

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

NO. **D-0101-CV-98-1295**

**PENDRAGON ENERGY PARTNERS, INC.,
PENDRAGON RESOURCES, LP, and
EDWARDS ENERGY CORPORATION**
Appellant

vs.

**NEW MEXICO OIL CONSERVATION
COMMISSION,**
Appellee

**WHITING PETROLEUM CORPORATION,
and MARALAX RESOURCES INC.**
Intervenors

DECISION OF THE COURT

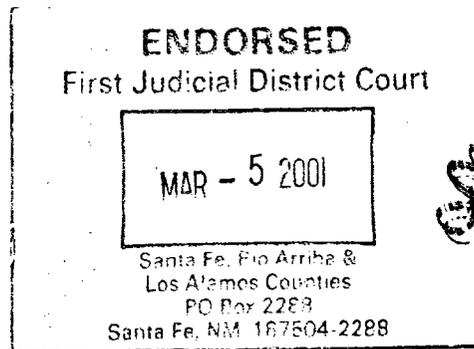
THIS MATTER came before the court upon the appeal of Pendragon from the April 26, 2000 decision of the Conservation Commission. Thereafter, Whiting moved to intervene in the appeal, which motion was opposed by Pendragon. At the same time, Whiting moved to dismiss the appeal of Pendragon for Rule 1-074 violations. Otherwise, the matter is ready for resolution.

Preliminary Matters

Whiting's Motion to Intervene is well-taken and it should be granted. However, Whiting's Motion to Dismiss the Appeal on the basis that Pendragon failed to recite all relevant facts [not just those which support its appeal] should be denied. While it is true that Pendragon varied from Rule 1-074 in this respect, the law requires a whole record review by the district court in any event. Here, the whole record consists of some 40,000 pages of largely technical testimony. Thus, Pendragon's failure, while it did not aid the court, certainly did not appreciably burden the court.

The Main Matters

Pendragon claims that the Commission committed three basic errors, albeit not in the order in which they are discussed in this Decision.



First, Pendragon claims that the evidence does not support several specific findings of fact by the Commission.

When reviewing findings of fact made by an administrative agency, the court must apply a whole record standard of review. **Duke City Lumber Co. v. New Mexico Env'tl. Improvement Bd.**, 101 N.M. 291, 294, 681 P.2d 717, 720 (1984). This means that the court must look not only at the evidence that is favorable, but also evidence that unfavorable to the agency's determination. **Trujillo v. Employment Sec. Dep't**, 105 N.M. 467, 470, 734 P.2d 245, 248 (Ct.App.1987). The court may not exclusively rely upon a selected portion of the evidence, and disregard other convincing evidence, if it would be unreasonable to do so. **National Council on Compensation Ins. v. New Mexico State Corp. Comm'n**, 107 N.M. 278, 282, 756 P.2d 558, 562 (1988).

The decision of the agency will be affirmed if it is supported by the applicable law and by substantial evidence in the record as a whole. **Kramer v. New Mexico Employment Sec. Div.**, [1992-NMSC-069] 114 N.M. 714, 716, 845 P.2d 808, 810 (1992). "Substantial evidence" is evidence that a reasonable mind would regard as adequate to support a conclusion. **Wolfley v. Real Estate Comm'n**, 100 N.M. 187, 189, 668 P.2d 303, 305 (1983). Where the reviewing court is addressing a question of fact, the court will accord greater deference to the agency's determination, "especially if the factual issues concern matters in which the agency has specialized expertise." **Morningstar Water Users Ass'n v. New Mexico Pub. Util. Comm'n**, [1995-NMSC-071,] 120 N.M. 579, 582, 904 P.2d 28, 31 (1995).

In the present case, the evidence is voluminous and highly technical. In essence, the evidence supports the Commission's conclusion that four of Pendragon's wells were producing gas from a source owned by another, Whiting. Pendragon focuses on a large number of factual findings which are related to or preliminary to this central issue and claims that there is little or no evidence in the record to support them. However, a fair reading of the records reveals more than adequate support for each one, even though opposing evidence was presented by Pendragon.

So long as the factual basis for the conclusion is sound, the conclusion should be upheld. Even if another conclusion may be reached or where there is room for two opinions, the longstanding rule of law is that the decision is not arbitrary or capricious if it was made after due consideration and is supported by substantial evidence. See **Perkins v. Department of Human Servs.**, 106 N.M. 651, 655, 748 P.2d 24, 28 (Ct. App. 1987). This is particularly true in cases where the decision calls for special expertise.

Pendragon also claims that the Commission failed in its duty to afford complete relief because it found that Whiting was also guilty of taking gas from Pendragon's sources but the Commission did nothing. Actually, the Commission only found that Whiting's wells may be taking gas but that the amount was so small that it wasn't worth bothering about. On this basis, the Commission's failure to take action, for example, shut-in Whiting's wells is logically supportable.

Finally, Pendragon claims that the Commission erred when it found that Pendragon had already taken its fair share of gas from the Pictured Cliffs Formation. This finding is not particularly puzzling since the Commission found that the Formation had been depleted by Pendragon in 1995 and that production from this formation was only later accomplished by Pendragon's fracture stimulation treatments which had the unfortunate effect of opening a communication between the nearly dead Pictured Cliffs Formation and the still productive Fruitland Formation owned by Whiting.

Conclusion

The appeal of Pendragon is not well-taken and it should be denied. As well, the decision of the Commission [including its decision on reconsideration] is well supported by substantial evidence in the record as a whole, not contrary to law and neither arbitrary nor capricious. Accordingly, that decision should be upheld.

Directions to Counsel

Mr. Ross, please prepare a form of Final Order in accordance with the court's decision and circulate the same to all counsel for approval as to form and submit the approved form to the court for signature and entry no later than March 16, 2001 at 9:00 a.m.

In the event that there is an unreasonable delay in securing approval or in the event of objections to the form of Order, please present the proposed form in open court on **March 16, 2001 at 9:00 a.m.** Objections, if any, shall be in writing and shall be filed with the Clerk of the Court [with copies to court and counsel] no later than three working days before the date set for Presentment.



ART ENCINIAS, District Judge

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