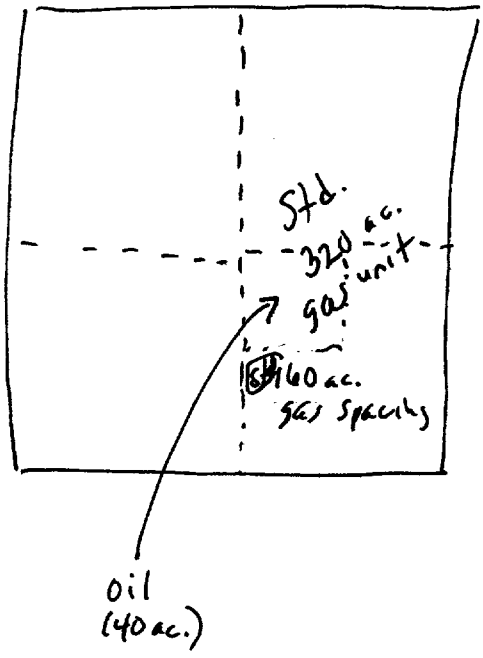
Newborne

i: whether pooling from base of Yates negates Yates' and Jalapeno's correlative rights

S.15 T.21S R27E
Eddy County

application at newborne:



Morrow well proposed - Morrow the main pay

application granted by Div. for NSL in Burton-Flat-Morrow Pool

"take" ????

Newborne:
needs uphole zones - to make well economic
Hesco owned 1/2 section for 30 years - no activity
Going through the Wolfcamp - extra wells - waste

Bruce: would it be different if returned to propose deeper well?

D. Paul Hader -
landman

<admin notice of DIV. record>

Melbourne did not desire NSL - originally, w/2 SE - archeological restrictions and pipelines - difficult terrain - this is the only location

didn't identify any other zone in NSL application because it is normal practice to include only zone of primary interest

East Avalon Bore Springs another target
160 acres 2 would be unorthodox location as
to Bore Springs

Melbourne obtains rights in their § in Jan. 2001

rig is available now (drilling another well)

* condition pooling on successful NSL later

Mike Burke
Midland

* No additional election period should be granted - 30 day period has run -

Bryan Montgomery

Yates
Raymond Raes

not a taking - govt. not acquiring interest -
granting rights to drill to Melbourne -

"mechanical process" -

"not a proper statutory basis to rely on economics"

NSL

Newbourne revision

none of pooled parties requested to join in well
didn't ask for a stay
all parties deemed non-consent
simple oversight
no additional election period -

70 N.M. 310

CONTINENTAL OIL COMPANY, Amerada Petroleum Corporation, Pan American Petroleum Corporation, Shell Oil Company, The Atlantic Refining Company, Standard Oil Company of Texas, and Humble Oil & Refining Company, Petitioner-Appellants and Cross-Appellees,

v.

OIL CONSERVATION COMMISSION, Respondent-Appellee and Cross-Appellant,

Texas Pacific Coal & Oil Company, a Foreign Corporation, El Paso Natural Gas Company, a Foreign Corporation, Permian Basin Pipeline Company, a Foreign Corporation, and Southern Union Gas Company, a Foreign Corporation, Respondents-Appellees.

No. 6830.

Supreme Court of New Mexico.

May 16, 1962.

Rehearing Denied Aug. 20, 1962.

Proceedings on application for change of gas proration formula. The District Court, Lea County, John R. Brand, D. J., affirmed the commission's order, and an appeal was taken. The Supreme Court, Carmody, J., held that the commission's order lacked basic findings necessary to, and upon which, its jurisdiction depended; that commission should have been permitted to participate in appeal to district court; and that district court should not have admitted additional evidence.

Reversed with directions.

1. Constitutional Law ⟹62

Administrative body may be delegated power to make fact determinations to which law, as set forth by legislative body, is to be applied.

2. Mines and Minerals ⟹92.15

The oil conservation commission is a creature of statute, expressly defined, limited and empowered by laws creating it. 1953 Comp. §§ 65-3-10, 65-3-13(c), 65-3-14(b, f), 65-3-29(h).

3. Mines and Minerals ⟹92.59

Commission, prorating production, must determine, insofar as practicable, (1) amount of recoverable gas under each producer's tract, (2) total amount of recoverable gas in pool, (3) proportion that (1) bears to (2), and (4) what portion of arrived at proportion can be recovered without waste. 1953 Comp. §§ 65-3-10, 65-3-13(c), 65-3-14(b), 65-3-29(h).

4. Mines and Minerals ⟹92.60

"Pure acreage" formula, which commission had originally applied would have to be assumed valid until it was successfully attacked on application for change of proration formula. 1953 Comp. §§ 65-3-2, 65-3-3(e), 65-3-5, 65-3-10, 65-3-13(c), 65-3-14 (a, b, f), 65-3-15(e), 65-3-22(b), 65-3-29 (h).

5. Mines and Minerals ⟹92.59

Commission's finding, that new proration formula would result in more equitable allocation of gas production than formula in use under prior order, was not equivalent of, or proper substitute for, required finding that present formula did not protect correlative rights. 1953 Comp. §§ 65-3-2, 65-3-3(e), 65-3-5, 65-3-10, 65-3-13(c), 65-3-14(a, b, f), 65-3-15(e), 65-3-22(b), 65-3-29(h).

6. Mines and Minerals ⟹92.60

Commission's finding, that there was general correlation between deliverabilities of gas wells in pool and recoverable gas in place under tracts dedicated to said wells, was not tantamount to finding that new proration formula, based 25 percent upon acreage and 75 percent upon deliverability, was based on amounts of recoverable gas in pool and under tracts, insofar as those amounts could be practically determined and obtained without waste.

7. Mines and Minerals ⟹92.59

A supposedly valid proration order in current use cannot be replaced in absence of findings that present formula does not protect correlative rights and that new formula is based on amounts of recoverable gas in pool and under tracts, insofar as those

in Choctaw Gas Co. v. Corporation Commission, (Okl.1956), 295 P.2d 800, said:

> "And these two fundamental purposes of the exercise of the Commission's powers in proration matters are interrelated, for, if the State, through this or some other agency, could not protect such rights, and each owner of a portion of the gas in a natural reservoir was left to protect his own, we would have resort to the wasteful drilling practices and races of the preproration days."

[14–17] Our legislature has explictly defined both "waste" and "correlative rights" and placed upon the commission the duty of preventing one and protecting the other. Inasmuch as there is no express mention of prevention of waste in the commission's findings, insofar as they concern correlative rights, it is obvious that the order must have been principally concerned with protecting correlative rights. However, as we have said, certain basic findings must be made before correlative rights can be effectively protected. From a practical standpoint, the legislature cannot define, in cubic feet, the property right of each owner of natural gas in New Mexico. It must, of necessity, delegate this legislative duty to an administrative body such as the commission. The legislature, however, has stated definitively the elements contained in such right. It is not absolute or unconditional. Summarizing, it consists of merely (1) an opportunity 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. The prevention of waste is of paramount interest, and protection of correlative rights is interrelated and inseparable from it. The very definition of "correlative rights" emphasizes the term "without waste." However, the protection of correlative rights is a necessary adjunct to the prevention of waste. Waste will result unless the commission can also act to protect correlative rights. See, Choctaw Gas Co. v. Corporation Commission, supra. Although subservient to the prevention of waste and perhaps to the practicalities of the situation, the protection of correlative rights must depend upon the commission's findings as to the extent and limitations of the right. This the commission is required to do under the legislative mandate. As such, it is acting in an administrative capacity in following legislative directions, and not in a judicial or quasi-judicial capacity. The commission's actions are controlled by adequate legislative standards, and it is performing its functions to conserve a very vital natural resource.

To state the problem in a different way, if the commission had determined, from a practical standpoint, that each owner had a certain amount of gas underlying his acreage; that the pool contained a certain amount of gas; and that a determined amount of gas could be produced and obtained without waste; then the commission would have complied with the mandate of the statute and its actions would have been protecting the public interest, thereby, quite obviously, entitling it to defend, for the public, whatever order it issued. Thus, it should be obvious that the commission is a necessary adverse party, and it was error for the trial court to refuse to allow the commission to participate as such. Plummer v. Johnson, supra; Board of Adjustment of City of Fort Worth v. Stovall, 1949, 147 Tex. 366, 216 S.W.2d 171; and Hasbrouck Heights, etc. v. Division of Tax Appeals, 1958, 48 N.J.Super. 328, 137 A.2d 585. The owners are understandably concerned only with their own interests and cannot be expected to litigate anything except that which concerns them. Therefore, absent the commission, the public would not be represented. If the protection of correlative rights were completely separate from the prevention of waste, then there might be no need in having the commission as a party; but if such were true, it is very probable that the commission would be performing a judicial