

**NINTH JUDICIAL DISTRICT
STATE OF NEW MEXICO
COUNTY OF ROOSEVELT**

PHILLIPS PETROLEUM COMPANY,

Petitioner,

vs.

No. 95-CV-74

Case Assigned

To: Judge HENSLEY

**OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO AND
ENSERCH EXPLORATION INC.
a Delaware corporation,**

Respondents.

**RESPONSE TO
PETITION FOR REVIEW OF A
DECISION OF THE
OIL CONSERVATION COMMISSION OF NEW MEXICO**

Respondent Enserch Exploration Inc. ("Enserch") responds to the Petition for Review of a Decision of the Oil Conservation Commission of New Mexico as follows:

1. Enserch admits the allegations contained in paragraphs 1 through 7 of the Petition.
2. Enserch denies the allegations contained in paragraph 8 of the Petition. Specifically, Enserch contends that the order of the Oil Conservation Commission of New Mexico ("the Commission") was supported by substantial evidence and was a proper exercise

of the Commission's statutory authority under NMSA 1978, §§ 70-2-11 and 70-2-12 (Repl. Pamp. 1987 & Cum. Supp. 1993).

3. Enserch denies the allegation contained in Point I of paragraph 8 of the Petition, and states that Point I of paragraph 8 of the Petition is an attempt to have this Court consider evidence which was not part of the record of the Commission hearing, contrary to NMSA 1978, § 70-2-25 (Repl. Pamp. 1987), which provides that the only evidence to be presented to this court is that taken in evidence by the Commission.

4. Enserch denies the allegation made in Point II of paragraph 8 of the Petition, and states that the Order of the Commission complies with the statutory requirements imposed by NMSA 1978, §§ 70-2-11, 70-2-12, and 70-2-17.

5. Enserch denies the allegation contained in Point III of paragraph 8 of the Petition and states that the Commission's order protects correlative rights as they are defined by the legislature and courts of the State of New Mexico.

6. Enserch denies the allegations contained in Points IV, V, VI, and VII of paragraph 8 of the Petition. NMSA 1978, § 70-2-25(B) provides that the "[C]ommission 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 [C]ommission." Enserch contends that the Order of the Commission is supported by substantial evidence submitted at a properly conducted hearing. As the Commission's Order is reasonable and logical, contains sufficient findings to disclose the reasoning of the Commission as required

by the Courts of the State of New Mexico and should not be disturbed by this Court.

7. Enserch denies the allegation contained in Point VIII of paragraph 8 of the Petition.

8. Enserch denies the allegations contained in Points IX and X of paragraph 8 of the Petition, and states that the Commission complied with all constitutional, statutory, and judicially imposed standards and requirements in conducting the hearing and issuing the order in this case.

9. Enserch denies the allegation contained in Point XI of paragraph 8 of the Petition, and states that the Commission's order was an order entered after a **de novo** hearing as provided by NMSA 1978, § 70-2-13, and as such was a valid exercise of the Commission's statutory authority as provided by NMSA 1978, §§ 70-2-11, 70-2-12, and 70-2-17.

10. Enserch admits the allegation contained in Point XII of paragraph 8 of the Petition insofar as it states that the Commission failed to adopt the order proposed by Phillips Petroleum Company (Phillips), but denies that the failure to adopt Phillips' proposed order resulted in the violation of correlative rights.

11. Enserch denies the allegations contained in Point XIII of paragraph 8 of the Petition insofar as they characterize the Commission's order as violative of either Phillips' due process or correlative rights, and states that the Commission complied with all constitutional, statutory, and judicially imposed standards and requirements in conducting the hearing and issuing the order in this case.

WHEREFORE, Enserch prays that this Court deny the relief requested by Petitioner and affirm the order of the Commission.

Respectfully submitted,

OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

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