

STATE OF NEW MEXICO

COUNTY OF EDDY

IN THE DISTRICT COURT

DAVID FASKEN,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Cause Nos. 28482 & 28483
	)	
OIL CONSERVATION COMMISSION	)	
OF THE STATE OF NEW MEXICO,	)	
	)	
Respondent.	)	

RESPONDENT'S BRIEF

STATEMENT OF THE CASE

This case is a statutory petition for judicial review of an action of the Oil Conservation Commission of New Mexico under Section 65-3-22(b), NMSA 1953. The action in question involves motions for summary judgment filed by both Petitioner and Respondent in the appeal of David Fasken from Oil Conservation Commission Order Nos. R-4409-A and R-4444, which issued pursuant to a hearing before the Oil Conservation Commission on November 21, 1972.

Order R-4409-A denied Petitioner's request to have Sections 4 and 5, Township 21 South, Range 24 East, NMPM, Eddy County, New Mexico, declared a gas pool separate from the rest of the Indian Basin-Morrow Gas Pool. In issuing this order the Commission found:

1. Communication existed between said Sections 4 and 5 and the rest of the pool (Finding 4);
2. That these sections were part of a single common source of supply with the rest of the Indian Basin-Morrow Gas Pool (Finding 5);
3. That granting said application would cause unratable take and would violate the correlative rights of other mineral interest owners in the pool (Finding 6).

Order R-4444 denied Petitioner's alternative request for

a capacity allowable for both of Petitioner's wells in said Sections 4 and 5. The Commission found that both the David Fasken-Ross Federal Well No. 1 and the David Fasken-Shell Federal Well No. 1 were completed in the same single source of supply as other wells in the Indian Basin-Morrow Gas Pool (Finding 6) and that increasing their allowables would permit them to take an undue share of the recoverable gas reserves in the pool (Finding 7). This would have resulted in unratable take and would have violated the correlative rights of the other mineral interest owners in the pool (Finding 7). The Commission further found in this Order that the area in which the aforesaid two wells are located contains a substantial amount of productive acreage not dedicated to any well (Finding 4) and that the Petitioner might provide his own relief to any gas migration by further development of the gas reserves in this part of the Indian Basin-Morrow Gas Pool (Finding 5).

On December 22, 1972, the Petitioner made application for rehearing to the Commission with respect to Orders Nos. R-4409-A and R-4444. Pursuant to Section 65-3-22(a), NMSA 1953, the Commission took no action on the application for rehearing thereby denying it.

#### SCOPE OF REVIEW

This hearing involves motions for summary judgment filed by both the Petitioner and Respondent in this action. As such the court may only decide if there are any genuine issues as to any material fact and if either party is entitled to judgment as a matter of law (Rule 56(c) N.M.R.C.P.). The court may only grant or deny these motions. It may neither modify the orders nor grant alternative relief.

The scope of review is further limited by the fact that this is an appeal from administrative orders issued pursuant to

hearings before the Oil Conservation Commission. The court, therefore, may only look at the record made in the administrative hearing. Continental Oil Co. v. Oil Conservation Commission 70 NM 310, 373 P.2d 809. It should determine if the Commission acted arbitrarily, capriciously or unreasonably; acted outside the scope of its statutory responsibilities; or issued orders not supported by substantial evidence. Otero v. New Mexico State Police Board, 495 P.2d 374, 83 N.M. 594 (1972). In the absence of a determination that the Petitioner can reasonably show that the Commission acted in one of the above ways, the motion of the Respondent, Oil Conservation Commission, for summary judgment should be granted.

There is conflict in the technical evidence in these cases but in this proceeding, the real question is whether or not there is substantial evidence which supports the orders of the Commission.

Since this case must be decided by the Court solely on the basis of the record made before the Oil Conservation Commission without the aid of additional evidence, a review of that evidence is essential.

#### THE EVIDENCE

The evidence presented in this case consists of the testimony of Mr. Henry and twelve exhibits offered by the Petitioner, and the brief testimony of Mr. Nutter and one exhibit for the Respondent, Oil Conservation Commission. Petitioner's primary contention is set forth in Exhibit 1 (Tr. 10) which is a structure map of the Morrow formation that shows the possible presence of a water trough through the Indian Basin-Morrow Gas Pool. In support of this hypothesis the Petitioner offered Exhibit 2 (Tr. 13) which is a cross section of a series of gamma ray neutron logs through this portion of the Morrow formation and Exhibit 3 (Tr. 18) which is a map showing the thickness of the Indian Hills Sand interval in this area. Exhibit 4 (Tr. 20) is an expanded vertical

view of the Indian Hills Sand cut along a trace portrayed on Exhibit 1.

In addition to this information on the structure of the Indian Hills Sand interval, the Petitioner offered six exhibits that demonstrated pressure variations over a period of time in this formation. These exhibits indicated that originally between what Petitioner calls the north and south basins there was a pressure differential of 111 pounds (Tr. 30). The testimony further indicates that the pressure had varied and increased between these portions of the pool during the time records had been kept on wells in the pool.

Exhibit 10 (Tr. 40) is a comparison of the total gas in place in the north and south portions of this gas pool and is based on information drawn from Exhibits 8 and 9. The Petitioner showed that the indications of how much gas was in place fluctuated greatly over a period of time in the reservoirs and claimed that to correct the situation a capacity allowable was needed for the wells in the northern portion of this gas pool (Tr. 38-41).

Exhibit 11 (Tr. 43) is the initial findings from bottom hole pressure build-up tests being conducted on certain wells in the area.

Although the Oil Conservation Commission offered little testimony of its own, on the cross-examination of Mr. Henry serious questions were raised as to these basic issues on which the Petitioner's applications rest: First, is there a trough running through this gas field which divides it into two separate sources of supply. Second, are the correlative rights of the Petitioner violated by reason of prorating and administering his two northern most wells in this pool under the special rules and regulations applicable to the Indian Basin-Morrow Gas Pool. Third, is any alleged waste a result of the policy of the Oil Conservation Commission or is it the result of operating practices of the Petitioner.

These are the basic issues in this case and will be discussed separately below.

SEPARATE SOURCE OF SUPPLY ISSUE

The powers of the Oil Conservation Commission are enumerated in Section 65-3-11, NMSA 1953. Subsection 12 of this statute confers on the Commission the following power:

To determine the limits of any pool or pools producing crude petroleum oil or natural gas or both, and from time to time to redetermine such limits.

On June 1, 1969, the Oil Conservation Commission issued Order No. R-3758, which pursuant to its statutory powers set out in Section 65-3-11 declared that the north and south Indian Basin-Morrow Gas Pools were one single source of supply and therefore one pool. This case represents a challenge to that order as well as to Orders No. R-4409-A and No. R-4444. It is important, therefore, to look at the basic weaknesses in the evidence presented by the Petitioner to establish the existence of a trough which separates the north and south portions of the Indian Basin-Morrow Gas Pool into separate sources of supply.

On the cross-examination by Mr. Nutter of Mr. Henry (Tr. 50), the sufficiency of the evidence establishing the existence of this trough was challenged. The transcript reads:

"Q Well, it's indeed necessary to do quite a bit of extrapolating to draw an abatement (sic) there between them, the Number 1 Well and the Marathon-North Indian Basin Number 2 Well, when they are three miles apart, is that not true?

"A That's not entirely true--That's not true. It did require some extrapolation, and I believe it is a reasonable engineering and geological extrapolation with the data we had at hand. Certainly the control is not complete, and not as good as where we have greater density of the wells. (emphasis added.)

"Q As a matter of fact, you don't have any well that actually shows you the gas-water contact for the north reservoir, as you call it, with the exception of the Mobil dry hole over there, is that correct?

"A That's correct...."

We therefore can see that the conclusions the Petitioner drew were based on somewhat sketchy information.

Mr. Nutter then inquired if the information might not just indicate that the formation merely sloped to the east.

At Page 50 the transcript reads:

"Q Whether the abatement (sic) is there, that Mobil Well isn't necessarily evidence of it, is it? I mean, it could be a low well on the east side of the structure whether the abatement (sic) was present or not, isn't that true?

"A That was our interpretation until the drilling of the Corinne Grace-Indian Hills Well in Township 21, 24 and that well indicated a substantial north dip over and above what we had seen between the David Fasken-Indian Hills Well No. 7 in Section 16, and the David Fasken-Skelly Federal Well in Section 9...."

It is apparent that the concept of a trough was devised based on information derived from the Corinne Grace-Indian Hills Well.

A question was raised as to the accuracy of this information on cross-examination by Mr. Cooley (Tr. 69).

Mr. Henry testified as follows:

"Q Mr. Henry, are you aware of all the perforations and the completion that was made with respect to the Grace Well?

"A I was aware of those that are on file with the New Mexico Oil Conservation Commission office in Artesia, New Mexico, prior to May 15th.

"Q Are you aware that the highest perforations in the Grace well would be in the same producing zone that you referred to here in most of your testimony if that zone is at least ten feet thick? Do I make myself clear?

"A No, would you say that again?

"Q The highest perforations for the Grace well would be, sir, in what you call the Indian Hills Zone if that zone is as much as ten feet thick.

"A I went through the Commission records and they have the perforations as of May 15th, and they had on file a log of the Grace well, and from the data that I had, this zone at that time was not perforated. If it has been perforated subsequent to May 15th when I checked the records, then I have no knowledge of that." (emphasis added)

At Page 71 the transcript continues:

(By Mr. Cooley)

"Q Are you aware of the fact that the Grace well initially produced a substantial quantity of gas?

"A No, sir.

"Q They tested the capability of producing a substantial quantity of gas.

"A They tested gas, but I would not call it substantial.

"Q Whatever gas it is capable of producing, where would it be coming from in your opinion?

"A It is coming out of the Avalon Zone. Under the first set of perforations, it was gas and water coming from the Avalon Zone, that is, from the first set of perforations reported to the Commission."

It is apparent that the conclusions drawn by the Petitioner as to the existence of a trough in this pool were based on information from the Corinne Grace-Indian Hills well. The problem is that the Petitioner relied on information that was not complete and may have been inaccurate. Further doubts were raised as to whether or not a trough exists in this formation on cross-examination by Mr. Nutter (Tr. 57):

(By Mr. Nutter)

"Q But when you draw a straight line from the Skelly Federal Well Number 1 to the Ross Federal Number 1, we simply see a dipping generally from the south to the north, and we don't have this tremendous sincline in between the wells, is that correct?

"A (By Mr. Henry) If you ignore the Corinne Grace Well, but--

"Q I said if we went from the Skelly Federal Number 1 to the Ross Federal Number 1, just straight across.

"A That's right...."

It is apparent that in attempting to show a trough through the Indian Hills Morrow Gas Pool the Petitioner relied upon certain information which was incomplete and in the case of the Grace well probably incorrect. If Petitioner's evidence is correct, it still fails to establish the existence of a trough for on cross-examination by Mr. Stamets (Tr. 67) it was revealed that the evidence submitted by Petitioner could be interpreted in many different ways:

"Q This map (structure map, Petitioner Exhibit No. 1) could be interpreted in a number of different ways. We could accentuate this saddle, or we could of sort of diminish the effect of the saddle just by the interpretation of these points, and for the interpretation to be one hundred percent cooperated (sic) by the pressure data, you would have to place this thing about fifty feet deeper, isn't that right?

"A (Mr. Henry) Or you would have to place the gas-water contact above the Skelly-Federal Well.

"Q Just ignoring the water-gas contact, isn't it a matter of connecting the geological points on the map and by doing this, we could interpret it in a variety of ways?

"A Well, as I mentioned earlier, we have included in this isopack (sic) map and the structure map all of the data we have accumulated.

"Q Mr. Henry, I realize that--

"A You will notice the zero limit of the sand.

"Q --You mentioned that several times. I would just like to ask you a question, and I would just like you to answer whether or not we could interpret this structural map in different ways?

"A Different people would draw different maps with the same points." (emphasis added)

It should be noted at this point, that when the Petitioner appeared before the Commission with the original applications in this case, the burden of proof was on him to establish that a trough ran through this formation which was an effective barrier between the north and south portions of the pool. In view of the fact that Petitioner relied on information that was inaccurate and incomplete, and further that Petitioner reached one of a variety of conclusions that could be drawn from this information, the Commission could not, based on the evidence, reach the conclusion that the northern portion of the pool was a separate source of supply.

In support of Petitioner's theorized trough, Exhibit 4 was offered which is an expanded vertical view of the Indian Hills Sand. Plotted on this cross-section are various wells. Petitioner's Exhibit No. 1, the structure map, has a red line or

trace across it. This trace shows where the vertical cut reflected in Exhibit 4 would lie. Now if Oil Conservation Commission Exhibit 1 is examined, it reflects the actual line connecting the wells which are plotted on Petitioner's Exhibit 4. It is important to look at Petitioner's Exhibit 1 and pay special attention to the wells which lie close to the suggested water trough. First we should look at the David Fasken-Skelly Federal Well No. 1 in Section 9, Township 21 South, Range 24 East, which is on the trace on Petitioner's Exhibit No. 1. To get to the next well plotted on Petitioner's Exhibit 4 we would have to move to the west on the structure map more than one-half of a mile to the Corinne Grace-Indian Hills Well in Section 8 of said Township 21 South, Range 24 East. To get to the next well we would then have to move east almost two miles to the Mobil Federal No. 1 in Section 10, and then we must go more than two miles to the west to the next well which is the David Fasken-Shell Federal Well No. 1 in Section 5, and finally to the east again about a mile to the David Fasken-Ross Federal Well No. 1 in Section 4. It is apparent that Petitioner had to resort to a considerable amount of zig-zagging in preparing this exhibit. The transcript on Pages 54 and 55 reveals that without this zig-zagging pattern quite a different picture would be portrayed. It reads as follows:

"Q (By Mr. Nutter) Now, Mr. Henry, if we look at your straight line that you have drawn between the Skelly Federal Number 1 and the Ross Federal Number 1, and if we ignored the zig-zagging back and forth, and we connected those two wells on Exhibit Number Four, I believe we would go from this point on the Skelly Federal Number 1 to this point on the Ross Federal Number 1, is that correct?

"A That's correct.

"Q And we wouldn't show the big U-tube connecting the two wells?

"A Not if you are on the structure map."

In view of the fact there was considerable manipulating of the information in the preparation of the Exhibit 4, the Oil

Conservation Commission found that it could give it little weight for it did not, in the opinion of the Commission, indicate the existence of a water trough in the Indian Basin-Morrow Gas Pool.

#### THE CORRELATIVE RIGHTS ISSUE

The power of the Oil Conservation Commission to protect the correlative rights of all operators in any oil or gas pool is set forth in Section 65-3-10, NMSA 1953, which reads:

65-3-10. POWER OF COMMISSION TO PREVENT WASTE AND PROTECT CORRELATIVE RIGHTS.--The Commission is hereby empowered, and it is its duty, to prevent the waste prohibited by this act and to protect correlative rights, as in this act provided. To that end, the Commission is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purposes of this act, whether or not indicated or specified in any section hereof.

Correlative rights is defined on Page A-2 of the Commission Rules as follows:

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

The wells in the Indian Basin-Morrow Gas Pool are on 640-acre spacing. An exception has been made, however, for the two David Fasken wells in the northern portion of this pool, and these wells have over 920 acres in each proration unit. It should be noted that the allocations of allowables in this pool are on a straight acreage basis, and therefore Fasken is able to produce considerably more from each of these wells than are other operators in the pool. Ten wells produce from the Indian Hills Morrow Sand in this pool. The two Fasken wells in the Northern portion of this pool constitute 20 percent of the

wells producing from the Indian Basin-Morrow Gas Pool (Tr. 58). These wells have produced almost 40 percent of the gas from this pool (Tr. 59). As has been noted earlier in this brief, the Petitioner is seeking a capacity allowable for the two Fasken wells in the northern portion of the pool. The present allowable for each of the David Fasken wells in the northern portion of the Indian Basin-Morrow Gas Pool is approximately 3,000,000 cubic feet of gas per day (Tr. 76-77). What Mr. Fasken is attempting to do with the applications in these cases is to increase production from each of the subject wells to approximately 9,000,000 cubic feet of gas per day and then to eventually to as much as 11,000,000 cubic feet of gas per day (Tr. 76). Mr. Henry testified (Tr. 76-77) that the Petitioner, Mr. Fasken, could increase the allowable and thereby the amount of gas he could produce in the northern portion of the Indian Hills-Morrow Gas Pool by reasonably developing that portion of the pool. The transcript reads as follows:

"Q (By Mr. Utz) Mr. Stamets asked you about drilling another well up in Section 31. What is the reason you don't want to develop that acreage?

"A (By Mr. Henry) Well, to date, my client has not provided the money to do it with, he maintains very strict budgetary control on what I drill and don't drill, and he's not provided the money. We have recommended it and discussed it from time to time, and he does own the lease on that acreage.

"Q Do you think it is productive?

"A Yes, sir.

"Q And that would increase your allowable by almost a third, wouldn't it?

"A I would hope so."

It is apparent that if Mr. Fasken would reasonably develop the acreage which he leases in this pool, his allowable would be increased and he could substantially correct the problem of which he complains in these cases. It is also apparent that if

his correlative rights are being impaired, it is not a result of Commission policy but a result of his unwillingness to adequately develop the acreage he has under lease.

#### ISSUE OF WASTE

Section 65-3-2, NMSA 1953, reads as follows:

65-3-2. 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.

Waste is defined in Section 65-3-3, NMSA 1953. The portion of this definition relevant to this case is quoted below:

65-3-3. 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.
  
- 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.

These statutory provisions are recited again in the rules and regulations of the Oil Conservation Commission.

The Petitioner in this case alleges that underground waste is occurring due to underground gas migration and a loss

of gas into the alleged water trough. The Petitioner alleges that this waste is caused by administering and regulating the pool in accordance with the Rules and Regulations of the New Mexico Oil Conservation Commission which prorate the pool. A close review of the evidence reveals, however, that:

1. Petitioner failed to establish that waste is occurring in this pool and
2. if waste is occurring, it is not the result of regulation by the Oil Conservation Commission, but instead is a result of imprudent operating procedures.

First, we will recall that serious questions have been raised as to whether or not a water trough runs through the Indian Basin-Morrow Gas Pool. If it does not, it is very doubtful that the theories advanced by the Petitioner on the issue of waste are valid.

A change in the rules of the New Mexico Oil Conservation Commission in relationship to this pool will not provide real relief to the operator for at the time of the hearing the operator was producing in excess of market demand. On cross-examination by Mr. Cooley, Mr. Henry testified (Tr. 72):

"Q (By Mr. Cooley) Referring to your testimony on cross-examination, it came out that you have certain gas purchase contract problems with respect to what you describe as the north pool, is that correct?

"A We have them with respect to all of the connections in the Indian Basin.

"Q The entire pool has a greater capacity to produce than Mr. Fasken is able to pass on to the pipe line company?

"A We have an excess capacity to produce, yes.

"Q If the present capacity under the present allowable is in excess of your present market, what is to be gained by giving capacity allowables or increasing the allowable for any well in the field or giving the capacity allowable as you suggest?

"A (No response)

"Q Are you already capable of producing more gas than you can sell?

"A That's right."

The testimony also shows (Tr. 74) that certain allowables have already been cancelled and reallocated in the pool because of the contract problems Mr. Fasken has had with the purchaser. It would appear from the record, therefore, that the Commission could not and cannot offer any real relief to the Petitioner for he is already producing more than the market demand and already allowables have had to be cancelled in this pool.

As was noted earlier in this brief, Mr. Fasken could provide his own relief in this situation by reasonably developing the northern portion of the Indian Basin-Morrow Gas Pool.

Not only has the Petitioner not properly developed the field, he is, in fact, aggravating the very problem of which he complains. It should be recalled that the Petitioner alleges that there is migration of gas from the northern reservoir toward the southern reservoir caused by greater pressure in the northern reservoir. He further alleges that this pressure differential is caused by the fact that there is greater production in the south than in the north.

If we assume these alleged facts to be true, it appears that the Petitioner in this case is practicing imprudent operating procedures for he is overproducing a well in the southern portion of the pool (Tr. 60) and at the same time, due to contract problems, has reduced production on certain wells in the northern portion of the pool, as reflected on Petitioner's Exhibit No. 6. Certainly it is not the duty of the Oil Conservation Commission to protect imprudent operators from their own operating practices. And if waste is occurring, it is not a result of the reasonable standards imposed by the Commission on operators in this gas pool.

#### SUFFICIENCY OF FINDINGS

Petitioner alleges that Orders R-4409-A and R-4444 are invalid in that they contain no findings to explain, support or indicate the reasoning of the Commission in concluding that Petitioner's applications should be denied in order to prevent waste.

If Petitioner's reasoning that there must be findings on the issue of waste is carried to its logical conclusion, it would appear that he should insist that all other considerations recited in statute be made findings of fact as a condition precedent to the validity of any Commission order.

It should be further observed that the New Mexico statutes relating to oil and gas (with an exception for underground storage reservoirs) make no requirement that the Commission make any findings whatever.

In entering Orders R-4409-A and R-4444, the Commission made general findings which effectively show that the Commission concluded that it would be contrary to the statutory responsibilities of the Commission to grant either the Petitioner's application for capacity allowable for his wells in the Indian Basin-Morrow Gas Pool or his application to declare the northern portion of this pool to be a separate source of supply.

The United States Supreme Court held in United States et al. v. Louisiana et al., 290 U.S. 70 (1933), that findings were not essential to the validity of an administrative order where an agency was operating under a statute which was indefinite on the question of findings of fact and did not require them.

In Truck Insurance Exchange v. Industrial Accident Commission, 226 P.2d 583 (1951), the Supreme Court of California found that where an ultimate finding has been made a subordinate

finding results by necessary implication.

Where the scope of the review of the District Court encompasses the entire record as it does under the Oil Conservation Commission statutes, findings are not necessary to sustain the order of the Commission and are not binding on the reviewing court. Seward v. Denver and Rio Grande Railroad Co., 131 P. 980, 17 N.M. 557 (1913); Harris v. State Corporation Commission, 129 P.2d 323, 46 N.M. 352 (1942).

If the Petitioner had requested a finding on the question of waste, it could then raise objection to the absence of such finding. Ferguson-Steere Motor Co. v. State Corporation Commission, 288 P.2d 440, 60 N.M. 114 (1955).

In Ferguson-Steere Motor Co. v. State Corporation Commission, the New Mexico Supreme Court cited with approval Railroad Commission v. Great Southern Railway Co., 185 Ala. 354, 64 So. 15, where it was stated that the Court accepts the making of an order by the Commission as a finding by the Commission that the circumstances are such as to justify the order.

It appears, therefore, that there is no statutory requirement that the Commission make any particular finding of fact in denying either of Petitioner's applications. Since the Petitioner did not request any specific findings when this matter was heard, under New Mexico law, he cannot object to the order on appeal to the District Court on the grounds of insufficient findings of fact.

#### CONCLUSION

Respondent, Oil Conservation Commission, respectfully submits that the record sustains each of the findings upon which the orders in question rest. The evidence shows that Petitioner's conclusion that a trough exists in this gas pool may in fact be erroneous. Close review of the evidence further shows that

Petitioner failed to establish that this trough, if it exists, is an effective barrier. If it is not, the Fasken wells in the northern portion of the Indian Basin-Morrow Gas Pool are not completed in a separate source of supply.

As to the issue of correlative rights, the record clearly shows that the two Fasken wells in the northern portion of this pool, through August of 1972, had produced 40 percent of the total production from this pool. This is more than twice as much production as the average of the remaining wells in the pool. The record further shows that the allowable attributable to the land leased by Mr. Fasken could be increased if the Petitioner was only willing to drill enough wells, reasonably develop the area and dedicate the acreage that he leases to these wells. It is clear from the record that if any waste is occurring it is not the result of the prorationing of the pool under the Commission Rules and Regulations but the result of imprudent operating procedures by the Petitioner.

There are sufficient findings to support the orders. The allegations of Petitioner in Paragraph 6-C of the Petition for Review of Order R-4444 are simply erroneous. For on careful reading, the findings challenged do not recognize a pressure differential as alleged in the Petition for Review.

In Paragraph 6-C of the Petition for Review challenging Order R-4409-A, the Petitioner notes that the original order (R-4409) finds that a water trough, in fact, does exist. Careful reading here again is required. The finding recognizes that there may be a water trough but says it does not constitute an effective barrier and that the real question in this case is whether or not there is a barrier which causes the northern portion of this pool to in fact be a separate source of supply.

The Petition for Review alleges that the Commission has not carried out its statutory responsibilities in this case. It should be noted that the Commission is a statutory body vested with jurisdiction over matters relating to the conservation of

crude oil and natural gas in New Mexico, the prevention of waste, the protection of correlative rights and the enforcement of the Conservation Act of the State of New Mexico. Pursuant to these responsibilities, the Commission promulgates rules and regulations. When an applicant appears before the Commission and requests a change in the rules and regulations applying to an oil or gas field, the burden is on the applicant to prove their case. When they fail to do so, they cannot hope to compensate for it by going to the district court. For in court, the burden of proof is again on the applicant. He must show that what he seeks is in fact justified by the facts and that the Commission acted contrary thereto at the administrative hearing.

It is important to remember in closing that this case involves motions for Summary Judgment. The question is, therefore, are there any genuine issues as to any material fact and is either party entitled to judgment as a matter of law.

For Petitioner to succeed on his motion, he must show that the Orders in question of the Oil Conservation Commission are not supported by substantial evidence, are arbitrary, capricious, or unreasonable, or involve matters outside the scope of the statutory responsibilities of the Commission.

The Commission is convinced that there is no such reasonable chance and there are no reasonable grounds on which the Petitioner can succeed on its motion. The Commission is further convinced that it is entitled to judgment as a matter of law and, therefore, the Respondent, Oil Conservation Commission, prays this Court to grant its motion for Summary Judgment and to deny the motion for Summary Judgment of the Petitioner.

  
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Oil Conservation Commission