

CAMPBELL & BLACK, P.A.

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June 26, 1989

RECEIVED

JUN 26 1989

OIL CONSERVATION DIVISION

HAND-DELIVERED

Robert G. Stovall, General Counsel
Oil Conservation Division
New Mexico Department of Energy,
Minerals and Natural Resources
State Land Office Building
Santa Fe, New Mexico 87503

Re: Enserch Exploration Inc. v. Oil Conservation Commission,
Roosevelt County District Court Cause No. 89-CV-159

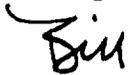
Dear Bob:

I have been trying to reach you for the last couple of days to arrange for service of the Petition for Review which we have filed on behalf of Enserch in the above-referenced matter. In the past the Division has been willing to accept service of the petition for review and I have, therefore, enclosed an Acceptance of Service for Mr. LeMay's signature. If this procedure is agreeable to you, please advise once Bill has signed the Acceptance of Service and I will arrange to have it picked up and filed with the District Court.

If this procedure is unacceptable to you, we can make other arrangements for service.

Your attention to this matter is appreciated.

Very truly yours,



WILLIAM F. CARR

WFC:mlh

Enclosure

cc w/enclosures: Frank H. Pope, Jr.
Senior Attorney

NINTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF ROOSEVELT

No. CV 89-159

ENSERCH EXPLORATION INC.,
a Delaware corporation,

Petitioner,

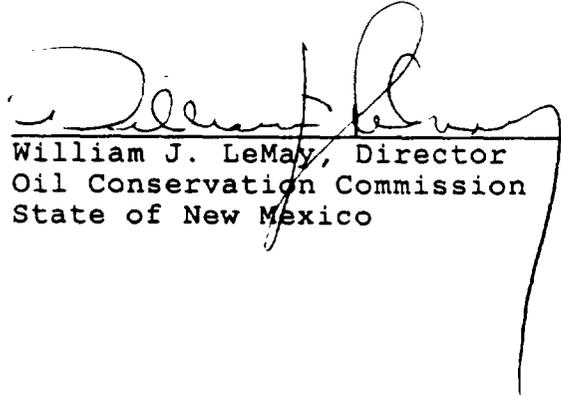
vs.

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent.

ACCEPTANCE OF SERVICE

WILLIAM J. LeMAY, Director of the Oil Conservation Commission of the State of New Mexico hereby accepts service of the Petition for Review of Oil Conservation Commission Order R-8780-A (Case 9511) in this matter on behalf of the Oil Conservation Commission of New Mexico on this 28th day of June, 1989.



William J. LeMay, Director
Oil Conservation Commission
State of New Mexico

RECEIVED

JUN 26 1989

OIL CONSERVATION DIVISION

NINTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF ROOSEVELT

No. ~~ex~~ 89-CV-159

ENSERCH EXPLORATION INC.,
a Delaware corporation,

Petitioner,

vs.

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO,

Respondent.

**PETITION FOR REVIEW OF OIL CONSERVATION
COMMISSION ORDER R-8780-A (CASE 9511)**

COMES NOW ENSERCH EXPLORATION INC., ("Enserch") and pursuant to the provisions of Section 7-2-25B, N.M.S.A., 1978, petitions the Court for review of the action of the New Mexico Oil Conservation Commission ("Commission") in Commission Case 9511 (De Novo) and Order R-8780-A entered therein, and in support of this Petition for Review states:

1. Petitioner Enserch is a corporation duly organized under the laws of the State of Delaware, doing business within the State of New Mexico. Enserch is an interest owner in acreage involved in Commission Case 9511 (De Novo) and is the operator of wells affected by Order R-8780-A entered in this case.

CLERK, DISTRICT COURT

Case Assigned
TO: JUDGE QUINN

2. Respondent Commission is a statutory body created and existing under the laws of the State of New Mexico which is vested with jurisdiction over all matters relating to the conservation of oil and gas in the State of New Mexico, the prevention of waste of oil and gas, the protection of the correlative rights of the owners of oil and gas interests, and the enforcement of the New Mexico Oil and Gas Act (§§ 70-2-1 through 70-2-36 N.M.S.A., 1978).

3. On September 22, 1988 Phillips Petroleum Company ("Phillips") filed an application with the Oil Conservation Division ("Division") seeking authority to utilize its Lambirth "A" Well No. 6, located 1830 feet from the South line and 1900 feet from the East line (Unit J) of Section 30, Township 5 South, Range 33 East, N.M.P.M., Roosevelt County, New Mexico to dispose of produced salt water into the South Peterson-Fusselman Pool and the Montoya formation.

4. The Division heard the case on October 26, 1988 and on November 7, 1988 entered Order R-8780 granting Phillips' application. A copy of Order R-8780 is attached to and incorporated into this Petition for Review as Exhibit A.

5. An Application for Hearing De Novo was timely filed by Enserch on November 9, 1988.

6. The case was heard by the Commission on March 9, 1989 and Order R-8780-A was entered on May 2, 1989 affirming the prior Order of the Division. A copy of Order R-8780-A is attached to and incorporated into this Petition for Review as Exhibit B.

7. Within twenty days of the date of the entry of Order R-8780-A Enserch filed its Application for Rehearing.

8. No action was taken by the Commission within ten days of the filing of the Application for Rehearing and it was therefore deemed denied on June 1, 1989 pursuant to the provisions of § 70-2-25A N.M.S.A., 1978 Comp.

REVIEW OF COMMISSION ORDER R-8780-A (CASE 9511)

9. Petitioner Enserch complains and seeks review of Commission Order R-8780-A, and as grounds for asserting invalidity of said Order, Enserch adopts the arguments set forth in its Application for Rehearing, attached to and incorporated into this Petition for Review as Exhibit C, and further states:

A. Order R-8780-A and Order-8780 which it affirms contain no ultimate findings of fact, as required by law, that waste will be prevented or correlative rights protected and, furthermore, contains no finding that even suggests that the correlative rights of Enserch or any other interest owner will be protected once Phillips' commences disposing produced salt water into the South Peterson-Fusselman Pool and the Montoya formation.

B. Order R-8780-A and Order-8780 which it affirms do not contain required findings that disclose the Commission's reasoning as to how correlative rights will be protected or how waste, as defined by the

New Mexico Oil and Gas Act, would be prevented by the disposal of produced salt water as Phillips' seeks with this application.

- C. In entering Order R-8780-A, the Commission has disregarded its own rules and regulations and breached its statutory duty to prevent waste. By permitting Phillips to inject produced salt water into the highly fractured Montoya formation and the South Peterson-Fusselman Pool it has ignored the evidence on the thousands of barrels of oil put at risk by this proposed disposal. Order R-8780-A is therefore arbitrary, capricious, unreasonable, contrary to law and not supported by substantial evidence.
- D. In entering Order R-8780-A, the Commission ignored the evidence on water damage to Enserch operated wells. This Order will deny Enserch the opportunity to produce its just and fair share of the reserves from the South Peterson-Fusselman Pool thereby impairing its correlative rights. Order R-8780-A is, therefore, arbitrary, capricious, unreasonable, contrary to law and is not supported by substantial evidence.
- E. Order R-8780-A, violates the express provisions of the Oil and Gas Act which enumerate the Commission's powers and duties in regulating the disposal of

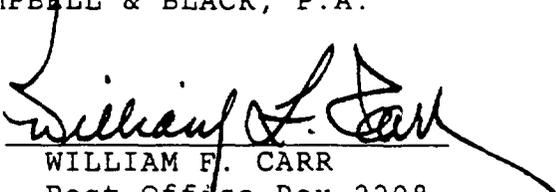
produced waters -- all as more fully set out in the Application for Rehearing attached hereto and incorporated herein by reference. Order R-8780-A is therefore arbitrary, capricious, unreasonable and contrary to law.

F. In entering Order R-8780-A, the Commission received no evidence from Phillips on the fractured nature of the Montoya formation. Furthermore, it ignored Enserch's evidence on the nature of this reservoir which demonstrated the damage water disposal into the Montoya formation can have on Enserch wells in the South Peterson-Fusselman Pool. As more fully set out in the Application for Rehearing attached hereto and incorporated herein, Phillips failed to carry its burden of proof and presented no evidence on the prevention of either the surface or underground waste of oil. Therefore, Order R-8780-A is not supported by substantial evidence, and is arbitrary, capricious, unreasonable and contrary to law.

WHEREFORE, Petitioner Enserch Exploration Inc,. prays that this Court review New Mexico Oil Conservation Commission Case 9511 (De Novo) and Commission Order R-8780-A affirming Division Order R-8780, and enter its Order vacating Commission Order R-8780-A and granting such other relief as the Court deems proper.

Respectfully submitted,

CAMPBELL & BLACK, P.A.

By: 

WILLIAM F. CARR
Post Office Box 2208
Santa Fe, New Mexico 87504
Telephone: (505) 988-4421

ATTORNEYS FOR
ENSERCH EXPLORATION INC.

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

CASE NO. 9511
ORDER NO. R-8780

APPLICATION OF PHILLIPS PETROLEUM
COMPANY FOR SALT WATER DISPOSAL,
ROOSEVELT COUNTY, NEW MEXICO

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on October 26, 1988, at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 7th day of November, 1988, the Division Director, having considered the testimony, the record and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

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

(2) The applicant, Phillips Petroleum Company, is the owner and operator of the Lambirth "A" Well No. 6, located 1830 feet from the South line and 1980 feet from the East line (Unit J) of Section 30, Township 5 South, Range 33 East, NMPM, Roosevelt County, New Mexico.

(3) The applicant proposes to utilize said well to dispose of produced salt water into the South Peterson-Fusselman Pool and Montoya formations, with injection into the perforated interval from approximately 7892 feet to 7944 feet.

(4) The injection should be accomplished through 2 3/8-inch plastic lined tubing installed in a packer set at approximately 7850 feet; the casing-tubing annulus should be filled with an inert fluid; and a pressure gauge or approved leak detection device should be attached to the annulus in order to determine leakage in the casing, tubing or packer.

Exhibit A

(5) Prior to commencing injection operations, the casing in the subject well should be pressure-tested throughout the interval, from the surface down to the proposed packer setting depth, to assure the integrity of such casing.

(6) The injection well or system should be equipped with a pressure limiting switch or other acceptable device which will limit the wellhead pressure on the injection well to no more than 1475 psi.

(7) The Director of the Division should be authorized to administratively approve an increase in the injection pressure upon a proper showing by the operator that such higher pressure will not result in migration of the injected waters from the Fusselman and Montoya formations.

(8) The operator should notify the supervisor of the Hobbs district office of the Division of the date and time of the installation of disposal equipment and of the mechanical integrity pressure test in order that the same may be witnessed.

(9) The operator should take all steps necessary to ensure that the injected water enters only the proposed injection interval and is not permitted to escape to other formations or onto the surface.

(10) Approval of the subject application will prevent the drilling of unnecessary wells and otherwise prevent waste and protect correlative rights.

IT IS THEREFORE ORDERED THAT:

(1) The applicant, Phillips Petroleum Company, is hereby authorized to utilize its Lambirth "A" Well No. 6, located 1830 feet from the South line and 1980 feet from the East line (Unit J), Section 30, Township 5 South, Range 33 East, NMPM, Roosevelt County, New Mexico, to dispose of produced salt water into the South Peterson-Fusselman Pool and Montoya formations, injection to be accomplished through 2 3/8-inch tubing installed in a packer set at approximately 7850 feet, with injection into the perforated interval from approximately 7892 feet to 7944 feet.

PROVIDED HOWEVER THAT, the tubing shall be internally plastic-lined; the casing-tubing annulus shall be filled with an inert fluid; and a pressure gauge shall be attached to the annulus or the annulus shall be equipped with an approved leak detection device in order to determine leakage in the casing, tubing, and/or packer.

PROVIDED FURTHER THAT, prior to commencing injection operations, the casing in the subject well shall be pressure-tested to assure the integrity of such casing in a manner that is satisfactory to the supervisor of the Division's district office at Hobbs.

(2) The injection well or system shall be equipped with a pressure limiting switch or other acceptable device which will limit the wellhead pressure on the injection well to no more than 1475 psi.

(3) The Director of the Division may authorize an increase in the injection pressure upon a proper showing by the operator that such higher pressure will not result in migration of the injected waters from the Fusselman and Montoya formations.

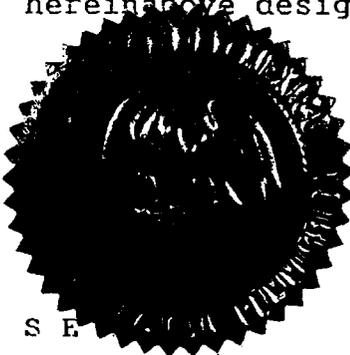
(4) The operator shall notify the supervisor of the Hobbs district office of the Division of the date and time of the installation of disposal equipment and of the mechanical integrity pressure test in order that the same may be witnessed.

(5) The operator shall immediately notify the supervisor of the Division's Hobbs district office of the failure of the tubing, casing or packer in said well or the leakage of water from or around said well and shall take such steps as may be timely and necessary to correct such failure or leakage.

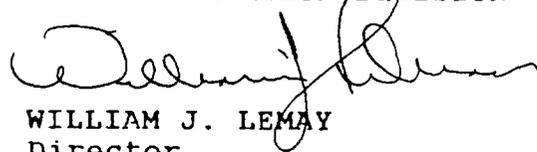
(5) The applicant shall conduct disposal operations and submit monthly reports in accordance with Rules 702, 703, 704, 705, 706, 708 and 1120 of the Division Rules and Regulations.

(7) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



STATE OF NEW MEXICO
OIL CONSERVATION DIVISION


WILLIAM J. LEMAY
Director

RECEIVED
MAY - 4 1989
CAMPBELL & BLACK

135

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE NO. 9511 DE NOVO
Order No. R-8780-A

APPLICATION OF PHILLIPS PETROLEUM
COMPANY FOR SALT WATER DISPOSAL,
ROOSEVELT COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9:00 a.m. on March 9, 1989, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 2nd day of May, 1989, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS THAT:

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

(2) The applicant, Phillips Petroleum Company, seeks an order to utilize its Lambirth "A" Well No. 6, located 1830 feet from the South line and 1980 feet from the East line (Unit J) of Section 30, Township 5 South, Range 33 East, NMPM, Roosevelt County, New Mexico, to dispose of produced salt water into the South Peterson-Fusselman Pool and Montoya Formation, with injection into the perforated interval from approximately 7892 feet to 7944 feet.

-2-

Case No. 9511 De Novo
Order No. R-8780-A

(3) The matter came on for hearing at 8:15 a.m. on October 26, 1988, at Santa Fe, New Mexico, before Examiner Michael E. Stogner and, pursuant to this hearing, Order No. R-8780 was issued on November 7, 1988, which granted the application for salt water disposal.

(4) On November 9, 1988, application for Hearing De Novo was made by Enserch Exploration, Inc. and the matter was set for hearing before the Commission.

(5) The matter came on for hearing De Novo on March 9, 1989.

(6) The findings of the Division in Order No. R-8780 are supported by substantial evidence and the Commission adopts those findings as its own.

(7) Enserch opposed the application alleging the potential loss of oil reserves caused by breakthrough of injected water because of the highly fractured nature of the Fusselman reservoir.

(8) The evidence presented did not support the conclusion that water breakthrough would occur and the mere contention of possible damage is not sufficient cause to deny the application.

(9) Phillips is presently paying EP Operating \$0.40 per barrel to dispose of produced water and granting of this application could reduce Phillips' operating costs and result in additional recoveries of oil and gas.

(10) The evidence adduced at said Commission hearing indicates that Division Order No. R-8780 should be affirmed.

IT IS THEREFORE ORDERED THAT:

(1) Division Order No. R-8780, entered November 7, 1988, is hereby affirmed.

(2) Jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

-3-
Case No. 9511 De Novo
Order No. R-8780-A

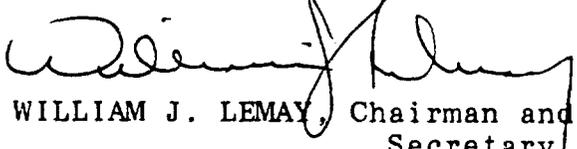
DONE at Santa Fe, New Mexico, on the day and year
hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION



WILLIAM R. HUMPHRIES, Member

ERLING A. BROSTUEN, Member



WILLIAM J. LEMAY, Chairman and
Secretary

S E A L

dr/

STATE OF NEW MEXICO
ENERGY, MINERALS & NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE No. 9511 DE NOVO
ORDER NO. R-8780-A

APPLICATION OF PHILLIPS PETROLEUM COMPANY
FOR SALT WATER DISPOSAL, ROOSEVELT COUNTY,
NEW MEXICO.

APPLICATION FOR REHEARING OF
ENSERCH EXPLORATION, INC.

RECEIVED
MAY 22 1989
OIL CONSERVATION DIVISION

Comes now Enserch Exploration, Inc. ("Enserch") pursuant to the provisions of §70-2-25 N.M.S.A. 1978 and applies to the New Mexico Oil Conservation Commission ("Commission") for Rehearing of the above-captioned case and in support thereof states:

1. On September 22, 1988, Phillips Petroleum Company ("Phillips") filed its application in this case and provided notice to Enserch as required by Division rules.

2. Enserch contacted Phillips on October 14 and requested a two week continuance of the hearing which had been scheduled for October 26, 1988.

3. Phillips opposed the continuance and on October 20, 1988 Enserch advised the Commission that without a continuance it would be forced to enter its appearance in the case and, on the entry of a Division order, file an application for Hearing De Novo.

4. The Division heard the case on October 26, 1988 and on November 7, 1988 entered Order R-8780 granting Phillips'

application.

5. An application for Hearing De Novo was filed by Enserch on November 9, 1988.

6. The matter was heard by the full Commission on March 9, 1989 and Order R-8780-A was entered on May 2, 1989 affirming the prior order of the Division.

7. Within twenty days of the date of Order R-8780-A, Enserch filed this application for rehearing.

GROUND FOR REHEARING

- I. ORDER R-8780-A SHOULD BE REVERSED BECAUSE THE COMMISSION FAILED TO MAKE BASIC JURISDICTIONAL FINDINGS OF FACT CONCERNING THE PREVENTION OF WASTE AND THE PROTECTION OF CORRELATIVE RIGHTS.

Order R-8780-A fails to comply with applicable statutory and judicial standards for it does not contain findings which show how it will prevent waste and protect correlative rights.

In Continental Oil Company v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962), the New Mexico Supreme Court reviewed the sufficiency of a Commission Order. The Court noted that the Commission was created by statute and, pursuant to the New Mexico Oil and Gas Act; its jurisdiction and powers are founded on the duty to prevent waste and to protect correlative rights. The Court then found that Commission Orders must contain findings that are "...sufficiently extensive to show...the basis of the Commission's Order."

The sufficiency of the findings of a Commission Order was also addressed by the New Mexico Supreme Court in Fasken v. Oil

Conservation Commission, 87 N.M. 292, 532 P.2d 588 (1975). In this case, the Court found that:

In cases where the sufficiency of the Commission's finding is an issue...the following must appear:

A. Findings of ultimate facts which are material to the issues.... (prevention of waste and protection of correlative rights)

B. Sufficient findings to disclose the reasoning of the Commission in reaching its ultimate findings.

Although the Oil & Gas Act contains definitions of both "underground waste" and "surface waste" (See, §70-2-3, N.M.S.A. (1978); the Commission in Order R-8780-A (or Order 8780 which is affirmed) totally failed to make any finding that would disclose how either surface or underground waste, as defined by this statute, would be prevented by the granting of Phillips' application. Although the Commission notes that granting the application will reduce Phillips' cost and result in additional recovery of oil or gas (Order R-8780-A, Finding 8), this finding of fact does not relate to either of the statutory definitions of waste.

Furthermore, Order R-8780-A contains no finding whatsoever on correlative rights. Not only is there no ultimate finding of fact that correlative rights are protected by this order, there is absolutely no finding at all that would suggest that the correlative rights of Enserch or any other interest owner are or can be protected once Phillips' application to dispose of salt water is approved.

The findings in Order R-8780-A do not meet the standards announced in the Continental and Fasken decisions. This Order, therefore, is contrary to law, arbitrary and capricious and must be set aside.

II. ORDER R-8780-A IS CONTRARY TO LAW.

A. ORDER R-8780-A WILL RESULT IN THE WASTE OF THE OIL.

Underground waste as defined by the Oil and Gas Act includes operating any well in a manner that tends to reduce the total quantity of crude oil to be recovered from any pool. §70-2-3A. The evidence presented by Enserch established that thousands of barrels of oil that could be produced from wells it operates in the South Peterson-Fusselman Pool were placed at risk by injection of water into this highly fractured formation as proposed by Phillips. This evidence however was ignored by the Commission in reaching its decision.

B. GRANTING PHILLIPS' APPLICATION WILL IMPAIR THE CORRELATIVE RIGHTS OF ENSERCH.

Correlative rights are defined by the Oil and Gas Act as affording to each interest owner in a pool the opportunity to produce its just and equitable share of oil or gas from the pool. §70-2-33H. In entering Order R-8780-A the Commission finds that granting this application can reduce Phillips' disposal costs and thereby increase its ability to recover oil from the pool. At the same time, however, it closes its eyes to the correlative rights

of other interest owners in the pool who may be damaged by the injection of salt water into this reservoir and thereby lose their opportunity to produce their just and equitable share of reserves from the pool.

C. ORDER R-8780-A VIOLATES EXPRESS PROVISIONS OF THE OIL & GAS ACT.

The powers of the Commission are enumerated in §70-2-12(4), N.M.S.A. (1978) as follows:

to prevent the drowning by water of any stratum or part thereof capable of producing oil or gas or both oil and gas in paying quantities and the premature and irregular encroachment of water or any other kind of watering encroachment which reduces or tends to reduce the total ultimate recovery of crude petroleum oil or gas or both oil and gas from any pool.

In Finding 8 of Order R-8780-A, the Commission summarily dismisses as a "mere contention" Enserch's concern about water damage and the resulting loss of oil (underground waste) that will result if Phillips' application is granted. The reason that the Oil and Gas Act expressly addresses water encroachment is that this type of encroachment can only be a "contention" until it occurs. Once it happens the damage is irreversible and waste has occurred.

In this case, the Commission ignores the fractured nature of this reservoir, the irregular and erratic way in which water will migrate therein and the waste of underground oil that can occur from the injection of water as requested by Phillips. Order R-8780-A therefore authorizes waste, impairs correlatiave rights, is contrary to law, arbitrary and capricious and must be amended or

reversed.

III. ORDER R-8780-A IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

The burden of proof is on Phillips, the Applicant, to establish that the water it injects will stay in the injection interval, will not cause waste and will not impair correlative rights. Phillips presented no evidence on the fractured nature of this reservoir in its direct case and otherwise failed to present sufficient evidence on any of these foundational matters to support the Commission's Order. Order R-8780-A, therefore, is not supported by substantial evidence.

In granting this application, and based on this record, the Commission entered only two findings that in any way relate to the jurisdictional issues of waste and correlative rights.

Order R-8780-A, Finding 8 provides:

"The evidence presented did not support the conclusion that water breakthrough would occur and the mere contention of possible damage is not sufficient cause to deny the application."

To make this finding, the Commission could not have considered the evidence presented by Enserch on the highly fractured nature of this reservoir -- evidence which was not challenged by Phillips. It had to disregard the engineering testimony on the ability of injected water to migrate through these fractures in unpredictable ways and estimates of the volumes of oil that would be put at risk if Phillips injected the volumes of salt water it proposed into this reservoir.

Order R-8780-A, Finding 9 states:

Phillips is presently paying EP Operating \$0.40 per barrel to dispose of produced water and granting of this application could reduce Phillips' operating costs and result in additional recovery of oil and gas.

This finding is based on a misreading of the Oil and Gas Act. Nowhere in this statute is the reduction of one owner's costs a factor to be considered in preventing waste or protecting correlative rights. This is especially true when, as here, an application can result in the loss of oil or gas to other owners in a pool and potentially damage the reservoir. In making this finding, the Commission ignored the evidence on the damage that can occur to this reservoir if there is a water breakthrough and the loss of recoverable reserves, if breakthrough occurs.

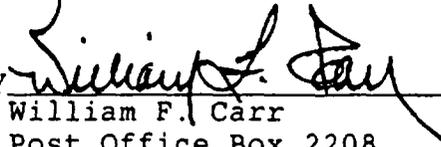
The findings in Order R-8780-A are not supported by substantial evidence and it, therefore, must be reversed.

WHEREFORE, Enserch Exploration, Inc. prays that the Oil Conservation Commission enter its order granting this Application for Rehearing, and, after notice and hearing as required by law and the rules of the Division, reverse Order R-8780-A and deny the application of Phillips Petroleum Company in Division Case 9511 DE NOVO.

Respectfully submitted,

CAMPBELL & BLACK, P.A.

By

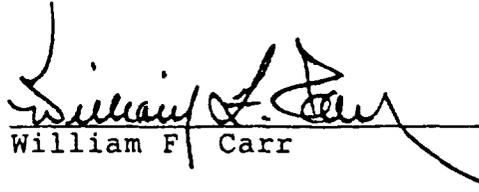
A handwritten signature in cursive script, appearing to read "William F. Carr", is written over a horizontal line.

William F. Carr
Post Office Box 2208
Santa Fe, NM 87504-2208
(505) 988-4421

ATTORNEYS FOR ENSERCH
EXPLORATION, INC.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Application for Rehearing of Enserch Exploration, Inc. was hand delivered to W. Thomas Kellahin, Esq., 117 N. Guadalupe, Santa Fe, New Mexico this 22nd day of May, 1989.



William F Carr

CAMPBELL & BLACK, P.A.
LAWYERS

JACK M. CAMPBELL
BRUCE D. BLACK
MICHAEL B. CAMPBELL
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May 22, 1989

HAND DELIVERED

William J. LeMay
Oil Conservation Division
Energy, Minerals and Natural
Resources Department
State Land Office Building
Santa Fe, New Mexico 87503

RECEIVED
MAY 22 1989
OIL CONSERVATION DIVISION

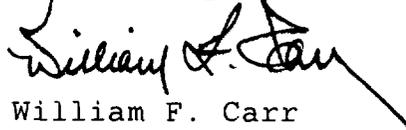
Re: Oil Conservation Division Case 9511; In the Matter of the
Application of Phillips Petroleum Company for Salt Water
Disposal, Roosevelt County, New Mexico; Order R-8780-A

Dear Mr. LeMay:

Enclosed in triplicate is the Application for Rehearing of
Enserch Exploration, Inc., in the above referenced case.

Your attention to this matter is appreciated.

Yours truly,


William F. Carr

WFC:bh
enc.

cc: Frank H. Pope, Jr. (w/enc.)
Leonard Kersh (w/enc.)
W. Thomas Kellahin (w/enc.)

STATE OF NEW MEXICO
ENERGY, MINERALS & NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE No. 9511 DE NOVO
ORDER NO. R-8780-A

RECEIVED

APPLICATION OF PHILLIPS PETROLEUM COMPANY
FOR SALT WATER DISPOSAL, ROOSEVELT COUNTY,
NEW MEXICO.

MAY 22 1989

OIL CONSERVATION DIVISION

APPLICATION FOR REHEARING OF
ENSERCH EXPLORATION, INC.

Comes now Enserch Exploration, Inc. ("Enserch") pursuant to the provisions of §70-2-25 N.M.S.A. 1978 and applies to the New Mexico Oil Conservation Commission ("Commission") for Rehearing of the above-captioned case and in support thereof states:

1. On September 22, 1988, Phillips Petroleum Company ("Phillips") filed its application in this case and provided notice to Enserch as required by Division rules.
2. Enserch contacted Phillips on October 14 and requested a two week continuance of the hearing which had been scheduled for October 26, 1988.
3. Phillips opposed the continuance and on October 20, 1988 Enserch advised the Commission that without a continuance it would be forced to enter its appearance in the case and, on the entry of a Division order, file an application for Hearing De Novo.
4. The Division heard the case on October 26, 1988 and on November 7, 1988 entered Order R-8780 granting Phillips'

application.

5. An application for Hearing De Novo was filed by Enserch on November 9, 1988.

6. The matter was heard by the full Commission on March 9, 1989 and Order R-8780-A was entered on May 2, 1989 affirming the prior order of the Division.

7. Within twenty days of the date of Order R-8780-A, Enserch filed this application for rehearing.

GROUND S FOR REHEARING

- I. ORDER R-8780-A SHOULD BE REVERSED BECAUSE THE COMMISSION FAILED TO MAKE BASIC JURISDICTIONAL FINDINGS OF FACT CONCERNING THE PREVENTION OF WASTE AND THE PROTECTION OF CORRELATIVE RIGHTS.

Order R-8780-A fails to comply with applicable statutory and judicial standards for it does not contain findings which show how it will prevent waste and protect correlative rights.

In Continental Oil Company v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962), the New Mexico Supreme Court reviewed the sufficiency of a Commission Order. The Court noted that the Commission was created by statute and, pursuant to the New Mexico Oil and Gas Act; its jurisdiction and powers are founded on the duty to prevent waste and to protect correlative rights. The Court then found that Commission Orders must contain findings that are "...sufficiently extensive to show...the basis of the Commission's Order."

The sufficiency of the findings of a Commission Order was also addressed by the New Mexico Supreme Court in Fasken v. Oil

Conservation Commission, 87 N.M. 292, 532 P.2d 588 (1975). In this case, the Court found that:

In cases where the sufficiency of the Commission's finding is an issue...the following must appear:

A. Findings of ultimate facts which are material to the issues.... (prevention of waste and protection of correlative rights)

B. Sufficient findings to disclose the reasoning of the Commission in reaching its ultimate findings.

Although the Oil & Gas Act contains definitions of both "underground waste" and "surface waste" (See, §70-2-3, N.M.S.A. (1978); the Commission in Order R-8780-A (or Order 8780 which is affirmed) totally failed to make any finding that would disclose how either surface or underground waste, as defined by this statute, would be prevented by the granting of Phillips' application. Although the Commission notes that granting the application will reduce Phillips' cost and result in additional recovery of oil or gas (Order R-8780-A, Finding 8), this finding of fact does not relate to either of the statutory definitions of waste.

Furthermore, Order R-8780-A contains no finding whatsoever on correlative rights. Not only is there no ultimate finding of fact that correlative rights are protected by this order, there is absolutely no finding at all that would suggest that the correlative rights of Enserch or any other interest owner are or can be protected once Phillips' application to dispose of salt water is approved.

The findings in Order R-8780-A do not meet the standards announced in the Continental and Fasken decisions. This Order, therefore, is contrary to law, arbitrary and capricious and must be set aside.

II. ORDER R-8780-A IS CONTRARY TO LAW.

A. ORDER R-8780-A WILL RESULT IN THE WASTE OF THE OIL.

Underground waste as defined by the Oil and Gas Act includes operating any well in a manner that tends to reduce the total quantity of crude oil to be recovered from any pool. §70-2-3A. The evidence presented by Enserch established that thousands of barrels of oil that could be produced from wells it operates in the South Peterson-Fusselman Pool were placed at risk by injection of water into this highly fractured formation as proposed by Phillips. This evidence however was ignored by the Commission in reaching its decision.

B. GRANTING PHILLIPS' APPLICATION WILL IMPAIR THE CORRELATIVE RIGHTS OF ENSERCH.

Correlative rights are defined by the Oil and Gas Act as affording to each interest owner in a pool the opportunity to produce its just and equitable share of oil or gas from the pool. §70-2-33H. In entering Order R-8780-A the Commission finds that granting this application can reduce Phillips' disposal costs and thereby increase its ability to recover oil from the pool. At the same time, however, it closes its eyes to the correlative rights

of other interest owners in the pool who may be damaged by the injection of salt water into this reservoir and thereby lose their opportunity to produce their just and equitable share of reserves from the pool.

C. ORDER R-8780-A VIOLATES EXPRESS PROVISIONS OF THE OIL & GAS ACT.

The powers of the Commission are enumerated in §70-2-12(4), N.M.S.A. (1978) as follows:

to prevent the drowning by water of any stratum or part thereof capable of producing oil or gas or both oil and gas in paying quantities and the premature and irregular encroachment of water or any other kind of watering encroachment which reduces or tends to reduce the total ultimate recovery of crude petroleum oil or gas or both oil and gas from any pool.

In Finding 8 of Order R-8780-A, the Commission summarily dismisses as a "mere contention" Enserch's concern about water damage and the resulting loss of oil (underground waste) that will result if Phillips' application is granted. The reason that the Oil and Gas Act expressly addresses water encroachment is that this type of encroachment can only be a "contention" until it occurs. Once it happens the damage is irreversible and waste has occurred.

In this case, the Commission ignores the fractured nature of this reservoir, the irregular and erratic way in which water will migrate therein and the waste of underground oil that can occur from the injection of water as requested by Phillips. Order R-8780-A therefore authorizes waste, impairs correlatiave rights, is contrary to law, arbitrary and capricious and must be amended or

reversed.

III. ORDER R-8780-A IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

The burden of proof is on Phillips, the Applicant, to establish that the water it injects will stay in the injection interval, will not cause waste and will not impair correlative rights. Phillips presented no evidence on the fractured nature of this reservoir in its direct case and otherwise failed to present sufficient evidence on any of these foundational matters to support the Commission's Order. Order R-8780-A, therefore, is not supported by substantial evidence.

In granting this application, and based on this record, the Commission entered only two findings that in any way relate to the jurisdictional issues of waste and correlative rights.

Order R-8780-A, Finding 8 provides:

"The evidence presented did not support the conclusion that water breakthrough would occur and the mere contention of possible damage is not sufficient cause to deny the application."

To make this finding, the Commission could not have considered the evidence presented by Enserch on the highly fractured nature of this reservoir -- evidence which was not challenged by Phillips. It had to disregard the engineering testimony on the ability of injected water to migrate through these fractures in unpredictable ways and estimates of the volumes of oil that would be put at risk if Phillips injected the volumes of salt water it proposed into this reservoir.

Order R-8780-A, Finding 9 states:

Phillips is presently paying EP Operating \$0.40 per barrel to dispose of produced water and granting of this application could reduce Phillips' operating costs and result in additional recovery of oil and gas.

This finding is based on a misreading of the Oil and Gas Act. Nowhere in this statute is the reduction of one owner's costs a factor to be considered in preventing waste or protecting correlative rights. This is especially true when, as here, an application can result in the loss of oil or gas to other owners in a pool and potentially damage the reservoir. In making this finding, the Commission ignored the evidence on the damage that can occur to this reservoir if there is a water breakthrough and the loss of recoverable reserves, if breakthrough occurs.

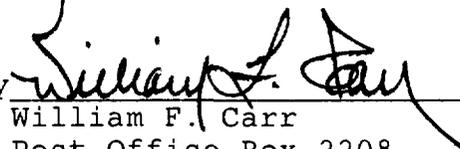
The findings in Order R-8780-A are not supported by substantial evidence and it, therefore, must be reversed.

WHEREFORE, Enserch Exploration, Inc. prays that the Oil Conservation Commission enter its order granting this Application for Rehearing, and, after notice and hearing as required by law and the rules of the Division, reverse Order R-8780-A and deny the application of Phillips Petroleum Company in Division Case 9511 DE NOVO.

Respectfully submitted,

CAMPBELL & BLACK, P.A.

By

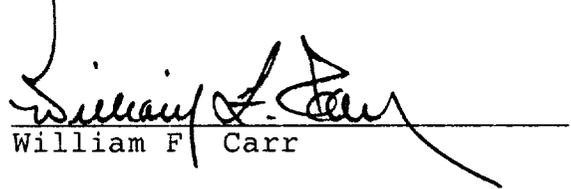
A handwritten signature in black ink, appearing to read "William F. Carr", written over a horizontal line.

William F. Carr
Post Office Box 2208
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(505) 988-4421

ATTORNEYS FOR ENSERCH
EXPLORATION, INC.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Application for Rehearing of Enserch Exploration, Inc. was hand delivered to W. Thomas Kellahin, Esq., 117 N. Guadalupe, Santa Fe, New Mexico this 22nd day of May, 1989.


William F Carr

ENERGY AND MINERALS DEPARTMENT

OIL CONSERVATION DIVISION

GARREY CARRUTHERS
GOVERNOR

May 2, 1989

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Re: CASE NO. 9511 De Novo
ORDER NO. R-8780-A

Applicant:

Phillips Petroleum Company

Dear Sir:

Enclosed herewith are two copies of the above-referenced Commission order recently entered in the subject case.

Sincerely,



FLORENE DAVIDSON
OC Staff Specialist

Copy of order also sent to:

Hobbs OCD x
Artesia OCD x
Aztec OCD

Other William F. Carr