

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

3 NO. 9821

4 MICHAEL P. GRACE II and
5 CORINNE GRACE,

6 Petitioners-Appellants,

7 vs.

Eddy County

8 OIL CONSERVATION COMMISSION
9 OF NEW MEXICO,

10 Respondent-Appellee,

11 and

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

14 Intervenors.

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

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

21 ATTEST: A True Copy

22 *James M. Aldrete*
23 Clerk of the Supreme Court
24 of the State of New Mexico
25
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29
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31
32

1 JOHN C. OTTO
45 West Jefferson, Suite 503
2 Phoenix, Arizona 85003
3 Telephone: (602) 252-7461

4 Attorney for Petitioners-Appellants

5 IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

6
7 MICHAEL P. GRACE II and)
CORINNE GRACE,)
8 Petitioners-Appellants,)

9 vs.)

10 OIL CONSERVATION COMMISSION)
11 OF NEW MEXICO,)

12 Respondent-Appelle,)

13 and)

14 CITIES SERVICE OIL COMPANY and)
15 CITY OF CARLSBAD, NEW MEXICO,)

16 Intervenors,)
17

NO. 9821

District Court File No. 28181

PETITION FOR REHEARING

18 COME NOW Petitioners-Appellants by and through counsel
19 undersigned and respectfully move the Court for rehearing on the Petition
20 for Stay of Judgment which Petition was denied by the Court on the 12th day
21 of December, 1973 and as grounds therefore would respectfully show the
22 Court:
23

24 I

25 That the Court should consider in the determination of this
26 motion the affidavits filed herein on the 12th day of December, 1973 but
27 which were not considered in the previous rehearing herein, and that a
28 consideration thereof would materially affect the Court's decision in this
29 matter. Said affidavits show the following:
30

31 (a) The affidavit of Ronald B. Johnson demonstrates that based
32 upon the files and records of Grace Atlantic #1 gas well located in the south
Carlsbad Morrow field, which is the subject matter of this cause may be

1 substantially and materially damaged in the event that the production
2 is restricted below five million cubic feet per day.

3 There is every probability that because of the allowable, that
4 subsequent to January 1 and pursuant to the Stipulation entered into between
5 the Oil Conservation Commission and Petitioners that the well will have to
6 be cut back below five million cubic feet per day, subsequent to January 1,
7 1974, resulting in irreparable damage to the well, as is more particularly
8 shown by the Stipulation with the Oil Conservation Commission a copy of
9 which is attached hereto and made a part hereof by this reference.

11 Said affidavit also shows that with the additional test of the
12 24 hour bottom hole pressure on the wells in the Morrow field would make
13 it possible to arrive at the amount of reserves both under the wells in question
14 and the reserves under the entire field, which findings are required in order
15 for the Commission to have a valid basis upon which to determine prorationing.

17 (b) The affidavit of Kenneth S. Smith demonstrates that it is
18 certainly possible to calculate the reserves necessary in order to permit the
19 Commission to reach a valid determination as to the prorationing formula to
20 be applied, under the Statute and the Continental Oil case.

22 (c) The affidavit of Corinne Grace attaching the exhibit pre-
23 pared by registered engineers demonstrates that it is certainly possible to
24 determine the reserves under wells in this field as was, in fact, done as
25 is shown by the attachments to Mrs. Grace's affidavit.

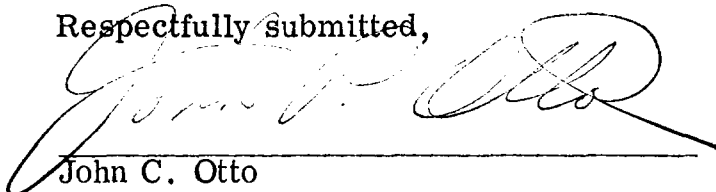
26 (d) The affidavit of Robert W. Becker clearly demonstrates
27 that it is not only reasonable and possible to determine the reserves but it
28 is practical to do so as well. Again demonstrating that it is possible to comply
29 with the command of the legislature and the teaching of the Continental Oil
30 case.

32 ...

1 (e) That the Court take judicial notice of the proceedings in
2 Cause No. 46933 District Court of Santa Fe County including the additional
3 affidavit of Kent S. Smith, a copy of which is attached hereto for the Court's
4 convenience.

5 WHEREFORE Petitioner-Appellants pray for a rehearing in
6 this matter and that the Court consider these matters together with the
7 decision in the Carlsbad-Straughn case and grant the stay prayed for until
8 such time as this matter can be determined on the merits in order to prevent
9 waste and irreparable harm as well as further financial damage to Petitioners-
10 Appellants.

11 Respectfully submitted,



12 John C. Otto
13 Attorney for Petitioners-Appellants
14 45 W. Jefferson, Suite 503
15 Phoenix, Arizona 85003

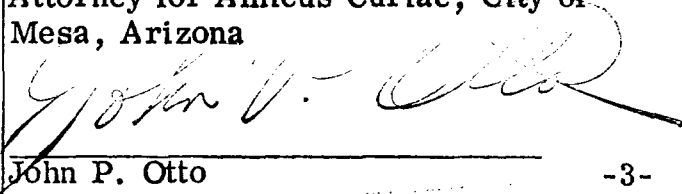
16 Copy of the foregoing mailed this
17 14 day of December, 1973, to:

18 William C. Marchiondo, Esq.
19 Marchiondo & Berry, P.A.
20 P. O. Box 568
21 Albuquerque, New Mexico 87103
22 co-counsel for Petitioner-Appellants

23 A. J. Losee, Esq.
24 William F. Carr, Esq.
25 Oil Conservation Commission
26 Albuquerque, New Mexico
27 Attorneys for Respondent-Appelle

28 Robert F. Leblanc, Esq.
29 Jason W. Kellahin, Esq.
30 Cities Service Oil Company and
31 City of Carlsbad, New Mexico
32 Albuquerque, New Mexico
Attorneys for Intervenor

Robert Borkenhagen, Esq.
American Bank of Commerce Bldg.
Albuquerque, New Mexico
Attorney for Amicus Curiae, City of
Mesa, Arizona



John P. Otto

MICHAEL R. GRACE and
CORINNE GRACE, et al.

Plaintiffs, et al.

vs.

No. 46933

OIL CONSERVATION COMMISSION, et al.
I. R. TRUJILLO, Chairman, et al.
ALEX. J. ARMijo, Member, et al.
and A. L. PORTER, JR., Member, et al.
and Secretary of the Commission, et al.

Defendants, et al.

ORDER

This cause having come on for trial, and the following having been stipulated to on October 19, continued to November 2, 1973, by the parties hereto in open court, to-wit:

1. That the Plaintiff's Grace Atlantic No. 1 well is over-produced beyond the tolerance provided for in Rule 15(b) of the Prorated Gas Pool Rules for Southeastern New Mexico, as promulgated by Commission Order No. R-1670, as amended.

2. That Defendant Commission on October 2 issued Gas Supplement No. SP-3802 ordering that the aforesaid well be shut in until such time that it be overproduced in an amount not in excess of the tolerance specified in Rule 15(b).

3. That on October 5, 1973, Plaintiffs obtained a Temporary Restraining Order in this Cause which purported to stay the effect of the aforesaid shut-in directive.

4. That concurrent with the application for the aforesaid Temporary Restraining Order, Plaintiffs filed an application for a public hearing before the Defendant Commission to determine, among other things, whether the well would incur material damage as a result of a shut-in and whether the well should be allowed to make up overproduction at a rate less than by complete shut-in.

ILLEGIBLE

Restraining Order entered on October 5, 1973.

6. That on October 25 and 26, 1973, Defendant Commission, after notice, held a hearing to determine the questions raised by Plaintiff's application referred to in No. 4 above.

7. That on October 27, Defendant Commission issued its Order No. R-4648 which upheld the shut-in directive contained in Gas Supplement No. SF-3802 and ordered that the subject well be shut-in until such time that it be overproduced in an amount that was not in excess of the tolerance provided for by Rule 16(b).

8. That on November 2, 1973, Plaintiffs filed an application for rehearing of the application referred to in No. 4 above.

9. That the Defendant Commission agrees that the Court may stay the effect of its Shut-In Directive and Order if the Plaintiffs agree to make up production at a rate less than by complete shut-in, in accordance with the requirements set forth below:

10. Plaintiffs agree that commencing at 7:00 a.m. November 3, 1973, the daily rate of production from the subject well shall be reduced to a rate commensurate with the daily allowable for November, such rate being 6970 mcf per day.

11. Plaintiffs agree that for a period of two months following the date of this order they will continue producing the subject well at a rate which Plaintiffs in good faith believe is appropriate to reduce the well's overproduced status while avoiding material damage to the well.

12. If upon receipt of December production figures it is in Defendant Commission's opinion that the rate of production from November 3, 1973, through December 31, 1973, if projected to March 31, 1974, is not sufficiently low to bring the well into the permissible six times overproduced tolerance by March 31, 1974,

ILLEGIBLE

based on best known projection of allowables, a committee of three engineers will be formed within ten days, one of which will be chosen by the Plaintiff's choice, one of Defendant's Commission's choice, and a third of good repute designated by the other two engineers and at no cost to Defendant. This committee will determine the minimum rate of production possible without material damage to the well which will bring the well into the aforesaid permissible tolerance by March 31, 1974.

13.1. In any event, if upon receipt of March, 1974 production figures the Defendant determines that the well's overproduction has not been reduced to an amount which is not in excess of six times its average monthly allowable for the preceding eleven and two-thirds months, according to the records of the Defendant, Plaintiff agrees that the well, upon directive from the Defendant, shall be thereupon shut in and remain shut in until the well's overproduction has been reduced to an amount that is not in excess of six times its average monthly allowable.

14.1. Plaintiff agrees to dismiss two actions pending against the Defendant Commission as follows: Eddy County Cause No. 28329 and Oil Conservation Commission Case No. 5085, Order No. R-4648, and agree not to appeal the pending decision in Eddy County Cause No. 28182.

IT IS, THEREFORE, ORDERED as follows:

1.1. The effect of the Shut-In Order No. R-4648 issued by Defendant Commission on October 27, 1973, is hereby stayed.

2.2. The parties herein are hereby ordered to comply with all stipulations hereinabove set forth.

ILLEGIBLE

APPROVED:

DISTRICT COURT

MICHAEL E. GRACE III
Plaintiff

Order: Page 3 3

Attorneys for Plaintiffs in

F. B. HOWDEN

FARRELL L. LINES

JOHN P. POTTS

OIL CONSERVATION COMMISSION
Defendant

A. L. PORTER, JR.
Secretary & Director

ATTORNEYS FOR DEFENDANT

THOMAS W. DERRYHERRY

WILLIAM F. CARR

INTERVENORS

DONALD G. STEVENS
Attorney for Morris Antweiler

JASON W. KELLAHAN
Attorney for Cities Service
and Pennzoil

A F F I D A V I T

STATE OF NEW MEXICO)

COUNTY OF BERNALILLO)

Comes now Kenneth E. Smith (having been first duly sworn upon his oath, and deposes and states as follows:

1. That I am an employee of Paul E. Cameron, Jr., Inc., a Petroleum Engineering Consulting firm based in Houston, Texas.

2. That I have been retained for a number of months by Michael Grace as an oil consultant.

3. That I have previously been qualified as an expert witness before the Oil Conservation Commission and have testified before the said Commission on a number of occasions in the past year.

4. That it is my understanding that a Shut-In Order has been issued by the New Mexico Oil Conservation Commission against the M. P. Grace II, Grace-Atlantic well located in Section 24, Township 22S, Range 26 E, Eddy County, New Mexico,

5. That I have been familiar with the well during its entire production history. I have deliberately reduced the choke size on this well in small steps, testing its reaction along the way.

6. That because of the aggravated energy crisis, El Paso Natural Gas requested of the tracers a substantial amount of gas production from this well to assist during the coming winter months.

7. In my opinion, a complete shut-in, followed by a return to full production to meet the request of El Paso Natural Gas, would amount to rocking the well and would cause damage to the well.

8. This well has been flowing at its present rate with a surface pressure only 325 pounds per square inch short of 2,000 P.S.I. I have good reason to believe that this is by far the highest pressure of any well in this area and zone with a like amount of production and production rates.

9. If the well is treated as a majority of the other wells in the field, a shut-in would have an even more drastic impact on the well, and could create more danger to the well itself than like actions would do to lesser wells in this field.

10. I make these statements based on my knowledge of the expert testimony presented to the New Mexico Oil Conservation Commission proration hearing on April 17, 1972. The extent of the above mentioned damage can only be ascertained
ment by a complete reservoir study.

KENNETH F. SMITH

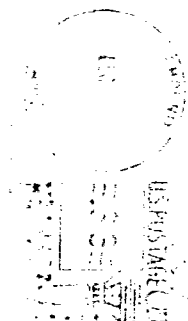
3 day of October, 1973.

TARY PUBLIC

HN SON & OTTO, P.C.
TTORNEYS AND COUNSELORS AT LAW
45 WEST JEFFERSON
PHOENIX, ARIZONA 85003

William F. Carr, Esq.
Oil Conservation Commission
Albuquerque, New Mexico
SANTA FE, N. MEX 87501

VIA AIR MAIL



materials offered by Mr. and Mrs. Grace but not admitted

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

12/12/73

MICHAEL P. GRACE II and
CORINNE GRACE,

W/K

Petitioners-Appellants,

vs.

No. 9821

OIL CONSERVATION COMMISSION
OF NEW MEXICO,

District Court
File No. 28181

Respondent-Appellee,

and

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

Intervenors.

A F F I D A V I T

RONALD D. JOHNSON, first being duly sworn, deposes and says:

That I am a Petroleum Engineer and a graduate of the University of Southwestern Louisiana, Lafayette, Louisiana. That I am a registered Engineer and have testified as an expert before the District Court of the State of New Mexico in cases where the N.M.O.C.C. has been the adverse party.

That I have been a practicing Petroleum Engineer for a period of sixteen years, and during said period, worked for ten years for Mobil Oil Company, finishing as Area Production Engineer; and for the subsequent six years have been a Consulting Petroleum Engineer with Steinhurst Operators Systems, INC., Lafayette, Louisiana.

That I make this Affidavit of my own knowledge, and further based upon my training and experience as a petroleum engineer.

That I have examined the files and records relating to the production of gas and water build-up with reference to Grace Atlantic No. 1, Gas Well, located in the South Carlsbad Morrow Field, in South-eastern New Mexico. That based on these records, this well is producing

at a rate of slightly less than 7MCF's per day by virtue of the present pro-rationing schedule. That this well is capable of conservatively producing at the rate of 17MCF's per day.

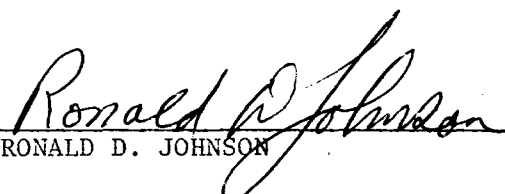
That because of the continuing water build-up inside the well when produced at the rate of 5MCF's per day, there is a reasonable possibility that the well will be damaged, resulting in the continuing strong possibility of loss of some of the reserves which would otherwise be available for recovery from said well.

That if the well is water-damaged this has a direct bearing on the wells inability to ever produce all the available future reserves which would be lost in the event of water damage.

That the Grace Atlantic Well No. 1, as well as a number of additional wells were not in existence or producing at the time of the original decision by the N.M.O.C.C. in this cause, but these wells are none-the-less pro-rated under the commission order issued herein.

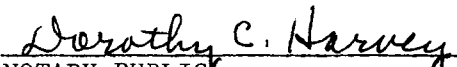
That with the information presently available plus additional 24 hour bottom hole pressure tests on the wells in the Morrow field it is possible to arrive at an opinion to a reasonable degree of probability as to the reserves under each well, and what the total reserves are under the entire field from an engineering standpoint.

Further, affiant sayeth not.


RONALD D. JOHNSON

STATE OF NEW MEXICO)
) SS.
COUNTY OF BERNALILLO)

SUBSCRIBED AND SWORN TO before me this 12th day of
December, 1973.


NOTARY PUBLIC

My Commission Expires:

December 8, 1976

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MICHAEL P. GRACE II and
CORINNE GRACE,

Petitioners-Appellants,

vs.

No. 9821

OIL CONSERVATION COMMISSION
OF NEW MEXICO,

District Court
File No. 28181

Respondent-Appelle,

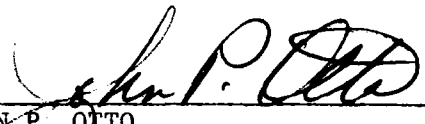
and

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

Intervenors.

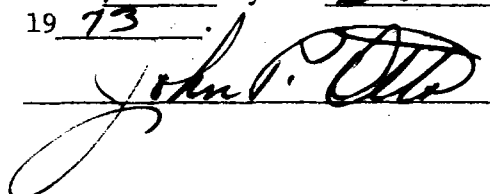
ENTRY OF APPEARANCE

COMES NOW JOHN P. OTTO and enters his appearance as co-counsel
for Appellants Michael P. Grace and Corinne Grace.



JOHN P. OTTO
45 West Jefferson
Phoenix, Arizona 85003

I hereby certify that a copy
of the foregoing was delivered
to opposing counsel of record
this 12th day of Dec,
19 73.



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MICHAEL P. GRACE II and
CORINNE GRACE,

Petitioners-Appellants,

vs.

No. 9821

OIL CONSERVATION COMMISSION
OF NEW MEXICO,

District Court
File No. 28181

Respondent-Appelle,

and

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

Intervenors.

A F F I D A V I T

ROBERT W. BECKER, first being sworn on oath, deposes and says:

That I am a graduate geologist with a Master of Science in Geology from the University of Michigan. I have been a practicing geologist for 25 years. I am presently a partner in a Consulting Geology firm in Roswell, New Mexico and have been so engaged for the past three years.

That I am familiar with the Carlsbad Morrow Field and make this Affidavit based on my own knowledge and further based on my training and experience.

That with the information presently available plus additional 24 hour bottom hole pressure tests on the wells in the Morrow field, it is possible to arrive at an opinion to a reasonable degree of probability as to the reserves under each well, and that the total reserves are under the entire field from an geological standpoint.

It certainly is within the realm of practicability to reach an opinion to a reasonable degree of probability as to the reserves under each well and the reserves under the Morrow field.

That without this determination, it is impossible to fairly determine the true correlative rights in the field.

Robert W. Becker
ROBERT W. BECKER

STATE OF NEW MEXICO)
) SS.
COUNTY OF BERNALILLO)

SUBSCRIBED AND SWORN TO before me this 12th day of December, 1973.

Dorothy C. Harvey
NOTARY PUBLIC

My Commission Expires:

December 8, 1976

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MICHAEL P. GRACE II and
CORINNE GRACE,

Petitioners-Appellants,

vs.

No. 9821

OIL CONSERVATION COMMISSION
OF NEW MEXICO,

District Court
File No. 28181

Respondent-Appelle,

and

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

Intervenors.

A F F I D A V I T

CORINNE GRACE first being duly sworn on oath deposes and says:

That I am one of the Appellants in this case and make this
Affidavit based on my own knowledge.

That the Report, attached hereto, marked Exhibit "A" and made
a part hereof by reference is a true and correct copy of a reserve
gas calculation made by a registered Petroleum Engineer concerning
the Carlsbad-Grace Well #1 in the South Morrow field, in Carlsbad,
New Mexico.

Corinne Grace
CORINNE GRACE

STATE OF NEW MEXICO)
) SS.
COUNTY OF BERNALILLO)

SUBSCRIBED AND SWORN TO before me this 12th day of December,
1973.

Dorothy C. Harvey
NOTARY PUBLIC

My Commission Expires:

December 8, 1976

CHAS. C. BANKHEAD, JR. & ASSOCIATES
PETROLEUM CONSULTANTS
1601 FIDELITY UNION TOWER
747-0303
DALLAS, TEXAS 75201

February 19, 1973

Michael P. Grace II
Corinne Grace
P. O. Box 1418
Carlsbad, New Mexico 88220

Re: Evaluation
Corinne Grace
Carlsbad Grace No. 1
Eddy County, New Mexico

Dear Mr. and Mrs. Grace:

Complying with your request, reserve and revenue projections have been made for the Corinne Grace interest in your well No. 1 on the Grace-Carlsbad Unit, South Carlsbad Field, Eddy County, New Mexico.

The attached letter from our engineering associates shows the combined net reserve of 4,375,000 Mcf of gas and 31,076 barrels of condensate will result in a future gross revenue of \$2,292,536. Deducting the estimated operating expense of \$116,046 results in a future net revenue of \$2,176,490. Discounting this future net revenue at the arbitrary rate of 7 percent per annum gives a discounted value of \$1,889,242.

We are pleased to present the following data resulting from our evaluation study.

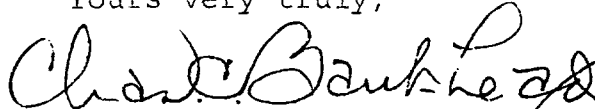
1. Letter dated February 16, 1973, from our associates Calhoun Engineering.
2. Projection tables showing the estimated future production and revenue for the Strawn and Morrow zones separately, and the combined production and revenue for both zones in the summary.

Michael P. Gra II
Corinne Grace
February 19, 1973
Page 2

3. Structure map on the Top of the Strawn formation.
4. Structure map on the Base of the Morrow formation.

We will maintain the engineering and geological data in our offices for reference and consultations and wish to thank you for permitting us to prepare this evaluation.

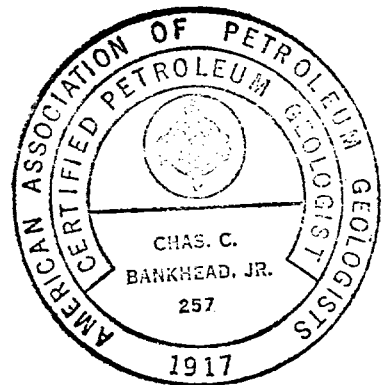
Yours very truly,



Chas. C. Bankhead, Jr.

CCBjr/cw

Attachments



CHAS. C. BANKHEAD JR. & ASSOCIATES

CHAS. C. BANKHEAD, JR. & ASSOCIATES
PETROLEUM CONSULTANTS
1601 FIDELITY UNION TOWER
747-0303
DALLAS, TEXAS 75201

February 22, 1973

Michael P. Grace II
Corinne Grace
P. O. Box 1418
Carlsbad, New Mexico 88220

Re: Evaluation
Corinne Grace
Carlsbad Grace No. 1
Eddy County, New Mexico

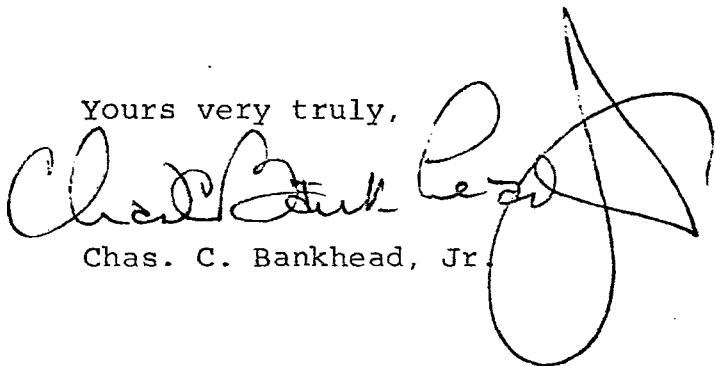
Dear Mr. and Mrs. Grace:

We are pleased to transmit the evaluation report on
your Carlsbad-Grace No. 1, Eddy County, New Mexico.

We are transmitting only the original report and one
copy of the enclosures as we understand from Juanita
that you will make as many copies there as you need.

It was my pleasure to prepare this evaluation for you
and if you need any additional information, please
advise.

Yours very truly,



Chas. C. Bankhead, Jr.

CCBjr/cw
Enclosures

CALHOUN ENGINEERING
PETROLEUM CONSULTANTS
511 NORTH AKARD STREET
DALLAS, TEXAS 75201

February 16, 1973

Mr. Charles C. Bankhead, Jr.
1601 Fidelity Union Tower
Dallas, Texas 75201

Re: Corinne Grace
Grace-Carlsbad No. 1
South Carlsbad Field
Eddy County, New Mexico

Dear Mr. Bankhead:

Pursuant to your instructions, reserve and revenue projections have been made for the Corinne Grace interest in their Well No. 1 on the Grace-Carlsbad Unit, South Carlsbad Field, Eddy County, New Mexico. These projections are on the attached tables which show the estimated future production and revenue for the Strawn and Morrow zones separately, and the combined production and revenue for both zones in the summary.

The gross reserve from the Strawn zone is estimated to be 1,500,000 Mcf of gas and 35,516 barrels of condensate. The net to the Corinne Grace interest is 1,312,500 Mcf of gas and 31,076 barrels of condensate.

The gross reserve from the Morrow zone is estimated to be 3,500,000 Mcf of dry gas which yields to the Corinne Grace interest 3,062,500 Mcf.

The combined net reserve of 4,375,000 Mcf of gas and 31,076 barrels of condensate will result in a future gross revenue of \$2,292,536. Deducting the estimated operating expense of \$116,046 results in a future net revenue of \$2,176,490. Discounting this future net revenue at the arbitrary rate of 7 percent per annum gives a discounted value of \$1,889,242.

Inasmuch as the Corinne Grace No. 1 Grace-Carlsbad has not been committed to market, the reserve estimate has been based upon analogy of the other wells in the field area which have an adequate performance history for making an appraisal. Geological structure, net pay thickness, performance trends and initial potentials were taken into consideration in making the analogy.


CALHOUN ENGINEERING

The price used for condensate was that which is prevalent in the general area but was reduced \$0.15 per barrel to cover trucking charges. The gas price used was that quoted by the operator as a firm offer to purchase. It is the writer's understanding that a contract for gas sales has not been signed as of this date.

Data used in this study were from the files of the operator, from New Mexico Conservation Commission records and from our general files. These data will be maintained in this office for reference and future consultations.

Yours very truly,

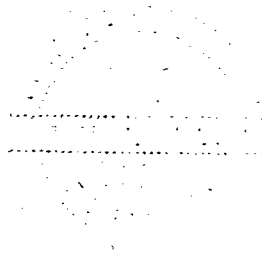
CALHOUN ENGINEERING

A handwritten signature in cursive script, appearing to read "Robert R. Wallace".

Robert R. Wallace, P.E.

RRW:mlj

attchs.



CHAS. BANKHEAD AND ASSOC.
DALLAS, TEXAS

TOTALS ALL LEASES
AS OF APR. 1, 1973

PAGE 1
SD. CARLSBAD

	Oil PRODUCTION GROSS BBL	Oil PRODUCTION NET BBL	GAS PRODUCTION GROSS MCF	GAS PRODUCTION NET MCF	REVENUE AFTER SEV TAX	OPERATING COSTS AND AD VAL TAX	CAPITAL COSTS	FUTURE REVENUE	CUM DISC. NET REV. 7.000 PC
CORINNE - CARLSBAD	35516	31076	1500000	1512500	752325	41851	0	710474	640931
CURINNE - CARLSBAD	0	0	3500000	3062500	1540211	74195	0	1466016	1248311
CURINNE GRACE	35516	31076	5000000	4375000	2292530	116046	0	2176490	1889242

CORINNE - CARLSBAD
SO. CARLSBAD (MORROW)
EDDY CO., NEW MEXICO
PAGE 2

RESERVES AND ECONOMICS
AS OF APR. 1, 1973

EXPENSE INTEREST = 1.000000 INCOME INTEREST = 0.875000		CIL PRICE = 0.0 GAS PRICE = 0.5200		NC. OF WELLS = 1.00 NC. OF ACRES = 320.00		DISCOUNT RATE = 7.00 PER CENT LIFETIME = 9.46 YEARS				
YEAR ENDS	CIL PRODUCTION GROSS BBL	NET BBL	GAS PRODUCTION GROSS MCF	NET MCF	REVENUE AFTER SEV TAX	OPERATING CGSTS AND AD VAL TAX	CAPITAL CUSTS	FUTURE NET REVENUE	CUMULATIVE DISCOUNTED NET REVENUE	
1973	0	0	748134	654617	318275	2700	0	315575	307423	
1974	0	0	807711	706747	348576	3600	0	344976	623580	
1975	0	0	633823	554595	278719	3000	0	275119	858720	
1976	0	0	491052	429671	219554	6029	0	213925	1029233	
1977	0	0	325561	284866	148490	10200	0	138290	1132029	
1978	0	0	205542	179849	94169	10200	0	83569	1150239	
1979	0	0	129768	113547	59453	10200	0	49253	1222081	
1980	0	0	81928	71687	37535	10200	0	27335	1238562	
1981	0	0	51725	45259	23698	10200	0	13498	1246152	
1982	0	0	24756	21662	11342	7266	0	4076	1248311	
SUB TOTAL	0	0	3500000	3062500	1540211	74195	0	1466016	1248311	
REMAINING	0	0	0	0	0	0	0	0	1248311	
TOTAL	0	0	3500000	3062500	1540211	74195	0	1466016	1248311	
PRIOR CUM	0	0	0	0						
ULTIMATE	0	0	3500000							
					CUMULATIVE DISCOUNTED NET REVENUE AT 10.00 PER CENT					1170914
					12.00 PER CENT					1123705
					15.00 PER CENT					1058704
					20.00 PER CENT					963736

CHAS. BANKHEAD AND ASSOC.
DALLAS, TEXAS

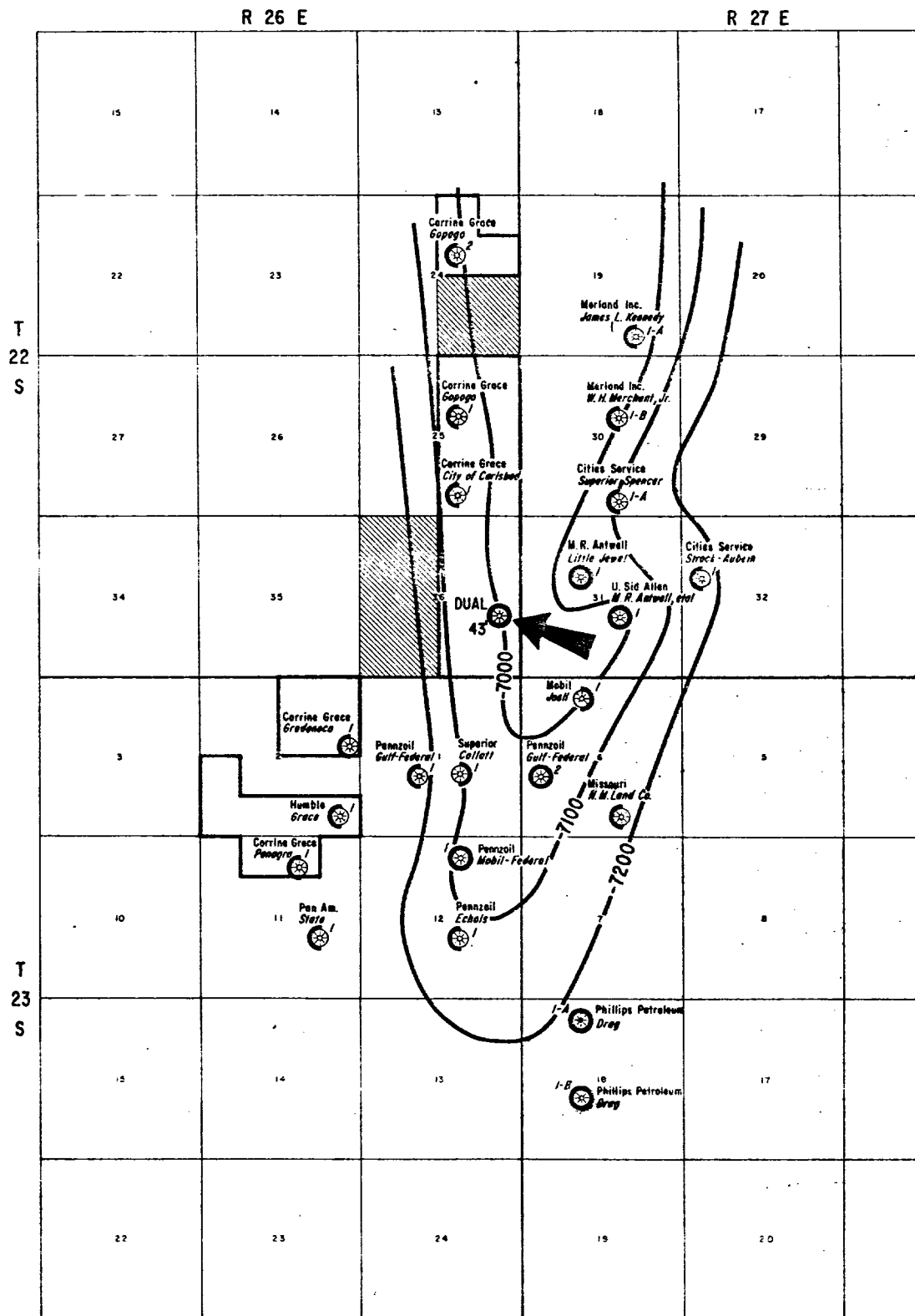
CORINNE GRACE
GRACE - CARLSBAD NO. 1
COMBINED ZONES
PAGE 3

SO. CARLSBAD






SUMMARY
RESERVES AND ECONOMICS
AS OF APR. 1, 1973

NUMBER OF WELLS = 2.00
NUMBER OF ACRES = 640.00

YEAR ENDS	CIL PRODUCTION GROSS BBL	NET BBL	GAS PRODUCTION GROSS MCF	NET MCF	REVENUE AFTER SEV TAX	OPERATING COSTS AND AD VAL TAX	CAPITAL COSTS	FUTURE NET REVENUE	CUMULATIVE NET REVENUE	CUM DISC. NET REV. 7.000 PCT
1973	12654	11072	1227672	1074213	557599	5400	0	552599	552599	538324
1974	11065	9082	1273212	1114060	500699	7200	0	573499	1126098	1063913
1975	6421	5010	527542	811599	426003	11590	0	414413	1540511	1418105
1976	3088	2702	637252	559361	295070	15029	0	280041	1820552	1641317
1977	1505	1320	359799	349824	186609	19200	0	167409	1987961	1765758
1978	747	634	242720	212360	113111	19200	0	94111	2082072	1830999
1979	32	28	131354	114935	60270	10761	0	49505	2131581	1863012
1980	0	0	61928	71687	37535	10200	0	27335	2158916	1879493
1981	0	0	51725	45259	23698	10200	0	13498	2172414	1887083
1982	0	0	24756	21662	11342	7266	0	4076	2176490	1889242
SU TOTAL	35516	31076	5000000	4375000	2292536	116046	0	2176490	2176490	1889242
REMAINING	0	0	0	0	0	0	0	0	2176490	1889242
TOTAL	35516	31076	5000000	4375000	2292536	116046	0	2176490	2176490	1889242
PRICE CUM	0	0	0	0	0	0	0	0	0	0
ULTIMATE	35516	31076	5000000	4375000	2292536	116046	0	2176490	2176490	1889242
CUMULATIVE DISCOUNTED NET REVENUE AT										
							10.00 PER CENT		1785420	
							12.00 PER CENT		1721592	
							15.00 PER CENT		1633045	
							20.00 PER CENT		1502153	



LEGEND

-  GRACE ACREAGE PRODUCING
-  GRACE ACREAGE PROSPECTIVE
-  STRAWN
-  MORROW
-  STRAWN AND MORROW

WELL EVALUATED

CORRINE GRACE
CARLSBAD GRACE NO. 1
DUAL 43' Net Porosity

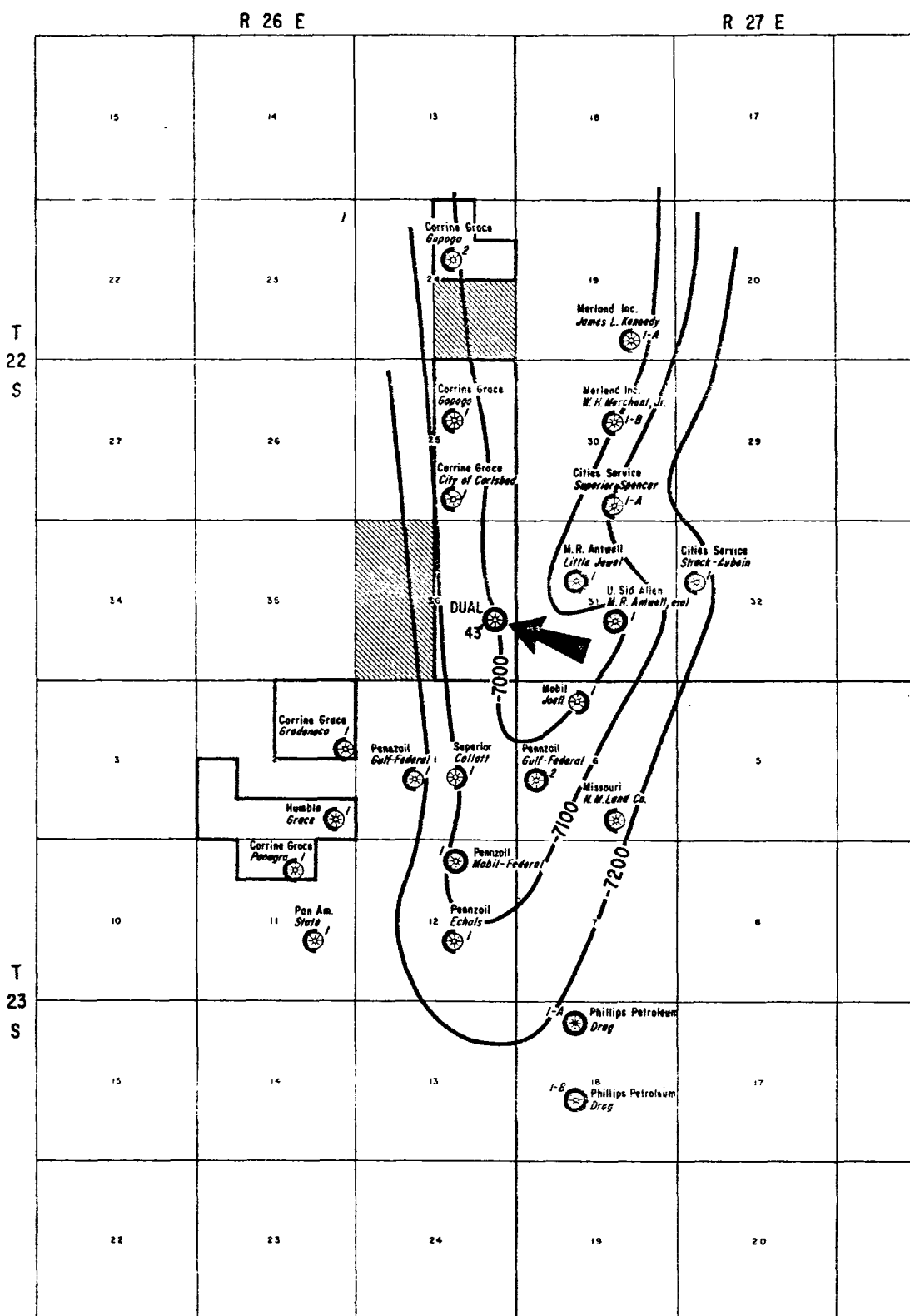
MICHAEL P. GRACE II
CORRINE GRACE

SOUTHWEST CARLSBAD FIELD
EDDY COUNTY, NEW MEXICO

**STRUCTURE
TOP STRAWN**

SCALE IN FEET
2000 0 2000 4000

CHAS. C. BANKHEAD, JR. & ASSOC.



- LEGEND**
- GRACE ACREAGE PRODUCING
 - GRACE ACREAGE PROSPECTIVE
 - STRAWN
 - MORROW
 - STRAWN AND MORROW

WELL EVALUATED

CORRINE GRACE
CARLSBAD GRACE NO. 1

DUAL 43' Net Porosity

MICHAEL P. GRACE II
CORRINE GRACE

SOUTHWEST CARLSBAD FIELD
EDDY COUNTY, NEW MEXICO

STRUCTURE
TOP STRAWN

SCALE IN FEET
2000 0 2000 4000

JAS. C. BANKHEAD, JR. & ASSOC.
FEBRUARY, 1973

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MICHAEL P. GRACE II and
CORINNE GRACE,

Petitioners-Appellants,

vs.

OIL CONSERVATION COMMISSION
OF NEW MEXICO,

Respondent-Appelle,

and

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

Intervenors.

No. 9821

District Court
File No. 28181

AFFIDAVIT

I, Kenneth F. Smith, being first duly sworn on oath, do hereby state:

1. That I am a Petroleum Engineering Consultant and have served in this status for a period of five years and four months.

2. That I previously had nine years experience in production and drilling engineering with Mobil Oil Corporation in West Texas and Mobil Oil Company de Venezuela in eastern Venezuela plus seven years oil and gas production work with oil field service companies.

3. That I have previously qualified as an expert witness before the New Mexico Oil Conservation Commission.

4. That I have worked as drilling and production engineer in the South Carlsbad-Morrow gas pool for six months intermittently over a period of the last two and one half years.

5. That I am familiar with the hearings and court proceedings pertaining to prorationing of the South Carlsbad-Morrow Pool and the South Carlsbad Strawn Pool.

6. That in view of the number of wells drilled in the South Carlsbad-Morrow Pool and the wide variations in their producing capacity, net feet of pay, porosity and apparent permeability it is a certainty that a more equitable formula for assigning well allowables could be worked out than the presently used surface acreage formula.

7. That under the presently used surface acreage formula a well with ten feet of pay and fifteen percent porosity can have the same allocation of production as one with thirty feet of pay and twenty-five percent porosity.

8. That this range of differences along with apparent permeability leads to wide differences in the wells' deliverability and ultimate total recovery.

9. That limiting highly capable wells to the producing capacity of incapable wells amounts to confiscation of part of the larger gas reserves under the capable wells.

10. That in view of the production history now available in this field, and the apparent lack of any Morrow formation water drive, reserves and ultimate recoveries can be calculated, using decline curves and or material balance calculations.

11. That basing allocations of production on reserves calculated from log porosities, water saturations, bottom hole pressures and net feet of pay, along with a deliverability factor would be much more equitable than the pure surface acre formula.

Kenneth F. Smith
AFFIANT

SUBSCRIBED AND SWORN to before me this 11th day of December, 1973.

Ellene Russell
Notary Public in and for Harris County,
Texas

My Commission Expires:

6/1/75

S.Ct. Rule 9

✓ superintending control - Article II, Section 3

rehearing on motion to stay - granted

1. Randolph Reese - Prorating Strawn
"same transcript + evidence" - as up
Morrow
cites Howden affidavit

2. diametrically opposed decisions on "same
evidence + concerning the same purpose"
Reese decision gives merit to
the appeal in The Morrow

Howden transcript

TP#1 Page 2A - attached - consolidated ^{for} _{trial} _{purpose}
Nutter affidavit ZA-6 -
comments of other parties

TP#2 Howden Brief < OK >

TP#3 - consolidation - testimony only
- evidence - difference as so agreed
by Grace attorney's

Howden concludes
same evidence
submitted as
to both formations

TR - attached - of
Dist Ct Decision herein
upholding OCC
- Petitioners trial brief
at page 3

Howden - OCC relied on the same evidence in each
order - hard to see what he based this on

NUTTER AFFIDAVIT -

FORMATION VARIANCES

evidence - not in K

petition for stay:

IP #2 - concludes - appellants most likely to suffer damage

- still in ground - can produce at later date
- converse not true - once surrounding properties drained by excessive production - offsets are permanently damaged.

- PROPERTY SITUATION IN OIL FIELD - not single property interests

1. fee - w/ royalty
2. working interests
3. overriding interests.

- if overproduction occurs in one well - can't later be made up by curtailing another - DENIES ROYALTY owners right to have their reserves produced.

2 occ - ^{to} protect royalty as well as other interests

PERSON LEAST LIKELY TO SUFFER DAMAGE IS THE PETITIONER HEREIN.

IP #3 - energy crisis - By statute OCC cannot consider this except as an aside to C/R - WASTE - PROTECTION OF FRESH WATER - Agree there is a serious GAS shortage - warned through IOCC

oec can't consider
energy crisis - by
change.

we are where we are
due to a look after today
forget tomorrow approach -
- abandoning present systems which
look at MER's and waste
prevention and c/r =
more serious problems than
contained in the present
situation.

TP#4 ~~True~~ - hope to produce as much
as possible from it.

oec can't consider
unless production
exceeds market demand

TP#5 - ~~greater production~~ might have disastrous consequences
water coming & permanently killing
or permanently damaging wells.
hurt reserves -
harder to meet market
demand.

TP#6 - concern for c/r - valid -
staying production well = return
to rule of capture and allow
the appellant to drain off other
operators.

TP#7 - consumer needs - business of oil & gas
- why we deal w/ market
demand
- MER's
- and require that production
be orderly and efficient
in the short term as
well as in the long
run.

- lines 4-6 Stants. (p. 6) (RECORDED AT 68): My testimony is designed to cover both pools, and The Morrow first primarily, but the exhibits which we have prepared cover both pools.
- M + S Exhibit 1 + A — chart - well data
(breaks out separately the top of the Morrow + top of the Strawn formation)
- M Exhibit 2 — Carlsbad Morrow Gas Pool Structure Map
- M Exhibit 3 — Well Completions - ~~Strawn~~ Morrow
- M Exhibit 4 — Completion Map - Carlsbad Morrow
- M Exhibit 5 — logs of Pennzoil - Gulf Federal Number 1 + Superior Oil Co. Estate Number 1 (the closest wells in the pool - 1320 ft apart) — Pennzoil was a producer — the other not from same zones — shows characteristics of Morrow
- (RECORDED AT 77)
- M + S Exhibit 6 + B — cross sections of gamma ray neutron logs which show the limits of the Strawn + Morrow formations
- M + S Exhibit 7 + C — cross section of Strawn + Morrow — from logs
- M Exhibit 8 — map of horizontal limits of South Carlsbad Morrow Gas Pool.
- M Exhibit 9 — Well Completion Chart (Morrow)
- M Exhibit 10 — 2. Labels. Labels. Formation (Morrow)

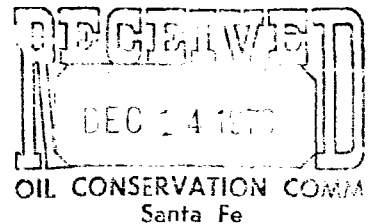
244511

not a part of this record -
do not relate to the
Morrow

- (RECORD 81/10) D — a structure contour map of the Strawn
82/17 E — well completion tabulation - Strawn
82/22 F — a graphic diagram of completions and
perforations in Strawn formation
104/ G — map of horizontal limits of Strawn
104/ H — Well completion chart (Strawn)
104/ I — Rateable calculations (Strawn)

Antwail 1 — 10 — all Strawn.

- 194/1 #1 - location map - South Carlsbad Strawn
194/10 #2 - Antwail interpretation of Strawn contour
195/11 #3 - North-South contour of the Strawn Reservoir
197/5 #4 - East-West cross section of the Strawn Reservoir
197/15 #5 - log of Morris Antwail #1 (Sec. 31) -
shows pay section in Strawn
201/14 #6 - Table of Porosity Thickness Determinations - Strawn
203/14 #7 - Table showing a determination of Morrow thickness
206/ #8 - calculation of total core volume in acre
feet for entire reservoir
208/18 #9; 9(a) & (b) Calculation of reserves in So Carlsbad Strawn
211/21 9(b) - core volume - calculated
212/14 #10 suggested allocations of pool reserves



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
Wednesday, December 12, 1973

NO. 9821

MICHAEL P. GRACE II and
CORINNE GRACE,

Petitioners-Appellants,

vs.

Eddy County

OIL CONSERVATION COMMISSION
OF NEW MEXICO/

Respondent-Appellee,

and

CITIES SERVICE OIL COMPANY
and the CITY OF CARLSBAD/

Intervenors.

This matter coming on for consideration by the Court upon
motion for stay of judgment, and the Court having considered said
motion and being sufficiently advised in the premises;

IT IS ORDERED that motion for stay of judgment be and the
same is hereby denied.

ATTEST: A True Copy

Rose Marie Aldrete
Clerk of the Supreme Court
of the State of New Mexico

Cause No. 9821

MICHAEL P. GRACE II AND CORINNE GRACE
VS PETITIONERS - APPELLANTS
OIL CONSERVATION COMMISSION OF NEW MEXICO
VS. RESPONDENT - APPELLEES
CITIES SERVICE OIL COMPANY AND
CITY OF CARLSBAD

INTERVENORS

Petition for Stay of Judgment - Based on STRAWN DECISION

STATEMENT OF CASE

1. This case involves an appeal by petitioners-
appellants from judgment entered by the Honorable Paul Snead
in Cause No. 28181, District Court for the Fifth Judicial
District, Eddy County, New Mexico, entitled Michael P. Grace
II and Corinne Grace, Petitioners, vs. Oil Conservation
Commission, which judgment upheld an order of the Oil
Conservation Commission prorating gas production from the
South Carlsbad-Morrow Gas Pool. [The Honorable N. Randolph
Reese entered his opinion of the court in Cause No. 28182, entit-
led Michael P. Grace II and Corinne Grace, Petitioners. vs.
Oil Conservation Commission of New Mexico, Respondent,
wherein he held that the order of the Oil Conservation
Commission prorating gas production in the South Carlsbad-
Strawn Gas Pool was invalid.

- matters involved in causes 28181 and 28182 before the OCC were heard on a consolidated record.
- separate orders were issued

Basic question involved in the
PETITION FOR STAY OR JUDGMENT
is this

are there two diametrically opposing
decisions concerning acts of
the Oil Conservation Commission
arising from the same evidence and
concerning the same purpose.

I. Different evidence + transcripts - in two cases
In the case concerning prorating of the
Strawn, the court did not have before
it the same transcript and evidence
as in the case concerning prorating of the
Morrow.

At my request Daniel S. Nutter (chief
petroleum engineer for the OCC for 15 yrs+)
examined the record file herein with
this court and in his affidavit
which is attached to OCC's response
states.

(b) that Mr. Clint Small and Mr. Lon Watkins, the attorneys
who actually represented the Graces in District Court
Case No. 28181, agreed that certain portions of the
evidence received at the Commission hearing only related
to the Strawn formation; this is reflected in the transcript
of this case at pages 394 through 396 of the Record filed
herein, a copy of which is attached as Exhibit II;

It is important that we look at
this transcript and see exactly what
transpired;

RECORD - p. 394

It had just stated it did
not have the original transcript.

MR. WATKINS: Court please, we have asked
that it be introduced, and the Commission has
brought that in, together with the Exhibits. Now
with reference to this transcript, we have
discussed the matter with Mr. Losee, and in the
interest of saving both time and money, and in
the event that this goes on appeal, we have
agreed that various parts of the transcript be
deleted, and particularly with reference to the
testimony concerning the Strawn Pool, rather than
the Morrow. We are only interested in the Morrow.

THE COURT: I noted that the two were
combined for purposes of hearing. Obviously,
from reading the transcript, some of that testi-
mony is applicable only to the Strawn Formation,
and really has no useful purpose here.

MR. LOSEE: For the record, as far as the
testimony is concerned, it is our belief that
Mr. Stamets' testimony, commencing on Page 18,
Line 24, running through Page 22, Line 6, and
the testimony of Mr. Williams, commencing on
Page 130, Line 14, running through Page 136,
can be omitted as it pertains solely to the
Strawn Formation.

Also, that Oil Conservation Commission's Exhibit D, E, F, G, H, and I, and all of the Morris Antwell Exhibits, 1 through 10, can be omitted, and with those exceptions, we'll stipulate to the record and the Certificate.

I'd like to also have a Certified Copy of Order R-4034, to which the Commission took administrative notice in the hearing, be the hearing on two of the three unorthodox well location of the Petitioners.

THE COURT: All right. Any objection to that?

Mr. Small reviewed the copy of Order R-4034 and indicated there were no objections

SO WHAT WE HAVE =

STATEMENT BY ATTORNEYS FOR MR. GRACE
ONLY A PORTION OF THE RECORD
AND EVIDENCE RELATE TO THE
STRAWN POOL

ALSO HAVE STATEMENT BY THESE
ATTORNEYS THAT PART OF THE EVIDENCE
RELATES ONLY TO THE MORROW

Mr. Nutter reviewed the petitioners trial brief and states in his affidavit:

(c) that the Petitioners at page 3 of the Petitioners' Trial Brief state that a portion of the record made before the Oil Conservation Commission applies only to the Morrow Pool; a copy of this page is attached hereto as Exhibit III:

if we turn to page 3 of Petitioner's Trial Brief - we find this statement:

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

↑ ADMISSIONS BY GRACE ATTNY'S
THAT ~~ONLY PART OF THE~~
~~EVIDENCE~~ IN THE CONSOLIDATED
CASES - ONLY PART OF THE
EVIDENCE RELATED TO THE
STRAWN FORMATION — AND OTHER
EVIDENCE RELATED TO THE
MORROW FORMATION
PART TO STRAWN — PART TO MORROW

THE SAME EVIDENCE WAS NOT
USED IN DECIDING THE
CASE ON THE MORROW + THE
CASE ON THE STRAWN

In examining the record filed herein
Mr. Nutter found:

- (d) that certain exhibits introduced into evidence in the consolidated cases before the Oil Conservation Commission related only to one of the formations and not to the other as is reflected on page 395 of Exhibit II which is attached hereto.

REFERRED AGAIN TO TRANSCRIPT OF THE
DIST. CT. HEARING BEFORE CMEAN - DU ADDED

Petitioner
going out to
record to
obtain what
if we can't
confined to the
record - no
issue before the
ct.

EXCLUDE CERTAIN EXHIBITS.

It should be further noted:

that Judge Sneed had same
record before him that you
have

your record does not
include OCC Strawn exhibits
nor those of ANTWEIL — STRAWN

The exhibits not included in this record
are the very exhibits that Judge Reese
relied on in the case concerning
the Strawn — THE EXHIBITS

ARE NOT THE SAME

THEY COULD NOT BE THE
SAME

due to ~~RESERVOIR~~ CHARACTERISTICS

Mr. Nutter — in his affidavit states:

7. That the South Carlsbad-Strawn reservoir and the South Carlsbad-Morrow reservoir are vastly different types of reservoirs.

8. That whereas the Strawn reservoir pay zone is, in general, a homogeneous limestone reef structure, the major variation of which is a thickening and thinning as one proceeds from one well to another with less important variations in porosity and water saturation, the Morrow formation is composed of many isolated stringers of porosity and permeability which are often present in one well but absent in an adjoining well.

9. That while it may be possible to determine the reserves under a given tract in the Strawn reservoir by interpolating the tract, based on the logs of offsetting wells, and by interpolating the net feet of pay, porosity, and water saturation, such a determination is hazardous at best and is not practicable.

10. That in view of the appearance and disappearance of the sand stringers from well to well, and the impossibility of determining the areal extent of any given sand stringer in the Morrow formation, it is virtually impossible to determine the reserves under any given tract in the South Carlsbad-Morrow Gas Pool.

11. That due to the great difference in the nature of the respective reservoirs, separate and distinct testimony must be considered when determining whether either of these pools should be prorated and, if so, what formula should be applied.

In other words —

STRAWN — classic dome-shaped pocket of gas —
homogeneous in its geological make-up

MORROW — STRINGER OR FINGERS —
w/ varying permeability (pinch out)

— COULD NOT RELY ON SAME EVIDENCE IN PRORATING THESE TWO POOLS —
CONFRONTED w/ VERY DIFFERENT CONSIDERATIONS.

The petitioners herein place great
reliance on the fact that
the OCC CONSOLIDATED
FOR PURPOSES OF TAKING
TESTIMONY.

Mr. Nutter in his affidavit states:

(a) that Cases 4693 and 4694 before the Oil Conservation Commission
were consolidated only for the limited purpose of taking testimony
in the interest of saving time, as is reflected on pages 2A through
6 of the transcript of the proceedings before the Commission, a
copy of which is attached as Exhibit I, since the two pools being
considered for prorationing overlay one another and gas from these
pools is being sold to common purchasers;

Mr. Howden in his affidavit - places
great weight on the fact that
these case were consolidated
by the OCC. and attaches to
his affidavit a copy of p. 2A.
of the transcript before the
O.C.C.

The limited purpose for the consolidation
is quite apparent if one reads beyond
page 2A.

turn attention to EXHIBIT I (OCC
RESPONSE TO PETITION FOR STAY)

READ PORTIONS

EXHIBIT I

dearnley-meier reporting service, inc.

SPECIALIZING IN: DEPOSITIONS, HEARINGS, STATEMENTS, EXPERT TESTIMONY, DAILY COPY, CONVENTIONS
209 SIMMS BLDG., P.O. BOX 1092 • PHONE 243-6601 • ALBUQUERQUE, NEW MEXICO 87103
FIRST NATIONAL BANK BLDG. EAST • ALBUQUERQUE, NEW MEXICO 87106

1 MR. PORTER: The Hearing will come to order.
2 I should have made the announcement earlier this morning,
3 I did make it last evening and most of you were here, in
4 regard to Governor King who had to cancel out at the last
5 minute. I was in his office at 10:30 o'clock the day before
6 yesterday before I came down to Hobbs and he had already
7 made reservations and fully intended to come to the
8 Hearing.

9 As you know, Governor King is very much interested
10 in the affairs of the Oil and Gas Industry and the development
11 of resources in the State. He also wanted to come to Hobbs
12 and was extremely sorry he could not be here. Things came
13 up that required him to cancel his appearance. He asked
14 me to express his regrets to you that he could not be
15 here.

16 We will take Cases 4693 and 4694.

17 MR. HATCH

18 MR HATCH: I have asked that Cases 4693 and 4694,
19 having to do with instituting proration in the South Carlsbad
20 Morrow Gas Pool and the South Carlsbad Strawn Gas Pool be
21 consolidated for the purpose of this Hearing only. There
22 will be two separate Orders that will be written by the
23 Commission.

24 The Commission will have two witnesses, Mr. Stamets
25 and Mr. Utz. The two pipe line companies who purchase gas

- 2-A -

1 in those two pools have voluntarily consented to also put
2 on testimony concerning their facilities and concerning
3 questions of market demand and capacity.

4 So first I will present Mr. Stamets and then
5 Mr. Utz to be followed by the representatives from the
6 pipe line companies.

7 Mr. Nutter, have you distributed the Exhibits
8 to the pipe line companies and to all the distributors?

9 MR. NUTTER: Yes.

10 MR. PORTER: Let me ask you, are there any
11 objections to consolidating these cases for the purpose of
12 taking testimony. As Mr. Hatch has indicated there will be
13 separate Orders issued.

14 MR. NEAL: I am C. Fincher Neal of Neal and Neal,
15 Hobbs, New Mexico. We represent Cities Service along with
16 Mr. LeBlanc of Tulsa. We are only interested in Case 4693,
17 but we have no objection to the Hearing being consolidated.

18 Our testimony, however, will only apply to that one Case
19 and that one formation.

20 MR. PORTER: I don't believe that will be any
21 problem.

22 MR. HATCH: No problem.

23 MR. NEAL: Thank you.

24 MR. STEVENS: Donald Stevens of McDermott, Connelly
25 & Stevens, Santa Fe. We have no objection to consolidation,

1 but for the purpose of clarity we suggest that perhaps
2 testimony on the Morrow can be heard first and then we
3 can have cross-examination and discussion. I say this on
4 the basis that the two fields are vastly dissimilar in
5 composition and in pay quality.

6 MR. PORTER: Do you have any objection to that,
7 Mr. Hatch, or have you prepared your testimony to present
8 both pools at the same time?

9 MR. HATCH: I think the Commission could do that
10 very easily, but I am not sure whether the pipe line
11 companies' testimony would be that easily separated. We
12 can ask them if they have any objection.

13 MR. PORTER: What about the Commission's
14 testimony?

15 MR. HATCH: The Commission's testimony can be
16 divided easily.

17 MR. KELLAHIN: Jason W. Kellahin of the firm
18 of Kellahin & Fox, Santa Fe, appearing for Pennzoil. Our
19 testimony is so prepared that if we follow the procedure
20 outlined by Mr. Stevens there will be a lot of unnecessary
21 repetition. It would be simpler for us to go ahead with the
22 entire presentation which will be very easily distinguished
23 as to which pool we are talking about.

24 MR. PORTER: The Commission desires to hear all
25 of the testimony in the proper order, however, I must state

1 at this point that we are limited in time since
2 Mr. Armijo must get back to Santa Fe this evening. Now,
3 there can be quite a bit of testimony presented and quite
4 a bit of cross-examination, I'm sure. So as far as we are
5 concerned we would like the testimony presented in the
6 manner in which it can be most expeditious to handle from
7 a point of time.

8 The case was originally listed and there was a
9 request for a full Commission Hearing so it was continued
10 for two months.

11 MR. CHASE: We represent Mr. and Mrs. Grace,
12 Michael P. Grace and his wife, Corinne Grace, of the City
13 of Carlsbad. My name is Edward Chase and my office is in
14 the Bank of New Mexico Building, Albuquerque, New Mexico.
15 My associates, Mr. Charles C. Spann and Mr. George Hunker, Jr.
16 I will hand the Reporter, with your permission, the cards
17 of these gentlemen.

18 If it please the Commission, we would like to
19 have the Strawn case heard first. The reason is that it
20 would simplify the matter and, we think, get to the heart
21 and guts of the situation quicker. Mr. Spann of the firm
22 of Grantham, Spann, Sanchez and Rager, in Albuquerque, will
23 take the lead in this case as our trial lawyer and
24 Mr. George Hunker, Jr., of Roswell, is our associate.

25 Mr. Spann, do you care to say anything?

1 MR. SPANN: We, of course, think the Strawn
2 should be heard first, but we will comply with the ruling
3 of the Commission.

4 MR. STAMETS: My testimony is designed to cover
5 both pools, and the Morrow first primarily, but the Exhibits
6 which we have prepared cover both pools.

7 MR. HATCH: I have a letter here from one
8 company saying that if everybody enters into the spirit of
9 cooperation and conservation, and I think we can do that,
10 and I would recommend we go ahead on the original grounds
11 because I think we are already wasting time here.

12 MR. PORTER: That is a fact and the Commission is
13 going to rule that the Cases will be consolidated for this
14 Hearing and the Commission may proceed at this time with
15 its first witness.

16 RICHARD M. STAMETS,
17 was called as a witness and after being duly sworn, testified
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. HATCH:

21 Q Will you state your name and position for the record?

22 A R. L. Stamets, Technical Support Chief for the Oil
23 , Conservation Commission of the State of New Mexico.

24 Q And your place of residence is in Santa Fe?

25 A Yes.

- It can hardly be asserted that
1. The case were not separate and distinct
 2. separate evidence was to be offered in each
 - * 3. THAT THERE WAS NO CONFUSION AS TO THE LIMITED PURPOSE OF THE CONSOLIDATION AT THE TIME OF THE HEARING

Mr. Nutter addresses himself to the consideration confronting the Commission in presenting these case in his affidavit — he states;

4. That although some testimony was common to both pools, certain other specific testimony applied to only one pool or the other.
5. That only the applicable common testimony and the appropriate specific testimony was used in deciding each case.
6. That separate orders were issued for each pool based upon the portion of the evidence pertaining to each respective pool.

=

(1) THESE CASES CONSOLIDATED
FOR PURPOSES OF HEARING

(2) SEPARATE + DISTINCT EVIDENCE INTRODUCED
CONCERNING EACH POOL —
< HAD TO BE DIFFERENT FOR
SEPARATE + DISTINCT W/ DIFFERENT
TO RESERVOIRS CHARACTERISTICS >
< ADMITTED BY ATTORYS FOR
PETITIONER >

THEREFORE — THE DECISIONS ARE
NOT IN CONFLICT

PETITIONERS MOTION FOR STAY OF
JUDGMENT SHOULD BE
DENIED.

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MICHAEL P. GRACE II and
CORINNE GRACE,

Petitioners-Appellants,

vs.

No. 9866

OIL CONSERVATION COMMISSION
OF NEW MEXICO,

District Court
File No. 28181

Respondent-Appellee,

and

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

Intervenors.

RESPONSE TO
PETITION FOR STAY OF JUDGMENT

COMES NOW respondent-appellee Oil Conservation Commission of New Mexico and intervenor Cities Service Oil Company, and in response to the petition for stay of judgment filed by petitioners-appellants herein, state:

1. This case involves an appeal by petitioners-appellants from judgment entered by the Honorable Paul Snead in Cause No. 28181, District Court for the Fifth Judicial District, Eddy County, New Mexico, entitled Michael P. Grace II and Corinne Grace, Petitioners, vs. Oil Conservation Commission, which judgment upheld an order of the Oil Conservation Commission prorating gas production from the South Carlsbad-Morrow Gas Pool. The Honorable N. Randolph Reese entered his opinion of the court in Cause No. 28182, entitled Michael P. Grace II and Corinne Grace, Petitioners, vs.

Oil Conservation Commission of New Mexico, Respondent, wherein he held that the order of the Oil Conservation Commission prorating gas production in the South Carlsbad-Strawn Gas Pool was invalid.

2. The matters involved in Causes Nos. 28181 and 28182 before the Oil Conservation Commission were heard on a consolidated record, but separate orders were entered by the Oil Conservation Commission based upon separate and distinct testimony insofar as the producing formations and the producing characteristics of the Morrow formation, and the Strawn formations are concerned, all as more fully shown by the affidavit of Daniel S. Nutter, Chief Engineer, New Mexico Oil Conservation Commission, attached hereto.

3. The acts of the Oil Conservation Commission in the two cases arose from separate and distinct evidence, involving separate and distinct gas producing reservoirs, and the decisions in the two cases are not in conflict.

4. The oil and gas supply of the world and of the United States is not a matter the Oil Conservation Commission is authorized by law to consider in prorating the production from a gas producing reservoir.

5. The existence of an abundant supply of gas in any particular reservoir is not a matter the Oil Conservation Commission is authorized to consider by law in prorating the production from a gas producing reservoir, unless the producing capacity of the reservoir is in excess of market demand.

6. Petitioners-Appellants, at the trial of this cause in the District Court, acknowledged that although the record

in the case covered both the Morrow Pool and the Strawn Pool in the South Carlsbad Field, the order under attack pertained to the Morrow, and only that portion of the record was pertinent to the hearing, all as is more fully shown by the affidavit of Daniel S. Nutter attached hereto, with attached exhibits.

7. The Petition for Stay of Judgment fails to show wherein Petitioners will be damaged by enforcement of the Commissions order pending appeal.

8. The Petition for Stay of Judgment attempts to argue matters which should more properly be heard on the appeal of the case.

9. The Petition for Stay of Judgment presents nothing in support thereof that has not heretofore been considered by this court.

WHEREFORE, respondent-appellee Oil Conservation Commission and intervenor, Cities Service Oil Company pray that the Petition for Stay of Judgment be denied.

OIL CONSERVATION COMMISSION
OF NEW MEXICO

A. J. LOSEE
WILLIAM F. CARR
Attorneys for Respondent-
Appellant, Oil Conservation
Commission

BY William F. Carr
Special Assistant Attorney
General

I hereby certify that a true copy of the
foregoing instrument was mailed to
opposing counsel of record this _____
day of _____, 19____

Jason W. Kellahin

CITIES SERVICE OIL COMPANY
ROBERT F. LEBLANC
JASON W. KELLAHIN
Attorneys for Intervenor

BY Jason W. Kellahin

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MICHAEL P. GRACE II and
CORINNE GRACE,

Petitioners-Appellants,

vs.

OIL CONSERVATION COMMISSION
OF NEW MEXICO,

Respondent-Appellee,

and

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

Intervenors.

No. 9821

District Court
File No. 28181

AFFIDAVIT

I, Daniel S. Nutter, being first duly sworn on oath, depose and state:

1. That I am a registered petroleum engineer and have served as Chief Petroleum Engineer of the New Mexico Oil Conservation Commission for over fifteen years.

2. That I am familiar with all hearings and court proceedings relating to prorationing of the South Carlsbad-Morrow Pool and the South Carlsbad-Strawn Pool.

3. That upon the request of William F. Carr, attorney for Respondent-Appellee, herein, I have examined the Petitioners' Trial Brief filed in District Court Case 28181, and the Record filed in this case, paying special attention to the transcript of the Oil Conservation Commission hearing in Cases 4693 and 4694 which were consolidated for the purpose of hearing, and the transcript of Eddy County District Court Case No. 28181 which is an appeal of the decision entered by the Oil Conservation Commission in Case 4693, and have determined:

- (a) that Cases 4693 and 4694 before the Oil Conservation Commission were consolidated only for the limited purpose of taking testimony in the interest of saving time, as is reflected on pages 2A through 6 of the transcript of the proceedings before the Commission, a copy of which is attached as Exhibit I, since the two pools being considered for prorationing overlay one another and gas from these pools is being sold to common purchasers;

- (b) that Mr. Clint Small and Mr. Lon Watkins, the attorneys who actually represented the Graces in District Court Case No. 28181, agreed that certain portions of the evidence received at the Commission hearing only related to the Strawn formation; this is reflected in the transcript of this case at pages 394 through 396 of the Record filed herein, a copy of which is attached as Exhibit II;
- (c) that the Petitioners at page 3 of the Petitioners' Trial Brief state that a portion of the record made before the Oil Conservation Commission applies only to the Morrow Pool; a copy of this page is attached hereto as Exhibit III;
- (d) that certain exhibits introduced into evidence in the consolidated cases before the Oil Conservation Commission related only to one of the formations and not to the other as is reflected on page 395 of Exhibit II which is attached hereto.

4. That although some testimony was common to both pools, certain other specific testimony applied to only one pool or the other.

5. That only the applicable common testimony and the appropriate specific testimony was used in deciding each case.

6. That separate orders were issued for each pool based upon the portion of the evidence pertaining to each respective pool.

7. That the South Carlsbad-Strawn reservoir and the South Carlsbad-Morrow reservoir are vastly different types of reservoirs.

8. That whereas the Strawn reservoir pay zone is, in general, a homogeneous limestone reef structure, the major variation of which is a thickening and thinning as one proceeds from one well to another with less important variations in porosity and water saturation, the Morrow formation is composed of many isolated stringers of porosity and permeability which are often present in one well but absent in an adjoining well.

9. That while it may be possible to determine the reserves under a given tract in the Strawn reservoir by interpolating the tract, based on the


logs of offsetting wells, and by interpolating the net feet of pay, porosity, and water saturation, such a determination is hazardous at best and is not practicable.

10. That in view of the appearance and disappearance of the sand stringers from well to well, and the impossibility of determining the areal extent of any given sand stringer in the Morrow formation, it is virtually impossible to determine the reserves under any given tract in the South Carlsbad-Morrow Gas Pool.

11. That due to the great difference in the nature of the respective reservoirs, separate and distinct testimony must be considered when determining whether either of these pools should be prorated and, if so, what formula should be applied.


APPLANT

SUBSCRIBED AND SWORN to before me this 30th day of November, 1973.


Notary Public

My Commission Expires:

October 28, 1977

EXHIBIT I

dearnley-meier reporting service, inc.

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1 MR. PORTER: The Hearing will come to order.
2 I should have made the announcement earlier this morning,
3 I did make it last evening and most of you were here, in
4 regard to Governor King who had to cancel out at the last
5 minute. I was in his office at 10:30 o'clock the day before
6 yesterday before I came down to Hobbs and he had already
7 made reservations and fully intended to come to the
8 Hearing.

9 As you know, Governor King is very much interested
10 in the affairs of the Oil and Gas Industry and the development
11 of resources in the State. He also wanted to come to Hobbs
12 and was extremely sorry he could not be here. Things came
13 up that required him to cancel his appearance. He asked
14 me to express his regrets to you that he could not be
15 here.

16 We will take Cases 4693 and 4694.

17 MR. HATCH

18 MR HATCH: I have asked that Cases 4693 and 4694,
19 having to do with instituting proration in the South Carlsbad
20 Morrow Gas Pool and the South Carlsbad Strawn Gas Pool be
21 consolidated for the purpose of this Hearing only. There
22 will be two separate Orders that will be written by the
23 Commission.

24 The Commission will have two witnesses, Mr. Stamets
25 and Mr. Utz. The two pipe line companies who purchase gas

1 in those two pools have voluntarily consented to also put
2 on testimony concerning their facilities and concerning
3 questions of market demand and capacity.

4 So first I will present Mr. Stamets and then
5 Mr. Utz to be followed by the representatives from the
6 pipe line companies.

7 Mr. Nutter, have you distributed the Exhibits
8 to the pipe line companies and to all the distributors?

9 MR. NUTTER: Yes.

10 MR. PORTER: Let me ask you, are there any
11 objections to consolidating these cases for the purpose of
12 taking testimony. As Mr. Hatch has indicated there will be
13 separate Orders issued.

14 MR. NEAL: I am C. Fincher Neal of Neal and Neal,
15 Hobbs, New Mexico. We represent Cities Service along with
16 Mr. LeBlanc of Tulsa. We are only interested in Case 4693,
17 but we have no objection to the Hearing being consolidated.
18 Our testimony, however, will only apply to that one Case
19 and that one formation.

20 MR. PORTER: I don't believe that will be any
21 problem.

22 MR. HATCH: No problem.

23 MR. NEAL: Thank you.

24 MR. STEVENS: Donald Stevens of McDermott, Connelly
25 & Stevens, Santa Fe. We have no objection to consolidation,

1 but for the purpose of clarity we suggest that perhaps
2 testimony on the Morrow can be heard first and then we
3 can have cross-examination and discussion. I say this on
4 the basis that the two fields are vastly dissimilar in
5 composition and in pay quality.

6 MR. PORTER: Do you have any objection to that,
7 Mr. Hatch, or have you prepared your testimony to present
8 both pools at the same time?

9 MR. HATCH: I think the Commission could do that
10 very easily, but I am not sure whether the pipe line
11 companies' testimony would be that easily separated. We
12 can ask them if they have any objection.

13 MR. PORTER: What about the Commission's
14 testimony?

15 MR. HATCH: The Commission's testimony can be
16 divided easily.

17 MR. KELLAHIN: Jason W. Kellahin of the firm
18 of Kellahin & Fox, Santa Fe, appearing for Pennzoil. Our
19 testimony is so prepared that if we follow the procedure
20 outlined by Mr. Stevens there will be a lot of unnecessary
21 repetition. It would be simpler for us to go ahead with the
22 entire presentation which will be very easily distinguished
23 as to which pool we are talking about.

24 MR. PORTER: The Commission desires to hear all
25 of the testimony in the proper order, however, I must state

1 at this point that, we are limited in time since
2 Mr. Armijo must get back to Santa Fe this evening. Now,
3 there can be quite a bit of testimony presented and quite
4 a bit of cross-examination, I'm sure. So as far as we are
5 concerned we would like the testimony presented in the
6 manner in which it can be most expeditious to handle from
7 a point of time.

8 The case was originally listed and there was a
9 request for a full Commission Hearing so it was continued
10 for two months.

11 MR. CHASE: We represent Mr. and Mrs. Grace,
12 Michael P. Grace and his wife, Corinne Grace, of the City
13 of Carlsbad. My name is Edward Chase and my office is in
14 the Bank of New Mexico Building, Albuquerque, New Mexico.
15 My associates, Mr. Charles C. Spann and Mr. George Hunker, Jr.
16 I will hand the Reporter, with your permission, the cards
17 of these gentlemen.

18 If it please the Commission, we would like to
19 have the Strawn case heard first. The reason is that it
20 would simplify the matter and, we think, get to the heart
21 and guts of the situation quicker. Mr. Spann of the firm
22 of Grantham, Spann, Sanchez and Rager, in Albuquerque, will
23 take the lead in this case as our trial lawyer and
24 Mr. George Hunker, Jr., of Roswell, is our associate.

25 Mr. Spann, do you care to say anything?

1 MR. SPANN: We, of course, think the Strawn
2 should be heard first, but we will comply with the ruling
3 of the Commission.

4 MR. STAMETS: My testimony is designed to cover
5 both pools, and the Morrow first primarily, but the Exhibits
6 which we have prepared cover both pools.

7 MR. HATCH: I have a letter here from one
8 company saying that if everybody enters into the spirit of
9 cooperation and conservation, and I think we can do that,
10 and I would recommend we go ahead on the original grounds
11 because I think we are already wasting time here.

12 MR. PORTER: That is a fact and the Commission is
13 going to rule that the Cases will be consolidated for this
14 Hearing and the Commission may proceed at this time with
15 its first witness.

16 RICHARD M. STAMETS,
17 was called as a witness and after being duly sworn, testified
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. HATCH:

21 Q Will you state your name and position for the record?

22 A R. L. Stamets, Technical Support Chief for the Oil
23 , Conservation Commission of the State of New Mexico.

24 Q And your place of residence is in Santa Fe?

25 A Yes.

EXHIBIT II

exercise of the jurisdiction, in this particular case. I would be inclined to allow the Amended Petition for Review, and take it that the responsive pleadings, would be directed to that, and I see no real problem there. I will allow that. Now, I don't have the original transcript. Should that be introduced?

MR. WATKINS: Court please, we have asked that it be introduced, and the Commission has brought that in, together with the Exhibits. Now with reference to this transcript, we have discussed the matter with Mr. Losee, and in the interest of saving both time and money, and in the event that this goes on appeal, we have agreed that various parts of the transcript be deleted, and particularly with reference to the testimony concerning the Strawn Pool, rather than the Morrow. We are only interested in the Morrow.

THE COURT: I noted that the two were combined for purposes of hearing. Obviously, from reading the transcript, some of that testimony is applicable only to the Strawn Formation, and really has no useful purpose here.

MR. LOSEE: For the record, as far as the testimony is concerned, it is our belief that

Mr. Stamets' testimony, commencing on Page 18,
Line 24, running through Page 22, Line 6, and
the testimony of Mr. Williams, commencing on
Page 130, Line 14, running through Page 136,
can be omitted as it pertains solely to the
Strawn Formation. Also, that Oil Conservation
Commission's Exhibit D, E, F, G, H, and I, and
all of the Morris Antwell Exhibits, 1 through 10,
can be omitted, and with those exceptions, we'll
stipulate to the record and the Certificate.
I'd like to also have a Certified Copy of Order
R-4034, to which the Commission took administrat-
ive notice in the hearing, be the hearing on two
of the three unorthodox well location of the
Petitioners.

THE COURT: All right. Any objection to
that?

MR. WATKINS: I have not seen that.

(Document handed to Mr. Watkins, and
examined by Mr. Watkins and Mr. Small.)

MR. SMALL: As I understand this, your
honor, this is the order establishing the penalty
in respect to this particular well.

MR. LOSEE: Yes, sir.

MR. SMALL: It was incorporated in the

record, by reference in the Conservation Commission's hearing, and consequently we have no objections.

THE COURT: Fine. It will be admitted then. Well, I take it then, the next step is, let's hear from the Petitioner on the questions raised by the Petition for Review, as to your views on why this matter should be null, set aside, and held for naught.

MR. SMALL: Yes, sir. We do have some serious objections to the order, and we would like to discuss the record with your honor, in the light of what we take to be the applicable New Mexico Law. Under the decision in the Continental Case, which is the lead case on gas proration in this state, the Court pointed out that the Commission had two statutory jurisdictional areas or obligations in respect to proration of gas. It can and should prorate when it is necessary to prevent waste, by proration in that sense -- I mean, restrict the amount of gas that could be produced from a particular pool, to a level that will not constitute waste. It has a corresponding duty when it makes such a restriction on the total withdrawal from the pool,

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

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

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

REVIEW OF THE RECORD

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

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

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

Mr. Stamets produced seven exhibits as follows:

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

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MICHAEL P. GRACE II and
CORINNE GRACE,

Petitioners-Appellants,

vs.

No. 9866

OIL CONSERVATION COMMISSION
OF NEW MEXICO,

Respondent-Appellee

District Court
File No. 28181

and

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

Intervenors.

PETITION FOR STAY OF JUDGMENT

COME NOW the petitioners-appellants and move the Court, in exercise of its original jurisdiction under Supreme Court Rule 9 and superintending control under Article VI, Section 3, of the New Mexico Constitution, for a rehearing on their motion for a stay in the captioned matter and for the granting of an order of this Court staying the judgment of the lower court and the order of the Oil Conservation Commission of the State of New Mexico, and on behalf of said petition would state as follows:

1. That petitioners-appellants have heretofore filed a petition for a stay order which was disallowed by this Court and subsequently filed a petition for rehearing and evidentiary hearing on motion for stay of judgment which was disallowed; that since the entry of the last order above-mentioned, the Honorable N. Randolph Reese entered an opinion of the court in Cause No. 28182, entitled Michael P. Grace II and Corinne

Grace, Petitioners, vs. Oil Conservation Commission of New Mexico, Respondent, wherein he ruled that the Oil Conservation Commission acted unreasonably, arbitrarily, unlawfully, and capriciously; that in said cause the court had before it the same transcript and evidence that the Oil Conservation Commission considered in rendering its decision in the within cause as per the attached affidavit of Frederick B. Howden, member of the bar of the State of New Mexico.

2. That as a result of Judge Reese's decision and the decision of Judge Paul Snead, there are presently two diametrically opposed decisions concerning the acts of the Oil Conservation Commission of the State of New Mexico arising from the same evidence and concerning the same purpose; that by virtue of the entry of the opinion of Judge Reese, it is quite apparent that the appeal of the appellants herein has merit and is not frivolous and it is further apparent that the persons most likely to suffer damage herein are appellants.

3. That the oil and gas supply of the world and particularly the United States is critical.

4. That the field from which petitioners-appellants wells are producing has an abundant supply of gas.

5. That production in greater quantity than is presently allowed under Oil Conservation Commission Order No. R-1670-L will have no deleterious effect upon gas reserves or market demand. C/R

6. That unless the order of the Commission be stayed true waste and destruction of correlative rights shall result.

7. That the requirements of consumers for gas producible from petitioners' wells far outweigh a theoretical and erroneous assumption that the wells affected by this order were overproducing.

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

By William C. Marchiondo
William C. Marchiondo

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MICHAEL P. GRACE II and
CORINNE GRACE,

Petitioners-Appellants,

vs.

No. 9866

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OF NEW MEXICO,

Respondent-Appellee

District Court
File No. 28181

and

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

Intervenors.

A F F I D A V I T

I, FREDERICK B. HOWDEN, being first duly sworn
on oath, depose and state:

1. That I was ^{when} the attorney for Michael P. Grace II
and Corinne Grace in Cause 28182, entitled Michael P. Grace II
and Corinne Grace, Petitioners vs. Oil Conservation Commission
of New Mexico, Respondent; that said appeal to the District Court
arose out of a hearing before the Oil Conservation Commission of
New Mexico wherein that case, among others, was consolidated
before the New Mexico Oil Conservation Commission with Case
4694, being the Oil Conservation Commission number allotted to
Cause 28182 and Case 4693 being allotted to the within cause;
that on Page 2A of the hearing before the Oil Conservation Com-
mission of New Mexico, a copy of which is attached hereto as
Exhibit 1, both cases were consolidated.

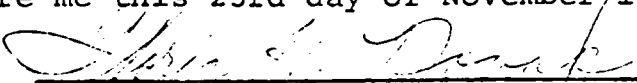
for what
purpose
see ex. #1

2. That in the appeal before the District Court of Eddy County, I submitted briefs ^{? *letter*} in connection with the appeal asserting that the Oil Conservation Commission acted unreasonably, unlawfully, arbitrarily, and capriciously in allocating the production from the Carlsbad-Strawn solely upon the basis of the surface acreage involved in the Oil Conservation Commission's definition of the pool; that on the second day of November 1973, the Honorable N. Randolph Reese entered an opinion of the court, a copy of said opinion being attached hereto as Exhibit 2, wherein the Court ruled that our contention was correct.

3. That at the request of William C. Marchiondo, attorney for the petitioners-appellants herein, I have examined the transcript of the Oil Conservation Commission of New Mexico as it applies to the Carlsbad-Strawn hearing and have determined in view of the consolidation the evidence submitted on the Carlsbad-Strawn is the same evidence submitted on the Carlsbad-Morrow; that a copy of the face sheet regarding said hearing and the transcript prepared from said hearing before the Oil Conservation Commission of the State of New Mexico is attached hereto as Exhibit 3; that from an examination of the transcript the Oil Conservation Commission of New Mexico relied upon the same testimony in rendering its decision in both cases utilizing the surface acreage in allocating production from the respective pools.


FREDERICK B. HOWDEN

SUBSCRIBED AND SWORN to before me this 23rd day of November 1973.


Notary Public

My commission expires:
April 17, 1976

1 MR. PORTER: The Hearing will come to order.
2 I should have made the announcement earlier this morning,
3 I did make it last evening and most of you were here, in
4 regard to Governor King who had to cancel out at the last
5 minute. I was in his office at 10:30 o'clock the day before
6 yesterday before I came down to Hobbs and he had already
7 made reservations and fully intended to come to the
8 Hearing.

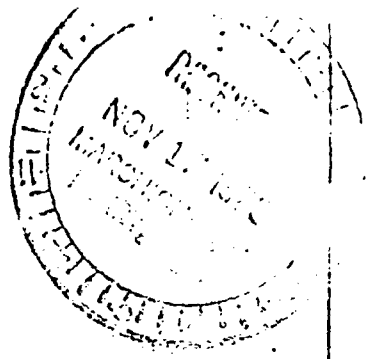
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10 in the affairs of the Oil and Gas Industry and the development
11 of resources in the State. He also wanted to come to Hobbs
12 and was extremely sorry he could not be here. Things came
13 up that required him to cancel his appearance. He asked
14 me to express his regrets to you that he could not be
15 here.

16 We will take Cases 4693 and 4694.

17 MR. HATCH

18 MR HATCH: I have asked that Cases 4693 and 4694,
19 having to do with instituting proration in the South Carlsbad
20 Morrow Gas Pool and the South Carlsbad Strawn Gas Pool be
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22 will be two separate Orders that will be written by the
23 Commission.

24 The Commission will have two witnesses, Mr. Stamets
25 and Mr. Utz. The two pipe line companies who purchase gas



IN THE DISTRICT COURT OF EDDY COUNTY
STATE OF NEW MEXICO

MORRIS R. ANTWEIL, DELTA)
DRILLING COMPANY and MABEE)
PETROLEUM COMPANY,)

Petitioners,)

-vs-)

No. 28180

OIL CONSERVATION COMMISSION)
OF NEW MEXICO,)

Respondent.)

and

MICHAEL P. GRACE II and)
CORINNE GRACE;)

Petitioners,)

-vs-)

No. 28182

OIL CONSERVATION COMMISSION)
OF NEW MEXICO,)

Respondent.)

OPINION OF THE COURT

The Oil Conservation Commission, in consolidated cases, heard testimony of their employees and of the parties and their witnesses in connection with the prorationing of gas under both the Carlsbad-Morrow and the Carlsbad-Strawn Pools at and near Carlsbad, New Mexico.

This opinion deals solely with the Carlsbad-Strawn and it is the Opinion of the Court that the Oil Conservation Commission

acted unreasonably, unlawfully, arbitrarily and capriciously in allocating the production from the Carlsbad-Strawn solely upon the basis of the surface acreage involved in the Oil Conservation Commission's definition of the pool, and therefore, that portion of Commission Order R-1670-M is void and should be set aside.

The Oil Commission, in said hearing, wholly failed to carry out the law under which they were settling the allowables for said field in that, Section 65-3-14A of the 1953 New Mexico Statutes Annotated, requires the Commission to afford to the owner of each property in a pool the opportunity to produce his just and equitable share of the oil and gas, or both, in the pool, being an amount, so far as can be practically determined, in so far as can be practically obtained without waste, substantially in proportion that the quantity of the recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for this purpose to use his just and equitable share of the reservoir energy.

The Oil Commission, in posting its 100% Surface Acreage formula, called attention to the fact that other fields in the State were operating on a Surface Acreage formula without stating whether or not any of such fields had been so established over the objection or protest of any operators or owners therein; together with the testimony of one of the Oil Conservation Commission's employees that it would be difficult to obtain a fair reservoir and tract gas reserve figure. The undisputed evidence of the Petitioners was that the foundationary facts as required by both the above

quoted statute and Section 65-3-29H, 1953 NMSA, and the cases of Continental Oil Company versus Oil Conservation Commission, 70 New Mexico 310, 373 Pacific Second 809 and El Paso Natural Gas Company versus Oil Conservation Commission, 76 New Mexico 268, 414 Pacific Second 496, could be ascertained by standard geological and engineering practices. These Statutes and cases, definitely require the Oil Commission, in carrying out its duty, to find:

- (1) The amount of recoverable gas under each producers' tract;
- (2) The total amount of recoverable gas in the pool; (3) The proportion that the total amount of recoverable gas under each producers' tract bears to the total amount of recoverable gas in the pool and; (4) What proportion of the arrived at proportion can be recovered without waste.

The El Paso case relaxed the Continental Oil Company case to the extent that it held the foundationary facts, or their equivalents, are necessary requisites to the validity of an order replacing a formula in current use and, in the mind of the Court, such requirements would be necessary to establish a new order in the first instance. The witness Stametz having testified to the conclusion that it would not be practical to determine the foundationary facts in this case, did admit that under engineering and geological principles that the reservoir capacity could be determined and the tract reserves for each producing tract could also be determined after expenditures and work. It is the opinion of the Court that this conclusion of impracticability will not stand as substantial evidence in the face of such an admission and of the undisputed testimony of the witnesses Williams and Raney who


both testified at length as to the manner of determining the reservoir reserves and the tract reserves and the manner of allowing each producer to produce his fair share of the reserves and for his use of a fair share of the reservoir energy in so producing. The undisputed testimony is that the wells in the Carlsbad-Strawn vary greatly as to productibility and reserves and that a Surface Acreage allocation would violate, instead of protecting, correlative rights; in that the wells within the tracts having the greatest amount of reserves, would only be allowed to produce an equal amount to the wells with a great deal less reserves and energy so that, according, to the findings of the Commission, there would be drainage uncompensated from the higher capacity wells to the weaker wells which could still produce the allowable.

From the foregoing, it follows that the Commission's Findings of Fact, numbered 66, 69, 73, 74, 78, 80 and 82, are not supported by substantial evidence.

IT IS THEREFORE ORDERED by the Court that Findings of Fact, numbered 66, 69, 73, 74, 78, 80 and 82, are null and void and the same are vacated and held for naught, and;

IT IS FURTHER ORDERED by the Court that that portion of Oil Conservation Commission Order R-1670-M, denominated Special Rules C.8(A) be, and the same is hereby, set aside as null and void as a result of unreasonable, unlawful, arbitrary and capricious action on the part of the Oil Conservation Commission and that this case be remanded to the Oil Conservation Commission with directions to fix an allocation formula in compliance with the applicable provisions of law.

DONE this 2nd day of November, 1973.


District Judge

dearnley-moier

SPECIALIZING IN: DEPOSITIONS, HEARINGS, STATEMENTS, EXPERT TESTIMONY, DAILY COPY, CONVENTIONS
209 SIMMS BLDG., P.O. BOX 1092 • PHONE 243-6691 • ALBUQUERQUE, NEW MEXICO 87103
FIRST NATIONAL BANK BLDG. EAST • ALBUQUERQUE, NEW MEXICO 87108

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BEFORE THE
NEW MEXICO OIL CONSERVATION COMMISSION
CITY HALL BUILDING
HOBBS, NEW MEXICO
April 19 & 20, 1972

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF LINCOLN

COMMISSION HEARING

FILED JUN - 5 1972
2:24 PM
FRANCES M. WILCOX
Clerk of the District Court

IN THE MATTER OF:

The hearing called by the Oil Conservation)
Commission on its own motion to consider)
instituting gas prorationing in the) Case No. 4693
South Carlsbad-Morrow Gas Pool and the) and
South Carlsbad-Strawn Gas Pool, Eddy) Case No. 4694
County, New Mexico)

BEFORE: State Geologist A. L. Porter, Jr., Secretary-Director
Land Commissioner Alex Armijo, Member

TRANSCRIPT OF HEARING

1 IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
2 Thursday, November 1, 1973

3 NO. 9821

4 MICHAEL P. GRACE, II and
5 CORINNE GRACE,

6 Petitioners-Appellants,

7 vs.

Eddy County

8 OIL CONSERVATION COMMISSION
9 OF NEW MEXICO,

10 Respondent-Appellee,

11 and

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

14 Intervenors.

15 This matter coming on for consideration by the Court upon
16 motion for Rehearing and for Evidentiary hearing on motion for Stay
17 of Judgment, and the Court having considered said motion and
18 brief of counsel and being sufficiently advised in the premises;
19 IT IS ORDERED that motion for rehearing and for evidentiary
20 hearing on motion for stay of judgment be and the same is hereby
21 denied.

22
23 ATTEST: A True Copy

24 [Signature]
25 Clerk of the Supreme Court
26 of the State of New Mexico
27
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31
32

fixed on
10/23/73
JH

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MICHAEL P. GRACE II and
CORINNE GRACE,

Petitioners-Appellants,

vs.

OIL CONSERVATION COMMISSION
OF NEW MEXICO,

Respondent-Appellee,

and

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

Intervenors.

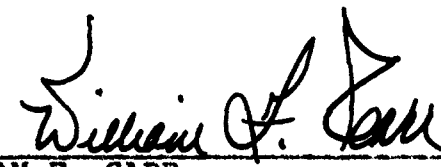
No. 9821

District Court
File No. 28181

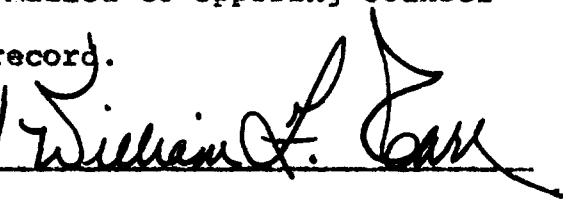
ENTRY OF APPEARANCE

Comes now William F. Carr, Special Assistant Attorney General representing the Oil Conservation Commission of the State of New Mexico, P. O. Box 2088, Santa Fe, New Mexico, and herewith enters his appearance as Attorney for the Respondent-Appellee Oil Conservation Commission of New Mexico in this cause.

Dated this 30th day of November, 1973.

15/ 
WILLIAM F. CARR
Special Assistant Attorney General
representing the Oil Conservation
Commission of the State of New Mexico

I hereby certify that on the
30th day of November, 1973, a
copy of the foregoing pleading
was mailed to opposing counsel
of record.

15/ 

Case 4693

William C. Marchiondo
Charles G. Berry
Robert L. Thompson
Mary C. Walters
Paul Tackett, of Counsel

MARCHIONDO & BERRY, P.A.

ATTORNEYS AT LAW

315 FIFTH STREET N.W. — P. O. BOX 568
ALBUQUERQUE, NEW MEXICO 87103
505 247-0751

October 29, 1973

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

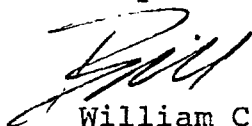
Mr. Jason W. Kellahin
Attorney at Law
500 Don Gaspar
Santa Fe, New Mexico 87501

Re: Grace, et al. v. Oil Conservation Commission,
et al.

Gentlemen:

Enclosed is a copy of our Petition for Rehearing and
For Evidentiary Hearing on Motion for Stay of Judgment
along with a copy of our brief in support of this
petition.

Very truly yours,



William C. Marchiondo

WCM:gn

Enc.

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MICHAEL P. GRACE II and
CORINNE GRACE,

Petitioners-Appellants,

vs.

No. 9821

OIL CONSERVATION COMMISSION
OF NEW MEXICO,

Respondent-Appellee,

and

CITIES SERVICE OIL COMPANY
and THE CITY OF CARLSBAD,

Intervenors.

PETITION FOR REHEARING AND FOR EVIDENTIARY
HEARING ON MOTION FOR STAY OF JUDGMENT

COME NOW the Petitioners-Appellants and move the Court in its exercise of original jurisdiction under Supreme Court Rule 9 and superintending control under Article VI, §3, of the New Mexico Constitution, for a rehearing on their Motion for Stay in the captioned matter, and for an evidentiary hearing thereon, and in support of this petition, say:

1. That the oil and gas supply of the world, and particularly the United States, is critical.
2. That the field from which petitioners' wells are producing has abundant supply of gas.
3. That production in greater quantity than is presently allowed under Oil Conservation Commission Order No. R-1670-L will have no deleterious effect upon gas reserves or market demand.

4. That on approximately October 4, 1972 following the petitioners filing of a notice of appeal herein, an order was issued by the Oil Conservation Commission restraining petitioners from producing and ordering a shut-in of petitioners' wells, obtaining a court order restraining petitioners from producing any gas until such time as the quotas allowable under the Commission's order had been caught up with in terms of time over which such allowables could be produced in accordance with the order of the Commission.

5. That during such shut-in period certain tests were performed by a former vice-president of Pubco, a practicing engineer; that the tests so performed disclosed that the shut-in ordered was working permanent damage to the wells so shut in and that the total reserve of the wells and in particular petitioners' largest producing well in the entire field, would be completely lost.

6. That to continue in force the shut-in order and to deny a stay of the pro-ration order as well as the shut-in order will create permanent and irreparable harm to petitioners' wells, and in all probability, to all of the wells of the field if there is merit to the Commission findings that there is an inter-connection between the producing wells in the pool.

7. That unless the order of the Commission be stayed true waste and destruction of correlative rights shall result.

8. That under-production of petitioners' wells as well as complete destruction of their capacity to produce will cause serious and irreparable harm to the citizens of the State and nation, as well as to petitioners.

9. That the requirements of consumers for gas producible from petitioners' wells far outweigh a theoretical and erroneous assumption that the wells affected by this order were overproducing.

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

ORIGINAL SIGNED BY
WILLIAM C. MARCHIONDO

By William C. Marchiondo

I hereby certify that
a true copy of the
foregoing has been
mailed to opposing
counsel this 29th
day of October 1973.

ORIGINAL SIGNED BY
WILLIAM C. MARCHIONDO

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MICHAEL P. GRACE II and
CORINNE GRACE,

Petitioners-Appellants,

vs.

No. 9821

OIL CONSERVATION COMMISSION
OF NEW MEXICO,

Respondent-Appellee,

and

CITIES SERVICE OIL COMPANY
and THE CITY OF CARLSBAD,

Intervenors.

BRIEF IN SUPPORT OF PETITION
FOR REHEARING AND FOR EVIDENTIARY
HEARING ON MOTION FOR STAY OF JUDGMENT

ARGUMENT

THE COURT HAS CONSTITUTIONAL POWER
TO HEAR EVIDENCE IN ITS EXERCISE
OF ORIGINAL JURISDICTION AND SUPER-
INTENDING CONTROL.

Rule 9 of the Rules of the Supreme Court, 521-1-1(9), N.M.S.A. (1953), provides that the Supreme Court may determine, after an appeal is taken or a writ of error issued, that the District Court should have allowed supersedeas and failed to do so, and the Court may then grant additional time within which the appellant shall file the bond in the Supreme Court. Sub-section 3 of the Rule clearly indicates the nature of the Supreme Court's original jurisdiction in a proceeding of this nature, in its provisions that the clerk of the Supreme Court shall give prompt notice of the Court's approval of a supersedeas bond to the District Court which rendered the judgment below.

Likewise, Section 3 of Article VI, New Mexico Constitution, provides that the Court shall have original jurisdiction "to hear and determine" matters embracing its "superintending control over all inferior courts" and to issue such writs as are "necessary or proper for the complete exercise of its jurisdiction."

Thus, whereas the request to present evidence upon a hearing for stay of judgment may be unusual, it is not unprecedented, nor is it improper. Thirty-five years ago this Court recognized the ranging powers given to it by the Constitution, and approvingly cited this language from People ex rel. Green v. Court of Appeals of Colorado, 51 L.R.A. 111:

"The power of superintending control is an extraordinary power. It is hampered by no specific rules or means for its exercise. It is so general and comprehensive that its complete and full extent and use have practically hitherto not been fully and completely known and exemplified. It is unlimited, being bounded only by the exigencies which call for its exercise. As new instances of these occur it will be found able to cope with them. And, if required, the tribunals having authority to exercise it will, by virtue of it possess the power to invent, frame, and formulate new and additional means, writs, and processes whereby it may be exerted."

State v. Roy, 40 N.M. 397,
at 422-23, 60 P.2d 656 (1936).

This Court has, in the past, conducted evidentiary hearings, as is apparent from the Opinion of In re Marron, 22 N.M. 252, 160 Pac. 391 (1916); Petition of Alarid, No. 9580, (filed June 22, 1973). As long ago as Owen v. Van Stone, 17 N.M. 41, 121 Pac. 611 (1912), and as recently as State Racing Comm'n v. McManus, 82 N.M. 108, 475 P.2d 767, it was said that intervention by the

Supreme Court, in the exercise of its supervisory control, "will lie even where there is a remedy by appeal, where it is deemed to be in the public interest to settle the question involved at the earliest moment."

Certainly, it is in the public interest to have this issue of gas production settled immediately. The world crisis is still with us; and Winter 1973 is but a cold breath away. The availability of all sources of energy is a critical issue in the welfare of the entire nation at this moment and to contemplate what petitioners' believe is inclusively provable to this Court by an evidentiary hearing, i.e., that gas reserves and gas production are actually being destroyed by the conduct of the Oil Conservation Commission and that denial of a stay order pending appeal of the decision, in view of the acute resource shortage facing the world, is unthinkable.

Petitioners urge the Court to assume its powers in this grave and unprecedented emergency; and to grant the petitioners the opportunity to present to the Court first-hand evidence of the necessity for prompt remedial action in the form of stay of the administrative order entered in this matter.

MARCHIONDO & BERRY, P. A.
Attorneys for Petitioners-Appellants
P. O. Box 563
Albuquerque, New Mexico 87103

By ORIGINAL SIGNED BY
WILLIAM C. MARCHIONDO
William C. Marchiondo

Stay- mark of discretion w/ S. Ct.

*- must be a patent abuse & discrimination
or some other circumstance here.*

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MICHAEL P. GRACE II and
CORINNE GRACE,

Petitioners-Appellants,

vs.

No. 9821

OIL CONSERVATION COMMISSION
OF NEW MEXICO,

Respondent-Appellee,

and

CITIES SERVICE OIL COMPANY
and the CITY OF CARLSBAD,

Intervenors.

APPELLEE'S MEMORANDUM BRIEF
SUPPORTING DENIAL OF STAY OF JUDGMENT

STATEMENT OF APPLICABLE PROCEEDINGS

By Order R-1670-L, the Oil Conservation Commission of New Mexico ("Respondent") prorated the South Carlsbad-Morrow Gas Pool effective September 1, 1972. Michael P. Grace II and Corinne Grace ("Petitioners") timely filed a petition for review of the order and it was docketed as Civil No. 28181 in the District Court of Eddy County, New Mexico. On August 31, 1972, the District Court, pursuant to a verified motion, entered an ex parte order temporarily staying Respondent's Order R-1670-L until further order of the court.

After a one-day hearing the District Court granted Respondent's motion and on April 11, 1973, entered its order, which among other things, dissolved the temporary stay order.

On August 13, 1973, judgment was entered in favor of Respondent dismissing the petition for review. At the same time, Petitioners filed their notice of appeal and a motion for stay of judgment which was denied by the District Court.

POINT I

PENDENCY OF PROCEEDINGS TO REVIEW AN
ORDER OF RESPONDENT SHALL NOT OF ITSELF
STAY OPERATION OF THE ORDER BEING REVIEWED

Petitioners' motion for stay of judgment is apparently filed under Supreme Court Rule 9(1) [§ 21-2-1(9)(1), N.M.S.A., 1953 Comp.], providing in part that: "At any time after an appeal is taken . . . the Supreme Court may, upon motion and notice, review any action of or any failure or refusal to act by, the district court dealing with supersedeas or stay." (Underlineation added.) Here there has been no failure or refusal to act for the Trial Court has¹once, after hearing, dissolved a temporary stay order and again,²after a hearing on the petition for review, denied a motion to stay the judgment. Under the Supreme Court Rule 9(1), supra, if Petitioners are not entitled to supersedeas as a matter of right, then this Court should review the action of the Trial Court to determine if it has abused its discretion in denying suspension of the Judgment.

*It is here
that the
order is
made
90*

The filing and approval of a supersedeas bond shall have the same effect as the filing and approval of such bond in the District Court pursuant to Rule 62 [§ 21-1-1(62) N.M.S.A., 1953 Comp.] of the Rules of Civil Procedure. Supreme Court Rule 9(3) [§ 21-2-1(9)(3) N.M.S.A., 1953 Comp.]. Rule 62 of the Rules of Civil Procedure, supra, governs the stay of proceedings to enforce a judgment. When an appeal is taken appellant, by giving a supersedeas bond, may obtain a stay of judgment subject to the exceptions contained in Rule 62(a)

and (c), supra. It is made discretionary with the court rendering judgment to allow a supersedeas in actions for an injunction or receivership (Rule 62[a], supra), and in contested elections, mandamus, removal of public officers, quo warranto or prohibition (Rule 62[c], supra).

Are the enumerated exceptions in Rule 62, supra

with intent to prevent the exercise of powers that are not conferred by law

the only actions where the District Court has the discretion to deny supersedeas? Rule 1 of the Rules of Civil Procedure (§ 21-1-1 N.M.S.A., 1953 Comp.):

These rules govern the procedure in the district courts of New Mexico in all suits of a civil nature whether cognizable as cases at law or in equity, except in special statutory and summary proceedings where existing rules are inconsistent herewith. (Underlineation added.)

It was held in Carpenter vs. Pacific Mutual Life Insurance Company, 89 P.2d 637 (1939 Calif.) that supersedeas under the Code of Civil Procedure was not applicable to a special proceeding under the California Insurance Code. The Rules of Civil Procedure have been held inapplicable to certain special statutory proceedings inconsistent with the rules. Trujillo vs. Trujillo, 52 N.M. 258, 197 P.2d 421 (1948); Montoya vs. McManus, 68 N.M. 381, 362 P.2d 771 (1961), election proceedings; State ex rel State Highway Commission vs. Burks, 79 N.M. 373, 443 P.2d 866 (1968), eminent domain proceedings; Guthrie vs. Threlkeld Co., 52 N.M. 93, 192 P.2d 307 (1948).

Although supersedeas may be available as a matter of right in proceedings to review orders and decisions of other administrative tribunals, by statute it is expressly made discretionary in proceedings to review orders of the Oil Conservation Commission. However, § 48-16-8 N.M.S.A., 1953 Comp., provides that findings of the Commissioner of Banking with respect to installment savings-investment certificates shall remain in full force and effect during the pendency of actions for review. § 65-3-22, N.M.S.A., 1953 Comp., dealing with re-hearings and appeals from orders of the Oil Conservation Commission of New Mexico, provides in part:

* (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 said 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 (1) or more parties secure, in such form and amount as the court may deem just and proper, one (1) 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. (Underlineation added.)

* (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 this state, to the extent such rules are consistent with provisions of this act. (Underlineation added.)

At least to the extent that § 65-3-22(c), supra, is a special statutory proceeding providing that petitions for review do not

in themselves suspend operation of the order which is being reviewed, it is inconsistent with the Rules of Civil Procedure. In such proceedings a stay of judgment is discretionary with the District Court.

POINT II

THE BURDEN IS ON PETITIONERS TO SHOW
THAT THE DISTRICT COURT ABUSED ITS
DISCRETION IN DENYING A STAY OF THE
JUDGMENT

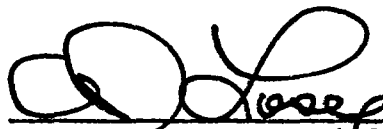
Three actions were taken by the District Court with respect to suspension of Respondent's Order R-1670-L, viz. the temporary stay order, the order dissolving the temporary stay order, and after judgment the order denying the motion to stay judgment. A transcript of the March 7, 1973, hearing on Respondent's motion to quash the temporary stay order (where the question was the propriety of staying Respondent's Order R-1670-L) is available for Supreme Court review. The ruling of the trial court is presumed valid and the burden is on appellant to show the manner in which the trial court abused its discretion. Coastal Plains Oil Company vs. Douglas, 69 N.M. 68, 364 P.2d 131 (1961). The Supreme Court will not substitute its discretion for that of the trial court.

Appellant bears a heavy burden in view of the long-standing rule that the Supreme Court will not overturn the action of the trial court absent a patent abuse or manifest error in the exercise of the discretion. State ex rel Meyers Co. vs. Reynolds, 22 N.M. 473, 164 P. 830 (1917); Martinez vs. Cook, 57 N.M. 263, 258 P.2d 375 (1953); In re Stern's Will, 61 N.M. 446, 301 P.2d 1094 (1956); Coastal Plains Oil Company vs. Douglas, supra.

CONCLUSION

Petitioners, as a matter of right, are not entitled to a stay of judgment. This very question was the subject of judicial inquiry before the trial judge in a hearing that took one full day and produced the voluminous testimony which has been presented to the Court. The trial judge heard the evidence in full. After hearing the testimony, viewing the witnesses and considering the exhibits, he vacated the temporary order staying (or superseding) operations of the Commission order. On two occasions the trial court has exercised its discretion in denying Appellants' motions. No patent abuse of discretion has been shown. Appellants' motion should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. J. Losee', is written over a horizontal line.

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

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MICHAEL P. GRACE II and
CORINNE GRACE,

Petitioners-Appellants,

vs.

⁹⁸²¹
No. ~~9866~~

OIL CONSERVATION COMMISSION
OF NEW MEXICO,

Respondent-Appellee

District Court
File No. 28181

and

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

Intervenors.

PETITION FOR STAY OF JUDGMENT

COME NOW the petitioners-appellants and move the Court, in exercise of its original jurisdiction under Supreme Court Rule 9 and superintending control under Article VI, Section 3, of the New Mexico Constitution, for a rehearing on their motion for a stay in the captioned matter and for the granting of an order of this Court staying the judgment of the lower court and the order of the Oil Conservation Commission of the State of New Mexico, and on behalf of said petition would state as follows:

1. That petitioners-appellants have heretofore filed a petition for a stay order which was disallowed by this Court and subsequently filed a petition for rehearing and evidentiary hearing on motion for stay of judgment which was disallowed; that since the entry of the last order above-mentioned, the Honorable N. Randolph Reese entered an opinion of the court in Cause No. 182, entitled Michael P. Grace II and Corinne

Grace, Petitioners, vs. Oil Conservation Commission of New Mexico, Respondent, wherein he ruled that the Oil Conservation Commission acted unreasonably, arbitrarily, unlawfully, and capriciously; that in said cause the court had before it the same transcript and evidence that the Oil Conservation Commission considered in rendering its decision in the within cause as per the attached affidavit of Frederick B. Howden, member of the bar of the State of New Mexico.

2. That as a result of Judge Reese's decision and the decision of Judge Paul Snead, there are presently two diametrically opposed decisions concerning the acts of the Oil Conservation Commission of the State of New Mexico arising from the same evidence and concerning the same purpose; that by virtue of the entry of the opinion of Judge Reese, it is quite apparent that the appeal of the appellants herein has merit and is not frivolous and it is further apparent that the persons most likely to suffer damage herein are appellants.

3. That the oil and gas supply of the world and particularly the United States is critical.

4. That the field from which petitioners-appellants wells are producing has an abundant supply of gas.

5. That production in greater quantity than is presently allowed under Oil Conservation Commission Order No. R-1670-L will have no deleterious effect upon gas reserves or market demand.

6. That unless the order of the Commission be stayed true waste and destruction of correlative rights shall result.

7. That the requirements of consumers for gas producible from petitioners' wells far outweigh a theoretical and erroneous assumption that the wells affected by this order were overproducing.

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

By *William C. Marchiondo*
William C. Marchiondo

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MICHAEL P. GRACE II and
CORINNE GRACE,

Petitioners-Appellants,

vs.

No. 9866

OIL CONSERVATION COMMISSION
OF NEW MEXICO,

Respondent-Appellee

District Court
File No. 28181

and

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

Intervenors.

A F F I D A V I T

I, FREDERICK B. HOWDEN, being first duly sworn
on oath, depose and state:

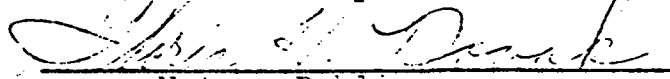
1. That I was the attorney for Michael P. Grace II and Corinne Grace in Cause 28182, entitled Michael P. Grace II and Corinne Grace, Petitioners vs. Oil Conservation Commission of New Mexico, Respondent; that said appeal to the District Court arose out of a hearing before the Oil Conservation Commission of New Mexico wherein that case, among others, was consolidated before the New Mexico Oil Conservation Commission with Case 4694, being the Oil Conservation Commission number allotted to Cause 28182 and Case 4693 being allotted to the within cause; that on Page 2A of the hearing before the Oil Conservation Commission of New Mexico, a copy of which is attached hereto as Exhibit 1, both cases were consolidated.

2. That in the appeal before the District Court of Eddy County, I submitted briefs in connection with the appeal asserting that the Oil Conservation Commission acted unreasonably, unlawfully, arbitrarily, and capriciously in allocating the production from the Carlsbad-Strawn solely upon the basis of the surface acreage involved in the Oil Conservation Commission's definition of the pool; that on the second day of November 1973, the Honorable N. Randolph Reese entered an opinion of the court, a copy of said opinion being attached hereto as Exhibit 2, wherein the Court ruled that our contention was correct.

3. That at the request of William C. Marchiondo, attorney for the petitioners-appellants herein, I have examined the transcript of the Oil Conservation Commission of New Mexico as it applies to the Carlsbad-Strawn hearing and have determined in view of the consolidation the evidence submitted on the Carlsbad-Strawn is the same evidence submitted on the Carlsbad-Morrow; that a copy of the face sheet regarding said hearing and the transcript prepared from said hearing before the Oil Conservation Commission of the State of New Mexico is attached hereto as Exhibit 3; that from an examination of the transcript the Oil Conservation Commission of New Mexico relied upon the same testimony in rendering its decision in both cases utilizing the surface acreage in allocating production from the respective pools.


FREDERICK B. HOWDEN

SUBSCRIBED AND SWORN to before me this 23rd day of November 1973.


Notary Public

My commission expires:
April 17, 1976

1 MR. PORTER: The Hearing will come to order.
2 I should have made the announcement earlier this morning,
3 I did make it last evening and most of you were here, in
4 regard to Governor King who had to cancel out at the last
5 minute. I was in his office at 10:30 o'clock the day before
6 yesterday before I came down to Hobbs and he had already
7 made reservations and fully intended to come to the
8 Hearing.

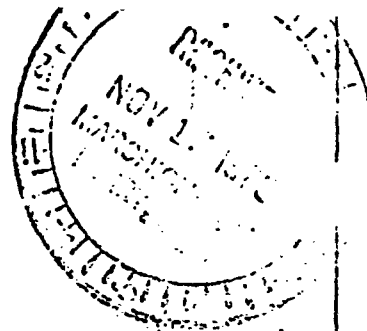
9 As you know, Governor King is very much interested
10 in the affairs of the Oil and Gas Industry and the development
11 of resources in the State. He also wanted to come to Hobbs
12 and was extremely sorry he could not be here. Things came
13 up that required him to cancel his appearance. He asked
14 me to express his regrets to you that he could not be
15 here.

16 We will take Cases 4693 and 4694.

17 MR. HATCH

18 MR HATCH: I have asked that Cases 4693 and 4694,
19 having to do with instituting proration in the South Carlsbad
20 Morrow Gas Pool and the South Carlsbad Strawn Gas Pool be
21 consolidated for the purpose of this Hearing only. There
22 will be two separate Orders that will be written by the
23 Commission.

24 The Commission will have two witnesses, Mr. Stamets
25 and Mr. Utz. The two pipe line companies who purchase gas



IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO

MORRIS R. ANTWEIL, DELTA
DRILLING COMPANY and MABEE
PETROLEUM COMPANY,)

Petitioners,)

-vs-)

No. 28180

OIL CONSERVATION COMMISSION
OF NEW MEXICO,)

Respondent.)

and

MICHAEL P. GRACE II and
CORINNE GRACE;)

Petitioners,)

-vs-)

No. 28182

OIL CONSERVATION COMMISSION
OF NEW MEXICO,)

Respondent.)

OPINION OF THE COURT

The Oil Conservation Commission, in consolidated cases, heard testimony of their employees and of the parties and their witnesses in connection with the prorationing of gas under both the Carlsbad-Morrow and the Carlstad-Strawn Pools at and near Carlsbad, New Mexico.

This opinion deals solely with the Carlsbad-Strawn and it is the Opinion of the Court that the Oil Conservation Commission

acted unreasonably, unlawfully, arbitrarily and capriciously in allocating the production from the Carlsbad-Strawn solely upon the basis of the surface acreage involved in the Oil Conservation Commission's definition of the pool, and therefore, that portion of Commission Order R-1670-M is void and should be set aside.

The Oil Commission, in said hearing, wholly failed to carry out the law under which they were setting the allowables for said field in that, Section 65-3-14A of the 1953 New Mexico Statutes Annotated, requires the Commission to afford to the owner of each property in a pool the opportunity to produce his just and equitable share of the oil and gas, or both, in the pool, being an amount, so far as can be practically determined, in so far as can be practically obtained without waste, substantially in proportion that the quantity of the recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for this purpose to use his just and equitable share of the reservoir energy.

The Oil Commission, in posting its 100% Surface Acreage formula, called attention to the fact that other fields in the State were operating on a Surface Acreage formula without stating whether or not any of such fields had been so established over the objection or protest of any operators or owners therein; together with the testimony of one of the Oil Conservation Commission's employees that it would be difficult to obtain a fair reservoir and tract gas reserve figure. The undisputed evidence of the Petitioners was that the foundationary facts as required by both the above

quoted statute and Section 65-3-29H, 1953 NMSA, and the cases of Continental Oil Company versus Oil Conservation Commission, 70 New Mexico 310, 373 Pacific Second 809 and El Paso Natural Gas Company versus Oil Conservation Commission, 76 New Mexico 268, 414 Pacific Second 496, could be ascertained by standard geological and engineering practices. These Statutes and cases, definitely require the Oil Commission, in carrying out its duty, to find:

- (1) The amount of recoverable gas under each producers' tract;
- (2) The total amount of recoverable gas in the pool;
- (3) The proportion that the total amount of recoverable gas under each producers' tract bears to the total amount of recoverable gas in the pool and;
- (4) What proportion of the arrived at proportion can be recovered without waste.

The El Paso case relaxed the Continental Oil Company case to the extent that it held the foundationary facts, or their equivalents, are necessary requisites to the validity of an order replacing a formula in current use and, in the mind of the Court, such requirements would be necessary to establish a new order in the first instance. The witness Stametz having testified to the conclusion that it would not be practical to determine the foundationary facts in this case, did admit that under engineering and geological principles that the reservoir capacity could be determined and the tract reserves for each producing tract could also be determined after expenditures and work. It is the opinion of the Court that this conclusion of impracticability will not stand as substantial evidence in the face of such an admission and of the undisputed testimony of the witnesses Williams and Raney who

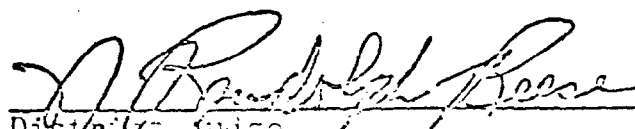
both testified at length as to the manner of determining the reservoir reserves and the tract reserves and the manner of allowing each producer to produce his fair share of the reserves and for his use of a fair share of the reservoir energy in so producing. The undisputed testimony is that the wells in the Carlsbad-Strawn vary greatly as to productibility and reserves and that a Surface Acreage allocation would violate, instead of protecting, correlative rights; in that the wells within the tracts having the greatest amount of reserves, would only be allowed to produce an equal amount to the wells with a great deal less reserves and energy so that, according, to the findings of the Commission, there would be drainage uncompensated from the higher capacity wells to the weaker wells which could still produce the allowable.

From the foregoing, it follows that the Commission's Findings of Fact, numbered 66, 69, 73, 74, 78, 80 and 82, are not supported by substantial evidence.

IT IS THEREFORE ORDERED by the Court that Findings of Fact, numbered 66, 69, 73, 74, 78, 80 and 82, are null and void and the same are vacated and held for naught, and;

IT IS FURTHER ORDERED by the Court that that portion of Oil Conservation Commission Order R-1670-M, denominated Special Rules C.8(A) be, and the same is hereby, set aside as null and void as a result of unreasonable, unlawful, arbitrary and capricious action on the part of the Oil Conservation Commission and that this case be remanded to the Oil Conservation Commission with directions to fix an allocation formula in compliance with the applicable provisions of law.

DONE this 2nd day of November, 1973.


District Judge

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BEFORE THE
NEW MEXICO OIL CONSERVATION COMMISSION
CITY HALL BUILDING
HOBBS, NEW MEXICO
April 19 & 20, 1972

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF LINCOLN

COMMISSION HEARING

FILED JUN - 5 1972
2:24 PM
FRANCES M. WILCOX
Clerk of the District Court

IN THE MATTER OF:

The hearing called by the Oil Conservation
Commission on its own motion to consider
instituting gas prorationing in the
South Carlsbad-Morrow Gas Pool and the
South Carlsbad-Strawn Gas Pool, Eddy
County, New Mexico

)
)
)
) Case No. 4693
) and
) Case No. 4694
)
)

BEFORE: State Geologist A. L. Porter, Jr., Secretary-Director
Land Commissioner Alex Armijo, Member

TRANSCRIPT OF HEARING

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

December 19, 1973

A. J. Losee, Esq.
Losee & Carson
P. O. Box 239
Artesia, New Mexico 88210

Dear Jerry:

Enclosed are certain affidavits filed by the Graces on December 12 with the Supreme Court. They gave me these copies at that time.

As you will note in the Petition for Rehearing, which we received today, John Otto makes reference to certain of these affidavits, but true to form, did not attach them.

I am, therefore, sending them to you.

Very truly yours,

WILLIAM F. CARR
General Counsel

WFC/dr

enclosure

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

December 12, 1973

Mr. A. J. Losee
P. O. Box 239
Artesia, New Mexico 88210

Dear Jerry:

The Supreme Court, today, denied the Grace's Petition for Stay of Judgment in Case 9821.

I am returning to you, herewith, the transcripts that you sent to me last week. Thank you for your help with this motion.

Very truly yours,

WILLIAM F. CARR
General Counsel

WFC/dr

enclosure

A. J. LOSEE
JOEL M. CARSON

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

AREA CODE 505
746-3508

3 December 1973

Mrs. Rose Marie Alderete
Clerk of the Supreme Court of New Mexico
P. O. Box 848
Supreme Court Building
Santa Fe, New Mexico 87501

Re: Michael P. Grace, et ux., vs. Oil Conservation Commission
of New Mexico - Cities Service Oil Company and City of
Carlsbad, New Mexico, No. 9866

Dear Mrs. Alderete:

Enclosed for filing please find Response of Oil Conservation
Commission and Cities Service to Petition for Stay of Judgment.

Very truly yours,

LOSEE & CARSON, P.A.


A. J. Losee

AJL/dae

Enclosure

cc: Marchiondo & Berry
Mr. Michael F. McCormick
Mr. Jason W. Kellahin
Mr. William F. Carr

C
O
P
Y

A. J. LOSEE
JOEL M. CARSON

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

AREA CODE 505
746-3508

30 November 1973

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

Dear Bill:

As requested, we herewith enclose Transcript of Proceedings, Volumes 1 and 2, on the March 2, 1973, stay order hearing in the District Court of Eddy County, No. 28181, Michael P. Grace II vs. Oil Conservation Commission et al.

Very truly yours,

LOSEE & CARSON, P.A.

A. J. Losee

AJL:jw
Enclosures

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

November 30, 1973

C
O
P
Y

A. J. Losee, Esq.
P. O. Box 239
Artesia, New Mexico 88210

Dear Jerry:

Enclosed is the Commission's Response to Petition for Stay of Judgment with an attached Affidavit and exhibits. If this meets with your approval, would you date the certification of service on the last page of the Response and mail the original to the Supreme Court and copies to Marchiondo and Mike McCormick.

If you have any questions about it, please check with Jason, as I will be out of the office until Thursday.

I appreciate your help with this matter.

Very truly yours,

WILLIAM F. CARR
General Counsel

WFC/dr
enclosure