

STATE OF NEW MEXICO

COUNTY OF RIO ARRIBA

IN THE DISTRICT COURT

J. GREGORY MERRION, and
ROBERT L. BAYLESS, individually
and doing business as MERRION &
BAYLESS,

Petitioners,

vs.

OIL CONSERVATION DIVISION OF
THE STATE OF NEW MEXICO,

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

ORIGINAL FILED
1-19-81
R.A. [illegible]

NO. RA 80-390(c)

O R D E R

This matter having come on for hearing on Petitioners' Motion for Partial Summary Judgment and Petitioners appearing by their attorneys, Kellahin and Kellahin, Respondent appearing by its attorney, Ernest Padilla, and Intervenors appearing by their attorney, Dale Dilts, and the parties agreeing to it, it is thereupon

ORDERED that Petitioners' Motion for Partial Summary Judgment directed to Intervenors' Crossclaim is granted as to the issues of trespass and damages, and

It is further ORDERED that any ruling on Intervenors' request for declaratory judgment is reserved.

DONE AND ORDERED this 19th day of January, 1981.

Tony Scarborough
JUDGE OF THE DISTRICT COURT

Copies furnished to:

Kellahin and Kellahin
Ernest Padilla, Esq.
Dale Dilts, Esq.

STATE OF NEW MEXICO

COUNTY OF RIO ARRIBA

IN THE DISTRICT COURT

J. GREGORY MERRION and ROBERT L.
BAYLESS, individually and doing
business as MERRION & BAYLESS,

Petitioner,

ORIGINAL PLEADING
FILED ON 10/18/81

2A COUNTY

DISTRICT COURT CLERK'S OFFICE

-vs-

No. Ra 80-390(c)

OIL CONSERVATION DIVISION OF
THE STATE OF NEW MEXICO,

Respondent,

-vs-

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

O R D E R

This matter having come before the Court upon the
Stipulation of the parties hereto,

IT IS THEREFORE ORDERED that the New Mexico Oil Conserva-
tion Division shall grant to the Petitioners and to the
Intervenors a DeNovo Hearing in Oil Conservation Commission
Case 6892; and

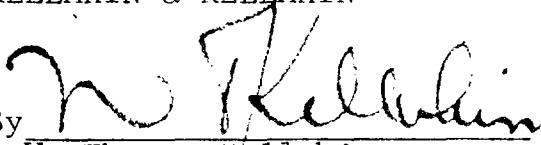
IT IS FURTHER ORDERED that this Petition and Crossclaim
shall be dismissed without prejudice to any party hereto.

Done and Ordered this _____ day of June, 1981.

Judge of the District Court

Submitted by:

KELLAHIN & KELLAHIN

By 
W. Thomas Kellahin
P.O. Box 1769
Santa Fe, New Mexico 87501
(505) 982-4285

APPROVED BY:

OIL CONSERVATION DIVISION

By _____

PAUL and MARIE BROWN

By _____
Dale B. Dilts

STATE OF NEW MEXICO

COUNTY OF RIO ARriba

IN THE DISTRICT COURT

J. GREGORY MERRION and ROBERT L.
BAYLESS, individually and doing
business as MERRION & BAYLESS,

ORIGINAL PLEADING
FILED ON 6/18/81
RA COUNTY.
DISTRICT COURT CLERK'S OFFICE

Petitioner,

-vs-

No. RA 80-390(c)

OIL CONSERVATION DIVISION OF
THE STATE OF NEW MEXICO,

Respondent,

-vs-

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

S T I P U L A T I O N

Come now Petitioners, by and through their attorneys,
Kellahin & Kellahin, and Respondent, by and through its
attorney, Ernest L. Padilla, and the Intervenors by and
through their attorney, Dale B. Dilts and stipulate and
agree as follows:

(1) That without admitting the allegations contained
in the Petition filed herein, the New Mexico Oil Conservation
Commission, hereby agrees to grant to the Petitioner and
to the Intervenor a DeNovo Hearing in Case 6892, and there-
fore

(2) All parties consent to the Court's Dismissal of the Petition and Crossclaim herein without prejudice.

Submitted:

KELLAHIN & KELLAHIN

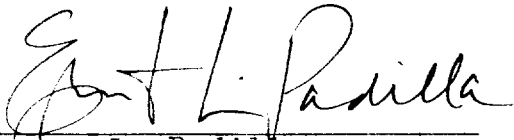
By



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

APPROVED:

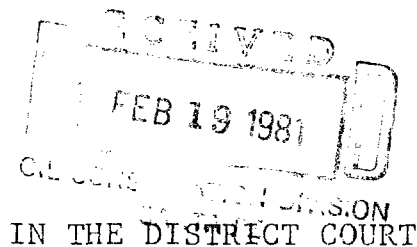
OIL CONSERVATION DIVISION
OF NEW MEXICO

By 
Ernest L. Padilla

PAUL AND MARIE BROWN

Mr. Dilts approval obtained per telephone
call on June 18, 1981 from Mr. Kellahin to
Mr. Dilts
By Dale B. Dilts

STATE OF NEW MEXICO



COUNTY OF RIO ARRIBA

J. GREGORY MERRION and ROBERT L.
BAYLESS, individually and doing
business as MERRION & BAYLESS, a
New Mexico Partnership,

ORIGINAL FILED
FILED ON 2/17/81

R.A.
DISTRICT COURT CLERK'S OFFICE

Petitioners,

-vs-

No. RA 80-390(c)

OIL CONSERVATION DIVISION OF
THE STATE OF NEW MEXICO,

Respondent,

-vs-

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

MOTION FOR PARTIAL
SUMMARY JUDGMENT

Come now Petitioners, J. GREGORY MERRION and ROBERT L. BAYLESS, individually and doing business as MERRION & BAYLESS, by and through their undersigned attorneys, and hereby move this Court pursuant to Rule 56, F.R.Civ.P., for partial summary judgment against Intervenors, PAUL BROWN and MARIE BROWN, as to the First Amended Cross-Claim filed herein.

As grounds therefor, Petitioners state:

(a) On December 15, 1980, Petitioners Moved to Partial Summary Judgment against the BROWN'S Cross-Claim.

(b) On January 19, 1981, the Court granted the Petitioner's Motion for Partial Summary Judgment.

(c) On February 12, 1981, BROWN'S filed a First Amended Cross-Claim which adds a claim for Declaratory Judgment to the Brown's original Cross-Claim.

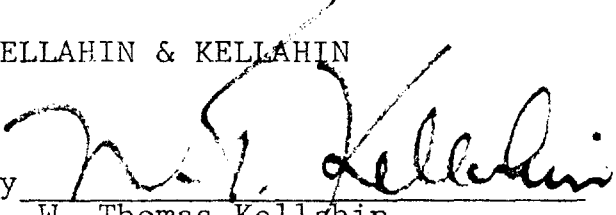
(d) That there is no material difference between the Original Cross-Claim and the First Amended Cross-Claim.

(e) Petitioners incorporate by reference their previous Memorandum Brief and Affidavits filed herein pursuant to Petitioner's Motion for Partial Summary Judgment on the original Cross-Claim.

(f) That no genuine issue of material fact exists with regard to the said Amended Cross-Claim and that Petitioners are entitled to judgment as a matter of law.

KELLAHIN & KELLAHIN

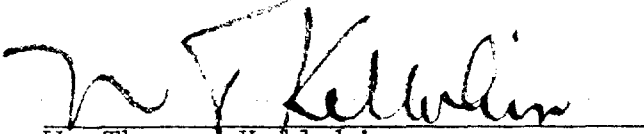
By


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

ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Partial Summary Judgment and attached Exhibit "A" was mailed this 17 day of February, 1981 to Dale B. Dilts, Esq., Attorney for Intervenor, 6001 Marble, N.E., Suite 4, Albuquerque, New Mexico 87110, and to Ernest L. Padilla, Esq., Attorney for the Oil Conservation Division, State Land Office Building, Santa Fe, New Mexico 87501.


W. Thomas Kellahin

STATE OF NEW MEXICO

IN THE DISTRICT COURT

J. GREGORY MERRION and ROBERT L.
BAYLESS, individually and doing
business as MERRION & BAYLESS, a
New Mexico Partnership,

Petitioners,

-vs-

No. RA 80-390(c)

OIL CONSERVATION DIVISION OF
THE STATE OF NEW MEXICO,

Respondent,

-vs-

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

REPLY TO CROSSCLAIM

Come now Petitioners, by their attorneys, KELLAHIN and
KELLAHIN, and for their reply to the First Amended Crossclaim
of Intervenor state:

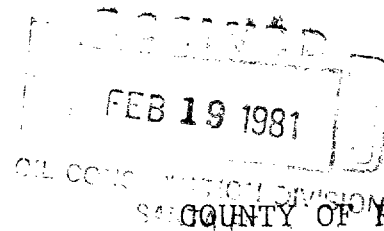
FIRST DEFENSE

The Amended Crossclaim alleged herein fails to state a
claim upon which relief can be granted.

SECOND DEFENSE

1. Admit the allegations of paragraph 1 of the Amended
Crossclaim.

2. Admit the allegations of paragraph 2 of the Amended
Crossclaim.



ORIGINAL PLEADING
FILED ON 2/17/81
BH COUNTY
CLERK OF DISTRICT COURT'S OFFICE

3. Admit the allegations of paragraph 3 of the Amended Crossclaim.

4. Admits the allegations of paragraph 4 of the Amended Crossclaim.

5. Deny the allegations of paragraphs 5 and 6 of the Amended Crossclaim.

WHEREFORE, Petitioners pray that Intervenor take nothing by their Amended Crossclaim, for their costs incurred and for other and further relief as the Court deems just.

KELLAHIN & KELLAHIN

By 
W. Thomas Kellahin
P.O. Box 1769
Santa Fe, New Mexico 87501
(505) 982-4285

ATTORNEYS FOR PETITIONERS

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing was mailed to opposing counsel of record on this 17 day of February, 1981.


W. Thomas Kellahin

RECEIVED
FEB 16 1981
OIL CONSERVATION DIVISION
SANTA FE

STATE OF NEW MEXICO

COUNTY OF RIO ARriba

IN THE DISTRICT COURT

J. GREGORY MERRION and ROBERT L.
BAYLESS, Individually and Doing
Business as MERRION & BAYLESS, a
New Mexico Partnership,

Petitioners,

vs.

RA-80-390(c)

OIL CONSERVATION DIVISION
OF THE STATE OF NEW MEXICO,

Respondent,

vs.

PAUL BROWN AND MARIE BROWN,
Husband and Wife,

Intervenors.

AMENDED CROSS-CLAIM

Come now the intervenors, by their attorney, Dale B. Dilts,
and for their cross-claim against the petitioners, allege:

1. That the intervenors are the owners of the minerals in
one quarter of the SW/4, SEction 27, T24N, R2W, N.M.P.M., Rio
Arriba County, New Mexico

2. That Robert L. Bayless, for himself and on behalf of
all of the other petitioners herein visited the intervenors and
negotiated for a lease for the purpose of drilling the well here
in controversy. No agreement was reached and he left without
obtaining any lease.

3. Although the petitioners may have had a pooling order
from the Oil Conservation Division at an earlier time, they all
know that it had run out and was no longer applicable to the
drilling of a well on said premises.

4. The petitioners drilled an oil and gas well on said
quarter section and completed the same on May 20, 1980, the day
before the hearing on the Application for Compulsory Pooling
Order.

5. That the drilling of the well was a willful, wanton, and intentional trespass upon the mineral interest of the intervenors in their one quarter of the quarter section mentioned above.

6. That an actual controversy exists between the parties hereto.

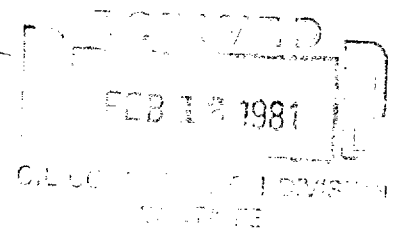
WHEREFORE, intervenors pray for a declaratory judgment against the petitioners granting them their 25% of the oil and gas from said well at its enhanced value and without any costs for drilling the well, maintenance, or supervision of the well and for punitive damages in the sum of \$100,000.00, plus any maintenance and supervision charges as punitive damages, plus costs, and, in the alternative, 50% of the oil and gas, pursuant to Section 34-14-1.1D, N.M.S.A., 1978, Annotated.

s/Dale B. Dilts

Dale B. Dilts (255-8643)
Attorney for Intervenors
6001 Marble, N.E., Suite 4
Albuquerque, New Mexico 87110

I hereby certify that a true copy of the foregoing was mailed to opposing counsel of record this 12th day of February, 1981.

s/Dale B. Dilts



STATE OF NEW MEXICO

COUNTY OF RIO ARRIBA

IN THE DISTRICT COURT

J. GREGORY MERRION and ROBERT L.
BAYLESS, Individually and doing
business as MERRION & BAYLESS, a
New Mexico Partnership,

Petitioners,

vs.

RA-80-390(c)

OIL CONSERVATION DIVISION
OF THE STATE OF NEW MEXICO,

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
Husband and Wife,

Intervenors.

A N S W E R

TO AMENDED PETITION

Come now the intervenors, by their attorney, Dale B. Dilts,
and in answer to the petitions filed herein admit, deny, and
allege:

1. Intervenors admit the allegations of paragraph 1 of
Count I of the petition.

2. Intervenors do not have information upon which to form
a belief as to paragraph 2, Count I, of the petition, and, there-
fore, deny the same. Intervenors show the Court that the peti-
tioners do not own any interest in any of the holdings of the
intervenors in said area.

3. Intervenors deny the allegations of paragraph 3, Count
I, of the petition and show the Court that they are residents of
Rio Arriba County, New Mexico.

4. As to paragraph 4, Count I, of the petition, admit that
there is an Oil Conservation Commission in the State of New Mexico
under the law stated in this paragraph, but deny each and every
other allegation in said paragraph.

5. Intervenor's admit the allegations of paragraphs 5, 6, and 7, Count I, of the petition.

6. Intervenor's do not have information upon which to form a belief concerning the allegations of paragraphs 8, 9, and 10, Count I, of the petition and, therefore, deny the same.

7. Intervenor's admit the allegations of paragraphs 11, 14, 15, and 16, Count I, of the petition.

8. Intervenor's do not have information upon which to form a belief as to paragraphs 12 and 13, Count I, of the petition and, therefore, deny the same,

9. That order no. R-6398 granted petitioner compulsory pooling, a cost and risk factor penalty of 105%, and the intervenor's share of the \$150.00 per month supervision charge.

10. In accordance with Sec. 70-2-13, N.M.S.A., 1978, the intervenor's are parties adversely affected by division order no. R-6398.

11. Intervenor's lack a plain, speedy, and adequate remedy in the ordinary course of law.

12. That the petitioners did not have the right to drill the well pursuant to Sec. 70-2-17, N.M.S.A., 1978, because they did not have any agreement with the intervenor's and they did not have any compulsory pooling order -- the well was drilled and completed on May 20, 1980, before the hearing on May 21, 1980.

13. That the New Mexico Oil Conservation Division did not have jurisdiction to grant the petitioners any relief as against the intervenor's.

14. That the petitioners are intentional, willful, and wanton trespassers upon the interest of the intervenor's in the drilling of the well in question.

15. Intervenor's admit the allegations of paragraphs 1, 2, 3, 4, 6, 7, 9, and 12, Count II, of the petition herein, except that they allege that they are residents of Rio Arriba County.

16. As to paragraph 5, Count II, of the petition herein, the intervenors admit that there is an Oil Conservation Division, but deny each and every allegation in said paragraph that may be in conflict with the statutes mentioned therein.

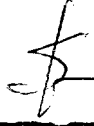
17. Intervenors do not have information on which to form a belief as to paragraphs 8, 10, and 11, Count II, of the petition, and, therefore, deny the same.

WHEREFORE, the intervenors pray as follows:

1. That the Court first consider the intervenors' cross-claim and grant the relief prayed for therein.

2. In the alternative, that the Court review the action of the Oil Conservation Division and grant the intervenors a full 25% of all oil and gas removed from the well involved without any payment by them for the drilling of the well or the management thereof.

3. As second alternative, that the Court issue a Writ of Mandamus requiring the New Mexico Oil Conservation Division to grant intervenors a de novo hearing in Division Case no. 6892, and for all other and proper relief.



Dale B. Dilts (255-8643)
Attorney for Intervenors
6001 Marble, N.E., Suite 4
Albuquerque, New Mexico 87110

I hereby certify that a true copy
of the foregoing was mailed to
opposing counsel of record this
12th day of February, 1981.

STATE OF NEW MEXICO

COUNTY OF RIO ARriba

IN THE DISTRICT COURT

J. GREGORY MERRION, and
ROBERT L. BAYLESS, individually
and doing business as MERRION &
BAYLESS,

Petitioners,

vs.

OIL CONSERVATION DIVISION
OF THE STATE OF NEW MEXICO,

No. RA 80-390(c)

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

COUNT I
AMENDED
PETITION FOR A WRIT OF MANDAMUS

COMES NOW, J. GREGORY MERRION and ROBERT L. BAYLESS,
individual and doing business as MERRION & BAYLESS, herein
called Petitioners, and pursuant to the provisions of
Section 44-2-1 through Section 44-2-14, NMSA-1978, petition
the Court for a Writ of Mandamus issued against the New
Mexico Oil Conservation Division compelling said Division
to grant a hearing to the Petitioners and as grounds therefore
state:

1. Petitioners are residents of the County of San Juan,
State of New Mexico, doing business within the State of
New Mexico.

2. Petitioners are oil and gas operators in New Mexico
and are interest owners of a certain well and acreage located
in the SW/4 of Section 27, T24N, R2W, NMPM, Rio Arriba County,
New Mexico.

3. Intervenors, upon information and belief, are residents of Bernalillo County, New Mexico, and are interest owners in the SW/4 of Section 27, T24N, R2W, NMPM, Rio Arriba County, New Mexico.

4. The Respondent, Oil Conservation Division of New Mexico herein called the Division, is a statutory body created and existing under the provisions of the laws of the State of New Mexico and is 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 70, Article 2, New Mexico Statutes Annotated, 1978 Compilation, as amended.

5. On May 21, 1980, the Division held an Examiner Hearing in Division Case 6892, pursuant to Section 70-2-17, NMSA-1978, upon Petitioners' application for a compulsory pooling order for the SW/4 of said Section 27.

6. On June 5, 1980, the Division entered its Order No. R-6398 in Case 6892, attached hereto as Exhibit "A" and incorporated by reference.

7. Order No. R-6398 granted Petitioner's application for compulsory pooling of the SW/4 of said Section 27 but denied that part of Petitioner's application which sought the statutory maximum risk factor penalty of 200%.

8. By cover letter dated June 13, 1980, Exhibit "A-1" attached hereto and incorporated by reference, the Division mailed a copy of the Order No. R-6398 to the Petitioners which was received by them on June 16, 1980.

9. In accordance with Section 70-2-13, NMSA-1978, the Petitioners are parties adversely affected by Division Order No. 6398.

10. On June 16, 1980, Petitioner timely mailed a letter to the Division pursuant to Section 70-2-13, NMSA-1978, requesting a De Novo Hearing before the Division, attached as Exhibit "B" and incorporated by reference.

11. On July 2, 1980, the Interventor's timely mailed a letter to the Division also requesting the Division grant a De Novo Hearing in Case 6892, a copy of which is attached as Exhibit "C" hereto and incorporated by reference herein.

12. On July 10, 1980, the Petitioners retained an attorney who filed another timely application for a De Novo Hearing in Case 6892 with the Division, attached as Exhibit "D" and incorporated herein.

13. All of the affected parties to Case 6892 timely filed applications for a De Novo Hearing in accordance with Section 70-2-13, NMSA-1978.

14. By letter dated July 16, 1970, Exhibit "E" attached hereto and incorporated by reference, the Division denied the respective parties' Applications for De Novo Hearing.

15. Notwithstanding the timely filing of the various applications for a De Novo Hearing, the Division has refused and continues to refuse to grant the De Novo Hearing for Case 6892, contrary to Section 70-2-13, NMSA-1978.

16. Petitioners lack a plain, speedy and adequate remedy in the ordinary course of law.

WHEREFORE, Petitioners pray the Court to issue a Writ of Mandamus requiring the New Mexico Oil Conservation Division to grant Petitioners a De Novo Hearing in Division Case 6892, pursuant to Section 70-2-13, NMSA-1978, and for all other and proper relief.

COUNT II
AMENDED
PETITION FOR REVIEW

COMES NOW, J. GREGORY MERRION and ROBERT L. BAYLESS,

individually and doing business as MERRION & BAYLESS, herein called Petitioners, and pursuant to the provisions of Section 70-2-25, New Mexico Statutes Annotated, 1978 Compilation, respectfully petitions the Court for review of the action of the Oil Conservation Division of New Mexico in Case 6892 on the Division's docket and its Order No. R-6398 entered therein, and states:

1. Petitioners are residents of the County of San Juan, State of New Mexico, doing business with the State of New Mexico, and are interest owners in a certain well and lands involved in Case 6892 on the Division's docket.

2. That the subject matter of this Petition involves mineral interest in the South Blanco-Pictured Cliffs Pool underlying the SW/4 of Section 27, Township 24 North, Range 2 West, NMPM, Rio Arriba County, New Mexico.

3. Intervenors, upon information and belief, are residents of Bernalillo County, New Mexico and are interest owners in the SW/4 of said Section 27.

4. Pursuant to Section 70-2-25 New Mexico Statutes Annotated 1978 Compilation, this Petition is filed in Rio Arriba County, the county wherein is located the property affected by the Division's decision.

5. The Respondent, Oil Conservation Division of New Mexico herein called the Division, is a statutory body created and existing under the provisions of the laws of the State of New Mexico and is 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 70, Article 2,

New Mexico Statutes Annotated 1978 Compilation, as amended.

6. On June 5, 1980, the New Mexico Oil Conservation Division entered its Order No. R-6398, which approved in part Petitioner's application for Compulsory Pooling of the SW/4 of said Section 27, but which also denied Petitioner's request for a 200% risk factor.

7. Petitioners have sought a Rehearing pursuant to Section 70-2-13, NMSA-1978, on the grounds that the risk factor awarded was arbitrary and not supported by the substantial evidence and that the substantial evidenced supported an award of a 200% risk factor.

8. That all affected parties have timely applied for a De Novo Hearing on Division Case No. 6892, Order No. R-6398.

9. By letter dated July 16, 1980, the Division denied the respective parties applications for a De Novo Hearing.

10. On July 30, 1980, Petitioners timely filed an Application for Rehearing which was not acted upon by the Division within ten days and was, therefore, denied. A copy of the said Application for Rehearing is attached hereto as Exhibit "F".

11. Petitioners are adversely affected by the Division Order No. R-6398, are dissatisfied with the Division's disposition of Case 6892, and hereby appeal therefrom.

12. Petitioners complain of said Order R-6398 and as grounds for asserting the invalidity of said Order, Petitioners adopt the grounds set forth in their Application for Rehearing attached hereto as Exhibit "F" and state:

(a) That the Division's Findings are not supported by substantial evidence and therefore unlawful, invalid and void;

(b) That the Division's actions in denying Petitioner's

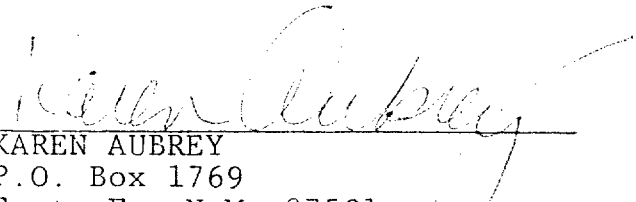
Application for Rehearing and for a De Novo Hearing are arbitrary, capricious and fail to comply with Section 70-2-13, NMDS-1978.

(c) That the Division's method of service of Division Orders upon affected parties is inadequate and had arbitrarily denied the Petitioner's procedural due process.

WHEREFORE, Petitioners pray that the Court direct the New Mexico Oil Conservation Division to grant a rehearing as provided by law and increase the risk factor penalty assessed in this case to the statutory maximum of 200% and for such other relief as may be proper in the premises.

KELLAHIN & KELLAHIN

By


KAREN AUBREY
P.O. Box 1769
Santa Fe, N.M. 87501
(505) 982-4285

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing and above Amended Petition for a Writ of Mandamus was hand delivered this 13th day of January, 1981 to Dale B. Dilts, Esq., 6001 Marble, N.E., Suite 4, Albuquerque, New Mexico 87110, and to Ernest L. Padilla, Esq., State Land Office Building, Santa Fe, New Mexico 87501.

KAREN AUBREY



STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR
LARRY KEHOE
SECRETARY

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

June 13, 1980

Mr. Robert L. Bayless
P. O. Box 1541
Farmington, New Mexico 87401

Re: CASE NO. 6892
ORDER NO. R-6366

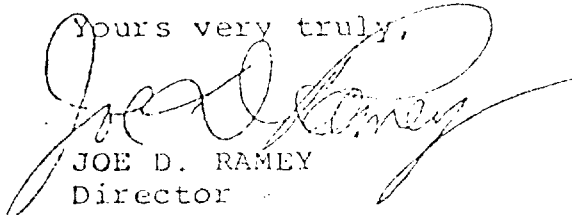
Applicant:

Merrion & Bayless

Dear Sir:

Enclosed herewith are two copies of the above-referenced
Division order recently entered in the subject case.

Yours very truly,


JOE D. RAMEY
Director

JDR/fd

Copy of order also sent to:

Hobbs OCD x
Artesia OCD x
Aztec OCD x

Other _____

Exhibit A-1

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE NO. 6892
Order No. R-6366

APPLICATION OF MERRION & BAYLESS
FOR COMPULSORY POOLING, RIO ARRIBA
COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 9 a.m. on May 21, 1980, at Santa Fe, New Mexico, before Examiner Richard L. Stamets.

NOW, on this 5th day of June, 1980, the Division Director, 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 Division has jurisdiction of this cause and the subject matter thereof.
- (2) That the applicant, Merrion & Bayless, seeks an order pooling all mineral interests in the South Blanco-Pictured Cliffs Pool underlying the SW/4 of Section 27, Township 24 North, Range 2 West, NMPM, Rio Arriba County, New Mexico.
- (3) That the applicant has the right to drill and proposes to drill a well at a standard location thereon.
- (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

-2-

Case No. 6892

Order No. R-6366

(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 who does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 5 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 who 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 \$150.00 should be fixed as a reasonable charge for supervision (combined fixed rates); that the operator should be authorized to withhold from production the proportionate share of such supervision charge 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 September 15, 1980, 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 South Blanco-Pictured Cliffs Pool underlying the SW/4 of Section 27, Township 24 North, Range 2 West, NMPM, Rio Arriba County, New Mexico, are hereby pooled to form a standard 160-acre gas spacing and proration unit to be dedicated to a well to be drilled at a standard location thereon.

PROVIDED HOWEVER, that the operator of said unit shall commence the drilling of said well on or before the 15th day of September, 1980, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Pictured Cliffs formation;

PROVIDED FURTHER, that in the event said operator does not commence the drilling of said well on or before the 15th day of September, 1980, Order (1) of this order shall be null and void and of no effect whatsoever, unless said operator obtains a time extension from the Division 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 Division Director and show cause why Order (1) of this order should not be rescinded.

(2) That Merrion & Bayless is hereby designated the operator of the subject well and unit.

(3) That after the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Division 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 Division and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the well; that if

-4-

Case No. 6892

Order No. R-6366

no objection to the actual well costs is received by the Division and the Division 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 Division 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 who 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, 5 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 \$150.00 per month is hereby fixed as a reasonable charge for supervision (combined fixed rates); that the operator is hereby authorized to withhold from production the proportionate share of such supervision charge 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.

-5-

Case No. 6892

Order No. R-6366

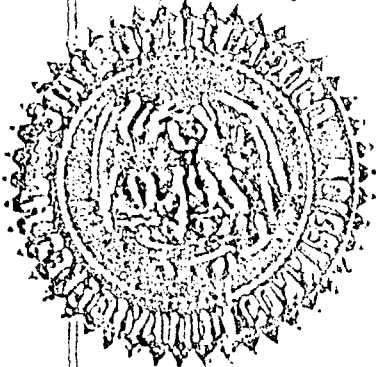
(10) That any unsevered mineral interest shall be considered a seven-eighths ($7/8$) working interest and a one-eighth ($1/8$) royalty interest for the purpose of allocating costs and charges under the terms of this order.

(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 immediately be placed in escrow in Rio Arriba County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; that the operator shall notify the Division of the name and address of said escrow agent within 30 days from the date of first deposit with said escrow agent.

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

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



S E A L

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

[Signature]
JOE D. RAMEY
Director

June 16, 1980

State of New Mexico
Energy & Minerals Department
Oil Conservation Division
P.O. Box 2088
Santa Fe, NM 87501

RE: Order #B-6266
Case 6892

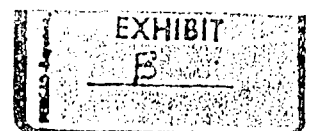
Gentlemen:

We request a hearing to amend the risk factor provided in the above Order. We would like to point out that in November, 1979, under Order B-6193 a factor of 200% was allowed us. Because of the severe winter we were unable to timely drill the prescribed well and the Order expired. We were under notice from the U.S.G.S., a copy of the letter being attached, to drill a well in the SW/4 of Section 27, T24N, R2W, to prevent drainage of the USA minerals in the NW/4 of Section 27. After we had requested the Forced Pooling hearing but prior to the actual hearing a rotary rig became available and in order to fulfill our obligation to the U.S.G.S. we drilled the subject well (East Lindrith #5.) We should point out that no additional geologic knowledge was available to us subsequent to the original hearing and prior to the drilling of the subject well, so it is difficult to rationalize a change in the risk factor.

Also, the well itself has been drilled and casing cemented but no completion work has been done and costs incurred to date are approximately only one-half of the eventual total costs.

It also should be pointed out that electric log interpretation in this area is not precisely definitive and the risk of a successful completion after the drilling of the well is very substantial.

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Oil Conservation Division
June 16, 1980
Page 2.

Because of the above we request an amendment of the above Order to change the risk factor to 200% as allowed by law. If necessary to accomplish this we request a hearing or if required a DeNovo hearing, and in any instance at the earliest possible moment.

Yours truly,

[Signature]

MERRION & BAYLESS

By _____

ROBERT L. BAYLESS

RLB/ch

Enclosure (1)

ILLEGIBLE

RECEIVED
JUL 0 8 1980
OIL CONSERVATION DIVISION
SANTA FE

July 2, 1980

Dale B. Dilts
Attorney at Law
4 Marble Plaza Center
6001 Marble NE
Albuquerque
NM 87110
255-6111
Office 255-6111
Residence 255-6701

RECEIVED
JUL 0 8 1980
OIL CONSERVATION DIVISION
SANTA FE

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

Re: Order of the Division
Case No. 6892
Order No. R-6366

Gentlemen:

Paul Brown and Marie Ann Brown, his wife, hereby appeal from the captioned order and respectfully request another hearing de novo relative thereto. As grounds therefor the Browns show the Oil Conservation Commission that the gas well involved was completed by Merriam and Bayless prior to the hearing on May 21, 1980.

Yours very truly,

Dale B. Dilts

Dale B. Dilts
Attorney for the Browns

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7/8/80

DBD:inms

Talked to Mr. Dilts relation to his de novo request. He still wants to go with the de novo but will advise his clients on the 57% risk factor, i.e., its advantages.

E/P

EXHIBIT
C

KELLAHIN and KELLAHIN

Attorneys at Law

500 Don Gaspar Avenue

Post Office Box 1761

Santa Fe, New Mexico 87501

Jason Kellahin

W. Thomas Kellahin

Karen Aubrey

Telephone 912-4225

Area Code 505

July 10, 1980

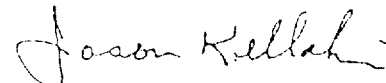
Mr. Joe Ramey, Director
New Mexico Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87501

re: Application of Merrion & Bayless
Case No. 6892, Order No. R-6366

Dear Mr. Ramey:

Merrion and Bayless request a hearing de novo before the Oil Conservation Commission, particularly as to the risk factor allowed in Order No. R-6366.

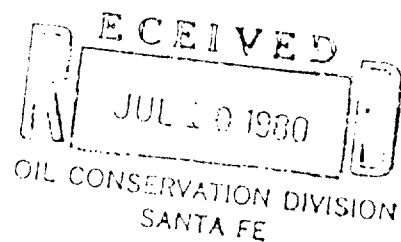
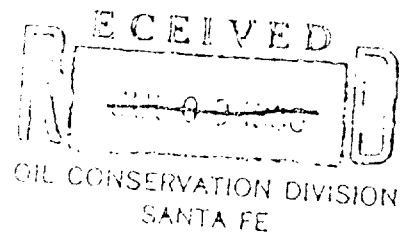
Yours very truly,



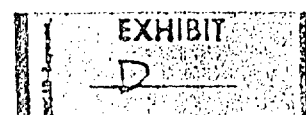
Jason Kellahin

cc: J. Gregory Merrion

JK:msf



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STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR
LARRY KENOE
SECRETARY

July 16, 1980

POST OFFICE BOX 20018
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
13051 027-2434

Kellahin & Kellahin
Attorneys at Law
Post Office Box 1769
Santa Fe, New Mexico 87501

Dale B. Dilts
Attorney at Law
4 Marble Plaza Center
6001 Marble H.E.
Albuquerque, New Mexico 87110

Re: Case No. 6892
Order No. R-6366
Applications for
De Novo Hearing

Gentlemen:

Paul and Marie Brown and Merriem and Bayless, through their attorneys, have requested de novo hearings in the above-referenced case. After examining both applications it appears that neither of the applications for de novo hearings was timely filed.

The order for which de novo hearings are requested was entered on June 5, 1980. The application for de novo hearing should have been filed with the Commission no later than July 7, 1980, within 30 days after issuance of the order. The Brown application was received by the Commission on July 8, 1980, one day late. The Merriem and Bayless application was received on July 10.

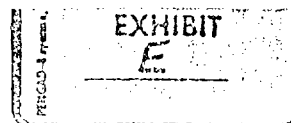
Accordingly, both applications for de novo hearings before the Oil Conservation Commission are hereby denied.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

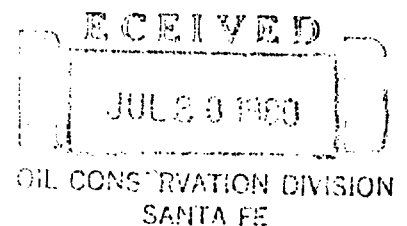
Joe D. Ramey
JOE D. RAMEY
Secretary

JDR/fd

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STATE OF NEW MEXICO
ENERGY & MINERALS DEPARTMENT
OIL CONSERVATION DIVISION



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

Case No. 6892
Order No. R-6398

APPLICATION OF MERRION & BAYLESS
FOR COMPULSORY POOLING, RIO ARriba
COUNTY, NEW MEXICO

APPLICATION FOR REHEARING

COMES NOW MERRION & BAYLESS, by their attorneys KELLAHIN & KELLAHIN,
and pursuant to the Provision of Section 70-2-25 New Mexico Statutes
Annotated, 1978, and apply to the Oil Conservation Division of New Mexico
for Rehearing of the above captioned Case No. 6892 and Order No. R-6366
issued pursuant thereto and in support thereof state:

STATEMENT OF FACTS:

1. The applicant, Merrion & Bayless, received New Mexico Oil Conservation Division Order No. R-6366 on June 16, 1980 under the Division cover letter dated June 13, 1980. Said order, attached as Exhibit "A", was entered on June 5, 1980 and adversely affects Merrion & Bayless, a party herein.
2. That on June 16, 1980, Merrion & Bayless wrote a letter to the Oil Conservation Division deposited in the U.S. Mails on June 16, 1980, postage paid, attached hereto as Exhibit "B", requesting another hearing on this matter to have the risk factor penalty increased to 200%.
3. That the risk factor entered herein is arbitrary and not supported by substantial evidence.
4. That the substantial evidence in this case supports the awarding of a 200% risk factor.
5. That on July 2, 1980, Paul and Marie Brown, an interested and affected party to this case, through their attorney, mailed a letter requesting a De

Exhibit F

Novo Hearing in this matter, said letter mailed to the Oil Conservation Division, deposited in the U.S. Mails on July 2, 1980, postage paid, and attached hereto as Exhibit "C".

6. That on July 10, 1980, Merrion & Bayless, through their attorneys filed another application for a De Novo Hearing which was received by the New Mexico Oil Conservation Division on July 10, 1980, a copy of which is attached hereto as Exhibit "D".

7. That all the affected parties have timely applied for a De Novo Hearing.

8. That on July 16, 1980, the New Mexico Oil Conservation Division sent to the attorneys for the respective parties a letter denying the applications for a De Novo Hearing for both parties, a copy of which is attached hereto as Exhibit "E".

GROUND FOR REHEARING

1. Section 70-2-13 NMSA-1978 provides in part that:

"When any matter or proceedings is referred to an examiner and a decision is rendered thereon, any party adversely affected shall have the right to have said matter heard De Novo before the Commission upon application filed with the division within thirty days from the time any such decision is rendered."

2. Although the subject order was entered on Thursday June 5, 1980, it was not mailed to the affected parties until Friday, June 13, 1980.

3. That the failure of the Division to timely mail copies of the order to the affected parties on the same date as the date of the order substantially reduces the time for the affected party to then file an application for a Hearing De Novo.

4. That such action by the Division has prejudiced the rights of Merrion & Bayless in this case and has arbitrarily denied them procedural due process.

5. That the thirty day period for filing an application for a De Novo Hearing in this case should be from the date of the receipt of the order by the affected parties and not the date of the order itself.

6. That the mailing of an order by the Division to the affected parties fails to provide a reliable method of timely informing the affected parties of that decision.

7. That the letter mailed by Merrion & Bayless on June 16, 1980, (Exhibit B), constitutes timely filing of an application for De Novo Hearing.

8. That the application filed by Kellahin & Kellahin as attorneys for Merrion & Bayless on July 10, 1980, constitutes timely filing of an application for De Novo Hearing.

9. That the application mailed by Dale B. Dilts as attorney for Paul and Marie Brown, on July 2, 1980, constitutes timely filing of an application for De Novo Hearing.

10. That the Division's letter of July 16, 1980, constitutes a decision of the Division under Section 20-2-25 NMSA-1978 and that this Application for Rehearing has been timely filed.

11. That Rule 6 (a) and 6 (e) of the New Mexico Rules of Civil Procedure should be applied to this case thereby enlarging the thirty day period for filings herein.

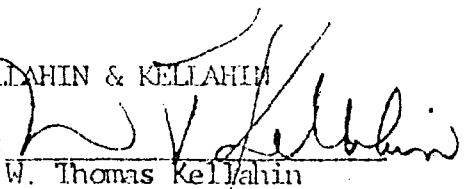
12. That the Division should be required to adopt, establish, use and apply in this case and all other cases a method of service of Division orders to insure actual timely notice to the affected parties.

13. That the Division's actions in this case are arbitrary, capricious, not supported by substantial evidence and are therefore unlawful, invalid and void.

WHEREFORE, applicant prays that the Division grant a rehearing in the above captioned cause and that after rehearing as provided by law, the Division increase the risk factor penalty assessed in this case to the statutory maximum of 200%.

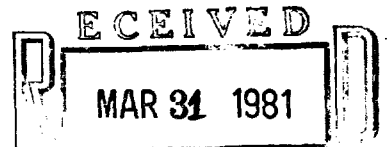
Respectfully submitted,

KELLAHIN & KELLAHIN

By: 
W. Thomas Kellahin
P.O. Box 1769
Santa Fe, New Mexico 87501

I certify that a true and correct copy of the foregoing
were mailed to Dale B. Dilts, attorney for Paul and Marie Brown,
this 29 day of July, 1980.

W. J. Kelbourn



OIL CONSERVATION DIVISION
SANTA FE

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO

COUNTY OF RIO ARRIBA

J. GREGORY MERRION, et al.,
etc.,

Petitioners,
vs.

OIL CONSERVATION DIVISION OF
THE STATE OF NEW MEXICO,

Respondent,
vs.

PAUL BROWN and MARIE BROWN, etc.,
Intervenors.

ORIGINAL PLEADING
FILED ON 3-26-81
RA COUNTY
DISTRICT COURT CLERK'S OFFICE
NO. RA 80-390(C)

REQUEST FOR HEARING

1. Specific Matters Requested to be Heard: Motion for Partial Summary Judgment.
2. Judge to Whom Assigned: Scarborough Division: II
3. Disqualified Judges: None
4. Jury Non-Jury X
5. Estimated Total Time Required for Hearing all parties and witnesses: One (1) hour
6. Pre-trial conference needed? Yes X No
Estimated Time to Hear:
7. Names, addresses and telephone numbers of all Counsel or Parties Pro Se entitled to Notice:
Dale B. Dilts, Esq., 6001 Marble, N.E., Suite 4,
Albuquerque, N.M. 87110 (505) 255-8643
Ernest L. Padilla, Esq., Oil Conservation Division,
State Land Office Building, Santa Fe, N.M. 87501 (505) 827-2636
Karen Aubrey, Esq.; Kellahin & Kellahin, P.O. Box 1769,
Santa Fe, N.M. 87501 (505) 982-4285

Submitted By: W. THOMAS KELLAHIN

Kellahin & Kellahin

By Jason Kellahin

NOTICE OF HEARING

The above matter will be heard before the Honorable

Tony Scarborough, at the Santa Fe Judicial Complex
at the hour of 1:15 p.m. on JUNE 18, 1981
DIVISION II.

Tony Scarborough /bmj
DISTRICT JUDGE

Notice mailed March 26, 1981,
1981, by: B. L. Lundy.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
STATE OF NEW MEXICO COUNTY OF RIO ARriba

J. GREGORY MERRION and ROBERT L.
BAYLESS, individually and doing
business as MERRION & BAYLESS,

Petitioners,

vs.

OIL CONSERVATION DIVISION OF
THE STATE OF NEW MEXICO,

NO. RA 80-390(C)

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
husband and wife,

ORIGINAL PLEADING
FILED ON 12/31/80

RA COUNTY

Intervenors.

COURT CLERK'S OFFICE

REQUEST FOR HEARING

1. Specific Matters Requested to be Heard: Motion for Partial Summary
2. Judge to Whom Assigned: Scarborough Division 2 Judgment.
3. Disqualified Judges: None
4. Jury Non-Jury X
5. Estimated Total Time Required for Hearing all parties and Witnesses:
one (1) hours
6. Pre-trial conference needed? Yes X No.
Estimated Time to Hear _____
7. Names, Addresses, and Telephone Numbers of all Counsel or Parties Pro Se
Entitled to Notice:

Dale B. Dilts, Esq.
6001 Marble, N.E., Suite 4
Albuquerque, NM 87110
(505) 255-8643

Ernest L. Padilla, Esq.
Oil Conservation Division
State Land Office Building
Santa Fe, New Mexico 87501
(505) 827-2636

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

SUBMITTED BY: Karen Aubrey
Kellahin & Kellahin

Karen Aubrey

NOTICE OF HEARING

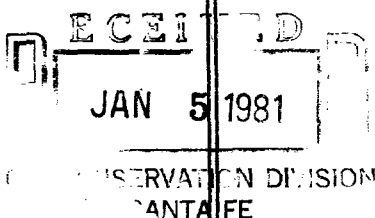
The above matter will be heard before the Honorable

Tony Scarborough, at the S.F. County Judicial Complex
at the hour of 9:30 A.M. on January 13, 1981.
DIVISION II.

Tony Scarborough /baf
DISTRICT JUDGE

Notice mailed Dec. 31, 1980 by:

Bernadette Fernandez



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

RECEIVED
DEC 19 1980
OIL CONSERVATION DIVISION
SANTA FE

Telephone 982-4285
Area Code 505

December 15, 1980

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

RE: J. Gregory Merrion, et al. v.
Oil Conservation Division of the
State of New Mexico v. Paul Brown, et al.

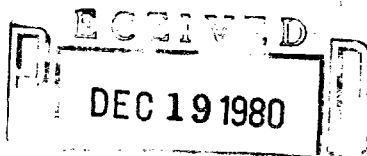
Dear Mr. Padilla:

Enclosed please find a copy of our Motion For
Partial Summary Judgment and Memorandum In Support
Of Motion for Partial Summary Judgment filed on
December 15, 1980.

Sincerely,


KAREN AUBREY

KA:jm
Encl.
cc: J. Gregory Merrion



STATE OF NEW MEXICO

OIL CONSERVATION DIVISION
SANTA FE COUNTY OF RIO ARRIBA

IN THE DISTRICT COURT

J. GREGORY MERRION and ROBERT L.
BAYLESS, individually and doing
business as MERRION & BAYLESS, a
New Mexico Partnership,

12-15-80
Rio Arriba COUNTY
DISTRICT COURT

Petitioners,

vs.

NO. RA 80-390(C)

OIL CONSERVATION DIVISION OF
THE STATE OF NEW MEXICO,

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT

Rule 56 of the Federal Rules of Civil Procedure provides that a party may, at any time, move with or without supporting affidavits for summary judgment. The rule also provides that "the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that no genuine issue as to any material fact exists and that the moving party is entitled to judgment as a matter of law."

Intervenors have filed a Cross-Claim against Petitioners alleging an intentional trespass upon the property of Intervenors. See Cross-Claim attached hereto as Exhibit "B". In Intervenors' answers to Request for Admissions, attached hereto as Exhibit "C", Intervenors admit a material fact which defeats their Cross-Claim. That fact is that the well in question is not located on the

property of Intervenor. Since Intervenor has admitted that the well in question is not located on their property, there can be no physical trespass by Petitioners.

Further, the well in question is not in production, and has never been in production. See Affidavit of J. GREGORY MERRION attached hereto as Exhibit "A". Since the well is not producing there can be no trespass by Petitioners by virtue of any draining of any oil and gas from beneath the property of the Intervenor.

It is a fundamental element of trespass that the claimant establish that the trespassor physically invaded the claimant's property. 23 Am. Jur., Pleading and Practice Forms (Rev.Ed.), TRESPASS, Form 10:942.

New Mexico law also defines trespass in terms of entry on the lands of another. See Section 30-14-1.1, NMSA (1978 Comp.).

In this case there has been neither an above nor a below surface entry and therefore no trespass. 75 Am.Jur.2d, TRESPASS, §§10, 11 and 15.

Since Intervenor has admitted that there is no physical trespass, and since the well is not producing and cannot be draining the acreage owned by Intervenor, the Cross-Claim must fail as a matter of law.

Respectfully submitted,

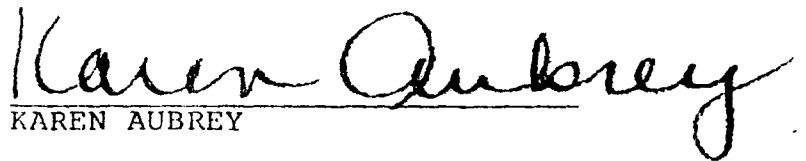


KELLAHIN & KELLAHIN
KAREN AUBREY
Attorneys for Petitioners
P.O. Box 1769
Santa Fe, New Mexico 87501
(505) 982-4285

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Memorandum of Law in Support of Motion for Partial Summary Judgment was mailed this 12th day of December, 1980 Dale B. Dilts, Esq., Attorney for Intervenor, 6001 Marble, N.E., Suite 4, Albuquerque, New Mexico 87110, and to Ernest L. Padilla, Esq., Attorney for the Oil Conservation Division, State Land Office Building, Santa Fe, New Mexico 87501.

KELLAHIN & KELLAHIN


KAREN AUBREY

STATE OF NEW MEXICO

COUNTY OF RIO ARRIBA

IN THE DISTRICT COURT

J. GREGORY MERRION and ROBERT L.
BAYLESS, individually and doing
business as MERRION & BAYLESS, a
New Mexico Partnership,

Petitioners,

vs.

OIL CONSERVATION DIVISION OF
THE STATE OF NEW MEXICO,

No. RA 80-390(c)

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

A F F I D A V I T

STATE OF NEW MEXICO)
) ss
COUNTY OF San Juan)

COMES NOW, J. GREGORY MERRION, being first duly sworn,
on oath, deposes and says:

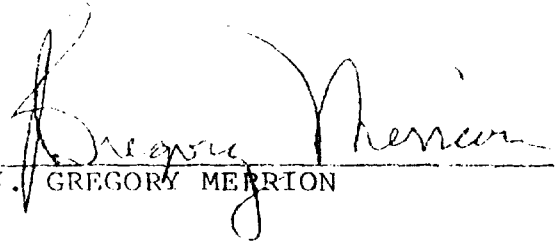
1. That he is one of the Petitioners in the above
entitled matter.
2. That he is a co-owner under an operating agreement
doing business as Merrion & Bayless.
3. That he is a resident of San Juan County, State
of New Mexico.
4. That Merrion & Bayless is an interest owner in a
certain well and acreage located in the Southwest 1/4 of
Section 27, Township 24 North, Range 2 West, NMPM, Rio Arriba
County, New Mexico.

EXHIBIT "A"


5. That he has personal knowledge of matters in connection with said well.

6. That he knows of his own personal knowledge that said well is not producing and has not produced.

7. That he knows of his own personal knowledge that there are no present plans to commence production from said well.


J. GREGORY MERRION

SUBSCRIBED AND SWORN to before me this 27th day
of October, 1980, by J. GREGORY MERRION.


Notary Public

My Commission Expires:

September 20, 1984

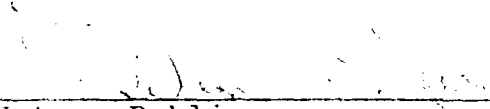
5. That he has personal knowledge of matters in connection with said well.

6. That he knows of his own personal knowledge that said well is not producing and has not produced.

7. That he knows of his own personal knowledge that there are no present plans to commence production from said well.


J. GREGORY MERRION

SUBSCRIBED AND SWORN to before me this 27th day
of October, 1980, by J. GREGORY MERRION.


Notary Public

My Commission Expires:

September 20, 1984

STATE OF NEW MEXICO

COUNTY OF RIO ARriba

IN THE DISTRICT COURT

J. GREGORY MERRION and ROBERT L.
BAYLESS, Individually and Doing
Business as MERRION & BAYLESS, a
New Mexico Partnership,

Petitioners,

vs.

RA-80-390(c)

OIL CONSERVATION DIVISION
OF THE STATE OF NEW MEXICO,

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
Husband and Wife,

Intervenors.

CROSS-CLAIM

Come now the intervenors, by their Attorney, Dale B. Dilts,
and for their cross-claim against the petitioners, allege:

1. That the intervenors are the owners of the minerals in
one quarter of the SW/4, Section 27, T24N, R2W, N.M.P.M., Rio
Arriba County, New Mexico.

2. That Robert L. Bayless, for himself and on behalf of
all of the other petitioners herein visited the intervenors and
negotiated for a lease for the purpose of drilling the well here
in controversy. No agreement was reached and he left without
obtaining any lease.

3. Although the petitioners may have had a pooling order
from the Oil Conservation Division at an earlier time, they all
know that it had run out and was no longer applicable to the
drilling of a well on said premises.

4. The petitioners drilled an oil and gas well on said
quarter section and completed the same on May 20, 1980, the day
before the hearing on the Application for Compulsory Pooling
Order.

EXHIBIT "B"

5. That the drilling of the well was a willful, wanton, and intentional trespass upon the mineral interest of the intervenors in their one quarter of the quarter section mentioned above.

WHEREFORE, intervenors pray for a judgment against the petitioners granting them their 25% of the oil and gas from said well at its enhanced value and without any costs for drilling the well, maintenance, or supervision of the well and for punitive damages in the sum of \$100,000.00, plus any maintenance and supervision charges as punitive damages, plus costs.

s/Dale B. Dilts

Dale B. Dilts (255-8643)
Attorney for Intervenor
6001 Marble, N.E., Suite 4
Albuquerque, New Mexico 87110

I hereby certify that a true copy
of the foregoing was mailed to
opposing counsel of record this
7th day of September, 1980.

s/Dale B. Dilts

STATE OF NEW MEXICO

COUNTY OF EL ARRIBA

IN THE DISTRICT COURT

J. GREGORY HERRICK and ROBERT L.
PAYLESS, Individually and doing
business as HERRICK & PAYLESS, a
New Mexico Partnership,

Petitioners,

vs.

No. BA-80-300(c)

OIL CONSERVATION DIVISION OF
THE STATE OF NEW MEXICO,

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
Husband and Wife,

Interveners.

ANSWER TO COMPLAINT OF PETITIONERS

Complainer the intervenors in answer to the request for admissions and admit the requests numbered 1, 2, and 4, and deny the request number 3 for the following reasons:

- a) The well was completed on May 20, 1980.
- b) The hearing on the order of the Division was held on May 21, 1980.
- c) The order of the Division was issued June 5, 1980.
- d) Finding (3) of the order of the Division finds that the petitioners have the right to drill when they have already drilled.
- e) Finding (13) suggests that the order pooling said unit should become null and void if the petitioners do not start drilling before September 15, 1980. No well has been started after the order or before the said date, so that the order of Division is null and void.
- f) That the said orders about drilling the well are absurd and of no force and effect, since the well was already completed.

EXHIBIT "C"

ILLEGIBLE

g) That the petitioners have not provided the intervenors with any schedule of actual well costs, making the whole matter of any payment by the intervenors moot.

h) That the five percent charge for the risk involved is meaningless, inasmuch as the well was completed prior to the order

i) For all of the above reasons, the order of Division is void.

s/Dale B. Dilts

Dale B. Dilts (255-8643)

Attorney for Intervenors

6001 Marble, N.E., Suite 4

Albuquerque, New Mexico 87110

I hereby certify that a true copy of the foregoing was mailed to opposing counsel this 14th day of October, 1980.

s/Dale B. Dilts

STATE OF NEW MEXICO

COUNTY OF BERNALILLO, N.M.

I, Marie Brown, being first duly sworn, upon my oath depose and say that I am one of the Interveners in the captioned action and that I know the contents of the answer to requests for admission and I have read the same and they are true and correct to the best of my knowledge and belief.

Marie Brown

Subscribed and sworn before me this October 7, 1935.

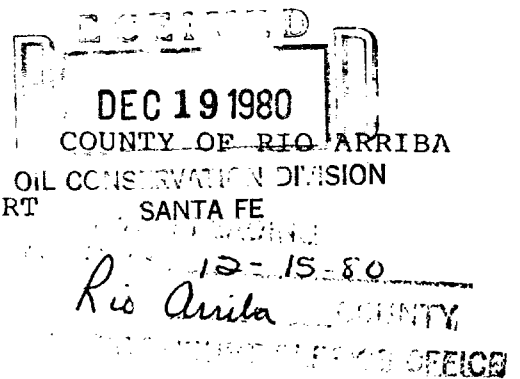
Notary Public

W. A. [illegible]
My Commission Expires Sept. 1, 1937

ILLEGIBLE

STATE OF NEW MEXICO

IN THE DISTRICT COURT



J. GREGORY MERRION and ROBERT L.
BAYLESS, individually and doing
business as MERRION & BAYLESS, a
New Mexico Partnership,

Petitioners,

vs.

NO. RA 80-390(c)

OIL CONSERVATION DIVISION OF
THE STATE OF NEW MEXICO,

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

MOTION FOR PARTIAL
SUMMARY JUDGMENT

Come now Petitioners, J. GREGORY MERRION and ROBERT L.
BAYLESS, individually and doing business as MERRION & BAYLESS,
New Mexico Partnership, by and through their undersigned
attorneys, and hereby move this Court pursuant to Rule 56, F.R.Civ.P.,
for partial summary judgment against Intervenors, PAUL BROWN
and MARIE BROWN, as to Cross-Claim filed herein.

As grounds therefor, Petitioners allege that no genuine
issue of material fact exists with regard to the said Cross-Claim,
and that Petitioners are entitled to judgment as a matter of law.
The Affidavit of J. GREGORY MERRION is attached hereto as
Exhibit "A" in support of this motion.

Karen Aubrey

KELLAHIN & KELLAHIN
KAREN AUBREY
Attorneys for Petitioners
P.O. Box 1769
Santa Fe, New Mexico 87501
(505) 982-4285

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Partial Summary Judgment and attached Exhibit "A" was mailed this 12th day of December, 1980 to Dale B. Dilts, Esq., Attorney for Intervenors, 6001 Marble, N.E., Suite 4, Albuquerque, New Mexico 87110, and to Ernest L. Padilla, Esq., Attorney for the Oil Conservation Division, State Land Office Building, Santa Fe, New Mexico 87501.

KELLAHIN & KELLAHIN


KAREN AUBREY

STATE OF NEW MEXICO

COUNTY OF RIO ARriba

IN THE DISTRICT COURT

J. GREGORY MERRION and ROBERT L.
BAYLESS, individually and doing
business as MERRION & BAYLESS, a
New Mexico Partnership,

Petitioners,

vs.

OIL CONSERVATION DIVISION OF
THE STATE OF NEW MEXICO,

No. RA 80-390(c)

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

A F F I D A V I T

STATE OF NEW MEXICO)
) ss
COUNTY OF San Juan)

COMES NOW, J. GREGORY MERRION, being first duly sworn,
on oath, deposes and says:


1. That he is one of the Petitioners in the above
entitled matter.
2. That he is a co-owner under an operating agreement
doing business as Merrion & Bayless.
3. That he is a resident of San Juan County, State
of New Mexico.
4. That Merrion & Bayless is an interest owner in a
certain well and acreage located in the Southwest 1/4 of
Section 27, Township 24 North, Range 2 West, NMPM, Rio Arriba
County, New Mexico.

EXHIBIT "A"

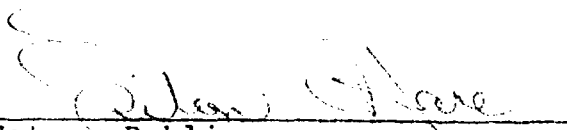
5. That he has personal knowledge of matters in connection with said well.

6. That he knows of his own personal knowledge that said well is not producing and has not produced.

7. That he knows of his own personal knowledge that there are no present plans to commence production from said well.


J. GREGORY MERRION

SUBSCRIBED AND SWORN to before me this 27th day
of October, 1980, by J. GREGORY MERRION.


Notary Public

My Commission Expires:

September 20, 1984

KELLAHIN and KELLAHIN

Attorneys at Law

500 Don Gaspar Avenue

Post Office Box 1769

Santa Fe, New Mexico 87501

Jason Kellahin
W. Thomas Kellahin
Karen Aubrey

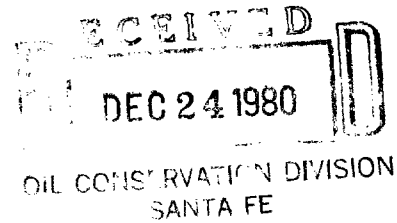
Telephone 982-4285
Area Code 505

December 18, 1980

Ernest L. Padilla, Esq.
Oil Conservation Division
State Land Office Building
Santa Fe, New Mexico 87501

Dale B. Dilts, Esq.
6001 Marble, N.E., Suite 4
Albuquerque, New Mexico 87110

Re: Merrion & Bayless v. OCD v. Brown
Case No. RA 80-390(C)
Our File No. 1550



Gentlemen:

Enclosed you will find a conformed copy of the Order
Granting Leave to File Amended Petition signed by Judge
Scarborough on December 16, 1980.

Sincerely,

Karen Aubrey
Karen Aubrey

KA:vik
Enclosure

STATE OF NEW MEXICO

COUNTY OF RIO ARriba

IN THE DISTRICT COURT

J. GREGORY MERRION and ROBERT L.
BAYLESS, individually and doing
business as MERRION & BAYLESS,
a New Mexico Partnership,

Petitioners,

-vs-

No. RA 80-390(C)

OIL CONSERVATION DIVISION OF
THE STATE OF NEW MEXICO,

Respondent,

-vs-

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

ORIGINAL PLEADING
FILED ON 12-16-80
RA COUNTY
DISTRICT COURT CLERK'S OFFICE

RECEIVED
DEC 24 1980
OIL CONSERVATION DIVISION
SANTA FE

ORDER GRANTING LEAVE TO FILE
AMENDED PETITION

This matter having come before the Court on Motion of
Petitioners for leave to file an amended petition for writ of
mandamus, and all parties concurring, it is hereby

ORDERED that the Petitioners, J. GREGORY MERRION and
ROBERT L. BAYLESS, individually and doing business as MERRION
& BAYLESS, are granted leave to file their Amended Petition
for Writ of Mandamus.

DATED this 16 day of December, 1980.

TONY SCARBOROUGH
DISTRICT COURT JUDGE

Submitted:

KELLAHIN & KELLAHIN

Karen Aubrey
Karen Aubrey
P.O. Box 1769
Santa Fe, New Mexico 87501
(505) 982-4285

Copies furnished to counsel.

DEC 16 1980

OIL CONSERVATION DIVISION
SANTA FE

STATE OF NEW MEXICO

COUNTY OF RIO ARRIBA

IN THE DISTRICT COURT

J. GREGORY MERRION and ROBERT L.
BAYLESS, individually and doing
business as MERRION & BAYLESS, a
New Mexico Partnership,

Petitioners,

vs.

NO. RA 80-390(c)

OIL CONSERVATION DIVISION OF
THE STATE OF NEW MEXICO,

Respondent,

vs.


PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

MOTION FOR PARTIAL
SUMMARY JUDGMENT

Come now Petitioners, J. GREGORY MERRION and ROBERT L. BAYLESS, individually and doing business as MERRION & BAYLESS, New Mexico Partnership, by and through their undersigned attorneys, and hereby move this Court pursuant to Rule 56, F.R.Civ.P., for partial summary judgment against Intervenors, PAUL BROWN and MARIE BROWN, as to Cross-Claim filed herein.


As grounds therefor, Petitioners allege that no genuine issue of material fact exists with regard to the said Cross-Claim, and that Petitioners are entitled to judgment as a matter of law. The Affidavit of J. GREGORY MERRION is attached hereto as Exhibit "A" in support of this motion.

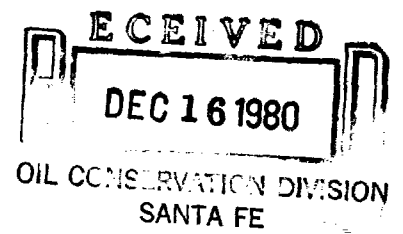

KELLAHIN & KELLAHIN
KAREN AUBREY
Attorneys for Petitioners
P.O. Box 1769
Santa Fe, New Mexico 87501
(505) 982-4285

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Partial Summary Judgment and attached Exhibit "A" was mailed this 12th day of December, 1980 to Dale B. Dilts, Esq., Attorney for Intervenor, 6001 Marble, N.E., Suite 4, Albuquerque, New Mexico 87110, and to Ernest L. Padilla, Esq., Attorney for the Oil Conservation Division, State Land Office Building, Santa Fe, New Mexico 87501.

KELLAHIN & KELLAHIN


KAREN AUBREY



STATE OF NEW MEXICO

COUNTY OF RIO ARriba

IN THE DISTRICT COURT

J. GREGORY MERRION and ROBERT L.
BAYLESS, individually and doing
business as MERRION & BAYLESS, a
New Mexico Partnership,

Petitioners,

vs.

OIL CONSERVATION DIVISION OF
THE STATE OF NEW MEXICO,

No. RA 80-390(c)

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

A F F I D A V I T

STATE OF NEW MEXICO)
) ss
COUNTY OF San Juan)

COMES NOW, J. GREGORY MERRION, being first duly sworn,
on oath, deposes and says:

1. That he is one of the Petitioners in the above
entitled matter.

2. That he is a co-owner under an operating agreement
doing business as Merrion & Bayless.

3. That he is a resident of San Juan County, State
of New Mexico.

4. That Merrion & Bayless is an interest owner in a
certain well and acreage located in the Southwest 1/4 of
Section 27, Township 24 North, Range 2 West, NMPM, Rio Arriba
County, New Mexico.

EXHIBIT "A"


5. That he has personal knowledge of matters in connection with said well.

6. That he knows of his own personal knowledge that said well is not producing and has not produced.

7. That he knows of his own personal knowledge that there are no present plans to commence production from said well.

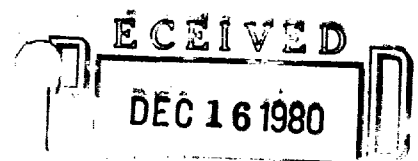

J. GREGORY MERRION

SUBSCRIBED AND SWORN to before me this 27th day
of October, 1980, by J. GREGORY MERRION.


Notary Public

My Commission Expires:

September 20, 1984



STATE OF NEW MEXICO

OIL CONSERVATION DIVISION
SANTA FE
COUNTY OF RIO ARriba

IN THE DISTRICT COURT

J. GREGORY MERRION and ROBERT L.
BAYLESS, individually and doing
business as MERRION & BAYLESS, a
New Mexico Partnership,

Petitioners,

vs.

NO. RA 80-390(C)

OIL CONSERVATION DIVISION OF
THE STATE OF NEW MEXICO,

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT

Rule 56 of the Federal Rules of Civil Procedure provides that a party may, at any time, move with or without supporting affidavits for summary judgment. The rule also provides that "the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that no genuine issue as to any material fact exists and that the moving party is entitled to judgment as a matter of law."

Intervenors have filed a Cross-Claim against Petitioners alleging an intentional trespass upon the property of Intervenors. See Cross-Claim attached hereto as Exhibit "B". In Intervenors' answers to Request for Admissions, attached hereto as Exhibit "C", Intervenors admit a material fact which defeats their Cross-Claim. That fact is that the well in question is not located on the

property of Intervenorors. Since Intervenorors have admitted that the well in question is not located on their property, there can be (no physical trespass) by Petitioners.

Further, the well in question is not in production, and has never been in production. See Affidavit of J. GREGORY MERRION attached hereto as Exhibit "A". Since the well is not producing there can be no trespass by Petitioners by virtue of any draining of any oil and gas from beneath the property of the Intervenorors.

It is a fundamental element of trespass that the claimant establish that the trespassor physically invaded the claimant's property. 23 Am. Jur., Pleading and Practice Forms (Rev.Ed.), TRESPASS, Form 10:942.

New Mexico law also defines trespass in terms of entry on the lands of another. See Section 30-14-1.1, NMSA (1978 Comp.).

In this case there has been neither an above nor a below surface entry and therefore no trespass. 75 Am.Jur.2d, TRESPASS, §§10, 11 and 15.

Since Intervenorors have admitted that there is no physical trespass, and since the well is not producing and cannot be draining the acreage owned by Intervenorors, the Cross-Claim must fail as a matter of law.

Respectfully submitted,

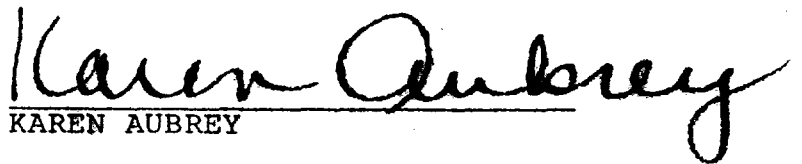


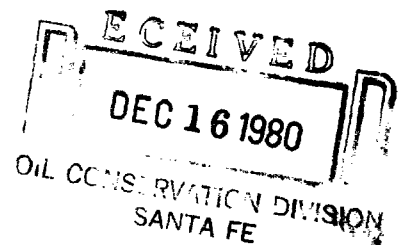
KELLAHIN & KELLAHIN
KAREN AUBREY
Attorneys for Petitioners
P.O. Box 1769
Santa Fe, New Mexico 87501
(505) 982-4285

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Memorandum of Law in Support of Motion for Partial Summary Judgment was mailed this 12th day of December, 1980 Dale B. Dilts, Esq., Attorney for Intervenors, 6001 Marble, N.E., Suite 4, Albuquerque, New Mexico 87110, and to Ernest L. Padilla, Esq., Attorney for the Oil Conservation Division, State Land Office Building, Santa Fe, New Mexico 87501.

KELLAHIN & KELLAHIN


KAREN AUBREY



STATE OF NEW MEXICO

COUNTY OF RIO ARRIBA

IN THE DISTRICT COURT

J. GREGORY MERRION and ROBERT L.
BAYLESS, individually and doing
business as MERRION & BAYLESS, a
New Mexico Partnership,

Petitioners,

vs.

OIL CONSERVATION DIVISION OF
THE STATE OF NEW MEXICO,

No. RA 80-390(c)

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

A F F I D A V I T

STATE OF NEW MEXICO)
) ss
COUNTY OF San Juan)

COMES NOW, J. GREGORY MERRION, being first duly sworn,
on oath, deposes and says:

1. That he is one of the Petitioners in the above
entitled matter.

2. That he is a co-owner under an operating agreement
doing business as Merrion & Bayless.

3. That he is a resident of San Juan County, State
of New Mexico.


4. That Merrion & Bayless is an interest owner in a
certain well and acreage located in the Southwest 1/4 of
Section 27, Township 24 North, Range 2 West, NMPM, Rio Arriba
County, New Mexico.

EXHIBIT "A"


5. That he has personal knowledge of matters in connection with said well.

6. That he knows of his own personal knowledge that said well is not producing and has not produced.

7. That he knows of his own personal knowledge that there are no present plans to commence production from said well.


J. GREGORY MERRION

SUBSCRIBED AND SWORN to before me this 27th day
of October, 1980, by J. GREGORY MERRION.

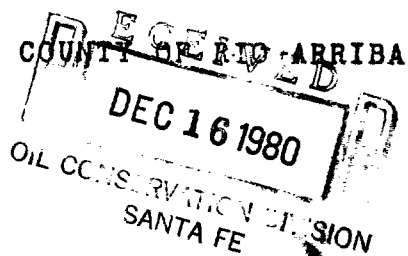

Notary Public

My Commission Expires:

September 20, 1984

STATE OF NEW MEXICO

IN THE DISTRICT COURT



J. GREGORY MERRION and ROBERT L.
BAYLESS, Individually and Doing
Business as MERRION & BAYLESS, a
New Mexico Partnership,

Petitioners,

vs.

RA-80-390(c)

OIL CONSERVATION DIVISION
OF THE STATE OF NEW MEXICO,

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
Husband and Wife,

Intervenors.

CROSS-CLAIM

Come now the intervenors, by their Attorney, Dale B. Dilts,
and for their cross-claim against the petitioners, allege:

1. That the intervenors are the owners of the minerals in one quarter of the SW/4, Section 27, T24N, R2W, N.M.P.M., Rio Arriba County, New Mexico.
2. That Robert L. Bayless, for himself and on behalf of all of the other petitioners herein visited the intervenors and negotiated for a lease for the purpose of drilling the well here in controversy. No agreement was reached and he left without obtaining any lease.
3. Although the petitioners may have had a pooling order from the Oil Conservation Division at an earlier time, they all know that it had run out and was no longer applicable to the drilling of a well on said premises.
4. The petitioners drilled an oil and gas well on said quarter section and completed the same on May 20, 1980, the day before the hearing on the Application for Compulsory Pooling Order.

EXHIBIT "B"

5. That the drilling of the well was a willful, wanton, and intentional trespass upon the mineral interest of the intervenors in their one quarter of the quarter section mentioned above.

WHEREFORE, intervenors pray for a judgment against the petitioners granting them their 25% of the oil and gas from said well at its enhanced value and without any costs for drilling the well, maintenance, or supervision of the well and for punitive damages in the sum of \$100,000.00, plus any maintenance and supervision charges as punitive damages, plus costs.

s/Dale B. Dilts

Dale B. Dilts (255-8643)

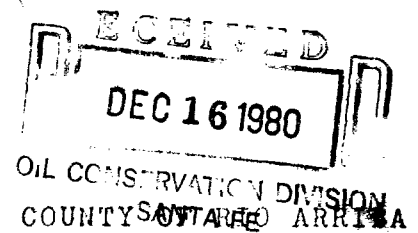
Attorney for Intervenors

6001 Marble, N.E., Suite 4

Albuquerque, New Mexico 87110

I hereby certify that a true copy
of the foregoing was mailed to
opposing counsel of record this
22 day of September, 1980.

s/Dale B. Dilts



STATE OF NEW MEXICO

IN THE DISTRICT COURT

J. GREGORY MERRION and ROBERT L.
BAYLESS, Individually and doing
business as MERRION & BAYLESS, a
New Mexico Partnership,

Petitioners,

vs.

No. RA-80-390(c)

OIL CONSERVATION DIVISION OF
THE STATE OF NEW MEXICO,

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
Husband and Wife,

Intervenors.

ANSWER TO REQUEST FOR ADMISSIONS

Come now the intervenors in answer to the request for admissions and admit the requests numbered 1, 2, and 4, and deny the request number 3 for the following reasons:

- a) The well was completed on May 20, 1980.
- b) The hearing on the order of the Division was held on May 21, 1980.
- c) The order of the Division was issued June 5, 1980.
- d) Finding (3) of the order of the Division finds that the petitioners have the right to drill when they have already drilled.
- e) Finding (13) suggests that the order pooling said unit should become null and void if the petitioners do not start drilling before September 15, 1980. No well has been started after the order or before the said date, so that the order of Division is null and void.
- f) That the said orders about drilling the well are absurd and of no force and effect, since the well was already completed.

EXHIBIT "C"

ILLEGIBLE

g) That the petitioners have not provided the intervenors with any schedule of actual well costs, making the whole matter of any payment by the intervenors moot.

h) That the five percent charge for the risk involved is meaningless, inasmuch as the well was completed prior to the order.

i) For all of the above reasons, the order of Division is void.

s/Dale B. Dilts

Dale B. Dilts (255-8643)

Attorney for Intervenors

6001 Marble, N.E., Suite 4

Albuquerque, New Mexico 87110

I hereby certify that a true copy of the foregoing was mailed to opposing counsel this 14th day of October, 1980.

s/Dale B. Dilts

STATE OF NEW MEXICO

COUNTY OF BERNALILLO, NM

I, Marie Brown, being first duly sworn, upon my oath depose and say that I am one of the Intervenorers in the captioned action and that I know the contents of the Answer to Requests for Admission and I have read the same and they are true and correct to the best of my knowledge and belief.

Marie Anne Brown

Subscribed and sworn before me this October 7, 1980.

NATIONAL COMMISSION
Notary Public
My Commission Expires: Sept. 9, 1982

ILLEGIBLE

KELLAHIN and KELLAHIN

Attorneys at Law

500 Don Gaspar Avenue

Post Office Box 1769

Santa Fe, New Mexico 87501

October 28, 1980

Jason Kellahin
W. Thomas Kellahin
Karen Aubrey

Telephone 982-4285
Area Code 505

Ernest Padilla, Esq.
Oil Conservation Division
P. O. Box 2088
Santa Fe, N.M. 87501

RE: Merrion & Bayless vs. Oil
Conservation Division and
Brown

Dear Ernie:

I have discovered that Merrion & Bayless is not a New Mexico Partnership, and I am attempting to obtain Dale Dilts' signature on a Motion to Amend the Petition. Once I receive the signed Motion from him, I will be transmitting it to you for your signature.

Sincerely,



KAREN AUBREY

ljh

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
October 28, 1980

Telephone 982-4285
Area Code 505

Dale B. Dilts, Esq.
6001 Marble N.E., Suite 4
Albuquerque, N.M. 87110

RE: Merrion & Bayless vs.
Oil Conservation Division
and Brown

Dear Mr. Dilts:

I am enclosing a Motion to Amend the Petition filed in the above matter, together with the proposed Amended pleading. In speaking to Mr. Merrion on October 27, 1980, I discovered that Merrion and Bayless is not a New Mexico Partnership, and propose to amend the pleadings in this matter to reflect the true nature of the ownership of their interest in the subject well and acreage. If you have no objection to this amendment, I would appreciate your signing the enclosed Original Motion and return it to me.

Sincerely,


KAREN AUBREY

ljh
cc: Ernest Padilla w/encl.
Robert L. Bayless
J. Gregory Merrion

STATE OF NEW MEXICO

COUNTY OF RIO ARriba

IN THE DISTRICT COURT

J. GREGORY MERRION and ROBERT L.
BAYLESS, individually and doing
business as MERRION & BAYLESS,
a New Mexico Partnership,

Petitioners,

vs.

No. RA 80-390(c)

OIL CONSERVATION DIVISION OF
THE STATE OF NEW MEXICO

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

MOTION FOR LEAVE TO FILE AMENDED PETITION


COME NOW Petitioners, J. GREGORY MERRION and ROBERT L. BAYLESS, by and through their attorneys, KELLAHIN & KELLAHIN, and move this Court for leave to amend their Petition for Writ of Mandamus and Petition for Review filed on August 29, 1980, as follows:

1. The entity of MERRION & BAYLESS, is not a New Mexico Partnership as alleged in the Petition for Review.

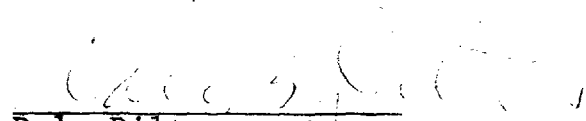
2. Petitioners J. Gregory Merrion and Robert L. Bayless own an interest in the acreage and well which are the subject matter of this lawsuit as co-owners under an operating agreement.


3. That through mistake and inadvertence on the part of Petitioner's counsel, Petitioners were identified as members of a New Mexico Partnership in the Petition for Writ of Mandamus and Petition for Review.

WHEREFORE, Petitioners pray the Court to enter an order permitting the amendment of their Petition for Writ of Mandamus and Petition for Review as shown on the proposed Amended Petition for Writ of Mandamus and Petition for Review attached hereto and incorporated herein as Exhibit "A".


KELLAHIN & KELLAHIN
KAREN AUBREY
P. O. Box 1769
Santa Fe, N.M. 87501

APPROVED AS TO FORM:


Dale Dilts
Attorney for Intervenors


Ernest L. Padilla
Attorney for Oil Conservation
Division of the State of New
Mexico

STATE OF NEW MEXICO

COUNTY OF RIO ARriba

IN THE DISTRICT COURT

J. GREGORY MERRION, and
ROBERT L. BAYLESS, individually
and doing business as MERRION &
BAYLESS,

Petitioners,

vs.

OIL CONSERVATION DIVISION
OF THE STATE OF NEW MEXICO,

No. RE 80-390(c)

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

COUNT I
AMENDED
PETITION FOR A WRIT OF MANDAMUS

COMES NOW, J. GREGORY MERRION and ROBERT L. BAYLESS, individual and doing business as MERRION & BAYLESS, herein called Petitioners, and pursuant to the provisions of Section 44-2-1 through Section 44-2-14, NMSA-1978, petition the Court for a Writ of Mandamus issued against the New Mexico Oil Conservation Division compelling said Division to grant a hearing to the Petitioners and as grounds therefore state:

1. Petitioners are residents of the County of San Juan, State of New Mexico, doing business within the State of New Mexico.

2. Petitioners are oil and gas operators in New Mexico and are interest owners of a certain well and acreage located in the SW/4 of Section 27, T24N, R2W, NMPM, Rio Arriba County, New Mexico.

3. Intervenors, upon information and belief, are residents of Bernalillo County, New Mexico, and are interest owners in the SW/4 of Section 27, T24N, R2W, NMPM, Rio Arriba County, New Mexico.

4. The Respondent, Oil Conservation Division of New Mexico herein called the Division, is a statutory body created and existing under the provisions of the laws of the State of New Mexico and is 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 70, Article 2, New Mexico Statutes Annotated, 1978 Compilation, as amended.

5. On May 21, 1980, the Division held an Examiner Hearing in Division Case 6892, pursuant to Section 70-2-17, NMSA-1978, upon Petitioners' application for a compulsory pooling order for the SW/4 of said Section 27.

6. On June 5, 1980, the Division entered its Order No. R-6398 in Case 6892, attached hereto as Exhibit "A" and incorporated by reference.

7. Order No. R-6398 granted Petitioner's application for compulsory pooling of the SW/4 of said Section 27 but denied that part of Petitioner's application which sought the statutory maximum risk factor penalty of 200%.

8. By cover letter dated June 13, 1980, Exhibit "A-1" attached hereto and incorporated by reference, the Division mailed a copy of the Order No. R-6398 to the Petitioners which was received by them on June 16, 1980.

9. In accordance with Section 70-2-13, NMSA-1978, the Petitioners are parties adversely affected by Division Order No. 6398.

10. On June 16, 1980, Petitioner timely mailed a letter to the Division pursuant to Section 70-2-13, NMSA-1978, requesting a De Novo Hearing before the Division, attached as Exhibit "B" and incorporated by reference.

11. On July 2, 1980, the Interventor's timely mailed a letter to the Division also requesting the Division grant a De Novo Hearing in Case 6892, a copy of which is attached as Exhibit "C" hereto and incorporated by reference herein.

12. On July 10, 1980, the Petitioners retained an attorney who filed another timely application for a De Novo Hearing in Case 6892 with the Division, attached as Exhibit "D" and incorporated herein.

13. All of the affected parties to Case 6892 timely filed applications for a De Novo Hearing in accordance with Section 70-2-13, NMSA-1978.

14. By letter dated July 16, 1970, Exhibit "E" attached hereto and incorporated by reference, the Division denied the respective parties' Applications for De Novo Hearing.

15. Notwithstanding the timely filing of the various applications for a De Novo Hearing, the Division has refused and continues to refuse to grant the De Novo Hearing for Case 6892, contrary to Section 70-2-13, NMSA-1978.

16. Petitioners lack a plain, speedy and adequate remedy in the ordinary course of law.

WHEREFORE, Petitioners pray the Court to issue a Writ of Mandamus requiring the New Mexico Oil Conservation Division to grant Petitioners a De Novo Hearing in Division Case 6892, pursuant to Section 70-2-13, NMSA-1978, and for all other and proper relief.

COUNT II
AMENDED
PETITION FOR REVIEW

COMES NOW, J. GREGORY MERRION and ROBERT L. BAYLESS,

individually and doing business as MERRION & BAYLESS, herein called Petitioners, and pursuant to the provisions of Section 70-2-25, New Mexico Statutes Annotated, 1978 Compilation, respectfully petitions the Court for review of the action of the Oil Conservation Division of New Mexico in Case 6892 on the Division's docket and its Order No. R-6398 entered therein, and states:

1. Petitioners are residents of the County of San Juan, State of New Mexico, doing business with the State of New Mexico, and are interest owners in a certain well and lands involved in Case 6892 on the Division's docket.

2. That the subject matter of this Petition involves mineral interest in the South Blanco-Pictured Cliffs Pool underlying the SW/4 of Section 27, Township 24 North, Range 2 West, NMPM, Rio Arriba County, New Mexico.

3. Intervenors, upon information and belief, are residents of Bernalillo County, New Mexico and are interest owners in the SW/4 of said Section 27.

4. Pursuant to Section 70-2-25 New Mexico Statutes Annotated 1978 Compilation, this Petition is filed in Rio Arriba County, the county wherein is located the property affected by the Division's decision.

5. The Respondent, Oil Conservation Division of New Mexico herein called the Division, is a statutory body created and existing under the provisions of the laws of the State of New Mexico and is 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 70, Article 2,

New Mexico Statutes Annotated 1978 Compilation, as amended.

6. On June 5, 1980, the New Mexico Oil Conservation Division entered its Order No. R-6398, which approved in part Petitioner's application for Compulsory Pooling of the SW/4 of said Section 27, but which also denied Petitioner's request for a 200% risk factor.

7. Petitioners have sought a Rehearing pursuant to Section 70-2-13, NMSA-1978, on the grounds that the risk factor awarded was arbitrary and not supported by the substantial evidence and that the substantial evidenced supported an award of a 200% risk factor.

8. That all affected parties have timely applied for a De Novo Hearing on Division Case No. 6892, Order No. R-6398.

9. By letter dated July 16, 1980, the Division denied the respective parties applications for a De Novo Hearing.

10. On July 30, 1980, Petitioners timely filed an Application for Rehearing which was not acted upon by the Division within ten days and was, therefore, denied. A copy of the said Application for Rehearing is attached hereto as Exhibit "F".

11. Petitioners are adversely affected by the Division Order No. R-6398, are dissatisfied with the Division's disposition of Case 6892, and hereby appeal therefrom.

12. Petitioners complain of said Order R-6398 and as grounds for asserting the invalidity of said Order, Petitioners adopt the grounds set forth in their Application for Rehearing attached hereto as Exhibit "F" and state:

(a) That the Division's Findings are not supported by substantial evidence and therefore unlawful, invalid and void;

(b) That the Division's actions in denying Petitioner's

Application for Rehearing and for a De Novo Hearing are arbitrary, capricious and fail to comply with Section 70-2-13, NMDS-1978.

(c) That the Division's method of service of Division Orders upon affected parties is inadequate and had arbitrarily denied the Petitioner's procedural due process.

WHEREFORE, Petitioners pray that the Court direct the New Mexico Oil Conservation Division to grant a rehearing as provided by law and increase the risk factor penalty assessed in this case to the statutory maximum of 200% and for such other relief as may be proper in the premises.

KELLAHIN & KELLAHIN

By

KAREN AUBREY
P.O. Box 1769
Santa Fe, N.M. 87501
(505) 982-4285



BRUCE KING
GOVERNOR
LARRY KEHOE
SECRETARY

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
15051 827-2434

June 13, 1980

Mr. Robert L. Bayless
P. O. Box 1541
Farmington, New Mexico 87401

Re: CASE NO. 6892
ORDER NO. R-6366

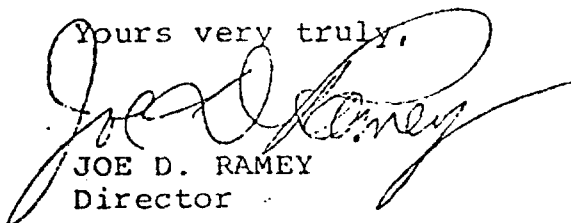
Applicant:

Merrion & Bayless

Dear Sir:

Enclosed herewith are two copies of the above-referenced
Division order recently entered in the subject case.

Yours very truly,


JOE D. RAMEY
Director

JDR/fd

Copy of order also sent to:

Hobbs OCD x
Artesia OCD x
Aztec OCD x

Other _____

Exhibit A-1

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE NO. 6892
Order No. R-6366

APPLICATION OF MERRION & BAYLESS
FOR COMPULSORY POOLING, RIO ARRIBA
COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 9 a.m. on May 21, 1980,
at Santa Fe, New Mexico, before Examiner Richard L. Stamets.

NOW, on this 5th day of June, 1980, the Division
Director, 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 Division has jurisdiction of this cause and the
subject matter thereof.
- (2) That the applicant, Merrion & Bayless, seeks an order
pooling all mineral interests in the South Blanco-Pictured
Cliffs Pool underlying the SW/4 of Section 27, Township 24
North, Range 2 West, NMPM, Rio Arriba County, New Mexico.
- (3) That the applicant has the right to drill and proposes
to drill a well at a standard location thereon.
- (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

-2-

Case No. 6892

Order No. R-6366

(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 who does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 5 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 who 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 \$150.00 should be fixed as a reasonable charge for supervision (combined fixed rates); that the operator should be authorized to withhold from production the proportionate share of such supervision charge 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 September 15, 1980, 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 South Blanco-Pictured Cliffs Pool underlying the SW/4 of Section 27, Township 24 North, Range 2 West, NMPM, Rio Arriba County, New Mexico, are hereby pooled to form a standard 160-acre gas spacing and proration unit to be dedicated to a well to be drilled at a standard location thereon.

PROVIDED HOWEVER, that the operator of said unit shall commence the drilling of said well on or before the 15th day of September, 1980, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Pictured Cliffs formation;

PROVIDED FURTHER, that in the event said operator does not commence the drilling of said well on or before the 15th day of September, 1980, Order (1) of this order shall be null and void and of no effect whatsoever, unless said operator obtains a time extension from the Division 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 Division Director and show cause why Order (1) of this order should not be rescinded.

(2) That Merrion & Bayless is hereby designated the operator of the subject well and unit.

(3) That after the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Division 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 Division and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the well; that if

-4-

Case No. 6892

Order No. R-6366

no objection to the actual well costs is received by the Division and the Division 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 Division 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 who 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, 5 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 \$150.00 per month is hereby fixed as a reasonable charge for supervision (combined fixed rates); that the operator is hereby authorized to withhold from production the proportionate share of such supervision charge 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.

-5-

Case No. 6892

Order No. R-6366

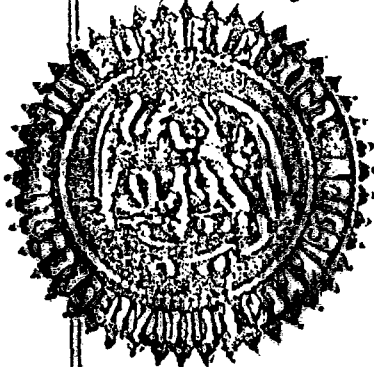
(10) That any unsevered mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under the terms of this order.

(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 immediately be placed in escrow in Rio Arriba County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; that the operator shall notify the Division of the name and address of said escrow agent within 30 days from the date of first deposit with said escrow agent.

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

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



S E A L

STATE OF NEW MEXICO
OIL CONSERVATION-DIVISION

Joe D. Ramey
JOE D. RAMEY
Director

fd/

June 16, 1980

State of New Mexico
Energy & Minerals Department
Oil Conservation Division
P.O. Box 2088
Santa Fe, NM 87501

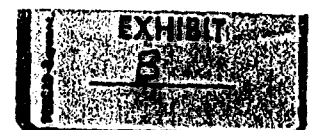
RE: Order #R-6366
Case 6892

Gentlemen:

We request a hearing to amend the risk factor provided in the above Order. We would like to point out that in November, 1979, under Order R-6193 a factor of 200% was allowed us. Because of the severe winter we were unable to timely drill the prescribed well and the Order expired. We were under notice from the U.S.G.S., a copy of the letter being attached, to drill a well in the SW/4 of Section 27, T24N, R2W, to prevent drainage of the USA minerals in the NW/SW of Section 27. After we had requested the Forced Pooling hearing but prior to the actual hearing a rotary rig became available and in order to fulfill our obligation to the U.S.G.S. we drilled the subject well (East Lindrith #5.) We should point out that no additional geologic knowledge was available to us subsequent to the original hearing and prior to the drilling of the subject well, so it is difficult to rationalize a change in the risk factor.

Also, the well itself has been drilled and casing cemented but no completion work has been done and costs incurred to date are approximately only one-half of the eventual total costs.

It also should be pointed out that electric log interpretation in this area is not precisely definitive and the risk of a successful completion after the drilling of the well is very substantial.



Oil Conservation Division

June 16, 1980

Page 2.

Because of the above we request an amendment of the above Order to change the risk factor to 200% as allowed by law. If necessary to accomplish this we request a hearing or if required a DeNovo hearing, and in any instance at the earliest possible moment.

Yours truly,

MR.

MERRION & BAYLESS

By _____

ROBERT L. BAYLESS

RJB/eh

Enclosure (1)

RECEIVED
JUL 02 1980
OIL CONSERVATION DIVISION
SANTA FE

JUL 2, 1980

RECEIVED
JUL 08 1980
OIL CONSERVATION DIVISION
SANTA FE

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

Re: Order of the Division
Case No. 6892
Order No. R-6366

Gentlemen:

Paul Brown and Marie Ann Brown, his wife, hereby appeal from the captioned order and respectfully request another hearing de novo relative thereto. As grounds therefor the Browns show the Oil Conservation Commission that the gas well involved was completed by Merrion and Bayless prior to the hearing on May 21, 1980.

Yours very truly,

Dale B. Dilts
Dale B. Dilts
Attorney for the Browns

DBD:mms

7/8/80
Ticked to Mr. Dilts relation to his de novo request. He still wants to go with the de novo but will advise his clients on the 57% risk factor, i.e., its advantages.

E/P



KELLAHIN and KELLAHIN

Attorneys at Law

500 Don Gaspar Avenue

Post Office Box 1769

Santa Fe, New Mexico 87501

Jason Kellahin

W. Thomas Kellahin

Karen Aubrey

Telephone 982-4285

Area Code 505

July 10, 1980

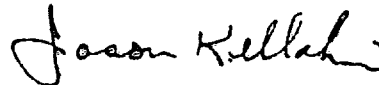
Mr. Joe Ramey, Director
New Mexico Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87501

re: Application of Merrion & Bayless
Case No. 6892, Order No. R-6366

Dear Mr. Ramey:

Merrion and Bayless request a hearing de novo before
the Oil Conservation Commission, particularly as to the
risk factor allowed in Order No. R-6366.

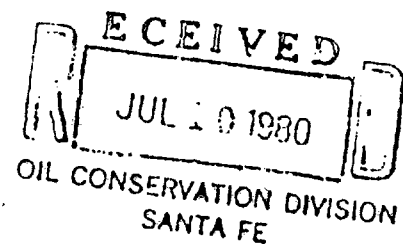
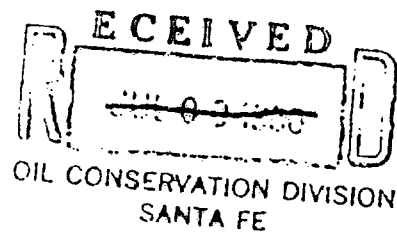
Yours very truly,



Jason Kellahin

cc: J. Gregory Merrion

JK:msf





STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR
LARRY KENDRICK
SICHTANY

July 16, 1980

POST OFFICE BOX 2008
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
13051 027-2434

Kellahin & Kellahin
Attorneys at Law
Post Office Box 1769
Santa Fe, New Mexico 87501

Dale B. Dilts
Attorney at Law
4 Marble Plaza Center
6001 Marble N.E.
Albuquerque, New Mexico 87110

Re: Case No. 6892
Order No. R-6366
Applications for
De Novo Hearing

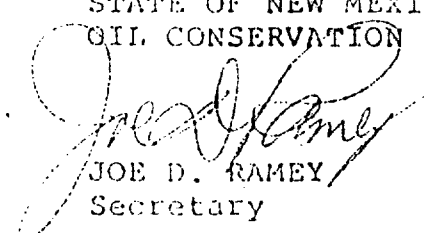
Gentlemen:

Paul and Marie Brown and Merrion and Bayless, through their attorneys, have requested de novo hearings in the above-referenced case. After examining both applications it appears that neither of the applications for de novo hearings was timely filed.

The order for which de novo hearings are requested was entered on June 5, 1980. The application for de novo hearing should have been filed with the Commission no later than July 7, 1980, within 30 days after issuance of the order. The Brown application was received by the Commission on July 8, 1980, one day late. The Merrion and Bayless application was received on July 10.

Accordingly, both applications for de novo hearings before the Oil Conservation Commission are hereby denied.

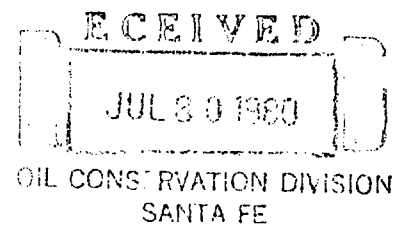
STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION


JOE D. RAMEY
Secretary

JDR/fd



STATE OF NEW MEXICO
ENERGY & MINERALS DEPARTMENT
OIL CONSERVATION DIVISION



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

Case No. 6892
Order No. R-6398

APPLICATION OF MERRION & BAYLESS
FOR COMPULSORY POOLING, RIO ARRIBA
COUNTY, NEW MEXICO

APPLICATION FOR REHEARING

COMES NOW MERRION & BAYLESS, by their attorneys KELLAHIN & KELLAHIN,
and pursuant to the Provision of Section 70-2-25 New Mexico Statutes
Annotated, 1978, and apply to the Oil Conservation Division of New Mexico
for Rehearing of the above captioned Case No. 6892 and Order No. R-6366
issued pursuant thereto and in support thereof state:

STATEMENT OF FACTS:

1. The applicant, Merrion & Bayless, received New Mexico Oil Conservation Division Order No. R-6366 on June 16, 1980 under the Division cover letter dated June 13, 1980. Said order, attached as Exhibit "A", was entered on June 5, 1980 and adversely affects Merrion & Bayless, a party herein.
2. That on June 16, 1980, Merrion & Bayless wrote a letter to the Oil Conservation Division deposited in the U.S. Mails on June 16, 1980, postage paid, attached hereto as Exhibit "B", requesting another hearing on this matter to have the risk factor penalty increased to 200%.
3. That the risk factor entered herein is arbitrary and not supported by substantial evidence.
4. That the substantial evidence in this case supports the awarding of a 200% risk factor.
5. That on July 2, 1980, Paul and Marie Brown, an interested and affected party to this case, through their attorney, mailed a letter requesting a De

Exhibit F

Novo Hearing in this matter, said letter mailed to the Oil Conservation Division, deposited in the U.S. Mails on July 2, 1980, postage paid, and attached hereto as Exhibit "C".

6. That on July 10, 1980, Merrion & Bayless, through their attorneys filed another application for a De Novo Hearing which was received by the New Mexico Oil Conservation Division on July 10, 1980, a copy of which is attached hereto as Exhibit "D".

7. That all the affected parties have timely applied for a De Novo Hearing.

8. That on July 16, 1980, the New Mexico Oil Conservation Division sent to the attorneys for the respective parties a letter denying the applications for a De Novo Hearing for both parties, a copy of which is attached hereto as Exhibit "E".

GROUND FOR REHEARING

1. Section 70-2-13 NMSA-1978 provides in part that:

"When any matter or proceedings is referred to an examiner and a decision is rendered thereon, any party adversely affected shall have the right to have said matter heard De Novo before the Commission upon application filed with the division within thirty days from the time any such decision is rendered."

2. Although the subject order was entered on Thursday June 5, 1980, it was not mailed to the affected parties until Friday, June 13, 1980.

3. That the failure of the Division to timely mail copies of the order to the affected parties on the same date as the date of the order substantially reduces the time for the affected party to then file an application for a Hearing De Novo.

4. That such action by the Division has prejudiced the rights of Merrion & Bayless in this case and has arbitrarily denied them procedural due process.

5. That the thirty day period for filing an application for a De Novo Hearing in this case should be from the date of the receipt of the order by the affected parties and not the date of the order itself.

6. That the mailing of an order by the Division to the affected parties fails to provide a reliable method of timely informing the affected parties of that decision.

7. That the letter mailed by Merrion & Bayless on June 16, 1980, (Exhibit B), constitutes timely filing of an application for De Novo Hearing.

8. That the application filed by Kellahin & Kellahin as attorneys for Merrion & Bayless on July 10, 1980, constitutes timely filing of an application for De Novo Hearing.

9. That the application mailed by Dale B. Dilts as attorney for Paul and Marie Brown, on July 2, 1980, constitutes timely filing of an application for De Novo Hearing.

10. That the Division's letter of July 16, 1980, constitutes a decision of the Division under Section 20-2-25 NMSA-1978 and that this Application for Rehearing has been timely filed.

11. That Rule 6 (a) and 6 (e) of the New Mexico Rules of Civil Procedure should be applied to this case thereby enlarging the thirty day period for filings herein.

12. That the Division should be required to adopt, establish, use and apply in this case and all other cases a method of service of Division orders to insure actual timely notice to the affected parties.

13. That the Division's actions in this case are arbitrary, capricious, not supported by substantial evidence and are therefore unlawful, invalid and void.

WHEREFORE, applicant prays that the Division grant a rehearing in the above captioned cause and that after rehearing as provided by law, the Division increase the risk factor penalty assessed in this case to the statutory maximum of 200%.

Respectfully submitted,

KELLAHIN & KELLAHIN

By:

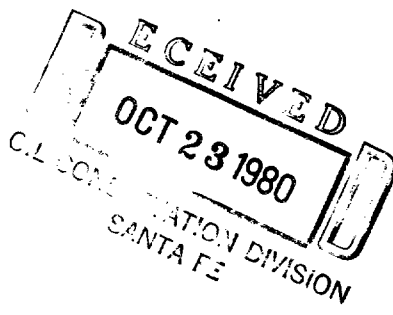
W. Thomas Kellahin

P.O. Box 1769

Santa Fe, New Mexico 87501

I certify that a true and correct copy of the foregoing
were mailed to Dale B. Dilts, attorney for Paul and Marie Brown,
this 29 day of July, 1980.

W. J. Kelso



STATE OF NEW MEXICO

COUNTY OF RIO ARRIBA

IN THE DISTRICT COURT

J. GREGORY MERRION and ROBERT L. BAYLESS, individually and doing business as MERRION & BAYLESS, a New Mexico Partnership,

Petitioners,

vs.

No. RA 80-390(c)

OIL CONSERVATION DIVISION OF THE STATE OF NEW MEXICO

Respondent.

vs.

PAUL BROWN and MARIE BROWN, husband and wife,

Intervenors.

REPLY TO CROSSCLAIM

Come now Petitioners, by their attorneys, KELLAHIN and KELLAHIN, and for their reply to Crossclaim of Intervenor state:

FIRST DEFENSE

The Crossclaim alleged herein fails to state a claim upon which relief can be granted.

SECOND DEFENSE

1. Admit the allegations of paragraph 1 of the Crossclaim.
2. Admit the allegations of paragraph 2 of the Crossclaim.
3. Admit the allegations of paragraph 3 of the Crossclaim.

4. Admit the allegations of paragraph 4 of the Crossclaim.

5. Deny the allegations of paragraph 5 of the Crossclaim.

WHEREFORE, Petitioners pray that Intervenor take nothing by their Crossclaim, for their costs incurred and for other and further relief as the Court deems just.

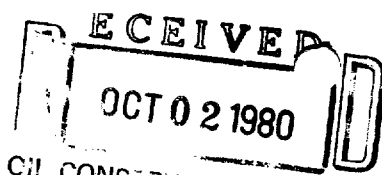
KELLAHIN & KELLAHIN

By KAREN AUBREY
Attorneys for Petitioners
P. O. Box 1769
Santa Fe, N.M. 87501
(505) 982-4285

CERTIFICATE OF MAILING:

I hereby certify that a true copy of the foregoing was mailed to opposing counsel of record on this 22 day of Oct, 1980.

Karen Aubrey
KAREN AUBREY



STATE OF NEW MEXICO

OIL CONSERVATION DIVISION
SANTA FE COUNTY OF RIO ARRIBA

IN THE DISTRICT COURT

J. GREGORY MERRION, and
ROBERT L. BAYLESS, individually
and doing business as MERRION
& BAYLESS, a New Mexico
Partnership,

Petitioners,

vs.

No. RA-80-390(c)

OIL CONSERVATION DIVISION
OF THE STATE OF NEW MEXICO,

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

ORIGINAL PLEADING
FILED ON 10-9-80
RA COUNTY
DISTRICT COURT CLERK'S OFFICE

ENTRY OF APPEARANCE

Please take notice that the undersigned hereby enters his
appearance in the above entitled and numbered cause on behalf of
the Oil Conservation Division of the Energy and Minerals Department
of the State of New Mexico.

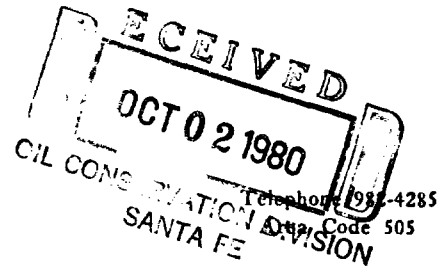
S/
ERNEST L. PADILLA
Assistant Attorney General
for the Oil Conservation Division
of the Energy & Minerals Department
P. O. Box 2088
Santa Fe, New Mexico 87501

I hereby certify that on the
_____ day of September, 1980,
a copy of the foregoing pleading
was mailed to opposing counsel of
record.

S/ _____

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



September 29, 1980

Dale B. Dilts, Esq.
6001 Marble, N.E., Suite 4
Albuquerque, New Mexico 87110

Re: Merrion & Bayless vs.
Oil Conservation Division and
Brown

Dear Mr. Dilts:

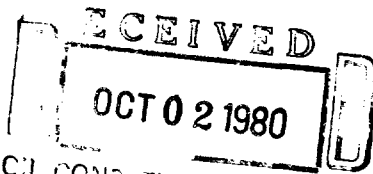
Enclosed please find two copies of Requests
for Admissions in the above matter.

Sincerely,

Karen Aubrey
Karen Aubrey

encl.
cc: J. Gregory Merrion
Robert L. Bayless
Ernest L. Padilla

COPY



STATE OF NEW MEXICO

OIL CONSERVATION DIVISION COUNTY OF RIO ARriba
SANTA FE
IN THE DISTRICT COURT

J. GREGORY MERRION, and
ROBERT L. BAYLESS, individually
and doing business as MERRION
& BAYLESS, a New Mexico
Partnership,

Petitioners,

-vs-

No. RA-80-390(c)

OIL CONSERVATION DIVISION
OF THE STATE OF NEW MEXICO

Respondent,

-vs-

PAUL BROWN and MARIE BROWN
husband and wife,

Intervenors.

REQUESTS FOR ADMISSIONS

Come Now Petitioners by and through their attorneys Kellahin & Kellahin and request admission of the facts set out of the numbered paragraphs below. These requests are to be answered by Intervenors Paul Brown and Marie Brown within thirty days of receipt thereof. These requests shall be deemed continuing, and knowledge of your attorney or any of the agents or employees, employed by you during the transactions which are the subject matter of this action shall be deemed to be your knowledge, If, after filing your original admissions to these requests, you receive or discover information that would change your original admission, you should immediately file amended admissions or denials and have them served on Plaintiff's attorney.

1. Admit or deny that the Intervenors Paul Brown and Marie Brown are interest owners of acreage in SW/SW/4 Section 27, T24N, R2W, N.M.P.M., Rio Arriba County, New Mexico.

2. Admit or deny that a certain well in which Petitioners are interest owners is located NW/SW/4 of Section 27, T24N, R2W, N.M.P.M., Rio Arriba County, New Mexico.

3. Admit or deny that pursuant to the Order of the Oil Conservation Division, Order Number R-6366, Intervenor's interest in that acreage referred to Request for Admission Number One has been force-pooled with the interest of Petitioners referred in Request for Admission Number Two.

4. Admit or deny that the well located on the acreage referred to in Request for Admission Number Two is not located on the acreage referred to in Request for Admission Number One.

Kellahin & Kellahin

By Karen Aubrey
Karen Aubrey
P.O. Box 1769
Santa Fe, New Mexico 87501
(505) 982-4285

I hereby certify that a true copy of the foregoing was mailed to opposing counsel of record this 30 of September, 1980.

Karen Aubrey



STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

September 29, 1980

BRUCE KING
GOVERNOR
LARRY KEHOE
SECRETARY

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

Clerk of the District Court
for Rio Arriba County
Santa Fe County Courthouse
P. O. Box 2268
Santa Fe, New Mexico 87501

Re: Merrion & Bayless vs.
Oil Conservation Division
Rio Arriba County Cause
No. RA-80-390(c)

Dear Madam:

Please file the enclosed Entry of Appearance in
the above-referenced case and return a conformed copy
to this office.

Thank you.

Sincerely,

(Ms.) DIANE RICHARDSON
Administrative Secretary
Legal Department

dr/

enc.

STATE OF NEW MEXICO

COUNTY OF RIO ARRIBA

IN THE DISTRICT COURT

J. GREGORY MERRION, and
ROBERT L. BAYLESS, individually
and doing business as MERRION
& BAYLESS, a New Mexico
Partnership,

Petitioners,

vs.

No. RA-80-390(c)

OIL CONSERVATION DIVISION
OF THE STATE OF NEW MEXICO,

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

ENTRY OF APPEARANCE

Please take notice that the undersigned hereby enters his
appearance in the above entitled and numbered cause on behalf of
the Oil Conservation Division of the Energy and Minerals Department
of the State of New Mexico.

ERNEST L. PADILLA
Assistant Attorney General
for the Oil Conservation Division
of the Energy & Minerals Department
P. O. Box 2088
Santa Fe, New Mexico 87501

I hereby certify that on the
_____ day of September, 1980,
a copy of the foregoing pleading
was mailed to opposing counsel of
record.

STATE OF NEW MEXICO

COUNTY OF RIO ARRIBA

IN THE DISTRICT COURT

J. GREGORY MERRION, and
ROBERT L. BAYLESS, individually
and doing business as MERRION
& BAYLESS, a New Mexico
Partnership,

Petitioners,

vs.

No. RA-80-390(c)

OIL CONSERVATION DIVISION
OF THE STATE OF NEW MEXICO,

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

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Assistant Attorney General
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of the Energy & Minerals Department
P. O. Box 2088
Santa Fe, New Mexico 87501

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STATE OF NEW MEXICO

COUNTY OF RIO ARRIBA

IN THE DISTRICT COURT

J. GREGORY MERRION, and
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Partnership,

Petitioners,

vs.

No. RA-80-390(c)

OIL CONSERVATION DIVISION
OF THE STATE OF NEW MEXICO,

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

ENTRY OF APPEARANCE

Please take notice that the undersigned hereby enters his appearance in the above entitled and numbered cause on behalf of the Oil Conservation Division of the Energy and Minerals Department of the State of New Mexico.

ERNEST L. PADILLA
Assistant Attorney General
for the Oil Conservation Division
of the Energy & Minerals Department
P. O. Box 2088
Santa Fe, New Mexico 87501

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STATE OF NEW MEXICO

COUNTY OF RIO ARriba

IN THE DISTRICT COURT

J. GREGORY MERRION, and
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Partnership,

Petitioners,

vs.

No. RA-80-390(c)

OIL CONSERVATION DIVISION
OF THE STATE OF NEW MEXICO,

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

ENTRY OF APPEARANCE

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the Oil Conservation Division of the Energy and Minerals Department
of the State of New Mexico.

ERNEST L. PADILLA
Assistant Attorney General
for the Oil Conservation Division
of the Energy & Minerals Department
P. O. Box 2088
Santa Fe, New Mexico 87501

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_____ day of September, 1980,
a copy of the foregoing pleading
was mailed to opposing counsel of
record.

STATE OF NEW MEXICO

COUNTY OF RIO ARRIBA

IN THE DISTRICT COURT

J. GREGORY MERRION, and
ROBERT L. BAYLESS, individually
and doing business as MERRION
& BAYLESS, a New Mexico
Partnership,

Petitioners,

vs.

No. RA-80-390(c)

OIL CONSERVATION DIVISION
OF THE STATE OF NEW MEXICO,

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

ENTRY OF APPEARANCE

Please take notice that the undersigned hereby enters his appearance in the above entitled and numbered cause on behalf of the Oil Conservation Division of the Energy and Minerals Department of the State of New Mexico.

ERNEST L. PADILLA
Assistant Attorney General
for the Oil Conservation Division
of the Energy & Minerals Department
P. O. Box 2088
Santa Fe, New Mexico 87501

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_____ day of September, 1980,
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record.

STATE OF NEW MEXICO

COUNTY OF RIO ARRIBA

IN THE DISTRICT COURT

J. GREGORY MERRION, and
ROBERT L. BAYLESS, individually
and doing business as MERRION
& BAYLESS, a New Mexico
Partnership,

Petitioners,

vs.

No. RA-80-390(c)

OIL CONSERVATION DIVISION
OF THE STATE OF NEW MEXICO,

Respondent,

vs.

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

ENTRY OF APPEARANCE

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the Oil Conservation Division of the Energy and Minerals Department
of the State of New Mexico.

ERNEST L. PADILLA
Assistant Attorney General
for the Oil Conservation Division
of the Energy & Minerals Department
P. O. Box 2088
Santa Fe, New Mexico 87501

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_____ day of September, 1980,
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record.

STATE OF NEW MEXICO

COUNTY OF RIO ARRIBA

IN THE DISTRICT COURT

J. GREGORY MERRION, and
ROBERT L. BAYLESS, individually
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Partnership,

Petitioners,

-vs-

No. RA-80-390(c)

OIL CONSERVATION DIVISION
OF THE STATE OF NEW MEXICO,

Respondent,

-vs-

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

ACCEPTANCE OF SERVICE

The undersigned acknowledges receipt of Notice of Appeal
in the above captioned case and accepts service thereof for and
on behalf of the Oil Conservation Division of New Mexico.

131
ERNEST L. PADILLA
GENERAL COUNSEL

DATE

Sept. 4, 1980

STATE OF NEW MEXICO

COUNTY OF RIO ARRIBA

IN THE DISTRICT COURT

J. GREGORY MERRION, and
ROBERT L. BAYLESS, individually
and doing business as MERRION
& BAYLESS, a New Mexico
Partnership,

ORIGINAL PLEADING
FILED ON 8-29-80
RA COUNTY
DISTRICT COURT CLERK'S OFFICE

Petitioners

-vs-

No. RA-80-390(c)

OIL CONSERVATION DIVISION
OF THE STATE OF NEW MEXICO,

Respondent,

-vs-

PAUL BROWN and MARIE BROWN,
husband and wife,

Intervenors.

COUNT I

PETITION FOR A WRIT OF MANDAMUS

COMES NOW J. GREGORY MERRION and ROBERT L. BAYLESS, individually and as general partners in MERRION & BAYLESS, a New Mexico Partnership, herein called Petitioners, and pursuant to the provisions of Section 44-2-1 through Section 44-2-14, NMSA-1978, petition the Court for a Writ of Mandamus issued against the New Mexico Oil Conservation Division compelling said Division to grant a hearing to the Petitioners and as ground therefore state:

1. Petitioners are residents of the County of San Juan, State of New Mexico, doing business within the State of New Mexico.
2. Petitioners are oil and gas operators in New Mexico and are interest owners of a certain well and acreage located in the SW/4 of Section 27, T24N, R2W, N.M.P.M., Rio Arriba County, New Mexico.
3. Intervenors, upon information and belief, are residents of Bernalillo County, New Mexico and are interest owners in the

SW/4 of Section 27, T24N, R2W, N.M.P.M., Rio Arriba County, New Mexico.

4. The Respondent, Oil Conservation Division of New Mexico herein called the Division, is a statutory body created and existing under the provisions of the laws of the State of New Mexico and is 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 70, Article 2, New Mexico Statutes Annotated, 1978 Compilation, as amended.

5. On May 21, 1980, the Division held an Examiner Hearing in Division Case 6892, pursuant to Section 70-2-17, NMSA-1978, upon Petitioners' application for a compulsory pooling order for the SW/4 of said Section 27.

6. On June 5, 1980, the Division entered its Order No. R-6398 in Case 6892, attached hereto as Exhibit "A" and incorporated by reference.

7. Order No. R-6398 granted Petitioner's application for compulsory pooling of the SW/4 of said Section 27 but denied that part of Petitioner's application which sought the statutory maximum risk factor penalty of 200%.

8. By cover letter dated June 13, 1980, Exhibit "A-1" attached hereto and incorporated by reference, the Division mailed a copy of the Order No. R-6398 to the Petitioners which was received by them on June 16, 1980.

9. In accordance with Section 70-2-13, NMSA-1978, the Petitioners are parties adversely affected by Division Order No. R-6398.

10. On June 16, 1980, Petitioner timely mailed a letter to the Division pursuant to Section 70-2-13, NMSA-1978, requesting a DeNovo Hearing before the Division, attached as Exhibit "B" and incorporated by reference.

11. On July 2, 1980, the Intervenor's timely mailed a letter to the Division also requesting the Division grant a DeNovo Hearing in Case 6892, a copy of which is attached as Exhibit "C" hereto and incorporated by reference herein.

12. On July 10, 1980, the Petitioners retained an attorney who filed another timely application for a DeNovo Hearing in Case 6892 with the Division, attached as Exhibit "D" and incorporated herein.

13. All of the affected parties to Case 6892 timely filed applications for a DeNovo Hearing in accordance with Section 70-2-13, NMSA-1978.

14. By letter dated July 16, 1980, Exhibit "E" attached hereto and incorporated by reference, the Division denied the respective parties Applications for DeNovo Hearing.

15. Notwithstanding the timely filing of the various applications for a DeNovo Hearing, the Division has refused and continues to refuse to grant the DeNovo Hearing for Case 6892, contrary to Section 70-2-13, NMSA-1978.

16. Petitioners lack a plain, speedy and adequate remedy in the ordinary course of law.

WHEREFORE, Petitioners pray the Court to issue a WRIT OF MANDAMUS requiring the NEW MEXICO OIL CONSERVATION DIVISION to grant Petitioners a DeNovo Hearing in Division Case 6892, pursuant to Section 70-2-13, NMSA-1978, and for all other and proper relief.

COUNT II

PETITION FOR REVIEW

COMES NOW J. GREGORY MERRION and ROBERT L. BAYLESS, individually and as general partnership in MERRION & BAYLESS, a New Mexico Partnership, herein called Petitioners, and pursuant to the provisions of Section 70-2-25, New Mexico Statutes Annotated, 1978 Compilation, respectfully petitions the Court for review of the

action of the Oil Conservation Division of New Mexico in Case 6892 on the Division's docket and its Order No. R-6398 entered therein, and states:

1. Petitioners are residents of the County of San Juan, State of New Mexico, doing business within the State of New Mexico and are interest owners in a certain well and lands involved in Case 6892 on the Division's docket.

2. That the subject matter of this Petition involves mineral interest in the South Blanco-Pictured Cliffs Pool underlying the SW/4 of Section 27, Township 24 North, Range 2 West, N.M.P.M., Rio Arriba County, New Mexico.

3. Intervenors, upon information and belief, are residents of Bernalillo County, New Mexico and are interest owners in the SW/4 of said Section 27.

4. Pursuant to Section 70-2-25 New Mexico Statutes Annotated 1978 Compilation, this Petition is filed in Rio Arriba County, the county wherein is located the property affected the Division's decision.

5. The Respondent, Oil Conservation Division of New Mexico herein called the Division, is a statutory body created and existing under the provisions of the laws of the State of New Mexico and is 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 70, Article 2, New Mexico Statutes Annotated 1978 Compilation, as amended.

6. On June 5, 1980, the New Mexico Oil Conservation Division entered its Order No. R-6398, which approved in part Petitioner's application for Compulsory Pooling of the SW/4 of said Section 27, but which also denied Petitioner's request for a 200% risk factor.

7. Petitioners have sought a Rehearing pursuant to Section 70-2-13, NMSA-1978, on the grounds that the risk factor awarded was arbitrary and not supported by the substantial evidence and that the substantial evidence supported an award of a 200% risk factor.

8. That all affected parties have timely applied for DeNovo Hearing on Division Case No. 6892, Order No. R-6398.

9. By letter dated July 16, 1980, the Division denied the respective parties applications for a DeNovo Hearing.

10. On July 30, 1980, Petitioners timely filed an Application for Rehearing which was not acted upon by the Division within ten days and was, therefore, denied. A copy of the said Application for Rehearing is attached hereto as Exhibit "F".

11. Petitioners are adversely affected by the Division Order No. R-6398, are dissatisfied with the Division's disposition of Case 6892, and hereby appeal therefrom.

12. Petitioners complain of said Order R-6398 and as grounds for asserting the invalidity of said Order, Petitioners adopt the grounds set forth in their Application for Rehearing attached hereto as Exhibit "F" and state:

(a) That the Division's Findings are not supported by substantial evidence and therefore unlawful, invalid and void;


(b) That the Division's actions in denying Petitioner's Application for Rehearing and for a DeNovo Hearing are arbitrary, capricious and fail to comply with Section 70-2-13, NMSA-1978;

(c) That the Division's method of service of Division Orders upon affected parties is inadequate and had arbitrarily denied the Petitioner's procedural due process.

WHEREFORE, Petitioners pray that the Court direct the New Mexico Oil Conservation Division to grant a rehearing as provided by law and increase the risk factor penalty assessed in this case to the statutory maximum of 200% and for such other relief as may be proper in the premises.

KELLAHIN & KELLAHIN

By:


W. Thomas Kellahin

P.O. Box 1769

Santa Fe, New Mexico 87501

(505) 982-4285

ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISIONBRUCE KING
GOVERNOR
LARRY KEHOE
SECRETARYPOST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

June 13, 1980

Mr. Robert L. Bayless
P. O. Box 1541
Farmington, New Mexico 87401Re: CASE NO. 6892
ORDER NO. R-6366

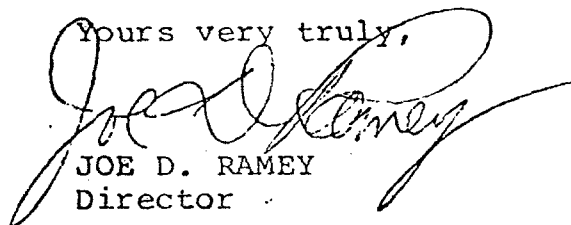
Applicant:

Merrion & Bayless

Dear Sir:

Enclosed herewith are two copies of the above-referenced
Division order recently entered in the subject case.

Yours very truly,


JOE D. RAMEY
Director

JDR/fd

Copy of order also sent to:

Hobbs OCD x
Artesia OCD x
Aztec OCD xOther _____

Exhibit A-1

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE NO. 6892
Order No. R-6366

APPLICATION OF MERRION & BAYLESS
FOR COMPULSORY POOLING, RIO ARRIBA
COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 9 a.m. on May 21, 1980,
at Santa Fe, New Mexico, before Examiner Richard L. Stamets.

NOW, on this 5th day of June, 1980, the Division
Director, 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 Division has jurisdiction of this cause and the
subject matter thereof.
- (2) That the applicant, Merrion & Bayless, seeks an order
pooling all mineral interests in the South Blanco-Pictured
Cliffs Pool underlying the SW/4 of Section 27, Township 24
North, Range 2 West, NMPM, Rio Arriba County, New Mexico.
- (3) That the applicant has the right to drill and proposes
to drill a well at a standard location thereon.
- (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.



-2-

Case No. 6892

Order No. R-6366

(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 who does not pay his share of estimated well costs should have withheld from production his share of the reasonable well costs plus an additional 5 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 who 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 \$150.00 should be fixed as a reasonable charge for supervision (combined fixed rates); that the operator should be authorized to withhold from production the proportionate share of such supervision charge 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 September 15, 1980, 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 South Blanco-Pictured Cliffs Pool underlying the SW/4 of Section 27, Township 24 North, Range 2 West, NMPM, Rio Arriba County, New Mexico, are hereby pooled to form a standard 160-acre gas spacing and proration unit to be dedicated to a well to be drilled at a standard location thereon.

PROVIDED HOWEVER, that the operator of said unit shall commence the drilling of said well on or before the 15th day of September, 1980, and shall thereafter continue the drilling of said well with due diligence to a depth sufficient to test the Pictured Cliffs formation;

PROVIDED FURTHER, that in the event said operator does not commence the drilling of said well on or before the 15th day of September, 1980, Order (1) of this order shall be null and void and of no effect whatsoever, unless said operator obtains a time extension from the Division 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 Division Director and show cause why Order (1) of this order should not be rescinded.

(2) That Merrion & Bayless is hereby designated the operator of the subject well and unit.

(3) That after the effective date of this order and within 90 days prior to commencing said well, the operator shall furnish the Division 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 Division and each known working interest owner an itemized schedule of actual well costs within 90 days following completion of the well; that if

-4-

Case No. 6892

Order No. R-6366

no objection to the actual well costs is received by the Division and the Division 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 Division 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 who 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, 5 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 \$150.00 per month is hereby fixed as a reasonable charge for supervision (combined fixed rates); that the operator is hereby authorized to withhold from production the proportionate share of such supervision charge 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.

-5-

Case No. 6892

Order No. R-6366

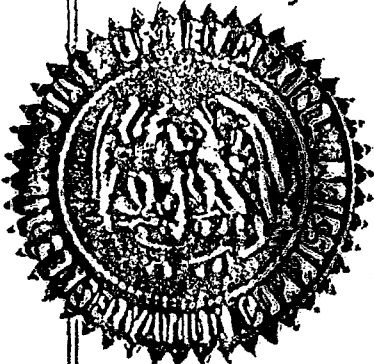
(10) That any unsevered mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under the terms of this order.

(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 immediately be placed in escrow in Rio Arriba County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; that the operator shall notify the Division of the name and address of said escrow agent within 30 days from the date of first deposit with said escrow agent.

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

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



S E A L

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

Joe D. Ramey
JOE D. RAMEY
Director

fd/

June 16, 1980

State of New Mexico
Energy & Minerals Department
Oil Conservation Division
P.O. Box 2088
Santa Fe, NM 87501

RE: Order #R-6366
Case 6892

Gentlemen:

We request a hearing to amend the risk factor provided in the above Order. We would like to point out that in November, 1979, under Order R-6193 a factor of 200% was allowed us. Because of the severe winter we were unable to timely drill the prescribed well and the Order expired. We were under notice from the U.S.G.S., a copy of the letter being attached, to drill a well in the SW/4 of Section 27, T24N, R2W, to prevent drainage of the USA minerals in the NW/SW of Section 27. After we had requested the Forced Pooling hearing but prior to the actual hearing a rotary rig became available and in order to fulfill our obligation to the U.S.G.S. we drilled the subject well (East Lindrith #5.) We should point out that no additional geologic knowledge was available to us subsequent to the original hearing and prior to the drilling of the subject well, so it is difficult to rationalize a change in the risk factor.

Also, the well itself has been drilled and casing cemented but no completion work has been done and costs incurred to date are approximately only one-half of the eventual total costs.

It also should be pointed out that electric log interpretation in this area is not precisely definitive and the risk of a successful completion after the drilling of the well is very substantial.



Oil Conservation Division

June 16, 1980

Page 2.

Because of the above we request an amendment of the above Order to change the risk factor to 200% as allowed by law. If necessary to accomplish this we request a hearing or if required a DeNovo hearing, and in any instance at the earliest possible moment.

Yours truly,

~~MM~~

MERRION & BAYLESS

By _____
ROBERT L. BAYLESS

RLB/eh

Enclosure (1)

RECEIVED
JUL 0 9 1980
OIL CONSERVATION DIVISION
SANTA FE

July 2, 1980

Dale B. Dilts
Attorney at Law
4 Marble Plaza Center
6001 Marble NE
Albuquerque
N.M. 87110
255-1111
Office 255-1111
Residence 255-6708

RECEIVED
JUL 0 8 1980
OIL CONSERVATION DIVISION
SANTA FE

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

Re: Order of the Division
Case No. 6892
Order No. R-6366

Gentlemen:

Paul Brown and Marie Ann Brown, his wife, hereby appeal from the captioned order and respectfully request another hearing de novo relative thereto. As grounds therefor the Browns show the Oil Conservation Commission that the gas well involved was completed by Merrion and Bayless prior to the hearing on May 21, 1980.

Yours very truly,

Dale B. Dilts

Dale B. Dilts
Attorney for the Browns

DBD:mms

7/8/80
Talked to Mr. Dilts relation to his de novo request. He still wants to go with the de novo but will advise his clients on the 57% risk factor, i.e., its advantages.

E/P

EXHIBIT
C

KELLAHIN and KELLAHIN

Attorneys at Law

500 Don Gaspar Avenue

Post Office Box 1769

Santa Fe, New Mexico 87501

Telephone 912-4285

Area Code 505

Jason Kellahin

W. Thomas Kellahin

Karen Aubrey

July 10, 1980

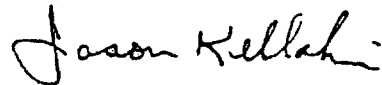
Mr. Joe Ramey, Director
New Mexico Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87501

re: Application of Merrion & Bayless
Case No. 6892, Order No. R-6366

Dear Mr. Ramey:

Merrion and Bayless request a hearing de novo before the Oil Conservation Commission, particularly as to the risk factor allowed in Order No. R-6366.

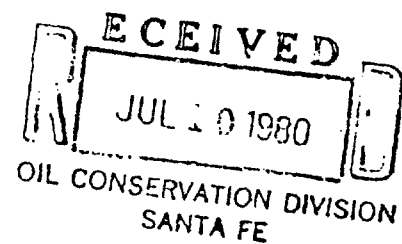
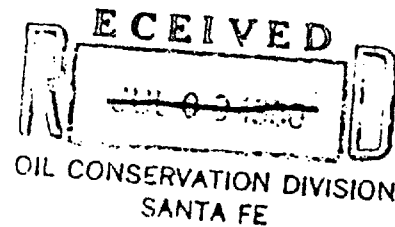
Yours very truly,



Jason Kellahin

cc: J. Gregory Merrion

JK:msf





STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR

LARRY KEHOE
SECRETARY

July 16, 1980

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

Kellahin & Kellahin
Attorneys at Law
Post Office Box 1769
Santa Fe, New Mexico 87501

Dale B. Dilts
Attorney at Law
4 Marble Plaza Center
6001 Marble N.E.
Albuquerque, New Mexico 87110

Re: Case No. 6892
Order No. R-6366
Applications for
De Novo Hearing

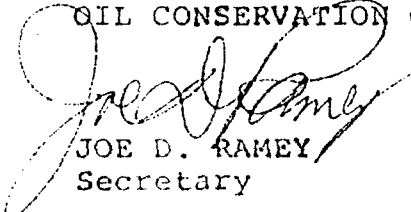
Gentlemen:

Paul and Marie Brown and Merrion and Bayless, through their attorneys, have requested de novo hearings in the above-referenced case. After examining both applications it appears that neither of the applications for de novo hearings was timely filed.

The order for which de novo hearings are requested was entered on June 5, 1980. The application for de novo hearing should have been filed with the Commission no later than July 7, 1980, within 30 days after issuance of the order. The Brown application was received by the Commission on July 8, 1980, one day late. The Merrion and Bayless application was received on July 10.

Accordingly, both applications for de novo hearings before the Oil Conservation Commission are hereby denied.

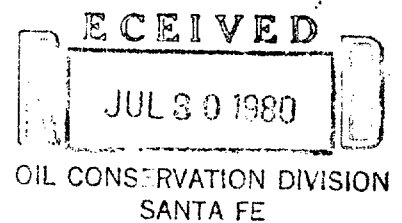
STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION


JOE D. RAMEY
Secretary

JDR/fd



STATE OF NEW MEXICO
ENERGY & MINERALS DEPARTMENT
OIL CONSERVATION DIVISION



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

Case No. 6892
Order No. R-6398

APPLICATION OF MERRION & BAYLESS
FOR COMPULSORY POOLING, RIO ARRIBA
COUNTY, NEW MEXICO

APPLICATION FOR REHEARING

COMES NOW MERRION & BAYLESS, by their attorneys KELLAHIN & KELLAHIN,
and pursuant to the Provision of Section 70-2-25 New Mexico Statutes
Annotated, 1978, and apply to the Oil Conservation Division of New Mexico
for Rehearing of the above captioned Case No. 6892 and Order No. R-6366
issued pursuant thereto and in support thereof state:

STATEMENT OF FACTS:

1. The applicant, Merrion & Bayless, received New Mexico Oil Conservation Division Order No. R-6366 on June 16, 1980 under the Division cover letter dated June 13, 1980. Said order, attached as Exhibit "A", was entered on June 5, 1980 and adversely affects Merrion & Bayless, a party herein.
2. That on June 16, 1980, Merrion & Bayless wrote a letter to the Oil Conservation Division deposited in the U.S. Mails on June 16, 1980, postage paid, attached hereto as Exhibit "B", requesting another hearing on this matter to have the risk factor penalty increased to 200%.
3. That the risk factor entered herein is arbitrary and not supported by substantial evidence.
4. That the substantial evidence in this case supports the awarding of a 200% risk factor.
5. That on July 2, 1980, Paul and Marie Brown, an interested and affected party to this case, through their attorney, mailed a letter requesting a De

Exhibit F

Novo Hearing in this matter, said letter mailed to the Oil Conservation Division, deposited in the U.S. Mails on July 2, 1980, postage paid, and attached hereto as Exhibit "C".

6. That on July 10, 1980, Merrion & Bayless, through their attorneys filed another application for a De Novo Hearing which was received by the New Mexico Oil Conservation Division on July 10, 1980, a copy of which is attached hereto as Exhibit "D".

7. That all the affected parties have timely applied for a De Novo Hearing.

8. That on July 16, 1980, the New Mexico Oil Conservation Division sent to the attorneys for the respective parties a letter denying the applications for a De Novo Hearing for both parties, a copy of which is attached hereto as Exhibit "E".

GROUND'S FOR REHEARING

1. Section 70-2-13 NMSA-1978 provides in part that:

"When any matter or proceedings is referred to an examiner and a decision is rendered thereon, any party adversely affected shall have the right to have said matter heard De Novo before the Commission upon application filed with the division within thirty days from the time any such decision is rendered."

2. Although the subject order was entered on Thursday June 5, 1980, it was not mailed to the affected parties until Friday, June 13, 1980.

3. That the failure of the Division to timely mail copies of the order to the affected parties on the same date as the date of the order substantially reduces the time for the affected party to then file an application for a Hearing De Novo.

4. That such action by the Division has prejudiced the rights of Merrion & Bayless in this case and has arbitrarily denied them procedural due process.

5. That the thirty day period for filing an application for a De Novo Hearing in this case should be from the date of the receipt of the order by the affected parties and not the date of the order itself.

6. That the mailing of an order by the Division to the affected parties fails to provide a reliable method of timely informing the affected parties of that decision.

7. That the letter mailed by Merrion & Bayless on June 16, 1980, (Exhibit B), constitutes timely filing of an application for De Novo Hearing.

8. That the application filed by Kellahin & Kellahin as attorneys for Merrion & Bayless on July 10, 1980, constitutes timely filing of an application for De Novo Hearing.

9. That the application mailed by Dale B. Dilts as attorney for Paul and Marie Brown, on July 2, 1980, constitutes timely filing of an application for De Novo Hearing.

10. That the Division's letter of July 16, 1980, constitutes a decision of the Division under Section 20-2-25 NMSA-1978 and that this Application for Rehearing has been timely filed.

11. That Rule 6 (a) and 6 (e) of the New Mexico Rules of Civil Procedure should be applied to this case thereby enlarging the thirty day period for filings herein.

12. That the Division should be required to adopt, establish, use and apply in this case and all other cases a method of service of Division orders to insure actual timely notice to the affected parties.

13. That the Division's actions in this case are arbitrary, capricious, not supported by substantial evidence and are therefore unlawful, invalid and void.

WHEREFORE, applicant prays that the Division grant a rehearing in the above captioned cause and that after rehearing as provided by law, the Division increase the risk factor penalty assessed in this case to the statutory maximum of 200%.

Respectfully submitted,

KELLAHIN & KELLAHIN

By:

W. Thomas Kellahin

P.O. Box 1769

Santa Fe, New Mexico 87501

I certify that a true and correct copy of the foregoing
were mailed to Dale B. Dilts, attorney for Paul and Marie Brown,
this 29 day of July, 1980.

W. J. Kelso