

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO EX REL OIL
CONSERVATION COMMISSION, EDWIN
L. MECHEM, MURRAY E. MORGAN,
A. L. PORTER, JR., Members of
said Commission, TEXAS PACIFIC
COAL AND OIL COMPANY, and EL PASO
NATURAL GAS COMPANY,

Relators,

-vs-

No. 6483

HON. JOHN R. BRAND, JUDGE OF
THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF NEW MEXICO,

Respondent.

A N S W E R

I

Comes now the respondent, by his attorneys, and, in answer to the application for writ of prohibition and the writ of prohibition herein, respectfully shows the Court:

FIRST LEGAL DEFENSE

That respondent has at all material times acted and proposes to act in accordance with the law; that respondent at all material times has had and now has jurisdiction over the parties and subject matter involved in Lea County District Court case No. 16,213, which said jurisdiction is in no wise questioned or attacked in said application or writ.

SECOND LEGAL DEFENSE

Relator has a plain, adequate and speedy remedy in the ordinary course of law even if respondent's rulings and order in Lea County District Court Cause No. 16,213 were in fact erroneous.

THIRD LEGAL DEFENSE

Relator seeks to convert this proceeding into and make it serve the purpose of an appeal or writ of error.

FOURTH LEGAL DEFENSE

Said application and writ fail to state facts showing that irreparable loss or damage will result if the relief sought herein is not granted, and to the contrary show facts from which it affirmatively appears that such irreparable loss or damage, as alleged, will not result in such event.

FIFTH LEGAL DEFENSE

Said application and writ fail to state a claim or cause of action upon which relief can be granted herein against respondent.

SIXTH LEGAL DEFENSE

Said application and writ fail to state sufficient facts to support a writ of prohibition based upon superintending control for the following reasons:

1. The orders of the Oil Conservation Commission, review of which is sought in Lea County District Court case No. 16,213, were entered by relator Oil Conservation Commission of New Mexico, in a case in which relator Texas Pacific Coal and Oil Company was the applicant, supported by El Paso Natural Gas Company. Said orders became effective July 1, 1958, and are presently in full force and effect, and any delay in obtaining a review thereof before the District Court of Lea County, or before the Supreme Court of New Mexico can have no adverse effect upon relators, which orders are attached to relators' application herein, as Exhibit Nos. A and B, and are by reference incorporated herein.
2. The costs asserted by relators are purely speculative, and can form no reasonable basis for the issuance of the writ in question.

3. Said application and writ fail to state facts showing that irreparable mischief, great, extraordinary, and exceptional hardship, or costly delays and highly unusual burdens of expense will result if the relief sought herein is not granted, but on the contrary, show facts from which it affirmatively appears that relators have available to them a complete, adequate and speedy remedy at law.

II

Without waiving the defenses hereinabove set forth and relying fully thereon, respondent makes the following further answer to said application and writ on file herein, and respectfully shows the Court:

1. Respondent admits the material allegations of paragraphs 1, 2, 3, and 5 of said application and writ.

2. In answer to paragraphs 4 of said application and writ, respondent admits that a pre-trial conference was held in said cause No. 16,213 on August 4, 1958, at Lovington, New Mexico, and that the remarks of the court constitute the pre-trial order. As to the remainder of paragraphs 4, respondent states the contents thereof are argumentative, irrelevant and immaterial.

3. In answer to paragraphs 6, respondent admits that a second pre-trial conference was had on September 23, 1958, but states that the remainder of said paragraph is argumentative, irrelevant and immaterial.

4. In answer to paragraphs 7, respondent admits that relators requested a written pre-trial order, and that respondent stated a transcript of his remarks would constitute the pre-trial order. As to the other matter contained in said paragraphs, respondent states said matter is argumentative, irrelevant and immaterial.

5. In answer to paragraphs 8, respondent admits that he may at the trial of said cause, unless prohibited by this Court, proceed to take evidence in addition to the transcript of proceedings

before the Oil Conservation Commission, all subject to proper objection, as stated in the pre-trial orders entered in said Cause No. 16,213, District Court, Lea County, copies of which are attached to the application for writ of prohibition on file herein as Exhibits D and F, and by reference incorporated herein. As to the other matter contained in said paragraphs, respondent states it is argumentative, irrelevant and immaterial.

6. In answer to paragraphs 9, respondent denies the averments made in said paragraphs, and sub-paragraphs (a) and (f) appended thereto. As to sub-paragraphs (b), (c), (d), and (e), respondent states that he is without knowledge or information sufficient to form a belief as to the truth thereof. Further answering paragraphs 9 (b), respondent denies the Oil Conservation Commission of New Mexico, as the agency appealed from, has any obligation, duty or right to appear and present testimony and evidence before the court in support of a decision rendered by it in an administrative proceeding where the parties involved therein are appearing before the court.

WHEREFORE, having fully answered the application for writ of prohibition and alternative writ of prohibition herein, respondent prays that the alternative writ of prohibition be discharged as improvidently issued, and respondent have such other and further relief as may be proper in the premises.

Respectfully submitted,

ATWOOD & MALONE
Roswell, New Mexico

HERVEY, DOW & HINKLE
Roswell, New Mexico

KELLAHIN AND FOX
Santa Fe, New Mexico

By: JASON W. KELLAHIN
Attorneys for Respondent

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

JASON W. KELLAHIN, being first duly sworn, upon oath states that he has read and understands the foregoing instrument and that the matters alleged therein are true to the best of his knowledge, information, and belief; that the Respondent above named is not within the county in which this verification is made, and for that reason, the undersigned has made this verification in place of said Respondent, as attorney for said Respondent.

s/ Jason W. Kellahin

Subscribed and sworn to before me this 24th day of October, 1958.

s/ Joan Landwehr

Notary Public

(SEAL)

My Commission Expires:

July 8, 1962