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FRANCES M. WILCOX
Clerk of the District Court

IN THE DISTRICT COURT OF EDDY COUNTY
STATE OF NEW MEXICO

C & K PETROLEUM, INC.,
a Corporation,

Petitioner,

-vs-

NEW MEXICO ENERGY AND
MINERALS DEPARTMENT, OIL
CONSERVATION DIVISION and
BILL TAYLOR,

Respondents.

CV-78-415

IN THE MATTER OF THE APPLICATION
OF BILL TAYLOR FOR ENFORCEMENT
AND AMENDMENT OF ORDER NO. R-5332
EDDY COUNTY NEW MEXICO OIL
CONSERVATION COMMISSION CASE
NO. 6289 CV-78-417

O R D E R

THE ABOVE styled and numbered causes were on the 12th day of January 1979, consolidated by the Court for purposes of review or relief from Order No. R-5332-A entered by the Oil Conservation Department of the Energy and Minerals Department of the State of New Mexico pursuant to Section 70-2-25 (B) N.M.S.A. 1978 Comp., thereafter said matter was set for hearing for July 11, 1979, on the consolidated appeals and each and all of the parties thereafter agreed that the hearing of July 11, 1979, be vacated and that the issues be submitted to the Court upon written briefs, the Order vacating such setting and providing for briefs was entered in these causes on July 11, 1979, and the Court having reviewed each and all of the briefs submitted by the respective parties and being fully advised in the premises finds:

FINDINGS OF FACT CV-78-415

(1) On November 9, 1976, Bill Taylor, for himself and for William A. Page, entered into an agreement with C & K Petroleum Inc. a copy of such agreement having been introduced as C & K Exhibit No. 13 at the hearing which commenced November 10, 1976, before the New Mexico Oil Conservation Commission, which agreement specifically provided that in consideration of C & K Petroleum, Inc. agreeing not to seek a risk factor in excess of

120% and C & K further agreeing that Bill Taylor shall have the right to take his gas in kind after pay-out of the well provided that he make connection at his own expense and C & K further agreeing they would not seek compulsory pooling in the matter to be heard on November 10, of any formation other than Wolfcamp and Pennsylvanian formation and does not seek pooling of any formations above the Wolfcamp, Bill Taylor then acknowledged receipt of the estimated well costs in the form of an A.F.E. furnished him the date of the agreement and C & K agreed that Bill Taylor should have thirty (30) days from November 9, 1976, in which to pay his share of estimated well costs in lieu of paying such share out of production and thereby avoid payment of the 120% risk factor.

(2) Thereafter on November 10, 1976, a hearing commenced before the New Mexico Oil and Gas Commission, under case No. 5807 and pursuant thereto on November 30, 1976, the Commission entered its Order which provided among other things that the designated operator C & K Petroleum, Inc. furnished the Commission and each known working interest owner in the unit an itemized schedule of estimated well costs and further provided that any non-consenting working interest owner should have thirty (30) days from the date the schedule was furnished to him to pay his share of estimated well costs in lieu of paying his share of reasonable well costs out of production and would thereafter not be liable for risk charges.

(3) Thereafter Bill Taylor made application to the New Mexico Oil Conservation Division for removal of C & K Petroleum, Inc. as operator and requested other relief relating to correlative rights and pursuant to notice to all parties the New Mexico Oil Conservation Division heard evidence on such application on August 9, 1978, and on September 11, 1978, and thereafter on October 17, 1978, entered its Order No. R-5332-A under its case No. 6289 which is the Order from which C & K Petroleum and Bill Taylor are seeking review in these consolidated actions.

CONCLUSIONS OF LAW CV-78-415

(1) The provisions of the Commission's Order No. R-5332

dated November 30, 1976, has three (3) paragraphs 7, 8 and 9 to the extent that they apply to Bill Taylor and C & K Petroleum, Inc. such provisions are void and of no force or effect as they are in direct conflict with the specific terms and provisions of the agreement between the parties dated November 9, 1976, and such provisions invade the right of the parties to contract and the Commission was without jurisdiction to amend, alter, modify or rescind such agreement between the parties dated November 9, 1976.

(2) To the extent that the Commission in its Order No. 5332-A attempted to afford Bill Taylor any relief from Bill Taylor's obligations under the terms and provisions of his agreement dated November 9, 1976, and to the extent that the Commission was attempting to enforce and/or modify its previous Order as to payment by Bill Taylor of drilling costs and thereby avoid application of the 120% risk factor the Commission was interfering with the rights of the parties to contract and was wholly without jurisdiction to in any manner to amend, modify or rescind the agreement of the parties entered into on November 9, 1976.

The foregoing Findings and Conclusions of Law having disposed of the objection of C & K Petroleum, Inc. to the Commission's allowing Taylor additional time within which to pay well cost and avoid the risk factor the remaining arguments presented by C & K Petroleum, Inc. in support of their contention need not be ruled upon in this decision.

FINDINGS OF FACT CV-78-417

(1) Pursuant to Order of the Court, Petitioner Bill Taylor, filed his brief in support of his Petition for review and raised in such brief four (4) points for review and to the extent that additional matters were raised in the Petition for review which were not briefed the Court deems such additional matters as abandoned. The four points raised by Petitioner Bill Taylor are as follows: (a) Point 1, Petitioner has alleged the Oil Conservation Division erred in failing to consider the rights of W. A. Page, Jr., in affording him relief from imposition of the

120% risk charge. (b) Point 2, the Division erred in failing to grant Petitioner's application for rehearing as to continued violations of Paragraph 12 of Order 5332. (c) Point 3, the Commission erred in failing to order C & K to pay Taylor and Page their 1/8 royalty interest. (d) Point 4, the Commission erred in failing to assess the penalty called for under Section 70-2-31 D, N.M.S.A., 1978 Comp.

The contentions made by Petitioner under Points 1 and 4 above cited are disposed of as a matter of law covered by Conclusions of Law Nos. 1 and 2 below.

(2) The Division did not err in failing to grant Petitioner Taylor's application for rehearing as to continued violations of Paragraph 12 of Order 5332 the continued violation upon which Petitioner Taylor has relied covers the same violations which was presented to the Division in the hearings of August 9, and September 11, 1978.

(3) That the original Order of the Commission being Order R-5332 dated November 30, 1976, specifically provided:

"(12) That all proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership."

(4) Evidence was received by the Division as to the reasons and justification that C & K had not disbursed certain funds primarily by reason of the fact that Petitioner Bill Taylor would not execute the Division Order which was submitted to him by C & K and the Division should have ordered in its Order R-5332-A that the terms and provisions of Paragraph 12 of its Order entered November 30, 1976, R-5332 be carried out and that no limitations be placed on payment out of escrow other than the true owner making demand and furnishing proof of ownership.

(5) That no notice of appeal or petition for review has been filed with this Court in this cause number by William A. Page.

(6) William A. Page did not by himself or through an attorney join in the application of Bill Taylor to remove C & K Petroleum, Inc. as operator which application of Bill Taylor resulted in the hearings held August 9, 1978, and September 11, 1978, and the Division's Order No. R-5332-A.

CONCLUSIONS OF LAW CV-78-417

(1) To the extent that the Division had an obligation to protect the correlative rights of William A. Page, notwithstanding the fact that he had not filed or joined in the application of Bill Taylor in the Division's Order No. R-5332-A, the Division was without jurisdiction to modify the agreement of November 9, 1976, which agreement insofar as the Division is concerned bound William A. Page to the same extent as Bill Taylor for the reasons set forth under Conclusions of Law numbered 1 and 2 above made as to CV-78-415.

(2) The Petitioner in his Petition for Review to this Court in asking that this Court order the Commission to impose sanctions and/or penalties against C & K Petroleum by reason of the Commission or Division's statutory duty, Petitioner in his Petition for Review is seeking to utilize his Petition for Review as a substitute for his remedy of Mandamus. If the Division is in fact violating any statutory duty imposed upon it, the Division can only be ordered to carry out any such statutory duty through a Mandamus proceeding.

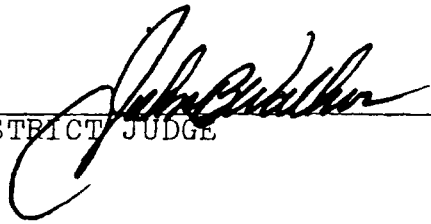
(3) The Division did not act arbitrary, capricious or unlawful in denying Petitioner Bill Taylor's application for relief hearing of its Order R-5332-A.

(4) Based on the evidence submitted to the Division relating to the facts that C & K Petroleum, Inc. had not complied with the Division's Order No. R-5332, (Paragraph No. 12) the Division in Order No. R-5332-A should have ordered C & K Petroleum, Inc. to place all proceeds from production from the subject well in escrow advising the escrow agent that such funds were to be paid to the true owner thereof upon demand and proof of ownership

and further ordered that C & K Petroleum, Inc. should not place any other additional limitations upon the escrow agent regarding disbursing of such funds.

Based upon the foregoing Findings of Fact and Conclusions of Law herein made by the Court it is Ordered, Adjudged and Decreed that the provisions of the Division's Orders numbered R-5332 and R-5332-A insofar as they extend the time within which Bill Taylor was allowed to pay his proportionate share of drilling costs and thereby avoid the application of the 120% risk factor, beyond the time provided for in Bill Taylor's agreement with C & K Petroleum, Inc. dated November 9, 1976, such provisions in said Orders are void and of no force or effect and are hereby set aside and held to be of no force or effect.

It is further Ordered, Adjudged and Decreed by the Court that C & K Petroleum, Inc. is hereby ordered and directed to forthwith place all proceeds from production from the subject well which have not been disbursed for any reason in escrow instructing the escrow agent to pay such proceeds to the true owner thereof upon demand and proof of ownership and C & K Petroleum, Inc. is hereby enjoined and restrained from placing any further limitations upon payment of said funds to the owners thereof.


DISTRICT JUDGE

STATE OF NEW MEXICO

IN THE DISTRICT COURT

C & K PETROLEUM, INC.
a Corporation,

Petitioner,

vs.

NEW MEXICO ENERGY AND
MINERALS DEPARTMENT, OIL
CONSERVATION DIVISION,
and BILL TAYLOR,


Respondents.

ORDER

This matter having come before the Court for rehearing, and it appearing that the Court had entered its Finding of Fact, Conclusions of Law and Judgment in these consolidated cases on December 15, 1980, and Respondent, Bill Taylor having filed his motion for Rehearing, and the Court having set the consolidated cases for rehearing January 6, 1981, and the Court having heard argument of counsel and being fully advised;

Finds that arguments of Respondent Bill Taylor were without merit.

It is therefore ordered, adjudged and decreed that the Judgment entered herein on December 15, 1980, should be and the same hereby is ratified and affirmed in all respects.


DISTRICT JUDGE

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DISTRICT COURT

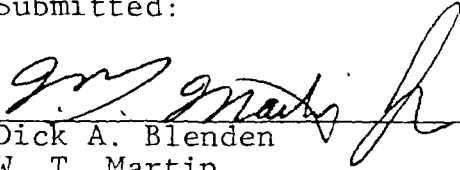
COUNTY OF EDDY
FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

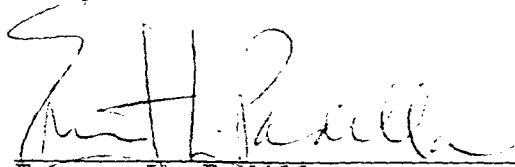
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FRANCES M. WILCOX
Clerk of the District Court

CV-78-415
CV-78-417 (Consolidated)

Submitted:

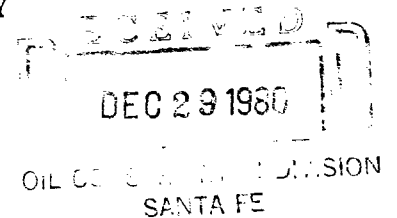

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IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO



1 C & K PETROLEUM, INC.,)
2 a Corporation,)

3 Petitioner,)

4 vs.)

5 NEW MEXICO ENERGY AND)
6 MINERALS DEPARTMENT, OIL)
7 CONSERVATION DIVISION and)
8 BILL TAYLOR,)

9 Respondents.)

No. CV-78-415

IN THE MATTER OF THE
APPLICATION OF BILL TAYLOR
FOR ENFORCEMENT AND AMENDMENT
OF ORDER NO. R-5332 EDDY
COUNTY NEW MEXICO OIL CON-
SERVATION COMMISSION CASE
NO. 6289 CV-78-417

MOTION FOR REHEARING

COMES NOW Respondent, BILL TAYLOR, individually, and in his
capacity of representing W. A. PAGE (in protecting his correlative
rights), and moves the Court for a rehearing relative to that
portion of the Judgment declaring the Orders of the Commission
extending the time within which BILL TAYLOR was allowed to
pay his proportionate share of the drilling cost to be void
and of no force and effect. That no Motion for Rehearing is
applied for the remaining portion of the Judgment.

That for reasons for the Motion for Rehearing, Respondent
states:

1. That the Court found, in both CV-78-415 and CV-78-417,
that on November 9, 1976, BILL TAYLOR and C & K PETROLEUM entered
into an agreement for Respondent TAYLOR's participation in C & K
Carlsbad 13 No. 1 well.

2. That the Court further found that C & K would agree
not to seek compulsory pooling in the matter to be heard on
November 10, 1976.

3. That the Court found that because of this agreement,
the Commission had no jurisdiction to relieve Respondent TAYLOR
from his obligations under the terms and provisions of the
agreement dated November 9, 1976.


4. That the Court's findings were in error because C & K
PETROLEUM and Respondent TAYLOR had no such agreement as of
November 9, 1976, as shown by the testimony of MR. EDWARD W.

1 HOOPER before the Commission on November 10, 1976, and in response
2 to questioning by MR. JASON KELLAHIN beginning at line 22 on
3 page 10 and continuing through line 2 on page 11 of the hearing
4 of November 10, 1976, wherein it was admitted that the agreement
5 was not complete as of the time of that hearing.


6 5. That, in case No. 6289, held on September 11, 1978, MR.
7 THOMPSON again testified that the agreement with MR. TAYLOR was
8 not a complete agreement in that it was not a full operating
9 agreement and was not a sufficient substitute therefor, all of
10 which set forth in the transcript of that hearing at page 175.

11 WHEREFORE, Respondent prays Order of the Court setting this
12 Motion for Rehearing on January 6, 1981, at 9:00 a.m. on the
13 trailing docket and that notice be served forthwith on opposing
14 counsel of record.


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20 MARTIN & MEYER

21 
22 W. T. MARTIN, JR.
23 509 West Pierce
24 Carlsbad, New Mexico 88220

25 I hereby certify that a true
26 copy of the foregoing has been
27 mailed to opposing counsel this
28 23rd day of December, 1980.

29 
30
31
32

MEMORANDUM BRIEF OF THE OIL
CONSERVATION COMMISSION IN RESPONSE
TO PETITION TO REVIEW

Submitted by:

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INTRODUCTION

This memorandum brief is submitted by Respondent Oil Conservation Commission (Commission) in response to the petition for judicial review of Commission Order No. R-5332-A filed herein by Petitioners Bill Taylor (Taylor) and C & K Petroleum, Inc. (C & K). The issues raised by both petitioners are addressed in this brief. For convenience Commission Orders Nos. R-5332 and R-5332-A, both relevant to this case, are attached hereto as Exhibits B and C, respectfully.

It should be noted at this point that it fully appears that Taylor has abandoned its allegations that C & K should be removed as operator of the Carlsbad 13 Well No. 1 because he has failed to renew such allegations in both his petition for rehearing as well as in his petition for judicial review under consideration before this Court.

STATEMENT OF FACTS

The Statements of Fact contained in Petitioners' briefs are sufficient to apprise the Court of the issues in the case.

SCOPE OF REVIEW

The scope of review in this case is limited by the fact that this is an appeal from an administrative order issued pursuant to hearings before the Oil Conservation Commission. The Court, therefore, may only look at the record made in the administrative hearing. Continental Oil Company vs. Oil Conservation Commission, 70 N.M. 310, 325, 326, 373 P.2d 809 (1962). It should determine if the Commission acted arbitrarily, capriciously or unreasonably; acted outside the scope of its statutory responsibility; or issued an order not supported by substantial evidence. Otero vs. New Mexico State Police Board, 495 P.2d 374, 83 N.M. 594 (1972). In the absence of a determination that the Commission acted in one of the above ways, the decision of the Commission should be affirmed. Furthermore, the Court is not to weigh the evidence but its inquiry is limited to whether the Commission could reasonably make its findings based on the record before it. Grace vs. Oil Conservation Commission, 87 N.M. 205, 531 P.2d 939 (1975). Also, the Court is to give "...special weight and credence to the experience, technical competence and specialized knowledge of the Commission." Grace, supra, at 208.

"Substantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Fort Sumner Municipal School Board vs. Parsons, 82 N.M. 610, 485 P.2d 366 (1971); Wickersham vs. New Mexico State Board of Education, 81 N.M. 188, 464 P.2d 918, Ct. of App. (1970). In deciding whether a finding has substantial support, the Court must review the evidence in the most favorable light to support the finding and reverse only if convinced that the evidence thus viewed together with all reasonable inferences to be drawn therefrom, cannot sustain the finding. Any evidence unfavorable to the finding will not be considered. Martinez vs. Sears Roebuck & Company 81 N.M. 371, 467 P.2d 37, Ct. of App. (1970); United Veterans Organization vs. New Mexico Property Appraisal Department, 84. N.M. 114, 500 P.2d 199, Ct. of App. (1972).

ORDER NO. R-5332-A IS NOT UNLAWFUL
AND NOT IN EXCESS OF THE AUTHORITY
OF THE COMMISSION.

C & K in its brief argues that Findings 13 and 14 were fatal to the validity of Order No. R-5332-A and thus rendered the order void. The basis of this argument runs on the theory that because the two findings found that correlative rights had not been impaired and no waste had occurred from C & K's operation of the Carlsbad 13 Well No. 1 the Commission had no jurisdiction. This argument completely ignores the initial compulsory pooling Order No. R-5332 applied for by C & K and which force-pooled Taylor's and others' interests.

Finding No. 5 of Order No. R-5332 states:

"That to avoid the drilling of unnecessary wells, to protect correlative rights, and to afford to the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the gas in said pool, the subject application should be approved by pooling all mineral interests, whatever they may be, within said unit."

Order No. 13 of Order No. R-5332 states:

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

At first glance, C & K's argument leaves us on the horns of a dilemma if one were to assume that findings such as the Findings 13 and 14 automatically defeated jurisdiction from the beginning. To adopt this view would render the powers, and indeed the purpose, of the oil conservation statutes meaningless.

A more meaningful and logical approach is that the Commission has continuous jurisdiction to protect correlative rights and that its jurisdiction will not be defeated by findings such as Findings 13 and 14. Jurisdiction must exist for the Commission to reach a determination as to whether correlative rights will be impaired, are being impaired, or have been impaired depending on the particular fact situation.

In Order R-5332 the Commission sought to prevent waste by the drilling of unnecessary wells and to protect the correlative

rights of the various interest owners, and in addition retained jurisdiction over the subject matter of the order to carry out its duties and to preserve the integrity of its order.

C & K has cited some New Mexico Supreme Court cases dealing with the powers of the Oil Conservation Commission. Close scrutiny of those cases reveals that they are inapplicable to this case. If anything, these cases lend support to the position of the Commission.

Two of these cases are worthy of mention. Continental Oil Co. v. Oil Conservation Commission, supra, strongly emphasizes the role of the Commission with respect to prevention of waste and protection of correlative rights.

Sims v. Mechem, 72 N.M. 186, 382 P.2d 183 (1963) merely supports the findings made in Order No. R-5332. The Sims case simply invalidated an order of the Commission for not making a finding that waste would be prevented. Like in the Continental case, the New Mexico Supreme Court ruled in Sims that the Commission had not made jurisdictional findings relative to prevention of waste and protection of correlative rights.

In its brief C & K has cited much of the statutory power of the Commission. Included in those citations is Section 70-2-11 NMSA, (1978 Comp.) which reads as follows:

"A. The division is hereby empowered, and it is its duty, to prevent waste prohibited by this act and to protect correlative rights, as in this act provided. To that end, the division is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof.

"B. The commission shall have concurrent jurisdiction and authority with the division to the extent necessary for the commission to perform its duties as required by law." (emphasis added)

Indeed the foregoing language of Section 7-2-11 is quite broad in its grant of regulatory authority to the Commission.

Section 70-2-17 NMSA (1978 Comp.), the compulsory pooling statute, states that the compulsory pooling orders issued by

the Commission "shall be upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit to recover or receive without unnecessary expense his just and fair share of the oil or gas or both...." (emphasis added)

In fact many of the oil conservation statutes allow the Commission to give equitable consideration to certain situations as may from time to time exist. The Legislature liberally sprinkled such words as "just and equitable," "just and fair," and "just and reasonable" in the conservation statutes. See Section 70-2-17, supra. The proration statute, Section 70-2-15 (C) gives explicit authority for equitable consideration. In addition, it appears that the Legislature recognized the difficulty that could arise from time to time in ascertaining equitable shares of oil and gas to the various interest owners in a unit or pool. Therefore, the legislature again resorted to flexible language such as "so far as it is practicable to do so" and "so far as can be practically determined." See Section 70-2-17.

There can be no other conclusion but that the Commission had ample authority in making its ruling under Order No. R-5332-A.

THE COMMISSION FINDINGS ARE
SUPPORTED BY SUBSTANTIAL
EVIDENCE.

As stated earlier and in C & K's brief, the real test of whether there is substantial evidence to support the Commission's findings is whether the Commission could reasonably make the findings. See Grace v. Oil Conservation Commission, supra.

Order No. 3 of Commission Order No. R-5332 states that the operator was to have furnished all known working interest owners in the unit with an itemized schedule of estimated well costs within 30 days before commencing the well. In addition, through Order 4 of Order R-5332 non-consenting working interest

owners were allowed to pay their share of estimated well costs provided that such payment was made within 30 days after receipt of the schedule of estimated well costs.

The relevant facts in this regard are as follows:

- (1) Order R-5332 was issued on November 30, 1976.
- (2) Taylor received an AFE on November 9 and 10, 1976.
- (3) Spud date of the well was January 16, 1977.

Tr. 49

- (4) Approximate completion date of the well was March 16, 1977. Tr. 62.

The illustration presented by the above facts and dates is that although Taylor received two identical AFE's on the date of the hearing and the following day, the drilling of the well was not commenced until more than a year later. It would seem logical that the actual estimate for well costs would be more refined and reliable the closer one gets to the spud date. This is evident from the sharp rise in tubing costs as evidenced by the testimony of Dorothy Brown to the effect that tubing costs has been undercharged (Tr. 67) because market value had not been assessed to tubing taken from the warehouse, Tr. 65.

Taylor simply was not furnished an AFE within 30 days prior to commencement of the well.

RISK FACTOR

As discussed above, the Commission in Order No. R-5332, retained jurisdiction over the subject matter of the order. After not complying with the Commission order C & K now complains about the removal of the 120 percent risk factor. Had C & K timely furnished the AFE to Taylor this issue as it relates to Taylor's correlative rights would not be before this court.

The Commission's sole basis for removing the risk factor is the protection of correlative rights over which the Commission has ample authority as discussed earlier. But let us go a step further and examine C & K's position as operator of the

unit with respect to other interest owners in the unit.

Application of fiduciary responsibilities may be necessary to the relationship of the operator under a pooling situation as found in this case and persons having interests in the pooled premises affected. In this regard see 6 Williams and Meyers, Oil and Gas Law, Section 990. By C & K's own admission it was not careful in compliance with the order as well as other filing procedures. See Tr. 125 testimony of Mr. Tompson, one of C & K's witnesses.

It seems clear that C & K cannot be heard to complain.

THE OIL CONSERVATION COMMISSION
DID NOT FAIL TO CONSIDER THE
RIGHTS OF V. A. PAGE, JR.

The real basis of Taylor's argument on this issue is that Taylor was not allowed to represent Mr. Page at the hearing. The OCC had a valid reason for not allowing Taylor to represent Mr. Page. Simply, Taylor is not an attorney licensed under the rules of the New Mexico Supreme Court relating to admission to the practice of law.

Attached hereto as Exhibit A is Attorney General Opinion 58-200 issued on September 30, 1958 and still in force. The essence of this opinion is that representation by a layman of another before an administrative body where the character of the acts performed are in a representative capacity as an advocate constitutes the practice of law. Since Opinion 58-200 is attached hereto in its entirety its further explanation is unnecessary as the opinion speaks for itself. It should be noted, however, that the statutes under discussion and consideration in the opinion now are found in the 1978 Compilation as Sections 36-2-9, 36-2-27 and 36-2-28.

In addition, in the case of State ex rel Norvell v. Credit Bureau of Albuquerque, 85 N.M. 521, 514 P.2d 40 (1973) the New Mexico Supreme Court recognized that an indicia of the practice of law included representation of parties before administrative bodies.

As is evident from the record, the Orders under consideration in this case are formal orders. The hearings before the Commission often are adversary in nature requiring a special skill and competence obtained through special training and experience. Certainly the hearing giving rise to Order No. R-5332-A had the attributes of an adversary hearing where witnesses were examined and cross-examined, objections were made and ruled on, findings of fact were made and a complete record for a possible appeal was made.

Clearly the Commission cannot sanction the unauthorized practice of law.

The contention that Mr. Page's correlative rights were impaired is preposterous. Mr. Page, nor an attorney hired by him, ever objected to the force-pooling order or attended its hearing. Similarly, Mr. Page nor his attorney, were present at the second hearing giving rise to Order No. R-5332-A.

Simply stated, Mr. Page was validly treated as a non-consenting interest owner whose interest was assessed a risk factor as allowed by the compulsory pooling statute, Section 70-2-17, supra.

THE COMMISSION DID NOT ERR IN
FAILING TO ORDER C & K TO PAY
TAYLOR AND PAGE THEIR 1/8TH
ROYALTY INTERESTS

Earlier in this brief (with respect to points raised by C & K) it was argued that the Commission's authority was quite broad insofar as preventing waste and protecting correlative rights were concerned. But let us not lose sight of the origin and purpose of that authority.

It must be remembered that a regulatory agency such as the Commission herein is not adjudicating property rights, but rather is regulating production of oil and gas. This issue raised by Taylor is one that involves a determination of property rights - totally outside the jurisdiction of the Commission or the Executive branch of the state government. Determination of ownership in property are judicial functions. Continental Oil Co. v. Oil Conservation Commission, supra.

It is true that the compulsory pooling statute does call for the royalty interest of interest owners of unleased mineral tracts to be a 1/8 royalty interest. But the reason for setting a royalty interest in the statute is for comparable treatment with leased tracts in the unit. Generally royalty interests under an oil and gas lease have been 1/8 of the gross value of

the production and the royalty interest has been free from costs of production. See 3 Williams, Oil and Gas Law, Sections 641, 642.3.

The point is that the statute sets a royalty percentage for unleased tracts so that there will be a comparable parity between leased and unleased tracts in a unit.

If Taylor believes that the royalty portion of his interest was unlawfully withheld, then his remedy would be in bringing an appropriate action in a proper court. It is not for the Commission to decide the extent of Taylor's interest nor whether it is necessary for Taylor to sign a division order before payment. Clearly issues with respect to language of a division order have nothing to do with correlative rights.

THE COMMISSION DID NOT ERR
IN FAILING TO ASSESS THE
PENALTY PROVISIONS OF SECTION
70-2-31 B NMSA (1978 COMP.)

The thrust of Taylor's argument is that the penalty provisions of Section 70-2-31 are mandatory.

We have already quoted Section 70-2-11 to illustrate the broad powers of the Commission. Section 70-2-11 would seem to temper the language of Section 70-2-31. It appears inappropriate that the legislature intended that each and every violation of rules and orders of the Commission, whether intentional or not, be prosecuted with the zeal that Taylor suggests.

A legislative intention that the word "shall" is to be construed as permissive may appear from the spirit and purpose of an act or from the connection in which it is used. See Am Jur 2d, Statutes, Section 26.

Moreover, in determining whether a statutory provision is mandatory or directory, a reasonable construction must be given rather than one which would render the statute absurd. State v. Vigil, 74 N.M. 766, 398 P.2d 987 (1965). In this case Taylor's

theory for penalizing C & K certainly borders on the absurd, when one computes a late, but unintentional, filing at \$1000.00 per day, let alone Taylor's entire list of C & K's violations.

Even assuming that the penalty provisions are mandatory, under our set of facts, Taylor's allegations are improperly brought before this court. A Writ of Mandamus is the method by which Taylor can properly bring this issue before the court and not through an appeal from an order of the Commission.

THE COMMISSION DID NOT ERR
IN FAILING TO GRANT TAYLOR'S
APPLICATION FOR REHEARING.

Essentially nothing new would have been presented to the Commission had it granted Taylor's application for rehearing. Taylor claims in this regard run to C & K's failure to open an escrow account in Eddy County. The record reveals that this problem was amply presented to the Commission. Tr. 133, 137, 144, 150, 151.

CONCLUSION

In summary, C & K's appeal is one attempting to rescind the Commission's order removing the 120 percent risk factor as to Taylor's interest. C & K's position is not an enviable one because it has only itself to blame; it cannot shift the responsibility for its failings of timely making filings or of making relevant and extremely crucial mistakes of not furnishing estimated well costs to working interest owners of the unit which C & K force pooled.

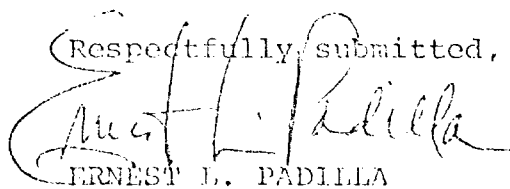
It is difficult to understand the rationale of Taylor's appeal from the nature of the facts in this case. By Order No. R-5332-A Taylor seems to have obtained the best of two possible worlds.

By virtue of C & K's ineptness in providing him with an AFE within 30 days of drilling the Carlsbad 13 No. 1 well, Taylor did not have to risk any capital in financing the drilling of the well. After the drilling venture proved successful and the capital investment no longer a risk, Taylor through the order was allowed to pay his share of the costs.

All of these issues raised by Taylor are without merit insofar as Order No. R-5332-A is concerned. Simply stated, Taylor's allegations raise issues beyond the scope of the Commission's jurisdiction in that Taylor advances interests of others not his own, seeks an adjudication of property rights, and is in the wrong forum to force the Commission to penalize C & K.

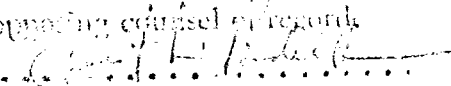
The Commission's Order No. R-5332-A is legally supportable in all respects.

Respectfully submitted,



ERNEST L. PADILLA
Assistant Attorney General
Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501
Telephone: 827-2741

I hereby certify that on the
3.3.88 day of May, 1988, a copy of the fore-
going pleading was mailed to
opposing counsel or report.



April 28, 1980

C & K Petroleum, Inc.
P. O. Drawer 3546
Midland, Texas 79702

Dear Sirs:

I have chosen to initiate this contact to you because of the inconsistency of your handling of my mineral interests in the C & K Carlsbad 13 No. 1 Well, Eddy County, New Mexico, pooled by the New Mexico Oil Conservation Division under Order R-5332. Your protection of my correlative rights has deteriorated from bad to worse.

C & K (and the New Mexico Oil Conservation Division) has constantly ignored my rights of ownership. You have varied Mr. Bill Taylor's statements of my position concerning our mutual desires to the extremes of elevating his statements to attorney status on the one hand, to the other extreme of totally ignoring his statements on my behalf -- thereby placing my interests in whatever category best benefited C & K.

Mr. Bill Taylor has presented me with information, letters and documents which indicate C & K Petroleum has and continues to violate my rights, many of which are delegated under the NMOCD Order R-5332 and New Mexico statutes. I contend:

1. C & K has not properly billed nor accounted to me for well costs and production.
2. C & K has failed to pay me any royalties or working interests. I have reason to believe some of my monies are in the American Bank at Carlsbad, N.M. I have demanded any money escrowed there in my name but have not been afforded any payment nor statement of amount. I understand Mr. Thompson of C & K has testified under oath that only those who would not sign C & K's division order or had an ownership question were having payment withheld. Mr. Taylor has shown me documents evidencing C & K's acknowledgment of my ownership interest, so that is not a problem. C & K has never sent me a division order for signature or consideration. Consequently, Mr. Thompson's statement is false, made to cover up C & K failures.
3. C & K has failed to allow my participation in drilling the well, violating several provisions of NMOCD Order R-5332 in doing so.

4. C & K has, without notification to me or justification therefor, advised the well's gas purchaser, Transwestern Pipeline, that sale of my gas required a separate contract between Transwestern and myself. This again violates my correlative rights under NMOCD Order R-5332. To prevent economic waste concerning my share of gas production, I have signed a direct contract with Transwestern.

Please be advised I expect immediate action on your part to allow and require:

1. My participation in the well, with past production to pay my share of drilling costs, and no claim on any penalty;
2. Payment of all monies due me from my royalty and working interest share of production, along with interest thereon, whether held by the American Bank at Carlsbad, N.M. or elsewhere; and
3. Proper accounting for costs and production.

Otherwise, I must consider a course of action in the courts as presently undertaken by Mr. Taylor. I understand my rights have been violated more than his.

s/William A. Page, Jr.

William A. Page, Jr.

cc: File

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

American Bank
P. O. Box 1689
Carlsbad, New Mexico 88220
Attention: Jerry Jones



October 4, 1979

Mr. Bill Taylor
512 Welshire
Carlsbad, New Mexico 88220

Re: C&K Carlsbad No. 13-1
New Mexico Oil Commission
Division Order R-5332

Dear Mr. Taylor:

Your letter of August 27, 1979, requesting information as to the status of the payout provisions on the above referenced property has been routed to my office. Our records indicate that the property in question paid out on April 17, 1979 (see attached). All monies attributable to the royalty and revenue interest owners (at the appropriate after pay-out interests) have been deposited in a special escrow account as ordered by the New Mexico Oil Commission.

Very truly yours,

Allan Korsakov
Controller

AK/mm

Attachments

cc: New Mexico Conservation Dept. ✓
P.O. Box 2088
Santa Fe, New Mexico 87501
Attn: J.D. Ramey

C & K PETROLEUM, INC.
CARLSBAD #13-1 PAYOUT STATUS
AUGUST 1, 1978 THROUGH APRIL 17, 1979

	<u>I.D.C.</u> <u>L & W Equipment</u>	<u>Lease Operator</u> <u>Expense</u>	
Balance to be recovered at July 31, 1978			\$ 55,637.00
Expenditures:			
August, 1978	\$(2,149.00)	\$ 771.00	
September, 1978		383.00	
October, 1978	103.00	511.00	
November, 1978	432.00	353.00	
December, 1978		1,759.00	
January, 1979		524.00	
February, 1979	1,454.00	370.00	
March, 1979		351.00	
April, 1979	293.00	52.00	
Adjustment for overhead stipulated by the courts		(845.00)	
Total Cost	133.00	4,229.00	
WI Applicable to Payout	.1418597	.1418597	
WI Cost	19.00	600.00	
120% Cost Recovery	<u>2.2</u> 42.00	<u>1.00</u> 600.00	<u>642.00</u>
Total to be recovered			\$ 56,279.00
Income (Net of Taxes and Royalties thru April 17, 1979):			
August, 1978	61,868.00		
September, 1978	52,404.00		
October, 1978	53,722.00		
November, 1978	50,337.00		
December, 1978	56,260.00		
January, 1979	53,467.00		
February, 1979	47,420.00		
March, 1979	51,162.00		
April, 1979	<u>27,963.00</u>		
	454,603.00		
NMI Applicable to Payout	<u>.1241272</u>		
Total Income Applicable to Payout			\$(56,429.00)
Balance Over Recovered at April 17, 1979			<u>\$(150.00)</u>

CARLSBAD #13-1

PAYOUT

	<u>IDC</u> <u>I. & W Equipment</u>	<u>Lease Operator</u> <u>Expense Thru 7/78</u>	<u>Total</u>
Total Costs	\$548,763.35	\$8,424.80	\$557,188.15
Adjusted Material Costs	3,140.52	-	-
Total Adjusted Costs	551,903.87	8,424.80	-
WI Applicable to Payout	.1418597	.1418597	-
WI Costs	78,292.92	1,195.14	-
120% Cost Recovery	2.2	1	-
Total to be Recovered	172,244.42	1,195.14	174,439.56
Income (Net of Taxes and Royalties thru 7/78)		\$949,046.20	
NMI Applicable to Payout		.1241272	
Total Income Applicable to Payout		117,802.45	117,802.45
Balance to be Recovered at July 31, 1978			<u>\$ 55,637.11</u>

Schedule 1

Month	As Charged		As S/B Charged	
	Drilling Overhead	Producing Overhead	Drilling Overhead	Producing Overhead
August, 1978	\$ -	\$ 519.00	-	\$ 150.00
September, 1978	-	232.00	-	150.00
October, 1978	-	232.00	-	150.00
November, 1978	-	232.00	-	150.00
December, 1978	-	232.00	-	150.00
January, 1979	-	232.00	-	150.00
February, 1979	-	232.00	-	150.00
March, 1979	-	232.00	-	150.00
*April, 1979	-	52.00	-	150.00
Total As Charged	-	\$2,195.00		
Total As Should Be Charged			-	\$1,350.00

Over (Under) Charged
Producing Overhead \$(845.00)

Total \$(845.00)

Source:

Well File Copy - Property Expenditure Statement.

*Note:

The auditor adjustments were reflected in this month's property expenditure statements. Actual April figures were computed by backing out these adjustments. See Schedule II.

Schedule II

	<u>I.D.C.</u>	<u>L.O.E.</u>	<u>Total</u>
Net Credit per April, 1979, Expenditures Statement	\$(19,738.00)	\$ (1,226.00)	\$(20,964.00)
*Add back: Credits resulting from H. Gene Brown & Associates	<u>20,295.00</u>	<u>1,278.00</u>	<u>21,573.00</u>
Actual Charges for April, 1979	<u>557.00</u>	<u>52.00</u>	<u>609.00</u>
Proration of Expenditures through April 17, 1979 (17/30x\$609.00)	<u>\$ 293.00</u>	<u>\$ 52.00</u>	<u>\$ 345.00</u>

Source:

Well File Copy - Property expenditure statements for April, 1979.

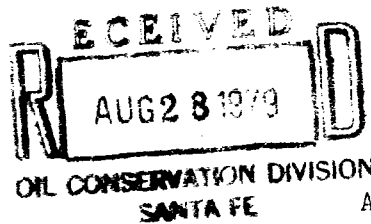
*The credits resulting from H. Gene Brown and Associates are reflected in the payout balance as of July 31, 1978, but they were not mechanically processed by the Joint Interest department until April, 1979. To avoid taking these credits twice, adjustments for H. Gene Brown & Associates were added to the net credits per the property expenditure statements for April, 1979. The actual charges for the month of April, 1979 were \$609.00.

CARLSBAD #13-1
LEASE OPERATING EXPENSE

Month	Overhead 01	Pumping 02	Misc. Service 03	Minimum Royalties 04	Legal Expenses 05	Salt Water 06	Company Labor 07	Total
August, 1978	\$ 519.00	\$ 130.00	\$ 112.00				\$ 10.00	\$ 771.00
September, 1978	232.00	130.00					21.00	383.00
October, 1978	232.00	130.00	14.00			\$ 73.00	62.00	511.00
November, 1978	232.00	130.00					(9.00)	353.00
December, 1978	232.00	130.00	1,397.00					1,759.00
January, 1979	232.00	130.00	1.00			96.00	65.00	524.00
February, 1979	232.00	130.00					8.00	370.00
March, 1979	232.00	130.00					(11.00)	351.00
April, 1979	52.00							52.00
	<u>\$2,195.00</u>	<u>\$1,040.00</u>	<u>\$ 1,524.00</u>	<u>-</u>	<u>-</u>	<u>\$169.00</u>	<u>\$ 146.00</u>	<u>\$5,074.00</u>

Total	\$ 5,074.00
Less Adjustment	(845.00)
L.O.E. per	
P.O. Schedule	<u>\$ 4,229.00</u>

Source:
Well File Copy - Property Expenditures statement.



August 27, 1979
512 Welshire
Carlsbad, NM 88220

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

Re: Orders R-5332 & R-5332-A

Dear Division:

Enclosed is a copy of a letter to C&K Petroleum, Inc. demanding their payment of nonconsent interests share of gas production from the C&K Carlsbad 13, No. 1 Well, force pooled under NMOCD Order R-5332. A copy is also being sent to Transwestern Pipeline, the common gas purchaser of the well.

The NMOCD's attention is also called to two efforts at deception (fraud perpetrated, perjury?) that C&K Petroleum, Inc. exercised upon the Commission and Taylor (& Page) through the September 11, 1978 hearing of Case 6289; thereby maintaining and promoting C&K unjust retention and use of nonconsent force pooled owners monies: (1) the failure of C&K to establish an escrow account per Provision 12 of Order R-5332, contrary to statements of compliance by C&K representation (facts called to the Division's attention by Taylor in prior letters); and (2) C&K continued use of their acknowledged erroneous accounting as the basis of accounting statements to nonconsent, forced pooled owners.

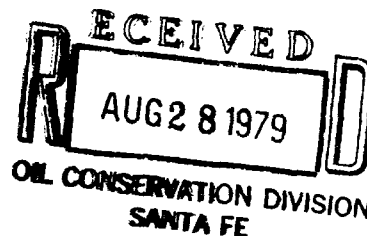
C&K testimony and presentation of September 11, 1978 emphasized the formation of an escrow account per Provision 12 and a correction of their accounting to the "independent" accounting of the Brown firm with C&K previous accounting no longer valid (Sept. 11 Trans. Pages 164 & 165). The Brown accounting is only partly incorporated in C&K present accounting and will deprive Taylor (& Page), forced pooled owners, of thousands of dollars of their share of the well.

These violations constitute waste of our estate as defined in the letter to C&K, violates our correlative rights, and violates the NMOCD's Order R-5332. The Commission relied upon C&K's testimony for Finding (15) of Order R-5332-A. I suggest the NMOCD reconsider the facts of C&K's past disregard for orders, regulations, and statutes, consider the reservation of Finding (16) of R-5332-A in light of major promised corrections not undertaken, and thereafter undertake proper, just, and legal enforcement and action as is its delegated responsibility.

Sincerely,

Bill Taylor

Xerox: Tom Martin, attorney
Enclosure



August 27, 1979
512 Welshire
Carlsbad, NM 88220

Mr. David E. Bott
Partnership Supervisor
C&K Petroleum, Inc.
1 Houston Center
Suite 2600
Houston, Texas 77002

Re: C&K Carlsbad 13 No. 1 Well;
New Mexico Oil Commission Division
Order R-5332

Dear Mr. Bott:

Please be advised that all C&K Petroleum, Inc. accounting to Bill Taylor indicates that C&K has not only recovered Taylor (& Page) share of the cost of C&K Carlsbad 13, No. 1 Well, but also exceeded the 120% penalty of the New Mexico Oil Conservation Division's Order R-5332 (which has been determined to be unjustly applied in Order R-5332-A).

C&K is authorized to continue selling our share of the well's production subject to: (1) C&K immediately making and thereafter maintaining current, monthly payments of our share of production (C&K can have no possible claim to our share of production above the 120% penalty); (2) C&K furnishing itemized accounting of income and expenditures as such occur, or monthly; and (3) Taylor (& Page) rights to our gas in kind upon demand as agreed with C&K on November 9, 1976 and confirmed since.

If C&K continues to produce our gas and does not make payments directly to us, attention is called to Provision 12 of NMOCD Order R-5332 which orders C&K to escrow all undisbursed funds from the well to an account in Eddy County, New Mexico, subject to our demand and proof to ownership, etc. In prior force pooling, the NMOCD has held that the well is still a pooled unit although payout has occurred.

If working interest monies are not speedily forthcoming and compliance escrowing not undertaken, please make immediate and acceptable arrangements with the NMOCD and Taylor (& Page) to immediately cease withdrawing our share of the well's gas and effect an immediate and visible reduction in the rate of withdrawal of gas from the well to reflect same. Taylor (& Page) will then make arrangements with a purchaser to purchase, regain, and maintain Taylor (& Page) share of production and protect our rights.

The courts have held that depletion of gas and/or oil from an estate without just recompense to the owner thereof constitutes waste of that estate, damaging the owner thereof. To protect our correlative rights to gas production and prevent waste, time is of the essence in your determination. Delay caused by C&K manufactured conditions not only works a hardship upon

Taylor letter of Aug. 27, 1979
Page 2

us, but does not allow Taylor (& Page) the full opportunity of private enterprise as provided for and built into the FERC's pricing structure for natural gas, again damaging us.

Prior NMOCD orders have required the operator's payment to nonconsent owners for their share of production after well payout subject only to agreement of nonconsent owners to repay any overpayment by operator caused by a Federal price rollback. Taylor's willingness to be obligated thusly is a matter of record and sworn testimony before the NMOCD and is hereby confirmed. Any other potential, possible, privately negotiated document between C&K and ourselves has no bearing upon C&K payment of nonconsent force pooled owners share of well production to nonconsent owners.

A copy of this letter is being sent to the NMOCD as official notice to them of the present status of the well and existing conditions as require their monitoring and such authoritative action undertaken as is outlined and required in the rules and regulations of the NMOCD and New Mexico statutes; notwithstanding no rights of Taylor (& Page) to pursue their rights in the courts are being relinquished.

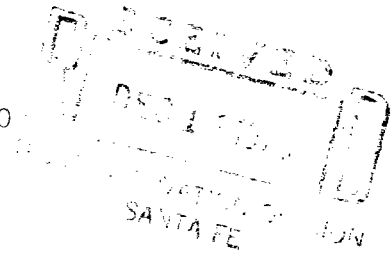
Sincerely,

A handwritten signature in cursive script that reads "Bill Taylor".

Bill Taylor

Xerox: NMOCD
Tom Martin, attorney
Transwestern Pipeline

December 10, 1979
512 Welshire
Carlsbad, NM 88220



Mr. Ernest L. Padilla
General Counsel,
New Mexico Oil Conservation Division
P.O. Box 2088
Santa Fe, New Mexico 87501

Dear Mr. Padilla:

I am unaware of any contested production and cost accounting of the C&K Carlsbad 13 No. 1 Well presently before the courts.

I rephrase my second question of November 26, 1979 to remove any possible involvement with present court action: Does any New Mexico Oil Conservation Division's force-pooled well's definite payout, even beyond any applicable penalty, vacate, terminate, or cause to cease pooling provisions and consequently the New Mexico Oil Conservation Division's jurisdiction or arbitrator position over subsequent accounting between the producer and working and royalty interests? How would erroneous accounting be corrected once a force-pooled well has paid out if correction is not undertaken voluntarily by the operator?

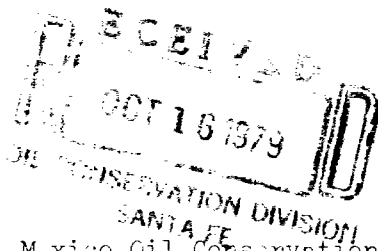
What provisions of the common force-pooling orders terminate with the well's total payout of costs?

These are questions concerning your basic policy and should be able to be answered without partisan discussion, although I have considerable evidence the NMOCD has engaged in such with C&K Petroleum, Inc. and has not made the details available to me upon my request.

Again, in the absence of an answer from you on the above questions, I will assume the NMOCD no longer claims or desires to exercise jurisdiction over accounting after well payout.

Sincerely,

Bill Taylor



October 17, 1979
512 Welshire
Carlsbad, NM 88220

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

Dear Division:

Thank you for your aid in obtaining some corrections in accounting methods from C&K Petroleum, Inc. per my letter request of August 27, 1979. I would appreciate very much a copy of the correspondence from yourselves to C&K Petroleum requesting the corrections. I understand the correspondence was either by Mr. Ramey or at his direction.

Enclosed is a copy of a letter to Mr. Houston of C&K Petroleum for your records. The escrow account of royalty and working interest is still in violation of Provision 12 of Order R-5332 and needs your attention. C&K acknowledged they do not contest my mineral ownership, even accepting an exhibit of their acknowledgment without contest (hearing 6289). The problem is not one of adjudicating titles but of violation of said NMOCD Order's Provision 12.

Sincerely,

Bill Taylor

Bill Taylor

Enclosure
Xerox: Tom Martin



Mr. D.H. Houston
Vice-President, Finance
C&K Petroleum, Inc.
1 Houston Center
Suite 2600
Houston, Texas 77002

Re: C&K Carlsbad 13 No. 1 Well
Gas and Escrow

Dear Mr. Houston:

I have received your letter of October 3, 1979 with notice of escrow deposits amounting to \$53,472.11 for my share of royalty and working interest (April through August, 1979) monies from gas sales from the C&K Carlsbad 13 No. 1 Well.

I have again made unsuccessful demand to the American Bank of Carlsbad, New Mexico for my share of the escrow account per Provision 12 of the New Mexico Oil Conservation Division Order R-5332. The account is still not in compliance with said provision. Please make needed corrections and inform me. C&K efforts to illegally maintain control over my monies continues to work unnecessary, embarrassing financial and time consuming hardships upon Taylor as well as violating New Mexico Statutes and NMOCD Orders and Regulations.

I request C&K's specific, detailed conditions for release of my (& Page's) escrowed monies. You might also state specific, detailed conditions under which C&K would like to continue marketing our share of the well's production if Taylor and Page are willing to accept such conditions. A local market for our gas is being considered as C&K has been made full aware of the probability since October 12, 1976.

Sincerely,

Bill Taylor

Bill Taylor

Xerox: Tom Martin
NMOCD



600 C & K PETROLEUM BUILDING
POST OFFICE DRAWER 3546
MIDLAND TEXAS 79702
(915) 683-3311

June 16, 1978

Mr. Bill Taylor
512 Welshire
Carlsbad, New Mexico 88220

Re: Carlsbad "13" No. 1 Well
Eddy County, New Mexico

Dear Mr. Taylor:

When I wrote you on May 19, 1978, I told you I would ask our accounting department to give me a record of the monies now being held in suspense for your account. They have now responded to my inquiry and tell me that as of the May 1978 accounting period, which would include production through April, there was \$12,751.82 being held in suspense for payment to you. They also advised that another payout statement is in the process of being prepared and should be sent to you very soon.

I have not heard from you since my letter of May 19. We are anxious to conclude this matter and begin making payments to your account. I do feel that the differences between us could be quickly resolved if you put your attorney in touch with our attorney. We certainly want you to receive everything that is rightfully yours, but the people in our industry have found through many years of experience that we need certain legal protections in making payment to the royalty and working interest owners. We are only asking for the generally accepted protection given to those who disburse the proceeds from oil and gas runs. I hope we will hear from you soon.

Yours very truly,

C & K PETROLEUM, INC.

A handwritten signature in black ink that reads 'G. C. Thompson'.

G. C. Thompson,
Manager of Production

GCT/meb

cc: Land Department
cc: Martin L. Allday
cc: Revenue Accounting

July 7, 1978
512 Welshire
Carlsbad, NM 88220

Mr. G. C. Thompson
C&K Petroleum, Inc.
P. O. Drawer 3546
Midland, Texas 79702

Dear Mr. Thompson:

I have this day received your letter dated June 16, 1978. I am unable to account for the period of elapsed time between your date and arrival. Thank you for the information; I have been awaiting it.

My attempts to satisfy your desire for a Division Order with the Division Order I sent to you on May 3, 1978 with portions crossed out was met with solid disapproval of my attorneys and contributed to differences between us.

I again state my position that C&K Petroleum, Inc. has never allowed me the opportunity of participating in the well; and that the suspension of my royalty interests is in violation of Order R-5322 of the NMOCD.

I am overruling my attorneys desires to pursue these facts in civil court and am requesting a hearing before the NMOCD first.

I would respectfully request you to relay to Mr. E. W. Hooper that the penalty for perjury before the NMOCD at any hearing is a minimum of six months to a maximum of five years imprisonment in the state penitentiary. I have no present desire that he should face such punishment and would suggest he refresh his memory concerning our relations.

I will most likely (but such is not promised) attempt to contact Mr. Bruce McIntire of your Houston office once I obtain a hearing date from the NMOCD.

Sincerely,



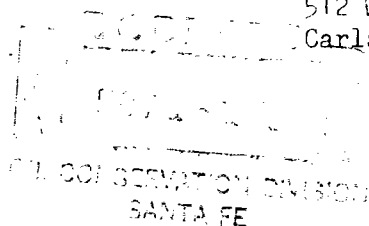
Bill Taylor

Xerox copy: NMOCD

Enclosed copy Thompson letter of 6/16/78.

October 31, 1979
512 Welshire
Carlsbad, NM 88220

Mr. G. C. Tompson
C & K Petroleum, Inc.
P. O. Drawer 3546
Midland, Texas 79702



Re: C&K Carlsbad 13 No. 1 Well

Dear Mr. Tompson:

I appreciate your letter of October 25, 1979.

C&K's accounting has not been nor is it currently acceptable with the figures available to me. More detailed explanation as requested of C&K might resolve some of the problems. However, C&K's acknowledged errors, C&K's failure to make promised corrections to erroneous accounting until so prompted over one year later, and C&K's consistent variations of cost and income figures are not conducive to an attitude of trust in C&K accounting.

Your letter of October 25, 1979 quotes: "items of controllable material and unusual charges and credits shall be separately identified and fully described in detail." My requests of Mr. Korsakov are for basically these. C&K should be able to understand that C&K current charges seeking the risk charges, applicable (?) only to drilling and equipping for production, on the well that has been drilled, equipped, and producing for over two and one-half years constitutes unusual charges and needs identifying and full description per your own accounting procedure. Prior orders of the NMOCD have terminated applicable risk applications with the operators compliance with provision five of their pooling orders.

The accounting procedure from which you quote also states C&K will "bill Non-Operators on or before the last day of each monthfor the preceding month", accompanied by the accounting statement your letter references. This is accounting as promised by Mr. Kennedy and I have requested from C&K prior times and once again from Mr. Korsakov. C&K has not complied. Mr. Houston has tendered a monthly report of a royalty deposit since I requested it of him, but it makes no other accounting. Only one recent deposit report has been made for my working interest portion, C&K states as accumulating since April 1979, and certainly does not constitute monthly reporting on that.

Urgent financial pressures prompted my sending and C&K receiving a division order such as you outline to no avail. The contents accepted verbally tendered and negotiated terms as offered by C&K personnel and Mr. Kennedy in conference at Carlsbad, New Mexico. C&K did not make payments of my royalty interests nor bring their savings account into compliance with the escrow provisions of the NMOCD's Order R-5332. C&K's conditions that "have in no way changed" are too unstable. Please state in writing the exact, minimum details

Mr. G. C. Tompson
October 31, 1979
Page 2

of a division order which C&K would accept. Time is of the essence for your reply.

I accept C&K's acknowledgement of my freedom to negotiate my own contract for marketing my gas. This was negotiated in our November 9, 1976 agreement to permit a local market for my gas. C&K waited six months to provide figures and a statement of my payout, including contested monies. C&K's accounting shows it to have occurred on April 17, 1979. It should be understood that I am in no way accepting your accounting which includes contested items. To prevent waste, I will now need a reasonable time to contract my gas. The usual monthly and working interest accounting I requested and was promised by C&K but which was not furnished would have afforded me adequate knowledge and opportunity to effectively, timely, contract my gas without waste or violating my correlative rights.

I expect C&K co-operation in protecting my interests until I can avail myself of the new disposition of my gas. C&K has committed itself to protect my correlative rights and prevent waste of my gas as one condition for the NMOCD pooling the well. I will inform C&K when I desire to exercise my right to sell the gas myself. I will then make monthly payments to C&K for my share of substantiated operating costs as exist under NMOCD Order R-5332. Which day will C&K cease selling my gas if I contract it to a desired market? Would it need to be 7 a.m. on the first day of the month?

If, as your letter indicates, my gas is not included in the future C&K---Transwestern contract due to my not advising C&K in time to so include it, then Transwestern will have no authority to transmit my share without my direct authorization as such would be unlawful and violations of my correlative rights. If I am damaged through non-production or waste of my gas due to inadequate time for me to contract my gas, C&K must bear its full share of the responsibility along with anyone dealing with my share of the well's production.

I would appreciate a copy of the proposed contract C&K is negotiating with Transwestern, as offered in your letter.

Sincerely,

Bill Taylor

Bill Taylor

Xerox:

Tom Martin
NMOCD
D. H. Houston
Allan Korsakov
Bill Kennedy
Transwestern Pipeline Co.



600 C & K PETROLEUM BUILDING
POST OFFICE DRAWER 3546
MIDLAND, TEXAS 79702
(915) 683-3311

October 25, 1979

Mr. Bill Taylor
512 Welshire
Carlsbad, New Mexico 88220

Re: C & K Carlsbad "13" No. 1 Well

Dear Mr. Taylor:

Your letter of October 10 addressed to Mr. Allan Korsakov, and your letter of October 12 addressed to Mr. D. H. Houston have both been forwarded to me for reply. Please consider this a reply to both letters since they both tend to address the same problems.

In reference to the payout statement that accompanied Mr. Korsakov's letter of October 4, the corrections you refer to were shown in an effort to make clear the tie-in with the accounting presented to and accepted by the NMOCD at the hearing held September 11, 1978. The payout statement goes only to April 17, 1979, since this is the date we calculate payout to have occurred. We have been giving you a report of deposits made to the escrow account in the American Bank of Carlsbad, and we will continue to give you this report. Any further accounting will have to await the decision of the court on our appeal of the Commission's Order. Because many entries will have to be backed out and rebilled on the new interests, we do not want to proceed with this work until we have the direction of the court. With the direction of the court we will proceed as rapidly as is feasible.

In your letter to Mr. Korsakov you request a great deal of support information for billings. Please understand that as operator we must treat all of the working interest owners alike; we do not have time to give any one working interest owner special information. Under the terms of our Accounting Procedure which is attached to and a part of the Operating Agreement it provides that "bills will be accompanied by statements which identify the authority for expenditure, lease or facility, and all charges and credits, summarized by appropriate classifications of investment and expense, except that items of controllable material and unusual charges and credits shall be separately identified and fully described in detail." When billings including your interest are prepared, they will be prepared in this same manner. Such billings will be furnished to you for all months beginning with the time of payout up to the date of billing, and monthly billings will be sent for each producing month thereafter. If you need any further information, you are entitled to the same rights as

Mr. Bill Taylor
October 25, 1979
Page 2

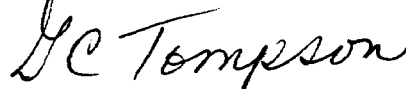
any other working interest owner. Again, quoting from the Accounting Procedure, under Paragraph I-5, "Audits": "A non-operator, upon notice in writing to operator and all other non-operators, shall have the right to audit operator's accounts and records relating to the joint account for any calendar year within the twenty-four (24) month period following the end of such calendar year;" ... "Operator shall bear no portion of the non-operator's audit cost incurred under this paragraph unless agreed to by the operator." This is the way such audits are handled in the industry. We will open our books to you or your representative during working hours to review the accounts for any period during the past two years, but such audit will be at your expense.

In your letter to Mr. Houston you indicate you feel our accounting of the escrow account is not correct. We know of no errors, but we will review any problems you bring to our attention. In your final paragraph to Mr. Houston you ask that we indicate the detailed conditions for release of your money held in escrow. These conditions have in no way changed. So far as the royalty monies are concerned, they will be released immediately upon receipt of a signed Division Order. We have previously furnished a Division Order. If you no longer have it we will be glad to send you another, and we have indicated our willingness to negotiate the language of the Division Order. To release the money in escrow that is due to your working interest, we would want a signed Division Order and a signed Operating Agreement. We have also furnished you an Operating Agreement. Again, within reason we can negotiate the language of specific paragraphs.

So far as the marketing of your gas is concerned, C & K stands ready to market it at your request, or you are free to negotiate your own contract as you have frequently indicated you might wish to do. Our contract with Transwestern was a two year contract, and we are in the process of negotiating a new contract. With authority from you we will include your gas under the Transwestern contract. If we have no direction from you, it will not be included. We will be glad to ask Transwestern to send you a copy of the contract we intend to sign so that you can make your own judgment as to its terms. If you prefer, we will ask Transwestern to contact you so that you may negotiate your own terms.

Yours very truly,

C & K PETROLEUM, INC.



G. C. Tompson, Vice President
Engineering and Production

GCT/meb

Distribution List Attached

W. T. Martin, Jr.
P. O. Drawer N
Carlsbad, New Mexico 88220

Joe Ramy
New Mexico Oil Conservation Department
P. O. Box 2088
Santa Fe, New Mexico 87501

Jason Kellahin
Kellahin & Fox
P. O. Box 1769
Santa Fe, New Mexico 87501

D. H. Houston
Allan Korsakov
David Capron
C & K Petroleum, Inc.
One Houston Center - Suite 2600
Houston, Texas 77002



600 C & K PETROLEUM BUILDING
POST OFFICE DRAWER 3546
MIDLAND, TEXAS 79702
(915) 683-3311

November 8, 1979

Mr. Bill Taylor
512 Welshire
Carlsbad, New Mexico 88220

Dear Mr. Taylor:

I have your letter of October 31, 1979. I feel that I covered most of the questions raised in your first three paragraphs in my letter of October 25. C & K went to considerable cost and expense to prepare a complete audit of the drilling costs of the Carlsbad "13" well. The results of this audit were furnished to you and to the New Mexico Oil Conservation Department at the hearing before the NMOCD on September 11, 1978. Further, we have indicated that our books are open to you as they are open to any working interest owner as provided in the terms of our Operating Agreement. Since we have not billed you for any operating expenses, it seems premature to criticize these billings. You may be sure complete billings will be forthcoming when we have the clarification of the court as to the period of time involved.

You indicate in your fourth paragraph that you have sent us a division order, the terms of which were negotiated with C & K personnel and Mr. Kennedy in a conference in Carlsbad, New Mexico. We understood at the conference in Carlsbad that your attorney would prepare such a division order and would forward it to us for our approval, but we have not, to my knowledge, received any suggested division order, nor have we received the Operating Agreement it was agreed your attorney would prepare. If something has been sent to us, I suggest you send us another copy. We will certainly give it our immediate attention. If you need another copy of our division order or our Operating Agreement, we will be glad to send them to you at your request.

I am asking Mr. Fred Larson with Transwestern Pipeline Company to send you a copy of the contract we are signing for the sale of our gas. I would suggest that you move as rapidly as possible to conclude a contract for the sale of your share of the gas.

Yours very truly,

C & K PETROLEUM, INC.

A handwritten signature in dark ink, appearing to read 'G. C. Thompson', is written over the typed name.

G. C. Thompson, Vice President
Engineering and Production

GCT/meb

cc: NMOCD
Martin L. Allday
Jason Kellahin
Tom Martin
Allan Korsakov



BRUCE KING
GOVERNOR

LARRY KEHOE
SECRETARY

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

August 8, 1979

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

The Honorable John B. Walker
District Judge, Fifth Judicial
District
P. O. Box 1626
Carlsbad, New Mexico 88220

Re: C & K Petroleum, Inc. v.
New Mexico Oil Conservation
Commission et al., Eddy
County Cause Nos. CV-78-415
and CV-78-417 (Consolidated)

Dear Judge Walker:

I have just discovered, much to my chagrin and embarrassment, that I have made what could be a misleading and erroneous conclusion in the brief which I filed on behalf of the Oil Conservation Commission in the above referenced cases.

On page 6 of the Commission's brief, following a listing of facts, in the second full paragraph, I concluded that "the drilling of the well was not commenced until more than a year later." Closer examination of the relevant dates indicates that the period of time between August 9, 1976, the date of the compulsory pooling hearing when Taylor received an AFE from C & K, and January 16, 1977, the spud date of the well, reveal that the actual time lapse is somewhat in excess of 5 months.

Nonetheless, I believe that the point which I stressed remains applicable.

I regret any confusion that I may have caused by this error.

Very truly yours,

ERNEST L. PADILLA
General Counsel

ELP/jc

cc: Jason Kellahin, Esquire
W. T. Martin, Jr., Esquire

FIFTH JUDICIAL
EDDY

TESCHENDORF LYNN H.
P. O. BOX 2088
SANTA FE NM 87501

CASE STATUS REPORT

CASES TO BE TRIED FROM .

STYLE OF CASE	JUDGEMENT ENTERED OR CASE SETTLED	JURY OR NON-JURY	READY FOR TRIAL (YES OR NO)	ESTIMATED TIME TO TRY (HOURS)	ADDITIONAL DEPOSITIONS NECESSARY (YES OR NO)	PRE TRIAL CONFERENCE REQUESTED (YES OR NO)	DAYS TILL READY	NAME OF TRIAL ATTORNEY	NOT READY FOR TRIAL	DATES TRIAL ATTORNEY UNAVAILABLE FOR TRIAL	OTHER COMMENTS
CV7800415 LC & K PETROLEUM, INC VS. N.M. ENERGY & MINERALS DEPT											(1) Counsel for Oil Conservation Commiss- ion is Ernest L. Padilla, P. O. Box 2088, Santa Fe, New Mexico 87501
CV7800417 APL OF BILL TAYLOR FOR OCC6289 VS.											(2) Upon stipulation of parties, consoli- dated cases being submitted to Judge John B. Walker on briefs. Petitioners briefs due on July 18, and Respondents Oil Conservation Com- mission brief is due 10 days thereafter.

CASE STATUS REPORT

TO: TESCHENDORF LYNN H.
P. O. BOX 2088
SANTA FE NM 87501

DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT FOR THE COUNTY OF EDDY

RETURN DATE: OCTOBER 15, 1979 CASES TO BE TRIED FROM: DECEMBER 1, 1979 TO: FEBRUARY 29, 1980

STYLE OF CASE	JUDGMENT ENTERED	READY FOR TRIAL	NOT READY FOR TRIAL			DATES NOT AVAILABLE	OTHER COMMENTS
			ADDITIONAL DISCOVERY	DAYS TILL READY	NAME OF TRIAL ATTORNEY		
CV7800415 LC & K PETROLEUM, INC VS. N. M. ENERGY & MINERALS DEPT							
CV7800417 APL OF BILL TAYLOR FOR OCC6289 VS.							

These cases involve appeals from orders of the Oil Conservation Commission, deal with similar facts and legal issues, and have been consolidated on appeal.

These cases have been submitted to District Court Judge John B. Walker on briefs and should require no further trial time unless Judge Walker requests oral arguments.

Attorney: ERNEST L. PADILLA
P O BOX 2088
SANTA FE NEW MEXICO 87501

(Replacement for Lynn H. Teschendorf)

KELLAHIN and KELLAHIN

Attorneys at Law

500 Don Gaspar Avenue

Post Office Box 1769

Santa Fe, New Mexico 87501

July 27, 1979

Jason Kellahin

W. Thomas Kellahin

Karen Aubrey

Telephone 982-4285

Area Code 505

Honorable John B. Walker
District Judge, Fifth Judicial District
P. O. Box 1626
Carlsbad, New Mexico 88220

Re: C & K Petroleum, Inc., v. New
Mexico Energy and Minerals Dept.,
et al., Nos CV-78-415, CV-78-417

Dear Judge Walker:

In accordance with the order previously entered in
the above consolidated cases, I am forwarding our
reply brief to the brief of Bill Taylor. The
original of this brief has been forwarded to the
Clerk of the District Court for filing.

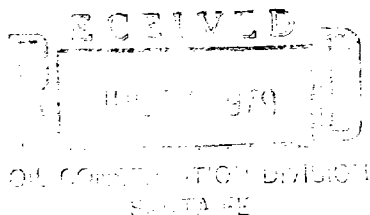
Sincerely,



Jason Kellahin

Encl.

cc: W. T. Martin Jr., Esquire
Ernest Padi/la, Esquire
Mr. Gilbert C. Tompson



RECEIVED
JUL 11 1979
COUNTY OF EDDY

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

C & K PETROLEUM, INC.,
A CORPORATION,
Petitioner

vs.

NEW MEXICO ENERGY AND
MINERALS DEPARTMENT, OIL
CONSERVATION DIVISION,
AND BILL TAYLOR,
Respondents,

No. CV-78-415
No. CV-78-417
(Consolidated)

and

IN THE MATTER OF THE APPLI-
CATION OF BILL TAYLOR FOR
ENFORCEMENT AND AMENDMENT
OF ORDER NO. R-5332, EDDY
COUNTY, NEW MEXICO, OIL
CONSERVATION COMMISSION
CASE NO. 6289

REPLY BRIEF OF C & K PETROLEUM, INC.
TO BRIEF OF BILL TAYLOR

C & K Petroleum, Inc., Appellant in Case No. CV-78-415,
as provided by the Order of the Court entered July 11, 1979,
submits this Reply Brief to the Brief in Support of Bill
Taylor's Application for Review.

Since the brief in chief of Bill Taylor did not address
the issues raised in C & K's Petition for Review, C & K will
be deprived of the opportunity to respond to any contentions
that might be made to its Petition in any answer brief filed
by Taylor.

STATEMENT OF FACTS:

Taylor's Statement of Facts does not materially differ
from the statement made by C & K in its brief, however the
statement of facts submitted by C & K was somewhat more extensive.

I.

W. A. PAGE, JR., WAS NOT A PARTY TO THE PROCEEDINGS
BEFORE THE OIL CONSERVATION COMMISSION:

Bill Taylor, in his brief, alleges that the Oil Conservation Commission erred in failing to consider the rights of W. A. Page, Jr., in affording relief from the imposition of a 120% risk factor, as provided by Order No. R-5332.

It should be pointed out that W. A. Page, Jr., was not a party to the proceedings before the Oil Conservation Commission which resulted in issuance of Order No. R-5332-A from which these appeals have been taken, nor is he a party to these appeals.

Bill Taylor did purport to represent W. A. Page, Jr. In filing the initial application Taylor stated:

"Comes now Bill Taylor (& W. A. Page, Jr.)
as applicant * * * "

Commission Rule 1230 (copy attached as Exhibit 1) adopted pursuant to the provisions of Sec. 70-2-7, N.M.S.A., 1978 Comp., provides that applications state the name of the applicant and be signed by the applicant, or by an attorney on his behalf. As shown by the application attached to Taylor's brief, the application was signed by Bill Taylor. It was not signed by W. A. Page, Jr.,

This problem was addressed at some length by Commissioner Lucero at the hearing on August 9, 1978. At that hearing Bill Taylor attempted to represent Page, but in response to questions by Commissioner Lucero he stated he did not have written authorization to do so. (Tr. Aug. 9, 1978, pp. 11-14). As a matter of law, written authorization would have been immaterial to the question. Taylor is not an attorney (Tr. Aug. 9, p. 10). Page was not present at the hearing, nor was he represented by counsel. (Tr. Aug. 9, pp. 11, 14).

It is settled in New Mexico that representation of parties before administrative bodies constitutes the practice of law. State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc., 85 N.M. 521, 526; 514 P.2d 40 (1973). Opinion, Attorney General 58-200 (copy attached as Exhibit 2). Compare State Bar v. Guardian Abstract & Title Co., 91 N.M. 434 at 439; 575 P.2d 943, where the Court discusses what actions will constitute the practice of law. Certainly the history of this case shows it was fraught with "difficult or doubtful legal questions, which * * * reasonably demand the application of a trained legal mind", as contemplated by the Guardian Abstract case.

The Commission was fully justified in declining to permit Bill Taylor to represent W. A. Page, Jr. He, of course, had the right to represent himself, and was permitted to do so.

Apparently, however, Taylor seems to argue that the Commission, pursuant to its statutory authority, should on its own initiative have acted to protect the correlative rights of Page. As we have shown, Page sought no relief, or action of any kind from the Commission.

He did not sign or file any application with the Commission, nor did he join in the application filed by Bill Taylor. He was not present at the hearing, nor was he represented by counsel. Other than Bill Taylor's purported representation, properly forbidden, there is nothing in this record to show W. A. Page, Jr. either sought or desired any action on the part of the Commission.

II.

THE COMMISSION DID NOT ERR IN DECLINING TO GRANT A REHEARING AS TO ALLEGED CONTINUING VIOLATIONS:

Paragraph 12 of Order No. R-5332 provided:

"(12) That all proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof

upon demand and proof of ownership; that the operator shall notify the Commission of the name and address of said escrow agent within 90 days from the date of this order."

Under his Point II, Taylor contends that he learned of "new continued violations" of the above paragraph, after the hearing on September 11, 1978 and before entry of Order R-5332-A on October 17, 1978. This appears to be based on an alleged failure of C & K to provide the depository bank with escrow instructions for disbursement of funds on deposit, and in support of the allegation of continuing violations he would have this Court consider a letter written by himself dated September 20, 1978, directed to the American Bank of Carlsbad, with a note to the Commission appended thereto dated September 25, and on a letter from his counsel of record in this case, as attorney for the bank, dated September 26, 1978. These letters were not a part of the record in Case No. 6289 which resulted in the issuance of Order No. R-5332-A. They cannot now be properly considered by this Court in this proceeding, which is strictly limited to a consideration of the record before the Commission. Sec. 70-2-25 N.M.S.A., 1978 Comp., as amended by Chap. 113, Sec. 1.B., Laws of 1979; Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 373; P.2d 809 (1962); Rutter & Wilbanks Corp. v. Oil Conservation Commission, 87 N.M. 286, 532 P.2d 582 (1975).

The question of establishment of the escrow account as required was presented to the Commission, (Tr. Sept. 11, 1978, pp. 120-121, 178-179) and the Commission made a finding that while C & K had been lax in complying with this and other provisions of Order No. R-5332, this did not afford grounds for removal of C & K as operator -- the relief Taylor originally sought. (Finding (16), Order No. R-5332-A.) The Commission's finding in this regard is supported by substantial evidence,

and its ruling was in the sound exercise of its discretion and its authority under New Mexico Statutes. It should not now be disturbed by this Court.

III.

PAYMENT OF ROYALTY INTERESTS

As in all compulsory pooling orders, Order No. R-5332 provided that any unsevered mineral interest subject to the pooling order shall be considered a seven-eighths working interest and a one-eighth royalty interest "for the purpose of allocating costs and charges under the terms of this order". (Paragraph (10), Order R-5332). This conforms to the requirements of Sec. 70-2-17 C, N.M.S.A., 1978 Comp. The order made no requirements as to disbursement of this fund, which would have probably been beyond the jurisdiction of the Commission.

The question raised here, in fact, does go to the jurisdiction of the Commission. Admittedly, C & K is required to account to royalty owners for their share of production, and this requirement could be enforced in a proper action in the Court. At the time of the hearing a full accounting of production was presented (C & K Exhibits 7 and 8, Tr. Sept. 11, 1978, pp. 59-62). But the accounting was not broken down as to individual interest owners.

The question revolves around the necessity, or lack of necessity, for a signed division order. On this issue, Gilbert Thompson, Manager of Production for C & K Petroleum, Inc., testified that all interest owners who had signed a division order, had been paid for their proportionate share of production, and that Taylor, too, would be paid immediately if he would likewise sign a division order (Tr. Sept. 11, 1978, p. 116). He further testified that his company uniformly required division orders, and that he had attempted to work out a satisfactory order with Taylor (id. p. 117-118).

There are serious doubts as to the Commission's jurisdiction to direct payment of proceeds to interest owners. The Commission has uniformly, and we submit properly, declined to pass on questions of title as being beyond its jurisdiction, and more properly vested in the courts. Yet Taylor would, in effect, ask the Commission to direct payment of royalty proceeds based on his title.

Taylor discounts the need for a division order in this case, alleging there is no dispute as to his title, but that is not the entire problem. C & K, as producer, must sell the production, and must have authority to do so. It must be remembered there is no oil and gas lease involved, which would give C & K the right to sell Taylor's gas. This is a normal provision in oil and gas leases. In the absence of this provision a division order is essential to protect the interests of C & K as operator. It is also for the protection of Taylor, for in its absence, C & K could well argue that it has sold none of Taylor's gas, and his portion is still in the ground, a position we do not take at this point.

In 4 Williams, Oil and Gas Law, Sec. 701, p. 645, the text writer points out that a person charged with the responsibility for making distribution of proceeds from production could examine the title records and other instruments and make distribution in accordance with his construction of their provisions. But, he adds:

"Not infrequently, however, such instruments affecting oil and gas rights contain ambiguities, inconsistencies, or lacunae. The validity of certain claims may be in dispute. The interests of unknown parties may be involved. Under such circumstances, how should distribution be made? The person responsible for the distribution could be expected under such circumstances to seek a means of protecting himself against liability in the event of an improper distribution. And even though the person making distribution is unaware of any such ambiguity, dispute, or other difficulty, he could be expected to seek protection in the event of some future claim that payment had been made improperly."

"There is, then, an obvious need for protection of the distributor of such fund against liability for improper payment. To meet this need, instruments known as division orders and transfer orders are employed."

The writer than states a purchaser would look to the lease to determine whether the lessee could sell lessor's royalty oil (or gas). But here there is no lease to look to, and the pooling order is properly silent on this question.

Hence C & K's requirement for a signed division order is fully justified. The section of Williams, cited by Taylor, Sec. 704.8, when read in full reaches a different conclusion than that for which it was cited. The remaining language of the section reads:

" * * * Purchasers prefer not to rely on such authority; they seek to obtain a division order providing that in the event of a title dispute or failure of the parties to satisfy the purchaser of their title, the purchaser may withhold the proceeds until a suitable indemnity bond is furnished the purchaser."

The case cited by Williams in support of the above, Wolfe v. Texas Co., 83 F.2d 425 (CA 10, 1936), cert. denied, 299 U.S. 553 (1936), holds that a lessee had authority to dispose of royalty production and withhold payment pending furnishing of an abstract showing merchantable title in the lessor and until a division order has been executed and delivered by the lessor. Although there is no lease involved here, Taylor is in the position of a lessor insofar as his royalty and fractional working interest created by the Oil Conservation Commission's order is concerned.

Whether Taylor signed a division order, or not, and whether the escrowed royalty funds should now be paid in the absence of a division order, we feel was beyond the jurisdiction of the Commission, and is not now properly before the Court, which now can only review the action of the Commission in entering Order

No. R-5332-A. Certainly the Court cannot now consider matters subsequent to the entry of the order appealed from, on the basis of authority already cited here and in our brief-in-chief.

IV.

THERE IS NO MANDATORY DUTY OF THE COMMISSION TO
ASSESS PENALTIES FOR VIOLATION OF ITS ORDERS:

Under Point IV, Taylor argues that under the provisions of Secs. 70-2-28, 70-2-20, 70-2-29 and 70-2-31, there is a mandatory duty on the part of the Commission to bring suit for imposition of penalties against C & K Petroleum, Inc., for alleged violations of Commission Order No. R-5332.

Under Section 70-2-28, the Commission or division, is directed to bring a suit against any person who "is violating, or threatening to violate, any statute of this state with respect to the conservation of oil or gas, or both, or any provision of this act, or any rule, regulation or order made thereunder* * *" through the attorney general. Under the provisions of Section 70-2-20, a fine of not more than \$1,000.00 is to be imposed, upon conviction, for each violation.

If, as contended by Taylor, these provisions are mandatory, which we do not admit, his remedy is in mandamus, and not in an appeal from the order of the Commission. Such appeals are limited in scope, as we have already shown in our brief-in-chief, and the issue of assessment of a penalty is not properly before this Court.

Taylor's Point IV states that the Commission erred in failing to assess the penalty called for, but there is no authority in the Commission to assess penalty. It can only bring an action in the district court, through the attorney general, as provided by Sec. 70-2-31, N.M.S.A., 1978.

Throughout the hearing in this case, Taylor alleged numerous violations of various rules of the Commission, and of Order No. R-5332. The record is replete with these allegations. They are so numerous that it would be difficult to cite the Court to the record, but they will principally be found in the major portion of the transcript of the hearing on August 9, 1978.

Based on this the Commission was fully aware of Taylor's allegations, but apparently did not consider them well enough founded to bring any action against C & K, or to remove C & K as operator of the well involved. This is reflected by Commission Findings Nos. (15) and (16) of Order R-5332-A.

Administrative determinations are enforceable only in the manner provided by statute. Am. Jur. 2d Adm. Law, Sec. 507. These statutes have been sufficiently set out in Taylor's brief, and in none of them does it give a private citizen the right to force action by the Commission for assessment of penalties or other punitive action. If such a remedy exists it is, as we have said, by mandamus, and not by appeal from a Commission order. Nor can this Court now seek to force action by remanding the case to the Commission with directions. It must act within the bounds of the statute conferring its jurisdiction to review. State v. Carmody, 53 N.M. 367, 208 P.2d 1073 (1949); New Mexico Electric Service Co. v. Lea County Electric Cooperative, 76 N.M. 434 at 444, 415 P.2d 434 (1966).

The Commission did not, as alleged, err in failing to assess the penalty called for in Section 70-2-31 B.

V.

OTHER MATTERS:

In his Petition for Rehearing before the Commisison, and the Petition for review filed in this Court, Taylor raised other matters which have neither been set out or argued in his brief filed in this case.

Since the case has been submitted on briefs with the agreement of counsel, at the request of counsel for Taylor, we assume that matters not presented in his brief are abandoned, and we do not attempt to answer them here.

COMMISSION ARGUMENTS:

We, of course, have no way of knowing what arguments will be presented by the Oil Conservation Commission in this appeal, however there is one issue we feel may be necessary to address -- the issue of continuing jurisdiction of the Commission over its orders.

As we discussed in our brief-in-chief, the Commission in its Order No. R-5332-A made explicit findings that neither the question of waste or the protection of correlative rights was involved. On the basis of these findings we argue that the Commission had no jurisdiction to enter its Order No. R-5332-A.

It may be argued, however, that the necessary findings of waste and the protection of correlative rights will be found in Commission Order No. R-5332, and that in some ways with continuing jurisdiction of some sort vested in the Commission, these findings lend support to the later order.

This is an untenable position. In Sims v. Mechem, 72 N.M. 186, 382 P.2d 183 (1963), while the Court did not directly address this issue, the issue involved the rescission of a prior order and enactment of a new order establishing two separate proration units. In holding the order invalid because of a failure to find waste was occurring, would occur, or would be presented, the Court said (P. 189):

"But the statutory authority of the Commission to pool property or to modify existing agreements relating to production within a pool under either of these sub-sections must be predicated on the prevention of waste".

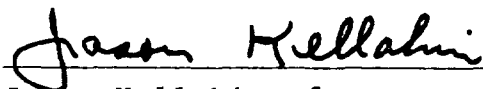
It may be argued that since Order No. R-5332-A reaffirmed Order R-5332 in all respects except as modified, no further finding as to the prevention of waste or the protection of

correlative rights is necessary. But any action of the commission must be founded upon one or both of these statutory requirements. Continental Oil Co. v. Oil Conservation Commission, supra.

Under the provisions of Section 70-2-25, N.M.S.A. 1978 Comp, Order No. R-5332 was final and conclusive. The time for any appeal had expired, and C & K, as shown by the record in this case, had acted pursuant to the provisions of the order. It was entered November 30, 1976, but it was not until June of 1978 that Taylor sought a review of the actions under the order, and its modification.

Certainly the Commission is not without authority to review and modify its prior orders, and we do not contend this authority is lacking. But it must act within the provisions of the statutes vesting it with authority to act in the first instance or it is without jurisdiction. A finding of the jurisdictional facts in the prior order cannot be relied upon to support an order modifying the prior order. Sims v. Mechem, supra; Continental Oil Company v. Oil Conservation Commission, supra; Grace v. Oil Conservation Commission, 87 N.M. 205, 531 P.2d 939 (1975).

Respectfully submitted,



Jason Kellahin, for
KELLAHIN AND KELLAHIN
P. O. Box 1769
Santa Fe, New Mexico 87501
ATTORNEYS FOR C & K PETROLEUM, INC.

CERTIFICATE

I hereby certify that a true copy of the foregoing brief was mailed to opposing counsel of record this 27th day of July 1979.


Jason Kellahin

for an agent's license to conduct an insurance business in New Mexico. If, however, one or more of the partners reside within the state then it is our belief, and you are so advised, that such a partnership meets all the residence requirements found in § 58-5-22.1 supra. In reaching such a conclusion, this office can only analogize to those cases in which for venue purposes, the residence of one or more of the partners of a partnership was held to be the residence of the partnership. See *MacKenzie v. Climax Industries*, supra, wherein are cited numerous authorities to this effect. This analogy must be made in view of the apparent absence of any court decision on this precise question. However, we feel the analogy made is a proper one. A contrary holding would in some instances lead to a ridiculous result. For example, it would make it impossible for a partnership whose membership did not all reside within the same state to ever acquire a residence. In the opinion of this office, such is not and cannot be the law.

**Attorney General Opinion
No. 58-200**

September 30, 1958

**OPINION
OF**

FRED M. STANDLEY
Attorney General

By: Joel B. Burr, Jr.
Assistant Attorney General

To: Stephen W. Bowen, President
Board of Commissioners of
the State Bar of
New Mexico
Tucumcari, New Mexico

QUESTION:

Does appearance by a layman, or an attorney in a representative capacity as an advocate in hearings before any commissioner, hearing officer, referee, board, body, committee or commission of the State of New Mexico constitute the

practice of law and require attorneys so engaged to be licensed in New Mexico or otherwise associated with resident counsel?

CONCLUSION:

Yes.

ANALYSIS:

The pertinent statutory provisions of this State in reference to the practice of law are Secs. 18-1-8, 18-1-26, and 18-1-27 of the New Mexico Statutes Annotated, 1953 Comp., and 1957 Pocket Supplement.

Sec. 18-1-8, supra, creates a Board of Bar Examiners to pass upon the qualifications of applicants before they are admitted to practice law in the State.

Sec. 18-1-26, supra, prohibits the practice of law in this State by any person unless he shall have first obtained either a temporary license, a certificate of admission, or associated himself with local counsel. This section provides in part as follows:

"No person shall practice law in any of the courts of this state, except courts of justice of the peace, nor shall any person commence, conduct or defend any action or proceeding in any of said courts unless he be an actual and bona fide resident of the State of New Mexico, and unless he shall have first obtained a temporary license as herein provided, or shall have been granted a certificate of admission to the bar under the provisions of this chapter. No person not licensed as provided herein shall advertise or display any matter or writing whereby the impression may be gained that he is an attorney or counselor at law, or hold himself out as an attorney or counselor at law, and all persons violating the provisions hereof shall be deemed guilty of contempt of the court wherein such violation

EXHIBIT 2

occurred, as well as of the Supreme Court of the state; Provided, however, that nothing in this act shall be construed to prohibit persons residing beyond the limits of this state, otherwise qualified, from assisting resident counsel in commencing, conducting or otherwise participating in any action or proceeding: ****

And lastly, Section 18-1-27, supra, likewise prohibits the practice of law without a valid license and provides for a penalty for the violation thereof. This section provides:

"If any person shall, without having become duly licensed to practice, or whose licenses to practice shall have expired either by disbarment, failure to pay his license fee, or otherwise, practice or assume to act or hold himself out to the public as a person qualified to practice or carry on the calling of a lawyer, he shall be guilty of any offense under this act (18-1-2 to 18-1-8, 18-1-24, 18-1-25, 18-1-27), and on conviction thereof be fined not to exceed five hundred dollars (\$500), or be imprisoned, for a period not to exceed six (6) months or both."

Thus, we note that there is no statutory provision in New Mexico defining what constitutes the "practice of law". Nor to our knowledge, has the term been defined by the Supreme Court of this State. However, the reports are replete with cases in other jurisdictions in which the courts have been called upon to define the term.

In *People v. People's Stock Yards State Bank*, 344 Ill. 462, 176 N.E. 901 (1931), it is said:

"Practicing as an attorney or counselor at law, according to the laws and customs of our courts, is the giving of advice or rendition of any sort of service by any person, firm or

corporation when the giving of such advice or rendition of such service requires the use of any degree of legal knowledge or skill."

In *Barr v. Cardell*, 173 Iowa 18, 155 N.W. 312 (1915), the Court said:

"We are of the opinion that the practice of law was not confined to practice in the courts of this state, but was of larger scope, including the preparation of pleadings and other papers incident to any action or special proceeding in any court or other judicial body, conveyancing, the preparation of all legal instruments of all kinds whereby a legal right is secured, the rendering of opinions as to the validity or invalidity of the title to real or personal property, the giving of any legal advice, and any action taken for others in any matter connected with the law."

The following is the concise definition given by the Supreme Court of the United States as quoted by the South Carolina Supreme Court in *State v. Wells*, 191 S.C. 468, 5 S.E. 2d 181 (1939):

"Persons acting professionally in legal formalities, negotiations or proceedings by the warrants or authority of their clients may be regarded as attorneys at law within the meaning of that designation as employed in this country."

In determining what is the practice of law, the courts have consistently said that it is the character of the acts performed and not the place where they are done that is decisive. Or phrased in a different manner, it is the character of the services rendered and not the denomination of the tribunal before whom they are rendered which controls in determining whether such services constitute the practice of law. *State ex rel. Daniel v. Wells*, 191 S.C. 468, 5 S.E. 2d 181 (1939); *People ex rel. Chicago Bar As-*

sociation v. Goodman 366 Ill. 346, 8 N.E. 2d 941 (1937), Cert. Den. 302 U.S. 728; Stock v. P. G. Garage, Inc., 7 N.J. 118, 30 A. 2d 545 (1951); State ex rel. Johnson, Atty. Gen. v. Childe, 147 Neb. 527, 23 N.W. 2d 720 (1946); Gardner v. Conway, 234 Minn. 468, 48, N.W. 2d 788 (1951); Carey v. Thieme, 2 N.J. Super. 458, 64 A. 2d 394 (1949).

In disposing of the question in the case of Shortz v. Farrell, 327 Pa. 81, 193 A. 20, 21 (1937), the Court said:

"In considering the scope of the practice of law mere nomenclature is unimportant, as for example, whether or not the tribunal is called a 'court,' or the controversy 'litigation', where the application of legal knowledge and technique is required, the activity constitutes such practice even if conducted before a so-called administrative board or commission. It is the character of the act, and not the place where it is performed, which is the decisive factor."

If this is the true test then, and we agree that it is, let us proceed to analyze the nature of the advocacy utilized by an attorney in conducting hearings before an administrative board or commission. It appears to take place in what may be called adversary administrative proceedings, and in the processing of claims by and against the state, as a more informal type of adversary proceeding.

In the constitutional sense, adversary administrative proceedings are the substantial equivalent of judicial proceedings. The same issues of law and argument carry over from an administrative proceeding on judicial review of the agency's determination. Moreover, the Supreme Court of the United States has held that administrative proceedings are subject to the constitutional requirements of procedural due process, that they are quasi-judicial in character, and are required to

fit the cherished judicial tradition embodying the basic concepts of fair play. Morgan v. United States, 304 U.S. 1, (1938).

A study of the rules of practice adopted by various administrative bodies in this State reveals that the same basic system of mechanics is utilized as is found in judicial litigation. Choices must be made between causes of action and the drafting of pleadings. The conduct of a hearing before an administrative tribunal and the conduct of a trial in a purely judicial proceedings are for all practical purposes, the same. For example, in order to prove questions of fact in an administrative proceeding, witnesses must be qualified, examined and cross-examined, questions must be asked which, to some extent at least, must fit the rules of evidence. Documents must be proved and introduced into evidence as exhibits. Statutes and judicial decisions must many times be interpreted. Briefs are written and questions of law argued. Decisions are made which are based on findings of fact and conclusions of law. In addition, some statutes or rules of practice provide that the rules of evidence in certain administrative proceedings will, as far as applicable, be the same as the rules of procedure generally followed by the district courts. And it is not insignificant to note that language utilized in both administrative proceedings and judicial litigation are distinctly similar. Such terms as "complaints", "answers", "replies", "motions", "depositions", "subpoenas", "evidence", "offers of proof", "judicial" or "official notice", "briefs" "oral argument", and "findings of fact" are used in both proceedings.

Thus, if it is the character of of the acts performed that is to govern us in determining what is the practice of law, the conclusion is inescapable that if a layman, or an attorney appears in a representative capacity as an advocate in hearings before any Commissioner, hearing officer, referee, board, body, committee or

commission of the State of New Mexico which considers legal questions, applies legal principles and weighs facts under legal rules, and in that representative capacity files pleadings, qualifies, examines and cross-examines witnesses, proves and introduces exhibits into evidence or performs any of the other duties normally associated with an attorney requiring specialized training and skill, such layman or attorney is practicing law within the meaning of the term as it is used in the act.

As was indicated earlier in this opinion, our Supreme Court has never been called upon to decide this question. However, we are certainly not without authority in our position. In *State ex rel Daniel, Atty. Gen., et al. v. Wells*, supra, the Supreme Court of South Carolina was called upon to determine whether an appearance by an insurance adjuster as a paid representative of an insurance company before a single commissioner in hearings before the South Carolina Industrial Commission, constituted the practice of law. The Court concluded that it did under a statutory provision which prohibited the practice of law in any court of the state by any person unless admitted and sworn in as an attorney.

The Court reviewed authorities from other jurisdictions and concluded that the correct test to be applied in determining what constitutes the practice of law, is to look at the character of the acts performed and not the place where they are done. In view of the test adopted, the Court carefully analyzed the procedure followed at such hearings. It found among other things that at such a hearing, the Commissioner ascertained disputed issues of law or fact, swore witnesses, and took testimony. Witnesses were examined and cross-examined. The commissioner was empowered to make awards based upon the evidence, together with a statement of his findings of fact, rulings and conclusions of law. A complete record was made of the case, and ag-

grieved parties given a right of appeal. Commenting upon this procedure, the Court said at pp. 184.

"Examination and cross examination of witnesses require a knowledge of relevancy and materiality. Such examination is conducted in much the same manner as that of the Circuit Court. Improper or irrelevant testimony must be objected to, or otherwise it may be considered. *Rice v. Brandon Corporation*, 190 S.C. 229, 2 S.E. 2d 740. While findings of fact will be upheld by the Court if there is any evidence on which it can rest, it must be founded on evidence and cannot rest on surmise, conjecture or speculation. *Rudd v. Fairforest Finishing Company*, 189 S.C. 188, 200 S.E. 727. Depositions are taken under the procedure of the Circuit Court. The various decisions of this Court since this legislation was enacted illustrate the difficult and complicated questions which arise in the construction of the Act and its application. Facts must be weighed by the commissioner in the light of legal principles. The Hearing commissioner makes not only findings of fact, but states his conclusions of law."

The Court then held that such hearings were essentially of a judicial character and that the appearance at such hearings in a representative capacity constituted the practice of law.

It should be noted that the South Carolina statute prohibiting the practice of law without a license is extremely similar to our New Mexico statute compiled as Section 18-1-26, supra, in that in both statutes, the word "court" is used in the prohibition. In disposing of the question, the South Carolina Supreme Court quotes with approval the following language from the Pennsylvania case of *Shortz v. Farrell*, supra.

"In considering the scope of the practice of law mere nomenclature is unimportant, as for example, whether or not the tribunal is called 'court' or the controversy 'litigation'."

The real question to be resolved according to the South Carolina Court is whether the duties performed require the application of legal knowledge or technique; that it is the character of the acts performed and not the place where they are performed which is the decisive factor.

In the Pennsylvania case from which the quoted language above is taken, the Court held that an appearance by an adjuster in administrative hearings held under the Pennsylvania Workman's Compensation Act, in which he examined and cross-examined witnesses, constituted the practice of law.

The Supreme Court of Illinois in the case of *People ex rel. Chicago Bar Association v. Goodman*, supra, upon similar facts, reached the same conclusion. In discussing what acts constituted the practice of law, the Court said:

"It is immaterial whether the acts which constitute the practice of law are done in an office, before a court, or before an administrative body. The character of the act done, and not the place where it is committed, is the factor which is decisive of whether it constitutes the practice of law."

Petition for Writ of Certiorari in the above case was denied by the United States Supreme Court in 302 U.S. 728.

The Supreme Court of Ohio is likewise in accord with the position we have taken on this question. See *Goodman v. Beall*, 130 Ohio St. 427, 200 N.E. 470 (1936).

In the case of *Stack v. P. G. Garage, Inc.*, supra, the plaintiff

Stack, a licensed relator appeared in a representative capacity before the Hudson County Tax Board. The New Jersey Supreme Court in holding that Stack's actions constituted the practice of law quoted with approval the following conclusion reached in the case of *Tumulty v. Rosenblum*, 134 N.J.L. 514, 48 A. 2d 850 (Sup. Ct. 1946):

"The practice of law is not confined to the conduct of litigation in courts of record. Apart from such, it consists, generally, in the rendition of legal service to another, or legal advice and counsel as to his rights and obligations under the law ... calling for ... a fee or stipend, i.e., that which an attorney as such is authorized to do; and the exercise of such professional skill certainly includes the pursuit, as an advocate for another, of a legal remedy within the jurisdiction of a quasi-judicial tribunal. Such is the concept of R.S. 2: 111-1, N.J.S.A. classifying as a misdemeanor the practice of law by an unlicensed person."

The Nebraska case of *State ex rel. Johnson, Atty. Gen. v. Childe*, supra, arose out of the appearance of one Childe before the Nebraska State Railway Commission in a proceeding entitled:

"In the Matter of the Application of the Central States Motor Carriers' Association for authority to Establish Commodity Rates on Building and Fencing materials."

The conclusion reached by the Court is quoted below:

"We conclude that in the proceeding before the commission involved herein and the part taken by the defendant in his conduct thereof, there was involved a need of legal training, knowledge, and skill and constituted the practice of law. It was particularly required in the drafting of the petition, in the interpretation

of the legislative powers with which the commission was clothed, in determining the power of the commission to make the order, in the making of a record in contemplation of a judicial review, in establishing the legal qualifications of witnesses to testify and the technical proffer of testimony in conformity to legal standards. In performing such services, and others noted in this opinion, in a representative capacity without license to engage in the practice of law, the defendant engaged in the illegal practice of law within the meaning of the rules announced in the former opinion in this case. *State ex rel. Johnson v. Childe*, 129 Neb. 91, 295 N.W. 381."

But for the sake of brevity, many more cases could be cited in support of our position in this matter. However, we feel the cases we have discussed are sufficient to point out the correctness of the conclusions we have reached.

In view of this conclusion, one further question merits discussion at this time. Inasmuch as there is no prohibition under our law against an individual representing himself, and, in the case of a corporation, it is necessary that its appearance be made through employees or representatives, it might be contended that an employee of a corporation was not acting for a client, but for his own employer. Similar contentions were made in *State v. Wells*, supra, *Clark v. Austin*, 340 Mo. 467, 101 S.W. 2d 977, 982 (1937); *Shortz, et al. v. Farrell*, supra, and *Mullin-Johnson Company v. Penn. Mutual Life Insurance Company*, 9 F. Supp. 175 (1934).

In *Clark v. Austin*, supra, the Court disposed of the contention as follows:

"The law recognizes the right of natural persons to act for themselves in their own affairs, although the acts performed by them, if performed for others, would con-

stitute the practice of law. A natural person may present his own case in court or elsewhere, although he is not a licensed lawyer. A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act, in person. It must act in all its affairs through agents or representatives. In legal matters, it must act, if at all through licensed attorneys.

If a corporation could appear in court through a layman upon the theory that it was appearing for itself, it could employ any person, not learned in the law, to represent it in any or all judicial proceedings."

The Court also quoted with approval the following from *Mullin-Johnson Company v. Penn. Mutual Life Insurance Company*, supra:

"Since a corporation cannot practice law, and can only act through the agency of natural persons, it follows that it can appear in court on its own behalf only through a licensed attorney. It cannot appear by an officer of the corporation who is not an attorney, and may not even file a complaint except by an attorney, whose authority to appear is presumed; in other words, a corporation cannot appear in propria persona."

We are further of the opinion that the power granted to various administrative agencies to promulgate rules and regulations does not contemplate the power to permit laymen and lawyers who are not licensed to practice law in this State to perform functions in connection with the administration of the various acts which constitute the practice of law. *State v. Wells*, supra, *State v. Childe*, supra, *Goodman v. Beall*, supra.

By way of conclusion, it is the

opinion of this office that a layman or an attorney who appears in a representative capacity as an advocate in hearings before any commissioner, hearing officer, referee, board, body, committee or commission of the State of New Mexico which considers legal questions, applies legal principles and weighs facts under legal rules, and in that representative capacity files pleadings, qualifies, examines and cross-examines witnesses, proves and introduces exhibits into evidence, or performs any of the other duties normally associated with attorneys requiring specialized training and skill, is engaging in the practice of law which is expressly prohibited without a license under the provisions of Section 18-1-26 and 18-1-27, supra. It therefore follows that under the provisions of Section 18-1-26, supra, all foreign licensed attorneys must associate themselves with resident counsel before commencing, conducting, or otherwise participating in any such proceeding.

The law in this regard is neither unusual nor oppressive. Doctors of medicine, dentists, pharmacists, barbers, hair-dressers, and others who engage in professions or skilled trades, must show required preparation and fitness for their work, take examinations and procure licenses to practice. As the Court pointed out in *State v. Wells*, supra, a dual trust is imposed on licensed attorneys; they must act with all good fidelity to the courts and to their clients, and they are bound by canons of ethics which have been the growth of long experience and which are enforced by the Courts. Or as was said by Judge Matson in *Gardner v. Conway*, 234 Minn. 468, 48 N.W. 2d 788, 795:

"The law practice franchise or privilege is based upon the threefold requirements of ability, character and responsible supervision." (Court's Emphasis).

Attorney General Opinion
No. 58-201

September 30, 1958

OPINION
OF
FRED M. STANDLEY
Attorney General

By: Robert F. Pyatt
Assistant Attorney General

To: Honorable Dan Sosa, Jr.
District Attorney
Third Judicial District
Las Cruces, New Mexico

QUESTIONS:

"(1) May a teacher retired under the previous act and occupying emeritus status under such former act but returned to active employment after the effective date of the 1957 Act in any way become eligible, by contribution, 'buying in,' earned credit service, or otherwise, to participate, after being returned to retirement status, to the increased benefits of the 1957 Act?"

(2) Does the fact that upon return to active employment deductions or contributions were made from the teacher's pay establish any rights towards participation for benefits under the new Act? If not, would she not be entitled to refund of such contributions? And further would there be any advantage or necessity for the continued contributions thereunder?

(3) Would the signing of a waiver agreement by such teacher providing that upon the conclusion of the re-employment period specified such teacher shall be reinstated to prior retirement status with the same benefits the individual was receiving prior to such re-employment effect any exemption or waiver to such benefits that might otherwise have been received under the new act?

(4) If so, does the school

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In
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KELLAHIN and KELLAHIN

Attorneys at Law

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Post Office Box 1769

Santa Fe, New Mexico 87501

July 16, 1979

Jason Kellahin
W. Thomas Kellahin
Karen Aubrey

Telephone 932-4285
Area Code 505

Honorable John B. Walker
District Judge, Fifth Judicial District
P. O. Box 1626
Carlsbad, New Mexico 88220

Re: C & K Petroleum, Inc., v. New
Mexico Energy and Minerals
Department, et al., Eddy County
Cause Nos. CV-78-415 and
CV-78-417 (Consolidated)

Dear Judge Walker:

Enclosed for your consideration in connection with
the above consolidated cases is the brief of C & K Petro-
leum, Inc., in support of its Petition for Review of the
order of the New Mexico Oil Conservation Commission,
Energy and Minerals Department.

The original of this brief has been forwarded to
Mrs. Frances M. Wilcox, Clerk of the District Court,
for filing.

Sincerely,

Jason Kellahin

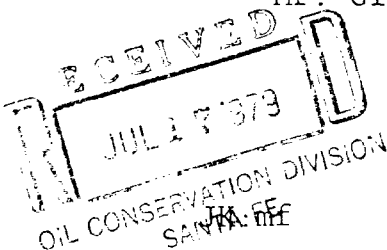
Jason Kellahin

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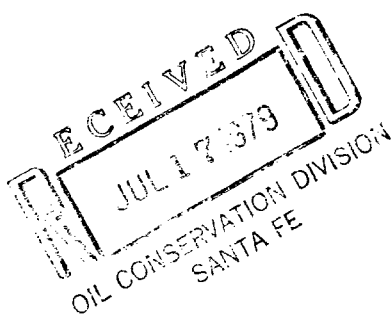
cc: W. T. Martin, Jr., Esquire

Earnest Padilla, Esquire —

Mr. Gilbert C. Tompson



BRIEF OF C & K PETROLEUM, INC.,
IN SUPPORT OF ITS PETITION FOR REVIEW



Submitted by:

Jason Kellahin
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P. O. Box 1769
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Attorney for Petitioner
C & K Petroleum, Inc.

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STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

C & K PETROLEUM, INC.,
A CORPORATION,

Petitioner

vs.

NEW MEXICO ENERGY AND MINERALS
DEPARTMENT, OIL CONSERVATION
DIVISION, AND BILL TAYLOR,

No. CV-78-415
No. CV-78-417
(Consolidated)

Respondents,

and

IN THE MATTER OF THE APPLICATION
OF BILL TAYLOR FOR ENFORCEMENT
AND AMENDMENT OF ORDER NO. R-5332,
EDDY COUNTY, NEW MEXICO, OIL
CONSERVATION COMMISSION CASE
NO. 6289

BRIEF OF C & K PETROLEUM, INC., IN
SUPPORT OF ITS PETITION FOR REVIEW

COMES NOW C & K Petroleum, Inc., Petitioner in Cause
No. CV-78-415, and submits this memorandum brief in support of its
Petition for Review of the Order of the Oil Conservation Commission,
New Mexico Energy and Minerals Department, in its Case No. 6289,
Order No. R-5332-A:

STATEMENT OF FACTS

The statement of facts contained in the Petition for Review,
filed by C & K Petroleum, Inc. (C & K), to the extent necessary
for an understanding of this appeal, may be summarized as follows:

On November 30, 1976, the New Mexico Oil Conservation Commission,
on the application of C & K, entered Order No. R-5332, which pooled
all of the mineral interests in the Wolfcamp and Pennsylvanian
formations underlying the N½ of Section 13, Township 22 South,
Range 26 East, in the South Carlsbad Field, Eddy County, New
Mexico. A copy of this Order is attached to the Petition, but for

convenience, a copy is also attached to this Brief as Exhibit "A". The Order designated C & K as operator of the pooled unit, and the well to be drilled on the pooled unit. Paragraph (3) required the operator to furnish the Commission and each known working interest owner in the unit an itemized schedule of estimated well costs (an AFE). Paragraph (4) provided that within 30 days after receipt of the schedule of estimated well costs, any non-consenting owner could pay his share and avoid a risk factor for the drilling of the well. Paragraph (7) authorized the operator to withhold from production the pro rata share of reasonable well costs (7)(A) and a risk factor of 120% of the pro rata share of reasonable well costs, attributable to the interest of any non-consenting owner (7)(B). The Order is in a standard form normally used by the Oil Conservation Commission, now the Oil Conservation Division of the New Mexico Energy and Minerals Department.

Application was filed by Bill Taylor, one of the interest owners in the acreage in the pooled unit, for an amendment of Order R-5332, and for removal of C & K as operator of the Carlsbad "13" Well No. 1, that had been located on the pooled unit. Hearing on this application was held on August 9, August 23, and September 11, 1978; and on October 17, 1978, the Oil Conservation Commission entered its Order No. R-5332-A, which is the Order from which these appeals have been taken.

Order R-5332-A denied Bill Taylor's application for removal of C & K as operator of the Carlsbad "13" Well No. 1, and provided that all provisions of Order No. R-5332 not in conflict with Order No. R-5332-A shall remain in full force and effect.

The only change in R-5332 that was made by R-5332-A is found in paragraph (2) of the Order, which granted Bill Taylor 30 days

from the effective date of the Order to pay his share of the actual well costs of \$551,903.87 to C & K in lieu of paying his share out of production, and if he should pay this share, he would no longer be subject to the risk factor of 120% provided by paragraph (7)(B) of Order No. R-5332. It is as to this provision that C & K seeks reversal of the Oil Conservation Commission in this appeal.

C & K Petroleum, Inc., and Bill Taylor, both filed timely applications for rehearing before the Commission, as provided by Section 70-2-25, New Mexico Statutes Annotated, 1978 Comp. (formerly Section 65-3-22, New Mexico Statutes Annotated, 1953 Comp.). In its application for rehearing, C & K contended that this provision of the Division's Order No. R-5332-A is unlawful, unreasonable, arbitrary, ambiguous and capricious for a number of reasons, fully stated in the application, and in the Petition for Review.

When the Commission failed to act on the application for rehearing within ten days, C & K filed this appeal to the District Court of the Fifth Judicial District for Eddy County, the county in which the land involved in the Commission's hearing is located, as provided by Section 70-2-25 N.M.S.A., 1978 Comp.

ORDER NO. R-5332-A IS UNLAWFUL AND IN
EXCESS OF THE AUTHORITY OF THE COMMISSION.

In entering its Order No. R-5332-A the Commission made two findings that are fatal to its validity. Being important to this appeal, they merit setting out in full here:

- "(13) That no evidence was presented showing that C & K has failed to afford Taylor or other interest owners in the unit the opportunity to recover their just and fair share of the gas from the Carlsbad "13" Well No. 1, and there is no evidence that correlative rights have been impaired. (emphasis supplied)

- (14) That no evidence was presented showing that C & K has caused waste by its operation of the well." (emphasis supplied)

The Oil Conservation Commission is a creature of statute, and as such, has only such authority as is given to it by law, Vermejo Club v. French, 43 N.M. 45, 85 P.2d 90 (1939), and such powers as may be fairly implied therefrom. Brininstool v. New Mexico State Board of Education, 81 N.M. 319, 466 P.2d 885 (1970). We really have to look no further than the cases involving the Oil Conservation Commission for a clear discussion of the limitation on the Commission's powers. We will discuss these later.

The powers and duties of the Commission, in general terms, are set out in Section 70-2-6 N.M.S.A., 1978 Comp. This vests in the Commission jurisdiction and authority over all matters relating to the conservation of oil and gas, and prevention of the waste of potash, and gives it jurisdiction over all persons and things necessary or proper to enforce the oil conservation statutes. Section 70-2-12 further refines the powers of the Commission over the filing of reports, control over drilling operations and production of wells.

In Section 70-2-11, N.M.S.A., 1978 Comp., the powers of the Commission and its duty to prevent waste, and to protect correlative rights are set out. Additional powers, not material to this case, are granted by Section 70-2-12.

The real basis of the Commission's authority is found in Section 70-2-11, formerly Section 65-3-10, N.M.S.A., 1953 Comp.

In Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 373 P2d 809 (1962), the Commission entered an Order changing the formula for the proration of gas in one of the Southeastern New Mexico gas pools. Holding the Commission was without jurisdiction to enter the Order, the Court pointed out that:

"The Oil Conservation Commission is a creature of statute, expressly defined, limited and empowered by the laws creating it. The commission has jurisdiction over matters related to the conservation of oil and gas in New Mexico, but the basis of its powers is bounded on the duty to prevent waste and to protect correlative rights. See Sec. 65-3-10, supra. Actually, the prevention of waste is the paramount power, inasmuch as this term is an integral part of the definition of correlative rights." (emphasis supplied)

In Sims v. Mechem, 72 N.M. 186, 382 P.2d 183 (1963), a compulsory pooling order, such as the initial Order No. R-5332 entered in this case, was attacked on the ground that the Commission had failed to make a finding that waste would be prevented. In agreeing with this contention, and holding the Commission's order void, the Court stated:

"(But) the statutory authority of the commission to pool property or to modify existing agreements relating to production within a pool under either of these subsections (Sec. 70-2-17) must be predicated on the prevention of waste. Section 65-3-10 (now 70-2-11).

"We conclude, therefore, that since commission Order R-1310 contains no finding as to the existence of waste, or that pooling would prevent waste, based upon evidence to support such a finding, the commission was without jurisdiction to enter Order R-1310, and that it is void." (emphasis supplied)

Not only was there no affirmative finding in the instant case that waste was occurring, would occur, or would be prevented by the entry of the Order now before this Court, the contrary is true. The Commission made a positive finding that there was no evidence of waste, and that there was no evidence that correlative rights have been impaired. Under the ruling the Sims and Continental cases, the Commission was without jurisdiction to enter its Order R-5332-A and it should now be held void. The action of the Commission was not founded on any statutory authority and thus was arbitrary and capricious under the ruling in these two cases.

The paramount duty of the Commission to prevent waste as the basis of its authority has been recognized by the courts in

subsequent cases. See El Paso Natural Gas Co. v. Oil Conservation Commission, 76 N.M. 268, 414 P.2d 496 (1966); Grace v. Oil Conservation Commission, 87 N.M. 205, 531 P.2d 939 (1975); Rutter & Wilbanks Corp. v. Oil Conservation Commission, 87 N.M. 286, 532 P.2d 582 (1975).

ORDER (2) OF ORDER R-5332-A NOT
SUPPORTED BY SUBSTANTIAL EVIDENCE

As pointed out above, Paragraph (2) of Order No. R-5332-A granted Taylor 30 days from October 17, 1978, to pay his share of the actual well costs, determined to be \$551,903.87 from the evidence offered at the hearing. Upon payment of this share, Taylor would remain laible for operating costs, but would not be liable for the risk charges.

It is C & K's contention that this portion of the Order is not based on any finding that is supported by substantial evidence in the record.

The findings of Order R-5332-A purporting to support this portion of the Order are found in paragraphs (7), (8), and (9) of the findings. These are to the effect that C & K failed to furnish the Commission and each known working interest owner an itemized schedule of estimated well costs after the effective date of Order No. R-5332 and within 30 days prior to commencing the well involved, as required by Paragraph (3) of Order R-5332; that Taylor was therefore not afforded the opportunity to pay his share of the well costs in accordance with R-5332; and that he should now be afforded the opportunity to pay his share of the costs.

Order No. R-5332 was entered by the Commission on November 30, 1976. The well was spudded on January 16, 1977, and was completed on March 16, 1977 (Tr. Sept. 11, pp. 106-107).

It was not until more than a year later, in July of 1978, that Taylor came forward with the claim that he had been denied the right to participate in the drilling of the well because he had not been furnished with estimated well costs (an AFE, or Authority for Expenditure) during the precise period between the entry of Order No. R-5332 on November 30, 1976, and within 30 days prior to spudding of the well on January 16, 1977. As shown by the evidence, however, Taylor had full knowledge of the estimated well costs, full opportunity to participate in the drilling of the well, and in fact entered into an agreement, for consideration, to participate in the drilling of the well.

It must be admitted that C & K did not furnish Taylor with estimated well costs after the effective date of Order R-5332 and within thirty days prior to the commencement of the subject well. Taylor claimed this failure deprived him of the opportunity to participate in the drilling of the well (August 9, 1978 Tr. p. 45-58). But Taylor had been furnished with estimated well costs on November 9, 1976, the day before the hearing that resulted in the initial pooling order. As shown by the record of the hearing, August 9, 1978, the following took place:

Mr. Stamets: Well, have you ever received an AFE on this well?

Mr. Taylor: Yes, sir.

Mr. Stamets: And when did you receive that?

Mr. Taylor: The 11th and 9th of 1976.

Mr. Stamets: Is that the only one you have received?

Mr. Taylor: On this well?

Mr. Stamets: Yes.

Mr. Taylor: Yes, sir, it is.

Mr. Stamets: Okay, Thank you.

Commissioner Ramey: That's prior to the date of the order?

Mr. Taylor: Yes, sir, prior to the date of the order.

Commissioner Ramey: You don't think that would satisfy the requirements of paragraph three of the order?

Mr. Taylor: It states within thirty days, sir of drilling, and we've established the date of spudding as the 1st and 16th and it's without it.

As shown by later testimony, Mr. Taylor was in error in saying this was the only AFE received by him. (August 9 Tr., p. 58, 59). Again, at page 58 of the transcript of the August 9 hearing, Taylor stated:

"I state that C & K's non-compliance with General Provision Number Three of Order R-5331 then did not allow Taylor to comply with the general provision number Four of that Order."

On this basis alone Taylor said he sought forfeiture by C & K to any claims to the 120% penalty (risk factor), as they did not comply with paragraph (3) of Order R-5332 (August 9 Tr. p. 60).

Mr. Taylor, as we have shown, acknowledged receipt of at least two copies of the estimated well costs. In addition to this, however, he entered into a written agreement with C & K Petroleum, Inc., on November 9, 1976 (C & K Exhibit 13, copy attached hereto as Exhibit "C") whereby he acknowledged receipt of estimated well costs in the form of an AFE, and agreed he would have thirty days in which to pay his share of these costs. In consideration of this C & K agreed it would not seek a risk factor in excess of 120%, would seek pooling only as to the Wolfcamp and Pennsylvanian formations, and that Bill Taylor could take his share of the gas in kind.

Taylor acknowledged the execution of this agreement (Sept. 11, 1978 Tr. p. 12). On this basis C & K did not consider, at the time Order R-5332 was entered, that Mr. Taylor's interests were being force-pooled, but understood he would participate in the drilling of the well, which he did not do (Sept. 11 Tr., p. 103).

In addition Mr. Gilbert Thompson, Production Superintendent for C & K, stated that Mr. Taylor had not only been furnished with the estimated well costs, but was probably furnished with three copies (Sept. 11 Tr. p. 102). As shown by his participation in another well, Mr. Taylor was quite conversant with procedures for participating in the drilling of a well on the basis of submission of estimated well costs (Sept. 11 Tr. p. 96-97).

Under these circumstances the extremely narrow construction the Commission has placed on its order No. R-5332 in requiring the furnishing of estimated well costs between specific dates after entry of the pooling order, and on that basis alone removing the risk factor on which C & K had relied, appears arbitrary and capricious. Bill Taylor had received two and possibly three copies of the well costs. He executed an agreement leading C & K to believe that he was going to participate in the drilling of the well, in return for which C & K made concessions as to any risk factor. Bill Taylor knew, as shown by the agreement he signed, that he would have thirty days in which to furnish his share of the well costs, as shown by the AFE. This he did not do. Instead, more than a year later, he contends he did not have a chance to participate. Such a conclusion is patently absurd.

It should be pointed out that the provision of Order R-5332 requiring the operator to furnish estimated well costs after the effective date of the Order and within thirty days prior to commencement of the well is not required by any statute.

Sec. 70-2-17, N.M.S.A., 1978 Comp., merely requires that pooling orders be upon such terms as are just and reasonable. The narrow time frame involved here was created wholly by the Commission's Order R-5332.

The Commission's finding in its Order No. 5332-A that Bill Taylor was not afforded the opportunity to pay his share of the estimated well costs in lieu of paying such costs out of production is not supported by substantial evidence.

It is fundamental that Commission Orders must be supported by substantial evidence. Rutter and Wilbanks Corp. v. Oil Conservation Commission, supra; Continental Oil Co. v. Oil Conservation Commission, supra.

As stated in Grace v. Oil Conservation Commission, supra:

" 'Substantial evidence' means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. In resolving these arguments of the appellant we will not weigh the evidence. By definition the inquiry is whether on the record, the administrative body could reasonably make the findings."

It strains the imagination to find any support in this record for a finding that Bill Taylor was denied the right to participate in the drilling of this well. Without such a finding, supported by substantial evidence, the Commission's Order must fail.

cf: State ex rel Reynolds v. Lewis, 84 N.M. 768, 508 P.2d 577 (1973); Sims v. Mechem, supra.

REMOVAL OF THE RISK FACTOR

Order No. R-5332 in paragraph (7)(B) provided for a charge for the risk of drilling the well of 120%, to be recovered out of the pro rata share of production attributable to each non-consenting working interest owner.

Despite the fact Bill Taylor, as we have shown, had the opportunity to participate in the drilling of the well and failed to do so, the Commission in its Order No. R-5332-A gave renewed

life to his opportunity to participate without a risk factor upon payment of his share of the costs of a well of known producing ability.

The unfairness of this is manifest. The subject well was drilled to completion on March 16, 1977, and connected to the pipeline in August, 1977 (Sept. 11 Tr., p. 107). Then on October 17, 1978, some fourteen months later, the Commission entered Order No. R-5332-A effectively removing the risk factor on condition that Bill Taylor pay his proportionate share of the actual well costs within thirty days. C & K had already assumed the risks of drilling the well without Taylor's participation. They had a well of known capacity and probably by the time of the hearing had already recovered Taylor's share, without the risk factor. See the testimony of Dorothy Brown, independent auditor (Sept. 11, Tr. p. 58, 59, 60).

The action of the Commission was punitive, though based on some supposed violation of Order No. R-5332, for it was not designed to protect Taylor's correlative rights. The Commission found they had not been violated, or that Taylor had been denied the right to recover his just and equitable share of the gas from the Carlsbad "13" Well No. 1 (Order No. R-5332-A, Finding (13)).

There is no provision in the statutes for the Commission to reconsider its Orders, but presuming the authority does exist, assessment of sanctions in the nature of a penalty finds no authority in the statutes.

If C & K had violated the provisions of Order R-5332, as alleged, the Commission's remedy lay in an action in district court as provided by Sec. 70-2-20, N.M.S.A., 1978 Comp., or 70-2-28, N.M.S.A., 1978 Comp. -- not by assessment of a penalty by recapture of a risk factor previously assessed, agreed to, and acted on by the parties under a valid Order of the Commission and a valid contract between the parties.

In addition the Commission ruled that any request to remove the risk factor was not timely, and would not be heard at the hearing on Mr. Taylor's application (August 9 Tr., p. 96-97). Despite this the Commission effectively removed the risk factor.

OTHER MATTERS

In general, C & K has no quarrel with the other findings of Order R-5332-A, and feels they are largely supported by substantial evidence, and support that portion of the Order based upon them.

Rather than discuss the evidence supporting these affirmative findings here, we will defer this to our answer brief to the brief of Bill Taylor or reply to the Oil Conservation Commission, if reply is permitted.

CONCLUSION

Based on the foregoing, C & K Petroleum, Inc., submits that Order R-5332-A is fatally defective in that it was not based upon any finding that waste was occurring or would be prevented, as required by New Mexico statutes and the decisions of the Supreme Court.

The Order is also fatally defective in that it is based on a finding that Bill Taylor was not permitted to participate in the drilling of the well involved which finding (a) was not supported by substantial evidence, (b) was not founded on any statutory authority of the Commission, (c) placed such a narrow, unreasonable construction, under the circumstances of this case, on the Commission's prior Order as to be unreasonable, arbitrary and capricious, and (d) resulted in an assessment of

a penalty against C & K Petroleum, Inc., without authority of law.

Respectfully submitted,


JASON KELLAHIN

Kellahin & Kellahin
P. O. Box 1769
Santa Fe, New Mexico 87501
Phone (505) 982-4285

Attorney for Petitioner
C & K Petroleum, Inc.

CERTIFICATE

I hereby certify that a true copy of the foregoing brief was mailed to opposing counsel of record this 16th day of July, 1979.


JASON KELLAHIN

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. 5807
Order No. R-5332

APPLICATION OF C & K PETROLEUM, INC.
FOR COMPULSORY POOLING AND A NON-STANDARD
UNIT, EDDY COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on November 10, 1976, at Santa Fe, New Mexico, before Examiner Richard L. Stamets.

NOW, on this 30th day of November, 1976, the Commission, a quorum being present, having considered the testimony, the record, and the recommendations of the Examiner, 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 the applicant, C & K Petroleum, Inc., seeks an order pooling all mineral interests in the Wolfcamp and Pennsylvanian formations underlying the N/2 of Section 13, Township 22 South, Range 26 East, NMPN, South Carlsbad Field, Eddy County, New Mexico.

(3) That the applicant has the right to drill and proposes to drill a well 1680 feet from the North line and 1960 feet from the East line of said Section 13 to be dedicated to a non-standard 336.6-acre unit.

(4) That there are interest owners in the proposed proration unit who have not agreed to pool their interests.

(5) That to avoid the drilling of unnecessary wells, to protect correlative rights, and to afford to the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the gas in said pool, the subject application should be approved by pooling all mineral interests, whatever they may be, within said unit.



EXHIBIT "A"

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Case No. 5607
Order No. R-5332

(6) That the applicant should be designated the operator of the subject well and unit.

(7) That any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production.

(8) That any non-consenting working interest owner that does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 120 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(9) That any non-consenting interest owner should be afforded the opportunity to object to the actual well costs but that actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(10) That following determination of reasonable well costs, any non-consenting working interest owner that has paid his share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(11) That \$1,000 per month while drilling and \$150 per month while producing should be fixed as reasonable charges for supervision (combined fixed rate); that the operator should be authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator should be 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 each non-consenting working interest.

(12) That all proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

(13) That upon the failure of the operator of said pooled unit to commence drilling of the well to which said unit is dedicated on or before February 28, 1977, the order pooling said unit should become null and void and of no effect whatsoever.

ILLEGIBLE

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Case No. 5807
Order No. R-5332

IT IS THEREFORE ORDERED:

(1) That all mineral interests, whatever they may be, in the Wolfcamp and Pennsylvanian formations underlying the N/2 of Section 13, Township 22 South, Range 26 East, EMPPA, South Carlsbad Field, Eddy County, New Mexico, are hereby pooled to form a non-standard 336.6-acre gas spacing and proration unit to be dedicated to a well to be drilled 1680 feet from the North line and 1980 feet from the East line of said Section 13.

PROVIDED HOWEVER, that the operator of said unit shall commence the drilling of said well on or before the 28th day of February, 1977, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Pennsylvanian formation;

PROVIDED FURTHER, that in the event said operator does not commence the drilling of said well on or before the 28th day of February, 1977, Order (1) of this order shall be null and void and of no effect whatsoever; unless said operator obtains a time extension from the Commission for good cause shown.

PROVIDED FURTHER, that should said well not be drilled to completion, or abandonment, within 120 days after commencement thereof, said operator shall appear before the Commission and show cause why Order (1) of this order should not be rescinded.

(2) That C & K Petroleum, Inc. is hereby designated the operator of the subject well and unit.

(3) That after the effective date of this order and within 30 days prior to commencing said well, the operator shall furnish the Commission and each known working interest owner in the subject unit an itemized schedule of estimated well costs.

(4) That within 30 days from the date the schedule of estimated well costs is furnished to him, any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production, and that any such owner who pays his share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(5) That the operator shall furnish the Commission and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the well; that if no objection to the actual well costs is received by the Commission and the Commission has not objected within 45 days following receipt of said schedule, the actual well costs

shall be the reasonable well costs; provided however, that if there is an objection to actual well costs within said 45-day period the Commission will determine reasonable well costs after public notice and hearing.

(6) That within 60 days following determination of reasonable well costs, any non-consenting working interest owner that has paid his share of estimated costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

(7) That the operator is hereby authorized to withhold the following costs and charges from production:

(A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(B) As a charge for the risk involved in the drilling of the well, 120 percent of the pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(8) That the operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(9) That \$1,000 per month while drilling and \$150 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); that the operator is hereby authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating such well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(10) That any unsevered mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under the terms of this order.

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Case No. 5807
Order No. R-5332

(11) That any well costs or charges which are to be paid out of production shall be withheld only from the working interests share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

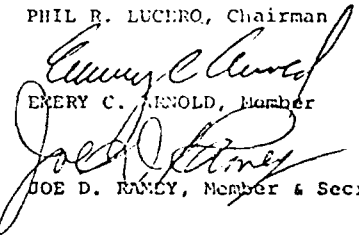
(12) That all proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; that the operator shall notify the Commission of the name and address of said escrow agent within 90 days from the date of this order.

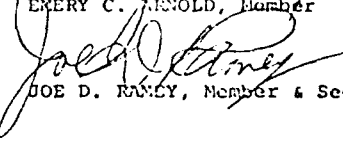
(13) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

PHIL R. LUCERO, Chairman


EMORY C. ARNOLD, Member


JOE D. RANEY, Member & Secretary

S E A L

dr/

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE NO. 6289
Order No. R-5332-A

APPLICATION OF BILL TAYLOR FOR
ENFORCEMENT AND AMENDMENT OF
ORDER NO. R-5332, EDDY COUNTY,
NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on August 9, 1978, and September 11, 1978, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 17th day of October, 1978, 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 on November 30, 1976, upon the application of C & K Petroleum, Inc., hereinafter referred to as "C & K", the Commission issued its Order No. R-5332 pooling the N/2 of Section 13, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico.

(3) That this acreage was dedicated to the Carlsbad "13" Well No. 1 located in Unit G of said section.

(4) That C & K was appointed the operator of the well by Order No. R-5332, and Bill Taylor, hereinafter referred to as "Taylor", was and is an interest owner in said well.

EXHIBIT "B"

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Case No. 6289
Order No. R-5332-A

(5) That on July 5, 1978, Taylor filed an application for "operator's accounting, regulation and order compliance; operator removal; protection of royalty and interest owner's correlative rights; and Commission amendment of Order No. R-53

(6) That this cause came on for hearing on August 9, 1978, and September 11, 1978.

(7) That C & K failed to furnish the Commission and each known working interest owner an itemized schedule of estimated well costs after the effective date of Order No. R-5332 and within 30 days prior to commencing the well in accordance with Order (3) of said order.

(8) That Taylor was therefore not afforded the opportunity to pay his share of estimated well costs to the operator in accordance with the terms of said Order No. R-5332 in lieu of paying his share of reasonable well costs out of production.

(9) That Taylor should be afforded the opportunity to pay his share of reasonable well costs now in lieu of paying the same out of production.

(10) That although Taylor objected to well costs as submitted by C & K, including tubing costs, the evidence presented shows that actual well costs total \$551,903.87.

(11) That said well costs of \$551,903.87 are reasonable costs for the subject well.

(12) That within 30 days from the effective date of this order, Taylor should have the right to pay his share of the actual well costs to the operator in lieu of paying his share of said costs out of production; further, that if he pays his share as provided herein, he should remain liable for operating costs but should not be liable for risk charges.

(13) That no evidence was presented showing that C & K has failed to afford Taylor or other interest owners in the unit the opportunity to recover their just and fair share of the gas from the Carlsbad "13" Well No. 1, and there is no evidence that correlative rights have been impaired.

(14) That no evidence was presented showing that C & K has caused waste by its operation of the well.

(15) That although certain of the accounting and operational procedures employed by C & K in the past appear to have been less than satisfactory, these have apparently now been corrected.

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Case No. 6289
Order No. R-5332-A

(16) That although the evidence in this case establishes that C & K has been grossly lax in the observance of certain Division rules and orders, particularly as they relate to the filing of forms and reports, and the establishment of an escrow account in accordance with Order (12) of Order No. R-5332, the Commission cannot find this to be grounds for removal of C & K as operator of the well at this time, and it should be permitted to continue as operator, pending further order of the Commission or Division.

(17) That Taylor's request that C & K be removed as operator should therefore be denied.

IT IS THEREFORE ORDERED:

(1) That the application of Bill Taylor for removal of C & K Petroleum, Inc., as operator of the Carlsbad "13" Well No. 1 located in Unit G of Section 13, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico, is hereby denied.

(2) That within 30 days from the effective date of this Order, Bill Taylor shall have the right to pay his share of the actual well costs of \$551,903.87 to the operator of said Carlsbad "13" Well No. 1 in lieu of paying his share of said costs out of production, and should he pay his share as provided above, he shall remain liable for operating costs but shall not be liable for risk charges.

(3) That all provisions of Order No. R-5332 not in conflict herewith shall remain in full force and effect.

(4) 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

Phil R. Lucero
PHIL R. LUCERO, Chairman

Emery C. Arnold
EMERY C. ARNOLD, Member

Joe D. Kamey
JOE D. KAMEY, Member & Secretary

S E A L
fd/

Exhibit C-115 2061
Edley Co., New Mexico

A G R E E M E N T

C & K Petroleum, Inc., is the applicant for compulsory pooling and a non-standard gas proration unit in Case No. 5807 before the New Mexico Oil Conservation Commission, Wednesday November 10, 1976. Bill Taylor and William A. Page are owners of interests in the minerals underlying the proposed non-standard unit that would be affected by a pooling order.

Bill Taylor represents that he has the right to bind William A. Page, and E. W. Hooper, Exploration Manager for C & K Petroleum, Inc., represents that he has the right to enter into this agreement on behalf of C & K Petroleum, Inc.

C & K Petroleum, Inc., agrees that at the presentation of this case it will not seek a risk factor in excess of 120%, that is it will seek the right to recover its reasonable costs of drilling, completing and equipping the subject well, plus 120% of that amount as a risk factor for drilling the well, as provided by New Mexico statutes, and the rules and regulations of the Commission.

Bill Taylor acknowledges receipt of estimated well costs in the form of an A.F.E., given to him this date, and C & K Petroleum Inc., agrees that Bill Taylor shall have thirty days from this date in which to pay his share of estimated well costs in lieu of paying such share out of production, and thereby avoid payment of the 120% risk factor.

Bill Taylor shall have the right to take his gas in kind, after payout of the well, provided that he shall make connection at his own expense.

It is agreed that C & K Petroleum, Inc., does not seek compulsory pooling in this case of any formations other than Wolfcamp and Pennsylvanian formations, and does not seek pooling of any formations above the Wolfcamp.

Bill Taylor

BILL TAYLOR, for himself, and
for William A. Page

E. W. Hooper
E. W. HOOPER, for C & K
Petroleum, Inc.

Dated: November 9, 1976

EXHIBIT "C"

IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO

IN THE MATTER OF THE APPLI-)
CATION OF BILL TAYLOR FOR :
ENFORCEMENT AND AMENDMENT)
OF ORDER NO. R-5332 EDDY COUNTY, :
NEW MEXICO OIL CONSERVATION)
COMMISSION CASE NO. 6289 :

No. CV-78-417

C & K PETROLEUM, INC., a)
Corporation, :

Petitioner,)

vs. :

NEW MEXICO ENERGY AND MINERALS :
DEPARTMENT, OIL CONSERVATION)
DIVISION AND BILL TAYLOR, :

No. CV-78-415
(CONSOLIDATED)

Respondents.)

*Received
Monday
1979.
E/P*

BRIEF IN SUPPORT OF BILL TAYLOR'S
APPLICATION FOR REVIEW

MATKINS AND MARTIN
P. O. Drawer N
Carlsbad, New Mexico 88220
(505) 885-2445
Attorneys for Petitioner, Bill Taylor

INTRODUCTION

Petitioner and Appellant, Bill Taylor, submits this Brief in support of his Petition for Review of the Order of the Oil Conservation Division of the Energy and Minerals Department of the State of New Mexico in Case number 6289, Order No. R-5332-A. As the Court has allowed Taylor and C & K Petroleum, Inc. (C & K) to submit Briefs on or before the 19th day of July, 1979, and has given each party including the Oil Conservation Division ten (10) days thereafter in which to reply, no attempt will be made in this Brief to address the issues raised in C & K's Petition for Review. Taylor will reserve those issues to his Answer Brief to be filed in response to C & K's Brief in Support of its Petition for Review.

STATEMENT OF FACTS

The Oil Conservation Commission (now Oil Conservation Department) entered a forced pooling order in Case No. 5807, Order No. R-5332 on the 30th day of November, 1976 (Exhibit 2-2 and Certified Copy of Order). The Order forced pooled all mineral interests in the Wolfcamp and Pennsylvanian formations in the North 1/2 of Section 13, Township 22 South, Range 26 East, N.M.P.M., South Carlsbad Field, Eddy County, New Mexico. C & K, as Applicant, was designated operator. All nonconsenting working interest owners were to be given an opportunity to pay their estimated share of the well drilling costs instead of having their share of the drilling costs taken out of production for purposes of reimbursement to the operator. In addition, C & K was awarded a 120% risk charge against any non-consenting working interest owner who did not pay his proportionate share of the estimated well drilling costs. The working interest owner had thirty days from the date the operator supplied him with an estimate of the well costs (and AFE) to contribute his proportionate share. The AFE was to be supplied to the working interest

owner within thirty days prior to the commencement of the drilling of the well.

The order provided for 7/8th working interest payment and 1/8th royalty interest payment in conformity with Section 70-2-17C, NMSA 1978.

In addition the Order provided for escrowing by C & K of any proceeds from production which are not disbursed for any reason in an account in Eddy County to be paid to the true owner upon demand and proof of ownership. C & K was to notify the Commission of the name and address of the escrow agent within ninety days of the date of entry of the forced pooling order. Subsequent to the entry of Order No. R-5332, Petitioner Bill Taylor filed an application with the Commission. The application was not included in the Transcript sent to this Court. A copy is attached. A hearing was held on Taylor's application on August 9 and September 11, 1978. Subsequent thereto, the Commission entered Order No. R-5332-A in Case No. 6289, the order and case out of which this appeal arises. While both orders appear in the record, they have been attached to this Brief for ease of referral by the Court.

While the facts of this case are extensive in nature, a long recitation of Statement of Facts without reference to the issues presented would be of little aid to the Court. The necessary reference to facts and pages within the Transcript will appear as the argument on each point raised by Taylor in his application are presented to the Court in this Brief.

POINT I

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showed off*

THE OIL CONSERVATION DIVISION ERRED IN FAILING
TO CONSIDER THE RIGHTS OF W. A. PAGE, JR., A
WORKING INTEREST OWNER IN AFFORDING RELIEF
FROM IMPOSITION OF THE 120% RISK CHARGE

In Order R-5332-A, the Division made the following Findings of Fact:

"(7) That C & K failed to furnish the Commission and each known working interest owner an itemized schedule of estimated well

costs after the effective date of Order No. R-5332 and within thirty days prior to commencing a well in accordance with Order (3) of said Order.

(8) That Taylor was therefore not afforded the opportunity to pay his share of estimated well costs to the operator in accordance with said Order No. R-5332 in lieu of paying his share of reasonable well costs out of production.

(9) That Taylor should be afforded the opportunity to pay his share of reasonable well costs now in lieu of paying the same out of production.

(12) That within thirty days from the effective date of this order, Taylor should have the right to pay his share of the actual well costs to the operator in lieu of paying his share of said well costs out of production; further, that if he pays his share as provided herein, he should remain liable for operating costs but should not be liable for risk charges. "

The Division entered an order allowing Taylor thirty days from the date of the order to pay his share of the well costs in lieu of paying his share out of production, and thereby not remain liable for the risk charges. The Findings of Fact by the Division recognize failure of notice to working interest owners, yet it failed to afford any relief to anyone but Taylor. The Commission had sufficient evidence before it so as to be aware that W. A. Page, Jr., was a working interest owner (Exhibit 2-1: August 9, TR. p. 16-17). The Application of C & K Petroleum in Cause No. 5807 for a forced pooling order stated that to the best of its information and belief, Bill G. Taylor and Mr. and Mrs. W. A. Pate (sic) (W. A. Page, Jr.) was non-consenting working interest owners with a total working interest of 47.75 acres.

Section 70-2-11 NMSA 1978 Comp., empowers the Oil Conservation Division to protect the correlative rights of individuals having an interest in a well and the production therefrom. The statute provides,

"...to that end, the Division is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof."

The Court is also referred to Section 70-2-17 A and C NMSA 1978 Comp., which goes to the Division's authority to deal with correlative rights mineral interest owners.

Section 70-2-33H NMSA 1978 Comp., defines correlative rights as:

" . . . the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of an oil or gas, or both, in the pool, being an amount, so far as can be practicably determined, and so far as can be practicably obtained without waste, substantially in the proportion that quantity of recoverable oil or gas, or both, under such property bears to the total recoverable share of the reservoir energy."

An integral part of the concept of correlative rights is the right of an interest owner to recover his fair share of the return on the production of oil or gas when his interest is pooled with other interests. To that end the Commission in Order No. R-5332 specified steps for C & K as operator to take in giving the working interest owners an opportunity to pay their fair share of the drilling costs and avoid imposition of the risk charge which is authorized by Section 70-2-17C NMSA 1978 Comp. In entering its Order R-5332A, giving Taylor a right to pay his share of the actual well costs so as to avoid imposition of the risk charge, the Commission was clearly looking out for the correlative rights of Bill Taylor and fashioning an Order that it deemed appropriate to meet that goal as authorized by Section 70-2-11, supra. The Commission failed to meet its statutory charge of protecting the correlative rights of W. A. Page, Jr. If Taylor was harmed and needed to be afforded relief, so should Page. The Commission was put on notice that W. A. Page, Jr., desired to have his rights determined. Throughout the hearings reference was made by Taylor to the interests of Taylor and Page. Taylor sought to directly represent Page. The Commission informed Taylor that he could not represent Page as he was not Page's attorney. This writer has reviewed the statutes affecting the Oil Conservation Commission as well as the Rules and Regulations of the Commission. Nowhere is there any

statute or rule or regulation limiting the right of an individual to be represented by somebody who is not an attorney licensed to practice before the Supreme Court of the State of New Mexico. The only limitation is found in Rule 1203 regarding initiating of a hearing. The Rule indicates that an individual seeking a hearing should file an application. It states: "The application shall be signed by the person seeking the hearing or by his attorney." Taylor signed the application. He certainly had the right to represent Page. It was arbitrary and capricious on the part of the Commission to fail to make inquiry as to the correlative rights of Page and further arbitrary and capricious on the part of the Commission to enter an Order on behalf of Taylor affecting his correlative rights when the same Order was not made equally applicable to Page when his correlative rights were affected in the same way. Due process demands equal treatment of Taylor and Page's rights. The Commission has clearly failed to exercise its broad powers as mandated by statute to protect the correlative rights of the interest owners. The cause should be remanded to the Commission with direction to enter the appropriate Orders protecting the correlative rights of W. A. Page, Jr., as to imposition of the 120% risk charge in the same manner as remedy was afforded to Taylor.

POINT I I

THE DIVISION ERRED IN FAILING TO GRANT TAYLOR'S APPLICATION FOR REHEARING AS TO CONTINUED VIOLATIONS OF PARAGRAPH 12 OF ORDER R-5332

Order R-5332 (12) required C & K to escrow in Eddy County proceeds from the sale of production "not disbursed for any reason" to be paid to the owners upon demand and proof of ownership. C & K had violated this provision by not escrowing the funds nor placing them in Eddy County. C & K had held them in suspense and commingled them with other capital of C & K. It was not until just before

the September 11, 1978 hearing, and after the August 9, 1978 hearing that the funds were finally deposited in Eddy County (August 9, TR. p. 103-104; September 11, TR. p. 177-179).

Taylor filed his application for rehearing with the Division within the time period prescribed by Section 70-2-25 NMSA 1978 Comp. Between the hearing of September 11, 1978 and entry of Order K-5332-A, Taylor became aware of new continued violations of paragraph 12 of Order R-5332. The violations consisted of the continuing failure of C & K to place the funds in an escrow account and failure to submit escrow instructions to the depository bank, The American Bank of Carlsbad. Taylor also became aware of failure of C & K to allow payment of escrowed funds upon demand and proof of ownership. This point will be further refined in Point I I I. Taylor notified the Division. Copies of letters notifying the Division are attached hereto. A review of the record submitted to this Court by the Division shows a failure to include those letters. Request is being made of the Division to supply those letters as a part of the record and a supplementation to the record. Up until the Commission either granted Taylor's application for rehearing or denied Taylor's application for rehearing the Division retained jurisdiction over the cause. The Division had new evidence or continuing violations. It failed to conduct a hearing or address itself to the alleged new violations. Before allowing an appeal, the Division should have heard the new evidence or inquired as to the new evidence and ruled upon the allegations of continued violations. This Court should remand this cause to the Division with instructions to the Division to conduct an investigation as to the new evidence presented by Taylor and to rule specifically thereon. All issues timely presented should have been ruled upon.

POINT I I I

THE COMMISSION ERRED IN FAILING TO ORDER C & K
TO PAY TAYLOR AND PAGE THEIR 1/8TH ROYALTY INTERESTS

The forced pooling order calls for payment of 1/8th royalty interest and

7/8th working interest. This is in conformity with Section 70-2-17C which calls for payment of the 1/8th royalty "in any event." C & K has held Taylor and Page's royalty interest in suspense. The purported reason for holding the runs in suspense was Taylor and Page's failure to sign a Division Order acceptable to C & K (August 9, TR. p. 94; Taylor's Exhibits 11-1, 15-1 through 15-7, 16-1 through 16-10). At no time has there been any dispute as to acreage ownership of either Taylor or Page (Taylor's Exhibit 16-9; Taylor's Exhibit 2-1, August 9, TR. p. 93). Nowhere has there been any indication of any adverse claim as to any of the mineral interests ownership of either Taylor or Page.

The forced pooling order R-5332 does not require a nonconsenting owner to sign a Division Order before royalty can be paid. There exists no statute in New Mexico and no regulation promulgated by the Oil Conservation Division requiring the execution of a Division Order before an interest owner can obtain his royalty payment (August 9, TR. p. 93). This writer has been unable to find any New Mexico case addressing itself to the problem. Taylor and Page had no lease. The only order, rule, statute or instrument concerning payment of royalties were the forced pooling order and Section 70-2-17C, supra. The obligation to pay is absolute and not qualified as contained in both the forced pooling order and the statute. C & K cannot raise the argument that the Division Order was necessary to protect itself as no quarrel existed as to ownership of the mineral interests nor had any adverse claim arisen. Division Orders are theoretically to protect the purchasers. 3A Summers, Oil and Gas, §590 p. 135; 4 Williams and Meyers, Oil and Gas Law, §701 p. 646. That necessity was not present with Taylor and Page.

C & K, as operator in a forced pool unit has a duty to account to the mineral interest for royalty from production. That duty exists where no Division

Order has been signed.

4 Williams and Meyers, Oil and Gas Law, Section 704.8 states:

"There is limited authority that a purchaser may withhold payments due a lessor pending a resolution of a title dispute even though the lessor is not a party to a division order."

That language carries with it the reverse implication that if there is no title dispute there exists no right to withhold payments due a lessor for that lessor is not a party to a Division Order. The rest of the language in §704.8 of this treatise clearly indicates there exists a duty to pay royalties to the lessor regardless of the signing of a Division Order. The New Mexico Statute and the Order of the Oil Conservation Division pooling Taylor and Page's interests tracks and follows the existing common law as to the obligation for accounting of and payment of royalties on production to the working interest owners regardless of the signing of a Division Order.

The situation presented to the Oil Conservation Division in this cause is more aggravated than simply a dispute as to an alleged failure by Taylor or Page to sign a Division Order. In fact, C & K Petroleum presented to Taylor and Page Division Orders drafted by C & K. Taylor returned a Division Order with modifications in that Division Order reflecting deletions that to Taylor were unacceptable. C & K refused to accept Taylor's Amended Division Order and maintained a position that certain terms had to be contained in the Division Order. (Taylor's Exhibits 11-2, 16-2 through 16-10). At no time did the dispute center around the mineral interest ownership of either Taylor or Page nor was there any indication that there was any concern about an adverse claim as against Taylor and Page's interests. C & K, through the testimony of Mr. Gilbert Thompson, indicated whether or not a Division Order had been signed should an adverse claim arise as against the mineral interest

ownership of either Taylor or Page, or both, C & K would take steps necessary to protect its interests (Sept. 11, TR. p. 134-135). It is thus clear that C & K was prepared to act in case of adverse claim regardless of the signing of a Division Order, again raising the question as to why should C & K withhold royalty payments to Taylor and Page under the circumstances. Taylor repeatedly argued to the Commission that the terms which C & K was attempting to impose upon him in the Division Order were adhesiory in nature. (Aug. 9, p. 120, p. 92) Taylor was left with no bargaining room. He had no option other than to sign a Division Order acceptable to C & K before he could have payment.

This Court is well aware of the case law existent throughout the country regarding enforcement of adhesiory provisions in contracts where an unequal bargaining relationship exists between parties. C & K had the upper hand on Taylor. It had his money. It said to him - sign our deal or we keep your money. Such is not equal bargaining.

At certain points in the August 9th hearing, discussions occurred between the Commissioners, Taylor and C & K's attorney regarding a question of jurisdiction over royalty interest owners. While the matter is not totally resolved in either the August 9th Transcript or the September 11th Transcript, C & K does acknowledge that the Commission has jurisdiction over royalty interest owners as to their correlative rights but not as to a question as to whom monies are to be paid. Taylor has no quarrel with C & K's position as to jurisdiction of the Commission over royalty interest owners. (August 9th Transcript, p. 129)

The issue is whether execution of a Division Order by the mineral interest owners who have been forced pooled is within jurisdiction of the Division. The question is directly related to correlative rights and does not concern "to whom" the payments were to be paid. It is not clear what the Division did with the

issue. This Court should find the Division to have jurisdiction over the issue and remand the matter for division decision in the interest of the correlative rights of all mineral interest owners who have been forced pooled.

The Commission did not rule on the failure of C & K to make the royalty payments to Taylor and Page other than by implication in paragraph 16 of the Findings of Fact. It is doubtful that the Commission intended to address itself to the royalty issue in Finding of Facts No. 16. Payment of royalties to the mineral interest owners in a pooled unit falls within the concept of correlative rights. The Commission is charged with protecting those correlative rights. The Commission has failed to rule on this issue and if it is impliedly argued that failure to rule on the issue is a denial of the issue the Commission has erred, as it has acted contrary to existing common law and statutory law regarding the payment of royalty interests where a Division Order has not been signed. The cause should be reversed and remanded to the Division with directions to enter the appropriate orders regarding directing payment of royalties to Taylor and Page and ruling on necessity for signing a Division Order by mineral interest owners who have been forced pooled.

POINT I V

THE COMMISSION ERRED IN FAILING TO ASSESS THE PENALTY CALLED FOR IN SECTION 70-2-31B NMSA 1978 COMP.

Section 70-2-31B NMSA 1978 Comp., provides for imposition of a penalty of up to \$1,000.00 per day for each and every day for each and every violation of a Commission Regulation, Rule or Order.

Section 70-2-28, NMSA 1978 Comp., states:

"Whenever it shall appear that any person is violating, or threatening to violate, any statute of this state with respect to the conservation of oil or gas, or both, or any provision of this act, or any rule, regulation or order made thereunder, the division through the attorney

This has absolutely no bearing to the scope of this hearing

general shall bring suit against such person in the county of the residence of the defendant . . . for penalties, if any are applicable, and to restrain such person from continuing such violation, if any are applicable, and to restrain such person from continuing such violations or from carrying out the threat of a violation." (emphasis added)

Section 70-2-20, NMSA 1978 Comp., provides:

"Any person who violates any provision of this act or any rules, regulation or order of the Commission of the Division may pursuant to this act, shall, upon conviction, be fined not more than \$1,000.00 for each violation. Each day during which said violation is continued shall be considered a separate and complete offense for this purpose." (emphasis added)

Section 70-2-29, NMSA 1978 Comp., provides:

"Nothing in this act contained or authorized, and no suit by or against the commission or the division, and no penalties imposed or claimed against any person for violating any statute of this state with respect to conservation of oil and gas, or any provision of this act, or any rule, regulation or order issued thereunder, shall impair or abridge or delay any cause of action for damages which any person may have or assert against any person violating any statute of the state with respect to conservation of oil and gas, or any provision of this act, or any rule, regulation or order issued thereunder. Any person so damaged by the violation may sue for and recover such damages as he may be entitled to receive. . . ."

No case law exists in this state construing any of the statutes heretofore cited. Section 70-2-31, Part B, requires the Commission or Division to bring the suit for penalty in the District Court. The Commission cannot arbitrarily on its own impose the penalty, however, Section 70-2-28, supra., imposes a mandatory requirement upon the Commission or Division through the Attorney General's office to bring suit when any person is violating or threatening to violate any rule, regulation or order of the Division the Commission has failed to carry out its statutorily mandated duty. This duty is ministerial in nature, the Commission has no option other than to bring the action when presented with facts showing violations or threatened violation. Rule 2 of the Miscellaneous Rules of the Commission impose the ministerial duty. The record is undisputed that C & K violated Commission Orders

in the following particulars:

- a. C & K failed to provide the working interest owners with an AFE within thirty days of the date of drilling as provided for in Order R-5332 (Aug. 9, TR. p. 52)
- b. C & K failed to follow provision 5 of the forced pooling order by its late and untimely filings of well costs for each day of delinquency (Aug. 9, TR. p. 76)
- c. C & K failed to accurately and properly report tubing costs (Aug. 9, TR. p. 88) and additional costs (Aug. 9, TR. p. 88)
- d. Failure to comply with provision (12) of the forced pooling order relating to the escrowing of royalty proceeds. (Aug. 9, TR. pp. 116, 136, 103)
- e. Failure to comply with provision (12) requiring payment of royalties to owner upon demand and proof of ownership (Aug. 9, TR. p. 125)
- f. C & K had discrepancies in reporting its rig fuel reports (Aug. 9, TR. p. 107)
- g. C & K failed to properly file C-115s as required by the Commission (Aug. 9, TR. p. 117 and 125)
- h. C & K failed to pay taxes as required by rules and regulations of the Oil and Gas Conservation Division (Aug. 9, TR. p. 117)

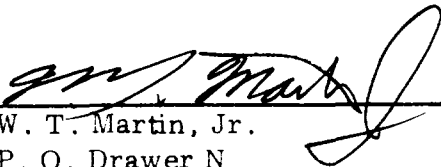
Other penalties were requested under 70-3-31A for C & K's failures to comply with various requirements of state law and regulations (Aug. 9, TR. p. 98 and 125):

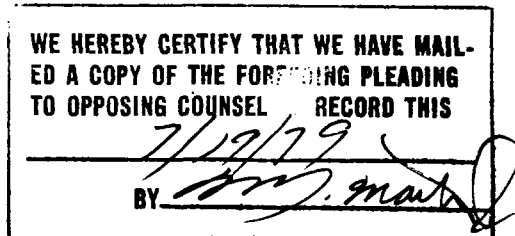
- a. C-101 with certified acreage required (p. 27)
- b. C-103 commencement of drilling report (p. 30)
- c. C-103 on well casing cementing (p. 30)
- d. C-105 on well completion (p. 33)
- e. Drill stem test report (p. 35)
- f. C-122 well potential (p. 35)
- g. C-104 well allowable and authorization to transport (p. 37)

The record in this cause clearly shows violations and threatened violations. This cause should be remanded to the Commission with the directive by

this Court to the Commission carrying out its statutorily mandated duty to bring an action for penalties in the appropriate District Court for the violation of the statutes and orders by C & K Petroleum.

MATKINS AND MARTIN

By 
W. T. Martin, Jr.
P. O. Drawer N
Carlsbad, New Mexico 88220
Attorney for Bill Taylor



June 30, 1978
512 Welshir
Carlsbad, New Mexico 88220

Mr. Joe Ramey, Secretary-Director
New Mexico Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87501

Dear Mr. Ramey:

Please find enclosed three copies of the application of Bill Taylor (& W.A. Page, Jr.) for a hearing concerning Order R-5332, operator (C&K Petroleum, Inc.) compliance with regulations, and operator removal request.

I request hearing notification publication in the Carlsbad Current Argus, P.O. Box 1629, 620 S. Main, Carlsbad, NM 88220 (Eddy County), as per notice of hearing per Statute 65-3-6, as well as the personal notices, etc. the Commission customarily undertakes.

In order that correlative rights be protected with a minimum waste of time, I request the Commission, under statute 65-3-7, subpoena the following for the hearing:

1. Edward W. Hooper, C&K Representative at hearing 5807 on 11/10/76.
2. Jason W. Kellahin, C&K Attorney at hearing 5807 on 11/10/76.
3. David E. Botts, C&K Supervisor of Partnership Accounting.
4. Jack Taylor, 3802 Highland View Dr., Farmington, NM, witness.
5. C&K Pet., Inc. records concerning C&K Carlsbad "13" Com., No. 1 Well (located in the N₂ Sec. 13, T-22S, R-26E, NMPM, Eddy County, NM), including but not limited to:
 - a. Phone calls and summaries,
 - b. Drilling and completion activities, filings, and records.
 - c. Compliance with Order R-5332,
 - d. Letters of correspondence, etc.,
 - e. Gas production, sales, reports, & payments of individual working interest and royalty owners,
 - f. Legal documentation of well ownership (dates, etc.), lease copies, assignments, partnerships, letters of agreement, etc.,
 - g. Rights of partnership, liabilities, etc.
6. TransWestern Pipeline (common gas purchaser of C&K Carlsbad "13" Com. No. 1 Well production) volumn and payment records in manner that such will be acceptable to the Commission as admissible evidence.
7. Records of the Oil and Gas Accounting Division, Santa Fe, concerning the identified well are needed, in form acceptable to the Commission as admissible evidence.
8. Records of the Oil and Gas Conservation Division on file at Santa Fe and Artesia, NM, in form acceptable to the Commission as admissible evidence. Testimony from Mr. R.L. Stamets, examiner for the Commission, will also be needed.

Presentation of evidence from all sources and with all persons named is intended.

The Commission is requested to have available an accountant whose figures will provide valid and unbiased value of considerations when introduced, and acceptable to the Commission as such. (Mr. Stamets stated an evaluation of 80% to 90% in favor of gas companies over individual's accounting in conversation, 5/15/78, which makes needful an accountant acceptable to the Commission for protection of correlative rights).

It is thought that other interested parties, including those to whom Bill Taylor has legally assigned interests but which are not presently on public record, will desire appearance at the hearing.

Sincerely,

Bill Taylor

Bill Taylor Cert. 637037

Rec'd 7/5/78 by M. F. Rogers

BEFORE THE
OIL CONSERVATION DIVISION OF NEW MEXICO

IN THE MATTER OF THE APPLICATION OF BILL
TAYLOR (& W.A.PAGE, JR.) FOR OPERATOR'S ACCOUNT-
ING, REGULATION & ORDER COMPLIANCE; OPERATOR RE-
MOVAL; PROTECTION OF ROYALTY AND INTEREST OWNER'S
CORRELATIVE RIGHTS; & COMMISSION AMENDMENT OF ORDER
R-5332.

APPLICATION

Comes now Bill Taylor (& W.A.Page, Jr.) as applicant and applies to the New Mexico Conservation Division for a hearing open to all interested parties for further consideration of Order R-5332, issued by the Commission Nov. 30, 1976, after hearing 5807, held in Santa Fe, NM, on Nov. 10, 1976. The legal description of the gas well under Order R-5332 is: C&K Carlsbad "13" Com, No. 1 Well, being in the NE₄ of Sec. 13, T-22S, R-26E, NMPM, Eddy County, New Mexico, operated by C&K Petroleum, Inc. of Houston, Texas.

Applicant desires protection of correlative rights and seeks operator compliance with all provisions of Order R-5332, New Mexico rules and regulations, along with accounting of production, sales, payments, working interests and royalties.

Applicant requests the Commission to replace C&K Petroleum, Inc. as operator and substitute another operator for the well.

The Commission's attention is called to General Provision of Order R-5332 wherein the Commission retains jurisdiction of this case for further orders. Ms. Lynn Teschendorf's letter to Ass. Att. Gen. Paul Biderman (Apr. 21, '78) and Mr. R. Stamet's letter of Feb. 14, '78, (both on file at Santa Fe) indicate a hearing by the Commission to be the proper procedure.

Wherefore applicant requests the application be set for hearing before the Commission and that after notice and hearing as required by law, the Commission enter its orders and undertake action as determined necessary to protect correlative rights, prevent waste, and enforce New Mexico statutes, regulations, and orders.

Respectfully submitted,

Bill Taylor

Bill Taylor
512 Welshire
Carlsbad, New Mexico 88220

with letter to Joe Roney - Sec. - Div. Cont. 637037

(Rec'd 7/5/78
required by M. Riggs)

July 10, 1978
512 Welshire
Carlsbad, New Mexico 88220

Mr. Joe Ramey, Secretary-Director
Ms. Lynn Teschendorf, General Counsel
New Mexico Oil Conservation Division
P. O. Box 2036
Santa Fe, New Mexico 87501

Dear Division Representatives:

I have received Ms. Teschendorf's communication of July 7, 1978. The subpoena procedure outlined would of course be acceptable; however the "other interested persons---not presently on public record" are not on public record so that they might remain anonymous. At their request, I do not have the privilege to divulge their identities at this time. They are aware of anything of which I am. Of course the public publication of notice of hearing by local paper, etc. fulfills legal obligation of notification.

May 15, 1978, I verbally informed Mr. R. Stamets of the date of my letter of objection and dispute with C&K Petroleum well costs as being July 19, 1977. The letter covered several areas of dispute. A copy of the signed return card, certification number, etc. with date and person of delivery is enclosed for your aid. I complied with regulations; the NMOCD has not.

We do not challenge the 120% factor. It is immaterial. We challenge the RIGHT of C&K Petroleum to receive it or the imposition of any penalty being imposed upon Taylor and Page. We contend I was ready to pay our share of well costs but have not been allowed to do so because of incompilance of C&K Petroleum to Order R-5332 and the lack of the NMOCD to enforce those orders upon C&K. Such enforcement need has been stated to and requested of the NMOCD several times. Taylor compliance with regulations; NMOCD failure.

It is our desire to allow the NMOCD to correct its own mistake by the hearing. John 8:32. One of our attorneys desires to proceed directly to District Court with strong argumentation to place the case there. We intend to acquaint the NMOCD with areas under its jurisdiction needing more regulation, the lack of which allows such as C&K (we could name more) to fraud individuals and States of millions of dollars.

We shall attempt to present evidence which will prove fraud, perjury, and a flagrant disregard for personal and State rights by C&K from prior to force-pooling application through today.

The slight embarrassment at the hearing of the NMOCD will be a small price to pay for the information they will gain. We do intend to state that the NMOCD's lack of enforcement of rules, regulations, statutes, and orders allows C&K its only legal claim to the 120% penalty, etc. and therefore C&K's claim to such is not valid. Also stricter enforcement of rules, etc., is necessary to protect correlative rights and prevent waste.

A District Court presentation will require our proving NMOCD negligence of enforcement of rules, etc., as well as deal with the mentioned problems. The embarrassment there could be greater, if the court accepts our evidence.

If the NMOCD should decide to hear the lengthy case in its entirety: also take constructive action to procure for itself, under 65-5-11, all the data I have indicated in my letter with application of 6/30/78, a much more favorable image might emerge.

My subpoena requests was not a fishing expedition. The NMOCD will need the information from each to pursue futher legal action as required of it by law. I believe the seriousness of the charges we shall develop along with involvement of the persons and records named would make their presence desirable in order that correlative and personal rights be protected. The public publication I have requested will be more than sufficient for our purposes, so:

THIS IS MY FORMAL APPLICATION AND REQUEST TO WITHDRAW MY REQUESTS FOR SUB-

Letter to NMOCD, July 10, 1978

PONEAS OF: 1. Edward W. Hooper; 2. Jason L. Kellahin; 3. David E. Botts; 4. Jack Taylor; 5. C&K Petroleum, Inc. records; and 6. Transwestern Pipeline Co. records. I will make admissible references to them in hearing.

I would suggest you might like to determine C&K's legal right to represent all partners of record as such rights have not been placed in public records in Eddy County, New Mexico.

In view of the statements contained herein, stating error on the part of the NMOCD as basis for the NMOCD's refusal to hear the case in entirety, I request NMOCD reconsideration toward placing limitations on the hearing of less than full disclosure and accounting of C&K Petroleum, Inc.'s dealings with the well under Order R-5332 and State statutes, rules, regulations, and orders. Any hearing with less will not be adequate to disclose the facts needed to protect correlative rights, and would of necessity require pursuit in District Court instead. The seriousness of the problems is emphasized by the fact we have left over \$13,000 royalty benefits in C&K's "suspense" account rather than compromise.

If the NMOCD does not desire to hear the case in entirety, dealing with all facts relative to C&K's obtaining and operating the well, then the NMOCD is requested to identify the specific administrative remedies and specific NMOCD rules, regulations, statutes, or order provisions failures of Bill Taylor in order that the District Court might give them full value, and consideration.

A question exists as to whether Ms. Teschendorf's position allows the letter of July 7, 1978 on behalf of the NMOCD to constitute a formal refusal of the NMOCD to a hearing as requested. If so, then this letter constitutes my application for rehearing your decision, requesting a full hearing as stated herein. We shall allow attorneys to begin preparing their appeal to the District Court for consideration of the full case in order to be certain of compliance with the time limits of the Division's regulations.

I have placed more of our case in writing than should ordinarily be necessary, however I will take one more step for the purpose of developing a more healthy atmosphere between us. Thomas Marek, a Carlsbad attorney has done legal work for me (he is not one of my attorneys in this case). He is also a personal friend of Jeff Bingaman (most likely the next Attorney General). Perhaps a phone call from Ms. Teschendorf to Mr. Marek might ease the apparent hostility enough to allow constructive efforts toward protection of correlative rights. I believe he could provide an unbiased opinion as to whether Bill Taylor is a blow-hard creating trouble or someone with genuine problems for the NMOCD's consideration, or the District Court's.

Respectfully submitted,

Bill Taylor

Bill Taylor

Card # 637041

in file (shj) 1-1-78

Enclosure Xerox copy of return card
of 7/19/77 letter.

P.S. I continue to dispute and object to C&K's continual additions to well costs and efforts to apply 1200 penalty to such when such penalty provision would not apply beyond drilling risk even if such were a legal right.

I shall so state to C&K for the record. C&K accounting is a major part of my objection to their being operator. Copy enclosed.

Enclosure

Letter to David Bott dtd 7/10/78

Bill Taylor
7/10/78

September 20, 1978
512 Welshire
Carlsbad, New Mexico 88220

American Bank of Carlsbad
P.O. Box 1689
Carlsbad, New Mexico 88220

Dear Escrow Department:

In the hearing of Case 6289 on September 11, 1978, at Santa Fe, New Mexico before the New Mexico Oil Conservation Division Commissioners, Mr. Gil Tompson of C&K Petroleum, Inc. stated C&K Petroleum had placed approximately thirty thousand dollars (\$30,000) in an escrow account in the American Bank of Carlsbad for unpaid royalty owners of C&K Carlsbad 13, No. 1 Well, in compliance with Provision No. 12 of Order R-5332 of the NMOCD dated November 30, 1976.

Provision 12 of the NMOCD Order R-5332 states: "That all proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; that the operator shall notify the Commission of the name and address of the escrow agent within 90 days from the date of this order."

I respectfully request my share of the royalty funds established in the escrow account.

In the event the American Bank of Carlsbad cannot furnish my royalty monies herewith, I request information as to exactly what is needed to obtain my money; exactly how much money is established in the fund for me; which months production are designated in the fund; and how the account is established so that my individual royalty is recognized.

Sincerely,

Bill Taylor

Bill Taylor

Xerox: C&K Petroleum, Inc. & Carlsbad Mail # 637109 Rec'd Sept. 26, 78 by a Kathy Jones
New Mexico Oil Conservation Division
C

New Mexico Oil Conservation Division: Upon my presenting this letter to Mrs. Barbara Webber of the American Bank of Carlsbad (NM) on the morning of Sept. 21, 1978, she requested I contact their attorney. She stated the Bank had contacted C&K personnel (upon my having made a verbal request of payment for my interests the prior day) and requested instructions for the escrow account; and presently no instructions concerning the royalty interests and payments were with the account.

I presented a copy of this letter to the attorney; he requested a few days time prior my sending my copies. He stated that the account was set up as some sort of savings-escrow account, had no royalty payment provisions, and C&K had a signature card on the account. He had advised the bank to not make any royalty payments on the account as no information as to such interests or payments was on record with the bank.

He phoned Mrs. Webber and stated to her that the escrow account, as existed, was not in compliance with the Provision 12 of NMOCD Order R-5332, and he would be in later to discuss items concerning the account.

Bill Taylor 9/25/78
Bill Taylor

Xerox: American Bank of Carlsbad
Jason Kellchin, C&K Attorney

Cart. # 637108 Rec'd Sept. 27, 78 by
a Robert Quintana

MATKINS AND MARTIN

ATTORNEYS AT LAW

601 NORTH CANAL STREET

P O DRAWER N

CARLSBAD, NEW MEXICO 88220

CASWELL S. NEAL 1898-1974

JEROME D. MATKINS

W. T. MARTIN, JR.

AREA CODE 505

885-2445

885-2312

September 26, 1978

Mr. Bill Taylor
512 Welshire
Carlsbad, NM 88220

Dear Mr. Taylor:

As you are aware, this office represents the American Bank of Carlsbad.

We have reviewed your demand letters to the American Bank's escrow department. C & K Petroleum has deposited \$30,000 in a savings account in its name in the American Bank. This account is not an escrow account nor have any escrow instructions been sent to the American Bank. The American Bank has no authorization or instructions to pay any portion of the savings account to you and can only pay the proceeds to C & K Petroleum.

The American Bank of Carlsbad is, therefore, unable to fulfill your requests in the letter of September 20, 1978.

Yours very truly,

MATKINS AND MARTIN



W. T. Martin, Jr.

ebg

cc: Mr. Jerry N. Jones
President
American Bank of Carlsbad
P. O. Box 1689
Carlsbad, NM 88220



STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

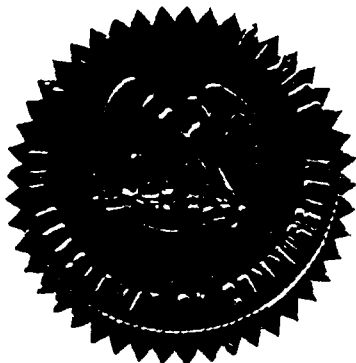
C E R T I F I C A T E

TO WHOM IT MAY CONCERN:

I, JOE D. RAMEY, Director of the Oil Conservation Division of the New Mexico Energy and Minerals Department, do hereby certify that the attached is a true and correct copy of Order No. R-5332 in Case No. 5807 on file in this office.

JOE D. RAMEY, Director

March 2, 1979



STATE OF NEW MEXICO)) ss.
COUNTY OF SANTA FE)

The foregoing instrument was acknowledged before me this 2nd day of March, 1979.

NOTARY PUBLIC

My Commission Expires:

Oct 28 1950

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. 5807
Order No. R-5332

APPLICATION OF C & K PETROLEUM, INC.
FOR COMPULSORY POOLING AND A NON-STANDARD
UNIT, EDDY COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on November 10, 1976, at Santa Fe, New Mexico, before Examiner Richard L. Stamets.

NOW, on this 30th day of November, 1976, the Commission, a quorum being present, having considered the testimony, the record, and the recommendations of the Examiner, 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 the applicant, C & K Petroleum, Inc., seeks an order pooling all mineral interests in the Wolfcamp and Pennsylvanian formations underlying the N/2 of Section 13, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico.

(3) That the applicant has the right to drill and proposes to drill a well 1680 feet from the North line and 1980 feet from the East line of said Section 13 to be dedicated to a non-standard 336.6-acre unit.

(4) That there are interest owners in the proposed proration unit who have not agreed to pool their interests.

(5) That to avoid the drilling of unnecessary wells, to protect correlative rights, and to afford to the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the gas in said pool, the subject application should be approved by pooling all mineral interests, whatever they may be, within said unit.

(6) That the applicant should be designated the operator of the subject well and unit.

(7) That any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production.

(8) That any non-consenting working interest owner that does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 120 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(9) That any non-consenting interest owner should be afforded the opportunity to object to the actual well costs but that actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(10) That following determination of reasonable well costs, any non-consenting working interest owner that has paid his share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(11) That \$1,000 per month while drilling and \$150 per month while producing should be fixed as reasonable charges for supervision (combined fixed rates); that the operator should be authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator should be 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 each non-consenting working interest.

(12) That all proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

(13) That upon the failure of the operator of said pooled unit to commence drilling of the well to which said unit is dedicated on or before February 28, 1977, the order pooling said unit should become null and void and of no effect whatsoever.

IT IS THEREFORE ORDERED:

(1) That all mineral interests, whatever they may be, in the Wolfcamp and Pennsylvanian formations underlying the N/2 of Section 13, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico, are hereby pooled to form a non-standard 336.6-acre gas spacing and proration unit to be dedicated to a well to be drilled 1680 feet from the North line and 1980 feet from the East line of said Section 13.

PROVIDED HOWEVER, that the operator of said unit shall commence the drilling of said well on or before the 28th day of February, 1977, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Pennsylvanian formation;

PROVIDED FURTHER, that in the event said operator does not commence the drilling of said well on or before the 28th day of February, 1977, Order (1) of this order shall be null and void and of no effect whatsoever; unless said operator obtains a time extension from the Commission for good cause shown.

PROVIDED FURTHER, that should said well not be drilled to completion, or abandonment, within 120 days after commencement thereof, said operator shall appear before the Commission and show cause why Order (1) of this order should not be rescinded.

(2) That C & K Petroleum, Inc. is hereby designated the operator of the subject well and unit.

(3) That after the effective date of this order and within 30 days prior to commencing said well, the operator shall furnish the Commission and each known working interest owner in the subject unit an itemized schedule of estimated well costs.

(4) That within 30 days from the date the schedule of estimated well costs is furnished to him, any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production, and that any such owner who pays his share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(5) That the operator shall furnish the Commission and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the well; that if no objection to the actual well costs is received by the Commission and the Commission has not objected within 45 days following receipt of said schedule, the actual well costs

shall be the reasonable well costs; provided however, that if there is an objection to actual well costs within said 45-day period the Commission will determine reasonable well costs after public notice and hearing.

(6) That within 60 days following determination of reasonable well costs, any non-consenting working interest owner that has paid his share of estimated costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

(7) That the operator is hereby authorized to withhold the following costs and charges from production:

(A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(B) As a charge for the risk involved in the drilling of the well, 120 percent of the pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(8) That the operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(9) That \$1,000 per month while drilling and \$150 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); that the operator is hereby authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating such well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(10) That any unsevered mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under the terms of this order.

(11) That any well costs or charges which are to be paid out of production shall be withheld only from the working interests share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(12) That all proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; that the operator shall notify the Commission of the name and address of said escrow agent within 90 days from the date of this order.

(13) 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

PHIL R. LUCERO, Chairman


EMERY C. ARNOLD, Member


JOE D. RAMEY, Member & Secretary

S E A L

dr/



BRUCE KING
GOVERNOR
LARRY KEHOE
SECRETARY

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

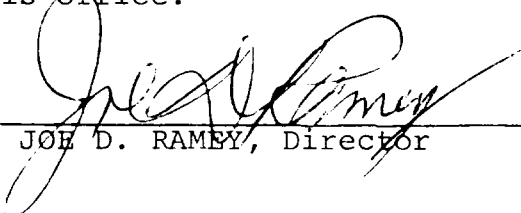
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(505) 827-2434

C E R T I F I C A T E

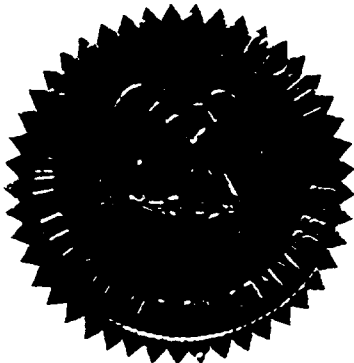
TO WHOM IT MAY CONCERN:

I, JOE D. RAMEY, Director of the Oil Conservation Division of the New Mexico Energy and Minerals Department, do hereby certify that the attached is a true and correct copy of Order No. R-5332-A in Case No. 6289 on file in this office.

March 2, 1979




JOE D. RAMEY, Director



STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

The foregoing instrument was acknowledged before me this 2nd day of March, 1979.



NOTARY PUBLIC

My Commission Expires:



STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE NO. 6289
Order No. R-5332-A

APPLICATION OF BILL TAYLOR FOR
ENFORCEMENT AND AMENDMENT OF
ORDER NO. R-5332, EDDY COUNTY,
NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on August 9, 1978, and September 11, 1978, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 17th day of October, 1978, 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 on November 30, 1976, upon the application of C & K Petroleum, Inc., hereinafter referred to as "C & K", the Commission issued its Order No. R-5332 pooling the N/2 of Section 13, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico.

(3) That this acreage was dedicated to the Carlsbad "13" Well No. 1 located in Unit G of said section.

(4) That C & K was appointed the operator of the well by Order No. R-5332, and Bill Taylor, hereinafter referred to as "Taylor", was and is an interest owner in said well.

(5) That on July 5, 1978, Taylor filed an application for "operator's accounting, regulation and order compliance; operator removal; protection of royalty and interest owner's correlative rights; and Commission amendment of Order No. R-5332."

(6) That this cause came on for hearing on August 9, 1978, and September 11, 1978.

(7) That C & K failed to furnish the Commission and each known working interest owner an itemized schedule of estimated well costs after the effective date of Order No. R-5332 and within 30 days prior to commencing the well in accordance with Order (3) of said order.

(8) That Taylor was therefore not afforded the opportunity to pay his share of estimated well costs to the operator in accordance with the terms of said Order No. R-5332 in lieu of paying his share of reasonable well costs out of production.

(9) That Taylor should be afforded the opportunity to pay his share of reasonable well costs now in lieu of paying the same out of production.

(10) That although Taylor objected to well costs as submitted by C & K, including tubing costs, the evidence presented shows that actual well costs total \$551,903.87.

(11) That said well costs of \$551,903.87 are reasonable costs for the subject well.

(12) That within 30 days from the effective date of this order, Taylor should have the right to pay his share of the actual well costs to the operator in lieu of paying his share of said costs out of production; further, that if he pays his share as provided herein, he should remain liable for operating costs but should not be liable for risk charges.

(13) That no evidence was presented showing that C & K has failed to afford Taylor or other interest owners in the unit the opportunity to recover their just and fair share of the gas from the Carlsbad "13" Well No. 1, and there is no evidence that correlative rights have been impaired.

(14) That no evidence was presented showing that C & K has caused waste by its operation of the well.

(15) That although certain of the accounting and operational procedures employed by C & K in the past appear to have been less than satisfactory, these have apparently now been corrected.

-3-

Case No. 6289

Order No. R-5332-A

(16) That although the evidence in this case establishes that C & K has been grossly lax in the observance of certain Division rules and orders, particularly as they relate to the filing of forms and reports, and the establishment of an escrow account in accordance with Order (12) of Order No. R-5332, the Commission cannot find this to be grounds for removal of C & K as operator of the well at this time, and it should be permitted to continue as operator, pending further order of the Commission or Division.

(17) That Taylor's request that C & K be removed as operator should therefore be denied.

IT IS THEREFORE ORDERED:

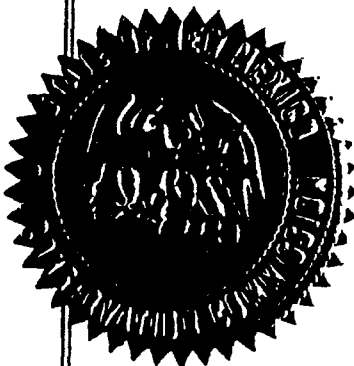
(1) That the application of Bill Taylor for removal of C & K Petroleum, Inc., as operator of the Carlsbad "13" Well No. 1 located in Unit G of Section 13, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico, is hereby denied.

(2) That within 30 days from the effective date of this Order, Bill Taylor shall have the right to pay his share of the actual well costs of \$551,903.87 to the operator of said Carlsbad "13" Well No. 1 in lieu of paying his share of said costs out of production, and should he pay his share as provided above, he shall remain liable for operating costs but shall not be liable for risk charges.

(3) That all provisions of Order No. R-5332 not in conflict herewith shall remain in full force and effect.

(4) 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 herein-above designated.



STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

Phil R. Lucero
PHIL R. LUCERO, Chairman

Emery C. Arnold
EMERY C. ARNOLD, Member

Joe D. Ramey
JOE D. RAMEY, Member & Secretary

S E A L
fd/

MEMORANDUM BRIEF OF THE OIL
CONSERVATION COMMISSION IN RESPONSE
TO PETITION TO REVIEW

Submitted by:

ERNEST L. PADILLA
Assistant Attorney General
Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501
Telephone: 827-2741

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INTRODUCTION

This memorandum brief is submitted by Respondent Oil Conservation Commission (Commission) in response to the petition for judicial review of Commission Order No. R-5332-A filed herein by Petitioners Bill Taylor (Taylor) and C & K Petroleum, Inc. (C & K). The issues raised by both petitioners are addressed in this brief. For convenience Commission Orders Nos. R-5332 and R-5332-A, both relevant to this case, are attached hereto as Exhibits B and C, respectfully.

It should be noted at this point that it fully appears that Taylor has abandoned its allegations that C & K should be removed as operator of the Carlsbad 13 Well No. 1 because he has failed to renew such allegations in both his petition for rehearing as well as in his petition for judicial review under consideration before this Court.

STATEMENT OF FACTS

The Statements of Fact contained in Petitioners' briefs are sufficient to apprise the Court of the issues in the case.

SCOPE OF REVIEW

The scope of review in this case is limited by the fact that this is an appeal from an administrative order issued pursuant to hearings before the Oil Conservation Commission. The Court, therefore, may only look at the record made in the administrative hearing. Continental Oil Company vs. Oil Conservation Commission, 70 N.M. 310, 325, 326, 373 P.2d 809 (1962). It should determine if the Commission acted arbitrarily, capriciously or unreasonably; acted outside the scope of its statutory responsibility; or issued an order not supported by substantial evidence. Otero vs. New Mexico State Police Board, 495 P.2d 374, 83 N.M. 594 (1972). In the absence of a determination that the Commission acted in one of the above ways, the decision of the Commission should be affirmed. Furthermore, the Court is not to weigh the evidence but its inquiry is limited to whether the Commission could reasonably make its findings based on the record before it. Grace vs. Oil Conservation Commission, 87 N.M. 205, 531 P.2d 939 (1975). Also, the Court is to give "...special weight and credence to the experience, technical competence and specialized knowledge of the Commission." Grace, supra, at 208.

"Substantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Fort Sumner Municipal School Board vs. Parsons, 82 N.M. 610, 485 P.2d 366 (1971); Wickersham vs. New Mexico State Board of Education, 81 N.M. 188, 464 P.2d 918, Ct. of App. (1970). In deciding whether a finding has substantial support, the Court must review the evidence in the most favorable light to support the finding and reverse only if convinced that the evidence thus viewed together with all reasonable inferences to be drawn therefrom, cannot sustain the finding. Any evidence unfavorable to the finding will not be considered. Martinez vs. Sears Roebuck & Company 81 N.M. 371, 467 P.2d 37, Ct. of App. (1970); United Veterans Organization vs. New Mexico Property Appraisal Department, 84. N.M. 114, 500 P.2d 199, Ct. of App. (1972).

ORDER NO. R-5332-A IS NOT UNLAWFUL
AND NOT IN EXCESS OF THE AUTHORITY
OF THE COMMISSION.

C & K in its brief argues that Findings 13 and 14 were fatal to the validity of Order No. R-5332-A and thus rendered the order void. The basis of this argument runs on the theory that because the two findings found that correlative rights had not been impaired and no waste had occurred from C & K's operation of the Carlsbad 13 Well No. 1 the Commission had no jurisdiction. This argument completely ignores the initial compulsory pooling Order No. R-5332 applied for by C & K and which force-pooled Taylor's and others' interests.

Finding No. 5 of Order No. R-5332 states:

"That to avoid the drilling of unnecessary wells, to protect correlative rights, and to afford to the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the gas in said pool, the subject application should be approved by pooling all mineral interests, whatever they may be, within said unit."

Order No. 13 of Order No. R-5332 states:

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

At first glance, C & K's argument leaves us on the horns of a dilemma if one were to assume that findings such as the Findings 13 and 14 automatically defeated jurisdiction from the beginning. To adopt this view would render the powers, and indeed the purpose, of the oil conservation statutes meaningless.

A more meaningful and logical approach is that the Commission has continuous jurisdiction to protect correlative rights and that its jurisdiction will not be defeated by findings such as Findings 13 and 14. Jurisdiction must exist for the Commission to reach a determination as to whether correlative rights will be impaired, are being impaired, or have been impaired depending on the particular fact situation.

In Order R-5332 the Commission sought to prevent waste by the drilling of unnecessary wells and to protect the correlative

rights of the various interest owners, and in addition retained jurisdiction over the subject matter of the order to carry out its duties and to preserve the integrity of its order.

C & K has cited some New Mexico Supreme Court cases dealing with the powers of the Oil Conservation Commission. Close scrutiny of those cases reveals that they are inapplicable to this case. If anything, these cases lend support to the position of the Commission.

Two of these cases are worthy of mention. Continental Oil Co. v. Oil Conservation Commission, supra, strongly emphasizes the role of the Commission with respect to prevention of waste and protection of correlative rights.

Sims v. Mechem, 72 N.M. 186, 382 P.2d 183 (1963) merely supports the findings made in Order No. R-5332. The Sims case simply invalidated an order of the Commission for not making a finding that waste would be prevented. Like in the Continental case, the New Mexico Supreme Court ruled in Sims that the Commission had not made jurisdictional findings relative to prevention of waste and protection of correlative rights.

In its brief C & K has cited much of the statutory power of the Commission. Included in those citations is Section 70-2-11 NMSA, (1978 Comp.) which reads as follows:

"A. The division is hereby empowered, and it is its duty, to prevent waste prohibited by this act and to protect correlative rights, as in this act provided. To that end, the division is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof.

"B. The commission shall have concurrent jurisdiction and authority with the division to the extent necessary for the commission to perform its duties as required by law." (emphasis added)

Indeed the foregoing language of Section 7-2-11 is quite broad in its grant of regulatory authority to the Commission.

Section 70-2-17 NMSA (1978 Comp.), the compulsory pooling statute, states that the compulsory pooling orders issued by

the Commission "shall be upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit to recover or receive without unnecessary expense his just and fair share of the oil or gas or both...." (emphasis added)

In fact many of the oil conservation statutes allow the Commission to give equitable consideration to certain situations as may from time to time exist. The Legislature liberally sprinkled such words as "just and equitable," "just and fair," and "just and reasonable" in the conservation statutes. See Section 70-2-17, supra. The proration statute, Section 70-2-15 (C) gives explicit authority for equitable consideration. In addition, it appears that the Legislature recognized the difficulty that could arise from time to time in ascertaining equitable shares of oil and gas to the various interest owners in a unit or pool. Therefore, the legislature again resorted to flexible language such as "so far as it is practicable to do so" and "so far as can be practically determined." See Section 70-2-17.

There can be no other conclusion but that the Commission had ample authority in making its ruling under Order No. R-5332-A.

THE COMMISSION FINDINGS ARE
SUPPORTED BY SUBSTANTIAL
EVIDENCE.

As stated earlier and in C & K's brief, the real test of whether there is substantial evidence to support the Commission's findings is whether the Commission could reasonably make the findings. See Grace v. Oil Conservation Commission, supra.

Order No. 3 of Commission Order No. R-5332 states that the operator was to have furnished all known working interest owners in the unit with an itemized schedule of estimated well costs within 30 days before commencing the well. In addition, through Order 4 of Order R-5332 non-consenting working interest

owners were allowed to pay their share of estimated well costs provided that such payment was made within 30 days after receipt of the schedule of estimated well costs.

The relevant facts in this regard are as follows:

- (1) Order R-5332 was issued on November 30, 1976.
- (2) Taylor received an AFE on November 9 and 10, 1976.
- (3) Spud date of the well was January 16, 1977.

Tr. 49

- (4) Approximate completion date of the well was March 16, 1977. Tr. 62.

The illustration presented by the above facts and dates is that although Taylor received two identical AFE's on the date of the hearing and the following day, the drilling of the well was not commenced until more than a year later. It would seem logical that the actual estimate for well costs would be more refined and reliable the closer one gets to the spud date. This is evident from the sharp rise in tubing costs as evidenced by the testimony of Dorothy Brown to the effect that tubing costs has been undercharged (Tr. 67) because market value had not been assessed to tubing taken from the warehouse, Tr. 65.

Taylor simply was not furnished an AFE within 30 days prior to commencement of the well.

RISK FACTOR

As discussed above, the Commission in Order No. R-5332, retained jurisdiction over the subject matter of the order. After not complying with the Commission order C & K now complains about the removal of the 120 percent risk factor. Had C & K timely furnished the AFE to Taylor this issue as it relates to Taylor's correlative rights would not be before this court.

The Commission's sole basis for removing the risk factor is the protection of correlative rights over which the Commission has ample authority as discussed earlier. But let us go a step further and examine C & K's position as operator of the

unit with respect to other interest owners in the unit.

Application of fiduciary responsibilities may be necessary to the relationship of the operator under a pooling situation as found in this case and persons having interests in the pooled premises affected. In this regard see 6 Williams and Meyers, Oil and Gas Law, Section 990. By C & K's own admission it was not careful in compliance with the order as well as other filing procedures. See Tr. 125 testimony of Mr. Tompson, one of C & K's witnesses.

It seems clear that C & K cannot be heard to complain.

THE OIL CONSERVATION COMMISSION
DID NOT FAIL TO CONSIDER THE
RIGHTS OF W. A. PAGE, JR.

The real basis of Taylor's argument on this issue is that Taylor was not allowed to represent Mr. Page at the hearing. The OCC had a valid reason for not allowing Taylor to represent Mr. Page. Simply, Taylor is not an attorney licensed under the rules of the New Mexico Supreme Court relating to admission to the practice of law.

Attached hereto as Exhibit A is Attorney General Opinion 58-200 issued on September 30, 1958 and still in force. The essence of this opinion is that representation by a layman of another before an administrative body where the character of the acts performed are in a representative capacity as an advocate constitutes the practice of law. Since Opinion 58-200 is attached hereto in its entirety its further explanation is unnecessary as the opinion speaks for itself. It should be noted, however, that the statutes under discussion and consideration in the opinion now are found in the 1978 Compilation as Sections 36-2-9, 36-2-27 and 36-2-28.

In addition, in the case of State ex rel Norvell v. Credit Bureau of Albuquerque, 85 N.M. 521, 514 P.2d 40 (1973) the New Mexico Supreme Court recognized that an indicia of the practice of law included representation of parties before administrative bodies.

As is evident from the record, the Orders under consideration in this case are formal orders. The hearings before the Commission often are adversary in nature requiring a special skill and competence obtained through special training and experience. Certainly the hearing giving rise to Order No. R-5332-A had the attributes of an adversary hearing where witnesses were examined and cross-examined, objections were made and ruled on, findings of fact were made and a complete record for a possible appeal was made.

Clearly the Commission cannot sanction the unauthorized practice of law.

The contention that Mr. Page's correlative rights were impaired is preposterous. Mr. Page, nor an attorney hired by him, ever objected to the force-pooling order or attended its hearing. Similarly, Mr. Page nor his attorney, were present at the second hearing giving rise to Order No. R-5332-A.

Simply stated, Mr. Page was validly treated as a non-consenting interest owner whose interest was assessed a risk factor as allowed by the compulsory pooling statute, Section 70-2-17, supra.

THE COMMISSION DID NOT ERR IN
FAILING TO ORDER C & K TO PAY
TAYLOR AND PAGE THEIR 1/8TH
ROYALTY INTERESTS

Earlier in this brief (with respect to points raised by C & K) it was argued that the Commission's authority was quite broad insofar as preventing waste and protecting correlative rights were concerned. But let us not lose sight of the origin and purpose of that authority.

It must be remembered that a regulatory agency such as the Commission herein is not adjudicating property rights, but rather is regulating production of oil and gas. This issue raised by Taylor is one that involves a determination of property rights - totally outside the jurisdiction of the Commission or the Executive branch of the state government. Determination of ownership in property are judicial functions. Continental Oil Co. v. Oil Conservation Commission, supra.

It is true that the compulsory pooling statute does call for the royalty interest of interest owners of unleased mineral tracts to be a 1/8 royalty interest. But the reason for setting a royalty interest in the statute is for comparable treatment with leased tracts in the unit. Generally royalty interests under an oil and gas lease have been 1/8 of the gross value of

the production and the royalty interest has been free from costs of production. See 3 Williams, Oil and Gas Law, Sections 641, 642.3.

The point is that the statute sets a royalty percentage for unleased tracts so that there will be a comparable parity between leased and unleased tracts in a unit.

If Taylor believes that the royalty portion of his interest was unlawfully withheld, then his remedy would be in bringing an appropriate action in a proper court. It is not for the Commission to decide the extent of Taylor's interest nor whether it is necessary for Taylor to sign a division order before payment. Clearly issues with respect to language of a division order have nothing to do with correlative rights.

THE COMMISSION DID NOT ERR
IN FAILING TO ASSESS THE
PENALTY PROVISIONS OF SECTION
70-2-31 B NMSA (1978 COMP.)

The thrust of Taylor's argument is that the penalty provisions of Section 70-2-31 are mandatory.

We have already quoted Section 70-2-11 to illustrate the broad powers of the Commission. Section 70-2-11 would seem to temper the language of Section 70-2-31. It appears inappropriate that the legislature intended that each and every violation of rules and orders of the Commission, whether intentional or not, be prosecuted with the zeal that Taylor suggests.

A legislative intention that the word "shall" is to be construed as permissive may appear from the spirit and purpose of an act or from the connection in which it is used. See Am Jur 2d, Statutes, Section 26.

Moreover, in determining whether a statutory provision is mandatory or directory, a reasonable construction must be given rather than one which would render the statute absurd. State v. Vigil, 74 N.M. 766, 398 P.2d 987 (1965). In this case Taylor's

theory for penalizing C & K certainly borders on the absurd, when one computes a late, but unintentional, filing at \$1000.00 per day, let alone Taylor's entire list of C & K's violations.

Even assuming that the penalty provisions are mandatory, under our set of facts, Taylor's allegations are improperly brought before this court. A Writ of Mandamus is the method by which Taylor can properly bring this issue before the court and not through an appeal from an order of the Commission.

THE COMMISSION DID NOT ERR
IN FAILING TO GRANT TAYLOR'S
APPLICATION FOR REHEARING.

Essentially nothing new would have been presented to the Commission had it granted Taylor's application for rehearing. Taylor claims in this regard run to C & K's failure to open an escrow account in Eddy County. The record reveals that this problem was amply presented to the Commission. Tr. 133, 137, 144, 150, 151.

CONCLUSION

In summary, C & K's appeal is one attempting to rescind the Commission's order removing the 120 percent risk factor as to Taylor's interest. C & K's position is not an enviable one because it has only itself to blame; it cannot shift the responsibility for its failings of timely making filings or of making relevant and extremely crucial mistakes of not furnishing estimated well costs to working interest owners of the unit which C & K force pooled.

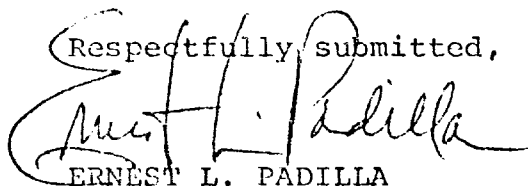
It is difficult to understand the rationale of Taylor's appeal from the nature of the facts in this case. By Order No. R-5332-A Taylor seems to have obtained the best of two possible worlds.

By virtue of C & K's ineptness in providing him with an AFE within 30 days of drilling the Carlsbad 13 No. 1 well, Taylor did not have to risk any capital in financing the drilling of the well. After the drilling venture proved successful and the capital investment no longer a risk, Taylor through the order was allowed to pay his share of the costs.

All of these issues raised by Taylor are without merit insofar as Order No. R-5332-A is concerned. Simply stated, Taylor's allegations raise issues beyond the scope of the Commission's jurisdiction in that Taylor advances interests of others not his own, seeks an adjudication of property rights, and is in the wrong forum to force the Commission to penalize C & K.

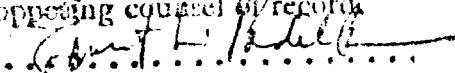
The Commission's Order No. R-5332-A is legally supportable in all respects.

Respectfully submitted,



ERNEST L. PADILLA
Assistant Attorney General
Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501
Telephone: 827-2741

I hereby certify that on the
30th day of July, 1977, a copy of the foregoing pleading was mailed to
opposing counsel of record.





FIFTH JUDICIAL DISTRICT

STATE OF NEW MEXICO

JOHN B. WALKER
District Judge
Division V

May 31, 1979

P O Box 1626
Carlsbad, New Mexico 88220
Phone (505) 887-7101

Mr. Jason W. Kellahin
P.O. Box 1769
Santa Fe, New Mexico 87501

Mr. W. T. Martin, Jr.
P.O. Drawer N
Carlsbad, New Mexico 88220

Lynn Teschendorf
P.O. Box 2088
Santa Fe, New Mexico 87501

Re: C & K Petroleum, Inc., vs.
New Mexico Energy and Minerals
Department, et al,
Eddy County Cause Nos. CV-78-415 and
CV-78-417 (Consolidated)

Gentlemen:

This is to advise each of you that I have entered an Order this date
striking interrogatories.

Very truly yours,

A handwritten signature of John B. Walker in cursive script, followed by a vertical line.

John B. Walker
District Judge

JBW/cy

MATKINS AND MARTIN

ATTORNEYS AT LAW

601 NORTH CANAL STREET

P. O. DRAWER N

CARLSBAD, NEW MEXICO 88220

CASWELL S. NEAL 1898-1974

JEROME D. MATKINS

W. T. MARTIN, JR.

ROBERT N. MEYER

AREA CODE 505

885-2445

885-2312

May 10, 1979

**Mr. Martin Allday
Lynch, Chappell, Allday & Aldridge
1800 First National Building
Midland, TX 79701**

Re: Bill G. Taylor, Carlsbad 13 Well No. 1

Dear Mr. Allday:

I have finally had the opportunity to get back on track with the Taylor -C & K problem. I have had a rather extensive meeting and discussion with Mr. Taylor. Based upon that discussion I feel it is entirely fruitless for me to submit to C & K Petroleum, Inc., a proposed Division Order or Operating Agreement that meets Mr. Taylor's approval as it is clear they would not meet with C & K's approval even for settlement purposes. I have grave doubts at this time that any kind of settlement can be accomplished. I am not foreclosing the idea.

I have submitted to Mr. Kellahin, attorney of record, some interrogatories. After I have had an opportunity to review the answers to those interrogatories, I may then be in a position to review settlement possibilities and proceed along those lines. It is only fair to inform you that at present Mr. Taylor is not prone to entering into any kind of settlement agreement.

Yours very truly,

MATKINS AND MARTIN

W. T. Martin, Jr.

tms

**cc: Mr. Jason Kellahin
Attorney at Law
500 Don Gaspar
Santa Fe, NM 87501**

**cc: Ms. Lynn Teschendorf
General Counsel
Oil Conservation Division
P. O. Box 2088
Santa Fe, NM 87501**

**C
O
P
Y**

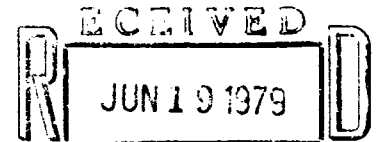


BRUCE KING
GOVERNOR
LARRY KEHOE
SECRETARY

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

June 15, 1979

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434



OIL CONSERVATION DIVISION
SANTA FE

Mrs. Frances M. Wilcox
Clerk of the District Court
Eddy County Courthouse
Carlsbad, New Mexico 88220

Re: Eddy County Cause Nos.
CV-78-415 and CV-78-417

Dear Mrs. Wilcox:

Enclosed, in duplicate, for filing please find
my Entry of Appearance in the above-numbered causes
which have been consolidated.

Thank you for your assistance in this matter.

Very truly yours,

ERNEST L. PADILLA
General Counsel

ELP/dr

enc.

cc: W. T. Martin, Jr.
Jason Kellahin

STATE OF NEW MEXICO

FIFTH JUDICIAL DISTRICT
COUNTY OF EDDY
STATE OF NEW MEXICO

IN THE DISTRICT COURT COUNTY OF EDDY

FILED JUN 18 1979 IN MY
OFFICE

C & K PETROLEUM, INC.,
a Corporation,

Petitioner,

FRANCES M. WILCOX
Clerk of the District Court

vs.

NO. CV-78-415

NEW MEXICO ENERGY AND
MINERALS DEPARTMENT, OIL
CONSERVATION DIVISION
and BILL TAYLOR,

Respondents,

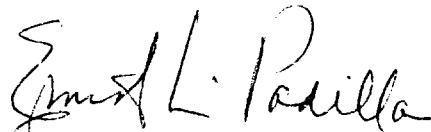
IN THE MATTER OF THE
APPLICATION OF BILL TAYLOR
FOR ENFORCEMENT AND AMEND-
MENT OF ORDER NO. R-5332,
EDDY COUNTY, NEW MEXICO,
OIL CONSERVATION CASE NO.
6289

NO. CV-78-417

CONSOLIDATED

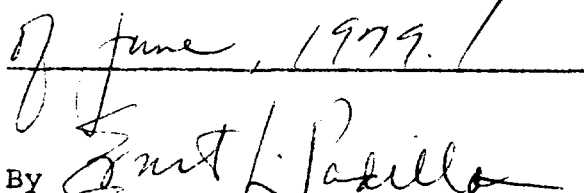
ENTRY OF APPEARANCE

Please take notice that the undersigned hereby enters his
appearance as counsel for the Oil Conservation Division in the
above-styled and numbered causes.



ERNEST L. PADILLA
Special Assistant Attorney General
P. O. Box 2088
Santa Fe, New Mexico
505 827-2741

I hereby certify that I have
mailed a copy of the foregoing
pleading to opposing counsel of
record this 15th day

of June, 1979.
BY 



BRUCE KING
GOVERNOR

LARRY KEHOE
SECRETARY

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

June 15, 1979

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

Mrs. Frances M. Wilcox
Clerk of the District Court
Eddy County Courthouse
Carlsbad, New Mexico 88220

Re: Eddy County Cause Nos.
CV-78-415 and CV-78-417

Dear Mrs. Wilcox:

Enclosed, in duplicate, for filing please find
my Entry of Appearance in the above-numbered causes
which have been consolidated.

Thank you for your assistance in this matter.

Very truly yours,

ERNEST L. PADILLA
General Counsel

ELP/dr

enc.

cc: W. T. Martin, Jr.
Jason Kellahin

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

C & K PETROLEUM, INC.,
a Corporation,

Petitioner,

vs.

NO. CV-72-415

NEW MEXICO ENERGY AND
MINERALS DEPARTMENT, OIL
CONSERVATION DIVISION
and BILL TAYLOR,

Respondents,

IN THE MATTER OF THE
APPLICATION OF BILL TAYLOR
FOR ENFORCEMENT AND AMEND-
MENT OF ORDER NO. R-5332,
EDDY COUNTY, NEW MEXICO,
OIL CONSERVATION CASE NO.
6289

NO. CV-72-417

CONSOLIDATED

ENTRY OF APPEARANCE


Please take notice that the undersigned hereby enters his
appearance as counsel for the Oil Conservation Division in the
above-styled and numbered causes.



ERNEST L. PADILLA
Special Assistant Attorney General
P. O. Box 2088
Santa Fe, New Mexico
505 827-2741

I hereby certify that I have
mailed a copy of the foregoing
pleading to opposing counsel of
record this 15th day

of June, 1979.

By 

Jason Kellahin
W. Thomas Kellahin

Karen Aubrey

RECEIVED
MAY 1 1979
OIL CONSERVATION DIVISION
SANTA FE

KELLAHIN and KELLAHIN

Attorneys at Law

500 Don Gaspar Avenue

Post Office Box 1769

Santa Fe, New Mexico 87501

Telephone 982-4285

Area Code 505

May 14, 1979

Mrs. Frances M. Wilcox
Clerk of the District Court
Fifth Judicial District
P. O. Box 98
Carlsbad, New Mexico 88220

Re: C & K Petroleum, Inc., v. New Mexico Energy
and Minerals Department, et al.,
Nos. CV-78-415, CV-78-417 (Consolidated)

Dear Mrs. Wilcox:

Enclosed, in duplicate, are the Objection of Interrogatories and Motion to Strike, together with memorandum in support thereof and a form of order for the Judge's consideration.

Would you kindly present this to the Judge assigned to these Consolidated cases for his consideration?

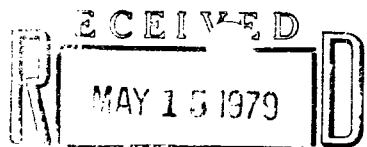
Your assistance on this is appreciated.

Yours very truly,

Jason Kellahin
Jason W. Kellahin

JWK:eps
Enclosures

cc: Martin L. Allday, Esq.
W. T. Martin, Jr., Esq.
Gilbert C. Thompson
Ernest Padilla, Esq. ✓



OIL CONSERVATION DIVISION
SANTA FE

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

C & K PETROLEUM, INC.,
a Corporation,

Petitioner,

-vs-

No. CV-78-415

NEW MEXICO ENERGY AND
MINERALS DEPARTMENT, OIL
CONSERVATION DIVISION
and BILL TAYLOR,

Respondents,

IN THE MATTER OF THE
APPLICATION OF BILL TAYLOR
FOR ENFORCEMENT AND AMEND-
MENT OF ORDER NO. R-5332,
EDDY COUNTY, NEW MEXICO,
OIL CONSERVATION CASE NO.
6289

No. CV-78-417

CONSOLIDATED

OBJECTION TO INTERROGATORIES
AND
MOTION TO STRIKE

Comes now C & K Petroleum, Inc., and as provided by Rule 33, Rules of Civil Procedure for the District Courts of New Mexico, objects to the interrogatories served on this party by Bill Taylor, Respondent in Cause No. CV-78-415 and Petitioner in Cause No. CV-78-417, and moves that said interrogatories, a copy of which is attached hereto and made a part of this motion, be ordered to be stricken out and expunged, and that C & K Petroleum, Inc., be not required to answer the same upon the following grounds:

1. The subject consolidated cases are appeals from the New Mexico Oil Conservation Division, formerly Oil Conservation Commission, and complain of the Commission's action in Case No. 6289, Order No. R-5332.

2. Under the provisions of Section 70-2-25, New Mexico Statutes, Annotated, 1973 Compilation, appeals from the Oil Conservation Commission are limited to matters raised in the petition for rehearing, and under construction of the act, review is limited to a review of the record before the Commission.

3. The interrogatories, nor any other form of discovery, could produce admissible evidence nor lead to the discovery of admissible evidence, as provided by Rule 26, Rules of Civil Procedure, since no evidence is admissible on these appeals.

WHEREFORE C & K Petroleum, Inc., seeks an order of this Court striking the interrogatories served on it as being improperly served.

Respectfully submitted,

C & K PETROLEUM, INC.,

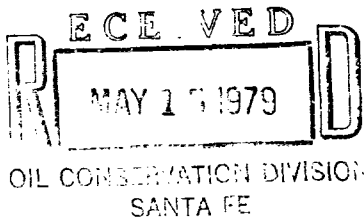
By Jason Kellahin
JASON KELLAHIN

KELLAHIN & KELLAHIN
P. O. Box 1769
Santa Fe, New Mexico 87501
Ph. (505) 982-4285

CERTIFICATE

I hereby certify that a true copy of the foregoing objection and motion was served on opposing counsel of record this 14TH day of May, 1979, by mailing a copy thereof to him, postage fully paid.

Jason Kellahin
JASON KELLAHIN



IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO

IN THE MATTER OF THE)
APPLICATION OF BILL TAYLOR)
FOR ENFORCEMENT AND) No. CV-78-417
AMENDMENT OF ORDER NO. R-5332,) CV-78-415
EDDY COUNTY, NEW MEXICO, OIL)
CONSERVATION COMMISSION CASE)
NO. 6289)

WRITTEN INTERROGATORIES

TO: C & K Petroleum, Inc., c/o its attorney
Jason W. Kellahin
500 Don Gaspar
Santa Fe, New Mexico 87501

Please take note that pursuant to the Rules of Civil Procedure of the State of New Mexico, C & K Petroleum, Inc., is requested to answer under oath the following written interrogatories within fifteen days of the date of submission.

1. State the amount of allowable production of C & K Carlsbad 13 Well No. 1, as set by the Oil Conservation Division of the State of New Mexico since date of first production to the present. Itemize the production allowables on a monthly basis.

2. State on a monthly basis the amount of production of Carlsbad 13 Well No. 1 since date of first production. Also state what percentage of the allowable as set by the Oil Conservation Division was produced by C & K Petroleum, Inc.

3. Is any party or entity other than C & K Petroleum, Inc., acting as operator and/or producing or removing production from C & K Carlsbad 13 Well No. 1?

4. State to whom all production from C & K Carlsbad 13 Well No. 1 is being sold and the price or prices having been paid for the product.

5. Since date of first production or runs has all the production been sold to the same buyer? If not, state each buyer of production, the amount purchased, the price paid thereon, and date of sales. Also, state whether the sales were intra-state or interstate in nature.

6. As to all sales state through whom production was sold and through whom production was metered. State method of billing. Please attach to these interrogatory answers copies of the metering and billing of intrastate sales.

7. State what is C & K H-1973 Development Venture. State its purposes and the parties to the venture. Please attach a copy of any and all written agreements concerning the relationship of the parties in the Development Venture.

8. Is the sale to the buyer as stated in the answer to Interrogatory No. 4 in interstate or intrastate commerce?

9. Please state the State of incorporation, the principal office location for corporate purposes, names of all officers and directors of the Desana Corporation.

10. Is Desana Corporation a wholly owned subsidiary of C & K Petroleum, Inc.? If not, state the amount of stock, if any, owned by C & K Petroleum, Inc., in Desana Corporation.

11. Has 25% of the production of C & K Carlsbad 13 Well No. 1 been allocated to Desana? Has Desana been paid for production? If so, state amounts and method of payment. If your answer is no, please state the percentage of production allocated to Desana Corporation. Please attach a copy of any agreement to which C & K Petroleum, Inc., and Desana Corporation are parties relating to Carlsbad 13 Well No. 1.

12. Is Desana Corporation an operator in C & K Carlsbad 13 Well No. 1?

13. Does C & K Petroleum, Inc., have a Certificate of Authority to sell production from C & K Carlsbad 13 Well No. 1 in interstate commerce as required by the Federal Energy Regulatory Agency or any other agency of the Federal Government? If so, please attach a copy of the permit. If C & K Petroleum, Inc., does not have such permit, please state why. Who does hold the permit or permits to sell production from said Well in interstate commerce?

14. If Desana's gas from Carlsbad 13 Well No. 1 is being sold in interstate commerce, please state whether or not Desana Corporation has a permit for such sale in interstate commerce as required by the Federal Energy Regulatory Agency or any other agency so requiring a permit. If Desana Corporation does not have such a certificate, please state why.

15. State in detail the amount of production or runs for C & K Carlsbad 13 Well No. 1 since date of first production to the present, and the price obtained for the production. Also, state amounts (on monthly basis) which have been charged against the operating cost to working interest owners.

16. Please state the total amount of funds or monies being held in suspense or escrow under the name of Bill G. Taylor or tentatively allocated to Bill G. Taylor. State the date of placing the funds in suspense or escrow, and the amount of interest earned on those funds. If no interest was earned on some portion or all of the funds, please state which funds and why no interest was being earned.

17. State why C & K Petroleum, Inc., has instructed the American Bank of Carlsbad not to release any information to royalty interest owners about the amount of funds being held in the American Bank of Carlsbad pursuant to Oil Conservation Division Order R-5332.

18. Please state why C & K Petroleum, Inc., is not authorizing American Bank of Carlsbad to release funds to royalty interest owners on proof being submitted to the American Bank of Carlsbad of their ownership interest in such funds. If C & K Petroleum, Inc., denies it is so instructing the American Bank of Carlsbad, why haven't the funds been released?

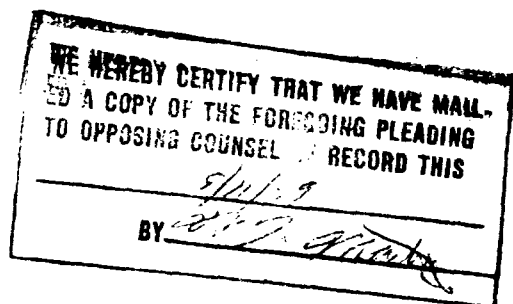
19. Please state why Bill G. Taylor is not receiving payment of his 1/8th royalty or production from C & K Carlsbad 13 Well No. 1?

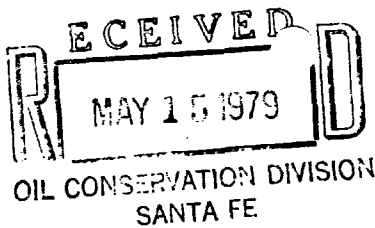
20. Does C & K Petroleum, Inc., acknowledge that there is no statute in the State of New Mexico nor regulation as promulgated by the Oil Conservation Division requiring the execution of a Division Order prior to the payment of any royalty or working interest? If C & K claims such a statute or regulation exists, cite the statute or regulation.

21. Please state on what date C & K Petroleum, Inc., deposited funds in an escrowed account at the American Bank of Carlsbad pursuant to Oil Conservation Commission Division For Pooling Order No. R-5332. Also state what period of time has passed since the date of the entry of Oil Conservation Division Force Pooling Order No. R-5332. State why C & K Petroleum, Inc., has not complied with R-5332A for such a period of time.

MATKINS AND MARTIN

By *W. T. Martin, Jr.*
W. T. Martin, Jr.
Attorneys for Bill G. Taylor
P. O. Drawer N
Carlsbad, New Mexico 88220





STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

C & K PETROLEUM, INC.,
a Corporation,

Petitioner,

-vs-

No. CV-78-415

NEW MEXICO ENERGY AND
MINERALS DEPARTMENT, OIL
CONSERVATION DIVISION
and BILL TAYLOR,

Respondents,

IN THE MATTER OF THE
APPLICATION OF BILL TAYLOR
FOR ENFORCEMENT AND AMEND-
MENT OF ORDER NO. R-5332,
EDDY COUNTY, NEW MEXICO,
OIL CONSERVATION CASE NO.
6289

No. CV-78-417

CONSOLIDATED

MEMORANDUM IN SUPPORT OF OBJECTIONS
TO INTERROGATORIES AND MOTION TO STRIKE

On May 14, 1979, counsel for Bill Taylor, Respondent in Cause No. CV-78-415 and Petitioner in Cause No. CV-78-417 (Consolidated), served interrogatories on the Attorney for C & K Petroleum, Inc., under the provisions of the New Mexico Rules of Civil Procedure. C & K Petroleum, Inc., submits that serving of interrogatories or engaging in any other form of discovery in this type of proceeding is improper.

Generally, the purpose of discovery is to assist a party in preparing and presenting his case, and to eliminate, insofar as possible, the element of surprise at a trial. 23 Am. Jur. 2d Sec. 155.

In an appeal from the Oil Conservation Commission, discovery at the District Court level cannot lead to the discovery of admissible evidence, nor could produce admissible

evidence, as provided by Rule 26, Rules of Civil Procedure. Under the provisions of Sec. 70-2-25, New Mexico Statutes, Annotated, 1978 Comp., the scope of review of a commission action by the District Court is limited strictly to matters presented in the petitioner's application for rehearing before the Commission.

The New Mexico Supreme Court has construed this provision strictly. Pubco Petroleum Corporation v. Oil Conservation Commission, 75 N.M. 36, 399 P.2d 932 (1965).

In Continental Oil Company v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 309 (1962), the court held that it was error for the court to admit evidence at a review of an Oil Conservation Commission order, and that the review before the District Court is solely for the purpose of determining if the order is supported by substantial evidence, and is not arbitrary or capricious. See also Grace v. Oil Conservation Commission, 87 N.M. 205, 531 P.2d 839 (1975).

Since the serving of interrogatories can serve no useful purpose in this case they constitute harrassment and an imposition of this party to the consolidated suits, and the interrogatories should be ordered stricken.

Respectfully submitted,

C & K PETROLEUM, INC.

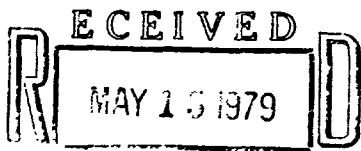
By Jason Kellahin
JASON KELLAHIN

KELLAHIN & KELLAHIN
P. O. Box 1769
Santa Fe, New Mexico 87501
Ph. (505) 982-4285

CERTIFICATE

I hereby certify that a true copy of the foregoing memorandum was served on opposing counsel of record this 14th day of May, 1979 by mailing a copy thereof to him, postage fully paid.


JASON KELLAHIN



OIL CONSERVATION DIVISION
STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

C & K PETROLEUM, INC.,
a Corporation,

Petitioner,

-vs-

No. CV-78-415

NEW MEXICO ENERGY AND
MINERALS DEPARTMENT, OIL
CONSERVATION DIVISION
and BILL TAYLOR,

Respondents,

IN THE MATTER OF THE
APPLICATION OF BILL TAYLOR
FOR ENFORCEMENT AND AMEND-
MENT OF ORDER NO. R-5332,
EDDY COUNTY, NEW MEXICO,
OIL CONSERVATION CASE NO.
6289

No. CV-78-417

CONSOLIDATED

O R D E R

This matter coming regularly before the Court on the Motion of C & K Petroleum, Inc., objecting to interrogatories served by Bill Taylor, a party hereto, and moving that they be stricken, and the Court having considered the objections and motion, and supporting memorandum, and it appearing that discovery is improper in this proceeding and good cause appearing,

It is therefore ORDERED that said interrogatories be stricken out and that C & K Petroleum, Inc., be not required to answer the same.

Dated this ____ day of _____, 1979.

DISTRICT JUDGE

Lynn H. Teschendorf

FIFTH JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO

CIVIL NON-JURY NOTICE

TO: ALL ATTORNEYS of record in the hereinafter styled and numbered cases.

You and each of you are hereby notified that the following styled and numbered CIVIL NON-JURY cases have been set for trial before the HONORABLE JOHN B. WALKER at Carlsbad, New Mexico, said cases to begin at 9:00 A. M. on the designated dates.

N. Randolph Reese
Presiding Judge

Frances B. Wilcox
District Court Clerk

WEDNESDAY, JULY 11, 1979

Donald Fanning
vs.
Mike Roberts Farms, Inc.

CV-78-389

David R. Vandiver

Kenton E. Walz
Charles R. McCash

C & K Petroleum, Inc.
vs.
N. M. Energy & Minerals

CV-78-415

Jason W. Kellahin

Lynn H. Teschendorf
W. T. Martin, Jr.

In Re Bill Taylor's
Appeal of State Engineer's
Decision

CV-78-417

W. T. Martin, Jr.

Jason W. Kellahin

(Cause Nos. CV-78-415 and CV-78-417 have been consolidated
for trial purposes.)

Anita Bustamante
vs.
Martin Castaneda

CV-79-26

Charles A. Feezer

Chad D. Dickerson

THURSDAY, JULY 12, 1979

Security Savings & Loan
vs.
Francis G. Tracy III

CV-79-18

Perry Abernethy

Jerome D. Matkins
Michael T. Murphy

Carlsbad Savings & Loan
vs.
Roger H. Jenkins

CV-79-31

Jerome D. Matkins

Buford L. Norrid

THURSDAY, JULY 12, 1979 (Cont'd.)

Cynthia L. Maki
vs.
Douglas E. Maki

DR-78-245

Buford L. Norrid
Thomas L. Marek

FRIDAY, JULY 13, 1979

Merrill F. Ehrmantraut
vs.
Barbara A. Ehrmantraut

DR-78-420

Buford L. Norrid
Jerome D. Matkins

State of New Mexico, ex rel.
vs.
Rodney Mason

DR-79-3

Joseph L. Herring
James W. Klipstine

Donna J. Boles
vs.
Kenneth E. Boles

DR-78-126

Joseph L. Herring
James W. Klipstine

Hazel B. Watkins
vs.
Ralph Watkins

DR-79-39

Joe Gant III
Lon P. Watkins

TUESDAY, JULY 17, 1979

Rayetta L. Morris
vs.
Rocky L. Morris

DR-79-53

William M. Siegenthaler
David R. Vandiver

David Charles Wood
vs.
Martha Jane Wood

DR-79-68

Perry Abernethy
Leonel Ceniceros

Consuelo R. Torrez
vs.
Doroteo

DR-79-84

Michael M. Carrasco
Charles A. Feezer

Evelyn B. Wigley
vs.
Jackie L. Wigley

DR-79-125

Martha Jane Shuler
Jerome D. Matkins



STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR
LARRY KEHOE
SECRETARY

March 2, 1979

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

Mrs. Frances M. Wilcox
Clerk of the District Court
Eddy County Courthouse
Carlsbad, New Mexico 88220

Re: Eddy County Cause
Nos. CV-78-415 and
CV-78-417

Dear Mrs. Wilcox:

Enclosed for filing please find the Transcript
on Appeal for the above-numbered causes which have been
consolidated.

Thank you for your assistance in this matter.

Very truly yours,

(Ms.) LYNN TESCHENDORF
General Counsel

LT/dr

cc: W. T. Martin, Jr.
Jason W. Kellahin

PS Form 3811, Apr. 1977

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.		
1. The following service is requested (check one). <input checked="" type="checkbox"/> Show to whom and date delivered..... <input type="checkbox"/> Show to whom, date, and address of delivery..... <input type="checkbox"/> RESTRICTED DELIVERY Show to whom and date delivered..... <input type="checkbox"/> RESTRICTED DELIVERY. Show to whom, date, and address of delivery. \$_____ (CONSULT POSTMASTER FOR FEES)		
2. ARTICLE ADDRESSED TO: Clerk of the District Court Carlsbad, New Mexico		
3. ARTICLE DESCRIPTION: REGISTERED NO. CERTIFIED NO. INSURED NO. 81792		
(Always obtain signature of addressee or agent)		
I have received the article described above. SIGNATURE: <input type="checkbox"/> Addressee <input type="checkbox"/> Authorized agent Carolyn V. [Signature]		
4. DATE OF DELIVERY MAR - 5 1979		
5. ADDRESS (Complete only if requested)		
6. UNABLE TO DELIVER BECAUSE:		

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

C & K PETROLEUM, INC.,)
a Corporation,)
)
Petitioner,)
)
vs.)
)
NEW MEXICO ENERGY AND MINERALS)
DEPARTMENT, OIL CONSERVATION)
DIVISION and BILL TAYLOR,)
)
Respondents,)
)
and)
)

NOS. CV-78-415
CV-78-417

IN THE MATTER OF THE APPLICATION
OF BILL TAYLOR FOR ENFORCEMENT AND
AMENDMENT OF ORDER NO. R-5332, EDDY
COUNTY, NEW MEXICO, OIL CONSERVATION
COMMISSION CASE NO. 6289.

TRANSCRIPT ON APPEAL

1. Certified transcript of Commission hearings held August 9, 1978, August 23, 1978, and September 11, 1978.
2. Exhibits introduced by Bill Taylor.
3. Exhibits introduced by C & K Petroleum, Inc.
4. Exhibits introduced by Clarence Wells.
5. Exhibits introduced by Bob Burnett.
6. Certified copy of Order No. R-5332-A, the order appealed from.
7. Certified copy of Order No. R-5332.
8. Oil Conservation Commission records and Oil and Gas Accounting Commission records of which administrative notice was taken.

NEW MEXICO OIL CONSERVATION COMMISSION

Lynn Teschendorf

By

LYNN TESCHENDORF
P. O. Box 2088
Santa Fe, New Mexico 87501

2nd March
79

Lynn Teschendorf

IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO

C & K PETROLEUM, INC.
a Corporation,

Petitioner,

-vs-

No. CV-78-415

NEW MEXICO ENERGY AND
MINERALS DEPARTMENT, OIL
CONSERVATION DIVISION and
BILL TAYLOR,

Respondents.

ANSWER TO PETITION FOR REVIEW

COMES NOW, Bill G. Taylor, Respondent herein, and for his answer in response to the petition for review filed by C & K Petroleum, Inc., alleges and states:

1. The allegations of paragraph 1 are admitted.
2. The allegations of paragraph 2 are admitted.
3. The allegations of paragraph 3 are admitted.
4. The allegations of paragraph 4 are admitted as to the execution of the agreement and any remaining allegations are denied.
5. The allegations of paragraph 5 are admitted.
6. The allegations of paragraph 6 are admitted.
7. The allegations of paragraphs 7, 8 and parts a, b, c, d, e, f, g, h and i of paragraph 8 are denied.

ADDITIONAL MATTERS AND COUNTERCLAIM

1. Taylor affirmatively states that on the same date as this appeal was filed, he filed his appeal in Cause No. CV-78-417 in the District Court of Eddy County wherein he seeks relief from Order No. R-5332-A of the Oil Conservation Division,

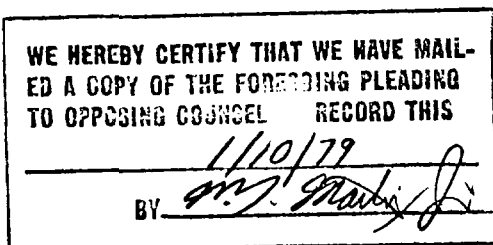
and further affirmatively states that said causes should be consolidated for all purposes.

2. That the Oil Conservation Division erred in not allowing the production proceeds attributable to Taylor's working interest be used as a setoff and payment for Taylor's proportionate contribution to well drilling costs.

WHEREFORE, Taylor prays that the relief requested for by C & K Petroleum, Inc., be denied and that the Court enter such other and further relief in favor of Taylor that the Court deems just and proper.

MATKINS AND MARTIN

By *W. T. Martin, Jr.*
W. T. Martin, Jr.
P. O. Drawer N
Carlsbad, New Mexico 88220
Attorneys for Respondent, Bill Taylor





STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

JERRY APODACA
GOVERNOR

NICK FRANKLIN
SECRETARY

January 9, 1979

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

Mr. W. T. Martin, Jr.
P. O. Drawer N
Carlsbad, New Mexico 88220

Re: Eddy County Cause
Nos. CV-78-415 and CV-78-417

Dear Mr. Martin:

Enclosed please find a Motion to Consolidate and Order approved by both Jason Kellahin and myself in the above-captioned causes. I would appreciate your approving them as we agreed, and submitting them for the Judge's signature. I would also appreciate the return of an endorsed copy, or simply notice of the filing date.

Thank you for your assistance.

Very truly yours,

LYNN TESCHENDORF
General Counsel

LT/dr

cc: Jason Kellahin

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

C & K PETROLEUM, INC.,)	
a Corporation,)	
)	
Petitioner,)	
)	
vs.)	No. CV-78-415
)	
NEW MEXICO ENERGY AND)	
MINERALS DEPARTMENT, OIL)	
CONSERVATION DIVISION and)	
BILL TAYLOR,)	
)	
Respondents.)	

MOTION TO CONSOLIDATE

Comes now the Respondent New Mexico Oil Conservation Division, by and through its attorney Lynn Teschendorf, and pursuant to Rule 42(a) of the Rules of Civil Procedure for the District Courts moves the Court for an Order consolidating this cause with Eddy County Cause No. CV-78-417 captioned "In the matter of the application of Bill Taylor for enforcement and amendment of Order No. R-5332, Eddy County, New Mexico, Oil Conservation Commission Case No. 6289," and as grounds therefor states:

1. Both actions are pending before this Court.
2. Both actions involve common questions of law or fact, arise from the same transaction and involve the same parties.
3. Whether suits should be consolidated is within the discretion of the Court. Kassel v. Anderson, 84 N.M. 697, 507 P.2d 444 (1973).

WHEREFORE, Respondent respectfully seeks the Order of this Court consolidating the two subject causes of action.

NEW MEXICO OIL CONSERVATION DIVISION

By _____
LYNN TESCHENDORF
Assistant Attorney General
P. O. Box 2088
Santa Fe, New Mexico 87501

APPROVED:

JASON KELLAHIN
Attorney for Petitioner
C & K Petroleum, Inc.

W. T. MARTIN, Jr.
Attorney for Respondent,
Bill Taylor

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

C & K PETROLEUM, INC.,
a Corporation,

Petitioner,

vs.

NEW MEXICO ENERGY AND
MINERALS DEPARTMENT, OIL
CONSERVATION DIVISION and
BILL TAYLOR,

Respondents.

No. CV-78-415
CV-78-417


ORDER


This matter coming before the Court upon the Motion of Respondent New Mexico Oil Conservation Division to consolidate this action with Eddy County Cause No. CV-78-417 captioned "In the matter of the application of Bill Taylor for enforcement and amendment of Order No. R-5332, Eddy County, New Mexico, Oil Conservation Commission Case No. 6289," and the Court being fully advised in the premises,


IT IS ORDERED that Eddy County Cause Nos. CV-78-415 and CV-78-417 are hereby consolidated.


DISTRICT JUDGE

APPROVED:


LYNN TESCHENDORF
Attorney for Respondent
New Mexico Oil Conservation Division


JASON W. KELLAHIN
Attorney for Petitioner
C & K Petroleum, Inc.


W. T. MARTIN, Jr.
Attorney for Respondent
Bill Taylor



STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

JERRY APODACA
GOVERNOR

NICK FRANKLIN
SECRETARY

January 8, 1979

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

Clerk of the District Court
for Eddy County
Eddy County Court House
Carlsbad, New Mexico 88220

Attention: Francis M. Wilcox

Re: Eddy County Cause No.
CV-78-415

Dear Madam:

Enclosed please find, for filing, the Response
to Petition for Review in the above-captioned cause.

Very truly yours,

LYNN TESCHENDORF
General Counsel

LT/dr

cc: Jason Kellahin
W. T. Martin, Jr.

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

C & K PETROLEUM, INC.,
a Corporation,

Petitioner,

vs.

NEW MEXICO ENERGY AND
MINERALS DEPARTMENT, OIL
CONSERVATION DIVISION and
BILL TAYLOR,

Respondents.

No. CV-78-415

RESPONSE TO PETITION FOR REVIEW

Comes now the Respondent New Mexico Oil Conservation Division,
by and through its attorney Lynn Teschendorf, and in response
to the Petition for Review states:

1. Respondent admits the allegations contained in Paragraphs 1, 2, 3, 5 and 6.

2. Respondent admits the allegations contained in Paragraph 4 insofar as they pertain to the content of Exhibit "C" attached to the Petition, but otherwise is without knowledge or information sufficient to form a belief as to the truth thereof.

3. Respondent admits that Petitioner is an owner and the operator of the property affected by Order No. R-5332-A, but denies the remainder of the allegations contained in Paragraph 7.

4. Respondent denies the allegations contained in Paragraph 8 and each subdivision thereof.

WHEREFORE, having fully responded to the Petition for Review, Respondent New Mexico Oil Conservation Division respectfully asks that the same be dismissed.

NEW MEXICO OIL CONSERVATION DIVISION

I hereby certify that on the
8th day of Jan.
1979, a copy of the foregoing pleading was filed in the
opposing counsel of record.

By

LYNN TESCHENDORF
Assistant Attorney General
P. O. Box 2088
Santa Fe, New Mexico 87501

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

C & K PETROLEUM, INC.,
a Corporation,

Petitioner,

- vs -

No. _____


NEW MEXICO ENERGY AND
MINERALS DEPARTMENT, OIL
CONSERVATION DIVISION and
BILL TAYLOR,

Respondents.

ACCEPTANCE OF SERVICE

The undersigned acknowledges receipt of Notice of Appeal, with a copy of Petition for Review attached, in the above captioned case, and accepts service thereof for and on behalf of the New Mexico Energy and Minerals Department, Oil Conservation Division.

Date 12-15-78



STATE OF NEW MEXICO

IN THE DISTRICT COURT

COUNTY OF EDDY
JUDICIAL DISTRICT
STATE OF NEW MEXICO
CLERK OF DISTRICT COURT

C & K PETROLEUM, INC.
a Corporation,

Petitioner,

- vs -

No. CV-78-415

NEW MEXICO ENERGY AND
MINERALS DEPARTMENT, OIL
CONSERVATION DIVISION and
BILL TAYLOR,

Respondents.

NOTICE OF APPEAL

STATE OF NEW MEXICO TO THE FOLLOWING NAMED ADVERSE PARTIES:

NEW MEXICO ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION, BILL TAYLOR

NOTICE IS HEREBY GIVEN that the above named Petitioner being dissatisfied with the Oil Conservation Division of New Mexico's promulgation of Order No. R-5332-A entered in Case No. 6289 on the docket of the Division, has appealed therefrom in accordance with the provisions of Sec. 65-3-22, New Mexico Statutes, Annotated, having filed their Petition for Review in the District Court for the Fifth Judicial District, Eddy County, New Mexico.

The attorney representing Petitioner in said cause is:

JASON W. KELLAHIN
KELLAHIN & FOX
P.O. Box 1769
Santa Fe, New Mexico 87501

(SEAL)

WITNESS the Honorable Harvey W. Fort
District Judge of the Fifth Judicial
District Court of the State of New
Mexico and the Seal of the District
Court of Eddy County, New Mexico,
this 4th day of December, 1978.

Frances M. Wilcox Clerk
Glenda M. Harper, Deputy

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

C & K PETROLEUM, INC.,
A Corporation,

Petitioner,

vs.

No. CV. 78-415

NEW MEXICO ENERGY AND
MINERALS DEPARTMENT, OIL
CONSERVATION DIVISION and
BILL TAYLOR

Respondents.

PETITION FOR REVIEW

Comes now C & K Petroleum, Inc., a corporation, hereinafter called Petitioner, pursuant to the provisions of Section 65-3-22, New Mexico Statutes Annotated, 1953 Compilation, as amended, and respectfully petitions the Court for review of the action of the Oil Conservation Division, New Mexico Energy and Minerals Department in Case No. 6289 on the Docket of said division, and its Order No. R-5332-A issued therein, and states:

Admit

1. Petitioner is a corporation duly admitted to do business in the State of New Mexico. The Respondent New Mexico Energy and Minerals Department, Oil Conservation Division, is a statutory body created and existing under the provisions of the laws of the State of New Mexico, and vested with jurisdiction over all matters relating to the conservation of oil and gas in the State of New Mexico, the prevention of waste, the protection of correlative rights, and the enforcement of the Conservation Act of the State of New Mexico, being Chapter 65, Article 3, New Mexico Statutes, Annotated, 1953 Compilation, as amended.

Admit

2. On November 30, 1976, the Oil Conservation Commission of New Mexico, predecessor of the Oil Conservation Division.

entered its Order No. R-5332 pooling all mineral interests, whatever they may be, in the Wolfcamp and Pennsylvanian formation underlying the N½ of Section 13, Township 22 South, Range 26 East, N.M.P.M., South Carlsbad Field, Eddy County, New Mexico, designating Petitioner as the operator of the pooled unit. A copy of Order No. R-5332, marked as Exhibit "A" is attached hereto and made a part hereof.

Admit

3. On October 17, 1978, on the application of Bill Taylor, the Oil Conservation Division, successor to the Oil Conservation Commission, entered its Order No. R-5332-A, giving Bill Taylor thirty days from the effective date of the order, to pay his proportionate share of the actual well costs of \$551,903.87 to C & K Petroleum, Inc., as operator of the Carlsbad "13" Well No. 1, located on said pooled unit, payment to be made in lieu of payment out of production as provided by Order No. R-5332. The order provided that on payment Taylor would remain liable for operating costs, but not for any risk charge as provided in Order No. R-5332. Petitioner opposed the application of Bill Taylor before the Oil Conservation Division at the hearings held on August 9, 1978, and September 11, 1978, which hearings resulted in the entry of Order No. R-5332-A. A copy of Order No. R-5332-A is attached hereto, marked Exhibit "B", and made a part hereof.

Without Knowledge

4. At the time of the hearing which resulted in the entry of the Commission's (Division's) Order No. R-5332 Bill Taylor entered into an agreement with C & K Petroleum, Inc., in consideration of C & K Petroleum's agreement not to seek a risk factor in excess of 120%, to permit Taylor to take his gas in kind, and not to seek pooling of any formations other than the Wolfcamp and Pennsylvanian formations or any formations lying above the Wolfcamp formation. Taylor acknowledged receipt of the estimated well costs for the Carlsbad "13" Well No. 1, and

his right to pay his share of estimated well costs, in lieu of paying his share out of production and thereby avoid payment of the 120% risk factor. A copy of this agreement is attached hereto, marked Exhibit "C", and made a part hereof.

Admit
5. Petitioner timely filed its application for rehearing in this case before the Oil Conservation Division, which application stated the grounds of the invalidity of Division Order No. R-5332-A. The Application was not acted upon by the Division within ten days, and was, therefore, as provided by law, denied.

Admit
6. A copy of Petitioner's Application for rehearing, filed with the Division, is attached hereto, marked Exhibit "D", and made a part hereof.

Admit/Deny
7. The Petitioner is an owner and is the operator of the property affected by Order No. R-5332-A, Exhibit "B", is adversely affected, and dissatisfied with its application for rehearing and its handling by the Division, and with the provisions of Order No. R-5332-A.

Deny
8. Oil Conservation Division Order No. R-5332-A is unlawful, unreasonable, arbitrary, ambiguous and capricious in the following respects, all of which were presented to the Division in Petitioner's Application for Rehearing;

a. On November 10, 1976, the New Mexico Oil Conservation Commission heard the application of C & K Petroleum, Inc., for compulsory pooling of the N½ of Section 13, Township 22 South, Range 26 East, N.M.P.M., South Carlsbad Field, Eddy County, New Mexico. As shown by the record, Bill Taylor was present at the hearing and acknowledged receipt of a copy of the estimated well costs of the proposed well, and stated his intention of participation in the drilling of the well. As shown by Exhibit "C" attached hereto, Bill Taylor had full knowledge of the well costs and his right

to pay his proportionate share of such costs.

b. Bill Taylor acknowledged receipt of not less than three copies of the estimated well costs, before and after the hearing.

c. The Division's Order No. R-5332-A so narrowly construes its Order No. R-5332 as to the requirement for furnishing estimated well costs within a specific, narrow time frame as to be unreasonable arbitrary, capricious and unlawful. The Division's construction is not founded on any law, rule or regulation and is unlawful.

d. The Division's finding that Taylor was not afforded the opportunity to pay his share of estimated well costs to the operator in accordance with the terms of Order No. R-5332 in lieu of paying his share of reasonable well costs out of production is not supported by, and is contrary to the evidence in this case.

e. Although he had stated he would do so, Taylor did not put up his share of estimated well costs, although at all times he had full knowledge as to what those costs were.

f. Taylor has failed and refused to sign a division order covering his interest in the subject well.

g. The subject well commenced production June 21, 1977, and was potentialized into the pipeline August 3, 1977, as shown by the testimony, exhibits and the Division's records. The well has produced consistently since being placed on production. Order No. R-5332-A, however, is silent as to any accounting for any production prior to Bill Taylor's payment of his share of well costs is ambiguous, indefinite and void.

h. If Order No. R-5332 is not valid as to pooling Taylor's interest, giving him a right to share in production from the well, none of Taylor's gas has been sold and Taylor should share in production only from the time he pays his proportionate share of the well costs.

i. If Order No. R-5332-A is construed as requiring C & K Patroleum, Inc., to account to Bill Taylor as a working interest owner and participant since first production, the order is in excess of the authority of the Division, is unreasonable, arbitrary, capricious and void because:

- (1). The action exceeds the power of the Division.
- (2). The Order would purport to determine property rights contrary to law.
- (3). The Order interferes with contracts rights of C & K Petroleum, Inc., contrary to law.
- (4). The Order would impose on C & K Petroleum, Inc. penalties not authorized by statute, and in excess of the Division's authority.
- (5). The Order takes C & K Patroleum's property without due process of law.

WHEREFORE, Petitioner respectfully prays the Court as authorized by Section 65-3-22, New Mexico Statutes Annotated, 1953 Compilation, as amended, that:

1. Notice of this Petition for review be served in the manner provided for the service of summons in civil proceedings upon the New Mexico Energy and Minerals Department, Oil Conservation Division, and upon Bill Taylor.

2. That this Petition be set for trial in the manner provided by law, and that this Court review the action of the Oil Conservation Division herein complained of.

3. That this Court enter its order vacating and setting aside New Mexico Oil Conservation Division Order No. R-5332-A.

4. That the Court enter such other and further orders as may be proper in the premises.

5. That Petitioner have such other and further relief as may be proper.

Respectfully submitted,

C & K PETROLEUM, INC.

By Jason Kellahin
JASON KELLAHIN

KELLAHIN & FOX
P. O. Box 1769
Santa Fe, New Mexico 87501
Phone (505) 9824285

ATTORNEYS FOR PETITIONER

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. 5887
Order No. R-5332

APPLICATION OF C & K PETROLEUM, INC.
FOR COMPULSORY POOLING AND A NON-STANDARD
UNIT, EDDY COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on November 18, 1976, at Santa Fe, New Mexico, before Examiner Richard L. Stamets.

NOW, on this 30th day of November, 1976, the Commission, a quorum being present, having considered the testimony, the record, and the recommendations of the Examiner, 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 the applicant, C & K Petroleum, Inc., seeks an order pooling all mineral interests in the Wolfcamp and Pennsylvanian formations underlying the N/2 of Section 13, Township 22 South, Range 26 East, NMPL, South Carlsbad Field, Eddy County, New Mexico.

(3) That the applicant has the right to drill and proposes to drill a well 1680 feet from the North line and 1980 feet from the East line of said Section 13 to be dedicated to a non-standard 376.6-acre unit.

(4) That there are interest owners in the proposed proration unit who have not agreed to pool their interests.

(5) That to avoid the drilling of unnecessary wells, to protect correlative rights, and to afford to the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the gas in said pool, the subject application should be approved by pooling all mineral interests, whatever they may be, within said unit.

EXHIBIT "A"

(6) That the applicant should be designated the operator of the subject well and unit.

(7) That any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production.

(8) That any non-consenting working interest owner that does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 120 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(9) That any non-consenting interest owner should be afforded the opportunity to object to the actual well costs but that actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(10) That following determination of reasonable well costs, any non-consenting working interest owner that has paid his share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(11) That \$1,000 per month while drilling and \$150 per month while producing should be fixed as reasonable charges for supervision (combined fixed rates); that the operator should be authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator should be 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 each non-consenting working interest.

(12) That all proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

(13) That upon the failure of the operator of said pooled unit to commence drilling of the well to which said unit is dedicated on or before February 28, 1977, the order pooling said unit should become null and void and of no effect whatsoever.

IT IS THEREFORE ORDERED:

(1) That all mineral interests, whatever they may be, in the Wolfcamp and Pennsylvanian formations underlying the N/2 of Section 13, Township 22 South, Range 26 East, MPN, South Carlsbad Field, Eddy County, New Mexico, are hereby pooled to form a non-standard 336.6-acre gas spacing and proration unit to be dedicated to a well to be drilled 1680 feet from the North line and 1980 feet from the East line of said Section 13.

PROVIDED HOWEVER, that the operator of said unit shall commence the drilling of said well on or before the 28th day of February, 1977, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Pennsylvanian formation;

PROVIDED FURTHER, that in the event said operator does not commence the drilling of said well on or before the 28th day of February, 1977, Order (1) of this order shall be null and void and of no effect whatsoever; unless said operator obtains a time extension from the Commission for good cause shown.

PROVIDED FURTHER, that should said well not be drilled to completion, or abandonment, within 120 days after commencement thereof, said operator shall appear before the Commission and show cause why Order (1) of this order should not be rescinded.

(2) That C & K Petroleum, Inc. is hereby designated the operator of the subject well and unit.

(3) That after the effective date of this order and within 30 days prior to commencing said well, the operator shall furnish the Commission and each known working interest owner in the subject unit an itemized schedule of estimated well costs.

(4) That within 30 days from the date the schedule of estimated well costs is furnished to him, any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production, and that any such owner who pays his share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(5) That the operator shall furnish the Commission and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the well; that if no objection to the actual well costs is received by the Commission and the Commission has not objected within 45 days following receipt of said schedule, the actual well costs

shall be the reasonable well costs; provided however, that if there is an objection to actual well costs within said 45-day period the Commission will determine reasonable well costs after public notice and hearing.

(6) That within 60 days following determination of reasonable well costs, any non-consenting working interest owner that has paid his share of estimated costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

(7) That the operator is hereby authorized to withhold the following costs and charges from production:

- (A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.
- (B) As a charge for the risk involved in the drilling of the well, 120 percent of the pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(8) That the operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(9) That \$1,000 per month while drilling and \$150 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); that the operator is hereby authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating such well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(10) That any unsevered mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under the terms of this order.

Case No. 5807
Order No. N-5332

(11) That any well costs or charges which are to be paid out of production shall be withheld only from the working interests share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

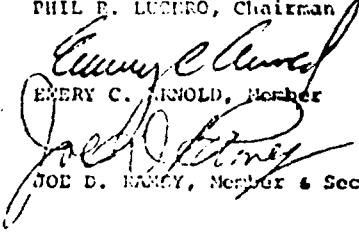
(12) That all proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; that the operator shall notify the Commission of the name and address of said escrow agent within 90 days from the date of this order.

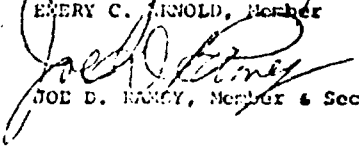
(13) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

PHIL E. LUCERO, Chairman


EMERY C. ARNOLD, Member


JOE D. NANCY, Member & Secretary

S E A L

dr/

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE NO. 6289
Order No. R-5332-A

APPLICATION OF BILL TAYLOR FOR
ENFORCEMENT AND AMENDMENT OF
ORDER NO. R-5332, EDDY COUNTY,
NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on August 9, 1978, and September 11, 1978, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 17th day of October, 1978, 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 on November 30, 1976, upon the application of C & K Petroleum, Inc., hereinafter referred to as "C & K", the Commission issued its Order No. R-5332 pooling the N/2 of Section 13, Township 22 South, Range 26 East, NNPM, South Carlsbad Field, Eddy County, New Mexico.

(3) That this acreage was dedicated to the Carlsbad "13" Well No. 1 located in Unit G of said section.

(4) That C & K was appointed the operator of the well by Order No. R-5332, and Bill Taylor, hereinafter referred to as "Taylor", was and is an interest owner in said well.

EXHIBIT "B"

(5) That on July 5, 1978, Taylor filed an application for "operator's accounting, regulation and order compliance; operator removal; protection of royalty and interest owner's correlative rights; and Commission amendment of Order No. R-5332."

(6) That this cause came on for hearing on August 9, 1978, and September 11, 1978.

(7) That C & K failed to furnish the Commission and each known working interest owner an itemized schedule of estimated well costs after the effective date of Order No. R-5332 and within 30 days prior to commencing the well in accordance with Order (3) of said order.

(8) That Taylor was therefore not afforded the opportunity to pay his share of estimated well costs to the operator in accordance with the terms of said Order No. R-5332 in lieu of paying his share of reasonable well costs out of production.

(9) That Taylor should be afforded the opportunity to pay his share of reasonable well costs now in lieu of paying the same out of production.

(10) That although Taylor objected to well costs as submitted by C & K, including tubing costs, the evidence presented shows that actual well costs total \$551,903.87.

(11) That said well costs of \$551,903.87 are reasonable costs for the subject well.

(12) That within 30 days from the effective date of this order, Taylor should have the right to pay his share of the actual well costs to the operator in lieu of paying his share of said costs out of production; further, that if he pays his share as provided herein, he should remain liable for operating costs but should not be liable for risk charges.

(13) That no evidence was presented showing that C & K has failed to afford Taylor or other interest owners in the unit the opportunity to recover their just and fair share of the gas from the Carlsbad "13" Well No. 1, and there is no evidence that correlative rights have been impaired.

(14) That no evidence was presented showing that C & K has caused waste by its operation of the well.

(15) That although certain of the accounting and operational procedures employed by C & K in the past appear to have been less than satisfactory, these have apparently now been corrected.

(16) That although the evidence in this case establishes that C & K has been grossly lax in the observance of certain Division rules and orders, particularly as they relate to the filing of forms and reports, and the establishment of an escrow account in accordance with Order (12) of Order No. R-5332, the Commission cannot find this to be grounds for removal of C & K as operator of the well at this time, and it should be permitted to continue as operator, pending further order of the Commission or Division.

(17) That Taylor's request that C & K be removed as operator should therefore be denied.

IT IS THEREFORE ORDERED:

(1) That the application of Bill Taylor for removal of C & K Petroleum, Inc., as operator of the Carlsbad "13" Well No. 1 located in Unit G of Section 13, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico, is hereby denied.

(2) That within 30 days from the effective date of this Order, Bill Taylor shall have the right to pay his share of the actual well costs of \$551,903.87 to the operator of said Carlsbad "13" Well No. 1 in lieu of paying his share of said costs out of production, and should he pay his share as provided above, he shall remain liable for operating costs but shall not be liable for risk charges.

(3) That all provisions of Order No. R-5332 not in conflict herewith shall remain in full force and effect.

(4) 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

Phil R. Lucero
PHIL R. LUCERO, Chairman

Emery C. Arnold
EMERY C. ARNOLD, Member

Joe D. Ramey
JOE D. RAMEY, Member & Secretary

S E A L
fd/

*North. Carbon Steel
Eddy Co., New Mexico*

A G R E E M E N T

C & K Petroleum, Inc., is the applicant for compulsory pooling and a non-standard gas proration unit in Case No. 5807 before the New Mexico Oil Conservation Commission, Wednesday, November 10, 1976. Bill Taylor and William A. Page are owners of interests in the minerals underlying the proposed non-standard unit that would be affected by a pooling order.

Bill Taylor represents that he has the right to bind William A. Page, and E. W. Hooper, Exploration Manager for C & K Petroleum, Inc., represents that he has the right to enter into this agreement on behalf of C & K Petroleum, Inc.

C & K Petroleum, Inc., agrees that at the presentation of this case it will not seek a risk factor in excess of 120%, that is it will seek the right to recover its reasonable costs of drilling, completing and equipping the subject well, plus 120% of that amount as a risk factor for drilling the well, as provided by New Mexico statutes, and the rules and regulations of the Commission.

Bill Taylor acknowledges receipt of estimated well costs in the form of an A.F.E., given to him this date, and C & K Petroleum Inc., agrees that Bill Taylor shall have thirty days from this date in which to pay his share of estimated well costs in lieu of paying such share out of production, and thereby avoid payment of the 120% risk factor.

Bill Taylor shall have the right to take his gas in kind, after payout of the well, provided that he shall make connection at his own expense.

It is agreed that C & K Petroleum, Inc., does not seek compulsory pooling in this case of any formations other than Wolfcamp and Pennsylvanian formations, and does not seek pooling of any formations above the Wolfcamp.

Bill Taylor
BILL TAYLOR, for himself, and
for William A. Page

E. W. Hooper
E. W. HOOPER, for C & K
Petroleum, Inc.

Dated: November 9, 1976

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE NO. 6289
Order No. R-5332-A

APPLICATION OF BILL TAYLOR FOR
ENFORCEMENT AND AMENDMENT OF
ORDER NO. R-5332, EDDY COUNTY,
NEW MEXICO.

APPLICATION FOR REHEARING

Comes now C & K Petroleum, Inc., and pursuant to the provisions of Section 65-3-22, New Mexico Statutes Annotated, 1963 Compilation, applies for a rehearing on Energy and Minerals Department, Oil Conservation Division Order No. R-5332-A entered on October 17, 1978, and as grounds therefor states:

A. On November 30, 1976 the Oil Conservation Commission of New Mexico entered its Order No. R-5332 pooling all mineral interests, whatever they may be, in the Wolfcamp and Pennsylvanian formations underlying the N/2 of Section 13, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico, designating applicant as operator of the pooled unit. A copy of Order No. R-5332, marked as Exhibit "A" is attached hereto and made a part hereof.

B. On October 17, 1978, on the application of Bill Taylor, the Oil Conservation Division, successor to the Oil Conservation Commission, entered its Order No. R-5332-A giving Bill Taylor thirty days from the effective date of the order, to pay his

Exhibit "D"

proportionate share of the actual well costs of \$551,903.87 to C and K Petroleum, Inc., as operators of the Carlsbad "13" Well No. 1 in lieu of paying his share out of production, as provided by Order No. R-5332, and providing further that on payment Taylor shall remain liable for operating costs but not for a risk charge as provided by said Order No. R-5332. A copy of Order No. R-5332-A, marked as Exhibit "B", is attached hereto and made a part of this application.

C. Oil Conservation Division Order No. R-5332-A is unlawful, unreasonable, arbitrary, ambiguous and capricious in the following respects:

1. On November 10, 1976 the New Mexico Oil Conservation Commission heard the application of C & K Petroleum, Inc., for compulsory pooling of the N/2 of Section 13, Township 22 South, Range 26 East, N.M.P.M. South Carlsbad Field, Eddy County, New Mexico. As shown by the record Bill Taylor was present at the hearing and acknowledged receipt of a copy of the estimated well costs of the proposed well, and stated that he intended participating in the drilling of the well. (Tr. Nov. 10, 1976, p. 11-12). As shown by Exhibit "C", (presented as C & K's Exhibit 13) attached hereto and made a part of this application, Bill Taylor acknowledged in writing receipt on November 9, 1976, estimated well costs in the form of an A.F.E., and agreed he should have thirty days in which to pay his share of estimated well costs, in lieu of paying out of production, and thereby avoid payment of a risk factor. In consideration of this agreement, C & K agreed not to seek a risk factor in excess of 120%, and agreed that Taylor should have the right to take his gas in kind after payout of the well.

2. On November 30, 1976, the Commission entered its

order pooling the described acreage, which, among other things provided that after the effective date of the order and within thirty days prior to commencing the subject well non-consenting owners should be furnished with estimated well costs, and should have thirty days after receipt of the estimated well costs to pay his proportionate share of the well costs.

3. Bill Taylor acknowledged receipt of not less than three copies of the estimated well costs, before and after the hearing, but not after effective date of Order R-5332.

4. The Division Order R-5332-A so narrowly construes its Order R-5332 as to the requirement for furnishing estimated well costs within a specific, narrow time frame, as to be unreasonable, arbitrary, capricious and unlawful. The Division's construction is not founded on any law, rule or regulation and should be revoked.

5. Although he had stated he would do so, Bill Taylor did not put up his share of estimated well costs, although at all times he had full knowledge as to what those costs were. Not until November 6, 1978, pursuant to Order No. R-5332-A, did Mr. Taylor tender a bank draft to C & K as his estimate of his share of well costs.

6. Bill Taylor has failed and refused to sign a division order covering his interest in the subject well.

7. Order R-5332-A, Exhibit "B" provides that upon payment, within thirty days, of his share of the well costs of \$551,903.87, he shall remain liable for well costs but shall not be liable for any risk charges.

8. The subject well commenced production June 21, 1977, and was potentialized into the pipeline August 3, 1977, as shown by the testimony, exhibits and the Commission's records. The

well has produced consistently since being placed on production. Order R-5332-A, however, is silent as to accounting for any production prior to Bill Taylor's payment of his share of well costs is ambiguous, indefinite and void.

9. If Order R-5332-A is construed as requiring C & K Petroleum, Inc. to account to Bill Taylor as a working interest owner and participant since first production the order is unreasonable, arbitrary and capricious because:

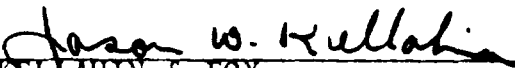
- A. The action exceeds the power of the Division.
- B. The Order would determine property rights, contrary to law.
- C. The Order interferes with contract rights of C & K Petroleum, Inc., contrary to law.
- D. The Order would impose on C & K Petroleum penalties not authorized by statute, and in excess of the Division's authority.
- E. The Order takes C & K Petroleum's property without due process of law.

WHEREFORE Applicant C & K Petroleum, Inc., prays that the Oil Conservation Division, New Mexico Energy Department, grant it a rehearing on its Order No. R-5332-A as requested, and that after notice and hearing as provided by law, the Division rescind its Order R-5332-A as to provisions permitting Bill Taylor to pay his share of well costs, and participate in production without payment of a risk factor, and for reaffirmation of the provisions of Division Order No. R-5332 in its entirety.

Respectfully submitted,

C & K PETROLEUM, INC.

By


KELLY & FOX
P. O. Box 1769
Santa Fe, New Mexico 87501

Attorneys for C & K Petroleum, Inc.

C E R T I F I C A T E

I hereby certify that I mailed a true copy of the above and foregoing application for rehearing to W. T. Martin, Jr., P. O. Drawer N, Carlsbad, New Mexico 88220, and to Bill Taylor, 512 Wilshire, Carlsbad, New Mexico 88220, this 6th day of November 1978.


JASON W. KELLAHIN

EXHIBITS "A", "B" AND "C" TO THE APPLICATION
FOR REHEARING ARE ATTACHED TO THE PETITION
FOR REVIEW, AND ARE NOT REPEATED HERE

STATE OF NEW MEXICO

IN THE DISTRICT COURT

C & K PETROLEUM, INC.,
a Corporation,

Petitioner,

vs.

NEW MEXICO ENERGY AND
MINERALS DEPARTMENT, OIL
CONSERVATION DIVISION and
BILL TAYLOR,

Respondents.

IN THE MATTER OF THE APPLI-
CATION OF BILL TAYLOR FOR
ENFORCEMENT AND AMENDMENT
OF ORDER NO. R-5332, EDDY
COUNTY, NEW MEXICO, OIL
CONSERVATION COMMISSION CASE
NO. 6289

COUNTY OF EDDY
FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

(Copy)
JUL 11 1979 IN MY
OFFICE
FRANKS M. WILCOX
Clerk of the District Court

No. CV-78-415

No. CV-78-417

ORDER VACATING SETTING

IT IS HEREBY ORDERED:

1. That the hearing of July 11, 1979, on the above consolidated appeals from the Oil Conservation Division of the State of New Mexico be, and they hereby are, VACATED.

2. That Bill Taylor and C & K Petroleum, Inc., shall submit written Briefs on July 19, 1979, to the Court.

3. That Bill Taylor, C & K Petroleum, Inc., and the Oil Conservation Division of the State of New Mexico shall have ten (10) days thereafter to submit Reply Briefs if they deem it necessary.

4. That the Court shall, if it deems it necessary, order the parties by

and through their respective counsel of record to appear before the Court to answer any questions the Court may have or to present oral argument to the Court after the Court has had the opportunity to review the Briefs and Reply Briefs of the parties.

5/John B. Walker
DISTRICT JUDGE

APPROVED:

MATKINS AND MARTIN

By W. T. Martin, Jr.
W. T. Martin, Jr.
P. O. Drawer N
Carlsbad, New Mexico 88220

APPROVED BY TELEPHONE
CONVERSATION:
Jason W. Kellahin
Kellahin and Fox
P. O. Box 1769
Santa Fe, New Mexico 87501
Attorneys for C & K Petroleum, Inc.

Ernest L. Padilla
Special Assistant Attorney General
P. O. Box 2088
Santa Fe, New Mexico 87501
Attorney for Oil Conservation Division

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

C & K PETROLEUM, INC.,
A Corporation,
Petitioner

vs.

No. CV-78-415

No. CV-78-417

(Consolidated)

NEW MEXICO ENERGY AND MINERALS
DEPARTMENT, OIL CONSERVATION
DIVISION, AND BILL TAYLOR,
Respondents,

and

IN THE MATTER OF THE APPLICATION
OF BILL TAYLOR FOR ENFORCEMENT
AND AMENDMENT OF ORDER NO. R-5332,
EDDY COUNTY, NEW MEXICO, OIL
CONSERVATION COMMISSION CASE NO. 6289

Received
Aug 6, 1979
E/P

REPLY TO C & K'S BRIEF

MATKINS AND MARTIN
P. O. Drawer N
Carlsbad, New Mexico 88220
Attorneys for Bill Taylor

ORDER NO. R-5332-A IS NOT UNLAWFUL AND IS
NOT IN EXCESS OF COMMISSION AUTHORITY

C & K claims Findings of Fact numbers (13) and (14) render Order No. R-5332-A fatally defective. C & K suggests to the Court that the failure to find "waste" occurring in C & K's operation and failure to find "correlative rights" to have been impaired is a jurisdictional defect. Authority relied upon by C & K is Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962) and Sims v. Mechem, 72 N.M. 186, 382 P.2d 183 (1963) which followed Continental Oil, supra. Counsel fails to disclose to the Court that the language in Continental Oil relating to jurisdiction of the Oil Conservation Commission has been explained and clarified. In Grace v. Oil Conservation Commission of New Mexico, 87 N.M. 205, 531 P.2d 939 (1975) the Supreme Court recognized Continental Oil to be "... the primary oil and gas decision in New Mexico." However, the Court did clear up the usage of loose and unclear language in Continental by stating:

"The Graces assert that the Commission did not have 'jurisdiction' to institute gas prorationing in the pool based upon the record before it. There are frequent references to 'jurisdiction' in the Graces' briefs and some of their argument is addressed to the jurisdictional issue.

[5] There is not a shred of a jurisdictional question here. A lack of jurisdiction means an entire lack of power to hear or determine the case and the absence of authority over the subject matter or the parties. 20 Am.Jur.2d, 'Courts' §87 (1965).

As we said in Elwess v. Elwess, 73 N.M. 400, 404, 389 P.2d 7, 9 (1964):

'The word 'jurisdiction' is a term of large and comprehensive import. It includes jurisdiction over the subject matter, over the parties, and power or authority to decide the particular matters presented. * * *.'

[6] Certainly the Commission had jurisdiction of the subject matter - conservation of oil and gas - and it had authority to decide the matters presented. See §65-3-5, N.M.S.A. 1953. No question is raised concerning lack of jurisdiction over the parties.

'The authority to decide a cause at all and not the decision rendered therein, is what makes up jurisdiction; * * *.' State v. Patten, 41 N.M. 395, 399, 69 P.2d 931, 933 (1937).

These alleged shortcomings are said to be 'jurisdictional.' For the reasons mentioned, they are not. Rather, they are what Justice Carmody characterized in Continental Oil Co. v. Oil Conservation Com'n, supra, as 'foundational matters.' By this he meant 'basic conclusions of fact' which were held to be a prerequisite, together with support in the record, to sustain orders made by the Commission.

This court has in the past improperly phrased certain issues as jurisdictional. For example, in Sims v. Mechem, 72 N.M. 186, 382 P.2d 183 (1963) we held that the failure to find that a pooling order would prevent waste was 'jurisdictional,' and the case was incorrectly decided on that basis. Actually, the failure to find that the order would prevent waste in Sims was no more jurisdictional than would be a failure to find negligence in a negligence case. Both are matters of proof of an issue that has nothing to do with jurisdiction.

The words 'jurisdiction' and 'jurisdictional' are occasionally loosely used in Continental Oil (70 N.M. at 321, 373 P.2d at 816). We understand that case to mean only that certain 'basic conclusions of fact' must have been found as facts and supported by the record and 'are necessary requisites to the validity of an order' prorating production. El Paso Natural Gas Co. v. Oil Conservation Com'n, 76 N.M. 268, 414 P.2d 496 (1966).

We will consider the appellant's position upon the true issue presented, which is whether the findings in the order, which clearly comply with the mandate of Continental Oil, supra, are supported by substantial evidence in the record, devoid of any jurisdictional overtones."

The Oil Conservation Division has jurisdiction to hear the cause. The question should not be placed before the Court in terms of a jurisdictional defect but whether certain fundamental findings by the Division as called for in Continental and subsequent cases were made or were required. Continental Oil, supra., dealt with validity of an order prorating production. Sims v. Mechem, supra., dealt with validity of a forced pooling order. Rutter & Willbanks Corp. v. Oil Conservation Comm'n., 87 N.M. 286, 532 P.2d 582 (1975); Grace v. Oil Conservation Comm'n., supra., deal with validity of the same type of orders.

In the Bill Taylor case the Division was not dealing with validity of a proration order nor a forced pooling order. The Division had previously entered a forced pooling order in Order No. R-5332 where it made the necessary fundamental findings to support the forced pooling order. Order No. R-5332-A deals with the failure of C & K to carry out a portion of Order R-5332 i.e., supplying of an AFE to working interest owners within thirty days prior to commencement of C & K Carlsbad 13 Well No. 1.

§70-2-17 A. NMSA 1978 Comp., directs the Division to:

" . . . afford to the owner of each property in a pool the opportunity to produce his just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practically determined, and so far as such can be practicably obtained without waste, substantially in the 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."

Section 70-2-11 NMSA 1978 Comp., empowers the Oil Conservation Division to protect those correlative rights of individuals having an interest in a well and production therefrom. The statute provides,

" . . .to that end, the Division is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof."

There is no statute nor regulation that limits the ability of the Division to enter supplemental orders in a case so as to ensure its prior order is being enforced. §70-2-11, supra., gives the Division authority that is equitable in nature. Orders may be fashioned as is deemed necessary to lawfully carry out the legislative mandate goals and purposes of the Division. In fact such supplemental orders are contemplated by the language of §70-2-23 NMSA 1978 where it speaks of changes or renewals of an

order. Findings of Fact Nos. (13) and (14) in Order No. R-5332-A were not necessary nor required for purposes of correcting C & K's failure to properly supply interest owners with an AFE within the time periods prescribed. If the Findings of Fact Nos. (13) and (14) are needed or relate to any specific portion of the order it is the Division's refusal to remove C & K as operator, an order from which C & K has not appealed.

ORDER (2) OF ORDER R-5332-A IS SUPPORTED
BY SUBSTANTIAL EVIDENCE

There is substantial evidence to support the order of the Commission. Order R-5332 was entered by the Commission November 30, 1976. The well was spudded on January 16, 1977, and completed on or about March 16, 1977 (Sept. 11, TR 106-107). The spudding of the well occurred some sixty-seven days after the hearing on C & K's application for forced pooling order (Aug. 9, TR 43). It is undisputed that C & K Petroleum failed to send an AFE within thirty days prior to the commencement of the well as required by Order R-5332. C & K has attempted to justify its position by claiming that Taylor had entered into an written agreement to participate in the well, and for that reason C & K felt an additional AFE was not necessary (Sept. 11, TR 12, 103). Taylor acknowledges that he signed a written agreement with C & K. However, Taylor further states that the written agreement did not truly reflect the agreement entered into between the parties, i. e. Taylor and C & K. Taylor testified he had a contemporaneous oral agreement with C & K that he could participate in the well. C & K was to bill him periodically as drilling progressed. Taylor and Page were to receive an AFE within thirty days prior to the spudding of the well (same as provision 3 of Order R-5332). After receipt of that AFE (which would indicate C & K's decision to drill and a more accurate cost projection) Taylor and Page were to have thirty days within which to decide to participate. Once the decision to participate was made, C & K was to bill Taylor and Page periodically as

drilling progressed. C & K and Mr. Staments of the Oil Conservation Division agreed that such would comply with the usual provisions of forced pooling orders which were later reflected in provisions 3 and 4 of Order R-5332. The only difference in the oral agreement and Order R-5332 was periodic billings as the drilling progressed. The order basically tracks the provisions of an operating agreement which contemplates periodic billings. C & K had indicated that the operating agreement which the order tracked was the operating agreement that had now been signed by other interest owners (Sept. 11, TR 198-201; Taylor's Exhibit 2-2; Taylor's Exhibit 21-5). The written agreement which Taylor signed was never corrected to reflect the contemporaneous oral agreement. Taylor had been promised that the interpretation or application of the written agreement would be in compliance with the oral agreement. Based on that representation, Taylor signed the written agreement. Taylor and Page were never billed by C & K as the drilling of the well progressed. Taylor and Page were not furnished an AFE within thirty days prior to the spudding of the well. After Taylor learned drilling had commenced, he at various times, attempted to participate in the well and contacted C & K representatives, all to no avail. Taylor repeatedly objected because the written agreement had not reflected the oral agreement for periodic billings. Taylor and Page contend that C & K's failure to send an AFE as required by the Commission and its failure to live up to the verbal agreement to periodically bill working interest owners as drilling progressed caused Taylor and Page's nonparticipation and C & K's imposition of the 120% risk penalty. It should be noted that Taylor attempted to participate in the well and made inquiries through February and March of 1977 and did not wait for one year to complain (Aug. 9, TR 43-60; Sept. 11, TR 140,143; Taylor's Exhibit 13-4). Also, he contacted the Division several times about his participation (Taylor's exhibits 12 series). It should also be noted that Taylor's wife testified to the oral agreement (Sept. 11, TR 192).

In reviewing the record, it is clear that the Commission not only relied on the violation of its forced pooling order but also had evidence before it of an oral agreement to which C & K did not abide. C & K attempted to argue that because Taylor had received AFEs at various time periods, the Commission's strict construction of its order is arbitrary and capricious. This Court is to give special weight and credence to the experience and specialized knowledge of the Commission. It is not for this Court to second guess the Commission in the construction of its own orders. It is obvious that one of the reasons for submission of an AFE within thirty days prior to the commencement of a drilling of a well is to protect the working interest owners and give them an accurate approximation of well drilling costs. Acceleration of well costs, on a daily basis was admitted by C & K's Thompson (Sept. 11, TR 128-129). AFE's submitted prior to hearing and prior to entry of an order may very well be inaccurate because of excessive inflation present in the United States economy when drilling begins at a later date. Also, Taylor very succinctly states additional reasons for the thirty day requirement on submitting an AFE as it is the only protection to a nonconsenting owner in participating in a well (Sept. 11, TR 195-197). This writer does not feel it is necessary to refute each piece of evidence referred to by opposing counsel in his brief but urges the Court to review the portion of the record cited by Taylor. The Court will readily see substantial evidence exists in the record to support the decision of the Commission. For the Court to get some feel of the Commission's attitude regarding the failures of C & K to abide by its orders, see September 11th Transcript, 176, 177, 181 and 182.

REMOVAL OF RISK FACTOR

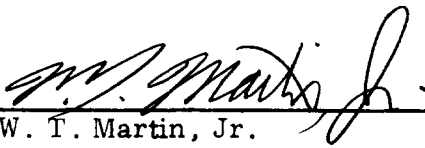
The Division did not remove the 120% risk factor. Taylor was given the opportunity to avoid the 120% risk factor by contributing his well costs within thirty days of the date of the order. All the Division did was to set the parties back

to where they would have been had C & K complied with the original Order R-5332. C & K is not being penalized. C & K was attempting to penalize Taylor and Page by means of C & K's own violation of R-5332 and verbal agreement. The actions of the Commission are not manifestly arbitrary and capricious. The Division was exercising its broad powers in dealing with the correlative rights of a working interest owner in setting straight and correcting actions of C & K that resulted to the detriment of the working interest owner and in violation of the Division's own orders. The Division's remedy is proper and within the statutory authority of the Division.

Respectfully submitted,

MATKINS AND MARTIN

By


W. T. Martin, Jr.

P. O. Drawer N

Carlsbad, New Mexico 88220

Attorney for Bill Taylor

WE HEREBY CERTIFY THAT WE HAVE MAILED
A COPY OF THE FOREGOING PLEADING
TO OPPOSING COUNSEL OF RECORD THIS

7/30/79
BY 



STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR
LARRY KEHOE
SECRETARY

July 30, 1979

POST OFFICE BOX 2068
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

The Honorable John B. Walker
District Judge, Fifth Judicial
District
P. O. Box 1626
Carlsbad, New Mexico 88220

Re: C & K Petroleum, Inc. v.
New Mexico Oil Conservation
Commission et al., Eddy
County Cause Nos. CV-78-415
and CV-78-417 (Consolidated)

Dear Judge Walker:

Enclosed for your consideration in connection with
the above consolidated cases is the brief by Respondent
Oil Conservation Commission in response to Petition for
Review filed by C & K Petroleum, Inc. and Bill Taylor.

The original of this brief has been forwarded to
Mrs. Frances M. Wilcox, Clerk of the District Court,
for filing.

Very truly yours,

ERNEST L. PADILLA
General Counsel

ELP/dr

cc: Jason Kellahin, Esquire
W. T. Martin, Jr., Esquire

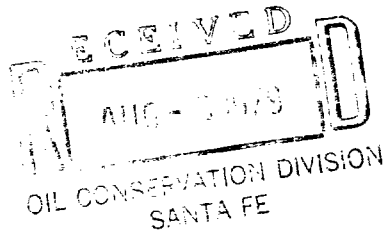


STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR
LARRY KEHOE
SECRETARY

July 30, 1979

POST OFFICE BOX 2088
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SANTA FE, NEW MEXICO 87501
(505) 827-2434



FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

FILED AUG - 2 1979 IN MR. OFFICE

Mrs. Frances M. Wilcox
Clerk of the District Court
Eddy County Court House
Carlsbad, New Mexico 88220

FRANCES M. WILCOX
Clerk of the District Court

Re: C & K Petroleum, Inc. v.
New Mexico Oil Conservation
Commission, et al., Eddy
County Cause Nos. CV-78-415
and CV-78-417 (Consolidated)

Dear Mrs. Wilcox:

Enclosed please find, for filing, a brief in the
above-captioned causes.

Thank you.

Very truly yours,

ERNEST L. PADILLA
General Counsel

ELP/dr

FRED M. STANDLEY
ATTORNEY GENERAL
ALFRED P. WHITTAKER
FIRST ASSISTANT ATTORNEY GENERAL

State of New Mexico
Department of Justice
Office of the Attorney General



Santa Fe

ASSISTANT ATTORNEYS GENERAL
PAUL L. BILLHYMER
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HILTON A. DICKSON, JR.
ROBERT F. PYATT
HOWARD M. ROSENTHAL
HILARIO RUBIO

OPINION
of
FRED M. STANDLEY
Attorney General

No. 58-200
September 30, 1958

By: Joel B. Burr, Jr.
Assistant Attorney General

To: Stephen W. Bowen, President
Board of Commissioners of the
State Bar of New Mexico
Tucumcari, New Mexico

Question:

Does appearance by a layman, or an attorney in a representative capacity as an advocate in hearings before any commissioner, hearing officer, referee, board, body, committee or commission of the State of New Mexico, constitute the practice of law and require attorneys so engaged to be licensed in New Mexico or otherwise associated with resident counsel?

Conclusion:

Yes.

Analysis:

The pertinent statutory provisions of this State in reference to the practice of law are Secs. 18-1-8, 18-1-26, and 18-1-27 of the New Mexico Statutes Annotated, 1953 Comp., and 1957 Pocket Supplement.

Sec. 18-1-8, supra, creates a Board of Bar Examiners to pass upon the qualifications of applicants before they are admitted to practice law in the State.

September 30, 1958

Sec. 18-1-26, supra, prohibits the practice of law in this State by any person unless he shall have first obtained either a temporary license, a certificate of admission, or associated himself with local counsel. This section provides in part as follows:

"No person shall practice law in any of the courts of this state, except courts of justice of the peace, nor shall any person commence, conduct or defend any action or proceeding in any of said courts unless he be an actual and bona fide resident of the State of New Mexico, and unless he shall have first obtained a temporary license as herein provided, or shall have been granted a certificate of admission to the bar under the provisions of this chapter. No person not licensed as provided herein shall advertise or display any matter or writing whereby the impression may be gained that he is an attorney or counselor at law, or hold himself out as an attorney or counselor at law, and all persons violating the provisions hereof shall be deemed guilty of contempt of the court wherein such violation occurred, as well as of the Supreme Court of the state; Provided, however, that nothing in this act shall be construed to prohibit persons residing beyond the limits of this state, otherwise qualified, from assisting resident counsel in commencing, conducting or otherwise participating in any action or proceeding; * * *".

And lastly, Section 18-1-27, supra, likewise prohibits the practice of law without a valid license and provides for a penalty for the violation thereof. This section provides:

"If any person shall, without having become duly licensed to practice, or whose licenses to practice shall have expired either by disbarment, failure to pay his license fee, or otherwise, practice or assume to act or hold himself out to the public as a person qualified to practice or carry on the calling of a lawyer, he shall be guilty of an offense under this act (18-1-2 to 18-1-8, 18-1-24, 18-1-25, 18-1-27), and on conviction thereof be fined not to exceed five hundred dollars (\$500), or be imprisoned, for a period not to exceed six (6) months, or both."

Thus, we note that there is no statutory provision in New Mexico defining what constitutes the "practice of law". Nor, to our knowledge, has the term been defined by the Supreme Court of this State. However, the reports are replete with cases in other jurisdictions in which the courts have been called upon to define the term.

In People v. People's Stock Yards State Bank, 344 Ill. 462, 176 N.E. 901 (1931), it is said:

"Practicing as an attorney or counselor at law, according to the laws and customs of our courts, is the giving of advice or rendition of any sort of service by any person, firm or corporation when the giving of such advice or rendition of such service requires the use of any degree of legal knowledge or skill."

In Barr v. Cardell, 173 Iowa 18, 155 N.W. 312 (1915), the Court said:

"We are of the opinion that the practice of law was not confined to practice in the courts of this state, but was of larger scope, including the preparation of pleadings and other papers incident to any action or special proceeding in any court or other judicial body, conveyancing, the preparation of all legal instruments of all kinds whereby a legal right is secured, the rendering of opinions as to the validity or invalidity of the title to real or personal property, the giving of any legal advice, and any action taken for others in any matter connected with the law."

The following is the concise definition given by the Supreme Court of the United States as quoted by the South Carolina Supreme Court in State v. Wells, 191 S.C. 468, 5 S.E. 2d 181 (1939):

"Persons acting professionally in legal formalities, negotiations or proceedings by the warrants or authority of their clients may be regarded as attorneys at law within the meaning of that designation as employed in this country."

In determining what is the practice of law, the courts have consistently said that it is the character of the acts performed and not the place where they are done that is decisive. Or phrased in a different manner, it is the character of the services rendered and not the denomination of the tribunal before whom they are rendered which controls in determining whether such services constitute the practice of law. State ex rel. Daniel v. Wells, 191 S.C. 468, 5 S.E. 2d 181 (1939); People ex rel. Chicago Bar Association v. Goodman, 366 Ill. 346, 8 N.E. 2d 941 (1937), Cert. Den. 302 U.S. 728; Stock v. P. G. Garage, Inc., 7 N.J. 118, 30 A. 2d 545 (1951); State ex rel. Johnson, Atty. Gen. v. Childe, 147 Neb. 527, 23 N.W. 2d 720 (1946); Carner v. Conway, 234 Minn. 468, 48 N.W. 2d 788 (1951); Carey v. Thieme, 2 N.J. Super. 458, 64 A. 2d 394 (1949).

In disposing of the question in the case of Shortz v. Farrell, 327 Pa. 81, 193 A. 20, 21 (1937), the Court said:

"In considering the scope of the practice of law mere nomenclature is unimportant, as for example, whether or not the tribunal is called a 'court,' or the controversy 'litigation', where the application of legal knowledge and technique is required, the activity constitutes such practice even if conducted before a so-called administrative board or commission. It is the character of the act, and not the place where it is performed, which is the decisive factor."

If this is the true test then, and we agree that it is, let us proceed to analyze the nature of the advocacy utilized by an attorney in conducting hearings before an administrative board or commission. It appears to take place in what may be called adversary administrative proceedings, and in the processing of claims by and against the state, as a more informal type of adversary proceeding.

In the constitutional sense, adversary administrative proceedings are the substantial equivalent of judicial proceedings. The same issues of law and argument carry over from an administrative proceeding on judicial review of the agency's determination. Moreover, the Supreme Court of the United States has held that administrative proceedings are subject to the constitutional requirements of procedural due process; that they are quasi-judicial in character, and are required to fit the cherished judicial tradition embodying the basic concepts of fair play. Morgan v. United States, 304 U.S. 1, (1938).

A study of the rules of practice adopted by various administrative bodies in this State reveals that the same basic system of mechanics is utilized as is found in judicial litigation. Choices must be made between causes of action and the drafting of pleadings. The conduct of a hearing before an administrative tribunal and the conduct of a trial in a purely judicial proceeding are for all practical purposes, the same. For example, in order to prove questions of fact in an administrative proceeding, witnesses must be qualified, examined and cross-examined, questions must be asked which, to some extent at least, must fit the rules of evidence. Documents must be proved and introduced into evidence as exhibits. Statutes and judicial decisions must many times be interpreted. Briefs are written and questions of law argued. Decisions are made which are based on findings of fact and conclusions of law. In addition, some statutes or rules of practice provide that the rules of evidence in certain administrative proceedings will, as far as applicable, be the same as the rules of procedure generally followed by the district courts. And it is not insignificant to note that language utilized in both administrative proceedings and judicial litigation are distinctly similar. Such terms as "complaints", "answers", "replies", "motions", "depositions", "subpoenas", "evidence", "offers of proof", "judicial" or "official notice", "briefs", "oral argument", and "findings of fact" are used in both proceedings.

Thus, if it is the character of the acts performed that is to govern us in determining what is the practice of law, the conclusion is inescapable that if a layman, or an attorney appears in a representative capacity as an advocate in hearings before any Commissioner, hearing officer, referee, board, body, committee or commission of the State of New Mexico which considers legal questions, applies legal principles and weighs facts under legal rules, and in that representative capacity files pleadings, qualifies, examines and cross-examines witnesses, proves and introduces exhibits into evidence or performs any of the other duties normally associated with an attorney requiring specialized training and skill, such layman or attorney is practicing law within the meaning of the term as it is used in the act.

As was indicated earlier in this opinion, our Supreme Court has never been called upon to decide this question. However, we are certainly not without authority in our position. In State ex rel Daniel, Atty. Gen., et al. v. Wells, supra, the Supreme Court of South Carolina was called upon to determine whether an appearance by an insurance adjuster as a paid

representative of an insurance company before a single commissioner in hearings before the South Carolina Industrial Commission, constituted the practice of law. The Court concluded that it did under a statutory provision which prohibited the practice of law in any court of the state by any person unless admitted and sworn in as an attorney.

The Court reviewed authorities from other jurisdictions and concluded that the correct test to be applied in determining what constitutes the practice of law, is to look at the character of the acts performed and not the place where they are done. In view of the test adopted, the Court carefully analyzed the procedure followed at such hearings. It found among other things that at such a hearing, the Commissioner ascertained disputed issues of law or fact, swore witnesses, and took testimony. Witnesses were examined and cross-examined. The commissioner was empowered to make awards based upon the evidence, together with a statement of his findings of fact, rulings and conclusions of law. A complete record was made of the case, and aggrieved parties given a right of appeal. Commenting upon this procedure, the Court said at pp. 184:

"Examination and cross examination of witnesses require a knowledge of relevancy and materiality. Such examination is conducted in much the same manner as that of the Circuit Court. Improper or irrelevant testimony must be objected to, or otherwise it may be considered. *Rice v. Brandon Corporation*, 190 S.C. 229, 2 S.E. 2d 740. While findings of fact will be upheld by the Court if there is any evidence on which it can rest, it must be founded on evidence and cannot rest on surmise, conjecture or speculation. *Rudd v. Fairforest Finishing Company*, 189 S.C. 188, 200 S.E. 727. Depositions are taken under the procedure of the Circuit Court. The various decisions of this Court since this legislation was enacted illustrate the difficult and complicated questions which arise in the construction of the Act and its application. Facts must be weighed by the commissioner in the light of legal principles. The Hearing commissioner makes not only findings of fact, but states his conclusions of law."

The Court then held that such hearings were essentially of a judicial character and that the appearance at such hearings in a representative capacity constituted the practice of law.

It should be noted that the South Carolina statute prohibiting the practice of law without a license is extremely similar to our New Mexico statute compiled as Section 18-1-26, supra, in that in both statutes, the word "court" is used in the prohibition. In disposing of the question, the South Carolina Supreme Court quotes with approval the following language from the Pennsylvania case of Shortz v. Farrell, supra.

"In considering the scope of the practice of law mere nomenclature is unimportant, as for example, whether or not the tribunal is called 'court' or the controversy 'litigation'."

The real question to be resolved according to the South Carolina Court is whether the duties performed require the application of legal knowledge or technique; that it is the character of the acts performed and not the place where they are performed which is the decisive factor.

In the Pennsylvania case from which the quoted language above is taken, the Court held that an appearance by an adjuster in administrative hearings held under the Pennsylvania Workman's Compensation Act, in which he examined and cross-examined witnesses, constituted the practice of law.

The Supreme Court of Illinois in the case of People ex rel. Chicago Bar Association v. Goodman, supra, upon similar facts, reached the same conclusion. In discussing what acts constituted the practice of law, the Court said:

"It is immaterial whether the acts which constitute the practice of law are done in an office, before a court, or before an administrative body. The character of the act done, and not the place where it is committed, is the factor which is decisive of whether it constitutes the practice of law."

Petition for Writ of Certiorari in the above case was denied by the United States Supreme Court in 302 U.S. 728.

The Supreme Court of Ohio is likewise in accord with the position we have taken on this question. See Goodman v. Beall, 130 Ohio St. 427, 200 N.E. 470 (1936).

In the case of Stack v. P. G. Garage, Inc., supra, the plaintiff Stack, a licensed realtor appeared in a representative

capacity before the Hudson County Tax Board. The New Jersey Supreme Court in holding that Stack's actions constituted the practice of law, quoted with approval the following conclusion reached in the case of Tumulty v. Rosenblum, 134 N.J.L. 514, 48 A. 2d 850 (Sup. Ct. 1946):

"The practice of law is not confined to the conduct of litigation in courts of record. Apart from such, it consists, generally, in the rendition of legal service to another, or legal advice and counsel as to his rights and obligations under the law. . . calling for. . . a fee or stipend, i.e., that which an attorney as such is authorized to do; and the exercise of such professional skill certainly includes the pursuit, as an advocate for another, of a legal remedy within the jurisdiction of a quasi-judicial tribunal. Such is the concept of R. S. 2:111-1, N.J.S.A., classifying as a misdemeanor the practice of law by an unlicensed person."

The Nebraska case of State ex rel. Johnson, Atty. Gen. v. Childe, supra, arose out of the appearance of one Childe before the Nebraska State Railway Commission in a proceeding entitled:

"In the Matter of the Application of the Central States Motor Carriers' Association for authority to Establish Commodity Rates on Building and Fencing materials."

The conclusion reached by the Court is quoted below:

"We conclude that in the proceeding before the Commission involved herein and the part taken by the defendant in his conduct thereof, there was involved a need of legal training, knowledge, and skill and constituted the practice of law. It was particularly required in the drafting of the petition, in the interpretation of the legislative powers with which the commission was clothed, in determining the power of the commission to make the order, in the making of a record in contemplation of a judicial review, in establishing the legal qualifications of witnesses to testify and the technical proffer of testimony in conformity to legal standards. In performing such services, and others noted in this opinion, in

a representative capacity without license to engage in the practice of law, the defendant engaged in the illegal practice of law within the meaning of the rules announced in the former opinion in this case. State ex rel. Johnson v. Childe, 139 Neb. 91, 295 N.W. 381."

But for the sake of brevity, many more cases could be cited in support of our position in this matter. However, we feel the cases we have discussed are sufficient to point out the correctness of the conclusions we have reached.

In view of this conclusion, one further question merits discussion at this time. Inasmuch as there is no prohibition under our law against an individual representing himself, and, in the case of a corporation, it is necessary that its appearance be made through employees or representatives, it might be contended that an employee of a corporation was not acting for a client, but for his own employer. Similar contentions were made in State v. Wells, supra, Clark v. Austin, 340 Mo. 467, 101 S.W. 2d 977, 982 (1937); Shortz, et al. v. Farrell, supra, and Mullin-Johnson Company v. Penn. Mutual Life Insurance Company, 9 F. Supp. 175 (1934).

In Clark v. Austin, supra, the Court disposed of the contention as follows:

"The law recognizes the right of natural persons to act for themselves in their own affairs, although the acts performed by them, if performed for others, would constitute the practice of law. A natural person may present his own case in court or elsewhere, although he is not a licensed lawyer. A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act, in person. It must act in all its affairs through agents or representatives. In legal matters, it must act, if at all, through licensed attorneys.

* * * * *

If a corporation could appear in court through a layman upon the theory that it was appearing for itself, it could employ any person, not learned

in the law, to represent it in any or all judicial proceedings."

The Court also quoted with approval the following from Mullin-Johnson Company v. Penn. Mutual Life Insurance Company, supra:

"Since a corporation cannot practice law, and can only act through the agency of natural persons, it follows that it can appear in court on its own behalf only through a licensed attorney. It cannot appear by an officer of the corporation who is not an attorney, and may not even file a complaint except by an attorney, whose authority to appear is presumed; in other words, a corporation cannot appear in propria persona."

We are further of the opinion that the power granted to various administrative agencies to promulgate rules and regulations does not contemplate the power to permit laymen and lawyers who are not licensed to practice law in this State to perform functions in connection with the administration of the various acts which constitute the practice of law. State v. Wells, supra, State v. Childe, supra, Goodman v. Beall, supra.

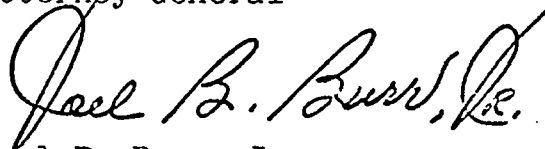
By way of conclusion, it is the opinion of this office that a layman or an attorney who appears in a representative capacity as an advocate in hearings before any commissioner, hearing officer, referee, board, body, committee or commission of the State of New Mexico which considers legal questions, applies legal principles and weighs facts under legal rules, and in that representative capacity files pleadings, qualifies, examines and cross-examines witnesses, proves and introduces exhibits into evidence, or performs any of the other duties normally associated with attorneys requiring specialized training and skill, is engaging in the practice of law which is expressly prohibited without a license under the provisions of Sections 18-1-26 and 18-1-27, supra. It therefore follows that under the provisions of Section 18-1-26, supra, all foreign licensed attorneys must associate themselves with resident counsel before commencing, conducting, or otherwise participating in any such proceeding.

The law in this regard is neither unusual nor oppressive. Doctors of medicine, dentists, pharmacists, barbers, hair-dressers, and others who engage in professions or skilled

trades, must show required preparation and fitness for their work, take examinations and procure licenses to practice. As the Court pointed out in State v. Wells, supra, a dual trust is imposed on licensed attorneys; they must act with all good fidelity to the courts and to their clients, and they are bound by canons of ethics which have been the growth of long experience and which are enforced by the Courts. Or as was said by Judge Matson in Gardner v. Conway, 234 Minn. 468, 48 N.W. 2d 788, 795;

"The law practice franchise or privilege is based upon the threefold requirements of ability, character and responsible supervision." (Court's Emphasis).

FRED M. STANDLEY
Attorney General

A handwritten signature in cursive script, reading "Joel B. Burr, Jr.", written in dark ink.

Joel B. Burr, Jr.
Assistant Attorney General

DATA ENTERED 6-7-79

(1) 0.5 0.3 C.V. C.V. 7.8 0.04.1.7
JUDICIAL COUNTY TYPE DOCKET YEAR DOCKET NUMBER
DISTRICT CODE CASE BOOK FILED

(3) Retrial ☐ (2) Date of Filing/Reopen 1 2 0 4 7 8
MO. DAY YEAR
 for Retrial

PLAINTIFF(S) (In the Matter of)

In Re: THE APPLICATION OF BILL TAYLOR FOR
 ENFORCEMENT AND AMENDMENT OF ORDER
 NO. R-5332, EDDY COUNTY, NEW MEXICO,
 OIL CONSERVATION COMMISSION CASE NO.
 6289

ATTORNEYS

For Plaintiff(s)

W. T. Martin Jr. 3081

For Defendant(s)

✓ Ernest Padilla 3720

~~Lynn Teschendorf~~ 5059

(N.M. Oil Conservation)

Jason W. Kellahin (C & K)

Fee \$ 20.00 CDR 15068 2589

CONDEMNATION TRACTS

CATEGORY/SUBCATEGORY

1 0 4 1 0
CODE

JUDGE'S CODE

(5)

JUDGE'S NAME

JURY SELECTION

(10) (11)

TRIAL TIME

Other/Miscellaneous
DESCRIPTION

(6) TYPE APPEAL

- 1 ☐ Magistrate
 2 ☐ Municipal
 3 ☐ Administrative
 4 ☐ Other

(7) TYPE OF TRIAL

- ✓ 1 ☒ Non-Jury
 2 ☐ 12 Person Jury
 3 ☐ 6 Person Jury
 4 ☒ Consolidated

- (12) ☐ Pre-Trial Conference
 (13) ☐ Trial Reset
 (14) ☐ State-Provided Counsel
 (17) ☐ Special Master/Hrng. Officer
 (18) ☐ Workman's Comp. Appealed Up

DISPOSITION TYPE

- ☐ Default
☐ Stipulated Judgment/Agreement
☐ Trial
☐ Dismissal Failure to Pursue
☐ Other Dismissal
☐ Mistrial/Hung Jury

(8) DISPOSITION DATE

MONTH DAY YEAR

CASES TO BE TRIED FROM SEPT. 2, 1980 to NOV. 26, 1980

RETURN TO CLERK ON OR BEFORE JULY 31, 1980

PLEASE REVIEW AND CHECK EACH COLUMN CAREFULLY

Ready for Trial	Approx. Trial Time	Not Ready for Trial	Days until Ready	Trial Atty.	Dates not Available	If case already set, give date	Judgment Settled to be entered
Pursuant to an Order Vacating setting filed July 11, 1979, case was submitted on Briefs to Judge Walker. No appearances by counsel unless Judge Walker desires oral arguments.				Respectfully submitted,			

Below this line for office use only:

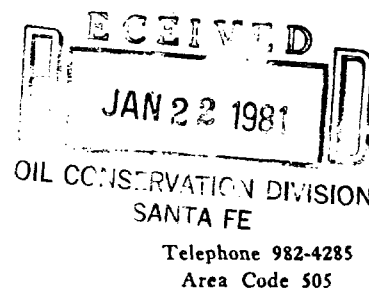
JUDGE

DATE SET

Jason Kellahin
W. Thomas Kellahin
Karen Aubrey

KELLAHIN and KELLAHIN
Attorneys at Law
500 Don Gaspar Avenue
Post Office Box 1769
Santa Fe, New Mexico 87501

January 21, 1981



W. T. Martin, Esq.
509 West Pierce
Carlsbad, New Mexico 88220

RE: C & K Petroleum, Inc., v. New Mexico
Energy and Minerals Department, et al.;
Bill Taylor v. New Mexico Energy and
Minerals Department, et al., Nos. 78-415,
78-417 (Civil) Eddy County, New Mexico

Dear Tom:

Enclosed is a form of Order I have prepared for
submission to the Court in connection with Bill
Taylor's motion for rehearing on the above cases.

If this meets with your approval would you
kindly submit it to Judge Walker. As you will
note, Ernest Padilla has already approved it on be-
half of the Oil Conservation Division.

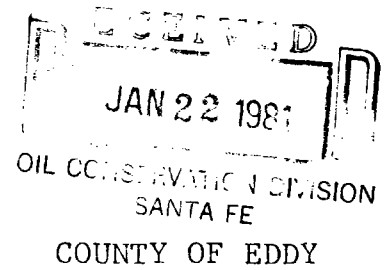
Sincerely,


Jason Kellahin

JK:jm

Enclosure

cc: Dick Blenden, Esq.
Ernest Padilla, Esq.
Honorable John B. Walker



STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

C & K PETROLEUM, INC.
a Corporation,

Petitioner,

CV-78-415
CV-75-417 (Consolidated)

vs.

NEW MEXICO ENERGY AND
MINERALS DEPARTMENT, OIL
CONSERVATION DIVISION,
and BILL TAYLOR,

Respondents.

ORDER

This matter having come before the Court for rehearing, and it appearing that the Court had entered its Finding of Fact, Conclusions of Law and Judgment in these consolidated cases on December 15, 1980, and Respondent, Bill Taylor having filed his motion for Rehearing, and the Court having set the consolidated cases for rehearing January 6, 1981, and the Court having heard argument of counsel and being fully advised;

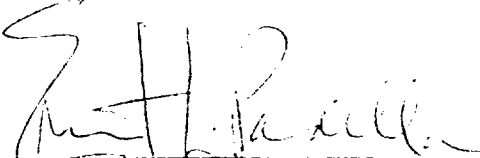
Finds that arguments of Respondent Bill Taylor were without merit.

It is therefore ordered, adjudged and decreed that the Judgment entered herein on December 15, 1980, should be and the same hereby is ratified and affirmed in all respects.

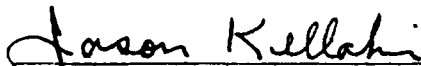
DISTRICT JUDGE

Submitted:

Dick A. Blenden
W. T. Martin
Attorneys for Bill Taylor



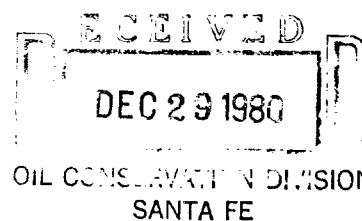
Ernest L. Padilla
Assistant Attorney General
Attorney for Oil Conservation Division
New Mexico Energy & Minerals Department



Jason Kellahin
Attorney for C & K Petroleum Inc.

IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO



C & K PETROLEUM, INC.,)
a Corporation,)

Petitioner,)

vs.)

NEW MEXICO ENERGY AND)
MINERALS DEPARTMENT, OIL)
CONSERVATION DIVISION and)
BILL TAYLOR,)

Respondents.)


No. CV-78-415

IN THE MATTER OF THE
APPLICATION OF BILL TAYLOR
FOR ENFORCEMENT AND AMENDMENT
OF ORDER NO. R-5332 EDDY
COUNTY NEW MEXICO OIL CON-
SERVATION COMMISSION CASE
NO. 6289 CV-78-417

ENTRY OF APPEARANCE

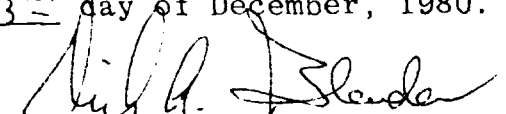
COMES NOW PAINE, BLENDE & DIAMOND, DICK A. BLENDE,
and enters their general appearance in the above-styled and
numbered cause of action on behalf of the Respondent, BILL
TAYLOR, as co-counsel with W. T. MARTIN, JR.

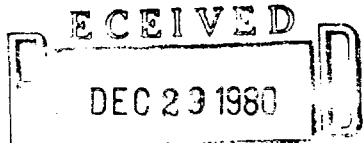
PAINE, BLENDE & DIAMOND


DICK A. BLENDE

Attorneys for Respondent Bill Taylor
P. O. Box 1387
Carlsbad, New Mexico 88220

I hereby certify that a true
copy of the foregoing has been
mailed to opposing counsel this
23rd day of December, 1980.





IN THE DISTRICT COURT OF EDDY COUNTY
SANTA FE
STATE OF NEW MEXICO

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY

FILED DEC 23 1980 4:11 PM
OFFICE

3:17 PM

FRANCES M. WILCOX
Clerk of the District Court

C & K PETROLEUM, INC.)
a Corporation,)
)
Petitioner,)
)
-vs-)
)
NEW MEXICO ENERGY AND)
MINERALS DEPARTMENT, OIL)
CONSERVATION DIVISION and)
BILL TAYLOR,)
)
Respondents.)

CV-78-415
CV-78-417
(Consolidated)

NOTICE OF REHEARING

TO: Jason W. Kellahin
Post Office Box 1769
Santa Fe, NM 87501

Attorney for Petitioner

Ernest L. Padilla
Post Office Box 2088
Santa Fe, NM 87501

Attorney for Respondent
(Oil Conservation Division)

W.T. Martin, Jr.
509 West Pierce
Carlsbad, NM 88220

Attorney for Respondent
(Bill Taylor)

Dick Blenden
Post Office Box 1387
Carlsbad, NM 88220

Co-counsel for Respondent
(Bill Taylor)

YOU ARE HEREBY NOTIFIED THAT THE ABOVE STYLED AND NUMBERED CAUSE
HAS BEEN SET FOR REHEARING ON January 6, 1981, at 9:00 AM.

THE HONORABLE JOHN B. WALKER, presiding.

DATED: December 23, 1980

FRANCES M. WILCOX
CLERK, DISTRICT COURT

BY: *Jeanne Brown*

KELLAHIN and KELLAHIN

Attorneys at Law

Jason Kellahin
W. Thomas Kellahin
Karen Aubrey

500 Don Gaspar Avenue
Post Office Box 1769
Santa Fe, New Mexico 87501

Telephone 982-4285
Area Code 505

December 24, 1980

W. T. Martin, Jr., Esquire
Matkins & Martin
P.O. Drawer N
Carlsbad, New Mexico 88220

RE: C & K Petroleum Inc. vs. N.M. Energy
and Minerals Department and Bill Taylor
Nos. CV 78-415, CV 78-417, District Court
Fifth Judicial District

Dear Tom:

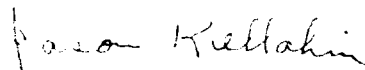
This will confirm our telephone conversations concerning your request that C & K direct the bank in Carlsbad to release to Taylor any funds held in escrow, as directed by the District Court Order entered December 15, 1980.

This request is premature and C & K does not consider it a proper request until such time as the order is a final order, thirty days after its entry, in the event an appeal is not taken.

I have been authorized to assure you that C & K does not contemplate an appeal of the court's decision. This, of course, will not preclude a cross appeal in the event Mr. Taylor or the Oil Conservation Division were to take an appeal.

In the event the Order becomes final, we would also like to know what arrangements Mr. Taylor is willing to make to take care of his share of operation costs of the Carlsbad 13, Well No. 1, in view of the fact that Transwestern is now paying him directly for his full share of production from the well. This is not interposed as a condition to compliance with the court order, but is a matter that will have to be faced by both sides when the court's order does become final.

Sincerely,


Jason W. Kellahin

JWK:jm
cc: Honorable John B. Walker
Martin Allday, Esquire
Charles Padilla, Esquire
Mr. Gil Thompson

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

C & K PETROLEUM, INC.,
a Corporation,

Petitioner,

vs.

NOS. CV-78-415
CV-78-417

NEW MEXICO ENERGY AND MINERALS
DEPARTMENT, OIL CONSERVATION
DIVISION and BILL TAYLOR,

Respondents,

and

IN THE MATTER OF THE APPLICATION
OF BILL TAYLOR FOR ENFORCEMENT AND
AMENDMENT OF ORDER NO. R-5332, EDDY
COUNTY, NEW MEXICO, OIL CONSERVATION
COMMISSION CASE NO. 6289.

TRANSCRIPT ON APPEAL

1. Certified transcript of Commission hearings held August 9, 1978, August 23, 1978, and September 11, 1978.
2. Exhibits introduced by Bill Taylor.
3. Exhibits introduced by C & K Petroleum, Inc.
4. Exhibits introduced by Clarence Wells.
5. Exhibits introduced by Bob Burnett.
6. Certified copy of Order No. R-5332-A, the order appealed from.
7. Certified copy of Order No. R-5332.
8. Oil Conservation Commission records and Oil and Gas Accounting Commission records of which administrative notice was taken.

NEW MEXICO OIL CONSERVATION COMMISSION

By

LYNN TESCHENDORF

P. O. Box 2068

Santa Fe, New Mexico 87501



STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR
LARRY KEHOE
SECRETARY

March 2, 1979

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

Mrs. Frances M. Wilcox
Clerk of the District Court
Eddy County Courthouse
Carlsbad, New Mexico 88220

Re: Eddy County Cause
Nos. CV-78-415 and
CV-78-417

Dear Mrs. Wilcox:

Enclosed for filing please find the Transcript
on Appeal for the above-numbered causes which have been
consolidated.

Thank you for your assistance in this matter.

Very truly yours,

(Ms.) LYNN TESCHENDORF
General Counsel

LT/dr

cc: W. T. Martin, Jr.
Jason W. Kellahin



BRUCE KING
GOVERNOR
LARRY KEHOE
SECRETARY

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

February 19, 1979

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

Mr. Bill Taylor
512 Welshire
Carlsbad, New Mexico 88220

Re: Case No. 6289
Order No. R-5332-A

Dear Mr. Taylor:

There is nothing in Orders Nos. R-5332 and R-5322-A which would prohibit a split-stream connection whereby each interest owner sells his own gas. However, independent arrangements would have to be made with the purchaser so that the terms of these orders would be complied with. For example, if an interest owner has elected to go nonconsent then both purchasers would have to pay the operator of the well until such time as that owner's share of well costs was paid out of production. In addition, that owner would remain liable for operating costs.

Please let me know if I have not fully responded to your question.

Very truly yours,

LYNN TESCHENDORF
General Counsel

LT/dr

cc: Tom Martin
Jason Kellahin

February 7, 1979

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

Re: Case 5807, Order R-5332;
Case 6289, Order R-5332A

Dear Sirs:

C & K Petroleum Inc. and Taylor (&Page) have discussed settling our differences outside the district court. Taylor has over thirty-four surface acres immediately adjacent the well area that has been appraised as "best use" for commercial purposes. Taylor and Page's share of the gas from the well could be a very desirable commodity and was stated into the transcript of Case 5807 as agreeable to C & K Petroleum, Inc.

C & K has advanced a possible settlement solution, creating a split stream connection with Taylor (and Page) responsible for his (their) share of the gas, including sales, connections, etc.

Mr. Jason Kellahin, C & K Attorney, has indicated the NMOCD might make the necessary adjustments in Orders R-5332 and R-5332A to allow the split-stream connection. Would this be a common occurrence; what adjustments in the orders R-5332 & A would be necessary; and would such adjustments be possible to allow the split stream connection?

Sincerely,

Bill Taylor

Bill Taylor

Xerox: Tom Martin
Jason Kellahin

*512 Welshire
Carlisle, N.M. 88220*

JASON W. KELLAHIN
W. THOMAS KELLAHIN
KAREN AUBREY

198-10-1319
KELLAHIN and KELLAHIN
ATTORNEYS AT LAW
800 DON GASPAR AVENUE
P. O. BOX 1769
SANTA FE, NEW MEXICO 87501

TELEPHONE 982-4288
AREA CODE 505

January 22, 1979

Mrs. Frances M. Wilcox
Clerk of the District Court
Eddy County Courthouse
Carlsbad, New Mexico 88220

Re: In the matter of the application of Bill Taylor
for Enforcement and Amendment of Order No.
R-5332, Eddy County, New Mexico, Oil Conservation
Commission Case No. 6289, No. CV-78-417

Dear Mrs. Wilcox:

Enclosed for filing please find C & K Petroleum's
Response to Motion to Amend and Response to Petition for
Review. Also enclosed is an Acceptance of Service.

Very truly yours,


W. Thomas Kellahin

CC: Lynn Teschendorf
W. T. Martin, Jr.
Mr. Gil Tompson

WTK:kfm

Enclosure

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

IN THE MATTER OF THE APPLICATION
OF BILL TAYLOR FOR ENFORCEMENT AND
AMENDMENT OF ORDER NO. R-5332, EDDY
COUNTY, NEW MEXICO, OIL CONSERVATION
COMMISSION CASE NO. 6289

No. CV-78-417

RESPONSE OF C & K PETROLEUM, INC.
TO PETITION FOR REVIEW

Comes now C & K Petroleum, Inc., having heretofore
accepted service of the Petition of Bill Taylor for review
of the Oil Conservation Commission's order No. R-5332-A
and entered its appearance herein, for its response to the
Petition for Review, states:

FIRST DEFENSE

1. Respondent C & K Petroleum, Inc., (hereinafter "C & K") admits the allegations contained in Paragraph 1.

2. Respondent C & K admits the allegations contained in Paragraph 2 except that C & K denies that the property in question involves the right to certain royalty funds on deposit with the American Bank of Carlsbad.

3. C & K admits the allegations contained in Paragraph 3 except that C & K denies that the proceedings in Case No. 6289 sought enforcement of Order No. R-5332 regarding the payment of royalties.

4. C & K admits the allegations contained in Paragraph 4, except the exhibit number should be corrected to read "B".

5. Respondent C & K denies the allegations contained in Paragraphs 5, 6, and 7 and each subdivision thereof.

Second Defense

As a Second Defense to Petitioner's petition for review, Respondent C & K states:

1. The Oil Conservation Division, New Mexico Energy and Minerals Department (formerly Oil Conservation Commission) is without jurisdiction to determine ownership of royalty funds on deposit with the American Bank of Carlsbad, did not consider such ownership, and the issue is not now properly before this Court.

Third Defense

As a Third Defense to Petitioner's petition for review, Respondent C & K states:

1. Petitioner's Petition for review seeks determination of matters beyond the jurisdiction of this Court on a review of administrative order of the Oil Conservation Division, as provided by law and court decisions.

WHEREFORE, having fully responded to the Petition, Respondent C & K Petroleum, Inc., respectfully requests that the Petition be dismissed.

C & K PETROLEUM, INC.

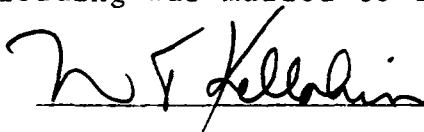
By _____

W. THOMAS KELLAHIN
JASON KELLAHIN

KELLAHIN & KELLAHIN
P. O. Box 1769
Santa Fe, New Mexico 87501
Phone (505) 982-4285

ATTORNEYS FOR C & K PETROLEUM, INC.

I hereby certify that on the 22nd day of January, 1979, a copy of the foregoing pleading was mailed to opposing counsel of record.

 _____

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

IN THE MATTER OF THE APPLICATION
OF BILL TAYLOR FOR ENFORCEMENT AND
AMENDMENT OF ORDER NO. R-5322, EDDY
COUNTY, NEW MEXICO, OIL CONSERVATION
COMMISSION CASE NO. 6289

RESPONSE OF C & K PETROLEUM, INC.,
TO MOTION TO AMEND

Comes now C & K Petroleum, Inc., respondent herein, and
opposes the motion of Petitioner Bill Taylor to amend his
Petition for Review, and as grounds therefore states:

1. The scope of review of an order of the Oil Conservation
Division is limited by Section 70-2-25, New Mexico Statutes
Annotated, 1978 Compilation, to questions presented to the
commission by the application for rehearing.

2. Paragraph 7 of petitioner's proposed amended petition
contains matters not presented to the Commission by Bill Taylor's
application for rehearing.

3. The proposed amendment to the Petition for Review
would present new matters that were not before the Commission
at the time of the hearing on and adoption of its order No.
R-5332-A, nor were such matters presented to or considered by
the Commission in connection with petitioner's Petition for
Rehearing in this case, nor in Case No. CV-78-415; with which
this case has been consolidated.

WHEREFORE Respondent C & K Petroleum, Inc., opposes the

Motion to Amend filed by Petitioner Bill Taylor, and asks
that it be denied.

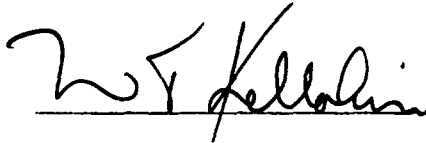
C & K PETROLUM, INC.,

By _____
W. THOMAS KELLAHIN
JASON KELLAHIN

KELLAHIN & KELLAHIN
P. O. Box 1769
Santa Fe, New Mexico 87501
Phone (505) 982-4285

ATTORNEYS FOR C & K PETROLEUM, INC.

I hereby certify that on the 22nd day of January, 1979,
a copy of the foregoing pleading was mailed to opposing
counsel of record.

 _____

MATKINS AND MARTIN
ATTORNEYS AT LAW

CASWELL S. NEAL 1896-1974
JEROME D. MATKINS
W. T. MARTIN, JR.
~~JOHN W. FISH~~

601 NORTH CANAL STREET
P. O. DRAWER N
CARLSBAD, NEW MEXICO 88220

AREA CODE 505
885-2445
885-2312

January 11, 1979

Ms. Lynn Teschendorf
Oil Conservation Division
P.O. Box 2088
Sante Fe, NM 87501

Mr. Jason Kellahin
Kellahin & Fox
P.O. Box 1769
Sante Fe, NM 87501

Re: Appeal of Bill Taylor from Order R5332A
Eddy County, New Mexico, OCC Case No. 6289
District Court of Eddy County, CV-78-417

Gentlemen:

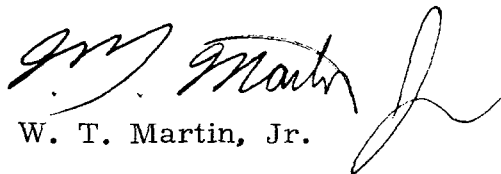
Enclosed is a Motion to Amend the Petition in the above styled and numbered appeal, together with an Order for your approval.

If you have no objections to the amendment, please sign your approval to the Order and return it to this office and I will see that it is filed and return to you conformed copies.

If you have objections to the Motion, please advise. Thank you.

Yours very truly,

MATKINS AND MARTIN


W. T. Martin, Jr.

rlh
encs.

*P.S. Lynn: Please submit to Jason for signature
before returning them to me.
WTM*

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

IN THE MATTER OF THE)
APPLICATION OF BILL)
TAYLOR FOR ENFORCEMENT)
AND AMENDMENT OF ORDER)
NO. R-5332, EDDY COUNTY,) No. CV-78-417
NEW MEXICO, OIL CONSERVATION)
COMMISSION CASE NO. 6289)

RESPONSE TO MOTION TO AMEND

Comes now the Respondent New Mexico Oil Conservation Division and respectfully asks the Court to deny Petitioner Bill Taylor's Motion to Amend, and as grounds therefor states:

1. That Section 70-2-25 NMSA 1978 limits the scope of review to "questions presented to the commission by the application for rehearing."

2. That Paragraph 7 of the proposed Amended Petition contains matters that were not presented to the commission by Bill Taylor's Application for Rehearing.

3. That Paragraph 7 of the proposed Amended Petition contains new matters that were not before the commission at the time it adopted its Order No. R-5332-A, nor at the time it considered the Petitions for Rehearing in these cases.

WHEREFORE, Respondent New Mexico Oil Conservation Division respectfully requests that the Motion to Amend be denied.

NEW MEXICO OIL CONSERVATION DIVISION

By

LYNN TESCHENDORF
P. O. Box 2088
Santa Fe, New Mexico 87501

I hereby certify that on the
17th day of Jan
1979
going through the office of
opposing counsel of record.



STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

JERRY APODACA
GOVERNOR

NICK FRANKLIN
SECRETARY

January 17, 1979

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

Mrs. Frances M. Wilcox
Clerk of the District Court
for Eddy County
Eddy County Courthouse
Carlsbad, New Mexico 88220

Re: Eddy County Cause
No. CV-78-417

Dear Mrs. Wilcox:

Enclosed for filing find a Response to Motion to Amend in the above-numbered cause. It is my understanding that Petitioner Bill Taylor's Attorney, Mr. W. T. Martin, Jr., will ask for a hearing on the Motion, and I concur in his request.

Very truly yours,

LYNN TESCHENDORF
General Counsel

LT/dr

cc: Jason Kellahin
W. T. Martin, Jr.

IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO

IN THE MATTER OF THE)	
APPLICATION OF BILL	:	
TAYLOR FOR ENFORCE-)	
MENT AND AMENDMENT	:	
OF ORDER NO. R-5332,)	No. CV-78-417
EDDY COUNTY, NEW	:	CV-78-415
MEXICO, OIL CONSERVA-)	
TION COMMISSION CASE	:	
NO. 5289)	

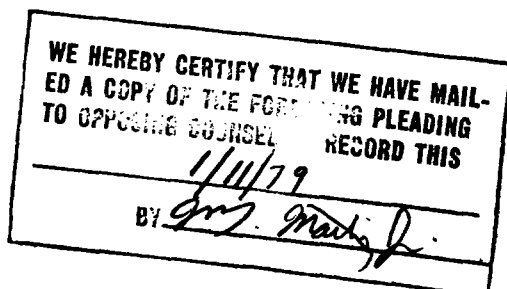
MOTION TO AMEND

COMES NOW Appellant, Bill Taylor, and moves the Court to enter an order allowing amendment to his Petition on file herein, and states as grounds therefor:

1. That paragraph 7 of the Petition needs to be amended because of new matter arising as a result of the actions of C & K Petroleum and it is necessary for the Court to review as more fully set forth in paragraph 7 of the Amended Petition.

2. A copy of the Amended Petition is attached hereto and incorporated herein as if fully set forth.

MATKINS AND MARTIN



By *W. T. Martin, Jr.*
W. T. Martin, Jr.
Attorneys for Appellant
P.O. Drawer N
Carlsbad, NM 88220

IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO

IN THE MATTER OF THE APPLI-)	
CATION OF BILL TAYLOR FOR	:	
ENFORCEMENT AND AMENDMENT OF)	CV-78-417
ORDER NO. R-5332, EDDY COUNTY	:	CV-78-415
NEW MEXICO, OIL CONSERVATION)	
COMMISSION CASE NO. 6289	:	

AMENDED PETITION

COMES NOW Petitioner and Appellant, Bill Taylor, and pursuant to Section 65-3-22 (b), NMSA, 1953 Comp., now Section 70-2-25, NMSA, 1978 Comp., amends his original Petition and appeals to District Court of Eddy County, New Mexico, and states as grounds therefor:

1. That on the 17th day of October, 1978, in Case No. 6289 the Oil Conservation Division of the Energy and Minerals Department of the State of New Mexico entered Order No. R-5332-A, a copy of which is attached hereto as Exhibit A and incorporated herein as if fully set forth. That on the 3rd day of November, 1978, and within the twenty-day time limit provided in Section 65-3-22 (a), NMSA, 1953 Comp., Appellant and Petitioner herein did file an application for rehearing with the Oil Conservation Division. That within the ten-day time limit prescribed in Section 65-3-22 (a), NMSA, 1953 Comp., no action was taken by the Oil Conservation Department granting or denying the application for rehearing and that the tenth day ran on the 13th day of November, 1978. That this Petition and Appeal is filed within the twenty-day time limit following the 13th day of November, 1978, as prescribed in Section 65-3-22 (b), NMSA, 1953 Comp.

2. That the property in question involves working interest and royalty interest in C & K Carlsbad "13" Well No. 1, situate and lying in Eddy County, New

Mexico and the right to certain royalty funds on deposit with the American Bank of Carlsbad with its principal place of business in Carlsbad, Eddy County, New Mexico, and that this Court has jurisdiction and venue prescribed under Section 65-3-22, NMSA, 1953 Comp.

3. That the proceedings in Case No. 6289 before the Oil Conservation Division involved a challenge by Appellant regarding the imposition of 120% risk penalty factor, a challenge of the actual well costs on C & K Carlsbad "13" Well No. 1, allegations that the correlative rights of the mineral interest and working interest owners were being impaired by the actions of C & K Petroleum as operator, seeking enforcement of Order No. R-5332 regarding payment of royalties, seeking accounting by operator and removal of C & K Petroleum as operator of C & K Carlsbad "13" Well No. 1.

4. That after hearings before the Oil Conservation Division Order No. R-5332-A was entered the 17th day of October, 1978 and is attached hereto as Exhibit A.

5. That Taylor complains of the actions of the Oil Conservation Division in Order R-5332-A in the following particulars:

11/16/78
A. That the Commission failed in any way to consider the correlative rights of W. A. Page, Jr., an owner of a working interest in C & K Carlsbad "13" Well No. 2 as adequate and sufficient evidence was presented in the record to allow the Commission to consider the rights of W. A. Page, Jr., and the Commission failed to consider the rights of W. A. Page, Jr., in relation to the assessment of the risk factor penalty and waiver thereof.

B. That the Commission was in error in finding that no correlative rights have been impaired as the record clearly reveals failure by C & K Petroleum to properly account to the Commission and that Appellant was personally

aware of continuing violations by C & K Petroleum of paragraph 12 of Order No. R-5332 as certain funds are continuing to be held in escrow by the American Bank of Carlsbad without authorization from C & K for disbursement upon proof of ownership. That the Oil Conservation Division failed to consider the fact that the escrow instructions of C & K are in direct violation of paragraph 12 of Order No. R-5332 and that subsequent to the entry of Order No. R-5332-A accountings were submitted to the working interest owners containing incorrect figures as previously used prior to the last hearing before the Oil Conservation Division at which time the record reveals C & K acknowledged errors in the accounting.

C. That the Division failed to consider assessments or attempted collection of penalties as provided in Section 65-3-27, NMSA, 1953 Comp., for violations of the orders of the Commission and the impairment of the correlative rights of the working interest and royalty interest owners.

D. That the Division failed to address itself to its capacity to exercise jurisdiction over royalty interest owners and their rights and that said Commission does have such jurisdiction and should actively exercise that jurisdiction in protection of the citizens of the State of New Mexico and royalty interest owners owning royalty interests in the State of New Mexico.

E. That the Division has failed to address itself to the inadequate testing of production casing out of which a contingent liability arises against other working interest owners should failure of casing result in injury to persons or property.

F. That the Division has failed to consider and address itself to the right of C & K, if any, to withhold the royalty payments pending a signing of a division order and that the adhesiary nature of a division order, and that the Commission has failed to consider or rule on the necessity of executing an operating agreement, all of which issues were presented to the Division at hearing.

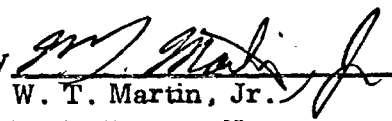
6. At the hearing before the Division, a preponderance of adequate and sufficient evidence was presented to the Commission and it was revealed that the transcripts of the two hearings conducted by the Division at Mr. Taylor's application and that this Court should consider the law of the State of New Mexico as applicable to the facts presented to the Division and take steps to grant Taylor the additional relief and review requested in this appeal and denied by the Division.

7. That the application for rehearing did not challenge that portion of Order R-5332-A allowing Taylor thirty additional days to contribute his proportionate share of well costs on the drilling of Carlsbad "13" Well No. 1. That within a thirty-day period Taylor (did submit a sight draft) to C & K Petroleum together with an assignment of proceeds of the working interest for purposes of collateralizing his loan at the Carlsbad National Bank. That after expiration of the 30th day, C & K Petroleum notified Taylor that the sight draft would not be accepted. That the time period for filing an application for rehearing with the Oil Conservation Division had passed at the time of notification by C & K to Taylor that the first possible time the issue could be raised is on this appeal and that the Court should hear said issue as a part of Taylor's appeal. That Taylor's submission of the sight draft was proper and C & K should be denied any attempt to impose any risk factor penalty.

WHEREFORE, Appellant Taylor prays that the Court enter an order vacating and setting aside New Mexico Oil Conservation Division Order R-5332-A and entering such order as the Court may deem appropriate after trial and review of the actions of the Oil Conservation Division and for such other and further relief as to the Court may seem just and proper.

MATKINS AND MARTIN

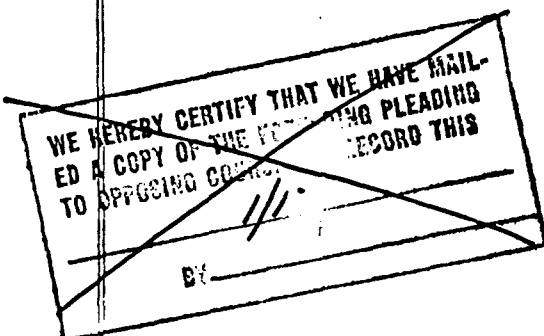
By


W. T. Martin, Jr.

P. O. Drawer N

Carlsbad, New Mexico 88220

Attorneys for Petitioner and Appellant



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. 5887
Order No. R-5332

APPLICATION OF C & K PETROLEUM, INC.
FOR COMPULSORY POOLING AND A NON-STANDARD
UNIT, EDDY COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on November 10, 1976, at Santa Fe, New Mexico, before Examiner Richard L. Stamets.

NOW, on this 30th day of November, 1976, the Commission, a quorum being present, having considered the testimony, the record, and the recommendations of the Examiner, 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 the applicant, C & K Petroleum, Inc., seeks an order pooling all mineral interests in the Wolfcamp and Pennsylvanian formations underlying the N/2 of Section 13, Township 22 South, Range 26 East, NMPN, South Carlsbad Field, Eddy County, New Mexico.

(3) That the applicant has the right to drill and proposes to drill a well 1980 feet from the North line and 1960 feet from the East line of said Section 13 to be dedicated to a non-standard 336.6-acre unit.

(4) That there are interest owners in the proposed proration unit who have not agreed to pool their interests.

(5) That to avoid the drilling of unnecessary wells, to protect correlative rights, and to afford to the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the gas in said pool, the subject application should be approved by pooling all mineral interests, whatever they may be, within said unit.

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EXHIBIT "A"

-2-
Case No. 5007
Order No. R-5332

(6) That the applicant should be designated the operator of the subject well and unit.

(7) That any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production.

(8) That any non-consenting working interest owner that does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 120 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(9) That any non-consenting interest owner should be afforded the opportunity to object to the actual well costs but that actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(10) That following determination of reasonable well costs, any non-consenting working interest owner that has paid his share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(11) That \$1,000 per month while drilling and \$150 per month while producing should be fixed as reasonable charges for supervision (combined fixed rates); that the operator should be authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator should be 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 each non-consenting working interest.

(12) That all proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

(13) That upon the failure of the operator of said pooled unit to commence drilling of the well to which said unit is dedicated on or before February 28, 1977, the order pooling said unit should become null and void and of no effect whatsoever.

ILLEGIBLE

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Case No. 5807
Order No. R-5332

IT IS THEREFORE ORDERED:

(1) That all mineral interests, whatever they may be, in the Wolfcamp and Pennsylvanian formations underlying the N/2 of Section 13, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico, are hereby pooled to form a non-standard 336.6-acre gas spacing and proration unit to be dedicated to a well to be drilled 1680 feet from the North line and 1980 feet from the East line of said Section 13.

PROVIDED HOWEVER, that the operator of said unit shall commence the drilling of said well on or before the 28th day of February, 1977, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Pennsylvanian formation;

PROVIDED FURTHER, that in the event said operator does not commence the drilling of said well on or before the 28th day of February, 1977, Order (1) of this order shall be null and void and of no effect whatsoever, unless said operator obtains a time extension from the Commission for good cause shown.

PROVIDED FURTHER, that should said well not be drilled to completion, or abandonment, within 120 days after commencement thereof, said operator shall appear before the Commission and show cause why Order (1) of this order should not be rescinded.

(2) That C & K Petroleum, Inc. is hereby designated the operator of the subject well and unit.

(3) That after the effective date of this order and within 30 days prior to commencing said well, the operator shall furnish the Commission and each known working interest owner in the subject unit an itemized schedule of estimated well costs.

(4) That within 30 days from the date the schedule of estimated well costs is furnished to him, any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production, and that any such owner who pays his share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(5) That the operator shall furnish the Commission and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the well; that if no objection to the actual well costs is received by the Commission and the Commission has not objected within 45 days following receipt of said schedule, the actual well costs

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shall be the reasonable well costs; provided however, that if there is an objection to actual well costs within said 45-day period the Commission will determine reasonable well costs after public notice and hearing.

(6) That within 60 days following determination of reasonable well costs, any non-consenting working interest owner that has paid his share of estimated costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

(7) That the operator is hereby authorized to withhold the following costs and charges from production:

(A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(B) As a charge for the risk involved in the drilling of the well, 120 percent of the pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(8) That the operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(9) That \$1,000 per month while drilling and \$150 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); that the operator is hereby authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating such well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(10) That any unsevered mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under the terms of this order.

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Case No. 5807
Order No. R-5332

(11) That any well costs or charges which are to be paid out of production shall be withheld only from the working interests share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

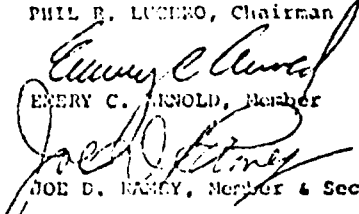
(12) That all proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; that the operator shall notify the Commission of the name and address of said escrow agent within 90 days from the date of this order.

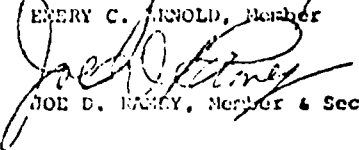
(13) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

PHIL B. LUCERO, Chairman


EMERY C. ARNOLD, Member


JOE D. MACKAY, Member & Secretary

S E A L

dr/

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STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE NO. 6289
Order No. R-5332-A

APPLICATION OF BILL TAYLOR FOR
ENFORCEMENT AND AMENDMENT OF
ORDER NO. R-5332, EDDY COUNTY,
NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on August 9, 1978, and September 11, 1978, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 17th day of October, 1978, 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 on November 30, 1976, upon the application of C & K Petroleum, Inc., hereinafter referred to as "C & K", the Commission issued its Order No. R-5332 pooling the N/2 of Section 13, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico.

(3) That this acreage was dedicated to the Carlsbad "13" Well No. 1 located in Unit G of said section.

(4) That C & K was appointed the operator of the well by Order No. R-5332, and Bill Taylor, hereinafter referred to as "Taylor", was and is an interest owner in said well.

EXHIBIT "B"

(5) That on July 5, 1978, Taylor filed an application for "operator's accounting, regulation and order compliance; operator removal; protection of royalty and interest owner's correlative rights; and Commission amendment of Order No. R-5332."

(6) That this cause came on for hearing on August 9, 1978, and September 11, 1978.

(7) That C & K failed to furnish the Commission and each known working interest owner an itemized schedule of estimated well costs after the effective date of Order No. R-5332 and within 30 days prior to commencing the well in accordance with Order (3) of said order.

(8) That Taylor was therefore not afforded the opportunity to pay his share of estimated well costs to the operator in accordance with the terms of said Order No. R-5332 in lieu of paying his share of reasonable well costs out of production.

(9) That Taylor should be afforded the opportunity to pay his share of reasonable well costs now in lieu of paying the same out of production.

(10) That although Taylor objected to well costs as submitted by C & K, including tubing costs, the evidence presented shows that actual well costs total \$551,903.87.

(11) That said well costs of \$551,903.87 are reasonable costs for the subject well.

(12) That within 30 days from the effective date of this order, Taylor should have the right to pay his share of the actual well costs to the operator in lieu of paying his share of said costs out of production; further, that if he pays his share as provided herein, he should remain liable for operating costs but should not be liable for risk charges.

(13) That no evidence was presented showing that C & K has failed to afford Taylor or other interest owners in the unit the opportunity to recover their just and fair share of the gas from the Carlsbad "13" Well No. 1, and there is no evidence that correlative rights have been impaired.

(14) That no evidence was presented showing that C & K has caused waste by its operation of the well.

(15) That although certain of the accounting and operational procedures employed by C & K in the past appear to have been less than satisfactory, these have apparently now been corrected.

(16) That although the evidence in this case establishes that C & K has been grossly lax in the observance of certain Division rules and orders, particularly as they relate to the filing of forms and reports, and the establishment of an escrow account in accordance with Order (12) of Order No. R-5332, the Commission cannot find this to be grounds for removal of C & K as operator of the well at this time, and it should be permitted to continue as operator, pending further order of the Commission or Division.

(17) That Taylor's request that C & K be removed as operator should therefore be denied.

IT IS THEREFORE ORDERED:

(1) That the application of Bill Taylor for removal of C & K Petroleum, Inc., as operator of the Carlsbad "13" Well No. 1 located in Unit G of Section 13, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico, is hereby denied.

(2) That within 30 days from the effective date of this Order, Bill Taylor shall have the right to pay his share of the actual well costs of \$551,903.87 to the operator of said Carlsbad "13" Well No. 1 in lieu of paying his share of said costs out of production, and should he pay his share as provided above, he shall remain liable for operating costs but shall not be liable for risk charges.

(3) That all provisions of Order No. R-5332 not in conflict herewith shall remain in full force and effect.

(4) 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

Phil R. Lucero
PHIL R. LUCERO, Chairman

Emery C. Arnold
EMERY C. ARNOLD, Member

Joe D. Ramey
JOE D. RAMEY, Member & Secretary

S E A L

fd/

IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO

IN THE MATTER OF THE APPLI-)
CATION OF BILL TAYLOR FOR :
ENFORCEMENT AND AMENDMENT OF)
ORDER NO. R-5332, EDDY COUNTY :
NEW MEXICO, OIL CONSERVATION)
COMMISSION CASE NO. 6289 :

CV-78- 47

P E T I T I O N

COMES NOW Petitioner and Appellant, Bill Taylor, and pursuant to Section 65-3-22 (b), NMSA, 1953 Comp., appeals to the District Court of Eddy County, New Mexico for relief from Order No. R-5332-A entered by the Oil Conservation Department of the Energy and Minerals Department of the State of New Mexico, and states as grounds therefor:

Admitted

1. That on the 17th day of October, 1978, in Case No. 6289 the Oil Conservation Division of the Energy and Minerals Department of the State of New Mexico entered Order No. R-5332-A, a copy of which is attached hereto as Exhibit A and incorporated herein as if fully set forth. That on the 3rd day of November, 1978, and within the twenty-day time limit provided in Section 65-3-22 (a) NMSA, 1953 Comp., Appellant and Petitioner herein did file an application for rehearing with the Oil Conservation Division. That within the ten-day time limit prescribed in Section 65-3-22 (a), NMSA, 1953 Comp., no action was taken by the Oil Conservation Department granting or denying the application for rehearing and that the tenth day ran on the 13th day of November, 1978. That this Petition and Appeal is filed within the twenty-day time limit following the 13th day of November, 1978, as prescribed in Section 65-3-22 (b), NMSA, 1953 Comp.

Admitted / Henry

2. That the property in question involves working interest and royalty interest in C & K Carlsbad "13" Well No. 1, situate and lying in Eddy County, New Mexico and the right to certain royalty funds on deposit with the American Bank of Carlsbad with its principal place of business in Carlsbad, Eddy County, New Mexico.

and that this Court has jurisdiction and venue prescribed under Section 65-3-22, NMSA, 1953 Comp.

Admit Deny

3. That the proceedings in Case No. 6289 before the Oil Conservation Division involved a challenge by Appellant regarding the imposition of 120% risk penalty factor, a challenge of the actual well costs on C & K Carlsbad "13" Well No. 1, allegations that the correlative rights of the mineral interest and working interest owners were being impaired by the actions of C & K Petroleum as operator, seeking enforcement of Order No. R-5332 regarding payment of royalties, seeking accounting by operator and removal of C & K Petroleum as operator of C & K Carlsbad "13" Well No. 1.

deny →

Admit Deny

4. That after hearings before the Oil Conservation Division Order No. R-5332-A was entered the 17th day of October, 1978 and is attached hereto as Exhibit A B

Deny

5. That Taylor complains of the actions of the Oil Conservation Division in Order R-5332-A in the following particulars:

A. That the Commission failed in any way to consider the correlative rights of W. A. Page, Jr., an owner of a working interest in C & K Carlsbad "13" Well No. 1 as adequate and sufficient evidence was presented in the record to allow the Commission to consider the rights of W. A. Page, Jr., and that the Commission failed to consider the rights of W. A. Page, Jr., in relation to the assessment of the risk factor penalty and waiver thereof.

B. That the Commission was in error in finding that no correlative rights have been impaired as the record clearly reveals failure by C & K Petroleum to properly account to the Commission and that Appellant was personally aware of continuing violations by C & K Petroleum of paragraph 12 of Order No. R-5332 as certain funds are continuing to be held in escrow by the

American Bank of Carlsbad without authorization from C & K for disbursement upon proof of ownership. That the Oil Conservation Division failed to consider the fact that the escrow instructions of C & K are in direct violation of paragraph 12 of Order No. R-5332 and that subsequent to the entry of Order No. R-5332-A accountings were submitted to the working interest owners containing incorrect figures as previously used prior to the last hearing before the Oil Conservation Division at which time the record reveals C& K acknowledged errors in the accounting.

C. That the Division failed to consider assessments or attempted collection of penalties as provided in Section 65-3-27, NMSA, 1953 Comp., for violations of the orders of the Commission and the impairment of the correlative rights of the working interest and royalty interest owners.

D. That the Division failed to address itself to its capacity to exercise jurisdiction over royalty interest owners and their rights and that said Commission does have such jurisdiction and should actively exercise that jurisdiction in protection of the citizens of the State of New Mexico and royalty interest owners owing royalty interests in the State of New Mexico.

E. That the Division has failed to address itself to the inadequate testing of production casing out of which a contingent liability arises against other working interest owners should failure of casing result in injury to persons or property.

F. That the Division has failed to consider and address itself to the right of C & K, if any, to withhold the royalty payments pending a signing of a division order and the adhesiary nature of a division order, and that the

Commission has failed to consider or rule on the necessity of executing an operating agreement, all of which issues were presented to the Division at hearing.

Deny

6. At the hearing before the Division, a preponderance of adequate and sufficient evidence was presented to the Commission and it was revealed that the transcripts of the two hearings conducted by the Division at Mr. Taylor's application and that this Court should consider the law of the State of New Mexico as applicable to the facts presented to the Division and take steps to grant Taylor the additional relief and review requested in this appeal and denied by the Division.

Deny

7. That no appeal was taken for that portion of Order R-5332-A of allowing Taylor thirty additional days to contribute his proportionate share of the costs of drilling Carlsbad "13" Well No. 1, however, subsequent to the Motion for Rehearing, certain actions have been taken by C & K which may necessitate this Court's review of that portion of the Order.

MATKINS AND MARTIN

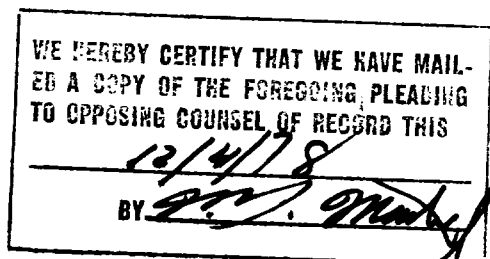
By

W. T. Martin, Jr.
W. T. Martin, Jr.

P. O. Drawer N

Carlsbad, New Mexico 88220

Attorneys for Petitioner and Appellant



STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

IN THE MATTER OF THE

APPLICATION OF BILL TAYLOR
FOR ENFORCEMENT AND
AMENDMENT OF ORDER NO.
R-5332, EDDY COUNTY, NEW
MEXICO.

CASE NO. 6289
Order No. R-5332-A

APPLICATION FOR REHEARING

COMES NOW Applicant Bill Taylor, by and through his attorneys, Matkins and Martin, of Carlsbad, Eddy County, New Mexico, and pursuant to Section 65-3-22(a), NMSA, 1953 Comp., applies for a rehearing on certain matters arising from Order No. R-5332-A entered October 17, 1978, as hereinafter set forth:

1. That the Commission failed in any way to consider the correlative rights of W. A. Page, Jr., an owner of a working interest in C & K Carlsbad "13" Well No. 1, as adequate and sufficient evidence is presented in the record to allow the Commission to consider the rights of W. A. Page, Jr. That the Commission failed to consider the rights of W. A. Page, Jr., in relation to the assessment of the risk factor penalty and waiver thereof.
2. That the Commission is in error in finding that no correlative rights have been impaired as the record clearly reveals failure by C & K Petroleum to properly account to the Commission. That Taylor is aware of continuing violations by C & K Petroleum of paragraph 12 of Order No. R-5332 as certain funds are continuing to be held in escrow by the American Bank of Carlsbad without authorization from C & K for disbursement upon proof of

ownership. That said escrow instructions of C & K are in direct violation of paragraph 12 of Order No. R-5332. That subsequent to the entry of Order No. R-5332-A, accountings were submitted to the working interest owners containing incorrect figures as previously used prior to the last hearing before the Commission at which time the record reveals C & K acknowledged errors in the accounting.

3. That the Commission failed to consider assessment or attempted collection of penalties as provided in Section 65-3-27, NMSA, 1953 Comp., for continued violations of the orders of the Commission and the impairment of the correlative rights of the working interest and royalty interest owners.

4. That the Commission failed to address itself to its capacity to exercise jurisdiction over royalty interest owners and their rights, and that said Commission does have such jurisdiction and should actively exercise that jurisdiction in protection of the citizens of the State of New Mexico and the royalty interest owners owning royalty interests in the State of New Mexico.

5. That the Commission has failed to address itself to the inadequate testing of production casing out of which a contingent liability arises against other working interest owners should failure of casing result in injury to persons or property.

6. That the Commission failed to consider and address itself to the right of C & K, if any, to withhold royalty payments pending the signing of a division order and the adhesionary nature of the division order. That the Commission also failed to consider or rule on the necessity of executing an operating agreement.

7. That a preponderance of adequate and sufficient evidence was presented to the Commission as revealed by the transcripts of the two hearings conducted by the Commission at Mr. Taylor's application, and that the Commission should reconsider the law of the State of New Mexico as applicable to the facts presented to the Commission and take steps to grant Taylor the additional review and relief requested.

8. That no review or request for relief or rehearing is applied for by Taylor in reference to the allowing Taylor 30 additional days to contribute his proportionate share of the costs of drilling Carlsbad "13" Well No. 1.

Respectfully submitted,

MATKINS AND MARTIN

By _____

W. T. Martin, Jr.

P. O. Drawer N

Carlsbad, NM 88220

Attorneys for Applicant

*copy
mailed to
Kellahan*

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. 5357
Order No. R-5332

APPLICATION OF C & K PETROLEUM, INC.
FOR ~~COMPULSORY~~ POOLING AND A NON-STANDARD
UNIT, EDDY COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on November 10, 1976, at Santa Fe, New Mexico, before Examiner Richard L. Stamets.

NOW, on this 20th day of November, 1976, the Commission, a quorum being present, having considered the testimony, the record, and the recommendations of the Examiner, 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 the applicant, C & K Petroleum, Inc., seeks an order pooling all mineral interests in the Wolfcamp and Pennsylvanian formations underlying the N/2 of Section 13, Township 22 South, Range 26 East, NMPN, South Carlsbad Field, Eddy County, New Mexico.

(3) That the applicant has the right to drill and proposes to drill a well 1680 feet from the North line and 1960 feet from the East line of said Section 13 to be dedicated to a non-standard 336.6-acre unit.

(4) That there are interest owners in the proposed proration unit who have not agreed to pool their interests.

(5) That to avoid the drilling of unnecessary wells, to protect correlative rights, and to afford to the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the gas in said pool, the subject application should be approved by pooling all mineral interests, whatever they may be, within said unit.

EXHIBIT "A"

(6) That the applicant should be designated the operator of the subject well and unit.

(7) That any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production.

(8) That any non-consenting working interest owner that does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 120 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(9) That any non-consenting interest owner should be afforded the opportunity to object to the actual well costs but that actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(10) That following determination of reasonable well costs, any non-consenting working interest owner that has paid his share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(11) That \$1,000 per month while drilling and \$150 per month while producing should be fixed as reasonable charges for supervision (combined fixed rates); that the operator should be authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator should be 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 each non-consenting working interest.

(12) That all proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

(13) That upon the failure of the operator of said pooled unit to commence drilling of the well to which said unit is dedicated on or before February 28, 1977, the order pooling said unit should become null and void and of no effect whatsoever.

-3-
Case No. 5807
Order No. R-5332

IT IS THEREFORE ORDERED:

(1) That all mineral interests, whatever they may be, in the Wolfcamp and Pennsylvanian formations underlying the N/2 of Section 13, Township 22 South, Range 26 East, NMPH, South Carlsbad Field, Eddy County, New Mexico, are hereby pooled to form a non-standard 336.6-acre gas spacing and proration unit to be dedicated to a well to be drilled 1680 feet from the North line and 1980 feet from the East line of said Section 13.

PROVIDED HOWEVER, that the operator of said unit shall commence the drilling of said well on or before the 28th day of February, 1977, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Pennsylvanian formation;

PROVIDED FURTHER, that in the event said operator does not commence the drilling of said well on or before the 28th day of February, 1977, Order (1) of this order shall be null and void and of no effect whatsoever; unless said operator obtains a time extension from the Commission for good cause shown.

PROVIDED FURTHER, that should said well not be drilled to completion, or abandonment, within 120 days after commencement thereof, said operator shall appear before the Commission and show cause why Order (1) of this order should not be rescinded.

(2) That C & K Petroleum, Inc. is hereby designated the operator of the subject well and unit.

(3) That after the effective date of this order and within 30 days prior to commencing said well, the operator shall furnish the Commission and each known working interest owner in the subject unit an itemized schedule of estimated well costs.

(4) That within 30 days from the date the schedule of estimated well costs is furnished to him, any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production, and that any such owner who pays his share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(5) That the operator shall furnish the Commission and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the well; that if no objection to the actual well costs is received by the Commission and the Commission has not objected within 45 days following receipt of said schedule, the actual well costs

shall be the reasonable well costs; provided however, that if there is an objection to actual well costs within said 45-day period the Commission will determine reasonable well costs after public notice and hearing.

(6) That within 60 days following determination of reasonable well costs, any non-consenting working interest owner that has paid his share of estimated costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

(7) That the operator is hereby authorized to withhold the following costs and charges from production:

- (A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.
- (B) As a charge for the risk involved in the drilling of the well, 120 percent of the pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(8) That the operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(9) That \$1,000 per month while drilling and \$150 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); that the operator is hereby authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating such well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(10) That any unsevered mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under the terms of this order.

-5-
Case No. 5807
Order No. N-5332

(11) That any well costs or charges which are to be paid out of production shall be withheld only from the working interests share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

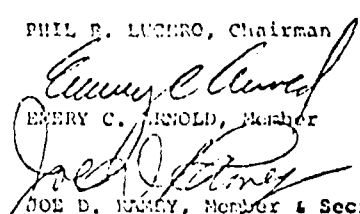
(12) That all proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; that the operator shall notify the Commission of the name and address of said escrow agent within 90 days from the date of this order.

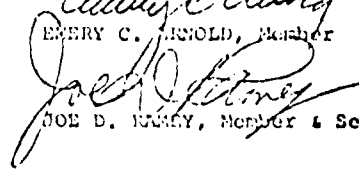
(13) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

PHIL E. LUCERO, Chairman


EMORY C. ARNOLD, Member


JOE D. KELSEY, Member & Secretary

S E A L

dr/

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE NO. 6289
Order No. R-5332-A

APPLICATION OF BILL TAYLOR FOR
ENFORCEMENT AND AMENDMENT OF
ORDER NO. R-5332, EDDY COUNTY,
NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on August 9, 1978, and September 11, 1978, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 17th day of October, 1978, 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 on November 30, 1976, upon the application of C & K Petroleum, Inc., hereinafter referred to as "C & K", the Commission issued its Order No. R-5332 pooling the N/2 of Section 13, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico.

(3) That this acreage was dedicated to the Carlsbad "13" Well No. 1 located in Unit G of said section.

(4) That C & K was appointed the operator of the well by Order No. R-5332, and Bill Taylor, hereinafter referred to as "Taylor", was and is an interest owner in said well.

EXHIBIT "B"

(5) That on July 5, 1978, Taylor filed an application for "operator's accounting, regulation and order compliance; operator removal; protection of royalty and interest owner's correlative rights; and Commission amendment of Order No. R-5332."

(6) That this cause came on for hearing on August 9, 1978, and September 11, 1978.

(7) That C & K failed to furnish the Commission and each known working interest owner an itemized schedule of estimated well costs after the effective date of Order No. R-5332 and within 30 days prior to commencing the well in accordance with Order (3) of said order.

(8) That Taylor was therefore not afforded the opportunity to pay his share of estimated well costs to the operator in accordance with the terms of said Order No. R-5332 in lieu of paying his share of reasonable well costs out of production.

(9) That Taylor should be afforded the opportunity to pay his share of reasonable well costs now in lieu of paying the same out of production.

(10) That although Taylor objected to well costs as submitted by C & K, including tubing costs, the evidence presented shows that actual well costs total \$551,903.87.

(11) That said well costs of \$551,903.87 are reasonable costs for the subject well.

(12) That within 30 days from the effective date of this order, Taylor should have the right to pay his share of the actual well costs to the operator in lieu of paying his share of said costs out of production; further, that if he pays his share as provided herein, he should remain liable for operating costs but should not be liable for risk charges.

(13) That no evidence was presented showing that C & K has failed to afford Taylor or other interest owners in the unit the opportunity to recover their just and fair share of the gas from the Carlsbad "13" Well No. 1, and there is no evidence that correlative rights have been impaired.

(14) That no evidence was presented showing that C & K has caused waste by its operation of the well.

(15) That although certain of the accounting and operational procedures employed by C & K in the past appear to have been less than satisfactory, these have apparently now been corrected.

Case No. 6289
Order No. R-5332-A

(16) That although the evidence in this case establishes that C & K has been grossly lax in the observance of certain Division rules and orders, particularly as they relate to the filing of forms and reports, and the establishment of an escrow account in accordance with Order (12) of Order No. R-5332, the Commission cannot find this to be grounds for removal of C & K as operator of the well at this time, and it should be permitted to continue as operator, pending further order of the Commission or Division.

(17) That Taylor's request that C & K be removed as operator should therefore be denied.

IT IS THEREFORE ORDERED:

(1) That the application of Bill Taylor for removal of C & K Petroleum, Inc., as operator of the Carlsbad "13" Well No. 1 located in Unit G of Section 13, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico, is hereby denied.

(2) That within 30 days from the effective date of this Order, Bill Taylor shall have the right to pay his share of the actual well costs of \$551,903.87 to the operator of said Carlsbad "13" Well No. 1 in lieu of paying his share of said costs out of production, and should he pay his share as provided above, he shall remain liable for operating costs but shall not be liable for risk charges.

(3) That all provisions of Order No. R-5332 not in conflict herewith shall remain in full force and effect.

(4) 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

Phil R. Lucero
PHIL R. LUCERO, Chairman

Emery C. Arnold
EMERY C. ARNOLD, Member

Joe D. Ramey
JOE D. RAMEY, Member & Secretary

S E A L
fd/

A G R E E M E N T

C & K Petroleum, Inc., is the applicant for compulsory pooling and a non-standard gas proration unit in Case No. 5807 before the New Mexico Oil Conservation Commission, Wednesday, November 10, 1976. Bill Taylor and William A. Page are owners of interests in the minerals underlying the proposed non-standard unit that would be affected by a pooling order.

Bill Taylor represents that he has the right to bind William A. Page, and E. W. Hooper, Exploration Manager for C & K Petroleum, Inc., represents that he has the right to enter into this agreement on behalf of C & K Petroleum, Inc.

C & K Petroleum, Inc., agrees that at the presentation of this case it will not seek a risk factor in excess of 120%, that is it will seek the right to recover its reasonable costs of drilling, completing and equipping the subject well, plus 120% of that amount as a risk factor for drilling the well, as provided by New Mexico statutes, and the rules and regulations of the Commission.

Bill Taylor acknowledges receipt of estimated well costs in the form of an A.F.E., given to him this date, and C & K Petroleum Inc., agrees that Bill Taylor shall have thirty days from this date in which to pay his share of estimated well costs in lieu of paying such share out of production, and thereby avoid payment of the 120% risk factor.

Bill Taylor shall have the right to take his gas in kind, after payout of the well, provided that he shall make connection at his own expense.

It is agreed that C & K Petroleum, Inc., does not seek compulsory pooling in this case of any formations other than Wolfcamp and Pennsylvanian formations, and does not seek pooling of any formations above the Wolfcamp.

Bill Taylor
BILL TAYLOR, for himself, and
for William A. Page

E. W. Hooper
E. W. HOOPER, for C & K
Petroleum, Inc.

Dated: November 9, 1976

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. 5337
Order No. R-5332

APPLICATION OF C & K PETROLEUM, INC.
FOR COMPULSORY POOLING AND A NON-STANDARD
UNIT, EDDY COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on November 10, 1976, at Santa Fe, New Mexico, before Examiner Richard L. Stamets.

NOW, on this 30th day of November, 1976, the Commission, a quorum being present, having considered the testimony, the record, and the recommendations of the Examiner, 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 the applicant, C & K Petroleum, Inc., seeks an order pooling all mineral interests in the Wolfcamp and Pennsylvanian formations underlying the N/2 of Section 13, Township 22 South, Range 26 East, NMPN, South Carlsbad Field, Eddy County, New Mexico.
- (3) That the applicant has the right to drill and proposes to drill a well 1680 feet from the North line and 1960 feet from the East line of said Section 13 to be dedicated to a non-standard 336.6-acre unit.
- (4) That there are interest owners in the proposed proration unit who have not agreed to pool their interests.
- (5) That to avoid the drilling of unnecessary wells, to protect correlative rights, and to afford to the owner of each interest in said unit the opportunity to recover or receive without unnecessary expense his just and fair share of the gas in said pool, the subject application should be approved by pooling all mineral interests, whatever they may be, within said unit.

EXHIBIT "A"

(6) That the applicant should be designated the operator of the subject well and unit.

(7) That any non-consenting working interest owner should be afforded the opportunity to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production.

(8) That any non-consenting working interest owner that does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 120 percent thereof as a reasonable charge for the risk involved in the drilling of the well.

(9) That any non-consenting interest owner should be afforded the opportunity to object to the actual well costs but that actual well costs should be adopted as the reasonable well costs in the absence of such objection.

(10) That following determination of reasonable well costs, any non-consenting working interest owner that has paid his share of estimated costs should pay to the operator any amount that reasonable well costs exceed estimated well costs and should receive from the operator any amount that paid estimated well costs exceed reasonable well costs.

(11) That \$1,000 per month while drilling and \$150 per month while producing should be fixed as reasonable charges for supervision (combined fixed rates); that the operator should be authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator should be 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 each non-consenting working interest.

(12) That all proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

(13) That upon the failure of the operator of said pooled unit to commence drilling of the well to which said unit is dedicated on or before February 28, 1977, the order pooling said unit should become null and void and of no effect whatsoever.

-3-
Case No. 5807
Order No. R-5332

IT IS THEREFORE ORDERED:

(1) That all mineral interests, whatever they may be, in the Wolfcamp and Pennsylvanian formations underlying the N/2 of Section 13, Township 22 South, Range 26 East, NMPM, South Carlisbad Field, Eddy County, New Mexico, are hereby pooled to form a non-standard 336.6-acre gas spacing and proration unit to be dedicated to a well to be drilled 1680 feet from the North line and 1980 feet from the East line of said Section 13.

PROVIDED HOWEVER, that the operator of said unit shall commence the drilling of said well on or before the 28th day of February, 1977, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Pennsylvanian formation;

PROVIDED FURTHER, that in the event said operator does not commence the drilling of said well on or before the 28th day of February, 1977, Order (1) of this order shall be null and void and of no effect whatsoever; unless said operator obtains a time extension from the Commission for good cause shown.

PROVIDED FURTHER, that should said well not be drilled to completion, or commencement, within 120 days after commencement thereof, said operator shall appear before the Commission and show cause why Order (1) of this order should not be rescinded.

(2) That C & K Petroleum, Inc. is hereby designated the operator of the subject well and unit.

(3) That after the effective date of this order and within 30 days prior to commencing said well, the operator shall furnish the Commission and each known working interest owner in the subject unit an itemized schedule of estimated well costs.

(4) That within 30 days from the date the schedule of estimated well costs is furnished to him, any non-consenting working interest owner shall have the right to pay his share of estimated well costs to the operator in lieu of paying his share of reasonable well costs out of production, and that any such owner who pays his share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges.

(5) That the operator shall furnish the Commission and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the well; that if no objection to the actual well costs is received by the Commission and the Commission has not objected within 45 days following receipt of said schedule, the actual well costs

shall be the reasonable well costs; provided however, that if there is an objection to actual well costs within said 45-day period the Commission will determine reasonable well costs after public notice and hearing.

(6) That within 60 days following determination of reasonable well costs, any non-consenting working interest owner that has paid his share of estimated costs in advance as provided above shall pay to the operator his pro rata share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator his pro rata share of the amount that estimated well costs exceed reasonable well costs.

(7) That the operator is hereby authorized to withhold the following costs and charges from production:

- (A) The pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.
- (B) As a charge for the risk involved in the drilling of the well, 120 percent of the pro rata share of reasonable well costs attributable to each non-consenting working interest owner who has not paid his share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished to him.

(8) That the operator shall distribute said costs and charges withheld from production to the parties who advanced the well costs.

(9) That \$1,000 per month while drilling and \$150 per month while producing are hereby fixed as reasonable charges for supervision (combined fixed rates); that the operator is hereby authorized to withhold from production the proportionate share of such supervision charges attributable to each non-consenting working interest, and in addition thereto, the operator is hereby authorized to withhold from production the proportionate share of actual expenditures required for operating such well, not in excess of what are reasonable, attributable to each non-consenting working interest.

(10) That any unsevered mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under the terms of this order.

-5-

Case No. 5807
Order No. K-5332

(11) That any well costs or charges which are to be paid out of production shall be withheld only from the working interests share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(12) That all proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; that the operator shall notify the Commission of the name and address of said escrow agent within 90 days from the date of this order.


(13) 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

PHIL E. LUCERO, Chairman


EMORY C. ARNOLD, Member


JOE D. MCKEY, Member & Secretary

S E A L

dr/

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE NO. 6289
Order No. R-5332-A

APPLICATION OF BILL TAYLOR FOR
ENFORCEMENT AND AMENDMENT OF
ORDER NO. R-5332, EDDY COUNTY,
NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on August 9, 1978, and September 11, 1978, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 17th day of October, 1978, 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 on November 30, 1976, upon the application of C & K Petroleum, Inc., hereinafter referred to as "C & K", the Commission issued its Order No. R-5332 pooling the N/2 of Section 13, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico.

(3) That this acreage was dedicated to the Carlsbad "13" Well No. 1 located in Unit G of said section.

(4) That C & K was appointed the operator of the well by Order No. R-5332, and Bill Taylor, hereinafter referred to as "Taylor", was and is an interest owner in said well.

EXHIBIT "B"

(5) That on July 5, 1978, Taylor filed an application for "operator's accounting, regulation and order compliance; operator removal; protection of royalty and interest owner's correlative rights; and Commission amendment of Order No. R-5332."

(6) That this cause came on for hearing on August 9, 1978, and September 11, 1978.

(7) That C & K failed to furnish the Commission and each known working interest owner an itemized schedule of estimated well costs after the effective date of Order No. R-5332 and within 30 days prior to commencing the well in accordance with Order (3) of said order.

(8) That Taylor was therefore not afforded the opportunity to pay his share of estimated well costs to the operator in accordance with the terms of said Order No. R-5332 in lieu of paying his share of reasonable well costs out of production.

(9) That Taylor should be afforded the opportunity to pay his share of reasonable well costs now in lieu of paying the same out of production.

(10) That although Taylor objected to well costs as submitted by C & K, including tubing costs, the evidence presented shows that actual well costs total \$551,903.87.

(11) That said well costs of \$551,903.87 are reasonable costs for the subject well.

(12) That within 30 days from the effective date of this order, Taylor should have the right to pay his share of the actual well costs to the operator in lieu of paying his share of said costs out of production; further, that if he pays his share as provided herein, he should remain liable for operating costs but should not be liable for risk charges.

(13) That no evidence was presented showing that C & K has failed to afford Taylor or other interest owners in the unit the opportunity to recover their just and fair share of the gas from the Carlsbad "13" Well No. 1, and there is no evidence that correlative rights have been impaired.

(14) That no evidence was presented showing that C & K has caused waste by its operation of the well.

(15) That although certain of the accounting and operational procedures employed by C & K in the past appear to have been less than satisfactory, these have apparently now been corrected.

(16) That although the evidence in this case establishes that C & K has been grossly lax in the observance of certain Division rules and orders, particularly as they relate to the filing of forms and reports, and the establishment of an escrow account in accordance with Order (12) of Order No. R-5332, the Commission cannot find this to be grounds for removal of C & K as operator of the well at this time, and it should be permitted to continue as operator, pending further order of the Commission or Division.

(17) That Taylor's request that C & K be removed as operator should therefore be denied.

IT IS THEREFORE ORDERED:

(1) That the application of Bill Taylor for removal of C & K Petroleum, Inc., as operator of the Carlsbad "13" Well No. 1 located in Unit G of Section 13, Township 22 South, Range 26 East, NMPM, South Carlsbad Field, Eddy County, New Mexico, is hereby denied.

(2) That within 30 days from the effective date of this Order, Bill Taylor shall have the right to pay his share of the actual well costs of \$551,903.87 to the operator of said Carlsbad "13" Well No. 1 in lieu of paying his share of said costs out of production, and should he pay his share as provided above, he shall remain liable for operating costs but shall not be liable for risk charges.

(3) That all provisions of Order No. R-5332 not in conflict herewith shall remain in full force and effect.

(4) 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

Phil R. Lucero
PHIL R. LUCERO, Chairman

Emery C. Arnold
EMERY C. ARNOLD, Member

Joe D. Ramey
JOE D. RAMEY, Member & Secretary

S E A L
fd/

A G R E E M E N T

C & K Petroleum, Inc., is the applicant for compulsory pooling and a non-standard gas proration unit in Case No. 5807 before the New Mexico Oil Conservation Commission, Wednesday, November 10, 1976. Bill Taylor and William A. Page are owners of interests in the minerals underlying the proposed non-standard unit that would be affected by a pooling order.

Bill Taylor represents that he has the right to bind William A. Page, and E. W. Hooper, Exploration Manager for C & K Petroleum, Inc., represents that he has the right to enter into this agreement on behalf of C & K Petroleum, Inc.

C & K Petroleum, Inc., agrees that at the presentation of this case it will not seek a risk factor in excess of 120%, that is it will seek the right to recover its reasonable costs of drilling, completing and equipping the subject well, plus 120% of that amount as a risk factor for drilling the well, as provided by New Mexico statutes, and the rules and regulations of the Commission.

Bill Taylor acknowledges receipt of estimated well costs in the form of an A.F.E., given to him this date, and C & K Petroleum Inc., agrees that Bill Taylor shall have thirty days from this date in which to pay his share of estimated well costs in lieu of paying such share out of production, and thereby avoid payment of the 120% risk factor.

Bill Taylor shall have the right to take his gas in kind, after payout of the well, provided that he shall make connection at his own expense.

It is agreed that C & K Petroleum, Inc., does not seek compulsory pooling in this case of any formations other than Wolfcamp and Pennsylvanian formations, and does not seek pooling of any formations above the Wolfcamp.

Bill Taylor

BILL TAYLOR, for himself, and
for William A. Page

E. W. Hooper

E. W. HOOPER, for C & K
Petroleum, Inc.

Dated: November 9, 1976



STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

JERRY APODACA
GOVERNOR

NICK FRANKLIN
SECRETARY

January 3, 1979

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

Clerk of the District Court
for Eddy County
Eddy County Court House
Carlsbad, New Mexico 88220

Re: Eddy County Cause No.
CV-78-417

Dear Madam:

Enclosed please find, for filing, the Acceptance
of Service on behalf of the Oil Conservation Commis-
sion in the above-captioned cause.

Very truly yours,

(Ms.) LYNN TESCHENDORF
General Counsel

LT/dr

enc.

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

IN THE MATTER OF THE APPLICA-)
TION OF BILL TAYLOR FOR ENFORCEMENT)
AND AMENDMENT OF ORDER NO. R-5332,) No. CV-78-417
EDDY COUNTY, NEW MEXICO, OIL)
CONSERVATION COMMISSION CASE)
NO. 6289)

ACCEPTANCE OF SERVICE

The undersigned acknowledges receipt of the Petition
filed in the above-captioned cause and accepts service thereof
for and on behalf of the New Mexico Oil Conservation Division.

Lynn Teschendorf

LYNN TESCHENDORF
Assistant Attorney General
P. O. Box 2088
Santa Fe, New Mexico 87501

Date: December 26, 1978

I hereby certify that on the
3rd day of Jan
1979, a copy of the
going pleading was mailed to
opposing counsel at record.
Lynn Teschendorf



STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

JERRY APODACA
GOVERNOR

NICK FRANKLIN
SECRETARY

January 8, 1979

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

Mrs. Frances M. Wilcox
Clerk of the District Court
for Eddy County
Eddy County Court House
Carlsbad, New Mexico 88220

Re: Eddy County Cause No.
CV-78-417

Dear Mrs. Wilcox:

Enclosed please find, for filing, Response
to Petition in the above-captioned cause.

Very truly yours,

LYNN TESCHENDORF
General Counsel

LT/dr

cc: Jason Kellahin
W. T. Martin, Jr.

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

C & K PETROLEUM, INC.,
a Corporation,

Petitioner,

vs.

NEW MEXICO ENERGY AND
MINERALS DEPARTMENT, OIL
CONSERVATION DIVISION and
BILL TAYLOR,


Respondents.

No. CV-78-415
CV-78-417


ORDER


This matter coming before the Court upon the Motion of Respondent New Mexico Oil Conservation Division to consolidate this action with Eddy County Cause No. CV-78-417 captioned "In the matter of the application of Bill Taylor for enforcement and amendment of Order No. R-5332, Eddy County, New Mexico, Oil Conservation Commission Case No. 6289," and the Court being fully advised in the premises,


IT IS ORDERED that Eddy County Cause Nos. CV-78-415 and CV-78-417 are hereby consolidated.


DISTRICT JUDGE

APPROVED:


LYNN TESCHENDORF
Attorney for Respondent
New Mexico Oil Conservation Division


JASON W. KELLAHIN
Attorney for Petitioner
C & K Petroleum, Inc.


W. T. MARTIN, Jr.
Attorney for Respondent
Bill Taylor

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

IN THE MATTER OF THE APPLICA-)
TION OF BILL TAYLOR FOR ENFORCEMENT)
AND AMENDMENT OF ORDER NO. R-5332,) No. CV-78-417
EDDY COUNTY, NEW MEXICO, OIL)
CONSERVATION COMMISSION CASE)
NO. 6289)

RESPONSE TO PETITION

Comes now the Respondent New Mexico Oil Conservation Division,
by and through its attorney Lynn Teschendorf, and in response
to the Petition states:

1. Respondent admits the allegations contained in Paragraph 1.
2. Respondent denies the allegations contained in Paragraphs 5, 6, and 7 and each subdivision thereof.
3. Respondent admits the allegations contained in Paragraph 2, except that Respondent denies that the property in question involves the right to certain royalty funds on deposit with the American Bank of Carlsbad.
4. Respondent admits the allegations contained in Paragraph 3, except that Respondent denies that the proceeding in Case No. 6289 sought enforcement of Order No. R-5332 regarding payment of royalties.
5. Respondent admits the allegations contained in Paragraph 4, but the Exhibit number should be corrected to read "B".

WHEREFORE, having fully responded to the Petition, Respondent New Mexico Oil Conservation Division respectfully asks that the same be dismissed.

NEW MEXICO OIL CONSERVATION DIVISION

Lynn Teschendorf

I hereby certify that on the By
.. 8th .. day of .. Jan .., LYNN TESCHENDORF
19 .. 77 .., a copy of the foregoing pleading was mailed to Assistant Attorney General
opposing counsel of record. P. O. Box 2088
Lynn Teschendorf Santa Fe, New Mexico 87501

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

C & K PETROLEUM, INC.,
a Corporation,

Petitioner,

vs.

No. CV-78-415

NEW MEXICO ENERGY AND
MINERALS DEPARTMENT, OIL
CONSERVATION DIVISION and
BILL TAYLOR,

Respondents.

MOTION TO CONSOLIDATE

Comes now the Respondent New Mexico Oil Conservation Division, by and through its attorney Lynn Teschendorf, and pursuant to Rule 42(a) of the Rules of Civil Procedure for the District Courts moves the Court for an Order consolidating this cause with Eddy County Cause No. CV-78-417 captioned "In the matter of the application of Bill Taylor for enforcement and amendment of Order No. R-5332, Eddy County, New Mexico, Oil Conservation Commission Case No. 6289," and as grounds therefor states:

1. Both actions are pending before this Court.
2. Both actions involve common questions of law or fact, arise from the same transaction and involve the same parties.
3. Whether suits should be consolidated is within the discretion of the Court. Kassel v. Anderson, 84 N.M. 697, 507 P.2d 444 (1973).

WHEREFORE, Respondent respectfully seeks the Order of this Court consolidating the two subject causes of action.

NEW MEXICO OIL CONSERVATION DIVISION

By


LYNN TESCHENDORF
Assistant Attorney General

P. O. Box 2088

Santa Fe, New Mexico 87501

APPROVED:



JASON KELLAHIN
Attorney for Petitioner
C & K Petroleum, Inc.



W. T. MARTIN, JR.
Attorney for Respondent,
Bill Taylor