

# GALLEGOS LAW FIRM

A Professional Corporation

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October 2, 1987

Ms. Florene Davidson  
Oil Conservation Division  
P. O. Box 2088  
Santa Fe, New Mexico 87501

RE: Application of Howard Olson to Reopen Case  
Nos. 8668 and 8769, Lea County, NM -- Hartman

Dear Ms. Davidson:

As we discussed today by telephone, I am sending a copy of my letter of September 14, 1987 concerning these cases which was evidently misrouted.

As soon as counsel for both parties feel the matter is ready for hearing we will advise you. Meanwhile, it is understood that the hearings set for October 7, 1987 are vacated.

Very truly yours,

GALLEGOS LAW FIRM

By   
J. E. GALLEGOS

JEG:evm

Enclosure

cc: Jim Bruce, Esq.  
Bob Strand, Esq.  
Doyle Hartman

Case No. 8769  
J.E. Gallegos  
George F. Bingham  
Felice Gonzales



STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

GARREY CARRUTHERS  
GOVERNOR

April 5, 1989

POST OFFICE BOX 2088  
STATE LAND OFFICE BUILDING  
SANTA FE, NEW MEXICO 87504  
(505) 827-5800

CERTIFIED - RETURN  
RECEIPT REQUESTED

Mr. Harold Hensley  
Hinkle, Cox, Eaton,  
Coffield & Hensley  
Attorneys at Law  
Post Office Box 10  
Roswell, New Mexico 88201

Dear Mr. Hensley:

In reviewing our records we find that you are the attorney of record in two cases which have been continued indefinitely and have not had any action taken on them in over a year. Said cases are listed on the attached sheet.

If we do not receive word from you instructing us otherwise within 15 days from the date of this letter, we will set the cases for the next scheduled hearing at which time they will be dismissed.

Sincerely,

A handwritten signature in cursive script that reads "Florene Davidson".

Florene Davidson  
OC Staff Specialist

enc/

Case 8668 - Examiner Hearing - October 7, 1987

Application of Howard Olsen to Reopen Case  
8668 to Reconsider the Provisions of Division  
Order No. R-8031, Lea County, New Mexico

Continued Indefinitely

Case 8769 - Examiner Hearing - October 7, 1987

Application of Howard Olsen to Reopen Case  
8769 to Reconsider the Provisions of Division  
Order No. R-8091, Lea County, New Mexico

Continued Indefinitely

Cases 8668 and 8769 involved applications of Doyle  
Hartman for Compulsory Pooling.

# GALLEGOS LAW FIRM

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J. E. Gallegos  
George F. Bingham\*  
Michael L. Oja†  
Felice G. Gonzales  
Joanne Reuter

June 16, 1989

**VIA HAND DELIVERY**

**RECEIVED**

**JUN 16 1989**

William J. Lemay, Director  
Oil Conservation Division  
P.O. Box 2088  
Santa Fe, New Mexico 87504

**OIL CONSERVATION DIVISION**

RE: Application of Howard Olsen to Reopen Case Nos. 8668 and 8769,  
Lea County, New Mexico.

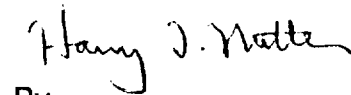
Dear Mr. Lemay:

Enclosed herewith please find a Response and Motion to Dismiss the referenced Application filed today on behalf of Doyle Hartman. By this letter we request that the enclosed Motion be set for hearing on the Division's docket for July 12, 1989.

If the Motion can not be set for hearing as requested, please advise us as soon as possible. Your prompt attention to this matter will be greatly appreciated.

Sincerely,

GALLEGOS LAW FIRM



By  
HARRY T. NUTTER

HTN:ap

\* Also admitted in the District of Columbia

† Also admitted in California

**STATE OF NEW MEXICO**  
**ENERGY AND MINERALS DEPARTMENT**  
**OIL CONSERVATION DIVISION**

**IN THE MATTER OF THE  
APPLICATION OF HOWARD OLSEN  
TO REOPEN CASE NOS. 8668  
AND 8769, LEA COUNTY, NEW MEXICO**

RECEIVED

JUN 16 1989

OIL CONSERVATION DIVISION

**RESPONSE TO APPLICATION  
AND MOTION TO DISMISS**

DOYLE HARTMAN ("Hartman") hereby submits this Response to the captioned Application filed by Howard Olsen ("Olsen"). While Olsen asks the Oil Conservation Division ("Division") to reopen the earlier proceedings, in reality Olsen seeks to avoid the nonconsent penalties imposed upon him by Order Nos. 8668 and 8769. Hartman hereby moves the Division to dismiss the Application for the following reasons:

1. After proper notice and hearing, Order Nos. 8668 and 8769 were duly entered by the Division on September 27 and December 6, 1985, respectively. Olsen did not timely request a rehearing, but instead instituted this Cause approximately two years later seeking to overturn the action of the Division. Olsen may not now collaterally attack those Orders.

2. Olsen initiated this Cause in September of 1987. On April 15, 1989, the OCD notified Olsen's counsel that this Application would be scheduled for hearing and dismissed. Olsen's attorney requested a further continuance. Olsen has utterly failed to prosecute this Cause with due diligence and is prolonging the administrative process in an attempt to subvert a judicial resolution of other legal disputes with Hartman.


3. At the same time Hartman sought the compulsory pooling Orders attacked herein, he was negotiating with Olsen and arrived at an agreement for the purchase of

Olsen's interest. Hartman relied upon Olsen's agreement to sell his interest, but Olsen later reneged on that agreement. Olsen is equitably estopped from asserting any technical noncompliance with the provisions of Order Nos. 8668 and 8769.

4. Hartman drilled the wells authorized by the Orders at issue, undertaking all the financial risks and managerial responsibility for the benefit of the interest owners within the pooled lands. Hartman conscientiously complied with the terms and conditions imposed by Order Nos. 8668 and 8769. The policy underlying the conservation laws mandates that Olsen also abide by the terms of those Orders, including the payment of his share of drilling costs subject to the nonconsent penalty.

WHEREFORE, Hartman requests this Motion be set for hearing on the Division's docket for July 12, 1989, and the Division dismiss the Application for the foregoing reasons.

Respectfully submitted,

By   
J.E. GALLEGOS  
HARRY T. NUTTER  
300 Paseo De Peralta  
Suite 100  
Santa Fe, New Mexico 87501  
(505) 983-6686

Attorneys for Respondent  
Doyle Hartman

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Response was served on this 16th day of June, 1989, to all counsel of record.

  
HARRY T. NUTTER

# GALLEGOS LAW FIRM

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George F. Bingham\*  
Michael L. Oja †  
Felice G. Gonzales  
Joanne Reuter

*Whitaker 7 M.S.  
7/5/89*

June 29, 1989

Our File No. 87-1.3

**RECEIVED**

JUL - 2 1989

OIL CONSERVATION DIV.  
SANTA FE

Ms. Florene Davidson  
OCD Staff Specialist  
Oil Conservation Division  
P. O. Box 2088  
Santa Fe, New Mexico 87504

RE: Application of Howard Olsen to Reopen  
Case 8668 and to Reopen Case 8769

Dear Ms. Davidson:

These two cases have been on file for well over a year and we have asked that they be set for hearing and concluded. We have learned that they were to be set on the July 12, 1989 docket. Unfortunately, that will not allow sufficient time to schedule and perform depositions of some key witnesses.

It would be appreciated if these matters could be called for hearing on the July 26, 1989 docket.

Very truly yours,

GALLEGOS LAW FIRM

By *J E Gallegos*  
J. E. GALLEGOS

JEG:evm

cc: Harold Hensley, Esq.

CAMPBELL & BLACK, P.A.  
LAWYERS

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BRUCE D. BLACK  
MICHAEL B. CAMPBELL  
WILLIAM F. CARR  
BRADFORD C. BERGE  
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J. SCOTT HALL  
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JEFFERSON PLACE

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JUL 24 1989

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SANTA FE, NEW MEXICO 87504-2208

OIL CONSERVATION DIVISION

TELEPHONE: (505) 988-4421

TELECOPIER: (505) 983-6043

July 24, 1989

Hand Delivered

William J. LeMay  
Director, Oil Conservation Div.  
NM Dept. Energy, Minerals  
& Natural Resources  
State Land Office Building  
Santa Fe, New Mexico 87503

*MS.*

Re: **Case 8668: In the Matter of Case No. 8668 being reopened upon Application of Howard Olsen to Reconsider the Provisions of Division Order No. R-8031.**

**Case 8769: In the Matter of Case No. 8769 being reopened upon Application of Howard Olsen to Reconsider the Provisions of Division Order No. R-8091.**

Dear Mr. LeMay:

Doyle Hartman requests that the above-referenced cases currently scheduled for hearing before a division examiner on July 26, 1989 be continued to the examiner hearing scheduled for August 9, 1989. Mr. Harold L. Hensley, Jr., attorney for Howard Olsen, concurs in this request for continuance.

Your attention to this matter is appreciated.

Very truly yours,

*William F. Carr*  
William F. Carr

WFC:ep

cc: J.E. Gallegos, Esq.  
Don Maddox, Esq.  
Harold L. Hensley, Jr., Esq.  
Doyle Hartman  
W. Thomas Kellahin, Esq.



**STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION DIVISION**

**IN THE MATTER OF THE APPLICATION  
OF HOWARD OLSEN TO REOPEN  
CASE NOS. 8668 AND 8769,  
LEA COUNTY, NEW MEXICO**

**MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS**

**PRELIMINARY STATEMENT**

This memorandum is submitted by Doyle Hartman ("Hartman") in response to the captioned Application filed by Howard Olsen ("Olsen"), and includes points and authorities in support of Hartman's Motion to Dismiss.

Olsen seeks the withdrawal of two force pooling orders<sup>1</sup> entered by the Division four years ago, claiming he was not afforded an opportunity to join in the wells drilled pursuant to those orders. Olsen bases the application strictly on technicalities that he did not receive estimated and actual well costs for the two wells drilled pursuant to those orders in exactly the manner prescribed by the orders.

Hartman did in fact furnish Olsen with estimated and actual well costs in a manner which gave Olsen the information and the opportunity to join in the wells (the

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<sup>1</sup> Order No. R-8031 entered September 27, 1985 in Case No. 8668, Application of Doyle Hartman for Compulsory Pooling, Lea County, New Mexico; Order No. R-8091 entered December 6, 1985 In Case No. 8769, Application of Doyle Hartman for Compulsory Pooling, Lea County, New Mexico.

Carlson Federal No. 4 and Carlson Federal No. 5) or object to the actual well costs. The facts show Olsen as a practical matter has received all information coming to him and was not prejudiced by the lack of strict compliance with the Division's orders.

#### **CHRONOLOGICAL STATEMENT OF THE KEY FACTS**

January 24, 1985	Hartman initiated negotiations for the joinder, sale or farmout of Olsen's interest in the lands encompassed by the force poolings orders.
July 10, 1985	Hartman furnished Olsen with an itemized estimate of costs for the Carlson Federal No. 4, the well he proposed to be drilled on the lands which are the subject of Case No. 8668.
July 19, 1985	Hartman filed application in Case No. 8668 for compulsory pooling of the proration unit for the Carlson Federal No. 4.
July 22, 1985	Olsen was notified of the hearing in Case No. 8668 set for July 31, 1985 by certified mail.
July 31, 1985	Hearing on Case No. 8668 was held at the OCD. Olsen elected not to intervene.
September 10, 1985	The Carlson Federal No. 4 was spudded.
September 20, 1985	Hartman received Olsen's agreement to sell his interest (reflected by Hartman's letter of that date to Olsen's agent enclosing a draft and an assignment for execution by Olsen).
September 27, 1985	Order No. R-8031 was issued in Case No. 8668 force pooling the proration unit for the Carlson Federal No. 4.
October 4, 1985	Drilling was completed on Carlson Federal No. 4.
October 29, 1985	Application was filed in Case No. 8769 for compulsory pooling of the proration unit for the Carlson Federal No. 5.
November 11, 1985	Hartman notified Olsen of the hearing in Case No. 8769 set for November 21, 1985 by certified mail.
November 21, 1985	Hearing was held at the OCD in Case No. 8769. Olsen elected not to intervene.

December 6, 1985	Order No. 8091 was issued in Case No. 8769 force pooling the proration unit for the the Carlson Federal No. 5.
December 10, 1985	The Carlson Federal No. 5 was spudded.
January 5, 1986	Drilling was completed on the Carlson Federal No. 5.
January 6, 1986	Hartman notified Olsen of the completion of the Carlson Federal No. 5 by certified mail and again requested closing of the purchase of Olsen's interest.
January 13, 1986 and January 14, 1986	Olsen refused to accept Hartman's January 6, 1986 letter notifying Olsen of January 14, 1986 the completion of the Carlson Federal No. 5.
August 17, 1987	Application of Howard Olsen to Reopen Case Nos. 8668 and 8769, Lea County, New Mexico was filed.
October, 1987	Olsen's CPA spent three to four days at Hartman's offices auditing Hartman's records on the Carlson Federal No. 4 and No. 5.
October 17, 1987	Olsen writes Hinkle Firm with data on actual costs of Carlson Nos. 4 and 5.
November 9, 1987 and November 16, 1987	Olsen's CPA reports to Olsen actual well costs based upon his audit and certain exceptions.
April 5, 1989	OCD notified Olsen that Case Nos. 8668 and 8769 would be set for the next scheduled hearing at which time they would be dismissed.
June 16, 1989	Hartman requested OCD hearing on Olsen's Application to Reopen.

## LEGAL ARGUMENT AND AUTHORITY

### POINT I.

#### **AN ADMINISTRATIVE AGENCY HAS DISCRETION TO RELAX OR MODIFY ITS PROCEDURAL RULES FOR HARMLESS AND NONPREJUDICIAL ERROR**

It is well settled that administrative agency decisions will not be set aside for procedural errors unless they are major, substantial and prejudicial. American Farm Lines v. Black Ball Freight Service, 397 U.S. 563, 539, 90 S.Ct. 1288, 1292 (1970); County of Del Norte v. United States, 732 F.2d 1462, 1467 (9th Cir. 1984); N.L.R.B. v. Seine and Line Fishermen's Union of San Pedro, 374 F.2d 974, 981 (9th Cir. 1967); Anderson v. United States Forest Service, 645 F.Supp. 3, 7 (E.D.Cal. 1985). This is especially true where the error was harmless because there was no resulting prejudice, or where the failure to follow the procedural rule inflicts no significant injury upon the party entitled to the rule's observance. Dodson v. Nat'l Transp. Safety Bd., 644 F.2d 647, 652 (7th Cir. 1981).

### POINT II.

#### **BURDEN OF PROOF IS ON OLSEN TO SHOW PREJUDICE**

The burden is on the complaining party to establish prejudice has occurred. N.L.R.B. v. Seine and Line Fishermen's Union of San Pedro, 374 F.2d 974, 981 (9th Cir. 1967); Center for Auto Safety v. Tiemann, 414 F.Supp. 215, 226 (D.C. 1976); Lanningham v. United States, 2 Cl.Ct. 535, 556 (Cl.Ct. 1983).

Where an agency furnished notice to plaintiff earlier than required by that agency's regulations thereby affording plaintiff the opportunity intended to be furnished

to plaintiff by the regulation, such procedural irregularity was deemed trivial and did not mandate setting aside agency's action. County of Del Norte, 732 F.2d 1462. In Tiemann a plaintiff challenging an agency's action failed to meet its burden of showing it had been prejudiced by an agency's failure to hold open public meetings regarding its intended action as required by statute because plaintiff was able, albeit through its own initiative, to comment on the intended action while it was pending before the agency. Tiemann, 414 F.Supp at 226. In Laningham the United States was unable to show it had been prejudiced by unauthorized personnel having conducted an investigation of a claim for disability retirement rather than the designated authority where the facts clearly supported the conclusion of that investigation and the procedural rule was deemed so technical as to be inconsequential, constituting harmless error, if any. Laningham, 2 Cl.Ct. at 556.

### **POINT III.**

#### **POLICY AND EQUITABLE PRINCIPLES UNDERLYING COMPULSORY POOLING STATUTE DICTATE OLSEN'S APPLICATION BE DISMISSED**

Where an administrative agency is expressly given the power to determine what is fair and equitable, equitable principles are necessarily applied in their decisions. Securities & Exhc. Com. v. Chenery Corp., 318 U.S. 80, 90-92 (1943); 1 AmJur2d Administrative Law Sec. 143 (1962). In a clear mandate that equity guide decisions involving compulsory pooling the New Mexico Legislature entitled the State's statute governing compulsory pooling "Equitable allocation of allowable production; pooling; spacing."

When in a given case the ends of justice require it an administrative agency should exercise its discretion to modify or relax its procedural rules. American Farm Lines v. Black Ball Freight Service, 397 U.S. 563, 539, 90 S.Ct. 1288, 1292 (1970); Neighborhood TV Co., Inc. v. F.C.C., 742 F.2d 629, 636 (D.C. 1984).

State law empowers the Division to compel pooling as a means of achieving orderly development when interest owners cannot voluntarily agree to do so. §70-2-17 C. NMSA 1978 (1987 Repl.). The purpose of compulsory pooling is to prevent the drilling of unnecessary wells, protect correlative rights and prevent waste. Id.; see also, Rutter & Wilbanks v. Oil Conservation Commission, 87 N.M. 286, 291-292, 532 P.2d 282 (1975) (primary consideration of conservation laws is prevention of waste and protection of correlative rights). The compulsory pooling statute prevents waste by appropriately limiting the number of wells drilled. §70-2-17 B. NMSA 1978 (1987 Repl.). The statute protects correlative rights by assuring each owner the opportunity to produce his just and equitable share of the pooled substances. §70-2-17 A. NMSA 1978 (1987 Repl.).

Under this statutory scheme of compulsory pooling, the operator and participating parties assume all the financial risk of drilling. See, §70-2-17 C. NMSA 1978 (1987 Repl.) (compulsory pooling order should provide that those electing not to pay their proportionate share in advance be reimbursed "solely out of production"). Therefore, the operator and any participating parties bear the loss if a well drilled pursuant to the statute proves to be a dry hole or does not produce in paying quantities. In order to compensate the participating parties for their assumption of that risk, the statute assesses a penalty upon the nonparticipating party. §70-2-17 C. NMSA

1978 (1987 Repl.) (charge for risk not to exceed 200% of nonconsenting owners' prorata share of drilling and completing costs); see also, Ranola Oil Co. v. Corporation Commission, 752 P.2d 1116, 1119 (Okla. 1988) (purpose of forced pooling is to equalize the risk of loss by forcing all interest owners to choose in advance whether they will share in both benefits and risk of exploration). The statute further protects the rights of the nonconsenting party by allowing the Division to determine proper costs in the event a dispute arises. §70-2-17 C. NMSA 1978 (1987 Repl.).

### **CONCLUSION**

Olsen is asking the OCD to set aside two force pooling orders issued four years ago because he was not furnished with estimated and actual well costs in the technically exact manner prescribed by those orders. As a practical matter Hartman has complied with the Division's orders in all respects. Moreover, Olsen has failed to meet his burden to show how he has been prejudiced by technical noncompliance.

Olsen openly acknowledges having received the information the orders required to be furnished, as well as having had the opportunity to audit Hartman's records on these wells. In the almost two years which have passed since Olsen's audit Olsen has never objected to the OCD about the reasonableness of the well costs.

The purpose of forced pooling is to equalize the risk of loss by forcing all interest owners to choose in advance whether they will share in both the benefits and the risk of exploration. Hartman has already borne all risk associated with drilling, completing and producing these wells over the last four years. To this day, Olsen is still sitting on the fence refusing to commit to becoming a voluntary participant in these

wells. What Olsen really is attempting to do is to manipulate a technical procedural rule of the OCD to defeat the purposes and public policy underlying the force pooling statute.

CAMPBELL & BLACK, P.A.

By

  
WILLIAM F. CARR

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GALLEGOS LAW FIRM, P.C.

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SEP 15 1989

OIL CONSERVATION DIVISION

September 14, 1989

Robert Stovall, Esquire  
Counsel, Oil Conservation Division  
Department of Energy and Minerals  
State Land Office Building  
Santa Fe, New Mexico

Re: Cases 8668 and 8769

Dear Bob:

Please find enclosed our Memorandum in Response to Mr. Hartman's Motion to Dismiss and Brief. We have only cited one case and a copy is enclosed. Copies of our Memorandum are also being delivered to Messrs. Gallegos and Carr.

Respectfully submitted,

HINKLE, COX, EATON, COFFIELD & HENSLEY



T. Calder Ezzell, Jr.

TCE/tw  
Enclosures

cc: Mr. J. E. Gallegos  
Mr. William Carr

STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION DIVISION

IN THE MATTER OF THE APPLICATION  
OF HOWARD OLSEN TO REOPEN  
CASE NOS. 8668 and 8769,  
LEA COUNTY, NEW MEXICO

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SEP 1 1979  
OIL CONSERVATION DIVISION

RESPONSE MEMORANDUM IN  
OPPOSITION TO MOTION TO DISMISS

I.

HARTMAN'S FAILURE TO COMPLY WITH THE DIVISION'S  
ORDERS DEPRIVED OLSEN OF HIS OPPORTUNITY TO  
PARTICIPATE IN THE SUBJECT WELLS

The New Mexico pooling statute contains the following provision:

Such pooling order of the division shall make definite provision as to any owner, or owners, who elects not to pay his proportionate share in advance for the pro rata reimbursement, solely out of production to the parties advancing the costs of the development and operation, which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable, but which shall include a reasonable charge for supervision and may include a charge for the risk involved in the drilling of such well, which charge for risk shall not exceed two hundred percent [200%] of the non-consenting working interest owner's or owners' pro rata share of the costs of drilling and completing the well.

Section 70-2-17C. N.M.S.A. 1978.

In accordance with § 70-2-17 N.M.S.A. 1978, the Division issued its Orders in Case No. 8668 and Case No. 8769. Both of the Orders contain the following provisions:

After the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Division and each known working interest owner in the subject unit an itemized schedule of estimated well costs.

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 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.

The operator shall furnish the Division and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the well; . . .

Both Orders also provided that each non-consenting working interest owner who had not paid his share of estimated well costs in advance was required to pay 200% of the reasonable well costs as risk charges.

In this case, it is undisputed that with respect to the Carlson Federal No. 4, which is the subject of Case No. 8668, Doyle Hartman ("Hartman") did not provide the itemized estimate of well costs to Howard Olsen ("Olsen") after the effective date of the subject Order, which was September 27, 1985. In fact, Hartman furnished Olsen with the estimate of costs for the subject well only on July 10, 1985, which is approximately two and one-half months before Order No. R-8031 was even issued. See, the stipulated Chronological Statement of the Key Facts. The prejudice to Olsen is clear, because the very purpose of the language of the Order was to afford Olsen the opportunity to participate after being advised of the consequences to him if he elected not to do so. Obviously, Hartman's failure to comply with the Division's Order deprived Olsen of his opportunity to exercise his right to participate in accordance with the Division's Order.

Hartman has argued before the Division that it was impossible for him to have complied with the Division's Order No. R-8031 because he commenced drilling the well on September 10, 1985, seventeen days before the Order was ever issued. However, Hartman himself created this impossibility, the drilling of the well was solely within his control. When Hartman decided to drill the well prior to the issuance of the Order, he did so at his own risk, not knowing what the provisions of the Order would be. Even though Hartman created the impossibility, which was solely within his control, he could still have minimized the prejudice to Olsen by furnishing Olsen with the estimated well costs after the issuance of the Order, thereby providing Olsen the 30 days within which to decide whether or not he would participate in the well. The well had not yet been completed when the Order was issued, and Hartman could have "tight-holed" the well and delayed completion until the 30 day period had run. He chose not to do this at his own risk, and his failure should not have absolved him of the obligation to comply with the Division's Order so as not to prejudice Olsen.

With respect to the Carlson Federal No. 5, which is the subject of Case No. 8769, it is undisputed that Hartman did not provide Olsen with a schedule of estimated well costs either after the effective date of the order, or within 90 days prior to spudding the subject well. See Chronological Statement of the Key Facts, both as set forth in Hartman's Memorandum in Support of Motion to Dismiss, and as agreed to by the parties. Again, Hartman's failure to provide Olsen with a schedule of estimated well costs with respect to the Carlson Federal No. 5 was in clear

violation of Order No. R-8091. The prejudice to Olsen is again clear, for he was never given the opportunity to avoid the risk penalty. The order places a duty on the designated operator, and this duty was ignored.

In addition, with respect to the requirement in both of the Orders that "the operator shall furnish the Division and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the well," it is undisputed that Hartman did not comply with this requirement either, as it was not until October 1987, approximately 2 years later, that Olsen through his accountants received notice of the actual well costs on the Carlson Federal No. 4 and No. 5. See, the stipulated Chronological Statement of the Key Facts.

Clearly, Hartman's failure to comply with the Division's Orders prevented Olsen from exercising his option to join in the drilling of the subject wells without penalty and, therefore, Hartman should now be required to comply with the Division's Orders and give Olsen the opportunity to participate in the subject wells.

This would be consistent with the Tenth Circuit's decision in Mountain States Natural Gas v. Petroleum Corp. of Texas, 693 F.2d 1015 (10th Cir. 1982), wherein the Court determined that estimated well costs had not been furnished to the party entitled to same pursuant to the New Mexico Oil Conservation Division order, which contained substantially the same provisions as the Orders involved in this case. Id. at 1017. The only difference between the relevant portion of the Division order involved in Mountain States Natural Gas and this case is that in Mountain

States Natural Gas, the itemized schedule of estimated well costs was required to be furnished "after the effective date of the order and within a minimum of 30 days prior to commencing the well [emphasis added]." Id. In this case, the schedule of estimated well costs was required to be furnished "after the effective date of this order and within 90 days prior to commencing said well."

In Mountain States Natural Gas, the Court declined "to consider whether the order and due process required actual notification, or whether Petco's attempt to notify by mail, even though not received by Mountain States, was sufficient notification." Id. at 1020. The Court found that since "Petco's attempt to notify Mountain States . . ., even if received," failed to comply with the clear language of the Division's Order . . ., "Mountain States was not allowed the opportunity accorded by the Division's Order to elect to pay the costs of drilling." Id. at 1020 - 1021. In affirming the District Court's decision, the Tenth Circuit in Mountain States Natural Gas approved the decision that the party so deprived of such a right should be allowed to join in the drilling of the subject well without penalty, and that the party that failed to so comply with the Division's Order should be ordered to compensate the party so prejudiced for the amount of risk penalties held from production. Id. at 1016.

It is undisputed in this case that Hartman did not comply with the clear language of the Division's Orders entered in Cause No. 8668 and No. 8769 which would have afforded Olsen the opportunity to elect to pay in advance the costs of drilling

allowed by the Division's Orders. Therefore, consistent with the holding of Mountain States Natural Gas, Olsen should be afforded the opportunity to participate in the subject wells and to a reimbursement for risk penalties withheld from production.

II.

IT IS WITHIN THE DIVISION'S POWER TO ENFORCE  
ITS OWN ORDERS

All of the cases cited in Points I and II of Hartman's Memorandum in Support of Motion to Dismiss apply the wrong standard to this proceeding. The rule of prejudicial error applies to a court of law's review of administrative decisions. See, National Labor Relations Board v. Seine Fishermen's Union of San Pedro, 374 F.2d 974, 981 (9th Cir. 1967). No one is attacking the validity of the agency's Orders entered in this case. This is a proceeding wherein Olsen is asking the Division to enforce its Orders duly entered pursuant to statutory and regulatory authority. Hartman's reliance upon cases such as Center for Auto Safety v. Tiemann, 414 F.Supp 215 (D.C. Cir. 1976), is misplaced in that Olsen is not claiming that the Division's actions should be set aside for procedural irregularity under 5 U.S.C. § 706. All of the cases cited in Points I and II of Hartman's Memorandum involve a court's review of a procedural error committed by the agency. In the case at bar, there is no claim that the Division committed any error whatsoever. The only error committed was on the part of Hartman in failing to comply with the Division's Orders. Therefore, the cases cited by Hartman are inapplicable and have nothing to do with the ability of an agency to enforce its own orders.


While it is true that a court of law reviewing an agency's action will not upset the decision in the event of a harmless procedural error, Dotson v. Nat'l Transp. Safety Board, 644 F.2d 647, 652 (7th Cir. 1981), even if a court of law were reviewing the Division's Orders which intended to give Olsen an opportunity to participate in the subject wells without the imposition of a risk penalty, Hartman's failure to comply with the Division's Orders is certainly not a situation involving "a harmless procedural error", with "no resulting prejudice." See, discussion at Part I above.

III.

CONCLUSION

For the foregoing reasons, Hartman's Motion to Dismiss should be denied, and an appropriate order should be entered requiring Hartman's complete compliance with Order Nos. R-8031 and R-8091, such that Olsen is allowed the opportunity to participate in the wells which are the subject of the Orders.

HINKLE, COX, EATON, COFFIELD & HENSLEY

By   
T. Calder Ezzell, Jr.  
P. O. Box 10  
Roswell, New Mexico 88202-0010  
(505) 622-6510

ATTORNEYS FOR HOWARD OLSEN



RECEIVED

SEP 21 1989

OIL CONSERVATION DIVISION

**STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION DIVISION**

**IN THE MATTER OF THE APPLICATION  
OF HOWARD OLSEN TO REOPEN  
CASE NOS. 8668 AND 8769,  
LEA COUNTY, NEW MEXICO**

**REPLY MEMORANDUM IN SUPPORT  
OF MOTION TO DISMISS**

Pursuant to the schedule for filing post-hearing briefs set by the Division at the hearing on September 7, 1989, Doyle Hartman ("Hartman") submits this reply to the response memorandum of Howard Olsen ("Olsen").

The most striking aspect of Olsen's memorandum is its assertion of facts directly at odds with those presented in the Examiner's hearing. At that hearing the evidence demonstrated Olsen had not decided, almost four years after the issuance of the subject orders, whether to participate in the drilling of the Carlson Federal No. 4 and No. 5 wells. Now, Olsen apparently wishes to join in the venture. The evidence at the hearing also established the nonexistence of any dispute as to the reasonableness of the costs associated with drilling the subject wells. Now, Olsen claims to have been prejudiced by being denied the opportunity to dispute those costs. Olsen's abrupt reversal of his previous positions is a feeble effort to fabricate more favorable facts.

Attempting to lend some legal credence to his factual permutations, Olsen cites the decision in Mountain States Natural Gas Corp. v. Petroleum Corp. of Texas, 693 F.2d 1015 (10th Cir. 1982) to support his belated request to participate without being subject to the 200 percent risk penalty imposed by the applicable orders. One important fact distinguishes the Mountain States case from this dispute. In Mountain States, the complaining party had unequivocally rejected a farmout proposal. 693 F.2d at 1017. Evidence presented at the initial hearings which resulted in the issuance of the orders attacked herein as well as the most recent hearing shows that Hartman, however, acted in a good faith belief that a purchase of Olsen's interest had been concluded or was imminent. Hartman Examiner Hearing Exhibits No. 7 at p. 28 and No. 19 at pp. 26 and 27. Mountain States does not support Olsen's contention that he should be allowed to participate without assessment of the risk penalty due to noncompliance with the orders because, unlike the force-pooled party in that case, Olsen's conduct precipitated the noncompliance. Olsen cannot claim prejudice by seizing upon a procedural error he exacerbated.

The compulsory pooling process requires force-pooled parties to elect whether or not to participate in drilling a well based upon reasonably accurate information. The compulsory pooling statute imposes a penalty upon parties who have been furnished such information and decided not to bear the risks associated with drilling. The record proves Olsen has had ample opportunity to make a decision based upon information furnished at least as early as November 1987 and the information

regarding projected and actual drilling costs was unquestionably accurate and reasonable. Hartman Examiner Hearing Exhibit No. 33. Olsen's subsequent indecision should be seen for what it was - tantamount to an election not to participate in the drilling of the Carlson wells.

The evidence Olsen now ignores demonstrates that he suffers prejudice only by virtue by his own conduct. Olsen has surreptitiously avoided all the risks of drilling the Carlson wells and now seeks to avoid the concomitant penalty. The Division should not succumb to Olsen's duplicitous claims of prejudice nor allow Olsen's invocation of a procedural technicality to thwart the spirit of the compulsory pooling statute.

CAMPBELL & BLACK, P.A.

By \_\_\_\_\_  
WILLIAM F. CARR  
P.O. Box 2208  
Santa Fe, New Mexico 87504  
(505) 988-4421

GALLEGOS LAW FIRM, P.C.

By  \_\_\_\_\_  
J.E. GALLEGOS  
141 East Palace Avenue  
Santa Fe, New Mexico 87501  
(505) 983-6686

ATTORNEYS FOR  
DOYLE HARTMAN

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J. E. Gallegos  
George F. Bingham\*  
Michael L. Oja†  
Joanne Reuter  
Felice G. Gonzales  
Candace Hamann-Callahan  
Harry T. Nutter

September 21, 1989

## VIA HAND DELIVERY

Robert Stovall, Esquire  
Counsel, Oil Conservation Division  
Department of Energy and Minerals  
State Land Office Building  
Santa Fe, New Mexico 87501

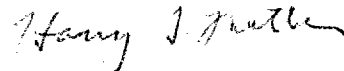
RE: OCD Case Nos. 8668 and 8769

Dear Bob:

Enclosed please find our post-hearing Memorandum in Reply to the Response Memorandum which was hand delivered to our office on September 19, 1989. A copy of the enclosed memorandum is being mailed today to T. Calder Ezzell, Jr., counsel for Olsen in the referenced case.

Sincerely,

GALLEGOS LAW FIRM



By  
HARRY T. NUTTER

HTN:ap

Enclosure

\* Also admitted in the District of Columbia

† Also admitted in California

# GALLEGOS LAW FIRM

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George F. Bingham\*  
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Joanne Reuter  
Felice G. Gonzales  
Candace Hamann-Callahan  
Harry T. Nutter

September 5, 1989

**RECEIVED**

SEP - 5 1989

OIL CONSERVATION DIV.  
SANTA FE

HAND-DELIVERED

Michael E. Stogner, Examiner  
Oil Conservation Division  
State Land Office Bldg.  
Santa Fe, NM 87501

Re: Case No. 8769 & Case No. 8668 - Reopen Application  
of Howard Olsen

Dear Mr. Stogner:

Pursuant to Gene's instructions, enclosed please find the deposition transcripts and deposition summaries for Garold Bowlby and Howard Olsen which were taken August 25, 1989, with regard to the above-referenced cause.

Please do not hesitate to call if I can be of further assistance.

Very truly yours,

GALLEGOS LAW FIRM

By



ANTOINETTE R. FIDEL  
Paralegal

Enclosures

\* Also admitted in the District of Columbia

† Also admitted in California

BEFORE THE OCD, NM DEPARTMENT OF ENERGY,  
MINERALS AND NATURAL RESOURCES

IN THE MATTER OF THE APPLICATION  
OF HOWARD OLSEN TO REOPEN CASE  
NOS. 8668 AND 8769, LEA COUNTY, NM

SUMMARY OF THE DEPOSITION OF SEP - 5 1989  
GAROLD BOWLBY  
TAKEN AUGUST 25, 1989, 1:00 P.M.

RECEIVED

OIL CONSERVATION  
SANTA FE

APPEARANCES FOR HOWARD OLSEN: HAROLD L. HENSLEY; T. CALDER  
APPEARANCES FOR DOYLE HARTMAN: J.E. GALLEGOS  
ALSO APPEARING: OLE OLSEN; HOWARD OLSEN; DOYLE HARTMAN

EXAMINATION BY J.E. GALLEGOS

4 Garold Bowlby lives in Norman, Oklahoma. Bowlby worked as a CPA for 30 years in Oklahoma City and retired in 1986. He did some oil and gas accounting and auditing but mostly construction accounts.

5-8 Bowlby worked for Mr. Olsen in Midland after he had retired in 1987. He has worked for Mr. Olsen as a tax advisor and has not really done a joint interest audit before. Under the terms of Mr. Bowlby's retirement, he is not able to give a certified report but agreed to go to Midland with an associate bookkeeper and review Doyle Hartman's records.

Bowlby believes he contacted Ben Wilcox at Doyle Hartman's office where Mr. Wilcox agreed to make the well records available. Mr. Bowlby and associate reviewed the files in early November of 1987 where the process took less than a week. Bowlby went to Hartman's office looking specifically for supporting invoices and costs associated with the Carlson Federal Well Nos. 4 and 5. One of Mr. Bowlby's objectives in reviewing the files was to ascertain the actual drilling costs of Carlson Nos. 4 & 5.

8-11 All invoices were examined, a few holes were not furnished; however, Bowlby was able to ascertain costs. Exhibit 13 entered -- 11/09/87 letter to Olsen from Bowlby re various items Olsen may want to challenge re Hartman's charges on Carlson Nos. 4 & 5.

Exhibit 13 does not provide summary. Bowlby satisfied that he did present Mr. Olsen with actual well costs on the Carlson Nos. 4 & 5. Believes he presented something in writing on or about 11/09/89. Bowlby also believes he had available to him the authorization for expenditures and made a comparison of what the authorization showed as compared to the actual cost. Bowlby agreed to search his file and find summary and/or letter and provide same to Gallegos through Olsen's attorney.

Exhibit showed a few exceptions. Bowlby received answers to all exceptions except on sizable item where Hartman's office could not locate invoice. All other items listed on Exhibit 13 were resolved to Bowlby's satisfaction. Mr. Bowlby reported to Olsen regarding the follow-up of the exceptions and will search his file and provide counsel with a copy of such correspondence.

WITNESS EXCUSED

COPY

1

BEFORE THE OIL CONSERVATION DIVISION  
NEW MEXICO DEPARTMENT OF ENERGY,  
MINERALS AND NATURAL RESOURCES

IN THE MATTER OF THE APPLICATION  
OF HOWARD OLSEN TO REOPEN CASE  
NOS. 8668 AND 8769, LEA COUNTY,  
NEW MEXICO

CASE NO. 8769 & 8668

ORAL DEPOSITION OF GAROLD BOWLBY  
Taken August 25, 1989

A P P E A R A N C E S

FOR HOWARD OLSEN:

HON. HAROLD L. HENSLEY, JR.  
HON. T. CALDER EZZELL, JR.  
Hinkle, Cox, Eaton,  
Coffield & Hensley  
400 N. Pennsylvania  
United Bank Plaza, Suite 700  
Roswell, New Mexico 88201

FOR DOYLE HARTMAN:

HON. J. E. GALLEGOS  
Attorney at Law  
141 E. Palace Avenue  
Santa Fe, New Mexico 87501

ALSO APPEARING:

MR. OLE OLSEN  
MR. HOWARD OLSEN  
MR. DOYLE HARTMAN

1 ORAL ANSWERS AND DEPOSITION OF GAROLD BOWLEY,  
2 taken August 25, 1989, at 1:00 p.m., at the offices  
3 of Hinkle, Cox, Eaton, Coffield & Hensley, ClayDesta  
4 National Bank, Suite 2800, 6 Desta Drive, Midland,  
5 Texas, before Todd Anderson, Certified Shorthand  
6 Reporter for the State of Texas, in accordance with  
7 the Rules of Civil Procedure.

8 IT IS STIPULATED AND AGREED by the parties to  
9 the above-entitled and numbered cause, through their  
10 attorneys appearing herein, that the Oral Deposition  
11 of the within-named witness may be taken at this  
12 time and place before Todd Anderson, Certified  
13 Shorthand Reporter for the State of Texas.

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## I N D E X

Page

Examination by Mr. Gallegos-----4

1 GAROLD BOWLBY

2 the witness, was duly sworn on oath by the  
3 Court Reporter to tell the truth, the whole  
4 truth, and nothing but the truth, whereupon  
5 the witness testified as follows in answer to  
6 the questions propounded by Counsel:

7 EXAMINATION

8 BY MR. GALLEGOS:

9 Q. State your name, please.

10 A. Garold Bowlby.

11 Q. Would you spell your first name, please?

12 A. G-a-r-o-l-d.

13 Q. Where do you live, Mr. Bowlby?

14 A. Norman, Oklahoma.

15 Q. What is your occupation?

16 A. Retired CPA.

17 Q. When did you retire?

18 A. 1986.

19 Q. Did you practice in Oklahoma?

20 A. In Oklahoma City.

21 Q. For how many years?

22 A. Oh, 30 some odd years.

23 Q. Did your practice include accounting and  
24 auditing in the business of oil and gas?

25 A. Some oil and gas. Mostly construction,

1     though.

2           Q.     Have you done auditing and accounting in  
3     the oil and gas industry as it relates to the  
4     interests of Howard Olsen?

5           A.     Not while I was in practice, but when I  
6     retired I did some work for him in Midland.

7           Q.     Beginning when?

8           A.     In 1987. I have always worked for Mr.  
9     Olsen as tax advisor.

10          Q.     I see. Well, when you undertook work  
11     for him in 1987, was it your view that you had  
12     experience and were acquainted with the methods used  
13     in accounting the oil and gas business?

14          A.     Yes.

15          Q.     Had you done a joint interest audit  
16     before?

17          A.     Not really.

18          Q.     Have you done any since?

19          A.     No.

20          Q.     Tell us what happened. What were the  
21     circumstances surrounding your taking on this  
22     engagement from Mr. Olsen?

23          A.     I'm sure he asked me if I could go, and  
24     I told him I couldn't give him a certified report  
25     because the terms of my retirement wouldn't let me.

1 do that. But I have a man that works with me, just  
2 really a bookkeeper, and we agreed to go and just  
3 look at the records.

4 Q. Now, as we are discussing this in your  
5 testimony, are you referring to the examination you  
6 made of certain records of Doyle Hartman in Midland?

7 A. Yes.

8 Q. And tell us how it came about that you  
9 conducted the examination. What steps did you take  
10 in order to be able to do it?

11 A. Well, we just made arrangements -- and I  
12 can't remember the man's name -- that we would come  
13 and he would make all the well records available to  
14 us.

15 Q. Was the man's name Ben Wilcox? Does  
16 that refresh your recollection?

17 A. Probably, yes.

18 Q. Did you go through any other person, Mr.  
19 Olsen's attorneys, for example, or anyone else in  
20 order to make those arrangements?

21 A. Well, I'm sure we talked about it, but  
22 we had permission to go, sure.

23 Q. Do you remember any particular obstacles  
24 or difficulties in obtaining that access to the  
25 records?

1 A. No.

2 Q. And from testimony we previously have in  
3 the record, it's indicated that this was done  
4 sometime in early November of 1987. Does that  
5 comport with your recollection?

6 A. Yes.

7 Q. How much time did you spend at the  
8 Hartman offices?

9 A. Less than a week. Three or four days.  
10 I don't remember.

11 Q. Did you come there having in mind  
12 certain records that you wanted to see?

13 A. Yes, specifically the Number 4 and 5  
14 Carlson wells.

15 Q. All right. And as to those wells, did  
16 you have certain kinds of records or documents that  
17 you wanted to view?

18 A. Sure. All the supporting invoices for  
19 costs and so forth.

20 Q. Was it your objective, or at least one  
21 of the objectives of your audit, to ascertain what  
22 were the actual costs of drilling the Number 4 and  
23 Number 5 well to completion?

24 A. Yes.

25 Q. And on appearing at the Hartman offices,

1 did you make a request for the records you wanted to  
2 see?

3 A. Yes.

4 Q. And were those records furnished to you?

5 A. Yes.

6 Q. And did you examine them?

7 A. We did.

8 Q. And as a result of that examination,  
9 were you able to ascertain what the actual well  
10 costs were on the Number 4 and Number 5 well?

11 A. All the invoices we examined. There  
12 were a few holes that they didn't furnish us. One  
13 or two invoices they never did find, and a few  
14 questionable items. But, basically, if they were  
15 proper, we came up with some numbers for cost.

16 Q. Do you recall the numbers that you came  
17 up with?

18 A. I can't tell you. That's been two  
19 years.

20 Q. Will Exhibit 13 help you?

21 (PAUSE)

22 A. I'm trying to find a summary or  
23 something that would give the full --

24 Q. I was looking for that, too.

25 A. Well, are these the operating

1 statements? I really can't find any totals.

2 Q. Sir, I couldn't either. And I'm  
3 wondering if there isn't something else.

4 A. I may have something more to summarize.  
5 I really think I do. And I didn't really realize  
6 what this was or could remember what it was.

7 Q. Well, I would expect that you would.  
8 And let me just ask you this. Are you satisfied in  
9 your mind that you did present to Mr. Olsen, as a  
10 result of your audit, your findings as to the actual  
11 well costs on the 4 and the 5?

12 A. Yes, I'm sure I did.

13 Q. And that would have been presented  
14 somehow in writing, would it not?

15 A. Yes. Figures or a schedule or  
16 something.

17 Q. Would that have been done on or about  
18 November 9, 1987?

19 A. Yes. Should have been roughly this same  
20 time.

21 Q. Do you have even a general recollection  
22 of what you found?

23 A. Two years ago, you know, I really can't.  
24 I would be afraid to say.

25 Q. In connection with doing this

1 examination, did you have available the  
2 authorization for expenditures?

3 A. I think we did, yes.

4 Q. And did you make a comparison of what  
5 that authorization showed as compared to actual  
6 cost?

7 A. I'm sure we did, yes.

8 Q. Okay. But you couldn't remember how --

9 A. If you asked me \$200,000.00 or  
10 \$300,000.00 -- you know.

11 Q. Would you be willing to search your file  
12 and find that and supply it to us through Mr.  
13 Olsen's attorneys?

14 A. Yes.

15 Q. Let me ask this. Exhibit 13 does show a  
16 few exceptions. Was there any follow-up on those?

17 A. We received, as I recall, answers to all  
18 but one pretty sizable item. And I can't remember  
19 what that was, frankly. I don't remember. We never  
20 did -- they just didn't find the invoice for it, a  
21 pretty good item.

22 Q. So were the others resolved to your  
23 satisfaction except for whatever that item was?

24 A. Uh-huh.

25 Q. Would there also be some correspondence



1 on that, Mr. Bowlby?

2 A. It was probably by phone. I'm guessing  
3 that Wilcox probably called me. The best I recall,  
4 he said, "We just can't find that particular  
5 invoice." "Well, if you can't find it, you can't  
6 find it."

7 Q. I mean on the others that were resolved,  
8 they would have supplied you documentation?

9 A. Yes, yes. I know he did.

10 Q. So that will be in the file?

11 A. Should be.

12 Q. And then did you report to Mr. Olsen  
13 regarding this follow-up on the exceptions?

14 A. Sure did.

15 Q. We would like to have that information  
16 also, if we could, please.

17 A. All right.

18 MR. HENSLEY: Sure.

19 MR. GALLEGOS: Okay. That's all the  
20 questions I have.

21 (WITNESS EXCUSED)

22 (SIGNATURE WAIVED)

23

24

25

BEFORE THE OIL CONSERVATION DIVISION  
NEW MEXICO DEPARTMENT OF ENERGY,  
MINERALS AND NATURAL RESOURCES

IN THE MATTER OF THE APPLICATION  
OF HOWARD OLSEN TO REOPEN CASE  
NOS. 8668 AND 8769, LEA COUNTY,  
NEW MEXICO

CASE NO. 8769 & 8668

---

COURT REPORTER'S CERTIFICATE  
ORAL DEPOSITION OF GAROLD BOWLBY  
Taken August 25, 1989

---

I, Todd Anderson, Certified Shorthand Reporter  
for The State of Texas, do hereby certify that I am  
the deposition officer before whom this deposition  
was given; that the witness was duly sworn by me;  
that the transcript is a true record of the  
testimony given by the witness; that my charges for  
preparation of the completed original deposition  
transcript and any exhibits thereto are:

Original Deposition \$ 44.85

Copying of Exhibits \$ .25

To Be Paid By Hon. J. E. Gallegos

I further certify that the witness and parties  
present waived the right of the witness to examine

PERMIAN COURT REPORTERS, INC.  
MIDLAND-ODESSA (915) 683-3032

1 and sign the deposition; and that the original  
2 deposition was delivered or mailed in a postpaid  
3 properly addressed wrapper to the attorney who asked  
4 the first question appearing in the transcript for  
5 safekeeping and use at trial.

6 Witness my hand this 29th day of August, 1989.

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TODD ANDERSON - CERTIFIED SHORTHAND REPORTER  
CSR No. 2708 - Expires Dec. 31, 1990  
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Midland, Texas 79702  
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MIDLAND-ODESSA (915) 683-3032

# GALLEGOS LAW FIRM

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J. E. Gallegos  
George F. Bingham\*  
Michael L. Oja†  
Joanne Reuter  
Felice G. Gonzales  
Candace Hamann-Callahan  
Harry T. Nutter

September 29, 1989

## VIA HAND DELIVERY

Robert G. Stovall, Esq.  
General Counsel  
Oil Conservation Division  
State Land Office Building  
Old Santa Fe Trail  
Santa Fe, New Mexico 87501

RE: In the Matter of the Application of Howard Olsen to reopen  
Case Nos. 8668 and 8769

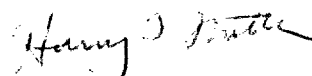
Dear Bob:

Enclosed please find copies of the cases cited in the Memorandum in Support of Motion to Dismiss filed on behalf of Doyle Hartman.

I can certainly understand your predicament in obtaining cases cited in OCD pleadings and briefs, particularly cases from other jurisdictions. In the future I will be certain to append copies of all cited authorities to our memoranda.

Sincerely,

GALLEGOS LAW FIRM



By  
HARRY T. NUTTER

HTN:ap

Enclosures

\* Also admitted in the District of Columbia

† Also admitted in California

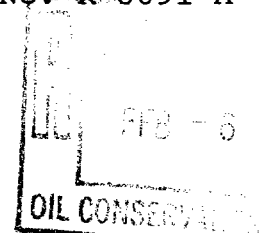
STATE OF NEW MEXICO  
ENERGY MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION DIVISION TO  
CONSIDER THE APPLICATION OF:

Case No. 8769 (Reopened)  
Order No. R-8091-A

DOYLE HARTMAN FOR COMPULSORY POOLING,  
LEA COUNTY, BEING REOPENED UPON THE  
APPLICATION OF HOWARD OLSEN TO RECONSIDER  
THE PROVISIONS OF DIVISION ORDER NO. R-8091


REQUEST FOR STAY



Howard R. Olsen, a party of record affected by the decision of the Oil Conservation Division herein in the above referenced Order No. R-8091-A, hereby requests that the 30 day time period from the date of the Order within which Howard Olsen may elect to participate in the Carlson Federal No. 5 well and to pay his pro rata share of drilling, completion and operating costs of said well be stayed until the resolution of the Application filed by Doyle Hartman, Oil Operator, for a Hearing De Novo before the full Oil Conservation Commission.

Respectfully submitted,

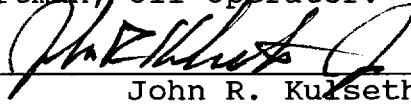
HINKLE, COX, EATON, COFFIELD & HENSLEY

By:   
John R. Kulseth, Jr.  
T. Calder Ezzell, Jr.  
P. O. Box 2068  
Santa Fe, New Mexico 87504  
(505) 982-4554

ATTORNEYS FOR HOWARD R. OLSEN

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Request for Stay was hand delivered this 6th day of February, 1991, to the Gallegos Law Firm, Attention: J. E. Gallegos and Joanne Reuter, attorneys for Doyle Hartman, Oil Operator.

A handwritten signature in black ink, appearing to read "John R. Kulseth, Jr.", written over a horizontal line.

John R. Kulseth, Jr.



STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

GARREY CARRUTHERS  
GOVERNOR

January 9, 1991

POST OFFICE BOX 2098  
STATE LAND OFFICE BUILDING  
SANTA FE NEW MEXICO 87504  
(505) 827-5800

Mr. Calder Ezzell  
Hinkle, Cox, Eaton,  
Coffield & Hensley  
Attorneys at Law  
Post Office Box 10  
Roswell, New Mexico 88201

Re: CASE NO. 8769 (Reopened)  
ORDER NO. R-8091-A  
Applicant:  
Howard Olsen

Dear Sir:

Enclosed herewith are two copies of the above-referenced  
Division order recently entered in the subject case.

Sincerely,

*Florene Davidson*

FLORENE DAVIDSON  
OC Staff Specialist

Copy of order also sent to:

Hobbs OCD x  
Artesia OCD x  
Aztec OCD

Other William F. Carr, J. E. Gallegos

STATE OF NEW MEXICO  
ENERGY MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION DIVISION TO  
CONSIDER THE APPLICATION OF:

Case No. 8769 (Reopened)  
Order No. R-8091-A

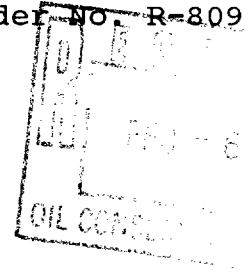
DOYLE HARTMAN FOR COMPULSORY POOLING,  
LEA COUNTY, BEING REOPENED UPON THE  
APPLICATION OF HOWARD OLSEN TO RECONSIDER  
THE PROVISIONS OF DIVISION ORDER NO. R-8091

ORDER GRANTING STAY

BY THE DIVISION:

THIS MATTER came before the Division upon the Application of Howard R. Olsen to stay the time periods imposed by the Division in Order No. R-8091-A pending the outcome of a hearing De Novo before the full Commission of Case No. 8769 (Reopened) as requested by Doyle Hartman, Oil Operator.

IT IS THEREFORE ORDERED that the 30 day time period from the date of Order No. R-8091-A within which Howard Olsen may elect to participate in the Carlson Federal No. 5 well by the payment of his pro rata share of drilling, completion and operating costs, plus interest, and the 30 day period from the date of such payment within which Doyle Hartman Oil Operator must account for and pay to Olsen proceeds from production attributable to Olsen's interest, with interest thereon, be and hereby are stayed pending the outcome of the hearing De Novo

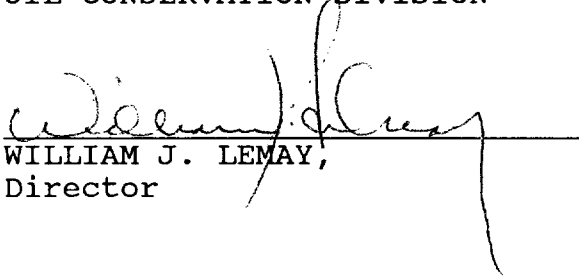




before the full Commission as requested by Doyle Hartman Oil  
Operator.

DONE at Santa Fe, New Mexico on this 6th day of  
February, 1991.

STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION



WILLIAM J. LEMAY,  
Director