

DAVID FASKEN v. OIL CONSERVATION COMMISSION

OIL CONSERVATION COMMISSION

CASE 4865

ORDER R-4444

DISTRICT COURT

COUNTY OF EDDY

CASE 28483

(CONSOLIDATED WITH 28482)

SUBJECT OF CASE:

Application for Special Allowable

OTHER PARTIES:

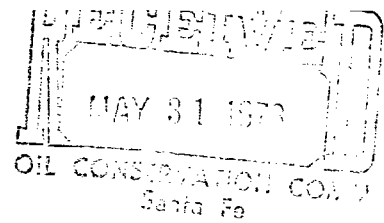
OPPOSING COUNSEL:

Dick Morris (Fasken)

OTHER COUNSEL OF RECORD:

WILLIAM J. COOLEY <GRACE>

(NOTICE OF SETTING OF CASE)



David Fasken

Plaintiff

vs.

No. 28482 & 28483

New Mexico Oil Conservation Commission

TO: Montgomery, Federici, Andrews, Hannahs & Morris
William F. Carr, Special Assistant Attorney General ✓
Burr & Cooley

You are hereby notified that the above entitled case has been set for ^{Hearings on Motions} trial at Carlsbad, New Mexico, on the 12th day of June, 1973
at 9:30 o'clock A. M.

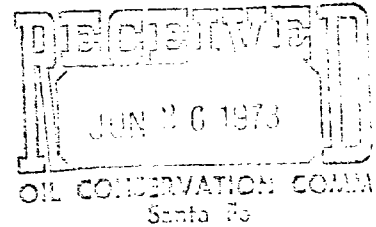
FRANCES M. WILCOX

CLERK OF THE DISTRICT COURT

Mailed: May 30, 1973

D. D. ARCHER
DISTRICT JUDGE
P. O. Box 98
CARLSBAD, NEW MEXICO
88220

June 25, 1973



Mr. Richard S. Morris
Attorney at Law
P. O. Box 2307
Santa Fe, New Mexico 87501

Mr. William F. Carr
Special Assistant Attorney General
P. O. Box 2088
Santa Fe, New Mexico 87501

Mr. William J. Cooley
Attorney at Law
152 Petroleum Center Building
Farmington, New Mexico 87401

Gentlemen:

Re: David Fasken vs. Oil Conservation Commission
Eddy County Nos. 28482 and 28483

I have set the above matters for hearing at 9:30 A.M.,
August 1, 1973, in the District Courtroom in the Eddy
County Courthouse, Carlsbad, New Mexico.

Very truly yours,

D. D. Archer

DDA/mg

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

June 4, 1973

The Honorable D. D. Archer
District Judge
County Court House
Carlsbad, New Mexico 88220

Re: David Fasken vs. New Mexico
Oil Conservation Commission,
Eddy County Cause Nos.
28482 and 28483 ✓

Dear Judge Archer:

This letter will confirm our telephone conversation of May 31, 1973, in which I informed you that it is impossible for me to argue the motions in the above-captioned cases on June 12, 1973.

I have contacted Mr. Richard S. Morris, Attorney for David Fasken, and informed him of this problem. He has no objection to vacating the setting and resetting as soon as possible after June 15th.

Very truly yours,

WILLIAM F. CARR
Special Assistant Attorney General
Oil Conservation Commission

WFC/dr

cc: Mr. Richard S. Morris
Mr. Wm. J. Cooley
Mrs. Frances M. Wilcox



OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO
P. O. BOX 2088 - SANTA FE
87501

May 29, 1973

I. R. TRUJILLO
CHAIRMAN
LAND COMMISSIONER
ALEX J. ARMIJO
MEMBER
STATE GEOLOGIST
A. L. PORTER, JR.
SECRETARY - DIRECTOR

The Honorable D. D. Archer
District Judge
County Court House
Carlsbad, New Mexico 88220

Re: David Fasken vs. New Mexico Oil
Conservation Commission, Eddy
County Cause Nos. 28482 and
28483

Dear Judge Archer:

We have filed motions for Summary Judgment in the above-captioned cases.

On April 12, 1973, Richard S. Morris, attorney for David Fasken, also filed motions for Summary Judgment in these cases.

We would appreciate your setting Respondent's motions for hearing on the same day as those of Petitioner. I estimate our motions will require about two hours additional time to argue.

Very truly yours,

A handwritten signature in black ink, which appears to read "William F. Carr", is written over the typed name.

WILLIAM F. CARR
Special Assistant Attorney General
Oil Conservation Commission

WFC/dr

cc: Mr. Richard Morris
Mr. William J. Cooley
Mrs. Frances Wilcox

OIL CONSERVATION COMMISSION
P. O. BOX 2088
SANTA FE, NEW MEXICO 87501

May 25, 1973

Mrs. Frances M. Wilcox
Clerk
District Court of the Fifth
Judicial District
Carlsbad, New Mexico

Re: David Fasken vs. New Mexico Oil
Conservation Commission, Eddy
County Cause Nos. 28482 and
28483✓

Dear Mrs. Wilcox:

I transmit herewith the Oil Conservation Commis-
sion's Motions for Summary Judgment in the above-
entitled cases.

Very truly yours,

WILLIAM F. CARR
Special Assistant Attorney General
Oil Conservation Commission

WFC/dr

encls.

J. O. SETH (1883-1963)

MONTGOMERY, FEDERICI, ANDREWS, HANNAHS & MORRIS

ATTORNEYS AND COUNSELORS AT LAW

350 EAST PALACE AVENUE

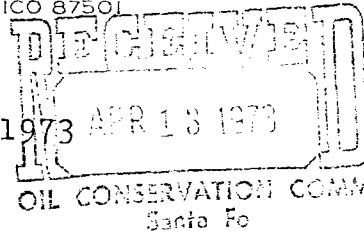
SANTA FE, NEW MEXICO 87501

A. K. MONTGOMERY
WM. R. FEDERICI
FRANK ANDREWS
FRED C. HANNAHS
RICHARD S. MORRIS
SUMNER G. BUELL
SETH D. MONTGOMERY
FRANK ANDREWS III

OWEN M. LOPEZ
JEFFREY R. BRANNEN
JOHN BENNETT POUND

POST OFFICE BOX 2307
AREA CODE 505
TELEPHONE 982-3876

April 12, 1973



The Honorable D. D. Archer
District Judge
County Court House
Carlsbad, NM 88220

Re: David Fasken vs. New Mexico Oil Conservation
Commission, Eddy County Cause Nos. 28482 & 28483

Dear Judge Archer:

The subject cases are appeals from orders of the New Mexico Oil Conservation Commission which involve alternative applications covering the same lands and which pertain to the same problems.

We have filed Motions for Summary Judgment in both of these cases which we believe to be the appropriate procedure in as much as the District Court review is required to be on the record made before the Commission. We would appreciate your setting these motions for hearing and allowing approximately two hours for the Petitioner's argument. Although I can not speak for the Respondent, I would estimate it would require at least one hour for its argument in response to the motion.

Very truly yours,

Richard S. Morris

RSM:sp
5086-73-2

Enc. &

cc: Mrs. Frances Wilcox
Mr. William F. Carr
Mr. William J. Cooley
Mr. Richard S. Brooks

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Cases to be Submitted

Tuesday
October 22, 1974
9:00 A. M.

No. 9958

David Fasken, Appellant

Montgomery, Federici, Andrews,
Hannahs & Buell
Sumner G. Buell

vs.

Oil Conservation Commission of the
State of New Mexico Appellee

William F. Carr, Special Asst. Atty
General

No. 9953

State of New Mexico, Appellee

David L. Norvell, Attorney General
George A. Morrison, Special Asst.
Attorney General

vs.

David G. Vigil, Appellant

Jones, Gallegos, Snead & Wertheim
John Wentworth

THE CALL OF THE DOCKET FOR THE FOLLOWING CASES WILL BE AT 1:30 O'CLOCK P.M. AND
COUNSEL NEED NOT BE PRESENT UNTIL THAT TIME:

No. 9838

Jimmy Lee Black, Appellant

Caton & Hynes
Byron Caton

vs.

Board of Education of Jemez Mountain
School District No. 53, et al.,
Appellees

Solomon & Roth
Charles Solomon

No. 9936

James H. Thompson, d/b/a J. H. Thompson
Construction Co., Appellee

Shipley, Durrett, Conway & Sandenaw

vs.

George Graham, Appellee

vs.

E. E. Anderson, Appellant

Donald Brown
Paul R. Dillard

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Cases to be Submitted

Tuesday
October 22, 1974
9:00 A. M.

No. 9958

David Fasken, Appellant

Montgomery, Federici, Andrews,
Hannahs & Buell
Sumner G. Buell

vs.

Oil Conservation Commission of the
State of New Mexico Appellee

William F. Carr, Special Asst. Atty
General

No. 9953

State of New Mexico, Appellee

David L. Norvell, Attorney General
George A. Morrison, Special Asst.
Attorney General

vs.

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Jones, Gallegos, Snead & Wertheim
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COUNSEL NEED NOT BE PRESENT UNTIL THAT TIME:

No. 9838

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No. 9936

James H. Thompson, d/b/a J. H. Thompson
Construction Co., Appellee

Shipley, Durrett, Conway & Sandenaw

vs.

George Graham, Appellee

vs.

E. E. Anderson, Appellant

Donald Brown
Paul R. Dillard

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

DAVID FASKEN,)	
)	
Petitioner-Appellant,)	
)	
vs.)	No. 9958
)	
OIL CONSERVATION COMMISSION OF)	
THE STATE OF NEW MEXICO,)	
)	
Respondent-Appellee.)	


NOTICE

TO: Sumner Buell
Montgomery, Federici, Andrews,
Hannahs & Buell
350 E. Palace Avenue
Santa Fe, New Mexico 87501

NOTICE IS HEREBY GIVEN that notice has been received from the Clerk of the Supreme Court, postmarked ~~May 7, 1974,~~ that Respondent-Appellee's Motion for extension of time to file Answer Brief on behalf of Oil Conservation Commission of the State of New Mexico has been granted.

This Notice is given in accordance with Rule 15 of the New Mexico Rules of Civil Procedure.

Dated this ~~14th~~ day of May, 1974.


WILLIAM F. CARR
Special Assistant Attorney General
Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

DAVID FASKEN,)	
)	
Petitioner-Appellant,)	
)	
vs.)	No. 9958
)	
OIL CONSERVATION COMMISSION OF)	
THE STATE OF NEW MEXICO,)	
)	
Respondent-Appellee.)	

MOTION

COMES NOW Oil Conservation Commission of The State of New Mexico, Respondent-Appellee, in the above styled and numbered cause and respectfully moves the Court for a thirty-day extension of time, to June 30, 1974, within which to file its Answer Brief in said cause, by reason of the fact that counsel will undergo surgery on May 8, 1974, and will be out of the office most of the month of May making it impossible to file the Commission Answer Brief by May 30, 1974.

WILLIAM F. CARR, Special Assistant
Attorney General, representing the
Oil Conservation Commission of the
State of New Mexico, P. O. Box 2088
Santa Fe, New Mexico 87501

We hereby certify that we have
mailed a copy of the foregoing
pleading to Sumner Buell, opposing
counsel of record, this 7th day of
May, 1974.

J. O. SETH (1899-1962)

A. K. MONTGOMERY
WM. FEDERICI
FRANK ANDREWS
FRED C. HANNAHS
SUMNER G. BUELL
SETH D. MONTGOMERY
FRANK ANDREWS III
OWEN M. LOPEZ

JEFFREY R. BRANNEN
JOHN BENNETT POUND

MONTGOMERY, FEDERICI, ANDREWS, HANNAHS & BUELL
ATTORNEYS AND COUNSELORS AT LAW
380 EAST PALACE AVENUE
SANTA FE, NEW MEXICO 87501

POST OFFICE BOX 2307
AREA CODE 505
TELEPHONE 982-3876

December 19, 1973

Mrs. Frances M. Wilcox
Clerk of the District Court
Fifth Judicial District
P. O. Box 98
Carlsbad, New Mexico 88220

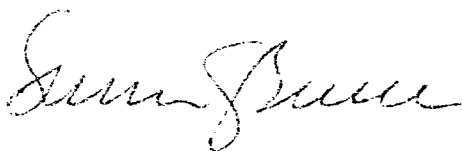
Re: Fasken v. Oil Conservation Commission:
Nos. 28432 and 28433, Eddy County

Dear Mrs. Wilcox:

We are enclosing herewith a Praecipe and Certificates of Satisfactory Arrangements for signature by you and the Court Reporter to be filed in the above entitled and numbered causes.

Please let me know what type of arrangements you would like to make for payment in order to obtain the signatures on the Certificates.

Very truly yours,



SGB/jc

Enclosures as noted

cc: Mr. Herman H. Linneveh
Official Court Reporter
Eighth Judicial District
P. O. Box 98
Carlsbad, New Mexico 88220

Mr. William F. Carr
Special Assistant Attorney General
New Mexico Oil Conservation Commission
P. O. Box 2083

C
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STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

DAVID FASKEN,

Petitioner,

-vs-

Cause No. 28482 and
Cause No. 28483

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent.

P R A E C I P E

TO: THE CLERK OF THE DISTRICT COURT
OF THE FIFTH JUDICIAL DISTRICT
P. O. BOX 98
CARLSBAD, NEW MEXICO 88220

and

THE OFFICIAL COURT REPORTER
OF THE FIFTH JUDICIAL DISTRICT
P. O. BOX 98
CARLSBAD, NEW MEXICO 88220

You are each requested to prepare for an appeal to the Supreme Court of the State of New Mexico a record proper which shall include all pleadings, motions, entries, requested findings of fact and conclusions of law, if any, orders and rulings of the Court with a record proper and, as necessary, all testimony, objections, rulings, exhibits and other evidence and pleadings in this matter which may not be in the record proper as a transcript to be brought into the record by a bill of exceptions and as a transcript of the proceedings herein. Please include within the record proper a certificate of each of you that satisfactory arrangements have been made for the payment of your services and other costs.

MONTGOMERY, FEDERICI, ANDREWS,
HANNAHS & BUELL

By

P. O. Box 2307
Santa FE, New Mexico 87501
Attorneys for Petitioner

CERTIFICATE OF MAILING

I hereby certify that on this _____ day of December, 1973,
I caused a true and correct copy of the above and foregoing
Praecipe to be mailed to The Official Court Reporter of the
Eighth Judicial District Court, P. O. Box 98, Carlsbad, New
Mexico 88220 and to opposing counsel of record, William F.
Carr, Special Assistant Attorney General for the New Mexico
Oil Conservation Commission, P. O. Box 2088, Santa Fe, New
Mexico 87501.

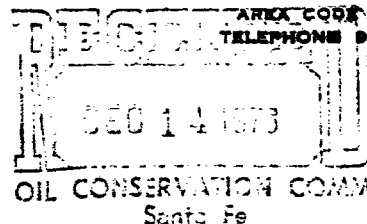
/s/ SUMNER G. BUELL

J. G. SETH (1883-1963)
A. K. MONTGOMERY
WM. FEDERICI
FRANK ANDREWS
FRED C. HANNAHS
SUMNER G. BUELL
SETH D. MONTGOMERY
FRANK ANDREWS III
OWEN M. LOPEZ

JEFFREY R. BRANNEN
JOHN BENNETT POUND

MONTGOMERY, FEDERICI, ANDREWS, HANNAHS & BUELL
ATTORNEYS AND COUNSELORS AT LAW
350 EAST PALACE AVENUE
SANTA FE, NEW MEXICO 87501

POST OFFICE BOX 2307
AREA CODE 505
TELEPHONE 982-2876



December 13, 1973

Mrs. Frances M. Wilcox
Clerk of the District Court
Division I
Fifth Judicial District
P. O. Box 98
Carlsbad, New Mexico 88220

Re: Fasken v. Oil Conservation Commission
Nos. 28482 and 28483, Eddy County

Dear Mrs. Wilcox:

I am enclosing herewith our Notice of Appeal
to the Supreme Court of the above two Eddy
County causes.

Very truly yours,

A handwritten signature in cursive script, likely belonging to J. G. Seth.

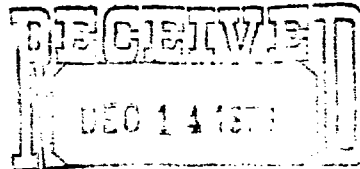
SOB/jc

Enclosure as noted

cc: Mr. William Carr
Special Assistant Attorney General
New Mexico Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

5036-73-2(3)

C
O
P
Y



STATE OF NEW MEXICO

OIL CONSERVATION COMMISSION OF EDDY
Santa Fe

IN THE DISTRICT COURT

DAVID FASKEN,

Petitioner,

-vs-

Cause No. 28482 and
Cause No. 28483

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent.

NOTICE OF APPEAL

Comes now David Fasken, the Petitioner in the above
entitled and numbered cause, and appeals to the Supreme Court
of the State of New Mexico from the final judgment entered in
this action.

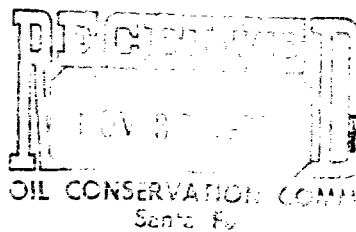
MONTGOMERY, FEDERICI, ANDREWS,
HANNAHS & BUELL

By /s/ SUMNER G. BUELL
P. O. Box 2307
Santa Fe, New Mexico 87501
Attorneys for Petitioner

CERTIFICATE OF MAILING

I hereby certify that on this 13th day of December, 1973,
I caused a true and correct copy of the above and foregoing
Notice of Appeal to be mailed to opposing counsel of record,
William F. Carr, Special Assistant Attorney General for the
New Mexico Oil Conservation Commission, P. O. Box 2088,
Santa Fe, New Mexico 87501.

/s/ SUMNER G. BUELL



D
FIFTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF EDDY
FILED NOV 29 1973 IN MY
9:38 am OFFICE
FRANCIS M. WILCOX
Clerk of the District Court

IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO

DAVID FASKEN,

Petitioner,

vs.

Cause No. 28483

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

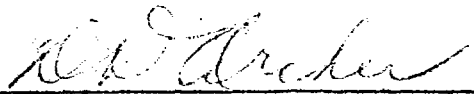
Respondent.

SUMMARY JUDGMENT

This matter having come before the Court upon Motions for Summary Judgment filed herein by petitioner and by respondent; and the Court having considered the said Motions and arguments of counsel together with the Petition for Review, the respondent's Answer to Petition for Review and the transcript of de novo hearing held before the respondent on November 21, 1972, together with all exhibits introduced into evidence during that hearing, all of which have been filed with the Court in this action, finds that there are no factual issues involved, that respondent is entitled to judgment as a matter of law, and that the Court should grant summary judgment in favor of respondent affirming respondent's Order No. R-4444.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that summary judgment be, and it hereby is, granted in favor of the respondent affirming respondent's Order No. R-4444.

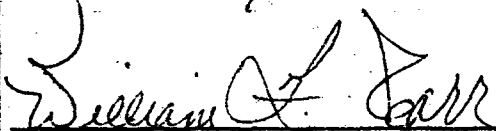
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that petitioner's Motion for Summary Judgment be, and the same hereby is, denied.


DISTRICT JUDGE

APPROVED AS TO FORM:

MONTGOMERY, FEDERICI, ANDREWS,
HANNAHS & MORRIS


Attorneys for Petitioner


WILLIAM F. CARR
Special Assistant Attorney General

IN THE DISTRICT COURT OF EDDY COUNTY
STATE OF NEW MEXICO

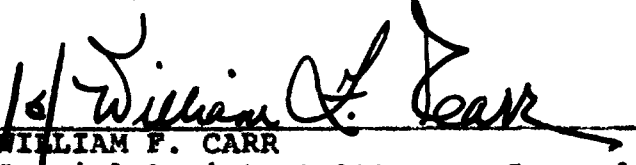
DAVID FASKEN,)	
)	
Petitioner,)	
)	Cause No. 28483
vs.)	
)	
OIL CONSERVATION COMMISSION)	
OF THE STATE OF NEW MEXICO,)	
)	
Respondent.)	

MOTION FOR SUMMARY JUDGMENT

Comes now the Respondent, Oil Conservation Commission of the State of New Mexico, by its attorney, and moves the Court, pursuant to Rule 56(b) of the Rules of Civil Procedure for the District Courts of the State of New Mexico, to enter Summary Judgment in its favor as to all issues in this action, and in support of his motion states that there are no factual issues involved and that Respondent is entitled to judgment as a matter of law based upon Petitioner's Petition for Review, Respondent's Answer to Petition for Review, and the transcript of the de novo hearing held before the Respondent, New Mexico Oil Conservation Commission, on November 21, 1972, together with all exhibits introduced into evidence during that hearing, all of which have been filed in this action.

WHEREFORE, Respondent prays that the Court enter Summary Judgment affirming Order No. R-4444 which properly denied Petitioner's application which, if granted, would have jeopardized the correlative rights of other operators in the Indian Basin-Morrow Gas Pool.

DAVID L. NORVELL
Attorney General


WILLIAM F. CARR
Special Assistant Attorney General
representing the Oil Conservation
Commission of New Mexico, P. O.
Box 2088, Santa Fe, New Mexico 87501

I hereby certify that on the 25th
day of May, 1973, a true and correct
copy of the foregoing Motion for
Summary Judgment was mailed to Richard
S. Morris and William J. Cooley, opposing
counsel of record.

/s/ William L. Earl

IN THE DISTRICT COURT OF EDDY COUNTY
STATE OF NEW MEXICO

DAVID FASKEN,

Petitioner,

vs.

Cause No. 28483

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent.

MOTION FOR SUMMARY JUDGMENT

Comes now the Petitioner, David Fasken, by his attorneys, and moves the Court to enter Summary Judgment in his favor as to all issues in this action, and in support of his motion states that there are ^{//} no factual issues ^{//} involved and that Petitioner is entitled to judgment as a matter of law based upon his Petition for Review, the Respondent's Answer to Petition for Review, and the Transcript of de novo hearing held before the Respondent, New Mexico Oil Conservation Commission, on November 21, 1972, together with all exhibits introduced into evidence during that hearing, all of which have been filed in this action.

WHEREFORE, Petitioner prays that the Court enter Summary Judgment setting aside Respondent's Order No. R-4444 for the reasons set forth in the Petition for Review and that the Court direct the Respondent to enter a proper order superseding Order No. R-4444 and either exempting the Petitioner's wells from prorationing or establishing special allowables for the said wells in order to prevent drainage of hydrocarbons from the Petitioner's lands.

MONTGOMERY, FEDERICI, ANDREWS,
HANNAHS & MORRIS

by

Richard J. Morris
Attorneys for Petitioner

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing Motion for Summary Judgment to be mailed to William F. Carr, Attorney for the Oil Conservation Commission of the State of New Mexico, P.O. Box 2088, Santa Fe, New Mexico 87501 and William J. Cooley, Attorney for Michael P. Grace, II and Corrine Grace, 152 Petroleum Center Building, Farmington, New Mexico 87401 on this 12 day of April, 1973.

Richard S. Morris

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

September 18, 1973

C The Honorable D. D. Archer
District Judge, Division I
Fifth Judicial District Court
Eddy County Courthouse
P. O. Box 98
Carlsbad, New Mexico 88220

Re: David Fasken v. Oil Conservation Commission,
Eddy County Causes Nos. 28482 and 28483

O Dear Judge Archer:

P I have received a copy of Mr. Morris' letter to you dated
September 6, 1973, in which he expressed his opinion that findings
of fact and conclusions of law made by the district court would
be "superfluous" in the above-captioned cases or any other case
involving an appeal from an order of an administrative agency.
Y In support of his position, Mr. Morris cited to the court Hardin v.
State Tax Commission, 78 N.M. 477, 432 P.2d 833. This case involved
an appeal of an order of the Tax Commission. The district court
after hearing the case filed findings of fact and conclusions of
law. Although this opinion states that the appellant court must
"...make the same review of the administrative agency's action as
did the district court," it does not say that findings of fact and
conclusions of law are either inappropriate or superfluous. If no
such findings and conclusions are made in these cases, it is diffi-
cult to see what possible benefit was derived from the hearing in
district court.

Certainly no dispute arising from an order of an administrative
agency will ever be resolved at the district court level if, in fact,
an identical review is available at the appellant level. Only costs
in terms of time and money would prevent such an appeal, for the
appellant court will be in the same position as the district court
and will not have the benefit of the reasoning of the district court
in reaching its decision.

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

The Honorable D. D. Archer

September 17, 1973
Page 2

We therefore request the Court to enter Summary Judgments in these cases and to adopt the suggested Findings of Fact and Conclusions of Law offered by the Oil Conservation Commission.

Very truly yours,

WILLIAM F. CARR
Special Assistant Attorney General

WFC/dr

cc: Mr. Richard Morris

C
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J. O. SETH (1983-1989)

A. K. MONTGOMERY
WM. FEDERICI
FRANK ANDREWS
FRED C. HANNAHS
RICHARD S. MORRIS
SUMNER G. BUELL
SETH D. MONTGOMERY
FRANK ANDREWS III
OWEN M. LOPEZ

JEFFREY R. BRANNEN
JOHN BENNETT POUND

MONTGOMERY, FEDERICI, ANDREWS, HANNAHS & MORRIS

ATTORNEYS AND COUNSELORS AT LAW

350 EAST PALACE AVENUE

SANTA FE, NEW MEXICO 87501

POST OFFICE BOX 2307
AREA CODE 505
TELEPHONE 982-3876

September 6, 1973

The Honorable D. D. Archer
District Judge, Division I
Fifth Judicial District Court
Eddy County Courthouse
Post Office Box 98
Carlsbad, New Mexico 88220

Re: David Fasken v. Oil Conservation Commission;
Eddy County Causes Nos. 28482 and 28483

Dear Judge Archer:

We are in receipt of a copy of Mr. Carr's letter to you of August 31 transmitting the summary judgments in the subject cases and requesting that you enter findings of fact and conclusions of law.

We do not believe it appropriate for the Court to make findings of fact in an appeal from an administrative agency since the scope of review in the District Court is limited to matters of law. Also, the Supreme Court of New Mexico has held that in reviewing a District Court's judgment, it must make the same review of the administrative agency's action as did the District Court. Hardin v. State Tax Commission, 78 N.M. 477, 432 P.2d 833. Accordingly, the Supreme Court of New Mexico will review the Order of the administrative agency and not the findings and conclusions of the District Court, and any such findings and conclusions by the District Court would be superfluous.

If an appeal is taken in these cases, it will be much more straightforward for all parties to argue on the merits and demerits of the Commission's orders rather than also to be required to argue about the findings and conclusions of the District Court. We, therefore, recommend that the Court proceed to enter summary judgments in these cases and take no action with respect to the Commission's suggested findings of fact and conclusions of law.

Very truly yours,

Richard J. Morris

RSM:alb
5086

cc: William F. Carr

C
O
P
Y

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

August 31, 1973

C
O
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Y
The Honorable D. D. Archer
District Judge, Division I
Fifth Judicial District Court
Eddy County Courthouse
P. O. Box 98
Carlsbad, New Mexico 88220

**Re: David Fasken v. Oil Conservation
Commission, Nos. 28482 and 28483,
Eddy County, New Mexico**

Dear Judge Archer:

I am forwarding to you herewith the Summary Judgment sent to me by Richard S. Morris in each of the above-captioned cases approved by us as to form pursuant to your letter of August 8, 1973.

I am also transmitting Suggested Findings of Fact and Conclusions of Law for the New Mexico Oil Conservation Commission.

If these cases are appealed, it will be important for the Court of Appeals to have more than just the Summary Judgment upon which to base its review. I, therefore, consider it both necessary and appropriate to make such findings and conclusions.

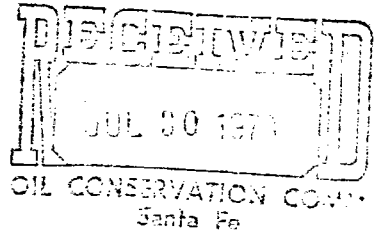
Very truly yours,

**WILLIAM F. CARR
General Counsel**

**WFC/dr
cc: Mr. Richard S. Morris
enclosures**

IN THE DISTRICT COURT OF EDDY COUNTY

STATE OF NEW MEXICO



DAVID FASKEN,

Petitioner,

-vs-

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent.

Cause Nos. 28482 and 28483

MEMORANDUM IN SUPPORT OF
PETITIONER'S MOTIONS FOR
SUMMARY JUDGMENT

These proceedings involve two appeals from Orders of the New Mexico Oil Conservation Commission which denied the petitioner's applications seeking recognition of the northerly portion of the Indian Basin-Morrow Gas Pool in Eddy County as a separate, non-prorated gas pool or, in the alternative, seeking the establishment of special allowables for the wells in the northerly portion of the pool in order to prevent waste and protect the petitioner's lands from drainage.

At the hearing before the Commission the petitioner supported his applications by testimony and exhibits prepared by Mr. James B. Henry, a consulting petroleum engineer whose qualifications as an expert were acknowledged. Mr. Henry's testimony, which will be reviewed in detail at the hearing before the Court on the Motions for Summary Judgment, was not contradicted in any manner, and no other evidence was offered with the exception of a brief presentation by Mr. Nutter of the Commission staff to the effect that one of Mr. Henry's exhibits might have been prepared in a different manner (Transcript, pages 77-78).

In brief, Mr. Henry's testimony established:

- (1) that a water-filled trough exists between the north and south reservoirs of the area the Commission is presently designating as one pool;
- (2) that the accumulations of gas in the two reservoirs are not in direct communication with each other except through this water-filled trough;
- (3) that the quantity of gas produced from the north reservoir, in relation to the quantity of gas produced from the south reservoir, has not been sufficient to maintain pressure equilibrium between the two reservoirs;
- (4) that the pressure differential between the two reservoirs has resulted in expansion of gas from the north reservoir into a portion of the area formerly occupied by the water-filled trough and a displacement of water from the trough into the south reservoir;
- (5) that gas is migrating from beneath the petitioner's lands in the north reservoir into the water-saturated trough formation from which it cannot be produced by any well;
- (6) that water encroachment into the south reservoir is threatening the ability of the wells in that area to continue producing gas;
- (7) that increased withdrawals of gas from the north reservoir are required in order to equalize pressures between the reservoirs and alleviate the present conditions under which waste and drainage are occurring; and
- (8) that increased withdrawals of gas from the north reservoir could be achieved by approval of the petitioner's applications.

As to the application for designation of the north reservoir as a separate, non-prorated pool, the Commission refused to recognize the distinctly diverse characteristics of the two gas accumulations and insisted upon treating them as a "common source of supply" subject to continued administration as a single pool (Order No. R-4409-A). As to the alternative application for special allowables to be assigned to wells in the north reservoir, the Commission found that approval of the application would cause unratable take (Order No. R-4444). In the Orders denying both applications the Commission found that its action was necessary in order to prevent waste and protect correlative rights, yet it offered no explanation as to how it had arrived at such conclusions or what justification it had to reject petitioner's uncontroverted evidence to the contrary.

The Commission's principal statutory duties are to prevent the waste of oil and gas and to protect the correlative rights of the owners of oil and gas interests. Section 65-3-10, N.M.S.A., 1953. In the exercise of these duties, the Commission's duty to prevent waste is paramount over its duty to protect correlative rights inasmuch as the definition of the term "correlative rights" limits an individual's rights to that amount of his share of oil or gas which can be produced without waste. As stated in Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 318, 373 P.2d 809 (1962):

"The Oil Conservation Commission is a creature of statute, expressly defined, limited and empowered by the laws creating it. The commission has jurisdiction over matters related to the 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. See, § 65-3-10,

supra. Actually, the prevention of waste is the paramount power, inasmuch as this term is an integral part of the definition of correlative rights."

In the Continental case and in Sims v. Mechem, 72 N.M. 186, 382 P.2d 183 (1963), which also involved the appeal of an order of the Oil Conservation Commission, the Court closely scrutinized the findings made by the Commission in its orders and in both cases held the orders invalid when it appeared that they did not demonstrate compliance with the duties imposed upon the Commission by statute.

In order to demonstrate compliance with its statutory duties the Commission must explain its conclusions concerning waste and correlative rights. As stated in City of Roswell v. New Mexico Water Quality Control Commission, 84 N.M. 561, 565, 505 P.2d 1237 (Ct.App. 1972):

"This record reveals only the notice of the public hearing, the testimony of the various experts and others, some exhibits and the regulations. We have no indication of what the Commission relied upon as a basis for adopting the regulations. As was stated in McClary v. Wagoner, 16 Mich.App. 326, 167 N.W.2d 800 (1969), 'We need to know the path the board has taken through the conflicting evidence. The appeal board should indicate the testimony adopted, the standard followed and the reasoning it used in reaching its conclusion.' These regulations are conclusions without reasons.

"There are some very practical reasons for this.

"2 Davis Administrative Law Treatise, § 16.05 (1958): 'The reasons have to do with facilitating judicial review, avoiding judicial usurpation of administrative functions, assuring more careful administrative consideration, helping parties plan their cases for rehearings and judicial review, and keeping agencies within their jurisdiction.' In making regulations, § 75-39-4(D), supra, states the

Water Quality Control Commission '...shall give weight it deems appropriate to all facts and circumstances...' including six categories stated in that statute. We cannot effectively perform the review authorized by § 75-39-6, supra, unless the record indicates what facts and circumstances were considered and the weight given to those facts and circumstances. We do not hold that formal findings are required. We do hold the record must indicate the reasoning of the Commission and the basis on which it adopted the regulations. The regulations were not adopted in accordance with law. Accordingly, the regulations are set aside."

In St. Louis County Water Co. v. State Highway Commission, 386 S.W.2d 119, 125 (Mo. 1964), the Supreme Court of Missouri, on motion for rehearing, carefully explained the nature and extent of findings required in an administrative order, as follows:

"...the Commission argues that the findings which it made in this case were sufficient. The motion asserts: 'The only ultimate fact which the Commission was required to find was whether or not the water mains in question would interfere with the construction, maintenance or use of the highway.' Insofar as the finding of ultimate fact is concerned, we can agree with this contention. We do not agree, however, that such ultimate finding, couched in the statutory language, is the only finding the Commission was required to make. The Commission must also have found the basic facts from which such ultimate fact might be inferred. 'Courts do not want agencies to include detailed summaries of testimony in their findings; they want what they call the basic facts. ***The basic findings are those on which the ultimate finding rests; the basic findings are more detailed than the ultimate finding but less detailed than a summary of the evidence.' 2 Davis, Administrative Law Treatise, Section 16.06, pages 450, 451. Only when the administrative agency makes such basic findings can a court properly perform its limited function of review of the administrative action. To repeat Judge Hyde's statement in Michler v. Krey Packing Co., 363 Mo. 707, 253 S.W.2d 136, 142, 'In any case, finding should be sufficient to show how the controlling issues have been decided.'"

A decision very closely in point is Pan American Petroleum Corp. v. Wyoming Oil & Gas Conservation Commission, 446 P.2d 550, (Wyo. 1968), in which the Supreme Court of Wyoming reversed a judgment of the district court which had affirmed a Commission order denying Pan American an exception to the Commission's well location requirements in an oil pool. As in the case at bar, Pan American based its case on evidence that an exception to the general rules was required in order to prevent waste and drainage and to protect its correlative rights. As stated in the opinion (446 P.2d 550 at p. 554):

"...Pan American's application, as stated, was predicated upon the claim that Marathon's wells, particularly those on the adjoining Wiley lease to the east, were draining and would continue to drain oil underlying Pan American's tract to such an extent that unless the exception well were granted Pan American would be deprived of recovering the oil remaining under its tract, or to state the claim more precisely in keeping with its theory of protecting its 'correlative rights' it would be deprived of an opportunity to recover its just and equitable share--without waste--of the oil in that part of the field where the properties are located."

The Court then recognized that opinion evidence is required in resolving such cases and that the Commission should utilize its own expertise in resolving conflicts in such evidence (no conflict exists in the case at bar), but also recognized that the Commission must indicate the basis upon which such evidence is accepted or rejected. In this regard, the opinion states (446 P.2d 550 at pp. 554-555):

"In developing the factors involved the courts recognize that resort to the opinions of experts experienced in such matters is usually necessary and essential. *** It is true, as the commission indicates, that such evidence may be somewhat speculative. Nevertheless, if the expertise of the witness is established, the evidence so presented is competent and the best available

with respect to the conditions prevailing in oil 'pools' or reservoirs underlying the surface. Its ultimate weight is for the commission, as the trier of facts, to determine in the light of the expertise and experience of its members in such matters. *** However, the subject matter of such expert testimony is highly technical; must receive careful consideration; and the courts will see to it that the acceptance or rejection of such evidence, in whole or in part, is on a reasonable and proper basis." (Emphasis supplied, citations omitted).

As to the findings required of the Commission in this type of case, the Court held (446 P.2d 550 at p. 555) that there was "...the duty to make findings of basic facts upon all of the material issues in the proceeding and upon which its ultimate findings of fact or conclusions are based. Unless that is done there is no rational basis for judicial review." (Emphasis added). Continuing, the Court said:

"...one of the duties charged to courts, on review of agency action, is to ascertain whether or not such findings of fact are supported by substantial evidence. To afford the court an opportunity informatively and intelligently to discharge that function it must first be known what underlying evidentiary facts the agency relied upon for a finding or conclusion of ultimate facts. Findings of those basic facts will not be implied from ultimate findings. *** ...if that were not true there could be no assurance that an agency has made a 'reasoned analysis' of all the material evidence. *** ...orderly review requires that the primary basic facts must be settled before it can be determined that ultimate facts found by an agency conform to law. Failure of an agency to meet its responsibilities in the premises makes its determination susceptible to the charge that the order entered is contrary to law." (Emphasis added, citations omitted).

In holding the Commission's order involved, the Court stated (446 P.2d 550 at pp. 555-557):

"In the instant case Pan American has made such a charge and with good reason. Although the commission's order, as stated above, contained a heading, 'FINDINGS,' the matters stated thereunder pertaining to the pivotal factual issues presented with respect to the necessity of an exception well for protection of Pan American's

correlative rights are nothing more than ultimate findings of fact or conclusions of law and do not purport to be basic findings of fact.

* * *

"While we do not profess to be skilled in such scientific matters, and absent technical guidance by the commission by way of adequate findings or otherwise, it would appear that the witness was qualified by training and experience to present the evidence submitted; that for purposes of his study he utilized all of the information available on the field; that such data was that ordinarily utilized for purposes of determining whether or not migration was taking place in the 'pool,' particularly in that portion here involved; that the method used to calculate the extent, if any, of such migration to Marathon's Wiley lease was well recognized as a 'tool of the trade'; and that such evidence was substantial evidence, sufficient in the first instance to make out a prima facie case.

"If, on the other hand, the term 'burden of proof' was used in the sense that Pan American failed to keep its prima facie case 'good,' First National Bank of Morrill v. Ford, 30 Wyo. 110, 216 P. 691, 694, 31 A.L.R. 1441, in the face of the countervailing testimony of Marathon's witness Thomas B. Harvey, whose expertise as a petroleum engineer was also conceded, then a different approach must be taken. All of the material evidence offered by the parties must be carefully weighed by the agency as the trier of the facts; conflicts in the evidence must be resolved, and the underlying or basic facts which prompt the ultimate conclusion on issues of fact drawn by the agency in sustaining the prima facie case made, or in rejecting it for the reason it has been satisfactorily met or rebutted by countervailing evidence, must be sufficiently set forth in the decision rendered. Otherwise the proceeding is not ripe for review.

"In the instant proceeding and regardless of which view is taken on the matter of burden of proof, the commission has not met its responsibilities in connection therewith.

* * *

"For the reasons stated the judgment of the trial court is reversed with instructions to enter a judgment vacating the order of the commission and remanding the proceeding to the commission for further consideration consistent with this opinion with the condition, however, that the commission in its discretion may grant a rehearing or reargument if it so desires."

In the Pan American case the Commission order was set aside even though there was conflicting evidence presented by Marathon upon which the Commission might have based its decision to deny Pan American's application. Significantly, in the case at bar neither the Commission staff nor any operator offered evidence contrary to that introduced by the petitioner. We recognize that such uncontroverted evidence may not be absolutely binding on the Commission, but at least the Commission is under a duty to offer a rational explanation as to why it was rejected. Where there is no finding that the credibility of uncontroverted evidence is lacking, such testimony cannot be ignored by the Commission. See State v. State Tax Commission, 393 S.W.2d 460 (Mo. 1965).

Petitioner therefore submits that Commission Orders Nos. R-4409, R-4409-A, and R-4444 should be set aside on the grounds that the orders did not set forth the basis of the Commission's decisions and that the findings in which the Commission stated that denial of the applications would prevent waste and protect correlative rights are not supported by substantial evidence.

MONTGOMERY, FEDERICI, ANDREWS,
HANNAHS & MORRIS

By Richard S. Morris
Post Office/Box 2307
Santa Fe, New Mexico
Attorneys for David Fasken

IN THE DISTRICT COURT OF EDDY COUNTY
STATE OF NEW MEXICO

DAVID FASKEN,

Petitioner

No. 28483

vs.

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent.

ANSWER TO PETITION FOR REVIEW

Respondent, Oil Conservation Commission of New Mexico,
answering the Petition for Review states:

1. Respondent admits the allegations contained in Paragraphs 1 and 2 of the Petition for Review.

2. Respondent denies each and every allegation in Paragraph 3 of the Petition for Review.

3. Respondent admits the allegation in Paragraph 4 that production from Petitioner's said wells has been restricted by reason of being administered and prorated under the special rules and regulations applicable to the Indian Basin-Morrow Gas Pool. Respondent denies all other allegations contained in Paragraph 4 of the Petition for Review.

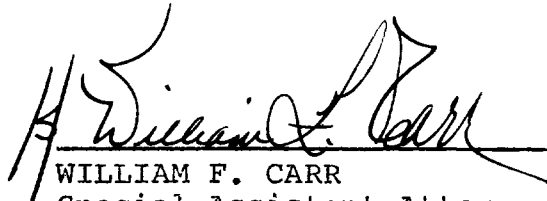
4. Respondent denies the allegation in Paragraph 5 that a pressure differential exists and states that Petitioner's application for an order exempting its said wells from prorationing or, in the alternative, for the assignment of special allowables to said wells was made on October 24, 1972. Respondent admits all other allegations contained in Paragraph 5 of the Petition for Review.

5. Respondent denies each and every allegation contained in Paragraph 6 of the Petition for Review.

6. Respondent admits Paragraph 7 of the Petition for Review.

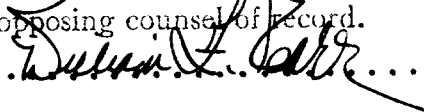
WHEREFORE, Respondent prays:

1. That the Petition for Review be dismissed.
2. That Commission Order No. R-4444 be affirmed.
3. That the Court grant Respondent such other and further relief as the Court deems just.



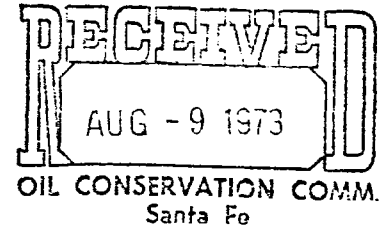
WILLIAM F. CARR
Special Assistant Attorney General
representing the Oil Conservation
Commission of New Mexico, P. O.
Box 2088, Santa Fe, New Mexico 87501

I hereby certify that on the
26TH day of FEBRUARY, 1973, a copy of the fore-
going pleading was mailed to
opposing counsel of record.



D. D. ARCHER
DISTRICT JUDGE
P. O. Box 98
CARLSBAD, NEW MEXICO
88220

August 8, 1973



Hon. Richard S. Morris
Montgomery, Federici, Andrews,
Hannahs & Morris
P.O. Box 2307
Santa Fe, New Mexico 87501

Hon. William F. Carr
Special Assistant Attorney General
Box 2088
Santa Fe, New Mexico 87501

Re: David Fasken vs. Oil Conservation Commission,
Nos. 28482 and 28483

Gentlemen:

With reference to the above causes of action, I have decided to find the issues in favor of the Commission and against the Petitioner. A judgment may be prepared by the Respondent accordingly for my signature.

If the Petitioner desires to file requested findings and conclusions, he will be granted 20 days to do so and the Respondent allowed 10 days thereafter to reply.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. D. Archer".

D. D. Archer
District Judge

J. O. SETH (1893-1983)

MONTGOMERY, FEDERICI, ANDREWS, HANNIS & MORRIS

A. K. MONTGOMERY
WM. FEDERICI
FRANK ANDREWS
FRED C. HANNAHS
RICHARD S. MORRIS
SUMNER G. BUELL
SETH D. MONTGOMERY
FRANK ANDREWS III
OWEN M. LOPEZ

ATTORNEYS AND COUNSELORS AT LAW

350 EAST PALACE AVENUE

SANTA FE, NEW MEXICO 87501

POST OFFICE BOX 2307
AREA CODE 505
TELEPHONE 982-3876

July 27, 1973

JEFFREY R. BRANNEN
JOHN BENNETT POUND

Honorable D. D. Archer
District Judge, Division I
Fifth Judicial District Court
Eddy County Courthouse
Post Office Box 98
Carlsbad, New Mexico 88220

Re: David Fasken v. Oil Conservation Commission
of the State of New Mexico; Eddy County
Cause Nos. 23432 and 23433, District Court

Dear Judge Archer:

Enclosed is a Memorandum in Support of Petitioner's
Motions for Summary Judgment in the subject cases, which
Motions are set for hearing before you at 9:30 A.M. on
Wednesday, August 1. A copy of this Memorandum is being
furnished to Mr. Carr, attorney for the New Mexico Oil
Conservation Commission.

Very truly yours,

Richard S. Morris

RSM:alb
enclosure
5086-73-2

cc: William F. Carr, Esquire w/enc. ✓

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COUNTY OF EDDY

DAVID FASKEN,
Petitioner,
vs.
OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO
Respondent.

COMES NOW, Respondent Oil Conservation Commission of the State of New Mexico in the above-styled and numbered causes and respectfully requests the Court to adopt the following:

1. Petitioner is an individual doing business in the State of New Mexico and owns gas wells located on lands leased within the exterior boundaries of the Indian Basin-Morrow Gas Pool, located in Eddy County, New Mexico.

2. Respondent is a duly organized agency of the State of New Mexico with jurisdiction over matters relating to the conservation of oil and gas in New Mexico; particularly the prevention of waste and the protection of correlative rights (Section 65-3-10, NMSA 1953).

3. On June 7, 1972, a hearing was conducted by Examiner Daniel S. Nutter, of the New Mexico Oil Conservation Commission at which Case 4733, an application of David Fasken, was considered which requested the Commission declare the northern portion of the Indian Basin-Morrow Gas Pool a separate source of supply and therefore a separate pool.

4. On September 27, 1972, the Commission entered its Order No. R-4409, which denied Petitioner's application finding that:

- (a) although the evidence offered at the examiner hearing indicated the presence of a trough in the area of the proposed separation, the evidence did not indicate that this constituted an effective barrier,
- (b) there was substantial evidence that communication existed between the areas to the north and south of the alleged trough,
- (c) the area north and south of the trough constitute a single source of supply,
- (d) that Petitioner failed to prove that a new pool in the north should be created, and
- (e) that granting Petitioner's request could cause waste and would not protect correlative rights.

5. On October 24, 1972, the Commission received Petitioner's application for hearing de novo which was timely filed in Case 4733.

6. On November 21, 1972, Case 4733 was heard de novo and was consolidated for the purposes of testimony with Case 4865 which was an application of the Petitioner for alternative relief arising out of the same factual situation as that of Case 4733. Case 4865 requested a capacity allowable for the Fasken wells in the northern portion of the Indian Basin-Morrow Gas Pool as an alternative to declaring this area a separate pool.

7. On December 6, 1972, the Commission entered its Order No. R-4409-A, which affirmed Order No. R-4409 and found further that if this pool was divided into two parts, the Fasken wells in the northern portion of the pool would be able to withdraw at unrestricted rates and such unratable take would cause waste and violate the correlative rights of other mineral interest owners in the pool.

8. Pursuant to the November 21, 1972, de novo hearing, the Commission also issued Order No. R-4444 which denied Petitioner's

request for a capacity allowable and found that:

- (a) the north area, in which the two Fasken wells are located, contains a substantial amount of productive acreage not dedicated to any well,
- (b) that there might be a pressure differential between the north and south portions of this pool, but that Petitioner could provide his own relief to any gas migration by further development of the gas reserves in the area to the north,
- (c) that the Fasken wells in the northern portion of this pool produce from the same formation as other wells in the pool,
- (d) that to grant a capacity allowable would allow Petitioner an undue share of the recoverable gas reserves in the pool and would result in unratable take and would violate the correlative rights of other mineral interest owners in the pool, and
- (e) that denying the application would prevent waste and protect correlative rights.

9. Petitioner timely filed its applications for rehearing before the Oil Conservation Commission, as provided by law. The applications for rehearing were denied by the Commission's failure to act thereon within ten days after filing. The Commission entered no order on either of the applications for rehearing.

10. On or about January 23, 1973, Petitioner filed its Petitions for Review of Commission Orders R-4409, R-4409-A, and R-4444 in this Court. These were docketed as Cases 28482 and 28483.

11. On or about April 13, 1973, Petitioner filed motions for Summary Judgment in both cases.

12. On May 25, 1973, the Respondent filed motions for Summary Judgment in both cases.

13. These motions for Summary Judgment came on for hearing before the Court on August 1, 1973, all parties being present and

represented by counsel.

14. For the purpose of arguing the motions for Summary Judgment of both Petitioner and Respondent, Cases Nos. 28482 and 28483 were consolidated on the docket of this Court.

15. The transcript of evidence and the exhibits introduced before the Commission have been received in evidence by this Court for review.

16. The burden of proof is on the applicant to show that the facts actually support the change it seeks in proceedings before the Oil Conservation Commission.

17. The applicant failed to carry the burden in the subject cases for the evidence relied on was shown to be of questionable accuracy, insufficient and perhaps incomplete.

18. The evidence offered by applicant at the de novo hearing before the Commission was capable of various differing interpretations.

19. In preparing applicant's Exhibit 4, information had to be so manipulated that the Commission could give it little weight in reaching its decision.

20. The Fasken wells in the northern portion of the Indian Basin-Morrow Gas Pool produce more gas than other wells in the Pool because they have had more acreage dedicated to them by the Oil Conservation Commission than other wells in the pool.

21. The applicant could increase his allowable by reasonably developing the acreage he has under lease in the northern portion of this pool.

22. Petitioner failed to establish that waste was occurring, and if it was, whether or not this was due to being prorated and administered under Rules and Regulations of the Oil Conservation Commission or resulted from imprudent operating procedures of the Petitioner.

23. The Commission could not provide relief to Petitioner, for at the time of the de novo hearing, Petitioner was producing in excess of market demand.

24. It was shown that certain production practices of Petitioner might be aggravating the situation of which Petitioner complained.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the subject matter of these causes and all necessary and indispensable parties thereto.

2. The Oil Conservation Commission had jurisdiction to enter Orders Nos. R-4409, R-4409-A, and R-4444.

3. Oil Conservation Commission Orders Nos. R-4409, R-4409-A, and R-4444 contain the basic jurisdictional findings required by law to issue a valid order denying requests for pool separation.

4. The Court is limited in its review of an order of the Oil Conservation Commission to matters raised in the application for rehearing filed with the Commission.

5. The Court is further limited in its review of these motions for summary judgment to a determination of whether or not there are any issues as to any material fact or if either party is entitled to judgment as a matter of law.

6. The Oil Conservation Commission has authority to create new pools and modify existing ones when proper application is made and there is a sufficient showing that such a pool creation or modification is justified by the facts.

7. That the Oil Conservation Commission acted within and according to the duties imposed upon it by the oil and gas statutes of the State of New Mexico.

8. The burden of proof to show a pool creation or modification is needed is on the party making the application for the change.

9. Oil Conservation Commission Orders Nos. R-4409, R-4409-A, and R-4444 contain findings which fully comply with all statutory requirements concerning pool modification in the Indian Basin-Morrow Gas Pool.

10. The findings contained in Oil Conservation Commission Orders Nos. R-4409, R-4409-A, and R-4444 are based upon and supported by substantial evidence.

11. The record and findings clearly indicates the reasoning of the Oil Conservation Commission and the basis of its decision in reaching the conclusions that the applications should be denied.

12. Oil Conservation Commission Orders Nos. R-4409, R-4409-A, and R-4444 will prevent waste and best protect the correlative rights of all the mineral interest owners in the Indian Basin-Morrow Gas Pool.


13. The Oil Conservation Commission did not act in an erroneous, unlawful or arbitrary manner.

14. Petitioners have failed to sustain the burden of proof placed upon them by law and therefore the Petitions for Review should be dismissed and Oil Conservation Commission Orders Nos. R-4409, R-4409-A, and R-4444 should be affirmed.

Respectfully submitted,

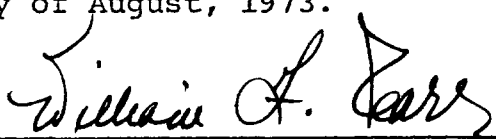
OIL CONSERVATION COMMISSION OF
THE STATE OF NEW MEXICO

By


WILLIAM F. CARR
General Counsel

CERTIFICATE

I hereby certify that a true copy of the foregoing Requested Findings of Fact and Conclusions of Law was served on opposing counsel of record by mailing a copy thereof to them this 31st day of August, 1973.


WILLIAM F. CARR

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

DAVID FASKEN,

Petitioner,

vs.

No. 28483

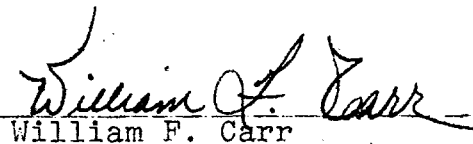
OIL CONSERVATION COMMISSION)
OF THE STATE OF NEW MEXICO,)

Respondent.

ACCEPTANCE OF SERVICE
and ENTRY OF APPEARANCE

The undersigned hereby accepts service of a copy of Notice of Appeal with Petition for Review attached thereto in the above styled cause and hereby enters his appearance as Attorney for the Respondent Oil Conservation Commission of the State of New Mexico in this cause.

Dated this 29th day of January, 1973.



William F. Carr
Special Assistant, Attorney General
for the State of New Mexico and
Attorney for the Oil Conservation
Commission of the State of New Mexico

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

DAVID FASKEN,

Petitioner,

vs.

No. 28483

OIL CONSERVATION COMMISSION)
OF THE STATE OF NEW MEXICO,)

Respondent.

NOTICE OF APPEAL

TO: Oil Conservation Commission
of the State of New Mexico,
Respondent

Michael P. Grace, II and
Corrine Grace

Please take notice that on the 18th day of January, 1973,
David Fasken, the Petitioner in the above styled cause, filed a
Petition for Review of Oil Conservation Commission of New Mexico
Order No. R-4444 in the District Court of Eddy County, New Mexico.

Dated this 22 day of January, 1973.

MONTGOMERY, FEDERICI, ANDREWS,
HANNAHS & MORRIS

by

Richard S. Morris

P.O. Box 2307
Santa Fe, New Mexico 87501
Attorneys for David Fasken,
Petitioner

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

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

CASE NO. 4865
Order No. R-4444

APPLICATION OF DAVID FASKEN
FOR SPECIAL ALLOWABLES, EDDY
COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on November 21, 1972, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 6th day of December, 1972, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS:

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

(2) That the applicant, David Fasken, seeks an exception to the general rules and regulations governing prorated gas pools in Southeast New Mexico, promulgated by Order No. R-1670, as amended, to permit the production of his Ross Federal Well No. 1, located 1980 feet from the South line and 1980 feet from the West line of Section 4, and his Shell Federal Well No. 1, located 1980 feet from the South line and 1980 feet from the West line of Section 5, both in Township 21 South, Range 24 East, Indian Basin-Morrow Gas Pool, Eddy County, New Mexico, at the capacity of the wells to produce, or in the alternative, to permit the production of said wells at a rate in excess of the allowables assigned to said wells.

(3) That the applicant contends that a pressure differential exists between the area in which the above-described two wells are located and that area of the Indian Basin-Morrow Gas Pool to the south, and that unless his wells are permitted to be produced at a rate in excess of the current allowable assigned to them, gas will migrate to the south away from the aforesaid two wells.

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(4) That the north area, in which the aforesaid two wells are located, contains a substantial amount of productive acreage not dedicated to any well.

(5) That while the aforesaid pressure differential may be present, it appears that the applicant may be able to provide his own relief to the aforesaid gas migration situation by further development of the gas reserves in the area to the north.

(6) That the applicant's Ross Federal Well No. 1 and Shell Federal Well No. 1, located as described in Finding No. (2) above, are producing from the same single common source of supply as other wells in the Indian Basin-Morrow Gas Pool.

(7) That to permit applicant's aforesaid two wells to produce in excess of the allowables assigned to said wells would afford said wells an undue share of the recoverable gas reserves in the pool and would result in unratable take and would violate the correlative rights of other mineral interest owners in the pool.

(8) That in order to prevent unratable take and protect correlative rights and prevent waste, the application should be denied.

IT IS THEREFORE ORDERED:

(1) That the application of David Fasken for special allowables for his Ross Federal Well No. 1 and his Shell Federal Well No. 1, both in the Indian Basin-Morrow Gas Pool, Eddy County, New Mexico, be and the same is hereby denied.

(2) That jurisdiction of this cause is 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

BRUCE KING, Chairman

ALEX J. ARMIJO, Member

A. L. PORTER, Jr., Member & Secretary

S E A L

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