

EXCERPTS
FROM
NEW MEXICO OIL AND GAS ACT,
§§70-2-1 THROUGH 70-2-38 NMSA 1978

70-2-1. Short title.

Chapter 70, Article 2 NMSA 1978 may be cited as the "Oil and Gas Act".

History: 1953 Comp., § 65-3-1.1, enacted by Laws 1977, ch. 237, § 1; 1989, ch. 130, § 13.

The 1989 amendment, effective June 16, 1989, substituted "Chapter 70, Article 2 NMSA 1978" for "Sections 65-3-1.1 through 65-3-31 and 65-3-35 and 65-3-36 NMSA 1953".

Law reviews. — For article, "New Mexican Nationalism and the Evolution of Energy Policy in New Mexico," see 17 Nat. Resources J. 283 (1977).

70-2-2. [Waste prohibited.]

The production or handling of crude petroleum oil or natural gas of any type or in any form, or the handling of products thereof, in such manner or under such conditions or in such amounts as to constitute or result in waste is each hereby prohibited.

History: Laws 1935, ch. 72, § 1; 1941 Comp., § 65-202; Laws 1949, ch. 168, § 1; 1953 Comp., § 65-3-2.

Cross references. — For regulation and conservation of carbon dioxide gas, see 70-2-34 NMSA 1978.

Legislative intent. — Primary concern of oil and gas legislation is eliminating and preventing waste in the pool so far as it can practicably be done, and also the protection of correlative rights of producers from the pool. *El Paso Natural Gas Co. v. Oil Conservation Comm'n*, 76 N.M. 268, 414 P.2d 496 (1966).

Two fundamental powers and duties of commission are prevention of waste and protection of correlative rights. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Elements of property rights of natural gas owners. — The legislature has stated definitively the elements contained in property rights of natural gas owners. Such right is not absolute or unconditional. It consists of merely (1) an opportunity to produce, (2) only insofar as it is practicable to do so, (3) without waste, (4) a proportion, (5) insofar as it can be practically determined and obtained without waste, (6) of gas in the pool. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Protection of correlative rights. — Although subservient to prevention of waste and perhaps to practicalities of the situation, the protection of correlative rights must depend upon the commission's findings as to the extent and limitations of the right. This the commission is required to do under legislative mandate. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Keeping of false records actionable offense. — The Connally Hot Oil Act (15 U.S.C. § 715 et seq.) applies only to those states which have in effect proration statutes for the purpose of preventing waste of oil and gas resources, encouraging conservation of oil and gas deposits, etc., and New Mexico is among those states which has enacted a valid com-

prehensive oil conservation law; since Connally Act applies to this state, keeping of false records, though not in violation of any New Mexico proration order, constitutes an actionable offense under Connally Act. *Humble Oil & Ref. Co. v. United States*, 198 F.2d 753 (10th Cir.), cert. denied, 344 U.S. 909, 73 S. Ct. 328, 97 L. Ed. 701 (1952).

Forfeiture of lease denied. — Lessors of oil and gas lease could not declare balance of 40-acre tract (i.e., all except 10-acre tract a producing well was on) retained after selling interests without reservation in another undrilled 40-acre area included in the original lease, as forfeited because of lease provision that lessee was to drill or start to drill a second well or forfeit the lease, in view of order promulgated pursuant to this act which prevented drilling of second well on the retained 40-acre tract. *Thompson v. Greer*, 55 N.M. 335, 233 P.2d 204 (1951).

Law reviews. — For article, "Compulsory Pooling of Oil and Gas Interests in New Mexico," see 3 Nat. Resources J. 316 (1963).

For article, "New Mexican Nationalism and the Evolution of Energy Policy in New Mexico," see 17 Nat. Resources J. 283 (1977).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil §§ 157, 158.

Constitutionality of statute limiting or controlling exploitation of waste of oil and gas, 24 A.L.R. 307; 78 A.L.R. 834.

Constitutionality of statute or ordinance limiting production and preventing waste, 67 A.L.R. 1347; 99 A.L.R. 1119.

Constitutionality of statute regulating petroleum production, 86 A.L.R. 418.

Construction, application, and effect of statutes regulating production of oil or gas in a manner or under conditions constituting waste, 86 A.L.R. 431.

Rights and remedies of owner or lessee of oil or gas land on mineral or royalty interest therein, in respect of waste of oil or gas through operations on other lands, 4 A.L.R.2d 198.

58 C.J.S. Mines and Minerals § 234.

70-2-3. Waste; definitions.

As used in this act the term "waste," in addition to its ordinary meaning, shall include:

A. "underground waste" as those words are generally understood in the oil and gas business, and in any event to embrace the inefficient, excessive or improper, use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and the locating, spacing, drilling, equipping, operating or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas

ultimately recovered from any pool, and the use of inefficient underground storage of natural gas;

B. "surface waste" as those words are generally understood in the oil and gas business, and in any event to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of natural gas of any type or in any form or crude petroleum oil, or any product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating or producing, well or wells, or incident to or resulting from the use of inefficient storage or from the production of crude petroleum oil or natural gas in excess of the reasonable market demand;

C. the production of crude petroleum oil in this state in excess of the reasonable market demand for such crude petroleum oil. Such excess production causes or results in waste which is prohibited by this act. The words "reasonable market demand," as used herein with respect to crude petroleum oil, shall be construed to mean the demand for such crude petroleum oil for reasonable current requirements for current consumption and use within or outside the state, together with the demand for such amounts as are reasonably necessary for building up or maintaining reasonable storage reserves of crude petroleum oil or the products thereof, or both such crude petroleum oil and products;

D. the nonratable purchase or taking of crude petroleum oil in this state. Such nonratable taking and purchasing causes or results in waste, as defined in the Subsections A, B, C of this section and causes waste by violating Section 12(a) [70-2-16A NMSA 1978] of this act;

E. the production in this state of natural gas from any gas well or wells, or from any gas pool, in excess of the reasonable market demand from such source for natural gas of the type produced or in excess of the capacity of gas transportation facilities for such type of natural gas. The words "reasonable market demand," as used herein with respect to natural gas, shall be construed to mean the demand for natural gas for reasonable current requirements, for current consumption and for use within or outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of natural gas or products thereof, or both such natural gas and products;

F. drilling or producing operations for oil or gas within any area containing commercial deposits of potash where such operations would have the effect unduly to reduce the total quantity of such commercial deposits of potash which may reasonably be recovered in commercial quantities or where such operations would interfere unduly with the orderly commercial development of such potash deposits.

History: Laws 1935, ch. 72, § 2; 1941, ch. 166, § 1; 1941 Comp., § 69-203; Laws 1949, ch. 168, § 2; 1953 Comp., § 65-3-3; Laws 1965, ch. 58, § 1.

Cross references. — For definitions, see 70-2-33 NMSA 1978.

Meaning of "this act." — The term "this act," referred to in this section, means Laws 1935, ch. 72, §§ 1 to 24, which appear as 70-2-2 to 70-2-4, 70-2-6 to 70-2-11, 70-2-15, 70-2-16, 70-2-21 to 70-2-25, 70-2-27 to 70-2-30, and 70-2-33 NMSA 1978.

Allowable production not to exceed market demand. — When 70-2-16C and 70-2-19E NMSA 1978 are read together, one fact is evident: even after a pool is prorated, market demand must be determined, since, if allowable production from the pool exceeds market demand, waste would result if the

allowable is produced. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Change of allowable production to meet market demand. — The enabling of gas purchasers to more nearly meet market demand is not an authorized statutory basis upon which a change of allowable production may be placed. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Law reviews. — For article, "Compulsory Pooling of Oil and Gas Interests in New Mexico," see 3 *Nat. Resources J.* 316 (1963).

For article, "New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 *Nat. Resources J.* 283 (1977).

70-2-4. Oil conservation commission; members; term; officers; quorum; power to administer oaths.

There is created an "oil conservation commission", hereinafter in the Oil and Gas Act [this article] called the "commission", to be composed of a designee of the commissioner of public

CHAPTER 70

Oil and Gas

Art.

- 2. Oil Conservation Commission; Division; Regulation of Wells, 70-2-1 to 70-2-38.
- 3. Pipelines, 70-3-1 to 70-3-20.
- 5. Liquefied and Compressed Gases, 70-5-1 to 70-5-23.

ARTICLE 2

Oil Conservation Commission; Division; Regulation of Wells

Sec.

- 70-2-12. Enumeration of powers.
- 70-2-14. Requirement for financial assurance.
- 70-2-25. Rehearings; appeals.
- 70-2-38. Oil and gas reclamation fund administered;

plugging wells on federal land; right of indemnification; annual report; contractors selling equipment for salvage.

70-2-7. Rules of procedure in hearings; manner of giving notice; record of rules, regulations and orders.

Notice of proceedings. — Commission's order increasing spacing requirements for deep wildcat gas wells in certain areas of the state was invalid as to individual holders of working interests and operating rights affected thereby because the holders were

not afforded reasonable notice of the proceedings as required by the New Mexico Oil and Gas Act and its implementing regulations. *Johnson v. New Mexico Oil Conservation Comm'n*, 1999-NMSC-021, 127 N.M. 120, 978 P.2d 327.

70-2-12. Enumeration of powers.

A. Included in the power given to the oil conservation division of the energy, minerals and natural resources department is the authority to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge oil and gas wells, tanks, plants, refineries and all means and modes of transportation and equipment; to hold hearings; to provide for the keeping of records and the making of reports and for the checking of the accuracy of the records and reports; to limit and prorate production of crude petroleum oil or natural gas or both as provided in the Oil and Gas Act [this article]; to require either generally or in particular areas certificates of clearance or tenders in connection with the transportation of crude petroleum oil or natural gas or any products of either or both oil and products or both natural gas and products.

B. Apart from any authority, express or implied, elsewhere given to or existing in the oil conservation division by virtue of the Oil and Gas Act or the statutes of this state, the division is authorized to make rules, regulations and orders for the purposes and with respect to the subject matter stated in this subsection:

(1) to require dry or abandoned wells to be plugged in a way to confine the crude petroleum oil, natural gas or water in the strata in which it is found and to prevent it from escaping into other strata; the division shall require a cash or surety bond in a sum not to exceed fifty thousand dollars (\$50,000) conditioned for the performance of such regulations;

(2) to prevent crude petroleum oil, natural gas or water from escaping from strata in which it is found into other strata;

(3) to require reports showing locations of all oil or gas wells and for the filing of logs and drilling records or reports;

(4) to prevent the drowning by water of any stratum or part thereof capable of producing oil or gas or both oil and gas in paying quantities and to prevent the premature and irregular encroachment of water or any other kind of water encroachment that reduces or tends to reduce the total ultimate recovery of crude petroleum oil or gas or both oil and gas from any pool;

(5) to prevent fires;

(6) to prevent "blow-ups" and "caving" in the sense that the conditions indicated by such terms are generally understood in the oil and gas business;

(7) to require wells to be drilled, operated and produced in such manner as to prevent injury to neighboring leases or properties;

(8) to identify the ownership of oil or gas producing leases, properties, wells, tanks, refineries, pipelines, plants, structures and all transportation equipment and facilities;

(9) to require the operation of wells with efficient gas-oil ratios and to fix such ratios;

(10) to fix the spacing of wells;

(11) to determine whether a particular well or pool is a gas or oil well or a gas or oil pool, as the case may be, and from time to time to classify and reclassify wells and pools accordingly;

(12) to determine the limits of any pool producing crude petroleum oil or natural gas or both and from time to time redetermine the limits;

(13) to regulate the methods and devices employed for storage in this state of oil or natural gas or any product of either, including subsurface storage;

(14) to permit the injection of natural gas or of any other substance into any pool in this state for the purpose of repressuring, cycling, pressure maintenance, secondary or any other enhanced recovery operations;

(15) to regulate the disposition of water produced or used in connection with the drilling for or producing of oil or gas or both and to direct surface or subsurface disposal of the water in a manner that will afford reasonable protection against contamination of fresh water supplies designated by the state engineer;

(16) to determine the limits of any area containing commercial potash deposits and from time to time redetermine the limits;

(17) to regulate and, where necessary, prohibit drilling or producing operations for oil or gas within any area containing commercial deposits of potash where the operations would have the effect unduly to reduce the total quantity of the commercial deposits of potash which may reasonably be recovered in commercial quantities or where the operations would interfere unduly with the orderly commercial development of the potash deposits;

(18) to spend the oil and gas reclamation fund and do all acts necessary and proper to plug dry and abandoned oil and gas wells and to restore and remediate abandoned well sites and associated production facilities in accordance with the provisions of the Oil and Gas Act, the rules and regulations adopted under that act and the Procurement Code, including disposing of salvageable equipment and material removed from oil and gas wells being plugged by the state;

(19) to make well price category determinations pursuant to the provisions of the Natural Gas Policy Act of 1978 or any successor act and, by regulation, to adopt fees for such determinations, which fees shall not exceed twenty-five dollars (\$25.00) per filing. Such fees shall be credited to the account of the oil conservation division by the state treasurer and may be expended as authorized by the legislature;

(20) to regulate the construction and operation of oil treating plants and to require the posting of bonds for the reclamation of treating plant sites after cessation of operations;

(21) to regulate the disposition of nondomestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas to protect public health and the environment; and

(22) to regulate the disposition of nondomestic wastes resulting from the oil field service industry, the transportation of crude oil or natural gas, the treatment of natural gas

or the refinement of crude oil to protect public health and the environment, including administering the Water Quality Act [Chapter 74, Article 6 NMSA 1978] as provided in Subsection E of Section 74-6-4 NMSA 1978.

History: 1953 Comp., § 65-3-11, enacted by Laws 1978, ch. 71, § 1; 1986, ch. 76, § 1; 1987, ch. 234, § 61; 1989, ch. 289, § 1; 1996, ch. 72, § 2.

The 1996 amendment, inserted "of the energy, mineral and natural resources department" in the first sentence of Subsection A; and in Subsection B, substituted "that reduces" for "which reduces" in Paragraph (4), and inserted "and to restore and remediate abandoned well sites and associated production facilities" and "the rules and regulations adopted under that act" in Paragraph (18). Laws

1996, ch. 72 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Procurement Code. — See 13-1-28 NMSA 1978 and notes thereto.

Natural Gas Policy Act. — The federal Natural Gas Policy Act of 1978, referred to in Paragraph B(19), appears as 15 U.S.C. § 3301 et seq.

70-2-14. Requirement for financial assurance.

A. Each person, firm, corporation or association who operates any oil, gas or service well within the state shall, as a condition precedent to drilling or producing the well, furnish financial assurance in the form of an irrevocable letter of credit or a cash or surety bond to the oil conservation division running to the benefit of the state and conditioned that the well be plugged and abandoned in compliance with the rules of the oil conservation division. The oil conservation division shall establish categories of financial assurance after notice and hearing. Such categories shall include a blanket plugging financial assurance in an amount not to exceed fifty thousand dollars (\$50,000) and one-well plugging financial assurance in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by the financial assurance. In establishing categories of financial assurance, the oil conservation division shall consider the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells and such other factors as the oil conservation division deems relevant. In addition to the blanket plugging financial assurance, the oil conservation division may require a one-well financial assurance on any well that has been held in a temporarily abandoned status for more than two years. All financial assurance shall remain in force until released by the oil conservation division. The oil conservation division shall release financial assurance when it is satisfied the conditions of the financial assurance have been fully performed.

B. If any of the requirements of the Oil and Gas Act [Chapter 70, Article 2 NMSA 1978] or the rules promulgated pursuant to that act have not been complied with, the oil conservation division, after notice and hearing, may order any well plugged and abandoned by the operator or surety or both in accordance with division rules. If the order is not complied with in the time period set out in the order, the financial assurance shall be forfeited.

C. When any financial assurance is forfeited pursuant to the provisions of the Oil and Gas Act or rules promulgated pursuant to that act, the director of the oil conservation division shall give notice to the attorney general, who shall collect the forfeiture without delay.

D. All forfeitures shall be deposited in the state treasury in the oil and gas reclamation fund.

E. When the financial assurance proves insufficient to cover the cost of plugging oil and gas wells on land other than federal land and funds must be expended from the oil and gas reclamation fund to meet the additional expenses, the oil conservation division is authorized to bring suit against the operator in the district court of the county in which the well is located for indemnification for all costs incurred by the oil conservation division in plugging the well. All funds collected pursuant to a judgment in a suit for indemnification brought under the provisions of this section shall be deposited in the oil and gas reclamation fund.

70-2-10. Perjury; punishment.

If any person of whom an oath shall be required under the provisions of this act, or by any rule, regulation or order of the commission or division, shall willfully swear falsely in regard to any matter or thing respecting which such oath is required, or shall willfully make any false report or affidavit required or authorized by the provisions of this act, or by any rule, regulation or order of the commission or division, such person shall be deemed guilty of perjury and shall be punished by imprisonment in the state penitentiary for not more than five years nor less than six months.

History: Laws 1935, ch. 72, § 8; 1941 Comp., § 69-209; Laws 1949, ch. 168, § 8; 1953 Comp., § 65-3-9; Laws 1977, ch. 255, § 45.

Meaning of "this act". — The term "this act," referred to in this section, means Laws 1935, ch. 72,

§§ 1 to 24, which appear as 70-2-2 to 70-2-4, 70-2-6 to 70-2-11, 70-2-15, 70-2-16, 70-2-21 to 70-2-25, 70-2-27 to 70-2-30, and 70-2-33 NMSA 1978.

70-2-11. Power of commission and division to prevent waste and protect correlative rights.

A. The division is hereby empowered, and it is its duty, to prevent waste prohibited by this act and to protect correlative rights, as in this act provided. To that end, the division is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof.

B. The commission shall have concurrent jurisdiction and authority with the division to the extent necessary for the commission to perform its duties as required by law.

History: Laws 1935, ch. 72, § 9; 1941 Comp., § 69-210; Laws 1949, ch. 168, § 9; 1953 Comp., § 65-3-10; Laws 1977, ch. 255, § 46.

Meaning of "this act". — The term "this act," referred to in this section, means Laws 1935, ch. 72, §§ 1 to 24, which appear as 70-2-2 to 70-2-4, 70-2-6 to 70-2-11, 70-2-15, 70-2-16, 70-2-21 to 70-2-25, 70-2-27 to 70-2-30, and 70-2-33 NMSA 1978.

Authority based on power of prevention of waste. — The statutory authority of the commission to pool property or to modify existing agreements relating to production within a pool under either 70-2-17C or 70-2-17E NMSA 1978 must be predicated on prevention of waste. *Sims v. Mechem*, 72 N.M. 186, 382 P.2d 183 (1963).

Commission has jurisdiction over matters related to conservation of oil and gas in New Mexico, but the basis of its powers is founded on the duty to prevent waste and to protect correlative rights, as set forth in this section. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Powers of proration and creation of spacing units remain intact. — The standards of preventing waste and protecting correlative rights, as laid out in this section, are sufficient to allow commission's power to prorate and create standard or non-standard spacing units to remain intact, and 70-2-18 NMSA 1978 is not an unlawful delegation of legislative power. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 87 N.M. 286, 532 P.2d 582 (1975).

Prevention of waste by pooling. — Commission's finding that most efficient and orderly development of the subject acreage could be accomplished by force pooling is not equivalent to a finding that this pooling will prevent waste. *Sims v. Mechem*, 72 N.M. 186, 382 P.2d 183 (1963).

Former act to prohibit waste. — There was no delegation to the commission of power to make law or determine what it shall be in the former Oil Conservation Act, but act was, in effect, a prohibition against waste. 1951-52 Op. Att'y Gen. 5397.

Protection of correlative rights. — The prevention of waste is of paramount interest to the legislature and protection of correlative rights is interrelated and inseparable from it. The very definition of "correlative rights" emphasizes the term "without waste." However, protection of correlative rights is a necessary adjunct to the prevention of waste. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Although subservient to prevention of waste and perhaps to practicalities of the situation, protection of correlative rights must depend upon the commission's findings as to extent and limitations of right. This the commission is required to do under legislative mandate. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Property rights of natural gas owners. — The legislature has stated definitively the elements contained in property right of natural gas owners. Such right is not absolute or unconditional. It consists of merely (1) an opportunity to produce, (2) only insofar as it is practicable to do so, (3) without waste, (4) a proportion, (5) insofar as it can be practically determined and obtained without waste, (6) of gas in the pool. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Authority held not exceeded. — When an oil well was located so that it could produce oil from the top portion of the pool, thereby avoiding waste that would have occurred unless the well was allowed, but the well was located so that it could effectively drain the entire pool, and the oil conservation commission, charged with the protection of correlative rights of the other lease owners in the pool, placed a production penalty on the well to protect these rights, the commission did not exceed the broad statutory authority granted by the Oil and Gas Act. *Santa Fe Exploration Co. v. Oil Conservation Comm'n*, 114 N.M. 103, 835 P.2d 819 (1992).

Subsection A specifically requires filing of application for rehearing setting forth the claimed invalidity of order entered by commission. Its purpose is to afford commission an opportunity to reconsider and correct erroneous decision. *Pubco Petroleum Corp. v. Oil Conservation Comm'n*, 75 N.M. 36, 399 P.2d 932 (1965).

Subsection B relates solely to dissatisfied applicant and what he may do following entry of an order on rehearing or refusal of a rehearing. The term "party of record to such rehearing proceeding" as used in Subsection B means a party who has applied for a rehearing and is dissatisfied with disposition of his application. *Pubco Petroleum Corp. v. Oil Conservation Comm'n*, 75 N.M. 36, 399 P.2d 932 (1965).

Commission's judicial decision preclusive. — Commission was acting in a judicial capacity when it approved a proposed unitization plan; its decision was therefore entitled to preclusive effect. *Amoco Prod. Co. v. Heimann*, 904 F.2d 1405 (10th Cir.), cert. denied, 498 U.S. 942, 111 S. Ct. 350, 112 L. Ed. 2d 314 (1990).

Supreme court review of commission's action. — The supreme court makes same review of commission's action as did district court. It is restricted to considering whether, as a matter of law, commission's action is consistent with and within scope of its statutory authority, and whether administrative orders are supported by substantial evidence. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 87 N.M. 286, 532 P.2d 582 (1975).

Sufficiency of commission's findings. — Since appellant had filed two applications with the commission seeking either establishment of certain property within a gas pool as separate and distinct pool with special pool rules for production or, as an alternative, exemption of his wells from prorationing within gas pool and establishment of special production allowances, and at commission hearing appellant elicited evidence from his sole witness tending to support his applications, but commission did not put on any testimony, merely cross-examining appellant's witness, the record failing to provide any illumination as to why the testimony was wrong and should be disregarded, and nevertheless, commission found there was single common source of supply, that granting the applications would violate correla-

tive rights and that their denial was necessary to prevent waste, it was held that administrative findings sufficiently extensive to show basis of commission's order was utterly lacking and reversal was thereby required. *Fasken v. Oil Conservation Comm'n*, 87 N.M. 292, 532 P.2d 588 (1975).

In cases when sufficiency of the commission's findings is in issue or their substantial support is questioned, it must appear: (1) that commission made findings of ultimate facts which are material to the issues, having to do with such ultimate factors as whether a common source of supply exists, prevention of waste, protection of correlative rights and matters relative to net drainage, (2) that commission made sufficient findings to disclose reasoning of the commission in reaching its ultimate findings, and (3) findings must have substantial support in the record. *Fasken v. Oil Conservation Comm'n*, 87 N.M. 292, 532 P.2d 588 (1975).

Question whether commission's order instituting prorationing in a pool was arbitrary, unreasonable, unlawful and capricious because of lack of substantial evidence that wells were producing from same pool and because commission failed to determine amount of recoverable gas under each tract or in the pool was question of fact and not one of jurisdiction. *Grace v. Oil Conservation Comm'n*, 87 N.M. 205, 531 P.2d 939 (1975).

Lack of jurisdiction. — Since corporation failed to exhaust its statutory administrative remedies, trial court was without jurisdiction to entertain review of the order of commission. *Pubco Petroleum Corp. v. Oil Conservation Comm'n*, 75 N.M. 36, 399 P.2d 932 (1965).

Commission is necessary adverse party to an appeal of one of its decisions and it was error for trial court to refuse to allow commission to participate as such. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Law reviews. — For comment on *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962), see 3 Nat. Resources J. 178 (1963).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 392 et seq., § 415 et seq.

73A C.J.S. Public Administrative Law and Procedure §§ 161, 162, 172 to 190.

70-2-26. Review of oil conservation commission decision; appeals.

The secretary of energy, minerals and natural resources may hold a public hearing to determine whether an order or decision issued by the commission contravenes the public interest. The hearing shall be held within twenty days after the entry of the commission order or decision following a rehearing or after the order refusing a rehearing. The hearing shall be a de novo proceeding, and the secretary shall enter such order or decision as may be required under the circumstances, having due regard for the conservation of the state's oil, gas and mineral resources, and the commission shall modify its own order or decision to comply therewith. If a rehearing before the commission was granted, the record of the rehearing shall be made part of the record of the hearing before the secretary. If the application for rehearing was denied, the record of the hearing before the commission or the oil conservation division shall be made part of the record of the hearing before the secretary. Orders and decisions of the secretary may be appealed by any party to the original hearing or the rehearing before the commission or by any party to the hearing before the secretary held pursuant to this section, in accordance with the procedure of Subsections B, C and D of Section 70-2-25 NMSA 1978, except that the appeal shall not be a de novo proceeding and shall be limited to a review of the record of the hearing held pursuant to the provisions of this section.