

**SUMMONS**

IN THE FIFTH JUDICIAL DISTRICT COURT,  
DIVISION I, COUNTY OF EDDY  
STATE OF NEW MEXICO

For Court Use Only  
; Not Write In This Space

MICHAEL P. GRACE II and

CORINNE GRACE

Plaintiff(s)

vs.

OIL CONSERVATION COMMISSION

OF NEW MEXICO

Defendant(s)

No 28181

**The State of New Mexico**

TO OIL CONSERVATION COMMISSION OF NEW MEXICO

DEFENDANT(S)

**GREETING:**

YOU ARE HEREBY DIRECTED to serve a pleading or motion in response to the complaint within 30 days after service of this summons, and file the same, all as provided by law.

YOU ARE NOTIFIED that, unless you so serve and file a responsive pleading or motion, the plaintiff will apply to the court for the relief demanded in the complaint.

BURR & COOLEY, 152 Petroleum Center Building, Farmington, N.M. 87401

NAME AND ADDRESS OF ATTORNEYS FOR PLAINTIFF (OR OF PLAINTIFF, IF NO ATTORNEY)

WITNESS the Honorable D. D. ARCHER, District Judge of the Fifth Judicial District Court of the State of New Mexico, and the Seal of the District Court of Eddy County, this 18 day of August A. D., 1972

Frances M. Wilcox  
FRANCES M. WILCOX, Clerk

By \_\_\_\_\_, Deputy

(Sheriff's return when service is made personally on defendants)

STATE OF NEW MEXICO

County of \_\_\_\_\_

ss.

I, \_\_\_\_\_ Sheriff of \_\_\_\_\_ County, State of New Mexico, do hereby certify, that I served the within summons on the \_\_\_\_\_ day of \_\_\_\_\_ by delivering a copy thereof, with copy of complaint attached, in the county aforesaid, in person to \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_, Sheriff

Fees: \_\_\_\_\_

By \_\_\_\_\_, Deputy

(Sheriff's return when service is made on defendants by leaving copy at usual place of abode.)

STATE OF NEW MEXICO

ss.

County of .....

I, \_\_\_\_\_ Sheriff of \_\_\_\_\_ County,

State of New Mexico, do hereby certify, that I served the within summons on the

day of \_\_\_\_\_ by delivering a copy thereof, with copy of complaint attached,

in the county aforesaid, to

a person over fifteen years of age, residing at the usual place of abode of defendant(s) \_\_\_\_\_

\_\_\_\_\_ who at the time of such service was absent therefrom.

Date: \_\_\_\_\_

\_\_\_\_\_, Sheriff

Fees: \_\_\_\_\_

By \_\_\_\_\_, Deputy

(Return when service is made personally on defendants by other than Sheriff.)

STATE OF NEW MEXICO

ss.

County of .....

being duly sworn, upon his oath says, I am over the age

of eighteen years, I served the within summons on the

day of \_\_\_\_\_ by

delivering a copy thereof, with copy of complaint attached, in the county aforesaid to

Fees: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

(Out of State)

STATE OF

ss.

County of .....

being by me first duly sworn, upon his oath deposes and says:

That he is a resident of the State of \_\_\_\_\_ over the age of eighteen years and in no

wise interested in the case of \_\_\_\_\_, No. \_\_\_\_\_ on the Civil Docket

of the District Court of Eddy County, New Mexico; that he is not a party to said action; that this writ came

to hand the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, and there was at the same time delivered to

him for service herewith \_\_\_\_\_ cop. \_\_\_\_\_ of this summons and \_\_\_\_\_ cop. \_\_\_\_\_ of the complaint filed therein;

that he made service herein by delivering one copy of this summons and one copy of the complaint herein to

each of the within named defendants within the said County of \_\_\_\_\_ and State

of \_\_\_\_\_, as follows, to wit:

\_\_\_\_\_ was personally served on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

Affiant

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

My Commission Expires:

Notary Public

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

MICHAEL P. GRACE II and )  
 CORINNE GRACE, )  
 )  
 Petitioners, )  
 )  
 vs. )  
 )  
 OIL CONSERVATION COMMISSION )  
 OF NEW MEXICO, )  
 )  
 Respondent. )

No. 28181

FIFTH JUDICIAL DISTRICT  
STATE OF NEW MEXICO  
COUNTY OF EDDY

FILED AUG 18 1972 IN MY OFFICE

FRANCES M. WILCOX  
Clerk of the District Court

PETITION FOR REVIEW

COME NOW petitioners in the above styled and numbered cause, and respectfully petition the Court to review Order No. R-1670-L, a copy of which is attached hereto as Exhibit "A", in case no. 4693 before the Oil Conservation Commission of New Mexico, hereinafter referred to as "Commission", pursuant to Section 65-3-22(b), N.M.S.A., 1953 Comp.

1. Commission case no. 4693 was a hearing called by the Commission on its own motion to consider instituting gas pro- rationing in the South Carlsbad-Morrow gas pool in Eddy County, New Mexico.
2. Petitioners are the owners of certain gas wells located within the geological area defined by the Commission as the South Carlsbad-Morrow gas pool, and by reason of such ownership petitioners have been adversely affected by Commission Order R-1670-L.
3. Commission Order No. R-1670-L was entered on June 30, 1972.

4. On July 18, 1972, within the time allowed by Section 65-3-22(a), petitioners filed their Application for Re-Hearing in case no. 4693, out of which Order No. R-1670-L issued. A copy of petitioners' Application for Re-Hearing is attached hereto as Exhibit "B".

5. That the petitioners' Application for Re-Hearing in case no. 4693 was refused by the Commission through failure to act thereon for a period of ten days after filing the same.

6. Petitioners verily believe that Commission Order No. R-1670-L is invalid in that there is no substantial evidence to support the Commission's jurisdictional finding that waste (as defined in Section 65-3-3, N.M.S.A., 1953 Comp.) will occur in the South Carlsbad-Morrow gas pool unless production therefrom is restricted pursuant to Section 65-3-13(c), N.M.S.A., 1953 Comp.

WHEREFORE, Petitioners pray that Commission Order No. R-1670-L be reversed, set aside and held for naught.

BURR & COOLEY  
152 Petroleum Center Building  
Farmington, New Mexico 87401

By \_\_\_\_\_  
William J. Cooley  
Attorneys for Petitioners

KELLAHIN AND FOX

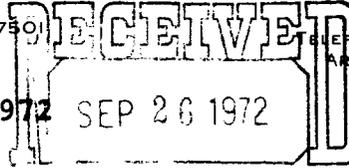
ATTORNEYS AT LAW

500 DON GASPAR AVENUE

POST OFFICE BOX 1769

SANTA FE, NEW MEXICO 87501

JASON W. KELLAHIN  
ROBERT E. FOX  
W. THOMAS KELLAHIN



TELEPHONE 982-4315  
AREA CODE 505

September 25, 1972

SEP 26 1972

OIL CONSERVATION COMM.  
Santa Fe

Mr. George Hatch  
Oil Conservation Commission of New Mexico  
P. O. Box 2088  
Santa Fe, New Mexico 87501

Dear George:

In connection with District Court Case #28181, Eddy County, New Mexico, the appeal of Michael P. and Corinne Grace from Oil Conservation Commission Order in the South Carlsbad-Morrow Gas Pool. Robert LeBlanc tells me that Gene Motter and the engineering staff say they would not be able to furnish any testimony which would support a request for a bond to be posted by the Grace's if the Operation Commission order is stayed. Apparently they do not feel that the prorationing will make a great deal of difference to their well unless they could establish drainage and that would be apparently quite difficult for them to do.

If you have any ideas on this, please let me know. I will see you when I return from Wyoming.

Sincerely yours,

*W. T. Kellahin for -*  
Jason W. Kellahin

JWK:amr

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

September 26, 1972

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Y

Mrs. Frances M. Wilcox  
Clerk  
District Court of the Fifth  
Judicial District  
Carlsbad, New Mexico

Dear Mrs. Wilcox:

Enclosed please find Response to Petition for  
Review for filing in Eddy County Cause No. 28181.

Very truly yours,

---

GEORGE M. HATCH  
Special Assistant Attorney General  
representing the Oil Conservation  
Commission of New Mexico  
P. O. Box 2088, Santa Fe, New Mexico

GMH/dr

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

September 26, 1972

Mr. William J. Cooley  
Burr and Cooley  
152 Petroleum Center Building  
Farmington, New Mexico 87401

Mr. Lon P. Watkins  
Attorney  
122 N. Canyon  
Carlsbad, New Mexico

Dear Sir:

Please find enclosed a copy of Response to  
Petition for Review mailed, this date, to be filed  
in Eddy County Cause No. 28181.

Very truly yours,

---

GEORGE M. HATCH  
Special Assistant Attorney General  
representing the Oil Conservation  
Commission of New Mexico  
P. O. Box 2088, Santa Fe, New Mexico

GMH/dr

COPY

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

MICHAEL P. GRACE II and  
CORINNE GRACE,

Petitioners,

vs.

OIL CONSERVATION COMMISSION  
OF NEW MEXICO,

Respondent.

No. 28181

RESPONSE TO PETITION FOR REVIEW

Respondent, Oil Conservation Commission of New Mexico,  
answering the Petition for Review, states:

1. That Respondent admits the allegations in paragraphs 1, 3, 4, and 5 of the Petition for Review.
2. That Respondent denies each and every allegation in paragraph 6 of the Petition for Review, including all conclusions of fact and law stated therein.
3. As to paragraph 2, the Respondent admits that the Petitioners are the owners of gas wells located within the geological area defined by the Commission as the South Carlsbad Gas Pool but is without knowledge or information sufficient to form a belief as to the truth of the averment concerning "adversely affected" and therefore denies said part.

FURTHER DEFENSES

1. Respondent states that petitioners have failed to state a claim upon which relief can be granted.
2. Respondent states that the petitioners have failed to join indispensable parties.
3. Respondent states that the petitioners have failed to exhaust their administrative remedies and have asked the court to act in derogation of the doctrines of primary jurisdiction and exclusive administrative jurisdiction for the following reasons:

(a) Petitioners have failed to exhaust their administrative remedies in that there is presently pending before the Commission Case No. 4796, the application of Michael P. Grace II and Corinne Grace, petitioners in this cause, for an exception to the pro-rationing orders of the Commission under its Order No. R-1670 for its City of Carlsbad "COM" Well No. 1, one of its wells in the South Carlsbad-Morrow Gas Pool, which case has been continued on the docket of the Commission at the request of the petitioners in this cause.

(b) Petitioners have failed to exhaust their administrative remedies in Commission Case No. 4795, which case directly concerns the subject matter of this appeal in that the petitioners sought in Case No. 4795 contraction of the South Carlsbad-Morrow Gas Pool to eliminate their wells from said pool.

WHEREFORE, Respondent prays:

1. That the Petition for Review be dismissed.
2. That Commission Order No. R-1670-L be affirmed.
3. That the Court grant Respondent such other and further relief as the Court deems just.

DAVID L. NORVELL  
Attorney General for the  
State of New Mexico

  
\_\_\_\_\_  
GEORGE M. HATCH  
Special Assistant Attorney General  
representing the Oil Conservation  
Commission of New Mexico  
P. O. Box 2088, Santa Fe, New Mexico

I hereby certify that on the 26 day of Sept.,  
1972, a copy of the foregoing pleading was mailed to opposing  
counsel of record.

  
\_\_\_\_\_  
GEORGE M. HATCH

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

September 13, 1972

Mr. William J. Cooley  
Burr and Cooley  
152 Petroleum Center Building  
Farmington, New Mexico 87401

Mr. Lon P. Watkins  
Attorney  
122 N. Canyon  
Carlsbad, New Mexico

Dear Sir.

Please find enclosed a copy of Response to  
Petition for Review mailed, this date, to be filed  
in Lady County Cause No. 29182.

Very truly yours,

\_\_\_\_\_  
GEORGE M. HATCH  
Special Assistant Attorney General  
representing the Oil Conservation  
Commission of New Mexico  
P. O. Box 2088, Santa Fe, New Mexico

GMB/ur

ILLEGIBLE

**OIL CONSERVATION COMMISSION**

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

September 18, 1972

**Mrs. Frances M. Wilcox**  
Clerk  
District Court of the Fifth  
Judicial District  
Carlsbad, New Mexico

Dear Mrs. Wilcox:

Enclosed please find Response to Petition for  
Review for filing in Eddy County Cause No. 28182.

Very truly yours,

---

**GEORGE M. HATCH**  
Special Assistant Attorney General  
representing the Oil Conservation  
Commission of New Mexico  
P. O. Box 2088, Santa Fe, New Mexico

GMH/dr

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STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

MICHAEL P. GRACE II and )  
 CORINNE GRACE, )  
 )  
 Petitioners, )  
 )  
 vs. )  
 )  
 OIL CONSERVATION COMMISSION )  
 OF NEW MEXICO, )  
 )  
 Respondent. )

No. 28182

FIFTH JUDICIAL DISTRICT,  
STATE OF NEW MEXICO  
COUNTY OF EDDY

FILED AUG 18 1972 IN MY OFFICE

FRANCES M. WILCOX  
Clerk of the District Court

PETITION FOR REVIEW

COME NOW petitioners in the above styled and numbered cause, and respectfully petition the Court to review Order No. R-1670-M, a copy of which is attached hereto as Exhibit "A", in case no. 4694 before the Oil Conservation Commission of New Mexico, hereinafter referred to as "Commission", pursuant to Section 65-3-22(b), N.M.S.A., 1953 Comp.

1. Commission case no. 4694 was a hearing called by the Commission on its own motion to consider instituting gas pro-rationing in the South Carlsbad-Strawn gas pool in Eddy County, New Mexico.
2. Petitioners are the owners of certain gas wells located within the geological area defined by the Commission as the South Carlsbad-Strawn gas pool, and by reason of such ownership petitioners have been adversely affected by Commission Order R-1670-M.
3. Commission Order No. R-1670-M was entered on June 30, 1972.

4. On July 18, 1972, within the time allowed by Section 65-3-22(a), petitioners filed their Application for Re-Hearing in case no. 4694, out of which Order No. R-1670-M issued. A copy of petitioners' Application for Re-Hearing is attached hereto as Exhibit "B".

5. That the petitioners' Application for Re-Hearing in case no. 4694 was refused by the Commission through failure to act thereon for a period of ten days after filing the same.

6. Petitioners verily believe that Commission Order No. R-1670-M is invalid in that there is no substantial evidence to support the Commission's jurisdictional finding that waste (as defined in Section 65-3-3, N.M.S.A., 1953 Comp.) will occur in the South Carlsbad-Strawn gas pool unless production therefrom is restricted pursuant to Section 65-3-13(c), N.M.S.A., 1953 Comp.

WHEREFORE, Petitioners pray that Commission Order No. R-1670-M be reversed, set aside and held for naught.

BURR & COOLEY  
152 Petroleum Center Building  
Farmington, New Mexico 87401

By \_\_\_\_\_  
William J. Cooley  
Attorneys for Petitioners

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

MICHAEL P. GRACE II and )  
 CORINNE GRACE, )  
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 Petitioners, )  
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 OIL CONSERVATION COMMISSION )  
 OF NEW MEXICO, )  
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 Respondent. )

No. 28182

FIFTH JUDICIAL DISTRICT  
STATE OF NEW MEXICO  
COUNTY OF EDDY

FILED AUG 18 1972 IN MY OFFICE

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1. Commission case no. 4694 was a hearing called by the Commission on its own motion to consider instituting gas pro-rationing in the South Carlsbad-Strawn gas pool in Eddy County, New Mexico.

2. Petitioners are the owners of certain gas wells located within the geological area defined by the Commission as the South Carlsbad-Strawn gas pool, and by reason of such ownership petitioners have been adversely affected by Commission Order R-1670-M.

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WHEREFORE, Petitioners pray that Commission Order No. R-1670-M be reversed, set aside and held for naught.

BURR & COOLEY  
152 Petroleum Center Building  
Farmington, New Mexico 87401

By \_\_\_\_\_  
William J. Cooley  
Attorneys for Petitioners

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

MICHAEL P. GRACE II and )  
CORINNE GRACE, )  
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 Petitioners, )  
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vs. )  
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OIL CONSERVATION COMMISSION )  
OF NEW MEXICO, )  
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 Respondent. )

No. 28182

RESPONSE TO PETITION FOR REVIEW

Respondent, Oil Conservation Commission of New Mexico, answering the Petition for Review, states:

1. Respondent admits the allegations in paragraphs 1, 3, 4, and 5 of the Petition for Review.
2. Respondent denies each and every allegation in paragraph 2 and 6 of the Petition for Review, including all conclusions of fact and law stated therein.

AFFIRMATIVE DEFENSES

1. As its first affirmative defense, Respondent states that Petitioners have failed to state a claim upon which relief can be granted.
2. As its second affirmative defense, Respondent states that the Petitioners have failed to join indispensable parties.
3. As its third affirmative defense, Respondent states that the Petitioners have failed to exhaust their administrative remedies.

WHEREFORE, Respondent prays:

1. That the Petition for Review be dismissed.
2. That Commission Order No. R-1670-M be affirmed.

3. That the Court grant Respondent such other and further relief as the Court deems just.

DAVID L. NORVELL  
Attorney General for the State of  
New Mexico

George M. Hatch  
GEORGE M. HATCH  
Special Assistant Attorney General  
representing the Oil Conservation  
Commission of New Mexico  
P. O. Box 2088, Santa Fe, New Mexico

I hereby certify that on the 18<sup>th</sup> day of September  
1972, a copy of the foregoing pleading was mailed to opposing  
counsel of record.

George M. Hatch  
GEORGE M. HATCH