

PADILLA & SNYDER  
ATTORNEYS AT LAW  
200 W. MARCY, SUITE 212  
P.O. BOX 2523  
SANTA FE, NEW MEXICO 87504-2523  
(505) 988-7577

November 3, 1987

HAND DELIVERED

Mr. Jeffrey Taylor  
General Counsel  
Oil Conservation Division  
State Land Office Building  
Santa Fe, New Mexico 87501

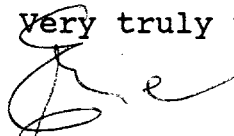
Re: Case 8901

Dear Jeff:

Enclosed are extra copies of what I had labeled "Grynberg Exhibits" for the August 7, 1986, hearing. I cannot recall whether these exhibits were actually introduced or not. You will obviously have to compare the transcript with the enclosed exhibits to see whether or not they were actually introduced.

I hope this helps you.

Very truly yours,



Ernest L. Padilla

ELP:crk

Enclosures as stated



STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION DIVISION

TONEY ANAYA  
GOVERNOR

July 15, 1986

POST OFFICE BOX 2088  
STATE LAND OFFICE BUILDING  
SANTA FE, NEW MEXICO 87501-2088  
(505) 827-5800

Mr. Ernest L. Padilla  
Attorney at Law  
P. O. Box 2523  
Santa Fe, New Mexico 87502

RE: CASE NO. 8901 AND ORDER NO. R-7393 IN CASE NO. 7984

Dear Mr. Padilla:

This letter is to advise you of my intention to seek correction of Finding No. (25) of the subject order.

You will recall that at the June 19 Commission hearing, it was discovered that said Finding No. (25) contained an error in referring to the PreCambrian formation rather than the PrePermian. It would be my intention to ask the Commission to correct that error by signing a proposed Nunc Pro Tunc order as enclosed.

Your comments as to this proposed action are invited.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. L. Stamets".

R. L. STAMETS  
Director

RLS:dp

Enc.

cc: Case File 8901 and 7984  
Ed Kelley

LAW OFFICES

LOSEE & CARSON, P. A.

300 AMERICAN HOME BUILDING

P. O. DRAWER 239

ARTESIA, NEW MEXICO 88211-0239

A. J. LOSEE  
JOEL M. CARSON  
JAMES E. HAAS  
ERNEST L. CARROLL

AREA CODE 505  
746-3508

TELECOPY  
746-6316

26 January 1987

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

Re: Grynberg/Yates, NMOCD Case 8901

Dear Mr. LeMay:

This case has already been heard twice by the Commission. The results were not totally favorable to the Yates applicants, but these matters have to come to a close sometime. You will note that Mr. Grynberg's witness offered figures that were not significantly different from Yates figures.

We ask that the Commission deny the application for rehearing.

Yours truly,

LOSEE & CARSON, P. A.

  
Joel M. Carson

JMC:ktl

cc: Tom Kelley  
W. Thomas Kellahin, Esq.

LAW OFFICES  
**LOSEE & CARSON, P. A.**  
300 AMERICAN HOME BUILDING  
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ARTESIA, NEW MEXICO 88211-0239

A. J. LOSEE  
JOEL M. CARSON  
—  
JAMES E. HAAS  
ERNEST L. CARROLL

AREA CODE 505  
746-3508  
  
TELECOPY  
746-6316

11 December 1986

Mr. Richard Stamets, Director  
New Mexico Oil Conservation Division  
P. O. Box 2088  
Santa Fe, New Mexico 87501-2088

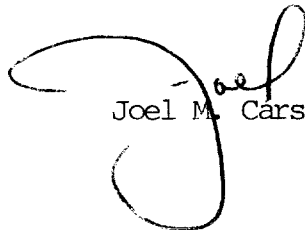
Re: Yates v. Grynberg

Dear Dick:

I am enclosing a proposed order in the above case. I hope that it is satisfactory to the Commission. If there are any questions, please call.

Yours truly,

LOSEE & CARSON, P. A.

  
Joel M. Carson

JMC:ktl  
Enclosure

cc: Mr. Tom Kelley  
Mr. Ernest Padilla



STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION DIVISION

TONY ANAYA  
GOVERNOR

January 5, 1987

POST OFFICE BOX 2088  
STATE LAND OFFICE BUILDING  
SANTA FE, NEW MEXICO 87501  
(505) 827-5800

Mr. Joel Carson  
Losee & Carson  
Attorneys at Law  
Post Office Box 239  
Artesia, New Mexico

Re: CASE NO. 8901  
ORDER NO. R-7393-B

Applicant:  
Yates Petroleum Corporation, Yates  
Drilling Company, Myco Industries, Inc.,  
and Abo 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 Ernest L. Padilla

# GRYNBERG PETROLEUM COMPANY

5000 SOUTH QUEBEC • SUITE 500 • DENVER, COLORADO 80237-2707 USA • PHONE 303-850-7490

TELEX: 510 600 2180 ENERGY DVR  
TELECOPIER: 303-850-7490

July 1, 1986

*Case No. 8901*

*M.S.*

*Attn: R.L. Stanek*

Mr. Tom Kelly  
Yates Petroleum Company  
207 South 4th Street  
Artesia, NM 88210

Dear Tom:

I enclose a schedule showing allocation of costs on the #1-20 Grynberg State based on the instructions of the New Mexico Oil & Gas Conservation Commission hearing dated 6/19/86.

I understand that you are performing a like analysis and will be sending us your information on this matter.

Sincerely,  
GRYNBERG PETROLEUM COMPANY

*Linda Middleton*

Linda Middleton, for  
Robert D. Pelo, Controller

cc: New Mexico Oil & Gas Conservation Commission  
Earnest Padilla, Attorney

COST ALLOCATION  
1-20, T9S-R27E  
Chaves County, New Mexico  
(Based on Commission Order R-7343) June 19, 1986  
Pre-Permian

SERVICE DATE	VENDOR AND SERVICE PERFORMED	AMOUNT	COST	REMARKS
12/30/83	*Runnels Mud. Co.-Prepay Mud	6,240.00	3,284.21	
12/30/83	Oilfied Constr. Co.-Location	1,037.50		
12/30/83	Lyman R. Graham - Surface Damage	500.00		
12/31/83	Oilfield Constr. Co. - Location	2,056.25		
12/31/83	R.R. Patton - Survey Road	470.81		
1/4/84	Comm.Pub. Land-ROW 20,T9S-R27E	2,130.00		
1/6/84	Hondo Pipe- 8 5/8" 24# Casing	8,943.69		
1/31/84	*Jim's Wtr.Svc.-Fresh Water	430.04	226.34	
2/2/84	Halliburton-Cement 8 5/8"	6,945.86		
2/1-2/4/84	*Jim's Wtr. Svc.-Fresh Wtr.& Trkg.	860.08	452.67	
2/2/84	*Jim's Wtr.Svc.-Fresh Wtr.& Trkg.	967.62	509.27	
2/2/84	*Jim's Wtr.Svc.-Fresh Wtr. & Trkg.	752.57	396.09	
2/3-2/4/84	*Jim's Wtr. Svc.-Fres Wtr. & Trkg.	645.06	339.51	
2/4/84	Roswell Ready Mix-Rods for Cellar	515.74		
2/4/84	Troy's Welding-Weld Cattleguard	108.68		
2/5/84	*Jim's Wtr. Svc.-Brine & Trkg.	282.02	148.43	
2/5/84	*Jim's Wtr.Svc.-Fresh Wtr. & Trkg.	107.51	56.58	
2/5/84	*Jim's wtr.Svc.-Brine Wtr. & Trkg.	564.04	296.86	
2/5/84	*Jim's Wtr. Svc.-Brine & Fresh Wtr.	671.55	353.45	
2/5/84	*Jim's Wtr. Svc.-Brine Water	282.02	148.43	
2/7/84	*Jim's Wtr. Svc.-Fressh Water	107.51	56.58	
2/7/84	Big Red Supply-Sampe Bags	32.95	32.95	
2/9/84	*Jim's Wtr. Svc.-Fresh Water	107.51	56.58	
2/11/84	*Jim's Wtr. Svc.-Fresh & Brine Wtr.	497.04	263.43	
2/12/84	Troy's Welding-Cut & Weld Wellhead	122.26		
2/15/84	*Jim's Wtr. Svc.-Fresh Water	107.38	56.91	
2/17/84	*Jim's Wtr. Svc.-Fresh Water	107.51	56.98	
2/19/84	*Jim's Wtr. Svc.-Fresh Water	322.53	169.75	
2/23/84	Robert Becker-Geologist	1,786.63	1,786.63	
1/31/84	Oilfield Industrial-Line pit	1,530.14		
2/12/84	✓ Schlumberger-Logging	20,363.86	9,658.62	Depth charge
2/13/84	Buckeye, Inc.-Mud slick	2,555.52		
2/16/84	Halliburton-DST 6325-6396	3,039.88	3,039.88	

SERVICE DATE	VENDOR AND SERVICE PERFORMED	AMOUNT	Pre-Permian	REMARKS
			COST	
2/18/84	Schlumberger-Logging	6,493.62	6,493.62	Run #2
2/18/84	Big Red Supply-Casinghead & Etc.	1,090.27		
2/18/84	Associated Pipe-5½" 15.5# Casing	29,120.80		
2/19/84	Troy's Welding-Final Csg. Cutoff	108.68		
2/19/84	Halliburton-Cement 5½" Csg.	9,000.20	3,451.74	Proportional cost for Pre-Permian Section
2/20/84	Hondo Pipe-Forklift 5½"	224.37		
2/12-2/20/84	Sonny Longo-Drlg. Consultant	1,918.00	1,918.00	
2/21/84	*Desert Drilling-Footage & Daywork	114,005.07	60,002.67	
3/10/84	Mimco Pipe-6,340 ft. 2 3/8 Tbg.	11,675.61		
3/10/84	Buckeye, Inc.-Return mud slick	(1,983.23)		
3/10-3/31/84	Mack Chase - Completion Rig	23,971.44	15,879.93	
3/12/84	Hondo Pipe-Wellhead fittings	2,067.57		
3/12/84	Hondo Pipe-Tbghd & Subs	2,088.77		
3/12/84	Hondo Pipe-Flow Tee & Swage	187.10		
3/12/84	Troy's Welding-Cut & Weld Csg.	176.60		
3/14/84	Jim's Wtr. Svc.-Fresh & KCL	437.15	437.15	
3/14/84	Halliburton-Acid @ 6190'-6207'	1,562.24	1,562.24	
3/14/84	Halliburton-Acid & N <sub>2</sub> @ 6190-6207'	1,835.68	1,835.68	
3/14/84	Maypole Packers-5½" Rental Packer	1,219.73	1,219.73	
3/16/84	Halliburton-Acid & N <sub>2</sub> @6163-6170'	1,499.68	1,499.68	
3/16/84	Halliburton-Acid & N <sub>2</sub> @6163-6170'	1,855.64	1,855.64	
3/16/84	Jim's Wtr. Svc. -Fresh & KCL	628.94	628.94	
3/16/84	Jim's Wtr. Svc.-Fresh & KCL	2,830.74	2,830.74	
3/16/84	Hondo Pipe-Return Sub. & Collar	(277.22)	2,830.74	
3/17/84	Halliburton- Deep Frac	18,902.18	18,902.18	
3/19/84	B&R Lease Svc.-Fence pit	158.15		
3/21/84	Halliburton-Acid & N <sub>2</sub> @ 5414-5429'	1,470.22	1,470.22	
3/21/84	Halliburton-Acid & N <sub>2</sub> @ 5414-5429'	3,403.53	3,403.53	
3/22/84	T & C Tank-Install Anchors	462.45		
3/24/84	Jim's Wtr. Svc. -Fresh & KCL	2,801.51		
3/24/84	Maypole - 5½" Rental Packer	903.71		
3/26/84	Bell Pet. Survey-Survey for leak	3,291.93		
3/28/84	Jim's Wtr. Svc.-Fresh & KCL	731.18		



SERVICE DATE	VENDOR AND SERVICE PERFORMED	AMOUNT	Pre-Permian		REMARKS
			COST		
3/28/84	Halliburton-Acidize & N <sub>2</sub> Abo	1,675.84			
3/28/84	Halliburton-Acidize & N <sub>2</sub> Abo	3,291.47			
3/29/84	Jim's Water Service-Tank Rent	46.74			
3/29/84	Halliburton-Frac Abo	13,779.82			
3/29-3/30/84	Jim's Wtr. Svc.-Tank Rent	46.69			
3/31/84	Completion Rentals-BOP Rental	605.80			
3/30/84	B & R Lease-load tbq. & csg.	169.84			
4/4/84	Jim McWilliams-Drilling Consultant	5,435.35	2,989.44		llout of 20 days completing Pre-Permi
4/25/84	Jones & Gallegos-Lawsuit	438.50			
5/25/84	Jones & Gallegos-Lawsuit	66.00			
6/25/84	Jones & Gallegos - Lawsuit	33.81			
6/30/84	Valley Construction-Final cleanup	640.00			
7/10/84	Double Anchor - Repair Road	624.00			
10/31/84	Welborn Fuffard-Lawsuit	221.00			
1/10/84	T. K. Campbell-Grynberg vs. M	701.67			
3/12/84	T. K. Campbell-Grynberg vs. M	216.97			
10/17/84	T. K. Campbell-Grynberg vs. M	1,500.00			
	Dennis Wright Insurance - Insurance	522.50			
	Engineering Charge-Grynberg	600.00			
	Overhead	3,764.31			
	2 3/8" Tbg. Credited	(2,121.09)			
	5 1/2" Casing credited	(356.57)			
	TOTAL	\$340,956.72	\$147,771.28		

\*Pre-Permian charges based on actual days drilled from 5340' to 5415'. 10 days over total drilling of 19 days. (0.53).

Well cost less Pre-Permian direct expenses =  
= 340,956.72 - 147,771.28 = \$193,185.44

Abo cost = 193,185.44 x 0.8189 = \$158,199.56

Indirect Pre-Permian cost = 193,185.44 x 0.1811 = \$34,985.88

Total Pre-Permian Cost = 147,771.28 + 34,985.88 = \$182,757.16

ALLOCATION OF COSTS - GRYNBERG STATE 1-20

Deep Only - (schedule)	\$ 44,137.45	
Deep Allocated - (schedule)	60,492.18	at indicated %
Abo Allocated - (schedule)	116,017.16	
Abo .8189 -	98,521.81 *	
Deep .1811 -	<u>21,788.12</u>	
	\$340,956.72	

TOTALS

Deep	126,417.75	x .625	= 79,011.09
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Abo	<u>214,538.97</u>	x .25	= <u>53,634.67</u>
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	340,956.72		132,645.76
--	------------	--	------------

(215,706.26)

( 83,060.50)

2,608.31 Grynberg payment

( 80,452.19)

Total Abo %

\$214,538.97 ÷ 340,956.72 = .6292

Total Deep %

\$126,417.75 ÷ 340,956.72 = .3708

\* - These charges allocated to Abo per one interpretation of the OCC order, but \$42,683.09 was allocated to the Abo on the schedule prepared by both Yates and Grynberg for the June, 1986 hearing

SERVICE DATE	VENDOR AND SERVICE PERFORMED	AMOUNT	FORMATION SERVED	
			ABO .8189	PREPERMIAN .1811
12/30/83	Runnels Mud Co. - Prepay Mud	6,240.00	.4737 2,955.79	.5263 3,284.21 ✓
12/30/83	Oilfield Construction Co.-Location	1,037.50	849.61	187.89 ✓
12/30/83	Lyman R. Graham - Surface Damage	500.00	409.45	90.55 ✓
12/31/83	Oilfield Construction Co.-Location	2,056.25	1,683.86	372.39
12/31/83	R. R. Patton - Survey road	470.81	385.55	85.26
1/4/84	Comm. Pub. Land -ROW 20-T9S-R27E	2,130.00	1,744.26	385.74
1/6/84	Hondo Pipe - 8 5/8" 24# Casing	8,943.69	7,323.99	1,619.70
1/31/84	Jim's Water Service - Fresh Water	430.04	352.16	77.88
2/2/84	Halliburton - Cement 8 5/8"	6,945.86	5,687.96	1,257.90 ✓
2/1-2/4/84	Jim's Water Svc.-Fresh Wtr.& Trkg.	860.08	704.32	155.76
2/2/84	Jim's Water Svc.-Fresh Wtr.& Trkg.	967.62	792.38	175.24
2/2/84	Jim's Water Svc.-Fresh Wtr.& Trkg.	752.57	616.28	136.29
2/3-2/4/84	Jim's Water Svc.-Fresh Wtr.& Trkg.	645.06	528.24	116.82
2/4/84	Roswell Ready Mix- Rods for Cellar	515.74	422.34	93.40
2/4/84	Troy's Welding - Weld Cattleguard	108.68	89.00	19.68
2/5/84	Jim's Water Svc. - Brine & Trucking	282.02	230.95	51.07
2/5/84	Jim's Water Svc.-Fresh Wtr.& Trkg.	107.51	88.04	19.47
2/5/84	Jim's Water Svc. Brine Wtr.&Trkg.	564.04	461.89	102.15
2/5/84	Jim's Water Svc.-Brine & Fresh Wtr.	671.55	549.93	121.62
2/5/84	Jim's Water Svc.-Brine Water	282.02	230.95	51.07
2/7/84	Jim's Water Service - Fresh Water	107.51	88.04	19.47
2/7/84	Big Red Supply - Sample Bags	32.95	-0-	32.95 ✓
2/9/84	Jim's Water Service - Fresh Water	107.51	-0-	107.51 ✓
2/11/84	Jim's Water Svc.-Fresh & Brine Wtr.	497.04	-0-	497.04
2/12/84	Troy's Welding-Cut & weld wellhead	122.26	100.12	22.14
2.15.84	Jim's Water Service - Fresh Water	107.38	-0-	107.38
2/17/84	Jim's Water Service - Fresh Water	107.51	-0-	107.51
2/19/84	Jim's Water Service - Fresh Water	322.53	-0-	322.53
2/23/84	Robert Becker - Geologist	1,786.63	-0-	1,786.63
1/31/84	Oilfield Industrial - Line pit	1,530.14	1,253.03	277.11
2/12/84 ✓	Schlumberger - Logging	20,363.86	.7093 14,443.37	.2907 5,920.49
2/13/84	Buckeye, Inc. - Mud Slick	2,555.52	-0-	2,555.52 ✓
2/16/84	Halliburton - DST 6325-6396	3,039.88	-0-	3,039.88 ✓

SERVICE DATE	VENDOR AND SERVICE PERFORMED	AMOUNT	FORMATION SERVED	
			ABO .8189	PREPERMIAN .1811
2/18/84	Schlumberger - Logging	6,493.62	.2989 1,940.78	.7011 4,552.84
2/18/84	Big Red Supply - Casinghead & Etc.	1,090.27	892.82	197.45
2/18/84	Associated Pipe - 5 1/2" 15.5# Csg.	29,120.80	23,847.02	5,273.78
2/19/84	Troy's Welding - Final Csg. Cutoff	108.68	89.00	19.68
2/19/84	✓ Halliburton - Cement 5 1/2" Csg.	9,000.20	7,370.26	1,629.94
2/20/84	Hondo Pipe - Forklift 5 1/2"	224.37	183.74	40.63
2/12-2/20/84	Sonny Longo - Drilling Consultant	1,918.00	-0-	1,918.00
2/21/84	✓ Desert Drilling-Footage & Daywork	114,005.07	.7566 86,256.27	.2434 27,748.80
3/10/84	Mimco Pipe - 6,305' 2 3/8" Tubing	11,675.61	9,561.16	2,114.45
3/10/84	Buckeye, Inc. - Return mud slick	(1,983.23)	-0-	(1,983.23)
3/10-3/31/84	Mack Chase - Completion Rig	23,971.44	.3375 8,091.51	.6625 15,879.93
3/12/84	Hondo Pipe - Wellhead fittings	2,067.57	1,693.13	374.44
3/12/84	Hondo Pipe - Tubinghead & Subs	2,088.77	1,710.49	378.28
3/12/84	Hondo Pipe - Flow Tee & Swage	187.10	153.22	33.88
3/12/84	Troy's Welding - Cut & Weld Casing	176.60	144.62	31.98
3/14/84	Jim's Water Svc. - Fresh & KCL Wtr	437.15	-0-	437.15
3/14/84	Halliburton - Acid @ 6190 - 6207	1,562.24	-0-	1,562.24
3/14/84	Halliburton - Acid & N <sub>2</sub> @ 6190-6207	1,835.68	-0-	1,835.68
3/14/84	Maypole Packers - 5 1/2" Rental Packer	1,219.73	-0-	1,219.73
3/16/84	Halliburton-Acid & N <sub>2</sub> @ 6163-6170'	1,499.68	-0-	1,499.68
3/16/84	Halliburton-Acid & N <sub>2</sub> @ 6163-6170'	1,855.64	-0-	1,855.64
3/16/84	Jim's Water Service-Fresh & KCL	628.94	-0-	628.94
3/16/84	Jim's Water Service-Fresh & KCL	2,830.74	-0-	2,830.74
3/16/84	Hondo Pipe - Return Sub & Collar	(277.22)	(227.02)	(50.20)
3/17/84	Halliburton - Deep Frac	18,902.18	-0-	18,902.18
3/19/84	B & R Lease Service - Fence Pit	158.15	129.51	28.64
3/21/84	Halliburton-Acid & N <sub>2</sub> @ 5414-5429'	1,470.22	-0-	1,470.22
3/21/84	Halliburton-Acid & N <sub>2</sub> @ 5414-5429'	3,403.53	-0-	3,403.53
3/22/84	T & C Tank - Install Anchors	462.45	378.70	83.75
3/24/84	Jim's Water Service - Fresh & KCL	2,801.51	2,294.16	507.35
3/24/86	Maypole - 5 1/2" Rental Packer	903.71	740.05	163.66
3/26/86	Bell Pet. Survey -Survey for leak	3,291.93	2,695.76	596.17
3/28/84	Jim's Water Service - Fresh & KCL	731.18	598.76	132.42

[illegible]

(5)

<u>DEEP ONLY CHARGES</u>		<u>INVOICE AMOUNT</u>	<u>DEEP %</u>
Mud Bill	\$ 3,284.21 - Divided	\$ 6,240.00	.5263
Big Red Supply	32.95	32.95	1.0000
Water Service	107.51	107.51	1.0000
Water Service	497.04	497.04	1.0000
Water Service	107.38	107.38	1.0000
Water Service	107.51	107.51	1.0000
Water Service	322.53	322.53	1.0000
Geologist	1,786.63	1,786.63	1.0000
Logging	5,920.49 - Divided	20,363.86	.2907
Mud Slick	2,555.52	2,555.52	1.0000
DST @ 6325 - 6396	3,039.88	3,039.88	1.0000
Logging	4,552.84 - Divided	6,493.62	.7011
Drilling Consultant	1,918.00	1,918.00	1.0000
Credit Mud Slick	(1,983.23)	(1,983.23)	1.0000
Mack Chase	15,879.93 - Divided	23,971.44	.6625
Water Service	437.15	437.15	1.0000
Acid @ 6190 - 6207	1,562.24	1,562.24	1.0000
Acid @ 6190 - 6207	1,835.68	1,835.68	1.0000
Packer Rental	1,219.73	1,219.73	1.0000
Acid @ 6163 - 6170	1,499.68	1,499.68	1.0000
Acid @ 6163 - 6170	1,855.64	1,855.64	1.0000
Water Service	628.94	628.94	1.0000
Water Service	2,830.74	2,830.74	1.0000
Deep Frac	18,902.18	18,902.18	1.0000
Acid @ 5414 - 5429	1,470.22	1,470.22	1.0000
Acid @ 5414 - 5429	3,403.53	3,403.53	1.0000
Drilling Consultant	<u>3,105.91</u> - Divided	5,435.35	.5714
TOTAL	\$76,880.83		

DRILLING COST

Deep Only	11,416.74 - Daywork - 1.0000
Deep Allocated	16,332.06 - .1592
Abo Allocated	<u>86,256.27</u> - 5378/6398 = .8418
TOTAL	\$114,005.07

STATE OF NEW MEXICO  
COUNTY OF CHAVES  
IN THE DISTRICT COURT

JACK J. GRYNBERG, )  
individually, and doing )  
business as )  
GRYNBERG PETROLEUM COMPANY, )  
 )  
Petitioner, )  
 )  
-vs- )  
 )  
OIL CONSERVATION COMMISSION )  
OF THE STATE OF NEW MEXICO, )  
and YATES DRILLING COMPANY, )  
MYCO INDUSTRIES, INC., and )  
ABO PETROLEUM CORPORATION )  
 )  
Respondents. )

---

No. CIV 87-103

TRIAL MEMORANDUM

This matter is currently before the Court on a Petition for Review of the Decision of the Oil Conservation Commission of New Mexico, (hereinafter "Commission"). Petitioner, Jack J. Grynberg, individually, and d/b/a Grynberg Petroleum Company, (hereinafter "Grynberg") seeks to have Commission Order R-7393-B, (hereinafter "Order") vacated and remanded to the Commission for reconsideration. Grynberg submits that the Order is arbitrary and capricious, contrary to law and not based upon substantial evidence in the record as a whole.

### BACKGROUND

On December 2, 1983, the Commission issued Order R-7393 force pooling the interests of Yates Petroleum Corporation, Yates Drilling Company, Myco Industries, and Abo Petroleum Corporation (hereinafter "Yates") with those of Grynberg for the purpose of drilling the Grynberg State I-20 well in Chaves County, New Mexico. Yates and Grynberg were the sole interest owners in this well. The well was to be tested in two geological formations: the Abo and the Pre-Permian. Yates' interests in these two formations are 25% and 62.5%, respectively. Grynberg's interests in the two formations are 75% and 37.5%, respectively. The 1983 forced pooling order specified that allocation of well costs between the two formations was to be made in the following manner:

... estimated well costs for the Abo formation, except for costs directly attributable to the Pre-Cambrian,\* should be estimated on the basis of depth for each formation and that costs for the Abo formation should not exceed 81.89 percent of the total cost of the proposed well (5200 foot Abo depth/6350 foot total depth = 0.8189).

On January 19, 1984 Yates signed an Authorization for Expenditures and prepaid to Grynberg \$215,706.26 for the costs of the well. The well was completed on April 1, 1984 at a total cost of \$340,956.72. The total cost of the well is not at issue.

---

\* "Pre-Cambrian" should have been "Pre-Permian." This error was corrected by the Commission by a Nunc Pro Tunc Order entered on August 7, 1986.



However, on May 22, 1986, Yates filed an application before the Commission for a determination of reasonable well costs, contending that its share of the total well costs, as computed by Grynberg, the operator of the well, were incorrect. Yates' application came before the Commission on June 19, 1986, at which time both Yates and Grynberg presented their respective allocations of costs. The Commission determined that neither party's cost allocations had been calculated in the manner set out in Order R-7393. The Commission further stated that its interpretation of the cost allocation provision of Order R-7393 was that there was to be a "split of all costs, except those directly attributable to Pre-Permian on a 81.89% to Abo and remainder to Pre-Permian" basis. The Commission continued the hearing until August with instructions to the parties to recalculate the cost allocations in light of its interpretation of Order R-7393.

At the August 1986 hearing, Yates and Grynberg again presented separate cost allocations to the Commission. Basically, there were cost allocations on three items upon which the parties did not agree. The Commission accepted Yates calculations on two of the items; Grynberg's calculations on the third. On December 31, 1986 the Commission issued its Order R-7393-B concluding

that Yates was entitled to a refund of \$78,770.96 from Grynberg out of the \$215,706.26 it had prepaid on the well.

In accordance with Section 70-2-25, N.M.S.A. (1978), Grynberg applied to the Commission for rehearing. Grynberg's application was deemed denied when the Commission failed to take any action thereon within ten days of its filing. Pursuant to the above-cited statute, Grynberg petitioned this court for review of the Order. This Court has subject matter jurisdiction because the property from which this dispute arises is located in Chaves County, New Mexico.

#### JUDICIAL SCOPE OF REVIEW

The judicial scope of review of appeals for administrative agencies has been well defined by the New Mexico Supreme Court. It is limited to determining whether the administrative agency acted fraudulently, arbitrarily, or capriciously; whether the order was supported by substantial evidence and, generally, whether the action of the administrative body was within the scope of its authority. Llano, Inc. v. Southern Union Gas Company, 75 N.M. 7, 399 P.2d 646 (1965); S.I.C. Finance - Loans of Menaul, Inc. v Upton, 75 N.M. 780, 411 P.2d 755 (1966); Otero v. New Mexico State Police Board,

83 N.M. 594, 495 P.2d 374 (1972); Groendyke Transport v. N. M. State Corporation Commission, 101 N.M. 470, 684 P.2d 1135 (1984); Elliott v. N.M. Real Estate Commission, 103 N.M. 273, 705 P.2d 679 (1985). In recent years, the substantial evidence requirement has changed from a review of the evidence most favorable to the agency decision, to a whole record review of the evidence. Groendyke, supra; Duke City Lumber v. N. M. Environ. Imp. Bd. 101 N.M. 291, 681 P.2d 217 (1984); Trujillo v. Employment Sec. Dept., 734 P.2d 245 (N.M. App. 1987).

Thus the task before this Court is to determine if the Commission's decision is a reasonable, lawful one, based upon substantial evidence in the record as a whole. Grynberg submits it is not.

#### THE COMMISSION'S ORDER IS ARBITRARY AND CAPRICIOUS

Arbitrary and capricious has been defined by the New Mexico Court of Appeals in Garcia v. New Mexico Human Services Department, 94 N.M. 178, 608 P.2d 154 (Ct. App. 1979):

Arbitrary and capricious action by an administrative agency is evident 'when it can be said that such action is unreasonable or does not have a rational basis...' and '... is the result of an unconsidered, wilful and irrational choice of conduct and not the result of the "winnowing and sifting" process.' [citation omitted]. Id. at 179.

At its June 19, 1986 hearing the Commission, after an off-the-record discussion of its interpretation of Order R-7393's allocation of costs provision. The Commission instructed the parties to resubmit their allocations of costs after they had been recalculated. At the August hearing Grynberg submitted his allocation of costs which were correctly calculated in accordance with the Commission's Order R-7393. Specifically Grynberg showed that the logging and daily drilling costs should be allocated to reflect the actual time spent in those activities in the Pre-Permian. Conversely, Yates used a footage allocation for some items and apportioned others, based upon the 81.89% to the Abo and 18.11 to the Pre-Permian and used Grynberg's approach for still other items.

The Commission, without amending Order R-7393, and contrary to that order and its own interpretation thereof, decided to allocate the costs on a different basis and apparently allocated certain direct costs to the Abo and certain direct costs to the Pre-Permian, then divided some of the remaining balance between the two zones on a ratio of 81.89% to the Abo and 18.11% to the Pre-Permian and others on a footage basis different from that calculated in Order R-7393. At the August hearing,

the Commission stated on the record that it was not following the allocation of costs provision of Order R-7393: "Mr. Grynberg, for what it's worth, I would point out that the method that is currently being used for allocation of costs under these conditions is substantially different from the one that's in this order..." (Page 44 - August hearing Transcript).

However, there is nothing in the record or in the Order issued subsequent to the August hearing to explain or justify why the Commission failed to follow the terms of the original order and/or its own interpretation of that order, as set forth at the June hearing. The U. S. Supreme Court has established that unexplained and unjustified administrative decisions may not stand.

... the Board must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choices made. Motor Vehicle Manufacturers Association of the United States, Inc. v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29, 43, 103 S. Ct. 2856, 2866, 77 L.Ed. 2d 443 (1983); Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 168, 83 S. Ct. 239, 245, 9 L.Ed. 2d 207 (1962). [The court] must be able to consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error in judgment. Bowman Transportation, Inc. v. Arkansas Best Freight System, Inc., 419 U.S. 281, 285, 95 S. Ct. 438, 442, 42 L.Ed. 2d 447 (1974); Citizens to Preserve Overton Park, 401 U.S. at 416, 91 S.Ct. at 823. Sears Savings Bank v. Federal Savings & Loan Ins., 775 F.2d 1028 (9th Cir 1985).

The Commission's allocation of costs was clearly arbitrary and capricious in that it did not have a rational basis, as required by law.

THE COMMISSION FAILED TO MAKE  
SUFFICIENT FINDINGS OF FACT TO  
SUPPORT ITS DECISION

Finding No. 8 in the Commission Order states:

(8) The Commission adopts the allocation of costs submitted by Yates on their August 7, 1986, Exhibit No. 2, except that the cementing costs as shown by the Halliburton invoice dated February 19, 1984 should be reallocated on the basis of the Abo and the amount of cement below the base of the Abo.

It is this finding which results in the Commission's conclusion that Grynberg should repay the sum of \$78,770.96 to Yates. However, the Commission has failed to make any findings which support the Commission's adoption of the Yates' allocation of costs. Under New Mexico law, this is impermissible. In Continental Oil Company v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962) the New Mexico Supreme Court held:

Administrative findings by an expert administrative commission should be sufficiently extensive to show not only the jurisdiction but the basis of the commission's order. At 321.

In order for an administrative order to be valid such an order must contain:

(1) Findings of ultimate facts which are material to the issue;

(2) Sufficeint findings to disclose the reasoning of the Commission in reaching its ultimate findings; and

(3) Substantial support in the record for such findings.

Fasken v. Oil Conservation Commission, 87 N.M. 292, 532 P.2d 588 (1975).

In the absence of sufficient findings disclosing the reasoning of the Oil Conservation Commisison in reaching its ultimate findings, reversal is required. Id. at 294.

Likewise, in Viking Petroleum v. Oil Conservation Commission, 100 N.M. 451, 672 P.2d 280 (1983), the Supreme Court reiterated its opinions in Continental and Fasken, supra, that "administrative findings by the Commission should be sufficiently extensive to show the basis of the order" and that "findings must disclose the reasoning of the Commission in reaching its conclusion."

The Order before this court does not contain findings which met these requirements.

**THE COMMISSION'S DECISION IS  
NOT BASED ON SUBSTANTIAL EVIDENCE**

In order for an order of an administrative agency to be valid, it must be based on substantial evidence in the record as a whole. Ferguson - Steere Motor Company v. State Corporation Commission, 63 N.M. 137, 314 P.2d 894 (1957); Duke City Lumber Company v. N. M. Environ. Imp.

Bd., 101 N.M. 291, 681 P.2d 717 (1984). An order of an administrative body which is not based on substantial evidence may properly be described as conjectural, speculative, unlawful, unreasonable, arbitrary and capricious and courts are vested with the power to set aside an order if it is unreasonable, unlawful, arbitrary, capricious, or not supported by substantial evidence. Ferguson - Steere, supra, at 143. It is the task of the reviewing court to determine whether an administrative agency's decision is based upon substantial evidence. Llano, Inc. v. Southern Union Gas Company, 75 N.M. F, 399 P.2d 646 (1965); Rutter & Wilbanks Corporation v. Oil Conservation Commission, 87 N.M. 286, 532 P.2d 582 (1975).

In 1987, the New Mexico Court of Appeals clarified the "whole record review" standard of Duke City, supra, in Trujillo v. Employment Security Department, 734 P.2d 245 (N.M. App. 1987):

The whole record standard of review is as follows:

- A. The whole record review means considering all the evidence, whether it is favorable or unfavorable;
- B. The evidence should be considered in light of the entire record; and
- C. Independent findings by the reviewing court reaching a contrary result from that of the administrative agency are permissible when the decision of the administrative agency is



not supported by substantial evidence, it is arbitrary or capricious or it is contrary to law.

A review of the whole record of the Commission proceedings indicates that the following findings in Commission Order R-7393-B are not supported by substantial evidence:

Finding No. (6): The Commission determined that neither Grynberg nor applicants have calculated the reasonable well costs as stated in the above-described order in accordance with the Commission's interpretation of that order and required the parties to resubmit the allocation of costs based upon such interpretation.

Finding No. (8): The Commission adopts the allocation of costs submitted by Yates on their August 7, 1986, Exhibit No. 2 except that the cementing costs as shown by the Halliburton invoice dated February 19, 1984 should be reallocated on the basis of the amount of cement above the base of the Abo and the amount of cement below the base of the Abo.

Finding No. (9): Morris Ettinger, witness for Grynberg, established that the top of the cement was 4,200 feet and that the top of the Wolfcamp was allocated at 5,378 feet.

Finding No. (10): One thousand one hundred seventy eight feet (1,178) of cement were placed in the well below the base of the Abo.

Finding No. (11): In accordance with the formula established by the Commission, \$4,827.97 should be allocated to depths above the Wolfcamp and \$4,172.23 should be allocated to depths below the Wolfcamp. These calculations are shown on Exhibit "A" attached hereto.

Finding No. (12): Yates has paid Grynberg \$215,706.26 while the total amount due from Yates to Grynberg was \$134,326.99.

Finding No. (13): After giving Grynberg credit for sums credited by him to applicants, Grynberg owes applicants the sum of \$78,770.96, all as shown on Exhibit "A" attached hereto.

THE COMMISSION'S ORDER SHOULD  
BE VACATED AND REMANDED

The Commission's Order is arbitrary and capricious in that it lacks sufficient findings to support the conclusions contained therein and is not based upon substantial evidence in the record. Courts in various jurisdictions have held that where the agency's decision is not based on substantial evidence, it will be remanded.

Where an agency's decision is based on an administrative record, the decision should be reviewed in light of that record. If the agency decision is not sustainable on the basis of the administrative record, then the matter should be remanded to [the agency] for further consideration [citations omitted]. Avoyelles Sportsmen's League, Inc. v. Marsh, 715 F.2d 897 (5th Cir. 1983).

... we as a reviewing court are required to base our decision on the record in the case, not on the unstated considerations of Commission members... If [that] finding is not sustainable on the administrative record made, then the ... matter [must be] remanded... for further consideration. Burlington Truck Lines v. United States, 371 U.S. 156, 83 5.Ct. 239, 9 L.Ed 2d 207 (1962).

U.S. Lines v. Federal Maritime Commission, 584 F.2d 519 (D.C. Cir. 1978) at 532.

Additionally, the courts have determined that an agency's decision must contain findings which will support and explain its decision.

Where the findings of an administrative agency are inadequate to show the appropriateness of a choice of remedies made by it, it is ordinarily entitled to have the case remanded for further consideration. [citations omitted] Regal Knitwear Company v. N.L.R.B., 324 U.S. 9, 89 L.Ed. 661, 65 S.Ct. 478 (1945).

To fulfill its function under any appropriate standard of review, a court must be able to ascertain the reasons for an agency's decision. We cannot determine whether an agency acted correctly unless we are told what factors are important and why they are relevant. Therefore, an agency must provide a reasoned explanation for its actions and articulate with some clarity the standards that governed its decision. Moon v. United States Department of Labor, 727 F.2d 1315 (D.C. Cir. 1984).

[A] remand is proper where an agency has made invalid, inadequate or incomplete findings.

It is familiar appellant practice to remand causes for further proceedings without deciding the merits, where justice demands that course in order that some defect in the record may be supplied. Such a remand may be made to permit further evidence to be taken or additional findings to be made upon essential points... Ford Motor Co. v. N.L.R.B., 305 U.S. 364, 59 S. Ct. 301, 306-307, 83 L.Ed. 221 (1939). Application of Kauai Elec. Division, 590 P.2d 524 (Haw. 1978) at 538.

Therefore, the Commission's Order should be vacated and remanded to the Commission for reconsideration.

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'W. Thomas Kellahin', written over a horizontal line.

W. Thomas Kellahin, Esq.  
Kellahin, Kellahin & Aubrey  
P. O. Box 2265  
Santa Fe, New Mexico 87501

(505) 982-4285

Attorneys for Petitioner

PADILLA & SNYDER

ATTORNEYS AT LAW

200 W. MARCY, SUITE 212

P.O. BOX 2523

SANTA FE, NEW MEXICO 87504-2523

(505) 988-7577

August 1, 1986

Mr. Richard L. Stamets  
Director, Oil Conservation Division  
Post Office Box 2088  
Santa Fe, New Mexico 87504-2088

RE: Case No. 8901 and Order No. R-7393 in Case No. 7984

Dear Mr. Stamets:

My clients have reviewed your proposed Nunc Pro Tunc order and are of the belief that it correctly sets forth the Commission's intention when Order R-7393 was originally issued.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ernest L. Padilla", written in a cursive style.

Ernest L. Padilla

ELP:lyg

cc: Morris Ettinger, Grynberg Petroleum Company  
Joel Carson, Esq., Losee & Carson, P.A.

FIFTH JUDICIAL DISTRICT  
STATE OF NEW MEXICO  
COUNTY OF CHAVES

JACK J. GRYNBERG, )  
individually, and doing )  
business as Grynberg Petroleum )  
Company, )

Petitioner, )

-vs-

No. CIV 87-103

OIL CONSERVATION COMMISSION )  
OF THE STATE OF NEW MEXICO, )  
YATES DRILLING COMPANY, )  
MYCO INDUSTRIES, INC., and )  
ABO PETROLEUM CORPORATION, )

Respondents. )

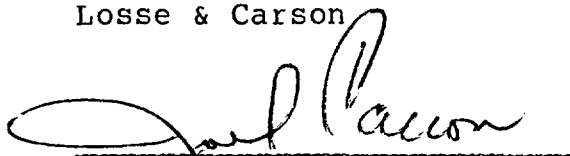
ACCEPTANCE OF SERVICE  
AND  
WAIVER OF ISSUANCE OF SUMMONS

COMES NOW, JOEL CARSON, attorney at law, and states that he is the attorney for Yates Drilling Company, Myco Industries, Inc., and ABO Petroleum Corporation, named respondents in the above cause of action and is duly authorized by such Respondents to accept service of the First Amended Complaint/Petition for Review of a Decision of the New Mexico Oil Conservation Commission on behalf of such Respondent.

That Joel Carson does hereby accept service of the First Amended Complaint/Petition for Review of a Decision of the Oil Conservation Commission of New Mexico and

waives issuance of Summons as of this 11 day of October, 1987, and further acknowledged receipt of a true copy of the attached First Amended Complaint/Petition for Review of a Decision of the Oil Conservation Commission of New Mexico, for such Respondents.

Losse & Carson



Joel Carson, Esq.  
105 South Fourth Street  
Artesia, New Mexico 88210

FIFTH JUDICIAL DISTRICT COURT  
STATE OF NEW MEXICO  
COUNTY OF CHAVES

JACK J. GRYNBERG, individually,  
and doing business as Grynberg  
Petroleum Company,

Petitioner,

vs.

OIL CONSERVATION COMMISSION OF  
THE STATE OF NEW MEXICO, YATES  
DRILLING COMPANY, MYCO INDUS-  
TRIES, INC., and ABO PETROLEUM  
CORPORATION,

Respondents.

No. CIV-87-103

ANSWER

COMES NOW, the Defendants Yates Drilling Company, Myco Industries, Inc. and Abo Petroleum Corporation and for their answer to Plaintiffs' First Amended Complaint state:

PARTIES:

1. Admitted, except that Jack J. Grynberg not Grynberg Petroleum Company, is the real party in interest in this cause (to the extent that they are different parties or their interests differ). Whenever Respondent refers to Grynberg, it is Jack J. Grynberg. Respondent denies that it has had any dealings in this cause with Grynberg Petroleum.

2. Admitted, except that Yates Petroleum Corporation is not a respondent in this proceeding and Petitioners have not appealed from the order of the New Mexico Oil Conservation Commission ("OCC") insofar as the order applies to Yates Petroleum Corporation.



3. Admitted.

GENERAL STATEMENT OF FACTS:

1. Admitted.

2. Admitted, except that both orders were entered on the same day.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Denied.

JURISDICTION:

1. Denied.

2. Admitted.

RELIEF SOUGHT:

Respondents deny that Grynberg is entitled to any relief or that the Court has jurisdiction to grant the relief for the reasons stated herein.

WHEREFORE, Respondents pray that the Petition be dismissed and for such other and further relief as may be appropriate.

Respectfully submitted,

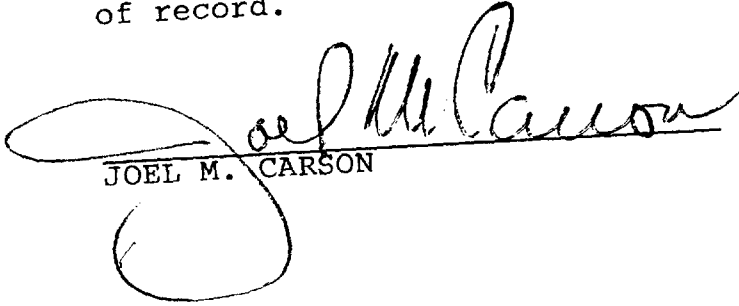
LOSEE & CARSON, P.A.

By: 

Joel M. Carson  
P. O. Drawer 239  
Artesia, NM 88210  
(505) 746-3508

Attorneys for Respondents, Yates  
Drilling Company, Myco Industries, Inc. and Abo Petroleum Corporation

I hereby certify that on this  
15th day of October, 1987, a  
copy of the foregoing Answer  
was mailed to opposing counsel  
of record.

  
JOEL M. CARSON



STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION DIVISION

TONEY ANAYA  
GOVERNOR

July 15, 1986

POST OFFICE BOX 2088  
STATE LAND OFFICE BUILDING  
SANTA FE, NEW MEXICO 87501-2088  
(505) 827-5800

Mr. Joel Carson  
Losee, Carson & Dickerson  
Attorneys at Law  
P. O. Box 239  
Artesia, New Mexico 88210

RE: CASE NO. 8901 AND ORDER NO. R-7393 IN CASE NO. 7984

Dear Mr. Carson:

This letter is to advise you of my intention to seek correction of Finding No. (25) of the subject order.

You will recall that at the June 19 Commission hearing, it was discovered that said Finding No. (25) contained an error in referring to the PreCambrian formation rather than the PrePermian. It would be my intention to ask the Commission to correct that error by signing a proposed Nunc Pro Tunc order as enclosed.

Your comments as to this proposed action are invited.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. L. Stamets".

R. L. STAMETS  
Director

RLS:dp

Enc.

cc: Case File 8901<sup>✓</sup> and 7984  
Ed Kelley

STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION COMMISSION

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

CASE NO. 7984  
Order No. R-7393-A

APPLICATION OF JACK J. GRYNBERG  
FOR COMPULSORY POOLING, CHAVES  
COUNTY, NEW MEXICO.

NUNC PRO TUNC

BY THE COMMISSION:

It appearing to the Commission that Order No. R-7393,  
dated December 2, 1983, does not correctly state the intended  
order of the Commission,

IT IS THEREFORE ORDERED THAT:

(1) Finding Paragraph No. (25) be and the same is hereby  
corrected to read in its entirety as follows:

"(25) That estimated well costs for the Abo  
formation, except for costs directly attributable  
from the top of the Wolfcamp to the Precambrian,  
should be estimated on the basis of depth drilled  
for each formation and that costs for the Abo formation  
should not exceed 81.89 percent of the total cost of the  
proposed well, (5200 foot Abo depth/6350 foot total  
depth = 0.8189)."

(2) The correction set forth in this order be entered  
nunc pro tunc as of December 2, 1983.

-2-

Case No. 7984

Order No. R-7393

DONE at Santa Fe, New Mexico, on this \_\_\_\_\_ day of  
August, 1986.

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

JIM BACA, Member

ED KELLEY, Member

R. L. STAMETS, Chairman and  
Secretary

S E A L

LAW OFFICES

LOSEE & CARSON, P. A.

A. J. LOSEE  
JOEL M. CARSON  
JAMES E. HAAS  
ERNEST L. CARROLL

300 AMERICAN HOME BUILDING  
P. O. DRAWER 239  
ARTESIA, NEW MEXICO 88211-0239

AREA CODE 505  
746-3508  
TELECOPY  
746-6316

October 15, 1987

Ms. Georgia Ferrin  
District Court Clerk  
P. O. Box 1776  
Roswell, NM 88201

RE: Grynberg v. Oil Conservation  
Commission, No. CIV-87-103

Dear Ms. Ferrin:

Enclosed for filing in the above captioned cause of action is our Answer on behalf of the Respondents. Please return a filed-stamped copy to me in the enclosed envelope. Thank you very much.

Sincerely yours,

LOSEE & CARSON, P.A.

  
Joel M. Carson

JMC/fel  
Enclosures

cc w/ enclosures: Jeffery Taylor  
W. Thomas Kellahin

FIFTH JUDICIAL DISTRICT COURT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

GRYNBERG PETROLEUM COMPANY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. CIV-87-103
	)	
OIL CONSERVATION COMMISSION	)	
OF THE STATE OF NEW MEXICO;	)	
and YATES DRILLING COMPANY,	)	
MYCO INDUSTRIES, INC., and	)	
ABO PETROLEUM CORPORATION,	)	
	)	
Respondents.	)	

ANSWER TO COMPLAINT  
PETITION FOR REVIEW OF DECISION OF  
OIL CONSERVATION COMMISSION OF NEW MEXICO

COME NOW the respondents, Yates Drilling Company, Myco Industries, Inc., and Abo Petroleum Corporation ("Yates"), and for their answer state:

PARTIES

1. Denied.
2. Admitted.
3. Admitted.

#### GENERAL STATEMENT OF FACTS

1. Yates admit that on or about October 18, 1983 the Oil Conservation Commission held a hearing on the application of Jack J. Grynberg and Yates to compulsory pool the other for the drilling of the Grynberg State I-20 Well, but deny that Grynberg Petroleum Company ("Grynberg") made the above described application.

2. Admitted, except that Yates deny that Grynberg was a party to the application.

3. Admitted, except that Yates paid its share of the costs to Jack J. Grynberg, not Grynberg.

4. Admitted, except Yates deny that the well was completed by Grynberg.

5. Admitted.

6. Admitted.

7. Admitted.

#### JURISDICTION

1. Denied.

2. Admitted.

#### RELIEF SOUGHT

Yates deny that Grynberg is entitled to any relief or that the Court has jurisdiction over the subject matter of this action.



AFFIRMATIVE DEFENSES

1. That Grynberg is not a person affected by an order of the Oil Conservation Commission within the meaning of Section 70-2-25, N.M.S.A., 1978, and, therefore, has no standing to appeal an order of the Commission.

2. That petitioner has failed to join the real party in interest, namely Jack J. Grynberg.

3. That the Court has no jurisdiction over the subject matter of this action.

4. That petitioner's petition fails to state a claim for which relief can be given.

WHEREFORE, Yates prays that the petition be dismissed, for its costs herein, and for such other relief as may be proper.

LOSEE & CARSON, P.A.

By: 

Joel M. Carson  
P. O. Drawer 239  
Artesia, New Mexico 88210  
(505/746-3508)

Attorneys for Respondents,  
Yates Drilling Company, Myco  
Industries, Inc. and Abo  
Petroleum Corporation

STATE OF NEW MEXICO  
COUNTY OF CHAVES  
IN THE DISTRICT COURT

'87 JUN -5 P3:21

CLERK OF COURT

NO. CIV 87-103

GRYNBERG PETROLEUM COMPANY,  
Petitioner,

vs.

OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO,  
and YATES DRILLING COMPANY,  
MYCO INDUSTRIES, INC., and  
ABO PETROLEUM CORPORATION,

Respondents.

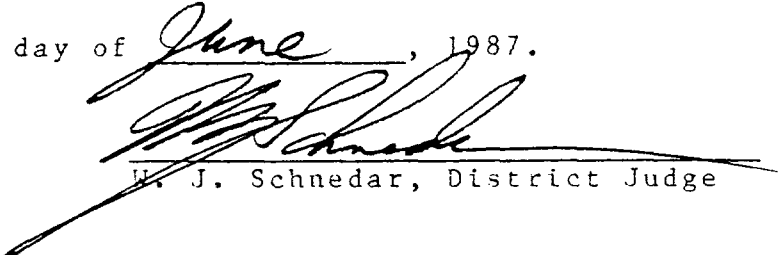
ORDER GRANTING LEAVE TO AMEND COMPLAINT

THIS MATTER HAVING COME BEFORE THE COURT upon  
Petitioner's Motion for Leave to Amend the Original  
Complaint to Substitute Party and the Court being fully  
advised of the matters contained therein;


IT IS HEREBY ORDERED that Petitioner be allowed to  
Amend the Complaint to substitute Jack J. Grynberg,  
individually, and doing business as Grynberg Petroleum  
Company as the real party in interest as Petitioner in  
place of Grynberg Petroleum Company, Petitioner.

IT IS FURTHER ORDERED that the motion be denied insofar as it requests that Yates Petroleum Corporation be made a party defendant and requests that the Rachel Susan (Grynberg) Trust, Stephen Mark (Grynberg) Trust, Miriam Zela (Grynberg) Trust, and Jack J. Grynberg and Dean G. Smernoff, as Co-Trustees of the Rachel Susan Trust, Stephen Mark Trust, and Miriam Zela Trust, be named as additional parties plaintiff.

EXECUTED this 5 day of June, 1987.

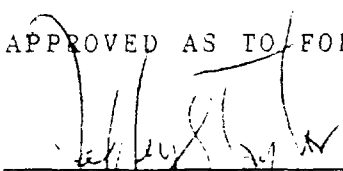
  
W. J. Schnedar, District Judge

SUBMITTED BY:

  
W. Thomas Kellahin  
KELLAHIN, KELLAHIN & AUBREY  
P. O. Box 2265  
Santa Fe, New Mexico 87504  
(505/982-4285)

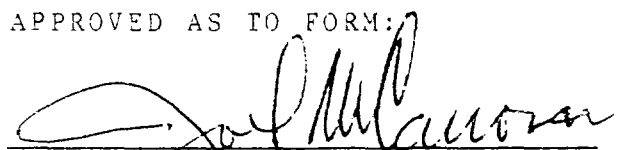
Attorneys for Petitioner

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Jeffery Taylor  
OIL CONSERVATION COMMISSION  
P. O. Box 2088  
Santa Fe, New Mexico 87504  
(505/827-5305)

Attorney for Oil  
Conservation Commission

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Joel M. Carson  
LOSEE & CARSON, P.A.  
P. O. Drawer 239  
Artesia, New Mexico 88210  
(505/746-3508)

Attorneys for Yates, et al.

FIFTH JUDICIAL DISTRICT COURT  
COUNTY OF CHAVES  
STATE OF NEW MEXICO

GRYNBERG PETROLEUM COMPANY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. CIV-87-103
	)	
OIL CONSERVATION COMMISSION	)	
OF THE STATE OF NEW MEXICO;	)	
and YATES DRILLING COMPANY;	)	
MYCO INDUSTRIES, INC.; and	)	
ABO PETROLEUM CORPORATION,	)	
	)	
Respondents.	)	

BRIEF IN OPPOSITION TO MOTION FOR  
LEAVE TO FILE AMENDED COMPLAINT

This case arises out of an application to the New Mexico Oil Conservation Commission ("OCC") filed by Jack J. Grynberg ("Grynberg") requesting an order pooling the interests of Yates Petroleum Corporation, Yates Drilling Company, Abo Petroleum Corporation, and Myco Industries, Inc. (collectively "Yates"), in the W/2 of Section 20, Township 9 South, Range 27 East, N.M.P.M., Chaves County, New Mexico. In New Mexico OCC Cause No. 7984 the OCC entered an order force pooling the Yates interests.

In compliance with the OCC order Yates signed an operating agreement with Grynberg and paid in advance \$215,706.26 as their share of the estimated cost of drilling the well.

The well was drilled. Yates was entitled to an accounting for the actual cost of drilling the well. This accounting when performed by a Yates auditor indicated that Grynberg owed Yates a refund. Yates filed application No. 8901 requesting a determination of reasonable well costs. In order No. R-7393-b the OCC determined that Grynberg owed Yates \$78,770.96.

Grynberg Petroleum Company, a corporation, requested a rehearing. Grynberg Petroleum Company which is said to be a corporation authorized to do business in the State of New Mexico filed an action in Chaves County, New Mexico to review the decision of the OCC.

Yates answered the Petition and questioned the jurisdiction of the Court to consider the matter because Grynberg Petroleum Company was not a party to either of the proceedings before the OCC and Jack J. Grynberg had not filed an application for rehearing before the OCC or an application for review within the time specified by the statute governing appeals from orders of the OCC (see Section 70-2-25, N.M.S.A., 1978).

The OCC also filed its response denying the standing of Grynberg Petroleum Company and alleging that the Petition had not been timely filed.

Grynberg Petroleum Company filed a Petition to amend to name Grynberg, individually and doing business as Grynberg Petroleum Company and as trustee for various Grynberg Trusts, as parties plaintiff. It is clear from both Cause No. 7984 and No. 8901 that the party involved was Jack J. Grynberg individually and not as a corporation. Grynberg's own employee clarified this in Cause No. 7984. In response to Art Jaramillo's questioning of Morris Ettinger (Grynberg's witness) the following colloquy took place:

Mr. Jaramillo (Q): All right. Has there not also been an assignment from Grynberg Trust to Mr. Grynberg? That question was raised by Ms. Richardson.

Ettinger (A): Yeah, if you look on the last page of exhibit number two.

(Q): What is marked as page number 12 of exhibit No. 2?

(A): Page number 12, yeah.

The only thing is, I want to stress that this related to Section 19 but not to Section 20.

(Q): What is the current ownership status of the leasehold interest in Section 20?

(A): J. J. Grynberg owns 100% of the working interest.

(Page 70 of Transcript in Cause Nos. 7982, 7983, 7984 consolidated)

Grynberg's own expert's testimony indicates that the only person involved is Jack J. Grynberg.

The operating agreement submitted in Cause No. 7984 (compulsory pooling) and the operating agreement signed by Yates and introduced in evidence in Cause No. 8901 (determination of reasonable well costs) were both with Jack J. Grynberg. There is no suggestion in either case that Grynberg Petroleum Company or Jack Grynberg as trustee for the various Grynberg Trusts is involved.

#### Argument

Section 70-2-25(A), N.M.S.A., 1978, provides that within 20 days after the entry of an order or decision by the OCC any person affected thereby may file an application for rehearing with the OCC.

Section 70-2-25(b) provides that a party to the proceedings may appeal to the District Court of the county in which any property affected is located. This petition for review must be filed within 20 days after the entry of the order following the rehearing or after the refusal of a rehearing.



This rule means that the only party aggrieved or affected by the order of the OCC, namely Jack J. Grynberg, must appeal the decision within 20 days from the date the OCC refused his rehearing. The OCC entered its order on December 31, 1986. Grynberg Petroleum Company filed its complaint on February 16, 1987.

The filing of the Petition within the time prescribed by statute is jurisdictional. 2 Am.Jur.2d, "Administrative Law", Section 719. If the time for filing a petition in Court had passed when Grynberg Petroleum Company filed its Petition with the District Court, the provisions of N.M.R.Civ.P. 1-017 and 1-015(c) cannot breathe life back into an already dead case.

N.M.R.Civ.P. 1-015(c) permits the amendment of pleadings under certain circumstances so that the amendment relates back to the original filing of the complaint. The most common amendment is one which is made to avoid the running of the statute of limitations. Yates submits that this rule does not permit the amendment of pleadings to invest the Court with subject matter jurisdiction and that it certainly cannot be made to take two steps back to correct a jurisdictional error which was made long before the case was filed in Court.

Grynberg seeks to avoid not only his failure to make a timely filing of a motion for rehearing, but to also add new

parties, namely the Grynberg Trusts, which were not parties to the 1983 order, were not parties to the 1986 order, were not parties to the request for rehearing, and were not parties to the court case filed in February of 1987. We submit that no interpretation of any rule including N.M.R.Civ.P. 1-015 or 1-017 can be interpreted liberally enough to give the Court jurisdiction over the Trusts.

Yates Petroleum Corporation was not made a party to this proceeding. There is no allegation in the motion and related documents that would permit the Court to name Yates Petroleum Corporation as a party defendant long after the time for suing Yates Petroleum Corporation has passed.

Petitioner cites two cases in support of its position. Neither case supports the motion. Indeed, Chavez v. Regents of UNM, 103 N.M. 606, 711 P.2d 883 (1985), which distinguishes itself from DeVargas v. State ex rel. Dept. of Corrections, 97 N.M. 447, 640 P.2d 1327 (Ct.App. 1981), and Mercer v. Morgan, 86 N.M. 711, 526 P.2d 1304 (Ct.App. 1974) appears to support the position previously urged that if the suit was not brought within the proper time period, it was a nullity and Rules 1-015 and 1-017, N.M.R.Civ.P., cannot give the Court jurisdiction. Petitioner's

complaint should be dismissed and the decision of the OCC  
should be affirmed.


Respectfully submitted,

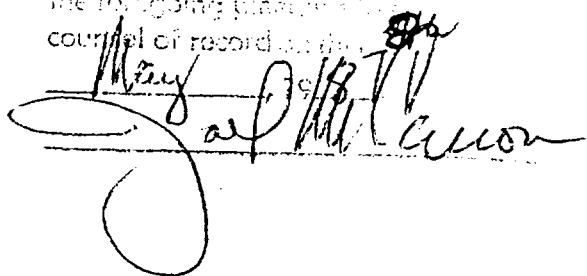

LOSEE & CARSON, P.A.

By: 

Joel M. Carson  
P. O. Drawer 239  
Artesia, New Mexico 88210  
(905/746-3508)

Attorneys for Respondents,  
Yates Drilling Company,  
Myco Industries, Inc., and  
Abo Petroleum Corporation

I certify that I mailed a copy of  
the foregoing pleading to the  
court of record on this 

  
Mary 

STATE OF NEW MEXICO  
COUNTY OF CHAVES  
IN THE DISTRICT COURT

GRYNBERG PETROLEUM COMPANY,

Petitioner,

v.

No. CV-87-103

OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO,  
AND YATES DRILLING COMPANY,  
MYCO INDUSTRIES, INC. AND  
ABO PETROLEUM CORPORATION,

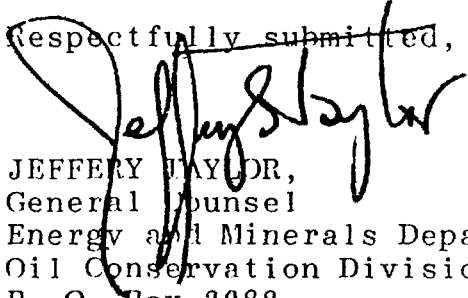
Respondents.

RESPONSE OF THE OIL CONSERVATION COMMISSION  
IN OPPOSITION TO MOTION TO AMEND COMPLAINT

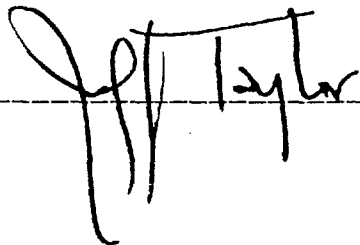
The New Mexico Oil Conservation Commission, respondent in this action, opposes the motion of Petitioner to amend the Complaint or Petition filed in this action. Because the original named Petitioner does not appear to have been a party to the administrative proceeding that led to the instant appeal, it may be without standing to file the appeal and thus the Court could not entertain this proceeding pursuant to the appeal provisions of the Oil and Gas Act, Section 70-2-25(B) NMSA 1978. Neither does it appear, moreover, that the entities that would be substituted under the instant Motion to Amend were parties to the administrative proceeding. They may also lack standing. The Commission is confused as to the real

parties in interest and some explanation may be appropriate. It also appears, however, that the time to file an appeal of the Commission decision has expired. For these reasons the Commission opposes the Motion filed by Petitioner to amend its "Complaint."

Respectfully submitted,

  
JEFFERY TAYLOR,  
General Counsel  
Energy and Minerals Department  
Oil Conservation Division  
P. O. Box 2088  
Santa Fe, New Mexico 87504-2088  
Telephone: (505) 827-5805

I hereby certify that on the  
23<sup>rd</sup> day of April, 1987,  
a copy of the foregoing pleading  
was mailed to opposing counsel  
of record.

  
\_\_\_\_\_

STATE OF NEW MEXICO  
COUNTY OF CHAVES  
IN THE DISTRICT COURT

GRYNBERG PETROLEUM COMPANY,

Petitioner,

v.

No. Civ. 87-103

OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO  
AND YATES DRILLING COMPANY,  
MYCO INDUSTRIES, INC. AND  
ABO PETROLEUM CORPORATION,

Respondents.

RESPONSE OF OIL CONSERVATION COMMISSION  
TO PETITION FOR REVIEW

The New Mexico Oil Conservation Commission (hereinafter OCC) by and through its attorney, responds to the Petition filed in this matter as follows:

1. The OCC is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph One, (parties) except that the records of the Division, including Commission Order No. R-7393 attached to the Petition as Exhibit A, indicate that the application that is the subject of the instant case was filed by Jack J. Grynberg and not Grynberg Petroleum Company. Jack J. Grynberg is not

listed on Commission records as a corporation registered to do business in New Mexico but as an individual.

2. The allegations contained in Paragraph Two (parties) of the petition are admitted.

3. The allegations contained in Paragraph Three (parties) of the petition are admitted.

4. The allegations contained in Paragraph One (facts) are admitted, except that the applicant was Jack J. Grynberg and not Grynberg Petroleum Company.

5. The allegations contained in Paragraph Two (facts) are admitted except that the approved application was filed by Jack J. Grynberg and not Grynberg Petroleum Company.

6. The OCC is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph Three (facts).

7. The allegations contained in Paragraph Four (facts) are admitted, except that Commission records indicate the well was completed by Jack J. Grynberg and not Grynberg Petroleum Company.

8. The allegations contained in Paragraph Five (facts) are admitted.

9. The allegations contained in Paragraph Six (facts) are admitted, except that the hearing was held August 7, 1986 rather than August 7, 1987.

10. The allegations contained in Paragraph Seven (facts) are admitted except that Division records indicate that the Application for Rehearing was filed January 20, 1987 rather than January 30, 1987.

11. The allegations contained in Paragraph One (jurisdiction) are admitted, except that Jack J. Grynberg rather than Grynberg Petroleum Company is listed in Commission records as the operator of the subject well.

12. The allegations contained in Paragraph Two (jurisdiction) are denied insofar as Grynberg Petroleum Company does not operate the subject well and was not the Petitioner before the Commission. It is admitted that the well is located in Chaves County, New Mexico.

13. The allegations contained in Paragraph One (relief) are denied.



14. The allegations contained in Paragraph Two (relief) are denied.

15. The allegations contained in Paragraph Three (relief) are denied.

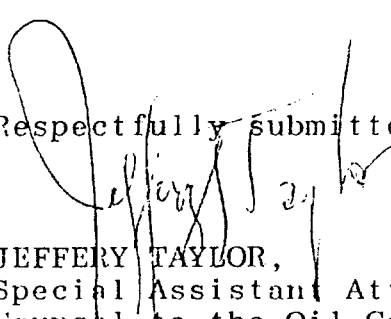
16. The allegations contained in Paragraph Four (relief) are denied.

17. The allegations contained in Paragraph Five (relief) are denied.

18. The allegations contained in Paragraph Six (relief) are denied.

WHEREFORE the Oil Conservation Commission requests that the Petition filed herein be dismissed with prejudice and that no relief be granted.

Respectfully submitted,

  
JEFFERY TAYLOR,  
Special Assistant Attorney General  
Counsel to the Oil Conservation  
Commission  
P. O. Box 2088  
Santa Fe, New Mexico 87501

I hereby certify that on the  
15<sup>th</sup> day of April  
1987, a copy of the foregoing  
pleading was mailed to opposing  
counsel of record.

Jeffrey S. Taylor

KELLAHIN, KELLAHIN AND AUBREY

*Attorneys at Law*

El Patio - 117 North Guadalupe

Post Office Box 2265

Santa Fe, New Mexico 87504-2265

Telephone 982-4285  
Area Code 505

W. Thomas Kellahin  
Karen Aubrey

Jason Kellahin  
Of Counsel

September 8, 1987

Mrs. Georgia Ferrin  
Clerk of the District Court  
P. O. Box 1776  
Roswell, New Mexico 88201

Re: CV-87-103: Grynberg Petroleum Company v.  
Oil Conservation Commission, et al.

Dear Mrs. Ferrin:

Enclosed is the original and one copy of Petitioners First Amended Complaint for filing. Could you please endorse the extra copy and return it to us in the enclosed, self-addressed, stamped envelope.

Instead of having a summons issued, we are going to ask respondent counsel to file an acceptance of service and waivers of issuance of summons.

We appreciate your assistance in this matter.

Very truly yours,

/s/

Marsha L. Butler  
Legal Assistant

MLB:ca  
Enc.

FIFTH JUDICIAL DISTRICT  
STATE OF NEW MEXICO  
COUNTY OF CHAVES

JACK J. GRYNBERG, )  
individually, and doing )  
business as Grynberg Petroleum )  
Company, )

Petitioner, )

-vs-

No. CIV 87-103

OIL CONSERVATION COMMISSION )  
OF THE STATE OF NEW MEXICO, )  
YATES DRILLING COMPANY, )  
MYCO INDUSTRIES, INC., and )  
ABO PETROLEUM CORPORATION, )

Respondents. )

FIRST AMENDED COMPLAINT  
PETITION FOR REVIEW OF DECISION OF  
OIL CONSERVATION COMMISSION OF NEW MEXICO

COMES NOW Jack J. Grynberg, individually, and doing business as Grynberg Petroleum Company, pursuant to the provisions of Section 70-2-25, NMSA (1978), as amended, and respectfully petitions the Court for review of the action of the Oil Conservation Commission of New Mexico in Case 8901 (DeNovo) on the Commission's docket, and its Order R-7393-B entered therein.

PARTIES:

1. Petitioner, Jack J. Grynberg, ("Grynberg") is president of Grynberg Petroleum Company, a sole proprietorship, doing business in the State of New

Mexico, and is the operator of the Grynberg State I-20 Well ("subject well") located in W/2 of Section 20, T9S, R27E, NMPM, Chaves County, New Mexico.

2. Respondents, Yates Petroleum Corporation, Yates Drilling Company, Myco Industries and Abo Petroleum Corporation ("Yates"), are corporations duly organized under the laws of the State of New Mexico and are working interest owners in the Grynberg State I-20 Well, and have been issued Commission Order R-7393-B from which the Petitioner objects and appeals.

3. Respondent, the Oil Conservation Commission of the State of New Mexico ("Commission"), is a statutory body created and existing under the provisions of the Oil & Gas Act, Sections 70-2-1 through 70-2-36 NMSA (1978), laws of the State of New Mexico.

#### GENERAL STATEMENT OF FACTS:

1. On October 18, 1983, the Commission held a hearing on the applications of Grynberg and Yates to compulsory pool the other for the drilling of the Grynberg State I-20 well.

2. On December 2 and 3, 1983, the Commission entered Order R-7393, copy attached as Exhibit A, and incorporated herein, approving the Grynberg application and also entered Order R-7392 denying the Yates application.

3. On January 12, 1984, Yates prepaid its share of the estimated costs of the well to Grynberg.

4. On April 1, 1984, Grynberg completed the subject well.

5. On May 22, 1986, Yates filed an application with the Commission, which was docketed as Case 8901, requesting a hearing to determine reasonable well costs.

6. On June 19, 1986 and on August 7, 1986, the Commission heard Case 8901 and on December 31, 1986 entered its Order R-7393-B, copy attached as Exhibit "B" and incorporated herein, finding that Yate's share of the costs of the subject well was \$134,326.99.

7. On January 30, 1987, Grynberg filed its Application for Rehearing, copy attached as Exhibit "C" and incorporated herein, which was deemed denied by the Commission when it failed to act on the application within the ten days required by Section 70-2-25, N.M.S.A. (1978).

#### JURISDICTION:

1. Petitioner has exhausted its administrative remedies before the Commission and now seeks judicial review of the Commission's decision within the time provided for by Section 70-2-25, N.M.S.A. (1978), as amended.

2. The Fifth Judicial District, Chaves County, New Mexico, has jurisdiction of this case pursuant to the provisions of Section 70-2-25, N.M.S.A. (1978), because the property affected by the Commission order is located within Chaves County, New Mexico.

RELIEF SOUGHT:

Petitioner complains of Commission Order R-7393-B and asserts that said Order is invalid. As grounds for such assertion Petitioner adopts the grounds set forth in its Application for Rehearing (Exhibit C) and further states:

1. Commission Order R-7393-B should be reversed because the Commission failed to make a "basic conclusion of fact" as required by Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962).

2. Commission Order R-7393-B should be reversed because the order fails to contain sufficient findings as required by Fasken v. Oil Conservation Commission, 87 N.M. 292, 532 P.2d 588 (1975).

3. Commission Order R-7393-B should be reversed because the allocation of costs as set

forth in Commission Order R-7839-B are contrary to the requirements of Paragraph (25) of the prior Commission Order R-7393.

4. Commission Order R-7393-B is not supported by substantial evidence, is arbitrary and capricious, and is contrary to law.

5. The Commission improperly excluded Grynberg's testimony and failed to allocate a portion of the well costs to the San Andres Formation.

6. The Commission erroneously denied Grynberg's Motion to Dismiss the Yates' Application.

WHEREFORE, Petitioner prays that the Court review New Mexico Oil Conservation Commission Case 8901 (DeNovo) and Commission Order R-7393-B and hold said order unlawful, invalid and void, and for such other and further relief as may be proper in the premises.

Respectfully submitted:

By 

W. Thomas Kellahin  
Kellahin, Kellahin & Aubrey  
P. O. Box 2265  
Santa Fe, New Mexico 87504

(505) 982-4285

Attorneys for Petitioner



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing First Amended Complaint was mailed to Jeffery Taylor, Oil Conservation Division, P. O. Box 2088, Santa Fe, New Mexico 87504, and to Joel Carson, Esq., Losse & Carson, Attorneys at Law, P. O. Drawer 239, Artesia, New Mexico 88210, on this 4 day of Sept., 1987.

  
W. Thomas Kellahin

STATE OF NEW MEXICO

ENERGY AND MINERALS DEPARTMENT

OIL CONSERVATION DIVISION



May 28, 1987

GARREY CARRUTHERS  
GOVERNOR

POST OFFICE BOX 2088  
STATE LAND OFFICE BUILDING  
SANTA FE, NEW MEXICO 87501  
(505) 827-5800

Mrs. Georgia Ferrin  
Clerk of the Court  
Fifth Judicial District  
P. O. Box 1776  
Roswell, New Mexico 88201

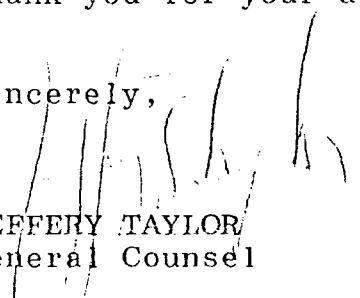
Re: Grynberg v. Oil Conservation Commission,  
No. CIV-87-103

Dear Mrs. Ferrin:

Enclosed for filing at the request of Petitioner's attorney is an additional document from the Oil Conservation Division files to be included in the record of the referenced proceeding.

Thank you for your assistance.

Sincerely,

  
JEFFERY TAYLOR  
General Counsel

JT/dr

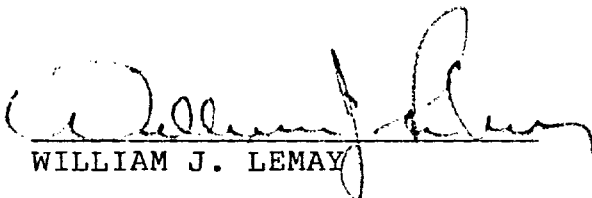
cc: Joe Carson  
Tom Kellahin

S U P P L E M E N T A L  
C E R T I F I C A T I O N

TO WHOM IT MAY CONCERN:

I, WILLIAM J. LEMAY, Director of the Oil Conservation Division of the New Mexico Energy and Minerals Department, do hereby certify that the attached are true and correct copies of the following documents on file in this office:

Letter dated January 20, 1987 from W. Thomas Kellahin, on behalf of Grynberg Petroleum Company and Jack J. Grynberg, which was attached to and part of the Grynberg Petroleum Company application for Rehearing of Case 8901 and received by the Division on January 20, 1987.

  
WILLIAM J. LEMAY

STATE OF NEW MEXICO       )  
                                  )   SS  
COUNTY OF SANTA FE       )

The foregoing instrument was acknowledged before me  
this 5<sup>th</sup> day of May, 1987.

*2044*

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

OCT 28, 1989

W. Thomas Kellahin  
Karen Aubrey  
Jason Kellahin  
Of Counsel

KELLAHIN and KELLAHIN  
Attorneys at Law  
El Patio - 117 North Guadalupe  
Post Office Box 2261  
Santa Fe, New Mexico 87504-2261

Telephone 982-4285  
Area Code 505

RECEIVED

January 20, 1987

JAN 20 1987

OIL CONSERVATION DIVISION

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

"Hand Delivered"

Re: Application of Yates  
Petroleum Corporation, et al.,  
For Determination of Reasonable  
Well Costs, NMOCD Case 8901  
Order R-7393-B

Dear Mr. LeMay:

On behalf of Grynberg Petroleum Company and Jack J. Grynberg, please find enclosed our application for rehearing of the prior Commission's decision in the referenced case.

Under the provisions of Section 70-2-25 NMSA (1978) if the Commission does not grant this application for rehearing within ten days of receipt, then it is deemed denied and our only recourse is to file an appeal to District Court.

We contend that there are significant errors in the way the prior Commission handled this case and with the specific findings and conclusions of the order entered. I assume, because the prior order is generally favorable to Yates position, that Mr. Joel Carson who represents Yates in this matter, will oppose our application for rehearing.

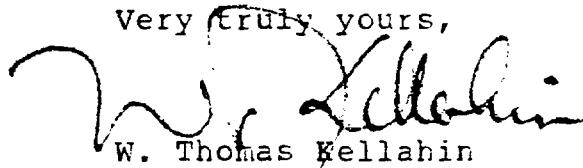
In order to resolve this matter, I would prefer to handle our concerns before the Commission rather than have to continue with an appeal to District Court. In order to provide us with that opportunity, we would request that you grant the rehearing application, and

KELLAHIN and KELLAHIN

Mr. William J. LeMay  
January 20, 1987  
Page 2

that prior to another evidentiary hearing you give Mr. Carson and me an opportunity to meet with you and discuss and agree upon a procedure to resolve this case.

Very truly yours,

A handwritten signature in dark ink, appearing to read "W. Thomas Kellahin". The signature is fluid and cursive, with a large, sweeping initial "W".

W. Thomas Kellahin

WTK:ca  
Enc.

cc: Joel Carson, Esq.  
Mr. Jack J. Grynberg

W. Thomas Kellahin  
Karen Aubrey  
Jason Kellahin  
Of Counsel

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

RECEIVED

January 20, 1987

OIL CONSERVATION DIVISION

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

"Hand Delivered"

Re: Application of Yates  
Petroleum Corporation, et al.,  
for Determination of Reasonable  
Well Costs, NMOCD Case 8901  
Order R-7393-B

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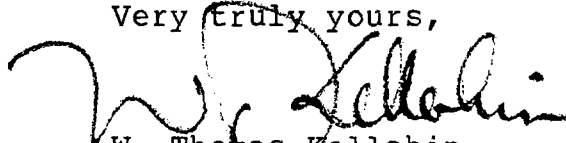
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KELLAHIN and KELLAHIN

Mr. William J. LeMay  
January 20, 1987  
Page 2

that prior to another evidentiary hearing you give Mr. Carson and me an opportunity to meet with you and discuss and agree upon a procedure to resolve this case.

Very truly yours,



W. Thomas Kellahin

WTK:ca  
Enc.

cc: Joel Carson, Esq.  
Mr. Jack J. Grynberg

STATE OF NEW MEXICO

ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION DIVISION



GARREY CARRUTHERS  
GOVERNOR

May 5, 1987

POST OFFICE BOX 2038  
STATE LAND OFFICE BUILDING  
SANTA FE NEW MEXICO 87501  
(505) 827-3800

Ms. Georgia Mae Ferrin  
Clerk  
Chaves County Courthouse  
Roswell, New Mexico 88201

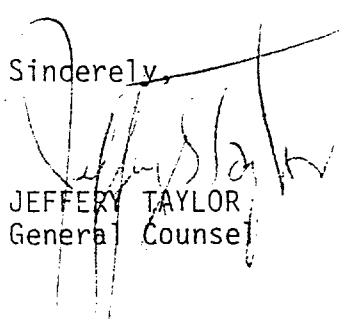
Re: Oil Conservation Commission of the  
State of New Mexico, and Yates  
Drilling Company, MYCO Industries,  
Inc. and ABO Petroleum Corporation  
Cause No. CV-87-103

Dear Ms. Ferrin:

Enclosed please find the Transcript of Proceedings  
in the above-captioned cause.

Thank you.

Sincerely,

  
JEFFERY TAYLOR  
General Counsel



ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION DIVISION



GARREY CARRUTHERS  
GOVERNOR

C E R T I F I C A T I O N

POST OFFICE BOX 2088  
STATE LAND OFFICE BUILDING  
SANTA FE, NEW MEXICO 87501  
(505) 827-8800

TO WHOM IT MAY CONCERN:

I, VICTOR T. LYON, Acting Director of the Oil Conservation Division of the New Mexico Energy and Minerals Department, do hereby certify that the attached are true and correct copies of the following documents on file in this office:

Application of Yates Petroleum Corporation, Yates Drilling Company, Myco Industries, Inc. and Abo Petroleum Corporation for Determination of Reasonable Well Costs in Case 8901 with attached exhibits;

Transcript of Case 8901 dated August 7, 1986;

Order No. R-7393-B entered in Case 8901 on December 31, 1986;

Application of Grynberg Petroleum Company for Rehearing of Case 8901 received January 20, 1987;

Applications of Yates Petroleum Corporation and Jack J. Grynberg for Compulsory Pooling and Unorthodox Gas Well Location in Cases 7982, 7983, and 7984;

Application of Yates Petroleum Corporation for Rehearing of Cases 7982, 7983, and 7984;

Transcript in Cases 7982, 7983, and 7984 dated October 18, 1983;

Yates Exhibits 1 through 14 in Cases 7982, 7983, and 7984;

Grynberg Exhibits 1 through 14 in Cases 7982, 7983, and 7984;

Order No. R-7391 entered in Case 7982 on December 2, 1983;

Order No. R-7392 entered in Case 7983 on December 2, 1983;

Order No. R-7393 entered in Case 7984 on December 2, 1983;

Order No. R-7393-A entered in Case 7984 on December 2, 1983;

Order No. R-7393-B entered in Case 8901 on December 31, 1986.

*Victor T. Lyon*  
VICTOR T. LYON, Acting Director

May 5, 1987



STATE OF NEW MEXICO     )  
                                      )  
COUNTY OF SANTA FE     )

The foregoing instrument was acknowledged before me this  
5th day of May, 1987.

*Glenn Richardson*  
NOTARY PUBLIC

My Commission Expires:

*Oct 28, 1989*

-1-

2. Respondents, Yates Petroleum Corporation, Yates Drilling Company, Myco Industries and Abo Petroleum Corporation ("Yates") are corporations duly organized under the laws of the State of New Mexico and are working interest owners in the Grynberg State I-20 Well, and have been issued Commission Order R-7393-B from which the Petitioner objects and appeals.

3. Respondent, the Oil Conservation Commission of the State of New Mexico, ("Commission") is a statutory body created and existing under the provisions of the Oil & Gas Act, Sections 70-2-1 through 70-2-36 NMSA (1978), laws of the State of New Mexico.

GENERAL STATEMENT OF FACTS:

1. On October 18, 1983, the Commission held a hearing on the applications of Grynberg and Yates to compulsory pool the other for the drilling of the Grynberg State I-20 well.

2. On December 2 and 3, 1983, the Commission entered Order R-7393, copy attached as Exhibit A, and incorporated herein, approving the Grynberg application and also entered Order R-7392 denying the Yates application.

3. On January 12, 1984, Yates prepaid its share of the estimated costs of the well to Grynberg.

4. On April 1, 1984 Grynberg completed the subject well.

5. On May 22, 1986 Yates filed an application with the Commission requesting a hearing to determine the reasonable well costs which was docketed as Case 8901.

6. On June 19, 1986 and on August 7, 198~~6~~<sup>7</sup> the Commission heard Case 8901 and on December 31, 1986 entered its Order R-7393-B, copy attached as Exhibit "B" and incorporated herein, finding, among other things, that Yate's share of the costs of the subject well should be \$134,326.99.

7. On January 30, 1987 Grynberg filed its Application for Rehearing, copy attached as Exhibit "C" and incorporated herein, which was deemed denied by the Commission when it failed to act on the application within the ten days required by Section 70-2-25 NMSA (1978).

JURISDICTION:

1. Petitioner has exhausted its administrative remedies before the Commission and now seeks judicial review of the Commission's decision within the time provided for by Section 70-2-25 NMSA (1978), as amended.

2. The Fifth Judicial District, Chaves County, New Mexico, has jurisdiction of this case pursuant to the provisions of Section 70-2-25 NMSA (1978), because the property affected by the Commission order is located within Chaves County, New Mexico.

RELIEF SOUGHT:

Petitioner complains of Commission Order R-7393-B and as grounds for asserting the invalidity of the said Order, Petitioner adopts the grounds set forth in its Application for Rehearing (Exhibit C) and states:

1. Commission Order R-7393-B should be reversed because the Commission failed to make a "basic conclusion of fact" as required by Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 373 P2d 809 (1962).

2. Commission Order R-7393-B should be reversed because the order fails to contain sufficient findings as required by Fasken v. Oil Conservation Commission, 87 N.M. 292, 532 P2d 588 (1975).

3. Commission Order R-7393-B should be reversed because the allocation of costs as set forth in Commission Order R-7839-B are contrary to the requirements of Paragraph (25) of the prior Commission Order R-7393.


4. Commission Order R-7393-B is not supported by substantial evidence, is arbitrary and capricious and is contrary to law.

5. The Commission improperly excluded Grynberg's testimony and failed to allocate a portion of the well costs to the San Andres Formation.

6. The Commission erroneously denied Grynberg's Motion to Dismiss the Yates' Application.

WHEREFORE, Petitioner prays that the Court review New Mexico Oil Conservation Commission Case 8981 (DeNovo) and Commission Order R-7393-B and hold said order unlawful, invalid and void, and for such other and further relief as may be proper in the premises.

Respectfully submitted:



By  
W. Thomas Kellahin  
Kellahin, Kellahin & Aubrey  
P. O. Box 2265  
Santa Fe, New Mexico 87504

(505) 982-4285

Attorneys for Petitioner

ENDORSED COPY  
ORIGINAL FILED DISTRICT COURT  
04/10/87  
GEORGIA FERRIN, CLERK

STATE OF NEW MEXICO  
COUNTY OF CHAVES  
IN THE DISTRICT COURT

No. CIV 87-103

GRYNBERG PETROLEUM COMPANY,

Petitioner,

vs.

OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO,  
and YATES DRILLING COMPANY,  
MYCO INDUSTRIES, INC., and  
ABO PETROLEUM CORPORATION,

Respondents.

**MOTION FOR LEAVE TO AMEND ORIGINAL COMPLAINT  
TO SUBSTITUTE AND JOIN ADDITIONAL PARTIES**

COMES NOW Petitioner, Grynberg Petroleum Company, by and through its attorneys, Kellahin, Kellahin & Aubrey, and pursuant to Rule 1-017 N.M.R. Civ.P., moves this Court for an order granting leave to amend the original complaint to substitute Jack J. Grynberg, individually, and doing business as Grynberg Petroleum Company, and as grantor of the Rachel Susan (Grynberg) Trust, the Stephen Mark (Grynberg) Trust and the Miriam Zela (Grynberg) Trust, and as agent for and on behalf of Celeste C. Grynberg and Dean G. Smernoff, Co-Trustees for the Rachel Susan Trust, the Stephan Mark Trust and the



Miriam Zela Trust, as the Petitioner in this cause. Further, pursuant to Rule 1-015(c), N.M.R. Civ.P., Petitioner requests that such amendment relate back to the original date of the Complaint. Further Petitioner seeks to add Yates Petroleum Corporation as a defendant herein. A copy of the proposed Amended Complaint is attached hereto as Exhibit A.

As grounds for this motion Petitioner states:

1. Jack J. Grynberg, individually, and doing business as Grynberg Petroleum Company and as grantor of the Rachel Susan Trust, the Stephen Mark Trust and the Miriam Zela Trust, and as agent for and on behalf of Celeste C. Grynberg and Dean G. Smernoff, Co-Trustees of the Rachel Susan Trust, the Stephan Mark Trust and the Miriam Zela Trust are the real parties in interest in this cause. (Exhibit B).

2. Grynberg Petroleum Company was, through an honest mistake, named as Petitioner in this cause. (Exhibit C).

3. Jack J. Grynberg, individually, and doing business as Grynberg Petroleum Company and as grantor of the Rachel Susan Trust, the Stephen Mark Trust and the Miriam Zela Trust, and as agent for and on behalf of Celeste C. Grynberg and Dean G. Smernoff, Co-Trustees of the Rachel Susan Trust, the Stephan Mark Trust and the Miriam Zela Trust and Grynberg Petroleum Company have a substantial identity of

interest and the claims upon which the complaint are based arise out of the same conduct and occurrence regardless of the named Petitioner.

4. That Yates Petroleum Corporation was inadvertently omitted from the list of defendants.

5. Amendments to pleadings are allowed by the New Mexico Rules of Civil Procedure.

Concurrence of counsel for the parties in this action has been sought. Counsel for Respondent Oil Conservation Commission concurs in this motion. Counsel for Respondents, Yates Drilling Company, Myco Industries, Inc. and Abo Petroleum Corporation does not concur.

THEREFORE, for the reasons stated herein and as set forth more fully in the accompanying memorandum, Petitioner's motion should be granted.

KELLAHIN, KELLAHIN & AUBREY  
Post Office Box 2265  
Santa Fe, New Mexico 87504  
Telephone: (505) 982-4285

By:   
W. Thomas Kellahin

Attorneys for Petitioner

CERTIFICATE OF MAILING

I hereby certify that I have caused to be mailed a true and correct copy of the foregoing pleading to Jeffrey Taylor, Esq., Oil Conservation Commission, Post Office Box 2088, Santa Fe, New Mexico 87501 and Joel Carson, Esq., Post Office Drawer 239, Artesia, New Mexico 88210, on this 9 day of April, 1987.

  
W. Thomas Kellahin

STATE OF NEW MEXICO  
COUNTY OF CHAVES  
IN THE DISTRICT COURT

JACK J. GRYNBERG, )  
individually, and doing )  
business as Grynberg Petroleum )  
Company, and as grantor )  
of the RACHEL SUSAN (GRYNBERG) )  
Trust, the STEPHEN MARK )  
(GRYNBERG) Trust and the )  
MIRIAM ZELA (GRYNBERG) Trust, )  
and as agent for and on behalf )  
of CELESTE C. GRYNBERG and )  
DEAN G. SMERNOFF, Co-Trustees )  
for the RACHEL SUSAN Trust, )  
the STEPHEN MARK Trust, and )  
the MARIAM ZELA Trust. )

Petitioner, )

-vs- )

No. CIV 87\_\_\_\_\_

OIL CONSERVATION COMMISSION )  
OF THE STATE OF NEW MEXICO, )  
YATES PETROLEUM CORPORATION, )  
and YATES DRILLING COMPANY, )  
MYCO INDUSTRIES, INC., and )  
ABO PETROLEUM CORPORATION, )

Respondents. )

FIRST AMENDED COMPLAINT  
PETITION FOR REVIEW OF DECISION OF  
OIL CONSERVATION COMMISSION OF NEW MEXICO

COMES NOW Jack J. Grynberg, individually, and doing  
business as Grynberg Petroleum Company, and as grantor of  
the Rachel Susan (Grynberg) Trust, the Stephen Mark  
(Grynberg) Trust and the Miriam Zela (Grynberg) Trust,  
and as agent for and on behalf of Celeste C. Grynberg and  
Dean G. Smernoff, Co-Trustees for the Rachel Susan Trust,

the Stephen Mark Trust and the Miriam Zela Trust, pursuant to the provisions of Section 70-2-25, NMSA (1978), as amended, and respectfully petitions the Court for review of the action of the Oil Conservation Commission of New Mexico in Case 8901 (DeNovo) on the Commission's docket, and its Order R-7393-B entered therein.

PARTIES:

1. Petitioner, Jack J. Grynberg, ("Grynberg") is president of Grynberg Petroleum Company, a sole proprietorship, doing business in the State of New Mexico, and is the operator of the Grynberg State 1-20 Well ("subject well") located in W/2 of Section 20, T9S, R27E, NMPM, Chaves County, New Mexico.

2. Petitioners Celeste C. Grynberg and Dean G. Smernoff, are co-trustees of the Rachel Susan Trust, the Stephen Mark Trust and the Miriam Zela Trust which have a 37.5% working interest in the subject well.

3. Petitioner, Jack J. Grynberg, operates the subject well as agent for and on behalf of the Co-trustees shown in paragraph 2 above.

4. Respondents, Yates Petroleum Corporation, Yates Drilling Company, Myco Industries and Abo Petroleum Corporation ("Yates"), are corporations duly organized under the laws of the State of New Mexico and are working

interest owners in the Grynberg State I-20 Well, and have been issued Commission Order R-7393-B from which the Petitioner objects and appeals.

5. Respondent, the Oil Conservation Commission of the State of New Mexico ("Commission"), is a statutory body created and existing under the provisions of the Oil & Gas Act, Sections 70-2-1 through 70-2-36 NMSA (1978), laws of the State of New Mexico.

GENERAL STATEMENT OF FACTS:

1. On October 18, 1983, the Commission held a hearing on the applications of Grynberg and Yates to compulsory pool the other for the drilling of the Grynberg State I-20 well.

2. On December 2 and 3, 1983, the Commission entered Order R-7393, copy attached as Exhibit A, and incorporated herein, approving the Grynberg application and also entered Order R-7392 denying the Yates application.

3. On January 12, 1984, Yates prepaid its share of the estimated costs of the well to Grynberg.

4. On April 1, 1984, Grynberg completed the subject well.

5. On May 22, 1986, Yates filed an application with the Commission requesting a hearing to determine the reasonable well costs which was docketed as Case 8901.

6. On June 19, 1986 and on August 7, 1986, the Commission heard Case 8901 and on December 31, 1986 entered its Order R-7393-B, copy attached as Exhibit "B" and incorporated herein, finding that Yate's share of the costs of the subject well was \$134,326.99.

7. On January 30, 1987, Grynberg filed its Application for Rehearing, copy attached as Exhibit "C" and incorporated herein, which was deemed denied by the Commission when it failed to act on the application within the ten days required by Section 70-2-25, N.M.S.A. (1978).

#### JURISDICTION:

1. Petitioner has exhausted its administrative remedies before the Commission and now seeks judicial review of the Commission's decision within the time provided for by Section 70-2-25, N.M.S.A. (1978), as amended.

2. The Fifth Judicial District, Chaves County, New Mexico, has jurisdiction of this case pursuant to the provisions of Section 70-2-25, N.M.S.A. (1978), because the property affected by the Commission order is located within Chaves County, New Mexico.

RELIEF SOUGHT:

Petitioner complains of Commission Order R-7393-B and asserts that said Order is invalid. As grounds for such assertion Petitioner adopts the grounds set forth in its Application for Rehearing (Exhibit C) and further states:

1. Commission Order R-7393-B should be reversed because the Commission failed to make a "basic conclusion of fact" as required by Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962).

2. Commission Order R-7393-B should be reversed because the order fails to contain sufficient findings as required by Fasken v. Oil Conservation Commission, 87 N.M. 292, 532 P.2d 588 (1975).

3. Commission Order R-7393-B should be reversed because the allocation of costs as set forth in Commission Order R-7839-B are contrary to the requirements of Paragraph (25) of the prior Commission Order R-7393.

4. Commission Order R-7393-B is not supported by substantial evidence, is arbitrary and capricious, and is contrary to law.

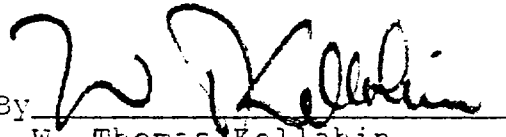


5. The Commission improperly excluded Grynberg's testimony and failed to allocate a portion of the well costs to the San Andres Formation.

6. The Commission erroneously denied Grynberg's Motion to Dismiss the Yates' Application.

WHEREFORE, Petitioner prays that the Court review New Mexico Oil Conservation Commission Case 8901 (DeNovo) and Commission Order R-7393-B and hold said order unlawful, invalid and void, and for such other and further relief as may be proper in the premises.

Respectfully submitted:

By   
W. Thomas Kellahin  
Kellahin, Kellahin & Aubrey  
P. O. Box 2265  
Santa Fe, New Mexico 87504

(505) 982-4285

Attorneys for Petitioner

AFFIDAVIT OF JACK J. GRYNBERG

Jack J. Grynberg, being first duly sworn, states as follows:

1. I am over the age of eighteen years and fully competent to testify as to the matters herein contained.

2. I am President of Grynberg Petroleum Company.

3. That I am doing business under the name of Grynberg Petroleum Company, which is not incorporated.

4. The Grynberg State 1-20 is the well which was the subject of the application filed in Case No. 8901 before the Oil Conservation Division.

5. Grynberg Petroleum Company neither owns an interest in nor operates the subject well.


6. I, individually, am the operator of the Grynberg State 1-20 well as agent for and on behalf of the real parties in interest which are Celeste C. Grynberg and Dean G. Smernoff, as Co-Trustees for the Rachel Susan Trust, the Stephen Mark Trust and the Miriam Zela Trust which have a 37.5% working interest in the subject well.

7. I retained Kellahin, Kellahin & Aubrey to petition the district court for review of the Commission's Order in Case No. 8901 on my behalf and on behalf of Celeste C. Grynberg and Dean G. Smernoff, as Co-Trustees for the Rachel Susan Trust, the Stephen Mark Trust and the Miriam Zela Trust.

  
\_\_\_\_\_  
Jack J. Grynberg

STATE OF Colorado )  
 ) ss.  
COUNTY OF Arapahoe )

SWORN AND SUBSCRIBED TO before me by Jack J. Grynberg on this 18th day of March, 1987.

  
\_\_\_\_\_  
Notary Public  
Linda L. Magnuson

My Commisison Expires:

March 13, 1990

AFFIDAVIT OF W. THOMAS KELLAHIN

State of New Mexico     )  
                                  )   ss  
County of Santa Fe     )

W. Thomas Kellahin, being first duly sworn, states as follows:

1. I am over the age of eighteen years and fully competent to testify as to the matters contained herein.

2. I am a partner in the law firm of Kellahin, Kellahin & Aubrey.

3. Our firm was retained by Jack J. Grynberg to petition this Court for a review of an Oil Conservation Division ("OCD") Order in Case No. 8901.

4. Mr. Grynberg is known to me as the president of Grynberg Petroleum Company.

5. Our firm did not represent Mr. Grynberg or any other parties to Case 8901 before the OCD.

6. My review of the proceedings before the OCD led me to believe that Grynberg Petroleum Company was the real party in interest.

7. As a result of my review, I named Grynberg Petroleum Company as Petitioner in the original Complaint.

8. As a result of issues raised in the Respondents' Answer filed March 5, 1987 I discovered that Jack J. Grynberg, individually, and doing business as Grynberg

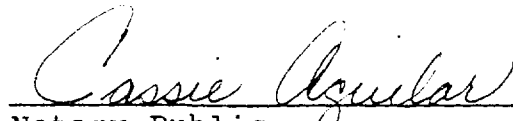
Petroleum Company, and as grantor of the Rachel Susan (Grynberg) Trust, the Stephen Mark (Grynberg) Trust and the Mirian Zela (Grynberg) Trust, and as agent for and on behalf of Celeste C. Grynberg and Dean G. Smernoff, Co-Trustees for the Rachel Susan Trust, the Stephen Mark Trust, and the Marian Zela Trust, as opposed to Grynberg Petroleum Company, all the real parties in interest. The Grynberg State 1-20, which well is the subject of our Petition, is operated by Jack J. Grynberg, doing business as Grynberg Petroleum Company.

9. Captioning the Petition in the name of Grynberg Petroleum Company was an honest mistake on my part.

10. It was never my intention to delay these proceedings or to disadvantage Respondents in any way by naming Grynberg Petroleum Company as Petitioner instead of Jack J. Grynberg.

  
W. Thomas Kellahin

SUBSCRIBED AND SWORN to before me this 9<sup>th</sup> day of April, 1987, by W. Thomas Kellahin.

  
Notary Public

My Commission Expires:

9-26-87