

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

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,

Petitioners-Appellants
and Cross-Appellees,

vs.

No. 6 C 30

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.

MOTION FOR EXTENSION OF TIME

Come now appellants by their attorneys and move the Court
to grant an extension of time to July 20, 1962, for the
filing of their brief in opposition to the motion of appellees
for rehearing, and brief in support thereof.

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KELLAHIN & FOX

By

P. O. Box 1713
Santa Fe, New Mexico

Granted 7/5/62
David W. Carmody
Justice

ATTORNEYS FOR PETITIONERS-APPELLANTS

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

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PETROLEUM CORPORATION, PAN AMERICAN
PETROLEUM CORPORATION, SHELL OIL
COMPANY, THE ATLANTIC REFINING
COMPANY, STANDARD OIL COMPANY OF
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COMPANY,

Petitioners-Appellants
and Cross-Appellees,

vs.

No. 6 8 3 0

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.

CERTIFICATE OF SERVICE

I certify that a copy of Motion for Extension of Time
and a copy of Order granting extension of time to July 20,
1962, was mailed this 5th day of July, 1962, to opposing counsel
of record as follows:

Richard S. Morris
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One of the Attorneys for Petitioners-
Appellants and Cross-Appellees.

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

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,

Petitioners-Appellants,

vs.

No. 6830

OIL CONSERVATION COMMISSION, TEXAS PACIFIC COAL & OIL COMPANY, EL PASO NATURAL GAS COMPANY, PERMIAN BASIN PIPELINE COMPANY, and SOUTHERN UNION GAS COMPANY,

Respondents-Appellees.

MOTION FOR REHEARING

Come now the appellees by their attorneys and move the Court pursuant to Rule 18 of the Rules of the Supreme Court of New Mexico for rehearing in the subject cause.

As grounds for rehearing, appellees contend that the opinion of the Court is erroneous in failing to remand the matter to the Oil Conservation Commission to determine whether, on the present state of the record, findings properly can be made in accordance with the decision of the Court.

Respectfully submitted,

EARL E. HARTLEY, Attorney General
RICHARD S. MORRIS, Special Assistant
Attorney General
Attorneys for Appellee Oil Conservation Commission

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Attorneys for Appellee Texas Pacific Coal & Oil Company

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Permian Basin Pipeline
Company

BY

RICHARD S. MORRIS
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OIL CONSERVATION COMMISSION, TEXAS PACIFIC COAL & OIL COMPANY, EL PASO NATURAL GAS COMPANY, PERMIAN BASIN PIPELINE COMPANY, and SOUTHERN UNION GAS COMPANY,

Respondents-Appellees.

BRIEF IN SUPPORT OF MOTION FOR REHEARING

The subject case, as the Court has noted, is the first appeal from an order of the Oil Conservation Commission and is a matter of great importance to the oil and gas industry in this state. The record before the Commission, taken from time to time over a period of two and one-half years, is voluminous and is replete with evidence of a technical nature fully supporting every aspect of the case.

The Court has not ruled on the sufficiency of the evidence in the record before the Commission to support the requisite findings. If, on the present state of the Commission's record, there is enough evidence concerning the recoverable gas reserves in the Jalmat Gas Pool to support findings in accordance with the Court's opinion, the Commission should be permitted to correct its error by making proper findings and entering a new order changing the allocation formula. The Commission would not be precluded from

considering the matter upon a new application to change the formula, but further proceedings would be unnecessary if the present record were adequate to accomplish this purpose. If the present record does not contain sufficient evidence concerning recoverable gas reserves to justify findings which would be a proper basis for changing the allocation formula, the Commission should be permitted the opportunity to so find.

In urging this proposition to the Court, appellees are not unmindful of the holding in State v. Carmody, 53 N.M. 367, 208 P.2d 1073 (1949), that absent constitutional or statutory authority a reviewing court cannot remand a case to an administrative body for the taking of further evidence. Appellees, however, are not requesting that the matter be remanded to the Commission for the taking of further evidence, but only for further consideration with respect to the form of findings which the Court has held the Commission must make.

A reviewing court has the inherent power to remand a case to an inferior court for findings on a material issue of fact if the remand might change the result of the case. Smith v. South, 59 N.M. 312, 283 P.2d 1073 (1955); Prater v. Holloway, 49 N.M. 353, 164 P.2d 378 (1945). And it has been held that even where there is no statutory or constitutional authority for a reviewing court to remand a case to an administrative agency, such authority may be implied. Gauthier v. Penobscot Chemical Fiber Company, 120 Me. 73, 113 A. 28 (1921).

Appellees submit that the Supreme Court has the inherent or implied authority to remand this matter to the Commission for further consideration in accordance with the Court's opinion, and that such disposition should be made of

this matter in order to afford the Commission the opportunity to change the allocation formula if the evidence so warrants.

Respectfully submitted,

EARL E. HARTLEY, Attorney General
RICHARD S. MORRIS, Special Assistant
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tion Commission

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Natural Gas Company

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Attorney for Appellee Permian Basin
Pipeline Company

BY

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Special Assistant
Attorney General

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Respondents-Appellees.

CERTIFICATE OF SERVICE

I certify that a copy of the Motion for Rehearing and Brief in Support of Motion for Rehearing was mailed this 2nd day of July, 1962, to the following:

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