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OIL CONSERVATION COM  
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2-016870E182 07/01/74

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PMS 2-015041E181 PD CARLSBAD NM 06-30 0256P EDT

D S NUTTER NEW MEXICO OIL CONSERVATION COMMISSION, DLR STATE

LAND OFFICE BLDG

SANTA FE NM

THE MERLAND #1 WELL LOCATED SECTION 25 TOWNSHIP 22 SOUTH RANGE  
26 EAST EDDY COUNTY NEW MEXICO THAT WE CONTESTED RE ITS LOCATION  
IS BLOWING OUT THE GRANTING OF THE PERMIT HAS ENDANGERED THE  
GRACE ATLANTIC WELL AND LOCATION WE DEMAND IMMEDIATE STEPS BE  
TAKEN T CONTROL THE BLOW OUT AND TO PREVENT FURTHER DAMAGE TO  
THE GRACE ATLANTIC WELL AND SURFACE EQUIPMENT THE LOCATION IS  
SATURATED WITH OIL THEREFORE WE HAVE PUT WATCHMEN ON AROUND  
THE CLOCK WE HOLD THE NEW MEXICO OIL CONSERVATION COMMISSION  
RESPONSIBLE AND DEMAND THE OIL CONSERVATION COMMISSION TAKE  
IMMEDIATE CORRECTIVE MEASURES

MICHAEL AND CORINNE GRACE

1248 EDT

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6022646556 TDRN PHOENIX AZ 105 07-03 0855P EDT

PMS DAN NUTTER, DLR

STATE LAND OFFICE BLDG

SANTE FE NM

RE THE MERLAND NUMBER 1 WELL SOUTH HALF SECTION 24, TOWNSHIP  
2200# JAANGEAST, EDDY COUNTY, NEW MEXICO IN VIEW OF YOUR  
NEGLIGENCE REGARDING THE ABOVE WELL WE HOLD THE NEW MEXICO OIL  
CONSERVATION COMMISSION PERSONALLY RESPONSIBLE FOR ANY DAMAGE  
TO THE GRACE ALANTIC WELL AT THE ABOVE LOCATION AND ITS RESERVOIR  
AND SURFACE EQUIPMENT. BEFORE ANY WORK ON THE MERLAND WELL PROGRESSES  
FURTHER I AM REQUESTING THAT YOU SHOW TO ME AND MY ENGINEERS  
THE PROJECTED PLAN AND WELL HEAD EQUIPMENT FOR REPAIRING AND  
REWORKING SAID MERLAND WELL. I CAN BE REACHED BUSINESS DAYS,  
SUNDAYS, NIGHTS AND HOLIDAYS AT AREA CODE 6022646556

RECEIVED  
JUL 5 - 1974  
OIL CONSERVATION COMMISSION

MICHEAL P GRACE

NNNN

JASON W. KELLAHIN

P. O. BOX 1769

SANTA FE, NEW MEXICO 87501

Bill -

Here's all your research.

Can I help argue it?

Jason

### § 913. Moot or abstract questions.

Pursuant to the general rule that review proceedings will not be allowed for the purpose of settling merely abstract questions,<sup>8</sup> when a reviewing court has notice of facts showing that only moot or abstract propositions are involved or where the substantial questions presented in the trial court no longer exist, it will dismiss the appeal or writ of error.<sup>9</sup> The proceeding will ordinarily be dismissed if the question presented is fictitious<sup>10</sup> or if, without any fault of the appellee or defendant in error,<sup>11</sup> an event has occurred which makes a determination of it unnecessary<sup>12</sup> or renders it impossible for an appellate court to grant effectual relief.<sup>13</sup>

While it has sometimes been suggested that the rule concerning the dismissal of moot cases is one of jurisdiction,<sup>14</sup> the more common view is that the fact that the question directly presented has become moot does not necessarily require a dismissal,<sup>15</sup> the rule being one of judicial policy which the courts have some discretion in applying.<sup>16</sup>

### § 914. Defects in procedure.

The failure to take the necessary steps to perfect an appeal may be ground for its dismissal,<sup>17</sup> although appellate courts ordinarily will not dismiss an

8. §§ 760 et seq., supra.

9. *Barker Painting Co. v Local No. 734, B. P. D. P.* 281 US 462, 74 L ed 967, 50 S Ct 88; *Willis v Buchman*, 240 Ala 386, 199 So 892, 132 ALR 1179; *McSween v State Live Stock Sanitary Bd.* 97 Fla 749, 122 So 239, 65 ALR 508; *Tabor v Hipp*, 136 Ga 123, 70 SE 886; *Coburn v Thornton*, 30 Idaho 347, 164 P 1012; *People ex rel. Wallace v Labrenz*, 411 Ill 618, 104 NE2d 769, 30 ALR2d 1132, cert den 344 US 824, 97 L ed 642, 73 S Ct 24; *Mason v Commonwealth (Ky)* 283 SW2d 845, 54 ALR2d 1158; *Nestler v Cohen*, 265 NY 576, 193 NE 327; *Berry v Zahler*, 220 SC 86, 66 SE2d 459; *McCanless v Klein*, 182 Tenn 631, 188 SW2d 745; *Mangan's Admr. v Smith*, 116 Vt 401, 78 A2d 12; *Branscome v Cunduff*, 123 Va 352, 96 SE 770.

An appeal will ordinarily be dismissed when no useful purpose could be accomplished by entertaining it, when so far as concerns any practical ends to be served the decision upon the legal question involved would be purely academic. *Sartin v Barlow*, 196 Miss 159, 16 So 2d 372.

**Practice Aids.**—Form of motion to dismiss appeal as moot. 2 AM JUR PL & PR FORMS 2:247.

10. *Muskogee Gas & El. Co. v Haskell*, 38 Okla 358, 132 P 1098.

11. See *Willis v Buchman*, 240 Ala 386, 199 So 892, 132 ALR 1179, holding, as against contention that the act was one for which the appellee was at fault, that appellee could mark judgment in his favor satisfied and have the appeal dismissed although appellant had not paid the judgment, and wished to prosecute the appeal.

12. *Orgill Bros. & Co. v Roddy*, 227 Miss

291, 86 So 2d 37; *Brace v Steele County*, 77 ND 276, 42 NW2d 672.

13. *Gulf, C. & S. F. R. Co. v Dennis*, 224 US 503, 56 L ed 860, 32 S Ct 542; *Re Scott*, 228 NY 566, 126 NE 717; *Overesch v Campbell*, 95 Ohio App 359, 53 Ohio Ops 317, 119 NE2d 848; *Burnett v Tipton (Tex Civ App)* 89 SW2d 440, error dismd.

The change in circumstance rendering it impossible or unnecessary to determine the appeal may be shown by extrinsic evidence. *McSween v State Live Stock Sanitary Bd.* 97 Fla 749, 122 So 239, 65 ALR 508.

14. It is the universal rule that courts will not consume their time in deciding abstract propositions of law or moot cases and have no jurisdiction to do so. *Hudspeth v Commonwealth*, 204 Ky 606, 265 SW 18.

The existence of an actual controversy between the parties to the suit is an essential requisite to appellate jurisdiction; and where there is no controversy, or where a controversy existing at the time an appeal was taken has, by reason of matters subsequently transpiring, ceased to exist, the appeal will ordinarily be dismissed. *Burnett v Tipton*, supra.

15. *F. Burkart Mfg. Co. v Case (CA8)* 39 F2d 5; *Harthke v Abbott*, 106 Cal App 388, 289 P 206; *Moore v Smith*, 160 Kan 167, 160 P2d 675; *Overesch v Campbell*, 95 Ohio App 359, 53 Ohio Ops 317, 119 NE2d 848; *Clarke v Beadle County*, 40 SD 597, 169 NW 23; *North Laramie Land Co. v Hoffman*, 28 Wyo 183, 201 P 1022.

16. Cases in which court will decide moot questions, see §§ 763 et seq., supra.

17. *United States v Adams*, 6 Wall (US) 101, 18 L ed 792; *People v Manriquez*, 188 Cal 602, 206 P 63, 20 ALR 1441; *Wilkins v*

The failure to perfect<sup>8</sup> or prosecute the proceeding,<sup>9</sup> or to present it to the appellate court,<sup>10</sup> or the bringing of a new appeal,<sup>11</sup> may be taken as an abandonment of the appeal.

An appeal or error proceeding may be dismissed for failure of the appellant or plaintiff in error,<sup>12</sup> or of both parties, to appear.<sup>13</sup>

A cross appeal or cross writ of error may be dismissed for want of prosecution.<sup>14</sup>

## 2. PRACTICE AND PROCEDURE

### § 916. In general; time for motion to dismiss.

The usual method of obtaining the dismissal of an appeal or of error proceedings is by a motion<sup>15</sup> made in the court to which the appeal is taken.<sup>16</sup> The motion to dismiss should not be made until the review proceeding has been sufficiently perfected so that there is before the appellate court a record sufficient to permit it to pass upon the motion, that is, ordinarily not before the proceeding has been perfected or the time for taking the appeal has expired.<sup>17</sup> Normally, this should not be until the record has been printed and

Where the attorney for appellant, in a letter to the court, stated that he would file no brief against appellee's motion to dismiss, it would be assumed that appellant acquiesced in the judgment and the appeal would be dismissed, regardless of the merits. *Ricketson v Girtman*, 222 La 576, 63 So 2d 3.

8. The prosecution of a writ of error sued out apparently on behalf of all the defendants below will be deemed abandoned by those who have furnished no bond for costs and are not represented by counsel, especially where the bill of exceptions does not contain the answers of those defendants or the pertinent evidence relating to their case. *Yates v Jones Nat. Bank*, 206 US 158, 51 L ed 1002, 27 S Ct 638.

9. *Schonfield v Turner (Tex)* 6 SW 628; *Brandon v Frost (Tex Civ App)* 256 SW2d 647.

10. *Fields v Sanders*, 29 Cal 2d 834, 180 P2d 684, 172 ALR 525; *Ingram v Hughes*, 170 SC 1, 169 SE 425, 87 ALR 1325.

One who has given notice of appeal from portions of a decree will be deemed to have abandoned his appeal, where he appears in the appellate court only as a respondent and in his brief asks for an affirmance. *Hilmes v Moon*, 168 Wash 222, 11 P2d 253, 93 ALR 1.

11. *Lowe v Turpie*, 147 Ind 652, 44 NE 25, 47 NE 150; *Reef v Hamblen (Tex Civ App)* 47 SW2d 375, error ref.

12. *Anastopoulos v Johnson*, 274 US 762, 71 L ed 1314, 47 S Ct 573.

Where the court was advised that the appellant had discharged counsel and did not desire to prosecute her appeals further, and she was called and defaulted, the appeals must be dismissed. *Waitt v Badger*, 318 Mass 101, 60 NE2d 375.

13. *Raskin v Dixon*, 260 US 758, 67 L ed 500, 43 S Ct 249; *Reeves v Reeves*, 104 Ind App 563, 12 NE2d 372.

Where an appeal has been deserted by all the original defendants who brought the appeal except one, it must be dismissed as to them and retained as to the remaining appellant. *Todd v Daniel*, 16 Pet (US) 521, 10 L ed 1054.

However, the want of prosecution of an appeal by one of several joint appellants should not result in the affirmance of the judgment below as to such appellant, where the judgment is reversed on the merits on the appeal of the other appellants. *Newman v Moyers*, 253 US 182, 64 L ed 849, 40 S Ct 478.

14. *The Tornado (Good Intent Tow-Boat Co. v Atlantic Mut. Ins. Co.)* 109 US 110, 27 L ed 874, 3 S Ct 78.

15. *Brooks v Norris*, 11 How (US) 204, 13 L ed 665; *Cincinnati v Cormany*, 96 Ohio St 596, 118 NE 1082; *Murphy v Williams*, 103 Tex 155, 124 SW 900.

Under the common-law practice the defense that the appellate procedure was taken too late was by plea. *Peterson v Manhattan L. Ins. Co.* 244 Ill 329, 91 NE 466.

16. *Engleken v Justice Ct.* 46 Cal App 512, 189 P 298; *Powell v Schenck*, 6 App Div 130, 39 NYS 877.

The appellate court alone has jurisdiction to dismiss an appeal because the appellant is in default in the service of the printed papers. *Walker v Dressler*, 156 App Div 718, 141 NYS 1102.

The trial court is without jurisdiction to dismiss the appeal. *Wilbur v Donohoe Kelly Banking Co.* 10 Cal 2d 473, 75 P2d 514.

17. *Stafford v Union Bank*, 16 How (US)

is before the court,<sup>18</sup> although a motion to dismiss need not necessarily wait until the formal return day.<sup>19</sup> Properly, the motion should not be made before the proceeding has been reached in its regular turn on the docket.<sup>20</sup> After the proceeding has become ripe for the motion to dismiss, however, the motion should be made at the first opportunity, since the right to dismissal on many grounds may be lost by laches,<sup>1</sup> although a motion to dismiss for want of jurisdiction of the subject matter may be made at any time prior to a final determination.<sup>2</sup> Similarly, the fact that there is no controversy between parties to the record may be shown at any time before the decision of the case.<sup>3</sup>

135, 14 L ed 876; *Golden Arrow Mines, Inc. v Hickman*, 10 Cal 2d 457, 74 P2d 1043.

Where a case and exceptions are a prerequisite to the bringing on of an appeal for argument, the motion to dismiss should not be made prior to the expiration of the period for making a proposed case. *Queen v Lewis*, 225 App Div 477, 233 NYS 506.

18. *St. Louis Nat. Bank v United States Ins. Co.* 100 US 43, 25 L ed 547.

A motion to dismiss an appeal for want of jurisdiction is not premature because the record has not been printed, where the appellate court is sufficiently advised as to the situation of the case from a printed transcript of the proceedings in the trial court to dispose of the motion without doing injustice to the parties. *Lazarus v Prentice*, 234 US 263, 58 L ed 1305, 34 S Ct 851.

19. A motion to dismiss for want of jurisdiction may be entertained before the return day of the writ of error. *Clark v Hancock*, 94 US 493, 24 L ed 146.

An appellate court will not refuse to hear a motion to dismiss, before the term in which, in regular order, the record ought to be returned, if the record was actually brought to that court and printed. *Thomas v Woolbridge*, 23 Wall (US) 283, 23 L ed 135; *Re Russell*, 13 Wall (US) 664, 20 L ed 632.

20. *The Eutaw (Wheeler v Harris)* 12 Wall (US) 136, 20 L ed 278.

Counsel cannot be expected to attend in the court merely to guard against the possibility of a motion to dismiss, made before the case is reached in the regular call of the docket. *Davidson v Lanier*, 131 US lxxii, Appx, 16 L ed 796.

Time for voluntary dismissal, § 921, *infra*.

1. *Deputron v Young*, 134 US 241, 33 L ed 923, 10 S Ct 539; *Allen v Allen*, 149 NY 280, 43 NE 626; *Drabant v Cure*, 274 Pa 180, 118 A 30; *Curlin v Canadian & A. Mortg. & Tr. Co.* 90 Tex 376, 38 SW 766.

A motion to dismiss a writ of error for defect of attestation comes too late if not made until after the defendant in error has filed a brief taking issue on the assignment of errors, and within 2 days of the time the cause is set down for hearing. *Long v Farmers' State Bank (CA8)* 147 F 360.

A motion to dismiss the appeal for failure

to file the transcript should be made at the term or call to which the transcript is returnable; where it is not made until the next call after the term or call at which the transcript was submitted, after an order for certiorari to perfect the record and to continue the case, it is too late. *Carpenter v Walker*, 170 Ala 659, 54 So 60.

Defects in the transcript should be promptly presented to the appellate court for an early ruling, and a delay or omission to do so may in law preclude the movant from asserting the defects of the record as a cause for dismissal. *Cacciatore v State*, 147 Fla 758, 3 So 2d 584.

A request for dismissal of an appeal from an interlocutory order, on the ground that prior leave of the appellate court was not obtained, comes too late when made in the brief instead of by motion to dismiss. *Stegles v National Discount Corp.* 326 Mich 44, 39 NW2d 237, 15 ALR2d 208.

2. *Wilson v Life & F. Ins. Co.* 12 Pet (US) 140, 9 L ed 1032; *Dilworth v Ed R. Steves & Son*, 107 Tex 73, 174 SW 279.

The fact that the respondent did not make his motion to dismiss an appeal from a non-appealable judgment until after the appellant had expended large sums of money in preparing a voluminous record and brief does not preclude dismissal. *Craig of California v Green*, 89 Cal App 2d 829, 202 P2d 104.

The requirement of the Declaratory Judgment Act that an appeal be taken within a stated period limits the jurisdiction of the appellate court to appeals taken within such period, and the right to have the appeal dismissed is not affected by the fact that the motion to dismiss is not made until after the appeal has been considered and decided by the reviewing court. *Moore v Lee Court Realty Co.* 240 Ky 835, 43 SW2d 45.

The objection that the judgment or order appealed from is not appealable may be raised and decided on the main appeal. *McKeown v Officer*, 127 NY 687, 28 NE 401.

3. *Little v Bowers*, 134 US 547, 33 L ed 1016, 10 S Ct 620.

The fact that a controversy has become merely academic when it reaches the appellate court must be suggested at the time the case is called for hearing, at least, to secure its dismissal. *Coker v Richey*, 104 Or 14, 202 P 551, 204 P 945, 947, 22 ALR 744.

### § 917. Who may make or oppose motion.

From the nature of the review proceeding, the motion to dismiss is usually made by the appellee or defendant in error who seeks to sustain the judgment below, although the motion to dismiss may be made on behalf of either the appellant or respondent,<sup>4</sup> or on the court's own motion.<sup>5</sup> A mere stranger cannot make a motion to dismiss a review proceeding<sup>6</sup> and third persons, as a general rule, have no such pecuniary interest in an action that the prejudice resulting to them from a dismissal will be taken into consideration.<sup>7</sup> However, where the attorney for the plaintiff in error has a contract for a contingent fee,<sup>8</sup> or where the litigation is such that it will, if the plaintiff in error is successful, result in a recovery of property on which his counsel will have a lien for his fees,<sup>9</sup> it has been held that the attorney would be so prejudiced by the dismissal that he may successfully resist it. However, the fact that an attorney of a party to the record has a lien on the judgment for his costs does not empower him to object to a dismissal of the case.<sup>10</sup> And it appears that an appellant will not be denied permission to withdraw his appeal because of the objections of an attorney who no longer represents him in the case.<sup>11</sup>

### § 918. Dismissal by court on its own motion.

An appellate court may dismiss an appeal or error proceeding on its own motion where it appears from the record that the court is without jurisdiction<sup>12</sup> or that the judgment sought to be reviewed is not final,<sup>13</sup> as well as for numerous other reasons, even though no objection is raised by the opposite party.<sup>14</sup>

4. *Lanman v Lewiston R. Co.* 18 NY 493; *Howard v Malsch*, 52 Tex 60.

However, a plaintiff is not entitled to move for dismissal of an appeal brought by one of the defendants to modify the judgment insofar as it declares appellant's rights against the other defendant. *Glasscock v Price* (Tex Civ App) 45 SW 415, mod on other grounds 92 Tex 271, 47 SW 965.

Voluntary dismissal, see § 919, *infra*.

5. See § 918, *infra*.

6. *Denver & R. G. R. Co. v Alling*, 99 US 463, 25 L ed 438.

7. *Lake's Appeal*, 32 Conn 331.

The fact that the plaintiff in another similar suit against the same defendant had agreed to abide by the appeal in the instant case did not give him sufficient interest to resist a dismissal sought by appellant. *Tuttle v Omaha*, 55 Neb 53, 75 NW 50.

However, appellant's motion to dismiss on the ground that the matters have been settled may be resisted by the assignee of a part of the cause of action whose written assignment has been noted on the docket of the court pending appeal. *Seiter v Smith*, 105 Tex 205, 147 SW 226.

8. *Richmond County v Richmond County Reformatory Institute*, 141 Ga 457, 81 SE 232.

9. *Walker v Equitable Mortg. Co.* 114 Ga 862, 40 SE 1010.

Where the attorney has no special contract or lien upon any of the property in controversy entitling him to continue the prosecution, a client may dismiss her appeal without notice to her attorneys. *Re Degnan*, 132 Cal 260, 64 P 485.

10. *Platt v Jerome*, 19 How (US) 384, 15 L ed 623.

11. *Riney v Hemenway Furniture Co.* 119 La 329, 44 So 116.

12. *Palmer v Ohio*, 248 US 32, 63 L ed 108, 39 S Ct 16; *Re More*, 143 Cal 493, 77 P 407; *People ex rel. Schick v Marvin*, 246 App Div 71, 283 NYS 203, revd on other grounds 271 NY 219, 2 NE2d 634; *Tuck v Chapple*, 114 Ohio St 155, 151 NE 48; *Berry v Zahler*, 220 SC 86, 66 SE2d 459; *C. & L. Supply Co. v Kennerly* (Tex Civ App) 258 SW2d 102; *Adamson v Brockbank*, 112 Utah 52, 185 P2d 264.

Where the act under which declaratory judgment is sought makes the time for appeal jurisdictional, the appellate court will dismiss upon its own motion an appeal not filed within the period prescribed. *Ohio-Kentucky Coal Co. v Auxier*, 239 Ky 442, 39 SW2d 662.

13. *Arnold v United States*, 263 US 427, 68 L ed 371, 44 S Ct 144; *Berry v Zahler*, 220 SC 86, 66 SE2d 459.

14. *Arnold v United States*, *supra*; *Berry v*

## Notes

Appellant's lack of right to review as ground for dismissal. 5 Am Jur 2d APPEAL AND ERROR § 909.

**Form 990 Motion—To dismiss appeal—Improper party appellant—Lack of service**  
[Caption, see CAPTIONS, PRAYERS, ETC.]

To the \_\_\_\_1\_\_\_\_ [appellate] Court of the State of \_\_\_\_2\_\_\_\_  
\_\_\_\_3\_\_\_\_, the petitioner and respondent herein, hereby moves this court to  
make and enter its order dismissing the appeal of \_\_\_\_4\_\_\_\_ upon the following  
grounds:

1. Notice of appeal was not served on \_\_\_\_5\_\_\_\_.
2. \_\_\_\_6\_\_\_\_ is not a party with the right to appeal to this court.

Said motion will be made on the return on appeal filed herein, together with  
the affidavits and brief attached hereto.

Dated \_\_\_\_7\_\_\_\_, 19\_\_8\_\_.

[Signature]

## Notes

Appellant's lack of right to review as ground for dismissal. 5 Am Jur 2d APPEAL AND ERROR § 909.

**Form 991 Motion—To dismiss appeal—Judgment appealed from not final**  
[Caption, see CAPTIONS, PRAYERS, ETC.]

To the Honorable Chief Justice and the Associate Justices of the \_\_\_\_1\_\_\_\_  
Court of \_\_\_\_2\_\_\_\_.

The \_\_\_\_3\_\_\_\_ [defendant or plaintiff] \_\_\_\_4\_\_\_\_ moves to dismiss the appeal  
in this action taken to this \_\_\_\_5\_\_\_\_ by the \_\_\_\_6\_\_\_\_ [plaintiff or defendant]  
\_\_\_\_7\_\_\_\_ pursuant to notice of appeal served on \_\_\_\_8\_\_\_\_, 19\_\_9\_\_, and filed with  
the \_\_\_\_10\_\_\_\_ [lower] Court on \_\_\_\_11\_\_\_\_, 19\_\_12\_\_.

The \_\_\_\_13\_\_\_\_ [defendant or plaintiff] \_\_\_\_14\_\_\_\_ so moves for the reason  
that the judgment of the \_\_\_\_15\_\_\_\_ [lower] Court is not a final judgment. Said  
judgment is printed in Appendix \_\_\_\_16\_\_\_\_ attached hereto.

There is annexed to this motion a supporting brief stating the object of the  
motion and the facts on which it is based, together with relevant argument.

Dated: \_\_\_\_17\_\_\_\_, 19\_\_18\_\_.

[Signature]

## Notes

Dismissal of review proceedings based on decision not appealable because not final. 5 Am  
Am Jur 2d APPEAL AND ERROR § 908.

**Form 992 Motion—To dismiss appeal—Issues presently moot**  
[Caption, see CAPTIONS, PRAYERS, ETC.]

Now comes the above-named \_\_\_\_1\_\_\_\_ and respondent and moves the court  
for an order dismissing the appeal of the \_\_\_\_2\_\_\_\_ and appellant in the above  
cause for the reason that the matters in controversy in this action and upon this  
appeal have become abstract or moot, in that \_\_\_\_3\_\_\_\_ [recite pertinent facts].

Said motion will be made upon the record in the above-entitled cause together with the affidavits and brief attached hereto.

Dated \_\_\_\_4\_\_\_\_\_, 19\_\_5\_\_.

[Signature]

Notes

Right to have appeal dismissed on motion where substantial questions presented in trial court have become moot. 5 Am Jur 2d APPEAL AND ERROR § 913.

The interest which every person has in having decided every question of law which governs individual conduct or interprets contracts is not the sort of public interest which will prevent dismissal of an appeal when the question has, as between the immediate par-

ties, become moot. *Willis v Buchman*, 240 Ala 386, 199 So 892, 132 ALR 1179.

Where the question involved is of a public character, the court will determine it to forestall future similar controversies, even though events have rendered it moot so far as the personal interests of the parties are concerned. *Pallas v Johnson*, 100 Colo 449, 68 P2d 559, 110 ALR 1403.

**Form 993 Motion—To dismiss appeal—Failure to file undertaking**

[Caption, see CAPTIONS, PRAYERS, ETC.]

Comes now \_\_\_\_1\_\_\_\_ [plaintiff or defendant] for this motion only, and shows to the court that plaintiff filed suit in the \_\_\_\_2\_\_\_\_ Court of \_\_\_\_3\_\_\_\_ County against defendant for \_\_\_\_4\_\_\_\_; that on \_\_\_\_5\_\_\_\_, 19\_\_6\_\_, the said court rendered judgment in favor of \_\_\_\_7\_\_\_\_ [plaintiff or defendant] for \_\_\_\_8\_\_\_\_; that thereafter on \_\_\_\_9\_\_\_\_, 19\_\_10\_\_, \_\_\_\_11\_\_\_\_ the [defendant or plaintiff] filed with the said court notice of appeal and said court allowed the appeal and transferred the papers to this court.

\_\_\_\_12\_\_\_\_ [defendant or plaintiff] in filing notice of appeal did not file any \_\_\_\_13\_\_\_\_ [recognizance or bond] with the said court as required by \_\_\_\_14\_\_\_\_ [cite statute or rule of court] and that said \_\_\_\_15\_\_\_\_ [statute or rule of court] makes it mandatory that such \_\_\_\_16\_\_\_\_ [recognizance or bond] be filed in order that an appeal may be allowed. That said appeal was allowed contrary to such statute, and therefore the order allowing appeal is null and void, and this court has no jurisdiction over said matter except to dismiss the appeal.

Wherefore, \_\_\_\_17\_\_\_\_ [plaintiff or defendant] moves the court to dismiss the appeal in said cause.

Notes

Filing of required undertaking on appeal as jurisdictional. 4 Am Jur 2d APPEAL AND ERROR § 323.

The appeal of one not filing an undertaking or depositing money in lieu thereof

will be dismissed. *Re Bernheim*, 82 Mont 198, 266 P 378, 57 ALR 1169.

An appeal will be dismissed where the appellant fails to file a cost bond. *Napier v Runkel*, 9 Wash 2d 246, 114 P2d 534, 137 ALR 175.

**Form 994 Motion—To dismiss appeal—Failure to pay filing fee**

[Caption, see CAPTIONS, PRAYERS, ETC.]

Now comes the above-named \_\_\_\_1\_\_\_\_ and respondent and moves the court for an order dismissing the appeal of the \_\_\_\_2\_\_\_\_ and appellant in the above cause for the reason that appellant has failed to pay the fee required by law for filing such appeal within the period of \_\_\_\_3\_\_\_\_ days from the date of notice to appellant by the clerk of the above-entitled court to do so, and within the limit of the extension of that time heretofore granted him by the court, and that appellant's failure to pay the aforesaid filing fee within the time so extended

STATE OF NEW MEXICO

COUNTY OF SANTA FE

IN THE DISTRICT COURT

MICHAEL P. GRACE and  
CORRINE GRACE,

Petitioners,

v.

No. 47406

NEW MEXICO OIL CONSERVATION  
COMMISSION, D. L. HANNIFIN,  
JOE DON COOK, and CACTUS  
DRILLING COMPANY,

Respondents.

ORIGINAL PLEADING  
FILED ON 2/28/74  
District Court Santa Fe  
DISTRICT COURT CLERK'S OFFICE

NOTICE OF APPEAL  
TO THE  
SUPREME COURT OF NEW MEXICO

notice is given that the Petitioners have appealed to  
the Supreme Court of the State of New Mexico from the Judgment  
rendered herein on February 8, 1974, denying Petitioners'  
Application for a Temporary Restraining Order and Preliminary  
Injunction.

DATED this 28th day of February, 1974.

Farrell L. Lines  
FARRELL L. LINES  
ATTORNEY FOR PETITIONERS  
500 Second Street, N.W.  
Albuquerque, New Mexico 87101

Robert W. Ryan, Jr.  
ROBERT W. RYAN, JR.  
ATTORNEY FOR PETITIONERS  
Stroud & Smith  
Suite 1300, 1407 Main Street  
Dallas, Texas 75202

I hereby certify that a  
copy of the foregoing  
was mailed to opposing  
counsel of record this  
7th of March, 1974.

Farrell L. Lines

ILLEGIBLE

STATE OF NEW MEXICO

COUNTY OF SANTA FE

IN THE DISTRICT COURT

MICHAEL P. GRACE and  
CORRINE GRACE,

Petitioners,

v.

No. 47406

NEW MEXICO OIL CONSERVATION  
COMMISSION, D. L. HANNIFIN,  
JOE DON COOK and CACTUS  
DRILLING COMPANY,

Respondents.

ORIGINAL PLEADING  
FILED ON Feb 24 1974  
DISTRICT COURT COUNTY  
CLERK'S OFFICE

PRAECIPE FOR  
RECORD ON APPEAL

The Clerk will please prepare a transcript of the Record for Appeal to the Supreme Court of the State of New Mexico.

The transcript will include the record of all proceedings in connection with the Final Hearing on the merits on the Application for a Temporary Restraining Order and Preliminary Injunction, and to include all pleadings of record and all Exhibits offered in evidence, and to include the Findings of Fact and Conclusions of Law of all parties together with the Decision of the Court and the Judgment thereof.

Dated this 25th day of February, 1974.

s/ Parrell L. Lines  
PARRELL L. LINES  
ATTORNEY FOR PETITIONERS  
500 Second Street, N.W.  
Albuquerque, New Mexico 87101

ILLEGIBLE

Robert W. Ryan, Jr.  
ROBERT W. RYAN, JR.  
ATTORNEY FOR PETITIONERS  
Stroud & Smith  
Suite 1300, 1407 Main Street  
Dallas, Texas 75202

I hereby certify that a  
copy of the foregoing was  
mailed to opposing counsel  
of record this 7th day  
of March, 1974.

Shirley L. Kline

ILLEGIBLE

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MICHAEL P. GRACE and  
CORRINE GRACE  
Petitioners,

fee as  
soon as record  
filed

v.

No. \_\_\_\_\_

NEW MEXICO OIL CONSERVATION  
COMMISSION, D.L. HANNIFIN, JOE  
DON COOK, and CACTUS  
DRILLING COMPANY,  
Respondents

**ILLEGIBLE**

MOTION TO DISMISS APPEAL

Now come the above named Respondents and move the court for an order dismissing the appeal of the Petitioners, Michael P. Grace and Corrine Grace in the above cause for the reason that the matters in controversy in this action and upon this appeal have become abstract or moot, in that the judgment appealed involved the District Court's denial of an injunction to halt the drilling of a well which has since been drilled, completed and is producing oil.

Said motion will be made upon the record in the above-entitled cause together with the affidavit attached hereto.

Dated \_\_\_\_\_, 1971.

WFC

~~WFC~~ *WFC*

*Lamb, Metzgar, Franklin & Lines P.A.*

ATTORNEYS AND COUNSELLORS AT LAW

500 SECOND STREET, NW  
ALBUQUERQUE, NEW MEXICO 87101  
TELEPHONE (505) 247-0107

LARRY L. LAMB  
BERNARD P. METZGAR  
NICK FRANKLIN  
FARRELL L. LINES

November 15, 1974

Ms. Susie M. Montoya  
District Court Clerk  
P. O. Box 2268  
Santa Fe, New Mexico 87501

RE: Grace v. New Mexico Oil  
Conservation Commission,  
et al., #47,406

Dear Ms. Montoya:

Enclosed please find a Notice of Appeal and Precipe which should be filed in the above cause. Enclosed please find a stamped, self-addressed envelope to return conformed copies.

I appreciate your assistance.

Very truly yours,

Farrell L. Lines

FLL:cls

cc: Mr. William F. Carr  
Asst. Attorney General  
Oil Conservation Commission  
Santa Fe, New Mexico 87501

Hunker, Fedric & Higginbotham, P.A.  
P. O. Box 1837  
Roswell, New Mexico 88201

IN THE DISTRICT COURT OF SANTA FE COUNTY

STATE OF NEW MEXICO

MICHAEL P. GRACE, II,  
and CORRINE GRACE,

Petitioners,

v.

No. 47,406

NEW MEXICO OIL CONSERVATION  
COMMISSION, D.L. HANNIFIN,  
JOE DON COOK and CACTUS  
DRILLING COMPANY,

Respondents.

NOTICE OF APPEAL TO THE SUPREME COURT OF NEW MEXICO

NOTICE IS GIVEN that the Petitioners have appealed to the Supreme Court of the State of New Mexico from the Order and Judgment rendered herein on November 13, 1974, ordering that Petitioners' bond in the sum of \$3,000.00 be forfeited, and request that the appeal from this Order be consolidated with the appeal from the Judgment denying Petitioners application for a Temporary Restraining Order and Preliminary Injunction in the same captioned and numbered cause.

LAMB, METZGAR, FRANKLIN & LINES, P.A.

By:

Attorneys for Petitioners  
500 Second Street, N.W.  
Albuquerque, New Mexico 87101  
247-0107

STROUD & SMITH

By:

Attorneys for Petitioners  
1407 Main Street, Suite 1407  
Dallas, Texas 75202  
214-741-1407

I hereby certify that a true copy  
of the foregoing was mailed to  
opposing counsel of record this  
\_\_\_\_\_ day of \_\_\_\_\_, 1974.

IN THE DISTRICT COURT OF SANTA FE COUNTY

STATE OF NEW MEXICO

MICHAEL P. GRACE, II,  
and CORRINE GRACE,

Petitioners,

v.

No. 47,406

NEW MEXICO OIL CONSERVATION  
COMMISSION, D.L. HANNIFIN,  
JOE DON COOK and CACTUS  
DRILLING COMPANY,

Respondents.

PRECIPE FOR RECORD ON APPEAL

The Clerk will please prepare a transcript of the record for appeal to the Supreme Court of the State of New Mexico.

The transcript will include, in addition to the Precipe that was filed on March 4, 1974, all of the pleadings and exhibits and record of proceedings in connection with the hearing on Respondents' Motion to forfeit the \$3,000.00 injunction bond that was heard on October 29, 1974.

LAMB, METZGAR, FRANKLIN & LINES, P.A.

By:

Attorneys for Petitioners  
500 Second Street, N.W.  
Albuquerque, New Mexico 87101  
247-0107

STROUD & SMITH

By:

Attorneys for Petitioners  
1407 Main Street, Suite 1407  
Dallas, Texas 75202  
214-741-1407

I hereby certify that a true copy  
of the foregoing was mailed to  
opposing counsel of record this  
\_\_\_\_\_ day of \_\_\_\_\_, 1974.



STATE OF NEW MEXICO

COUNTY OF SANTA FE

IN THE DISTRICT COURT

MICHAEL P. GRACE and  
CORRINE GRACE,

Petitioners,

v.

No. 47406

NEW MEXICO OIL CONSERVATION  
COMMISSION, D. L. HANNIFIN,  
JOE DON COOK, and CACTUS  
DRILLING COMPANY,

Respondents.

ORIGINAL PLEADING  
FILED ON March 4, 1974  
Santa Fe COUNTY  
DISTRICT COURT CLERK'S OFFICE

NOTICE OF APPEAL  
TO THE  
SUPREME COURT OF NEW MEXICO

Notice is given that the Petitioners have appealed to the Supreme Court of the State of New Mexico from the Judgment rendered herein on February 8, 1974, denying Petitioners' Application for a Temporary Restraining Order and Preliminary Injunction.

DATED this 28th day of February, 1974.

/s/ Farrell L. Lines  
FARRELL L. LINES  
ATTORNEY FOR PETITIONERS  
500 Second Street, N.W.  
Albuquerque, New Mexico 87101

/s/ Robert W. Ryan, Jr.  
ROBERT W. RYAN, JR.  
ATTORNEY FOR PETITIONERS  
Stroud & Smith  
Suite 1300, 1407 Main Street  
Dallas, Texas 75202

I hereby certify that a copy of the foregoing was mailed to opposing counsel of record this 7th of March, 1974.

/s/ Farrell L. Lines

STATE OF NEW MEXICO

COUNTY OF SANTA FE

IN THE DISTRICT COURT

MICHAEL P. GRACE and  
CORRINE GRACE,

Petitioners,

v.

No. 47406

NEW MEXICO OIL CONSERVATION  
COMMISSION, D. L. HANNIFIN,  
JOE DON COOK, and CACTUS  
DRILLING COMPANY,

Respondents.

ORIGINAL PLEADING  
FILED ON March 4, 1974  
Santa Fe COUNTY  
DISTRICT COURT CLERK'S OFFICE

NOTICE OF APPEAL  
TO THE  
SUPREME COURT OF NEW MEXICO

Notice is given that the Petitioners have appealed to the Supreme Court of the State of New Mexico from the Judgment rendered herein on February 8, 1974, denying Petitioners' Application for a Temporary Restraining Order and Preliminary Injunction.

DATED this 28th day of February, 1974.

*Farrell L. Lines*  
FARRELL L. LINES  
ATTORNEY FOR PETITIONERS  
500 Second Street, N.W.  
Albuquerque, New Mexico 87101

*Robert W. Ryan, Jr.*  
ROBERT W. RYAN, JR.  
ATTORNEY FOR PETITIONERS  
Stroud & Smith  
Suite 1300, 1407 Main Street  
Dallas, Texas 75202

I hereby certify that a copy of the foregoing was mailed to opposing counsel of record this 7th of March, 1974.

*Farrell L. Lines*

IN THE DISTRICT COURT OF SANTA FE COUNTY  
STATE OF NEW MEXICO

MICHAEL P. GRACE, II  
and CORRINE GRACE,  
Petitioners

vs.

No. 47406

NEW MEXICO OIL CONSERVATION  
COMMISSION, D.L. HANNIFIN,  
JOE DON COOK and CACTUS  
DRILLING COMPANY,  
Respondents

MEMORANDUM BRIEF IN SUPPORT OF  
RESPONDENTS' MOTION TO FORFEIT BOND

On January 25, 1974, the Petitioners herein obtained a Temporary Restraining Order against the Respondents, which Order:

(1) Required the New Mexico Oil Conservation Commission to temporarily suspend the drilling permit of D.L. Hannifin and Joe Don Cook for the drilling of an oil and gas well known as Merland No. 1, in Section 24, Township 22 South, Range 26 East, N.M.P.M., Eddy County, New Mexico.

(2) Restrained and enjoined D.L. Hannifin, Joe Don Cook and Cactus Drilling Company from further drilling operations on the Merland No. 1 Well, and ordered the immediate removal of the drilling rig and all drilling equipment from the Grace-Atlantic Well pad.

(3) Required the posting of a Three Thousand Dollar (\$3,000.00) bond by Petitioners as security for Respondents' costs.

On January 28, 1974, the Court, upon proper Notice of Hearing having been given, and with all parties being present in person and represented by counsel, heard a Motion filed by Respondents D.L. Hannifin and Joe Don Cook to quash the Temporary Restraining Order or alternatively, to dissolve the same, based upon violations alleged by Respondents to have been committed by Petitioners in obtaining the Temporary Restraining Order. After hearing, the Court, on January 28, 1974, entered its Order finding that the Temporary Restraining Order had been improvidently issued, and the same was quashed and dissolved.

On the same date the Court entered its Order quashing and dissolving the Temporary Restraining Order, a Motion to forfeit the Petitioners' Three Thousand Dollar (\$3,000.00) bond was filed in open court by the Respondents, D.L. Hannifin and Joe Don Cook.

Rules 65-66(c) of the Rules of Civil Procedure for the District Courts of the State of New Mexico (Sec. 21-1-1, 65-66(c)) N.M.S.A., 1953 Comp., state that no preliminary injunction shall issue or occur except upon the giving of security by the applicant in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. Subsection (d) of the same Rule and Statute provides that whenever security is given in the form of a bond, each surety submits himself to the jurisdiction of the court and irrevocably appoints the Clerk of the Court as his agent upon whom any papers affecting his liability on the bond or undertaking may be

erved. The liability may be enforced on motion without the necessity of independent action.

Section 65-3-23(b), N.M.S.A., 1953 Comp., provides that such a bond as the subject bond is given for the use and benefit of all persons who may suffer damage under a wrongfully issued temporary restraining order, even though the bond may be stated on its face to run directly to another party. In this particular matter, the bond was stated to be in favor of the State of New Mexico, however, the Statute extends protection to all persons suffering damage under a wrongfully issued restraining order.

Respondents, D.L. Hannifin and Joe Don Cook seek to forfeit the bond submitted by the Petitioners in obtaining the issuance of the Temporary Restraining Order. Respondents submit that the Temporary Restraining Order was wrongfully issued, in violation of the requirements for such an order as set forth in Rules 65-66 of the Rules of Civil Procedure for the District Courts of the State of New Mexico.

Black's Law Dictionary, 4th Ed. (1957) defines wrongfully as something having been done "in a wrong manner" or "unjustly". The same dictionary source defines improvidently as "a judgment, decree, rule, injunction, etc., when given or rendered without adequate consideration by the court, or without proper information as to all the circumstances affecting it, or based upon a mistaken assumption or misleading information or advice, is sometimes said to have been 'improvidently' given or issued."

In the present instance, the Court was not provided proper information as to all of the circumstances affecting

the Temporary Restraining Order which was granted on January 25, 1974, and further, the same was granted upon misleading information. As the Court will recall from the argument of counsel for the Respondents on the Motion to Quash the Temporary Restraining Order, the Petitioners failed to comply with the requirements set forth in Rule 65-66(b) of the New Mexico Rules of Civil Procedure in that they almost totally failed to follow the requirements of the Rules. The Court will recall the language of Rules 65-66(b) which initiates the basis for granting a temporary restraining order without written or oral notice to the adverse party or his attorney only if the specific requirements of this Subsection are met. Such stringent requirements are understandable, since the Court is dealing with an ex parte order which could cause substantial injury to the enjoined party, as we have in the present instance.

There do not appear to be any New Mexico cases in point where the forfeiture of a bond under the Rules has been considered. However, the New Mexico Rule requiring the giving of security (Rule 65(c)) is derived from Rule 65(c) of the Federal Rules, and the same are almost identical. New Mexico Rule 65(d), allowing for proceedings against the surety is almost identical with Federal Rule 65.1. Under the Federal Rules of Civil Procedure, Rule 65, 28 U.S.C.A., there have been numerous decisions involving the forfeiture of a bond in temporary restraining order and injunctive proceedings.

It appears to be reasonably well settled that damages under bond forfeiture are recoverable only if final judgment is in favor of the party enjoined. Meeker v. Stuart, 188 F. Supp. 272, Aff. 289 F.2d 902. In the present instance,

final judgment was rendered in favor of these Respondents, the parties enjoined.

Further, the purpose for the Rule requiring security is well settled, as stated in Onan v. United States, 190 F.2d 1, at page 7, as follows:

"The requirement of security as provided by Rule 65(c), Federal Rules of Civil Procedure, was intended to protect against damage caused by the improvident issuance of an injunction in advance of full hearing." (Emphasis added)

It is significant that many cases, in speaking of wrongfully issued restraining orders and injunction, refer to an improvidently issued order. Capital Electric Company v. Cristaldi, 157 F. Supp. 646; and Salvage Process Corporation v. Acme Tank Cleaning Process Corporation, 104 F.2d 105, Cert. Den.:

Thus, assuming the existence of an improvidently issued temporary restraining order, the burden rests upon the restrained parties to prove damages under the bond sought to be forfeited. As stated in Monolith Portland Midwest Co. v. R.F.C., 128 F. Supp. 824:

"The allowance of damages for wrongful issuance of an injunction, should rest on equitable principals, and as a general rule, should be such damages only as were actual, necessary and the proximate result of the injunction during the time it was operative."

In viewing the bond, it is only necessary that the same substantially comply with the statutory requirements for the bond, and in determining whether a condition of the bond has been broken, it must be construed according to the substance and not according to the letter. 42 Am. Jur. 2d "Injunctions",

p.p. 1113-1114.

Respectfully Submitted,

HUNKER, FEDRIC & HIGGINBOTHAM, P.A.

By:

---

Don M. Fedric  
Attorneys for Respondents  
D.L. Hannifin and Joe Don Cook  
P.O. Box 1837  
Roswell, New Mexico 83201

*Lamb, Metzgar, Franklin & Lines P.A.*

ATTORNEYS AND COUNSELLORS AT LAW

500 SECOND STREET, NW  
ALBUQUERQUE, NEW MEXICO 87101  
TELEPHONE (505) 247-0107

LARRY L. LAMB  
BERNARD P. METZGAR  
NICK FRANKLIN  
FARRELL L. LINES

April 3, 1974

Mr. W. A. Gresset  
Supervisor and Oil  
and Gas Inspector  
Drawer D D  
Artesia, New Mexico 88210

RE: Merland No. 1 Well

Dear Mr. Gresset:

I represent Michael P. Grace, who is the operator of the Grace Atlantic No. 1 Well, which is located a few feet from the Merland No. 1 Well located in Eddy County, New Mexico. By this letter we are informing you that we are opposed to your granting any extension allowing flaring of the above well past the 60-day period, ending April 26, 1974.

We are making application with the Oil Conservation Commission for a suspension of any further authority to flare, and trust that if you receive application for such authority that you will refer it to the Commission, rather than granting the authorization on the district level.

We appreciate your assistance.

Very truly yours,

Farrell L. Lines

FLL:ml

cc: Mr. George Hunker  
Mr. Robert Ryan, Jr.  
Oil Conservation Commission  
Mr. Michael P. Grace

LAW OFFICES OF  
**HUNKER, FEDRIC & HIGGINBOTHAM, P.A.**

210 HINKLE BUILDING  
POST OFFICE BOX 1837

GEORGE H. HUNKER, JR.  
DON M. FEDRIC  
RONALD M. HIGGINBOTHAM

ROSWELL, NEW MEXICO 88201  
March 25, 1974

TELEPHONE 622-2700  
AREA CODE 505

District Court Clerk  
District Court of Santa Fe County  
P. O. Box 2268  
Santa Fe, New Mexico 87501

Re: Michael P. Grace, and  
Corrine Grace vs. N.M.O.C.C.,  
et al, No. 47406, District  
Court, Santa Fe County

Dear Ms. Montoya:

Enclosed for filing, please find Respondents' Cost Bill  
and Notice of Hearing in connection with the above matter.

Thank you for your attention.

Yours very sincerely,

HUNKER, FEDRIC & HIGGINBOTHAM, P.A.

Don M. Fedric

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\*

encls.

cc: Mr. Farrell L. Lines  
cc: Mr. Robert W. Ryan, Jr.  
cc: Mr. William F. Carr

IN THE DISTRICT COURT OF SANTA FE COUNTY  
STATE OF NEW MEXICO

MICHAEL P. GRACE, II )  
and CORRINE GRACE, )  
 )  
Petitioners )  
 )  
vs. ) No. 47406  
 )  
NEW MEXICO OIL CONSERVATION )  
COMMISSION, D.L. HANNIFIN, )  
JOE DON COOK, and CACTUS )  
DRILLING COMPANY, )  
 )  
Respondents )

NOTICE OF HEARING

Notice is hereby given by Hunker, Fedric & Higginbotham, P.A., attorneys for Respondents, D.L. Hannifin and Joe Don Cook, that a hearing will be held on the said Respondents' Cost Bill which has been submitted herein, on Tuesday, April 2, 1974, in the District Court of Santa Fe County, New Mexico in the County Courthouse at Santa Fe, New Mexico, at 9:30 A.M., or as soon thereafter as counsel may be heard.

HUNKER, FEDRIC & HIGGINBOTHAM, P.A.

I hereby certify that I have mailed a true copy of the foregoing instrument to Mr. Farrell L. Lines, Attorney at Law, 500 2nd St., N.W., Albuquerque, New Mexico; Mr. Robert W. Ryan, Jr., Attorney at Law, Suite 1300, 1407 Main St., Dallas, Texas, 75202; and Mr. William F. Carr, Asst. Atty. Gen., O.C.C., Land Office Bldg., Santa Fe, New Mexico, 87501, this 25 day of March, 1974.

By: Don M. Fedric  
Don M. Fedric  
Attorneys for Respondents,  
D.L. Hannifin and Joe Don Cook  
P.O. Box 1837  
Roswell, New Mexico 88201

Don M. Fedric  
Don M. Fedric

IN THE DISTRICT COURT OF SANTA FE COUNTY  
STATE OF NEW MEXICO

MICHAEL P. GRACE, II	)	
and CORRINE GRACE,	)	
	)	
Petitioners	)	
	)	
vs.	)	No. 47406
	)	
NEW MEXICO OIL CONSERVATION	)	
COMMISSION, D.L. HANNIFIN,	)	
JOE DON COOK and CACTUS	)	
DRILLING COMPANY,	)	
	)	
Respondents	)	

RESPONDENTS' COST BILL

The Respondents, D.L. Hannifin and Joe Don Cook, herewith submit their cost bill to be taxed against and recovered from the Petitioners, Michael P. Grace, II and Corrine Grace, as follows:

1. Witness fees for attending District Court hearings:

(a) Witness Ken Hedrick

1/31/74	\$5.00
2/1/74	\$5.00
2/2/74	\$5.00
	\$15.00

(b) Witness Ray Warner

1/31/74	\$5.00
2/1/74	\$5.00
2/2/74	\$5.00
	\$15.00

\$30.00

2. Travel expense for witnesses, Ken Hedrick and Ray Warner, from and to Hobbs, New Mexico (total 614 miles each) at 8¢ per mile for each witness:

(a) Ken Hedrick	\$49.12
(b) Ray Warner	\$49.12
	\$98.24

\$98.24



CERTIFICATE OF MAILING

I hereby certify that I have mailed a true copy of the foregoing Cost Bill to Mr. Farrell L. Lines, Attorney at Law, 500 Second Street, N.W., Albuquerque, New Mexico; Mr. Robert S. Ryan, Jr., Attorney at Law, Suite 1300, 1407 Main Street, Dallas, Texas, 75202; and Mr. William F. Carr, Assistant Attorney General, Oil Conservation Commission, Land Office Building, Santa Fe, New Mexico, 87501, this 25 day of March, 1974.

  
\_\_\_\_\_  
Don M. Fedric

LAW OFFICES OF  
**HUNKER, FEDRIC & HIGGINBOTHAM, P.A.**

210 HINKLE BUILDING

POST OFFICE BOX 1837

ROSWELL, NEW MEXICO 88201

TELEPHONE 622-2700  
AREA CODE 505

GEORGE H. HUNKER, JR.  
DON M. FEDRIC  
RONALD M. HIGGINBOTHAM

March 26, 1974

Mr. Farrell L. Lines  
Attorney at Law  
500 Second Street, N.W.  
Albuquerque, New Mexico

Mr. Robert W. Ryan, Jr.  
Attorney at Law  
Suite 1300  
1407 Main Street  
Dallas, Texas 75202

Mr. William F. Carr  
Assistant Attorney General  
Oil Conservation Commission  
Land Office Building  
Santa Fe, New Mexico 87501

MAR 27 1974  
OIL CONSERVATION COMMISSION  
SANTA FE, N.M.

Re: Michael P. Grace and  
Corrine Grace vs.  
N.M.O.C.C., et al  
No. 47406 - Santa Fe  
County

Gentlemen:

We have been advised that Judge Felter will hear  
the Motion to Forfeit, Respondents' Cost Bill and  
Supersedeas Bond at the April 2, 1974 setting.

Yours very sincerely,

HUNKER, FEDRIC & HIGGINBOTHAM, P.A.

*Don Fedric / of*  
Don M. Fedric

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STATE OF NEW MEXICO

COUNTY OF SANTA FE

IN THE DISTRICT COURT

MICHAEL P. GRACE & CORRINE GRACE,

Plaintiffs,

vs.

No. 47406

NEW MEXICO OIL CONSERVATION  
COMMISSION, D. L. HANNIFIN,  
JOE DON COOK, & CACTUS DRILLING  
COMPANY,

Defendants.

CERTIFICATE

I, Anita M. Aldecoa, Secretary to Edwin L. Felter,  
District Judge, Division II of the First Judicial District of  
the State of New Mexico do hereby certify that I mailed a  
copy of the attached notice of hearing this 22nd day of March,  
1974, to the surety upon the bond furnished by the plaintiffs  
herein addressed to Robert S. Hoog, Agent, Safeco Insurance  
Company of America, 7901 Mountain Road, N.E., Albuquerque,  
New Mexico 87101.

*Anita M. Aldecoa*

Anita M. Aldecoa

In The District Court of SANTA FE County, State of New Mexico

MICHAEL P. GRACE & CORRINE GRACE  
Plaintiff.

Va.

No. 47406

NEW MEXICO OIL CONSERVATION  
COMMISSION, D. L. Defendant.  
HANNIFIN, JOE DON COOK, &  
CACTUS DRILLING COMPANY

**NOTICE OF HEARING**

NOTICE IS HEREBY GIVEN that the above cause of action will be called for hearing before the undersigned Judge for the time, date, place and purpose indicated.

9:30 AM  
TIME

APRIL 2, 1974  
DATE

SANTA FE COUNTY COURTHOUSE  
PLACE

MOTION TO FORFEIT BOND

NATURE OF HEARING

TIME RESERVED

OTHER COMMENTS:

EDWIN L. FELTER

District Judge

By: Anita M. Aldecoa

SECRETARY

DATE THIS NOTICE MAILED: MARCH 12, 1974

CC:

Mr. Farrell L. Lines  
Attorney at Law  
500 2nd Street, NW  
Albuquerque, New Mexico 87110

Mr. Robert W. Ryan, Jr.  
Attorney at Law  
Suite 1300, 1407 Main St.  
Dallas, Texas 75202

HUNKER, FEDRIC & HIGGINBOTHAM  
Attorneys at Law  
P. O. Box 1837  
Roswell, New Mexico 88201

Mr. William F. Carr  
Assistant Attorney General  
Oil Conservation Commission  
Land Office Building  
Santa Fe, New Mexico 87501

LAW OFFICES OF  
HUNKER, FEDRIC & HIGGINBOTHAM, P.A.

210 HINKLE BUILDING  
POST OFFICE BOX 1837

ROSWELL, NEW MEXICO 88201

TELEPHONE 622-2700  
AREA CODE 505

GEORGE H. HUNKER, JR.  
DON M. FEDRIC  
RONALD M. HIGGINBOTHAM

February 7, 1974

Bill Carr, General Counsel  
New Mexico Oil Conservation Commission  
P. O. Box 2088  
Santa Fe, New Mexico 87501

Dear Bill:

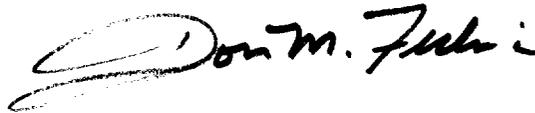
We certainly appreciate the kind professional assistance and cooperation shown us by all of the staff of the New Mexico Oil Conservation Commission in the recent Santa Fe District Court proceeding. Messrs. Porter, Nutter and Stamets were most helpful, and please express to them our best wishes and thanks.

Someone once said, "In the face of adversity, courage, fortitude and whiskey sometimes helps", and you might pass that on to Tom with our best wishes.

Again, thank you for your enthusiasm and kind help.

Yours very sincerely,

HUNKER, FEDRIC & HIGGINBOTHAM, P.A.



Don M. Fedric

DMF:dd

State of New Mexico

First Judicial District Court

Santa Fe

CLERKS OF  
EDWIN L. FELTER  
JUDGE, DIV. II

827-2385  
POST OFFICE BOX 2268

February 8, 1974

Mr. Farrell L. Lines  
Attorney at Law  
500 2nd Street, N.W.  
Albuquerque, New Mexico 87103

HUNKER, FEDRIC & HIGGINBOTHAM  
Attorneys at Law  
P. O. Box 1837  
Roswell, New Mexico 88201

Mr. Robert W. Ryan, Jr.  
Attorney at Law  
Suite 1300, 1407 Main St.  
Dallas, Texas 75202

Mr. William F. Carr ✓  
Assistant Attorney General  
Oil Conservation Commission  
Land Office Building  
Santa Fe, New Mexico 87501

RE: GRACE, et al -v- OIL CONSERVATION  
COMMISSION, et al  
Santa Fe County #47406

Dear Sirs:

Herewith enclosed is a copy of the Court's Decision together with a copy of the Judgment both which were filed this date with the Clerk of the District Court.

Very truly yours,

EDWIN L. FELTER  
DISTRICT JUDGE

ELF/ama

Enclosure

STATE OF NEW MEXICO

COUNTY OF SANTA FE

IN THE DISTRICT COURT

MICHAEL P. GRACE and  
CORRINE GRACE,

Petitioners,

vs.

No. 47406

NEW MEXICO OIL CONSERVATION  
COMMISSION, D. L. HANNIFIN,  
JOE DON COOK, and CACTUS  
DRILLING COMPANY,

Respondents.

DECISION OF THE COURT

The Court hereby makes the following Decision in the above-entitled case:

FINDINGS OF FACT

1. The Court has jurisdiction of the parties and subject matter of this action.
2. The Respondents, D. L. Hannifin and Joe Don Cook, are the lessees of record in and to the oil and gas and other minerals underlying the SE/4 of Section 24, Township 22 South, Range 26 East, Eddy County, New Mexico. The SW/4 of the said Section 24 is under lease to or controlled by the Petitioners.
3. The Petitioner, Michael P. Grace, is the operator of a gas well known as the Grace-Atlantic #1, located on the leased premises owned by Respondents, D. L. Hannifin and Joe

Don Cook, and said gas well, in accordance with New Mexico Oil Conservation Commission Rules and Regulations, has been allocated a 320 acre well spacing unit for production of gas from the Morrow formation at approximately 11,400 feet, which spacing unit consists of the SE/4 of Section 24, under lease to said Respondents, and the SW 1/4 of said Section 24 under lease to or controlled by the Petitioners.

4. The Grace-Atlantic Well #1, which is presently producing and selling gas from the Morrow Formation, is owned Fifty Percent (50%) by Petitioners and Fifty Percent (50%) by said Respondents, subject to royalty interests.

5. On or about December 28, 1973, the New Mexico Oil Conservation Commission approved an application filed by the said Respondents, to operate and drill a well known as the Merland #1, to a depth of approximately 4,550 feet on a 40 acre spacing unit, located within and upon the lease owned by said Respondents in the SE 1/4 of said Section 24, to test the Delaware Formation underlying said land for the production of oil.

6. The Merland #1 Well is located approximately 144 feet Northeast of the Grace-Atlantic #1 gas well.

7. The Delaware Formation underlying the lease and land of said Respondents in the SE 1/4 of said Section 24 is solely owned by said Respondents, and the Petitioners have no interest therein.

8. On or about January 23, 1974, said Respondents initiated

drilling operations for the Merland #1 Well through Respondent Cactus Drilling Company.

9. The drilling operations of Cactus Drilling Company in drilling the Merland #1 Well are being and will be conducted within the limits of reasonable and adequate safety precautions so as to avoid damage or injury to the Grace-Atlantic Well #1, provided Cactus Drilling Company shall employ safety devices and precautions which Respondents indicated in open court would be employed and observed and provided that there is obedience to such safety requirements as may be prescribed in the premises by the New Mexico Oil Conservation Commission.

10. The Petitioners have failed to show the existence of irreparable injury to the Grace-Atlantic #1 Well as the result of drilling of the Merland #1 Well.

#### CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and the subject matter.

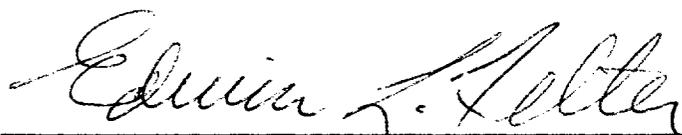
2. The application to drill the Merland #1 Well filed by Respondents D. L. Hannifin and Joe Don Cook, was validly and properly approved by the New Mexico Oil Conservation Commission.

3. The Merland #1 Well is being and will be drilled with reasonable and adequate safety precautions provided those safety measures set out in Finding of Fact #9 hereof are kept performed and observed.

4. Irreparable injury to Petitioners will not result from the drilling of the Merland #1 Well to the Delaware Formation provided that it shall be drilled with the safety precautions contemplated by Finding of Fact #9 hereof and Conclusions of Law #3 hereof.

All Requested Findings of Fact and Conclusions of Law inconsistent herewith are hereby denied.

LET JUDGMENT BE ENTERED ACCORDINGLY.



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DISTRICT JUDGE

IN THE DISTRICT COURT OF SANTA FE COUNTY

STATE OF NEW MEXICO

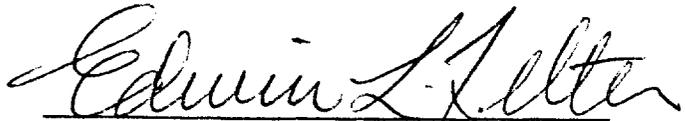
MICHAEL P. GRACE and )  
CORINNE GRACE, )  
 )  
Petitioners )  
 )  
vs. ) Cause No. 47,406  
 )  
NEW MEXICO OIL CONSERVATION )  
COMMISSION, D. L. HANNIFIN, )  
JOE DON COOK and CACTUS )  
DRILLING COMPANY, )  
 )  
Respondents )

J U D G M E N T

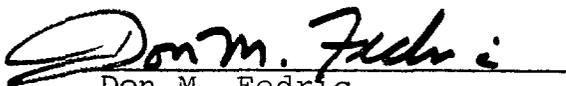
*EM*  
*10-1-*  
This cause, having come before the Court for hearing upon the Petitioners' Application for a Temporary Restraining Order, and the parties, through counsel, having agreed that said hearing constituted a full hearing upon Application for a Temporary Restraining Order and Preliminary Injunction, *AND A FINAL HEARING ON THE MERITS*, with all parties having been present in person and with counsel, the Court, after having heard all the evidence presented, and having made and filed herein its Findings of Fact and Conclusions of Law, finds the issues in favor of the Respondents and that the Petitioners' Application should be denied.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Application of the Petitioners for a Temporary Restraining Order and Preliminary Injunction be, and the same hereby is, denied, with judgment hereby rendered for the Respondents, with costs.

DONE at Santa Fe, New Mexico, this 5th day of  
February, 1974.

  
HONORABLE EDWIN L. FELTER,  
District Judge

I hereby certify that  
a copy of this instrument  
was mailed to opposing  
counsel of record, postage  
prepaid, this 5th day of  
February, 1974.

  
Don M. Fedric  
Hunker, Fedric & Higginbotham, P.A.  
P. O. Box 1837  
Roswell, New Mexico 88201

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

February 8, 1974

C  
O  
P  
Y

George Hunker, Esq.  
P. O. Box 1837  
Roswell, New Mexico 88201

Dear George.

Enclosed is the Judgment, Findings of Fact, and  
Conclusions of Law entered by Judge Felter today in  
Santa Fe County Case 47406.

I am also enclosing, as per your request, a copy  
of the transcript of Case No. 5152. We would appreciate  
your returning it in two weeks if possible.

Will see you on the 13th.

Very truly yours,

WILLIAM F. CARR  
General Counsel

WFC/dr  
enclosure

February 8, 1974

Honorable Edwin L. Felter  
District Court Judge  
Santa Fe District Court House  
Santa Fe, New Mexico

RE: Grace v. New Mexico Oil Conservation Commission, et al.  
Cause No. 47,406

Dear Judge Felter:

Enclosed please find two alternative forms of Judgment that we would propose with regard to the above captioned matter.

Very truly yours,

Farrell L. Lines

FLL:ml

Enclosures

cc: Mr. Bob Ryan, Jr.  
New Mexico Oil Conservation Commission  
Mr. George Hunker

IN THE DISTRICT COURT OF SANTA FE COUNTY

STATE OF NEW MEXICO

MICHAEL P. GRACE, and )  
CORINNE GRACE, )  
 )  
Petitioners, )  
 )  
vs. ) Cause No. 47,406  
 )  
NEW MEXICO OIL CONSERVATION )  
COMMISSION, D.L. HANNIFIN, )  
JOE DON COOK and CACTUS )  
DRILLING COMPANY, )  
 )  
Respondents. )  
 )

J U D G M E N T

This cause, having come before the Court for hearing upon the Petitioners' Application for a Temporary Restraining Order, and the parties, through counsel, having agreed that said hearing constituted a full hearing upon Application for a Temporary Restraining Order and Preliminary Injunction, with all parties having been present in person and with counsel, the Court, after having heard all the evidence presented, and having made and filed herein its Findings of Fact and Conclusions of Law, finds that the Petitioners have failed to prove that standard drilling precautions have not or cannot be taken in connection with the drilling of the Merland No. 1 Well, therefore, Petitioners' Application is denied subject to the continuing good faith compliance of the parties in carrying out the necessary precautions set forth in Petitioners' Requested Finding of Fact Number 15 and Petitioners' suggested Conclusions of Law Numbers 3 and 4.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by

ILLEGIBLE

the Court that the Application of the Petitioners for a Temporary Restraining Order and Preliminary Injunction be, and the same hereby is, denied, with Judgment hereby rendered for the Respondents subject to the continuing good faith compliance of the parties in carrying out the necessary precautions referred to above, with each party to bear its own costs.

HONORABLE EDWIN L. FELTER,  
District Judge

I hereby certify that  
a copy of this instrument  
was mailed to opposing  
counsel of record this  
\_\_\_\_\_ day of February,  
1974.

FARRELL L. LINES  
Lamb, Metzgar, Franklin & Lines, P.A.  
500 Second Street, N.W.  
Albuquerque, New Mexico 87101

**ILLEGIBLE**



DONE at Santa Fe, New Mexico, this \_\_\_\_\_ day of  
February, 1974.

\_\_\_\_\_  
HONORABLE EDWIN L. FELTER,  
District Judge

I hereby certify that  
a copy of this instrument  
was mailed to opposing  
counsel of record, this  
\_\_\_\_\_ day of February,  
1974.

\_\_\_\_\_  
FARRELL L. LINES  
Lamb, Metzgar, Franklin & Lines, P.A.  
500 Second Street, N.W.  
Albuquerque, New Mexico 87101

**ILLEGIBLE**

February 7, 1974

Mr. George Hunker, Jr.  
Hunker, Fedric & Higgenbotham  
Suite 210, Hinkle Building  
Roswell, New Mexico 88201

RE: Grace v. New Mexico Oil Conservation Commission et al.

Dear George:

Enclosed please find a copy of our Requested Findings of Fact and Conclusions of Law.

I received your proposed Judgment and am reviewing it with the Graces and Mr. Ryan and hope to be back to you very shortly. I would appreciate also your sending copies of all future correspondence to Bob Ryan at the address indicated in our pleadings.

Very truly yours,

Farrell L. Lines

FLL:ml

Enclosure

ccs: Mr. Robert Ryan, Jr.  
New Mexico Oil Conservation Commission

STATE OF NEW MEXICO

COUNTY OF SANTA FE

IN THE DISTRICT COURT

MICHAEL P. GRACE, and  
CORRINE GRACE,

Petitioners,

vs.

No. 47406

NEW MEXICO OIL CONSERVATION  
COMMISSION, D.L. HANNIFIN, JOE  
DON COOK, and CACTUS DRILLING  
COMPANY,

Respondents.

PETITIONERS' REQUESTED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

COME NOW Petitioners by their attorneys and request that the Court make the following findings of fact and conclusions of law. Petitioners on January 25, 1974, filed their Application for Preliminary Injunction restraining and enjoining D.L. Hannifin, Joe Don Cook and Cactus Drilling Company from further drilling the Merland No. 1 Well and ordering said parties to remove the drilling rig and all drilling equipment from the Grace-Atlantic Well pad. Said preliminary injunction was granted on January 25, 1974. The preliminary injunction was dissolved on January 28, 1974 and hearing was set for January 31, 1974, on the matter of permanent injunction against the Respondent. The parties appeared for trial without jury at 2:00 p.m. on January 31, 1974.

FINDINGS OF FACT

1. The Grace-Atlantic Well is located one and one-half (1-1/2) miles south of Carlsbad, New Mexico, in Eddy County. Fifty percent (50%) of the working interest in said well is owned by Michael P. Grace and Corrine Grace, twenty-five percent (25%) of

the working interest is owned by Joe Don Cook and twenty-five percent (25%) of the working interest is owned by D.L. Hannifin. The well was completed as a producer in the Morrow Formation and the well has a present value of \$8,500,000.00. The Grace-Atlantic Well is currently producing 8.5 mmcf of gas daily and has a far greater production potential. The cost of drilling a replacement well for the Grace-Atlantic Well would be in excess of \$500,000.00.

2. The Grace-Atlantic Well was drilled during the period February 1, 1973, through March 15, 1973. The Grace-Atlantic Well encountered a high pressure gas blowout in the Delaware Formation at 4,490 feet on February 6, 1973, which required three (3) days to bring under control. The drilling contractor on the Grace-Atlantic Well was Big West Drilling Company and the supervisor was J.E. Wilsher. The deviation of the Grace-Atlantic Well at total depth is 1.75° and the direction of deviation is not known.

3. The Merland No. 1 Well is currently being drilled by Respondents D.L. Hannifin and Joe Don Cook at a location 144.3 Feet northeast of the Grace-Atlantic Well. The pad for the Merland No. 1 Well overlaps the pad of the Grace-Atlantic Well. The Merland No. 1 Well is being drilled to the Delaware Formation, the same formation in which the blowout occurred on the Grace-Atlantic Well.

4. Mike Linder, one of the drillers on the Grace-Atlantic Well, testified that he would not work on the rig being used to drill the Merland No. 1 Well at any location in which it was being drilled into the Delaware Formation, since it did not have a Hi-Drill Blowout Preventer. The Merland No. 1 rig is too small to accomodate a Hi-Drill Blowout Preventer. Linder testified that the Merland No. 1 rig was capable of drilling through the cement and casing on the Grace-Atlantic Well. Linder testified that it

was possible for the Merland No. 1 Well to catch fire, topple and hit the Grace-Atlantic Well X-mas tree. Linder further testified that he could not be certain that even with heavy mud being used in the Merland No. 1 Well that there would not be blowout problems. Linder testified that in his twenty (20) years experience in the oil fields he had never seen high pressure gas wells drilled as close as the Merland No. 1 Well is being drilled to the Grace-Atlantic Well. Linder testified that the Merland No. 1 Well needs a rotating head so that the well can be drilled under pressure. Linder testified that the formation from 4,000 feet to 4,490 feet could be charged with high pressure gas from the earlier blowout. He further testified that there could be leakage in the Merland No. 1 Well into the upper sands while changing pipe.

5. Phillip Graves, a safety expert with sixteen (16) years experience, testified that the Merland No. 1 Well and the Grace-Atlantic Well were located too close together from a safety standpoint. Graves had visited the Merland No. 1 Well for forty-five (45) minutes on the day the trial commenced. Graves testified that mobile equipment might run into the Grace-Atlantic X-mas tree destroying it, causing a fire and perhaps destroying the reservoir of the Grace-Atlantic Well. Graves testified that the equipment was too close together on the Merland No. 1 Well which could cause fire and spread to the Grace-Atlantic Well. Graves testified that the proximity of the propane tanks to the Merland No. 1 Well, to the road and to the Grace-Atlantic Well did not meet the 150 foot safety standards of the Department of Labor or of the Independent Association of Drilling Contractors. Graves further testified that there was a blowout fire potential where flying debris from the Merland No. 1 Well might fall on the Grace-Atlantic Well. He testified that an

explosion in the Merland No. 1 Well could shatter the Grace-Atlantic Well head and burn up the entire Grace-Atlantic Reservoir. The same blowout hazard would result from equipment being too close and not meeting the above standards. Graves testified that even if all standard safety measures were employed on the Merland No. 1 Well, with the exception of use of a Hi-Drill Blowout Preventer, he did not recommend drilling the Merland No. 1 Well at so close a proximity to the Grace-Atlantic Well.

6. Jim Johnson, a petroleum engineering expert who testified for Petitioners, stated that given the facts of the instant case and use of all standard safety practices, except a Hi-Drill Blowout Preventer, that there was still the possibility of a blowout. Jim Johnson testified that if a trip were made out of the well to change pipe that the mud column weight would be lightened and that a blowout could be experienced. Jim Johnson testified that a driller is in a better position when there has been a prior well in a formation due to increased information available, but that one could not be sure of avoiding a blowout in the instant case. Jim Johnson testified that he has never known wells to be drilled so close under the facts of this case. Jim Johnson further testified that due to deviation the Merland No. 1 Well could drill into the Grace-Atlantic Well and collapse the Grace-Atlantic casing. Jim Johnson testified that the deviation of the Grace-Atlantic Well at 4,490 feet was 75.5 feet. Jim Johnson states that the Merland No. 1 Well could not be drilled safely at its present location.

7. Ron Johnson, a petroleum engineering expert who testified for Petitioners and who consulted on the Grace-Atlantic Well, testified concerning a blowout in the Powder River Basin in the same formation where another well had blown out. Ron Johnson

further testified that there were hazards to the Grace-Atlantic Well because the proximity of the wells presented problems because of moving equipment and natural human error. Ron Johnson testified that it was possible to have gas leakage to the upper sands which might blowout and that the mud column might not have sufficient weight closer to the surface to prevent such a blowout in the Merland No. 1 Well. Ron Johnson testified that the deviation in the Grace-Atlantic Well at 11,000 to 12,000 feet in the Morrow Formation could be much more than 200 feet to 250 feet.

8. Respondent Joe Don Cook testified that he carried no insurance on the Merland No. 1 Well and that his drilling contractors carried insurance in the amount of \$100,000 per party and \$300,000 per occurrence. Respondent Cook is a joint operator of the Merland No. 1 Well with Respondent D.L. Hannifin. Respondent Cook testified that he had a net worth of approximately \$2,300,000, although his testimony was vague as to specifics other than \$100,000 of certificates of deposit. The engineer for the Merland No. 1 Well had never been on the well site prior to the commencement of this trial.

9. Respondent D.L. Hannifin testified that he had a net worth of some \$500,000 to \$750,000 with outstanding indebtedness of approximately \$120,000. Both Respondents Hannifin and Cook testified that while they thought the proximity of the wells presented no hazard problem, they would not be willing to post a bond in favor of Petitioners based on the safe drilling of the Merland No. 1 Well. Respondent Hannifin testified that he had been operator of one marginal well at Green Way.

10. Kenneth Hedrick, drilling superintendent for Cactus Drilling Company, testified that there was no Kelly Cock, no Geronimo, no Hi-Drill Blowout Preventer and no rotating head on

the Merland No. 1 Well. Witness Hedrick testified that the Grace-Atlantic Well might be killed during critical periods on the Merland No. 1 Well including fracing and treatment, but he could not state what harm might be done to the Morrow Formation production in the Grace-Atlantic Well by doing this. Witness Hedrick further testified that when men panic and run they sometimes do not stop to turn on blowout preventers. With regard to plugging the Grace-Atlantic Well, witness Hedrick testified that the plugging would not work in integral joint tubing such as the PH 6 Hydril in the Grace-Atlantic Well. Witness Hedrick testified that he did not know of a "thief" zone at 2,100 feet which might cause loss of mud in that zone. Witness Hedrick testified that an ignition source would still be running on the Merland No. 1 Well even if the heater treater on the Grace-Atlantic Well were shut down. He said that this source could cause a fire in a blowout situation. Hedrick testified that he had known blowout preventers to fail.

11. Ray Warner, an employee of Eastman Whipstock, testified that a magnetic single compass was being used to check deviation in the Merland No. 1 Well. Warner was not personally supervising this instrument. He testified that his company would not guarantee results and was not responsible for damage resulting from the company's work. Eastman was employed by the operators of the Merland No. 1 Well after the commencement of the instant litigation.

12. Raymond Lamb, employed as engineer on the Merland No. 1 Well, testified that he had inspected the well site and that fire extinguishers were near the mud pump and southwest corner. He testified that the blowout equipment was being readied for use. He stated that there was a kill pump and manifold and that the flow lines were in fact being secured down now. He testified that

Eastman equipment was being used. Lamb testified that there was no Kelly Cock and that the flow line location on the surface presented a hazard. He testified that he did not know whether or not Jerry Butts, the Merland No. 1 mud engineer was certified. He testified that the Otis plugging tool could not be used on high pressure four and one-half (4-1/2) inch tubing as located in the Grace-Atlantic Well. He further testified that he had known blowout preventers to fail in the past.

13. Daniel S. Nutter, engineer for the New Mexico Oil Conservation Commission, testified that he was originally uncomfortable with the proposed location of the Merland No. 1 Well so near to the Grace-Atlantic Well and he telephoned Respondent Hannifin to see if the location for the Merland No. 1 Well could be moved. The location was not changed.

14. Petitioner Michael Grace testified that his total expenditures, projected and otherwise, other than attorneys' fees in connection with the instant matter had been \$13,434.00. Petitioner Grace testified that a gas mud detector should be used with the Merland No. 1 Well. Petitioner Grace further testified as to the extreme hazards of blowouts in the Carlsbad, New Mexico, area where the Merland No. 1 Well is located due to aerated mud column and underestimated mud weight.

15. At a minimum the following safety precautions, many of which have been implemented since this litigation began, should be observed on the Merland No. 1 Well:

A. The Merland No. 1 Well should have the following maintained in good working order:

- (1) adequate fire extinguishers, placed properly
- (2) hydraulic blowout equipment with accumulator and manual controls
- (3) pump to kill manifold

- (4) two two-inch flow lines secured down with chokes from kill manifold
- (5) Kelly Cock
- (6) Eastman deviation equipment
- (7) Geronimo installed and in working order
- (8) steel connections to fillup lines with 3,000 pounds working pressure in known danger periods
- (9) rotating head should be used
- (10) four (4) inch line anchored from blowout preventer to pit through kill manifold
- (11) adequate fire, blowout and public liability insurance in force throughout
- (12) gas mud aerating equipment should be available - degasser
- (13) sufficient weight mud should be used and available
- (14) gas detector device should be installed on flow lines or on mud volume indicator
- (15) pit liner and mud volume detector with alarm system
- (16) spark plug arrestor should be installed
- (17) engine exhaust should be water cooled with water tap

B. The Merland No. 1 Well pad should be enclosed with such enclosure to exclude the portion of the Grace-Atlantic pad which is overlapped by the Merland No. 1 Well.

C. Equipment locations on Merland No. 1 Well should meet standards of U.S. Department of Labor and Independent Association of Oil Drilling Contractors of America.

D. The operators of the Grace-Atlantic Well should be

notified at such time as the Delaware Formation is reached, they should be kept advised of drilling operations in the Delaware Formation and should be advised as to any fracing and treatment operations.

E. All moving equipment and personnel working on the Merland No. 1 Well should stay well clear of the Grace-Atlantic X-mas tree and related equipment.

16. Respondents Hannifin and Cook do not have sufficient net worth to provide a bond to Petitioners in the amount of \$4, \$4,250.000 conditioned on the Merland No. 1 Well not causing the destruction of the Grace-Atlantic Reservoir.

#### CONCLUSIONS OF LAW

1. This Court has jurisdiction of the instant controversy.

2. Upon agreement of parties this hearing is treated as a hearing on the merits as well as a hearing on the injunction.

3. The Court finds that the Petitioners have failed to prove that standard drilling precautions have not or cannot be taken in connection with the drilling of the Merland No. 1 Well.

4. The judgment entered, therefor, herein is subject to the continuing good faith compliance of the parties in carrying out the necessary precautions set forth in Finding of Fact number 15, as referred to in Paragraph 3 of these Conclusions of Law.

AND, THEREFORE, Petitioners request for an injunction and/or a bond to be filed by Respondents Hannifin and Cook is denied.

Respectfully submitted,

---

FARRELL L. LINES  
Attorney for Petitioners  
500 Second Street, N.W.  
Albuquerque, New Mexico

Robert W. Ryan, Jr.  
ROBERT W. RYAN, JR.  
Attorneys for Petitioners  
Stroud & Smith  
1407 Main Street, Suite 1300  
Dallas, Texas 75202

Samuel A. Francis  
SAMUEL A. FRANCIS  
Attorney for Petitioners  
400 7th Street, N.W.  
Albuquerque, New Mexico

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Petitioners' Requested Findings of Fact and Conclusions of Law was mailed, postage prepaid, this 2<sup>nd</sup> day of February, 1974, to George H. Hunker, Jr., attorney for Respondents, at Hunker, Fedric & Higginbotham, Suite 210 Hinkle Building, Roswell, New Mexico 88201

LAW OFFICES OF  
**HUNKER, FEDRIC & HIGGINBOTHAM, P.A.**

210 HINKLE BUILDING

POST OFFICE BOX 1837

ROSWELL, NEW MEXICO 88201

TELEPHONE 622-2700  
AREA CODE 505

GEORGE H. HUNKER, JR.  
DON M. FEDRIC  
RONALD M. HIGGINBOTHAM

February 5, 1974

Mr. Bill Carr  
General Counsel  
New Mexico O.C.C.  
State Land Office Building  
Santa Fe, New Mexico 87501

Re: Cause No. 47406  
District Court, Santa Fe County

Dear Bill:

Enclosed are the following:

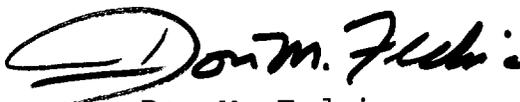
1. Original and one copy of the letter to Judge Felter.  
The copy is for you.
2. Original and one copy of Findings and Conclusions.  
The copy is for you.
3. Original and one copy of Judgment. The copy is for  
you.

Please sign the original Findings and deliver all originals to Judge Felter on Thursday, the 7th. If you have any questions, give me a call.

Thank you for your assistance.

Yours very sincerely,

HUNKER, FEDRIC & HIGGINBOTHAM, P.A.

  
Don M. Fedric

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encls.

LAW OFFICES OF  
HUNKER, FEDRIC & HIGGINBOTHAM, P.A.

210 HINKLE BUILDING

POST OFFICE BOX 1837

GEORGE H. HUNKER, JR.  
DON M. FEDRIC  
RONALD M. HIGGINBOTHAM

ROSWELL, NEW MEXICO 88201  
February 7, 1974

TELEPHONE 622-2700  
AREA CODE 505

Honorable Edwin L. Felter  
District Judge  
County of Santa Fe  
P. O. Box 2268  
Santa Fe, New Mexico 87501

Re: Michael P. Grace, et al  
v. Oil Conservation Commission,  
D.L. Hannifin, Joe Don Cook,  
et al, Cause No. 47406,  
District Court, Santa Fe County

Dear Judge Felter:

Enclosed you will find the requested Findings of Fact and Conclusions of Law for the Respondents in the captioned matter, along with the proposed Judgment for entry therein.

Rule 62 of the Rules of Civil Procedure for the District Courts of the State of New Mexico, with specific reference to subsections (a) and (c), governs the situation where an appeal is taken from a final judgment denying an injunction. Subsection (a) of the Rule states that unless otherwise ordered by the Court, a final judgment in an action for an injunction shall not be stayed during the period of its entry and until an appeal is taken or during the pendency of an appeal. Subdivision (c) provides that the Court, in its discretion, may suspend, modify, restore or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

In connection with appeal, we submit, based upon the evidence presented to the Court, that the granting of a stay or injunction during the pendency of an appeal would be contrary to the Court's basic findings upon the evidence presented. A supersedeas bond of \$100,000.00 or more would not be sufficient to mitigate the injury which could be done to the Respondents, resulting from the ordinary passage of time which

Honorable Edwin L. Felter  
Page 2

occurs on appeal. The use of the drilling rig would be lost, and the acquisition of another rig suitably equipped with the special safety precautions, supervision and controls presently existing, would be most difficult to reacquire at a later date. In any event, we feel that the evidence overwhelmingly established that irreparable injury will not occur to the Petitioners under even the worst of circumstances, which was the true test in this litigation, and we believe it is perfectly clear that the well will be drilled under utmost safety precautions. Therefore, we strenuously oppose the granting of a stay or injunction during the pendency of any appeal which might be filed, and respectfully request that the Court adopt such a position in exercise of its discretion.

Due to the shortness of time in providing the Court with the proposed Judgment, we have not submitted the same to opposing counsel for approval as to form, but rather, have provided them with a copy, along with a request that they signify their form approval or disapproval directly to you.

Thank you for your kind attention.

Yours very sincerely,

HUNKER, FEDRIC & HIGGINBOTHAM, P.A.

Don M. Fedric

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encls.

bcc: D.L. Hannifin  
bcc: Joe Don Cook  
bcc: William F. Carr, Esq.

IN THE DISTRICT COURT OF SANTA FE COUNTY  
STATE OF NEW MEXICO

MICHAEL P. GRACE and	)	
CORRINE GRACE,	)	
	)	
Petitioners	)	
	)	
vs.	)	No. 47406
	)	
NEW MEXICO OIL CONSERVATION	)	
COMMISSION, D.L. HANNIFIN,	)	
JOE DON COOK and CACTUS	)	
DRILLING COMPANY,	)	
	)	
Respondents	)	
	)	

RESPONDENTS' REQUESTED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. The Court has jurisdiction of the parties and subject matter of this action.

2. The Respondents, D.L. Hannifin and Joe Don Cook, are the lessees of record in and to the oil and gas and other minerals underlying the SE $\frac{1}{4}$  of Section 24, Township 22 South, Range 26 East, Eddy County, New Mexico. The SW $\frac{1}{4}$  of the said Section 24 is under lease to or controlled by the Petitioners.

3. The Petitioner, Michael P. Grace, is the operator of a gas well known as the Grace-Atlantic #1, located on the leased premises owned by Respondents, D.L. Hannifin and Joe Don Cook, and said gas well, in accordance with New Mexico Oil Conservation Commission Rules and Regulations, has been allocated a 320 acre well spacing unit for production of gas from the Morrow Formation at approximately 11,400 feet, which spacing unit consists of the SE $\frac{1}{4}$  of Section 24, under lease to said

Respondents, and the SW $\frac{1}{4}$  of said Section 24 under lease to or controlled by the Petitioners.

4. The Grace-Atlantic Well #1, which is presently producing and selling gas from the Morrow Formation, is owned Fifty Percent (50%) by Petitioners and Fifty Percent (50%) by said Respondents, subject to royalty interests.

5. On or about December 28, 1973, the New Mexico Oil Conservation Commission approved an application filed by the said Respondents, to operate and drill a well known as the Merland #1, to a depth of approximately 4,550 feet on a 40 acre spacing unit, located within and upon the lease owned by said Respondents in the SE $\frac{1}{4}$  of said Section 24, to test the Delaware Formation underlying said land for the production of oil.

6. The Merland #1 Well is located approximately 144 feet Northeast of the Grace-Atlantic #1 gas well.

7. The Delaware Formation underlying the lease and land of said Respondents in the SE $\frac{1}{4}$  of said Section 24 is solely owned by said Respondents, and the Petitioners have no interest therein.

8. On or about January 23, 1974, said Respondents initiated drilling operations for the Merland #1 Well through Respondent Cactus Drilling Company.

9. The drilling operations of Cactus Drilling Company in drilling the Merland #1 Well are being conducted within the limits of reasonable and adequate safety precautions so as to avoid damage or injury to the Grace-Atlantic Well #1.

10. The Petitioners have failed to show the existence of irreparable injury to the Grace-Atlantic #1 Well as the result of drilling of the Merland #1 Well.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and the subject matter.

2. The application to drill the Merland #1 Well filed by Respondents D.L. Hannifin and Joe Don Cook, was validly and properly approved by the New Mexico Oil Conservation Commission.

3. The Merland #1 Well is being drilled with reasonable and adequate safety precautions.

4. Irreparable injury to the Petitioners will not result from the drilling of the Merland #1 Well to the Delaware Formation.

Respectfully submitted,

HUNKER, FEDRIC & HIGGINBOTHAM, P.A.

By: \_\_\_\_\_

Don M. Fedric  
P. O. Box 1837  
Roswell, New Mexico 88201

Attorneys for Respondents,  
D.L. Hannifin, Joe Don Cook  
and Cactus Drilling Company

NEW MEXICO OIL CONSERVATION COMMISSION

By: \_\_\_\_\_

General Counsel

CERTIFICATION

I hereby certify that a copy of the foregoing instrument was mailed to opposing counsel of record, postage prepaid, on this 5th day of February, 1974.

\_\_\_\_\_  
Don M. Fedric

IN THE DISTRICT COURT OF SANTA FE COUNTY

STATE OF NEW MEXICO

MICHAEL P. GRACE and	)	
CORINNE GRACE,	)	
	)	
Petitioners	)	
	)	
vs.	)	
	)	Cause No. <u>47,406</u>
NEW MEXICO OIL CONSERVATION	)	
COMMISSION, D. L. HANNIFIN,	)	
JOE DON COOK and CACTUS	)	
DRILLING COMPANY,	)	
	)	
Respondents	)	

J U D G M E N T

This cause, having come before the Court for hearing upon the Petitioners' Application for a Temporary Restraining Order, and the parties, through counsel, having agreed that said hearing constituted a full hearing upon Application for a Temporary Restraining Order and Preliminary Injunction, with all parties having been present in person and with counsel, the Court, after having heard all the evidence presented, and having made and filed herein its Findings of Fact and Conclusions of Law, finds the issues in favor of the Respondents and that the Petitioners' Application should be denied.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Application of the Petitioners for a Temporary Restraining Order and Preliminary Injunction be, and the same hereby is, denied, with judgment hereby rendered for the Respondents, with costs.

DONE at Santa Fe, New Mexico, this \_\_\_\_\_ day of  
February, 1974.

\_\_\_\_\_  
HONORABLE EDWIN L. FELTER,  
District Judge

I hereby certify that  
a copy of this instrument  
was mailed to opposing  
counsel of record, postage  
prepaid, this 5th day of  
February, 1974.

\_\_\_\_\_  
Don M. Fedric  
Hunker, Fedric & Higginbotham, P.A.  
P. O. Box 1337  
Roswell, New Mexico 88201

STATE OF NEW MEXICO

COUNTY OF SANTA FE

IN THE DISTRICT COURT

MICHAEL P. GRACE, and  
CORRINE GRACE,

Petitioners,

vs.

No. 47406

NEW MEXICO OIL CONSERVATION  
COMMISSION, D. L. HANNIFIN,  
JOE DON COOK, and CACTUS  
DRILLING COMPANY,

Respondents.

THE COURT: The Court finds that the Plaintiff has failed to prove, by a preponderance of evidence, that the Merlin No. 1 cannot be drilled to the Delaware Formation within limits of reasonable safety to the Grace Atlantic Well provided that standard safety precautions are observed, such as the Cactus Drilling Company is employing and has stated it will employ to the safety requirements as may be prescribed by the Oil Conservation Commission pursuant to its statutory authority. Therefore, the application for a preliminary injunction will be denied.

*mailed to  
Fetrick on 2/4/74  
WJK*

STATE OF NEW MEXICO

COUNTY OF SANTA FE

IN THE DISTRICT COURT

MICHAEL P. GRACE, and  
CORRINE GRACE,

Petitioners,

vs.

No. 47406

NEW MEXICO OIL CONSERVATION  
COMMISSION, D. L. HANNIFIN,  
JOE DON COOK, and CACTUS  
DRILLING COMPANY,

Respondents.

THE COURT: The Court finds that the Plaintiff has failed to prove, by a preponderance of evidence, that the Merlin No. 1 cannot be drilled to the Delaware Formation within limits of reasonable safety to the Grace Atlantic Well provided that standard safety precautions are observed, such as the Cactus Drilling Company is employing and has stated it will employ to the safety requirements as may be prescribed by the Oil Conservation Commission pursuant to its statutory authority. Therefore, the application for a preliminary injunction will be denied.

EXAMINATION OF RICHARD L. STAMETS

- ✓ 1. Will you state your full name for the record, please?
- ✓ 2. By whom are you employed and in what position?
- ✓ 3. How long have you been employed by the Oil Conservation Commission?
- ✓ 4. Will you describe your duties with the Oil Commission (Examiner)?
- ✓ 5. Will you summarize your professional background
  - ✓ a. Education
  - ✓ b. Formal degrees
  - ✓ c. Additional jobs and positions (OCC)
  - ✓ d. Experience (~~blowout~~ ~~(APPROVING DRAINAGE PERMITS)~~  
~~HERE AND ARTESIA - DRAINAGE PERMITS~~)
  - ✓ e. Previous experience testifying in court (OCC expert witness) **NO COURT EXPERIENCE**
  - ✓ f. Professional organizations
- ✓ 6. Before you came to Santa Fe where were you stationed?
- ✓ 7. Does the Artesia district office have responsibility for the South Carlsbad Gas Pool?
- ✓ 8. Are you familiar with the South Carlsbad Gas Pool?
- ✓ 9. Are you familiar with the Morrow Pool and the Delaware formation in that area?
- ✓ 10. Are you familiar with the case before the court?

AND OCC PROCEDURES  
TENDER AS AN EXPERT IN GEOLOGY, OR PASS FOR VOIR DIRE AS TO  
QUALIFICATIONS.

CARLSBAD POOL - inspected - as field rep. >  
are ~~some~~ <sup>some</sup> of the wells found.

- ✓ 11. Are you familiar with what has been referred to as the "Morrow Delaware Gas Reservoir" (original complaint - Page 3) by the Petitioner herein? (Answer - no reason - no such thing)  
- FAMILIAR w/ BINDING PROCEDURES -  
Q - Bond 10% - per year -
- ✓ 12. Are you familiar with the Grace-Atlantic No. 1 Well?
- ✓ 13. In what formation is it completed?
- ✓ 14. What depth?
- ✓ 15. Are you familiar with the Merland No. 1 Well?
- ✓ 16. What formation is it projected to?
- ✓ 17. What depth?
- ✓ 18. Briefly describe the characteristics of the Morrow formation?
- ✓ 19. Describe the characteristics of the Delaware formation (sources of information - widespread - small pockets -)?  
Q. You said you were familiar w/ Delaware formation is a one well pool a common occurrence.
- ✓ 20. Based on what you have told us about the Delaware formation, what in your opinion would be the consequences of moving a well 600 or 1320 feet (could make the difference between hitting the productive area and a dry hole)?
- ✓ 21. Mr. Stamets, pursuant to my request, have you reviewed the well files of the Commission of all the offsetting wells to the Grace-Atlantic No. 1.  
Q. How many are there.
- ✓ 22. Would you define what you mean by an offsetting well?
- ✓ 23. <sup>Approximately</sup> How close are these wells to the Grace-Atlantic No. 1?  
Q. In what directions.

- ✓ **WERE**  
24. ~~Did~~ all these wells drill ~~to~~ the Delaware formation or deeper?
- ✓ 25. Did you review the logs filed with the Commission of these wells?
- ✓ 26. In reviewing these logs, did you find ~~any~~ shows in any of these offsetting wells in the Delaware formation?
- ✓ 27. Have you examined the log of the Grace-Atlantic No. 1 Well?
- ✓ 28. Did it show production in the Delaware formation?

29. While in Artesian did you approve drilling permits.

30. What factors are taken into consideration in approving a drilling permit:  
(a) Damage to surrounding properties.  
(b) Blow out?

31. Have you reviewed the drilling authorization in this case?

32. Where there any special requirements of the Operator - recited in the authorization? -- (What + Why)

33. Have you ever heard of a blow out preventer being jammed with sand before?

34. Wouldn't it be more likely that this problem resulted from a mechanical failure?

35. Authorization - did it require that the blow out preventers be checked daily?

36. Hydril - could it be checked frequently?

37. What do you think is the best location for a Delaware well on this lease?

38. Would you be concerned about being on this well during drilling

DIRECT EXAMINATION OF DANIEL S. NUTTER

1. ✓ Will you state your full name for the record, please?
2. ✓ By whom are you employed and in what position?
3. ✓ How long have you been so employed?
4. ✓ Will you summarize your professional background?

✓ a. Education

✓ b. Formal degrees

(REGISTERED IN NEW MEXICO)

✓ c. Special training

(HAVE YOU WORKED ON A DRILLING RIG?)

✓ d. Additional jobs and positions (IOCC) \* MICH.

e. Experience — EXAMINER

— RULES + PROCEDURES OF OCC

f. Previous court experience (expert witness - court and OCC)

— DRAFTED RULES WHICH RELATE TO BLOWOUTS + FIRES

g. Professional REGISTRATION organizations (2137)

5. Are you familiar with the South Carlsbad Gas Pool?

6. Are you familiar with the Delaware and Morrow formations in this general area?

7. Are you familiar with the case pending before the court?

AND OCC OPERATING PROCEDURES

TENDER AS EXPERT IN PETROLEUM ENGINEERING, OR PASS FOR VOIR DIRE  
AS TO QUALIFICATIONS.

8. Are you familiar w/ the Grace-Atlantic #1 Well

A. Inspected it?

B. References to "drilling pad" —  
WHAT IS IT?

C. WHERE DOES IT END?

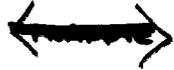
9. Are you familiar with the circumstances surrounding the drilling of the Merland #1 well?

Q RAY WARNER - TIME RETAINED -  
EASTMAN WHIPSTOCK.

10. How closely have you stayed in contact with the drilling this well during the last few days?

11. Mr. Nutter, you have heard testimony here today in which it has been alleged that there will be catastrophic consequences if the present Merland No. 1 Well is permitted to continue drilling. Would you state in your opinion what are the potential classes of danger that can occur from the drilling of a well by virtue of its proximity to another well which is producing volumes of oil or gas (two classes - surface danger - and the subsurface danger)?

12. You have indicated that surface danger could occur to a producing well by virtue of its proximity to another well. What do you mean by this? (Answer 1. The drilling rig on the drilling well could collapse onto the surface equipment of the producing well or 2. there could be a blowout and a resulting fire)?



13. Mr. Nutter, what are the chances of the drilling rig collapsing onto the Grace-Atlantic Well in this particular case?

*< HEIGHT OF RIG > avoid*

14. Mr. Nutter, how likely are the prospects of a blowout occurring in this particular situation (answer - remote at best - blowout

preventers - ~~drilling under direction of mud engineer~~)

Q. ~~YOU GAVE THE AFFIDAVIT OF MR. HENDERSON FILED BY PETTIPPER WITH A REFERENCE TO THAT MUD WAS THIS SUFFICIENT?~~

15. You ~~have heard~~ ARE AWARE OF testimony as to the blowout that occurred in the drilling of the Grace-Atlantic in the Delaware formation.

Do you believe ~~that this is evidence that~~ *the Merland* is likely to blowout when they reach the Delaware formation, ~~in the Merland No. 1 well~~

(answer: the high pressure in the Delaware was unexpected when the Grace-Atlantic was being drilled - it will be no surprise in the Merland No. 1 and they are prepared for it. So the fact that there was a blowout in the Grace-Atlantic probably reduces the chances there will be a blowout in the drilling of the

Merland No. 1)

Q. ~~MUD ENGINEER~~

16. Have you ever heard of a blow-out preventer jamming with sand prior to this case?

(YES - IF NOT CLEAN ———)

OCC REQUIRED DAILY TEST)

17. Hydrill — can't be tested.

16. Mr. Nutter, you indicated that there could be subsurface damage by a drilling of a well near to a producing well. Could you explain what you meant by that (answer: bore of drilling well deviating from vertical and encountering bore of producing well or 2. ~~damage from high pressure fracturing treatment~~)

17. Mr. Nutter, what do you believe the chances are of the Merland No. 1 Well deviating from the vertical and encountering the bore of the producing well (none - deviation survey test - TOTCO conducted during the drilling of Grace-Atlantic indicated that bore of well had deviated from vertical a total of 75.52 feet at depth of 4490 feet. The anticipated depth of the Merland No. 1 Well if vertical would not intercept the Grace-Atlantic - Merland No. Well constantly controlled by deviation equipment under supervision of Eastman Whipstock, Inc.

EXHIBITS - MARK AS B + II

1. - REFER TO AND IDENTIFY

2. - REFER TO AND EXPLAIN

TO GET WHAT IT SHOWS

3. - REFER TO II - HOW PREPARED

- WHAT DOES IT SHOW

4. - TO WHAT DEPTH DID YOU

TAKE EX. #II

5. - WHY

6. - WHAT DOES IT SHOW?

ADMIT # I + #II

Director's  
(Directional Test)

Leave it in

18. Mr. Nutter, supposing the Merland No. 1 Well tended to deviate from the vertical, what direction do you think it would deviate in? (Deviation function of formation equals deviation in same direction.)

< EXPLAIN - "FUNCTION OF FORMATION" >

Q. WHAT DIRECTION DO YOU THINK THE GRACE - ATLANTIC DEVIATED?

~~A. If fracture is necessary, do you believe the pressure could be controlled to avoid any casing damage to the Grace Atlantic?~~

20. Mr. Nutter, in your role as Chief Petroleum Engineer for the New Mexico Oil Conservation Commission, do you come in contact with drilling companies?

21. Are you familiar with Cactus Drilling Co.?

22. In your opinion are they a safe competent satisfactory operator for the drilling of a well of this nature?

Q Testimony on complaints By OSHA - what kind of violations? but all at the same Co.

23. Does Cactus Drilling Company, who is working on the Merland No. 1 Well differ from Cactus Drilling Corporation which is named in the complaint herein?

Q. You heard Mr. Ron Johnson discuss a Pennzoil well that he said blew out in the Delaware in this area — Are you familiar with this situation —

WHAT DO YOU KNOW ABOUT IT?

(WOLF CAMP)

Q. WHERE IS THE WOLF CAMP?

Q. Are you aware of any Delaware well that has blown out in this area?

24,

and hearing examiner  
Mr. Nutter in your role of Chief Petroleum Engineer, have you had to come familiar with the general statutes under which the

~~O - C - C - operator and its general operating procedures.~~

(DRAFT RULES — RE: FIRE + BLOW OUTS.)

25. Are you familiar with the jurisdiction of the Oil Commission in the area of fire prevention?

26. Is this concurrent jurisdiction with the New Mexico State Fire Inspector for the National Fire Protective Association Code (no - exclusive jurisdiction in oil field operations or in New Mexico Oil Conservation Commission) Q. Is this a safe well?

27. You heard Mr. Phil Graves mention the Texas Rules on Spacing — Are you familiar w/ these Rules?

↳ spacing - Bottom Hole v. surface distance

28. In your opinion, is the Merland well being drilled in a prudent manner?

29. Does the Drilling of the Merland No 1 pose an unusual danger to the Grace - Atlantic # 1?

30. Was the O.C.C. drilling authorization properly issued?

Should it be rescinded?

6 times  
Rule

DSN - over produced - G.A.  
6 times - at present -  
is it over produced?

\* tolerance - 6 times  
\* present over produced status.

~~tolerance~~  
original location (10%) tolerance,  
in what direction

DSN  
10%  
Tolerance

Ken Hedrick - (Cactus Drilling Superintendent)

boni Q - 10% - per yr.

Don - (Type of bit being used)  
- can't penetrate - sound casing -

Deviation + Directional Drilling - two tests

## Additional DSN testimony

Deviation

Deviation (EXHIBITS)  
w/ Rules - 5% deviation could the wells cross.  
Practically speaking - could this happen.

Pennzoil

You heard Mr. Ron Johnson discuss a Pennzoil well that he said blew-out in the Delaware:

1. Are you familiar with this well?
2. What do you know about this well?

Bond  
Q.

1. Much discussion on an 8 1/2 million dollar bond?
2. How much would it cost to obtain such a bond? CANT GET ONE
3. This would protect against any danger of traffic damaging the well (GRACE - ATLANTIC)
4. Ref to Petitioner's exhibit  
is this just as you recall the site of the Grace-Atlantic # from your visit?
5. Is there a fence around the Christmas tree?
6. Is this a prudent procedure for an operator to follow?

# Big West Drilling Company

1714 COMMERCE BUILDING  
FORT WORTH, TEXAS 76102

March 22, 1973

RECEIVED

TO: MICHAEL P. GRACE  
CORINNE GRACE  
POST OFFICE BOX 1418  
CARLSBAD, NEW MEXICO 88220

APR 2 1973

O. C. C.  
ARTESIA, OFFICE

WELL NAME AND LOCATION: Grace Atlantic Well No. 1,  
1980' FSL 1980' FEL,  
Sec. 24, T-22-S, R-26-E,  
Eddy County, New Mexico

## EASTMAN DEVIATION RECORD

Date 1973	Depth	Degree of Deviation
1-28	260'	1/2
1-29	375'	3/4
1-30	660'	3/4
1-31	1,370'	1
2-1	1,860'	1 1/4
2-2	2,300'	1
	2,600'	1
2-3	3,095'	1 1/4
2-4	3,550'	1
2-5	4,125'	1
2-9	4,490'	1
2-13	5,396'	1
2-16	5,871'	1 1/4
2-17	6,368'	1 1/4
2-19	6,860'	1/2
2-20	7,340'	3/4
2-21	7,800'	1 1/2
2-22	8,290'	1 1/2
2-23	8,520'	1 1/2
2-24	9,010'	1 1/2
2-25	9,510'	1 1/2
2-27	9,980'	1 1/2
2-28	10,450'	2
3-1	10,690'	1 1/2
3-4	11,165'	1 1/2
	11,260'	1 3/4
3-6	11,470'	1 1/2
3-10	11,770'	1 3/4

Continued

I hereby certify that I have personal knowledge of the data and facts placed on this form, and that such information given above is true and complete.

J. E. Wilsher  
JOHN E. WILSHER, Toolpusher  
BIG WEST DRILLING COMPANY

Operator Affidavit:

Before me, the undersigned authority, on this day personally appeared Michael P Grace II, known to me to be the person whose name is subscribed hereto, who, after being duly sworn, on oath states that he is the Operator of the well identified in this instrument, and that such well was not intentionally deviated from the vertical whatsoever.

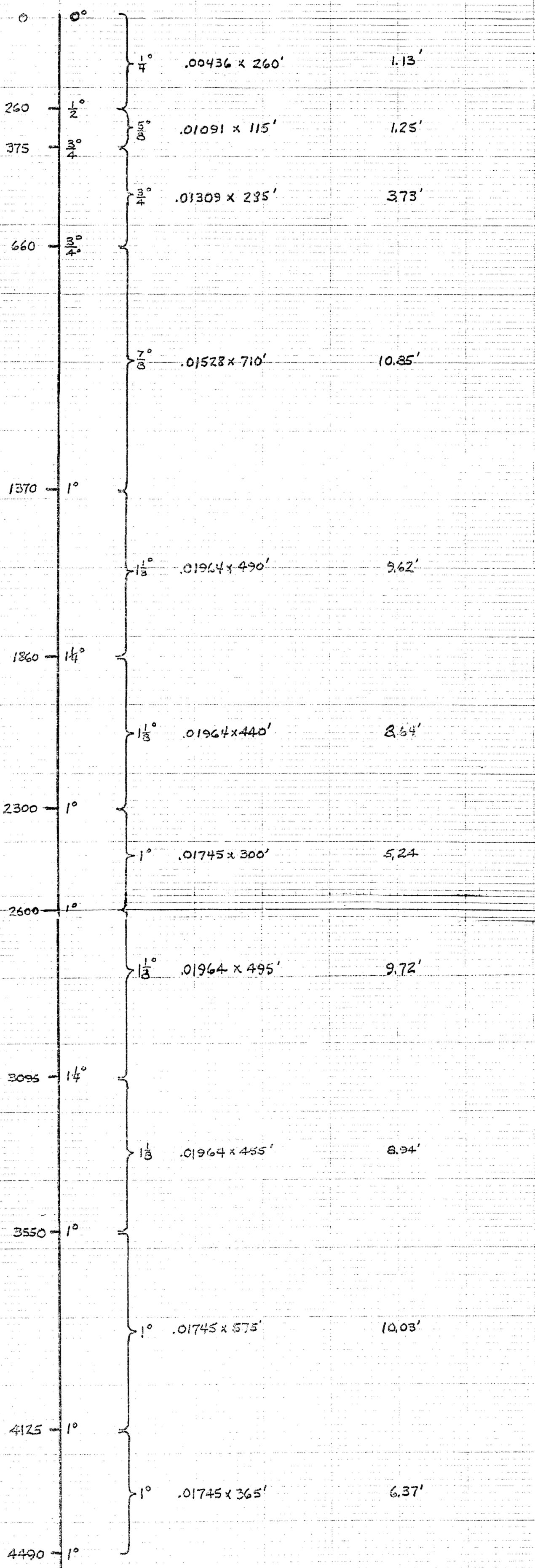
Michael P Grace II  
Signature of Affiant

Operator  
Title of Affiant

Sworn and Subscribed to before me, this 2nd day of April, 1973.

Marita R. Jones  
Notary Public in and for

Edley County, New Mexico.



TOTAL DRIFT (ALL DRIFT ASSUMED IN CONSTANT DIRECTION)

75.52

STATE OF NEW MEXICO

COUNTY OF SANTA FE

IN THE DISTRICT COURT

MICHAEL P. GRACE, and  
CORRINE GRACE,

17. 1-31-74  
CLERK

Petitioners,

vs.

No. 47406

NEW MEXICO OIL CONSERVATION  
COMMISSION, D.L. HANNIFIN,  
JOE DON COOK, and CACTUS  
DRILLING COMPANY,

Respondents.

SUPPLEMENTAL PETITION

COME NOW the Petitioners by their attorneys of record and supplement their original Petition filed herein on January 25, 1974, by further requesting of the Court that an Order be entered restraining and enjoining Respondents D.L. Hannifin, Joe Don Cook, and Cactus Drilling Company from attempting to fracture the Merland I Well and as grounds therefor state that any said fracturing such a short distance of 110 feet from the existing well, can reasonably be expected to damage the casing of the existing Grace-Atlantic Well or could cause damage to the formation which would either partially or completely destroy the Grace-Atlantic Well.

In the alternative, Petitioners would ask that the Court require Respondents to post a bond in an amount sufficient to hold harmless Petitioners for any and all losses they might sustain in the event of damage or destruction to the Grace Atlantic Well, and for such other relief as the Court may deem proper.

Respectfully submitted,

I hereby certify that a copy of the foregoing was hand delivered to the ~~opposing~~ opposing counsel this 31st day of January, 1974.

Farrell L. Lines  
FARRELL L. LINES  
Attorney for Petitioners  
500 Second Street, N.W.  
Albuquerque, New Mexico

Samuel A. Francis

Samuel A. Francis  
SAMUEL A. FRANCIS  
Attorney for Petitioners

**ILLEGIBLE**

IN THE DISTRICT COURT OF SANTA FE COUNTY

STATE OF NEW MEXICO

MICHAEL P. GRACE, II and )  
CORINNE GRACE, )  
 )  
Petitioners )  
 )  
vs. ) No. 47406  
 )  
NEW MEXICO OIL CONSERVATION )  
COMMISSION, D. L. HANNIFIN, )  
JOE DON COOK, and CACTUS )  
DRILLING COMPANY, )  
 )  
Respondents )

MEMORANDUM BRIEF

This Memorandum Brief is submitted by the Respondents, D. L. Hannifin and Joe Don Cook, at the request of the Court, for authority on the following question:

Is the Petitioner entitled to examine the Respondents as to their financial net worth in an injunctive relief proceeding?

Counsel for the said Respondents were incorrect in stating in open court that New Mexico authority exists on this specific question. The authority which Respondents' counsel had in mind relates to the taking of depositions and discovery wherein a defendant cannot ordinarily be examined upon his ability to pay a judgment which has not as yet been rendered. The test involved is relevancy, and although the test may be analogous to the subject question, there appear to be no New Mexico cases exactly on point.

In searching other jurisdictions, a general rule may be said to exist to the effect that insolvency of the person against whom injunctive relief is sought is not of itself a sufficient reason for granting such relief, and the suggestion of insolvency

is not sufficient unless there is some other equitable ground for imposition of the injunctive relief. 42 AM Jur 2d Sec. 53, p. 795; Kellogg v. King, 46 P. 166 (Cal.); Marx v. Watson, 67 S.W. 391 (Mo.); Dills v. Doebler, 26 A. 398 (Conn.); 60 ALR 2d 337, Sec. 7.

However, the solvency or insolvency of a Defendant may be a consideration in determining whether the Plaintiff has an adequate remedy at law so as to preclude the granting of an injunction in his favor, but it is only in cases where the injury may be adequately estimated and compensated in money that it becomes material to inquire whether the Defendant is able to respond to a judgment at law for damages. 42 AM. Jur 2d, Sec. 53, p. 796.

It has been held that where damages at law are capable of fully compensating for the injury, the remedy at law is not to be deemed inadequate merely because the Defendant appears to be insolvent. Bersch v. Rust, 95 A. 108.

Respondents conclude from the authorities, that solvency or insolvency may be material for examination purposes only where damages at law cannot compensate for the injury, and only when the injury may be adequately estimated and the needed compensation determined.

In this case, the injury to the Petitioners, if any such possibility exists, has been shown to be purely speculative, and necessary compensation to cover injury is equally questionable. A non-licensed petroleum consultant, with limited Eddy County, New Mexico experience has testified for the Petitioners that he has estimated the value of the Grace-Atlantic #1 Well to be approximately 8.5 million dollars. He did not do a reservoir survey, area well comparative analysis, definitive engineering study or formation analysis. In fact, he did not testify to a

basis for the figures he used in his computations, except to rely upon past production and present pressures. We suggest that such a value estimate is insufficient to constitute an adequate estimation in determining compensation, should the improbable occur and the Grace-Atlantic Well be totally and fully destroyed.

We submit, that at least in this stage in the proceedings, sufficient evidence does not exist to show probable irreparable injury to the Petitioners, or the value of injury, if any, so as to make inquiry into the financial worth of the Respondents material.

Respectively Submitted

HUNKER, FEDRIC & HIGGINBOTHAM

by

\_\_\_\_\_  
DON M. FEDRIC  
Attorneys for Respondents,  
D. L. Hannifin and Joe Don Cook

NEW MEXICO  
OIL CONSERVATION COMMISSION

FIELD TRIP REPORT

DATE 1-28-74 Monday A.M.

Name of Employee Gressett & Mermis

Time of Departure 9:10 A. M.

Time of Return 11:30 A. M.

Miles Travelled 78

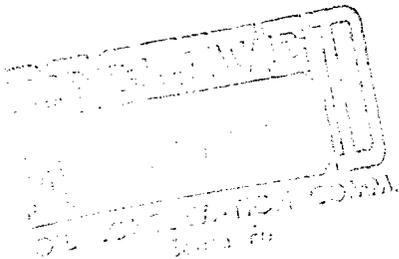
In the space below please indicate purpose of trip and duties performed, listing wells or leases visited.

Field Inspection:

D. L. Hannifin & Joe Don Cook Merland #1, 2004' FSL & 1870' FEL Sec. 24-22-26 Wildcat Delaware test. They were TD 400' 3-5/8"-396-250 sacks Class C 2% CC circulated to surface. The rig is still over the hole; however, the derrick was laid down and the mud pump, light plant and water tank had been moved to the other side of the location. They were in the process of nipping up when they got orders to shut down. The blowout preventers are Shaffer 10" Series 900 hydraulic and manual operated, not completely hooked up yet. The derrick is 96' high on about a 10' substructure.

This well is 141' + from Grace Atlantic, (I didn't get under the substructure to measure.) The mud pump and light plant were about 90' from Grace Well and the water tank was some closer, and then the road.

The crew was there working out around the mud pump and we met the pusher Mr. J. E. Prichard on the way out.



W. A. Gressett

Employee's Signature  
District #II

IN THE DISTRICT COURT OF SANTA FE COUNTY

STATE OF NEW MEXICO

MICHAEL P. GRACE, II and  
CORRINE GRACE,

Petitioners

vs.

NEW MEXICO OIL CONSERVATION  
COMMISSION, D.L. HANNIFIN,  
JOE DON COOK, and CACTUS  
DRILLING COMPANY,

Respondents

*Jan. 29, 1934*  
D.F. [unclear]  
[unclear] OFFICE

No. 47406

APPLICATION FOR PRELIMINARY  
INJUNCTION AGAINST D.L. HANNIFIN,  
JOE DON COOK, and CACTUS DRILLING  
COMPANY

*Grace was unable  
to get a hearing on this  
1/29/34  
WJ*

COME THE APPLICANTS MICHAEL P. GRACE, II and Corrine Grace

by their attorneys and apply to the Court for a Preliminary Injunction restraining and enjoining D.L. Hannifin, Joe Don Cook, and Cactus Drilling Company from further drilling the proposed Merland I Well, and ordering said parties to remove the drilling rig and all the drilling equipment from the Grace-Atlantic Well pad and as grounds therefor states as follows:

1. The Court is referred to the Petition filed herein on January 25 with affidavits attached, which pleadings are herein incorporated by reference and show the Court that said Petition outlined to the Court that the Merland I Well is being drilled 110 feet from the high pressure Grace-Atlantic Gas Well.

2. That there are high pressure lines, tanks, and heater treaters on the Grace-Atlantic Well pad in the immediate area of the well head.

3. That the drilling equipment and rig being used to drill the Merland I Well have been placed on the Grace-Atlantic Well pad

in such close proximity that there is danger of immediate and

\* irreparable damage to the Grace-Atlantic Well and any personnel in the area should any of the drilling equipment come in contact with said well or should there be an accident involving the drilling equipment or its personnel.

4. That the Merland I Well is contemplated to be drilled to the Delaware Formation.

\* 5. That the Grace-Atlantic Well, some 110 feet away experienced, during drilling, a gas blow-out in the Delaware Formation which took three days to control.

\* 6. That there is a good probability that the Merland I Well will also blow out in the Delaware Formation and such a blow-out occurring virtually on top of another well and its equipment would almost certainly cause fire and explosion which could destroy the Grace-Atlantic Well and the entire Morrow Reservoir and would certainly imperil the lives of any personnel in the area.

7. That the Grace-Atlantic Well has an estimated worth in excess of eight million dollars.

8. That Applicants would refer the Court to the additional affidavits attached hereto as Exhibits A, B, C, D & E which further show the Court the extreme danger involved herein.

9. That this Court has set a hearing for January 31, at 2:00 o'clock p.m. on the matter of permanent injunction against the respondents herein.

10. That because of the imminent danger of irreparable harm to an existing gas well, gas reservoir, and all personnel in the area this Court should issue a Preliminary Injunction enjoining D.L. hannifin, Joe Don Cook, and the Cactus Drilling Company from further drilling of the Merland I Well until this Court has had opportunity to conduct an evidentiary hearing in the matter of

Permanent Injunction.

11. That George Hunker and Don M. Fedric who have entered an appearance in open court as attorneys for D.L. Hannifin, Joe Don Cook, and Cactus Drilling Company have been given oral notice by Applicants that Applicants intend to apply to the Court for this Preliminary Injunction at 1:00 o'clock p.m. on January 29, 1974.

12. That Applicants have already posted with the Court a bond in the amount of \$3,000.00, and that the Court should require no further bond in connection with this Preliminary Injunction.

---

FARRELL L. LINES  
Attorney for Petitioners  
500 Second Street, N.W.  
Albuquerque, New Mexico

---

SAMUEL A. FRANCIS  
Attorney for Petitioners  
400 7th Street, N.W.  
Albuquerque, New Mexico

A F F I D A V I T

STATE OF NEW MEXICO    )  
                                  )  
                                  )    ss,  
COUNTY OF BERNALILLO   )

COMES NOW JAMES C. JOHNSON, HAVING BEEN first duly sworn and deposes and states as follows:

1. That I am a petroleum engineer and have worked in the oil and gas fields for approximately seventeen years.

2. That during this period of time I have directly or indirectly supervised the drilling of over 200 gas and oil wells.

3. That from my experience as an engineer there is a good probability that since the Grace Atlantic Well blew out in the Delaware formation, that the proposed Merland 1 Well will also blow in the Delaware formation.

4. That I have been to the Grace Atlantic Well site and am aware of the high pressure pipes, the tanks, and heater treaters on the well pad.

5. That in my professional opinion if the well should blow out there is a high probability of fire and explosion which could extend to the surface area of the Grace Atlantic Well which would cause irreparable damage to the well and to the Morrow Reservoir.

6. That such a fire or explosion would certainly jeopardize the lives of all personnel in the area.

7. That due to the high pressure and the high volume of the Grace Atlantic Well, an explosion in the area could cause phenomenal damage covering a much larger area than might be normally expected from a single blow-out.

8. That I have studied the present capacity of the Grace Atlantic Well, and have concluded that it has a net worth of somewhere in excess of eight million dollars.

James P. Johnson  
JAMES P. JOHNSON

SUBSCRIBED AND SWORN TO before me this 19<sup>th</sup> day of January, 1974, by James P. Johnson.

James A. Robinson  
NOTARY PUBLIC

My commission expires:

September, 1975

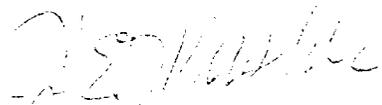
STATE OF NEW MEXICO  
EDDY COUNTY

AFFIDAVIT

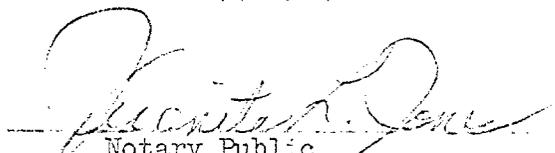
The undersigned being Superintendent for Big West Drilling Company being first duly sworn, deposes and says that on February 6, 1973 while drilling the Grace Atlantic #1 well, located in Section 24, T22S, R26E, Eddy County, New Mexico, I encountered a blow out of three days duration at a depth of 4490'. Thanks to Big West personnel and management the fire which could have been expected any moment did not break out and the well was put back into control and further drilling recommenced on February 10, 1973. This well was blowing gas and I would consider this a gas blow-out in the Delaware zone

I am aware there is now a well being drilled in this same immediate area which is closer than 150' to the above well which I consider a very hazardous condition as some of the major oil companies I have drilled for require that we must be a minimum of 150' from butane tanks or high pressure gas lines.

In my experience in drilling in this area I would recommend that a hydrill be used in addition to regular blow out preventor for blow out protection.

  
\_\_\_\_\_  
J. E. WILSHEAR, SUPERINTENDENT  
BIG WEST DRILLING COMPANY

Subscribed and sworn to before me this 28th January, 1974

  
\_\_\_\_\_  
Notary Public

My commission expires Sept. 10, 1975.

Exhibit B

STATE OF NEW MEXICO  
COUNTY OF EDDY

AFFIDAVIT

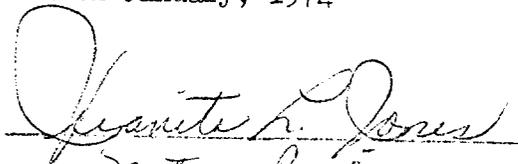
The undersigned being Vice-President of Buckeye, Inc. of Midland, Texas being first duly sworn, deposes and says that on February 6, 1973 I was called to the Graco-Atlantic #1 in Section 24, T22S, R26E, Eddy County, New Mexico. Upon arrival I found this well was blowing gas from a depth of 4490' which I would consider the Delaware zone.

We managed to keep this well under control even in this high pressure gas field, with 10.4 PPG mud.

\* I have had quite a bit of experience in this area and I would consider it an extremely high pressure zone and I have worked on wells in this area of we have not been as fortunate in getting under control as we were on this one which was approximately 2100 psi at this shallow depth. I also consider it highly dangerous to have another rig drilling this close to any well in this area.

  
\_\_\_\_\_  
Joe Henderson

Subscribed and sworn to before me this 28th January, 1974

  
\_\_\_\_\_  
Notary Public

My comm. expires Sept. 10, 1975

Exhibit C

1-28-74

TO WHOM IT MAY CONCERN:

ON JANUARY 28, 1974 WITH MR.  
JOHN C. SANDERS AS MY ASSISTANT  
I MEASURED THE WELL SITE DESCRIBED  
BELOW.

ATLANTIC GRACE  
SECTION 24, TOWNSHIP 22, SOUTH,  
RANGE 26 EAST.

THE MARIAND WELL WAS LOCATED  
49' 0" NORTH AND 133' 5" EAST OF THE  
ATLANTIC GRACE, ON THE SECTION 24,  
TOWNSHIP 22 SOUTH, RANGE 26 EAST.

REGISTERED ENGINEER  
# 1257

Subscribed & sworn to before David, Brewer  
me this 28th day Jan. 1974 Salvador A. Nijon  
Maurita Dow, Notary  
My Comm. expires Sept. 16, 1975

Ephraim D



U.S. DEPARTMENT OF LABOR  
Occupational Safety and Health Administration

Room 421 Federal Building  
1205 Texas Avenue  
Lubbock, Texas 79401

CSHO NO.	OSHA-I NO.
K-8347	1
AREA	REGION
4140	6

OSHA-2C

TO: CACTUS DRILLING CORPORATION  
P.O. Box 32  
Midland, Texas 79701  
ATTN: Mr. L.A. Rogers, Vice-President of Drilling

Date July 28, 1972

Subject: Citation for Alleged Occupational Safety and Health Violation(s)

An inspection of a workplace under your operation, ownership, or control has revealed conditions which we believe do not comply with the provisions of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651. The nature of such alleged violation(s) is described in the enclosed citation with references to applicable standards, rules, regulations, and provisions of the said Act. These conditions must be corrected on or before the date shown to the right of each violation therein.

The Act requires that a copy of the enclosed citation(s) be prominently posted "in a conspicuous place upon receipt" at or near each place a violation referred to in the citation occurred. It must remain posted until all violations cited therein are corrected, or for 3 working days, whichever period is longer. A sufficient number of copies of the attached citation(s) should be prepared to permit posting in accordance with the requirements of the Act.

If you contest the citation you may post a notice to this effect near the citation contested. The Act contains penalties for violation of the posting requirements.

You will soon be notified by certified mail whether or not a proposed penalty will be assessed as a result of the cited violation(s). You have the right to contest the citation(s), the proposed penalties, or both, before the Occupational Safety and Health Review Commission. The Review Commission is an independent quasi-judicial agency with authority to issue decisions regarding citations and proposed penalties. If you do contest, you must so notify the Area Director within 15 working days after receipt of the certified mail notice regarding proposed penalties. If you fail to contest within the 15 working day period, the citation and the proposed assessment of penalties shall be deemed to be a final order not subject to review by any court or agency.

An employee or representative of employees may file a notice to contest the time stated in the citation for the abatement of the alleged violation(s).

Alleged violations that are not contested shall be corrected within the abatement period specified in the citation. Failure to correct an alleged violation within the abatement period may result in a further proposed assessment of penalties.

As to alleged violations with an abatement period of 30 days or less, you are directed to promptly advise the Area Director as to the specific corrective action on each such violation and the date of such action.

Alleged violations having a longer abatement period will require a progress report at the end of each 30-day period. The progress report should detail what has been done, what remains to be done, and the time needed to fully abate each such violation. When the alleged violation is fully abated, the Area Director shall be so advised.

A followup inspection may be made for the purpose of ascertaining that you have posted the citations as required by the Act and corrected the alleged violations as you have reported. The Act provides that whoever knowingly gives false information is subject to a fine up to \$10,000, imprisonment up to 6 months, or both.

If you wish additional information, you may direct such request to the undersigned at the address listed above.

A copy of all pages of  
this citation sent to:  
Cactus Drilling Corporation  
P.O. Box 221  
Dallas, Texas 75221  
ATTN: Mr. F.M. Late, President

U. S. Department of Labor

By Area Director

  
ROBERT B. SIMMONS

U.S. DEPARTMENT OF LABOR  
Occupational Safety and Health Administration

Room 421 Federal Building  
1205 Texas Avenue  
Lubbock, Texas 79401

CSHO NO. K-8347	OSHA-1 NO. 1
AREA 4140	REGION 6

CITATION\*

Citation Number 1 Page 1 of 6 Date Issued July 28, 1972

EMPLOYER CACTUS DRILLING CORPORATION

(Street U.S. Highway 80 West)

ADDRESS ( P.O. Box 32 )

(City Midland State Texas Zip 79701)

An inspection of a workplace under your ownership, operation, or control located at 4 miles west of Grand Falls, Texas and inspected on July 12, 1972 from 10:30 A.M. until 4:30 P.M. and described as follows

Engaged in drilling for gas and oil Rig No. 22

has been conducted. On the basis of the inspection it is alleged that you have violated the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, in the following respects:

Item number	Standard or regulation allegedly violated	Description of alleged violation	Date on which alleged violation must be corrected
1	29 CFR 1910.23(c)(1)(i)	The following open sided floors or platforms were not equipped with standard railings and toeboards on the open sides: a. The rig floor did not have a toeboard on three sides: north, east, and south sides; b. Guardrail broken between V door and northeast corner; c. Guardrail broken and not in holes provided to support guardrail (tied together with softline) on north side of floor by draw works; d. 2' wide opening on north side of motor floor.	September 5, 1972
2	29 CFR 1910.23(d)(1)(iii)	Stairs less than 44 inches wide located in the following places were not equipped with standard stair railings: a. stairs located by V door only one handrail (20 steps)	September 5, 1972

(CONTINUED)

Area Director's Signature Robert B. Simmons  
ROBERT B. SIMMONS

The issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Occupational Safety and Health Review Commission.

RIGHTS OF EMPLOYEES

Any employee or representative of employees who believes that any period of time fixed in this citation for the correction of a violation is unreasonable has the right to contest such time for correction by filing a notice with the U.S. Department of Labor at the address shown above within 15 working days of the receipt by the employer of notice of proposed penalty or notice that no penalty is being proposed.

"No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act." Sec. 11 (c)(1) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651.

The law requires that a copy of the enclosed citation(s) "shall be prominently posted" in a conspicuous place "at or near each place a violation referred to in the citation occurred." It must remain posted until all violations cited therein are corrected, or for 3 working days, whichever period is longer.

\* Alleged violations covered by this citation are those which are not serious violations within the meaning of the Act but which have a direct or immediate relationship to occupational safety and health.

U.S. DEPARTMENT OF LABOR  
Occupational Safety and Health Administration

Room 421 Federal Building  
1205 Texas Avenue  
Lubbock, Texas 79401

CSHO NO.	OSHA-1 NO.
K-8347	1
AREA	REGION
4140	6

CITATION\*

Citation Number 1 Page 2 of 6 Date Issued July 28, 1972

EMPLOYER CACTUS DRILLING CORPORATION

(Street U.S. Highway 80 West

ADDRESS ( P.O. Box 32 )

(City Midland State Texas Zip 79701

An inspection of a workplace under your ownership, operation, or control located at 4 miles west of Grand Falls,

Texas and inspected on July 12, 1972 from 10:30 A.M. until 4:30 P.M. and described as follows

Engaged in drilling for gas and oil Rig No. 22

has been conducted. On the basis of the inspection it is alleged that you have violated the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, in the following respects:

Item number	Standard or regulation allegedly violated	Description of alleged violation	Date on which alleged violation must be corrected
Item 2 Cont'd		<ul style="list-style-type: none"> <li>b. stairs located by V-door no handrails (5 steps);</li> <li>c. stairs north side of motor floor only one handrail (10' high stairs)</li> <li>d. stairs east side of mud pit no handrails (6 steps);</li> <li>e. stairs east side of mud pit no handrails (6 steps);</li> <li>f. stairs south side of mud pit no handrails (8 steps);</li> <li>g. stairs west side of mud pit no handrails (4 steps).</li> </ul>	September 5, 1972
3	29 CFR 1910.24(b)	<p>Stairs had not been provided for access from the following locations:</p> <ul style="list-style-type: none"> <li>a. Door on north side of Mud House, unstable wooden pallets were being used;</li> <li>b. Water Tank to supply radiator water. A soap barrel was being used on north side of tank to gain access to gauge and hose;</li> </ul>	September 5, 1972

(CONTINUED)

Area Director's Signature *Robert B. Simmons*  
ROBERT B. SIMMONS

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U.S. DEPARTMENT OF LABOR  
Occupational Safety and Health Administration

Room 421 Federal Building  
1205 Texas Avenue  
Lubbock, Texas 79401

CSHO NO.	OSHA-T NO.
K-8347	1
AREA	REGION
4140	6

CITATION\*

Citation Number 1 Page 3 of 6 Date Issued July 28, 1972

EMPLOYER CACTUS DRILLING CORPORATION

(Street U.S. Highway 80 West

ADDRESS ( P.O. Box 32 )

(City Midland State Texas Zip 79701

An inspection of a workplace under your ownership, operation, or control located at 4 miles west of Grand Falls,

Texas and inspected on July 12, 1972 from 10:30 A.M. until 4:30 P.M. and described as follows

Engaged in drilling for gas and oil Rig No. 22

has been conducted. On the basis of the inspection it is alleged that you have violated the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, in the following respects:

Item number	Standard or regulation allegedly violated	Description of alleged violation	Date on which alleged violation must be corrected
Item 3 Cont'd		c. Derrick from rig floor to bottom of fixed ladder 14' without access (fixed ladder acceptable in lieu of stairs).	September 5, 1972
4	29 CFR 1910.27(b)(1)(ii)	The verticle distance between the rungs on the following fixed ladders exceeded 12": a. Derrick ladder had rungs 16" high; b. Fixed ladder to No. 1 radiator motor had rungs 14" high; c. Fixed ladder to No. 2 radiator motor had rungs 14" high; d. Fixed ladder to No. 3 radiator motor had rungs 14" high.	September 5, 1972
5	29 CFR 1910.27(b)(1)(iii)	The minimum clear length of rungs or cleats was less than 16 inches on the following fixed ladders:  (CONTINUED)	September 5, 1972

Area Director's Signature

Robert B. Simmons  
ROBERT B. SIMMONS

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CSHO NO.	OSHA-1 NO.
K-8347	1
AREA	REGION
4140	6

CITATION\*

Citation Number 1 Page 4 of 6 Date Issued July 28, 1972

EMPLOYER CACTUS DRILLING CORPORATION

(Street U.S. Highway 80 West

ADDRESS ( P.O. Box 32 )

(City Midland State Texas Zip 79701

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Engaged in drilling for gas and oil Rig No. 22

has been conducted. On the basis of the inspection it is alleged that you have violated the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, in the following respects:

Item number	Standard or regulation allegedly violated	Description of alleged violation	Date on which alleged violation must be corrected
Item 5 Cont'd		a. Derrick ladder rungs were 12"; b. Fixed ladder to No. 1 radiator motor had rungs 14"; c. Fixed ladder to No. 2 radiator motor had rungs 14"; d. Fixed ladder to No. 3 radiator motor had rungs 14".	September 5, 1972
6	29 CFR 1910.157(d)(3)(iv)	Portable fire extinguishers located as listed below did not have a durable tag securely attached to show the maintenance or recharge date and the initials or signature of the person who performs the service: a. 20 lb. portable extinguisher northeast corner of Rig Floor; b. 20 lb. portable extinguisher entrance to Doghouse; c. 350 lb. dry chemical extinguisher on ground by west side of Doghouse.  (CONTINUED)	August 14, 1972

Area Director's Signature Robert B. Simmons  
ROBERT B. SIMMONS

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Occupational Safety and Health Administration

Room 421 Federal Building  
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CSHO NO.	OSHA-1 NO.
K-8347	1
AREA	REGION
4140	6

CITATION\*

Citation Number 1 Page 5 of 6 Date Issued July 28, 1972

EMPLOYER CACTUS DRILLING CORPORATION

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Item number	Standard or regulation allegedly violated	Description of alleged violation	Date on which alleged violation must be corrected
7	29 CFR 1910.219(c)(2)(i)	Horizontal shafting having exposed moving part was noted in the following place without proper guarding: a. East side of auxiliary pump 2" x 8" shaft; b. Mud pump 3" x 8" shaft; c. Motor floor 8" x 18" shaft.	September 5, 1972
8	29 CFR 1910.219(e)(3)(i)	Verticle and inclined belt drives located as listed below were not properly guarded: a. Thirteen (13) v belts in 3' x 12' spacing by mud pump (ground level to Rig Floor); b. V belts on shale shaker.	September 5, 1972
9	29 CFR 1910.219(f)(1)(i)	Gears were noted to be improperly guarded (2"x 18" hole worn in clutch housing, northside of motor floor).	September 5, 1972
10	29 CFR 1910.23(c)(3)	The following platforms/walkways over the mud pits were not equipped with	September 5, 1972

(CONTINUED)

Area Director's Signature

*Robert B. Simmons*  
ROBERT B. SIMMONS

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U.S. DEPARTMENT OF LABOR  
Occupational Safety and Health Administration

Room 421 Federal Building  
1205 Texas Avenue  
Lubbock, Texas 79401

CSHO NO. K-8347	OSHA-I NO. J
AREA	REGION
4140	6

CITATION\*

Citation Number 1 Page 6 of 6 Date Issued July 28, 1972

EMPLOYER CACTUS DRILLING CORPORATION

(Street U.S. Highway 80 West

ADDRESS ( P.O. Box 32 )

(City Midland State Texas Zip 79701

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has been conducted. On the basis of the inspection it is alleged that you have violated the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, in the following respects:

Item number	Standard or regulation allegedly violated	Description of alleged violation	Date on which alleged violation must be corrected
Item 10 Cont'd		standard railings: a. About the middle of the Shale Shaker Pit to gain access to jet gun; b. West end of Shale Shaker Pit to gain access to jet gun.	September 5, 1972

Area Director's Signature *Robert B. Simmons*  
ROBERT B. SIMMONS

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RIGHTS OF EMPLOYEES

Any employee or representative of employees who believes that any period of time fixed in this citation for the correction of a violation is unreasonable has the right to contest such time for correction by filing a notice with the U.S. Department of Labor at the address shown above within 15 working days of the receipt by the employer of notice of proposed penalty or notice that no penalty is being proposed.

"No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act." Sec. 11 (c)(1) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651.

The law requires that a copy of the enclosed citation(s) "shall be prominently posted" in a conspicuous place "at or near each place a violation referred to in the citation occurred." It must remain posted until all violations cited therein are corrected, or for 3 working days, whichever period is longer.

\* Alleged violations covered by this citation are those which are not serious violations within the meaning of the Act but which have a direct or immediate relationship to occupational safety and health.

NOTIFICATION OF PROPOSED PENALTY

TO: CACTUS DRILLING CORPORATION  
P.O. Box 32  
Midland, Texas 79701

On the 28 day of July, 19 72 a Citation(s) was (~~were~~) issued to you in accordance with the provisions of section 9(a) of the Occupational Safety and Health Act of 1970 (84 Stat. 1601; 29 U.S.C. 651, et seq.) hereinafter referred to as the Act. You were thus notified of certain alleged violations of the Act, as specified in that Citation(s).

YOU ARE HEREBY NOTIFIED that pursuant to the provisions of section 10(a) of the Act, the penalty(ies) set forth below is/are being proposed, based on the above Citation(s):

SERIOUS VIOLATIONS

<u>Citation No.</u>	<u>Proposed Penalty</u>
'NONE'	

OTHER VIOLATIONS\*

<u>Citation No.</u>	<u>Item No.</u>	<u>Proposed Penalty</u>
1	1. Open sided floor not equipped with standard guardrails	\$ 40.00
1	2. Stairs not equipped with proper handrails	40.00
1	3. Stairs not provided for access	: 25.00
1	4. Fixed ladders with improper spacing of rungs greater than 12"	45.00
1	5. Fixed ladders with clear length of rungs less than 16"	45.00
1	6. Portable fire extinguishers not properly tagged	-0-
1	7. Horizontal shafting not guarded	-0-
1	8. Verticle and inclined belts not guarded	25.00
1	9. Gears not properly guarded	25.00
1	10. Platforms/walkways without standard guardrail	25.00
Total for All Alleged Violations		<u>\$270.00</u>

\* In the case of each "other violation," the proposed penalty reflects a 50 percent adjustment factor for corrective action taken within the period prescribed in the citation. If a particular alleged violation is not corrected within this period, an automatic additional penalty of 50 percent will be proposed for each violation. However, if you contest an alleged violation in good faith before the Review Commission, the period for correction does not begin to run until the entry of a final order by the Review Commission affirming the citation. The proposed penalty is exclusive of such other additional penalty as may subsequently be proposed for failure to correct a violation within the abatement period.

The payment of penalties is to be made by certified check or money order, payable to the order of "Occupational Safety and Health-Labor." Remit to the Area Director whose address appears below.

YOU ARE FURTHER NOTIFIED that the aforesaid Citation(s), this Notification, and the proposed assessment shall be deemed to be the final order of the Occupational Safety and Health Review Commission and not subject to review by any court or agency, unless, within 15 working days from the date of receipt of this notice, you notify the official named below in writing that you intend to contest the Citation or this Notification of Proposed Penalty before the Review Commission. The Review Commission is an independent quasi-judicial agency with authority to issue decisions regarding citations and proposed penalties.

There is no requirement that this Notification be posted.

Dated at Lubbock, Texas this 28 day  
of July, 19 72.



Area Director ROBERT B. SIMMONS  
Occupational Safety and Health Administration  
U. S. Department of Labor

Room 421 Federal Building  
1205 Texas Avenue  
Lubbock, Texas 79401

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
FOR THE COUNTY OF SANTA FE, STATE OF NEW MEXICO

MICHAEL P. GRACE AND  
CORINNE GRACE,

Plaintiffs

vs.

No. \_\_\_\_\_

NEW MEXICO STATE OIL CONSERVATION  
COMMISSION, D.L. HANNIFIN, JOE DON  
COOK, AND CACTUS DRILLING COMPANY,

Respondents.

AFFIDAVIT

Comes now the undersigned, Daniel S. Nutter, Chief Engineer of the New Mexico Oil Conservation Commission, resident of Santa Fe County, New Mexico, over the age of twenty-one (21) years, after first being sworn upon his oath, and states:

1. I have been a licensed petroleum engineer for eighteen years and am a registered professional petroleum engineer in the State of New Mexico and am familiar with the Grace-Atlantic Com Well No. 1 and the D.L. Hannifin and Joe Don Cook Merland Well No. 1, which wells are the subject of this suit.

2. The Merland well is located a distance of at least 141 feet from the Grace-Atlantic well.

3. There are two classes of danger which a drilling well may pose to a producing well by virtue of its proximity to that well:

A. Surface danger. This could occur by means of the drilling rig on the drilling well collapsing onto the surface equipment of the producing well or by means of a blowout and a resulting fire on the drilling well which spreads to the producing well. To begin with, the toppling of a drilling rig is a remote possibility. Even if the rig did topple, the distance between the two wells would prevent any surface equipment on the Grace-Atlantic well from being damaged. A blowout is also unlikely to occur because the

Merland well is equipped with blowout preventers and the operator will be drilling under the direction of a mud engineer with heavy drilling fluids which will contain the reservoir energy encountered in the anticipated productive zone in the Delaware formation.

B. Subsurface damage. This could occur by means of the bore of the drilling well deviating from the vertical and encountering the bore of the producing well or by means of a high pressure fracturing treatment in the drilling well collapsing the casing in the producing well. A deviation survey (TOTCO test) conducted during the drilling of the Grace-Atlantic indicated that the bore of that well had deviated from the vertical a total of 75.52 feet at a depth of 4490 feet, the anticipated total depth of the Merland No. 1 well. Assuming such deviation was entirely in the direction of the Merland No. 1 well, that well's bore, if vertical, would not intercept the Grace-Atlantic bore. The Merland No. 1 well bore will be constantly controlled by deviation equipment under the supervision of Eastman Whipstock, Inc. to ensure that it is vertical. Even if the bore deviated from the vertical, it most likely would deviate in the same direction that the Grace-Atlantic well deviated. There is little likelihood that a fracturing treatment would be carried out on the Merland No. 1 well. Fracturing is a remedial treatment for wells which produce at rates which are too low to be economical. The blowout in the Delaware zone in the Grace-Atlantic well indicates that the Merland No. 1 well will not suffer from this problem, however, if fracturing is necessary, pressure can be controlled as to avoid any potential casing damage to the Grace-Atlantic well.

4. That there is no possibility of danger to the "Morrow-Delaware" reservoir because there is no such thing as the "Morrow-Delaware" reservoir. The Morrow reservoir is in a deep sandstone formation, the top of which is approximately 11,128 feet in the vicinity of the subject wells. The Delaware is a much shallower

formation, the base of which is approximately 5225 feet. There is therefore a separation of these zones of approximately 5903 feet, during which interval occur many layers of impermeable shale which totally isolate the two reservoirs.

5. That I have contacted Mr. Ted K. Hudson, New Mexico State Fire Inspector, and he has informed me that the New Mexico Fire Code adopts the National Fire Protective Association Code in its entirety and that said code contains no provisions relating to oil field operations. Mr. Hudson also stated that the Fire Marshalls' Office has no jurisdiction over oil field operations.

6. To my knowledge, the Oil Conservation Commission has received no information indicating that Cactus Drilling Company has conducted any of its operations in an unsafe or unsatisfactory manner.

7. In my opinion, the Merland No. 1 well, if drilled by the respondents under the safeguards that the respondents have indicated that they will follow, will not impose any danger to the Grace-Atlantic Com Well No. 1.

DATED this 29th day of January, 1974

  
DANIEL S. NUTTER

SUBSCRIBED AND SWORN TO before me this 29th day of January, 1974, by Daniel S. Nutter.

  
Diana Richardson  
Notary Public

My Commission Expires:

Oct 28, 1977

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
FOR THE COUNTY OF SANTA FE, STATE OF NEW MEXICO

MICHAEL P. GRACE AND  
CORINNE GRACE,

Plaintiffs

vs.

NEW MEXICO STATE OIL CONSERVATION  
COMMISSION, D.L. HANNIFIN, JOE DON  
COOK, AND CACTUS DRILLING COMPANY,

Respondents.

AFFIDAVIT

Comes now the undersigned, Daniel S. Nutter, Chief Engineer of the New Mexico Oil Conservation Commission, resident of Santa Fe County, New Mexico, over the age of twenty-one (21) years, after first being sworn upon his oath, and states:

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2. The Merland well is located a distance of at least 141 feet from the Grace-Atlantic well.

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*not used*  
*1/29/74*  
*basis for DSN*  
*testimony on*  
*1/31/74*  
*WJK*

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formation, the base of which is approximately 5225 feet. There is therefore a separation of these zones of approximately 5903 feet, during which interval occur many layers of impermeable shale which totally isolate the two reservoirs.

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7. In my opinion, the Merland No. 1 well, if drilled by the respondents under the safeguards that the respondents have indicated that they will follow, will not impose any danger to the Grace-Atlantic Com Well No. 1.

DATED this 29th day of January, 1974

*Daniel S. Nutter*  
DANIEL S. NUTTER

SUBSCRIBED AND SWORN TO before me this  
29th day of January, 1974, by Daniel S.  
Nutter.

*S. Diana Richardson*  
Notary Public

My Commission Expires:

*Oct. 28, 1977*

Intervention - argument for:

1. New Case - we are not a respondent as  
in 47406
2. Remedy here = same effect as previous  
case
3. oec - approved a drilling application  
— after considering certain facts —  
— these FACTS — SAME AS  
ISSUE INVOLVED HEREIN
4. The CONSIDERATIONS = oec  
statutorily mandate powers  
set out in 65-3-11
5. If we cannot intervene —  
oec seriously impaired —  
can't defend its acts —
6. Adverse determination could  
severely limit oec ability  
to prevent waste + protect CR  
and <sup>carry out</sup> OTHER ENUMERATED POWERS.

Intervention — Waldon "Civil Procedure in New Mexico"

Pp. 161 - 164

Two types

permissive + of right.

1969 — standards for intervention were revised.

OF RIGHT:

NMRCiv.P. 24(a)

1) when statute confers an unconditional right

OR

2) "when he claims an interest in the subject of litigation and is so situated that disposition of the action may impair his interest and he is not adequately represented in the action already"

PERMISSIVE JURISDICTION. INTERVENTION

NMRCiv.P. 24(b)

\*

changed in 1969 — now authorizes state or federal officers or agencies to intervene in actions involving matters under its jurisdiction.

Court should consider — if intervention will cause

1. undue delay
2. prejudice to the rights of the original parties.

JOINED AS AN INDISPENSABLE PARTY  
(Waldon — P. 159)



New Mexico, after due consideration on December 28, 1973, since the well was to be drilled at a standard location and 40 acres of land, all of which is leased by Mr. Hannifin and Mr. Cook, was to be dedicated to said well.

5. That such approval of said drilling permit was given only after due consideration to the possibility of damage to surrounding properties and such approval in fact required that "...blowout preventers will be installed and tested daily during drilling."

6. That restraining the drilling of a well subsequent to approval of the drilling permit by the Oil Conservation Commission seriously affects the ability of the Oil Conservation Commission to carry out its statutory responsibilities to prevent waste and protect correlative rights in the oil and gas producing areas in New Mexico.

WHEREFORE, Movant seeks leave to intervene in the above-entitled cause and for such other and further relief as the Court may deem proper in the premises.

DAVID L. NORVELL  
Attorney General

  
WILLIAM F. CARR

  
THOMAS W. DERRYBERRY

Special Assistant Attorneys General  
Oil Conservation Commission, P. O.  
Box 2088, Santa Fe, New Mexico 87501



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Attorney General

---

WILLIAM F. CARR

---

THOMAS W. DERRYBERRY

Special Assistant Attorneys General  
Oil Conservation Commission, P. O.  
Box 2088, Santa Fe, New Mexico 87501

*Filed in open Court  
January 25, 1974  
at 8:21 P.M.  
Edmund L. Jetter*

IN THE DISTRICT COURT OF SANTA FE COUNTY

STATE OF NEW MEXICO

*District Judge*

MICHAEL P. GRACE, II and	)	
CORRINE GRACE,	)	
	)	
Petitioners	)	
	)	
vs.	)	No. 47406
	)	
NEW MEXICO OIL CONSERVATION	)	
COMMISSION, D.L. HANNIFIN,	)	
JOE DON COOK, and CACTUS	)	
DRILLING COMPANY,	)	
	)	
Respondents	)	
	)	

MOTION TO FORFEIT BOND

Come now the Respondents, D.L. Hannifin and Joe Don Cook, pursuant to Rules 65-66(c) and (d) (Section, 21-1-1, 65-66(c) (d), N.M.S.A., 1953 Comp.) and move the Court for an Order against the surety which gave a \$3,000.00 bond here-in for the Petitioners, forfeiting said bond in the full amount thereof to said Respondents, and as grounds therefor, state:

1. Said Respondents were wrongfully restrained herein from continuing the drilling operations on the Merland #1 Well, SE $\frac{1}{4}$ , Section 24, Township 22 South, Range 26 East, Eddy County, New Mexico, by Petitioners.

2. Said Respondents have been wrongfully restrained by Petitioners from said drilling operations for the days of January 26, 27 and 28, 1974, all to said Respondents' damage in the amount of at least \$3,600.00, which sum represents Respondents' daily stand-by costs for three (3) days, owed by Respondents to Cactus Drilling Company under a drilling contract for the Merland #1 Well. A copy of said drilling contract has been previously submitted to this Court.

3. Section 65-3-23(b), N.M.S.A., 1953 Comp. provides that such a bond as the subject bond is given for the use and benefit of all persons who may suffer damage under a wrongfully issued Temporary Restraining Order.

4. Said Respondents have suffered actual monetary damage in excess of the said bond liability.

WHEREFORE, said Respondents move that Notice of Hearing upon this Motion, as the Court may prescribe, be served by the Clerk of this Court, as provided by law, and that after hearing, the Court issue an Order forfeiting said bond.

DATED this 28th day of January, 1974.

HUNKER, FEDRIC & HIGGINBOTHAM, P.A.

By: *Don M. Fedric*  
Don M. Fedric  
Attorneys for Respondents,  
D.L. Hannifin and Joe Don Cook  
P. O. Box 1837  
Roswell, New Mexico 88201

*Motion to Forfeit Bond  
January 28 1974*

*By: Dolores Pujan*

Filed in open Court  
January 28, 1974  
at 8:20 P.M.  
Edmund L. Letter

IN THE DISTRICT COURT OF SANTA FE COUNTY

STATE OF NEW MEXICO

*District Judge*

MICHAEL P. GRACE, II and  
CORRINE GRACE,

Petitioners

vs.

No. 47406

NEW MEXICO OIL CONSERVATION  
COMMISSION, D.L. HANNIFIN,  
JOE DON COOK, and CACTUS  
DRILLING COMPANY,

Respondents

O R D E R

This matter having come before the Court on January 28, 1974 for hearing upon the Motion of the Respondents, D.L. Hannifin and Joe Don Cook, to quash and dissolve the Temporary Restraining Order entered herein by the Court on January 25, 1974, with counsel for both parties being present, and the Court, being fully advised in the premises, finds:

*is issued said temporary Restraining Order*  
That the Court ~~lacked jurisdiction to grant said Order,~~ and therefore, the Respondents' Motion should be granted.

IT IS, THEREFORE, ORDERED, that said Temporary Restraining Order be, and the same hereby is quashed and dissolved.

DATED this 28th day of January, 1974.

*Edmund L. Letter*  
District Judge

Order  
January 28, 74

*By: Helares Hujan*



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

January 28, 1974

*Filed in open  
Court  
January 28,  
Edwin L. Felter  
District Judge*

OLIVER E. PAYNE  
DEPUTY ATTORNEY GENERAL

Judge Edwin L. Felter  
District Court Judge  
District Court House  
Santa Fe, New Mexico

*SF Courts  
#47406*

Dear Judge Felter:

I have been unable to reach you by telephone today, and am out of town, and for that reason, unable to appear at the Grace hearing at 5:00 p. m.

However, I understand some misunderstanding has arisen concerning the roll of the Attorney General's office in the granting of the temporary restraining order last Friday.

Neither Mr. Payne nor myself had an opportunity to see the pleadings prior to the entry of the order. However, both Mr. Payne, who knows a considerable amount about petroleum engineering, and myself, were apprehensive about initiation of drilling 110' from the Grace - Atlantic well for a number of reasons.

Mr. Payne and I had general knowledge of the facts concerning the controversy and we felt jointly that human lives are worth more than a gas well. Therefore, we saw no way that anyone could be injured by a delay of three days in drilling this well until your honor had time to determine the controversy.

As a result, both Mr. Payne and I agreed in principal to the entry of a temporary restraining order on Friday evening until the hearing of today before you, as we could envision no serious detrimental harm occurring to anyone for that short a period of time, while on the other hand, the serious consequences which could possibly result from the new drilling were paramount in our minds.

Judge Edwin L. Felter  
Page #2  
January 28, 1974

Therefore, Mr. Payne, at my direction, talked with you expressing these general principles, and I trust you were at least, in part, guided thereby.

I hope this will help clarify the matter for your consideration, if in fact the dispute still exists.

Sincerely yours,

DAVID L. NORVELL  
Attorney General

DLN:lg

January 28, 1974

Judge Edwin L. Felter  
District Court Judge  
District Court House  
Santa Fe, New Mexico

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January 28, 1974

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I hope this will help clarify the matter for your consideration, if in fact the dispute still exists.

Sincerely yours,

DAVID L. NORVELL  
Attorney General

DLN:lg



a. That Petitioner's have failed to cause an attorney's certificate to be filed, certifying to the Court in writing, the efforts, if any, which were made to give notice of Petitioners' application for a Temporary Restraining Order and the reason supporting the claim that the notice should not be required.

b. That the Temporary Restraining Order issued by the Court fails to state upon its face, the hour of its issuance.

c. That said Order fails to define the injury which Petitioners will allegedly suffer.

d. That said Order fails to state why said injury will result in irreparable damage to the Petitioners.

e. That said Order fails to state why the Order was entered without notice to the Respondents, D.L. Hannifin and Joe Don Cook.

f. That the Petitioners have failed to file a Motion seeking a preliminary injunction based on the Temporary Restraining Order as contemplated by the specific language of said Rules 65-66(b), nor does the Petition contain a prayer for preliminary injunction relief. Failure to make said application should result in dissolution of the Temporary Restraining Order.

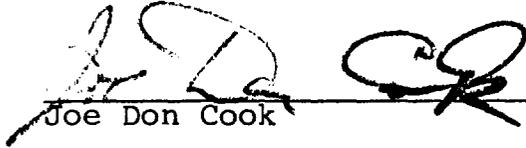
3. That the Petition upon which the Order was based falsely avers that due notice was given to the Commissioners of the Oil Conservation Commission as required by Section 65-3-23(a), N.M.S.A., 1953 Comp.; and that said Order falsely states that the New Mexico Oil Conservation Commission had had notice as required by law as further described in the Affidavit(s) annexed hereto and identified as Exhibit "A" to this Motion; and therefore, the Court lacked jurisdiction to grant the Temporary Restraining Order.

4. That no formal notice was given to the Respondents, D.L. Hannifin and Joe Don Cook, nor to Movent's belief, the



thereof and that the matters contained therein are true and correct to the best of their knowledge, information and belief.

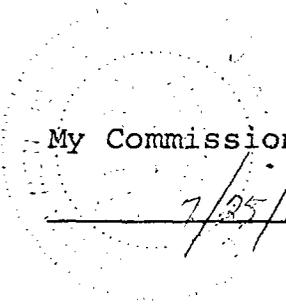
  
D.L. Hannifin

  
Joe Don Cook

SUBSCRIBED AND SWORN TO before me this 26 day of  
January, 1974.

  
Notary Public

My Commission Expires:

  
7/25/76

IN THE DISTRICT COURT OF SANTA FE COUNTY  
STATE OF NEW MEXICO

MICHAEL P. GRACE, II and                    )  
CORINNE GRACE,                                )  
  )  
  )                    Petitioners                    )  
  )  
vs.    )                    No. 47406  
  )  
NEW MEXICO OIL CONSERVATION                )  
COMMISSION, D. L. HANNIFIN,                )  
JOE DON COOK, and CACTUS                    )  
DRILLING COMPANY,                            )  
  )  
  )                    Respondents                    )

AFFIDAVIT

Comes now the undersigned, A. L. Porter, Jr., Secretary-Director of The New Mexico Oil Conservation Commission, resident of Santa Fe, Santa Fe County, New Mexico, over the age of twenty-one (21) years, after being first duly sworn upon his oath, and states:

1. Cause No. 47406 was filed in Santa Fe County District Court on January 25, 1974, wherein Michael P. Grace and Corinne Grace are named as Petitioners and New Mexico Oil Conservation Commission, D. L. Hannifin, Joe Don Cook and Cactus Drilling Company are named as Respondents.

2. That in said Cause, the Petitioners sought a Temporary Restraining Order against all of the Respondents.

3. That at approximately 4:45 p.m. on January 25, 1974, a Petition and exhibits, consisting of 17 pages, was hand delivered by Michael P. Grace II to the Santa Fe office of the Commission. Mr. Thomas W. Derryberry, an attorney for the Commission, immediately contacted the Santa Fe County District Court and was

informed that no hearing time had been set on said Petition. Before Mr. Derryberry had finished reading the Petition, at approximately 4:55 p.m., a copy of a Temporary Restraining Order against the Oil Conservation Commission was hand delivered to the Commission's Santa Fe office by Farrell L. Lines, Attorney for Mr. Grace. I had not read the Petition at the time the Temporary Restraining Order was received.

4. The Temporary Restraining Order directed me to temporarily suspend the drilling permit for the Merland Well No. 1 in Section 24, Township 22 South, Range 26 East, NMPM, Eddy County, New Mexico, which had been previously approved pursuant to the provisions of rules and regulations adopted by Oil Conservation Commission Order 850 as amended. I complied with the Temporary Restraining Order and cancelled the drilling permit on January 25, 1974, by telephone and by telegraphing D. L. Hannifin and Joe Don Cook.

5. Since that time, I have contacted Alex J. Armijo and I. R. Trujillo, the other members of the Oil Conservation Commission, and of my personal knowledge can state that neither of them received notice of the Petition filed in this cause on January 25, 1974, until contacted by me after receiving the Temporary Restraining Order.

6. At approximately 7:55 a.m. on January 28, 1974, Mr. Norvell called me and I got the definite impression that he had not consented to the order. I asked him to give me a written statement at which time he said he would call the judge.

7. That without due notice to the Oil Conservation Commission, and without hearing, the said District Court on January 25, 1974, issued a Temporary Restraining Order directed

to and against the Oil Conservation Commission and other Respondents.

DATED this 28th day of January, 1974.

  
A. L. PORTER, Jr.

SUBSCRIBED AND SWORN TO before me this 28th day of January, 1974, by A. L. Porter, Jr.

  
Notary Public

My Commission Expires:

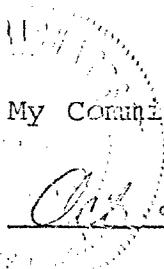
  
Oct 28, 1977

EXHIBIT "A"



completed in the Morrow Formation at perforations from 11,424 feet to 11,444 feet as a gas well, and the same is presently producing gas, under pipeline connection to the El Paso Natural Gas Company.

4. That the said Grace-Atlantic Well #1, subject to royalty interests, is owned Fifty Percent (50%) by Michael P. Grace, II and Fifty Percent (50%) by the undersigned.

5. That on or about November 21, 1973, D.L. Hannifin, made application with the New Mexico Oil Conservation Commission, pursuant to the rules and regulations of said Commission, for the drilling of a Delaware Formation test well, to be known as the Merland #1, to a depth of approximately 4,550 feet on a 40-acre spacing unit, located within and upon the Lease owned by the undersigned in the SE $\frac{1}{4}$  of said Section 24. On or about December 10, 1973, said application was approved by the New Mexico Oil Conservation Commission. On or about December 27, 1973, an amended application was filed, so as to designate D.L. Hannifin and Joe Don Cook as the Operator to drill the said Merland #1 well, which application was approved by the New Mexico Oil Conservation Commission on or about December 28, 1973. A copy of each of said applications with O.C.C. approval reflected thereon is attached hereto as Exhibit "2" to this Affidavit.

6. That the said Delaware Formation underlying the Lease and land of the undersigned, has not been force pooled with any adjoining Leases or lands, and the said Michael P. Grace, II has no ownership or other interest of any nature in and to the Delaware Formation underlying the Lease of the undersigned, nor has the said Michael P. Grace, II any interest in the said Merland #1 well.

7. That the New Mexico Oil Conservation Commission in exercise of its administrative function, approved the application of the undersigned to drill the Merland #1 Well, with such approval being made by said Commission with full knowledge of the location of said well, with reference to the location of the Grace-Atlantic Well #1. Further, the undersigned, in making said application, and in proposing to drill said Merland #1 Well, were knowledgeable of the location of said Merland #1 Well with reference to the location of the said Grace-Atlantic Well #1, and all actions taken by the undersigned, and intended to be taken in the future, were and will be prosecuted in a prudent fashion, so as to totally avoid any possibility of the said Merland #1 Well causing damage of any nature to the said Grace-Atlantic Well #1, under which well, the undersigned have a Fifty Percent (50%) ownership.

8. That on or about January 22, 1974, the undersigned entered into a drilling contract with Cactus Drilling Company for the drilling of the Merland #1 Well, to a depth of approximately 4,550 feet, and at a cost of Six Dollars Five Cents (\$6.05) per foot, with a commitment by the undersigned to cause the drilling of said well to a minimum depth of 3,680 feet, or in the event of a premature stoppage of work, to pay to Cactus Drilling Company, all costs actually incurred, plus a stated sum of Three Thousand, Three Hundred Thirty-Nine Dollars Sixty Cents (\$3,339.60). A copy of said Contract is attached hereto and made a part hereof as Exhibit "3" to this Affidavit.

9. That on or about January 23, 1974, the undersigned, through Cactus Drilling Company, commenced operations to drill the Merland #1 Well, and as of this date, in addition to well site preparation and drilling rig installation, Cactus Drilling

Company has drilled to a depth of approximately 375 feet, and has set 8-5/8 inch surface casing, to said depth in concrete, at a total estimated cost to date to the undersigned of approximately Nine Thousand Dollars (\$9,000.00) and with continuing daily stand-by costs, when Cactus Drilling Company is not in operation drilling said well, of One Thousand Two Hundred Dollars (\$1,200.00) per day, for which the undersigned are obligated by contract.

10. That due to the present state of increased activity in the oil and gas industry in New Mexico, it is extremely difficult to obtain a drilling rig for oil and gas development operations, and if the undersigned are prevented from continuing with drilling operations at the Merland #1 Well site, in addition to the substantial economic loss resulting to the undersigned, it is probable that they will lose the use and services of the Cactus Drilling Company drilling rig, with resulting irreparable harm to the undersigned.

11. That it is not geologically feasible to move the said Cactus Drilling Company rig to a site proposed for the Merland #2 Well, for the geology information possessed by the undersigned indicates the probability of completing a producible Delaware Formation oil well at the Merland #1 Well site, with actual well production information to determine whether or not the Merland #2 Well will, in fact, be drilled.

12. That the undersigned, in connection with their drilling operations of the Merland #1 Well, are and will be subject to all rules and regulations of the New Mexico Oil Conservation Commission for prudent and safe operations, and further, the undersigned, as Fifty Percent (50%) interest owners in and under the Grace-Atlantic #1 Well, have no intention whatsoever in

connection with their Merland #1 Well operations of jeopardizing, damaging or otherwise interfering with the operations and gas production from the said Grace-Atlantic #1 Well, in its production of gas from the Morrow Formation.

13. That with reference to the drill site for the Merland #1 Well, the undersigned and Cactus Drilling Company prepared a drilling pad for the same, with the drilling rig and other drilling equipment having been placed thereon. The undersigned acknowledge that said drilling pad adjoins and overlaps the Grace-Atlantic Well #1 pad, and a portion of equipment may in fact, be located upon the Grace-Atlantic Well #1 pad, however, the same is not hazardous or dangerous to the Grace-Atlantic Well #1, and all such drill site operations of the undersigned have been performed by the undersigned pursuant to a surface easement held by the undersigned, while the said Michael P. Grace, II does not hold such an easement. A copy of the easement held by the undersigned is attached hereto and made a part hereof as Exhibit "4" to this Affidavit.

14. That the Merland #1 Well is located 144 feet from the Grace-Atlantic Well #1. Further, in connection with the drilling operations by the undersigned on the Merland #1 Well, the undersigned have employed Eastman Whipstock, Inc., a company specializing in well drilling deviation control, to assist in and control drift and direction of drift in drilling operations to insure that said well does not cause hole damage to the Grace-Atlantic Well #1. Also, Cactus Drilling Company, in connection with drilling operations upon the Merland #1 Well, have installed as a safety measure, a blow-out prevention device upon the drilling rig, under supervision of experienced Cactus Drilling Company personnel.

DATED this 26th day of January, 1974.

*D.L. Hannifin*  
D.L. Hannifin

*Joe Don Cook*  
Joe Don Cook

SUBSCRIBED AND SWORN TO before me this 26th day of  
January, 1974, by D.L. Hannifin and Joe Don Cook.

*John C. Lee*  
Notary Public

My Commission Expires:

1/25/76

# OIL & GAS LEASE

THIS AGREEMENT made this 10th day of July 1972, between Merland, Inc.

of \_\_\_\_\_ (Post Office Address)

D. L. Hannifin

herein called lessor (whether one or more) and \_\_\_\_\_, lessee:

1. Lessor, in consideration of TEN AND OTHER DOLLARS in hand paid, receipt of which is here acknowledged, and of the royalties herein provided and of the Agreements of the lessee herein contained, hereby grants, leases and lets exclusively unto lessee for the purpose of investigating, exploring, prospecting, drilling, and operating for and producing oil and gas, injecting gas, waters, other fluids, and air into subsurface strata, laying pipe lines, storing oil, building tanks, roadways, telephone lines, and other structures and things thereon to produce, save, take care of, treat, process, store and transport said minerals, the

following described land in Eddy County, New Mexico, to-wit:

Township 22 South, Range 26 East, N.M.P.M.,

Section 24: SE $\frac{1}{4}$

For the purpose of calculating the rental payments hereinafter provided for, said land is estimated to comprise 160 acres, whether it actually comprises more or less.

2. Subject to the other provisions herein contained, this lease shall remain in force for a term of one (1) year from this date (called "primary term"), and as long thereafter as oil or gas, is produced from said land or land with which said land is pooled.

3. The royalties to be paid by lessee are: (a) on oil, and on other liquid hydrocarbons saved at the well, of one (1) percent of that produced and saved from said land, same to be delivered at the well or to the credit of lessor in the pipe line to which the wells may be connected; (b) on gas, including casinghead gas and all gaseous substances, produced from said land and sold or used off the premises or in the manufacture of gasoline or other product therefrom, the market value at the mouth of the well of one (1) percent of the gas so sold or used, provided that on gas sold at the wells the royalty shall be one (1) percent of the amount realized from such sale; (c) and at any time when this lease is not validated by other provisions hereof and there is a gas and/or condensate well on said land, or land pooled therewith, but gas and/or condensate is not being so sold or used and such well is shut in, either before or after production therefrom, then on or before 90 days after said well is shut in, and thereafter at annual intervals, lessee may pay or tender an advance annual shut-in royalty equal to the amount of delay rentals provided for in this lease for the acreage then held under this lease by the party making such payment or tender, and so long as said shut-in royalty is paid or tendered this lease shall not terminate and it will be considered under all clauses hereof that gas is being produced from the leased premises in paying quantities. Each such payment shall be paid or tendered to the party or parties who at the time of such payment would be entitled to receive the royalties which would be paid under this lease if the well were in fact producing, or be paid or tendered to the credit of such party or parties in the depository bank and in the manner hereinafter provided for the payment of rentals.

4. If operations for drilling are not commenced on said land or on land pooled therewith on or before one (1) year from this date, this lease shall terminate

as to both parties ~~on or before one (1) year from this date lessee shall pay or tender to the lessor a rental of \$ \_\_\_\_\_ which shall cover the privilege of deferring commencement of such operations for a period of twelve (12) months. In like manner and upon like payments or tenders, annually the commencement of said operations may be further deferred for successive periods of twelve (12) months each during the primary term. Payment~~

~~or tender may be made to the lessor or to the credit of the lessor in the \_\_\_\_\_ Bank~~

~~\_\_\_\_\_ which bank, or any successor thereof, shall continue to be agent for the lessor and lessee's heirs and assigns. If such bank (or any successor bank) shall fail, liquidate, or be succeeded by another bank, or for any reason shall fail or refuse to accept rental, lessee shall not be held in default until thirty (30) days after lessor shall deliver to lessee a recordable instrument naming provision for another acceptable method of payment or tender, and any depository charge is a liability of the lessor. The payment or tender of actual rentals may be checked or draft of lessee mailed or delivered to said bank or lessor, or any lessor, if more than one, on or before the rental paying date. Any attempt by lessee to tender or shut-in royalty which is made in a bona fide attempt to make proper payment but which is erroneous in whole or in part may be quite sufficient, or depositories shall nevertheless be so sufficient to prevent termination of this lease in the same manner as though a proper payment had been made. However, lessee shall correct such error within thirty (30) days after lessee has received written notice thereof by registered mail of the lessor together with such instrument to be necessary to enable lessee to make proper payment.~~

5. Lessee is hereby granted the right and power, from time to time, to pool or combine this lease, the land covered by it or any part or horizon thereof with any other land, lease, leases, mineral estates or parts thereof for the production of oil or gas. Units pooled hereunder shall not exceed the standard proration unit fixed by law or by the New Mexico Oil Conservation Commission or by other lawful authority for the pool or area in which said land is situated, plus a tolerance of 10%. Lessee shall file written unit designations in the county in which the premises are located and such units may be designated from time to time and either before or after the completion of wells. Drilling operations on or production from any part of any such unit shall be considered for all purposes, except the payment of royalty, as operations conducted upon or production from the land described in this lease. There shall be allocated to the land covered by this lease included in any such unit that portion of the total production of pooled minerals from wells in the unit, after deducting any used in lease or unit operations, which the number of surface acres in the land covered by this lease included in the unit bears to the total number of surface acres in the unit. The production so allocated shall be considered for all purposes, including the payment or delivery of royalty, to be the entire production of pooled minerals from the portion of said land covered hereby and included in said unit in the same manner as though produced from said land under the terms of this lease. Any pooled unit designated by lessee, as provided herein, may be dissolved by lessee by recording an appropriate instrument in the County where the land is situated at any time after the completion of a dry hole or the cessation of production on said unit. Lessee is further granted the right and power to commit this lease as to all or any portion of the above described lands or horizons thereof to any unit agreement for the purpose of conserving the natural resources of any oil or gas pool, field or area covered thereby; provided, such unit agreement contains usual and customary provisions for the allocation of oil and gas produced from the unit area and such unit agreement embraces lands of either the United States or State of New Mexico or both, and the form of unit agreement has been approved by either the United States Geological Survey or Commissioner of Public Lands or both and the New Mexico Oil Conservation Commission, and upon such commitment the provisions of this lease shall be conformed to the unit agreement.

6. If prior to the discovery of oil or gas hereunder, lessee should drill and abandon a dry hole or holes hereunder, or if after discovery of oil or gas the production thereof should cease for any cause, this lease shall not terminate if lessee commences reworking or additional drilling operations within 60 days thereafter and diligently prosecutes the same, or (if it be within the primary term) commences or resumes the payment or tender of rentals or commences operations for drilling or reworking on or before the rental paying date next ensuing after the expiration of three months from date of abandonment of said dry hole or holes or the cessation of production. If at the expiration of the primary term oil or gas is not being produced but lessee is then engaged in operations for drilling or reworking of any well, this lease shall remain in force so long as such operations are diligently prosecuted with no cessation of more than 60 consecutive days. If during the drilling or reworking of any well under this paragraph, lessee loses or junks the hole or well and after diligent efforts in good faith is unable to complete said operations then within 30 days after the abandonment of said operations lessee may commence another well and drill the same with due diligence. If any drilling, additional drilling, or reworking operations hereunder result in production, then this lease shall remain in full force so long thereafter as oil or gas is produced hereunder.

7. Lessee shall have free use of oil, gas and water from said land, except water from lessor's wells and tanks, for all operations hereunder, and the royalty shall be computed after deducting any so used. Lessee shall have the right at any time during or after the expiration of this lease to remove all property and fixtures placed by lessee on said land, including the right to draw and remove all casing. When required by lessor, lessee will bury all pipe lines on cultivated lands below ordinary plow depth, and no well shall be drilled within two hundred feet (200 ft.) of any residence or barn now on said land without lessor's consent. Lessor shall have the privilege, at his risk and expense, of using gas from any gas well on said land for stoves and inside lights in the principal dwelling thereon, out of any surplus gas not needed for operations hereunder.

8. The rights of either party hereunder may be assigned in whole or in part and the provisions hereof shall extend to the heirs, executors, administrators, successors and assigns; but no change or division in the ownership of the land, or in the ownership of or right to receive rentals, royalties or payments, however accomplished shall operate to enlarge the obligations or diminish the rights of lessee; and no such change or division shall be binding upon lessee for any purpose until 30 days after lessee has been furnished by certified mail at lessee's principal place of business with acceptable instruments or certified copies thereof constituting the chain of title from the original lessor. If any such change in ownership occurs through the death of the owner, lessee may pay or tender any rentals, royalties or payments to the credit of the decedent or his estate in the depository bank until such time as lessee has been furnished with evidence satisfactory to lessee as to the persons entitled to such sums. In the event of an assignment of this lease as to a segregated portion of said land, the rentals payable hereunder shall be apportioned as between the several leasehold owners ratably according to the surface area of each, and default in rental payment by one shall not affect the rights of other leasehold owners hereunder. An assignment of this lease, in whole or in part, shall, to the extent of such assignment, relieve and discharge lessee of any obligations hereunder, and, if lessee or assignee of part or parts hereof shall fail or make default in the payment of the proportionate part of the rentals due from such lessee or assignee or fail to comply with any other provision of the lease, such default shall not affect this lease in so far as it covers a part of said lands upon which lessee or any assignee thereof shall so comply or make such payments. Rentals as used in this paragraph shall also include shut-in royalty.

9. Should lessee be prevented from complying with any express or implied covenant of this lease, or from conducting drilling or reworking operations hereunder, or from producing oil or gas hereunder by reason of scarcity or inability to obtain or use equipment or material, or by operation of force majeure, or by any Federal or state law or any order, rule or regulation of governmental authority, then while so prevented, lessee's duty shall be suspended, and lessee shall not be liable for failure to comply therewith; and this lease shall be extended while and so long as lessee is prevented by any such cause from conducting drilling or reworking operations on or from producing oil or gas hereunder; and the time while lessee is so prevented shall not be counted against lessee, anything in this lease to the contrary notwithstanding.

10. Lessor hereby warrants and agrees to defend the title to said land, and agrees that lessee, at its option, may discharge any tax, mortgage, or other lien upon said land, and in the event lessee does so, it shall be subrogated to such lien with the right to enforce same and apply rentals and royalties accruing hereunder toward satisfying same. Without impairment of lessor's rights under the warranty, if this lease covers a less interest in the oil or gas in all or any part of said land than the entire and undivided fee simple estate (whether lessor's interest is herein specified or not) then the royalties, shut-in royalty, rental, and other payments, if any, accruing from any part as to which this lease covers less than such full interest, shall be paid only in the proportion which the interest therein, if any, covered by this lease, bears to the whole and undivided fee simple estate therein. Should any one or more of the parties named above as lessors fail to execute this lease, it shall nevertheless be binding upon the party or parties executing the same.

11. Lessee, its successors, heirs and assigns, shall have the right at any time to surrender this lease, in whole or in part, to lessor or his heirs, successors, and assigns by delivering or mailing a release thereof to the lessor, or by placing a release thereof of record in the county in which said land is situated; thereupon lessee shall be relieved from all obligations, expressed or implied, of this agreement as to acreage so surrendered, and thereafter the rentals and shut-in royalty payable hereunder shall be reduced in the proportion that the acreage covered hereby is reduced by said release or releases.

Executed the day and year first above written.  
Attest: Pitt P. Saunders  
Secretary

Merland, Inc.  
By: W. J. Merched  
President

Exhibit "I"



STATE OF NEW MEXICO,

INDIVIDUAL ACKNOWLEDGMENT (New Mexico Short Form)

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ by \_\_\_\_\_

My Commission expires \_\_\_\_\_, 19\_\_\_\_ Notary Public

STATE OF NEW MEXICO,

INDIVIDUAL ACKNOWLEDGMENT (New Mexico Short Form)

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ by \_\_\_\_\_

My Commission expires \_\_\_\_\_, 19\_\_\_\_ Notary Public

STATE OF NEW MEXICO,

INDIVIDUAL ACKNOWLEDGMENT (New Mexico Short Form)

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ by \_\_\_\_\_

My Commission expires \_\_\_\_\_, 19\_\_\_\_ Notary Public

STATE OF \_\_\_\_\_

INDIVIDUAL ACKNOWLEDGMENT (New Mexico Short Form)

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ by \_\_\_\_\_

My Commission expires \_\_\_\_\_, 19\_\_\_\_ Notary Public

No. _____	OIL AND GAS LEASE NEW MEXICO	FROM	TO	Date _____, 19____	Section _____, Township _____, Range _____	No. of Acres _____	County, New Mexico	Term _____	STATE OF NEW MEXICO COUNTY OF _____	I hereby certify that this instrument was filed for record on the _____ day of _____, A. D. 19____, at _____ o'clock _____ m., and was duly recorded in Book _____ at Page _____ of the Records of said County. County Clerk.	By _____ Deputy.
-----------	---------------------------------	------	----	--------------------	--	--------------------	--------------------	------------	--	--	------------------

STATE OF NEW MEXICO

CORPORATION ACKNOWLEDGMENT (New Mexico Short Form)

County of Albany

The foregoing instrument was acknowledged before me this 14 day of July, 1973 by Merland, Inc. W. W. Macintosh President of Merland, Inc. a New Mexico corporation on behalf of said corporation.

My Commission Expires: 12 May 1975 Bobbie Morgan Notary Public

STATE OF \_\_\_\_\_

CORPORATION ACKNOWLEDGMENT (New Mexico Short Form)

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ by \_\_\_\_\_, \_\_\_\_\_ President of \_\_\_\_\_ a \_\_\_\_\_ corporation on behalf of said corporation.

My Commission Expires: \_\_\_\_\_ Notary Public

Form 342 Hull-Poorbaugh Press, Roswell, N. M.

30-015-21036  
 Form C-101  
 Revised 1-1-65

NEW MEXICO OIL CONSERVATION COMMISSION  
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LAND OFFICE	
OPERATOR	

5A. Indicate Type of Lease  
 STATE  FEE

5. State Oil & Gas Lease No.

7. Unit Agreement Name

8. Farm or Lease Name  
**Morland**

9. Well No.  
**1**

10. Field and Pool, or Wildcat  
**Wildcat Delaware**

12. County  
**Eddy**

19. Proposed Depth  
**4550**

19A. Formation  
**Delaware**

20. Rotary or C.T.  
**Rotary**

21. Elevations (Show whether DF, RT, etc.)

21A. Kind & Status Plug. Bond  
**One-Well**

21B. Drilling Contractor  
**Cactus Drilling Co.**

22. Approx. Date Work will start  
**Feb. 1, 1974**

APPLICATION FOR PERMIT TO DRILL, DEEPEN OR PLUG-BACK

a. Type of Work

b. Type of Well  
 DRILL  DEEPEN  PLUG BACK   
 OIL WELL  GAS WELL  OTHER   
 SINGLE ZONE  MULTIPLE ZONE

3. Name of Operator  
**D. L. Hannifin**

3. Address of Operator  
**P. O. Box 945, Roswell, New Mexico 88201**

4. Location of Well  
 UNIT LETTER **J** LOCATED **2004** FEET FROM THE **South** LINE  
**1070** FEET FROM THE **East** LINE OF SEC. **24** TWP. **22** RGE. **26** NMPM

13. PROPOSED CASING AND CEMENT PROGRAM

SIZE OF HOLE	SIZE OF CASING	WEIGHT PER FOOT	SETTING DEPTH	SACKS OF CEMENT	EST. TOP
12 1/2"	8 5/8"	20	375	200	Surface
7 7/8"	5 1/2"	15.5	4550	500	Approx. 1800

Surface casing will be set at approx. 375 and cement circulated to surface  
 W O C time will be 18 hrs. then blowout preventers will be installed and  
 tested daily during drilling

APPROVAL VALID  
 FOR 90 DAYS UNLESS  
 DRILLING COMMENCED,  
 EXPIRES 3-10-74

IN ABOVE SPACE DESCRIBE PROPOSED PROGRAM; IF PROPOSAL IS TO DEEPEN OR PLUG BACK, GIVE DATA ON PRESENT PRODUCTIVE ZONE AND PROPOSED NEW PRODUCTIVE ZONE. GIVE BLOWOUT PREVENTER PROGRAM, IF ANY.

I hereby certify that the information above is true and complete to the best of my knowledge and belief.

Signed D. L. Hannifin Title Operator Date 11-21-73

(This space for State Use)

APPROVED BY W. A. Gressett TITLE OIL AND GAS INSPECTOR DATE DEC 10 1973

CONDITIONS OF APPROVAL, IF ANY:

Cement must be circulated to  
 surface behind 8 5/8" casing

Exhibit "2"

NEW MEXICO OIL CONSERVATION COMMISSION  
 WELL LOCATION AND ACREAGE DEDICATION PLAT

Form C-102  
 Supersedes C-128  
 Effective 1-1-65

All distances must be from the outer boundaries of the Section.

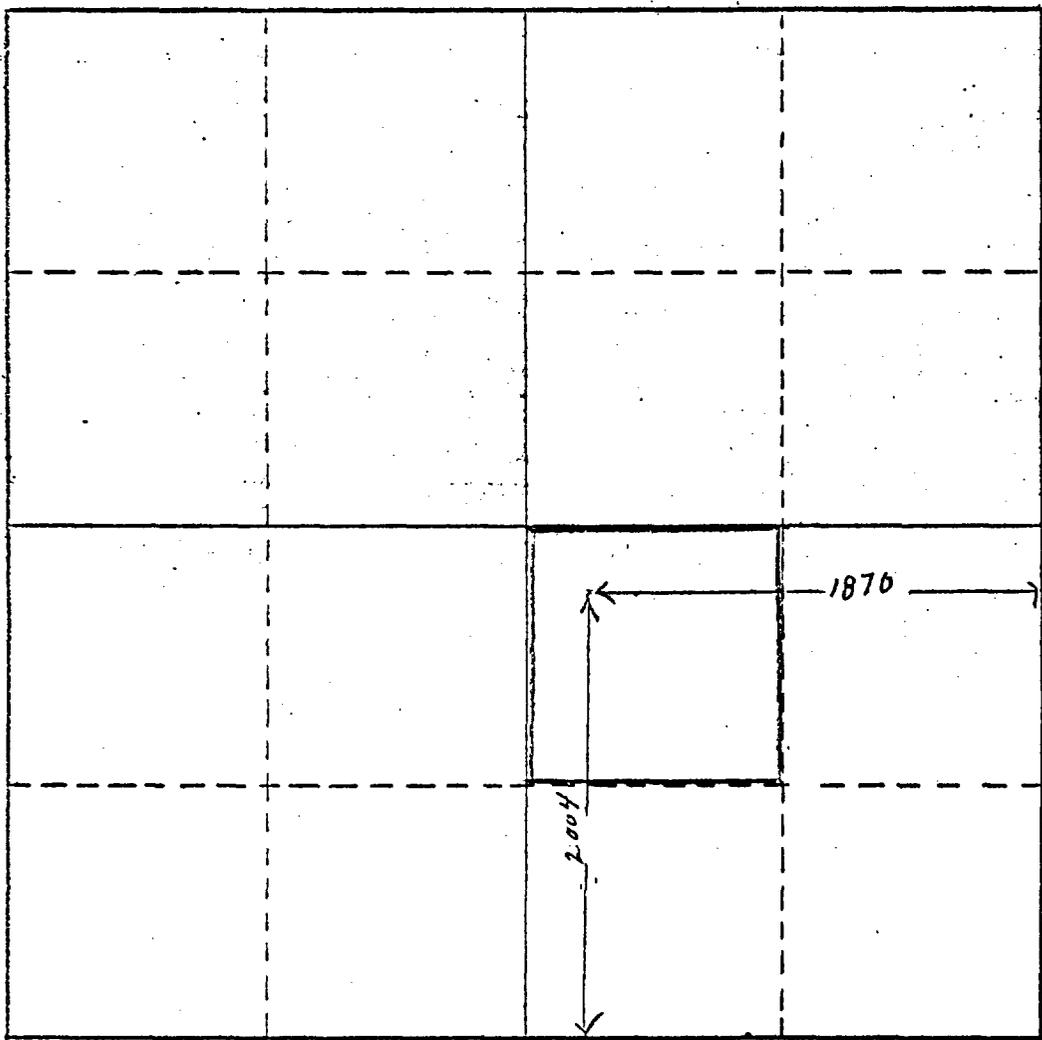
Operator <b>D. L. Hannifin</b>		Lease <b>Merland</b>		Well No. <b>1</b>
Unit Letter <b>J</b>	Section <b>24</b>	Township <b>22 S</b>	Range <b>26 E</b>	County <b>Eddy</b>
Actual Footage Location of Well: <b>1870</b> feet from the <b>east</b> line and <b>2004</b> feet from the <b>South</b> line				
Ground Level Elev.	Producing Formation <b>Delaware</b>	Pool <b>wildcat</b>	Dedicated Acreage: <b>40</b> Acres	

1. Outline the acreage dedicated to the subject well by colored pencil or hachure marks on the plat below.
2. If more than one lease is dedicated to the well, outline each and identify the ownership thereof (both as to working interest and royalty).
3. If more than one lease of different ownership is dedicated to the well, have the interests of all owners been consolidated by communitization, unitization, force-pooling, etc?

Yes  No If answer is "yes," type of consolidation \_\_\_\_\_

If answer is "no," list the owners and tract descriptions which have actually been consolidated. (Use reverse side of this form if necessary.) \_\_\_\_\_

No allowable will be assigned to the well until all interests have been consolidated (by communitization, unitization, forced-pooling, or otherwise) or until a non-standard unit, eliminating such interests, has been approved by the Commission.



CERTIFICATION

I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief.

*D. L. Hannifin*  
 Name

Position

Company

Date **11-21-73**

I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my knowledge and belief.

**Nov. 9, 1973**

Date Surveyed

*John ...*  
 Registered Professional Engineer and/or Land Surveyor

**N. M. 220**

Certificate No.



BLENDEN, MCCORMICK AND NORRID, P. A.

DICK A. BLENDEN  
MICHAEL F. MCCORMICK  
BUFORD L. NORRID

ATTORNEYS AT LAW  
P. O. DRAWER 370  
211 WEST MERRIM  
CARLSBAD, NEW MEXICO 88220

TELEPHONE 887-2803  
AREA CODE 505  
IN REPLY REFER TO:

December 7, 1973

RECEIVED

DEC 10 1973

O. C. C.  
ARTESIA, OFFICE

Mr. W. A. Gressett, Supervisor &  
Oil & Gas Inspector  
Oil Conservation Commission  
Drawer DD  
Artesia, New Mexico 88210

Dear Mr. Gressett:

This letter is to inform you that the City of Carlsbad has no objection to the following proposed location of a Hannifin well in the Sec. 24, T 22 S, R 26 E, N. M. P. M. :

A well site lying 2,004' from the South line  
and 1,870' from the East line of said section.

I am informed that that location will not interfere with the operations of the Cavern City Air Terminal. As long as the well is drilled at the above location, the City of Carlsbad has no objection to drilling permits being issued.

Very truly yours,



MICHAEL F. MCCORMICK  
City Attorney

MFMcC:br

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OPERATOR	

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NEW MEXICO OIL CONSERVATION COMMISSION

30-015-21036

Form C-101  
Revised 1-1-65

DEC 27 1973

**O. C. C.** Appended Operator  
ARTESIA, OFFICE

5A. Indicate Type of Lease  
STATE  FEE

5. State Oil & Gas Lease No.

APPLICATION FOR PERMIT TO DRILL, DEEPEN, OR PLUG BACK

1a. Type of Work DRILL <input checked="" type="checkbox"/> DEEPEN <input type="checkbox"/> PLUG BACK <input type="checkbox"/>		7. Unit Agreement Name	
b. Type of Well OIL WELL <input checked="" type="checkbox"/> GAS WELL <input type="checkbox"/> OTHER <input type="checkbox"/>		8. Farm or Lease Name <b>Morland</b>	
2. Name of Operator <b>D. L. Hannifin &amp; Joe Don Cook</b>		9. Well No. <b>1</b>	
3. Address of Operator <b>P. O. Box 945 Roswell, New Mexico 89201</b>		10. Field and Pool, or Wildcat <b>Wildcat Delaware</b>	
4. Location of Well UNIT LETTER <b>J</b> LOCATED <b>2004</b> FEET FROM THE <b>South</b> LINE AND <b>1870</b> FEET FROM THE <b>East</b> LINE OF SEC. <b>24</b> TWP. <b>22</b> RGE. <b>26</b> NMPM		12. County <b>Eddy</b>	
19. Proposed Depth <b>4550</b>		19A. Formation <b>Delaware</b>	20. Rotary or C.T. <b>Rotary</b>
21. Elevations (Show whether DF, RT, etc.)	21A. Kind & Status Plug. Bond <b>Blanket</b>	21B. Drilling Contractor <b>Cactus Drilling Co.</b>	22. Approx. Date Work will start <b>Feb. 1, 1974</b>

PROPOSED CASING AND CEMENT PROGRAM

SIZE OF HOLE	SIZE OF CASING	WEIGHT PER FOOT	SETTING DEPTH	SACKS OF CEMENT	EST. TOP
12 1/2"	8 5/8"	20	375	200	Surface
7 7/8"	5 1/2"	15.5	4550	500	Approx. 1800

Surface casing will be set at approx. 375 and cement circulated to surface  
W O C time will be 18 hrs. then blowout preventers will be installed and  
tested daily during drilling.

APPROVAL VALID  
FOR ~~90~~ DAYS UNLESS  
DRILLING COMMENCED,

EXPIRES 3-10-74

IN ABOVE SPACE DESCRIBE PROPOSED PROGRAM; IF PROPOSAL IS TO DEEPEN OR PLUG BACK, GIVE DATA ON PRESENT PRODUCTIVE ZONE AND PROPOSED NEW PRODUCTIVE ZONE. GIVE BLOWOUT PREVENTER PROGRAM, IF ANY.

I hereby certify that the information above is true and complete to the best of my knowledge and belief.

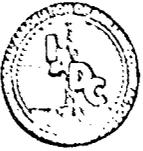
Signed Joe Don Cook Title **Operator** Date **12-21-73**

(This space for State Use)

APPROVED BY W. A. Gussert TITLE **OIL AND GAS INSPECTOR** DATE **DEC 28 1973**

CONDITIONS OF APPROVAL, IF ANY:

Cement must be circulated to  
surface behind 8 5/8" casing



INTERNATIONAL ASSOCIATION OF DRILLING CONTRACTORS  
 ROTARY DRILLING BID PROPOSAL AND CONTRACT

Rev. Feb. 1972  
 7M 2-72

Contract Numbers	Owner's
	Contractor's

TO: Cactus Drilling Company  
P.O. Box 2068,  
Hobbs, New Mexico 88240

Please submit bid on this drilling contract form for performing the work outlined below, upon the terms and for the consideration set forth, with the understanding that if the bid is accepted by

D. L. Hannifin & Joe Don Cook  
 this instrument will constitute a contract between us. Your bid should be mailed or delivered not later than - - - P.M. on January 25, 1974 to the following address:  
P.O. Box 182, Roswell, New Mexico 88201 & Box 159, Roswell, New Mexico 88201

DRILLING CONTRACT entered into between the parties designated as follows:

OWNER: D. L. Hannifin Joe Don Cook  
P.O. Box 182, P.O. Box 159  
 Address: Roswell, New Mexico 88201 Roswell, New Mexico 88201

CONTRACTOR: Cactus Drilling Company  
P.O. Box 2068,  
 Address: Hobbs, New Mexico 88240

IN CONSIDERATION OF the mutual promises and agreements herein contained and the specifications and special provisions set forth in EXHIBIT "A" attached hereto and made a part hereof, Owner engages Contractor as an independent contractor to drill the hereinafter designated well in search of oil or gas, in conformity therewith.

1. LOCATION OF WELL:

Well Name \_\_\_\_\_  
 and Number: \_\_\_\_\_  
 County: Eddy State: New Mexico

Field Name: \_\_\_\_\_  
 Well location and land description: NW of SE, Sec. 24, T-22S, R-26E

2. TIME ELEMENT: Subject to Rig availability

Contractor agrees to commence operations for the drilling of well by the 25th day of January, 1974, or within \_\_\_\_\_ days from the date of completion of roadway and other ingress or egress facilities, and the clearing and grading of location, whichever is the later date, and to thereafter prosecute operations hereunder with due diligence and without undue delays or interruptions. It is agreed by both parties that time is of the essence of this contract.

3. DEPTH:

Subject to the right of Owner to direct the stoppage of work at any time (as provided in Par. 6), the well shall be drilled to the depth as specified below:

3.1 Contract Footage Depth: The well shall be drilled to 4600 feet or Delaware formation, or to the depth at which the \_\_\_\_\_ inch casing (oil string) is set, whichever depth is first reached, on a footage basis and Contractor is to be paid for such drilling at the footage rate specified below, which depth is hereinafter referred to as the contract footage depth.

3.2 Day Work Basis Drilling: All drilling below the above specified contract footage depth shall be on a day work basis and Contractor shall be paid for such drilling at the applicable day work rate specified below.

3.3 Complete Day Work Basis Drilling: If all operations hereunder are performed at applicable day work rates, provisions of this contract applicable to drilling on a "footage basis" shall not apply.

3.4 Maximum Depth: Contractor shall not be required to drill said well under the terms of this contract below a maximum depth of 4600 feet.

4. FOOTAGE RATE, DAY WORK RATES, BASIS OF DETERMINING AMOUNTS PAYABLE TO CONTRACTOR:

Owner agrees to pay Contractor for the work performed, services rendered, and material, equipment, and supplies furnished by Contractor a sum computed on the following rates:

4.1 For work performed on a footage basis the rate will be \$6.05 per linear foot of hole drilled determined by steel line measurement from the surface of the ground if Contractor digs cellar, or from the bottom of the cellar if Owner digs cellar, less footage made in regular size hole while working on day work basis.

4.2 For work performed on a day work basis the day work rate per twenty-four hour day with 4 man crew shall be:

	Without Drill Pipe		With Drill Pipe	
	Per Day	Per Hour	Per Day	Per Hour
From Surface To Depth Of <u>4600</u> ft.	\$ <u>1,350.00</u>	\$ <u>56.25</u>	\$ <u>1,450.00</u>	\$ <u>60.417</u>
From _____ ft. To _____ ft.	\$ _____	\$ _____	\$ _____	\$ _____
From _____ ft. To _____ ft.	\$ _____	\$ _____	\$ _____	\$ _____
From _____ ft. To _____ ft.	\$ _____	\$ _____	\$ _____	\$ _____

Exhibit "3"

Stand By Time Rate: \$ 1200.00 Per Day \$ 50.00 Per Hour

If under the above column "With Drill Pipe" no day work rate is specified, then the day work rate per 24-hour day when drill pipe is in use shall be the applicable day work rate specified above under the column "Without Drill Pipe" plus compensation for additional expense in an amount equal to (a)        cents per foot per day on        inch drill pipe, and (b)        cents per foot per day on        inch drill pipe, computed on the basis of the maximum drill pipe in use at any time during each 24-hour day.

Drill pipe shall be considered in use not only when in actual use but also while it is being picked up or laid down. When drill pipe is standing in the derrick it shall not be considered in use, provided, however, that if Contractor furnishes special strings of drill pipe, drill collars, and handling tools as provided for in Par. 7.13 and 7.14 of Exhibit "A", attached hereto and made a part hereof, the same shall be considered in use at all times when on location or until released by Owner. If Contractor is drilling with Owner's tubing, or drill pipe, the charge on the day work rate basis shall be construed as without drill pipe unless otherwise specified in Par. 25. In no event shall fractions of an hour be considered in computing the amount of time drill pipe is in use but such time shall be computed to the nearest hour, with thirty minutes or more being considered a full hour and less than thirty minutes not to be counted.

4.3 Work Stoppage Rate: \$ NA Per Day \$     Per Hour

The above rate shall apply under the following circumstances:

(a) During any continuous period that normal operations are suspended or cannot be carried on due to weather, water conditions, or due to Federal, State or Local governmental action. It is understood, however, that Owner shall have the right to release the rig in accordance with Owner's right to direct stoppage of the work (See Par. 6), effective when conditions will permit the rig to be moved from the location.

(b) During any period when Contractor has notified Owner that the rig is available for movement to the drilling site and movement cannot be accomplished because of Owner's failure or inability to furnish and/or maintain adequate roadway and/or canal to location and/or location and/or weather prevents positioning the rig on a water location drill site.

(c) During any period after operations under this Contract have been completed and Owner has released the rig and the same cannot be dismantled and/or transported from the location due to inadequate roadway or canal or weather or water conditions which will not allow such activity to be conducted with reasonable safety.

4.4 In the event it is necessary to shut down Contractor's rig for repairs or maintenance while Contractor is performing day work hereunder, Contractor shall be allowed compensation at the applicable day work rate for such shut down time up to a maximum of 4 hours for any one repair or maintenance job. **24 Hours per month**

4.5 Standby time shall be defined as the time when the rig is shut down although in readiness to begin or resume operations but Contractor is waiting on orders of Owner or on materials, services or other items to be furnished by Owner.

4.6 Owner shall reimburse Contractor for the costs of material, equipment, work, or services which are to be furnished by Owner as provided for herein but which for convenience are actually furnished by Contractor at Owner's request.

4.7 The term day work shall apply to the work performed by the Contractor at a stipulated sum per day as distinguished from work for which the Contractor is compensated at a stipulated price per foot of hole drilled. Unless otherwise provided herein, the term day work shall include the following work performed by the Contractor: (a) All drilling below the contract footage depth as provided in Par. 3.1, including the setting of any string of casing below such depth; (b) All work performed by the Contractor, whether or not prior to reaching the contract footage depth, in an effort to restore the hole to such condition that further drilling or other operations may be conducted, in the event of loss of or damage to the hole as a result of the failure of Owner's casing or equipment either during or after the running and setting of such casing or as a result of the subsequent failure of the cementing job resulting in parted casing; (c) All other work performed by Contractor at the request of Owner, regardless of depth, which is not within the scope of the work to be performed on a footage basis, including all coring, drill stem testing, bailing, gun or jet perforating, electric logging, acid treatment, shooting, cleaning out, hydraulic fracturing, plugging, running tubing, setting liners, squeeze cementing, abandoning well and installation of well head equipment.

4.8 In determining the amount of day work time for which the Contractor is to be compensated at the applicable day work rate, it is agreed that such day work time shall begin when Contractor at the request of Owner suspends normal drilling operations being conducted on a footage basis for the purpose of conducting operations to be performed hereunder on a day work basis. There shall be included in day work time any time required to condition the hole preparatory to performing such day work and also the time required to restore the hole to the same drilling conditions which existed when operations were suspended for the purpose of beginning day work, in order to again resume normal drilling operations.

#### 5. TIME OF PAYMENT:

Subject to Owner's right to require that Contractor furnish him with satisfactory evidence that Contractor has paid all labor and material claims chargeable to Contractor, payment becomes due by Owner to Contractor as follows:

5.1 If the well is drilled to total depth on a footage basis, payment becomes due for all services (footage and day work) when Contractor completes the performance of the services which he agrees to perform under this contract and the acceptance thereof by the Owner; provided, however, if Contractor prior to the completion of the contract performs a substantial amount of day work, payment for such day work shall be due and payable upon presentation of invoice therefor at the end of the month in which such day work was performed.

5.2 If the entire hole or the bottom section of the hole is drilled on a day work basis, payment shall become due as follows: Upon Contractor's completion of the footage basis drilling to the depth specified above and upon acceptance by the Owner of the hole as drilled to such depth in accordance with this agreement, payment becomes due for all footage drilled and for all work performed on a day work basis to the date of completion of the footage drilled. Payment for drilling and other work performed at day work rates below the depth specified at which day work basis drilling commences shall become due upon acceptance by Owner of the work performed in accordance with this contract upon presentation of invoice therefor upon completion of the well or at the end of the month in which such day work was performed, whichever shall first occur.

5.3 Any sum or sums not paid within 30 days after the due date hereinabove specified shall bear interest at the rate of 1 percent ~~xxx~~ above prime from such date until paid.

#### 6. STOPPAGE OF WORK BY OWNER OR CONTRACTOR:

6.1 OWNER'S RIGHT: Notwithstanding the provisions of Paragraph 3 with respect to the depth to be drilled, the Owner shall have the right to direct the stoppage of the work to be performed by the Contractor hereunder at any time prior to reaching the specified depth, and even though Contractor has made no default hereunder, and in such event Owner shall be under no obligation to Contractor except as set forth in subparagraph 6.3 hereof.

6.2 CONTRACTOR'S RIGHT: Notwithstanding the provision of Paragraph 3 with respect to the depth to be drilled, in the event the Owner shall become insolvent, or be adjudicated a bankrupt, or file, by way of petition or answer, a debtor's petition or other pleading seeking adjustment of Owner's debts, under any bankruptcy or debtor's relief laws now or hereafter prevailing, or if any such be filed against the Owner, or in case a receiver be appointed of the Owner or Owner's property, or any part thereof, or the Owner's affairs be placed in the hands of a Creditor's Committee, Contractor may, at his option, elect to terminate further performance of any work under this contract and Contractor's right to compensation shall be as set forth in subparagraph 6.3 hereof. In addition to Contractor's right to terminate performance hereunder, Owner hereby expressly agrees to protect, indemnify and save Contractor harmless from any claims, demands and causes of action, including all costs of defense, in favor of Owner, Owner's joint venturers, or other parties arising out of any drilling commitments or obligations contained in any lease, farmout agreement or other agreement, which may be affected by such termination of performance hereunder.

6.3 (a) If such work stoppage occurs prior to the spudding of the well, Owner shall pay to Contractor the sum of the following: (1) all expenses reasonably and necessarily incurred and to be incurred by Contractor by reason of the contract and by reason of the premature stoppage of the work, excluding, however, expenses of normal drilling crew and supervision; (2) ten percent (10%) of the amount of such reimbursable expenses; and (3) a sum calculated at the standby rate for all time from the date upon which Contractor commences any operations hereunder down to such date subsequent to the date of work stoppage as will afford Contractor reasonable time to dismantle his rig and equipment.

(b) If such work stoppage occurs after the spudding of the well, Owner shall pay the Contractor (1) the amount owing Contractor at the time of such work stoppage under the footage rate, applicable day work rate, and standby rate; but in such event Owner shall pay Contractor for a minimum footage of 3680 feet regardless of whether or not the well has been drilled to such depth at the time of work stoppage; or (2) at the election of Contractor and in lieu of the foregoing Owner shall pay Contractor for all expenses reasonable and necessarily incurred and to be incurred by Contractor by reason of this contract and by reason of the premature stoppage of work plus the sum of \$ 3,339.60.

#### 7. OPTIONAL RIGHT OF OWNER IN THE EVENT OF DEFAULT BY CONTRACTOR:

In the event Owner is dissatisfied with the performance of Contractor hereunder on account of unreasonably slow progress or incompetency in the performance of the contract as a result of causes reasonably within the control of Contractor, Owner shall give Contractor written notice in which Owner shall specify in detail the cause of his dissatisfaction. Should Contractor fail or refuse to remedy the matters complained of within five days after the written notice is received by Contractor, Owner shall have the right at his option to take over the operation of Contractor's equipment for the purpose of completing the drilling of the well. Should such drilling operation be taken over by the Owner, the cost of the operations conducted by Owner, without any allowance to Contractor for the use of drilling tools, machinery, and appliances of Contractor, shall be deducted from the contract price calculated in accordance with the terms of this contract as though Contractor had completely performed said contract; and the balance, if any, shall be paid to Contractor. Owner shall return such drilling tools, machinery, and appliances to Contractor when drilling of said well has been completed in as good condition as when taken over by Owner, normal wear and tear excepted. In event drilling operations are taken over by Owner as herein provided, all operations thereafter conducted shall be at risk of Owner and indemnity provisions of this contract shall not apply to such operations by Owner.

#### 8. CASING PROGRAM:

8.1 The casing program to be followed in the drilling of said well is set forth in Exhibit "A", and the Contractor shall drill a well sufficient in size to set at the approximate depth therein indicated the size of casing so specified. The exact setting depths for each string of casing shall be specified by the Owner. The Owner may modify said casing program provided any modification thereof which materially increases the Contractor's hazards or costs of performing his obligations hereunder can only be made by mutual consent of Contractor and Owner.

8.2 The setting of any string of casing within the footage contract depth shall be performed by Contractor and the compensation payable to Contractor at the footage rate shall cover such work, which work shall include rig time for cementing casing, testing cement jobs on each string of casing, and the time required by governmental regulatory authorities having jurisdiction thereof or as directed by Owner for allowing cement to set. If, however, time so required is in excess of "allowed cement time" as specified in Par. 1 of Exhibit "A", all work performed and time consumed in cementing or recementing and for allowing cement to set shall be paid for at applicable day work rate. Allowed cement time will start at the time the plug hits bottom.

8.3 The setting of any string of casing below the footage contract depth shall be performed by Contractor under the direction of Owner but Owner shall pay Contractor for all time so consumed at the applicable day work rate.

8.4 Before each string of casing is run, Contractor agrees to condition the walls of the hole if necessary, so that the hole is free from obstructions which might impede the lowering of the casing. Contractor agrees to keep thread protectors on the casing until it is run and to grease the threads as it is made up with a suitable pipe lubricant furnished by Owner.

8.5 Owner reserves the right to require Contractor to set strings of casing or liners in addition to those listed (subject to the limitations upon Owner's right to modify the casing program as provided for in Par. 8.1) and in such event Contractor agrees to provide rig time for cementing and testing cement on such liners and strings of casing and to provide rig time for performing cement squeezing jobs as required by Owner. Owner shall pay Contractor for time consumed by such work at the applicable day work rate.

#### 9. LABOR, EQUIPMENT, MATERIALS, SUPPLIES, AND SERVICES:

The furnishing of labor, equipment, appliances, materials, supplies, and services of whatever character necessary or proper in the drilling and completion of said well and not otherwise specifically provided for herein shall be furnished by Contractor or Owner as specified in Exhibit "A" attached hereto and made a part hereof.

#### 10. DRILLING METHODS AND PRACTICES:

10.1 Contractor agrees to perform all work to be conducted by him under the terms of this contract with due diligence and care and in a good and workmanlike manner and shall provide a competent superintendent to supervise the work.

10.2 Contractor shall maintain well control equipment in good condition at all times and shall use all reasonable means to control and prevent fires and blow-outs and to protect the hole.

10.3 Subject to the terms hereof, at all times during the drilling of the well, Owner shall have the right to control the mud program, and the drilling fluid must be of a type and have characteristics acceptable to Owner and be maintained by Contractor in accordance with the specifications shown in Par. 2 of Exhibit "A". No change or modification of said specifications which materially increases the Contractor's hazards or costs of performing his obligations hereunder shall be made by Owner without consultation with and consent of the Contractor. Owner shall have the right to make any tests of the drilling fluid which may be necessary. Should no mud control program be specified by Owner in Exhibit "A", Contractor shall have the right to determine the mud program and the type and character of drilling fluid during the time that Contractor is performing work upon a footage basis under the terms of this contract.

10.4 Contractor shall measure the total length of drill pipe in service with a steel tape at the point where the contract footage depth has been reached; and when requested by Owner, before setting casing or liner and after reaching final depth.

10.5 Contractor agrees to furnish equipment, workmen and instruments acceptable to owner and to make slope tests as provided in the Exhibit "A". Unless operations are on a day-work basis, all such slope tests shall be made at contractor's sole risk, cost and expense. If, in the opinion of the owner, it becomes advisable to obtain the use of an additional slope test instrument and accessory equipment for the purpose either of checking previous readings or of determining the direction of the drift, the rental charges therefor shall be paid by owner, and the running of same shall be on a day-work basis. Should the hole at any depth during the time contractor is performing work on a footage basis, have either a deviation from vertical or a change in over-all angle in excess of the limits prescribed in Exhibit "A", Contractor agrees to restore the hole to a condition suitable to the owner either by conventional methods and procedures while drilling ahead or by cementing off and re-drilling. While operations are being performed on a "Day Work Basis", or during "Complete Day Work Basis Drilling", contractor agrees to exercise due diligence and care to maintain the straight hole specifications, if any, set forth in paragraph "3" of Exhibit "A" but all risk and expense of maintaining such specifications or restoring the hole to a condition suitable to the Owner shall be assumed by Owner.

#### 11. COMPLETION TESTS AND INSTALLATION OF WELL CONNECTIONS OR ABANDONMENT:

Contractor will either complete the well and install well head equipment and connections or plug and abandon same, in accordance with Owner's instructions, at the applicable rates set forth in Par. 4 above, using equipment, materials and services to be furnished and paid for by either Owner or Contractor as specified in Exhibit "A".

#### 12. CORING AND CUTTINGS:

12.1 As directed by Owner and utilizing the type of coring equipment specified and furnished as shown in Exhibit "A" Contractor agrees at any time to take either rat-hole or full hole conventional or wire line cores in the manner requested by Owner. Regardless of depth, all coring shall be paid for at the applicable day work rate. All coring footage shall be deducted from the total footage charge if the well is being drilled on footage basis at that depth. Reaming of the rat-hole shall be paid for at the applicable day work rate.

12.2 When requested by Owner, Contractor shall save and identify the cuttings and cores, free from contamination, and place them in separate containers which shall be furnished by the Owner; such cuttings and cores shall be made available to a representative of Owner at the location.

**13. FORMATIONS DIFFICULT OR HAZARDOUS TO DRILL:**

13.1 In the event chert, pyrite, quartzite, granite, igneous rock or other impenetrable substance, is encountered while drilling on the footage basis and the footage drilled during each twenty-four (24) hour period multiplied by the footage rate does not equal the applicable day work rate plus cost of bits, all drilling operations shall be conducted on a day work basis at the applicable day work rate, with Owner furnishing the bits, until normal drilling operations and procedures can be resumed. The footage drilled on day work rate shall be deducted from the footage charge.

13.2 In the event water flow, domal formation, abnormal, pressure, underground mine or cavern, heaving shale, or other similar formation, salt or other similar condition is encountered which makes drilling abnormally difficult or hazardous, causes sticking of drill pipe or casing, or other similar difficulty which precludes drilling ahead under reasonably normal procedures, Contractor shall, in all such cases, without undue delay, exert every reasonable effort to overcome such difficulty. When such condition is encountered, further operations shall be conducted on a day work basis at the applicable day work rate until such conditions have been overcome and normal drilling operations can be resumed. Owner shall assume the risk of loss of or damage to the hole and to Contractor's equipment in the hole from the time such condition is encountered. The footage drilled while on day work basis shall be deducted from the footage charge.

13.3 In the event loss of circulation or partial loss of circulation is encountered, Contractor shall, without undue delay, exert every reasonable effort to overcome such difficulty. When such condition is encountered, Owner shall assume risk of loss of or damage to the hole and to Contractor's equipment in the hole. Should such condition persist in spite of Contractor's efforts to overcome it, then after a period of 12 hours time consumed in such efforts, further operations shall be conducted on a day work basis at the applicable day work rate until such condition has been overcome and normal drilling operations can be resumed. The total rig time furnished by Contractor under the terms of this paragraph shall be limited to a cumulative 12 hours. The footage drilled while on day work basis shall be deducted from the footage charge.

**14. REPORTS TO BE FURNISHED BY CONTRACTOR:**

14.1 Contractor shall keep and furnish to Owner an accurate record of the work performed and formations drilled on the IADC-API Daily Drilling Report Form or other form acceptable to Owner. A legible copy of said form signed by Contractor's representative shall be furnished by Contractor to Owner.

14.2 Delivery tickets covering any material or supplies furnished by Owner shall be turned in each day with the daily drilling report. The quantity, description, and condition of materials and supplies so furnished shall be checked by Contractor and such tickets shall be properly certified by Contractor.

**15. INGRESS AND EGRESS TO LOCATION:**

Owner hereby assigns to Contractor Owner's rights of ingress and egress with respect to the tract of land where the well is to be located for the performance by Contractor of all work contemplated by this contract. Should the Contractor be denied free access to the location for any reason not reasonably within the Contractor's control, any time lost by the Contractor as a result of such denial shall be paid for at a reasonable rate in keeping with the stage of operations at that time. In the event there are any restrictions, conditions, or limitations in Owner's lease which would affect the free right of ingress and egress to be exercised by Contractor hereunder, its employees, or subcontractors, Owner agrees to timely advise Contractor in writing with respect to such restrictions, conditions, or limitations, and Contractor agrees to observe same.

**16. INSURANCE:**

During the life of this contract, Contractor shall at Contractor's expense maintain, with an insurance company or companies authorized to do business in the state where the work is to be performed and satisfactory to Owner, insurance coverages of the kind and in the amounts set forth in Exhibit "A". Contractor shall, if requested to do so by Owner, procure from the company or companies writing said insurance a certificate or certificates satisfactory to Owner that said insurance is in full force and effect and that the same shall not be cancelled or materially changed without Ten (10) days prior written notice to Owner.

**17. PAYMENT OF CLAIMS:**

Contractor agrees to pay all claims for labor, material, services, and supplies to be furnished by Contractor hereunder, and agrees to allow no lien or charge to be fixed upon the lease, the well, or other property of the Owner or the land upon which said well is located.

**18. RESPONSIBILITY FOR LOSS OR DAMAGE:**

18.1 Contractor's Surface Equipment: Contractor shall assume liability at all times, regardless of whether the work is being performed on a footage basis or day work basis, for damage to or destruction of Contractor's surface equipment, including but not limited to all drilling tools, machinery, and appliances, for use about the surface, regardless of when or how such damage or destruction occurs, except for such loss or damage as provided in Paragraph 18.4 herein, and Owner shall be under no liability to reimburse Contractor for any such loss except loss or damage thereto caused by gross negligence or willful acts or omissions of Owner or Owner's agents, servants, or employees or any loss or damage thereto occurring during the time that the operation of Contractor's equipment has been taken over by Owner as provided for in Par. 7 hereof.

18.2 Contractor's In-Hole Equipment—Footage Basis: Contractor shall assume liability at all times while work is being performed on a footage basis for damage to or destruction of Contractor's in-hole equipment, including but not limited to, drill pipe, drill collars, and tool joints, and Owner shall be under no liability to reimburse Contractor for any such loss except loss or damage thereto caused by gross negligence or willful acts or omissions of Owner or Owner's agents, servants, or employees or any loss or damage thereto occurring during the time that the operation of Contractor's equipment has been taken over by Owner as provided for in Par. 7, and except as provided for in Paragraphs 13.2 and 18.4.

18.3 Contractor's In-Hole Equipment—Day Work Basis: Owner shall assume liability at all times while work is on a day work basis for damage to or destruction of Contractor's in-hole equipment, including but not limited to, drill pipe, drill collars, and tool joints, and Owner shall reimburse Contractor for the actual cash value of any such loss or damage provided such loss or damage is not due to the negligence of Contractor, his agents, servants or employees.

18.4 Contractor's Equipment-Environmental Loss or Damage: Owner shall assume liability at all times for damage to or destruction of Contractor's equipment caused by exposure to unusually corrosive or otherwise destructive elements not normally encountered which are introduced into the drilling fluid from subsurface formations or the use of corrosive additives in the fluid due to conditions not normally contemplated at the time this contract was entered into by the parties. In calculating the amount of the loss caused by such damage or destruction the parties hereby agree that the same shall be determined by the difference in the value of the equipment prior to such damage or destruction and the value immediately thereafter. The value of the equipment immediately after the damage or destruction shall be determined by a competent independent appraisal or by good faith, arms length sale of the salvaged equipment. The value of the equipment prior to such damage or destruction shall be that amount in actual cash required to replace such equipment with that of like, kind, grade quality and quantity or to restore such equipment to its prior condition. Owner may, at his option, elect to pay such loss by the actual purchase of the replacement equipment and take the salvage, or in the event of repair or restoration, to pay the actual cost thereof.

18.5 Owner's Equipment: Owner shall assume liability at all times for damage to or destruction of Owner's equipment, including but not limited to casing, tubing, well head equipment, and tankage, and Contractor shall be under no liability to reimburse Owner for any such loss or damage except that due to negligence of Contractor, his agents, servants and employees.

18.6 The Hole—Footage Basis: Subject to the provisions of Par. 13 hereof (relating to formations difficult or hazardous to drill and to loss of circulation) should a fire or blow-out occur or should the hole for any cause attributable to Contractor's operations be lost or damaged while Contractor is engaged in the performance of work hereunder on a footage basis, all such loss of or damage to the hole shall be borne by the Contractor; and if the hole is not in condition to be carried to the contract depth as herein provided, Contractor shall, if requested by Owner, commence a new hole without delay at Contractor's cost; and the drilling of the new hole shall be conducted under the terms and conditions of this contract in the same manner as though it were the first hole. In such case Contractor shall not be entitled to any payment or compensation for expenditures made or incurred by Contractor on or in connection with the abandoned hole, except for day work earned in coring, testing, and logging said well for which Contractor would have been compensated had such hole not been junked and abandoned.

Notwithstanding the foregoing provisions, if the hole is lost or damaged without negligence on the part of the Contractor but as a result of the failure of Owner's casing or equipment either during or after the running and setting of such casing, or as a result of subsequent failure of the cementing job resulting in parted casing, such loss shall be borne by the Owner and Contractor shall nevertheless be paid: (a) For all footage drilled and other work performed by Contractor prior thereto; (b) For work performed in an effort to restore the hole to such condition as that further drilling or other operations may be conducted at the applicable day work rate; and (c) The cost of dismantling the rig and moving to and rigging up Contractor's equipment prior to starting the drilling of a new hole at a location designated by Owner if such be required. The work of drilling the new hole shall be performed by the Contractor under the terms and conditions of this contract.

18.7 The Hole—Day Work Basis: In the event the hole should be lost or damaged while Contractor is working on a day work basis or as a result of work performed on a day work basis unless such loss or damage is caused by negligence of Contractor, his agents, servants, or employees, Owner shall be responsible for any such loss of or damage to the hole.

18.8 Underground Damage: Owner agrees to indemnify Contractor for any and all sums which Contractor shall become liable by final judgment to pay for damages resulting from operations under this contract on account of injury to, destruction of, or loss or impairment of any property right in or to oil, gas, or other mineral substance or water, if at the time of the act or omission causing such injury, destruction, loss, or impairment, said substance had not been reduced to physical possession above the surface of the earth, and for any loss or damage to any formation, strata, or reservoir beneath the surface of the earth.

18.9 Inspection of Materials Furnished by Owner: Contractor agrees to inspect all materials furnished by Owner before using same and to notify Owner of any apparent defects therein; and Contractor's use of such materials without notifying Owner shall be conclusive evidence that such materials were free from apparent defects. Contractor shall not be liable for any loss or damage resulting from the use of materials furnished by Owner containing latent defects.

18.10 Indemnity by Contractor: Contractor agrees to protect, indemnify, and save harmless the Owner from and against all claims, demands, and causes of action in favor of Contractor's employees or third parties on account of personal injuries or death or on account of property damages (other than property damages as in this Par. 18 specifically provided for) arising out of the work to be performed by Contractor hereunder and resulting from the negligent acts or omissions of Contractor, Contractor's agents, employees, and subcontractors.

18.11 Indemnity by Owner: Owner agrees to protect, indemnify, and save harmless, the Contractor from and against all claims, demands and causes of action in favor of Owner's employees or third parties on account of personal injuries or death or on account of property damages (other than property damages as in this Paragraph 18 specifically provided for) arising out of work performed by Owner, Owner's agents, employees, and contractors or subcontractors (other than the contractor under this Contract) or equipment furnished in connection therewith and resulting from the negligent acts or omissions of such Owner, Owner's agents, employees, contractors or subcontractors.

18.12 Pollution and Contamination: Notwithstanding anything to the contrary contained herein, it is understood and agreed by and between the Contractor and Owner that the responsibility for pollution or contamination shall be as follows:

(a) The Contractor shall assume all responsibility for, including control and removal of, and protect, defend and save harmless the Owner from and against all claims, demands and causes of action of every kind and character arising from pollution or contamination, which originates above the surface of the land or water from spills of fuels, lubricants, motor oils, normal water base drilling fluid and attendant cuttings, pipe dope, paints, solvents, ballast, bilge and garbage wholly in Contractor's possession and control and directly associated with Contractor's equipment and facilities.

(b) The Owner shall assume all responsibility for, including control and removal of, protect, defend and save the Contractor harmless from and against all claims, demands, and causes of action of every kind and character arising from all other pollution or contamination which may occur during the conduct of operations hereunder, including but not limited to, that which may result from fire, blowout, cratering, seepage or any other uncontrolled flow of oil, gas, water or other substance, as well as, the use or disposition of oil emulsion, oil base or chemically treated drilling fluids, contaminated cuttings oravings, lost circulation and fish recovery materials and fluids.

(c) In the event a third party commits an act or omission which results in pollution or contamination for which either the Contractor or Owner, for whom such party is performing work, is held to be legally liable, the responsibility therefor shall be considered, as between the Contractor and the Owner, to the same as if the party for whom the work was performed had performed the same and all of the obligations respecting defense, indemnity, holding harmless and limitation of responsibility and liability, as set forth in (a) and (b) above, shall be specifically applied.

#### 19. INDEPENDENT CONTRACTOR RELATIONSHIP:

19.1 In the performance of the work herein contemplated on a "footage basis", Contractor is an independent contractor, with the authority to control and direct the performance of the details of the work, Owner being only interested in the results obtained. The work on such "footage basis" shall meet the approval of Owner and be subject to the right of inspection and supervision herein provided. Owner shall not unreasonably withhold approval of all such work, when performed by Contractor in accordance with the generally accepted practices and methods customary in the industry. Contractor agrees to comply with all laws, rules, and regulations, federal, state, and local, which are now, or may in the future become applicable to Contractor, Contractor's business, equipment, and personnel engaged in operations covered by this contract or accruing out of the performance of such operations; provided, however, as between the Owner and Contractor specific provisions herein contained respecting the risk and responsibility for such compliance shall be controlling.

19.2 When operations hereunder are being conducted on a "day work" basis or all the work contemplated is on a "complete day work" basis, the work shall be conducted in accordance with the orders and directions of the Owner. In the event Owner fails to direct the performance of the work and allows Contractor to perform the same in accordance with the generally accepted methods and practices customary in the industry, it shall be conclusively presumed that Contractor acted and performed the work in the same manner as would have been the case had Owner exercised his right to direct and control it. The specific provisions contained herein with respect to risk of loss and responsibility while on a "day work" basis shall be controlling.

19.3 Owner shall be privileged to designate a representative or representatives who shall at all times have access to the premises for the purpose of observing tests or inspecting the work of the Contractor. Such representative or representatives shall be empowered to act for Owner in all matters relating to the work herein undertaken and Contractor shall be entitled to rely on the orders and directions issued by such representative or representatives as being those of the Owner.

#### 20. NO WAIVER EXCEPT IN WRITING:

It is fully understood and agreed that none of the requirements of this contract shall be considered as waived by either party unless the same is done in writing, and then only by the persons executing this contract, or other duly authorized agent or representative of the party.

#### 21. FORCE MAJEURE:

Neither Owner nor Contractor shall be liable to the other for any delays or damage or any failure to act due, occasioned or caused by reason of federal or state laws or the rules, regulations, or orders of any public body or official purporting to exercise authority or control respecting the operations covered hereby, including the procurement or use of tools and equipment, or due, occasioned or caused by strikes, action of the elements, or causes beyond the control of the party affected thereby; and any delay due to the above causes or any of them shall not be deemed to be a breach of or failure to perform this contract or any part thereof. Provided, however, nothing herein contained shall abrogate the obligation of Owner to pay Contractor the "Work Stoppage" rates as set forth in Paragraph 4.3 above.

#### 22. INFORMATION CONFIDENTIAL:

All information obtained by the Contractor in the conduct of drilling operations on this well, including, but not limited to, depth, formations penetrated, the results of coring, testing, and surveying, shall be considered confidential and shall not be divulged by Contractor, or his employees, to any person, firm, or corporation other than Owner's designated representatives.

#### 23. ASSIGNMENT OF CONTRACT:

Contractor agrees not to sublet or assign this contract except for work normally performed by subcontractors without the written consent of the Owner.

24. NOTICES AND PLACE OF PAYMENT:

All notices to be given with respect to this contract unless otherwise provided for shall be given to the Contractor and to the Owner respectively at the addresses hereinabove shown. All sums payable hereunder to Contractor shall be payable at his address hereinabove shown unless otherwise specified herein.

25. ARBITRATION:

Every controversy or claim arising out of or relating to this Contract, or the alleged breach thereof, will be settled by arbitration according to the law pursuant to the rules then obtaining of the American Arbitration Association, and judgment upon the award so rendered may be entered in any court having jurisdiction thereof.

26. SPECIAL PROVISIONS:

Any down time due to fuel shortages at the supplier to be at Daywork rates - standby time w/Crew. Rates subject to change at discretion of Contractor due to any increases in price of fuel. Current prices are: \$.304 for Diesel, and \$.262 for Butane.

If well is unproductive, casing is not run, and Owner elects to P & A, Contractor will furnish eight (8) hours rig time to P & A.

Contractor to pay 4% New Mexico School Tax applicable to Footage Rates.

27. ACCEPTANCE OF CONTRACT:

This instrument shall not become a binding contract until Owner has noted its acceptance and Owner shall be under no obligation to Contractor until such acceptance has been noted and a fully executed copy of this agreement sent to Contractor. Contractor will sign all copies of this instrument and return all but one signed copy to Owner.

Owner D. L. Hannifin & Joe Don Cook

By *D. L. Hannifin*

The foregoing contract is accepted by the undersigned as Contractor this 22nd day of January, 1974, subject to rig availability, and subject to all of its terms and provisions, with the understanding that it will not be binding upon Owner until Owner has noted its acceptance, and with further understanding that unless said contract is thus executed by Owner within days of the above date Contractor shall be in no manner bound by its signature thereto.

Contractor Cactus Drilling Company

By *Ronald R. Anderson*

Ronald R. Anderson

Title Contact Representative

Accepted this 22nd day of January

1974, which is effective date of this agreement.

Owner D. L. Hannifin & Joe Don Cook

By *D. L. Hannifin & Joe Don Cook*

Title \_\_\_\_\_

**EXHIBIT "A"**

To Drilling Contract dated January 22, , 19 74 .

Owner D. L. Hannifin Contractor Cactus Drilling Company

Well Name and Number \_\_\_\_\_

**SPECIFICATIONS AND SPECIAL PROVISIONS**

**1. CASING PROGRAM (See Par. 8)**

	Size	Weight	Approx. Setting Depth	To Be Set By	Allowed Cement Time Footage
	in.	lbs./ft.	ft.		hours
Conductor	<u>8 5/8</u>		<u>375</u>	<u>Contractor</u>	<u>12</u>
Surface					
Protection					
Oil String	<u>5 1/2</u>		<u>4600</u>	<u>Contractor</u>	<u>0</u>
Liner					
Tubing					

**2. MUD CONTROL PROGRAM (See Par. 10.3)**

Depth Interval (ft)		Type Mud	Weight (lbs./gal.)	Viscosity (Secs)	Water Loss (cc)
From	To				
<u>0</u>	<u>4600'</u>	<u>For Hole Control Only</u>			

It is understood that in the event it becomes necessary to discontinue drilling operations and to suddenly raise the mud weight 1.0 lb. per gallon above the weight currently being used OR to raise the mud weight at any time to 11.0 lbs. per gallon, it will conclusively constitute "Abnormal Pressure" as that term is employed in Paragraph 13.2 of the Contract. Operations will thereafter go forward under the terms of such provision (13.2) until such condition has been overcome; the well is under control and the mud system stabilized at a weight less than 11.0 lbs. per gallon, so as to permit normal drilling operations to be resumed.

Other mud specifications: \_\_\_\_\_

**3. STRAIGHT HOLE SPECIFICATIONS (See Par. 10.5)**

Well Depth		Maximum Distance Between Surveys, Feet	Maximum Deviation from Vertical, Degrees	Maximum Change of Angle (or Over-All Angle Between) Any Two Surveys, Degrees (1)
From	To			
<u>0</u>	<u>4600'</u>	<u>500'</u>	<u>5</u>	<u>1 per 100'</u>

Location of well bore at \_\_\_\_\_ feet shall be \_\_\_\_\_

- (1) a. Reduce proportionately for survey intervals less than 100 feet, but do not use intervals shorter than 30 feet.
- b. If these limits are exceeded and the distance between surveys is more than 100 feet, Contractor shall take intermediate surveys no more than 100 feet apart. If such intermediate surveys show that above limits for any interval have been exceeded, Contractor shall correct hole deviation to within limits of above specifications.
- c. When directional surveys are required, the change of angle shall be the change of over-all angle.

**4. INSURANCE (See Par. 16)**

- 4.1 Adequate Workmen's Compensation Insurance complying with State Laws applicable or Employers' Liability Insurance covering all of Contractor's employees working under this agreement.
- 4.2 Comprehensive Public Liability Insurance or Public Liability Insurance with limits not less than \$100,000.00 for the death or injury of any one person and \$300,000.00 , for each accident.
- 4.3 Comprehensive Public Liability Property Damage Insurance or Public Liability Property Damage Insurance with limits of not less than \$100,000.00 for each accident and \$300,000.00 aggregate per policy.
- 4.4 Automobile Public Liability Insurance with limits of \$100,000.00 for the death or injury of each person and \$300,000.00 for each accident; and Automobile Public Liability Property Damage Insurance with limits of \$100,000.00 for each accident.
- 4.5 \_\_\_\_\_
- 4.6 \_\_\_\_\_

**EXHIBIT "A" (Continued)**

**5. EQUIPMENT, MATERIALS AND SERVICES TO BE FURNISHED BY CONTRACTOR**

The machinery, equipment, tools, materials, supplies, instruments, services and labor hereinafter listed, including any transportation required for such items, shall be provided at the location at the expense of Contractor unless otherwise noted hereon and otherwise provided for in Par. 7 hereof.

**5.1 Drilling Rig.**

Complete drilling rig, designated by Contractor as his rig No. 60, the major items of equipment being:

Drawworks: Bethlehem S-45-E  
(Make and Model)  
 Engines: Make, Model, and H. P. 6-71 GM Twin Diesels 454 HP No. on Rig TWO  
 Pumps: Make and Size Emsco DB-550 w/D-379 Caterpillar Diesel  
 Auxiliary Pump: Make, Size, and Power NA  
 Boilers: Number, Make, H. P. and W. P. NA  
 Steam Drilling Engine: Make and Size NA  
 Derrick or Mast: Make, Size, and Capacity 97' Lee C. Moore 386,000#  
 Substructure: Size and Capacity 7' KB 8'  
 Drill Pipe: Size 4" Full Hole Grade E, Size \_\_\_\_\_ in. \_\_\_\_\_ ft.; Size \_\_\_\_\_ in. \_\_\_\_\_ ft.  
 Drill Collars: Number and Size 6 1/4" X 31'  
 Blowout Preventers: \_\_\_\_\_

Size	Series or Test Pr.	Make & Model	Number
<u>10"</u>	<u>Shaffer Type B, Series 900</u>		
	<u>Double Hydraulic w/Payne Closing Unit.</u>		

- 5.2 Trucking service and other transportation, hauling, or winching services as required to move Contractor's property to location, rig up Contractor's rig, tear down Contractor's rig, and remove all of Contractor's property from location.
- 5.3 Drilling bits, reamers, stabilizers, reamer cutters, and other drilling tools or devices (except while on daywork).
- 5.4 Contract fishing tool services and fishing tool rentals (except while on daywork).
- 5.5 Derrick timbers.
- 5.6 Normal strings of drill pipe and drill collars specified above.
- 5.7 Conventional drift indicator.
- 5.8 ~~SPUD~~ earthen mud pits and reserve pits.
- 5.9 Services in connection with erection and dismantling of Contractor's derrick.
- 5.10 Necessary pipe racks and rigging up material.
- 5.11 Normal storage for mud and chemicals.
- 5.12 Necessary spools, flanges and fittings to connect blowout preventers to Owner's well head equipment.

**6. EQUIPMENT, MATERIALS AND SERVICES TO BE FURNISHED BY OWNER**

The machinery, equipment, tools, materials, supplies, instruments, services and labor hereinafter listed, including any transportation required for such items, shall be provided at the location at the expense of Owner unless otherwise noted hereon and otherwise provided for in Par. 7 hereof.

- 6.1 Furnish and maintain adequate roadway and/or canal to location, right-of-way, including rights-of-way for fuel and water lines, river crossings, highway crossings, gates and cattle guards.
- 6.2 Stake location, clear and grade location, and provide turnaround, including surfacing when necessary.
- 6.3 Test tanks with pipe and fittings.
- 6.4 Mud storage tanks with pipe and fittings.
- 6.5 Separator with pipe and fittings.
- 6.6 Labor to connect and disconnect mud tank, test tank, and separator.
- 6.7 Labor to disconnect and clean test tanks and separator.
- 6.8 Drilling mud, chemicals, lost circulation materials and other additives.
- 6.9 Pipe and connections for oil circulating lines.
- 6.10 Labor to lay, bury and recover oil circulating lines.
- 6.11 Drilling bits, reamers, reamer cutters, stabilizers and special tools while operating on day work basis.
- 6.12 Contract fishing tool services and tool rental while operating on a day work basis.
- 6.13 Wire line core bits or heads and wire line core catchers if required.
- 6.14 Conventional core bits and core catchers.
- 6.15 Diamond core barrel with head.
- 6.16 Cement and cementing service.
- 6.17 Electrical and Gamma-Neutron logging services.
- 6.18 Directional, caliper, or other special services.
- 6.19 Gun or jet perforating services.
- 6.20 Explosives and shooting devices.
- 6.21 Formation testing, hydraulic fracturing, acidizing and other related services.
- 6.22 Equipment for drill stem testing.
- 6.23 Mud logging services.
- 6.24 Sidewall coring service.
- 6.25 Welding service for welding bottom joints of casing, guide shoe, float shoe, float collar and in connection with installing of well head equipment if required.
- 6.26 Casing, tubing, liners, screen, float collars, guide and float shoes and associated equipment.
- 6.27 Casing scratchers and centralizers.
- 6.28 Well head connections and all equipment to be installed in or on well or on the premises for use in connection with testing, completion and operation of well.
- 6.29 Special or added storage for mud and chemicals.

**EXHIBIT "A" (Continued)**

**7. EQUIPMENT, MATERIALS AND SERVICES TO BE FURNISHED BY DESIGNATED PARTY**

The machinery, equipment, tools, materials, supplies, instruments, services, and labor listed as the following numbered items including any transportation required for such items unless otherwise specified, shall be provided at the location and at the expense of the party hereto as designated by an X mark in the appropriate column.

ITEM	TO BE PROVIDED BY AND AT EXPENSE OF	
	Owner	Contractor
7.1 Cellar and runways.....	X	
7.2 Fuel (located at _____ ).....		X
7.3 Fuel Lines (length _____ ).....		X
7.4 Water at source..... \$1,000.00 Limit to Contractor		X
7.5 Water well.....	- - -	- - -
7.6 Water lines.....	- - -	- - -
7.7 Water storage tanks _____ capacity.....		X
7.8 Labor to operate water well or water pump.....	- - -	- - -
7.9 Maintenance of water well, if required.....	- - -	- - -
7.10 Mats for engines and boilers, or motors and mud pumps.....		X
7.11 Transportation of Contractor's property:		
Move in.....		X
Move out.....		X
7.12 Materials for "boxing in" rig and derrick.....		X
7.13 Special strings of drill pipe and drill collars as follows:		
.....	- - -	- - -
.....	- - -	- - -
.....	- - -	- - -
7.14 Kelley joints, subs, elevators and slips for use with special drill pipe.....	- - -	- - -
7.15 Drill pipe protectors for Kelly joint and each joint of drill pipe running inside of casing for use with normal strings of drill pipe.....	- - -	- - -
7.16 Drill pipe protectors for Kelly joint and each joint of drill pipe running inside of casing for use with special strings of drill pipe.....	- - -	- - -
7.17 Coring reel with wire line of sufficient length for coring at maximum depth specified in contract.....	- - -	- - -
7.18 Wire line core barrel.....	- - -	- - -
7.19 Conventional core barrel.....	- - -	- - -
7.20 Rate of penetration recording device.....		X
7.21 Extra labor for running and cementing casing.....		X
7.22 Casing tools.....		X
7.23 Running of casing-conductor.....	- - -	- - -
7.24 Running of casing-surface.....		X
7.25 Running of casing protection.....	- - -	- - -
7.26 Running of casing production.....		X
7.27 Running of casing liner.....	- - -	- - -
7.28 Power casing tongs 5 1/2" Casing.....		X
7.29 Tubing tools.....	- - -	- - -
7.30 Power tubing tong.....	- - -	- - -
7.31 Swabbing unit with swabbing line.....	- - -	- - -
7.32 Swab.....	- - -	- - -
7.33 Swab lubricator.....	- - -	- - -
7.34 Swab rubbers.....	- - -	- - -
7.35.....		
7.36.....		
7.37.....		
7.38.....		
7.39.....		
7.40.....		

**8. OTHER PROVISIONS:**

Operator to pay for any extra equipment if required: Pit level indicator, hydril, rotating head, flow rate indicator, etc., and any related transportation.

Initialed by the Parties as correct: For Owner           D.H. JDC          

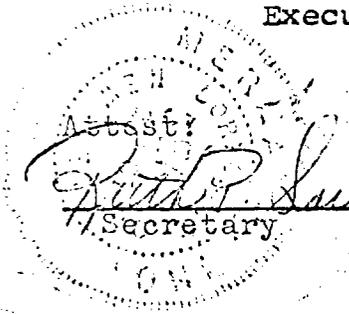
For Contractor           BPA

SURFACE DAMAGE RELEASE AND EASEMENT

In consideration of the sum of Ten Dollars and other valuable consideration, the receipt of which is acknowledged by Merland Inc., a New Mexico Corporation, hereinafter called "Surface Owner," hereby releases D. L. Hannifin, hereinafter called Lessee, and/or his assigns, from all claims for surface damages resulting from the drilling of a well located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 24, Township 22 South, Range 26 East, N.M.P.M. Eddy County, New Mexico, and the plugging and abandonment or completion and operation thereof and the installation and operation of tanks and associated facilities for the treatment and storage of production from said well.

For the same consideration, Surface Owner hereby grants to Lessee an easement for the construction of any roads required for the drilling of additional wells including disposal and/or water supply wells on the following described land: SE $\frac{1}{4}$ , Section 24, Township 22 South, Range 26 East, N.M.P.M. Eddy County, New Mexico.

Executed this 17<sup>th</sup> day of October, 1972.

Attest:  
  
Ruth P. Saunders  
Secretary

MERLAND, INC.

By Mary Frances Merchant  
President

STATE OF NEW MEXICO X

COUNTY OF EDDY X

I hereby certify that on this 18 day of October, 1972, before me personally appeared Mary Frances Merchant President of Merland, Inc., a New Mexico corporation, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

Bobbie McQueen  
Notary Public

My commission expires:  
12 May 1975

Exhibit "4"

IN THE DISTRICT COURT OF SANTA FE COUNTY

STATE OF NEW MEXICO

MICHAEL P. GRACE, II and	)	
CORINNE GRACE,	)	
	)	
Petitioners	)	
	)	
vs.	)	No. 47406
	)	
NEW MEXICO OIL CONSERVATION	)	
COMMISSION, D. L. HANNIFIN,	)	
JOE DON COOK, and CACTUS	)	
DRILLING COMPANY,	)	
	)	
Respondents	)	

AFFIDAVIT

Comes now the undersigned, A. L. Porter, Jr., Secretary-Director of The New Mexico Oil Conservation Commission, resident of Santa Fe, Santa Fe County, New Mexico, over the age of twenty-one (21) years, after being first duly sworn upon his oath, and states:

1. Cause No. 47406 was filed in Santa Fe County District Court on January 25, 1974, wherein Michael P. Grace and Corinne Grace are named as Petitioners and New Mexico Oil Conservation Commission, D. L. Hannifin, Joe Don Cook and Cactus Drilling Company are named as Respondents.

2. That in said Cause, the Petitioners sought a Temporary Restraining Order against all of the Respondents.

3. That at approximately 4:45 p.m. on January 25, 1974, a Petition and exhibits, consisting of 17 pages, was hand delivered by Michael P. Grace II to the Santa Fe office of the Commission. Mr. Thomas W. Derryberry, an attorney for the Commission, immediately contacted the Santa Fe County District Court and was

informed that no hearing time had been set on said Petition. Before Mr. Derryberry had finished reading the Petition, at approximately 4:55 p.m., a copy of a Temporary Restraining Order against the Oil Conservation Commission was hand delivered to the Commission's Santa Fe office by Farrell L. Lines, Attorney for Mr. Grace. I had not read the Petition at the time the Temporary Restraining Order was received.

4. The Temporary Restraining Order directed me to temporarily suspend the drilling permit for the Merland Well No. 1 in Section 24, Township 22 South, Range 26 East, NMPM, Eddy County, New Mexico, which had been previously approved pursuant to the provisions of rules and regulations adopted by Oil Conservation Commission Order 850 as amended. I complied with the Temporary Restraining Order and cancelled the drilling permit on January 25, 1974, by telephone and by telegraphing D. L. Hannifin and Joe Don Cook.

5. Since that time, I have contacted Alex J. Armijo and I. R. Trujillo, the other members of the Oil Conservation Commission, and of my personal knowledge can state that neither of them received notice of the Petition filed in this cause on January 25, 1974, until contacted by me after receiving the Temporary Restraining Order.

6. At approximately 7:55 a.m. on January 28, 1974, Mr. Norvell called me and I got the definite impression that he had not consented to the order. I asked him to give me a written statement at which time he said he would call the judge.

7. That without due notice to the Oil Conservation Commission, and without hearing, the said District Court on January 25, 1974, issued a Temporary Restraining Order directed

to and against the Oil Conservation Commission and other Respondents.

DATED this 28th day of January, 1974.

\_\_\_\_\_  
A. L. PORTER, Jr.

SUBSCRIBED AND SWORN TO before me this 28th day of January, 1974, by A. L. Porter, Jr.

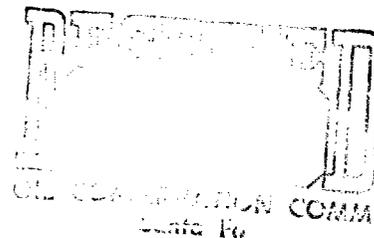
\_\_\_\_\_  
Notary Public

My Commission Expires:  
  
\_\_\_\_\_

EXHIBIT "A"

MGMABQC ABQ  
2-171271U026 01/26/74  
ICS MGMNCSA WUCC  
03320 MLTN VA  
ZIP 87501

**western union Mailgram**



NEW MEXICO OIL CONSERVATION COMMISSION WILLIAM F CARR ATTORNEY

PO BOX 2088  
SANTA FE NM 87501

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

5058272741 TDBN SANTA FE NM 79 01-25 0831P EDT

PMS D L HANNIFIN , DLR  
2008 SOUTH PENNSYLVANIA AVE  
ROSWELL NM

PURSUANT TO THE PROVISION OF A TEMPORARY RESTRAINING ORDER SIGNED  
BY JUDGE EDWIN L FELTER IN SANTA FE COUNTY DISTRICT COURT CASE  
NUMBER 47406 ON JANUARY 25 1974 THE NEW MEXICO OIL CONSERVATION  
COMMISSION HEREBY TEMPORARILY SUSPENDS THE AUTHORITY OF THE  
DRILLING PERMIT OF D L HANNIFIN AND JOE DON COOK APPROVED DECEMBER  
28 1973 WHICH ALLOWED THE DRILLING OF THE MERLAND WELL NUMBER  
ONE IN SECTION 24 TOWNSHIP 22 SOUTH RANGE 26 EAST NMPM EDDY  
COUNTY NEW MEXICO

A L PORTER JR SECRETARY DIRECTOR

THIS IS A CONFIRMATION COPY BY MAILGRAM.

2311 EDT

MGMABQC ABQ

MGMABQC ABQ  
2-171265U026 01/26/74  
ICS MGMNCSA WUCC  
03314 MLTN VA  
ZIP 87501

western union Mailgram



NEW MEXICO OIL CONSERVATION COMMISSION WILLIAM F CARR ATTORNEY SANTA FE, NM

PO BOX 2088  
SANTA FE NM 87501

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

5058272741 TDBN SANTA FE NM 79 01-25 0830P EDT

PMS JOE DON COOK , DLR

THE OIL DALE BLDG

ROSWELL NM

PURSUANT TO THE PROVISION OF A TEMPORARY RESTRAINING ORDER SIGNED BY JUDGE EDWIN L FELTER IN SANTA FE COUNTY DISTRICT COURT CASE NUMBER 47406 ON JANUARY 25 1974 THE NEW MEXICO OIL CONSERVATION COMMISSION HEREBY TEMPORARILY SUSPENDS THE AUTHORITY OF THE DRILLING PERMIT OF D L HANNIFIN AND JOE DON COOK APPROVED DECEMBER 28 1973 WHICH ALLOWED THE DRILLING OF THE MERLAND WELL NUMBER ONE IN SECTION 24 TOWNSHIP 22 SOUTH RANGE 26 EAST NMPM EDDY COUNTY NEW MEXICO

A L PORTER JR SECRETARY DIRECTOR

THIS IS A CONFIRMATION COPY BY MAILGRAM.

2309 EDT

MGMABQC ABQ

Pursuant to the provisions of a temporary restraining order signed by Judge Edwin L. Felter in Santa Fe County District Court Case No. 47406 on January 25, 1974, the New Mexico Oil Conservation Commission hereby temporarily suspends the authority of the drilling permit of D. L. Hannifin and Joe Don Cook, approved December 28, 1973, which allowed the drilling of the Merland Well No. 1 in Section 24, Township 22 South, Range 26 East, N.M.P.M., Eddy County, New Mexico.

A. L. PORTER, Jr.  
Secretary-Director

Sent to D. L. Hannifin and Joe Don Cook on January 25, 1974

STATE OF NEW MEXICO

COUNTY OF SANTA FE

IN THE DISTRICT COURT

MICHAEL P. GRACE and  
CORRINE GRACE,

Petitioners,

vs.

NEW MEXICO STATE OIL CON-  
SERVATION COMMISSION, D. L.  
HANNIFIN, JOE DON COOK, and  
CACTUS DRILLING COMPANY,

Respondents.

No 47406  
ORIGINAL PLEADING  
FILED ON 9-25-74  
Santa Fe COUNTY  
DISTRICT COURT CLERK'S OFFICE

TEMPORARY RESTRAINING ORDER

THIS MATTER coming on to be heard upon the verified Petition of the Petitioners, wherein the Petitioners seek interalia a Temporary Restraining Order requiring the New Mexico Oil Conservation Commission to temporarily suspend the authority of the drilling permit for the Merland 1 well in Eddy County, New Mexico, and to order Respondents, D. L. Hannifin, and Joe Don Cook, and Cactus Drilling Company to forthwith remove their drilling rig and all drilling equipment from the Merland 1 well site, and restraining said respondents from further drilling operations at the said Merland 1 well site, and said Complaint being accompanied by appropriate Affidavits, and the Court having considered said pleadings and the tendered bond, and finding that notice was given to the Oil Conservation Commission of New Mexico that the latter consents to the entry of this Order,

IT IS, THEREFORE, ORDERED, that the New Mexico Oil Conservation Commission temporarily suspend the authority of the drilling permit of D. L. Hannifin and Joe Don Cook, approved December 28, 1973, which allowed the drilling of Merland Well No. 1 in Section 24, T22S, R26E, N.M.P.M., Eddy County, New Mexico.

IT IS FURTHER ORDERED that Respondents D. L. Hannifin, Joe Don Cook, and Cactus Drilling Company be, and are restrained and enjoined from further drilling operations at the Merland 1 Well site, and are ordered to immediately remove the drilling rig and all drilling equipment from the Grace-Atlantic well pad.

IT IS FURTHER ORDERED that Petitioners post with the Court a bond to the State of New Mexico in the amount of \$3,000.00 to cover the costs of the removal of all said drilling equipment to the Merland 2 drilling site in Section 24 above mentioned.

**EDWIN L. FELTER**

---

DISTRICT JUDGE

STATE OF NEW MEXICO

COUNTY OF SANTA FE

IN THE DISTRICT COURT

MICHAEL P. GRACE, and  
CORRINE GRACE,

Petitioners,

-VS-

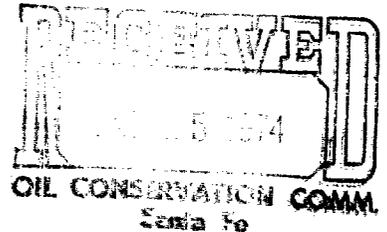
NEW MEXICO OIL CONSERVATION  
COMMISSION, D. L. HANNIFIN,  
JOE DON COOK, and CACTUS  
DRILLING COMPANY,

Respondents.

P E T I T I O N

ORIGINAL PLEADING  
FILED ON Jan. 25, 1974  
San COUNTY  
DISTRICT COURT CLERK'S OFFICE

No. 47406



Comes now the Petitioners by and through their attorneys,  
FARRELL L. LINES and SAMUEL A. FRANCIS, and for their Petition  
state and allege as follows:

I.

That the Petitioners are the owners of an interest in,  
and are operators of a certain gas producing well situated  
1980 feet North of South Line and 1980 feet West of East Line,  
of Section 24, Township 22 South, Range 26 East, NMPM, South  
Carlsbad-Morrow Gas Pool, Eddy County, New Mexico.

II.

That by Order R-4432, issued on November 8, 1972, by Res-  
pondent, New Mexico Oil Conservation Commission, a copy of which  
is attached as Exhibit A, the acreage on which the above men-  
tioned well is situated was pooled to form a 320 acre pro-  
duction unit, with Petitioners as operators.

III.

That the above mentioned well is a high pressure well, main-  
taining an average well pressure of approximately 2000 pounds,  
and presently producing approximately 7MMCF of gas per day,  
with a potential of 20 MMCF per day.

IV.

That on December 27, 1973, Respondents Hannifin and Cook  
filed an application with Respondent, Oil Conservation Com-  
mission for a permit to drill two (2) additional gas wells,

namely; Merland 1 and Merland 2 in the Section 24 above mentioned. Copies of the said applications are attached hereto as Exhibits B and C, but does not note the distinction in hazardous operations between the two locations.

V.

That in disregard of its legislative mandates under §65-3-5 and §65-3-3(B), N.M.S.A., to protect gas waste and provide reasonable spacing and fire prevention, Respondent, Oil Conservation Commission routinely granted the aforesaid permits, even though the Merland 1 well site is only 110 feet from the above mentioned high pressure Grace-Atlantic well, and the drilling equipment might be located in the pad of said Grace-Atlantic well.

VI.

That Respondents, D. L. Hannifin and Joe Don Cook have contracted with the Respondent, Cactus Drilling Company to drill the proposed Merland 1 well and that a drilling rig and other drilling equipment have been moved onto the proposed site, and that said drilling equipment are operating on the Grace-Atlantic pad.

VII.

That according to information and belief, the drilling of the said Merland 1 well has commenced and surface casing has been set this date, and the well is waiting on cement (normal oil field period is 18 hours).

VIII.

That as evidenced by affidavit of Michael P. Grace, which is attached hereto as Exhibit D,<sup>(a)</sup> the Carlsbad Zone is an extremely hazardous zone for drilling gas wells, and a significant percentage of wells in this zone have experienced loss of control and drilling stoppage situations.

IX.

As is evidenced by the affidavit of John Wilsher, who was the driller of the subject Grace-Atlantic well, a blow-out was experienced during the drilling of that well, and the fact that another high pressure well is being drilled within 110 feet of the present high pressure well, with the drilling equipment located on the well pad and in the immediate proximity to tanks, and heater treaters; that extraordinary precautions should be required to protect the present Grace-Atlantic well, attached as Exhibit D(b).

X.

That upon information and belief the actions of Respondents, D. L. Hannifin and Joe Don Cook are probably in violation of the New Mexico Fire Code, the National Fire Protective Association Code, and the provisions of the Federal Occupation and Health Act, and against the common law concepts of a prudent operation.

XI.

That the actions of Respondents, D. L. Hannifin and Joe Don Cook, in the placement of a rig and other drilling equipment on the pad of a high pressure well presently under production, amounts to imprudence, gross negligence, and presents an extremely hazardous situation, and represents immediate danger to the Grace-Atlantic well and the entire Morrow Delaware Gas Reservoir, and to all personnel working in the area.

XII.

That Respondents, D. L. Hannifin and Joe Don Cook have been put on notice as to the position of Petitioners, and as to the potentially hazardous situation that has been created through telegram personally sent by Plaintiffs on January 24, 1974, a copy of which is attached as Exhibit E.

XIII.

That the attorneys for Petitioners have given due notice as required by law to Respondent, New Mexico Oil Conservation Commission, and the various commissioners.

XIV.

That the Court should enter an Order requiring Respondents and/or Oil Conservation Commission to temporarily suspend the authority of the drilling permit for the Merland 1 well, and restrain Respondents, D. L. Hannifin and Joe Don Cook and Cactus Drilling Company from any further drilling operations in the said Merland 1 well site, and should further enter an Order requiring the immediate removal of the drilling rig and all other drilling equipment from the close proximity of the Grace-Atlantic well and its pad.

XV.

That Respondents, D. L. Hannifin and Joe Don Cook and Cactus Drilling Company will not experience loss or damage by such Order, in that a permit has been granted as is evidenced by Exhibit D to allow immediate drilling of the Merland 2 well in the same Section, but at a distance several hundred feet from the Grace-Atlantic well and the proposed Merland 1 well site.

XVI.

That Petitioners herewith tender to the Court a bond to the State in the amount of \$3000.00, which will adequately cover all reasonable moving expenses of Hannifin and Cook and Cactus Drilling Company in the moving of the rig and drilling equipment at the well site from the Merland 1 well location to the Merland 2 well location.

XVII.

That before Respondents, D. L. Hannifin and Joe Don Cook be allowed to re-enter the Merland 1 drilling site to re-estab-

lish drilling, this Court should require the Respondents to submit, at their own expense, a comprehensive reservoir report to determine the amount of Morrow and Delaware production loss to the Grace-Atlantic well and the entire reservoir should fire or destruction result from the drilling or completion operations of the proposed Merland 1 well.

XVIII.

That before Respondents, D. L. Hannifin and Cook be allowed to re-enter the Merland 1 drilling site, to re-establish drilling operations, this Court should further require that Respondents submit to the Court, at their own expense, a feasibility report from an actuary and engineer as to whether drilling could be re-established at the Merland 1 well site and effectively meet safety regulations of the National Fire Code, and all other affiliated fire and safety code and meet reasonable insurance standards, and also establishing whether Respondents would be able, and be required to obtain adequate reasonable insurance that would hold Petitioners harmless should damage occur to either the well or the <sup>reservoir</sup> Respondents through appropriate bonding for the safety of the above, under normal insurance requirements.

Respectfully submitted,



---

FARRELL L. LINES  
Attorney for Petitioners  
500 2nd Street, N.W.  
Albuquerque, New Mexico

---

SAMUEL A. FRANCIS  
Attorney for Petitioners  
400 7th Street, N.W.  
Albuquerque, New Mexico

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO

)  
)SS  
)

MICHAEL P. GRACE AND CORRINE GRACE, being first duly sworn, depose and state that they are the Petitioners in the foregoing entitled cause, that they have read the foregoing pleading, and know the contents thereof, and each and every allegation stated therein is true and correct according to their best information, knowledge, and belief.

Michael P. Grace  
MICHAEL P. GRACE  
Petitioner

Corrine Grace  
CORRINE GRACE  
Petitioner

SUBSCRIBED AND SWORN TO BEFORE ME this 25 day of January, 1974.

Sharon Healy  
NOTARY PUBLIC

MY Commission expires:

16, 1977.

BEFORE THE OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
COMMISSION OF NEW MEXICO FOR  
THE PURPOSE OF CONSIDERING:

CASES NOS. 4819 AND 4836  
Order No. R-4432

APPLICATION OF D. L. HANNIFIN FOR  
COMPULSORY POOLING, EDDY COUNTY,  
NEW MEXICO.

APPLICATION OF MICHAEL P. GRACE II  
AND CORINNE GRACE FOR COMPULSORY  
POOLING, EDDY COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on September 27, 1972, at Santa Fe, New Mexico, before Examiner Elvis A. Utz.

NOW, on this 8th day of November, 1972, the Commission, a quorum being present, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) That in Case No. 4819, the applicant, D. L. Hannifin, seeks an order pooling all mineral interests underlying the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico, to form a standard 320-acre unit to be dedicated to a well to be drilled 1980 feet from the South line and 1980 feet from the East line of said Section 24.

(3) That in Case No. 4836, the applicants, Michael P. Grace II and Corinne Grace, seek an order pooling all mineral interests down to and including the Morrow formation underlying the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, South Carlsbad-Morrow Gas Pool, Eddy County, New Mexico, to form a standard 320-acre unit to be dedicated to a well to be drilled at an orthodox location for said unit.

EXH "A"

-2-

Cases Nos. 4819 and 4836  
Order No. R-4432

(4) That both applicants, D. L. Hannifin and Michael P. Grace II and Corinne Grace, seek to be named operator of the unit to be pooled.

(5) That Cases Nos. 4819 and 4836 were consolidated as both cases involve the same lands.

(6) That the evidence indicates that the entire S/2 of the above-described Section 24 can reasonably be presumed productive of gas from the South Carlsbad Gas Pool.

(7) That the evidence indicates that the entire S/2 of the above-described Section 24 can be efficiently and economically drained and developed by a well located at a point 1980 feet from the South line and 1980 feet from the East line of said Section 24.

(8) That there are interest owners in the proposed 320-acre proration unit who have not agreed to pool their interests.

(9) That to avoid the drilling of unnecessary wells, to protect correlative rights, and to afford to the owner of each interest in the unit the opportunity to receive without unnecessary expense his just and fair share of the gas in the pool, all mineral interests in the Morrow formation underlying the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, South Carlsbad-Morrow Gas Pool, Eddy County, New Mexico, should be pooled to form a 320-acre standard unit to be dedicated to a well to be drilled at a standard location in said Section 24.

(10) That Michael P. Grace II should be designated the operator of the proposed well and unit.

(11) That any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production.

(12) That any non-consenting working interest owner that does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 25% thereof as a reasonable charge for the risk involved in the drilling of the well.

(13) That any non-consenting interest owner should be afforded the opportunity to object to the actual well costs but that said actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(14) That following determination of reasonable well costs, any non-consenting working interest owner that has paid his

Cases Nos. 4819 and 4836  
Order No. R-4432

share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(15) That \$135.00 per month should be fixed as a reasonable charge for supervision (combined fixed rates) for the subject well; that the operator should be authorized to withhold from production the proportionate share of such supervision charge attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(16) That all proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

IT IS THEREFORE ORDERED:

(1) That all mineral interest, whatever they may be, in the South Carlsbad-Morrow Gas Pool underlying the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, Eddy County, New Mexico, are hereby pooled to form a 320-acre proration unit to be dedicated to a well to be drilled at a standard location in Section 24.

(2) That Michael P. Grace II is hereby designated the operator of the subject well and unit.

(3) That the operator shall furnish the Commission and each known working interest owner in the subject unit an itemized schedule of estimated well costs within 30 days following the date of this order.

(4) That within 30 days from the date the schedule of estimated well costs is furnished to him, any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production, and that any such owner who pays his share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(5) That the operator shall furnish the Commission and each known working interest owner in the subject unit an itemized schedule of actual well costs within 60 days following completion of the well; that if no objection to the actual well

Cases Nos. 4819 and 4836  
Order No. R-4432

costs are received by the Commission, and the Commission has not objected within 60 days following completion of the well, the actual well costs shall be the reasonable well costs; provided however, that if there is an objection to actual well costs within said 60-day period, the Commission will determine reasonable well costs after public notice and hearing.

(6) That within 60 days following determination of reasonable well costs, any non-consenting working interest owner that has paid his share of estimated costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

(7) That the operator is hereby authorized to withhold the following costs and charges from production:

(A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 60 days from the date the schedule of estimated well costs is furnished to him.

(B) As a charge for the risk involved in the drilling of the well, 25% of the pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(8) That the operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(9) That \$135.00 per month is hereby fixed as a reasonable charge for supervision (combined fixed rates) for the subject well; that the operator is hereby authorized to withhold from production the proportionate share of such supervision charge attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(10) That any unsevered mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under the terms of this order.

-5-

Cases Nos. 4819 and 4836  
Order No. R-4432

(11) That any well costs or charges which are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(12) That all proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; that the operator shall notify the Commission of the name and address of said escrow agent within 90 days from the date of this order.

(13) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

BRUCE KING, Chairman

ALEX J. ARMIJO, Member

A. L. PORTER, Jr., Member & Secretary

S E A L

dr/

*Exhibit "A"*

**RECEIVED**  
NEW MEXICO OIL CONSERVATION COMMISSION

30-015-21070

DEC 27 1973

STATE	NEW MEXICO
COUNTY	SANTA FE
FILE NO.	
U.S.G. NO.	
LAND OFFICE	
OPERATOR	

**O.C.C.**  
**OPERATOR'S OFFICE**

Form O-104  
Revised 1-65

1A. Leasing Type of Lease STATE <input type="checkbox"/> FEDERAL <input checked="" type="checkbox"/>
1B. State Oil & Gas Lease No.
7. Lease Agreement Date
8. Name of Lease Tract <b>Merland</b>
9. Well No. <b>2</b>
10. Field and Pool, or District <b>Wildcat Delaware</b>
17. County <b>Delaware</b>
19. Proposed Depth <b>4550</b>
19A. Formation <b>Delaware</b>
20. Locality of Well <b>Merland</b>
21. Approx. Date Work will start <b>Feb. 1, 1974</b>

**APPLICATION FOR PERMIT TO DRILL, DEEPEN, OR PLUG BACK**

1A. Type of Well DRILL <input checked="" type="checkbox"/> DEEPEN <input type="checkbox"/> PLUG BACK <input type="checkbox"/>
1B. Type of Well OIL WELL <input checked="" type="checkbox"/> GAS WELL <input type="checkbox"/> OTHER <input type="checkbox"/> PIPELINE TAP <input type="checkbox"/> MULTIPLE POINT <input type="checkbox"/>
2. Name of Operator <b>D. L. Hannifin &amp; Joe Don Cook</b>
3. Address of Operator <b>P. O. Box 945 Roswell, New Mexico 88201</b>
4. Location of Well UNIT LETTER <b>M</b> QUANTITY <b>1980</b> FEET FROM TRAIL <b>East</b> LINE
4.1. Section <b>6&amp;0</b> 4.2. Township <b>South</b> 4.3. Range <b>24</b> 4.4. Meridian <b>25E</b>
15. Proposed Depth <b>4550</b>
19A. Formation <b>Delaware</b>
20. Locality of Well <b>Merland</b>
21. Approx. Date Work will start <b>Feb. 1, 1974</b>

**PROPOSED CASING AND CEMENT PROGRAM**

SIZE OF HOLE	SIZE OF CASING	WT. PER FOOT	SETTING DEPTH	SACKS OF CEMENT	HT. TOP
12 1/2"	8 5/8"	20	375	200	Surface
7 7/8"	5 1/2"	13.5	4550	500	APPROX. 1900

Surface casing will be set at approx. 375 and cement circulated to surface  
W O C time will be 18 hrs. then blowout preventers will be installed and  
tested daily during drilling.

APPROVAL VALID  
FOR 90 DAYS UNLESS  
(DURING THE PERIOD)  
EXPIRES 4-11-74

IN ABOVE SPACE DESCRIBE PROPOSED WELL AND IF PROPOSED IS TO BE A PLUG BACK, GIVE DEPTH OF PROPOSED PRODUCTIVE ZONE AND PROPOSED NEW PRODUCTION ZONE. THIS SPACE MAY BE USED FOR OTHER INFORMATION.

I hereby certify that the information herein is true and complete to the best of my knowledge and belief.

Signature: [Signature] Title: Operator Date: 12-21-73

APPROVED BY: [Signature] TITLE: OIL AND GAS INSPECTOR DATE: JAN 1 1974

CONDITIONS OF APPROVAL, IF ANY:

Cement must be circulated to surface behind 2 1/2" casing

[Signature]



STATE OF NEW MEXICO                    )  
  ) SS:  
COUNTY OF BERNALILLO                )  
  )  
  A F F I D A V I T

I, MICHAEL P. GRACE, being first duly sworn upon oath,  
depose and state the following:

I.

That my wife, Corrine Grace, and I have operated and drilled wells in the South Carlsbad or immediate area in the past four (4) years aside from other oil operations.

II.

That supplemental to the facts stated in my telegram annexed as Exhibit E, I would like to state that the so-called South Carlsbad pool, Morrow, Strawn, etc. has a track record high in hazards. To my personal knowledge, the wells above mentioned encountered one fire, one blowout, and at least one inability to trip pipe (choke the well) for prolonged periods. To my attention has come the Antweill blowout of three (3) weeks duration, the Texas International five (5) day drilling stoppage, and Gulf, Pennzoil etc. have encountered at least an additional six (6) or seven (7) similar situations. In the immediate area last summer, Moran Drilling Company lost a rig to fire and the famous TP fire occurred in the immediate Indian Hills similar high pressure area, also the same operator, Hannegan lost a rig to fire in the same period.

III.

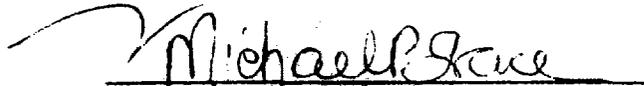
To my personal knowledge this Delaware zone blew out while drilling, (without fire-thanks to expertise in operations) for three (3) days; the Hannifin and Cook combination is without experience as operators and their drilling rig is uninsured, and Cactus Drilling Company has been subject to serious administrative citations in the past.

IV.

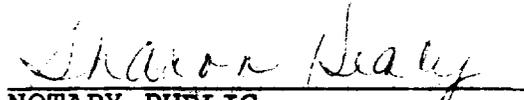
Tolling these factors, with the prima facie negligence of placing the pits and rig draw works in such a manner as to aggravate rather than insulate the fire and high pressure hazards, a cease and desist order is in order here.

V.

My agents in Carlsbad report that the above mentioned Merland 1 well, Cactus Drilling rig pumped the plug down at 7:00 A.M. today cementing its surface casing, and is now inactive, waiting on cement for the minimum 18 hour standard period for cement to set and should be able to immediately move without additional expense.

  
MICHAEL P. GRACE

SUBSCRIBED AND SWORN TO BEFORE ME, this 25 day of  
January, 1974, by MICHAEL P. GRACE.

  
NOTARY PUBLIC

My Commission expires:

6, 1977.

*Exhibit (A)*

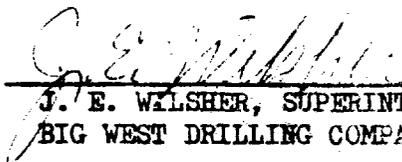
STATE OF NEW MEXICO  
COUNTY OF EDDY

AFFIDAVIT

The undersigned being Superintendent for Big West Drilling Company being first duly sworn, deposes and says that on February 6, 1973 while drilling the Grace Atlantic #1 well, located in Section 24, T22S, R26E, Eddy County, New Mexico, I encountered a blow out of three days duration at a depth of 4490'. Thanks to Big West personnel and management the fire which could have been expected any moment did not break out and the well was put back into control and further drilling recommenced on February 10, 1973. I am aware that there is a rig moving to within a distance of 110' East of this extremely high pressure well (in this high loss of control area). In my opinion after 22 years experience in oil field work an event such as this requires extraordinary precautions for any future drilling in that immediate area.

I name among these items wrench tightened kill valves and manifolds, recently tested hydraulic operated blow out preventers, carefully checked mud program, access to fire fighting equipment, both local and in the operation and easy access to the same for the drilling site. Approved insurance, blow out, fire and otherwise, (State, Federal and Insurance Inspections). Proper installation and safe working distance from other high pressure gas facilities and operations.

Any procedure which does not include the above I would consider hazardous enough to be negligent in nature.

  
\_\_\_\_\_  
J. E. WILSNER, SUPERINTENDENT  
BIG WEST DRILLING COMPANY

Subscribed and sworn to before me this 23rd January, 1974.

  
\_\_\_\_\_  
Notary Public

My commission expires September 10, 1975

*Exhibit D(b)*

No. WDS.-CL. OF SVC.	PD. OR COLL.	CASH NO.	CHARGE TO THE ACCOUNT OF	<input checked="" type="checkbox"/> OVER NIGHT TELEGRAM
	PdE		1974 JAN 24 PM	UNLESS BOX ABOVE IS CHECKED THIS MESSAGE WILL BE SENT AS A TELEGRAM

Send the following message, subject to the terms of the contract, to the following address:  
 GEORGE HANKER HINKLE BLDG  
 ROSWELL N MEX N 622 8853

LET THIS APPRIZE YOUR CLIENTS, HANNIFIN AND COOK, OF THE DAMAGES DUE ME FROM THEIR BREACH OF OUR TENANCY IN COMMON IN REGARD TO OUR GRACE ATLANTIC WELL S 24 T22 S26E AND ESPECIALLY AS IT APPLIES TO OUR HIGH PRESSURE GAS PAD INTERFERENCE IN ACCESS AND USE THEREUPON.

LET THIS FURTHER APPRIZE THEM THAT EXPERTS INFORM US THAT PLACEMENT OF YOUR RIG AND DRILLING OPERATIONS IS IMPRUDENT, GROSSLY NEGLIGENT, AND EXTREMELY HAZARDOUS AND THAT WE SHALL HOLD YOUR CLIENTS TOTALLY RESPONSIBLE FOR BOTH DAMAGES MENTIONED ABOVE AND ALL DAMAGES CONSEQUENT THERE TO RESULTING FROM SAID IMPRUDENT AND HAZARDOUS CONDUCT AND EXPECT YOU TO MITIGATE THESE DAMAGES THROUGH IMMEDIATE SUBMITTAL OF APPROPRIATE INSURANCE INVENTORIES

505-887-5581

MICHAEL P GRACE

Exhibit E

**Attorney General**  
P. O. Box 2246  
Santa Fe, New Mexico 87501

RECEIVED  
12/4/50  
LAND OFFICE BUILDING

Mr. Tom Nutter  
Chief Engineer  
Oil Conservation Commission  
Land Office Building  
Santa Fe, N. M. 87501



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

January 24, 1974

OLIVER E. PAYNE  
DEPUTY ATTORNEY GENERAL

*Rec'd 4:30 pm  
1/24/74*

Mr. Tom Nutter  
Chief Engineer  
Oil Conservation Commission  
Land Office Building  
Santa Fe, N. M. 87501

Re: Permit No. 30-015-21036

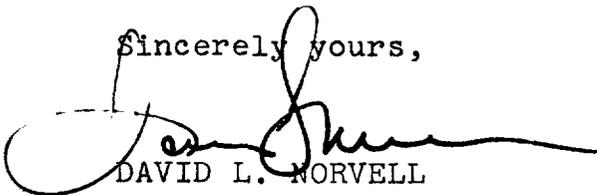
Dear Mr. Nutter:

I understand that W. A. Grussett approved a drilling permit for D. L. Dannifin and Joe Don Cook.

Without going into great detail, the facts which I am sure you are familiar with by now, I am advised and convinced that a dangerous situation exists with regard to the location-  
ing of this permit in that it is approximately 110 feet from the Grace-Atlantic gas well which is a high pressure gas well and one that has experienced a blow-out in the recent past and there is a great deal of expert opinion available that the positioning of the Dannifin-Cook well at a distance closer than 600 feet to the Grace-Atlantic well could very well result in dire consequences.

I would therefore suggest that on a temporary basis at least the Oil Conservation Commission withdraw permission granted under the above-referenced permit and would request that you advise this office as to your intended course of action by 5:00 o'clock p.m., January 24, 1974.

Sincerely yours,

  
DAVID L. NORVELL

DLN/gr



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

January 24, 1974

OLIVER E. PAYNE  
DEPUTY ATTORNEY GENERAL

Mr. Tom Nutter  
Chief Engineer  
Oil Conservation Commission  
Land Office Building  
Santa Fe, N. M. 87501

Re: Permit No. 30-015-21036

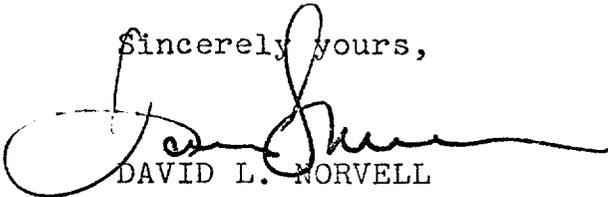
Dear Mr. Nutter:

I understand that W. A. Grussett approved a drilling permit for D. L. Dannifin and Joe Don Cook.

Without going into great detail, the facts which I am sure you are familiar with by now, I am advised and convinced that a dangerous situation exists with regard to the location-  
ing of this permit in that it is approximately 110 feet from the Grace-Atlantic gas well which is a high pressure gas well and one that has experienced a blow-out in the recent past and there is a great deal of expert opinion available that the positioning of the Dannifin-Cook well at a distance closer than 600 feet to the Grace-Atlantic well could very well result in dire consequences.

I would therefore suggest that on a temporary basis at least the Oil Conservation Commission withdraw permission granted under the above-referenced permit and would request that you advise this office as to your intended course of action by 5:00 o'clock p.m., January 24, 1974.

Sincerely yours,



DAVID L. NORVELL

DLN/gr

RECEIVED

30-015-21036

NEW MEXICO OIL CONSERVATION COMMISSION  
DEC 27 1973

Form O-121  
Revised 12-65

NO. OF COPIES RECEIVED	5
DISTRIBUTION	
CANTY OFF	
FILE	
USERS	
LAND OFFICE	
OPERATOR	

**D.L.D.**  
Amended Operator

1A. Indicate Type of Lease  
LEASE  PIP

3. Lease Oil & Gas Lease No.

7. Unit Agreement Name

8. Name of Lease Name  
Maryland

9. Unit No.  
1

10. Field and Pool, or Wellcat  
Wildcat Delaware

11. County  
Madu

12. Property No.  
4550

13. County  
Delaware

14. Name of Co.  
Sentry

15. Date of Lease (DD, MM, YY)  
Blanket

16. Date of Lease (DD, MM, YY)  
Casper Drilling Co. Feb. 1, 1974

APPLICATION FOR PERMIT TO DRILL, DEEPEN, OR PLUG BACK

1A. Type of Case  
DRILL  DEEPEN  PLUG BACK

1B. Type of Well  
OIL WELL  GAS WELL  OTHER  SURFACE  MULTIPLE

2. Name of Operator  
D. L. Bannifin & Jos Don Cook

3. Address of Operator  
P. O. Box 945 Roswell, New Mexico 89201

4. Location of Well  
COUNTY: South SECTION: 24 TOWNSHIP: 22 RANGE: 26  
AND 1870 ACRES FROM THE East LINE OF SEC. 24 TOWNSHIP 22 RANGE 26

15. Proposed Depth  
4550

16. County  
Delaware

17. Name of Co.  
Sentry

PROPOSED CASING AND CEMENT PROGRAM

SIZE OF HOLE	SIZE OF CASING	WEIGHT PER FOOT	SETTING DEPTH	SAKCS OF CEMENT	EST. TOP
12 1/2"	8 5/8"	20	375	200	SURFACE
7 7/8"	5 1/2"	18.5	4550	300	APPROX. 1500

Surface casing will be set at approx. 375 and cement circulated to surface  
W O C time will be 16 hrs. then blowout preventers will be installed and  
tested daily during drilling.

APPROVAL VALID  
REGARDING UNLESS  
DRILLING COMMENCED

EXPIRES 2-10-74

**ILLEGIBLE**

IN ABOVE SPACE DESCRIBE PROPOSED PROGRAM IF DIFFERENT IN DEPTH OR PLUS OR A LITTLE MORE OR LESS THAN PRODUCTION UNIT AND PROPOSED NEW PRODUCTION UNIT. USE BLOWOUT PREVENTER PROGRAM, IF ANY.

I hereby certify that the information above is true and complete to the best of my knowledge and belief.

Signature: [Signature] Title: Operator Date: 12-21-73

(This space for State Use)

APPROVED BY: [Signature] TITLE: Oil and Gas Inspector DATE: DEC 28 1973

CONDITIONS OF APPROVAL, IF ANY:

Cement must be circulated to surface behind 8 7/8" casing

NEW MEXICO CONSERVATION COMMISSION  
 WELL LOCATION AND ACREEAGE DEDICATION FORM

Form C-139  
 Supersedes C-125  
 Effective 10-68

All distances listed are from the outer boundary of the Section.

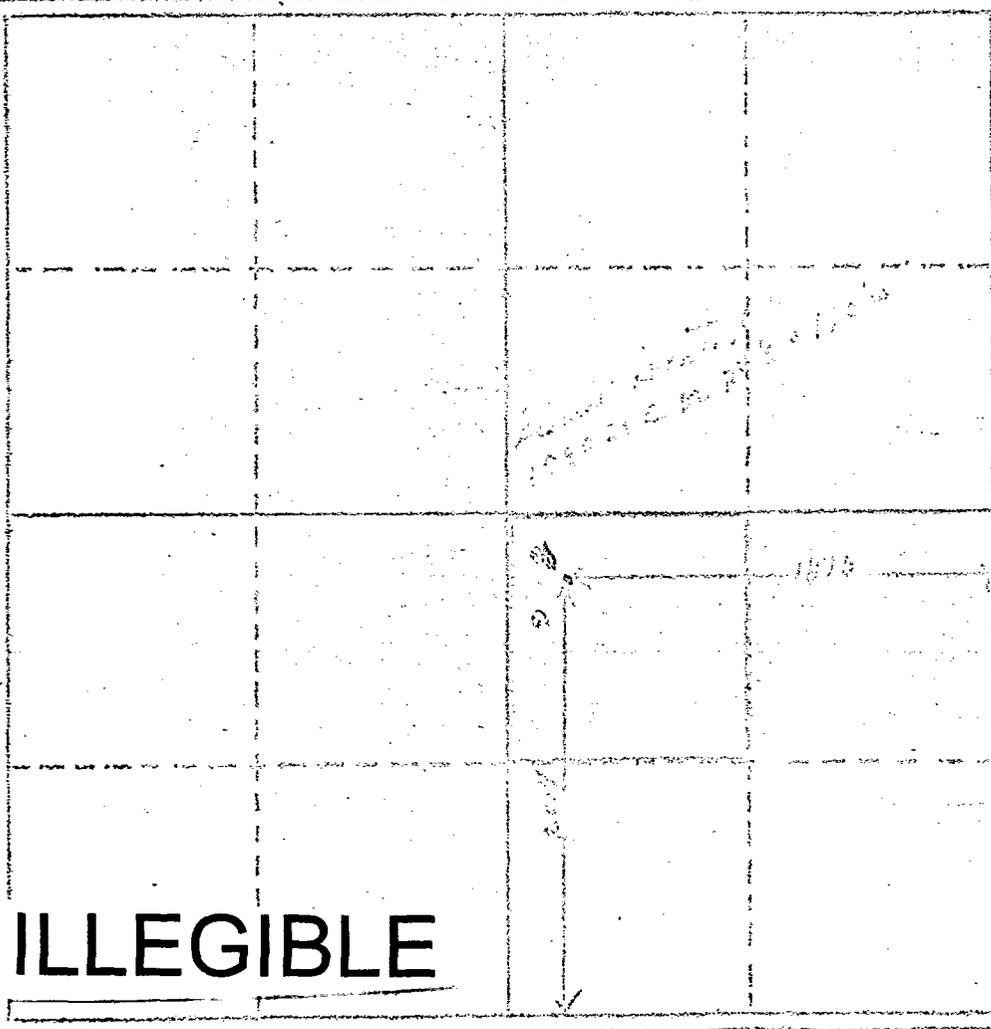
Operator <b>D. L. Hannifin - Joe Law Coak</b>		Lease <b>Merland</b>		Well No. <b>1</b>
Section <b>3</b>	Range <b>24</b>	Township <b>22 S</b>	Block <b>26 E</b>	County <b>Biola</b>
Actual Footage Location of Well: <b>1870</b> feet from the <b>east</b> side of <b>2004</b> feet from the <b>South</b> side of				
Ground Level Elev. <b>5110</b>	Producing Formation <b>Delaware</b>	Depth <b>1211</b>	Designated Area <b>1/2 Sec 26</b>	

- Outline the acreage dedicated to the subject well by colored pencil or hatchure marks on the plat below.
- If more than one lease is dedicated to the well, outline each and identify the ownership thereof (both as to working interest and royalty).
- If more than one lease of different ownership is dedicated to the well, have the interests of all owners been consolidated by communitization, unitization, forcepooling, etc?

Yes  No If answer is "yes" type of consolidation \_\_\_\_\_

If answer is "no" list the acreage and tract descriptions which have actually been consolidated. (Use reverse side of this form if necessary.) \_\_\_\_\_

No allowable will be assigned to the well until all interests have been consolidated (by communitization, unitization, forcepooling, or otherwise) or until a non-standard well, affecting each interest, has been approved by the Commission.



COMMUNICATION

I hereby certify that the information consolidated herein is true and complete to the best of my knowledge and belief.

*[Signature]*

Name \_\_\_\_\_

Position \_\_\_\_\_

Company \_\_\_\_\_

Date **11-21-73**

I hereby certify that the well location shown on this plan was located from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my knowledge and belief.

Nov. 9, 1973

*[Signature]*

Registered Professional Geologist  
 State of New Mexico

**H. K. 220**

Commissioner

**ILLEGIBLE**

NO. OF COPIES RECEIVED	5
REGISTRATION	
SANT A M	1
FILE	1
U.S.G.O.	3
LAND OFFICIAL	
OPERATOR	1

RECEIVED  
NEW MEXICO OIL CONSERVATION COMMISSION

DEC 27 1973

30-015-01270

Form O-101  
Revised 11-61

~~NEW MEXICO OIL CONSERVATION COMMISSION~~

APPLICATION FOR PERMIT TO DRILL, DEEPEN, OR PLUG BACK

1a. Type of Well DRILL <input checked="" type="checkbox"/> DEEPEN <input type="checkbox"/> PLUG BACK <input type="checkbox"/>		7. Well Log-cement Name
b. Type of Well OIL WELL <input checked="" type="checkbox"/> GAS WELL <input type="checkbox"/> OTHER <input type="checkbox"/> SPECIAL CASE <input type="checkbox"/> MULTIPLE ZONE <input type="checkbox"/>		8. Fracture Length (feet)
2. Name of Operator D. L. Hannifin & Joe Don Cook		9. Well No. 2
3. Address of Operator P. O. Box 945 Roswell, New Mexico 89201		10. Field and Pool, or Well No. Wildcat Delaware
4. Location of Well UNIT LETTER <u>M</u> <u>0</u> LOCATED <u>1950</u> FEET FROM SURFACE <u>DATE</u> <u>LINE</u> AND <u>680</u> FEET FROM LINE <u>South</u> LINE OF SEC. <u>24</u> T. <u>22</u> N. R. <u>23E</u> M.D.P.		11. County DELAWARE
19. Proposed Depth 355		21. Formation Delaware
20. History of Well Rotary		22. Approx. Date Well will start Feb. 1, 1974
23. Direction (show whether N, S, etc.) 3193, S 70		24. Kind & Strata Plug, Bond Blended
25. Date of Completion		26. Approx. Date Well will start

PROPOSED CASING AND CEMENT PROGRAM

SIZE OF HOLE	SIZE OF CASING	WEIGHT PER FOOT	SWT (LBS PER FOOT)	SACKS OF CEMENT	EST. TOP
12 1/2"	8 5/8"	20	375	200	Surf level
7 7/8"	5 1/2"	15.5	450	500	Approx. 1100

Surface casing will be set at approx. 375 and cement circulated to surface  
W O C time will be 18 hrs. then blowout preventers will be installed and  
rested daily during drilling.

ILLEGIBLE

APPROVAL VALID FOR 90 DAYS UNLESS DRILLING COMMENCED

DATE 4-11-74

IN ADDITIONAL SPACE OPERATOR PROPOSED PROGRAM IF OPERATOR IS TO OBTAIN PERMIT TO DRILL, DRILL, AND CEMENT OR PASSERS OF EXISTING TOWER AND PROPOSED NEW CASING PER LINE. GIVE BLOCKS AND OTHER APPROVALS, IF ANY.

I hereby certify that the information above is true and complete to the best of my knowledge and belief.  
Signed [Signature] Job Operator Date 12-21-73

(This space for State Use)

APPROVED BY [Signature] TITLE OIL AND GAS INSPECTION DATE JAN 11 1974

CONDITIONS OF APPROVAL, IF ANY  
Cement must be circulated to surface behind 5 1/2" using Grace Atlantic

110 feet from Grace Atlantic

NEW MEXICO OIL CONSERVATION COMMISSION  
WELL LOCATION AND ACREAGE DEDICATION

Form O-103  
Supersedes O-101  
Effective 1-1-65

All distances must be from the outer boundaries of the tract.

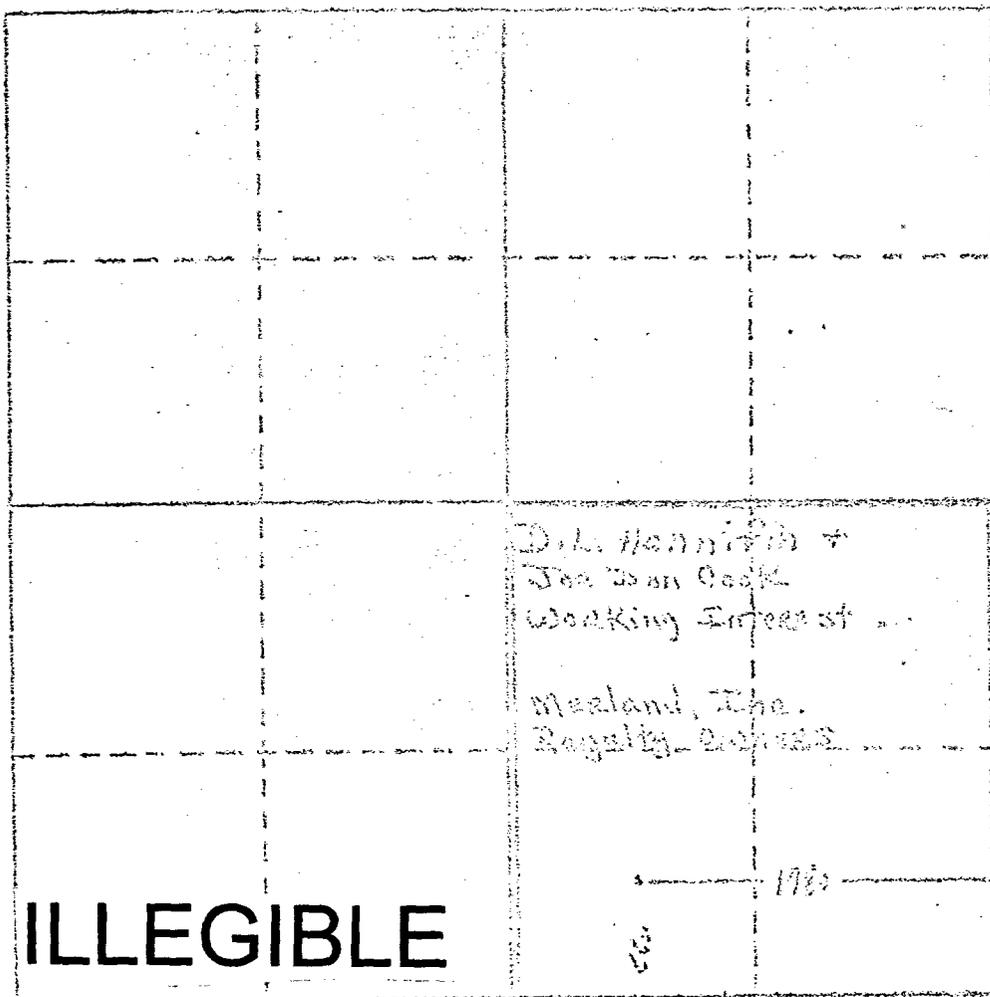
Operator <b>D. L. Hannifin &amp; Joe Don Cook</b>		Lease <b>Merland</b>		Well No. <b>2</b>
Map Letter <b>W O</b>	Section <b>24</b>	Township <b>22 South</b>	Range <b>26 East</b>	County <b>Eddy</b>
Approximate Location of Well: <b>1980</b> feet from the <b>East</b> line and <b>450</b> feet from the <b>South</b> line				
Land Level Elev. <b>3173.3</b>	Producing Formation <b>Delaware</b>	Pool <b>Wildcat</b>	Dedicated Acreage <b>40</b> Acres	

- Outline the acreage dedicated to the subject well by colored pencil or ink on the plot below.
- If more than one lease is dedicated to the well, outline each and identify the respective owners (as to working interest and royalty).
- If more than one lease of different ownership is dedicated to the well, have the (15627 1973) owners been consolidated by communitization, unitization, force-pooling, etc?

Yes  No If answer is "yes," type of consolidation O. E. C.

If answer is "no," list the owners and exact descriptions which have actually been consolidated. (Use reverse side of this form if necessary.)

No allowance will be assigned to the well until all interests have been consolidated (by communitization, unitization, force-pooling, or otherwise) or until a non-standard unit, allocating such interests, has been approved by the Commission.



CERTIFICATION

I hereby certify that the information furnished herein is true and complete to the best of my knowledge and belief.

*[Signature]*  
Name: Joe Don Cook

Position: \_\_\_\_\_

Company: \_\_\_\_\_

Date: 1-20-73

I hereby certify that the well location shown on this plan was placed in a field notes of record records and by me or under my supervision, and that the same is true and correct to the best of my knowledge and belief.

Date: Dec. 2, 1973

*[Signature]*

Registered Professional Engineer  
and Public Surveyor

*[Signature]*

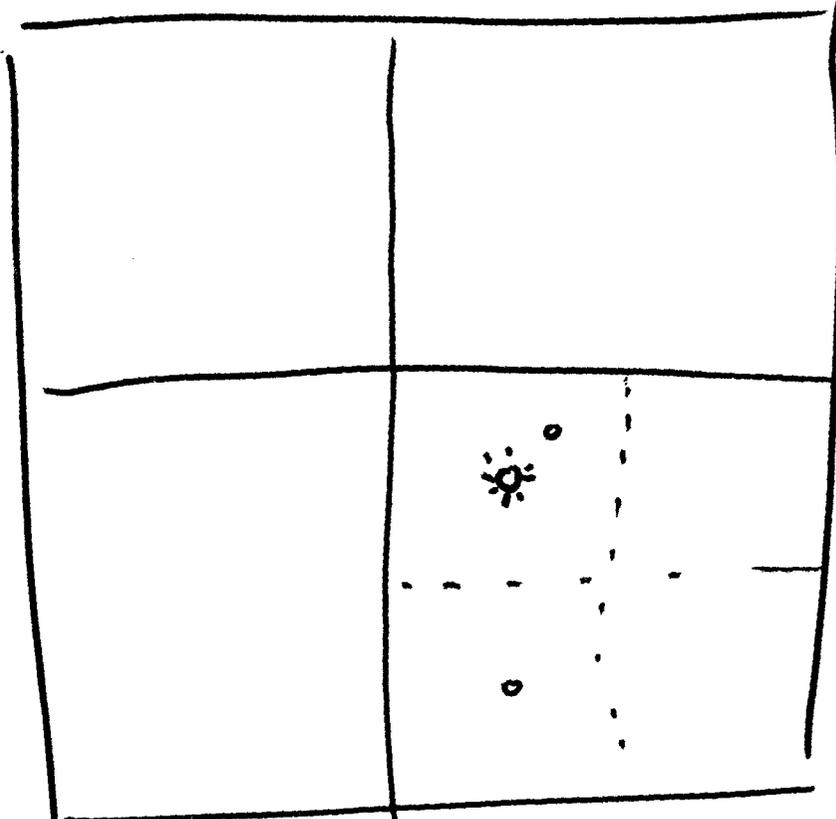
ILLEGIBLE

D. L. Hammelin & Joe Elton Cook

Merland # 1 J 24-22-26  
~~2004~~ 2004 S 1870 E

Merland # 2 M 24-22-26  
~~660~~ 660 S 1980 E

Grace Pt Lentic 1980 S E E



18 E  
24 11

2004  
1980  
24

1980  
1870  
110

designated as the Carlsbad-Canyon Gas Pool, consisting of the following described area:

TOWNSHIP 22 SOUTH, RANGE 27 EAST, NMPM  
Section 21: S/2

is hereby dismissed.

(d) That the proposed creation of a new pool in Eddy County, New Mexico, classified as a gas pool for Morrow production and designated as the Happy Valley-Morrow Gas Pool, consisting of the following described area:

TOWNSHIP 21 SOUTH, RANGE 26 EAST, NMPM  
Section 34: W/2

is hereby dismissed.

(e) That the proposed creation of a new pool in Eddy County, New Mexico, classified as a gas pool for Morrow production and designated as the La Huerta-Morrow Gas Pool, consisting of the following described area:

TOWNSHIP 21 SOUTH, RANGE 27 EAST, NMPM  
Section 28: S/2

is hereby dismissed.

(f) That the East Empire Yates-Seven Rivers Pool in Eddy County, New Mexico, as heretofore classified, defined, and described, is hereby extended to include therein:

TOWNSHIP 17 SOUTH, RANGE 28 EAST, NMPM  
Section 28: NE/4 SE/4

(g) That the Fowler-Devonian Pool in Lea County, New Mexico, as heretofore classified, defined, and described, is hereby extended to include therein:

TOWNSHIP 24 SOUTH, RANGE 37 EAST, NMPM  
Section 10: SE/4

(h) That the Hat Mesa-Morrow Gas Pool in Lea County, New Mexico, as heretofore classified, defined, and described, is hereby extended to include therein:

TOWNSHIP 21 SOUTH, RANGE 32 EAST, NMPM  
Section 1: S/2  
Section 2: All

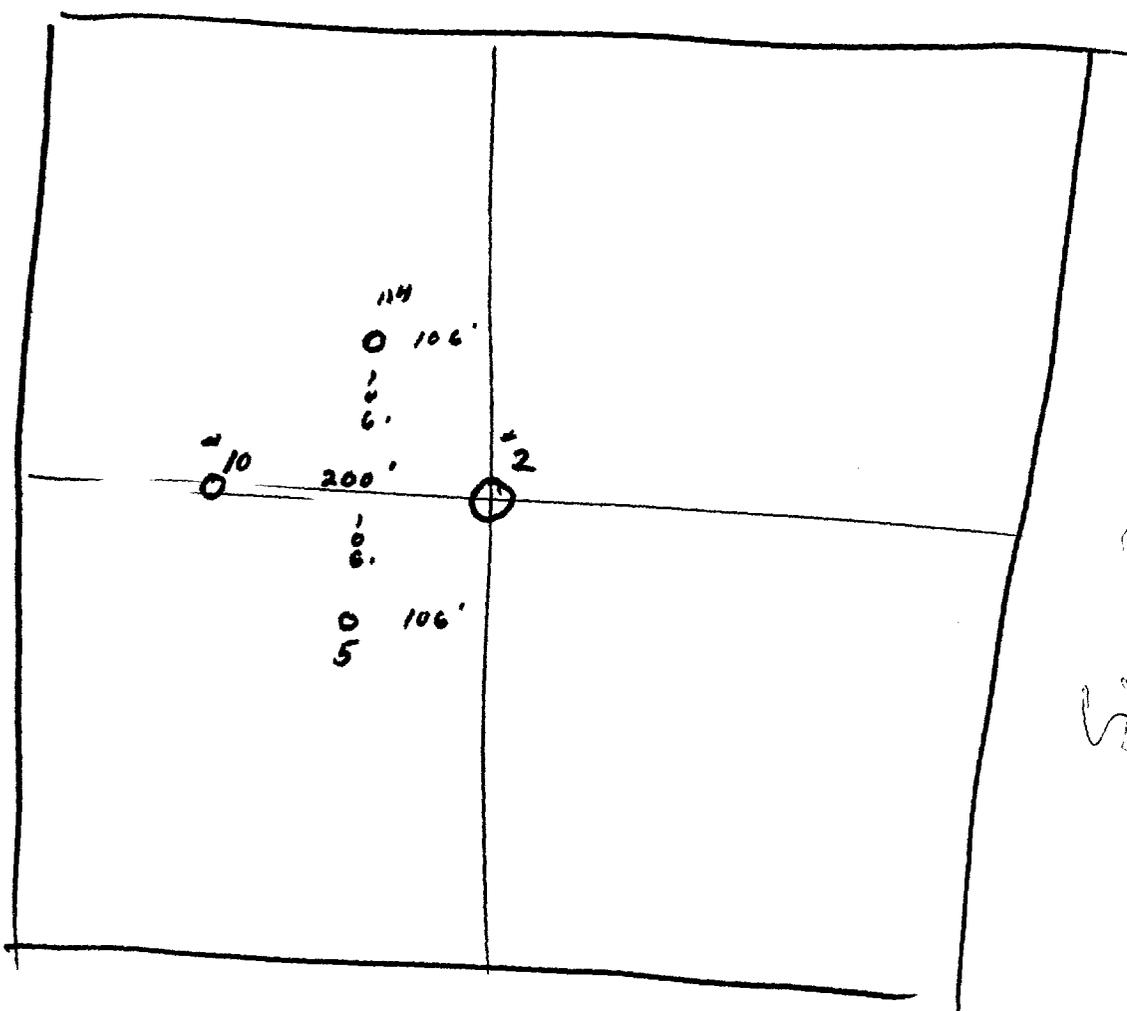
J 28-21-37

Gulf J. N. Carson # 5 1874 S 2086 E  
TD 7910 1-31-48

Gulf J. N. Carson # 10 1980 S 2180 E  
TD 7570 2-27-49

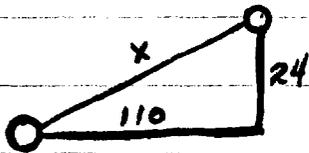
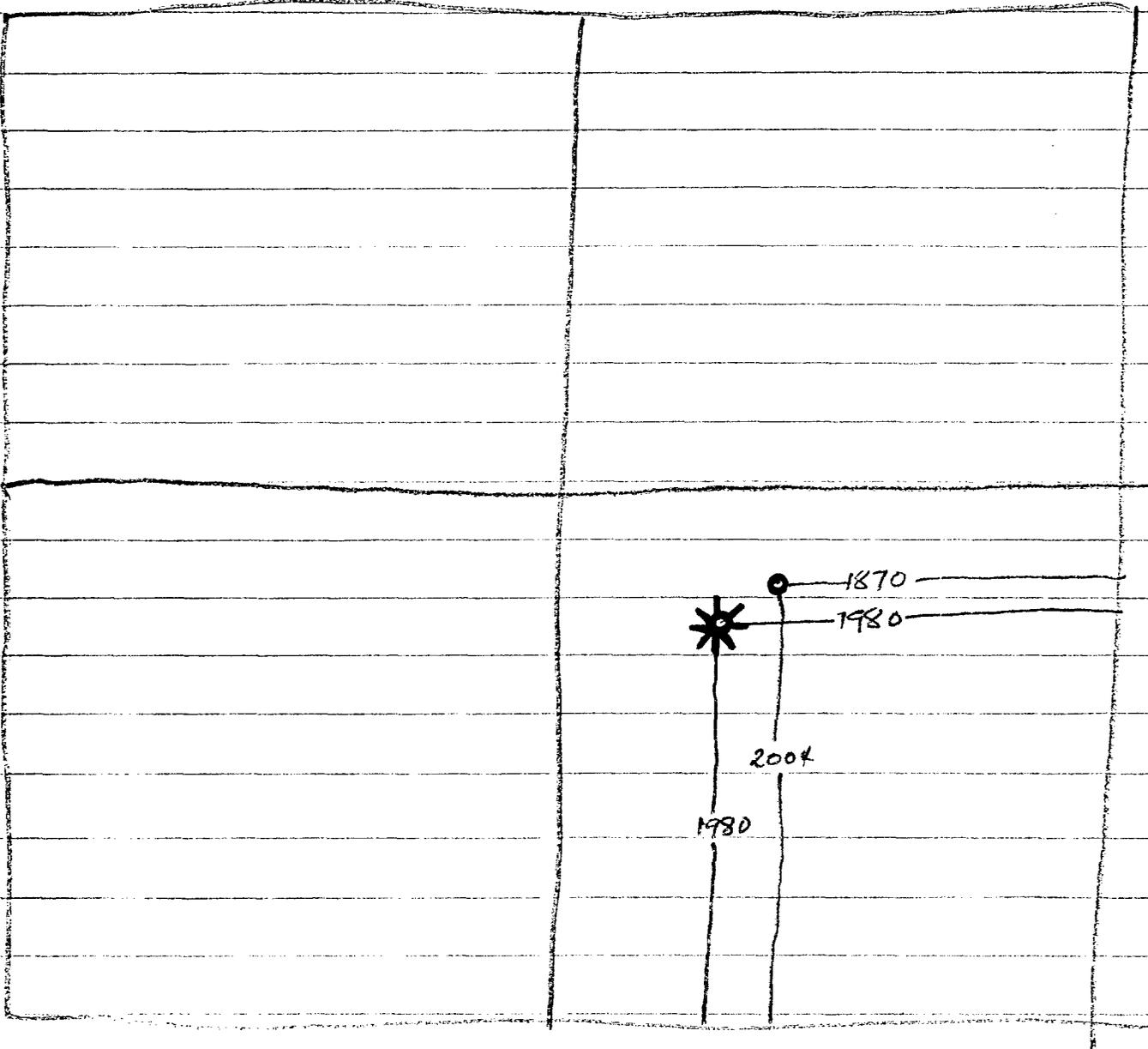
Gulf J. N. Carson B # 2 1980 S 1980 E  
TD 3754 5-20-39

Gulf Central Drinking Unit # 114 2086 S 2086 E  
TD 6611 3-19-48



Sec 28-21-37e

$\frac{100}{x}$   
 $x \cdot 100 = 100$   
 $x = 1$



$$x = \sqrt{a^2 + b^2}$$

$$x = \sqrt{576 + 12100} = \sqrt{12676} = 112.59$$

< 136' by tape >

calculated distance between Jamison well (DELAWARE)  
and Grace Atlantic #1 (Maryland)

Mr. Simon

Occupation

OSHA

Safety + Health Administration

1490

(306)

747-3711

ext 681

WJ AGENCY SANA

107P MDT DVA133(1502)(2-015022E181)PD 06/30/74 1455

ICS IPMBNGZ CSP

5058853243 TDBN CARLSBAD NM 97 06-30 0255P EDT

PMS BILL CARR, NEW MEXICO OIL CONSERVATION COMMISSION, DLR

STATE LAND OFFICE BLDG

SANTA FE NM

THE MERLAND #1 WELL LOCATED SECTION 25 TOWNSHIP 22 SOUTH RANGE  
26 EAST EDDY COUNTY NEW MEXICO THAT WE CONTESTED RE ITS LOCATION  
IS BLOWING OUT THE GRANTING OF THE PERMIT HAS ENDANGERED THE  
GRACE ATLANTIC WELL AND LOCATION AND WE DEMAND IMMEDIATE STEPS  
BE TAKEN TO CONTROL THE BLOW OUT AND TO PREVENT FURTHER DAMAGE  
TO THE GRACE ATLANTIC WELL AND SURFACE EQUIPMENT THE LOCATION  
IS SATURATED WITH OIL THEREFORE WE HAVE PUT WATCHMEN ON AROUND  
THE CLOCK WE HOLD THE NEW MEXICO OIL CONSERVATION COMMISSION  
RESPONSIBLE AND DEMAND THE OIL CONSERVATION COMMISSION TAKE  
IMMEDIATE CORRECTIVE MEASURES

RECEIVED  
JUL 1 - 1974  
NEW MEXICO OIL CONSERVATION COMMISSION

MICHAEL AND CORINNE GRACE