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JOSEPH M. ZEBAS

May 1, 2001

Mr Jere J. Crean, Credit Manager, Oil Field Service
NAM-Oilfield Financial Center
100 Gillingham Lane (MD100/18)
Sugar Land, Texas 77478

Re: Petroleum Equipment Suppliers Association - Credit Interchange Division
Lien Law Committee

Dear Jere:

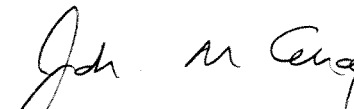
I was pleased to receive your letter of April 26, 2001 asking for my contribution to the binder with information which will be utilized by the Petroleum Equipment Suppliers Association.

Attached to this letter, please find the outline of information pertaining to oil and gas liens in New Mexico, a copy of the statutes pertaining to the Oil and Gas Lien Act, and a copy of a recommended form for a lien.

Please feel free to include this letter and attached materials in you binder.

With best regards, I am

Very truly yours,


John M. Caraway

JMC/jk
Enclosure(s)

OIL AND GAS LIENS IN NEW MEXICO

IN WHICH TO FILE: Office of the County Clerk in which the well or property is located.

CONTRACTOR'S FILING TIME: Every original contractor within two hundred ten days after the performed of the last labor, or the furnishing, or hauling, of the last item of material, tools, machinery, equipment, or supplies.

3. **SUBCONTRACTOR'S FILING TIME:** Every person other than the original contractor within one hundred eighty days after the performance of the last labor, or the furnishing, or hauling of the last item of material, tools, machinery, equipment, or supplies.
4. **TIME WITHIN WHICH TO FILE SUIT TO FORECLOSE LIEN:** Lien required to be foreclosed within one year after date on which the same is filed.
5. **NOTICE (OR POSTING) REQUIREMENTS WITH PRIOR TO OR AFTER FILING:** None required by statute.
6. **SUMMARY OF INFORMATION TO BE INCLUDED IN LIEN:** Name and address of the claimant, the amount and the items claimed, name of the person to whom the materials, tools, machinery, equipment or supplies, were furnished or hauled or for whom the labor was performed, the name of the owner and the description of the property upon which the lien is claimed, verified by affidavit.
7. **STATUTORY CITATIONS:** Section 70-4-1 through 70-4-15 NMSA 1978, copies of the foregoing which are attached hereto as well as a copy of a suggested form of lien.

CLAIM OF LIEN

BY GIVEN THAT:

_____, whose address is _____,

claimant pursuant to 70-4-1, et. seq., NMSA 1978, **CLAIMS A LIEN** upon the following described lands together with all Oil and Gas Leases covering all or any portion of the same and located in _____ County, New Mexico, described as follows:

(DESCRIPTION)

This Claim of Lien arises from the performance of labor and/or the furnishing or hauling of material, equipment, tools, machinery, and/or oil or gas well supplies used or employed in the digging, drilling, torpedoing, completing, maintaining, equipping, operating, or repairing the following described and/or gas well located upon the above described lands and lease, to wit:

(DESCRIPTION)

The lien claimant additionally claims a lien on all production of oil and/or gas from the above-described well, together with all other oil and/or gas wells located upon the described lands, together with all proceeds from the sale of oil and gas produced therefrom inuring to the working interest, the whole of the above-described lands and oil and gas lease, leasehold estate, and any rights-of-way therefor, together with all of the equipment, fixtures, machinery, tools, appliances, buildings or improvements, located upon said lease and lands and employed in the operating and developing of the above-described well, and

ated upon the lease and lands.

s or reputed owners of the working interest under the above-described gas lease, lands, and oil and gas well or wells, to the best knowledge, information and belief of claimant is _____.

The labor performed and the furnishing or hauling of material, equipment, tools, machinery, or oil well or gas well supplies furnished to and for the benefit of the lease and well are more perfectly itemized on Exhibit "A", attached hereto and incorporated by reference. The said items were performed and furnished at the request of _____, _____, President, whose address is _____.

The total amount claimed which is due and owing to the lien claimant is \$_____, and said sum remains unpaid after all just credits and offsets have been applied. The last date of performance of labor or other services pursuant to which this lien is claimed was _____, and was invoiced on that date as reflected by Exhibit "B". Said amount was due and payable on or before 30 days from the date of invoice. Lien claimant claims interest either as provided by the invoice for services or by other existing contract between claimant and obligor, or alternatively at the rate prescribed by law. Lien claimant further claims a reasonable attorney's fee for the preparation and recording of this lien and all other costs.

IN WITNESS WHEREOF, I have placed my hand and seal this ___ day of _____, 2001.



ay
Caraway, Tabor & Madrid
. 1718
ad, New Mexico 88220
(505)-885-4171
(505)-885-1963 telefax



ARTICLE 4 LIENS ON WELLS AND PIPELINES

Section

- 70-4-1. Liens for labor and material furnished or hauled for use of oil and gas wells or pipelines.
- 70-4-2. Labor, hauling and materials considered under continuous contract.
- 70-4-3. Liens of subcontractors.
- 70-4-4. Claim of lien; contents and filing.
- 70-4-5. Recording; index; fees.
- 70-4-6. Liability of owner limited to contract price.
- 70-4-7. Limitation of action to enforce.
- 70-4-8. Enforcement of lien.
- 70-4-9. Joinder of actions; attorney's fees; costs.
- 70-4-10. Definition of words "person" and "subcontractor".
- 70-4-11. Preference to laborers; no preference to first contractors.
- 70-4-12. Materials exempt from attachment.
- 70-4-13. Personal liability.
- 70-4-14. Name of act.
- 70-4-15. Conflicting laws repealed, Chapter 82, "1929 New Mexico Statutes Annotated" excepted.

70-4-1. Liens for labor and material furnished or hauled for use of oil and gas wells or pipelines.

Every person who shall, by contract, express or implied, or partly expressed or implied, with the owner of any land, oil and gas permit, leasehold, lease for oil and gas purposes, or with the owner of any gas, oil, or gasoline pipeline, or with a purchaser under executory contract, or with the trustee or agent of the owner, or with one whom the owner has authorized or knowingly permitted to contract, or with a receiver appointed for any of the property of the owner, perform labor or furnish or haul material, equipment, tools, machinery or oil well or gas well supplies, used or employed, or to be used, or to be employed in the digging, drilling, torpedoing, completing, maintaining, equipping, operating or repairing any oil or gas well, or in the construction, operation, maintenance or repairing any gas, oil, or gasoline pipeline, or who shall furnish or haul any oil or gas well supplies, or perform any labor in constructing or putting together any of the equipment or machinery used or employed, or to be used or to be employed, in drilling, torpedoing, completing, maintaining, equipping, operating, or repairing any oil or gas well, shall have a lien upon the whole of that land, oil and gas permit, leasehold, lease for oil and gas purposes, oil pipeline, gas pipeline, or gasoline pipeline, and right-of-way therefor, the buildings and equipment thereon, and the appurtenances thereto, the proceeds from the sale of oil and gas produced therefrom inuring to the working interest, and upon the materials, tools, machinery, equipment and supplies so furnished or hauled, and upon the oil and gas well for which they were furnished or hauled, and upon all the other oil and gas wells, fixtures, machinery, tools, equipment and appliances, used or employed in operating or developing, for oil and gas purposes, upon the land, oil and gas permit, leasehold, or lease for oil and gas purposes, for which the material, tools, machinery, equipment or supplies were furnished or hauled, or labor performed, for the amount due to him for the materials, tools, machinery, equipment, oil and gas well supplies, hauling, or labor, and interest from the date the amount is due; provided, however, the lien herein created shall not extend to the underlying fee or royalty interest unless

expressly provided by contract, nor shall it extend to the property, leasehold, or working interest of any owner who does not have a working interest in the well upon which the labor was performed or for which the materials were furnished or hauled.

The lien shall be preferred to all other liens or incumbrances which may attach to or upon the land, oil and gas permit, leasehold, lease for oil and gas purposes, and the buildings, machinery, equipment and appurtenances, or upon any oil pipeline, gas pipeline, or gasoline pipeline, and the right-of-way therefor, or such oil or gas wells, the proceeds from the sale of oil and gas produced therefrom inuring to the working interest, and the material, tools, machinery, equipment and supplies so furnished or hauled and the fixtures and appliances thereon, subsequent to the commencement of the labor performed, or the furnishing, or hauling, or putting up of the material, tools, machinery, equipment or supplies; and the lien shall follow the property and each part thereof, and be enforceable against the property wherever it may be found. The taking of any note or additional security by the contractor or subcontractor, or the person having the lien shall not effect, or be a waiver of, any lien he may have by virtue of the Oil and Gas Lien Act [70-4-1 to 70-4-15 NMSA 1978], unless made a waiver by express agreement in writing of the parties; and the lien hereby given shall attach as of the date on which the first of the material, tools, machinery, equipment or supplies is furnished or hauled, or the first of the labor is performed. Any purchaser of oil or gas in the ordinary course of business without actual knowledge of the filing of a lien covering the proceeds from the sale of oil or gas shall take the oil or gas free of the lien.

History: Laws 1931, ch. 11, § 1; 1941 Comp., § 69-401; 1953 Comp., § 65-5-1; Laws 1961, ch. 199, § 1; 1963, ch. 12, § 1; 1987, ch. 147, § 1.

The 1987 amendment, effective June 19, 1987, inserted "proceeds from the sale of oil and gas produced therefrom inuring to the working interest" in the middle of the first paragraph following "the buildings and equipment thereon, and the appurtenances thereto" and in the middle of the first sentence of the second paragraph following "and the right-of-way therefor, or such oil or gas wells", and added the last sentence to the second paragraph.

Lien acquired upon leasehold. - A leasehold estate, including all rights, powers and privileges contained therein or appurtenant thereto, is subject to a time dimension, and upon expiration of that dimension nothing is left; there can be no merger of mineral rights with the fee upon termination of the lease, because all mineral rights were already contained in and were part of the fee. Thus, claim that lien acquired by construction company upon a leasehold under act was not extinguished by terms of the leasehold, but, rather, that it contained a lien upon an interest in any oil and gas and followed that interest, even though leasehold estate had terminated, was without merit. *Butt v. Vermejo Park Corp.* 89 N.M. 679, 556 P.2d 835 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 38 Am. Jur. 2d Gas and Oil §§ 135 to 140.

Rights and duties as between owner of land and owner of timber or of mineral in place as regards liens covering both interests, 26 A.L.R. 1031.

Casing of oil and gas well as subject to mechanic's lien, 39 A.L.R. 1260.

Oil, gas or other mineral rights in land subject as real estate to judgment lien against owner of mineral interest, 52 A.L.R. 135.

Interest of owner of land as subject to lien for material or service engaged by holder of mineral rights, 59 A.L.R. 548.

Mechanic's lien as to drilling of oil wells, 92 A.L.R. 756.

Right or interest subject to, and priority of, statutory lien for labor or material in developing property for oil and gas, 122 A.L.R. 1182.

Sufficiency of notice, claim, or statement of mechanic's lien with respect to description or location of real property, 52 A.L.R.2d 12.

Assertion of statutory mechanic's or materialman's lien against oil and gas produced or against proceeds attributable to oil and gas sold, 59 A.L.R.3d 278.

58 C.J.S. Mines and Minerals §§ 259 to 269.

70-4-2. Labor, hauling and materials considered under continuous contract.

Any labor performed, or materials, machinery, tools, equipment or supplies so furnished or hauled by any person entitled to a lien under the provisions of the Oil and Gas Lien Act [70-4-1 to 70-4-15 NMSA 1978] for the land, oil and gas permit, leasehold, lease for oil and gas purposes, or oil pipeline, gas pipeline or gasoline pipeline, shall be considered as having been furnished under a single contract regardless of whether or not the same was performed or furnished at different times or on separate orders, provided no more than one hundred twenty days shall have elapsed between the date of performance of the labor or the date of the furnishing or hauling of any part or parts of the material, tools, equipment, machinery or supplies and the date on which labor or materials, tools, equipment, machinery or supplies are next performed, hauled or finished [furnished].

History: Laws 1931, ch. 11, § 2; 1941 Comp., § 69-402; 1953 Comp., § 65-5-2; Laws 1963, ch. 12, § 2.

Bracketed material. - The bracketed word "furnished" was inserted by the compiler as the apparently intended term. It was not enacted by the legislature and is not a part of the law.

70-4-3. Liens of subcontractors.

Any person who furnishes or hauls the material, tools, equipment, machinery or supplies as, or to, a subcontractor, or any person who performs the labor for, or under, a subcontract with a contractor or subcontractor shall have a lien upon the whole of the land, oil and gas permit, leasehold, lease for oil and gas purposes, or oil pipeline, gas pipeline or gasoline pipeline, and the right-of-way therefor, buildings and equipment thereon, and the appurtenances thereto, and upon the materials, tools, machinery, equipment and supplies so furnished or hauled, and upon the oil and gas well for which they were furnished or hauled, and upon all the other oil and gas wells, fixtures, machinery, tools, equipment and appliances used in operating or developing for oil and gas purposes upon the land, oil and gas permit, leasehold, or lease for oil and gas purposes, for which the material, tools, machinery, equipment or supplies were furnished or hauled, or labor performed, to the same extent, with the same preferences and priorities, and on an equality with the lien of an original contractor as provided in Sections 70-4-1 and 70-4-2 NMSA 1978, for the amount due him for the labor, hauling or materials, tools, machinery, equipment or supplies.

History: Laws 1931, ch. 11, § 3; 1941 Comp., § 69-403; 1953 Comp., § 65-5-3; Laws 1963, ch. 12, § 3.

70-4-4. Claim of lien; contents and filing.

Every original contractor, within two hundred ten days after the performance of the last labor

or the furnishing or hauling of the last item of material, tools, machinery, equipment or supplies, and every person, except the original contractor, claiming the benefits of the Oil and Gas Lien Act [70-4-1 to 70-4-15 NMSA 1978] within one hundred eighty days after the performance of the last labor or the furnishing or hauling of the last item or material, tools, machinery, equipment or supplies shall file for record with the county clerk of the county in which the property upon which the lien is claimed or situated, a claim setting forth the name and residence of the claimant, the amount and the items claimed, the name of the person to whom the materials, tools, machinery, equipment or supplies were furnished or hauled or for whom the labor was performed, the name of the owner and a description of the property upon which the lien is claimed, verified by affidavit.

History: Laws 1931, ch. 11, § 4; 1941 Comp., § 69-404; 1953 Comp., § 65-5-4; Laws 1963, ch. 12, § 4; 1993, ch. 6, § 1.

The 1993 amendment, effective June 18, 1993, substituted "two hundred ten days" for "one hundred twenty days" and "one hundred eighty days" for "ninety days", and made minor stylistic changes.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 38 Am. Jur. 2d Gas and Oil § 139.

58 C.J.S. Mines and Minerals § 264.

70-4-5. Recording; index; fees.

The county clerk shall record the claim in a book kept by him for that purpose, and shall index such record as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds and other conveyances.

History: Laws 1931, ch. 11, § 5; 1941 Comp., § 69-405; 1953 Comp., § 65-5-5.

Cross references. - For recording fees, see 14-8-12 NMSA 1978.

70-4-6. Liability of owner limited to contract price.

Nothing in the Oil and Gas Lien Act [70-4-1 to 70-4-15 NMSA 1978] shall be deemed to fix a greater liability upon an owner than the amount contracted by the owner to be paid the original contractor; provided that the risk of all payments made to the original contractor shall be upon the owner until the expiration of the one hundred eighty days specified in Section 70-4-4 NMSA 1978 within which persons other than the original contractor may fix their liens by the filing of the claim as provided in that section, and no owner shall be liable to an action by the contractor until the expiration of the one hundred eighty day period. Owners may pay subcontractors the specific contract or agreed upon charge due them from the original contractor for work, labor, material, tools, machinery, equipment and supplies, and the amount so paid shall be held and deemed a payment of that amount to the original contractor.

History: Laws 1931, ch. 11, § 6; 1941 Comp., § 69-406; 1953 Comp., § 65-5-6; Laws 1963, ch. 12, § 5; 1965, ch. 184, § 2; 1993, ch. 6, § 2.

The 1993 amendment, effective June 18, 1993, substituted "one hundred eighty days specified in Section 70-4-4 NMSA 1978" for "ninety (90) days hereinbefore" and "the one hundred eighty day period" for "said ninety (90) days" in the first sentence, and made minor stylistic changes.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 C.J.S. Mines and Minerals § 263.

70-4-7. Limitation of action to enforce.

No lien provided for in this act [70-4-1 to 70-4-15 NMSA 1978] shall bind any property subject thereto for a longer period than one year after the date on which the same is filed, unless proceedings be commenced in the district court within that time to enforce the same, or, if a credit be given, then one year after the expiration of such credit, but no such lien shall continue in force for a longer time than two years from the time the lien is filed by any agreement to give credit unless action to enforce the same shall have been commenced within that time.

History: Laws 1931, ch. 11, § 7; 1941 Comp., § 69-407; 1953 Comp., § 65-5-7.

Cross references. - For sales under execution and foreclosure, see 39-5-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 58 C.J.S. Mines and Minerals § 269.

70-4-8. Enforcement of lien.

The liens herein created may be enforced by proper action in the district court in the county in which the property is situate to which the lien attaches, provided that if the property to which the lien attaches is situate in more than one county the action may be brought in any county where a part of the property is situate. If the lien is foreclosed there shall be no redemption, and the sheriff or other officer shall make a formal conveyance of the property sold under foreclosure to the purchaser as provided by law.

History: Laws 1931, ch. 11, § 8; 1941 Comp., § 69-408; 1953 Comp., § 65-5-8.

70-4-9. Joinder of actions; attorney's fees; costs.

Any number of persons claiming liens may join in the same action, and when separate actions are commenced the court may consolidate them. The court may also allow as a part of the costs the moneys paid for filing and recording the lien, and reasonable attorney's fees in the trial and appellate courts.

History: Laws 1931, ch. 11, § 9; 1941 Comp., § 69-409; 1953 Comp., § 65-5-9.

Cross references. - For joinder of parties, see Rule 1-020A NMRA 1997.

For consolidation of actions, see Rule 1-042C NMRA 1997.

70-4-10. Definition of words "person" and "subcontractor".

The word "person" as used in this act [70-4-1 to 70-4-15 NMSA 1978] shall include one or more individuals and corporations and copartnerships.

The word "subcontractor" as used in this act shall include every person entitled to the benefits thereof other than an original contractor.

History: Laws 1931, ch. 11, § 10; 1941 Comp., § 69-410; 1953 Comp., § 65-5-10.

70-4-11. Preference to laborers; no preference to first contractors.

Upon all questions arising between different persons having liens under the Oil and Gas Lien Act [70-4-1 to 70-4-15 NMSA 1978], no preference shall be given to him who first performed

labor or furnished, or hauled, materials, tools, machinery, equipment or supplies, except that the claim of any person for labor by him personally performed is a preferred lien.

History: Laws 1931, ch. 11, § 11; 1941 Comp., § 69-411; 1953 Comp., § 65-5-11; Laws 1963, ch. 12, § 6.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 38 Am. Jur. 2d Gas and Oil § 140.

58 C.J.S. Mines and Minerals § 268.

70-4-12. Materials exempt from attachment.

Whenever materials, tools, machinery, equipment or oil and gas supplies shall have been furnished for use or employment in the digging, drilling, torpedoing, completing, operating or repairing of any oil or gas well, or in the construction, operation or repairing of any gas pipeline, oil pipeline or gasoline pipeline, such materials, machinery, equipment or oil and gas supplies shall not be subject to attachment, execution or other legal process to enforce any debt due by the purchaser of such materials, machinery, tools, equipment or supplies, except a debt due for the purchase price thereof so long as such purchase price, or any part thereof, remains unpaid, and such materials, tools, machinery, equipment or supplies are in good faith about to be used for the purposes for which they were so furnished, until after the expiration of the time for filing a lien for such purchase price under the provisions of this act [70-4-1 to 70-4-15 NMSA 1978].

History: Laws 1931, ch. 11, § 12; 1941 Comp., § 69-412; 1953 Comp., § 65-5-12.

Cross references. - For rules governing garnishment and writs of execution in the district, magistrate, and metropolitan courts, see Rules 1-065.1, 2-801, and 3-801 NMRA 1997, respectively.

For form for claim of exemptions on executions, see Rule 4-803 NMRA 1997.

For form for order on claim of exemption and order to pay in execution proceedings, see Rule 4-804 NMRA 1997.

For form for application for writ of garnishment and affidavit, see Rule 4-805 NMRA 1997.

For form for notice of right to claim exemptions from execution, see Rule 4-808A NMRA 1997.

For form for claim of exemption from garnishment, see Rule 4-809 NMRA 1997.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 38 Am. Jur. 2d Gas and Oil § 137.

58 C.J.S. Mines and Minerals § 262.

70-4-13. Personal liability.

Nothing in the Oil and Gas Lien Act [70-4-1 to 70-4-15 NMSA 1978] shall be construed to impair or affect the right of any person, to whom any debt may be due for work done or materials, tools, machinery, equipment or supplies furnished or hauled, to maintain a personal action to recover the debt against the person liable therefor.

History: Laws 1931, ch. 11, § 13; 1941 Comp., § 69-413; 1953 Comp., § 65-5-13; Laws 1963, ch. 12, § 7.

70-4-14. Name of act.

This act [70-4-1 to 70-4-15 NMSA 1978] shall be known as the Oil and Gas Lien Act.

History: Laws 1931, ch. 11, § 15; 1941 Comp., § 69-414; 1953 Comp., § 65-5-14.

70-4-15. Conflicting laws repealed, Chapter 82, "1929 New Mexico Statutes Annotated" excepted.

This act [70-4-1 to 70-4-15 NMSA 1978] shall not in any way affect, modify or repeal Chapter 82 of the "1929 New Mexico Statutes Annotated." All other laws in conflict with the provisions of this act are hereby repealed.

History: Laws 1931, ch. 11, § 16; 1941 Comp., § 69-415; 1953 Comp., § 65-5-15.

Compiler's notes. - Chapter 82 of the 1929 Compilation referred to in this section is presently compiled as 48-2-1 to 48-2-8, 48-2-10 to 48-2-16, 48-3-1, 48-3-2, 48-3-4, 48-3-5, 48-3-7 to 48-3-15, 48-5-1 to 48-5-3 and 48-6-1 to 48-6-16 NMSA 1978.

Purpose of declaration of cumulative effect was not to make other statutory provisions applicable to those things covered by this act itself, but to show that the things for which liens were given by this act were not intended to nullify other lien statutes in favor of mechanics, laborers, clerks and others performing services in the oil industry, and materialmen who might furnish material in the oil or mining industry not covered by the act. *Butt v. Vermejo Park Corp.* 89 N.M. 679, 556 P.2d 835 (1976).

Lien on fee owner's interest. - Under the Mechanics' Lien Act (48-2-1 NMSA 1978 et seq.), a lien may be imposed upon fee owner's interest if he has knowledge of the construction and fails to disclaim responsibility therefor in manner and within time therein provided, while under this act, fee owner's interest is subject to lien only if he expressly so contracts, an obvious conflict, and it was held that company which built roads, leveled land, hauled water and provided gravel and load pipe in connection with certain oil and gas exploration and drilling were entitled to assert a lien only under this act. *Butt v. Vermejo Park Corp.* 89 N.M. 679, 556 P.2d 835 (1976).
