KELLAHIN AND KELLAHIN
Attorneys at Law
El Patio, 117 Guadalupe
Post Office Box 1769
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Telephone (505) 982-4285

Jason Kellahin
W. Thomas Kellahin
Karen Aubrey
James B. Grant

December 20, 1982

Mrs. Rose Marie Alderete
Clerk of the New Mexico Supreme Court
Supreme Court Building
Santa Fe, New Mexico 87501

Re: Robert Casados et al vs.
Oil Conservation Division et al
No. 14,359

Dear Mrs. Alderete:

On behalf of Defendants Cities Service Company and Amerada Hess Corporation, we hereby adopt and support the Answer Brief of Appellee Amoco Production Company.

Cities Service Company and Amerada Hess Corporation do not desire to file separate answer briefs.

KELLAHIN & KELLAHIN

By W. Thomas Kellahin

WTK:mm

cc: Ernest L. Carroll, Esq.
William Monroe Kerr, Esq.
W. F. Carr, Esq.
J. Scott Hall, Esq.
W. Perry Pearce, Esq.
WynDee Baker, Esq.
Gerald Barnes, Esq.

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR
LARRY KEHOE
SECRETARY

December 17, 1982

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

Mr. J. Scott Hall
Attorney at Law
Commissioner of Public Lands
P. O. Box 1148
Santa Fe, New Mexico 87501

Re: Robert Casados, et al., vs. Oil Conservation Commission, Supreme Court Cause No. 14,359

Dear Scott:

Enclosed please find a conformed copy of the Answer Brief of Defendant-Appellee Oil Conservation Commission filed this date in the above-referenced action.

Sincerely,

W. PERRY PEARCE
General Counsel

WPP/dr

enc.

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR

LARRY KEHOE
SECRETARY

December 17, 1982

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

Mr. W. Thomas Kellahin
Kellahin and Kellahin
Attorneys at Law
P. O. Box 1769
Santa Fe, New Mexico 87501

Re: Robert Casados, et al., vs. Oil Conservation Commission, Supreme Court Cause No. 14,359

Dear Tom:

Enclosed please find a conformed copy of the Answer Brief of Defendant-Appellee Oil Conservation Commission filed this date in the above-referenced action.

Sincerely,

W. PERRY PEARCE
General Counsel

WPP/dr

enc.

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR

LARRY KEHOE
SECRETARY

December 17, 1982

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

Mr. William F. Carr
Campbell, Byrd and Black
Attorneys at Law
P. O. Box 2208
Santa Fe, New Mexico 87501

Re: Robert Casados, et al., vs. Oil Conservation Commission, Supreme Court Cause No. 14,359

Dear Bill:

Enclosed please find a conformed copy of the Answer Brief of Defendant-Appellee Oil Conservation Commission filed this date in the above-referenced action.

Sincerely,

W. PERRY PEARCE
General Counsel

WPP/dr

enc.

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR
LARRY KEHOE
SECRETARY

December 17, 1982

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

Mr. William M. Kerr
Kerr, Fitz-Gerald and Kerr
Attorneys at Law
P. O. Drawer 511
Midland, Texas 79702

Re: Robert Casados, et al., vs. Oil Conservation Commission, Supreme Court Cause No. 14,359

Dear Mr. Kerr:

Enclosed please find a conformed copy of the Answer Brief of Defendant-Appellee Oil Conservation Commission filed this date in the above-referenced action.

Sincerely,

W. PERRY PEARCE
General Counsel

WPP/dr

enc.

LAW OFFICES
KERR, FITZ-GERALD & KERR
III MIDLAND TOWER BUILDING
MIDLAND, TEXAS 79701

POST OFFICE BOX 511
MIDLAND, TEXAS 79702
TELEPHONE 915 683-5291

WILLIAM L. KERR (1904-1978)
GERALD FITZ-GERALD (1906-1980)
WM. MONROE KERR
THEODORE M. KERR
HARRIS E. KERR
MICHAEL T. MORGAN
WILLIAM E. WARD
EVELYN UNDERWOOD
H. W. LEVERETT

WARREN D. BARTON
COUNSEL

April 29, 1982

W. Perry Pearce, Esquire
General Counsel
Energy & Minerals Department
Oil Conservation Commission
State of New Mexico
P. O. Box 2088
Santa Fe, New Mexico 87501

Re: Casados v. Oil Conservation Division,
Taos County
Cause No. 81-176

Dear Mr. Pearce:

Here is the Judgment approved as to form only by Mr. Carroll. In forwarding the Judgment to the Court for entry, would you ask the Court to please cause us to be notified of the date of entry of this Judgment.

Thank you very much.

Very truly yours,

Wm. Monroe Kerr

Enclosure

WMK/cc

CC: William F. Carr, Esquire
Campbell, Byrd and Black
P. O. Box 2208
Santa Fe, New Mexico 87501

J. Scott Hall, Esquire
Commissioner of Public Lands
New Mexico State Land Office
P. O. Box 1148
Santa Fe, New Mexico 87501

W. Thomas Kellahin, Esquire
Kellahin & Kellahin
500 Don Gaspar
Santa Fe, New Mexico 87501

STATE OF NEW MEXICO

IN THE DISTRICT COURT

COUNTY OF TAOS

ROBERT CASADOS, et al,

Plaintiffs,

vs.

OIL CONSERVATION COMMISSION, et al,

Defendants.

CONSOLIDATED CAUSE
No. 81-176

JUDGMENT

This matter came before the Court on December 7, 1981, for judicial review of the New Mexico Oil Conservation Commission Order No. R-6446 and R-6446-B approving the Bravo Dome Carbon Dioxide Unit Agreement.

The Court having considered the pleadings on file, the record of the hearing before the Commission, arguments and briefs of counsel, and having entered its Memorandum Decision on April 5, 1982, finds: that the Commission's findings of fact are supported by substantial evidence; that the conclusions reached in the orders of the Commission are supported by the findings of fact; that the Commission acted within its authority in approving the preliminary unitization agreement; that the decision of the Oil Conservation Commission should be sustained; and that the defendants are entitled to their costs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Orders No. R-6446 and R-6446-B approving the Bravo Dome Carbon Dioxide Unit Agreement are affirmed and that defendants are entitled to recover their costs.

DONE BY THE COURT this _____ day of _____,

1982.

_____
DISTRICT JUDGE

APPROVED:

W. PERRY PEARCE
Special Assistant Attorney
General for Defendant
Oil Conservation Commission

ERNEST L. CARROLL
Kerr, Fitz-Gerald and Kerr
For Plaintiffs
Whose Approval is as to Form Only

WILLIAM F. CARR
Campbell, Byrd and Black
For Defendant
Amoco Production Company

J. SCOTT HALL
Intervenor
Commissioner of Public Lands

W. THOMAS KELLAHIN
Kellahin & Kellahin
For Defendants
Amerada Hess Corporation and
Cities Service Corporation

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR

LARRY KEHOE
SECRETARY

April 20, 1982

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

Mr. Ernest L. Carroll
Kerr, Fitz-Gerald and Kerr
Attorneys at Law
P. O. Drawer 511
Midland, Texas 79702

Re: Casados v. Oil Conservation Division, Taos County
Cause No. 81-176

Dear Mr. Carroll:

Attached is a copy of a form of judgment in the above-referenced matter. If this form is acceptable, please sign the original and return it to me so that I may present it to the Court for entry.

Thank you.

Sincerely,

W. PERRY PEARCE
General Counsel

WPP/dr

enc.

STATE OF NEW MEXICO

COUNTY OF TAOS

IN THE DISTRICT COURT

ROBERT CASADOS, et al,

Plaintiffs,

vs.

OIL CONSERVATION COMMISSION, et al,

Defendants.

CONSOLIDATED CAUSE
No. 81-176

JUDGMENT

This matter came before the Court on December 7, 1981, for judicial review of the New Mexico Oil Conservation Commission Order No. R-6446 and R-6446-B approving the Bravo Dome Carbon Dioxide Unit Agreement.

The Court having considered the pleadings on file, the record of the hearing before the Commission, arguments and briefs of counsel, and having entered its Memorandum Decision on April 5, 1982, finds: that the Commission's findings of fact are supported by substantial evidence; that the conclusions reached in the orders of the Commission are supported by the findings of fact; that the Commission acted within its authority in approving the preliminary unitization agreement; that the decision of the Oil Conservation Commission should be sustained; and that the defendants are entitled to their costs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Orders No. R-6446 and R-6446-B approving the Bravo Dome Carbon Dioxide Unit Agreement are affirmed and that defendants are entitled to recover their costs.

DONE BY THE COURT this_____day of _____,

1982.

_____
DISTRICT JUDGE

APPROVED:

W. PERRY PEARCE
Special Assistant Attorney
General for Defendant
Oil Conservation Commission

ERNEST L. CARROLL
Kerr, Fitz-Gerald and Kerr
For Plaintiff

WILLIAM F. CARR
Campbell, Byrd and Black
For Defendant
Amoco Production Company

J. SCOTT HALL
Intervenor
Commissioner of Public Lands

W. THOMAS KELLAHIN
Kellahin & Kellahin
For Defendants
Amerada Hess Corporation and
Cities Service Corporation

CHAMBERS OF
JOSEPH E. CALDWELL
DISTRICT JUDGE
DIVISION II

STATE OF NEW MEXICO
EIGHTH JUDICIAL DISTRICT

P. O. BOX 1715
TAOS, NEW MEXICO
87571
PHONE: 758-3173
758-4547

April 6, 1982

Mr. W. Perry Pearce
Assistant Attorney General
Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

Mr. W. Thomas Kellahin
Kellahin and Kellahin
Attorneys at Law
P. O. Box 1769
Santa Fe, New Mexico 87501

Mr. Ernest L. Carroll
Kerr, Fitz-Gerald and Kerr
Attorneys at Law
P. O. Drawer 511
Midland, Texas 79702

Mr. J. Scott Hall
Attorney at Law
Commissioner of Public Lands
P. O. Box 1148
Santa Fe, New Mexico 87501

Mr. William F. Carr
Campbell, Byrd and Black
Attorneys at Law
P. O. Box 2208
Santa Fe, New Mexico 87501

Re: Robert Casados, et al vs. Oil Conservation Commission, et al
Taos County Cause No. 81-176

Gentlemen:

Enclosed herewith please find a conformed copy of the Memorandum Decision entered April 5, 1982 in the above-entitled cause. Mr. Pearce will prepare a Judgment in conformance with the Decision, submit it to opposing counsel for approval, thence to the Court.

Thank you.

Cordially yours,

Joseph E. Caldwell
cp

Joseph E. Caldwell
District Judge

JEC:cp

Enclosure

STATE OF NEW MEXICO

COUNTY OF TAOS

IN THE DISTRICT COURT

ROBERT CASADOS, et al,
Plaintiffs,

vs.

OIL CONSERVATION COMMISSION, et al,

Defendants.

CONSOLIDATED CAUSE
NO. 81-176

MEMORANDUM DECISION

This is an appeal for a review from Orders No. R-6446 and R-6446-B of the Oil Conservation Commission of New Mexico, which approved in its Cause 6967 the proposed Bravo Dome Carbon Dioxide unit over the Tubb geological formation which contains marketable carbon dioxide gas. The plaintiff raises essentially three points for this appeal:

I. Is there substantial evidence to support the findings of the Commission?

Plaintiffs challenge in their Petition whether substantial evidence exists on the record of Cause 6967 to support the findings of the Commission contained in the Orders objected to. Without repeating the totality of those findings, they are essentially to the effect that:

A. There is sufficient data to conclude as a geological probability the outer perimeters of the formation within the unitized area containing marketable carbon dioxide deposits;

B. There is insufficient data to conclude as a geological probability the location of the gas within the unitized area in order to determine the best method to protect the correlative rights of the parties and distribution of royalties but there exists sufficient data to determine the two best methods of such distribution.

C. Data can only be collected through exploration and development within the unitized area.

II. Do the findings support the conclusions included by the Commission in the protested Orders?

Appellants also argue that, even though sufficient evidence might exist to support the findings of the Commission, those findings do not support the conclusions of the Commission that:

A. The proposed unit is the best method to provide for orderly development of the gas deposit to prevent waste; and

B. The alternative methods for royalty determination to protect correlative rights set forth in the Orders are the best methods; and

C. The Commission's retaining of jurisdiction would protect the correlative rights of fee owners as development should continue.

III. Did the Commission have authority to approve the unit at its present stage of development?

The appellants were granted leave of the Court at oral argument to raise the issue of the constitutional and statutory authority of the Commission to approve the unit in the manner contemplated in the protested Orders. Specifically, the appellants argue that even though substantial evidence may exist before the Commission to sustain the findings in the Orders, and even though the conclusions should naturally flow from such findings, the Commission has no statutory or constitutional authority to approve what is a preliminary unit at a stage where the Commission concedes in its findings insufficient information exists to determine as a geological probability the actual location of marketable gas within the Tubb formation.

In reference to the above arguments, the Court, having heard the arguments of counsel, having read the transcripts of proceedings before the Commission, having read the briefs submitted by the parties, and otherwise being fully advised in the premises, makes the following:

FINDINGS OF FACT

1. The plaintiffs are all owners of carbon dioxide property rights within the proposed unit area, either in Union, Quay or Harding Counties in New Mexico.

2. The defendant Oil Conservation Commission is a New Mexico regulatory agency empowered under Section 70-2-1 et. seq. to regulate and control

production or handling of natural gas, oil, and, in particular for this case carbon dioxide (Section 70-2-2 and Section 70-2-34 N.M.S.A., 1978 Comp.).

3. The primary mandate of the Commission is to prevent waste in developing natural resources, and in doing so, protecting the correlative rights of owners of land or minerals during exploitation of such natural resources.

4. The defendants Amoco Production Company, Amerada Hess Corporation and Cities Service Company are all foreign corporations licensed to do business in New Mexico and are holders of oil and gas (including carbon dioxide) leases within the area of the proposed unit and/or participants in the proposed unitization, with Amoco being the applicant before the Commission in Cause No. 6967.

5. The intervenor Commissioner of Public Lands and State Land Commissioner is the holder in public trust of fee title to substantial lands within the proposed unit and also is required by law to approve the unitization agreement as it should affect such lands.

6. The Petition to the defendant Commission arose out of agreements contained in oil and gas leases with fee owners of land, some of which are plaintiffs in this case, requiring review and approval of unitization agreements by the Commission. The effort to unitize in this case is therefore characterized as a voluntary unitization where all parties concede that land belonging to fee owners not part of such lease agreements is not included as part of the unit.

7. The transcipts of record before the Commission show that the following evidence was presented at hearing:

A. Adequate geological data to show that the Tubb formation is within the unitized area as a reasonable geological probability.

B. Inadequate geological data exists to show the various underground meanderings of the formation and therefore determine as a geological probability whether certain fee owners are or are not entitled to royalities because of the location of that formation, and in what distribution.

C. The data needed for such determination will occur during the very expiration and production contemplated within the challenged Commission's Orders and at which time much of the waste to protect against would likely occur.

D. The Commission was unable to determine which method of guarantee of correlative rights would be best, because the information does not exist on which to reasonably calculate the best method at this time, and therefore alternative methods subject to subsequent review by the Commission were approved.

8. The Commission retained jurisdiction over the unit, to reasonably respond as information develops.

9. The Commission followed in all respects its rules required by Section 70-2-7 N.M.S.A., 1978 Comp.

Based upon the foregoing findings of fact, the Court makes the following:

CONCLUSIONS OF LAW

1. Substantial evidence exists on the record of proceedings before the New Mexico Oil Conservation Commission in Cause No. 6967 to support the findings of fact contained in Orders R-6446 and R-6446-B of that Commission.

2. The conclusions reached in those Orders by the Commission in approving the Bravo Dome unitization agreement are supported by the findings of fact.

3. The Commission acted within its authority in approving the preliminary unitization agreement set forth in its Orders and properly within its mandate to provide an opportunity for property owners to produce insofar as practicable to do so, without waste, a proportion of gas in the formation insofar as can practically be determined and obtained without waste. (See Continental Oil Co. v. Oil Conservation Commission, 70 NM 310, 373 P2d 809 (1962).

4. The decision of the Oil Conservation Commission should be sustained.

5. The defendants in this case are entitled to their costs.

DONE BY THE COURT this 5th day of April, 1982.

DISTRICT JUDGE

CHAMBERS OF
JOSEPH E. CALDWELL
DISTRICT JUDGE
DIVISION II

STATE OF NEW MEXICO
EIGHTH JUDICIAL DISTRICT

P. O. BOX 1718
TAOS, NEW MEXICO
87571
PHONE: 758-3173
758-4547

April 6, 1982

Mr. W. Perry Pearce
Assistant Attorney General
Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

Mr. W. Thomas Kellahin
Kellahin and Kellahin
Attorneys at Law
P. O. Box 1769
Santa Fe, New Mexico 87501

Mr. Ernest L. Carroll
Kerr, Fitz-Gerald and Kerr
Attorneys at Law
P. O. Drawer 511
Midland, Texas 79702

Mr. J. Scott Hall
Attorney at Law
Commissioner of Public Lands
P. O. Box 1148
Santa Fe, New Mexico 87501

Mr. William F. Carr
Campbell, Byrd and Black
Attorneys at Law
P. O. Box 2208
Santa Fe, New Mexico 87501

Re: Robert Casados, et al vs. Oil Conservation Commission, et al
Taos County Cause No. 81-176

Gentlemen:

Enclosed herewith please find a conformed copy of the Memorandum Decision entered April 5, 1982 in the above-entitled cause. Mr. Pearce will prepare a Judgment in conformance with the Decision, submit it to opposing counsel for approval, thence to the Court.

Thank you.

Cordially yours,

Joseph E. Caldwell
cp

Joseph E. Caldwell
District Judge

JEC:cp

Enclosure

STATE OF NEW MEXICO

COUNTY OF TAOS

IN THE DISTRICT COURT

ROBERT CASADOS, et al,
Plaintiffs,

vs.

OIL CONSERVATION COMMISSION, et al,

Defendants.

CONSOLIDATED CAUSE NO. 81-176

FILED IN MY OFFICE
COUNTY, NEW MEXICO
6:00 PM
APR 5 1982
/ District Court Clerk

MEMORANDUM DECISION

This is an appeal for a review from Orders No. R-6446 and R-6446-B of the Oil Conservation Commission of New Mexico, which approved in its Cause 6967 the proposed Bravo Dome Carbon Dioxide unit over the Tubb geological formation which contains marketable carbon dioxide gas. The plaintiff raises essentially three points for this appeal:

I. Is there substantial evidence to support the findings of the Commission?

Plaintiffs challenge in their Petition whether substantial evidence exists on the record of Cause 6967 to support the findings of the Commission contained in the Orders objected to. Without repeating the totality of those findings, they are essentially to the effect that:

A. There is sufficient data to conclude as a geological probability the outer perimeters of the formation within the unitized area containing marketable carbon dioxide deposits;

B. There is insufficient data to conclude as a geological probability the location of the gas within the unitized area in order to determine the best method to protect the correlative rights of the parties and distribution of royalties but there exists sufficient data to determine the two best methods of such distribution.

C. Data can only be collected through exploration and development within the unitized area.

II. Do the findings support the conclusions included by the Commission in the protested Orders?

Appellants also argue that, even though sufficient evidence might exist to support the findings of the Commission, those findings do not support the conclusions of the Commission that:

A. The proposed unit is the best method to provide for orderly development of the gas deposit to prevent waste; and

B. The alternative methods for royalty determination to protect correlative rights set forth in the Orders are the best methods; and

C. The Commission's retaining of jurisdiction would protect the correlative rights of fee owners as development should continue.

III. Did the Commission have authority to approve the unit at its present stage of development?

The appellants were granted leave of the Court at oral argument to raise the issue of the constitutional and statutory authority of the Commission to approve the unit in the manner contemplated in the protested Orders. Specifically, the appellants argue that even though substantial evidence may exist before the Commission to sustain the findings in the Orders, and even though the conclusions should naturally flow from such findings, the Commission has no statutory or constitutional authority to approve what is a preliminary unit at a stage where the Commission concedes in its findings insufficient information exists to determine as a geological probability the actual location of marketable gas within the Tubb formation.

In reference to the above arguments, the Court, having heard the arguments of counsel, having read the transcripts of proceedings before the Commission, having read the briefs submitted by the parties, and otherwise being fully advised in the premises, makes the following:

FINDINGS OF FACT

1. The plaintiffs are all owners of carbon dioxide property rights within the proposed unit area, either in Union, Quay or Harding Counties in New Mexico.

2. The defendant Oil Conservation Commission is a New Mexico regulatory agency empowered under Section 70-2-1 et. seq. to regulate and control

production or handling of natural gas, oil, and, in particular for this case carbon dioxide (Section 70-2-2 and Section 70-2-34 N.M.S.A., 1978 Comp.).

3. The primary mandate of the Commission is to prevent waste in developing natural resources, and in doing so, protecting the correlative rights of owners of land or minerals during exploitation of such natural resources.

4. The defendants Amoco Production Company, Amerada Hess Corporation and Cities Service Company are all foreign corporations licensed to do business in New Mexico and are holders of oil and gas (including carbon dioxide) leases within the area of the proposed unit and/or participants in the proposed unitization, with Amoco being the applicant before the Commission in Cause No. 6967.

5. The intervenor Commissioner of Public Lands and State Land Commissioner is the holder in public trust of fee title to substantial lands within the proposed unit and also is required by law to approve the unitization agreement as it should affect such lands.

6. The Petition to the defendant Commission arose out of agreements contained in oil and gas leases with fee owners of land, some of which are plaintiffs in this case, requiring review and approval of unitization agreements by the Commission. The effort to unitize in this case is therefore characterized as a voluntary unitization where all parties concede that land belonging to fee owners not part of such lease agreements is not included as part of the unit.

7. The transcipts of record before the Commission show that the following evidence was presented at hearing:

A. Adequate geological data to show that the Tubb formation is within the unitized area as a reasonable geological probability.

B. Inadequate geological data exists to show the various underground meanderings of the formation and therefore determine as a geological probability whether certain fee owners are or are not entitled to royalities because of the location of that formation, and in what distribution.

C. The data needed for such determination will occur during the very expiration and production contemplated within the challenged Commission's Orders and at which time much of the waste to protect against would likely occur.

D. The Commission was unable to determine which method of guarantee of correlative rights would be best, because the information does not exist on which to reasonably calculate the best method at this time, and therefore alternative methods subject to subsequent review by the Commission were approved.

8. The Commission retained jurisdiction over the unit, to reasonably respond as information develops.

9. The Commission followed in all respects its rules required by Section 70-2-7 N.M.S.A., 1978 Comp.

Based upon the foregoing findings of fact, the Court makes the following:

CONCLUSIONS OF LAW

1. Substantial evidence exists on the record of proceedings before the New Mexico Oil Conservation Commission in Cause No. 6967 to support the findings of fact contained in Orders R-6446 and R-6446-B of that Commission.

2. The conclusions reached in those Orders by the Commission in approving the Bravo Dome unitization agreement are supported by the findings of fact.

3. The Commission acted within its authority in approving the preliminary unitization agreement set forth in its Orders and properly within its mandate to provide an opportunity for property owners to produce insofar as practicable to do so, without waste, a proportion of gas in the formation insofar as can practically be determined and obtained without waste. (See Continental Oil Co. v. Oil Conservation Commission, 70 NM 310, 373 P2d 809 (1962).

4. The decision of the Oil Conservation Commission should be sustained.

5. The defendants in this case are entitled to their costs.

DONE BY THE COURT this 5th day of April, 1982.

DISTRICT JUDGE

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR
LARRY KEHOE
SECRETARY

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

December 2, 1981

The Honorable Joseph E. Caldwell
District Judge
Eighth Judicial District
P. O. Box 1715
Taos, New Mexico 87571

Re: Robert Casados et. al., v. Oil Conservation Commission et. al., Taos County Cause No. 81-176 (Consolidated)

Dear Judge Caldwell:

Enclosed for your consideration in connection with the above-referenced consolidated cases is the Trial Brief of Respondent Oil Conservation Commission in support of its administrative orders under review.

The original of this brief has been forwarded to Tina V. Martinez, Clerk of the District Court, for filing.

Sincerely,

W. PERRY PEARCE
Assistant Attorney General
for the Oil Conservation Commission

WPP/dr

cc: Ernest L. Carroll, w/enc.
William F. Carr, w/enc
W. Thomas Kellahin, w/enc.
J. Scott Hall, w/enc.

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR

LARRY KEHOE
SECRETARY

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

December 2, 1981

Ms. Tina V. Martinez
Clerk of the District Court
Taos County Courthouse
P. O. Box 1715
Taos, New Mexico 87571

Re: Casados et. al. vs. Oil Conservation Commission et al., Taos County Cause No. 81-176 (Consolidated)

Dear Ms. Martinez:

Enclosed please find RESPONDENT'S TRIAL BRIEF in the above-referenced cause. Please file this pleading in the appropriate court file.

Thank you for your help.

Sincerely,

W. PERRY PEARCE
Assistant Attorney General
for the Oil Conservation Commission

WPP/dr

enc.

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR

LARRY KEHOE
SECRETARY

December 17, 1981

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

Ms. Tina V. Martinez
Clerk of the District Court
Taos County Courthouse
P. O. Box 1715
Taos, New Mexico 87571

Re: Casados et. al vs. Oil Conservation Commission et al., Taos County Cause No. 81-176 (Consolidated)

Dear Ms. Martinez:

Enclosed please find a SUPPLEMENTAL BRIEF in the above-referenced cause. Please file this pleading in the appropriate court file.

Thank you for your help.

Sincerely,

W. PERRY PEARCE
Assistant Attorney General
for the Oil Conservation Commission

WPP/dr

enc.

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR

LARRY KEHOE
SECRETARY

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

December 17, 1981

The Honorable Joseph E. Caldwell
District Judge
Eighth Judicial District
P. O. Box 1715
Taos, New Mexico 87571

Re: Robert Casados et. al., v. Oil Conservation Commission et al., Taos County Cause No. 81-176 (Consolidated)

Dear Judge Caldwell:

Enclosed for your consideration in connection with the above-referenced consolidated cases is the Supplemental Brief of Respondent Oil Conservation Commission in support of its administrative orders under review.

The original of this brief has been forwarded to Tina V. Martinez, Clerk of the District Court, for filing.

Sincerely,

W. PERRY PEARCE
Assistant Attorney General
for the Oil Conservation Commission

WPP/dr

cc: Ernest L. Carroll, w/enc.
William F. Carr, w/enc.
W. Thomas Kellahin, w/enc.
J. Scott Hall, w/enc.

IN THE DISTRICT COURT OF TAOS COUNTY

STATE OF NEW MEXICO

ROBERT CASADOS, et al,

Petitioners,

vs. Cause No. 81-176

(Consolidated)

OIL CONSERVATION COMMISSION, et al,

Respondents.

SUPPLEMENTAL BRIEF OF RESPONDENT

OIL CONSERVATION COMMISSION

This supplemental brief is submitted in response to request of the court at a hearing held in this matter on December 7, 1981. It is the purpose of this brief to respond to that request and to supplement the presentation made by respondent Oil Conservation Commission in a trial brief submitted to the court in this matter, and also in arguments presented to the court at the December 7, 1981, hearing on this matter.

The question posed by the court at the hearing related to the power of respondent Oil Conservation Commission to enter orders R-6446 and R-6446-B in response to the application of Co-respondent Amoco Production Company, for approval of the Bravo Dome Carbon Dioxide Unit Agreement and proceedings which followed that application. The question posed is:

> Whether the Commission has the power to approve a voluntary preliminary exploratory unitization agreement or a final unitization agreement with preliminary findings before the limitations of a field have been determined to a geologic probability.

This inquiry contains two separable elements which will be addressed. The first relates to the propriety of issuing the order prior to more definite geologic data becoming available and the second relates to the propriety of the Commission continuing to review unit operations. The two questions may be stated:

> 1. Whether the New Mexico Oil Conservation Commission acted within the scope of its authority in issuing these orders prior to all data and factual materials relating to the subject matter of the application becoming available?
>
> 2. Whether the respondent Oil Conservation Commission exceeded the scope of its statutory authority in issuing orders which retained continuing jurisdiction over the applicant, the Bravo Dome Carbon Dioxide Unit Agreement, and matters related thereto?

In order for this court to accurately answer either of these questions, it is necessary that a brief review be given of exactly what action was taken by the respondent Oil Conservation Commission and exactly what orders were entered. Contrary to the statements set out in the brief of petitioners, the provisions of Order No. R-6446-B are not "czar-like" and do not purport to grant to the Commission the far-reaching powers which petitioners claim the Commission may not exercise.

Petitioners attempt to reverse the test for review of administrative orders by claiming that in this instance the findings portion of the administrative decision must be supported by the order portion of that administrative decision. Petitioners argue that the findings contain matters which are not set forth in the order portion of the decision and therefore the orders are invalid. This mistaken and inverted view of administrative orders is then tested and the argument is made that since the orders fail to meet the inappropriate

and illogical standard of review, that the orders should be stricken.

The operative (order) portion of Order No. R-6446-B contains eleven subsections which: 1) approve the unit agreement; 2) approve the initial plan as a proper conservation measure; 3) require reports to the Commission by the operator of any expansions or contractions of the unit area; 4) require periodic demonstrations by the operator that the unit agreement is operating to prevent waste and protect correlative rights; 5) require that the demonstration of the prevention of waste and protection of correlative rights be made at a public hearing at least every four years; 6) require the submission of all plans of development of the unit area to be submitted to the Commission for approval; 7) require that the operator file tentative four-year plans; 8) specify that the four-year plans shall be for informational purposes only; 9) set forth the requirement of filing the first operating plan; 10) set the effective date of the unit agreement; and 11) state that the Commission retains jurisdiction over this matter. Nowhere in these provisions is there any indication that the operator of the unit or any party participating in the unit is required to submit any of its contractual relationships to the Commission for modification.

I.

THE COMMISSION HAS A STATUTORY DUTY TO ENTER THESE ORDERS WHICH ACT TO PREVENT WASTE PRIOR TO MORE GEOLOGICAL INFORMATION BECOMING AVAILABLE

Orders No. R-6446 and R-6446-B entered by the Oil Conservation Commission find that the approval of the Bravo Dome Carbon Dioxide Unit Agreement would act to prevent waste (see Trial Briefs of respondents for citation of substantial evidence supporting this finding). In addition, Orders No. R-6446 and R-6446-B find that the Bravo Dome Carbon Dioxide Unit Agreement operates to protect correlative rights. This finding is also supported by substantial evidence as demonstrated by briefs and arguments of respondents previously submitted in this matter.

Petitioners complain that respondent Oil Conservation Commission entered its order in this matter prior to all detailed factual data becoming available and in support of such position refers this court to several instances in Order No. R-6446-B in which the Commission states that "at least initially" or "at this time" the orders act to protect correlative rights. Petitioner than argues that since the data is not available to enter an order resolving for all time the correlative rights of all parties in the Bravo Dome Carbon Dioxide Unit, that the Commission is barred from entering any order.

This position is directly contrary to statutory mandates and case law authority in the State of New Mexico placing

requirements on the New Mexico Oil Conservation Commission. A similar argument was made in the case of Grace v. Oil Conservation Commission, 87 N.M. 205, 531 P.2d 939. In that case the court held that the Commission had made findings of fact "insofar as can be practicably determined" and that it would be inappropriate to delay the entry of orders which would act to prevent waste simply because there was insufficient data presently available to accurately and permanently set forth the correlative rights of the respective parties. In that case the court said:

> The prime objective of the statutes under consideration is, "in the interest of the public welfare, to prevent waste of an irreplaceable natural resource." El Paso Natural Gas Co. v. Oil Conservation Com'n, supra. The Graces would have us hold that the Commission is powerless to enter proration orders in respect to newly discovered pools until sufficient data has been gleaned to make the reserve computations. We do not agree. Prevention of waste is paramount, and private rights, such as prevention of drainage not offset by counter drainage and correlative rights must stand aside until it is practicable to determine the amount of gas underlying each producer's tract or in the pool. 87 N.M. at 212. (emphasis added)

The New Mexico Oil Conservation Commission has entered an order directly in line with its statutory mandate as interpreted by the New Mexico Supreme Court in this case. The Commission approved a unit agreement which it found would act to prevent waste, that unit agreement presently acts in an equitable way to protect correlative rights, and that unit agreement provides for subsequent adjustment of the equities as additional information becomes available. (Article 5.2 of Exhibit 1 to the Hearing)

This finding in Grace that the Oil Conservation Commission must accept as its primary responsibility the prevention of waste and must act to prevent waste in situations where detailed factual data may not be available with regard to doing exact

equity between all parties in regard to correlative rights has been followed and explicitly re-adopted in the case of Rutter and Wilbanks Corp. v. the Oil Conservation Commission, 87 N.M. 286, 532 P.2d 582 (1975). In addition the primary case relied upon by petitioners in support of the necessity of detailed findings relating to correlative rights is Continental Oil Co. v. the Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962) supports this position. In that case the court was presented with an order which did not refer to the prevention of waste but relied upon only the duty of protection of correlative rights to support the Commission's action. The court found that in order to support the order under such circumstances, more detailed correlative rights related findings were required but despite such finding that detailed findings were desirable, that court stated that the prevention of waste was "the paramount power" (Continental Oil Co. v. Oil Conservation Commission, 70 N.M. at 318).

That this authority is granted by the statutes is clear, not only from court decision interpreting those statutes, but from the statutes themselves. Section 70-2-11 sets forth the powers of the Oil Conservation Commission to prevent waste and protect correlative rights. That section provides in part that the Commission:

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

For additional statutory authority this court is referred to briefs previously filed in this matter.

In response to the statutory mandate imposed upon it, and by the interpretation of that statutory mandate rendered by the courts of this state in various proceedings, the Oil Conservation Commission in entering Orders No. R-6446 and R-6446-B has acted to prevent waste and has acted to protect correlative rights to the extent practicable. Such action was not only within the statutory authority of the agency, but such action was in fact the duty of the agency.

II.

THE NEW MEXICO OIL CONSERVATION DIVISION IS EMPOWERED TO MAINTAIN CONTINUING JURISDICTION OVER MATTERS PRESENTED FOR ITS CONSIDERATION.

In view of the possibility of changing circumstances, as additional information becomes available, both Orders R-6446 and R-6446-B entered by the New Mexico Oil Conservation Division approving the Bravo Dome Carbon Dioxide Unit Agreement by their own terms retain jurisdiction in this matter "for the entry of such further orders as the Commission may deem necessary." (Order Paragraph No. (11) of Order No. R-6446-B.) The authority of the Commission to retain such jurisdiction is once again found in New Mexico Statutes, New Mexico case law, and is supported by the general rules of administrative law.

Although the power of the New Mexico Oil Conservation Division to exercise continuing jurisdiction has not in the past in reported cases been directly attacked, there is in several cases the implication that the exercise of such jurisdiction is appropriate. Once again this court is specifically referred to the cases Grace v. Oil Conservation Commission, 87 N.M. 205, 531

P.2d 939 (1975) and Rutter and Wilbanks Corporation v. Oil Conservation Commission, 87 N.M. 286, 532 P.2d 582 (1975). In both of these cases the court found that in view of the Commission's primary responsibility for preventing waste that orders entered which acted in the near term to protect correlative rights were appropriate until additional information relative to correlative rights was obtained. In neither of these cases did the court either insist upon the imposition of a formula initially which would be ultimately supportable nor did the court in either of these cases determine that the parties would be permanently and ultimately bound by the formula adopted.

In addition, the court is once again referred to Section 70-2-11 NMSA, 1978, which grants to the Commission the powers necessary to accomplish its duties whether or not specified by statute. The nature of the exploration for, development of, and production of natural resources is by its very nature a complex, long-term operation which cannot be planned with finality at its initial stages. To require the Oil Conservation Commission to adopt or impose, at this time, plans which could not be subsequently amended would prevent the Oil Conservation Commission from performing its duties of preventing waste and protecting correlative rights. By the same token, refusal to allow the Oil Conservation Commission to act at this time would deny to the Oil Conservation Commission the power to perform its statutory duty of preventing waste. The mechanism most suitable in instances of this sort for allowing the Commission to act to perform its statutory duties is the mechanism of allowing the Commission to act presently while retaining jurisdiction for subsequent review and action.

Although this matter has not been directly challenged in New Mexico, there are in the federal system several cases which address the continuing jurisdiction of administrative agencies. In the case of the Environmental Defense Fund v. The Environmental Protection Agency, 465 F.2d 528 (D.C. Ct. App. 1972) the District of Columbia Court of Appeals was confronted with a challenge to an interim decision of the Environmental Protection Agency which decision provided that its interim decision would be reviewed on receipt of additional information. In discussing the propriety of this exercise of continuing jurisdiction, the Court of Appeals stated:

> "That course is sound practice, and indeed is an implicit requirement of law, for the administrative process is a continuing one, and calls for continuing re-examination at significant junctures. Citations omitted. 465 F.2d at 541.

The Environmental Defense Fund case, supra. relied upon American Airline, Inc. v. CAB, 359 F.2d 624 (en banc), cert. denied, 385 U.S. 843, 87 S. Ct.73, 172 Ed.2d 75 (1966) which had a somewhat more extended discussion of the ability of administrative agencies to continue their jurisdiction over matters and subsequently review and possibly amend their decisions. The court in the American Airlines case found that the question before them for review was one which involved expert opinions and forecasts which could not be decisively resolved by testimony and that in light of that type of problem the administrative process was particularly useful because of its ability to continue to oversee and supervise matters. The court said:

> "It is part of the genius of the administrative process that its flexibility permits adoption of approaches subject to expeditious adjustment in light of experience....In any event, it is the obligation of

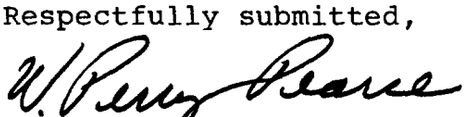
an.... agency to make re-examinations and adjustments in the light of experience." 559 F.2d 624 at 633

It is particularly significant that the ruling of the CAB being challenged in the American Airlines case contained the language "at this time" in referring to certain of its findings. This is precisely the method adopted by the Oil Conservation Commission in the matter presently under review and it is particularly appropriate in situations in which to allow parties to proceed without this order being entered would cause waste and yet to prohibit them from proceeding at all would cause a failure to develop the natural resources in question.

CONCLUSION

In view of the matters presented to this court for its review, both in initial briefs and arguments and in this supplemental brief, the respondent New Mexico Oil Conservation Commission has acted within its statutory authority. The Commission has acted to approve this voluntary unit agreement which acts to prevent waste and to protect correlative rights. Therefore the Commission requests that its orders Nos. R-6446 and R-6446-B be affirmed and that petitioners be denied the relief sought.

Respectfully submitted,



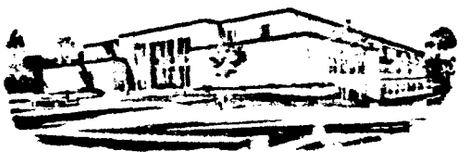
W. PERRY PEARCE
Assistant Attorney General
State of New Mexico
Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

CERTIFICATE

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE FOREGOING BRIEF WAS MAILED TO OPPOSING COUNSEL OF RECORD THIS 17th DAY OF DECEMBER, 1981.

_____

State of New Mexico



Commissioner of Public Lands

ALEX J. ARMIJO
COMMISSIONER

P. O. BOX 1148
SANTA FE, NEW MEXICO 87501

December 17, 1981

Honorable Joseph E. Caldwell
District Judge, Eighth Judicial District
P. O. Box 1715
Taos, New Mexico 87571

Re: Robert Casados, et al. v. Oil Conservation Commission, Civil No. 81-176

Dear Judge Caldwell:

I am enclosing herewith the Intervenor's Supplemental Brief for your review in the above-styled cause.

A copy of this brief has been filed with the District Court Clerk.

Thank you kindly.

Very truly yours,

J. Scott Hall
Legal Counsel for the
Commissioner of Public Lands

JSH:cw
Enclosure
cc: Ernest L. Carroll
W. Perry Pearce
Wm. F. Carr
W. Thomas Kellahin

STATE OF NEW MEXICO COUNTY OF TAOS

IN THE DISTRICT COURT

ROBERT CASADOS, et al.,	)	
	)	
Plaintiffs,	)	Union County No. CV 81-18
	)	
v.	)	Quay County No. CV 81-00015
	)	
OIL CONSERVATION COMMISSION, et al.,	)	Harding County No. CV 81-00001
	)	
	)	(Consolidated)
Defendants.	)	(81-176)

INTERVENOR'S SUPPLEMENTAL BRIEF

PRELIMINARY STATEMENT

The Petitioners in this proceeding have initiated judicial review of the Oil Conservation Commission's approval of the voluntary Bravo Dome Carbon Dioxide Unit Agreement covering lands in Harding, Quay and Union Counties, New Mexico. By statutory mandate, the New Mexico Legislature allows judicial review of the Commission's administrative orders. See § 70-2-25 NMSA, 1978 Comp. However, the statutory scope of review is expressly limited: "...provided, however, that the questions reviewed on appeal shall be only questions presented to the Commission by the application for rehearing." § 70-2-25 (B), supra. Thereby, the extent of authority of the courts in proceedings of this type, e.g. judicial review of administrative functions, is clearly set out in this case.

Counsel for all parties in this case were asked to brief additional matters raised by counsel for the Petitioners at the time of the trial: Specifically, the authority of the Oil Conservation Commission to exercise continuing jurisdiction over the unit upon the basis of preliminary findings. However, a perusal of the original Application for Rehearing will show that such an issue, even by implication, was not raised at that crucial point in time. Moreover, the Petition to Appeal filed in February, 1981,

was aimed solely at the sufficiency of the evidence used to support the Commission's findings. It was not until the oral presentation by counsel for Petitioners at the trial setting that the issue of the authority of the Oil Conservation Commission was first raised. Notably, the issue was not raised by motion, thereby denying opposing counsel an opportunity by proper procedural means to object to its introduction.

It is asserted here that should Petitioners have wished to attack the Commission's authority, it should have done so in the proper forum: specifically, at the Rehearing. Having failed to do so, the issue is consequently waived and not properly brought before the court. See, Arnstad v. No. Dakota State Industrial Comm., 122 N.W. 2d 857 (1963); and, California Co. v. State Oil and Gas Bd., 200 Miss. 824, 27 So. 2d 524, cited in Continental Oil Co., v. Oil Conservation Commission, 70 NM 310 at 325, 373 P.2d 809 (1962). Moreover, because of common law notions of fair play in pleadings of causes, the Petitioner must necessarily be limited to what was specifically pleaded 'lest the opposing parties be placed at an unfair disadvantage. See, In re Jane Doe, 87 NM 253, 531 P.2d 1226 (Ct. App.), cert. denied, 87 NM 239, 531 P.2d 1212 (1975); Wynne v. Pino, 78 N.M. 520, 433 P.2d 499 (1967).

It is also asserted that because of the statutory limitation upon judicial review (§ 70-2-25 (B) NMSA, 1978 Comp.), the issue of Commission authority cannot be here raised by any sort of amendment to the pleadings as contemplated by Rules 8 and 15 of the New Mexico Rules of Civil Procedure. See, Moya v. Fidelity Gas Co., 75 N.M. 462, 406 P.2d 173 (1965); Wells v. Arch Hurley Conservancy Dist., 89 N.M. 516, 554 P.2d 308 (1954).

For these reasons, the Intervenor respectfully objects hereby to the raising of this issue to the Court by Petitioners.

THE OIL CONSERVATION COMMISSION POSSESS THE REQUISITE AUTHORITY TO APPROVE UNITS ON THE BASIS OF PRELIMINARY INFORMATION

Assuming, arugendo, that the issue is properly raised, which it is not, Petitioners have questioned the authority of the Oil Conservation Commission (OCC) to approve the Bravo Dome Carbon Dioxide Unit on the basis of preliminary data relating to conservation, prevention of waste and protection of correlative rights.

In order to properly examine the issue, reference must be had to the enabling authority of the OCC found generally at §§ 70-2-11 and 70-2-12 NMSA, 1978 Comp. The broad powers delegated to the OCC necessary for it to achieve its statutory objectives are set out in § 70-2-11, supra, which provides:

> A. The division is hereby empowered, and it is its duty, to prevent waste prohibited by this act and to protect correlative rights, as in this act provided. To that end, the division is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof.
>
> B. The commission shall have concurrent jurisdiction and authority with the division to the extent necessary for the commission to perform its duties as required by law. (emphasis supplied)

Hence, the OCC possesses broad discretionary powers in the administration and enforcement of the legislative policies concerning conservation, waste and correlative rights. By reasonable interpretation, the OCC's powers"...to do whatever may be reasonably necessary..." must, by the very nature of the technical complexities of the oil and gas business, include the authority to approve such voluntary units on the best information available, even if 'preliminary' in nature. Indeed, the Commission's

enabling statute does not expressly prohibit or limit to certain types, the kinds of data which may provide the basis for its findings.

In the creation of a unit such as the Bravo Dome, it is desirable to define the vertical extent of the unit as closely as possible to the actual production limits of the gas reservoir. But even with the best available technology, no geologist, engineer, or conservation agency can positively define the absolute reservoir boundaries. Indeed, in such units, it is one goal to explore for and find those limits. Consequently, there will always be a reasonable margin of doubt as to the exact reservoir limits at the time of unitization and agency approval.

Needless to say, in the operation of any unit systematic development is looked upon to be the primary means of achieving economic as well as physical conservation of gas reserves. Where the plan of unit development must be premised upon limited data available from only partial or exploratory development, preliminary efforts are made to reach agreement upon the extent and character of the reservoir. From that point, unit participation is enjoyed by all tracts whether drilled or not, and it is customary that adjustments are made as drilling progresses under the unit plan and more field data obtained. Such unitization has tremendous advantages as there is orderly, economic and intelligent development of the field from the inception of the plan. This type of unitization method has long been recognized by industry in exploratory and development units and is commonly referred to as the "Benton Plan". [See, generally, Kirk, "Content of Royalty Owners' and Operators' Unitization Agreements," Third Annual Institute on Oil and Gas Law and Taxation, Southwest Legal Foundation, 1952; § 12.1.3 of the A.P.I. Model Form of Unit Agreement; Texaco, Inc. v. Vermilion Parish School Board, 244 La. 408, 152 So. 2d 541 (1963).]

It is the recongized rule and practice, irrespective of the express or implied meaning of authority granting statutes, that conservation agencies possess the power to review, modify, supplement or set aside its conservation orders at any time. Continental Oil Co. v. Oil Conservation Comm'n., 70 N.M. 310, 373 P.2d 809 (1962); Aylward Production Corp. v. State Corporation Comm'n., 102 Kan. 428, 176 P.2d 861 (1947); And see, §§ 70-2-11 and 70-2-12 (B) (12) NMSA, 1978 Comp.

Indeed, particularly where order approving exploration and development units have been issued, regulatory agencies of all the states are continually amending, supplementing, setting aside, or granting exceptions to their orders because of change of condition, inadequacies or errors in existing orders, improved technologies or because additional knowledge is brought to light.

The authority to apply such a fluid concept in administering its actions and orders is inherent in the conservation agencies' general powers and continuing responsibility to prevent waste and protect correlative rights. Indeed, Texas case law has stated that the principle is so well established as to require no citation of authority. Railroad Comm'n. v. Humble Oil and Ref. Co., 193 S.W. 2d 824 (Tex. Civ. App. 1946). To hold otherwise that the Oil Conservation Commission is without the power to make its findings and issue its orders on the basis of the best information available to it and then later modify its orders would be to emasculate the agency and defeat its statutory purposes.

With this view toward the public policies underlying the conservation laws, it has become the inclination of the law that regulatory agency orders should not be subject to the rigid strictures of the doctrine of res judicata and be set in concrete. See, Hartman v. Corp. Comm'n., 215 Kan. 758, 529 P.2d 1934 (1974 ; 2 K. Davis, ADMINISTRATIVE LAW TREATISE §§ 18.03, et. seq. This legal theory is premised on the nature of such regulatory orders as being prospectively legislative rather than retrospectively

adjudicatory in nature. 2K. Davis, supra, § 1803.

However, even where, as here, the agency order may be thought of as adjudicating previously vested rights such as allocation and unit participation, the res judicata doctrine can be relaxed and the order modified, as opposed to the rather harsh alternative of having to set the order aside. The case of Corley v. State Oil and Gas Board is right on point and presents strong parallels to the issue at bar. Corley v. State Oil and Gas Board 234 Miss. 199, 105 So. 2d 633 (1958).

In Corley, the Mississippi Oil and Gas Board, on the basis of available evidence, issued an order approving a voluntary untization with a 100% acreage participation formula. Subsequently, the conservation agency increased the maximum efficient rate of production and enlarged the size of individual drilling units, effectively expanding the unit area to include additional acreage. Consequently, the effect of the agency's second order was to reduce the participation of the mineral owners under the original order, thus generating an appeal by some owners.

Of necessity, the field expansion order in Corley was based upon reservoir information that was unavailable at the original hearing. The Mississippi Supreme Court's response in Corley, nonetheless, was to reaffirm that the original order, 'though based upon preliminary data at the time, was in fact adequately supported by substantial evidence and was subject to refinement upon additional data. The court stated:

> What the Board in fact did was to redefine the field and reservoirs according to the facts if found at the hearing. It increased the size of the field, because the undisputed evidence reflected that the increased area was underlain with oil of varying depths. Clearly, the Board had the power to define the zero isopach line of the pool. Corley v. State Oil and Gas Board, 105 So. 2d 633.

Unquestionably, the initial approval and subsequent modification of the unit was proper and reasonably necessary in order to comport with the policy behind the state's conservation laws. For that reason, the conservation agency's authority to act in such a

manner is reasonably found by implication within the general ambit of its overall statutory mandate to prevent waste and protect correlative rights.

This view is shared by the New Mexico Supreme Court:

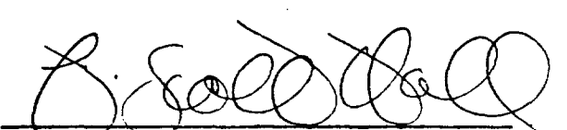
> Nothing we have said to now is contrary to Continental Oil, supra. When the Commission exercises its duty to allow each interest owner in a pool "his just and equitable share" of the oil or gas underlying his property, the mandate to determine the extent of those correlative rights, as prescribed by § 65-3-29 (11), N.M.S.A. 1953, is subject to the qualification "as far as it is practicable to do so." See Grace v. Oil Conservation Comm'n. While the evidence lacked many of the factual details thought to be desirable in a case of this sort, it was because the appropriate data was as yet obtainable. We cannot say that the exhibits, statements and expressions of opinion by the applicant's witness do not constitute "substantial evidence" or that the orders were improperly entered or that they did not protect the correlative rights of the parties "so far as [could] be practicably determined" or that they were arbitrary or capricious. (Emphasis supplied) Rutter and Wilbanks Corp. v. Oil Conservation Commission, 87 N.M. 286 at 292, 532 P.2d 582 (1975). See, also, Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962); Grace v. Oil Conservation Commission, 87 N.M. 205, 531 P.2d 939 (1975).

Moreover, in aid of an administrative agency's jurisdiction and authority to accomplish its statutory duties, the New Mexico Supreme Court has held: "...the authority of an agency is not limited to those powers expressly granted by statute, but includes all powers that may be fairly implied therefrom" Wimberly v. New Mexico State Police Bd., 83 N.M. 757 at 758, 497 P.2d 968. The Supreme Court has further stated in Public Service Co. of New Mexico v. New Mexico Environmental Imp. Bd., 89 N.M. 223, 549 P.2d 638, that "...The authority granted to an administrative agency should be construed so as to permit the fullest accomplishment of the legislative intent or policy." 89 N.M. at 223. Surely, then, it is within the authority of the Oil Conservation Commission to consider its orders on the basis of even preliminary data where it deems appropriate.

CONCLUSION

The enabling statutes of the Oil Conservation Commission issue a legislative mandate to that agency to prevent waste and protect correlative rights. In order to achieve these policy goals of the state, the applicable statutes and case law stand for the proposition that the Oil Conservation Commission has the authority to do whatever is reasonably necessary toward those ends. As shown by the evidence in the record, the Commission, in approving the Bravo Dome Carbon Dioxide Unit, has acted in a manner clearly within its authority. Further, the applicable law on the matter does not support the cause of the Petitioners. It is respectfully submitted, therefore, that the Petition be denied and the orders of the Oil Conservation Commission be affirmed.

Respectfully submitted,



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Commissioner of Public Lands
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Santa Fe, New Mexico 87501
(505) 827-2743

CERTIFICATE

I hereby certify that I mailed a copy of the foregoing pleading to opposing counsel of record 12-17, 19 81.

JSH

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December 18, 1981

Ms. Tina V. Martinez
District Court Clerk
Taos County Courthouse
Post Office Box 1715
Taos, New Mexico 87571

Re: Robert Casados, et al., v. Oil Conservation Commission, et al; Taos County Cause No. 81-176

Dear Ms. Martinez:

Enclosed for filing in the above-referenced cause is the Supplemental Trial Brief of Defendant Amoco Production Company.

By copy of this letter, all counsel of record are receiving a copy of this pleading.

Very truly yours,

William F. Carr

WFC:lr

Enclosure

cc: Ernest L. Carroll, Esq.
Perry Pierce, Esq.
W. Thomas Kellahin, Esq.
J. Scott Hall, Esq.

STATE OF NEW MEXICO COUNTY OF TAOS

IN THE DISTRICT COURT

ROBERT CASADOS, et al.,

Plaintiffs,

v. No. 81-176

OIL CONSERVATION COMMISSION, et al.,

Defendants.

SUPPLEMENTAL TRIAL BRIEF OF DEFENDANT AMOCO PRODUCTION COMPANY

Defendant, Amoco Production Company, submits this supplemental trial brief in response to questions raised by the court at the December 7, 1981 hearing on this appeal. The questions are:

1. Does the Oil Conservation Commission have continuing jurisdiction over a case after a final order has been entered?

2. Can the Oil Conservation Commission approve a unitization agreement before the limitations of the field have been determined to a geologic probability?

Oil Conservation Commission Orders R-6446 and R-6446-B approved the Bravo Dome Carbon Dioxide Unit Agreement, but imposed certain conditions on its approval. Findings 28 through 32 of Order R-6446-B set forth those conditions as follows:

> (28) That the Commission is empowered and has the duty with respect to unit agreements to do whatever may be reasonably necessary to prevent waste and protect correlative rights.
>
> (29) That the Commission may, and should, exercise continuing jurisdiction over the unit relative to all matters given it by law and take such actions as may, in the future, be required to prevent waste and protect correlative rights therein.
>
> (30) That those matters or actions contemplated by Finding No. (29) above may include but are not limited to: well spacing, requiring wells to be drilled, requiring elimination of undeveloped or dry acreage from the unit area, and modification of the unit agreement.

(31) That the unit operator should be required to periodically demonstrate to the Commission that its operations within the unit are resulting in prevention of waste and protection of correlative rights on a continuing basis.

(32) That such a demonstration should take place at a public hearing at least every four years following the effective date of the unit or at such lesser intervals as may be required by the Commission.

At the December 7, 1981 hearing, plaintiffs attacked the orders approving the Bravo Dome Unit Agreement on the grounds that the Commission's approval was contingent upon its continuing jurisdiction over the case; that the Commission lacked continuing jurisdiction over the order and; that this jurisdictional defect rendered the order void.

I.

THE OIL CONSERVATION COMMISSION HAS CONTINUING JURISDICTION OVER A CASE AFTER A FINAL ORDER HAS BEEN ENTERED.

This point deals only with the power of the Oil Conservation Commission to reopen and rehear a case after a final order in the case has been entered. It does not consider what actions might be taken by the Commission in such a rehearing. Subsequent actions by the Commission, if any, are not jurisdictional matters. See, Grace v. Oil Conservation Commission, 87 N.M. 205, 531 P.2d 939, 942-943 (1975). At the December 7 hearing, plaintiffs expressed concern about a number of actions that the Commission might take following a rehearing. Subsequent decisions the Commission, if any, would have to be consistent with its statutory authority. The legality of such decisions cannot be determined until the Commission acts.

An administrative agency can exercise continuing jurisdiction over its orders and decisions only if such authority is expressly granted by statute or if the exercise of continuing jurisdiction has been granted to the agency by implication. Kennecott Copper Corp. v. Employment Security Comm., 78 N.M. 398, 432 P.2d 109 (1967).

There is language in the New Mexico Oil and Gas Act which clearly shows that the Oil Conservation Commission has continuing jurisdiction over its orders. §70-2-23 N.M.S.A. 1978 provides in part as follows:

> 70-2-23 HEARINGS ON RULES, REGULATIONS AND ORDERS -- NOTICE -- EMERGENCY RULES. -- except as provided for herein, before any rule, regulation or order, including revocation, change, renewal or extension thereof, shall be made under the provisions of this Act, a public hearing shall be held at such time, place and manner as may be prescribed by the Division.

This section requires the Commission hold a public hearing prior to changing, revoking, renewing or extending any of its orders. Unless it had continuing jurisdiction over its orders, such hearing could not be held by the Commission.

Even if this section of statute is not construed as expressly conferring on the Commission continuing jurisdiction over its orders, such power has been granted to the Commission by implication.

In determining whether the power to reopen and reconsider its prior final decisions have been conferred by implication on an administrative agency, we must first construe the statutes which govern the agency's actions to determine what was the intention of the legislature concerning continuing jurisdiction. Kennecott, supra. In Reese v. Dempsey, et al., 48 N.M. 417, 152 P.2d 157 (1944) the New Mexico Supreme Court found that the intention of the legislature ". . . is the primary and controlling consideration in determining the proper construction" of an act. Furthermore, in reviewing an Act, the entire statute should be considered. Allen v. McClellan, 75 N.M. 400, 405 P.2d (1965); State v. Wylie, 71 N.M. 477, 379 P.2d 86 (1973); Reese, supra pp. 161, 162.

The Commission has been granted broad powers and

responsibilities of a continuing character. The general scope of these powers is announced in two sections of the Oil and Gas Act:

> 70-2-6 COMMISSION'S AND DIVISION'S POWERS AND DUTIES. -- A. The Division shall have, and is hereby given, jurisdiction and authority over all matters relating to the Conservation of oil and gas and the prevention of waste of potash as a result of oil or gas operations in this state. It shall have jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of this Act or any other law of this state relating to the conservation of oil or gas and the prevention of waste of potash as a result of oil or gas operations.
>
> 70-2-11 POWER OF COMMISSION AND DIVISION TO PREVENT WASTE AND PROTECT CORRELATIVE RIGHTS. -- A. The Division is hereby empowered, and it is its duty, to prevent waste prohibited by this Act and to protect correlative rights, as in this Act provided. To that end, the Division is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purposes of this Act, whether or not indicated or specified in any section hereof.

(The Commission is granted the same power and authority as is conferred upon the Division in the above quoted sections of statute.)

The Oil and Gas Act contains broad definitions of waste and correlative rights. "Waste" is defined to include surface waste, underground waste, production in excess of reasonble market demand and non-ratable taking. §70-2-3-NMSA 1978. "Correlative rights" is defined as affording each property owner in a pool the opportunity to produce his just and equitable share of the oil or gas in the pool. §70-2-33 NMSA 1978.

It is necessary that the Commission be able to reopen and reconsider its decisions for an order which complies with both of the Commission's statutory duties when entered may be discovered to violate correlative rights or cause waste as subsequent data becomes available. To hold that the Commission did not have continuing jurisdiction over its orders would make it impossible for it to efficiently perform its statutory duties. As the Supreme Court of New Mexico noted in Kennecott, supra:

> When a power is conferred by statute, everything necessary to carry out the power and make it effective and complete will be implied.

Also see, Reese, supra; State Ex Rel Clancy v. Hall, 23 N.M. 422, 168 P.2d 715.

The power of an agency to reopen and reconsider a decision has been generally sustained where the function of the agency was classified as non-judicial, administrative, executive, or ministeral and has been denied when the function was classified as judicial or quasi-judicial. 73 ALR.2d 954.

In Wilbur v. United States, 281 U.S. 206, 74 LEd 809, 50 S.Ct. 320 (1930) the United States Supreme Court reviewed the power of the Secretary of the Interior to reconsider and revoke final decisions concerning the rights of certain Indians to share in tribal properties. In upholding the power of the Secretary to reconsider these decisions the Court stated:

> "The decision . . . was, not a judgment pronounced in a judicial proceeding, but a ruling made by an executive officer in the exertion of administrative authority. That authority was neither exhausted nor terminated by its exertion on that occasion, but was in its nature continuing. Under it the Secretary who made the decision could reconsider the matter and revoke the decision if found wrong; and so of his successor. The latter was charged, no less than the former had been, with the duty of supervising the payment of the interest annuities. . . ." Wilbur, supra. at 324.

Also see, Siegel v. Mangan, 258 App. Div. 448, 16 NYS2d 1000.

Contrary to the assertions by the plaintiffs in this case, the Oil Conservation Commission does not perform a judicial or quasi-judicial function. In Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809, 818 (1962), the New Mexico Supreme Court reviewed the nature of the Oil Conservation Commission and found that in preventing waste and protecting correlative rights it acts under "legislative mandate". The Court proceeded to find: "As such, it is acting in

an administrative capacity in following legislative directions, and not in a judicial or quasi-judicial capacity."

In carrying out its administrative duties, the Commission authority is of a continuing nature and as such it has the power to reopen and reconsider its decision and orders.

The authority to prescribe its own rules of practice and procedure has also been found to support the continuing authority of an administrative agency to reopen and reconsider a final decision.

In Atlantic Greyhound Corp. v. Public Service Commission, 132 W.Va. 650, 54 SE.2d 169, 175 (1949) the Supreme Court of West Virginia found that the Public Service Commission of that state had continuing jurisdiction over its orders by implication. In reaching this conclusion, the court stated:

> Denial of the authority of the Commission to rehear a matter of which it has jurisdiction, in view of its power to prescribe rules of practice and procedure... would disrupt the orderly discharge of the duties and functions which the Legislature, by the enactment of statutes has required it to perform; produce confusion and uncertainty; and add to the number and frequency of unnecessary appeals. Unless legally necessary, a conclusion which produces those results should not be adopted. In the absence of any limitation or precept of law which requires disavowal of that right, and it seems there is none, the power of the Commission to rehear a proceeding of which it has and retains jurisdiction will be recognized and its effective operation sustained and upheld."

The New Mexico Oil and Gas Act authorizes the Oil Conservation Commission to "prescribe its rules of order or procedure in hearings or other proceedings before it. §70-2-7 and 70-2-13 NMSA, 1978. Such power and the general authority cited above further supports the argument that the Commission has continuing authority over its orders by implication.

The case before the court demonstrates the need for the Commission to have continuing jurisdiction over its orders and decisions if it is to effectively and efficiently carry out its

statutory duties. The Commission approved the Bravo Dome Unit Agreement finding that it, at least initially, is fair to the owners of interest therein (Order R-6446-B, Finding 25). Additional evidence would have been desirable but, due to the fact that this is an exploratory unit, that data is as yet unobtainable. The New Mexico Supreme Court has found that, in a situation like this, where certain data is not yet obtainable, the Commission can rely on what is available and enter an order to protect correlative rights. Rutter and Wilbanks v. Oil Conservation Commission, 87 N.M. 286, 532 P.2d 582 (1975). If the Commission did not have continuing jurisdiction and if, as additional evidence was obtained, it appeared that correlative rights were being impaired, the Commission would be unable to change its original order.

As noted above, the Oil and Gas Act contains language which shows the legislature intended the Oil Conservaton Commission to have continuing jurisdiction. This agency was directed by the legislature to carry out the administrative functions of preventing the waste of oil and gas and protecting the correlative rights of operators in oil and gas fields. The functions of the agency are broad in scope and of a continuing character which require that it be empowered to reopen and reconsider its decisions as conditions warrant. The absence of such power to reconsider would render the Commission unable to carry out its duties.

The Commission's finding on continuing jurisdiction in Order R-6446-B approving the Bravo Dome Unit Agreement is a correct statement of its authority. How the Commission might act in exercising this power is a matter which cannot be reviewed until the Commission exercises this jurisdiction.

II.

THE OIL CONSERVATION COMMISSION HAS THE POWER TO APPROVE A UNITIZATION AGREEMENT BEFORE THE LIMITATIONS OF THE FIELD HAVE BEEN DETERMINED TO A GEOLOGIC PROBABILITY.

The Commission's power to approve unit agreements comes from its broad statutory authority to do whatever may be reasonably necessary to prevent waste and protect correlative rights as set out in the Oil and Gas Act. §70-2-11 NMSA, 1978.

In Continental, supra, p. 818, the New Mexico Supreme Court found that the prevention of waste is the paramount interest and the protection of correlative rights is subservient thereto. The Court also held in Grace v. Oil Conservation Commission, 87 N.M. 205, 531 P.2d 939, 946 (1975) that "Prevention of waste is paramount, and private rights, such as prevention of drainage not offset by counter drainage and correlative rights must stand aside until it is practical to determine the amount of gas underlying each producer's tract or in the pool."

The evidence present in the case, as was fully set out in the Trial Brief of Defendant Amoco Production Company, showed that substantial benefits will be derived from unitized operations of the Bravo Dome Unit Area. These benefits include (1) more efficient development and production of carbon dioxide, (2) elimination of wasteful duplication of material and equipment and (3) more efficient well spacing. All of these benefits will result in reduced costs, extended economic lives of wells within the unit, and greater ultimate recovery of carbon dioxide -- which in turn result in the prevention of waste. See, §70-2-3 NMSA, 1978.

Benefits of unitization for primary production can only be obtained if the field is unitized at an early stage in its development when the full extent of the field often cannot be

determined to a geologic probability.

In Rutter and Wilbanks v. Oil Conservation Commission, 87 N.M. 286, 532 P.2d 582, 587-588 (1975), the Commission entered orders approving to nonstandard spacing units which contained substantially more acres than allowed by state-wide rules. Rutter and Wilbanks challenged the orders on the grounds that part of the lands in the spacing units contained no recoverable reserves and that their interests were being diluted by inclusions of these lands. In upholding the Commission's decision, the New Mexico Supreme Court noted ". . . it also appears that the Washington Ranch - Morrow Pool is still being developed and proof as to its recoverable reserves and its limits and character is far from complete." The Court then quoted with approval the following language froma similar case from Oklahoma:

> "We also recognized the risk, without such a requirement (and under wide spacing) of some owners of mineral interests being enabled to share, at least, for a time, in production to which subsequently developed knowledge (whether gained from wells later drilled on smaller units, or otherwise) indicates they were never entitled, because of the (subsequently established) unproductivity of the locus of their interest. But, in said opinion (p. 853) we had also noted that the prevention of wasteful, excessive drilling (as well as the protection of correlative rights) was a primary legislative consideration in the enactment of the original Well Spacing Act. And, we concluded that it has been the policy of the Legislature to tolerate the lesser hazard (i.e., the possibility that some production, or production proceeds, may be taken from some owners rightfully entitled to it, and transmitted to others not so entitled) . . . in preference to the greater hazard to the greater number of owners and the State in the dissipation of its natural resources by excessive drilling . . . Landowners, Oil, Gas and Royalty Owners v. Corporation Comm., 415 P.2d 942, 950 (1960), referring to Panhandle Eastern Pipeline Co. v. Corporation Comm., 285 P.2d 847 (1955).

Rutter and Wilbanks involved a Commission decision approving a spacing unit based on less data than was desirable as to the extent of the limits of the producing field. It was known

if all lands sharing in the proceeds from production from the wells on these spacing units were actually contributing reserves to the wells.

In the Bravo Dome unit area, the Commission is operating with less data than is desirable as to the full extent of the Tubb Formation but, as in Rutter and Wilbanks, that is because certain data is as yet unobtainable. Yet in both cases the Commission approved the applications on the grounds that such approval would prevent the waste of gas and carbon dioxide. It also found in both cases that orders protected the correlative rights of interest owners in the pool.

In Rutter and Wilbanks, the court upheld the Commission's orders on the grounds that it protected correlative rights as far as it was practicable to so citing Grace, supra. See, Trial Brief of Defendant Amoco Production Company, pp. 10-11.

Rutter and Wilbanks provides authority for the Commission to approve unitization agreements as well as application for non-standard spacing units prior to the time the full limits of the field are established to a geologic probability. In each case, the same basic considerations are involved. In both instances the Commission must act to prevent waste and to protect correlative rights as far as it is practicable to do so.

It is the very nature of the oil and gas business that with each new well drilled in a pool, more data becomes available about that pool. If the Commission could not approve a voluntary unit until the pool limits were fully known few, if any, units could be approved and a unit could never be approved until the pool had been developed to such an extent that it would be too late to derive the above-noted benefits of unitized operations.

For over 40 years unitization has been a fundamental tool used to conserve oil and gas. If no pool could be unitized until

the full extent of the field was known to a geologic probability, the effect of unitization agreements would be defeated and the validity of hundreds of units in the State of New Mexico would be called into question.

CONCLUSION

Defendant Amoco Production Company submits that:

(1) the New Mexico Oil Conservation Commission has continuing jurisdiction over its orders enabling it to reopen and reconsider its decisions as circumstances require.

(2) the Commission also has the authority and duty to approve unitization agreements prior to the time when the limits of the producing field are known to a geologic propbability, and

(3) Orders R-6446 and R-6446-B should be affirmed.

Respectfully submitted

CAMPBELL, BYRD & BLACK, P.A.

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Certificate of Mailing

I hereby certify that true copies of the foregoing pleading were mailed to all counsel of record this 18th day of December, 1981.

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December 16, 1981

Honorable Joseph E. Caldwell
District Judge
8th Judicial District
P. O. Box 1715
Taos, New Mexico 87571

Re: Case No. 81-176 (Consolidated)
Robert Casados, et al, vs. Oil
Conservation Commission, et al

Dear Judge Caldwell:

We submit this letter as a post submission brief to supplement the trial brief that we presented at the commencement of the hearing on December 7.

We have looked for legal authority dealing with a contract among proprietors of property interests which requires, as a precondition, that the agreement be approved by a regulatory agency of government before the agreement may become an effective contract binding on the parties to the contract. More particularly, we have been searchinng for authorities dealing with a situation in which the regulatory agency gave tentative, preliminary, revocable or conditional approval, or approval with revocations, as such might affect whether the contract became an effective contract binding on the parties thereto, or whose interests were bound thereby.

The federal government in its proprietary capacity, as distinguished from its regulatory capacity, in its form of unit agreement affecting federal leases, authorizes the Government to revoke a unit agreement under certain circumstances pertaining to drilling, development and participation formulae. This form may be found in 6 Williams and Meyers, Oil and Gas Law, beginning at page 362. This refer-

ence is treated extensively in Plaintiff's Brief in support of its Motion for Rehearing before the Commission and which is a part of the record in this case. This example of a reserved power over the unit agreement, however, is one contemplated, contained in and forming a part of the agreement itself, is reserved by a proprietor in its proprietary capacity, and does not involve the function of a regulatory agency exercising its regulatory function. There is, of course, a great deal of law on the general subject of the enforceability of preconditions which must be satisfied before a contract becomes effective which is a part of the contract itself. This sort of authority is based on general, common law contract principles that courts will give effect to the mutual intent of the parties to a written contract as the court can determine the mutual intent, giving effect to all parts of the written instrument. We find no authority, however, for the proposition that preliminary, tentative, revocable, amendable or terminable approval of a regulatory agency, or one with reservations, is the equivalent of approval required by the terms of the contract to become effective and binding on the parties thereto, unless the agreement itself allows such.

In the rehearing before the Commission, Amoco Production Company proffered up some evidence that the more wells that might be drilled, the greater are the chances that a truck driver might hit a wellhead with his truck to cause gas to be wasted while the wellhead iss being repaired. It also offered testimony that if the Unit Operator did not have the free use of the surface estate in the unit area, more than 4,000 surface installations might have to be built in the unit area, at considerable cost, whereas 6 sites might suffice were the surface to be unitized. Ergo, such additional costs of operation could create a form of waste. Amoco also offered proof that without unitization it might have to drill more wells at more and different locations than it would under unit operations and that such might cause waste. Mr. Carr, in his oral argument, made reference to such evidence in the record.

Without in anyway delving into the weight, sufficiency or probativeness of the evidence offered by Amoco on rehearing before the Commission, it should suffice to note

that the Commission did not adopt Amoco's evidentiary theories in its findings. To the contrary, the Commission adopted the position that it could not tell at this time whether, in fact, the proposed agreement would prevent waste and would protect the correlative rights of owners of interest in the proposed unit. Accordingly, it adopted "safeguards", by reserving the right, power, and presumably the duty and obligation, in the future, to do whatever was necessary to prevent waste and protect correlative rights, including, but not limited to, requiring wells to be drilled, requiring elimination of undeveloped or dry acreage from the unit area and modification of the Unit Agreement, notwithstanding that not a single person privy to the proposed agreement has ever agreed that they or their property rights may be bound by such reservations.

Ten years ago or so, in the unit area we had undeveloped fee owned interests in oil, gas and other minerals, the legal rights in which were determined by the common law and constitutionally protected rules of property, subject to reasonable regulations by the State in the exercise of the State's police powers. As the owners of such property rights made oil and gas leases, the legal rights of those interested in oil, gas and other minerals accordingly were granted, reserved and modified, to thereafter be governed by the contractual terms and provisions of the oil and gas leases, express and implied, again subject to reasonable and lawfully exercised police powers of the State. The contracts in effect in the form of leases became protected by the constitutional limitations on the power of the State to abrogate contracts contained in the Bill of Rights of the New Mexico Constitution, Article II, Section 19, and Article One, Section 10, Cause 1, of the Constitution of the United States.

Before and during the pendency of the proceeding before the Commission, the owners of property rights in the proposed unit area entered into a proposed contract among themselves to modify their property rights in certain particulars on the proviso that the Commission, or its division, must approve the agreement before it could ever become effective. There is no agreement that it would become effective if the Commission approved some other agreement,

or whatever agreement the Commission might dictate. Always, of course, the rights of the parties to the proposed agreement were subject to the lawful exercise by the State of its police powers properly balanced against the limitation on the State powers to abrogate contracts. In its arsenal of police powers, the State has the power to limit the number of wells that might be drilled by designating the size of spacing or proration units, within reason, and by limiting the rates of production that will be allowed from wells to prevent waste, including economic waste. It can also require certain affirmative acts, such as plugging wells, extinguishing fires, and the like. None of these powers to require the performance of affirmative acts, however, that we can find, have ever been extended to hold that the Commission can write new contracts or otherwise modify such contracts, or to take a property from one private person to award to another private person.

The Commission, on rehearing, has approached the problem as though the properties were no longer private properties but, rather, are public properties or quasi-public properties which it may regulate as a public utility. There is now no legislatively or constitutionally granted authority in the Commission to manage or to direct the management of carbon dioxide deposits as public or quasi-public properties under public direction. Yet, that is precisely the role that the Commission unlawfully adopted for itself on rehearing. Even a lawfully constituted utility regulator cannot lawfully exercise any of the powers that the Commission claims for itself in this case, short of first condemning the affected property rights under some grant of authority that has yet to be ceded to it.

The Plaintiffs fear Amoco's virtual absolute control on the Bravo Dome area under the proposed Unit Agreement, more than they fear control over and adverse changes in their property rights by a quasi-legislative body whose membership is determined through political processes. Their concern is that the Unit Agreement, with its concentration of power and elimination of corresponding duties, will be held to be effective and that thereafter the courts will hold that the powers reserved by the Commission to compel development, to change the composition of the unit,

to change the Sharing Agreement, and otherwise to modify the Unit Agreement will be held ineffective and of no force and effect, leaving the Unit Agreement in effect or so balled up in controversy that it will take years and fortunes to sort out. With Amoco as a participating party in this case, along with the Commissioner of Public Lands, Amerada Hess and Cities Service, in support of the order under attack, and if perchance the proposed Unit Agreement is to be allowed to become effective by the Court, we would hope and expect that the Court would judicially bind them to recognize that the powers and authority reserved by the Commission are as the Commission said they are in its promulgation of its "safeguards". With the Commission approval of the Unit Agreement, "with these safeguards", it would be a monumental travesty were it hereafter to be held that the safeguards are ineffective, but that the Unit Agreement is enforceable.

While doing our briefing, both before and after the trial, we looked just about everywhere we could think of to find where a regulatory agency of the State might have taken upon itself the power to mandatorily enjoin an oil and gas operator to drill wells the operator didn't want to drill, or to produce gas that an operator didn't want to produce, or to build pipelines that an operator didn't want to build, or to modify contracts that an operator and those in privity of contract with him didn't want to modify, or to market gas at a wellhead price the operator didn't want to pay, or to sell gas that an operator didn't want to sell but wanted to use himself. Our search for such any such factual situation has been completely fruitless. Where issues have arisen concerning development, production and marketing, such have been on the motion of the landowners, seeking remedies for breach of the express or implied contractual provisions of their leases, all of which the proposed Unit Agreement completely eliminates.

In judicial review, we believe that the Court will see that the Commission's actions were based on a false basic premise concerning its lawful powers, and that having clearly acted on such false basic premise, the Commission's order must be vacated so that the affected parties can go about the business of unitizing, if they will, in a manner

that protects both the rights of the property owners as well as the public interest. Unitization under a proper agreement can undoubtedly be beneficial to all concerned. Unitization can only be beneficial, however, if the unitization agreement is tailor-made to fit the body and all its parts, and to take care of all the valid concerns of the parties affected.

The Commission has found that it has no experience with so vast a unit as the one proposed or with a unit with development and production of carbon dioxide gas; that there is no other carbon dioxide gas unit in the State; that there is no current availability of reservoir data that will permit of the presentation of evidence or the finding that the Unit Agreement provides for long-term development in a method which will prevent waste and which is fair to the owners of interests therein. In a matter so vital, and in a matter which lacks the required ratification of terms of all whose property interests are to be affected, and in a matter where experience and facts are completely lacking, this order should be vacated by the Court in the exercise of its judicial powers.

Very truly yours,

Ernest L. Carroll

ELC:kl

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STATE OF NEW MEXICO COUNTY OF TAOS

IN THE DISTRICT COURT

ROBERT CASADOS, et al.,	)	
	)	
Plaintiffs,	)	Union County No. CV 81-18
	)	
v.	)	Quay County No. CV 81-00015
	)	
OIL CONSERVATION COMMISSION, et al.,	)	Harding County No. CV 81-00001
	)	
	)	(Consolidated)
Defendants.	)	(81-176)

INTERVENOR'S TRIAL BRIEF
STATEMENT OF THE CASE

The Petitioners herein have brought before this court for review Orders No. R-6446 and No. R-6446-B of the New Mexico Oil Conservation Commission approving the Bravo Dome Carbon Dioxide Unit embracing lands in Harding, Quay, and Union Counties. The Petitioners seek to invoke the jurisdiction of the Court to review the Commission's orders via § 70-2-25 (B), N.M.S.A., 1978 Comp. By virtue of that judicial review statute, the issues posed to the Court must necessarily be limited to those originally presented by the Petitioners in their Application for Rehearing presented to the Commission in August of 1980.

In brief, the Petitioners are requesting the Court to review the record to determine whether there was substantial evidence supporting the Oil Conservation Commissions' findings that the unit agreement and plan of development act to prevent waste and protect correlative rights as defined in the Oil and Gas Act in §§ 70-2-3 and 70-2-33(H), N.M.S.A., 1978 Comp., respectively.

Of its 1,174,424 acre total, the Bravo Dome Carbon Dioxide Unit includes approximately 318,403 acres of subsurface

estate belonging to the State of New Mexico and administered by the Commissioner of Public Lands. Although he was not named in the Petition, it was determined that the Commissioner's ability to administer the state lands committed to the unit would be significantly affected by the outcome of this litigation, thereby making him a necessary and indispensable party under the authority of Swayze v. Bartlett, 58 N.M. 504, 273 P.2d 367 (1954). Consequently, in order to preserve the jurisdiction of the Court and allow all parties a full and fair hearing, the Commissioner sought and was allowed intervention in this proceeding by the Court's Order of October 5, 1981.

THE ORDERS OF THE OIL CONSERVATION COMMISSION APPROVING THE BRAVO DOME UNIT ARE BASED UPON SUBSTANTIAL EVIDENCE.

SCOPE OF REVIEW

As stated, the Petition to Appeal seeks to have set aside the Oil Conservation Commission's (OCC) order approving the Bravo Dome Unit for lack of substantial evidence that waste will be prevented and correlative rights protected.

The general authority of the OCC to carry out its legislative mandate of conservation of oil and gas, prevention of waste and protection of correlative rights is found generally at §§ 70-2-6 et seq., N.M.S.A., 1978 Comp. In the review and approval of exploratory and developmental units brought before it, the OCC, within its authority, must make a finding that the unit will indeed act to: (1) prevent waste, and (2) protect correlative rights. The Commission's duties in this regard were considered by the New Mexico Supreme Court in the case of Continental Oil Company v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809, wherein the court stated:

> "The Oil Conservation Commission is a creature of statute, expressly defined, limited and empowered by the law 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. * * * Actually, the prevention of waste is the paramount power, inasmuch as this term is an integral part of the definition of correlative rights." [Emphasis supplied.]

See, also, Sims v. Mechem, 72 N.M. 186, 382 P.2d 183 (1963). And, by virtue of § 70-2-34, N.M.S.A., 1978 Comp., the Commission was charged with applying those same duties to the conservation of carbon dioxide gas.

Based upon the testimony of many expert witnesses made at lengthy public hearings, the OCC made the two essential findings upon the original application of Amoco Production Company and issued Order No. R-6446 on August 14, 1980. Again, upon a review of the record and consideration of additional testimony at rehearing, the OCC reiterated its findings with additional stipulations and issued order No. R-6446-B.

POSITION OF THE COMMISSIONER OF PUBLIC LANDS

Against the above-stated background of judicial review, it will be helpful to the understanding of the Court to outline the relative position of the Commissioner of Public Lands.

By the Organic Act of 1850, and more accurately by the Ferguson Act of 1891 (Ferguson Act, June 21, 1898, 30 Stats. 484, Chap. 489, Organic Act, September 9, 1850, 9 Stat. 446, Chap. 49), Congress granted to the Territory of New Mexico to be held in trust, Sections 16 and 36 in each and every township within the territorial borders. The sections were to be used for common school purposes—that is, they were to be leased and sold under the provisions and subject to the restrictions of that Act. In the same Act, certain quantity grants were made for other specifically enumerated purposes. Thereafter, by the Enabling Act of 1910 (Enabling Act for New Mexico, June 20, 1910, 36 Stat. 557, Chap. 310), the territory became a state; and by that Act, Congress confirmed

the earlier grants and granted to the new State additional school Sections 2 and 32 along with additional grants for the support of additional institutions.

The Enabling Act, along with the statutory powers found at Chapter 19 of the New Mexico Statutes Annotated, place the Commissioner in the position of constitutional agent of the State of New Mexico in administering state lands. More exactly, as the state lands are held "for the benefit of" the enumerated institutions, the Commissioner administers a true trust. See N.M. Const., Art. XIII, § 2. It is notable at this point that in addition to his general powers as administrator of state trust lands, the Commissioner is designated to be one of the three Oil Conservation Commission members. See § 70-2-4, N.M.S.A., 1978 Comp. However, as § 70-2-4, supra, provides that two members of the OCC shall constitute a quorum for all purposes, the Commissioner declined to participate in the Commission's findings in the proceeding at bar.

The Commissioner's powers and duties concerning the administration of the state's oil and gas lands (including carbon dioxide by virtue of 19-10-2, N.M.S.A., 1978 Comp.) are found in §§ 19-10-1, N.M.S.A., 1978 Comp., et seq. Several statutes specifically address the Commissioner's authority to commit state trust lands to voluntary exploration and development units. (See §§ 19-10-45, 19-10-46, and 19-10-47, N.M.S.A., 1978 Comp., as well as §§ 19-10-53 and 19-10-54 concerning pooling and communitization agreements.)

It has been and continues to be the position of the Commissioner that under the above-mentioned statutes approval of the Oil Conservation Commission is not a specific condition precedent to the commitment of state lands to voluntary unit agreements. However, before he may give his consent to such agreements, § 19-10-46, supra, mandates that the Commissioner make certain findings of his own. The text of that statute states:

[Cooperative agreements; requisites for approval.]

No such agreement shall be consented to or approved by the commissioner unless he finds that:

A. such agreement will tend to promote the conservation of oil and gas and the better utilization of reservoir energy;

B. under the operations proposed the state and each benefidicary of the lands involved will receive its fair share of the recoverable oil or gas in place under its lands in the area affected; and

C. the agreement is in other respects for the best interests of the state.

The substance of § 19-10-46, supra, has, as well, been adopted in the administrative rules and regulations of the Commissioner, most notably in Rule 1.045 under the ambit of "Co-operative and Unit Agreements" - "Requisites of Agreements." (See Ex. A, attached hereto.)

The significance of the statutory and regulatory findings required of the Commissioner lies in the substantive similarity to the OCC's findings. In addition to the requirement that the interests of the state trust beneficiaries are protected, the Commissioner makes his own finding that the agreement promotes conservation and assures best utilization of reservoir energy: in essence, the finding must be that 'waste,' as defined by § 70-2-3, N.M.S.A., 1978 Comp., is prevented.

Much like the OCC, the Commissioner's approval is based upon extensive geologic and engineering data presented by the unit applicant and analyzed by the Commissioner's in-house staff. (See Rule 1.046, Ex. A.) Although there is no 'record' of the staff's analysis, per se, recommendations are made to the Commissioner in view of his required finding and the Commissioner acts accordingly.

In his decision making process, the Commissioner may delay his finding pending an analysis of the data by his staff and by the Oil Conservation Division (Rule 1.047, Ex. A). In essence, there is a deference to the specialized expertise of

the OCC serving to enhance and augment the findings of the Commissioner. The Commissioner in fact chose to conduct his decisional procedure in this manner, delaying his final approval until the OCC made its investigation. (See Bravo Dome Unit Agreement Article 17(B), delaying the effective date until the approval of both the OCC and the Commissioner.)

The significance of the conjunctive fact-finding and approval process utilized by the Commissioner in the case at bar is evident in that the Commissioner is placed in a situation not unlike that of the Court's in its review of the Oil Conservation Commission's findings. More exactly, the Commissioner of Public Lands, before giving his final approval to the unit agreement, acted as a reviewer of the Oil Conservation Commission's investigation. And, finding nothing in the 'record' of the OCC reflecting that the considered orders of the OCC were not supported by 'substantial evidence,' the Commissioner corraborated the OCC's conclusions and gave his final approval to the unit agreement on August 28, 1980. (Additional findings resulting in added stipulations to the Commissioner's final approval concerning the use of in-kind royalty, payment and transportation were made in view of the interests of the state and the trust's beneficiary institutions and were not concerned with issues of conservation and waste, per se. See Exhibits B and C, attached hereto.)

STANDARD OF REVIEW

On appeal, the Court is required to review the evidence and must sustain the orders appealed from if they are supported by "substantial evidence." The present day standard of review in New Mexico goes further than requiring a finding of "any" substantial evidence (ICC v. Louisville & N.R.R., 227 U.S. 88 [1913]), but looks to a review of a finding based on the record as a whole. Ribera v. Employment Security Commission, 92 N.M. 694, 594 P.2d 742 (1979); Jones v. Employment Services Division,

619 P.2d 542, 545 (1980).

It is asserted here that the record 'as a whole' is replete with evidence supporting the Commission's orders, undergoing not only the primary expert review by OCC staff prior to promulgation, but also submission to scrutinization by the Commissioner of Public Land's expert staff prior to his approval.

It is difficult to ascertain from the Petitioner's pleadings as to what exactly constitutes the evidentiary deficiency. Petitioner seems to allege that because the Oil Conservation Commission did not "define" the extent of waste or correlative rights that the record is unable to show that the evidence could support a finding by the OCD that those two objectives are reached.

A like argument was made to the New Mexico Supreme Court in Rutter & Wilbanks Corp. v. Oil Conservation Com'n, 87 N.M. 286, 532 P.2d 582 (1975). In Rutter, the appellant from an order of the OCC argued that because the Commission failed to establish the "type" of waste contemplated from the record, there was no "substantial evidence" supporting the order. The Court in Rutter, supra, simply quoted Continental Oil Co. v. Oil Conservation Com'n, 70 N.M. 310, 373 P.2d 809 (1962), which stated that the Commission is required to make only "basic conclusions" from the record. The court said, in essence, that the Commission's findings regarding waste in even a generic sense imply protection against any waste contemplated by the statutes. Here, as in Rutter, supra, an attempt to reposture the findings relationship to the record cannot be "seriously argued," Rutter, id. at 289. Instead, an attack upon the sufficiency of the evidence must, by virtue of the law, be limited to scrutinization of what appears on the record. That scrutiny does not require that the evidence be weighed against definitional or extraneous standards, but only that the evidence be looked to "to determine whether it implies a quality of proof which induces the conviction that the order was proper or furnishes a substantial basis

of facts from which the issue tendered could be reasonably resolved." Landowners Oil, Gas and Royalty Owners v. Corporation Commission, Okla., 415 P.2d 942 (1966).

Hence, a review of the record by this court will show sufficient "quality of proof" to provide a substantial basis for the Commission's findings.

SUMMARY

Based upon a lengthy and substantial record, including testimony from many expert witnesses, the Oil Conservation Commission made its uniquely qualified administrative determination that approval of the Bravo Dome Carbon Dioxide Unit would serve to prevent waste and protect correlative rights. Indeed, the OCC's findings were paralleled and complemented to a great degree by statutorily required findings of the Commissioner of Public Lands based upon the recommendations of his own expert staff.

For these reasons, the Petitioner's Application should be denied and the Oil Conservation Commission Order No. R-6446-B should be affirmed.

Respectfully submitted,

J. SCOTT HALL, Attorney for
Intervenor, Alex J. Armijo
Commissioner of Public Lands
New Mexico State Land Office
P.O. Box 1148
Santa Fe, New Mexico 87501
(505) 827-2743

CERTIFICATE

HAND DELIVERED

I hereby certify that I mailed a copy of the foregoing pleading to opposing counsel of record 12-7, 1981.

COOPERATIVE AND UNIT AGREEMENTS

1.044 Purpose--Consent. The Commissioner of Public Lands may consent to and approve agreements made by lessees of State Lands for any of the purposes enumerated in 19-10-45, NMSA, 1978 Comp.

1.045 Application--Requisites of Agreements. Formal application shall be filed with the Commissioner of Public Lands for the presentation of a cooperative or unit agreement. The filing fee therefor shall be ten dollars ($10.00) for each section or fraction part hereof, with a minimum of ten dollars ($10.00), whether the acreage is federal, state, or privately owned. Such application shall contain a statement of facts showing:

(a) That such agreement will tend to promote the conservation of oil and gas and the better utilization of reservoir energy.

(b) That under the proposed unit operation, the State of New Mexico will receive its fair share of the recoverable oil and gas in place under its lands in the proposed unit area.

(c) That each beneficiary institution of the State of New Mexico will receive its fair and equitable share of the recoverable oil and gas under its lands within the unit area.

(d) That such unit agreement is in other respects for the best interest of the State, with respect to State lands. (History: Previously amended; see Change No. 3 dated June 30, 1971.)

1.046 Information to be Furnished. Complete geological and engineering data shall be presented with the application and the information offered for the Commissioner's action must be in clear and understandable form. In order that such geological and engineering data may be held confidential, it will be considered held on a loan basis only and will not be made a matter or considered as part of the Land Office records for a period of six (6) months from date of its receipt. If at the end of such six (6) month period the cooperative agreement is approved, then such data will be made a permanent part of the records. If for any reason such proposed agreement has not been approved at the end of the six (6) month period, then at the request of the applicant, the data shall be returned to the applicant.

1.047 Decision Postponed. In any matter respecting cooperative and unit agreements, the Commissioner of Public Lands may postpone his decision pending action by the Oil Conservation Division and may use any information obtained by his own investigators, or obtained by the Oil Conservation Division to enable him to act properly on the matter. The applicant shall deposit with the Commissioner a sum of money estimated to be sufficient to meet the actual and necessary expenses of any investigation or inspection by representatives of the State Land Office.

EXHIBIT A.

NEW MEXICO STATE LAND OFFICE
CERTIFICATE OF APPROVAL
COMMISSIONER OF PUBLIC LANDS, STATE OF NEW MEXICO
BRAVO DOME CARBON DIOXIDE GAS UNIT
UNION, HARDING AND QUAY COUNTIES, NEW MEXICO

There having been presented to the undersigned Commissioner of Public Lands of the State of New Mexico for examination, the attached Agreement for the development and operation of acreage which is described within the attached Agreement dated April 9, 1979, which has been executed, or is to be executed by parties owning and holding oil and gas leases and royalty interests in and under the property described, and upon examination of said Agreement, the Commissioner finds:

(a) That such agreement will tend to promote the conservation of Unitized Substances and the better utilization of reservoir energy in said area.

(b) That under the proposed agreement, the State of New Mexico will receive its fair share of the recoverable Unitized Substances in place under its land in the area.

(c) That each beneficiary Institution of the State of New Mexico will receive its fair and equitable share of the recoverable Unitized Substances under its lands within the area.

(d) That such agreement is in other respects for the best interests of the state, with respect to state lands.

NOW THEREFORE, by virtue of the authority conferred upon me under Sections 19-10-45, 19-10-46, 19-10-47, 19-10-53, and 19-10-54, New Mexico Statutes Annotated, 1978 Compilation, I, the undersigned, Commissioner of Public Lands of the State of New Mexico, for the purpose of more properly conserving the Unitized Substances resources of the State, do hereby consent to and approve the said Agreement, and any leases embracing lands of the State of New Mexico within the area shall be and the same are hereby amended to conform with the terms and conditions thereof, and shall remain in full force and effect according to the terms and conditions of said Agreement. This approval is subject to all of the provisions of the aforesaid statutes and conditioned as follows:

1. That the State of New Mexico shall have the right to take in kind,

at any time, its royalty share of unitized substances and upon request by the Commissioner the Unit Operator shall transport through any pipeline which it may own or have the right to use, unitized substances so taken in kind or otherwise purchased under 19-14-1 through 19-14-3 NMSA 1978 Comp., or under the provisions of Article 7 Paragraph 7.6 of the Unit Agreement. The owner of such unitized substances shall compensate or otherwise reimburse the unit operator for the actual cost of such transportation.

2. That the allocation of Carbon Dioxide provided in Article 7 Paragraph 7.6 of the unit agreement shall be made available within a reasonable time after expiration of the notice period not with-standing the language of lines 21 through 28 of Paragraph 7.6 at page 14 of the Unit Agreement.

3. That not withstanding any Storage, Balancing, Take or Pay agreements or provisions of this unit agreement to the contrary the State of New Mexico shall receive payment for its allocated royalty share of all unitized substances produced and marketed from the unit area. Payment to be made on the 20th day of each month for all royalties due the lessor for the preceeding month.

IN WITNESS WHEREOF, this Certificate of Approval is executed with seal affixed, this 28th. day of August 19 80.

COMMISSIONER OF PUBLIC LANDS
of the State of New Mexico

EXHIBIT B.

State of New Mexico

Commissioner of Public Lands

ALEX J. ARMIJO
COMMISSIONER

September 22, 1980

P. O. BOX 1148
SANTA FE, NEW MEXICO 87501

MEMORANDUM

TO: BRAVO DOME UNIT FILE

FROM: RAY D. GRAHAM, DIRECTOR - OIL AND GAS DIVISION

SUBJECT: BRAVO DOME CARBON DIOXIDE GAS UNIT - UNION, HARDING AND QUAY COUNTIES

The Unit Agreement for the subject unit was executed by the Commissioner of Public Lands for the State of New Mexico on August 28, 1980: said unit to become effective on November 1, 1980.

This unit consists of 1,174,424 acres of land, 318,403 acres of which are owned by the State of New Mexico.

The purpose of the unit is to assure an adequate supply of carbon dioxide gas for the unit operating interests to justify the large expense required to obtain and transport this material to the Southeast New Mexico - West Texas area. It is the stated intent of the operators to utilize this gas an an agent for enhanced oil recovery in these areas. Carbon dioxide gas by virtue or its miscibility in the liquid hydrocarbon phase is one of the three enhanced recovery agents (other than water or steam) which are economically viable under the present state of the art.

The energy needs of our nation, and the obvious economic benefits to the New Mexico State Land Beneficiaries, and the general economy of the State dictated that the Commissioner join with the industry in this endeavor to recover the maximum amount of oil in place within the State. To these ends the State has negotiated the following conditions with the unit operating interests.

1. The State has reserved the right "to take in-kind" its 1/8th royalty share of the CO^2 produced from the unit. This will assure the State receiving the maximum price obtainable in the area for its share of production.

2. The State has the option to purchase at market price the working interest share of gas attributable to approximately 89,000 acres of State lands committed to the unit.

3. A maximum of 10% of the CO^2 produced from the unit is allocated for use as an "Enchanced or tertiary" recovery mechanism within New Mexico. It should be noted here

EXHIBIT C.

that the majority of the known oil reservoirs to which this enhanced recovery technique will be applied are in areas of high density state land ownership which will of course be of great benefit to the State's interest.

4. Formation fo this unit automatically increases rental payments from a range of 10¢ to 30¢ per acre on State lands to $1.50 per acre.

In summation, with the unit as formed, the State has access to approximately 20% of the CO^2 which will be produced from the unit. Without benefit of such a unitized operation it is estimated that even though the area were fully developed as to CO^2 potentials the State would only have access to 7.6% of this material. The benefits to the State from developing this resource as planned will be extremely long-lived in that much of the CO^2 injected into suitable oil reservoirs is recovered as the oil is produced and is therefore reusable in the same or other oil reservoirs.

Also, it should be noted that in the absence of a unitized operation, the checkerboard pattern or mineral ownership in this area would require tremendous policing effort on the part of the State to monitor development and drainage patterns to assure the State's fair share recovery from this huge area of marginal reservoir quality.

In addition, any CO^2, which in the future, may be and most probably will be used for enhanced recovery in New Mexico will be utilized in southeast New Mexico oil fields where approximately 60 percent of the present production is on state minerals wherein the same beneficiaries will again benefit from additional recovery of oil. Also, a lot of the production is from federal lands under which the state gets 50 per cent of the royalty from any enchanced recovery program. This federal royalty goes to the State's general fund.

Ray D Graham

RAY D. GRAHAM, DIRECTOR
OIL AND GAS DIVISION

RDG:cw

cc: Commissioner
Legal Division

EXHIBIT C.

December 3, 1981

Honorable Joseph E. Caldwell
District Judge
Eighth Judicial District
Post Office Box 1715
Taos, New Mexico 87571

Re: Robert Casados, et al. v. Oil Conservation Commission, et al.; Taos County Cause No. 81-176 (Consolidated)

Dear Judge Caldwell:

Enclosed for your consideration is a copy of the trial brief of Defendant Amoco Production Company in the above-referenced cause.

I have mailed the original of this brief to the Clerk of the District Court for filing in this case.

Very truly yours,

William F. Carr

WFC:lr

Enclosures

cc: Ernest L. Carroll, Esq.
Perry Pierce, Esq.
W. Thomas Kellahin, Esq.
J. Scott Hall, Esq.

STATE OF NEW MEXICO COUNTY OF TAOS

IN THE DISTRICT COURT

ROBERT CASADOS, et al.,

Plaintiffs,

v. No. 81-176

OIL CONSERVATION COMMISSION, et al.,

Defendants.

TRIAL BRIEF OF DEFENDANT, AMOCO PRODUCTION COMPANY

STATEMENT OF THE CASE

This suit is brought pursuant to Section 70-2-25, NMSA, 1978, for judicial review of orders entered by the New Mexico Oil Conservation Commission on August 14, 1980 and modified and reaffirmed on January 23, 1981.

STATEMENT OF PROCEEDINGS

Amoco Production Company (hereinafter called Amoco) is the operator of the Bravo Dome Carbon Dioxide Gas Unit (hereinafter called Unit) which is a voluntary unit for the exploration and development of carbon dioxide gas from approximately 1,035,000.00 acres of federal, state and fee lands located in Harding, Quay and Union Counties, New Mexico. In forming the Unit, Amoco, as unit operator, submitted the Bravo Dome Carbon Dioxide Gas Unit Agreement (hereinafter called Unit Agreement) to the New Mexico Commissioner of Public Lands and the Director of the United States Geological Survey for approval.

On January 8, 1980, the New Mexico Commissioner of Public Lands gave preliminary approval to the Unit Agreement as to form and content, but pursuant to Rule 47 of the State Land Office Rules and Regulations postponed his final decision pending action by the New Mexico Oil Conservation Commission (hereinafter called

Commission)(RTR 184).*

Amoco made application to the Commission for approval of the Unit on May 28, 1980. Notice was given and on July 21, 1980 a Commission hearing was held on Amoco's application.

On August 14, 1980, Order R-6446 was entered by the Commission approving the Unit. This order provided, among other things, that the Unit would become effective 60 days after approval of the Unit Agreement by the Commissioner of Public Lands.

Final approval was received from the Commissioner of Public Lands on August 28, 1980 (Exhibit RH 8) and the Unit became effective under the order and Unit Agreement on November 1, 1980. The Director of the United States Geological Survey in Albuquerque, New Mexico approved the Unit on August 29, 1980 (Exhibit RH 9).

Certain petitioners filed an Application for Rehearing on September 2, 1980 asking the Commission to set aside Order R-6446 or, in the alternative, to enter additional findings on the questions of the prevention of waste and the protection of correlative rights. Petitioners' Application for Rehearing alleged that: (a) the order and findings are not supported by substantial evidence; (b) the findings in the order are insufficient; (c) the Commission failed to carry out its statutory duties to prevent waste and protect correlative rights; and (d) the Commission's decision is arbitrary and capricious.

The Commission granted the Application for Rehearing by order dated September 12, 1980 but limited evidence to:

"(1) prevention of waste within the unit area,

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*References to the transcript of the July 21, 1980 hearing are indicated by "TR". References to the transcript of the October 9, 1981 rehearing are indicated by "RTR".

(2) protection of correlative rights within the unit area as afforded by the unit agreement, its plan and participation formula, and

(3) whether the unit agreement and its plan are premature."

A second public hearing was held before the Commission on October 9, 1980 and on January 23, 1981 the Commission entered Order R-6446-B which again approved the Unit and contained extensive findings on waste and correlative rights. This order also imposed certain conditions which, among other things, require periodic hearings before the Commission at which time Amoco will be required to show that unit operations will result in the prevention of waste and protection of correlative rights. (Order R-6446-B, Findings 29 through 36).

Petitions to Appeal from Order Nos. R-6446 and R-6446-B were filed in Harding, Quay and Union Counties on February 11, 1981. The petitions were consolidated and docketed in the District Court of Taos County New Mexico.

POINT I

OIL CONSERVATION COMMISSION ORDERS R-6446 AND R-6446-B ARE NOT ARBITRARY OR CAPRICIOUS AND ARE CONSISTENT WITH THE COMMISSION'S STATUTORY DIRECTIVES.

In the instant case, the Commission was concerned with the establishment of a voluntary unit for the exploration and development of carbon dioxide gas.

The State of New Mexico plays a significant role in the formation of this unit. Article 17 of the Unit Agreement requires approval of the Oil Conservation Commission as a condition precedent to its effectivness. Furthermore, a substantial portion of the unit is state land and therefore, the consent of the Commissioner of Public Lands to the development and operation of these lands as part of the unit is necessary.

The standards to be applied by the Commissioner in making this determination are specifically set out in statute: Section 19-10-46 NMSA, 1978 provides:

> "No such agreement shall be consented to or approved by the Commissioner unless he finds that:
>
> (A) Such agreement will tend to promote the conservation of oil and gas and the better utilization of reservoir energy;
>
> (B) under the operations proposed the state and each beneficiary of the lands involved will receive its fair share of the recoverable reserves; and
>
> (C) the agreement is in other respects for the best interests of the state."

As previously noted, Amoco submitted the Unit Agreement to the Commissioner of Public Lands and received the Commissioner's preliminary approval as to form and content. Under Rule 47 of the State Land Office Rules and Regulations, the Commissioner referred this Agreement to the Oil Conservation Commission for review and comment prior to rendering a final decision on it.

The authority for such Commission action comes from its general statutory authority to do whatever is necessary to prevent waste and protect correlative rights. Section 70-2-11 NMSA, 1978. The Commission held two hearings after giving notices required by law, received evidence and approved the unit agreement finding it would prevent waste and protect correlative rights.

The plaintiffs contend that due to the limited development in the unit area, the decision of the Commission that the Unit Agreement prevents waste and protects correlative rights is premature. Application for Rehearing, paragraph 8. The Commission found, however, that this was an exploratory unit (Order R-6446-B, Finding 13), that there is a current need for carbon dioxide (Order R-6446-B, Findings 18 and 19), and that the

application was not premature (Order R-6446-B, Finding 21). By its very nature, an exploratory unit cannot be prematurely created and approval of such unit by regulatory authorities, likewise, cannot be prematurely given. If unit development is to be effective, the unit must be in operation before there is substantial development of the resource.

POINT II

THERE IS SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT EACH FINDING NECESSARY FOR A VALID ORDER APPROVING THE BRAVO DOME UNIT AGREEMENT.

Plaintiffs attack the sufficiency of the Commission's findings on waste and correlative rights in paragraph 7 of their Petition to Appeal. In Continental Oil Company v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962), and again in Fasken v. Oil Conservation Commission, 87 N.M. 292, 532 P.2d 588 (1975), the New Mexico Supreme Court announced the standards to be applied when the sufficiency of the findings in an Oil Conservation Commission order are at issue. The Court found that the Commission order must contain "sufficient findings to disclose the reasoning of the Commission in reaching its ultimate findings" on waste and correlative rights and further found that "administrative findings by an expert adminstrative commission should be sufficiently extensive to show the basis of the Commission's order." Fasken v. Oil Conservation Commission, supra, at 590. In this case, the Court is asked to review the findings to determine if they meet the test announced in Continental and Fasken.

Plaintiffs also attack the Commission's findings by alleging that they are not supported by substantial evidence. In Grace v. Oil Conservation Commission, 87 N.M. 205, 531 P.2d 939 (1975) the New Mexico Supreme Court defined the scope of review

of an order of the Oil Conservation Commission stating that it will review the order to determine if it is substantially supported by the evidence and by applicable law. The question presented to the court by this appeal, therefore, is whether or not there is substantial evidence in the record which supports the order of the Commission. "Substantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Grace, supra, p. 492; Rinker v. State Corporation Commission, 84 N.M. 626, 506 P.2d 783 (1973); Fort Sumner Municipal School Board v. Parsons, 82 N.M. 610, 45 P.2d 366 (1971). In deciding whether a finding has substantial support, the court must review the evidence in the light most favorable to support the finding and reverse only if convinced that the evidence thus viewed together with all reasonable inferences to be drawn therefrom cannot sustain the finding. In making this review any evidence unfavorable to the finding will not be considered. Martinez v. Sears Roebuck & Co., 81 N.M. 371, 467 P.2d 37 at 39 (Ct.App. 1970). These standards of review apply to the decisions of administrative boards. United Veterans Organization v. New Mexico Property Appraisal Department, 84 N.M. 114, 500 P.2d 199, 203 (1972).

WASTE

The definition of waste in the New Mexico Oil and Gas Act reads in part as follows:

> "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 any manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool, and the use of inefficient

underground storage of natural gas. . .

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

Section 70-2-3 NMSA, 1978 (emphasis added).

This definition has been extended to apply to carbon dioxide gas as well as natural gas. Section 70-2-34 NMSA, 1978.

Findings 8 and 9 of Order R-6446-B clearly reflect the Commission's reasoning in reaching its conclusion that approval of the unit will tend to increase the total quantity of carbon dioxide ultimately recovered from the unit area thereby preventing underground and surface waste.

Finding 8 of Order R-6446-B reads in part:

> "That the unitized operation and management of the proposed unit has the following advantages over development of this area on a lease by lease basis:
>
> (a) more efficient, orderly and economic exploration of the unit area; . . ."

The record contains substantial evidence to support this finding.

Witnesses for Amoco, Cities Services Company and the plaintiffs all testified that unitized operation and management was the best method to be used to develop this field. Mr. F.H. Callaway, a reservoir engineer who testified for the plaintiffs, stated:

> "I've always been an advocate of field-wide unitization. I feel like that is the optimum method for operation in order to achieve the maximum recovery of hydrocarbons, in this case gas, and operates under the most efficient circumstances." (RTR 154)

The evidence offered in the case shows that unit management will provide for orderly development of the unit area (TR 28, RTR 87, 140), and that will enable the operator of the unit to develop the area by drilling wells at the most desirable locations (TR 35) enabling the operator to drain the reservoir in an effective manner with the most efficient spacing pattern (RTR 100). It was also shown that unit management will avoid wasteful drilling and completion practices (TR 35) for the operator will drill only those wells necessary to produce the reserves (RTR 40-50, Rehearing Exhibits 1, 2, and 3). Unnecessary wells will, therefore, be avoided (RTR 45, 61-63).

Finding 8 of Order R-6446-B further provides that another advantage of unitized operation and management is that it will result in: "(b) more economical production, field gathering, and treatment of carbon dioxide gas within the unit area." Substantial evidence was presented supporting this finding.

Jim Allen, Senior Petroleum Engineer for Amoco Production Company was qualified as an expert engineering witness and testified that unit management and operation is the most efficient way to produce CO_2 from the Bravo Dome Unit area (RTR 87, 154). He testified as to how unit operations will enable the operator to produce CO_2 from the Bravo Dome Unit with substantially fewer surface facilities than would be required by operations on a lease by lease basis (RTR 50-61, 63, Rehearing Exhibits 3, 4, 5, 6, and 7). This in turn results in reduced production costs (RTR 64, 97).

Finding No. 9 of Order R-6446-B provides:

> "That said advantages will reduce average well costs within the unit area, provide for longer economic well life, result in the greater ultimate recovery of carbon dioxide gas thereby preventing waste."

Mr. Allen testified as to the number of surface facilities

that would be required if the Bravo Dome was developed on a lease by lease basis and then contrasted this number with the number of facilities required under unit operation and management (RTR 50-61, Rehearing Exhibits 3, 4, 5, 6, and 7). He stated that under unit operations, only six surface facilities would be required as opposed to as many as 4435 such facilities if operated under the individual leases. (RTR 60) He concluded his testimony on this subject as follows:

> Q. "(By Mr. Buell)" . . . in your opinion would six surface facilities installations serving 324 wells each be able to be operated a longer economic life than 4435 individual facility installations serving this unit area on a lease basis?"
>
> A. "In my opinion, Mr. Buell, I think it would be considerably cheaper to operate on a unit basis and as such, we would have a longer individual life, well life."
>
> Q. "So under unit operation a greater amount of CO_2 would be recovered than would be recovered under the individual lease operations?"
>
> A. "Yes, sir, in my opinion."
>
> Q. "That would thus prevent reservoir waste in that you'd be recovering the maximum amount of CO_2 possible."
>
> A. "Yes, sir."
>
> (RTR 63-64)

Mr. Allen further testified that the savings reflected by the reduced number of surface facilities is only indicative of a number of economies that would come from unit operations resulting in greater recovery of carbon dioxide gas from the unit area (RTR 97). This testimony was not refuted by any evidence offered at either commission hearing.

Order R-6446-B, therefore, contains findings sufficient to show the Commission's reasoning that unitized operation and management of unit area would clearly prevent waste as defined by the New Mexico Oil and Gas Act. The findings reflect the

Commission's reasoning that unitized management and operation of the unit area was more efficient, that it would result in economic savings which would extend the economic lives of the wells involved, that this would result in the production of carbon dioxide gas that otherwise would not be produced; and thus prevent waste. Each of the findings is supported by substantial evidence.

CORRELATIVE RIGHTS

The Supreme Court of New Mexico has stated that correlative rights are not absolute or unconditional but noted that the legislature has enumerated in the definition of correlative rights (Section 70-2-33 NMSA, 1978) the following definite elements contained in such a right:

> ". . . (1) an opporunity to produce, (2) only insofar as it is practicable to do so, (3) without waste, (4) a proportion, (5) insofar as it can be practically determined and obtained without waste, (6) of the gas in the pool." Continental v. Oil Conservation Commission, supra at 818.

In Continental, the court noted that ". . . the protection of correlative rights must depend upon the Commission's findings as to the extent and limitations of the rights." Id. It further enumerated specific correlative rights findings to be made by the Commission, if practicable to do so, prior to the entry of an order, Id.

The strict test announced in Continental concerning correlative rights findings was reviewed by the court in Rutter & Wilbanks v. Oil Conservation Commission, 87 N.M. 286, 532 P.2d 582 (1975). This case involved an attack on an Oil Conservation Commission order approving oversized proration units for failing to contain all findings on correlative rights required by the Continental decision. In announcing its decision in Rutter & Wilbanks, the Court stated:

> When the Commission exercises its duty to allow each interest owner in a pool "his just and equitable share" of the oil or gas underlying his property, the mandate to determine the extent of those correlative rights, as prescribed by Section 65-3-29(H), NMSA 1953 [Section 70-2-33, NMSA, 1978] is subject to the qualification "as far as it is practicable to do so" see Grace v. Oil Conservation Commission. While the evidence lacked many of the factual details thought to be desirable in a case of this sort, it was because the appropriate data was as yet unobtainable. We cannot say that the exhibits, statements and expressions of opinion by the applicant's witness do not constitute "substantial evidence" or that the orders were improperly entered or that they did not protect the correlative rights of the parties "so far as [could] be practicably determined . . ." 532 P.2d at 588 (emphasis added).

The record in this case, as will be hereinafter shown, contains substantial evidence supporting the Commission's conclusion that the correlative rights of all property owners in the Bravo Dome Unit Area will be protected. (TR 27-29, 45, RTR 14, 17, 32, 38, 80, 98, and 176). The only limitations on the evidence presented result from the very nature of exploratory units (see Order R-6446-B, Findings 10-13) in that certain evidence is not obtainable until the acreage involved has been more fully developed.

Finding 14 of Oil Conservation Commission Order R-6446-B reads as follows:

> (14) that the evidence presented demonstrated that there are two methods of participation which would protect the correlative rights of the owners within exploratory units through the distribution of production of proceed therefrom from the unit; these methods are as follows:
>
> (a) a formula which provides that each owner in the unit shall share in production from any well(s) within the unit in the same proportion as each owner's acreage interest in the unit bears to the total unit acreage, and
>
> (b) a method which provides for the establishment of participating areas within the unit based upon completion of commercial wells and geologic and engineering interpretation of presumed productive acreage with only those parties of interest within designated particpating areas sharing in production. Such participation would be based

> upon the proportion of such owner's acreage interest within the participating area as compared to the total acreage within the participating area.

Mr. Neil D. Williams, a petroleum consultant with extensive experience in unitization, testified that about these two basic types of participation formulas used in exploratory units (RTR 23, 32-34). This testimony was concurred in by Mr. Callaway (RTR 179) and by Mr. Oscar Jordan who made a statement for the New Mexico Commissioner of Public Lands (RTR 185).

In its Finding 15, the Commission concluded that each of the methods of participation described in Finding 14 ". . . was demonstrated to have certain advantages and limitations." Bruce Landis, Regional Unitization Supertindent for Amoco, testified that when it was learned where productive acreage within the unit area was located, the unit agreement had a built-in provision to correct these inequities. (TR 45) He further testified that there could be problems with the participating area approach, if there are obligations outside of the area that destroy the concept of orderly and efficient development (TR 45 and 46). Mr. Callaway testified that the participating area approach was better than a straight acreage approach but that it was not as precise a tool to protect correlative rights as one based on recoverable reserves. (RTR 180). Mr. Jordan's statement for the Commissioner of Public Lands also noted abuses that the Land Office has experienced with participation formulas in unit agreements (RTR 186-187).

Finding 17 of Order R-6446-B reads as follows: "(17) That the method of sharing the income from production from the unit as provided in the unit agreement is reasonable and appropriate at this time." In response to questions about the reasonableness of the "undivided participation" formula in the Bravo Dome Unit Agreement, Mr. Williams testified as follows:

Q. (By Mr. Buell) All right, sir. Let me ask you this question, since you have studied the Unit Agreement, Exhibit No. One, you're familiar with the transcript, you're aware of the fact that in the Bravo Dome Unit all people who have voluntarily committed their interest to the Unit will participate in the unit production from the time of first sale."

A. That is correct.

Q. Do you see anything wrong based on your experience with exploratory units with having, I believe you experts in the field call it an undivided participation from the outset, do you see anything wrong with participation in that manner?"

A. No, I do not. In fact, it's probably the most ideal situation to have in exploratory units. (RTR 16)

Mr. Williams further expanded on this testimony by stating:

"In exploratory units, the participation is based on the surface acre basis and where you are able to get all the land owners and working interest owners to agree to participate in the whole unit, they are all then sharing in the risk and sharing in the benefits proportionate to their acreage as to the whole, regardless to where the production is found." (RTR 32-33)

"Well, geology is not an exact science, so therefore, by all the parties voluntarily agreeing to share whatever there might be, is an ideal situation, in my opinion, regardless of where the production is, because you don't know that to begin with." (RTR 34)

In Findings 25 and 37, the Commission states its conclusions on correlative rights. Finding 25 reads "That the evidence presented in this case establishes that the Unit Agreement at least initially provides for the development of the unit in a method that will serve to prevent waste and which is fair to the owners of interest therein." Finding 37 reads "That approval of the proposed unit agreement with the safeguards provided above should promote the prevention of waste and the protection of correlative rights within the unit area."

Order R-6446-B contains findings which are sufficiently extensive to disclose the Commission's reasoning that approval of the unit will protect correlative rights. Each of these findings is supported by substantial evidence.

POINT III

IN A VOLUNTARY UNIT WHERE ALL OWNERS MUTUALLY AGREE TO BE PAID ON A PRO RATA BASIS, REGARDLESS OF THE ACTUAL PRODUCTION ON ANY TRACT WITHIN THE UNIT, THE CORRELATIVE RIGHTS OF ALL PARTIES ARE IPSO FACTO PROTECTED.

There is an irrefutable distinction between voluntary unitization and forced or compulsory unitization. The former is a contractual agreement among parties for the purpose of primary or secondary production of resources. See generally, William & Meyers Oil and Gas Law, Volume 6, Section 924, at 508. The latter is usually a statutory proceeding to compel non-consenting interest owners to unitized acreage for purposes of secondary or enhanced recovery. See, for example, the New Mexico Statutory Unitization Act, 70-7-1 et seq. NMSA 1978.

Accordingly, the procedure governing approval of compulsory unitization, given its involuntary and adversarial nature, must provide safeguards and protection for non-consenting interest owners. For example, all compulsory unitization statutes, including New Mexico's, provide for full notice and hearing prior to Commission approval. 70-7-6A NMSA 1978. And again because of the adversarial nature of the proceeding, the Commission must determine whether the participation formula for unitization is fair, reasonable and equitable to both consenting and non-consenting parties.

The elements of conflict and adversity between the parties are simply not present in voluntary unitization. Because such unitization is affected to a negotiation and agreement of the parties, there is no conflict which the court must resolve: the parties themselves have mutually agreed as to how their correlative rights will be protected.

In a voluntary unit, only one set of parties is affected; those who are committed to the unit. The very nature of voluntary unitization assures, ipso facto, that the correlative rights of committed parties are protected. The correlative rights of those not committed to the unit exist independently of the unit and are otherwise protected by lease agreements. The unit agreement in issue here provides for allocation of produced carbon dioxide on a straight, fixed pro rata acreage basis, regardless of the actual production on any tract within the unit. Each interest owner in the unit area was notified of the formula, the vast majority of such owners acknowledge the equity of the formula by contractually ratifying the unit agreement.

Defendant Amoco Production Company submits that those owners whose interests have been joined through commitment to the unit agreement have contractually acknowledged the protection of their respective correlative rights. Such committed owners have consented to unitization and allocation on the basis of the unit agreement. Indeed, there is no justiciable issue of correlative rights with respect to such committed owners.

In Syverson v. North Dakota State Industrial Commission, 111 N.W.2d 128 (W.D. 1960), the North Dakota Supreme Court addressed the issue of correlative rights of both joining and non-joining parties in a voluntary unit. The Court affirmed a regulatory Commission order approving a voluntary unit. In so doing, the decision asserted that the correlative rights of joining interest owners are ipso facto protected by an allocation formula based on a prorata acreage basis:

> Where all mineral and royalty owners under a voluntary unitization agreement . . . are paid on a fixed pro rata basis regardless of the actual production on any tract within the unit, finding by the Industrial Commission that such agreement would be in the public interest, protective of correlative rights . . . will not be disturbed in the absence of

> affirmative proof to the contrary that such agreement is not in the public interest. 11 N.W.2d at 129, (emphasis added).

Here, there is a complete "absence of affirmative proof" by plaintiffs that the allocation of unitized substances under the unit formula is not in the public interest. In the absence of such proof, the allocation formula, consented to by committed parties, establishes the protection of correlative rights of such parties ipso facto.

The correlative rights of non-committed owners are not an issue in this proceeding. But again, the nature of a voluntary unit allows for protection of such rights ipso facto. The proposed unit is wholly voluntary. No one can be compelled to join it. The correlative rights of non-committed parties, vis a vis the unit operation, are amply protected by the terms of their individual leases.

The court in Syverson, supra, outlines the undeniable mechanics of voluntary unitization with respect to non-commiting parties.

> "The provisions of the unitization agreement submitted to the owners of mineral and royalty interests in the field where to be binding only upon those persons having interest in a proposed unit who agreed in writing to such unitization. The appellants, by refusing to sign such agreement, are not affected thereby. Their rights are independent of this agreement and the order approving the unit agreement . . . affect(s) only those owners who have joined in this agreement. 111 N.W.2d at 133 (emphasis added).

With specific respect to the correlative rights of non-commiting parties in a unit area, the North Dakota Supreme Court acknowledged that such rights cannot be affected or impaired by approval of a voluntary unit agreement:

> "By refusing to sign the unitization, as the appellant had the rights to do . . ., they are left in the same position that they would be in if there had been no unit agreement proposed. The respondent, as lessee under the lease with appellant, will be compelled to live up to all of its obligations under

> such lease. Respondent will be compelled to continue. . . the oil wells upon the appellants' lands . . . we fail to see how the appellants are in any way injured by the order appealed from on the record as is before us." Id. (emphasis added)

Here, defendants, and all lessees participating in the unit agreement, must abide by the terms and obligations specified in their leases with non-commiting lessors. As in Syverson, we fail to see how non-commiting interest owners could be injured by approval of the unit agreement.

To the contrary, the claims of protestants here appeared to be nothing less than thinly-failed attempts to frustrate and impair the voluntary efforts of the overwhelming majority of the interest owners in the area. It should not be permitted. The holding of the court in Syverson is equally applicable here:

> "By refusing to join such agreement, however, appellants may not, at the same time, prevent other interests in the field from developing adjoining tracts under such agreement. They have had an equal opportunity with the other owners within the area of the proposed unit to become parties to such agreement on the same basis as all other owners in the field. Whatever the result would be if the appellants could show actual damages, they certainly are not entitled to complain in the absence of such a showing." Id. at 134 (emphasis added).

See also, Baumgartner v. Gulf Oil Corporation, 184 Neb. 384, 168 N.W.2d 510 (1969); Reed v. Texas Co., 22 Ill. App.2d 131, 159 N.E.2d 641 (1959).

In summary, Amoco submits that the correlative rights of the parties committed to the unit are protected ipso facto by the voluntary unit agreement. Those interest owners have acknowledged that the allocation formula adequately protects their correlative rights. The correlative rights of those interest owners who have refused to join the unit are not affected by unit operation, and such rights are adequately protected by their respective leases.

More importantly, defendants submit that the record evidence in both the first and second hearings overwhelmingly supports the Commission's initial conclusion that the unit agreement prevents waste and protects correlative rights of parties to the Unit Agreement and could not in any way adversely affect the correlative rights of non-committed parties.

CONCLUSION

The Bravo Dome Unit area is in an early stage of carbon dioxide development. In an effort to effect efficient and orderly development of this resource, a voluntary unit agreement was entered into by a vast majority of the interest owners in the area. This Unit Agreement was submitted to state and federal authorities for approval. Part of the review made by the state included two hearings before the Oil Conservation Commission which resulted in orders approving the unit agreement. These orders concluded that the Unit Agreement would prevent waste of the resource and would protect the correlative rights of all interest owners in the unit area. The orders are lawful and supported by substantial evidence.

We respectfully submit that the orders of the Oil Conservation Commission approving the Bravo Dome Carbon Dioxide Gas Unit Agreement should be affirmed.

Respectfully submitted

CAMPBELL, BYRD & BLACK, P.A.

By_____

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IN THE DISTRICT COURT OF TAOS COUNTY

STATE OF NEW MEXICO

ROBERT CASADOS, et al,

Petitioners

vs. No. 81-176

OIL CONSERVATION COMMISSION,

et al

Respondents.

RESPONDENT'S TRIAL BRIEF

STATEMENT OF THE CASE

This case results from a petition for judicial review, under Section 70-2-25 NMSA, 1978, of orders entered by the Oil Conservation Commission of the State of New Mexico. The petition seeks review of Order No. R-6446 and Order No. R-6446-B issued after hearing by the Oil Conservation Commission and rehearing by the Commission held pursuant to the application of Plaintiffs herein and others.

Order R-6446, issued August 14, 1980, approved a Unit Agreement submitted by Co-respondent Amoco Production Company. This unit agreement established the Bravo Dome Carbon Dioxide Unit which covers portions of Quay, Union, and Harding Counties, New Mexico. This order was the result of a hearing held by the Commission on July 21, 1980, in response to the application of Amoco for such approval.

On October 9, 1981, the Commission held a rehearing on certain matters in response to the request of Plaintiffs herein and others, pursuant to Section 70-2-29 NMSA, 1978. After this rehearing the Commission issued Order R-6446-B on January 23,

1981. Order R-6446-B again granted approval to the Bravo Dome Carbon Dioxide Unit and placed certain requirements on the applicant, Amoco Production Company.

Within the statutory period, petitioners caused to be filed three petitions for review as: Harding County Cause No. CV-81-0001; Quay County Cause No. CV-81-00015, and Union County Cause No. CV-81-18. By order of the District Court of Union County, after stipulation of the parties, these three actions were consolidated and docketed as Cause No. 81-18 in Union County. By Amended Order For Docketing, this consolidated matter was docketed in this court.

SCOPE OF REVIEW

This proceeding presents for review two orders of the Oil Conservation Commission of the State of New Mexico. The Commission, pursuant to the provisions of Section 70-2-1 et. seq. NMSA, 1978, as amended, is empowered to act as an administrative agency of the State of New Mexico. In fulfilling its statutory duties, the Commission conducts hearings and issues administrative orders.

In Rutter & Wilbanks Corp. v. Oil Conservation Commission, 87 N.M. 286, 532 P.2d 582 (1975), the New Mexico Supreme Court set forth the scope of review which is to be applied in cases of review of such administrative orders. That Court stated:

> We [the District Court and the Supreme Court on review of administrative orders] are restricted to considering whether, as a matter of law, the action of the Commission was consistent with and within the scope of its statutory authority, and whether the administrative orders are supported by substantial evidence (citations omitted) (at 287).

This Court is therefore called upon to determine whether the decision of the Commission approving the Bravo Dome Carbon Dioxide Unit Agreement was within the scope of its authority and whether such decision was supported by substantial evidence.

In the absence of a showing by Petitioners that the Commission violated these standards, the Court should hold for Respondent, Oil Conservation Commission, and affirm the orders under review.

ARGUMENT AND AUTHORITIES

The following sections of discussion and analysis of evidence and authorities will be presented for this Court's review in a form which will highlight the fact that the Commission in issuing Orders No. R-6446 and R-6446-B has met the standards set forth in Rutter & Wilbanks Corp. v. Oil Conservation Commission (supra) as well as other New Mexico cases. This consideration will first consider whether or not the Commission acted within the scope of authority, and second whether or not the Commission's orders are supported by substantial evidence.

POINT I

THE COMMISSION ACTED WITHIN THE SCOPE OF ITS AUTHORITY IN ISSUING ORDERS NOS. R-6446 AND R-6446-B.

The New Mexico Oil and Gas Act,§70-2-1 et. seq. NMSA 1978, contains the primary statements of the authority of the Oil Conservation Commission. Section 70-2-6 of that act states:

> "A. The division shall have, and is hereby given, jurisdiction and authority over all matters relating to the conservation of oil and gas and the prevention of waste of potash as a result of oil or gas operations in this state. It shall have jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of this act or any other law of this state relating to the conservation of oil or gas and the prevention of waste of potash as a result of oil or gas operations.
>
> B. The commission shall have concurrent jurisdiction and authority with the division to the extent necessary

for the commission to perform its duties as required by law. In addition, any hearing on any matter may be held before the commission if the division director, in his discretion, determines that the commission shall hear the matter.

Section 70-2-34 supplements that provision by empowering the Division and Commission to act "in the same manner" with regard to carbon dioxide. It states in part:

> "A. The oil conservation division is hereby vested with the authority and duty of regulation and conserving the production of and preventing waste of carbon dioxide gas within this state in the same manner, insofar as is practicable as it regulates, conserves and prevents waste of natural or hydrocarbon gas. The provisions of this act relating to gas or natural gas shall also apply to carbon dioxide gas insofar as the same are applicable. 'Carbon dioxide gas' as used herein shall mean noncombustible gas composed chiefly of carbon dioxide occurring naturally in underground rocks.
>
> B. The commission shall have concurrent jurisdiction and authority with the division to the extent necessary for the commission to perform its duties as required by law."

The Oil Conservation Commission received an application on May 28, 1980, from Amoco Production Company requesting approval of the Bravo Dome Carbon Dioxide Unit Agreement. This Agreement covering 1,174,225.43 acres, more or less, provides for the unitized operation of all voluntary participating areas within its boundaries for the exploration for, and production of, carbon dioxide gas. On July 21, 1980, the Commission held a hearing on this application at which hearing Petitioners, as well as others, appeared in opposition to such application. On August 14, 1980, after having considered the evidence presented at such hearing as well as all matters contained in its record, the Commission issued Order No. R-6446 approving the Bravo Dome Carbon Dioxide Unit Agreement.

As reflected by the record in this case, an application for rehearing of this matter was timely received from Petitioners and others and in response to such application for rehearing, the Commission issued its Order No. R-6446-A which set forth

certain specific matters which were to be addressed by the applicant at the rehearing which that order granted.

On October 9, 1980, a rehearing was held on this matter before the Oil Conservation Commission and at such hearing Petitioners, as well as others, appeared by counsel and objected to the granting of approval of the Bravo Dome Carbon Dioxide Unit. Following a review and study of matters presented at that hearing as well as all materials contained in its record, the Oil Conservation Commission on January 23, 1981, issued Order No. R-6446-B which approved the Bravo Dome Carbon Dioxide Unit Agreement and placed certain requirements upon applicant Amoco Production Company.

The statutes governing the authority, responsibility and duties of the Oil Conservation Commission do not specifically mandate the approval by the Commission of voluntary unit agreement. However, the unit agreement which Amoco Production Company had proposed contained language which made the effectiveness of such unit agreement contingent upon approval of that agreement by the Oil Conservation Commission. In addition, the rules of the State Land Commissioner who was one of the parties being asked to join in that unit agreement provided that the State Land Commissioner may postpone any decision on any unitization agreement pending action by the Oil Conservation Commission.

Respondent Oil Conservation Commission submits that in view of the statutory mandate placed upon it in Section 70-2-34 NMSA, 1978, and the application filed with the Commission by Co-respondent Amoco Production Company that its actions in regard to the Bravo Dome Carbon Dioxide Unit Agreement and the approval of such agreement by Orders Nos. R-6446 and R-6446-B were clearly within its scope of authority.

POINT II

THE ORDERS OF THE OIL CONSERVATION COMMISSION UNDER REVIEW ARE SUPPORTED BY SUBSTANTIAL EVIDENCE.

In its Petition for Review, here at issue, Petitioner requests that Orders Nos. R-6446 and R-6446-B be declared invalid and set aside because they are not supported by substantial evidence that such orders act to prevent waste or protect the correlative rights of petitioners or other fee interest owners. Before discussing the specific items of substantial evidence which support the Commission's decision, a brief review of the "substantial evidence" standard set forth by the New Mexico Supreme Court is appropriate.

The most clearcut discussion of the substantial evidence rule in New Mexico is contained in a case dealing with an order of the Oil Conservation Commission. That case is Grace v. Oil Conservation Commission, 87 N.M. 205, 531 P.2d 939, (1975). When confronted with a challenge similar to this one that a certain order of the Commission was not supported by substantial evidence, the Supreme Court stated in part:

> "'Substantial evidence' means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Rinker v. The State Corporation Commission, 84 N.M. 622, 506 P.2d 783 (1973). In resolving those arguments of the appellant, we will not weigh the evidence. By definition, the inquiry is whether on the record, the administrative body could reasonably make the findings. See IV Davis, Administrative Law Treatise, §29.01 (1958).
>
> [4] Moreover, in considering these issues, we will give special weight and credence to the experience, technical competence and specialized knowledge of the Commission. C.f., McDaniel v. New Mexico Board of Medical Examiners, 86 N.M. 447, 525 P.2d 374 (1974); §4-32-22, subd. A. NMSA, 1953.

The record presently before this Court clearly demonstrates that the New Mexico Oil Conservation Commission exercised its "experience, technical competence and specialized knowledge" in

issuing the orders here under review and such orders are supported by substantial evidence.

A. THERE IS SUBSTANTIAL EVIDENCE THAT THE ORDERS UNDER REVIEW ACT TO PREVENT WASTE.

The New Mexico Oil and Gas Act, discussed above, which grants authority to the Oil Conservation Commission sets forth a definition of "waste" which the Commission is charged with preventing. That definition found in §70-2-3 NMSA 1978, states in part:

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

It is on the basis of this statutory definition that the Commission is compelled to judge whether or not any proposed action will operate to prevent waste. In operating under such statutory definition of waste, the Commission in Order No. R-6446-B made the following findings:

(8) That the unitized operation and management of the proposed unit has the following advantages over the development of this area on a lease-by-lease basis:

(a) More efficient, orderly and economic exploration of the unit area; and

(b) More economical production, field gathering, and treatment of carbon dioxide gas within the unit area.

(9) That said advantages will reduce average well costs within the unit area, provide for longer economic well life, result in the greater ultimate recovery of carbon dioxide gas thereby preventing waste.

These findings specifically address the statutory definition of what constitutes "waste" of carbon dioxide gas. Of the items specifically set forth in the statute, these two findings address, (1) the prevention of "inefficient, excessive or improper, use or dissipation of reservoir energy," (2) the prevention of "the locating, spacing, drilling, equipping, operating or producing, of any well or wells in a manner to tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from the pool," as well as, (3) the prevention of surface waste by the prevention of "loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage or fire, especially such loss or destruction instant to or resulting from the manner of spacing, equipping, operating or producing, well or wells..."

Although the Petitioner does not directly attack the sufficiency of the findings in the challenged orders the implication in Paragraph 7 of such petition is that because the Oil Conservation Commission did not specifically "define" "establish" or "set forth" the extent of the waste as prohibited by the Oil and Gas Act, such orders are subject to challenge. In response, this Court is referred to the case of Continental Oil Company v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962) which states in part:

"We would add that although formal and elaborate findings are not absolutely necessary, nevertheless

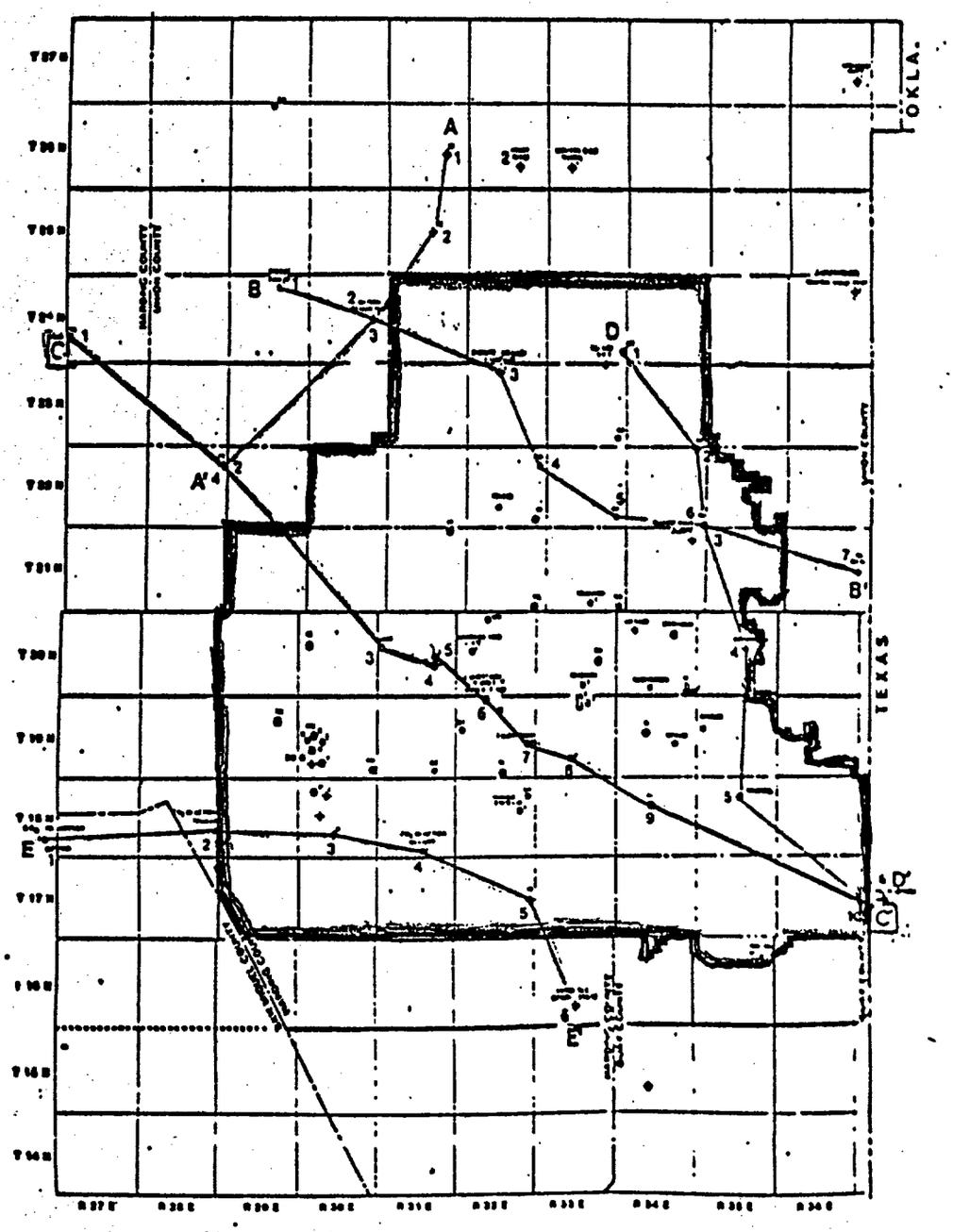
> basic jurisdictional findings, supported by evidence, are required to show that the Commission has heeded the mandate and the standards set out by statute. Administrative findings by an expert administrative commission should be sufficiently extensive to show not only the jurisdiction but the basis of the Commission's order. (Citations omitted.) 70 N.M. at 321.

A comparison of findings 8 and 9 of the Commission in Order No. R-6446-B, set out above, and the statutory definition of waste set forth in the New Mexico Oil and Gas Act, demonstrates that the Commission acting as an expert administrative agency has tendered findings that meet this standard.

Evidence presented to the Commission shows that these findings, which set out the basis of the orders, are supported by substantial evidence. Some of the evidence presented showed that the Tubb formation is the formation which is productive of CO_2 and is the unitized interval. (Transcript of Hearing, p. 14.) Since the unitized substance under the definition set forth in the unit agreement is CO_2 (Amoco's Exhibit 1 to Hearing, paragraph 1.3) the Commission focused its attention on this formation.

Applicant presented a set of five stratigraphic cross-sections at the hearing on July 21, 1980. These cross-sections were interpreted by qualified expert geologists as showing that the Tubb formation was contiguous throughout the unit area. (Transcript of Rehearing, p. 99.) These cross-sections correlate the rock characteristics at specific depths at 28 known locations in and around the unit area. By demonstrating that the formation being studied tends to vary in a known way (thicker or thinner, wetter or dryer, more or less permeable, etc.) it is possible for highly trained geologists to predict how the formation characteristics vary in an area for which no test data is available. These 28 wells and their correlating cross-sections provide information about the major areas of the unit, as can be seen from the diagrammatic sketch

which locates each of these wells and traces the plot of each cross-section, A-A' through E-E'. [This sketch was copied from Exhibit of Applicant at the hearing of July 21, 1980, and has been highlighted for clarification.]



A review of the testimony relative to each of these cross-sections (Transcript of Hearing, p. 56-74, Exhibits 5

through 10) shows that the Applicant demonstrated that the Tubb formation was evident in the entire unit area and that the formation was substantially less evident, if present at all, outside the unit boundaries. Evidence was presented that "this entire area could reasonably be considered productive." (Transcript of Rehearing, p. 101, J. C. Allen.)

In addition to establishing that the entire unit area could be considered productive, Applicant demonstrated that without an approved unit agreement, it would be forced to drill additional, and possibly unnecessary wells. (Transcript of Hearing, p. 28, Transcript of Rehearing, p. 100.) This unnecessary drilling would cause the cost of production to rise and would therefore decrease the amount of CO_2 which would ultimately be recovered from the formation. (Transcript of Rehearing, p. 63-64.)

With regard to the question of waste, Mr. Bruce Landis the expert witness appearing on behalf of applicant Amoco Production Company at Page 35 of the transcript of the initial hearing on this matter stated:

> "All right. First of all, with respect to conservation of CO_2. Where you have an orderly and efficient development, where it can be planned ahead, and where you are not running into competitive operators who have desperately to drill offset obligations, and so on, you are conserving the unitized substances. You are preventing waste in the drilling process. You are preventing waste in the completion of process."

The question of whether or not the Bravo Dome Carbon Dioxide Unit Agreement would operate to prevent waste was one main focus of the rehearing before the Oil Conservation Commission of this matter. At that hearing Mr. J. C. Allen, an expert witness appearing on behalf of Amoco Production Company, addressed this question and the affect which the Bravo Dome Dioxide Unit Agreement might have on the efficient use and production of materials contained in the Bravo Dome Carbon

Dioxide deposits. Mr. Allen stated at Page 100 of the transcript of rehearing:

> "Yes, sir, I believe that was our intent the whole intent of the unit is to develop in an orderly and efficient manner and to develop on a basis that would effectively and efficiently drain that reservoir, whether it be 640 or somewhat less, 320."

This evidence, when coupled with the lack of evidence presented by Petitioners herein to refute such conclusions, supports the Commission's decision that unitization is an appropriate step and would act to prevent waste. In fact, Mr. F. H. Callaway, appearing on behalf of Petitioners herein at the rehearing of this matter stated:

> "I've always been an advocate of field-wide unitization. I feel like that is the optimum method of operation in order to achieve the maximum recovery of hydrocarbons, in this case gas, and operate under the most efficient circumstances." (Transcript of Rehearing, p. 154)

Section 70-2-3 NMSA, 1978, defines waste. Other sections of the Oil and Gas Act require that the Oil Conservation Commission act to prevent waste. The Commission, both at the hearing of July 21, 1980, and the rehearing held on October 9, 1980, was presented with substantial evidence that the Bravo Dome Carbon Dioxide Unit Agreement operated to prevent waste by preventing the construction of unnecessary surface facilities, by preventing the drilling of unnecessary wells to efficiently and effectively drain the carbon dioxide reservoir in question, and by providing for orderly and efficient development of this resource in a manner which would act to most appropriately utilize and prevent the dissipation of reservoir energy.

B. <u>THERE IS SUBSTANTIAL EVIDENCE THAT THE ORDERS UNDER REVIEW ACT TO PROTECT THE CORRELATIVE RIGHTS OF INTEREST OWNERS</u>.

One of the purposes of the regulatory authority granted to the New Mexico Oil Conservation Commission is the protection of "correlative rights." The definition of these rights is set

forth in the New Mexico Oil and Gas Act at §70-2-33.H. That section states:

> "correlative rights" means the opportunity afforded, so far as 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 and gas, or both, under such property bears to the total recoverable oil and gas, or both, in the pool, and for such purpose to use his just and equitable share of the reservoir energy;"

Since the drilling of wells on each individual interest owner's property might violate the principles of prevention of waste, protection of correlative rights is accomplished by equitable sharing of the proceeds of production from interests owned by separate individuals. In this manner, each interest owner receives a fair share of the proceeds of production of the resources which he is entitled to produce and greater ultimate resource recoveries are obtained by the prevention of waste.

In its findings in Order No. R-6446-B made after the rehearing of October 9, 1980, the Commission made the following findings regarding the protection of correlative rights:

> "(13) That the developed acreage within the proposed unit is very small when compared to the total unit area and when viewed as a whole, the unit must be considered to be an exploratory unit.
>
> (14) That the evidence presented demonstrated that there are two methods of participation which would protect the correlative rights of the owners within the exploratory units through the distribution of production or proceeds therefrom from the unit; these methods are as follows:
>
> (A) a formula which provides that each owner in the unit shall share in production from any well(s) within the unit in the same proportion as each owner's acreage interest in the unit bears to the total unit acreage, and
>
> (B) a method which provides for the establishment of participating areas within the unit based upon completion of commercial wells and geologic and engineering interpretation of presumed productive acreage with only those parties of interest within designated participating areas sharing in production. Such participation would be based upon the proportion

of such owner's acreage interest within the participating area as compared to the total acreage within the participating area.

(15) That each of the methods described in Finding No. (14) above was demonstrated to have certain advantages and limitations.

(16) That there was no evidence upon which to base a finding that either method was clearly superior upon its own merits in this case at this time.

(17) That the method of sharing the income from production from the unit as provided in the Unit Agreement is reasonable and appropriate at this time.

On the correlative rights issue, Petitioner again complains that the findings issued by the Commission in this matter are deficient because they do not "define correlative rights." Again the clarifications set forth by Continental Oil v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962) are instructive. The findings of the Commission set out above set forth the following: the necessity of providing for equitable participation; the two most commonly accepted participation formulas; the exploratory nature of the Bravo Dome Unit and the very limited development of such area which results in this exploratory nature; and that there is evidence that the participation formula set forth in the Bravo Dome Carbon Dioxide Unit Agreement is appropriate to protect the correlative rights of those interest owners participating in such agreement. Clearly these findings are the basis of the Commission's finding that the Bravo Dome Carbon Dioxide Unit Agreement acts to protect correlative rights and should be approved.

These findings are supported by substantial evidence presented to the Commission by expert witnesses for both parties to the dispute. This evidence indicated that there are two primary methods of determining how production is to be shared. (Transcript of Rehearing, pgs. 23, 32-33, 179 and 185.)

Evidence was also presented to the Commission that a participation formula which allocated production from the unit

based upon the percentage of the unit owner's acreage in the total unit area was the most appropriate method of participation for large exploratory units in which the concentration of extensive reserves was unknown. At page 16 of the Transcript of Rehearing, the following exchange between counsel for Amoco Production Company and one of the expert witnesses, Mr. Neal Williams, is found:

> "Q. All right, sir. Let me ask you this question, since you have studied the unit agreement, Exhibit No. 1, you're familiar with the transcript, you're aware of the fact that in the Bravo Dome Unit all people who have voluntarily committed their interest to the unit will participate in the unit production from the time of first sale.
>
> "A. That is correct.
>
> "Q. Do you see anything wrong based upon your experience with exploratory units with having, I believe you experts in the field call it an undivided participation from the outset, do you see anything wrong with participation in that manner?
>
> "A. No, I do not. In fact, it's probably the most ideal situation to have in exploratory units."
>
> Rehearing Transcript, p. 16

At its hearing, the Commission was presented with certain ratifications of the unit agreement which implicitly indicated that those interest owners voluntarily participating in this unit had agreed that the participation formula set forth in such agreement was a just and equitable method of protecting their interests. Other evidence was introduced to indicate that some of the interests which had been added to the unit agreement were added under terms of the various lease agreements which allowed the lessee to join unit agreements. These leases indicate that the "opportunity. . .to produce without waste his just and equitable share. . ." has been transferred to the lessee and he has been authorized to use and is responsible to the lessor for protecting the lessors "correlative rights". It is not within the responsibility, authority, or expertise of the Oil Conservation Commission to resolve individual contract disputes.

The decision of the Oil Conservation Commission was rendered outside the consideration of these difficulties over private contractual arrangements. The Commission has decided only that based upon the substantial evidence presented to it, the Bravo Dome Carbon Dioxide Unit Agreement, being an agreement providing for voluntarily participation, provided an appropriate means of protecting the correlative rights of those individual interest owners participating in such unit.

As to the correlative rights of parties who do not participate in the units by voluntarily joining the Bravo Dome Carbon Dioxide Unit Agreement such interest owners are unaffected by the Commission's approval of the agreement. Nothing in the agreement or the Commission's approval of that agreement has any affect upon such non-joining interest owners' right "to produce without waste his just and equitable share of oil and gas. . .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 and gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool,. . ." Such non-participating interest owners will have available to them the same rules and regulations and will have placed upon them the same requirements as would have been applicable if there had been no agreement or approval of such agreement.

In addition, in order to more appropriately carry out its mandate to prevent waste and protect correlative rights, the Oil Conservation Commission retained jurisdiction over this matter and placed upon applicant Amoco Production Company certain planning and reporting requirements which in the future will act to assure the most appropriate present and future actions on the part of unit operators to prevent waste and protect correlative rights. These requirements and the findings supporting them are

set forth in Order No. R-6446-B at findings No. 24 through 36 and Order paragraphs numbered 3 through 11.

CONCLUSION

In issuing Orders No. R-6446 and No. R-6446-B, the New Mexico Oil Conservation Commission was responding to a request of applicant and others that it exercise its specific expertise to determine whether or not that certain agreement known as the Bravo Dome Carbon Dioxide Unit Agreement operated to prevent waste of carbon dioxide and to protect the correlative rights of the interest owners in such product. As summarized above, under both the statutory and case law of the State of New Mexico the evidence presented to the Oil Conservation Commission supported a finding that in fact this agreement would operate to prevent waste and protect such correlative rights.

Therefore, Respondent New Mexico Oil Conservation Commission respectfully prays that the relief sought by Petitioner herein be denied and that Order No. R-6446-B be affirmed.

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CERTIFICATE

I hereby certify that a true and correct copy of the foregoing brief was mailed to opposing counsel of record this 2nd day of December, 1981.

W. Perry Pearce

STATE OF NEW MEXICO COUNTY OF TAOS

IN THE DISTRICT COURT

Robert Casados, et al,
Plaintiffs,
vs.
Oil Conservation Commission, et al,
Defendants.

No. 81-176

ORDER TO DELETE PARTIES

This matter having come on for hearing upon the motion of Forrest Atchley and Atchley Ranch, Inc., to be dropped as parties plaintiff herein, and it appearing that such motion is well taken,

THEREFORE, it is ORDERED, that Forrest Atchley and Atchley Ranch, Inc., be and they hereby are deleted and dropped as parties plaintiff herein.

District Judge

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STATE OF NEW MEXICO)
)
COUNTY OF TAOS)

I hereby certify that on the 21st. day of September, 1981, I mailed a conformed copy of the Order to Delete Parties filed herein to all counsel of record.

Connie Pacheco

Connie Pacheco
Secretary to Judge Caldwell

STATE OF NEW MEXICO COUNTY OF TAOS

IN THE DISTRICT COURT

ROBERT CASADOS, ET AL,

PLAINTIFFS,

CASE NO. 81-176
(Consolidated)

VS.

OIL CONSERVATION COMMISSION,
ET AL.,

DEFENDANTS

PLAINTIFF'S TRIAL BRIEF

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STATE OF NEW MEXICO COUNTY OF TAOS

IN THE DISTRICT COURT

ROBERT CASADOS, ET AL,

PLAINTIFFS,

CASE NO. 81-176
(Consolidated)

VS.

OIL CONSERVATION COMMISSION,
ET AL.,

DEFENDANTS

PLAINTIFFS' TRIAL BRIEF

Plaintiffs, owners of fee simple interests in carbon dioxide subject to leases in the proposed unit area ("Landowners"), directly attack the Order of the Oil Conservation Commission ("Commission") approving the proposed Bravo Dome Carbon Dioxide Unit Agreement, and particularly its correlative rights flaw.

THE SHARING ARRANGEMENT OF THE UNIT AGREEMENT

Under the Unit Agreement (Exhibit "1"), the boundaries of the proposed unit embrace about 1,174,000 acres of land, depicted in Exhibit "2", divided into 1,568 tracts (Tr. 32.) Of this, about 318,000 acres are state lands, 95,000 are federal lands, and 761,000 acres are fee or patented lands (Tr. 16,17). The formation sought to be unitized is the Tubb Formation lying between the Cimarron Anhydrite just above the Tubb, and the Granite lying just below the Tubb, in a series of Northwest-Southeast trending fault systems. The Tubb consists of sediments washed within the area in fluvial deposits (Tr. 14, 15, 54). The Tubb Formation is thin and tight on the West side of the proposed unit area and generally thickens and becomes less tight to the East and Southeast (Exhibits "5", "6", "7", "8", "9" and "10", Tr. 78-83). At the time of the initial hearing, only 42 wells capable of producing had been drilled in the unit area. At the time of the hearing, the well spacing and proration unit rules of the Commission allowed one well to each 160 acres of land (Tr. 41-48). Thus, when fully developed, the unit could contain as many as 7,300 wells. Of the wells, some are wet wells, that is, wells that produced water to such an extent that carbon dioxide gas could not be produced therefrom (Exhibit "8", Tr. 69-75, 83-84). There is no evidence about the producing capabilities or recoverable reserves attributable to any of the wells that have been drilled, much less about the recoverable reserves and producing capabilities of the other 7,300 wells that might be drilled on current 160 acre spacing rules. Amoco Production Company owns 68.03% of the working interest estate in the unit area (Tr. 97-103). In Amoco's original timetable, first sales from the unit area were scheduled for mid-1984 (Tr. 32-38).

The sharing arrangement is by tract, as specified in Article 5 of the proposed Unit Agreement. In the sharing agreement, unit production is ascribed to the owners of each tract, based on the number of surface acres in the tract, so that, in sharing production, each acre in the proposed unit is treated as equal in every respect to every other acre in the unit, regardless of recoverable reserves or producing capabilities of the tract. It is provided in Paragraph 5.2 that within fifteen years after the first sales of carbon dioxide delivered into the pipe line, but in any event no later than twenty years after the effective date of the unit, the tract participation of each tract will be re-determined by the working interest owners, subject to the approval of the Commissioner of Public Lands, to eliminate the "non-productive acres." The "non-productive acres" are determined by extrapolating net pay intervals. If a tract has no extrapolated net pay acres, it will be eliminated. An acre with any extrapolated net pay interval will remain, to therafter be treated as equal in every respect to each other acre left in the unit. Thus it is, that if the unit area has 1x recoverable reserves average per acre, the owners of acreage having 10x recoverable reserves per acre will be entitled to receive the benefits of only 1x share of production per acre. On the other hand, the owners of acreage having x/10 reserves per acre will be entitled to receive the benefits of 1x share of production per acre. During the next fifteen to twenty years, the owners of land having no recoverable reserves will be entitled to 1x share of production per acre.

Until the field is developed, there is no earthly way to protect the correlative rights of any of the thousands of owners of interests in the unit area, and especially those having interests in only a few of the tracts, as

distinguished from those having interests spreading across and through the entire unit area, who can afford to play the averages, as has the Commissioner of Public Lands (Tr. Re-hearing 185-188), who has also succeeded in extracting different terms and concessions for his ratification than those expressed in the Unit Agreement as binding on all (Tr. 132-138; Tr. Re-hearing 183-188). After the field is developed, the odds against the sharing formulae protecting correlative rights of all of the parties must reach near infinity.

Once the Unit Agreement is approved by the Commission, the sharing of production provisions of Article 5 become set and jelled, forever and ever, and, as will hereinafter be demonstrated, beyond the power and jurisdiction of the Commission, or anyone else, for that matter, to change, unless it be by the unanimous agreement of every one of the thousands of affected interest owners.

WHAT ARE CORRELATIVE RIGHTS

The first paragraph of the preamble of the proposed Unit Agreement recognizes the need to protect correlative rights. Article 17 expressly provides that the unit cannot become effective without the approval of the Commission or its Division. The sole jurisdiction and function of the Commission in natural resources is the prevention of waste and the protection of correlative rights. Section 70-2-11, NMSA, 1978. By statutory definition, "correlative rights" means the opportunity afforded, so 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. Section 20-2-33H, NMSA, 1978. The provisions of the Oil and Gas Act, Chapter 70, NMSA, 1978, relating to oil and natural gas, have been made to apply to carbon dioxide gas, insofar as the same are applicable. Section 20-2-34, NMSA, 1978.

The landmark case on correlative rights is Continental Oil Company vs Oil Conservation Commission, 70 NM 310, 373, P2d, 809 (1962). This case has been explained and clarified in El Paso Natural Gas Company vs Oil Conservation Commission, 76 NM 268, 414 P2d, 496 (1966), and Grace vs Oil Conservation Commission, 87 NM 205, 531 P2d, 939 (1975). These three cases all deal with gas proration formulae which the Oil Conservation Commission can and does change from time to time as additional facts and data come to be known.

According to the Continental Oil Company case, in order to protect correlative rights, it is encumbent upon the Commission to determine, so far as it is practicable to do so, certain foundationary matters without which correlative rights of the various owners cannot be ascertained. Therefore, the Commissioner must determine, insofar as practicable, (1) the amount of recoverable gas under each producer's tract; (2) the total amount of recoverable gas in the pool; (3) the proportions that (1) bears to (2); and (4) what portion of that proportion can be recovered without waste. That the extent of correlative rights must first be determined before the Commission can act to protect them is manifest. Continental Oil Company vs Oil Conservation Commission, 70 NM 310, 373 P2d 809 (1962), and see 3 Nat. Resources J. 178 (1963).

Where data is not yet available due to non-development, in such matters as gas proration formulae and sizes and distances involved in proration and spacing units, all of which the Commission can change, the courts have allowed the Commission the expediency of proceeding to set alterable formulae and distance and size rules pending development of additional facts. In addition to El Paso Natural Gas Company vs Oil Conservation Commission, 76 NM 268, 414 P2d 496 (1966) and Grace vs Oil Conservation Commission, 87 NM 205, 531 P2d 939 (1975), please see Sims vs Mechem, 72 NM 186, 352 P2d 183 (1963); Fasken vs Oil Conservation Commission, 87 NM 292, 532 P2d 588 (1975), and Rutter and Wilbanks Corporation vs Oil Conservation Commission, 87 NM 286, 532 P2d 582 (1975).

HOW THE OIL CONSERVATION COMMISSION IS INVOLVED WITH THIS PROPOSED UNIT AGREEMENT

There is no statute, rule or regulation requiring the Commission to approve or even consider approval of a Unitization Agreement such as this. Commission approval of this Unit Agreement became necessary only because its draftsmen provided that it would only become effective if approved by the Commission or its Division. Section 17.1 (b) of the Unit Agreement. For the Commission to have any jurisdiction of the matter whatsoever, such must be done in the name of conservation, to prevent waste and to protect correlative rights. The Commission has no other standing or jurisdiction.

The reasons why Commission approval was made a condition is not spelled out. It is our belief that with a subject matter that is so complex and about which so few have any reason to become knowledgable, it was felt desir-

able to have the Commission's Good Housekeeping Seal of Approval in the offing as an inducement and comfort factor to obtain ratification by the various landowners without much study or consideration on their individual parts. Thus, the check on the balance would be entrusted to the Commission in the performance of its duty to protect correlative rights.

WHAT THE COMMISSION DID ON RE-HEARING

On re-hearing, the Commission adopted the position that it could control unit operations and the terms of the Unit Agreement in the future, making the following pertinent findings, among others:

1. The method of sharing the income of production from the unit, as provided in the Unit Agreement, is reasonable and appropriate at this time (findings on re-hearing, Paragraph 17, emphasis added);

2. The Commission has no experience with the long-term operation of either a unit of this size or of a unit for the development and production of carbon dioxide gas (findings on re-hearing, Paragraph 24). The evidence presented in this case establishes that the Unit Agreement, at least initially, provides for the development of the unit area in a method that will serve to prevent waste and which is fair to the owners of interests therein (findings on re-hearing, Paragraph 25, emphasis added).

3. The current availability of reservoir data in this large exploratory unit does not now permit the presentation of evidence or the finding that the Unit Agreement provides for the long-term development of the unit area in a method which will prevent waste and which is fair to the owners of the interests therein. (findings on re-hearing, Paragraph 26). Further development within the unit area should provide the data upon which such determinations could from time to time be made (findings on re-hearing, Paragraph 27)

4. The Commission is empowered and has the duty with respect to Unit Agreements to do whatever may be reasonably necessary to prevent waste and protect correlative rights (findings on re-hearing, Paragraph 28).

5. The Commission may and should exercise continuing jurisdiction over the unit relative to all matters given it by law and take such actions as may, in the future, be required to prevent waste and protect correlative rights (findings on re-hearing, Paragraph 29).

6. These matters may include, but are not limited to: well spacing, requiring wells to be drilled, requiring elimination of undeveloped or dry acreage on the unit area, and modification of the Unit Agreement (findings on re-hearing, Paragraph 30).

7. The approval of the proposed Unit Agreement with the safeguards provided above should promote the prevention of waste and the protection of correlative rights within the unit area (findings on re-hearing, Paragraph 37).

The Commission then ordered that the Unit Agreement be approved (Order on Re-hearing, Paragraph 1). It also ordered the operator to submit plans and demonstrations to the Commission, setting an effective date for the approval and retaining jurisdiction for the entry of further orders.

On re-hearing, the Commission patently adopted the theory that it has jurisdiction and power by its future orders to do such things as change the terms and provisions of the Unit Agreement, to alter the property rights vested in the various interest owners under the terms of the Unit Agreement, and to mandatorily compel faster development and production, including the drilling of additional wells and installation of additional facilities and including the expenditure of reasonable monies of the working interest owners therefor.

In this, the Commission exceeds not only its existing powers and jurisdiction, but, as well, the powers and jurisdiction that could be lawfully conferred upon a quasi-legislative body, such as the Commission, in a state constitutionally mandating separation of powers. Inasmuch as one company, Amoco, owns 68%, or more, of the leasehold working interests, and thereby, for all essential purposes, controls unit development and operations, and since the Unit Agreement eliminates the implied covenants of reasonable development, obligations to drill offset wells and fair marketing of gas, and in view of the production sharing agreement in the Unit Agreement, there can be no doubt that by mid-1984, when production might commence, the interests of the various landowners and the content of the Agreement, to be apt, will need a lot of revising and changing by someone. The trouble is that the Commission is not endowed with the power and jurisdiction to effect such changes and to assume unto itself control of such matters, no matter its good intention to do so in the future, having once allowed the unit contract to become the agreement binding on all of the affected interest owners and their properties. It is not within the power of the Commission to take the property of one owner and give it to another. It is not within the power of the Commission to compel the working interest owners to drill, and expend the funds required to drill, more wells. It is not within the power of the Commission to make the working interest owners produce more gas than the working interest owners want to produce. It is not within the power of the Commission to protect the wellhead value of carbon dioxide against the self-dealing transactions authorized by the very agreement that became effective when the

Commission placed upon the agreement its Good Housekeeping Seal of Approval. [1]

JURISDICTION OF THIS COURT

The jurisdiction of this Court to hear and determine the merits of this direct attack on the Order of the Commission on re-hearing is Section 70-2-25, NMSA, 1978 as amended. The hearings shall be on a transcript of proceedings before the Commission under the substantial evidence rule. The Court's Order shall be either to affirm or vacate the Commission's orders. Appeal from the Judgment or decision of this Court is to the Supreme Court.

THE COMMISSION HAS NO LAWFUL POWER OR AUTHORITY HEREAFTER TO CHANGE THE PROVISIONS OF THE UNIT AGREEMENT PERTAINING TO SHARING OF PRODUCTION OR THE PROCEEDS OF SALE THEREOF

Had the Commission the lawful power hereafter to compel the transfer, exchange or elimination of property rights and interests of royalty and working interest owners in the unit, as the Commission seems to think that it has,

---

1. The provisions of the Unit Agreement amending existing leases to conform to the Unit Agreement, and eliminating express or implied covenants of reasonable development in the drilling of offset wells are to be found in Paragraph 3.3 and 3.3(a) and (b) of the proposed Agreement. The provisions allowing self-dealing in the marketing of production to determine wellhead value of carbon dioxide for payment of royalties is to be found in Paragraph 6.3(a) of the Proposed Agreement. Of interest, in this regard, since ratification of the proposed Unit Agreement has been purportedly effected for certain landowners by their lessees, acting alone and unilaterally, pursuant to provisions of the leases, please see Phillips Petroleum Company vs Peterson, 218 F 2d, 926, 935 (Ca. 10, 1954), dealing with like lease provisions.

then perhaps the tack taken by the Commission on re-hearing might afford the possibilities of an adequate means of protecting the correlative rights of the various property interest owners in the unit. Particularly might this be so if the Commission could also issue its enforceable orders compelling the working interest owners in the unit to drill offset wells, to spend their money drilling wells to insure reasonable development, and to market their gas fairly and at fair wellhead values. If the Commission had the power to do so, it could perhaps direct a pretty fair carbon dioxide operation, using the monies and properties furnished by others under modes of compensation to be devised by the Commission. In this way, the Commission could perhaps decide in the future that Tract 105, because of its carbon dioxide producing capabilities, should have allocated to it five times more production per acre from the unit, and that such should be made up from Tracts 750, 890 and 1099. Likewise, it could perhaps decide that the working interest owners need to drill and complete, in 1984, 500 additional wells to meet the market demand and therefrom should produce so many million cubic feet of gas per day, subject to the physical abilities of the unit wells to produce the same. This means of developing and producing might be very efficient and might result in a great number of economies and might prevent waste that might otherwise occur, through underdevelopment and underproduction. To do this, of course, the Commission would have to be able to change, as it saw fit, from time to time, the various contractual provisions of the Unit Operating Agreement, and the property rights created thereby, including the sharing arrangement therein contained.

Such powers, of course, sound foreign and wholly inconsistent with the rights of private ownership of property and the legalities by which regulatory agencies of the government, such as the Commission, are created and empowered.

The State's powers over conservation of its natural resources derives from the police powers reserved to the states in the Constitution of the United States. Whatever powers the Oil Conservation Commission has are police powers delegated to it by the legislative branch of the government of New Mexico. Palmer Oil Corp. vs. Amerada Petroleum Corp. 343 U. S. 390, 96 L Ed. 1022, 72 S. Ct. 842 (1952); Marrs vs Oxford, 32 F 2d, 134 (CCA 8, Kans., 1929) Cert. Den., 280 U. S. 573, 74 L Ed. 625, 50 S. CT. 29; and see 37 ALR 2d, 434.

In the absence of explicit statutory authority, neither the courts nor an administrative agency has the power to force pool or unitize interests in oil or gas. Pickens vs Ryan Consolidated Petroleum Corp., 219 SW 2d 150 (Tex. Ca. 1949) er. ref. nre; Republic Natural Gas Company vs Baker, 197 F 2d 647 (Ca. 10, Kans., 1952); Dobson vs Oil and Gas Commission, 218 Ark. 165, 235 SW 2d 33 (1950).

The New Mexico Legislature has delegated to the Commission the power to force pool interests to form oil or gas spacing and proration units, in this case 160 acres of land. Section 70-2-17, NMSA, 1978, and see 3 Nat. Resources J. 316. In 1975, the Legislature delegated to the Commission the power to force unitization of an entire pool, or any part thereof, for the recovery of oil by pressure maintenance and in secondary and tertiary operations, provided the correlative rights are afforded virtually absolute protection. The Statutory Unitization Act, Sections 70-7-1 to 70-7-21 NMSA, 1978.

The Legislature has not delegated to the Commission any other role in creating Pooling or Unitization Agreements, and certainly has not purported to delegate expressly to the Commission any function in either setting or modifying the terms of Sharing Agreements among those having proprietary interests. Were the Legislature to empower an agency such as the Commission to take private property rights from one person and award them to another person, or insist that it be done, the Legislature would be exercising a power reserved to the judicial branch of government under Article 3, Section 1, of the Constitution of the State of New Mexico, and over which the Legislature has no lawful authority whatsoever. See Fellows vs Shultz, 81 NM 496, 469 P 2d, 141 (1970); State Exrel Hovey Concrete Products Co. vs Mechem, 63 NM 250, 316 P 2d 1069 (1957); and 4 Nat. Resources J. 350, 1964, on the New Mexico interpretation of Article 3, Section 1 of its Constitution.

The Unit Agreement is a contract among those having proprietary interests altering property rights in the subject matter of the contract. The proprietors have not granted to the Commission the power or authority to re-write the Agreement or to take over operations as a Czar. The only function of the Commission with respect to the terms of the Agreement is to approve or disapprove of the same, to implant or withhold its Good Housekeeping Seal of Approval. Finally approved by lawful Order of the Commission, the Agreement and its sharing arrangements are jelled forever, subject only to those modifications allowed in the Agreement, or, the unanimous agreement of all of those thousands of persons having proprietary interests therein. The instant that the Commission orders the sharing arrangement to be changed to protect the owners of interests in various of the tracts in the unit, those adversely affected thereby can

fully expect the courts in New Mexico to hold that the Commission had no power or authority to re-allocate or eliminate their private property ownership in the production from the unit, in just the same way that the Legislature, had it purported to do so, would have had no power or authority to do so by statutory enactment.

Put another way, the Unit Agreement is a private treaty, and is not the act of an agency of government that is empowered to create such. It is not a part of the treaty that anyone, including an agency of the government, can dictate amendments, changes or alterations of the same.

At the time of the hearings, it was projected by Amoco, the unit operator, that it would be at least 1984 before it could be expected that any carbon dioxide would be produced and transported off the unit area by pipeline. Of the approximately 7,300 wells that might be drilled in the unit area, in order to drill the same to the density prescribed by the spacing rules of the Commission in effect, but 42 had been drilled in the unit area at the time of the first hearing, many of which had not been completed and most of which had not even been tested. Because of the faulting system in the unit area, the manner in which the Tubb Formation had been deposited or laid down in geologic history, the demonstrated differences in thickness of the Tubb Formation underlying various parts of the land, the fact that some of the wells that had been drilled were wet and, hence, incapable of producing carbon dioxide, and thereby because the producing capabilities of the various tracts comprising the unit are not uniform, it is impossible to tell from evidence that the Unit Agreement will either prevent waste or protect correlative rights, and that such can only be determined after there has been further development. Small wonder it is then that Plaintiffs have contended throughout

that unitization is premature and will be until there is adequate evidence to present to the Commission that the Unit Agreement will, in fact, prevent waste and will, in fact, protect correlative rights. When it is timely to consider, based on evidence, the aptness of a particular Unit Agreement, one can be almost positively assured from the evidence made before the Commission that the sharing agreement pertaining to production and proceeds of sale thereof will be different than the sharing agreement now provided in the proposed Unit Agreement. The person with 10x recoverable reserves is not going to ratify or be required to ratify an agreement that gives him but 1x reserves to be recovered from the unit. Neither, on reflection, will the Unit Agreement waive off the checks and balances of the underlying Oil and Gas Leases, as has the proposed unit pertaining to the implied covenants of reasonable development, protection against drainage from offset wells, and the duty to market and market fairly the carbon dioxide gas production. Neither can it be expected that one operator will be allowed virtually absolute control of the state's one commercial supply of large quantities of carbon dioxide gas, at a time when the significance of its use in tertiary recovery of crude oil is just coming to be known and appreciated.

We are not prepared to say that in the exercise of the state's police power a citizen cannot be compelled affirmatively to do some things if the need therefor has a reasonable relationship to the public interest. Thus, we would say that an operator can be compelled, affirmatively, to plug a well that is flowing salt water on the land, or to cap a blowout well that is destroying a reservoir of natural resources, or to destroy a building to prevent the spread of a raging inferno. The Court can appreciate, however, that this limited mandatory injunction power, so to speak, is far

removed from the power of the state, and particularly a quasi-legislative body, to take the ownership of property from one citizen and award it to another, or to make a person produce wells at a greater rate than the owner desires, or to make a person spend money to drill more wells than it suits his purposes at the time to drill. Contrary to the conception that the Commission has of its powers, the Commission is not empowered to do everything it may consider necessary to prevent waste and to protect correlative rights, when such involves the taking of property from one for the benefit of another, with or without compensation. The New Mexico Bill of Rights, Article II, Section 20 of the Constitution of New Mexico, means that title and ownership of private property of one person cannot be taken by the State for the benefit of another private person. See Kaiser Steel Corp. vs W. S. Ranch Co., 81 NM 414, 467 Pacific 2d, 986 (1970), and see Estate of Waggoner vs Gleghorn, 378 SW 2d 47 (Tex. Sup. Ct., 1964), and Marrs vs Railroad Commission, 177 SW 2d, 941, 949 (Tex. Sup. Ct., 1944).

In approving a fixed production sharing arrangement which it is impossible to show by evidence will, in fact, protect correlative rights, the Commission is not allowed the tolerance that it might were the subject merely setting easily revised proration formulae and well spacing patterns in undeveloped fields.

CONCLUSION

The Commission has presupposed that it has in its power to do anything that it sees fit to do to prevent waste and protect correlative rights. On this premise, it has supposed that it can change the sharing agreement contained in the proposed Unit Agreement from time to time if it sees

fit to do so, and otherwise to change or alter the property rights of interest owners. On these false premises, the Commission has approved this Unit Agreement. Since the Commission does not, and constitutionally cannot, have the powers that it claims for itself, the Commission's Order, on its face is based on a false basic premise that cannot be supported by any substantial evidence. The Commission's Order approving the unit must therefore be vacated.

Respectfully submitted,

WM. MONROE KERR
P. O. Box 511
Midland, Texas 79702
915/683-5291

ERNEST L. CARROLL
P. O. Box 511
Midland, Texas 79702
(915) 683-5291

OF COUNSEL:

KERR, FITZ-GERALD & KERR
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111 MIDLAND TOWER BUILDING
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WILLIAM L. KERR (1904-1978)
GERALD FITZ-GERALD
WM. MONROE KERR
THEODORE M. KERR
HARRIS E. KERR
ERNEST L. CARROLL*
MICHAEL T. MORGAN
WILLIAM E. WARD
KATHLEEN McCULLOCH
*NEW MEXICO

POST OFFICE BOX 511
MIDLAND, TEXAS 79702
TELEPHONE 915 683-5291

September 10, 1981

William F. Carr, Esquire
Campbell, Byrd & Black
P. O. Box 2208
Santa Fe, New Mexico 87501

Re: Casados, et al, vs. Oil Conservation Commission, Civil Action No. 81-176

Dear Mr. Carr:

After you have executed the enclosed instrument, would you please forward it to Mr. Kellahin for his approval and then for return to Mr. J. Scott Hall.

With best regards, I am

Very truly yours,

Wm. Monroe Kerr

WMK:kl

cc: J. Scott Hall, Esquire
Attorney for
Commissioner of Public Lands
P. O. Box 1148
Santa Fe, New Mexico 87501

W. Thomas Kellahin, Esquire
Kellahin & Kellahin
P. O. Box 1769
Santa Fe, New Mexico 87501

W. Perry Pearce, Esquire
New Mexico Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87501

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR

LARRY KEHOE
SECRETARY

September 10, 1981

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

Ms. Tina V. Martinez
District Court Clerk
Taos County
Post Office Box 1715
Taos, New Mexico 87571

Re: Casados et al., vs. Oil Conservation Commission, et al., No. 81-176 (Consolidated)

Dear Ms. Martinez:

Enclosed please find an ENTRY OF APPEARANCE in the above-referenced matter. Please file this pleading in the appropriate court file.

Thank you for your help.

Sincerely,

W. PERRY PEARCE
Assistant Attorney General
representing the Oil Conservation Commission

WPP/dr
enc.

STATE OF NEW MEXICO COUNTY OF TAOS

IN THE DISTRICT COURT

ROBERT CASADOS et al,

Plaintiffs,

vs.

Case No. 81-176
(Consolidated)

OIL CONSERVATION COMMISSION, et al.,

Defendants

ENTRY OF APPEARANCE

W. Perry Pearce, Assistant Attorney General for the Oil Conservation Commission, hereby enters his appearance in this matter on behalf of the Defendant Oil Conservation Commission, replacing Ernest L. Padilla formerly Assistant Attorney General representing the Oil Conservation Commission.

W. PERRY PEARCE
Assistant Attorney General representing
the Oil Conservation Commission

CERTIFICATE

I hereby certify that a true and correct copy of the foregoing pleading was mailed to opposing counsel of record this _____day of September, 1981.

SERVICE LIST:

Ernest L. Carrol
Kerr, Fitz-Gerald & Kerr
P. O. Drawer 511
Midland, Texas 79702

William F. Carr
Campbell, Byrd & Black
P. O. Box 2208
Santa Fe, New Mexico 87501

W. Thomas Kellahin
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J. Scott Hall
Attorney for Commissioner
of Public Lands
P. O. Box 1148
Santa Fe, New Mexico 87501

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR

LARRY KEHOE
SECRETARY

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SANTA FE, NEW MEXICO 87501
(505) 827-2434

September 10, 1981

Charles D. Alsup, Esq.
P. O. Box 518
Clayton, New Mexico 88415

Re: Casados v. Oil Conservation Commission, Taos No. 81-176

Dear Mr. Alsup:

Enclosed is your Order To Delete Parties which has been approved by all counsels. Please provide conformed copies when this order is approved by Judge Caldwell and filed.

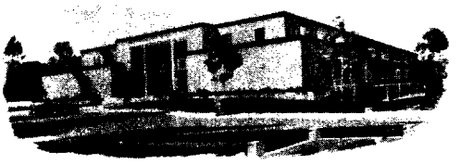
If I can be of further help, please let me know.

Sincerely,

W. PERRY PEARCE
General Counsel

WPP/dr

State of New Mexico



Commissioner of Public Lands

ALEX J. ARMIJO
COMMISSIONER

P. O. BOX 1148
SANTA FE, NEW MEXICO 87501

September 3, 1981

W. Perry Pearce, Esq.
New Mexico Oil Conservation
Division
P.O. Box 2088
Santa Fe, New Mexico 87501

RE: Casados, et al. v. Oil Conservation Commission
Civil No. 81-176

Dear Mr. Pearce:

Please find enclosed, copies of the Motion to Intervene and Proposed Response filed on behalf of the Commissioner of Public Lands in the above-styled cause.

Thank you kindly.

Very truly yours,

J. SCOTT HALL
LEGAL COUNSEL

JSH/br

Enclosure

STATE OF NEW MEXICO COUNTY OF TAOS

IN THE DISTRICT COURT

ROBERT CASADOS, et al., Plaintiffs, vs. OIL CONSERVATION COMMISSION, et al., Defendants	Union County No. CV 81-18 Quay County No. CV 81-00015 Harding County No. CV 81-00001 (Consolidated) (81-176)

RESPONSE OF INTERVENOR,
COMMISSIONER OF PUBLIC LANDS
TO PETITION FOR REVIEW

COMES NOW the intervenor, Alex J. Armijo, Commissioner of Public Lands by and through his Attorney, J. Scott Hall, and for his Response to the Petition to Appeal from Order R-6446 and Order R-6446-B of the Oil Conservation Commission states:

1. Admits the allegations contained in Paragraph 1.

2. Is without sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 2, and, therefore, denies same.

3. Admits the allegations contained in Paragraphs 3, 4 and 5.

4. Denies each and every allegation contained in Paragraph 6 and further denies that the findings of the Oil Conservation Division in issuing Orders No. R-6446 and R-6446-B are not supported by substantial evidence.

5. Denies the allegations contained in Paragraph 7.

6. Paragraph 8 of the Petition to Appeal requires no responsive pleading.

WHEREFORE, the Intervenor prays the Court for relief as follows:

1. That the Court dismiss the Petition to Appeal with

prejudice;

2. That Oil Conservation Commission Orders R-6446 and R-6446-B be affirmed, and;

3. For such other and further relief as to the Court seems just and proper in the premises.

Respectfully submitted,

J. SCOTT HALL
Attorney for Commissioner
of Public Lands
P.O. Box 1148
Santa Fe, New Mexico 87501

CERTIFICATE
I hereby certify that a true and correct copy of the foregoing pleading was mailed to opposing counsel of record this 3rd day of Sept., 1981.

SERVICE LIST:

Ernest L. Carrol
Kerr, Fitz-Gerald & Kerr
P.O. Drawer 511
Midland, Texas 79702

William F. Carr
Cambell, Byrd & Black
P.O. Box 2208

W. Thomas Kellahin
Kellahin & Kellahin
P.O. Box 1769
Santa Fe, New Mexico 87501

W. Perry Pearce
New Mexico Oil Conservation
Division
P.O. Box 2088
Santa Fe, New Mexico 87501

STATE OF NEW MEXICO COUNTY OF TAOS

IN THE DISTRICT COURT

ROBERT CASADOS, et al.,	)	Union County No. CV 81-18
Plaintiffs,	)	Quay County No. CV 81-00015
vs.	)	Harding County No. CV 81-00001
OIL CONSERVATION COMMISSION, et al.,	)	(Consolidated) (81-176)
Defendants.	)	

MOTION TO INTERVENE

COMES NOW Alex J. Armijo, Commissioner of Public Lands for the State of New Mexico ("Commissioner") and hereby moves the Court pursuant to Rule 19 and Rule 24 of the New Mexico Rules of Civil Procedure for leave to intervene. In support hereof, the Commissioner states:

1. This lawsuit involves the performance under State of New Mexico oil and gas leases committed to the Bravo Dome Carbon Dioxide Unit administered by the Commissioner, who is not a party to the lawsuit.

2. The approval of the Bravo Dome Unit Agreement and the commitment of state lands thereto by the Commissioner pursuant to his authority under N.M. Const., Art. XIII, § 2; Enabling Act for New Mexico, June 20, 1910, 36 Stat. 557, Chap. 310; and § 19-10-47 N.M.S.A., 1978 Comp. concern important public policy interests.

3. Failure to join the Commissioner will impede or impair his ability to protect the state's interests.

4. That, as a matter of law in this jurisdiction the Commissioner is an indispensable party to this action.

5. A copy of the Intervenor's proposed Response to Petition

to Appeal from Order No. R-6446 and Order No. R-6446-B of the Oil Conservation Commission is attached hereto as Exhibit "A".

Respectfully submitted,

J. SCOTT HALL
Attorney for Alex J. Armijo
Commissioner of Public Lands
P.O. Box 1148
Santa Fe, New Mexico 87501
AC/505/827-2743

CERTIFICATE

I hereby certify that a true and correct copy of the foregoing pleading was mailed to opposing counsel of record this 3rd day of Sept., 1981.

JSH

STATE OF NEW MEXICO

COUNTY OF TAOS

IN THE DISTRICT COURT

ROBERT CASADOS, et al,

Plaintiffs,

vs.

OIL CONSERVATION COMMISSION, et al,

Defendants.

NO. 81-176

PLAINTIFFS' REPLY TO
THE MOTION TO DISMISS
OF AMOCO PRODUCTION COMPANY

Plaintiffs respectfully reply to the Motion to Dismiss this case filed herein by Amoco Production Company ("Amoco"), asking that the Motion to Dismiss be denied, showing:

1.

Amoco asserts that the Commissioner of Public Lands is an indispensable party to this action and that in his absence, the Court is without jurisdiction to hear the case. This action is not a suit for title to lands or any interest therein. It is a suit under statutory authority and procedures for the direct judicial review of an order of an administrative agency of the State, the Oil Conservation Commission, that will only be final when the judicial review process is complete.

2.

The District Court has jurisdiction to hear this case under the provisions of Section 70-2-25, N.M.S.A., 1978, as amended. Section 70-2-25 is reproduced in its entirety in Annex A attached hereto. In accordance with the provisions of Paragraph B of Section 70-2-25, Plaintiffs, being landowners in the proposed Unit, who are dissatisfied

with the disposition of their Application for Rehearing before the Oil Conservation Commission, appealed therefrom to the District Courts of each of the counties wherein parties' property affected by the decision is located, by filing a Petition for Review of the action of the Commission within twenty (20) days after the entry of the Order following rehearing. Notice of such appeal was thereafter served upon all of the adverse parties who appeared as such before the Commission, and the Commission, in the manner provided for the service of summons in civil proceedings.

3.

The Commissioner of Public Lands is one of the three members of the Oil Conservation Commission, the other two members being the State Geologist and the Director of the Oil Conservation Division (Section 70-2-4, New Mexico Statutes, 1978). In neither of the hearings before the Oil Conservation Commission did the Commissioner of Public Lands sit. Neither the original order nor the order on rehearing bears the signature of the Commissioner of Public Lands. In neither hearing did counsel for the Commissioner of Public Lands appear as either a proponent, protestant or advocate to urge the Commission to adopt any particular stance. At the conclusion of the original hearing on July 21, 1980, following the conclusion of presentation of evidence, Oscar Jordan appeared and presented a short statement from the Commissioner explaining why the Commissioner had given his preliminary consent to the formation of the Unit. This may be found in the Transcript of the July 21 hearing at pages 128 through 131 and is reproduced as Annex B attached hereto. At the rehearing conducted October 9, 1980, Mr. Jordan, at the conclusion of the evidence, appeared and made another statement concerning why the Commissioner chose to join in the Unit and the terms under which he did so. This appears

at pages 183 to 188 of the Transcript of the October 9, 1980 rehearing, and is reproduced as Annex C attached hereto. There is nothing that the Commissioner of Public Lands and his counsel, Oscar Jordan, has done or not done in this case which would indicate the Commissioner of Public Lands was either a party or an adverse party in the proceedings under review. Aside from being a member of the Commission, the Commissioner of Public Lands is a landowner, albeit a large one, who advocated neither the Commission's approval nor disapproval of Amoco's Application. As Mr. Jordan indicated in his statements in the hearings, the Commissioner had large enough and diverse enough and well enough spread landholdings that he felt that with added provisions inuring to the benefit of his interests, his correlative rights could be expected to average out.

4.

From the record, it is to be seen that there are approximately 1,174,000 acres of land within the proposed Unit area, of which approximately 318,000 acres are State lands, managed by the Commissioner of Public Lands, 95,000 acres are Federal lands, and 761,000 acres are fee or patented lands (Tr. First Hearing, 16-17). The area is divided into about 1,568 tracts (Tr. First Hearing, 32-33). At the time of the first hearing, about 1,450 mineral owners in private lands had ratified the Unit Agreement (Tr. First Hearing, 24-25). The U.S.G.S., for the United States, because it had less than a ten percent (10%) interest, waived preliminary approval (Tr. First Hearing, 27). Just how many hundreds, if not thousands, of owners of interest in oil, gas and other minerals there are in the 1,174,000 acres of land is not known. There are 85 working interest owners alone (Tr. First Hearing, 98).

At the first hearing, the appearances made before the Commission were:

(a) Ernest L. Padillo, legal counsel for the Oil Conservation Division;

(b) Jack M. Campbell, William F. Carr and Guy Buell for the applicant, Amoco Production Company;

(c) Ernest L. Carroll and Wm. Monroe Kerr for the protestants; and

(d) Walter F. X. Healy and Conrad Coffield for Amerigas, Inc., and Swartz Carbonic, Inc.

(Tr. First Hearing, 6, 7). On rehearing, the same appearances were made as at the first hearing for the same persons and entities, except that in addition thereto W. Thomas Kellahin appeared for Amerada Hess and Cities Service. No appearances were made in behalf of the several hundred, if not thousands, of other unidentified owners of property interests affected by the proposed unitization. The names of Plaintiffs appeared in the record as among those petitioning for rehearing before the Oil Conservation Commission.

5.

By the express provisions of the proposed Unit Agreement (Amoco's Exhibit 1), the Unit Agreement becomes effective only if the Agreement is approved by the Oil Conservation Division (Paragraph 17.1 of the proposed Unit Agreement). This, of course, presupposes that the approval of the Oil Conservation Commission or its division is a valid act of that administrative body. If it is not, then the Unit Agreement is wholly ineffective as to everyone concerned.

6.

This being a suit to obtain judicial review of the actions of an administrative agency, we would submit that the question of parties and notice is governed by the statute granting the right of judicial review, namely, Section 70-2-25, N.M.S.A., 1978, rather than under the New Mexico

Rules of Civil Procedure, though it may be that the result is the same. The statute provides that the Petition for Review be filed within twenty (20) days of the entry of the order on rehearing. This was done and in the proper counties, that is, where the property lies. The statute does not purport to impose any time limit on when notice of the appeal shall be served upon the adverse parties and the Commission, and such could be done now without affecting the Court's jurisdiction were it to be decided that the Commissioner of Public Lands is an adverse party entitled to notice. Under Rule 19(a) of the New Mexico Rules of Civil Procedure (District Courts), the Court can now order that the Commissioner of Public Lands be made a party, plaintiff or defendant, if the Court is of the opinion that in the Commissioner's absence complete relief cannot be accorded among those already parties, or if the Commissioner claims an interest relating to the subject matter of the suit and is so situated that the disposition of the action in his absence may either, (1) as a practical matter, impose or impede his ability to protect that interest, or (2) leave any of the persons already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of the Commissioner's interest. We doubt that the Commissioner fits either of these categories in this particular case.

7.

We have no objection to the Court ordering that the Commissioner of Public Lands be made a party, or better, be formally served with notice of this appeal so that the Commissioner may take whatever posture he might desire before the Court, if he chooses to make any appearance at all.

8.

In any event, there is nothing in the statute or in the Rules of Civil Procedure that makes it appropriate to dismiss this suit as requested by Amoco. The Commissioner's presence or absence does not affect the Court's jurisdiction of the subject matter. Notice to provide opportunity to additional parties to participate is a matter to be handled in the pre-trial stages that this case is now in.

9.

The proposed Unit Agreement with its production sharing arrangement affects hundreds, if not thousands, of property owners, some beneficially and some adversely. All, including the Commissioner of Public Lands, enjoyed full opportunity to participate in the hearings conducted by the Oil Conservation Commission. Those who chose not to advocate a result, as we submit that the Commissioner of Public Lands did, either as a member of the Commission or as a proponent or adversary, in our opinion, are not necessary parties, having waived their right to advocate or protest. It would be impossible to obtain judicial review of administrative actions in many instances were it essential that all persons and entities whose interests might be affected by the administrative actions be made parties in judicial review proceedings, after they chose in the administrative proceedings themselves merely to abide the agency's decision. We see no difference, except perhaps in degree, between the Commissioner of Public Lands, who sits as a trustee owning interests in oil, gas and other minerals within the affected area, than those hundreds, if not thousands, of other private citizens owning interests affected by the proposed Unit Agreement.

WHEREFORE, Plaintiffs pray that:

(a) Amoco's Motion to Dismiss be denied; and

(b) The Court, if it deems fit, order that the Commissioner of Public Lands be served with a summons to appear and answer the allegations of the Petition, if he chooses to do so, together with a copy of the Petition and a copy of the Court's Order; and

(c) The Court enter its Order within such time that the matter at hand will not be grounds for interference with the trial setting made by the Court of December 7, 1981.

Respectfully submitted,

Ernest L. Carroll

Ernest L. Carroll
P. O. Box 511
Midland, Texas 79702
(915) 683-5291

OF COUNSEL:

KERR, FITZ-GERALD & KERR
P. O. Drawer 511
Midland, Texas 79702

CERTIFICATE OF SERVICE

On this the 26th day of August, 1981, copies of the foregoing were placed in the United States Mails in properly stamped envelopes, addressed to counsel for the parties as follows:

William F. Carr, Esquire
Jack M. Campbell, Esquire
P. O. Box 2208
Santa Fe, New Mexico 87501

Ernest L. Padilla, Esquire
Legal Counsel to the
Oil Conservation Division
State Land Office Bureau
P. O. Box 2088
Santa Fe, New Mexico 87501

W. Thomas Kellahin, Esquire
500 Don Gaspar Avenue
Santa Fe, New Mexico 87501

Ernest L. Carroll

70-2-25. Rehearings; appeals.

A. Within twenty days after entry of any order or decision of the commission, any person affected thereby may file with the commission an application for rehearing in respect of any matter determined by such order or decision, setting forth the respect in which such order or decision is believed to be erroneous. The commission shall grant or refuse any such application in whole or in part within ten days after the same is filed and failure to act thereon within such period shall be deemed a refusal thereof and a final disposition of such application. In the event the rehearing is granted, the commission may enter such new order or decision after rehearing as may be required under the circumstances.

B. Any party to such rehearing proceeding, dissatisfied with the disposition of the application for rehearing, may appeal therefrom to the district court of the county wherein is located any property of such party affected by the decision, by filing a petition for the review of the action of the commission within twenty days after the entry of the order following rehearing or after the refusal or rehearing as the case may be. Such petition shall state briefly the nature of the proceedings before the commission and shall set forth the order or decision of the commission complained of and the grounds of invalidity thereof upon which the applicant will rely; provided, however, that the questions reviewed on appeal shall be only questions presented to the commission by the application for rehearing. Notice of such appeal shall be served upon the adverse party or parties and the commission in the manner provided for the service of summons in civil proceedings. The trial upon appeal shall be without a jury, and the transcript of proceedings before the commission, including the evidence taken in hearings by the commission, shall be received in evidence by the court in whole or in part upon offer by either party, subject to legal objections to evidence. The commission action complained of shall be prima facie valid and the burden shall be upon the party or parties seeking review to establish the invalidity of such action of the commission. The court shall determine the issues of fact and of law and shall enter its order either affirming or vacating the order of the commission. Appeals may be taken from the judgment or decision of the district court to the supreme court in the same manner as provided for appeals from any other final judgment entered by a district court in this state. The trial of such application for relief from action of the commission and the hearing of any appeal to the supreme court from the action of the district court shall be expedited to the fullest possible extent.

C. The pendency of proceedings to review shall not of itself stay or suspend operation of the order or decision being reviewed, but during the pendency of such proceedings, the district court in its discretion may, upon its own motion or upon proper application of any party thereto, stay or suspend, in whole or in part, operation of said order or decision pending review thereof, on such terms as the court deems just and proper and in accordance with the practice of courts exercising equity jurisdiction; provided, that the court, as a condition to any such staying or suspension of operation of an order or decision may require that one or more parties secure, in such form and amount as the court may deem just and proper, one or more other parties against loss or damage due to the staying or suspension of the commission's order or decision, in the event that the action of the commission shall be affirmed.

D. The applicable rules of practice and procedure in civil cases for the courts of this state shall govern the proceedings for review, and any appeal therefrom to the supreme court of this state, to the extent such rules are consistent with provisions of this act.

STATEMENT FROM THE COMMISSIONER MADE BY MR. JORDAN:

We want to make a very short statement, but prompted by some of the questions here, and for the Commission's edification here, and talking with some of the people who are here, I wish to point out that the Land Commissioner, of course, represents a landowner, which is a trust, and as such, he does not in effect sign unit agreements. He approves unit agreements made by his lessees, his lessees of record, or disapproves.

The lessees get together and combine their leases or pool them and form a unit agreement. And then the lease terms are amended to conform to the unit agreement.

This unit was first submitted to the Commissioner and it was unsatisfactory to him, because he had to make certain findings that Mr. Campbell outlined this morning. Without those findings being made he could not approve the unit, and he could not approve that unit at that time.

So what he did was, he negotiated with the unit operator, the proposed unit operator, who was representing the lessees who are wanting to sign their leases and helped them modify it, and there were several changes made which would apply to the lands under his leases.

There were offered, some we did not ask for, they were voluntarily offered. The increase in rentals to $1.50, a higher minimum rental. The minimum under our lease was 5 cents; it was increased to a mininum of 12 cents, so that's ---we have other provisions in there, also.

We had a provision in there, in our rentals, in our leases, which the unit proposed to take out and which we had put back, which authorized us to take in kind. That was put back.

We have a favored nations clause, which allows us to take the highest price. That was put back in at our request.

At our request, they allowed a 10 percent of the production would be utilized in New Mexico for production of oil and gas under certain conditions. That was asked---we figured the Governor's office would want this and we asked that it benefit some of our lessees.

There are several others there, the take or pay. That was classified in some meetings with the ranchers and the people in that area, and with the Land Commissioner, and the representatives of Amoco, and agreed that the State would receive its royalty and so would the other lessees want any take or pay.

The balancing agreements, that was worked out, and there was no use of any water belonging to--water rights belonging to a subdivision in there that tended to--that looked like it was going to be, but that was taken out.

There are many other things that were changed.

With all of these things that were changed, the Land Commissioner gave his tentative approval. He made the findings required by the statute, tentatively, providing that these things were put in there.

One other thing that was put in, that they would be allowed to utilized the pieplines to market the 1/8th royalty we take in kind.

Now those were already in the original lease; they'd been taken out; we had them put back.

I think one of the problems that came up was that some of the private lessees or private land hitched their wagon--put their wagon in the Commissioner's wagon train and

he may not be going in the same direction they are, and that's given a problem, a very serious problem, but what the Commissioner's obligated to do is to do what's best for the trust. He has amended this proposd unit agreement to where it complies with that requirement, and further than that he cannot. He cannot look after welfare of the general public.

So he gave tentative approval to that. The formal agreement has not been submitted but we presume that it will be submitted and the terms of these changes have been worked out in the form. (Tr. 128-131).

that you wi_ be calling for closing st_cements.

I would like to present as Amoco's Exhibit Number Eight in this case the Certificate of Approval from the Land Commissioner, Alex Armijo, as well as the Certificate of Approval by James W. Southerland, the Conservation Manager for the USGS, as our Exhibits Eight and Nine.

MR. RAMEY: Your Exhibits Eight and Nine will be admitted.

MR. JORDAN: At the appropriate time, I think we need to make a clarification in light of the recent testimony in the present case. It might be a good time to mention it now when it's fresh in the minds before you go to your redirect testimony.

MR. RAMEY: All right, Mr. Jordan.

MR. JORDAN: Earlier in the Commission's -- in the earlier hearing when the Commissioner made his position -- stated his position generally, he followed the normal procedure and that he follows in approving other units, in that he -- Amoco submitted a proposed unit agreement to the Commissioner for an approval. The Commissioner reviewed that, sought the advice of various people, including the Governor's Office, the Department of Energy, some of the legislators, et cetera.

Then he made certain suggestions that he wanted changes back, some of the things in the lease had

SALLY W. BOYD, C.S.R.
Rt. 1 Box 193-B
Santa Fe, New Mexico 87501
Phone (505) 455-7409

been changed. He wanted those put back. I think I enumerated those last time.

Thereafter, then, he told me we'll give you tentative approval, although there may be some further changes to be made, come out; we'll wait till the hearing comes before the Oil Commission.

But we gave a tentative approval; the reason being if the Commissioner is going to turn it down, there's no need going out and getting all these signatures and then come back and the Commissioner disapproves it.

So he made certain basic changes that he had to make at that time.

Then he gave tentative approval and he then waited, and the usual procedure, until after the Commission had had its hearing, to take advantage of any testimony that might be made there to see how it affected the State lands. Now, you bear in mind that he's looking after State lands in his capacity only. He's not looking after other people or any other State agency.

And that's in accordance with Rule 46 of the Commissioner's rules, it sets forth that he will do this in most cases, and he did do it, the usual procedure.

Then he made his finding as set out in the Commissioner's Rule Number 44. The reason I mention this is it just now got introduced here and I presume it would be

a part of the record anyway. That's filed with the Oil Commission.

Now, the Commissioner, when he made his final approval, and when it came back with the signatures on it, made his final approval, he made that final approval, we feel that he made a determination then at that time that correlative rights, as far as the land -- State lands was concerned, was protected. He made that finding. He's not challenging that now, and I wanted to explain why he's not challenging that; it does not affect him.

He feels that he has a unit as far as he's concerned. He's not going to argue pro and con any more. This is it. And this was brought out by the last witness where he pointed out that there are two types of -- he discussed here the two types of participation, a total participation in the entire area, in an exploratory area, a relatively unknown area, or unknown reservoir area, and then the participating area. We have units of both kinds that have been approved through the years.

In this particular one, it was submitted to us on the basis of a total participating area, and if you'll remember the last witness here testified, well, he took into account what he said, we got it from our own people where the State in this large unit would have enough acreage scattered through it, then you may have some good and some

bad. You may have some non-productive and some highly productive. We know we have some highly productive and we know we have some that's not producing at all, or might not produce; there's some dry wells on it; it still may produce. But when you average it out, that type of a unit, we feel, if we accept that type, we are protected.

We also have some provisions in for excluding acreage after a certain length of time, and the parties could agree to include more, if they wanted to. It would require approval of all of them.

So the Commissioner here, what it's amounted to, once he's made his decision, he made it on that basis.

And I appreciate your letting that testimony in because I think that explains why we went on this basis, and the Commissioner has now said he will not change his position based on what he now knows.

We have enough acreage in that type of a unit and it's just as good as the participating ones. As a matter of fact, we've had some problems with participating ones. We find that the wells are not drilled where it's most likely to be, but we have found from time to time there are side agreements, and one of the first ones I got stung on when I came to work in this office many years ago, was where they had a participating area and they drilled the well --

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they agreed if someone would commit their acreage, they'd drill them a well right away. So we had a unit there with about half State acreage in it, and there wasn't a well on any State land which was producing, and then we were being drained by adjoining wells.

So you can have abuses anywhere. I don't know whether you understand what I'm trying to say, but if you start out with a participating area, and say it's the north half of the section and the south half, the east or the west, 320 acre spacing, we found that all through this unit there was not a single well being drilled, and the unit operator was saying we're drilling where we think we should. It's more likely to find the production.

Well, we found out when they got into a bind and needed us to approve a further participating deal under the unit, going to cancel the unit for that failure to comply with, they came in and admitted to us they'd made deals with different other people if they'd come into the unit, they'd drill them a well right away.

So some of those people had to give up theirs so we could get some wells on ours because we were being drained. So you can get hurt with either type of these units.

Since we're scattered throughout this one now, there's some of these people that have acreage in there

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they know is highly productive. I wouldn't blame them if they didn't want to join. And some that have some acreage that they feel from a geological thing that it has nothing on it, but they want to get in. I don't blame them, either.

But we have ours spread across it so we feel that the correlative rights of the State will be protected, especially when you read it in the light of the concessions that we have asked Amoco to make for the State, and as I understand it, they have offered the same concessions to the other people. In other words, the right to take in kind, use their lines to transport at cost, et cetera. Those are all set out in the unit and in the approval of the Commissioner's conditions.

I'll try to answer any questions from anybody who has any.

MR. RAMEY: Thank you, Mr. Jordan. Mr. Kerr, do you have a statement?

MR. KERR: In light of Mr. Jordan's remarks about the offer, I believe you'll find that there are three extra conditions, or three extra provisions on the Commissioner's ratification. Among them would be the right to take in kind at any time, and I think probably since the statement has been made that that's been offered as such to the other interest owners, perhaps I'd better find me some testimony to refute that, because I don't believe that's quite

CHAMBERS OF
JOSEPH E. CALDWELL
DISTRICT JUDGE
DIVISION II

STATE OF NEW MEXICO
EIGHTH JUDICIAL DISTRICT

P. O. BOX 1715
TAOS, NEW MEXICO
87571
PHONE: 758-3173
758-4547

August 13, 1981

Mr. Charles D. Alsup
Attorney at Law
P. O. Box 518
Clayton, New Mexico 88415

Re: Robert Casados, et al vs. Oil Conservation Commission, et al
Taos County Cause No. 81-176

Dear Mr. Alsup:

We are in receipt of your letter of August 4, 1981 in which you submitted a Motion to Delete Parties and Order to Delete Parties for Judge Caldwell's signature.

I have filed the Motion, a conformed copy of which is enclosed. However, before the Judge will sign the Order, he has asked that you secure the approval of all counsel. I have taken the liberty of typing in the names and addresses of all the attorneys of record on the Order and am returning it herewith. Would you please obtain their approval and return it to Judge Caldwell for his signature?

By copy of this letter, I mailing a conformed copy of the Motion to all counsel.

Thank you.

Sincerely yours,

Connie Pacheco

Connie Pacheco
Secretary to Judge Caldwell

cp
Enclosures

cc: Mr. Ernest L. Carroll, Attorney at Law
Mr. Ernest L. Padilla, Attorney at Law
Mr. William F. Carr, Attorney at Law
Mr. W. Thomas Kellahin, Attorney at Law

STATE OF NEW MEXICO COUNTY OF TAOS

IN THE DISTRICT COURT

Robert Casados, et al, Plaintiffs, vs. Oil Conservation Commission, et al, Defendants.	)	No. 81-176

MOTION TO DELETE PARTIES

Comes now Forrest Atchley, an individual, and Atchley Ranch, Inc., a New Mexico corporation, and move to withdraw as parties plaintiff herein and request that the court enter an order herein dropping them as parties plaintiff in this matter.

Charles D. Olson Jr.
P.O. Box 518
Clayton, New Mexico 88415
Attorney for Forrest Atchley
and Atchley Ranch, Inc.

I hereby certify that a copy of the foregoing Motion to Delete Parties was mailed to all counsel of record on the 13th. day of August, 1981.

Connie Pacheco
Connie Pacheco
Secretary to Judge Caldwell

STATE OF NEW MEXICO

COUNTY OF TAOS

IN THE DISTRICT COURT

ROBERT CASADOS, et al,

Plaintiffs,

vs.

OIL CONSERVATION COMMISSION, et al,

Defendants.

NO. 81-176

AMENDED
NOTICE OF HEARING

Notice is hereby given that the above cause of action will be called for hearing before the Honorable Joseph E. Caldwell, District Judge of the Eighth Judicial District, at the time, place and for the purpose indicated.

10:00 a.m.	December 7, 1981	Santa Fe (Jury Assembly Room) County Courthouse
TIME	DATE	PLACE

On Merits
NATURE OF HEARING

Connie Pacheco
Secretary

Other Comments: The previous setting of November 5, 1981 at 10:00 a.m. is vacated.

cc:

Mr. Ernest L. Carroll
Attorney at Law
P. O. Drawer 511
Midland, Texas 79702

Mr. William F. Carr
Attorney at Law
P. O. Box 2208
Santa Fe, New Mexico 87501

Mr. Ernest L. Padilla ✓
Assistant Attorney General
P. O. Box 2088
Santa Fe, New Mexico 87501

Mr. W. Thomas Kellahin
Attorney at Law
500 Don Gaspar
Santa Fe, New Mexico 87501

CAMPBELL, BYRD & BLACK, P.A.
LAWYERS

JACK M. CAMPBELL
HARL D. BYRD
BRUCE D. BLACK
MICHAEL B. CAMPBELL
WILLIAM F. CARR
BRADFORD C. BERGE
WILLIAM G. WARDLE

JEFFERSON PLACE
SUITE 1 - 110 N. GUADALUPE
POST OFFICE BOX 2208
SANTA FE, NEW MEXICO 87501
TELEPHONE (505) 988-4421
TELECOPIER (505) 983-6043

August 6, 1981

Ms. Tina V. Martinez
District Court Clerk
Taos County
Post Office Box 1715
Taos, New Mexico 87571

Re: Casados, et al. v. Oil Conservation Commission, et al.
Nos. CV-81-00001, CV-81-00015 and CV-81-18, Consolidated

Dear Ms. Martinez:

Enclosed please find a Motion to Dismiss and Memorandum in Support of the Motion to Dismiss of Defendant Amoco Production Company in the above-referenced matter. Please file these pleadings in the appropriate Court file.

Thank you for your assistance.

Very truly yours,

William F. Carr

WFC:lr

Enclosure

cc: Mr. Ernest L. Carroll
Mr. Ernest L. Padilla
Mr. W. Thomas Kellahin
Mr. Paul M. Bohannon

STATE OF NEW MEXICO COUNTY OF UNION

IN THE DISTRICT COURT

ROBERT CASADOS, et al.,

Plaintiffs,

vs.

OIL CONSERVATION COMMISSION, et al.,

Defendants.

No. CV-81-00001, CV-81-00015 & CV-81-18 (Consolidated)

MOTION TO DISMISS

Defendant Amoco Production Company moves the Court, pursuant to Rule 19b of the New Mexico Rules of Civil Procedure for an Order dismissing the Complaint for failure to join an indispensable party and in support thereof states:

1. Plaintiffs seek an Order declaring invalid Oil Conservation Commission Orders R-6446 and R-6446-B which approve the Bravo Dome Carbon Dioxide Gas Unit Agreement.

2. The Bravo Dome Carbon Dioxide Gas Unit contains state lands which have been leased for carbon dioxide development and committed to the Unit by the New Mexico Commissioner of Public Lands.

3. The Commissioner of Public Lands is an indispensable party to this action.

4. The Court is without jurisdiction to hear this case.

5. Defendant submits a written brief in support of this motion.

WHEREFORE, Defendant requests the Court dismiss the Complaint with prejudice.

Respectfully submitted,

CAMPBELL, BYRD & BLACK, P.A.

By William F. Carr

William F. Carr
Attorneys for Amoco Production Company
Post Office Box 2208
Santa Fe, New Mexico 87501
Telephone: (505) 988-4421

Certificate of Mailing

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record this 6th day of August, 1981.

William F. Carr
William F. Carr

STATE OF NEW MEXICO COUNTY OF UNION

IN THE DISTRICT COURT

ROBERT CASADOS, et al.,

Plaintiff,

v. No. CV-81-0001, CV-81-00015, and CV-81-18, Consolidated

OIL CONSERVATION COMMISSION et al.

Defendants.

MEMORANDUM IN SUPPORT OF THE MOTION TO DISMISS OF DEFENDANT AMOCO PRODUCTION COMPANY

In support of its Motion to Dismiss, Defendant, Amoco Production Company, states the following:

1. Plaintiffs failed to join the Commissioner of Public Lands of the State of New Mexico (hereinafter called Commissioner) as a party defendant in this suit. The Commissioner, is a necessary and indispensable party to this litigation and the Court therefore lacks jurisdiction to hear the case. The Petition to Appeal from Order R-6446 and Order R-6446-B of the Oil Conservation Division should be dismissed.

2. Amoco Production Company (hereinafter called Amoco) as unit operator of the Bravo Dome Carbon Dioxide Gas Unit (hereinafter called the Unit) submitted the Bravo Dome Carbon Dioxide Gas Unit Agreement (hereinafter called Agreement) to the Commissioner for his approval.

3. On January 8, 1980, the Commissioner preliminarily approved the Agreement as to form and content but pursuant to Rule 46 of the State Land Office Rules and Regulations postponed his final decision pending action by the New Mexico Oil Conservation Commission (hereinafter called the Commission).

4. Following notice and hearing, the Commission entered Order R-6446 on August 14, 1980 approving the Agreement which covers 1,175,255.43 acres, more or less, of Federal, State and Fee land in Harding, Quay and Union Counties, New Mexico.

5. The Agreement received final approval of the Commissioner on August 28, 1980.

6. On September 2, 1980, the fee owners of minerals under certain tracts within the unit area filed an application with the Commission seeking a rehearing of Case 6967.

7. A rehearing was held on October 9, 1980 and on January 23, 1981 the Commission entered its order No. R-6446-B again approving the Agreement.

8. On February 11, 1981, the plaintiffs filed their Petition to Appeal from Order R-6446 and Order R-6446-B of the Oil Conservation Division (hereinafter called Petition to Appeal) asking the court to set aside each of these orders.

9. If plaintiffs prevail and the orders approving the Agreement are set aside, the manner of performance of leases on state lands committed to the Unit will be affected for the lands will have to be developed in accordance with the terms of the individual lease contracts and not as a part of the Unit Plan of Development. Furthermore, the Agreement provides that the terms of the individual leases will be amended to conform to the terms of the Agreements. Bravo Dome Carbon Dioxide Gas Unit Agreement, Article 3.3.

10. That approval of the Agreement by the Commissioner and resulting commitment of state lands thereto is a question of public policy which has been passed upon by the Commissioner.

11. In Swayze v. Bartlett, 58 NM 504, 273 P.2d 367 (1954) the New Mexico Supreme Court stated, as follows, the rule as to the necessity of the Commissioner as a party to litigation

between private litigants when state lands are involved:

> If the controversy involves a question concerning the legality of a state lease, the eligibility of the lessee thereunder, the manner of performance of the lease, reservations, if any, in the lease, or a matter of public policy requiring passage thereon by the Commissioner of Public Lands, then the Commissioner is not only a necessary party, but is an indispensable party. (at p. 371)

12. In State Game Commissioner v. Tackett, 71 NM 400, 379 P.2d 54 (1963) the Supreme Court of New Mexico applied the rule announced in Swayze and held that the Commissioner was a necessary and indispensable party in that litigation. In announcing its decision, the court further stated:

> . . . because of the absence of an indispensable party, we have here the situation where the court is completely without jurisdiction to hear or try any issue in the cause, and any judgment rendered therein would be a complete nullity.

13. In the instant case, the Commissioner is the necessary and indispensable party to the suit. Plaintiff's failure to join the Commissioner renders the court without jurisdiction to hear or try any issue in the cause and the Petition to Appeal, therefore, should be dismissed.

CAMPBELL, BYRD & BLACK, P.A.

By William F. Carr

William F. Carr
Post Office Box 2208
Santa Fe, New Mexico 87501
(505) 988-4421

Certificate of Mailing

I hereby certify that true copies of the foregoing pleading were mailed to all counsel of record this 6th day of August, 1981.

William F. Carr

LAW OFFICES
KERR, FITZ-GERALD & KERR
III MIDLAND TOWER BUILDING
MIDLAND, TEXAS 79701

WILLIAM L. KERR (1904-1978)
GERALD FITZ-GERALD
WM. MONROE KERR
THEODORE M. KERR
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ERNEST L. CARROLL*
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WILLIAM E. WARD
KATHLEEN McCULLOCH
*NEW MEXICO

POST OFFICE BOX 511
MIDLAND, TEXAS 79702
TELEPHONE 915 683-5291

August 6, 1981

Mrs. Tina V. Martinez
Taos County District Clerk
P. O. Box 1715
Taos, New Mexico 87571

Re: Robert Casados, et al vs. Oil Conservation Commission, et al; No. CV 81-176

Dear Mrs. Martinez:

Here for filing in the captioned cause is a Motion to Dismiss Irene Miera and Valentine Miera as parties Plaintiff in this case. Also enclosed is a proposed form of Order of Dismissal. Would you please file the Motion and present it to Judge Caldwell along with the proposed form of Order for his consideration and, hopefully, entry of the Order.

Thank you very much.

Very truly yours,

Ernest L. Carroll

ELC:brm
Enclosures

cc: Ernest L. Padilla, Esquire
P. O. Box 2088
Santa Fe, New Mexico 87501

William F. Carr, Esquire
P. O. Box 2208
Santa Fe, New Mexico 87501

W. Thomas Kellahin, Esquire
500 Don Gaspar Avenue
Santa Fe, New Mexico 87501

STATE OF NEW MEXICO COUNTY OF TAOS

IN THE DISTRICT COURT

ROBERT CASADOS, et al,	
Plaintiffs,	Union County No. CV 81-18 Quay County No. CV 81-00015 Harding County No. CV 81-00001
vs.	
	(Consolidated for Appeal)
OIL CONSERVATION COMMISSION, et al,	Taos County No. CV 81-176
Defendants	

MOTION TO DISMISS
IRENE MIERA AND VALENTINE MIERA
AS PLAINTIFFS

Irene Miera and Valentine Miera, two of the Plaintiffs in the captioned cause, pursuant to Rule 41(a)(2), respectfully move the Court to dismiss this action as brought by them, without prejudice, inasmuch as they, Irene Miera and Valentine Miera, no longer wish to prosecute the action.

DATED this the _____ day of August, 1981.

ERNEST L. CARROLL
P. O. Box 511
Midland, Texas 79702

ATTORNEY FOR PLAINTIFFS IRENE MIERA AND VALENTINE MIERA

WMK:brm 8/6/81 7Y

CERTIFICATE OF SERVICE

On this the _____ day of August, 1981, copies of the foregoing Motion, together with a proposed form of Order of Dismissal as requested in the Motion, were placed in the United States mail in a properly addressed and stamped envelope to counsel for Defendants, as follows:

Ernest L. Padilla, Esquire
P. O. Box 2088
Santa Fe, New Mexico 87501

William F. Carr, Esquire
P. O. Box 2208
Santa Fe, New Mexico 87501

W. Thomas Kellahin, Esquire
500 Don Gaspar Avenue
Santa Fe, New Mexico 87501

Ernest L. Carroll

STATE OF NEW MEXICO COUNTY OF TAOS

IN THE DISTRICT COURT

ROBERT CASADOS, et al,	
Plaintiffs,	Union County No. CV 81-18 Quay County No. CV 81-00015 Harding County No. CV 81-00001
vs.	
	(Consolidated for Appeal)
OIL CONSERVATION COMMISSION, et al,	Taos County No. CV 81-176
Defendants	

ORDER DISMISSING IRENE MIERA
AND VALENTINE MIERA AS PARTIES PLAINTIFF

The Motion of Irene Miera and Valentine Miera filed in these proceedings to dismiss this action as brought by them is granted. Accordingly,

It is ORDERED that Irene Miera and Valentine Miera each be dismissed as parties Plaintiff, without prejudice.

DATED this the _____ day of August, 1981.

JOE CALDWELL, District Judge
(Judge Presiding)

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR

LARRY KEHOE
SECRETARY

POST OFFICE BOX 2088
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SANTA FE, NEW MEXICO 87501
(505) 827-2434

July 30, 1981

William M. Kerr, Esq.
P. O. Drawer 511
Midland, Texas 79702

Re: Robert Casados, et al v.
Oil Conservation Commission,
Taos County Cause No. 81-176

Dear Mr. Kerr:

Enclosed is a conformed copy of Transcript on Appeal which was filed with the Taos County District Court on July 28th.

Very truly yours,

ERNEST L. PADILLA
General Counsel

ELP/dr

enc.

LAW OFFICES
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III MIDLAND TOWER BUILDING
MIDLAND, TEXAS 79701

WILLIAM L. KERR (1904-1978)
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*NEW MEXICO

POST OFFICE BOX 511
MIDLAND, TEXAS 79702
TELEPHONE 915 683-5291

June 26, 1981

Ms. Connie Pacheco
Secretary to
Honorable Joseph E. Caldwell
District Judge
County Courthouse
Taos, New Mexico 87571

Re: Robert Casados, et al, Plaintiff, vs. Oil Conservation Commission, et al, Defendants; Trailing Taos County Cause No. 80-251; Union County, New Mexico Docket Nos. 81-00001, 81-00015 and 81-18 Consolidated

Dear Ms. Pacheco:

Here is a Stipulation to Change the Place of Docketing of this case from Union County to Taos County, New Mexico, together with a proposed Amended Order for Docketing. The Stipulation has been executed by counsel for all parties in this case. Would you please call this to Judge Caldwell's attention and cause it and the Order to be filed with the appropriate clerk.

Today we received the Notice of Hearing in this case designating October 5, 1981, as the hearing date. This creates a problem for the Plaintiffs. Mr. Carroll is the special prosecutor in a murder case in Eddy County, New Mexico, that is scheduled and is expected to begin September 28, 1981, at Carlsbad. The case is a purely circumstantial evidence case with lots of witnesses, many of whom will be presenting scientific sorts of evidence. The defendant is the mayor of Carlsbad. The case is fairly sensational

and has caused a considerable split in the views of the community. As a consequence, the jury selection is expected to be extremely careful and somewhat prolonged. The District Attorney has disqualified himself so that the laboring oar in the prosecution will be with Mr. Carroll. It is expected that the case may take two to three weeks to try.

The pending Oil Conservation Commission case, being an appeal on an established record, should take one day or less to try. All parties, I feel sure, are quite anxious to get this case tried as soon as it is practicable to do so. We would appreciate it if you would call this letter to the Court's attention with the request that under the circumstances the trial date be changed to a date before September 28 or after October 20.

Thank you very much.

Very truly yours,

Wm. Monroe Kerr
for
Ernest L. Carroll

WMK:brm
Enclosures

cc: Ernest L. Padilla, Esquire
Assistant Attorney General for
the Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

William F. Carr, Esquire
P. O. Box 2208
Santa Fe, New Mexico 87501

W. Thomas Kellahin, Esquire
P. O. Box 1769
Santa Fe, New Mexico 87501

STATE OF NEW MEXICO

COUNTY OF TAOS

IN THE DISTRICT COURT

ROBERT CASADOS, ET AL,

Plaintiffs,

vs.

OIL CONSERVATION COMMISSION, ET AL,

Defendants.

NO. 81-176

AMENDED NOTICE OF HEARING

Notice is hereby given that the above-entitled cause has been set for hearing on the merits before the Honorable Joseph E. Caldwell, District Judge at the Santa Fe County Courthouse, (Jury Assembly Room), Santa Fe, New Mexico, on the 5th. day of November, 1981 at the hour of 10:00 a.m.**

Copies of the foregoing Amended Notice of Hearing were mailed to the attorneys listed below on July 27, 1981.

Connie Pacheco
Secretary

**The previous setting of October 5, 1981 at 10:00 a.m. is vacated.

cc:

Mr. Ernest L. Carroll
Attorney at Law
P. O. Drawer 511
Midland, Texas 79702

Mr. William F. Carr
Attorney at Law
P. O. Box 2208
Santa Fe, New Mexico 87501

Mr. Ernest L. Padilla
Assistant Attorney General
P. O. Box 2088
Santa Fe, New Mexico 87501

Mr. W. Thomas Kellahin
Attorney at Law
500 Don Gaspar Avenue
Santa Fe, New Mexico 87501

STATE OF NEW MEXICO COUNTY OF TAOS

IN THE DISTRICT COURT

ROBERT CASADOS, et al, Plaintiffs vs. OIL CONSERVATION COMMISSION, et al, Defendants	Union County No. CV 81-18 Quay County No. CV 81-00015 Harding County No. CV 81-00001 (Consolidated for Appeal) Taos County 81-176

TRANSCRIPT ON APPEAL

1. Application of Amoco Production Company for an order approving the Bravo Dome Unit Agreement.

2. Certified copies of Affidavits of Publication for Oil Conservation Commission Case No. 6967.

3. Certified transcript of July 21, 1980, Oil Conservation Commission hearing.

4. Exhibits Nos. 1 through 10 introduced by Amoco Production Company at July 21, 1980 hearing. (Exhibit No. 11 consists of numerous and voluminous individual ratifications of the Bravo Dome Unit Agreement and will not be submitted to the Court unless requested by any of the Parties hereto or the Court.)

5. Exhibits marked B and C introduced by Protestants at July 21, 1980 hearing.

6. Certified copy of Oil Conservation Commission Order No. R-6446.

7. Application of Protestants for Rehearing and Request for Additional Findings.

8. Amoco Production Company's Response to Application for Rehearing and Request for Additional Findings.

9. Certified copy of Oil Conservation Commission Order No. R-6446-A.

10. Certified copies of Affidavits of Publication for rehearing of Oil Conservation Commission Case No. 6967.

11. Certified copy of October 9, 1980 Transcript of Oil Conservation Commission hearing.

12. Exhibits Nos. RH-1 through RH-9 introduced by Amoco Production Company at October 8, 1980 hearing. (Exhibit 11A introduced at this hearing includes additional ratifications supplementing Exhibit 11 of the July 21, 1980 hearing and will not be submitted to the Court except by request of any of the Parties hereto or the Court.)

13. Exhibits Nos. 1 through 3 introduced by Cities Service Company at the October 9, 1980 hearing.

14. Requested Findings submitted by the Applicants for Rehearing.

15. Brief of the Applicants for Rehearing in Support of their Requested Findings.

16. Requested Findings of Fact of Amoco Production Company.

17. Memorandum Brief in Support of Confirmation of Bravo Dome Carbon Dioxide Gas Unit.

18. Proposed Order Submitted by Amerada Hess Corporation and Cities Service Company.

19. Memorandum submitted on Behalf of Amerada Hess Corporation and Cities Service Company Supporting Approval of Bravo Dome Carbon Dioxide Gas Unit.

20. Certified Copy of Oil Conservation Commission Order No. R-6446-B.

Respectfully submitted,

OIL CONSERVATION COMMISSION

By: Ernest L. Padilla

ERNEST L. PADILLA
P. O. Box 2088
Santa Fe, New Mexico 87501

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

BRUCE KING
GOVERNOR

LARRY KEHOE
SECRETARY

July 28, 1981

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-2434

Ms. Tina V. Martinez
District Court Clerk
P. O. Box 1715
Taos, New Mexico 87571

Re: Robert Casados, et al, v.
Oil Conservation Commission
et al; Union County No. CV 81-18;
Quay County No. CV 81-00015,
Harding County No. CV 81-00001
(Consolidated)

Dear Ms. Martinez:

Enclosed for filing in the above-referenced cause is the Transcript on Appeal which constitutes the record at the administrative level before the Oil Conservation Commission.

Thank you for your assistance.

Very truly yours,

ERNEST L. PADILLA
General Counsel

ELP/dr

cc: William M. Kerr, Esq.
William F. Carr, Esq.
W. Thomas Kellahin, Esq.

STATE OF NEW MEXICO COUNTY OF TAOS

IN THE DISTRICT COURT

ROBERT CASADOS, et al, Plaintiffs	)	Union County No. CV 81-18
	)	Quay County No. CV 81-00015
	)	Harding County No. CV 81-00001
vs.	)	(Consolidated for Appeal)
OIL CONSERVATION COMMISSION, et al, Defendants	)	

TRANSCRIPT ON APPEAL

1. Application of Amoco Production Company for an order approving the Bravo Dome Unit Agreement.

2. Certified copies of Affidavits of Publication for Oil Conservation Commission Case No. 6967.

3. Certified transcript of July 21, 1980, Oil Conservation Commission hearing.

4. Exhibits Nos. 1 through 10 introduced by Amoco Production Company at July 21, 1980 hearing. (Exhibit No. 11 consists of numerous and voluminous individual ratifications of the Bravo Dome Unit Agreement and will not be submitted to the Court unless requested by any of the Parties hereto or the Court.)

5. Exhibits marked B and C introduced by Protestants at July 21, 1980 hearing.

6. Certified copy of Oil Conservation Commission Order No. R-6446.

7. Application of Protestants for Rehearing and Request for Additional Findings.

8. Amoco Production Company's Response to Application for Rehearing and Request for Additional Findings.

9. Certified copy of Oil Conservation Commission Order No. R-6446-A.

10. Certified copies of Affidavits of Publication for rehearing of Oil Conservation Commission Case No. 6967.

11. Certified copy of October 9, 1980 Transcript of Oil Conservation Commission hearing.

12. Exhibits Nos. RH-1 through RH-9 introduced by Amoco Production Company at October 8, 1980 hearing. (Exhibit 11A introduced at this hearing includes additional ratifications supplementing Exhibit 11 of the July 21, 1980 hearing and will not be submitted to the Court except by request of any of the Parties hereto or the Court.)

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Respectfully submitted,

OIL CONSERVATION COMMISSION

By: Ernest L. Padilla

ERNEST L. PADILLA
P. O. Box 2088
Santa Fe, New Mexico 87501

STATE OF NEW MEXICO COUNTY OF UNION

IN THE DISTRICT COURT

ROBERT CASADOS, et al,	)	Union County No. CV 81-18
Plaintiffs	)	Quay County No. CV 81-00015
vs.	)	Harding County No. CV 81-00001
OIL CONSERVATION COMMISSION, et al,	)	(Consolidated)
Defendants	)	

AMENDED ORDER FOR DOCKETING

This matter having come before the court upon the stipulation of the parties hereto that the cause be docketed in Taos County, New Mexico, instead of Union County, New Mexico, it is

ORDERED that this cause of action is hereby docketed in the district court for Taos County, New Mexico.

DISTRICT JUDGE

CHAMBERS OF
JOSEPH E. CALDWELL
DISTRICT JUDGE
DIVISION II

STATE OF NEW MEXICO
EIGHTH JUDICIAL DISTRICT

P.O. BOX 1715
TAOS, NEW MEXICO
87571
PHONE: 758-3173
758-4547

July 14, 1981

Mrs. Sally V. Sanchez
Deputy District Court Clerk
Union County Courthouse
Clayton, New Mexico 88415

Re: Robert Casados, et al vs. Oil Conservation Commission, et al
No. CV-81-00001, CV-81-00015 & CV-81-18
Consolidated

Dear Sally:

Enclosed herewith for filing in the above-entitled consolidated causes please find a Stipulation to Change Place of Docketing and Amended Order for Docketing signed this date by Judge Caldwell. As per the Order, would you please mail us the original court files. By copy of this letter, I am mailing conformed copies of both instruments to all counsel of record.

Thank you.

Sincerely yours,

Connie Pacheco

Connie Pacheco
Secretary to Judge Caldwell

cp

Enclosures

cc: Mr. Ernest L. Carroll, Attorney at Law
Mr. Ernest L. Padilla, Assistant Attorney General
Mr. William F. Carr, Attorney at Law
Mr. W. Thomas Kellahin, Attorney at Law

STATE OF NEW MEXICO COUNTY OF UNION

IN THE DISTRICT COURT

ROBERT CASADOS, et al,	)	Union County No. CV 81-18
Plaintiffs	)	Quay County No. CV 81-00015
vs.	)	Harding County No. CV 81-00001
OIL CONSERVATION COMMISSION, et al,	)	(Consolidated)
Defendants	)	

STIPULATION TO CHANGE PLACE OF DOCKETING

The parties hereto, by and through their attorneys of record, hereby stipulate that this cause be docketed in the district court for Taos County, New Mexico, instead of Union County, New Mexico, as previously docketed.

ERNEST L. CARROLL, Esq.
P. O. Drawer 511
Midland, Texas 79702

ERNEST L. PADILLA, Esq.
Assistant Attorney General for
the Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

WILLIAM F. CARR, Esq.
P. O. Box 2208
Santa Fe, New Mexico 87501
Attorneys for Defendant
Amoco Production Company

W. THOMAS KELLAHIN, Esq.
P. O. Box 1769
Santa Fe, New Mexico 87501

STATE OF NEW MEXICO COUNTY OF UNION

IN THE DISTRICT COURT

ROBERT CASADOS, et al,	)	Union County No. CV 81-18
	)	
Plaintiffs	)	Quay County No. CV 81-00015
	)	
vs.	)	Harding County No. CV 81-00001
	)	
OIL CONSERVATION COMMISSION, et al,	)	(Consolidated)
	)	
Defendants	)	

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DISTRICT JUDGE

STATE OF NEW MEXICO COUNTY OF UNION

IN THE DISTRICT COURT

ROBERT CASADOS, et al,	)	Union County No. CV 81-18
	)	
Plaintiffs	)	Quay County No. CV 81-00015
	)	
vs.	)	Harding County No. CV 81-00001
	)	
OIL CONSERVATION COMMISSION, et al,	)	(Consolidated)
	)	
	)	
Defendants	)	

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DISTRICT JUDGE

STATE OF NEW MEXICO COUNTY OF UNION

IN THE DISTRICT COURT

ROBERT CASADOS, et al,	)	Union County No. CV 81-18
	)	
Plaintiffs	)	Quay County No. CV 81-00015
	)	
vs.	)	Harding County No. CV 81-00001
	)	
OIL CONSERVATION COMMISSION, et al,	)	(Consolidated)
	)	
Defendants	)	

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Santa Fe, New Mexico 87501
Attorneys for Defendant
Amoco Production Company

W. THOMAS KELLAHIN, Esq.
P. O. Box 1769
Santa Fe, New Mexico 87501

STATE OF NEW MEXICO COUNTY OF UNION

IN THE DISTRICT COURT

ROBERT CASADOS, et al,	)	Union County No. CV 81-18
Plaintiffs	)	Quay County No. CV 81-00015
vs.	)	Harding County No. CV 81-00001
OIL CONSERVATION COMMISSION, et al,	)	(Consolidated)
Defendants	)	

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