

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE OF
CONSIDERING:

CASES NOS. 7980, 8946,
9113, AND 9114
ORDER NO. 4-7407-E

CASE NO. 8950
ORDER NO. R-6469-D

EXHIBITS TO
APPLICATION FOR REVIEW

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MEMORANDUM OF LAW AND AUTHORITY
IN SUPPORT OF APPLICATION FOR REVIEW

I.

BACKGROUND

On March 30, 1987, a five day hearing commenced before the Commission to consider appropriate pool rules, allowables and boundaries for two adjacent pools: the Gavilan and the West Puerto. On June 8, 1987, the Commission entered Orders R-6469-D and R-7407-E ordering, among other things, as follows:

1. The two pools are separate, with weak communication;
2. All wells in both pools should have bottomhole pressure tests run at three different times to determine rate sensitivity to production levels;
3. The allowables for the Gavilan Pool (which had previously been arbitrarily reduced by 83%) should be restored to 1280 bopd and a 2000:1 GOR for 640-acre proration units (640 bopd for a 320 acre proration unit) for a three-month period, beginning July 1, 1987, in order to determine rate sensitivity;
4. The allowables for Gavilan should be restricted again in October 1987 for a period of ninety (90) days as part of the rate sensitivity testing;

5. In January 1988 testing should cease and the information obtained is to be analyzed by the Commission prior to reopening the hearing in May 1988 for such further orders as may be appropriate in light of the test data;
6. The Gavilan allowables are to remain restricted at 17% (an 83% cut) of the statewide depth bracket top allowable until the May 1988 reopened hearing and so long thereafter until the results of said hearing are put into effect.

Both sides filed Applications for Rehearing with the Commission. Applicants herein objected to the imposition of the additional five months of restricted allowables to run from January to May 1988; requested that the reopened hearing date be moved to February 1988 to alleviate this arbitrary continuation of the allowable restriction; and requested that isolation bottomhole tests be conducted on certain key wells which would more accurately establish the boundary between the Gavilan and West Puerto as well as be determinative of the rate sensitivity question. These requests were denied as a matter of law on July 9, 1987 when the Commission took no action on the Applicants' Application for Rehearing.

The opposing parties, BMG, et al., also filed an Application for Rehearing, objecting to the Commission's determination that the Gavilan and West Puerto Fields were separate; objecting to the reinstatement of statewide depth bracket allowables to the Gavilan and objecting to the rate sensitivity testing ordered by the Commission, which Application for Rehearing was also denied as a matter of law on July 9, 1987.

II.

APPEAL TO THE SECRETARY

Applicants have filed their Application for Review by the Secretary, not to overturn the Commission's substantive orders, but to clarify and amend them in four vital ways:

1. To order the testing requested by Applicant and required by the Commission's order as necessary to obtain relevant data.
2. To advance the reopened hearing date from May 1988 to February 1988; or
3. In the alternative, to reinstate previous statewide depth bracket allowables to the Gavilan, effective January 1, 1988, of 702 bopd and a 2000/1 GOR for a 320 acre proration unit (and twice this amount for a 640 acre production unit) pending the reopened hearing.
4. To clarify that the reopened hearing will consider the appropriate boundary between the Gavilan and West Puerto based on the new testing and production data.

The parties to a Commission proceeding have two statutory avenues of appeal: appeal directly to the district court (§ 70-2-25 NMSA 1978) or appeal for review by the Secretary of the Energy, Minerals and Natural Resources Department. (§ 70-2-26 NMSA 1978, see copies of these statutory provisions attached to this memorandum) Applicants have chosen to pursue their rights by appeal to the Secretary for they believe that with the proposed amendments to the Commission's orders, all

parties can proceed to the reopened hearing on a relatively equal basis, with sufficient data to once and for all resolve the controversy surrounding the Gavilan and West Puerto. On the other hand, if Applicants appeal to the district court the entire validity of the Commission orders would be at issue. Although Applicants have objected and preserved their objections to several errors in the Commission orders, they believe those objections do not need to be raised if the orders are amended as requested.

III.

STATUTORY AUTHORITY

Statutory authority for appeal to the Secretary states that the Secretary may hold a public hearing to determine whether the orders appealed "contravene the statewide plan or the public interest." (§ 70-2-26 NMSA 1978) Applicants have specifically reviewed the "Policy-Level Plan for the Development and Management of New Mexico's Energy and Mineral Resources" ("Plan") to understand the statewide plan and how it may affect this Application. The Plan sets out four goals, two of which are directly applicable to this controversy:

1. To optimize state revenues from the production of mineral resources;
2. To stimulate economic development in New Mexico by optimizing the supply of mineral resources. (P. 6 of the Plan)

The Plan further states that developers are entitled to expect a reasonable degree of regulatory stability at the state and local levels and to be assisted by the State in the drilling, production and transportation of natural resources. (P. 7 of the Plan)

Applicants believe that the subject orders of the Commission are in contravention of the stated goals of the Plan. Specifically, the orders require Applicants to restrict their production by 83% of the previous statewide depth bracket allowables from January 1988 to May 1988, after the Commission ordered testing period is over. There is no justification in the orders for continuing this arbitrary restriction. This restriction will result in a tremendous loss of revenue to the State of New Mexico as affected wells have the ability to produce an additional 400,000 barrels of oil and 750,000 mcf of gas under normal allowables, providing at least \$800,000 in additional tax revenues to the State over this five-month period. The State also loses one-half of the royalty production attributable to federal leases which is not produced due to these severe allowable restrictions. This arbitrary restriction clearly contravenes the stated goals of the Plan. This error can be easily corrected by amending the Commission's orders to provide for a February 1988 hearing date, or, in the alternative, to reinstate the previous statewide allowables in January 1988, pending the reopened hearing.

Further, Applicants believe the Commission orders, as written, are contrary to the public interest. It is in the public's interest to have orders which encourage the legitimate development and production of resources and which fairly require the compilation of data to resolve disputes. The orders, as written, do not encourage the development and production of resources because they arbitrarily and unnecessarily continue restriction (by 83%) of the statewide allowables. Applicants have diligently developed the minerals on their property, and spent millions of dollars in doing so, with the understanding that statewide rules would apply to them just as they apply to other operators in the State. Changing these rules, in midstream, without any finding that these changes are necessary to prevent waste or protect correlative rights, unquestionably has a chilling effect on development of reserves in New Mexico and therefore clearly affects the public interest.

The orders also fail to require the fair compilation of data on an equal and reasonable basis so that the issues before the Commission can be resolved at the reopened hearing. In order to determine the questions of rate sensitivity and the appropriate boundary location, it is necessary to obtain isolated bottomhole pressure tests on the wells requested in Applicants' Application for Rehearing and this Application for Review. Without this data, the issues the Commission has reserved for the reopened

hearing cannot be intelligently and completely resolved. The public interest will be thwarted if ultimate resolution of those issues is made without consideration of the relevant data.

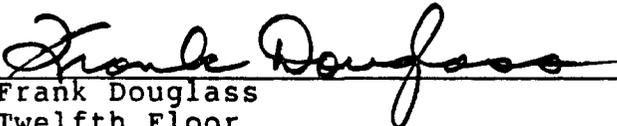
IV.

CONCLUSION

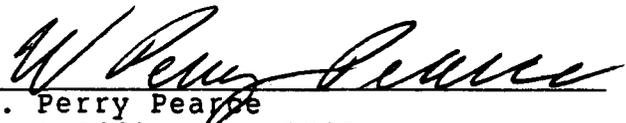
Applicants, therefore, request the Secretary grant their Application for Review, hold a hearing to consider oral arguments of the parties and enter an order amending or modifying the Commission's Order as requested by Applicants.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Memorandum of Law and Authority in Support of Application for Review to be mailed to the following persons this 22nd day of July, 1987.

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A handwritten signature in cursive script, reading "W. Perry Pearce", is written over a horizontal line.

[WPP:70]

70-2-25. Rehearings; appeals.

A. Within twenty days after entry of any order or decision of the commission, any party of record adversely affected thereby may file with the commission an application for rehearing in respect of any matter determined by such order or decision, setting forth the respect in which such order or decision is believed to be erroneous. The commission shall grant or refuse any such application in whole or in part within ten days after the same is filed, and failure to act thereon within such period shall be deemed a refusal thereof and a final disposition of such application. In the event the rehearing is granted, the commission may enter such new order or decision after rehearing as may be required under the circumstances.

B. Any party of record to such rehearing proceeding dissatisfied with the disposition of the application for rehearing may appeal therefrom to the district court of the county wherein is located any property of such party affected by the decision by filing a petition for the review of the action of the commission within twenty days after the entry of the order following rehearing or after the refusal or [of] rehearing as the case may be. Such petition shall state briefly the nature of the proceedings before the commission and shall set forth the order or decision of the commission complained of and the grounds of invalidity thereof upon which the applicant will rely; provided, however, that the questions reviewed on appeal shall be only questions presented to the commission by the application for rehearing. Notice of such appeal shall be served upon the adverse party or parties and the commission in the manner provided for the service of summons in civil proceedings. The trial upon appeal shall be without a jury, and the transcript of proceedings before the commission, including the evidence taken in hearings by the commission, shall be received in evidence by the court in whole or in part upon offer by either party, subject to legal objections to evidence. The commission action complained of shall be prima facie valid and the burden shall be upon the party or parties seeking review to establish the invalidity of such action of the commission. The court shall determine the issues of fact and of law and shall enter its order either affirming or vacating the order of the commission. Appeals may be taken from the judgment or decision of the district court to the supreme court in the same manner as provided for appeals from any other final judgment entered by a district court in this state. The trial of such application for relief from action of the commission and the hearing of any appeal to the supreme court from the action of the district court shall be expedited to the fullest possible extent.

C. The pendency of proceedings to review shall not of itself stay or suspend operation of the order or decision being reviewed, but during the pendency of such proceedings, the district court in its discretion may, upon its own motion or upon proper application of any party thereto, stay or suspend, in whole or in part, operation of the order or decision pending review thereof, on such terms as the court deems just and proper and in accordance with the practice of courts exercising equity jurisdiction; provided, that the court, as a condition to any such staying or suspension of operation of an order or decision may require that one or more parties secure, in such form and amount as the court may deem just and proper, one or more other parties against loss or damage due to the staying or suspension of the commission's order or decision, in the event that the action of the commission shall be affirmed.

D. The applicable rules of practice and procedure in civil cases for the courts of this state shall govern the proceedings for review and any appeal therefrom to the supreme court of the state to the extent such rules are consistent with provisions of the Oil and Gas Act [70-2-1 to 70-2-36 NMSA 1978].

70-2-26. Review of oil conservation commission decision; appeals.

The secretary of [the] energy and minerals department may hold a public hearing to determine whether an order or decision issued by the oil conservation commission contravenes the department's statewide plan or the public interest. The hearing shall be held within twenty days after the entry of the commission order or decision following a rehearing or after the order refusing a rehearing as the case may be. The hearing shall be a de novo proceeding and the secretary shall enter such order or decision as may be required under the circumstances, having due regard for the conservation of the state's oil, gas and mineral resources, and the commission shall modify its own order or decision to comply therewith. If a rehearing before the commission was granted, the record of the rehearing shall be made part of the record of the hearing before the secretary. If the application for rehearing was denied, the record of the hearing before the commission or the division shall be made part of the record of the hearing before the secretary. Such orders and decisions of the secretary may be appealed by any party to the original hearing or the rehearing before the commission, or by any party to the hearing before the secretary held pursuant to this section, in accordance with the procedure of Subsections B, C and D of Section 70-2-25 NMSA 1978 except that the appeal shall not be a de novo proceeding and shall be limited to a review of the record of the hearing held pursuant to the provisions of this section.