

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

January 25, 1974

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

John Otto, Esq.  
45 W. Jefferson  
Suite 503  
Phoenix, Arizona 85

Gentlemen:

On January 24, 1974, the Oil Conservation Commission considered the proposed nunc pro tunc of Commission Order No. R-4432 which was suggested by Mr. Otto for Mr. Grace.

It is the opinion of the Commission that the order as presently written is in full compliance with the provisions of Section 65-3-14 (c) NMSA 1953. If there was dissatisfaction by any party as to the formation pooled by this order, a de novo hearing before the Commission should have been sought. No application was made within 20 days of the entry of the order by either party for such a hearing and consequently this order became final pursuant to Section 65-3-22 (a) NMSA, 1953.

As you are aware, the requested nunc pro tunc involves the controversial Grace-Atlantic No. 1 Well which is the subject of considerable litigation. The Commission believes that it would be unwise to amend such an order since an amendment could seriously affect and complicate these legal proceedings.

The nunc pro tunc is also deemed unwise since other remedies are available to the parties. If those individuals who have an interest in the Grace-Atlantic #1 Well desire to pool other zones that can be produced on 320-acre tracts, they can enter into voluntary pooling agreements or may come to the Commission seeking further pooling orders. For these reasons and because neither party commented pursuant to my request on the suggested language for the nunc pro tunc, the Commission will not issue a nunc pro tunc of its Order No. R-4432.

If you have any questions, feel free to contact me.

Very truly yours,

WILLIAM F. CARR  
General Counsel

WFC/dr

# OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO

P. O. BOX 2088 - SANTA FE

87501

I. R. TRUJILLO  
CHAIRMAN

LAND COMMISSIONER  
ALEX J. ARMJO  
MEMBER

STATE GEOLOGIST  
A. L. PORTER, JR.  
SECRETARY - DIRECTOR

## CONFIDENTIAL MEMORANDUM

TO:

FROM: WILLIAM F. CARR, GENERAL COUNSEL

SUBJECT: NUNC PRO TUNC OF ORDER NO. R-4432

On November 8, 1972, the Commission issued Order No. R-4432 pursuant to the applications of D. L. Hannifin in Case No. 4819 and Michael P. Grace II and Corinne Grace in Case No. 4836. Both applications sought an order pooling all mineral interests under the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, South Carlsbad-Morrow Gas Pool, Eddy County, New Mexico, but the order pooled only the Morrow formation. (A copy of the order is attached.)

On December 12, 1973, Mr. John Otto, Attorney for Mr. and Mrs. Grace, visited Dan Nutter and me in our Santa Fe office and requested that the Commission issue a nunc pro tunc which would pool "...all mineral interests from the surface of the ground down to and including the Morrow formation...." in the S/2 of this section. Mr. Otto pointed out that such a change would be consistent with both applications and that this language had been used in other Commission pooling orders. Mr. Nutter and I agreed to draft such an order for consideration by the Commission.

Subsequent to this meeting, certain facts have come to light which should be called to your attention:

1. This is the acreage which is dedicated to the highly controversial Grace-Atlantic No. 1 well which is the subject matter of Santa Fe County District Court Case No. 46933, and has recently become involved in the Supreme Court challenge to the Commission's Prorating of the Morrow formation in the South Carlsbad pool;
2. This well was drilled on acreage under lease by D. L. Hannifin;
3. When the well was drilled there was evidence of producible oil reserves in the Delaware formation;
4. D. L. Hannifin is presently planning to drill a well to the Delaware on 40 acres of land he has under lease in close proximity to the Grace-Atlantic No. 1 which is also drilled on Hannifin acreage.

5. The nunc pro tunc sought by Otto could give Grace a legal argument that could tie up the Hannifin Delaware well.

Mr. Nutter and I then contacted Mr. Hannifin through his attorney, George Hunker of Roswell, and they agreed to a nunc pro tunc which would only pool mineral interests on "...320 acre designated drilling tracts...."

I am now of the opinion that this would also be unwise for a nunc pro tunc of any kind could arguably reopen Order No. R-4432 and then Grace might ask for a rehearing. He is mounting, as you know, a multitude of collateral attacks of a frivolous nature in the Supreme Court Case on the Morrow and I'm opposed to giving him anything else to work with. Order No. R-4432 is now final and I hope we will leave it that way.

The order as it stands is in compliance with Section 65-3-14(c) NMSA 1953, which reads in pertinent part:

Each order shall describe the lands included in the unit designated thereby, identify the pool or pools to which it applies and designate an operator for the unit.  
(emphasis added)

It appears that all pooling orders in the future will have to specifically state which pools are affected and that the language originally proposed by Otto would not comply with this statute.

Should the parties in this consolidated case desire to pool other zones that can be produced on 320-acre tracts, they could enter into voluntary pooling agreements and this appears to me to be the most desirable approach to any present problem.

I, therefore, request that the Commission authorize me to inform Mr. Otto and Mr. Hunker that the Commission has decided against a nunc pro tunc and recommend to them a voluntary pooling agreement if they are interested in pooling other zones in the Grace-Atlantic Well.

Re: Nunc Pro Tunc  
Order - NMOCC R-4432

IT IS HEREBY ORDERED:

(1) That all mineral interests (whatever they may be) underlying the S $\frac{1}{2}$  of Section 24, Township 22 South, Range 26 East, are hereby pooled as to all pools underlying said tract required or permitted to be drilled on a 320-acre designated drilling tract (or standard proration unit within prorated gas pools) or which by special field rule may be drilled on a 320-acre designated drilling tract. As to those pools underlying said S $\frac{1}{2}$  of Section 24, Township 22 South, Range 26 East, which may be located on designated drilling tracts of 160 acres or less, this Order shall be ineffective.

*Language received from Tuncer 12/17/73*

OIL CONSERVATION COMMISSION

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SANTA FE, NEW MEXICO 87501

December 14, 1973

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

Dear George:

Thank you for the suggested language for the nunc pro  
tunc of Order No. R-4432 that Dan and I are drafting for  
Commission action.

Enclosed you will find a copy of a letter I sent to  
John Otto concerning this matter. As you will note, I  
have asked him for comments on the language Dan and I  
will submit to the Commission. We would also appreciate  
having your comments.

We will keep you advised in this matter.

Very truly yours,

WILLIAM F. CARR  
General Counsel

WFC/dr

cc: Mr. John Otto

Order No. R-4432  
Anne Ho Luner

Docket  
4836  
4819 } same  
requests

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example  
R-4033  
R-4266

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write Otto + Snowden (Los Lunas)

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STATE OF NEW MEXICO  
P. O. BOX 2088 - SANTA FE  
87501

December 14, 1973

I. R. TRUJILLO  
CHAIRMAN

LAND COMMISSIONER  
ALEX J. ARMIJO  
MEMBER

STATE GEOLOGIST  
A. L. PORTER, JR.  
SECRETARY - DIRECTOR

John P. Otto, Esq.  
Fifth Floor Luthers Tower  
Phoenix, Arizona 85003

Re: Nunc Pro Tunc of Commission  
Order No. R-4432

Dear John:

After our meeting on Wednesday morning, Dan Nutter and I contacted George Hunker concerning the nunc pro tunc of the above-captioned order. We informed him, as we did you, that we would be happy to draft the nunc pro tunc for the Commission's action but that it could only apply to 320 acre spacing units. As was pointed out to you, the Commission has jurisdiction to pool only when two or more separately owned tracts lie within a single spacing or proration unit (Sec. 65-3-14(c), NMSA 1953). Mr. Hunker did not object to the nunc pro tunc and, at our request, submitted suggested language for this change, a copy of this language as well as that proposed for Mr. Grace is attached.

Due to the long history of dispute between the leasehold owners in this particular production unit, we feel that it is important that the language in the nunc pro tunc be as clear and concise as possible. Dan and I, therefore, have drafted a nunc pro tunc order which will provide as follows:

(1) That all mineral interests, whatever they may be, underlying the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico, are hereby pooled to form a 320-acre proration unit to be dedicated to a well to be drilled at a standard location for said 320-acre unit, provided however, that this order shall be applicable only to the Pennsylvanian formation down to and including the Morrow and shall not be applicable to any pool or formation the standard unit for which, either by the Commission's General Rules and Regulations or by Special Pool Rules, is more or less than 320 acres.

John P. Otto, Esq.


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December 14, 1973

I regret that I was unable to get this order signed due to Mr. Porter's vacation and Mr. Trujillo's illness. It should be possible to have a quorum about the first of January.

I trust this change in language will meet with your approval and would appreciate your comments.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Bill Carr", with a long horizontal flourish extending to the right.

WILLIAM F. CARR  
General Counsel

WFC/dr

cc: Mr. George Hunker  
Mr. Frederick B. Howden



NUNC PRO TUNC LANGUAGE PROPOSED BY GEORGE HUNKER

That all mineral interests (whatever they may be) underlying the S/2 of Section 24, Township 22 South, Range 26 East, South Carlsbad Field Area, Eddy County, New Mexico, are hereby pooled as to all pools underlying said tract required or permitted to be drilled on 320 acre designated drilling tracts (or standard proration units within prorated gas pools) or which by special field rules may be drilled on a 320 acre designated drilling tract; as to those pools underlying S/2 of said Section 24, which may be located on a designated drilling tract of 160 acres or less, this order shall be ineffective.

NUNC PRO TUNC LANGUAGE PROPOSED BY JOHN OTTO

(1) That all mineral interests from the surface of the ground down to and including the Morrow formation underlying the S/2 of Section 24, Township 22 South, Range 26 East, South Carlsbad Field area, Eddy County, New Mexico, are hereby pooled to form a 320-acre proration unit to be dedicated to a well to be drilled at a standard location in Section 24.