

For article, "State Conservation Regulation and the Proposed R-199," see 6 Nat. Resources J. 223 (1966).

For comment on geothermal energy and water law, see 19 Nat. Resources J. 445 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. —
38 Am. Jur. 2d Gas and Oil §§ 161, 164.

Rights and obligations, with respect to adjoining landowners, arising out of secondary recovery of gas, oil, and other fluid minerals, 19 A.L.R.4th 1182.
58 C.J.S. Mines and Minerals § 240.

70-2-17. Equitable allocation of allowable production; pooling; spacing.

A. The rules, regulations or orders of the division shall, so far as it is practicable to do so, afford to the owner of each property in a pool the opportunity to produce his just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practically determined, and so far as such can be practicably obtained without waste, substantially in the proportion that the quantity of the recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for this purpose to use his just and equitable share of the reservoir energy.

B. The division may establish a proration unit for each pool, such being the area that can be efficiently and economically drained and developed by one well, and in so doing the division shall consider the economic loss caused by the drilling of unnecessary wells, the protection of correlative rights, including those of royalty owners, the prevention of waste, the avoidance of the augmentation of risks arising from the drilling of an excessive number of wells, and the prevention of reduced recovery which might result from the drilling of too few wells.

C. When two or more separately owned tracts of land are embraced within a spacing or proration unit, or where there are owners of royalty interests or undivided interests in oil and gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, the owner or owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit.

All orders effecting such pooling shall be made after notice and hearing, and shall be upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil or gas, or both. Each order shall describe the lands included in the unit designated thereby, identify the pool or pools to which it applies and designate an operator for the unit. All operations for the pooled oil or gas, or both, which are conducted on any portion of the unit shall be deemed for all purposes to have been conducted upon each tract within the unit by the owner or owners of such tract. For the purpose of determining the portions of production owned by the persons owning interests in the pooled oil or gas, or both, such production shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit. The portion of the production allocated to the owner or owners of each tract or interest included in a well spacing or proration unit formed by a pooling order shall, when produced, be considered as if produced from the separately owned tract or interest by a well drilled thereon. Such pooling order of the division shall make definite provision as to any owner, or owners, who elects not to pay his proportionate share in advance for the prorata reimbursement solely out of production to the parties advancing the costs of the development and operation, which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable, but which shall include a reasonable charge for supervision and may include a charge for the risk involved in the drilling of such well, which charge for risk shall not exceed two hundred percent of the nonconsenting working interest owner's or owners' prorata share of the cost of drilling and completing the well.

BEFORE EXAMINER CARRINGTON

OIL CONSERVATION COMMISSION

EXHIBIT NO. 1152

In the event of any dispute relative to such costs, the division shall determine the proper costs after due notice to interested parties and a hearing thereon. The division is specifically authorized to provide that the owner or owners drilling, or paying for the drilling, or for the operation of a well for the benefit of all shall be entitled to all production from such well which would be received by the owner, or owners, for whose benefit the well was drilled or operated, after payment of royalty as provided in the lease, if any, applicable to each tract or interest, and obligations payable out of production, until the owner or owners drilling or operating the well or both have been paid the amount due under the terms of the pooling order or order settling such dispute. No part of the production or proceeds accruing to any owner or owners of a separate interest in such unit shall be applied toward the payment of any cost properly chargeable to any other interest in said unit.

If the interest of any owner or owners of any unleased mineral interest is pooled by virtue of this act, seven-eighths of such interest shall be considered as a working interest and one-eighth shall be considered a royalty interest, and he shall in all events be paid one-eighth of all production from the unit and creditable to his interest.

D. Minimum allowable for some wells may be advisable from time to time, especially with respect to wells already drilled when this act takes effect, to the end that the production will repay reasonable lifting cost and thus prevent premature abandonment and resulting waste.

E. Whenever it appears that the owners in any pool have agreed upon a plan for the spacing of wells, or upon a plan or method of distribution of any allowable fixed by the division for the pool, or upon any other plan for the development or operation of such pool, which plan, in the judgment of the division, has the effect of preventing waste as prohibited by this act and is fair to the royalty owners in such pool, then such plan shall be adopted by the division with respect to such pool; however, the division, upon hearing and after notice, may subsequently modify any such plan to the extent necessary to prevent waste as prohibited by this act.

F. After the effective date of any rule, regulation or order fixing the allowable production, no person shall produce more than the allowable production applicable to him, his wells, leases or properties determined as in this act provided, and the allowable production shall be produced in accordance with the applicable rules, regulations or orders.

History: Laws 1935, ch. 72, § 12; 1941 Comp., § 69-213½; Laws 1949, ch. 168, § 13; 1953, ch. 76, § 1; 1953 Comp., § 65-3-14; Laws 1961, ch. 65, § 1; 1973, ch. 250, § 1; 1977, ch. 255, § 51.

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.

The terms "spacing unit" and "proration unit" are not synonymous and the commission has power to fix spacing units without first creating proration units. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 87 N.M. 286, 532 P.2d 582 (1975).

Proration formula required to be based on recoverable gas. — Lacking a finding that new gas proration formula is based on amounts of recoverable gas in pool and under tracts, insofar as these amounts can be practically determined and obtained without waste, a supposedly valid order in current use cannot be replaced. Such findings are necessary requisites to validity of the order, for it is upon them that the very power of the commission to act depends. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Findings required before correlative rights ascertained. — In order to protect correlative rights, it is incumbent upon commission to determine, "so far as it is practical to do so," certain foundationary matters, without which the correlative rights of various owners cannot be ascertained.

Therefore, the commission, by "basic conclusions of fact" (or what might be termed "findings"), must determine, insofar as practicable: (1) amount of recoverable gas under each producer's tract; (2) the total amount of recoverable gas in pool; (3) proportion that (1) bears to (2); and (4) what portion of arrived at proportion can be recovered without waste. That the extent of the correlative rights must first be determined before commission can act to protect them is manifest. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

In addition to making such findings the commission, "insofar as is practicable, shall prevent drainage between producing tracts in a pool which is not equalized by counter-drainage," under the provisions of 70-2-16 NMSA 1978. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Four basic findings required to adopt a production formula under this section can be made in language equivalent to that required in previous decision construing this section. *El Paso Natural Gas Co. v. Oil Conservation Comm'n*, 76 N.M. 268, 414 P.2d 496 (1966) (explaining *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 commission's (now division's) findings as to extent and limitations of the right. This the commission is required to do

under the legislative mandate. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Division found not to have primary jurisdiction over suit seeking an order to join in an oil well free of risk penalty. *Mountain States Natural Gas Corp. v. Petroleum Corp.*, 693 F.2d 1015 (10th Cir. 1982).

Grant of forced pooling is determined on case-to-case basis. — The granting of or refusal to grant forced pooling of multiple zones with an election to participate in less than all zones, the amount of costs to be reimbursed to the operator, and the percentage risk charge to be assessed, if any, are determinations to be made by the commission (now the division) on a case-to-case basis and upon the particular facts in each case. *Viking Petroleum, Inc. v. Oil Conservation Comm'n*, 100 N.M. 451, 672 P.2d 280 (1983).

As to forced pooling of multiple zones with an election to participate in less than all zones. See *Viking Petroleum, Inc. v. Oil Conservation Comm'n*, 100 N.M. 451, 672 P.2d 280 (1983).

Division's findings upheld. — Commission's (now division's) findings that it would be unreasonable and contrary to the spirit of conservation statutes to drill unnecessary and economically wasteful well were held to be sufficient to justify creation of two nonstandard gas proration units, and the force pooling thereof, and were supported by substantial evidence. Likewise, participation formula adopted by commission, which gave each owner a share in production in same ratio as his acreage bore to acreage of the whole, was upheld despite limited proof as to extent and character of pool. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 87 N.M. 286, 532 P.2d 582 (1975).

Relation between prevention of waste and protection of correlative rights. — 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 necessary adjunct to the prevention of waste. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).

Division's authority to pool separately owned tracts. — Since commission (now division) has power to pool separately owned tracts within a spacing or proration unit, as well as concomitant authority to establish oversize nonstandard spacing units, commission also has authority to pool separately owned tracts within an oversize nonstandard spacing unit. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 87 N.M. 286, 532 P.2d 582 (1975).

Elements of property right 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).

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

For comment on *El Paso Natural Gas Co. v. Oil Conservation Comm'n*, 76 N.M. 268, 414 P.2d 496 (1966), see 7 *Nat. Resources J.* 425 (1967).

For comment on geothermal energy and water law, see 19 *Nat. Resources J.* 445 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 *Am. Jur. 2d Gas and Oil* §§ 159, 161, 164.
38 *C.J.S. Mines and Minerals* §§ 229, 230.

70-2-18. Spacing or proration unit with divided mineral ownership.

A. Whenever the operator of any oil or gas well shall dedicate lands comprising a standard spacing or proration unit to an oil or gas well, it shall be the obligation of the operator, if two or more separately owned tracts of land are embraced within the spacing or proration unit, or where there are owners of royalty interests or undivided interests in oil or gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, to obtain voluntary agreements pooling said lands or interests or an order of the division pooling said lands, which agreement or order shall be effective from the first production. Any division order that increases the size of a standard spacing or proration unit for a pool, or extends the boundaries of such a pool, shall require dedication of acreage to existing wells in the pool in accordance with the acreage dedication requirements for said pool, and all interests in the spacing or proration units that are dedicated to the affected wells shall share in production from the effective date of the said order.

B. Any operator failing to obtain voluntary pooling agreements, or failing to apply for an order of the division pooling the lands dedicated to the spacing or proration unit as required by this section, shall nevertheless be liable to account to and pay each owner of minerals or leasehold interest, including owners of overriding royalty interests and other payments out of production, either the amount to which each interest would be entitled if pooling had occurred or the amount to which each interest is entitled in the absence of pooling, whichever is greater.

C. Nonstandard spacing or proration units may be established by the division and all mineral and leasehold interests in any such nonstandard unit shall share in production from that unit from the date of the order establishing the said nonstandard unit.