STATE OF NEW MEXICO

Office of the Attorney General

DEPARTMENT OF JUSTICE
P. O. BOX 2246
Santa Fe, N. M. 87501

DAVID L. NORVELL
ATTORNEY GENERAL

June 15, 1973

OLIVER E. PAYNE
DEPUTY ATTORNEY GENERAL

A. L. Porter, Jr.
Secretary - Director
Oil Conservation Commission
Land Office Building
Santa Fe, New Mexico

Dear Mr. Porter:

Pursuant to our conversation yesterday in which Mr. Carr and Mr. Payne were in attendance, and our subsequent conversation with Mr. Carr this morning, and in view of the complexity of and differing opinions regarding the issue of retroactivity, it has fallen upon this office pursuant to your request to respond.

Mr. Carr, desiring to perform the duties of his office commensurate with the desire of his superiors and at the same time desiring to fulfill his commitment as a Special Assistant Attorney General under this office, has requested that we advise you directly as to the official position of this office as to the retroactivity of the decision of the court entered earlier this month.

After meeting with you yesterday, we expanded upon the research previously done by this office and reflected by memorandum dated May 24, 1973, which has heretofore been submitted to you.

We have reviewed the memorandum of Mr. Carson, talked with Mr. Carr, and are well convinced that the law better supports the position of prospective application of the court's ruling on proration dated earlier this month, although it is not absolutely clear cut.

Therefore, it is the judgment of this office that proration of the field covered in the Grace hearing be applied prospectively only from the date this year when the order was signed by Judge Snead and was filed.

To do otherwise, in my opinion, would be contrariwise to what appears to be the majority rule in this matter.

We trust this matter can be resolved quickly and trust that you will provide this office with a copy of your proration order pursuant to the judgment of the court and opinion of this office.

Although admittedly this is a close question, it is the considered judgment of both Mr. Payne and myself that this position is far preferable than the alternatives which are available.

Sincerely yours,

DAVID L. NORVELL
Attorney General

DLN:lg

May 24, 1973

MEMORANDUM OF LAW

FACTS:

On August 31, 1972, the Honorable D. D. Archer, District Judge, entered the following order in Cause No. 28181 entitled Michael P. Grace vs. Oil Conservation Commission:

> "IT IS THEREFORE ORDERED that said order Number R-1670-L issued by the New Mexico Oil Commission be and the same is temporarily stayed until further order of the Court."

On April 11, 1973, the Honorable Paul Snead, District Judge, entered an order vacating the August 31, 1972, order. This order provided in part:

> "IT IS FURTHER ORDERED by the Court that the temporary stay order entered by this Court on August 31, 1972, be and the same is hereby vacated and dissolved."

QUESTION:

Is the order of April 11, 1973, effective prospectively or retrospectively?

ANSWER:

Prospectively only.

ANALYSIS:

The court orders here involved were authorized by §65-3-22, N.M.S.A., 1953 Comp., which provides in part:

> "(c) The pendency of proceedings to review shall not of itself stay or suspend operation of the order or decision being reviewed, but during the pendency of such proceedings, the district court in its discretion may, upon its own motion or upon proper application of any party thereto, stay or suspend, in whole or in part, operation of said order or decision pending review thereof, on such terms as the court deems just and proper and in accordance with the practice of courts exercising equity jurisdiction;"

Since the same section provides for appeals to the Supreme Court of New Mexico from any judgment or decision of the district court, and since the duration of the suspension is not limited to the district court proceeding, it is apparent that the legislature intended that such a suspension order be effective through the appellate procedure. Actually, nothing is said in the statute about termination of the order, but, since it is discretionary with the district judge whether such an order will be issued at all, it seems that he should have the power to terminate it at any time in the exercise of the same discretion. On appeal, of course, he would lose jurisdiction, but no doubt the Supreme Court could likewise terminate the suspension order if it deemed it desirable. The point is that a suspension order, if granted, ordinarily would continue in effect for an extended period of time. Could it be said that the legislature intended to afford relief from the Commission's proration order during the pendency of judicial review, including the appellate process and perhaps further proceedings in the district court on remand, and yet that producers could rely on the "suspension order" only at their own peril?

It should be kept in mind that we are not faced with the usual problem of illegally produced gas. Even in a case of illegal overproduction, there are many problems inherent in making up for the overproduction of his wells until the overproduction is made up. As stated in Allowable Make-up--Examination of an Administrative Remedy, by Dean J. Capp, in Seventeenth Annual Institute on Oil and Gas Law and Taxation, p. 163, at pp. 181, 182:

> ". . . The remedy is said to be based upon protection of correlative rights, yet the proof as to whose correlative rights were abridged and how much is indefinite. Did the offset operators have wells that could have made the

basic questions underlying correlative rights

allowable lost to the offender? Did such wells have the potentials to make it and acreage to assign? Are the reserves on the lease of the offender adequate to permit him to make up the entire questioned volume from that lease, and if his reserves are depleted on the offending lease, could the make-up requirement be imposed elsewhere on the offender? What percentage should you cut the offender? Could it be cut to the point where commercial production might be jeopardized and loss of lease might occur? Would the offense apply to a new replacement or additional well drilled by the offender on his lease or only to the offending well? What effect does a change in ownership of the offending property or of the drained property have? How about the effect on creditors of the offender or innocent purchasers without notice? What is the significance of an interim change in price or other condition of the offending production? How far back can the administrative agency go since limitations would normally be inapplicable against the State?

"To me the most serious basic objection is the assumption that the remedy must be based on protection of correlative rights alone. Correlative rights are not always injured by overproduction. What if the offender and his royalty owner own the entire reservoir? It is not hard to guess that such may have been the case in countless instances of this type of enforcement. Undoubtedly the administrative inquiry has sometimes been only whether the administrative fiat was violated, not the extent of the injury.

"These suggested questions serve to point up the difficulty implicit in the remedy, not insoluble perhaps, but surely perplexing."

With regard to illegal overproduction in violation of valid proration orders, the same author summarized New Mexico's laws and regulations as follows:

"New Mexico statutes provide for penalties to be recovered for the production of oil in excess of the allowable or production in violation of a Conservation Commission order. In addition such oil, said to be 'illegal oil,' is subject to forfeiture. No statutory provision for oil allowable make-up is found.

"The New Mexico Conservation Commission has not provided by rule for oil allowable make-up, except to a limited degree. There is a tolerance of 25 percent over the top unit allowable for any one day, but this must be made up during the month. There is also a permissive monthly tolerance of

> five days allowable production, which must be made up against subsequent allowables, and in addition to such permissive tolerance, other excess production may be validated provided it is produced as the result of (a) mistake or error, (b) mechanical failure, or (c) testing, and provided the allowable is made up during the following proration period. But no general and inclusive regulation requiring that all illegal oil produced be made up is found in the New Mexico regulations.

The statutory sanctions for illegal overproduction are found in §§ 65-3-17 and 65-3-18, N.M.S.A., 1953 Comp.; the former prescribes a criminal penalty and the latter prohibits the sale, purchase, transportation, refining, processing, etc., of "illegal oil" or "illegal gas." Nowhere is the Commission granted specific authority to require "allowable make-up," as it is commonly called. 65-3-19 More to the point, neither do the statutes provide for such a make-up in the event a proration order is suspended during judicial review and later reinstated.

Additionally, it should be kept in mind that the judicial review might result in a determination that the Commission's order is invalid, as might still happen in the instant case. In that event it would certainly not make sense to enforce the invalid order for the period of suspension ordered by the reviewing court.

As stated by Capp in the "Allowable Make-up" article,

> "Strict Construction of statutes, when concerned with essentially retroactive remedies, is frequently found." Id. at p. 180.

Since there is no provision for make-up in our statutes, particularly with reference to the precise situation here involved, strict construction dictates that there be none.

Such a construction is consistent with the usual rule that court orders operate prospectively, rather than retrospectively. This applies to stay and supersedeas. Felker v. Johnson, 189 Ga. 797, 7 S.E.2d 668, 673 (1940), says:

> "A supersedeas holds the case in status quo from the time it becomes operative; it does not operate retroactively to undo what has previously been done under the judgment complained of."

While not precisely in point, the same principle can be applied to the instant case. What has been done under the suspension order should not be undone by its termination.

Assuming, however, that the reviewing court had the power to make its order retrospective in operation, it contains no language indicating that it intended to do so. Like the legislature, the court by adding a few words could have indicated such an intent.

LAW OFFICES
LOSEE & CARSON, P. A.
A. J. LOSEE
JOEL M. CARSON
300 AMERICAN HOME BUILDING
P. O. DRAWER 239
ARTESIA, NEW MEXICO 88210
AREA CODE 505
746-3508

18 May 1973

Honorable David Norvell
Attorney General
P. O. Box 2246
Santa Fe, New Mexico 87501

Re: Michael P. Grace vs. Oil Conservation Commission

COPY

Dear Dave:

We have received a copy of your letter of May 16, 1973, directed to Mr. Bill Carr of the Oil Conservation Commission. After reading the letter and talking to you on the telephone, I believe that certain vital parts of the OCC action have not been brought to your attention, thereby causing some misunderstanding on your part as to the action of the Commission and its effect and causing some misunderstanding on our part and the part of the Commission as to your intentions as set forth in the letter. Clarification should eliminate any disagreement.

The nub of the Michael P. Grace lawsuit is over whether prorationing should be enforced in the Carlsbad-Morrow Gas Pool. The rules governing the Oil Commission provide that the Oil Commission is to conserve the natural resources of the State of New Mexico, to prevent waste and protect correlative rights of all owners of crude oil and natural gas.

If the Commission is successful in the June hearing on the above mentioned cases, it intends to hold Mr. Grace accountable for any over-production which may have occurred. No wells have been shut in nor is it suggested that any wells will be shut in before the Court determines the matter in June. The Commission memorandum (a copy of which is enclosed) merely puts all producers on notice that if the Court upholds the Commission they will be held accountable under the proration order.

If the Commission is upheld and the producers who are parties to this lawsuit are displeased with the order of the Court, they are, of course, free to seek further redress through the Courts.

We have assumed from your letter, as clarified by our telephone conversation, that you did not want to have parties litigant shut-in before the Court could determine the effect of the stay order. At this time, under the memorandum of the Commission, any producer in the Carlsbad-Morrow Gas Pool may produce as much as his heart desires, subject to the warning that if he is wrong and the Court treats the vacation of the stay order as completely vitiating the protection of the order he will have to answer for his actions to the Commission and those persons whose correlative rights he has invaded.

If this letter clarifies the position of the Commission and correctly states your intention, the Commission would appreciate it if you would send it a letter along the lines of the letter enclosed in order that it may know how to govern its activities until the date of the Court hearing.

Yours truly,

LOSEE & CARSON, P. A.

Joel M. Carson

JMC/sff
Enclosure

cc: Mr. William Carr

A letter proposed by Jerry Rose and not used.

Dear Mr. Carr:

In order to clarify my letter of May 16, 1973, you should advise the Commission that its memorandum of May 2, 1973, may be left in effect but that no gas well in the Carlsbad-Morrow Gas Pool should be shut in before the District Court has had an opportunity to pass on the effect of the vacation of the August 31, 1972, stay order. This shall be the position of the Office of the Attorney General until such time as we advise you to the contrary if, after reviewing the data we have received and researching the law, we come to a contrary conclusion.

OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO
P. O. BOX 2088 - SANTA FE
87501

GOVERNOR
BRUCE KING
CHAIRMAN

LAND COMMISSIONER
ALEX J. ARMIJO
MEMBER

STATE GEOLOGIST
A. L. PORTER, JR.
SECRETARY - DIRECTOR

MEMORANDUM

TO: THE NEW MEXICO OIL CONSERVATION COMMISSION

FROM: WILLIAM F. CARR, SPECIAL ASSISTANT ATTORNEY GENERAL

RE: LETTER FROM THE ATTORNEY GENERAL CONCERNING THE REINSTATEMENT OF PRORATIONING IN THE SOUTH CARLSBAD MORROW GAS POOL

Attached is a letter from the Attorney General, dated May 16, in which he indicates that it is the position of his office that proration cannot be reinstated in the South Carlsbad Pool effective September 1, 1972.

It therefore appears that prorationing of this pool will have to be reinstated as of March 7, 1973.

We must receive, however, a statement from the Attorney General as to what his final position on this question will be. It is essential, to avoid unnecessary confusion, that we know his final position before we notify field operators of this change.

As you will note, a copy of this letter was sent to A. J. Losee. Since he has been retained to represent the Commission in this case, I suggest any action on this matter be first discussed with him.

dr/

May 17, 1973

STATE OF NEW MEXICO

Office of the Attorney General

DEPARTMENT OF JUSTICE

P. O. BOX 2246

Santa Fe, N. M. 87501

DAVID L. NORVELL
ATTORNEY GENERAL

May 16, 1973

OLIVER E. PAYNE
DEPUTY ATTORNEY GENERAL

William F. Carr
Special Assistant Attorney General
Oil Conservation Commission
Land Office Building
Santa Fe, New Mexico

Re: Effect of Order Staying Oil Conservation Commission Order.

Dear Mr. Carr:

I am at this time reviewing the memorandum of Joel Carson concerning the effect of the order staying the Oil Conservation Commission order.

My initial reaction is that the order dissolving the stay order can be prospective only and that no penalty can be assessed which in effect would make the order retroactive, particularly in view of the clear language of the court on the day of the hearing which is included in the transcript, which to me clearly indicates the court intended the matter to operate prospectively only.

Therefore, I am advising you this date to, in turn, advise the Commission that no proration orders shall issue on the Carlsbad field in question which would have the effect of making this matter retroactive; and this shall be the position of the Office of the Attorney General until such time as we advise you to the contrary if, after reviewing the data we have received and researching the law, we come to a contrary conclusion.

Sincerely yours,

DAVID L. NORVELL
Attorney General

DLN:lg
cc: A. J. Losee

original letter in file L-200-1-5

OIL CONSERVATION COMMISSION
STATE OF NEW MEXICO
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CHAIRMAN

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STATE GEOLOGIST
A. L. PORTER, JR.
SECRETARY - DIRECTOR

MEMORANDUM

TO: ALL PURCHASERS AND PRODUCERS IN THE SOUTH CARLSBAD-MORROW POOL

FROM: A. L. PORTER, Jr., SECRETARY-DIRECTOR

SUBJECT: PRORATION OF SOUTH CARLSBAD-MORROW GAS POOL

On August 31, 1972, the Honorable D. D. Archer, District Judge, entered an order temporarily staying Order R-1670-L of the New Mexico Oil Conservation Commission which established proration in the South Carlsbad Morrow Pool.

On April 11, 1973, the Honorable Paul Snead, District Judge, entered an order vacating and dissolving the August 31, 1972, order. As a result of this action, proration in the South Carlsbad-Morrow Pool is in effect as of September 1, 1972, pursuant to Order R-1670-L.

Rule 15-A of Oil Conservation Commission Order No. R-1670-L provides in part:

> If, at any time, a well is overproduced in an amount equaling six times its average monthly allowable for the preceding proration period, (or, in the case of a new well, six times the average monthly allowable for a unit of corresponding size) it shall be shut in during that month and each succeeding month until it is overproduced less than six times its average monthly allowable for the preceding proration period,...

Pending the outcome of the above-mentioned court action, allowables were published monthly for the wells in the pool, but the proration schedules bore the following notation "Proration suspended by court order until further notice."

The May proration schedule reflects that some of the wells in the South Carlsbad pool are more than six times overproduced. In view of the above-described circumstances, however, these wells will be allowed the remainder of the current proration period, which ends December 31, 1973, to become less than six times overproduced. Curtailment of production on such wells should begin immediately. Lack of evidence of a good faith effort to compensate for overproduction may result in a complete shut in order by the Commission.

May 2, 1973

OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO
P. O. BOX 2088 - SANTA FE
87501

GOVERNOR
BRUCE KING
CHAIRMAN

LAND COMMISSIONER
ALEX J. ARMIJO
MEMBER

STATE GEOLOGIST
A. L. PORTER, JR.
SECRETARY - DIRECTOR

MEMORANDUM

TO: ALL PURCHASERS AND PRODUCERS IN THE SOUTH CARLSBAD MORROW POOL.

FROM: WILLIAM F. CARR, GENERAL COUNSEL

SUBJECT: PRORATION OF SOUTH CARLSBAD-MORROW GAS POOL.

On August 31, 1972, the Honorable D. D. Archer, District Judge, entered an order temporarily staying Order R-1670-L of the New Mexico Oil Conservation Commission which established proration in the South Carlsbad Morrow Pool.

On April 11, 1973, the Honorable Paul Snead entered an order vacating the August 31, 1972, order. As a result of this action, proration has been re-established in the South Carlsbad-Morrow Pool effective September 1, 1972.

April 26, 1973

dr/

MEMORANDUM

TO: A. J. LOSEE

FROM: JOEL M. CARSON

DATE: APRIL 23, 1973

RE: EFFECT OF ORDER STAYING OIL CONSERVATION COMMISSION ORDER

On August 31, 1972, the Honorable D. D. Archer, District Judge, entered the following order in Cause No. 28181 entitled Michael P. Grace vs. Oil Conservation Commission:

> "IT IS THEREFORE ORDERED that said order Number R-1670-L issued by the New Mexico Oil Commission be and the same is temporarily stayed until further order of the Court."

On April 11, 1973, the Honorable Paul Snead, District Judge, entered an order vacating the August 31, 1972, order. This order provided in part:

> "IT IS FURTHER ORDERED by the Court that the temporary stay order entered by this Court on August 31, 1972, be, and the same is hereby vacated and dissolved."

Section 65-3-22(C), N.M.S.A. 1953 Compilation provides:

> The pendency of proceedings to review shall not of itself stay or suspend operation of the order or decision being reviewed, but during the pendency of such proceedings, [the District Court in its discretion may upon its own motion or upon proper application of any party thereto stay or suspend in whole or in part operation of said order or decision pending review thereof on such terms as the Court deems just and proper and in accordance with the practice of Court's exercising equity jurisdiction. . .]

The question presented is whether the dissolution of an order staying a commission order has the effect of reinstating the commission order as of the date of issuance or whether the dissolution of the stay order reinstates the commission order as of the date of dissolution of the stay order. Sena vs. District Court, 30 N.M. 505, 240 Pac. 202 (1925) treats the term "stay" as being synonymous with the term "supersedeas."

In Sena vs. District Court, supra, the plaintiffs A. P. Anaya, Leopoldo Sanchez, et al, acting as the board of education of Guadalupe County, brought suit against Juan Sena, et al, as the board of county commissioners to enjoin said board of county commissioners from acting as the board of education of Guadalupe County. From an order granting such injunction, the defendants (petitioners herein) appealed and obtained an order which among other things provided that the judgment of the District Court should be superseded until a final disposition of the cause. The defendants proceeded as if the injunction was not in effect. Contempt proceedings were then brought against the defendants (petitioners) thereby eventually giving rise to the hearing on a writ of prohibition. The question on prohibition was whether the supersedeas of the Court had the effect of suspending the operation of the injunction pending the appeal and whether the District Court had authority to issue such an order.

The Court said:

> "It is to be admitted that, if some other term than "supersedeas" had been used in the application and in the order, their import and effect would have been more clear. Yet except for the confusion in the decisions regarding the meaning of the word "supersedeas," there could be no doubt. From a general survey of many decisions cited by counsel, respectively, and of many others, we are satisfied that the term is to be construed according to the occasion of its use. When used in a statute such as ours, it is interpreted by a great majority of courts as practically synonymous with "stay of proceedings," or "stay of execution," or "stay," as intended to preserve the status quo of the parties at the time of the taking of the appeal or suing out of the writ of error. But, where the judgment under review is a prohibitory injunction, it may well be that the ends of justice require the preservation of the status quo ante."

status quo

*

> The many decisions upholding the power of appellate courts to maintain the status quo by suspending the operation of prohibitory injunctions pending appeal--a power conceded here--point out that without the power the appellate jurisdiction might often be practically defeated. Irreparable injury may result as well from the injunction as from the conduct enjoined. The purpose of injunction is to prevent such injury. After it has occurred, relief comes too late. So in many cases it will appear that the appellate court must either assert its power to suspend the operation of the injunction or abandon the power to grant substantial or effectual relief."

The Court went on to state that the District Court had great latitude in the granting of stays and that in this particular case the "stay" had the effect of suspending the operation of the injunction.

In Wilkman vs. Banks, 261 P.2d 299 (1953) a California case which has a statute on supersedeas, it is said that the purpose of the writ of supersedeas is to maintain the subject of the action in status quo until the final determination of the appeal, in order that appellant may not lose the fruits of a meritorious appeal. The supersedeas should, however, not be granted as the case points out when positive harm might occur by the granting of the supersedeas.

In Gregg vs. Gardner, 73 N.M. 347, 388 P.2d 68 (1963) it is said that supersedeas is not mandatory. If the status quo is to be maintained, a supersedeas bond must be provided (for appeal) in such an amount as will indemnify the appellee from all damages that may result from such supersedeas, the amount to be fixed by the Court. Absent an order of the Court and bond, the judgment remains in full effect and may be enforced.

In State ex rel Reynolds vs. King, 63 N.M. 425 321 P.2d 200 (1958) the District Court granted an injunction against the defendant. It then stayed the injunction. The relator

state engineer cross appealed to dissolve the injunction. The Court held that under the equity power of the District Court, it had the authority to stay the operation of the injunction.

At 43 CJS Injunction, Section 225, it is provided:

> "The dissolution of an injunction is conclusive and res judicacata as to the issues raised on the dissolution, but only as to such issues; hence, the general effect of the dissolution of a temporary injunction is merely to put the parties in the same position in which they were prior to the granting of the injunction." (Emphasis supplied)

The cases cited above deal with the effect of the stay order itself. What then is the effect of Judge Snead's order vacating the stay order? In Arias vs. Springer, 42 N.M. 350, 78 P.2d 153 (1938) it was stated that when a decree of the District Court is set aside the status of the case is as though no decree had been entered. In Shotzman vs. Ward, 172 Kan 272, 239 P.2d 935 (1952) the Supreme Court of Kansas said:

> "[W]hen an order or judgment is vacated during the term, the previously existing status of the case is restored, the situation is the same as though the order or judgment had never been made, and the issues stand for trial or for such other disposition as may be appropriate to the situation. . ."

Standard Life Ass'n vs. Merrill, 147 Kan 121, 75 P.2d 825 (1938) formed the basis for the statement in Shotzman, supra. In that case the Court stated:

> "The general rule is that when an order or judgment is vacated the previously existing status is restored and the situation is the same as though the order or judgment had never been made. The matters in controversy are left open for further determination.

> Where a judgment is vacated or set aside by a valid order or judgment, it is entirely destroyed and the rights of the parties are left as if no such judgment had ever been entered. No further steps can be taken to enforce the vacated judgment."

See also Abel vs. Lowry, 68 Nev 284, 231 P.2d 191 (1951).

It would thus appear that the vacation of the Judge Archer stay order by Judge Snead had the effect of placing the parties in the same position as they were in prior to the entry of the stay--that is that the Commission order was in effect and governed the activities of the Petitioner at all times material to this action.

THE COURT: Mr. Kellahin?

MR. KELLAHIN: Yes, sir.

MR. LOSEE: Frankly, I don't believe they are required, under a review, but if Mr. Watkins does, and advised me, I will file them.

THE COURT: The Appellate Court can probably rule, certainly, on it, whether it goes up on the full record. I don't know that my dissertation on the law would be more of interest to them, or less, then it is in a usual case, and frequently that is not very much, but I would be happy to permit that. And, Mr. Small, it has been a pleasure to have you with us today. And, gentlemen, I thank you.

MR. LOSEE: Judge, before you depart the Bench, I have got another question, and I have waited until this time to raise the question. If you will recall, there was a temporary stay order, issued by Judge Archer on about September 11th of last year, and then pursuant to our hearing on March 7th, this year, that temporary stay order was vacated by an order signed -- I believe signed in April by the Court. At that point in time, and after our research on the law,

as Special Attorneys for the Commission, we advised the Commission that in our opinion the temporary stay order could be treated as if it had not been in force. It was really -- if the Court will recall, I attempted at the time of that hearing, to broaden the Court's ruling to cover whether it was or wasn't in effect as of September 1st, because it does effect proration. Thereafter, we advised the Commission that they could treat it as if it had not been in existance and in its May Proration Schedule, they further advised that the order, the stay order had been removed and that their counsel had informed them that it would be treated as if it had not been in existance, and that in fairness to the producers, they would be allowed until December 31st of this year, or in effect a total of fifteen months, in which to bring the wells into line. That is, not more than six times over-produced. At the time that the May Schedule came out, there were three wells that were over-produced. Two of them are -- the one is the Grace-City of Carlsbad and it is not greatly over-produced, but it some, and the Gopogo Number

2, is greatly over-produced, and one Phillips Well. Shortly after this memorandum came out, the Attorney General, who in a letter to Mr. Carr, who is the In-house Counsel for the Commission, advised him in reading the remarks of the Court, in the March 7th hearing, he was of the opinion that the Court felt like that the order was not to be interpreted as removing the stay order as if it never existed, and although we grant that our law on the subject of the effect of the removal of a stay order is sure very sparse, that we were able to find, we felt like that the only proper way to get the matter determined, if that were an issue, is that in view of the Commission's actions, someone could file an injunction proceeding and set it down for hearing, and may be that the Court could make that determination. But, the Commission is now faced with a partial opinion from the Attorney General, really based upon this Court's remarks, which, although I frankly have not seen them, it was my recollection that the Court specifically did not pass on that subject.

THE COURT: I tried to duck that day.

MR. LOSEE: That was my recollection, And, we are at a situation that they have got advice from the Attorney General one way, and if there is a dispute over it, I would like to properly get it before the Court.

THE COURT: Well, as I recall, all I said that day, or all I intended to say was that the stay order would be dissolved and the legal effect would be that of dissolution of the stay order. What that might be is debatable. I don't mind telling you my impressions of the thing are that usually an injunction or other such proceedings, my guess is that the stay order, once dissolved, is of no effect, and is as if though it had never existed, and that the situation reverts to its prior status, and to me that is a distinction between a stay and an injunction. But, you can argue that with the Attorney General, or whoever.

MR. LOSEE: At least the record is clear to the Court's intention not to rule on it in the other case.

THE COURT: My intention was not to rule on it before and not necessary here, because it

is no longer a question of fact. All right, I assume this is the Court's Copy of the hearing.

MR. LOSEE: Yes, sir.

(Short discussion off the record, at the Bench.)

(Court in recess as to this matter.)

****

MEMO SENT ON APRIL 26th to the following:

EL PASO NATURAL GAS COMPANY
P. O. Box 1492
El Paso, Texas

MR. ELY HURWITZ
1310 19th Street, N.W.
Washington, D. C. 20036

TRANSWESTERN PIPE LINE CO.
Box 2521
Houston, Texas 77001

LLANO INC.
Box 2215
Hobbs, New Mexico 88240

MR. MORRIS ANTWEIL
Box 2010
Hobbs, New Mexico 88240

CITIES SERVICE OIL CO.
800 Vaughan Building
Midland, Texas 79701

MICHAEL P. AND CORINNE GRACE
Box 1418
Carlsbad, New Mexico 88220

PENNZOIL
Box 1828
Midland, Texas 79701

PHILLIPS PETROLEUM CORPORATION
Phillips Building
4th and Washington
Odessa, Texas 79760

SUPERIOR OIL COMPANY
Box 1900

OIL CONSERVATION COMMISSION

GOVERNOR
BRUCE KING
CHAIRMAN

STATE OF NEW MEXICO
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LAND COMMISSIONER
ALEX J. ARMIJO
MEMBER
STATE GEOLOGIST
A. L. PORTER, JR.
SECRETARY - DIRECTOR

MEMORANDUM

TO: ALL PURCHASERS AND PRODUCERS IN THE SOUTH CARLSBAD-MORROW POOL

FROM: A. L. PORTER, Jr., SECRETARY-DIRECTOR

SUBJECT: PRORATION OF SOUTH CARLSBAD-MORROW GAS POOL

On August 31, 1972, the Honorable D. D. Archer, District Judge, entered an order temporarily staying Order R-1670-L of the New Mexico Oil Conservation Commission which established proration in the South Carlsbad Morrow Pool.

On April 11, 1973, the Honorable Paul Snead, District Judge, entered an order vacating and dissolving the August 31, 1972, order. As a result of this action, proration in the South Carlsbad-Morrow Pool is in effect as of September 1, 1972, pursuant to Order R-1670-L.

Rule 15-A of Oil Conservation Commission Order No. R-1670-L provides in part:

> If, at any time, a well is overproduced in an amount equaling six times its average monthly allowable for the preceding proration period, (or, in the case of a new well, six times the average monthly allowable for a unit of corresponding size) it shall be shut in during that month and each succeeding month until it is overproduced less than six times its average monthly allowable for the preceding proration period,...

Pending the outcome of the above-mentioned court action, allowables were published monthly for the wells in the pool, but the proration schedules bore the following notation "Proration suspended by court order until further notice."

The May proration schedule reflects that some of the wells in the South Carlsbad pool are more than six times overproduced. In view of the above-described circumstances, however, these wells will be allowed the remainder of the current proration period, which ends December 31, 1973, to become less than six times overproduced. Curtailment of production on such wells should begin immediately. Lack of evidence of a good faith effort to compensate for overproduction may result in a complete shut in order by the Commission.

May 2, 1973