

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

RECEIVED

AUG 22 1989

APPLICATION OF MERIDIAN OIL, INC.  
FOR EXEMPTION FROM THE NEW MEXICO  
NATURAL GAS PRICE PROTECTION ACT,  
SAN JUAN COUNTY, NEW MEXICO

OIL CONSERVATION DIVISION

CASE NO. 9703

APPLICANT'S RESPONSE TO GAS COMPANY'S  
MOTION TO DISMISS

Applicant, Meridian Oil, Inc. ("Meridian") responds to a motion to dismiss filed by Gas Company of New Mexico. Gas Company's motion is deficient for four (4) different, but equally compelling reasons:

- I. The Division's authority to act on applications for exemption is preserved by laws 1984, CH. 123, SEC. 13 (B).
- II. The OCD has previously established its authority to grant applications for exemptions subsequent to the expiration of The Price Protection Act.
- III. Amendments to The Price Act do not affect Meridian's Application by virtue of Article IV, SEC. 34 of the New Mexico Constitution.
- IV. Gas Company's operational personnel expressly requested Meridian to obtain this exemption so that Gas Company could release funds due and owing to Meridian. The present motion is a disingenuous effort to aid Gas Company in other unrelated litigation and to deprive Meridian of its funds.

- I. The New Mexico Legislature expressly preserved the OCD's authority to act on applications for exemption from the Pricing Act by enacting Laws 1984, CH. 123, Sec. 13 (B).

Gas Company blithely asserts that 1984 amendments to the Natural Gas Pricing Act (Section 62-7-1 to 62-7-10), which led to the Natural Gas Price Protection Act (Sections 62-7-11 to 62-7-23), terminated the authority of the New Mexico Oil Conservation Division's authority to act on applications for exemptions from the Pricing Act and transferred such authority to the New Mexico Public Service Commission. Gas Company is wrong.

Gas Company makes only oblique reference to the "savings clause" in the applicable statute. The "savings clause" (See, Laws 1984, CH. 123, Sec. 13 [B], attached hereto as Exhibit A.), specifically retains OCD jurisdiction to act on exemption applications, the statute states:

B. Nothing in this act (The Natural Gas Price Protection Act) shall limit:

(1) the right of any person to seek relief or pursue rights; or

(2) the obligation of any governmental agency to act; if such right or obligation existed prior to the repeal of the Natural Gas Pricing Act; and Subsection A of this section shall not operate to limit any such right or obligation.

Hence, the statute makes clear that since the OCD has a pre-amendment obligation to act on exemption applications, that obligation continued unaffected by the 1984 amendments.

Gas Company's argument that the expiration of the Price Protection Act terminated the Division's authority ignores the

applicable rules of statutory construction. In the event of a seeming conflict between statutory enactments, a specific statute will always control a general statute. City of Alamogordo v. Walker Motor Co., Inc., 94 NM 690, 616 P.2d 403 (1980). Nowhere has the legislature expressed an intent that rights expressly preserved by the savings clause were to be subsequently extinguished. A generic provision declaring the termination of other, separate statutory provisions of the Natural Gas Pricing Protection Act (Sections 62-7-11 to 62-7-23, NMSA [1978]) is insufficient to act as a repeal (express or otherwise) of the simultaneously enacted savings clause. Such repeals by implication are disfavored under the law. Hall v. Regents of University of New Mexico, 106 NM 167, 740 P.2d 1151 (1987). Because the legislature has not specifically and expressly repealed the provisions of Laws 1984, Ch. 123, Sec. 13 (B), the Division's authority and Meridian's rights continue in effect. See, Alaska Public Utilities v. Chugach Elec. Ass'n., 580 P.2d 687 (Alas. 1978), citing Sutherland, Statutory Construction (4th Ed. C.D. Sands 1973).

II. The Oil Conservation Division has previously determined that it has the authority to act on applications for exemptions subsequent to the expiration of the Price Protection Act.

Meridian's application is not the first application for exemption filed subsequent to the expiration of the Price Protection Act or after the repeal of the Natural Gas Pricing Act. Indeed, the Division has acted on applications for more than 100

wells since June 30, 1985.<sup>1</sup> By approving the numerous applications covering those wells, the Division has interpreted the Natural Gas Pricing Act and Price Protection Act statutes and has determined that it possesses the requisite authority to act. Accordingly, substantial authoritative weight should be accorded to the interpretation and construction given a statute by the agency charged with administering it. *Tsosie v. Califano*, 651 F.2d 719 (10th Cir. 1981).

III. Amendments to the Pricing Act do not affect Meridian's application by virtue of Article IV, Section 34 of the New Mexico Constitution.

In addition to the reasons explained in points I and II above, Meridian's right to claim exemptions is preserved by Article IV, Section 34 of the New Mexico Constitution. That provision of the Constitution states:

No act of the legislature shall affect the right or remedy of either party, or change the rules of evidence or procedure, in any pending case.

The modifications to the Gas Pricing Act which Gas Company argues preclude this application were made during the 1984 legislative session. Prior to and during the 1984 session, the propriety of the NMOCD's blanket orders allowing for infill drilling in the Blanco Mesa Verde and Basin Dakota formations<sup>2</sup> and concomitant exemptions from the Gas Pricing Act were at issue in

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<sup>1</sup> See, NMOCD Administrative Order No. NGPA-36 through No. NGPA-47 granting retroactive determinations subsequent to the expiration of the Price Protection Act.

<sup>2</sup> Order No.s R-1670-T and R-1670-V.

Gas Company of New Mexico, et al. v. Amoco Production Company, et al., the so-called "Infill Well Litigation".<sup>3</sup> Meridian's predecessor in interest, Southland Royalty Company, was a party-defendant in that proceeding.

Without question, the infill litigation was a "pending case" affecting the same rights, remedies and parties present in this matter. Because the issues in the infill case were joined prior to the legislature's 1984 deliberations, the legislative amendments and repealers enacted in Chapter 123 of the 1984 Session Laws did not affect the right of Meridian (or its predecessor) to apply for exemptions under the Gas Pricing Act. Such legislative acts fall squarely within the prohibition of Article IV, Section 34.

The constitutional prohibition notwithstanding, Meridian's right to bring this application for exemptions is preserved by the Court's order in the infill case as well. It remains a pending case today.

In its dispositive order granting summary judgment for the producers and against Gas Company, the Court ruled inter alia as follows:

(6) B. For all other infill wells which were drilled in the above-noted reservoirs [Blanco Mesa Verde and Basin Dakota], the Court stays further action in this case pending a determination by the Oil Conservation Commission whether such wells were justified for reasons other than avoiding application of the Natural Gas Pricing Act. Upon a finding by the Oil Conservation Commission that such wells were justified for reasons other than avoiding the Pricing Act, the stay... shall be lifted upon

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<sup>3</sup> First Judicial District Court Cause No. SF 83-2228 (C)

application of any party, and an order consistent with this ruling will be entered for all such wells.

Accordingly, the District Court retained jurisdiction over all Dakota and Mesa Verde infill wells affected by the Gas Pricing Act and specifically allowed for future, additional exemptions from the Gas Pricing Act. Significantly, the District Court's Judgment against Gas Company was entered on April 29, 1985, nearly a full year after the Gas Pricing Act was repealed. (See, Exhibit B, attached.)

IV. Gas Company's operational personnel expressly requested Meridian to obtain this exemption so that Gas Company could release funds due and owing to Meridian. The present motion is a disingenuous effort to aid Gas Company in other unrelated litigation and to deprive Meridian of its funds.

The primary purpose of this proceeding is to obtain the release of certain production proceeds Gas Company placed in suspense because of the pendency of the Infill Well Litigation in Santa Fe County District Court. Gas Company has held those monies since 1983.

On September 30, 1988, Gas Company of New Mexico wrote Meridian and politely advised it "would like" to make a settlement of monies held pursuant to the Infill Well Litigation. Gas Company further stated, "In order for the monies to be released, Meridian Oil Company (aka Southland Royalty Company) needs to obtain an Infill Pricing Exemption from the New Mexico Oil Conservation Division. After receiving confirmation that the exemption has been issued, SGGC will immediately release the monies to Meridian."

(See, Gas Company's September 30, 1988 letter to Meridian, Exhibit C, attached.)

Gas Company's pronounced shift in position -- from one requesting an OCD exemption and guaranteeing "immediate release" of Meridian's monies, to one opposing Meridian's effort to obtain the exemption -- is unjust and inequitable. It can only be explained by the fact that Gas Company and Meridian are engaged in litigation in other forums on unrelated matters<sup>4</sup> and that Gas Company is seeking to use the exemption issue here as leverage.

The OCD should ignore Gas Company's tactics. Meridian is entitled to the exemption requested and to a return of its funds.

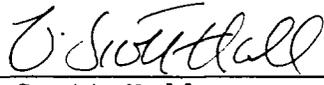
CONCLUSION

For all of the above stated reasons, Gas Company's Motion to Dismiss should be denied.

Respectfully submitted,

CAMPBELL & BLACK, P.A.

By

  
\_\_\_\_\_  
J. Scott Hall  
P.O. Box 2208  
Santa Fe, NM 87504-2208

Attorneys for Applicant,  
Meridian Oil, Inc.

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<sup>4</sup> See, Public Service Company of New Mexico, et al. v. Meridian Oil, Inc., N.M.D.C. Cause No. CV88-0519(sc); Southland Royalty Co. v. Public Service Company of New Mexico, Harris County, Texas Cause No. 88-3650C (165th District Court)



any, during the pendency of any appeals of a legal proceeding contesting the validity of the New Mexico Natural Gas Price Protection Act shall also be included in the amount to be amortized. The rate adjustment shall amortize the total amount over the shortest practicable period to minimize the interest cost burden on the utility consumers. Any issuance of securities to pay such obligation shall be permissible under Section 62-6-6 NMSA 1978."

Section 12. A new Section 62-7-23 NMSA 1978 is enacted to read:

"62-7-23. ABANDONMENT OF FACILITIES.--

A. Except as provided in Subsection B of this section and for wells plugged and abandoned pursuant to rules and regulations of the oil conservation commission, no producer who is subject to the maximum lawful price limitations shall abandon all or any portion of its facilities for production and sale of natural gas for consumption in New Mexico without first obtaining the permission and approval of the commission. Such approval and permission shall be given only after reasonable notice and hearing and a finding by the commission that:

- (1) the available supply of natural gas is depleted to the extent that the continuance of production is unwarranted; or
- (2) the present or future public convenience or necessity permits such abandonment.

B. The provisions of Subsection A of this section shall not apply to any producer who abandons facilities for production and

sale of natural gas for consumption in New Mexico if:

- (1) the abandonment occurs on or after the expiration of a natural gas sales contract pursuant to the terms of that contract as it existed on January 1, 1977; and

- (2) the producer notifies, prior to contract expiration, the oil conservation division and the attorney general in writing of the abandonment."

Section 13. REPEAL.--

A. Sections 62-7-1 through 62-7-10 NMSA 1978 (being Laws 1977, Chapter 73, Sections 2 through 6, Laws 1981, Chapter 317, Sections 3 through 5, Laws 1977, Chapter 73, Sections 8 through 10, Laws 1981, Chapter 317, Section 9 and Laws 1977, Chapter 73, Section 11, as amended) are repealed.

B. Nothing in this act shall limit:

- (1) the right of any person to seek relief or pursue rights; or
- (2) the obligation of any governmental agency to act;

If such right or obligation existed prior to the repeal of the Natural Gas Pricing Act; and Subsection A of this section shall not operate to limit any such right or obligation.

Section 14. SEVERABILITY.--If any part or application of the New Mexico Natural Gas Price Protection Act is held invalid, the remainder or its application to other situations or persons shall not be affected.



IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO, COUNTY SANTA FE

GAS COMPANY OF NEW MEXICO,  
a division of SOUTHERN UNION  
COMPANY, and SOUTHERN UNION  
GATHERING COMPANY,

Plaintiffs,

v.

No. SF 83-2228 (C)

Producer Defendants:  
AMOCO PRODUCTION COMPANY,  
e

State Agency Defendants:  
PAUL BARDACKE, ATTORNEY  
GENERAL OF NEW MEXICO,  
et al.,

Defendants.

JUDGMENT

This matter having come before the Court for hearing on a Motion for Summary Judgment filed by Certain Producer-Defendants, and joined in by all Producer-Defendants, and by Plaintiffs, and the Court having fully considered the memoranda filed by counsel, the pleadings, affidavits and exhibits, and the arguments and authorities of counsel, the Court enters its Judgment as follows:

A. For all infill wells owned or operated by Producer-Defendants which were drilled in the Blanco Mesa Verde Reservoir in San Juan and Rio Arriba Counties, New Mexico, after the entry of Oil Conservation Commission Order No. R-1670-T (November 14,

1974) and for all infill wells owned or operated by Producer-Defendants which were drilled in the Basin Dakota Reservoir in San Juan and Rio Arriba Counties, New Mexico, after the entry of Oil Conservation Commission Order No. R-1670-V (May 22, 1979), the Court concludes:

(1) The pleadings, depositions, answers to interrogatories, admissions and affidavits and exhibits show that there is no genuine issue as to any material fact with respect to whether such wells are exempt from the pricing provisions of the New Mexico Natural Gas Pricing Act, § 62-7-5, N.M.S.A. 1978 (repealed).

(2) The moving parties are entitled to summary judgment under Rule 56 of the New Mexico Rules of Civil Procedure as a matter of law with respect to the question of whether such wells are exempt from the pricing provisions of the New Mexico Natural Gas Pricing Act § 62-7-5 because the Oil Conservation Commission found that such wells were drilled for conservation purposes to increase natural gas supply and, accordingly, were justified for reasons other than avoiding the pricing provisions of the New Mexico Natural Gas Pricing Act. This finding applies to the wells identified in Exhibit "A," attached hereto, which the Oil Conservation Commission found to be exempt in well-by-well proceedings.

(3) The Motion for Summary Judgment filed by Certain Producer-Defendants and joined in by all Producer-Defendants

and by Plaintiffs is granted, and the Counterclaims and Cross-claims of the Attorney General for the State of New Mexico, and all claims of Plaintiffs against Producer-Defendants, are dismissed with prejudice because such wells were and are exempt from application of the New Mexico Natural Gas Pricing Act.

(4) The bonds required to be filed with the Court by the Court's Order of Interpleader dated April 18, 1984 for these wells are no longer necessary since refunds are not owed and all bonds filed with the Court for such wells are released and dissolved.

(5) Plaintiffs are hereby ordered to pay to Producer-Defendants, within forty-five (45) days from the entry of this Judgment, any and all payments still withheld by Plaintiffs from certain Producer-Defendants for the production months of January, 1984 through June, 1984. Interest shall be paid on withheld sums, whether previously or presently withheld, at the rate of 9-3/4%, calculated on sums withheld from the date of withholding until the day of payment.

(6) With respect to the wells identified in Exhibit "A," the Court's judgment is a final judgment based upon the Court's express determination that there is no just reason for delay.

B. For all other infill wells which were drilled in the above-noted reservoirs, the Court stays further action in this case pending a determination by the Oil Conservation Commission

whether such wells were justified for reasons other than avoiding application of the Natural Gas Pricing Act. Upon a finding by the Oil Conservation Commission that such wells were justified for reasons other than avoiding the Pricing Act, the stay referred to above shall be lifted upon application of any party, and an order consistent with this ruling will be entered for all such wells. Upon a contrary finding by the Oil Conservation Commission, the stay referred to above shall be lifted upon application by any party, and this action may proceed with respect to such wells. The Court retains such further jurisdiction over those wells as may be necessary for the completion of this matter.

C. Each party shall bear its own costs of this proceeding.

ORIGINAL SIGNED BY  
LORENZO F. GARCIA, DISTRICT JUDGE

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LORENZO F. GARCIA  
District Judge

APPROVED AS TO FORM:

  
\_\_\_\_\_  
LYMAN C. SANDY  
ATTORNEY FOR GAS COMPANY OF  
NEW MEXICO

*Michael B. Campbell*

MICHAEL B. CAMPBELL  
ATTORNEY FOR AMOCO PRODUCTION CO.,  
ARCO OIL & GAS CO., CONSOLIDATED  
OIL & GAS CO., CROWN CENTRAL PETRO-  
LEUM CORP., GETTY OIL CO., LADD  
PETROLEUM CORP., JOHN HILL REVENUE  
#2, MESA PETROLEUM CO., PIONEER  
PRODUCTION CORP., SOUTHLAND ROYALTY  
CO., UNICON PRODUCING CO., and  
UNION TEXAS PETROLEUM CORP.

*Karen Aubrey*

KAREN AUBREY  
ATTORNEY FOR CAULKINS OIL CO., GEORGE  
P. CAULKINS, CAULKINS PRODUCING CO.,  
CONOCO INC., DAMSON OIL CO., DEPCO,  
INC., GULD OIL CORP., MARATHON OIL  
CO., MOBIL PRODUCING TEXAS AND NEW  
MEXICO INC., LORENA MAYER NIDORF,  
TENNECO OIL CO., GEORGE ZIMMERMAN,  
LOUIS ZIMMERMAN, and MARY ZIMMERMAN

JOHN P. MASSEY  
ATTORNEY FOR EL PASO NATURAL GAS

JAMES J. WECHSLER  
ATTORNEY FOR ENERGY RESERVES GROUP, INC.

ERIC D. LANPHERE  
ATTORNEY FOR PETROLEUM CORP. OF  
TEXAS and BBL, LIMITED

MARK K. ADAMS  
ATTORNEY FOR SOUTHERN UNION  
EXPLORATION CO.

*Mr. Campbell advised the  
court by letter that all  
remaining counsel have  
given telephonic consent  
to the form of Order.*

*SJH*

---

ROBERT URAM  
ATTORNEY FOR TEXACO, INC.

---

KEVIN V. REILLY  
ATTORNEY FOR OFFICE OF THE ATTORNEY GENERAL

---

JEFF TAYLOR  
ATTORNEY FOR OIL CONSERVATION DIVISION

---

JAMES C. MARTIN  
ATTORNEY FOR PUBLIC SERVICE COMMISSION



September 30, 1988

Meridian Oil Company  
801 Cherry Street  
Fort Worth, Texas 76102

RE: Infill Monies in Suspense

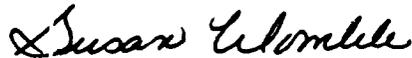
Gentlemen:

Our Gas Accounting Department, in conjunction with our Internal Audit Department, has brought to my attention the fact that there is still Infill monies on hold status for Southland Royalty Company since February, 1984.

Gas Company of New Mexico (GCNM) would like to make a settlement for the above mentioned liability still carried on our books. In order for the monies to be released, Meridian Oil Company (aka Southland Royalty Company) needs to obtain an Infill Pricing Exemption from the New Mexico Oil Conservation Division. After receiving confirmation that the exemption has been issued, GCNM will immediately release the monies to Meridian.

I would appreciate your helping in resolving this matter. Any questions that you may have concerning the wells involved or the Infill issue itself, please call me at (505) 888-8387.

Sincerely,



Susan Wamble, Gas Supply  
Gas Contract Specialist

cjc

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CERTIFICATE OF SERVICE

I hereby certify that I caused the original and one copy of Applicant's Response to Gas Company's Motion to Dismiss to be hand-delivered to J.E. Gallegos, Gallegos Law Firm, 141 East Palace Avenue, Santa Fe, New Mexico 87501 on this 22nd day of August, 1989.

CAMPBELL & BLACK, P.A.

By



\_\_\_\_\_  
J. Scott Hall  
Post Office Box 2208  
Santa Fe, New Mexico 87504-2208  
(505) 988-4421

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- I. The New Mexico Legislature expressly preserved the OCD's authority to act on applications for exemption from the Pricing Act by enacting Laws 1984, CH. 123, Sec. 13 (B).

Gas Company blithely asserts that 1984 amendments to the Natural Gas Pricing Act (Section 62-7-1 to 62-7-10), which led to the Natural Gas Price Protection Act (Sections 62-7-11 to 62-7-23), terminated the authority of the New Mexico Oil Conservation Division's authority to act on applications for exemptions from the Pricing Act and transferred such authority to the New Mexico Public Service Commission. Gas Company is wrong.

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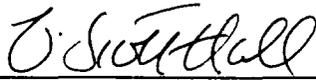
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CAMPBELL & BLACK, P.A.

By   
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P.O. Box 2208  
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Attorneys for Applicant,  
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- (1) the available supply of natural gas is depleted to the extent that the continuance of production is unarranged; or
- (2) the present or future public convenience or necessity permits such abandonment.

B The provisions of Subsection A of this section shall not apply to any producer who abandons facilities for production and

sale of natural gas for consumption in New Mexico if:

- (1) the abandonment occurs on or after the expiration of a natural gas sales contract pursuant to the terms of that contract as it existed on January 1, 1977; and
- (2) the producer notifies, prior to contract expiration, the oil conservation division and the attorney general in writing of the abandonment."

Section 13. REPEAL.--

A. Sections 62-7-1 through 62-7-10 NMSA 1978 (being Laws 1977, Chapter 73, Sections 2 through 6, Laws 1981, Chapter 317, Sections 3 through 5, Laws 1977, Chapter 73, Sections 8 through 10, Laws 1981, Chapter 317, Section 9 and Laws 1977, Chapter 73, Section 11, as amended) are repealed.

B. Nothing in this act shall limit:

- (1) the right of any person to seek relief or pursue rights; or
- (2) the obligation of any governmental agency to act;

If such right or obligation existed prior to the repeal of the Natural Gas Pricing Act; and Subsection A of this section shall not operate to limit any such right or obligation.

Section 14. SEVERABILITY.--If any part or application of the New Mexico Natural Gas Price Protection Act is held invalid, the remainder or its application to other situations or persons shall not be affected.



IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO, COUNTY OF SANTA FE

GAS COMPANY OF NEW MEXICO,  
a division of SOUTHERN UNION  
COMPANY, and SOUTHERN UNION  
GATHERING COMPANY,

Plaintiffs,

v.

No. SF 83-2228 (C)

Producer Defendants:  
AMOCO PRODUCTION COMPANY,  
e

State Agency Defendants:  
PAUL BARDACKE, ATTORNEY  
GENERAL OF NEW MEXICO,  
et al.,

Defendants.

JUDGMENT

This matter having come before the Court for hearing on a Motion for Summary Judgment filed by Certain Producer-Defendants, and joined in by all Producer-Defendants, and by Plaintiffs, and the Court having fully considered the memoranda filed by counsel, the pleadings, affidavits and exhibits, and the arguments and authorities of counsel, the Court enters its Judgment as follows:

A. For all infill wells owned or operated by Producer-Defendants which were drilled in the Blanco Mesa Verde Reservoir in Sar Juan and Rio Arriba Counties, New Mexico, after the entry of Oil Conservation Commission Order No. R-1670-T (November 14,

1974) and for all infill wells owned or operated by Producer-Defendants which were drilled in the Basin Dakota Reservoir in San Juan and Rio Arriba Counties, New Mexico, after the entry of Oil Conservation Commission Order No. R-1670-V (May 22, 1979), the Court concludes:

(1) The pleadings, depositions, answers to interrogatories, admissions and affidavits and exhibits show that there is no genuine issue as to any material fact with respect to whether such wells are exempt from the pricing provisions of the New Mexico Natural Gas Pricing Act, § 62-7-5, N.M.S.A. 1978 (repealed).

(2) The moving parties are entitled to summary judgment under Rule 56 of the New Mexico Rules of Civil Procedure as a matter of law with respect to the question of whether such wells are exempt from the pricing provisions of the New Mexico Natural Gas Pricing Act § 62-7-5 because the Oil Conservation Commission found that such wells were drilled for conservation purposes to increase natural gas supply and, accordingly, were justified for reasons other than avoiding the pricing provisions of the New Mexico Natural Gas Pricing Act. This finding applies to the wells identified in Exhibit "A," attached hereto, which the Oil Conservation Commission found to be exempt in well-by-well proceedings.

(3) The Motion for Summary Judgment filed by Certain Producer-Defendants and joined in by all Producer-Defendants

and by Plaintiffs is granted, and the Counterclaims and Cross-claims of the Attorney General for the State of New Mexico, and all claims of Plaintiffs against Producer-Defendants, are dismissed with prejudice because such wells were and are exempt from application of the New Mexico Natural Gas Pricing Act.

(4) The bonds required to be filed with the Court by the Court's Order of Interpleader dated April 18, 1984 for these wells are no longer necessary since refunds are not owed and all bonds filed with the Court for such wells are released and dissolved.

(5) Plaintiffs are hereby ordered to pay to Producer-Defendants, within forty-five (45) days from the entry of this Judgment, any and all payments still withheld by Plaintiffs from certain Producer-Defendants for the production months of January, 1984 through June, 1984. Interest shall be paid on withheld sums, whether previously or presently withheld, at the rate of 9-3/4%, calculated on sums withheld from the date of withholding until the day of payment.

(6) With respect to the wells identified in Exhibit "A," the Court's judgment is a final judgment based upon the Court's express determination that there is no just reason for delay.

B. For all other infill wells which were drilled in the above-noted reservoirs, the Court stays further action in this case pending a determination by the Oil Conservation Commission

whether such wells were justified for reasons other than avoiding application of the Natural Gas Pricing Act. Upon a finding by the Oil Conservation Commission that such wells were justified for reasons other than avoiding the Pricing Act, the stay referred to above shall be lifted upon application of any party, and an order consistent with this ruling will be entered for all such wells. Upon a contrary finding by the Oil Conservation Commission, the stay referred to above shall be lifted upon application by any party, and this action may proceed with respect to such wells. The Court retains such further jurisdiction over those wells as may be necessary for the completion of this matter.

C. Each party shall bear its own costs of this proceeding.

ORIGINAL SIGNED BY

LORENZO F. GARCIA, DISTRICT JUDGE

---

LORENZO F. GARCIA  
District Judge

APPROVED AS TO FORM:

  
\_\_\_\_\_  
LYMAN G. SANDY  
ATTORNEY FOR GAS COMPANY OF  
NEW MEXICO

*Michael B. Campbell*

MICHAEL B. CAMPBELL  
ATTORNEY FOR AMOCO PRODUCTION CO.,  
ARCO OIL & GAS CO., CONSOLIDATED  
OIL & GAS CO., CROWN CENTRAL PETRO-  
LEUM CORP., GETTY OIL CO., LADD  
PETROLEUM CORP., JOHN HILL REVENUE  
#2, MESA PETROLEUM CO., PIONEER  
PRODUCTION CORP., SOUTHLAND ROYALTY  
CO., UNICON PRODUCING CO., and  
UNION, TEXAS PETROLEUM CORP.

*Karen Aubrey*

KAREN AUBREY  
ATTORNEY FOR CAULKINS OIL CO., GEORGE  
P. CAULKINS, CAULKINS PRODUCING CO.,  
CONOCO, INC., DAMSON OIL CO., DEPCO,  
INC., GULD OIL CORP., MARATHON OIL  
CO., MOBIL PRODUCING TEXAS AND NEW  
MEXICO, INC., LORENA MAYER NIDORF,  
TENNECO OIL CO., GEORGE ZIMMERMAN,  
LOUIS ZIMMERMAN, and MARY ZIMMERMAN

JOHN P. MASSEY  
ATTORNEY FOR EL PASO NATURAL GAS

JAMES J. WECHSLER  
ATTORNEY FOR ENERGY RESERVES GROUP, INC.

ERIC D. LANPHERE  
ATTORNEY FOR PETROLEUM CORP. OF  
TEXAS and BBL, LIMITED

MARK K. ADAMS  
ATTORNEY FOR SOUTHERN UNION  
EXPLORATION CO.

*Mr. Campbell advised the  
court by letter that all  
remaining counsel have  
given telephonic consent  
to the form of Order.*

*SJB*

---

ROBERT URAM  
ATTORNEY FOR TEXACO, INC.

---

KEVIN V. REILLY  
ATTORNEY FOR OFFICE OF THE ATTORNEY GENERAL

---

JEFF TAYLOR  
ATTORNEY FOR OIL CONSERVATION DIVISION

---

JAMES C. MARTIN  
ATTORNEY FOR PUBLIC SERVICE COMMISSION



September 30, 1988

Meridian Oil Company  
801 Cherry Street  
Fort Worth, Texas 76102

RE: Infill Monies in Suspense

Gentlemen:

Our Gas Accounting Department, in conjunction with our Internal Audit Department, has brought to my attention the fact that there is still Infill monies on hold status for Southland Royalty Company since February, 1984.

Gas Company of New Mexico (GCNM) would like to make a settlement for the above mentioned liability still carried on our books. In order for the monies to be released, Meridian Oil Company (aka Southland Royalty Company) needs to obtain an Infill Pricing Exemption from the New Mexico Oil Conservation Division. After receiving confirmation that the exemption has been issued, GCNM will immediately release the monies to Meridian.

I would appreciate your helping in resolving this matter. Any questions that you may have concerning the wells involved or the Infill issue itself, please call me at (505) 888-8387.

Sincerely,



Susan Womble, Gas Supply  
Gas Contract Specialist

cjc

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

APPLICATION OF MERIDIAN OIL, INC.  
FOR EXEMPTION FROM THE NEW MEXICO  
NATURAL GAS PRICE PROTECTION ACT,  
SAN JUAN COUNTY, NEW MEXICO

CASE NO. 9703

CERTIFICATE OF SERVICE

I hereby certify that I caused the original and one copy of Applicant's Response to Gas Company's Motion to Dismiss to be hand-delivered to J.E. Gallegos, Gallegos Law Firm, 141 East Palace Avenue, Santa Fe, New Mexico 87501 on this 22nd day of August, 1989.

CAMPBELL & BLACK, P.A.

By J. Scott Hall  
J. Scott Hall  
Post Office Box 2208  
Santa Fe, New Mexico 87504-2208  
(505) 988-4421

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

AUG 28 1984

OIL CONSERVATION DIVISION

APPLICATION OF MERIDIAN OIL, INC.  
FOR EXEMPTION FROM THE NEW MEXICO  
NATURAL GAS PRICE PROTECTION ACT,  
SAN JUAN COUNTY, NEW MEXICO

CASE NO. 9703

APPLICANT'S RESPONSE TO GAS COMPANY'S  
MOTION TO DISMISS

Applicant, Meridian Oil, Inc. ("Meridian") responds to a motion to dismiss filed by Gas Company of New Mexico. Gas Company's motion is deficient for four (4) different, but equally compelling reasons:

- I. The Division's authority to act on applications for exemption is preserved by laws 1984, CH. 123, SEC. 13 (B).
- II. The OCD has previously established its authority to grant applications for exemptions subsequent to the expiration of The Price Protection Act.
- III. Amendments to The Price Act do not affect Meridian's Application by virtue of Article IV, SEC. 34 of the New Mexico Constitution.
- IV. Gas Company's operational personnel expressly requested Meridian to obtain this exemption so that Gas Company could release funds due and owing to Meridian. The present motion is a disingenuous effort to aid Gas Company in other unrelated litigation and to deprive Meridian of its funds.

- I. The New Mexico Legislature expressly preserved the OCD's authority to act on applications for exemption from the Pricing Act by enacting Laws 1984, CH. 123, Sec. 13 (B).

Gas Company blithely asserts that 1984 amendments to the Natural Gas Pricing Act (Section 62-7-1 to 62-7-10), which led to the Natural Gas Price Protection Act (Sections 62-7-11 to 62-7-23), terminated the authority of the New Mexico Oil Conservation Division's authority to act on applications for exemptions from the Pricing Act and transferred such authority to the New Mexico Public Service Commission. Gas Company is wrong.

Gas Company makes only oblique reference to the "savings clause" in the applicable statute. The "savings clause" (See, Laws 1984, CH. 123, Sec. 13 [B], attached hereto as Exhibit A.), specifically retains OCD jurisdiction to act on exemption applications, the statute states:

B. Nothing in this act (The Natural Gas Price Protection Act) shall limit:

(1) the right of any person to seek relief or pursue rights; or

(2) the obligation of any governmental agency to act; if such right or obligation existed prior to the repeal of the Natural Gas Pricing Act; and Subsection A of this section shall not operate to limit any such right or obligation.

Hence, the statute makes clear that since the OCD has a pre-amendment obligation to act on exemption applications, that obligation continued unaffected by the 1984 amendments.

Gas Company's argument that the expiration of the Price Protection Act terminated the Division's authority ignores the

applicable rules of statutory construction. In the event of a seeming conflict between statutory enactments, a specific statute will always control a general statute. City of Alamogordo v. Walker Motor Co., Inc., 94 NM 690, 616 P.2d 403 (1980). Nowhere has the legislature expressed an intent that rights expressly preserved by the savings clause were to be subsequently extinguished. A generic provision declaring the termination of other, separate statutory provisions of the Natural Gas Pricing Protection Act (Sections 62-7-11 to 62-7-23, NMSA [1978]) is insufficient to act as a repeal (express or otherwise) of the simultaneously enacted savings clause. Such repeals by implication are disfavored under the law. Hall v. Regents of University of New Mexico, 106 NM 167, 740 P.2d 1151 (1987). Because the legislature has not specifically and expressly repealed the provisions of Laws 1984, Ch. 123, Sec. 13 (B), the Division's authority and Meridian's rights continue in effect. See, Alaska Public Utilities v. Chugach Elec. Ass'n., 580 P.2d 637 (Alas. 1978), citing Sutherland, Statutory Construction (4th Ed. C.D. Sands 1973).

II. The Oil Conservation Division has previously determined that it has the authority to act on applications for exemptions subsequent to the expiration of the Price Protection Act.

Meridian's application is not the first application for exemption filed subsequent to the expiration of the Price Protection Act or after the repeal of the Natural Gas Pricing Act. Indeed, the Division has acted on applications for more than 100

wells since June 30, 1985.<sup>1</sup> By approving the numerous applications covering those wells, the Division has interpreted the Natural Gas Pricing Act and Price Protection Act statutes and has determined that it possesses the requisite authority to act. Accordingly, substantial authoritative weight should be accorded to the interpretation and construction given a statute by the agency charged with administering it. *Tsosie v. Califano*, 651 F.2d 719 (10th Cir. 1981).

III. Amendments to the Pricing Act do not affect Meridian's application by virtue of Article IV, Section 34 of the New Mexico Constitution.

In addition to the reasons explained in points I and II above, Meridian's right to claim exemptions is preserved by Article IV, Section 34 of the New Mexico Constitution. That provision of the Constitution states:

No act of the legislature shall affect the right or remedy of either party, or change the rules of evidence or procedure, in any pending case.

The modifications to the Gas Pricing Act which Gas Company argues preclude this application were made during the 1984 legislative session. Prior to and during the 1984 session, the propriety of the NMOCD's blanket orders allowing for infill drilling in the Blanco Mesa Verde and Basin Dakota formations<sup>2</sup> and concomitant exemptions from the Gas Pricing Act were at issue in

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<sup>1</sup> See, NMOCD Administrative Order No. NGPA-36 through No. NGPA-47 granting retroactive determinations subsequent to the expiration of the Price Protection Act.

<sup>2</sup> Order No.s R-1670-T and R-1670-V.

Gas Company of New Mexico, et al. v. Amoco Production Company, et al., the so-called "Infill Well Litigation".<sup>3</sup> Meridian's predecessor in interest, Southland Royalty Company, was a party-defendant in that proceeding.

Without question, the infill litigation was a "pending case" affecting the same rights, remedies and parties present in this matter. Because the issues in the infill case were joined prior to the legislature's 1984 deliberations, the legislative amendments and repealers enacted in Chapter 123 of the 1984 Session Laws did not affect the right of Meridian (or its predecessor) to apply for exemptions under the Gas Pricing Act. Such legislative acts fall squarely within the prohibition of Article IV, Section 34.

The constitutional prohibition notwithstanding, Meridian's right to bring this application for exemptions is preserved by the Court's order in the infill case as well. It remains a pending case today.

In its dispositive order granting summary judgment for the producers and against Gas Company, the Court ruled inter alia as follows:

(6) B. For all other infill wells which were drilled in the above-noted reservoirs [Blanco Mesa Verde and Basin Dakota], the Court stays further action in this case pending a determination by the Oil Conservation Commission whether such wells were justified for reasons other than avoiding application of the Natural Gas Pricing Act. Upon a finding by the Oil Conservation Commission that such wells were justified for reasons other than avoiding the Pricing Act, the stay... shall be lifted upon

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<sup>3</sup> First Judicial District Court Cause No. SF 83-2228 (C)

application of any party, and an order consistent with this ruling will be entered for all such wells.

Accordingly, the District Court retained jurisdiction over all Dakota and Mesa Verde infill wells affected by the Gas Pricing Act and specifically allowed for future, additional exemptions from the Gas Pricing Act. Significantly, the District Court's Judgment against Gas Company was entered on April 29, 1985, nearly a full year after the Gas Pricing Act was repealed. (See, Exhibit B, attached.)

IV. Gas Company's operational personnel expressly requested Meridian to obtain this exemption so that Gas Company could release funds due and owing to Meridian. The present motion is a disingenuous effort to aid Gas Company in other unrelated litigation and to deprive Meridian of its funds.

The primary purpose of this proceeding is to obtain the release of certain production proceeds Gas Company placed in suspense because of the pendency of the Infill Well Litigation in Santa Fe County District Court. Gas Company has held those monies since 1983.

On September 30, 1988, Gas Company of New Mexico wrote Meridian and politely advised it "would like" to make a settlement of monies held pursuant to the Infill Well Litigation. Gas Company further stated, "In order for the monies to be released, Meridian Oil Company (aka Southland Royalty Company) needs to obtain an Infill Pricing Exemption from the New Mexico Oil Conservation Division. After receiving confirmation that the exemption has been issued, SGGC will immediately release the monies to Meridian."

(See, Gas Company's September 30, 1988 letter to Meridian, Exhibit C, attached.)

Gas Company's pronounced shift in position -- from one requesting an OCD exemption and guaranteeing "immediate release" of Meridian's monies, to one opposing Meridian's effort to obtain the exemption -- is unjust and inequitable. It can only be explained by the fact that Gas Company and Meridian are engaged in litigation in other forums on unrelated matters<sup>4</sup> and that Gas Company is seeking to use the exemption issue here as leverage.

The OCD should ignore Gas Company's tactics. Meridian is entitled to the exemption requested and to a return of its funds.

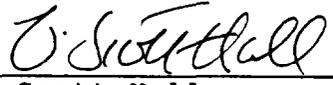
CONCLUSION

For all of the above stated reasons, Gas Company's Motion to Dismiss should be denied.

Respectfully submitted,

CAMPBELL & BLACK, P.A.

By

  
\_\_\_\_\_  
J. Scott Hall  
P.O. Box 2208  
Santa Fe, NM 87504-2208

Attorneys for Applicant,  
Meridian Oil, Inc.

---

<sup>4</sup> See, Public Service Company of New Mexico, et al. v. Meridian Oil, Inc., N.M.D.C. Cause No. CV88-0519(sc); Southland Royalty Co. v. Public Service Company of New Mexico, Harris County, Texas Cause No. 88-3650C (165th District Court)



any, during the pendency of any appeals of a legal proceeding contesting the validity of the New Mexico Natural Gas Price Protection Act shall also be included in the amount to be amortized. The rate adjustment shall amortize the total amount over the shortest practicable period to minimize the interest cost burden on the utility consumers. Any issuance of securities to pay such obligation shall be permissible under Section 62-6-6 NMSA 1978."

Section 12. A new Section 62-7-23 NMSA 1978 is enacted to read:

"62-7-23. ABANDONMENT OF FACILITIES.--

A. Except as provided in Subsection B of this section and for wells plugged and abandoned pursuant to rules and regulations of the oil conservation commission, no producer who is subject to the maximum lawful price limitations shall abandon all or any portion of its facilities for production and sale of natural gas for consumption in New Mexico without first obtaining the permission and approval of the commission. Such approval and permission shall be given only after reasonable notice and hearing and a finding by the commission that:

- (1) the available supply of natural gas is depleted to the extent that the continuance of production is unwarranted; or
- (2) the present or future public convenience or necessity permits such abandonment.

B. The provisions of Subsection A of this section shall not apply to any producer who abandons facilities for production and

sale of natural gas for consumption in New Mexico if:

- (1) the abandonment occurs on or after the expiration of a natural gas sales contract pursuant to the terms of that contract as it existed on January 1, 1977; and

- (2) the producer notifies, prior to contract expiration, the oil conservation division and the attorney general in writing of the abandonment."

Section 13. REPEAL.--

A. Sections 62-7-1 through 62-7-10 NMSA 1978 (being Laws 1977, Chapter 73, Sections 2 through 6, Laws 1981, Chapter 317, Sections 3 through 5, Laws 1977, Chapter 73, Sections 8 through 10, Laws 1981, Chapter 317, Section 9 and Laws 1977, Chapter 73, Section 11, as amended) are repealed.

B. Nothing in this act shall limit:

- (1) the right of any person to seek relief or pursue rights; or
- (2) the obligation of any governmental agency to act;

If such right or obligation existed prior to the repeal of the Natural Gas Pricing Act; and Subsection A of this section shall not operate to limit any such right or obligation.

Section 14. SEVERABILITY.--If any part or application of the New Mexico Natural Gas Price Protection Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

EXHIBIT B

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
STATE OF NEW MEXICO, COUNTY OF SANTA FE

GAS COMPANY OF NEW MEXICO,  
a division of SOUTHERN UNION  
COMPANY, and SOUTHERN UNION  
GATHERING COMPANY,

Plaintiffs,

v.

No. SF 83-2228 (C)

Producer Defendants:  
AMOCO PRODUCTION COMPANY,  
e

State Agency Defendants:  
PAUL BARDACKE, ATTORNEY  
GENERAL OF NEW MEXICO,  
et al.,

Defendants.

JUDGMENT

This matter having come before the Court for hearing on a Motion for Summary Judgment filed by Certain Producer-Defendants, and joined in by all Producer-Defendants, and by Plaintiffs, and the Court having fully considered the memoranda filed by counsel, the pleadings, affidavits and exhibits, and the arguments and authorities of counsel, the Court enters its Judgment as follows:

A. For all infill wells owned or operated by Producer-Defendants which were drilled in the Blanco Mesa Verde Reservoir in San Juan and Rio Arriba Counties, New Mexico, after the entry of Oil Conservation Commission Order No. R-1670-T (November 14,

FIRST JUDICIAL DISTRICT COURT

APR 29 1985



1974) and for all infill wells owned or operated by Producer-Defendants which were drilled in the Basin Dakota Reservoir in San Juan and Rio Arriba Counties, New Mexico, after the entry of Oil Conservation Commission Order No. R-1670-V (May 22, 1979), the Court concludes:

(1) The pleadings, depositions, answers to interrogatories, admissions and affidavits and exhibits show that there is no genuine issue as to any material fact with respect to whether such wells are exempt from the pricing provisions of the New Mexico Natural Gas Pricing Act, § 62-7-5, N.M.S.A. 1978 (repealed).

(2) The moving parties are entitled to summary judgment under Rule 56 of the New Mexico Rules of Civil Procedure as a matter of law with respect to the question of whether such wells are exempt from the pricing provisions of the New Mexico Natural Gas Pricing Act § 62-7-5 because the Oil Conservation Commission found that such wells were drilled for conservation purposes to increase natural gas supply and, accordingly, were justified for reasons other than avoiding the pricing provisions of the New Mexico Natural Gas Pricing Act. This finding applies to the wells identified in Exhibit "A," attached hereto, which the Oil Conservation Commission found to be exempt in well-by-well proceedings.

(3) The Motion for Summary Judgment filed by Certain Producer-Defendants and joined in by all Producer-Defendants

and by Plaintiffs is granted, and the Counterclaims and Cross-claims of the Attorney General for the State of New Mexico, and all claims of Plaintiffs against Producer-Defendants, are dismissed with prejudice because such wells were and are exempt from application of the New Mexico Natural Gas Pricing Act.

(4) The bonds required to be filed with the Court by the Court's Order of Interpleader dated April 18, 1984 for these wells are no longer necessary since refunds are not owed and all bonds filed with the Court for such wells are released and dissolved.

(5) Plaintiffs are hereby ordered to pay to Producer-Defendants, within forty-five (45) days from the entry of this Judgment, any and all payments still withheld by Plaintiffs from certain Producer-Defendants for the production months of January, 1984 through June, 1984. Interest shall be paid on withheld sums, whether previously or presently withheld, at the rate of 9-3/4%, calculated on sums withheld from the date of withholding until the day of payment.

(6) With respect to the wells identified in Exhibit "A," the Court's judgment is a final judgment based upon the Court's express determination that there is no just reason for delay.

E. For all other infill wells which were drilled in the above-noted reservoirs, the Court stays further action in this case pending a determination by the Oil Conservation Commission

whether such wells were justified for reasons other than avoiding application of the Natural Gas Pricing Act. Upon a finding by the Oil Conservation Commission that such wells were justified for reasons other than avoiding the Pricing Act, the stay referred to above shall be lifted upon application of any party, and an order consistent with this ruling will be entered for all such wells. Upon a contrary finding by the Oil Conservation Commission, the stay referred to above shall be lifted upon application by any party, and this action may proceed with respect to such wells. The Court retains such further jurisdiction over those wells as may be necessary for the completion of this matter.

C. Each party shall bear its own costs of this proceeding.

ORIGINAL SIGNED BY  
LORENZO F. GARCIA, DISTRICT JUDGE

---

LORENZO F. GARCIA  
District Judge

APPROVED AS TO FORM:

  
\_\_\_\_\_  
LYMAN G. SANDY  
ATTORNEY FOR GAS COMPANY OF  
NEW MEXICO

*Michael B. Campbell*

MICHAEL B. CAMPBELL  
ATTORNEY FOR AMOCO PRODUCTION CO.,  
ARCO OIL & GAS CO., CONSOLIDATED  
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*Mr. Campbell advised the  
court by letter that all  
remaining counsel have  
given telephonic consent  
to the form of Order.*

*SJB*

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ATTORNEY FOR TEXACO, INC.

---

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ATTORNEY FOR OFFICE OF THE ATTORNEY GENERAL

---

JEFF TAYLOR  
ATTORNEY FOR OIL CONSERVATION DIVISION

---

JAMES C. MARTIN  
ATTORNEY FOR PUBLIC SERVICE COMMISSION



# GAS COMPANY OF NEW MEXICO

September 30, 1988

Meridian Oil Company  
801. Cherry Street  
Fort Worth, Texas 76102

RE: Infill Monies in Suspense

Gentlemen:

Our Gas Accounting Department, in conjunction with our Internal Audit Department, has brought to my attention the fact that there is still Infill monies on hold status for Southland Royalty Company since February, 1984.

Gas Company of New Mexico (GONM) would like to make a settlement for the above mentioned liability still carried on our books. In order for the monies to be released, Meridian Oil Company (aka Southland Royalty Company) needs to obtain an Infill Pricing Exemption from the New Mexico Oil Conservation Division. After receiving confirmation that the exemption has been issued, GONM will immediately release the monies to Meridian.

I would appreciate your helping in resolving this matter. Any questions that you may have concerning the wells involved or the Infill issue itself, please call me at (505) 888-8387.

Sincerely,



Susan Womble, Gas Supply  
Gas Contract Specialist

cj:

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

APPLICATION OF MERIDIAN OIL, INC.  
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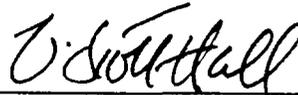
CASE NO. 9703

CERTIFICATE OF SERVICE

I hereby certify that I caused the original and one copy of Applicant's Response to Gas Company's Motion to Dismiss to be hand-delivered to J.E. Gallegos, Gallegos Law Firm, 141 East Palace Avenue, Santa Fe, New Mexico 87501 on this 22nd day of August, 1989.

CAMPBELL & BLACK, P.A.

By



\_\_\_\_\_  
J. Scott Hall  
Post Office Box 2208  
Santa Fe, New Mexico 87504-2208  
(505) 988-4421