

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION



BRUCE KING  
GOVERNOR



POST OFFICE BOX 2088  
STATE LAND OFFICE BUILDING  
SANTA FE, NEW MEXICO 87504  
(505) 827-5800

August 28, 1992

Tansey, Rosebrough, Gerding  
& Strother  
Attornys at Law  
P. O. Box 1020  
Farmington, New Mexico 87499

RE: CASE NO. 10436  
Order No. R-7940-B(1)

Dear Sir:

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

Sincerely,

A handwritten signature in cursive script that reads "Florene Davidson".

Florene Davidson  
OC Staff Specialist

FD/sl

cc: BLM - Farmington  
T. Kellahin  
E. Padilla  
D. Meiklejohn  
OCD - Aztec Office  
N. Kendrick

FOUR CORNERS GAS PRODUCERS ASSOCIATION

NEW MEXICO OIL AND GAS ASSOCIATION

PROPOSED

VULNERABLE AREA ORDER

(I) Within the San Juan Basin of Northwestern New Mexico situated within the counties of San Juan, Rio Arriba, Sandoval and McKinley, there is hereby designated the "VULNERABLE AREAS", which areas are delineated on United States Geological Survey Quadrangle Maps maintained and available for use in the Santa Fe and Aztec offices of the New Mexico Oil Conservation Division ("NMOCD") and which are further defined as follows:

(A) That area within the valleys of the San Juan, Animas, La Plata, Chama and Navajo Rivers which is bounded by the topographic line on either side of the river that is 100 vertical feet above the river channel measured perpendicular to the river channel;

(B) Those areas between the above-named rivers and the following ditches:

Highland Park Ditch  
Hillside Thomas Ditch  
Cunningham Ditch  
Farmers Ditch  
Halford Independent Ditch  
Citizens Ditch  
Hammond Ditch  
Greenhorn Ditch  
Lower Animas Ditch  
Farmers Mutual Ditch

(C) That area within the drainage bottoms of the following perennial and ephemeral surface water drainages of the respective river systems which is bounded by the topographic line on either side of the drainage that is 50 vertical feet above the drainage channel measured perpendicularly to the drainage channel:

(1) San Juan River

Armenta Canyon	West Fork Bloomfield Canyon
Benito Canyon	
Bloomfield Canyon	La Jara Canyon
Caballo Canyon	Laguna Seca Draw

Cabresto Canyon	Locke Arroyo
Canon Bancos	Malpais Arroyo
Canon Largo	Mansfield Canyon
Carracas Canyon	Manzanares Canyon
Chaco River/Chaco Wash	Many Devils Wash
Chavez Canyon	Munzo Canyon
Collidge Canyon	Negro Andy Canyon
Cottonwood Canyon	Ojo Amarillo Canyon
Creighton Canyon	Potter Canyon
Dain Canyon	Pump Canyon
Eagle Nest Wash	Rattlesnake Wash
Eul Canyon	Red Wash
Farmington Glade	Ruins Canyon
Frances Creek	Salt Creek Wash
Gallegos Canyon	Shiprock Wash
Gobernador Canyon	Shumway Arroyo
Green Canyon	Slane Canyon
Hare Canyon	Little Slane Canyon
Head Canyon	Stevens Arroyo
Horn Canyon	Stewart Canyon
Kutz Canyon	Sullivan Canyon
La Fragua Canyon	Tom Gale Canyon
Vaca Canyon	Valdez Canyon
Waughan Arroyo	Wright Canyon

(2) Animas River

Arch Rock Canyon	Hood Arroyo
Barton Arroyo	Johnson Arroyo
Blancett Arroyo	Jones Arroyo
Bohanan Canyon	Kiffen Canyon
Calloway Canyon	Knowlton Canyon
Cook Arroyo	Kochis Arroyo
Cox Canyon	Miller Canyon
Ditch Canyon	Rabbit Arroyo
Estes Arroyo	Tucker Canyon
Flora Vista Arroyo	Williams Arroyo
Hampton Arroyo	Wyper Arroyo
Hart Canyon	

(3) La Plata River

Barker Arroyo	Murphy Arroyo
Conner Arroyo	Pickering Arroyo
Cottonwood Arroyo	Thompson Arroyo
Coyne Arroyo	Two Cross Arroyo
McDermott Arroyo	

(D) The following areas, which shall be known as  
Wellhead Protection Areas:

(1) within 1,000 horizontal feet of a water supply well owned or operated by an incorporated city, town or village;

(2) within 200 horizontal feet of a water supply well serving 25 or more people at least 60 days out of the year, but which is not owned or operated by an incorporated city, town or village; and

(3) within 100 horizontal feet of all other fresh water springs and wells.

(E) All other areas delineated on the United States Geological Survey Quadrangle Maps identified in Section (I) above, but not defined in Subsections (I) (A) , (I) (B) , (I) (C) , or (I) (D) above.

(II) Special Rules and Regulations governing the disposal of oil and natural gas waste in the "VULNERABLE AREAS" are hereby promulgated as follows:

SPECIAL RULES AND REGULATIONS FOR THE DISPOSAL OF  
OIL AND NATURAL GAS WASTE IN THE VULNERABLE AREAS IN  
SAN JUAN, MCKINLEY, RIO ARriba AND  
SANDOVAL COUNTIES, NEW MEXICO

RULE 1.    APPLICABILITY

These rules shall apply to the disposal of Oil and Natural Gas Waste produced within the "VULNERABLE AREAS" whether such wastes are disposed of within or without said areas.

RULE 2.    DEFINITIONS

- (A) Aquifer: an aquifer is a saturated permeable geologic unit (a geological formation, group of formations, or part of a formation) that can transmit significant quantities of water to a well for municipal, industrial, domestic, agricultural, or stock watering purposes.
  
- (B) Fresh Water: includes all underground waters containing less than 10,000 milligrams per liter Total Dissolved Solids and the water in lakes, playas and all streams.

- (C) Oil and Natural Gas Waste: waste produced in conjunction with production and transportation of crude oil and/or natural gas commonly collected at field, storage, processing or disposal facilities, and waste collected at gas processing plants, refineries and other processing or transportation facilities. Water produced by dry natural gas wells located within the "VULNERABLE AREAS" defined in Subsections (I)(C), (I)(D), and (I)(E) above shall not be deemed to be Oil and Natural Gas Waste for purposes of this order.
- (D) Field, Storage, Processing or Disposal Facilities: include, but are not limited to, separators, dehydrators, blowdown pits, workover pits, burn pits, lease tanks, commingled tank batteries, LACT units, community or lease salt water disposal systems, and gathering and transmission line drip pits.
- (E) Pit: a below grade or surface excavation which receives Oil and Natural Gas Waste.
- (F) Dry Natural Gas Well: a natural gas production well
- (i) which produces 1 barrel or less of oil or natural gas condensate for every 1 million cubic feet of



produced natural gas, (ii) which produces 1 barrel or less of water per day, and (iii) at which liquid hydrocarbons are not recovered at the well.

RULE 3.    PROHIBITIONS

(A) Discharges of Oil and Natural Gas Waste produced within "VULNERABLE AREAS" into unlined pits or onto the ground surface are prohibited, except as follows:

(1) Discharges occurring or existing prior to or on the effective date of this order may be continued; subject, however, to elimination pursuant to the schedule set forth in Rule 3(B) below.

(2) Notwithstanding anything to the contrary set forth herein, discharges into an unlined pit or onto the ground surface located in a Wellhead Protection Area may be continued, provided, however, that (a) the Wellhead Protection Area was created or established after the effective date of this order, (b) the Wellhead Protection Area was created or established after the commencement of the discharges, and (c) the discharges are otherwise permitted pursuant to this order.

(B) Discharges of Oil and Natural Gas Waste produced within the "VULNERABLE AREAS" into unlined pits or onto the ground surface, occurring or existing prior to or on the effective date of this order, will be eliminated pursuant to the following schedule:

(1) Discharges of Oil and Natural Gas Waste into unlined pits or onto the ground surface located in the areas defined in Subsections (I)(A), (I)(B), and (I)(D)(1) above will be eliminated within one (1) year after the effective date of this order.

(2) Discharges of Oil and Natural Gas Waste into unlined pits or onto the ground surface located in the areas defined in Subsections (I)(C) and (I)(D)(2) above will be eliminated within three (3) years after the effective date of this order.

(3) Discharges of Oil and Natural Gas Waste into unlined pits or onto the ground surface located in the areas defined in Subsections (I)(D)(3) and (I)(E) above will be eliminated within five (5) years after the effective date of this order.

- (C) After the effective date of this order, no Oil and Natural Gas Waste shall be removed from the "VULNERABLE AREAS" for surface disposal except to facilities approved by the NMOCD to accept such waste.
- (D) No Oil and Natural Gas Waste may be disposed of or stored in below grade tanks or lined pits except after such tanks or lined pits have been approved by the NMOCD.

RULE 4. SURFACE DISPOSAL FACILITIES TO BE APPROVED

- (A) Disposal of Oil and Natural Gas Waste to a centralized surface facility outside the "VULNERABLE AREAS" may be approved by the NMOCD pursuant to New Mexico Oil Conservation Commission Order R-7940A.
- (B) Upon application to the NMOCD, the Director of the NMOCD is hereby authorized to approve the use of lined pits and below grade tanks within the "VULNERABLE AREAS" for disposal or storage of Oil and Natural Gas Waste upon a demonstration that the tank or lined pit will be constructed and operated in such a manner as to contain the wastes to be placed therein and to detect leakage therefrom.

- (C) Lined pits or below-grade tanks installed prior to the effective date of this order shall be deemed to have been approved by the Director; provided, however, that such pits or tanks shall be registered with the NMOCD within one (1) year after the effective date of this order. Replacement of such lined pits or below-grade tanks shall be subject to the provisions set forth in Rule 4(B).

RULE 5.    PIT REGISTRATION

- (A) Within one (1) year after the effective date of this order, the owner/operator of any unlined pit outside the "VULNERABLE AREAS" which receives greater than an average of five (5) barrels per day of Oil and Natural Gas Waste must file a Pit Registration Form with the NMOCD in accordance with the directions thereon as shown on Exhibit "A" attached to this order.
- (B) Notwithstanding the provisions set forth in Rule 5(A), any pit previously registered pursuant to New Mexico Oil Conservation Commission Order No. R-8952 need not be registered again.

RULE 6.    PIT CLOSURE

- (A)    Unlined pits in the "VULNERABLE AREAS" which have received Oil and Natural Gas Waste shall be closed in a manner approved by the NMOCD. Applications or plans to close unlined pits in the "VULNERABLE AREAS" shall be submitted to the NMOCD for approval. Such applications or plans may be submitted at any time, but no later than 60 days after the final date scheduled for elimination of the discharge pursuant to Rule 3(B).
  
- (B)    A single application or plan of closure applicable to two (2) or more pits may be submitted and the NMOCD is hereby authorized to approve such application or plan if closure requirements are met.
  
- (C)    Unlined pits in the "VULNERABLE AREAS" which have received Oil and Natural Gas Waste and which were closed prior to the effective date of this order shall be deemed to have been closed in a manner approved by the NMOCD.

RULE 7.     VARIANCES

(A) The NMOCD may approve a variance to Rule 3 (Prohibitions) or Rule 6(A) (Pit Closure) if the discharger can demonstrate that:

(1) the Oil and Natural Gas Waste does not exceed the standards of Section 3-103 of the New Mexico Water Quality Control Commission (WQCC) Regulations; or

(2) fresh water at any future point of foreseeable beneficial use will not be adversely affected by the discharge or pit closure.

(B) For good cause shown, the NMOCD may approve an extension of a specific time schedule for elimination of discharges of Oil and Natural Gas Waste to unlined pits.

(C) The NMOCD may approve a variance to Rule 3 (Prohibitions) or Rule 6(A) (Pit Closure) on an area-wide basis for two (2) or more pits if the discharger can demonstrate that any one or combination of the following conditions exists which allow the discharger to satisfy the demonstration required pursuant to Rule 7(A):

- (1) The pits are located within an area of a similar land use;
- (2) The pits are located within an area in which minimum depth to ground water is uniform;
- (3) The pits are located on the same geologic formation;
- (4) The pits are receiving or have received Oil and Natural Gas Waste of similar chemistry;
- (5) The pits are receiving or have received Oil and Natural Gas Waste of similar volume; or
- (6) Any other condition, the existence of which would evidence a trait or characteristic common to the pits.

RULE 8. REQUESTS FOR APPROVAL -- ACTION BY NMOCD

The NMOCD shall take action on any written request for approval filed or submitted pursuant to the provisions of this order within thirty (30) days after receipt of the request.

BEFORE THE OIL CONSERVATION COMMISSION  
STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING CALLED BY THE  
OIL CONSERVATION COMMISSION FOR THE PURPOSE OF  
AMENDING COMMISSION ORDER R-7940 TO PROVIDE FOR  
THE EXPANSION OF THE DESIGNATED VULNERABLE AREA CASE NO. 10436  
OF THE SAN JUAN BASIN, ELIMINATION OF DISCHARGES  
TO UNLINED PITS, CREATION OF WELLHEAD PROTECTION  
AREAS, ESTABLISHMENT OF DEADLINES FOR COMPLIANCE, AND  
OTHER MATTERS.

REPLY OF THE OIL CONSERVATION DIVISION  
TO THE REQUEST FOR REHEARING

The Oil Conservation Division of the New Mexico Energy, Minerals and Natural Resources Department certifies that on September 4, 1992, copies of its Reply to the Request for Rehearing and this Certificate were mailed to:

W. Thomas Kellahin  
P. O. Box 2265  
Santa Fe, New Mex. 87504-2265

Ernest L. Padilla  
Padilla & Snyder  
P. O. Box 2523  
Santa Fe, New Mex. 87504

B. Tommy Roberts  
Four Corners Gas Producers  
P. O. Box 1020  
Farmington, N.M. 87499

Susan Thomas  
Bureau of Reclamation  
P. O. Box 640  
Durango, Co. 81302

Dennis Olson  
Bureau of Indian Affairs  
P. O. Box 26567  
Albuquerque, N.M. 87125-6567

Joe Chesser  
Bureau of Land Management  
1235 N. La Plata Highway  
Farmington, N.M. 87401

Douglas Meiklejohn  
1520 Paseo de Peralta  
Santa Fe, N.M. 87504

and that copies of this Certificate were mailed to:

Ruth Andrews  
N.M. Oil and Gas Association  
P. O. Box 1864  
Santa Fe, New Mex. 87504-1864

Robert L. Bayless  
P. O. Box 168  
Farmington, N.M. 87499

John Corbett  
Giant E&P  
P. O. Box 2810  
Farmington, N.M. 87499-2810

William F. Carr  
Campbell, Black & Carr  
P. O. Box 2208  
Santa Fe, N.M. 87504-2208

Neel Duncan  
BCO, Inc.  
135 Grant Avenue  
Santa Fe, N.M. 87501

Patrick Flynn  
6143 S. Willow Dr.  
No. 200  
Englewood, Co. 80111



Ilyse Gold  
1235 N. La Plata Highway  
Farmington, N.M. 87401

Carl Kolbe  
5847 San Felipe  
No. 3600  
Houston, Texas 77084

Sylvia Little  
Curtis Little Oil & Gas  
P. O. Box 1258  
Farmington, N.M. 87499

J. Gregory Merriam  
Merriam Oil & Gas Corp.  
P. O. Box 840  
Farmington, N. M. 87499

Ronald Morgan  
Marathon Oil Company  
P. O. Box 552  
Midland, Texas 79705

Nancy Prince  
Environmental Affairs  
P. O. Box 1492  
El Paso, Texas 79925

John Roe  
Dugan Production Corp.  
P. O. Box 420  
Farmington, N.M. 87499

C. Neal Schaeffer  
WTEC  
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Charles Verquer  
Caulkins Oil Company  
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Bloomfield, N.M. 87413

Edmund H. Kendrick  
Montgomery & Andrews  
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Santa Fe, N.M. 87504-2307

Alan Kuhn  
A. K. GeoConsult Inc.  
13212 Manitoba Dr. N.E.  
Albuquerque, N.M. 87111

Arlene Luther  
Navajo EPA  
P. O. Box 308  
Window Rock, Az. 86515

David W. Milles  
WT Environmental Consultants  
8305 Washington Place NE  
Albuquerque, N.M. 87113

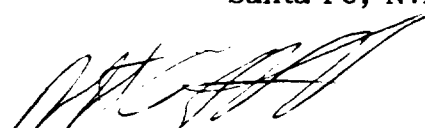
John Phenix  
Conoco Inc.  
3817 N.W. Expressway  
Oklahoma City, Ok 73112

Carol Revelt  
Northwest Pipeline  
295 Chipeta Way  
Salt Lake City, Ut 84158-0900

Margaret Anne Rogers  
MARA INC.  
1753 Camino Redondo  
Los Alamos, N.M. 87544

George Seitts  
Giant Industries Inc.  
23733 N. Scottsdale Rd.  
Scottsdale, Az. 85225

Brian Wood  
Permite West Inc.  
37 Verano Loop  
Santa Fe, N.M. 87501



---

ROBERT G. STOVALL,  
Attorney for Oil Conservation  
Division of the Energy, Minerals  
and Natural Resources Dept.  
P. O. Box 2088  
Santa Fe, New Mexico 87504

LAW OFFICES

**TANSEY, ROSEBROUGH, GERDING & STROTHER, P.C.**

621 WEST ARRINGTON

FARMINGTON, NEW MEXICO 87401

TELEPHONE: (505) 325-1801

RECEIVED  
JUN 24 1992

TELECOPIER:  
(505) 325-4675

OF COUNSEL  
Charles M. Tansey

Douglas A. Echols  
Richard L. Gerding  
Connie R. Martin  
Michael T. O'Loughlin  
James B. Payne  
Tommy Roberts  
Haskell D. Rosebrough  
Robin D. Strother  
Karen L. Townsend

Mailing Address:  
P. O. Box 1020  
Farmington, N.M. 87499

June 25, 1992

William J. Lemay, Chairman  
Oil Conservation Commission  
P.O. Box 2088  
Santa Fe, New Mexico 87504-2088

Re: In the Matter of the Application  
By The Oil Conservation Division  
For Expansion of the San Juan Basin  
"Vulnerable Area", Which Was  
Established By OCC Order R-7940  
In 1985; San Juan, Rio Arriba,  
McKinley and Sandoval Counties,  
New Mexico.

Gentlemen:

Enclosed is the Closing Statement of Four Corners Gas Producers Association in the above referenced matter. Also enclosed is proposed Order jointly drafted by Four Corners Gas Producers and New Mexico Oil & Gas Association.

Sincerely,



Tommy Roberts

TR:nk  
Enclosures

cc w/enc: W. Thomas Kellahin  
Ernest L. Padilla  
Edmund H. Kendrick  
Douglas Meiklejohn  
Robert Stovall  
Susan Thomas  
Joe Chessser  
Dennis Olson

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE APPLICATION  
BY THE OIL CONSERVATION DIVISION  
FOR EXPANSION OF THE SAN JUAN BASIN  
"VULNERABLE AREA", WHICH WAS  
ESTABLISHED BY OCC ORDER R-7940  
IN 1985; San Juan, Rio Arriba,  
McKinley and Sandoval Counties,  
New Mexico.

CASE NO. 10436

CERTIFICATE OF SERVICE

I hereby certify that on June 25, 1992, I mailed copies of  
the Closing Statement of Four Corners Gas Producers Association  
to the following:

W. Thomas Kellahin  
New Mexico Oil & Gas  
Association  
P.O. Box 2265  
Santa Fe, NM 87504-2265

Robert Stovall  
State of New Mexico, Energy,  
Minerals & Natural Resources  
Department  
Oil Conservation Division  
P.O. Box 2088  
Santa Fe, NM 87504-2088

Ernest L. Padilla  
BCO, Inc.  
P.O. Box 2523  
Santa Fe, NM 87505-2523

Susan Thomas  
Bureau of Reclamation  
P.O. Box 640  
Durango, CO 81302

Edmund H. Kendrick  
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Santa Fe, NM 87504-2307

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1235 N. La Plata Hwy.  
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Douglas Meiklejohn  
Southwest Research Information  
Center  
1520 Paseo de Peralta  
Santa Fe, NM 87501

Dennis Olson  
Bureau of Indian Affairs  
P.O. Box 26567  
Albuquerque, NM 87125-6567

  
\_\_\_\_\_  
TOMMY ROBERTS

BEFORE THE OIL CONSERVATION COMMISSION  
STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING CALLED BY  
THE OIL CONSERVATION COMMISSION FOR THE  
PURPOSE OF AMENDING COMMISSION ORDER R-  
7940 TO PROVIDE FOR THE EXPANSION OF THE  
DESIGNATED VULNERABLE AREA OF THE SAN  
JUAN BASIN, ELIMINATION OF DISCHARGES TO  
UNLINED PITS, CREATION OF WELLHEAD  
PROTECTION AREAS, ESTABLISHMENT OF  
DEADLINES FOR COMPLIANCE, AND OTHER  
MATTERS

UPON THE APPLICATION OF THE OIL  
CONSERVATION DIVISION

CASE NO. 10436

Southwest Research and Information Center's  
Certificate of Service of its Closing Statement

Southwest Research and Information Center hereby  
certifies that on June 26, 1992 copies of its Closing  
Statement and this Certificate of Service were mailed to:

W. Thomas Kellahin  
P.O. Box 2265  
Santa Fe, N.M. 87504-2265

B. Tommy Roberts  
Four Corners Gas Producers  
P.O. Box 1020  
Farmington, N.M. 87499

Susan Thomas  
Bureau of Reclamation  
P.O. Box 640  
Durango, Colo. 81302

Joe Chesser  
Bureau of Land Management  
1235 N. La Plata Highway  
Farmington, N.M. 87401

Ernest L. Padilla  
Padilla & Snyder  
P.O. Box 2523  
Santa Fe, N.M. 87504

Robert Stovall  
Oil Conservation Division  
Room 206  
State Land Office  
Santa Fe, N.M. 87501

Dennis Olson  
Bureau of Indian Affairs  
P.O. Box 26567  
Albuquerque, N.M. 87125-  
6567

Edmund H. Kendrick  
Montgomery & Andrews  
P.O. Box 2307  
Santa Fe, N.M. 87504

and that copies of this Certificate were mailed to:

Ruth Andrews  
N.M. Oil and Gas Association  
P.O. Box 1864  
Santa Fe, N.M. 87504-1864

John Corbett  
Giant E&P  
P.O. Box 2810  
Farmington, N.M. 87499-2810

Robert L. Bayless  
P.O. Box 168  
Farmington, N.M. 87499

William F. Carr  
P.O. Box 2208  
Santa Fe, N.M. 87504-  
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135 Grant Avenue  
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Houston, Texas 77084

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Curtis Little Oil & Gas  
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Farmington, N.M. 87499

J. Gregory Merrion  
Merrion Oil & Gas Corp.  
P.O. Box 840  
Farmington, N.M. 87499

Ronald Morgan  
Marathon Oil Company  
P.O. Box 552  
Midland, Texas 79705

Nancy Prince  
Environmental Affairs  
P.O. Box 1492  
El Paso, Texas 79925

John Roe  
Dugan Production Corp.  
P.O. Box 420  
Farmington, N.M. 87499

C. Neal Schaeffer  
WTEC  
400 So. Lorena Avenue  
Farmington, N.M. 87401

Charles Verquer  
Caulkins Oil Company  
P.O. Box 340  
Bloomfield, N.M. 87413

Patrick Flynn  
6143 S. Willow Dr. #200  
Englewood, Colo. 80111

Alan Kuhn  
A.K. GeoConsult, Inc.  
13212 Manitoba Dr. N.E.  
Albuquerque, N.M. 87111

Arlene Luther  
Navajo EPA  
P.O. Box 308  
Window Rock, Ariz. 86515

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Consultants  
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3817 N.W. Expressway  
Oklahoma City, OK 73112

Carol Revelt  
Northwest Pipeline  
295 Chipeta Way  
Salt Lake City, UT 84158-0900

Margaret Anne Rogers  
MARA, Inc.  
1753 Camino Redondo  
Los Alamos, N.M. 87544

George Seitts  
Giant Industries, Inc.  
23733 N. Scottsdale Rd.  
Scottsdale, Ariz. 85225

Brian Wood  
Permite West Inc.  
37 Verano Loop  
Santa Fe, N.M. 87501

  
Douglas Meiklejohn

KELLAHIN, KELLAHIN AND AUBREY

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

W. THOMAS KELLAHIN\*  
KAREN AUBREY†

\*NEW MEXICO BOARD OF LEGAL SPECIALIZATION  
RECOGNIZED SPECIALIST IN THE AREA OF  
NATURAL RESOURCES-OIL AND GAS LAW

†ALSO ADMITTED IN ARIZONA

JASON KELLAHIN (RETIRED 1991)

TELEPHONE (505) 982-4285  
TELEFAX (505) 982-2047

June 26, 1992

William J. LeMay, Chairman  
Oil Conservation Commission  
P.O. Box 2088  
Santa Fe, New Mexico 87504-2088

HAND DELIVERED

Re: In the Matter of the Application  
By the Oil Conservation Division  
For Expansion of the San Juan Basin  
"Vulnerable Area", Which Was  
Established By OCC Order R-7940  
In 1985; San Juan, Rio Arriba,  
McKinley and Sandoval Counties,  
New Mexico.

RECEIVED

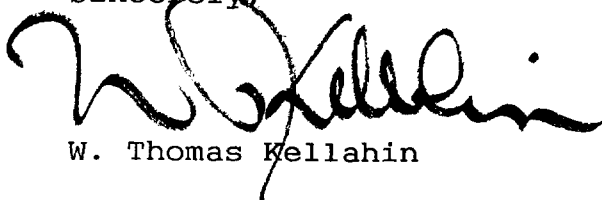
JUN 26 1992

OIL CONSERVATION DIVISION

Gentlemen and women:

Enclosed is the Closing Statement of New Mexico Oil &  
Gas Association in the above referenced matter.

Sincerely,



W. Thomas Kellahin

WTK/kkl

Enclosures

cc w/enc: Tommy Roberts  
Ernest L. Padilla  
Edmund H. Kendrick  
Douglas Meiklejohn  
Robert Stovall  
Susan Thomas  
Joe Chessser  
Dennis Olson

1trt626.126

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE APPLICATION  
BY THE OIL CONSERVATION DIVISION  
FOR EXPANSION OF THE SAN JUAN BASIN  
"VULNERABLE AREA", WHICH WAS  
ESTABLISHED BY OCC ORDER R-7940  
IN 1985; San Juan, Rio Arriba,  
McKinley and Sandoval Counties,  
New Mexico.

CASE NO. 10436

CERTIFICATE OF SERVICE

I hereby certify that on June 26, 1992, I mailed  
copies of the Closing Statement of New Mexico Oil & Gas  
Association to the following:

Tommy Roberts  
P.O. Box 1020  
Farmington, NM 87499

Ernest L. Padilla  
BCO, Inc.  
P.O. Box 2523  
Santa Fe, NM 87505-2523

Dennis Olson  
Bureau of Indian  
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W. THOMAS KELLAHIN

STATE OF NEW MEXICO  
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES  
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARING CALLED BY  
THE OIL CONSERVATION COMMISSION FOR THE  
PURPOSE OF AMENDING COMMISSION ORDER  
R-7490 TO PROVIDE FOR THE EXPANSION OF  
THE DESIGNATED VULNERABLE AREA OF THE  
SAN JUAN BASIN, ELIMINATION OF DISCHARGES  
TO UNLINED PITS, CREATION OF WELLHEAD  
PROTECTION AREAS, ESTABLISHMENT OF  
DEADLINES FOR COMPLIANCE, AND OTHER MATTERS

RECEIVED

JUN 26 1992

OIL CONSERVATION DIVISION

CASE 10436

NEW MEXICO OIL & GAS ASSOCIATION'S  
CLOSING STATEMENT

On behalf of the New Mexico Oil & Gas Association ("NMOGA"), this Memorandum states its closing argument and the legal principles upon which the Oil Conservation Commission ("Commission") must base the promulgation of rules and regulations controlling the expansion of Order R-7490.

ARGUMENT

NMOGA is not unaware or unconcerned about the Division's interest in regulating on the side of "overprotection" of ground or surface waters in certain



areas of the San Juan Basin from oil & gas waste materials.

NMOGA participated in the study sessions and the Commission hearings in 1984-1985 which ultimately resulted in the establishment of the Existing Vulnerable Area set forth in Order R-7490. The Commission's rule-making activity on this subject has been fair and responsible. Both the industry and the environment have benefitted from the past actions of the Commission in establishing reasonable rules tailored to a specific environmental risk. Of some 1,200 oil & gas wells and 300 fresh water wells in the Existing Vulnerable Area, no fresh water well has been contaminated by discharges of produced water into unlined surface pits.

However, the Division now asks this Commission and industry to accept limited data and expand these environmental rules to some 13,000 square miles and some 7,250 wells. This "rule-making" case will adversely affect valuable, established property rights in existing oil and gas production based upon limited evidence to do so.

Specifically, the Olson Report shows that only

five sites out of 13 studied in an area containing about 1,200 sites indicate the presence of BTEX in concentrations in excess of the Water Quality Control Commission Standards.

The evidence presented by the Division only supports a minor rule change to Rule (4) of the Existing Vulnerable Area Order. The Division's evidence demonstrates that small volume discharges into unlined pits are a possible risk to ground water where the depth to ground water is 20 feet or less. Thus the small volume exception rule precluding discharge where the depth to ground water is 10 feet or less should be increased to 20 feet.

The Division has been unable to present substantial evidence of the reasonable probability of contamination to the proposed Expanded Vulnerable Area. The Division speculates that contamination might occur and wants the Commission to place the burden of proof on the industry to show that contamination is not occurring.

In addition, Southwest Research and Information Center ("SWRIC") argues for the Commission to adopt rules that are more stringent than the discharges

allowed by the Water Quality Control Commission Standards. To do so requires the Commission to exceed its statutory authority as set forth in Section 70-2-12(22) NMSA (1978):

...to regulate the disposition of non-domestic waters resulting from the oil field service industry ... including administering the Water Quality Act [74-6-1 to 74-6-4, 74-6-6 to 74-6-13 NMSA 1978] as provided in Subsection E of Section 74-6-4 NMSA 1978.

While the Commission can and should deny the Division's application for lack of substantial evidence, NMOGA does not take that position. NMOGA has participated in this study and supports modifications to and extension of Order R-7490 provided they are fair and reasonable.

NMOGA urges a course of regulatory action which would serve the interests of the Division in environmental protection without being arbitrary or capriciously unfair to the producers in the region who have detrimentally relied on a long standing practice of disposal of produced water approved by this Commission.

NMOGA supports the Four Corners Gas Producers Association's proposed order which, among other things,

proposes to add a few months on to the compliance schedule in order to phase in the burdensome expense of compliance.

The industry is willing to acquiesce to additional regulations of discharges into unlined pits based upon limited scientific data provided that the Commission adopts a procedure with clear criteria for obtaining meaningful exceptions and variances without great expense or delay.

NMOGA hopes the Commission will not constrain the industry to a procedure so as to create an exercise in futility.

**THE COMMISSION MUST BASE RULE-MAKING  
UPON SUBSTANTIAL EVIDENCE**

The following is presented to guide the Commission in properly supporting its rule-making decision in this case:

**(1) SUFFICIENCY OF EVIDENCE:**

Rules governing the admissibility of evidence before administrative boards are frequently relaxed to expedite administrative procedure, but the rules relating to weight, applicability or

materiality of the evidence are not.

See: Saenz v. N.M. Dept. of Human Services, 462  
98 N.M. 805 (Ct.App.1982).

Eaton v. Bureau of Revenue, 84 N.M. 226  
(Ct.App.1972).

**(2) SUBSTANTIAL EVIDENCE:**

"Substantial evidence" supporting  
administrative agency action is relevant evidence  
in the whole record that a reasonable mind might  
accept as adequate to support the findings and  
conclusions of the agency.

"Substantial evidence" in administrative  
agency review requires whole record review, not a  
review limited to those findings most favorable to  
the agency's order.

SEE: Oil Transport Co. v. New Mexico State Corp.  
Com'n, 110 N.M. 568 (1990).

Pacheco v. Sullivan, 931 F.2d 695, (10th  
Cir.1991).

Groendeyke Transport v. N.M. State  
Corporation Commission, 101 N.M. 470 (1984).

Duke City Lumber v. N.M. Employment Sec.  
Dept, 101 N.M. 291 (1984).

Trujillo v. Employment Sec. Dept., 105 N.M.  
467, (Ct.App. 1987).

(3) **RULE-MAKING V. ADJUDICATION:**

The New Mexico Supreme Court has applied the substantial evidence test to administrative rule-making cases. In addition, considerable care should be taken before characterizing this case as "rule-making" in the legal sense as opposed to an "adjudication." This Commission made that mistake in the Uhden case. The subject case is not unlike Uhden in that the Commission is dealing with special rules that do not have a statewide application but are directed towards a particular area with identified companies and individuals with vested property rights who will be immediately affected by this case.

See: Bokum Resources Corporation v. New Mexico Water Quality Control Board, 93 N.M. 546 at 554 (1979).

Uhden v. New Mexico Oil Conservation Commission et al, 33 SBB No 44 at 939, (September 24, 1991).

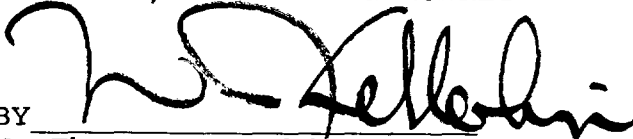
CONCLUSION

Although there has been speculation and postulation about the possibility of contamination of ground water in the Expanded Vulnerable Area, the fact remains that the Division and SWRIC have been unable to present substantial evidence of the reasonable probability of contamination from produced water discharged into unlined surface pits particularly as it involves "dry gas wells."

Adoption of the Division's proposed order will shift the burden of proof to the operator to attempt to "prove a negative." In the alternative, NMOGA asks the Commission to adopt the proposed order submitted by the Four Corners Gas Producers Association as a fair and reasonable solution of this matter.

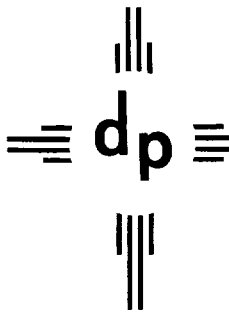
Respectfully submitted:

KELLAHIN, KELLAHIN & AUBREY



BY  
W. Thomas Kellahin  
P. O. Box 2265  
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(505) 982-4285

ment604.126



# dugan production corp.

OIL CONSERVATION DIVISION  
RECEIVED

'92 JUN 28 AM 9 52

June 25, 1992

Mr. Bill LeMay, Director  
New Mexico Oil Conservation Commission  
P.O. Box 2088  
Santa Fe, NM 87504

**Re: NMOCC Case #10436  
Proposed Vulnerable Area Expansion**

Dear Mr. LeMay:

We are writing to support the position of the Four Corners Gas Producers Association, Inc. (4CGPA) in this case. Dugan Production Corp. is one of 35 companies that participated in this group effort of the 4CGPA and strongly supports this group effort. We are in total agreement that the fresh water resources of the State of New Mexico need to be protected and preserved for future generations and pledge our support in this effort. However, we plead that the New Mexico Oil Conservation Commission (NMOCC) exercise every option available to ensure that the mineral industry is not regulated simply to appease environmental radicals.

Dugan Production Corp. has a thirty plus year history of operating low volume, marginal wells in the San Juan Basin Area of Northwest New Mexico. Many of our wells were acquired from other operators that were prepared to permanently plug and abandon these wells due to marginal operating economics. As a result, during 1991 Dugan Production averaged 713 BOPD + 5372 MCFD from 314 active wells, many of which would have long ago been plugged and abandoned had Dugan Production not assumed operations of these wells.

The proposal by the NMOCD to expand the Vulnerable Area to encompass approximately 2½ million acres in Northwest New Mexico will result in 46 wells operated by Dugan Production being plugged and abandoned with a corresponding loss in current production of 13 BOPD + 260 MCFD. These 46 wells will be plugged simply because at their current producing rates, although currently marginally economic (during 1991 our average gas price was \$1.69 per MCF and our average oil price was \$19.47 per bbl), we will not be able to justify an expenditure of \$3,500 to \$5,000 per well necessary to install a tank or line the pit as required to continue disposing of very, very small volumes of produced water (in all cases less than 1 BOPD per well and often only a few gallons per day). The expenditures related to closing the existing pits (which will



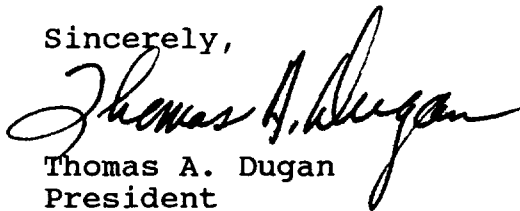
Letter to Mr. Bill LeMay, NMOCC  
June 25, 1992  
Page 2

average between \$3,600 and \$13,000 per well) were not included in the decision to cease operation on these 46 wells. These 46 wells account for approximately 15% of our active wells and although the daily volumes lost will be fairly small, over a four year period, a loss of approximately 19,000 barrels of oil and 380 MMCF of gas will result.

These are only the actual out-of-pocket costs related to this issue. In addition, there will be a tremendous administrative cost to the oil and gas industry, as well as to the Oil Conservation Division, resulting from issues related to this case. The hearing process alone has resulted in a time investment for Dugan Production of approximately 750 man hours.

Again, Dugan Production supports the Commission taking whatever action is necessary to protect the fresh ground waters of New Mexico, however, we request that you also make every effort to not unnecessarily burden the oil and gas industry with regulations that serve no benefit.

Sincerely,

A handwritten signature in cursive script, reading "Thomas A. Dugan". The signature is written in dark ink and is positioned above the printed name and title.

Thomas A. Dugan  
President

TAD/JDR/cg

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

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

THE APPLICATION OF THE OIL CONSERVATION  
DIVISION FOR AN EXPANSION OF THE  
SAN JUAN BASIN VULNERABLE AREA

RECEIVED CASE NO. 10436

JUN 26 1992

OIL CONSERVATION DIVISION

CLOSING STATEMENT OF THE APPLICANT

In 1985 this Commission adopted Order R-7940 which established a "vulnerable area" in the San Basin production area of the State. The rules for that area, generally defined as being lands within 100 vertical feet of the three major rivers and designated special areas, prohibited the discharge of produced fluids into unlined surface pits. This was not the first time the Commission had taken such an action. In 1967 the Commission adopted Order R-3221 which prohibited discharges into unlined pits in a defined area in Southeast New Mexico.

It is uncontroverted that produced water from oil and gas operations can contain contaminants, either dissolved solids or hydrocarbons. Orders R-7940 and R-3221 were premised on the determination that such produced water had the potential to contaminate fresh ground water supplies. Order R-3221 contains no exemptions, but it does have a procedure for obtaining an exception through a hearing process. Order R-7940 exempts from its restriction disposal of small volumes - less than five barrels per day - of produced water.

Both orders were issued to fulfil in part the Commission's mandate to protect fresh water<sup>1</sup>. That provision places an affirmative burden on the Commission to take reasonable

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<sup>1</sup>§70-2-12(B), N.M.S.A. 1978

steps to prevent the contamination of fresh water. This Commission does not establish water quality standards. That fresh water has been defined by the State Engineer as water with less than 10,00 parts per million total dissolved solids is not in dispute. The new Mexico Water Quality Control Commission acting under authority of the *Water Quality Control Act*<sup>2</sup> has established levels on contamination of water with certain constituents which are based upon known human health risks. These are the standards that are applied by the Division.

Prevention of that contamination is the objective of the proposed rule. Subsequent to the adoption of R-7940, the Division has conducted studies which have shown that even small volumes of produced fluid disposed into unlined pits can harm shallow fresh water. The studies have also shown that fresh water can be found at shallow depths outside the present vulnerable area.

The Commission can approach its duty to protect fresh water in one of two ways. The first alternative is to do nothing in terms of prevention and rely on the potential enforcement of the existing rules and statute to prevent contamination. Using that approach, the division as the enforcement arm of the Commission, would take no action until a violation has occurred, at which time it could seek to impose penalties on the violator and require remediation. The difficulty with that approach is that the presence of contaminants in the water might not be discovered until they showed up in a well or other point of use, which could be many years and miles away from the point of contamination.

At that time it might be impractical or impossible to identify the specific source or responsible party. More critically, it might be impossible, or at least prohibitively expensive to remediate the problem.

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<sup>2</sup>§§74-6-1 et seq., N.M.S.A. 1978

The other approach, and the one which the Division recommends, is to adopt reasonable prevention standards: prevent the discharges which have the potential to cause contamination in the first place by requiring those discharges to be contained in an impermeable vessel such as a tank or a lined pit.

It is important for the Commission to understand that this case is not an adjudication of historical facts. The Division did not submit evidence for the purpose of proving that a specific incidence of fresh water contamination has occurred. Nor is the Division trying to establish that a level of contamination will occur.

This case is about adopting rules which will require actions to prevent contamination of fresh water. The Division is requesting that the Commission adopt rules which will require operators to take action in the future which will prevent the occurrence of contamination.

In order to support its application, and for the Commission to adopt the requested rules, the division must show that there is an duty to protect the water, that there is a risk of harm and the nature of the risk. Once that has been established, the Commission must determine that the proposed requirements are reasonably related to the harm sought to be prevented.

The *Oil and Gas Act* provision cited above imposes the duty to protect fresh water. The Division has demonstrated that disposal of even small volumes of fluids into produced fluids poses a threat to protectable water supplies. Admittedly the sample population was relatively small compared to the entire population of pit sites within the San Juan Basin. But the presence of contamination within a significant portion of those sites is enough to demonstrate that the problem can exist.

Is the proposed regulation reasonably related to the harm sought to be prevented? Clearly it is! The essence of the proposed rule is to prohibit operators from discharging fluids into unlined earthen pits. It is not over-broad in its requirement. Industry is given

great latitude to develop effective means to comply with the requirement. The Division has developed guidelines for the installation of facilities, compliance with which would be presumed to satisfy the requirement. But the Division guidelines and methods are not comprehensive. If operators have other methods of compliance which will offer comparable protection, they are free to propose those methods to the division for approval. Are the economic burdens on the industry reasonable. The Division believes so. The immediate cost is the replacement of existing unlined pits. Additional costs of cleaning pits are costs which will have to be borne by the operator at some point, and the Division proposal allows those actions to be undertaken under a plan submitted by the operator.

The rest of the rule deals with definitions of the geographic areas subject to the rules, timetables for implementation for existing pits and procedures for obtaining variances from the rule.

Three participants have come forward and requested broad exemptions from applicability of the rules. The Four Corners Gas Association ("Four Corners") has requested an exemption for discharges from "dry gas wells" outside the current vulnerable area. BCO, Inc. ("BCO") has requested an exemption for 324 square mile area within which it has operations. Williams Field Services requested an exemption for pipeline dehydration pits.

The Division opposes these exemptions for the same reasons that it has proposed these rules in the first place. If the Commission agrees that "an ounce of prevention" is the preferred approach to protecting fresh water, then granting broad exemptions within the rule or order is inconsistent with that approach. None of the request are supported by sufficient information to support the granting of the exemptions.

Four Corners request is based upon the premise than dry gas wells do not produce sufficient volumes of fluids to cause contamination. Yet the technical evidence presented by Four Corners show contamination of the soil from produced fluids from such wells. Such contamination has the potential to reach groundwater over a period of time, if such

groundwater is present. Furthermore, the requested exemption is based upon a definition of dry gas wells as wells from which liquid hydrocarbons are not extracted. Whether or not liquids are extracted is a function of marketability of the liquids. Quantities which are too small to be effectively marketed may be sufficient to cause contamination.

The BCO approach requests an exemption for nine full townships based upon the premise that there are no alluvial deposits with the entire area. It just so happens that the nine townships happen to encompass virtually all of BCO's operations. The request is supported by flawed geologic analysis. The BCO witness used two surface observation points to draw a six mile cross-section showing almost a thousand feet of Nacimiento formation protecting the Ojo Alamo water zone. He then interpreted his flawed cross-section to argue that there were no alluvial deposits through out the 324 square miles.

Division staff spent one day in the field with the proposed exemption area and found several alluvial washes which contained water very close to the surface. At least two of the water wells identified by BCO are perennial water sources.

Williams' request is premised on the argument that discharges from dehydrators are primarily clean water extracted from a gas stream. Unfortunately, one of the most serious contamination cases in the San Juan Basin, which involved a community water supply, was caused by a dehydrator upset.

It isn't necessary for the Commission to go into detailed analysis of the technical side of the presentations. None of the evidence presented by any party is sufficiently comprehensive to allow a complete evaluation of discharges throughout the Basin.

The Division fully recognizes that it has identified a large area for inclusion under the proposed rule. It also recognizes that not every pit site is above shallow groundwater. The Division doesn't know where all the groundwater in the Basin is located. Nor do the operators. Southwest Research and Information Center ("SRIC") has recommended that the entire San Juan Basin be subject to the no pit requirement. The proposed area is based

upon a determination that the arroyos are likely places to find shallow ground water.

The Division also recognizes that not all discharges contain contaminants which can or will pollute groundwater. There are some operations which result in discharge of "fresh" water.

Therefore the division has built a procedure for obtaining a variance from the requirements of the rule. It does place the burden on the operator to demonstrate either that there is no water to be contaminated or that the discharge does not contain impermissible levels of contaminants, but that is where the burden should be. The operators have access to information at specific sites to enable them to support a variance. Under the variance procedure, the requests of Four Corners, BCO and Williams can be address with more specific and comprehensive information and review.

The threshold question the Commission must decide is whether or not it is going to place an emphasis on prevention of a problem. If it so elects, the solution is to adopt the Division request for an expansion of the vulnerable area and implement the no pit requirement throughout the area without exemption, but subject to variance in accordance with the Division's procedures. If the Commission chooses to incorporate exemptions that are totally inconsistent with the concept of prevention, then the Commission should deny the Division's application. Enforcement of such an order would place an impractical burden on the Division, for it would have to make the same types of investigations as if there were no rule at all.

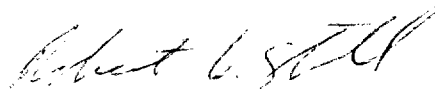
Assuming the Commission approves the Division's application, the next question is the adoption of the implementation provisions. First is the timetable for implementation. The Division has proposed what it believes to be a reasonable timetable for implementation of replacement of existing pits within the vulnerable area. Industry would like to see much almost double the time schedule recommended by the Division, while SRIC, representing environmental interests would prefer substantially reduced time-frames. The Division's

proposed one, two and three year requirements with additional two years for each phase under the variance procedure gives the industry a reasonable time to eliminate discharges without creating a significant additional environmental risk.

The other significant provision is the procedure and requirements for a variance. SRIC has proposed language which would make it virtually impossible to obtain a variance. The division's proposed language recognizes that the purpose of the order is to afford reasonable protection to fresh water, public health and the environment. The Division has modified the language of the variance provision to require notice to be given to owners and occupants of lands within one-half mile of the site by deliver with some sort of return receipt, which could include personal service, certified mail or express services with return receipt. The requirement also includes notice by publication in a newspaper of statewide circulation and in the county in which the property is located. This is consistent with notice required in other similar types of applications.

The Division requests that the Commission adopt the rules for the expanded vulnerable as proposed herein, without exemptions and with the recommended time schedules. By doing so the Commission will fulfill its duty to afford reasonable protection to fresh water, public health and the environment without imposing an unreasonable burden on the industry.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Robert G. Stovall", is written over a horizontal line.

Robert G. Stovall  
General Counsel  
New Mexico Oil Conservation Division  
P.O. Box 2088  
Santa Fe, NM 87504  
(505)827-5805



**OIL CONSERVATION DIVISION**  
**PROPOSED**  
**VULNERABLE AREA ORDER**  
(June 26, 1992)

(I) Within the counties of San Juan, Rio Arriba, Sandoval and McKinley, State of New Mexico, there is hereby designated a "VULNERABLE AREA" defined as follows:

(a) That area within the valleys of the San Juan, Animas, La Plata, Chama and Navajo Rivers which is bounded by the topographic line on either side of the river that is 100 vertical feet above the river channel measured perpendicular to the river channel;

(b) Those areas that lie between the above-named rivers and the following ditches:

Highland Park Ditch	Greenhorn Ditch
Hillside Thomas Ditch	Lower Animas Ditch
Cunningham Ditch	Farmers Mutual Ditch
Farmers Ditch	Citizens Ditch
Halford Independent Ditch	Hammond Ditch;

(c) That area which is within the drainage bottoms of all major perennial and ephemeral surface water drainages bounded by the topographic line on either side of the drainage that is 50 vertical feet above the drainage channel measured perpendicularly to the drainage channel;

(d) The following areas, which shall be known as Wellhead Protection Areas:

(1) Those areas that lie within 1,000 horizontal feet of a public water supply and;

(2) Those areas that lie within 200 feet of all other fresh water wells and springs.

(3) Wellhead Protection Area shall not include areas around water wells which are drilled after the effective date of this order if such water wells are located within the distances specified in Subsection (I)(d)(1) & (2) to an existing source of oil or natural gas waste.

- (e) Those lands which constitute the Vulnerable Area as defined in paragraphs (I)(a), (b) &(c) which are within the extent of known oil and gas production are delineated on United States Geological Survey Quadrangle Maps which are maintained in the Santa Fe Division Office.
- (II) To protect fresh waters, Special Rules and Regulations governing the disposal of oil and gas wastes in the Vulnerable Area of San Juan, McKinley, Rio Arriba and Sandoval Counties are hereby promulgated as follows:

**SPECIAL RULES AND REGULATIONS FOR THE DISPOSAL OF  
OIL AND NATURAL GAS WASTES IN THE VULNERABLE AREA IN  
SAN JUAN, MCKINLEY, RIO ARRIBA AND  
SANDOVAL COUNTIES, NEW MEXICO**

**RULE 1.    APPLICABILITY**

These rules shall apply to the disposal of all oil and natural gas waste within the Vulnerable Area whether such wastes are disposed of within or without said areas.

**RULE 2.    DEFINITIONS**

- (a) **Aquifer:** An aquifer is a saturated permeable geologic unit (a geological formation, group of formations, or part of a formation) that can transmit significant quantities of water under ordinary hydraulic gradients.

For purposes of this definition, the word significant means that the water from the aquifer is used for or may presumed to be usable for municipal, industrial, domestic, agricultural, or stock watering purposes.

- (b) **Fresh Water to be protected** includes the water in lakes and playas, the surface waters of all streams regardless of the quality of the water within any given reach, and all underground waters containing 10,000 milligrams per liter (mg/l) or less of total dissolved solids. The water in lakes and playas shall be protected from contamination even though it may contain more than 10,000 mg/l of TDS unless it can be shown that hydrologically connected fresh water will not be adversely affected.
- (c) **Public Water Supply** shall mean all fresh water wells which supply 25 people or more at least 60 days out of the year.
- (d) **Oil and Natural Gas Wastes** shall mean those wastes produced in conjunction with the production, refining processing and transportation of crude oil and/or natural gas and commonly collected at field storage, processing or disposal facilities, and waste collected at gas processing plants, refineries and other processing or transportation facilities.
- (e) **Field Storage, Processing or Disposal Facilities** include but are not limited to: separators, dehydrators, blowdown pits, workover pits, burn pits, lease tanks, commingled tank batteries, LACT units, community or lease salt water disposal systems, gathering and transmission line drip pits.

- (f) Pit: That below grade or surface excavation which receives any type of oil and gas waste as described above.

RULE 3. PROHIBITIONS

- (a) Disposal of oil and natural gas wastes produced within the Vulnerable Area into unlined pits or onto the ground surface is prohibited.
- (b) Current discharges of oil and natural gas wastes to unlined pits within the Vulnerable Area will be eliminated pursuant to the following schedule:

- (1) All discharges of oil and natural gas wastes to unlined pits located in the areas defined in Subsections (I)(a), (I)(b) and (I)(d)(1) will be eliminated within one (1) year of the effective date of this order.

- (2) All discharges of oil and natural gas wastes to unlined pits located in the areas defined in Subsection (I)(d)(2) and discharges which are within the following major tributaries of the respective river systems will be eliminated within two (2) years of the effective date of this order:

(i) San Juan River

Armenta Canyon	Laguna Seca Draw
Benito Canyon	Locke Arroyo
Bloomfield Canyon	Malpais Arroyo
West Fork	
Bloomfield Canyon	Mansfield Canyon
Caballo Canyon	Manzanares Canyon
Cabresto Canyon	Many Devils Wash
Canon Bancos	Munzo Canyon
Canon Largo	Negro Andy Canyon
Carracas Canyon	Ojo Amarillo Canyon
Chaco River/Chaco Wash	Potter Canyon
Chavez Canyon	Pump Canyon
Collidge Canyon	Rattlesnake Wash
Cottonwood Canyon	Red Wash
Creighton Canyon	Ruins Canyon
Dain Arroyo	Salt Creek Wash
Eagle Nest Wash	Shiprock Wash
Eul Canyon	Shumway Arroyo
Farmington Glade	Slane Canyon
Frances Creek	Little Slane Canyon
Gallegos Canyon	Stevens Arroyo
Gobernador Canyon	Stewart Canyon
Green Canyon	Sullivan Canyon
Hare Canyon	Tom Gale Canyon

Head Canyon  
Horn Canyon  
Kutz Canyon  
La Fragua Canyon  
La Jara Canyon

Vaca Canyon  
Valdez Canyon  
Waughan Arroyo  
Wright Canyon

(ii) Animas River

Arch Rock Canyon  
Barton Arroyo  
Blancett Arroyo  
Bohanan Canyon  
Calloway Canyon  
Cook Arroyo  
Cox Canyon  
Ditch Canyon  
Estes Arroyo  
Flora Vista Arroyo  
Hampton Arroyo  
Hart Canyon

Hood Arroyo  
Johnson Arroyo  
Jones Arroyo  
Kiffen Canyon  
Knowlton Canyon  
Kochis Arroyo  
Miller Canyon  
Rabbit Arroyo  
Tucker Canyon  
Williams Arroyo  
Wyper Arroyo

(iii) La Plata River

Barker Arroyo  
Conner Arroyo  
Cottonwood Arroyo  
Coyne Arroyo  
McDermott Arroyo

Murphy Arroyo  
Pickering Arroyo  
Thompson Arroyo  
Two Cross Arroyo

- (3) All discharges of oil and natural gas wastes to unlined pits in any remaining surface water tributaries within the Vulnerable Area will be eliminated within three (3) years from the effective date of this order.
- (c) After the effective date of this order, no oil and natural gas wastes shall be removed from the Vulnerable Area for surface disposal except upon authorization of the Aztec District Manager to transport oil and natural gas wastes to such facilities as may be approved by the Division Director for acceptance of such wastes.
- (d) No oil and natural gas wastes may be disposed of or stored in below grade tanks or lined pits except after application to and approval by the Division.

RULE 4. SURFACE DISPOSAL FACILITIES TO BE APPROVED

- (a) Disposal of oil and natural gas wastes to a centralized surface facility outside the Vulnerable Area may be approved by the Division pursuant to OCC Order R-7940A.
- (b) Upon application to the Division, the Director of the Division is hereby authorized to approve administratively the use of lined pits and below grade tanks within the Vulnerable Area for disposal or storage of oil and natural gas wastes upon a proper showing that the tank or lined pit will be constructed and operated in such a manner as to safely contain the wastes to be placed therein and to detect leakage therefrom.
- (c) Any existing lined pits or below-grade tanks installed prior to the effective date of this order shall be registered with the OCD within one (1) year after the effective date of this order. Any replacement of such lined pits or tanks shall be subject to the provisions set forth in Rule 4 (b).

RULE 5. PIT REGISTRATION

Within one (1) year of the effective date of this order, the owner/operator of any unlined pit outside the Vulnerable Area which receives greater than an average of five (5) barrels per day of oil and natural gas wastes must register such pit(s) with the Division.

RULE 6. PIT CLOSURE

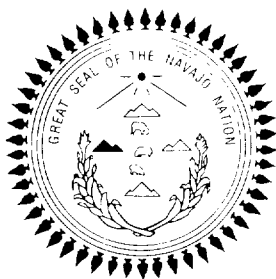
All unlined pits in existence as of the effective date of this order which have received oil and natural gas wastes and for which discharges are to be eliminated shall be closed in a manner approved by the Oil Conservation Division. Applications or plans to close existing unlined pits in the Vulnerable Area shall be submitted to the Division for approval at any time, but no later than 60 days from the final date for elimination of the discharge pursuant to Rule 3 (b).

RULE 7. VARIANCES

- (a) The Director of the OCD may administratively approve a variance to Rule 3 (a) upon a finding that a complete and proper application has been filed and that no significant objections have been filed within 30 days following public notice. All applicants for a variance from Rule 3 (a) must demonstrate to the Division that:
  - (1) The discharge quality does not exceed the New

Mexico Water Quality Control Commission (WQCC)  
Ground Water Standards, or;

- (2) fresh water at the discharge location will not be affected by the discharge at any future point of foreseeable beneficial use, and;
  - (3) the discharge is not located within a Wellhead Protection area defined in Subsection (I)(d), and;
- (b) For good cause shown, the Director of the OCD may administratively allow an extension of time for a period not to exceed two (2) years from that specified in Rule 3 (b) for elimination of discharges of oil and natural gas wastes to unlined pits upon a finding that a complete and proper application has been filed and that no significant objections have been filed within 30 days following public notice.
- (c) All applicants for variances shall:
- (1) Give written notice of the application to the owners of surface lands and occupants thereof which are within one-half (1/2) mile of any site for which a variance is sought. Such notice shall be by personal service or postal or other delivery by which receipt is acknowledged in writing.
  - (2) Provide public notice, in a form approved by the Division, by advertisement in a newspaper of general circulation published of the state and in the county in which the variance is sought, and;
  - (3) Provide proof of compliance with these notice provisions to the Division.



# THE NAVAJO NATION

P.O. BOX 308 • WINDOW ROCK, ARIZONA 86515 • (602) 871-4941

PETERSON ZAH  
PRESIDENT

MARSHALL PLUMMER  
VICE PRESIDENT

## BEFORE THE OIL CONSERVATION COMMISSION STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING CALLED BY )  
THE OIL CONSERVATION COMMISSION FOR THE )  
PURPOSE OF AMENDING COMMISSION ORDER )  
R-7940 TO PROVIDE FOR THE EXPANSION OF )  
THE DESIGNATED VULNERABLE AREA OF THE SAN )  
JUAN BASIN, ELIMINATION OF DISCHARGES TO )  
UNLINED PITS, CREATION OF WELLHEAD )  
PROTECTION AREAS, ESTABLISHMENT OF )  
DEADLINES FOR COMPLIANCE, AND OTHER )  
MATTERS )

CASE NO. 10436

UPON THE APPLICATION OF THE OIL )  
CONSERVATION DIVISION )

The Navajo Nation Environmental Protection Administration  
Window Rock, Arizona  
Hearing Statement

The proposed amendment to Order R-7940 will affect approximately 18 tributaries located within the jurisdiction of the Navajo Nation. There are crude oil and natural gas operators who have unlined pits located within the proposed "Vulnerable Area" on Navajo Nation lands. The actual number of unlined pits on Navajo Nation lands is unknown at this time, but is estimated to number in the hundreds, if not thousands.

The Navajo Nation fully supports the amended Vulnerable Area Order proposed by the Oil Conservation Division. The discharge of oil and gas waste to unlined pits in vulnerable areas on Navajo lands is unacceptable. The Navajo Nation Environmental Protection Administration has recommended to the Navajo Nation Department of Justice that a similar rule be adopted and enforced by the Navajo Nation.

The Navajo Nation recommends that certain portions of the proposed Order be modified and strengthened as follows:

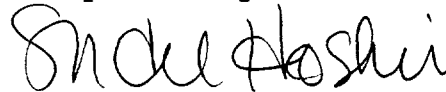
1. Under Part (I)(d)(2) of the Order, replace **200 feet** with **1000 feet**. This was the required distance from fresh water wells and springs in the original amended Order proposed by the Oil Conservation Division. Based on the original



recommendation of OCD and testimony given in the hearing by Southwest Research and Information Center witness, Michael G. Wallace, who conducted computer model studies of the Vulnerable Area, 1000 feet is a reasonable distance in which protection should be afforded to fresh water wells and springs. We believe that the burden of demonstrating otherwise should be on the operator and should be site-specific.

2. Operators that have closed unlined pits in the proposed Vulnerable Area since the amended Order was proposed in January, 1992, should be required to submit the results of investigations, studies, and closures to the Division for review and approval, subject to additional monitoring or corrective actions as the Division may deem necessary to protect fresh water supplies, public health and the environment. This requirement is needed to ensure that pits that were closed prior to the effective date of a revised Order R-7940 were closed consistent with the Division closure guidelines.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sadie Hoskie". The signature is fluid and cursive, with the first name "Sadie" and last name "Hoskie" clearly distinguishable.

Sadie Hoskie,  
Executive Assistant to the  
President and Director,  
Navajo Nation Environmental  
Protection Administration

PADILLA & SNYDER  
ATTORNEYS AT LAW  
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JUN 19 1992

OIL CONSERVATION DIV.  
SANTA FE

June 19, 1992

HAND DELIVERED

William J. LeMay  
Chairman, Oil Conservation Commission  
State Land Office  
Santa Fe, New Mexico 87501

Re: Case No. 10436  
San Juan Basin Vulnerable Area

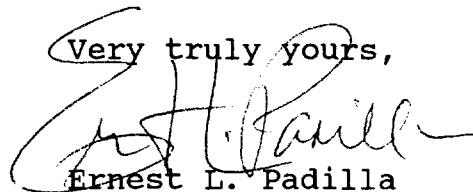
Dear Mr. LeMay:

Enclosed please find originals and two copies each of:

- (1) Closing Statement
- (2) Memorandum of Law
- (3) Proposed Order of BCO, Inc.
- (4) Certificate of Service

Should you have any questions please let me know.

Very truly yours,



Ernest L. Padilla

ELP/pmc  
Enclosures  
xc: BCO, Inc. (w/encls)

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STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

JUN 19 1992

OIL CONSERVATION DIV.  
SANTA FE

IN THE MATTER OF THE APPLICATION  
BY THE OIL CONSERVATION DIVISION  
FOR EXPANSION OF THE SAN JUAN BASIN  
"VULNERABLE AREA", WHICH WAS  
ESTABLISHED BY OCC ORDER R-7940  
IN 1985; San Juan, Animas, and  
La Plata Rivers in San Juan,  
Rio Arriba, McKinley and Sandoval  
Counties, New Mexico.

CASE NO. 10436

CLOSING STATEMENT

On January 16, 1992, this Commission convened for the purpose of hearing the application of the Oil Conservation Division to amend the "Vulnerable Area" as promulgated by Order No. R-7940 in 1985. At that time the direct case of the Oil Conservation Division was presented. The principal piece of evidence that was introduced by the Division's chief witness in this proceeding, Mr. William C. Olson, was a study entitled "Volatile Organic Contamination of Ground Water Around Unlined Produced Water Pits". The study concluded that BTEX contaminants in the vicinity of thirteen oil and gas wells are concentrated in the San Juan River alluvial basin. All of these wells were located within, or very close to, the existing Vulnerable Area as defined in Order R-7940. In addition, these sites were selected by the Division for study because they fall within the exempt category comprised of wells having discharges of less than 5

barrels per day in accordance with Order R-7940. As we understand Mr. Olson's testimony regarding the thirteen sites that were reviewed, nine had ground water contamination by dissolved aromatic volatile organics. Seven of those nine sites had ground water contamination in excess of New Mexico water quality standards for benzene.

But to understand and relate to the issues presented, it is not necessary to consider the scientific data in detail. In this regard, I would like to emphasize to the Commission that there is agreement among the parties that there is need for ground water protection within the existing Vulnerable Area. Moreover, possibly there is a need for such protection within areas of the proposed expanded Vulnerable Area in close proximity to the existing Vulnerable Area. However, while it may be justified to say that ground water contamination is occurring within the area studied by Mr. Olson, it does not follow that this analysis is similarly applicable to the entire expanse of all of the San Juan Basin, including the Lybrook area. It would be especially inappropriate to draw such a conclusion without the benefit of any study of that area having been conducted.

The Lybrook area, where BCO operates its oil and gas properties, was studied by BCO specifically to address the issues before the Commission at this hearing. Its study unequivocally concluded, after thorough analysis, that the

geologic and hydrogeologic conditions of the area studied by Mr. Olson were completely different from the area where BCO operates its oil and gas properties. Even the evidence presented by the Southwest Research Information Center in support of the Division did not include one piece of data from the Lybrook area. An attempt at using statistical analysis for expansion of the existing Vulnerable Area to include all of the San Juan Basin was effectively refuted by Commissioner Weiss' questions of SRIC's hydrological expert. In short, the sampling and selection of the thirteen wells in Mr. Olson's study was not random and did not justify an extension of the Vulnerable Area to include the Lybrook area.

Mr. Shuie, one of SRIC's experts, attempted to compare the type of BCO's discharges, which average approximately a half barrel per day, from 24 sites within the proposed expanded Vulnerable Area with the type of discharges that have occurred in the Lee Acres site is absurd, unconvincing and irrational. On cross examination, even Mr. Shuie had to admit that this was comparing apples and oranges.

This also pertains to the modeling performed by Mr. Wallace, SRIC's hydrologist. Mr. Wallace's statement that he took what he "thought" was appropriate, borders on irresponsibility. He conceded that he never studied the Lybrook area and further admitted that, if he had been given the parameters of the Lybrook area as his model, the results

would most likely have been be entirely different. Indeed, they are unquestionably different and distinct.

The positive aspects of the Lybrook area are based on the original considerations and guidelines upon which BCO conducted its study. These considerations and guidelines were:

(1) The fact that BCO, by its operations in the Lybrook area, has not contaminated any ground water, irrespective of whether those operations were within the proposed Vulnerable Area.

(2) The inquiry regarding whether continued and future BCO operations would have a likelihood of causing contamination to fresh water sources.

The study determined emphatically that BCO's operations have not, and will not, have any likelihood whatsoever of causing contamination to fresh water sources. The ultimate conclusion reached by BCO's hydrology experts was that the proposed regulation was not necessary in the Lybrook area. The conclusion was not even refuted by Mr. Olson's trip to the Lybrook area three days before the May 21 portion of this hearing. In fact, Mr. Olson's trip confirmed that the fresh water he tested had a better quality than Santa Fe water. The ultimate conclusion still stands:

No present contamination and absolutely no possibility of future contamination exists.

BCO's production facilities in the Lybrook area are located in an area bearing little hydrogeologic resemblance to the study areas forming the basis for the proposed rule. The studies conducted by the Division were performed in saturated alluvial valleys having significant susceptibility to surface contamination. Again, no one questions the need for the rule in the existing Vulnerable Area nor that the exemption of 5 barrels per day should be eliminated. However, there is no basis for the rule in the Lybrook area. The proposed expanded Vulnerable Area in the Lybrook area is located on dense shale outcrops of the Upper Naciminto Formation which is characterized by very low permeability and erratic, nonpotable ground water depths averaging an excess of 200 feet.

The Ojo Alamo Formation, which contains the best aquifer in the Lybrook area, is protected by geologic separation from BCO discharges. Surface springs are topographically higher than BCO's discharges.

At the May 21 hearing Mr. Kilmer, our hydrologic expert, emphatically demonstrated that any BCO BTEX discharges by the time they reach 20 feet, meet water quality standards, and certainly, by the time they reach 30 feet, would not contain any trace of contaminants. Further, these discharges are not flowing into any type of shallow water aquifers at that depth.


Unfortunately, despite the complete lack of factual basis for expansion of the vulnerable area, the burden has been placed on BCO and the other parties resisting the application to persuade the Commission of its position. In this connection, we are submitting to the Commission our Memorandum of Law to support our position that it would be arbitrary, capricious and illegal for the Commission to promulgate a rule or regulation that was lacking in a factual basis. The Division, in this case, has only proved that, within the existing vulnerable area, the rule, as proposed by the Division, should be promulgated. The Division, under no circumstances, has met its burden of proof or even remotely came close to showing, on the basis of substantial evidence, that the rule was necessary within the Lybrook area.

The Commission should act consistently with the factual basis and rationale for creating a Vulnerable Area and refrain from placing additional economic burdens on producers such as BCO. The Lybrook area, and other areas with distinct geologic and hydrogeologic features which do not threaten water quality standards properly should be exempted from the proposed expansion of the Vulnerable Area.



Respectfully submitted,

PADILLA & SNYDER

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STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

JUN 19 1992

OIL CONSERVATION DIV.  
SANTA FE

IN THE MATTER OF THE APPLICATION  
BY THE OIL CONSERVATION DIVISION  
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Counties, New Mexico.

CASE NO. 10436  
Order No. R-\_\_\_\_\_

MEMORANDUM OF LAW

On January 31, 1992, the Oil Conservation Division (OCD) proposed expanding the vulnerable area established in 1985 by Order R-7940. The proposed expansion of the vulnerable area would eliminate surface disposal of oil and natural gas wastes into unlined pits which are located in the San Juan Basin. Studies of the geologic formations of the current vulnerable area and the area near Lybrook, where BCO's operations are located, demonstrate conclusively that they are completely dissimilar. The current vulnerable area is located within 100 vertical feet of the San Juan, Animas and La Plata river channels and within other known shallow ground water areas. In contrast, BCO's operations near Lybrook, are located on dense shale outcrops, characterized by very low permeability. The Ojo Alamo Sandstone is the only potable aquifer in the Lybrook area with its community well located at a depth of 1300 feet. Moreover, springs near Lybrook would not be affected by discharges as they are

topographically higher than the extended vulnerable areas. There has been no indication of contamination of ground water in the Lybrook area, despite more than 30 years of oil and gas production.

No factual basis exists for the OCD's proposed rulemaking that would expand the existing vulnerable area to include geologic formations that are completely dissimilar to the existing vulnerable area. The existing vulnerable area was created to protect fresh water resources in an area where high permeability of the geologic formations threatened organic contamination of the ground water. Since the Lybrook area has distinct geologic formations that are not highly permeable and contamination of ground water is not threatened, there is no factual basis for a rule that would extend the vulnerable area to include Lybrook.

A plethora of caselaw exists that supports the requirement that rulemaking proceedings must be based on relevant factors and be supported by a factual basis. In addition to the absolute requirement of a factual basis, a formal rule-making procedure must comport with a substantial evidence standard and will be set aside if it is arbitrary, capricious or an abuse of discretion. American Tunaboat Ass'n. v. Baldridge, 738 F.2d 1013 (9th Cir. 1984).

In Connor v. Andrus, 453 F. Supp. 1037 (W.D. Texas 1978) a declaratory judgment suit was brought to have certain hunting regulations of the United States Fish and

Wildlife Service of the Department of the Interior declared invalid and to enjoin the enforcement of the regulations. The district court held that regulations promulgated in order to further the Endangered Species Act, which prohibited all duck hunting in designated portions of Texas, New Mexico and Arizona, were not based on all the relevant factors which the Fish and Wildlife Service should have considered and, therefore, could not be sustained. The court explained:

Clearly the record and the evidence in this case demonstrate that the Mexican duck is threatened by the destruction of its natural habitat. Additionally, it shows that the other danger is hybridization with the mallard. However, the record is filled to abundance with data to show that hunting presents no threats to the Mexican duck. The defendants' reliance upon a general finding of a congressional inquiry is not well founded when compared to the specifics of the record presented here.

Even the caveat in Defenders of Wildlife v. Andrus that the Secretary has a duty under the Act to increase the population of endangered species does not justify the hunting ban in this case. 428 F.Supp. at 170. The record does not support a finding that banning hunting of all ducks will increase or even tend to increase the Mexican duck population. Evidence adduced at the hearing on the preliminary injunction in fact indicates that the hunting ban could have an adverse affect on the Mexican duck population through destruction of critical habitat of the duck.

This Court will not lightly consider its duty under the Administrative Procedure Act to weigh the validity of administrative rules. It recognizes that the Fish and Wildlife Service has expertise in this area but in reviewing the regulations, judicial deference to expertise is not boundless and expertise is not sufficient in itself to sustain a decision. United States v. United States, 417 F.Supp. 851 (D.D.C. - 1976) affirmed, 430 U.S. 961, 97 S.Ct. 1638, 52 L.Ed.2d 352 (1977). This Court finds that the rules herein challenged were not based on all the relevant factors which the Fish and Wildlife Service should have considered and this is a clear error of judgment. Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 91 S.Ct. 814, 28 L.Ed.2d 136 (1971). The Court can find no rational basis for the decision of the agency and cannot sustain it. Sabin v. Butz, F.2d 1061, 1067 (10th Cir.-1975).

Id. at 1041-1042.

Similarly, in American Tunaboat Ass'n v. Baldridge, 738 F.2d 1013 (9th Cir. 1984), an appeal was taken from an order of the United States District Court for the Southern District of California holding that the National Oceanic Atmospheric Administration's (NOAA) decisions regarding regulation of porpoises were unsupported by substantial evidence. The Court of Appeals affirmed the District Court holding that the decisions of the NOAA were unsupported by substantial evidence. The court reasoned that:

In light of the comprehensive and reliable nature of the data collected by the federal observers, it was arbitrary for the agency to have simply disregarded it. Without offering any reason, the agency refused to consider

the post-1977 data, data collected on over 300 expeditions and data which revealed that the relevant range of the porpoise was broader than originally imagined. Even though the net effect of this data on the overall population estimates would not have been dramatic, due to the low density of the populations in the western ranges, we conclude that the agency acted arbitrarily in refusing to consider this information in its decision-making process.

We have reviewed the "whole record" in this matter and conclude that the agency acted arbitrarily in failing to utilize the best scientific evidence available in arriving at population and range estimates and also arrived at a conclusion not supported by substantial evidence in determining school density...

Id. at 1017

The Second Circuit in National Nutritional Foods Ass'n v. Mathews, 557 F.2d 325 (2nd Cir. 1977), held that the Food and Drug Administration's classification of high dosage vitamins as "drugs" was arbitrary and capricious and not in accordance with law. The court explained that there must be a factual basis for such a classification and that irrational reliance upon definitions or classifications would not suffice.

In Arkla Exploration Co. v. Texas Oil & Gas Corp., 734 F.2d 347 (8th Cir. 1984), cert. den. 469 U.S. 1158, 105 S. Ct. 905, 83 L.Ed.2d 920 (1985), the Eighth Circuit Court of Appeals considered a case arising from a decision by the Secretary of the Interior pursuant to the Mineral Lands

Leasing Act (MLA), 30 U.S.C. Sections 181-287. The Secretary was required to determine that lands were not located within a "known geologic structure of a producing oil or gas field" (KGS) prior to government lands being leased for oil or gas exploration without competitive bidding. The Secretary applied an arbitrary mileage rule without even considering geologic information or competitive interests in determining that certain lands were not within "known geologic structures of producing oil or gas fields." The court explained its reasoning in determining the Secretary's action was unlawful:

But the Department, in making the KGS determination, did not consider pertinent geologic information that readily was available for it or actual competitive interest that had been shown in the Fort Chafee area. Instead, the Department made its determination under an arbitrary one-mile step-out rule. These actions ignore Congressional intent in enacting the MLA and are inconsistent with the statute. Therefore, because the Department applied an arbitrary mileage rule without even considering geologic information or competitive interest, we hold that the KGS determination is unlawful...

In short, the Department did not do its homework before it classified the Fort Chafee lands as non-KGS under an arbitrary mileage rule and granted these leases. These actions were taken without consideration of such relevant factors, see Citizens to Preserve Overton Park v. Volpe, supra, 401 U.S. at 416, 91 S. Ct. at 823, as available geologic data and actual competitive interest. Based on our review of the

administrative record as amplified and explained by the proceedings in the district court, we hold that these Secretarial actions were unlawful.

Id. at 357, 361

In Humana of Aurora v. Heckler, 753 F.2d 1579 (10th Cir. 1985), a hospital brought an action against the Secretary of Health and Human Services regarding a new rule governing reimbursement for the hospital's malpractice insurance costs. The Court of Appeals held that the evidence that was before the Secretary did not support a new rule governing reimbursement to the hospital for malpractice insurance costs. The court explained that:

A rational connection must be found between the facts before the agency and the rule-making choice made. Id. 103 S. Ct. at 2866-67. See also Burlington Truck Lines v. United States, 371 U.S. 156, 168, 83 S. Ct. 239, 245, 9 L.Ed.2d 207.

In the case before us we must conclude that the evidence that was before the agency is contrary to the administrative action ultimately taken. The fundamental nexis between evidence and agency action is absent...

Id. at 1582

See also Menorah Medical Center v. Heckler, 768 F.2d 292 (8th Cir. 1985) (Malpractice rule which reimbursed premiums by medicare health providers arbitrary and capricious in violation of Administrative Procedure Act as it failed to contain an adequate basis - and - purpose statement)

In the present case, there is no factual basis for extending the vulnerable area into an area where the



geologic and hydrogeologic conditions are dissimilar to the existing vulnerable area and potential problems of water contamination is non-existent. To create such a regulation through the rulemaking procedure would be arbitrary, capricious and taken without consideration of the relevant factors. There is no rational basis for including the Lybrook area with its distinct geological formation of low permeability within the vulnerable area that was created to protect water resources in a permeable geologic formation.

It would, therefore, be arbitrary and capricious for the Oil Conservation Commission to extend the vulnerable area in its rulemaking procedure.

Respectfully submitted,

PADILLA & SNYDER

By: 

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STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

JUN 19 1992  
OIL CONSERVATION DIV.  
SANTA FE

IN THE MATTER OF THE APPLICATION  
BY THE OIL CONSERVATION DIVISION  
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IN 1985; San Juan, Animas, and  
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Rio Arriba, McKinley and Sandoval  
Counties, New Mexico.

CASE NO. 10436  
Order No. R-\_\_\_\_\_

BCO'S PROPOSED ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9:00 o'clock a.m. on January 16, April 9, 10, and May 21, 1992, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this \_\_\_\_\_ day of June, 1992, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearings, and being fully advised in the premises,

FINDS THAT:

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

(2) Section 70-2-12 B(15) authorizes the Oil Conservation Division and Commission "to regulate the disposition of water produced or used in connection with the

drilling for or producing of oil or gas, or both, and to direct surface or subsurface disposal of such water in a manner that will afford reasonable protection against contamination of fresh water supplies designated by the state engineer;".

(3) The State Engineer has designated all surface waters of the State and all ground waters containing 10,000 milligrams per liter (mg/l) of total dissolved solids (TDS), or less, for which there is a reasonably foreseeable future use as fresh water.

(4) Section 70-2-2 states that "[T]he production for handling of crude petroleum oil or natural gas of any type or in any form, or the handling of products thereof, in such manner or under such conditions or in such amounts as to constitute or result in waste, is each hereby prohibited."

(5) Section 70-2-3 (A) defines "underground waste, as including "a manner to reduce or tend to reduce total quantity of crude petroleum oil or natural gas ultimately recovered from any pool, ..."

(6) Section 70-2-6 (A) gives the Commission "jurisdiction and authority over all matters relating to the conservation of oil and gas ...."

(7) By its Order No. R-7940, the Commission adopted special rules to control the disposition of water fluids produced in connection with the production of oil and

natural gas in an area of the San Juan Basin found to be the most vulnerable to contamination from such disposition.

(8) By its Order No. R-7940-A, the Commission amended Order No. R-7940 by promulgation of special rules to require approval of all commercial disposal or collection facilities and to require commercial disposal operators to keep and make available records on the volume, source, dates, type of oil fluids and solid waste received, and hauling companies used in the commercial facilities.

(9) Finding No. 19 of Order No. R-7940-A states that:

"[T]he hydrogeology of the area outside the Vulnerable Area is sufficiently diverse to require site specific reviews for approval of such centralized collection or disposal facilities."

(10) In the subject case, the Oil Conservation Division (Division) seeks to expand the existing San Juan Basin "Vulnerable Area", which was established by OCC Order No. R-7940 in 1985. The expansion area includes all lands defined by a contour line which is fifty (50) vertical feet above and on both sides of the centerline of drainages into the San Juan, Animas and La Plata Rivers in San Juan, Rio Arriba, McKinley and Sandoval Counties, New Mexico. The application also requests, among other things, amendments to Order R-7940 and Order No. R-7940-A to prohibit all discharges to all unlined pits.

(11) Various parties appeared at the hearing and presented evidence concerning their respective interest in the application.

(12) Order R- 7940 made the following findings:

(28) The movement of produced water to the subsurface can result in such waters and the contaminants entering the fresh water supplies in the vulnerable area.

(29) The entry of such contaminated water into the fresh waters could contaminate such waters and cause them to become unfit for use at points of current or foreseeable future use.

(30) The potential for contamination of fresh water supplies is reduced by a variety of attenuation mechanisms and other factors which work to slow, halt, or reduce the concentration of contaminants, including mixing, volatilization, sorption, and microbiological degradation.

(31) A zone of unsaturated or partially saturated material above the water table (vadose zone) is necessary in order for said attenuation mechanisms to work effectively.

(32) The evidence in this case indicated that a minimum vadose zone of 10 feet is necessary to protect ground water supplies under its

receiving even small volumes of produced water.

(13) The Division, the Applicant, presented evidence of a study that was limited to 13 produced water disposal sites, all of which were geographically concentrated in a highly saturated alluvial basin within the existing Vulnerable Area, or within close proximity thereto. The sampling of the 13 produced water disposal sites in the Division's study indicated that of the 13 sites that were reviewed, 9 had ground water contamination by dissolved aromatic volatile organics. Seven of those 9 sites had ground water contamination in excess of New Mexico water quality standards for benzene.

(14) The proposed expansion of the Vulnerable Area defined by a contour line which is fifty (50) vertical feet above and on both sides of the centerline of drainages into the San Juan, Animas, and La Plata Rivers in San Juan, Rio Arriba, McKinley and Sandoval Counties is not based on known water contamination from oil and gas operations.

(15) The Division did not, in its evidence, incorporate or map sources of fresh water as established by the State Engineer, nor did it map any sources of fresh water that may exist outside of the channels of the San Juan, Animas, and La Plata Rivers.

(16) The Division did not study what effect, if any, its application would have on the economic life of oil and

gas wells in the San Juan Basin, nor did it address the economic impact of compliance with its proposed regulations.

(17) The Division's study did not include any effect that the application could have on future oil and gas development in the San Juan Basin.

(18) The Division's study did not consider whether economic or reservoir waste would occur as a result of its application.

(19) Aside from its 13-site study of a concentrated area of San Juan County, the Division made no other site specific investigation, study, or determination to establish that similar or representative geologic and hydrogeologic conditions existed throughout the entire San Juan Basin of New Mexico.

(20) Depth to ground water at the 13 sites varies from 10 to 15 feet at six of the sites, 5 to 10 feet at two of the sites, and the remaining sites had ground water at depths ranging from 15 to 32 feet.

(21) The Division presented no evidence contrary to the Commission's Finding No. 19 in Order R-7940-A requiring site specific reviews because of diverse hydrogeology outside of the Vulnerable Area.

(22) The Division did not present substantial evidence that established that the proposed expansion of the Vulnerable Area beyond its current boundaries is warranted, except to the extent that its study included actual data

from two wells outside the Vulnerable Area that were included in its 13-well study.

(23) The Southwest Research Information Center (SRIC), appeared in support of the application of the Division.

(24) The evidence presented by SRIC in support of the application of the Division, did not include any data of a site specific nature that would expand the geologic and hydrogeologic conditions as found in the 13 sites as studied by the Division to other areas of the San Juan Basin.

(25) SRIC presented evidence on computer modeling simulation that did not incorporate any geologic or hydrogeologic parameters from areas outside of the Vulnerable Area, which as conceded by its expert witness, could have materially altered the results derived from computer modeling.

(26) The selection of the 13 sites by the Division was not performed on a random basis.

(27) BCO, Inc., of Santa Fe, New Mexico, which operates wells in the Lybrook Area of the San Juan Basin, appeared at the hearings of this application to seek exemption for an area to include Townships 22, 23 and 24 North, Ranges 6, 7 and 8 West (the Lybrook Area).

(28) The general conclusion of the evidence presented by BCO as a result of its study of the area indicated that BCO's production facilities and oil and gas properties in the Lybrook Area are located in an area bearing little



hydrogeologic resemblance to the study area of the 13 sites studied by the Division which formed the basis for the Division's application to expand the existing Vulnerable Area.

(29) The geologic and hydrogeologic conditions of the Lybrook Area are:

(a) The proposed extended vulnerable areas in the Lybrook Area are located on dense shale outcrops of the upper Nacimiento Formation, having a thickness of approximately 1300 feet, which is characterized by very low permeability and erratic, naturally non-potable ground water at depths averaging in excess of 200 feet.

(b) The Ojo Alamo Sandstone, which underlies the Nacimiento Formation, is the only potable aquifer in the Lybrook Area. Residents of the community of Lybrook obtain their water from a community well which produces from the Ojo Alamo Sandstone at a depth of approximately 1300 feet.

(c) The thick sequence of Nacimiento Formation shales overlying the Ojo Alamo has such low vertical and horizontal hydraulic conductivity that migration of oil and gas well-produced waters is not a threat to the

Ojo Alamo aquifer nor to isolated, discontinuous, and erratic lenses of naturally highly mineralized water found in the Nacimiento Formation.

(d) Springs in the Lybrook Area originate at the contact between the Nacimiento shale and overlying sandstones of the San Jose Formation. The springs discharge from locations which are topographically higher than the proposed expansion of the Vulnerable Area.

(e) Although there exist some erratic and thin alluvial deposits in the Lybrook Area, in general, there is no alluvium such as that characterized by the type of alluvial deposits and sediments identified in the Division's 13-well study.

(30) There was no existing contamination from BCO discharges in the Lybrook Area either in the proposed expansion of the Vulnerable Area nor in other areas outside of the proposed expansion which, by virtue of past oil and gas operation, could have contaminated or posed a danger of contamination to fresh water sources in the Lybrook Area.

(31) Studies conducted by BCO's expert witness, based on BCO's rate of discharges, demonstrate that such discharges do not now pose any threat of contamination of

fresh water sources in the Lybrook Area nor in the foreseeable future.

(32) The Lybrook Area is a site specific area of San Juan County for which the Division's application is not warranted and should be exempted from any application of the regulations requested by the Division.

(33) Expansion of the existing Vulnerable Area to include portions of the Lybrook Area would not be in the best interests of conservation of oil and gas because the economic impact of such expansion would cause both economic and reservoir waste.

(34) The proposed expansion of the existing Vulnerable Area defined by a contour line which is fifty (50) vertical feet above and on both sides of the centerline of drainages into the San Juan, Animas, and La Plata Rivers located in the Lybrook Area is arbitrary and has no rational connection to all of the relevant factors which the Commission must consider and the scientific evidence that BCO presented at the hearing.

(35) The application of the Division should be denied insofar as the Lybrook Area is concerned.

IT IS THEREFORE ORDERED THAT:

(1) The application of the Division is denied insofar as the Lybrook Area is concerned.

(2) Jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

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

State of New Mexico  
Oil Conservation Commission

---

Jami Bailey, Member

---

Bill Weiss, Member

---

William J. LeMay, Chairman

RECEIVED

JUN 19 1992

OIL CONSERVATION DIV.  
SANTA FE

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE APPLICATION  
BY THE OIL CONSERVATION DIVISION  
FOR EXPANSION OF THE SAN JUAN BASIN  
"VULNERABLE AREA", WHICH WAS  
ESTABLISHED BY OCC ORDER R-7940  
IN 1985; San Juan, Animas, and  
La Plata Rivers in San Juan,  
Rio Arriba, McKinley and Sandoval  
Counties, New Mexico.

CASE NO. 10436

CERTIFICATE OF SERVICE

I hereby certify that on June 19, 1992 I mailed copies  
of the Closing Statement, Memorandum of Law, and Proposed  
Order of BCO, Inc. to the following:

W. Thomas Kellahin  
P. O. Box 2265  
Santa Fe, NM 87504-2265

B. Tommy Roberts  
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Farmington, NM 87499

Susan Thomas  
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Joe Chesser  
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Robert Stovall  
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Douglas Meiklejohn  
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Ernest L. Padilla

OIL CONSERVATION DIVISION  
KELEHER & McLEOD, P. A. RECEIVED  
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P. O. DRAWER AA

ALBUQUERQUE, NEW MEXICO 87103

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ARTHUR O. BEACH  
JOHN M. KULIKOWSKI  
THOMAS F. KELEHER  
PETER H. JOHNSTONE  
HENRY F. NARVAEZ  
CHARLES L. MOORE  
ROBERT H. CLARK  
BRIAN J. O'ROURKE  
RONALD F. HORN  
PHIL KREHBIEL  
CLYDE F. WORTHEN  
SPENCER REID  
ELIZABETH E. WHITEFIELD  
ROBERT C. CONKLIN  
REBECCA A. HOUSTON  
MARK STYLES  
EVAN S. HOBBS  
PATRICK V. APDACA  
RANDOLPH L. HAMBLIN  
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RIKKI L. QUINTANA  
WILLIAM M. CASEY  
RICHARD L. ALVIDREZ  
JONATHAN M. DUKE  
THOMAS F. BLUEHER  
KURT WIHL  
MARGARET C. CAUSEY  
THOMAS G. SCARVIE  
JOHN D. PHILLIPS  
HELEN G. HILLEGASS  
CAROL LISA SMITH  
PATRICIA A. BRADLEY  
TERESA M. JOHNSON  
LARRY HEYECK  
SUSAN G. LOWREY  
ERIC R. BURRIS  
JERE K. SMITH  
DUANE A. DAHNKE  
S. CHARLES ARCHULETA  
JAMES R. BREWSTER  
JEFFREY A. JENKINS  
M. GLORIA TRISTANI  
JUDY M. MELTON  
NIKKI J. MANN  
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JAMIE McALISTER  
WILLIAM D. SLEASE  
RODNEY J. STARKWEATHER

May 19, 1992

WILLIAM KELEHER (1886-1972)  
A. H. McLEOD (1902-1976)

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

Re: Case 10436

Gentlemen:

Enclosed please find an entry of appearance for Case 10436. I would appreciate it if you would send me all drafts of the Proposed Vulnerable Area Order prepared after January 31, 1992.

Very truly yours,

KELEHER & McLEOD, P.A.

By Susan McCormack  
Susan McCormack

SMM:bg  
Enclosure  
310SMM(2)

BEFORE THE OIL CONSERVATION COMMISSION

APPLICATION BY THE OIL CONSERVATION )  
DIVISION FOR THE EXPANSION OF THE ) Case 10436  
SAN JUAN BASIN "VULNERAL AREA" )  
WHICH WAS ESTABLISHED BY OCC ORDER )  
R-7940 IN 1985. )

COMES NOW Keleher & McLeod, P.A. and enters its  
appearance in this case.

KELEHER & McLEOD, P.A.

By Susan McCormack  
SUSAN McCORMACK  
Post Office Drawer AA  
Albuquerque, New Mexico 87103  
Telephone: (505) 842-6262

310SMM

BEFORE THE OIL CONSERVATION COMMISSION  
STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING CALLED BY )  
THE OIL CONSERVATION COMMISSION FOR THE )  
PURPOSE OF AMENDING COMMISSION ORDER R- )  
7940 TO PROVIDE FOR THE EXPANSION OF THE )  
DESIGNATED VULNERABLE AREA OF THE SAN )  
JUAN BASIN, ELIMINATION OF DISCHARGES TO )  
UNLINED PITS, CREATION OF WELLHEAD )  
PROTECTION AREAS, ESTABLISHMENT OF )  
DEADLINES FOR COMPLIANCE, AND OTHER )  
MATTERS )

CASE NO. 10436

UPON THE APPLICATION OF THE OIL )  
CONSERVATION DIVISION )

MAY 15

OIL CONSERVATION

Southwest Research and Information Center  
Certificate of Mailing Exhibits

Southwest Research and Information Center hereby  
certifies that on May 15, 1992 copies of exhibits SRIC 15  
and SRIC 16 were mailed to:

W. Thomas Kellahin  
P.O. Box 2265  
Santa Fe, N.M. 87504-2265

B. Tommy Roberts  
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Susan Thomas  
Bureau of Reclamation  
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Joe Chesser  
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Padilla & Snyder  
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Santa Fe, N.M. 87504

Robert Stovall  
Oil Conservation Division  
Room 206  
State Land Office  
Santa Fe, N.M. 87501

Dennis Olson  
Bureau of Indian Affairs  
P.O. Box 26567  
Albuquerque, N.M. 87125-  
6567

and that copies of this Certificate were mailed to:

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John Phenix  
Conoco, Inc.  
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Oklahoma City, OK 73112

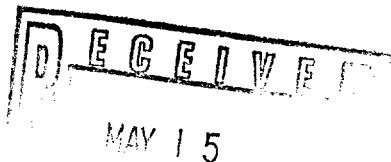
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23733 N. Scottsdale Rd.  
Scottsdale, Ariz. 85225

Brian Wood  
Permite West Inc.  
37 Verano Loop  
Santa Fe, N.M. 87501

Dated: May 15, 1992.



NEW MEXICO  
ENVIRONMENTAL LAW CENTER

  
Douglas Meiklejohn  
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Santa Fe, N.M. 87501  
(505) 989-9022

Attorney for Southwest  
Research and Information

BEFORE THE OIL CONSERVATION COMMISSION  
STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING CALLED BY )  
THE OIL CONSERVATION COMMISSION FOR THE )  
PURPOSE OF AMENDING COMMISSION ORDER R- )  
7940 TO PROVIDE FOR THE EXPANSION OF THE )  
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DEADLINES FOR COMPLIANCE, AND OTHER )  
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CASE NO. 10436

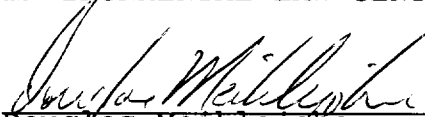
UPON THE APPLICATION OF THE OIL )  
CONSERVATION DIVISION )

Southwest Research and Information Center's  
Notice of Filing Exhibits

Southwest Research and Information Center hereby gives  
notice that on May 14, 1992 it filed with the Oil  
Conservation Commission two exhibits: the Revised and  
Expanded Parameters Table for Exhibit SRIC-11 and the  
Revised and Expanded Reference List for Exhibit SRIC-11.

Dated: May 14, 1992.

NEW MEXICO  
ENVIRONMENTAL LAW CENTER

  
Douglas Meiklejohn  
1520 Paseo de Peralta  
Santa Fe, N.M. 87501  
(505) 989-9022

Attorney for Southwest  
Research and Information  
Center

MAY 14

# Certificate of Service

I certify that on May 14, 1992 copies of the foregoing Notice and Southwest Research and Information Center's Revised and Expanded Parameters Table for Exhibit SRIC-11 and Revised and Expanded Reference List for Exhibit SRIC-11 were mailed to:

W. Thomas Kellahin  
P.O. Box 2265  
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B. Tommy Roberts  
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Dennis Olson  
Bureau of Indian Affairs  
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Albuquerque, N.M. 87125-6567

and that copies of this Notice were mailed to:

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Santa Fe, N.M. 87504-1864

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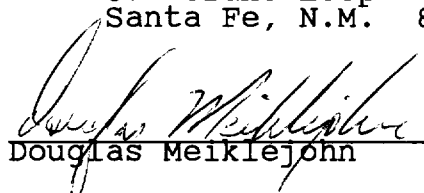
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Brian Wood  
Permite West Inc.  
37 Verano Loop  
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Douglas Meiklejohn

REVISED AND EXPANDED PARAMETERS TABLE FOR EXHIBIT SRIC-11  
Case # 10436; Before the Oil Conservation Commission, State of New Mexico

PARAMETER	Saturated Areal Model (SAM)		Unsaturated Vertical Cross-Section Model (UM)	
	VALUE	REFERENCE	VALUE	REFERENCE
$K_{sat}$	250 ft/day ( $8.8 \cdot 10^{-4}$ m/s)	1) GCL 2) Boyer 3) Earp 4) Peter et al., (table 4) p. 33	2.5 ft/day ( $8.8 \cdot 10^{-6}$ m/s)	1) Earp
$k$	$9 \cdot 10^{-11}$ m <sup>2</sup>	1) GCL 2) Boyer 3) Earp 4) Peter et al., (table 4) p. 33	$9 \cdot 10^{-13}$ m <sup>2</sup>	1) Earp
$K$ (at saturation = 0.7)		N/A	0.00175 ft/day	1) Voss; SUTRA Default Van Genuchten Model
representative velocities	2 ft/day	1) Peter et al., (table 4) p. 33 2) Earp	0.3 ft/day	calculated from model; velocities vary widely in time and space in this transient simulation
representative hydraulic gradients	0.003	1) GCL 2) Boyer	74	calculated from model; gradients vary widely in time and space in this transient simulation
porosity	0.35	1) Freeze & Cherry p. 37 2) Earp 3) Boyer	same as SAM case	same as SAM case
source concentration	30 ppm	1) Olsen	30 ppm	1) Olsen
produced waters loading rate		NA	2.5 bbls/day	1) half of 5 bbls/day
pit area		N/A - but a source of 30 ppm BTEX covers a 150 x 150 ft. area 1) Olsen	144 ft <sup>2</sup>	1) Eiseman
avg annual rainfall		N/A	8 in/yr	1) Boyer
depth to groundwater		N/A	10 to 20 feet	1) Olsen 5 to 32 feet 2) Brown and Stone; depth shown at one site to vary from 7.9 to 19.3 feet in one year
aquifer thickness	~ 30 ft	1) Boyer; 15 ft 2) Brown and Stone; 40 to 100 ft		N/A
linear adsorption coeff.	$1.35 \cdot 10^{-4} \frac{m^3}{kg}$	1) Freeze & Cherry p. 404 2) Parker; $R_{Benzene} = 1.4$	same as SAM case	same as SAM case
decay rate	-1.09 E-7	1) Chiang et. al.	same as SAM case	same as SAM case
longitudinal dispersivity	60 m	1) Parker 2) Freeze & Cherry p. 400	0.15m	1) Chiang et. al.
transverse dispersivity	30 m	1) Parker 2) Freeze & Cherry p. 400	0.05m	1) Freeze & Cherry
molecular diffusion	$1 \cdot 10^{-9} \frac{m^2}{sec}$	1) Freeze & Cherry p. 393 2) Baehr & Corapcioglu	$1 \cdot 10^{-9} \frac{m^2}{sec}$	1) Freeze & Cherry p. 393 2) Baehr & Corapcioglu

REVISED AND EXPANDED REFERENCE LIST FOR EXHIBIT SRIC-11

Case # 10436; Before the Oil Conservation Commission, State of New Mexico

Baehr, A. L. and M. Y. Corapcioglu, 1987, *A Compositional Multiphase Model for Groundwater Contamination by Petroleum Products 2. Numerical Solution*. Water Resources Research, 23 (1)

Boyer, David, of New Mexico Oil Conservation Division, 1985, calculations presented at NMOCC hearings, April, 1985

Brown, D. R. and W. J. Stone, 1979, *Hydrogeology of Aztec quadrangle, San Juan County, New Mexico*, Hydrogeologic Sheet 1

Chiang, C.Y, et al., 1989, *Aerobic Biodegradation of Benzene, Toluene, and Xylene in a Sandy Aquifer - Data Analysis and Computer Modeling*, Ground Water, 27 (6)

Earp, Douglas, of New Mexico Environmental Improvement Division, 1985, *Statement for the Record of the April 3, 1985 Hearing Before the Oil Conservation Commission*,

Eiceman, G. A. et al., 1986, *Hydrocarbons and Aromatic Hydrocarbons in Groundwater Surrounding an Earthen Waste Disposal Pit for Produced Water in the Duncan Oil Field of New Mexico*, International Journal of Analytical Environmental Chemistry, vol. 24, pp 143-162, 1986.

Freeze, Allan R., and John Cherry, *Groundwater*, 1979, Prentice Hall Inc.

Geoscience Consultants, Ltd (GCL)., 1985, *Field Investigations, Vulnerable Area. San Juan Basin, New Mexico*. Exhibit #3; NMOCC hearings, April 3, 1985

Olsen, William C. *Volatile Organic Contamination of Ground Water Around Unlined Produced Water Pits*. New Mexico Institute of Mining and Technology (Socorro), Open File Report H89-9, December 1989

Parker et al., 1990, ANAHYD User Notes for Short Course on Petroleum Hydrocarbons and Organic Chemicals in Groundwater, Los Angeles, May 7-11, 1990, p. 7.4.8

Peter, K. D. et al., 1987, *Hydrogeologic Characteristics of the Lee Acres Landfill Area, San Juan County, New Mexico*, U.S. Geological Survey Water-Resources Investigations Report 87-4246

Stone, W. J., et al., 1983, *Hydrogeology and Water Resources of San Juan Basin, New Mexico*. Hydrogeologic Report 6, New Mexico Bureau of Mines and Mineral Resources

Voss, Clifford J., *A Finite Element Simulation Model for Saturated-Unsaturated Fluid-Density-Dependant Ground-Water Flow with Energy Transport or Chemically Reactive Single-Species Solute Transport*. USGS Water Resources Investigations Report 84-4369, 1984

**LIST OF SRIC'S PROPOSED AMENDMENTS TO  
OIL CONSERVATION DIVISION PROPOSED VULNERABLE AREA ORDER**

April 9, 1992

**Closure Reporting Requirements:**

In proposed Rule 6, insert a second paragraph which states:

"For pits closed prior to the effective date of this Order and after January 1, 1987, the operator shall submit to the Division for review and retroactive approval, all reports, analytical data and any other pertinent information pertaining to such pits. Such information shall be submitted within 180 days of the effective date of this rule. The Division may require additional investigations, monitoring or corrective action as may be needed to protect fresh water supplies or to protect public health and the environment. Any corrective action conducted under this section shall be carried out pursuant to applicable Division closure guidelines."

**Variance Criteria:**

Insert the following new wording as a new subparagraph after Rule 7(a)(3):

"In no case shall the Director approve an application for a variance to Rule 3(a) where the applicant has not demonstrated that the proposed use of an unlined pit affords the same level of protection to fresh water supplies, public health and the environment as that afforded by a liner system or tank system with leak detection."

**Notice of Applications for Variances:**

After Rule 7(b), insert the following new material:

"(c) The discharger shall file with the Director an application for a variance to Rule 3(a). Such application shall address the criteria established in Rule 7(a). The Director shall provide public notice of the application and afford the public an opportunity to comment and to request a hearing before the Commission or Division examiners. Such provisions for notice and hearing on variances to Rule 3(a) shall be consistent with the Commission's existing notice and hearing requirements. "

## Compliance Deadlines:

Amend proposed Rule 3(b)(2) as follows:

- "(2) All discharges of oil and natural gas wastes to unlined pits located in areas defined in Subsection (I)(d)(2) and discharges which are within the following major tributaries of the respective river systems will be eliminated within ~~two (2) years~~ 18 months of the effective date of this order."

Amend proposed Rule 3(b)(3) as follows:

- "(3) All discharges of oil and natural gas wastes to unlined pits in any remaining surface water tributaries within the Vulnerable Area will be eliminated within ~~three (3) years~~ 24 months from the effective date of this order."

Amend proposed Rule 7(b) as follows:

- "(b) For good cause shown, the Director of the OCD may administratively allow an extension of time for a period not to exceed ~~two (2) years~~ one (1) year from that specified in Rule 3(b) for elimination of discharges of oil and natural gas wastes to unlined pits."

Alternatively, eliminate in its entirety proposed Rule 7(b) and do not change proposed Rule 3(b).



STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION

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

CONSIDERING: Expansion of the designated  
vulnerable area, elimination of discharges  
to unlined pits, creation of wellhead protection zones, and other matters. **CASE NO. 10436**

**APPLICATION OF**

Oil Conservation Division, on its own  
motion.

**PRE-HEARING STATEMENT**

This prehearing statement is submitted by Southwest Research and Information Center  
as required by the Oil Conservation Division.

**APPEARANCES OF PARTIES**

**APPLICANT**

n/a

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

name, address, phone and  
contact person

**OPPOSITION OR OTHER PARTY**

Southwest Research and  
Information Center

P.O. Box 4524

Albuquerque, NM 87106

505-262-1862

name, address, phone and  
contact person

contact: Chris Shuey

**ATTORNEY**

n/a

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ATTORNEY**

Douglas Meiklejohn

New Mexico Environmental

Law Center

1520 Paseo de Peralta

Santa Fe, NM 87501

505-989-9022

**STATEMENT OF CASE**

**APPLICANT**

(Please make a concise statement of what is being sought with this application and the reasons therefore.)

n/a

**OPPOSITION OR OTHER PARTY**

(Please make a concise statement of the basis for opposing this application or otherwise state the position of the party filing this statement.)

Southwest Research and Information Center ("SRIC") is appearing in support of the Division's motion to expand the existing vulnerable area (as set forth in OCC Order R-7940), to eliminate all discharges of produced water to unlined pits in the vulnerable area, to establish special protection areas at Lindrith and Hospah, New Mexico, to provide for a wellhead protection area around wells and springs, and to establish deadlines for compliance.

SRIC's basis for supporting the Division's motion includes, but is not limited to, evidence (1) that discharges of any volume to unlined pits in the vulnerable will cause contamination of soils in virtually all cases and contamination of ground water in most cases, (2) technology exists to eliminate such discharges through the installation of above-grade or below-grade tanks or multiple liners with leak detection, (3) that such technology is economically feasible and, to some extent, has already been implemented by oil and gas operators in the San Juan Basin, and (4) that ground water contamination has been detected at 60 percent of the unlined pit sites where investigations have taken place.

SRIC will offer to testimony and evidence in these areas and will suggest language for the rule that will require operators to submit information and data on all pit closings conducted after January 1, 1990.

**PROPOSED EVIDENCE**

**APPLICANT**

**WITNESSES**  
(Name and expertise)

**EST. TIME**

**EXHIBITS**

n/a

**OPPOSITION SUPPORTING PARTY**

**WITNESSES**  
(Name and expertise)

**EST. TIME**

**EXHIBITS**

Chris Shuey, director,  
Community Water Quality  
Program, SRIC

1 hour

exact number unknown  
at this time; written  
testimony and exhibits  
are not likely to  
exceed 100 pages

\*Expertise: Member, Short-  
term and Long-Term Pro-  
duced Water Study Committees,  
NMOCD; advisor to Interstate  
Oil and Gas Compact Commission  
and other qualifications.

**PROCEDURAL MATTERS**

(Please identify any procedural matters which  
need to be resolved prior to the hearing)

\*The witness will submit a  
copy of his resume with  
this written testimony.

PROCEDURAL MATTERS: The party requests that should citizens  
from the affected area appear at the hearing to give statements  
that they be allowed to appear as early in the hearing as possible  
so that they may drive back to the Farmington area during the  
same day as that of the hearing.

  
Signature

Douglas Meiklejohn, NMELC

STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION

**RECEIVED**

IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
DIVISION FOR THE PURPOSE OF  
CONSIDERING: Application by the Oil  
Conservation Division for the  
expansion of the San Juan Basin  
"Vulnerable Area" which was  
established by OCC Order R-7940 in 1985.

APR 02 1992

OIL CONSERVATION DIV.  
SANTA FE

CASE NO. 10436

APPLICATION OF  
Oil Conservation Division

PRE-HEARING STATEMENT

This prehearing statement is submitted by Ernest L. Padilla, Esq. as required by the Oil Conservation Division.

APPEARANCES OF PARTIES

APPLICANT

Oil Conservation Division  
State Land Office  
Santa Fe, New Mexico 87501

ATTORNEY

Robert G. Stovall, Esq.  
P. O. Box 2208  
Santa Fe, N. M. 87504

OPPOSITION OR OTHER PARTY

BCO, Inc.  
135 Grant Avenue  
Santa Fe, New Mexico 87501  
(505) 983-1228

ATTORNEY

Ernest L. Padilla  
PADILLA & SNYDER  
Post Office Box 2523  
Santa Fe, N. M. 87504  
(505) 988-7577

STATEMENT OF CASE

APPLICANT

(Concise statement of what is being sought with this application and the reasons therefore.)

OPPOSITION OR OTHER PARTY

(Concise statement of the basis for opposing this application or otherwise state the position of the party filing this statement.)

In the area where BCO, Inc. operates, which is in the vicinity of Lybrook, New Mexico, the applicant's testimony and evidence generally will be to make the following conclusions:

A. A study conducted by BCO, Inc. in its area of operations does not show any evidence of contamination due to oil and gas discharges.

B. Due to the geologic and hydrologic conditions in the area, fresh water aquifers or fresh water resources in the area will not be impaired or contaminated due to continued and future oil and gas operations.

C. The proposed regulations, i.e., the expansion of the Vulnerable Area to include the lands in the general area of BCO's operations, is not warranted, would constitute economic waste, and would result in reservoir waste should the regulations be extended to include this area.

PROPOSED EVIDENCE

APPLICANT

WITNESSES (Name and expertise)	EST. TIME	EXHIBITS
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OPPOSITION

WITNESSES (Name and expertise)	EST. TIME	EXHIBITS
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Tim Kelly, Hydrologist	1.5 Hours	
------------------------	-----------	--

or

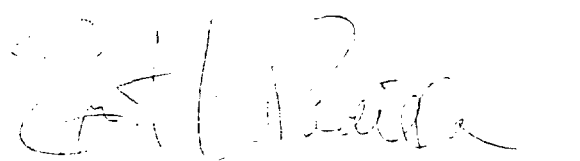
Clay Kilmer, Hydrologist

Exhibit: Hydrologic report, together with attachments.

PROCEDURAL MATTERS

(Identify any procedural matters which  
need to be resolved prior to the hearing.)

None at this time.

  
Ernest L. Padilla

Hearing Date: April 9, 1992  
xc: Service List

STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION COMMISSION

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

APPLICATION OF OIL CONSERVATION DIVISION  
FOR THE EXPANSION OF THE SAN JUAN BASIN  
"VULNERABLE AREA" WHICH WAS ESTABLISHED  
BY OCC ORDER R-7940 IN 1985.

CASE: 10436

RECEIVED

APR 01 1992

OIL CONSERVATION DIVISION

PRE-HEARING STATEMENT

This pre-hearing statement is submitted by The New Mexico Oil & Gas Association as required by the Oil Conservation Division.

APPEARANCE OF PARTIES

OPPOSITION OR OTHER PARTY

New Mexico Oil & Gas Association  
P. O. Box 1864  
Santa Fe, New Mexico 87504  
Attn: Mr. Darwin Van De Graaff  
(505) 982-2568

ATTORNEY

W. Thomas Kellahin  
Kellahin, Kellahin &  
Aubrey  
P. O. Box 2265  
Santa Fe, N.M. 87504  
(505) 982-4285

STATEMENT OF CASE

OPPOSITION OR OTHER PARTY

The New Mexico Oil & Gas Association expresses its concern that the Division has presented insufficient technical data to support the adoption of its proposed order for the expansion of the San Juan Basin "Vulnerable Area" as established by Order R-7940.

However, on behalf of its membership, the Association will support the adoption of an order which provides, among other things that:

(1) adoption of reasonable categories/area in which to eliminate discharges of produced water into unlined pits;

(2) adoption of reasonable periods of time within specified categories or areas in which to eliminate discharges of produced water into unlined pits;

(2) adoption of reasonable guidelines for pit closures;

(3) adoption of reasonable rules for obtaining variances by individual pits or by area, including establishing procedures for approval with and without hearings and for standing, objections and notice;

(4) adoption of a procedure for an administrative extension of time for compliance with the closure of individual pits or within a defined geographic area.

(5) adoption of exemptions from the proposed rule for certain categories of pits.



Pre-hearing Statement  
NMOCD Case 10436  
Page 3.

PROPOSED EVIDENCE

OPPOSITION:

WITNESSES	EST. TIME	EXHIBITS
Darwin Van De Graaff Executive Director NMOGA	20-30 Min	1-5 (attached)
Thomas O'Keefe Williams Field Services Company Bloomfield, N.M.	20-30 Min.	
Buddy Shaw Environmental Coordinator Amoco Production Company	20-30 Min	

Summary:

NMOGA has collected and analyzed economic data from its membership to demonstrate the economic impact of the proposed vulnerable area order, including but not limited to, the number of wells potentially affected, the revenue impact for compliance, the time involved for compliance, and the number of wells to be abandoned and the reserves lost.

PROCEDURAL MATTERS

None at this time.

Respectfully submitted:

  
W. Thomas Kellahin  
Attorney for New Mexico Oil & Gas Association

# ACTUAL COSTS, AVERAGED, FOR 17 PIT CLOSURES

OFFSITE DISPOSAL, NO GROUNDWATER CONTAMINATION

INSTALLATION OF TANKS

(Soil testing and site remediation costs estimated)

AVERAGE DEPTH OF CONTAMINATED SOIL (Averaging 205 yards of soil per pit)	11 FEET
AVERAGE CLOSURE COST (a)	\$12,237
TANK COST PER PIT	\$3,500
-----	
TOTAL COST PER PIT	\$15,737
TOTAL COST TO INDUSTRY TO CLOSE 7,000 PITS	<u><u>\$110,156,550</u></u>

(a) 17 pits averaged 11 feet depth of contaminated soil, 205 yards to be removed per pit.

Removal of soil and transportation to offsite disposal facility (Average 205 yards @ \$42.13)	\$8,637
Testing of soil before and after removal	\$600
Site Remediation (Backfill, reseeding)	\$3,000
-----	
	\$12,237
=====	

(b) OCD expanded vulnerable area listing includes 7,262 wells. Since the wells are listed by unit, not all lay within the expanded vulnerable area. Therefore, it is estimated the new Order 7940 would require closure of at least 7,000 pits.

## ESTIMATED COSTS

CLOSURE AND CONFORMANCE OF PITS,  
OFFSITE DISPOSAL, NO GROUNDWATER CONTAMINATION

	REPLACING WITH TANK	REPLACING WITH FIBERGLASS PIT LINER
ESTIMATED DEPTH OF CONTAMINATED SOIL (16' x 16' pit dimensions, removing 20' x 20' of soil, 300 yards per pit)	20 FEET	20 FEET
CLOSURE COST PER PIT (a)	\$12,750	\$12,750
REPLACEMENT COST	\$3,500	\$5,000
	-----	-----
TOTAL COST PER PIT	\$16,250	\$17,750
TOTAL COST TO INDUSTRY TO CLOSE 7,000 PITS (b)	<u>\$113,750,000</u>	<u>\$124,250,000</u>

(a) Estimating 20 feet depth of contaminated soil, 300 yards to be removed per pit.

Removal of soil (300 yards @ \$18)	\$5,400
Transportation to offsite disposal facility to offsite disposal facility (15 loads @ \$250)	\$3,750
Testing of soil before and after removal	\$600
Site Remediation (Backfill, reseeding)	\$3,000
	-----
	<u>\$12,750</u>

(b) OCD expanded vulnerable area listing includes 7,262 wells. Since the wells are listed by unit, not all lay within the expanded vulnerable area. Therefore, it is estimated the new Order 7940 would require closure of at least 7,000 pits.

LOSS OF ESTIMATED RESERVES  
LOSS OF STATE REVENUES AND TAXES

Based on a random  
sampling of independents  
operating in the San Juan  
Basin proposed expanded  
vulnerable area.  
(Seven companies sampled)

	Current Production		Lost Reserves	
# Wells Lost (a)	Oil (BOPD)	Gas (MCFD)	Oil (BBLs)	Gas (MCF)
186	252.4	3,131.9	159,631.0	2,882,915.0
Total Production Lost Annually	92,126 bbls.	1,143,144 mcf		
Value of Lost Production (b)	\$1,566,142	\$1,486,087		
State Taxes on that Lost Production (@ 9%)	\$140,953	\$133,748		
Other Revenues (State, Indian & Federal Royalties, Rentals) (15%)	\$234,921	\$222,913		
Total Lost State Taxes & other Revenues	\$375,874	\$356,661		
	on lost oil Production	on lost gas Production		
TOTAL OIL AND GAS REVENUES AND STATE TAXES LOST IN ONE YEAR DUE TO CLOSURE OF MARGINAL WELLS BY ONLY 7 INDEPENDENTS			\$ 732,535	

(a) Economic decision to close a "Marginal Well" is based on costs and revenues as they compare to the cost of pit closure and replacement. If the well can still be operated economically after the expense of closure, the well continues producing.

Estimated Closure Costs	\$15,737 to \$17,750
Pit or Tank Installation	\$ 3,500 to \$ 5,000
Soil Testing	\$ 600
Site Remediation	\$ 3,000
Cost to haul water (aa)	\$ 2.00/bbl
Water Disposal Costs	\$ 1.00/bbl

5 barrels/day x 30 days/month = 150 barrels/month  
x 12 months

NOTE: Installation costs of equipment to  
recover produced water not included in  
the above figures.

-----  
1,800 barrels/year per well

	\$3,600 per well per year
(aa) \$ 42.50/hr. - 80 bbl. truck	\$72,000 per well over 20 years
Average 2 hour time charge	\$144,000 per well over 40 years

(b) Based on \$1.30/mcf gas and \$17/bbl oil (per N.M. Department of Finance, revised estimates for 1993 are expected to fall within this range, and are lower than previous estimates the DFA has released.)

SAN JUAN BASIN MARGINAL AND STRIPPER WELLS  
PRODUCTION/TAXES/ROYALTIES

	<u>GAS</u>	<u>OIL</u>
San Juan Basin Total Wells (a)	16,022	3,048
San Juan Basin "Marginal" Gas or "Stripper" Oil Wells (b)	2,150	2,068
Total Annual "Marginal" or "Stripper" Production in the San Juan Basin	5,172,466 mcfs	2,680,548 bbls.
Value @ \$1.30/mcf or \$17/bbl. (c)	\$6,724,206	\$45,569,316
State Direct Taxes on "Marginal" or "Stripper" Production - San Juan Basin	\$605,179	\$4,101,238
Other State Revenues from "Marginal" or "Stripper" Production - San Juan Basin	\$1,008,631	\$6,835,397
Total Direct Taxes & Revenues on "Marginal" or "Stripper" Production	\$1,613,809	\$10,936,636
Total Annual Oil & Gas Taxes and Revenues San Juan Basin "Marginal" and "Stripper" Production		<u>\$12,550,445</u>

NOTE: The OCD's records do not show total "Marginal" or "Stripper" wells in the proposed expanded vulnerable area, nor is the data readily available. Therefore, state tax and revenue losses due to the loss of production from these wells in the area cannot be developed with any degree of accuracy at this time.

- (a) Per OCD records 3-31-92
- (b) A marginal gas well is defined as producing 15 MCFD or less. Totals for the San Juan Basin are listed in 8-23-91 OCD Memo (from William J. LeMay to Producers, et al).  
A stripper oil well is a well nearing depletion and producing very little oil. According to OCD records for 1990 (latest available data), the average production of a stripper well was 2.56 BPD.

Continued production of Marginal or Stripper Wells is dependent on the economics of operation, and would include the costs of pit closure and continued disposal of produced water.

Pit Closure and Conformance	\$ 15,737 to \$ 17,750
Soil Testing	\$ 600
Site Remediation	\$ 3,000
Cost to haul water (aa)	\$ 2.00/bbl
Water Disposal Costs	\$ 1.00/bbl
5 barrels/day x 30 days/month	
150 barrels/month	
x 12 months	
1,800 barrels/year per well	
\$3,600 per well per year	
\$72,000 per well over 20 years	
\$144,000 per well over 40 years	

(aa) \$42.50/hr. - 80 bbl. truck, Average 2 hour time charge

NOTE: Installation costs of equipment to recover produced water are not included in the above figures.

FLFOilfield Pit  
& Tank Liners**FRANK LINER FABRICATIONS, INC.**

P.O. Box 308 • Farmington NM 87499 • (505) 326 - 1962

March 26, 1992

PHILLIPS PET CO  
5525 HWY 64 NEU 3004  
FARMINGTON, NM 87401

With the upcoming implementation of New Mexico Oil Conservation Division Order R-7940-B; Vulnerable Area Expansion, Frank Liner Fabrications, Inc. (FLF) would like to offer our assistance in complying with the regulations.

The FLF Liner System and testing procedures will allow the oil and gas operator, producer and transporter of the San Juan Basin to fulfill their requirements contained in the order.

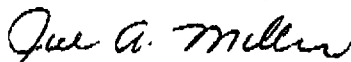
Our system and testing procedures are approved by the NMOCD and are available at a fraction of the cost of conventional fiberglass or steel tanks.

We believe you will find the Liner System FLF provides will serve your needs for many years. The advantage of our flexible wall liner system over a fiberglass tank will become evident in the Winter months. Our system will not crack from expansion and contraction of freezing subsoils or temperature fluctuations. Other advantages of our system:

1. Systems can be tailored to any size and come complete with leak detection system at no additional charge.
2. Systems comply with NMOCD regulations for containment ponds.
3. Systems are easy to install. There is minimal, if any pipe fitting.
4. Increased surface area and black liner material increases evaporation rate, thereby reducing transportation charges.
5. Less expensive overall, on a cost per barrel basis, than fiberglass tanks.

We look forward to working with you to meet your needs. Please contact us at your convenience. Thank you for your consideration.

Very truly yours,



Joe A. Miller

**FLF**Oilfield Pit  
& Tank Liners**FRANK LINER FABRICATIONS, INC.**

P.O. Box 308 • Farmington NM 87499 • (505) 326 - 1962

**Frank Liner Fabrications, Inc.**

a newly formed company, is dedicated to helping the Oil and Gas Producer, Transporter and Retailer with protection of ground water from Oilfield Wastes.

We offer a variety of liner materials and services:

**\* Liner Materials**

XR-5  
Hypalon  
PVC  
Geotextile

**\* Leak Detection**

Gravity / Sump  
Electronic  
Vacuum Testing

**\* Application**

New or Existing Pits  
Production Pits  
Separator Pits  
Dehydrator Pits  
Blow Down Pits  
Reserve Pits  
Secondary Containments

**\* Installation****\* Periodic Testing and Reporting**

For a quote on a liner (s) installation please contact Bob Frank at Frank Liner Fabrications, INC.

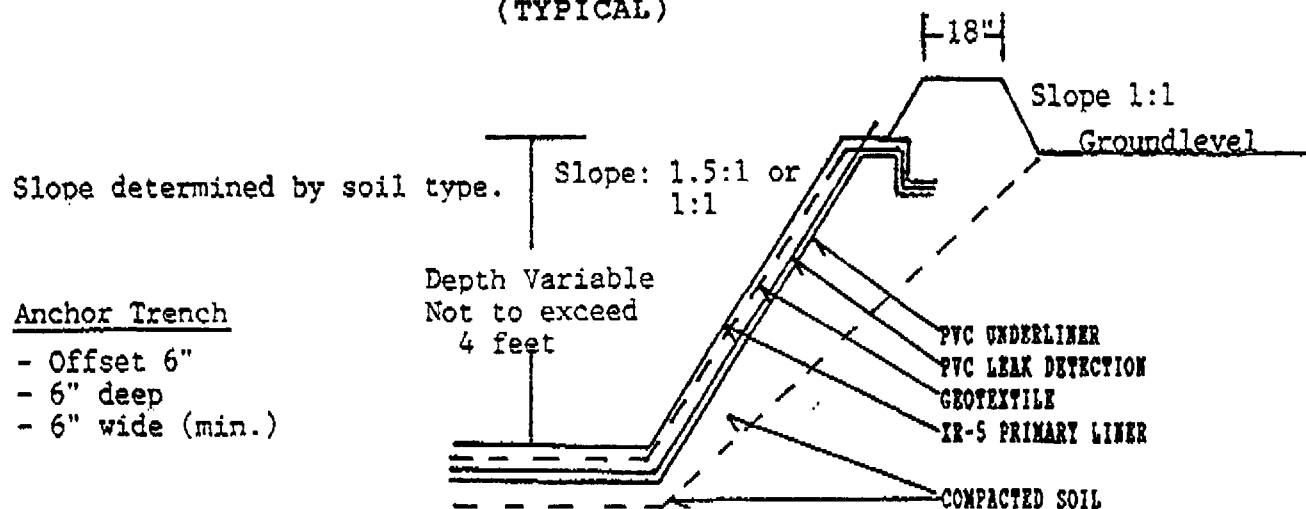
**Thank You**

**FLF**Oilfield Pit  
& Tank Liners**FRANK LINER FABRICATIONS, INC.**

P.O. Box 308 • Farmington NM 87499 • (505) 326 - 1962

**INSTALLATION PROCEDURES****PRODUCTION PIT LINER SYSTEMS**

1. Take down existing fence. Layout cut and fill stakes.
2. Remove excess dirt or bring in fill dirt, as necessary.  
Cut anchor trench.
3. Compact bottom and all side slopes with vibrating compactor.
4. Remove all sharp objects.(rocks, roots, etc...).
5. Install 30 mil PVC underliner.
6. Install leak detection system (0.5" open-ended pvc).
7. Install geotextile over leak detection system.
8. Install 30 mil XR-5 Primary liner.
9. Bury liners and geotextile in anchor trench. Compact soil in anchor trench. Install compacted soil ,rain diversion berm.
10. Put fence back up.

**CUT AWAY CROSS-SECTION**  
**(TYPICAL)**





**FRANK LINER FABRICATIONS, INC.**

Oilfield Pit  
& Tank Liners

**Lic. No. 33474**

Secondary Containment Liners,  
Underground Tanks  
Evaporation Ponds  
Production Pits  
Reserve Pits

Joe A. Miller  
Sales Representative  
(Home) 505-632-8142

P.O. Box 308  
Farmington, NM 87499  
(Office) 505-326-1962

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION



BRUCE KING  
GOVERNOR



POST OFFICE BOX 2088  
STATE LAND OFFICE BUILDING  
SANTA FE, NEW MEXICO 87504  
(505) 827-5800

MEMORANDUM

Case 10436

TO: INTERESTED PARTIES IN VULNERABLE AREA HEARING

FROM: BOB STOVALL, GENERAL COUNSEL

SUBJECT: REVISED SCHEDULE AND MAILING LIST

At the January Vulnerable Area Hearing, a filing schedule was announced to get proposed exhibits and recommendations to the Commission and other parties interested in the Vulnerable Area Hearing. Because of a number of meetings with various groups and requests for additional time from various groups to prepare comments and responses, it has been necessary to adjust the schedule.

The following is now the established procedural schedule for this case:

1. Comments in suggested language and the proposed rule to be submitted to the OCD by 5:00 p.m. by March 23, 1992.
2. OCD will make final recommended rule revisions and propose final recommended rules by March 27, 1992. The OCD will make no further revisions to the recommendations prior to the Commission Hearing on April 9th. The OCD does reserve the right to make additional recommendations at the time of the hearing based upon comments and evidence submitted.
3. A summary of evidence and all exhibits to be presented by any party at hearing will be submitted to the OCD and to those parties listed on the attached mailing list by 5:00 p.m. on April 1, 1992.

If you wish to submit testimony and exhibits at the hearing and your name is not on the attached list, please submit your testimony all names on the attached list, and if you wish to receive copies of their testimony so advise them when you send to the individual parties.

OCD appreciates the efforts of all interested persons who have contributed to this process. Given our obligation to protect the environment and the economic considerations of the industry, we believe that your input will enable us to come up with as good a rule as we can possibly get. Once again, thank you for your contributions.

March 19, 1991

dr/

1992

enclosure

Ruth Andrews  
New Mexico Oil & Gas Assoc.  
P. O. Box 1864  
Santa Fe,, New Mex. 87504-1864

John Corbett  
Giant E&P  
P. O. Box 2810  
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Bureau of Reclamation  
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Sylvia Little  
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Caulkins Oil Company  
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Mr. Joe Chesser  
Bureau of Land Management  
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Farmington,, New Mexico 87401

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Houston,, Tex. 77084

Arlene Luther  
Navajo EPA  
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Window Rock,, Ariz. 86515

Ronald Morgan  
Marathon Oil Company  
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Nancy Prince  
Environmental Affairs  
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El Paso,, Tex. 79925

John Roe  
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P. O. Box 420  
Farmington,, New Mex. 87499

George Seitts  
Giant Industries, Inc.  
23733 N. Scottsdale Rd.  
Scottsdale,, Ariz. 85255

Brian Wood  
Permite West Inc.  
37 Verano Loop  
Santa Fe,, New Mex. 87505



UNITED STATES  
DEPARTMENT OF THE INTERIOR

FISH AND WILDLIFE SERVICE

Ecological Services

Suite D, 3530 Pan American Highway, NE  
Albuquerque, New Mexico 87107

OIL CONSERVATION DIVISION  
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'92 JAN 23 AM 9 49

January 17, 1992

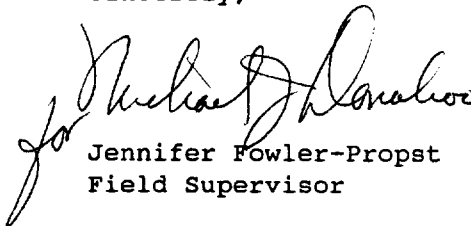
Mr. William J. LeMay  
Oil Conservation Division  
New Mexico Energy, Minerals  
and Natural Resources Department  
Santa Fe, New Mexico 87505

Dear Mr. LeMay:

This letter is in reference to the New Mexico Oil Conservation Division's (OCD) recommendations for changes in New Mexico Oil Conservation Commission (OCC) Order R-7940 for the "San Juan Basin Vulnerable Area Hearing". This office considers all the types of discharges to unlined pits listed in 3.A of your recommendations as significant sources of hydrocarbon contamination to the San Juan Basin. We have identified elevated levels of hydrocarbons in several species of fish and migratory birds in this area. We support the recommendations by OCD as a vital preliminary step toward the protection of valuable natural resources of the San Juan Basin.

If you have any questions, please contact Stephen Ward or me at 505) 883-7877.

Sincerely,

  
Jennifer Fowler-Propst  
Field Supervisor

cc:

Habitat Management Specialist, Refuges & Wildlife, Region 2, Albuquerque  
Chief, Environmental Contaminants Division, Region 2, Albuquerque



23733 North Scottsdale Road  
Scottsdale, Arizona 85255  
P.O. Box 12999  
Scottsdale, Arizona 85267

602  
585-8888

January 16, 1992

Commissioners  
Oil Conservation Division  
Land Office Building  
310 Old Santa Fe Trail  
Santa Fe, NM 87501

Re: Comments for the Record Concerning San Juan  
Basin Vulnerable Area Hearing, January 16, 1992

Gentlemen:

Giant Exploration and Production Company, located in Farmington, New Mexico, produced over 400,000 barrels of oil and 2 BCF of natural gas from the New Mexico portion of the San Juan Basin in 1991. As a producer we will be affected by the proposed Vulnerable Area. As an employer and taxpayer we will not be alone in feeling the impact.

We do not believe that the oil and gas industry or its beneficiaries have had sufficient notice to prepare meaningful comments on the proposed rule changes. Therefore, we respectfully ask that the NMOCDC extend its hearing for 90 days. In addition, we request that we be kept informed of future meetings/hearings, as well as reserve the right of appearance before the Commission relative to this matter.

For the record, Giant Exploration & Production Company is a division of Giant Industries, Inc., of Scottsdale, Arizona.

Sincerely,

  
George M. Seitts  
Manager, Government Affairs

GMS:ju  
cc: William C. Olson, Hydrogeologist

1/16/92

STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
DIVISION FOR THE PURPOSE OF  
CONSIDERING: Application by the Oil  
Conservation Division for the expansion  
of the San Juan Basin "Vulnerable Area"  
which was established by OCC Order  
R-7940 in 1985.

CASE NO. 10436

MOTION FOR CONTINUANCE  
OR IN THE ALTERNATIVE  
FOR LEAVE OF TIME IN  
WHICH TO CONDUCT ITS  
OWN STUDY

BCO, Inc. (BCO), by its attorneys, moves the Commission for a continuance of this hearing for a period of six (6) months; or in the alternative, for leave of time for a period of six (6) months within which to conduct its study of contamination of fresh ground water resources in its area of oil and gas operations in the San Juan Basin of New Mexico to determine whether the safeguards contemplated by the Division's proposed rulemaking is necessary. In support of this motion BCO further states:

- (1) The first notice of the Division's proposed rulemaking was received by BCO upon its receipt of the Division's Memorandum dated January 7, 1992.
- (2) Upon information and belief, the Division's proposed rulemaking is primarily based upon a report entitled "Volatile Organic Contamination of

Ground Water Around Unlined Producer Water Pits" authored by William C. Olson and dated December, 1989. (Olson Report)

- (3) The Olson Report, a copy of which was only very recently obtained by BCO (after it received notice of this hearing), appears to be a very comprehensive report that required a substantial period of time to compile.
- (4) The notice to BCO by the Division to adequately prepare a response, cross examine the Division's witnesses, or to otherwise determine whether the proposed rulemaking is necessary for the area of BCO's oil and gas operation is grossly inadequate and unreasonable under the circumstances.
- (5) BCO has had insufficient time in which to assess the economic impact of the proposed rulemaking to its current oil and gas operations, as well as future development of its oil and gas properties.
- (6) BCO knows of no immediate and present danger nor has the Division indicated that there exists such a danger of water contamination in the area of BCO's oil and gas operations.
- (7) BCO's principal witness and owner is unavailable for the next four months thereby contributing to



BCO's inability to adequately respond to the rulemaking and to coordinate a study of its area of operations.

- (8) The Division's notice to BCO violates its constitutionally guaranteed rights to procedural and substantive due process.

WHEREFORE, for the foregoing reasons, BCO requests that the Commission grant its Motion.

Respectfully submitted:


PADILLA & SNYDER

By: 

Ernest L. Padilla  
Post Office Box 2523  
Santa Fe, New Mexico 87504  
(505) 988-7577

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Motion For Continuance Or In The Alternative For Leave Of Time In which To Conduct Its Own Study to be hand-delivered to Robert G. Stovall, Esq., State Land Office Building, Santa Fe, New Mexico on the 16th day of January, 1992.

  
Ernest L. Padilla

STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
DIVISION FOR THE PURPOSE OF  
CONSIDERING: Application by the Oil  
Conservation Division for the  
expansion of the San Juan Basin  
"Vulnerable Area" which was  
established by OCC Order R-7940  
in 1985.

CASE NO. 10436

MEMORANDUM IN SUPPORT OF MOTION FOR  
CONTINUANCE OR IN THE ALTERNATIVE FOR  
LEAVE OF TIME IN WHICH TO CONDUCT ITS  
OWN STUDY

Due process generally requires that affected parties receive reasonable notice. Bell Telephone Co. of Pennsylvania v. Federal Communications Commission, 503 F.2d 1250, (3rd Cir. 1974), cert. denied, 422 U.S. 1026, 95 S. Ct. 2620, 45 L.Ed. 2d 684; Mobile Oil Corp. v. Federal Power Commission, 483 F.2d 1238 (D.C.Cir. 1973); Rivas v. Board of Cosmetologists, 101 N.M. 592, 686 P.2d 934 (1984). Notice must be given a sufficient length of time before the hearing to afford persons an opportunity to be present. 16A Am Jur 2d, Constitutional Law, Section 833 p. 1024 (1979) citing Roller v. Holly, 176 U.S. 398, 44 L.Ed. 520, 20 S. Ct. 410; McDaniel v. McElvy, 91 Fla. 770, 108 So. 820, 51 ALR 731; Jacobson-Lyons Stone Co. v. Silverdale Cut Stone Co., 189 Kan. 511, 370 P.2d 68; Smith v. Smith, 2 N.Y.2d 120, 157

N.Y.S.2d 546, 138 N.E.2d 790; Staub v. Lyman Land & Invest. Co., 30 S.D. 310, 138 N.W. 957, adhered to 31 S.D. 571, 141 N.W. 979. The notice must afford a reasonable time for those interested to make their appearance. 16 A Am Jur 2d supra citing Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 94 L.Ed. 865, 70 S. Ct. 652. "Notice to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that a reasonable opportunity to prepare will be afforded, and it must set forth the alleged misconduct with particularity." 16A Am Jur 2d supra citing Re Gault, 387 U.S. 1, 18 L.Ed.2d 527, 87 S. Ct. 1428. (emphasis ours). "The very nature of the principle that notice must be given sufficiently in advance of the hearing to afford an opportunity to be present makes it clear that the question whether, from the viewpoint of time, there has been a sufficient compliance with the notice requirement which the due process guaranty imposes is determinable according to the facts and circumstances of particular cases." 16 Am Jur 2d Section 833 supra at 1025.

A fair trial in a fair tribunal is an essential requirement of due process. This concept applies to administrative agencies as well as to courts. Withrow v. Larkin, 421 U.S. 35, 95 S. Ct. 1456, 43 L.Ed.2d 712 (1975); Tumey v. Ohio, 273 U.S. 510, 47 S. Ct. 437, 71 L.Ed. 749 (1927); Lujan v. New Mexico State Police Bd., 100 N.M. 149,

667 P.2d 456 (1983). "Safeguarding this requirement is especially essential in administrative proceedings where certain basic rights are overlooked in the interest of administrative efficiency and expedition. Lujan v. New Mexico State Police Bd., supra at 151 citing National Labor Relations Board v. Phelps, 136 F.2d 562 (5th Cir. 1943).

In the instant case, BCO, Inc. was given notice of a hearing by Memorandum of the Oil Conservation Division dated January 7, 1992 that was scheduled to occur on January 16, 1992. Upon information and belief the Oil Conservation Division has been studying this complex issue since approximately 1985. Suddenly, on January 7, 1992, a decision to have a hearing regarding rulemaking is made. The rulemaking concerns a complicated issue of tremendous impact on the oil and gas operations in the entire San Juan Basin. It is impossible for a small producer such as BCO to adequately prepare for a hearing with less than two weeks notice. The complicated nature of the issues should be considered in conjunction with the length of notice to reach a determination that insufficient notice was given to comport with procedural due process.

Respectfully submitted,

PADILLA & SNYDER

By: 

Ernest L. Padilla

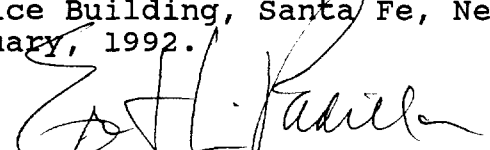
Post Office Box 2523

Santa Fe, New Mexico 87504

(505) 988-7577

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Memorandum in Support of Motion For Continuance Or In The Alternative For Leave Of Time In Which To Conduct Its Own Study to be hand-delivered to Robert G. Stovall, Esq., State Land Office Building, Santa Fe, New Mexico on the 16th day of January, 1992.

  
Ernest L. Padilla

January 16, 1992

New Mexico Oil and Gas Commission  
Case 10436

Morgan Hall, State Land Office Building  
Santa Fe, New Mexico

RECEIVED

JAN 16 1992

OIL CONSERVATION DIVISION

The continuance of this hearing is  
requested for a period of time  
sufficient to study the impact on  
our operations.

A change of the type suggested  
deserves a full study and adequate  
consideration.

Sincerely,

William Manchester

General Manager

D. J. Simmons Company

3005 Northridge Drive, Suite ~~EL~~ L

Farmington, NM 87401



## Independent Petroleum Association of New Mexico

P.O. Box 1477 • 440 Cerrillos • Santa Fe, New Mexico 87504-1477  
(505) 982-2500 • Fax: (505) 983-0644

Sylvia F. Little  
*President*

Kevin H. McCord  
*Northern Vice President*

Robert G. Armstrong  
*Southern Vice President*

Bruce Ritter  
*Secretary-Treasurer*

Alvin Baca  
*Executive Director*

**January 15, 1992**

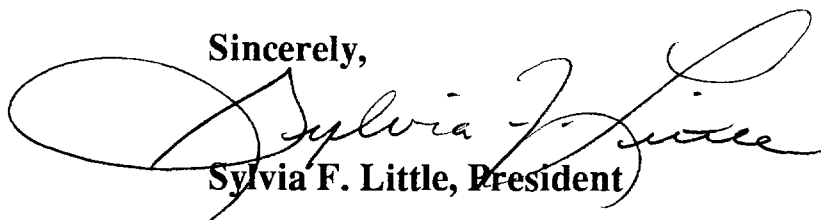
**Mr. William J. LeMay, Director  
Oil Conservation Division  
P. O. Box 2088  
Santa Fe, New Mexico 87504**

**Dear Mr. LeMay:**

The Independent Petroleum Association of New Mexico has received and reviewed the proposed Commission Order R-7940 which was mailed from your office January 7, 1992. Various Association Committees were subsequently mailed the final proposal and announcement of OCD Hearing date. On January 14th we learned by phone that a comprehensive evaluation and written comments would not be possible to submit by January 16th. Our Association's Officers and Committee Chairmen have expressed their intent to make oral testimony and present expert witnesses on R-7940.

Our Association requests a continuance of the hearing on R-7940 until the date of the ~~March~~ Commission Hearing. Thank you for your consideration in this matter. ~~April~~

Sincerely,



Sylvia F. Little, President



United States Department of the Interior  
BUREAU OF RECLAMATION

UPPER COLORADO REGION  
DURANGO PROJECTS OFFICE  
835 E. SECOND AVENUE

P.O. BOX 640  
DURANGO, COLORADO 81302-0640

IN REPLY  
REFER TO:

DUR-453  
RES-3.20

JAN 15 1992

Mr. William J. LeMay, Director  
Oil Conservation Division  
Energy, Minerals, and Natural  
Resources Department  
State Land Office Building  
P.O. Box 2088  
Santa Fe NM 87504

Subject: Oil Conservation Division Hearing, Case 10436, Regarding Expansion of the Defined "Vulnerable Area" to Include Drainages into the San Juan, Animas, and La Plata Rivers, New Mexico (Water Quality)

Dear Mr. LeMay:

The Bureau of Reclamation (Reclamation) welcomes the opportunity to comment on Case 10436 proposing expansion of the San Juan Basin "Vulnerable Area" to include drainages of the San Juan, Animas, and La Plata Rivers in San Juan, Rio Arriba, McKinley, and Sandoval Counties, New Mexico. We are currently involved with a number of water quality issues throughout the San Juan Basin, including squawfish recovery, salinity control, non-point source pollution control, and hazardous waste remediation. Maintaining or improving surface and groundwater quality is a vital component of each of these efforts, as well as a fundamental part of Reclamation's overall mission. We are particularly concerned with any deterioration in water quality in the San Juan River, and possible effects on Navajo Reservoir. Reclamation strongly endorses efforts by the State of New Mexico to avoid negative water quality impacts from energy development. We also agree that clean-up should be required at sites where environmental damage has already occurred.

In addition to offering support for proposed rule changes by the Oil Conservation Division, Reclamation encourages close and early coordination between respective agencies whenever energy development may endanger water quality in rivers, reservoirs, and drainages.

Thank you for consideration of these comments.

Sincerely,

Max J. Stodolski  
Projects Manager



STATEMENT OF THE  
BUREAU OF LAND MANAGEMENT  
IN THE MATTER OF THE  
NEW MEXICO OIL CONSERVATION DIVISION  
REQUEST FOR AMENDMENTS  
TO OCC ORDER R-7940

January 16, 1992

The Bureau of Land Management (BLM) is the largest surface and mineral management agency in the San Juan Basin managing over 22,000 producing wells on approximately 2,325,000 acres of Federal and Indian leases.

The proposed amendments to Order R-7940 will afford increased protection of water resources in the San Juan Basin. The BLM supports the proposed amendments.

The prohibition of pits in the expanded "Vulnerable Area" and the "Wellhead Protection Area" will require operators to close and rehabilitate existing pits and establish new lined pits or tanks. Any change of operations involving pits receiving water from Federal or Indian leases must meet Federal standards requiring approval of the BLM in conjunction with the surface management agency, if other than the BLM.

BLM will not be able approve all operations anticipated in closing these pits within the proposed time frames. We recommend that the proposed schedule be changed as follows:

Elimination of discharge to unlined pits within currently defined "Vulnerable Area": Change from one year to two years.

Elimination of discharge to unlined pits within major tributary drainages to the San Juan, Animas, and La Plata Rivers: Change from two to three years.

Elimination of discharge to unlined pits within all remaining tributary drainages: Change from three to five years.

Implementing the proposed changes will require delineation of the current and expanded "Vulnerable Areas", "Wellhead Protection Areas", and affected existing pits. We recommend that the information compiled by the Oil Conservation Division (OCD) be made available to all affected surface management agencies.

We also recommend that the BLM and the OCD enter into a memorandum of understanding at the field level to share data, to coordinate compliance inspections, and to consolidate the approval processes of the two agencies.

CAMPBELL, CARR, BERGE  
& SHERIDAN, P.A.  
LAWYERS

MICHAEL B. CAMPBELL  
WILLIAM F. CARR  
BRADFORD C. BERGE  
MARK F. SHERIDAN  
WILLIAM P. SLATTERY

PATRICIA A. MATTHEWS  
MICHAEL H. FELDEWERT

JACK M. CAMPBELL  
OF COUNSEL

JEFFERSON PLACE  
SUITE 1 - 110 NORTH GUADALUPE  
POST OFFICE BOX 2208  
SANTA FE, NEW MEXICO 87504-2208  
TELEPHONE: (505) 988-4421  
TELECOPIER: (505) 983-6043

**HAND-DELIVERED**

January 15, 1992

**RECEIVED**

JAN 15 1992

OIL CONSERVATION DIV.  
SANTA FE

William J. LeMay, Director  
Oil Conservation Division  
New Mexico Department of Energy,  
Minerals & Natural Resources  
State Land Office Building  
Santa Fe, New Mexico 87501

**Re: Case 10436: Application of the Oil Conservation Division for the Expansion of the San Juan Basin "Vulnerable Area" which was Established by OCC Order R-7940 in 1985**

Dear Mr. LeMay:

Enclosed is a copy of a motion to continue the hearing in Case 10436 to the February Commission Hearing date to permit Benson-Montin-Greer Drilling Corp. ("BMG") to review the Division's proposal and prepare for the hearing on this application. As stated in Mr. Greer's affidavit, attached to this motion, the fact that the Commission and an Industry Committee have been working on this matter for some time was known to us. However, BMG was not a member of this Committee and we simply have not had sufficient time to review their proposal and prepare for this case.

We believe that it is reasonable for Benson-Montin-Greer to expect the rules, once finalized the Industry Committee, to be made available to non-committee members for review a reasonable time prior to the final rule making hearing. In this case, such notice has not been provided. Accordingly, we request a continuance.

In addition to this motion, I have been contacted by Mr. John Roe of Dugan Production Company who has advised me that he will be present at the January 16th hearing, along with Mr. Dugan, Mr. Greg Merrian, Mr. Bob Bayless, Mr. Kevin McCord, and others. I anticipate that I will be entering my appearance in this case for Dugan Production Company, Greg Merrian, Robert Bayless, Mr. Kevin McCord and BMG. Some

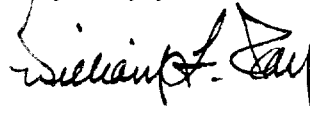
William J. LeMay, Director  
January 15, 1992  
Page 2

or all of these individuals may want to present testimony at the time of hearing. I call this to your attention since no pre-hearing statement has been filed by these individuals in this case due to the fact that these operators, like BMG, have been "caught short" by the limited notice of the final rules which will be considered by the Commission on January 16, 1992.

I hope that what we are dealing with here is just a mis-communication. If the Commission intends to leave the record open for additional testimony on these proposed rules at the March 1992 Commission hearing, I will withdraw BMG's motion. I believe that leaving the record open in this fashion is consistent with Commission practice and would permit all operators to fully participate in this hearing.

I am available to discuss this matter with you at your convenience.

Very truly yours,

A handwritten signature in black ink, appearing to read "William F. Carr", with a stylized flourish at the end.

William F. Carr

WFC:sg  
Enclosures  
cc: Albert R. Greer

STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION COMMISSION

**RECEIVED**

APPLICATION OF THE OIL CONSERVATION  
DIVISION FOR THE EXPANSION OF THE  
SAN JUAN BASIN "VULNERABLE AREA"  
WHICH WAS ESTABLISHED BY OCC  
ORDER NO. R-7540 IN 1985.

JAN 17 1992  
OIL CONSERVATION DIV  
SANTA FE

CASE NO. 10436

**MOTION FOR CONTINUANCE**

COMES NOW, Benson-Montin-Greer Drilling Corp., through its President, Albert R. Greer and hereby moves the Oil Conservation Commission ("Commission") for a continuance of Case 10436 to the March, 1992 Commission hearing and in support thereof states:

1. On January 16, 1992 the Oil Conservation Commission has docketed Case No. 10436 in which it will consider the expansion of the "vulnerable area" in the San Juan Basin in northwest, New Mexico.
2. A final notice of the proposed rules changes were not made available to oil and gas producers in the San Juan Basin until sometime after January 7, 1992 - a maximum of nine days prior to the hearing on this matter. See Oil Conservation Division Memorandum dated January 7, 1992 attached hereto as Exhibit "A".
3. Copies of the topographic quadrangles which identify the proposed expanded boundaries of the "vulnerable area" were not available, in some cases, until January 13, 1992 - three days prior to the scheduled hearing on this application.

4. See Affidavit of Albert R. Greer attached hereto as Exhibit B.

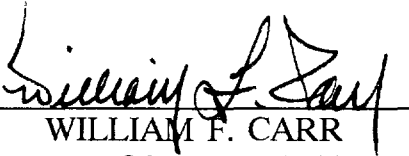
5. Benson-Montin-Greer Drilling Corp. has been advised that the Division intends to conclude its hearing on these proposed changes on either January 16, or 17, 1992. (See, Affidavit of Albert R. Greer attached hereto as Exhibit "B").

6. Due to the late date on which notice of the Division's proposed changes were received by Benson-Montin-Greer, it has been impossible for it to adequately evaluate the proposed changes and prepare for the January 16, 1992 hearing. (See, Affidavit of Albert R. Greer attached hereto as Exhibit "B").

7. Unless Case 10436 is continued and remains open for presentation of evidence after the currently scheduled January 16, 1992 hearing date, Benson-Montin-Greer will be denied reasonable notice from the Division of the proposed changes and accordingly will be denied a fair hearing on this case which can impair its constitutionally protected property rights in the San Juan Basin in northwest New Mexico.

Respectfully submitted,

CAMPBELL, CARR, BERGE & SHERIDAN, P.A.

By:   
WILLIAM F. CARR

Post Office Box 2208  
Santa Fe, New Mexico 87504  
Telephone: (505) 988-4421

ATTORNEYS FOR BENSON-  
MONTIN-GREER DRILLING CORP.



State of New Mexico  
ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT  
Santa Fe, New Mexico 87505

OIL CONSERVATION DIVISION



BRUCE KING  
GOVERNOR

MEMORANDUM

ANITA LOCKWOOD  
CABINET SECRETARY  
MATTHEW BACA  
DEPUTY SECRETARY

TO: Interested Parties  
San Juan Basin Long Term Produced Water Study Committee

FROM: William C. Olson, Hydrogeologist *WCO*  
Environmental Bureau

DATE: January 7, 1992

RE: SAN JUAN BASIN VULNERABLE AREA HEARING

*7/2 min 2-11-92*  
*Bo C. Olson*

This memorandum serves to inform all interested parties of the San Juan Basin Long Term Produced Water Study Committee that the master copies of the current and expanded "Vulnerable Areas" are available for copying at the Reprographics Center, Inc. The Reprographics Center, Inc. is located at 814 West Apache, Farmington, New Mexico 87401 and can be reached at (505) 326-2269.

Enclosed you will find a revised draft of the New Mexico Oil Conservation Division's (OCD) recommendations for changes in New Mexico Oil Conservation Commission (OCC) Order R-7940. The revised recommendations incorporate comments on OCD's September 25, 1991 initial "Vulnerable Area" recommendations which have been submitted by various parties to the OCD.

In addition, you will also find enclosed a copy of the docket for the January 16, 1992 OCC Hearing at which OCD's recommendations for changes in OCC Order R-7940 will be presented to the OCC.

If you have any questions, please contact me at (505) 827-5885.

VILL AGRA BUILDING - 4th Floor  
Forestry and Resources Conservation Division  
P.O. Box 1946 87504-1946  
827-5830

Park and Recreation Division  
P.O. Box 1147 87504-1147  
827-7466

2048 South Pacheco  
Office of the Secretary  
827-1960

Administrative Services  
827-3929

Energy Conservation & Management  
827-8900

Mining and Minerals  
827-4970

LAND OFFICE BUILDING - 310 Old Santa Fe Trail  
Oil Conservation Division  
P.O. Box 2006 87504-2006  
827-5800

EXHIBIT "A"

NEW MEXICO OIL CONSERVATION DIVISION RECOMMENDATIONS  
FOR CHANGES IN OIL CONSERVATION COMMISSION ORDER R-7940

The following are the New Mexico Oil Conservation Division's (OCD) recommendations for changes in Oil Conservation Commission (OCC) Order R-7940:

1. Expansion Of The "VULNERABLE AREA".

The OCD recommends that the areas currently defined as "VULNERABLE AREAS" under OCC Order R-7940 be expanded to include those areas which lie within 50 vertical feet of all major perennial and ephemeral creeks, canyons, washes, arroyos and draws located within the oil and gas producing areas of the San Juan Basin in Northwestern New Mexico. The OCD has delineated the "VULNERABLE AREAS" on 7.5 minute and 15 minute United States Geological Survey quadrangle maps.

2. Creation Of A Wellhead Protection Area.

The OCD recommends that a wellhead protection area be established to provide protection for springs and water wells outside of the current and recommended expanded "VULNERABLE AREAS". The OCD proposes that a "WELLHEAD PROTECTION AREA" be defined as the area within a radius of 1000 horizontal feet of all fresh water springs and wells.

3. "VULNERABLE AREA" And "WELLHEAD PROTECTION AREA" Prohibitions

A. Discharges To Unlined Pits.

The OCD recommends that all types of discharges to any unlined pits be prohibited within the "VULNERABLE AREAS" and "WELLHEAD PROTECTION AREAS" defined above. The OCD recommends that the current 5 barrel/day volume exemption be eliminated. Examples of types of prohibited unlined pits would include:

- Produced Water Pits
- Dehydration Pits
- Separator Pits
- Blowdown Pits
- Tank Drain Pits
- Gathering and Transmission Line Drip Pits
- Workover Pits
- Drilling Fluid Pits
- Reserve Pits

## B. Transfer Of Fluids

The OCD recommends that the transfer of fluids out of the "VULNERABLE AREAS" and "WELLHEAD PROTECTION AREAS" for disposal into unlined or unpermitted pits be prohibited unless specifically authorized by the Director of the OCD.

## 4. Pit Registration

The OCD recommends that all unlined pits outside the "VULNERABLE AREAS" and "WELLHEAD PROTECTION AREAS" receiving greater than five (5) barrels of fluids per day be registered with the OCD. The OCD will review the registration forms to determine if additional fresh water protection is necessary at the specific pit location.

## 5. Closure Of Existing Unlined Pits

The OCD recommends that prohibited unlined pits in the "VULNERABLE AREAS" and "WELLHEAD PROTECTION AREAS" at existing locations be closed pursuant to OCD guidelines. Closure procedures will require submittal for OCD approval of a closure plan describing proposed company procedures for closing pits and eliminating, to the extent practicable, existing and future threats to fresh water and the environment from past disposal at the site. Closure plans will also include a reasonable time schedule for implementation and submission of a closure report. Applications may be for single sites or companies may submit a plan for multiple locations.

## 6. Schedule For Implementation Of Recommendations.

The OCD recommends the following implementation schedule:

### A. Elimination Of Discharges To Unlined Pits

#### 1. Currently Defined "Vulnerable Area"

Eliminate all discharges to unlined pits within one year from the effective date of the order.



11. Major Tributaries To The San Juan, Animas and La Plata Rivers.

Eliminate all discharges to unlined pits within two years from effective date of order in the following tributaries to the following rivers:

a. San Juan River

Arzenta Canyon	Laguna Seca Draw
Benito Canyon	Locke Arroyo
Bloomfield Canyon	Malpais Arroyo
West Fork	
Bloomfield Canyon	Mansfield Canyon
Caballo Canyon	Manzanares Canyon
Cabresto Canyon	Many Devils Wash
Canon Bancos	Munzo Canyon
Canon Largo	Negro Andy Canyon
Carracas Canyon	Ojo Amarillo Canyon
Chaco River/Chaco Wash	Potter Canyon
Chavez Canyon	Pump Canyon
Collidge Canyon	Rattlesnake Wash
Cottonwood Canyon	Red Wash
Craighton Canyon	Ruins Canyon
Dain Arroyo	Salt Creek Wash
Eagle Nest Wash	Shiprock Wash
Eul Canyon	Shunway Arroyo
Farmington Glade	Slana Canyon
Frances Creek	Little Slana Canyon
Gallegos Canyon	Stavens Arroyo
Gobernador Canyon	Stewart Canyon
Green Canyon	Sullivan Canyon
Hara Canyon	Tom Gale Canyon
Head Canyon	Vaca Canyon
Horn Canyon	Valdez Canyon
Kuts Canyon	Waughan Arroyo
La Fragua Canyon	Wright Canyon
La Jara Canyon	

b. Animas River

Arch Rock Canyon	Hood Arroyo
Barton Arroyo	Johnson Arroyo
Blancett Arroyo	Jones Arroyo
Bohanan Canyon	Kiffen Canyon
Calloway Canyon	Knowlton Canyon
Cook Arroyo	Kochis Arroyo
Cox Canyon	Miller Canyon
Ditch Canyon	Rabbit Arroyo
Estas Arroyo	Tucker Canyon
Flora Vista Arroyo	Williams Arroyo
Hampton Arroyo	Wyper Arroyo
Hart Canyon	

c. La Plata River

Barker Arroyo  
Conner Arroyo  
Cottonwood Arroyo  
Coyne Arroyo  
McDermott Arroyo

Murphy Arroyo  
Pickering Arroyo  
Thompson Arroyo  
Two Cross Arroyo

iii. Remaining Tributary Drainages

Eliminate all discharges to unlined pits in all remaining tributaries within three years from effective date of the order.

3. Pit Registration

The OCD recommends that all unlined pits outside the "VULNERABLE AREAS" and "WELLHEAD PROTECTION AREAS" receiving greater than five (5) barrels of fluids per day be registered with the OCD within one year of the effective date of order.

C. Closure Plans

Applications or plans to close existing unlined pits in the "VULNERABLE AREAS" and "WELLHEAD PROTECTION AREAS" will be submitted to OCD for approval within 60 days from the date of elimination of the discharge.

7. Variances

A. Discharge Prohibition

The Director of the OCD may administratively approve a variance to the discharge prohibition if the discharger can demonstrate that:

- i. the discharge site is located outside the boundaries of the "VULNERABLE AREA" as defined in Recommendation 1. above, or;
- ii. the discharge quality meets or exceeds the New Mexico Water Quality Control Commission (WQCC) Ground Water Standards, or;

iii. no protectable ground water exists within 100 vertical feet of the discharge location and that a fresh water well or spring within a radius of 1000 feet of the discharge location will not be affected by the discharge.

3. Time Schedule For Elimination Of Discharges

For good cause shown, the Director of the OGD may administratively allow an extension of the time schedule for elimination of discharges to unlined pits, as described in 6.A. above, for a period not to exceed one year.

**DOCKET: COMMISSION HEARING - THURSDAY - JANUARY 16, 1992**  
**9:00 A.M. - MORGAN HALL, STATE LAND OFFICE BUILDING,**  
**SANTA FE, NEW MEXICO**

**CASE 10243:** (De Novo and continued from November 14, 1991, Commission Hearing.)

Application of BHP Petroleum (America) Inc. for compulsory pooling, San Juan County, New Mexico. Applicant, in the above-styled cause, seeks an order pooling all mineral interests in the Basin-Fruitland Coal Gas Pool underlying the W1/2 of Section 23, Township 29 North, Range 13 West, forming a standard 320-acre gas spacing and production unit for said pool. Said unit is to be dedicated to its existing Gallegos Canyon Unit Well No. 190 located at a previously approved unorthodox coal gas well location 245 feet from the South line and 1500 feet from the West line (Unit N) of said Section 23. Also to be considered will be the cost of drilling and completing said well and the allocation of the cost thereof as well as actual operating costs and charges for supervision, designation of applicant as operator of the well and a charge for risk involved in drilling said well. Said unit is located at the southeast edge of Farmington, New Mexico. Upon application of Louise Locke d/b/a Locke-Taylor Drilling Company, this case will be heard De Novo pursuant to the provisions of Rule 1220.

**CASE 10246:** (De Novo and continued from November 14, 1991, Commission Hearing.)

Application of BHP Petroleum (America) Inc. for compulsory pooling, San Juan County, New Mexico. Applicant, in the above-styled cause, seeks an order pooling all mineral interests in the Basin-Fruitland Coal Gas Pool underlying the E1/2 of Section 23, Township 29 North, Range 13 West, forming a standard 320-acre gas spacing and production unit for said pool. Said unit is to be dedicated to its existing Gallegos Canyon Unit Well No. 191 drilled at a standard located 975 feet from the North line and 370 feet from the East line (Unit A) of said Section 23. Also to be considered will be the cost of drilling and completing said well and the allocation of the cost thereof as well as actual operating costs and charges for supervision, designation of applicant as operator of the well and a charge for risk involved in drilling said well. Said unit is located at the southeast edge of Farmington, New Mexico. Upon application of Louise Locke d/b/a Locke-Taylor Drilling Company, this case will be heard De Novo pursuant to the provisions of Rule 1220.

**CASE 10245:** Application by the Oil Conservation Division for the expansion of the San Juan Basin "Vulnerable Area" which was established by OCC Order R-7540 in 1985. The expansion area includes all lands defined by a contour line which is fifty (50) vertical feet above and on both sides of the centerline of drainages into the San Juan, Animas and La Plata Rivers in San Juan, Rio Arriba, McKinley and Sandoval Counties, New Mexico. The application also requests amendments to OCC Order R-7540 and Order R-7940-A to prohibit all discharges to unlined pits, to require the registration of all pits outside the defined "Vulnerable Area" that receive more than five barrels per day, to establish a special protection area at Lindrieth, New Mexico and to provide a wellhead protection zone of 1000 feet surrounding all springs and fresh water wells.

STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION COMMISSION

APPLICATION OF THE OIL CONSERVATION  
DIVISION FOR THE EXPANSION OF THE  
SAN JUAN BASIN "VULNERABLE AREA"  
WHICH WAS ESTABLISHED BY OCC  
ORDER NO. R-7540 IN 1985.

CASE NO. 10436

AFFIDAVIT

STATE OF NEW MEXICO     )  
                                  ) ss.  
COUNTY OF SAN JUAN     )

Albert R. Greer, being duly sworn, upon oath states:

1. I am president of Benson-Montin-Greer Drilling Corp., which owns oil and gas mineral interests and operates certain oil and gas producing wells in the San Juan Basin in northwest New Mexico. These property interests may be adversely affected by the expansion of the "vulnerable area" as proposed by the Oil Conservation Division ("Division") in Case 10436.

2. I know that the San Juan Basin Long Term Produced Water Study Committee has been studying expansion of the "vulnerable area" but I have not been a member of this industry committee, nor have I participated in the development of any of the changes proposed by it or the Division in Case 10436.

3. On January 9, 1992 my office received - through an industry association - the Division's January 7, 1992 Memorandum, a copy of which is attached hereto. This was the first time I received a draft of the rules which the Commission will consider at its January 16, 1992 hearing.

4. Pursuant to the directive from Mr. William C. Olson in the Division's January 7, 1992 Memorandum, I contacted Reprographics Center Inc. in Farmington, New Mexico, on Monday, January 13, 1992 to obtain copies of the topographic quadrangles which identify the proposed expanded boundaries for the "vulnerable area". Reprographics Center Inc. advised me on January 13, 1992 that in addition to 113 topographic quadrangles they had had for several days, 200 new topographic quadrangles had been provided to them on that date. Further with respect to identification of wells in relation to the vulnerable area, wells are not spotted on the topographic quadrangles and section lines are difficult to define. Our draftsman is scheduled to commence spotting wells on these quadrangles Friday, January 17. I will not know how my company's operations are impacted until this work is completed.

5. I contacted Mr. William C. Olson at the Division's Santa Fe office on January 14, 1992 and was advised that the Division was preparing lists of affected wells by operators, but that these lists were not complete at that time.

6. It is my understanding that the Oil Conservation Commission intends to conclude the presentation of all evidence in this case on January 16 or 17, 1992.


7. Due to the late date on which Benson-Montin-Greer Drilling Corp. received the revised draft of the Division's proposed changes in Order R-7940, and due to the limited time that the proposed boundaries for the "vulnerable area" have been available for review through Reprographics Center Inc., it has been impossible for Benson-Montin-Greer Drilling Corp. to adequately

prepare for the hearing in Case 10436.

WHEREFORE, Affiant sayeth naught.

  
ALBERT R. GREER

SUBSCRIBED AND SWORN to before me this 15 day of  
January, 1992 by Albert R. Greer.

  
Notary Public

My Commission Expires:

June 20, 1994

# New Mexico Register

Volume II Number 24  
December 31, 1991

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## NOTICES

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### NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION  
Santa Fe - New Mexico

The State of New Mexico by its Oil Conservation Commission hereby gives notice pursuant to law and Rules and Regulation of said Commission promulgated thereunder of the following public hearing to be held at 9:00 A.M. on **Thursday, January 16, 1992**, at Morgan Hall, State Land Office Building, Santa Fe, New Mexico.

#### STATE OF NEW MEXICO TO:

All named parties and persons  
having any right, title, interest  
or claim in the following cases  
and notice to the public.

(NOTE: All land descriptions herein refer to the New Mexico Principal Meridian whether or not so stated.)

#### CASE 10436:

Application by the Oil Conservation Division for the expansion of the San Juan Basin "Vulnerable Area" which was established by OCC Order R-7940 in 1985. The expansion area includes all lands defined by a contour line which is fifty (50) vertical feet above and on both sides of the centerline of drainages into the San Juan, Animas and La Plata Rivers in San Juan, Rio Arriba, McKinley and Sandoval Counties, New Mexico. The application also requests amendments to OCC Order R-7940 and Order R-7940-A to prohibit all discharges to unlined pits, to require the registration of all pits outside the defined "Vulnerable Area" that receive more than five barrels per day, to establish a special protection area at Lindrith, New Mexico and to provide a wellhead protection zone of 1000 feet surrounding all springs and fresh water wells.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 20th day of December 1991.

STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION

WILLIAM J. LEMAY, Director

S E A L

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### NEW MEXICO GAME AND FISH DEPARTMENT

STATE GAME COMMISSION

#### MEETING ANNOUNCEMENT

The State Game Commission will meet Jan. 7, 1992 at 1 p.m. at the Education Department Building, Mabry Hall, 300 Don Gaspar in Santa Fe. Agenda items will include:

Approval of minutes, report from Waterfowl/Upland Game Council, approval of habitat stamp and regional five-year plans and 1992-1993 projects, license revocation recommendations, funding for bear study, reaffirm Open Meetings Act, approval of Mission Statement, financial assessments to vendors because of unaccounted licenses (Reg. 691), proposed legislation. Open discussion by commission to include long range plan for the commission, comments on the advisory council system, objectives for the game department.

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### NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

The New Mexico Human Services Department will hold a hearing on Friday, January 31, 1992 at 9:00 AM, in the Conference Room

at the Kennedy Building, at 331 Sandoval, in Santa Fe, New Mexico.

The Department has recently undertaken a thorough review of Medicaid expenditures. Currently, the Medicaid program reimburses for home health agencies services using the Medicare reimbursement methodology. The Department is proposing to reduce reimbursement by decreasing the cost limits by 3.1 percentage points for the period December 1, 1991, to June 30, 1992.

Interested persons may testify at this hearing or may submit written comments no later than January 31, 1992 to Richard W. Heim, Secretary, Human Services Department, P. O. Box 2348, Santa Fe, New Mexico 87504-2348.

Copies of the proposed regulation may be obtained by sending a self-addressed stamped envelope to Medical Assistance Division, P. O. Box 2348, Santa Fe, New Mexico 87504-2348.

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### NEW MEXICO JUVENILE PAROLE BOARD

New Mexico Juvenile Parole Board will be conducting a public hearing at 1506 S. St. Francis Drive, Santa Fe, NM on January 31, 1992 at 9:00 AM on Juvenile Parole Board Rules and Regulations. Those requesting a copy of rules can call 827-3599 or pick up a set at the above mentioned address.

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### NEW MEXICO STATE RACING COMMISSION

P. O. Box 8576, Highland Sta.  
Albuquerque, NM 87198  
(505) 841-4644

#### NOTICE OF RULEMAKING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a rulemaking and public hearing will be held Tuesday,