

BEFORE THE  
OIL CONSERVATION COMMISSION  
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE APPLICATION OF  
STANLEY JONES, ET AL, FOR AN ORDER  
REQUIRING MALCO REFINERIES, INC.,  
TO PURCHASE OIL PRODUCED FROM THE  
DAYTON-ABO POOL IN EDDY COUNTY,  
NEW MEXICO. APPLICANTS, IN THE  
ABOVE-STYLED CAUSE, SEEK AN ORDER  
REQUIRING MALCO REFINERIES, INC.,  
TO PURCHASE OIL PRODUCED FROM WELLS  
IN THE DAYTON-ABO POOL IN EDDY  
COUNTY, NEW MEXICO, UNDER THE  
PROVISIONS OF THE COMMON PURCHASER  
ACT.

CASE NO.  
1615

APPLICATION FOR REHEARING

Comes now Malco Refineries, Inc., which is affected by the entry of the Order of the Commission described as Order No. R-1363, heretofore entered in this case, and hereby makes application for rehearing in respect to the matters determined by such Order, and Applicant for rehearing does hereinafter set forth the respect in which such Order is believed to be erroneous:

1. Malco Refineries, Inc. is not a common purchaser from the Dayton-Abo Pool in Eddy County, New Mexico.
2. The original Application in this case was limited to production from the Dayton-Abo Pool and did not include production from any other pools in Eddy County, New Mexico.
3. The Commission in its Order requires Malco Refineries, Inc. to purchase all oil produced from the "Dayton Field" in Eddy County, New Mexico and there is no formal designation by any agency of the State of New Mexico, nor is there any clearly defined area in common usage known as the "Dayton Field".
4. The action was taken in this action with regard to

what the Commission has termed in this Order the "Dayton Field", although all interested parties in such an enlarged area were not properly before the Commission.

5. If it is found that Malco Refineries, Inc. is a common purchaser, then there are other corporations, partnerships or individuals who are likewise common purchasers. Such other parties actually have facilities in the area to take oil from the Dayton-Abo Pool which Malco Refineries, Inc. does not have. It is erroneous to order one of the several common purchasers to take the entire production of any one pool and to thereby deprive others of their existing connections in the pool. The ratable take provisions of the New Mexico statute contemplate that there be one purchaser in the field and the provisions thereof as to taking all of the production can only be operative in situations where there is but one purchaser. To hold otherwise will be to completely disrupt marketing arrangements in many fields in the State of New Mexico where there are more than one purchaser. And to hold otherwise is also in abuse of the ratable take statute.

6. Under the existing Order of the Commission heretofore entered, it will require that there be more than one connection to several of the wells here involved, contrary to the express provision of the statute.

7. The Order of the Commission constitutes a serious interference with contract rights with no basis for the action in conservation nor prevention of waste.

8. The Commission by administrative construction has construed the words "pool" and "field" to be synonymous and the statutes relating to the conservation of oil and they have thereby assumed this meaning.

9. To construe the ratable take statute (Section 65-3-15,

New Mexico Statutes Annotated 1953) to require a purchaser to take from different and distinct pools as if they were one and the same is to render the statute unconstitutional. There is no basis in conservation or the prevention of waste and no basis for the jurisdiction of the Commission to require a purchaser to take all oil from a number of separate and distinct pools under the circumstances in this case.

10. The Statute as it is construed in accordance with the Order of the Commission entered in this case is also invalid when a purchaser already within the field and who as a matter of fact is the only purchaser from the particular pool can be excluded completely and another separate and distinct purchaser who has never purchased oil as a common purchaser can be substituted. Further, the ratable take statute is unconstitutional.

11. The evidence in this action shows that the Applicant in the original proceeding has a present and existing market for his oil and that he is attempting to use the ratable take statute to exclude from the pool the purchaser with whom he is presently dealing.

12. The testimony in the original hearing shows beyond question that there is but one purchaser in the Dayton-Abo Pool at the present time and that such purchaser is not Malco Refineries, Inc., but nevertheless Malco Refineries, Inc. has been ordered to purchase all the oil tendered to it from the Dayton-Abo Pool and from any other pools within an area which has no definitely ascertainable boundaries.

13. It is not a protection of correlative rights nor in the interest of conservation and consequently not within the jurisdiction of the Commission to impose ratable taking under

these circumstances and to thereby bring about purchaser pro-  
ration from the area concerned which will affect other pro-  
ducers not before the Commission in this action and will per-  
mit and give undue advantage to other producers within the  
same pool as those pro rated which have other means of dis-  
posing of their production.

WHEREFORE, the Applicant for rehearing respectfully moves  
the Commission to grant a rehearing in this action and to re-  
voke and set aside its Order No. R-1363 heretofore entered.

Respectfully submitted,

MALCO REFINERIES, INC.

BY:

SETH, MONTGOMERY, FEDERICI & ANDREWS

BY: *Oliver Seth*  
Its Attorneys