEANOR JARNAGIN
Clerk of the District Court

PREMIER OIL & GAS, INC.,
Petitioner,

vs. No. CV-96-121-JWF

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO
EXXON CORPORATION AND
YATES PETROLEUM CORPORATION

COPY

Respondents.

ORDER GRANTING MOTION
TO VACATE SETTINGS
AND
AMENDED NOTICE OF HEARING ON THE MERITS

This matter comes before the Court on the joint motion of all parties and their respective counsel to vacate the pre-trail conference set for Tuesday, November 26, 1996 and the hearing on the merits now set for December 26, 1995 and to reschedule oral arguments before the Court and the Court being fully advised, and finds that reasonable grounds exist to vacate the current settings and to reschedule this matter.

IT IS THEREFORE ORDERED THAT:

(1) this case is an appeal to the District Court of a decision of the New Mexico Oil Conservation Commission in which the District Court acts like an appellate court based upon the record established before the agency.

(2) a pre-trial conference is not necessary in this case and the conference set for November 26, 1996 is hereby vacated,

(3) all parties shall file simultaneous briefs two weeks prior to the date the Court sets for oral argument;

(4) the hearing for oral arguments currently set for December 26, 1996 is hereby vacated.

(5) the Court will hear oral arguments commencing at 9:00 a.m., the 31 day of January, 1997.

S/ Jay F. Harris
DISTRICT JUDGE

APPROVED:

Petitioner:

W. Thomas Kellahin, Esq.
Attorney for Petitioner

Ken Jones for Premier Oil & Gas Company

Respondents:

Lyn Herbert by RC
Lyn Herbert, Esq.

Rand Carroll
Rand Carroll, Esq.
Attorneys for Respondents: New Mexico Oil Conservation Commission and New Mexico Oil Conservation Division.

(2) a pre-trial conference is not necessary in this case and the conference set for November 26, 1996 is hereby vacated,

(3) all parties shall file simultaneous briefs two weeks prior to the date the Court sets for oral argument;

(4) the hearing for oral arguments currently set for December 26, 1996 is hereby vacated.

(5) the Court will hear oral arguments commencing at ___ a.m., the _____ day of _____, 1997.

_____
DISTRICT JUDGE

APPROVED:

Petitioner:

W. Thomas Kellahin, Esq.
Attorney for Petitioner

Ken Jones for Premier Oil & Gas Company

Respondents:

Lyn Herbert by RC

Lyn Herbert, Esq.

Rand Carroll

Rand Carroll, Esq.
Attorneys for Respondents: New Mexico Oil Conservation Commission and New Mexico Oil Conservation Division.

William J. LeMay, Director of the Division,
Chairman of the Commission

James Bruce, Esq.
Attorney for Exxon Corporation

for Exxon Corporation

William F. Carr, Esq.
Attorney for Yates Petroleum Corporation

Randy Patterson, for Yates Petroleum Corporation

William J. LeMay, Director of the Division,
Chairman of the Commission

James Bruce, Esq.
Attorney for Exxon Corporation

Scott Lansdown for Exxon Corporation

William F. Carr, Esq.
Attorney for Yates Petroleum Corporation

Randy Patterson, for Yates Petroleum Corporation

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

PREMIER OIL & GAS, INC.,
Petitioner,

vs. No. CV-96-121-JWF

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO
EXXON CORPORATION AND
YATES PETROLEUM CORPORATION

Respondents.

MOTION TO VACATE SETTINGS
AND
RESCHEDULE HEARING ON THE MERITS

Come now the Petitioner and all Respondents and jointly move the Court to vacate the pre-trial conference set for Tuesday, November 26, 1996 and the hearing on the merits now set for December 26, 1996 and to reschedule oral arguments before the Court and as grounds therefore states that:

(a) this case is an appeal to the District Court of a decision of the New Mexico Oil Conservation Commission in which the District Court acts like an appellate court based upon the record established before the agency.

(b) the pre-trial conference is not necessary in this case because all counsel have agreed to file simultaneous briefs two weeks prior to the date the Court sets for oral argument;

(c) the parties desire the Court to change the date for oral argument to a date other than the week of Christmas because all clients and attorneys desiring to attend this hearing are located outside of Carlsbad and will be required to forego Christmas with their families in order to be present in Carlsbad; and

(d) All parties desire the Court to set a one-half day hearing for oral argument at the next available date acceptable to the Court prior to March 15, 1997.

Respectfully, submitted:

Petitioner:

W. Thomas Kellahin, Esq.
Attorney for Petitioner

Ken Jones for Premier Oil & Gas Company

Respondents:

Lyn Herbert, Esq.

Rand Carroll, Esq.
Attorneys for Respondents: New Mexico Oil Conservation Commission and New Mexico Oil Conservation Division.

(c) the parties desire the Court to change the date for oral argument to a date other than the week of Christmas because all clients and attorneys desiring to attend this hearing are located outside of Carlsbad and will be required to forego Christmas with their families in order to be present in Carlsbad; and

(d) All parties desire the Court to set a one-half day hearing for oral argument at the next available date acceptable to the Court prior to March 15, 1997.

Respectfully, submitted:

Petitioner:

W. Thomas Kellahin, Esq.
Attorney for Petitioner

Ken Jones for Premier Oil & Gas Company

Respondents:

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Lyn Herbert, Esq.

Rand Carroll, Esq.
Attorneys for Respondents: New Mexico Oil Conservation Commission and New Mexico Oil Conservation Division.

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Randy Patterson, for Yates Petroleum Corporation

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Attorney for Yates Petroleum Corporation

Randy Patterson, for Yates Petroleum Corporation

FIFTH JUDICIAL DISTRICT COURT

COUNTY OF EDDY

STATE OF NEW MEXICO

PREMIER OIL & GAS, INC.

Plaintiff/Petitioner

V.

No. 05-03-CV-CV-96-00121

OIL CONSERVATION COMMISSION OF etal

Defendant/Respondent.

NOTICE OF HEARING

Type of Hearing: NON-JURY TRIAL
STARTING AT: 09:00:AM
December 26, 1996

TO: CARROLL, RAND
2040 SOUTH PACHECO
SANTA FE NM 87505-0000

YOU ARE HEREBY NOTIFIED THAT the above cause is set for NON-JURY TRIAL
on THURSDAY, December 26, 1996, AT 09:00 AM
before the Honorable JAY W. FORBES, District Judge, Division 01
at the EDDY COUNTY COURTHOUSE, CARLSBAD, NEW MEXICO.

THE DISTRICT COURT COMPLIES WITH THE AMERICANS WITH DISABILITIES ACT. IT IS COUNSEL'S, OR A PRO SE PARTY'S OBLIGATION TO NOTIFY THE CLERK OF THE COURT AT LEAST FIVE (5) DAYS BEFORE ANY HEARING OF THE ANTICIPATED ATTENDANCE OF A DISABLED PERSON SO THAT APPROPRIATE ACCOMMODATIONS CAN BE MADE.

JAY W. FORBES

By: M. L. Lucero

~~Judge / Clerk /~~ Deputy

NOTICE MAILED/DELIVERED August 27, 19 96 by

HINKLE, COX, EATON, COFFIELD & HENSLEY, L.L.P.

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TIMOTHY R. BROWN
JAMES C. MARTIN

*NOT LICENSED IN NEW MEXICO

August 19, 1996

Eleanor Jarnigan
Clerk of the District Court
P. O. Box 1838
Carlsbad, New Mexico 88220

Re: Case CV-96-121-JWF

Dear Ms. Jarnigan:

Enclosed for filing is an original Request for Hearing in the above case. Please endorse the enclosed copy and return it to me in the self-addressed envelope. Thank you.

Also enclosed is a copy of a Notice of Hearing in this matter. The original was submitted directly to Judge Forbes, together with a copy of the Request for Hearing.

Very truly yours,

HINKLE, COX, EATON, COFFIELD & HENSLEY, L.L.P.

James Bruce

James Bruce

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TIMOTHY R. BROWN
JAMES C. MARTIN

*NOT LICENSED IN NEW MEXICO

August 19, 1996

The Honorable Jay W. Forbes
Division I - Fifth Judicial District
P.O. Box 1838
Carlsbad, New Mexico 88220

Re: **Premier Oil & Gas, Inc. v. Oil Conservation Commission of the State of New Mexico, Exxon Corporation, and Yates Petroleum Corporation**, Case No. CV-96-121-JWF

Dear Judge Forbes:

This letter is submitted jointly by counsel for all Respondents in this case. The purpose of the letter is to request a hearing on the merits.

At the docket call on July 3, 1996, this matter was set for a pre-trial conference on November 26, 1996. This case is an appeal of a decision of the Oil Conservation Commission ("OCC"). Appeals of OCC decisions are on the record established before the agency. Thus, there is no pre-trial discovery nor a trial to present witnesses. **See N. M. Stat. Ann. § 70-2-25.** As a result, it is only necessary to have the parties brief the issues, and then have oral argument.

Therefore, the parties signing below jointly request that the Court schedule a half-day for oral argument. A copy of a Request for Hearing (the original has been mailed to the Court Clerk for filing) and an original Notice of Hearing are enclosed. The undersigned parties also suggest that all parties simultaneously submit briefs to the Court two weeks before the hearing.

This letter and the Request for Hearing have been submitted to counsel for Petitioner, but he has not responded to requests to join in the letter. However, the half-day requested for oral argument is based upon his comments to counsel for Respondents.

Please call us if you have any questions. Thank you for your attention to this matter.

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cc: W. Thomas Kellahin w/enclosures
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cc: W. Thomas Kellahin w/enclosures
Attorney for Petitioner
Premier Oil & Gas, Inc.

HINKLE, COX, EATON, COFFIELD & HENSLEY, L.L.P.

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NICHOLAS J. NOEDING
T. CALDER EZZELL, JR.
WILLIAM B. BURFORD*
RICHARD E. OLSON
RICHARD R. WILFONG*
THOMAS J. McBRIDE
NANCY S. CUSACK
JEFFREY L. FORNACIARI
JEFFREY D. HEWETT
JAMES BRUCE
JERRY F. SHACKELFORD*
JEFFREY W. HELLBERG*
WILLIAM F. COUNTISS*
MICHAEL J. CANON
ALBERT L. PITTS
THOMAS M. HNASKO
JOHN C. CHAMBERS*
GARY D. COMPTON*
W. H. BRIAN, JR.*
RUSSELL J. BAILEY*
CHARLES R. WATSON, JR.*
STEVEN D. ARNOLD
THOMAS D. HAINES, JR.
GREGORY J. NIBERT
FRED W. SCHWENDIMANN
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LEWIS C. COX, JR. (1924-1993)
CLARENCE E. HINKLE (1901-1985)

OF COUNSEL
O. M. CALHOUN* JOE W. WOOD
RICHARD L. CAZZELL* RAY W. RICHARDS*

AUSTIN AFFILIATION
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KAROLYN KING NELSON
ELLEN T. LOUDERBOUGH
JAMES H. WOOD*
NANCY L. STRATTON
TIMOTHY R. BROWN
JAMES C. MARTIN

*NOT LICENSED IN NEW MEXICO

August 2, 1996

Rand Carroll
Marilyn S. Hebert
Oil Conservation Commission
2040 South Pacheco Street
Santa Fe, New Mexico 87505

William F. Carr
Campbell, Carr, Berge & Sheridan, P.A.
P. O. Box 2208
Santa Fe, New Mexico 87504

Dear Counsel:

I have never had a response from Tom regarding the letter to Judge Forbes in the **Premier** appeal. I suggest that we all sign the letter and the Request for Hearing, and submit it to the judge without Tom's joinder. Therefore, enclosed to each of you are an original letter and Request for Hearing. Please sign them and return them to me, and I will file them with the Court.

Very truly yours,

HINKLE, COX, EATON, COFFIELD & HENSLEY, L.L.P.

James Bruce

POST OFFICE BOX 10
ROSWELL, NEW MEXICO 88202
(505) 622-6510
FAX (505) 623-9332

POST OFFICE BOX 3580
MIDLAND, TEXAS 79702
(915) 683-4691
FAX (915) 683-6518

POST OFFICE BOX 9238
AMARILLO, TEXAS 79105
(806) 372-5569
FAX (806) 372-9761

POST OFFICE BOX 2043
ALBUQUERQUE, NEW MEXICO 87103
(505) 768-1500
FAX (505) 768-1529

401 W. 15TH STREET, SUITE 800
AUSTIN, TEXAS 78701
(512) 476-7137
FAX (512) 476-5431

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

PREMIER OIL & GAS, INC.

Petitioner,

vs. No. CV-96-121-JWF

OIL CONVERSATION COMMISSION
OF THE STATE OF NEW MEXICO,
EXXON CORPORATION, AND
YATES PETROLEUM CORPORATION,

Respondents.

REQUEST FOR HEARING

1. Jury: _____ Non-Jury: __X__

2. Judge to whom Assigned : The Honorable Jay W. Forbes.

3. Matter to be Heard: Hearing on the Merits.

4. Estimated time for hearing all parties: Half-day.

5. The names, addresses, and telephone numbers of all counsel entitled to notice are listed below.

Respectfully submitted,

Marilyn S. Hebert
Rand Carroll
Special Assistant Attorneys General
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-1364

Attorneys for Respondent Oil Conservation Commission

William F. Carr
Campbell, Carr, Berge
& Sheridan, P.A.
Post Office Box 2208
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(505) 988-4421

Attorneys for Respondent Yates Petroleum Corporation

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& Hensley, L.L.P.
Post Office Box 2068
Santa Fe, New Mexico 87504-2068
(505) 982-4554

Attorneys for Respondent Exxon Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Request for Hearing was mailed, first-class, postage prepaid, this 19th day of August, 1996 to:

W. Thomas Kellahin
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265
(505) 982-4285

James Bruce

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

PREMIER OIL & GAS, INC.

Petitioner,

vs. No. CV-96-121-JWF

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,
EXXON CORPORATION, AND
YATES PETROLEUM CORPORATION,

Respondents.

NOTICE OF HEARING

PLEASE TAKE NOTICE that the above-entitled cause has been scheduled before the Honorable Jay W. Forbes, District Judge, Division I, for the date, time, and place set forth below:

Date:	
Time:	
Place:	Eddy County Courthouse, Carlsbad, New Mexico.
Purpose:	Hearing on the Merits.
Time Allocated:	One-half day. The parties shall simultaneously submit briefs to the Court two weeks before hearing.

JAY W. FORBES

By _____

cc: W. Thomas Kellahin
Marilyn S. Hebert
William F. Carr
James Bruce

HINKLE, COX, EATON, COFFIELD & HENSLEY, L.L.P.

ATTORNEYS AT LAW

218 MONTEZUMA POST OFFICE BOX 2068

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NICHOLAS J. NOEDING
T. CALDER EZZELL, JR.
WILLIAM B. BURFORD*
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JEFFREY D. HEWETT
JAMES BRUCE
JERRY F. SHACKELFORD*
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WILLIAM F. COUNTISS*
MICHAEL J. CANON
ALBERT L. PITTS
THOMAS M. HNASKO
JOHN C. CHAMBERS*
GARY D. COMPTON*
W. H. BRIAN, JR.*
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GREGORY J. NIBERT
FRED W. SCHWENDIMANN
JAMES M. HUDSON
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LEWIS C. COX, JR. (1924-1993)
CLARENCE E. HINKLE (1901-1985)

OF COUNSEL
O. M. CALHOUN* JOE W. WOOD
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AUSTIN AFFILIATION
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JOSÉ CANO*

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S. BARRY PAISNER
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ANDREW J. CLOUTIER
STEPHANIE LANDRY
KIRT E. MOELLING*
DIANE FISHER
JULIE P. NEERKEN
WILLIAM P. SLATTERY
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JAMES A. GILLESPIE
MARGARET R. McNETT

GARY W. LARSON
LISA K. SMITH*
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KAROLYN KING NELSON
ELLEN T. LOUDERBOUGH
JAMES H. WOOD*
NANCY L. STRATTON
TIMOTHY R. BROWN
JAMES C. MARTIN

*NOT LICENSED IN NEW MEXICO

August , 1996

The Honorable Jay W. Forbes
Division I - Fifth Judicial District
P.O. Box 1838
Carlsbad, New Mexico 88220

Re: **Premier Oil & Gas, Inc. v. Oil Conservation Commission of the State of New Mexico, Exxon Corporation, and Yates Petroleum Corporation**, Case No. CV-96-121-JWF

Dear Judge Forbes:

This letter is submitted jointly by counsel for all respondents in this case. The purpose of the letter is to request a hearing on the merits.

At the docket call on July 3, 1996, this matter was set for a pre-trial conference on November 26, 1996. This case is an appeal of a decision of the Oil Conservation Commission ("OCC"). Appeals of OCC decisions are on the record established before the agency, and thus there is no pre-trial discovery, nor a trial to present witnesses. **See N. M. Stat. Ann. § 70-2-25.** As a result, it is only necessary to have the parties brief the issues, and then have oral argument.

Therefore, the parties signing below jointly request that the Court schedule a half-day for oral argument (a Request for Hearing and Notice of Hearing are enclosed). The undersigned parties also suggest that all parties simultaneously submit briefs to the Court two weeks before the hearing.

This letter and the Request for Hearing have been submitted to counsel for Petitioner, but he has not responded to requests to join in the letter. However, the half-day requested for oral argument is based upon his comments to counsel for Respondents.

Please call us if you have any questions. Thank you for your attention to this matter.

Marilyn S. Hebert
Rand Carroll
(505) 827-1364

Attorneys for Respondent
Oil Conservation Commission

James Bruce
(505) 982-4554

Attorney for Respondent
Exxon Corporation

William F. Carr
(505) 988-4421

Attorney for Respondent
Yates Petroleum Corporation

cc: W. Thomas Kellahin w/enclosures
Attorney for Petitioner
Premier Oil & Gas, Inc.

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

PREMIER OIL & GAS, INC.

Petitioner,

vs. No. 96-CV-121-JWF

OIL CONVERSATION COMMISSION
OF THE STATE OF NEW MEXICO,
EXXON CORPORATION, AND
YATES PETROLEUM CORPORATION,

Respondents.

REQUEST FOR HEARING

1. Jury: _____ Non-Jury: _____

2. Judge to whom Assigned1: The Honorable Jay W. Forbes.

3. Matter to be Heard: Hearing on the Merits.

4. Estimated time for hearing all parties: Half-day.

5. The names, addresses, and telephone numbers of all counsel entitled to notice are listed below.

Respectfully submitted,

Marilyn S. Hebert
Rand Carroll
Special Assistant Attorneys General
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-1364

Attorneys for Respondent Oil Conservation Commission

William F. Carr
Campbell, Carr, Berge
& Sheridan, P.A.
Post Office Box 2208
Santa Fe, New Mexico 87504-2208
(505) 988-4421

Attorneys for Respondent Yates Petroleum Corporation

James Bruce
Hinkle, Cox, Eaton, Coffield
& Hensley, L.L.P.
Post Office Box 2068
Santa Fe, New Mexico 87504-2068
(505) 982-4554

Attorneys for Respondent Exxon Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Request for Hearing was mailed, first-class, postage prepaid, this _____ day of August, 1996 to:

W. Thomas Kellahin
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265
(505) 982-4285

James Bruce

FIFTH JUDICIAL DISTRICT COURT

COUNTY OF EDDY

STATE OF NEW MEXICO

FIFTH JUDICIAL DISTRICT
EDDY COUNTY NM
FILED IN MY OFFICE

96 JUL -9 PM 4:35

ELEANOR JARNAGIN
DISTRICT COURT CLERK

PREMIER OIL & GAS, INC.

Plaintiff/Petitioner

V.

No. 05-03-CV-CV-96-00121

OIL CONSERVATION COMMISSION OF etal

Defendant/Respondent.

NOTICE OF HEARING

Type of Hearing: PRE-TRIAL CONFERENCE
STARTING AT: 09:00:AM
November 26, 1996

TO: HEBERT, LYN
2040 SOUTH PACHECO STREET
SANTA FE NM 87505-0000

YOU ARE HEREBY NOTIFIED THAT the above cause is set for PRE-TRIAL CONFERENCE on TUESDAY, November 26, 1996, AT 09:00 AM before the Honorable JAY W. FORBES, District Judge, Division 01 at the EDDY COUNTY COURTHOUSE, CARLSBAD, NEW MEXICO.

THE DISTRICT COURT COMPLIES WITH THE AMERICANS WITH DISABILITIES ACT. IT IS COUNSEL'S, OR A PRO SE PARTY'S OBLIGATION TO NOTIFY THE CLERK OF THE COURT AT LEAST FIVE (5) DAYS BEFORE ANY HEARING OF THE ANTICIPATED ATTENDANCE OF A DISABLED PERSON SO THAT APPROPRIATE ACCOMMODATIONS CAN BE MADE.

JAY W. FORBES

By: Eleanor Jarnagin
Judge / Clerk / Deputy

NOTICE MAILED/DELIVERED July 09, 19 96 by _____

NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-7131

June 27, 1996

Eleanor Jarnagin
Clerk of the District Court
Fifth Judicial District
P.O.Box 1838
Carlsbad, NM 88221-1838

Re: Premier Oil & Gas, Inc. v. Oil Conservation Commission et al.
No. 96-CIV 121 JWF

Dear Ms. Jarnagin:

Enclosed please find an original and copy of an Entry of Appearance and a self-addressed, stamped envelope. Please file the original, conform and return the copy to me.

Thank you for your assistance.

Sincerely,

Marilyn S. Hebert

cc: William F. Carr
James Bruce
W. Thomas Kellahin

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

EDDY COUNTY, N.M.
5TH JUDICIAL DISTRICT
FILED IN MY OFFICE

96 JUN 28 AM 10:41

ELEANOR JARNAGIN
DISTRICT COURT CLERK

PREMIER OIL & GAS, INC.

Petitioner,

vs.

No. 96-CV-121 JWF

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,
EXXON CORPORATION, AND
YATES PETROLEUM CORPORATION,

Respondents.

ENTRY OF APPEARANCE

Comes now Marilyn S. Hebert, special assistant attorney general, and enters her appearance on behalf of the New Mexico Oil Conservation Commission, Respondent.

Marilyn S. Hebert
Special Assistant Attorney General
State of New Mexico
Energy, Minerals and Natural
Resources Department
2040 South Pacheco
Santa Fe, NM 87505
(505) 827-1364

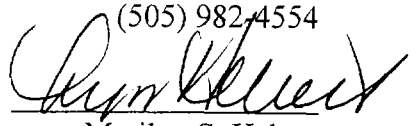
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Entry of Appearance was delivered by first-class mail, postage prepaid, this 27th day of June, 1996, to:

William F. Carr, Esq.
Campbell, Carr, Berge, P.A.
Post Office Box 2208
Santa Fe, New Mexico 87504-2208
(505) 988-4421

W. Thomas Kellahin
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265
(505) 982-4285

James Bruce
Post Office Box 2068
Santa Fe, New Mexico 87504-2068
(505) 982-4554



Marilyn S. Hebert
Special Assistant Attorney General
State of New Mexico
Energy, Minerals and Natural
Resources Department
2040 South Pacheco
Santa Fe, NM 87505
(505) 827-1364

Fifth Judicial District
State of New Mexico

Eleanor Jarnagin
Clerk of the District Court
Eddy County

P.O. Box 1838
Carlsbad, New Mexico 88221-1838
Telephone: (505) 885-4740
Fax: (505) 887-7095

M E M O R A N D U M

TO-ALL ATTORNEYS OF RECORD:

SUBJECT: CIVIL DOCKET CALL FOR **WEDNESDAY JULY 3, 1996 @ 10:00 AM**

FROM: ELEANOR JARNAGIN, CLERK OF THE DISTRICT COURT, EDDY COUNTY

CASES TO BE SET FOR NOVEMBER & DECEMBER 1996 AND JANUARY & FEBRUARY 1997

Enclosed is a copy of your contested case/cases to be set on Merits Pre-trial

CASES WILL NOT BE CALLED FOR SETTING IF:

1. ANSWER IS NOT FILED (Entry of Appearance does not constitute an Answer.

2. CASES ALREADY SET FOR TRIAL (Unless Motion & Order Vacating is filed).

3. CASES PREVIOUSLY SET FOR TRIAL (settled before Court trial). PLEASE FILE JUDGMENTS OR ORDERS ON ALL SETTLED CASES in order for respective cases to be closed out.

4. BANKRUPTCY (The Clerk's Office does request a formal Notice of Bankruptcy or Release of Bankruptcy to be filed in the case "to keep the record straight".)

5. CASES ASSIGNED TO JUDGES OUT OF EDDY COUNTY. Only the Judge to whom it is assigned will set your case. Please contact that judges secretary for a setting. EDDY COUNTY JUDGES ARE Hon. James L. Shuler and Hon. Fred A. Watson. See attached list of out of county judges and their addresses.

NOTE: ANSWERS FILED AFTER JUNE 7, 1996 will not be set.

Yours truly,

Eleanor Jarnagin

Eleanor Jarnagin
Clerk of The District Court

FIFTH JUDICIAL DISTRICT COURT
CASES PENDING BY ATTORNEY
CONTESTED CASES
NOT SET FOR TRIAL

CASE	FILING DATE	REOPEN DATE	STATISTIC JUDGE	TRIAL TYPE
05-03-CV-CV-96-00121	04/12/96	00/00/00	JAY W. FORBES	NON JURY

CHARGES

OTHER CIVIL

PLAINTIFFS	DEFENDANTS	PROSECUTION	DEFENSE
PREMIER OIL & GAS, INC.	EXXON CORPORATION OIL CONSERVATION COMMISSION OF YATES PETROLEUM CORPORATION	KELLAHIN, W. THOMAS	BRUCE, JAMES G. BRUMMETT, WILLIAM R. CARR, WILLIAM F. CARROLL, RAND

1 TOTAL PENDING CASES FOR CARROLL, RAND

MEMORANDUM

TO ALL ATTORNEYS OF RECORD:

SUBJECT: EDDY COUNTY CONTESTED CASES ASSIGNED TO OUT OF COUNTY JUDGES

FROM: ELEANOR JARNAGIN, DISTRICT COURT CLERK, EDDY COUNTY

An Eddy County Case assigned to a Judge in another county will be set for trial by the assigned judge only. We will not be setting them at Docket Call. As per Judge's Order we will set cases assigned to Judges Shuler and Forbes at Docket Call.

Please contact the out of Eddy County Judge for a trial setting.

The Fifth Judicial District Judges OUT of EDDY COUNTY are as follows:

Honorable Patrick J. Francoeur	100 N.Main, Box 6-C Lovington 396-4430	Lea Co.
Honorable R.W. Gallini	100 N. Main, Box 6-C Lovington 396-8573	Lea Co.
Honorable Larry Johnson	P.O. Box 2585, Hobbs, NM 393-6101	Lea Co.
Honorable William P. Johnson	P.O. Box 1776, Roswell, NM 622-0536	Chaves Co.
Honorable Alvin Jones	P.O. Box 1776, Roswell, NM 625-2411	Chaves Co.
Honorable William P. Lynch	P.O. Box 1776, Roswell, NM 624-0859	Chaves Co.

EDDY COUNTY, N.M.
5TH JUDICIAL DISTRICT
FILED IN MY OFFICE

96 MAY 22 PM 4:34

ELEANOR JARNAGIN
DISTRICT COURT CLERK

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

IN THE MATTER OF THE
CIVIL DOCKET CALL,
EDDY COUNTY, NEW MEXICO.

NO. CV-95-2-W

DOCKET ORDER

THE CIVIL DOCKET for the months of November and December, 1996, and January and February, 1997, will be called in Eddy County at the Eddy County Courthouse, Carlsbad, NM, beginning at 10:00 a.m. on July 3, 1996. All Civil cases at issue on the Docket of the Hon. Jay W. Forbes and the Hon. James L. Shuler prior to June 7, 1996, will be called. **ALL CASES AT ISSUE BEFORE THE ABOVE-NAMED JUDGES WILL BE SET EITHER FOR TRIAL OR PRE-TRIAL.**

All trial attorneys involved in cases on the Docket will be expected to attend the Docket Call unless another representative is present. The trial attorney, or his representative, will have knowledge of any conflicts of dates of trial attorneys during the above periods, and adequate knowledge of the case to state whether discovery has been or can be completed in time for trial of the case, as well as whether or not his or her parties will be available on the particular day of setting for the trial of the case. This requirement applies equally to out-of-county and resident attorneys so that those who are unable or do not wish to attend the Docket Call may be properly represented by an attorney who will be able to participate and function in their place in connection with their case.

Opposing counsel may serve as a representative. The District Court Clerk or the Judges' Trial Court Administrative Assistants shall not serve as representatives.

JAY W. FORBES, DISTRICT JUDGE

Oil Conservation Division

Please Deliver this I c

To: Kelly Brooks

From: Rand Carroll

Date: 6/4/96

Message: Here are answers from the OCC and Yates. No hearing schedule has been set yet.

If you have any trouble receiving this please call (505) 827-7133

FAX Exxon Answer:

Kelly Brooks
4262 FAX

5856 Phone

CAMPBELL, CARR, BERGE
& SHERIDAN, P.A.
LAWYERS

MICHAEL B. CAMPBELL
WILLIAM F. CARR
BRADFORD C. BERGE
MARK F. SHERIDAN

MICHAEL H. FELDEWERT
TANYA M. TRUJILLO
PAUL R. OWEN

JACK M. CAMPBELL
OF COUNSEL

JEFFERSON PLACE
SUITE I - 110 NORTH GUADALUPE
POST OFFICE BOX 2208
SANTA FE, NEW MEXICO 87504-2208
TELEPHONE: (505) 988-4421
TELECOPIER: (505) 983-6043

May 28, 1996

Eleanor Jarnagin, Clerk
Fifth Judicial District Court
Post Office Box 1838
Carlsbad, New Mexico 88220

Re: ***Premier Oil & Gas Inc., v. Oil Conservation Commission of the State of New Mexico, et al.***
District Court No. 96-CV-121 JWF

Dear Ms Jarnagin:

Enclosed for filing please find the original and a copy of Answer of Yates Petroleum Corporation to Petition for Review of a Decision of the Oil Conservation Commission of New Mexico in the above-captioned case. Please file the original and return the conformed copy to me in the self-addressed, stamped envelope provided for your convenience.

Your assistance in this matter is appreciated.

Very truly yours,

WILLIAM F. CARR
WFC:mlh
Enclosures
cc: W. Thomas Kellahin, Esq. (w/enclosure)
Rand L. Carroll, Esq. (w/enclosure)
James Bruce, Esq. (w/enclosure)

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

PREMIER OIL & GAS INC.

Petitioner,

vs. No. 96-CV-121 JWF

OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO, EXXON CORPORATION, AND YATES PETROLEUM CORPORATION,

Respondents.

ANSWER OF YATES PETROLEUM CORPORATION TO PETITION FOR REVIEW OF A DECISION OF THE OIL CONSERVATION COMMISSION OF NEW MEXICO

Respondent Yates Petroleum Corporation ("Yates") responds to the Petition for Review of a Decision of the Oil Conservation Commission of New Mexico as follows:

1. Yates denies the allegation in paragraph 1 of the Petition for Review which asserts that the Petitioner was adversely affected by Oil Conservation Commission Order No. R-10460-B. Yates admits the remaining allegations in paragraph 1 of the Petition for Review.

2. Yates admits the allegations contained in paragraphs 2, 3, 4, 5, 6, 7 and 8 of the Petition.

3. Yates denies the allegations of paragraph 9 of the Petition for Review.

WHEREFORE, Yates Petroleum Corporation prays that this Court deny the relief requested by Petitioner and affirm the order of the Commission.

Respectfully submitted,

CAMPBELL, CARR, BERGE
& SHERIDAN, P.A.

By: _____
WILLIAM F. CARR
Post Office Box 2208
Santa Fe, New Mexico 87504-2208
(505) 988-4421

Attorneys for Yates Petroleum
Corporation

CERTIFICATE OF MAILING

I hereby certify that on this 28th day of May, 1996, I have caused to be mailed a copy of our Response to Petition for Review of a Decision of the Oil Conservation Commission of New Mexico in the above-captioned cases to the following counsel of record:

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504

Rand L. Carroll, Esq.
New Mexico Oil Conservation Commission
2040 South Pacheco Street
Santa Fe, New Mexico 87505-5472

James Bruce, Esq.
Hinkle, Cox, Eaton, Coffield & Hensley, L.L.P.
Post Office Box 2068
Santa Fe, New Mexico 87504-2068

William F. Carr

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

PREMIER OIL & GAS, INC.,

Petitioner,

vs. **No. 96-CV-121 JWF**

OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO, EXXON CORPORATION, AND YATES PETROLEUM CORPORATION,

Respondents.

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

The New Mexico Oil Conservation Commission ("Commission"), for its Answer to the Petition for Review of a Decision of the Commission ("Petition"), states:

1. In answer to paragraph 1, the Commission denies that Petitioner was adversely affected by Commission Order No. R-10460-B, but admits the remaining allegations in paragraph 1.

2. The Commission admits the allegations contained in paragraphs 2, 3, 4, 5, 6, 7, and 8 of the Petition.

3. In answer to paragraph 9, the Commission admits that Petitioner complains of Order No. R-10460-B and asserts that said Order is arbitrary, capricious, unreasonable, and not supported by substantial evidence and is contrary to law, but the Commission denies the same, and further denies all remaining allegations in paragraph 9.

WHEREFORE, having fully answered the Petition, the Commission requests that the Court enter its order dismissing the Petition with prejudice, and granting such further relief as the court deems proper.

NEW MEXICO OIL CONSERVATION COMMISSION

Rand Carroll, Attorney for the New Mexico Oil Conservation Division
2040 South Pacheco
Santa Fe, NM 87505
505/827-8156

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Answer of New Mexico Oil Conservation Commission to Petition for Review of a Decision of the Oil Conservation Commission** was delivered by first-class mail, postage prepaid, this 31st day of May, 1996, to:

W. Thomas Kellahin
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, NM 87504-2265

James Bruce
Hinkle, Cox, Eaton, Coffield & Hensley
P.O. Box 2068
Santa Fe, NM 87504-2068

William F. Carr
Campbell, Carr, Berge & Sheridan
P.O. Box 2208
Santa Fe, NM 87504-2208

Rand Carroll

Fifth Judicial District

505/885-4740

P.O. Box 1838

88220

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

FOR:
Tom
Kellahin

PREMIER OIL & GAS, INC.
Petitioner,

vs. No. 96-CU-____

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,
EXXON CORPORATION, AND
YATES PETROLEUM CORPORATION,
Respondents.

ACCEPTANCE OF SERVICE
AND
ENTRY OF APPEARANCE

Comes now Rand L. Carroll, Esq., Santa Fe, New Mexico, having been duly authorized to accept service for the Respondent, Oil Conservation Commission of the State of New Mexico in the above styled and numbered cause and hereby enters his appearance in this case this 9th day of ~~April~~ May 1996, and hereby accepts service of the Summons and Complaint filed in this case on behalf of said Commission.

Rand L. Carroll
Assistant Attorney General
Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

TRANSMITTAL COVER SHEET

Oil Conservation Division
(505) 827-7131 (Office)
(505) 827-8177 (Fax)

Please Deliver This Fax To:

TO: Kelly Brooks

FROM: Rand Carroll

SUBJECT: Premier v. OCD/Exxon/Yates

DATE: 5/20/96

PAGES: 4

If You Have Any Problems Receiving This Fax
Please Call the Number Above

HINKLE, COX, EATON, COFFIELD & HENSLEY, L.L.P.
Attorneys at Law
Post Office Box 2068
Santa Fe, New Mexico 87504
Telephone: (505) 982-4554
Fax: (505) 982-8623

FAX COVER SHEET

DELIVER TO: Rand Carroll

COMPANY: Oil Conservation Division

CITY: Santa Fe, New Mexico

FAX NUMBER: 827-8177

NUMBER OF PAGES: 3 (Including Cover Sheet)

FROM: James Bruce

DATE SENT: 5/15/96

MATTER NUMBER: N/A

PHONE CODE: N/A

MEMO: Rand: Enclosed is a copy of Exxon's answer to Premier's petition to review Order No. R-10460-B.

HINKLE, COX, EATON, COFFIELD & HENSLEY, L.L.P.
Attorneys at Law
Post Office Box 2068
Santa Fe, New Mexico 87504
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MEMO: Rand: Enclosed is a copy of Exxon's answer to Premier's petition to review Order No. R-10460-B.

CONFIDENTIALITY NOTICE

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

PREMIER OIL & GAS, INC.,

Petitioner,

vs. **No. 96-CV-121 JWF**

OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO, EXXON CORPORATION, AND YATES PETROLEUM CORPORATION,

Respondents.

ANSWER OF EXXON CORPORATION TO PETITION FOR REVIEW OF A DECISION OF THE OIL CONSERVATION COMMISSION OF NEW MEXICO

Exxon Corporation ("Exxon"), for its Answer to the Petition for Review of a Decision of the Oil Conservation Commission of New Mexico ("the Petition"), states:

1. Answering paragraph 1 of the Petition, Exxon denies that Petitioner was adversely affected by Commission Order No. R-10460-B, but admits the remaining allegations in paragraph 1.

2. Exxon admits the allegations contained in paragraphs 2, 3, 4, 5, 6, 7, and 8 of the Petition.

3. Answering paragraph 9 of the Petition, Exxon admits that Petitioner asserts Order No. R-10460-B is arbitrary, capacious, unreasonable, and not supported by substantial evidence, but denies the same, and further denies all remaining allegations in paragraph 9.

WHEREFORE, having fully answered the Petition, Exxon requests that the Court enter its order dismissing the Petition with prejudice, and granting such further relief as the Court deems proper.

Scott Lansdown
Exxon Corporation
Post Office Box 1600
Midland, Texas 79702
(915) 688-4982

HINKLE, COX, EATON, COFFIELD
& HENSLEY, L.L.P.

James Bruce
Post Office Box 2068
Santa Fe, New Mexico 87504-2068
(505) 982-4554

Attorneys for Exxon Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Answer of Exxon Corporation to Petition for Review of a Decision of the Oil Conservation Commission of New Mexico** was delivered by first-class mail, postage prepaid, this 15th day of May, 1996, to:

W. Thomas Kellahin
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

William F. Carr, Esq.
Campbell, Carr, Berge, P.A.
Post Office Box 2208
Santa Fe, New Mexico 87504-2208

Rand L. Carroll
New Mexico Oil Conservation
Commission
2040 South Pacheco
Santa Fe, New Mexico 87505-5472

James Bruce

B:\EXXON.ANS

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

PREMIER OIL & GAS, INC.,
Petitioner,

vs. No. 96-CIV-121-JEC

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,
EXXON CORPORATION AND
YATES PETROLEUM CORPORATION

Respondents.

SUMMONS
STATE OF NEW MEXICO

TO: Oil Conservation Commission of the State of New Mexico
2040 South Pacheco
Santa Fe, New Mexico 87505

GREETINGS:

You are hereby directed to serve a pleading or motion in response to the Petition within thirty (30) days after service of this summons, and file the dame, all as provided by law.

You are notified that, unless you serve and file a responsive pleading or motion, the Petitioner will apply to the Court for the relief demanded in the Petitioner.

Attorney for Petitioner:

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

JAY W. FORD

WITNESS the Honorable _____, District Judge of the Fifth Judicial District Court of the State of New Mexico, and the seal of the District Court of said County, this 12 day of April, 1996.

Eleanor Jarnagin, District Court Clerk ELEANOR JARNAGIN

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

PREMIER OIL & GAS, INC.,
Petitioner,

vs. No. 96-CIV-121-JWF

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,
EXXON CORPORATION AND
YATES PETROLEUM CORPORATION

Respondents.

SUMMONS
STATE OF NEW MEXICO

TO: Oil Conservation Commission of the State of New Mexico
2040 South Pacheco
Santa Fe, New Mexico 87505

GREETINGS:

You are hereby directed to serve a pleading or motion in response to the Petition within thirty (30) days after service of this summons, and file the dame, all as provided by law.

You are notified that, unless you serve and file a responsive pleading or motion, the Petitioner will apply to the Court for the relief demanded in the Petitioner.

Attorney for Petitioner:

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

JAY W. FORD

WITNESS the Honorable _____, District Judge of the Fifth Judicial District Court of the State of New Mexico, and the seal of the District Court of said County, this 12 day of April, 1996.

Eleanor Gather - deputy
Eleanor Jarnagin, District Court Clerk ELEANOR JARNAGIN

RETURN

STATE OF NEW MEXICO)
) SS.
COUNTY OF _____)

I, the undersigned, being duly sworn, upon oath, say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served the within Summon in said County on the ___ day of April, 1996, by delivering a copy thereof, with a copy of the Petition attached, in the following manner:

[check one box and fill in appropriate blanks]

[ ] to Respondent_____
(used when Respondent receives a copy of Summons or refuses to receives Summons).

[ ] to _____, a person over fifteen (15) years of age and residing at the usual place of abode of Respondent _____, who at the time of such service was absent therefrom.

[ ] by posting a copy of the Summons and Petition in the most public part of the premises of Respondent _____ (used if no person found at dwelling house or usual place of abode).

[ ] to _____, an agent authorized to receive service of process for Respondent _____ _____.

[ ] to _____, (name of person), _____, (title of person authorized to receive service: (used when Respondent is corporation or association subject to a suit under a common, name, a land grant board of trustees, the State of New Mexico or any political subdivision).

_____
Signature of Person Making Service

_____
Title (if any)

SUBSCRIBED AND SWORN TO before me this ____ day of April, 1996.

_____ (Seal)
Notary Public

My Commission Expires:_____

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

PREMIER OIL & GAS, INC.,
Petitioner,

vs. **No. CIV 96-121 (DW)**

OIL CONSERVATION COMMISSION OF THE STATE OF NEW MEXICO, EXXON CORPORATION AND YATES PETROLEUM CORPORATION,
Respondents.

PETITION FOR REVIEW OF A DECISION OF THE OIL CONSERVATION COMMISSION OF NEW MEXICO

COMES NOW, PREMIER OIL & GAS, INC. ("Premier"), pursuant to the provisions of Section 70-2-25, N.M.S.A. (1978), as amended, and respectfully petitions the Court for review of the actions of the Oil Conservation Commission of New Mexico in Case No. 11297 (DeNovo) and Case No. 11298 (DeNovo) on the Commission's docket and its Order R-10460-B entered therein.

PARTIES:

1. Petitioner, Premier, is a New Mexico corporation authorized to and doing business in the State of New Mexico, is an oil and gas operator and is the current lessee of a valid and effective State of New Mexico Oil & Gas Lease covering all of Section 25, T20S, R27E, NMPM, Eddy County, New Mexico, and is a party of record in all of the proceedings before the Commission in this matter and is adversely affected by the Commission Order R-10460-B entered in Case Nos. 11297 (DeNovo) and 11298 (DeNovo).

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

3. Exxon Corporation ("Exxon") is a party of record in all of the proceedings before the Commission in this matter being the applicant before the Commission in Case Nos. 11297 (DeNovo) and 11298 (DeNovo) having sought and obtained Commission approval (Order R-10460-B) which compels Premier to include a portion of Premier's State of New Mexico Oil & Gas Lease into the Exxon Avalon (Delaware) Unit, Eddy County, New Mexico.

4. Yates Petroleum Corporation ("Yates") is also a party of record in all of the proceedings before the Commission in this matter having appeared in support of Exxon.

JURISDICTION:

5. The Commission held a public Hearing in Cases 11297 (DeNovo) and 11298 (DeNovo) on December 14, 1995 and entered Order R-100460-B on March 12, 1996.

6. On March 20, 1996, Petitioner filed its Application for Rehearing, a copy of which is attached as Exhibit "1" and incorporated herein, which was deemed denied by the Commission when it failed to act on the application within ten days as required by Section 70-2-25, N.M.S.A. (1978), as amended.

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

8. The Fifth Judicial District, Eddy County, New Mexico, has jurisdiction of this case pursuant to the provisions of Section 70-2-25 N.M.S.A. (1978), because the property affected by Commission Order R-10460-B is located within Eddy County, New Mexico.

RELIEF SOUGHT:

9. Petitioner complains of Commission Order R-10460-B and asserts that said Order is arbitrary, capricious, unreasonable, not supported by substantial evidence and is contrary to law as set forth in its Application for Rehearing (Exhibit "1") and further states:

POINT I:

COMMISSIONER BAILEY WAS DISQUALIFIED TO PARTICIPATE IN THIS CASE BY PRIOR EXPARTE DISCUSSION, BIAS AND PREJUDGMENT

POINT II:

THE STATUTORY UNITIZATION ACT, [SECTION 70-7-1 TO 70-7-21 NMSA (1978)] IS UNCONSTITUTIONAL BECAUSE IT PROVIDES FOR THE USE OF THE STATE'S POLICE POWERS TO ALLOW THE PRIVATE CONFISCATION AND IMPAIRMENT OF PROPERTY RIGHTS

POINT III:

THE COMMISSION VIOLATED PREMIER'S CORRELATIVE RIGHTS BY FAILING TO COMPLY WITH THE STATUTORY UNITIZATION ACT

POINT IV:

THE COMMISSION'S APPROVAL OF THE CARBON DIOXIDE ("C02") PROJECT FOR EXXON'S AVALON UNIT IS PREMATURE AND IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

POINT V:

THERE IS NO SUBSTANTIAL EVIDENCE TO SUPPORT INCLUDING PREMIER'S TRACT IN THE WATERFLOOD PROJECT FOR THE EXXON'S AVALON UNIT

POINT VI:

THE COMMISSION'S ULTIMATE DECISION IS BASED UPON ERRONEOUS FINDINGS OF FACT SET FORTH IN FINDINGS (20)(a) AND (20)(c) OF ORDER R-10460-B WHICH ARE INCONSISTENT WITH UNDISPUTED TESTIMONY AND ADOPTS ARBITRARY AND CAPRICIOUS REASON TO SUPPORT ITS REJECTION OF PREMIER'S GEOLOGIC EVIDENCE

POINT VII:

THE COMMISSION'S ULTIMATE DECISION IS BASED UPON FINDINGS (17)(h) AND (19)(a) WHICH ARE WRONG AND ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND ADOPTS ARBITRARY AND CAPRICIOUS REASONS TO SUPPORT ITS REJECTION OF PREMIER'S PETROLEUM ENGINEERING EVIDENCE

POINT VIII:

FINDING (20)(f) OF ORDER R-10460-B IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND EXXON'S PARTICIPATION FORMULA WILL NOT PROTECT CORRELATIVE RIGHTS

POINT IX:

THE COMMISSION'S ULTIMATE DECISION IS BASED UPON ERRONEOUS FINDINGS OF FACT SET FORTH IN FINDING (20)(b) WHICH ARE INCONSISTENT WITH UNDISPUTED TESTIMONY

WHEREFORE, Petitioner prays that the Court review New Mexico Oil Conservation Commission Case 11297 (DeNovo) and Case 11298 (DeNovo) and Commission Order R-10460-B and order that:

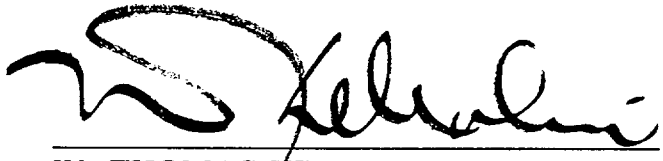
(1) Commission Order R-10460-B is unlawful, invalid and void;

(2) the Statutory Unitization Act is unconstitutional;

(3) Premier's property rights have been violated by an unlawful taking; and

(4) for such other and further relief as may be proper in the premises.

Respectfully submitted,



W. THOMAS KELLAHIN, Esq.
KELLAHIN & KELLAHIN
P. O. Box 2265
Santa Fe, New Mexico 87504
(505) 982-4285

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

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

APPLICATION OF EXXON CORPORATION FOR A WATERFLOOD PROJECT, QUALIFICATION FOR THE RECOVERED OIL TAX RATE PURSUANT TO THE "NEW MEXICO ENHANCED OIL RECOVERY ACT" FOR SAID PROJECT, AND FOR 18 NON-STANDARD OIL WELL LOCATIONS, EDDY COUNTY, NEW MEXICO CASE NO. 11297 (DeNovo)

APPLICATION OF EXXON CORPORATION FOR STATUTORY UNITIZATION, EDDY COUNTY, NEW MEXICO CASE NO. 11298 (DeNovo)

ORDER NO. R-10460-B

APPLICATION FOR REHEARING
BY
PREMIER OIL & GAS, INC.

This Application for Re-Hearing is submitted by W. Thomas Kellahin, Esq. of Kellahin and Kellahin on behalf of PREMIER OIL & GAS, INC. ("Premier").

In accordance with the provisions of Section 70-2-25 NMSA (1978), Premier requests the New Mexico Oil Conservation Commission grant this Application for ReHearing in Case 11297 (DeNovo) and in Case 11298 (DeNovo) to correct erroneous findings and conclusions set forth in Order R-10460-B, attached as Exhibit "A" and to substitute Premier's proposed Commission Order attached as Exhibit "B" hereto, and IN SUPPORT PREMIER STATES:

EXHIBIT "1"

INTRODUCTION

On March 12, 1996, the New Mexico Oil Conservation entered its decision in these cases and in doing so, the Commission made errors of fact and of law which require that another hearing be held.

GROUNDS FOR REHEARING

POINT I:

THE COMMISSION'S ULTIMATE DECISION IS BASED UPON ERRONEOUS FINDINGS OF FACT SET FORTH IN FINDINGS (20)(a) AND (20)(c) OF ORDER R-10460-B WHICH ARE INCONSISTENT WITH UNDISPUTED TESTIMONY

The primary issue in dispute between Premier and Exxon is the geological pick of the base of the Upper Cherry Canyon ("UCC") reservoir in the Premier FV3 Well.

Mr. Stuart Hanson, Premier's expert geologic consultant, concluded that Exxon's geological interpretation mistakenly excluded some 82 feet of net UCC pay from Premier's FV Well by picking the base of the UCC reservoir (at 2768 feet instead of at 2852 feet) some 82 feet too high and as a result of this mistake, Exxon had failed to properly credit the Premier Well with sufficient reservoir thickness. (See Transcript Vol. II, Page 315, lines 14-19).

In addition, Mr. Hanson demonstrated the geologic similarity and common depositional environment between the Premier FV3 Well and the Yates EP7 Well. (See Premier Exhibits 2, 6, & 7, Transcript Vol II, Pages 311-346)

In Finding (20)(c) of Order R-10460-B, the Commission concluded that "the geological interpretation of Premier's was a more believable and scientifically sound interpretation." But then, the Commission explains that "Unfortunately, for Premier, the production results shows the additional potential pay to be uneconomic;"

In Finding (20)(a) of Order R-10460-B, the Commission finds that a workover attempt in October, 1995 "overlies the disputed 82 feet" and that it "correlatives with uneconomic production" from the Yates ZG1 Well.

The Commission uses this workover attempt to **negate** the potential in the FV3 Well and then discounted the Premier geologic interpretation because the Commission mistakenly believed that the October 1995 test was a "workover" test of the disputed 82 feet of additional pay in the UCC reservoir.

The Commission has an **incorrect** understanding of the FV3 Well's history. The work conducted in October 1995 does not overlay the dispute 82 feet. (See Vol. II, Page 302, lines 13-18).

In October, 1995, Premier attempted to test its FV3 Well for oil production in Delaware intervals **other than in the disputed 82 feet in the lower UCC reservoir** in order to support its contention that it had other Delaware pay below Exxon's base of the Upper Brushy Canyon which was not accounted for in the Unit participation formula proposed by Exxon. (See Transcript Vol. II., page 291, lines 14-23).

Gulf originally completed the FV3 Well in only three zones:

Zone #1:

Location-some 900 feet below the disputed 82 feet interval
Perf: 3764-3828--Brushy Canyon below Exxon's UBC Base.
Completion: Acidized & Frac
Results: Zone flowed back 2 days and was swabbed 1 day. Frac load recovered was about 60%. Oil stain reported on last 75 BBLs swabbed. Placed CIBP the next day.
Note: zone was incompletely tested.

Zone #2:

Location: some 58 feet above the disputed 82 feet interval
Perf: 2710-2740--Cherry Canyon above Exxon's pick of the UCC base.
Completion: Acidized & Frac
Results: 72 BO & 369 BW
Note: Acid job was 50 feet above the top perf. Frac job was a high rate 25 BPM & pressure 5000 psi
Treatment out of zone. TA'd in 1986

Zone #3:

Location: some 269 feet above the disputed 82 feet interval
Perf: 2491-99--Above UCC
Completion: Acidized & Frac
Results: All water
Note: Zone was squeezed. This zone was cored by Exxon in their wells and it has a high RW which leads to log SW miscalculations.

In October, 1995, Premier did not add additional perforations nor did it stimulate any zone. Premier removed both bridge plugs uncovering both Zones #1 and #2. Zone #2 had no pressure while Zone #1 had fluid flow up the casing due to the incomplete testing by Gulf. This Zone #1 is the "pay not accounted for in the unit production formula" because it is **below** Exxon's Upper **Brushy Canyon** base located some 900 feet below the disputed 82 feet interval in the UCC reservoir. (**See Exhibits 1-A & 1-B**, being a copy of the log of the Premier FV3 Well with annotations from evidence introduced before the Commission and **Exhibit 1-C** taken from OCD files).

Mr. Terry Payne, a petroleum engineer, testified for Premier that the acid treatment log of Zone #2 of the Premier FV-3 Well shows that some of the water produced from the well was channeling down from an upper zone and should not be attributed to the UCC reservoir. See Premier Exhibit 10 (testimony of Terry Payne).

When evaluating the treatment of Zone #2, the Cement Bond Log for the Premier FV3 Well confirms that the disputed 82 feet interval is protected with cement and along with the acid treatment log demonstrates that the disputed 82 feet interval remains "virgin reservoir" before and after the October 1995 test.

The Commission compounds its mistake of fact by concluding that the Premier FV3 Well is going to be uneconomic because the disputed 82 feet of pay correlates to the Yates ZG1 Well to the south which is "uneconomic". The Commission forgot that the Yates ZG1 Well is only perforated in the top 3 feet of the "disputed 82 feet interval" and therefore is not relevant to how the FV3 Well might have performed had it been properly drilled and cemented by Gulf.

In terms of reservoir thickness, porosity, water saturations and therefore original oil in place, waterflood target oil and CO2 target oil, the Premier tract compares favorably to the Yates tracts (EP 5,7,8, & WM 5& 6) which Exxon credits with substantial waterflood reserves.

Yet when Exxon imputes this data into its reservoir simulation program (computer model), it chose to increase the water saturation for the Premier FV3 Well from 39.1% to 59.9% and in doing so made the Premier tracts appear to have less value than comparable Yates' tracts.

In addition, at the OCC hearing, Mr. Payne testified that Yates tested every major part of the UCC reservoir in the EP7 Well (3 tests) with the well IP'd for 10 BO and 100 BW (a 9% initial cut compared to the FV3 Well at 16% cut) and which has produced less than 2,000 barrels to date. Notwithstanding those poor results, Exxon credits this well with 266,600 barrels of UCC workover target oil and 145,000 barrels of waterflood target oil for a total credit of 411,600 barrels towards the waterflood portion of the participation formula. Exxon testified that the EP7 Well was (a) under Frac'd; (b) fits their Delaware water model even though December's production of 31 days equalled only 50 BO and 875 BW; and (c) it will make up the reserves once the flood begins.

Furthermore, Exxon attributes the same type of reserves for the untested UCC in the EP5 Well, the EP8 Well, the WM5 Well and the WM6 Well. The waterflood and workover target oil attributed to the UCC in these wells account for approximately 20% of the total waterflood reserves in the participation formula.

Three of these wells border the Premier Tract 6 (EP7,5 & WM6). Exxon's report shows UCC waterflood target oil for Premier's Tract 6 is 2,320,000 barrels while Yates adjoining tract are credited with 2,680,00 barrels of oil.

By Exxon mislocating the UCC base and concluding the reservoir is ending, and by exaggerating the water saturation in the Premier FV3 Well, Exxon discriminates in its Report against Premier by not giving the same waterflood reserve credits to the Premier acreage as it does for the Yates' tracts.

Because the Commission agreed with but then discounted the net 82 feet disputed interval and failed to draw comparisons of the Premier acreage with the Yates acreage, the Commission has made a substantial errors of fact in Findings (2)(a) and (20)(c) which affects its ultimate decision in this case. Therefore, the Commission needs to withdraw Order R-10460-B and correct its mistake.

POINT II:

THE COMMISSION'S ULTIMATE DECISION IS BASED UPON FINDINGS (17)(h) AND (19)(a) WHICH ARE WRONG AND ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND ADOPTS ARBITRARY AND CAPRICIOUS REASONS TO SUPPORT ITS REJECTION OF PRIMER'S ENGINEERING EVIDENCE

At the Commission hearing, Mr. Terry Payne, a consulting petroleum engineer, who correctly analyzed the Exxon Technical Report DID NOT equate waterflood target oil-in-place with incremental recoverable waterflood oil reserves. Both Mr. Payne testifying for Premier and Mr. Gilbert Beuhler testifying for Exxon agreed on the engineering method by which to calculate recoverable reserves based upon volumetric calculations of original oil in place and incorporate recovery factors and sweep efficiencies.

However, in Findings (17)(h) and (19)(a), the Commission erroneously mischaractized Premier's petroleum engineering testimony presented to the Commission when it described his testimony as equating waterflood target reserves with waterflood target oil in place and then unfairly dismisses Premier's claim because it "excluded recovery efficiency."

The mistakes in Findings (17)(h) and (19)(a) formed the basis for the Commission to reach the wrong conclusion in Finding (20)(b) when it incorrectly finds that "Premier's arguments and proposed participation formula is limited to oil-in-place calculations.

In fact **both** Exxon and Premier's proposed formula are based **in part** on oil-in place calculation **while neither** is limited only to oil in place calculation. The Commission has made a mistake of fact which has affected its ultimate decision in this case.

POINT III:

FINDINGS (20)(f) IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND EXXON'S PARTICIPATION FORMULA WILL NOT PROTECT CORRELATIVE RIGHTS

Contrary to Finding (20)(f) of Order R-10460-B, Exxon's Unit participation formula does not protect correlative rights. The Commission should have remembered that Mr. Payne used Exxon's own Technical Report and demonstrated that:

> The Exxon-Yates participation formula is flawed because it fails to allocate the total unit waterflood reserves equitably among the tracts:

Operator	Waterflood target	Assigned percentage
Premier	8.29%	-0-%
Exxon	41.09%	59.71%
Yates	49.63%	40.29%
MWJ	1.07%	-0-%

(See Premier Exhibit 9 page 4)

Exxon's proposed 50% flood factors for Tract 6 (Exxon Technical Report Exhibit E-7) are arbitrary because they assume that the outer ring tract's producing wells will be located in the center of each 40-acre tract when in fact those wells could be located 330 feet from the outer boundary and be assigned a 75% flood factor without adversely affecting flood efficiency.

Premier's Tract 6 can be excluded from the unit without any reduction in ultimate recovery if the four lease line CO2 flood injection wells are drilled between Premier Tract 6 and the Yates' Tracts #3, 3b, 5a,and 5b (See Premier Exhibit 9 pages 9-12). Furthermore, Premier will have the ability to flood part of its that is being excluded from the Exxon Avalon (Delaware) Unit.

POINT IV:

THE COMMISSION'S ULTIMATE DECISION IS BASED UPON ERRONEOUS FINDINGS OF FACT SET FORTH IN FINDING (20)(b) WHICH ARE INCONSISTENT WITH UNDISPUTED TESTIMONY

In Finding (19)(g), the Commission finds that Premier's proposed participation formula was based upon 50% on original oil in place with the remaining 50% attributed to actual recoveries.

Then in Finding (20)(b), the Commission finds that Premier's arguments and proposed participation formula is limited to oil-in-place calculations.

These two findings are inconsistence and mutually exclusive. Finding (20)(b) is factually wrong. Premier's arguments and proposed participation formula is not "limited to oil-in-place calculations."

BOTH Exxon and Premier arguments are founded in original oil in place calculations.

POINT V:

COMMISSIONER BAILEY WAS DISQUALIFIED TO PARTICIPATE IN THIS CASE BY PRIOR EXPARTE DISCUSSION, BIAS AND PREJUDGMENT

Premier was denied procedural due process because Commissioner Bailey was disqualified to participate as a member of the Commission. ***See Santa Fe Exploration Co. v. Oil Conservation Comm'n, 114 N.M. 103 (S.Ct 1992).***

On May 24, 1995, Commissioner Bailey in her capacity as the Deputy Director of the oil and Gas and Mineral Division for the Commission of Public Lands for New Mexico ("SLO") met with Exxon's attorney and Exxon personnel who included Exxon witnesses who later testified at the Commission hearing. **(See Exhibit 2).**

The purpose of this meeting was to obtain preliminary approval from Commissioner Bailey for the inclusion of the State of New Mexico oil & gas leases into the Avalon (Delaware) Unit.

In response to this Exxon request, by letter dated May 15, 1995, Commissioner Bailey concluded that the Exxon proposal "meets the general requirements of the Commission of Public Lands" and on behalf of the SLO, approved the Exxon request. **(See Exhibit 3)**.

By her actions, the SLO agreed to include the State Oil & Gas lease which it has leased to Premier and which Premier objects to being included in the unit.

Over the objections of Premier, the Commission voted to allow Commissioner Bailey to participate as a member of the Commission in an administrative agency adjudication of the same issue in which Commissioner Bailey had been involved and had already reached a decision and by doing so denied to Premier is procedural due process rights to have its dispute adjudicated by a Commission composed of members who could satisfy the principles set forth in ***Santa Fe Exploration Co. v. Oil Conservation Comm'n, 114 N.M. 103 (S.Ct. 1992).***

Commissioner Bailey was disqualified from participation on the Commission because of (a) prior exparte conferences with witnesses and Exxon's attorney; (b) bias (b) prejudgment of this matter; and (c) that it is a conflict of interest for the Commissioner of Public Lands to have designated a member of the Commission who has already acted on this matter.

By letter dated December 13, 1995, Jan Unna, as General Counsel for the Commissioner of Public Lands, admits that "we do recognize that parties litigating before the Oil Conservation Commission are entitled to have their constitutional rights including procedural due process, respected. As a transactional matter, this means that the Commissioner's designed should be free from bias and prejudgment." Further, Mr. Unna advised that "we will try to make sure that the Commissioner's designee has not participated in the Land Office decision or transaction that is the subject of the Oil Conservation Commission hearing." **(See Exhibit 4)**.

It is of no comfort to Premier that the State Land Office plans to change its practices after this case.

POINT VI:

THE COMMISSION'S APPROVAL OF THE CO2 PROJECT IS PREMATURE AND IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

The Commission has prematurely approved a Tertiary CO2 Project. The Secondary Recovery Project ("waterflooding") is the reason for the Unit, while the Tertiary Recovery Project ("CO2") has only some probability of happening/not happening.

It is undisputed that Exxon intends to institute a Secondary Recovery Project for recovery of oil by waterflooding an interior portion of the unit containing 1100 acres utilizing 27 existing producing wells, 19 injection wells which will be surrounded by an outer ring of 40-acre tracts which will not contain producing wells nor contain or be offset by injection wells.

Exxon proposes not to extend the waterflood pattern so as to recover any of Premier's secondary ("waterflood target") oil and therefore give Premier "0" credit for waterflood target oil.

Exxon proposes possibly at an undetermined time in the future to convert the Secondary Recovery Project to a Tertiary Recovery Project by expanding the original waterflood project area by drilling 18 CO2 injection wells, 18 new producing wells, and adding 10 existing wells to include an additional 1000 acres and commencing the injection of carbon dioxide ("CO2") at which point the outer ring tracts (including Tract 6) will contain producing and adjacent injection wells.

Exxon proposes to extend the CO2 injection in such a pattern so as to flood only 25% of Tract 1109 and 50% of the balance of Premier's tracts thereby reducing Premier's share of tertiary ("CO2 target") oil recovery by a factor of 25% to 50%.

It is of particular concern to Premier that Exxon's uses the same reservoir simulation model for both the waterflood project and the CO2 project which results in "equal value" for both projects, yet chooses in its participation formula to credit 50% to waterflood target oil and only 25% to CO2 target oil.

The Commission criticized Premier for giving equal value to the waterflood and the CO2 projects yet overlooks the fact that Exxon's own technical report did exactly the same thing.

The Commission's approval of the CO2 project is **premature**. Exxon's analysis of the CO2 potential is based solely on a waterflood model and therefore is speculative and has not been the subject of any scientific study to determine its feasibility and therefore any forecasted increase in ultimate recovery of tertiary oil from the unit by including the Premier Tract 6 is speculative.

At such time as firm plans are formulated for a tertiary recovery project, then Exxon should return to the Commission for either (a) a lease line injection agreement with Premier and/or (b) including the Premier acreage in the CO2 project.

POINT VII:

THERE IS NO SUBSTANTIAL EVIDENCE TO SUPPORT INCLUDING PREMIER'S TRACT

Under the Exxon analysis, the inclusion of Premier's Tract 6 is **not necessary** in order to effectively carry on the Secondary Recovery Project and that it is **premature** to include this Tract 6 for a Tertiary Recovery Project.

Under the Exxon analysis, there is **no increase** in ultimate recovery of secondary oil from the unit by including the Premier Tract 6.

Under the Exxon analysis the inclusion of the Premier Tract 6 is **not necessary** in order to effectively carry on the Secondary Recovery Project.

Exxon's Secondary Recovery Plan provides no means for the recovery of any oil west of the existing Yates' wells.

Since recovery of any such oil is thereby deferred to a tertiary recovery phase for which no commitment has been made, the implication that correlative rights would be impaired and that waste would occur if the Premier acreage were deleted from the proposed unit is groundless.

Exxon operates or owns working interests in all tracts except Tracts 6, 7, and 8, seeks to include the Premier Tract 6 only as a "protection buffer" and assigns no "contributing value" for secondary oil recovery. (See Section 70-7-4(J) NMSA 1978).

POINT VIII:

THE COMMISSION VIOLATED CORRELATIVE RIGHTS BY FAILING TO COMPLY WITH THE STATUTORY UNITIZATION ACT

Exxon proposes to include a column of 40-acre tracts including four 40-acre tracts (Tract 6) operated by Premier within the western boundary the Avalon Unit but does not intend to attempt to recovery from those tracts any remaining primary oil or any secondary oil by waterflooding.

Exxon's geologic interpretation along with Exxon's volumetric calculations of original oil in place established the "relative value" of Premier's Tract 6 on the western boundary of the reservoir as follows:

Original oil in place:	13,730,000 BO
Remaining Primary Oil in place:	-0-
Waterflood Target Oil in place:	2,950,000 BO
Workover Target Oil in place:	-0-
CO2 Target Oil in place:	10,070,000 BO

See Exxon Exhibit 10 Vol 1 Exhibit E-6

Based upon its analysis of Premier's FV #3 Well, Exxon further determined that Premier's Tract 6 had no potential for waterflood target oil and only 1.626 million barrels of CO2 target oil by applying a weighted factor of 50% and 25% to Tract 6. See Exxon Exhibit 10- Vol. 1 Exhibit E-7 and E-6)

The Commission adopted Exxon's unit participation formula predicated upon the intention to allow each tract to recover its percentage of remaining primary oil, its percentage of secondary oil and workover oil potential and its percentage of tertiary oil potential by a weighted formula of 25% primary, 50% secondary/workover and 25% tertiary.

The result, however, is to give 1.0192% of all unit production to Tract 6 operated by Premier despite the fact that Exxon said Tract 6 has 7.6 percent of the unit acreage and 4.16% of the total remaining reserves (See Exxon Exhibit 10 (G-19). Such a participation formula does not allocate unitized hydrocarbons on a fair, reasonable and equitable basis. Such a result violates the Statutory Unitization Act.

The Commission attempts to excuse this inequity by arguing that the Exxon participation formula is "fair" because Premier will receive income from the start of the unit even though Premier's acreage will provide no benefit to the unit until the CO2 project. The Commission ignores the statutory definition of "fairness":

> Section 70-2-33(H) NMSA of the Oil and Gas Act defines Correlative Rights as "...the opportunity afforded, as far as it is practicable to do so, to the owners of each property in a pool to produce without waste his just and equitable share of the oil or gas or both in the pool, being an amount so far as can be practicably determined and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas or both under the property bears to the total recoverable oil or gas or both in the pool and for such purpose, to use his just and equitable share of the reservoir energy;"

As much as the Commission wants to avoid the difficult task of determining relative value, it is no excuse to accept the Exxon participation formula when it is based upon an albeit expensive and time consuming but still fatally flawed technical report.

The Commission in Finding (20)(f) refused Premier's request that the Commission determine "relative value from the evidence introduced at the hearing and instead has approved the Exxon participation formula as "fair" despite the following evidence:

> (a) Reserves are established for the unit by utilizing Exhibit G-19 of the Exxon's August 1992 Technical Report (as amended by G-24) in which Premier's Tract 6 is assigned "0" remaining primary recovery, "0" workover reserves, "0" waterflood reserves and 1,626.0 MSTBO CO2 reserves; and

(b) Exxon proposes to include a column of 40-acre tracts including four 40-acre tracts (Tract 6) operated by Premier within the western boundary of the Avalon Unit but does not intend to attempt to recover from those tracts any remaining primary oil, any workover oil or any secondary oil by waterflooding.

The Commission has allowed Exxon to confiscate Premier's property rights in this oil & gas lease and has failed to " determine relative value, from the evidence introduced at the hearing taking into account the separately owned tracts in the unit area, exclusive of physical equipment for development of oil and gas by unit operations, and the production allocated to each tract shall be the proportion that the relative value of each tract so determined bears to the relative value of all tracts in the unit area." (emphasis added--See Section 70-7-6(B) NMSA 1978).

The Commission should have approved the waterflood unit **but excluded** the Premier Tract from the waterflood project because under Exxon's proposal the Premier Tract will make no contributing value to the waterflood and should not receive any compensating value.

CONCLUSION

Premier petitions the Commission to:

(a) withdraw Order R-10460-B (**See Exhibit 6)** and substitute Premier's proposed order which is attached hereto as **Exhibit 5** and incorporated herein by reference;

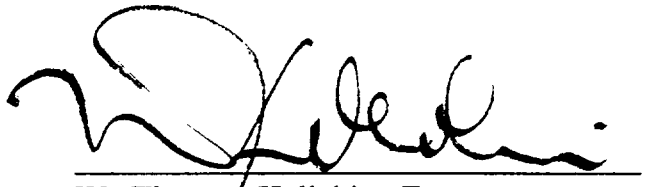
(b) to vacate Order R-10460-B and grant a Rehearing to address all of the issues set forth in this Application for Rehearing;

(c) to order Exxon to amend its simulation program by substituting Premier's geologic interpretation and water saturation for the Premier tracts; or in the alternative,

(d) to appoint a qualified petroleum engineer acceptable to all parties to act as a mediator in order to resolve the technical differences between the Exxon study and the Premier study.

In order to preserve Opponents' right to further appeals of this matter, all of the issues set forth in our proposed Order R-10460-C **(See Exhibit 5)** are made a part of this Application for Rehearing.

Respectfully submitted,



W. Thomas Kellahin, Esq.
KELLAHIN & KELLAHIN
P.O. Box 2265
Santa Fe, New Mexico 87501
(505) 982-4285

Eddy "FV" State No. 3
Premier Oil and Gas, Inc.

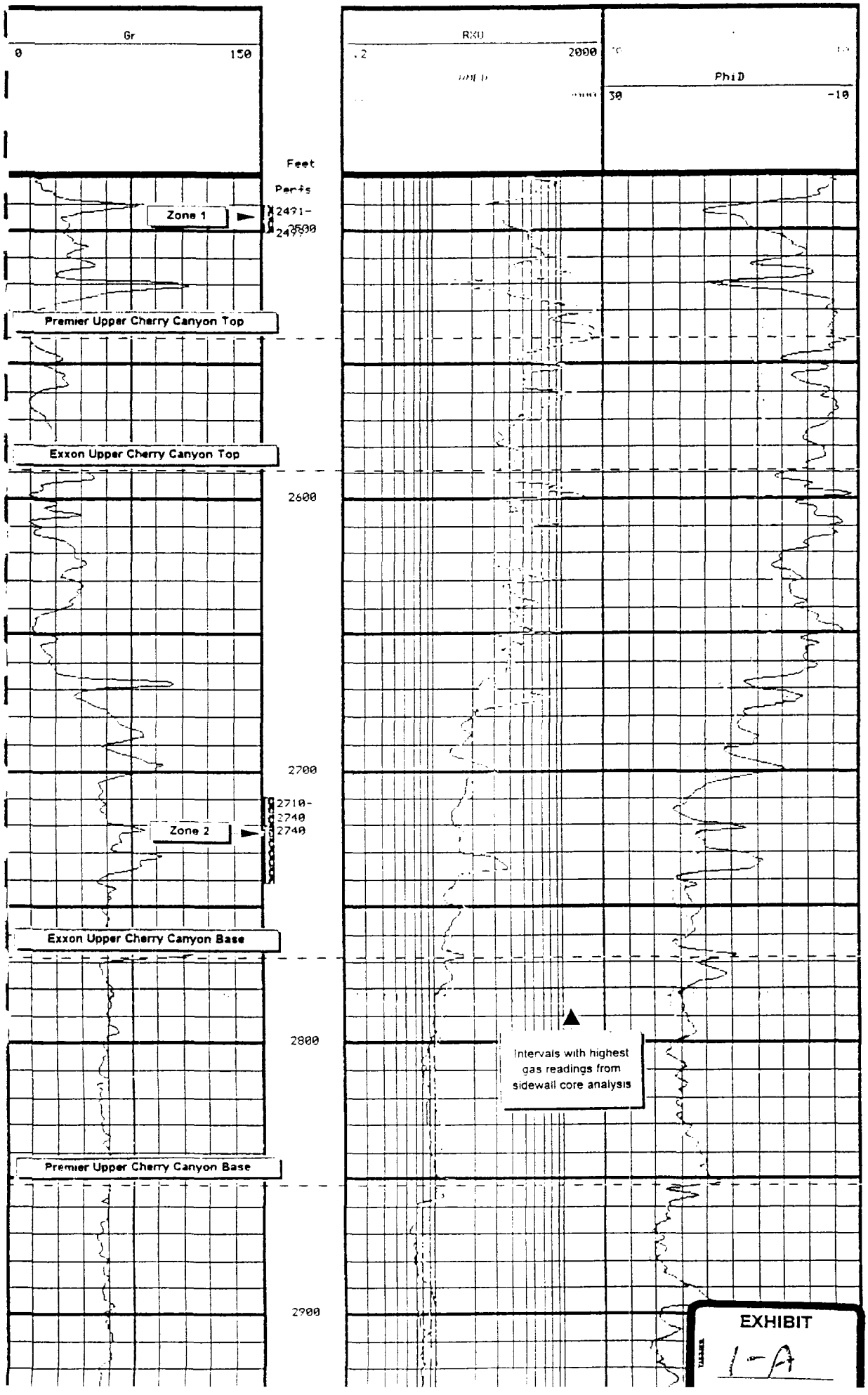


EXHIBIT
1-A

Type Log

Eddy "FV" State No. 3

Premier Oil and Gas, Inc.

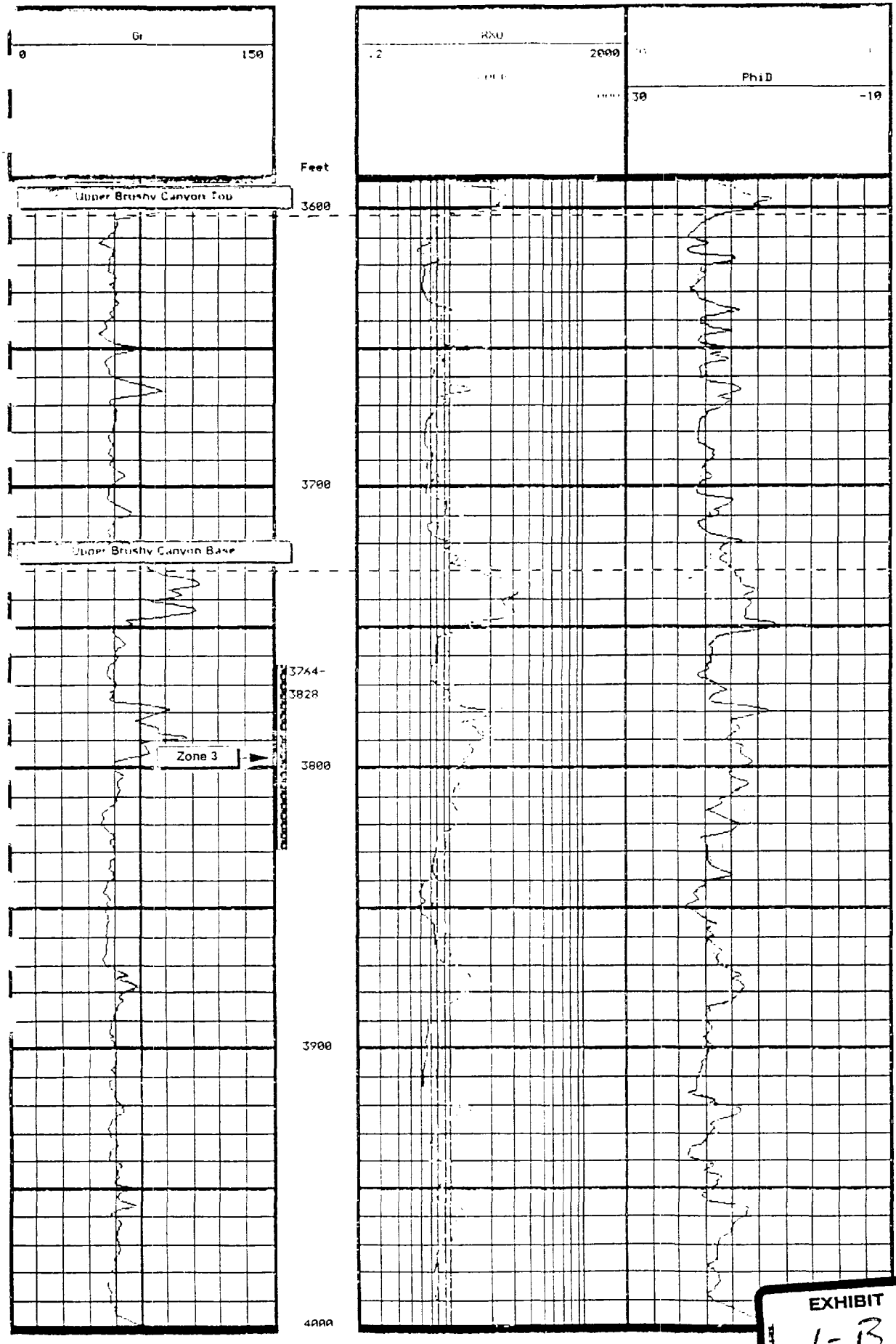


EXHIBIT
1-B

Form C-103
Revised 1-1-89

State of New Mexico
Energy, Minerals and Natural Resources Department

OIL CONSERVATION DIVISION

P.O. Box 2088
Santa Fe, New Mexico 87504-2088

Copies Appropriate District Office

DISTRICT I
P.O. Box 1980, Hobbs, NM 88240

DISTRICT II
P.O. Drawer DD, Artesia, NM 88210

DISTRICT III
1000 Rio Brazos Rd., Aztec, NM 87410

WELL API NO.
30-015-24770

5. Indicate Type of Lease STATE [X] FEE [ ]

6. State Oil & Gas Lease No.
K-6527

SUNDRY NOTICES AND REPORTS ON WELLS

DO NOT USE THIS FORM FOR PROPOSALS TO DRILL OR TO DEEPEN OR PLUG BACK TO A DIFFERENT RESERVOIR. USE "APPLICATION FOR PERMIT" (FORM C-101) FOR SUCH PROPOSALS.)

7. Lease Name or Unit Agreement Name
Eddy "FV" State

Type of Well:
OIL WELL [ ] GAS WELL [X] OTHER

8. Well No.
3

Name of Operator
Premier Oil and Gas, Inc.

9. Pool name or Wildcat
Avalon Delaware

Address of Operator
P.O. Box 1246, Artesia, NM 88210

Well Location
Unit Letter P : 660 Feet From The South Line and 330 Feet From The East Line

Section 25 Township 20S Range 27E NMPM Eddy County

10. Elevation (Show whether DF, RKB, RT, GR, etc.)
3302.5 GR

11. Check Appropriate Box to Indicate Nature of Notice, Report, or Other Data

NOTICE OF INTENTION TO:				SUBSEQUENT REPORT OF:			
PERFORM REMEDIAL WORK	[ ]	PLUG AND ABANDON	[ ]	REMEDIAL WORK	[X]	ALTERING CASING	[ ]
TEMPORARILY ABANDON	[ ]	CHANGE PLANS	[ ]	COMMENCE DRILLING OPNS.	[ ]	PLUG AND ABANDONMENT	[ ]
PULL OR ALTER CASING	[ ]			CASING TEST AND CEMENT JOB	[ ]		
OTHER:	[ ]			OTHER:			[ ]

12. Describe Proposed or Completed Operations (Clearly state all pertinent details, and give pertinent dates, including estimated date of starting any proposed work) SEE RULE 1103.

Rigged up well service unit. Used 4 3/4" bit on 2 7/8" tubing. Drilled out cast iron bridge plug at 2480'. Drilled out cast iron bridge plug at 3725. Cleaned out 5½" casing to 3900'. Pulled out of hole. Ran tubing, pump and rods. Started well pumping at 5:00 p.m., September 28, 1995.

RECEIVED
OCT 03 1995
OIL CON. DIV.
DIST. 2

I hereby certify that the information above is true and complete to the best of my knowledge and belief.

SIGNATURE Paul White TITLE Consulting Engineer DATE Oct. 2, 1995

TYPE OR PRINT NAME Paul G. White TELEPHONE NO. 746-9507

(This space for State Use) ORIGINAL SIGNED BY TIM W. GUM
DISTRICT II SUPERVISOR

APPROVED BY _____ TITLE _____ DATE OCT 10 1995

CONDITIONS OF APPROVAL, IF ANY:

EXHIBIT 1-C

NEW MEXICO OIL CONSERVATION DIVISION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

Form C-104
Revised 10-1-78

MAY 02 1984
O. C. D.
ARTESIA, OFFICE

OIL CONSERVATION DIVISION

REQUEST FOR ALLOWABLE AND AUTHORIZATION TO TRANSPORT OIL AND NATURAL GAS

Operator: Gulf Oil Corp.

Address: P. O. Box 670, Hobbs, NM 88240

Reason(s) for filing (Check proper box)

- New Well [X]
- Recompletion [ ]
- Change in Ownership [ ]
- Change in Transporter of: Oil [ ] Dry Gas [ ] Casinghead Gas [ ] Condensate [ ]

Other (Please explain): New Well

CASINGHEAD GAS MUST NOT BE FLARED AFTER 7-16-84 UNLESS AN EXCEPTION TO RULE 306 IS OBTAINED

If change of ownership give name and address of previous owner: _____

DESCRIPTION OF WELL AND LEASE

Lease Name	Well No.	Pool Name, Including Formation	Kind of Lease	Lease No.
Todd "FV" Com	3	Undesignated Delaware	State, Federal or Fee K-6527	

Location: Unit Letter P : 660 Feet From The South Line and 330 Feet From The East

Line of Section 25 Township 20S Range 27E NMPM, Eddy County

DESIGNATION OF TRANSPORTER OF OIL AND NATURAL GAS

Name of Authorized Transporter of Oil [X] or Condensate [ ]	Address (Give address to which approved copy of this form is to be sent)
Permian Pipe	Box 3110 Midland 79701
Name of Authorized Transporter of Casinghead Gas [X] or Dry Gas [ ]	Address (Give address to which approved copy of this form is to be sent)
El Paso Natural Gas	Box 1492 El Paso 79999

If well produces oil or liquids, give location of tanks.	Unit	Sec.	Twp.	Rge.	Is gas actually connected?	When
	P	25	20S	27E	No	

If this production is commingled with that from any other lease or pool, give commingling order number: _____

COMPLETION DATA

Designate Type of Completion – (X)	Oil Well	Gas Well	New Well	Workover	Deepen	Plug Back	Same Res'v.	Diff. Res'v.
	X		X					

Date Spudded	Date Compl. Ready to Prod.	Total Depth	P.B.T.D.
3-15-84	4-26-84	4975'	3400'

Elevations (DF, RKB, RT, GR, etc.)	Name of Producing Formation	Top Oil/Gas Pay	Tubing Depth
3002.5' GL	Delaware	2710'	2791'

Perforations	Depth Casing Shoe
2710'-2740'	—

TUBING, CASING, AND CEMENTING RECORD

HOLE SIZE	CASING & TUBING SIZE	DEPTH SET	SACKS CEMENT
17½"	13⅜"	500'	500
12¼"	8⅝"	2450'	1400
7⅞"	5½"	4975'	800
	2⅜"	2791'	

TEST DATA AND REQUEST FOR ALLOWABLE (Test must be after recovery of total volume of load oil and must be equal to or exceed top allowable for this depth or be for full 24 hours)

OIL WELL

Date First New Oil Run To Tanks	Date of Test	Producing Method (Flow, pump, gas lift, etc.)
4-26-84	4-29-84	Pump

Length of Test	Tubing Pressure	Casing Pressure	Choke Size
24 hrs	20#	20#	W.O.

Actual Prod. During Test	Oil-Bbls.	Water-Bbls.	Gas-MCF
441	72	369	40

GAS WELL

Actual Prod. Test-MCF/D	Length of Test	Bbls. Condensate/MMCF	Gravity of Condensate

Testing Method (pitot, back pr.)	Tubing Pressure (Shut-in)	Casing Pressure (Shut-in)	Choke Size

CERTIFICATE OF COMPLIANCE

I hereby certify that the rules and regulations of the Oil Conservation Division have been complied with and that the information given above is true and complete to the best of my knowledge and belief.

R. L. Pitts
(Signature)
AREA ENGINEER
(Title)
5-1-84
(Date)

OIL CONSERVATION DIVISION

APPROVED MAY 16 1984, 19__

BY Original Signed By Leslie A. Clements

TITLE Supervisor District II

This form is to be filed in compliance with RULE 1104.

If this is a request for allowable for a newly drilled or deepened well, this form must be accompanied by a tabulation of the deviation tests taken on the well in accordance with RULE 111.

All sections of this form must be filled out completely for allowable on new and recompleted wells.

Fill out only Sections I, II, III, and VI for changes of owner, well name or number, or transporter, or other such change of condition.

Separate Forms C-104 must be filed for each pool in multiply completed wells.

LL NO. Edd. "A" Sec 3 FIELD/POOL Malaga DATE 6-7-84

N 660 FEET FROM South LINE AND 330 FEET FROM East LINE

S 25 T20S-R27E COUNTY Eddy STATE NM

GE 3303'
KDB to GE 13'
DF to GE

13⅜" OD Surface Pipe set @ 500' w/ 625 sx
Cmt. Circulated? Yes

8⅝" OD 24 #/ft Thd Csg
Gr. K-55
set @ 2450 w/ 1900 sx
Cmt Circulated? No
TOC @ 30' by TS

2491- Prop to perf & 2777- circulate thru perfs

2710-16

2723-25

Baker Mod C RBP 2731'

2738-40

CIBP @ 3735' w/ 6 sx

3764-68

3773-77

3813-17

3824-28

Orig. PBTD ~4882'

5½" OD 15.5 & 17 #/ft Thd
Gr. K-55 CTA Csg.
set @ 4975' w/ 700 sx
Cmt Circulated? NO
TOC @ 200' by TS

PBD 3700'
TD 4975'

Date Completed

Initial Formation Cherry Canyon Delaware Sand
From: 3764' to 3828' GOR
Initial: Production ☒ - O - bopd ____ bwpd
Or: Injection ☐ ____ bwpd @ ____ psi

Completion Data:
4-09-84 Perf 3764-68; 73-77; 3813-17; 24-28 w/ 2-JSPF. Brk down w/ Acetic Acid - 300 gal. ISIP-950psi, w/ KCL wtr flsh Acdz w/ 4000 gals 10/30 mix of 10% Acetic & 15% HCL ISIP 950psi
4-11-84- Foam Frac w/ 50000 gal 75% N- 30000 gal foamed fluid and 90000# 20/40 Sand. Inj @ 30 BPM Flsh w/ N2 ISIP 2300psi
- cont below -

~~Subsequent Workover or Recompletion:~~
4-16-84- Set CIBP @ 3735' - 1/6 sx cmt on top of plug. Perf 2710-16; 23-25; 38-40 w/ 2 JSPF
Brkdown perfs w/ 200 gals 7½% NEFE ISIP 950psi
Acdz w/ 3000 gals 7½% NEFE HCL

4-18-84- Frac w/ 38000 gal 75Q foam & 64000# 20/40 sd. Flsh w/ N2 ISIP 3200 psi

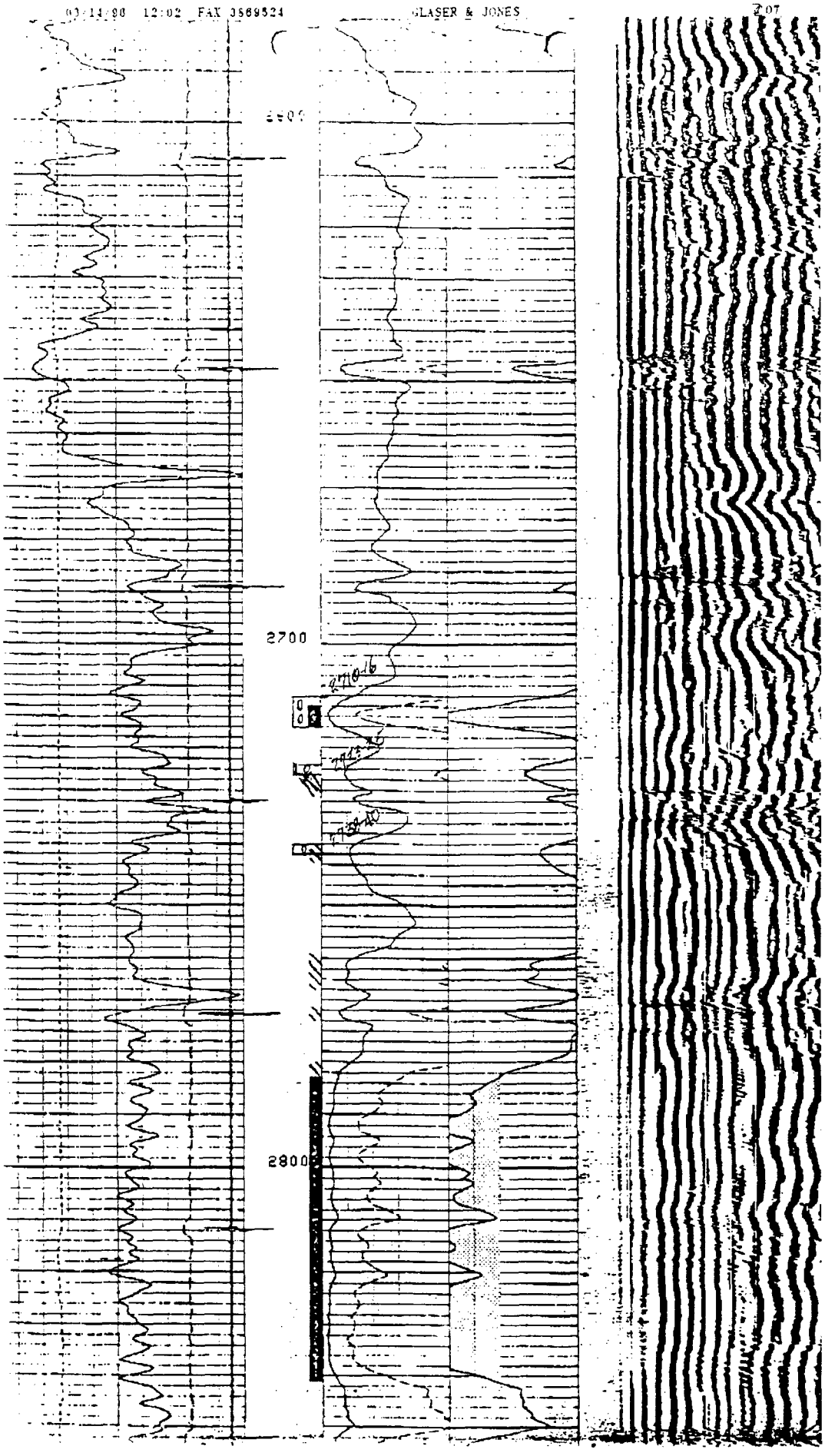
4-25-84- Ran Conv PE Set Pmp Tst
5-17-84 Well Pmpd 51 BO 92 BW

5-25-84- LD 5 jts 1" to bring pmp intake above perfs. Ran prod rods

6-06-84 Set Baker Mod C RBP @ 2731' GIH w/ PE & set well to pmpg to check for severance in wtr prod

Present Inj. ☐ ____ bwpd @ ____ psi Date ____
Present Prod. ☐ ____ bopd ____ bwpd Date ____
GAS ____ MCFPD ____

Remarks Or Additional Data:


2700
2800

STATE LAND OFFICE

MEETING RE AUSTROL (DELAWARE) UNIT

JOE B THOMAS	(915) 688-7162	EXXON
Ron Mayden	" 688-7841	Exxon
Bill Duncan	" 688-6174	"
Jeff Albers	505 827-5759	SLO
Janet Richardson	505-748-1471	Yates Petroleum
JAMI BAILEY	505-827-5745	SLO
PETE MARTINEZ	505-827-5791	SLO
ELEANOR KOSTELECKY	505-827-5748	SLO
CHARLES D. ENGELKE	827-5880	OSC
DAVE BONEAU	505-748-1471	YATES PETROLEUM
Jim Bruce	505-982-4554	Exxon (Hinkle Firm
Scott Lansdown	915-688-4982	Exxon

EXHIBIT 2

State of New Mexico
Commissioner of Public Lands
310 OLD SANTA FE TRAIL P.O. BOX 1148
SANTA FE, NEW MEXICO 87504-1148

AY POWELL, M.S., D.V.M.
COMMISSIONER

(505) 827-5760
FAX (505) 827-5766

May 15, 1995

Exxon Company USA
P.O. Box 1600
Midland, Texas 79702-1600

Attention: Mr. Joe Thomas

MDA	RECEIVED LAND SERVICES	MPC
RLA		RGG
RKF		RTL
SHJ		TAL
PLK	MAY 17 1995	JBE
DCR		SHK
JBT		LLM
		SES
	MPO - MIDLAND	JHT
HANDLE	REVIEW SEE ME CIRC	FILE

Re: Request for Preliminary Approval
Avalon Delaware Unit
Eddy County, New Mexico

Dear Mr. Thomas:

This office has reviewed the unexecuted copy of the unit agreement for the proposed Avalon Delaware Unit, Eddy County, New Mexico. This agreement meets the general requirements of the Commissioner of Public Lands who has this date granted you preliminary approval as to form and content.

Preliminary approval shall not be construed to mean final approval of this agreement in any way and will not extend any short term leases until final approval and an effective date are given.

When submitting your agreement for final approval, please submit the following:

1. Application for final approval by the Commissioner setting forth the tracts that have been committed and the tracts that have not been committed.

2. Two copies of the Unit Agreement.

3. All ratifications from the Lessees of Record and Working Interest Owners. All signatures should be acknowledged before a notary. One set of ratifications must contain original signatures.

4. Initial Plan of Operation.

5. Order of the New Mexico Oil Conservation Division. Our approval will be conditioned upon subsequent favorable approval by the New Mexico Oil Conservation Division.

6. A copy of the Unit Operating Agreement.

Exhibit No. 6-A
Exxon Corporation
NMOCD Cases 11297 & 11298
Hearing Date: June 29, 1995

EXHIBIT
3

7. Per your telephone conversation with Pete Martinez of this office, please revise Exhibit "A" & "B" to coincide with the BLM's survey plats. The following unit acreage should be changed: Federal Acreage, State Acreage. Fee Acreage and Total Acreage.

8. In Unit Agreement Page 3, Section 2(a), the acreage should be changed to 2,118.78.

9. Please date the unit agreement on Page 1.

10. A redesignation of all well names and numbers. The list should include the OCD property name, property number, pool name , pool code and API number.

If you have any questions, or if we may be of further help, please contact Pete Martinez at (505) 827-5791.

Very truly yours,

RAY POWELL, M.S., D.V.M.
COMMISSIONER OF PUBLIC LANDS

BY:
JAMI BAILEY, Deputy Director
Oil/Gas and Minerals Division
(505) 827-5745

RP/JB/cpm
Enclosure
cc: Reader File
BLM-Roswell--Attention: Mr. Armando Lopez
OCD-Santa Fe--Attention: Mr. Roy Johnson

State of New Mexico
Commissioner of Public Lands
310 OLD SANTA FE TRAIL P.O. BOX 1148
SANTA FE, NEW MEXICO 87504-1148

RAY POWELL, M.S., D.V.M.
COMMISSIONER

Legal Division
(505) 827-5713
Fax (505) 827-5853

December 13, 1995

VIA FACSIMILE & U.S. MAIL

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
117 North Guadalupe
P.O. Box 2265
Santa Fe, NM 87504-2265

Re: NMOCD cases 11297 and 11298, Application of Exxon Corporation for Waterflood Project, Carbon Dioxide Project and Statutory Unitization Avalon-Delaware Unit, Eddy County, New Mexico

Dear Mr. Kellahin:

Your letter of December 11, 1995 to Jami Bailey has been referred to me for reply. In your letter you raise certain questions about Ms. Bailey's participation in a State Land Office decision to approve this particular Unit. You are concerned that her participation may have created a conflict of interest precluding her from sitting on the Oil Conservation Commission as the Commissioner of Public Lands' designee. See Sec. 70-2-4 NMSA 1978.

We share your concern that procedural due process of law be accorded parties appearing before this agency and any others on which a designee of the Commissioner sits. We are mindful of our responsibilities to the public in this regard. See Santa Fe Exploration Co. v. Oil Conservation Comm'n, 114 NM 103 (S.Ct. 1992).

In this instance Ms. Bailey and I are satisfied that she can participate as a member of the Commission and hear the matter with complete professionalism and impartiality. In response to the first two questions you pose in your letter, Ms. Bailey has no reservations about participating in this case. Any decision she may make as the Commissioner's designee will be based on the evidence in the record of the case. She had very little personal involvement in the Land Office process concerning this particular unitization. She attended one meeting internally and as a formality signed a letter of preliminary approval prepared by staff. The documents

BEFORE THE
OIL CONSERVATION COMMISSION
Case No. 11298 DeNovo Exhibit No. B
Submitted By:
PREMIER OIL & GAS INC.
Hearing Date: December 14, 1995

EXHIBIT
4

concerning the unitization in question are, of course, public records and you are free to examine them if you wish. In that event please call me at 827-5715 to arrange a time for you to inspect the documents.

Your letter is the first occasion that this particular conflict of interest question has come to my attention. As you may know, I have been general counsel here for a relatively short time, and I am continually discovering new areas requiring legal attention. This is one of them.

It seems to me that the Legislature created a statutory conflict of interest, or at least a potential one, when it provided for the Commissioner to participate as a member of the Oil Conservation Commission under Sec. 70-2-4 NMSA 1978. It seems to me that the Legislature was concerned enough for the welfare and protection of public lands that, as a secondary consequence of its action, it created this form of institutional conflict. One of the purposes of having the Commissioner of Public Lands or his designee on the Oil Conservation Commission is to look after the interests of public land trust beneficiaries. There is nothing, of course, that the Land Office can do about this legislative framework.

At the same time, however, as we stated earlier, we do recognize that parties litigating before the Oil Conservation Commission are entitled to have their constitutional rights, including procedural due process, respected. As a transactional matter, this means that the Commissioner's designee should be free from bias and prejudgment. We are satisfied that such is the case with Ms. Bailey in this case. In addition, as to the future, we will try to make sure that the Commissioner's designee has not participated in the Land Office decision or transaction that is the subject of the Oil Conservation Commission hearing. The issues before the Land Office may be different from the questions before the Commission, which would mean that participating in a Land Office decision would not preclude a designee from hearing a different issue, albeit arising out of the same facts, before a different administrative body. We haven't researched this issue at this point, partly in the interest of turning around your letter request as soon as possible. We understand that you have a hearing in this matter before the Oil Conservation Commission tomorrow and we would not want to delay that by our review. In any case, we think it is the wiser choice for the Land Office to simply avoid any transactional conflict whenever it can by making sure the Commissioner's designee has not worked directly on the matter before the Commission.

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

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

APPLICATION OF EXXON CORPORATION FOR A WATERFLOOD PROJECT AND EOR QUALIFICATION, EDDY COUNTY, NEW MEXICO **CASE NO. 11297**

APPLICATION OF EXXON CORPORATION FOR STATUTORY UNITIZATION, EDDY COUNTY, NEW MEXICO **CASE NO. 11298**

ORDER NO. R-10460-C

PREMIER OIL & GAS, INC.'S PROPOSED ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9:00 a.m. on December 14, 1995, at Santa Fe, New Mexico before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission".

NOW, on this ____ day of January, 1996, the Commission, a quorum being present, having considered the testimony presented and the exhibits receive 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) Division Case Nos. 11297 and 11298 were consolidated at the time of the hearing for the purpose of testimony.

EXHIBIT 5

(3) The applicant, Exxon Corporation ("Exxon"), seeks the statutory unitization, pursuant to the "Statutory Unitization Act", Sections 70-7-1 through 70-7-21, N.M.S.A. (1978), of 2,140.14 acres, more or less, being a portion of the Delaware Mountain Group of the Avalon-Delaware Pool, Eddy County, New Mexico, said portion to be known as the Avalon Delaware Unit; the applicant further seeks approval of the Unit Agreement and the Unit Operating Agreement which were submitted in evidence as applicant's Exhibit Nos. 2 and 3 in this case.

(4) Exxon proposes that the horizontal limits of said unit area would be comprised of the following described Federal, State and Fee lands in Eddy County, New Mexico:

Tract 1:	SW/4 Sec 29, T20S, R28E
Tract 2:	Sec 31, T20S, R28E
	Lot 4(NW/4NW/4) Sec 4 T21S, R27E
	Lots 1&2 (N/2NE/4) Sec 5 T21S, R27E
Tract 3-A:	Lot 1 (NW/4NW/4) Sec 30, T20S, R28E
Tract 3-B:	Lot 2 (SW/4NW/4) Sec 30, T20S, R28E
Tract 3-C:	NE/4NW/4 Sec 30, T20S, R28E
Tract 3-D:	SE/4NW/4 Sec 30, T20S, R28E
Tract 3-E:	SW/4NE/4 Sec 30, T20S, R28E
Tract 4-A:	NW/4SE/4 Sec 30, T20S, R28E
Tract 4-B:	NE/4SE/4 Sec 30, T20S, R28E
Tract 5-A:	Lot 3 (NW/4SW/4) Sec 30, T20S, R28E
Tract 5-B:	Lot 4 (SW/4SW/4) Sec 30, T20S, R28E
Tract 5-C:	NE/4SW/4 Sec 30, T20S, R28E
Tract 5-D:	SE/4SW/4 Sec 30, T20S, R28E
Tract 5-E:	SW/4SE/4 Sec 30, T20S, R28E
Tract 5-F:	SE/4SE/4 Sec 30, T20S, R28E
Tract 6:	E/2E/2 Sec 25, T20S, R27E
Tract 7:	E/2NE/4 Sec 36, T20S, R27E
Tract 8:	E/2SE/4 Sec 36, T20S, R27E
Tract 9:	Lots 1 & 2 (N/2NE/4) Sec 6, T21S, R27E
Tract 10:	W/2W/2, NE/4NW/4, SE/4SW/4 Sec 32, T20S, R28E
Tract 11:	SE/4NW/4 & NE/4SW/4 Sec 32, T20S, R28E
Tract 12:	E/2SE/4, SW/4NW/4 Sec 32, T20S, R28E

(5) Exxon proposes that the vertical limits of said unit area would comprise that interval which includes the "Upper Cherry Canyon Reservoir" ("UCC") and the "Lower Cherry Canyon/Upper Brushy Canyon Reservoir"

("LCC-UBC") and extends from an upper limit between 100 feet above the base of the Goat Seep Reef to the top of the Bone Springs formation to a lower limit of the base of the Brushy Canyon formation which are defined at all points under the unit area correlative to a depth of 2,378 feet and 4,880 feet, respectively, as identified on the Compensated Neuron/Litho density /Gamma Ray Log dated September 14, 1990 for the Exxon Yates "C" Federal Well No. 36, located in Unit A of Section 31, T20S, R28E, NMPM, Eddy County, New Mexico.

(6) Exxon, with approximately 61 percent of the unit acreage and Yates Petroleum Corporation ("Yates") with approximately 13-1/2 percent of the unit acreage appeared and presented evidence in support of approval of the unit.

(7) Premier Oil & Gas Inc. ("Premier"), the operator of Tract 6 with 7.6 percent of the unit acreage and 4.16% of the total remaining reserves (by Exxon's calculation--See Exxon Exhibit 10 (G-19) **but credited by Exxon with only 1.0192% of unit production** appeared and presented evidence in opposition to including Tract 6 with the unit.

EXXON PROPOSAL

(8) Exxon proposes to:

(a) **Statutory Unitization:** compel Premier Oil & Gas Inc. ("Premier") to include its property (Tract 6) in both projects by resorting to statutory unitization, pursuant to the "Statutory Unitization Act", Sections 70-7-1 through 70-7-21, N.M.S.A. (1978);

(b) **Correlative Rights:** that Premier has forfeited its correlative rights by failing to further develop its lease and now the Commission pursuant to the statutory unitization act can allow Exxon to hold Tract 6 without further development pending the possibility of a tertiary recovery project in the future.

(c) **Relative Value:** to fix the "relative value" of Premier's Tract 6 in the Upper Cherry Canyon Reservoir ("UCC") based its determination of a total net thickness of 55 feet for the Premier FV-3 Well, from log analysis in which Exxon

estimates a total gross thickness of 179 feet by picking the top of the Upper Cherry Canyon Downlap at 2589 feet in depth and the base of the Upper Cherry Canyon at 2768 feet in depth and by using a 10% percent Gamma Ray porosity and a 75 API Gamma Ray unit cutoffs;

(d) **Reserves:** to establish reserves for the unit by utilizing Exhibit G-19 of the Exxon's August 1992 Technical Report (as amended by G-24) in which Premier's Tract 6 is assigned "0" remaining primary recovery, "0" workover reserves, "0" waterflood reserves and 1,626.0 MSTBO CO2 reserves;

(e) **Workover Potential**: to credit certain tracts with workover potential as set forth in Exhibit E-19 of Exxon's Technical Report dated August 1992 and then include that potential with the waterflood reserves which are assigned a 50% weighted factor thereby increasing the value of Yates' Well EP-7 (number tract 1111);

(f) **Waterflood:** institute a Secondary Recovery Project for recovery of oil by waterflooding an interior portion of the unit containing 1100 acres utilizing 27 existing producing wells, 19 injection wells which will be surrounded by an outer ring of 40-acre tracts which will not contain producing wells nor contain or be offset by injection wells;

(g) **CO2 flood:** possibly at an undetermined time in the future to convert the Secondary Recovery Project to a Tertiary Recovery Project by expanding the original waterflood project area by drilling 18 CO2 injection wells, 18 new producing wells, and adding 10 existing wells to include an additional 1000 acres and commencing the injection of carbon dioxide ("CO2") at which point the outer ring tracts (including Tract 6) will contain producing and adjacent injection wells;

(h) **Flood Factors**: to adopt flood factors as set forth in Exhibit E-7 of Exxon's Technical Report dated August 1992 which results in a 50% increase in participation for the original waterflood tracts and a correspondingly 25% to 50% decrease for the outer ring of 40-acre tracts including the Premier Tract;

(i) **Exxon-Yates' formula:** adopt a unit participation formula predicated upon the intention to allow each tract to recovery its percentage of remaining primary oil, its percentage of secondary oil and workover oil potential and its percentage of tertiary oil potential by a weighted formula of 25% primary, 50% secondary/workover and 25% tertiary.

(j) **Exxon Percentages:** to give 1.0192% of all unit production to Tract 6 operated by Premier Oil & Gas Inc. ("Premier"), said tract having 7.6 percent of the unit acreage and 4.16% of the total remaining reserves (by Exxon's calculation--See Exxon Exhibit 10 (G-19). Exxon, with approximately 61 percent of the unit acreage and Yates Petroleum Corporation ("Yates") with approximately 13-1/2 percent of the unit acreage appeared and presented evidence in support of approval of the unit.

(k) **Waste**: that waste will occur because the entire unit plan and the recovery of this potential oil is predicated upon having Premier's tract in the unit.

PREMIER'S POSITION

(9) Premier is the working interest owner of oil & gas leases for all of Section 25, T20S, R27E, NMPM with the E/2E/2 of said Section 25 constituting Unit Tract 6 (numbered tracts 1109, 1309, 1509 and 1709) under the Exxon proposed Avalon-Delaware Unit and proposes:

(a) **Statutory Unitization:** that Exxon's proposed unit shape, determination of the distribution of hydrocarbon pore volume and the primary and secondary production estimates fail to provide "relative value" to Tracts 1109. 1309, 1509 and 1709 as required by Section 70-7-4(J) NMSA (1978), as amended and, unless corrected by the Commission, the correlative rights of Premier will be violated;

(b) **Correlative Rights:** that Premier is still the current lessee of a valid State of New Mexico oil & gas lease who has postponed its development plans pending the outcome of unitization commenced by Exxon in 1991, should not be denied its opportunity to further develop its lease just because Exxon

wants to hold this tract without further development pending the possibility of a tertiary recovery project in the future.

(c) **Relative Value:** to fix the "relative value" of Premier's Tract 6 in the Upper Cherry Canyon Reservoir ("UCC") based its determination of a total net thickness of 137 feet for the Premier FV-3 Well (which is some 82 net feet more than attributed by Exxon) from log analysis in which Premier estimates a total gross thickness of 308 feet by picking the top of the Upper Cherry Canyon Downlap at 2544 feet in depth and the base of the Upper Cherry Canyon at 2852 feet in depth and by using a 10% percent Gamma Ray porosity and a 75 API Gamma Ray unit cutoffs;

(d) **Reserves:** to establish reserves for the unit by utilizing Exhibit G-19 of the Exxon's August 1992 Technical Report (as amended by G-24) in which Premier's Tract 6 is assigned "0" remaining primary recovery, "0" workover reserves, "0" waterflood reserves and 1,626.0 MSTBO CO2 reserves;

(e) **Workover Potential**: to credit certain tracts with workover potential as set forth in Exhibit E-19 of Exxon's Technical Report dated August 1992 and then include that potential with the waterflood reserves which are assigned a 50% weighted factor thereby increasing the value of Yates' Well EP-7 (number tract 1111);

(f) **Waterflood:** approve the waterflood unit **but**

exclude the Premier Tract from the waterflood project because under Exxon's proposal the Premier Tract will make no contributing value to the waterflood and should not receive any compensating value;

or in the alternative, include the Premier Tract **but adopt:**

(i) Premier's geologic evidence as the appropriate reservoir pore volume for Premier's Tract 6:

(ii) exclude the workover reserves assigned to Yates' number tracts 1111, 1311, 1313, 1511 and 1513;

(iii) move the location of proposed outer ring producers and increase the food factors for the outer ring tracts including Premier Tract 6;

(iv) **adopt Premier's participation formula:**
50% original oil in place;
10% 1/93 rate;
20% remaining primary and
20% future production

(g) **Premier Percentages:** to credit 4.52% of all unit production to Tract 6 operated by Premier Oil & Gas Inc. ("Premier"), said tract having 7.6 percent of the unit acreage, 6.14% of the original oil in place, 6.19% of the CO2 reserves and 5.17% of the total remaining reserves (by Premier's calculation--See Premier Exhibit 9 page 49;

(h) **CO2 flood:** deny the CO2 tertiary project because it is premature.

(i) **Waste**: that excluding the Premier tract does not cause waste. The only waste issue is whether "statutory unitization" is the **proper** means by which the drilling of certain lease line CO2 injection wells which can take place or whether those wells can be drilled by adoption of a cooperative lease line agreement.

PREMIER'S OBJECTIONS

(10) Premier contends that its Tract 6 should be **excluded** because:

(a) Exxon proposes to include a column of 40-acre tracts including four 40-acre tracts (Tract 6) operated by Premier within the western boundary of the Avalon Unit but does not intend to attempt to recover from those tracts any remaining primary oil, any workover oil or any secondary oil by waterflooding;

(b) Exxon based its plan upon a Technical Report dated August, 1992 (Exxon Exhibit 10) which was prepared exclusively by Exxon personnel and submitted to Yates and the other working interest owners in September, 1992;

(c) the Secondary Recovery Project ("waterflooding") is the reason for the Unit, while the Tertiary Recovery Project ("CO2") has only some probability of happening/not happening (See Exxon Exhibit 7--letter dated 10/10/94);

(d) on June 17, 1994, in Premier's absence, the working interests owners met to discuss the Exxon Technical Report and unanimously agreed to **exclude** Premier's Tract 6 from both the Secondary Recovery and Tertiary Recovery project in the Avalon Unit and Exxon has made no change in its Technical Report to now justify including the Premier Tract in the Unit;

(e) under the Exxon analysis, the inclusion of Premier's Tract 6 is **not necessary** in order to effectively carry on the Secondary Recovery Project and that it is **premature** to include this Tract 6 for a Tertiary Recovery Project

(f) under the Exxon analysis, there is **no increase** in ultimate recovery of secondary oil from the unit by including the Premier Tract 6;

(g) the Exxon analysis of the CO2 potential is speculative and not been the subject of any scientific study to determine its feasibility and therefore any forecasted increase in ultimate recovery of tertiary oil from the unit by including the Premier Tract 6 is speculative;

(h) Exxon operates or owns working interests in all tracts except Tracts 6, 7, and 8, seeks to include the Premier Tract 6 only as a "protection buffer" and assigns no "contributing value" for secondary oil recovery; See Section 70-7-4(J) NMSA 1978;

(i) because Premier, as owner of all of Section 25, T20S, R27E, is not receiving any "contributing value" for primary or secondary oil, it does not want to divide its property for Exxon's satisfaction.

(j) Yates wants the Premier Tract included in order to shift the risk of being a edge CO2 flood tract from Yates to Premier.

(k) that Premier's Tract 6 can be excluded in accordance with the New Mexico Statutory Unitization Act.

(11) In the alternative, Premier contends that if Tract 6 is to be included in the unit, then and in that event, the application for unitization must be **denied** because:

(a) the horizontal and vertical limits of said unit have **not** been reasonably defined by development;

(b) Exxon's Technical Report is flawed because it incorrectly correlates the top of the Upper Cherry Canyon-Downlap Unit and the base of the Upper Cherry Canyon Reservoir in Premier's FV #3 Well (identified as Unit Well 1709) located within Premier's Tract 6;

(c) Exxon mistakenly uses a high gamma ray reading at 2768 feet on the log of the Premier FV-3 Well as an indication of the base of the UCC reservoir when in fact the average porosity within the 82 feet below that point is equal to or greater than the average porosity within the 55 feet picked by Exxon;

(d) this mistake causes Exxon only to attribute 55 feet of net thickness to the UCC reservoir for the FV-3 Well which in turn affects the contouring of the various geologic maps, including the "TOTAL NET RESERVOIR HYDROCARBON THICKNESS AT RESV COND MAP" (Exxon Exhibit 10 map 20 from which Exxon concludes that Premier's Tract 6 acreage has no remaining primary oil potential;

(e) Premier's FV-3 Well when correctly correlated indicates a net porosity thickness in the Upper Cherry Canyon Reservoir of 137 feet which is some 82 feet more than attributed by Exxon; (See Premier Exhibit 2)

(f) Exxon has determined that 131 feet of net pay thickness is the average for wells in the UCC reservoir but only credits Premier's FV #3 Well with 55 feet; (See Exxon Exhibit 10 B-1)

(g) **BOTH** Exxon's and Premier's hydrocarbon pore volume map shows that there is substantial recoverable oil remaining under Premier's
Tract 6.

(h) Exxon's Technical Report in assigning "relative value" to each tract, determined that based upon logged derived water saturations there are 2,320,00 barrels of waterflood target oil to be recovered underlying the Premier Tract 6 (See Premier's Exhibit 8) **but** then arbitrarily eliminated all of that incremental oil in their reservoir model by increasing the water saturation (Sw=0.60) based upon water production volumes reported by Gulf when it operated the Premier FV-3 Well; (See Exxon Exhibit 10 G-19)

(i) Premier has determined that Sw should be derived from log analysis and not actual water production because the actual water production from the FV-3 Well is attributed to water encroachment from above the Upper Cherry Canyon Reservoir;

(j) The log of the Premier FV-3 Well shows that the water produced from the well was channeling down from an upper zone and should not be attributed to the UCC reservoir. See Premier Exhibit 10 (testimony of Terry Payne).

(k) Exxon gives workover reserves in the UCC reservoir to Yates' Tracts 1111, 1311, 1313, 1511 but excludes workover reserves for Premier's Tract 6 which has the same reservoir parameters with identical Sw values (See Exxon Exhibit 10 Map 19);

(l) Exxon is biased in distributing waterflood reserves;

(m) Exxon has incorrectly mapped the UBC reservoir's gross thickness on Premier's acreage;

(n) The granting of the application with the deletion of Tract 6 as proposed by Premier in this case will have no adverse effect upon the Delaware formation.

(o) The deletion of Premier's Tract 6 from the Avalon Unit Agreement and the Avalon Unit Operating Agreement provide for unitization and unit operation of the Avalon Unit Area upon terms and conditions that are fair, reasonable and equitable.

(p) The Exxon's request for approval of a tertiary recovery ("CO2") project is premature and should be **denied.**

BACKGROUND-UNITIZATION NEGOTIATIONS

(12) On May 21, 1991, Exxon commenced unitization plans for the Avalon Area and announced its schedule to commence waterflood operations by June, 1992.

(13) In November, 1991 Exxon issued its first Technical Report, but progress towards unitization was delayed until August, 1992 when Exxon issued its Second Technical Report (Exxon Exhibit 10) and circulated that report to the working interest owners.

(14) The Exxon technical Report was undertaken exclusively by Exxon without requesting participation or involvement by Premier.

(15) On November 25, 1992, David Boneau on behalf of Yates advised Exxon that:

(a) Yates considered the engineering work in the August-1992 Technical Report to have "cut a few corners" and expressed concern that the modeling work required that permeability be increased by a factor of two or more and "cast doubt on the shaly-sand analysis of the logs which reduced log porosity and indirectly log permeability. Maybe a different log analysis would have given permeabilities that fit the computer model without modification. Probably you all believe there is no change that the basic geologic picture can be wrong." See Yates Exhibit 6 (2-A).

(b) Yates expressed concern that the areas outside the wells where primary production has been established in the UCC-LBC may not be developed economically by CO2.

(c) Yates questioned Exxon's workover reserve credited to Yates' Tracts 1111, 1311, 1313, 1511 and 1513 **but** states "Since the assumed workover reserves benefit Yates, we are willing to believe the Exxon explanation and leave the workover reserves in the Engineering Report (ie, Exxon Exhibit 10 part 2).

(16) On December 22, 1992, Exxon advises Yates that Exxon has increased the primary reserves credited to Yates Wells EP-5 (Unit E-Sec 30), Well EP-8 (Unit F-Sec 30) and C-36 (Unit A-Sec 31).

(17) By January 7, 1993 Yates has withdrawn its concerns about the Exxon Technical Report, but continues to express concerns over Exxon's AFEs, Exxon's participation formula and states "Exxon's voting procedures stinks."

(18) On April 8, 1994, Exxon with a working interest owner with 73.92% of the unit area and the proposed unit operator proposed to Yates other major working interest owner with 12.01% of the unit area, the formation of the subject unit utilizing a Two Phase Tract Participation Formula whereby for Phase I remaining primary oil per tract was weighted by 62.34%; waterflood reserves which included workover potential per tract was weighted by 37.56% and tertiary reserves were weighted by -0-% and then a Phase Two were the weighted percentages were 23.45%, 20.6375% and 55.9073% respectively.

(19) Under the Exxon participation formula Exxon would receive 79.71 % of Phase One oil recovery and 72.529% of Phase Two oil recovery while Yates would receive 9.837% of Phase One oil recovery and 11.55% of Phase Two oil recovery with Premier receiving -0-% of Phase One oil recovery and 2.279% of Phase Two oil recovery.

(20) On May 18, 1994, Premier withdrew its tracts from unit consideration because of inability to agree with the geology in the Exxon Technical Report and Premier did not enter into equity negotiations.

(21) On June 17, 1994, in Premier's absence, all other Working interest owners agreed to exclude Premier's tracts when discussing Premier's

letter of May 18, 1994. Yates then took the lead in developing a single phase formula using traditional parameters, including original oil in place. See Yates Exhibit 7, Sec 3(f) page 1)

(22) On January 18, 1995, Exxon and Yates agreed to a single phase Participation Formula whereby primary oil is weighted by 25%, secondary oil and workover potential is weighted by 50% and tertiary oil is weighted by 25% which results in Exxon receiving 73.92% of unit production, Yates receiving 12.01% of unit production and Premier receiving 1.0192% of unit production.

(23) Exxon/Yates proposed formula is predicated upon the intention to allow each tract to recovery its percentage of remaining primary oil, its percentage of secondary oil and workover oil potential and its percentage of tertiary oil potential by a weighted formula of 25% primary, 50% secondary/workover and 25% tertiary.

(24) In October, 1995, Premier attempted to test for oil production in its FV-3 Well in zones other than the UCC reservoir and produced approximately 10 BOPD until the test was terminated when Exxon disputed Premier's operational practices.

(25) Once Exxon commence its unitization study in 1991, no operator including Exxon, Yates or Premier, drilled any further wells pending the outcome of the unitization issues.

THE EXXON-PREMIER DISPUTE

EXXON'S TECHNICAL DATA:

(26) Under its analysis and adjustment factors, Exxon contends as to Premier's tracts 1109, 1309, 1509 and 1709 (Unit Tract 6) that:

(a) there is no remaining primary recovery potential and therefore gives Premier "0" credit for any remaining recovery of primary oil;

(b) Exxon proposes not to extend the waterflood pattern so as to recover any of Premier's secondary ("waterflood target") oil and therefore give Premier "0" credit for waterflood target oil.

(b) Exxon proposes to extend the CO2 injection in such a pattern so as to flood only 25% of Tract 1109 and 50% of the balance of Premier's tracts thereby reducing Premier's share of tertiary ("CO2 target") oil recovery by a factor of 25% to 50%.

(27) Exxon in support of its contention that neither the Premier FV-3 nor the Premier FV-1 is productive of primary oil in the UCC reservoir and that addition west-side injectors are probably not appropriate presented the following geologic/engineer evidence:

(a) that the UCC reservoir reveals that the hydrocarbon distribution is a function of both structure, which controls the downdip, southern and eastern limits of production and stratigraphy which controls the updip pinchout of the reservoir quality sands into tight carbonates on the northern and western sides of the reservoir; (Exxon Exhibit 10-Vol 1)

(b) that there is no apparent updip closure of structural contours in the north and west portions of the proposed unit;

(c) that the "relative value" of Premier tract on the western boundary of the reservoir is based upon log analysis of the Premier FV-3 Well from which Exxon has determined that there is a total gross thickness of 179 feet based upon picking the top of the Upper Cherry Canyon Downlap at 2589 feet in depth and the base of the Upper Cherry Canyon at 2768 feet in depth and therefore a total net thickness of 55 feet;

(e) When its interpretation of net thickness for the Premier FV-3 well is integrated into its hydrocarbon pore volume map (Exxon Exhibit 10 map 22) and its volumetric calculations (Exxon Exhibit 10-Vol 1 Exhibit E-4), **EXXON** concludes that Premier's Tract 6 has:

Original oil in place:	*13,730,000 BO*
Remaining Primary Oil in place:	*-0-*
Waterflood Target Oil in place:	*2,950,000 BO*
Workover Target Oil in place:	*-0-*
CO2 Target Oil in place:	*10,070,000 BO*

See Exxon Exhibit 10 Vol 1 Exhibit E-6

(f) Exxon concluded that the average Water saturation for the UCC Reservoir by log calculations was 39% but for the Premier FV-3 well, but in its reservoir modeling adjusted the Sw factor to 60% because Gulf reported higher water production in that well than the averages; See Exxon Exhibit 10, Vol 1 Exhibit D-12,D-13, D-14)

(g) By increasing the Sw factor, Exxon calculated the Premier numbered tract 1709 (UCC) to have only 1,580,000 barrels of oil in place and that based upon a total cumulative recovery by the FV-3-Well of 5,100 barrels of oil Tract 6 has no remaining primary oil to be recovered;

(h) Based upon its analysis of Premier's FV #3 Well, Exxon further determined that Premier's Tract 6 had no potential for waterflood target oil and only 1.626 million barrels of CO2 target oil by applying a weighted factor of 50% and 25% to Tract 6. See Exxon Exhibit 10- Vol. 1 Exhibit E-7 and E-6)

(i) Finally, based upon decline curve analysis (Exxon Exhibit 10 Vol 1 Exhibit G-9), and an 85% watercut, Exxon concluded that the Premier Tract 6 had no workover Target oil. See Exxon Exhibit 10 Vol 1 Exhibit G-19).

PREMIER'S TECHNICAL DATA:

(28) Premier, the owner/operator in Tract 6, appeared in opposition to the case.

(29) Premier contends that the revised Exxon proposed unit shape, reservoir parameters and participation formula fail to provide "relative value" to Tract 6 as required by Section 70-7-4(J) NMSA (1978), as amended, and unless corrected by the Division will be violated.

(30) Premier contends that Exxon failed to directly correlate the FV-3 Well with its direct east offset well, the WM-4 Well, and thereby made mistakes in correlation which reduced the net UCC reservoir for the FV-3 Well. (See Exxon Technical Report Exhibit C-6)

(31) Premier provided geologic and petroleum engineer evidence which demonstrates that:

(a) Stuart Hanson, Premier's expert geologic consultant, based upon regional geologic studies he has conducted for the Delaware and upon log correlations including log analysis of the Premier FV-3 Well, Premier has determined that the Premier FV-3 Well has a total gross thickness of 308 feet based upon picking the top of the Upper Cherry Canyon Downlap at 2544 feet in depth and the base of the Upper Cherry Canyon at 2852 feet in depth. (See Premier Exhibits 1, 2, and 3)

(b) Mr. Hanson concludes that:

1. the correct correlations will also increase reservoir quality and quantity for Premier location 1509 and that additional UCC reservoir potential exists in Premier's Section 25 (See Premier Exhibit 1)

2. the additional 82 net feet averages 53% SW and 15.4% porosity and by attributing the correct net thickness to the FV #3 Well changes the contouring of the "UPPER CHERRY CANYON HYDROCARBON THICKNESS MAP" which results in a significantly larger areal extent of the UCC reservoir extending to the north and northwest than that which the Exxon Technical Report attributes to the Premier's Section 25. (See Premier Exhibits 4, 4A,6, and 6A)

3. that the FV-2 Well log demonstrates potential for UCC reservoir extending westward into other acreage in Section 25 which Exxon excluded from the unit.

4. that Exxon has incorrectly correlated the log of the Premier FV #3 Well and as a result had failed to give the Premier FV #3 Well its correct total net thickness of UCC reservoir and failed to properly value the reservoir quality and quantity for Premier's Tract 6;

(c) Stuart Hanson, based upon calibrating and scaling the mudlog for the Premier FV #3 Well and to correlate the Mudlog with the Compensated Neutron Density Gamma Ray Log for that same well, concluded that:

1. the Premier FV #3 Well had an untested portion from 2777 feet to 2791 feet of the UCC reservoir which correlate to a productive portion from 2717 feet to 2730 feet in the offsetting WM #4 Well (Unit M) Section 30, (See Premier's Exhibit 5) and which, in terms of core analysis and log derived water saturations, showed this interval to be consistent with UCC primary production in the Unit area thereby invalidating Exxon's UCC base pick at 2668 feet.

2. that Exxon had incorrectly correlated these wells and in doing so have failed to properly credit the Premier Well with sufficient reservoir thickness.

3. that there is no barrier in the UCC reservoir which would isolate the Exxon's 55 net feet from the 82 net feet of additional pay thickness in the FV-3 Well.

(d) Mr. Hanson determined that Gulf improperly drilled and completed the FV-3 Well as a Delaware Well:

1. the FV-3 Well was drilled with fresh water (RW=.13 @ 76 degrees). This procedure caused the clays within the Delaware sand to swell and created damage around the wellbore;

2. the acid job channeled 50 feet above the top perforation;

3. the frac job was at such a high rate (25 BPM) and pressure 5100 psi) that the frac further extended the channeling created by the acid work.

(e) Mr. Terry Payne, Premier's expert petroleum engineering witness, based upon Exxon's Technical Report dated August 1992, concluded that:

1. Exxon failed to use traditional participation parameters including original oil in place such as those adopted by the Division for use in the Parkway Delaware Unit (NMOCD Case 10619)

2. The Exxon-Yates participation formula is flawed because it assigns waterflood & CO2 percentages based upon numbers assigned to tracts which are not adjusted for geological changes in the reservoir modeling study

3. The Exxon-Yates participation formula is flawed because it fails to allocate the total unit waterflood reserves equitably among the tracts:

Operator	Waterflood percent	assigned percentage
Premier	8.29%	-0-%
Exxon	41.09%	59.71%
Yates	49.63%	40.29%
MWJ	1.07%	-0-%

(See Premier Exhibit 9 page 4)

4. The Exxon-Yates participation formula is flawed because it fails to allocate the total unit CO2 flood reserves equitably among the tracts:

Operator	CO2 flood percent	assigned percentage
Premier	5.88%	4.08%
Exxon	56.49%	60.26%
Yates	36.01%	35.25%
MWJ	1.62%	0.42%

(See Premier Exhibit 9 page 6)

(f) Mr. Terry Payne, compared the following three options:

USING THE EXXON GEOLOGIC AND EXXON FORMULA the total remaining future production is allocated as follows:

Operator	percent of future production	assigned percentage
Premier	3.30%	1.02%
Exxon	60.63%	64.79%
Yates	35.74%	34.07%
MWJ	0.34%	0.12%

(See Premier Exhibit 9 pages 32-35)

USING THE EXXON GEOLOGY but SUBSTITUTING PREMIER'S PROPOSED FORMULA, the total remaining future production is allocated as follows:

Operator	percent of future production	assigned percentage of future production
Premier	3.03%	3.42%
Exxon	60.63%	59.28%
Yates	35.74%	36.20%
MWJ	0.34%	1.09%

(See Premier Exhibit 9 page 41)

USING PREMIER'S GEOLOGY AND PREMIER'S PROPOSED FORMULA, the total remaining future production is allocated as follows:

Operator	percent of future production	assigned percentage of future production
Premier	5.17%	4.52%
Exxon	57.80%	58.29%
Yates	36.70%	36.10%
MWJ	0.32%	1.08%

(See Premier Exhibit 9 page 49)

(g) Mr. Terry Payne concluded that of the above three options, the Premier geology and participation formula is fair because:

(i) it uses more traditional parameters like those adopted for Parkway Delaware Unit while the Exxon proposal dos not;

(ii) it allocates the total unit future oil production equitable among the tracts while the Exxon participation formula is flawed because it fails to do so.

(h) Mr. Payne further concluded that:

1. the Exxon's proposed 50% flood factors for Tract 6 (Exxon Technical Report Exhibit E-7) are arbitrary because they assume that the outer ring tract's producing wells will be located in the center of each 40-acre tract when in fact those wells could be located 330 feet from the outer boundary and be assigned a 75% flood factor:

2. Premier's Tract 6 can be excluded from the unit without any reduction in ultimate recovery if the four lease line CO2 flood injection wells are drilled between Premier Tract 6 and the Yates' Tracts #3, 3b, 5a,and 5b (See Premier Exhibit 9 pages 9-12)

3. the average water saturation ("Sw") for the Premier FV-3 Well should be 39.1% because it is incorrect to use actual water production which is attributed to a poor cement job acid/frac height and water production from a squeezed zone and therefore Sw should not be increased to 59.9% as Exxon did.

4. By using the proper Sw factor, Premier concludes that the Premier's FV #3 Well has 2,910,000 barrels of oil in place and that based

upon a total cumulative recovery by Premier's FV #3 Well of 5,100 barrels of oil, Tract 6 still has remaining primary oil to be recovered (See Premier Exhibit 9 pages 30-31)

5. when Premier's interpretation of net thickness for the Premier FV-3 well is integrated into its hydrocarbon pore volume map (Premier Exhibit 8) and its volumetric calculations, Premier's VF-3 Well has an estimated 2,910,000 barrels of oil in place, 860,000 barrels of waterflood target oil and 2,380,000 barrels of CO2 target oil.

6. based upon the Exxon Technical Report, the Premier Tract 6 has UCC waterflood target oil of 2,320,000 barrels of oil in place, that Yates operated tracts bordering Premier's tracts have 2,680,000 barrels of UCC waterflood target oil and **therefore** the Exxon Report is biased when it attributed "-0-" waterflood reserves to the Premier Tract 6 (See Exxon Exhibit 10 G-19);

7. that Exxon should have extended the "outer ring-buffer" to include an additional column of 40-acre tracts in Section 25 in order to be consistent with Exxon's inclusion of the Exxon operated tracts in the Southeastern corner of the Unit which contain little or no waterflood target oil;

8. based upon the Exxon-Yates formula, the waterflood reserves improperly favored both Yates and Exxon as working interest owners in Section 30 to the disadvantage of Premier.

9. Exxon has failed to assign "relative value" to certain tracts because decline curve analysis concludes that an excessive amount of UCC remaining primary target oil was credited by Exxon to number tracts 1511, 1915, 1919, 2111, 2113 and 1917; (See Premier Exhibit 9 page 14-25)

10. Exxon has failed to properly calculate "relative value" for waterflood target oil by including excessive workover reserve credit for Tract 1111 because the Yates EP #7 Well (1111) had an estimated workover potential of 266,600 barrels (Exxon Exhibit 10 G-19) but the well has only produced 2,000 barrels to date. Therefore these reserves further biased the Exxon report in favor of Exxon and Yates who are both working interest owners in Section 30. (See Premier Exhibit 9 page 29 and Exhibits 1, 2, 3, showing the logs for the FV-3, EP-7 and EP-6).

(i) Mr. Payne further concluded that from a reservoir engineering perspective, a lease line injection plan is a practical alternative to including the Premier tract in the proposed unit.

(j) Mr. Payne concluded that there were significant recoverable oil reserves underlying Premier's Tract 56 which can be recovered both by waterflooding and by carbon dioxide flooding.

COMMISSION FINDINGS:

(32) The COMMISSION finds that:

(a) Section 70-2-33(H) NMSA of the Oil and Gas Act defines Correlative Rights as "...the opportunity afforded, as far as it is practicable to do so, to the owners of each property in a pool to produce without waste his just and equitable share of the oil or gas or both in the pool, being an amount so far as can be practicably determined and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas or both under the property bears to the total recoverable oil or gas or both in the pool and for such purpose, to use his just and equitable share of the reservoir energy;"

(b) Section 70-7-6(B) NMSA of the Statutory Unitization Act states "If the Division determines that the participation formula contained in the unitization agreement does not allocate unitized

hydrocarbons on a fair, reasonable and equitable basis, the Division shall determine relative value, from the evidence introduced at the hearing taking into account the separately owned tracts in the unit area, exclusive of physical equipment for development of oil and gas by unit operations, and the production allocated to each tract shall be the proportion that the relative value of each tract so determined bears to the relative value of all tracts in the unit area.

(c) Section 70-7-4 (J) NMSA of the Statutory Unitization Act says "relative value" means the value of each separately owned tract for oil and gas and its contributing value to the unit in relation to like values of other tracts in the unit, taking into account acreage, the quantity of oil and gas recoverable therefrom, location on structure, its probable productivity of oil and gas in the absence of unit operations, the burden of operation to which the tract will or is likely to be subjected, or so many of said factors, or such other pertinent engineering, geological, operating or pricing facts, as may be reasonably susceptible of determination.

(d) Section 70-7-7 NMSA of the Statutory Unitization Act provides that the Division has the authority and obligation to approve or prescribe a plan or unit agreement for unit operation which **shall include**:

"A. ....area of the pool or part of the pool to be operated as a unit and the vertical limits to be included,..."

"C. an allocation to the separately owned tracts in the unit area of all the oil and gas that is produced from the unit area..."

(33) The COMMISSION further FINDS that:

(a) Exxon proposes to include a column of 40-acre tracts including four 40-acre tracts (Tract 6) operated by Premier within the western boundary the Avalon Unit but does not intend to attempt to recovery from those tracts any remaining primary oil or any secondary oil by waterflooding;

(b) The Secondary Recovery Project ("waterflooding") is the reason for the Unit, while the Tertiary Recovery Project ("CO2") has only some probability of happening/not happening;

(c) on June 17, 1994, the working interests owners met to discuss the Exxon Technical Report and unanimously agreed to **exclude** Premier's Tract 6 from both the Secondary Recovery and Tertiary Recovery project in the Avalon Unit;

(d) Exxon failed to present adequate evidence to demonstrate any substantial change in its Technical Report to now justify including the Premier Tract in the Unit;

(e) under the Exxon analysis the inclusion of the Premier Tract 6 is **not necessary** in order to effectively carry on the Secondary Recovery Project:

(f) Contrary to the testimony of Mr. David Boneau on behalf of Yates that reserves under certain portions of Yates' acreage would remain unrecovered if the Premier acreage were deleted from the unit, the Secondary Recovery Plan as proposed by Exxon provide no means for the recovery of any oil west of the existing Yates' wells.

(g) Since recovery of any such oil is thereby deferred to a tertiary recovery phase for which no commitment has been made, the implication that correlative rights would be impaired and that waste would occur if the Premier acreage were deleted from the proposed unit is groundless.

(h) At such time as firm plans are formulated for a tertiary recovery project, consideration may be given to (a) a lease line injection agreement with Premier and/or (b) including the Premier acreage in that CO2 project.

(i) that Exxon's proposed Tertiary Recovery ("CO2") Project is not supported by substantial scientific evidence, is speculative, inadequately studied and is **premature**;

(j) under the Exxon analysis there is **no increase** in ultimate recovery of secondary oil from the unit by including the Premier Tract 6;

(k) the Exxon analysis of the CO2 potential is speculative and not been the subject of any scientific study to determine its feasibility and therefore any forecasted increase in ultimate recovery of tertiary oil from the unit by including the Premier Tract 6 is speculative;

(l) Exxon seeks to include the Premier Tract 6 only as a "protection buffer" and assigns no "contributing value" for secondary oil recovery; See Section 70-7-4(J) NMSA 1978; and

(m) that Premier's Tract 6 can be excluded in accordance with the New Mexico Statutory Unitization Act.

(34) The COMMISSION further finds that Exxon's proposal to include the Premier Tract 6:

(a) fails to conform to the statutory requirements set forth in Paragraph (27) above;

(b) fails to appropriately distribute hydrocarbon pore volume with accurate corresponding reservoir parameters and has not established the appropriate relative value to be attributed to each tract including Tract 6; and

(c) fails to submit an appropriate participation formula to allow the owners of Tract 6 to recover their proportionate share of the total remaining recoverable hydrocarbons underlying the unit.

(d) the horizontal and vertical limits of said unit have **not** been reasonably defined by development;

(e) Exxon's Technical Report is flawed because it incorrectly correlates the top and base of the Upper Cherry Canyon Reservoir in Premier's FV #3 Well located as (Unit Well 1709) within Premier's Tract 6 which results in Exxon assigning 55 feet of net thickness to this well which in turn is used to contour the various geologic maps and ultimate the hydrocarbon pore volume map from which Exxon concludes that Premier Tract 6 has no remaining primary oil potential;

(f) Premier's FV #3 Well when correctly correlated has a net porosity thickness in the Upper Cherry Canyon Reservoir of 137 feet which is some 82 feet more than assigned by Exxon;

(g) Premier's hydrocarbon pore volume map establishes that there are substantial additional recoverable oil remaining under Premier's Tract 6.

(h) Premier's Tract 6 contains substantial additional oil which can be recovered by both waterflooding and carbon dioxide flooding.

(i) Premier Oil & Gas Inc. presented geologic and petroleum engineer evidence which demonstrates the appropriate distribution of reservoir pore volume with corresponding adjustments and the proper relative value to be attributed to Tracts 1109, 1309, 1509, 1709 and others to allow the owners of these tracts the opportunity to recover their proportionate share of the total recoverable hydrocarbons from the unit.

(j) Exxon's Technical Report in assigning "relative value" to each tract, determined that based upon logged derived water saturations (Sw=0.46) there are 2,320,000 barrels of waterflood target oil to be recovered from Premier's Tract 6 **but** then arbitrarily eliminated all of that incremental oil by increasing the water saturation (Sw=0.60) based upon water production volumes reported by Gulf when it operated the Premier FV-3 Well;

(k) Premier accurately determined that SW should be derived from log analysis and not actual water production because the actual water production from the FV-3 Well is attributed to water encroachment above the Upper Cherry Canyon Reservoir;

(35) The proposed Secondary Recovery ("waterflood") Project, with the deletion of Premier Tract 6, should result in the additional recovery of approximately 8,269,400 barrels of oil.

(36) The unitized management, operation and further development of the Avalon Unit Area, as modified by this Order, is reasonably necessary to effectively carry on secondary recovery operations and will substantially

increase the ultimate recovery of oil and gas from the unitized portion of the pool.

(37) The unitized method of operation as applied to the Avalon Unit Area (with the deletion of the Premier Tract 6) is feasible and will result with reasonable probability in the increased recovery of substantially more oil and gas from the unitized portion of the pool than would otherwise be recovered without unitization.

(38) The estimated additional costs of such operations will not exceed the estimated value of the additional oil so recovered plus a reasonable profit.

(39) Such unitization and adoption of a unitized method of operation will benefit the working interest owners and royalty owners of the oil and gas rights within the Avalon Unit Area.

(40) The granting of the application with the deletion of Tract 6 as proposed by Premier in this case will have no adverse effect upon the Delaware formation.

(41) The deletion of Premier's Tract 6 from the Avalon Unit Agreement and the Avalon Unit Operating Agreement provide for unitization and unit operation of the Avalon Unit Area upon terms and conditions that are fair, reasonable and equitable, and include:

a) an allocation to the separately owned tracts in the unit area of all oil and gas that is produced from the unit area and which is saved, being the production that is not used in the conduct of unit operations or not unavoidably lost;

b) a provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials and equipment contributed to the unit operations;

c) a provision governing how the costs of unit operations, including capital investments, shall be determined and charged to the separately owned tracts and how said costs shall be paid, including a provision providing when, how, and by whom, such costs shall be paid, including a provision providing when, how

and by whom such costs shall be charged to each owner or the interest of such owner, and how his interest may be sold and the proceeds applied to the payment of his costs;

d) a provision for carrying any working interest owner on a limited, carried or net-profits basis, payable out of production, upon terms and conditions which are just and reasonable, and which allow an appropriate charge for interest for such service payable out of production, upon such terms and conditions determined by the Division to be just and reasonable;

e) a provision designating the Unit Operator and providing for supervision and conduct of the unit operations, including the selection, removal or substitution of an operator from among the working interest owners to conduct the unit operations;

f) a provision for a voting procedure for decisions on matters to be decided by the working interest owners in respect to which each working interest owner shall have a voting interest equal to his unit participation; and,

g) the time when the unit operations shall commence and the manner in which, and the circumstances under which, the operations shall terminate and for the settlement of accounts upon such termination.

(42) Section 70-7-7.F. N.M.S.A. of said "Statutory Unitization Act" provides that any working interest owner who has not agreed in writing to participate in a unit could have relinquished to the Unit Operator all of its operating rights and working interest in and to the unit until his share of the costs has been repaid plus an additional 200 percent thereof as a non-consent penalty.

(43) At the time of the hearing, the applicant requested that no 200% penalty be assessed these working interest owners in said unit who have not committed their interests.

(44) The statutory unitization of the Avalon Unit Area is in conformity with the above findings, and will prevent waste and protect correlative rights of all interest owners within the proposed unit area, and should be approved.

IT IS THEREFORE ORDERED:

(1) The application of Exxon for the Avalon Unit Agreement covering 1971.8 acres, more or less, of Federal, State and Fee lands in the Avalon-Delaware Pool, Eddy County, New Mexico, is hereby approved for statutory unitization pursuant to the "Statutory Unitization Act", Section 70-7-1 through 70-7-21, N.M.S.A. (1978), **SUBJECT** to the following:

That Premier's Tract 6 shall be deleted and the same hereby is deleted from this unit.

(2) The lands covered by said Avalon Unit Agreement shall be designated the Avalon Unit Area and shall comprise the following described acreage in Lea County, New Mexico:

Tract 1:	SW/4 Sec 29, T20S, R28E
Tract 2:	Sec 31, T20S, R28E
	Lot 4(NW/4NW/4) Sec 4 T21S, R27E
	Lots 1&2 (N/2NE/4) Sec 5 T21S, R27E
Tract 3-A:	Lot 1 (NW/4NW/4) Sec 30, T20S, R28E
Tract 3-B:	Lot 2 (SW/4NW/4) Sec 30, T20S, R28E
Tract 3-C:	NE/4NW/4 Sec 30, T20S, R28E
Tract 3-D:	SE/4NW/4 Sec 30, T20S, R28E
Tract 3-E:	SW/4NE/4 Sec 30, T20S, R28E
Tract 4-A:	NW/4SE/4 Sec 30, T20S, R28E
Tract 4-B:	NE/4SE/4 Sec 30, T20S, R28E
Tract 5-A:	Lot 3 (NW/4SW/4) Sec 30, T20S, R28E
Tract 5-B:	Lot 4 (SW/4SW/4) Sec 30, T20S, R28E
Tract 5-C:	NE/4SW/4 Sec 30, T20S, R28E
Tract 5-D:	SE/4SW/4 Sec 30, T20S, R28E
Tract 5-E:	SW/4SE/4 Sec 30, T20S, R28E
Tract 5-F:	SE/4SE/4 Sec 30, T20S, R28E
Tract 6:	**[deleted]**
Tract 7:	E/2NE/4 Sec 36, T20S, R27E
Tract 8:	E/2SE/4 Sec 36, T20S, R27E
Tract 9:	Lots 1 & 2 (N/2NE/4) Sec 6, T21S, R27E
Tract 10:	W/2W/2, NE/4NW/4, SE/4SW/4 Sec 32, T20S, R28E
Tract 11:	SE/4NW/4 & NE/4SW/4 Sec 32, T20S, R28E
Tract 12:	E/2SE/4, SW/4NW/4 Sec 32, T20S, R28E

(3) The vertical limits of said unit area shall comprise that interval which includes the "Upper Cherry Canyon Reservoir" ("UCC") and the "Lower Cherry Canyon/Upper Brushy Canyon Reservoir" ("LCC-UBC") and extends from an upper limit between 100 feet above the base of the Goat Seep Reef to the top of the Bone Springs formation to a lower limit of the base of the Brushy Canyon formation which are defined at all points under the unit area correlative to a depth of 2,378 feet and 4,880 feet, respectively, as identified on the Compensated Neuron/Litho density/Gamma Ray Log dated September 14, 1990 for the Exxon Yates "C" Federal Well No. 36, located in Unit A of Section 31, T20S, R28E, NMPM, Eddy County, New Mexico.

(4) The applicant shall institute a waterflood project for the secondary recovery of oil and associated gas, condensate and all associated liquefiable hydrocarbons within and produced from the unit area, and said waterflood project is the subject of Division Case No. 11194.

(5) The applicant's request for approval of a tertiary recovery ("CO2") project is premature and is hereby **denied.**

(6) The Avalon Unit Agreement and the Avalon Unit Operating Agreement, which were submitted to the Division at the time of the hearing as Exhibit Nos. __ and __, respectively, are hereby incorporated by reference into this order.

(7) The Avalon Unit Agreement and the Avalon Unit Operating Agreement provide for unitization and unit operation of a portion of the Delaware formation upon terms and conditions that are fair, reasonable and equitable **PROVIDED** the following amendments are made:

THAT THE PREMIER TRACT NO. 6 SHALL BE DELETED.

(8) This order shall not become effective unless and until seventy-five percent of the working interest and seventy-five percent of the royalty interest owners in the Unit Area have approved the plan for unit operations as required by Section 70-7-8, N.M.S.A., 1978 Compilation.

(9) If the persons owning the required percentage of interest in the Unit Area as set out in Section 70-7-8, N.M.S.A., 1978 Compilation, do not approve the plan for unit operations within a period of six months from the date of entry of this order, this order shall cease to be of further force and

effect and shall be revoked by the Division, unless the Division shall extend the time for ratification for good cause shown.

(10) When the persons owning the required percentage of interest in the Unit Area have approved the plan for unit operations, the interests of all persons in the Unit Area are unitized whether or not such persons have approved the plan or unitization in writing.

(11) Any working interest owner who has not agreed in writing to participate in the unit prior to the effective date of this order shall be deemed to have relinquished to the Unit Operator all of his operating rights and working interest in and to the unit until his share of the costs has been repaid. Such repayment shall not include a non-consent penalty (Section 70-7-7.F N.M.S.A. 1978)

(12) The applicant as Unit Operator shall notify in writing the Division Director of any removal or substitution of said Unit Operator by any other working interest owner within the area.

(13) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

JAMI BAILEY, Member

WILLIAM W. WEISS, Member

WILLIAM J. LEMAY Chairman

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JASON KELLAHIN (RETIRED 1991)

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April 10, 1996

HAND DELIVERED

Mr. William J. LeMay, Director
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

Rand Carroll, Esq.
Division Attorney
Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: ***MOTION FOR A PROTECTIVE ORDER***
Meridian's Rhodes "B" Federal Well No. 7
Application of Hartman et al, to void
Division Order NSL-3633, for Discovery and
for Contraction and Extension of the Rhodes Oil & Gas Pools,
Eddy County, New Mexico

Gentlemen:

On behalf of Meridian Oil Inc., please find enclosed our Motion for a Protective Order postponing discovery, for a Denial of a Stay of Order NSL-3633 and for a continuance of this evidentiary hearing.

Also enclosed is a proposed order for your consideration.

Very truly yours,

W. Thomas Kellahin

via hand delivery:
cc: Michael J. Condon, Esq.
Attorney for Hartman et al
cc: William F. Carr, Esq.
Attorney for Texaco Inc.

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

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

APPLICATION OF DOYLE HARTMAN ET AL, TO VOID DIVISION ORDER NSL-3633, FOR DISCOVERY AND FOR THE CONTRACTION AND EXTENSION OF THE RHODES OIL AND GAS POOLS, EDDY COUNTY, NEW MEXICO.

CASE _____

ORDER NO. R-_____

ORDER GRANTING MERIDIAN OIL INC.'S MOTION FOR PROTECTIVE ORDER FOR DENIAL OF HARTMAN'S REQUEST FOR A STAY OF ORDER NSL-3633 AND FOR A CONTINUANCE OF HEARING

This matter coming before the Division on the Motion of Meridian Oil Inc. for a Protective order postponing Hartman's Motion for Discovery; for a Denial of Hartman's Request for a Stay of Administrative Order NSL-3633 and for a Continuance of the Examiner hearing now pending on May 2, 1996, and it appearing to the Division that good cause exists for granting Meridian's Motion;

It is, accordingly, hereby ORDERED, that:

(1) the Division grants Meridian's Motion for Protective Order postponing any and all discovery as described in Hartman's Motion for Discovery,

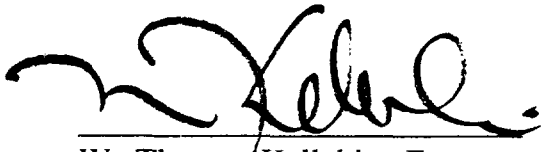
(2) the Division Denies Hartman's request for a Stay of Order NSL-3633: and

(3) the evidentiary hearing currently set for May 2, 1996, shall be continued until such time as the Commission has adopted rules and regulations for pre-hearing discovery before the Division.

OIL CONSERVATION DIVISION
OF NEW MEXICO

BY_____
WILLIAM J. LEMAY
DIRECTOR

Submitted:



W. Thomas Kellahin, Esq.
Attorney for Meridian Oil Inc.

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

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

APPLICATION OF DOYLE HARTMAN, ET AL, TO VOID DIVISION ORDER NSL-3633,FOR DISCOVERY AND FOR THE CONTRACTION AND EXTENSION OF THE RHODES OIL AND GAS POOLS, EDDY COUNTY, NEW MEXICO.

CASE _____

MERIDIAN OIL INC.'S MOTION FOR PROTECTIVE ORDER FOR DENIAL OF HARTMAN'S REQUEST FOR A STAY OF ORDER NSL-3633 AND FOR A CONTINUANCE OF HEARING

MERIDIAN OIL INC. ("MERIDIAN") by its attorneys, Kellahin & Kellahin, hereby requests that the New Mexico Oil Conservation Division ("Division") (a) issue a protective order postponing discovery in this case pending the adoption by the Oil Conservation Commission (Commission") of rules and regulations for pre-hearing discovery in matters pending adjudication by the Division; (b) issue an order denying Hartman's request for a Stay of Administrative Order NSL-3633; and (c) grant a continuance of the evidentiary hearing currently set for May 2, 1996 pending ultimate resolution of the Hartman Motion for Discovery;

and in support states:

BACKGROUND

(1) On March 28, 1996 Hartman filed with the Division a Motion for Discovery in which Hartman seeks from Meridian extensive discovery to be completed on or before April 20, 1996 including:

(a) First Set of Requests for Meridian to Produce Documents involving twelve different requests;

(b) First Set of Interrogatories for Meridian to Answer involving 9 different items; and

(c) Depositions of Leslyn Swierc and Donna Williams to be taken in Midland "substantially prior to May 2, 1996 hearing."

(2) Hartman contends this extraordinary discovery is necessary to support its Application, which among other things, seeks to void Division Order NSL-3633 which approved Meridian's application for an unorthodox well location for its Rhodes "B" Federal Well No. 7 ("Rhodes 7 Well") in Unit C of Section 26, T26S, R37E, Lea County, New Mexico

HARTMAN'S ALLEGATIONS IN SUPPORT OF HIS MOTION FOR DISCOVERY ARE ARGUMENTATIVE, DISPUTED AND WITHOUT MERIT

In support of its Motion, Hartman sets forth at length numerous statements which are factually and legally incorrect, argumentative, disputed in an attempt to persuade the Division that Order NSL-3633 is the result of improper conduct by both the Division and Meridian.

Hartman complicates, confuses and otherwise obscures the simple point that Hartman has no standing to complain about the location of the Rhodes 7 Well.

Contrary to Hartman's allegations, the public record before the Division in this matter reflects that:

(a) Prior to January 18, 1996, Division Rule 104.F(4) required that an applicant for administrative approval of an unorthodox well location ("NSL") send notice of that application **only to offset operators**;

(b) At all times relevant hereto, Hartman was not an offset operator there being no producing oil or gas well in the Rhodes Oil Pool or Rhodes Gas Pool in the SW/4 of Section 23 in which Hartman has a working interest;

(c) Despite not being an operator, Hartman received notice of Meridian's December 21, 1995 administrative application (Exhibit "A");

(d) Hartman had actual notice of Meridian's application and filed an objection with the Division by letter dated January 24, 1996;

(e) Michael E. Stogner, of the Division, requested Meridian to provide for his review and analysis copies of the Rhodes Unit Agreement and Side Agreement which he did not have and which he needed in order to make an accurate determination of well classification and decision concerning the Meridian application;

(f) Prior to the Division acting on the Meridian administrative application, Hartman filed five (5) separate letters each of which detailed his various objections and complaints;

(g) Michael E. Stogner, of the Division, consistent with Division practice for processing such administrative applications for unorthodox well locations ("NSL"), received and reviewed the various documents filed by Meridian and the objections filed by Hartman and Texaco;

(h) On January 18, 1996, the Commission entered Order R-10533 which among other things amended the requirement of notification for administrative NSL applications to now require notice to operators or in the absence of an operator to the lessee and in the absence of a lessee, to all owners of unleased mineral interests in the affected pool;

(i) Under the new Rule 104.F Hartman is not entitled to notice because the Rhodes 7 Well is a standard setback from his boundary because standard gas and oil well locations in the Rhodes Oil Pool are to be no closer than 330 feet to the side boundary of a 40-acre spacing unit;

(j) Hartman has no standing to object and the Division properly rejected his objection and approved the location of the Rhodes 7 Well by letter dated February 28, 1996;

(k) The Meridian application is based upon and justified by topographical conditions;

(l) Pursuant to a valid and effective administrative order issued by the Division, Meridian is entitled to produce and continues to produce the Rhodes 7 Well.

Hartman contends that there were improper exparte contacts with the Division. Hartman cast aspersion on an administrative process by which Meridian was simply responding to the Division's request for further information and explanations concerning the application. In particular, when Texaco and Hartman filed objections, Mr. Stogner asked Meridian for a written reply and Meridian provided one. Mr. Stogner, then reviewed the information and independently reach his own conclusions which are incorporated into the Administrative Order NSL-3633. Frankly, that is exactly how the agency should conduct business.

MERIDIAN OBJECTS TO HARTMAN'S ATTEMPT TO HAVE THE DIVISION ORDER THE RHODES 7 WELL SHUT-IN

On Friday, March 15, 1996, Hartman filed an application for a DeNovo Hearing including request that the Commission stay Administrative Order NSL-3633.

On Tuesday, March 19, 1996 without affording Meridian an opportunity to respond, William J. LeMay, apparently in his capacity as Chairman of the Commission, wrote to Hartman's attorney advising "the Commission will refer this matter to the Division and direct the Division to set this matter for an Examiner hearing and direct the Division to stay Administrative Order NSL-3633 pending the outcome of such hearing."

The Division has not yet acted to stay Administrative Order NSL-3633. Meridian requests that such action not be taken because:

(a) such action would be improper and contrary to law resulting in violation of Meridian's rights to due process and its correlative rights for the Division, without hearing, to unilaterally require the Rhodes Well to be shut-in.

(b) Hartman has failed to satisfy the requirements set forth in Tenneco Oil Company v. New Mexico Water Quality Control Commission et al, 105 N.M. 708 (1986) for obtaining a stay of an agency action by:

1. failing to demonstrate the likelihood that his application will prevail on the merits

2. failing to show irreparable harm to him unless the stay is granted;

3. failing to show that no substantial harm will result to other interested person including Meridian; and

4. failing to show that no harm will ensure to the public interest.

MERIDIAN'S OBJECTIONS TO DISCOVERY

Meridian objects to the scope of discovery sought by Hartman on the grounds that:

(a) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive;

(b) Hartman has had ample opportunity to obtain much of this information from public records;

(c) much of the information sought is simply not relevant;

(d) much of the information sought is confidential and proprietary the disclosure of which to Hartman as a competitor would be adverse to Meridian;

(e) the discovery is unduly burdensome, expensive and time consuming.

ABSENCE OF DIVISION RULES AND PROCEDURES GOVERNING DISCOVERY

Hartman's Motion for Discovery seeks to do what no other party has yet been able to do in any case before the Division and, if granted, will establish a precedent for the Division.

If such discovery is allowed in this case, then all the reasons which would allow it to occur in this case are now applicable to each and every future Division case.

A Protective Order is necessary pending the adoption by the Commission of Rules and Procedures governing discovery.

The Commission has consistently limited discovery to very explicit areas involving (a) the exercise of its police powers in compulsory pooling See Application of Santa Fe Energy Operating Partners Ruling of the Commission Case 10211 (Exhibit "B" attached); (b) the disclosure of potash core data. Order R-9697 (Exhibit "C" attached).

While, the New Mexico Supreme Court in the Matter of the Protest of Ira B. Miller, 88 N.M. 492 (1975), has recognized that "Protestants appearing before administrative boards have a right to discovery similar in scope to that granted by Rules 26 and 27 of the Rules of Civil Procedure." the Commission has implemented this concept by a substitute process which requires that all cases first be heard in an evidentiary hearing before a Division Examiner.

The Division's Rule 1212 provides that:

> "Full opportunity shall be afforded all interest parties at a hearing to present evidence and to cross-examine witnesses. In general, the rules of evidence applicable in a trial before a court without a jury shall be applicable, provided that such rules may be relaxed, where, by so doing, the ends of justice will be better served."

This serves as an effective and appropriate means for taking deposition and obtaining data during the hearing before a court reporter. All hearing transcripts of witness testimony is made available to the public and to parties without charge.

Thereafter, the Commission hears such matters at a DeNovo hearing with the parties being afforded the benefit and use of the discovery undertaken at the Examiner hearing.

If the Division intends that this practice now be altered to accommodate Mr. Hartman, then this matter needs to be set for a hearing before the Commission and a comprehensive rule and regulation need to be adopted with input from the entire industry which will now have to bear the expense of time involved.

WHEREFORE, Meridian respectfully requests that the Division:

(1) grant Meridian's Motion for Protective Order postponing any and all discovery,

(2) Deny Hartman's request for a Stay of Order NSL-3633: and

(3) that the evidentiary hearing currently set for May 2, 1996, be continued until such time as the Commission has adopted rules and regulations for pre-hearing discovery before the Division.

KELLAHIN AND KELLAHIN

By: _____
W. Thomas Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504
(505) 982-4285

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing pleading was hand delivered on April 10, 1996 to the office of Michael Condon, attorney for Doyle Hartman et al., and to William F. Carr, Esq., attorney for Texaco Exploration and Production Inc.

_____
W. Thomas Kellahin

MERIDIAN OIL

January 29, 1996

Doyle Hartman Oil Operators
500 N. Main
Midland, Texas 79701

RE: Request for a Non- Standard Location
Rhodes B Federal Well No. 7
330' FNL & 1470' FWL
Sec. 26, T26S, R37E
Lea County, New Mexico

Ladies & Gentlemen:

In reviewing my requests, I realized that I failed to notify your company as an offset operator. Please find attached a copy of the request that was filed with the Oil Conservation Division in Santa Fe, New Mexico. I apologize for the oversight in this matter. Should you have any questions, or need additional information, please do not hesitate to contact me at 915-688-6943.

Sincerely,

Donna J. Williams
Regulatory Compliance

P.O. Box 51810, Midland, Texas 79710-1810, Telephone 915-688-6800
3300 N. "A" St., Bldg. 6, 79705-5406

Exhibit "A"

be required to disclose the information prior to Hanley making that commitment.

(11) Hanley was unwilling to commit its interest to the well in any manner without receiving the information from Santa Fe and Santa Fe therefore filed this forced pooling application pursuant to the Oil & Gas Act asking the Division to use the police powers of the State to force a private property interest to be committed to this drilling venture. As a result, Hanley is forced to decide between accepting Santa Fe's farm-out offer, joining in the drilling of the well by paying its proportionate share of costs in advance or being force pooled and allowing Santa Fe to recover out of production Hanley's proportionate share of drilling and completing and equipping the well, plus a risk penalty established by the Division, without having access to information about a direct offset well operated by Santa Fe which information is now available only to Santa Fe.

(12) When a party asks the Division to use the police power of the State to impose a burden upon a private property interest, minimum due process requires a departure from usual industry practice with respect to the disclosure of the information, and Hanley should be allowed access to the raw data information from the offsetting Kachina "8" Federal No. 1 well which is not otherwise available from public sources, but it should not be allowed to compel Santa Fe to produce Santa Fe's interpretations of this data, whether or not those interpretations are based on information from just this well or from all of the available information.

(13) Rule 1105 of the Rules and Regulations of the Oil Conservation Division requires the filing of Form C-105 which includes all special tests conducted on the well (item 1, 3, 4, and 5 of the Subpoena), one copy of all electrical and radio-activity logs run on the well (part of item 2 of the Subpoena), which information becomes of public record immediately, or if so requested by the operator of the well, after being held confidential for 90 days. Daily drilling and completion reports (item 9 of the Subpoena) could be public record if they contain testing information. Rule 1105 further provides that the data may be introduced in public hearing regardless of the request that it be held confidential.

(14) Santa Fe could keep all information on the Kachina "8" Federal No. 1 well confidential for 90 days from completion if it dismisses the pending application and does not seek to involve the police powers of the State to force pool Hanley.

(15) In order to comply with minimum due process requirements implicated by State action and to protect the correlative rights of Hanley, Santa Fe should be required to provide sufficient information for Hanley to make an informed decision as to which of the alternatives set forth above it elects to follow by having access to data which normally

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

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

CASES NO. 10446, 10447
10448, 10449

ORDER R-9679

APPLICATION OF YATES PETROLEUM CORPORATION FOR A PERMIT TO DRILL, EDDY COUNTY, NEW MEXICO

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing on motions to quash sub poenas duces tecum at 9:00 a.m. on May 22, 1992 at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission", all members being present for hearing.

NOW, on this 12th day of June, 1992, the Commission, having considered the arguments of counsel,

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) These cases have been consolidated for purpose of hearing.

(3) Reference is made to parties and locations which are matters of record in this proceeding and detailed descriptions are not given herein.

(4) Yates Petroleum Corporation has requested and the Commission has issued the following sub poenas duces tecum:

(a) dated April 16, 1992, directed to Bob Lane, New Mexico Potash Corporation;

(b) dated May 6, 1992, directed to Leslie Cone, District Manager, Bureau of Land Management.

(5) New Mexico Potash Corporation, operator of the LMR in question, objects to providing the information on core-holes outside of section 2, the section on which the proposed wells are to be located, and has moved to quash the sub poenas because the information Yates is requesting is confidential and proprietary.

(6) The burden is on Yates to prove that the wells in question can be drilled without causing undue waste of potash.

(7) Yates cannot adequately prepare its case without access to the information considered confidential and proprietary by New Mexico Potash.

(8) A protective order can be established which will protect New Mexico Potash proprietary interests and still afford Yates the opportunity to adequately prepare its case.

IT IS THEREFORE ORDERED THAT:

(1) The motion of New Mexico Potash Corporation to quash the sub poena duces tecum, identified in Finding 4 herein, issued by the Commission at the request of Yates Petroleum Corporation is hereby denied.

(2) Unless the parties otherwise agree, the information sought from New Mexico Potash Corporation shall be produced not later than 1:00 p.m. on June 17, 1992.

(3) Unless otherwise agreed by the parties and the Bureau of Land Management, the information sought from BLM shall be produced at the Roswell District office of the BLM not later than 1:00 p.m. on June 19, 1992.

(4) Unless the parties otherwise agree on alternative protective orders approved by the Director of the Oil Conservation Division, production shall be subject to the following confidentiality provision:

(a) Inspection of the confidential information shall be limited to one attorney, one management representative and one expert for Yates Petroleum Corporation.

(b) No reproductions shall be made of any confidential material without the consent of New Mexico Potash Corporation or an order of this Commission.

(c) No representative of Yates shall disclose the information to any other person, including any other person within Yates Petroleum Corporation.

(5) Violation of the confidentiality provisions of this order or of any agreement entered into by the parties shall be grounds for contempt of this Commission.

(6) If it is determined that any confidential material must be presented at hearing, the parties and the Chairman of the Commission shall determine what measures shall be undertaken to preserve the confidentiality of the information.

(7) The Commission retains jurisdiction of this matter for the entry of such further orders as it deems necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

GARY CARLSON,
Member

WILLIAM W. WEISS,
Member

WILLIAM J. LEMAY,
Chairman

S E A L

tended to punish the wrongdoer and deter others from engaging in similar conduct. 450 N.E.2d at 495. Applying a similar rationale as employed in *Husted*, the Hawaii court in *In re WPMK Corp.* decided that innocent partners are not liable for punitive damages unless it could be shown "that the partnership authorized, ratified, controlled, or participated in the alleged tortious activity." 59 B.R. at 997.

" 'The rule [on derivative liability] is well established in New Mexico that the principal, or master, is liable for punitive or exemplary damages *only* in cases where the principal or master has in some way authorized, participated in or ratified the acts of the agent or servant, which acts were wanton, oppressive, malicious, fraudulent or criminal in nature.' " *Samedan Oil Corp. v. Neeld*, 91 N.M. 599, 601, 577 P.2d 1245, 1247 (1978) (quoting *Couillard v. Bank of N.M.*, 89 N.M. 179, 181, 548 P.2d 459, 461 (Ct.App.1976)). This rule supported the holding in *Newberry v. Allied Stores, Inc.*, 108 N.M. 424, 773 P.2d 1231 (1989), a defamation case in which we reversed an employer's liability for punitive damages due to the employee's tort. "[A] master or employer is liable for punitive damages for the tortious act of an employee acting within the scope of his [or her] employment *and* where the employer in some way participated in, authorized or ratified the tortious conduct of the employee." *Id.* at 431, 773 P.2d at 1238 (citing *Samedan Oil Corp.*).

Our law is consistent with the rule set out by the United States Supreme Court in the seminal case of *Lake Shore & Michigan Southern Railway Co. v. Prentice*, 147 U.S. 101, 107, 13 S.Ct. 261, 262, 37 L.Ed. 97 (1893), that punitive damages can only be awarded against one who has participated in the offense. *Samedan*, 91 N.M. at 601, 577 P.2d at 1247. In other words, "a master or principal is not liable for punitive damages unless it can be shown that in some way he also has been guilty of the wrongful motives upon which such damages are based." *Id.* at 602, 577 P.2d at 1248.

In *Meleski*, unlike the case at bar, the court held there was sufficient evidence for the jury to have found that the partners ratified or authorized the fraudulent acts. Here the court specifically found that the copartners, Mrs. Glenn and the Popes, "committed no fraudulent acts." Accordingly, absent a finding of ratification, authorization, or participation in the fraudulent conduct, punitive damages may not be recovered from copartners for one partner's fraudulent conduct.[1] Glenn, his wife, and Mr. and Mrs. Pope, as partners in P & G Investments are liable to plaintiff jointly and severally for the award of compensatory damages, attorney fees, and costs; however, only Glenn is liable to plaintiff for the award of punitive damages.

IT IS SO ORDERED.

BACA and MONTGOMERY, JJ., concur.

835 P.2d 819

SANTA FE EXPLORATION COMPANY, Petitioner–Appellant,

v.

OIL CONSERVATION COMMISSION OF the STATE OF NEW MEXICO, Respondent–Appellee,

and

STEVENS OPERATING CORPORATION, Petitioner–Cross–Appellant,

v.

OIL CONSERVATION COMMISSION OF the STATE OF NEW MEXICO, Respondent–Cross–Appellee.

No. 19707.

Supreme Court of New Mexico.

July 27, 1992.

Appeal was taken from order of the District Court, Chaves County, W.J. Schne-

1. In *Callegos* this court prescribed that the determination as to the liability for punitive damages must be made separately when two or more defendants are involved. 108 N.M. at 728, 779 P.2d at 105.

dar, D.J., approving final order of the Oil Conservation Commission governing production of oil from pool. The Supreme Court, Baca, J., held that: (1) Commission member's ex parte contact with interest owner did not create appearance of impropriety; (2) interest owner's protected property right in producing oil underlying its tract was not implicated by virtue of another interest owner's drilling of well; (3) Commission did not exceed its authority under Oil and Gas Act when approved; and (4) Statutory Unitization Act does not preclude unitization of field in primary production.

Affirmed.

1. Administrative Law and Procedure ⇐682

Mines and Minerals ⇐92.21

Oil Conservation Commission's failure to provide proper citation to record in its answer brief did not require Supreme Court to disregard Commission's arguments or to accord Commission's arguments less weight on appeal; rather, counsel for Commission would be advised to read and follow appellate rules to avoid future violations. SCRA 1986, Rule 12–213, subds. A(3), B.

2. Administrative Law and Procedure ⇐314

Constitutional Law ⇐296(1)

Ex parte contact by member of Oil Conservation Commission with owner of interest in oil pool prior to owner's second directional drilling attempt, member's conditional approval of the drilling, and subsequent participation in affirmance of decision by Commission, did not create appearance of impropriety, in violation of due process; bias issue was not raised at Commission hearing, and member did not express opinion regarding outcome of case prior to hearing. NMSA 1978, §§ 70–2–2 to 70–2–4, 70–2–11; U.S.C.A. Const.Amend. 14.

3. Constitutional Law ⇐255(1), 278(1.1)

At a minimum, procedural due process requires that before being deprived of life, liberty, or property, a person or entity be given notice of possible deprivation and an opportunity to defend; in addition, the trier of fact must be unbiased and may not have predisposition regarding outcome of case. U.S.C.A. Const.Amend. 14.

4. Constitutional Law ⇐296(1)

Interest owner in oil pool was not denied due process on appeal from Oil Conservation Commission when district court dismissed with prejudice its claim of bias on part of Commission member; court allowed briefing on question of whether to vacate claim of bias and whether dismissal of bias claim should be with or without prejudice. U.S.C.A. Const.Amend. 14.

5. Constitutional Law ⇐277(1)

Interest owner's protected property right in producing oil underlying its tract in oil pool was not implicated by virtue of another interest owner's drilling of the well, for purposes of due process notice and hearing requirements. U.S.C.A. Const. Amend. 14.

6. Administrative Law and Procedure ⇐475

Constitutional Law ⇐296(1)

Mines and Minerals ⇐92.17

Oil Conservation Commission did not violate interest owner's due process rights in proceeding to determine whether to approve unorthodox well in oil pool and impose production penalty when it considered issues concerning allocation of production from pool, protection of correlative rights of pool members, and prevention of waste; parties had general notice of issues to be determined, and other evidence was presented at hearing before Commission made its final decision. U.S.C.A. Const. Amend. 14.

7. Constitutional Law ⇐296(1)

Mines and Minerals ⇐92.78

Oil Conservation Commission did not violate interest owner's substantive due process rights when it set low allowable production from unorthodox well in oil pool: Commission did not act in arbitrary or capricious manner, and Commission's actions were consistent with its statutory duties to prevent waste and protect correla-

tive rights of other producers in the pool. U.S.C.A. Const.Amend. 14.

8. **Mines and Minerals** ⇐92.78

Oil Conservation Commission did not exceed its authority under Oil and Gas Act when it approved unorthodox well in oil pool, placed restriction on production from that well, and limited oil production from entire pool; well was located so that it could produce oil from top portion of pool, thereby avoiding waste, but was also located so that it could effectively drain pool, supporting production penalty. NMSA 1978, §§ 70–2–11, 70–2–12, subd. B(7).

9. **Mines and Minerals** ⇐92.78

Statutory Unitization Act does not preclude unitization of oil field in primary production. NMSA 1978, §§ 70–2–11, subd. A, 70–7–1.

10. **Mines and Minerals** ⇐92.78

Oil Conservation Commission did not violate its rules set out in order establishing oil pool when it allowed interest owner to drill well at nonstandard location without prior notice and hearing to other lease holders in pool, where other lease holders had notice of subsequent hearing to determine whether well would be allowed to produce oil.

11. **Mines and Minerals** ⇐92.79

Substantial evidence supported decision Oil Conversation Commission approving well in unorthodox location in oil pool, placing restriction on production from that well, and limiting production from entire pool. NMSA 1978, §§ 70–2–4, 70–2–5, 70–2–33, subd. H.

12. **Administrative Law and Procedure** ⇐791

"Substantial evidence" necessary to support agency decision is relevant evidence reasonable mind would accept as sufficient to support conclusion.

See publication Words and Phrases for other judicial constructions and definitions.

13. **Administrative Law and Procedure** ⇐791

In determining whether there is substantial evidence to support administrative agency decision, Supreme Court reviews whole record; in such review, Court reviews evidence in light most favorable to upholding agency determination, but does not completely disregard conflicting evidence.

14. **Administrative Law and Procedure** ⇐788

Agency decision will be upheld if the Supreme Court is satisfied that evidence in record demonstrates reasonableness of its decision.

15. **Mines and Minerals** ⇐92.78

Oil Conservation Commission's decision to approve unorthodox well drilled in oil pool, place restrictions on production from that well, and limit production from entire pool, was not arbitrary and capricious; Commission considered evidence presented by parties, and in light of its statutory duties to protect correlative rights and avoid waste, fashioned creative solution to resolve dispute. NMSA 1978, § 70–2–13.

Padilla & Snyder, Ernest L. Padilla, Santa Fe, Brown, Maroney & Oaks Hartline, K. Douglas Perrin, Dallas, Tex., for appellant.

Robert G. Stovall, Santa Fe, for Oil Conservation Com'n.

Campbell, Carr, Berge & Sheridan, William F. Carr, Santa Fe, for Stevens Operating Corp.

OPINION

BACA, Justice.

This appeal involves a series of orders issued by the New Mexico Oil Conservation Commission (the "Commission") and the New Mexico Oil Conservation Division (the "Division"). These orders established and govern the production of oil from the North King Camp Devonian Pool (the "Pool") in which appellant, Santa Fe Exploration Company ("Santa Fe"), and cross-appellant, Stevens Operating Corporation ("Stevens"), owned interests. After the Division approved Stevens's request to drill a

well at an unorthodox location and limited production from the well, both Santa Fe and Stevens petitioned the Commission for a de novo review. After consolidation of the petitions, the Commission, in its final order, approved the Stevens well, placed restrictions on Stevens's production from this well, and limited oil production from the entire Pool. Pursuant to NMSA 1978, Section 70–2–25 (Repl.Pamp.1987), both Santa Fe and Stevens appealed the final order of the Commission to the district court, which affirmed. Both parties appeal the decision of the district court. We note jurisdiction under Section 70–2–25 and affirm.

I

In December 1988, at the request of Santa Fe, the Division issued Order No. R–8806, which established the Pool and the rules and regulations governing operation of the Pool. These rules established standard well spacings and a standard unit size of 160 acres; regulated the distances that wells could be placed from other wells, the Pool boundary, other standard units, and quarter-section lines; set production limits for wells in the Pool; and outlined procedures for obtaining exceptions to the rules. The order also approved Santa Fe's Holstrom Federal Well No. 1 (the "Holstrom well") for production, which Santa Fe began producing at the rate of 200 barrels per day.

In April 1989, Curry and Thornton ("Curry"), predecessors in interest to Stevens, applied to the Division to drill a well in the Pool and for an exception to the standard spacing and well location rules. Curry requested the non-standard spacing because it claimed that geologic conditions would not allow for production of oil from their lease from an orthodox well location. Santa Fe [1] opposed the application, claiming that the well would impair its correlative rights to oil in the Pool. In its Order No. R–8917, the Division approved Curry's application to drill the well at the unorthodox location but imposed a production penalty limiting the amount of oil that Curry could produce from the well to protect correlative rights of other lease holders in the Pool.

In May, Stevens, which had replaced Curry as an operator in the Pool, applied to the Division for an amendment to Order No. R–8917. Stevens requested that, instead of drilling the well authorized by Order No. R–8917, it be allowed to enter an existing abandoned well and drill directionally to a different location. The requested well, if approved and drilled, would also be at an unorthodox location. Santa Fe opposed the amendment and objected to the original production penalty, which it contended should have allowed less production from the Stevens well. The Division approved Stevens's application and issued Order No. R–8917–A amending Order No. R–8917. The amended order, while allowing directional drilling to an unorthodox location, required Stevens to otherwise meet the requirements of the original order, including the original production penalty.

Stevens proceeded to drill the well authorized by the amended order. When the well failed to produce oil, Stevens contacted the Division Director and requested approval to re-drill the well to a different location and depth. The Director permitted Stevens to continue drilling at its own risk and subject to subsequent orders to be entered after notice to all affected parties and a hearing. Stevens drilled and completed this well (the "Deemar well") and filed an application for a de novo hearing by the Commission to approve production from the well and to consider the production penalty. *See* NMSA 1978, § 70–2–13 (Repl.Pamp.1987) (decisions by the Director may be heard de novo by the Commission). Santa Fe also filed an application for a de novo hearing opposing Stevens's application or, in the alternative, urging that a production penalty be assessed against the Stevens well.

The Commission consolidated the petitions and, after notice to the parties and a

1. Santa Fe and Exxon USA were co-owners of both the lease and the production from the Holstrom well. While both Santa Fe and Exxon USA contested the application, for the sake of simplicity we will refer to them collectively as "Santa Fe."

hearing, entered Order No. R-9035. This order estimated the total amount of oil in the Pool and the amount of oil under each of the three tracts in the Pool.[2] The order set the total allowable production from the Pool at the existing production rate of 235 barrels per day,[3] and allocated production to the two wells in accordance with the relative percentages of oil underlying each of the three tracts. Under this formula, Stevens was allowed to produce 49 barrels per day from its Deemar well, Santa Fe was allowed to produce 125 barrels per day from its Holstrom well, and the undeveloped tract left in the Pool would be allowed to produce 61 barrels per day, if developed. The order also allowed the production to be increased to 1030 barrels per day if all operators voluntarily agreed to unitized operation of the Pool.

Pursuant to NMSA 1978, Section 70-2-25(A), both Santa Fe and Stevens applied to the Commission for a rehearing. Santa Fe contended that the second attempt at directional drilling was unlawful; that it was denied due process and equal protection by the ex parte contact between Stevens and the Division Director; that the findings of the Commission apportioning production were not supported by the evidence; that the reduction of production was not supported by the evidence and was erroneous, capricious, and contrary to law; and that the unitization was illegal and confiscatory to Santa Fe. Stevens argued that the order was contrary to law because it would result in the drilling of an unnecessary well on the undeveloped tract, which would result in waste; that the order was arbitrary, capricious, unreasonable, and contrary to law because it exceeded the Commission's statutory authority; that the order violated its due process rights; and that the findings regarding recoverable reserves were contrary to the evidence and arbitrary and capricious. When the Commission took no action on the applications for rehearing, the petition was presumed to be denied and each party appealed to the district court, which consolidated the appeals. *See* NMSA 1978, § 70-2-25.

On appeal to the district court, Santa Fe contended that Order No. R-9035 was arbitrary and capricious, that it was not supported by substantial evidence, that the Commission exceeded its statutory authority, and that the Commission Chairman's bias against Santa Fe denied it due process. Stevens contended that the order was arbitrary, capricious, and unreasonable; that it was contrary to law; and that it denied Stevens's rights to due process. The trial court, after a review of the evidence presented at the Commission's hearings, affirmed the Commission's order. The trial court also dismissed, with prejudice, Santa Fe's contention of bias.

Pursuant to Section 70-2-25, both Santa Fe and Stevens appeal the district court decision to this Court. Santa Fe contends (1) that it was denied procedural due process because the Commission was biased; (2) that the district court erred when it failed to consider the question of bias; (3) that the Division violated its own regulations and procedures; (4) that the Commission abused its discretion when it lowered allowable production from the Pool; and (5) that the Commission decision was not supported by the evidence and was arbitrary and capricious. Stevens contends (1) that the Commission exceeded its authority when it reduced allowable production in an attempt to unitize operation of the Pool; (2) that the order violated the Commission's statutory duty to prevent waste; (3) that the order was not supported by substantial evidence; and (4) that its rights to due process were violated. Because of a substantial overlap of issues

2. The order estimated oil productive rock volume in the Pool to be 10,714 acre-feet and allocated the oil as follows: 21% to the tract on which Stevens held the lease and where the unorthodox well was located (E/2 W/2 of section 9); 53% to the tract on which Santa Fe held the lease and where the Holstrom well was located (SE/4 of section 9); 26% to the tract on which Santa Fe held the lease and where no producing well was located (NE/4 of section 9).

3. At the time, Santa Fe was producing 200 barrels per day of oil from its Holstrom well. Under the production penalty formula imposed by the prior Division order, Stevens would have been allowed to produce 35 barrels per day from its Deemars well.

raised by Santa Fe and Stevens, we consolidate these issues and address the following: (1) whether the Commission's actions violated due process rights of either Santa Fe or Stevens; (2) whether by issuing Order No. R-9035 the Commission exceeded its statutory authority or violated any of its own rules; (3) whether the Commission's order was supported by substantial evidence; and (4) whether the Commission's order was arbitrary and capricious.

II

[1] Before addressing the substance of this appeal, we first must address an issue of appellate procedure. Santa Fe contends that the Commission, in its answer brief, has disregarded SCRA 1986, 12-213 (Cum. Supp.1991), by failing to provide proper citation to the record proper, transcript of proceedings, and exhibits on which it relied. In light of this failure, Santa Fe urges us to disregard the Commission's arguments or, in the alternative, to accord the Commission's arguments less weight.

We agree with Santa Fe that the Commission failed to provide proper citations in its answer brief. Rule 12-213(B) requires an answer brief to meet the same requirements as the brief in chief, which include "citations to authorities and parts of the record proper, transcript of proceedings or exhibits relied on." Rule 12-213(A)(3). The Commission's answer brief contains numerous factual statements without a single citation to the record below, except for a passing reference to several findings made by the Commission (but without citation to where such findings appear in the Record Proper) and one citation to the record in which the Commission's brief quoted Santa Fe's brief in chief and citation. The Court of Appeals, in addressing a similar violation, stated:

> [W]e caution [appellant's] counsel regarding violations of our appellate rules. [Appellant] provided no citations to the parts of the record and transcript he relied on, a violation of SCRA 1986, 12-213(A)(1)(c) and (A)(2). Technically, we have no duty to entertain any of [appellant's] contentions on appeal due to this procedural violation. *See Bilbao v. Bilbao*, 102 N.M. 406, 696 P.2d 494 (Ct.App. 1985). [Appellant's] counsel also failed to provide case authority for several of his issues, a violation of Rule 12-213(A)(3). We remind counsel that we are not required to do his research. *In re Adoption of Doe* [, ~~100 N.M. 764,~~ 676 P.2d 1329 (1984)]. We will not review issues raised in appellate briefs and unsupported by cited authority. *Id.*

Fenner v. Fenner, 106 N.M. 36, 41-42, 738 P.2d 908, 913-14 (Ct.App.), *cert. denied*, 106 N.M. 7, 738 P.2d 125 (1987). As the Court of Appeals advised appellant's counsel in *Fenner*, we advise counsel for the Commission "to read and follow the appellate rules to avoid future violations." *Id.* 106 N.M. at 42, 738 P.2d at 914.

III

We turn now to the due process claims of Santa Fe and Stevens. Santa Fe claims that it was denied procedural due process for three separate reasons: (1) the Commission was biased by the ex parte communication between the Division Director and Stevens thereby tainting its decision; (2) the Division Director's approval of the second directional drilling attempt was given prior to notice and a hearing; and (3) the Commission failed to give notice that it was going to consider limiting allowable production from the Pool. Stevens, while contesting Santa Fe's charge of bias, contends that its procedural due process rights were violated because the Commission failed to give adequate notice of its intent to limit production from the entire field. Stevens also claims that its substantive due process rights were violated by the Commission's allegedly erroneous determination of the recoverable reserves underlying the Pool. We address each contention below.

A

[2] Santa Fe argues that its procedural due process rights were denied because the Division Director had ex parte contact with Stevens prior to Stevens's second directional drilling attempt, conditionally approved the drilling, and then participated in the

affirmance of this decision as a member of the Commission. This action, Santa Fe contends, gives the appearance of impropriety and irrevocably taints the Commission's decision, and, as such, renders the decision voidable. *See, e.g., Professional Air Traffic Controllers Org. v. Federal Labor Relations Auth.*, 685 F.2d 547, 564 (D.C.Cir.1982). Santa Fe also contends that the district court erred when it dismissed its claim of bias with prejudice. Santa Fe argues that the court should have allowed its discovery motion on the issue of bias rather than dismissing with prejudice. These actions, Santa Fe concludes, violated its rights to procedural due process.

[3] At a minimum, procedural due process requires that before being deprived of life, liberty, or property, a person or entity be given notice of the possible deprivation and an opportunity to defend. *Reid v. New Mexico Bd. of Examiners in Optometry*, 92 N.M. 414, 415–16, 589 P.2d 198, 199–200 (1979). In addition, the trier of fact must be unbiased and may not have a predisposition regarding the outcome of the case. *Id.* at 416, 589 P.2d at 200. Our cases also require the appearance of fairness to be present. *Id.*

> The inquiry is not whether the Board members are actually biased or prejudiced, but whether, in the natural course of events, there is an indication of a possible temptation to an average man sitting as a judge to try the case with bias for or against any issue presented to him.

Id. The above principles are applicable to administrative proceedings, such as the instant case, where the administrative agency adjudicates or makes binding rules that affect the legal rights of individuals or entities. *Id.* Due process safeguards are particularly important in administrative agency proceedings because "many of the customary safeguards affiliated with court proceedings have, in the interest of expedition and a supposed administrative efficiency, been relaxed." *Id.*

In *Reid*, the Board of Examiners in Optometry initiated disciplinary proceedings against Dr. Reid for alleged misconduct. Prior to the hearing and pursuant to a statute, Reid disqualified two of the five Board members. At the hearing, Reid moved to disqualify one of the remaining Board members, Dr. Zimmerman, on the basis of bias. Reid based his motion on Zimmerman's prior statements that Reid would lose his license after the hearing. After Zimmerman testified that he could render a fair and impartial decision, the Board denied Reid's request to disqualify Zimmerman. The Board revoked Reid's license to practice and he appealed to the district court, which affirmed. *Id.* at 415, 589 P.2d at 199. On appeal to this Court, Reid claimed that Zimmerman's testimony indicated prejudgment and that the failure to disqualify Zimmerman deprived him of his right to due process. We agreed and held that the Board's failure to disqualify Zimmerman violated Reid's due process rights because Zimmerman's prior statements indicated bias against Reid. *Id.* at 416, 589 P.2d at 200.

The instant case is distinguishable from the *Reid* case. Unlike the appellant in *Reid*, Santa Fe failed to raise the issue of the Division Director's bias at the Commission hearing, even though it was aware of the prior ex parte contact. Unlike the Board member in *Reid*, the Director in the instant case did not express an opinion regarding the outcome of the case prior to the hearing. The Director merely permitted Stevens to drill a second exploratory well at its own risk and conditioned approval of production from the well on further Commission action. He made no comment on the probability of Commission approval or on the possible production penalties that could be assessed. Additionally, at the original hearing, the Director could have approved Stevens's request to drill the well to a different depth. Moreover, by statute, the Director is a member of the Commission, NMSA 1978, Section 70–2–4 (Repl. Pamp.1987), and has a duty to prevent waste, NMSA 1978, Sections 70–2–2, –3 (Repl.Pamp.1987) (defining and prohibiting waste); NMSA 1978, Section 70–2–11 (Repl.Pamp.1987) (setting out duties). Here, the Director avoided waste by allowing the second well to be drilled, which

eliminated the expense of removing the drilling rig from the drilling site and moving the rig back after approval was obtained. As *Reid* is distinguishable, we hold that the Commission did not violate Santa Fe's procedural due process rights by virtue of bias.

[4] In addition, Santa Fe was not denied due process when the district court dismissed its claim of bias with prejudice. The court allowed briefing on the question of whether to vacate the claim of bias and whether dismissal of the bias claim should be with or without prejudice. More is not required. *See Lowery v. Atterbury,* 113 N.M. 71, 73, 823 P.2d 313, 315 (1992). *See also, Jones v. Nuclear Pharmacy, Inc.,* 741 F.2d 322, 325 (10th Cir.1984) (procedural due process not violated where petitioner given opportunity to address issue by memorandum).

B

We next address other claims by the parties that their respective rights to procedural due process were denied. Santa Fe contends that the Commission's actions impaired its constitutionally protected property rights with neither adequate notice nor an opportunity to be heard regarding two separate issues: (1) whether the Commission should grant permission for Stevens's second directional drilling attempt; and (2) whether the Commission should reduce the Pool wide allowable production. Stevens also contends that it was denied procedural due process when the Commission failed to provide notice prior to the hearing that Pool wide allowables might be reduced as a consequence of the hearing.

1

[5] Santa Fe's first argument is that, by allowing Stevens to drill the second well without notice or a prior hearing, the Commission denied Santa Fe due process. Before due process is implicated, the party claiming a violation must show a deprivation of life, liberty, or property. *Reid,* 92 N.M. at 415–16, 589 P.2d at 199–200. In the instant case, the property right implicated is Santa Fe's right to produce the oil underlying its tract in the Pool. This right was not implicated by virtue of Stevens drilling a well, but rather would be implicated by Stevens being allowed to produce oil from the well. Santa Fe had notice and an opportunity to be heard before the Commission granted Stevens permission to produce oil from the Deemar well. Because no due process right was implicated, we find no violation of due process.

2

[6] Citing *Jones* and *McCoy v. New Mexico Real Estate Comm'n,* 94 N.M. 602, 614 P.2d 14 (1980), both Santa Fe and Stevens claim that the Commission deprived them of procedural due process. They argue that the Commission failed to give adequate notice that it would consider limiting production from the Pool. Both claim that the only issues before the Commission were whether the Deemar well should be approved and what production penalty should be imposed. Because the Commission went beyond these issues and decided an issue of which the parties neither had notice nor an opportunity to be heard, both parties conclude that the Commission violated their due process rights.

Curiously, none of the parties cited *National Council on Compensation Insurance v. New Mexico State Corporation Commission,* 107 N.M. 278, 756 P.2d 558 (1988), which we find controlling. In *National Council,* the National Council on Compensation Insurance ("NCCI") filed a premium rate increase for all worker's compensation carriers operating in New Mexico with the State Insurance Board. Prior to a hearing considering the rate increase, the Insurance Board, by letter and a subsequent mailed notice, informed NCCI that a hearing had been scheduled to allow public written and oral comments regarding the proposed rate increases and to allow NCCI to present its filing. The notice provided that the hearing would consider whether the proposed rate increase was excessive, inadequate, or unfairly discriminatory. After the hearing, the Insurance Board denied NCCI's rate increase request, and NCCI appealed. *Id.* at 280–82, 756

P.2d at 560–62. On appeal, NCCI contended that its procedural due process rights were denied because the notice provided was not sufficiently specific to allow NCCI to prepare for issues to be addressed at the hearing. *Id.* at 283, 756 P.2d at 563. We disagreed and held that the notice provided comported with due process requirements because "[t]he notice provided NCCI an opportunity to be heard by reasonably informing NCCI of the matters to be addressed at the hearing so that it was able to meet the issues involved." *Id.* at 284, 756 P.2d at 564. In other words, general notice of issues to be presented at the hearing was sufficient to comport with due process requirements.

Like the notice given to NCCI in *National Council,* both Santa Fe and Stevens were reasonably informed as to the issues that the Commission would address at its hearing on the consolidated petitions. The parties themselves had each requested a de novo review by the Commission of Stevens's application for a non-standard well location. Santa Fe requested that the Commission deny the application or, in the alternative, impose a production penalty to protect its correlative rights. Stevens requested approval of its Deemar well for production and asked the Commission to reconsider the production penalty. At the hearing, the parties presented the evidence and requested that the Commission provide them the relief that each sought: the right to produce its proportionate share of the oil from the Pool. The parties knew, prior to the hearing, that the Commission would be considering production rates from the various wells and the correlative rights of all parties concerned.

The cases relied upon by the parties are either distinguishable or support the result we reach today. In *McCoy,* we considered whether a realtor's right to procedural due process was violated when her license was revoked by the Real Estate Commission. In that case, the district court based its decision on an issue raised by the Real Estate Commission for the first time on appeal. Because the realtor was denied notice and any opportunity to prepare her case and be heard on that issue in the district court, we held that the district court's decision violated due process. *McCoy,* 94 N.M. at 603–04, 614 P.2d at 15–16. In *Jones,* the appellant claimed that he was denied due process when the trial court did not allow him to present testimony at a hearing to determine whether a settlement agreement should be approved. The Tenth Circuit disagreed, and, held that, because the appellant was given notice and had the opportunity to be heard by submitting a lengthy memorandum, he was not denied due process. *Jones,* 741 F.2d at 325.

Unlike the appellant in *McCoy,* the parties in the instant case had adequate notice of the issues that were going to be addressed to allow them to prepare their cases. In fact, the evidence presented by the parties at the Commission's hearing shows that they had notice of the very issues that the Commission eventually considered: allocation of production from the Pool, protection of the correlative rights of Pool members, and prevention of waste in the Pool. The parties presented evidence of the size, shape, location, and structure of the reservoir. The parties presented evidence that the Stevens well was located so that it could effectively drain the entire reservoir and destroy correlative rights of the other parties unless a production penalty was assessed. The parties presented evidence of the efficient production rate of the Santa Fe well. Expert testimony presented at the hearing demonstrated that the oil in the Pool could be produced more efficiently under unitized operation. While the Commission crafted a unique solution to the problem presented to it, the *process* by which the Commission reached this solution was not unique. The parties had general notice of the issues to be determined, and evidence was presented at a hearing before the Commission made its final decision. Under these circumstances, we hold that Stevens and Santa Fe had adequate notice so as to be reasonably informed of the issues to be decided by the Commission. Thus, we find no violation of procedural due process here.

C

[7] The final due process argument that we discuss is whether Stevens's substantive due process rights were violated by the Commission's determination of the recoverable reserves underlying the Pool. Stevens argues that the setting of low allowable production from the well was an arbitrary decision that will deprive it of a valuable property right. Stevens, citing *Schware v. Board of Bar Examiners,* 60 N.M. 304, 291 P.2d 607 (1955), *rev'd,* 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796 (1957), claims that this is a violation of substantive due process. We disagree. As discussed in Section VI, *infra,* the Commission did not act in an arbitrary or capricious manner. Moreover, as demonstrated in Section IV, *infra,* the Commission's actions were consistent with its statutory duties to prevent waste and protect the correlative rights of other producers in the Pool.

IV

The next issue that we address is whether the Commission exceeded its statutory authority or violated its rules when it issued Order No. R–9035. Both Santa Fe and Stevens contend that Order No. R–9035, while not requiring unitization, effectively unitizes operation of the Pool. They argue that the Commission does not have the statutory authority to require unitization of the Pool because, under the Statutory Unitization Act, NMSA 1978, Sections 70–7–1 to –21 (Repl.Pamp.1987), unitization is available only in fields that are in the secondary or tertiary recovery phase. They assert that, because the Commission order effectively unitizes the Pool, a field in the primary development phase, the Commission exceeded its statutory authority. In addition, Santa Fe contends that the Commission violated its own rules when it allowed Stevens's second directional drilling attempt and that Order No. 9035 is void. The Commission argues that its actions were proper under the Oil and Gas Act, NMSA 1978, Sections 70–2–1 to –38 (Repl.Pamp.1987 & Cum.Supp.1991), and argues that the Statutory Unitization Act is inapplicable to the instant case.

A

[8] "The Oil Conservation Commission is a creature of statute, expressly defined, limited and empowered by the laws creating it." *Continental Oil Co. v. Oil Conservation Comm'n,* 70 N.M. 310, 318, 373 P.2d 809, 814 (1962). The Oil and Gas Act gives the Commission and the Division the two major duties: the prevention of waste and the protection of correlative rights. NMSA 1978, § 70–2–11(A); *Continental Oil Co.,* 70 N.M. at 323, 373 P.2d at 817. Correlative rights are defined as

> the opportunity afforded * * * to the owner of each property in a pool to produce without waste his just and equitable share of the oil * * * in the pool, being an amount, so far as can be practicably determined and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil * * * under the property bears to the total recoverable oil * * * in the pool and, for such purpose, to use his just and equitable share of the reservoir energy.

NMSA 1978, § 70–2–33(H). In addition to its ordinary meaning, waste is defined to include "the locating, spacing, drilling, equipping, operating or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil * * * ultimately recovered from any pool." NMSA 1978, § 70–2–3(A).

The broad grant of power given to the Commission to protect correlative rights and prevent waste allows the Commission "to require wells to be drilled, operated and produced in such manner as to prevent injury to neighboring leases or properties." NMSA 1978, § 70–2–12(B)(7). In addition, the Division and the Commission are "empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof." NMSA 1978, § 70–2–11.

In the instant case, evidence presented to the Commission indicated that the Pool was located under three separate tracts of land.

The Commission was called upon to determine the total amount of oil in the Pool and the proportionate share underlying each tract. Stevens's Deemar well was located so that it could produce oil from the top portion of the Pool, thereby avoiding waste that would have occurred unless the well was allowed. However, the well was located so that it could effectively drain the entire Pool. The Commission, charged with the protection of correlative rights of the other lease owners in the Pool, placed a production penalty on the well to protect these rights. Thus, the Commission attempted to avoid waste while protecting correlative rights. We hold that, under the facts of this case, the Commission did not exceed the broad statutory authority granted by the Oil and Gas Act.

[9] Moreover, we are unpersuaded by the argument of both Stevens and Santa Fe that the Statutory Unitization Act prohibits the Commission's actions. They argue that, by enacting the Statutory Unitization Act, the legislature intended to limit the availability of forced unitization to secondary and tertiary recovery only. Both Santa Fe and Stevens quote the following language from the Statutory Unitization Act to support their argument:

> It is the intention of the legislature that the Statutory Unitization Act apply to any type of operation that will substantially increase the recovery of oil above the amount that would be recovered by *primary recovery alone* and not to what the industry understands as exploratory units.

Section 70–7–1 (emphasis added by Stevens and Santa Fe). They assert that this section precludes unitization of a field in primary production such as the Pool. We disagree.

We read the above quoted language from Section 70–7–1 merely to say that the Statutory Unitization Act is not applicable to fields in their primary production phase, such as the Pool in the instant case. Nothing contained in the Statutory Unitization Act, including the above quoted section, however, limits the authority of the Commission to regulate oil production from a pool under the Oil and Gas Act. The Commission still must protect correlative rights of lease holders in the Pool while preventing waste. The Commission still has broad authority "to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof." NMSA 1978, § 70–2–11(A). As discussed above, in the instant case the Commission's actions were within its statutory authority. We hold that the circumstances of this case do not implicate the Statutory Unitization Act and that the Commission's actions in effectively unitizing operation of the Pool were an appropriate exercise of its statutory authority under the Oil and Gas Act.

B

[10] Santa Fe contends that, by issuing Order No. R–9035, the Commission abused its discretion by failing to follow the rules and regulations established by Order No. R–8806. That order established the Pool and set out special rules and regulations designed to prevent waste and protect correlative rights.[4] The order also established notice and hearing requirements before the Commission could allow a non-standard well to be drilled in the Pool. Santa Fe contends that, by allowing Stevens to drill a well at a non-standard location, *i.e.*, to within 70 feet of Santa Fe's lease line, without prior notice and a hearing, the Commission violated its own rules. Santa Fe also contends that lowering the allowable production from the Holstrom well to 125 barrels of oil per day without adequate notice is a violation of these rules. Santa Fe concludes that, because Order No. 9035 was issued in a manner inconsistent with these rules, the order is void and Order Nos. 8917 and 8917–A should be reinstated. We disagree.

4. These rules provided that the standard size for proration unit was to be 160 acres, that a well could not be located closer than 660 feet from the outer boundary of a proration unit nor nearer than 1320 feet from the nearest well in the Pool, and that the maximum production allowed from a standard production unit would be 515 barrels per day.

The Commission's actions in this case did not violate the Commission's rules established by Order No. 8806. While the Director did allow Stevens to make a second attempt to drill a well at an unorthodox location without notice to other lease holders in the Pool, the other lease holders had notice of the subsequent hearing to determine whether this well would be allowed to produce oil. In addition, this action was designed to further the Director's statutory duty to prevent waste by preventing added expense in the development of the field. Moreover, the Director could have approved drilling the second Stevens attempt at the hearing that it held prior to issuing Order No. 8917–A. Thus, the Commission's actions did not violate the rules established by Order No. 8806 and the Commission did not abuse its discretion in this matter.

V

[11] The next issue that we address is whether the Commission's Order No. R–9035 is supported by substantial evidence. Stevens argues that the Commission, in determining correlative rights of Santa Fe, did not refer to the recoverable oil underlying the tract. Stevens claims that this resulted in the Commission apportioning more oil in the Pool to Santa Fe than Santa Fe deserves based on evidence introduced at the hearing. Santa Fe contends that the Commission ignored testimony of its expert witnesses that indicated that a greater portion of the Pool was under its tract. Santa Fe concludes that the Commission underestimated its proportionate share of oil in the Pool and that this estimate is not supported by substantial evidence.

[12–14] Substantial evidence is relevant evidence that a reasonable mind would accept as sufficient to support a conclusion. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 87 N.M. 286, 290, 532 P.2d 582, 586 (1975). In determining whether there is substantial evidence to support an administrative agency decision, we review the whole record. *Duke City Lumber Co. v. New Mexico Envtl. Improvement Bd.*, 101 N.M. 291, 294, 681 P.2d 717, 720 (1984). In such a review, we view the evidence in a light most favorable to upholding the agency determination, but do not completely disregard conflicting evidence. *National Council*, 107 N.M. at 282, 756 P.2d at 562. The agency decision will be upheld if we are satisfied that evidence in the record demonstrates the reasonableness of the decision. *Id.*

Stevens contends that the Commission did not consider the recoverable reserves underlying the Santa Fe tract, *see* NMSA 1978, Section 70–2–33(H) (correlative right based on recoverable reserves), thereby overestimating the amount of oil under the Santa Fe tract. Stevens also contends that the Commission ignored testimony by Stevens's expert witnesses indicating that more of the Pool was under Stevens's tract than the Commission ultimately concluded. Stevens concludes that the record lacks substantial evidence to uphold the Commission's estimate of Santa Fe's proportionate share of oil in the Pool. Santa Fe contends that the Commission underestimated its proportional share of oil because the Commission failed to accept as conclusive the engineering and geologic evidence presented by Santa Fe of the location and extent of the Pool, which would result in a higher proportion of the oil being allocated to Santa Fe. Santa Fe concludes that the Commission's estimate of Santa Fe's proportionate share of oil in the Pool is not supported by substantial evidence.

In any contested administrative appeal, conflicting evidence will be produced. In the instant case, the resolution and interpretation of such evidence presented requires expertise, technical competence, and specialized knowledge of engineering and geology as possessed by Commission members. *See* NMSA 1978, § 70–2–4 (commissioners to have "expertise in regulation of petroleum production by virtue of education or training"); NMSA 1978 § 70–2–5 (director is "state petroleum engineer" who is "registered by the state board of registration for professional engineers and land surveyors as a petroleum engineer" or "by virtue of education and experience [has] expertise in the field of petroleum engi-

neering"). Where a state agency possesses and exercises such knowledge and expertise, we defer to their judgment. *Stokes v. Morgan*, 101 N.M. 195, 202, 680 P.2d 335, 342 (1984); *Groendyke Transp., Inc. v. New Mexico State Corp. Comm'n*, 101 N.M. 470, 477, 684 P.2d 1135, 1142 (1984). We have reviewed the record and, in light of the standard of review detailed above, find that the decision of the Commission was reasonable and is supported by substantial evidence.

VI

[15] The final issue raised by this appeal is whether the decision of the Commission is arbitrary and capricious.

> Arbitrary and capricious action by an administrative agency consists of a ruling or conduct which, when viewed in light of the whole record, is unreasonable or does not have a rational basis, and " 'is the result of an unconsidered, wilful and irrational choice of conduct and not the result of the 'winnowing and sifting' process.' " *Garcia v. New Mexico Human Servs. Dep't*, 94 N.M. 178, 179, 608 P.2d 154, 155 (Ct.App.1979) (quoting *Olson v. Rothwell*, 28 Wis.2d 233, 239, 137 N.W.2d 86, 89 (1965))[, *rev'd*, 94 N.M. 175, 608 P.2d 151 (1980)]. An abuse of discretion is established if the agency or lower court has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence. *Le Strange v. City of Berkeley*, 26 Cal.Rptr. 550, 210 Cal.App.2d 313 (1962). An abuse of discretion will also be found when the decision is contrary to logic and reason. *Newsome v. Farer*, 103 N.M. 415, 708 P.2d 327 (1985); *Sowders v. MFG Drilling Co.*, 103 N.M. 267, 705 P.2d 172 (Ct.App.1985).
>
> *Perkins v. Department of Human Servs.*, 106 N.M. 651, 655, 748 P.2d 24, 28 (Ct.App. 1987).

In the instant case, the action of the Commission is not arbitrary and capricious. As discussed in Section IV, *supra*, the Commission did not exceed its statutory authority nor violate its rules when it issued the final order in this case. As discussed in Section III, *supra*, the Commission did not deprive either Santa Fe or Stevens of their due process rights. As demonstrated in Section V, *supra*, the findings of the Commission were supported by substantial evidence. The Commission considered the evidence presented by the parties, and, in light of its statutory duties to protect correlative rights and avoid waste, fashioned a creative solution to resolve this dispute. While the Commission's solution was unique, such a result is not arbitrary or capricious "if exercised honestly and upon due consideration, even though another conclusion might have been reached." *Perkins*, 106 N.M. at 655–56, 748 P.2d at 28–29 (citing *Maricopa County v. Gottsponer*, 150 Ariz. 367, 723 P.2d 716 (App. 1986)). In accordance with the foregoing discussion, we hold that Order No. R–9035 is not arbitrary and capricious.

The judgment of the trial court is AFFIRMED.

IT IS SO ORDERED.

RANSOM, C.J., and HARRIS, District Judge, concur.

835 P.2d 831

JMB RETAIL PROPERTIES COMPANY, f/k/a JMB Property Company, Petitioner,

v.

Hon. Benjamin S. EASTBURN, District Judge, Respondent.

No. 20594.

Supreme Court of New Mexico.

Aug. 3, 1992.

Petitioner sought writ of superintending control, prohibition, or mandamus requiring district judge to recognize petitioner's peremptory challenge of judge. The

PREMIER v. **OCC**
Supreme Court Argument

I. Introduction:

MAY IT PLEASE THE COURT.

My name is Rand Carroll, Special Assistant Attorney General, appearing on behalf of the New Mexico Oil Conservation Commission.

I SHALL LIMIT my argument to the first issue raised by Premier in its brief--the conflict of interest issue. Mr. Bruce representing Exxon and Mr. Carr representing Yates Petroleum will follow and address the issues regarding the evidence considered by the Commission.

II. Argument:

PREMIER IS ASKING THIS COURT TO INVALIDATE an order of the Commission based upon claimed prejudgment bias on the part of one of the three Commissioners--the designee of the Commissioner of Public Lands, Ms. Jami Bailey, at that time the Deputy Director of the State Land Office Oil/Gas and Minerals Division.

THE COMMISSION ORDER APPROVED the unitization or combining of several tracts of land, including a tract operated by Premier and other tracts operated by Exxon and Yates, so that Exxon could operate the several tracts as one tract or unit. ONLY THE COMMISSION CAN ENTER SUCH AN ORDER. Some of the tracts are State trust lands,

including Premier's tract, that require Land Office approval for inclusion in a unit. Such Land Office approval is a separate process involving separate issues from the Commission unit approval process. The Commission has as its primary responsibilities the prevention of waste and the protection of correlative rights. The Land Office has as its primary responsibility the best interest of its trust beneficiaries.

PREMIER CLAIMS THAT SINCE MS. BAILEY, prior to the Commission hearing, attended a meeting with Exxon and signed a letter regarding Exxon's application for inclusion of state trust lands in the unit, the Commission's order should be invalidated due to prejudgment bias on the part of Ms. Bailey.

PREMIER'S CLAIM, HOWEVER, IS BASED upon an incorrect assumption. Premier in its brief continually mischaracterizes Ms. Bailey's signing of this letter as an "approval" of the inclusion of Premier's tract in the unit. THE LETTER DOES NO SUCH THING AND NOTHING IN THE RECORD SUPPORTS SUCH A CLAIM. The letter does not approve the unit, which only the Commission can do, nor does it approve the inclusion of any state lands in the unit, but in fact clearly states that [AND I QUOTE] THIS OFFICE HAS REVIEWED THE UNEXECUTED COPY OF THE UNIT AGREEMENT FOR THE PROPOSED AVALON DELAWARE UNIT... THIS AGREEMENT MEETS THE **GENERAL REQUIREMENTS** OF THE COMMISSIONER OF PUBLIC LANDS WHO HAS THIS DATE GRANTED YOU **PRELIMINARY APPROVAL** AS TO **FORM** AND **CONTENT**. PRELIMINARY APPROVAL SHALL **NOT** BE CONSTRUED TO MEAN **FINAL** APPROVAL **IN ANY WAY.** The letter goes on to state that a number of additional items, including the Commission

approval order, must be submitted **prior** to final Land Office approval and CONTAINS A STATEMENT THAT "APPROVAL WILL BE CONDITIONED UPON SUBSEQUENT FAVORABLE APPROVAL BY THE NEW MEXICO OIL CONSERVATION DIVISION".

THE LETTER, IN EFFECT, IS BUT A MINISTERIAL ACT that tells Exxon that the form and content of its proposed Unit Agreement are in compliance with the Land Office's general requirements, and that Exxon should now go to the Commission, where the Commission considers the application for compliance with its statutory responsibilities. Only after the Commission order is obtained and the other requested items are submitted will the Land Office approval be granted. Ms. Bailey therefor did not and could not grant approval of the Land Office application prior to the Commission hearing let alone express a prejudgment as to issues that were not even before her IN HER POSITION AT THE LAND OFFICE.

The Santa Fe Exploration Co. and Reid cases are correctly cited by Premier in its brief as addressing prejudgment bias in an agency setting. Like the Director of the Oil Conservation Division in the Santa Fe case, Ms. Bailey had knowledge of some of the underlying facts in this case prior to the Commission hearing. AS STATED IN THE DAVIS TREATISE ON ADMINISTRATIVE LAW: "ADVANCE KNOWLEDGE OF ADJUDICATIVE FACTS THAT ARE IN ISSUE IS NOT ALONE A DISQUALIFICATION FOR FINDING THOSE FACTS". Since Ms. Bailey at no time prior to the Commission hearing voiced her opinion as to the outcome of Exxon's application at the Commission nor commented on the probability of its approval, as what occurred in the Reid case, she should **not** be disqualified due to bias.

TO CONSTRUE HER SIGNATURE on the letter granting Land Office preliminary approval as to the form and content of Exxon's application at the Land Office, WHICH IS THE ONLY EVIDENCE IN THE RECORD PREMIER CAN CITE TO, as being a prejudgment of the issues before the Commission is a real stretch------that this court is being asked to make and should decline to do.

THANK YOU FOR YOUR TIME.

OPTIONAL (SLO v. OCC): The Land Office is a royalty owner with trust responsibilities and has promulgated rules as to what applications to include state lands in unitizations should contain in order to receive approval. The Commission on the other hand examines applications for unitizations as to its responsibilities of preventing waste and protecting correlative rights. The Land Office recognizes the differing roles and not only defers to the Commission as to issues of prevention of waste and protection of correlative rights but requires Commission approval of the unit prior to its own approval of inclusion of state lands in the unit.

OPTIONAL(Admin v. Hearing Process): The Land Office administrative approval process is without notice and hearing. Notice and hearing as to issues of prevention of waste and protection of correlative rights are deferred to the Commission. A claim of ex parte contact tainting the Comnission order is made by Premier. This normally involves an adversarial proceeding where there are opposing parties. Here the claimed ex parte contact was made in the ordinary course of an administrative process where it was not yet the time for Premier to voice its concerns. Such time was at the OCC where Premier was served with notice of the hearing and had the opportunity to present its evidence to the Commission. Ms. Bailey's involvement in the

Land Office administrative process should not taint her judgment on different issues before the Commission.

OPTIONAL(Unna letter): The December 13, 1996 letter from Jan Unna, former General Counsel for the Land Office, to Counsel for Premier is cited by Premier as admitting the existence of a conflict of interest. THIS IS BUT THE EXCHANGE OF OPINIONS OF COUNSEL NOWHERE IS THERE A CONFLICT ADMITTED, ONLY THE FUTURE POSSIBILITY OF ONE. It should be noted that Mr. Unna does not represent the Commission, the Attorney General's office does. Mr. Unna did not consult the AG's office prior to answering. The response letter was written two days after the date of the letter from Premier and shortly after Mr.Unna assumed the Land Office General Counsel position. In the letter Mr.Unna admitted his unfamiliarity with the issue.

State of New Mexico
Commissioner of Public Lands
310 OLD SANTA FE TRAIL P.O. BOX 1148
SANTA FE, NEW MEXICO 87504-1148

AY POWELL, M.S., D.V.M.
COMMISSIONER

(505) 827-5760
FAX (505) 827-5766

May 15, 1995

Exxon Company USA
P.O. Box 1600
Midland, Texas 79702-1600

Attention: Mr. Joe Thomas

MDA	RECEIVED	MPC
RLA	LAND SERVICES	RGG
RKF		RTL
SHJ		TAL
PLK	MAY 17 1995	JBE
DCR		SHK
JBT		LLM
		SES
	MPO - MIDLAND	JHT
HANDLE	REVIEW	SEE ME	CIRC	FILE		

Re: Request for Preliminary Approval
Avalon Delaware Unit
Eddy County, New Mexico

Dear Mr. Thomas:

This office has reviewed the unexecuted copy of the unit agreement for the proposed Avalon Delaware Unit, ~~Eddy County, New Mexico~~. This agreement meets the general requirements of the Commissioner of Public Lands who has this date granted you preliminary approval as to form and content.

Preliminary approval shall not be construed to mean final approval of this agreement in any way and will not extend any short term leases until final approval and an effective date are given.

When submitting your agreement for final approval, please submit the following:

1. Application for final approval by the Commissioner setting forth the tracts that have been committed and the tracts that have not been committed.
2. Two copies of the Unit Agreement.
3. All ratifications from the Lessees of Record and Working Interest Owners. All signatures should be acknowledged before a notary. One set of ratifications must contain original signatures.
4. Initial Plan of Operation.
5. Order of the New Mexico Oil Conservation Division. Our approval will be conditioned upon subsequent favorable approval by the New Mexico Oil Conservation Division.
6. A copy of the Unit Operating Agreement.

Exhibit No. 6-A
Exxon Corporation
NMOCD Cases 11297 &
Hearing Date: June 29, 19

EXHIBIT
3

7. Per your telephone conversation with Pete Martinez of this office, please revise Exhibit "A" & "B" to coincide with the BLM's survey plats. The following unit acreage should be changed: Federal Acreage, State Acreage, Fee Acreage and Total Acreage.

8. In Unit Agreement Page 3, Section 2(a), the acreage should be changed to 2,118.78.

9. Please date the unit agreement on Page 1.

10. A redesignation of all well names and numbers. The list should include the OCD property name, property number, pool name , pool code and API number.

If you have any questions, or if we may be of further help, please contact Pete Martinez at (505) 827-5791.

Very truly yours,

RAY POWELL, M.S., D.V.M.
COMMISSIONER OF PUBLIC LANDS

BY:
JAMI BAILEY, Deputy Director
Oil/Gas and Minerals Division
(505) 827-5745

RP/JB/cpm
Enclosure
cc: Reader File
BLM-Roswell--Attention: Mr. Armando Lopez
OCD-Santa Fe--Attention: Mr. Roy Johnson

ARGUMENT

I. INTRODUCTION.

A. This hearing culminates over 5 years of effort to unitize the Avalon Delaware Pool. Unitization will enable the recovery of millions of barrels of oil which would otherwise be unrecovered.

B. To achieve unitization, a major technical study, which integrated actual production with a geologic model, was prepared to determine the best way to recover the additional oil.

C. A unit agreement and a participation formula were prepared after substantial negotiations among the interest owners. Over 98% of lessors and lessees voluntarily approved unitization

II. COMMISSION HEARING.

A. Hearing vigorously contested. Exxon & Yates, on the one hand, and Premier, on the other hand, presented conflicting testimony on a number of issues.

B. Where there is conflicting testimony, it is the Commission's job to weigh the evidence and arrive at a decision. That's what it did.

C. Commission's decision is presumptively valid, and the evidence is viewed in a light most favorable to the Commission's decision. Even without those requirements, there is substantial evidence in the record to support the Commission's decision, as cited in the Exxon/Yates brief. Therefore, the Commission's decision must be upheld.

D. What Premier wants you to do is to substitute the opinion of its expert for the judgment of the Commission. That is improper.

III. COMMISSION ACCEPTED PREMIER'S GEOLOGY.

Premier claims that the Commission preferred its geology over that of Exxon, and as a result, it should win. WRONG FOR 2 REASONS:

1. Geology tells you whether oil or gas might be found under a particular piece of land; in other words, that there is a "container" underground. However, only the drilling of a well and the application of engineering principles will tell you if oil or gas is recoverable from that piece of land. Premier's experts ignored engineering. What Exxon & Yates did was look at the wells drilled on Premier's land, and wells very near to Premier's tract. Combining engineering with geology shows that (a) Premier's geology is incorrect, and (b) Premier's tract has a much lower value to the unit than Premier asserts.

2. The Commission has been recognized by this Court to have specialized knowledge in these matters. What the Commission did was use its expertise to sift through the mass of testimony and exhibits, and decide that actual production contradicts Premier's geology. That decision should not be overturned on appeal.

[Premier finds fault with one data point out of a massive technical report. Even if Premier is correct, that is no basis to overturn the Commission's decision as long as the remaining evidence supports the decision. **Chenoweth v. Pan American Petroleum Corp., 382 P.2d 743 (Okla. 1963).**]

IV. WATER SATURATION FIGURES IN FV3 WELL.

Same argument as above: Exxon used common engineering principles to adjust the FV3's water saturation value, because its production was so poor. It is common practice in the industry, of which the Commission is aware, to match geology with production. Its judgment on this issue be final.

V. DAMAGE TO FV3 WELL.

Conflicting evidence was presented on this issue: Gulf Oil Corp., who drilled the well, saw no evidence of damage; Exxon & Yates witnesses examined well data, and saw no evidence of damage; THE CLOSEST WELL, THE YATES ZG1 WELL, IMMEDIATELY TO THE SOUTH, HAD PRODUCTION VIRTUALLY THE SAME AS THE FV3 WELL. Based on this evidence, the Commission could reasonably find that the well was not damaged.

VI. PREMIER WAS PREVENTED FROM DRILLING.

A. Premier's engineer, Paul White, encouraged Premier to drill a well in 1993, to prove up its acreage. The response of K. Jones at hearing was:

"Paul White does not make the calls on economics."

Transcript Vol II. at p. 296. This is an admission that Premier did not believe it was economic to drill a new well on its acreage.

B. Drilling a well in this pool takes 7-10 days. It's hard to believe, that with millions of dollars at stake, Premier could not find one week during a five year period to drill a well.

C. THE AVALON DELAWARE POOL WAS DISCOVERED IN 1983, AND FULLY DEVELOPED BY 1985. THE ONLY WELL DRILLED SINCE THEN WAS BY

EXXON, IN 1991, WHICH WAS DRILLED EXPRESSLY FOR THE PURPOSE OF DEVELOPING ADDITIONAL DATA FOR UNITIZATION.

D. Premier has contended throughout that, if it is unitized, its acreage to the west should be included. That acreage was never proposed for inclusion, and thus there could have been no bar to drilling on that acreage. Yet, in six years, Premier has never drilled a well on that acreage.

PREMIER'S ASSERTIONS ARE BASELESS.