

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 NEARBURG EXPLORATION
COMPANY FOR AN UNORTHODOX GAS WELL
LOCATION, EDDY COUNTY, NEW MEXICO.

21 1996
OIL CONSERVATION DIVISION

CASE 11481

NEARBURG'S RESPONSE TO
READ & STEVEN'S MOTION TO QUASH
SUBPOENA

NEARBURG EXPLORATION COMPANY ("Nearburg")
Requests that the New Mexico Oil Conservation Division DENY Read &
Steven's Motion to Quash the Subpoena issued at the request of
Nearburg and in support states:

BACKGROUND

(1) Nearburg is requesting approval to drill its Black River "10"
Federal Com Well No. 1 at an unorthodox gas well location 990 feet
from the West line and 1330 feet from the North line (Unit E) of Section
10, T24S, R26E, to test any and all formations from the top of the
Wolfcamp formation to the base of the Morrow formation, including but
not limited to the South Carlsbad-Morrow Gas Pool. Nearburg proposes
to dedicate the W/2 of Section 10 to this well. (See Exhibit 1)

(2) Read & Stevens is the current operator of a Morrow gas well
originally drilled by BTA Oil Producers at an **un-penalized** unorthodox
gas well location 1150 feet from the South line and 1650 feet from the
East line (Unit) of Section 4, T24S, R26E and dedicated to the E/2 of
said section. (See Exhibit 2)

(3) On March 3, 1996, Read & Stevens filed a Pre-Hearing Statement disclosing that it opposed the granting of the Nearburg application and stated that:

the Nearburg well "at the proposed location will unfairly drain reserves attributed to opponents' (Read & Stevens) interest in the E/2 of Section 4, T24S, R26E..." and that it intended to call Les Carnes, a petroleum engineer, who would "probably show pressure data, volumetric and drainage calculations."

(4) In order to prepare for that objection, Nearburg's petroleum engineer has searched public records in an attempt to obtain data concerning the Read & Steven's well including pressure and production information, but that search has failed to disclose adequate information from which he can prepare a proper rebuttal to what Mr. Carnes purports to have done for Read & Stevens. **(See Exhibit 3)**

(5) Accordingly, on March 4, 1996, Counsel for Nearburg requested that Counsel for Read & Stevens provide by March 8, 1996 the following:

- (a) data concerning the Read & Stevens well:
- (b) the facts and opinions held by Read & Steven's expert witness concerning the basis for his expected testimony in opposition to Nearburg; and
- (c) whatever studies, calculations and/or reports Read & Stevens had which would support the statement it had made in its Pre-Hearing Statement.

and that if Read & Stevens had any objection to advise him by March 7, 1996. **(See Exhibit 4)**

(6) Read & Stevens not only failed to object but also failed to voluntarily produce the requested information.

(7) On March 19, 1996, Counsel for Read & Stevens advised Nearburg that Read & Steven would not voluntarily provide the requested information.

(8) On March 19, 1996, Read & Steven was served with a Subpoena which required production of the information on March 21, 1996. (See Exhibit 5)

**READ AND STEVENS' MOTION TO QUASH IS
WITHOUT MERIT AND SHOULD BE DENIED**

Nearburg seeks relevant information from Read & Stevens concerning Read & Stevens' claim that Nearburg's well "at the proposed location will unfairly drain reserves attributed to opponents' (Read & Stevens) interest in the E/2 of Section 4, T24S, R26E..." and concerning Read & Steven's expert witness who would "probably show pressure data, volumetric and drainage calculations."

Read & Stevens neither argues relevancy nor asserts that the subpoenaed information does not exist. To the contrary, Read & Stevens contends that the Subpoena should be quashed because to comply would require it to disclose (a) confidential information and/or (b) trade secrets.

In addition, Read & Steven argues that the Division has never had a policy of discovery proceedings and that the subpoena is unreasonable, oppressive and constitutes an abuse of process because it would confiscate a property right without adequate compensation.

But Read & Stevens provides no explanation why or how such information is confidential, nor is it easy to believe their other contentions when they have stated that they expected to introduce such information at the hearing but now do not want to release it to Nearburg so that its experts can properly prepare for hearing on this issue.

Nearburg is attempting to avoid being ambushed at the hearing by an opponent who claims it will be drained but then refuses to disclose information which might refute that claim.

Fortunately, New Mexico has procedures to protect Nearburg from ambush.

The New Mexico Supreme Court in the Matter of the Protest of Ira B. Miller, 88 N.M. 492 (1975), has recognized Nearburg's right to this information when it held 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 Division's Rule 1212 as 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."

Notwithstanding the objection of Ready & Stevens, Rule 26 of the Rules of Civil Procedure provides for the discovery of facts known or opinions held by an expert and further provides for the discovery of trade secrets and confidential information.

In fact, the New Mexico Oil Conservation Commission has dealt with and denied similar Motions to Quash. **(See Exhibit 6)**

In this case, it is of particular concern to Nearburg that it have a fair and reasonable opportunity to prepare to respond to issues raised by Read & Stevens in its opposition. To have that opportunity it is necessary for Nearburg to have information which currently is exclusive to Read & Stevens.

Read & Stevens has raised the issues of drainage, pressure, and reserve calculations and has advised that it has available relevant information including pressure data and drainage and volumetric calculations which it has utilized in its preparation for this case.

In doing so, Read & Stevens has also waived its claim that this information is somehow confidential.

To grant Read & Steven's Motion would be to deny Nearburg's right to due process and preclude it from adequately preparing for hearing.

Accordingly, Nearburg requests that the Motion to Quash be **denied**.

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 to the office of Ernest L. Padilla, attorney for Read & Stevens on March 21, 1996.



By W. Thomas Kellahin

TD 11,830

Dorchester
1-Graham St
TD 12,006

Hamon
1-Stats
TD 12,

5

Paloma
1-Aspen
TD 12,070

4

Bauerhoff
1-Schurp
TD 1970

C&K
2-Allied Chem
TD 11,936

Sabine
1-Bell St

3

Hamon
1-St K 4401
TD 11,898

Coquina
1-O'Neil
TD 12,1

Hamon
1-St L-4325
TD 11,946

Read, et al
(BTA)
1-Crystal
TD 12,060

USCGS
FRONTIER

8

et
K Fed
00
1

C&K Pet
2-Pennzoil Fed

C&K Pet
1-Pennzoil Fed
TD 11,750

9

C&K Pet
2-Pennzoil Fed
TD 11,782

Pennzoil
1 O'Neill B
TD 11,850

Street
1-Bradle
TD 2061

10

Pennzoil
1 O'Neill
TD 11,900

D

1
2
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4
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7
8

17

Campbell
1-Lee Fed
TD 1920

16

Pennzoil
2-White
TD 11,700

Crace
1-White Baby
TD 11,640

Pet
von Fed

C&K Pet
1-Pennzoil Fed
TD 11,760

15

Bradley
1-Fee
TD 2114

Grisham
1-Chayter
TD 2320

Shappell
3-Bradle
TD 1960

R-26-E

EXHIBIT
1

District I
 PO Box 1900, Hobbs, NM 88241-1900
 District II
 PO Drawer DD, Artesia, NM 88211-0719
 District III
 1000 Rio Brazos Rd., Aztec, NM 87410
 District IV
 PO Box 2088, Santa Fe, NM 87504-2088

State of New Mexico
 Energy, Minerals & Natural Resources Department

Form C-10
 Revised February 10, 1991
 Instructions on back
 Submit to Appropriate District Office
 State Lease - 4 Copies
 Fee Lease - 3 Copies

OIL CONSERVATION DIVISION
 PO Box 2088
 Santa Fe, NM 87504-2088

AMENDED REPORT

WELL LOCATION AND ACREAGE DEDICATION PLAT

API Number 30-015-26898		Pool Code 87280	Pool Name White City Penn
Property Code 015124	Property Name Crystal Federal		Well Number 1
OGRID No. 018917	Operator Name Read & Stevens, Inc.		Elevation 3393'

10 Surface Location

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
	4	24S	26E		1,150	South	1,650	East	Eddy

11 Bottom Hole Location If Different From Surface

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County

12 Dedicated Acres	13 Joint or Infill	14 Consolidation Code	15 Order No.

NO ALLOWABLE WILL BE ASSIGNED TO THIS COMPLETION UNTIL ALL INTERESTS HAVE BEEN CONSOLIDATED OR A NON-STANDARD UNIT HAS BEEN APPROVED BY THE DIVISION

<p>16</p>	<p>17 OPERATOR CERTIFICATION</p> <p>I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief.</p> <p style="text-align: right;"><i>John C. Maxey, Jr.</i></p> <p>Signature _____ John C. Maxey, Jr. Printed Name Petroleum Engineer Title 6-27-94 Date</p>
	<p>18 SURVEYOR CERTIFICATION</p> <p>I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my belief.</p> <p>Date of Survey _____ Signature and Seal of Professional Surveyor: _____</p>
	<p>Certificate Number _____</p>
	<p>EXHIBIT 2</p>

MEMORANDUM

Date: 3/21/96
To: Tom Kellahin
From: Tim MacDonald
Subject: Black River 10 #1 OCD Hearing

The public data pertaining to the Read & Stevens Crystal Federal #1 well we have access to is as follows:

The 10/94 4-point test forms submitted by Read & Stevens for the perforations 11,571'- 11,663'

Dwights production volume history through 7/95

NMOCD well file of forms filed with the OCD

In Read & Stevens pre-hearing statement they stated they would show among other things pressure data which would show that our proposed well would unfairly drain reserves in the E/2 of Section 4, T24S-R26E. In order to respond to this assertion we will need any additional pressure test data taken subsequent to the 10/94 4-point test as well as the detailed bottom hole gauge information from the 10/94 4-point test. We also need the gas, condensate, and water production volumes for the Crystal Federal #1 through January, 1996 and later if available. We also need copies of the volumetric and drainage calculations they stated they had performed.

cc: Mike Gray



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

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

JASON KELLAHIN (RETIRED 1991)

March 4, 1996

VIA FACSIMILE

(505) 988-7592

Ernest L. Padilla, Esq.
Padilla Law Firm
P. O. Box 2523
Santa Fe, New Mexico 87504

Re: REQUEST FOR PRODUCTION OF DATA
NMOCD Case 11481
Application of Nearburg Exploration Company
for an Unorthodox Gas Well Location
Lea County, New Mexico

Dear Ernie:

On behalf of Nearburg Exploration Company, I need certain data from your client, Read & Stevens, in order to prepare for the hearing of the referenced case which is set for hearing on Thursday, March 7, 1996.

In addition, we are requesting that case 11481 be continued to March 21, 1996 hearing in order to have time to review the Read & Stevens data and prepare for hearing.

Accordingly, we request that Read & Stevens provide to me at my office, not later than noon on March 8, 1996 the following information for all the Read & Stevens operated well in the SE/4 of Section 4, T24S, R26E, Lea County, New Mexico:

1. Reservoir pressure data including but not limited to bottom-hole surveys or pressures, surface pressure readings, daily tubing pressure and casing pressures, drill stem tests, build-up tests, and interference tests, with relevant information as to shut-in time and production rates prior to shut-in.
2. Gas-liquid ratios and tests including a description of any and all test data and zones per well.



Ernest L. Padilla, Esq.

March 4, 1996

Page 2

3. All production data including, but not limited to all well check records, including gauges/charts for each well on a daily basis from initial testing/completion to date showing actual production of oil, gas and water per day and per month.

4. Chronological reports to include details of: (a) perforating and perforation locations, (b) stimulation fluids, volumes, rates, and pressures for each treated interval, and (c) swabbing, flowing and/or pumping results for each interval that was perforated and tested including Pre and Post stimulation results as applicable.

5. If your client has conducted any reservoir simulation which includes either of the subject wells, then provide: model software description, model parameters and assumptions, model variables, model history matching data, model predictions, subsequent modification.

6. Any and all reserve calculations, including but not limited to estimates of ultimate recovery, production decline curves, pressure decline curves, material balance calculations (including reservoir parameters), volumetric calculation (including reservoir parameters); and

7. Any and all reservoir studies, including but not limited to drainage calculations, well interference studies, pressure studies or well communication studies.

If you have any objection to the foregoing, please advise me by 9:00 AM on Thursday, March 7, 1996.

Very truly yours,



W. Thomas Kellahin

cc: Nearburg Exploration Company

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES
BEFORE THE OIL CONSERVATION DIVISION**

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

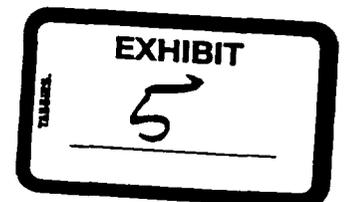
**THE APPLICATION OF NEARBURG PRODUCING COMPANY
AN UNORTHODOX GAS WELL LOCATION,
EDDY COUNTY, NEW MEXICO**

CASE NO. 11481

SUBPOENA DUCES TECUM

**TO: READ & STEVENS, INC.
c/o Earnest L. Padilla, Esq.
1512 S. Saint Francis Drive
Santa Fe, New Mexico 87502**

Pursuant to Section 70-2-8 NMSA (1978) and Rule 1211 of the New Mexico Oil Conservation Division's Rules of Procedure, and in accordance with the power vested in this Division, you are commanded to appear at 8:15 a.m., March 21, 1996, to the offices of the Oil Conservation Division, 2040 South Pacheco, Santa Fe, New Mexico 87502 and to produce the documents and items specified in attached Exhibit A and to make available to Nearburg Producing Company and its attorney, W. Thomas Kellahin, for copying, all said documents.



This subpoena is issued on application of Nearburg Producing Company through its attorneys, Kellahin & Kellahin, P. O. Box 2265, Santa Fe, New Mexico 87504.

ISSUED THIS 19th day of March, 1996 at Santa Fe, New Mexico.

NEW MEXICO OIL CONSERVATION
DIVISION

BY:

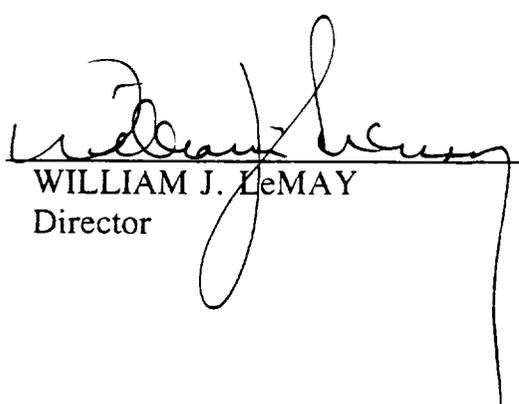

WILLIAM J. LEMAY
Director

EXHIBIT "A"

TO SUBPOENA DUCES TECUM TO READ & STEVENS, INC. IN NEW MEXICO OIL CONSERVATION DIVISION CASE 11481

PURPOSE: The purpose of this subpoena is to provide all of the information necessary for Nearburg Producing Company to be able to adequately prepare its NMOCD Case 11481 which is opposed by Read & Stevens Inc.

I. PRODUCE THE FOLLOWING DOCUMENTS:

For the Read & Stevens Inc. operated well in the SE/4 of Section 4, T24S, R26E, Lea County, New Mexico:

- 1. Reservoir pressure data including but not limited to bottom-hole surveys or pressures, surface pressure readings, daily tubing pressure and casing pressures, drill stem tests, build-up tests, and interference tests, with relevant information as to shut-in time and production rates prior to shut-in.**
- 2. Any and all Gas-Liquid ratios and tests including a description of any and all test data and zones per well.**
- 3. All production data including, but not limited to all well check records, including gauges/charts for each well on a daily basis from initial testing/completion to date showing actual production of oil, gas and water for each well per day and per month.**

4. Chronological reports to include details of: (a) perforating and perforation locations, (b) stimulation fluids, volumes, rates, and pressures for each treated interval, and (c) swabbing, flowing and/or pumping results for each interval that was perforated and tested including Pre and Post stimulation results as applicable.

5. If your client has conducted any reservoir simulation which includes any wells within this 9-section area, then provide: model software description, model parameters and assumptions, model variables, model history matching data, model predictions, subsequent modification.

6. Any and all reserve calculations, including but not limited to estimates of ultimate recovery, production decline curves, pressure decline curves, material balance calculations (including reservoir parameters), volumetric calculation (including reservoir parameters);

7. Any and all reservoir studies, including but not limited to drainage calculations, well interference studies, pressure studies or well communication studies;

INSTRUCTIONS

This Subpoena Duces Tecum seeks all information available to you or in your possession, custody or control from any source, wherever situated, including but not limited to information from any files, records, computers documents, employees, former employees, consultants, counsel and former counsel. It is directed to each person to whom such information is a matter of personal knowledge.

When used herein, "you" or "your" refers to the person or entity to whom this Subpoena Duces Tecum is addressed to including all of his or its attorneys, officers, agent, consultants, employees, directors, representatives, officials, departments, divisions, subdivisions, subsidiaries, or predecessors.

The term "document" as used herein means every writing and record of every type and description in the possession, custody or control of Read & Stevens Inc., whether prepared by you or otherwise, which is in your possession or control or known by you to exist, including but not limited to all drafts, papers, books, writings, records, letters, photographs, computer disks, tangible things, correspondence, communications, telegrams, cables, telex messages, memoranda, notes, notations, work papers, transcripts, minutes, reports and recordings of telephone or other conversations or of interviews, conferences, or meetings. It also includes diary entries, affidavits, statements, summaries, opinions, reports, studies, analyses, evaluations, contracts, agreements, jottings, agenda, bulletins, notices, announcements, plans, specifications, sketches, instructions charts, manuals, brochures, publications, schedules, price lists, client lists, journals, statistical records, desk calendars, appointment books, lists, tabulations sound recordings, computer printouts, books of accounts, checks, accounting records, vouchers, and invoices reflecting business operations, financial statements, and any notice or drafts relating to the foregoing, without regard to whether marked confidential or proprietary,. It also includes duplicate copies if the original is unavailable or if the duplicate is different in any way, including marginal notations, from the original.

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:

THE APPLICATION OF NEARBURG PRODUCING COMPANY
FOR AN UNORTHODOX GAS WELL LOCATION,
EDDY COUNTY, NEW MEXICO

CASE NO. 11481

ACCEPTANCE OF SERVICE OF SUBPOENA DUCES TECUM

I, Earnest L. Padilla, Esq, the attorney of record for Read & Stevens, Inc., hereby acceptance service of the original Subpoena Duces Tecum dated March 19, 1996 issued in this matter to Read & Stevens Inc. on this 19th day of March, 1996.



Earnest L. Padilla
P. O. Box 2523
Santa Fe, New Mexico 87505

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.



Cases Nos. 10446, 10447,
10448 and 10449
Order No. R-9679

-2-

(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.

Cases Nos. 10446, 10447,
10448 and 10449
Order No. R-9679
-3-

(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.

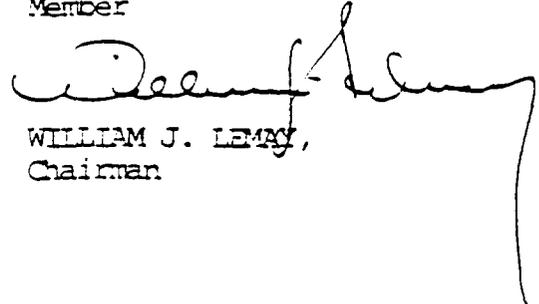
STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION



GARY CARLSON,
Member



WILLIAM W. WEISS,
Member



WILLIAM J. LEMAY,
Chairman

S E A L