

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

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

CASE NO. 5054
Order No. R-4432-A

APPLICATION OF D.L. HANNIFIN AND
JOE DON COOK FOR DETERMINATION OF
REASONABLE WELL COSTS AND FOR AN
ORDER TERMINATING OPERATOR'S
WITHHOLDING PERIOD


APPLICATION FOR REHEARING

Comes now Michael P. Grace II, Respondant in the
above entitled cause, and applies to the Oil Conservation
Commission for a rehearing in respect to the following matters
determined by its order;

To Wit:

Findings 13 through 18 and paragraphs
4 and 12 of the Order

All in the respect that the failure or refusal of
the Commission to consider and apply the anticipated impact
of FPC price rollbacks as to the date of payout is erroneous.


FREDERICK B. HOWDEN
Attorney for Michael P. Grace III,
Respondant
400 7th NW
Albuquerque, New Mexico 87101



OIL CONSERVATION COMMISSION

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

October 23, 1973

I. R. TRUJILLO
CHAIRMAN

LAND COMMISSIONER
ALEX J. ARMIJO
MEMBER

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

CERTIFIED - RETURN
RECEIPT REQUESTED

Fredrick B. Howden, Esq.
400 7th N.W.
Albuquerque, New Mexico 87101

Re: Application for rehearing
Case 5054
Order No. R-4432-A

Dear Mr. Howden:

Subsection 65-3-22(a), NMSA, 1953, provides inter alia:

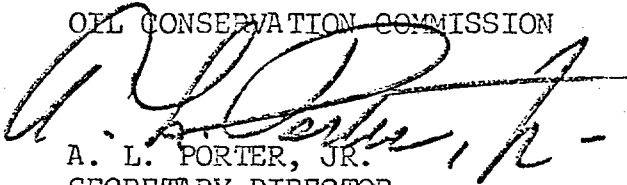
Within twenty (20) days after entry of any order or decision of the Commission, any person affected thereby may file with the Commission an application for rehearing in respect of any matter determined by such order or decision, setting forth the respect in which such order or decision is believed to be erroneous....

As you will note, Order No. R-4432-A was entered on September 28, 1973. The statutorily prescribed time period within which affected persons could make application for rehearing expired on October 18, 1973 and Order No. R-4432-A became final on that date.

The application which you had hand delivered to the Commission in the late afternoon of October 19, 1973, for Michael P. Grace, was, not timely filed and, therefore, no rehearing can be granted in this case.

Very truly yours,

OIL CONSERVATION COMMISSION


A. L. PORTER, JR.
SECRETARY-DIRECTOR

ALP/WFC/uh

cc: Mr. Michael P. Grace
Mr. George Hunker, Esq.

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Mr. Michael P. Grace

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635890

CERTIFIED NO.

635891

INSURED NO.

635891

DATE DELIVERED

10/29/73

SHOW WHERE DELIVERED (only if required)

65-10-71548-11 347-106 GPO

RECEIPT FOR CERTIFIED MAIL—20¢

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CITY, STATE, AND ZIP CODE	Carlsbad, N. M. 88220	
If you want a return receipt, check which delivery only to whom, when, and address where delivered		
<input type="checkbox"/> 10¢ shows to whom, when, and address where delivered		<input type="checkbox"/> 50¢ fee
FEES ADDITIONAL TO 20¢ FEE		

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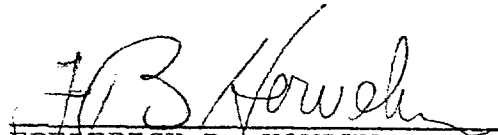
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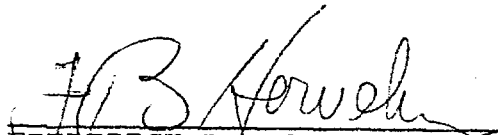
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Santa Fe

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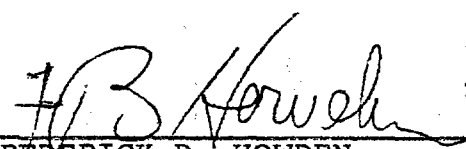
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400 7th NW
Albuquerque, New Mexico 87101

OCT 10 1973

LAW OFFICES OF
HUNKER, FEDRIC & HIGGINBOTHAM, P.A. OIL CONSERVATION COMM.
210 HINKLE BUILDING
Santa Fe

POST OFFICE BOX 1837

ROSWELL, NEW MEXICO 88201

TELEPHONE 622-2700
AREA CODE 505

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

October 8, 1973

Certified Mail - Return Receipt Requested

Frederick B. Howden,
Attorney at Law
P. O. Box 718
Los Lunas, New Mexico 87031

Re: NMOCC 4432-A (9/28/73)
Hannifin - Grace

Dear Mr. Howden:

The New Mexico Oil Conservation Commission has supplemented its original Order 4432 and has determined that Operator (Michael P. Grace, II) was paid out by production attributable to the SE $\frac{1}{4}$ of Section 24, Township 22 South, Range 26 East, N.M.P.M., at 7:00 A.M. on June 26, 1973, with an overpayment attributable to Hannifin and Cook of \$661.09. Funds attributable to Hannifin and Cook after that hour and date are to be released to Hannifin and Cook subject to an agreement in writing between Hannifin and Cook and Michael P. Grace, II. Your client is aware of the fact that Hannifin and Cook have previously entered into a contract with El Paso Natural Gas Company for the sale of gas attributable to the SE $\frac{1}{4}$ of Section 24, effective as of the date of payout to Operator, and that they have otherwise elected to separately market and dispose of their share of the gas from the forced pooled unit.

Our accountant finds that El Paso Natural Gas Company apparently overpaid for gas produced during the month of June, 1973, the consequence of which is that each 50% interest owner would be responsible to account to the gas purchaser for an adjustment by reason of this overpayment. The overpayment appears to equal \$248.06.

There are escrowed funds held by the American Bank of Carlsbad, Carlsbad, New Mexico, in amounts of \$84,974.11, representing Hannifin and Cook runs for the month of June from 7:00 A.M., June 18, through the end of the month; \$139,084.71 for July runs attributable to Hannifin and Cook; and \$131,911.80 for August 1973 runs attributable to Hannifin and Cook.

Mr. Frederick B. Howden
October 8, 1973
Page 2

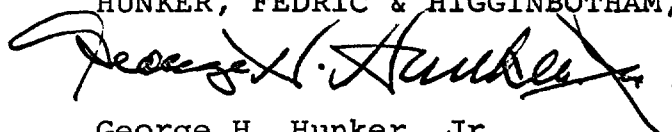
Our accountant has prepared a statement showing the balance due Grace in connection with the June 1973 escrow deposit, taking into account the overpayment made, apparently, during this period by El Paso Natural Gas Company, and this statement shows that out of the \$84,963.14, Grace is entitled to receive \$57,899.57. He would similarly be entitled to any interest which has accrued on this sum to the date that the fund is disbursed to him. Hannifin and Cook are entitled to \$27,063.57, together with the runs deposited for the months of July and August, 1973, with any interest which may have accrued to those funds. Should a further escrow deposit be made by El Paso, Hannifin and Cook would be entitled to receive all of the amount so deposited.

With a reservation of our right to file a motion for a rehearing in the above matter, we are offering to dispose of the escrow phase of this matter by dividing the escrow proceeds as set forth hereinabove and as based on the accountant's statement attached hereto. Under the Commission's Order dated November 8, 1972, the withholding period has now terminated and the proceeds from the subject well are no longer subject to being held in escrow or placed in escrow for a distribution between the parties.

As the attorney of record for Michael P. Grace, II, you are being given five (5) days from the date you acknowledge receipt of this certified letter or until 5:00 P.M., October 15, 1973, whichever is the earlier date, within which to advise us that you have concurred in the conclusions that we have reached with regard to the division of the escrow account, failing which we will resort to such other proceedings as are necessary or required under the circumstances. When you concur, please execute a copy of this letter, noting your concurrence so that we may present the same to the Commission and to the American Bank of Carlsbad for a distribution of the escrowed funds. We are authorized to sign this letter on behalf of our clients, D. L. Hannifin and Joe Don Cook, and they have concurred in its terms and conditions.

Respectfully submitted,

HUNKER, FEDRIC & HIGGINBOTHAM, P.A.



George H. Hunker, Jr.
Attorneys for D. L. Hannifin
and Joe Don Cook

Mr. Frederick B. Howden
October 8, 1973
Page 3

I concur in the distribution of the escrow accounts and direct American Bank of Carlsbad, Carlsbad, New Mexico, to distribute the escrowed funds in accordance with the foregoing letter and the attachment thereto.

Dated this _____ day of October, 1973.

F. B. Howden, Attorney for
Michael P. Grace, II

xc: Messrs. D. L. Hannifin & Joe Don Cook
xc: John Otto, Attorney
xc: New Mexico Oil Conservation Commission ✓
xc: Michael P. Grace, II, Operator
xc: Frederick B. Howden, Attorney

Hannifin and Cook

AMOUNT DUE GRACE INTERESTS FROM JUNE, 1973 ESCROW DEPOSIT

Amount deposited in bank by El Paso Natural Gas representing Hannifin - Cook 50% ownership of gas runs from June 18 to June 30, 1973, inclusive		\$ 84 963 14
Less: 50% of apparent over-payment for above period by El Paso Natural Gas		<u>124 03</u>
		\$ 84 839 11
Gross runs from June 18 to June 26, 1973, inclusive:		
June 18	\$ 12 840 21	
June 19	12 839 59	
June 20	12 711 15	
June 21	12 839 59	
June 22	12 698 63	
June 23	12 972 35	
June 24	12 654 10	
June 25	13 544 32	
June 26	<u>14 021 38</u>	
	\$ <u>117 121 32</u>	
Deduct: 50% of \$117,121.32		<u>58 560 66</u>
		\$ 26 278 45
Add: credit due Hannifin-Cook from run of June 26		<u>661 09</u>
Hannifin-Cook interest in escrow deposit		<u>\$ 26 939 54</u>
Amount due Grace Interests:		
Adjusted escrow deposit of June runs		\$ 84 839 11
Less: hannifin-Cook interest		<u>26 939 54</u>
Balance Due Grace Interests		<u>\$ 57 899 57</u>

Attachment to letter of October 8, 1973 -
NMOCC 4432-A, Hannifin - Grace


GHH

FBH

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ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on August 28 and 29, 1973, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 28th day of September, 1973, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS:

(1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.

(2) That pursuant to Cases Nos. R-4819 and R-4836, heard before an examiner of the Oil Conservation Commission on September 27, 1972, Order No. R-4432 was issued which force pooled the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, South Carlsbad-Morrow Gas Pool, Eddy County, New Mexico.

(3) That Order No. R-4432 created a standard communitized unit comprising 320 acres, named Michael P. Grace II the operator of said unit, established a risk factor of 25 percent to be assessed against any non-consenting working interest, and authorized the drilling of a well for the subject unit to be drilled at a standard location for the South Carlsbad-Morrow Gas Pool.

(4) That the SE/4 of Section 24, Township 22 South, Range 26 East, NMPM, Eddy County, New Mexico, is subject to a royalty payment of 18.75 percent, and the working interest ownership of said SE/4 of Section 24 is 81.25 percent; that the SW/4 of said Section 24 is subject to a royalty and overriding royalty payment of 25.0 percent, and the working interest ownership of said SW/4 of Section 24 is 75.0 percent.

(5) That subsequent to the issuance of Order No. R-4432, D. L. Hannifin, as Non-Consenting Working Interest Owner, and Barbara E. Hannifin, his wife, filed with the Commission a "Statement of Non-Consent" executed January 4, 1973, wherein D. L. Hannifin and Barbara E. Hannifin, his wife, stipulated that D. L. Hannifin is the working interest owner under an Oil and Gas Lease covering the SE/4 of Section 24, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico, which said tract, together with the SW/4 of said Section 24, has been dedicated to a 320-acre standard location for the drilling of a test well in the Morrow formation underlying the S/2 of said Section 24; and that Michael P. Grace II has been designated by the New Mexico Oil Conservation Commission as the operator of the proposed well and unit. The Statement of Non-Consent stipulated further:

"The undersigned, D. L. Hannifin, non-consenting working interest owner, joined herein by his wife, Barbara E. Hannifin, hereby expressly elects not to pay his share of estimated well costs to Operator and in lieu thereof, hereby elects to pay his share of reasonable well costs out of production. The undersigned further certifies and agrees that \$135.00 per month should be fixed as a reasonable charge for the supervision (combined fixed rates) for the subject well; agrees to the 25% prorata risk share charge described in finding (7)(B); and agrees that Operator is authorized to withhold from production the proportionate share of such supervision charge attributable to the undersigned non-consenting working interest owner's interest, and Operator is authorized to withhold from production the proportionate share of actual expenditures required for operating the subject well, not in excess of what are reasonable, attributable to non-consenting working interest owner, all as more particularly defined in Order R-4432."

(6) That on January 28, 1973, Michael P. Grace II as Operator of the S/2 of Section 24, Township 22 South, Range 26 East, caused to be commenced the drilling of a well designated the Grace-Atlantic Well No. 1, located 1980 feet from the South line and 1980 feet from the East line of said Section 24, to a proposed depth of 12,100 feet to test the Morrow formation, the S/2 of said Section 24 being dedicated to the well.

(7) That on March 1, 1973, Michael P. Grace II and Corinne Grace, as "Seller," entered into a contract with El Paso Natural Gas Company, as "Buyer," for the sale of gas produced from those formations between the surface of the ground and the base of the Morrow formation underlying Seller's properties comprising certain lands, including the S/2 of Section 24, Township 22 South, Range 26 East, NMPM, Eddy County, New Mexico; that said

contract provides that Buyer shall pay Seller for gas purchased thereunder at the rate of \$0.52 per MCF commencing on the date of first deliveries and continuing through the month of December, 1973, subject to adjustment for the heating value of the gas produced, either more or less than 1,000 BTU's per MCF; and subject to certain escalations after December, 1973.

(8) That on March 15, 1973, the above-described Grace-Atlantic Well No. 1 was completed and ready to produce; that on March 29, 1973, said well was tested and found to have a calculated absolute open flow potential of 65,737 MCF per day from perforations in the Morrow formation from 11,424 feet to 11,444 feet.

(9) That said Grace-Atlantic Well No. 1 was actually connected to the El Paso Natural Gas Company pipeline system April 16, 1973, and that gas production since that date has yielded, including the BTU adjustment described in Finding No. (7) above, \$0.62036 per MCF.

(10) That on July 30, 1973, D. L. Hannifin and Joe Don Cook, through their attorney, made application to the Commission seeking a determination of the reasonable well costs of the Grace-Atlantic well, and a determination of when Michael P. Grace II had been fully compensated for all reasonable well costs and the 25 percent risk charges and the pro rata share of reasonable well costs attributable to Hannifin and Cook on the well.

(11) That at the hearing the parties stipulated to the following facts:

(a) That the original cost of the well is \$439,986.35, one-half of which is subject to the 25 percent risk factor provided in Order No. R-4432.

(b) That additional charges have been incurred by the operator in the amount of \$25,694.75 and should be divided equally between the parties.

(c) That the Grace share of these costs (50 percent of the original costs and 50 percent of the additional costs) is \$232,840.56.

(d) That the Hannifin and Cook share of these costs (50 percent of the original costs, a 25 percent penalty thereon and 50 percent of the additional costs) is \$237,838.84.

(e) That the total well costs are \$520,679.40.

Case No. 5054
Order No. R-4432-A

(f) That each party should pay 50 percent of the reasonable charge for supervision (combined fixed rates).

(g) That the reasonable charge for supervision pursuant to Commission Order No. R-4432, is \$135 per month which totals \$405 for the months of April, May and June, 1973, \$202.50 of which should be paid by each of the two parties.

(h) That the Grace total share of all costs is \$233,043.06.

(i) That the Hannifin and Cook share of all costs is \$288,041.34.

(12) That each of the 160-acre tracts communitized by Commission Order No. R-4432 should stand on its own insofar as royalty and overriding royalty payments are concerned; that accordingly, the working interest attributable to the SE/4 of Section 24, Township 22 South, Range 26 East, NMPM, Lea County, New Mexico, is 40.625 percent of the pooled unit interests as a whole; that the royalty interest underlying said SE/4 of Section 24 is 9.375 percent of the pooled unit interests as a whole; that the working interest attributable to the SW/4 of said Section 24 is 37.5 percent of the pooled unit interests as a whole; and the combined royalty interests and overriding royalty interests underlying said SW/4 of Section 24 total 12.5 percent of the pooled unit interests as a whole.

(13) That the current sales price for gas produced from the subject well is \$0.52 per MCF plus \$0.10036 per MCF BTU adjustment for a total of \$0.62036 per MCF. That the royalty under the SE/4 of Section 24, Township 22 South, Range 26 East, NMPM, Eddy County, New Mexico, is 18.75 percent of the production attributable to said tract. That the current rate of taxation on the production from the subject well is 6.419 percent of the value received for said production. That these are the proper factors to be used in determining the date on which production, less royalty and taxes, attributable to the subject SE/4 of Section 24 has paid out the stipulated costs chargeable to Hannifin and Cook through June, 1973, which total \$288,041.34.

(14) That from April 16, 1973, through 7 o'clock a.m. on June 26, 1973, the subject Grace-Atlantic Well No. 1 produced a total of 1,243,313 MCF of gas. That applying the factors described in Finding No. (13) above to this production indicates that at 7 o'clock a.m. on June 26, 1973, the portion of production attributable to the subject SE/4 of Section 24, less royalty and taxes, had paid out the costs attributable to Hannifin and Cook plus an additional \$661.09, or a total of \$288,702.43.

-5-

Case No. 5054

Order No. R-4432-A

(15) That according to the evidence, gas is currently being sold from the subject well under a contract signed pursuant to the Federal Power Commission's Order No. 428-428 A dealing with Small Producer sales; that the sale of gas under such contracts is currently in litigation; that depending upon the outcome of such litigation, the sales price for gas from the subject well could be changed.

(16) That the Commission is in no position to determine what the final sales price for gas from the subject well will be, and can only rely upon the current price.

(17) That certain monies derived from the sale of gas from the subject well have been placed in escrow with the American Bank of Carlsbad, Carlsbad, New Mexico, pending the determination of payout of the well.

(18) That inasmuch as it has been determined that the Hannifin and Cook portion of total well costs was paid out at 7 o'clock a.m. June 26, 1973, plus \$661.09, it would appear that monies held in escrow from production after that date should be released to the applicants, Hannifin and Cook.

(19) That it should be up to the working interest owners in the subject well to arrive at a suitable arrangement regarding payment of funds derived from sale of gas from the subject well which may be excessive should the sales price of gas be adjusted retroactively and be subject to refund.

IT IS THEREFORE ORDERED:

(1) That the 18.75 percent royalty of the Hannifin portion of the subject unit, being the SE/4 of Section 24, Township 22 South, Range 26 East, NMPM, Eddy County, New Mexico, and the 25.0 percent royalty for the Grace portion of the subject unit being the SW/4 of said Section 24, are independent and separate from each other and cannot be pooled or averaged at the discretion of the operator into a uniform royalty percentage for the purpose of determining the payout date of the Michael P. Grace II Grace-Atlantic Well No. 1, located 1980 feet from the South line and 1980 feet from the East line of said Section 24.

(2) That the 18.75 percent royalty applicable to the SE/4 of said Section 24 shall be applied to one-half of the total production from the well, and the 25 percent royalty and overriding royalty applicable to the SW/4 of said Section 24 shall be applied to the other half of the total production from the well.

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Case No. 5054
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(3) That a tax rate of 6.419 percent of the production attributable to the SE/4 of said Section 24 shall be used in determining date of payout for the total share of well costs attributable to Hannifin and Cook through June, 1973.

(4) That the gas price to be used in determining the date of payout for the subject well shall be \$0.52 per MCF plus \$0.10036 per MCF BTU adjustment, for a total of \$0.62036 per MCF of gas.

(5) That the original well costs for the subject well are \$439,986.35, one-half of which, or \$219,993.18, are to be borne by Michael P. Grace II and one-half of which plus a 25 percent charge for risk, or \$274,991.47, are to be borne by D. L. Hannifin and Joe Don Cook.

(6) That additional costs incurred, totalling \$25,694.75, are not subject to any charge for risk, and shall be shared equally by the two parties to this hearing, Michael P. Grace II, and Hannifin and Cook.

(7) That Michael P. Grace II's total share of original well costs and additional costs incurred shall be \$232,840.56.

(8) That Hannifin and Cook's share of original well costs plus the 25 percent charge for risk, and their share of additional costs incurred, shall be \$287,838.84.

(9) That \$135.00 per month is a reasonable charge for supervision (combined fixed rates) for the subject well and totals \$405.00 for the months of April, May, and June, 1973. That this charge for supervision shall be borne equally by Michael P. Grace II and by Hannifin and Cook, thereby making each party's share \$202.50.

(10) That Michael P. Grace II's total share of reasonable well costs (defined as original well costs and additional costs incurred) and charge for supervision through June, 1973, shall be \$233,043.06.

(11) That Hannifin and Cook's total share of reasonable well costs (as defined above) plus a 25 percent penalty on the original well costs, and charge for supervision through June, 1973, shall be \$288,041.34.

(12) That \$288,041.34, being the total share of reasonable well costs (as defined above) plus a 25 percent penalty on the original well costs, and charge for supervision through June, 1973, attributable to Hannifin and Cook, is hereby determined to have been paid out by production attributable to the SE/4 of Section 24, Township 22 South, Range 26 East, NMPM, Eddy County, New Mexico, less royalty and taxes, at 7 o'clock on June 26, 1973, with an additional overpayment attributable to Hannifin and Cook of \$661.09.

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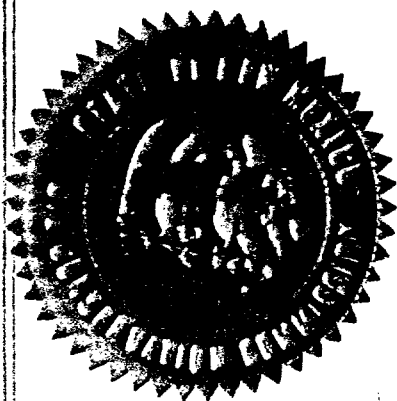
Case No. 5054

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(13) That any funds derived from the sale of gas from the subject well after 7 o'clock a.m. June 26, 1973, attributable to D. L. Hannifin and Joe Don Cook, and held in escrow by American Bank of Carlsbad shall be released to said Hannifin and Cook subject to agreement in writing between Hannifin and Cook and Michael P. Grace II as to future arrangements, escrow, bonding or whatever may be satisfactory to the parties involved, covering the difference, if any, between the current sales price of gas from the subject well and the future sales price of gas.

(14) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

I. R. Trujillo
I. R. TRUJILLO, Chairman

ALEX J. ARMIJO, Member

A. L. Porter, Jr.
A. L. PORTER, Jr., Member & Secretary

S E A L

dr/



AN ORIGINAL POLAROID® LAND PHOTOGRAPH

11:40 AM. 2-4-74

SUBJECT _____ DATE _____

NAME *Standing at well head of Grove*

ADDRESS *Atlantic #1-J-24-22-26*

Approximately 70-75' to Butane Tanks

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1:35 PM.

SUBJECT _____ DATE *2-6-74*

NAME *Henniper + Cook Merland #1-J-24-22-26*

ADDRESS *The cars belong to the Guard*

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1:30 PM.

SUBJECT

DATE 2-6-74

NAME Hannifin + Cook Melrose #1-5-24-22-26

ADDRESS ~~to be determined~~

road in to Grace well. went straight in where it
now is located
Hannifin started going in on the right fork
which is now closed off with a fence -
they are now going in the left fork

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11:30 AM

SUBJECT

DATE 2-4-74

NAME ~~to be determined~~

ADDRESS

from approx 50' north of well
~~looking south~~

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11:50 AM 2-4-74

SUBJECT

DATE

NAME Approx 200' North of Grace

ADDRESS Atlantic #1-5-24-22-26

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