



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Cases to be Submitted  
Monday  
May 20, 1974  
9:00 A.M.

No. 9886

Home Savings & Loan Association,  
Appellant

Franks & deVesty  
Michael F. Croom

vs.

Esquire Homes, Inc., et al., Appellees

Robinson, Stevens & Wainwright  
Paul S. Wainwright

No. 9895

Maurice Malcolm Dillon, Appellant

Maurice Malcolm Dillon, Pro Se

vs.

Bruce King, Governor, et al., Appellees

David L. Norvell, Attorney General  
Jane E. Pendleton, Asst. Atty. Gen.

THE CALL OF THE DOCKET FOR THE FOLLOWING CASES WILL BE AT 1:30 O'CLOCK P.M. AND COUNSEL NEED NOT BE PRESENT UNTIL THAT TIME:

No. 9828

Alice Mayes Ballard, et al., Appellants

Burr & Cooley  
William J. Cooley

vs.

J. W. Miller, et al., Appellees

Walker & Estill  
John B. Walker  
Hinkle, Bendurant, Cox & Eaton  
Harold L. Hensley, Jr.

No. 9821

Michael P. Grace II, et ux, Appellants

Marchiondo & Berry  
William C. Marchiondo

vs.

Oil Conservation Commission of New  
Mexico, Appellee

Losee & Carson  
William F. Carr, Sp. Asst. Atty Gen

and

Cities Service Oil Company, et al  
Intervenors

Jason Kellahin

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Cases to be Submitted  
Tuesday  
May 21, 1974  
9:00 A. M.

No. 9897 - Submit on Brief in Chief Only

Gallup Trading Company, Appellee

vs.

Eddie Michaels, Appellee

vs.

Don Owen, aka Donald Owen, Appellant

vs.

Arthur W. Rogers, Appellee

Joan K. L. Roberts

(No appearance for Appellees)

No. 9926

Richard E. Ransom, Executor, Appellant

Schlenker, Parker, Payne &  
Wellborn

Charles I. Wellborn

vs.

La Verne M. Little, Appellee

John P. Dwyer

Virgil L. Brown

THE CALL OF THE DOCKET FOR THE FOLLOWING CASES WILL BE AT 1:30 O'CLOCK P.M.  
AND COUNSEL NEED NOT BE PRESENT UNTIL THAT TIME:

9914

Philip Richardson and Helen B.  
Richardson, Appellees

Bill G. Payne

vs.

Cleo Hendricks Duggar, Appellant

William C. Schauer

No. 9870

Franklin Levacy, et ux, Appellees

vs.

First Nat'l Bank of Belen, Appellant

Mayo T. Boucher

and

Whynama Tucker Luce, Appellee

Jay Morgan

Supreme Court of the State of New Mexico

Santa Fe, New Mexico..... April 22, 1974

Dear Sir:

Cause No. 9821

Michael P. Grace, et ux v. Oil Conservation Comm.

has been placed on the calendar for submission to the Court upon

oral argument } on Monday, May 20, 1974 at  
--- briefs only }  
--9:00 o'clock a.m. 1:30 o'clock P.M.

Please return to me promptly copy of transcript of the record in this case, if you have one.

ROSE MARIE ALDERETE,  
Clerk of Supreme Court.

To: Mr. William F. Farr, Attorney  
Oil Conservation Commission  
Santa Fe, New Mexico 87501

A. J. LOSEE  
LOSEE & CARSON LAW OFFICES  
P. O. DRAWER 239  
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SUBJECT Grace v OCC, Sup. Ct. No. 9821

DATE 4/23/74

The Michael P. Grace vs. Oil Conservation Commission argument has been re-set before the Supreme Court for May 20, 1974, at 1:30 P.M. I hope that Pete can make arrangements to be present for the argument.

Jerry

AJL:jw

Supreme Court of the State of New Mexico

Santa Fe, New Mexico March 18, 1974

Dear Sir:

Cause No. 9821

Michael P. Grace v. Oil Conservation Comm.

has been placed on the calendar for submission to the Court upon

oral argument } on Tuesday, April 16, 1974, at  
~~-briefs only-~~ }  
~~-9:00 o'clock a.m.-~~ 1:30 o'clock P.M.

Please return to me promptly copy of transcript of the record in this case, if you have one.

ROSE MARIE ALDERETE,  
Clerk of Supreme Court.

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MICHAEL P. GRACE II and  
CORINNE GRACE,

Petitioners-Appellants,

vs.

OIL CONSERVATION COMMISSION  
OF NEW MEXICO,

NO. 9821

Respondent-Appellee,

and  
CITIES SERVICE OIL COMPANY  
and the CITY OF CARLSBAD,

Intervenors.

CERTIFICATE OF SERVICE

This will certify that on this date I served a true  
copy of Reply Brief

by mailing such copy to:

A. J. Losee, Esquire  
Attorney at Law  
P. O. Box 239  
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✓ William F. Carr, Esquire  
Special Asst. Atty Gen.  
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Santa Fe, N. M. 87501

by first class mail with postage thereon fully prepaid.

Dated at Santa Fe, New Mexico, this 19th day of  
March, 1974

ROSE MARIE ALDERETE  
Clerk of the Supreme Court  
of the State of New Mexico

By: Laura R. Galley  
Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MICHAEL P. GRACE II and  
CORINNE GRACE,

Petitioners-Appellants,

v.

No. 9821

OIL CONSERVATION COMMISSION  
OF NEW MEXICO,

Respondent-Appellee,

and

CITIES SERVICE OIL COMPANY AND  
CITY OF CARLSBAD, NEW MEXICO,

Intervenors.

APPELLANTS' REPLY BRIEF

MARCHIONDO & BERRY, P.A.  
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*[Handwritten signature]*  
CLERK

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MICHAEL P. GRACE II and  
CORINNE GRACE,

Petitioners-Appellants,

vs.

OIL CONSERVATION COMMISSION  
OF NEW MEXICO,

No. 9821

Respondent-Appellee,

and

CITIES SERVICE OIL COMPANY AND  
CITY OF CARLSBAD, NEW MEXICO,

Intervenors.

APPELLANTS' REPLY BRIEF

OBJECTIONS TO ANSWER BRIEF

In a brief filed jointly by the appellee and the intervenor Cities Service Oil Company in this matter, the initial attempt has been to gloss over the only two definitive decisions in this jurisdiction by responding in their first paragraph that Continental Oil Co. v. Oil Conservation Comm., 70 N.M. 310, 373 P.2d 809 (1962), and El Paso Nat. Gas Co. vs. Oil Conservation Comm., 76 N.M. 268, 414 P.2d 496 (1966), were concerned with changing an existing prorationing formula in those cases, whereas we are here discussing establishment of a formula in a relatively new pool -- a distinction without a difference; thence referring only once again (Answer Brief, pp. 14-15) to either decision, and then only to note the obvious: the apparent "practicability" in those cases of determining recoverable gas in the pool and under the individual tracts, because the Commission had indeed done so in El Paso and was ordered to do so in Ccontinental.

The Answer Brief has otherwise left appellants befuddled in several areas, as well.

Appellants would first like to set out those factual assertions made in appellee's and intervenor's brief which, inconsistent with Supreme Court Rule 15(6), cannot be correlated with the record, before we proceed to a further response to that Answer Brief:

1. At page 3 of the Answer Brief, they refer to Transcript 121 and 185 as supporting a statement that "substantially all of the prorated gas pools in southwestern New Mexico are prorated on a straight acreage formula." Nothing appears at Transcript 121 regarding the number of pools prorated on an acreage formula as related to the number of gas pools in southeastern New Mexico, and at Transcript 185 the witness discussed two pools out of the fifteen he had analyzed (Tr. 184) as being prorated on a straight acreage basis. Certainly those pages of the record will not substantiate a claim that "substantially all" of an unknown total are so prorated.

2. At the same page 3 of the Answer Brief, pages 166 and 167 of the Transcript are cited to support a statement that drilling the Morrow would destroy the capability of producing commercial oil and gas. At pages 166 and 167 of neither the record before the Oil Conservation Commission nor the Transcript of the record now before the Court is there any mention whatever regarding drilling, or its effect.

3. At page 4 of the Answer Brief, it is said that the deliverability of a well is affected by the "method in which the well is stimulated or treated for completion (Tr. 178)." At

Transcript 178 the witness does discuss stimulation of wells, but nowhere discusses methods of stimulation, or the effect of different methods.

4. All of the factual assertions in the first two sentences of the final paragraph on page 4 of the Answer Brief are unsupported by transcript reference.

5. At page 6, appellee and intervenor cite Transcript 75 as establishing that "there is no one well producing from a zone wholly isolated from every other producing well in the field." The witness relied on for that assertion immediately continues: "I feel this shows there are some isolated pay zones in the field, in the Carlsbad Morrow Field, but if you will look at the Cities Service Wells, the Merland A and the Merland B and if you will look at the Texas Oil and Gas Pan American Number 1, you can see where it appears there is an isolated zone that is perforated in that well only and does not extend to the other wells, apparently." (Tr. 75-76) Moreover, when the same witness was asked on cross-examination whether it was his testimony "that while there are separate zones, particularly in the Morrow, none of these zones constitute a separate, common source of supply," he answered: "I didn't check the figures available on the Morrow formation in that manner." (Tr. 86)

6. At page 8, Transcript 125 is referred to as establishing that geology was used to determine pool limits. The testimony at Transcript 125 refers to geological information applied to the Strawn Pool; and that witness confirmed, at Transcript 126 and 127, that the Commission's order was entered before any geological data was available from the wells in question

for the simple reason that the wells had not been drilled and completed at the time the order was entered.

7. At page 13, the Answer Brief refers to Transcript 55 to support an assertion that appellants filed an appeal and dismissed the same thereafter. Transcript 55 is the second page of intervenor's Response to Petition for Review in the trial court, and there is nothing in that pleading to substantiate the statement of fact made in the Answer Brief. Nor do appellants find a reference to that asserted fact anywhere else in the Transcript.

8. At page 15, the Transcript at page 166 is shown as support for a statement that the Morrow Formation is a non-homogeneous reservoir. Appellants cannot find any evidence to that effect at the Transcript reference.

9. At page 21, the Transcript references in the last paragraph on that page are utterly misleading. Appellants have scanned the pages as numbered in the Transcript, as well as those as numbered at the Oil Conservation Commission hearing, in an effort to substantiate the Transcript references for the statements made regarding waste and correlative rights, and, with the exception of the references to Transcript 183, 188 and 189 (where, indeed, the witness does assert that straight acreage is a reasonable basis for proration if you "reject" all other criteria), none of the remaining twelve pages referenced in any way support any of the statements made in that paragraph.

10. Again, at page 24 of the Answer Brief, Transcript 124-125 is cited to support a statement that geological information was utilized by the Commission. As we have pointed out in Item 6

above, this testimony referred to the Strawn Pool, not to the "pool" under consideration.

11. At page 25, no Transcript references are given for the assertion of fact made in the only full paragraph on that page, and the Commission findings cited to support the last two sentences of that paragraph recite facts diametrically opposed to what the appellee and intervenor cite them for.

12. At page 29, the second sentence, stating as a fact that the pool had been established three years earlier, is not supported by a Transcript reference; the last full sentence on the page refers to testimony regarding communication at the well bore, at Transcript 92. Such testimony is non-existent either at Transcript 92 or page 92 of the Commission hearing record.

Appellants would suggest that whether there was an attempt to mislead the Court by the transcript references given, or the failure to cite the transcript at other pages of the Answer Brief, or whether the citations to the transcript were merely carelessly made, there has not been a careful compliance with the terms of Rule 15(6) of the Rules of this Court [§21-2-1(15)(6), N.M.Stat. Ann. (1953)], and the Answer Brief is subject to dismissal for the deficiencies we have noted above.

ANSWER TO POINT ONE

THE ORDER OF THE OIL CONSERVATION COMMISSION  
WAS ARBITRARY, UNREASONABLE, UNLAWFUL AND  
CAPRICIOUS, AND SHOULD HAVE BEEN SET ASIDE  
BY THE TRIAL COURT.

Appellee and intervenor have, in their brief, recognized the criteria set forth in the statute and by the Supreme Court to be applied in determining correlative rights. The reason for the requirement that such rights first be fixed is made clear by §65-3-13, N.M.Stat. Ann. (1953), and Continental Oil Co. v. Oil Cons. Comm., supra, at 319, because allocation of allowables (defined in subsection (a) of the statute as "prorat[ion] or distribut[ion of] the allowable production among the producers in the field or pool") cannot be made unless made "upon a reasonable basis and recognizing correlative rights," §65-3-13(a) and (c).

As we noted in our Brief-in-Chief, "[i]n order to protect correlative rights, it is incumbent upon the Commission to determine, 'so far as it is practical to do so,' certain foundationary matters, without which the correlative rights of the various owners cannot be ascertained." (Continental Oil Co. v. Oil Cons. Comm., supra).

Thus, the critical issue before this Court is the single question: Was it practical for the Commission to determine those certain foundationary matters?

Appellee and intervenor do not deny that the "basic conclusion of facts" (Continental, supra, at 319)

- (1) amount of recoverable gas under each producer's tract;

- (2) total amount of recoverable gas in the pool;
- (3) the proportion that (1) bears to (2);
- (4) what portion of (3) can be recovered without waste,

were not ascertained by the Commission before the order of pro-  
ration was entered here, asserting, however, that "recoverable  
reserves could not be practically determined by effective feet  
of pay, porosity, water saturation and deliverability obtained  
at the well bore." (Answer Brief, p. 4)

Section 65-3-13(c) provides that the "equitable con-  
siderations" which the Commission is to examine are: acreage,  
pressure, open flow, porosity, permeability, deliverability,  
quality of the gas, "and such other pertinent factors as may  
from time to time exist...."

The Commission found that "the effective feet of pay,  
porosity of the pay, and water saturation of the pay underlying  
each developed tract cannot be practically determined from the  
data obtained at the wellbore." (Finding 72, Tr. 11)

It found further that the "amount of recoverable gas  
under each producer's tract cannot be practically determined...  
by a formula which considers effective feet of pay, porosity  
and water saturation." (Finding 74, Tr. 11)

Finally, it also found that "the amount of recoverable  
gas under each producer's tract cannot be determined...by a  
formula which considers only the deliverability of a well."  
(Finding 75, Tr. 11)

Perhaps Finding 72 is the key finding, since it refers,  
apparently, to extrapolations that cannot be made from "data

obtained at the wellbore." The only inference to be drawn, of course, is that effective feet of pay, porosity and water saturation thus were not determined. And because they were not determined, recoverable reserves could not be determined (Finding 74, Tr. 11).

Additionally, Finding 75 seems to indicate that the Commission had data concerning deliverability, but that factor alone was insufficient to determine each producer's reserve.

But what effect did the Commission give to any of the factors enumerated in the statute, other than acreage? The only other element mentioned by the Commission's findings -- deliverability -- was considered inadequate as a basis for prorating (Finding 75). Yet "acreage" -- alone -- a sole item -- became the proration "formula." What of pressure? of open flow? of porosity? of permeability? of gas quality? The Findings do not so much as mention any consideration given to these criteria for determining correlative rights.

Williams & Meyers, Oil and Gas Law, Manual of Terms 92, describes "coring" as follows:

"A core bit is attached to the end of the drill pipe; this tool then cuts a column of rock from the formation being penetrated; the core is then removed and tested for evidences of oil or gas, and its characteristics (porosity, permeability, etc.) are determined. Coring tools permit the taking of full-core holes (i.e., a large diameter core), small-diameter cores, and side-wall cores. Many wells are now cored all the way through potentially productive formations."

The same source, at 79, defines a "core test" as "[o]ne of the methods of subsurface geology. Core samples are taken just below the top soil to determine the nature of the formations and, so far as possible, their structure...."

At 1 Williams & Meyers, Oil and Gas Law 9, §103, a further explanation is made:

"We have noticed already that during the drilling it is customary to take cores -- samples of the strata which the bit passes through -- and electrical logs. Another standard procedure is the drill stem test, which is run whenever the well reaches potential oil or gas bearing formations. A special tool is lowered in the hole and placed next to its wall; the drilling mud is removed from the vicinity; and the fluids of the formation are allowed to flow into the tool, while an instrument measures the pressure. If no petroleum flows from the formation, the well will be drilled to the next potential producing stratum for a similar test, or it will be abandoned as a dry hole and plugged to prevent harm to shallow fresh water formations. If the test shows the presence of petroleum but deeper production is also anticipated, the higher formation may be sealed off and drilling continued. With discovery of more petroleum in the lower formation, the well can be put into production by dual completion, which permits it to produce from two formations at once."

And, concerning "permeability," "porosity," "pressure," and "open flow," these authors, in their Manual of Oil & Gas Terms, give these definitions:

Permeability: "A measure of the resistance offered by rock to the movement of fluids through it."

Porosity: "The relative volume of the pore spaces between mineral grains as compared to the total rock volume. Thus, porosity measures the capacity of the rock to hold oil, gas, and water. The usual range of porosities is from 15 to 20 per cent, but they may be as high as 43 per cent or higher in highly fractured and cavernous limestones."

Shut-in Pressure: "The pressure at the casinghead or well-head when all valves are closed and no oil or gas has been allowed to escape for a period of time, usually more than 24 and less than 72 hours."

Bottom hole pressure: "The reservoir or rock pressure at the bottom of the hole, whether measured under flowing conditions or not. If measured under flowing conditions, pressure readings are usually taken at different rates of flow in order to compute a theoretical value for maximum productivity."

Reservoir pressure: "The pressure at the face of the productive formation when the well is shut in. It is equal to the shut-in pressure plus the weight, in pounds per square inch, of the column of oil and gas in the well."

Open flow: "The production of oil or gas by virtue of reservoir energy without artificial restriction on the rate of flow."

Bearing in mind these definitions and the questions unanswered concerning all of the factors which bear upon correlative rights -- the only true gauge upon which prorationing may be ordered -- and the obvious means for obtaining those answers, we urge the Court's attention to the disclosures of the Transcript:

(1) The available data on porosity:

Tr. 80, Mr. Stamets:

"The porosities [of the Morrow Sands] are very wide between wells in the same zones...."

Tr. 90, Mr. Stamets:

"[On the factors to be used in determining] water saturation...there was a difference of opinion on what matrix velocity should be used and at comparing [data sent me by different companies] with my data I worked out...hurriedly...I found a difference in the porosity of the calculated water saturation...which would be factors in determining reserves.

(2) The available data on permeability:

Tr. 99-100, Mr. Stamets:

"Well, I would like to tell you about the cores that I looked at and the samples I have seen, but I have not seen any. There are no cores and we did not get samples, however, in some of the sample descriptions which I have looked at there are sands reported and the sands are interbedded with shales and there are some limestones in the Morrow... Normally fairly thick shale would be sufficient to prevent vertical migration, if vertical fracturing is insistent there can be communication even though you normally don't see it...In the absence of any

concrete evidence that there are fractures then you would have to say that the zones are isolated; conversely, in the absence of any definite evidence that there are not fractures you can't say there aren't any. And [we] have no evidence that there are fractures in these zones."

Tr. 160, Mr. Taylor:

"Cities Service just arbitrarily broke down the Morrow into four zones for correlation purposes."

Tr. 171, Mr. Taylor

"[I]t is difficult, probably impossible, to trace any number of thin sand members in the Morrow for any great distance at all...I don't think you can determine exactly [that all of the wells in the Morrow formation are producing from the same reservoir or source of supply]."

Tr. 274, Mr. Raney:

"I don't think [the fact that there is communication or lack of communication between wells] has been established [in this particular pool]."

Tr. 298-299; 301-302, Mr. Steinholz:

"It is interesting to note that this particular well is in the lower nonproductive section of the Morrow and the bottom hole pressure is 4,854 pounds which indicates the Morrow, at least by bottom hole pressure data, does not particularly show any communication between wells."

"For example, the Pennzoil-Gulf Federal Number 1 had a shut-in bottom hole pressure at two intervals of 4,827 and 4,809 two years later than the Mobil Federal Number 1 which had been producing for some time prior to that completion."

"So, it would indicate from bottom hole pressure data that there is not very much communication between wells at this time....[Grace Exhibit Number 3] shows the fact that the Humble Grace Humble Number 1 and the Granada apparently must be in a different source of supply because the pressures are considerably different....The shut-in well head pressure on the log data also indicates that these are not completed in the same section as the other wells."

"Again, going back to the Humble Grace Number 1, when you get back there to the general Morrow, if you want to call it that, we do get bottom hole

pressure which is similar to the other bottom hole pressure in the other wells completed in the Morrow....[Assuming that the purpose of prorationing is to prevent waste and protect correlative rights], [i]n my opinion, I don't think there is enough evidence to show sufficient communication and interference between wells to justify proration.

\*\*\*\*

"Q. How would you account for the difference in pressures between the Pennzoil and the Mobil Federal Number 1 when the virgin pressures were 4870 for the Grace Humble Number 1 and 4486 for the Pennzoil Well for approximately the same zone?

A. They are not the same zone in my opinion.

Q. Where is the same zone in the hole?

A. The same zone in that particular hole you are talking about, the Grace Well Number 1?

Q. Yes.

A. The same zone in that particular hole was completely dense and was not tested.

Q. So you're testing different zones when you compare the two zones?

A. I am saying they are not the same zone, therefore they are not connected."

Tr. 308-09; 310-11, Mr. Decker:

"Q. Directing your attention to Grace Exhibit Number 4, will you explain what that is and what it shows?

A. It shows the structural features over the main portion of the [Morrow] field with a low on the west side and then my interpretation shows a dip or a rising to the west which I consider to be an original dip and separation down the west side of the main structure....

\*\*\*\*

Q. And do you have an opinion as to whether there is communication between the wells on each side of this dip as you call it, in this formation?

A. I think there is very poor communication throughout the Morrow with the thin sand and it is poorly connected.

There is one main sand shown on my cross section which I think is correlative and probably produces throughout the main part

of the field, however all the other sands seem to show poor communication, they are thinner sands in the main field and there is no communication to the west across the low areas.

\*\*\*\*

...[T]he cross-section] also shows a thick sand in the Humble Grace separated by twenty feet of shale which should be adequate to prevent vertical migration eastward to the Number 1 Gulf Federal.

The upper hasn't continued across and I feel the sand perhaps continues throughout the whole area.

However, at this time in the Humble Grace Well, the lower sand is not present in the Number 1 Gulf Federal to the east.

This lower sand is present only in the Grace Number 1. Therefore, these two wells are definitely different pays than the rest of the field.

- Q. Does the Exhibit show anything else with respect to these wells and their characteristics?
- A. The primary point of the cross section is the fact that this does -- the pay does not extend eastward, also it does not extend southward."

Tr. 278-79; 293-94, Mr. Miller:

- "Q. Is there any evidence available that you know of from which we can determine whether there is drainage between wells in the Morrow formation as developed in this field?
- A. Up to the present time I think we have not used any method that would definitely show that.
- Q. What sort of test would be necessary in order to do that in your opinion?
- A. Well, I'm not qualified here as a professional engineer, although I do have a registration and I am a member of that society, but I would make the suggestion that if we wanted to be positive about it perhaps a group of wells, maybe four or five wells could be shut in and one well that is centrally located -- let those wells be shut in and have them stabilize themselves and then run a bomb pressure

test in the test well and then open the other wells and record in the well which the bomb was placed whether there is a pressure trap. That's a way we can establish, I think, to a reasonable degree whether there is communication between the wells immediately around the test wells.

Q. You are talking about bottom hole pressure?

A. Yes, sir.

\*\*\*\*

Q. And as I understand your testimony you have no knowledge of any horizontal communication in the pool; is that correct?...

\*\*\*\*

Q. Of one well to the next?

A. I don't think we have any evidence to prove it yet.

Q. Do you know of any evidence at all to indicate horizontal communication?

A. No, I don't believe I have positive evidence to give you a correct answer on that.

Q. These wells are completed in different zones throughout the pool, they are not all completed necessarily in the same zone, are they?

A. No, I believe there is a certain amount of overlap on these wells.

Q. With that situation would the pressure test you recommended for determining communication be effective?

A. Well, I'll answer you this way: If it doesn't show geology it certainly shows their separation.

Q. Vertically or horizontally you wouldn't know though, would you?

A. That's a question for speculation.

Q. Well, the whole question of communication at this stage is a question for speculation; isn't it?

A. You are very right."

(3) The available data on quality of the gas

Tr. 80, Mr. Stamets:

"...[W]ater saturation varies [between the wells] from twenty percent to eighty percent."

Tr. 271, Mr. Raney:

"...I do know the reservoir quality under the Humble-Grace is much greater than the surrounding wells."

(4) The available data on pressure

Tr. 95, Mr. Stamets:

"I didn't give the pressures anything but a passing consideration."

Tr. 110-11, Mr. Utz:

"You will note there is a substantial variance in shut-in pressures. The bottom hole pressure simply means that it is substantially higher than the well head pressure as to how much higher I am unable to state because that depends on how much liquids are in the well bore....

\*\*\*\*

I think I will explain a little bit about why I think these pressures vary. It has been testified here, and I am sure it is true from the information available to the Oil Commission, that there is a varying amount of liquid being produced in these wells, both in hydrocarbons and water. Many of these lower tests could be substantially affected by liquids in the oil bore which, I am sure, is no surprise to any of you here. But since this is the only information I have available as far as shut-in pressure, I regarded this information for the purpose of information more than anything else."

Tr. 126, Mr. Utz:

"I don't believe we have bottom hole pressures. In most instances most of the pressures are reported to us as surface pressure....[B]ottom hole pressure [is] a significant factor in determining whether there is communication between wells...But there is no such information from [our] records concerning bottom hole pressure of these various wells and no such tests were made, to [my] knowledge."

Tr. 301-02; 303; 305, Mr. Steinholz:

"Q. How would you account for the difference in pressures between the Pennzoil and the Mobil Federal Number 1 when the virgin pressures were 4870 for the Grace Humble Number 1 and 4486 for the Pennzoil Well for approximately the same zone?

A. They are not the same zone in my opinion.

Q. Where is the same zone in the hole?

A. The same zone in that particular hole you are talking about, the Grace Well Number 1?

Q. Yes.

A. The same zone in that particular hole was completely dense and was not tested.

Q. So you're testing different zones when you compare the two zones?

A. I am saying they are not the same zone, therefore they are not connected.

\*\*\*\*

A. ...[T]hose two pressures [in the Humble-Grace Number 1] certainly indicate they are not related to the other wells in the field.

\*\*\*\*

A. In my opinion, you would need more bottom hole pressure data and production data before you could determine the equitable distribution of allowables."

Tr. 312, Mr. Decker:

"Q. Do you feel we have enough information available to determine if this field should be prorated at the present time -- production should be prorated?

A. No, sir.

Q. Why is that?

A. I think we need more pressure data, very few wells in the field have actually produced for very long and we don't even have the

lateral extent of the Morrow field; we just don't have any information.

Q. And you have been here during the prior hearing and heard the testimony concerning the various formulas that have been proposed here for proration?

A. Yes, sir.

Q. Do you feel any of these, if adopted, and the field is prorated, would assure reasonably that the various operators would be able to recover their fair share of the reserves under their respective prorationing units?

A. Well, I'm not a reservoir engineer, but it doesn't seem, with the information we have available, that we can do that, no."

(5) The available data on deliverability:

Tr. 107-08, 109, Mr. Utz (OCC Engineer):

"The next column is the deliverability. To explain it a little, this was taken from the characteristic slope of the absolute overflow test. Those of you who are familiar with this type of flow, four points are plotted on the log and the slope is established. If these tests are accurate tests they indicate the characteristics of the well and the producibility. Therefore, you can take various pieces and plug them into a formula, I didn't plug these into a formula, I read these from a graph and read the deliverability at 850 pounds off of the log slope of each test...."

Tr. 122-23, Mr. Utz:

"Q. You didn't use deliverability of the wells any way in arriving at what their rateable share would be?

A. Only the acreage."

Tr. 167, Mr. Taylor:

"Q. ...[Y]ou cannot predict from location to location what part of the Morrow formation will be productive nor how thick the productive interval will be until you drill it and perforate it; is that correct?

A. In essence, that is correct.

Q. Would it follow that if you do not have perforated intervals, that you cannot predict the productivity until there is perforation?

A. Yes, sir."

Tr. 174; 175-77, Mr. Motter:

"A. ...I confined my review to open flows, or... deliverability.

\*\*\*\*

A. Before making the comparison I would like to direct your attention to the Corrine-Grace...and the Humble-Grace, which are both located in Section 2, 23 South, 26 East.

The Corinne-Grace Guadanaco was perforated at 11,656 to 11,686 and the Humble-Grace was perforated to 11,168 to 11,190. Again, I consider these wells are probably in the sand body in the Morrow zone.

The Guadanaco had a calculated open flow of 7,543 MCF and the Grace-Humble had a calculated open flow of 33,239 MCF.

Q. Would this wide disparity in deliverability between the two wells, in each case approximately 1,300 feet apart, in your opinion is it reasonable to believe that the deliverability is indicative of the recoverable reserves underlying the particular 320 acre tract?

A. Not necessarily. In this particular case the open flow is nearly four-fold times the other, but we do have second flows and there are certain problems in the Morrow sand which I plan to get into in the next Exhibit....

\*\*\*\*

I will now go on down to the Cities Service Merlin Number 1 which on October 1, 1971, we completed and the open flow was 2,066 MCF.

On January 6th the open flow was 7,600 MCF and on January 29th, immediately following the connection with the Transmission Company on January 29th, we ran another open flow and obtained a test of 3,049 MCF.

The Texas Oil and Gas Pan American State on completion in October of 1970, had an open flow of 1,973 MCF and following connection with the Transmission Company the open flow was indicated at 502 MCF.

I think that points out some changes that can occur in the open flow or deliverability."

\*\*\*\*

"I rejected it [deliverability] as a measure [of recoverable reserves]." (Tr. 186)

Nevertheless, and despite what appears to be an abundance of evidence, or the availability of it, just what was done by the Oil Commission, the intervenor, and their experts?

Mr. Motter, Cities Services' regional engineer, "disregarded many of these factors" and "confined" himself to deliverability (Tr. 174). But he thereupon "rejected" deliverability as an element in the measure of reserves (Tr. 186).

Mr. Stamets, the Commission's Technical Support Chief, didn't give pressures anything but "passing consideration" (Tr. 95).

Mr. Utz, engineer for the Commission, regarded shut-in pressure for the purpose of "information more than anything else" (Tr. 111).

Stamets agreed that the Oil Commission could not "afford the owner of each property in the pool the opportunity to produce a just and equitable share of the oil or gas, or both, in the pool...because of the lack of cores and with all of the problems that exist in this reservoir" (Tr. 87-88). That obligation, however, is exactly what the Commission is charged with under the statute; and if the Commission could not do so, by what right was any order entered?

By what authority may the Commission and its experts disregard factors, reject elements the statute requires to be considered, give "passing" rather than "equitable" consideration to other matters upon which its duty is founded?

Obviously it was not "impractical" to obtain the data necessary! It was merely inconvenient or laborious to gather and correlate all of the information that could have been

collected, or even to correlate that which it had on hand. As Mr. Williams, the Morris-Antweil engineer said, "The reserves can be determined and that isn't an impossible task from the data available, and the reserves can be determined." (Tr. 225)

Appellee and intervenor admit as much. In writing about the El Paso decision, they said: "...[T]he Commission did determine recoverable gas under the tracts...so it was not impractical to do so." Then, at page 20 of their Brief they noted, with respect to this case: "Obviously, it is possible to determine the reserves because Witness Raney did it for three wells." Thus, using appellee's and intervenor's own argument, we can as cogently insist: "Raney did determine recoverable gas under the tracts...so it was not impractical [for the Commission] to do so." We urge that simply because it was "tricky" (Tr. 87) or "difficult" (Tr. 86) to calculate reserves, the Commission nevertheless was obliged to make that attempt. Not a single word in the transcript discloses the slightest effort on the part of the Oil Commission to do so!

If the data at the well bore was indeed insufficient, why were the bores not perforated at intervals that would have produced some of the required information (Tr. 167), or why was no correlation of the known intervals attempted (Tr. 89)? Why were core tests not made (Tr. 70, 88, 96, 99)? Why did the Commission not have bottom hole pressure readings (Tr. 126)? Why did the Commission refuse to consider shut-in pressures of the various wells (Tr. 95)? Why were the logs not available on every well (Tr. 88)? Why was no effort made to obtain any other data?

In other words, appellant would ask this Court to inquire: What justification is it for failure to find recoverable reserves to say that the data obtained at the well bore is insufficient for the Commission to determine

- (a) the effective feet of pay;
- (b) the porosity of the pay; and
- (c) the water saturation of the pay

underlying each developed tract? The statute does not suggest that upon these three factors recoverable reserves should be determined. The statute does not refer to any of these determinations other than porosity. Nor does the statute suggest that these three factors -- or any of the considerations referred to in the statute -- are to be determined solely from whatever the unidentified data may have been which was obtained from the hole made by the well -- the "well bore."

Only "porosity" is mentioned in §65-3-13(c); "saturation" could refer to porosity, or quality of the gas or oil, or the proportion of hydrocarbons and/or connate water in the pore space. But, from the findings made by the Commission, no one will ever know just what was meant -- and no one will ever know why the Commission simply quit on the job the legislature directed it to perform, and failed to delve into any of the matters which could have been helpful in determining reserves.

We urge the Court's attention to that language of Continental Oil Co., supra, which we believe conclusively controls the view that must be taken of this case at this point.

There, the Court said:

"The commission has jurisdiction over matters related to the conservation of oil and gas in New Mexico, but the basis of its powers is founded on the duty to prevent waste and to protect correlative rights [cite omitted]. Actually, the prevention of waste is the paramount power, inasmuch as this term is an integral part of the definition of correlative rights.

"....That the extent of the correlative rights must first be determined before the commission can act to protect them is manifest.

"....The commission made no finding as to the amounts of recoverable gas in the pool, or under the various tracts; it made no finding as to the amount of gas that could be practicably obtained without waste; it made no finding concerning drainage; it made no finding that correlative rights were not being protected under the old formula, or at least that they would be better protected under the new formula. There is no indication that the commission attempted to do any of these things, even to the extent of 'insofar as is practicable.'

"....The commission made no finding, even 'insofar as can be practically determined,' as to the amounts of recoverable gas in the pool or under the tracts. How, then, can the commission protect correlative rights in the absence of such a finding?" [Italics by the Court]

(70 N.M. at 318-319)

In the instant matter, the Commission did make a finding that drainage was occurring between tracts; that the correlative rights of some producers were being violated; and that waste was occurring in the subject pool (Findings 64, 65, 66 - Tr. 10). But, according to Continental Oil Company, supra, those are not the significant findings, and, unless the Commission knows what the recoverable reserves are in the pool and under each tract, how can it possibly support such arbitrary Findings -- or Conclusions -- that correlative rights are being violated? The Commission must have more upon which to base its "Findings" than on the bare assertion that "this is so because we say it is so."

It would have been as logical for the Commission to have "found" that an acreage formula denied any one of the owners the opportunity to produce his fair share of his own totally isolated zone. The evidence is more susceptible of finding a denial of correlative rights than it is of protection of them. And in this respect, as we have seen more and more often recently, such an abuse of individual rights is the usual result of official arbitrary and capricious conduct.

#### CONCLUSION

The Commission prorated a "pool" in southeastern New Mexico without going through any of the tasks assigned to it by statute for doing so. Fulfillment of those obligations presented a challenging difficulty to the Commission -- so the Commission simply abandoned the effort and succumbed to the weaknesses of officialdom: it created by edict, and not by reason, a control having the facade of expertise. But stripped of its copia verborum, the Commission's order stands naked of any "basic facts" necessary to support a proration order, and bare of any reasons for the Commission's indolence in attempting to reach those basic facts. The order is not supported by the record.

Such agency conduct is arbitrary, capricious, unreasonable and, therefore, unlawful. Appellants request this Court to reverse the rulings of the trial court and the Commission.

Respectfully submitted,

MARCHIONDO & BERRY, P.A.  
Attorneys for Appellants  
P. O. Box 568  
Albuquerque, New Mexico 87103

By Mary C. Walters

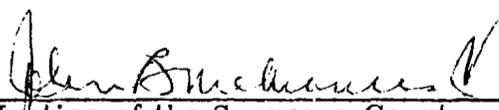
Mary C. Walters

1 JOHNSON & OTTO, P.C.  
2 Fifth Floor Luhrs Tower  
3 Phoenix, Arizona 85003  
4 Telephone: (602) 252-7461

5  
6  
7  
8 IN THE SUPREME COURT OF THE  
9 STATE OF NEW MEXICO

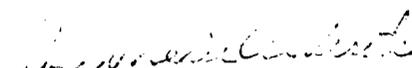
10 MICHAEL P. GRACE II and )  
11 CORINNE GRACE, )  
12 ) Petitioners-Appellants, ) NO. 9821  
13 vs. ) ORDER  
14 ) OIL CONSERVATION COMMISSION )  
15 ) OF NEW MEXICO, )  
16 ) Respondent-Appellee, )  
17 and )  
18 ) CITIES SERVICE OIL COMPANY and )  
19 ) CITY OF CARLSBAD, NEW MEXICO, )  
20 ) Intervenors. )

21  
22 The request of John P. Otto to be permitted to withdraw  
23 as counsel having been considered by the Court, the same is hereby granted  
24 and John P. Otto is relieved of further responsibility for the conduct of this  
25 case on behalf of Michael P. Grace II and Corinne Grace.  
26

27  
28   
29 Justice of the Supreme Court

30 Copies of the foregoing Order  
31 mailed this 8th day of March, 1974, to:

32  
MAR 12 1974

  
CLERK

JOHNSON & OTTO, P.C.  
ATTORNEYS & COUNSELORS AT LAW

45 WEST JEFFERSON  
PHOENIX, ARIZONA 85003  
TELEPHONE 252-7461  
AREA CODE 602

March 8, 1974

Clerk of the Supreme Court  
of New Mexico  
P. O. Box 848  
Santa Fe, New Mexico 87501

RE: Grace v. Oil Conservation Commission of New Mexico  
NO. 9821

Dear Madam:

I enclose herewith originals of a motion to withdraw as counsel in the above captioned case together with an order permitting my withdrawal.

Because of my withdrawal from the case Mr. & Mrs. Grace have requested that they be given additional time to respond to the answering brief of the Oil Conservation Commission.

I have transmitted this request to counsel who is continuing in the case and I presume that a motion will shortly be forth coming to request additional time.

I would very much appreciate your presenting this matter to the Court and your advising me of the entry of the order permitting my withdrawal.

Thank you very much for your consideration.

Very truly yours,

John P. Otto



1 Marchiondo & Berry  
P. O. Box 568  
2 Albuquerque, New Mexico 87103

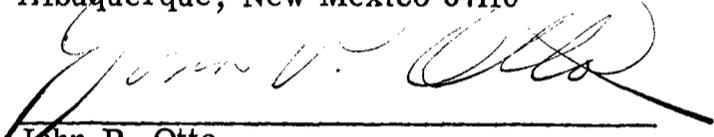
3 Robert Borkenhagen, Esq.  
4 1100 American Bank of  
Commerce Bldg.  
5 200 Lomas NW  
6 Albuquerque, New Mexico 87102

7 Losee & Carson  
P. O. Drawer 239  
8 Artesia, New Mexico 88210

9 Jason Kellahin, Esq.  
P. O. Box 1769  
10 Santa Fe, New Mexico 87501

11 William F. Carr, Esq.  
12 Special Asst. Attorney General  
Oil Conservation Commission  
13 State Land Office Building  
14 Santa Fe, New Mexico 87501

15 Malcolm L. Shannon, Jr., Esq.  
16 Kool, Kool, Bloomfield, Eaves & Mayfield  
1516 San Pedro, NE  
17 Albuquerque, New Mexico 87110

18   
19 John P. Otto

20  
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5  
6  
7  
8 IN THE SUPREME COURT OF THE  
9 STATE OF NEW MEXICO

10 MICHAEL P. GRACE II and )  
11 CORINNE GRACE, )

12 Petitioners -Appellants, )

NO. 9821

13 vs. )

WITHDRAWAL OF COUNSEL

14 OIL CONSERVATION COMMISSION )  
15 OF NEW MEXICO, )

16 Respondent -Appellee, )

17 and )

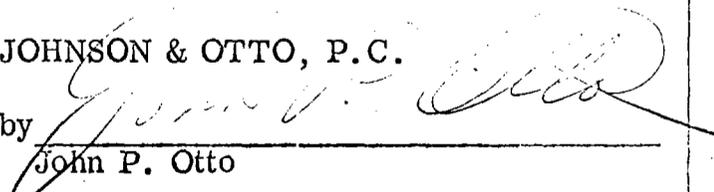
18 CITIES SERVICE OIL COMPANY and )  
19 CITY OF CARLSBAD, NEW MEXICO, )

20 Intervenors. )  
21

22 COMES NOW the undersigned and respectfully requests the  
23 Court to be permitted to withdraw as co-counsel for Michael P. Grace II  
24 and Corinne Grace and as grounds therefor would respectfully show the  
25 Court that the undersigned has been requested by Michael P. and Corinne  
26 Grace to withdraw from representation of them in this matter.  
27

28 Respectfully submitted,

29 JOHNSON & OTTO, P.C.

30 by 

John P. Otto

31 Copies of the foregoing mailed  
32 this 8th day of March, 1974, to:

Marchiondo & Berry  
P. O. Box 568  
Albuquerque, New Mexico 87103  
..

JOHN P. OTTO, P.C.  
45 W. JEFFERSON  
PHOENIX, ARIZONA 85003

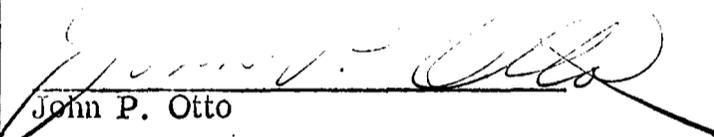
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9 Jason Kellahin, Esq.  
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11 Santa Fe, New Mexico 87501

12 William F. Carr, Esq.  
13 Special Asst. Attorney General  
14 Oil Conservation Commission  
15 State Land Office Building  
16 Santa Fe, New Mexico 87501

17 Malcolm L. Shannon, Jr., Esq  
18 Kool, Kool, Bloemfield, Eaves & Mayfield  
19 1516 San Pedro, NE  
20 Albuquerque, New Mexico 87110

21   
22 John P. Otto

LAW OFFICES

LOSEE & CARSON, P.A.

300 AMERICAN HOME BUILDING

P. O. DRAWER 239

ARTESIA, NEW MEXICO 88210

AREA CODE 505

746-3508

A. J. LOSEE  
JOEL M. CARSON

7 January 1974

Mr. William F. Carr, Attorney  
Oil Conservation Commission  
P. O. Box 2088  
Santa Fe, New Mexico 87501

Re: Michael P. Grace II et al vs. Oil Conservation  
Commission of New Mexico, Supreme Court No. 9821

Dear Bill:

Enclosed, please find copy of order denying petition for re-hearing on petition for stay of judgment, and also copy of order denying motion of the City of Mesa, Arizona, to appear as amicus curiae.

Very truly yours,

LOSEE & CARSON, P.A.



A. J. Losee

AJL:jw  
Enclosures

1 IN THE SUPREME COURT OF THE STATE OF NEW MEXICO  
2 Friday, December 28, 1973

3 NO. 9821

4 MICHAEL P. GRACE II and  
5 CORINNE GRACE,

6 Petitioners-Appellants,

7 vs.

Eddy County

8 OIL CONSERVATION COMMISSION  
9 OF NEW MEXICO,

10 Respondent-Appellee,

11 and

12 CITIES SERVICE OIL COMPANY  
13 and the CITY OF CARLSBAD,

14 Intervenors.

15 This matter coming on for consideration by the Court upon  
16 petition for rehearing on petition for stay of judgment, and the  
17 Court having considered said petition and being sufficiently advised  
18 in the premises;

19 IT IS ORDERED that petition for rehearing on petition for stay  
20 of judgment be and the same is hereby denied.

21 ATTEST: A True Copy

22 *James H. ...*  
23 Clerk of the Supreme Court  
24 of the State of New Mexico  
25  
26  
27  
28  
29  
30  
31  
32

1 IN THE SUPREME COURT OF THE STATE OF NEW MEXICO  
2 Friday, December 28, 1973

3 NO. 9821

4 MICHAEL P. GRACE II and  
5 CORINNE GRACE,

6 Petitioners-Appellants,

7 vs.

Eddy County

8 OIL CONSERVATION COMMISSION  
9 OF NEW MEXICO /

10 Respondent-Appellee,

11 and

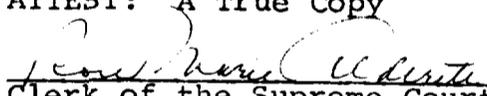
12 CITIES SERVICE OIL COMPANY  
13 and the CITY OF CARLSBAD,

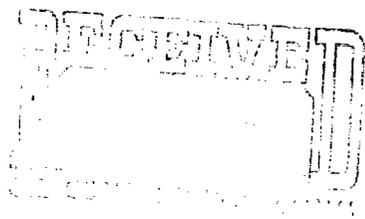
14 Intervenors.

15 This matter coming on for consideration by the Court upon  
16 motion of City of Mesa, Arizona to appear as amicus curiae on  
17 petition for stay of judgment, and the Court having considered said  
18 motion and being sufficiently advised in the premises;

19 IT IS ORDERED that motion to appear as amicus curiae on petition  
20 for stay of judgment be and the same is hereby denied.  
21

22 ATTEST: A True Copy

23   
24 Clerk of the Supreme Court  
25 of the State of New Mexico  
26  
27  
28  
29  
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31  
32



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MICHAEL P. GRACE II and  
CORINNE GRACE,

Petitioners- Appellants,

vs.

No. 9821

OIL CONSERVATION COMMISSION  
OF NEW MEXICO,

Respondent-Appellee,

and

CITIES SERVICE OIL COMPANY  
and the CITY OF CARLSBAD,

Intervenors.

M O T I O N

Come now the Oil Conservation Commission of New Mexico, Respondent-Appellee, and Cities Service Oil Company, Intervenor, and move the Court for an extension of time to and including February 13, 1974, in which to file their answer brief to Petitioner-Appellants' Brief in Chief and in support thereof state that the Christmas and the New Year's holidays, and the location of counsel in the case has caused delay in preparation of the answer brief.

A. J. LOSEE  
Special Assistant Attorney General  
P. O. Box 239  
Artesia, New Mexico 88220  
Attorney for Oil Conservation Commission

JASON W. KELLAHIN  
Kellahin & Fox  
P. O. Box 1769  
Santa Fe, New Mexico 87501  
Attorney for Cities Service Oil Co.

I hereby certify that a true copy of the foregoing instrument was mailed to opposing counsel of record this 8th day of January, 1974  
Jason W. Kellahin

GRANTED  
J.B.Mc. CJ

By Jason W. Kellahin  
Jason W. Kellahin

Exhibit prepared for Supreme Court - Sept. 12, 1973  
 (not used)

B.H.P. SUMMARY

South Carlsbad-Morrow

<u>OPERATOR - WELL</u>	<u>DATE</u>	<u>B.H.P.</u>	<u>CUMULATIVE PROD. MM</u>	<u>REMARKS</u>
<u>PENNZOIL CO.</u>				
Gulf Federal No. 1	6-19-70	4768		68 hrs. S.I.
	7-10-70	4660	20.0 (Tstg.)	240 hrs. S.I.
	7-30-71	2148	739.9	72 hrs. S.I.
	3-13-72	1416	859.2	72 hrs. S.I.
	5-12-72	1454	897.3	72 hrs. S.I.
	7-10-73	2038	1,270.0	72 hrs. S.I.
	Gulf Federal No. 2	2- 8-72	4334	0
6-14-72		3495	66	72 hr (Calc.)
3- 1-73		2815	253	72 hr (Meas.)
7-12-73		2569	316.6	75 hr (Meas.)
Mobil -12- No. 1	1-20-69	4897	-	184 hrs. (Meas.)
	9- 4-69	4930	0	Days calc.
	1- 9-70	4439	197	96 hrs. (Meas.)
	7-16-70	4204	601	10 days (Calc.)
	8- 9-71	3334	1465	78 hrs. (Calc.)
	2-28-72	3136	1830	72 hrs. (Meas.)
	7-13-72	2967	2067	72 hrs. (Meas.)
	7-10-73	2172	2574	75 hrs. (Meas.)
	Echols No. 1	2- -71	4731	0
6-14-71		4154	88.5	72 hrs. (Meas.)
3-10-72		4082	678.6	72 hrs. (Meas.)
8- 1-72		3310	1070	72 hrs. (Meas.)
1-23-73		3415	1605	74 hrs. (Meas.)
7-29-73		3024	2553	25 hrs. (Calc.)
<u>MICHAEL P. GRACE II and CORINNE GRACE</u>				
Go-Po-Go No. 2	9- -72	4200	0	6 days (Calc.)
	7- -73	2791	2897	25 hrs. (Calc.)
Grace Atlantic No. 1	2- -73	3419 DST	0	2 hrs. FSIP
	7- 3-73	2915	1323	N.A.
City of Carlsbad No. 1	1- 4-71	4700 DST	0	2-5/6 hrs. FSIP
	7- 1-73	No Pres.	3890	-
Grace Carlsbad No. 1	7- 7-72	4332 POT	0	N.A.
	Cum 8- 1-73	No Pres. Avail	672	
Humble Grace No. 1	6-14-71	4486 DST	0	2-1/2 hrs. FSIP
	Cum 7-1-73	No Pres. Reptd	766	
<u>J. M. HUBER CORP.</u>				
Sorenson Com	1- -73	5017 DST	0	3 hrs. FSIP
	3-13-73	4798	0	152 hrs. (Meas.)
	7- 9-73	4004	267	72 hrs. (Calc.)
Terra State	2- -73	4891 DST	0	2 hrs. FSIP
	2-21-73	4591	0	120 hrs. (Meas.)
	7- 9-73	4055	261	72 hrs. (Calc.)
O'Neill Federal	3-14-73	4544	0	184 hrs. (Meas.)
	7- 9-73	4284	132	72 hrs. (Calc.)

<u>OPERATOR - WELL</u>	<u>DATE</u>	<u>B.H.P.</u>	<u>CUMULATIVE PROD. MM</u>	<u>REMARKS</u>
<u>SUPERIOR OIL CO.</u>				
Stephens No. 1-A	7-30-73	4296	0	N.A.
<u>PHILLIPS PETR. CO.</u>				
Drag 1-A	5- -72	5018	0	Days (Calc.)
	2-23-73	3106	480	72 hrs. (Calc.)
	6-25-73	1940	931	52 hrs. (Calc.)
Drag 1-B	8- -72	5171	0	Days (Calc.)
	2-27-73	3095	1178	24 hrs. (Calc.)
	6-28-73	2090	1998	48 hrs. (Calc.)
Tidwell 1	1-31-73	4576	0	24 hrs. (Calc.)
	6-26-73	3046	500	24 hrs. (Calc.)
	8-17-73	2524	695	9 days (Calc.)
<u>CITIES SERVICE OIL CO.</u>				
Merland "A" No. 1	10-11-71	3882 POT.	0	N.A. (Calc.)
	9-30-72	3130	709	24 hrs. (Calc.)
	7-13-73	3067	1032	25 hrs. (Calc.)
Merland "B" No. 1	7-19-71	4741 DST	0	2 hrs. FSIP (Meas.)
	8-23-72	3535	921	24 hrs. (Calc.)
	7-13-73	2783	1919	25 hrs. (Calc.)
Merland "C" No. 1	5-20-73	3680	0	95 hrs. (Meas.)
Strackbein "A" No. 1	12-16-70	3710	0	16 hrs. (Meas.)
	9-30-72	2837	733	24 hrs. (Calc.)
	7-13-73	2360	1370	24 hrs. (Calc.)
Spencer "A" No. 1	6- 1-71	4815 DST	0	2 hrs. FSIP (Meas.)
	9-22-72	3880	1454	24 hrs. (Calc.)
	7-20-73	2920	3005	24 hrs. (Calc.)
<u>MORRIS R. ANTWEIL</u>				
Allen No. 1	8-24-70	4796 DST	0	3 hrs. FSIP (Meas.)
	11- 9-72	3964	598	48 hrs. (Meas.)
Little Jewel	3-16-71	4757 DST	0	3 hrs. FSIP (Meas.)
	11-15-72	3937	1130	48 hrs. (Meas.)
<u>TEXAS OIL &amp; GAS</u>				
City of Carlsbad No. 1	6-2- 73	3350	0	48 hrs. (Meas.)

CHAMBERS  
FIFTH JUDICIAL DISTRICT COURT  
STATE OF NEW MEXICO  
ROSWELL, NEW MEXICO  
88201

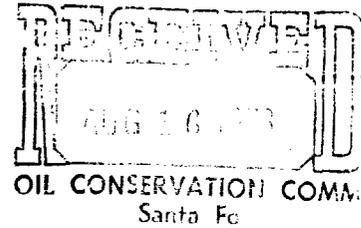
PAUL SNEAD  
DISTRICT JUDGE  
  
C. G. BLAIR  
COURT REPORTER

POST OFFICE BOX  
1776  
TELEPHONE  
622-2212

August 13, 1973

Mr. A. J. Losee  
Losee & Carson, P.A.  
Attorneys at Law  
P. O. Drawer 239  
Artesia, New Mexico 88210

Mr. William C. Marchiondo  
Marchiondo & Berry, P.A.  
Attorneys at Law  
P. O. Box 568  
Albuquerque, New Mexico 87103



Re: Michael P. Grace II and Corrine  
Grace, Petitioners, vs. Oil  
Conservation Commission of N.M.,  
Respondent, No. 28181, Eddy Co.

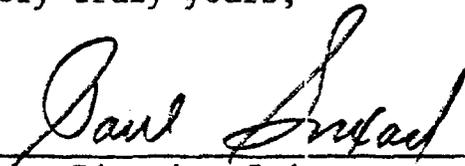
Gentlemen:

I have, on August 13th, signed the judgment presented by Mr. Losee in this matter, and I have further signed an order denying the motion for stay of judgment.

I have forwarded to the Clerk in Eddy County, for filing, the following instruments:

- (1) Judgment
- (2) Order denying stay of judgment
- (3) Notice of presentment of judgment
- (4) Notice of appeal.

(5) *Motion for Stay order.*  
Very truly yours,

  
District Judge

PS:b

Cc: Mr. Jason W. Kellahin

LAW OFFICES

LOSEE & CARSON, P. A.

300 AMERICAN HOME BUILDING

P. O. DRAWER 239

ARTESIA, NEW MEXICO 88210

AREA CODE 505

746-3508

A. J. LOSEE  
JOEL M. CARSON

5 July 1973

Mrs. Frances M. Wilcox  
Clerk of the District Court  
Carlsbad, New Mexico 88220

Re: Michael P. Grace, et ux, vs. Oil Conservation  
Commission of New Mexico, et al. District Court  
No. 22181

Dear Mrs. Wilcox:

Enclosed for filing please find Requested Findings of Fact  
and Conclusions of Law of Respondent. The Court allowed  
the parties 30 days from June 5, 1973, within which to file  
requested findings. I should appreciate your advising Judge  
Snead of the filing of requested findings in this case so  
that a decision may be entered.

Very truly yours,

LOSEE & CARSON, P. A.

  
A. J. Losee

AJL/sff  
Enclosure

cc Mr. Lon P. Watkins w/enclosure  
Mr. Michael F. McCormick w/enclosure  
Mr. Jason W. Kellahin w/enclosure  
Mr. Bill Carr w/enclosure

C  
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Y



KELLAHIN AND FOX  
ATTORNEYS AT LAW  
500 DON GASPAR AVENUE  
POST OFFICE BOX 1769  
SANTA FE, NEW MEXICO 87501

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

TELEPHONE 982-4315  
AREA CODE 505

June 28, 1973

Mrs. Frances M. Wilcox  
Clerk of the District Court  
P. O. Box 98  
Carlsbad, New Mexico 88220

Re: Grace, et al., vs. Oil Conservation Commission  
and Cities Service Oil Company, Intervenor-  
Respondent; no. 28181, Eddy County New Mexico.

Dear Mrs. Wilcox:

Enclosed for filing in the above case are the re-  
quested findings of fact and conclusions of law sub-  
mitted on behalf of Cities Service Oil Company, Inter-  
venor-Respondent.

Yours very truly,

Jason W. Kellahin

JWK:ks

Enclosure

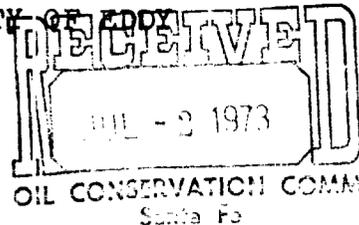
cc: Robert F. LeBlanc, Esq.  
A. J. Losee, Esq.  
Bill Carr, Esq. ✓  
Lon P. Watkins, Esq.  
C. G. Small, Jr., Esq.  
with enclosures

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STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT



MICHAEL P. GRACE II and  
CORINNE GRACE,

Petitioners,

-vs-

No. 28:81

OIL CONSERVATION COMMISSION  
OF NEW MEXICO,

Respondent,

and

CITIES SERVICE OIL COMPANY,  
and the CITY OF CARLSBAD,

Intervenors.

REQUESTED FINDINGS OF FACT AND  
CONCLUSIONS OF LAW OF INTERVENOR  
CITIES SERVICE OIL COMPANY

COMES NOW Intervenor Cities Service Oil Company in the  
above styled and numbered cause and respectfully requests  
the Court to adopt the following:

FINDINGS OF FACT

1. Petitioners are individuals doing business in the State of New Mexico and are the owners of gas properties and gas wells situated within the exterior boundaries of the South Carlsbad-Morrow Gas Pool, located in Eddy County, New Mexico.
2. Respondent Oil Conservation Commission of New Mexico is a duly organized agency of the State of New Mexico, whose

members are, Hon. Bruce King, Chairman, Alex Armijo, member, and A. L. Porter, Jr., Secretary-Director. Intervenor, Cities Service Oil Company is a Delaware Corporation, duly admitted to do business in the State of New Mexico, and is the owner and operator of gas properties in the South Carlsbad-Morrow Gas Pool, located in Eddy County, New Mexico. The City of Carlsbad is a municipal body, duly organized under the laws of the State of New Mexico.

3. By Order of the Court, Cities Service Oil Company was granted leave to intervene as a party respondent in this cause, and the City of Carlsbad was granted leave to intervene as a party petitioner.

4. On June 30, 1972, the Oil Conservation Commission of New Mexico after notice and hearing on April 19, 1972, issued its Order No. R-1670-L, which established Special Rules and Regulations for the South Carlsbad-Morrow Gas Pool, Eddy County, New Mexico, and adopted by reference, the General Rules and Regulations for the Prorated Gas Pools of Southeastern New Mexico, as promulgated by Commission Order No. R-1670. Order No. R-1670-L, established a formula for allocating gas production from the South Carlsbad-Morrow Gas Pool based on the acreage dedicated to non-marginal wells, in the proportion that each non-marginal well's acreage bears to the total acreage dedicated to non-marginal wells in the pool.

5. Order No. R-1670-L was given an effective date of September 1, 1972.

6. On July 18, 1972, Petitioners filed an application for rehearing before the Oil Conservation Commission, which applications stated Petitioner's reasons for believing that Order No. R-1670-L was invalid and void. The application for rehearing was denied by the Commission's failure to act thereon within ten days after it was filed, the Commission entering no order

on the application for rehearing.

7. On August 18, 1972, Petitioners filed their petition for review in this Court, and on August 31, 1972, on motion of Petitioners this Court entered its order staying the effect of Commission Order No. R-1670-L. The Commission filed its motion to vacate the temporary stay order, or in the alternative, to require Petitioners to post bond, and after notice and hearing, the Court on April 11, 1973, entered its order vacating and dissolving the temporary stay order.

8. This cause came on for hearing on the merits on June 5, 1973, all parties being present and represented by Counsel, with the exception of the City of Carlsbad.

9. In its Findings Nos. 5 through 32 inclusive, the Commission made findings as to the producing capacity of the wells in the South Carlsbad-Morrow Gas Pool, and the capacities of the pipelines connected to the wells in the pool.

In Finding No. 33, the Commission determined that the combined capacity of the wells in the pool is substantially in excess of the capacity of the combined gas transportation facilities connected to the wells in the pool.

In Findings Nos. 34 through 48, inclusive, the Commission determined the actual gas purchases from the pool, and determined that the wells in the South Carlsbad-Morrow Gas Pool are capable of producing gas in excess of the reasonable market demand of the two pipelines connected to the wells in the pool.

In Findings Nos. 49 through 59, the Commission determined that gas was being taken from some wells in excess of reasonable market demand.

In Findings No. 60 through 65, the Commission determined that some wells in the pool were producing less than the reasonable market demand from those pools; that gas was not being taken

ratably from the various producer in the pool; that there are owners of property in the pool who are being denied the right to produce their just and equitable share of gas in the pool; that drainage is occurring between tracts in the pool that is not equalized by counter drainage; and that the correlative rights of some producers in the pool are being violated.

In Finding No. 66, the Commission determined that waste is occurring in the South Carlsbad-Morrow Gas Pool, and in Findings Nos. 67 and 68, determined that in order to prevent waste and to ensure that each owner of property in the pool has the opportunity to produce his fair share of the gas underlying the pool, the pool should be prorated in order to limit the amount of gas to be produced from each tract to the reasonable market demand for gas from that tract and to limit production from the pool to reasonable market demand.

In Findings Nos. 70 through 75, the Commission determined that the Morrow formation from which the South Carlsbad-Morrow Gas Pool produces consists of many separate stringes which vary greatly in thickness, and not continuous across the pool, and because of the nature of the reservoir it is not practical to determine the net feet of pay, porosity, and water saturation of the formation underlying each tract, and that the amount of recoverable gas under each producers tract cannot be practically determined on the basis of such information, and, due to the nature of the reservoir, the amount of recoverable gas under each producers' tract cannot be practically determined by a formula which considers only the deliverability of a well.

In Findings Nos. 76, 77, and 81, the Commission determined that considering available reservoir information, a proration formula based upon 100% acreage is presently the most reasonable basis for allocating allowable production from the Pool,

and upon such basis the amount of gas that can be practicably obtained without waste, substantially in the proportion that the recoverable gas under each tract bears to the total recoverable gas in the pool can best be practically determined, and will afford the owner of each property the opportunity to produce his just and equitable share of the gas in the pool.

In Findings Nos. 78, 79 and 80, the Commission determined that in order to prevent waste the total allowable production of gas should be limited to reasonable market demand and to the capacity of the gas transportation facilities for the pool.

In Findings Nos. 82 and 83 the Commission determined that the pool should be prorated to prevent drainage between tracts that is not equalized by counter drainage and that adoption of a proration formula based upon 100% acreage for allocating allowable production would prevent such drainage.

In Findings Nos. 84 and 85 the Commission determined that it was necessary to prorate production in order to assure that each operator would produce his property ratably with all other operators connected to the same gas transportation facility and that adoption of a 100% surface acreage formula for allocating allowable production would accomplish this.

In Finding No. 86 the Commission determined that the pool should be governed by the General Rules and Regulations for the Prorated Gas Pools of Southeastern New Mexico promulgated by Order No. R-1670, as amended.

10. In their application for rehearing before the Commission, Petitioners stated that "the Commission did not have jurisdiction to institute gas proration in the Carlsbad-Morrow Gas Pool based upon the record before the Commission in this case.

11. Petitioners did not argue the other matters raised in their application for rehearing before the Commission.

12. The Oil Conservation Commission did not act fraudulently, arbitrarily or capriciously in issuing Order No. R-1670-L.

13. The Transcript of Record and Proceedings in Case No. 4693

before the Oil Conservation Commission contains substantial evidence to support the Commission's findings in order No. R-1670-L.

14. The Oil Conservation Commission did not exceed its authority in issuing order No. R-1670-L.

15. Oil Conservation Commission Order No. R-1670-L is not erroneous, invalid improper or discriminatory.

16. The formula adopted by the Oil Conservation Commission for allocating allowable production among the gas wells in the South Carlsbad-Morrow Gas Pool allocates such production upon a reasonable basis, recognizing correlative rights, and, insofar as practicable, prevents drainage between producing tracts in the pool which is not offset by counter drainage.

17. The formula adopted by the Oil Conservation Commission for allocating allowable production among the gas wells in the South Carlsbad-Morrow Gas Pool allocates such production in a manner that affords to the owner of each property in the South Carlsbad-Morrow Gas Pool the opportunity to produce without waste his just and equitable share of the gas in the pool, insofar as it is practicable to do so, and for this purpose to use his just and equitable share of the reservoir energy.

18. Oil Conservation Commission Order No. R-1670-L will prevent waste and will protect correlative rights.

#### Conclusions of Law

1. The Court has jurisdiction over the subject matter of this cause and all necessary and indispensable parties thereto.

2. The Court is limited in its review of an order of the Oil Conservation Commission to matters raised in the application for rehearing filed with the Commission.

3. Matters raised in the application for rehearing but not argued on appeal are considered waived.

4. The Oil Conservation Commission had jurisdiction to

institute gas prorationing in the South Carlsbad-Morrow Gas Pool, based upon the record before the Commission.

5. Oil Conservation Commission Order NoR-1670-L contains the basic jurisdictional findings required by law to issue a valid order prorating production and allocating allowable production among the producers in the South Carlsbad-Morrow Gas Pool.

6. Oil Conservation Commission Order No. R-1670-L contains findings which fully comply with all statutory requirements concerning proration of production and allocation of allowable gas production among producers in the South Carlsbad-Morrow Gas Pool.

7. The findings contained in Oil Conservation Commission Order No. R-1670-L are based upon and supported by substantial evidence.

8. Oil Conservation Commission Order No. R-1670-L will prevent waste and protect correlative rights.

9. The Oil Conservation Commission did not act fraudulently, arbitrarily, or capriciously in issuing Order No. R-1670-L.

10. The Oil Conservation Commission did not exceed its authority in issuing its Order No. R-1670-L.

11. The Oil Conservation Commission had jurisdiction to enter Order No. R-1670-L.

12. Petitioners have failed to sustain the burden of proof placed upon them by law and therefore the Petition for Review should be dismissed and Oil Conservation Commission Order No. R-1670-L should be affirmed.

Respectfully submitted,

Robert F. LeBlanc  
Jason W. Kellahan

I hereby certify that a true copy of the foregoing instrument was mailed to opposing counsel of record this 28th day of June, 1973  
Jason W. Kellahan

By Jason W. Kellahan  
ATTORNEYS FOR INTERVENOR-  
RESPONDENT, Cities Service  
Oil Company.

A. J. LOSEE  
JOEL M. CARSON

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

AREA CODE 505  
746-3508

10 August 1973

Honorable Paul Snead  
District Judge  
Chaves County Courthouse  
Roswell, New Mexico 88201

Re: Michael P. Grace II and Corinne Grace, Petitioners,  
vs. Oil Conservation Commission of New Mexico,  
Respondent, Eddy County District Court No. 28181  
Our File 15-007-001a

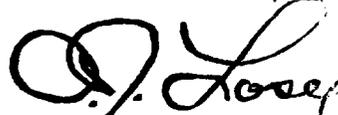
Dear Judge Snead:

We have a copy of Mr. Marchiondo's Motion for Stay of Judgment pending appeal, his proposed Order granting stay and Notice of Appeal.

We do not concur in the Motion for Stay of Judgment and if the Court would like to hear further argument on this matter, we would be pleased to be present for such purpose. In the event it is felt that this argument is not necessary and the Motion should be denied, we enclose proposed Order denying Motion.

Very truly yours,

LOSEE & CARSON, P. A.



A. J. Losee

AJL/sff  
Enclosure

cc: Mr. William C. Marchiondo w/enclosure  
Mr. Jason W. Kellahin w/enclosure  
Mr. Bill Carr w/enclosure

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DAVID L. NORVELL  
ATTORNEY GENERAL

STATE OF NEW MEXICO  
**Office of the Attorney General**  
DEPARTMENT OF JUSTICE  
P. O. BOX 2246  
Santa Fe, N. M. 87501

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.

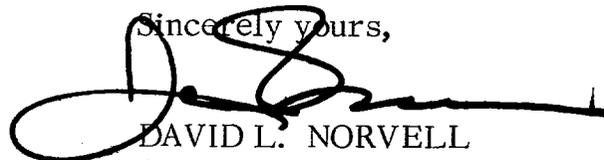
Dear Mr. Carr:

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.

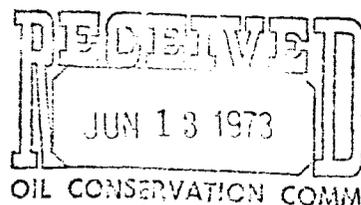
Therefore, I am advising you this date to, in turn, advise the Commission that no proration orders shall issue on the Carlsbad field in question which would have the effect of making this matter retroactive; and this shall be the position of the Office of the Attorney General until such time as we advise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

Sincerely yours,



DAVID L. NORVELL  
Attorney General

DLN:lg  
cc: A. J. Losee



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, than 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,

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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 existence 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 existence, 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

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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.

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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. LOSZE: 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

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

MR. LOSEZ: Yes, sir.

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

(Court in recess as to this matter.)

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7-D Carlsbad

2. That the Commission improperly included acreage within the horizontal limits of the South Carlsbad-Morrow Gas Pool which has wells located thereon that are not in communication with or in the same common source of supply as the other wells in the area, i.e., Section 2, Township 23 South, Range 26 East, N.M.P.M.

3. That the Commission should have exempted Applicants' City of Carlsbad No. 1 well located in the S/2 of Section 25, Township 22 South, Range 26 East, N.M.P.M., from prorationing by reason of the fact that any substantial curtailment of production from said well will cause it to cease flowing, with probable watering out and complete loss of productivity, thereby causing underground waste, as well as impairment of the correlative rights of Applicants.

This application was not granted within ten days, and the order became final. This petition for review was then timely filed in this Court which has jurisdiction and venue under Section 65-3-22(b).

PETITIONERS' GROUNDS FOR RELIEF

In support of their petition, Petitioners say that the order in question is unlawful and unreasonable and should be set aside by this Court for the following reasons:

(i) there is no substantial evidence to support the Commission's jurisdictional finding that waste (as defined in Section 65-3-3, N.M.S.A., 1953 Comp.) is occurring or will

occur in the South Carlsbad-Morrow Gas Pool unless production therefrom is restricted pursuant to Section 65-3-13(c), N.M.S.A., 1953 Comp.;

(ii) it contains no basic conclusions of fact required to support an order designed to protect correlative rights; and

(iii) it deprives Petitioners of their property without due process of law in that it does not rest upon an authorized statutory basis, is not supported by substantial evidence, is incomplete, vague and indefinite.

#### REVIEW OF THE RECORD

This case must be decided by the Court solely on the basis of the record made before the Commission without the aid of any additional evidence outside the record received by the Commission. Continental Oil Co. v. Oil Conservation Com'n., 373 P.2d 809. This being the case, a review of the record made before the Commission is imperative.

Although the record covers both the Morrow Pool and the Strawn Pool in the South Carlsbad Field, the order under attack pertains only to the Morrow, and only that portion of the record is pertinent to this proceeding.

Staff testimony on behalf of the Commission in support of its action came from R. L. Stamets, Technical Support Chief for the Commission (Tr. 6-40, 74-81) and from Elvis Utz, an engineer for the Commission. (Tr. 41-73)

Mr. Stamets produced seven exhibits as follows:

Exhibit 1 - A tabulation of well data listing all wells by operator or lease name, etc., location of each well, its

elevation, the total depth and his pick of the top of the Strawn lime and of the Morrow sand. (Tr. 9)

Exhibit 2 - A structure contour map of the top of the Morrow showing wells completed in the Morrow. (Tr. 10-11)

Exhibit 3 - A tabulation of all of the Morrow completions showing the perforations for each of the wells (Tr. 12)

Exhibit 4 - a graphic display of the same data as shown by Exhibit 3 (Tr. 13)

Exhibit 5 - a log to log comparison of the Pennzoil-Gulf Federal No. 1 well and the Superior Oil Company State No. 1 (Tr. 15-16)

Exhibit 6 - cross-section A-A' (Tr. 16)

Exhibit 7 - cross-section B-B' (Tr. 17)

This witness stated that he did not think the horizontal limits of the Morrow Pool had been determined and it would be very difficult to do so (Tr. 11); the thickness of the Morrow is quite regular; there is no one pay zone common to every well in the pool; there are some isolated pay zones in the pool (Tr. 12); the wells produce from different intervals (Tr. 14); that all the wells shown are all producing from one pool (Tr. 17).

The witness concluded that the Morrow sands show a considerable amount of thickening and thinning and discontinued unity over short distances; the porosities vary widely between wells, the water saturation varies and the formation can be damaged by drilling operations. (Tr. 18) He says these factors tend to confuse the reserve calculations.

On cross-examination, this witness testified as follows: (Tr. 25-27)

"Q Let me read what has been said should be done, it says: The rules, regulations or orders of the Commission, so far as it is practicable to do, should afford the owner of each property in the pool the opportunity to produce a just and equitable share of the oil or gas, or both, in the pool being an amount, so far as can be practicably determined, and so far as can be practicable obtained, and which is substantially in proportion to the continued recovery of oil and gas, or both, under the property and to the total recoverable oil or gas in the pool for this purpose to use a just and equitable share of the reservoir energy. Now, I submit that that is a statement to which you must comply if prorationing the pool. Can the Commission do this in these two pools bearing in mind it must be a practicable matter.

"A Considering the practicability I am going to have to answer at this time, no. After the presentation of the Exhibits and the testimony by the other people who are interested I may be forced to change my answer, but from my own investigation and my own observations at this time, because of the lack of cores, and with all of the problems that exist in this reservoir, I am going to have to answer no right now.

"Q There are logs on every well in the pool?

"A Yes.

"Q And geological information can be obtained from Hobbs; can it not?

"A Yes, it can.

"Q If all the logs of the pool were identical then all the wells would be the same; isn't that right?

"A You would think so, yes.

"Q Now, if the logs indicated that the interval being produced was dissimilar from well to well could you determine from the logs within some reasonable approximation the amount of recoverable gas in place under that well?

"A It's quite possible I could come up with a figure which I would consider reasonable, but I have a feeling that every operator in the pool would not feel it was reasonable.

"Q Mr. Stamets, certain factors relating to information obtained from logs has been consistently used in the State of New Mexico for allocating production from secondary recoverable units; isn't that right?

"A You are speaking of the operators getting together?

"Q Yes.

"A Yes, that's true. There have been meetings of the minds of people concerned and they have come up with some parameters which they have all accepted and these have been used, yes." (Tr. 25-27)

On further cross-examination, this witness testified as follows:

"A Yes. In preparation for this Hearing I talked to as many people as I could and there was a difference of opinion on what matrix velocity should be used and at looking at some of the things that were sent to me by different companies and comparing that data with my data I worked out, and this was admittedly worked out hurriedly, and I found a difference in the porosity of the calculated water saturation between the figures I adopted and the figures submitted by the companies.

"Q And these would be factors in determining reserves?

"A These would be factors. I don't know that if we all set down together we probably couldn't work this out and we probably could come up with some parameters which would be acceptable. I feel that if I developed the parameters they would not be accepted by the majority in the field." (Tr. 28)

. . . .

"Q These factors that you saw difficult to determine, aren't they, as a matter of fact, determined, whether correctly or incorrectly by engineers in southeast New Mexico working with the rocks on a continuous basis?

"A Yes, I would say that is quite true." (Tr. 29)

Commission witness Utz presented three exhibits as to the Morrow as follows:

Exhibit 8 a plat of the horizontal limits of the South Carlsbad Morrow Pool (Tr. 42) on which the well locations are shown.

Exhibit 9 an information sheet listing 15 completed wells, their location, absolute open flow rateable flow and

acreage factor, shut-in pressure, date of completion, deliverability at 850 psi, well connection. (Tr. 43-48)

Exhibit 10 calculation of rateable take on a straight acreage basis. (Tr. 49-53)

This witness does not purport to show the productive limits of the pool, only what is indicated by producing wells. (Tr. 43) He states that by the characteristic slope of the open flow tests on the wells, he could predict the deliverability of the wells at 850 pounds pressure. (Tr. 45-46) He found substantial differences in deliverability between wells (Tr. 47), some are "excellent wells" others are "stinkers." From Exhibit 9, he concluded that "the availability of gas at the well head is greater than the market demand, the market demand being the production." (Tr. 51-52)

This witness gave as his reasons for recommending that the Morrow pool be prorated the following: (Tr. 58)

"1. There are two pipe lines in each pool, one pipe line doesn't know what the other pipe line is going to take unless we set a figure.

"2. There is one separate connection in the Morrow Pool and other possible connection in the Strawn Pool. These pipe lines don't know what to take and they won't know unless we set a figure.

"3. Probably one of the most important factors is the penalty factor. There are three wells that have been indicated as having a rateable take penalty factor. Rateable take to me means gas proration allowables set as rateable factors and without knowing what that figure is I don't know how you are going to enforce the penalty factor."

This witness on cross-examination stated his conception of market demand in the following way:

"Q Well, that would indicate that -- are you saying that market demand is based on the ability of the

wells to produce rather than on the ability of the --  
the need of the purchaser?

"A I don't think I said that and I don't think the Exhibit indicates that, Mr. Spann. What I said was that the market demand, as far as my job is concerned is the production in the pool, x amount of production from the pool is the market demand from the pool. The market demand from the pool is what the purchaser chooses to take." (Tr. 68)

As to proration when the market demand exceeds the availability of supply, this witness testified as follows:

"MR. ALLISON: If the market demand exceeds the availability of supply does the Commission then prorate the production in a pool?

"THE WITNESS: Ordinarily no." (Tr. 73)

The Commission then called for testimony from the pipeline companies taking gas from the Morrow Pool. James L. Thomas of Transwestern Pipeline testified in response to the Commission's request as follows:

"Q What volume of gas does Transwestern now take and what volume of gas does Transwestern anticipate taking in the future?

"A At the present time we are taking 4100 MCF per day. Our present need for gas is such that we will purchase all available gas used from the area.

"Q You have prepared a plat showing Transwestern's gathering system in the area?

"A Yes.

"Q Are you prepared to present it at this point?

"A Yes.

MR. ALLISON: Sir, we would like to have Transwestern's Exhibit 1 marked.

(Marked Transwestern's Exhibit 1 for identification.)

"Q (By Mr. Allison) Would you describe --

MR. HATCH: May I interrupt you? Will Exhibit Number 1 be in both cases?

MR. ALLISON: In both cases, if you please, I'm sorry.

"Q (By Mr. Allison) Would you describe the size of the capacity of Transwestern's system?

"A In the Carlsbad area, it consists of two eight-inch lines, running generally northwest from the northeast corner of Section 3, Township 24, North, Range 27 East.

From our main lateral, we have four-inch gathering lines from these eight-inch lines to each of the connected wells. Our main lateral has a capacity of approximately 120,000 MCF per day of which perhaps 90,000 per day would be taken from the South Carlsbad field area.

If more gas supply becomes available, we expect our system will enable us to purchase all such gas.

"Q What is the pressure at your gathering system?

"A At the present time, our gathering system pressure is averaging approximately seventy-five pounds per square inch.

"Q Is the gas produced into your system produced at a plant prior to delivery?

"A No, all the gas flows through the main system for delivery, at the present time, to our customer in California.

"Q Mr. Thomas, are you now purchasing all the gas you understand to be available from this . . . area?

"A Yes, sir." (Tr. 84-86)

Randall Montgomery of Llano Gas Company testified in response to the Commission's request as follows:

"Q There was testimony by Mr. Thomas that Transwestern Pipeline would take all of the gas in the wells they had contracts with, all the gas these wells could produce; is Llano in the same situation?

"A Yes." (Tr. 92)

Cities Service offered testimony of E. E. Taylor, a geologist, who presented geological data comparable to that presented by Commission witness Stamets. His testimony commences on page 96 of the transcript. He concluded that it would be

difficult to determine the exact net feet of pay for an individual well (Tr. 105) and that geologists would disagree as to the preparation of a net pay isopach (Tr. 106). On cross, he testified as follows:

"Q Now, as I understand your testimony, and correct me if I am wrong, you said you cannot determine the reserves in the pool?

"A That's what I said -- I think what I said was that a net pay map, in my opinion, would be useless for that.

"Q But there would be other means available for determining reserves?

"A I suppose there would be if you had sufficient data."  
(Tr. 108)

Cities Service also offered testimony of E. F. Motter, an engineer, who discussed open flow deliverability and concluded that there was a wide difference between wells in deliverability but that deliverability was not necessarily indicative of reserves. (Tr. 114) (Tr. 120) He concluded that acreage was one of the best factors available to show recoverable reserves. (Tr. 121)

Pennzoil-United presented the testimony of J. C. Raney, an engineer. Raney testified that adequate sonic logs are available from which the hydrocarbon pore volume of the formation could be determined (Tr. 173); as to determination of reserves, he testified:

"Q Can the reserves be determined under your formula with any reasonable degree of accuracy?

"A Yes, we feel the properties actually determine or dictate what gas is in place and this is what our formula is based on, the gas in place.

"Q And that is the reserve underlying the tract?

"A Yes.

"Q Could you determine reserves for the entire pool by simple addition of the reserves from each tract?

"A Yes.

"Q In your opinion, does this proposal meet the requirements of the New Mexico Statutes?

"A Yes, we feel it would." (Tr. 176-177)

. . . .

"Q Is it your testimony that the reserves are proportionate to the hydrocarbon pore volume?

"A Yes, you take into account the porosity of the available spaces for storage of gas, then you take out the water saturation and get the hydrocarbon pore volume.

"Q Has Pennzoil made a determination of the reserves in the field?

"A On the data we have available and as far as I can go, I have made a determination on our well and the Superior Well and one of the Grace Wells of which we feel we have an interest in.

"Q Your previous testimony was to the effect that your method here makes it a simple addition factor to determine these reserves?

"A Yes.

"Q Would it be a simple process from the point where you stopped your determination?

"A Yes." (Tr. 178)

Ramey also testified as follows:

"Q In this field, based on the information available, why is it necessary to prorate to prevent waste?

"A I have no technical data to determine at what point the waste would occur, at what pressure point, and this requires someone spending some money to go out and obtain a bottom hole sample and send it to the lab to determine at what point the reservoir pressure is likely to begin to drop out.

"Q At this point we do not have enough information to determine whether proration is necessary to prevent waste?

"A Nothing other than our technical backgrounds that this will occur on the basis of chemistry, as you drop the pressure in the reservoir there has to be some change from gas to liquid.

"Q But we haven't made tests to determine whether that is occurring yet in this field; have we?

"A No.

"Q Now, insofar as the Commission's authority is concerned, they can prorate production when the reasonable market demand exceeds -- I mean the production exceeds the reasonable market demand; is that right?

"A And the testimony so far is that there are two purchasers in the field, one can take all the production from the well which it has under contract and the other within seven days, will be able to do so also; so we have a situation wherein seven days from now the market demand will take care of all the production.

Now, under those circumstances, there is no basis for prorationing; is there?

"A Nothing other than just our belief that if you produce a well to an excessive capacity then you will cause reservoir damage." (Tr. 190-191)

#### THE WASTE ISSUE

Section 65-3-13(c) provides that:

"Whenever, to prevent waste, the total allowable natural gas production from gas wells producing from any pool in this state is fixed by the commission in an amount less than that which the pool could produce if no restrictions were imposed, the commission shall allocate the allowable production among the gas wells in the pool delivering to a gas transportation facility upon a reasonable basis and recognizing correlative rights, . . ."

A prerequisite for the Commission to prorate or allocate allowable production among the gas wells in a pool under this provision is a showing must be made that waste will occur unless the production from the pool is restricted to less than the pool could otherwise produce.

Waste of natural gas is defined by Section 65-3-3 as:

"A. 'Underground waste' as those words are generally understood in the oil and gas business, and in any event to embrace the inefficient, excessive, or improper, use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and the locating, spacing, drilling, equipping, operating, or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool, and the use of inefficient underground storage of natural gas.

"B. 'Surface waste' as those words are generally understood in the oil and gas business, and in any event to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of natural gas of any type or in any form or crude petroleum oil, or any product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating, or producing, well or wells, or incident to or resulting from the use of inefficient storage or from the production of crude petroleum oil or natural gas in excess of the reasonable market demand.

". . . .

"E. The production in this state of natural gas from any gas well or wells, or from any gas pool, in excess of the reasonable market demand from such source for natural gas of the type produced or in excess of the capacity of gas transportation facilities for such type of natural gas. The words 'reasonable market demand,' as used herein with respect to natural gas, shall be construed to mean the demand for natural gas for reasonable current requirements, for current consumption and for use within or outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of natural gas or products thereof, or both such natural gas and products."

The order in question contains the following findings in respect to waste:

"(66) that waste is occurring in the subject pool.

"(67) That in order to prevent waste and to ensure that all owners of property in the subject pool have the opportunity to produce their share of the gas, the subject pool should be prorated in order to limit

the reasonable market demand for gas from that tract that can be produced without waste.

"(78) That in order to prevent waste the total allowable production from each gas well producing from the subject pool should be limited to the reasonable market demand for gas from that well.

"(79) That in order to prevent waste the total allowable production from all gas wells producing from the subject pool should be limited to the reasonable market demand for gas from the pool.

"(80) That in order to prevent waste the total allowable production from gas wells in the subject pool should be limited to the capacity of the gas transportation system for the subject pool's share of said transportation facility."

Petitioners respectfully submit that there is no evidence, much less any substantial evidence, in the record to support these findings.

There is no probative evidence that any sort of "underground waste" is likely to occur in this reservoir. There is likewise no evidence of any "surface waste" occurring or likely to occur in this reservoir. There is likewise no evidence that there will be production of natural gas in excess of the reasonable market demand. The evidence is exactly the opposite. The Commission called witnesses testifying to the amount of gas the pipeline purchasers would take who were positive that the pipelines would take all available gas. This completely eliminates the possibility of statutory waste. These findings are simply not supported by the record but are contrary to the testimony of the Commission's own witnesses.

The Commission's findings in respect to reasonable market demand are completely contrary to the record. The findings as to market demand are as follows:

"(43) That the reasonable market demand for gas from the wells in the South Carlsbad-Morrow Gas Pool connected to the Transwestern system is substantially less than 41,000 MCF per day.

"(44) That the reasonable market demand for gas from the wells in the South Carlsbad-Morrow Gas Pool connected to the Llano system is substantially less than 25,000 MCF per day.

"(45) That the reasonable market demand for gas from the wells in the South Carlsbad-Morrow Gas Pool connected to both systems is less than 66,000 MCF per day.

"(46) That the wells in the South Carlsbad-Morrow Gas Pool connected to the Transwestern system are capable of producing gas in excess of Transwestern's reasonable market demand for gas from those wells.

"(47) That the wells in the South Carlsbad-Morrow Gas Pool connected to the Llano system are capable of producing gas in excess of Llano's reasonable market demand for gas from those wells.

"(48) That the wells in the South Carlsbad-Morrow Gas Pool are capable of producing gas in excess of the combined reasonable market demand for gas from the South Carlsbad-Morrow Gas Pool.

"(58) That the reasonable market demand for gas from a well that is that well's fair share of the total market demand for gas from that pool that can be produced without waste.

"(59) That gas is being produced from some wells in the subject pool in excess of the reasonable market demand for gas from those wells.

"(60) That gas is being produced from some wells in the subject pool in an amount less than the reasonable market demand for gas from those wells."

In the face of the testimony of the pipeline witnesses that they are in position to take all available production, these findings are completely arbitrary and capricious. There is no basis whatsoever for the finding of specific MCF figures on market demand as the Commission has done. There is no evidence whatsoever that any well has not been able to produce all the gas its operator desires to produce. There is no testimony from any operator that he had gas deliverability from his

wells that he could not use because of lack of market. There is no evidence that in fact indicates this.

It is true that Mr. Utz has constructed theoretical or hypothetical deliverability figures based on the open flow tests using some sort of graph and an assumed back-pressure of 850 pounds. The actual performance of the wells does not conform with these theoretical figures. The market had absorbed the actual deliverability of the wells to the date of the hearing, and the prospective market as forecast by the pipeline purchasers would likewise absorb all the actual deliverability of the wells.

The order in question simply cannot be supported on any theory of waste or production in excess of market demand.

#### THE CORRELATIVE RIGHTS ISSUE

The burden the statute places on the Commission when it undertakes to prorate gas to protect correlative rights is stated explicitly in Continental Oil Co. v. Oil Conservation Com'n., supra, as follows:

". . . In order to protect correlative rights, it is incumbent upon the commission to determine, 'so far as it is practical to do so,' certain foundational matters, without which the correlative rights of the various owners cannot be ascertained. Therefore, the commission, by 'basic conclusions of fact' (or what might be termed 'findings'), must determine, insofar as practicable, (1) the amount of recoverable gas under each producer's tract; (2) the total amount of recoverable gas in the pool; (3) the proportion that (1) bears to (2); and (4) what portion of the arrived at portion can be recovered without waste. That the extent of the correlative rights must first be determined before the commission can act to protect them is manifest." (p. 814-815)

The Commission, in the order under attack here, has made no finding as to the amounts of recoverable gas in the pool, or under the various tracts; it made no finding as to the

amount of gas that could be practicably obtained without waste.

The Commission has attempted to evade this responsibility by casting aside all the parameters indicative of reserves in place except surface acreage. The series of findings which attempts this ploy is as follows:

"(69) That the subject pool has not been completely developed.

"(70) That production from the Morrow formation in the subject pool is from many separate stringers which vary greatly in porosity, water saturation, and thickness, both within individual stringers and between stringers.

"(71) That the above-described stringers are not continuous across the pool, but are interconnected by the perforations in the various completions in the pool.

"(72) That due to the above-described variations in the stringers and the lack of continuity of the stringers, the effective feet of pay, porosity of the pay, and water saturation of the pay underlying each developed tract cannot be practically determined from the data obtained at the wellbore.

"(73) That there are recoverable gas reserves underlying each of the developed 320-acre tracts within the horizontal limits of the subject pool; that there are 15 developed 320-acre tracts in the pool as defined by the Commission.

"(74) That due to the nature of the reservoir the amount of recoverable gas under each producer's tract cannot be practically determined in the subject pool by a formula which considers effective feet of pay, porosity, and water saturation.

"(75) That due to the nature of the reservoir the amount of recoverable gas under each producer's tract cannot be practically determined in the subject pool by a formula which considers only the deliverability of a well.

"(76) That the amount of gas that can be practicably obtained without waste by the owner of each property in the subject pool substantially in the proportion that the recoverable gas under his tract bears to the total recoverable gas in the pool can be practically determined best by allocating the allowable production

among the wells on the basis of developed tract acreage compared to total developed tract acreage in the pool.

"(77) That considering the nature of the reservoir and the known extent of development, a proration formula based upon surface acreage will afford the owner of each property in the pool the opportunity to produce his just and equitable share of the gas in the pool so far as such can be practicably obtained without waste substantially in the proportion that the recoverable gas under such property bears to the total recoverable gas in the pool."

This was done in face of the fact that the Commission's own witnesses admitted that reserve calculations, although difficult, could be made and in face of the testimony of witness Raney that all the parameters necessary to compute reserves were available. The Commission went to surface acres in the measure of reserves in face of the testimony of its own witnesses that the Morrow sand was discontinuous and varied greatly in thickness from well to well which made it obvious that reserves varied substantially from acre to acre. The Commission has assumed when it adopted the surface acre formula that each acre contains the same recoverable reserve. The wide disparity in deliverability between wells renders this assumption erroneous on its face. This is also contrary to the Commission's solemn finding in the order under attack in Continental where the Commission said there is a general correlation between the deliverabilities of the gas wells and the recoverable gas in place under the tracts dedicated to the wells.

Section 65-3-13(c) says for the Commission to give equitable consideration to acreage, pressure, open flow, porosity, permeability, deliverability and quality of the gas. It was brought out that along with acreage, the Commission had available

to it pressures, open flow calculations and deliverability of the wells. It also had available electric logs which indicated porosity. It also had available all the tools which were in use daily in southeastern New Mexico in the calculation of reserves. The Commission discarded all these factors and took refuge from the pronouncement of the Supreme Court in Continental by saying it was not able to compute reserves.

As Petitioners read Continental, no such refuge is available to the Commission. It must make the basic findings where it is possible to do so. The record and the Commission's own witnesses make it clear that such can be done for the Morrow Pool.

The Commission made some findings as to correlative rights as follows:

"(61) That gas is not being taken ratably from the various producers in the pool.

"(62) That there are owners of property in the subject pool who are being denied the opportunity to produce without waste their just and equitable share of the gas in the pool.

"(63) That there are owners of property in the subject pool that are producing more than their just and equitable share of the gas in the pool.

"(65) That the correlative rights of some producers in the pool are being violated.

"(68) That to ensure that each owner of property in the subject pool has the opportunity to produce that amount of gas that can be practicably obtained without waste substantially in the proportion that the recoverable gas under his tract bears to the total recoverable gas in the pool, the subject pool should be prorated in order to limit the amount of gas to be produced from the pool to the reasonable market demand and the capacity of the gas transportation facilities.

"(84) That in order to ensure that each operator is afforded the opportunity to produce his property

ratably with all other operators connected to the same gas transportation facility, allowable production from the pool should be prorated to the various producers upon a just and equitable basis.

"(85) That the adoption of a 100% surface acreage formula for allocating the allowable production in the subject pool will, insofar as is presently practicable, allow each operator the opportunity to produce his property ratably with all other operators connected to the same transportation facility.

Unless the Commission finds the relative reserves under the several tracts, there is no way to tell whether gas is being taken ratably (whatever that means) or not. Until the Commission determines the relative shares of the several owners, there is no way to find that some are not getting their just and equitable share of the gas in the pool. Until an owner's proportion of the recoverable share of gas in the pool is determined, there is no way to determine whether he is being allowed to produce such share. The 100% surface acreage factor simply begs the question. No witness testified that each acre was equal as to recoverable reserves. The fact that the wells range from "excellent" wells to "stinkers," reflects that surface acres do not reflect recoverable reserves. The same is true of the unchallenged testimony as to isolated sections of pay, discontinuity of pay and variations in thickness of pay.

The statute and the decision of the Supreme Court of this state do not permit the Commission to evade its responsibility. Under Continental, the order is void.

The Commission also made some findings as to drainage as follows:

"(64) That drainage is occurring between tracts in the pool which is not equalized by counter drainage.

"(82) That in order to prevent drainage between tracts that is not equalized by counter drainage the allowable production from the pool should be prorated to the various producers upon a just and equitable basis.

"(83) That the adoption of a 100% surface acreage formula for allocating the allowable production in the subject pool will, insofar as is presently practicable, prevent drainage between producing tracts which is not equalized by counter-drainage."

Here again, until relative reserves have been established, drainage cannot be determined as a fact. The finding that a 100% surface acre formula will prevent drainage is purely a self-serving declaration with no foundation in this record. The Commission witnesses were not able to state with any conviction that there was effective communication in all zones between wells. The pressure data certainly does not support any finding of communication between wells which would be indicative of drainage. Since surface acres are not truly reflective of reserves, the likelihood of drainage using this formula is just as great as with no proration. At least with no proration, each well produces to the extent of its capacity and to that extent receives equal opportunity. Allowing wells completed in the thin portions of the pay to produce to capacity while wells completed in the thick portions of the pay are restricted is not an equitable application of the statutory factors the Commission is charged with considering.

#### CONCLUSION

Petitioners respectfully submit that the record will not sustain the findings upon which the order in question is predicated. There is no substantial evidence as to waste which

would require proration. The order does not contain the basic statutory requirements for a correlative rights order, and the Commission cannot lawfully evade the requirement that it make relative reserve determinations when it allocates production to protect correlative rights.

Even if reserve determinations are difficult, they are being made and accepted in the gas industry in New Mexico based on the same data available to the Commission. The statute requires an effort on the part of the Commission to make the findings and a mere self-serving statement of difficulty is not enough. Certainly the statute requires the Commission to use all the data available and to make at least a best efforts finding of reserves. Certainly the adoption of a formula based on one element of the calculation of reserves which according to the findings of the Commission is inexact will not meet the statutory test.

The Court should hold that Order No. R-1670-1 is void.

Respectfully submitted,

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Lon P. Watkins

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C. C. Small, Jr.

Dakins attempting to quash our motion to set aside the stay.

✓ AM JUR Judges 41 and following focus on the rights of successor judges to vacate interlocutory orders of other judges.

✓ on the 1st order in this case — was not appealable.

↳ the stay order here — probably not appealable — suppose they had disqualified Archer — not us.

132 ALR 78 — old annotation — *Huffman Case*

= If motion heard on Monday and then gets a writ of prohibition — do we want to fight the writ or wait for the June 5 hearing.

16 Am Jur 2d - sec 41

one judge should hesitate to vacate an interlocutory order made in the same case by another judge w/ equal powers.

courts oppose this idea using terms "jurisdiction" and "power"

courts do not permit this in cases where the 1<sup>st</sup> judge is available

p. 123

\* "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."

WILLIAMS v. GARRETT, 4 ARIZ APP 7, 417 P2d 378.

"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,<sup>9</sup> 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"<sup>10</sup>

9. KUHNEN v. GARRETT, 243 IOWA 785, 51 NW 2d 149, 41 ALR 2d 1397; PETERS v. HOPSON 306 MASS 597, 29 NE 2d 140, 132 ALR 1

10. DICTOGRAPH PRODUCTS CO. v. SENOYNE CORP.

(CA 2 NY) 230 F2d 131

Ordinarily it's unreasonable for one judge to vacate the order of another by *ex parte* order.

CAYUGA CO. BANK v.

WARFIELD (NY)

13 HOWR 439

p. 124

if original order could have been appealed — not as likely a subject to be vacated by another judge.

p. 125

If it is not feasible to apply to the <sup>1st</sup> judge for a vacation or modification — another judge of the same court may act.

WILLARD v. WILLARD 194

APP DIV 123, 185 NYS 569;

HARRISSAN v. GILCHRIST, 121

WIS. 127, 99 NW 909.

p. 126

rulings on administrative and discretionary matters should not be overturned by successor judges.

## ALR - JUDGES - sec 9 3/4 -

P. 1 While a judge should hesitate to undo his own work, and should hesitate even more to undo the work of another judge, he has, until final judgment or decree power to do so, and may therefore vacate or modify the interlocutory order of another judge.

P. 17 < citing 31 Am. Jur. 275, JUDGMENTS, sec 728 - >  
 the law on the correction or change of interlocutory rulings by the court that made them is that this remains upon the jurisdiction of the court that made the ruling and may be modified or set aside by that court until rendition of a final judgment.

South Carlsbad production vs allowable analysis for  
September 1972, thru June 1973.

Allowable calculation September thru December, 1972.

Total Pool Production 5,981,012

Marginal Production 1,489,230

Non-Marginal Production 4,491,782

Divided by non-marginal acreage

Factors of 5.94 equals

Allowable for Factor of 1.00 = 756,192

Factor of .25 189,048

" " .51 385,657

" " .97 597,391

" " .98 741,068

Allowable calculation January thru June, 1973.

Total Production (est.base Jan.) 13,771,038

Marginal production 3,728,684

Non-marginal production 10,042,354

Divided by Non-marginal acreage

Factors of 5.48 equals

Allowable for Factor of 1.00 1,832,546

Factor of .97 1,777,569

" " .51 934,598

GRACE / O.C.C.  
E... S...  
M... TO R...  
... EDD...  
MARCH 7, 1973

				Sept. thru Dec.	Jan. thru June	Value of Overproduction
1.00 Phillips	Drag A #1-C, 18-23-27					
	Production			163,210	1,097,352	
	Allowable			756,192	1,832,546	
	Status			592,982+	1,453,854+	
N						
1.00 Phillips	Drag B #1-K, 18-23-27					
	Production			306,860	2,950,488	
	Allowable			756,192	1,832,546	
	Status			449,332+	663,610-	
N						
						\$234,013
.97 Antweil	Little Jewel #1-F, 31-22-27					
	Production			635,081	1,210,998	
	Allowable			597,391	1,777,569	
	Status			37,690-	528,881+	
N						
1.00 Grace	City of Carlsbad #1-O, 25-22-26					
	Production			1,160,327	1,647,510	
	Allowable			756,192	1,832,546	
	Status			404,135-	219,099-	
N						
						\$76,684
.51 Grace	Gradanocq #1-H, 2-23-26					
ability 92.728	Production			340,784	404,098	
x 4 = 370.912	Allowable			385,657	934,598	
	Status			44,873+	573,373+	
N						
1.00 Grace	Gopogo #2-G, 24-22-26					
	Production			915,220	2,731,908	
	Allowable			756,192	1,832,546	
	Status			159,028-	1,058,390-	
N						
						\$370,436
.98 Cities Service	Merland B #1-G, 30-22-27					
	Production			412,591		
	Allowable			741,068		
	Status			328,477+		
N						
.98 Cities Service	Spencer A #1-O, 30-22-27					
	Production			557,709		
	Allowable			741,068		
	Status			183,359+		
N						

# Gas Well Operator Set To Appeal Prorationing

SANTA FE, N.M. (AP) — A Carlsbad natural gas well operator said Thursday he will appeal a district court decision upholding an Oil Conservation Commission order that established gas prorationing in the South Carlsbad-Morrow gas pool.

Michael P. Grace of Carlsbad said he will appeal to the New Mexico Supreme Court a June 4 decision by Dist. Court Judge Paul Snead of Roswell affirming the OCC order.

"I'm not opposed to intelligent prorationing," Grace said Thursday in a statement issued in Santa Fe. "It's necessary for effective conservation."

But, the statement said, "I am opposed to political prorationing as practiced by our state's Oil Conservation Commission."

"In prorationing the South Carlsbad-Morrow gas field last year, the commission flagrantly violated the mandate of the New Mexico Supreme Court, which has said that the commission must determine reserves in a field before making a finding for prorationing," Grace said.

"The commission's own witnesses testified that this had not been done before the prorationing order was issued last year. In fact, it has not been done to this day," he said.

"At a time when the nation is faced with a dire energy crisis, New Mexico should not be hoarding its resources in the guise of conservation," Grace's statement said.

The OCC held hearings on prorationing of the South

Carlsbad field in April 1972, and its order establishing prorationing was issued in May 1972, to be come effective the following September.

Grace obtained a stay of the order last August. The stay was dissolved last month.

## The El Paso Times

Friday, June 8, 1973

Page 1-B

LAW OFFICES

LOSEE & CARSON, P.A.

300 AMERICAN HOME BUILDING

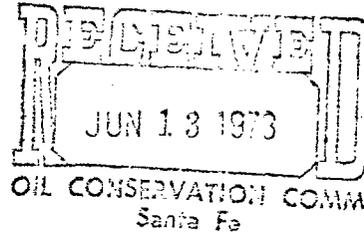
P. O. DRAWER 239

ARTESIA, NEW MEXICO 88210

A. J. LOSEE  
JOEL M. CARSON

AREA CODE 505  
746-3508

12 June 1973



Mr. A. L. Porter, Jr.  
Oil Conservation Commission  
P. O. Box 2088  
Santa Fe, New Mexico 87501

Dear Pete:

Enclosed herewith, you will please find copies of Judge Snead's remarks concerning the effect of the dissolution of the stay order. After reviewing these remarks, please call me so that we may decide how to approach David Norvell about withdrawing his "opinion" on the matter. I suspect a face-to-face discussion would be preferable, but I do not plan on being in Santa Fe until June 27. At any rate, give me a call and we will discuss the same.

Enclosed is a clipping from the El Paso Times of last Friday, revealing that the Commission's "friend" has also become a vociferous press agent.

Very truly yours,

LOSEE & CARSON, P.A.

A. J. Losee

AJL:jw  
Enclosures

MICHAEL P. GRACE II et ux vs. OIL CONSERVATION COMMISSION

OIL CONSERVATION COMMISSION

CASE 4693

ORDER R-1670-L

DISTRICT COURT

County of Eddy

CASE 28181

APPEAL BY MICHAEL GRACE

Subject of Case:

Morrow - South Carlsbad  
Proration

Other Parties:

City Service  
City of Carlsbad

Opposing Counsel:

Lon Watkins (Grace)  
Michael F. McCormick (City of Carlsbad)  
William J. Cooley (Grace)

Other Counsel of Record:

A. J. Losee (Oil Conservation Commission)  
Jason Kellahin (Cities Service)

Michael F. Grace  
Carlsbad, New Mexico  
Tel. 505-887-5581

June 7, 1973

Capricious and politically-motivated prorationing by the New Mexico Oil Conservation Commission is going to hasten Federal intervention in this regulatory area, which has long been a prerogative of the state, an independent New Mexico gas producer said today.

Michael F. Grace, who operates in the South Carlsbad field, made the charge in announcing that he proposes to appeal a ruling of District Judge Paul Snead, of Roswell, on Tuesday (June 4), upholding the prorationing of the South Carlsbad-Morrow gas pool by the Oil Conservation Commission. The appeal would be made to the New Mexico Supreme Court.

"I am not opposed to intelligent prorationing; it's necessary for effective conservation, but I am opposed to political prorationing as practiced by our state's Oil Conservation Commission," Grace said. "In prorationing the South Carlsbad-Morrow gas field last year, the Commission flagrantly violated the mandate of the New Mexico Supreme Court, which has said that the Commission must determine reserves in a field before making a finding for prorationing," Grace pointed out.

"The Commission's own witnesses testified that this had not been done before the prorationing order was issued last year. In fact, it has not been done to this day.

"Further, witnesses brought in by the Commission from the two pipe line companies then serving the field, testified that they could take all the gas produced from the field, thus there would be no waste from the wells, as the Commission maintained. Since the Commission's ruling, a third pipe line has come into the field," Grace pointed out.

"At a time when the Nation is faced with a dire energy crisis, New Mexico should not be hoarding its resources in the guise of conservation," Grace reiterated. "Oil and gas are national resources."

The Commission originally held hearings on the South Carlsbad field in April, 1972, and its prorationing order was issued in May, to become effective September 1. Grace obtained a stay order by the courts upon the ruling in August.

The stay was dissolved by the District Court last month (May, 1973). The hearing before Judge Snead on Tuesday, June 4, was on the question of whether the Commission had followed the proper procedures in determining if the field should be prorated.

SUBPOENA DUCES TECUM

MYERS PRINTING CO.

THE STATE OF NEW MEXICO

To MR. A. L. PORTER, Jr., Secretary of the Oil Conservation

Commission of New Mexico GREETING:

We command you to be and appear on June 5, 1973 at 9:00 A.M.

before the District Court within and for the Fifth Judicial District of the State of New Mexico, at the Court House, in the County of Eddy, then and there to testify in the case of Michael P. Grace, II, et al vs Oil Conservation Comm., on behalf of the Petitioners and also that you bring with you and produce at the time and place aforesaid Transcript of the hearing held by the Oil Conservation Commission in Hobbs, N.M. upon the Commission's own Motion to consider instituting gas prorationing in the South Carlisbad's-Horror Gas Pool in Eddy County, N.M. and out of which hearing Commission's Order No. R-1670-L was issued, together with all Exhibits introduced at said hearing

And this do you under penalty of the law

WITNESS The Hon. Paul Snead, Judge of the Fifth

Judicial District Court of New Mexico, and the seal of said District Court, this 4th day of June A. D. 19 73

FRANCES M. WILCOX District Court Clerk

M B Foster Deputy

Rule #1 = EPP - jurisdiction v. exercise thereof.  
John Small {Austin}  
attack on record:

### Contributed

before you can prostrate to protect  
correlative rights — must determine  
what those rights are.

I. The commission - no evidence that  
waste was an issue in this prod.

A. waste not mentioned

B. OCC judges waste by pipeline  
capacity.

1. Pipelines said they would  
take all available gas.

← PROSPECTIVE - PROBLEMS

C. no evidence that production  
will exceed market demand -

looked to definition of waste  
underground / surface / subsurface

"market demand for reasonable  
current consumption!!"

D. no jurisdiction on grounds of  
waste to issue a production order.

### II. Accrualative Rights

A. must determine certain facts as a  
precedent — extent of  
rights needed to first be  
determined.

B. determination of (acc) production -  
others would not agree so  
we do it — stated that  
others could do it

III. turned to transcript -

A. quoted "just and equitable" share

B. Drives forward a determination of reserves by the Commission as condition precedent to determining correlative rights

C. p. 58. 3 reasons for prorating the pool (Morrow)

- don't even come close to the statutory requirements

D. p. 68 (OTZ)

market demand = production x \_\_\_\_\_ = 10

p. 73 - M.D v. supply

II. ability to produce — positive correlation to reserves in fact.

"I don't believe the S.Ct. of N.M. will let OCC avoid responsibility on grounds that it is not practical" — straight average approach -

"consequently we submit to you sir!" ...

Jerry Cosci:

Jason Kellakin

Small —

talk about jurisdiction based on fact —  
findings not supported by facts

findings: #58 < "fair share" >  
#59 "market demand"  
#60  
#62  
#63

"circular findings" —  
bootstrap Karpis

there is no finding as to what is  
included in "fair share"  
#55 "deliverability used to determine  
capability of the well."  
< i.e. "recoverable gas in  
place" >

"practicality" — hide behind this?  
— antiquate and refute.

< burden on commission > — This is what  
Small is attempting  
to do.

trial brief.

Q. Both Continental + E.P. Pass —  
presume the validity of the  
previous order —

These involved changes in formula  
this case is a challenge to the  
whole system.

A. \*Attack in all cases is the same except  
for time aspect.

< disregard the presumption  
and this is where you  
are. >

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

A. J. LOSEE  
JOEL M. CARSON

AREA CODE 505  
746-3508

24 April 1973

Mr. A. L. Porter, Jr., Secretary-Director  
Oil Conservation Commission of New Mexico  
P. O. Box 2088  
Santa Fe, New Mexico 87501

Re: Michael P. Grace II et ux vs. Oil Conservation  
Commission et al, Eddy County No. 28181

Dear Mr. Porter:

We herewith enclose a xerox copy of the Order entered on April 11, 1973, by Judge Paul Snead, which, among other things, dissolved the temporary stay order entered in the above case on August 31, 1972.

Also enclosed is a memorandum which Mr. Carson has written to me on the effect of the enclosed order. It would appear that the dissolution of the stay order had the effect of instituting prorationing in the Carlsbad-Morrow field, effective September 1, 1972.

Very truly yours,

LOSEE & CARSON, P.A.

  
A. J. Losee

AJL:jw  
Enclosures

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, )  
) )  
and )  
) )  
CITIES SERVICE OIL COMPANY )  
and CITY OF CARLSBAD, NEW )  
MEXICO, )  
) )  
Intervenors. )

No. 28181

*Filed in open  
Court this 11<sup>th</sup>  
day of April, 1973  
Paul Sadad  
District Judge*

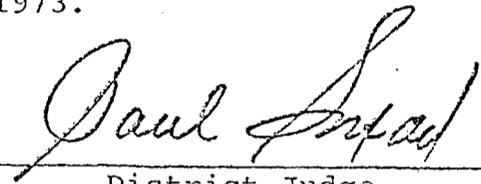
ORDER DENYING MOTION TO QUASH  
AND DISSOLVING TEMPORARY STAY ORDER

THIS MATTER came on for hearing on March 7, 1973, on the motion of Respondent to vacate temporary stay order or to post bond and on the motion of Petitioners to quash the motion of Respondent to vacate temporary stay order or to post bond, Petitioners, Respondent and Intervenors appearing by their counsel of record, and the Court having considered the motions, affidavits, documentary evidence, testimony of sundry witnesses and the arguments of counsel, finds that the motion to quash should be denied and the motion to vacate temporary stay order should be granted.

IT IS, THEREFORE, ORDERED by the Court that the motion of Petitioners to quash the Respondent's motion to vacate temporary stay order be, and the same is hereby, denied.

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.

DATED this April 11, 1973.



---

District Judge

A. J. LOSEE  
JOEL M. CARSON

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

AREA CODE 505  
746-3508

4 April 1973

The Honorable Paul Snead  
District Judge  
Chaves County Courthouse  
Roswell, New Mexico 88201

Re: Michael P. Grace et ux vs. Oil Conservation  
Commission et al, Eddy County No. 28181

Dear Judge Snead:

The Petitioners' Motion to Quash was heard on March 7, 1973, and denied. On the same day the Court heard the Respondents' Motion to Vacate the Stay Order and granted said motion. On March 12, I received a copy of Lon Watkins' letter to the Court requesting 10 days to file findings. At the expiration of said 10-day period, and on March 23, 1973, I submitted to Lon Watkins, with copies to the other counsel of record, the proposed Order Denying Motion to Quash and Dissolving Temporary Stay Order.

Although I had a telephone conversation with Lon on about March 27 or 28, in which he advised that he was approving the order as to form and submitting it to other counsel. I have not yet received the order approved as to form, and after repeated efforts I have been unable to contact Lon Watkins by telephone. Both Jason Kellahin and Mike McCormick have already advised me that the order is approved as to form.

In view of the foregoing, I herewith enclose proposed Order Denying Motion to Quash and Dissolving Temporary Stay Order, identical to that submitted to all counsel of record on March 23, 1973, with a request that you sign the order as submitted and advise the parties that it has been signed and filed.

C  
O  
P  
Y

The Honorable Paul Sneač

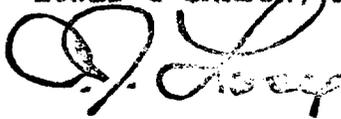
4 April 1973

-2-

Thank you in advance for your consideration to this request.

Very truly yours,

LOSEE & CARSON, P.A.

A handwritten signature in cursive script, appearing to read "A. J. Losee".

A. J. Losee

AJL:jjw  
Enclosure

cc: Mr. Lon P. Watkins  
Mr. Michael F. McCormick  
Mr. Jason W. Kellahin  
Mr. Bill Carr

LAW OFFICES

LOSEE & CARSON

300 AMERICAN HOME BUILDING

P. O. DRAWER 239

ARTESIA, NEW MEXICO 88210

A. J. LOSEE  
JOEL M. CARSON

AREA CODE 505  
746-3508

23 March 1973

Mr. Lon F. Watkins  
Attorney at Law  
122-1/2 North Canyon  
Carlsbad, New Mexico

Re: Michael P. Grace II et ux vs. Oil Conservation  
Commission of New Mexico et al, Eddy County  
No. 28181

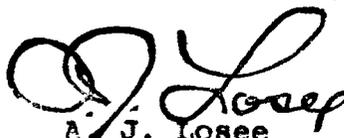
Dear Lon:

On March 12, 1973, you requested 10 days to file findings. This time has now expired and accordingly, I have prepared and herewith enclose proposed Order Denying Motion to Quash and Dissolving Temporary Stay Order. If the same meets with your approval, please approve the original and deliver it to Mike McCormick for his approval and transmittal to Jason Kellahin. When the order has been approved by Jason, I ask that he send it directly to Judge Snead for his signature and filing in the case. Please ask the Judge to advise all parties when it has been signed and filed.

Please let me have a copy of your transmittal letters so that I may know the progress in securing approval of the order.

Very truly yours,

LOSEE & CARSON, P.A.

  
A. J. Losee

AJL:jw  
Enclosure

cc: Mr. Jason W. Kellahin w/enclosure  
Mr. Michael F. McCormick w/enclosure  
bcc: Mr. Bill Carr w/enclosure

C  
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P  
Y

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	)	
	)	
CITIES SERVICE OIL COMPANY	)	
and CITY OF CARLSBAD, NEW	)	
MEXICO,	)	
	)	
Intervenors.	)	

ORDER DENYING MOTION TO QUASH AND DISSOLVING TEMPORARY STAY ORDER

THIS MATTER came on for hearing on March 7, 1973, on the motion of Respondent to vacate temporary stay order or to post bond and on the motion of Petitioners to quash the motion of Respondent to vacate temporary stay order or to post bond, Petitioners, Respondent and Intervenors appearing by their counsel of record, and the Court having considered the motions, affidavits, documentary evidence, testimony of sundry witnesses and the arguments of counsel, finds that the motion to quash should be denied and the motion to vacate temporary stay order should be granted.

IT IS, THEREFORE, ORDERED by the Court that the motion of Petitioners to quash the Respondent's motion to vacate temporary stay order be, and the same is hereby, denied.

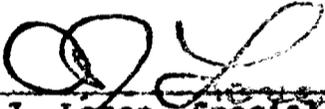
IT IS FURTHER ORDERED by the Court that the temporary stay order entered by this Court on August 31, 1972, be, and the same is hereby vacated and dissolved.

DATED this March \_\_\_\_\_, 1973.

\_\_\_\_\_  
District Judge

APPROVED AS TO FORM:

\_\_\_\_\_  
Lon P. Watkins, Attorney for  
Petitioners

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

\_\_\_\_\_  
Michael F. McCormick, Attorney  
for Intervenor City of Carlsbad,  
New Mexico

KELLAHIN & FOX

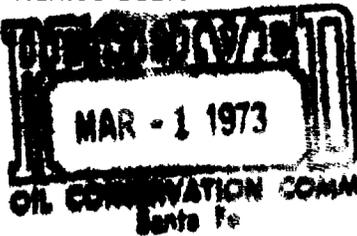
By: \_\_\_\_\_  
Attorneys for Intervenor  
Cities Service Oil Company

A. J. LOSEE  
JOEL M. CARSON

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

AREA CODE 505  
746-3508

28 Febr



Mr. Jason W. Kellahin  
Kellahin and Fox  
P. O. Box 1769  
Santa Fe, New Mexico 87501

Mr. Bill Carr, Attorney  
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

C  
O  
P  
Y



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 proration 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 herein.
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.

7. That Judge Sneed is without jurisdiction to hear said Motion To Vacate for the reason that both Judge Archer and Judge Sneed are of equal stature in the Fifth Judicial District and Judge Sneed 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 motions 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.

LOW P. WATKINS  
122 1/2 North Canyon  
Carlsbad, New Mexico 88220

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

By \_\_\_\_\_  
Attorneys for Petitioners

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. )

NOTICE

Notice is hereby given that the within Motion to Quash will be heard before Judge Paul Snead in Roswell, New Mexico on Friday, March 2, 1973 at 2:00 p. m.

LON P. WATKINS Attorney for Petitioners  
122 1/2 North Canyon Carlsbad, New Mexico  
88220

CERTIFICATE

The undersigned hereby certifies that a true copy of the foregoing Notice was served upon A. J. Losee, LOSEE & CARSON, attorneys for respondent and upon Michael McCormick, BLENDEK, MCCORMICK & NORRIS, attorneys for intervenor, City of Carlsbad, by mailing a true copy of the same to their respective addresses on February 27, 1973.

LON P. WATKINS Attorney for Petitioners  
122 1/2 North Canyon Carlsbad, New Mexico  
88220

CHAMBERS  
FIFTH JUDICIAL DISTRICT COURT

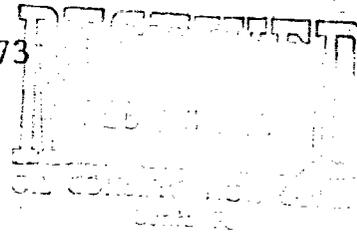
STATE OF NEW MEXICO  
ROSWELL, NEW MEXICO  
86201

POST OFFICE BOX  
1778  
TELEPHONE  
622-2212

PAUL SNEAD  
DISTRICT JUDGE

C. G. BLAIR  
COURT REPORTER

February 13, 1973



Burr & Cooley  
Attorneys at Law  
152 Petroleum Center Bldg.  
Farmington, New Mexico 87401

Mr. Lon P. Watkins  
Attorney at Law  
122 N. Canyon  
Carlsbad, New Mexico 88220

Kellahin & Fox  
Attorneys at Law  
P. O. Box 1769  
Santa Fe, New Mexico 87501

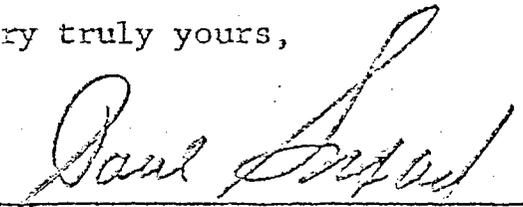
Losee & Carson  
Attorneys at Law  
P. O. Drawer 239  
Artesia, New Mexico 88210

Re: Grace et ux vs. Oil Conservation  
Commission, Eddy County No. 28181

Gentlemen:

Please be advised that I will hear all Motions pending in the above styled cause, at the Courthouse, Carlsbad, Eddy County, New Mexico, on Wednesday, March 7th, 1973, at the hour of 10:00 A.M.

Very truly yours,

  
\_\_\_\_\_  
District Judge

PS:b

Cc: Mrs. Francis M. Wilcox, Clerk

2/15/73 cc: Mr. A. L. Porter, Jr.  
Mr. Bill Carr

KELLAHIN AND FOX  
ATTORNEYS AT LAW  
500 DON GASPAR AVENUE  
POST OFFICE BOX 1769  
SANTA FE, NEW MEXICO 87501

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

TELEPHONE 982-4315  
AREA CODE 505

January 31, 1973

Honorable Paul Snead  
District Judge  
Chaves County Courthouse  
Roswell, New Mexico 88201

Re: Michael P. Grace II et ux vs. Oil Conservation  
Commission of New Mexico, District Court of  
Eddy County, No. 28181

Dear Judge Snead:

C  
O  
P  
Y  
The above case is pending before you on disqualification of Judges Archer and Nash, and I recently received Notice of Setting of this case for June 5, 1973 in Carlsbad. I am representing Cities Service Oil Company in the matter. Judge Archer, prior to his disqualification, entered an order staying the effect of New Mexico Oil Conservation Commission Order No. R-1617-L, in an ex parte proceeding and my file shows that the Oil Conservation Commission has filed a Motion to Vacate this temporary stay order, or to post bond.

My client is of the opinion that this pool will be seriously depleted if the stay order remains in effect for any length of time, and we request that the Commission's motion to vacate the stay order be set for hearing as soon as possible.

Cities Service filed a petition to intervene in the above case, to which the Petitioner, Michael P. Grace II and Mrs. Grace, filed an objection. We also request that this petition to intervene be heard as soon as possible, to enable us to determine if we are going to participate in the case or not. I believe that the City of Carlsbad also has a petition to intervene which could be heard at the same time.

Your consideration of this request will be greatly appreciated.

Yours very truly,

Jason W. Kellahin

JWK:ks  
cc: Mr. William Carr ✓  
A. J. Losee  
William J. Cooley  
Lon P. Watkins  
Michael F. McCormick  
Robert F. LeBlanc

NOTICE OF SETTING OF CASE

-----  
Michael P. race, et al

Plaintiff

vs.

No. 28131

-----  
Oil Conservation Commission

Judge Snead

TO: Burr and Cooley  
Lon P. atkins  
George M. Hatch ✓  
Jason W. Kellahin

You are hereby notified that the above entitled case has been set for trial at Carlsbad, New Mexico, on the 5th day of June, 1973 at 9:00 o'clock A. M.

FRANCES M. ILCOX  
CLERK OF THE DISTRICT COURT

Mailed: January 18, 1973

RECEIVED  
JAN 24 1970  
OIL CONSERVATION COMMISSION  
Santa Fe

IN THE DISTRICT COURT

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

RESPONSE TO MOTION FOR STAY OF ORDER

Respondent, Oil Conservation Commission of New Mexico, answering the ~~Response to~~ 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-\_\_\_\_\_ 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 facie 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 ~~Petitioners have failed to exhaust their administrative remedies in that~~ there is presently pending before the Commission Case No. 4796, the application of Michael P. Grace II and Corinne Grace, Petitioners in this cause, for an exception to the 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~~ <sup>refused</sup> 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.

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

3. That ~~other~~ <sup>other than the petitioners</sup> owners of interests in the South Carlsbad-Morrow Gas Pool, are suffering a loss of approximately \$ \_\_\_\_\_

*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 Order in Bata County, Case No. 2-8181.*

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 of the matter and status of evidence supporting the same* request for a rehearing by the Commission in Commission Case *filed* No. 4693 was the issue of jurisdiction.

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

8. 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.

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

PRORATION FACTORS  
(All Numbers Inclusive)

<u>320 Acre Spacing</u>		<u>Factor</u>	<u>160 Acre Spacing</u>		<u>320 Acre Spacing</u>		<u>Factor</u>	<u>160 Acre Spacing</u>	
From	To		From	To	From	To		From	To
238.40	241.59	.75	119.20	120.79	316.00	324.00	1.00	158.00	162.00
241.60	244.79	.76	120.80	122.39	324.01	324.79	1.01	162.01	162.39
244.80	247.99	.77	122.40	123.99	324.80	327.99	1.02	162.40	163.99
248.00	251.19	.78	124.00	125.59	328.00	331.19	1.03	164.00	165.59
251.20	254.39	.79	125.60	127.19	331.20	334.39	1.04	165.60	167.19
254.40	257.59	.80	127.20	128.79	334.40	337.59	1.05	167.20	168.79
257.60	260.79	.81	128.80	130.39	337.60	340.79	1.06	168.80	170.39
260.80	263.99	.82	130.40	131.99	340.80	343.99	1.07	170.40	171.99
264.00	267.19	.83	132.00	133.59	344.00	347.19	1.08	172.00	173.59
267.20	270.39	.84	133.60	135.19	347.20	350.39	1.09	173.60	175.19
270.40	273.59	.85	135.20	136.79	350.40	353.59	1.10	175.20	176.79
273.60	276.79	.86	136.80	138.39	353.60	356.79	1.11	176.80	178.39
276.80	279.99	.87	138.40	139.99	356.80	359.99	1.12	178.40	179.99
280.00	283.19	.88	140.00	141.59	360.00	363.19	1.13	180.00	181.59
283.20	286.39	.89	141.60	143.19	363.20	366.39	1.14	181.60	183.19
286.40	289.59	.90	143.20	144.79	366.40	369.59	1.15	183.20	184.79
289.60	292.79	.91	144.80	146.39	369.60	372.79	1.16	184.80	186.39
292.80	295.99	.92	146.40	147.99	372.80	375.99	1.17	186.40	187.99
296.00	299.19	.93	148.00	149.59	376.00	379.19	1.18	188.00	189.59
299.20	302.39	.94	149.60	151.19	379.20	382.39	1.19	189.60	191.19
302.40	305.59	.95	151.20	152.79	382.40	385.59	1.20	191.20	192.79
305.60	308.79	.96	152.80	154.39	385.60	388.79	1.21	192.80	194.39
308.80	311.99	.97	154.40	155.99	388.80	391.99	1.22	194.40	195.99
312.00	315.19	.98	156.00	157.59	392.00	395.19	1.23	196.00	197.59
315.20	315.99	.99	157.60	157.99	395.20	398.99	1.24	197.60	199.19
316.00	324.00	1.00	158.00	162.00	398.40	401.59	1.25	199.20	200.79



D-

1. It was brought out at the hearing that some of the data used by Mr. Baldwin (perforations) was tabulated by Grace personnel and that some of this was in error. Had Mr. Baldwin done all the work himself his opinion might be different.

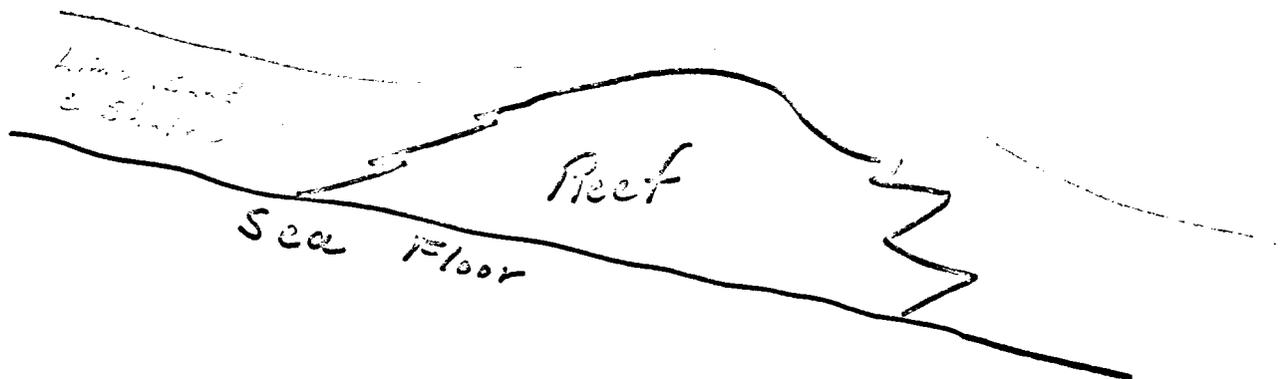
2. Structural analysis

(a) The fault proposed was based on Mr. Baldwin's testimony of fault cuts proved by thinning of 50 to 100 feet from east to west in the Upper Penn (Cisco) formation.

(1) These formations naturally thin westward due to the slope of the sea floor on which they were deposited.

(2) There is a difference in thickness in the Morrow formation of 30 feet between the Grace Gradonoco No. 1 and the Humble Grace No. 1, both wells supposedly on the same side of the fault and in the same half section (E/2 2-23S-26E)

(3) The Cisco & Strawn formations in the area contain lime beds, some reefing and muds and shales. Draping of the formations over the lime or reef highs can account for some loss of section



(4) There was no direct evidence of a fault presented, no cores of a faulted zone were seen, the slickensides produced in faulting would in all likelihood look just like the Cisco shales found, no log to log interpretation of the faulted missing Cisco section was exhibited.

(5) Regardless of what Mr. Baldwin said the Pennsylvanian formation is subject to substantial variation between wells and individual zones may often be recognized between wells only if there is a continuous recognizable bed above and/or below the bed in question.

(6) A normal fault with the west side up-thrown would appear to be contrary to regional trends. Regional dip in this area is to the southeast. There has obviously been some elevation of the beds east of the so-called fault. As these beds have been pushed up, it is more reasonable that any faulting occurring would result in the east side being up-thrown.

(b) Applicant proposed that even without the fault, a steep syncline between their wells and the rest of the pool would act as a barrier to migration of gas between East and West.

(1) None of the Grace wells on the "West Side" are substantially structurally higher or lower than wells producing on the east side of the pool (11 to 13 ft.) If the pool can be filled with gas to that depth on the east side, it can also be so filled on the west side.

(2) Wells drilled at lower structural positions in the pool than the Grace wells produce gas, Pennzoil Gulf Federal No. 1, Section 1 and Texas O & G Pan A ST Com No. 1, Section 11-23S-26E.

(3) Some wells drilled at higher structural positions exhibit lower productivity and water production indicating that structure does not seem to play the dominant role in gas trapping or production in the pool.

(4) Structural differences are less East to West in the North half of the pool. There appears to be no steep syncline there which could act as a barrier.

### 3. Separation of the Pool based on pressures (Isobaric Map Ex. 3)

(a) Too many variables involved to place any reliability on this interpretation.

#### Variables

- (1) Time of shut-in. More time more press.
- (2) Method of gauging press. (Gauge or dead weight)
- (3) Accuracy of instruments used.
- (4) Had pressures stabilized?

(5) How much fluid in the hole, what was its affect on the pressure?

(6) Were the tests witnessed to insure accuracy?

(7) Different testors have been known to come with different results on the same well.

(b) The exhibit could have easily been contoured to show no separation.

(c) The Exhibit may show only the better portions of the pool where pressures build faster.

(d) Exhibit ignores the Superior Collatt Estate well which was not completed in the Morrow and the Phillips Drag A, a new well.

4. Separation of the Pool based on Potentials-CAOF (Iso Productivity Map Exhibit 4)

(a) Too many variables involved to place any reliability on this interpretation.

Tests run by different testers with different equipment, with fluid or no fluid down hole, for different periods of time, with or without formation damage, and with or without stabilized pressures will not yield test results comparable well to well in the same pool.

(b) The Exhibit could have easily been contoured to show no separation.

(c) Exhibit ignores the Superior Collatt Estate well which was not completed in the Morrow and the Phillips Drag A, a new well.

5. Separation of the Pool based on production from separate stratigraphic zones in the west side of the pool.

- (a) Applicants own Exhibit No. 7 when corrected showed the Pennzoil Mobil 12 Federal to be perforated in the same zone as their wells on the "West side" as well as other zones.
- (b) Testimony by other witnesses of this case as well as at the Hobbs hearing was to the affect that other wells in varying parts of the pool were producing from the same zone as the Grace wells.
- (c) Midwest's porosity iso pach maps show that their sand zones A, B, C & D are continuous across the pool but with substantial variation in porosities.

As noted in closing statements, there was essentially no testimony as to the Strawn formation and pool relative to separation or lack of separation therein.

NEW MEXICO OIL CONSERVATION COMMISSION  
GAS PURCHASERS MONTHLY REPORT

Form C-111  
Sheet No. 2  
Supersedes Old C-111 and C-114  
Effective 1-1-65

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**ACQUISITION**

(Transfer Total Take To Sheet No. 1)

Report of <b>TRANSWESTERN PIPELINE CO.</b>	Date <b>FOR THE MONTH OF: August 1972</b>
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DETAIL OF TAKE (Total Each Pool)

PRODUCER	LEASE	WELL NO.	U.L.	S	T	R	KIND OF WELL	VOLUME
<u>CARLSBAD SOUTH (MORROW) FIELD (Cont'd)</u>								
1058-1 Morris R. Antweil	Missouri-New Mex. Land Co.	1	O	6	23S	27E	Gas	<u>-0-</u> ✓
1071-1 Cities Service Oil	Strackbein "A"	1	E	32	22S	27E	Gas	73,261
1072-1 Cities Service Oil	Spencer "A"	1	O	30	22S	27E	Gas	32,879
1073-1 Cities Service Oil	Merland "B" Com.	1	G	30	22S	27E	Gas	107,626
1074-1 Cities Service Oil	Merland "A" Com.	1	O	19	22S	27E	Gas	<u>59,006</u>
1075-1 Texas Oil & Gas Corp.	Pan Am State Com.	1	J	11	23S	26E	Gas	<u>1,114</u>
1046-1 Corinne Grace	City of Carlsbad Com.	1	O	25	22S	26E	Gas	<u>1,114</u>
1047-1 Corinne Grace	Humble-Grace Com.	1	P	2	23S	26E	Gas	40
1048-1 Corinne Grace	Gradonoco	1	H	2	23S	26E	Gas	84,787
1045-1 Corinne Grace	Panagra	1	B	11	23S	26E	Gas	<u>7,265</u>
<u>CARLSBAD SOUTH (STRAWN) FIELD</u>								<u>391,673</u>
							FIELD TOTAL:	852,610
1056-1 Superior Oil	Collatt Est. "Gas Com."	1	J	1	23S	26E	Gas	<u>45,900</u>
1076-1 Pennzoil Co.	Gulf-Federal	2	L	6	23S	27E	Gas	<u>45,900</u>
<u>CRAWFORD (PENNSYLVANIAN) FIELD</u>								<u>39,713</u>
							FIELD TOTAL:	85,613
1010-1 Union Oil of California	Crawford	1-26	S	26	24S	26E	Gas	4,914

(Field Cont'd)