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JOHN R. BRAND
DISTRICT JUDGE
FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
P. O. BOX 1176
HOBBS, NEW MEXICO

July 27, 1959

Mr. Ross Malone
Mr. Jason Kellahin
Mr. Harry G. Dippel
Mr. Willis L. Lea, Jr.
Mr. Manuel A. Sanches
Mr. John S. Miller
Mr. J. K. Smith
Mr. Frank L. Heard, Jr.
Mr. R. L. Hughston
Mr. Alfred C. Holl

Mr. A. B. Tanco
Mr. C. W. Proctor

Mr. Jack Campbell
Mr. Morris Galatzan
Mr. Ray C. Cowan
Mr. Robert W. Ward
Mr. Lawrence I. Shaw
Mr. Jack Cooley

Re: Continental Oil, et al
v. N.M.O.C.C., et al

Gentlemen:

At the conclusion of the trial of this matter, I requested briefs. I have now concluded, however, that the Petitions should be dismissed, and the Order of the Oil Conservation Commission confirmed. This letter is intended to acquaint the parties with my reasons for so holding.

I am unable to say that the Order of the Commission is vague or uncertain. Implemented by the Directive or Memorandum, it gives a method of determining "deliverability" which is evidently comprehensible to those affected. One witness asserted that the large discrepancies in deliverability test results taken at different times made it manifest that it was not possible to make accurate tests using the new formula. The validity of the method of testing was not challenged from an engineering or mathematical view point, and no reason was given for the failure of one test to approximate the result to another test. But, when it is remembered that the new program has been in effect less than two years, and that the potential capacity of a well to produce varies from time to time because of numerous factors, some governable by the operator and some due to natural or fortuitous changes in conditions, the apparent discrepancies become understand

And, as was done, to add all the "plus" percentages for one column and all the "minus" for another, and assert that computation of the result shows an average total discrepancy between tests of more than 40%, is to present an absurdity, apparent on its face, and which proves nothing of value.

As to the claim that the reason for the adoption of the new formula was unsupported by any substantial evidence and hence was arrived at capriciously or arbitrarily, I fail to agree. It was argued that the finding of the Commission to the effect that there is a general correlation between the deliverabilities of the gas wells and the gas "in place" under the tracts dedicated to said wells is unsupported, because there is no testimony as to the recoverable gas in place under the tracts involved, -- that the testimony pertains instead to the reserves of the wells -- hence, the conclusion reached, that the inclusion of a deliverability factor in the proration formula would result in a more equitable allocation of the gas production, is untenable, that the testimony, on the contrary, showed that there is no correlation between the amount of gas a well may produce at a given time, and the amount of gas which is in the formation underlying the tract assigned to the well.

The owner's share of the gas is that amount which he can obtain in the proportion that the recoverable gas under his property bears to the total recoverability, not the amount in place but the amount recoverable. It does not depend on the proportion which the area of his tract bears to the area of the pool, or solely upon the quantity of gas in place under his tract in such proportion. I find substantial testimony to the effect that there is a general correlation between deliverability of gas wells and gas in place under the tract dedicated to such wells. The fugacious nature of gas must be taken into account and cannot be ignored.

There was substantial evidence that the 100% acreage formula permitted drainage from strong to weak wells, thus denying one group of operators the right to appropriate their share of the gas in place under their tracts to their detriment and to the unjust benefit of the other group. Under such type of allocation, the inefficient operator might be allowed to produce more

gas than his prudent and efficient neighbor with equal dedicated acreage, because of factors in the producing strata over which neither could have control. The field produced for years under this program which gave to each operator the right to produce quantities of gas dependent solely on the proportion which his acreage bore to the total field area, without regard to the many other conditions affecting the potential productivity of the tract. This was a simple method of arriving at allocations and required no complicated formula or tests to achieve but, as I see it, forced inequities and was inherently unfair to some. It may be that allocation of allowable production based entirely on the operators ability to produce is the ideal method to follow in fields where output is restricted. The Commission has adopted a compromise between the two methods and, in my opinion, has arrived at a more just and fair division than the former method afforded. It was in evidence that (as to one month) in round figures, eight operators had lost the right to produce $40,000 worth of gas while four others had gained $50,000 worth. This can mean, however, that a previous and possibly greater inequity has been corrected.

I feel, too, that a program which rewards good and prudent operation and discourages the contrary sort, contributes to the prevention of waste and the better utilization of the natural resource, and that the present plan is designed to further that result.

Counsel shall have thirty days in which to submit requested findings of fact and conclusions of law.

Yours very truly,

John R. Brand

JOHN R. BRAND

JRB/cvj