

10/15/98

RE: HARRIS FED. 1

LYNN

ATTACHED IS LETTER SENT TO
JIM RANCE DATED 7/27/98. A COPY
OF THE ONLY TEST WE HAVE IN FILES
WAS ATTACHED TO LETTER TO JIM.

AT THE SAME TIME A LETTER
WAS SENT TO RYAN & STEVENS REQUESTING
TEST, NONE FURNISHED TO DATE. CALLED
JOHN MAXY W/ RYAN & STEVENS, HE SAID
HE HAD SOME TEST AND WOULD
FAX. I WILL FAX WHEN I GET
THEM.

ALSO ATTACHED IS PRODUCTION
DATA SHOWING THAT PRODUCTION
HAS BEEN BELOW ALLOWABLE AS
STATED IN R-ORDER-10622-A.

ADVISED IF OTHER DATA
IS NEEDED.

THANKS ALL...

OIL CONSERVATION DIVISION
ARTESIA, NEW MEX. 88210

TO: Lynne Hebert
FROM: Terry Hum
DATE: 10-15-98

NUMBER OF SHEETS (INCLUDING TRANSMITTAL SHEET) 8

IF YOU HAVE ANY PROBLEMS WITH THIS TRANSMISSION, PLEASE CALL 505-748-1283.

FAX NUMBER (505) 748-9720

JAMES BRUCE
ATTORNEY AT LAW

POST OFFICE BOX 1056
SANTA FE, NEW MEXICO 87504

SUITE B
612 OLD SANTA FE TRAIL
SANTA FE, NEW MEXICO 87501

(505) 982-2043
(505) 982-2151 (FAX)

October 12, 1998

Via Fax and U.S. Mail

Lori Wrotenbery
Oil Conservation Division
2040 South Pacheco Street
Santa Fe, New Mexico 87505

Re: Order No. R-10622-A
Read & Stevens, Inc. unorthodox location
White Fed. Well No. 11
S% §26-15S-27E

Dear Ms. Wrotenbery:

The above order imposed a 50% penalty on production from Read & Stevens' well, based on semi-annual deliverability tests. The well was completed on April 19, 1997, and the penalty was assessable from the date of first production.

By October 1998, four deliverability tests should have been conducted under the terms of the order. This spring and summer I wrote to the Artesia District Office requesting copies of the deliverability tests, but I never received a response. Copies of my letters are attached as Exhibits A and B. In late July I spoke with Ms. Hebert about this situation. She called Tim Gum, who informed her that one test had been conducted. However, to date I have not even received a copy of that test.

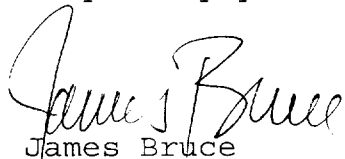
Attached as Exhibit C is a production graph of Read & Stevens' well. In Ocean Energy's opinion, the well has been producing at capacity since completion, without penalty. My client requests that the Division look into this situation, and inform us whether the well is producing without restriction. We also ask (again) that a copy the only deliverability test be provided to us. Finally, we ask that Read & Stevens be ordered to conduct a second deliverability test immediately.

We feel it may be necessary to file an application to shut in Read & Stevens' well in order to bring production in line with the

order. However, we will wait a short time before doing so.

I look forward to your response.

Very truly yours,

A handwritten signature in cursive script that reads "James Bruce". The signature is written in dark ink and is positioned above the printed name "James Bruce".

James Bruce

Attorney for Ocean Energy Resources, Inc.
(formerly UMC Petroleum Corporation)

cc: Marilyn S. Hebert
Rand L. Carroll
Bret C. Jameson
W. Thomas Kellahin

JAMES BRUCE
ATTORNEY AT LAW

POST OFFICE BOX 1056
SANTA FE, NEW MEXICO 87504

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612 OLD SANTA FE TRAIL
SANTA FE, NEW MEXICO 87501

(505) 982-2043
(505) 982-2151 (FAX)

May 31, 1998

Tim Gum, Supervisor
Oil Conservation Division
811 South First Street
Artesia, New Mexico 88210

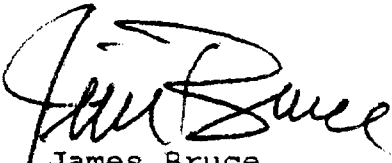
Re: Harris Fed. Well No. 11
990 feet FSL & 1980 feet FWL
S½ S26, Township 15 South, Range 27 East, NMPM
Chaves County, New Mexico

Operator: Read & Stevens, Inc.

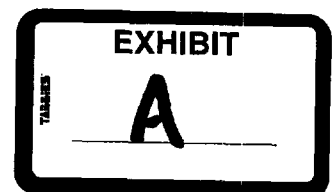
Dear Tim:

The above well was drilled under Division Order No. R-10622 and Commission Order No. R-10622-A (copy enclosed). The order requires a 50% penalty on production, based upon a deliverability test to be conducted twice a year, and witnessed by the Division (see page 8 of the order). The well was completed on April 19, 1997, and the penalty on production is applicable since the date of completion. There should by now have been three tests conducted. Have the deliverability tests been conducted? If so, please send me copies of the tests results. Thank you.

Very truly yours,


James Bruce

Attorney for Ocean Energy, Inc.
(formerly UMC Petroleum Corporation)



JAMES BRUCE
ATTORNEY AT LAW

POST OFFICE BOX 1056
SANTA FE, NEW MEXICO 87504

SUITE B
612 OLD SANTA FE TRAIL
SANTA FE, NEW MEXICO 87301

(505) 982-2043
(505) 982-2151 (FAX)

July 13, 1998

Tim Gum, Supervisor
Oil Conservation Division
811 South First Street
Artesia, New Mexico 88210

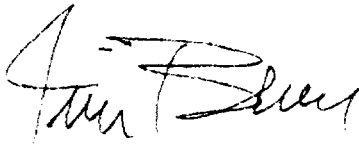
Re: Harris Fed. Well No. 11
990 feet FSL & 1980 feet FWL
S $\frac{1}{4}$ S26, Township 15 South, Range 27 East, NMPM
Chaves County, New Mexico

Operator: Read & Stevens, Inc.

Dear Tim:

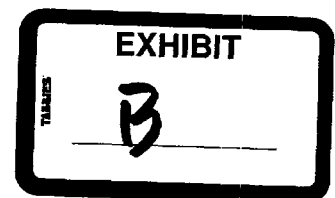
I would appreciate a prompt response to the enclosed letter. Thank you.

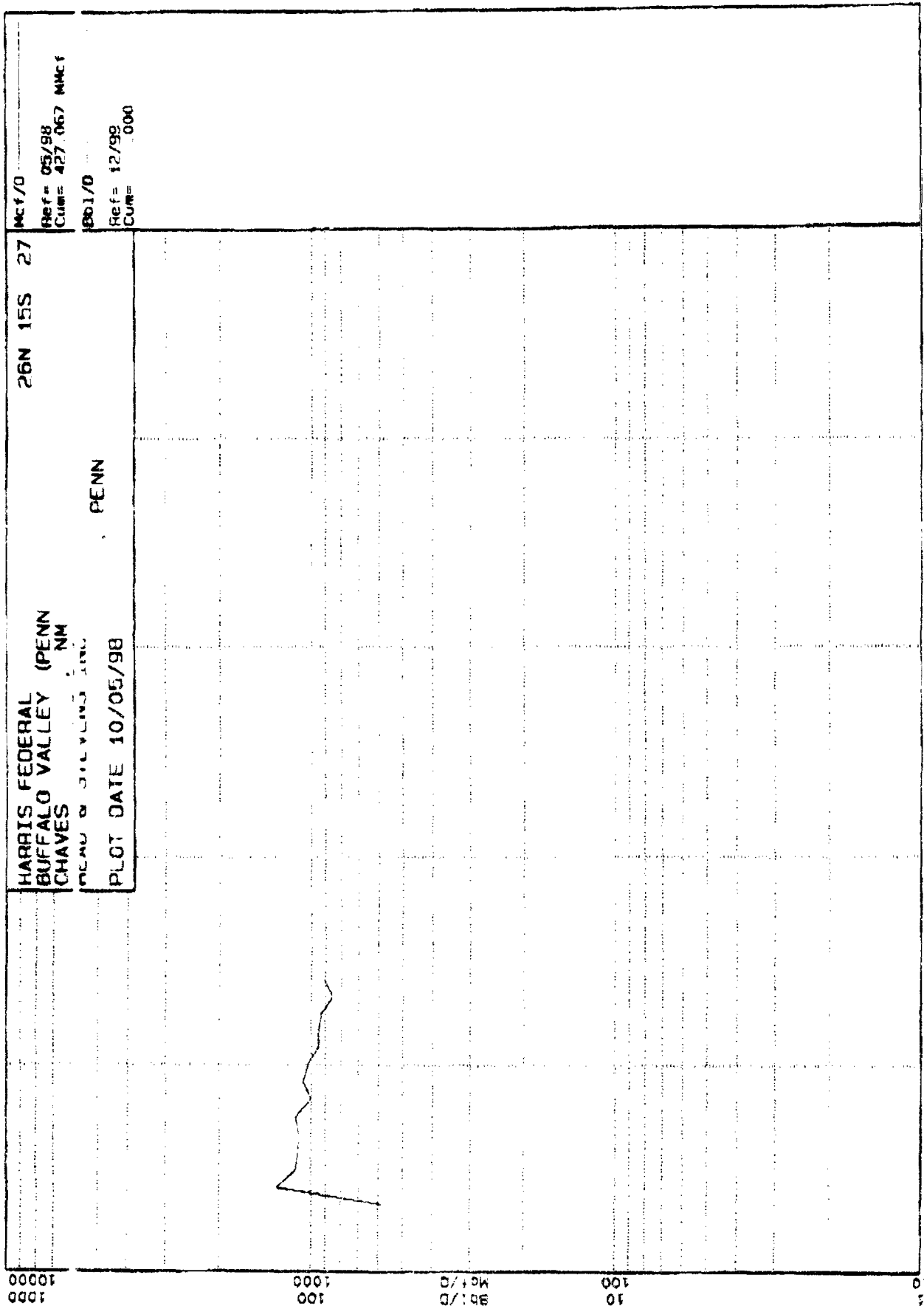
Very truly yours,



James Bruce

Attorney for Ocean Energy, Inc.
(formerly UMC Petroleum Corporation)





ILLEGIBLE





NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-7131

March 31, 1998

Ms. Bee J. Clem
District Court Clerk
Fifth Judicial District
Post Office Box 1776
Roswell, New Mexico 88201

Re: Read & Stevens, Inc., et al. v. Oil Conservation Commission, et al.
CV 97-29

Dear Ms. Clem:

Enclosed please find an **Amended Notice of Hearing** to be filed in the above-referenced case.
Please conform the copy and return to me in the enclosed envelope.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marilyn S. Hebert".

Marilyn S. Hebert

cc: James Bruce
W. Thomas Kellahin

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

W. THOMAS KELLAHIN*

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

JASON KELLAHIN (RETIRED 1991)

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

March 30, 1998

FEDERAL EXPRESS

(505) 622-2212

Bee J. Clem, Clerk
District Court Clerk
Chaves County Courthouse
401 North Main
Roswell, New Mexico 88201

Re: *Case No. D-0504-CV-0097000029*
Read & Stevens, Inc. and
Matador Petroleum Corporation vs
Oil Conservation Commission
State of New Mexico and
UMC Petroleum Corporation

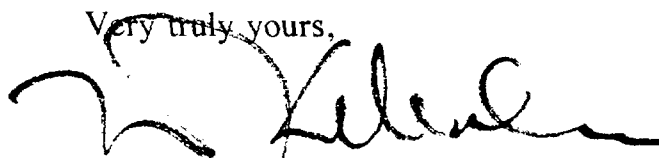
Dear Ms. Clem:

On behalf of the Petitioner, please find enclosed for filing in the referenced case our appeal and petition for review of a decision of the Oil Conservation Commission of New Mexico with Exhibit (A) attached;

Please find enclosed an additional copy of Petition without Exhibit (1) to be conformed and returned to me. My stamped-addressed envelope to return the summons and conformed copies of Petition to me.

Please call me if you have any questions.

Very truly yours,



W. Thomas Kellahin

cc: *Read & Stevens, Inc.*

Attn: Charlie Read

cc: *Matador Petroleum Company,*

Attn: Barry Osborne

cc: *counsel of record:*

Lyn Hebert, Esq.

James Bruce, Esq.

**STATE OF NEW MEXICO
COUNTY OF CHAVES
FIFTH JUDICIAL DISTRICT**

**READ AND STEVENS, INC. and
MATADOR PETROLEUM CORPORATION,
Petitioners/Appellants**

vs.

No. D-0504-CV-0097000029

**OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO, and
UMC PETROLEUM CORPORATION,
Respondents/Appellees**

**NOTICE OF APPEAL
OF A DECISION OF
THE OIL CONSERVATION COMMISSION OF NEW MEXICO**

COMES NOW, READ & STEVENS, INC. and MATADOR PETROLEUM CORPORATION (collectively "Read & Stevens"), pursuant to the provisions of Section 70-2-25(B) NMSA 1978 and Rule 1-074 NMRA 1997, files this Notice of Appeal and respectfully petitions the Court to review the actions of the Oil Conservation Commission of New Mexico in Case 11514(DeNovo) which resulted in the entry of Commission Order R-10622-A dated February 26, 1998.

PARTIES

(1) Petitioner, Read & Stevens, is the applicant in Case 11514 before the Commission and is adversely affected by Commission Order R-10622-A entered on February 26, 1998 in this case.

(2) Petitioner, Matador Petroleum Corporation, is a party of record who supported Read & Stevens, Inc. in all of the proceedings before the Commission in this matter and also is adversely affected by Commission Order R-10622-A.

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

(4) Respondent/Appellee, UMC Petroleum Corporation ("UMC") is a party of record in all of the proceedings before the Commission in Case 11514(DeNovo) and appeared in opposition to Read & Steven's requested unorthodox gas well location.

JURISDICTION:

(5) On December 29, 1997, this Court entered its order reversing and remanding Case 11514 and Order R-10622 back to the New Mexico Oil Conservation Commission ("Commission") for the entry of additional findings because the Commission's order fails to explain the Commission's reasoning behind the imposition of the 50% production penalty on Read & Stevens Harris Well No. 11 as set forth in Commission Order R-10622 dated December 12, 1996. The Court concluded that "Without further findings

on this issue, it is impossible to determine whether there is substantial evidence to support the production penalty, or whether the imposition of the production penalty was arbitrary and capricious by the Commission."

(6) On February 26, 1998, the Commission, in a closed meeting, adopted additional findings in an effort to explain why it had imposed the 50% production penalty.

(7) On March 12, 1998, the Commission released Order R-10622-A, dated February 26, 1998 which contains in bold type the additional findings.

(8) On March 16, 1998, Petitioners timely filed its Application for Rehearing with the Commission in which Petitioners' contest these supplemental findings because the imposition of the production penalty was an arbitrary and capricious action by the Commission. **See Exhibit "1" attached.**

(9) On March 13, 1998, the Commission forwarded its supplemental findings to the Court.

(10) On December 31, 1997, Petitioners timely filed their Application for Rehearing, a copy of which is attached as Exhibit "1" and incorporated herein, which was deemed denied by the Commission when it failed to act on the application within ten days as required by Section 70-2-25, N.M.S.A. (1978), as amended.

(11) Petitioners have exhausted their administrative remedies before the Commission and now seek judicial review of the Commission's decision within the time provided for by Section 70-2-25(B) NMSA 1978 and pursuant to Rule 1-074 NMRA 1997.

(12) 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 Commission Order R-10872-A is located within Chaves County, New Mexico.

(13) This matter is pending further oral argument before the Court currently scheduled for May 7, 1998.

RELIEF SOUGHT:

(14) Petitioners complain of Commission Order R-10622-A attached hereto as Exhibit "A" to Exhibit "1" and assert that the Commission committed reversible error when it failed to grant Petitioners' Application for Rehearing, all as set forth in Exhibit "1", because:

POINT I.

THE COMMISSION FAILED TO COMPLY WITH SECTION 70-2-33(H) NMSA-1978 AND IN DOING SO VIOLATED PETITIONERS' CORRELATIVE RIGHTS

POINT II:

THE COMMISSION'S SUPPLEMENTAL FINDING (12)(d) IS INCONSISTENT WITH THE COMMISSION'S ADOPTION OF A 50 % PRODUCTION PENALTY

POINT III:

THE COMMISSION'S SUPPLEMENTAL FINDING (12)(e) AND (12)(j) ARE CONTRARY TO UNDISPUTED FACTS IN THIS CASE AND MUST BE SET ASIDE

POINT IV:

THE COMMISSION'S SUPPLEMENTAL FINDING (12)(h) AND (12)(j) ARE INCONSISTENT WITH ORIGINAL

POINT V:

THE COMMISSION'S SUPPLEMENTAL FINDING (12)(h)(i) AND (12)(j) ARE WRONG, INCONSISTENT WITH ORIGINAL FINDING (10) ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE ARE ARBITRARY AND CAPRICIOUS AND MUST BE SET ASIDE

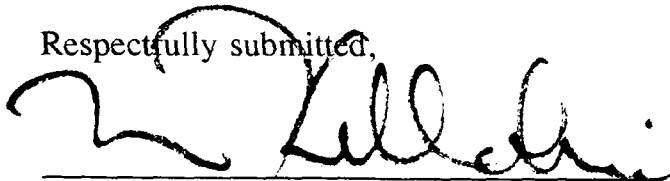
POINT VI:

THE COMMISSION ORDER R-10622-A FAILED TO PROVIDE FOR A MINIMUM GAS ALLOWABLE

WHEREFORE, Petitioners/Appellants pray that the Court consolidate this appeal of New Mexico Oil Conservation Commission Order R-10622-A, entered February 26, 1998 with the Court's current review of New Mexico Oil Conservation Commission Order R-10622 entered December 12, 1996 and that the Court enter its decision that:

- (1) the 50 % production penalty set forth in Commission Orders R-10662 and R-10622-A are unlawful, invalid and void;
- (2) there is no substantial evidence to support the 50% production penalty; and
- (3) the imposition of the 50 % production penalty is arbitrary and capricious; and
- (4) Petitioner's property rights have been violated by the Commission; and
- (5) for such other and further relief as may be proper in the premises.

Respectfully submitted,



W. THOMAS KELLAHIN, Esq.

KELLAHIN & KELLAHIN

P. O. Box 2265

Santa Fe, New Mexico 87504

(505) 982-4285


ATTORNEYS FOR PETITIONERS/APPELLANTS

PROOF OF SERVICE

Pursuant to Rule 1-074 NMRA 1997, I, W. Thomas Kellahin, hereby certify that on the 30th day of March, 1998, I mailed by regular mail-postage prepaid a copy of this Notice of Appeal and Petition for Review to all of the counsel of record in these proceedings as follows:

Lyn Hebert, Esq.
Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505
(505) 827-1364
Attorney for the Commission

James Bruce, Esq.
612 Old Santa Fe Trail
Santa Fe, New Mexico 87501
(505) 982-2043
Attorney for UMC Petroleum Corporation

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

W. Thomas Kellahin

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

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

**CASE NO. 11514 (DeNovo)
ORDER NO. R-10622-A**

**APPLICATION OF READ & STEVENS, INC.
FOR AN UNORTHODOX INFILL GAS WELL
LOCATION AND SIMULTANEOUS DEDICATION,
CHAVES COUNTY, NEW MEXICO.**

RECEIVED
MAR 16 1998
Oil Conservation Division

**APPLICATION FOR REHEARING
BY
READ & STEVENS, INC.**

This Application for Re-Hearing is submitted by W. Thomas Kellahin, Esq. of Kellahin and Kellahin on behalf of READ & STEVENS, INC. (Read & Stevens").

In accordance with the provisions of Section 70-2-25 NMSA (1978), Read & Stevens requests the New Mexico Oil Conservation Commission grant this Application for ReHearing in Case 11514 (DeNovo) to correct erroneous findings and conclusions set forth in Order R-10622-A, attached as Exhibit "A" and to substitute Read & Stevens' proposed Commission Order attached as Exhibit "B" hereto, and

IN SUPPORT READ & STEVENS STATES:



INTRODUCTION

On December 29, 1997, the District Court for the Fifth Judicial District, Chaves County, New Mexico ("Court") entered an order reversing and remanding this case to the Commission for the entry of additional findings because the New Mexico Oil Conservation Commission ("Commission") had failed to explain the reasoning behind the imposition of the 50 % production penalty in its Order R-10622 issued on December 12, 1996. The Court concluded that "(W)ithout further findings on this issue, it is impossible to determine whether there is substantial evidence to support the production penalty, or whether the imposition of the production penalty was arbitrary and capricious decision by the Commission"

On February 26, 1998, the Commission, in a closed meeting, adopted additional findings in an effort to explain why it had imposed a 50 % production penalty.

On March 12, 1998, the Commission released Order R-10622-A, dated February 26, 1998 which contains in "**bold**" font those findings which were not contained in Order R-10622 dated December 26, 1996. However, in doing so, the Commission continues to make errors of fact and of law which require that another hearing be held.

On March 16, 1998, Read & Stevens filed this Application for Rehearing so that the Commission can enter an order which corrects these mistakes and which protects Read & Stevens correlative rights.

GROUND FOR REHEARING

POINT I:

THE COMMISSION FAILED TO COMPLY WITH SECTION 70-2-33(H) NMSA-1978 AND IN DOING SO VIOLATED PETITIONERS' CORRELATIVE RIGHTS

Commission Order R-10622-A contains the following explanation in an effort to justify the 50 % production penalty:

"The standard penalty is based on the distance from the common boundary; or in a case such as this where two sections have differed set-back requirements, the penalty is based on the relative distance each well is from the lease line. Having a standard formula for a penalty for crowding a common boundary has provided predictability and consistency for industry and is an important tool in protecting correlative rights"

The Commission attempts to excuse this arbitrary 50% production penalty by calling it a "standard penalty" adopted to provide "predictability and consistency..." There is simply no such thing as a "standard penalty". There is no such concept as "standard penalty" contained in the General Rules of the New Mexico Oil Conservation Division nor in the special rules and regulations for either of these pools. The Commission uses a "distance encroachment penalty" when there is no evidence from which to determine how to allocate remaining recoverable gas. Excusing the 50% production penalty as a "standard penalty" is nothing more than an admission by the Commission that it has ignored Read & Steven's technical report which proved that there is sufficient remaining recoverable gas underlying Section 26 to allow the Read & Stevens Harris 11 Well to be produced **without a production penalty**.

Unbelievably, the Commission's explanation totally disregards its fundamental statutory obligation to protect correlative rights. The Commission has the duty to "prevent waste prohibited by this act (Oil & Gas Act) and to **protect correlative rights...**" (emphasis added). Section 70-2-11 NMSA (1978).

" 'Correlative rights' means the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas or both in the pool, being an amount, so far as can be practicably determined and so far as can be practicably obtained without waste, substantially in the **proportion that the quantify of recoverable oil or gas or both under the property bears to the total recoverable oil or gas or both in the pool,** and, for such purposes, to use his just and equitable share of the reservoir energy;" Section 70-2-33.H. NMSA (1978).

Pursuant to these statutory provisions, it was essential for the Commission to make findings concerning the remaining recoverable gas in this area of the pool and to apportion that volume between Read & Stevens' Section 26 and UMC's Section 35 in order to afford Read & Stevens and UMC an opportunity to produce their relative share of the remaining recoverable gas.

While the Commission made findings concerning the "estimated ultimate recovery" and the "original gas in place"¹ it still refuses to make the essential findings allocating the remaining recoverable gas between Sections 26 and 35.

¹ See Finding (10) Order R-10622

The Commission found² that "the Read and Stevens analysis had better scientific validity being derived from their 'Reservoir Simulation Study', validated by history matching gas production as compared to the UMC study which resulted from planimetered gas in place derived from their "Net Sand Thickness Isopach Map".'

The Read & Steven's study³ concluded that:

(a) there is 8.4 BCF of gas now remaining to be recovered between Sections 26 and 35;

(b) of the 8.4 BCF of gas remaining to be recovered, Read & Stevens' Section 26 is entitled to 5 BCF and UMC's Section 35 is entitled to 3.4 BCF.

(c) **without** the proposed Read & Stevens' Harris Federal Well No. 11 being drilled at its proposed unorthodox location of 990 feet from the south line, then Section 26 will recover only 2.5 BCF while Section 35 will recover 6.4 BCF.

(d) **with** the proposed Read & Stevens' Harris Federal Well No. 11 being drilled **without a penalty** at its proposed unorthodox location of 990 feet from the south line, then Section 26 will recover 4.9 BCF while Section 35 will recover 6.1 BCF⁴

(e) **With** the proposed Read & Stevens' Harris Federal Well No. 11 being drilled **without a penalty** at its proposed unorthodox location of 990 feet from the south line, then Section 26 will recover an additional 2.4 BCF of gas which otherwise would not be recovered thereby preventing waste or would be confiscated by other wells in the area.

² See Finding (10) of Order R-10622.

³ See Read & Stevens Exhibit 1, tab 14

⁴ The addition of the Harris Federal 11 Well to Section 26 allows the total recovery for Section 26 and 35 to increase from 8.9 BCF to 11.BCF which is a function of increasing recovery efficiency thereby preventing waste.

Having found the Read & Stevens' study "had better scientific validity" , then without explanation, the Commission illogically disregarded the Read & Stevens' conclusion contained in its study. Instead, The Commission applied the same 50 % distance penalty as adopted by the Division Examiner who had entered his decision without having the benefit of considering the Read & Stevens' petroleum engineering study.

A Rehearing is essential so the Commission can correct its statutory violation and enter an order which protects Read & Stevens' correlative rights.

POINT II:

SUPPLEMENTAL FINDINGS (12)(d) IS INCONSISTENT WITH THE COMMISSION'S ADOPTION OF A 50% PRODUCTION PENALTY

The Court found that because the Commission did not explicitly adopt either Read & Stevens 18.6 BCF of gas in place or UMC's 11.89 BCF of gas in place, "it is difficult to determine the reasoning behind the production penalty."

Despite the Court's desire that the Commission make such a determination, the Commission "declines to adopt either...." However, the Commission does find that "even so, the original gas-in-place is probably a figure closer to 18.6 BCF than 11.8 BCF". The only logical inference to be drawn from such a finding is that the Read & Stevens' Harris 11 Well will produce only the gas under its tract and not the gas under UMC's tract. This supplemental finding is inconsistent with the Commission's adoption of the 50 % production penalty.

Read & Stevens requests that the Court set aside the production penalty as arbitrary and not supported by the supplemental findings made by the Commission.

POINT III:

**SUPPLEMENTAL FINDING (12)(e) and (12(j) ARE CONTRARY TO
UNDISPUTED FACTS IN THIS CASE AND MUST BE SET ASIDE**

UMC contended that the wells in Section 26 and Section 35 were both producing approximately 1 million MCF per day and that production from the Harris 11, unless penalized, would upset this equilibrium. This argument might mean something if (a) the remaining recoverable gas underlying Section 35 is the same amount as that remaining to be recovered under Section 26 and (b) if the wells in Section 26 are allowed to produce at the same rate as the wells in Section 35.

The remaining recoverable gas is not the same:

UMC chose not to present any evidence of the remaining gas in place under either Section but if they had done so, UMC would have used a method similar to that utilized by Read & Stevens expert petroleum engineer. **See TR-p. 108.**

Read & Stevens petroleum engineering expert submitted his report in evidence to the Commission which demonstrated that of the 8.4 BCF of remaining recoverable gas, Read & Stevens' Section 26 was entitled to 5.0 BCF and UMC's Section 35 was entitled to 3.4 BCF. Thus the two section are not equal and UMC's contention is wrong. Unfortunately, the Commission ignores this undisputed fact and in doing so has imposed a penalty which is arbitrary and capricious.

Read & Steven's wells are already subject to production limits:

A production penalty cannot be justified based upon a concern about "upsetting the equilibrium in production. Despite the fact that the UMC wells and the Read & Stevens wells are located in the same common reservoir, the Commission has adopted two different sets of rules such that the UMC wells can produce at capacity while the Read & Stevens wells are subject to a maximum daily gas rate of not more than 1.1 million cubic feet of gas per day. The Commission's supplemental findings ignore this undisputed fact and impose a 50 % production penalty on the Read & Steven well which is unnecessary.

The Read & Stevens Harris Well No. 11 is located in dedicated to a 320-acre gas spacing and proration unit consisting of the S/2 of Section 26 which also contains the Harris Federal Well No. 8. This spacing unit is subject to a current maximum daily gas allowable of 1.1 million cubic feet of gas per day in accordance with the General Rules for the Prated Gas Pools of New Mexico/Special Rules and Regulations for the Buffalo Valley-Pennsylvanian Gas Pool (Order R-8170) **See Division Order R-10622.**

Inexplicably, the Commission justifies the 50 % penalty upon its mistaken belief that the Harris 11 and 8 wells are permitted to produce "over two times as much" has as the UMC wells are allowed to produce and "Thus the equilibrium that formerly existed between the two sections will be changed."

The truth is that regardless of a penalty, Read & Stevens' two wells in the S/2 of Section 26 are limited by current Division rules so that the total gas producing from both wells cannot exceed a maximum daily rate of 1 million cubic feet of gas per day. Even without a penalty these wells are not allowed to produce the 2 million cubic feet of gas per day rate which the Commission justifies the penalty.

POINT IV:

**SUPPLEMENTAL FINDINGS (12)(h) AND (12)(i) ARE
INCONSISTENT WITH ORIGINAL FINDINGS (12)(a)(b) AND (c)**

The Commission selectively applies the Read & Stevens' technical report to justify the "off-pattern" location for Read & Stevens' Harris 11 Well but then rejects that report and continues to insist that a 50 % production penalty is necessary despite the fact that the Read & Stevens' report concluded otherwise. **See Supplemental Findings (12)(i) and (j).**

The Commission continues to fail to explain how it can accept the Read & Stevens' analysis as having the "better scientific validity," but then chose to ignore the conclusions in that study and, instead, affirm a 50 % production penalty which is contrary to and inconsistent with that study. Such a conclusion is contrary to Finding (12)(b) of Order R-10622.

In Finding (12)(b), the Commission finds "drainage of the SW/4 of Section 26 from the White State No. 2 Well is likely occurring." This implies that the Commission rejected UMC's comparable 1,000 MCFPD rate argument. Thus, the only remaining

evidence upon which the Commission could have relied for determining the proper producing rate to protect correlative rights is the Read & Stevens' study which showed that an **unpenalized rate** of 1,500 MCFPD⁵ for the Harris Federal 11 Well was necessary to protect the SW/4 of Section 23 from being drained by UMC's well.

A rehearing is required, if for no other reason than to afford an opportunity to the Commission to reconcile this contradiction and adopt an adequate order which complies with state law.

POINT V:

SUPPLEMENTAL FINDINGS (12)(h)(i) AND (j) ARE WRONG, INCONSISTENT WITH ORIGINAL FINDING (10), ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND ARE ARBITRARY AND CAPRICIOUS.

There is no substantial evidence to support Findings (12)(h), (12)(i) and (12)(j) as reasonable basis upon which to adopt a penalty. Finding (12)(h) (12)(i) and (12)(j) adopt arbitrary and capricious reasons to support a penalty.

If the goal of the Commission is to protect correlative rights, then that implies there is a "no-flow boundary" at the common lease line between UMC and Read & Stevens. But the 50 % penalty will not allow a no-flow boundary to be established at the lease line.

⁵ The UMC's well in Section 35 will drain the SW/4 of Section 26 because the Division's proration rules limit gas production from the Harris 11 Well to only 1.1 MMCFPD which assumes that the Harris 8 Well will not be produced.

For example, if two wells are placed an equal distance from the common lease line and if their producing rates are equal and *if all other reservoir properties are identical*, then a no-flow boundary is established at the lease line and correlative rights are protected.

But, if the Read & Stevens' well is located one-half the distance from the common lease line as the UMC well, and if its rate is 50% of the rate of the UMC well, and *if all other reservoir properties are identical*, then a no-flow boundary will be established at the common lease line and correlative rights are protected.

However, the Commission has ignored the uncontested evidence in this case which demonstrated that the reservoir properties are **not identical**. The Read & Stevens' petroleum engineering study, supported by detailed geologic and petroleum engineering evidence, showed that:

(1) because the reservoir is thicker around the Read & Steven's location than at the UMC well and because the reservoir pressure near the Read & Stevens' well is higher than at the UMC well, and if Read & Stevens' well is located one-half the distance from the common lease line as the UMC well, then Read & Stevens' well must be produced at a **rate greater than** 50% of the rate of UMC's well in order to establish a no-flow boundary at the common lease line.

(2) if the Read & Stevens' well is limited to 50% of the rate of the UMC well, then the no-flow boundary will **not be** established at the common lease line **but** rather will be established within the Read & Steven's section and at a point **closer** to the Read & Stevens' well than required.

(3) the only way to quantify the proper rate is to use a reservoir simulation model that honors all the wells in the area. That is exactly what the Read & Stevens' study did and it demonstrated that the Read & Stevens' well could be produced at its proposed 990 foot location at a rate of

approximately 1,500 MCFPD and not impact the UMC acreage in Section 35.

It is impossible for the Commission to find that "Read and Stevens' analysis had better scientific validity" but to then reject the Read & Stevens' study as summarized above.

The Commission's order makes no sense and cannot be defended or explained. The result of Order R-10622 is to award UMC for failing to present to the Commission substantial evidence to support a 50% penalty. A Rehearing is required so that the Commission can correct its mistakes.

POINT VI:

**THE COMMISSION ORDER R-10622-A FAILED TO
PROVIDE FOR MINIMUM GAS ALLOWABLE**

Contrary to past precedents,⁶ the Commission order failed to adopt a minimum allowable for the Harris 11 Well No. 1. Without a minimum allowable, the penalty will continue to be applied to the well's producing rate ("deliverability") and as that rate declines, then the well will be limited to a gas volume which will make the well uneconomical. Such an order is punitive because it sets the producing volume for the well after Read & Stevens has invested the money to drill the well. A minimum allowable is necessary to protect Read & Stevens' correlative rights by affording a suitable rate of return on this investment.

⁶ For an example, See Order R-8804 issued December 8, 1988.

CONCLUSION

The substantial evidence in this case demonstrated that approval of the Read & Steven's application without a production penalty would afford it the opportunity to recover its share of the remaining gas without violating UMC's correlative rights. The Commission's order will not do what the Commission intended, but, instead, will cause waste and will impair Read & Stevens correlative rights. The Commission has entered an order which contains errors of fact and of law which require that another hearing be held. A Rehearing is essential so the Commission can enter an order which corrects these mistakes and which protects Read & Stevens' correlative rights.

Read & Stevens petitions the Commission to withdraw Order R-10622-A and substitute Read & Stevens' proposed order which is attached hereto as Exhibit "B" and incorporated herein by reference. In order to preserve Opponents' right to further appeals of this matter, all of the issues set forth in Read & Stevens' proposed Order R-10622-A are made a part of this Application for Rehearing.

Respectfully submitted,

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

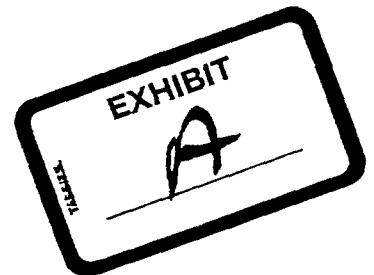
W. Thomas Kellahin, Esq.
KELLAHIN & KELLAHIN

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

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

DE NOVO
CASE NO. 11514
Order No. R-10622-A

APPLICATION OF READ & STEVENS INC.
FOR AN UNORTHODOX INFILL GAS WELL
LOCATION AND SIMULTANEOUS DEDICATION,
CHAVES COUNTY, NEW MEXICO.



ORDER OF THE COMMISSION

BY THE DIVISION:

This cause came on before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission" from remand from District Court for additional findings. (New findings are in bold).

NOW, on this 26th day of February, 1998, the Commission, a quorum being present, having considered the testimony, the exhibits received at said hearing, and being fully advised in the premises,

FINDS THAT:

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

(2) The applicant, Read & Stevens, Inc., seeks approval to drill its Harris Federal Well No. 11 at an unorthodox gas well location 990 feet from the South line and 1980 feet from the West line (Unit N) of Section 26, Township 15 South, Range 27 East, NMPM, to test the Pennsylvanian formation, Buffalo Valley-Pennsylvanian Gas Pool, Chaves County, New Mexico.

(3) The applicant further proposes to simultaneously dedicate the proposed Harris Federal Well No. 11 and its existing Harris Federal Well No. 4, located at a standard gas well location 990 feet from the South and East lines (Unit P) of Section 26, to a standard 320-acre gas spacing and proration unit in the Buffalo Valley-Pennsylvanian Gas Pool comprising the S/2 of Section 26.

(4) Matador Petroleum Company, an offset operator, appeared at the hearing in support of Read & Stevens, Inc.'s application.

(5) UMC Petroleum Corporation (UMC), operator of the following described Diamond Mound-Morrow Gas Pool producing wells in Section 35, Township 15 South, Range 27 East, appeared at the hearing as an affected offset operator in opposition to the application:

White State Well No. 1, located 660 feet from the South line and 1980 feet from the East line (Unit O), said well currently dedicated to the S/2 of Section 35; and,

White State Well No. 2, located 1980 feet from the North and West lines (Unit F), said well currently dedicated to the N/2 of Section 35.

(6) The proposed Harris Federal Well No. 11 is located within the Buffalo Valley-Pennsylvanian Gas Pool which is a prorated gas pool currently governed by the General Rules for the Prorated Gas Pools of New Mexico/Special Rules and Regulations for the Buffalo Valley-Pennsylvanian Gas Pool as contained within Division Order No. R-8170, as amended, which require standard 320-acre gas spacing and proration units with wells to be located in the NW/4 or SE/4 of a standard section no closer than 990 feet from the outer boundary of the quarter section nor closer than 330 feet from any governmental quarter-quarter section line or subdivision inner boundary.

(7) The proposed Harris Federal Well No. 11 is standard with respect to the setback requirements, but is unorthodox with respect to the quarter section location requirement.

(8) In addition to the Harris Federal Well No. 4, applicant currently operates the Harris Federal Well No. 8, located at a standard gas well location in Unit F of Section 26. The N/2 of Section 26 is currently dedicated to this well.

(9) Both the applicant and UMC presented geologic evidence and testimony in support of their respective positions. This geologic evidence and testimony is generally in agreement that:

- a) the Buffalo Valley-Pennsylvanian and Diamond Mound-Morrow Gas Pools, in the area of Sections 26 and 35, represent a single common source of supply in the Pennsylvanian formation;

- b) the Lower Pennsylvanian interval being produced in the Harris Federal Well Nos. 4 and 8 and the White State Well Nos. 1 and 2 is a correlatable channel sand which traverses Sections 26 and 35 in a north-south direction;
- c) the reservoir sand has its axis transversing and maximum buildup within both Sections 26 and 35;
- d) applicant's Harris Federal Well No. 8, which encountered approximately 30 feet of net sand, and UMC's White State Well No. 2, which encountered approximately 22 feet of net sand within the reservoir, are the best producing wells within Sections 26 and 35, respectively;
- e) applicant's Harris State Well No. 4 and UMC's White State Well No. 1 each encountered less than 10 feet of net pay sand, which places these wells on the flank of the main axis of sand buildup.
- f) the Harris Federal Well No. 11, which will be completed in the Lower Pennsylvanian interval, is projected to encounter between 22-30 feet of net sand in the reservoir.

(10) Both parties presented engineering evidence and testimony with regards to calculated gas-in-place under Sections 26 and 35 and estimated ultimate recoveries for the wells in Sections 26 and 35. The engineering evidence is generally in agreement for estimated ultimate recoveries, but there is disagreement concerning the calculated gas-in-place under Section 26.

ESTIMATED ULTIMATE RECOVERY

UMC Petroleum Corporation

Read and Stevens

Well Name

Harris Fed. No. 8	9.6 BCFG	8.0 BCFG
Harris Fed. No. 4	0.6 BCFG	0.7 BCFG
White State No. 1	5.1 BCFG	5.2 BCFG
White State No. 2	8.4 BCFG	9.0 BCFG

ORIGINAL GAS-IN-PLACE (BCF)

UMC Petroleum Corporation

Read and Stevens

Section

26	11.8	18.6
35	10.2	12.9

The significance of the variation in gas-in-place relates to the percentage of gas-in-place recovered by existing wells and projected to be recovered in the future and the inference that allowing Read and Stevens to drill their proposed well would allow them to drain gas reserves from under Section 35 (UMC's position).

Conversely Read and Stevens maintains that the only way for Read and Stevens to recover the gas-in-place under Section 26 is to drill their proposed Harris Federal Well No. 11. Accepting that 18.6 BCF is the gas-in-place under Section 26, the Read and Stevens proposed location would produce only the gas under their tract and not the gas under UMC's acreage in Section 35.

The Read and Stevens analysis had better scientific validity being derived from their "Reservoir Simulation Study", validated by history matching gas production as compared to the UMC study which resulted from planimetered gas-in-place derived from their "Net Sand Thickness Isopach Map".

- (11) UMC proposed that the Harris Federal Well No. 11, if allowed to be drilled at the proposed unorthodox location, should be assessed a production penalty of 65 percent or, in the alternative, should be assigned an allowable of 350 MCF gas per day. UMC's proposed allowable is based upon the fact that the proposed Harris Federal Well No. 11 will be located 50 percent closer to the common lease line than its White State Well No. 2, and therefore, should be allowed to produce 50 percent of the White State Well No. 2's current rate of production of 700 MCFGD.

- (12) The evidence and testimony presented in this case indicates that:

- a) the Harris Federal Well No. 4, which will ultimately recover only 0.6 BCF of gas, will not adequately drain and develop the S/2 of Section 26;
- b) drainage of the SW/4 of Section 26 from the White State Well No. 2 is likely occurring;

- c) the correlative rights of the applicant may be impaired if it is not allowed to drill a well within the SW/4 of Section 26 to recover gas reserves which may ultimately not be recovered by its existing wells; and,
- d) The calculated original gas-in-place under Section 26 is probably more than 11.8 BCF but not as much as 18.6 BCF. Even though the Read & Steven's analysis had better scientific validity, the Commission declines to adopt either Read & Stevens' specific calculation or UMC's specific calculation. The evidence presented by UMC cannot be entirely disregarded, and it militates against determining the amount of the original gas-in-place to be as much as 18.6 BCF. Read & Stevens did not present any long-term pressure data to support their claims. Many of the net pay, or net thickness, numbers used by Read & Stevens changed between the time of the Oil Conservation Division examiner hearing (the record of which was incorporated into the Commission hearing) and the Commission hearing. These changes consistently resulted in higher figures for Read & Stevens and lower figures for UMC. Even so, the original gas-in-place is probably a figure closer to 18.6 BCF than 11.8 BCF.
- e) The two existing wells in Section 26 are producing one million cubic feet of natural gas per day; the two existing wells in Section 35 are producing one million cubic feet of natural gas per day. The proposed Read & Stevens well is expected to produce over one million a day, so that Read & Stevens with the new well will be producing over two times as much in Section 26 as UMC is producing in Section 35. Thus, the equilibrium that formerly existed between the two sections will be changed.
- f) The standard set back for the Buffalo Valley-Pennsylvanian Gas Pool, in which Section 26 is located, is 990 feet from the outer boundary. However, this set back figure is only for wells

located in either the northwest or southeast quarter of a standard section. Read & Stevens' proposed location is in the southwest quarter, so that the proposed location is unorthodox irrespective of the set back.

- g) The standard set back for the Diamond Mound-Morrow Gas Pool, in which Section 35 is located, is 1980 feet from the outer boundary, and UMC's White State Well No. 2 is located 1980 feet from the outer boundary and is in the northwest quarter.
- h) Read & Steven's proposed unorthodox location is 50% closer to the common boundary with UMC than is UMC's White State Well No. 2 and thus would gain an unfair advantage unless penalized.
- i) While Read & Stevens presented sufficient evidence to prove that a third well located off-pattern in the southwest quarter is required to drain the gas in Section 26, Read & Stevens did not present sufficient evidence to prove that a well located at an equal distance from the common boundary with UMC as UMC's White State Well No. 2 would not drain the Section 26. Therefore, while Read & Stevens has justified a third well to be placed in the southwest quarter of Section 26 to prevent waste, it has not justified crowding its neighbor, UMC in Section 35, without the imposition of a penalty on production to protect UMC's correlative rights. Because Read & Stevens wants to crowd its neighbor by locating this third well 50% closer to the common boundary than UMC's well, Read & Stevens will gain an unfair competitive advantage and the imposition of a penalty is appropriate. Read & Steven's can drill its third well in the southwest quarter without any penalty if the well is at least 1980 feet from the common boundary with UMC.

- j) As there are between 11.8 BCF and 18.6 BCF of gas-in-place under Section 26 and the proposed well will increase production from Section 26 to over two million cubic feet per day, Read & Stevens' proposed location, 50% closer to the common boundary line than UMC's well, will lower daily production and drain some gas reserves from under Section 35 if the proposed well produces without penalty.
- k) by locating the Harris Federal Well No. 11, 990 feet off the common lease line, the applicant will be gaining an advantage over UMC, whose White State Well No. 2 is located 1980 feet off the common lease line.

(13) The applicant should be authorized to drill the Harris Federal Well No. 11 at a location no closer than 1830 feet from the South line (standard 1980 feet setback with 150 feet flexibility) without penalty. However, if Read and Stevens elects to drill their proposed unorthodox location, in order to protect the correlative rights of UMC, the well should be assessed a production penalty.

(14) Applicant testified that it expects the Harris Federal Well No. 11 to initially produce at a rate of approximately 1,500 MCF gas per day.

(15) A production penalty of 50 percent, which is based upon the well's distance from the common lease line relative to the White State Well No. 2's distance from the common lease line, is fair and reasonable and should be adopted in this case.

The standard penalty is based on the distance from the common boundary; or in a case such as this where two sections have different set-back requirements, the penalty is based on the relative distance each well is from the lease line. Having a standard formula for a penalty for crowding a common boundary has provided predictability and consistency for industry and is an important tool in protecting correlative rights.

(16) Approval of the subject application with a 50 percent production penalty will afford the applicant the opportunity to produce its just and equitable share of the gas in the affected pool, will prevent the economic loss caused by the drilling of unnecessary wells, avoid the augmentation of risk arising from the drilling of an excessive number of wells, and will otherwise prevent waste and protect correlative rights.

(17) The production penalty should be applied towards the Harris Federal Well No. 11's ability to produce into a pipeline as determined from a deliverability test to be conducted on the well on a semi-annual basis.

(18) The applicant should advise the supervisor of the Artesia district office of the Division of the date and time of conductance of the above-described production test(s) in order that they may be witnessed.

IT IS THEREFORE ORDERED THAT:

(1) The applicant, Read & Stevens, Inc., is hereby authorized to drill its Harris Federal Well No. 11 at an unorthodox gas well location at a minimum distance of 1830 feet from the South line without penalty or 990 feet from the South line and 1980 feet from the West line (Unit N) of Section 26, Township 15 South, Range 27 East, NMPM, to test the Pennsylvanian formation, Buffalo Valley-Pennsylvanian Gas Pool, Chaves County, New Mexico with the assessment of a production penalty of 50 percent. The production penalty shall be applied towards the well's ability to produce into a pipeline as determined from a deliverability test to be conducted on the well on a semi-annual basis.

(2) The S/2 of Section 26 shall be simultaneously dedicated to the aforesaid Harris Federal Well No. 11 and to the existing Harris Federal Well No. 4, located at a standard gas well location 990 feet from the South and East lines (Unit P) of Section 26 in the Buffalo Valley-Pennsylvanian Gas Pool.

(3) The applicant shall advise the supervisor of the Artesia district office of the Division of the date and time of conductance of the above-described production test(s) in order that they may be witnessed if Read and Stevens drills the Harris Federal No. 11 at the penalized location.

(4) Jurisdiction is hereby retained for the entry of such further orders as the Commission may deem necessary.

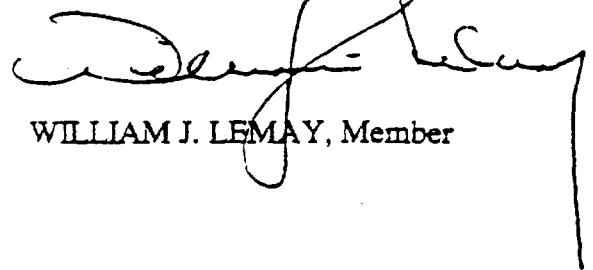
DE NOVO
CASE NO. 11514
Order No. R-10622-A
Page -9-

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION



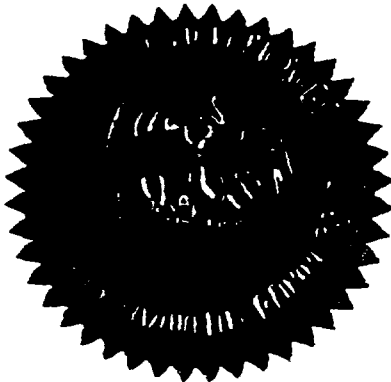
JAMI BAILEY, Member



WILLIAM J. LEMAY, Member

LORI WROTENBERY, Chairman

Commissioner Wrotenberry was not on the Commission when this Case was heard on October 30, 1997, and did not participate in the adoption of additional findings on remand.



S E A L

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

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

CASE NO. 11514 (DeNovo)
Order No. R-10622-A

APPLICATION OF READ & STEVENS, INC.
FOR AN UNORTHODOX INFILL GAS WELL LOCATION
AND FOR SIMULTANEOUS DEDICATION,
CHAVES COUNTY, NEW MEXICO

READ & STEVENS, INC.'S
PROPOSED ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9:00 a.m. on October 29, 1996, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission".

NOW, on this ____ day of November, 1996, the Commission, a quorum being present, having considered the testimony presented and exhibits received at said hearing, and being fully advised in the premises,

FINDS THAT:

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



(2) The applicant, Read & Stevens, Inc. ("Read & Stevens"), seeks approval to drill its Harris Federal Well No. 11 at a location of 990 feet from the South line and 1980 feet from the West line (Unit N) of Section 26, T15S, R27E, to test the Pennsylvanian formation, Buffalo Valley-Pennsylvanian Gas Pool, Chaves County, New Mexico, to be dedicated to a standard 320-acre gas spacing and proration unit consisting of the S/2 of said Section 26.

(3) Read & Stevens is the operator of the existing Harris Federal Well No. 4 (Unit P) and the Harris Federal Well No. 8 (Unit F) which are both lower Pennsylvanian interval gas wells in Section 26 in the Buffalo Valley-Pennsylvanian Gas Pool.

(4) The Buffalo Valley-Pennsylvanian Gas Pool is a prorated gas pool with the following special rules:

Rule 2(a): a standard gas proration unit ("GPU") in the pool contains 320 acres

Rule 2(b): wells shall be located in either the NW/4 or the SE/4 section and shall be no nearer than 990 feet to an outer boundary nor nearer than 330 feet to any interior quarter-quarter section line.

(5) The Read & Stevens' proposed Harris Federal Well No. 11 is at a standard footage location for this pool but because it is to be located in the SW/4 of Section 26 it will be "off-pattern" and will require an exception to Rule 2 of the special rules and regulations of the Buffalo Valley Pennsylvanian Gas Pool.

(6) Matador Petroleum Company, an offset operator, appeared at the hearing in support of Read & Steven's application.

(7) UMC Petroleum Corporation ("UMC") appeared at the hearing in opposition to the applicant.

(8) UMC is the operator of the existing White State Well No. 1 (Unit O) and the White State Well No. 2 (Unit F) both of which are lower Pennsylvanian interval gas wells in Section 35 in the Diamond Mound-Morrow Gas Pool which is not a prorated gas pool and is subject to the following general state-wide rules:

320-acre gas spacing units with wells located not closer than 1980 feet to the end boundary nor closer than 660 feet to the side boundary of its spacing unit.

(9) While Section 26 and Section 35 are in different pools subject to different rules, these four wells are in fact competing among each other for gas reserves from the same common Pennsylvanian volumetric gas drive reservoir.

(10) At the Examiner hearing, Read & Stevens presented geologic interpretations and petroleum engineering estimated drainage areas based upon decline curve analysis and volumetrics from which it contended that:

(a) the existing Harris Federal Well No. 4, located at a standard gas well location within the SE/4 of Section 26, encountered a thinner and less productive portion of the reservoir and as a result, will be unable to adequately drain and develop its proration unit

(b) a well located within the SW/4 of Section 26 should penetrate the Lower Pennsylvanian formation in a thicker and better producing portion of the reservoir; and

(c) applicant's engineering data indicates that there is an area of approximately 94 acres within the SW/4 of Section 26 which will ultimately not be drained by the existing Harris Federal Well Nos 4 and 8.

(11) At the Examiner Hearing, UMC presented geologic interpretations and petroleum engineering estimated drainage areas based upon decline curve analysis from which it contended that:

(a) there remained an estimated 8.42 BCF of gas to be recovered by the existing four wells in Sections 26 and 35;

(b) assuming that the Harris Federal Well No. 11 produced at a rate of 900 MCFGPD, it would affect only the White State Well No. 1 and 2 and would reduce the ultimate recovery of gas from the White State wells in Section 35 by approximately 1.39 BCF.

(c) the Harris Federal Well No. 11 should be restricted to a maximum allowable of 350 MCFGPD (a 65 % penalty) while allowing the White State Well No 2 to produce unrestricted at an estimated rate in excess of 1000 MCFGPD.

(12) At the time of the Examiner hearing, neither Read & Stevens nor UMC attempted to utilize petroleum engineering calculations in order to verify the accuracy of their respective geological interpretations of the size and shape of the reservoir presented to the Examiner

(13) Neither Read & Stevens nor UMC presented to the Examiner any estimates of original gas in place or current gas in place for Section 26 and for Section 35.

(14) Pursuant to Section 70-2-33.H. NMSA (1978) it is essential that estimates of original gas in place and current gas in place for Section 26 and for Section 35 be presented to the Division in order to afford each owner an opportunity to produce its share of recoverable gas by determining the percentage of recoverable gas underlying each tract in relation to the amount of recoverable gas remaining to be recovered from all affected tracts.

(15) In the absence of such evidence, the Division found that:

(a) the Harris Federal Well No. 4 will not adequately drain and develop the S/2 of Section 26;

(b) it is highly likely that the Harris Federal Well No. 8 has drained a portion of the SW/4 of Section 26, however, the engineering evidence presented is not sufficient to determine whether this well can ultimately recover all of the remaining gas reserves within this quarter section;

(c) drainage of the SW/4 of Section 26 from the White State Well No. 2 is likely occurring;

(d) the correlative rights of Read & Stevens may be impaired if it is not allowed to drill a well

within the SW/4 of Section 26 to recover gas reserves which may ultimately not be recovered by its existing wells.

(16) The Division Examiner, without evidence from which to determine if the Read & Steven's Harris 11 would adversely affected UMC, imposed a 50 % production penalty on the Harris 11 well.

(17) At the Commission hearing, Read & Stevens presented the testimony of a consulting petroleum engineer who had completed a reservoir study of an area of 9,600 acres including volumetric analysis of gas in place, decline curve analysis of estimated ultimate recovery, and a reservoir simulation of the expected performance of all existing wells, both with and without the proposed Harris 11 well. who concluded that:

(a) there was an estimated 86 BCF of gas originally in place within a study area containing 9,600 acres and covering some 22 wells including the four subject wells:

(b) UMC's geologic interpretation presented to the Examiner showed a reservoir which originally contained only 80 BCF of gas in place which was too small to contain the estimated 86 BCF of gas in place determined by petroleum engineering calculations:

(c) Read & Stevens' geologic interpretation submitted to the Examiner was too large:

(d) Read & Stevens introduced to the Commission its revised geologic interpretation which contains an estimated 86 BCF of gas originally in place and therefore "balances" with petroleum engineering estimates:

(e) based upon decline curve analysis, the estimated ultimate recovery for Section 26 and Section 35 will be 22.90 BCF of gas with individual well recoveries as follows:

Harris 8	8.0 BCF
Harris 4	0.7 BCF
White State 1	5.2 BCF
White State 2	9.0 BCF

(f) currently, there is 10.5 BCF of gas in place with 6.2 BCF allocated to Section 26 and 4.3 BCF allocated to Section 35;

(g) Section 26 currently has 6.2 BCF of gas in place of which 5.0 BCF is recoverable;

(h) Section 35 currently has 4.3 BCF of gas in place of which 3.4 BCF is recoverable;

(i) without the Harris Federal Well No. 11, the two existing Read & Stevens wells will only recovery 2.5 BCF from Section 26 resulting in a "loss" of 2.5 BCF of gas;

(j) without the Harris Federal Well No. 11, the two UMC wells will recover 6.4 BCF of gas or 3.0 BCF of gas **more** than the 3.4 BCF of gas currently recoverable from Section 35;

(k) **with** the Harris Well No. 11, Section 26 will recover only 4.9 BCF of its 5.0 BCF remaining recoverable gas attributed to Section 26 and **therefore no penalty is necessary**;

(l) **with** the Harris Well No. 11, Section 35 will still recover 6.1 BCF which is 2.7 BCF more than the 3.4 BCF remaining recoverable gas attributed to Section 35.

(18) At the Commission hearing, UMC presented the testimony of a petroleum engineer who had made volumetric estimates of gas in place, and prepared decline curves estimates of ultimate recovery and who concluded that:

(a) an ultimate recovery of 23.70 BCF of gas (compared to 22.90 BCF of gas calculated by Read & Stevens) for Section 26 and 35 based upon decline curve analysis as follows:

Harris 8	9.6 BCF
Harris 4	0.6 BCF
White State 1	5.1 BCF
White State 2	8.4 BCF

:

(b) volumetric estimates of original gas in place of 22.08 BCF for Sections 26 and 35 with 11.8 BCF for Section 26 and 10.2 BCF for Section 35;

(c) the White State wells are expected to recover 3.0 BCF of gas more than UMC had estimated were in place for Section 35;

(d) that UMC had not made any estimates of current gas in place for either Section 26 and 35 but if it had done so, UMC would have used a method similar to that utilized by Read & Stevens' expert petroleum engineer;

(e) the Commission should affirm the Examiner order and retain the 50 % production penalty of the Harris Federal Well No. 11;

(19) Commission finds that Read & Stevens' reservoir study introduced at the Commission hearing has been adequately verified and validated by history matching and accurately forecasts performance and should be relied upon by the Commission in reaching a decision in this case.

(20) The Commission further finds that:

(a) Read & Stevens' reservoir engineering study which was not available to the Division Examiner, demonstrates the necessity for approving the proposed Read & Stevens' Harris Federal Well No. 11 at its proposed location, **without a penalty**, in order to afford Read & Stevens the opportunity to produce its just and equitable share of the remaining recoverable gas to which it is entitled and thereby protect correlative rights.

(b) Read & Stevens' reservoir engineering study which was not available to the Division Examiner, demonstrates the necessity for approving the proposed Read & Stevens' Harris Federal Well No. 11 at its proposed location, **without a penalty**, in order to recover an additional 500 MMCF of gas which would not otherwise be recovered thereby preventing waste.

IT IS THEREFORE ORDERED THAT:

(1) The applicant, Read & Stevens, Inc., is hereby authorized to drill its Harris Federal Well No. 11 at an unorthodox gas well location 990 feet from the South line and 1980 feet from the West line (Unit N) Section 26, Township 15 South, Range 27 East, NMPM, Chaves County, New Mexico.

(2) The S/2 of Section 26 shall be simultaneously dedicated to the aforesaid Harris Federal Well No. 11 and the existing Harris Federal Well No. 4, located at a standard gas well location 990 feet from the South and East lines (Unit P) of Section 26 in the Buffalo Valley-Pennsylvanian Gas Pool.

(3) Jurisdiction is hereby retained for the entry of such further orders as the Commission may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

JAMIE BAILEY, Member

WILLIAM W. WEISS, Member

WILLIAM J. LEMAY, Chairman
and Secretary

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF CHAVES
STATE OF NEW MEXICO

ENDORSED COPY:
ORG. FILED DIST. COURT

MAY 29 1998

BEE J. CLEM, CLERK

READ & STEVENS, INC., and
MATADOR PETROLEUM CORPORATION,

Petitioners,

vs.

CV-97-29

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,
and UMC PETROLEUM CORPORATION,

Respondents.

ORDER DISMISSING APPEAL

This case involves an application by Read & Stevens to drill the Harris Federal Well No. 11 at an unorthodox gas well location in Chaves County. The Order entered December 29, 1997 sets out the factual background for this dispute. In that Order, I concluded that the Oil Conservation Commission ("Commission") had not made sufficient findings to explain the reasoning behind the imposition of the 50 % production penalty on the Harris 11. The Order remanded the case to the Commission for the entry of additional findings to explain the basis for the production penalty.

After a hearing held on February 26, 1998 the Commission entered an amended Order of the Commission (Order No. R-10622-A). This Order contains the reasoning that led the Commission to affirm the production penalty. The parties presented conflicting testimony concerning the original gas-in place under Section 26 (UMC argued that there was 11.8 BCF, and Read & Stevens argued that there was 18.6 BCF). The Commission concluded that it

could not make a specific finding concerning the original gas-in-place under Section 26, recognizing only that the original gas-in-place is probably a figure closer to 18.6 BCF than to 11.8 BCF. The Commission concluded that production from the Harris 11 would change the equilibrium in production that formerly existed between Section 26 and Section 35. The Commission also concluded that drilling the Harris 11 at a distance of 990 feet from the common lease line would drain gas reserves from under Section 35 if the well was allowed to produce without penalty.

Read & Stevens has appealed from Order No. R-10622-A, raising a number of issues. The main issues appear to be that the Commission was required to make a finding concerning the original gas-in-place under Section 26, that the Commission ignored the limits for production set for Sections 26 and 35, and that there is no such thing as a "standard penalty."

I find these arguments to be unpersuasive. Concerning the claim that the Commission was required to make a finding concerning the original gas-in-place, the Commission set out in some detail its reasons for failing to do so. The Commission concluded that it could not make a specific finding concerning the original gas-in-place under Section 26, in part because (1) Read & Stevens did not present any long-term pressure data to support its claims, and (2) Read & Stevens changed many of the net pay, or net thickness, numbers between the hearing before the Division and the hearing before the Commission. The Commission is required to make findings only to the extent it is practicable to do so. Rutter & Wilbanks Corp. v. Oil Conservation Comm'n., 87 N.M. 286, 532 P.2d 582 (1975) ("When the Commission exercises its duty to allow each interest owner in a pool 'his just and equitable share' of the oil or gas underlying his property, the mandate to determine the extent of those

correlative rights ... is subject to the qualification 'as far as it is practicable to do so.'" 87 N.M. at 292); Grace v. Oil Conservation Comm'n., 87 N.M. 205, 531 P.2d 939 (1975); and Continental Oil Co. v. Oil Conservation Comm'n., 70 N.M. 310, 373 P.2d 809 (1962). Under these circumstances the Commission was not required to make a specific finding on the original gas-in-place under Section 26.

There was conflicting evidence presented to the Commission on the other issues raised by Read & Stevens. The resolution and interpretation of that evidence requires expertise, competence, and specialized knowledge of engineering and geology as possessed by Commission members. Courts are to give special weight to the experience, technical competence and specialized knowledge of the Commission. Santa Fe Exploration Co. v. Oil Conservation Comm'n., 114 N.M. 103, 835 P.2d 819 (1992); Viking Petroleum, Inc. v. Oil Conservation Comm'n., 100 N.M. 451, 672 P.2d 280 (1983). There is substantial evidence to support the other conclusions reached by the Commission.

IT IS THEREFORE ORDERED THAT the appeal of Read & Stevens is hereby DISMISSED with prejudice.


WILLIAM P. LYNCH
DISTRICT JUDGE

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

James Bruce
P.O. Box 1056
Santa Fe, NM 87504

Marilyn Hebert
2040 S. Pacheco
Santa Fe, NM 87505

STATE OF NEW MEXICO
COUNTY OF CHAVES
FIFTH JUDICIAL DISTRICT COURT

ENDORSED COPY
ORG. FILED DIST. COURT

APR 02 1998

BEE J. CLEM, CLERK

READ & STEVENS, INC. and
MATADOR PETROLEUM CORP.

Petitioners,

vs.

No. CV 97-29

OIL CONSERVATION COMMISSION.
OF THE STATE OF NEW MEXICO, and
UMC PETROLEUM CORP.,
Respondents.

AMENDED NOTICE OF HEARING

To:

Marilyn S. Hebert
2040 South Pacheco
Santa Fe, NM 87505

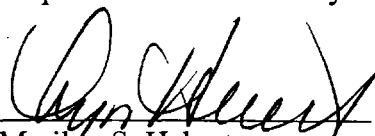
James Bruce
P.O. Box 1056
Santa Fe, NM 87504

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

At the request of counsel for the New Mexico Oil Conservation Commission and with the concurrence of all counsel of record, YOU ARE HEREBY NOTIFIED that Oral Argument of this matter originally set for May 7, 1998 is vacated and rescheduled for **Monday, May 18, 1998** at **9:00 am** before the Honorable William P. Lynch at the Chaves County Courthouse, 401 N. Main, Roswell, NM 88201

Authorized telephonically March 31, 1998
Kay Matson
Deputy Clerk/Administrative Assistant

Prepared and submitted by


Marilyn S. Hebert

**STATE OF NEW MEXICO
COUNTY OF CHAVES
FIFTH JUDICIAL DISTRICT COURT**

RECEIVED COPY:
DISTRICT COURT

MAR 25 1998

BEE J. CLEM, CLERK

**MATADOR PETROLEUM CORPORATION, Plaintiff
READ & STEVENS INC, Plaintiff**

vs.

**OIL CONSERVATION COMMISSION/NM, Defendan
UMC PETROLEUM CORPORATION, Defendant**

Case Number: D-0504-CV-0097000029

Dated: March 25, 1998

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above cause will be called for Hearing before the Honorable WILLIAM P LYNCH, as indicated:

TIME: 2:00 PM DATE: Thursday, May 7, 1998

**PLACE: ROSWELL 5TH JUDICIAL DISTRICT, 401 NORTH MAIN, PO BOX 1776,
ROSWELL, NM.**

Nature Of Hearing: ORAL ARGUMENT.

COMMENTS:

If this hearing requires more or less time than the court has designated, or if this hearing conflicts with any prior settings, please contact us immediately as continuances will not be granted on late notice. The District Court complies with the Americans with Disabilities Act. Counsel or PRO SE persons must notify the Clerk of the Court of the nature of the disability at least five (5) days before ANY hearing so appropriate accomodations may be made. The same requirement applies if an interpreter will be needed.

BEE J. CLEM

CLERK OF THE DISTRICT COURT

By:  DEPUTY CLERK/ADMINISTRATIVE ASSISTANT

*Kay Ma-son
624-0859*

*3/31 - called Jim, left message
" Jim.
May 18, 9th*

**MARILYN S. HEBERT
2040 S PACHECO ST
SANTA FE NM 87505-5472**

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

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

**DE NOVO
CASE NO. 11514
Order No. R-10622-A**

**APPLICATION OF READ & STEVENS INC.
FOR AN UNORTHODOX INFILL GAS WELL
LOCATION AND SIMULTANEOUS DEDICATION,
CHAVES COUNTY, NEW MEXICO.**

ORDER OF THE COMMISSION

BY THE DIVISION:

This cause came on before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission" from remand from District Court for additional findings. (New findings are in bold).

NOW, on this 26th day of February, 1998, the Commission, a quorum being present, having considered the testimony, the exhibits received at said hearing, and being fully advised in the premises,

FINDS THAT:

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

(2) The applicant, Read & Stevens, Inc., seeks approval to drill its Harris Federal Well No. 11 at an unorthodox gas well location 990 feet from the South line and 1980 feet from the West line (Unit N) of Section 26, Township 15 South, Range 27 East, NMPM, to test the Pennsylvanian formation, Buffalo Valley-Pennsylvanian Gas Pool, Chaves County, New Mexico.

(3) The applicant further proposes to simultaneously dedicate the proposed Harris Federal Well No. 11 and its existing Harris Federal Well No. 4, located at a standard gas well location 990 feet from the South and East lines (Unit P) of Section 26, to a standard 320-acre gas spacing and proration unit in the Buffalo Valley-Pennsylvanian Gas Pool comprising the S/2 of Section 26.

(4) Matador Petroleum Company, an offset operator, appeared at the hearing in support of Read & Stevens, Inc.'s application.

(5) UMC Petroleum Corporation (UMC), operator of the following described Diamond Mound-Morrow Gas Pool producing wells in Section 35, Township 15 South, Range 27 East, appeared at the hearing as an affected offset operator in opposition to the application:

White State Well No. 1, located 660 feet from the South line and 1980 feet from the East line (Unit O), said well currently dedicated to the S/2 of Section 35; and,

White State Well No. 2, located 1980 feet from the North and West lines (Unit F), said well currently dedicated to the N/2 of Section 35.

(6) The proposed Harris Federal Well No. 11 is located within the Buffalo Valley-Pennsylvanian Gas Pool which is a prorated gas pool currently governed by the General Rules for the Prorated Gas Pools of New Mexico/Special Rules and Regulations for the Buffalo Valley-Pennsylvanian Gas Pool as contained within Division Order No. R-8170, as amended, which require standard 320-acre gas spacing and proration units with wells to be located in the NW/4 or SE/4 of a standard section no closer than 990 feet from the outer boundary of the quarter section nor closer than 330 feet from any governmental quarter-quarter section line or subdivision inner boundary.

(7) The proposed Harris Federal Well No. 11 is standard with respect to the setback requirements, but is unorthodox with respect to the quarter section location requirement.

(8) In addition to the Harris Federal Well No. 4, applicant currently operates the Harris Federal Well No. 8, located at a standard gas well location in Unit F of Section 26. The N/2 of Section 26 is currently dedicated to this well.

(9) Both the applicant and UMC presented geologic evidence and testimony in support of their respective positions. This geologic evidence and testimony is generally in agreement that:

- a) the Buffalo Valley-Pennsylvanian and Diamond Mound-Morrow Gas Pools, in the area of Sections 26 and 35, represent a single common source of supply in the Pennsylvanian formation;

- b) the Lower Pennsylvanian interval being produced in the Harris Federal Well Nos. 4 and 8 and the White State Well Nos. 1 and 2 is a correlatable channel sand which traverses Sections 26 and 35 in a north-south direction;
- c) the reservoir sand has its axis transversing and maximum buildup within both Sections 26 and 35;
- d) applicant's Harris Federal Well No. 8, which encountered approximately 30 feet of net sand, and UMC's White State Well No. 2, which encountered approximately 22 feet of net sand within the reservoir, are the best producing wells within Sections 26 and 35, respectively;
- e) applicant's Harris State Well No. 4 and UMC's White State Well No. 1 each encountered less than 10 feet of net pay sand, which places these wells on the flank of the main axis of sand buildup.
- f) the Harris Federal Well No. 11, which will be completed in the Lower Pennsylvanian interval, is projected to encounter between 22-30 feet of net sand in the reservoir.

(10) Both parties presented engineering evidence and testimony with regards to calculated gas-in-place under Sections 26 and 35 and estimated ultimate recoveries for the wells in Sections 26 and 35. The engineering evidence is generally in agreement for estimated ultimate recoveries, but there is disagreement concerning the calculated gas-in-place under Section 26.

ESTIMATED ULTIMATE RECOVERY

UMC Petroleum Corporation

Read and Stevens

Well Name

Harris Fed. No. 8	9.6 BCFG	8.0 BCFG
Harris Fed. No. 4	0.6 BCFG	0.7 BCFG
White State No. 1	5.1 BCFG	5.2 BCFG
White State No. 2	8.4 BCFG	9.0 BCFG

ORIGINAL GAS-IN-PLACE (BCF)

UMC Petroleum Corporation

Read and Stevens

Section

26	11.8	18.6
35	10.2	12.9

The significance of the variation in gas-in-place relates to the percentage of gas-in-place recovered by existing wells and projected to be recovered in the future and the inference that allowing Read and Stevens to drill their proposed well would allow them to drain gas reserves from under Section 35 (UMC's position).

Conversely Read and Stevens maintains that the only way for Read and Stevens to recover the gas-in-place under Section 26 is to drill their proposed Harris Federal Well No. 11. Accepting that 18.6 BCF is the gas-in-place under Section 26, the Read and Stevens proposed location would produce only the gas under their tract and not the gas under UMC's acreage in Section 35.

The Read and Stevens analysis had better scientific validity being derived from their "Reservoir Simulation Study", validated by history matching gas production as compared to the UMC study which resulted from planimetered gas-in-place derived from their "Net Sand Thickness Isopach Map".

(11) UMC proposed that the Harris Federal Well No. 11, if allowed to be drilled at the proposed unorthodox location, should be assessed a production penalty of 65 percent or, in the alternative, should be assigned an allowable of 350 MCF gas per day. UMC's proposed allowable is based upon the fact that the proposed Harris Federal Well No. 11 will be located 50 percent closer to the common lease line than its White State Well No. 2, and therefore, should be allowed to produce 50 percent of the White State Well No. 2's current rate of production of 700 MCFGD.

(12) The evidence and testimony presented in this case indicates that:

- a) the Harris Federal Well No. 4, which will ultimately recover only 0.6 BCF of gas, will not adequately drain and develop the S/2 of Section 26;
- b) drainage of the SW/4 of Section 26 from the White State Well No. 2 is likely occurring;

- c) the correlative rights of the applicant may be impaired if it is not allowed to drill a well within the SW/4 of Section 26 to recover gas reserves which may ultimately not be recovered by its existing wells; and,
- d) **The calculated original gas-in-place under Section 26 is probably more than 11.8 BCF but not as much as 18.6 BCF. Even though the Read & Steven's analysis had better scientific validity, the Commission declines to adopt either Read & Stevens' specific calculation or UMC's specific calculation. The evidence presented by UMC cannot be entirely disregarded, and it militates against determining the amount of the original gas-in-place to be as much as 18.6 BCF. Read & Stevens did not present any long-term pressure data to support their claims. Many of the net pay, or net thickness, numbers used by Read & Stevens changed between the time of the Oil Conservation Division examiner hearing (the record of which was incorporated into the Commission hearing) and the Commission hearing. These changes consistently resulted in higher figures for Read & Stevens and lower figures for UMC. Even so, the original gas-in-place is probably a figure closer to 18.6 BCF than 11.8 BCF.**
- e). **The two existing wells in Section 26 are producing one million cubic feet of natural gas per day; the two existing wells in Section 35 are producing one million cubic feet of natural gas per day. The proposed Read & Stevens well is expected to produce over one million a day, so that Read & Stevens with the new well will be producing over two times as much in Section 26 as UMC is producing in Section 35. Thus, the equilibrium that formerly existed between the two sections will be changed.**
- f) **The standard set back for the Buffalo Valley-Pennsylvanian Gas Pool, in which Section 26 is located, is 990 feet from the outer boundary. However, this set back figure is only for wells**

located in either the northwest or southeast quarter of a standard section. Read & Stevens' proposed location is in the southwest quarter, so that the proposed location is unorthodox irrespective of the set back.

- g) The standard set back for the Diamond Mound-Morrow Gas Pool, in which Section 35 is located, is 1980 feet from the outer boundary, and UMC's White State Well No. 2 is located 1980 feet from the outer boundary and is in the northwest quarter.
- h) Read & Steven's proposed unorthodox location is 50% closer to the common boundary with UMC than is UMC's White State Well No. 2 and thus would gain an unfair advantage unless penalized.
- i) While Read & Stevens presented sufficient evidence to prove that a third well located off-pattern in the southwest quarter is required to drain the gas in Section 26, Read & Stevens did not present sufficient evidence to prove that a well located at an equal distance from the common boundary with UMC as UMC's White State Well No. 2 would not drain the Section 26. Therefore, while Read & Stevens has justified a third well to be placed in the southwest quarter of Section 26 to prevent waste, it has not justified crowding its neighbor, UMC in Section 35, without the imposition of a penalty on production to protect UMC's correlative rights. Because Read & Stevens wants to crowd its neighbor by locating this third well 50% closer to the common boundary than UMC's well, Read & Stevens will gain an unfair competitive advantage and the imposition of a penalty is appropriate. Read & Steven's can drill its third well in the southwest quarter without any penalty if the well is at least 1980 feet from the common boundary with UMC.

- j) As there are between 11.8 BCF and 18.6 BCF of gas-in-place under Section 26 and the proposed well will increase production from Section 26 to over two million cubic feet per day, Read & Stevens' proposed location, 50% closer to the common boundary line than UMC's well, will lower daily production and drain some gas reserves from under Section 35 if the proposed well produces without penalty.
- k) by locating the Harris Federal Well No. 11, 990 feet off the common lease line, the applicant will be gaining an advantage over UMC, whose White State Well No. 2 is located 1980 feet off the common lease line.

(13) The applicant should be authorized to drill the Harris Federal Well No. 11 at a location no closer than 1830 feet from the South line (standard 1980 feet setback with 150 feet flexibility) without penalty. However, if Read and Stevens elects to drill their proposed unorthodox location, in order to protect the correlative rights of UMC, the well should be assessed a production penalty.

(14) Applicant testified that it expects the Harris Federal Well No. 11 to initially produce at a rate of approximately 1,500 MCF gas per day.

(15) A production penalty of 50 percent, which is based upon the well's distance from the common lease line relative to the White State Well No. 2's distance from the common lease line, is fair and reasonable and should be adopted in this case.

The standard penalty is based on the distance from the common boundary; or in a case such as this where two sections have different set-back requirements, the penalty is based on the relative distance each well is from the lease line. Having a standard formula for a penalty for crowding a common boundary has provided predictability and consistency for industry and is an important tool in protecting correlative rights.

(16) Approval of the subject application with a 50 percent production penalty will afford the applicant the opportunity to produce its just and equitable share of the gas in the affected pool, will prevent the economic loss caused by the drilling of unnecessary wells, avoid the augmentation of risk arising from the drilling of an excessive number of wells, and will otherwise prevent waste and protect correlative rights.

(17) The production penalty should be applied towards the Harris Federal Well No. 11's ability to produce into a pipeline as determined from a deliverability test to be conducted on the well on a semi-annual basis.

(18) The applicant should advise the supervisor of the Artesia district office of the Division of the date and time of conductance of the above-described production test(s) in order that they may be witnessed.

IT IS THEREFORE ORDERED THAT:

(1) The applicant, Read & Stevens, Inc., is hereby authorized to drill its Harris Federal Well No. 11 at an unorthodox gas well location at a minimum distance of 1830 feet from the South line without penalty or 990 feet from the South line and 1980 feet from the West line (Unit N) of Section 26, Township 15 South, Range 27 East, NMPM, to test the Pennsylvanian formation, Buffalo Valley-Pennsylvanian Gas Pool, Chaves County, New Mexico with the assessment of a production penalty of 50 percent. The production penalty shall be applied towards the well's ability to produce into a pipeline as determined from a deliverability test to be conducted on the well on a semi-annual basis.

(2) The S/2 of Section 26 shall be simultaneously dedicated to the aforesaid Harris Federal Well No. 11 and to the existing Harris Federal Well No. 4, located at a standard gas well location 990 feet from the South and East lines (Unit P) of Section 26 in the Buffalo Valley-Pennsylvanian Gas Pool.


(3) The applicant shall advise the supervisor of the Artesia district office of the Division of the date and time of conductance of the above-described production test(s) in order that they may be witnessed if Read and Stevens drills the Harris Federal No. 11 at the penalized location.

(4) Jurisdiction is hereby retained for the entry of such further orders as the Commission may deem necessary.

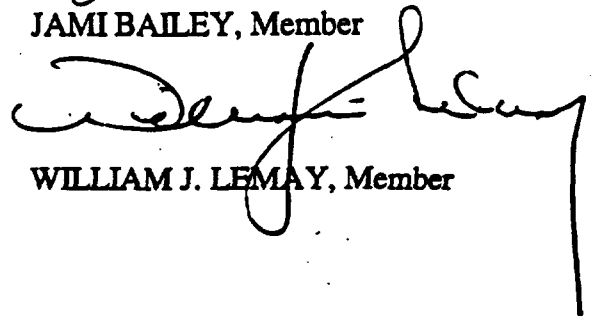
DE NOVO
CASE NO. 11514
Order No. R-10622-A
Page -9-

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

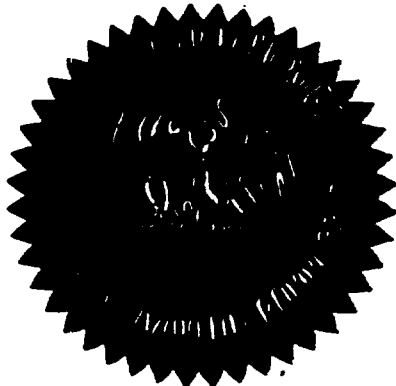


JAMI BAILEY, Member



WILLIAM J. LEMAY, Member

LORI WROTENBERY, Chairman



S E A L

Commissioner Wrotenberry was not on the Commission when this Case was heard on October 30, 1997, and did not participate in the adoption of additional findings on remand.

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

FACSIMILE

W. THOMAS KELLAHIN*

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

JASON KELLAHIN (RETIRED 1991)

TELEPHONE (505) 982-4285

TELEFAX (505) 982-2047

DATE: March 18, 1998
TIME: 2:00 PM

NUMBER OF PAGE -3-

TO: James Bruce, Esq.
OF: Bruce Law Firm
FAX NO: (505) 982-2151TO: Lyn Hebert, Esq.
OF: Oil Conservation Commission
FAX NO: (505) 827-8177

REF: NMOCD CASE 11514

REF: Read & Stevens v. Oil Conservation Commission
Chaves County Cause CV-97-29

Dear Counsel:

Attached is a copy of the Motion requesting another oral argument in this case.

Very truly yours,


W. Thomas Kellahin

This information contained in this Facsimile Message and Transmission is **ATTORNEY PRIVILEGED AND CONFIDENTIAL** information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is **strictly prohibited**. If you have received this Facsimile in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service.

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

W. THOMAS KELLAHIN*

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

JASON KELLAHIN (RETIRED 1991)

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

March 17, 1998

FEDERAL EXPRESS

Honorable William P. Lynch
District Court Judge
Chaves County Courthouse
401 N. Main
Roswell, New Mexico 88201

Re: *Read & Stevens vs Oil Conservation Commission*
CV-97-29
Case No. 11514 (DeNovo)
Commission Order R-10622
Application of Read & Stevens, Inc.
for an unorthodox well location,
Chaves County, New Mexico.

Dear Judge Lynch:

Please find enclosed our request for oral argument concerning the Commission's supplemental findings in this matter.

Very truly yours,



W. Thomas Kellahin

cc: *Bee J. Clem, District Court Clerk*
cc: *James Bruce, Esq.*
cc: *Lyn Hebert, Esq.*

**STATE OF NEW MEXICO
COUNTY OF SAN JUAN
FIFTH JUDICIAL DISTRICT**

**READ STEVENS, INC. and
MATADOR PETROLEUM CORPORATION,**

Petitioners

vs

No. 05-04-CV-97-00029

**OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,
and UMC PETROLEUM CORPORATION,
Respondents,**

**MOTION TO SCHEDULE
ORAL ARGUMENT**

Read & Stevens, Inc. and Matador Petroleum Corporation hereby move the Court to schedule additional oral argument in this case and as grounds therefore states:

(1) On December 29, 1997, the Court entered its order reversing and remanding this administrative appeal back to the New Mexico Oil Conservation Commission ("Commission") for the entry of additional findings because the Commission had failed to explain its reasoning behind the imposition of the 50% production penalty on Read & Stevens Harris Well No. 11 as set forth in Commission Order R-10622 dated December 12, 1996. The Court concluded that "Without further findings on this issue, it is impossible to determine whether there is substantial evidence to support the production penalty; or whether the imposition of the production penalty was arbitrary and capricious by the Commission."

(2) On February 26, 1998, the Commission, in a closed meeting, adopted additional findings in an effort to explain why it had imposed the 50% production penalty.

*no -
adopted
in open
mtg.*

(3) On March 12, 1998, the Commission released Order R-10622-A, dated February 26, 1998 which contains in bold type the additional findings.

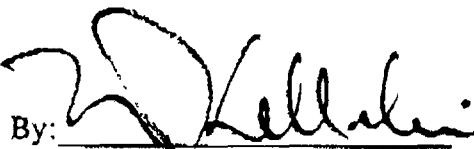
(4) On March 16, 1998, Petitioners filed its Application for Rehearing with the Commission in which Petitioners' contest these supplemental findings because the imposition of the production penalty was an arbitrary and capricious action by the Commission. See Exhibit "A" attached.

(5) On March 13, 1998, the Commission forwarded its supplemental findings to the Court.

(6) Petitioners have sought and obtained the concurrence of opposing counsel for the opportunity for each party to present arguments to the Court concerning the Commission's supplemental findings.

Wherefore, Petitioner's hereby request that the Court schedule an oral argument concerning the Commission's supplemental findings in this matter.

Respectfully submitted by:



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

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing motion was transmitted by facsimile this 17th of March, 1998 to the office of:

• James Bruce, Esq.
• P. O. Box 1056
Santa Fe, New Mexico 87504

Lyn Hebert, Esq.
Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505


W. Thomas Kellahin

MEMORANDUM

To: Bill LeMay

From: Lyn Hebert

Date: February 18, 1998

Re: Read & Stevens et al. v. OCC et al.

Attached are copies of:

1. Judge Lynch's Order
2. The Commission's Order
3. proposed findings pursuant the Judge's Order

The Judge seemed concerned about two things: the fact that the Commission did not explicitly accept either Read & Stevens' or UMC's specific figure for the gas-in-place; and whether and how upsetting the equilibrium of each section currently producing 1 MMCF/day related to the imposition of a penalty. Dave Catanach did not think the equilibrium factor was relevant, but even if that is so, I don't think we want to state it so bluntly in these proposed findings.

It seems I have said the same thing over and over in these proposed findings, but I was trying to make this as clear as possible. Call me when you have a chance 827-1364. Thank you.

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT**

**OIL CONSERVATION DIVISION
ARTESIA DISTRICT OFFICE**

GARY E. JOHNSON
GOVERNOR

JENNIFER SALISBURY
CABINET SECRETARY

7/27/98

James Bruce
P.O. BOX 1056
Santa Fe, NM 87501

Re: Harris Fed. Well No. 11

ml
Dear Bruce:

51M
Sorry about the delayed response to your letter of the above referenced well, it just got lost in the paper mill.

The only record we have on file is the initial test, which is attached. Read & Stevens has been requested to run the required deliverability test as per the Order No. R-10622-A.

Very truly yours,

Tim W. Gum
TIM W. GUM
DISTRICT II SUPERVISOR
OIL CONSERVATION DIVISION

**FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF CHAVES**

FIFTH JUDICIAL DISTRICT
CHAVES COUNTY, NM
FILED

97 SEP 24 AM 11:17

BEE J. CLEM
CLERK DISTRICT COURT

**READ & STEVENS, INC. and
MATADOR PETROLEUM CORPORATION,
Petitioners,**

vs.

No. CV-97-29

**OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,
and UMC PETROLEUM CORPORATION,
Respondents.**

AMENDED NOTICE OF HEARING

TO: W. T. Kellahin	Marilyn Hebert	James Bruce
P. O. Box 2265	2040 S. Pacheco	P. O. Box 1056
Santa Fe, NM 87504	Santa Fe, NM 87505	Santa Fe, NM 87504

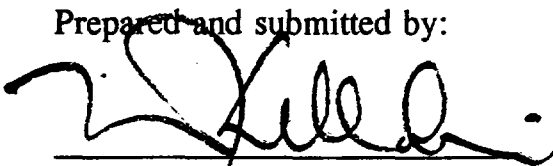
At the request of counsel for Read & Stevens and with the concurrence of all counsel of record, YOU ARE HEREBY NOTIFIED that Oral Argument of this matter originally set for October 8, 1997 is vacated and rescheduled for Tuesday, October 21, 1997 at 9:00 am before the Honorable William P. Lynch at the Chaves County Courthouse, 401 N. Main, Roswell, NM 88201.

authorized telephonically 9/18/97

Kay Matson

Trail Court Administrative Assistant

Prepared and submitted by:


William T. Kellahin

**FIFTH JUDICIAL DISTRICT COURT
COUNTY OF CHAVES
STATE OF NEW MEXICO**

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DEC 29 1997

BEE J. CLEM, CLERK

**READ & STEVENS, INC., and
MATADOR PETROLEUM CORPORATION,**

Petitioners,

vs.

CV-97-29

**OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,
and UMC PETROLEUM CORPORATION,**

Respondent.

ORDER

Read & Stevens applied to drill the Harris Federal Well No. 11 at an unorthodox gas well location in the SW/4 of Section 26, Township 15 South, Range 27 East in Chaves County. Read & Stevens claimed that 2 wells operated by UMC Petroleum Corporation ("UMC") in Section 35 were draining gas from Section 26. The Oil Conservation Division approved Read & Stevens' application to drill the Harris 11, but imposed a 50 % production penalty on the well's ability to produce gas. Read & Stevens appealed the Division Order to the Oil Conservation Commission ("Commission"), which affirmed. Read & Stevens appeals the penalty imposed on the Harris 11, raising a number of related issues. Because I find that the Commission failed to explain the reasoning behind the imposition of the 50 % production penalty in its Order, I will reverse and remand this matter to the Commission for entry of additional findings on this issue.

I. Factual Background.

Read & Stevens operates the Harris 4 and Harris 8 wells in Section 26. Section 26 is located within the Buffalo Valley-Pennsylvanian Gas Pool, which is a prorated gas pool governed by rules and regulations issued by the Commission. These rules and regulations require 320 acre gas spacing and proration units, with wells to be located in the NW/4 or SE/4 of a standard section, and located not closer than 990 feet from the outer boundary of the quarter section.

UMC operates the White State No. 1 and No. 2 wells in Section 35, which is directly south of Section 26. Section 35 is located in the Diamond Mound-Morrow Gas Pool, which is not a prorated pool, but is governed by rules and regulations issued by the Commission. Wells in this gas pool may not be located closer than 1980 feet to the end boundary of the spacing unit.

A hearing was held before the Commission on October 29, 1996. Both Read & Stevens and UMC presented expert testimony on whether Read & Stevens should be allowed to drill the Harris 11, and whether a production penalty was appropriate if the Harris 11 was drilled. The Commission found that while Sections 26 and 35 are in different pools, the four wells in these sections are competing with each other for gas reserves from the same common Lower Pennsylvanian interval. In Finding 10, the Commission summarized some of the disputes in the evidence presented by the parties, and found that the study prepared by Read & Stevens had better scientific validity as compared to the UMC study. In Finding 12, the Commission found that the Harris 4 will not adequately drain and develop the S/2 of Section 26, that drainage of the SW/4 of Section 26 from the White State 2 is likely

occurring, and that Read & Stevens' correlative rights may be impaired if it is not allowed to drill the Harris 11 in the SW/4 of Section 26. The Commission further found that Read & Stevens would gain an advantage over UMC by locating the Harris 11 990 feet off the common lease line because the White State 2 is located 1980 feet off the lease line, and imposed a production penalty of 50 % based on the relative distances of the wells to the common lease line.

II. Standard of Review.

The findings made by the Commission must address the facts which are material to the issues presented. The findings must also disclose the reasoning of the Commission in reaching its conclusion. Viking Petroleum, Inc. v. Oil Conservation Comm'n., 100 N.M. 451, 672 P.2d 280 (1983); Fasken v. Oil Conservation Comm'n., 87 N.M. 292, 532 P.2d 588 (1975). On appeal, a court will review the evidence in the whole record to determine whether there is substantial evidence to support the Commission's conclusions. The evidence will be viewed in the light most favorable to upholding the agency determination, but conflicting evidence will not be completely disregarded. Special weight will be given to the experience, technical competence and specialized knowledge of the Commission. An administrative decision is arbitrary and capricious if the agency did not proceed in the manner required by law, the order is not supported by the findings, the findings are not supported by the evidence, or the decision is contrary to logic and reason. Santa Fe Exploration Co. v. Oil Conservation Comm'n., 114 N.M. 103, 835 P.2d 819 (1992); Viking Petroleum, Inc. v. Oil Conservation Comm'n., *supra*.

III. The Commission Has Not Adequately Explained the Reasoning Behind the Production Penalty.

11.8
3.4
15.2

18.6
11.8
26.8
3.4

In Finding 10, the Commission recognized that the expert testimony was generally in agreement concerning the estimated ultimate recovery for the 4 wells, but that there was disagreement concerning the calculated original gas-in-place under Section 26. UMC presented expert testimony that there was 11.8 BCF of gas-in-place under Section 26, while Read & Stevens presented testimony that there was 18.6 BCF. The Commission succinctly summarized the positions advanced by both parties: if there was 11.8 BCF present, there was an inference that allowing Read & Stevens to drill the Harris 11 would allow Read & Stevens to drain gas reserves from under Section 35; if there was 18.6 BCF present, the Harris 11 would produce only the gas under Section 26 and would not drain gas from Section 35.


being a penalty

The Commission did not explicitly adopt either estimate of original gas-in-place. I believe that the Commission implicitly adopted the Read & Stevens estimate of 18.6 BCF by recognizing that the Read & Stevens study had better scientific validity than the UMC study, and by approving the drilling of the Harris 11 in the SW/4 of Section 26 to prevent drainage by the White State 2. UMC agrees that the Commission accepted the original gas-in-place calculations presented by Read & Stevens, while the Commission apparently contends that it adopted the UMC estimate of 11.8 BCF. See Answer Brief of UMC, FN 6 at p. 12; Answer Brief of Commission, p. 8-9.

Because the Commission did not explicitly adopt either estimate for original gas-in-place, it is difficult to determine the reasoning behind the production penalty. If the Commission adopted the UMC estimate of 11.8 BCF, I believe that it would have denied the

application to drill the Harris 11. If it adopted the Read & Stevens estimate of 18.6 BCF, the Commission needed to make further findings concerning the basis for the production penalty. There was testimony presented concerning the estimate of initial production from the Harris 11, and its decline over time (T.P. 49-50, 89-90, 96). UMC argued that the wells in Section 26 and Section 35 were both producing approximately 1 million MCF per day, and that production from the Harris 11 would upset this equilibrium. (T.P. 89-90). Although the Commission found that the Harris 11 was expected to initially produce approximately 1.500 MCF of gas per day, the Commission made no further findings concerning upsetting the equilibrium in production. Without further findings on this issue, it is impossible to determine whether there is substantial evidence to support the production penalty, or whether the imposition of the production penalty was an arbitrary and capricious decision by the Commission.

IT IS THEREFORE ORDERED that this case is remanded to the Commission for entry of additional findings concerning imposition of the production penalty.


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DISTRICT JUDGE

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FIFTH JUDICIAL DISTRICT
COUNTY OF CHAVES
STATE OF NEW MEXICO

READ & STEVENS, INC. and
MATADOR PETROLEUM CORP.,

Petitioners,

vs.

No. CV 97-29

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO, and
UMC PETROLEUM CORP.,

Respondents.

**ANSWER BRIEF OF THE
NEW MEXICO OIL CONSERVATION COMMISSION
Respondent**

Appeal from the New Mexico Oil Conservation Commission

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SUMMARY OF PROCEEDINGS

Petitioner Read & Stevens, Inc. ("Read & Stevens") applied to the Oil Conservation Division ("Division") for an unorthodox gas well location for the Harris Federal Well No. 11 ("Harris Well") pursuant to NMSA 1978, § 70-2-12 (1996 Supp.). Following a hearing on the merits on May 16, 1996, the Division approved the Read & Stevens's requested unorthodox location for the Harris Well, but the Division imposed a fifty percent production penalty on the Harris Well. The penalty restricts production of the well to fifty percent of its full daily production.

Read & Stevens, Inc. appealed the Division order to the Oil Conservation Commission ("Commission") pursuant to NMSA 1978, § 70-2-13 (Repl. Pamp. 1995). The Commission held a *de novo* hearing on October 29, 1996. The Commission entered its Order R-10622 ("Order") on December 12, 1996. The Order approved the unorthodox location and imposed a fifty percent production penalty of the Harris Well.

Read & Stevens filed its Application for Rehearing with the Commission. The Commission did not act on the application, and it was therefore deemed denied pursuant to NMSA 1978, § 70-2-25 (Repl. Pamp. 1995). Read & Stevens then appealed to the District Court pursuant to Rule 1-074 NMRA 1997.

ARGUMENT

I. The Commission Did Not Violate Read & Stevens's Correlative Rights

The Commission made sufficient findings of fact in its order permitting the unorthodox well location requested by Read & Stevens to protect both Read & Stevens's and UMC's correlative rights. Read & Stevens simply misstates the law and the facts by stating that the Commission "...forgot to make the essential finding of the volume of remaining recoverable gas and how that gas volume is allocated between Sections 26 and 35." (Brief in chief, p. 12) Read & Stevens states that the Commission "failed to comply" with NMSA 1978, § 70-2-33(H); however, this section is the definition section of the Act and imposes no duties on the Commission. (Brief in chief, p. 11)

Read & Stevens confuses the statutory requirements of the Commission in ordering the equitable allocation of allowable production in a pool with the Commission's responsibility when it is considering an application for an unorthodox well location in a pool that has already been prorated. The Commission agrees that in its orders that allocate allowable production in a pool, *i.e.*, proration, it must make certain findings. *See, Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 319, 373 P.2d 809, 818 (1962). In *Continental* the Supreme Court listed findings, or "basic conclusions of fact," that the Commission had to determine, so far as practicable, in computing allowables. In *Continental* the Supreme Court found that the Commission's order lacked any mention of any of the factors discussed by the Court.

However, the Commission in this case was not concerned with establishing a formula for computing allowables. As stated in the Commission's Finding No. 6: "The proposed Harris

Federal Well No. 11 is located within the Buffalo Valley-Pennsylvania Gas Pool **which is a prorated gas pool** currently governed by the General Rules for the Prorated Gas Pools of New Mexico/Special Rules and Regulations for the Buffalo Valley-Pennsylvanian Gas Pool....”

(emphasis added.) (R.P. 022, # 6) The findings, required pursuant to Continental, are contained in Division Order No. R-8170, as amended, referred to in the Commission’s Order No. R-10622, the order that is subject to this appeal: If Read & Stevens objected to the earlier proration order, i.e., Division Order No. R-8170, on the basis of insufficient findings, it had the right to challenge that earlier order but did not do so.

Instead, in this case on appeal to the District Court, the Commission had to consider Read & Stevens’s application for an additional well location **within an existing prorated pool** that would also be unorthodox. The Commission’s concern in this case was whether the requested unorthodox location for the Harris Well would create an unfair advantage for the Harris Well over neighboring wells, because the Harris Well would be located fifty percent closer to the common lease line than UMC’s White State Well No. 2 in neighboring Section 35. The Commission found that such unfair advantage would result from the proposed unorthodox location. (R.P. 023, 024, 025) The Commission found that Read & Stevens could locate its well in a **standard location** without penalty, but if Read & Stevens chose to drill in the proposed unorthodox location, it would bear a fifty percent production penalty to protect UMC’s correlative rights. (R.P. 025, #13)

Specifically, the Commission made the following findings: Sections 26 and 35 represent a single common source of supply (R.P. 022, #9a); the estimated ultimate recoveries for Sections 26 and 35 (R.P. 023, #10); the amount of gas-in-place (R.P. 024, #10); Read & Stevens’s

correlative rights would be impaired if not allowed to drill the Harris Well (R.P. 025, # 12c); and the Harris Well would give Read & Stevens an advantage over UMC (R.P. 025, #12d).

Read & Stevens makes much of the Commission's statement in Finding No. 10 (R.P. 024) to the effect that the "...Read & Stevens analysis had better scientific validity...." compared to the UMC study. This portion of Finding No. 10 merely supports the Commission's decision to allow the additional well and does not go to the issue of an appropriate production penalty for such unorthodox location. The Commission allowed the additional location, in part, based on Read & Stevens's engineering analysis and allowed the unorthodox location based upon Read & Stevens's geologic analysis that indicated the risk of drilling a dry or marginal well would be reduced by the location. However, such a location encroaches unfairly on neighboring Section 35 unless a penalty, or restriction, on production is imposed. Read & Stevens still has the option of drilling at the standard set back if it does not want to bear the penalty. (R.P. 025, #13)

II. The Commission's Decision Comports with Case Law and Contains Sufficient Findings to Support Its Decision

Read & Stevens's brief in chief cites three cases to the Court on the issue of whether the Commission's Order contained sufficient findings of fact to reflect the Commission's reasoning in reaching its conclusions: *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962); *Fasken v. Oil Conservation Comm'n*, 87 N.M. 292, 532 P.2d 588 (1975); and *Viking Petroleum v. Oil Conservation Comm'n*, 100 N.M. 451, 672 P. 2d 280 (1983). As discussed earlier, the Commission in *Continental* failed to make any of the findings the Supreme Court referred to as "foundational matters." As detailed in Point I, above, the

Commission in the case before this Court made the appropriate findings.

In *Fasken* the Commission denied an application even though the only evidence introduced at the Commission hearing was the evidence presented by the applicant; this evidence supported the application. The Supreme Court found there was no evidentiary basis for the Commission to rule against the applicant as the evidence supported the application. The Supreme Court found that sufficient findings to disclose the Commission's reasoning were "...utterly lacking" and all the Commission had to support its decision was merely argument of counsel. *Fasken*, 87 N.M. at 294, 532 P.2d at 590.

The case before the Court is clearly distinguishable from *Fasken*. Both Read & Stevens and UMC, the offset operator that opposed Read & Stevens's application, presented witnesses and exhibits to support their positions at the hearing. (Tr. 2 and 3). The Commission had sufficient evidence before it to support both the decision to allow the additional well at the unorthodox location as well as the decision to impose a production penalty. Prior to the approval of the Harris Well, Read & Stevens already had two producing wells in Section 26; UMC had two producing wells in the neighboring Section 35. UMC's engineer testified that the two wells in Section 35 were producing approximately a million cubic feet a day; and the two wells in Section 26 were producing about a million cubic feet a day. (R.P. 90) UMC's engineer testified that because of the distance of the proposed Harris Well to the lease line, the new Harris Well would have an unfair advantage; the engineer proposed that the Commission impose a fifty percent penalty on the Harris Well. (Tr. 89) UMC's engineer stated that if the penalty were too small, UMC's correlative rights would be adversely affected. (Tr. 90)

The *Viking* case has similarities to the case before the Court, because in *Viking* the

Commission was also presented with conflicting expert testimony. The district court reversed the Commission's decision, but the Supreme Court reversed the district court and affirmed the Commission stating: "[s]pecial weight will be given to the experience, technical competence and specialized knowledge of the Commission." *Viking*, 100 N.M. at 453, 672 P.2d at 282. The Supreme Court found that the Commission's order did disclose the Commission's reasoning in reaching its conclusion.

**III. Finding #12d Is Not Inconsistent with Finding #10;
It is Supported by Substantial Evidence;
and It Is Not Arbitrary or Capricious**

Read & Stevens quotes all of Finding # 12d, but fails to quote from Finding #10 even while making the allegation that the two findings are inconsistent. In fact, Finding #10 is the finding that provides the primary support for the statement in Finding #12d to the effect that allowing the unorthodox location of the Harris Well will allow the Harris Well to gain an advantage over UMC's White State Well No. 2.

Finding #10 sets forth both Read & Stevens's and UMC's "estimated ultimate recovery" figures for wells in Sections 26 and 35. As the Commission notes, these figures are generally in agreement. Finding #10 also sets forth Read & Stevens's and UMC's "original gas-in-place" figures. The Commission notes that these last figures differ from one another. It is this difference that leads to the Commission stating in Finding #10:

The significance of the variation in gas-in-place relates to the percentage of gas-in-place recovered by existing wells and projected to be recovered in the future **and the inference that allowing Read and Stevens to drill their proposed well would allow them to drain gas reserves from under Section 35 (UMC's position).** (emphasis added.)

Read & Stevens obviously disagrees with the inference that the Commission drew from the differences in the gas-in-place figures presented by Read & Stevens and UMC. However, it is just such reasoning to which the courts over the decades have given deference to the Commission whose members are selected for their technical expertise and experience. In *Santa Fe Exploration Co. v. Oil Conservation Comm'n.*, 114 N.M. 103, 835 P.2d 819 (1992) the Supreme Court stated:

In any contested administrative appeal, conflicting evidence will be produced. In the instant case, the resolution and interpretation of such evidence presented requires expertise, technical competence, and specialized knowledge of engineering and geology as possessed by Commission members. See NMSA 1978, § 70-2-5 (director is "state petroleum engineer" who is "registered by the state board of registration for petroleum engineers and land surveyors as a petroleum engineer" or by virtue of education and experience [has] expertise in the field of petroleum engineering.") Where a state agency possesses and exercises such knowledge and expertise, we defer to their judgment. *Stokes v. Morgan*, 101 N.M. 195, 202, 680 P.2d 335, 342 (1984); *Groendyke Transp. Inc. v. New Mexico State Corp. Comm'n.*, 101 N.M. 470, 477, 684 P.2d 1135, 1142 (1984).

Santa Fe, 114 N. M. at 114-115, 835 P.2d at 830-831.

IV. The Commission's Order Was Not Required to Contain a Minimum Allowable

It is interesting that Read & Stevens now complains that the Commission's Order did not contain a minimum allowable as Read & Stevens did not request a minimum allowable in its application and did not propose a minimum allowable in its draft order to the Commission. (R.P. 027) The fact that the Order does not contain a minimum allowable is a non-issue. The Commission's Order contains the following standard phrase: "Jurisdiction is hereby retained for

the entry of such further orders as the Commission may deem necessary.” (R.P. 026) As production from wells proceed, the dynamics of the pool change. If the Commission did not have the ability to issue orders for wells in later stages of production, the Commission would be unable to prevent waste. The prevention of waste is the primary duty of the Commission. *Continental*, 70 N.M. at 318, 373 P.2d at 818. Any party with an interest in the Harris Well has the right to make application to the Division for an amended order based on changed conditions at that time.

CONCLUSION

Read & Stevens’s application to the Commission for an additional well at an unorthodox location in Section 26 was granted by the Commission. The evidence from the hearing revealed that Read & Stevens’s well in the unorthodox location will result in Read & Stevens having three wells in Section 26 versus two well in Section 35 directly to the south of Section 26. Read & Stevens had been producing one million cubic feet a day with its two existing wells. UMC has two wells in neighboring Section 35 that also produce about one million cubic feet a day. The Commission found that Read & Stevens needed the additional well to produce the gas and prevent waste in Section 26. However, the Commission also found that the proposed unorthodox location would give Read & Stevens an advantage over UMC so that a fifty percent production penalty was necessary to protect UMC’s correlative rights. Read & Stevens can drill the additional well at an orthodox location without penalty.

The Commission’s Order contains sufficient findings of fact to support the Commission’s conclusions that Read & Stevens’s requested unorthodox well could be drilled, but such well would be subject to a production penalty to protect UMC’s correlative rights. The Court should

affirm the Commission's order.

Respectfully submitted



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CERTIFICATE OF SERVICE

I, Marilyn S. Hebert, hereby certify that a copy of the New Mexico Oil Conservation Commission's Answer Brief was mailed to all counsel of record on the 21st day of August, 1997.



Marilyn S. Hebert

**FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF CHAVES**

**READ & STEVENS, INC. and
MATADOR PETROLEUM CORPORATION,
Petitioners,**

vs.

No. 05-04-CV-CV-97-00029

**OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,
and UMC PETROLEUM CORPORATION,
Respondents.**

**PETITIONERS-APPELLANTS'
BRIEF IN CHIEF**

**APPEAL FROM COMMISSION
TO THE FIFTH JUDICIAL DISTRICT
CHAVES COUNTY
HONORABLE WILLIAM P. LYNCH**

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SUMMARY OF PROCEEDINGS

Nature of the case:

Pursuant to the "Oil and Gas Act" Section 70-2-25(B) NMSA (1978), this case is before the Court on Petitioners' Petition for Review of Order R-10622 entered by the New Mexico Oil Conservation Commission ("the Commission"). This appeal is limited to those issues raised by the Petitioners in their "Application for Rehearing" filed with the Commission on December 31, 1996, which was denied by the Commission.

This Commission order imposed a gas production penalty on a well Petitioners' sought approval to drill at an unorthodox gas well location in Section 26, T15S, R27E, NMPM, Chaves County, New Mexico. Petitioners take exception to the penalty.

Parties:

Petitioner, Read & Stevens, Inc., a New Mexico corporation authorized to and doing business in the State of New Mexico, is the operator and a working interest owner in the Harris Federal Well No. 11 ("Harris 11") located in and dedicated to the S/2 of Section 26, T15S, R27E, NMPM, Chaves County, New Mexico. Petitioner is the applicant in a case before the Commission and is adversely affected by the Commission Order R-10622 entered in Case No. 11514 (DeNovo) which approved the requested unorthodox gas well location but also imposed a production penalty on the well.

Petitioner, Matador Petroleum Corporation, a Texas corporation authorized to and doing business in the State of New Mexico, is a working interest owner in Section 26 and in the subject gas well and is a party of record who supported Read & Stevens in all of the proceedings before the Commission in this matter and also is adversely affected by the Commission Order R-10622.

The Oil Conservation Division ("Division") and Commission of the State of New Mexico ("Commission") are statutory bodies created and existing under the provisions of the New Mexico Oil & Gas Act, Sections 70-2-1 through 70-2-36, N.M.S.A. (1978), laws of the State of New Mexico, as amended.

UMC Petroleum Corporation ("UMC"), a party of record in all of the proceedings before the Commission in Case No. 11514 (DeNovo), is the operator (the "offsetting operator") of gas wells in Section 35 which adjoins the Read & Stevens' operated section 26. UMC appeared in opposition to Read & Stevens' requested gas well location.

Jurisdiction:

On May 16, 1996, the Division held a public hearing in Case 11514 and on July 12, 1996 entered Order R-10622 which approved Read & Steven's application but imposed a 50 % production penalty on the well's ability to produce gas.

On October 29, 1996 the Commission heard Read & Steven's DeNovo application and on December 12, 1996 entered Order R-10622 which affirmed the Division's order.¹

¹ Both the Division and the Commission used the same order number. To avoid confusion, all references are to the Commission Order R-10622 unless otherwise indicated.

On December 31, 1996, Petitioner timely filed their Application for Rehearing with the Commission which was deemed denied by the Commission when it failed to act on the application within ten days as required by Section 70-2-25.B NMSA (1978).

Petitioners have exhausted their administrative remedies before the Commission and now seek judicial review of the Commission's decision within the time provided for by Section 70-2-25.B NMSA (1978), as amended.

The Fifth Judicial District, Chaves County, New Mexico, has jurisdiction of this case pursuant to the provisions of Section 70-2-25.B NMSA (1978), because the property affected by Commission Order R-10622 is located within Chaves County, New Mexico.

Factual Summary:²

(1) Read & Stevens sought Division approval to drill its Harris 11 at a location of 990 feet from the South line and 1980 feet from the West line (Unit N) of Section 26, T15S, R27E, to be dedicated to a standard 320-acre gas spacing and proration unit consisting of the S/2 of said Section 26 to test for gas production from the Pennsylvanian formation within the current boundaries of the Buffalo Valley-Pennsylvanian Gas Pool, Chaves County, New Mexico. **TR-p 6.**

(2) The Buffalo Valley-Pennsylvanian Gas Pool is a prorated gas pool with the following special rules: **TR-p 7.**

Rule 2(a): a standard gas proration unit ("GPU") in the pool contains 320 acres

² unless indicated otherwise, references are to the Commission transcript pages "TR-p. __" and "R&S" means Read & Stevens Exhibits and "UMC" means UMC Petroleum Corporation Exhibits submitted at the Commission hearing. "OCD- __" references the finding paragraph of the Division Order R-10622 and "OCC- __" references the finding paragraph of the Commission Order R-10622.

Rule 2(b): wells shall be located in either the NW/4 or the SE/4 section and shall be no nearer than 990 feet to an outer boundary nor nearer than 330 feet to any interior quarter-quarter section line.

(3) The Harris 11 is at a standard footage location for this pool but because it is located in the SW/4 of Section 26 it is "off-pattern" and required an exception to Rule 2(b). **TR-p 8.**

(4) Read & Stevens also operates two other Pennsylvanian gas wells in Section 26: the Harris 4 in Unit P dedicated to the S/2 of Section 26 and the Harris 8 in Unit F dedicated to the N/2 of Section 26.

(5) Matador Petroleum Company, an offset operator and interest owner in the Harris 11, appeared at the hearing in support of Read & Steven's application. **TR-p 5.**

(6) UMC Petroleum Corporation ("UMC") appeared at the hearing in opposition to the applicant. **TR-p 5.**

(7) UMC is the operator of the existing White State 1 (Unit O) and the White State 2 (Unit F) both of which are lower Pennsylvanian interval gas wells in Section 35 within the current boundaries of the Diamond Mound-Morrow Gas Pool which is not a prorated gas pool and is subject to the following general state-wide rules: **TR-p 7.**

320-acre gas spacing units with wells located not closer than 1980 feet to the end boundary nor closer than 660 feet to the side boundary of its spacing unit.

(8) While Section 26 and Section 35 are in different pools subject to different rules, these four wells are in fact competing among each other for gas reserves from the same common Pennsylvanian volumetric gas drive reservoir. **TR-p 8, 19, 21.**

(9) At the Division hearing, Read & Stevens presented geologic interpretations and petroleum engineering estimated drainage areas based upon decline curve analysis and volumetrics from which it contended that: **OCD-(9).**

(a) the existing Harris 4 was located at a standard gas well location within the SE/4 of Section 26 but encountered a thinner and less productive portion of the reservoir and as a result, was unable to adequately drain the S/2 of Section 26.

(b) if the Harris 11 is located within the SW/4 of Section 26, then it should penetrate the Lower Pennsylvanian formation in a thicker and better producing portion of the reservoir; and

(c) there is an area of approximately 94 acres within the SW/4 of Section 26 which will ultimately not be drained by the existing Harris 4 and 8.

(10) At the Division hearing, UMC presented geologic interpretations and petroleum engineering estimated drainage areas based upon decline curve analysis from which it contended that: **OCD-(10)**.

(a) there remained an estimated 8.42 BCF of gas to be recovered by the existing four wells in Sections 26 and 35;

(b) assuming that the Harris 11 produced at a rate of 900 MCFGPD, it would affect the White State 1 and 2 and would reduce the ultimate recovery of gas from the White State wells in Section 35 by approximately 1.39 BCF; and

(c) the Harris 11 should be restricted to a maximum allowable of 350 MCFGPD (a 65 % penalty) while allowing the White State 2 to produce unrestricted at an estimated rate in excess of 1000 MCFGPD.

(11) At the time of the Division hearing, neither Read & Stevens nor UMC attempted to utilize petroleum engineering calculations in order to verify the accuracy of their respective geological interpretations of the size and shape of the reservoir. **TR-p 17**.

(12) Neither Read & Stevens nor UMC presented to the Division any estimates of original gas in place or current gas in place for Section 26 and for Section 35. **TR-p 17**.

(13) Pursuant to Section 70-2-33.H. NMSA (1979) it is essential that estimates of original gas in place and current gas in place for Section 26 and for Section 35 be presented to the Division in order for the Division to afford each owner an opportunity to produce its share of recoverable gas by the Division determining the percentage of recoverable gas underlying each tract in relation to the amount of recoverable gas remaining to be recovered from all affected tracts. See 70-2-33.H NMSA (1979)

(14) However, in the absence of such evidence, the Division still found that: **OCD (16).**

(a) the Harris 4 will not adequately drain and develop the S/2 of Section 26;

(b) it is likely that the Harris 8 has drained a portion of the SW/4 of Section 26, however, the engineering evidence presented is not sufficient to determine whether this well can ultimately recover all of the remaining gas reserves within this quarter section;

(c) drainage of the SW/4 of Section 26 from the White State 2 is likely occurring;

(d) the correlative rights of Read & Stevens may be impaired if it is not allowed to drill a well within the SW/4 of Section 26 to recover gas reserves which may ultimately not be recovered by its existing wells.

(15) The Division, without evidence from which to determine if the Read & Steven's Harris 11 would adversely affected UMC's White State wells, imposed a 50 % production penalty on the Harris 11. **TR-p 56, OCD(3).**

(16) At the Commission hearing, Read & Stevens presented the testimony of a consulting petroleum engineer who had completed a reservoir study of an area of 9,600 acres including volumetric analysis of gas in place, decline curve analysis of estimated ultimate recovery, and a reservoir simulation of the expected performance of all existing wells, both with and without the proposed Harris 11 well, who concluded that: **R&S Ex. 1**

(a) there was an estimated 86 BCF of gas originally in place within a study area containing 9,600 acres and covering some 22 wells including the four subject wells; **TR-p 29, R&S Ex 1 Tab 3.**

(b) UMC's geologic interpretation presented to the Division was flawed because it showed a reservoir which originally contained only 80 BCF of gas in place thus being too small to contain the estimated 86 BCF of gas in place determined by petroleum engineering calculations; **TR-p 43.**

(c) Read & Stevens introduced to the Commission its revised geologic interpretation which contained an estimated 86 BCF of gas originally in place and therefore "balanced" with petroleum engineering estimates; **TR-p 29, 31, R&S Ex 1 Tab 3.**

(d) based upon decline curve analysis, the estimated ultimate recovery for Section 26 and Section 35 will be 22.90 BCF of gas with individual well recoveries as follows: **R&S Ex 1 Tab 10.**

Harris 8	8.0 BCF
Harris 4	0.7 BCF
White State 1	5.2 BCF
White State 2	9.0 BCF

(e) currently, there is 10.5 BCF of gas in place with 6.2 BCF allocated to Section 26 and 4.3 BCF allocated to Section 35; **R&S Ex 1 Tab 14.**

(f) Section 26 currently has 6.2 BCF of gas in place of which 5.0 BCF is recoverable; **R&S Ex 1 Tab 14.**

(g) Section 35 currently has 4.3 BCF of gas in place of which 3.4 BCF is recoverable; **R&S Ex 1 Tab 14.**

(h) without the Harris 11, the two existing Read & Stevens wells will only recovery 2.5 BCF from Section 26 resulting in a "loss" to Read & Stevens of 2.5 BCF of gas; **R&S Ex 1 Tab 14.**

(i) without the Harris 11, the two UMC wells will recover 6.4 BCF of gas or 3.0 BCF of gas **more** than the 3.4 BCF of gas currently recoverable from Section 35; **TR-p 27, R&S Ex 1 Tab 14.**

(j) **with the Harris 11, Section 26 will recover only 4.9 BCF of its 5.0 BCF remaining recoverable gas attributed to Section 26 and therefore no penalty is necessary: TR-p 24-25, R&S Ex 1 Tab 14**

(k) **with the Harris 11, Section 35 will still recover 6.1 BCF which is 2.7 BCF more than the 3.4 BCF remaining recoverable gas attributed to Section 35. R&S Ex 1, Tab 14.**

(17) At the Commission hearing, UMC presented the testimony of a petroleum engineer who had made volumetric estimates of gas in place, and prepared decline curves estimates of ultimate recovery and who concluded that:

(a) an ultimate recovery of 23.70 BCF of gas (compared to 22.90 BCF of gas calculated by Read & Stevens) should be recovered from Section 26 and 35 as estimated from decline curve analysis as follows: **UMC Ex 3.**

Harris 8	9.6 BCF
Harris 4	0.6 BCF
White State 1	5.1 BCF
White State 2	8.4 BCF

(b) volumetric estimates of original gas in place of 22.08 BCF for Sections 26 and 35 with 11.8 BCF for Section 26 and 10.2 BCF for Section 35; **UMC Ex 3.**

(c) the White State wells are expected to recover 3.0 BCF of gas more than UMC had estimated were in place for Section 35; **UMC Ex 3.**

(d) that UMC had not made any estimates of current gas in place for either Section 26 and 35 but if it had done so, UMC would have used a method similar to that utilized by Read & Stevens' expert petroleum engineer;

(e) the Commission should affirm the Examiner order and retain the 50% production penalty of the Harris 11;

(18) Read & Stevens asked the Commission to reject the UMC engineering calculations and conclusions and to find that Read & Stevens' reservoir study introduced at the Commission hearing had been adequately verified and validated by history matching and accurately forecasts performance and should be relied upon by the Commission in reaching a decision in this case.

(19) Accordingly, the Commission found that:

"The Read and Stevens analysis had better scientific validity being derived from their "Reservoir Simulation Study" validated by history matching gas production as compared to the UMC study which resulted from planimetered gas-in-place derived from their "Net Sand Thickness Isopach Map."

(20) Read & Stevens asked the Commission to affirm certain of the Division's findings that:

(a) the Harris 4 will not adequately drain and develop the S/2 of Section 26; **Division Order R-10622, Finding (16-a).**

(b) it is highly likely that the Harris 8 has drained a portion of the SW/4 of Section 26, however, the engineering evidence presented is not sufficient to determine whether this well can ultimately recover all of the remaining gas reserves within this quarter section; **Division Order R-10622, Finding (16-b).**

(c) the correlative rights of Read & Stevens may be impaired if it is not allowed to drill a well within the SW/4 of Section 26 to recover gas reserves which may ultimately not be recovered by its existing wells. **TR-p 22. (Division Order R-10622, Finding (16-d).**

(21) The Commission affirmed these Division findings requested by Read & Stevens. **See Order R-10622**

(22) Read & Stevens also asked the Commission to find that:

(a) UMC enjoys an unfair competitive advantage over Read & Stevens. **TR-p. 51-52.**

(b) UMC had created a pressure advantage for its wells and that Read & Stevens needed a protection well in the SW/4 of Section 26; **TR-p 21-22.**

(c) UMC's White State 2 was draining Read & Stevens' gas underlying the SW/4 of Section 26; **R&S Ex. 1, tab 1.**

(d) the Division's 50 % penalty was arbitrary; **TR-p 57.**

(e) Read & Stevens' reservoir engineering study which was not available to the Division, demonstrated the necessity for approving the Harris 11 at its unorthodox location, **without a penalty**, in order to afford Read & Stevens the opportunity to:

(i) recover an additional 500 MMCF of gas which would not otherwise be recovered thereby preventing waste; and to **TR-p 22-23.**

(ii) allocate remaining gas production in accordance with Section 70-2-33.H NMSA (1979) and allow it to produce, without penalty, its just and equitable share of the remaining recoverable gas to which it is entitled and thereby protect correlative rights. **TR-51-58.**

(21) **Instead**, the Commission disregarded Section 70-2-33.H NMSA (1979), ignored the Read & Steven's engineering study and found:

"(15) a production penalty of 50 percent, which is based upon the well's distance from the common lease line relative to the White State Well No. 2's distance from the common lease line, is fair and reasonable and should be adopted in this case" **despite** also finding that "(12)(b) drainage of the SW/4 of Section 26 from the White State Well No. 2 is likely occurring;" **OCC (15), (12)(b).**

ARGUMENT

POINT I.

THE COMMISSION FAILED TO COMPLY WITH SECTION 70-2-33(H) NMSA (1978) AND IN DOING SO VIOLATED READ & STEVENS' CORRELATIVE RIGHTS

The New Mexico Supreme Court has stated that the Oil Conservation Commission "is a creature of statute" whose powers are expressly defined and limited by the laws creating it. **Continental Oil Co. v. Oil Conservation Commission**, 70 N.M. 310, 373 P.2d 809 (1962). The New Mexico Oil and Gas Act empowers the Commission to prevent waste and protect correlative rights [Sec. 70-2-11 NMSA (1978), as amended].

The Commission's ignored the statutory definition of "correlative rights" set forth in Section 70-2-33(H) NMSA of the Oil and Gas Act which defines Correlative Rights

as "...the opportunity afforded, as far as it is practicable to do so, to the owners of each property in a pool to produce without waste his just and equitable share of the oil or gas or both in the pool, being an amount so far as can be practicably determined and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas or both under the property bears to the total recoverable oil or gas or both in the pool and for such purpose, to use his just and equitable share of the reservoir energy;"(emphasis added).

Although reviewing courts generally may not substitute its judgment for that of the administrative decision maker, it may correct the decision maker's misapplication of law. **Wolfly v. Real Estate Commission**, 100 N.M. 187, 668 P.2d 303 (1981). Such is the case with the Commission's decision in Order R-10622.

The Oil Conservation Commission of New Mexico ("Commission") has the duty to "prevent waste prohibited by this act (Oil & Gas Act) and to **protect correlative rights...**" (emphasis added). Section 70-2-11 NMSA (1978). Correlative rights are measured in terms of recoverable reserves.³

Pursuant to these statutory provisions, it was essential for the Commission to make findings concerning the remaining recoverable gas in this area of the pool and to apportion that volume between Read & Stevens' Section 26 and UMC's Section 35 in order to afford Read & Stevens and UMC an opportunity to produce their relative share of the remaining recoverable gas.

While the Commission made findings concerning the "estimated ultimate recovery" and the "original gas in place"⁴ it forgot to make the essential finding of **the volume of remaining recoverable gas** and how that gas volume is allocated between Sections 26 and 35.

The Commission found⁵ that "the Read and Stevens analysis had better scientific validity being derived from their 'Reservoir Simulation Study', validated by history matching gas production as compared to the UMC study which resulted from planimetered gas in place derived from their 'Net Sand Thickness Isopach Map'."

³ See Section 70-2-33(H) NMSA 1978.

⁴ See Finding (10) Order R-10622

⁵ See Finding (10) of Order R-10622.

The Read & Stevens' study⁶ concluded that:

(a) there is 8.4 BCF of gas now remaining to be recovered between Sections 26 and 35;

(b) of the 8.4 BCF of gas remaining to be recovered, Read & Stevens' Section 26 is entitled to 5 BCF and UMC's Section 35 is entitled to 3.4 BCF.

(c) **without** the proposed Harris 11 being drilled at its proposed unorthodox location 990 feet from the south line, then Section 26 will recover only 2.5 BCF while Section 35 will recover 6.4 BCF.

(d) **with** the proposed Harris 11 being drilled **without a penalty** at its proposed unorthodox location 990 feet from the south line, then Section 26 will recover 4.9 BCF while Section 35 will still recover 6.1 BCF⁷

(e) **with** the proposed Read & Stevens' Harris 11 being drilled **without a penalty** at its proposed unorthodox location of 990 feet from the south line, then Section 26 will recover an additional 2.4 BCF of gas which otherwise would not be recovered thereby preventing waste or which would be confiscated by other wells in the area.

Having found the Read & Stevens' study "had better scientific validity", then without explanation, the Commission illogically disregarded the Read & Stevens' conclusion contained in its study. Instead, the Commission applied the same 50% distance penalty as adopted by the Division which had entered its decision without having the benefit of having available to it the Read & Stevens' petroleum engineering study.

It is essential for the Court to remand this case to the Commission so it can correct this statutory violation and enter an order which protects Read & Stevens' correlative rights.

⁶ See Read & Stevens Exhibit 1, tab 14.

⁷ The addition of the Harris Federal 11 Well to Section 26 allows the total recovery for Section 26 and 35 to increase from 8.9 BCF to 11.BCF which is a function of increasing recovery efficiency thereby preventing waste.

POINT II:

THE COMMISSION VIOLATED THE FASKIN, THE VIKING PETROLEUM AND THE CONTINENTAL OIL CASES WHEN IT FAILED TO MAKE SUFFICIENT FINDINGS TO DISCLOSE ITS REASONING

The Commission is required to make findings of ultimate facts which are material to the issues and to make sufficient findings to disclose the reasoning of the Commission in reaching its ultimate findings with substantial support in the record for such findings. **Fasken v. Oil Conservation Commission**, 87 N.M. 292, 532 P.2d 588 (1975). **Continental Oil Co. v. Oil Conservation Commission**, 70 N.M. 310, 373 P.2d 809 (1962). Likewise, in **Viking Petroleum v. Oil Conservation Commission** 100 N.M. 451, 453, 672 P.2d 280 (1983), the New Mexico Supreme Court reiterated its opinions in **Continental** and **Fasken**, 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 conclusions. The task before this Court is to determine if the Commission's decision is reasonable, lawful and based upon substantial evidence in the record as a whole. In particular, the Court must conclude that the numbered findings of fact set forth in the Commission's order are logical and consistent with the Commission's ultimate ordering paragraphs ("conclusions") which must be reasonable and supported by substantial evidence.

The substantial evidence requirements has changed from a review of the evidence most favorable to the agency decision to a review of the evidence in the whole record. **Duke City Lumber Co. v. New Mexico Env'tl. Improvement Bd.**, 101 N.M. 291, 294, 681 P.2d 717, 720 (1984). **Trujillo v. Employment Sec. Dept.**, 734 P.2d 245 (N.M. App. 1987).

The New Mexico Supreme Court in **Santa Fe Exploration Company vs. Oil Conservation Commission**, 114 N.M. 103, 835 P.2d 819 (1992) provided the following summary:

"Substantial evidence is relevant evidence that a reasonable mind would accept as sufficient to support a conclusion. **Rutter & Wilbanks Corp. v. Oil Conservation Commission**, 87 N.M. 286, 290, 532 P.2d 582, 586 (1975). In determining whether there is substantial evidence to support an administrative agency decision, we review the whole record. **Duke City Lumber Co. v. New Mexico Env'tl. Improvement Bd.**, 101 N.M. 291, 294, 681 P.2d 717, 720 (1984). In such a review, we view the evidence in a light most favorable to upholding the agency determination, but do not completely disregard conflicting evidence. **National Council**, 107 N.M. at 282, 756 P.2d at 562. The agency decision will be upheld if we are satisfied that evidence in the record demonstrates the reasonableness of the decision." (at page 114)

"Arbitrary and capricious action by an administrative agency consists of a ruling or conduct, when viewed in light of the whole record, 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." (at page 115)

"An abuse of discretion will also be found when the decision is contrary to logic and reason." (at page 115)

Unfortunately, the Commission failed to explain how it can accept the Read & Stevens' analysis as having the "better scientific validity," but then choose to ignore the conclusions in that study and, instead, affirm a 50 % production penalty which is contrary to and inconsistent with that study. Such a conclusion is "An abuse of discretion will also be found when the decision is contrary to logic and reason." **Santa Fe Exploration, supra.**

Such a conclusion is contrary to Finding (12(b) of Order R-10626 in which the Commission finds "drainage of the SW/4 of Section 26 from the White State No. 2 Well is likely occurring." This implies that the Commission rejected UMC's comparable 1,000 MCFPD rate argument. Thus, the only remaining evidence upon which the Commission could have relied for determining the proper producing rate to protect correlative rights is the Read & Stevens' study which showed that **an unpenalized rate** of 1,500 MCFPD for the Harris Federal 11 Well was necessary to protect the SW/4 of Section 23 from being drained by UMC's well.

This case needs to be remanded to the Commission, if for no other reason than to afford an opportunity to the Commission to reconcile this contradiction and adopt an adequate order which complies with state law.

POINT III:

FINDING (12)(d) IS WRONG, INCONSISTENT WITH FINDING (10), IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND IS ARBITRARY AND CAPRICIOUS

There is no substantial evidence to support Finding (12) (d) as a reasonable basis upon which to adopt a penalty. Finding (12)(d) adopts an arbitrary and capricious reason to support a penalty. Finding (12(d) states:

"by locating the Harris Federal Well No. 11 990 feet off the common lease line, the applicant will be gaining an advantage over UMC, whose White State Well No 2 is located 1980 feet off the common lease line."

If the goal of the Commission is the protection of correlative rights, then that implies that there is a "no-flow boundary" at the common lease line between UMC and Read & Stevens. But the 50 % penalty will not allow a no-flow boundary to be established at the lease line.

For example, if two wells are placed an equal distance from the common lease line and if their producing rates are equal and *if all other reservoir properties are identical*, then a no-flow boundary is established at the lease line and correlative rights are protected.

But, if the Read & Stevens' well is located one-half the distance from the common lease line as the UMC well, and if its producing rate is 50 % of the rate of the UMC well, and if all other reservoir properties are identical, then a no-flow boundary will be established at the common lease line and correlative rights are protected.

However, the Commission has ignored the uncontested evidence in this case which demonstrated that the reservoir properties are **not identical**. The Read & Stevens' petroleum engineering study,⁸ supported by detailed geologic and petroleum engineering evidence, showed that:

(1) because the reservoir is thicker around the Read & Steven's location than at the UMC well and because the reservoir pressure near the Read & Stevens' well is higher than at the UMC well, and if Read & Stevens' well is located one-half the distance from the common lease line as the UMC well, then Read & Stevens' well must be produced at a **rate greater than** 50% of the rate of UMC's well in order to establish a no-flow boundary at the common lease line.

(2) if the Read & Stevens' well is limited to 50% of the rate of the UMC well, then the no-flow boundary will **not be** established at the common lease line **but** rather will be established within the Read & Steven's section and at a point **closer** to the Read & Stevens' well than required.

(3) the only way to quantify the proper rate is to use a reservoir simulation model that honors all the wells in the area. That is exactly what the Read & Stevens' study did and it demonstrated that the Read & Stevens' well could be produced at its proposed 990 foot location at a rate of approximately 1,500 MCFPD and not impact the UMC acreage in Section 35.

It is impossible for the Commission to find that "Read and Stevens' analysis had better scientific validity" but to then reject the Read & Stevens' study. The Commission's order makes no sense and cannot be defended or explained. The result of Order R-10622 is to award UMC for failing to present to the Commission substantial evidence to support a 50% penalty. The Court should remand this case to the Commission so that the Commission can correct its mistakes.

⁸ See R&S Exhibit 1, TR-p 48-58.

Case
#9500

DIDN'T ASK
OK old order
CAN always
change it -
otherwise there
could be a waste

POINT IV:

THE COMMISSION ORDER R-10622 FAILED TO PROVIDE FOR A MINIMUM GAS ALLOWABLE

Contrary to past precedents,⁹ the Commission order failed to adopt a minimum allowable for the Harris 11 Well No. 1. Without a minimum allowable, the penalty will continue to be applied to the well's producing rate ("deliverability") and as that rate declines, then the well will be limited to a gas volume which will make the well uneconomic. Such an order is punitive because it sets the producing volume for the well after Read & Stevens has invested the money to drill the well. A minimum allowable is necessary to protect Read & Stevens' correlative rights by affording a suitable rate of return on this investment.

Issue
R's
draft
order
did not
contain
request
or
allowable

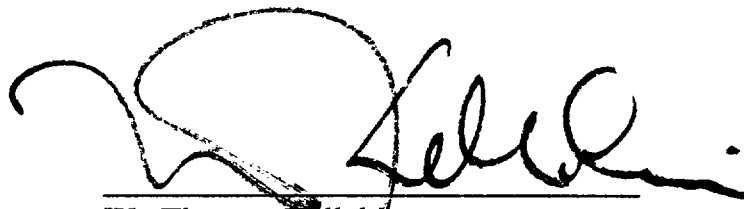
CONCLUSION

The substantial evidence in this case demonstrates that approval of the Read & Steven's application without a production penalty would afford it the opportunity to recover its share of the remaining gas without violating UMC's correlative rights. The Commission's order will not do what the Commission intended, but, instead, will cause waste and will impair Read & Stevens' correlative rights. The Commission has entered an order which contains errors of fact and of law which require that the Court vacate Commission Order R-10622.

⁹ For an example, See Order R-8804 issued December 8, 1988.

It is essential for the Court to remand this case to the Commission so the Commission can enter an order which correct these mistakes and which protects Read & Stevens' correlative rights. That can best be accomplished by directing the Commission to substitute Read & Stevens' proposed order which is attached as Exhibit "B" to its Application for Rehearing. In doing so, the Commission will be correcting its mistakes of fact and law and will be entering an order which is supported by substantial evidence.

Respectfully submitted,

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

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

CERTIFICATE OF SERVICE

I hereby certify that on this 8 day of August, 1997, I have caused to be mailed by first-class mail a true and correct copy of Petitioner's Brief in Chief to the following counsel of record:

Marilyn S. Hebert, Esq.
Special Assistant Attorney General
Oil Conservation Commission
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Santa Fe, New Mexico 87505

James Bruce, Esq.
P. O. Box 1056
Santa Fe, New Mexico 87504
Attorney for UMC Petroleum Corporation

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

W. Thomas Kellahin

AUG 11 1997

ENDORSED COPY
ORG. FILED DIST. COURT

AUG 08 1997

BEE J. CLEM, CLERK

FIFTH JUDICIAL DISTRICT
COUNTY OF CHAVES
STATE OF NEW MEXICO

READ & STEVENS, INC., and
MATADOR PETROLEUM CORP.,

Plaintiffs,

v.

CV 97-29

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO, and
UMC PETROLEUM CORP.,

Defendants.

RECORD ON APPEAL
Title Page

The following are the attorneys of record in this case:


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Attorney for Read & Stevens Inc. and
Matador Petroleum Corp.

Respectfully submitted,



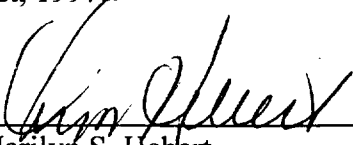
Marilyn S. Hebert

Special Assistant Attorney General

New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505
(505) 827-1364

CERTIFICATE OF SERVICE

I, Marilyn S. Hebert, hereby certify that a copy of the above-titled pleading was mailed to all counsel of record on the 17th day of August, 1997.



Marilyn S. Hebert

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF CHAVES
STATE OF NEW MEXICO

READ & STEVENS, INC., and
MATADOR PETROLEUM CORP.,

Plaintiff,

vs.

CV-97-29

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,
and UMC PETROLEUM CORP.,

Defendants.

NOTICE OF HEARING

TO: W.T. Kellahin	Marilyn Hebert	James Bruce
P.O. Box 2265	2040 S. Pacheco	P.O. Box 1056
Santa Fe, NM 87504	Santa Fe, NM 87505	Santa Fe, NM 87504-1056

YOU ARE HEREBY NOTIFIED that this matter is set for **ORAL ARGUMENT**
on **Wednesday, October 8, 1997, at 9:00 a.m.** before the Honorable William P. Lynch
at the Chaves County Courthouse, 401 N. Main, Roswell, NM 88201.


Kay Matson
Trial Court Administrative Assistant

This Notice was mailed to parties/counsel of record on the 8 day of July, 1997.

The District Court complies with the Americans with Disabilities Act. It is counsel's or pro se party's obligation to notify the Clerk of the Court at least five (5) days before any hearing of the anticipated attendance of a disabled person so that appropriate accommodations can be made.

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF CHAVES
STATE OF NEW MEXICO

FIFTH JUDICIAL DISTRICT
CHAVES COUNTY NM
FILED IN MY OFFICE

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SEE J. CLEM
DISTRICT COURT CLERK

READ & STEVENS, INC., and
MATADOR PETROLEUM CORP.

Plaintiffs,

vs.

CV-97-29

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,
and UMC PETROLEUM CORP.,

Defendants.

NOTICE OF HEARING

TO: W.T. KELLAHIN	MARILYN HEBERT	JAMES BRUCE
P.O. BOX 2265	2040 S. PACHECO	P.O. BOX 1056
SANTA FE, NM 87504	SANTA FE, NM 87505	SANTA FE, NM 87504-1056

YOU ARE HEREBY NOTIFIED that this matter is set for a **Telephone Status**

Conference on Friday, June 27, 1997, at 2:00 p.m. before the Honorable William P.

Lynch at the Chaves County Courthouse, 401 N. Main, Roswell, New Mexico 88201.

Counsel shall initiate the call.



Kay Matson
Trial Court Administrative Assistant

This Notice was mailed to parties/counsel of record on the 5th day of June, 1997.

The District Court complies with the Americans with Disabilities Act. It is counsel's or pro se party's obligation to notify the Clerk of the Court at least five (5) days before any hearing of the anticipated attendance of a disabled person so that appropriate accommodations can be made.

**FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF CHAVES**

**READ & STEVENS, INC. et al,
Petitioners**

vs.

No. 05-04-CV-CV-97-00029

**OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO
AND UMC PETROLEUM CORPORATION,
Respondents.**

AMENDED NOTICE OF HEARING

**Type of Hearing: Telephone Status Conference
Starting at 9:45 AM, Monday, June 2, 1997**

To: Counsel of Record:

You are hereby notified that, at the request of counsel for the Petitioner, the telephone status conference hearing to have taken place on May 12, 1997 has be rescheduled to Monday, June 2, 1997 at 9:45 AM before the Honorable William P. Lynch, District Judge, Division 06 at the Chaves County Courthouse, Roswell, New Mexico.

W. Thomas Kellahin, counsel for the Petitioner, shall initial the conference call.

BY _____
Deputy

submitted:

W. Thomas Kellahin

copies sent to:

Lyn Hebert, Esq.
Counsel for the Oil Commission
2040 Pacheco
Santa Fe, New Mexico 87505

James Bruce, Esq.
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Santa Fe, New Mexico 878504
Counsel for UMC Petroleum



NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-7131

August 7, 1997

Ms. Bee J. Clem
District Court Clerk
Fifth Judicial District
Post Office Box 1776
Roswell, New Mexico 88201

Re: Read & Stevens Inc., et al. v. Oil Conservation Commission, et al.
No. CV 97-29

Dear Ms. Clem:

Pursuant to Rule 1-074 NMRA 1997, the New Mexico Oil Conservation Commission (Commission) hereby requests that the following be filed as the record on appeal in the above-referenced case:

1. Original and copy of Title Page.
2. Copies of all papers and pleadings filed with the Commission for Case No. 11514 heard on the merits before the Commission on October 29, 1996.
3. Copy of the Commission's Order No. R-10622, the final order sought to be reviewed, with the date of issuance thereon.
4. Exhibits from the Commission hearing.
5. Transcript from the Commission hearing.

Please conform the copy of the Title Page and return to me in the enclosed envelope.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marilyn S. Hebert".
Marilyn S. Hebert

cc: James Bruce (w/o encl.)
W. Thomas Kellahin (w/o encl.)

FIFTH JUDICIAL DISTRICT
COUNTY OF CHAVES
STATE OF NEW MEXICO

READ & STEVENS, INC., and
MATADOR PETROLEUM CORP.,

Plaintiffs,

v.

CV 97-29

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO, and
UMC PETROLEUM CORP.,

Defendants.

RECORD ON APPEAL
Title Page

The following are the attorneys of record in this case:

James Bruce
Post Office Box 1056
Santa Fe, NM 87504-1056
(505) 982-2043

Attorney for UMC Petroleum Corp.

W. Thomas Kellahin
Post Office Box 2265
Santa Fe, NM 87504-2265
(505) 982-4285

Attorney for Read & Stevens Inc. and
Matador Petroleum Corp.

Respectfully submitted,



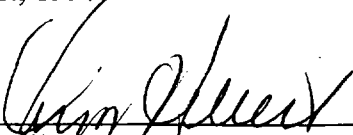
Marilyn S. Hebert

Special Assistant Attorney General

New Mexico Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505
(505) 827-1364

CERTIFICATE OF SERVICE

I, Marilyn S. Hebert, hereby certify that a copy of the above-titled pleading was mailed to all counsel of record on the 17th day of August, 1997.



Marilyn S. Hebert

CHARLES B. READ
PRESIDENT

Read & Stevens, Inc.

Oil Production

P. O. Box 1518

Reswell, New Mexico 88202

FAX NO. 505/489/20

PHONE 505 622-3770
FAX: 505 622-8043

May 9, 1997

New Mexico Oil Conservation Division
811 South First Street
Artesia, New Mexico 88210-2834

RE: Harris Federal #11
Section 26 T15S-R27E
Chaves County, New Mexico
Deliverability Test
De Novo Case #11514
Order #R10622

MAY 10 1997

Ladies and Gentlemen:

Enclosed please find a form C-122 and a C-122-C for the subject well. Per the subject order number, Read & Stevens, Inc. was required to conduct a deliverability test into the pipeline on the subject well. The order went on to state that Read & Stevens, Inc. would be assessed a production penalty of fifty percent (50%) of the wells ability to produce into a pipeline as determined from the deliverability test. The deliverability test was performed April 23, 1997 and the Artesia OCD office was advised of the date and time of the test. Read & Stevens, Inc. was advised that if there was no OCD representative on location at test time to proceed with the test. There was no witness from the OCD.

Please note on the form C-122-C that the twenty four (24) hour test into the pipeline was 1,783 MCF, and the calculated deliverability at pipeline pressure using the "n" from the Multipoint Back Pressure Test, was 2,418 MCFD. Taking the deliverability of 2,418 MCFD times fifty percent (50%) would yield an allowable of 1,209 MCFD for the subject well. Please instate an allowable of at least 1,200 MCFD for the subject well.

If you have any questions please advise.

Sincerely,

READ & STEVENS, INC.

John C. Maxey, Jr.
Petroleum Engineer

JCM/lj
enclosures
xc: file, partners

Page: 1 Document Name: Session1

CMD :
OG6IPRDONGARD
INQUIRE PRODUCTION BY POOL/WELL10/15/98 09:57
OGOTWG -T
Page No:

OGRID Identifier : 18917 READ & STEVENS INC
Pool Identifier : 73080 BUFFALO VALLEY;PFNN (PRORATED GAS)
API Well No : 30 5 63087 Report Period - From : 01 1995 To : 10 1998

API Well No	Property Name	Prodn. Days MM/YY Prod	Production Volumes Gas Oil Water S
30 5 63087	HARRIS FEDERAL	11 97 30	31962
30 5 63087	HARRIS FEDERAL	12 97 31	31817
30 5 63087	HARRIS FEDERAL	01 98 31	29394
30 5 63087	HARRIS FEDERAL	02 98 28	26573
30 5 63087	HARRIS FEDERAL	03 98 31	28674
30 5 63087	HARRIS FEDERAL	04 98 29	25607
30 5 63087	HARRIS FEDERAL	05 98 31	28105

Reporting Period Total (Gas, Oil) :

E0049: User may continue scrolling.

PF01 HELP	PF02	PF03 EXIT	PF04 GoTo	PF05	PF06 CONFIR
PF07 BKWD	PF08 FWD	PF09	PF10 NXTPOOL	PF11 NXTOGD	PF12

Date: 10/15/98 Time: 10:02:45 AM

Page: 1 Document Name: Session1

CMD :
OG6IPRDONGARD
INQUIRE PRODUCTION BY POOL/WELL10/15/98 09:57
OGOTWG -T
Page No:OGRID Identifier : 18917 READ & STEVENS INC
Pool Identifier : 73080 BUFFALO VALLEY;PENN (PRORATED GAS)
API Well No : 30 5 63087 Report Period - From : 01 1995 To : 10 1998

API Well No	Property Name	Prodn. Days MM/YY Prod	Production Volumes Gas Oil Water S
30 5 63087		04 97	17605
30 5 63087	HARRIS FEDERAL	05 97 30	40278
30 5 63087	HARRIS FEDERAL	06 97 30	33937
30 5 63087	HARRIS FEDERAL	07 97 31	34202
30 5 63087	HARRIS FEDERAL	08 97 31	33972
30 5 63087	HARRIS FEDERAL	09 97 30	33804
30 5 63087	HARRIS FEDERAL	10 97 28	31137

Reporting Period Total (Gas, Oil) :

M0002: This is the first page

PF01 HELP	PF02	PF03 EXIT	PF04 GoTo	PF05	PF06 CONFIR
PF07 BKWD	PF08 FWD	PF09	PF10 NXTPOOL	PF11 NXTOGD	PF12

Date: 10/15/98 Time: 10:02:52 AM

Page: 1 Document Name: Session1

CMD :
OG6IPRDONGARD
INQUIRE PRODUCTION BY POOL/WELL10/15/98 09:57
OGOTWG -T
Page No:

OGRID Identifier : 18917 READ & STEVENS INC

Pool Identifier : 73080 BUFFALO VALLEY;PENN (PRORATED GAS)

API Well No : 30 5 63087 Report Period - From : 01 1995 To : 10 1998

API Well No	Property Name	Prodn. Days MM/YY Prod	Production Volumes Gas Oil Water S
30 5 63087	HARRIS FEDERAL	06 98 30	25920
30 5 63087	HARRIS FEDERAL	07 98 31	25954

Reporting Period Total (Gas, Oil) : 478941

E0049: User may continue scrolling.

PF01 HELP	PF02	PF03 EXIT	PF04 GoTo	PF05	PF06 CONFIR
PF07 BKWD	PF08 FWD	PF09	PF10 NXTPOOL	PF11 NXTOGD	PF12

Date: 10/15/98 Time: 10:02:35 AM

FIFTH JUDICIAL DISTRICT COURT

COUNTY OF CHAVES

STATE OF NEW MEXICO

READ & STEVENS, INC. etal

Plaintiff/Petitioner

V.

OIL CONSERVATION COMMISSION/NM etal

Defendant/Respondent.

FIFTH JUDICIAL DISTRICT
CHAVES COUNTY NM
FILED IN MY OFFICE

97 APR 30 AM 10:27

DEE J. CLEM
DISTRICT COURT CLERK

No. 05-04-CV-CV-97-00029

NOTICE OF HEARING

Type of Hearing: TELEPHONE Status Conference
STARTING AT: 10:00:AM
May 12, 1997

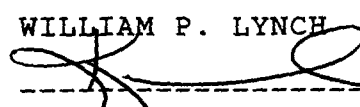
TO: HEBERT, MARILYN S.
2040 S. PACHECO
SANTA FE NM 87505-0000

YOU ARE HEREBY NOTIFIED THAT the above cause is set for
TELEPHONE Status Conference
on MONDAY, May 12, 1997, AT 10:00 AM
before the Honorable WILLIAM P. LYNCH, District Judge, Division 06
at the CHAVES COUNTY COURTHOUSE, ROSWELL, NEW MEXICO.

W.T. KELLAHIN SHALL INITIATE THE CONFERENCE CALL

THE DISTRICT COURT COMPLIES WITH THE AMERICANS WITH DISABILITIES
ACT. IT IS COUNSEL'S, OR A PRO SE PARTY'S OBLIGATION TO NOTIFY THE
CLERK OF THE COURT AT LEAST FIVE (5) DAYS BEFORE ANY HEARING OF THE
ANTICIPATED ATTENDANCE OF A DISABLED PERSON SO THAT APPROPRIATE
ACCOMMODATIONS CAN BE MADE.

CT- 624-0859

By: WILLIAM P. LYNCH


Judge / Clerk / Deputy

NOTICE MAILED/DELIVERED April 30, 19 97 by 

Ink -
982-4285

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF CHAVES

READ & STEVENS, INC. and
MATADOR PETROLEUM CORPORATION,

Petitioners,

vs.

No. CV-97-29

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO
and UMC PETROLEUM CORPORATION,

Respondents.

ANSWER OF UMC PETROLEUM CORPORATION

Respondent UMC Petroleum Corporation ("UMC"), for its Answer to the Petition for Review of a Decision of the Oil Conservation Commission of New Mexico ("the Petition"), states:

1. Answering paragraph 1 of the Petition, UMC denies that Read & Stevens, Inc. ("Read & Stevens") is adversely affected by Order No. R-10622 entered by Respondent Oil Conservation Commission ("the Commission"), but admits the remaining allegations of the paragraph.

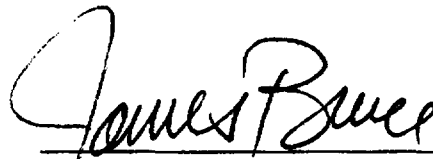
2. Answering paragraph 2 of the Petition, UMC denies that Matador Petroleum Corporation ("Matador") is adversely affected by Commission Order No. R-10622, but admits the remaining allegations of the paragraph.

3. UMC admits the allegations of paragraphs 3, 4, 5, 6, 7, and 8 of the Petition.

4. Answering paragraph 9 of the Petition, UMC admits that Read & Stevens and Matador (i) complain of Commission Order No. R-10622, and (ii) assert that Order No. R-10622 is arbitrary, capricious, unreasonable, not supported by substantial evidence, and is contrary to law. However, UMC denies that Order No. R-10622 is arbitrary, capricious, unreasonable, not supported by substantial evidence, and is contrary to law, and denies all remaining allegations of the paragraph.

WHEREFORE, having fully answered the Petition, UMC requests that the Court enter its order dismissing the Petition with prejudice, affirming Commission Order No. R-10622, and granting UMC such further relief as the Court deems proper.

Respectfully submitted,

A handwritten signature in cursive script, reading "James Bruce", written over a horizontal line.

James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504-1056
(505) 982-2043

Attorney for UMC Petroleum
Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was mailed, by first-class mail, postage prepaid, to the following counsel of record on this 24th day of February 1997:

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

Marilyn S. Hebert
Special Assistant Attorney General
Oil Conservation Commission
2040 South Pacheco Street
Santa Fe, New Mexico 87505

A handwritten signature in cursive script, appearing to read "James Bruce", written over a horizontal line.

James Bruce

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF CHAVES

ENDORSED COPY:
ORG. FILED DIST. COURT

FEB 19 1997

READ & STEVENS, INC. AND
MATADOR PETROLEUM
CORPORATION

BEE J. CLEM, CLERK

Petitioner,

vs.

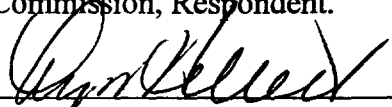
No. 97-CV-97-29

OIL CONSERVATION
COMMISSION OF THE STATE
OF NEW MEXICO AND UMC
PETROLEUM CORPORATION

Respondents.

ENTRY OF APPEARANCE

Comes now Marilyn S. Hebert, special assistant attorney general, and enters her appearance on behalf of the New Mexico Oil Conservation Commission, Respondent.



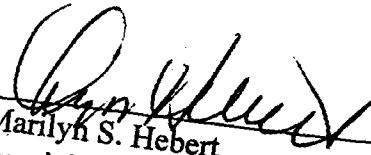
Marilyn S. Hebert
Special Assistant Attorney General
State of New Mexico
Energy, Minerals & Natural Resources Department
2040 S. Pacheco
Santa Fe, New Mexico 87505
(505) 827-1364

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Entry of Appearance was delivered by first-class mail, postage prepaid this 17th day of February, 1997, to:

W. Thomas Kellahin
Kellahin & Kellahin
Post Office Box 2265
Santa Fe, New Mexico 87504-2265
(505) 982-4285

James Bruce, Esquire
Post Office Box 1056
Santa Fe, New Mexico 87504-1056
(505) 982-2043



Marilyn S. Hebert
Special Assistant Attorney General
State of New Mexico
Energy, Minerals & Natural Resources Department
2040 S. Pacheco
Santa Fe, New Mexico 87505
(505) 827-1364

**FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF CHAVES**

**ENDORSED COPY:
ORG. FILED DIST. COURT**

FEB 19 1997

BEE J. CLEM, CLERK

**READ & STEVENS, INC. AND
MATADOR PETROLEUM
CORPORATION**

Petitioner,

vs.

No. 97-CV-97-29

**OIL CONSERVATION
COMMISSION OF THE STATE
OF NEW MEXICO AND UMC
PETROLEUM CORPORATION**

Respondents.

**ANSWER OF NEW MEXICO OIL CONSERVATION COMMISSION
TO PETITION FOR REVIEW**

The New Mexico Oil Conservation Commission ("Commission") for its Answer to the Petition for Review of a Decision of the Commission ("Petition") states:

1. In answer to paragraph 1, the Commission denies that Petitioner Read & Stevens, Inc. ("Read & Stevens") was adversely affected by Commission Order R-10622, but admits the remaining allegations in paragraph 1.

2. In answer to paragraph 2, the Commission denies that Petitioner Matador Petroleum Corporation ("Matador") was adversely affected by Commission Order R-10622, but admits the remaining allegations in paragraph 2.

3. The Commission admits the allegations contained in paragraphs 3, 4, 5, 6, 7 and 8 of the Petition.

4. In answer to paragraph 9, the Commission admits that Petitioner complains of Commission Order R-10622, but the Commission denies all remaining allegations in paragraph 9.

WHEREFORE, having fully answered the Petition, the Commission requests that the Court enter its order dismissing the Petition with prejudice, affirming the Commission Order R-10622 and granting such further relief as the Court deems proper.

Respectfully submitted



Marilyn S. Hebert
Special Assistant Attorney General
2040 South Pacheco
Santa Fe, New Mexico
(505) 827-1364

Attorney for the New Mexico
Oil Conservation Commission

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Answer of the New Mexico Oil Conservation Commission to Petition for Review** was delivered by first-class mail, postage pre-paid, this _____ February, 1997, to:

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

James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504-1056



Marilyn S. Hebert

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF CHAVES

READ & STEVENS, INC. and
MATADOR PETROLEUM CORPORATION,

Petitioners,

vs.

No. CV-97-29

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO
and UMC PETROLEUM CORPORATION,

Respondents.

**ACCEPTANCE OF SERVICE
AND
ENTRY OF APPEARANCE**

James Bruce, Attorney at Law, hereby accepts service of the Summons and a copy of the Petition filed in the above-captioned matter, and enters his appearance, on behalf of Respondent UMC Petroleum Corporation.



James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504-1056
Phone: (505) 982-2043
Fax: (505) 982-2151

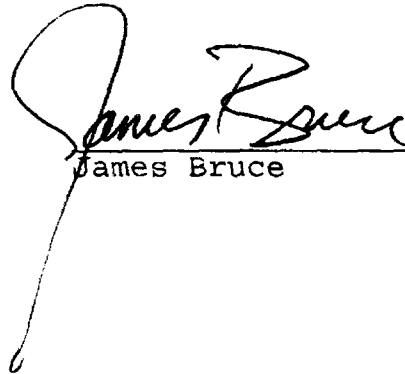
Attorney for UMC Petroleum
Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Acceptance of Service and Entry of Appearance** was mailed, by first-class mail, postage prepaid, to the following counsel of record on this 6th day of February 1997:

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

Marilyn S. Herbert
Rand L. Carroll
Oil Conservation Commission
2040 South Pacheco Street
Santa Fe, New Mexico 87505



James Bruce



NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-7131

February ¹⁷~~14~~, 1997

Ms. Bee J. Clem
District Court Clerk
Fifth Judicial District
Post Office Box 1776
Roswell, New Mexico 88201


Re: Read & Stevens, Inc., et al. V. Oil Conservation Commission, et al., No. CV 97-29

Dear Ms. Clem:

Enclosed for filing please find my Entry of Appearance and Answer in the above-referenced matter. Please file the originals and endorse the copies and return to me in the envelope provided.

Thank you for your assistance.

Sincerely,


Marilyn S. Hebert

cc: W. Thomas Kellahin
James Bruce



Attorney General of New Mexico

PO Drawer 1508
Santa Fe, New Mexico 87504-1508

505/827-6000
Fax 505/827-5826

TOM UDALL
Attorney General

MANUEL TIJERINA
Deputy Attorney General

No. 6339

THE OFFICE OF THE ATTORNEY GENERAL

TRANSMITTAL SLIP

TO: Lyn Hebert SERVED: Feb. 10, 1997
DEPARTMENT: Energy & Minerals TRANSMITTED: Feb. 11, 1997
DIVISION: Legal RETURNED: _____

FROM: **Sylvia D. Quintana, Litigation Division**

XX Attachments

CASE NAME AND CAUSE NO.: Read & Stevens, INC. and Matador
Petroleum Corp. v. Oil Conservation Comm., et al.; No. CV-97-29

The Office of the Attorney General has received a copy of the enclosed pleading. Examination of the allegations made against the State of New Mexico seems to indicate your agency as the state agency (if any) having an interest in the subject matter of the suit.

Please acknowledge receipt of the attached pleading by signing and returning this letter to the Office of the Attorney General immediately.

SIGNED: _____

DATE: _____

DEPARTMENT/DIVISION: _____

**STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT**

**TIMOTHY B. JOHNSON, Trustee for
Ralph A. Bard, Jr. et al.,**

Plaintiffs,

vs

CV-97-572-3

**BURLINGTON RESOURCES OIL & GAS
COMPANY, a corporation and the
NEW MEXICO OIL CONSERVATION COMMISSION**

**DEFENDANTS' JOINT MEMORANDUM BRIEF IN SUPPORT
OF THEIR
MOTION TO DISMISS**

The New Mexico Oil Conservation Commission ("Commission") and Burlington Resources Oil & Gas Company ("Burlington"), hereby submit their Defendants' Memorandum Brief in Support of their Motion to Dismiss:

I.

SUMMARY OF PROCEEDINGS

In Case 11745, the Commission Amended General Rule 104:

In order to prevent waste of New Mexico's natural resources, the New Mexico Oil and Gas Act authorizes the New Mexico Oil Conservation Commission ("Commission") to establish general rules on spacing and other matters in order to carry out the purposes of the Act. **Section 70-2-11 NMSA**

DRAFT
8/13/97

(Repl. Pump. 1995)

(1978). These General Rules for "statewide application"¹ govern when no special pool rules exist. **See 19 NMAC 15.A-Rule 11.** On June 5, 1997, the Commission entered Order R-10815 in Commission Case 11745 which is the result of such a rule making procedure.

The Commission amended General Rule 104 in order to encourage "deep gas" well development in the San Juan Basin of New Mexico because no such development had taken place nor would take place in the future under the limitations of the prior general rule. **See Order R-10815.**

Commission Case 11745 was heard by the Commission after appropriate notice at a public hearing where the Commission solicited comments and information to allow the Commission to determine how to encourage further development in the San Juan Basin. It did not involve a determination of ownership interest as would be the situation in compulsory pooling cases.² It did not affect the share of production any party was currently receiving as can happen in certain amendments to special pool rules.³

¹ Statewide application does not mean that all these rules are the same for all portions of New Mexico. The Commission has always adopted General Rules suitable for general application in the San Juan Basin and in the Permian Basin, New Mexico's two major producing areas.

² See Section 70-2-17.C NMSA (1979) for Commission authority to identify owners in a spacing unit and to pool their interests as compared to the Commission authority in Section 70-2-12(10) to fix the spacing wells.

³ See Section 70-2-17.A and Section 70-2-17.B NMSA (1979) for Commission authority to determine and allocate production in a specific pool.

Burlington's compulsory pooling in Division Case 11808:

On July 10, 1997, and in another matter, the New Mexico Oil Conservation Division⁴ held an adjudication hearing in Division Case 11808 in which Burlington sought an order from the Division in accordance with Section 70-2-17.C NMSA for the compulsory pooling of certain uncommitted interest owners in Section 9, T31N, R10W including the interests of the Plaintiffs in order to involuntarily commit those interests to a 640-acre spacing unit. That case is still pending decision by the Division.

The Plaintiffs' Litigation:

W. W. LaForce, Jr. and other individuals and entities alleged to own oil and gas minerals interests underlying Section 9, Township 31 North, Range 10 West, NMPM, San Juan County, New Mexico, hereinafter called "Plaintiffs" now want this Court to invalidate the Commission's general rule making decision in Case 11745 so that they can circumvent attempts by Burlington in another case (Division Case 11809) to involuntarily commit their interest pursuant to the compulsory pooling statute. Section 70-2-17.C NMSA (1979).

⁴ The Commission consists of a three member panel composed of the Director of the Oil Conservation Division, a designee of the Commissioner of Public Lands, and a designee of the Secretary of the Energy Minerals and Natural Resources Department. The Division is a fully staffed governmental agency, which among its duties conducts Examiner Hearings to adjudicate disputes among parties subject to its jurisdiction. An order entered by the Division in such a case is "appealable" de-novo" to the Commission.

II.

ARGUMENTS AND AUTHORITIES

Plaintiffs are asking this Court to invalidate portions of one of the General Rules and Regulations adopted by the Commission. But in doing so, the Plaintiffs have:

- (a) failed to comply with the appeal procedures set forth by the New Mexico Supreme Court;
- (b) failed to timely file a proper notice of appeal and thus waived their attempt to have the Court review Commission Order R-10815 entered in Case 11745;
- (c) failed to allege the proper standard for review;
- (d) failed to demonstrate that they are entitled to notice in Commission Case 11745;
- (e) failed to demonstrate that they are a party adversely affected by Order R-10815; and
- (f) prematurely appealed Division Case 11809 for which Petitioners have not exhausted their administrative remedies;

A. Appeals limited to Commission record:

An appeal of a Commission order to the District Court is based solely upon the record established at the Commission hearing. **NMSA Sec 70-2-25(B)(Repl. Pamp 1995) and Rule 1-074.H NMRA (1997)**

Instead, Plaintiffs have filed a complaint with attached exhibits in this case consisting of some 320 pages included numerous allegations, contentions, references to other litigation and other Division cases which are self serving, argumentative and outside the record in this case. The Court should dismiss this case because of the failure of Petitioner's to comply with Section 70-2-25.B NMSA (1979) and Rule 1-074.H NMRA (1997).

B. Plaintiffs have failed to comply with Rules 1-074C. and D NMRA (1997):

Rule 1-074 NMRA (1997) which became effective on January 1, 1996, strictly governs the procedures for the statutory review by the District Court of administrative decisions by the Commission. In addition, Section 70-2-25 NMSA required that Petitioners' Notice of Appeal must have been filed by July 25, 1997, in order to be timely file.⁵ Petitioners' failed to comply with Rule 1-074 NMRA (1979). Such an appeal is perfected:

- (a) by preparing a Notice of Appeal which contains certain specified information as set forth in Rule 1-074.D; and

⁵ Commission Order R-10815 was issued on June 5, 1997. Section 70-2-25.B NMSA (1979) requires any party adversely affected to file an Application for Rehearing with the Commission within twenty days of a Commission order. Plaintiffs filed an application for Rehearing on June 24, 1997, which was deemed denied ten days later.

- (b) by timely filing said notice with the Clerk of the District Court with proof of service as required by Rule 1-074.C NMRA (1979) and within the time limit set forth in Section 70-2-25.B NMSA (1979).

Plaintiffs did not timely file such a Notice of Appeal in compliance with Rule 1-074 NMRA (1979). Instead, Petitioners filed a complaint in this Case which is full of argumentative recitations and references to matters outside of the record in Commission Case 11745. The Plaintiffs have failed to comply with Rule 1-074 NMSA (197) and have waived their attempt to appeal Commission Order R-10815.

C. Standard of Review:

Petitioners are asking the Court to apply the wrong evidentiary standard to Case 11745. Petitioner want the substantial evidence standard of an adjudicatory proceeding applied to this rule making proceeding where the substantial evidence standard is not required. **See Uhden v. Oil Conservation Commission, 112 NM 528, 817 P.2d 721 (1991).**

Commission Case 11745 involved a rule of general application for all formations in the San Juan Basin below the base of the Dakota formation to establish a new standard sized spacing unit for some twenty (20) various formations below the base of the Dakota formation in the San Juan Basin

without regard to the particular geologic and petroleum engineering properties of each of these formations.

Had Commission Case 11745 been an adjudication proceeding, then Commission's order is to be reviewed by the Court acting as an "appellate court" in which the District Court reviews the record established at the Commission hearing to determine if the Commission's order is lawful and is supported by substantial evidence in the record. For examples, see *Continental Oil Co. Oil Conservation Commission*, 70 N.M. 310, 373 P.2d 809 (1962), *Duke City Lumber Co. v. New Mexico Env'tl. Improvement Bd.*, 101 N.M. 291, 681 P.2d 717 (1984), *Fasken v. Oil Conservation Commission*, 87 N.M. 292, 532 P.2d 588 (1975), *Rutter & Wilbanks Corp. v. Oil Conservation Commission*, 87 N.M. 286, 532 P.2d 582 (1975) *Santa Fe Exploration v. Oil Conservation Commission*, 114 N.M. 103, 835 P.2d 819 (1992) 734 P.2d 245 (N.M. App.1987) *Viking Petroleum v. Oil Conservation Commission*, 100 N.M. 451, 672 P.2d 280 (1983).

However, in order to have that opportunity for a "substantial evidence" review in Commission Case 11745, the Plaintiffs, in accordance with **Uhden, supra**, must demonstrate that this was an adjudication of their property rights which were adversely affected and not a rule making case.

In **Uhden**, *supra*, the New Mexico Supreme Court held that case **was not a rule making case** but was an adjudication for which Ms. Uhden must be given notice because:

- (1) the order was not of general application
- (2) was confined to a limited area,
- (3) the persons affected were limited in number and were identifiable;
- (4) the order had immediate effect on owner of producing property.

In contrast to **Uhden**, Commission Case 11745 involved the Commission's General Rules and the making of a prospective rule change for general application in a vast undeveloped area covering some 9,000 square miles with tens of thousands of owners and hundreds of operators for an interval involving at least twenty (20) different formations below the base of the Dakota formation in the San Juan Basin which, except for a few isolated and scattered wells, were **not** being produced and which had **not yet** been proven productive. While such land-use rules "impact" future development, they do not constitute an "adjudication of property rights."

D. Plaintiffs are not entitled to Notice:

The Plaintiffs are not entitled to actual notice of such rule making procedure. **Uhden, supra**. It is logical and reasonable to understand they are not entitled to notice. It would be impossible to identify, locate and provide

actual notice to the tens of thousands of parties owning an interest in oil and gas minerals in the entire San Juan Basin every time the Commission wanted to adopt a change in the General Rules. Such a requirement would simply preclude the Commission from ever changing any of its General Rules and thereby prevent the Commission from fulfilling its statutory mandate to provide and manage an oil and gas conservation system for the State of New Mexico.

This is not the **Uhden Case**. In that case, Commission was adjudicating an application by Amoco to change the spacing for **established and producing** coal-gas wells which were subject to the Special Rules and Regulations adopted specifically for and limited to the Cedar Hills Coal-Gas Pool.⁶ In **Uhden**, as a result of that adjudication, the Commission amended the special rules and regulations specifically adopted for that proven productive reservoir. The Commission made a change spacing which affected the existing 160-acre spacing units including the spacing unit from which Mrs. Uhden was receiving royalty income from her lessee, Amoco who had failed to provide Mrs. Uhden with notice of that hearing. Mrs. Uhden's share of current income from the Amoco well on her unit was reduced by one-half when the Commission increased the size of the spacing units in this pool to 320-acre without actual notice to her.

⁶ See OCD Order R-7588 and R-7588-A.

In Commission Case 11745, there were no existing spacing units subject to Rule 104 below the base of the Dakota formations in the entire San Juan Basin because there had been no commercial production established. When the Commission adopts a rule making decision, it is not an adjudication of rights or interest between parties. Thus the amendment of this general rule had no immediate effect on Plaintiff's interest in Section 9 and they were not entitled to actual notice.

D. Plaintiffs have no standing to appeal:

Plaintiffs have no standing to appeal because they are not adversely affected by Order R-10815. Division Rule 1220 provides in part that:

"any party to the proceedings adversely affected by the order or decision rendered by the Commission after hearing before the Commission may apply for rehearing pursuant to and in accordance with the provisions of Rule 1222 and said Rule 1222 together with the law applicable to rehearings and appeals in matters and proceedings before the Commission shall thereafter apply."

Plaintiffs incorrectly presume that this change of a General Rule has voluntarily or involuntarily committed their interest to a spacing unit consisting of Section 9. General Rule 104 only affects the owners within the area in the same way as any other land-use regulation affects property owners within the area regulated. When and how these owners will share in any production from any well to be drilled in this or any other spacing unit will be decided either by voluntarily agreement or by a compulsory pooling case **but** not by Case 11745.

As with other General Rules which require periodic revision, Rule 104 needed to be revised. With few exceptions, the many "deep gas" formations from the base of the Dakota formation to the base of the Pennsylvanian formation in the San Juan Basin have not been effectively explored because Rule 104 provided for 160-acre spacing was not suitable for "deep gas" exploration below the base of the Dakota formation.⁷

The Commission decided⁸ that there exists a substantial opportunity for operators in the San Juan Basin to commence more significant efforts to explore and produce the deep gas in the San Juan Basin, but the 160-acre spacing unit size for deep gas has discouraged efforts to develop the deep gas in the San Juan Basin because:

(a) a 160-acre unit does not provide sufficient gas-in-place to economically justify the drilling of deep gas wells which currently cost in excess of two million dollars to drill and complete;

(b) operators do not want to assume the risk of either (a) drilling a deep gas well on 160-acre spacing only to have the owners in the adjoining 160-acre drill another deep gas well which is not necessary in order to drain the area or (b) pooling the adjoining tracts into a 640-acre unit after the well is drilled only to have the adjoining owners avoid assuming any of the risk of drilling the deep gas well;

⁷ It is interesting to note the following inconsistency: that both the Blanco Mesaverde Pool and the Basin Dakota Pools, which are **above** the base of the Dakota are spaced on 320-acre spacing while the "deep gas" was subject to 160-acre spacing.

⁸ See Order R-10815

(c) it is extremely difficult to consolidate 640-acres into a voluntary spacing unit for the drilling of wildcat and development deep gas wells;

(d) future deep gas wells are estimated to costs in excess of two million dollars and the estimate ultimate recovery for deep gas wells requires the dedication of 640 acres to provide sufficient gas reserves to justify the drilling of such wells.

Such a determination was made as a matter of established conservation "policy" to encourage the development of a potential resources for the State of New Mexico⁹

E. Plaintiffs have failed to exhaust their administrative remedies:

The Plaintiffs are confusing three different types of cases:

(1) Division General Rules for well spacing¹⁰

(2) the establishment of special rules for well spacing, well locations and production from a specific reservoir **after** a well capable of producing hydrocarbons in paying quantities has been drilled and completed.¹¹

(3) compulsory pooling to involuntarily pool uncommitted interest owners for purposes of consolidating all owners into a spacing unit.¹²

⁹ See Section 70-2-6 NMSA (1979).

¹⁰ Case 11745 is an example. In New Mexico, unlike Oklahoma, a well spacing hearing is a separate and distinct proceeding unrelated to compulsory pooling hearing.

¹¹ No such case is yet pending that is relevant in this matter because no "deep gas" well has yet been drilled which is capable of production in paying quantities.

¹² Case 11809 is an example of this type.

Plaintiffs are attempting to appeal the first type of case when in order to circumvent the commitment of their interest in the third type of case.

Plaintiffs attempted appeal is premature because the gravamen of their complaint is that the Division may grant at a compulsory pooling order in another case still pending before the Division which may affect their property interest in Section 9. Should that happen, the Plaintiffs then have the statutory right to appeal the matter "de novo" to the Commission. In the event the Commission grants the compulsory pooling request, then the Plaintiffs are entitled to appeal the Commission's order to the District Court pursuant to Rule 1-074 NMRA (1997).

CONCLUSION

The Plaintiff's complaint is misdirected. They are concerned about a compulsory pooling case still pending before the Division. As a result of their anxiety over that case they have attempted to appeal the wrong case. Unfortunately for them, they have also failed to comply with the appropriate appellate rules for which they will have to ask their counsel for an explanation.

Dismissal of the Plaintiff's complaint is warranted in this case because the Plaintiffs have failed to comply with the appellate rules. However, dismissal of the Plaintiff's complaint does not deny them an opportunity at the appropriate time to have the District Court review the compulsory pooling case which is their real concern.

Respectfully submitted by:

DRAFT

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ATTORNEYS FOR BURLINGTON
RESOURCES OIL & GAS COMPANY

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing memorandum was hand delivered this ____ day of August, 1997 to the office of:

Gene Gallegos, Esq.

JAMES BRUCE
ATTORNEY AT LAW

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SANTA FE, NEW MEXICO 87504

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August 21, 1997

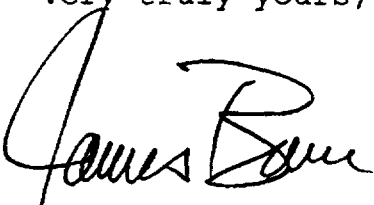
The Honorable William P. Lynch
P.O. Box 1776
Roswell, New Mexico 88201

Re: **Read & Stevens, Inc., et al. v. Oil Conservation
Commission, et al., Case CV-97-29**

Dear Judge Lynch:

Enclosed, regarding the above matter, is the Answer Brief of UMC
Petroleum Corporation. The original has been mailed to the Court
Clerk for filing.

Very truly yours,



James Bruce

cc: Counsel of record w/encl.

JAMES BRUCE
ATTORNEY AT LAW

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August 21, 1997


Bee J. Clem
District Court Clerk
P.O. Box 1776
Roswell, New Mexico 88201

Re: **Read & Stevens, Inc., et al. v. Oil Conservation
Commission, et al.,** Case CV-97-29

Dear Ms. Clem:

Enclosed for filing in the above matter is the Answer Brief of UMC Petroleum Corporation. Please endorse the enclosed copy, and return it to me in the envelope provided. Thank you.

Very truly yours,



James Bruce

cc: Counsel of record w/encl.



**NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT**

OFFICE OF THE SECRETARY
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-5950

Jennifer A. Salisbury
CABINET SECRETARY

Via Federal Express

August 21, 1997

Ms. Bee J. Clem
District Court Clerk
Chaves County Courthouse
401 N. Main
Roswell, NM 88201

**Re: Read & Stevens et al. v. Oil Conservation Commission et al.
No. CV 97-29**

Dear Ms. Clem:

Enclosed please find the original and a copy of the Answer Brief of the New Mexico Oil Conservation Commission in the above-referenced case. Please have the original filed, the copy conformed and the copy returned to me in the enclosed envelope.

Thank you for your assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "Marilyn S. Hebert".

Marilyn S. Hebert

cc: James Bruce
W. Thomas Kellahin



NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-7131

Via Federal Express

August 21, 1997

The Honorable William P. Lynch
District Court Judge
Chaves County Courthouse
401 N. Main
Roswell, New Mexico 88201

Re: Read & Stevens et al. v. Oil Conservation Commission et al.
No. CV 97-29

Dear Judge Lynch:

Enclosed please find the Answer Brief for the New Mexico Oil Conservation Commission in the above-referenced case. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marilyn S. Hebert".

Marilyn S. Hebert

cc: Bee J. Clem, District Court Clerk
James Bruce
W. Thomas Kellahin

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August 8, 1997

AUG 11 1997

FEDERAL EXPRESS

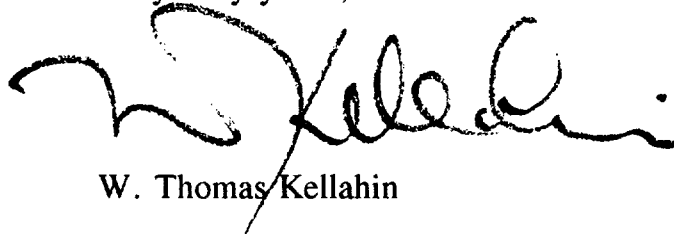
Honorable William P. Lynch
District Court Judge
Chaves County Courthouse
401 N. Main
Roswell, New Mexico 88201

Re: *Read & Stevens vs Oil Conservation Commission*
CV-97-29
Case No. 11514 (DeNovo)
Commission Order R-10622
Application of Read & Stevens, Inc.
for an unorthodox well location,
Chaves County, New Mexico.

Dear Judge Lynch:

In accordance with your instructions communicated to counsel on June 27, 1997,
please find enclosed Petitioners-Appellants' Brief in Chief in the referenced case.

Very truly yours,



W. Thomas Kellahin

cc: *Bee J. Clem, District Court Clerk*
cc: *James Bruce, Esq.*
cc: *Lyn Hebert, Esq.*



NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-7131

March 13, 1998

The Honorable William P. Lynch
District Court Judge
Fifth Judicial District, Division VI
Post Office Box 1776
Roswell, New Mexico 88201

Re: Read & Stevens, Inc., et al. v. Oil Conservation Commission, et al.
CV-97-29

Dear Judge Lynch:

Enclosed please find a copy of the Oil Conservation Commission's (Commission) Order with additional findings pursuant to the Court's Order filed on December 29, 1997, remanding the case to the Commission for entry of additional findings. Please note that the additional findings are in bold type.

I am sending a copy of the Commission's Order to the court clerk for filing and all counsel of record.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marilyn S. Hebert".

Marilyn S. Hebert

cc: James Bruce
W. Thomas Kellahin



NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-7131

March 13, 1998

Ms. Bee J. Clem
District Court Clerk
Fifth Judicial District
Post Office Box 1776
Roswell, New Mexico 88201

Re: Read & Stevens, Inc., et al. v. Oil Conservation Commission, et al.
CV-97-29

Dear Ms. Clem:

Enclosed please find two copies of the Oil Conservation Commission's (Commission) Order, Order No. R-10622-A. Please file one copy, conform the other and return it to me in the enclosed envelope.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Marilyn S. Hebert".

Marilyn S. Hebert

cc: James Bruce
W. Thomas Kellahin



NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION
2040 South Pacheco Street
Santa Fe, New Mexico 87505
(505) 827-7131

February 3, 1998

The Honorable William P. Lynch
District Court Judge, Div. VI
Post Office Box 1776
Roswell, New Mexico 88201


**Re: Read & Stevens, Inc., et al. v. Oil Conservation Commission, et al.
CV-97-29**

Dear Judge Lynch:

The New Mexico Oil Conservation Commission ("Commission") has received the Court's Order filed December 29, 1997, remanding the above-referenced matter to the Commission for entry of additional findings. This letter is to inform you that the Commission's last public meeting was held on December 11, 1997, and the next scheduled Commission meeting is February 26, 1998. This matter has been placed on the agenda for that meeting.

Thank you for your attention to this.

Sincerely,




Marilyn S. Hebert

cc: James Bruce
W. Thomas Kellahin

MEMORANDUM

To: Jami Bailey

From: Lyn Hebert 

Re: Read & Stevens, et al. v. Oil Conservation Commission, et al.

Date: January 8, 1998

Enclosed please find a copy of the order in the above-referenced case that we briefly discussed yesterday. Judge Lynch remanded the case to the Commission to enter additional findings. This case, I believe, will be set on the docket for the first Commission meeting of this year.

Please call me if you have any questions.

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF CHAVES

READ & STEVENS, INC. and
MATADOR PETROLEUM CORPORATION,

Petitioners,

v.

No. 05-04-CV-CV-97-00029

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO
and UMC PETROLEUM CORPORATION,

Respondents.

ANSWER BRIEF OF UMC PETROLEUM CORPORATION
IN SUPPORT OF OIL CONSERVATION COMMISSION ORDER R-10622

Appeal from Decision of the Oil Conservation Commission

James Bruce
P.O. Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

Attorney for UMC
Petroleum Corporation

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UMC Petroleum Corporation ("UMC") submits this brief in support of Order No. R-10622 entered by the Oil Conservation Commission ("Commission").

I. SUMMARY OF PROCEEDINGS

A. Nature Of The Case.

This case involves an appeal of a decision of the Commission pursuant to N.M. Stat. Ann. §70-2-25(B) (1995 Repl. Pamp.).

B. Course Of Proceedings.

In March 1996, Read & Stevens, Inc. ("Read & Stevens") applied to the Oil Conservation Division ("Division") in Case No. 11514 for approval of an unorthodox location for a gas well to be drilled in Chaves County, New Mexico.¹ UMC appeared in opposition to the application. The case was heard on May 16, 1996, after which the Division entered Order No. R-10622 ("Division Order") approving the well location, but assessing a production penalty of 50%.² Read & Stevens appealed the order to the Commission, pursuant to N.M. Stat. Ann. §70-2-13 (1995 Repl. Pamp.), which

¹Petitioner Matador Petroleum Corporation appeared in the case in support of Read & Stevens.

²Division Rule 104.G provides:

Whenever an exception [to well location requirements] is granted, the Division may take such action as will offset any advantage which the person securing the exception may obtain over other producers by reason of the unorthodox location.

19 NMAC 15.C-104.G.

heard the case on October 29, 1996. The Commission entered Order No. R-10622 ("Commission Order")³ on December 12, 1996, essentially affirming the Division Order. Read & Stevens filed its Application for Rehearing on December 31, 1996. The Commission did not act on the Application, and it was therefore deemed denied pursuant to N.M. Stat. Ann. §70-2-25(A) (1995 Repl. Pamph.) Read & Stevens filed its Petition for Review of the Commission's order with this Court on January 24, 1997.

C. Summary Of Facts.

Read & Stevens filed an application with the Division seeking approval to drill its Harris Federal Well No. 11 at an unorthodox gas well location 990 feet from the South line and 1980 feet from the West line (SE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 26, Township 15 South, Range 27 East, NMPM, to test the Buffalo Valley-Pennsylvanian Gas Pool.⁴ The well is dedicated to a 320-acre gas spacing and proration unit comprised of the S $\frac{1}{2}$ of Section 26, together with the existing Harris Federal Well No. 4, located at a standard gas well location in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26. **Commission Order, Finding ¶¶(2), (3).**

Read & Stevens also operates the Harris Federal Well No. 8, located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26. The N $\frac{1}{2}$ of Section 26 is

³The Commission Order is found at page 38 of the Record Proper.

⁴The well has now been drilled and completed at its proposed location.

dedicated to that well. **Commission Order, Finding ¶(8).**

All of Section 26 is located within the Buffalo Valley-Pennsylvanian Gas Pool. Division rules for this pool require standard 320-acre gas spacing and proration units with wells to be located in the NW¼ or SE¼ of a standard section, and no closer than 990 feet from the outer boundary of the well unit. **Commission Order, Finding ¶(6).**

UMC is the operator of the following gas wells in Section 35, Township 15 South, Range 27 East, NMPM:

- (a) White State Well No. 1, located in the SW¼SE¼ of Section 35. The S½ of Section 35 is dedicated to the well; and
- (b) White State Well No. 2, located 1980 feet from the North and West lines (SE¼NW¼) of Section 35. The N½ of Section 35 is dedicated to the well.

UMC's wells are located in the NW¼ and SE¼ of Section 35, just as applicant's wells (as of the date of hearing) are located in the NW¼ and SE¼ of Section 26. UMC's wells are completed in the Diamond Mound-Morrow Gas Pool. **Commission Order, Finding ¶(5).**

At the hearing in this matter, the geologic evidence presented by both Read & Stevens and UMC was in general agreement, and showed that:

- (a) The Buffalo Valley-Pennsylvanian Pool and Diamond Mound-Morrow Gas Pool, in the area of Sections 26 and 35, represent

a single common source of supply in the Lower Pennsylvanian formation;

(b) The Lower Pennsylvanian interval being produced in the Harris Federal Well Nos. 4 and 8 and the White State Well Nos. 1 and 2 is a correlatable channel sand which traverses Sections 26 and 35 in a north-south direction; and

(c) The reservoir sand generally thickens within the W½ and thins within the E½ of both Section 26 and Section 35.

See Commission Order, Finding ¶(9); Division Order, Finding ¶(9).

UMC presented engineering evidence at the hearing showing that:

(a) Drainage in the Lower Pennsylvanian reservoir will not be radial, but will be along the North-South trend of the channel in an oblong manner;

(b) Bottom hole pressures in the reservoir have declined from a virgin pressure of 3300-3400 psi to 1000-1300 psi in 1993, evidencing substantial depletion of the reservoir;

(c) The combined producing rates of Read & Stevens' two existing wells in Section 26 is approximately one million cubic feet of gas per day ("MCFGPD"). Likewise, the combined producing rates of UMC's two wells in Section 35 is approximately 1 MCFGPD. Thus, each section is currently producing an equal amount of gas, and production between

Sections 26 and 35 is at an equilibrium;

(d) Due to the north-south drainage pattern in the reservoir, by locating the Harris Federal Well No. 11 990 feet off the common lease line, the applicant will be gaining an advantage over UMC, whose White State Well No. 2 is located 1980 feet off the common lease line.

Testimony of B. Jameson (UMC engineer), Hearing Transcript ("Tr.") at 85-90.

At the Division hearing, the engineering testimony presented by Read & Stevens and UMC was also in general agreement. **See Division Order, Finding ¶(10).** However, at the Commission hearing, Read & Stevens changed its engineering evidence to show that:

- (a) The remaining recoverable gas in place in Section 26 is approximately 5 BCF, while remaining recoverable gas in place in Section 35 is approximately 3.4 BCF; and
- (b) As a result, Read & Stevens should be allowed to produce $5 + (5 + 3.4)$, or approximately 60%, of the remaining recoverable gas in place from the two sections.

Testimony of T. Payne (Read & Stevens engineer), Tr. at 25-26; Closing argument of Read & Stevens' counsel, Tr. at 122-123. Read & Stevens' engineer also testified that the initial producing rate of the proposed Harris Federal Well No. 11 will be 1.4 MCFGPD.

Testimony of T. Payne, Tr. at 48. Thus, with the addition of the proposed Harris Federal Well No. 11, if no penalty is assessed on production, the combined daily producing rate from Read & Stevens' wells in Section 26 is projected to be approximately 2.4 MCFGPD, which is more than 200% greater than the combined daily producing rate of UMC's wells in Section 35.

Additional facts pertinent to UMC's arguments are set forth below in the Argument section of this brief.

II. ARGUMENT

A. Standard Of Review.

The appeal of the Commission Order is before the Court on the record established at the Commission hearing. **N.M. Stat. Ann. §70-2-25(B) (1995 Repl. Pamp.)**. This Court must determine whether the Commission Order is lawful and is supported by substantial evidence in the record. **Rutter & Wilbanks Corp. v. Oil Conservation Comm'n**, 87 N.M. 286, 532 P.2d 582 (1975) ("substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion); **Grace v. Oil Conservation Comm'n**, 87 N.M. 205, 531 P.2d 939 (1975). The Commission Order is *prima facie* valid. **N.M. Stat. Ann. §70-2-25(B) (1995 Repl. Pamp.)**. Moreover, this Court gives special weight and credence to the experience, technical competence, and specialized knowledge of the Commission, **Rutter & Wilbanks Corp.**

v. Oil Conservation Comm'n, *supra*, and reviews the record in a light most favorable to upholding the Commission's decision. **Santa Fe Exploration Co. v. Oil Conservation Comm'n**, 114 N.M. 103, 835 P.2d 819 (1992). As a result, Read & Stevens has the burden to show that the Commission Order: (1) is contrary to statute; or (2) has no support in the record.

B. **Point I: The Commission Order Did Not Violate Read & Stevens' Correlative Rights.**

Read & Stevens asserts a faulty correlative rights argument, which is apparent when the statutory definition of correlative rights is examined. "Correlative rights" is defined by the Oil and Gas Act as follows:

"correlative rights" means **the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas or both in the pool, being an amount, so far as can be practicably determined and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas or both under the property bears to the total recoverable oil or gas or both in the pool and, for such purposes, to use his just and equitable share of the reservoir energy.**

N.M. Stat. Ann. §70-2-33(H) (1995 Repl. Pamp.) (emphasis added).

As "correlative rights" is defined by statute, Read & Stevens is only entitled to an **opportunity** to produce recoverable reserves. The four existing UMC and Read & Stevens wells were

drilled in the period 1980-1982. **UMC Exhibit 1.**⁵ Read & Stevens never sought to drill an additional well in Section 26 until 1996, and thus cannot claim its correlative rights are violated.

Moreover, the Commission's order gives Read & Stevens exactly what it asked for: Based on its own expert engineering testimony, Read & Stevens should be allowed to produce 60% of remaining reserves under Sections 26 and 35.⁶ Read & Stevens' new well will produce at a rate of 1.4 MCFGPD. The 50% penalty assessed by the Commission will allow the well to produce at $1.4 \times 50\% = 0.7$ MCFGPD. Since each section is now producing 1 MCFGPD, Read & Stevens will be producing 1.7 MCFGPD versus UMC's 1 MCFGPD. Simple arithmetic shows that Read & Stevens will produce $1.7 \div (1 + 1.7) = 63\%$ of the gas from the two sections. Thus, the penalty allows Read & Stevens to produce the reserves it claims it should be allowed to produce. What could be fairer?

C. Point II: The Commission Order Contains Sufficient Findings.

The assessment of a production penalty in the Commission

⁵The completion dates of the wells are printed in blue under each well location. UMC's wells were drilled earlier in time than Read & Stevens' wells, which is one reason they have larger cumulative recoveries than Read & Stevens' wells. **Testimony of B. Jameson, Tr. at 112.**

⁶The Commission accepted the original gas-in-place calculations from Read & Stevens' engineering analysis. **Commission Order, Finding ¶(10).** However, that finding is limited to gas-in-place calculations. The Commission did not accept Read & Stevens' argument that UMC would be unharmed by allowing the new well to produce without a penalty. **See Commission Order, Finding ¶¶(12)(d), (13).**

Order is supported by the following:

(a) Original Gas-in-Place figures for each section.

Commission Order, Finding ¶(10).

(b) Estimated ultimate recoveries for each section. **Id.**

(Based on items (a) and (b), the recoverable gas under each section can be determined.)

(c) Each section is currently producing at approximately 1 MCFGPD. **Division Order, Finding ¶(12)(a).**

(d) Read & Stevens' new well will produce at approximately 1.5 MCFGPD. **Commission Order, Finding ¶(14).**

(e) Read & Stevens' new well is only 990 feet off the common lease line. **Commission Order, Finding ¶(2).**

(f) UMC's White State Well No. 2 is 1980 feet off the common lease line. **Commission Order, Finding ¶(5).**

Based on the foregoing, the Commission could logically conclude that, due to the additional production from the new well, Read & Stevens will be gaining an advantage over UMC because the new well is substantially closer to the common lease line than UMC's existing well. **Commission Order, Finding ¶¶(12)(d), (13), (15).**⁷ These findings are sufficient to support the production penalty in the Commission Order. **Continental Oil Co. v. Oil**

⁷In protecting correlative rights, the Division and the Commission must consider the correlative rights of both the applicant and the protesting party. **Chevron Oil Co. v. Oil & Gas Conservation Comm'n, 435 P.2d 781 (Mont. 1967).**

Conservation Comm'n, 70 N.M. 310, 373 P.2d 809 (1962) (elaborate findings are not necessary). Accord, Zinke & Trumbo, Ltd. v. State Corporation Comm'n, 749 P.2d 21 (Kan. 1988) (Commission not required to render its findings in minute detail).⁸

D. Point III: The Findings In The Commission Order Are Consistent And Are Supported By Substantial Evidence.

Read & Stevens disputes Finding ¶12(d)⁹ in the Commission Order, claiming that it is inconsistent with Finding ¶(10), and that it is not supported by substantial evidence. Read & Stevens is wrong on both counts. As discussed above at pages 12-13 hereof, the findings of the Commission Order are consistent and support the imposition of a production penalty on Read & Stevens' new well. Moreover, as discussed in footnote 6, Finding ¶(10) only accepts Read & Stevens' gas-in-place calculations; it does not state that it accepts all of Read & Stevens' testimony. Therefore, the findings are not in conflict.

In addition, Finding ¶12(d) is supported by evidence in the record that Read & Stevens' new well would give it an unfair advantage over UMC. **Testimony of B. Jameson, Tr. at 89-90, 96.**

⁸Read & Stevens' cite to Fasken v. Oil Conservation Comm'n, 87 N.M. 292, 532 P.2d 588 (1975), is not on point. In that case the Court held that findings were "utterly lacking." 87 N.M. at 294.

⁹Finding ¶(12)(d) states:

By locating the Harris Federal Well No. 11 990 feet off the common lease line, [Read & Stevens] will be gaining an advantage over UMC, whose White State Well No. 2 is located 1980 feet off the common lease line.

There is competent evidence to support the disputed finding. The Commission Order must be sustained if reasonably supported by substantial evidence in the record. **Rutter & Wilbanks Corp. v. Oil Conservation Comm'n, supra; Big Piney Oil & Gas Co. v. Wyoming Oil & Gas Conservation Comm'n, 715 P.2d 557, 562 (Wyo. 1986); 6 Williams & Meyers, Oil and Gas Law, §948.** There was a conflict in the testimony presented by UMC on the one hand, and Read & Stevens on the other. However, it is for the Commission to weigh the evidence where a conflict occurs. As stated by one court:

It is not for this Court to substitute its opinion for the opinion of the Board where the Board has reached its decision on conflicting evidence and where its conclusions are supported by substantial evidence.

Ohio Oil Co. v. Porter, 225 Miss. 55, 82 So.2d 636 (1955). The Commission reviewed voluminous testimony, weighed the evidence, and made its decision. Since there is sufficient evidence in the record to support the Commission Order, it must be upheld. **Santa Fe Exploration Co. v. Oil Conservation Comm'n, supra; Palmer Oil Corp. v. Phillips Petroleum Co., 204 Okla. 543, 231 P.2d 977 (1951).**

E. Point IV: The Commission Order Was Not Required To Provide For A Minimum Gas Allowable.

Read & Stevens asserts the Commission Order is faulty because it does not establish a minimum gas allowable. Read & Stevens can point to no statutory provision or Division regulation requiring

a minimum allowable. Therefore, this is an issue left to the discretion of the Commission, which this Court should not overturn. See Viking Petroleum, Inc. v. Oil Conservation Comm'n, 100 N.M. 451, 672 P.2d 280 (1983) (force pooling as to less than all zones left to the Commission's discretion, on a case-by-case basis).

F. Summary.

In Santa Fe Exploration Co. v. Oil Conservation Comm'n, *supra*, this Court reviewed a decision of the Commission following administrative hearings in which conflicting geological and engineering evidence was presented. The Court stated that when expertise, technical competence, and specialized knowledge is required to resolve and interpret evidence, the courts defer to the judgment of the administrative agency which "possesses and exercises such knowledge and expertise."¹⁰ The Commission has

¹⁰ The Court, in Santa Fe, stated:

In any contested administrative appeal, conflicting evidence will be produced. In the instant case, the resolution and interpretation of such evidence presented requires expertise, technical competence, and specialized knowledge of engineering and geology as possessed by Commission members. See NMSA 1978, § 70-2-4 (commissioners to have "expertise in regulation of petroleum production by virtue of education or training"); NMSA 1978, § 70-2-5 (director is "state petroleum engineer" who is "registered by the state board of registration for petroleum engineers and land surveyors as a petroleum engineer" or "by virtue of education and experience (has) expertise in the field of petroleum engineering.") **Where a state agency possesses and exercises such knowledge and expertise, we defer to their judgment.** Stokes v. Morgan, 101 N.M. 195, 202, 680 P.2d 335, 342 (1984); Groendyke Transp. Inc. v. New Mexico State Corp. Comm'n, 101 N.M. 470, 477, 684 P.2d 1135, 1142 (1984).

special expertise in oil and gas matters. See Continental Oil Co. v. Oil Conservation Comm'n, supra, 70 N.M. at 315-16.

In this case, the Commission applied its expertise, technical competence, and specialized knowledge of engineering and geology to the evidence, and concluded that: (1) Read & Stevens should be allowed to drill a new well in Section 26; and (2) A production penalty was necessary to protect UMC's correlative rights. This Court does not have the technical expertise necessary to re-weigh the evidence and overrule the Commission's interpretation of this evidence.

III. CONCLUSION

Based on the foregoing, UMC requests this Court to affirm the Commission Order.

Respectfully submitted,



James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

Attorney for UMC Petroleum Corporation

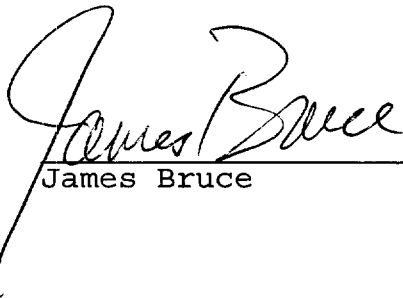
114 N.M. at 114-15, 835 P.2d at 830-831 (emphasis added).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Answer Brief of UMC Petroleum Corporation** was mailed, by first-class mail, postage prepaid, to the following counsel of record, on this 21st day of August, 1997:

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

Marilyn S. Hebert
Special Assistant Attorney General
Oil Conservation Commission
2040 South Pacheco Street
Santa Fe, New Mexico 87505


James Bruce

9:45
2/10/97
6339

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF CHAVES

READ & STEVENS, INC., AND
MATADOR PETROLEUM CORPORATION
Petitioners,

vs.

No. 97-CIV-CV-97-29

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,
AND UMC PETROLEUM CORPORATION

Respondents.

ORIGINAL: To Be
Returned to Clerk of
District Court for filing

**SUMMONS
STATE OF NEW MEXICO**

TO: OIL CONSERVATION COMMISSION
State of New Mexico
Santa Fe, New Mexico

GREETINGS:

You are hereby directed to serve a pleading or motion in response to the Petition within thirty (30) days after service of this summons, and file the same, all as provided by law.

You are notified that, unless you serve and file a responsive pleading or motion, the Petitioner will apply to the Court for the relief demanded in the Petitioner.

Attorney for Petitioner:

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

WITNESS the Honorable William P. Lynch, District Judge of the Fifth Judicial District Court of the State of New Mexico, and the seal of the District Court of said County, this 24th day of January 1997.

Janet Bloomer
Bee Clem, District Court Clerk Deputy

RETURN

STATE OF NEW MEXICO)
) SS.
COUNTY OF _____)

I, the undersigned, being duly sworn, upon oath, say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served the within Summon in said County on the ____ day of _____, 1997, by delivering a copy thereof, with a copy of the Petition attached, in the following manner:

[check one box and fill in appropriate blanks]

[] to Respondent _____
(used when Respondent receives a copy of Summons or refuses to receives Summons).

[] to _____, a person over fifteen (15) years of age and residing at the usual place of abode of Respondent _____, who at the time of such service was absent therefrom.

[] by posting a copy of the Summons and Petition in the most public part of the premises of Respondent _____ (used if no person found at dwelling house or usual place of abode).

[] to _____, an agent authorized to receive service of process for Respondent _____.

[] to _____, (name of person), _____, (title of person authorized to receive service: (used when Respondent is corporation or association subject to a suit under a common, name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Signature of Person Making Service

Title (if any)

SUBSCRIBED AND SWORN TO before me this ____ day of _____, 1997.

Notary Public

(Seal)

My Commission Expires: _____

JAMES BRUCE
ATTORNEY AT LAW

POST OFFICE BOX 1056
SANTA FE, NEW MEXICO 87504

SUITE B
612 OLD SANTA FE TRAIL
SANTA FE, NEW MEXICO 87501

(505) 982-2043
(505) 982-2151 (FAX)

February 6, 1997

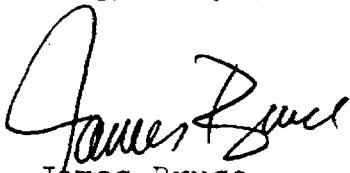
Bee J. Clem
District Court Clerk
P. O. Box 1776
Roswell, New Mexico 88201

Re: **Read & Stevens, Inc., et al. v. Oil Conservation
Commission, et al., Case CV-97-29**

Dear Ms. Clem:

Enclosed for filing is an Acceptance of Service and Entry of Appearance in the above matter. Please endorse the enclosed copy and return it to me in the envelope provided. Thank you.

Very truly yours,



James Bruce

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

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

W. THOMAS KELLAHIN*

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

JASON KELLAHIN (RETIRED 1991)

January 27, 1997

Marilyn S. Herbert, Esq.
Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87502

HAND DELIVERED

Re: **NOTICE OF APPEAL**
Case No. 11514 (DeNovo)
Commission Order R-10622
Application of Read & Stevens, Inc.
for an unorthodox well location,
Chaves County, New Mexico.

RECEIVED
JAN 27 1997
Oil Conservation Division

Dear Lyn:

On December 31, 1996, I hand delivered a letter to you requesting a meeting with you and Mr. Bruce to discuss the referenced Commission order and to seek a rehearing of this matter.

Because I have not heard from you, I have appealed the Commission's decision to the District Court for Chaves County, New Mexico.

Please find enclosed for acceptance of service a copy of the Petition for Review. I have enclosed an acceptance of service and entry of appearance. If you are able to accept service, this please sign and return the acceptance to me for filing. If you are unable to accept service, I would appreciate you calling me by Wednesday, January 29, 1997 so that I can arrange for formal service against the Commission

Very truly yours,


W. Thomas Kellahin

cc: James Bruce, Esq.
cc: Carol Leach, Esq.

FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF CHAVES

READ & STEVENS, INC., AND
MATADOR PETROLEUM CORPORATION
Petitioners,

vs.

No. CV-97-29

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,
AND UMC PETROLEUM CORPORATION

Respondents.

**ACCEPTANCE OF SERVICE
AND
ENTRY OF APPEARANCE**

Comes now Marilyn S. Hebert, Esq. Santa Fe, New Mexico, having been duly authorized to accept service for Respondent, Oil Conservation Commission of the State of New Mexico, in the above styled and numbered cause and hereby enters her appearance in this case this ____ day of January, 1997, and hereby accepts service of the Summons and Complaint filed in this case on behalf of said Commission.

Marilyn S. Hebert
Assistant Attorney General
Oil Conservation Commission
State of New Mexico
2040 South Pacheco
Santa Fe, New Mexico 87505
(505) 827-1364

**FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF CHAVES**

ENDORSED COPY
ORG. FILED DIST. COURT

JAN 24 1997

BEE J. CLEM, CLERK

**READ & STEVENS, INC. and
MATADOR PETROLEUM CORPORATION,
Petitioners,**

vs.

No. ^{CV} CIV 97-29 ()

**OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,
and UMC PETROLEUM CORPORATION,
Respondents.**

Case Assigned
To: William P. Lynch

**PETITION FOR REVIEW
OF A DECISION OF
THE OIL CONSERVATION COMMISSION OF NEW MEXICO**

COMES NOW, READ & STEVENS, INC. and MATADOR PETROLEUM CORPORATION, (collectively "Read & Stevens"), pursuant to the provisions of Section 70-2-25, N.M.S.A. (1978), as amended, and respectfully petitions the Court for review of the actions of the Oil Conservation Commission of New Mexico in Case No. 11514 (DeNovo) on the Commission's docket and its Order R-10622 entered therein.

PARTIES

1. Petitioner, Read & Stevens, Inc., a New Mexico corporation authorized to and doing business in the State of New Mexico, is the operator and a working interest owner of current gas wells, including the subject gas well, pursuant to a valid and effective oil & gas lease covering all of Section 26, T15S, R27E, NMPM, Chaves County, New Mexico. Petitioner is the applicant before the Commission in Case 11514 who sought approval to drill the subject gas well at an unorthodox gas well location in Section 26 which was approved, but subjected to a production penalty, by Commission Order R-10622. Petitioner, therefore is a party of record in all of the proceedings before the Commission in this matter and is adversely affected by the Commission Order R-10622 entered in Case No. 11514 (DeNovo).

2. Petitioner, Matador Petroleum Corporation, a Texas corporation authorized to and doing business in the State of New Mexico, is a working interest owner in Section 26 and in the subject gas well and is a party of record who supported Read & Stevens in all of the proceedings before the Commission in this matter and is adversely affected by the Commission Order R-10622 entered in Case No. 11514(DeNovo).

3. The Oil Conservation Commission of the State of New Mexico ("Commission") is a statutory body created and existing under the provisions of the New Mexico Oil & Gas Act, Sections 70-2-1 through 70-2-36, N.M.S.A. (1978), laws of the State of New Mexico, as amended.

4. UMC Petroleum Corporation ("UMC"), a party of record in all of the proceedings before the Commission in Case No. 11514 (DeNovo), is the operator (the "offsetting operator") of gas wells in Section 35 which adjoins the Read & Stevens' operated section 26. UMC appeared in opposition to Read & Stevens' requested gas well location.

JURISDICTION:

5. The Commission held a public hearing in Case 11514 (DeNovo) on October 29, 1996 and entered Order R-10622 on December 12, 1996.

6. On December 31, 1996, Petitioner timely filed its Application for Rehearing, a copy of which is attached as Exhibit "1" and incorporated herein, which was deemed denied by the Commission when it failed to act on the application within ten days as required by Section 70-2-25, N.M.S.A. (1978), as amended.

7. 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.

8. 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 Commission Order R-10622 is located within Chaves County, New Mexico.

RELIEF SOUGHT:

9. Petitioner complains of Commission Order R-10622 and asserts that said Order is arbitrary, capricious, unreasonable, not supported by substantial evidence and is contrary to law as set forth in its Application for Rehearing (Exhibit "1") and further states:

POINT I.

THE COMMISSION FAILED TO COMPLY WITH SECTION 70-2-33(h) NMSA (1978) AND IN DOING SO VIOLATED READ & STEVENS CORRELATIVE RIGHTS

POINT II:

THE COMMISSION VIOLATED THE FASKIN, THE VIKING PETROLEUM, AND THE CONTINENTAL OIL CASES WHEN IT FAILED TO MAKE SUFFICIENT FINDINGS TO DISCLOSE ITS REASONING

POINT III:

FINDING (12)(d) IS WRONG, INCONSISTENT WITH FINDING (10), IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND IS ARBITRARY AND CAPRICIOUS

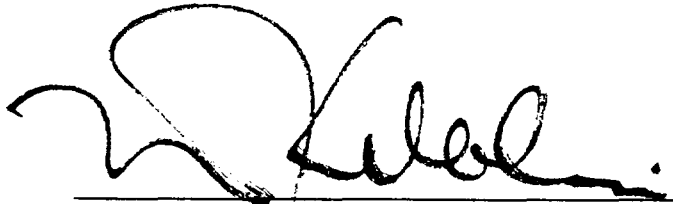
POINT IV:

THE COMMISSION ORDER R-10622 FAILED TO PROVIDE FOR A MINIMUM GAS ALLOWABLE

WHEREFORE, Petitioner prays that the Court review New Mexico Oil Conservation Commission Case 11514 (DeNovo) and Commission Order R-10622 and order that:

- (1) Commission Order R-10622 is unlawful, invalid and void;
- (2) Petitioner's property rights have been violated by the Commission; and
- (3) for such other and further relief as may be proper in the premises.

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
P. O. Box 2265
Santa Fe, New Mexico 87504
(505) 982-4285

ATTORNEYS FOR PETITIONERS

HINKLE, COX, EATON, COFFIELD & HENSLEY,
L.L.P.

ATTORNEYS AT LAW

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(505) 982-4554 FAX (505) 982-8623

LEWIS C. COX, JR. (1924-1993)
CLARENCE E. HINKLE (1904-1985)

OF COUNSEL

O. M. CALHOUN* JOE W. WOOD
RICHARD L. CAZZELL* RAY W. RICHARDS*

AUSTIN AFFILIATION
HOFFMAN & STEPHENS, P.C.
KENNETH R. HOFFMAN*
TOM D. STEPHENS*
RONALD C. SCHULTZ, JR.*
JOSE CANO*

THOMAS E. HOOD*

REBECCA NICHOLS JOHNSON
STANLEY K. KOTOVSKY, JR.
ELLEN S. CASEY
MARGARET CARTER LUDEWIG
S. BARRY PAISNER
WYATT L. BROOKS*
DAVID M. RUSSELL*
ANDREW J. CLOUTIER
STEPHANIE LANDRY
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DIANE FISHER
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WILLIAM P. SLATTERY
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JOHN D. PHILLIPS
EARL R. NORRIS
JAMES A. GILLESPIE
MARGARET R. MCNETT

GARY W. LARSON
LISA K. SMITH*
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MOLLY MCINTOSH
MARCIA B. LINCOLN
SCOTT A. SHUART*
PAUL G. NASON
AMY C. WRIGHT*
BRADLEY G. BISHOP*
KAROLYN KING NELSON
ELLEN T. LOUDERBOUGH
JAMES H. WOOD*
NANCY L. STRATTON
TIMOTHY R. BROWN
JAMES C. MARTIN
KATHLEEN M. HALL

*NOT LICENSED IN NEW MEXICO

January 3, 1997

Hand Delivered

Ms. Marilyn S. Hebert
New Mexico Oil Conservation Commission
2040 South Pacheco Street
Santa Fe, New Mexico 87505

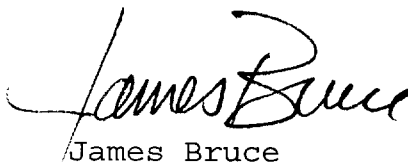
Re: Application for Rehearing; Case 101514 (de novo); Order
No. R-10622

Dear Ms. Hebert:

I am in receipt of the above application, but have not yet had time to review or respond to it. I plan to do so by early next week. However, please be confident that I see no problem in defending the order in court.

Very truly yours,

HINKLE, COX, EATON, COFFIELD
& HENSLEY, L.L.P.


James Bruce

cc: W. Thomas Kellahin

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

SANTA FE, NEW MEXICO 87504-2265

W. THOMAS KELLAHIN*

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

JASON KELLAHIN (RETIRED 1991)

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

December 31, 1996

Marilyn S. Herbert, Esq.
Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87502

HAND DELIVERED

*Re: APPLICATION FOR RE-HEARING
NMOCD Case No. 11514 (DeNovo)
Commission Order R-10622
Application of Read & Stevens, Inc.
for an unorthodox well location,
Chaves County, New Mexico.*

Dear Lyn:

As soon as possible, I would like to meet with you as the Commission attorney and with Mr. Bruce, attorney for UMC, to discuss correcting the serious flaws contained in Commission Order R-10622.

In more than twenty five years of practice before the Commission, with the exception of the Fasken order which was vacated by the New Mexico Supreme Court, I cannot recall seeing a more poorly constructed order. I have enclosed a copy of our Application for Rehearing which summarizes the flaws in this order. I am particularly concerned with the contradictions between pages 5 and 6 of the order which are totally inconsistent with the previous pages. It appears that the order was improperly collated.

I am sure Mr. Bruce is concerned that he will not be able to defend such an order before the District Court. It is obvious to me that the order was signed without you having an opportunity as Commission attorney to review it and advise the Commission that it is not logical to adopt the Read & Steven's engineering report and then, without explanation, ignore the conclusions in that report and impose a 50% penalty.

I look forward to an opportunity to assist in correcting the Commission's mistakes.

Very truly yours,



W. Thomas Kellahin

cc: James Bruce, Esq.
cc: Carol Leach, Esq.

KELLAHIN AND KELLAHIN

ATTORNEYS AT LAW

EL PATIO BUILDING

117 NORTH GUADALUPE

POST OFFICE BOX 2265

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W. THOMAS KELLAHIN*

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

JASON KELLAHIN (RETIRED 1991)

December 31, 1996

Mr. William J. LeMay
Oil Conservation Commission
2040 South Pacheco
Santa Fe, New Mexico 87505

Ms. Jamie Bailey
Office of Commissioner of Public Lands
State Land Office Building
310 Old Santa Fe Trail
Santa Fe, New Mexico 87501

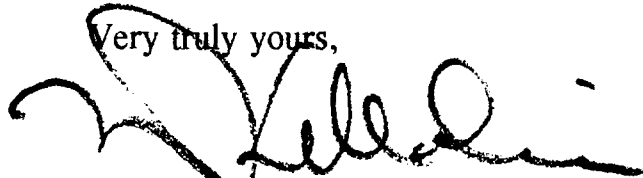
Mr. William Weiss
New Mexico Petroleum Recovery
Research Center, Kelly Building
New Mexico Tech Campus
Socorro, New Mexico 87801

Re: **APPLICATION FOR REHEARING**
NMOCD Case No. 11514 (DeNovo)
Application of Read & Stevens, Inc.
for an unorthodox infill gas well location
and for simultaneous dedication,
Chaves County, New Mexico.

Dear Members of the Commission:

On behalf of Read & Stevens, Inc., please find enclosed our Application for Rehearing in this case. Please be advised that the Commission has a maximum of ten (10) days in which to consider this request. If you agree that another hearing is required, then that decision must be entered on or before January 10, 1997.

Very truly yours,



W. Thomas Kellahin

cc: James Bruce, Esq.

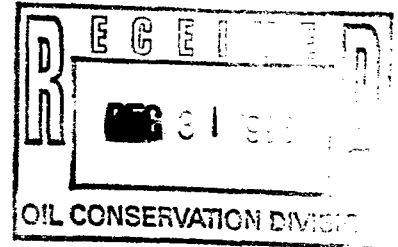
Attorney for UMC Petroleum Corporation

cc: Read & Stevens, Inc.

Charlie Read

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

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



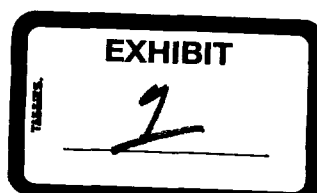
**CASE NO. 11514 (DeNovo)
ORDER NO. R-10622**

**APPLICATION OF READ & STEVENS, INC.
FOR AN UNORTHODOX INFILL GAS WELL
LOCATION AND SIMULTANEOUS DEDICATION,
CHAVES COUNTY, NEW MEXICO.**

**APPLICATION FOR REHEARING
BY
READ & STEVENS, INC.**

This Application for Re-Hearing is submitted by W. Thomas Kellahin, Esq. of Kellahin and Kellahin on behalf of READ & STEVENS, INC. (Read & Stevens").

In accordance with the provisions of Section 70-2-25 NMSA (1978), Read & Stevens requests the New Mexico Oil Conservation Commission grant this Application for ReHearing in Case 11514 (DeNovo) to correct erroneous findings and conclusions set forth in Order R-10622, attached as Exhibit "A" and to substitute Read & Stevens' proposed Commission Order attached as Exhibit "B" hereto. and IN SUPPORT READ & STEVENS STATES:



INTRODUCTION

On December 12, 1996, the New Mexico Oil Conservation entered its decision in this case which affirmed the prior Division decision made in this case by Examiner David R. Catanach.

In doing so, the Commission made errors of fact and of law which require that another hearing be held. A Rehearing is essential so the Commission can enter an order which correct these mistakes and which protects Read & Stevens' correlative rights.

GROUND FOR REHEARING

POINT I:

THE COMMISSION FAILED TO COMPLY WITH SECTION 70-2-33(H) NMSA (1978) AND IN DOING SO VIOLATED READ & STEVENS' CORRELATIVE RIGHTS

The Oil Conservation Commission of New Mexico ("Commission") has the duty to "prevent waste prohibited by this act (Oil & Gas Act) and to **protect correlative rights...**" (emphasis added). Section 70-2-11 NMSA (1978).

" 'Correlative rights' means the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas or both in the pool, being an amount, so far as can be practicably determined and so far

as can be practicably obtained without waste, substantially in the proportion that the ⁺quantify of recoverable oil or gas or both under the property bears to the total recoverable oil or gas or both in the pool, and, for such purposes, to use his just and equitable share of the reservoir energy;" Section 70-2-33.H. NMSA (1978).

Pursuant to these statutory provisions, it was essential for the Commission to make findings concerning the remaining recoverable gas in this area of the pool and to apportion that volume between Read & Stevens' Section 26 and UMC's Section 35 in order to afford Read & Stevens and UMC an opportunity to produce their relative share of the remaining recoverable gas.

While the Commission made findings concerning the "estimated ultimate recovery" and the "original gas in place"¹ it forgot to make the essential finding of **the volume of remaining recoverable gas** and how that gas volume is allocated between Sections 26 and 35.

The Commission found² that "the Read and Stevens analysis had better scientific validity being derived from their 'Reservoir Simulation Study', validated by history matching gas production as compared to the

¹ See Finding (10) Order R-10622

² See Finding (10) of Order R-10622.

UMC study which resulted from planimetered gas in place derived from their "Net Sand Thickness Isopach Map".'

The Read & Steven's study³ concluded that:

(a) there is 8.4 BCF of gas now remaining to be recovered between Sections 26 and 35;

(b) of the 8.4 BCF of gas remaining to be recovered, Read & Stevens' Section 26 is entitled to 5 BCF and UMC's Section 35 is entitled to 3.4 BCF.

(c) **without** the proposed Read & Stevens' Harris Federal Well No. 11 being drilled at its proposed unorthodox location of 990 feet from the south line, then Section 26 will recover only 2.5 BCF while Section 35 will recover 6.4 BCF.

(d) **with** the proposed Read & Stevens' Harris Federal Well No. 11 being drilled **without a penalty** at its proposed unorthodox location of 990 feet from the south line, then Section 26 will recover 4.9 BCF while Section 35 will recover 6.1 BCF⁴

(e) **With** the proposed Read & Stevens' Harris Federal Well No. 11 being drilled **without a penalty** at its proposed unorthodox location of 990 feet from the south line, then Section 26 will recover an additional 2.4 BCF of gas which otherwise would not be recovered thereby preventing waste or would be confiscated by other wells in the area.

³ See Read & Stevens Exhibit 1, tab 14 (copy attached as Exhibit C)

⁴ The addition of the Harris Federal 11 Well to Section 26 allows the total recovery for Section 26 and 35 to increase from 8.9 BCF to 11.BCF which is a function of increasing recovery efficiency thereby preventing waste.

Having found the Read & Stevens' study "had better scientific validity", then without explanation, the Commission illogically disregarded the Read & Stevens' conclusion contained in its study. Instead, The Commission applied the same 50% distance penalty as adopted by the Division Examiner who had entered his without having the benefit of considering the Read & Stevens' petroleum engineering study.

A Rehearing is essential so the Commission can correct its statutory violation and enter an order which protects Read & Stevens' correlative rights.

POINT II:

***THE COMMISSION VIOLATED THE FASKIN, THE
VIKING PETROLEUM AND THE CONTINENTAL OIL
CASES WHEN IT FAILED TO MAKE SUFFICIENT
FINDINGS TO DISCLOSE ITS REASONING***

The Commission is required to make findings of ultimate facts which are material to the issues and to make sufficient findings to disclose the reasoning of the Commission in reaching its ultimate findings with substantial support in the record for such findings. Fasken v. Oil Conservation Commission, 87 N.M. 292, 532 P.2d 588 (1975). Continental Oil Company v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962).

Likewise, in Viking Petroleum v. Oil Conservation Commission, 100 N.M. 451, 453, 672 P.2d 280 (1983), the New Mexico Supreme Court reiterated its opinions in Continental Oil and Fasken, 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 conclusions.

Unfortunately, the Commission failed to explain how it can accept the Read & Stevens' analysis as having the "better scientific validity," but then chose to ignore the conclusions in that study and, instead, affirm a 50% production penalty which is contrary to and inconsistent with that study. Such a conclusion is contrary to Finding (12)(b) of Order R-10622.

In Finding (12)(b), the Commission finds "drainage of the SW/4 of Section 26 from the White State No. 2 Well is likely occurring." This implies that the Commission rejected UMC's comparable 1,000 MCFPD rate argument. Thus, the only remaining evidence upon which the Commission could have relied for determining the proper producing rate to protect correlative rights is the Read & Stevens' study which showed that **an unpenalized rate** of 1,500 MCFPD for the Harris Federal 11 Well was necessary to protect the SW/4 of Section 23 from being drained by UMC's well.

A rehearing is required, if for no other reason than to afford an opportunity to the Commission to reconcile this contradiction and adopt an adequate order which complies with state law.

POINT III

FINDING (12(d)) IS WRONG, INCONSISTENT WITH FINDING (10), IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND IS ARBITRARY AND CAPRICIOUS

There is no substantial evidence to support Finding (12) (d) as a reasonable basis upon which to adopt a penalty. Finding (12)(d) adopts an arbitrary and capricious reason to support a penalty.

Finding (12(d) states:

"by locating the Harris Federal Well No. 11 990 feet off the common lease line, the applicant will be gaining an advantage over UMC, whose White State Well No 2 is located 1980 feet off the common lease line."

If the goal of the Commission is to protection of correlative rights, then that implies is a "no-flow boundary" at the common lease line between UMC and Read & Stevens. But the 50 % penalty will not allow a no-flow boundary to be established at the lease line.

For example, if two wells are placed an equal distance from the common lease line and if their producing rates are equal and *if all other reservoir properties are identical*, then a no-flow boundary is established at

the lease line and correlative rights are protected.

But, if The Read & Stevens' well is located one-half the distance from the common lease line as the UMC well, and if its rate is 50 % of the rate of the UMC well, and *if all other reservoir properties are identical*, then a no-flow boundary will be established at the common lease line and correlative rights are protected.

However, the Commission has ignored the uncontested evidence in this case which demonstrated that the reservoir properties are **not identical**. The Read & Stevens' petroleum engineering study, supported by detailed geologic and petroleum engineering evidence, showed that:

(1) because the reservoir is thicker around the Read & Steven's location than at the UMC well and because the reservoir pressure near the Read & Stevens' well is higher than at the UMC well, and if Read & Stevens' well is located one-half the distance from the common lease line as the UMC well, then Read & Stevens' well must be produced at a **rate greater than** 50 % of the rate of UMC's well in order to establish a no-flow boundary at the common lease line.

(2) if the Read & Stevens' well is limited to 50 % of the rate of the UMC well, then the no-flow boundary will **not be** established at the common lease line **but** rather will be established within the Read & Steven's section and at a point **closer** to the Read & Stevens' well than required.

(3) the only way to quantify the proper rate is to use a reservoir simulation model that honors all the wells in the area. That is exactly what the Read & Stevens' study did and it demonstrated that the Read & Stevens' well could be produced at its proposed 990 foot location at a rate of

approximately 1,500 MCFPD and not impact the UMC acreage in Section 35.

It is impossible for the Commission to find that "Read and Stevens' analysis had better scientific validity" but to then reject the Read & Stevens' study as summarized above.

The Commission's order makes no sense and cannot be defended or explained. The result of Order R-10622 is to award UMC for failing to present to the Commission substantial evidence to support a 50 % penalty. A Rehearing is required so that the Commission can correct its mistakes.

POINT IV:

***THE COMMISSION ORDER R-10622
FAILED TO PROVIDE FOR A MINIMUM
GAS ALLOWABLE***

Contrary to past precedents,⁵ the Commission order failed to adopt a minimum allowable for the Harris 11 Well No. 1. Without a minimum allowable, the penalty will continue to be applied to the well's producing rate ("deliverability") and as that rate declines, then the well will be limited to a gas volume which will make the well uneconomic. Such an order is punitive because it sets the producing volume for the well after Read & Stevens has invested the money to drill the well. A minimum allowable is necessary to protect Read & Stevens' correlative rights by affording a suitable rate of return on this investment.

⁵ For an example, See Order R-8804 issued December 8, 1988.

CONCLUSION

The substantial evidence in this case demonstrated that approval of the Read & Steven's application without a production penalty would afford it the opportunity to recover its share of the remaining gas without violating UMC's correlative rights. The Commission's order will not do what the Commission intended, but, instead, will cause waste and will impair Read & Stevens correlative rights. The Commission has entered an order which contains errors of fact and of law which require that another hearing be held. A Rehearing is essential so the Commission can enter an order which correct these mistakes and which protects Read & Stevens' correlative rights.

Read & Stevens petitions the Commission to withdraw Order R-10622 and substitute Read & Stevens' proposed order which is attached hereto as Exhibit "B" and incorporated herein by reference. In order to preserve Opponents' right to further appeals of this matter, all of the issues set forth in Read & Stevens' proposed Order R-10622 are made a part of this Application for Rehearing.

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

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

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

DE NOVO
CASE NO. 11514
Order No. R-10622

APPLICATION OF READ & STEVENS INC.
FOR AN UNORTHODOX INFILL GAS WELL
LOCATION AND SIMULTANEOUS DEDICATION,
CHAVES COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE DIVISION:

This cause came on for hearing at 9 o'clock a.m. on October 29, 1996, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 12th day of December, 1996, the Commission, a quorum being present, having considered the testimony, the exhibits received at said hearing, and being fully advised in the premises,

FINDS THAT:

- (1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.
- (2) The applicant, Read & Stevens, Inc., seeks approval to drill its Harris Federal Well No. 11 at an unorthodox gas well location 990 feet from the South line and 1980 feet from the West line (Unit N) of Section 26, Township 15 South, Range 27 East, NMPM, to test the Pennsylvanian formation, Buffalo Valley-Pennsylvanian Gas Pool, Chaves County, New Mexico.
- (3) The applicant further proposes to simultaneously dedicate the proposed Harris Federal Well No. 11 and its existing Harris Federal Well No. 4, located at a standard gas well location 990 feet from the South and East lines (Unit P) of Section 26, to a standard 320-acre gas spacing and proration unit in the Buffalo Valley-Pennsylvanian Gas Pool comprising the S/2 of Section 26.
- (4) Matador Petroleum Company, an offset operator, appeared at the hearing in support of Read & Stevens, Inc.'s application.



(5) UMC Petroleum Corporation (UMC), operator of the following described Diamond Mound-Morrow Gas Pool producing wells in Section 35, Township 15 South, Range 27 East, appeared at the hearing as an affected offset operator in opposition to the application:

White State Well No. 1, located 660 feet from the South line and 1980 feet from the East line (Unit O), said well currently dedicated to the S/2 of Section 35; and,

White State Well No. 2, located 1980 feet from the North and West lines (Unit F), said well currently dedicated to the N/2 of Section 35.

(6) The proposed Harris Federal Well No. 11 is located within the Buffalo Valley-Pennsylvanian Gas Pool which is a prorated gas pool currently governed by the General Rules for the Prorated Gas Pools of New Mexico/Special Rules and Regulations for the Buffalo Valley-Pennsylvanian Gas Pool as contained within Division Order No. R-8170, as amended, which require standard 320-acre gas spacing and proration units with wells to be located in the NW/4 or SE/4 of a standard section no closer than 990 feet from the outer boundary of the quarter section nor closer than 330 feet from any governmental quarter-quarter section line or subdivision inner boundary.

(7) The proposed Harris Federal Well No. 11 is standard with respect to the setback requirements, but is unorthodox with respect to the quarter section location requirement.

(8) In addition to the Harris Federal Well No. 4, applicant currently operates the Harris Federal Well No. 8, located at a standard gas well location in Unit F of Section 26. The N/2 of Section 26 is currently dedicated to this well.

(9) Both the applicant and UMC presented geologic evidence and testimony in support of their respective positions. This geologic evidence and testimony is generally in agreement that:

- a) the Buffalo Valley-Pennsylvanian and Diamond Mound-Morrow Gas Pools, in the area of Sections 26 and 35, represent a single common source of supply in the Pennsylvanian formation;

- b) the Lower Pennsylvanian interval being produced in the Harris Federal Well Nos. 4 and 8 and the White State Well Nos. 1 and 2 is a correlatable channel sand which traverses Sections 26 and 35 in a north-south direction;
- c) the reservoir sand has its axis transversing and maximum buildup within both Sections 26 and 35;
- d) applicant's Harris Federal Well No. 8, which encountered approximately 30 feet of net sand, and UMC's White State Well No. 2, which encountered approximately 22 feet of net sand within the reservoir, are the best producing wells within Sections 26 and 35, respectively;
- e) applicant's Harris State Well No. 4 and UMC's White State Well No. 1 each encountered less than 10 feet of net pay sand, which places these wells on the flank of the main axis of sand buildup.
- f) the Harris Federal Well No. 11, which will be completed in the Lower Pennsylvanian interval, is projected to encounter between 22-30 feet of net sand in the reservoir.

(10) Both parties presented engineering evidence and testimony with regards to calculated gas-in-place under Sections 26 and 35 and estimated ultimate recoveries for the wells in Sections 26 and 35. The engineering evidence is generally in agreement for estimated ultimate recoveries, but there is disagreement concerning the calculated gas-in-place under Section 26.

ESTIMATED ULTIMATE RECOVERY

UMC Petroleum Corporation

Read and Stevens

Well Name

Harris Fed. No. 8	9.6 BCFG	8.0 BCFG
Harris Fed. No. 4	0.6 BCFG	0.7 BCFG
White State No. 1	5.1 BCFG	5.2 BCFG
White State No. 2	8.4 BCFG	9.0 BCFG

ORIGINAL GAS-IN-PLACE (BCF)

UMC Petroleum Corporation

Read and Stevens

Section

26	11.8	18.6
35	10.2	12.9

The significance of the variation in gas-in-place relates to the percentage of gas-in-place recovered by existing wells and projected to be recovered in the future and the inference that allowing Read and Stevens to drill their proposed well would allow them to drain gas reserves from under Section 35 (UMC's position).

Conversely Read and Stevens maintains that the only way for Read and Stevens to recover the gas-in-place under Section 26 is to drill their proposed Harris Federal Well No. 11. Accepting that 18.6 BCF is the gas-in-place under Section 26, the Read and Stevens proposed location would produce only the gas under their tract and not the gas under UMC's acreage in Section 35.

The Read and Stevens analysis had better scientific validity being derived from their "Reservoir Simulation Study", validated by history matching gas production as compared to the UMC study which resulted from planimeted gas-in-place derived from their "Net Sand Thickness Isopach Map".

(11) UMC proposed that the Harris Federal Well No. 11, if allowed to be drilled at the proposed unorthodox location, should be assessed a production penalty of 65 percent or, in the alternative, should be assigned an allowable of 350 MCF gas per day. UMC's proposed allowable is based upon the fact that the proposed Harris Federal Well No. 11 will be located 50 percent closer to the common lease line than its White State Well No. 2, and therefore, should be allowed to produce 50 percent of the White State Well No. 2's current rate of production of 700 MCFGD. Why

(12) The evidence and testimony presented in this case indicates that:

a) the Harris Federal Well No. 4, which will ultimately recover only 0.6 BCF of gas, will not adequately drain and develop the S/2 of Section 26;

b) drainage of the SW/4 of Section 26 from the White State Well No. 2 is likely occurring;

How is penalty on new well inconsistent w/ this statement? just b/c Sect 26 is being drained, does it follow that Sect 35 would be drained if an unorth. well is drilled on Sect 26?

- c) the correlative rights of the applicant may be impaired if it is not allowed to drill a well within the SW/4 of Section 26 to recover gas reserves which may ultimately not be recovered by its existing wells; and,
- d) by locating the Harris Federal Well No. 11 990 feet off the common lease line, the applicant will be gaining an advantage over UMC, whose White State Well No. 2 is located 1980 feet off the common lease line.

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supp. by the
evid?*

(13) The applicant should be authorized to drill the Harris Federal Well No. 11 at a location no closer than 1830 feet from the South line (standard 1980 feet setback with 150 feet flexibility) without penalty. However, if Read and Stevens elects to drill their proposed unorthodox location, in order to protect the correlative rights of UMC, the well should be assessed a production penalty.

(14) Applicant testified that it expects the Harris Federal Well No. 11 to initially produce at a rate of approximately 1,500 MCF gas per day.

(15) A production penalty of 50 percent, which is based upon the well's distance from the common lease line relative to the White State Well No. 2's distance from the common lease line, is fair and reasonable and should be adopted in this case.

(16) Approval of the subject application with a 50 percent production penalty will afford the applicant the opportunity to produce its just and equitable share of the gas in the affected pool, will prevent the economic loss caused by the drilling of unnecessary wells, avoid the augmentation of risk arising from the drilling of an excessive number of wells, and will otherwise prevent waste and protect correlative rights.

(17) The production penalty should be applied towards the Harris Federal Well No. 11's ability to produce into a pipeline as determined from a deliverability test to be conducted on the well on a semi-annual basis.

(18) The applicant should advise the supervisor of the Artesia district office of the Division of the date and time of conductance of the above-described production test(s) in order that they may be witnessed.

IT IS THEREFORE ORDERED THAT:

(1) The applicant, Read & Stevens, Inc., is hereby authorized to drill its Harris Federal Well No. 11 at an unorthodox gas well location at a minimum distance of 1830 feet from the South line without penalty or 990 feet from the South line and 1980 feet from the West line (Unit N) of Section 26, Township 15 South, Range 27 East, NMPM, to test the Pennsylvanian formation; Buffalo Valley-Pennsylvanian Gas Pool, Chaves County, New Mexico with the assessment of a production penalty of 50 percent. The production penalty shall be applied towards the well's ability to produce into a pipeline as determined from a deliverability test to be conducted on the well on a semi-annual basis.

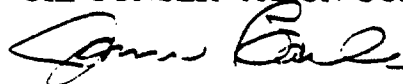
(2) The S/2 of Section 26 shall be simultaneously dedicated to the aforesaid Harris Federal Well No. 11 and to the existing Harris Federal Well No. 4, located at a standard gas well location 990 feet from the South and East lines (Unit P) of Section 26 in the Buffalo Valley-Pennsylvanian Gas Pool.

(3) The applicant shall advise the supervisor of the Artesia district office of the Division of the date and time of conductance of the above-described production test(s) in order that they may be witnessed if Read and Stevens drills the Harris Federal No. 11 at the penalized location.

(4) Jurisdiction is hereby retained for the entry of such further orders as the Commission may deem necessary.

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

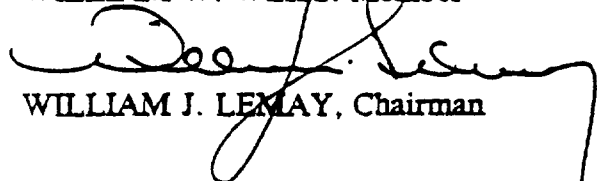
STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION



JAMI BAILEY, Member



WILLIAM W. WEISS, Member



WILLIAM J. LEMAY, Chairman

S E A L

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

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

**CASE NO. 11514 (DeNovo)
Order No. R-10622-A**

**APPLICATION OF READ & STEVENS, INC.
FOR AN UNORTHODOX INFILL GAS WELL LOCATION
AND FOR SIMULTANEOUS DEDICATION,
CHAVES COUNTY, NEW MEXICO**

**READ & STEVENS, INC.'S
PROPOSED ORDER OF THE COMMISSION**

BY THE COMMISSION:

This cause came on for hearing at 9:00 a.m. on October 29, 1996, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission".

NOW, on this ____ day of November, 1996, the Commission, a quorum being present, having considered the testimony presented and exhibits received at said hearing, and being fully advised in the premises,

FINDS THAT:

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



(2) The applicant, Read & Stevens, Inc. ("Read & Stevens"), seeks approval to drill its Harris Federal Well No. 11 at a location of 990 feet from the South line and 1980 feet from the West line (Unit N) of Section 26, T15S, R27E, to test the Pennsylvanian formation, Buffalo Valley-Pennsylvanian Gas Pool, Chaves County, New Mexico, to be dedicated to a standard 320-acre gas spacing and proration unit consisting of the S/2 of said Section 26.

(3) Read & Stevens is the operator of the existing Harris Federal Well No. 4 (Unit P) and the Harris Federal Well No. 8 (Unit F) which are both lower Pennsylvanian interval gas wells in Section 26 in the Buffalo Valley-Pennsylvanian Gas Pool.

(4) The Buffalo Valley-Pennsylvanian Gas Pool is a prorated gas pool with the following special rules:

Rule 2(a): a standard gas proration unit ("GPU") in the pool contains 320 acres

Rule 2(b) wells shall be located in either the NW/4 or the SE/4 section and shall be no nearer than 990 feet to an outer boundary nor nearer than 330 feet to any interior quarter-quarter section line.

(5) The Read & Stevens' proposed Harris Federal Well No. 11 is at a standard footage location for this pool but because it is to be located in the SW/4 of Section 26 it will be "off-pattern" and will require an exception to Rule 2 of the special rules and regulations of the Buffalo Valley Pennsylvanian Gas Pool.

(6) Matador Petroleum Company, an offset operator, appeared at the hearing in support of Read & Steven's application.

(7) UMC Petroleum Corporation ("UMC") appeared at the hearing in opposition to the applicant.

(8) UMC is the operator of the existing White State Well No. 1 (Unit O) and the White State Well No. 2 (Unit F) both of which are lower Pennsylvanian interval gas wells in Section 35 in the Diamond Mound-Morrow Gas Pool which is not a prorated gas pool and is subject to the following general state-wide rules:

320-acre gas spacing units with wells located not closer than 1980 feet to the end boundary nor closer than 660 feet to the side boundary of its spacing unit.

(9) While Section 26 and Section 35 are in different pools subject to different rules, these four wells are in fact competing among each other for gas reserves from the same common Pennsylvanian volumetric gas drive reservoir.

(10) At the Examiner hearing, Read & Stevens presented geologic interpretations and petroleum engineering estimated drainage areas based upon decline curve analysis and volumetrics from which it contended that:

(a) the existing Harris Federal Well No. 4, located at a standard gas well location within the SE/4 of Section 26, encountered a thinner and less productive portion of the reservoir and as a result, will be unable to adequately drain and develop its proration unit

(b) a well located within the SW/4 of Section 26 should penetrate the Lower Pennsylvanian formation in a thicker and better producing portion of the reservoir; and

(c) applicant's engineering data indicates that there is an area of approximately 94 acres within the SW/4 of Section 26 which will ultimately not be drained by the existing Harris Federal Well Nos 4 and 8.

(11) At the Examiner Hearing, UMC presented geologic interpretations and petroleum engineering estimated drainage areas based upon decline curve analysis from which it contended that:

(a) there remained an estimated 8.42 BCF of gas to be recovered by the existing four wells in Sections 26 and 35;

(b) assuming that the Harris Federal Well No. 11 produced at a rate of 900 MCFGPD, it would affect only the White State Well No. 1 and 2 and would reduce the ultimate recovery of gas from the White State wells in Section 35 by approximately 1.39 BCF.

(c) the Harris Federal Well No. 11 should be restricted to a maximum allowable of 350 MCFGPD (a 65 % penalty) while allowing the White State Well No 2 to produce unrestricted at an estimated rate in excess of 1000 MCFGPD.

(12) At the time of the Examiner hearing, neither Read & Stevens nor UMC attempted to utilize petroleum engineering calculations in order to verify the accuracy of their respective geological interpretations of the size and shape of the reservoir presented to the Examiner

(13) Neither Read & Stevens nor UMC presented to the Examiner any estimates of original gas in place or current gas in place for Section 26 and for Section 35.

(14) Pursuant to Section 70-2-33.H. NMSA (1978) it is essential that estimates of original gas in place and current gas in place for Section 26 and for Section 35 be presented to the Division in order to afford each owner an opportunity to produce its share of recoverable gas by determining the percentage of recoverable gas underlying each tract in relation to the amount of recoverable gas remaining to be recovered from all affected tracts.

(15) In the absence of such evidence, the Division found that:

(a) the Harris Federal Well No. 4 will not adequately drain and develop the S/2 of Section 26;

(b) it is highly likely that the Harris Federal Well No. 8 has drained a portion of the SW/4 of Section 26, however, the engineering evidence presented is not sufficient to determine whether this well can ultimately recover all of the remaining gas reserves within this quarter section;

(c) drainage of the SW/4 of Section 26 from the White State Well No. 2 is likely occurring;

(d) the correlative rights of Read & Stevens may be impaired if it is not allowed to drill a well

:

within the SW/4 of Section 26 to recover gas reserves which may ultimately not be recovered by its existing wells.

(16) The Division Examiner, without evidence from which to determine if the Read & Steven's Harris 11 would adversely affected UMC, imposed a 50 % production penalty on the Harris 11 well.

(17) At the Commission hearing, Read & Stevens presented the testimony of a consulting petroleum engineer who had completed a reservoir study of an area of 9,600 acres including volumetric analysis of gas in place, decline curve analysis of estimated ultimate recovery, and a reservoir simulation of the expected performance of all existing wells, both with and without the proposed Harris 11 well, who concluded that:

(a) there was an estimated 86 BCF of gas originally in place within a study area containing 9,600 acres and covering some 22 wells including the four subject wells;

(b) UMC's geologic interpretation presented to the Examiner showed a reservoir which originally contained only 80 BCF of gas in place which was too small to contain the estimated 86 BCF of gas in place determined by petroleum engineering calculations;

(c) Read & Stevens' geologic interpretation submitted to the Examiner was too large;

(d) Read & Stevens introduced to the Commission its revised geologic interpretation which contains an estimated 86 BCF of gas originally in place and therefore "balances" with petroleum engineering estimates;

(e) based upon decline curve analysis, the estimated ultimate recovery for Section 26 and Section 35 will be 22.90 BCF of gas with individual well recoveries as follows:

Harris 8	8.0 BCF
Harris 4	0.7 BCF
White State 1	5.2 BCF
White State 2	9.0 BCF

:

(f) currently, there is 10.5 BCF of gas in place with 6.2 BCF allocated to Section 26 and 4.3 BCF allocated to Section 35;

(g) Section 26 currently has 6.2 BCF of gas in place of which 5.0 BCF is recoverable;

(h) Section 35 currently has 4.3 BCF of gas in place of which 3.4 BCF is recoverable;

(i) without the Harris Federal Well No. 11, the two existing Read & Stevens wells will only recovery 2.5 BCF from Section 26 resulting in a "loss" of 2.5 BCF of gas;

(j) without the Harris Federal Well No. 11, the two UMC wells will recover 6.4 BCF of gas or 3.0 BCF of gas **more** than the 3.4 BCF of gas currently recoverable from Section 35;

(k) **with** the Harris Well No. 11, Section 26 will recover only 4.9 BCF of its 5.0 BCF remaining recoverable gas attributed to Section 26 and **therefore no penalty is necessary**:

(l) **with** the Harris Well No. 11, Section 35 will still recover 6.1 BCF which is 2.7 BCF more than the 3.4 BCF remaining recoverable gas attributed to Section 35.

(18) At the Commission hearing, UMC presented the testimony of a petroleum engineer who had made volumetric estimates of gas in place, and prepared decline curves estimates of ultimate recovery and who concluded that:

(a) an ultimate recovery of 23.70 BCF of gas (compared to 22.90 BCF of gas calculated by Read & Stevens) for Section 26 and 35 based upon decline curve analysis as follows:

Harris 8	9.6 BCF
Harris 4	0.6 BCF
White State 1	5.1 BCF
White State 2	8.4 BCF

:

(b) volumetric estimates of original gas in place of 22.08 BCF for Sections 26 and 35 with 11.8 BCF for Section 26 and 10.2 BCF for Section 35;

(c) the White State wells are expected to recover 3.0 BCF of gas more than UMC had estimated were in place for Section 35;

(d) that UMC had not made any estimates of current gas in place for either Section 26 and 35 but if it had done so, UMC would have used a method similar to that utilized by Read & Stevens' expert petroleum engineer;

(e) the Commission should affirm the Examiner order and retain the 50 % production penalty of the Harris Federal Well No. 11;

(19) Commission finds that Read & Stevens' reservoir study introduced at the Commission hearing has been adequately verified and validated by history matching and accurately forecasts performance and should be relied upon by the Commission in reaching a decision in this case.

(20) The Commission further finds that:

(a) Read & Stevens' reservoir engineering study which was not available to the Division Examiner, demonstrates the necessity for approving the proposed Read & Stevens' Harris Federal Well No. 11 at its proposed location, **without a penalty**, in order to afford Read & Stevens the opportunity to produce its just and equitable share of the remaining recoverable gas to which it is entitled and thereby protect correlative rights.

(b) Read & Stevens' reservoir engineering study which was not available to the Division Examiner, demonstrates the necessity for approving the proposed Read & Stevens' Harris Federal Well No. 11 at its proposed location, **without a penalty**, in order to recover an additional 500 MMCF of gas which would not otherwise be recovered thereby preventing waste.

IT IS THEREFORE ORDERED THAT:

(1) The applicant, Read & Stevens, Inc., is hereby authorized to drill its Harris Federal Well No. 11 at an unorthodox gas well location 990 feet from the South line and 1980 feet from the West line (Unit N) Section 26, Township 15 South, Range 27 East, NMPPM, Chaves County, New Mexico.

(2) The S/2 of Section 26 shall be simultaneously dedicated to the aforesaid Harris Federal Well No. 11 and the existing Harris Federal Well No. 4, located at a standard gas well location 990 feet from the South and East lines (Unit P) of Section 26 in the Buffalo Valley-Pennsylvanian Gas Pool.

(3) Jurisdiction is hereby retained for the entry of such further orders as the Commission may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

JAMIE BAILEY, Member

WILLIAM W. WEISS, Member

WILLIAM J. LEMAY, Chairman
and Secretary

:

Results of Reservoir Simulation Study Buffalo Valley (Penn) Field Study Area

Without Proposed Well

Section	Original Gas In Place (BCF)	Cumulative Production (BCF)	Current Gas In Place (BCF)	Current Recoverable Gas In Place (BCF)	Remaining Reserves For Existing Wells (BCF)	Reserves Unrecovered By Existing Wells (BCF)
26	18.6	6.1	6.2	5.0	2.5	2.5
35	12.9	9.1	4.3	3.4	6.4	-3.0

With Proposed Well

Section	Original Gas In Place (BCF)	Cumulative Production (BCF)	Current Gas In Place (BCF)	Current Recoverable Gas In Place (BCF)	Remaining Reserves For Existing Wells and Proposed Well (BCF)	Reserves Unrecovered by Existing Wells and Proposed Well (BCF)
26	18.6	6.1	6.2	5.0	4.9	0.1
35	12.9	9.1	4.3	3.4	6.1	-2.7

