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28 February 1973

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Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

Gentlemen:

Enclosed is the Graces' Motion to Quash the Commission's
Motion to Stay or Post Bond.

Very truly yours,

LOSEE & CARSON, P.A.



A. J. Losee

AJL:jw
Enclosure

IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO

MICHAEL P. GRACE II and)
CORINNE GRACE,)

Petitioners,)

vs.)

No. 28181

OIL CONSERVATION COMMISSION)
OF NEW MEXICO,)

Respondent,)

and)

CITY OF CARLSBAD, NEW MEXICO,)

Intervenor.)

MOTION TO QUASH

COME NOW petitioners and state to the Court:

1. That respondent heretofore issued its Order No. R-1670-L prorating gas production in the South Carlsbad-Morrow Pool. Said Order was to take effect on September 1, 1972.
2. That petitioners filed a Motion for Stay of said prorating order on August 31, 1972 in the District Court of Eddy County, New Mexico before Judge D. D. Archer which was granted by said Judge Archer and on said date he signed an Order staying the prorating order.
3. That said Judge Archer exercised his discretion in the premises and in issuing said Order in that he determined that said prorating order should be stayed and that no bond should be required of the petitioners here-in.
4. That thereafter respondent filed a disqualification of Judge Archer and Judge Archer recused himself from trial of this cause.
5. That Judge Paul Snead, Judge of the Chaves County Court of the State of New Mexico, has taken jurisdiction of this cause.
6. That respondent has filed a Motion To Vacate said Order or to require petitioners to file a bond, which has been set for hearing on March 7, 1973.

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7. That Judge Snead is without jurisdiction to hear said Motion To Vacate for the reason that both Judge Archer and Judge Snead are of equal stature in the Fifth Judicial District and Judge Snead is without authority or jurisdiction to change the Stay Order issued by Judge Archer and respondent's only remedy is through appeal of said Stay Order.

8. That this cause is set for trial on its merits on June 5, 1973.

WHEREFORE petitioners pray that all actions filed in this cause relative to vacating or dissolving or requiring a bond from the petitioners be quashed for lack of jurisdiction, and that this cause be held in abeyance until said cause is tried on its merits.

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By _____
Attorneys for Petitioners

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STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

MICHAEL P. GRAGE, II and
CORINNE GRACE, Petitioners

-vs-

No. 28181

OIL CONSERVATION COMMISSION
OF NEW MEXICO

M E M O R A N D U M

The subject of this memorandum is the specific question of whether Judge Snead has jurisdiction and authority to hear and decide a Motion to Vacate a previous Ex Parte Order entered by Judge Archer without notice and hearing which stayed the New Mexico Oil Conservation Proration Order.

It is my opinion that Judge Snead has the jurisdiction and authority to modify, amend or vacate any previous interlocutory order or ruling made by Judge ARcher in this case.

Generally, one Judge should ordinarily hesitate to vacate, modify or depart from an interlocutory order or ruling of another Judge in the same case with equal powers.

Some courts, in disapproving of the idea that a judge might do so, have expressed themselves in terms of jurisdiction and power and have laid down a seemingly rigid rule in restraint of the judges. This approach is prevalent in the jurisdiction of New York state which apparently uses a system of multiple judges for a single case. This rule, however, is not an imperative rule of law or jurisdiction but merely a rule of practice which even the New York courts will depart from in the face of necessity and justice.

Most courts recognize that a trial judge has power to vacate, modify or depart from the ruling of another in the same case, so

long as the previous ruling has not become the final judgment or law of the case. So, the generally accepted view is that in many instances one judge may properly depart from or even vacate the interlocutory ruling of another in the same case and even those courts which have held that a judge should not do so have recognized that such action may be proper in exceptional cases.

See 132 ALR 14
46 AM JUR 2nd 41
48 C.J.S. 56 (Judges)

The general issue involved here can be divided into two basic divisions: Does the second Judge have jurisdiction over the matters involved in the prior Judge's interlocutory order? and IS the Ex Parte Order of Judge Archer entered without notice and hearing in this case an interlocutory order or a final order?

Jurisdiction: Generally it can be stated that the jurisdiction of the case belongs to the court itself and not to the individual judge who may hear the case. Therefore, if the order in question is interlocutory and not final, the court retains jurisdiction and can subsequently modify or vacate a prior order regardless of who is the judge.

American Fire and Casualty v. Tillberg
109 S2 782 (1967) District Court of
Appeal of Florida

Williams v. Garret
4 Ariz App. 7, 417, P2 378 (1966)

Even those courts, which have said that a judge is wanting in power to depart from the ruling of another in the same case have recognized exceptions under such circumstances as to imply that the rule of restraint is, after all, not an imperative rule of law, but a mere rule of practice.

132 A.L.R. 14

Is Judge Archer's Order an "Interlocutory Order?"

In distinguishing between orders interlocutory and order final in nature, the Court in Rice v. VanWhy, 49 Colo 7, 111P.599 stated:

It will scarcely be denied that the court, at anytime before trial and final judgment, had the power, if convinced of error, to correct the same as it might be advised. The ruling on the motion to strike was not of such a final and conclusive character as to preclude the action taken even after the expiration of the term of the court. The fact that a different judge was sitting worked no limitation upon the power and authority of the court.

In determining what orders are interlocutory and what are final, the following cases are presented:

- A. The following have been held interlocutory orders and therefore the court allowed the second judge to modify or vacate:
1. subsequent modification of medical expenses awarded in workman's com case
Tingle v. Dade County Vd of County Commissioners
245 S2 76, Fla (1971)
 2. subsequent modification of findings and conclusions in an interlocutory decree which was subject only to final approval of the accounting by the second judge who heard the accounting portion of trial which included all evidence on entire trial
Lacey v. Baretone
240 P2 385 (1952-Calif Ct of Appls)
 3. subsequent allowance of motion to amend complaint which had been previously denied by first judge.
TCF Film Corp v. Gourley
(1957-US Ct of Appeals 3rd Cir) 240 F2 711
 4. Second judge IMPROPERLY refused to litigate probable cause of search based on fact that 1st judge had issued ex parte search warrant.
Gonzales v. District Court of Arapahoe
435 P2 384, (Colo01967)
 5. Subsequent granting of a previously denied motion to dismiss.
Denver Electric v. Phipps, Inc.
~~354 P2~~ Colo 1960 357 P2 618
 6. Subsequent denial of previously granted motion to strike allegation in complaint.
Rice v. Van Why
111 P. 599 COLO
 7. Subsequent granting of previously denied motion for summary judgment
Nusbaum v. Newark Morning Ledger
New Jersey-1965 206 A2 185
 8. Subsequent dismissal of suit as to additional parties which had previously been added by first judge in an ex parte order.
Hayes v. City of Wilmington
79 SE 2 792---North Carolina (1954)

B. Cases where second judge was not allowed to modify or vacate order of first judge:

1. Where the second judge based his action merely on a review of the record of proceedings before the first judge and took no evidence himself.
City of Long Beach v. Wright 25 P2 541
2. first judge after hearing and notice issued temporary injunctions and restraining orders. Second judge at contempt hearing for violation of those order could not relitigate propriety of those injunctions.

Mount Sinai Hospital v. Davis
(1959) 188 NYS 2 298

3. Held improper for second judge to order a joint trial in a certain New York County when a previous judge had order that one part of the trial was to be held in another New York court.

Parker v. Rogerson
307 NYS2 986 (1970)

4. Held improper for second judge to modify injunction imposed by first judge
Topping v. North Carolina State Bd of Education
106 SE2 502

In addition to the above cases, other cases, hold that ordinarily where one judge has issued an injunction or restraining order, it is improper for another judge of the same court to issue a contrary or a dissolving order upon the same state of facts. Except for Mount Sinai Hospital v. Davis, supra, normally a temporary injunction and temporary restraining order are considered to be interlocutory orders. Under that classification it can be concluded that a temporary restraining order is subject to subsequent modification by the second judge.

- C. The attached citations from Words & Phrases are provided to support proposition that Archer's order is like a temporary injunction and therefore is an interlocutory order. Although my research fails to disclose a subsequent modification of an order like the one entered by Judge Archer, two of the cases cited in paragraph "A", above, are examples of ex parte orders being vacated by the subsequent judge.

The Graces' position will most probably be founded in the argument that intra-court interference with interlocutory orders does not lead to the orderly administration of justice as presented in the following cases.

1. United States v. Parker
23 F. Supp. 880, (1938)
2. Plattner Implements v. International Harvester
133 F. 376 (1904) copy attached
3. Material Service v.
11 F. supp. 1006
4. Marshall Field
120 NE 756

This case dealt with the denial of a motion of strike the original stenographic report from the record as being an improper part of the transcript. Court said that although it is not a good practice to allow the subsequent judge to set aside the order of the prior judge, they would approve it in this case.

5. Jurgenson
63 F2 767

Dealt with second judge refusing to vacate the appointment by the first judge of the receiver in a bankruptcy action.

This case is apparently distinguishable in that after the first judge was not replaced by the second but rather the petitioner who lost before the first judge simply went forum shopping and found the second judge.

6. Barringer
165 NE 400

7. Beeber
20 NYS2 784 (1940)

Case appears to be distinguishable on facts. The modification of the order for the production of certain exhibits in court and their use as evidence as ordered by the first judge was precluded by prior case law from the particular application the second judge sought to impose upon the evidence.

sor judge has not only the authority but also in some states the duty to retry a case that his predecessor heard but did not decide; in other states, the successor judge may decide the case on the record of the evidence after hearing the argument and without taking further testimony.⁴

C. AFTER INTERLOCUTORY RULING BY ANOTHER JUDGE

§ 41. Generally.

One judge should ordinarily hesitate to vacate, modify, or depart from an interlocutory order or ruling made in the same case by another judge with equal powers.⁵ Some courts, in disapproving of the idea that a judge might do so, have expressed themselves in terms of "jurisdiction" and "power," and laid down a seemingly rigid rule in restraint of judges.⁶ Thus, some courts have taken the view that one judge should not (and even, in some instances, that he cannot) vacate, modify, or depart from an interlocutory order or ruling of another judge in the same case.⁷ But most of the cases recognize that a trial judge has power to vacate, modify, contravene, or depart from the ruling of another in the same case, whatever may be the consequences of his doing so.⁸ So, the generally accepted view is that in many instances one judge may properly depart from, or modify, or even vacate, the interlocutory ruling of another in the same case,⁹ and even those courts that have held that a judge should not do so have recognized that such action may be proper in exceptional cases.¹⁰

A judge acting later in a case is, at most, bound only by the actual order or ruling announced by an earlier judge and not by the doctrine announced by the earlier judge in connection with his order or ruling.¹¹

4. § 34, supra.

5. *Peterson v Hopson*, 306 Mass 597, 29 NE2d 140, 132 ALR 1.

Annotation: 132 ALR 14, 15.

6. *Hardy v North Butte Min. Co.* (CA9 Mont) 22 F2d 62; *Henry v New York Post*, 168 Misc 247, 5 NYS2d 716, affd without op 255 App Div 973, 8 NYS2d 1022, affd without op 280 NY 842, 21 NE2d 887, reh den 281 NY 665, 22 NE2d 488.

7. *Lane v J. W. Lavery & Son*, 294 Mass 288, 1 NE2d 378; *Wiener v Valley Steel Co.* 254 Mich 681, 236 NW 905 (second judge not to vacate order of first while first judge is available); *Price v Life & Casualty Ins. Co.* 201 NC 376, 160 SE 367.

A special problem is presented in New York and South Carolina because of the plurality of judges peculiar to the judicial systems of those states and because of the extensive rights of appeal existing in those states. **Annotation:** 132 ALR 14, 33.

8. *Williams v Garrett*, 4 Ariz App 7, 417 P2d 378.

Where the first judge overruled a demurrer to the amended bill and denied a motion

under the statute to report the ruling to the supreme court, a second judge, after a further amendment to the bill had been made and another demurrer taken on the same grounds, had power to reconsider the questions that had been presented and disposed of on the former demurrer and was therefore authorized to report his action thereon to the supreme court. *Peterson v Hopson*, 306 Mass 597, 29 NE2d 140, 132 ALR 1.

9. *Kuiken v Garrett*, 243 Iowa 785, 51 NW 2d 149, 41 ALR2d 1397; *Peterson v Hopson*, supra.

10. *Dictograph Products Co. v Sonotone Corp.* (CA2 NY) 230 F2d 131, reh den 231 F2d 867, cert dismd 352 US 883, 1 L Ed 2d 82, 77 S Ct 104, overlg in part *Commercial Union of America, Inc. v Anglo-South American Bank, Ltd.* 10 F2d 937; *German v Universal Oil Products Co.* (CA8 Mo) 77 F2d 70; *Willard v Willard*, 194 App Div 123, 185 NYS 569; *Harrigan v Gilchrist*, 121 Wis 127, 99 NW 909.

11. *Tube City Min. & Mill. Co. v Otterson*, 16 Ariz 305, 146 P 203; *Parrot v Mexican C. R. Co.* 207 Mass 184, 93 NE 590; *Outlook Farmers' Elevator Co. v American Surety Co.* 70 Mont 8, 223 P 905.

It would ordinarily be unreasonable and improper for one judge to vacate the order of another by ex parte order.¹²

§ 42. Effect of existence or absence of right to appeal.

The fact that the order of the first judge to take action in a case was appealable has been given weight in cases determining that the same question could not properly be ruled on anew by another judge of the trial court.¹³ Conversely, in cases where the second judge was deemed not to be precluded from reconsidering a point ruled upon by the first, weight has sometimes been given to the circumstance that the order of the latter judge was not appealable.¹⁴

§ 43. Jurisdictional and other defects of original order.

It is usually held that if an order or ruling of a judge was made without jurisdiction, other judges are not bound by it.¹⁵ This rule has been applied although the predecessor judge, on a challenge to his jurisdiction, found that he had jurisdiction,¹⁶ but it has been suggested that, where the first judge has made a decision on the question of jurisdiction, the second judge may not take up the same issue.¹⁷ Relief may also be granted from an order of another judge taken by default¹⁸ or through surprise, mistake, or excusable neglect of a party,¹⁹ or entered ex parte or without due notice.²⁰

§ 44. Effect of new matter.

It is generally recognized that in many cases a judge may properly reconsider a question that has been ruled upon by another judge in the same case where new matter affecting the ruling is presented.¹ It has been said that the new matter presented must be such as would probably induce the first judge himself to make a change in the ruling, were he still able to act in the matter.² Generally, the new matter may be new evidence,³ new and substantially different pleadings,⁴ or any matter by which the record is essentially changed.⁵ According to some cases, the new showing that will justify the

12. *Cayuga County Bank v Warfield* (NY) 13 How Pr 439.

13. *Platt v New York & S. B. Ry. Co.* 170 NY 451, 63 NE 532; *State v Standard Oil Co.* 205 NC 123, 170 SE 134; *Carolina Baking Co. v Geilfuss*, 169 SC 348, 168 SE 849.

Annotation: 132 ALR2d 14, 34.

14. *Schaffran v Mt. Vernon-Woodberry Mills, Inc.* (CA3 NJ) 70 F2d 963, 94 ALR 543; *Farmers' Mut. Ins. Assn. v Berry*, 53 SC 129, 31 SE 53.

15. *Graziani v Denny*, 174 Cal 176, 162 P 397; *State v Donnelly*, 68 ND 76, 276 NW 695; *Re Brizzolari*, 129 Or 307, 275 P 17.

Annotation: 132 ALR 14, 39.

16. *German v Universal Oil Products Co.* (CA8 Mo) 77 F2d 70.

17. *Turner v Indianapolis, B. & W. Ry. Co.* (CC Ind) F Cas No 14259 (in which federal jurisdiction had been upheld).

18. *Palmedo v Walton Reporter Co.* 112

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Misc 729, 183 NYS 365, *affd on op below* 193 App Div 920, 183 NYS 368; *Harrigan v Gilchrist*, 121 Wis 127, 99 NW 909.

19. *Dunton v Harper*, 64 SC 338, 42 SE 153; *Harrigan v Gilchrist*, 121 Wis 127, 99 NW 909.

20. *Munro v Post* (CA2 NY) 102 F2d 686.

1. **Annotation:** 132 ALR 14, 45.

2. *Harrigan v Gilchrist*, 121 Wis 127, 99 NW 909.

3. *Root v Samuel Cupples Envelope Co.* (DC NY) 36 F2d 405 (where on full hearing new evidence is presented); *Hamilton v State*, 207 Ind 97, 190 NE 870; *Harrigan v Gilchrist*, 121 Wis 127, 99 NW 909.

4. *Meeker v Lehigh Valley R. Co.* (CC NY) 175 F 320, *revd on other grounds* (CA2) 183 F 548; *Spencer v National Union Bank*, 189 SC 197, 200 SE 721.

5. *The Material Service* (DC Ill) 11 F Supp 1006, *affd* *Leathem Smith-Putnam Nav.*

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second judge in vacating or departing from the ruling of the first must be of happenings that have occurred since the former ruling.⁶ But new matter has also been held to include a principle of law that is decisive against the action complained of and that was overlooked in the first hearing, especially where no appeal lies from the former ruling.⁷

§ 45. Unavailability of first judge.

If the judge who made the first ruling is dead or out of office, or the circumstances are such that it is not feasible to apply to him for a vacation or modification of the ruling, another judge of the same court may, in some cases at least, properly vacate or modify such ruling or depart from it in a new ruling.⁸ So, it is said that while in general there is no sanction for a motion before one judge at special term to review or declare void the order of another judge at special term, the proper practice being to move for a rehearing before the same judge or to appeal, an exception may be made where the judge who made the first order is dead.⁹

§ 46. Rulings on questions of law.

According to the generally accepted view, one judge may, in a proper case, vacate, modify, or depart from an interlocutory order or ruling of another judge in the same case, upon a question of law.¹⁰ The orders that may be affected include an order allowing or denying intervention,¹¹ an order granting or denying a jury trial,¹² a ruling on the admissibility of evidence,¹³ or a ruling on the sufficiency or effect of pleadings.¹⁴

Some cases support the doctrine that that view of a question of law that was taken by one judge in ruling on the pleadings is not to be departed from by another.¹⁵ It has been held improper for one judge to order stricken

Co. v Osby (CA7) 79 F2d 280, cert den 296 US 653, 80 L Ed 465, 56 S Ct 370; Wiggins v Federal Stock & Grain Co. 77 Conn 507, 59 A 607.

6. Wingfoot Concessionaire v Sunnyside Outdoor Recreation Center, 233 App Div 540, 253 NYS 779; Crawell v Littlefield, 31 SCL (2 Rich) 17.

7. Bolles v Duff (NY) 56 Barb 567.

8. Willard v Willard, 194 App Div 123, 185 NYS 569; Harrigan v Gilchrist, 121 Wis 127, 99 NW 909.

Annotation: 132 ALR 14, 48.

9. Re Soules Hospital & Training School (Sup) 137 NYS 504.

10. **Annotation:** 132 ALR 14, 49.

A motion to rehear a motion may properly be entertained by a judge other than the one who disposed of the original motion if there appears to be a principle of law that is decisive against the action complained of and that was overlooked in the first hearing, especially where no appeal lies from the former ruling. Bolles v Duff (NY) 56 Barb 567.

11. German v Universal Oil Products Co. (CA8 Mo) 77 F2d 70.

12. Semidey v Central Aguirre (DC) 7 Puerto Rico F 572; Wilson v York Twp. 43 SC 299, 21 SE 82.

13. Salem Trust Co. v Federal Nat. Bank (CA1 Mass) 78 F2d 407; Anna McNally, Inc. v Chapin, 197 App Div 792, 189 NYS 441.

14. Schaffran v Mt. Vernon-Woodberry Mills, Inc. (CA3 NJ) 70 F2d 963, 94 ALR 543; Werner v Reid, 322 Ill 613, 153 NE 633; Barringer v Northbridge, 266 Mass 315, 165 NE 400.

A successor may change his predecessor's rulings of law involving the overruling of demurrers and motions to strike pleadings. Tube City Min. & Mill. Co. v Otterson, 16 Ariz 305, 146 P 203.

A second judge may permit allegations to be added to a pleading notwithstanding the first judge ordered similar allegations stricken therefrom. Rice v Van Why, 49 Colo 7, 111 P 599; Madden v Glathart, 115 Kan 796, 224 P 910.

15. Presidio Min. Co. v Overton (CA9 Cal) 261 F 933, affd on reh 270 F 388, cert den 256 US 694, 65 L Ed 1175, 41 S Ct 535; Henry v New York Post, 168 Misc 247, 5 NYS 2d 716, affd without op 255 App Div 973, 8 NYS2d 1022, affd without op 280 NY 842.

from a pleading an allegation that another has ordered or permitted to be added,¹⁶ but it has also been held that a trial judge is not required to admit proof of immaterial or irrelevant allegations added to or retained in a pleading under the order of another judge.¹⁷ Even courts taking the view that a judge is not bound by a previous holding on a question of law in the same case have held that a question of law ruled upon by one judge on a demurrer or motion attacking pleadings is not to be reconsidered by another or a second similar demurrer or motion attacking substantially the same pleadings.¹⁸ The view that the successor is bound by the decision of his predecessor on a question of law has also been taken in cases involving an order allowing intervention¹⁹ and an order granting a jury trial.²⁰

§ 47. Administrative and discretionary rulings.

A ruling by one judge on a purely administrative matter may not be binding on another judge in the same case.¹ But one judge should not ordinarily interfere with or depart from an interlocutory order or ruling of another that involved a large element of judicial discretion.² Where one judge makes an order in the exercise of a discretion committed to him, it is manifestly improper for another judge of the same court to set aside the order upon the ground of a difference of opinion as to its wisdom.³ In most cases it has been regarded as improper for one judge to entertain a motion involving a discretionary or administrative ruling where a like motion has been denied by another judge in the same case.⁴

In view of the general attitude of the courts toward matters disposed of by a judge in the exercise of discretion, it seems clear that ordinarily one judge should not amend the order of another by dispensing with the conditions upon which relief was granted.⁵ But one judge may relieve against the inadvertence or excusable neglect of a party or his attorneys in failing to conform with the requirement of the previous judge's order,⁶ and if the condition imposed by the first judge is void, the second judge may disregard it.⁷

21 NE2d 887, reh den 281 NY 665, 22 NE 2d 488; Tallahassee Power Co. v Peacock, 197 NC 735, 150 SE 510.

16. People v Biddison, 136 App Div 525, 121 NYS 129, affd without op 199 NY 584, 93 NE 378; Hardin v Greene, 164 NC 99, 80 SE 413.

17. Munro v Post (CA2 NY) 102 F2d 686; Givens v North Augusta Electric & Improv. Co. 91 SC 417, 74 SE 1067.

18. Galloway v Mitchell County Electric Membership Corp. 190 Ga 428, 9 SE2d 903.

19. Baltimore Trust Co. v Norton Coal Mining Co. (DC Ky) 25 F Supp 968.

20. Second Nat. Bank v Leary, 284 Mass 321, 187 NE 611.

1. Re Insull Utility Invest., Inc. (CA7 Ill) 74 F2d 510; Whittle v Jones, 82 SC 551, 64 SE 403.

Annotation: 132 ALR 14, 69.

(2). Jurgenson v National Oil & Supply Co. (CA3 NJ) 63 F2d 727; Beeber v Empire Power Corp. 260 App Div 68, 20 NYS2d 784; Rhode Island Co. v Superior Ct. 4? RI 5, 104 A 634.

(3). Harris v Clark (NY) 10 How Pr 415.

4. The Material Service (DC Ill) 11 F Supp 1006, affd Leathem Smith-Putnam Nav. Co. v Osby (CA7) 79 F2d 280, cert den 296 US 653, 80 L Ed 465, 56 S Ct 370; Marshall Field & Co. v Nyman, 285 Ill 306, 120 NE 756; Barringer v Northbridge, 266 Mass 315, 165 NE 400.

5. Blaustein v Lyons, 74 Misc 452, 132 NYS 315.

6. Dunton v Harper, 64 SC 338, 42 SE 153 (failing to file security for costs within time specified by order of first judge).

7. Lloyd v Swansboro Land & Lumber Co. 167 NC 97, 83 SE 248.

§ 48. Injunctions.

Ordinarily a judge who has denied an injunction may not be held liable for the facts.¹⁰

§ 49. Appellate review.

Different courts may review a judgment properly vacated by another court. Ordinarily a judgment that was not set aside by another court may not be set aside by another court.¹² But a judgment may be set aside by another court if the order was not properly entered.

§ 50. General principles.

Because of the public interest in the proper administration of the courts, a judge who has acted in the exercise of his discretion may not be held liable for the acts, and the service of a writ of mandamus to assign him to another court at the discretion of the court at which he is acting.

The right of a court to discipline a judge for acts of malfeasance or nonfeasance in the discharge of his duties is not affected by the fact that the judge has acted in the exercise of his discretion.

8. Montgomerie v. 188 (tem)

9. The Material Service (DC Ill) 11 F Supp 1006, affd Leathem Smith-Putnam Nav. Co. v Osby (CA7) 79 F2d 280, cert den 296 US 653, 80 L Ed 465, 56 S Ct 370; Concessionary Center, Inc. v. 1006, 80 L Ed 465, 56 S Ct 370.

10. Reynold v. 33 F 3 pending app

As to success generally, see § 321.

11. Annotation: As to appeal see RECEIVE

12. Hardy

§ 48. Injunction or restraining order.

Ordinarily, where one judge has issued an injunction or restraining order,⁸ or has denied an application therefor,⁹ it is improper for another judge of the court to issue a contrary or a dissolving order upon the same state of facts.¹⁰

§ 49. Appointment of receiver.

Different results have been reached on the question whether a judge may properly vacate an order for the appointment of a receiver that was made by another judge of the same court.¹¹ According to one view, a judge is not ordinarily permitted to vacate an order for the appointment of a receiver that was made in the exercise of discretion by another judge of the same court.¹² But according to the contrary view, a judge may vacate an order by another judge of the same court appointing a receiver, where it appears that the order was inconsiderately made.¹³

V. RIGHTS, PRIVILEGES, AND DISABILITIES

§ 50. Generally; rights and privileges.

Because of the nature of his office, the judge is granted certain special rights and privileges. Generally, a judge is exempt from liability for judicial acts,¹⁴ and under certain circumstances he is exempt from arrest¹⁵ and from the service of civil process.¹⁶ If a judge is threatened with assault or assassination on account of an act in his judicial capacity, the executive may assign him a guard, not only while he is actually holding court, but at all times, including, for example, while he is traveling for the purpose of holding court at different places.¹⁷

The rights and privileges of a judge do not make him immune from disciplinary proceedings during his term of office. A judge may be disciplined for acts of immorality, dishonesty, fraud, or crime and his license to practice law taken away, but the erroneous exercise of judicial discretion in the performance of a duty or execution of a constitutional mandate may not, in the

8. *Montgomery v Robinson*, 93 SC 247, 76 SE 188 (temporary injunction).

9. *The Material Service (DC Ill)* 11 F Supp 1006, *affd* *Leathem Smith-Putnam Nav. Co. v Osby (CA7)* 79 F2d 280, cert den 296 US 653, 80 L Ed 465, 56 S Ct 370; *Wingfoot Concessionaire v Sunnyside Outdoor Recreation Center*, 233 App Div 540, 253 NYS 779.

10. *Reynolds v Iron Silver Min. Co. (CC Colo)* 33 F 354 (continuing injunction in force pending appeal).

As to successive applications for injunction generally, see 42 Am Jur 2d, *INJUNCTIONS* § 321.

11. *Annotation*: 132 ALR 14, 85.

As to appointment of receivers generally, see *RECEIVERS* (1st ed §§ 5 et seq.).

12. *Hardy v North Butte Min. Co. (CA9*

Mont) 22 F2d 62; *Nixon Grocery Co. v Spann*, 108 SC 329, 94 SE 531.

13. *Haines v Commercial Mortg. Co.* 206 Cal 10, 273 P 35; *Quitman v Dowd*, 301 Ill App 403, 23 NE2d 207.

14. §§ 72 et seq., *infra*.

15. See 5 Am Jur 2d, *ARREST* § 107.

16. See *PROCESS* (1st ed § 140).

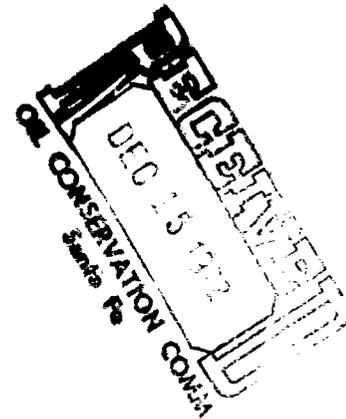
17. Where an unsuccessful litigant and her husband make open threats to injure or kill a Supreme Court judge because of his decisions in the circuit court, the President may assign a marshal the duty of protecting the judge, and if the judge is attacked, the marshal acts within his authority in protecting the judge, even if it is necessary to kill one of the assailants to protect the judge. *Re Neagle (Cunningham v Neagle)* 135 US 1, 34 L Ed 55, 10 S Ct 658, *affg* (CC Cal) 14 Sawy 232, 39 F 833.

A. J. LOSEE
JOEL M. CARSON

LAW OFFICES
LOSEE & CARSON
300 AMERICAN HOME BUILDING
P. O. DRAWER 239
ARTESIA, NEW MEXICO 88210

AREA CODE 505
746-3508

13 December 1972



Honorable Paul Snead
District Judge
Chaves County Courthouse
Roswell, New Mexico

Re: Michael P. Grace II et ux vs. Oil Conservation
Commission of New Mexico, District Court of
Eddy County No. 28181
Our File 15-007-001(a)

C
O
P
Y

Dear Judge Snead:

The captioned case, after disqualification of Judges Archer and Nash, is presently pending in your Court. On August 31, 1972, Judge Archer entered an order temporarily staying the order of the Oil Conservation Commission which Petitioners seek to have reviewed in this case.

The Commission's Order prorated gas in the South Carlsbad-Morrow gas pool in which 18 wells are presently producing. The Commission's Order, prima facie valid under Section 65-3-22(b), N.M.S.A., will have little effect if the stay order remains in force for any length of time until the case is finally decided, because, as I understand it, the pool will be materially depleted by that time. Enclosed for filing, you will please find the Motion of Respondent to Vacate Temporary Stay Order or to Require Petitioners to Post Bond.

As I mentioned on the telephone, we would like to present evidence in support of this motion and feel that one-half day is adequate for testimony and arguments. We are sorry that your schedule would not permit a hearing on the motion this month, but I understand that you will make every reasonable effort to set the matter sometime during the first of January.

Honorable Paul Snead

13 December 1972

-2-

There are also pending in the case motions to intervene by Cities Service Oil Company and the City of Carlsbad, which would be heard at the same time.

Thank you in advance for your attention to this request.

Very truly yours,

LOSEE & CARSON

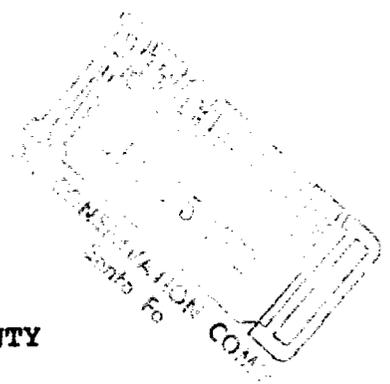


A. J. Losee

AJL:jw
Enclosure

cc w/enclosure:

Mr. A. L. Porter, Jr.
Mr. William J. Cooley
Mr. Lon P. Watkins
Mr. Jason W. Kellahin
Mr. Michael F. McCormick



IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO

MICHAEL P. GRACE II and CORINNE)	
GRACE,)	
)	
Petitioners,)	
)	
vs.)	No. 28181
)	
OIL CONSERVATION COMMISSION OF)	
NEW MEXICO,)	
)	
Respondent.)	

MOTION TO VACATE TEMPORARY
STAY ORDER OR TO POST BOND

COMES Respondent, Oil Conservation Commission of New Mexico, and moves the Court to vacate the temporary stay order, or to require Petitioners to post a bond in such form and amount as the Court may deem just and proper, securing the other operators in the South Carlsbad-Morrow field against loss or damage due to the staying of the Commission's Order in the event the action of the Commission shall be affirmed, and as grounds therefor states:

1. The Petition for Review of Respondent's Order No. R-1670-L, entered in Case No. 4693, was filed herein on August 18, 1972, and service was not completed until September 11, 1972.

2. The Petitioners' Motion for Stay of Order was filed herein on August 31, 1972, and in an ex parte proceeding on the same day, the Court issued an Order temporarily staying Respondent's Order No. R-1670-L.

3. The Motion for Stay of Order, like the Petition for Review, raised numerous issues which were not set forth

in the Petitioners' Application for Rehearing and which, by virtue of Section 65-3-22(b), N.M.S.A., 1953 Comp., as amended, are not before this Court for review.

4. Respondent, before service was complete, specially appeared herein on September 7, 1972, by Motion to Vacate Order on the ground that the Court did not have jurisdiction. This motion is filed after Respondent has filed its Response to the petition for review.

5. Respondent is informed and believes that Petitioners, in the absence of prorationing and while the stay order is in effect, are producing one or more of their wells in the South Carlsbad-Morrow pool at capacity, in dissipation of the reservoir energy and in a manner to reduce, or tend to reduce, the total quantity of natural gas which may be ultimately recovered from the South Carlsbad-Morrow pool.

6. Respondent is informed and believes that Petitioners, in the absence of prorationing and while the stay order is in effect, are producing one or more of their wells in the South Carlsbad-Morrow pool in excess of reasonable market demand for gas from the well or wells.

7. Respondent is informed and believes that Petitioners, in the absence of prorationing and while the stay order is in effect, are producing one or more of their wells in the South Carlsbad-Morrow pool at capacity and in such a manner that drainage from other tracts in the pool is occurring which is not equalized by counter drainage.

8. There are now a total of 18 wells in the South Carlsbad-Morrow pool and Respondent is informed and believes

that the owners and operators of wells in the said pool, other than those operated by Petitioners, will suffer loss or damage due to the staying of the Commission's Order.

9. Respondent's Gas Prorating Order No. 1670-L is prima facie valid under Section 65-3-22(b), N.M.S.A., 1953 Comp., but it will have little effect if the stay order remains in force for any length of time until this case is finally decided, because the South Carlsbad-Morrow gas pool will be substantially depleted by that time.

WHEREFORE, Respondent prays:

A. That the Court set this motion for hearing at the earliest possible date.

B. That the Court enter its order vacating the temporary stay of Respondent's Order R-1670-L, and direct the Respondent to commence the first allowable period for the South Carlsbad-Morrow pool on September 1, 1972.

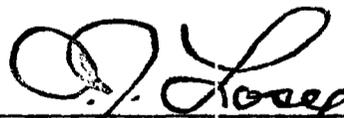
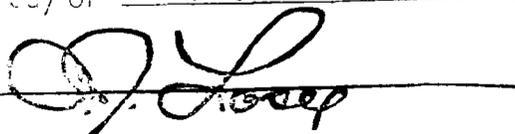
C. In the alternative, that the Court require Petitioners to post a bond in such form and amount as the Court may deem just and proper, securing the other owners and operators of wells in the South Carlsbad-Morrow pool against loss or damage due to staying of the Commission's Order in the event the order shall be affirmed.

D. And for such other relief as may be just in the premises.

I certify that I mailed a true copy of the foregoing pleading to opposing counsel of record, on this

13 day of December

1972.



A. J. Losee, Special Assistant
Attorney General, Representing
the Oil Conservation Commission
of New Mexico

P. O. Drawer 239
Artesia, New Mexico 88210

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

September 6, 1972

The Honorable D. D. Archer
District Judge
District Court of the Fifth
Judicial District
Carlsbad, New Mexico

Re: Eddy County Cause No. 28181
Michael P. Grace II and
Corinne Grace vs.
New Mexico Oil Conservation
Commission

Dear Sir:

Enclosed please find the original orders Vacating Stay and Quashing Return of Service. Also enclosed please find copies of Motion to Vacate Order with attached Exhibits "A", "B", "C" and Motion to Quash Return of Service with attached Exhibit "A", each of which has been filed in the Office of the District Court.

I would appreciate your filing each of the orders in the Office of the District Court Clerk as soon as you have taken action.

Very truly yours,

5/9-6-72

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

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

ORDER VACATING STAY

NOW on _____, 1972, this matter having come before the Court upon special appearance of the respondent Oil Conservation Commission and motion to vacate stay, the respondent appearing by its attorney and the Court having considered said motion, the exhibits attached thereto and being otherwise duly advised in the premises, finds that said motion is well taken and should be granted.

It is Therefore Ordered, Adjudged, and Decreed by the Court that the stay heretofore ordered in the above-entitled action by this court be vacated, annulled, set aside, and held for naught.

Dated _____, 1972.

DISTRICT JUDGE
Fifth Judicial District
Eddy County, New Mexico

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

ORDER QUASHING RETURN OF SERVICE

NOW on _____, 1972, this matter having come before the court upon special appearance of the respondent Oil Conservation Commission and motion to quash return of service, the respondent appearing by its attorney and the court, having considered said motion, the exhibit attached hereto and being otherwise duly advised in the premises, finds that said motion is well taken and should be granted.

It is therefore Ordered, Adjudged, and Decreed by the court that the return of service of summons in the above-entitled action be quashed, annulled, set aside, and held for naught.

Dated _____, 1972.

DISTRICT JUDGE
Fifth Judicial District
Eddy County, New Mexico

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

MOTION TO VACATE ORDER

Comes now the respondent above named by its attorney appearing specially and for the purposes of this motion only, and without submitting itself to the jurisdiction of this court, and for no other purpose, moves the court that the order staying New Mexico Oil Conservation Commission Order No. R-1670-L temporarily, a copy of which is attached hereto and made a part hereof as Exhibit "A", be vacated, annulled, set aside, and held for naught, for the reason that this defendant is a duly constituted agency of the State of New Mexico and that service of summons was not made on the attorney general, as evidenced by the affidavit of the attorney general attached hereto and made a part hereof as Exhibit "B", and hence not made in accordance with Sections 65-3-22(b) and 5-6-22, N.M.S.A., 1953 Comp. Hence the Court had no jurisdiction to stay an order of the respondent in that the Court has never acquired jurisdiction over the respondent. And further, because the certain named parties appeared in Commission Case No. 4693 taking positions adverse to that of Petitioners, as evidenced by the affidavit of A. L. Porter, Jr. attached hereto and made a part hereof as Exhibit "C", and it is believed by this respondent that said parties were not given notice of the appeal as required by Section 65-3-22(b), N.M.S.A. 1953 Comp.

WHEREFORE, Respondent prays:

1. That the Order of the Court in the above-entitled action staying the New Mexico Oil Conservation Commission Order No. R-1670-L be vacated, annulled, set aside, and held for naught.

2. And for such other and further relief as the Court may deem just and proper.

S/9-6-72

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

Exhibit "A"

IN THE DISTRICT COURT OF EDDY COUNTY
STATE OF NEW MEXICO

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

FILED AUG 31 1972 IN MY
3:56 PM OFFICE

FRANCES M. WILCOX
Clerk of the District Court

MICHAEL P. GRACE, and
CORINNE GRACE,

Petitioners,

vs.

OIL CONSERVATION COMMISSION,

Respondent.

No. 28181

ORDER

This day came on for hearing before the Court, petitioners verified Motion for a Stay Of Order Number R-1670-L of the Oil and Gas Commission prorating the South Carlsbad-Morrow Pool which is to take effect on September 1, 1972.

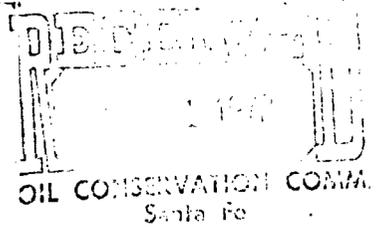
Having considered said Motion and exhibits attached hereto and being fully advised in the premises, the Court finds that a Stay of said Order should be granted.

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

DONE at Carlsbad, New Mexico this 31st day of August 1972.

W. J. Archer
DISTRICT JUDGE

CLERK'S CERTIFICATE



STATE OF NEW MEXICO }
County of Eddy } ss.

I, **FRANCES M. WILCOX**, Clerk of the DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT, within and for the County of Eddy, State of NEW MEXICO, DO HEREBY CERTIFY that the attached is a full, true and correct copy of the original

MOTION FOR STAY OF ORDER, Filed August 31, 1972

ORDER, Filed August 31, 1972

in cause numbered 28181 on the Civil Docket
of said court, wherein MICHAEL P. GRACE II and CORINNE GRACE
is plaintiff, and OIL CONSERVATION COMMISSION OF NEW MEXICO
is defendant, all as shown from the files and records of my said office.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed the seal of said Court at Carlsbad, New Mexico,
this 31st day of August, A. D. 19 72 .

FRANCES M. WILCOX
Clerk of the District Court

By M. B. Foster
Deputy

Exhibit "B"

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

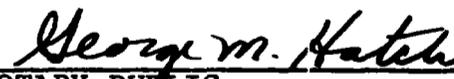
AFFIDAVIT

David L. Norvell, being first duly sworn upon oath deposes and says:

1. That he is now, and at all times hereinafter mentioned was, the duly elected, qualified, and acting Attorney General of the State of New Mexico.
2. That he has not been handed a copy of the summons and complaint in the above-entitled action.
3. That to the best of his knowledge and belief no copy of the summons and complaint in the above-entitled action has been handed to his receptionist.


_____)
AFFIANT

Subscribed and sworn to before me this 6 day of September, 1972.


_____)
NOTARY PUBLIC

My Commission Expires:

May 7, 1974

IN THE DISTRICT COURT

MICHAEL P. GRACE II and)	
CORINNE GRACE,)	
)	
Petitioners,)	No. 28181
)	
vs.)	
)	
OIL CONSERVATION COMMISSION)	
OF NEW MEXICO,)	
)	
Respondent.)	

RESPONSE TO MOTION FOR STAY OF ORDER

Respondent, Oil Conservation Commission of New Mexico, answering the Motion for Stay of Order, states:

1. As to paragraph 1 of the Motion for Stay of Order, the Respondent admits that the three wells are located in the South Carlsbad-Morrow Gas Pool, but denies that the Petitioners are the owners of the Gradonoco, Humble-Grace, and City of Carlsbad wells.

2. The Respondent denies the allegations contained in paragraph 2 of the Motion for Stay of Order.

3. The Respondent admits the allegation contained in paragraph 3 that it issued Order No. R-1670-L prorating the South Carlsbad-Morrow Gas Pool, but denies that said order set any allowable.

4. The Respondent denies each and every allegation contained in paragraphs 4, 5, and 6 of the Motion for Stay of Order.

5. The Respondent admits that a hearing was held before the Respondent Commission on August 16, 1972, wherein Petitioners were seeking, among other things, removal of the three wells described in Petitioner's Motion for Stay of Order from the South Carlsbad-Morrow Gas Pool but states, contrary to the allegation of Petitioners, that the Respondent has rendered a decision in the matter as evidenced by Commission Order No. R-4392 attached hereto and made a part hereof as Exhibit_____.

6. As to paragraph 8 of the Motion for Stay of Order, the Respondent states that its Order prorating the South Carlsbad-

Morrow Gas Pool is prima facia valid and not subject to review on the Motion for Stay of Order.

7. The Respondent denies each and every allegation of law and fact contained in paragraph 9 of the Motion for Stay of Order.

8. The Respondent denies the allegation contained in paragraph 10 of the Motion for Stay of Order.

FURTHER

1. 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) Respondent states 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 for the General Rules and Regulations governing the prorated gas pools of Southeast New Mexico, promulgated by Order No. R-1670, as amended, to produce its City of Carlsbad "Com" Well No. 1 at full capacity, which case has been continued twice 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 paragraph 7 of the Motion for Stay of Order in that Petitioners sought in Case No. 4795 contraction of the South Carlsbad-Morrow Gas Pool to eliminate their wells from said pool.

(c) Petitioners failed to exhaust their administrative remedies in Commission Case 4398, heard upon the application of the Petitioners in which Order R-4034 issuing from said case and attached hereto and made a part hereof as Exhibit _____, limited the allowable production from the Grace Gradonoco and Grace Humble Grace wells.

2. That there are many owners of interests in the South Carlsbad-Morrow Gas Pool, including State, Federal and municipal governments as well as private individuals.

3. That owners of interests in the South Carlsbad-Morrow Gas Pool other than the Petitioners are suffering a loss of approximately \$ _____ per day as a result of the Order Staying Commission Order No. R-1670-L.

4. That there was no evidence presented in Commission Case No. 4693 concerning loss of production or income from the City of Carlsbad Well No. 1.

5. That no evidence was received by the Commission in Case No. 4693 concerning removal of certain wells from the South Carlsbad-Morrow Gas Pool.

6. That the only issue raised by the Petitioners in their Petition for Review is the matter of substantial evidence to support a particular finding of the Commission.

7. That the issues and parties involved in Commission Cases 4796 and 4795 are separate and distinct from the issues and parties involved in Commission Case 4693 which is the subject of Review in Eddy County Cause No. 28181.

8. Respondent states that the Order Staying Commission Order No. R-1670-L was issued, as reflected by the record before the Court, ex parte without notice or opportunity for the Respondent or any person owning an interest in the subject pool other than Petitioners to be heard.

9. Respondent states that the entire motion of Petitioners and the affidavits attached thereto constitute an insidious attempt by the Petitioners to have the court consider evidence and issues contrary to law and should be stricken as immaterial, impertinent and scandalous.

WHEREFORE, Respondent prays:

1. That the order in the above-entitled action staying Order No. R-1670-L of the New Mexico Oil Conservation Commission be vacated, annulled, set aside, and held for naught.

4. Petitioners failed to exhaust their administrative remedies in Commission Case 4398, heard upon the application of *Michael P. Grace II and Corinne Grace,* the Petitioners, in which Order R-4034 issuing from said case and attached hereto and made a part hereof as Exhibit _____, limited the allowable production from the Grace Gradonoco and Grace Humble Grace wells.

5. Respondent states that the Court is without jurisdiction to grant relief to the City of Carlsbad.

WHEREFORE, Respondent prays:

1. That the order in the above-entitled action staying Order No. R-1670-L of the New Mexico Oil Conservation Commission be vacated, annulled, set aside, and held for naught.

2. And for such other and further relief as the court may deem just and proper.

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 _____ day of _____, 1972, a copy of the foregoing Response to Motion For Stay of Order was mailed to opposing counsel of record.

GEORGE M. HATCH

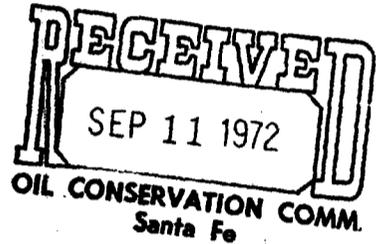
CLERK'S CERTIFICATE

STATE OF NEW MEXICO }
County of Eddy } ss.

I, FRANCES M. WILCOX, Clerk of the DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT, within and for the County of Eddy, State of NEW MEXICO, DO HEREBY CERTIFY that the attached is a full, true and correct copy of the original

MOTION FOR STAY OF ORDER, Filed August 31, 1972

ORDER, Filed August 31, 1972



in cause numbered 28181 on the Civil Docket
of said court, wherein MICHAEL P. GRACE II and CORINNE GRACE
is plaintiff, and OIL CONSERVATION COMMISSION OF NEW MEXICO
is defendant, all as shown from the files and records of my said office.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed the seal of said Court at Carlsbad, New Mexico,
this 31st day of August, A. D. 19 72 .

FRANCES M. WILCOX
Clerk of the District Court

By M. B. Foster
Deputy

IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

MICHAEL P. GRACE II and
CORINNE GRACE,
Petitioners,

FILED AUG 31 1972 IN MY OFFICE

FRANCES M. WILSON
Clerk of the District Court

v

No. 28181

OIL CONSERVATION COMMISSION
OF NEW MEXICO
Respondent

MOTION FOR STAY OF ORDER

Come now petitioners and state to the court:

1. Petitioners are owners of three producing gas wells presently in the South Carlsbad- Morrow pool. These three wells are identified as the Gradonodo, Humble-Grace, and City of Carlsbad Well No. 1. The Humble-Grace Well was not properly advertised into the South Morrow pool by the Respondent, but for the purposes of this Motion, it is assumed that the Commission is treating this well as part of the pool.
2. That as of June 30, 1972, the Respondent found that the producing capacity of this pool was 124,250,000 Cubic Feet of gas per day as of February, 1972, or 3, 727,000,000 Cubic Feet of Gas per month.
3. That Respondent issued its Order No. R-1670-L prorating this field to an allowable of 1,410,000,000 Cubic Feet of gas per month. This figure amounts to an allowable per well in said field of 3 1/3 million cubic feet of gas per day.
4. This Order will reduce the production of petitioners' wells by 7.107 million feet of gas per day as opposed to a production figure heretofore produced of 21 million cubic feet of gas per day. This amounts to a loss to plaintiffs' of the production of 14 million cubic feet of gas per day, which represents a loss to plaintiffs of \$4200.00 per day.
5. The City of Carlsbad has a royalty interest in the Humble- Grace Well and the City of Carlsbad Well No. 1 of approximately 7 1/2 %, for a monthly average income of approximately \$10,000.00; under said Order the City of Carlsbad will lose approximately \$40000.00 per month because of curtailment of production of said wells by said Order.
6. The result of the Proration Order with reference to the City of Carlsbad Well No. 1, which is now producing 10 million cubic feet of gas per day, will be to reduce production from this well by

approximately 7 million cubic feet of gas per day. Such reduction of production will probably result in the loss of said well and all its accompanying reserves by virtue of the mechanics of the encroachment of salt water in said well thereby destroying the gas production capacity. Affidavit to such is attached hereto, marked Exhibit A, and made a part of these pleadings.

7. Petitioners further state that a Hearing before the Respondent Commission was held on August 16, 1972, wherein Petitioners were seeking to remove the above mentioned three wells from the Morrow Pool, and no decision has been made by Respondent as to this matter.

8. That equitable proration cannot be established until the production characteristics and reserves of the separate pools in the subject formations have been evaluated in detail and such have not been made. (see Ex. B)

9. That the action of Respondent in issuing said Order was and is unreasonable, arbitrary, discriminatory and confiscatory and deprive Petitioners of their property without due process of law, contrary to and in violation of the Fourteenth Amendment to the Constitution of the United States and Article II, Section 18, of the Constitution of the State of New Mexico in that: Said Order does not rest upon an authorized statutory basis; is not supported by substantial evidence; and the order is incomplete.

10. That unless said Order is stayed, the Petitioners and the City of Carlsbad will suffer irreparable injury and damage.

WHEREFORE Petitioners pray that the court issue an order staying the Order No. R-1670-L until the case is heard upon its merits.

s/ Lon P. Watkins
Lon P. Watkins and Wm. J. Cooley, attorneys
for Petitioners, 122 No Canyon, Carlsbad,
New Mexico

STATE OF NEW MEXICO |

COUNTY OF EDDY |

Michael P. Grace and Corinne Grace being first duly sworn upon oath say:

That they are the Petitioners above named; that they have read the foregoing Petition and that the matters therein stated are true and correct.

s/ Michael P. Grace
s/ Corinne Grace
Affiants

Subscribed and sworn to before me this 31st day of August, 1972.

s/ Lon P. Watkins
Notary Public

Ex. A

STATE OF NEW MEXICO |

COUNTY OF EDDY |

RICHARD STEINHORST, JR., being first duly sworn upon oath deposes and says:

1. I am a Registered Professional Petroleum Engineer, and have been practicing as such for 35 years.

2. I have been studying production and performance and well production characteristics in the Carlsbad South Morrow Pool since February, 1972, to the present date.

3. I am familiar with the gas well known as City of Carlsbad Well No. 1.

4. This well is producing 1,000 barrels of water per day and 10 MCF of gas. When originally completed, this well made much more water with almost no gas. The well improved to its present productive capacity by virtue of production.

5. Any attempts to curtail production rates will result in an increase in water and a corresponding decrease in tubing flowing pressure and gas rate.

6. That any reduction in production from this well will probably result in the loss of said well and all its accompanying reserves by virtue of the mechanics of the encroachment of salt water in said well destroying the gas producing capacity.

Richard Steinhorst, Jr.
Affiant, Richard Steinhorst, Jr.

Subscribed and sworn to before me this 31st day of August, 1972.

(SEAL)

Law P. Watters
Notary Public

My commission expires 10-31-76

Exhibit B

IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO

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

No. 28181

A F F I D A V I T

STATE OF NEW MEXICO)
 :
 COUNTY OF EDDY)

THOMAS A. BALDWIN, being first duly sworn upon oath deposes
 and says:

1. That he is a Registered and Certified Geologist and Petroleum Engineer and has had approximately thirty-five years of experience in this field.
2. That he has made a study of the gas formations in connection with the Morrow Production in the south Carlsbad, Eddy County, field. That his total work in connection with said field extended over a total period of approximately thirty working days.
3. That the Oil and Gas Commission of the State of New Mexico held a hearing in Hobbs, New Mexico on April 19, 1972 for the purpose of determining whether the Morrow Pool should be prorated.
4. That said Affiant was unable to attend and testify at said hearing.
5. That as of the date April 19, 1972, through his company, TETRA-TECH, INC. of California, he advised said Commission of his inability to attend such hearing; that Affiant had made a preliminary study of the south Carlsbad field and had determined at that time, which determination has been confirmed by studies made by him since April 19, 1972, that:
 - a. There is a lack of communication between the various areas of the field, particularly within the Morrow Formation,

- b. The lack of communication suggests that the Morrow Production in the south Carlsbad field comes from at least two and possibly several separate pools,
- c. That equitable proration cannot be established until the production characteristics and reserves of the separate pools have been evaluated in detail,
- d. That such evaluation has not been made and such should be made before an equitable proration order from the New Mexico Oil and Gas Commission can be made.
- e. That had Affiant been given an opportunity to testify before said Oil and Gas Commission as held on April 19, 1972, his testimony concerning said field and particularly the Morrow Pool would have been the same as set out above.

Thomas A. Baldwin
AFFIANT

SUBSCRIBED AND SWORN to before me this 22nd day of August, 1972.

Lawrence P. Walker
NOTARY PUBLIC

MY COMMISSION EXPIRES:

10-31-76

IN THE DISTRICT COURT OF EDDY COUNTY
STATE OF NEW MEXICO

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

FILED AUG 31 1972 IN MY
3:52 P.M. OFFICE

FRANCES M. WILCOX
Clerk of the District Court

MICHAEL P. GRACE, and
CORINNE GRACE,

Petitioners,

vs.

OIL CONSERVATION COMMISSION,

Respondent.

No. 28181

ORDER

This day came on for hearing before the Court, petitioners verified Motion for a Stay Of Order Number R-1670-L of the Oil and Gas Commission prorating the South Carlsbad-Morrow Pool which is to take effect on September 1, 1972.

Having considered said Motion and exhibits attached hereto and being fully advised in the premises, the Court finds that a Stay of said Order should be granted.

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

DONE at Carlsbad, New Mexico this 31st day of August 1972.


DISTRICT JUDGE