

CAMPBELL & BLACK, P.A.

LAWYERS

JACK M. CAMPBELL
BRUCE D. BLACK
MICHAEL B. CAMPBELL
WILLIAM F. CARR
BRADFORD C. BERGE
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LOURDES A. MARTINEZ

RECEIVED

MAY 21 1985

OIL CONSERVATION DIVISION

JEFFERSON PLACE
SUITE 1 - 110 NORTH GUADALUPE
POST OFFICE BOX 2208
SANTA FE, NEW MEXICO 87501
TELEPHONE: (505) 988-4421
TELECOPIER: (505) 983-6043

May 21, 1985

Mr. Richard L. Stamets, Director
Oil Conservation Division
New Mexico Department of
Energy and Minerals
State Land Office Building
Santa Fe, New Mexico 87504

HAND-DELIVERED

RE: Case 8323: Application of Blanco Engineering for Salt
Water Disposal, Eddy County, New Mexico

Dear Mr. Stamets:

This letter will confirm our conversation of May 16, 1985 in which I advised you that Yates Petroleum Corporation has directed us to file a complaint in the District Court of Eddy County seeking, among other things, a determination of the ownership of the Pan American Flint Gas Com Well No. 1 which is the subject of the above-referenced case. The complaint in this case will be filed with the district court in approximately ten days.

Yates Petroleum Corporation therefore requests that the Division stay its Order R-7693-B which was entered on May 7, 1985 in this matter pending a determination by the District Court of the ownership of this wellbore. Yates further requests that the Division continue the de novo hearing in this matter until the ownership of the wellbore has been determined.

Blanco Engineering through its counsel has been advised of this request and has expressed its opposition to both the stay and the continuance. In support of their position Blanco asserts that the Division's duty to supervise salt water disposal is a separate and distinct issue from ownership of the wellbore. They also have admitted that the Division lacks jurisdiction to decide the ownership question. Yates concurs that the Division lacks jurisdiction to decide the ownership of this well but maintains that Order R-7693-B in fact makes such a decision in order paragraph 2 which directs Yates to ". . . return to Blanco Engineering Inc. the wellbore and surface location of the subject well to a condition as near as possible to that originally received by Yates Petroleum Corporation or in the alternative . . . reimburse Blanco Engineering for the additional costs

Mr. Richard L. Stamets, Director
May 21, 1985
Page two

incurred for restoring the well to said original condition." This paragraph determines the ownership of the well and if complied with, and addition injection of water into the well occurs, Yates Petroleum Corporation would suffer immediate and irreparable harm.

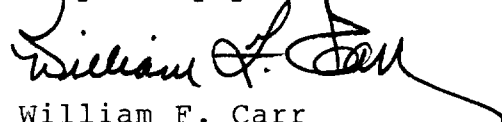
Blanco also asserts that its correlative rights will be impaired by a stay. We are unable to understand this position inasmuch as Blanco does not own any mineral interests under the subject acreage and, therefore, has no correlative rights under the tract to be protected. It may not be practicable for the Division to determine the exact extent of correlative rights before acting to protect them but certainly the Division must determine whether or not any such rights exist before taking an action which would impair the property interests of another party. Clearly authorization to dispose of water in this wellbore which could be used to produce commercial hydrocarbons causes waste and impairs the correlative rights of Yates Petroleum Corporation.

Furthermore, since the last hearing in this case, Blanco Engineering has received authority from the Division to dispose of produced water in the Abo and Wolfcamp formations in the C. E. LaRue & B. N. Muncy, Jr. Nix & Curtis Well No. 1 (Order R-7872 dated April 11, 1985). We believe this order provides to Blanco Engineering the relief they were seeking in their efforts to utilize the Pan American Flint Gas Com Well No. 1 for disposal purposes.

We would appreciate your decision on our request for stay at the earliest possible date and, should you decide to deny this request, we would appreciate your advising us of that fact in writing. We also would request that should you set the matter for hearing before the Commission the hearing be at the earliest possible date. Yates requests that the matter be set for hearing before the full Commission during either the second or third week of June, 1985.

Your attention to this matter is appreciated.

Very truly yours,



William F. Carr

WFC/ba

cc: Randy Patterson
Yates Petroleum Corp.
W. Thomas Kellahin, Esq.
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

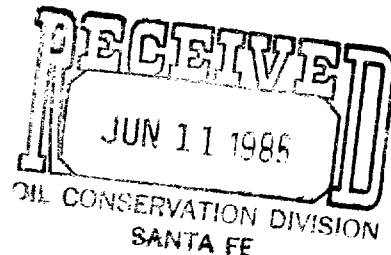
Jason Kellahin
W. Thomas Kellahin
Karen Aubrey

KELLAHIN and KELLAHIN
Attorneys at Law
El Patio - 117 North Guadalupe
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

Telephone 982-4285
Area Code 505

June 10, 1985

(Hand-Delivered)



William F. Carr, Esq.
CAMPBELL & BLACK
Post Office Box 2208
Santa Fe, New Mexico 87504-2208

Re: Case 8323
Order R-7693-B
Flint Salt Water Disposal

Dear Mr. Carr:

On May 7, 1985 the Division entered its order in the above matter granting our client, Blanco Engineering, Inc., permission to utilize the Pan American Flint Gas Com Well No. 1, for disposal of salt water. In addition, the Commission found that Yates Petroleum Corporation should return the wellbore and surface location of the well,

"in a condition as near as possible to that originally received by Yates Petroleum Corporation, or, in the alternative, reimburse Blanco Engineering for the additional costs incurred for restoring the well to said original condition."

As of this date, Yates Petroleum Corporation has done neither. We hereby make demand upon you to perform such work as is necessary to return the wellbore and surface location to the condition they were in when Yates was granted permission to re-enter the well. We are particularly concerned about the perforations in the Canyon zone and the effect the existence of those perforations has on our ability to commence disposal of produced salt water into the wellbore.

KELLAHIN and KELLAHIN

William F. Carr, Esq.

Page -2-

June 10, 1985

To our knowledge you have not obtained a stay of the Examiner order and Order R-7693-B, is a valid, subsisting order of the Oil Conservation Division. We hereby demand that you perform under the terms of that order and tender the wellbore to Blanco Engineering in the condition in which you received it.

Sincerely,


Karen Aubrey

KA:mh

cc: Mr. Richard L. Stamets
Director
Oil Conservation Division
Post Office Box 2088
Santa Fe, New Mexico 87501

Mr. Paul White

CAMPBELL & BLACK, P.A.

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June 14, 1985

OIL CONSERVATION DIVISION

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JUN 14 1985

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R. L. Stamets, Director
Oil Conservation Division
New Mexico Department of
Energy and Minerals
Post Office Box 2088
Santa Fe, New Mexico 87501


RE: Case 8323, Order R-7693-B: Application of Blanco Engineering, Inc. for Salt Water Disposal, Eddy County, New Mexico

Dear Mr. Stamets:

Pursuant to your request I have prepared a draft of a letter in the above-referenced case which denies the Application of Yates Petroleum Corporation of an indefinite continuance of Case 8323. The letter also grants a stay of Order R-7693-B pending the entry of an order following the de novo hearing in this case.

If you need anything further from me concerning this matter, please advise.

Very truly yours


William F. Carr

WFC/ba
Enclosure

cc: Karen Aubrey

June 14, 1985

JUN 14 1985

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William F. Carr, Esq.
Campbell & Black, P.A.
Post Office Box 2208
Santa Fe, New Mexico 87504-2208

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

RE: Case 8323, Order R-7693-B: Application of Blanco
Engineering for Salt Water Disposal, Eddy County, New
Mexico

Gentlemen:

On May 7, 1985, the Division entered the above-referenced Order which reinstated Division Order R-7693 authorizing Blanco Engineering, Inc. to utilize its Pan American Flint Gas Com Well #1 for disposal of produced water into the Atoka formation and further directed Yates Petroleum Corporation to return the wellbore and the surface location of the subject well to a condition as near as possible to that originally received by Yates Petroleum Corporation or to reimburse Blanco Engineering, Inc. for the costs of restoring the well to its original condition.

Following the entry of this Order, Yates Petroleum Corporation timely filed an application for hearing de novo and on May 21, 1985, through its attorney William F. Carr, requested that the Division stay Order R-7693-B and continue the de novo hearing in this case indefinitely until Yates Petroleum Corporation can have the ownership of the wellbore of the Pan American Flint Gas Com Well #1 determined by the District Court. This request is opposed by Blanco Engineering, Inc.

I have reviewed the record of this case and the request of Yates Petroleum Corporation and it is my decision that the request of Yates Petroleum Corporation for a continuance of Case 8323 for indefinite period of time to permit it to obtain from the court a resolution of certain questions concerning the ownership of the subject wellbore should be and hereby is denied. I believe, however, that Order R-7693-B should be and hereby is stayed by the Division until the order that will result from the de novo hearing is entered by the Division.

William F. Carr, Esq.
W. Thomas Kellahin, Esq.
June 14, 1985
Page two

The de novo hearing on Yates' application has been set before the Oil Conservation Commission at 9:00 A.M. on July 10, 1985.

Very truly yours,

R. L. STAMETS
Director

Jason Kellahin
W. Thomas Kellahin
Karen Aubrey

KELLAHIN and KELLAHIN
Attorneys at Law
El Patio - 117 North Guadalupe
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RECEIVED

June 17, 1985 JUN 17 1985

HAND DELIVERED

OIL CONSERVATION DIVISION

case file

Mr. Richard L. Stamets
Oil Conservation Division
Post Office Box 2088
Santa Fe, New Mexico 87501

Re: Case 8323, Order R-7693-B
Application of Blanco Engineering, Inc., for
Salt Water Disposal, Eddy County, New Mexico

Dear Mr. Stamets:

Today, June 17, 1985, I received a copy of a letter from William F. Carr to you in the above matter. Both the letter from Mr. Carr and his enclosure which appears to be a letter-order drafted for your signature bear the date June 14, 1985. Mr. Carr's letter to you indicates that you have communicated with him and requested him to prepare a letter granting Yates Petroleum Corporation's request for a stay of Order R-7693-B. The letter prepared for you by Mr. Carr recites no reason for your decision to stay the application of the Examiner Order pending an order following the de novo hearing by the Oil Conservation Commission.

On May 17, 1985 Mr. Kellahin of our office wrote you to indicate that Blanco Engineering opposed any stay in the matter and also to indicate that Blanco would file a Writ of Mandamus in District Court in the event that a stay was granted without notice and hearing.

I can find no statute granting the Division Director the authority to enter a stay of an Examiner Order, particularly to do so without notice and hearing. I further can find no rule of the Oil Conservation Division which would permit the entry of an ex-parte stay.

Mr. Richard L. Stamets
Page -2-
June 17, 1985

In the event you believe that there are meritorious reasons for entering a stay, and that you have the legal authority to do so, we request that the question be set for hearing before the full Commission on July 10, 1985. There can certainly be no claim that this is an emergency or that irreparable harm will be suffered by Yates Petroleum Corporation in permitting Blanco Engineering its constitutional right to notice, hearing, and due process of law before its rights are affected.

As I am sure you are aware, Yates Petroleum Corporation made no effort, to date, to comply with the terms of the Examiner Order entered on May 7, 1985. Yates Petroleum Corporation has made no showing or excuse, at least none that has been shared with co-counsel, for its refusal to treat Order R-7693-B as a valid, subsisting, enforceable order of the Oil Conservation Division in the time period between May 7, 1985 and June 14, 1985. It does not seem to us that staying the application of an order which is more than six weeks old will benefit either the parties or the Oil Conservation Commission.

Sincerely,



Karen Aubrey
KA:mh

cc: Mr. Paul White
Blanco Engineering
116 North First Street
Artesia, New Mexico 88210

Alan Konrad, Esq.
MILLER, STRATVERT, TORGERSON & BRANDT, P.A.
Post Office Box 25687
Albuquerque, New Mexico 87125

William F. Carr, Esq. "Hand-Delivered"
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Santa Fe, New Mexico 87504-2208

W. Thomas Kellahin, Esq.

CAMPBELL & BLACK, P.A.

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June 21, 1985

HAND DELIVERED

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JUN 21 1985

OIL CONSERVATION DIVISION

Mr. R. L. Stamets, Director
Oil Conservation Division
New Mexico Department of
Energy and Minerals
Post Office Box 2088
Santa Fe, New Mexico 87501

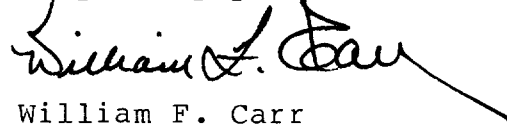
Re: Case 8323: Application of Blanco Engineering, Inc. for Salt
Water Disposal, Eddy County, New Mexico

Dear Mr. Stamets:

Enclosed is a Memorandum in Support of the May 21, 1985
request of Yates Petroleum Corporation for a stay of Order
R-7693-B which was entered on May 7, 1985.

Please treat this letter as a renewal of our request that
this order be stayed at least until a new order in this case has
been entered by the Commission following the de novo hearing
which you have set for July 10, 1985.

Very truly yours,


William F. Carr

WFC/ba
Enclosure

cc: Karen Aubrey, w/encl.
Randy Patterson

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

RECEIVED

JUN 2 1985

IN THE MATTER OF THE APPLICATION
OF BLANCO ENGINEERING, INC. FOR
SALT WATER DISPOSAL, EDDY COUNTY,
NEW MEXICO.

OIL CONSERVATION DIVISION

Case 8323

MEMORANDUM IN SUPPORT OF THE REQUEST OF
YATES PETROLEUM CORPORATION FOR A STAY OF ORDER R-7693-B

Facts

On August 15, 1984, Blanco Engineering, Inc. (hereinafter "Blanco") filed an application with the Oil Conservation Division (hereinafter "Division") seeking authority to dispose of produced salt water in the Pan American Petroleum Corporation Flint Gas Com Well #1 (hereinafter "Flint Well") located 1,980 feet from the South and East lines of Section 22, Township 18 South, Range 26 East, N.M.P.M., Eddy County, New Mexico. The matter came on for hearing on September 5, 1984 and on November 9, 1984 the Division entered Order No. R-7693 granting the application of Blanco. Subsequent to the entry of the Order it was discovered that Yates Petroleum Corporation (hereinafter "Yates") the leasehold operator of virtually every tract within one-half mile of the Flint Well, including the tract upon which the well was located, had not been given notice of the hearing as required by OCD Rule 701 and Form C-108. Order R-7693 was, therefore, vacated by letter from the Director of the Oil Conservation Division and the case reopened and set for hearing on January 16, 1985. On January 30, 1985, Order R-7693-A was entered which

authorized Yates to reenter the well for 45 days. During this reentry it was discovered that Blanco had already introduced substantial volumes of produced water into the wellbore thereby damaging the Flint Well and making Yates' efforts to return it to production more time consuming and costly. At the end of the 45 day period provided for by the January 30 Order, Yates suspended operations on the well and the case was again reopened on March 27, 1985. On May 7, 1985 the Division entered Order R-7693-B which ordered Yates to return the wellbore and surface location to a condition as near as possible to that originally received by Yates and further authorized Blanco to use the well for disposal purposes.

On May 21, 1985 Yates requested, among other things, a stay of Order R-7693-B and on June 14, 1985 at the request of the Division Director, submitted a draft letter which would stay this Order until a new order is entered in this case following the de novo hearing which has been scheduled for July 10, 1985. On June 17, 1985 Blanco wrote the Commission objecting to the entry of the stay alleging that the proposed letter failed to cite a reason for staying Order R-7693-B and further asserting that the Division Director lacked authority to enter a stay of this Order. This memo is in response to the June 17 letter from the attorneys for Blanco.

I. ONCE A CASE IS SET FOR HEARING DE NOVO THE EXAMINER ORDER CANNOT REMAIN VALID AND ENFORCEABLE.

In the case Herzberg v. State ex rel. Humphrey, 513 P.2d 966 (1973) the Arizona Court of Appeals discussed generally the scope of hearings de novo noting ". . . that both the nature and scope

of a de novo review is dependent upon the presence or absence of other statutorily imposed restrictions." Where the review is without statutory limitations ". . . the proceeding loses much of its character as a review and is heard the same as though it were an original proceeding . . ." Herzberg at 969.

When the Oil Conservation Commission reviews the decision of an examiner it does so without statutory limitations and therefore makes an entirely independent review as if the new hearing was an original proceeding. Section 70-2-13, N.M.S.A. 1978, provides in part:

. . . any party of record adversely affected (by the decision in a case heard by a division examiner) shall have the right to have the matter heard de novo before the Commission upon application filed with the Division within thirty days from the time any decision is rendered.

There are no other provisions in statute or Oil Conservation Division Rules which relate to or impose restrictions upon de novo hearings before the Commission. Therefore, there is nothing which would modify, restrict or give the concept of hearings de novo a unique or unusual meaning as it applies to hearings before the Oil Conservation Commission.

De novo means trying the matter anew, the same as if it had not been heard before. See Mason v. World War II Service Compensation Board, 51 N.W.2d 432. When hearing de novo is granted, it furthermore is as if no decision had previously been rendered. In Horton v. Liberty Mutual Insurance Company, 367 U.S. 348, 6 L.Ed.2d 980, the United States Supreme Court reviewed a dispute involving a worker's compensation award. Mr. Justice Black speaking for the Court noted that the Court was not making

an appellate review of the actions of the Texas Industrial Accident Board, but that the proceeding before the lower court had been a trial de novo and as such the proceeding was to be conducted wholly without reference to what the Board may have decided.

Since de novo means "anew" and "de novo" proceedings are to be conducted without reference to the previous decision, it is our position that the Order entered by the examiner in this case cannot remain valid and enforceable once the Commission has ordered a hearing de novo in the matter and a new order entered.

II. THE DIVISION DIRECTOR MAY STAY A DIVISION ORDER.

Section 70-2-6, N.M.S.A. 1978, defines the Division's powers and duties to include ". . . authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of this act or any other law of this state relating to the conservation of oil or gas and the prevention of waste of potash as a result of oil or gas operations." Furthermore, Section 70-2-11, N.M.S.A. 1978, empowers the Division ". . . to do whatever may be reasonably necessary to carry out the purposes of this act, whether or not indicated or specified in any section hereof." In discussing the additional powers of the Division, Section 70-2-13, N.M.S.A. 1978, refers to the powers of the Commission, ". . . either expressed or implied. . . ." Certainly the attorneys for Blanco in this case, by asserting that the Division Director cannot stay

his own order, adopt an absurd interpretation of these sections of the Oil and Gas Act which is contrary to both the letter of the statute as well as its intent.

It is clearly established that a court entering an order may stay its execution pending further proceedings in the case. See Rule 62 of the New Mexico Rules of Civil Procedure. In this case Yates is asking the Division Director, the individual who entered the order, to stay its effect pending de novo review.

A stay of Order R-7693-B is necessary to prevent immediate and irreparable harm to Yates Petroleum Corporation. At the March 27, 1985 hearing in this case, Yates Petroleum Corporation called David Boneau a petroleum engineer who testified that the Flint Well had been damaged by the injection of water into certain formations in the well prior to the time Yates knew of Blanco's plans for the well. (Transcript p. 14) Dr. Boneau also testified that gas reserves remain in this zone but Yates' chances of recovering that had been severely damaged by the fluids introduced by Blanco. (Transcript p. 18) He further went on to testify that Yates would consider swabbing and again attempting to place this zone on production. (Transcript p. 21)

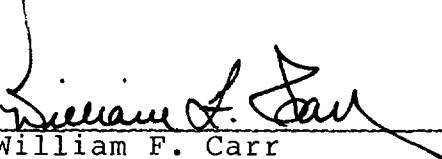
It was, and remains, the position of Yates Petroleum Corporation that if this wellbore is returned to Blanco and used for the disposal of additional produced water, harm of an immediate and irreparable nature will occur to Yates Petroleum Corporation, the leasehold operator of the tract upon which the well is located. Yates Petroleum Corporation has plans for the well which include efforts to return the disposal interval to

producing status and therefore asks that Order R-7693-B be stayed. If it is not, the correlative rights of Yates will be impaired and the physical waste of hydrocarbons will occur.

Respectfully submitted,

CAMPBELL & BLACK, P.A.

By


William F. Carr

Post Office Box 2208

Santa Fe, New Mexico 87501

(505) 988-4421

ATTORNEY FOR YATES PETROLEUM
CORPORATION

Jason Kellahin
W. Thomas Kellahin
Karen Aubrey

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June 24, 1985

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JUN 24 1985

OIL CONSERVATION DIVISION

Mr. Richard L. Stamets
Oil Conservation Division
Post Office Box 2088
Santa Fe, New Mexico 87501

Re: In the Matter of the Application of Blanco
Engineering, Inc., for Salt Water Disposal, Eddy
County, New Mexico
Case No. 8323
Order No. R-7693-B

Dear Mr. Stamets:

This will conform that at 4:30 P.M. on Friday, June 21, 1985 you called to inform me that as a result of Bill Carr's Supplemental Memorandum regarding the stay, that you were going to enter the stay requested by Yates. As I discussed with you on the telephone, we have not received any Supplemental Memorandum from Mr. Carr and have no idea what he said. In addition, this will confirm your opinion that this matter does not fall under the emergency provisions permitting the Oil Conservation Commission to enter Orders without notice and hearing.

As we discussed, we do not believe that it is proper for the Oil Conservation Commission to enter an Order without the opportunity for an affected party to be heard. Blanco Engineering, Inc., has had no opportunity to be heard on the issue of the stay and, as you are aware, we have no idea what Mr. Carr has said to you in his Supplemental Memorandum and have no way to meet any allegations or rebut them.

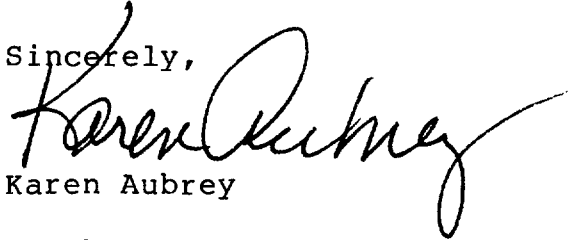
We continue to believe that a stay is entirely inappropriate in this matter. The Order in this case is more than six weeks old. The Commission hearing on the de novo application is set for July 10, 1985. The entry of a stay pending a decision of the Commission will adversely affect Blanco's correlative rights.

KELLAHIN and KELLAHIN

Mr. Richard L. Stamets
Page -2-
June 24, 1985

I do appreciate your courtesy in calling me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karen Aubrey". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Karen Aubrey

KA:mh

cc: William F. Carr, Esq.
Alan Konrad, Esq.
Mr. Paul White



STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

TONY ANAYA
GOVERNOR

July 19, 1985

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SANTA FE, NEW MEXICO 87501
(505) 827-5800

Mr. William F. Carr
Campbell & Black
Attorneys at Law
Post Office Box 2208
Santa Fe, New Mexico

Re: CASE NO. 8323
ORDER NO. R-7693-D

Applicant:

Blanco Engineering, Inc.
(Yates Petroleum Corporation)

Dear Sir:

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

Sincerely,

R. L. STAMETS
Director

RLS/fd

Copy of order also sent to:

Hobbs OCD x
Artesia OCD x
Aztec OCD _____

Other Karen Aubrey